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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---X 07 CV 414 Civ

RICHARD A. TROPP, individually, and On Behalf Of All Others Similarly Situated,

Plaintiff,

v.

THE CORPORATION OF LLOYD'S, also known as The Society Of Lloyd's,

Defendant

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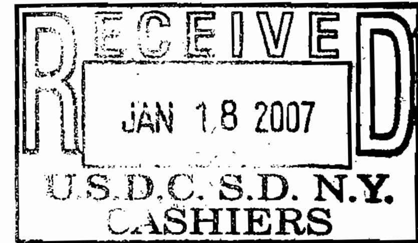
COMPLAINT



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CLASS ACTION ALLEGATIONS 60

Plaintiff Richard A. Tropp, by his attorneys, Bragar Wexler & Eagel, P.C., complaining of defendant, The Corporation of Lloyd's ("Lloyd's") alleges:

Jurisdiction

1. This is an action for a declaratory judgment, injunction, accounting, specific performance, conversion, and ancillary damages arising out of plaintiff's agreements to be a member of Lloyd's and Lloyd's breach of those agreements, conversion of plaintiff's funds, and Lloyd's threatened enforcement in New York of a United Kingdom ("UK") judgment against plaintiff, arising from a UK action in which plaintiff was precluded by UK law from litigating his claims against Lloyd's on the merits in UK courts.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332. Plaintiff is a citizen of the State of New York. Lloyd's is a corporation created under English law. Lloyd's principal place of business is London, England. Each of the plaintiff's claims exceeds $75,000, exclusive of interest and costs. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that some of the conduct complained of herein occurred in this District and Lloyd's is subject to personal jurisdiction in this District.

Parties

3. Plaintiff Richard A. Tropp ("Tropp"), who resides in New York, New York, is a member of Lloyd's, known as a "Name," who underwrote insurance through Lloyd's during the years 1988 through 1990 and was continued wrongfully, contrary to his wishes, as an underwriter in 1991.

4. Defendant Lloyd's is a United Kingdom ("UK") corporation statutorily incorporated by Lloyd's Act 1871. Lloyd's is a marketplace in which members of Lloyd's associate in groups to take risks from underwriting insurance. Lloyd's is regulated by various acts of Parliament, all of which have been incorporated into Lloyd's Act 1982. Lloyd's, itself, issues corporate By-Laws, which have been construed by the UK courts as carrying the authority of statutes enacted by Parliament, precluding defenses against violations by Lloyd's of its contractual and statutory duties when such acts are done unilaterally by Lloyd's in nominal reliance on those by-laws.

Summary of the Case

5. Plaintiff will prove that Lloyd's has systematically deprived him, and thousands of other Names, of their due process rights in obtaining UK judgments without providing any opportunity to contest the merits of the judgments, either before or after the judgments were obtained. Thus, plaintiff, individually, seeks to prevent Lloyd's from entering against him in New York a UK summary judgment of £463,883.28 ("UK Judgment") and to establish his right and separately the right of United States' ("US") Names to an accounting of their true liability to Lloyd's or of Lloyd's liability to them.

6. The UK procedure prevented not only plaintiff, but also thousands of other members of Lloyd's, known as "Names," from litigating the merits of claims asserted by Lloyd's. The substantive result is that seventy years' projected "debt" liability is imposed on plaintiff, and thousands of other Names, at will by Lloyd's with all Names being barred by UK law from showing any factual error in the imposition of the liability. Further, billions in trust funds and other classes of funds controlled by Lloyd's management, but legally belonging to plaintiff and those other Names, were converted

by Lloyd's management. These funds could have been more than enough to offset, if not exceed, the liability that Lloyd's seeks to impose on plaintiff and the other Names. Nevertheless, the UK courts refused to hear evidence from plaintiff that Lloyd's, as plaintiff's trustee, had converted plaintiff's own money without at least crediting plaintiff on its books to set off his purported "debt".

7. Thus, plaintiff, as representative of the class of United States ("US") citizens who have been or may become defendants in other similar cases brought by Lloyd's, seeks to establish the right of the class to obtain an accounting of each names' obligations with Lloyd's in order to satisfy US standards of procedural due process.

8. When plaintiff tried to present substantial evidence that he was not liable to Lloyd's, as a defendant, the UK courts barred it by a new, drastically narrowed interpretation of the UK case law that construed a Lloyd's agreement (unilaterally imposed on him nine years after his original voluntary contract). This new construction established Lloyd's bare allegation of plaintiff's purported liability as irrebuttably proved merely by been stated.

9. When the UK trial court and the appellate court foreclosed plaintiff from using his evidence in defense, those courts emphasized that plaintiff could present the evidence in a subsequent hearing on his counterclaims, after the entry of a judgment against him. When plaintiff then pursued his counterclaims, however, his evidence was again completely excluded by both of the same courts, this time because of a new, dispositively more expansive interpretation of a unique statutory immunity conferred upon Lloyd's.[1]

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[1] That immunity is on its face (and was intended by Parliament to be) an exemption from only the single remedy of damages arising from tort claims, while leaving all other rights open, and

10. Lloyd's has obtained other UK judgments and sought to enforce them in the US. When confronted with claims of lack of due process, Lloyd's in those other cases pointed to all the remedies that it claimed existed in the UK that gave the defendant/names ample opportunity to have their claims heard. But in plaintiff's case, Lloyd's successfully took the position in the UK that those alternative remedies did not exist, even though it had assured US courts in those other cases that those same remedies were available to members.

11. Lloyd's should not have it both ways. In the US, it claims in this court and in Federal circuits that numerous remedies exist for American defendants in the UK, but then in the UK, Lloyd's claims that those remedies are barred. Since the UK courts have upheld Lloyd's position, the UK procedures clearly deprive plaintiff, and all other similarly situated members, of basic due process: that is, the right to an adversarial hearing in which plaintiff can present evidence and challenge Lloyd's' allegations of a projected future lifelong debt instead of merely nominal ministerial proceedings that totally denied plaintiff the right to such a hearing.

12. Plaintiff's case is one of thousands arising from an effort by insiders at Lloyd's to shift the responsibility for paying for the huge environmental (including asbestos) losses incurred prior to the 1980's from long time members of Lloyd's, including management insiders and the traditional wealthy Lloyd's members who often were related parties to them, to new members who materially are middle-class rather than the stereotype Lloyd's old rich. Plaintiff, one of thousands of aggressively solicited late-1980's new recruits, was forced to bear these risks even though he had specifically

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was to cover Lloyd's only when acting in its statutorily delegated capacity as self-regulator under UK public law, not when (as in the instant matter) acting admittedly in their merely private capacity.

conditioned his joining Lloyd's to avoid them. However, the UK courts held plaintiff could not present evidence in his defense to show manifest error in Lloyd's calculations. Moreover, the UK courts interpreted a UK statute that precluded damages claims against Lloyd's to bar all of plaintiff's counterclaims for specific performance, declaration, injunction, or accounting between Lloyd's and plaintiff.

13. Finally, if plaintiff were to sue his individual Lloyd's insider agents rather than Lloyd's itself -- as Lloyd's has represented to this court, other Federal circuits, and the New York State court that a member could, if relief timely were not available against Lloyd's itself -- the proceeds of UK court awards in such lawsuits would be confiscated by Lloyd's. Plaintiff would receive nothing of any cash award ordered by a UK court against his individual agents. Upon information and belief, he would not even receive an accounting of Lloyd's use of those proceeds allegedly held in trust for him, if, in fact, Lloyd's had actually collected those damages in his name from its insiders as the UK court had ordered.

14. Lloyd's claims that plaintiff is bound to this result because of its by-laws agreed to by plaintiff in his original 1987 contract (on which plaintiff too relies in defense, as having been violated by Lloyd's). There is no way that plaintiff could have known that nine years later Lloyd's, by a by-law which the UK courts then would deem to carry preemptive statutory force, would unilaterally impose a second separate contract with a "conclusive evidence" clause that purported to effect a waiver of his rights to defend against a false claim, or would authorize the confiscation of various classes of his funds held in trust by his Lloyd's agents and then by Lloyd's itself without even crediting plaintiff with his share of those funds to correspondingly reduce his purported liability.

Similarly, in 1987, plaintiff could not have known of the UK courts' recent expansion of the breadth of Lloyd's unique immunity to preclude his post-judgment remedies in counterclaim as well as his prejudgment remedies in defense. These dramatic changes in plaintiff's UK legal position with Lloyd's, including a purported waiver of due process in that second unilaterally imposed contract, were unforeseen and without his consent.

15. As a result, Lloyd's members, such as plaintiff, were required by the UK Courts to accept whatever future projected liability Lloyd's alleged against them, without judicial recourse to show that the liability was in error in any way. The UK courts have, therefore, created a uniquely prejudicial judicial system for the class of Lloyd's cases that completely lacks due process for plaintiff and the similarly situated class of other US names of Lloyd's, who could not dispute the facts of the projected seventy years' liability that Lloyd's claimed was owing.

16. Plaintiff recognizes that there have been numerous prior Lloyd's cases against United States names which have uniformly ruled in favor of Lloyd's. Plaintiff's case, however, is very different from all the prior Lloyd's cases. Plaintiff is the first US defendant in a Lloyd's case to have stayed the course all the way in the UK process and to exhaust his UK remedies in counterclaim as well after he had first done so in defense. Plaintiff is, consequently, the first US defendant in a Lloyd's case to be able to make a showing to a US court of his UK court record that no UK remedy was in fact available to him, not only in defense to a judgment, but also after the entry of a judgment. The rationale of the UK courts with respect to plaintiff applies to all others similarly situated.

17. Plaintiff's UK court record rebuts the fundamental underlying assumption of the US courts which had been their gravamen for decision in the whole line of US Lloyd's cases. All Federal circuits have relied on what they understood had been US defendants' voluntary waiver of their rights to pre-judgment UK due process in defense, but no US court has ever had before it a record which could have shown it the unavailability of opportunity for post-judgment UK remedies in counterclaim as well.

18. Plaintiff is the first US name to both have developed his own new evidence and marshaled Lloyd's internal non-public evidence of how he did not owe anything to Lloyd's and that his liability, if any had already been satisfied by his funds that Lloyd's controlled in his name and had taken for itself. He is the first US name to have presented this evidence to every level of court in the UK to support numerous remedies he sought. None of his evidence was considered, because UK courts precluded the evidence, first in defense and then in counterclaim, in reliance on Lloyd's unique UK law. All of plaintiff's remedies were rejected.

19. These new, key facts differentiate plaintiff from the hundreds of other cases of US names who have failed to prevent enforcement in Federal courts of Lloyd's UK judgments against them. The record of his UK court process also shows that none of the US names could have obtained an appropriate accounting of their true net obligations, or of Lloyd's true net liability to them.

How Lloyd's Historically Operated

Syndicates of Members

20. A member of Lloyd's ("Member") is an individual underwriter, also known as a Name, who usually associates with other Members to form a syndicate that

underwrites insurance risks, but each member of a syndicate is liable to pay only his pro rata share of the syndicate's risks. The syndicate is not itself an insurance business, but only the administrative unit for managing the underwriting done by a group of members, each member being responsible only for his pro rata share of the risks insured. As explained below, the syndicate is operating by a managing agent. Each Member is advised on what risks to insure by a members' agent, who is in law on the Member's side of the table at arms' length from the managing agent. The members' agent receives from the managing agent any moneys owing to the Member, on his account pro rata out of profits made by his syndicates, or notice of the Member's obligation to pay funds to cover his syndicates' losses.

21. Under the terms of Lloyd's Acts 1982, Lloyd's By-Laws and the contract documentation executed by Members when they join, which includes a brochure from Lloyd's that describes the agreement between Lloyd's and the Member ("Brochure"), Members expressly do not assume partnership risks with other Members of their syndicate (nor with Members of other syndicates). Members' liability is "several," pro rata to their individual share of the risk that their syndicate takes. Lloyd's for generations has pronounced this principle, which makes up Lloyd's basic business model as "each for his own, [but] not for the other."

22. Each syndicate issues insurance as a discrete financial product, i.e. a particular kind of insurance risk which is differentiated from other syndicates' businesses, and in which the particular syndicate is specialized.

23. A Member has the option to join as many syndicates in a given year as he has capital, in the form of a letter of credit, to cover his share of underwriting the

insurance. An "underwriting year" is an insurance accounting period of exposure by a Lloyd's syndicate (usually a calendar year) to insure loss under a new policy which commences effectively that year, and covers losses from insured events during that year (or occasionally for longer times). A syndicate has a life of one underwriting year; it is not a continuing association.

24. The standard operating cycle of a syndicate in a particular underwriting year is three calendar years. The syndicate underwrites new business on its Members' behalf in year one, accepting liability for specified risks in return for a premium from customers. The syndicate invests this premium during years two and three and earns investment income on it. Usually in Lloyd's policies a customer has until the end of year three to submit claims. At that time, the syndicate closes its books and calculates its profit (to be distributed the Members) or loss, to be "cash-called" from the Members.

25. Each Member of Lloyd's is considered to be an underwriter under United Kingdom law (Lloyd's Act 1982 and Financial Services and Markets Act 2000 ("FSMA")) and New York State law (regulating Lloyd's American trust funds held in New York).

Managing Agents and Members' Agents

26. Each syndicate is organized and run by a managing agent or agency. The managing agent is a business entity that makes underwriting and other business decisions (such as purchasing reinsurance at the end of a syndicate's three year operating life) on behalf of the Members in the syndicate and employs the underwriter and technical staff who actually perform the insurance business. The managing agent is compensated by a management fee based on how much capital the syndicate's Members have placed at risk plus a share of the syndicate Members' profit.

27. Each managing agent may manage several syndicates of different Members in different lines of business, which take different kinds of underwriting risk. A managing agent may run a "marine" syndicate (ship insurance, allowed to assume up to 20% incidental non-marine risk) and syndicates, which underwrite automobile reinsurance, airline insurance, and property and casualty insurance, but each syndicate is managed as a separate business.

28. Upon information and belief, in the 1980's and 1990's, there were approximately 50 managing agents running approximately 400 syndicates. As a separate business unit, a managing agent, which is a permanent member of Lloyd's market community, has interests and incentives separate from the interests of the syndicate whose underwriting business the agent manages on behalf of its Members.

29. All United States ("U.S.") insurance regulators insisted that in return for Members to underwrite insurance in the U.S. that all premiums on policies payable in U.S. dollars and all investment returns on those premiums be kept in trust in the U.S. so that funds would be available to pay policy holders' claims. In fact about two-thirds of all premiums and all investments thereon were kept in so-called "Premium Trusts" at Citibank in New York City under the direction of Lloyd's.

30. All other Lloyd's premiums were also held in trust either in Canada or the United Kingdom. All Members' executed Premium Trust Deeds with their Members' Agents, who in turn executed trust agreements with the managing agents to be fiduciaries during the normal three-year cycle of the syndicates.

31. In all Premium Trusts, regardless of country of origin, the premiums and investment income were supposed to be accounted for on a Member-by-Member basis,

as one Member did not have liability for the obligations of any other Member. During the syndicates' normal three-year cycle, the trustees of the Premium Trusts were the managing agents of all the syndicates. Upon the close of a syndicates' normal three-year cycle, the funds were used, either as profit distributions, to pay claims or to pay for reinsurance. The proceeds of the trust were distributed in trust to Members' Agents for the benefit of Members and were held, for the most part, in accounts called "Collection and Distribution Accounts."

32. Pursuant to the United Kingdom Insurance Companies Act under which Lloyd's operates, each Member's underwriting accounts must be submitted annually to a rigorous audit conducted by a member of a panel of chartered accountants approved by the Council. This audit is carried out in accordance with the "Instructions for the Guidance of Lloyd's Auditors" ("Audit Instructions") issued annually by the Council with the approval of the British Department of Trade. The purpose of the audit is to identify whether each particular Member had personal assets and reserves sufficient to meet his prospective liabilities and to form the basis upon which each syndicate's accounts are to be signed off each year and to ascertain the premium to be required for the next year's syndicate in order to close the relevant year of account.

33. A description of the audit as set forth in the Audit Instructions appeared in the Brochure. Each Member and Lloyd's agreed that the Syndicates accounts were to be submitted annually to a rigorous audit in accordance with appropriate instructions approved by Lloyd's, which included proper provision for unknown and unnoted losses.

34. The members' agent is the advisor to individual Members, who solicits them to join Lloyd's, manages the recruitment process, and then advises them each year as

to which approximately 12 to 18 syndicates out of 400 available syndicates that the Member should participate in. A Member may join Lloyd's and resign from Lloyd's only through his members' agent.

35. To the extent that a Member's syndicates in a given year make a profit, the syndicates' managing agent distributes that profit to the members' agent on behalf of the Member. To the extent a Member's syndicates sustain losses, the members' agent transfers money it is holding for a Member to cover the Member's losses. The members' agent maintains an account for the Member to reflect the net result from all of the Members' syndicates. If a Member's loss on all of his syndicates in a year exceeds his gains from the syndicates, the member's agent calculates how much the Member owes and submits a "cash call" on the Member, which is a bill to pay the net loss. If the Member had previously consented through the members' agent, who had asked on Lloyd's behalf for the Member's Voluntary Release consent to a cash call in an amount specified by the members' agent, Lloyd's then would execute the cash call on the Member's letter of credit with the Member's bank through the Corp's Central Services Unit.

36. Members' agents are compensated by an administrative fee from his Members based on the amount of capital the Members put at risk (which generates a premium capacity which is generally up to four times the amount of capital) on underwriting originating in that year (which Lloyd's refers to as "pure year underwriting" as opposed to reinsurance of underwriting from a prior year) on which the members' agent is advising them, plus a commission on profit distributed to their Names, and shared with them by managing agents from the syndicates that are profit making.

37. By side agreement with a managing agent, which might not be disclosed to the Members, a members' agent may further be compensated by (a) a placement fee from the managing agent, which is a portion of the managing agent's management fee paid by the Members, plus (b) a percentage of the managing agent's profit commission from profitable syndicates in return for the members' agent placing his Members into the managing agents' syndicates rather than other syndicates. The amount of placement fee varies from syndicate to syndicate. The managing agents of syndicates that are short of capital pay a higher fee to the members' agents; while the managing agents of those syndicates that are profitable pay a lower fee to the members' agents. The members' agents' interests, therefore, are not identical to the Members' interests and may be at times adverse to the Members' interests.

38. A syndicate may well have the same investors from year to year and the same individual as managing agent. The investors in the syndicate may have the same members' agents. However, the managing agents and the members' agents operated through corporations. From time to time, each managing agent and each members' agent would change the name of the corporation that would work with the syndicate for the next year or years. An agreement, known as "novation," was executed each time a corporation assumed a new name. The novation was between the managing agent or members' agent and each investor in a syndicate. In the novation, each investor specifically released from all prior years liability the prior managing agent and/or members' agent, operating under the different name.

Reinsurance and Self-Reinsurance

39. Since the liability on risks insured against by syndicates might not all be known at the end of the normal three-year cycle of a syndicate (or the amount of losses might be unquantifiable from a known risk), syndicates protect against those risks by purchasing reinsurance. Reinsurance is a transaction in which liability is passed from one party (an insurer, who is the buyer of reinsurance) to another party (the reinsurer, the seller of the reinsurance). The buyer pays a premium to the seller, after which the buyer no longer has economic liability for risks previously insured against, although the buyer is still legally liable therefore (e.g. if the reinsurer is declared insolvent).

40. In the normal reinsurance situation, the buyer's liability is considered to have been passed to the reinsurer in economic terms under all relevant accounting standards. Thus, reinsured liability may be reported by a reinsured company to the capital markets as having been removed, in economic terms, from its balance sheet by the reinsurance. In the U.S., however, a non-U.S. insurer which is not licensed by U.S. state regulators must report its full original liability for purposes of meeting U.S. regulators' capital adequacy standards without reducing its liability by the amount of reinsurance. As a result, a non-U.S. domiciled insurer must hold cash physically in U.S. trust fund accounts to cover liability to U.S. policyholders (and other policy holders who are to be paid in U.S. dollars) as if that insurer had no reinsurance.

41. In order to qualify as reinsurance under relevant accounting and regulatory standards, the underwriting of reinsurance – the decision on what risk is prudent for the reinsurer to accept, at what premium price – must be done at arms' length. Thus, for a reinsurance transaction to be properly reportable as such, the party which assumes the liability (the reinsurer) must be an unrelated party to the reinsured. The risk assessment

and pricing of the transaction must be done at arms' length on business terms, and a liability must, in economic terms, truly pass from the buyer to the unrelated party.

42. The purchase of reinsurance by a Lloyd's syndicate at the end of a three-year standard claims cycle for any given underwriting year to protect against any subsequent claims that might be made against the syndicate is known as "Reinsurance to close" or "RITC"). This reinsurance was called "to close" because the purpose of this transaction was to close the books of that year of the syndicate's account and to declare and distribute (or cash call) profits or losses to the Members for that particular year.

43. In buying RITC, the syndicate would pay a premium for its reinsurer assuming the syndicate's liability outstanding at the end of its three-year cycle. The syndicate could have underwritten risks as a direct insurer, but it also was able to underwrite risks as a reinsurer of other insurers. The liability transferred in the RITC transaction to the reinsurer included both (a) liability arising from that syndicate's own original underwriting done in its current year of account and (b) prior liability which it had reinsured from prior-year insurers. The prior reinsured liability could include multiple years of liability which had been cumulatively assumed in successive cycles of RITC, not yet realized as losses payable to policy-holders on notified claims.

44. In a RITC transaction, the reinsurer (the seller of the reinsurance) could be (a) a non-Lloyd's reinsurer in the London market, Continental Europe or Bermuda, (b) another Lloyd's syndicate run at arms' length by an unrelated managing agent, or (c) the succeeding year of account of the buyer syndicate run by the same managing agent. In Lloyd's structure, the succeeding year of account of the same syndicate is a separate business entity, regardless of whether its Members, who as individuals are

legally the underwriters and the business parties who are both buying and selling the reinsurance, are new investors or the same ones from a prior year.

Long-tail Liability

45. In connection with reinsurance, and RITC transactions in particular, there are several industry terms that are relevant and help illustrate how RITC functions. The risk of loss which would not manifest itself as a loss all at one time in notified claims, but would only begin to show up bit by bit over the course of many years after the end of an underwriting year is known as "long-tail liability." In contrast, liability that was realized in claims as loss due and payable before the end of a syndicate's standard three-year claims cycle is known as "short-tail liability." Liability for future payments on losses, which have already occurred but have not yet been reported (or have been reported but the loss has not been quantified) to a reinsurer, is known throughout the reinsurance industry as "incurred by not [yet] reported" liability or "IBNR." In Lloyd's structure in particular, IBNR is projected liability on which claims have not yet been made by the end of a syndicate's standard three-year cycle, but which at the end of the cycle is a loss that foreseeably will come in as claims in the future. IBNR includes projected future loss development, known as "deterioration," from claims already reported, but whose ultimate total loss is not yet known in full.

46. In Lloyd's context, IBNR often arises from long-tail liability of syndicates that directly insured or reinsured environmental (including asbestos) or health risks. Under U.S. law since the 1970's, such liability is claimed against the insurer and reinsurers of the year in which the insured event occurred, regardless of how long afterward the loss was identified to the insurers, known as to "manifest", as a notified claim.

47. IBNR in Lloyd's context could also arise from syndicates, which reinsured property and casualty catastrophe risks in multiple layers of reinsurers, known as "London market excess-of-loss" or "LMX" syndicates. The reinsurers in the higher-dollar "excess-of" layers would have to wait to be notified of claims until after the whole chain of original insurers and lower-layer reinsurers below them had processed their successive layers, and had determined how high the total liability was for an insured loss under a particular original insurance policy.

48. In order to price the premium that has to be paid in an RITC transaction, the managing agent projects IBNR at the end of the syndicates' three-year cycle. Insurance regulators require that a syndicate must buy adequate reinsurance to cover all of its projected IBNR liability whenever in the future that it may materialize as claims, known as "reserved to ultimate," in order to close its books on its year of account.

49. For financial reporting purposes, reinsurers of IBNR must fully recognize in accounting terms, on a current basis, the full amount of the IBNR liability, rather than waiting until it becomes payable as an actual loss. Recognition of the IBNR liability may be discounted by the time(s) when the loss is expected and by subtracting the discounted present value of the investment income expected on the reinsurance premium received.

Lloyd's Self Reinsurance with Long Tail Liability in the 1980's and 1990's

50. As noted above, Lloyd's permitted a managing agent of a syndicate with a long-tail IBNR liability to reinsure that liability as RITC with its successor syndicate (even with the same investors) in the next year ("Self-RITC"). This practice became prevalent among long-tail syndicates during 1982 through 1996. In a Self-RITC

transaction, the managing agent was on both sides of the transaction, simultaneously as a buyer on behalf of his prior year's syndicate's investors and as a seller on behalf of his future year's ones. There was no independent assessment by an arms-length seller to protect the future-year members of the capital adequacy of the reserves, which were carried forward as assets to the future-year syndicate to cover the risk of liability, which its members were assuming.

51. In a Self-RITC transaction, there is an inherent conflict of interest between the economic interests of the Members of the prior year syndicate (which is to minimize the amount of premium they pay to the future year to fund the reserves to cover claims) and the economic interests of the Members of the future year syndicate (which is to maximize the amount of premium to cover the risks assumed). The managing agent of the two syndicates, which acts as agent for the investors on both sides of the table, has his own conflict of interest. To the extent the managing agent does a Self-RITC transaction, as opposed to buying reinsurance from a third party, the managing agent earns income. For each future year reinsurer syndicate, the assets carried forward from the prior-year buyer syndicate are booked not only as assets, but also as current income. Under Lloyd's rules, the managing agent was allowed to pay himself a "profit commission" on that "income," taken out of his syndicate's reserves each time that its reserve assets were carried forward to a successor year as a notional premium for such self-reinsurance. Thus, the managing agent was able to make "profit commission" multiple times, as year after year the same IBNR liability was carried forward by Self-RITC into the future.

52. If a syndicate's managing agent could not find a seller from whom to buy RITC at the end of its three-year cycle, then it could not close the syndicate's books; the year of account had to remain an "open year." Most times when a syndicate was unable to close its books, it was projected to be insolvent. Without RITC, the syndicate was forced into "run-off," which meant that the year of account was open, that year's investors remained liable for their share of the syndicate's liabilities until those liabilities were worked out or later reinsured, and the syndicate went into bankruptcy liquidation, also known as "winding up." A syndicate required to go into run-off cannot accept new premiums to do new business; it can only process claims on its existing underwriting liabilities from the year of account which was forced into run-off.

Overview of Lloyd's Failure to Adhere to its own Regulations in Light of Unexpected Losses

53. Prior to 1982, Lloyd's had numerous syndicates that issued insurance and reinsurance to cover both environmental risks and catastrophic losses. At this time, the scope of environmental losses was beginning to emerge, especially in the U.S. In January, 1982, the auditors of about eighteen of Lloyd's biggest syndicates ("18 Syndicates") asked for a meeting with the Council and reported that those syndicates, each of which was a billion dollar plus business, were insolvent. These syndicates had inadequate reserve assets on December 31, 1981 (the end of the standard three year cycle for the 1979 year) to cover long-tail IBNR liability from their 1979 underwriting.

54. The 18 Syndicates had liquidity to pay known claims, which were currently due, but had not booked their full IBNR liability on publicly reported interim financials, and had not yet issued final balance sheets after closing their 1979 books as of December 31 1981. The auditors warned the Council that the amount of RITC needed

to fully cover the 18 Syndicates long-tail IBNR could not be determined and recommended that the 18 Syndicates go into run-off and not close their 1979 books as if they were solvent and not to trade forward. Prospective new Lloyd's Members and insurance customers knew none of these facts.

55. Managing agents who were also Council members, such as Lloyd's vice chairman and the next three chairmen, ran many or all of the 18 Syndicates. As Council members, they were vested with self-regulatory authority over their own businesses. As owners and officers of managing agents, they personally stood to lose the most from following the auditors' recommendation to report the 18 Syndicates as insolvent. The Council reportedly suppressed the auditors' warnings. Some members of the Council, who were managing agents, reinsured-to-close their syndicates' IBNR liability onto other syndicates whose managing agents did not have the same inside information. Most members of the Council engaged in RITC transactions with their own future-year investors. These Self-RITC transactions enabled most or all of the 18 Syndicates to close their underwriting 1979 books and to quietly shift pre-1982 liability ("Old Years Liability") onto others in the future.

56. The managing agents of the 18 Syndicates informed members' agents in the Lloyd's market that they were available for new Members. The members' agents went on a recruiting campaign for capital from 30,000 new investors. These new Members were placed into syndicates, which materially re-insured the Old Years Liability through Self-RITC transactions. As a result, the burden of the select old investors IBNR liabilities was spread onto the new Members. The Old Years Liability was not yet visible as

booked loses to those being solicited because the insider managing agents had not yet recognized most of the IBNR as losses on their syndicate's balance sheets.

57. The aggressively recruited new generation of investors was, on information and belief, materially middle-class, not Lloyd's stereotype club of old wealth who were the ones relieved of liability that was reinsured onto the new recruits. About 4500 of the new Members were Americans. All of the new Members were told that their capital would be used to do insurance underwriting of new, current business. In fact, most of their capital was used as premiums for IBNR carry forward during 1982-1996, while being reported as materially current new business.

58. The insider Council members/managing agents of the 18 Syndicates, thus, took their traditional "deep pocket" United Kingdom investors off the hook of the Old Years Liability, which was primarily to American insureds for asbestos and pollution clean-up costs. For themselves, the insider Council members preserved an investment story that their businesses were still going concerns, to attract new capital and fees.

59. Lloyd's failed to insure there was any serious audit, not to mention a "rigorous" audit (see ¶¶ 33-33 above), of the syndicates' accounts to determine whether appropriate reserves existed for the liabilities that the Members had been given by the syndicates' underwriting Self-RITC.

Plaintiff's History With Lloyd's

60. In 1987, plaintiff worked in the office of the Administrator of the U.S. Agency for International Development. He previously had held a series of government policy positions ever since completing his education in 1971 and had little inherited or unearned wealth. Plaintiff's primary capital was his savings from over 14 years on a public servant's salary.

61. In 1987, an old friend of plaintiff introduced him to John Hayter, the chief executive officer of John Hayter (Agencies) Ltd. ("Hayter"). Hayter was a members' agent, which convinced plaintiff to invest in Lloyd's. Plaintiff used his life savings to post a fully collateralized $160,000 letter of credit that served as his investment. Based on his letter of credit, the syndicates in which plaintiff invested could take on risks of $640,000. Plaintiff underwrote insurance for 1988, after specifically confirming in writing that the syndicates in which plaintiff were investing would expose him to no "long tail" environmental risks at all. Hayter, on behalf of Lloyd's, agreed that plaintiff would not be put onto any long tail environmental risks. Plaintiff had previously worked in the U.S. Environmental Protection Agency in the precise period that the law of asbestos liability was evolving and regulations on toxic pollution contamination clean up were being crafted. Thus, plaintiff was especially sensitive to these risks and emphasized the importance of avoiding them.

62. During plaintiff's recruitment, Hayter, explained that one reason a middle class person as opposed to a rich person could prudently join Lloyd's was that a "personal stop loss" was always available for each year's underwriting at an affordable price of $1,000 to $2,500. The "Stop-loss" is cap on the maximum amount of loss that an investor who purchased the Stop-loss would incur in any year. Plaintiff agreed in 1987 to underwrite in the 1988 syndicates and purchased the Stop-loss when it was offered to him in the spring of 1988. Plaintiff agreed in 1988 to underwrite the 1989 syndicates and purchased the Stop-loss when it was offered to him in the spring of 1989.

63. As with 1988 and 1989, plaintiff received forms to implement the Stop-loss for 1990 in March, 1990, after having agreed in late 1989 to participate in syndicates for 1990, based on the representation that Stop-loss was always available. Plaintiff executed the Stop-loss forms and sent them along with a check for the premium to Hayter Brockbank, the 1990 successor name of the Hayter agency. However, in April, 1990, Hayter Brockbank returned plaintiff's check for the Stop-loss and informed plaintiff that the Stop-loss was no longer available, even though (as plaintiff learned only years later, inter alia from stop-loss brokers and underwriters) the insider directors and officers of Hayter Brockbank, who were also investor Members, were able to procure Stop-loss protection for themselves to cover their own personal risk from 1990 syndicate losses.

64. In April, 1990, Plaintiff immediately recognized that it would be foolhardy for him to underwrite insurance without a Stop-loss. He orally resigned from Lloyd's for 1991 in a telephone call with Nigel Bunting, Hayter Brockbank's designated person responsible for plaintiff. Because plaintiff was shortly thereafter called as a military reserve officer to active duty, he was unable to write a letter to Hayter Brockbank until August 3, 1990 confirming his earlier oral resignation from Lloyd's for 1991. Just as applications to Lloyd's had to be made through members' agents, such as Hayter Brockbank, resignations from Lloyd's also had to made through members' agents. Even though the resignation was submitted more than four months before the end of 1990, Hayter Brockbank refused to accept plaintiff's resignation and refused to process it through Lloyd's because Hayter Brockbank claimed that the written notice had to be made six months prior to the next year. With respect to solicitation of new Members

and resignations of Members, a members' agent was acting as an agent of Lloyd's, as well as an agent for the Member.

65. Plaintiff only learned years later that, in another case, Lloyd's represented to the UK Court of Appeal that Lloyd's By-Laws required resignations to be made prior to four months before the start of the next underwriting year, not six months. Thus under Lloyd's rules, plaintiff had timely submitted his resignation in 1990 and Lloyd's, through its agent, Hayter Brockbank, wrongfully rejected it. As a result, plaintiff remained an underwriter in 1991. and a material amount of the liability Lloyd's claims against him today arises from the 1991 underwriting onto which he was in effect conscripted after his resignation had ben refused.

66. Hayter Brockbank became Brockbank in 1991 and Brockbank remained (under various novated names) as plaintiff's members' agent. In 1992 and 1993, Brockbank represented plaintiff's underwriting year 1989 and 1990 total loss numbers to him and asked him, as agent for Lloyd's, for his Voluntary Release consent for Lloyd's to execute a cash call against his letter of credit in the amount of that total. Lloyd's then actually made those cash calls upon plaintiff. At the time the cash calls were made, Brockbank, as agent for Lloyd's, represented that the cash calls were for losses for plaintiff's underwriting for the years 1989 and 1990 based on the syndicates that plaintiff had directed that he was going to underwrite. Based upon what plaintiff later learned was a misrepresentation of the losses, as arising from new underwriting business in his year of account and currently due to cover insurance claims, plaintiff voluntarily consented to his letter of credit being drawn down to pay the cash call.

67. In 1994, Lloyd's, made a cash call based upon plaintiff's involuntary 1991 underwriting, which would have used up the balance of plaintiff's letter of credit and required a payment of additional funds. Plaintiff refused to pay this cash call without an explanation in detail as to the nature of the losses and, in particular, whether the losses arose from underwriting in violation of plaintiff's prohibition that he not underwrite any risk on long-tail business.

68. Plaintiff made oral and written requests upon Brockbank, the Central Services Unit of Lloyd's and other Lloyd's officers for a detailed explanation of the losses that resulted in the cash call for 1991. Extensive oral and written communications were then exchanged between plaintiff and Lloyds, but Lloyd's materially refused to explain the losses that resulted in the cash call for 1991. Lloyd's did, however, suspend the 1994 cash call through October, 1996, while negotiations between plaintiff and Lloyd's continued. After October, 1996, Lloyd's Chief Executive, Ron Sandler, told plaintiff that he had asked the head of the Central Services Unit to attend to plaintiff's inquiries. Plaintiff never received any response from Central Services Unit.

69. During plaintiff's requests for information from and then futile negotiations with Lloyd's in 1994 and 1995, the Internal Revenue Service ("IRS") did an audit of plaintiff's 1992 and 1993 losses from his syndicates from underwriting in the years of 1989 and 1990. The IRS suspended almost all of these losses, even though they were real cash out of pocket losses because those losses were not a final disposition of his liability. The IRS made a detailed analysis of plaintiff's tax returns compared to the informational tax returns from syndicates in which plaintiff was an underwriter (but which were not provided by the managing agents to plaintiff). In this analysis, the IRS

determined that, for the most part, plaintiff had been reinsuring his own liability from prior years on the same syndicates rather than participating in new current year insurance underwriting. Thus, under the tax law, plaintiff was still liable for the earlier year's losses, which had been reinsured into his later year syndicates.

70. Just as importantly, plaintiff's syndicates materially had not been underwriting new risks that plaintiff had selected each year. Rather those syndicates materially were running their own, old RITC transaction balance sheet carry-forward through the income statement of plaintiff's syndicates, treating the carry-forward as if it were "current" income in their reports to Members.

71. The managing agents were also churning multiple redundant fees out of reserves to pay claims on the purported new "profit" each year, which was just from recycling the same single old transaction. Lloyd's accounting rules allowed managing agents to take profit commissions out of claims reserves paid as premiums in Self-RITC transactions year after year, multiple times redundantly on one original underwriting for ten to fifteen years.

72. The premium income from plaintiff's syndicates was not current in accounting standard terms. Those syndicates nevertheless reported the RITC premium, paid to them by their own managing agent from their prior-year self, not only as being "current" in the senses of having arisen from new underwriting business in his year of account and of being currently due to cover insurance claims, on their balance sheets as an asset carried forward from the past to cover the corresponding IBNR liability carried forward, but on their income statement as current revenue. This practice gave the syndicates a façade of doing significantly new business, which meant to their

Members that the liability incurred was from underwriting the selected risks in the current year. The truth that substantially old, different liabilities were being rolled forward was not disclosed.

73. Unbeknownst to plaintiff, these Self-RITC transactions did not consist of true insurance business, which assumes the risk of future loss that may or may not happen, a fortuity. These transactions imposed a liability for a known past loss, an inevitability, carried forward but booked as new business with only the risk of future loss. In effect, these long-tail syndicates actually did not exist as going concern business by the 1990's. They materially were shells through which the managing agents laundered billions of their old IBNR from past to future, soliciting unwary new investors, such as plaintiff and about 4,500 other American investors, to float the process.

74. Not only did the financial reports of the individual syndicates incorrectly report the premium income to hide the carry-forward of known losses, but in Lloyd's own financials, which aggregated all the syndicates' results as current in Lloyd's annual global results, Self-RITC of churned old losses was reported as billions in new reinsurance underwriting—even when Self-RITC transactions had generated almost all reinsurance income for a particular syndicate, even though this constituted most of what the syndicate had reported that year as its current purported business.

75. As a result of plaintiff's repeated requests, in August, 1995, Lloyd's Financial Recovery Dept. directed plaintiff's syndicates managing agents to make available to plaintiff the syndicate accounts of the run-off agents of six of plaintiff's largest loss syndicates, Sturge 206 (Marine), Sturge 210 (Non-marine), Outhwaite 317/661, Spratt & White 287/357, Williams 235 and Crowe 666. A preliminary examination of those

accounts revealed that 98% to 99%+, depending on the syndicate, of losses attributed to plaintiff in fact (i) materially arose from lines of business different than what the syndicates had reported in advance that they did and would do with plaintiff's premium capacity; (ii) were in violation of plaintiff's advance prohibition of environmental long-tail liability; and (iii) materially arose from risks underwritten long before the years in which plaintiff was an underwriter, not during plaintiff's syndicate years of underwriting.

76. If the long-tail syndicates' Self-RITC transactions were true new underwriting, the syndicates should have been required by Lloyd's to set up appropriate reserves for the Self-RITC risks insured against. Specifically, the syndicates should have the same net capital (by being subject to the same premium capacity limit) against risk they accepted from their own prior year by Self-RITC as they were required to hold as security to support the new pure-year risk they had accepted (whether new underwriting or reinsurance issued to arms-length third parties). The managing agents of the syndicates did not do this, however, and Lloyd's did not make them.

77. The managing agents treated Self-RITC in the opposite manner for financial reporting purposes, on one hand, and for regulatory accounting purposes, on the other hand. For financial reporting purposes, the managing agents treated the assets from prior year's syndicates as income in the current year, as if new business were being underwritten. However, for regulatory accounting purposes, the managing agents reported no net capital cushion to cover the IBNR liabilities they had accepted by reinsuring a RITC from their syndicates' own prior year.

78. The net capital cushion is capital beyond premiums that serves as a prudent reserve for risks insured or reinsured. Reserves for the limited, true new business were

necessary under Lloyd's internal prudency rules, but Lloyd's did not require any reserves for the self-RITC as net capital over and above the assets which had been carried forward from a syndicate's prior year to its subsequent year as notional premium for the self-reinsurance. Nevertheless, Lloyd's permitted managing agents to report this self-reinsurance to their syndicates' members as new "current" underwriting. Lloyd's, run by substantially the same people who were the managing agents, permitted the syndicates to treat the Self-RITC transactions inconsistently for financial reporting purposes and the regulatory accounting purposes.

79. Lloyd's knew what its long-tail syndicates managing agents were reporting to the public, not only from the fact that the persons running the Corp were the same as the principal managing agents, but also because of the managing agents' internal reporting to Lloyd's on their syndicates. Lloyd's aggregated all syndicates' reporting in its own report known as "Global Accounts," which Lloyd's represented to the capital markets annually. Lloyd's knew, but did not disclose to plaintiff, that (a) those syndicates' Self-RITC was not new current business, nor true reinsurance, (b) to the extent of syndicates' Self-RITC, the managing agents should not have been booking new premium income, (c) to the extent of syndicates' Self-RITC, the managing agents should not be taking fees out of reserves as if the business were new, and (d) to the extent of syndicates' Self-RITC, reserves were not set up consistently with Lloyd's regulations for true, new underwriting business booked as "current". Nevertheless, Lloyd's did not stop them nor, as a market self-regulator, did it require them (as it should have under its rules if Self-RITC were current new risk) to maintain the usual net capital against the IBNR liabilities they had assumed from their own past by Self-RITC.

U.S. Litigations Over Allegedly Improperly Assumed Risks

80. Numerous lawsuits were commenced by U.S. Members claiming that Lloyd's had committed numerous wrongs in connection with shifting of Old Years Liability to new Members by means of Self-RITC. In these cases, Lloyd's took the position that all actions had to be brought in the United Kingdom, where there existed numerous remedies for the Members. Relying upon Lloyd's representation that numerous remedies existed in the United Kingdom, the U.S. courts dismissed all of these litigations.

Unilateral Amendments of All Investors Premium Trust Deeds as Lloyd's Becomes a Fiduciary of the Names

81. Prior to August, 1995, the New York State Department of Insurance audited the Premium Trust Funds, and, upon information and belief, found that the amount of funds insufficient to cover some Members' liability was short by over $8 billion dollars. However, other Members' accounts had assets in excess of their liabilities. In August, 1995, Lloyd's amended the Premium Trust Deeds to permit one Member's assets to be used to pay, on a cash basis, other Members' obligations, but the Members' whose obligations were paid incurred an obligation to the Members who assets were used.

82. In April, 1996, Lloyd's again amended the Premium Trust Deeds to substitute Lloyd's for both the managing agents and the members' agents as the fiduciary responsible to all Members for the distribution of the premium trust funds both during and at the end of the normal three-year cycle for each syndicate.

Lloyd's Attempt to Restructure

83. The problems with plaintiff's syndicates exhausting reserves from the Self-RITC transactions by assuming long-tail IBNR liabilities without proper reserves

unfortunately infected many other syndicates through stop loss reinsurance, excess loss syndicates insured by various syndicates, estate protection plans given by various syndicates, and errors and omissions risks insured by other syndicates. Thus, this problem spread to other Lloyd's syndicates and created a crisis by the mid-1990's. In light of this crisis, Lloyd's formulated an off-balance sheet restructuring of the liabilities of Members in syndicates underwriting prior to 1993.

84. The restructuring of Lloyd's was known as Reconstruction and Renewal or "R&R." R&R was Lloyd's off-balance sheet financial restructuring in which Lloyd's transferred its pre-1993 long tail IBNR liabilities (and some others) off its balance sheet onto a new captive reinsurance entity, Equitas. Lloyd's subsequently represented to a new generation of prospective Members and insurance customers that "New Lloyd's" no longer bore those liabilities. United Kingdom and U.S. insurance regulators approved the R&R off-balance sheet reorganization. Equitas is a holding company, owned by a trust, the beneficiaries of which are the reinsured Members, and several subsidiaries, all of which are controlled by Lloyd's through a controlling share in Equitas and through trustees and senior staff who were put into place by Lloyd's at the time of R&R.

85. As part of the restructuring, in August, 1996, Lloyd's sent statements to each Member called "Finality Statements" which purported to reflect their next 80 years IBNR projected future liability, which Lloyd's required them to admit (in effect confessing judgment and waiving all defenses against future rounds of collections) as a condition of reaching a settlement with Lloyd's as part of the forthcoming restructuring or be sued for all of the 80 years IBNR projected future liability at once. The settlement indicated that each Member was to pay a part of his total alleged future liability ("Equitas Premium")

as a Finality reinsurance premium to Equitas to obtain what appeared to be a release from all future liability.

86. In fact, under the restructuring, if the initial installment of the Equitas Premiums actually collected at the time of the member's agreeing to an R&R settlement were insufficient to pay the long-tail IBNR liabilities, Lloyd's reserved the right to collect from its Members who settled and paid their Equitas Premium any shortfall if the Equitas reserves were insufficient.

87. The R&R was implemented through various contracts. The primary agreement was known as the R&R Reinsurance and Runoff Contract ("R&R Contract") of September 3, 1996 in which Lloyd's agreed with Equitas and other parties, including a substitute managing agent, which Lloyd's had appointed under the authority of its Substitute Agents By Law of 1983, to act in R&R "for and on behalf of" all of its Members who were reinsured into Equitas. The substitute managing agent, called Additional Underwriting Agents (No. 9) Limited ("AUA9") was a shell entity authorized by the Council to act as a substitute managing agent in place of all managing agents in all syndicates to sign the R&R Contract on behalf of all the members of all syndicates.

88. Two officers of Lloyd's acting under the name of AUA9, as Substitute Agent "for and on behalf of" all the Names, agreed on behalf of all Members to reinsure all of their pre-1993 IBNR liabilities into Equitas, which effected the reorganization transferring all of Lloyd's Members pre-1993 IBNR liabilities to Equitas. Some disclosures of the terms of this settlement were made to all Members in a Settlement Offer Document a month earlier, but the R&R Contract was not shown to Members before it was put into effect (although portions were summarized), nor was their consent

asked for or given. The Members were not even informed that AUA9 was not an underwriting agent within the meaning of Lloyd's Act 1982 with the capacity to assess reinsurance risk in order to protect the Members in R&R as its principals. The R&R Contract was mandatorily imposed on all Members without material disclosure of its terms.

Operation of R&R

89. Lloyd's implementation of R&R benefited its principals to the substantial detriment of the Members in a number of critical ways, among others:

a. Assets were stripped from pre-R&R syndicates resulting in higher Finality reinsurance premiums and a windfall for insider managing agents and successor syndicates or for the general capital surplus of Equitas without credit to individual members.

b. Managing agents took more than £11/2 billion of fees on future profits not yet earned, increasing the need for reserves.

c. Equitas received from Lloyd's an advance of £285 million secured by receivables of £3.9 billion, which Lloyd's has been collecting for itself, but not remitting to Equitas for policy-holder claims reserves.

d. Members' trust funds intended ~~as~~ to become part of Equitas reserves, pro rata on those members' account in order to cover those members' R&R liability alleged by Lloyd's, have been diverted to Lloyd's.

90. While Lloyd's was telling Members to agree to their Finality statements in order to fully fund a claims reserve and avoid a collapse of Lloyd's, some run-off managing agents of non-long tail syndicates forced to be reinsured into Equitas reported to their Members that Lloyd's was overstating the individual Equitas Premium

required from the Members to be paid to Equitas. The same managing agents said that the overstatement of the Equitas Premium arose from a need to cover syndicate reserve shortfalls after an undervaluation by Lloyd's of receivables due from sound third-party reinsurers that should have been transferred to Equitas. The same managing agents also reported that Lloyd's had made them write down reinsurance receivables, which they considered to be sound assets. If written off, such assets were not turned over to Equitas, on the basis that they were of zero value. In short, before reserves from non long-tail syndicates were transferred to Equitas, they were, on information and belief, asset-stripped.

91. Some of these "dead" assets not turned over to Equitas reportedly were revived by successor syndicates as full payouts from reinsurers of the pre-R&R syndicates, only months after R&R. The benefit of those payouts went neither into Equitas' reserves nor to the Members who had been made by Lloyd's to cover the Equitas Premium to reinsure the pre-R&R syndicate reserves shortfalls. Managing agents of these syndicates took profit commissions after R&R on such payouts, and bragged publicly about it as indicating the post-R&R soundness of their syndicates to solicit new investors, which received a windfall benefit from being credited with these payouts.

92. If any of the "revived" receivables were in fact recovered for Equitas to strengthen its claims reserves, they were not credited by Lloyd's to the accounts of the Members of the pre-R&R syndicates, which had written down the asset. Rather they were paid into Equitas' general capital surplus account without reducing the liability of

the Members of the relevant pre-R&R syndicates, who had bought and paid for the reinsurance, which generated the receivables.

93. Under Equitas R&R agreements with managing agents of reinsured syndicates, such recoveries from their pre-R&R reinsurers were supposed to have been turned over to Equitas to cover the pre-R&R corresponding liabilities. Upon information and belief, no post R&R recoveries of this windfall of post R&R reinsurance recoveries on the supposedly valueless assets have in fact been turned over by those managing agents to Equitas. Nor has Lloyd's pursued claw-back from those managing agents, which were reportedly run by such insiders, as the former Lloyd's Chairman, David Coleridge, who were the beneficial owners of those managing agents.

94. In R&R, Lloyd's authorized managing agents to take a triple profit release of reportedly £1.5 billion advance future profit commission out of their syndicates reserves held to pay policy-holder claims, on a projected profit that did not yet exist from the next three underwriting years, whose accounts had not yet closed. When the projected profit turned into actual losses for some syndicates in the three years that closed after R&R, Lloyd's did nothing to recover the self-dealing windfall, either for Equitas' reserves or for their members. Members had to cover the resulting depletion in their syndicates' reserves by paying a larger Equitas Premium required by Lloyd's.

95. In R&R, Lloyd's advanced Equitas £285 million for Equitas to have enough capital in September, 1996 for insurance regulators to deem it solvent for regulatory purposes. In return, Equitas assigned to Lloyd's as security interest for the £285 million the right to collect £3.9 billion in Self-RITC debts that were assets on Equitas' pro forma starter books ("R&R Assignment"). The purpose of this transaction was to give Lloyd's a

security interest in those debts in order to fully repay Lloyd's for the £285 million cash advance.

96. On the face of the R&R assignment, Lloyd's has no security interest remaining in the R&R debts above the amount required to fully discharge Equitas' repayment to Lloyd's. The whole £3.9 billion went off Equitas' balance sheets between its March, 1997 and March, 1998 insurance regulatory returns, but, upon information and belief, did not show up as corresponding double entry in any reported Lloyd's accounts. Lloyd's owes an accounting to plaintiff and its other Members who are the residual beneficiaries of the funds held by Equitas of the billions of pounds of debt assigned to it by Equitas, insofar as it has been collected in excess of Equitas' full repayment of its advance from Lloyd's.

97. Lloyd's has refused to disclose the amount of Lloyd's collections from the assigned Equitas receivables. Lloyd's staff claims that the collections are less than the £285 million advanced to Equitas, but they have refused to put on the record that there is no surplus, and nowhere is there a write-off of the seeming surplus of £3.5 billion (£3.9 total assigned minus Lloyd's' £ 285 million advance plus interest) in Lloyd's accounts. It appears that billions of pounds have just disappeared, certainly on the books in Lloyd's' accounts and in cash to the extent that surplus has been actually collected, from both Equitas and Lloyd's after Equitas had assigned them to Lloyd's. That money belongs as cash pro rata to the Members reinsured into Equitas, and, insofar as actually collected, it should have been applied on the books pro rata to reduce the Members Equitas Premium liability.

98. Prior to R&R, members' agents were holding billions of pounds of Members' assets in trust as reserves for underwriting liabilities. Lloyd's directed that the members' agents turn over these trust funds to it and the members' agents expected that Lloyd's would forward the funds to Equitas for the accounts of their Members. However, after Lloyd's received the trust funds, Lloyd's neither paid them to Equitas nor (on information and belief,) recorded them on Lloyd's books as a credit to the owners of the funds. The Members' liability was not reduced by the amount of their funds simply taken by Lloyd's

99. For up to five years before R&R, Lloyd's instructed members' agents to intercept syndicate profit distributions made by managing agents to the members' agents to be distributed to the Members, and to hold such distributed profits in order ultimately to cover Members' long-tail liability. These intercepted distributions were to be warehoused in transit accounts, known as collection and distribution accounts ("the C&D Accounts"). The members' agents reportedly understood that proceeds from the C&D Accounts were intended to go to Equitas as part of the R&R reserves. They did not.

100. Some personal stop-loss ("PSL") syndicates had, before R&R, honored policies bought from them by Members, by disbursing stop-loss proceeds owed to Members under those policies. Such proceeds went from PSL underwriters to PSL brokers or to members' agents, who held the cash in C&D and other trust accounts, ultimately to forward it to Equitas to limit the R&R liability of those Members who had bought the PSL policies.

101. At Lloyd's direction to members' agents, proceeds of the PSL policies that had been paid out by PSL syndicates before R&R were turned over to Lloyd's in

1997-1999. The members' agents understood that the cash would go to Equitas to cover Members R&R liability in excess of their PSL caps. It did not. Lloyd's converted the PSL cover and imposed the liability upon the Members.

102. Upon information and belief, some such trust funds, which disappeared off the books during 1997-1999, may have been diverted into unconsolidated and unreported accounts controlled off Lloyd's balance sheet by Lloyd's management.

103. Other classes of funds that belonged to Members, but not formally "trust funds" held by members' agents also were seized by Lloyd's as part of the R&R transaction. For example, Members brought UK class actions against their members' agents and/or the managing agents of their syndicates. When the UK courts ordered that the agents pay damages to the Members, Lloyd's took possession of those damages. However, these funds then disappeared rather than being returned as cash to the Members, and, on information and belief, without necessarily even being credited on the books to reduce all those Members' Equitas Premiums.

History of Lawsuits Arising from R&R

104. Most Members agreed to R&R, but approximately 5% did not agree to R&R.[2] Lloyd's obtained judgments against those Members in the United Kingdom. To the extent the judgments were against U.S. residents, Lloyd's then sought to enforce the judgments in the U.S. Many U.S. residents resisted enforcement of the judgments on the grounds that they were obtained in violation of due process as the Member's claims against Lloyd's were never heard as a result of United Kingdom rulings that

[2] The 5% figure is according to Lloyd's; UK Names' groups have alleged that Lloyd's management misreported the count to the UK Government and to the Members, and that the number was in fact materially higher.

precluded defenses against Lloyd's claims. Lloyd's took the position that it could obtain judgments and enforce them so long as Members could assert independent claims in the United Kingdom to obtain whatever relief they deemed appropriate and various remedies existed in the United Kingdom to hear the Members' claims on their merits. Relying upon Lloyd's representations that remedies existed in the United Kingdom for Members to have their claims heard on the merits, courts in the U.S. consistently enforced judgments rendered against Members under R&R.

Plaintiff's Experience With Lloyd's Restructuring

105. In July of 1996, plaintiff received a document called the Settlement Offer Document ("SOD") which described some of the features of the R&R, along with his Finality Statement which alleged that plaintiff was liable for £253,409 from cash calls from his underwritings in his 1989, 1990, and 1991 syndicates with interest thereon along with £114,439 for his share of the Equitas reinsurance premium.

106. By July of 1996, plaintiff had been discussing his personal situation with the corporate secretary of plaintiff's members' agent, Christie Brockbank Shipton Ltd. ("CBS", novated in name from Hayter Brockbank, still wholly owned by The Brockbank Group), and other staff of CBS, Lloyd's' Underwriting Agents Department, U.S. lead counsel, Members' Ombudsmun, Membership Department, Regulatory Services Directorate, Central Services Unit, Individual Members' Unit, Financial Recovery Department, and Lloyd's Chief Executive, Ron Sandler, ever since mid-1994. In 1994, plaintiff received a cash call for 1991, which would have more than exhausted his letter of credit. In May, 1994, plaintiff requested that he receive an analysis of how his risks had lost so much money, prior to responding to the cash call. Plaintiff ended up in direct negotiations with Lloyd's over the information that he was seeking. During these

negotiations, Lloyd's agreed to suspend the cash call on plaintiff pending their discussions as to the information plaintiff requested.

107. In 1995, plaintiff learned that the IRS suspended his losses taken on his 1992 and 1993 tax returns (reflecting losses from underwriting years 1989 and 1990). The IRS acknowledged that plaintiff had suffered real economic losses, but, under the IRS passive loss rules, plaintiff was just reinsuring his own losses and there was no final disposition as to the losses. Thus, the future year in which the losses were deductible was not certain.

108. In 1995, plaintiff received another cash call, which was suspended because of plaintiff's negotiations with Lloyd's. In October, 1995, plaintiff learned that his losses overwhelmingly arose from his underwritings in 1989, 1990 and 1991[3], which consisted of, for the most part, reinsurance of other underwritings in syndicates that had long tail liabilities arising from pollution and asbestos risks- just the risks that plaintiff had agreed with Lloyd's that he would not underwrite.

109. Plaintiff then commenced negotiations with Lloyd's. On November 8, 1995, plaintiff agreed with Michael A. Meeson of Lloyd's Financial Recovery Department ("FRD"), that plaintiff and Lloyd's would settle on the full and final terms in Lloyd's standard Settlement and Release Agreement format which Mr. Meeson offered to plaintiff on behalf of FRD. Mr. Meeson then sent the standard Settlement and Release Agreement format to plaintiff on December 11, 1995 in order to confirm their having a meeting of the minds on the structure of the agreement. Plaintiff then pursued FRD to

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[3] At the same time, plaintiff learned that his profits from his 1988 syndicates were substantially reduced because of similar losses from risks that plaintiff had agreed with Lloyd's not to underwrite.

agree upon what would be paid in a settlement and to execute the final agreement, but FRD would not respond.

110. In October, 1996, plaintiff learned that the R&R was effective. Thereafter plaintiff received Lloyd's detailed analysis of the years of origin and the sources of his losses, which confirmed that virtually all of plaintiff's losses came from risks that plaintiff had agreed with Lloyd's that plaintiff would not underwrite. After plaintiff discussed this situation with Lloyd's, in March, 1997 Lloyd's, through its then head of FRD, Philip Holden, and its chief executive, Ron Sandler, offered to plaintiff a settlement by which plaintiff (a) would accept R&R in an individual settlement agreement with the full and final structure which FRD (Mr. Meeson) had earlier offered him based on Lloyd's' pre-R&R standard Settlement and Release Agreement, (b) would make a $5,000 payment for his Equitas Premium, and (c) would release Lloyd's from all liability. Lloyd's and Equitas, in turn, would release plaintiff. Plaintiff accepted this settlement offer and believed that, as a result, he was considered internally by Lloyd's as a Member that accepted R&R. Spring and summer 1997 letters from FRD confirmed this agreement.

111. On July 9, 1998, Phillip Holden, the head of Lloyd's financial recovery department, wrote plaintiff a letter reconfirming that a settlement had been agreed upon with plaintiff which only needed to be formalized and that plaintiff should be considered an accepting Member for R&R purposes. In August, 1998, plaintiff learned that the United Kingdom Inland Revenue ("Inland Revenue") believed that plaintiff owed income taxes for forgiveness of indebtedness based on his settlement with Lloyd's, which Lloyd's had reported to Inland Revenue.

112. Plaintiff repeatedly requested the final form of settlement agreement from Lloyd's and received correspondence from Lloyd's on March 2, 2000 and January 25, 2001 confirming the agreement in principle. Nevertheless, Lloyd's refused to execute a final form agreement embodying the terms agreed upon.

113. On August 20, 2002, by ambush without pre-action notice as required by the UK Royal Courts' Civil Procedure Rules ("CPR"), Lloyd's filed a lawsuit against plaintiff in the United Kingdom claiming £433,560.19 allegedly representing the unpaid cash calls, which Lloyd's itself had suspended in anticipation of settlement, plus the Equitas Premium, plus interest thereon. Plaintiff's time to answer or move with respect to the complaint was adjourned until May 1, 2003 in contemplation of settlement. However, the settlement was never finalized as Lloyd's insisted that plaintiff release not only Lloyd's, but also the managing agents, the members' agents, multiple other Lloyd's related parties and insider parties, Equitas, and Lloyd's subsidiaries including the dummy (paper shell) subsidiaries, which it used as Substitute Agents to proceed against its members and to act in their name in response to such proceedings, but that he would receive a release only from Lloyd's.

114. When plaintiff insisted on the reciprocity of mutual releases, which Lloyd's had promised him, on May 1, 2003, Lloyd's terminated all settlement discussions. Plaintiff requested that the UK Court decline to exercise its jurisdiction on the basis of Lloyd's spurious service on plaintiff Lloyd's had not served plaintiff, but rather the same UK incorporated dummy shell "Substitute Agent," Additional Underwriting Agencies (No. 9) Ltd. ("AUA9") which had also signed the R&R Agreements on behalf of plaintiff without his knowledge. Lloyd's' represented to the UK

court that the dummy agent had accepted service of the claim on his behalf (though without his knowledge or consent) under the signature of a senior officer of Lloyd's purportedly acting for plaintiff though controlled entirely by his employer Lloyd's. Thus Lloyd's was both the plaintiff, and, allegedly, the agent of the defendant to receive service from itself.

115. On January 20, 2004, the court denied dismissal for want of service because a provision of the R&R Contract, which had been signed by the same dummy agent in plaintiff's name, approved the dummy agent to act as an agent to accept local UK service of process for all names.

116. On May 14, 2004 plaintiff filed his defenses and counterclaims, both of which raised his claims, among others, that (a) he ended up underwriting risks that Lloyd's and he agreed that he would not underwrite, which risks were the source of 99% of the losses suffered by plaintiff; (b) there were substantial funds that Equitas did not receive that should have been credited to plaintiff's account, such as proceeds from stop loss reinsurance that plaintiff had purchased, among many other sources, (c) Lloyd's failed to credit plaintiff's account with monies that Equitas received on plaintiff's behalf, such as £269,893 listed on the Statement of Reinsurance jointly issued by Lloyd's and Equitas, dated as of December 27, 1997, as the value of plaintiff's share of syndicate assets that were transferred to Equitas; and (d) Lloyd's did not credit plaintiff with his share of the capital surplus portion of £3.9 billion of assets Equitas assigned to Lloyd's to secure repayment of a £285 million advance from Lloyd's to Equitas.

Risks That Plaintiff Never Agreed To Underwrite

117. In particular, plaintiff's counterclaims sought "specific performance" by asking for recalculation of his losses on each syndicate to conform to the underwriting

risks he had agreed to assume, an unwinding of the syndicates the engaged in Self-RITC without plaintiff's knowledge, not to mention consent, and a restatement of the annual results of each syndicate reflecting the proper recalculation and unwinding. In effect, plaintiff sought an accounting of his investment in underwriting insurance as part of Lloyd's. If plaintiff had received his accounting, upon information and belief, he would have shown that about 99% of the losses attributed to him arose from risks he had agreed with Lloyd's that he would not underwrite. Even if plaintiff had agreed to underwrite those risks, almost all of the amounts claimed owing against him were, if fact, paid by assets of his that were either never forwarded by Lloyd's as cash to Equitas or if paid, not credited by Lloyd's to his individual account.

118. If plaintiff had received his accounting, upon information and belief, he would also have shown that over 95% of the losses claimed against him by Lloyd's arose from shell syndicates, which had been floating their unreported prior insolvency on his capital, and reporting their self-reinsurances and old IBNR liability as if it were "current" new business in his years of account. In fact these syndicates did not materially exist as businesses during plaintiff's years of account, but were merely balance-sheet shells for a carry-forward into his years of prior syndicates' Old Years' liability. Thus plaintiff was saddled, unbeknownst to him, with liability of Members from over a decade before plaintiff's time, which Members, upon information and belief, were substantially related parties to the agents who ran those syndicates.

Long Tail Syndicates

119. Plaintiff had, and showed to the United Kingdom courts, substantial evidence to support his counterclaims. Lloyd's prepared a calculation of plaintiff's losses

for the three years during which he was an underwriter. Lloyd's analysis showed that syndicate 235 (1989), 206, 210, 287 and 317 (1990); and 206, 210, 235, 287, and 317 (1991) were all long-tail syndicates ("Long Tail Syndicates"). About 95% of the losses for which Lloyd's commenced its action against plaintiff arose from these syndicates, and consisted of RITC of IBNR liability from prior syndicates that underwrote environmental risks including pollution and asbestos- just the kind of risk that plaintiff had agreed with Lloyd's not to underwrite. Thus, plaintiff's losses not only came from the Long Tail Syndicates when plaintiff had requested just to write current insurance, but they came from the risks that plaintiff had specifically agreed with Lloyd's to avoid.

120. Plaintiff's problems with the Long Tail Syndicates were compounded by their improper use of reinsurance. Reinsurance is supposed to be an arms-length transaction whereby a premium is set equal to the discounted risk to establish reserves that can bear the liability the reinsurer is assuming from the buyer. Plaintiff's losses from these syndicates came from an improper use of reinsurance where the syndicates' managing agents sold the reinsurance to their own prior year syndicates who had reinsured earlier incarnations of the same syndicate ("Self-RITC").

121. Plaintiff had the following evidence of his losses from Self-RITC of environmental risks, among others, all of which he futilely tried to show to the UK Courts:

a. A tax examination by IRS agents of plaintiff's losses revealed that nearly 100% of plaintiff's losses arose from Self-RITC, i.e. the syndicates managing agents reinsured their own prior years of losses—with plaintiff's capacity used to cover multiple such prior years' loss.

b. Equitas prepared quotation tables that confirm the IRS agents' findings.

c. The syndicates informational tax returns filed with the IRS also confirm the IRS agents' findings.

122. Self-reinsurances by the managing agents of the Long Tail Syndicates were not arms-length transactions; inadequate reserve assets were carried forward from their syndicates' prior years of account as notional self-reinsurance "premium" to cover the carry-forward liability. The prior years' syndicates' assets were treated as current income, and were booked as reserves without any arms-length determination that the assets contributed were a sufficient reserve for the known risks.

123. Indeed, the opposite happened. Since the original 1979 or earlier syndicates had insured pollution and asbestos risks before the true scope of the risks were known, the original premium was far too low to serve as a sufficient reserve. Nevertheless, since the assets were treated as income, upon information and belief, redundant commissions were paid out from them each year on the same old underwriting that had been recycled. Each year commissions paid out reduced whatever income was earned on the premium. Thus, what had already been insufficient reserves were reduced by payment of annual commissions multiple times on a recycling year after year of the same old original single transaction. It was only time before the inevitable claims far in excess of the reserves would be identified. However, there was sufficient time for these risks to be rolled over into the Long Tail Syndicates and imposed upon plaintiff without his consent or knowledge.

LMX Syndicates

124. Plaintiff's losses from underwriting environmental, old risks, without plaintiff's knowledge, arose not only from the Long Tail Syndicates, but also from underwriting London Market Excess of Loss ("LMX") syndicates. For purposes of extracting redundant agent commissions from reserves, LMX syndicates functioned similarly to self reinsurance issued by Long Tail Syndicates, except that LMX syndicates insured only a designated layer of loss in excess of other insurance with all of the reinsurer layers underwriting during the same year of account, while the Long Tail Syndicates insured the entire loss (as opposed to fractional layers of it, excess of the layers below) over time across multiple years of account into the future. Plaintiff was placed into LMX syndicates 666 (1989), 666 (1990) and 666's successor, 929 (1991), ("LMX Syndicates"). Up to 40% to 60% or more of total loss from the LMX Syndicates, upon information and belief, came from old, environmental risks in contravention of plaintiff's original agreement with Lloyd's

Losses After Resignation

125. Plaintiff submitted his resignation from Lloyd's, effective at the end of 1990, to plaintiff's members' agent, the party designated by Lloyd's to receive resignations, in writing on August 3, 1990.[4] Lloyd's by-laws permitted resignations for the subsequent year, so long as they were submitted more than four months prior to the commencement of the subsequent year, as Lloyd's has represented to the UK Court of Appeal in a lead case in which the Court relied on that representation. *Lloyd's v Bowman & Ors* [2002] EWCA Civ 1886 (19 Dec 2004) at § 21. Thus, so long as plaintiff's resignation was submitted prior to September 1, 1990, it was effective for

[4] This written resignation confirmed plaintiff's oral resignation in April, 1990.

1991. However, plaintiff's members' agent, acting as to resignation as an agent for Lloyd's, would not, in violation of Lloyd's by-laws, accept plaintiff's resignation for 1991. Thus, plaintiff is not liable for any losses from the 1991 syndicates.

Funds Belonging to Plaintiff Not Paid to Equitas on Plaintiff's Account

126. Thus far, this Complaint has addressed the context and the mechanics of how a liability for 80 years' purported future "debt" came to be wrongfully alleged against Plaintiff. During plaintiff's UK litigation, plaintiff learned that there is a whole new area which requires scrutiny: wrongful conversions of his and others' assets held in trust by Lloyd's management, purportedly destined for Equitas' reserves to cover what Lloyd's alleged as his (and other names') liability, but which never made it to those reserves either in cash or book.

127. These assets are several different categories of funds, each of which separately may well be in the billions, and which belonged in Equitas' reserves to cover the long-tail liability of Lloyd's Members, including plaintiff, who were reinsured into Equitas as part of R&R. Some of these multiple different assets were trust funds that had been held in plaintiff's name by his members' agent, which Lloyd's ordered his agent to turn over into Lloyd's control, nominally for forwarding to Equitas to reduce plaintiff's Equitas Premium liability. Those funds, and other categories of assets which had been in plaintiff's pre-R&R syndicates' reserves in the custody of his syndicates' managing agents, went missing as cash after R&R rather than becoming part of Equitas' claims reserves. Lloyd's had and has a duty to effect claw-back of the missing cash from various Lloyd's insider parties for those reserves, but Lloyd's has made no such recovery.

128. Not only have the multiple classes of assets gone missing as cash while in Lloyd's' control, instead of going into Equitas reserves where the assets were supposed to go to cover policy-holder claims, but Lloyd's has not even credited plaintiff's missing assets to reduce his book liability as alleged in Lloyd's' claim.

Stop Loss Reinsurance

129. Plaintiff purchased Personal Stop Loss Reinsurance (a ceiling on all his losses on all his syndicates in a given year of account) for 1989, a year in which he incurred substantial losses. In 1997, plaintiff's members' agent wrote plaintiff that his stop loss recoveries of £28,831.28 were paid out to a broker who turned over the funds to Lloyd's. Yet neither the £28,831.28 nor any other stop loss insurance proceeds have ever appeared on plaintiff's Finality Statement, Equitas' Statement of Reinsurance, or on the claims Lloyd's has asserted against him. All stop loss proceeds attributable to plaintiff should be deducted from his Equitas Premium and Lloyd's claims against him.

Distributions from Profit Making Syndicates

130. Not all of plaintiff's syndicates lost money. Even in plaintiff's worst loss years, a material number of plaintiff's syndicates earned substantial profits. Under the Collection and Distribution Arrangements, also known as "the C&D Accounts," plaintiff's members' agent received profit distributions in 1992 through 1995 from the managing agents of his profit-making syndicates for a roughly estimated possible $500,000 to $750,000. Reportedly at Lloyd's' direction to all members' agents, plaintiff's members' agent held the cash in transit accounts pending R&R, and then turned over the cash at Lloyd's' direction to Lloyd's to pay to Equitas on plaintiff's account, which should have materially reduced plaintiff's alleged outstanding liability.

131. This cash from profit distributions made to plaintiff is entirely missing from plaintiff's R&R Finality Statement and plaintiff's Equitas Statement of Reinsurance. It is not booked on either one as a credit that would have reduced the amount outstanding on plaintiff's Equitas Premium. Equitas reports having no record of ever receiving any C&D cash on plaintiff's behalf from Lloyd's. Nor does the cash appear as a credit in Lloyd's claims against him. Since Lloyd's replaced plaintiff's members' agent as successor trustee of his C&D Accounts in April, 1996, Lloyd's owes a fiduciary duty to plaintiff to account for all of plaintiff's C&D cash which disappeared after Lloyd's had directed his members' agent to turn it over into Lloyd's' control.

Assets Stripped from Syndicates that should have been paid to Equitas

132. Specialized insurance press reported at the time of R&R and shortly thereafter, that when some secure reinsurance were revalued down or written off, they were retained by their managing agents going forward and placed into new, post R&R syndicates to create an asset base to attract new investors into those syndicates. These assets were supposed to have been paid to Equitas for the benefit of plaintiff and the other Members holding Old Years Liability.

133. Several syndicates reported to their Members that during the run-up to R&R, Lloyd's required them to write down as value-impaired or write off entirely some their reinsurance reserve assets from third party, solvent reinsurers, which the run-off managing agents of these syndicates considered as sound. The managing agents reported to their Members that the Members would be required by Lloyd's to pay individual Equitas premiums higher than what would have been required from them if those reinsurance assets had been, in the managing agents' judgment, booked at fair

value. One of the managing agents that so reported was the run-off managing agent for three of the syndicates in which plaintiff had underwritten risks. The amount of written off assets, as to one syndicate, that this managing agent believed were sound, should have covered 72% to 79% of the syndicates losses. These assets should have been sufficient to cover the Equitas premium levied by Lloyd's on plaintiff for this syndicate.

134. After R&R, the same managing agents, which had written down or off these assets at Lloyd's direction, began reporting a windfall of reinsurance payouts from such supposed value-impaired assets. For example, the Ockham agency disclosed almost immediately after R&R a reinsurance payout by Eagle Star, the composite reinsurer subsidiary of British American Tobacco. Ockham took post-R&R profit commission for its principals on this windfall to its post R&R Members, on reinsurance which had been bought to cover pre-R&R liability, and which should have been turned over to Equitas.

135. The immediate post-R&R Ockham agency was the old Sturge agency, which was the managing agent for four syndicates in which plaintiff was an underwriter and which reported some of plaintiff's worst losses. Lloyd's attributed £ 102,653 in R&R liability to plaintiff from just two syndicates managed by Sturge in underwriting years 1990 and 1991. Accrued interest claimed by Lloyd's since the date of the R&R Contract nearly doubles that amount. In addition, plaintiff paid for materially that amount again or more in further losses of those four syndicates out of his letter of credit in cash calls during 1992 and 1993, and out of cash taken from his Collection & Distribution Account trust funds after they had been distributed to him by his other syndicates which were profit-making.

136. The Eagle Star windfall appears to have been money taken pro rata out of plaintiff's pocket. The funds Eagle Star paid out were paid out by the reinsurer under reinsurance which had been bought for a pre-R&R syndicate to cover that syndicate's pre-1993 IBNR liability that was reinsured during R&R, into Equitas. Thus, those reinsurance proceeds should have instead gone into Equitas to reduce what Lloyd's claimed to be plaintiff's Equitas Premium liability attributable to those four syndicates managed by the Sturge agency (whose chairman was also chairman of Lloyd's during the time of conception of R&R).

R&R "Triple Profit Release" profit commission taken out of reserves

137. Lloyd's allowed managing agents of syndicates to take three years of advance, future profit commissions out of the syndicates' reserves, as part of R&R. This direction assumed a projected profit of the next three underwriting years which had not yet been closed, ("Triple Profit Release"). This advance Release of fees from reserves into the agents' own pockets reduced the reserves turned over to Equitas by about £1.5 billion. The R&R Settlement Offer Document provided for recovery of this commission from the Lloyd's agents who had taken it after R&R if the projected profit on those years of account subsequently had not materialized as actual profit. On information and belief, the projected profit did not materialize on most of plaintiff's syndicates.

138. If Lloyd's had not directed the advance Release of future fees to insiders, those funds would have been paid to the benefit of Equitas' reserves and would have reduced the Equitas Premium that Lloyd's has claimed against plaintiff.

Action Groups' Litigation Proceeds Confiscated by Lloyd's

139. Groups of Members from plaintiff's syndicates brought legal actions against the managing agents and members' agents of the syndicates and recovered substantial sums. However, Lloyd's obtained UK court judgments, which allowed Lloyd's to confiscate all the damages awarded to UK class "action groups" against individual Lloyd's agents, and to hold those litigation proceeds for the next 70 years-to cover the R&R liability of the groups' members. There has been no accounting showing the amount of these proceeds which were paid to Lloyd's in compliance with those court orders. Nor has there been an accounting of how much of those proceeds, if any, were added to the reserves of plaintiff's syndicates which were reinsured into Equitas and, therefore, should have reduced plaintiff's Equitas Premium. Indeed there has been no accounting of whether Lloyd's has turned over the cash proceeds to Equitas.

140. Separately from what Lloyd's did with the cash, there has been no accounting by Lloyd's of whether the litigation proceeds, which Lloyd's confiscated, have at least been netted out in book terms to reduce Members' Equitas Premium liability arising from the syndicates whose managing agents were the subjects of such damages awards.

Funds Belonging To Plaintiff Paid To Equitas Without Reducing Plaintiff's Obligation to Lloyd's

141. Lloyd's and Equitas jointly issued to plaintiff a document entitled "Lloyd's Statement of Reinsurance" on December 27, 1997, which stated:

> "2. Your share of Syndicate assets transferred to Equitas valued as at 31 December, 1995: £269,893."

142. Plaintiff's syndicates had cash, cash-like, or other valuable assets such as investments and reinsurance from third parties as of September, 1996. All of those

assets were paid to Equitas for the accounts of each Member of the syndicates. Plaintiff's share of those assets was £269,893.

143. The total Equitas reinsurance premium was £384,332. Since Equitas had received £269,893 of plaintiff's property, plaintiff should have been liable only for no more than the Equitas additional premium of £114,439.

144. On May 27, 2003, Equitas sent plaintiff his authoritative Statement of Reinsurance. On the face of this statement, Equitas confirms that £269,893 had been paid by plaintiff toward his reinsurance. On June 12, 2003, Equitas confirmed in writing that it had in fact received this £269,893 on behalf of plaintiff from his syndicates as cash, near-cash, and other actual assets.

145. Lloyd's claim against plaintiff, upon which the UK Judgment is based, improperly gave no credit for the £269,893 that was concededly paid to Equitas on behalf of plaintiff.

Plaintiff's share of £3.9 billion of assets Equitas assigned to Lloyd's as security for an advance of £285 million.

146. In order to fund Equitas so that it could meet capital standards for regulatory authorities, Lloyd's advanced Equitas £285 million in September, 1996. To secure repayment of that advance, Equitas assigned to Lloyd's £3.9 billion of assets from the syndicates that Equitas was reinsuring. Lloyd's has been collecting these assets for Lloyd's, itself, not for Equitas' claims reserves, by means of litigation. Lloyd's has made no accounting of how much of the surplus (£3.9 billion minus full repayment to Lloyd's for its R&R cash advance to Equitas, £285 million plus interest) is attributable pro rata to plaintiff to reduce his alleged liability. Nor has Lloyd's made an accounting

been made of where that surplus, which could be up to £ 3.5 billion, has actually gone in cash.

Decisions of the United Kingdom Courts

147. On May 24, 2004, the Commercial Court of the UK High Court granted summary judgment against plaintiff on his defenses, stating that, under Lloyd's by-laws, he was bound, without the right to contest, by the numbers assessed by Lloyd's. The Court held that it would not receive any of the evidence submitted by plaintiff to support his argument that Lloyd's claims contained "manifest errors" because "manifest error" only refers to Lloyd's calculation being internally inconsistent.

148. This ruling contradicted earlier rulings by UK courts that authorized the entry of extrinsic evidence to show manifest error, in non-Lloyd's cases on the standards under which UK courts were to construe contracts with "conclusive evidence" clauses in general. It also contradicted the understanding of US judges that United States defendants in UK R&R cases did have an opportunity to show "manifest error" in defense by having the UK courts consider evidence presented by the names to prove "manifest error", as the prior UK line of cases on conclusive evidence clauses in contracts in general had held. For example, Judge Posner believed in *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 480 (7th Cir. 2000) that "The names [before him had been] free... to show if they could 'manifest error' in the assessment of their liability... It would have to be an error... because of the disproportion between the reinsurance premium levied by Lloyd's and the risk to which the particular name would be exposed if he lacked [the R&R] reinsurance."

149. The High Court entered an Order (equivalent to a judgment in the United States) against plaintiff for the sum of £296,811.16 plus interest until May 24, 2004 of

£167,070.12 for a total of £463,883.28, plus £16,000 in costs. The Court did indicate that any claim that plaintiff had could be pursued in his counterclaims. On November 2, 2004, the United Kingdom Court of Appeals denied plaintiff permission to appeal the summary judgment dismissing his defenses, again relying on plaintiff's purported ability to assert his claims by means of his counterclaims.

150. However, on November 5, 2004, the trial court dismissed all of plaintiff' counterclaims on the basis that Lloyd's unique statutory immunity from damage claims in negligence or other tort under Lloyd's Act 1982 ("Lloyd's Immunity") applied to all of plaintiff's counterclaims, without citing any binding precedent. This was the first time any United Kingdom court construed Lloyd's Immunity to apply to preclude not only claims in negligence or other tort (as exempted on the face of the statute) but also (1) all other causes of action including those under contract law, all insurance law, UK common law and the UK statutory law of misrepresentation, and (2) all other relief, aside from damages, which would have financial consequences, such as specific performance and other remedies which relied on the contact between the parties as being a continuing one and asked the court to enforce it, when Lloyd's was running from it. Thus the court precluded plaintiff from such equitable relief as declaration, injunction, an accounting, and even specific performance[5] against Lloyd's – in its private capacity, not in its statutory public functions as a self-regulator.

151. On January 23, 2006, the Court of Appeals denied plaintiff permission to appeal dismissal of plaintiff's counterclaims on the basis that Lloyd's Immunity applied not only to damages sought against Lloyd's, but also to claims for specific performance,

[5] Plaintiff did not ask for either damages or rescission. He only sought to enforce the terms of his agreement with Lloyd's.

i.e. an unwinding, disgorgement, recalculation, or restatement (all of which are functionally an accounting of the proper transactions between plaintiff and Lloyd's) on the grounds that those claims were just a constructive equivalent of the barred damages claims. No appellate court had previously applied Lloyd's Immunity so broadly.

152. The result was that plaintiff was deprived of any hearing on the merits of his counterclaims, including those for his unaccounted for assets which may well have exceeded the nearly $800,000 judgment that Lloyd's was seeking against him. His counterclaims went to (a) the propriety of the basic liability (i.e. that thousands of members of plaintiff's particular syndicates having had billions of dollars of purportedly then-current liability willfully imposed upon them without their knowledge, which liability in fact was not theirs, but had been carried forward from prior-year underwriting by non-arms' length self-reinsurances), (b) plaintiff's bearing risks that Lloyd's had agreed that plaintiff, as an individual would not incur) and (c) accounting improperly for his money that Lloyd's concededly had seized from his agents but refused to apply to plaintiff's credit.

153. On April 27, 2006, plaintiff filed a petition with the House of Lords to review the Court of Appeal's novel, expanded construction of Lloyd's claimed immunity to preclude hearing of his counterclaims. On July 18, 2006, the House of Lords refused to hear plaintiff's petition formally exhausting his UK remedies as to his counterclaims.

154. As a result, Lloyd's is now able to attempt to enter the Order as a judgment in a state or federal court in the United States. Beginning in mid-September and in an aggressive rising crescendo since then, Lloyd's has threatened both in writing and orally to commence proceedings in New York to convert its UK Order into a

judgment here in order to enforce the judgment against plaintiff, and to drive him into bankruptcy over an alleged liability as to which he had never had the opportunity to defend in the UK by having his evidence heard on the facts.

FIRST COUNT
Declaratory Judgment

155. Plaintiff incorporates by reference all the allegations of paragraphs 1 through 154.

156. The UK Judgment has been obtained from a judicial system, which is not compatible with due process of law.

157. The UK Judgment has been obtained based on a cause of action repugnant to the policies of the State of New York.

158. The UK Judgment was obtained in violation of the due process clause of the Fifth Amendment of the U.S. constitution.

159. An actual controversy exists between plaintiff and Lloyd's as Lloyd's shortly intends to have the UK Judgment recognized as a New York judgment.

160. As a result of the foregoing, plaintiff is entitled to a declaratory judgment that Lloyd's may not recognize the UK Judgment in New York and that the UK judgment is not enforceable.

SECOND COUNT
Accounting

161. Plaintiff incorporates by reference all the allegations of paragraphs 1 through 154.

162. Plaintiff and Lloyd's have entered into several contracts under which plaintiff has certain monetary obligations to Lloyd's and Lloyd's has other monetary

obligations to plaintiff. Lloyd's, in at least one contract, has assumed an express fiduciary obligation to plaintiff with respect to funds belonging to plaintiff that are in its control. All records of the transactions between plaintiff and Lloyd's are in the sole control of Lloyd's.

163. As a result of the foregoing, Lloyd's has an obligation to account to plaintiff for all transactions between them.

THIRD COUNT
Injunction

164. Plaintiff incorporates by reference all the allegations of paragraphs 1 through 154.

165. The UK Judgment has been obtained from a judicial system, which is not compatible with due process of law.

166. The UK Judgment has been obtained based on a cause of action repugnant to the policies of the State of New York.

167. The UK Judgment was obtained in violation of the due process clause of the Fifth Amendment of the U.S. constitution.

168. Lloyd's shortly intends to have the UK Judgment recognized as a New York judgment.

169. As a result of the foregoing, plaintiff is entitled to an injunction restraining Lloyd's from enforcing the UK Judgment in New York.

FOURTH COUNT
Class Action For Declaratory Judgment Declaring the Right to an Accounting of Transactions Under R&R

170. Plaintiff incorporates by reference all the allegations of paragraphs 1 through 154.

Class Action Allegations

171. The class shall consist of all Names who (a) underwrote insurance through Lloyd's prior to 1993 (b) reside in the U.S. and (c) did not agree to R&R.

172. Upon information and belief, the class consists of more than seven hundred individuals and, thus, is so numerous that joinder of all members is practicable.

173. There are questions of law or fact common to the class, i.e. the right of each of the class members to obtain an accounting from Lloyd's of all transactions that are relevant to the determination of each members' Equitas Premium, where Lloyd's is a fiduciary to each of the class members and has refused to render any such accounting.

174. The claim of the representative party, plaintiff Richard A. Tropp, is typical of the claims of the class in that plaintiff is a Name who underwrote insurance through Lloyd's prior to 1993, resides in the U.S., did not agree to R&R, and has not obtained an accounting from Lloyd's of all transactions that are relevant to the determination of his Equitas Premium.

175. The representative party, Richard Tropp, will fairly and adequately protect the interests of the class.

176. Lloyd's has refused to account to any of the class for all transactions that are relevant to the determination of each class members' Equitas Premium, thereby making appropriate declaratory relief with respect to the class as a whole.

177. Alternatively, questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class

action is superior to other available methods for the fair and efficient adjudication of the controversy.

WHEREFORE, plaintiff demands judgment against Lloyd's

1. Declaring that Lloyd's may not recognize or enforce the UK Judgment in New York;

2. Directing Lloyd's to account to plaintiff for all plaintiff's transactions under the Lloyd's name since 1988;

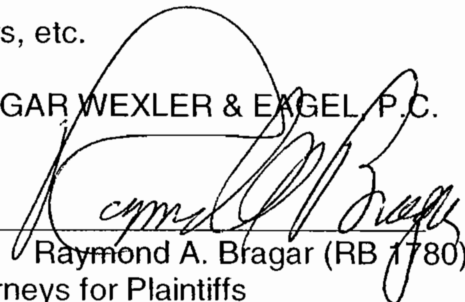
3. Enjoining Lloyd's from recognizing or otherwise attempting to enforce the UK Judgment in New York.

4. Certifying the class and declaring that each class member is entitled to an accounting from Lloyd's of all transactions that are relevant to the determination of his Equitas Premium.

Dated:
New York, New York
January 18, 2007

Yours, etc.

BRAGAR WEXLER & EAGEL, P.C.



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