In the High Court of Justice **2002 Folio 848**

Queen's Bench Division

Commercial Court

between:

The Society of Lloyd's

Claimant

- and -

Richard A. Tropp

Defendant

Defence and Counterclaim

This is a statement of case presenting defendant Tropp's Part 15 defence, Part 20 counterclaims, and Rule 20.5 counterclaims against persons other than the claimant, and asking the Court to order remedies in addition to money payment, including specific performance.

First principles underlying the contract, parties' intent in it

1. Defendant gladly admits §§ 1-3 of claimant's Particulars of Claim. § 3 cites and relies on the "General Undertaking" (Schedule A attached to the Particulars), which the defendant signed. Defendant agrees that he thus bound himself, but notes the obvious: by having offered this agreement to the defendant and having induced him to accept and to rely on it, the claimant bound itself as well. "Whereas" (D) of the Undertaking specifies that **both** were "to become parties to" it. Subsequent sections refer to both as "the parties" bound by it.

2. "Whereas" (A) of the Undertaking cites the Lloyd's Acts 1871-1982. §§ 1-3 of the claimant's Particulars each cite and rely on the Acts. § 3 notes that by signing the Undertaking, Tropp agreed to be bound by the provisions of the Acts. So also, by signing the Undertaking, did Lloyd's agree to be bound by them. By soliciting Tropp to sign the Undertaking with those Acts cited in it as its statutory basis, Lloyd's induced him to rely on them. He did in fact, in deciding to sign, rely on the protections and trammels in them. The parties' intent in the agreement must be construed within those Acts.

3. § 8 of the Lloyd's Act, 1982 defines "insurance business" within the meaning of the Act. This is what Lloyd's solicited Tropp to do, under the Act, and it is what Tropp agreed in the Undertaking to do. § 8.-(1) provides (annexed, Schedule A) that "An underwriting member shall be a party to a contract of insurance... at Lloyd's **only** if it is underwritten with **several** liability, each underwriting member for his own part and not one for another, and if the liability of each ... is ... solely for **his own** account [emphases defendant's]."

4. § 40 of the Lloyd's Act, 1871 speaks to "liability of members". § 40 provides (annexed, Schedule B) inter alia that "Nothing in this Act shall ... make any member of the Society ... responsible in any manner for any of the undertakings, debts, or liabilities of any other member of the Society...."

5. "Whereas" (B) of the General Undertaking refers to the Membership Byelaw (No. 9 of 1984) as having been made under the Lloyd's Acts 1871-1982, and thus relies on the authority of that Byelaw as well as of the Acts. At "Whereas" (D), the General Undertaking states that Lloyd's and the newly recruited member are becoming parties to the Undertaking agreement "Pursuant to the provisions of the Byelaw".

§ 18(a) of the Byelaw provides (Schedule C) that "No underwriting member shall - (a) underwrite insurance business at Lloyd's other than for his own account." Former Lloyd's Chief Executive Ian Hay Davison has reported, in a 1987 book, that "The membership bye-law... incorporates two of **the old fundamental rules** of Lloyd's [emphasis defendant's]: that each member underwrites for his own part and not one for another -- there is no liability by one member in respect of the underwriting of another ..." (A View of the Room at p. 126).

In footnote 7 annotating the above passage (id at p. 224), Davison -- who was CE of Lloyd's during the period of internal gestation of this Byelaw, and in November 1984 when it was codified -- explains that "**Several** liability is required by Bye-law No. 9 of 1984 s. 18(a)..."

6. Further as to first principles expressly underlying the contract between the parties, going to the root of that contract, the defendant incorporates here by reference §§ 3-6, "Evidence of the original intent of [the] parties in their agreement", and §§ 8-11, "Lloyd's' venerable business model to which Tropp agreed", of his Part 24 answer witness statement of 27 April 2004 with the schedules annexed.

7. Further as to one such first principle expressly underlying the contract between the parties, going to the root of their agreement in a different way that was individually particular to Tropp (but not to other members), the defendant incorporates here by reference § 7 from "Evidence of the original intent of [the] parties...", of his Part 24 answer witness statement id with the schedules annexed.

Structural basis alleged for defendant's liability for the claim

8. The defendant admits §§ 4 and 5 of the claimant's Particulars: that The Substitute Agents Byelaw and The Reconstruction and Renewal Byelaw were each enacted by Lloyd's "Pursuant to the powers conferred upon it by the Lloyd's Acts". Defendant notes, and will return to, the inference that Lloyd's' implementation of those byelaws in "R&R" vis-a-vis Tropp could be valid only insofar as such implementation was in conformity with the provisions of the Lloyd's Acts.

9. § 6(1) in the Particulars states that the Lloyd's Council appointed Additional Underwriting Agencies (No. 9) Limited ("AUA9") to be substitute managing agent ("the Substitute Agent") for the defendant for purposes of R&R. Defendant accepts that Lloyd's had authority to appoint such a substitute agent for him under § 18 of Schedule 2 of the Lloyd's Act 1982 ("§ 18"), but denies that Lloyd's' appointment of AUA9 did so in fact, and therefore could have done so in law.

(a) Under § 18, the Council had authority to appoint "an underwriting agent" to act as a substitute agent for any member. AUA9 was not "an underwriting agent" within the meaning of the 1982 Act, however.

Rather than being such an agent as the Act had contemplated, AUA9 was a dummy shell entity with no independent capacity to act as an underwriting agent. It was not capable in fact of making an underwriter's assessment of and decisions on the prudence, the reserves sufficiency and pricing, of a syndicate reinsurance. (See the evidence cited in §§ 2-5 of defendant's Part 11 witness statement of 11 November 2003, and annexed schedules; evidence cited in § 5 of his Part 11 statement of case of 8 January 2004; and § 4 of his Part 11 skeleton argument of 9 January 2004, all incorporated by reference herein.)

Because AUA9 was not in fact and was incapable of acting as an underwriting agent, it arguably could not be validly appointed under § 18 to act as defendant's substitute agent for agreeing the claim.

(b) In addition and in the alternative, AUA9 was not and could not be the defendant's "agent" in law, within the meaning of that expression in the law of principal and agent, because AUA9 was not free to act in **his** interests as its principal. (See §§ 11-15 of Part 11 skeleton argument id., incorporated by reference herein.) It was in fact (not merely formally) entirely a creature of the claimant under the claimant's absolute control; the individuals who acted in AUA9's name were required to act in the claimant's interests. (See evidence cited in § 7 of defendant's Part 11 statement of case id. and in §§ 11-12 of his Part 11 skeleton argument, all incorporated by reference herein.)

In the particular context of an adversary proceeding, in which any claimant is by definition on the other side from any defendant, AUA9 was irretrievably conflicted in law. It could not have acted, under the law of principal and agent, as the defendant's agent in admitting the instant claim (see §§ 13-15, Part 11 skeleton argument id.).

(c) Defendant therefore does not admit that Lloyd's appointed a substitute managing agent for him within the meaning of, and thus within the authority granted Lloyd's by, § 18 of Schedule 2 of the Lloyd's Act 1982, because he denies that AUA9 was in fact at the time of R&R, or was able to be, a substitute "underwriting agent" as meant in the Act. However, Tropp wants to emphasize to the Court that **he does not wish to contest this issue** except if the Court were to rebuff all his other defences, which speak much more narrowly to his particular syndicates (only) and to unique issues of his individual fact situation.

(d) What may follow from § 6(1) of the Particulars is that the claim, in particular its quantum at §§ 11-12, could be construed in law to have been admitted by the defendant on the basis that AUA9 had acted for him as his alleged agent in agreeing the R&R Contract. By reason of (a)-(c) above, the defendant denies § 6(1), and avers that if the claim were deemed admitted on the basis of § 6(1), then this would be violative of article 6(1) of the European Convention on Human Rights (ECHR), the ECHR requirement for a fair hearing, and the Human Rights Act 1998 (HRA). By denying § 6(1) of the Particulars here, though he would prefer that the Court not need to reach this issue, the defendant reserves his right to appeal § 6(1) on the ECHR point.

10. § 6(2) in the Particulars states that the Council directed AUA9 to act "...as may... appear to the Substitute Agent to be requisite or expedient for... the Reconstruction and Renewal Proposals ["R&R"],

including the Reinsurance Contract". Defendant denies that AUA9 -- as a shell entity with no life or personnel of its own, only Lloyd's staff signing R&R documents in its name -- had any capacity to assess independently, at arms' length from Lloyd's, whether any aspect of R&R did or did not "appear ...to be requisite or expedient" for R&R.

In § 6(2) AUA9 is assumed to have been a Substitute Agent within the meaning of the 1982 Act, but in fact AUA9 could not assess whether any act was in the interest of its nominal principal the defendant or not. Nor was AUA9 either able or free to exercise an agent's discretion to protect, as required of any agent, its principal's interests.
11. § 7 in the Particulars alleges that AUA9 entered into the R&R Reinsurance Contract on behalf of the defendant. Tropp does not challenge (while not admitting) that AUA9 effected a reinsurance into Equitas Reinsurance Limited ("ERL"), but he denies per §§ 9-10 above, and for narrower reasons to follow, that AUA9 had authority to bind him to § 5.3 (base date for interest accrual) or § 5.10 (reversal of the standard burden of proof if quantum is disputed) of the Contract.

Alleged date from when claim arose; arguable estoppel as to date

12. § 8 in the Particulars alleges that the defendant's premium under the Reinsurance Contract became due and payable on 4 September 1996. Defendant denies this because he had had no prior knowledge of the Contract nor of the existence of AUA9, and at that time was entirely unaware that a Substitute Agent unknown to him had entered into an obligation for him. When he learned this and asked urgently for a copy of the Contract of which he was alleged to be in breach but had never seen, and for basic information on AUA9 and how to contact it to find out what it had done in his name, he was for 2 months and a dozen rounds of frantic correspondence denied disclosure of both.

13. The defendant is unable to admit or deny § 9 in the Particulars, and requires the claimant to prove (a) that under the Deed of Assignment, ERL did assign "all" of its interest in his Premium, not only present but also "future" as stated in § 9, irrevocably to the claimant, and (b) that notice of this assignment (i) was in fact given to the AUA9 representative who is named in the notice (Schedule G of the Particulars), (ii) was in fact physically received for Tropp by him, and (iii) was given on the particular date cited, 2nd October 1996.

In considering whether "(a)" above were proved, note that § 5.8 of the Reinsurance Contract provides that as to "Each... Name's Premium, ERL shall have power to assign... (**including... the right further to assign**) [emphasis defendant's] the right to receive payment... and/or to pursue the... Name for [it]". Please n.b. also on this point § 19 of Tropp's Part 18 reply witness statement of 23 April 2004 (incorporated herein by reference), which addressed Part 18 question 25.

14. § 10 in the Particulars alleges that "Wrongfully and in breach of contract", and "in breach of The Reconstruction and Renewal Byelaw", the Defendant "failed and refused to pay the sum to Lloyd's by 4th September 1996". Defendant denies vehemently that his not having paid the claimed sum was wrongful, or in breach of contract, or in breach of The R&R Byelaw, as of the cited date of 4th September 1996.
(a) No one had disclosed the Reinsurance Contract nor his alleged

obligation under it and under the Byelaw to him before 4th September 1996, and when he tried to find out during October-December 1996, he was denied such disclosure. He could not have been in breach of an alleged obligation of which Lloyd's had not given him prior notice, and then refused for months to give him contemporaneous disclosure.

(b) The Deed of Assignment cited in § 9 in the Particulars was not dated until 2nd October 1996, but § 9 states that Lloyd's' claim "became due and owing from the Defendant to Lloyd's" by this assignment. As the assignment had not yet taken place as of 4th September, could Lloyd's have had a claim at that date arising from the assignment before it had happened? Moreover, notice of it is not claimed to have been given to AUA9 on the defendant's behalf before the assignment date, nor did AUA9 then send such actual notice on to him.

(c) By the time Tropp received first notice from Lloyd's' counsel in October 1996 that the Contract existed and he allegedly was in breach of it, the deadline for Names to settle into R&R had been extended by Lloyd's to December, later to March 1997. Tropp was actively in settlement discussions with Lloyd's from early November 1996 to 24 March 1997, relying on Lloyd's' negotiating good faith. How, then, could he have been in breach between 4 September 1996 to 24 March 1997?

(d) There is a prior history. On 8 November 1995, Michael A. Meeson of Lloyd's' Financial Recovery Department (FRD) had agreed a "full and final" settlement with Tropp in Lloyd's' standard pre-R&R Settlement and Release Agreement format, which Mr. Meeson sent Tropp on 11 December 1995. For 11 months, through 28 October when Tropp got the letter alleging breach of the Reinsurance Contract (the first he had heard of it), he and others were pushing FRD in multiple phone calls and letters to execute with him on the settlement. FRD would not.

Much later, Tropp was authoritatively told from within Lloyd's that in late 1995 or early 1996, FRD had been instructed to "stall" on pre-R&R agreements it had reached but had not yet signed in final documentation -- not to execute on those agreements -- pending the implementation of R&R. After that, the pre-R&R "full and final" Settlement and Release Agreement template was to be replaced by a post-R&R **non**-full and final new one, under which a Name who was "settling" would still retain contingent liability that he would not have had before R&R under the old full and final Settlement and Release.

Tropp detrimentally **relied** on Lloyd's' word of a settlement agreement from 8 November 1995 to 28 October 1996, during a period Lloyd's was "stringing him along" to expect that it would proceed, by forgoing to pursue proactive legal and regulatory-process remedies to resolve his issues with Lloyd's. Such remedies were legally and politically far more available at that time than they became after R&R, or are today.

(e) From November 1996 to March 1997, Tropp was in successor settlement discussions with the Head of FRD, Philip Holden. As described and evidenced in § 15 of Tropp's Part 18 reply witness statement of 23 April 2004 and schedules annexed (incorporated by reference here), Lloyd's' CE Ron Sandler agreed terms with Tropp on 21 and 24 March 1997 for a "full and final" individual settlement agreement ("ISA"). Mr. Sandler internally documented that he had agreed this ISA deal

with Tropp, and its root terms, in a memorandum of 25 March 1997 to Mr. Holden [§ 16(a), Part 18 Request] asking FRD to follow up with Tropp by executing ISA documentation (which Mr. Sandler told Tropp would, after R&R, return to the pre-R&R "full and final" template). On 15 December 1999 Mr. Holden read the key substantive excerpts from this memorandum to Tropp. What Mr. Sandler had written to FRD faithfully reflected Tropp's understanding as well of their agreed terms.

Lloyd's never executed on the ISA, on which Tropp relied for years in forbearing to bring action against Lloyd's. On 22 April 2003, Mr. Holden's successor denied to Tropp that this ISA had ever been agreed by Lloyd's, and that the memorandum as described above existed.

(f) Lloyd's knows better. For these reasons and others stated below, Lloyd's' allegation on the public record in § 10 that Defendant acted "wrongfully and in breach of contract" arguably falls (if it is not shielded by an absolute privilege, because made in a court filing) within the meaning of § 14(5) of the Lloyd's Act 1982: "Nothing in this section [§ 14, on Lloyd's' statutory immunities from liability] shall exempt the Society from liability for libel or slander."

(g) § 14(6) of the 1982 Act elaborates that "For the purposes of this section 'the Society' means the Society itself and also any of its officers and employees and any person or persons in or to whom (whether individually or collectively) any powers or functions are vested or delegated by or pursuant to Lloyd's Acts 1871 to 1982." § 14(6) is cited here in pari materia with § 14(5), in a context of Lloyd's' public representation made in § 10 of the Particulars, in anticipation that §§ 14(5) and (6) considered together will arise later as to Rule 20.5 "counterclaim[s] against a person other than the claimant".

15. § 11 in the Particulars alleges a sum "now due and owing from the Defendant to Lloyd's" based on full particulars of the calculation reported by Lloyd's in Schedule H, which under § 5.10 of the Reinsurance Contract would be conclusive evidence of the quantum of claim absent manifest error. Defendant denies that this sum is due and owing, by reason of manifest error in the quantum and in those Schedule H particulars, for multiple reasons stated and explained below.

16. § 12 in the Particulars alleges a sum due as interest under § 5.3 of the Contract, based on Lloyd's' calculation in Schedule I. Defendant denies that this sum is due, by reason of manifest error in (a) the calculation of the principal from which that interest arises, and (b) § 12's base date of 1 October 1996 for the interest calculation. Because of § 14 above, Lloyd's' own failure to perform timely on the ISA deal it had agreed and on which deal Tropp detrimentally relied, Lloyd's arguably is estopped from claiming interest from that time.

Issues of arguable manifest error in the claim, and in quantum

The claim and the quantum of claim alleged in §§ 8-10 of the Particulars, the sum alleged in § 11 to be now owing from the defendant to Lloyd's, and the particulars of the calculation presented by Lloyd's in Schedule H, are arguably in manifest error for, in addition to and within the framework of the above points, the reasons following.

17. The questions of arguable manifest error and supporting evidence which are presented in and annexed to the defendant's Part 18 Request (Schedules A-1 and A-2 to Part 18 statement of case), that statement of case at §§ 6-8 [please **n.b.** § 8, for authority on the breadth of the aperture in law which is open to the defendant to show arguable manifest error], his witness statement of 17 March 2004, and his reply witness statement of 23 April 2004 at §§ 5-21 [**n.b.** please also §§ 1-2, on the Part 18 questions in relation to the defence's required showing of such error] are all incorporated hereinto by reference, and therefore will not redundantly be addressed in this Defence.

18. The questions (from the answers to which, subject to disclosure and evidence, the defendant expects that inferences of manifest error will arise) and supporting evidence presented in and annexed to the defendant's letter of 17 February 2004 asking preaction disclosure (Schedule A to Part 31 statement of case) at §§ 1-3 on p. 1 and § 7 on p. 2, that statement of case at §§ 4-6, his witness statement of 17 March 2004 at §§ 3-9, and his reply witness statement of 23 April 2004 at §§ 2-4, are also all incorporated hereinto by reference.

19. **Not "insurance"; claim arguably not from "insurance business":** The defendant was recruited by Lloyd's, and joined, to do insurance business. In Lloyd's' calculation of its claim at Schedule H, however, syndicates 235 (1989); 206, 210, 287, and 317 (1990); 206, 210, 235, 287, and 317 (1991) -- **all** the long-tail syndicates listed -- were materially not doing "insurance", nor "underwriting" in Tropp's years cited. The attribution to him of these syndicates' liability is in arguable manifest error because it was not "insurance" loss to him, arising from insurance business during the listed years.

(a) The defendant incorporates hereinto by reference the evidence in and annexed to §§ 14-16 of his Part 24 answer witness statement of 27 April 2004, and, for exegesis on that, the evidence in and annexed to §§ 4-5 of his Part 31 statement of case of 24 February 2004.

(b) Names placed their capacity at risk on those syndicates in those years under an expectation that they were taking insurance risk: the risk that events insured by their syndicate might or might not occur. The evidence cited at §§ 14-16 of the Part 24 answer statement shows that 95-99%+ of these particular syndicates' losses now being claimed by Lloyd's against Tropp, however, arose from reinsurance to close of their prior-year Incurred But Not yet Reported ("IBNR") liability -- a balance-sheet carryforward item, rather than current underwriting. What is listed in Schedule H as these syndicates' liability was not merely materially, but overwhelmingly, already occurred known loss.

This was not the uncertainty of insurance "risk". It was using new capital to cover old carried-forward known loss, not current "underwriting" in the years listed. This is not how commercial law defines insurance, nor how insurance regulators do, nor the capital markets, nor commercial common usage. These particular syndicates' losses now claimed were materially not current **business** in Tropp's years listed in Schedule H. There might be some threshold of materiality below which this point would not merit the Court's attention as manifest error, but whatever may be the Court's standard of materiality for arguability, would not 95-99% of quantum claimed meet and exceed it?

(c) Aside from not being "insurance" in any common-usage business sense, the long-tail syndicates listed in Schedule H did not meet the statutory test of having been "insurance business" within the meaning of § 8 of the Lloyd's Act, 1982 (see again § 3 above). The evidence cited at "(a)" above shows that those particular syndicates' losses were ultra vires § 8 of the Act. Lloyd's attribution of those losses to Tropp in its claim is arguably therefore also ultra vires the statutory definition of permissible authorised "insurance business".

20. **Not "reinsurance"**, either: The business concept "reinsurance" is defined by accounting standards boards, in International Accounting Standards (IASs), and by US and UK securities regulators as passing insurance risk to **someone else**: an arms-length seller who is a true unrelated party to the buyer. The core accounting and regulatory enforcement issue, as Tropp can ask witnesses from the accounting standards and regulatory communities to elaborate at trial, is that a true reinsurer's scrutiny of the premium from buyer to seller must be conducted at arms' length. The pricing of premium is supposed to be by a seller who has a commercial self-interest in ensuring its prudent sufficiency, to establish reserves that can bear the liability he is assuming from the buyer in the reinsurance transaction.

(a) A tax examination by US Internal Revenue Service (IRS) agents of Tropp's losses arising from Lloyd's led them to do an analysis of the nature of his long-tail syndicate losses. The examiners' analysis found that nearly 100% of those losses arose from "reinsurance to close" ("RITC") by his syndicates' managers of **their own** prior years of losses -- with Tropp's capacity having been used to cover multiple such prior years' loss, not only loss from the one year before his.

(b) The Equitas quotations tables cited and explained in § 5(b) of the defendant's Part 31 statement of case of 24 February 2004, and the further such tables cited in § 14(b) of his Part 24 answer witness statement of 27 April 2004, confirm the tax examiners' findings.

(c) So do annual tax filings submitted to IRS by Tropp's syndicates in support of their Syndicate Information Statements ("SISs") cited and explained in § 5(a) of his Part 31 statement of case, and of the further such SISs cited in § 14(a) of his Part 24 answer statement.

(d) So does not only a retrospective loss analysis of his syndicates' financials, but also (as stated at § 14(c) of his Part 24 answer statement) a syndicate by syndicate **premiums received** ex ante analysis, based inter alia on his long-tail and LMX syndicates' 1991-95 reports and accounts covering the underwriting years listed in Schedule H. The defendant is prepared to submit such evidence at trial.

(e) So do witness interviews that were conducted for Tropp by forensic accountants during the gestation period of R&R with some of his long-tail and LMX syndicates' run-off agents, plus reviews of their accounts, and follow-up interviews by Tropp with run-off agents to confirm and amplify on the findings which had been reported to him.

(f) So do preliminary reviews of some of his worst listed syndicates by independent consulting actuaries, who are familiar with Lloyd's' idiosyncratic accounting usage. They also can be witnesses at trial.

(g) The business reality of the long-tail syndicates listed in Schedule H is that **they materially did not exist as going concerns** in the years cited. They substantially were insolvent shells already in an undisclosed run-off, using newly solicited capital from their Names in Tropp's years to support a carryforward of their own prior-year losses in order to trade forward as if solvent. Their accounts materially were self-RITCs that they **reported** as "reinsurance" business, and booked to the current underwriting year on its income statement.

Such self-RITC would not meet the accounting standards boards' nor securities regulators' test of true "reinsurance". It was not arms' length, with the syndicate agent on both sides of the table as buyer **and** seller, pricing himself. It was arguably not true "business".

(h) Industry common usage in property and casualty insurance and reinsurance, as accounting standards and insurance analyst expert witnesses can confirm at trial, is to book all IBNR carryforward on the balance sheet, not to report any as "current" on the income statement when it does not arise from current-year new underwriting. Churning it through the income statement, however (and for all the successive years under which the Court can see row after row of zeros on the Equitas quotations tables), enabled the syndicate agents to report a single original underwriting as if it were current business over and over again. This created current new book "income" on their accounts year after year from recycling the same old underwriting transaction.

(i) Booking such churning on the current income statement nominally justified agents' taking profit commission out of their syndicates' reserves at each cycle the old liability was reported "reinsured", as if each were new business, redundantly over multiple cycles of self-RITC. Insofar as this was done, subject to disclosure and evidence, it iteratively depleted syndicate reserves for a decade before R&R. It also exponentially raised the true total "load" of fees and expenses taken out cumulatively by agents on their syndicates' capital, as against the quantum of true underwriting transactions done by Tropp's Schedule H syndicates in his years or as a percentage of capital.

The ineluctable arithmetical result of such cumulative reserves depletion by taking out exponential load was an Equitas individual "additional premium" that became arguably not only materially but orders of magnitude higher than it need otherwise have been for the Names on Tropp's long-tail syndicates, whose reported "reinsurance" business had for years been such recycling of their own IBNR by self-RITCing.

(j) Such self-RITCing, which is what the long-tail syndicates listed in Schedule H were materially doing with Tropp's capacity during the years listed, would not even meet what Lloyd's represented to Names whom it was soliciting as <u>its</u> own definition of "**reinsurance**" (see § 6(b) of Part 24 answer witness statement and its Schedule C-2).

(k) Over the decade leading up to R&R, then during R&R when Lloyd's calculated Tropp's Equitas premium, Lloyd's was in deliberate avoidance of (g)-(j) above, or in possession of actual knowledge of it, as to all the long-tail syndicates in Schedule H. Lloyd's' inclusion of their multiply recycled self-RITC losses in the quantum of its claim against Tropp is arguably a particularly inculpating manifest error.

21. Claim not within the authority of statutory basic business model: The Lloyd's Acts 1871-1982 (please see again §§ 2-4 above), Lloyd's' Membership Byelaw (§ 5 above), and, by express reference to them, the General Undertaking (§ 1 above) establish the statutory authority pursuant to which the claim was brought, and against which the claim must be assessed as intra vires or not. All Lloyd's contractual documents which in combination evidence the original intent of the parties in their agreement (see §§ 3-6, defendant's Part 24 answer witness statement per § 6 above) are based on the provisions in that underlying statutory authority. Tropp relies on that authority here.

The fundamental structure of the enterprise to which Lloyd's solicited Tropp (see §§ 8-11, "Lloyd's' venerable business model...", Part 24 answer statement id) arises from the authority of those statutory provisions, the Byelaw based on that authority, and the terms of the agreements derived from both. What Tropp agreed to, and relied on, was Lloyd's' inducement to him to be recruited to that particular enterprise structure, Lloyd's' traditional basic business model.

By reason of §§ 19-20 above, and of the nature of the losses of his syndicates considered as against this basic business model (see §§ 14 and schedules G-H annexed, Part 24 answer statement id), the instant claim is inconsistent with and in fundamental violation of the statutory authority in the Lloyd's Acts, the Byelaw, the General Undertaking that relies on both, and all derivative agreements relied on by Lloyd's and Tropp. Lloyd's' claim is arguably in manifest error of law, but more: the claim is **itself** per se such error. It is lawless.

22. Claim not within the parties' original intent in the agreement: For the same reasons of fact, Lloyd's claim arguably is in breach of the original intent of the parties in their agreement. (See §§ 12, 15(b), and 16 of Part 24 answer witness statement id.) Because the nature of the losses of his long-tail syndicates is in violation of the core business model on the basis of Lloyd's' representation of which Tropp was induced to be recruited, on which he relied, and to which he agreed with Lloyd's, the instant claim goes to the root of that agreement. The claim is not only arguably in manifest error as being ultra vires the original intent of the parties in the agreement, but is arguably in repudiatory breach of that agreement.

23. Claim not within the express bounds limiting authority delegated: At the time the defendant joined Lloyd's he expressly and in writing, based on his professional regulatory experience, prohibited the use of his capacity on underwriting of environmental and other long-tail risk. (See § 7 of the Part 24 answer statement id., per § 7 above.)

(a) The losses of his long-tail syndicates (see list at § 19 above) are ultra vires that express, "up front", written prohibition.

(b) Material environmental long-tail liability, up to 40-60% of total loss, is embedded in the property (but not in most casualty) "London Market Excess of loss" ("LMX") reinsurances written by syndicates 666 (1989), 666 (1990), 666's successor 929 (1991) and perhaps others in Schedule H. This has been confirmed by inter alia the run-off agent of 666 and 929 during R&R, and the reinsurance investment officer of a lead institutional investor in the run-off agency's holding company.

Insofar as those LMX syndicates' loss arises, subject to disclosure and further evidence, from such long-tail environmental risk which expressly was prohibited by Tropp on joining, their loss too is ultra vires his prohibition and his original intent in the agreement.

(c) Therefore, as to all long-tail syndicates listed in Schedule H and as to the long-tail component of the loss of the LMX syndicates listed in it, the quantum of claim is arguably in manifest error -- in a way which is not only particular to those syndicates, but also distinguished on its facts uniquely to Tropp's individual fact situtation -- as being outside the agreed scope of the contract between the parties. (See § 15(a) and 16 of the Part 24 answer statement id.)

24. Claim includes loss from a year **after** Tropp had resigned timely: § 13 of the defendant's Part 24 answer witness statement of 27 April 2004, "Tropp's resignation timely should have kept him off 1991 losses" [but was wrongly refused], is incorporated hereinto by reference as a narrow arguable manifest error in the quantum of claim. Please review that § 13 together with §§ 14 and 17(a) of his Part 18 reply witness statement of 23 April 2004 and the evidence annexed.

25. No credits received to correct errors in quantum, however facial: § 11 in the Particulars refers to the sum alleged due and owing from the defendant to Lloyd's "...inclusive of credits received". In his colloquy with counsel at the end of **Lloyd's v. Fraser and Ors** (judgement 22 January 1998, transcript p. 11), Mr. Justice Tuckey directed Lloyd's as follows: "Well, you heard what I said my concern was about credits.... Obviously every credit which... can be allocated to the amount that is claimed from any Name, I would like to see credited."

However, the amount of "credits received", stated by Lloyd's in § 11 as having been included, is facially zero. No credit was subtracted from the sum alleged due to reflect, e.g., any corrections for:

(a) double-counting of some of the quantum which **seemingly** (subject to disclosure and evidence from Lloyd's, thus far denied) had already been paid out of Tropp's profits and his other funds held by Lloyd's, and thus had been satisfied (§§ 2-4, Part 18 Request); nor for

(b) an arguable overcalculation (subject to disclosure and evidence) of extra Equitas individual "additional premium" arising from a need to cover syndicate reserve shortfalls after apparent asset-stripping, of outside reinsurer payables due to them, out of their reserves before assignment of those reserves to Equitas. A windfall of post-R&R proceeds from such payables reportedly went to managing agents and to post-R&R new Names in the post-R&R market, rather than being credited to the pre-R&R Names to whom the pre-R&R reinsurance assets belonged (see § 7 of Part 18 Request, § 4(b) of Part 31 statement of case).

Reporting during and after R&R from run-off agents, the insurance press, and elsewhere suggests that a deliberate undervaluing of outside reinsurer payables, compounded sometimes by such stripping of reserves, may have led to an inflated Equitas additional premium for up to 7 syndicates in Schedule H. Tropp has received no credit from any clawback by Lloyd's for Equitas of such windfall which went to the **going-forward** market out of his syndicates' **pre**-R&R reinsurances.

26. Quantum decisively overstated if syndicate reserves undervalued: To bring vivid life to § 25 for the Court: the run-off manager of 3 of Tropp's syndicates listed in Schedule H reported at July 1996 in his "Run-off manager's report at 31 December 1995" that "The Equitas reserves [required of his syndicate in its Equitas quotation from Lloyd's' R&R Reserving Group, with whom he was taking issue] are very significantly higher than those provided in earlier years [to cover one class of liability] and... **little or no** credit [emphasis defendant's] has been allowed for potential reinsurance recoveries...."

For his syndicate, "The shortfall arising as a result of the premium quoted [for] Equitas to close the 1991 and all prior years is the equivalent of some 19% on allocated capacity." Lloyd's' standard syndicate gearing up to premiums-received "capacity", the maximum "premium income limit" ("PIL") a syndicate could accept in a given year, was a multiple of up to 4 times its Names' nominal capital at risk. At a 4x gearing, please n.b., the R&R reserves shortfall which this run-off agent reported would arithmetically result in an Equitas individual "additional Premium" -- to close that shortfall, over and above this syndicate's reserves to be transferred to Equitas -- of up to 76% of principal levied on the Names of this particular syndicate.

Against that, the reinsurance recoveries which this run-off manager believed were sound but for which "little or no credit" had been allowed by Lloyd's in calculating the Equitas premium required from his syndicate were, based on data in its "Underwriting Account... closed [prospectively into Equitas]... at 31 December 1995", seemingly 72.2% reinsurers' share of gross claims, possibly 79.0%. Enough, perhaps, to have covered **±100%** of the Equitas additional premium levied by Lloyd's on this particular syndicate's Names, including Tropp. Lest the Court wonder how representative such math is, this example seems, subject (n.b. caveat) to disclosure and evidence, not even close to being the worst syndicate on Schedule H in this respect.

This is not "facial" error. But evidence (of which the above is only a sample) suggests that it **is** manifest error in law, and contrary to natural justice if such error in quantum were not to be corrected. This particularly would be so where a post-R&R windfall from pre-R&R outside reinsurer payables had inured to the benefit of the ongoing market, rather than having been assigned and actually turned over to Equitas as required by § 6.11 of the R&R Reinsurance Contract.

27. The law on how a showing may be made of arguable manifest error, for the purpose of overcoming a threshold presumption of conclusive evidence, is intended to be addressed separately in the defendant's Part 24 skeleton argument (incorporated hereinto by reference).

Allegations implied, but not stated, in the complaint

28. Tropp's R&R premium covered by Lloyd's having paid it to Equitas? Lloyd's' Legal Services Department ("Legal Services") has alleged to Tropp multiple times, as witnesses who were sometimes present can confirm, that **the** reason Lloyd's considers him to owe it an RITC Debt is that Lloyd's covered his Equitas individual "additional premium" by paying it to Equitas for him. This allegation is not in Lloyd's' Particulars of the Claim, but may be intended to be implied in it.

In February 2003, at other times prior and subsequent, and recently in question 18 of his Part 18 Request, Tropp asked Legal Services to show him Lloyd's' internal book entry documenting that such a payment by Lloyd's of his alleged R&R Debt was in fact made on his behalf to Equitas, and in what amount and when. Legal Services has refused.

Equitas's finance and legal officers reported in May-June 2003 that Lloyd's' 1996-97 R&R payments to Equitas had been made in parcels for mass groups of unidentified Names. No such payment had been made by Lloyd's identifiably for him, therefore Equitas could not tell him whether or not Lloyd's had covered his particular R&R Premium by paying on his behalf. (See Equitas' letter of 30 May 2003 at Schedule C-2, defendant's Part 18 reply witness statement of 23 April 2004).

If this allegation is implied in the claim and is intended to be made by Lloyd's, then Tropp states that having looked hard, he knows of no evidence that any such payment by Lloyd's to Equitas to cover his R&R individual Equitas "additional premium" was in fact ever made, and he requires that Lloyd's strictly prove any such intended allegation.

29. Corresponding receivable still on Lloyd's' books, or long gone? Legal Services has also alleged to Tropp multiple times that having made this R&R payment on his behalf, Lloyd's carries on its books a corresponding receivable of debt due to it from him, which allegedly it would have to write off on its books as an asset if he were not to pay. Tropp has asked Legal Services multiple times to show him the internal book-item documentation that Lloyd's is in fact carrying such a receivable asset in his name. Legal Services has refused.

In 1997 or early 1998 Lloyd's submitted a tax filing to Inland Revenue reporting taxable income to Tropp arising from R&R, seemingly "cancellation of debt" non-cash income to him ("COD income"). Tropp has an officially reputed copy. In late 1998 or 1999 Lloyd's sent a materially similar filing to the US Internal Revenue Service ("IRS"). In filing such an R&R taxable income report, Lloyd's was stating or implying to both tax agencies that it had cancelled Tropp's now-alleged R&R Debt [presumably reflecting -- and please **n.b.**, itself also evidencing -- its CE's settlement agreement of March 1997 with Tropp; see § 14(e) above and § 15 of Part 18 reply witness statement id]. Lloyd's should have made a 1997 corresponding internal book entry documenting such cancellation. If so, then Tropp's alleged debt would not now be carried as an asset on Lloyd's' books (see §§ 7-8 in his Part 18 witness statement of 17 March 2004), assuming they were consistent with Lloyd's' reports to Inland Revenue and IRS. If a receivable asset which **was** once booked in Tropp's name was no longer carried on Lloyd's' books as a debt after an act of cancellation in 1997, then what could be the accounting basis for the claim today?

If the allegation is implied in the claim and is intended to be made by Lloyd's that it does carry on its books a receivable asset of debt payable to it by Tropp, which asset would now have to be written off if Lloyd's were not to pursue its claim, then on information from Inland Revenue and from IRS, Tropp denies such an implied allegation, and avers that the claim must have been written off 7 years ago. He requires that Lloyd's strictly prove any such intended allegation.

30. Consideration in R&R Reinsurance Contract, for Equitas premium? Under the Reinsurance Contract (see e.g. § 3.1 and § 5.1 excerpted at Schedule E to the Particulars of Claim), from which the RITC Debt alleged by Lloyd's in the claim arises, the consideration to Names for their Equitas premium is that they will be reinsured by ERL. Implied if not express in this Contract, and multiply so elsewhere in various R&R documentation, is that this reinsurance would protect reinsured Names in the same way that their pre-R&R syndicate reinsurances to close (RITCs) did. Equitas has been presented by Lloyd's to Names, and to the Court, as materially an umbrella multi-syndicate RITC.

Lloyd's' pleadings in US courts in post-R&R cases reportedly contradict this representation (annexed, Schedule D-1, law journal review of cases against Equitas; Schedule D-2, sample case, **LILCO v. Aetna and Ors** 1997). In such cases Lloyd's reportedly has argued that pre-R&R policy-holders of syndicates which reinsured into Equitas may not claim against Equitas, and Lloyd's it**self** has directed those policy-holders and US courts to pursue their claims against such syndicates' Names instead, on claims against syndicates that disappeared after R&R rather than RITCing into a successor syndicate trading forward.

This is flatly the opposite of how pre-R&R syndicate RITCs worked: the reinsuring syndicate handled claims for members of its reinsured syndicate that had been "closed". Moreover, what Lloyd's has argued in the post-R&R cases is the exact opposite of what Names understood they were receiving in consideration of paying their Equitas premium: precisely, protection by Equitas from claims being made against **them**.

If the allegation is express or implied in Lloyd's' claim that Tropp has received and will receive "reinsurance to close" protection from Equitas on the model of the standard pre-R&R syndicate RITCs, in consideration for his Name's Premium which is alleged in Lloyd's' claim, then Tropp does not admit -- and subject to disclosure and evidence, he reserves the right to deny -- that he has received such RITC protection as consideration on the Reinsurance Contract. In light of Lloyd's' own post-R&R court pleadings in Equitas cases which exactly are on point with this question, Tropp requires Lloyd's to prove any allegation made or implied in the claim, or intended to be made by Lloyd's, of such consideration received by Tropp on the Contract.

Remedies sought in defence

The defendant asks that the Court please:

31. Set aside and dismiss the claim in its entirety.

32. (a) Strike the claim from the Court's record, and expunge it, to restore reputation to the defendant who has been dishonored by it.

(b) Make in the Court's judgment an unambiguous declaration that the defendant (i) does not owe the claimed "debt", and (ii) never has.

33. Declare Lloyd's to be in repudiatory breach of the original contract between the parties, including inter alia (but not limited to) all component agreements cited in §§ 3-6 of the defendant's Part 24 answer witness statement of 27 April 2004, and void the contract.

34. If and insofar as the Court finds part of the quantum of Lloyd's' claim to have been, as to particular syndicates listed in Schedule H of the Particulars, not intra vires Lloyd's' statutory authority (see §§ 2-5, 19-21 above), in breach of the parties' original intent in the agreement (§§ 6 and 22 above, §§ 3-6 and 8-11 in the defendant's Part 24 answer statement), in breach in particular of his instruction expressly prohibiting the use of his capacity on certain underwriting (§ 7 and 23 above, § 7 of the Part 24 answer statement), or otherwise to be in manifest error by reason of any of the matters above, that the Court direct Lloyd's to recalculate the quantum of the claim so as to correct the error in quantum by "backing out" such error.

(a) Lloyd's reported during R&R that its original calculation of Names' Equitas premium yielded a negative premium (a distribution of cash back) to thousands of Names. Defendant asks that the Court expressly, in its direction to Lloyd's to recalculate a corrected quantum in those respects in which the Court may find it in error, direct Lloyd's to make a cash refund to Tropp of any such negative premium.

(b) The particulars of Lloyd's' calculation of quantum include not only Equitas additional premium going forward from R&R, but also (and in an even larger amount) alleged liabilities from prior to R&R (in the first 3 columns of § 2, Schedule H of the Particulars: "uncalled losses", "deferred losses", and "called but unpaid losses"). Defendant asks that in any direction to Lloyd's to correct error in quantum, the Court direct Lloyd's to make its recalculation retrospective to include these alleged pre-R&R liabilities too, and to make a cash refund to Tropp of any negative Names' premium arising from them.

Counterclaims

Exhaustion of internal remedies repeatedly beseeched; failure to supervise, deliberate avoidance of institutional responsibility

35. As preface to the remedies sought in counterclaim, the Court should know that the defendant has exhaustively pursued all internal institutional processes theoretically available within Lloyd's for redress of the arguable errors above and those cited in the Part 24, 18, and 31 statements. (See schedules H and I annexed to § 13 in his Part 18 reply witness statement of 23 April 2004, e.g., for issues raised in approaches to Lloyd's' Individual Members' Unit and CSU.) The background given with each of questions §§ 10-14 in his Part 18 Request (schedule A-2 to the Part 18 statement of case) offers a sad history of such fruitless pleas, including to Lloyd's' R&R-era CE (who referred Tropp's issues to the Director, Regulatory Division and the Head of CSU, neither of whom responded) and in 2003 to its Chair- man (who chose avoidance of those issues). The institution would not take corporate governance responsibility for remedy of grievances.

In settlement discussions with Legal Services, Tropp more recently sought internal redress through them as well (annexed, schedule E-1, letter of 15 December 2002 to Mr. Holden's successor; schedule E-2, memorandum of 4 February 2004 to Legal Services' senior negotiator with him). He has received no reply: not so much as the grace of an acknowledgment of, much less serious engagement with, his issues.

36. In preparing Rule 31.16 questions, Tropp approached Lloyd's' internal regulator of underwriting agencies for guidance (schedule F, e-mail of 12 February 2004 to Matthew Chandler, Head of Admissions). Tropp was rebuffed (§ 2, Part 31 reply witness statement of 23 April 2004), as he consistently had been by multiple predecessor internal self-regulatory units of Lloyd's during 1994-96 in the run-up to R&R.

37. From his first settlement meeting with Mr. Meeson of FRD on 28 July 1995, with Mr. Holden the Head of FRD on 19 November 1996, and with Mr. Holden's successor, with Lloyd's' CE, and others, Tropp has implored Lloyd's senior officers that the institution either pursue its internal disciplinary process against particular arguably rogue agencies and their controlling principals, or join Tropp in pursuing outside remedies against such agencies and individual principals acting wrongfully. Recently as part of a possible concept of settlement, he gingerly asked Legal Services to act with him in this way, as steward of the institution's integrity (see schedule G-1, excerpt from e-mail of 16 February 2004). Legal Services rebuffed this over- ture (Schedule G-2, their reply letter of 17 February 2004).

38. The defendant avers to the Court, in contemplation of the relief he will seek in the counterclaims to follow, that there has been a systemic institutional performance failure by Lloyd's -- a failure to supervise, in its market promotion capacity, and to regulate, under its statutory delegation of authority -- in turning its head to and consciously avoiding, rather than seriously reviewing and providing relief for, wrongful behavior by particular agencies which victimized Tropp and others on his particular syndicates. This is compounded by Lloyd's' claim now seeking more fruit of the arguably poisonous tree.

At trial, in evidence documenting years of rebuffs by various Lloyd's offices as he sought internal relief, Tropp will show an endemic and continuing failure of corporate ethics and governance: a pattern of nonfeasance and of deliberate avoidance by Lloyd's, and its officers, of its supervisory and regulatory institutional responsibility.

It is because of such pervasive failure in governance, and arguably of moral courage, that Tropp prays the Court for remedies now sought.

Remedies sought in counterclaim

The defendant asks that the Court please:

39. Make a declaration that the § 14 immunities to liability in the Lloyd's Act 1982 do not protect Lloyd's (nor its § 14(6) officers, employees, or agents) from counterclaim to the instant claim, because on the face of the claim and of the R&R Deed of Assignment Lloyd's is pursuing a debt allegedly owed to Equitas and not to Lloyd's, which inured to Lloyd's only as assignee. Declare that in law, the instant claim is constructively one by Equitas rather than by Lloyd's, the pertinent law for construing counterclaims is the companies law that would apply to Equitas, and § 14 of the 1982 Act ergo is inapposite.

40. Order specific performance by Lloyd's of its obligations under the Lloyd's Acts 1871-1982 and on its agreements with the defendant, including but, subject to disclosure and evidence, not limited to:

(a) Recalculation, for purposes not only of defence (§ 34 above) but also of counterclaim, of Tropp's pro rata losses on each of his syndicates listed in Schedule H to the Particulars and cited at §§ 19 and 23(b) above which carry long-tail IBNR liability from self-RITC -- whether of their own prior-year liability, or as LMX reinsurances of other syndicates' self-RITCs -- by subtracting such long-tail IBNR derived from self-RITCing from those listed syndicates' losses which had been reported to Tropp and collected from him before R&R.

(b) Refund to Tropp with compound interest and consequential losses, based on such recalculation of prior losses of syndicates listed in Schedule H, if such refund is found warranted by the recalculation.

(c) Internal discipline of managing agents of those syndicates which (i) took profit commission out of syndicate reserves on reported profit from self-RITC carryforward of their own prior-year liability, booking such self-RITCing as a current **income statement** item for purposes of calculating their profit commission, while **simultaneously** (ii) treating such self-RITC as a **balance sheet** rather than an income statement item for purposes of calculating the premium capacity to cover it, with the result that they carried forward unlimited amounts of self-RITC without any "premium income limit" at all of the maximum premium capacity to which their current year underwriting is required to be prudentially limited (i.e.: they seemingly took unlimited self-RITC risk against a cushion of zero net capital to cover that risk).

(d) Aggressive pursuit of clawback, for the benefit of the reserves of Equitas, of all such profit commission extracted from the reserves of Tropp's listed syndicates before R&R by managing agents who had on the one hand calculated profit commission as if self-RITC were an in- come statement item, but had on the other hand reserved for risk on their self-RITC accepted as if it were a balance sheet item entirely unlimited by Lloyd's' standard premium capacity underwriting ceiling.

(e) Pursuit of further clawback, for the benefit of Equitas, of all **advance** profit commission taken out of the reserves of Tropp's syndicates by their managing agents under the R&R Triple Profit Release.

(f) An unwinding out of Equitas of the reinsurances into it of (in particular, and only) the long-tail IBNR arising from **self**-RITCs that had been carried before R&R by Tropp's long-tail and LMX syndicates, and an unwinding of their predecessor chain of pre-R&R self-RITCs, back to the year of original underwriting of the underlying risk. Reverse all such IBNR liability from the E&O and PSL syndicates which had had to RITC into Equitas because they were contaminated by it. Return such liability to the Names of the original underwriting year who had had privity of contract with an arms-length reinsured, and reopen into run-off those original syndicate underwriting years.

(g) A restatement of the annual results of such syndicates whose chain of self-RITCs is unwound, going back to 1982 (the underwriting year of the standard 3-year claims cycle before 1985, the first year listed in the Equitas quotations), by forensic accountants retained by Lloyd's but reporting to and supervised by a special master with securities law enforcement experience to be appointed by the Court on advice from Tropp. Publish the restated syndicate results.

41. Under Lloyd's' public law duty of accounting, in its statutorily delegated capacity as a regulator under the Lloyd's Acts 1871-1982, order that Lloyd's publish a restatement of the Society's annual Global Results 1982 to 1996 reflecting those syndicate restatements.

42. By reason of Lloyd's' having **had knowledge of** robust evidence of material error in Tropp's claimed R&R liability from their extensive correspondence during his pursuit of internal redress as described in §§ 10-14 of the Part 18 Request, in relation to § 23 above (claim ultra vires of express limitation on underwriting authority delegated by Tropp) and to § 14(e) above (claim estopped by agreement Lloyd's' CE had reached with Tropp, but that Lloyd's would not execute):

Make a declaration that counterclaim lies as to Lloyd's under § 14(5) of the Lloyd's Act 1982 (annexed, Schedule H; see § 14(f) above) for libel and slander in (a) Lloyd's' publication of the claim in malice (because notwithstanding its knowledge of the above) on the Court's public record, overcoming by such malice the threshold presumption of privilege that shields submissions to the Court, and in (b) Lloyd's publication of substantially the same alleged R&R liability (and of alleged taxable income arising therefrom) with the Inland Revenue.

43. In addition or in the alternative (in place of liability under § 14(5), if publication with the Court and Inland Revenue are shield- ed by an absolute privilege that cannot be pierced even by evident malice), make a declaration that counterclaim lies as to Lloyd's -- in, in particular, Lloyd's' capacity in public law as a regulatory authority, under the statutory delegation to it of official authority in the Lloyd's Acts 1871-1982 -- for malicious prosecution.

44. By reason of the matters of multiple arguable manifest error set out in §§ 1-26 above, all known to Lloyd's at the time of its claim, and by reason in particular of §§ 42-43 above, make a declaration that aggravated damages and exemplary damages lie against Lloyd's.

45. By reason of § 14(e) above (claim arguably estopped from the date Lloyd's' CE reached settlement agreement with Tropp, on which agreement Tropp detrimentally relied from that time), make a declaration that as to any and all limitations which might otherwise time bar counterclaims, Lloyd's itself "stopped the clock" in law no later than 21 March 1997, arguably (see § 14(d) above) on 8 November 1995.

Remedies sought in CPR § 20.5 counterclaims against others

46. Pursuant to CPR § 20.5(1), the defendant asks that the Court order that the following classes of persons be added, subject to disclosure and evidence sought in his Part 18 and Part 31 applications as to their identities, as defendants to the counterclaim:

(a) The managing agencies, their controlling holding companies, and all the individual controlling principals of each -- as "control" is defined in §§ 2(2) and 12(2)(c)-(d) of the Lloyd's Act 1982 (annexed, Schedule I) -- of the original managing agents and the run-off agents of Tropp's long-tail and LMX syndicates (listed in Schedule H of the Particulars) during the years of defendant's underwriting on those syndicates and of their run-off until final execution of R&R;

(b) The defendant's members' agency during R&R, Christie Brockbank Shipton Ltd. ("CBS"), CBS's controlling holding company The Brockbank Group ("Brockbank"), all individual controlling principals of CBS and of Brockbank from the time of the first cash calls against Tropp and the first cash transfers under the Collection and Distribution Project ("C&D") to cover liability arising from the syndicates listed in the claim (indicatively from 1991), and all officers, directors, and employees of CBS's predecessor agency Hayter Brockbank Ltd. who participated in directing cash calls against Tropp, cash transfers under the C&D Project of profit distributions from his profit-making syndicates, denial of 1990 Personal Stop-Loss (PSL) after he had accepted it and sent payment timely, and denial of his 1990 resignation; and

(c) Officers, employees, and agents of Lloyd's who are described in §§ 5-7 on page 2 ("CPR 20.5 crossclaims") of Tropp's preaction disclosure request letter of 17 February 2004 (Schedule A to the Part 31 statement of case), irrespective of whether shielded by § 14(6) immunities (see Schedule H hereto) under the Lloyd's Act 1982.

47. As to all original and run-off syndicate managing agents, their controlling holding companies, and individual controlling principals of each as described in § 46(a) above, the defendant asks that the Court make a declaration that a counterclaim for disgorgement lies for Tropp's pro rata share of their fees and expenses taken arguably in error out of their syndicates' reserves in the ways described in (a) § 40(c)-(d) above; (b) § 40(e) above and § 9 of the Part 18 Re- quest (Schedule A-1 to the Part 18 statement of case; see also § 6 of Tropp's Part 18 witness statement of 17 March 2004), as to R&R Triple Profit Release; and (c) § 6 of the Part 18 Request id, as to multiple years of advance fees and expenses that reportedly had been taken by run-off agents out of Tropp's run-off syndicates' already depleted reserves before R&R, but were not clawed back by Lloyd's for Equitas.

48. The defendant further asks that the Court make a declaration that a counterclaim for § 47 disgorgement lies against the cited agents and other parties as to **all** such monies taken from their syndicates' reserves, beyond his individual share, to the benefit of Equitas.

49. As to all officers, employees, and agents of Lloyd's described in § 6-7 on page 2 ("CPR 20.5 crossclaims") of Tropp's preaction disclosure request letter id., subject to disclosure and evidence of their individual identities and of their particular roles in the behaviors described in § 6, the defendant asks that the Court make the same declarations as requested in §§ 42, 43, and 45 above.

50. As to all such officers, employees, and agents, the defendant asks that the Court make a declaration that counterclaim lies as well for deliberate avoidance of inculpating knowledge and for misprision.

51. As to all officers and employees of Lloyd's described in § 7 on page 2 ("CPR 20.5 crossclaims") of Tropp's preaction disclosure request letter id., those supervisory-level persons who have been in arguable **moral hazard** in pursuing the instant claim against him because they have personal compensation incentives whose realization is contingent on Lloyd's' obtaining judgment against him, he asks that the Court make the same declaration as requested in § 44 above.

52. As to all such officers and employees of Lloyd's who are in moral hazard arising from their individual compensation incentives (from which perverse commercial personal incentive to litigate the claim may arise or, subject to disclosure and evidence, perhaps has), who are employees or supervisors of Legal Services, and who are officers of the Court, the defendant asks that the Court make a declaration that counsel's privilege is pierced for purposes of requiring produc- tion of otherwise shielded evidence for the defence and counterclaim, as between them and Lloyd's or them and officers of Lloyd's and other persons immunized under § 14(6) of the Lloyd's Act 1982.

53. Costs of the counterclaim.

Case management

54. The defendant asks that the Court receive this defence as also a supplemental witness statement in answer to the Part 24 application, on which, pursuant to CPR § 24.5(1), he wishes to rely in the Part 24 hearing. He calls the Court's attention to, he has in his work flow relied on, and he here relies on Lloyd's' own invocation of this rule -- with the preface "Attention is drawn to rule 24.5(1)..." -- on the face sheet of Lloyd's' Part 24 application notice.

55. The defendant asks pursuant to § 24.6(a) that if the Court dismisses Lloyd's' Part 24 application, it please give him permission to submit an amended superseding defence and counterclaim without the pressure (against which he has struggled without remission after the listing direction of 19 March 2004, even as reconsidered on 29 March) and the exhaustion of having to conceptualize, to assemble and sift evidence for, and to draft multiple Part 24, Part 18, and Part 31 submissions simultaneously, while also finding and learning half a dozen lines of case authority (all new to him), and at the same time preparing the defence. This defence is, consequently, far from the defendant's best possible submission for purposes of fully informing the Court, and achieving a fair hearing and substantive due process.

56. If the Court grants his Part 18 or Part 31 application or both, the defendant asks that the Court stay the due date for him to submit such an amended superseding defence until after he will have received Lloyd's' disclosures under the Court's Part 18 and/or Part 31 order, and will have had time to digest such disclosures for purposes of incorporating new evidence into an amended defence and counterclaim.

57. Costs of the defence.

Statement of Truth

I believe that the facts stated in this Defence and Counterclaim are true.

Richard A. Tropp
Defendant/Counterclaimant
14 May 2004