In the High Court of Justice 2002 Folio 848

Queen's Bench Division

Commercial Court

between:

Richard A. Tropp

Applicant/Defendant

- and -

The Society of Lloyd's

Respondent/Claimant

Reply Witness Statement

This is a witness statement in reply to Lloyd's' answer statement of 29 March 2004 ("Second Witness Statement"), contesting Tropp's Part 18 application notice of 16 February 2004. This reply statement continues to addresses the relevance, which is disputed by Lloyd's, of the queries in Tropp's Part 18 Request (Schedules A-1 and A-2 annexed to statement of case), for the purpose of making a threshold defence showing of arguability of "manifest error" in Lloyd's' claim.

Tropp seeks the Part 18 answers especially urgently to show the Court a triable defence against Lloyd's' application for summary judgment.

1. §§ 6 and 10 of Lloyd's' statement refer to their letters of 13 and 18 February 2004 (annexed as Schedules B and B-2 to Tropp's statement of case), declining to answer his Part 18 Request questions on the ground of non-relevance. Neither in those letters nor in the respondent's answer statement has Lloyd's addressed for the Court, question by question on the facts pertinent to each one, why each individual question is **not** relevant. By contrast, in framing the questions in his Part 18 Request letters and in his witness statement of 17 March 2004, when read together, the applicant **has** explained each individual question's relevance, in particular its relevance pre-trial for the threshold defence showing that he is required to offer to the Court.

2. § 14 of Lloyd's' statement erects a straw man, evoking for the Court what other defendants in prior Lloyd's cases have sought to do, by citing the Court of Appeal's holding in **Fraser** that Lloyd's is not required "to produce all the underlying documents to each Name for him to check the figures and calculations of the CSU [Lloyd's' Central Services Unit]", on which Lloyd's' quantum of claim is based.

This defence by Lloyd's to the Part 18 application is a non sequitur. (a) Tropp hasn't asked for any, much less all, of the CSU calculation documents, and he has no intent to contest the internal logic chain of those calculations as others have. (b) Each of Tropp's Part 18 questions raises other, different issues of "manifest error" in the claim; his questions do not speak to CSU's calculation logic. (c) What Lloyd's is basically saying to the Court in § 14 is, "this is the same old stuff, so treat it the same way". That is the underlying straw man, a diversion of the Court from the substance of Tropp's questions by citing CSU's calculation process which he hadn't raised.

The applicant wants to emphasize to the Court that individually and in combination, to his knowledge, his Part 18 questions are in substance **different** from the issues which other defendants in Lloyd's cases have sought to raise to the Court, and on which they have been rebuffed as having not met the requisite threshold burden of going forward to argue manifest error. His are new issues which the Court has not been presented before, and new evidence supporting them.

3. § 15 of Lloyd's' statement ends "No such error has been identified by the Defendant". To the contrary, while no such error has yet been proved, each individually of the applicant's questions, on its face, presents or has a direct nexus to one such error or to several.

4. § 16 of Lloyd's' statement refers to the Part 18 application as "designed to obtain all the underlying information and records held by Lloyd's" supporting its calculation of the quantum of claim, implying that the application is a fishing expedition. Like the similar statement in § 14, this reference is a non sequitur to what the applicant has actually asked for; it is smoke to obscure a failure to respond to the specificity of applicant's questions, and a straw man to divert the Court from what actually is presently before it.

5. § 17 of Lloyd's' statement states, without supporting, that the information sought in applicant's Part 18 question 1 (please review Schedule A-1 annexed to statement of case) is irrelevant. It is not, because (i) under the R&R Deed of Assignment on which Lloyd's relies for its claim, the RITC Debts (allegedly including the claim against applicant) that were assigned by Equitas to Lloyd's are "security for the discharge of the Advance" (Deed § 2) made by Lloyd's to Equitas, and (ii) if that Advance had already <u>been</u> repaid and thus discharged, then under the Deed, Lloyd's could seemingly have no remaining such further security interest in any claim against the applicant.

(a) Lloyd's' 1996 Annual Report of May 1996 reported that Lloyd's' "Capital contribution to market settlement" was £ 552,842,000 as of 3 September 1996, including £ 285,000,000 from an emergency loan taken out by Lloyd's to top up the Society's initial capitalization of Equitas. Lloyd's made this contribution to get DTI's regulatory-solvency "capital-adequacy" approval for Equitas, for it to be able to separate from Lloyd's and become a standalone, off-balance sheet run-off entity. (Annexed, Schedule A; see footnote 17, "Notes to the financial statements" at p. 35 of 1996 Annual Report, annotating the 1996 consolidated revenue account at pp. 26 and 29].

From this public report, it would seem that the Advance referred to in the R&R Deed, as security for which the RITC Debts were assigned by Equitas to Lloyd's, was £ 285,000,000 (the amount of the emergency loan passed on by Lloyd's to Equitas), or £ 552,842,000, or (Lloyd's had represented to the Names in its Settlement Offering Document that it would make a **contribution** to the capitalization of Equitas) somewhere inbetween, but no greater than the latter number. This would seem to be a cap on Lloyd's' security interest in the RITC Debts.

(b) Equitas's first-period "Form 13" insurance regulatory return submitted to DTI by Lloyd's, for the period ended 4 September 1996, reports a total RITC Debts of £ 3,809,181,000 (annexed, Schedule B-1,

see line 74). This was the same number reported on the balance sheet in Equitas's first-period filing with Companies House, its Report & Accounts as at 4 September 1996 (at p. 15), as well as in its first-period Report & Accounts filed with the New York State Department of Insurance (at p. 26, Group Balance sheet, and at p. 36, fn. 11 in Notes to the Financial Statements, "Unpaid Equitas Premium").

Equitas's second-period filing with Companies House, its Report & Accounts for the transitional period ending 31 March 1997, repeats that number from 4 September 1996, then reports it as having been reduced to £ 244,000,000 by 31 March 1997 (annexed, Schedule B-2; see "Debtors" line on the balance sheet, at p. 15 of the filing). This was the same number reported in Equitas's Report & Accounts for the same period filed with New York's Department of Insurance (at p. 28, Group Balance Sheet, and note 12 at p. 36, "Unpaid Equitas Premium").

This reduction from £ 3,809,181,000 in RITC Debts outstanding on the date of the R&R Deed of Assignment to £ 244,000,000 at the end of Equitas's second reporting period as at 31 March 1997 is several times the amount of the reported Advance under the Deed. It far exceeds Lloyd's' security interest in the RITC Debts, which therefore may have been extinguished by the time of that second filing.

Equitas's Form 13 insurance regulatory return submitted to the Insurance Directorate HM Treasury for its third period ended 31 March 1998 (annexed, Schedule B-3; see line 74) reports a further drop of the RITC Debts outstanding to £ 96,663,000, but from (inexplicably) a base lower than the one reported by Equitas as at the end of the previous period, £ 124,234,000 rather than £ 244,000,000.

(c) The decline on Equitas' balance sheet of the RITC Debts which it had reported to its UK and US insurance regulators as outstanding exceeds by orders of magnitude, from the starting point of the date of the R&R Deed, the quantum of the Advance. This reduction suggests that the Advance had been repaid to Lloyd's long before Lloyd's filed its claim against Tropp. If the Advance had been repaid in full and thus discharged, it follows that Lloyd's' security interest in the RITC Debts that Equitas assigned to it had lapsed. If so, the Deed could no longer provide a basis for Lloyd's to claim against Tropp.

(d) A separate question of law (which the applicant flags here for the Court's consideration, but is beyond his competence) is whether Lloyd's ever **could** have had a security interest in the RITC Debts arising from the Deed of Assignment, considering that the Advance made by Lloyd's' to Equitas was characterized by Lloyd's in its 1996 revenue account as a "capital contribution" rather than a loan. A "contribution" may in law be a gift, or it may create an equity interest, but may it in law establish a "security" interest in Debts?

6. § 17 of Lloyd's' statement states, without supporting, that the information sought in applicant's Part 18 question 2 is irrelevant. It is not, as explained in the question in the Part 18 Request: if, as Equitas has reported, £ 269,893 of syndicate reserves which had been held pro rata for applicant's account -- constructively, Tropp's money -- was turned over to Equitas in R&R by applicant's syndicates, then his alleged R&R debt **had already been satisfied** by that amount.

Under the definition of "RITC Debts" in the R&R Deed (and in natural justice), the quantum of Tropp's outstanding debt could not include an amount by which that debt had already **been** satisfied. Could there be an error more manifest than such double-counting in the claim?

(a) The "Lloyd's Statement of Reinsurance" sent jointly by Equitas and Lloyd's as at 27 December 1997 (annexed, Schedule C-1) reports that the amount of the applicant's total "Equitas reinsurance premium" which **had been covered** by "Your [emphasis applicant's] Share of Syndicate assets transferred to Equitas" was £ 269,893. Subtracting this from Tropp's total Equitas premium, the Statement reports that "Your Equitas [individual] additional premium" (in combination with the amount allocated pro rata to him from R&R advance profit release by his syndicates, not separately broken out) was £ 114,439.

Pursuant to the terms of the Deed, the rest of his Equitas total premium (that £ 269,893) had already "been satisfied" as to Equitas by the transfer to it of his pro rata share of his syndicates' reserves.

(b) Equitas sent Tropp a copy of what Equitas considers his authoritative Statement of Reinsurance as of 27 May 2003 (Schedule C-2), in which the numbers are identical with those in the original. Equitas' cover letter stated that it is those numbers that Equitas ("we"; n.b. the definition of "RITC Debts" in the Deed) counts as Tropp's Equitas premium obligation to it. On the face of those numbers, as Equitas construes them, that £ 269,893 had been **paid** by and for Tropp.

(c) By follow-up letter of 12 June 2003 (Schedule D), repeating assurances that Equitas officers had given Tropp in conversations during May and June 2003, Equitas confirmed that (i) it had in fact received this £ 269,893 in Tropp's behalf from his syndicates, and that (ii) it had received this amount satisfying his Equitas premium as cash, near-cash and other actual assets, not, expressly, as notes (from Lloyd's to Equitas to cover Tropp, absent cash from him). In the colloquial, this was "real money"; it was Tropp's real money.

7. § 17 of Lloyd's' statement states, without supporting, that the information sought in applicant's Part 18 question 3 is irrelevant. It is not, as explained in the question in the Part 18 Request, and further in § 2 of the applicant's witness statement of 17 March 2004 and in § 2 of Schedule E annexed to his statement of case.

The distributions which are referred to in question 3 were made to Tropp by his profit-making syndicates: the ones that did not need to be reinsured into Equitas, and therefore don't appear on his Equitas Statement of Reinsurance nor at Schedule H of Lloyd's' Particulars of Claim. What question 3 refers to is cash that was sent to him by his syndicates via his Members' Agent ("MA"), was meant by his syndicate managing agents for him, but was instead intercepted, diverted, and warehoused in transit accounts by his MA at Lloyd's' direction for seemingly 4 years before R&R. Their purpose, his MA reported when Tropp accidentally learned of the existence of these undisclosed accounts, had been to secure his anticipated future Equitas premium: this money was supposed to be destined to go to Equitas in his name.

(a) The cash was in fact reportedly turned over by his MA to Lloyd's,

for forwarding to Equitas. The purpose of the cash transfer was, his MA reported, precisely as intended: to reduce the quantum of Tropp's Equitas premium (thus of his R&R RITC Debt) which might not get paid.

(b) Equitas, however, reported unequivocally during May and June 2003 that **it** had never received a pence of this cash. The only categories of money which Equitas received in satisfaction of the applicant's Equitas premium were those reported in the Statement of Reinsurance that Equitas sent him on 30 May 2003.

(c) If the applicant's MA's report is true, and presuming that Equitas's report is correct, then the money referred to in question 3 has been held within post-R&R Lloyd's, rather than having been forwarded to Equitas as his MA thought it was supposed to be and would be. The relevance of question 3 is that the quantum of Lloyd's claim would be manifestly in error for having not been reduced by the amount of such "C&D" cash, which belonged to Tropp but was kept by Lloyd's rather than being sent to Equitas to cover his Equitas "additional premium".

(d) Applicant asks the Court to note that in its answer statement, Lloyd's has not challenged the truth of facts he has stated to the Court about "C&D", nor thus required that he prove such facts. Applicant asks that the Court please assume those facts as having been admitted and proved, as he has stated them, for purposes of construing the relevance of his Part 18 questions 6 and 7, as well as in the Court's consideration (for purposes of its assessing arguable manifest error in the quantum of claim) of the Part 24 application.

(e) In Lloyd's' "Standard Agreement with a Non-Accepting Name" (what Lloyd's refers to as "the NANA") proposed by Lloyd's in November 1998 to Names who had not settled, in a "Definitions" section (pp. 28-29), Lloyd's states: "**Collection and Distribution Arrangements** means the arrangements made by Lloyd's under the description 'The C&D Project' for the collection and distribution of cash and other assets for the purposes of [n.b.] ... the settlement of amounts payable under the [R&R] Settlement Agreement and the Equitas Scheme". Lloyd's requires in the NANA (§ 3.4(c), at pp. 5-6) that all settling Names exculpate Lloyd's and others as to "...any monies or assets ... dealt with or disposed of through the Collection and Distribution Arrangements...." This waiver of claims is also required in successors to the NANA.

(f) The money in C&D accounts, and therefore the information on those accounts and on that money, is within the control of Lloyd's after R&R. In a memorandum of 4 May 1999 (Schedule E), Tropp's Members' Agent Christie Brockbank Shipton Ltd. ("CBS") reported that they no longer managed C&D accounts in Tropp's name, as they had before R&R, but that "Since the new Premiums Trust Deeds were passed in October 1998, all funds held on your behalf [in such accounts, about which Tropp had queried CBS after having learned of a conversion from such an account, to which conversion he objected] are held by Lloyd's."

8. § 18 of Lloyd's' statement states, without supporting, that the information sought in applicant's Part 18 question 4 is irrelevant. It is not, as explained in the question in the Part 18 Request and in § 3 of Schedule E annexed to his statement of case, and as briefly addressed in § 3 of his witness statement of 17 March 2004.

(a) In a memorandum of 28 May 1999 (Schedule F-1), Tropp's Members' Agent CBS reported (at "c)") that stop-loss "...proceeds would have been paid **to Lloyd's**...", and (closing of the memo) "I reiterate that CBS has never had, or had control of, any of the funds paid under your stop loss policy. The ...policy directs all [cash] recoveries to the Premiums Trust Fund which is under Lloyd's control."

In a follow-up memorandum of 2 June 1999 (Schedule F-2), CBS reported that "the cash movements [into and out of Tropp's Premium Trust Fund after R&R] are controlled by MSU [Lloyd's' Members' Services Unit] ... the successor to... CSU [the pre-R&R Central Services Unit]".

(b) Please note, as to why this subject is before the Court, CBS's assumption in continuing its first sentence of 28 May 1999: such PSL proceeds given to Lloyd's by Tropp's stop-loss broker, passing on cash paid by Tropp's stop-loss underwriter honoring his PSL policy, were supposed to be "...for them [those proceeds] **to reduce your [R&R] liabilities**". Question 4 is relevant to arguable manifest error in the quantum of claim precisely because CBS's assumption on what was supposed to happen with this money is not what in fact did.

(c) In a prior memorandum of 24 November 1997 (Schedule G-1), CBS had noted **its** impression "...that all these Stop-Loss recoveries [n.b., plural -- not only the particular one about which CBS was writing in the above] were [supposed to have been] credited to your final R&R statement....", precisely the issue that applicant is raising here as to arguable manifest error in the quantum of claim. On 25 November 1997 CBS reported (Schedule G-2) that "Lloyd's required these funds to be paid to the Trustees of the Premiums Trust Fund [under Lloyd's' control] in settlement of [R&R] liabilities."

(d) After checking on where the cash had gone missing and why it had not been noted on Tropp's R&R Finality Statement as a subtraction to reduce his total Equitas premium, on 1 December 1997 CBS confirmed (Schedule G-3) that "...it seems that your stop loss claim did **not** show as a [R&R] credit ...." as they had expected, notwithstanding that the underwriter had agreed to pay £ 28,831.28. Subsequently (on 2 June 1999) CBS reported that this cash was held by the broker under MSU control, having been paid out by the PSL underwriter "to" Tropp.

(e) In the NANA's Definitions section (at p. 37), Lloyd's states that "**PSL Administration Agreement** means any of those agreements [n.b. for Part 18 disclosure purposes, plural] entered into ... between the PSL Underwriters, Lloyd's and Equitas Reinsurance Limited in connection with" R&R. Lloyd's requires (§ 5.8, at pp. 16-17) that if "... a PSL Underwriter ...has paid to Lloyd's [note, not Equitas] the sums due ...pursuant to its PSL Administration Agreement, each Name ...(a) subject to clause 5.1, ...irrevocably assigns to Lloyd's [note again, not Equitas] absolutely such... interest as he may have... in any proceeds ..." In § 5.1, "The Name ...assigns absolutely to Lloyd's all rights and interest he may have in any Claim under any PSL Contract and in any proceeds ...of any such Claim, agrees that such proceeds... shall be retained by Lloyd's **for its own account** [emphasis applicant's, n.b. not for Equitas] and applied ...by Lloyd's in its sole and absolute discretion."

(f) § 18 of Lloyd's' statement argues that "...in light of Mr. Justice Tuckey's decision in the Fraser case on 4 March 1998 the information sought is irrelevant". Mr. Justice Tuckey referred in that decision to PSL proceeds not yet paid out by the PSL syndicates, or if paid out, which he was under an impression had been or would be transferred to Equitas or would otherwise be allocated by Lloyd's to help effect R&R. The whole sitz im leben fact context within which he was framing his decision was that of urgently facilitating R&R.

His decision did not consider -- it was silent on -- PSL proceeds in the instant fact context of Part 18 question 4: PSL proceeds that already had been paid out as cash by PSL syndicates in the applicant's behalf as PSL policy-holder, but which rather than being transferred to Equitas or otherwise allocated by Lloyd's for R&R, were intercepted and held under Lloyd's' control, and converted to other purposes. Because Tuckey J.'s decision did not consider and enter a holding nor even an obiter on this particular fact situation of the diversion of PSL proceeds, it could not be on point to make question 4 irrelevant.

9. § 18 of Lloyd's' statement further states, without supporting, that the information sought in applicant's Part 18 question 5 is irrelevant. § 4 of applicant's witness statement of 17 March 2004 speaks to why question 5 is not.

(a) § 18 of Lloyd's' statement also argues, as it had on question 4, that "...in light of Mr. Justice Tuckey's decision in the Fraser case on 4 March 1998 the information sought is irrelevant". His decision did not, however, consider the PSL proceeds referred to in question 5 either: those not yet paid out by the PSL syndicates and <u>not</u> destined to be transferred to Equitas, nor otherwise to be allocated by Lloyd's for the purpose of effecting R&R. This would have been outside the whole conceptual framework, that of facilitating R&R on an urgent basis, within which Tuckey J. was framing his decision.

10. § 19 of Lloyd's' statement states, without supporting, that the information sought in applicant's questions 6 and 7 is irrelevant. The context presented with those questions in applicant's Part 18 Request explains why that is not so.

Applicant asks the Court to note that in Lloyd's' answer statement, Lloyd's has not challenged the truth of the facts he has stated to the Court in the text of the Part 18 Request. Applicant has evidence from multiple documentation and witness sources supporting his fact statements prefacing questions 6 and 7, but will not trouble the Court by annexing any of it here in light of Lloyd's' silence on the facts. Applicant asks that the Court please assume those facts as having been admitted and proven, as he has stated them, for purposes of construing the relevance of his Part 18 questions 6 and 7, as well as in the Court's consideration (for purposes of assessing arguable manifest error in the quantum of claim) of the Part 24 application.

11. § 19 of Lloyd's' statement also states, without supporting, that the information sought in applicant's question 8 is irrelevant. The context prefacing question 8 in the Part 18 Request, as well as § 5 of applicant's witness statement of 17 March, explain why it is not.

Lloyd's' representation of its "chain of security" in its half-dozen post-R&R annual reports to the markets, as well as its own Chairman's representations to its regulators in late 2001 and 2002 on the timing of when current reserving need prudently be required of Lloyd's by them in light of its unique business model, contradict the timing assumptions on which the quantum of claim is based. Applicant will ask the Court to consider, inter alia, such representations as to whether question 8 poses an issue of arguable material error in the claim.

12. § 19 of Lloyd's' statement lastly states, without supporting, that the information sought in applicant's question 8 is irrelevant. The context briefly prefacing question 9 in the Part 18 Request, and § 5 of his witness statement of 17 March, explain why it is not.

13. § 20 of Lloyd's' statement challenges applicant's Part 18 questions 10-14 as being about potential set-off, rather than being each relevant separately to an arguable manifest error in the quantum of claim. The applicant's preface to each question in the text of his Part 18 Request explains why each is relevant. Lloyd's' US counsel considered them to pose issues of seeming possible error (annexed, Schedule H; letter of 28 July 1994 to Lloyd's), and tried, with follow-up notes and calls, to get Lloyd's to pay attention and to consider whether such error existed and should internally be corrected.

Questions 10 and 12-14 are further explained in summary in a memorandum of 1 September 1996 requested by the head of CSU (Schedule I).

14. Whether Part 18 question 14 is relevant to eliciting information as to arguable manifest error in the claim is further evidenced by Lloyd's' own submission in another case. Applicant had been told by his members' agency that under Lloyd's' rules, he could not resign Lloyd's effective the end of underwriting year 1990 on less than 6 months written notice. While sequestered on military active duty, he unanticipatedly could not send such notice, but **had** given 6 months verbal notice and then almost 5 months' written. His resignation of 3 August 1990 was not accepted as having been submitted timely, the consequence of which today is the liability ascribed to him for 1991 year syndicates listed at Schedule H of the Particulars of Claim.

In **Lloyd's v. Bowman & Ors** [2002] EWCA Civ 1886 (19 December 2003) at § 21, the Court of Appeal cited Lloyd's' standard for timeliness of notice required to effect resignation before the next underwriting year: "It is said by Lloyd's ... that a decision to resign would need to have been taken at least four months before the year end." If this standard had been applied to the applicant by Lloyd's in 1990, then applicant would today have no 1991 liability reflected in the quantum of claim, which thus would be reduced by that amount, because he had **met** the standard for resignation timely as at the end of 1990.

The transcript of Lloyd's' submission on which the Court of Appeal relied (Schedule J, bottom of p. 8) as to this matter confirms that the standard which Lloyd's represented to the Court is different than the one on which Lloyd's had attributed 1991 R&R liability to Tropp.

15. § 21 of Lloyd's' statement states, without supporting, that the information sought in applicant's questions 15 and 16 is not relevant

to the quantum of Lloyd's' claim. It is, because Lloyd's' then Chief Executive (CE) had agreed a settlement with him on 21 March 1997, the quantum of which was materially different, and on which Tropp had relied. In bringing the instant claim for a different quantum, Lloyd's has reneged on that agreement, and has brought a claim not only the quantum of which is manifestly in error, but the claim itself.

Before proceeding to the substance of this section, Tropp -- who is aware that a witness statement is supposed to focus with rigor on fact evidence -- asks the indulgence of the Court for a digression, because he wants the Court please to understand how he experiences the context from which he will make his next statement to the Court:

(i) Applicant is aware that LIPs try the Court's patience with overstatement, polemic and unseemly hyperventilation. He is as impatient with such a style, and finds it as distasteful, as might the Court.

(ii) In Tropp's religious values, to knowingly mischaracterize anyone and thus to stain their reputation is morally equivalent to a murder. The shame of such a stigma is what he most holds against Lloyd's, who have brought what he hopes to show the Court is a meretricious claim.

(iii) Tropp holds him**self**, he asks the Court clearly to understand, to not only the same standard but a harder one. He cannot be tougher on anyone else than he is required morally to be, and is, on himself.

It is in this context that Tropp asks the Court please to appreciate that he knows, and feels, the seriousness of what he will say next:

In § 21, Lloyd's flatly denies that any binding settlement agreement was reached by its CE, acting for Lloyd's, with Tropp. This may be nothing more than stating a tautology in law: Lloyd's has refused to execute documentation on the deal to which its CE agreed, so by definition there could be no completed deal. If Lloyd's' denial is not merely such a tautology, however, then that denial is a perjury.

(a) Lloyd's represents to the Court "the complete absence of any documentary evidence whatsoever supporting the contention that a binding compromise was reached". Lloyd's has such documentation; it is precisely what Tropp seeks in Part 18 questions 15 and 16.

(b) Indicative evidence that the deal did exist, and that Tropp was entitled to rely on it, includes (but is not limited to) a letter of 1 April 1997 from Lloyd's senior internal collector against Americans Michael A. Meeson (Schedule K-1) that refers to "your agreement" with his CE, on which the Financial Recovery Department ("FRD") had been instructed by their CE to execute with documentation; a follow-up letter of 14 May 1997 from Mr. Meeson (Schedule K-2) which presumes the agreement and presumes that the proverbial ball was in Lloyd's' court (not Tropp's) to execute; and a letter of 9 July 1998 from FRD Head Philip Holden (Schedule K-3), which refers to a phone message he had left earlier that day to head off a pre-emptive filing by Tropp, assuring Tropp that a mass pre-action letter he had received had been an error by FRD and that Lloyd's intended no litigation against him. Mr. Holden's message left on Tropp's home answering machine can be made available to the Court as evidence at trial.

Mr. Holden expressly addresses in his letter (2nd par.) that Lloyd's did not consider Tropp to be in the class of "**Non** Accepting Member" for purposes of calculating his Finality Account (much harsher for Non-Accepting Names than for those who had accepted R&R settlement). This representation by the then-Head of FRD speaks precisely to whether Lloyd's quantum of claim today is manifestly in error.

Moreover, Mr. Holden expressly states (3rd par.): "I can assure you that our records reflect the agreement made [between Lloyd's' CE and Tropp]", and that the ball was in Lloyd's' court (not Tropp's) to execute with the documentation that Mr. Meeson had promised 15 months earlier. This representation by Lloyd's' then-senior internal collector speaks precisely to whether Lloyd's claim itself, not merely the particular quantum, is manifestly in error (and more, albeit with due hesitance coming from an LIP: arguably, a malicious prosecution).

(c) The day after Tropp received FRD's mass pre-action letter which Mr. Holden quickly assured him had been sent to him, in particular, in error, he called Lloyd's' CE to ask why Lloyd's was threatening to sue him. Mr. Sandler assured him that "...there has been a mistake. This can't be right." and that "...there was definitely an agreement reached." The next day Mr. Holden left an early message on Tropp's home phone, sent his letter of 9 July, and assured Tropp in a phone conversation that "It was a mistake... it's **a done deal**" [emphasis his in that call; see Tropp's contemporaneous notes of highlights of assurances given him in both phone conversations, Schedule K-4].

(d) Other evidence exists, which Tropp will seek to have the Court see and hear at trial, that there is an arguable question of whether Lloyd's entered a settlement agreement with him that Lloyd's intended to be (and represented to him that it intended to be) binding, on which he therefore was entitled detrimentally to rely, and on which by bringing the instant claim Lloyd's has reneged, despite its having arguably been estopped from bringing the claim by that agreement.

(e) This issue also goes to quantum of the claim in another way: whether interest is or could have been owing on its alleged principal. If the applicant was entitled to rely on the deal that Lloyd's CE had agreed with him and that Mssrs. Meeson and Holden, Lloyd's' internal collectors, subsequently had multiple times confirmed, and Tropp did detrimentally rely on it for years while Lloyd's failed to perform on its CE's word (but in reliance on which he nonetheless refrained from bringing his own claim against **it**), then interest could not be owing.

(f) Lastly at the end of § 21 of its statement, Lloyd's argues that if applicant's Part 18 questions 15 and 16 were relevant, the time for disclosure is after he had pleaded his defence. The authorities on pretrial disclosure, however, recognize that where a party is facing summary judgment and any theoretical prospect of later disclosure could become mooted, disclosure is granted at what could be the only time it matters: pre-trial, **before** pleading of a full defence. This is precisely so that the Part 24 defendant timely have the information to be able to use it, to prepare as particularised a defence as possible against summary judgment in light of the reality that this may be their **only** chance to defend, and so that the Court be fully informed given the potential grim finality of a Part 24 application.

16. § 22 of Lloyd's' statement states, without supporting, that the information sought in applicant's Part 18 questions 17-21 is irrelevant. It is not, as explained in §§ 7-11 of the applicant's witness statement of 17 March 2004, and briefly in the preface to questions 19-21 in the Part 18 Request (at p. 5, 12 February letter).

17. § 23 of Lloyd's' statement states, without supporting, that the information sought in applicant's Part 18 question 22 is irrelevant. It is not, as explained in § 12 of the applicant's witness statement of 17 March 2004, and briefly in the preface to question 22 in the Part 18 Request (at bottom of p. 5, id).

(a) A perfect illustration of why this question is relevant arises from recent correspondence with Lloyd's about question 14 of the Part 18 Request (please revisit § 14 above). It was only very recently -- accidentally, on reading the **Bowman** decision on 29 February 2004, 13½ years too late -- that Tropp learned that the 6-month standard for timeliness of written notice of resignation, which had been applied to him when his resignation of 3 August 1990 was refused as at that 31 December **before** the next underwriting year, had been wrong. On the 4-month standard that Lloyd's itself represented to the Court of Appeal in December 2003, his resignation should have been accepted effective the end of 1990, and had it been, there would be no 1991 syndicate losses listed as part of Lloyd's' quantum of claim today.

The day he read **Bowman**, Tropp asked Lloyd's to send him the pertinent representation it had made to the Court of Appeal. Please note, in considering the relevance of question 22, Lloyd's' obiter in its reply letter of 2 April 2004 (Schedule L) with the transcript excerpt cited in § 14 above: "As far as Lloyd's is concerned your resignation is an issue between yourself and your members' agent."

(b) Joining Lloyd's could only be done through a members' agent, and resigning from Lloyd's could only be done through that agent, in both cases acting not for themselves but for the institution of Lloyd's. It was the members' agent, e.g., who solicited for and on behalf of Lloyd's the applicant's agreement to sign Schedule A attached to the Particulars of Claim, the 1987 "General Undertaking" on which Lloyd's relies in its claim. At the top right of that Schedule A, immediately above Lloyd's' stamp, the Court can see the printed signature of Tropp's members' agent (then Mr. Hayter) -- as to whom in the matter of question 14, Lloyd's now disavows institutional responsibility.

(c) Lloyd's members' agents have no independent regulatory licenses; they operate in the UK, US, and elsewhere under the legal authority of Lloyd's' single umbrella country license. In recent solicitations by Lloyd's officers to regulators in countries where they are trying to open significant new markets for tomorrow's Lloyd's, its officers have made representations 180° the opposite of what is in Schedule L: that under the single license it seeks from those governments for the multiple Lloyd's agencies to operate in those countries, Lloyd's assumes a self-regulatory duty for conformance by its agencies with its standards. This, Lloyd's senior officers have not only represented but emphasized in its "pitch" to foreign regulators, is precisely the benefit of giving their country's license to Lloyd's: it takes institutional **responsiblity** for its own business entities, its agencies.

(d) § 23 of Lloyd's' statement refers back to § 20, in which Lloyd's had argued that an earlier question was irrelevant because it related to set-off rather than to defence. The applicant's Part 18 question 22 relates (and question 14 revisited above is a vivid illustration of this) to defence, not set-off: to making a threshold showing of arguable manifest error in the quantum of Lloyd's' claim.

18. § 25 of Lloyd's' statement seems to presume that in his Part 18 questions 23-25, the applicant was seeking to challenge the scope of authority of AUA9. Applicant was not, but merely to understand the breadth of that scope under the undisclosed documents cited in those questions, on which Lloyd's is relying in its Particulars of Claim.

§ 27 of Lloyd's' statement states in relation to those documents that "...there is no unresolved... issues as to the authority of AUA9 that is relevant to this claim". Perhaps, but this was unknowable to the applicant absent disclosure by Lloyd's of those documents to him.

19. §§ 34-35 of Lloyd's statement address Part 18 question 25, which was about a reference at § 4(1)(a) of the R&R Byelaw to "reinsurance contract**s**", plural rather than the expected singular, by Lloyd's with Equitas. Lloyd's reply of 26 March 2004 to question 25 (Schedule M) was only partial: it did not answer the second part of applicant's question, on whether any **future** successor reinsurance contract is contemplated by Lloyd's with Equitas, to which Tropp might be deemed also subject by its incorporation by reference in the instant claim.

The post-R&R amended and restated Lloyd's American Trust [Funds] Deed of 3 September 1996, for example, which interpolates Equitas into the structure of the pre-R&R Deed, seems to refer to the possibility of such successor "son of R&R" contracts. Moreover, § 13.6 of the R&R Completion Agreement provides for reassignment back to Equitas by Lloyd's of the residual of RITC Debts left uncollected by Lloyd's, presumably (albeit not expressly) for future rounds of collections under successor documentation if Equitas were to run short of cash.

The second part of Tropp's question 25 was not, in other words, a mere hypothetical, nor trivial (as it might on the surface seem). In deciding on the instant claim, the Court may also, without intending to, be establishing vulnerability by him to ("setting him up" for) endless such future claims in future rounds of Lloyd's collections, under successor contracts if those are incorporated by reference in the claim. In this context, it is perhaps meaningful that Lloyd's chose not to address the second part of question 25 -- on what it contemplates in the **future** under the R&R documentation on which Lloyd's relies in the claim -- but only the first part, on whether there is **at this time** any R&R reinsurance contract under § 4(1)(a) of the R&R Byelaw other than the single one that Lloyd's has disclosed.

20. § 37 of Lloyd's' statement, referring to a Lloyd's letter of 5 February, implies to the Court that Lloyd's has disclosed to Tropp "a redacted copy of the [R&R] Completion Agreement". For the quality of this purported disclosure, please see § 1 (first par.) in his reply that day (Schedule E annexed to Part 18 statement of case): "When a document is several dozen pages and you send all of 1½ pages of text ..., you consider **that** to be a redacted 'copy of' an Agreement?"

21. § 38 of Lloyd's' statement states, justifying Lloyd's refusal to disclose documents incorporated by reference in Part 18 question 26, that "The effect of the Resolutions and Directions are not as we understand it in dispute." This is a non sequitur. The documents requested (see §§ 2-3 of Schedule E to the Part 18 statement of case on why they are relevant) contain Lloyd's' directions to members' agents and syndicate managing agents to effect the Collection and Distribution Arrangements (please revisit § 7 above, at p. 4 of this statement) and the Personal Stop Loss [proceeds] Administration Agreement (revisit §§ 8-9 above, at bottom of p. 5 of this statement).

Lloyd's' having not subtracted from its claim the amounts of Tropp's cash that it already **had** from him for Equitas, under each of the C&D and PSL Administration projects, is indeed in dispute: both raise arguable issues of manifest error in the quantum of the claim. That is why the documentation underlying both projects is relevant.

22. § 39 of Lloyd's' statement implies to the Court that Lloyd's has made several hundred pages of disclosures responsive to the Part 18 Request. The implication is disingenuous. What Lloyd's is referring to were documents (a) that it had provided as to AUA9, not as to the Part 18 questions relevant to his defence; (b) most of which he had during R&R, 7½ years ago; (c) that Lloyd's well **knows** he had (hence the "disingenuous" above), because it had sent them to him; and (d) that were already substantially or entirely in the public domain.

When Lloyd's sent again last September the hundreds of pages it cites which it knew he had already, that was a pretence, not a disclosure of new evidence. § 39 is now more such posturing, "an act".

23. § 40 of Lloyd's' statement states that "Lloyd's has provided all the information it can reasonably provide..." It has in fact provided almost none, and to applicant's knowledge, literally none that was not already in his hands or otherwise in the public record. § 40 is a misleading of the Court, if not outright an untrue statement. Let the Court please be under no illusion that any -- literally, "**any**" -- disclosure of information responsive to the Part 18 Request questions (other than a little already long ago public, as to questions 23-24), which would be pertinent to the applicant's defence, has taken place.

24. The applicant therefore asks the Court to order Lloyd's to answer the questions in his Part 18 Request. The applicant also asks that if the Court does so, it defer consideration of the Part 24 application until after he can incorporate some of the information from the answers into his defence against "sudden death" by summary judgment.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Richard A. Tropp
Applicant/Defendant
23 April 2004