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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD A. TROPP, individually, and On Behalf Of All Others Similary Situated, Plaintiff, - against - THE CORPORATION OF LLOYD'S, also known as the Society of Lloyd's, Defendant.	07 Civ. 414 (NRB) **ECF CASE**

DECLARATION OF NICHOLAS P. DEMERY

I, NICHOLAS P. DEMERY, a solicitor, hereby declare and state:

1. I am a solicitor employed by the defendant The Society of Lloyd's ("Lloyd's") since 1983. I submit this declaration in opposition to the motion of plaintiff Richard A. Tropp ("Tropp" or "plaintiff") for partial summary judgment and in support of Lloyd's motion to dismiss plaintiff's complaint (the "Complaint") pursuant to Rule 12(b)(3) and, in the alternative, Rule 12(b)(6) of the Federal Rules of Civil Procedure. I have personal knowledge of the matters set forth herein and am competent to testify.

2. Lloyd's provides services to and regulates the international insurance market located in London, England commonly known as "Lloyd's of London." The United Kingdom Parliament, through a succession of Parliamentary Acts, the Lloyd's Acts 1871 - 1982, has created and authorised Lloyd's to regulate those who conduct insurance business in the Lloyd's market.

3. Lloyd's regulatory responsibilities are currently vested in, and must be carried out by, the Council of Lloyd's. Lloyd's Act 1982 § 6(1). Among its regulatory responsibilities, Lloyd's promulgates and enforces regulations in accordance with its powers and obligations under the Lloyd's Acts, and exercises disciplinary authority over persons in the Lloyd's market. As with any insurance regulator, one of the fundamental objectives of Lloyd's regulatory regime is to ensure that policyholders are paid in respect of valid claims. And like any other regulator, Lloyd's does not have any shareholders.

4. Lloyd's is not an insurer and does not insure risks. Rather, risks are insured in the Lloyd's market by underwriting members of Lloyd's who are known as "Names." The Names underwrite insurance policies in groups known as "syndicates," with each Name assuming an agreed portion of the aggregate premiums paid to, and liabilities incurred by, the syndicate. Under the Lloyd's Act 1982, the Name's obligation to pay policyholders is several and not joint and they do not share their profits or losses with other Names in the market, not even those on the same syndicates. Lloyd's does not earn underwriting profits nor does it incur underwriting losses.

5. The U.K. *Insurance Companies Act* 1982 (now the *Financial Services and Markets Act* 2000) permits Names to lawfully conduct insurance business only as long as they become, and remain, subject to Lloyd's regulatory jurisdiction. This membership in Lloyd's and compliance with Lloyd's regulations and requirements is a license to lawfully conduct insurance business in the United Kingdom.

6. Tropp is a Name. As a condition of becoming a member of Lloyd's and continuing to underwrite at Lloyd's, Tropp entered into certain agreements governing his membership of Lloyd's and underwriting in the Lloyd's market. One of the agreements that Tropp executed was the General Undertaking. In the General Undertaking, Tropp agreed, among other things, that

a. he would comply with the provisions of the Lloyd's Acts 1871-1982 and any byelaws, regulations, etc. duly promulgated thereunder in connection with his membership of and underwriting at Lloyd's;

b. any dispute arising out of or relating to his membership of, and/or underwriting of insurance business at, Lloyd's would be resolved in English courts pursuant to English law;

c. the English courts had exclusive jurisdiction for purposes of suits against him to enforce his underwriting obligations; and

d. the judgments issued in any suit, action or proceeding brought in an English court are conclusive and binding and could be enforced in the courts of any other jurisdiction.

General Undertaking §§ 1, 2.1 - 2.3 (a true and correct copy of Tropp's General Undertaking is attached hereto as Exhibit 1). Tropp's agreement in the General Undertaking to litigate all disputes with Lloyd's in the English courts, pursuant to English law, and to consent to the conclusive and enforceable nature of English judgments concerning disputes with Lloyd's, was a necessary component of his agreement to subject himself to Lloyd's regulation.

7. Pursuant to the Lloyd's Acts, Names could only underwrite insurance in the Lloyd's market through duly appointed Members' Agents and Managing Agents (together "Agents"), who contractually assume management responsibilities over Names' underwriting activities. The agreements between Agents and Names contained choice of forum as well as arbitration and choice of law clauses, all requiring disputes to be settled in England under English law.

8. Tropp made requests of his Members' and Managing Agents, and of Lloyd's market regulation personnel, for information about his underwriting obligations. Lloyd's, unlike plaintiff's Members' and Managing Agents, had no duty to report to Tropp concerning the status of his underwriting.

9. Names are the only principals on whose behalf an Agent may act. Agents did not act for or on behalf of Lloyd's in recruiting prospective Names or in conducting Names' underwriting business. The only principals on whose behalf Members' Agents' were authorised to act were the Names with whom they had written agency agreements. The English courts have repeatedly held that Lloyd's owes no statutory, contractual or common law duty to Names to exercise reasonable skill and care in relation to the regulation of the Lloyd's market. *See, e.g., Price & Price v Soc'y of Lloyd's*, 1999 WL 33232626 (Queen's Bench, Oct. 22, 1999) *citing Soc'y of Lloyd's v Clementson*, 1994 WL 1062152 (Court of Appeal, Nov. 10, 1999) and *Ashmore v Corp. of Lloyd' s*, 1992 WL 895819 (Queen's Bench, July 2, 1992). *See also Laws v. Soc'y of Lloyd's*, 2003 WL 23014770 (Court of Appeal, Dec. 19, 2003).

10. Tropp underwrote insurance during the 1988, 1989, 1990 and 1991 years of account through various syndicates which he selected in consultation with his Members' Agent. Based on Tropp's statement that his funds at Lloyd's ("FAL") were in the amount of $160,000 (or the equivalent in pounds sterling), the maximum amount of gross premium income Tropp was allowed to earn through all of his syndicates was $640,000 (or the equivalent in pounds sterling) (the "premium income limit"). Tropp's premium income limit was allocated among his syndicates each year by agreement between him and his Agents. Tropp's liability to his policyholders for valid claims was not

limited to his FAL or to the amount of premium income he was paid. Under English law, Names' liability for valid claims under the insurance policies they underwrite is unlimited.

11. Syndicates are "yearly ventures" that underwrite insurance only during a single year of account, but the syndicate accounts must remain open for at least three years. In order to close the syndicate accounts at the end of the third year, the syndicate's outstanding liabilities as well as liabilities that have been incurred but have not been reported ("IBNR") must be reinsured. Typically, a syndicate year of account is closed through a reinsurance to close ("RITC"), in which the closing syndicate is reinsured by a succeeding syndicate year of account in return for an RITC premium. This premium is intended to cover the total estimated outstanding claims, including those not yet reported in respect of risks signed in the year of account, and from all previous years that were reinsured by the closing syndicate. The acceptance by a syndicate of the RITC premium from a closing syndicate means that a new Name on the reinsuring syndicate becomes liable for risks written before he became a member of the syndicate. The calculation of the RITC premium involves the exercise of significant professional judgment and draws on the full experience of the active underwriter in assessing the outstanding known claims, claims incurred but not reported to the syndicate and any further claims which are likely to arise. In determining the RITC, the Managing Agent and the active underwriter must have regard to the interests of the Names paying the premium and those of the Names accepting the premium — the premium must be equitable between the different groups of members. The syndicate auditor is required to pay particular attention to the calculation of the reinsurance to close in drawing up his report. When a syndicate's outstanding liabilities, particularly for claims incurred but not reported, are uncertain and difficult to estimate, it may be impossible to determine a RITC premium that is equitable between the closing and reinsuring syndicate, and the syndicate year of account will remain open. All of these issues are disclosed in a membership brochure, which is attached at least in part to the Tropp declaration as Ex. E, upon which Tropp claims he relied in deciding to become a member of Lloyd's. *See* Tropp Decl. ¶ 8. At this point in time, Lloyd's cannot confirm whether all Names who joined contemporaneously with Tropp received the exact same document.

12. Tropp's declaration and complaint allege that he attempted to resign from Lloyd's in the spring and summer of 1990, to be effective December 31, 1990, first in a telephone call with an employee of his Members' Agent, and then by letter dated August 3, 1990 to his Members' Agent. He further alleges that these acts satisfied the requirements of Lloyd's bye-laws then in effect, and that he should have been permitted to resign from Lloyd's as of December 31, 1990. Lloyd's does not dispute that Tropp had these communications with his Members' Agent, but Tropp is incorrect as to the requirements of the relevant bye-law in effect at the time. Lloyd's membership bye-law in effect as of January 1, 1990 required a Name who wished to resign as of the end of any calendar year to submit a written notice of resignation to an authorised officer or employee of Lloyd's on or before August 31, 1990. While Tropp apparently submitted a letter to his Members' Agent before August 31, 1990, he is incorrect in asserting that he submitted a resignation to Lloyd's. His letter to his Members' Agent did not satisfy the written notice requirement of the bye-law, and neither his Members' Agent, nor any of its officers or directors, were authorised to accept such written notice within the meaning of the bye-law. Members' Agents did not act as agents of Lloyd's for purposes of either admission of Names to, or Names' resignations from, Lloyd's. Copies of the relevant bye-laws are attached hereto as Exhibit 2. Lloyd's has no record of having received written notice of resignation from Tropp within the required time, or of having been notified of his desire to resign. There is no evidence that Lloyd's saw or received the letter of August 3, 1990.

13. Tropp's declaration states that Lloyd's made cash calls on him during 1992 and 1993. This is incorrect. Cash calls on Tropp, as with all other Names during this period, were made by their respective Members' Agents based on information provided to them by the Managing Agents for each Name's respective syndicates. Cash calls made on Tropp during 1994 likewise were made by his Members' Agent on the basis of information provided by his respective Managing Agents, not by Lloyd's.

14. In the late 1980s and early 1990s, Names in the Lloyd's market incurred aggregate underwriting losses of £8 billion (over $12 billion under then current exchange rates). As a result of these losses, some Names underwriting in those years found themselves on syndicates unable to

purchase RITC or other reinsurance for their outstanding liabilities. Because these syndicates could not be closed, the Names on these syndicates faced open-ended liabilities. Many Names defaulted on their underwriting obligations as they came due, putting policyholders at risk of non-payment. Some Names refused to pay their underwriting liabilities. Simultaneously, a significant amount of litigation began to embroil the Lloyd's market.

15. In order to address these issues, which threatened the viability of the Lloyd's market, in 1996 Lloyd's implemented the reconstruction and renewal ("R&R") plan. The R&R plan had two separate components: (1) the provision of reinsurance otherwise unavailable to each Name in respect of his underwriting obligations on 1992 and prior underwriting years of account through a newly formed company, Equitas Reinsurance Ltd. ("Equitas"), and (2) an offer of settlement (the "R&R Settlement Offer") was made to each Name with liabilities on 1992 and prior underwriting years of account to end litigation and to assist the Names in meeting their underwriting obligations. (Relevant portions of the R&R Settlement Offer document ("SOD") are attached hereto as Exhibit 3). The cost of reinsuring each Name's outstanding 1992 and prior liabilities was individually calculated and charged to the Name. This amount (the "Equitas Additional Premium") took into account the Name's existing reserves. Each Name was sent a "finality statement" (the "Finality Statement") that set forth the Name's total unpaid losses to date and his Equitas Additional Premium (together, the "Finality Amount"). The Finality Statement also showed an individually calculated package of "settlement credits" that each Name who accepted the R& R Settlement Offer could use to reduce his Finality Amount. Names who accepted the settlement offer and thereby benefited from the settlement credits were obligated to grant broad releases not just to Lloyd's but also to Agents and other market participants in consideration of among other things, certain market participants' contribution to the settlement fund from which the Name's settlement credits were allocated.

16. In August 1996, Tropp was sent a Finality Statement showing that his aggregate underwriting liability, or "Finality Amount," was £367,848, which included previously incurred but unpaid losses of £244,084, interest and other charges of £9,371, and an Additional Equitas Premium of £114,439. (A complete copy of Tropp's Finality Statement is attached hereto as Exhibit 4). Pursuant to

the R&R Settlement Offer, plaintiff was offered settlement credits totaling £281,077, which included £27,550 in credits offered only to certain U.S. Names

17. The closing date for accepting the R&R Settlement Offer was September 11, 1996. More than 90% of Names worldwide accepted their R&R Settlement Offers. The R&R Plan became effective on September 4, 1996, and the full amount of the Additional Equitas Premium became due and payable by September 30, 1996. Because Tropp did not accept his R&R Settlement Offer, he forfeited the benefit of settlement credits which would have reduced his Finality Amount by over 75%. As a consequence, he became liable for his entire Finality Amount of £367,848. Tropp failed to make such payment.

18. A Name was not required to accept his R&R Settlement Offer. However, Lloyd's exercised its regulatory authority to require each Name to reinsure his or her outstanding 1992 and prior obligations with Equitas. Consequently, regardless of whether they accepted the R&R Settlement Offer, Names were required to make payment of their respective Equitas Additional Premiums and other outstanding underwriting obligations. A bye-law adopted by the Council of Lloyd's appointed a separate corporate entity, Additional Underwriting Agencies (No 9) Limited ("AUA9"), as a substitute Managing Agent for all Names in connection with the Equitas reinsurance transaction and authorised it to constitute itself as trustee under the premiums trust deeds. Names who wished to resign their membership of Lloyd's were permitted to do so upon payment of their Equitas Additional Premium and other outstanding obligations.

19. Equitas was capitalized with the approval of the U.K. Department of Trade and Industry, following a two year long syndicate level reserving exercise as a result of which it was determined that Equitas would require £14.7 billion in assets to run-off the liabilities of the 1992 and prior open years of account. In addition to the assets held in Names' Premium Trust Funds, syndicate level reserves and other funds of Names at Lloyd's, Equitas was capitalized by contributions from various participants in the Lloyd's market, including Agents, brokers, syndicate auditors, and from Lloyd's Central Fund, an emergency reserve fund held by Lloyd's. Although Lloyd's could not grant

Names releases from their underwriting obligations (as those obligations are owed to policyholders), both Equitas and Lloyd's agreed not to take further action against Names who accepted the R&R Settlement Offer and/or paid their Finality Amounts, even in the event that Equitas' reserves subsequently proved insufficient to run-off the reinsured liabilities.

20. In Autumn of 1996, for reasons of regulatory prudence and to ensure immediate funding for Equitas to meet regulatory requirements imposed by the U.K. government, and in consideration of certain payments and advances by Lloyd's, Equitas validly assigned to Lloyd's its right to collect the Equitas Additional Premium from non-paying Names, including the right for Lloyd's to sue on its own behalf to recover the Equitas Additional Premium.

21. After the implementation of R&R, Lloyd's commenced proceedings in the English courts against most of the small number of non-accepting Names who had not paid their Finality Amounts.

22. The non-paying Names sued by Lloyd's vigorously litigated, in 32 days of hearings, various defences to Lloyd's claims for payment of certain of their unsatisfied underwriting obligations, including their Equitas Additional Premium. All of these defences were ultimately rejected by the English courts. For instance, the English courts considered and rejected the following defences asserted by Names:

a. That Lloyd's lacked the regulatory authority under the Lloyd's Acts 1871-1982 to mandate that all Names purchase reinsurance coverage from Equitas. *See Soc'y of Lloyd's v. Dennis Hugh Fitzgerald Leigh & others* 1997 WL 1104338 (Queen's Bench, February 20, 1997), *aff'd, Soc'y of Lloyd's v. Lyon, Leighs & Wilkinson,* 1997 WL 1104500 (Court of Appeal, 31 July 1997).

b. That Lloyd's lacked the regulatory authority under the Lloyd's Acts 1871-1982 to appoint substitute agents to bind Names to the reinsurance contract with Equitas. *See Soc'y of Lloyd's v. Dennis Hugh Fitzgerald Leigh & others,* 1997 WL 1104338

(Queen's Bench, February 20, 1997), *aff'd, Soc'y of Lloyd's v. Lyon, Leighs & Wilkinson* 1997 WL 1104500 (Court of Appeal, 31 July 1997).

c. That Lloyd's lacked title to sue for the Equitas Additional Premium pursuant to an assignment of rights to Lloyd's. *See Soc'y of Lloyd's v. Dennis Hugh Fitzgerald Leighs & others,* 1997 WL 1104338 (Queen's Bench, February 20, 1997), *aff'd, Soc'y of Lloyd's v. Lyon, Leighs & Wilkinson* 1997 WL 1104500 (Court of Appeal, 31 July 1997).

d. That Names were entitled to litigate claims of fraud against Lloyd's in the inducement of their membership of, or underwriting at, Lloyd's as a defence or setoff to their obligation to pay the Equitas Additional Premium. *See Soc'y of Lloyd's v. Wilkinson* 1997 WL 1103613 (Queen's Bench, April 23, 1997), *aff'd, Soc'y of Lloyd's v. Lyon, Leighs & Wilkinson* 1997 WL 1104500 (Court of Appeal, 31 July 1997).

e. That Names were entitled to rescind their underwriting obligations and liabilities if they were able to prove fraud against Lloyd's. *See Soc'y of Lloyd's v. Wilkinson (No. 2)* 1997 WL 1103613 (Queen's Bench, Apr. 23, 1997), *aff'd, Soc'y of Lloyd's v. Lyon, Leighs & Wilkinson* 1997 WL 1104500 (Court of Appeal, 31 July 1997).

f. That Names were not bound by certain provisions of the Equitas reinsurance contract, i.e., the "pay now, sue later" clause and the "conclusive evidence" clause. *See Soc'y of Lloyd's v. Fraser & Ors,* 1998 WL 1043675 (Court of Appeal, 31 July 1998) affirming *Soc'y of Lloyd's v. Fraser & Ors* 1997 WL 1103612 (Queen's Bench, December 3, 1997). Leave to appeal was denied on 31 July 1998 after argument was heard from June 15-19, 1998.

g. That the "conclusive evidence clause" did not prohibit attacks on the calculation of Names' Equitas Additional Premium absent proof of "manifest error." *See Soc'y of Lloyd's v Fraser & Ors* 1998 WL 1043675 (Court of Appeal, 31 July 1998).

23. Despite the expiration of the R&R Settlement Offer in 1996, and the commencement of proceedings against other non-paying Names, Lloyd's continued to negotiate with Tropp offering to settle his obligations on terms substantially more favourable than those set forth in the R&R Settlement Offer, but by mid-2002, it became clear that Tropp was unwilling to release various market participants, in addition to Lloyd's, and agree other terms, as all other settling Names had done. Accordingly, in 2002, Lloyd's commenced proceedings in the High Court of Justice, Queen's Bench Division against Tropp seeking payment of certain of his unsatisfied underwriting liabilities, including his unpaid Equitas Additional Premium, plus unpaid interest and costs, which came to £433,560 (inclusive of prejudgment interest).

24. Tropp's motion to dismiss the English proceedings initiated by Lloyd's on grounds of improper service was denied by the Queen's Bench Division on January 20, 2004. The decision of the court is attached hereto as Exhibit 5 (decision of Gross, J.).

25. Lloyd's subsequently moved for summary judgment against Tropp. On May 24, 2004, following the submission of written argument, documentary evidence and oral argument by both parties, the Queen's Bench Division granted Lloyd's motion for summary judgment against Tropp and ordered him to pay Lloyd's £463,881.28, which included the principal amount owed of £296,811.16 plus prejudgment interest and costs. (the "Judgment"). The decision of the court is attached hereto as Exhibit 6 (decision of Gross, J.). The decision of the court breaks down the total amount of the Judgment into its constituent elements, showing for example £114,439 for the Equitas Additional Premium and £95,085 in unpaid called losses and £87,024 in uncalled losses incurred prior to the effective date of R&R, and £167,070 in prejudgment interest. A separate Order expressing the conclusions reached by the court was issued on the same date. The Order of the court is attached hereto as Exhibit 7. The principal amount awarded by the Judgment is less than Tropp's Finality Amount, as shown on his Finality Statement, because Lloyd's did not sue Tropp for Central Fund Debt, which is one component of Tropp's unpaid underwriting obligations.

26. Tropp's request for permission to appeal against the decision of the Queen's Bench Division was denied by the Court of Appeal on November 2, 2004 in a lengthy, reasoned decision following consideration of Tropp's written submissions and oral arguments. The decision of the Court is attached hereto as Exhibit 8 (decision of Waller, L J.).

27. The Judgment is final, conclusive and fully enforceable in England. Tropp has not satisfied his Judgment debt. Lloyd's has not yet decided whether or when to seek recognition and enforcement of the Judgment against Tropp in the United States. Lloyd's typically makes such decisions based on cost and efficiency.

28. Following entry of the Judgment, Tropp pursued counterclaims against Lloyd's. On November 5, 2004, the Queen's Bench Division granted Lloyd's motion to dismiss Tropp's counterclaims, following consideration of further written submissions of testimony, documentary evidence, written and oral argument, in a reasoned decision based on English statutes and case law. The decision of the court is attached hereto as Exhibit 9 (decision of Gloster, J.).

29. Tropp sought permission to appeal from the dismissal of his counterclaims. On January 23, 2006, the Court of Appeal by a reasoned decision denied permission to appeal, following still more written submissions and oral argument. The decision of the court is attached hereto as Exhibit 10 (decision of Rix, L J.).

30. Tropp sought further review from the House of Lords, which was denied on July 27, 2006. The letter to Tropp denying further review is attached hereto as Exhibit 11.

31. As these decisions demonstrate, Tropp was permitted to submit evidence and present argument in support of his defences and counterclaims.

32. Tropp is not the first Name to have pursued legal remedies against Lloyd's after a judgment has been rendered against him in the English courts. In *Jaffray v. Soc'y of Lloyd's,* Names pursued post-judgment remedies in the form of counterclaims for fraud, alleging among other things that Lloyd's had acted fraudulently in making certain representations to Names concerning its regulation of

the market. Over 200 Names, many of whom were U.S. Names (not including Tropp), actively participated in the *Jaffray* litigation. After a trial lasting 64 days, including over 40 days of live witness testimony and the submission of massive amounts of documentary evidence, the Queen's Bench Division rendered judgment in favour of Lloyd's, finding that the Names had failed to prove, inter alia, fraudulent intent. *See Soc'y of Lloyd's v. Jaffray,* 2000 WL 1629463 (Queen's Bench, Nov. 3, 2000) (Cresswell, J.), *aff'd,* 2002 WL 1654876 (Court of Appeal, July 26, 2002).

33. I understand that Tropp is now claiming that he was denied due process in the English proceedings because he was not permitted to litigate certain defences and counterclaims concerning both the calculation of his Equitas Additional Premium and his liability for certain risks that he claims he had wished to avoid. Having reviewed his Complaint in this action, I believe that virtually all of the matters he has raised were actively litigated by him in the English proceedings. For example, Tropp asserted and submitted evidence in support of his counterclaim that his underwriting losses were caused, in whole or in part, by Lloyd's failure to adequately regulate the market, including the failure to prevent his Agents from accepting risks from prior syndicate years of account through the acceptance of the RITC premium. The English courts noted his evidence in granting Lloyd's motion to dismiss this counterclaim, finding it insufficient to support a claim against Lloyd's (as opposed to Tropp's Members' Agent), and noting that Lloyd's was immune from suits based on its exercise of the regulatory authority conferred by Lloyd's Acts 1871-1982 unless such exercise was bad faith. *See* Ex 9 & 10. The English courts' ruling that Tropp's claims for relief were not truly equitable in nature, but rather sought money damages and were therefore subject to Lloyd's partial immunity under Section 14(3) of Lloyd's Act 1982, involved the courts' analysis of both the statute and English law of remedies in law and equity.

34. While Tropp complains that the English courts refused to permit him to submit evidence concerning Lloyd's failure to credit the proceeds of his personal stop-loss policies to his Finality Amount, he presented evidence on this point in the English proceedings. Both the Queen's Bench Division and the Court of Appeal found that these credits had not been provided because Tropp had not executed a Letter of Assignment with respect to these policies, but that recoveries on these policies would be credited to him when and if he executed a Letter of Assignment. *See* Ex 6 at ¶ 22, 25;

Ex 8 at ¶ 20. Tropp to this day has not executed the requisite Letter of Assignment, or paid his outstanding liabilities.

35. Tropp alleges that the English courts refused to permit him to litigate his defence that he should not be liable for losses incurred on the 1991 syndicate year of account because his attempt to resign from Lloyd's was improperly refused by his Members' Agent and by Lloyd's. In fact, the English courts did permit Tropp to litigate this issue, but found that, as a matter of law, in light of the facts I described above, it should have been asserted against his Members' Agent, rather than Lloyd's. *See* Ex. 6 ¶ 21. I note that Tropp contends that suing his Agents for breaches of their contractual and fiduciary duties to him would not provide him with a meaningful remedy, because these recoveries would be "confiscated" by Lloyd's. This is inaccurate. The English courts have held that Names' recoveries from their Agents are underwriting receipts, which must be deposited in their premiums trust funds with their other reserves and applied to satisfy any outstanding underwriting obligations before the remainder, if any, may be distributed to the Names. *See Soc'y of Lloyd's v Robinson*, 1999 WL 477643 (House of Lords, 25 March 1992). Tropp thus would have the benefit of any such recoveries from his Agents by means of a reduction of his outstanding underwriting liabilities and would receive any excess, if and when outstanding liabilities are satisfied.

36. Tropp also litigated various claims relating to alleged failures to properly credit his syndicate reserves against his Equitas Additional Premium. He alleges that Lloyd's failed to credit his account with the amount (£269,893) in syndicate-level reserves in calculating the total amount of his Equitas Additional Premium. In doing so, Tropp confuses the Equitas Premium and the Equitas Additional Premium. The Equitas Additional Premium is only a component of the total Equitas Premium. Tropp's Statement of Reinsurance shows that his £269,893 in reserves were transferred to Equitas on his behalf and credited against his total Equitas Premium, reducing his total Equitas Premium from £384,332 to his Equitas Additional Premium of £114,439. This is clearly reflected in both Tropp's Finality Statement and the Judgment. The additional amounts owed, as shown on the Judgment,

represent unsatisfied underwriting obligations owed by Tropp in addition to the Equitas Additional Premium, such as unpaid called and uncalled losses incurred prior to R&R, and prejudgment interest.

37. Tropp alleged in the English proceedings, and alleges again, that Lloyd's decision to allow Members' and Managing Agents to earn commissions on the "triple profit release" reduced the amount of his reserves available for transfer to Equitas, thereby increasing his Equitas Additional Premium. The "triple profit release" involved the early release of anticipated surplus from the reserves of syndicates underwriting for the 1993, 1994 and 1995 years of account, in advance of the date on which these syndicates ordinarily would have been closed, in order to assist Names underwriting on such syndicates to pay their Finality Amounts. Only those Names who underwrote during the 1993, 1994 and 1995 years of account were eligible for the "triple profit release." Tropp did not pay any commissions for those years of account because he did not underwrite during 1993, 1994 or 1995, as the courts found, and the amount of his Equitas Additional Premium was unaffected by the triple profit release to other Names.

38. Tropp also alleges that he is entitled to a pro rata share of a purported surplus of funds collected by Lloyd's above the amount advanced to Equitas and for which the assignment of the right to collect certain unpaid underwriting liabilities owed to Equitas by non-accepting Names (including Tropp himself) was given. Tropp quotes a figure assigned of £3.809 billion of assets from the syndicates that Equitas was reinsuring but I do not know where that figure comes from and would refer the Court to the terms of the assignment at Exhibit AB of Tropp's declaration. The assignment to Lloyd's by Equitas was in consideration of Lloyd's advance to Equitas of £285 million in limited recourse funding. Lloyd's took out a syndicated loan of £285 million from seven banks in order to pay the limited recourse funding to Equitas, so that Equitas would have the requisite funds to be authorised by the DTI to conduct insurance business upon implementation of R&R.

39. Tropp alleges that Lloyd's is improperly withholding the "excess value" of the amount collected over the limited recourse funding. Under the terms of the assignment, until such time as the limited recourse funding had been repaid, Lloyd's is entitled to retain all amounts received or

recovered from Names. *See* Tropp Decl. Ex. AB §2. The amount recovered to date from non-accepting Names pursuant to the assignment is less than £285 million. In short, there is no "surplus" held by Lloyd's in respect of the assignment from Equitas. If and when Lloyd's recovers the amount of its advance to Equitas, Equitas could decide to have reassigned to it the rights to the remaining unpaid obligations, if any. To date, Lloyd's has not recovered an amount equal to or more than the amount of the advance to Equitas.

40. Tropp claims that Exhibit Q to his declaration shows that certain of his syndicates did not underwrite new policies during the year of account, but instead received premium income only in the form of the RITC premium paid by the prior year syndicate year of account. However, Exhibit Q does not purport to reflect the entire underwriting history of the respective syndicates shown. Instead, Exhibit Q shows only the estimated present value of liabilities *that remained unpaid and outstanding* as of August 1996 for each of Tropp's syndicates that remained "open," *i.e.,* and were to be reinsured by Equitas. To the extent that Tropp alleges that his Members' Agent ignored his instructions in placing him on syndicates that were subject to long tail claims, the English courts ruled that Tropp's claim lies against his Agent, not Lloyd's. Lloyd's did not and does not place Names on syndicates or review syndicate selections.

41. I also note that, while Tropp complains that he was denied credit on his Finality Statement for action group recoveries that would have reduced his Equitas Additional Premium, he does not claim to have been a member of any action group that brought litigation against any of his Members' or Managing Agents, and Lloyd's has no records indicating that he was an action group member. As such, he was not entitled to any allocation of credits on his Finality Statement from action group recoveries.

42. Lloyd's had the audited results from each of the syndicates in the Lloyd's market, which results were aggregated into a "global figure" that was set forth in a public document. However, Lloyd's did not review the policies that the syndicates had underwritten, or second-guess the syndicate

accounts prepared by the syndicates' auditors, who were retained by the syndicates and were not employed by Lloyd's.

43. The purpose of the syndicate information statement ("SIS") (Tropp Decl. Ex. S) was to show, for purposes of Names' payment of U.S. tax, how much, if any, of a particular syndicate's income for the tax year was attributable to underwriting U.S. risks. Each SIS is prepared by the syndicate's Managing Agent and reflects the syndicate's income and payments for the tax year for which they are prepared, and does not show the premiums received in prior tax years by the syndicate. The SISs cover the 1995 calendar year position of the 1989, 1990 and 1991 syndicate years of account of which Tropp was a member. Most of the premium income received by those syndicate years of account would have been received in the first year of the account (*i.e.*, in 1989, 1990 and 1991 respectively). Very little premium would have been received for those years of account in 1995 (as is shown in the SISs). The line for "Closing Reinsurance Assumed" on the various SISs included in Ex. S does not reflect an RITC premium accepted from a prior syndicate year of account, as Tropp asserts in his Declaration. Instead, this line shows the amount of the reserves that the respective syndicates held at the close of the previous year (in this case, 31 December 1994) that were available as of 1 January 1995 to pay outstanding claims. Although the SISs were not prepared by Lloyd's, they were submitted by Lloyd's, as an administrative convenience, to the IRS each year to facilitate the reporting of U.S. underwriting income by Names regardless of their country of residence.

44. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 29th day of May 2007, in London, England.

N. P. Demery

Nicholas P. Demery

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