Exhibit A: **What this case is really all about**

This exhibit replies to the conceptual framework within which Lloyd's presents to the Court what this case, and the R&R cases as a class, are basically all about. That framework is a fundamental misrepresentation to the court, a disingenuous "spin" in its basics.

A pious facade of public policy interest gravitas, masking the reality of Corporation management private windfall gain

1. Lloyd's' Rule 56.1 answer statement at § 2 picks up a theme they have emphasized to US courts in the whole line of US R&R cases: that the class of R&R collections enforcement cases in general, and their claim against me in particular, is all about the public interest "to ensure that policyholders are paid [on their insurance] claims".

2. This theme has been prominent up front in Lloyd's' memoranda of law to this court in prior R&R cases including in *Edelman*, to New York State courts in *Grace*, and to Federal courts in all other circuits. US courts' R&R decisions have cited and decisively relied on it, as framing their understanding of what the R&R cases are fundamentally about. This theme is Lloyd's' basic "spin" to the US judiciary.

3. If the court were to "follow the cash" as in the Enron, WorldCom and other complex financial cases, and to understand this case against the standard "where does the cash actually *go*, from all these cases in which Americans are denied hearing?", Lloyd's theme would be seen as a disingenuous basic misrepresentation, a deception of this Court.

4. Notwithstanding Lloyd's' pious incantation of noble public purpose in the hundreds of US and thousands of UK R&R collections cases in which defendant families' homes, life savings, and pensions are taken from them after hearing of their defences had been precluded in law, when you follow the cash, it turns out that none of the proceeds of this whole line of R&R cases go into insurance reserves to cover insured policy-holders' claims.

Instead, under the arcane "R&R assignment" side deal between Lloyd's and its captive R&R reinsurer Equitas, **100%** of the money from those summary judgments are captured by ***the Corporation*** of Lloyd's, off the books of reserves: by insider management.

5. It follows that insofar as US courts have relied dispositively on an understanding that what they were doing in the US line of R&R cases was to protect that public policy interest of strengthening insurance reserves held to pay insured policy-holders' claims, the US courts have been "had", in this whole line of cases, by Lloyd's management.

6. I pleaded this issue to the UK courts first as one of my issues in defence against Lloyd's' R&R claim, then as one basis for my counter- claims for an accounting and specific performance, and I submitted evidence in support of this issue to the UK courts (Tropp declaration §§ 84, 86; Rule 56.1 Statement §§ 106, 108). That evidence was from UK and US regulatory agency filings by Lloyd's and by Equitas.

7. Lloyd's did not dispute the facts above, nor my evidence in support of them, in the UK courts, nor has Lloyd's disputed those facts to this court (Lloyd's' Rule 56.1 answer statement § 108). Lloyd's admits them (Lloyd's' declaration § 39). Instead, Lloyd's' defence to the point is that it has in fact collected less than the evidence I submitted from US and UK regulatory agency filings would suggest.

8. In the UK, Lloyd's refused to make disclosures on this point, relying instead on preclusion in law to shut out the matter from substantive hearing. If Lloyd's had made in the UK the disclosure which it makes now to this court (that it in fact collected less than the numbers in the pertinent regulatory filings suggest), if Lloyd's had disclosed its book reconciliation accounts as I requested, and *if* they had sup- ported Lloyd's' point, then this would have mooted my point both in UK defence and (except as a future hypothetical) in counterclaim.

9. That would not, however, change the basic point above: that Lloyd's' theme in the

R&R cases is deceptive of this court and of all other US courts to whom Lloyd's' "spin" has been a purportedly elevated public interest purpose, justifying the summary deprivation by UK and US courts of R&R defendants' rights to defend and counterclaim.

10. The UK courts refused me argument and substantive hearing of this issue, as precluded in law first in defence, and then in counter- claim. Lloyd's' Rule 56.1 Statement now at §§ 106 that the English courts "considered and rejected" -- and at § 109, "considered and ruled against" -- my defences on this point, insofar as those state- ments suggest that this court should understand that the UK court had granted argument to and had heard my "R&R assignment point" on the merits, are misleading and in substance false.

Coming to US courts under false colors as "regulator", as if in Lloyd's' UK "public functions", when UK law is that the R&R cases are done in Lloyd's' merely private capacity

11. Lloyd's presents itself to this court as a UK public regulator, and emphasizes the theme that that is how this court should understand it (Lloyd's' Rule 56.1 answer statement § 2, very first numbered full par. in their declaration, in which "regulate, "insurance regulator", "regulatory" and variations on the term are deployed at this court half a dozen times; Lloyd's' Demery Dec §§ 2, 3, 5, 18, 20).

12. That UK public-law imprimatur is a repetition of Lloyd's' consistent presentation of itself to this court in *Edelman*, to New York State courts in *Grace*, and to other US courts in the whole line of US R&R cases. In asking US courts generally, NY State courts and the SDNY to enforce UK R&R judgments against Americans, Lloyd's has character- ized itself as a UK regulator, acting in its UK statutory capacity as delegated self-regulator of its members, as opposed to as a mere private business acting (in its R&R claims) in a merely commercial capacity. ***Lloyd's v Grace***, NY Appellate Division (1st Dept), Brief of Plaintiff-Respondent, Oct-ober 4, 2000, pp. 4 and 6 of Statement of Undisputed Facts; id, NY Supreme Court, Memo- randum of Law in support of motion for summary judgment, August 17, 1998, p. 2

(first line of Statement of Facts), 9; ***Lloyd's v Edelman, Gross et al***, Memorandum of Law in support of motion for summary judgment, April 26, 2004, p. 2 at Statement of Material Facts § 2, p. 15, p. 22.

13. For example, at p. 9 of Lloyd's' memorandum of law to the NY court in ***Grace***, Fried Frank averred: "The principles of comity that generally support foreign judgments are particularly strong here because the underlying cause of action involves rights and obligations between Lloyd's, a foreign ***regulatory authority***, with respect to the Graces, individuals who have agreed to be subject to Lloyd's' regulatory jurisdiction. It would unduly impair Lloyd's' ***regulatory authority*** for a US court to second guess an English court's determination of liabilities ***arising out of that regulatory relationship***." [emphasis plaintiff's here]. Lloyd's repeated this point (and language) in its ***Edelman, Gross*** memorandum at p. 22, in the most recent submission to this Court in an R&R case, and at p. 15 expressly characterized "the R&R transaction" out of which all of its claims arose as "implemented by Lloyd's as part of its [statutory] regulatory function...."

14. US courts throughout the R&R cases have prominently relied on this point in their judgments, as being UK law, citing Lloyd's' regulatory capacity up front as a foundation of their reasoning. New York State courts did so in *Grace*, Judge Posner did in *Ashenden*, and this court led its judgment in ***Edelman*** with this point in its first sentence.

15. Lloyd's is implying that it comes to the US judiciary in these cases as a UK "public authority" within the meaning of UK public law, that in bringing this line of cases against American defendants in general and against me now Lloyd's purportedly is performing a statutorily delegated regulatory public function, and by inference that US courts should defer to it as a UK official public regulator.

16. Lloyd's has, however, taken precisely the opposite position under UK law in the **UK** courts, in general and in the R&R cases in particular, in order to escape the duties and the

UK judicial review to which it would be held under UK public law including human rights law. For example, if Lloyd's were held by UK courts to the legal standards which provide public-law protections to those who are subject to the authority of a UK public regulator, then Lloyd's would be held to the same duty of accounting as any UK public authority under a standard of "Wednesbury reasonableness", which conceptually is equivalent to the "arbitrary and capricious" standard in US administrative law. In pleading that under UK law it not be held by UK courts to public-law duties and standards, Lloyd's escapes the "Wednesbury reasonableness" test of its acts, the protections which that test would offer from arbitrary and capricious behavior by Lloyd's against persons subject to its authority, and the disciplines of *the process* of UK judicial review under UK public law including especially human rights law.

17. The UK courts have upheld Lloyd's' position, in general and in the R&R cases, by refusing judicial review under UK public law to aggrie- ved members of Lloyd's in general and in the R&R cases in particular. The consequence is that in UK law, Lloyd's' position is -- in all its acts furthering R&R in particular, including in bringing the R&R line of cases -- that of a private merely commercial entity, acting in its private capacity and, expressly, ***not*** in its statutorily delegated "public functions". This is what Lloyd's has asked the UK courts to hold, this is what they have held, and it is UK law.

18. For example, "The nature of Lloyd's is essentially non-governmental; it exercises no public law functions and as such is not amenable to the application of the Human Rights Legislation." ***Lloyd's v Levy & Ors*** [2004] EWHC 1860 (Comm) (30 Jul 2004) at § 31 [an R&R case of a California resident trying to defend in the UK under UK public law], citing this as settled UK law, relying on UK Court of Appeal (CA) in ***R v Lloyd's on the application of West*** [2004] EWCA 506 (27 Apr 2004).

19. The CA in **West** had begun, "there had been a series of cases... which upheld... that Lloyd's did not operate in the public sphere..." (at § 2), of which functions judicial review

[in context, under UK public law] had been denied. After reviewing those cases (§§ 17-20), the CA held (at § 40) and made a declaration "that Lloyd's is not amenable to judicial review, whether by virtue of section 6 of the HRA [duties of public authorities, including of private hybrid bodies when they are performing their regulatory public functions] or otherwise...."

20. In the lead UK case rejecting judicial review under public law of Lloyd's' R&R plan, often quoted in Lloyd's' R&R cases against indivi- dual defendants, the UK Administrative Court ("Admin Ct") had said, "The Lloyd's Acts are Private Acts. I do not think that [the CA] had in mind, in ***Datafin*** [the ground-breaking case which established stan- dards for judicial review under UK public law of regulatory "public functions" when performed by private bodies], Private Acts of Parliament." (The Lloyd's Act 1982 was promoted by Lloyd's and enacted by Parliament as a private bill, not in the usual public law process.) And "`I am quite unable to see how this epithet `governmental' can be ascribed to Lloyd's' relationships with its members... [in] Lloyd's' systems of self-regulation'", ***R v Council of the Society of Lloyd's, ex parte Johnson*** (unreported, 16 Aug 1996, at transcript p. 66).

21. Those passages from ***Johnson*** were relied on as the *ratio decidendi* for rejecting an application by a UK defendant for judicial review under public law of an individual Lloyd's R&R claim in ***Doll-Steinberg v Lloyd's*** [2002] EWHC 419 (Admin) at §§ 16, 20. The UK Admin Ct concluded in ***Doll-Steinberg***, as to whether Lloyd's' self-regulatory acts were public-law ones which engaged the UK equivalent of due process protections, "...Lloyd's is not a public authority within the meaning [of] Section 6(1) of the Human Rights Act 1988..." (§ 30), and that the particular function the Court was considering there was not a public one for purposes of granting judicial review.

22. The UK Commercial Court most recently reviewed and then relied on this whole line of authority, especially the UK CA's holding in ***West***, in ***Lloyd's v Henderson & Ors*** [2005] EWHC 850 (Comm) at §§ 68-73, 75, 77 ("no realistic prospect of succeeding in...

argument that Lloyd's ...exercises public powers", for purposes of liability for misfeas- ance under public-law duties related to such powers).

23. The ***Henderson*** court held (at §§ 75, 105) that Lloyd's had not been exercising public functions in the ***West*** § 34, ***Donoghue*** [***Poplar Hous ing Assoc. v Donoghue*** [2001] EWCA Civ 595 at §§ 65-66)], and ***Datafin*** sense of having a public-law element, which would make such functions subject to judicial review under public law as to (in particular) its self-regulation of its members' insurance solvency under the Insuran ce Companies Acts 1974 and 1982. Compare the UK court's most recent holding on Lloyd's' acting in a public as versus a private capacity to Lloyd's' description of itself now to this Court as a "regulator" (Demery Dec. loc cit § 9 above), bringing this case as an insurance solvency regulator in particular (Lloyd's' Rule 56.1 Statement § 2).

24. This line of UK cases and the position which they establish as UK law is *exactly the opposite* of what Lloyd's has projected to US courts in the US line of R&R cases, in "spinning" itself to them, and now represents to this court in its statements.

25. (a) In my case in particular, Lloyd's defended against my counterclaims in the UK pleading expressly that it was acting in its private capacity -- that **its R&R acts toward me were not done in a regulatory or supervisory capacity, and that it assumed no such responsibility --** and therefore could not be held liable to the duties of a regulator acting in its statutorily delegated "public functions", within the meaning of UK public law. UK courts in my case relied on this point upholding that Lloyd's could have no liability under UK public law, as opposed to under the private law of contract. *That is the UK law of the case* under which Lloyd's comes before this court against me.

(b) See my UK counterclaims strikeout judgment of 5 Nov 2004 (Comm Ct) at § 10, inter alia quoting the UK CA in another case, "Lloyd's is *not* a public law body which regulates the insurance market", against which compare Lloyd's' Rule 56.1 statement § 2 to

this court today. The UK CA re-emphasized the point (CA judgment of 23 Jan 2006 refusing appeal of strikeout of my counterclaims, at § 20): "...this court held [in 2004] that because... Lloyd's was not a publ ic authority for the purposes of the Human Rights Act [which established public law duties for all UK public agencies, including for "hybrid body" private commercial associations to whom public-law regulatory powers are statutorily delegated, when they act in their public law capacity], and because its objectives were commercial rather than public, there was neither judicial review of its functions nor was there available any relief under the HRA."

26. Lloyd's has admitted here that "The English courts have repeatedly held that Lloyd's owes no statutory... duty [as opposed to, not only no separate private-law contractual or common law duty] to Names to exercise reasonable skill and care in... the regulation of the Lloyd's market", relying on 4 UK lead cases of which the most recent was ***Laws v Soc'y of Lloyd's*** [UK Court of Appeal (Dec 2003) EWCA Civ (1887) at § 69]. Lloyd's declaration § 9; Lloyd's' Rule 56.1 statement § 4; paralleling Lloyd's' pleadings to UK courts in my UK case). This echoes Lloyd's UK pleas which rebutted any *defence* I might have wanted to make in reliance on Lloyd's having such a regulatory duty (Lloyd's' "Outline Submissions" [of law] of 17 May 2004 at §§ 5(a), 13(a), in opposition to the UK court's granting arguability of my defences; Lloyd's' reply witness statement [Mr. Demery] of 11 May 2004 in support of summary judgment at § 10, relying on the same UK case law he now cites in Dem Dec. declaration § 9).

27. Lloyd's similarly deflected my UK *counterclaims* for an accounting and for specific performance on Lloyd's' statutory duties (as opposed to my reliance in separate points on their contractual duties in private law), by pleading there that Lloyd's *had no* such statutory duties. (Lloyd's' Outline Submissions of 28 Oct 2004 in support of strikeout of my counterclaims at §§ 9, 10, 13(b)). For purposes of shutting out my claims insofar as they relied on statutory public duties from the Lloyd's Act, Lloyd's expressly relied on the CA's

quotation in **West** of dictum from a prior case, that "'Lloyd's **is not a public law body which regulates** the insurance market.'" (id § 10, citing **West** at §§ 17, 30. This repeated the point as Lloyd's had emphasized it in their witness statement of 4 June 2004 in support of strikeout of my counterclaims at § 5, quoting from the same line of UK cases; also in Lloyd's' Defence to Counterclaim of 28 May 2004 at § 5).

28. In pleading with such emphasis to the UK court that it has no public law duty of an accounting nor has any statutory specific performance duty as to the matters raised in my counterclaim, Lloyd's was saying to the UK court (in defence) that Lloyd's' R&R claim against me, and Lloyd's' acts toward me in R&R which framed the un- derlying fact context of my defences against that claim, were -- expressly -- not done in its UK statutory "public functions" capacity. Compare to what Lloyd's now pleads to this court, in presenting itself.

29. The UK court in my case accepted this position -- Lloyd's' plea of lack of public regulatory duty, in defence to my counterclaims -- and relied on it as UK law. (UK counterclaims strikeout judgment § 10, "[Lloyd's] submitted that Lloyd's is not under any obligation to supervise... decisions of [its syndicates'] managing agents, nor to protect names from breaches of duty of their agents, *nor to regulate the business of insurance at Lloyd's* with reasonable care"; id at § 14, "[Lloyd's] also submitted that the Court of Appeal has made it clear in [2 recent cases including ***Laws*** above] that... Lloyd's owes no positive duty to supervise or regulate [its] agents [to protect its members]....". Compare this position -- which the UK courts have confirmed as UK law today -- with what Lloyd's now represents to this court about its status under UK law.

30. (a) It speaks to Lloyd's' good faith in its representations to UK courts on this point that Lloyd's had pleaded exactly the opposite to Parliament, when Lloyd's' then-management were soliciting Parliament to enact its statutory immunity -- with which the legislative history shows that Members of Parliament on all sides were uncomfortable as a concept of

jurisprudence, and acknowledged as unique in UK law -- as Lloyd's Act 1982 § 14 (Tropp Appellant's Supplemental Skeleton Argument of 9 January 2006 at §§ 48-65, reviewing the legislative history of the immunity provision on this point of whether duty)..

(b) In promoting to Parliament that there was a legal "mischief" which required the cure of an immunity, Lloyd's relied expressly on the then-existence in UK law of the duties to supervise and regulate which it now denies, and on the risks of liability posed for Lloyd's by those duties. Had there been no such mischief pleaded by Lloyd's to Parliament, then there would have been no context for a need for an immunity as a legislative cure to that mischief.

(c) The record of Parliament's legislative history on the Lloyd's private bill shows unambiguously that Parliament relied on Lloyd's' management's pleading that Lloyd's did have such duty as the whole context for why Parliament had to consider Lloyd's' proposal for an immunity: the risks posed by that duty were precisely the mischief which required Parliament to spend 2 years wrestling with the policy issues of enacting an immunity. If Lloyd's had no such duty -- as Lloyd's now pleads to **this** court and UK courts that it doesn't have -- then why would the issue have needed to trouble Parliament in the first place?

"Spinning" of US courts by Lloyd's as to me as well, and UK courts on the balance of equities as between Lloyd's and me

31. In Lloyd's' Rule 56.1 Statement at §§ 24 and 105, declaration § 17 (and by implication § 22), and memorandum of law at p. 6, Lloyd's characterizes me as having not accepted their settlement offer, and thus as one of the class of "non-accepting" aka "non-paying" Names familiar to US courts. This characterization is in substance a disingenuous calumny by Lloyd's, and frames falsely this court's understanding of the true balance of equities between the parties.

32. In substance this characterization rises to being a false statement to the court, because Lloyd's' Chief Executive ("CE") Ron Sandler had offered me an "individual settlement

agreement" ("ISA") in lieu of their boilerplate R&R Settlement Offer in March 1997 during the R&R settlement process, and I accepted his offer. (Tropp declaration of April 30, 2007 at §§ 25, 35-37). We had a "deal", Lloyd's internally scored me as a "settled" Name in the years immediately after R&R, and their Financial Recovery Department ("FRD") and Lloyd's senior offi- ers sent a stream of letters confirming that we had a settlement (on which they were inducing me to rely) that they intended to execute.

33. Lloyd's even reported to third parties (whose evidence the UK court did not give me an opportunity to offer) that it had settled with me.

34. Then after their CE left office, and after in reliance on their ISA settlement I had forborne from bringing my own claims for recovery, instead of executing, Lloyd's reneged on their CE's word by ambushing me with their UK claim (and without even the preaction notice and opportunity to cure required in the UK's Civil Procedure Rules).

35. It is true, as Lloyd's states in their declaration § 23 and Rule 56.1 Statement § 24, that I was "unwilling to release various market participants [particular individual insider agents and officers], in addition to Lloyd's [itself],... as all other settling Names had [purportedly] done". I insisted on continuing to have a right to sue particular Lloyd's agents and management insiders, who are supposed to be separate entities from Lloyd's itself, in fraud, while accepting that as a condition of settlement I would release Lloyd's itself.

36. It is <u>not</u> true that this only became clear to Lloyd's "by mid-2002" (their declaration § 23). It was a condition that had been accepted first by the Deputy Head (for dealing with Americans) of Lloyd's' Financial Recovery Department ("FRD") Mr. Meeson in November 1995, then by their CE Mr. Sandler in March 1997. Both "tossed it off", off-handedly, as being not an issue for Lloyd's in settling with me.

37. The first I have ever heard that this was Lloyd's' "drop-dead" issue in deciding not to execute on their CE's settlement agreement with me -- protection by Lloyd's of its insider

agents and management against whom fraud could be proved, not only release of Lloyd's itself -- was now, reading their declaration and their Rule 56.1 Statement in this action. No Lloyd's officer or agent -- not their CE, not their FRD internal collectors, not their outside counsel -- ever raised it with me. To the contrary, FRD and their CE both had expressly disclaimed it as being a concern of theirs (and in a dismissive tone, belittling it as of no significance to them) when **I** raised it with **them**.

38. (a) Lloyd's further states in their Rule 56.1 statement at § 24 that I was "required" to have paid the full total demanded by them in their boilerplate "R&R Settlement Offer" by September 30, 1996, and was in default for not having done so. This is false.

(b) At that time I was in discussion with their CE, who had stayed any requirement pending agreement of terms of settlement between Lloyd's and me, and said that he had tasked Lloyd's' Central Services Unit ("CSU") to give me internal numbers for which I had been asking since spring 1994 to try to understand "the number" of my true liability. (Exhibit of evidence shown to UK court, my letter to CSU Head Joseph Bradley of September 1, 1996 written as directed by Lloyd's CE Mr. Sandler, Schedule I annexed to my Part 18 [disclosures application] reply witness statement of 23 April 2004). Mr. Holden, the Head of Lloyd's' internal collections group FRD, reconfirmed that stay a few times from early Nov 1996 to Mar 1997 while his CE's and his settlement discussion with me was progressing.

39. I submitted multiple evidence to the UK court of the ISA having been (in Lloyd's officers' words after R&R) "a done deal", "an agreement made". Lloyd's denied that it had been binding on them. Rather than give me full hearing on the facts, with discovery and witness cross-examination, the UK court conducted in its summary judgment hearing what the UK case law on summary judgment disparagingly calls a "mini-trial" (against which that case law admonishes the UK courts).

40. In reliance on an incomplete bundle of ISA correspondence submitted by Lloyd's

and falsely stated by Lloyd's to the UK court as complete, without discovery or cross-examination (of e.g Mssrs. Meeson, Holden, or Sandler), the UK court reached a finding of fact that there had not been a meeting of the minds on the full material terms of a settlement (which was flat wrong). The court held on this basis that Lloyd's' CE's offer and agreement of an ISA had not been binding on Lloyd's, for purposes of my being able to rely on it as an estoppel in defence against Lloyd's' claim, and based on that for me to gain "triability" of my defence instead of losing on summary judgment.

41. Unlike all of my other defence issues, the UK court's disposition of this individually-distinguished one was in form not "preclusion" in law on the basis of Lloyd's' R&R Contract. The effect was the same, however: the court turned a blind eye to suppression of evidence by Lloyd's, refused to give me opportunity to produce the complete evidence, and I did not receive materially "real" substantive hearing.

Misrepresentation that a "Substitute Agent" in fact gave US defendants' consent to having their defences to Lloyd's R&R claims precluded in UK law, under the R&R "conclusive evidence" clause

42. Lloyd's' Rule 56.1 Statement § 18 and declaration § 18 refer to Lloyd's having appointed Additional Underwriting Agencies (No. 9) Ltd. ("AUA9") as Substitute Agent to act on all Lloyd's' members' behalf in agreeing to Lloyd's' R&R off-balance sheet liabilities reorganization, including the R&R reinsurance transaction with its newly created reinsurer Equitas. As part of that, Lloyd's has represented to UK and US courts that AUA9 agreed in all members' names to the R&R Contract which is said to have effected the R&R reinsurance.

43. In its R&R claims against me and others, Lloyd's relies on Substitute Agent AUA9 as having consented for me -- having bound me, acting for me as its principal -- to the "conclusive evidence" clause in the R&R Contract, in which all R&R defendants are construed by UK courts as having in effect confessed judgment to Lloyd's R&R claims in the quantum alleged by Lloyd's. Under this clause, UK and US courts have accepted that AUA9 consented

to preclusion of all defendants' rights to defend against an R&R claim by Lloyd's, or to dispute its quantum.

44. Lloyd's' Rule 56.1 Statement § 18 and declaration § 22(b) state that the UK courts have upheld Lloyd's' authority under their Substitute Agents' Byelaw to appoint a substitute agent for the purpose of effecting R&R, and have upheld AUA9's acting in this capacity. I do not dispute that the UK courts have upheld Lloyd's authority to do so. Nor do I dispute that Lloyd's had this authority under Lloyd's Act 1982 and under that Byelaw.

45. I do dispute that Lloyd's in fact *appointed* such a Substitute Agent, because AUA9 is a dummy shell for which Lloyd's officers signed the R&R Contract in my name, purporting to be my agent on the other side of the table from their employer Lloyd's, at arms' length from and independent of their bosses Lloyd's' officers and senior management. (Tropp declaration § 39, exhibit N of excerpts on AUA9 from my UK pleadings). In fact AUA9 had no capacity as an agent to protect my interests as its principal, because (a) it was wholly controlled by Lloyd's, though in the R&R Contract it acted purportedly for me, on the other side of the table from Lloyd's; and (b) it is nothing but paper, and therefore does not in fact and could not have any physical capacity to make underwriting decisions such as accepting for me the liability risk and the pricing of a reinsurance contract like R&R.

46. In UK law, under the Lloyd's Act, a Substitute Agent is supposed to be an "underwriting agent" with such capacity to make underwriting assessments and decisions on behalf of its principals. AUA9 could not meet the Lloyd's Act test. Nor could it meet the tests for being an agent under the general UK law of principal and agent, under which it must have the discretion to act in my interests as its principal.

47. Lloyd's has pleaded, and in the R&R cases US courts have relied, on R&R defendants' purported *waiver* of their rights to defend against an R&R claim by Lloyd's, in the "conclusive evidence" clause of the R&R Contract which Lloyd's admits to courts that it

"mandatorily" imposed on all its members. The basis in UK law for this waiver is that AUA9 -- which Lloyd's had imposed on all its members, to agree to the R&R Contract in their names -- had as their agent consented for them in that Contract to preclusion of their rights in defence.

48. It is not news to a US court that Lloyd's imposed the Substitute Agent on all its members including defendants in the US R&R cases, nor that Lloyd's controlled that agent and required "it" to sign a contract to which no defendant had personally consented. This Court relied in ***Edelman***, as have other US courts in those cases, on the theory that "all Names signed a mandatory reinsurance agreement [the R&R Contract]", because "a Lloyd's-appointed underwriting agent signed the... Contract on their behalf..." (WL at p. 2 col 2).

49. The ***Ashenden*** court understood the R&R transaction to have been the product of a "negotiation" within the meaning of the Supreme Court's due process standards in ***D.H. Overmyer v Frick Co.***, 405 U.S. 174, 180 (1972), albeit the Substitute Agent which was purported by Lloyd's to have "consented" to the R&R Contract for all defendants was known to the court to have been imposed upon them by Lloyd's. However, in ***Edelman*** and ***Ashenden*** the defendants did not present evidence and make a showing that the Substitute Agent was *in fact* a dummy shell (my declaration § 39 and exhibit N), which could not have met the tests of being an "underwri- ting agent" under the Lloyd's Act, nor of having an ability to act as "an agent" at all under the UK or US laws of principal and agent.

50. It appears on the record of the UK CA ***Leighs*** case, on which Lloyd's relies (Demery Dec § 22(b)) for the authority of AUA9 to have bound all R&R defendants to preclusion of their rights to defend, that the UK court also was unaware of this fact. There is no indication in any R&R judgment before mine that any UK or US court was aware of it.

51. It appears that all UK and US courts in R&R cases, though aware that AUA9 had been imposed on R&R defendants by Lloyd's to act as their agent in the R&R Contract, did not understand that AUA9 was not in fact "real". Because the courts did not know this fact,

they did not know that AUA9 could not have acted as agent for R&R defendants as its principals under any tests for an agent in UK insurance law in general, the Lloyd's Act, or the UK or US laws of agency -- much less under the Supreme Court's ***Overmyer*** standards for consent by an agent to waiver of its principal's rights in defence, as having to be the product of a true (inter alia, an arms' length) negotiation.

52. I pleaded this issue in defence to the UK court: that a dummy Substi tute Agent did not in fact, and could not have in UK law, consented in contract for me as its principal to preclusion by a "conclusive evidence" clause of my rights to defend against a claim [UK Defence §§ 9-11]. The court precluded me from arguing this point in defence [UK summary judgment § 16(6)], in reliance by the court ultimately on the authority in UK law of Lloyd's' Substitute Agent and R&R Byelaws as statutory instruments (like public agency regulations).

53. The UK CA had not in ***Leighs*** considered that in fact the R&R Substi tute Agent was a dummy shell, nor had the CA addressed the issues of UK agency law and separately of insurance law which would arise from this fact. Relying on ***Leighs***, however, the CA refused me permission to appeal on this point, and upheld the lower court's preclusion of "arguability" by me of this issue in defence against summary judgment (UK CA defence appeal judgment at §§ 7, 11-13, in which the CA separately also refused appeal on my jurisdiction point of spurious service, that a dummy local UK agent could not, under the UK law of principal and agent and that of civil procedure, have accepted local service of Lloyd's claim for me).

[end Exhibit A]