September 1, 1996

MEMORANDUM FOR MR. JOSEPH BRADLEY (M.D., CENTRAL SERVICES UNIT)

RE: Queries on the Society's Calculation of Losses Attributed to Me

This is the summary memo you requested in our telecon late Friday. You would find within your system a fat record of correspondence reflecting my mostly fruitless attempts--stretching over a frustrating 2 years, 4 months--to fairly resolve each central issue.

For the sake of parsimony with your time, I omit here some decisive issues readily generalizable to many other Names. I recount here instead only those issues which you could, without undue stretching, elect to construe as unique to my fact circumstances--and therefore arguably as establishing no costly precedent as to other Names, if you were to choose to experience these issues from my perspective.

1. Losses from lines of business I explicitly had proscribed: When I was being recruited in summer 1987 to place my savings at risk with Lloyd's, a fundamental underlying representation which induced me to believe it would be not imprudent for me to join was that of individualized "portfolio selection": I could instruct my Members' Agency to put me onto some classes of underwriting risk, but to avoid others I feared. I relied on assurances that via the annual syndicate selection process, I would be buying not a series of "blind pools" (i.e: untrammelled discretion for syndicate managers to assume any class of risk at all), but rather a selected group of differentiated, identified, particular underwriting financial products, which were within the syndicates' historically specialized lines of business as ex ante disclosed in their annual reports.

In several conversations with my future Members' Agent during the recruitment process, I specified that I was familiar from my work with the liability that might arise from environmental risk (Superfund, asbestos, and other types which I discussed with my Agent at the time) and that I would sign up with Lloyd's only on the condition that my Agency would keep me off all such environmental risks.

My future Agent agreed to this condition precedent to my joining Lloyd's, assuring me that the syndicate selection process would annually provide disclosures sufficient for me to be able to monitor their execution of this instruction, and further assuring me that my Agency itself would--as my fiduciary--diligently enforce this instruction on my behalf. As you can see from your file, I reinforced these multiple conversations with written instructions to my Agency, sent with my first signed syndicate selection form.

In 1995, in the course of trying to get an accounting and to arrive at the total loss legitimately "mine", I learned that "my" losses overwhelmingly (albeit not exclusively) had arisen from the precise classes of risk that I ab initio had explicitly proscribed as a use of my savings. Syndicates 235 (Williams, today owned by Coutts), 206 and 210 (Sturge), 317 and 666 (Outhwaite, in work-out by a run-off agency owned by Murray Lawrence), and 287 and 357 (Spratt & White, novated successor also owned by Lawrence) are the decisive ones from which such losses--in the very lines of business I had proscribed--have mostly been attributed to and collected from me.

Might you want to reconsider whether the Society really believes--in light of the entering representations on "portfolio selection" made to me (upon which I relied), and in the context of my explicit limiting instructions given to my Members' Agency pursuant to those representations--whether these (and other) syndicates' losses which arose from pollution-related underwriting are legitimately "mine"?

For these worst-loser syndicates, this category of losses seems to account for over 90-95% of their business--however differently that business was characterized to Names in their annual reports ex ante at the time they sought to induce Names to give them our capacity. ("Their business" as measured not only by losses, which arguably they could know only after underwriting year X had closed, but also as measured by the classes of risk for which they accepted premium --which they certainly knew right up front each underwriting year).

Others of my syndicates also include environmental loss, though not nearly so much as these decisive few. The upshot is that the overwhelming bulk of collections already made against me, as well as by far most of the Equitas premium now ascribed to me, derives from the very class of liabilities that I explicitly had proscribed.

Might it make sense for you--because of the explicitness with which I raised this direction to my Agency ex ante, and documented it--to consider my case uniquely "distinguishable on its facts" from the broader class of Names' ex post portfolio-selection complaints?

If yes, perhaps it need not raise any potentially costly "slippery slope" precedent issues if the Society were belatedly to discover innocent error in the calculation of losses that it had ascribed to me--and if it were now graciously to choose (arguably with more complete information than you had centrally available before?) to disavow its previous ascription of this class of loss as "mine"?

2. Losses in excess of the stop-loss cap I was denied in 1990: Another of the fundamental entering representations made by my Agency during the recruitment process was that although the liability of Names is unlimited within the constraint of "several" (as versus "joint") liability, this would be merely theoretical, while the business reality was that the annual availability of affordable personal stop-loss cover meant that my liability would--in the real world--be limited to the "excess-of" stop-loss cap I would choose.

Absent this representation of the continued availability of affordable stop-loss cover, I would have considered it imprudent for a middle-class person to join Lloyd's, and I would not have done so.

In 1990, after I timely had sent in my acceptance of my Agency's stop-loss cover quote plus a check paying for it, the Agency told me that such cover was no longer available from the market to me, and returned my check uncashed. In 1994, I discovered that such cover had been available from the market (for at least 6 months after when it was represented to me that it was not); it turned out that officers and directors of my own Agency, even while it was representing to me that stop-loss was not available to me--did have it themselves, for their own personal underwriting as Names.

In 1991 my Agency again represented that stop-loss was unavailable.

In late 1994 and early 1995, the Secretary of the Brockbank holding company engaged in a correspondence with me trying to resolve this issue. I informed him that I had sent out my acceptance and check in March 1990 before or right around the time my Agency sent me its 2nd offer letter of stop-loss (i.e.: such cover had to have been available at that time, else why would they have sent out their 2nd offer letter--and by slow post rather than by urgent fax?). Their staff, he wrote me in high dudgeon, informed him that no such 2nd March letter from them (which would verify that they had known that stop-loss capacity certainly was available) had ever existed.

So...I sent him a copy of his own people's letter, the existence of which they had denied to him. I retain the original, on their stationary. Homework with the brokers and the stop-loss underwriters since that time has documented conclusively that the capacity I was told was not available in March 1990 most certainly was available.

In light of this miserable story, Mr. Bradley, might you conclude that it would be unseemly for Lloyd's to hold me accountable for more than a capped loss of $100,000 for 1990 (the stop-loss quote that I accepted and tried to pay for)? If all this is news to you, then the Society's prior dunning of me for more may be construed as innocent error were we to reach amicable settlement, might it not?

3. I tried to resign for 1991 (in 1990), and they wouldn't let me: As I recounted to your U.S. counsel in late July 1994, and as I think they summarized for the Individual Members' Unit afterward, I tried to resign from Lloyd's in 1990. I did so because of this sudden unavailability of stop-loss, because at my far-from-wealthy income level and (as our property market crashed) steeply declining net asset level, underwriting without stop-loss was simply "nuts".

First the Members' Agency told me that it was too late to resign as of underwriting year 1990, because I had already signed their 1990 syndicate-selection list in late 1989 (relying on their 1987 representation that stop-loss would be affordably available every year). The syndicates had already begun underwriting with my capital. As to resigning for 1991, they said, "why don't you wait until just before the July deadline for resignation as of next year, and see how you feel about it then? You can always resign up to June 30."

Orally, I did, timely before July 1. As is probably recounted ad nauseum in your file, there were unique circumstances (relating to my active-duty military service that year) which unexpectedly had the result that I could not get a written resignation letter sent out timely to my Agency. As soon as I could (early August), I did.

My Agency's staff told me it was too late; your July 1, 1990 deadline had passed for a written resignation effective 1991. Around this time I received notice that my Reserve unit would be mobilized for military active duty in Desert Shield, and I stopped paying attention to Lloyd's for the rest of 1990. Have you ever had to re-focus on preparing to depart your real life, for a war?

Granted, I did not execute a resignation letter timely as of July 1, 1990. Given the factual context laid out above, do you think it appropriate for me to have been told that my oral attempts before then to resign were, because not timely documented, ineffective?

Do you really think that any 1991 losses should be ascribed to me?

Might this not be another fact situation which we can both agree to construe as innocent error by the Society, which centrally may have been--at the time CSU calculated "my" 1991 losses and ascribed them to me--incompletely knowledgeable of the whole factual context?

There is an infuriating footnote of which you should be aware, for it has implications for your reaction to the documentation that you see in my Society file as to every issue I raise with you. Based on discreetly very measured feedback which your U.S. counsel gave me in fall 1994, it seems my Agency's staff denied to them that I had tried to resign, and that they ever received any such letter.

I sent your counsel a copy of that letter.

In pari materia with this same staff's representation in early 1995 --to their own corporate officer--that they never had sent a March 1990 2nd stop-loss offer letter to me, might a cynic wonder: what other material documents may have been, um, lost from the file? Maybe this has to do with the subsequent departure from my Agency, not of his own volition (as the Agency's leadership changed), of the staff person who was handling me during 1990; perhaps worse?

4. What if the Society has collected losses from me arising from syndicates which made undisclosed side payments to "my" Agency?

There is reporting suggesting that my Agency and some syndicates had side agreements undisclosed to me, under which those troubled syndicates (in order to attract Name capacity) made side payments to the Agency over and above the published schedule of fees disclosed to me when I signed syndicate-selection lists. This was denied by the current Agency head; I accept that he believes what he said.

Your Underwriting Agents' department enquired into this 2 years ago, and essentially stopped with the Agency's denial. There is documentation contradicting that denial, and it is in your files.

Because the first 3 issues might (if resolved) moot this one, I did not pursue it in 1995 after your people gave up. It is a matter of record, however, that such side agreements were reported to exist, and of record as well (confirmed by the accountants who did my 1989 Lloyd's U.S. Tax Report, from numbers sent by my Agency) that such payments were reported to have actually occurred. May this suggest a gross "portfolio selection" conflict of interest as to my Agency?

Would they, and the particular syndicates which compensated them over and above published fee schedules, have been the only ones?

The Society itself has collected from me some losses which probably arose from syndicates who made such side agreements. We both might consider this issue mooted were we amicably to agree on the rest.

If not, perhaps you could have identified the syndicates involved, and consider writing down or off "my" losses arising from them in particular? Wouldn't it seem to you that I might never have been placed on these syndicates, absent an inherent conflict of interest in my Agency arising from such undisclosed side agreements/payments?

So what's "the number"? I have the mid-1992 and 1993 loss reports on the basis of which I signed Voluntary Releases for an L/C drawdown, but I do not have a syndicate breakdown or other accounting of the cash my Agency received on my behalf from those syndicates which made money using my capacity, held in various trust funds in my name, and then disbursed to some selected loser syndicates.

Without knowing the syndicate-by-syndicate allocation of distributions by my Agency from these trust funds, and adding these distributions to those made to each syndicate from my L/C drawdowns, I cannot conclude on "the number". If you take seriously issues 1-3 supra, then we both first should want to know how much of my trust funds went to syndicates whose ascription of "my" losses to me you might today, having become better informed, choose to reconsider.

What's my best guess? A reasonable "SWAG" seems to be that 50-67% of what the Society has already collected from me can be construed, had you known then what you know now, as wrongfully collected. My best guess is that you should give me back $75,000-100,000.

Maybe I am wrong. I certainly am open to being shown so, by data. How? Your staff could readily access the data I lack, on precisely which syndicates received payouts from the various cash trust funds retained in my name by my Agency, add these syndicate-by-syndicate to who received further payouts from my L/C drawdowns, then give us both the same complete list of all payments made to each syndicate.

From this list, you might consider such subtractions as you find appropriate given issues 1-3. The residual (e.g.: all the painful catastrophe mega-losses of Crowe 666) would be what I owe Lloyd's.

If this is less than what the Society already has collected from me, then send me a refund check and an acknowledgement that I owe no more. If it is more, then--presuming we settled issues 1-3--I would send you a check, even if it were so large as to break me.

I am emphatically not a "won't pay". I may be a "can't pay", but we can't know this until we know what the real number is. There is "a" real number; it would include losses in most classes of syndicate business, save for those I explicitly had proscribed. I have no "whinging" wish for anyone to subsidize those for me. Neither do I, however, wish to pay losses which seem ultra vires, or worse.

Will you work with me to identify "the (real) number"? You have the data in your files to be able to get at it quickly; I don't.

It's pretty late in the day for this in an individual case, you may dismissively snort, but take a look at my file: I have been trying seriously to get at this, and have mostly been told "F___ you" by your system, for over 2½ years--long before any Equitas deadline.

If this is too laborious, then will you either (a) accept my best guess, or (b) suggest your own alternative conceptual framework, from which we could quickly derive an agreed best-guess number that we both can consider to be "real" (i.e.: actually based on some approximation of what truly are my losses) and mutually fair?

Thanks for your time focusing on this.

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