

Queen's Bench Division

Commercial Court

between:

The Society of Lloyd's

Claimant

- and -

Richard A. Tropp

Defendant

Part 24 Skeleton Argument

This is a skeleton argument, in opposition to claimant Lloyd's' Part 24 application of 12 March 2004, addressing whether defendant Tropp has made a threshold showing of arguability of manifest error sufficient to overcome the R&R "conclusive evidence" rule on which Lloyd's relies in asking for summary judgment. That rule reverses the usual direction of the burden of proof, from claimant to defendant....

Defences not developed to maturity of argument, but reserved

37. The Part 24 respondent is not only a party to contract and an underwriter, the capacities in which he finds himself defending, but also a reinsurer. He was made, as evidence he has submitted shows, inadvertently to have become a "reinsurer" (at a level of almost 400% of capital at risk when measured by premiums received ex ante, not by losses, which were worse) almost entirely of already known losses embedded in prior-year IBNR, rather than contemporaneous underwriting. There is developing law on what "insurance" is in law and what it is not, and on what reinsurance is in law and is not. (See e.g. **Sphere Drake** cited at § 16 above.) In respondent's capacity as a mostly inadvertent reinsurer, there are defences and perhaps counterclaims he has yet to develop under UK insurance law, which he reserves here.

38. The respondent was also an insured policy-holder, on whose behalf managing agents of his syndicates bought reinsurance within the Lloyd's market, for which they paid pro rata with his capital. Those reinsurances have not protected him as a policy-holder, nor has Lloyd's regulated the reinsuring syndicates so that those reinsurances would. In his capacity as an insured policy-holder, there are defences and counterclaims under UK and EU insurance law, and in that capacity he arguably is not limited by the Lloyd's Acts. He reserves such defences and counterclaims under both UK and EU insurance law.

Richard A. Tropp
Respondent
18 May 2004