OIC Run-Off Limited and The London and Overseas Insurance Company Limited
Dan Yoram Schwarzmann
Fifth Witness Statement
Exhibits DYS5 1 to 3
Made 16th October 2015

IN THE HIGH COURT OF JUSTICE

Claim Nos 5812 and 5813 of 2014

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF OIC RUN-OFF LIMITED

AND IN THE MATTER OF THE LONDON AND OVERSEAS INSURANCE COMPANY LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 2006, PART 26

FIFTH WITNESS STATEMENT OF DAN YORAM SCHWARZMANN

I, DAN YORAM SCHWARZMANN, Chartered Accountant of 7 More London Riverside, London SE1 2RT, will say as follows:

1. INTRODUCTION

1.1 I am a Licensed Insolvency Practitioner and a partner in the United Kingdom Limited Liability Partnership of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT.

1.2 I refer to my fourth witness statement dated 23 September 2015 in relation to this matter (the "**Fourth Witness Statement**").

1.3 In this witness statement, I refer to a number of capitalised defined terms. Unless the context otherwise provides, those defined terms bear the meanings given to them in the Fourth Witness Statement.

1.4 I make this statement in support of the Applications of respectively Orion and L&O, in each case acting by myself and Mr Evans, seeking an order of the Court sanctioning the Amending Scheme pursuant to Part 26 of the Companies Act 2006.

1.5 The purpose of this witness statement is to exhibit to the Court letters that I have received from three Scheme Creditors in support of the valuation principles, policies and assumptions contained in the Estimation Guidelines.

1.6 I make this statement on behalf of both Orion and L&O by whom I am duly authorised to do so. Save where the contrary is indicated, I make this statement from my own knowledge gained in the performance of my duties as Scheme Administrator of the Companies and as Chairman.

1.7 The following exhibits accompany this statement:

(a) DYS5 1 - a letter dated 28 September 2015 sent to me by Mark J.Plumer of Orrick, Herrington & Sutcliffe (on behalf of his client CITGO Petroleum Corporation, a Scheme Creditor of the Companies);

(b) DYS5 2 – a letter dated 30 September 2015 sent to me by David J.Strasser of Eckert Seamans Cherin & Mellott, LLC (on behalf of a number of his clients who are Scheme Creditors of the Companies); and

(c) DYS5 3 – a letter dated 1 October 2015 sent to me by John Osborne on behalf of Global Risk Capital.

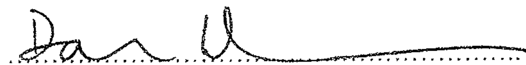
2. SCHEME CREDITOR LETTERS IN SUPPORT OF THE ESTIMATION GUIDELINES

2.1 I refer to paragraph 6.6 of the Fourth Witness Statement, in which I set out my response to the concern raised by Richard Mattick of Covingtons regarding the provisions in the

Estimation Guidelines providing for the valuation of claims on an "all sums net of contributions" basis in situations where a Scheme Creditor has the right (subject to the Original Scheme) to make its claim(s) in a US State in which claims are allocated on an "all sums" rather than on a "pro rata" basis. In that paragraph, I explained why I considered that it would be appropriate to value those claims on an "all sums net of contributions" basis and why it would be inappropriate to value them on a "pure all sums" basis (as suggested by Richard Mattick).

2.2 DYS5 1 to 3 exhibit three letters that I have received from, or on behalf of, Scheme Creditors in support of the Amending Scheme and, in particular, the valuation principles, policies and assumptions contained in the Estimation Guidelines. Each of those letters sets out why the relevant Scheme Creditor considers that it is appropriate and reasonable for their future claims (which have not yet been agreed by the Companies) to be valued on an "all sums net of contributions" basis in the Amending Scheme, instead of a "pure all sums" basis. This is despite the fact that if those Scheme Creditors' claims were valued on a "pure all sums" basis, the value of their claims in the Amending Scheme would be considerably higher.

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



Dan Yoram Schwarzmann

Date: 16th October 2015.

Nos 5812 and 5813 of 2014

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INSURANCE COMPANY LIMITED

AND IN THE MATTER OF

THE COMPANIES ACT 2006, PART 26

FIFTH WITNESS STATEMENT OF DAN YORAM SCHWARZMANN

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EXHIBIT DYS5 1

This is the exhibit marked "DYS5 1" referred to in the fifth witness statement of Dan Yoram Schwarzmann dated this 16 October 2015

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September 28, 2015

Mark J. Plumer
(202) 339-8628
mplumer@orrick.com

Via Electronic Mail

Dan Yoram Schwarzmann
PricewaterhouseCooopers LLP
7 More London Riverside
London SE1 2RT
United Kingdom

Re: Policyholder Submission in Support of Amending Scheme

Dear Mr. Schwarzmann:

I am writing on behalf of CITGO Petroleum Corporation ("CITGO"), a corporation with rights to coverage under policies of excess liability insurance subscribed by The Orion Insurance Company plc and The London and Overseas Insurance Company plc (collectively the "OIC Run-Off Companies"). **CITGO submits this letter in support of the amending scheme of arrangement pursuant to Part 26 of the Companies Act 2006** (the "Amending Scheme"). CITGO requests that you transmit this letter to the Court responsible for deciding whether to sanction the Amending Scheme.

By way of background, CITGO sought coverage from the OIC Run-Off Companies for pollution property damage liability at one of the largest oil refineries in the United States. The Lake Charles Refinery, in operation since the early 1940's, currently refines more than 400,000 barrels of oil per day on a site that is more than 1,500 acres in size. CITGO's insurance claim, related to historic pollution at the refinery, gave rise to a ten-year insurance litigation in Louisiana state court between CITGO and its solvent historic insurers, including the solvent London Market insurers and others. The coverage litigation was focused on approximately 150 insurance policies issued between 1944 and 1980. In connection with the litigation, more than 1 million pages of documents were produced and more than 60 depositions were taken, including several in London, England. CITGO prevailed in a 9-day Phase I trial and a 2-month Phase II trial to resolve all remaining issues was scheduled to commence in January 2015 before the litigation settled as to all solvent defendants.

As insolvents, the OIC Run-Off Companies were not parties to the Louisiana litigation, but the policies they subscribed for the benefit of CITGO were significant.[1] The OIC Run-Off Companies subscribed to more than 50 insurance policies at issue in the litigation, all but one of which did not contain pollution exclusions of any kind. The OIC Run-Off Companies' exposed

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[1] Notably, CITGO previously entered into settlements with the other principal insolvent London Insurers that subscribed to its policies.

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limits exceed US $20 million. A graphic illustrating the policies the OIC Run-Off Companies subscribed to is attached behind Tab 1 hereto.

Although the substance of the settlements with each insurer is confidential, CITGO settled with each and every one of the known historic insurers that subscribed to the historic insurance covering the refinery, including American Motorists Insurance Company, Insurance Company of North America, International Insurance Company, the solvent London Market insurers and several other London insolvent insurers. Multi-year settlement discussions with several of these insurers provided CITGO with a good understanding as to the process of settling such claims and the terms upon which such settlements are achieved.

CITGO has presented a significant loss to the OIC Run-Off Companies that included certain known liabilities and costs and certain estimated future costs based on assumed future liabilities and received an agreed indicative value letter. CITGO's agreement in principle of its claims with the OIC Run-Off Companies took six years, and the process was consistent with the process engaged in with the solvent insurers and was considered reasonable by CITGO. Indeed, there was a better than average level of transparency, as described in the Estimation Guidelines attached to the Amending Scheme. Although CITGO and the OIC Run-Off Companies disagreed on the value of CITGO's site estimate of damages for future site cleanup, the negotiation resulted in an estimate that CITGO ultimately deemed reasonable consistent with the status of the OIC Run-Off Companies and future uncertainties. Although CITGO and the OIC Run-Off Companies disagreed on the application of the governing law, the negotiation ultimately resulted in a valuation that CITGO deemed reasonable. CITGO also believes that, for settlement purposes, the methodology applied by the OIC Run-Off Companies to allocate costs to triggered policies was reasonable. The OIC Run-Off Companies disclosed that they applied an "all sums" methodology *net of contribution*. CITGO believes this is a fair methodology, as it allocates the loss to the block of available coverage (including all known insurers) without requiring CITGO to pay for years when insurance was unavailable (this methodology also does not saddle the policyholder with paying for years where there are gaps in coverage or coverage issued by insolvent insurers, though these were not at issue in the CITGO negotiation).[2] CITGO believes that the methodology in the Estimation Guidelines, as applied to CITGO, was fair and reasonable and would be fair and reasonable if applied to other creditors like CITGO.

After more than a decade of effort and expense (including a six year negotiation with the OIC Run-Off Companies), CITGO now has completed its claim for historic insurance coverage for environmental property damage except for the open claim against the OIC Run-Off Companies. CITGO would like to consummate this process, including its settlement with the OIC Run-Off

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[2] In light of its experience with other insurers, CITGO would have found it surprising if the OIC Run-Off Companies had agreed to an all sums allocation methodology for settlement purposes that did not take contribution rights into account.

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Companies, and be paid as soon as possible at the highest possible final payment percentage. CITGO understands that the difference in estimated payment percentage could vary as much as 7 percent (71% versus 78%). CITGO is not in favour of the OIC Run-Off Companies running off claims under the Original Scheme until 2035 or longer, at CITGO's expense, and instead favours the sanction of the Amending Scheme.

Very truly yours,

Mark J. Plumer

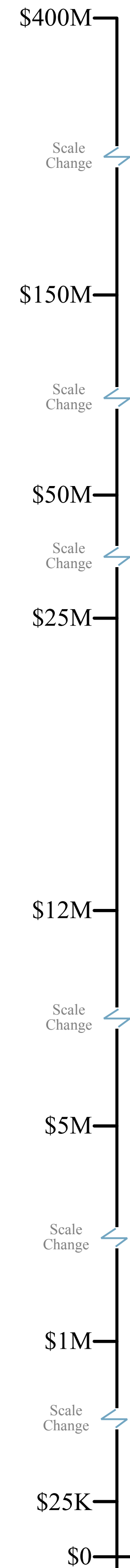
cc: Dana A. Burch, Esq.
Matthew D. Hann, Esq.

TAB 1

Orion Insurance Co. Ltd., London & Overseas Insurance Co. Ltd. and Hull Insurance Co. Ltd.

As of August 2009

Limits of Liability



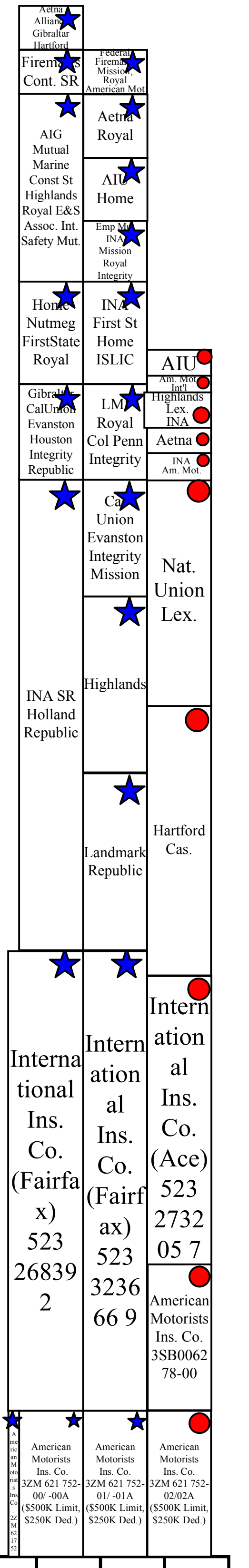
Orion, London & Overseas and Hull Participation

Gap in Coverage

Self-Insured Retention

Qualified Pollution Exclusion

Absolute Pollution Exclusion



1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987

Policy Period

LECG

Confidential and Protected Settlement Communication
Prepared for Settlement Purposes Only, at the Direction of Counsel

OIC Run-Off Limited and The London and Overseas Insurance Company Limited

Dan Yoram Schwarzmann
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Exhibits DYS5 1 to 3

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EXHIBIT DYS5 2

This is the exhibit marked "DYS5 2" referred to in the fifth witness statement of Dan Yoram Schwarzmann dated this 16 October 2015

ECKERT SEAMANS
ATTORNEYS AT LAW

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David J. Strasser
dstrasser@eckertseamans.com
412.566.6175

September 30, 2015

Mr. Daniel Schwarzmann
Joint Scheme Administrator
OIC Run-Off Limited and the London & Overseas
Insurance Company Ltd.
PricewaterhouseCoopers LLP
7 More London Riverside
London, SE1 2RT

Re: OIC Run-Off Limited and the London and Overseas Insurance Company Limited; collectively referred to as the "Companies".

Dear Dan:

I am writing to provide you with my views concerning the Estimation Guidelines – Appendix 2 to the proposed Amending Scheme of Arrangement as they relate to policyholders' APH claims. As you know, I represent a number of policyholder Creditors with agreed, outstanding and incurred but not reported claims against the Companies. As a lawyer specializing in insurance coverage issues, I have a wealth of experience evaluating, presenting and negotiating, *inter alia*, asbestos and pollution liability claims with insolvent insurers in the United Kingdom, United States and Bermuda. In addition, I have extensive experience litigating and negotiating those same coverage claims against solvent insurers.

I have been a member of the Creditors' Committee of the Companies from its inception and have always attempted to fulfill my obligation to act at all times in the best interest of Scheme Creditors as a whole and am submitting this letter in accordance with that obligation.

Based on my experience, it is my view that the Estimation Guidelines contained in the proposed Amending Scheme of Arrangement are fair and reasonable and mirror, to the extent practicable, the results that a policyholder would be likely to achieve if it were able to litigate, and litigated, against the Companies in the United States. As explained in greater detail below, I reach this conclusion for the following reasons:

1. The Estimation Guidelines provide clear and detailed guidance to Creditors.

2. The evaluation techniques utilized in the Estimation Guidelines are consistent with sound market practice and are utilized by insurers and policyholders in evaluating claims in the

ordinary course. They have also been used in other insolvent insurer Schemes approved by the English courts.

3. While detailing the evaluation techniques that the Scheme Administrators intend to utilize, the Estimation Guidelines provide Creditors with the flexibility to use any supportable approach to estimate their claims.

4. The Estimation Guidelines ensure that policyholders' claims will be evaluated taking into account previous judgments and settlements with the Companies' other insurers as well as utilizing the appropriate state's or country's law in evaluating coverage issues.

5. The Estimation Guidelines properly reject a "pure all sums" estimation allocation in favor of an "all sums net of contribution" estimation allocation since it represents the most likely outcome that a US court would reach, reflecting the various adjustments and apportionments due to and from the selected insurer while at the same time giving effect to the practical realities of the Companies' insolvency and permitting the Creditor to pursue recovery of those adjustments directly from its other insurers.

The Estimation Guidelines Provide Clear and Detailed Guidance, Utilizing Accepted Techniques While Providing Flexibility to the Policyholder

The detailed guidance contained in the Estimation Guidelines will prove helpful to policyholders in preparing their claims to be submitted under the Scheme. This is in stark contrast to the guidance given in the U.S. in those few jurisdictions in which estimation of claims is permitted in the context of the insolvency of an insurer. For example, administrative order 49 in the Transit Casualty Liquidation, which set forth a final bar date and permitted the estimation of IBNR claims, required Creditors to "*file the existing evidence of their current, unresolved claims and any actuarial evidence (or another accepted method of valuing claims with reasonable certainty), at their present value, of future claims that may be covered by a Transit policy or other contract by 3/15/2001. After that date, no new claims or evidence of claims shall be accepted or reviewed by the Special Deputy Receiver*".

Here, the Estimation Guidelines provide detailed guidance for policyholders regarding the information that should be submitted in connection with the presentation of non APH, asbestos, environmental pollution and health hazard claims as well as a discussing the methodologies that will be used to evaluate those claims. Moreover the Estimation Guidelines expressly provide the Creditor with the flexibility to utilize other projection techniques where the Creditor considers these techniques to be appropriate, provided that such techniques are well supported and that they use assumptions that can reasonably be justified.

In short, the Estimation Guidelines track the general concepts and techniques that have been in use and accepted by Creditors and approved by English Courts in the past to resolve their

claims in connection with other insolvent Schemes of Arrangement. Indeed, these are precisely the same techniques used by policyholders and solvent insurers in evaluating these claims.

Taking into Account Previous Judgments and Settlements and Applying the "Correct" Law Insures that Claims are Resolved Consistent with the Manner in Which Claims were Resolved Against Solvent Coinsurers

The Estimation Guidelines, by taking into account previous judgments and settlements and by using the appropriate law in evaluating coverage issues, should ensure that the evaluation of claims against the Companies is conducted in a manner consistent with the results obtained by the policyholders in connection with their dealings with the Companies' other insurers.

Again, these provisions are in sharp contrast to the "fair and appropriate" treatment that policyholders' claims receive in insolvency proceedings in the US where liquidators routinely ignore judgments and settlements with other insurers when evaluating claims against an insolvent insurer, forcing the policyholder to relitigate its claim. For example see *Lac D'Amiante du Quebec v. American Home Assurance Co.*, 864 F.2d 1033 (3rd Cir 1988) where the court vacated a previous judgment against insolvent insurer Midland and permitted Midland to re-litigate the claims against it in the New York Receivership Court, applying a different state's law, resulting in the claim being valued at zero, not $6.2 million as previously found against Midland.

Similarly, in the US, liquidators routinely argue that the law of the state in which the insolvency proceeding is pending should be applied to all claims. See for example *In re The Liquidation of Integrity Insurance Company,* (Superior Ct, Bergen County, Dec. 3, 2010) where the court held that New Jersey law applied to all claims in the Integrity estate finding that due to its insolvency, New Jersey had a compelling interest in the liquidation proceedings and there was no just reason to allow creditors from foreign states to obtain preferences over creditors in the domiciliary state by applying a different law. Applying a different law than that applied to the treatment of the same claims against a policyholder's solvent insurers can result in drastic differences in the outcome of the coverage analysis.

Moreover, while other States have held that the liquidator must apply a conflict of law analysis without regard to the liquidation of the insurer[1], even in those instances there is a chance that the policyholder will not obtain the same result it has achieved against its solvent insurers. For example, notwithstanding the fact that in litigation with its solvent insurers a policyholder had obtained the application of law favorable to coverage, the liquidator argued that under New York choice of law rulings, a different state's law applied, one which resulted in no coverage obligation for the insolvent insurer.

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[1] See for example *Matter of the Liquidation of Midland,* 16 N.Y. 3d 536 (2010) and *Viacom, Inc. v. Transit Casualty Co.,* 138 S.W. 3d 723 (Mo. 2004).

The Estimation Guidelines Properly Reject a "Pure All Sums" Allocation Methodology in Favor of an "All Sums Net of Contribution" Allocation Methodology

I understand that certain Creditors have taken issue with the proposed Amending Scheme's treatment of those claims which would (absent the existing schemes and the insolvency of the Companies) be determined pursuant to the law of States that have adopted a so called "all-sums" allocation of loss methodology. I understand that those Creditors believe that it is not appropriate that the value of their claims be reduced to reflect the liability to the Creditor of other insurers. Based on my experience, the objection is misplaced and without merit because the liability of the Creditor's other insurers would most certainly be reflected in the outcome of proceedings taken in an "all sums" state. The approach favored by the objectors ignores well settled legal principles and practical realities. Indeed, while States that apply an all-sums allocation methodology permit the policyholder to select one year in which to place its loss, those courts typically permit the selected insurer(s) to obtain contribution from other triggered insurers. See for example *J. H. France v. Allstate Ins. Co.*, 626 A.2d 502 (Pa. 1993) where the court while adopting an "all sums" allocation methodology, expressly found that "*[t]here is no bar against an insurer obtaining a share of indemnification or defense costs from other insurers under 'other insurance' clauses or under the equitable doctrine of contribution*".

In the current situation involving claims against an insolvent insurer, recognizing claims on a "pure all sums" basis without regard to any contributions due from other insurers would, in addition to creating a windfall to Creditors entitled to "all sums", saddle the Companies and ultimately the other Creditors, with the Hobbesian choice of overpaying on some claims (*i.e.* granting a preference) or incurring significant costs and delays associated with pursuing claims against that Creditor's other solvent insurers seeking contribution.

As an initial matter, I would point out that an injunction has been issued by the United States Bankruptcy Court for the Southern District of New York precluding the filing of any litigation against the Companies in the US. Thus it is extremely unlikely that a Creditor could pursue such a claim in the first instance against the Companies.

Even if the injunction did not create an impediment to a creditor pursuing such a strategy, the creditor would be required to make a potentially **binding** selection of the insurers and years into which to slot its loss at the time it submitted its claim to the Companies. In other words, in order to institute litigation on a pure all sums basis, the Creditor must make a choice of what year into which to slot the loss. Having made that choice, courts and other insurers will be reluctant to permit the policyholder to change course and pursue coverage on a different basis. In my experience, this is a choice that policyholders are reluctant to make in any litigation until forced to do so, given the uncertainty of litigation. Moreover, in my experience, policyholders choose a year into which to slot a loss in order to maximize coverage. That is achieved by selecting years without deductibles, retentions, retrospective premiums and insolvent insurers.

Thus, given the choice of pursuing coverage from a policy year with insolvent insurers verses one without insolvent insurers, a rational policyholder would select the year without insolvent coverage. Finally, I note that a creditor recognizing a claim against the Companies on a "pure all sums" basis could actually hamstring that creditor in its pursuit of claims against other insurers because it will have selected a sub-optimal year. This disadvantage does not exist when "all sums" claims are allocated on an "all sums net of contributions basis" in that the insured will be compensated by the Companies after allowing appropriately for contributions to and from other triggered policies across the whole of the relevant coverage block.

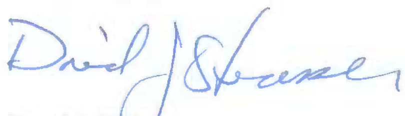
Given the reluctance of policyholders to make this selection and the overall uncertainty of litigation, in my experience, coverage litigation in the United States typically involves policyholders suing all potentially triggered insurers and then resolving the claims against them either through litigation or settlement. In the unusual situation in which only one insurer, or insurers from only one policy year, is or are sued, that insurer or those insurers, in order to have all issues resolved in a single litigation, will attempt to join the other potentially responsible insurers. Thus, as a practical matter, litigation in "all sums" States does not usually result in one insurer, or one set of insurers, paying the policyholder and then seeking contribution from other insurers; all issues, including the insurers' contribution claims are resolved in the same action. Indeed, in coverage litigation brought by my client Westinghouse Electric Corporation for coverage for asbestos claims, the judgment obtained against the "selected " insurers on an "all sums" basis was reduced by the contribution due to those insurers from other triggered insurers. See *Westinghouse Electric Corporation v. American Home Assurance Co.*, 2004 WL 187864 (N.J. Super Ct. App. Div., July 8, 2004).

Finally, the burden of seeking contribution from other triggered insurers should not be placed on the insolvent insurer. Since, as discussed above, the Companies will not be involved in any coverage litigation brought by the policyholder, it is the policyholder that is in the best position to pursue coverage from the other insurers if it so desires. Moreover, given that these estimated claims may not be crystalized for some time in the future, a pre-requisite to the Companies being able to obtain any contribution against other insurers, an obligation placed upon the Companies to pursue solvent insurers for their share will further delay the closure of the estate, the very benefit that the Amending Scheme is seeking to provide Creditors. The other Creditors would also be prejudiced by the extensive costs that would be incurred by the estate if it were forced to pursue these claims. In fact, I am unaware of any liquidation court in the US or elsewhere that has placed the burden on an insolvent carrier to pursue litigation against other solvent insurers to recover contribution from solvent insurers when it could provide a mechanism to provide the credit against the amount due from the insolvent insurer. To the contrary, my experience has been that the liquidator will view the insolvent insurer as the "insurer of last resort," requiring the policyholder to pursue all other possibilities of coverage before recognizing a claim against the insolvent insurer.

ECKERT SEAMANS
ATTORNEYS AT LAW

In conclusion, it is my view that the Estimation Guidelines contained in the proposed Amending Scheme of Arrangement are fair and reasonable and mirror, to the extent practicable, the results that a policyholder might expect if it were to litigate against the Companies in the United States. Please let me know if you have any questions regarding the above.

Very truly yours,



David J. Strasser

DJS/jcf

OIC Run-Off Limited and The London and Overseas Insurance Company Limited

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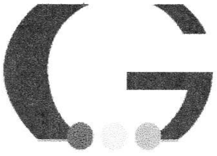
EXHIBIT DYS5 3

This is the exhibit marked "DYS5 3" referred to in the fifth witness statement of Dan Yoram Schwarzmann dated this 16 October 2015



Global Risk Capital Advisors LLC

515 North Flagler Drive
Suite P-300
West Palm Beach,
FL 33041
www.g-risk.com

DY Schwarzmann
Chairman of the Scheme Meetings
convened pursuant to the order of
Sales J. dated 7th Oct 2014
c/o PricewaterhouseCoopers LLP
7 More London Riverside,
London, SE1 2RT

1st October 2015

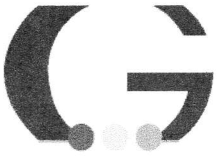
Dear Sirs,

Global Risk Capital ("GRC") was formed in 2001 to purchase claims against insolvent insurance companies. Since formation GRC has purchased almost 100 claims against OIC Run-Off Limited and London & Overseas Insurance Company Limited (the "Scheme Companies") and in total over $2bn in claim values against insurers worldwide. In addition GRC has acted as agent and consultant in dozens more claims where we have been retained by policyholders in order to pursue claims against insolvent and solvent London Market insurers and Lloyd's of London.

We understand that certain policyholders or their agents have been objecting to the Estimation Guidelines in the proposed Amending Scheme of Arrangement (the "Amending Scheme") on the basis that a pure "all sums" allocation should be applied rather than an "all sums net of contribution" allocation ("ASNOC"), in situations where "all sums" is applicable.

Whilst "all sums" has differing meanings in each of the very few US States where it is applied, its primary concept is one whereby, when more than one Comprehensive General Liability policy covers loss that has occurred over several policy periods, each policy issued by each insurer is separately obligated to indemnify for all sums the policyholder may become liable to pay as damages. Further, most of the "all sums" jurisdictions permit the policyholder to select an insurer that will assume the burden of defending and indemnifying.

This issue is particularly significant in asbestos bodily injury and environmental liability claims where the loss takes place over many years or even decades and each of the policy years in question is triggered. The insured in an "all sums" jurisdiction would argue that it has the right to choose a particular insurer or a particular year against which to claim the entirety of its loss, often thereby avoiding insolvent insurers.



In the event that an insurer is then obligated to pay more than its pro rata share of the loss (based on time on risk, or similar sharing of the overall loss) such insurer would then have contribution claims against its other insurers on the coverage block. The Amending Scheme reflects this position by calculating the "all sums" loss and deducting the contributions receivable from other insurers. The Scheme Companies do not seek to take into account any period of no insurance or other insolvents in the calculation of ASNOC.

This approach reflects the practical realities of the situation where a policyholder sues only one of its insurers in a pure "all sums" jurisdiction, in that the target insurer will invariably join its solvent other insurers on the coverage block to the action as third parties. In the event that judgement is eventually given the judge would allocate between all the insurers in question, not allocate to one insurer and require it to bring contribution claims against its other insurers on the coverage block. No allocation would be given to insolvent insurers, who would not in any event likely be a party to the action, nor would there be any allocation to the policyholder, either for gaps in coverage or insolvencies. This would therefore be, in practice, an all sums net of contribution allocation precisely equivalent to that proposed in the Amending Scheme.

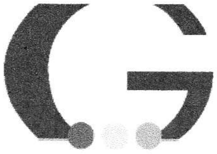
Our prior experience

Our prior negotiations with the Scheme Companies, together with our dealings with other UK and US insolvents have consistently been on a pro rata or, where appropriate, an ASNOC basis. Whilst we have negotiated for the highest settlement values possible taking into account the specific circumstances of each case, we have accepted that a valuation on an ASNOC basis fairly reflects the value of our claims, taking into account what might be achieved in a litigation and also our historical experience of settling numerous such claims in the market.

We highlight that the Scheme Companies' insolvent status is especially important in the above conclusion, given the limited funds available. A claim paid by an insolvent on an "all sums" basis would necessarily reduce the ultimate dividend percentage available to all policyholders of the insolvent. Further to the extent that it could be argued that the insolvent would enjoy the same rights of contribution as a solvent insurer, the expense which would be incurred in prosecuting such claims against other insurers would again reduce the ultimate dividend percentage available to policyholders. In addition the time such claims would take – likely against dozens of foreign and domestic insurers – could add years to the life of the insolvent, again reducing the ultimate distribution by virtue of further annual run-off costs being incurred.

Settlements and Commutations

During the 1990's and 2000's Lloyds of London, and many of the solvent London insurance companies entered into "London market settlements" with hundreds of policyholders, either as partial settlements



of particular loss types such as environmental or asbestos bodily injury, or as full policy buy-backs whereby any coverage under the settled policies was extinguished.

These settlements were negotiated on the basis of a sharing of liability between the London Market insurers. In general, an overall settlement amount was agreed with the policyholder for all of the London market policies, but that settlement amount was then allocated to each individual London Market insurer in schedules to the settlement agreement, including the insolvents. These "London market settlements", including allocations against all relevant insurers where "all sums" applied, rather than against individual targeted insurers on a pure "all sums" basis, were the genesis of GRC; the payment to policyholders of fair value for their rights against their insolvent insurers.

Future Insolvencies

Application of ASNOC will have no material prejudicial impact on policyholders in the event of future insolvency of another of its insurers. Where relevant state law provides for an "all sums" allocation to be applied, under the proposed Amending Scheme, the Scheme Companies will pay their appropriate allocable share of claims based on ASNOC. The remaining unrecovered amount of the loss will remain payable by the other insurers of the policyholder. In the event of a further insolvency, the then remaining insurers will pay the entirety of the unpaid outstanding loss, grossing up and absorbing the further insolvent's share to ensure that the policyholder will not be prejudiced.

Conclusion

Settlement agreements and litigation/judgement scenarios between policyholders and their solvent insurers are not entered into on a pure "all sums" basis. We, and other settling creditors, recognise that it would be inequitable in the circumstances and would not reflect reality in either a litigation/judgement or settlement scenario. Given this, the Scheme Companies' proposal of ASNOC is a fair reflection of how the market acts in practice and it does not, in any material way, prejudice the policyholder in being able to recover the full amount of its loss.

To allow certain policyholders to claim against the Scheme Companies on a pure "all sums" basis would also be prejudicial to those policyholders whose claims have already been settled on an ASNOC basis.

Yours faithfully

John Osborne
Managing Member