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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re :  
 : Chapter 15  
Petition of David McGuigan, as foreign :  
representative of : Case No. 11-[\_\_\_\_] (\_\_\_\_)  
 :  
Tokio Marine Europe Insurance Limited :  
 :  
Debtor in a Foreign Proceeding. :  
 :  
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**DECLARATION OF DAVID MCGUIGAN IN SUPPORT OF VERIFIED PETITION  
UNDER CHAPTER 15 FOR RECOGNITION OF A FOREIGN PROCEEDING AND  
MOTION FOR PERMANENT INJUNCTION AND ORDER**

David McGuigan, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury as follows:

1. By letter dated November 11, 2010, Tokio Marine Europe Insurance Limited (formerly known as The Tokio Marine & Fire Insurance Company (U.K.) Limited) (the “Scheme Company” or “Debtor”) duly appointed me as its foreign representative for the purpose of filing a petition with this Court for recognition of a foreign proceeding and additional relief under chapter 15 of title 11 of the United States Code (the “Bankruptcy Code”). For approaching seven years, I have acted as a representative of the Scheme Company in respect of the Scheme Business. In that capacity, I have given instructions on its behalf and worked very

closely with the Scheme Company and its other UK service providers. On December 2, 2010, the English Court, as defined below, entered an Order which declared, affirmed and certified that I had been duly appointed as the foreign representative of the Scheme Company. The Scheme Company is subject to an adjustment of debt proceeding (the “English Proceeding”) commenced in the High Court of Justice of England and Wales (the “English Court”). The Scheme Company is bound by a scheme of arrangement (the “Scheme”)¹ pursuant to Part 26 of the Companies Act 2006 (England) (formerly sections 425 to 427 of the Companies Act 1985) (the “Companies Act”) by an order of the English Court, and is duly authorized to seek ancillary assistance of this Court to aid in the implementation of the Debtor’s Scheme.

2. Except as otherwise noted, the facts and matters stated herein are gained from information within my own knowledge and belief and/or acquired by me in the performance of my duties in relation to the Scheme Company. If I were called upon to testify, I would testify competently to the facts set forth in this declaration.

3. As the duly appointed foreign representative of the Scheme Company, I submit this declaration in support of the Verified Petition Under Chapter 15 For Recognition Of A Foreign Proceeding And Motion For Permanent Injunction (the “Verified Petition and Motion”) filed contemporaneously herewith for recognition of a foreign main proceeding, for a permanent injunction, and related relief.

#### **SCHEME OF ARRANGEMENT UNDER THE COMPANIES ACT**

4. A scheme of arrangement is a well-established mechanism under English law that has been used regularly for dealing equitably with the closure of the run-off of insurance and/or reinsurance business.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Scheme or the Verified Petition and Motion.

5. Under the Companies Act, a scheme of arrangement is a compromise or arrangement between a company and its creditors or any class of creditors used to restructure their rights and liabilities. It may be used to permit an orderly wind-up of all, or a portion of, a company's business. A scheme of arrangement becomes legally binding on the company and on all of the creditors to whom it applies if:

- (a) a majority in number representing not less than 75% in value of each class of creditors, present and voting in person or by proxy, vote in favor of the scheme of arrangement at a meeting or meetings convened for such purpose with leave of the English Court;
- (b) the English Court subsequently sanctions the scheme of arrangement; and
- (c) a copy of the order of the English Court to that effect is delivered to the Registrar of Companies in England and Wales (the "Registrar of Companies").

6. There are no statutorily-prescribed contents for a scheme of arrangement and it is therefore a flexible mechanism. The use of schemes of arrangement enables some perceived disadvantages of formal liquidation procedures (for insolvent insurance companies) or of an extended run-off (for solvent insurance companies) to be mitigated so as to achieve expedited valuation and payment of creditors' claims and to reduce the costs of managing the run-off of an insurance company's business.

7. A scheme of arrangement is a method of binding a company and its creditors to a proposed course of action for the benefit of all involved. Schemes have been widely used by solvent insurance companies to bring finality to certain or all of their lines of business, and by insolvent companies as an alternative to liquidation. A scheme may contain simplified procedures for establishing and settling creditors' claims (whether in full or by way of distribution of a dividend out of remaining assets).

8. Under the Companies Act, there is no requirement that the company be insolvent. Many solvent insurers have proposed schemes of arrangement in the United Kingdom similar to the Debtor's Scheme, and have obtained sanction thereof from the English Court. Many of these schemes of arrangement have been approved by the Bankruptcy Courts of the United States pursuant to former section 304 and chapter 15 of Bankruptcy Code.<sup>2</sup>

### **THE SCHEME COMPANY**

9. The Scheme Company is an insurance company. It is incorporated under the laws of England and Wales and maintains its registered office in England.

10. The Scheme Company has conducted insurance business in the London insurance market since it was incorporated in 1970. The Scheme Business has been in solvent "run-off" since 2004. An English corporation, Pro Insurance Solutions Limited ("Pro"),<sup>3</sup> was appointed to manage the run-off of the Scheme Business in 2005 and is the Scheme Manager. I am informed by Pro that the vast majority of the policies that could give rise to Scheme Claims are governed by English law. The Scheme provides that it shall be governed and construed in accordance with the laws of England, and confers exclusive jurisdiction upon the English Court

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<sup>2</sup> See, e.g., In re Allianz Global Corporate & Specialty (France) et al., Case No. 10-14990 (Bankr. S.D.N.Y. 2010) (SMB); In re Greyfriars Ins. Co. Ltd. et al., Case Nos. 07-B-12934 (JMP) through 07-B-12944 (Bankr. S.D.N.Y. 2007) (JMP); In re Oslo Reinsurance Co. (UK) Ltd and Oslo Reinsurance Co. ASA, Case No. 07-12211 (Bankr. S.D.N.Y. 2007) (RDD); In re Axa Ins. UK plc, et al., Case Nos. 07-12110 to 07-12113 (Bankr. S.D.N.Y. Aug. 15, 2007) (solvent scheme of arrangement of members of insurance pool sanctioned by the High Court and recognized under Chapter 15); In re Axion Ins. Co. Ltd., Case No. 07-12108 (Bankr. S.D.N.Y. Aug. 9, 2007) (solvent scheme of arrangement sanctioned by the English Court and recognized under Chapter 15); In re Europäische Rückversicherungs-Gesellschaft in Zurich, Case No. 06-13061 (Bankr. S.D.N.Y. Jan. 22, 2007) (same); In re Gordion Runoff (UK) Ltd., Case No. 06-11563 (Bankr. S.D.N.Y. Aug. 29, 2006) (same); In re Lion City Run-off Private Ltd., Case No. 06-10461 (Bankr. S.D.N.Y. April 13, 2006) (same); In re La Mutuelle du Mans, Assurances IARD, Case No. 05-60100 (Bankr. S.D.N.Y. Dec. 7, 2005) (same); In re Unione Italiana (UK) Reinsurance. Co. Ltd., Case No. 04-17989 (Bankr. S.D.N.Y. June 8, 2005) (solvent scheme of arrangement sanctioned by the English Court and recognized under section 304); Aviation & General Ins. Co. Ltd., Case No. 04-13499 (Bankr. S.D.N.Y. Aug. 5, 2004) (same); In re Ludgate Ins. Co. Ltd., Case No. 04-10590 (Bankr. S.D.N.Y. April 18, 2004) (same); In re The Nichido Fire & Marine Ins. Co. Ltd., Case No. 01-15987 (Bankr. S.D.N.Y. Feb. 13, 2002) (same).

<sup>3</sup> Pro, a company incorporated in England, is a provider of (re)insurance outsourcing and consultancy services. Among other activities, Pro specializes in managing and administering the run-off of (re)insurance businesses.

to hear and determine any dispute arising out of the interpretation, construction or operation of the Scheme, and the Scheme Creditors agree to submit to the exclusive jurisdiction of the English Court for such purposes.

11. The Scheme Company conducts its business operations from its offices in the United Kingdom and employs approximately 170 employees in the United Kingdom. The Scheme Company's balance sheet as of December 31, 2010 shows total unconsolidated assets of approximately \$724 million (using the exchange rate \$1:0.62(GBP) published in the Financial Times as of June 28, 2011), substantially all of which are held in or connected to England. The Scheme Company estimates that approximately 65% of its total assets are located in the United Kingdom and approximately \$136 million of its total liabilities are owed to policyholders in the United Kingdom. The Scheme Business (which is only part of the Scheme Company's business) is all London market reinsurance business written through the use of brokers in the United Kingdom. The Scheme Company estimates that it has approximately 97,000 policyholders worldwide in respect of all business written by it. In the United Kingdom, there are 237 policyholders with claims subject to the Scheme.

12. The Scheme Company is licensed to write surplus lines of insurance in New York and renews that license annually. In connection with such license, the Scheme Company is required to maintain funds in a bank account in the United States. Accordingly, the Scheme Company maintains approximately \$6 million in an account at the New York branch of Union Bank. In addition, the Scheme Company has assets consisting of, among other things, reinsurance recoverables due from entities located in the United States, including in this District.

13. The Scheme Company has Scheme Creditors located throughout the United States including in New York. Specifically, the Scheme Company has approximately 53

policyholders in the United States holding approximately 481 policies subject to the Scheme. Of the 53 U.S. policyholders, 9 are New York-based (the largest single grouping of U.S. policyholders, who also represent the majority of the Scheme Company's U.S. exposure). The Scheme Company estimates that its potential exposure to policyholders in respect of Scheme Business in the United States is approximately \$244 million.

### **SCHEME BUSINESS**

14. The business with which the Scheme is concerned (the "Scheme Business") is all reinsurance business. The Scheme Company underwrote non-life insurance and reinsurance business in the London insurance market under the name The Tokio Marine & Fire Insurance Company (U.K.) Limited (between 1970 and 2002) and, from 2002 onwards, under its present name. This business was mainly non-marine and included traditionally long-tail policies exposed to asbestos, pollution and health hazard-type risks emanating principally from Europe and the United States. The Scheme relates to only part of the Scheme Company's business.

15. The Scheme Business includes certain of the reinsurance business written by the Scheme Company under underwriting stamps T0304, T0403 and T0502 (subject to an exclusion for certain T0502 stamp contracts) from 1970 onwards. Details of the Scheme Business and the business excluded from the Scheme are contained at Appendix A to the Scheme at pages 71 to 74, in the Explanatory Statement at page 9, and on the dedicated Scheme website at [www.TMEIScheme.com](http://www.TMEIScheme.com) (the "Website").

16. In addition, the Scheme Business includes all the reinsurance business transferred to the Scheme Company in 1994 by Tokio Reinsurance Company Limited (also known as Tokio Rückversicherungs- Gesellschaft AG and Tokio Compagnie De Reassurance

SA) (“Tokio Re”). Tokio Re was incorporated in Switzerland and operated a branch office in the United Kingdom. The business transferred to the Scheme Company from Tokio Re consisted of:

- (a) all the policies entered into by Tokio Re through its registered branch in the United Kingdom. These policies related to facultative and treaty reinsurance of general business; and
- (b) all the policies entered into by Tokio Re through its head office in Switzerland. These policies related to treaty reinsurance of general business.

17. For the avoidance of doubt, the Scheme Business does not include the following:

- (a) in the case of underwriting stamp T0502, liabilities arising from Engineering and CAR insurances or reinsurances with policy reference numbers commencing “3500”;
- (b) liabilities arising from the business assumed by TMEI as a participating company in the Willis Faber Underwriting (“WFUM”) Pools, which were subject to a separate scheme of arrangement;
- (c) liabilities other than in respect of Scheme Reinsurance Contracts; and
- (d) liabilities in respect of “compulsory insurance” under the laws of the United Kingdom, for example, employers’ liability policies and the compulsory element of motor policies under the laws of the United Kingdom.

18. For a full description of the history of the Scheme Company and the Scheme Business, I respectfully refer the Court to the Scheme and the Explanatory Statement, each of which is attached as Exhibit A of the Verified Petition and Motion.

### **THE SCHEME OF ARRANGEMENT**

19. The Scheme was designed to reorganize the Scheme Company’s business by subjecting its London market reinsurance business to the scheme process so as to enable the Scheme Company to close down its reinsurance department in circumstances where the Tokio Group continues to write new reinsurance business. The Scheme Company continues to write

insurance business in the London insurance market – as mentioned above, the Scheme relates to only part of the Scheme Company’s business. The Scheme Company ceased underwriting the Scheme Business in 2004 and the Scheme Business is presently in run-off. In the normal course, it is estimated that it would take at least another 30 to 40 years to run-off the Scheme Business.

20. Accordingly, the Scheme Company considers that it is in its interests and the interests of Scheme Creditors to finalize the run-off of the Scheme Business through the Scheme in a much shorter time frame than would happen in the ordinary course of a run-off. A true and correct copy of the Scheme applicable to the Scheme Company is attached to the Verified Petition and Motion as Exhibit A. The Scheme Company formulated its Scheme pursuant to Part 26 of the Companies Act with the aim of:

- (a) providing a mechanism for agreeing to or determining Scheme Creditors’ Scheme Claims (including outstanding claims and IBNR (as defined in the Scheme) claims); and
- (b) paying or discharging these claims, as agreed or determined under the Scheme, in full in the shortest practicable time subject to the application of any applicable set-off or time value discount.

21. The Scheme is an “estimation” or “cut-off” scheme. The purpose of the Scheme is to terminate the run-off of Scheme Claims earlier than would happen in the normal course. Accordingly, the Scheme establishes an orderly process by which the present and future Scheme Claims of Scheme Creditors against the Scheme Company in respect of the Scheme Business will be estimated and satisfied at such estimated value. The Scheme will replace a Scheme Creditor’s right to payment in respect of claims that have arisen or may arise under a Scheme Reinsurance Contract against the Scheme Company in the normal course of business with the right to receive payment under the Scheme equal to the Scheme Creditor’s Net Ascertained Claim.

22. To achieve the Scheme's objective (i.e., the crystallization and payment of Scheme Claims in an orderly and efficient fashion), the Scheme establishes a deadline (the "Bar Date") for the submission of Scheme Claims to the Scheme Manager. The Bar Date is 11:59 p.m. London Time on October 12, 2011.

23. Part 1 of the Scheme contains certain preliminary provisions, including definitions used in the Scheme and a guide to interpretation of the Scheme language.

24. Part 2 of the Scheme contains provisions regarding, among other things, (i) the application and purpose of the Scheme, (ii) information regarding Claim Forms and the Bar Date, (iii) adjudication of Disputed Claims, (iv) determination of the value of the claims net of adjustments ("Net Ascertained Claims"), and (v) the effect of the Scheme on the rights of Scheme Creditors.

25. Part 3 of the Scheme contains provisions regarding the determination and payment of Net Ascertained Claims.

26. Part 4 of the Scheme contains provisions regarding, among other things (i) the stay of Proceedings and acts prohibited by Scheme Creditors, (ii) claims for interest, and (iii) payment by means of Security.

27. Part 5 of the Scheme contains provisions regarding the role of the Scheme Manager and its powers, duties and obligations. Pro is the Scheme Manager. The Scheme Manager has the power to manage and control the business and affairs of the Scheme Company for the purpose of implementing the Scheme together with the powers specifically conferred on it by the Scheme.

28. Part 6 of the Scheme contains provisions regarding the Scheme Adjudicator, conflicts of interest which may affect the role and instructions with respect to

vacating and appointing the office of Scheme Adjudicator. The Scheme Adjudicator will act as an independent expert and not as an arbitrator. Under the Scheme, the proposed first Scheme Adjudicator was George Maher of Towers Watson. By virtue of the Convening Order, Mr. Maher was appointed as Vote Assessor for the Creditors' Meeting first convened on March 8, 2011. As a result of his leaving Towers Watson, Mr. Maher resigned from the role of Vote Assessor and Scheme Adjudicator on March 1, 2011. On March 29, 2011, John Birkenhead of HJC Actuarial Consulting Limited was appointed as the replacement Vote Assessor and nominated as Scheme Adjudicator. The Scheme Adjudicator will adjudicate all aspects of a disputed matter, including any matters of fact and law (consulting with other experts if necessary) and determine the value of Disputed Claims. The Scheme Adjudicator is required to be a suitably qualified, independent individual.

29. Part 7 of the Scheme contains provisions regarding the role of Scheme Adviser and his powers, duties and functions. I am the Scheme Adviser. Scheme Creditors may give notice to the Scheme Adviser if they consider that the Scheme is not being operated in accordance with its terms. The Scheme Adviser is required to review and investigate any such complaint and, if he considers that it is justified, advise the Scheme Company and the Scheme Manager on the steps which should be taken to remedy it.

30. Part 8 of the Scheme contains provisions regarding the completion of the Scheme and other general provisions, including, among others, co-operation between Scheme Creditors, the Scheme Manager and the Scheme Company, prohibited payments, notice, and the governing law of the Scheme, which is that of England and Wales.

## SCHEME APPROVAL AND SANCTIONING PROCESS

31. In preparation for the approval of the Scheme and the sanctioning process, the Scheme Company caused an extensive investigation to be made to identify all the policyholders who may be Scheme Creditors (the “Notice Parties”) based on the particular features of their policies, including claims history, the nature of the risks covered by their policies and the likelihood that claims might arise under them. A copy of the Policyholder Identification Report, which details the work done as of November 26, 2010 to identify policyholder addresses, and its results, is attached as Exhibit E to the Verified Petition and Motion.

32. By a letter dated August 28, 2009 (the “Practice Statement Letter” or “PSL”), notice of the formulation of the Scheme and the Scheme Company’s intent to seek permission from the English Court to convene a meeting of its creditors in respect of the Scheme (the “Creditors’ Meeting”), was sent to all 1,505 identified Notice Parties for whom an address had been obtained. A copy of the Practice Statement Letter also was sent to 144 brokers, agents and other intermediaries, requesting that they notify any of their clients that they believed might be affected by the Scheme. As of October 15, 2010, a total of 349 Practice Statement Letters had been returned undelivered to Pro. In respect of 335 of these, Pro subsequently has been able to find an alternative address for the relevant policyholder, and the PSL has been re-sent to such alternative addresses. In respect of 14 of the PSLs returned undelivered, Pro has subsequently discovered that the entities either have been dissolved or did not enter into policies with the Scheme Company in respect of Scheme Business and, therefore, are not Scheme policyholders. A true and correct copy of the Practice Statement Letter is attached as Exhibit F to the Verified Petition and Motion.

33. Although there was no legal requirement for the Scheme Company to do so, the information contained in the Practice Statement Letter was published in (i) England in (a) the Financial Times (UK and worldwide) on September 1, 2009, (b) Insurance Day on September 1, 2009, and (c) the London Gazette on September 1, 2009; and (ii) the USA in (a) Business Insurance magazine on August 31, 2009, (b) The Wall Street Journal (USA edition) on September 1, 2009, and (c) The Wall Street Journal (International edition) on September 1, 2009.

34. The Practice Statement Letter and such notice referred readers to the Scheme Website. The Website was created to facilitate the dissemination of information regarding the Scheme and has contained information in relation to the Scheme since August 2009.

#### **COMMENCEMENT OF THE ENGLISH PROCEEDING**

35. On November 29, 2010, the Scheme Company filed an application with the English Court seeking permission to convene the Creditors' Meeting for the purpose of allowing Scheme Creditors to vote on the Scheme.

36. On December 2, 2010, the English Court conducted a hearing and entered an order (the "Convening Order"), determining that it had jurisdiction over the Scheme Company and directing that the Creditors' Meeting be convened for the purpose of considering and, if thought fit, approving the Scheme (with or without modification). A true and correct copy of the Convening Order is attached as Exhibit G to the Verified Petition and Motion.

37. Among other things, the Convening Order required that, at least 56 calendar days before the Creditors' Meeting, all Notice Parties be sent a Court-approved cover letter (the "Covering Letter") containing copies of (a) the notice convening the Creditors' Meeting (the "Notice"); (b) the Explanatory Statement; and (c) the Form of Proxy and Voting

Form (the “Voting Form”). See Convening Order, at ¶¶ 2-3. The Explanatory Statement contained notice of the Scheme Company’s intention to seek chapter 15 recognition of the Scheme.

38. The Convening Order further required that the Covering Letter and enclosed documents be sent by pre-paid first class mail or airmail addressed to (i) each person or entity of which Pro was aware and which it believed was or might be a Scheme Creditor, and for which it had a current address; and (ii) to each existing broker or successor to a broker known by Pro to have claims within the scope of the Scheme and for which it had a current address, in each case to what Pro reasonably believed to be its last known address. See id.

39. The Convening Order also required the Scheme Company, at least 56 calendar days before the Creditors’ Meeting, to cause to be published an advertisement giving notice of the Creditors’ Meeting. Such notice was advertised on the Website and stated that the (a) Voting Form, (b) Explanatory Statement; and (c) the Scheme rules and appendices thereto (the “Scheme Document”) could be downloaded from the Website or obtained in hard copy, free of charge, by contacting Pro on the contact details contained therein (the “Advertisement”). The Convening Order required that the Advertisement be published once in each of the newspapers and publications listed in the Schedule to the Convening Order or in such further publications as may be deemed appropriate by the Scheme Company. I

40. In accordance with paragraph 6 of the Convening Order, the Advertisements were published in (i) England in (a) the Financial Times (UK edition) on December 20, 2010, (b) Insurance Day on December 20, 2010, and (c) the London Gazette on December 20, 2010; (ii) the USA in (a) Business Insurance magazine on December 20, 2010,

(b) The Wall Street Journal (USA National as part of Global) on December 21, 2010, and (c) The Wall Street Journal (International as part of Global) on December 21, 2010.

41. The Convening Order also permitted the Scheme Company to convene a single Creditors' Meeting on March 8, 2011 (or as soon as reasonably practicable thereafter and in any event on or before July 29, 2011) at Sidley Austin LLP, Woolgate Exchange, 25 Basinghall Street, London EC2V 5HA, United Kingdom. See Convening Order, at ¶ 1. Due to the need to appoint a replacement Vote Assessor and Scheme Adjudicator following Mr. Maher's resignation on March 2, 2011, the Creditors' Meeting was opened and adjourned on March 8, 2011 without any voting taking place. The re-convened Creditors' Meeting was held on April 7, 2011.

42. On April 7, 2011, at the re-convened Creditors' Meeting, Scheme Creditors unanimously voted in favor of the Scheme. Given that the Scheme was approved by the requisite majorities of its Scheme Creditors, the Scheme Company petitioned the English Court for an order sanctioning the Scheme.

43. The English Court has discretion to sanction a scheme of arrangement if it considers that it is proper and fair in all circumstances. In summary, the English Court must be satisfied:

- (a) that the classes of scheme creditors have been properly constituted;
- (b) that the meetings of scheme creditors to consider and vote on the scheme of arrangement were held in accordance with the English Court's order granting leave to convene such meetings;
- (c) that the scheme has been properly explained to the scheme creditors so that they have been able to exercise an informed vote with respect to the scheme;

- (d) that a simple majority in number representing three quarters in value of those present and voting in person or by proxy of each class of scheme creditors has voted in favor of the scheme of arrangement;<sup>4</sup> and
- (e) that the scheme should be sanctioned. This last element requires the English Court to consider whether the scheme of arrangement is such that an intelligent and honest person, who is a member of the relevant class of creditors and acting in respect of his interest, might reasonably approve it.

44. Provided that the English Court is satisfied that the foregoing five requirements have been met, it generally will sanction a scheme.

45. On April 15, 2011, the English Court, upon notice and a hearing, entered an order sanctioning the Scheme (the “Sanction Order”). A true and correct copy of the Sanction Order is attached as Exhibit B to the Verified Petition and Motion. The Scheme became effective on April 15, 2011 for all purposes upon the delivery of a copy of the English Court’s Sanction Order to the Registrar of Companies.

#### **IMPLEMENTATION OF THE SCHEME**

46. By letter dated April 28, 2011, the Scheme Manager caused to be sent by post, to each Scheme Creditor known to it as of the Effective Date, and for whom it had a current address: notification of the Effective Date, a Claim Form and notice of the Bar Date. Such notice also has been placed on the Website and advertised in (i) England in (a) the Financial Times (UK and worldwide) on May 3, 2011, (b) Insurance Day on May 3, 2011 (c) the London Gazette on May 3, 2011; and (ii) the USA in (a) Business Insurance magazine on May 2, 2011, (b) The Wall Street Journal (USA National as part of Global) on May 3, 2011 and (c) The Wall Street Journal (International as part of Global) on May 3, 2011.

47. Claim Forms sent to Scheme Creditors included details of all known Scheme Reinsurance Contracts which, in the reasonable opinion of the Scheme Manager, might

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<sup>4</sup> The English Court retains discretion to waive any immaterial departure from the directions provided in the Convening Order.

give rise to that Scheme Creditor having a Scheme Claim, together with details of any claim arising under or balance in relation to such Scheme Reinsurance Contract which, as at the Effective Date, was valid and due having been agreed by or on behalf of the Scheme Company and the party to which it was due, but which had not been paid by it or discharged by the operation of set-off or otherwise (“Unpaid Agreed Claims”).

48. Scheme Creditors are required to submit their claims by the Bar Date, which is 11:59 pm London Time on October 12, 2011. Where a Claim Form shows an Unpaid Agreed Claim, such claim will be deemed to have been submitted by the Bar Date even if the Scheme Creditor does not return its Claim Form by the Bar Date. Scheme Creditors will therefore receive settlement of Unpaid Agreed Claims even if they do nothing.

49. Within 180 days after the Bar Date, the Scheme Manager will attempt in good faith to negotiate a mutually agreed value for each Scheme Creditor’s Scheme Claim. If a value is agreed upon, it shall become that Scheme Creditor’s Agreed Claim.

50. If no agreement has been reached by the end of this 180-day period, the Scheme Manager will send the Scheme Creditor an Inwards Valuation Form setting out either (i) the amount that the Scheme Manager believes is due in respect of each of that Scheme Creditor’s unagreed Scheme Claims or (ii) the total amount that the Scheme Manager believes is due to that Scheme Creditor (including any Agreed Claims). The Scheme Creditor has 56 days from such notification to dispute any amount set out in its Inwards Valuation Form by way of a Dispute Notice, failing which it shall be deemed to have accepted the notified value. Where a Scheme Creditor sends a Dispute Notice to the Scheme Manager, within 28 days after receipt of the notice, the Scheme Manager shall refer the Disputed Claim(s) to Adjudication. The adjudication procedure is designed to deal with claims as expeditiously, economically and fairly as possible.

Unless the Scheme Adjudicator acts dishonestly or beyond his scope of authority, his decision will, with respect to the Scheme Creditor's Agreed Claim, so far as English law permits and in the absence of Manifest Error, be final and binding on the Scheme Company, the Scheme Manager and the Scheme Creditor concerned as that Scheme Creditor's Agreed Claim.

Discounting will not be applied to Scheme Claims.

51. The result of these processes will be that a Valuation Statement will be produced for each Scheme Creditor setting out the balance in favor of the Scheme Creditor or the Scheme Company. The Valuation Statement will be sent to each Scheme Creditor as soon as reasonably practicable. The Valuation Statement will set out the total value of each Scheme Creditor's Agreed Claims, and for those who are reinsurers of the Scheme Company or otherwise are susceptible to set-off under the Scheme, their offset balances. Certain other adjustments, as described in clause 2.14 of the Scheme, also will be applied and the resulting amount will be the Scheme Creditor's Net Ascertained Claim or, if it shows a balance in favor of the Scheme Company, the Scheme Creditor's Net Debt. A Valuation Statement becomes binding upon the Scheme Creditor unless disputed within 42 days of its date. Any values shown on a Valuation Statement (to the extent that the Scheme Creditor has not seen them before) may be disputed on substantive grounds. The value of Agreed Claims, which the Scheme Creditor has had the chance to dispute prior to the Valuation Statement, may at this stage only be disputed on the grounds of Manifest Error. If agreement cannot be reached between the Scheme Manager and the Scheme Creditor within 70 days after the date of the Valuation Statement, the substantive disputes will be resolved by the Scheme Adjudicator. If the Valuation Statement shows a Net Debt, the Scheme does not purport to bind the Scheme Creditor to pay that amount to the Scheme Company.

52. The Scheme Manager will procure the payment of Net Ascertained Claims to be made to each Scheme Creditor as soon as reasonably practicable after the date on which such Scheme Creditor's Valuation Statement containing a Net Ascertained Claim has become final and binding and, in any event, within 42 days thereof. The Scheme Manager has the discretion to make payment to Scheme Creditors prior to such date, if their Net Ascertained Claim has become binding at an earlier stage.

### **THE CHAPTER 15 CASE**

53. The sanction of the Scheme by the English Court, together with the granting of the relief requested of this Court, will enable the primary aim of the Scheme to be achieved. The primary aim of the Scheme is to provide full and final payments of the claims of the Scheme Creditors at the amount valued under the Scheme in a manner that will protect the interests of the Scheme Creditors by providing equal and consistent treatment of all claims. To that end, assistance of this Court is necessary to bind Scheme Creditors in the United States to the Scheme.

54. The Scheme Company appointed me as Petitioner to act as its foreign representative for the purpose of commencing this case seeking relief under chapter 15 of the Bankruptcy Code. Indeed, the Convening Order provides, in pertinent part, that the Petitioner "has been duly appointed as, and is, the foreign representative of the pending proceedings concerning the scheme of arrangement of the Scheme Company for the purpose of filing a petition for recognition of that Scheme, and for additional relief, with the United States Bankruptcy Court under Chapter 15 of the United States Bankruptcy Code."

55. Under the auspices of the English Court, and with the ancillary assistance of this Court, my ultimate goal as the foreign representative and the Scheme Company is to

satisfy the claims of the Scheme Creditors in a fair and efficient manner sooner than would be achieved if the Scheme Business remained in run-off.

56. I submit that the relief sought herein is well within the scope of chapter 15 and that the criteria for recognition and the issuance of an injunction under chapter 15 clearly are satisfied under the facts of this case. Relief under chapter 15 of the Bankruptcy Code is necessary to ensure that Scheme Creditors in the United States will not be able to take action to their advantage and to the disadvantage of other Scheme Creditors, thereby potentially jeopardizing the Scheme.

57. If the Scheme Creditors in the United States are permitted to pursue their own remedies, assets of the Scheme Company could be depleted unnecessarily to defend actions brought in the United States in contravention of the intent of the Scheme and the Sanction Order granted by the English Court. Absent the relief requested, including injunctive relief, the Scheme Company, its assets and Scheme Creditors will be irreparably harmed. If the Scheme Creditors in the United States are permitted to pursue their own remedies, assets of the Scheme Company could be depleted. In addition, those Scheme Creditors could gain an advantage over others, and there would be no orderly and uniform administration of claims against the Scheme Company in one central forum.

58. In contrast to the hardships that would occur without the relief requested herein (as described above), preservation of the Scheme Company's assets for distribution in accordance with the terms of the Scheme will not prejudice the Scheme Creditors in the United States. To preserve the Scheme Company's assets for equitable distribution among the Scheme Creditors pursuant to the Scheme, the Scheme bars any proceedings against the Scheme Company or its property (wherever located) seeking to establish the existence or amount of any

liability or to obtain payment of any liability, unless the Scheme Company has failed to perform any obligation to make a payment to a Scheme Creditor in respect of a Net Ascertained Claim.

59. Recognition of the Scheme under chapter 15 of the Bankruptcy Code and the grant of the relief requested herein are necessary to promote the goals of the Scheme and to ensure its effective implementation. In order to best preserve assets that may be made available to satisfy claims of Scheme Creditors, it is imperative that all claims and distributions be administered in accordance with the terms of the Scheme. If proceedings brought by Scheme Creditors are not stayed in the United States, the orderly determination and settlement of Scheme Claims may be jeopardized and the Scheme Company may be forced to expend resources unnecessarily in order to defend collection and other actions brought by Scheme Creditors in the United States.

60. The relief requested in the Verified Petition and Motion is necessary to give effect to the Scheme in the United States and will best assure an economical, expeditious, fair and efficient administration of the Scheme, protecting the interests of both the Scheme Company and the Scheme Creditors, and will enable the Scheme Company to make full and final payments to Scheme Creditors without undue interference.

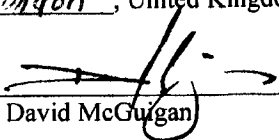
61. The relief sought is consistent with principles of comity and will reasonably assure the just treatment of Scheme Creditors. Moreover, I do not believe that Scheme Creditors in the United States will be prejudiced or unduly inconvenienced in the processing of Scheme Claims under the Scheme. Indeed, they will be treated like other similarly situated Scheme Creditors. The relief sought by me as the foreign representative will ensure that the Scheme Business will continue to be run-off in a unified manner and that Scheme Claims will be processed in an orderly and equitable manner and, further, that the interests of Scheme

Creditors and other interested entities, including the Scheme Company, are sufficiently protected.

62. For the foregoing reasons, I respectfully request that this Court grant the relief requested in the Verified Petition and Motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 18th day of July 2011  
in London, United Kingdom

  
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David McGuigan