

# LEMMA EUROPE INSURANCE COMPANY LIMITED (IN LIQUIDATION)

## LIQUIDATOR'S PROGRESS REPORT

As at 25 May 2023

An order winding up Lemma Europe Insurance Company Limited ("the Company") was made by the Supreme Court of Gibraltar on 24 January 2013 ("the Order") and I was appointed under the Order to act as the Company's Liquidator.

Paragraph 10 of the Order directed me:

*to report to the Court within 8 weeks of the date of this Order with a recommendation as to the constitution of a Committee of Inspection to be appointed by the Court, having regard to the provisions of section 13(2) of the Reorganisation Act, and (if the Liquidator's recommendation is that such Committee should be appointed) is to fix an appointment for the Court to consider the recommendation and, if thought fit, appoint a Committee of Inspection*

When I reported to the Court on 18 March 2013, I considered that it was not feasible or appropriate to recommend the appointment of a Committee of Inspection given the circumstances of the Company's liquidation, and instead proposed that I would report to the Company's creditors by publishing a progress report on the conduct of the liquidation, on the website and providing a hard copy available on request. In the early years of the liquidation this was six monthly, as matters required regular updates and latterly yearly as the liquidation nears its close.

This is the nineteenth report to creditors. A receipts and payments account for the period from 24 January 2013 to 31 December 2022 is attached. Matters included in previous reports are also included in this report.

### 1. Notification and Advertisement

- 1.1. My appointment was advertised in the Gibraltar Gazette and in the following publications: The Gibraltar Chronicle, The Panorama Newspaper, The Irish Times, The BVI Beacon, and Aftenposten.
- 1.2. The opening of these winding up proceedings was also published in the Official Journal of the European Union on 16 January 2013.
- 1.3. Notices were sent out to 12,265 addressees who it appeared from the records available to me were or may have been policyholders (i.e., holders of a contract of insurance issued by the Company), and to 22 recipients indicated by the records available to me to be a creditor of the Company ("the Notices").
- 1.4. Documents relevant to the liquidation of the Company are made available on the liquidation website at [www.lemmaeurope.com](http://www.lemmaeurope.com) ("the Website").

### 2. Recognition

- 2.1. Following a further hearing on 24 January 2013, the Supreme Court of Gibraltar issued a Letter of Request to the High Court in London asking the Court to recognise the liquidation of the Company and grant further relief.
- 2.2. On 14 February 2013, the Honourable Mr Justice Briggs made an order in the English High Court ("the Recognition Order") recognising the liquidation of the Company (and the liquidators status as the Company's *foreign representative*) in Great Britain under the legislation at the time, being the English Cross-

Border Insolvency Regulations 2006 (which implement the UNCITRAL Model Law on cross-border insolvency) and also granting relief under section 426 of the English Insolvency Act 1986, in particular recognising the disclaimer of contracts of insurance and reinsurance which the Gibraltar Court permitted under the Order and which were effected before the Court on 24 January 2013.

### **3. Service Providers**

- 3.1 To assist in the quantification and determination of the validity of claims arising under contracts of insurance which fall to be admitted as insurance creditors in the estate of the Company, solicitors and counsel were retained in Gibraltar and the UK in addition to professional advisors with suitable expertise. These firms included a claims manager, loss adjusters and a panel of lawyers providing specialist coverage advice and (where relevant) claims defence services. The majority of these firms were in the United Kingdom where the Company wrote approx. 75% of its business.
- 3.2 The Company also wrote insurance business and faced claims in several other jurisdictions. Advisors were also retained in other jurisdictions where necessary to include the Republic of Ireland, France, and Italy.
- 3.3 There was a need to monitor and control the costs of the Company's liquidation, and in general specialists were engaged on similar commercial terms to those that would have been entered into by the Company prior to my appointment. However due to the volume of claims arising and the legal issues resulting from the nature and geographical spread of insurance business written by the Company the costs of the liquidation have been considerable.

### **4. Financial Services Compensation Scheme ("FSCS")**

- 4.1 United Kingdom policyholders with claims arising under a valid insurance policy and who met the eligibility criteria of the "FSCS" were able to apply for compensation under that Scheme. We have co-operated and worked closely with the FSCS to identify, quantify and process claims and enable eligible policyholders to make claims upon the scheme. Under the scheme, in order to obtain compensation, the policyholder is required to assign 100% of their claim to the FSCS and the FSCS has therefore become the single largest insurance creditor of the Lemma estate.
- 4.2 Defence solicitor's costs incurred in relation to the defence of claims against FSCS eligible policyholders also attracted compensation. Initially, as these solicitors were engaged by the Liquidator, the costs were paid as an expense of the liquidation, with a claim for payment of 90% of these costs submitted and met by the FSCS. To allow streamlining of the process in the later stages of the liquidation it was agreed with the FSCS that eligible claim costs would be met directly by the FSCS.

### **5. British Virgin Islands**

- 5.1 The Company was licensed to carry on insurance business in the British Virgin Islands ("BVI"). Approximately US\$ 1.45 million stood to the credit of accounts in the Company's name at VP Bank in Tortola, British Virgin Islands ("the Deposit"). information available at the time indicated that this money was deposited by the Company in connection with its business in the BVI, but no trust of the Deposit was ever declared, nor a "domestic business trust" meeting the specifications in BVI legislation.
- 5.2 Following the Company's insolvency, the Financial Services Commission of the BVI ("BVI FSC") sought to take control of the Deposit and applied to the BVI Court for a declaration or order that the Deposit was held on trust, the effect of which would be that the money would be applied preferentially to meet liabilities to domestic insurance creditors in the BVI.

5.3 Following receipt of legal advice on the correct characterisation of the Deposit and the arguments advanced by the BVI FSC I contested the BVI FSC's proceedings. A hearing in the BVI Court was held in May 2014. The Judge ruled that a trust had not been established and that the Deposit remained throughout in the beneficial ownership of the Company, which was in keeping with the legal advice provided to me. The Judge did however also rule that although the Company did not divest itself of its beneficial interest in the Deposit, so that it remained an asset of the Company, it did, for valuable consideration moving from the BVI FSC in the form of the grant of a licence to conduct insurance business in the BVI, surrender control of it. In his judgment the effect of the arrangements which were put in place was to put the Deposit beyond the reach of the general body of the Company's creditors unless and to the extent that the BVI FSC otherwise agreed. The judgment thereby created a separate class of creditors, namely insurance creditors arising from BVI domestic business, whose claims would be met preferentially from the Deposit. A proposal was submitted to the BVI FSC for the administration of these claims which was subsequently agreed. In February 2016, the BVI Court issued an order appointing myself as receiver of the Deposit and any other assets located in the BVI. The adjudication of claims arising from BVI domestic insurance business was completed in accordance with the terms of the Order and 30 September 2018 was advertised as the final date for submission of claims. The receivership was accounted for as a separate appointment in accordance with the Order and all costs relating to the receivership and the administration of the BVI claims were segregated from the Company's assets and met from the BVI Deposit. On 18 June 2019 the BVI Court approved the final account of the receivership and my discharge as receiver. The balance of funds of £702,089.71 arising after payment of the receivership costs and admitted claims now forms part of the general assets of the Company to be dealt with in the ordinary course of the liquidation. It was included as a liquidation receipt in 2019 following the closure of the BVI bank account and the transfer of funds to Gibraltar.

## **6. Reinsurance**

- 6.1 Reinsurance claims were formulated with supporting documents and presented to the relevant reinsurers. The Company had a limited reinsurance program in place other than with the associated company Lemma Ukraine referred to below. Reinsurance recoveries amount to £125,579 and it is considered that no further recoveries will be achieved.
- 6.2 Lemma Ukraine, the associated company which provided the Company's reinsurance for the years 2008-2010, disputed that solicitor's professional indemnity insurance written by the Company in England and Wales in 2009-2010 and 2010-2011 was covered by its contracts of reinsurance. Lemma Ukraine is itself in liquidation and no recovery of reinsurance amounts is possible.

## **7. Reconciliation of Broker Accounts**

- 7.1 The Company had entered into contractual arrangements with some 33 insurance brokers distributing or writing business which bound the Company. An extensive reconciliation of the accounting records of the Company in respect of the premium bordereaux, was undertaken to establish the balance of funds due to the Company from brokers. Outstanding premium of £280,855 has been received from brokers. No further amounts are considered recoverable.

## **8. Insurance Creditors**

- 8.1 Under Gibraltar legislation, insurance creditors have a priority over other non-insurance creditors, the only exception to this precedence is certain claims by employees and tax authorities. The level of insurance claims cannot be met in full by the estate and there is no prospect of any distribution from the estate to creditors other than preferential or insurance creditors.

8.2 In explanation, insurance creditors result from claims under a policy of insurance which arose before 24 January 2013 or claims for return of premium in respect of unexpired periods after 24 January 2013 (when outstanding policies were disclaimed) to the end of the relevant policy term. A policyholder database was constructed to enable the calculation and processing of return of premium claims. For policyholders, where such claims were eligible for compensation from the FSCS the return of premium claims were calculated on their behalf. There were some 3,855 policyholders with return of premium claims amounting to some £1.1 million. Admitted and quantified insurance claims and estimated reserves applied to notified insurance claims on 31 December 2022 amount to £25.4 million. Of this total incurred claim figure, £17.7 million represents admitted claims with reserves of £7.7 million held against notified claims. The total incurred claims figure of £25.4 million consists of £12.7 million in respect of Solicitors professional indemnity insurance (UK), £8 million in respect of non-solicitor's professional indemnity insurance (UK) and £4.7 million from claims arising outside the UK.

## **9. Outward claims**

Enquiries were conducted in respect of potential outward claims against the directors of the Company and advice sought from legal Counsel in respect of those potential claims. Based upon this advice, claims were filed against the directors of the Company, and all of these have now been settled successfully.

## **10. Final Stages of the Liquidation**

In 2019/2020 reviews of remaining open insurance claims file were undertaken to either close files or agree the final quantum of claims. The unforeseen limitations in 2020/21 arising from the pandemic restricted progress but the continuation of the process leads me to anticipate minimal movement in the future on all claim types. Consideration will therefore be given in 2023 to a process whereby a distribution of the remaining liquidation funds may be made to admitted insurance creditors in an appropriate and cost-efficient manner.

## **11. Receipts and Payments Account**

I have attached to this report a copy of my receipts and payments account from 24 January 2013 (date of appointment) to 31 December 2022.

Creditors should contact me if they have any queries on this report or require any further information.



**Frederick White**  
**Liquidator**

**Lemma Europe Insurance Company Limited**  
(in Liquidation by the Court)

**Liquidator's Receipts and Payments Account for the Period**  
**24 January 2013 to 31 December 2022**

**24 Jan 13 to 31**  
**December 2022**

£

**RECEIPTS**

Bank balances taken over from Provisional Liquidation	4,730,890
Bank balances taken over from BVI Receiver	702,090
Premium debtor received from brokers	280,855
Return of funds held by solicitors	100,595
Sale of laptop	550
Sale of furniture	10,405
Defence solicitors costs refunded by FSCS	1,263,523
Compensation from Metropolitan Police	58,169
Claims recoveries	318,611
Settlement of outward claims	138,349
Reinsurance recovered	125,579
Corporation Tax refund	21,424
Bank Interest Receivable	57,393
<b>Total Income</b>	<b>7,808,433</b>

**PAYMENTS**

Claims management services	787,483
Loss adjusting services	532,207
Defence costs in relation to UK insurance claims	1,745,603
Forensic investigation services	12,594
Conditional fee arrangement costs	17,387
Arbitration costs	1,518
Additional claims management services for French claims	17,442
Defence costs in relation to Republic of Ireland insurance claims	5,496
Legal fees re claims coverage advice	145,021
Liquidator's fees	1,347,425
Consultancy IT	156,576
Staff Salaries	202,285
Translation costs	1,548
Rent	119,063
Rates	2,221
Water & electricity	6,998
Office cleaning	5,517
Repairs	1,026
Printing and Stationery	8,112
Software	3,425
IT assistance	2,461
PC/Printer Consumables	8,161
Other office costs	13,786
Telephone	22,744
Postage	19,003
Financial Services Commission licence fee	45,474
Bank Charges	3,165
Tax advice	1,900
Insurance	1,268
General Expenses	2,342
British Virgin Islands agent's fee	1,138
Employment & Training Board fees	140
Advertising	24,446
Commissioner of Oaths	180
Notary Public	688
Legal fees	1,290,859
Actuarial fees	8,000
Travel expenses	17,749
Bank interest payable	117
Foreign exchange movement	124,729

**Total expenses** **6,707,298**

**BALANCE IN HAND** **1,101,135**

**Represented by:**

**Natwest £** **1,101,135**