

# LEMMA EUROPE INSURANCE COMPANY LIMITED (IN LIQUIDATION)

## LIQUIDATOR'S ELEVENTH PROGRESS REPORT

as at 3rd August 2018

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, but instead proposed that I would report to the Company's creditors twice yearly on the conduct of the liquidation by publishing a progress report on the website and making it available in hard copy upon request.

This is my eleventh report to creditors in this matter. A receipts and payments account for the period from 24 January 2013 to 30 June 2018 is attached. Matters included in my 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, Aftenposten.
- 1.2. The opening of these winding up proceedings was also been published in the Official Journal of the European Union on 16 January 2013.
- 1.3. I have sent out notices to 12,265 addressees who it appeared from the records available to me are or may be policyholders (ie 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. I have also continued to make documents relevant to the liquidation of the Company available on the liquidation internet web-site at [www.lemmaeurope.com](http://www.lemmaeurope.com) ("the Website"), and I have drawn attention to the Website in the Notices.

### 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 my status as the Company's *foreign representative*) in Great Britain under 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 I effected before the Court on 24 January 2013.

### **3. Interviews**

- 3.1 I have conducted extensive interviews with a number of directors, managers and employees of the Company, as well as service providers to the Company.

### **4. Service Providers**

- 4.1 To assist me in understanding and addressing the issues arising in the Company's liquidation, and in particular the quantification and determination of validity of claims arising under contracts of insurance which may fall to be admitted as insurance creditors in the estate of the Company, I have retained solicitors and counsel in Gibraltar and the UK and engaged a number of professional advisors with suitable expertise. These firms include 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 are in the United Kingdom where the Company wrote about 75% of its business.
- 4.2 The Company also wrote insurance business and faces claims in a number of other jurisdictions. I have therefore engaged similar advisors in other jurisdictions where I have considered it necessary to do so. These include the Republic of Ireland, France and Italy.
- 4.3 I am extremely mindful of the need to monitor and control the costs of the Company's liquidation, and in general I have engaged specialists on similar commercial terms to those which would have been entered into by the Company prior to my appointment. Nonetheless, given 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 are very considerable.

### **5. Financial Services Compensation Scheme**

- 5.1 United Kingdom policyholders with claims arising under a valid insurance policy and who meet the eligibility criteria of the Financial Services Compensation Scheme ("FSCS") operated in the United Kingdom may apply for compensation under that Scheme. I and my liquidation team have cooperated and worked closely with the FSCS to identify, quantify and process claims and enable eligible policyholders to make claims upon the Scheme. While it is beyond the scope of this report to provide a detailed explanation of the operations of the Scheme and the administrative process I have facilitated to enable claims to be made, it is worth highlighting that in order to obtain compensation, the policyholder is required to assign 100% of their claim to the FSCS. The FSCS has therefore become the single largest insurance creditor of the Lemma estate.
- 5.2 Defence solicitor's costs incurred by me in relation to the defence of claims against FSCS eligible policyholders also attract compensation. As these solicitors have been engaged by me as Liquidator, they have been paid by me as an expense of the liquidation. A claim is then submitted for payment of 90% of these costs by the FSCS to the estate. I have been in discussions with the FSCS to arrange procedures as how claims may be appropriately managed in the later stages of the liquidation process. I have agreed with the FSCS that as from 1 January 2016 while service providers will continue to be engaged by me the eligible costs will be met directly by the FSCS. The service providers who continue to be engaged have agreed to this arrangement.

## **6. British Virgin Islands**

- 6.1 The Company was licensed to carry on insurance business in the British Virgin Islands (“BVI”). Approximately US\$ 1.45 million stands to the credit of accounts in the Company’s name at VP Bank in Tortola, British Virgin Islands (“the Deposit”). On the basis of the information available to me, this money was deposited by the Company in connection with its business in the BVI, but no trust of the Deposit was ever declared, and in particular no “domestic business trust” meeting the specifications in BVI legislation.
- 6.2 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 is 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.
- 6.3 I engaged lawyers in the BVI and after taking 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 during the week commencing 26 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. This was in keeping with the legal advice I had been provided with. The Judge did however also rule that although the Company did not divest itself of its beneficial interest in the Deposit, so that it remains 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 effect of the judgment is to create a separate class of creditor, namely insurance creditors arising from BVI domestic business, whose claims would be met preferentially from the Deposit. I submitted a proposal to the BVI FSC for the administration of these claims which was subsequently agreed. On 22 February 2016 the BVI Court issued an order appointing me as receiver of the Deposit and any other assets located in the BVI. I and my service providers have now completed the adjudication of claims arising from BVI domestic insurance business in accordance with the terms of the Order. The date of 30 September 2018 will be advertised as the final date for submission of claims. Any claims submitted after this date will not be adjudicated. All costs relating to the receivership and the administration of the BVI claims will be met from the BVI Deposit and neither these funds nor the costs of the receivership have been included in my Receipts and Payments account to 30 June 2018. The receivership will be accounted for as a separate appointment conducted in accordance with the terms of the Order with assets and costs segregated from the Company’s estate. A surplus arising after payment of the receivership costs and admitted claims, shall be remitted to Gibraltar and shall form part of the general assets of the Company to be dealt with in the ordinary course of the liquidation. I believe a surplus will materialize but am unable to confirm the amount until after 30 September 2018.

## **7. Reinsurance**

- 7.1 At the time the Company entered provisional liquidation and I was appointed its provisional liquidator, the Company had in place a program of reinsurance. After taking actuarial and legal advice I made payments of £313,194 then understood to be due in order to protect to a prudent degree the reinsurance cover available to the Company.
- 7.2 With the assistance of my Claims Manager, reinsurance claims have been formulated with supporting documents and presented to the relevant reinsurers. Correspondence is ongoing and I am unable at this stage to quantify the extent to which reinsurance will ultimately be recoverable by the Company. I can

however report that an amount of £100,579 was received from Kuwait Re on 21 December 2017 and an additional amount of £25,000 received from Continental Re in April 2018.

- 7.3 I record however that Lemma Ukraine, the associated company which provided the Company's reinsurance for the years 2008-2010, has previously 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, and has to date also failed to pay other claims for reinsurance recoveries submitted by me.

## **8. Reconciliation of Broker Accounts**

- 8.1 The Company had entered into contractual arrangements with some 33 insurance brokers distributing or writing business which bound the Company. A significant exercise has been for my team to conduct an extensive reconciliation of the accounting records of the Company with premium bordereaux, in order to establish the balance of funds due to the Company from brokers. Following completion of this work I instructed lawyers to assist in the recovery of the remaining balances
- 8.2 Following discussion and negotiations with the liquidator of Asset Underwriting Limited an amount of £44,903.31 representing broker debt, net of commission, has been recovered.

## **9. Insurance Creditors**

- 9.1 Under Gibraltar legislation, insurance creditors have a priority over other non-insurance creditors. The current level of insurance claims indicates that such claims will not be met in full by the estate and that there will be no prospect of any distribution from the estate to creditors other than insurance creditors.
- 9.2 In broad terms, insurance creditors will 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. My team and I have constructed a policyholder database to enable me to calculate and process these return of premium claims. For eligible policyholders, such return of premium claims may also be eligible for compensation from the FSCS. I have calculated the return of premium claims on behalf of such policyholders, and relevant FSCS documentation has been included in my communications to policyholders regarding these claims. There are 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 at 30 June 2018 amounted to £31 million. Of this £14 million relates to Solicitors Professional Indemnity claims. In my report at 31 December 2017 I had reported that admitted and quantified insurance claims and estimated reserves applied to notified insurance claims at that date amounted to approximately £34 million. My claims manager and I along with my other service providers have adopted a proactive approach to best manage claims and try to prevent their escalation and I am pleased to note that the claims position has improved materially since my last report.

## **10. Outward claims**

I have conducted enquiries regarding potential outward claims and have received advice from my legal Counsel in respect of these potential claims. Based upon this advice I have filed claims against the directors of the Company. As at the date of this report I have settled claims with three directors.

## 11. Receipts and Payments Account

11.1 I have attached to this report a copy of my receipts and payments account from 24 January 2013 the date of my appointment as Liquidator to 30 June 2018.

11.2 Items included in the Receipts and Payments account are for the most part self-explanatory but I offer further information and explanation as set out below:

- (i) I initially retained the services of two members of the Company's staff on the same terms as they were previously employed, as their knowledge of the systems was of considerable benefit to the liquidation. As the liquidation is now in its later stages, the level of work involved in the adjudicating and processing of claims has decreased and I no longer have a need to employ staff.
- (ii) For a period of nine months, I retained the original Company's office. Rent for this office was £42,000 per annum. As of July 2013, a smaller office was rented on a 2 year lease at £18,000 per annum to accommodate the Company employees and Company records. I have continued to rent this office until September 2018 at an annual rent of £20,875 to allow all documentation pertaining to the Company to be scanned and stored in digital format, pending closure.
- (iii) I have faced numerous technical legal issues specifically in relation to recognition of my appointment in England and Wales as well as recognition of my disclaimer of the contracts of insurance. Advice and representation was required from my London counsel who advised me on technical legal matters relating to the admission of insurance claims, and potential outward claims as well as representing me in the BVI Court hearing. Legal fees have been paid to my solicitors in Gibraltar and England in relation to recognition of my appointment in England and Wales as well as recognition of my disclaimer of the contracts of insurance. Legal fees have been paid to my solicitors in the BVI in relation to the Court hearing and to solicitors in France and Italy in relation to insurance claims matters in those jurisdictions. As per the Winding Up Order issued by the Supreme Court of Gibraltar legal fees relating to that petition were ordered to be paid from the estate and amounted to £36,445. I have also obtained legal opinions on the merits of the various potential outward claims I have considered and legal advice on numerous insurance claims management and adjudication issues. Legal costs incurred of £1,274,354 have been very substantial but have been unavoidable due to the complexity and number of issues referred to above. The majority of the legal issues affecting the liquidation have now been addressed and with the exception of legal costs relating to specific outward claims will be materially reduced during the remaining period of the liquidation

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



Frederick White  
Liquidator

3rd August 2018

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

**Liquidator's Receipts and Payments Account for the Period**  
**24 January 2013 to 30 June 2018**

**24 Jan 13 to 30 June 2018**

£

**RECEIPTS**

Bank balances taken over from Provisional Liquidation	4,730,890
Premium debtor received from brokers	280,855
Return of funds held by solicitors	100,595
Sale of laptop	550
Sale of furniture	8,700
Defence solicitors costs refunded by FSCS	1,261,380
Compensation from Metropolitan Police	58,169
Claims recoveries	196,264
Settlement of outward claims	133,349
Reinsurance recovered	125,579
Bank Interest Receivable	57,393
<b>Total Income</b>	<b>6,953,723</b>

**PAYMENTS**

Claims management services	786,622
Loss adjusting services	532,207
Defence costs in relation to UK insurance claims	1,738,622
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	1,185,286
Consultancy IT	156,576
Staff Salaries	202,285
Translation costs	1,548
Rent	115,547
Rates	2,221
Water & electricity	6,955
Office cleaning	4,920
Repairs	1,026
Printing and Stationery	8,427
Software	3,475
IT assistance	1,661
PC/Printer Consumables	5,224
Other office costs	2,793
Telephone	22,677
Postage	19,003
Financial Services Commission licence fee	45,474
Bank Charges	2,738
Tax advice	1,900
Insurance	1,668
General Expenses	2,342
British Virgin Islands agent's fee	366
Employment & Training Board fees	140
Advertising	24,446
Commissioner of Oaths	180
Notary Public	688
Legal fees	1,274,354
Actuarial fees	8,000
Travel expenses	17,749
Bank interest payable	117
Foreign exchange movement	124,730

**Total expenses** 6,501,426

**BALANCE IN HAND** 452,298

**Represented by:**  
Natwest £ 452,298

I, Frederick D J White, of Grant Thornton Limited, the Liquidator of the above company, make oath and say:-

That the account above contains a full and true account of my receipts and payments in the winding-up of the above named company from the 24th January 2013 to the 30th June 2018 inclusive and that I have not nor has any other person by my order or for my use during such period received or paid any monies on account of the said company other than and except the items specified in the said account.

Signed



Sworn at

**SERGIO M. MARTINEZ**  
**COMMISSIONER FOR OATHS**

  
Frederick D J White  
LIQUIDATOR

this 3rd day of August 2018