

IN THE SUPREME COURT OF GIBRALTAR
CHANCERY JURISDICTION

2012 Comp. No. 25

**IN THE MATTER OF LEMMA EUROPE INSURANCE
COMPANY LIMITED**

-and-

**IN THE MATTER OF THE FINANCIAL SERVICES
(INSURANCE COMPANIES) ACT**

-and-

IN THE MATTER OF THE COMPANIES ACT

Thursday the 24th day of January 2013

Before the Honourable Mrs Justice Prescott, Puisne Judge

IN COURT

UPON THE PETITION of the Financial Services Commission on the 19th day of September 2012 proffered unto the Court

AND UPON HEARING Peter Caruana QC, one of Her Majesty's Counsel, for the Petitioner, and Glen Davis QC, one of Her Majesty's Counsel, instructed by Messrs Isolas as solicitors for Mr Frederick David John White, ("the Provisional Liquidator") appointed by Order dated the 28th day of September 2012 herein ("the 28th September Order") to act as Provisional Liquidator of the above-mentioned Lemma Europe Insurance Company Limited ("the Company") and Nicholas Cruz of Counsel, instructed by Messrs Cruz & Co, as solicitor for Enterprise Insurance Company Plc, and upon hearing Terence Rocca Esquire, Crown Counsel for the Official Receiver

AND UPON READING the Affidavit of Michael Oliver sworn on the 19th September 2012 in support of the Petition.

AND UPON READING the Provisional Liquidator's Report to this Honourable Court dated the 22nd day of January 2013 ("the PL Report") and the further evidence set out in the Schedule to this Order

AND UPON READING the Application of the Official Receiver dated the 21st day of January 2013

AND UPON READING the Affidavit of Christine Victory on behalf of the Official Receiver dated the 21st day of January 2013

AND UPON THE COURT CONFIRMING that for the purposes of Directive 2001/17/EC of the European Parliament and the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings ("the Reorganisation Directive"), implemented in Gibraltar by the Insurers (Reorganisation and Winding-Up) Act 2004 ("the Reorganisation Act"), winding-up proceedings were opened herein on the 28th day of September 2012 by the 28th September Order

AND UPON THE COURT FURTHER CONFIRMING that, pursuant to section 227(2) of the Companies Act, winding up pursuant to this Order is deemed to have commenced at the time the Petition herein was presented to the Court on the 19th day of September 2012

AND UPON the winding-up of Lemma Europe Insurance Company Limited being a proceeding within Article 2(a) and (b), and the liquidator appointed by this Order being a foreign representative within Article 2(d), of the UNCITRAL Model Law on Cross-Border Insolvency

IT IS ORDERED THAT:

- 1 The said Lemma Europe Insurance Company Limited ("the Company") be wound up by this Court under the provisions of the Companies Act and the Insurers (Reorganisation and Winding Up) Act.

AND IT IS FURTHER ORDERED AND DIRECTED THAT:

- 2 The appointment of Mr Frederick David John White as Provisional Liquidator of the Company under the 28th September Order be discharged from such time as Mr White shall have notified to the Registrar his appointment under paragraph 5 below and given the security required under paragraph 6 below.
- 3 The Provisional Liquidator is to be absolutely and unconditionally released from all liabilities in respect of his acts and omissions in the provisional liquidation of the Company and otherwise in relation to his conduct as provisional liquidator of the Company with effect from 3 months from the date of this order (with liberty for interested parties to apply).
- 4 The remuneration of the Provisional Liquidator payable under paragraph 8 of the 28th September Order shall be fixed and approved by the Registrar by reference to the time properly given by the Provisional Liquidator and his staff in attending to the matters arising in the provisional liquidation of the Company.
- 5 Mr Frederick David John White of Grant Thornton (Gibraltar) Limited, 6A Queensway, Gibraltar ("the Liquidator") be appointed Liquidator of the Company with immediate effect and have all the duties of the Official Receiver in the winding up of the Company for the purposes of the Companies Act.
- 6 The Liquidator is to give security pursuant to Section 231(4) and Section 237(a) of the Companies Act in a form satisfactory to the Registrar.
- 7 The remuneration of the Liquidator shall be payable by reference to the time spent by him and the employees under his control on the basis of his firm's usual commercial rates for the type of work involved, initially at the rates set out in the Schedule to this Order and thereafter as may be reviewed and varied by the Committee of Inspection or directed by the Court, pursuant to section 238(2) of the Companies Act, together with any expenses incurred in connection therewith.
- 8 The costs, remuneration and expenses of the Liquidator are to be paid out of the assets of the Company and in accordance with the Liquidators Scheme of Appointment.

- 9 The Official Receiver is released from any obligation to summon meetings of the creditors and contributories of the Company under section 236(b) of the Companies Act.
- 10 The Liquidator is 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. The Liquidator is to serve a copy of his report and recommendation on the Financial Services Commission and give notice to the Financial Services Commission of any date fixed by the Court.

AND IT IS FURTHER ORDERED AND DIRECTED AS FOLLOWS:

Sanction

- 11 The Liquidator has sanction:
- (i) to appoint solicitors and Counsel to assist him in the performance of his duties;
 - (ii) to carry on the business of the company, so far as may be necessary for the beneficial winding up thereof;
 - (iii) to bring or defend any action or other legal proceeding in the name and on behalf of the Company;
 - (iv) to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the Company, or whereby the Company may be rendered liable;
 - (v) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the

Company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets or the winding up of the Company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

- 12 In exercising his powers sanctioned under paragraph 11 above, the Liquidator is to have regard to any views which may be expressed by a Committee of Inspection.

Disclaimer

- 13 The relevant parts of the PL Report are to stand as the affidavit in support of an application for leave to disclaim required under Rule 73 of the Companies (Winding-Up) Rules 1929, and the requirement for a separate ex parte summons is waived.
- 14 The Liquidator has leave pursuant to section 308(1) of the Companies Act to disclaim all contracts of insurance and all contracts of reinsurance under which the Company is or may be liable, and may do so by a general declaration of disclaimer with effect from the date of this order.
- 15 Notice of disclaimer is to be given by the Liquidator to all persons affected by the disclaimer of whose address the Liquidator is aware, and may be given by electronic communication.
- 16 The Liquidator is also to publish notice of the disclaimer on the Company's internet website, in the Gibraltar Gazette and in such other publications and in such manner as he reasonably considers are likely to come to the attention of any persons affected by the disclaimer.
- 17 Disclaimer of a contract of insurance pursuant to paragraph 14 of this Order shall not affect any claim under that contract which has arisen prior to the date of the winding up, and the Liquidator may take such steps (including the employment of agents and the instruction of solicitors and Counsel) to quantify the value of any such claim as he reasonably believes will be in the interests of the beneficial winding up of the Company.
- 18 The amount for which a person injured by the operation of a disclaimer of a contract of insurance pursuant to paragraph 14 of this

Order may prove as a debt in the winding up shall be such proportion of the last premium paid as is proportionate to the unexpired portion of the period in respect of which that premium was paid, unless the Liquidator shall agree or the Court shall direct that the person is entitled to prove for a different amount, and any person affected by this provision has liberty to apply (on notice to the Liquidator) for that purpose.

- 19 The Liquidator may pursuant to Rule 89 of the Companies (Winding-Up) Rules 1929 admit without proof the debt of a person to whom paragraph 18 of this Order applies, and those debts are to be treated as "insurance debts" for the purpose of section 13(2)(b) of the Reorganisation Act.

AND THAT

- 20 The costs of the Financial Services Commission of and incidental to the Petition be subject to assessment and be paid out of the assets of the Company.
- 21 The Provisional Liquidator's costs of and incidental to the hearing on 24th January 2013 and his Report are to be paid out of the assets of the Company as an expense of the provisional liquidation.
22. Leave be granted (if required) to Enterprise Insurance Plc. or its appointed representative to access the Court File.



Registrar

NOTE: It will be the duty of such of the persons as are liable to make out or to concur in making out a statement of affairs as the Official Receiver may require to attend on the Official Receiver at such time and place as the Official Receiver may appoint and to give him all the information he may require.

SCHEDULE

Grant Thornton:

Hourly charge out rates of principal staff involved in the provisional liquidation/liquidation of Lemma Europe Insurance Company Limited effective as of 24 January 2013 are set out below. Such rates are reviewed periodically with the next review scheduled for 30 September 2013. An uplift to these rates may be sought to be charged where work has been unusually complex or onerous or imposes unusual requirements on staff. These rates are exclusive of disbursements.

		Per hour
Freddie White	Director	£300
James Oton	Supervisor Lawyer	£175
Sebastian Pons	Assistant Lawyer	£100
Jerome Gamboa	Audit Manager	£100
Daniella Ocana	Audit Supervisor	£85
Various	Audit Juniors	£30