UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:
	: Chapter 15
Petition of David McGuigan, as foreign representative of	: Case No. 10-14990 (SMB)
	:
Allianz Global Corporate & Specialty (France), Allianz IARD, Delvag Luftfahrtversicherungs-AG, and Nürnberger Allgemeine Versicherungs-AG.	: (Jointly Administered)
	:
Debtors in a Foreign Proceeding.	:

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION UNDER CHAPTER 15 FOR RECOGNITION OF FOREIGN PROCEEDINGS AND MOTION FOR PERMANENT INJUNCTION

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David McGuigan (the "Petitioner"), as the duly appointed and authorized foreign representative of the Scheme Companies,[1] by its counsel, submits this supplemental memorandum of law (the "Supplemental Memorandum") in further support of the Scheme Companies' Verified Petition Under Chapter 15 For Recognition Of Foreign Proceedings And Motion For Permanent Injunction [Docket No. 2] (the "Petition and Motion"). This Supplemental Memorandum is in addition to the Scheme Companies' initial memorandum of law ("Memorandum of Law") filed in support of the Petition and Motion [Docket No. 3], and other supporting documents, all of which are incorporated herein by reference.

PRELIMINARY STATEMENT

1. On September 27, 2010, this Court held a hearing (the "Scheduling Hearing") on the Scheme Companies' Motion for the Joint Administration of the Chapter 15 Cases [Docket No. 7] and Motion for an Order Scheduling the Recognition Hearing and Approving the Form and Manner of Service of the Notice Related Thereto [Docket No. 8], and granted the relief requested therein. Publication and service of the notice of the recognition hearing was accomplished pursuant to, and in full compliance with, the Court's Order Scheduling the Recognition Hearing and Approving the Form and Manner of Service of the Notice. See Notice of Filing of Affidavits of Publication filed on October 22, 2010 [Docket No. 13] and Affidavit of Service of 1st Day Motions and Related Orders filed on October 28, 2010 [Docket No. 14] (collectively, the "Notice Affidavits"). Objections to entry of a proposed recognition order were due on November 1, 2010 by 4:00 p.m. (Eastern Time). We are pleased to report that no objections were filed to the relief requested by the Petition and Motion.

[1] All capitalized terms not defined herein shall have the meanings ascribed to them in the Schemes or the Petition and Motion.

2. The Petitioner respectfully submits this Supplemental Memorandum to provide supporting authority for certain of the relief requested in the proposed recognition order, specifically with respect to the exculpation and immunity clauses contained therein. In addition, a revised proposed recognition order (the "Revised Recognition Order"), which seeks to address the Court's comments provided at the Scheduling Hearing, is attached hereto as Exhibit A, together with a blackline comparing the Revised Recognition Order to the initial proposed recognition order is attached hereto as Exhibit B.

3. For the reasons provided in the Memorandum of Law and those set forth below, the Petitioner respectfully submits that (a) the English Proceedings should be recognized as foreign main proceedings because the Scheme Companies in connection with the CUAL Business have their center of main interests ("COMI") in the United Kingdom or, in the alternative, as foreign nonmain proceedings because the Scheme Companies maintain an "establishment" in connection with the CUAL Business in the United Kingdom, as such term is defined under section 1502(2) of the Bankruptcy Code,[2] and (b) the Revised Recognition Order should be entered.

[2] Petitioner's support under section 1517(b) and related provisions of the Bankruptcy Code was set forth in detail in the Memorandum of Law and Declaration of David McGuigan in Support of the Petition and Motion [Docket No. 4]. Consistent with such documents, Petitioner believes that the Scheme Companies' CUAL Business has its center of main interest in the United Kingdom or, alternatively, the Scheme Companies have an establishment there. Petitioner relies, among the other evidence provided, on the activities and office location of the Scheme Companies' agents for the CUAL Business (including, CUAL, Whittington and the Scheme Manager). See In re British American Ins. Co. Ltd. (In re BAICO), 425 B.R. 884, 911-12 (S.D. Fla. 2010) (holding that the location of the debtors' agents was directly relevant to and supported the determination that the debtor's COMI was in Trinidad because all of the daily activities and primary management and business functions took placed in Trinidad, rather than in the Bahamas where the debtor maintained its registered office); see also In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, 374 B.R. 122, 130 (Bankr. S.D.N.Y. 2007) (taking into account that the debtor's agent conducted the primary management, administration and business functions for the debtor in determining that COMI was more appropriately the agent's location in the U.S. rather than the Cayman Islands where the foreign proceedings were pending); see also In re SPhinX, 351 B.R. 103, 107, 119 (Bankr. S.D.N.Y. 2006) (applying the location and activities of the debtors' agents in determining COMI).

I. The Proposed Exculpation and Immunity Provisions of the Revised Recognition Order Clauses are Supported by Applicable Law

4. While exculpatory provisions and immunity clauses are routinely included in and approved in recognition orders, there is a dearth of case law under chapter 15 with respect to these clauses. Certainly, the purposes of chapter 15 – to provide effective mechanisms for dealing with cross-border insolvencies with the objectives of, among other things, promoting principles of cooperation and comity and maximizing the value of assets for the benefit of creditors – support such a grant.[3] Moreover, section 1507(a) of the Bankruptcy Code authorizes a court granting recognition to "provide additional assistance to a foreign representative under [the Bankruptcy Code] or under other laws of the United States." 11 U.S.C. § 1507(a). "Chapter 15 specifically contemplates that the court should be guided by principles of comity and cooperation with foreign courts in deciding whether to grant the foreign representative additional post-recognition relief." See In re Metcalfe & Mansfield Alternative Invs., et al. (In re Metcalfe), 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010) (citing In re Atlas Shipping A/S/, 404 B.R. 726, 738 (Bankr. S.D.N.Y. 2009)). The broad statutory grant under section 1507 provides discretion to assure that the policies of the Bankruptcy Code are implemented by insulating the individuals and entities involved in a foreign proceeding from liability and actions that may arise in connection with the chapter 15 process.

5. The reasoning applied to exculpation provisions in the chapter 11 context, where such provisions are commonplace, also is instructive for the chapter 15 context and,

[3] Section 1501 of the Bankruptcy Code articulates the purposes and scope of Chapter 15, and the Model Law of Cross-Border Insolvency on which is it based, realized through five objectives: (1) to promote cooperation between the United States courts and parties of interest and the courts and other competent authorities of foreign countries involved in cross-border insolvency cases; (2) to establish greater legal certainty for trade and investment; (3) to provide for the fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested entities, including the debtor; (4) to afford protection and maximization of the value of the debtor's assets; and (5) to facilitate the rescue of financially troubled businesses, thereby protecting investment and preserving employment. See 11 U.S.C. § 1501.

specifically, for the terms of the Revised Recognition Order. For example, pursuant to sections 1123 and 1125(e) of the Bankruptcy Code, claims or interests belonging to the debtor's estate may be settled through a plan of reorganization (11 U.S.C. § 1123(b)(3)(A)) and persons that participate in good faith with plan solicitation or the issuance of securities under a plan shall not be liable on account of such participation (11 U.S.C. § 1125(e)). See, e.g., In re Greyfriars Ins. Co. Ltd., et al., Case No. 07-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007) (approving exculpatory clauses and injunction provisions in recognition order to exculpate and limit the liability of the parties for their actions in relation to the scheme of arrangement); In re Oslo Reinsurance Co. (UK) Ltd. and Oslo Reinsurance Co. ASA, Case No. 07-12211 (RDD), Docket No. 15 (Bankr. S.D.N.Y. 2007) (same); In re NRG Victory Reinsurance Ltd., Case No. 06-11052 (JMP), Docket No. 26 (Bankr. S.D.N.Y. 2006) (same); In re Europaische Ruckversicherungs-Gesellschaft in Zurich (European Reinsurance Co. of Zurich), Case No. 06-13061 (REG), Docket No. 14 (Bankr. S.D.N.Y. 2006) (same); La Mutuelle du Mans Assurances IARD UK Branch MMA Account, Case No. 05-60100 (BRL), Docket No. 9 (Bankr. S.D.N.Y. 2005) (same); In re Lion City Run-Off Private Ltd., Case No. 06-10461 (SMB), Docket No. 12 (Bankr S.D.N.Y. 2006) (same). Indeed, in the one reported case in which the scope of a third party release was examined in the chapter 15 context, the court specifically looked to, among other things, governing law in the chapter 11, or plenary, context. In re Metcalfe, 421 B.R. at 694-699 (Bankr. S.D.N.Y. 2010) (approving broad release and injunction provisions in recognition order after analysis of jurisdictional grant, governing case law in the 2nd circuit and principles of comity).

6. As a general matter, to obtain approval of exculpation provisions in a chapter 11 plan, a debtor must show that the relevant provision is "reasonable and customary and

in the best interest of the estate." See In re Enron Corp., 326 B.R. 497, 504 (S.D.N.Y. 2005). Additionally, courts will permit exculpation provisions, such as those that grant injunctions and enjoin actions or stay proceedings against former directors, officers or individuals, if such provisions were subject to mutual agreement based upon arm's length negotiations and were made in good faith. See id. at 503-04 (affirming bankruptcy order which confirmed the debtor's plan on the basis that the broad exculpation clause was reasonable and customary because the clause resulted from extensive arm's length negotiations between the parties and was a factor in the parties agreeing to the plan); see also In re Winn-Dixie Stores, Inc., 356 B.R. 239, 261 (Bankr. M.D. Fla. 2006) (confirming a plan of reorganization over objection to a broad exculpation clause because, among other factors, such provisions were the result of negotiation by all parties and the overwhelming acceptance of the plan); see also In re RCN Corp., Case No. 04-13638 (Bankr. S.D.N.Y. Dec. 8, 2004) (RDD) (affirming broad exculpation provision in plan for numerous entities, including lenders, because sophisticated parties consented to the provision after arm's length negotiations and the provision was one of the terms that incentivized certain parties to agree to the plan).

7. Moreover, the exculpation and immunity provisions for the benefit of the Scheme Parties are analogous to the limited exculpation and immunity afforded to creditors' committees and their members for their critical participation in the formulation and acceptance or rejection of a plan. Indeed, Courts in this District have found that the "significant and central role for committees in the scheme of a business reorganization … set forth in section 1103(c)(3) of the Code, which provides that official committees are empowered to 'participate in the formulation of a plan, advise those represented by such committee of such committee's determination as to any plan formulated, ... implies both a fiduciary duty to committee

constituents, and a grant of limited immunity to committee members.'" See In re L.F. Rothschild Holdings, Inc., 163 B.R. 45 (S.D.N.Y. 1994). Similarly, the Scheme Parties play critical roles in the implementation and administration of the Schemes as authorized by the English Court and the sanctioned Schemes, and accordingly should be granted the narrowly tailored exculpation and immunity provisions in the Revised Recognition Order.

8. Applying these standards to the terms of the Revised Recognition Order makes clear that the exculpation provision should be granted here because such provision is not only consistent with the principles of the Bankruptcy Code and standards required by bankruptcy courts in plenary chapter 11 cases, but also appropriate in the chapter 15 context under section 1507 and principles of comity, as discussed below.

A. *The Exculpation Provision in the Revised Recognition Order is Customary and Reasonable*

9. The exculpatory language in the Revised Recognition Order is reasonable because it is narrowly tailored to limit the liability of the Scheme Parties *solely* with respect to their actions in connection with the Chapter 15 Cases and administration of the Schemes, including actions related to the preparation, dissemination, or application of the recognition process and for the implementation or enforcement of the Revised Recognition Order and Schemes. See Revised Recognition Order at pgs. 7-8.[4]

[4] The Revised Recognition Order provides that the Scheme Creditors shall be permanently enjoined and stayed from:

> commencing or continuing any proceeding against the duly appointed Foreign Representative, each of the Scheme Companies, the Centre for Effective Dispute Resolution ("CEDR"), any person who holds or has held the position of Chief Executive of CEDR, any person who holds or has held the position of President of the Institute of Actuaries in England, any person holding or who has at any time held the position of Scheme Manager, Scheme Adjudicator or Actuarial Adjudicator, the Chairman of the Creditors' Meetings, the Vote Assessor and any past or present director of any of the Scheme Companies, including their respective successors, delegates, directors, officers, agents, employees, representatives, advisers or attorneys, or any of them (the "Scheme Parties"), solely with respect to any claim or cause of action, in law or in equity, arising out of or relating to (i) any action taken or omitted to be taken as of the Effective Date by any of the Scheme Parties in connection with these Chapter 15 Cases or in preparing, disseminating, applying for or implementing the Schemes or the Order, or (ii) the construction or interpretation of the

10. In the chapter 11 context, exculpation clauses are commonly used to release officers, directors and other third parties related to a reorganization for actions arising in connection with a chapter 11 case and its reorganization, except for claims related to fraud, gross negligence or willful misconduct. See In re PWS Holding Corp., 228 F.3d 224, 245 (3d Cir. 2000) (referring to exculpation clauses as a "commonplace provision in chapter 11 plans"). Courts consistently have found such clauses reasonable because the protected parties – frequently extending not only to the debtors and reorganized debtors and their agents, but also to their subsidiaries, pre-petition lenders, a creditors' committee, or their professionals – and the covered activities are instrumental to the successful administration and enforcement of the chapter 11 case and the plan process. See id. at 246-47. Moreover, such exculpations have their roots in section 1125(e) of the Bankruptcy Code which provides that persons should not be liable for good faith actions in connection with their participation in plan solicitation or the issuance of securities under a plan of reorganization. See, e.g., In re EnviroSolutions of New York, LLC, 2010 WL 3373937, *4 (Bankr. S.D.N.Y. July 22, 2010); In re Citadel Broad. Corp., 2010 WL 2010808, *9 (Bankr. S.D.N.Y. May 19, 2010).

11. The exculpatory language set forth in the Revised Recognition Order also is entirely customary and similar provisions have been routinely approved in this District in the chapter 15 context. Specifically, courts have approved recognition orders that prevent any action taken against the relevant foreign actors in respect of their involvement in administering the scheme or implementing the scheme process. See, e.g., In re Greyfriars Ins. Co. Ltd., et al., Case

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> Schemes or out of any action taken or omitted to be taken by any of the Scheme Parties in connection with the administration of the Schemes...

Revised Recognition Order, pg. 5, ¶ (c) and pg. 7.

No. 07-B-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007); In re Oslo Reinsurance Co. (UK) Ltd. and Oslo Reinsurance Co. ASA, Case No. 07-12211 (RDD), Docket No. 15 (Bankr. S.D.N.Y. 2007); In re NRG Victory Reinsurance Ltd., Case No. 06-11052 (JMP), Docket No. 26 (Bankr. S.D.N.Y. 2006); In re Europaische Ruckversicherungs-Gesellschaft in Zurich (European Reinsurance Co. of Zurich), Case No. 06-13061 (REG), Docket No. 14 (Bankr. S.D.N.Y. 2006); La Mutuelle du Mans Assurances IARD UK Branch MMA Account, Case No. 05-60100 (BRL), Docket No. 9 (Bankr. S.D.N.Y. 2005); In re Lion City Run-Off Private Ltd., Case No. 06-10461 (SMB), Docket No. 12 (Bankr S.D.N.Y. 2006).

B. *The Proposed Exculpatory and Immunity Provisions in the Revised Recognition Order are in the Best Interests of the Debtors*

12. In addition, the Petitioner believes that it is in the best interests of the Scheme Companies to protect the Scheme Parties as set forth in the Revised Recognition Order. See In re Winn-Dixie Stores, Inc., 356 B.R. at 260-62 (approving plan, including release and exculpation provisions, that exculpated certain parties related to the organization process because the plan was not only reasonable and customary, but also "in the best interests of the estate").

13. Each of the Scheme Parties plays, has played, or potentially plays, a critical role in connection with the Schemes and/or (where relevant) the Creditors' Meetings. For example, in relation to the Creditors' Meetings, the roles of the Chairman and Vote Assessor were provided for in the Convening Order. The Chairman's role included determining the right and entitlement of a Scheme Creditor to vote (either at all, or in relation to particular contracts for which it had submitted values on its Voting Form) at the Creditors' Meetings. In addition, David McGuigan, the Petitioner and Foreign Representative, was tasked with seeking recognition of the English Proceedings in the United States and commencing the Chapter 15 Cases on behalf of the Scheme Companies. See Convening Order at ¶ 31. Arguably most

importantly, the Scheme Manager (currently, David McGuigan), plays a critical role in connection with the implementation and administration of the Scheme. Pursuant to the sanctioned Scheme, the Scheme Manager, in carrying out his duties and functions under the Scheme, is empowered to, among other things: (i) negotiate and enter into agreements for the commutation, compromise, waiver or settlement of Scheme Claims, (ii) do all acts, and to execute in the name of and on behalf of the Scheme Companies in connection with the Scheme any deed, transfer, instrument, cheque, bill of exchange, receipt or other document which may be necessary for, or incidental to, the full implementation of the Scheme, (iii) bring, commence or defend any Proceedings in the name of and, in so far as permitted by law, on behalf of the Scheme Company, in any matter affecting the Scheme Company; and (iv) exercise any other powers necessary for, or incidental to, the full and proper implementation of the Scheme whether in the name of the Scheme Company or otherwise. See Scheme at ¶ 5.2.1. In relation to any Adjudication pursuant to the Scheme, if the Scheme Manager and the relevant Scheme Creditor are unable to agree on the appointment of a mutually acceptable Scheme Adjudicator, the Scheme Manager is required to ask the Chief Executive of the Centre for Effective Dispute Resolution "CEDR")[1] to nominate a Scheme Adjudicator. Id. at ¶ 6.2.2. In case of a conflict of interest (or any other good reason why it may be inappropriate for the Scheme Adjudicator to adjudicate the relevant matter), the Scheme Manager is required to ask the Chief Executive of CEDR to nominate a substitute Scheme Adjudicator. Id. at ¶ 6.3.1.1. In the case of a conflict of interest (or any other good reason why it may be inappropriate for the Actuarial Adjudicator to adjudicate the relevant matter), the Scheme Manager is required to ask the President of the

[1] CEDR is an independent, non-profit organization with a mission to cut the cost of conflict and create choice and capability in dispute prevention and resolution. It is described on its website "...as an impartial third party used to facilitate negotiations in complex and sensitive multi-party conflict and dialogue. It has over 19 years experience in dispute resolution, conflict management, training and civil justice systems.

Institute of Actuaries to nominate a substitute Actuarial Adjudicator. See Id. ¶ 6.3.1.2. Accordingly, it is appropriate to include each of these parties, as well as those listed in the Revised Recognition Order, in the exculpation provision, with respect to actions undertaken in connection with the Schemes and the recognition and enforcement of such Schemes.

14. The exculpation provision also serves the best interests of the estates because it avoids a potentially costly waste of estate assets and resources. If the Scheme Parties do not obtain the contemplated exculpation as to their actions in connection with the Schemes – as well as the immunity from broad jurisdiction discussed below – these parties would be subjecting themselves to potential litigation in the United States, the cost of which would be covered by the Scheme Companies, thereby dissipating estate assets and using estate resources to the severe detriment of Scheme Creditors. See In re Winn-Dixie Stores, Inc., 356 B.R. at 260 (enforcing order with broad exculpatory language because it is in the best interests of the debtor "rather than facing the specter of pursuing the claims and expending time, energy, effort and management attention on an exercise in futility").

15. Similarly, the exculpation and immunity provisions serve the best interests of the estates because they are important in retaining the Scheme Parties who carry out critical roles in implementing, administering and enforcing the Schemes. See In re Enron Corp., 326 B.R. at 503 (noting that "[w]ithout such protection from liability, key personnel might abandon efforts to help the reorganized debtor entities follow through on the Plan" and "the implementation of the Plan might falter, leading to an 'unmanageable, uncontrollable situation for the Bankruptcy Court'") (citations omitted). Refusing to exculpate the Scheme Parties in the Chapter 15 Cases might result in the resignation of certain difficult-to-replace Scheme Parties,

thus potentially frustrating the implementation and administration of the Schemes contrary to the wishes of all of the Scheme Creditors that voted on the Scheme.

16. In these ways, and as further described in the Memorandum of Law, the relationship between the Scheme Parties and Debtors in relation to the Scheme and its effectuation supports the entry of the Revised Recognition Order and its exculpation terms.

C. *The Exculpation Provision is Based on Consent*

17. The fact that the exculpation provision in the Revised Recognition Order is consistent with the exculpatory language in the Schemes, and that such language was unanimously approved by voting Scheme Creditors and sanctioned by the English Court, also should weigh heavily in favor of upholding the exculpation provision in the Revised Recognition Order.[5] Effectively, such exculpation provision was approved by the Scheme Creditors (the parties against whom enforcement would be sought) who voted in favor of the Scheme and did not oppose the exculpation provisions. See In re Winn-Dixie Stores, Inc., 356 B.R. at 259-61 (approving broad exculpation provision in plan that releases actions in connection with the plan process against the present or former directors, officers and employees of the Debtors due to mutual consent and in the best interest of the debtors). Significantly, the parties listed as "Released Parties" in the Schemes, including former individuals and entities involved in the planning and implementation of the Schemes, are the same parties listed as Scheme Parties in the

[5] Section 4.1 of the Scheme provides, in pertinent part, that "[n]o Scheme Creditor nor any party acting on its behalf or deriving title from it shall be entitled to take or continue any step, or do or continue any act by way of Proceedings or otherwise in any jurisdiction whatsoever after the Effective Date … save as permitted by clause 7.1 against or in respect of any of the Released Parties either individually or collectively in connection with their duties and obligations under the Scheme; unless the Scheme Company has failed to perform any obligation to make payment to a Scheme Creditor in respect of a Net Ascertained Claim and then only in respect of such failure."

Revised Recognition Order and the Petition and Motion who are to receive the exculpations and immunity set forth in the Revised Recognition Order.[6]

18. Courts will enforce exculpation provisions that broadly exculpate or limit the liability of former as well as current and future individuals or entities that may be involved in the reorganization or plan process as long as there is mutual consent and, as discussed above, the exculpatory language "is reasonable and customary and in the best interest of the debtor." Id. at 259-60. Each of the Scheme Creditors located in the United States (for whom Whittington held a current address) was sent notice of the Schemes and had the opportunity to object both in England and before this Court. See Notice Affidavits; see also Declaration of David McGuigan [Docket No. 4] (the "McGuigan Declaration") at ¶¶ 32-35, 41. In England, all Scheme Creditors who voted did so unanimously in favor of the Schemes, including the provision that provided for the release of former, as well as current and future, parties and entities. See McGuigan Declaration at ¶ 37. Similarly, no objection to the entry of a proposed recognition order has been received in connection with this proceeding. The parties' consent further supports the exculpation terms provided in the Revised Recognition Order.

D. *The Immunity Provision of the Revised Recognition Order is Sanctioned under the Bankruptcy Code*

19. As with the exculpation provision discussed above, the immunity clause of the Revised Recognition Order serves a critical purpose by ensuring that foreign representatives acting in the United States in a manner consistent with their authority as granted by a foreign

[6] Specifically, the Released Parties are defined under the Scheme as "the Scheme Company, CEDR, any person who holds or has held the position of Chief Executive of CEDR, the Foreign Representative, any person who holds or has held the position of President of the Institute of Actuaries, any person holding, or who has at any time held, the position of Scheme Appointee, Chairman, Vote Assessor and any past or present director of the Scheme Company, including any Delegate Employee, partner or alternate of any of the foregoing, in each case in their capacity as such", which are the same parties in the defined term "Scheme Parties" under the exculpation and immunity provisions of the Revised Recognition Order. See Scheme at pgs. 14-15; see Revised Recognition Order at pg. 5.

court in connection with the applicable foreign proceeding do not unintentionally subject themselves to the broad jurisdiction of U.S. courts. This fundamental precept is embodied in and consistent with the immunity provided under sections 306 and 1510 of the Bankruptcy Code, which expressly provide for a foreign representative to receive certain immunities and protections by limiting the jurisdiction of United States' courts over a foreign representative. See 11 U.S.C. §§ 306 and 1510. Under section 101(24), a "foreign representative" is defined as "a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding." 11 U.S.C. § 101(24). Each of the Scheme Parties is or has been authorized by the English Court or pursuant to the sanctioned Schemes to play a critical role in connection with the Creditors' Meetings and/or the English Proceedings and the administration or implementation of the Schemes and, therefore, each qualifies as a foreign representative for purposes of receiving the protections afforded by sections 306 and 1510 of the Bankruptcy Code. See Convening Order ¶¶ 12-20, 22-28, 31 and Scheme at ¶¶ 1.1, 6-7.5. Moreover, for the same reasons discussed above, the immunity also is consistent with general constructs applicable to protections under chapter 11, in that the immunity provision is reasonable and customary, and in the best interests of the estate. Accordingly, the terms of the Revised Recognition Order granting the Scheme Parties limited immunity should be approved.

20. Indeed, this Court has granted recognition orders that contain immunity provisions similar to that requested in the Revised Recognition Order. See, e.g., In re Greyfriars Ins. Co. Ltd., et al., Case No. 07-B-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007); In re Oslo Reinsurance Co. (UK) Ltd. and Oslo Reinsurance Co. ASA, Case No. 07-12211 (RDD),

Docket No. 15 (Bankr. S.D.N.Y. 2007); In re NRG Victory Reinsurance Ltd., Case No. 06-11052 (JMP), Docket No. 26 (Bankr. S.D.N.Y. 2006); In re Europaische Ruckversicherungs-Gesellschaft in Zurich (European Reinsurance Co. of Zurich), Case No. 06-13061 (REG), Docket No. 14 (Bankr. S.D.N.Y. 2006); La Mutuelle du Mans Assurances IARD UK Branch MMA Account, Case No. 05-60100 (BRL), Docket No. 9 (Bankr. S.D.N.Y. 2005); In re Lion City Run-Off Private Ltd., Case No. 06-10461 (SMB), Docket No. 12 (Bankr S.D.N.Y. 2006).

II. ***Principles of Comity and Cooperation Support Entry of the Revised Recognition Order***

21. The exculpatory and immunity provisions are critical to the effectiveness of the Schemes. As discussed above, the exculpated parties in the Revised Recognition Order are identical to the exculpated parties in the Schemes that have been sanctioned by the English Court, and are exculpated for the same narrow litany of acts and circumstances. Upholding the exculpatory and immunity provisions set forth in the Revised Recognition Order, which have already been sanctioned by the English Court, is entirely consistent with the fundamental goals of the Bankruptcy Code in general and chapter 15 in particular. By contrast, failing to provide exculpation would create an inconsistent and unpredictable regime under which Scheme "officers" could be sued in the U.S. notwithstanding the fact that they cannot be sued in the U.K. by consent of relevant parties and the governing court order.

22. As such, the relief requested in the Revised Recognition Order should be granted pursuant to section 1507 of the Bankruptcy Code, which directs the court to consider comity in granting additional assistance to a foreign representative. See 11 U.S.C. § 1507. Indeed, chapter 15 specifically contemplates that courts "should be guided by principles of comity and cooperation with foreign courts" in deciding whether to grant additional assistance under chapter 15. In re Metcalfe & Mansfield Alternative Invs., et al. (In re Metcalfe), 421 B.R. 685, 696 (Bankr. S.D.N.Y. 2010). Further, this Court has noted the importance in the Second

Circuit of extending comity in foreign proceedings in order to facilitate the equitable, orderly and systematic distribution of the foreign debtor's estate. See In re Ionica PLC, 241 B.R. 829, 835 (Bankr. S.D.N.Y. 1999) (noting that the Second Circuit has often underscored the importance of granting comity in foreign proceedings); see also Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB, 773 F.2d 452, 458 (2d Cir. 1985) (emphasizing that deference to foreign insolvency proceedings typically "facilitate[s] equitable, orderly and systematic" distribution of the debtor's assets").

23. This Court's recent Metcalfe case is particularly instructive. Earlier this year, the bankruptcy court in In re Metcalfe found that principles of comity in chapter 15 cases "strongly counsel[ed]" granting a Canadian foreign representative additional assistance under section 1507 of the Bankruptcy Code by enforcing certain Canadian orders containing third-party non-debtor releases and injunction provisions (much broader than the narrowly tailored exculpation and immunity provisions being requested in the Revised Recognition Order), regardless of whether such provisions would have been proper in a chapter 11 plenary case. In re Metcalfe, 421 B.R. at 696. In evaluating whether to extend comity, the court took into account several factors, including, among others, that extending comity would not be "manifestly contrary to U.S. public policy", because the release provision in question did not fail to meet fundamental U.S. standards of fairness.[9] Indeed, although U.S. law might have required additional limitations on non-debtor third party releases, the applicable Canadian statute provided the Canadian court the jurisdiction and authority to grant such relief and, therefore, the U.S. bankruptcy court had the authority and discretion to recognize such foreign order pursuant

[9] Section 1506 provides a public policy exception by limiting the extension of comity if doing so "would be manifestly contrary to U.S. public policy." This public policy exception embodied in section 1506 "should be narrowly interpreted", restricting the public policy exception "to the most fundamental policies of the United States." See H.R. Rep. No. 109-31(I) at 109, reprinted in 2005 U.S.C.C.A.N. 88, 172.

to section 1507 of the Bankruptcy Code. In addition, the court noted that Canada was a "sister common law jurisdiction with procedures akin to [the United States]" and, thus, the bankruptcy court should extend comity with "less hesitation" because there are "fewer concerns over the procedural safeguards employed in those foreign proceedings." Id. at 698 (citing Hilton v. Guyot, 159 U.S. 113, 202-03 (1895)). Finally, the court also considered that the plan had been adopted with nearly unanimous creditor support after the Canadian courts had specifically considered and ruled on the release provisions. Id. at 700.

24. The same principles and factors that persuaded the Metcalfe court to extend comity are present here and support entry of the Revised Recognition Order. Granting the exculpation provisions would not violate U.S. public policy given that, as discussed above, they are consistent with the principles of the Bankruptcy Code as applied by U.S. courts and, moreover, they are not contrary to the most fundamental policies and standards of fairness in the United States since they were granted after adequate notice and a hearing. Indeed, the exculpation and immunity clauses of the Revised Recognition Order are substantially more narrow than those at issue in Metcalfe and, as such, are entirely supported by applicable U.S. law, as discussed above. Further, England is a "sister common law jurisdiction" with closely analogous judicial procedures and, therefore, there are fewer concerns over the procedural safeguards employed in the English proceedings. In re Ionica PLC, 241 B.R. at 835 ("English law is consistent with [United States'] concepts of due process and impartiality."); see Howard Seife and Francisco Vazquez, U.S. Courts Should Continue to Grant Recognition to Schemes of Arrangement of Solvent Insurance Companies, 17 J. Bankr. L. & Prac. 4 Art. 4, 571, 580 (July 2008) ("England is a 'sister common law jurisdiction' and its laws have procedures similar to those of the U.S.… Moreover, the [English Court] would not sanction a scheme unless it is one

that an intelligent and honest man may reasonably approve and would not be manifestly unfair.") (citations omitted). Moreover, as this Court noted in In re Ionica, "the laws of the United Kingdom, and specifically its insolvency laws, are generally afforded comity". In re Ionica PLC, 241 B.R. at 835. Finally, just as in In re Metcalfe, the fact that the Schemes received unanimous creditor approval and have been sanctioned by the English court after notice and upon a hearing should be dispositive in extending comity to the Schemes, including the exculpation and immunity provisions in the Revised Recognition Order, in order to facilitate the recognition and enforcement of the Schemes in the United States.

III. Consistency in the Reinsurance Market Further Supports the Approval of the Proposed Exculpatory and Immunity Provisions in the Revised Recognition Order

25. It is also important from the more global point of view of the London insurance market (the "London Insurance Market") that the relief granted in recognizing schemes of arrangement that are specific to insurers with business in run-off is uniform and consistent. Schemes of arrangement for insurers are of critical importance to the London Insurance Market and are a frequently-used, and often preferred, method in that market for closing direct and/or reinsurance business in an efficient manner. The London Insurance Market is the world's leading international insurance center for internationally traded insurance and a multi-billion dollar industry.[10] Further, reinsurance and insurance run-offs comprise 15% of this market,[11]

[10] The London Insurance Market is a distinct and separate part of the UK insurance and reinsurance market, which is the largest in Europe and the third in the world, accounting for 11% of the total worldwide premium income. See "UK Insurance-Key Facts", Association of British Insurers, Sept. 2009 (figures related to 2008).

[11] Insurance run-offs have total liabilities of approximately £30 billion. Statistics from the KPMG Run-off Survey: Non-life Insurance (hereinafter, the "KPMG Run-off Survey") (published in 2010) *available at* http://www.kpmg.co.uk/pubs/221144%20Run%20off%20survey_Accessible1.pdf, and attached hereto as Exhibit B..

with solvent run-offs constituting nearly half of total run-offs conducted.[12] U.K. schemes of arrangements have been used for many years to bring closure to insurance and reinsurance business in run-off. Such schemes require the sanction of the English Court, and often the recognition of such schemes by the United States bankruptcy courts based specifically on the authority and precedent of the decisions granted by the English and U.S. courts.[13] For the sake of consistency in this specific and critical market, uniform treatment is clearly important: the parties must know how they will be treated and what to expect in terms of, for example, liability in order for them to approach and utilize the scheme and recognition process, confident in a steady and predictable application of the law.

26. Moreover, while not legally dispositive, the multitude of schemes of arrangement recognized previously pursuant to section 304 of the Bankruptcy Code and currently pursuant to chapter 15, each of which contains similar exculpation and immunity provisions, also provides strong precedential support for the relief sought herein. See, e.g., In re Greyfriars Ins. Co. Ltd., et al., Case No. 07-B-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007); In re Oslo Reinsurance Co. (UK) Ltd. and Oslo Reinsurance Co. ASA, Case No. 07-12211 (RDD), Docket No. 15 (Bankr. S.D.N.Y. 2007); In re NRG Victory Reinsurance Ltd., Case No. 06-11052 (JMP), Docket No. 26 (Bankr. S.D.N.Y. 2006); In re Europaische Ruckversicherungs-Gesellschaft in Zurich (European Reinsurance Co. of Zurich), Case No. 06-13061 (REG), Docket No. 14 (Bankr. S.D.N.Y. 2006); La Mutuelle du Mans Assurances IARD

[12] Solvent run-offs comprise 46% of the run-offs conducted in the London Insurance Market. Further, solvent company run-offs in the London Insurance Market have total liabilities of approximately £13 billion and approximately £4 billion of capital tied-up in companies involved in solvent insurance run-off, excluding Lloyd's vehicles and companies with runoff portfolios that are combined with live business. See KPMG Run-off Survey at 8.

[13] A total of 227 solvent schemes of arrangement for non-life insurance companies had become effective by the end of 2009. See KPMG Run-off Survey at 8.

UK Branch MMA Account, Case No. 05-60100 (BRL), Docket No. 9 (Bankr. S.D.N.Y. 2005); In re Lion City Run-Off Private Ltd., Case No. 06-10461 (SMB), Docket No. 12 (Bankr S.D.N.Y. 2006). Indeed, courts have granted recognition orders that contain exculpatory language identical to that set forth in the Revised Recognition Order. In re Greyfriars Ins. Co. Ltd., et al., Case No. 07-B-12934 (JMP), Docket No. 23 (Bankr. S.D.N.Y. 2007). Granting the relief requested in the Revised Recognition Order will ensure a consistent and uniform approach to chapter 15 cases in the context of UK schemes of arrangements and in the vitally important London Insurance Market.

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