

**IN THE HIGH COURT OF JUSTICE**  
**000018**

**Claim No. FL-2020-14 Jul 2020**



FL-2020-000018

**BUSINESS AND PROPERTY COURTS**

**COMMERCIAL COURT (QBD)**

**FINANCIAL LIST**

**FINANCIAL MARKETS TEST CASE SCHEME**

**The Rt. Hon. Lord Justice Flaux and the Hon. Mr Justice Butcher**

**BETWEEN:**

**THE FINANCIAL CONDUCT AUTHORITY**

**Claimant**

**-and-**

**(1) ARCH INSURANCE (UK) LTD**

**(2) ARGENTA SYNDICATE MANAGEMENT LTD**

**(3) ECCLESIASTICAL INSURANCE OFFICE PLC**

**(4) HISCOX INSURANCE COMPANY LTD**

**(5) MS AMLIN UNDERWRITING LTD**

**(6) QBE UK LTD**

**(7) ROYAL & SUN ALLIANCE INSURANCE PLC**

**(8) ZURICH INSURANCE PLC**

**Defendants**

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**ORDER**

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UPON hearing Counsel for each of the Parties, the Hospitality Insurance Group Action Applicants, the Hiscox Action Group Applicants and Mr John Sheehan

AND UPON considering the Claimant's applications dated 23 June 2020 and 25 June 2020

AND UPON considering the First Defendant's application dated 23 June 2020

AND UPON considering the Third and Fifth Defendants' applications dated 23 June 2020

AND UPON considering the Seventh Defendant's application dated 25 June 2020

AND UPON considering the application dated 21 June 2020 on behalf of Mr John Sheehan (the "**Sheehan Application**")

AND UPON the Second Case Management Conference and the Order concerning the intervention of the Hospitality Insurance Group Action Applicants and the Hiscox Action Group Applicants dated 26 June 2020

IT IS ORDERED THAT:

**Amendment to Particulars of Claim**

- 1 The Claimant has permission pursuant to CPR 17.1(2)(b) to amend its Particulars of Claim in accordance with the draft Amended Particulars of Claim annexed to its application dated 25 June 2020.
- 2 The Defendants have permission pursuant to CPR 17.1(2)(a) to make any consequential amendments to their Defences.
- 3 The Claimant has permission pursuant to CPR 17.1(2)(a) to make any consequential amendments to its Reply.

**Factual evidence**

- 4 The First Defendant has permission to rely on the First Witness Statement of Kirsten Valder dated 23 June 2020 along with the accompanying exhibits thereto which concerns the Arch1 wording and government meetings.
- 5 The Third Defendant has permission to rely on the First Witness Statement of Samantha Nicholas dated 23 June 2020 along with the

accompanying exhibits thereto which concerns government meetings.

6 The Fifth Defendant has permission to rely on the First Witness Statement of Frederick Foreman dated 23 June 2020 along with the accompanying exhibits thereto which concerns government meetings.

7 The Seventh Defendant's application for permission to adduce factual evidence in relation to a non-test case wording is dismissed.

### **Expert evidence**

8 The Claimant's application dated 23 June 2020 to rely on expert evidence relating to the construction of the Specified Diseases clause of the Ecclesiastical1.1 and Ecclesiastical1.2 policy wordings is dismissed.

### **Intervention**

9 The Sheehan Application seeking permission to intervene is dismissed.

### **Exchange of skeleton arguments for the trial**

10 The Claimant shall file and serve skeleton arguments for the trial by 4pm on 10 July 2020.

11 The Defendants shall file and serve skeleton arguments for the trial by 4pm on 14 July 2020.

### **Cooperation between the Defendants in relation to skeleton arguments**

12 The Defendants shall cooperate, so far as reasonably practicable, to ensure that unnecessary duplication is avoided in each of their skeleton arguments for trial.

### **Chronology**

13 The requirement under Paragraph J.6.4 of the Commercial Court

Guide that the Claimant provide a chronology with its skeleton argument be disapplied.

### **Pre-trial checklist**

- 14 Each Party shall send to the Commercial Court Listing Office (with an electronic copy to all other Parties) a completed pre-trial checklist in the form set out in Appendix 2 of the Commercial Court Guide by 4pm on 29 June 2020.

### **Progress monitoring date**

- 15 The progress monitoring date is 10 July 2020.
- 16 Each Party must send to the clerks of Lord Justice Flaux and Mr Justice Butcher (with an electronic copy to all other Parties) a progress monitoring information sheet in the form set out in Appendix 2 of the Commercial Court Guide by 4pm on 6 July 2020.

### **Trial bundle**

- 17 The Parties shall agree the trial bundle by 5pm on 1 July 2020.
- 18 The Claimant shall arrange for upload of the trial bundle to the Opus 2 platform by 5pm on 3 July 2020.

### **Bundle of authorities**

- 19 At the time of serving the skeleton arguments referred to in paragraph 9 above, the Defendants will also provide the Claimant with a list of authorities referred to in those skeleton arguments and electronic pdf copies of those authorities for the Claimant to include in the Authorities section of the trial bundle.
- 20 The Claimant shall upload the Authorities section of the trial bundle as soon as possible after service of the Parties' skeletons.

### **List of Issues**

21 The Claimant shall provide the draft List of Issues to the Defendants by 5 July 2020.

22 The Defendants shall provide their responses to the draft List of Issues by 8 July 2020.

**Trial timetable**

23 The Claimant shall provide to the Commercial Court Listing Office (with an electronic copy to all other Parties) the trial timetable by 4pm on 8 July 2020 (absent the breakdown of time between the Defendants, which shall be specified by the Defendants at the time of service of their skeleton arguments).

**Reading list**

24 The Claimant shall provide to the Commercial Court Listing Office (with an electronic copy to all other Parties) a proposed reading list for the trial Judges, to be agreed between the Parties as a single reading list to the extent reasonably practicable, by 4pm on 14 July 2020.

**Reading days**

25 There shall be four reading days prior to the trial on 14, 15, 16 and 17 July 2020.

**Remote trial arrangements**

26 The trial shall be conducted wholly remotely and:

- (a) it shall be conducted via Skype for Business.
- (b) Sparq shall be retained by the Parties to assist the Parties with the arrangement of the Skype for Business call and the public livestreaming of the trial.
- (c) Opus 2 shall be retained by the Parties to host the trial bundles

electronically on their Magnum platform.

### **Transcription**

- 27 Opus 2 are permitted to circulate to the Parties following the Second Case Management Conference a draft of any Ruling by the Judge at the Second Case Management Conference, pending approval of the transcript by the Judge. The draft of any Ruling is to be used by the Parties solely to prepare a draft Order for the Court's approval, and is not to be circulated beyond the Parties.
- 28 Opus 2 are permitted to upload to the Magnum platform for access by the Parties, the synchronised audio of the Second Case Management Conference and each day of the trial so that the Parties can review, and agree any amendments to, the transcript of the Second Case Management Conference and the trial.
- 29 The Parties shall exchange comments on the draft transcript circulated by Opus 2 by 11am on the working day after the Second Case Management Conference and each day of the trial and provide comments to Opus 2 that day.
- 30 To the extent the transcript is finalised and agreed by Opus 2 by 10am the second working day after the Second Case Management Conference and each day of the trial, the Claimant will publish the final version on its website. If and to the extent the transcript has not been finalised and agreed by Opus 2 by 10am that day, the Claimant will publish the draft version marked as "draft" and the final version will be substituted as and when it is ready.

### **Publication**

- 31 The Claimant shall publish all skeleton arguments for trial on its

website as soon as practicable and in any event no later than one working day after their service.

**Other**

32 There be liberty to any Party to apply to vary the terms of this Order.

33 There be no order as to costs.

Date Order made: 26 June 2020