

Deponent: Frederick White  
Applicant  
Exhibits FW1-FW2  
Dated 26 September 2023

**IN THE SUPREME COURT OF GIBRALTAR**

**2016 Comp. No 23**

**IN THE MATTER** of Enterprise Insurance Company Plc (in liquidation)

**-and-**

**IN THE MATTER** of the Insolvency Act 2011 and an application for directions under section 177(5)

---

**AFFIDAVIT OF FREDERICK  
DAVID JOHN WHITE**

---

I, **FREDERICK DAVID JOHN WHITE** of 41 Quay 31, Kings Wharf, Gibraltar **MAKE OATH** and **SAY** as follows:

1. I am a Chartered Accountant, licensed Insolvency Practitioner and Managing Director of Grant Thornton Limited which practises from 6A Queensway, Gibraltar. I am also the Liquidator of Enterprise Insurance Company plc (“EIC”) appointed by Order of the Supreme Court of Gibraltar on 26<sup>th</sup> October 2016. I make this Affidavit in support of my application to the Supreme Court in accordance with Section 177(5) of the Insolvency Act, 2011 (“the Act”) for directions to assist me in the payment of a first interim dividend to insurance creditors.
2. Insofar as the matters deposed to herein are within my own knowledge then they are true. Insofar as they are not within my own knowledge then they are true to the best of my knowledge, information and belief.

3. I am currently the liquidator of four general insurance companies Lemma Europe Insurance Company Ltd, Lamp Insurance Company Ltd, Prometheus Insurance Company Limited and EIC. EIC prior to the liquidation wrote an extensive portfolio of motor insurance policies in the United Kingdom as well as the Republic of Ireland, France, Italy and Greece. I am also the administrator of Horizon Insurance Company Ltd which also wrote an extensive portfolio of motor insurance policies in the United Kingdom as did Prometheus Insurance Company Limited. I have extensive experience of managing and adjudicating as liquidator and administrator upon insurance claims in the context of an insolvent insurance company. I have also cooperated and worked extensively with the Financial Services Compensation Scheme (“FSCS”) in the United Kingdom in their role as a compensation scheme charged with protecting United Kingdom policyholders as well as the Insurance Compensation Funds of Ireland, France, Italy and Greece in respect of their similar roles.
4. I make this Affidavit in support of my application for certain directions to assist me in the calculation and payment of a first interim dividend distribution to insurance creditors relating to matters arising from the insurance business underwritten and undertaken by EIC.

#### **Directions sought**

5. I seek the following directions under section 177(5) of the Insolvency Act 2011 (Gibraltar):
  - a. A direction that I am permitted to treat all the assets of EIC including reinsurance recoveries and recoveries arising from litigation as assets over which insurance claims have preference except for those preferential claims set out in Regulation 250(2)(b);
  - b. A direction that in calculating the amount of the interim dividend to be paid to insurance creditors I make appropriate provision for the amount of any known or likely Regulation 250(2)(b) preferential claim for the reasons set out in paragraphs 6 to 8 below. At present, there are no such claims known to me;
  - c. A direction that I send claim forms to insurance creditors as follows:
    - i. To the compensation schemes (or their equivalent) in UK, Ireland, France, Italy and Greece;
    - ii. To all insurance creditors who have to date notified me of claims including to the solicitors who have notified me of claims on behalf of the Icebreaker policy holders as well as individual Icebreaker policy holders.
  - d. A direction dispensing with the requirement to send out claims forms to IBG policy holders, insurance creditors (who have assigned or subrogated their claims to statutory compensation schemes) and also, to unsecured creditors given the fact that no dividend will be paid to such creditors.
  - e. A direction for the calculation of provisions as set out in paragraph 23 below.
  - f. A direction for the applicable rate of exchange in accordance with paragraph 24 below.

- g. A direction for the approval of the proposed mechanism set out in paragraph 25 below.

## **Insurance Creditors**

6. Section 250 of the Financial Services Act 2019, Financial Services (Insurance Companies) Regulations 2020 provides that insurance claims take precedence over other claims against an insurance undertaking. The only exception to this precedence are claims by employees and tax authorities as set out in Section 250(2) (b). I am able to inform the Court that as at the date of this Affidavit no claims have been made against the Company by any such creditors. As the Company has insufficient assets to meet the claims of insurance creditors, there is no prospect of a dividend distribution to any creditors other than insurance creditors or any preferential claims arising from employees or tax authorities. I have already advised unsecured creditors of this in my reports to creditors which are published on the EIC liquidation website [www.eigplc.com](http://www.eigplc.com).
7. In so far as the treatment of insurance claims are concerned, the Financial Services (Insurance Companies) Regulations 2020 at Regulations 250 and 251 state the following:

*“Treatment of insurance claims*

*250.(1) Insurance claims take precedence over other claims against an insurance undertaking as specified in sub-regulation (2).*

*(2) With regard to—*

*(a) assets representing the technical provisions, insurance claims must take absolute precedence over any other claim on the undertaking; and*

*(b) the whole of the assets of the undertaking, insurance claims must take precedence over any claim on the undertaking other than—*

*(i) claims by employees arising from employment contracts and employment relationships;*

*(ii) claims by public bodies on taxes;*

*(iii) claims by social security systems; and*

*(iv) claims on assets subject to rights in rem.*

*(3) Despite sub-regulations (1) and (2), the expenses arising from the winding-up proceedings, as determined in accordance with the general law of Gibraltar, must take precedence over insurance claims.*

*Special register*

*251.(1) An insurance undertaking must establish and keep up to date at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with these Regulations.”*

8. I am able to advise the Court that no special register as required by Regulation 251(1) was maintained by EIC<sup>1</sup>. As Liquidator, I am therefore unable to determine the assets representing the technical provisions over which insurance claims must take absolute preference over all other claims including those set out in Regulation 250(2)(b). I therefore respectfully request that the Court directs that I treat all the assets of EIC including reinsurance recoveries and recoveries arising from litigation as assets over which insurance claims have preference except for those preferential claims set out in Regulation 250(2)(b) and that in calculating the amount of the interim dividend to be paid I make an appropriate provision for the amount of any known or likely Regulation 250(2)(b) preferential claims. At present, I am not aware of any.

#### **Claim Forms**

9. The Order of the Supreme Court dated 26<sup>th</sup> October 2016 appointing me as liquidator of the Company provided that:

*“The requirement for the liquidator to send claim forms to each creditor be dispensed with until further order or directions”*

Since my appointment as Liquidator, the adjudication of claims arising from insurance policies issued by EIC has of necessity required me to engage claims managers, loss adjusters, solicitors and other experts to manage the claims and admit only those claims for which EIC is liable and at the appropriate quantum as insurance creditors in the liquidation estate. As at 30<sup>th</sup> June 2023 total gross admitted insurance claims amounted to circa £226 million. In respect of policyholders protected by a statutory insurance compensation scheme the claims are submitted to the schemes for payment in return for an assignment and/or subrogation of the insurance claim to the scheme concerned.

10. The adjudication process conducted by myself, my staff and my agents acting for me is extensive, often involving dealing directly with the injured third parties claiming against the holder of the insurance policy issued by EIC. I would respectfully request that the Court direct that the creditors of the Company to whom a claim form should be sent be limited to the statutory insurance compensation funds of the United Kingdom, Republic of Ireland, France, Italy and Greece as well as all insurance creditors that I am able to determine from the claims records available to me, that will not be eligible for protection by any of the before mentioned statutory insurance compensation

---

<sup>1</sup> Previously and prior to the liquidation of EIC on 26 October 2016, this requirement was contained in section 153 of the Financial Services (Insurance Companies) (Solvency II Directive) Act 2015.

funds and as such will therefore remain as individual insurance creditors in the liquidation estate. I believe this is the most practical, proportionate and cost effective way of dealing with the issue of claim forms given that the compensation schemes concerned have already paid out a number of creditors subject to the assignment of claims by or subrogation to the scheme by the policy holder concerned.

11. It would also be my intention to advertise the intention to pay an interim dividend on the EIC website and to advise the individual compensation schemes of that intention (see further section below on Notice to Creditors). I would also write to the solicitors representing a body of insurance creditors relating to the Icebreaker scheme which was underwritten by EIC (as is set out in paragraph 16 below).

### **Notice to Creditors**

12. Section 208(1) of the Insolvency Act 2011 states:

*“Where the liquidator of a company has sufficient funds to make a distribution, he shall, subject to the retention of such sums as may be necessary for his remuneration and the other costs and expenses of the liquidation, by written notice sent to the creditors of the company, fix a date on or before which creditors shall submit their claims to him”*

13. Given that it has been over 7 years since EIC went into provisional liquidation on 25<sup>th</sup> July 2016 and subject to one exception namely the Insurance Backed Guarantee book of business (see further paragraphs 19 to 23 below), I consider that EIC/ myself as liquidator will have been notified of most if not all the insurance claims arising from insurance policies issued by EIC. All such notified insurance claims will either have been adjudicated upon and admitted to the liquidation estate or have had an appropriate level of reserve applied to the claim as the likely amount at which the claim would be admitted.
14. An estimated liquidation outcome statement reflecting balances and amounts as at 30<sup>th</sup> June 2023 is exhibited at “FW1”. This estimated outcome statement reflects total incurred claims of £338 million of which £226 million have been admitted and £112 million reserved. The majority of insurance creditors in respect of claims adjudicated upon and admitted to the estate will fall to be protected by the statutory insurance compensation funds of the United Kingdom, Republic of Ireland, France, Italy and Greece. Total gross reserved claims stated as at 30<sup>th</sup> June 2023 including an Incurred But Not Reported (“IBNR”) reserve of £10 million amounted to £112 million. The adjudication of these “open” reserved claims continues, often involving necessary litigation to determine the liability and the quantum of the insurance claim to be admitted.
15. In these circumstances I consider that the sending of a written notice to all creditors of the company “to fix a date on or before which creditors shall submit their claims to him” may be an unnecessary cost for the estate and may also cause possible confusion and alarm to insurance creditors. It would also be

pointless to send out claim forms to unsecured creditors in circumstances where there is no prospect of any dividend being paid to unsecured creditors. I would respectfully request that the Court direct that the creditors of the Company to whom the written notice should be sent be limited to the statutory insurance compensation funds of the United Kingdom, Republic of Ireland, France, Italy and Greece as well as all admitted insurance creditors that I am able to determine from the claims records available to me, that will not be eligible for protection by any of the before mentioned statutory insurance compensation funds and as such will therefore remain as individual insurance creditors in the liquidation estate.

16. A body of insurance creditors/policyholders arising from policies underwritten by EIC and referred to as “Icebreaker” policies are represented by a firm of English solicitors namely Moore Barlow of Gateway House, Tollgate, Chandler’s Ford, Southampton, Eastleigh SO53 3TG, England. It is therefore proposed that notice to these policyholders (who are represented by Moore Barlow) be by way of notice to the solicitors on behalf of the policyholders they represent. Icebreaker policyholders who are not represented by Moore Blatch would be individually notified.
17. In respect of IBG policyholders, I do not (subject to the Court’s direction) propose to provide notice to Insurance Backed Guarantee policyholders as these policies have not yet been disclaimed and claims arising under the policies are in any event met by the UK Financial Services Compensation Fund and it will prove in the liquidation in respect of any claims it has to date paid out to IBG policyholders. In respect of any other insurance creditors, I would propose to advertise my intention to pay the interim dividend on the Enterprise liquidation website and also to upload a copy of this application and this affidavit.

#### **Further relevant provisions**

18. Regulation 117(1) of the Insolvency Rules 2014 states:

*“In determining the funds available for distribution to creditors by way of dividend, the liquidator shall make provision*

- (a) For any claims which creditors may not have had sufficient time to make;*
- (b) For any claims which have not yet been determined; and*
- (c) For any disputed claims*

The liquidation of an insurance company and the process of the adjudication upon and admission of insurance claims over an extended period of time along with the possibility of claims being notified years after the occurrence of the events giving rise to the claims creates certain requirements and uncertainties for the calculation by the liquidator of the amount of provisions adequate to cover claims which have been notified but not yet determined and claims for which the events giving rise to the claim occurred during the period covered by a valid insurance policy issued by EIC but which have not yet been reported.

#### **Insurance Backed Guarantees**

19. As at the 26<sup>th</sup> October 2016 when I was appointed as Liquidator, EIC had issued and underwritten 353,379 insurance policies in the UK referred to as “Insurance Backed Guarantees” (“IBG policies”). These IBG policies provided cover for the benefit of homeowners in respect of remedial works required to home alterations such as the installation of windows, conservatories and solar panels in circumstances where the installing contractor had ceased to trade and was not available to undertake such works. The majority of the IBG policies were written to cover a ten-year period with the remainder covering a twenty-year period from the date of installation. The premium relating to each policy was very modest, an average being circa £13 per policy. As Liquidator I disclaimed all live policies of insurance issued by EIC as onerous contracts with the exception of the IBG policies for reasons I explain below.
20. In respect of the disclaimed insurance policies (e.g. motor insurance policies) this gave rise to claims for return of premium which in the United Kingdom were met by the statutory insurance compensation fund the Financial Services Compensation Scheme (“FSCS”). After analysis and detailed discussions with the FSCS, the FSCS requested that I did not disclaim the IBG policies as doing so would crystallize a return of premium claim of circa £2.5 million. It was estimated that claims arising from IBG policies would be substantially less than this amount if I simply proceeded to run off the book of policies and therefore, my not disclaiming IBG policies was considered beneficial to the EIC insolvent estate (and the FSCS as the largest insurance creditor of EIC).
21. Analysis indicated that the majority of the 10 year IBG policies would expire by 31<sup>st</sup> December 2026 and the FSCS requested that IBG policies not be disclaimed until after this date. There are currently circa 269,000 live policies and this number is projected to fall to circa 72,500 by 31<sup>st</sup> December 2026 with return of premium claims following a disclaimer at that date of circa £1.1 million. In these circumstances the calculation of a provision for claims arising from IBG policies after the date declared for the payment of an interim dividend distribution must provide for both claims arising up to 31<sup>st</sup> December 2026 and also return of premium claims arising from the disclaiming of IBG policies after 31<sup>st</sup> December 2026.
22. At the hearing of the application at the Supreme Court on 26<sup>th</sup> October 2016 when I was appointed as liquidator, representation was made by Mr David Bond of The Underwritten Warranty Company Limited (“UWC”) (trading as The Insurance Backed Guarantee Company) one of the original brokers of the IBG policies and claims manager requesting that IBG policies not be disclaimed while an alternative insurer was located willing to continue providing cover. A problem facing UWC was that the premium on IBG policies had already been paid and it appeared that the only source of remunerating a new insurer was by way of return of premium compensation paid by the FSCS. I am aware that the FSCS corresponded with UWC but that a new insurer able to provide cover did not materialise. Instead, as outlined at paragraphs 20 and 21 the FSCS requested that I not disclaim IBG policies until after 31<sup>st</sup> December 2026. I have engaged UWC to continue managing claims arising from the non-expired IBG policies.

### **Calculation of Provisions**

23. While I consider that Regulation 117(1) requires me to make provision for disputed claims, claims which have not yet been adjudicated or claims which the creditor may not have had sufficient time to make, in the particular circumstances of EIC, I would respectfully request that the Court directs;
- (i) That in respect of insurance claims notified to the Company at the date set for the submission of claims in accordance with the requirements of Section 208(1) of the Insolvency Act, but which have not yet been adjudicated upon, the provision shall be calculated at my discretion based upon the advice of my appointed claims managers and solicitors and the progress of the management of the claim or related litigation.
  - (ii) That an Incurred But Not Reported (“IBNR”) reserve be provided for claims arising which have not yet been reported at the date set for submission of claims and an Incurred But Not Enough Reported (“IBNER”) reserve for any unforeseen deterioration in the provisions made for reported claims. IBNR and IBNER provisions will be calculated by me at my discretion assisted by actuarial advice and estimations as required.
  - (iii) That in respect of IBG policies a provision is set for estimated claims that may arise on policies up to 31<sup>st</sup> December 2026 along with a provision for return of premium claims which could arise from the disclaiming of remaining IBG policies at that date (after the expiry of the last of the 10 year policies).

### **Rate of Exchange**

24. Regulation 72(1) requires that in respect of claims in currency other than pounds, the rate of exchange used for the purpose of converting a liability into pounds is the closing mid-point rate published in the European edition of the Financial Times for the relevant date. Regulation 72(2) states that in the absence of a published rate as referred to in sub-rule (1), the rate used shall be determined by the Court. The relevant date for the proving of claims and the conversion of claims to pounds is 26<sup>th</sup> October 2016 the date of my appointment as liquidator. Exhibited at “FW2” is a screen shot of the Financial Times UK Pound Sterling/Euro FX Cross Rate which shows that on 26<sup>th</sup> October 2016 the High rate was 1.18 and the Low rate was 1.10. The midpoint calculated between the high and low rates would be Euro 1.14 and I respectfully request that the Court determine that this be the rate used for converting insurance creditors stated in Euro to pounds sterling.

### **Further contemplated Interim Dividends**

25. While Regulation 117 and the directions sought would provide for the estimation of the necessary provisions for determining the funds available for



distribution to creditors, for the purpose of informing the Court and seeking the Court's direction approving the provisioning mechanism I consider it useful to set out the mechanism for the payment of further interim dividend distributions to insurance creditors. If the first interim dividend were set (as I currently intend) at 10% of the value of the admitted claim, a distribution would be made to insurance creditors admitted at the date set for the submission of claims as per the requirements of Section 208(1) of the Insolvency Act 2011. All insurance claims admitted after this date will receive a 10% distribution upon adjudication and admission of the claim in accordance with the requirements of Regulations 117(3). If a second interim dividend distribution of say 5% were to be declared new provisions would be calculated at the date set for the submission of claims to rank for receipt of the second interim dividend in respect of all open claims. All admitted insurance claims at that date would receive a further 5% interim dividend distribution and all insurance claims admitted after that date would receive a 15% dividend distribution upon the adjudication and admission of the claim. In this way no admitted insurance creditor would be prejudiced in the context of any interim dividends paid by virtue of the date when they file their claim pending any final dividend (and/or scheme of arrangement).

### **Scheme of Arrangement**

26. In England schemes of arrangement have been used by insolvent insurance companies as a mechanism to make distributions to insurance creditors and as a mechanism to facilitate closure of a liquidation. I have given consideration to the suitability of implementing a scheme in respect of EIC but do not propose to seek to implement such a scheme at this juncture but do not rule it out at a future date.
27. Schemes utilised by insurance companies usually fall into two categories, crystallisation schemes and reserving schemes.
28. Under a crystallisation scheme, creditors are required to submit their claims to the company by a particular date referred to as the "Bar Date", after which no further claims can be submitted. The ultimate liabilities of the company are then determined by reference to an estimation methodology with the assistance of actuaries. I do not consider it appropriate in the current circumstances of the liquidation of EIC to implement a crystallisation scheme requiring the implementation of a Bar Date at this time. As I have stated above it is not my intention to disclaim IBG policies until after 31<sup>st</sup> December 2026. These live IBG policies continue to give rise to claims and a Bar Date or cut-off date could not be applied to claims arising from these policies without being prejudicial to the interests of these policyholders. Further, the liabilities from claims arising after a Bar Date are excluded and neither a Liquidator or Scheme Manager would adjudicate upon the claims. In these circumstances new claims would either fall upon the protection of the statutory compensation funds of the United Kingdom, Republic of Ireland, France, Italy and Greece or would be left unprotected. The adjudication process I have followed as liquidator (with reference to insurance claims which have been covered by the compensation schemes) has managed claims efficiently and effectively for the benefit of the

compensation funds and given the continued level of open claims still to be adjudicated upon and corresponding reinsurance recoveries to be received, I do not consider it appropriate to consider the implementation of a crystallisation scheme of arrangement at this time.

29. Under a reserving scheme of arrangement, a company would remain in run-off with interim distributions paid to creditors with admitted claims from time to time, whilst reserves are maintained to pay an equivalent amount to creditors whose claims are not agreed and contingent claims arising at a future date. I do not consider that a reserving scheme would present any material advantage compared to the liquidation process I have followed and the planned payment of interim dividend distributions to insurance creditors to which this application for directions relates. Further the Company continues to be involved in litigation and pursue additional realisation of assets. Given the above, I do not therefore consider it appropriate to transfer liquidation estate assets to a scheme of arrangement at this juncture.
30. I therefore respectfully ask that the Court give directions as sought and approve the mechanism for the calculation of the proposed first interim dividend and my proposed methodology including in respect of the provisions. The projected liquidation outcome statement exhibited at "FW1" indicates a potential distribution to insurance creditors of circa 32% of the value of admitted claims. A first interim dividend of 10% is planned which based on total gross incurred claims would amount to circa £33.8 million. Gross admitted insurance claims are circa £226 million resulting in an immediate dividend distribution of circa £22.6 million with a 10% distribution paid on the admission of each subsequent claim.



SWORN by the above-named deponent

At *Trisles LLP, Suite 23, Portland House, Colons*

this 26<sup>th</sup> day of September 2023

Before me **Nicholas Manning**  
Commissioner for Oaths

Commissioner for Oaths



This Affidavit is filed by Triay Lawyers of 28 Irish Town, Gibraltar, solicitors for the Liquidator.