

## ENTERPRISE INSURANCE COMPANY PLC (IN LIQUIDATION)

### LIQUIDATOR'S FIFTH PROGRESS REPORT

as at 15 August 2019

By order of the Supreme Court of Gibraltar dated 26 October 2016 ("the Order") I was appointed liquidator of Enterprise Insurance Company PLC ("the Company") under section 160 of the Insolvency Act 2011.

A liquidation website was established at [ww.eigplc.com](http://ww.eigplc.com) as a means of communicating effectively with policyholders and creditors.

Section 161 (1) of the Financial Services (Insurance Companies) (Solvency II Directive) Act requires liquidators, in an appropriate manner, to keep creditors regularly informed on the progress of the winding up. Section 176 (2) of the Insolvency Act, 2011 in relation to the general duties of a liquidator, allows a liquidator, subject to the Act and Rules, to use his own discretion in undertaking his duties. In the liquidation of Lemma Europe Insurance Company Ltd the Court accepted my proposal that I would report to creditors twice yearly. In accordance with the powers of discretion provided to me I propose to report similarly as to the progress of the liquidation of the Company. It is my intention to report after the 30 June and the 31 December of each calendar year with receipts and payments accounts made up to those dates. My reports along with the receipts and payments accounts will be published on the liquidation website.

This is my fifth such report. A receipts and payments account for the period from 26 October 2016 to 30 June 2019 is attached. Certain matters included in my previous report are also included in this report.

#### **Insurance Business of the Company**

1. The Company wrote insurance business in the following main classes; motor, third party liability, miscellaneous financial loss – warranty, miscellaneous financial loss- other and legal expenses. While the majority of policies were issued to policyholders in the United Kingdom motor insurance policies were also issued in the Republic of Ireland, Italy, France and Greece under the freedom of services provisions.
2. As a result of the Court's decision to open winding-up proceedings the Gibraltar Financial Services Commission ("GFSC") issued a direction dated 26 October 2016 that the Company cease to be authorised to carry on insurance business, pursuant to section 156(1) Financial Services (Insurance Companies) (Solvency II Directive) Act and section 106 Financial Services (Insurance Companies) Act. As liquidator I am allowed, pursuant to section 156(2) of the Financial Services (Insurance Companies) (Solvency II Directive) Act to pursue some of the activities of the insurance undertaking in so far as that is necessary or appropriate for the purposes of the winding up. These activities involve the administration, management and adjudication of claims arising from the indemnities provided by insurance policies issued by the Company for the purpose of admitting these claims as insurance claims in the insolvent estate. I conduct these insurance activities with the consent of and under the supervision of the GFSC.
3. In accordance with section 152 of the Financial Services (Insurance Companies) (Solvency II Directive) Act, insurance claims take precedence over other claims as specified in subsections (2) and (3) of section 152. With regard to assets representing technical provisions, insurance claims shall take absolute precedence over any other claim on the insurance undertaking under section 152(2) and with regard to the whole of the assets of the insurance undertaking under section 152(3), insurance claims take precedence over any other claims other than:

- 3.1 Claims by employees arising from employment contracts and employment relationships;
- 3.2 Claims by public bodies on taxes;
- 3.3 Claims by social security systems, and
- 3.4 Claims on assets subject to rights in rem.

Given the priority afforded under Gibraltar's insurance legislation to insurance claims there is in my view no realistic prospect that creditors other than insurance creditors and the other creditors mentioned in section 152(3) will have any economic interest in the liquidation of the Company.

### **Publication of Decision on Winding up Proceedings**

4. Notice of the decision to open winding up proceedings and my appointment as liquidator was published by the GFSC in the Gibraltar Gazette and the Official Journal of the European Union as required by section 157(1) of the Financial Services (Insurance Companies) (Solvency II Directive) Act.

### **Information to Known Creditors**

5. Section 158 of the Financial Services (Insurance Companies) (Solvency II Directive) Act requires each known creditor whose habitual residence, domicile or head office is situated outside Gibraltar and in an EU Member State to be informed by written notice of the opening of winding up proceedings. The Order of 26 October 2016 allowed me to affect this notice as follows:
  - a. By email where the Company has the email address of the creditor concerned;
  - b. By sending to the Creditor's address where the Company has a record of the creditor's address;
  - c. By email to the insurance broker in respect of policyholder creditors where the Company does not have the email or postal address of the policyholder concerned.

The notice also informed creditors that future notices under the Insolvency Act (with the exception of any notice of disclaimer) and any reports by the Liquidator will be published on the Company's website.

The Company's distribution network via brokers and intermediaries along with the nature of certain warranty policies issued by the Company meant that a policyholder database containing contact details for the in excess of 760,000 live policies was not available to me. The IT staff of the Company retained by me along with my own staff worked to create an updated policyholder database to allow me to comply with the requirements of the Financial Services (Insurance Companies) (Solvency II Directive) Act and my order of appointment.

### **First Meeting of Creditors**

6. Given the nature and circumstances of the liquidation and the assets and liabilities of the Company, I considered it was not practical or necessary for a first meeting of creditors to be held. Given the circumstances, the Court also dispensed with the requirement for me to send out claim forms to creditors at this juncture. There is therefore currently no time limit for the filing of claims in the liquidation by creditors. Notice of my decision not to hold a meeting under section 174 of the Insolvency Act 2011 is published on the Company website and was advertised in the Gibraltar Gazette in accordance with the Order.



## **Disclaimer of Policies**

7. Section 209 of the Insolvency Act 2011 allows a liquidator to disclaim onerous property. Insurance policies issued by the Company allowed liabilities to continue to accrue on the insolvent estate. The disclaimer of policies terminated the policies and prevented insurance claims arising under the policies following the date of the disclaimer.

Accordingly I disclaimed policies of insurance issued by the Company as follows:

- 7.1 I disclaimed all and any motor insurance contracts issued in the United Kingdom, Republic of Ireland, France, Italy and Greece under which the Company was an insurer with effect from 0:00 Hours on 27<sup>th</sup> October 2016.
- 7.2 I disclaimed all and any teacher absence contracts issued in the United Kingdom under which the Company was an insurer with effect from 0:00 Hours on 27<sup>th</sup> October 2016.
- 7.3 On 14<sup>th</sup> December 2016 I disclaimed all contracts placed by the broker Motorway Direct plc with the Company as insurer. Motorway Direct plc had arranged alternative cover for its clients.
- 7.4 On 14<sup>th</sup> December I also disclaimed all contracts placed by the broker NCI Vehicle Rescue plc with the Company as insurer. NCI Vehicle Rescue plc had arranged alternative cover for its clients.
- 7.5 On 3<sup>rd</sup> January 2017 I disclaimed all furniture care insurance policies for 2 or 3 year structural defect and accidental damage cover placed by the broker Kainos Associates LLP with the Company as insurer. Kainos Associates LLP had arranged alternative cover for its clients.
- 7.6 On 27<sup>th</sup> June and 21<sup>st</sup> September 2017 I disclaimed all remaining policies for solicitor's professional indemnity insurance as per the Company's records available to me.

The disclaimers do not affect claims which have arisen under a contract of insurance underwritten by the Company prior to the date of disclaimer. The disclaimer may also give rise to a claim for damages which may be calculated as a return of premium claim. As at 30 June 2019 return of premium claims amounting to £18.1 million have been admitted in the liquidation estate.

## **Policies not Disclaimed**

8. Certain classes of warranty policies have not been disclaimed. Policies providing warranties in relation to building installation works and referred to as the Insurance Backed Guarantee scheme have not been disclaimed. The broker via whom these policies were issued is attempting to place alternative cover and enable a block transfer of policies. In relation to the After the Event ("ATE") legal expense policies I have put in place arrangements to run off this book of business as I am advised that this course of action will reduce insurance claims accruing on the estate as opposed to claims resulting from a disclaimer.

## **Administration and Adjudication of claims**

9. To prevent the escalation of claims I have devoted resources of the estate to administering and adjudicating claims arising from the indemnities provided under insurance policies issued by the Company which may properly be admitted as insurance claims in the estate. To assist me in this process I have appointed Quest Consulting (London) Ltd as claims managers along with Gallagher Basset International Ltd to manage United Kingdom ("UK") motor claims, Keoghs to manage UK litigated motor claims and DAC Beachcroft to manage UK large loss motor claims. I

will set out the arrangements I have put in place for the management of claims in Ireland, Italy, France and Greece later in my report. Depending on the rules of the compensation schemes operating in the different countries in which the Company conducted insurance business, insurance creditors may be eligible for compensation. I and my agents have met regularly with the compensation schemes in UK, France, Italy and Greece and established the processes whereby, after admission as an insurance claim in the liquidation, claims are submitted for payment from the relevant compensation scheme. The compensation schemes will take an assignment of the insurance claims or obtain subrogated rights and will stand as the largest insurance creditors in the liquidation. As the majority of insurance business was undertaken in the UK the Financial Services Compensation Scheme ("FSCS") will be the largest single insurance creditor. As at the date of this report, I am advised that the FSCS has paid compensation of some £130 million to eligible UK policyholders. The FSCS has been very proactive in assisting with the administration of insurance claims and their submission for compensation payment. I, along with the FSCS, entered into a number of tripartite agreements with certain large brokers to enable block transfers of policies to new insurers at the date of the policy disclaimers.

### **United Kingdom insurance claims**

10. As at 30 June 2019 admitted insurance claims for all lines of UK business gross of reinsurance amounted to £94.2 million. Reserves attributed to notified but not yet admitted claims gross of reinsurance amount to £84.2 million. In respect of claims arising from UK motor insurance policies as at 30 June 2019 admitted claims amounted to £84.7 million with notified and reserved claims of £71.3 to arrive at a total incurred claims figure of £156 million. Total incurred represents a decrease of £1.1 million from the £157.1 million reported at 31 December 2018 in my last report. At the time of my report as Provisional Liquidator on 25 July 2016 motor insurance claims were estimated at £55.7 million (excluding IBNR). This estimation was based upon the information available to my appointed actuary and myself at that time. The movement in the incurred motor claims from 25 July 2016 to 30 June 2019 represents a deterioration of £100.3 million. My claims managers have reviewed this movement and I provide the following comments;
  - 10.1 The reduction in the Personal Injury Discount Rate of 2.5% to -0.75% on 20 March 2017 had a significant impact on reserves. Panel Solicitor's recalculations of reserves using the new discount rate resulted in an increase of £25.9 million across the twelve highest value claims (claims above £500,000). Reserves as at 30 June 2019 have not yet been adjusted for the further Discount Rate adjustment.
  - 10.2 For these same twelve highest values claims there was also a deterioration of £23 million between 25 July 2016 and 30 June 2017. This deterioration was due to developments in the claims over time as a result of further evidence becoming available as well as a review and recalculation of reserves, applying a more conservative reserving philosophy. The effect of the reduction in the Personal Injury Discount Rate applied to these twelve claims along with the deterioration referred to above contributed £48.9 million of the reserve deterioration.
  - 10.3 The incurred figure of £156 million as at 30 June 2019 includes approximately £14 million in respect of new or reopened claims reported since 25 July 2016.
  - 10.4 Following my appointment of the claims managers Gallagher Bassett International Ltd and the transfer of claims files from Ozon Solicitors to Hill Dickinson (now Keoghs) in early 2017 a full review of claims files has been undertaken and a more conservative reserving philosophy applied contributing to the deterioration reported above.



No reserves have yet been included in the above claims figures in respect of the Icebreaker investment scheme business.

#### **Republic of Ireland insurance claims**

11. As at 30 June 2019 admitted claims and reserves attributed to notified Republic of Ireland (“ROI”) motor insurance claims gross of reinsurance amounted to Euro €11.4 million. This represents a reduction of Euro €1.1 million from the claims reserves of Euro €12.5 million reported at 31 December 2018. I have appointed Wrightway Underwriting Ltd to manage claims arising in the ROI. Recent legislative changes in ROI altered the regime under which compensation is payable to eligible policyholders from the Insurance Compensation Fund. An application for payment from the Insurance Compensation Fund of claims amounting to Euro €3.5 million was submitted in May 2019.

#### **French insurance claims**

12. As at 30 June 2019 admitted and reserved French motor insurance claims gross of reinsurance amounted to Euro €39.9 million. Claims arising in France were managed by the claims manager Eurodommage S.A.S. I terminated this arrangement and have appointed WTC to manage French claims. I have co-operated closely with the French insurance compensation fund the FGAO to manage claims and have provided staff to the compensation fund to assist in the process.

#### **Greek insurance claims**

13. As at 30 June 2019 admitted and reserved Greek motor insurance claims gross of reinsurance amounted to Euro €26.3 million. This represents an increase of Euro €1.7 million from the claims reserves of Euro €24.6 million reported at 31 December 2018. Assisted by Quest and Grant Thornton, Greece I have established a claims management office in Athens to administer and adjudicate on claims arising from motor insurance policies issued by the Company in Greece as I was unable to appoint an external claims management service provider satisfactory to the requirements of myself or the regulator. I have cooperated closely with both the compensation fund the Greek Auxiliary fund and regulator, the Bank of Greece in establishing this process.

#### **Italian insurance claims**

14. Under the Italian insurance code, claims arising in Italy under policies issued by a failed insurer are administered by Italian insurance companies appointed by the Italian compensation scheme the FGAV managed by CONSAP the public insurance body. Claims data is still being provided to me but as yet my information in respect of reserves to be applied to notified insurance claims is not complete. As per the records of the Company available to me reserves attributed to notified Italian motor insurance claims gross of reinsurance amounted to Euro €24 million.

#### **Reinsurance**

15. The Company operated an extensive program of reinsurance for the motor and solicitor’s professional indemnity insurance lines of business. This included quota share reinsurance and excess of loss contracts. Applications for recoveries under contracts of reinsurance have been submitted and as at 30 June 2019 reinsurance payments of £30.9 million had been received.

## **Legal Advisors**

16. The situation of the Company as an insurer in liquidation has given rise to numerous practical, technical and legal issues on which I have required authoritative specialist advice and appropriate legal representatives to assist me.
  - 16.1 I have retained Messrs Triay & Triay as solicitors to act for me in Gibraltar and generally.
  - 16.2 I have retained Messrs Hill Dickinson and Messrs Clyde & Co as solicitors to advise me on issues arising under English law and on technical legal insurance matters generally.
  - 16.3 I have been advised and represented by Mr Nigel Jones QC and Ms Sarah McCann of Hardwicke Chambers, London in respect of litigation in England and technical legal insurance matters generally.
  - 16.4 I have retained Messrs Kennedys AARPI as solicitors to act for me in France.
  - 16.5 I have retained Messrs Orrick, Herrington & Sutcliffe as solicitors to act for me in Italy.
  - 16.6 I have retained Messrs Bernitsas as solicitors to act for me in Greece.

## **Premises**

17. The offices are owned by the Company and therefore continue to be occupied with only the normal running costs of rates, water and electricity etc being incurred as costs of the liquidation.

## **Staff**

18. I have identified individuals with the necessary insurance skills previously engaged with the Company and employed them to assist me in the liquidation. Staff numbers reduced over the period of the liquidation and as at the date of this report three staff remain employed.

## **Potential Claims for Recoveries**

19. My investigations to date have indicated certain claims which are available to the Company. I am currently pursuing those claims along with my legal advisors. I consider it inappropriate to go into detail about such claims in a public document at this time. As at 30 June 2018 £1.7 million had been received as a result of my recovery actions.

## **Ozon Solicitors Limited**

20. Prior to my appointment Ozons acted in respect of litigated motor claims arising under the indemnities provided by UK motor insurance policies issued by the Company. As at 25 July 2016 there were approximately 1,300 outstanding claims which had been notified under those policies. Having consulted with the reinsurers and based upon my experience of Ozons and in particular Mr Michael Ozon, I took the view as liquidator of the Company that Ozon's retainers should be terminated, insofar as they had not already been, and I therefore terminated the retainers in respect of the motor insurance claims on behalf of the Company and its policyholders on 19 October 2016 as I was entitled to do. Ozons refused to relinquish the Company's claims files and I was forced to make an application to court in England for an Order compelling them to do so. This Order was granted on 3 February 2017 with Ozons ordered to pay my costs. In my second report to creditors I stated that Ozon Solicitors had presented a claim for outstanding fees in the

sum of circa £9 million. This claim by Ozon has now been settled on confidential terms which reflect what I consider was properly due. The attached Receipts and Payments account to 30 June 2019 includes a payment to Ozon of £791,000 in respect of fees and disbursements. The amount of £677,218 including interest accrued since 28 March 2018 previously held by Ozon in their client account and paid into Court following the applications made by me which were heard on 3 February 2017 was paid to the liquidation estate on 10 July 2018.

### **Projected Liquidation Outcome**

21. While emphasising the continuing uncertainty at this time as to the total amount insurance creditors, and consequently the related reinsurance recoveries might ultimately be, current best estimates indicate that total incurred insurance claims (gross of reinsurance) might amount to £319 million. If such claims figures were to materialise with corresponding reinsurance recoveries, a dividend of some 30% may be payable to insurance creditors.

### **Receipts and Payments Account**

22. I have attached to this report a copy of my receipts and payments account from 26 October 2016 the date of my appointment as Liquidator, to 30 June 2019. 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) Outstanding premium recovered from insurance brokers amounted to £7,503,905. I am engaged in actions to recover further outstanding amounts but am unable to forecast at this time the amounts that may eventually be recovered.
- (ii) Outstanding premiums received in respect of ATE policies amount to £221,704.
- (iii) I appointed Chestertons as agents to market the investment properties held by the Company in Gibraltar. Net proceeds of £2,729,418 have been received. Office premises currently occupied for the purposes of the liquidation remain to be disposed of in due course. An offer has been received and accepted for a small parcel of land in UK and completion is expected shortly.
- (iv) Salaries and related costs for staff previously engaged on behalf of the Company and who continued to be employed by me as Liquidator amount to £936,701 for the period since appointment. Staff numbers reduced over the period of the liquidation and as at the date of this report three staff remain employed.
- (v) Provisional liquidator's fees, legal and actuarial expenses outstanding at 26 October 2016 were paid during the liquidation period from the funds taken over from the provisional liquidation.

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



**Frederick White**  
**Liquidator**

15 August 2019



**Enterprise Insurance Company PLC**  
**(in Liquidation by the Court)**

**Liquidator's Receipts and Payments Account for the Period**  
**26 October 2016 to 30 June 2019**

**Receipts**

Bank balances taken over from provisional liquidation	16,327,425
Premium debtor from brokers	7,503,905
ATE premium receivable	221,704
Reinsurance recoveries	30,899,582
Monies recoverable by legal action	1,743,916
Monies held on account - returned	1,131,485
Rent receivable	12,999
Proceeds - disposal investment properties	2,729,418
Claims - third party recoveries	676,784
Sundry income	185,505
Bank interest receivable	301,648

**Total Income**

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61,734,371

**Payments**

Claims management services : CCSL	802,955
Claims management services : Quest	2,343,294
Claims handling costs : Gallagher Bassett	1,544,005
Claims handling costs : Gallagher Bassett (TUPE)	574,370
Claims handling costs : Greece	1,468,736
Claims handling costs : France (WTC)	91,979
Claims settlement costs	791,000
Claims - defence costs UK	213,451
Claims - defence costs Ireland	528,770
Claims - defence costs France	446,112
Claims - defence costs Greece	605,408
Claims - defence costs Italy	138,442
Claims - defence costs- recoverable	44,242
Claims handling costs - other	265,503
Sundry underwriting costs	12,097
Staff Salaries	936,701
IT services costs	258,896
Office costs - rates and service charge	116,060
Office costs - water & electricity	13,420
Office costs -pc/printer consumables	2,904
Office costs -telephone	15,953
Office costs - general	34,283
Investment property costs -rates, service charge	12,033
Investment property costs - improvements	7,809
Bank Charges	31,986
Provisional liquidator's fees	220,327
Provisional liquidators costs - legal fees to include Counsel	112,851



Provisional liquidators costs - actuarial fees	60,955
Provisional liquidators general costs	807
Liquidators fees	1,318,309
Liquidators costs - legal fees to incl Counsel	2,799,279
Liquidators costs - actuarial fees	300,907
Liquidators costs - expert fees	781,850
Liquidators costs - general costs	330,043
Foreign exchange movement	300,350

Total expenses	<u>17,526,087</u>
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<b>BALANCE IN HAND</b>	<u><u>44,208,284</u></u>
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**Represented by:**

NatWest	34,133,619
Coutts & Co	9,844,508
Unicredit €	1,030
National Bank of Greece	194,223
Cash held in claims floats	34,904
	<u><u>44,208,284</u></u>