THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

Docket No. 03-E-0109

In the Matter of the Liquidation of
The Home Insurance Company

AFFIDAVIT OF RICHARD DANIEL HACKER Q.C.
IN OPPOSITION TO THE LIQUIDATOR'S MOTION FOR APPROVAL
OF AGREEMENT AND COMPROMISE WITH AFIA CEDENTS

I, RICHARD DANIEL HACKER, one of Her Majesty's Counsel, of 3-4 South Square, Gray's Inn, London, England , hereby depose and say :-

1. I am a member of the English Bar admitted to practice law in England. I received an Honours Degree in Law from the University of Cambridge in 1976 and a License Speciale en Droit Europeen (with Distinction) from the University of Brussels in 1978. I was admitted to the English Bar in 1977 and have been continuously in practice as a Barrister since 1980. As a member of the Bar, I am qualified to advise and deliver opinions on matters of English law.

2. I specialise in business law with a heavy emphasis on insolvency matters and have been involved in many of the contentious insolvencies which have come before the English courts since I began to practice. A true and correct copy of my Summary Curriculum Vitae setting out my professional qualifications and experience in greater detail is attached as

Exhibit A. I have previously provided expert evidence of English law in relation to a number of matters proceeding before the United States Bankruptcy Court for the Southern District of New York.

3. In order that the Court is best able to judge the weight to be attached to the expert evidence which I give, I propose to explain briefly the structure of the English legal profession. In the interests of simplicity I deal here in generalisations to which there are, of course, exceptions. There are two types of practising lawyer in England. The Solicitor and the Barrister. The former deals directly with clients and will very often provide all the advice required by the client. Where more specialist advice is required (or advocacy skills are involved), the Solicitor will instruct a Barrister known to possess the necessary expertise. Until 2003, the Queen (on the advice of the Lord Chancellor) each year appointed a small number of practising lawyers to the rank of Queen's Counsel. Where a complex issue of law requires consideration and substantial sums are at stake it is normal for the advice of a Queen's Counsel to be sought. Only something over 1% of the practising legal profession currently hold the rank of Queen's Counsel. I was appointed a Queen's Counsel in 1998.

Materials which I have reviewed

4. I have reviewed and relied upon in preparing my Affidavit :-

(a) the Motion for 'Approval of Agreement and Compromise with AFIA Cedents' filed by the Liquidator of the Home Insurance Company (respectively "the Motion", "the Liquidator" and "Home");

(b) the Affidavit of Peter A Bengelsdorf sworn on 10th February 2004 in support of the Motion;

(c) an Insurance and Reinsurance Assumption Agreement dated 31st January 1984; and

(d) an Order of the English High Court of Justice, Chancery Division, Companies Court ("the English court") dated 8th May 2003 appointing Joint Provisional Liquidators in respect of Home ("the English Order").

I have been asked by Counsel for Century Indemnity Company and ACE Property & Casualty Insurance Company ("Century" and "ACE") to assume certain facts as set out in paragraph 22 below. The facts and information set out below are either within my own knowledge gained through my involvement with this matter, in which case they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.

The subject matter of my evidence

5. It is suggested in paragraph 7 of the Motion that certain AFIA Cedents have questioned the application of the New Hampshire claims and distribution procedures to claims and assets of Home alleged to be located in the United Kingdom *"thereby raising the potential for complex international conflicts of laws questions."* It is stated that :-

> *"In particular, certain AFIA Cedents have previously suggested that UK assets arguably should be 'walled off' from United States creditors and distributed only to Home UK Branch creditors."*

6. Paragraph 7 of the Motion goes on to state that neither the Liquidator nor the Joint Provisional Liquidators believe that there is any merit in that contention but that :-

> *"the potential re-emergence of this issue does raise the prospect of costly and time-consuming litigation over*

whether there should be separate US and UK liquidations or a global New Hampshire proceeding."

This potential issue is further emphasised by the following statement :-

"Resolution of these and other issues could require complex, protracted and costly litigation in both the United States and England."

7. I have been asked by Counsel for Century and ACE to comment on these statements in the Motion, viewed from the standpoint of English law.

Summary of my opinion

8. The suggestion that an English court would 'wall-off' (or 'ring-fence' as the concept is described in England) English assets to be divisible in a separate English liquidation only amongst the English creditors of Home, is misconceived. This much appears to be common ground between myself and the Liquidator and Joint Provisional Liquidators.

9. I would go significantly further and say that the suggestion is so fundamentally misconceived as to merit summary dismissal by the English court. The Liquidator and Joint Provisional Liquidators have not revealed the terms of the English legal advice which they have received to date, but I would be extremely surprised if the assessment of their own lawyers differs, in this regard, from my own.

10. If any AFIA Cedent were to suggest to the English court that local assets should be ring-fenced to meet their claims, I do not believe that the court would pay any serious regard to the suggestion. Indeed, I believe that the court would summarily dismiss the suggestion without requiring any significant debate or argument.

11. I do not believe that it can seriously be suggested that the dismissal of such a proposal would, or indeed could, involve litigation in England

which is '*complex*', '*time-consuming*', '*protracted*' or '*costly*', as suggested in the Motion.

Issues considered

12. It appears to me that a consideration of the concerns expressed by the Liquidators logically involves considering three discrete issues under English law :-

(a) Will Home be 'wound up' (liquidated) in England ?

(b) If so, will ring-fencing occur ?

(c) How will the English court deal procedurally with any attempt by AFIA Cedents to procure ring-fencing of Home's UK assets ?

Provisional liquidation and liquidation distinguished

13. Home is in liquidation in the United States, but it is not presently in liquidation in England. Although Home is in 'provisional liquidation' in England pursuant to the English Order, this is something very different from a liquidation.

14. A liquidation - whether voluntary or compulsory (pursuant to an order of the Court) – involves the assets of the insolvent debtor being taken out of its control and subjected to a 'statutory scheme', administered by a liquidator, under which the assets are to be realised and then to be shared out amongst the creditors of the debtor in accordance with an established set of rules, which provide for *pari passu* distribution amongst each class of creditor, subject to the priority status of the class. There are provisions in the Insolvency Act 1986 which not only regulate the manner of distribution but also provide for the avoidance of certain antecedent transactions and the application of mandatory rules such as those regulating rights of set-off.

15. A provisional liquidation is a quite different animal. It is, in one sense, a misnomer because it has none (or at most very few) of the characteristics of a liquidation. The traditional purpose of a provisional liquidation is to protect and preserve the assets of a company in what is generally the relatively short interval between the initiation of proceedings seeking the winding-up of a company (by the presentation and issue of a winding-up petition) and the decision of the Court whether to make a winding-up order or to dismiss the petition. The appointment was traditionally seen very much as a 'stop gap' measure and the office was traditionally filled by an Official Receiver, a public official attached to the Court who had neither the resources nor the skill to take anything more than the most basic steps to perform the very limited functions usually conferred upon him. The 'stop gap' nature of the appointment is reflected in the terms of the conventional order appointing provisional liquidators, which generally contains few specific powers.

16. The role of provisional liquidation has, more recently, undergone some change (as discussed in paragraph 19 below in the section dealing with schemes of arrangement) but the interim nature of the process remains unaltered. One essential characteristic of provisional liquidation is that once in place, there is an automatic stay of all proceedings against the insolvent debtor. The moratorium is absolute, subject to the power of the provisional liquidators and the court to lift it in relation to specific claims. In its more recent form, provisional liquidation is often used only for the purpose of achieving the protection conferred by the statutory automatic stay, which comes into effect on the appointment of provisional liquidators, in circumstances where there is no intention for a liquidation to follow: see further paragraph 19 below.

Schemes of arrangement

17. The scheme of arrangement ("scheme") is a creation of statute and (in broad terms) enables a debtor – solvent or insolvent – to enter into an arrangement with his creditors as a whole or with one or more classes of creditor, under which the debtor and the relevant creditors agree an arrangement or compromise relating to the claims existing between them. The scheme will invariably include a provision that bars a creditor from enforcing a claim covered by the scheme, other than through the scheme process.

18. The difference between a scheme and a simple contractual arrangement is that a non-assenting creditor may be 'crammed down' (i.e. bound by the terms of the scheme against his wishes) under a scheme if a specified majority of the class of which the creditor is a member, have approved the scheme. The relevant majority is a simple majority in value representing not less than 75% in value of those voting on the scheme proposal. There are various procedural safeguards which ensure that all relevant creditors are given the opportunity to vote on the scheme proposal and require also that the court be satisfied that the scheme is fair and reasonable to the class(es) of creditors bound by it.

19. The scheme process has a fundamental weakness. The process of formulating and obtaining creditor and court approval for the scheme is inevitably a slow one, but the statute does not provide for any form of moratorium on the enforcement of creditor claims during the process. To counter this significant lacuna, provisional liquidation has developed to provide for an extended moratorium in respect of claims against an insolvent debtor, whilst an alternative to liquidation – the scheme – is put in place. I would refer, as an example, to the unreported judgment of Harman J. in *Re Andrew Weir Insurance Company Limited* (12th November 1992).

20. However, it is important to note that even in this extended form (the form provided for under the English Order), a provisional liquidation does not involve anything akin to a liquidation. In particular, none of the provisions relating to the avoidance of antecedent transactions have any application and, most fundamentally, there is no process of distribution of assets amongst the creditors of the insolvent. Perhaps most importantly, it is never intended that the exit route from this form of provisional liquidation should be a full liquidation. Once a scheme is in place and the moratorium has served its purpose, the winding-up petition will generally be dismissed and the provisional liquidation discharged as it will no longer serve any useful purpose. (In any given case there may be some good reason why a liquidation is desirable in parallel with a scheme, but this would be the exception rather than the rule.)

21. From this it follows that the existing provisional liquidation of Home will not, in the ordinary course, lead to an English liquidation of Home. I consider below the question whether the creditors of Home would be able obtain a winding-up order in opposition to the wishes of the Liquidator and/or Joint Provisional Liquidators.

22. I am unclear how the Joint Provisional Liquidators propose to address the creditor class issues which would or could arise in relation to the proposed scheme mentioned in paragraph 10 of the Motion. The Joint Provisional Liquidators appear to be proceeding on the basis that the scheme would apply only to the AFIA Cedents. I am informed that there are creditors whose claims rank *pari passu* with those of the AFIA Cedents in a liquidation of Home (whether an English or a New Hampshire liquidation) and who would therefore fall to be treated as members of the same class as the AFIA Cedents. The scheme would therefore appear to constitute a blatant infringement of the *pari passu* principle and I

question whether, for this reason, the English court would sanction such a scheme.

The winding up in England of foreign companies

23. The power of the English court to wind up companies derives from statute. The statute permits the court to wind up insolvent companies wherever incorporated, and imposes no specific limitations on that power. The power to make a winding-up order is a discretionary power which will be exercised by the court in accordance with settled principles. In general, a creditor of an insolvent English incorporated company is entitled to a winding up as a matter of right and there is rarely any question of discretion, unless the winding-up is opposed by other creditors of the company.

24. However, this is not the case with a foreign incorporated company. The English court has adopted a self-imposed restraint on the circumstances in which the discretion will be exercised in favour of winding up a foreign company. Broadly speaking, the power will not usually be exercised unless there are assets within the jurisdiction of the English court.

25. Even where the court has a discretion to wind up a foreign company in accordance with the principles outlined above, this does not mean that the discretion will automatically be exercised in favour of a winding-up. The court will review all the circumstances in any particular case, with a view to identifying whether or not a winding-up would be in the interests of the general body of creditors of the company.

26. It is often the case that an insolvent foreign company will be the subject of a winding-up in its home jurisdiction (as in the present case). In those circumstances the English court would certainly have regard and could be expected to attach significant weight to the views expressed by

the 'home' liquidator as to what course it should follow. Whilst there may be circumstances in which the English court would wind-up a foreign incorporated company in the face of opposition from its 'home' liquidator, the court would require compelling reasons to do so.

27. I can see no reason why the English court would make a winding-up order on the application of the AFIA Cedents, in the face of opposition from Home's New Hampshire Liquidator, save only if it was required to do so in order to give effect to the principle considered in paragraph 40 below.

28. It is hard to see how the question of ring-fencing could arise at all, other than in the context of an English liquidation of Home. If there is no winding-up the question simply does not arise at all.

Ring-fencing in English law

29. Ring-fencing of local assets does not now form, nor has it ever formed, part of English law. Indeed it is a concept fundamentally repugnant to two basic English principles: namely, the principle of universality and the principle that it is the 'home' forum which has primary responsibility for the administration of the insolvency of a foreign incorporated or domiciled debtor.

30. There are a number of reported decisions of senior and highly experienced judges in which the concept of ring-fencing has been roundly and unequivocally rejected. It is, however, convenient simply to note (as appears from the decisions mentioned below) that under English law an English winding-up of any company (English or foreign) is treated as being notionally a universal liquidation of all its assets for the benefit of all its creditors (the universality principle), but that where a foreign company is being wound up in its place of incorporation, the 'home' liquidation is to be regarded as the principal liquidation with an

English liquidation being only ancillary thereto (the concept of the ancillary liquidation, as to which see e.g. *Re Bank of Credit and Commerce International SA (No. 10)* (supra) at pages 238F-G et seq.).

31. The suggestion in paragraph 7 of the Motion that claims and assets allegedly "*located in the United Kingdom*" would be treated differently from those located outside the United Kingdom in an English liquidation of Home presupposes that there are assets and claims identifiable as such. The Motion does not address the question of what rules the AFIA Cedents would seek to persuade an English court to adopt in determining which assets or claims are 'local' and which are not. It is because of the potential scope for confusion and conflict with the rules and principles applied by overseas courts that the English courts will not embark upon such an analysis and will apply the universality principle. The only very limited exception to this (the application of the mandatory rules of English law to the distribution of assets coming into the hands of an English liquidator) is mentioned in paragraph 40 below.

32. The application of the universality principle means also that the proposed scheme may not achieve its avowed objective: the avoidance of one section of a class of creditors (the AFIA Cedents) using litigation in the English courts to improve their position as against another section of the same class. Assuming that the AFIA Cedents are in a position to procure a liquidation of Home, there is nothing to stop disaffected non-AFIA cedents (the other section of the same class) who objected to the preferred status being accorded to the AFIA Cedents, also seeking an English liquidation of Home, as they would not be covered by the proposed scheme (which benefits only the AFIA section of the cedent class). There would then be scope for precisely the complex international conflict of laws questions which it is said that the scheme is intended to avoid. I note that the potential issues to which the universality principle gives rise are not addressed in the Motion.

33. As noted above, the concept of ring-fencing has been rejected by the English courts. That rejection has been summary, and none of the judges who have expressed a view in relation to it have even accepted the possibility that the contrary might be arguable.

34. It is convenient to begin with a judgment of Sir Nicolas Browne-Wilkinson V.-C. (as he then was) given in the context of the hearing of the petition by the Bank of England to wind up the Bank of Credit and Commerce International SA (a Luxembourg incorporated company hereafter referred to as "BCCI"). When the judgment was given, Sir Nicolas Browne-Wilkinson V.-C. was a Judge of the Court of Appeal, but sitting also as the Vice-Chancellor (the most senior judge of the Chancery Division and therefore of the Companies Court: see paragraph 42 below). He was subsequently appointed to sit as a Lord of Appeal in Ordinary in the House of Lords (the most senior English appellate court, corresponding in the United Kingdom to the United States Supreme Court), and it is hard to imagine a more authoritative view of the position under English law from a judge sitting at first instance. He stated in a judgment given on 30th July 1991 :-

> *"I have no hesitation in rejecting the Bank of England's grounds for opposing an adjournment. This case raises, and will continue to raise, enormous problems. BCCI is a Luxembourg bank; it is not an English bank. As I understand it, if a winding up goes forward the assets of BCCI worldwide will be applicable for the creditors of BCCI worldwide. The attempt to put a ring fence around either the assets or the creditors to be found in any one jurisdiction is, at least under English law as I understand it, not correct, and destined to failure. I believe the position will prove to be the same in most other countries and jurisdictions."*

35. The issue arose again in the context of a subsequent hearing in relation to BCCI reported at [1992] BCLC 579. Sir Nicolas Browne-Wilkinson V.-C. stated in his judgment :-

> *"Thirdly, there are proceedings in the United States brought by the provisional liquidators in this country, by the commissaire in Luxembourg and the court-appointed officers in the Cayman Islands designed to freeze the assets in the United States. Interim relief has been granted providing to a substantial extent the freezing order required, but there are further inter partes proceedings pending. If it is suggested in those proceedings (as I am told that it is suggested) that this court is in some way concerned to look after the interests of the English depositors or those whose claim is against BCCI in England at the expense of creditors elsewhere, the message that would go out would be extremely dangerous and totally erroneous. I have asked all counsel before me today, including those representing the three batches of creditors, whether they were maintaining that there could be any sort of ring fence rendering assets in any one jurisdiction applicable for the benefit of the creditors in that jurisdiction only. They have all disowned that proposition. There is therefore unanimity amongst the bar, unanimity with which I totally concur, that any administration in any jurisdiction under English law would be a worldwide administration for the administration of all assets wherever to be found for the benefit of all creditors wherever to be found."*

36. Statements to similar effect can be found in other decisions. See the decision of the Court of Appeal in *Re Paramount Airways Limited* [1993] Ch 223, in which the then Vice-Chancellor (Sir Donald Nicholls V.-C., sitting on this occasion as a judge of the Court of Appeal and since also appointed to sit in the House of Lords as a Lord of Appeal) stated at page 237:-

> *"Particularly, perhaps, since English law provides for the distribution of the assets of the insolvent among all the creditors worldwide. English law does not erect a 'ring fence' to exclude creditors living abroad."*

37. I would refer also the decision in *Re Bank of Credit and Commerce International SA (No. 10)* (supra) in which the then Vice-Chancellor, Sir

Richard Scott V.-C. (also subsequently appointed to sit as a Lord of Appeal in the House of Lords) stated at pages 241G-H – 242C-D :-

> *"This exposition seems to me to provide a valuable insight into what was meant by an "ancillary" winding up. The effective jurisdiction of the court is, for winding up purposes, necessarily territorial. English liquidators can get in assets of the company that are within the jurisdiction of the court. But they can only get in assets of the company that are outside the territorial jurisdiction of the court if or to the extent that their title to control the company is recognised by the courts of the country in which the assets are situated. The English statutory insolvency scheme purports to have worldwide, not merely territorial, effect. Every creditor of the company, wherever he may be resident and whatever may be the proper law of his debt, can prove in an English liquidation. The liquidators must get in and realise the company's assets as best they may whatever may be the country in which the assets are situated. But, if the company is incorporated abroad, English liquidators' ability to get in and realise the company's foreign assets will be very limited. It follows that, if a foreign company has a winding up order made against it in its country of incorporation and a winding up order made against it in England, the English liquidators' role is likely, perforce, to be limited to getting in, realising and distributing the English assets. It was in that sense, I think, that Kay J. was describing the English liquidation as "merely . . . ancillary." I would add, however, that Kay J.'s remark that the only purpose of the "ancillary" winding up would be "to protect the property in this country and the creditors in this country" cannot, without qualification, be accepted as correct. It is basic to an English winding up that English creditors cannot be ring-fenced and treated more favourably than foreign creditors. The reference to "creditors in this country" must, therefore, be read as a reference to "creditors who prove in this country."*
> (Emphasis added)

38. Having regard to the clarity and force with which no less than three successive Vice-Chancellors (all of whom were subsequently appointed

Lords of Appeal and sat as such in the House of Lords) have rejected the possibility that the English court could or would ring-fence local assets for those proving in a local liquidation, I cannot see how the contrary proposition could be suggested to be capable of argument at all, let alone serious argument.

39. In my opinion the alleged threat made by the AFIA Cedents to argue in favour of ring-fencing is a hollow threat and must be known both by them and by the Liquidator and Joint Provisional Liquidators to be a hollow one.

40. I should, for the sake of completeness, add that in his judgment in *Re Bank of Credit and Commerce International SA (No. 10)*, Sir Richard Scott V.-C. did recognise that creditors proving in an English liquidation of an overseas company are entitled to have the mandatory rules of English insolvency law (most notably those relating to preferential claims and rights of set-off) applied to their claims, and that for this purpose the English liquidators of a foreign company might retain those assets coming into their hands to ensure the application of those rules. This is a highly specific and very limited exception to the general rule that English assets should be remitted by an English liquidator to the liquidator in the 'home' jurisdiction for him to distribute those assets in the 'home' liquidation. The laws of New York (as the governing law of the INA Agreement) and/or the laws of New Hampshire (as the law governing Home's domiciliary liquidation) would determine whether the only specific asset referred to in the Motion (Home's claims under the INA Agreement) would be an asset which would or could come into the hands of an English liquidator of Home. I can see no basis why, as a matter of English law, an English liquidator should have a claim to that asset which would override the claim of the Liquidator.

Procedural considerations

41. There are a number of considerations specific to the procedural regime which applies in England which I believe to be relevant when considering the suggestion that litigation of the ring-fencing issue in England would be protracted or costly.

42. Insolvency proceedings of a contentious and substantial nature are handled exclusively by the judges of the Companies Court.[1] The Companies Court is a branch of the English High Court (the principal English court of first instance) and is composed of a small number of judges, all of whom are highly expert and experienced in insolvency issues generally and in the relevant legal issues which would require consideration in the context of any dispute between the Liquidator / Joint Provisional Liquidators and the AFIA Cedents. Their expertise is (in my experience) comparable with that of the judges of the United States federal bankruptcy courts.

43. Any litigation which took place would be regulated by the Insolvency Rules 1986, which are intended to enable such a dispute to be determined as speedily and efficiently as its complexity permits. If there were a dispute between the Liquidator and the AFIA Cedents as to whether assets should be ring-fenced, the dispute would be decided by a Companies Court judge on the basis of written evidence (almost certainly without oral evidence or cross-examination) and without any form of pre-trial discovery

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1 Non-contentious or procedural matters are often dealt with by a small panel of highly specialist registrars, whose decision can generally be challenged before a judge.

(oral or documentary). Any decision of the judge would be final unless either he or the Court of Appeal gave permission for an appeal to the Court of Appeal. I believe that the ring-fencing issue is so clear cut that permission would not be given.

44. In England, a significant proportion of the legal and other professional costs incurred by the Liquidator / Joint Provisional Liquidators in resisting any attempt by the AFIA Cedents to ring-fence local assets would be recoverable by them when they succeeded in resisting the attempt (as in my opinion they would). The costs burden on the Home estate of resisting any attempt to ring- fence would, therefore, be small.

Signed under the penalties of perjury this 12th day of March 2004.

Executed at London, England
on 12th March 2004

Richard Daniel Hacker Q.C.

Subscribed and sworn to me before me this 12th day of March 2004 at London, England

Notary Public OF LONDON, ENGLAND

My commission is for life

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

Docket No. 03-E-0109

In the Matter of the Liquidation of
The Home Insurance Company

EXHIBIT "A"

TO THE AFFIDAVIT OF RICHARD DANIEL HACKER Q.C.
SWORN 12TH MARCH 2004
IN OPPOSITION TO THE LIQUIDATOR'S MOTION FOR APPROVAL
OF AGREEMENT AND COMPROMISE WITH AFIA CEDENTS

BEFORE ME

NOTARY PUBLIC

RICHARD D. HACKER Q.C.

SUMMARY CURRICULUM VITAE

Academic and Professional Career

1973 - 76	Downing College, Cambridge. Awarded a BA in Law with an Upper Second Class Degree.
1976	Awarded the Wiener Anspach Scholarship by the University of Cambridge to read European Community Law at the University of Brussels.
1976 - 77	College of Law studying for the Bar Final Examinations. Finished 20th in year in the Bar Final Examinations with an Upper Second.
1977	Awarded a Hardwicke Scholarship by Lincoln's Inn. Awarded the Lincoln's Inn Student of the Year Prize.
1977 - 78	Graduated from the University of Brussels with a Distinction in the Licence Speciale en Droit Europeen.
1980	Began practice at the Bar at what is now 3 - 4 South Square.
1997	Appointed Queen's Counsel.
2001	Appointed by the Home Secretary as an Assistant Boundary Commissioner and Chaired a Public Inquiry into the Parliamentary constituency boundaries for the County of Hertfordshire (Report published May 2001).

Practice at the Bar

Over a period of 20 years I have developed a mixed litigation / advisory based practice which can compendiously be described as involving the practise of 'business law'. The fields of law in which I practice include general commercial and business law with a particularly heavy emphasis on contentious and non-contentious company and insolvency related work.

My clients have included the majority of the major international accountancy firms, all the major UK banks, a variety of overseas banks and a number of substantial quoted companies. I have advised and/or appeared in Court on behalf of (inter alia) the Bank of England, the UK Government and the Governments of Poland, Abu Dhabi, Kuwait, Ecuador and Iraq,

My practice has involved a series of substantial and complex matters. The better known matters in which I have been engaged include, by way of example only, the following :-

(a) Advising and acting for the Liquidator of Laker Airways in (inter alia) litigation which was taken on appeal to the House of Lords, concerning the right of the Liquidator of Laker Airways to pursue U.S. Anti-Trust proceedings against a number of British and European Defendants. This remains a leading authority in the context of anti-suit injunctions (1981 - 1986).

(b) Advising and representing the (Hong Kong) Liquidators of Carrian Investments Limited in relation to the largest insolvency in Hong Kong of the 1980s. (Mid 1980s)

(c) Advising and representing the (Luxembourg) Liquidators of Banco Ambrosiano in their world-wide attempts to recover assets of the Bank from the Calvi family. (Late 1980s)

(d) Advising and representing the (Bermudan) Liquidators of Mentor Insurance Limited (perhaps the largest and most complex Bermudan insolvency of the 1980s) in relation to all insolvency related aspects of the liquidation. (1985-1990)

(e) Advising a syndicate of international banks in relation to the Polly Peck Administration. (Early 1990s)

(f) Obtaining Administration Orders in relation to a number of the most well known UK insolvencies, such as the Olympia & York group (1990s).

(g) Obtaining the Administration Orders made in relation to the Maxwell private companies and thereafter advising and representing the Administrators in relation to insolvency matters and asset recovery proceedings. (1991-1995)

(h) Advising and representing in the courts of a variety of jurisdictions, the Government and Ruling Family of the Emirate of Abu Dhabi in relation to all aspects of the collapse of the BCCI group, in which they were the majority shareholders. This matter involved detailed consideration of the many issues arising from a substantial trans-national insolvency. (1991-2001)

(i) Advising and representing the Government of Iraq in relation to the steps taken by the UK authorities to place Rafidain Bank into provisional liquidation following the imposition of UN sanctions. (1990-1995)

(j) Advising and representing the auditors of the failed KWELM insurance companies in connection with proceedings brought against them by the Provisional Liquidators / Scheme Administrators of the companies following their collapse. This matter involved a consideration of various Bermuda law issues. (1992-1996)

(k) Advising and appearing on behalf of the principal French state-owned corporation defending litigation arising from its acquisition of a failed UK insurance company, in which the claims exceed £300 million. The trial of this litigation took place in late 1996 and involved numerous complex insolvency related issues. (1992-96)

(l) Participation in the formulation and implementation of the strategy underlying the rescue of the Barings banking group, from the discovery of its financial difficulties to its sale to ING and beyond. (1995-1997)

(m) Advising and representing the Kuwait Investment Authority in relation to complex commercial litigation intended to recover compensation for substantial losses suffered by the KIA in the wake of the collapse of its Spanish investment arm (the well publicised 'Grupo Torras affair'). (1997-2001)

(n) Advising and representing the Provisional Liquidations of the North Atlantic Insurance Company in relation to all aspects of the insolvency including trans-national litigation arising from the collapse of the company. This has included the provision of expert evidence to the US Bankruptcy Court (SDNY). (1997 to date)

(o) Advising the Provisional Liquidators / Liquidators of the CA Pacific Stockbroking group in Hong Kong in relation to the insolvency of the group and the complex issues concerning the distribution of its assets amongst its 14,000 clients. This has been one of the highest profile insolvencies in Hong Kong of the 1990s. (1998 - 2000)

(p) Advising the Provisional Liquidators of Ocean Marine Mutual Insurance Company, an insolvent Turks & Caicos Islands insurer. This included the provision of expert evidence to the US Bankruptcy Court (SDNY). (1999 - 2000)

(q) Advising and representing IONICA Group PLC in relation to trans-national insolvency issues arising from the collapse of IONICA PLC and in relation to a scheme or arrangement implemented in respect of the company. This included the provision of expert evidence to the US Bankruptcy Court (SDNY). (1999- 2000)

(r) Advising and representing Berliner Bank in relation to its well publicised dispute with First International Shipping, which has involved parallel proceedings in London and Bermuda. (2000 - 2001)

(s) Representing a leading Taiwanese semi-conductor manufacturer in complex Commercial Court litigation relating to derivative contracts, involving English, Taiwanese and Hong Kong law. (2000 - 2002)

(t) Advising the Bank of China and its former subsidiaries in relation to a range of litigation in which it has been involved in Hong Kong (From 1999 and ongoing)

(u) Representing the substantial minority shareholder of a Bermudan incorporated company listed on the Hong Kong Stock Exchange (Pacific Challenge Holdings) in its highly publicised dispute with the company's majority shareholders. This has involved litigating an unfair prejudice petition in the Supreme Court of Bermuda. (From 2000 and ongoing)

(v) Conducting substantial litigation in the British Virgin Islands on behalf of the Hong Kong partnership of a 'Big-4' accountancy firm. (From 2002 and ongoing)

London
March 2004