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Via United States First Class Mail

July 1, 2009

Re: In re Highlands Insurance Company (U.K) Limited, Chapter 15 Case No. 07-13970 (MG)

Dear Sir or Madam:

Please take notice that on July 1, 2009, Dan Yoram Schwarzmans and Mark Charles Batten, as the joint administrators of Highlands Insurance Company (UK) Limited (in administration) (the "Company") in the administration in the U.K. and foreign representatives of the Company in the above-referenced chapter 15 case (the "Movants") filed the enclosed Motion Pursuant to Bankruptcy Code Sections 1521 and 105(a) and Federal Rule of Bankruptcy Procedure 7065 for Permanent Injunction and Related Relief (the "Motion"), a memorandum of law in support of the Motion and a declaration of Dan Yoram Schwarzmans in support of the Motion.

You have received the enclosed documents because the records of the Company indicate that (i) you potentially may have a claim against the Company (ii) you are a broker or agent whose clients may have a claim against the Company, or (iii) you are a party that is otherwise involved in the above-referenced Chapter 15 case.

However, receipt of these documents does not mean that you are a creditor or potential creditor, or act for a party who is a creditor or potential creditor, of the Company.

Please take further notice that objections or responses, if any, to the Motion must be made in writing describing the basis therefor and shall be filed with the Bankruptcy Court electronically in accordance with the General Order M-182 by registered users of the Court's electronic case filing system, and by all other parties in interest, on a 3.5 inch disc, preferably in Portable Document Format (PDF), Word Perfect or any other Windows-based word processing format, with a hard copy to the Chambers of the Honorable Martin Glenn, United States Bankruptcy Judge, United States Bankruptcy Court, One Bowling Green, New York, New York 10004 U.S.A. and served upon Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019, Attention: Sara Tapinekis, counsel to the Movants so as to be received on or before August 12, 2009 at 5:00 p.m., New York time. A hearing to consider the Motion and objections or responses thereto, if any, shall be scheduled for August 18, 2009 at 2:00 p.m., New York time, or as soon thereafter as counsel shall be heard, in Room 501 of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004.

Kind regards,



Sara M. Tapinekis

Enclosures

Hearing Date and Time: August 18, 2009 at 2:00 p.m. (New York Time)
Objection Deadline and Time: August 12, 2009 at 5:00 p.m. (New York Time)

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Attorneys for the Administrators

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:	
	:	
Highlands Insurance Company (U.K.) Limited, (in administration)	:	Chapter 15
	:	
	:	Case No. 07-13970 (MG)
	:	
Debtor in a Foreign Proceeding	:	
-----	x	

**MOTION PURSUANT TO BANKRUPTCY CODE
SECTIONS 1521 AND 105(a) AND FED. R. BANKR. P. 7065
FOR PERMANENT INJUNCTION AND RELATED RELIEF**

Dan Yoram Schwarzmann and Mark Charles Batten (the “Administrators”), in their capacity as the duly appointed and recognized foreign representatives of Highlands Insurance Company (U.K.) Limited (in administration) (“HIC UK” or the “Company”), by their U.S. Counsel, Clifford Chance US LLP, submit this Motion Pursuant to Bankruptcy Code Sections 1521 and 105(a) and Fed. R. Bankr. P. 7065 for Permanent Injunction and Related Relief (the “Motion”) and respectfully represent as follows:

BACKGROUND

A. The English Proceeding and the Chapter 15 Case

1. HIC UK is an insurance and reinsurance company incorporated in England in 1974 under the U.K. Companies Act 1948.

2. The Company is a wholly-owned subsidiary of Highlands Holdings (U.K.) Limited, which in turn is wholly-owned by Highlands Insurance Group, Inc., a corporation organized under the laws of the State of Delaware, U.S. (“HIGI”).¹

3. On October 25, 2007, the directors of the Company filed an application with the High Court of Justice of England and Wales (the “English Court”) requesting the appointment of the Administrators as the joint administrators of the Company. Pursuant to a hearing held on November 1, 2007 (the “Administration Date”), the English Court entered an order commencing the administration proceeding (the “English Proceeding”) and appointing the Administrators as the joint administrators of the Company to manage its affairs, business and property (the “Administration Order”). Pursuant to the Administration Order, the English Court authorized the Administrators to commence this Chapter 15 case.

4. On December 18, 2007, the Administrators filed with this Court the Verified Petition for Recognition of a Foreign Main Proceeding and Motion for Related Relief Pursuant to 11 U.S.C. §§ 1504, 1517, 1520, 1521 (the “Verified Petition and Motion”) seeking recognition of the English Proceeding as a foreign main proceeding and granting related injunctive relief. See Docket No. 2.

5. On January 22, 2008, this Court entered the Order Granting Recognition of English Proceeding as Foreign Main Proceeding and Related Injunctive Relief (the “Recognition Order”). See Docket No. 23.

B. The Scheme of Arrangement

6. A scheme of arrangement pursuant to Part 26 of the Companies Act 2006, such as the scheme of arrangement dated 1 May 2009 and proposed in respect of the Company (the “Scheme of Arrangement”), is a compromise or arrangement between a company and its creditors or any class of them.

¹ On October 31, 2002, HIGI, together with several subsidiaries, filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. As a result of HIGI’s bankruptcy plan, which became effective on March 31, 2003, all the shares of HIGI were cancelled and new shares were issued to a Liquidating Trust, which now manages HIGI.

7. The Scheme of Arrangement, once effective, will establish a process by which the claims of direct insurance creditors of the Company will be valued and paid earlier than would be the case if such claims were permitted to mature and crystallize in the ordinary course of the administration proceeding.

8. In the absence of the Scheme of Arrangement, the Administrators do not expect the claims against the Company to mature and crystallize for a number of years. As such, the Administrators believe that the Scheme of Arrangement will be the most efficient and effective method of making payment to persons who have, or may in the future have, a claim against the Company in relation to a direct insurance contract underwritten, entered into or assumed by the Company in the shortest practicable time.

9. In order for a scheme of arrangement to become legally binding, (a) a majority in number representing not less than 75% in value of creditors, or any class of them, must vote in favor of the scheme of arrangement at a specially convened meeting held at the direction of the English Court, (b) the English Court must enter an order sanctioning the scheme of arrangement, and (c) a copy of such order must be delivered to the Registrar of Companies in England and Wales. The Scheme of Arrangement provides that it shall not become effective until the first date on which (a) a copy of the English Court's order sanctioning the Scheme of Arrangement is filed with the Registrar of Companies and (b) this Court enters an order granting permanent injunctive relief under Chapter 15 of the Bankruptcy Code (the "Effective Date").

10. On April 30, 2009, the English Court conducted a hearing and subsequently entered an order (the "April Order") directing the Administrators to convene a creditors' meeting (the "Creditors' Meeting") for the purpose of allowing Scheme Creditors to consider and vote on the Scheme of Arrangement. A certified copy of the April Order is attached hereto as Exhibit A.

11. In accordance with the April Order, by letter dated May 1, 2009, the Administrators notified Scheme Creditors that the Scheme of Arrangement was being proposed and that the Creditors' Meeting was scheduled to occur on June 18, 2009.

12. On May 1, 2009, the Administrators caused, amongst other things, a letter explaining the main provisions of the Scheme of Arrangement, a notice of the Creditors' Meeting and voting form (and guidance notes for completion thereof) (collectively the "Scheme Documents") to be mailed to those parties in respect of whom the Company's records indicate that they have or may have a claim against the Company, and, where known, to agents, representatives and brokers identified by the Company as having placed insurance business with or on behalf of the Company (collectively, the "Notice Recipients") at their last known address. A copy of the Scheme Documents is attached hereto as Exhibit B.

13. The Scheme of Arrangement is proposed between the Company and its Scheme Creditors² and generally will apply in respect of liabilities under a contract or policy of direct insurance to which the Company was subject as of the Administration Date or thereafter.

The Settlement Agreement

14. Highlands Insurance Company ("HIC US"), is an insurance company organized under the laws of the State of Texas and is also a subsidiary of HIGI. The Company has extensive reinsurance arrangements with HIC US.

15. In 1986, certain business written between 1978 and 1982 by HIC US's London branch was transferred to the Company (the "1986 Transfer") by way of statutory novation pursuant to Section 51 of the Insurance Companies Act 1982 of Great Britain. In return for the 1986 Transfer, HIC US entered into a 34% quota share reinsurance treaty with the Company in relation to the liabilities so transferred.

16. In 1988, the business written by HIC US between 1972 and 1977 through certain underwriting agents was also transferred to the Company by way of statutory novation (the "1988 Transfer", and together with the 1986 Transfer, the "Section 51 Transfers"). In exchange for the 1988 Transfer, HIC US entered into

² Capitalized terms not defined herein shall have the meaning given to such terms in the Scheme of Arrangement. To the extent that any definitions contained herein are inconsistent with or differ from definitions contained in the Scheme of Arrangement, the definition given to such term in the Scheme of Arrangement shall apply.

a quota share reinsurance treaty pursuant to which HIC US reinsured the Company in respect of 100% of the transferred business.

17. On November 6, 2003, HIC US was placed under a Rehabilitation Order by the Judicial District Court of Travis County, Texas (the “Texas Court”) and a Permanent Receiver was appointed to oversee the management of HIC US. The Permanent Receiver then named a Special Deputy Receiver to oversee the management of HIC US. On July 24, 2006, the Special Deputy Receiver filed a proposed rehabilitation plan in respect of HIC US in the Texas Court (the “Original Rehabilitation Plan”).

18. On August 21, 2006, the Company filed an objection to the Original Rehabilitation Plan in the Texas Court on the basis that the Original Rehabilitation Plan did not properly treat all creditors of HIC US in the same class equally. In particular, the Company was concerned that the policies transferred pursuant to the Section 51 Transfers (the “Section 51 Policies”) written in favor of U.S. domiciled insureds covering risks in the U.S. (the “US Section 51 Policies”) would not be treated equally with “class 2” creditors of HIC US under such plan. As discussed below, the enforceability of the Section 51 Transfers was in dispute and was the underlying cause of the objection.

19. In this regard, the Company requested that the Special Deputy Receiver, whether pursuant to a revised rehabilitation plan or through a liquidation of HIC US, treat all such claimants equally and ensure that they were paid *pari passu* in the event of any inability of HIC US to pay the claims in full.

20. On April 18, 2007, the Special Master of the Texas Court issued a “Memorandum of Recommendation and Findings of Fact and Conclusions of Law,” which ultimately found that the Original Rehabilitation Plan lacked sufficient evidence to prove that all creditors of the same class would be paid in full and treated equally.

21. The Special Deputy Receiver filed an objection to this decision and requested a trial in the Texas Court, which request was granted. Following commencement of the trial (the “Texas Litigation”),

proceedings were discontinued pending settlement of the dispute between HIC US and the Company. A central component of the dispute was the extent to which the Section 51 Transfers were enforceable in the U.S., and accordingly, whether the Company or HIC US was the proper entity obligated to policyholders on account of the U.S. Section 51 Policies.

22. Given the uncertainty surrounding the Texas Litigation and its outcome, the Company ceased paying claims in August 2006. Since the commencement of the English Proceeding, the entry into a binding resolution of the Texas Litigation has been one of the Administrators' key objectives.

23. On May 9, 2008, the Special Deputy Receiver, acting on behalf of HIC US, and the Administrators entered into the Settlement Agreement Between Highlands Insurance Company in Receivership and Highlands Insurance Company (U.K.) Ltd. in Administration (the "Settlement Agreement"). A copy of the Settlement Agreement and the first amendment thereto is attached hereto as Exhibit C.

24. On October 13, 2008, after notice and a hearing, the Texas Court entered the Order Approving Application for Authority to Settle ("Texas Court Order") and thereby approved the Settlement Agreement. A copy of the Texas Court Order is attached hereto as Exhibit D.

25. The Settlement Agreement provides for HIC US to pay a settlement amount to the Company in the amount of \$13,000,000 (the "Settlement Amount") in two installments and in return, the Company will administer the Section 51 Policies. The Settlement Amount will be utilized to discharge claims arising out of those Section 51 Policies which are direct policies or contracts of insurance (the "Section 51 Direct Policies"), as well as the other purposes specified in the Scheme of Arrangement.

26. A key benefit of the Settlement Agreement is that it provides certainty to the Company, HIC US and policyholders as to which party (*i.e.* the Company or HIC US) is obligated to make payments on claims arising under the Section 51 Policies and thereby obviates the need to litigate the issue on a one-off basis. As a result of the Settlement Agreement, creditors holding claims under the Section 51 Direct Policies ("Section

51 Direct Policyholders/Claimants”) should now be able to avoid the potential cost and uncertainty of claiming against two estates where the liability of both is in dispute.

27. Pursuant to the Settlement Agreement, payment of the Settlement Amount by HIC US is conditioned on a number of factors, including approval by the English Court of the Scheme of Arrangement and an order of this Court, pursuant to Chapter 15 of the Bankruptcy Code, enforcing and giving effect to the Scheme of Arrangement, which provides, *inter alia*, that (a) Section 51 Direct Policyholders/Claimants shall assert such claims solely against the Company, (b) such claims shall be administered exclusively through the Scheme of Arrangement and (c) Section 51 Direct Policyholders/Claimants shall be precluded and enjoined from asserting such claims except as specifically provided for under the Scheme Arrangement.

28. Accordingly, Part 3, Section 3.3.3. of the Scheme of Arrangement provides that:

No Scheme Creditor shall be entitled to commence or continue any Proceedings or other judicial, quasi-judicial or regulatory process whatsoever against HIC(US) in any jurisdiction for the purpose of obtaining payment directly or indirectly of a Scheme Liability, in particular any Section 51 Direct Claim. For the avoidance of doubt, the Scheme Administrators shall not consent to the commencement by a Scheme Creditor of any Proceedings as against HIC(US) or its Property in any jurisdiction for the purpose of obtaining payment directly or indirectly of any Scheme Liability.

See, Exhibit B, Scheme of Arrangement at §3.3.3 (pp. 72-73).

29. Thus, as contemplated by, and to give effect to, the Settlement Agreement, the Scheme of Arrangement provides that Section 51 Direct Policyholders/Claimants’ claims shall be administered solely by the Scheme of Arrangement and Scheme Creditors shall be prohibited from asserting such claims against HIC US.

30. The Company’s receipt of the Settlement Amount means that the Company will have additional assets available to it and thereby makes it more likely that the allowed claims of Scheme Creditors will be paid in full. The Administrators currently anticipate that once each Scheme Creditor’s claim is valued and properly established, such claims will be paid in full. If the claims of Scheme Creditors are paid in full (as is

currently anticipated), the ability of the Section 51 Direct Policyholders/Claimants to pursue HIC US would be immaterial.

31. In the event that the Administrators determine that it is not possible to pay all Scheme Creditors in full, an event which the Administrators currently consider to be unlikely, the Scheme of Arrangement shall terminate and as a result, Scheme Creditors would no longer be prohibited from pursuing claims against HIC US.

C. Approval of the Scheme of Arrangement

32. In accordance with the April Order, on June 18, 2009, the Administrators convened the Creditors' Meeting, at which the requisite statutory majority of creditors voted in favor of the Scheme of Arrangement.

33. The Administrators anticipate that the English Court will conduct a hearing on or around July 30, 2009 to consider whether to sanction the Scheme of Arrangement. If the English Court enters an order approving the Scheme of Arrangement, the Administrators will promptly file a notice with this Court and attach a certified copy of such order thereto.

34. Within 7 days of the Effective Date, the Administrators will cause notice to be mailed to the Notice Recipients at their last known address informing them that the Scheme of Arrangement is effective and a Claim Notification and a Final Claim Form will be enclosed therein.

35. Such notice will also advise Scheme Creditors that a Claim Notification must be submitted such that it is received by the Company no later than 5:00 p.m. (London time) on the first business day falling 90 elapsed calendar days after (but not including) the Effective Date and that a Final Claim Form must be submitted such that it is received by the Company no later than 5:00 p.m. (London time) on the first business day falling 180 elapsed calendar days after (but not including) the Effective Date. If a Scheme Creditor does not complete and return a Claim Notification and a Final Claim Form by the applicable deadline, and unless

the claim has already been agreed to by the Administrators, then such Scheme Creditor's claim, if any, will be valued at zero and the Scheme Creditor will not be entitled to receive any payment in respect of its claim.

36. The Administrators will also cause notices to be placed in *Insurance Day*, in the U.K., *Business Insurance*, in the U.S., *NRC Handelsblad*, in The Netherlands and the international editions of each of the *Financial Times* and the *Wall Street Journal*. Such notices also will be posted on the Company's website at www.ukhighlands.co.uk.

JURISDICTION AND VENUE

37. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the "Standing Order of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York" (Ward, Acting C.J.), dated July 10, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

38. Venue is proper before this Court pursuant to 28 U.S.C. § 1410.

RELIEF REQUESTED

39. The Administrators respectfully request the entry of an order by this Court, substantially in the form annexed hereto as Exhibit E (the "Proposed Order"), granting a permanent injunction and related relief, including a permanent non-debtor injunction in favor of HIC US, pursuant to sections 1521 and 105(a) of the Bankruptcy Code and Rule 65 of the Federal Rules of Civil Procedure, as made applicable by Rule 7065 of the Federal Rules of Bankruptcy Procedure, ordering that as of the Effective Date:

- (a) The Scheme of Arrangement (the "Scheme") shall be given full force and effect and be binding on and enforceable against all Scheme Creditors in the U.S.;
- (b) All claims of Scheme Creditors shall be administered and adjudicated exclusively pursuant to the terms of the Scheme;

(c) Section 51 Direct Policyholders/Claimants ("Section 51 Direct Policyholders/Claimants") shall be required to make any and all claims in respect of their Section 51 Direct Policy and seek payment of such claims exclusively in accordance with the provisions of the Scheme and shall be precluded and enjoined from making any such claims except as specifically provided for under the Scheme;

(d) all Scheme Creditors asserting a claim under a Section 51 Direct Policy shall be prohibited and enjoined from asserting any and all claims in respect of their Section 51 Direct Policy or seeking payment of such claims (including asserting or effecting a set-off based on such claims) against HIC(US);

(e) except as provided in the Scheme, all Scheme Creditors shall be permanently enjoined and restrained from taking any actions in contravention of, or that are inconsistent with, the terms of the Scheme or its administration, implementation or enforcement, including:

(i) transferring, relinquishing or disposing of any property of the Company located within the territorial jurisdiction of the United States or the proceeds of such property (the "US Property");

(ii) taking or continuing any act to obtain possession of, or exercise control over, the Company or any of its US Property;

(iii) commencing or continuing any action or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever), including by way of counterclaim (each individually, an "Action"), against the Company or any of its US Property;

(iv) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Company obtained in connection with any Scheme Liability;

(v) commencing or continuing any act or proceeding to create, perfect or enforce any lien, attachment, set-off or other claim against the Company or any of its US Property, including, without limitation, rights under the Insurance Contracts;

(vi) except as prohibited by § 1501(d) of the Bankruptcy Code, invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any Actions arising out of a Scheme Liability (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or regulatory action, proceedings or process whatsoever) and such statute, rule or requirement will be rendered null and void for proceedings; provided however, that nothing in the order shall in any respect affect any Security Interest in existence at the Effective Date or the replacements for such Security Interest;

(vii) except as prohibited by § 1501(d) of the Bankruptcy Code, drawing down any letter of credit established by, on behalf of or at the request of the Company unless expressly authorized by the terms of any contract or agreement pursuant to which the letter of credit has been established; and

(viii) except as prohibited by § 1501(d) of the Bankruptcy Code, withdrawing from, setting-off against, or otherwise applying US Property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established.

(f) except as provided in the Scheme, all Scheme Creditors that are parties to any trust, escrow agreement or similar arrangement in which the Company has an interest, shall be required to:

(i) provide notice to the Administrators' United States counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara Tapinekis), of any withdrawal from, set-off against, or other application of property that is the subject of any such trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Company to assess the propriety of such withdrawal, set-off or other application, including, without limitation, the date and amount of such withdrawal, set-off or other application and a copy of any contract, related trust or other agreement pursuant to which any such withdrawal, set-off or other application was made, and provide such notice and other information contemporaneously; and

(ii) turn over and account to the Company for all funds resulting from such withdrawal, set-off or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established;

(g) except as provided in the Scheme, all Scheme Creditors shall be required to:

(i) turn over and account to the Company for any US Property of the Company, or proceeds thereof, that relate to any Scheme Liability, of which they have possession, custody or control;

(ii) deliver to the Company any books, papers or records of the Company that relate to any Scheme Liability, of which they have possession, custody or control and all Scheme Creditors having any books, papers or records that the Company or Scheme

Adjudicator may reasonably require in relation to their duties or related to any matter that may affect the implementation of the Scheme shall preserve them and submit them to the Company or Scheme Adjudicator, or their designees, for examination at all reasonable times; and

(iii) to the extent they have a claim of any nature or source against the Company or any US Property or are a party to any proceeding in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, notify the Company, in accordance with the terms of the Scheme, and to put the Administrators' United States counsel on the master service list of any such proceeding and to take such other steps as may be necessary to ensure that they receive (A) copies of any and all documents sent by the parties to such proceeding or issued by the court, administrator, arbitrator, regulator or similar official having jurisdiction over such proceeding, and (B) any and all correspondence or other documents circulated to parties named in the master service list;

(h) nothing in the order would prevent the continuance or commencement of proceedings against any insurer other than the Company, provided however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or entity other than the Company, such settlement or judgment shall not be binding on or enforceable against the Company;

(i) this Court shall retain jurisdiction with respect to the enforcement, amendment or modification of the order or requests for any additional relief in the case filed under Chapter 15 of the Bankruptcy Code and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of the Bankruptcy Court;

(j) no action taken by the Company, its successors, agents or representatives, or any of them, or its counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme, the order, the Chapter 15 case, any further order for additional relief

in the Chapter 15 case, or any adversary proceedings in connection therewith, will be deemed to constitute a waiver of the immunity afforded to the Company, the Administrators, the Scheme Adjudicator or their successors, agents, attorneys or representatives pursuant to section 1510 of the Bankruptcy Code; and

(k) nothing in the order shall alter or affect the terms of the Settlement Agreement or the venue and jurisdiction provisions thereof.

BASIS FOR RELIEF

40. For the reasons set forth herein and in the memorandum of law in support of the Motion (the “Memorandum of Law”) filed simultaneously herewith and because the requested relief is necessary to effectuate the purpose of Chapter 15 and to protect the assets of the Company and the interests of the Company’s creditors, the Administrators respectfully request that this Court enter an order substantially in the form attached hereto as Exhibit E, pursuant to sections 1521 and 105(a) of the Bankruptcy Code and Rule 65 of the Federal Rules of Civil Procedure, as made applicable by Rule 7065 of the Federal Rules of Bankruptcy Procedure.

41. No previous application for the relief requested herein has been made in this or any other court.

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CONCLUSION

WHEREFORE, the Administrators respectfully request that the Court enter an order substantially in the form of the Proposed Order attached hereto as Exhibit E granting the relief requested herein and such other and further relief as is just and proper.

Dated: New York, New York
July 1, 2009

CLIFFORD CHANCE US LLP

/s/ Jennifer C. DeMarco
Jennifer C. DeMarco (JD-9284)
Sara M. Tapinekis (ST-4382)
Jennifer B. Premisler (JP-7499)
31 West 52nd Street
New York, New York 10019
Tel: (212) 878-8000
Fax: (212) 878-8375

Attorneys for the Administrators

EXHIBITS A THROUGH D

Due to the voluminous nature of Exhibits A through D, these exhibits are not included herein. These documents may be accessed on the Company's website at <http://www.ukhighlands.co.uk> or hardcopies are available upon request to the Administrators' U.S. counsel (including by facsimile or e-mail) addressed to:

**Clifford Chance US LLP
31 West 52nd Street
New York, New York 10019
(212) 878-8375 (facsimile)
Attention: Sara Tapinekis
Sara.Tapinekis@cliffordchance.com**

EXHIBIT E

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
In re :
 :
Highlands Insurance Company (U.K.) :
Limited (in administration), : Chapter 15
 :
 : Case No. 07-13970 (MG)
Debtor in a Foreign Proceeding :
----- X

**PROPOSED ORDER GRANTING MOTION PURSUANT TO
BANKRUPTCY CODE SECTIONS 1521 AND 105(a) AND FED. R.
BANKR. P. 7065 FOR PERMANENT INJUNCTION AND RELATED RELIEF**

Upon the Motion Pursuant to Bankruptcy Code Sections 1521 and 105(a) and Federal Rule of Bankruptcy Procedure 7065 for Permanent Injunction and Related Relief (the “Motion”), the Memorandum of Law in support of the Motion (the “Memorandum of Law”) and the Declaration of Dan Yoram Schwarzmann in support of the Motion, (the “Schwarzmann Declaration,” and together with the Motion and Memorandum of Law, the “Chapter 15 Papers”), each filed on July 1, 2009 by Dan Yoram Schwarzmann and Mark Charles Batten (the “Movants”) in this case; and upon the Court’s consideration of the Chapter 15 Pleadings and the record of the hearing before this Court on August 18, 2009 and all prior hearings herein; and due notice of the Chapter 15 Pleadings being given thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given; and no objections to the relief requested in the Motion having been filed or raised thereto that have not been overruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, this Court hereby finds and concludes as follows:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Standing Order of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984; and

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

C. Venue is proper in this District pursuant to 28 U.S.C. § 1410; and

D. The Movants, acting as the court-appointed joint administrators of Highlands Insurance Company (U.K.) Limited (In Administration) (the “Company”), are persons and the duly appointed foreign representatives of the Company (the “Administrators”) within the meaning of 11 U.S.C. § 101(24); and

E. The relief requested in the Motion is necessary to effectuate the purpose of chapter 15 and to protect the assets of the Company and the interests of its creditors, and is not manifestly contrary to the public policy of the U.S; and

F. Absent the requested relief, the Company may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with a claim against the Company or its property in the U.S. thereby interfering with and causing harm to, the Company and the English Proceeding,¹ and as a result, the Company and its creditors, as a whole, would suffer irreparable injury for which there is no adequate remedy at law; and

G. Absent the requested relief, the English Proceeding and the Administrators’ efforts in conducting the administration of the Company and the Scheme of Arrangement (the

¹ Capitalized terms not defined herein shall have the meaning given to such terms in the Motion.

“Scheme”) may be thwarted by the actions of certain creditors, a result inimical to the purposes of chapter 15 as reflected, *inter alia*, in 11 U.S.C. § 1501(a). Such actions may threaten, frustrate, delay and ultimately jeopardize the English Proceeding and the administration of the Company; and

G. The relief sought in the Motion will not cause undue hardship or inconvenience to parties in interest and, to the extent that any hardship or inconvenience may result, such hardship or inconvenience will be outweighed by the benefits to the Company, its estate and its creditors, as well as to the interests of cooperation between the courts of the U.S. and those of foreign jurisdictions; and

H. The relief requested in the Motion is necessary to the implementation of the Scheme and the effective resolution of disputes involving the Section 51 Transfers; and

I. The bankruptcy estate will receive substantial consideration in exchange for the release of claims against HIC US; and

J. The Settlement Amount will be used to pay claims of Scheme Creditors and the Administrators expect that allowed claims of Scheme Creditors will be paid in full (subject to discounting at a rate designed to reflect a risk free rate of return and other relevant deductions in accordance with the Scheme); and

K. The Administrators are entitled to the relief sought under 11 U.S.C. §§ 1521 and 105(a).

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT as of the Effective Date and provided there has been no early termination of the Scheme:**

1. The Scheme shall be given full force and effect and be binding on and enforceable against all Scheme Creditors in the U.S.; and

2. All claims of Scheme Creditors shall be administered and adjudicated exclusively pursuant to the terms of the Scheme; and

3. All Section 51 Direct Policyholders/Claimants are required to make any and all claims in respect of their Section 51 Direct Policy and seek payment of such claims exclusively in accordance with the provisions of the Scheme and are precluded and enjoined from making any such claims except as specifically provided for under the Scheme; and

4. All Section 51 Direct Policyholders/Claimants are prohibited and enjoined from asserting any and all claims in respect of their Section 51 Direct Policy or seeking payment of such claims (including asserting or effecting a set-off based on such claims) against HIC US; and

5. Except as provided in the Scheme, all Scheme Creditors are permanently enjoined and restrained from taking any actions in contravention of, or that are inconsistent with, the terms of the Scheme or its administration, implementation or enforcement, including:

(a) transferring, relinquishing or disposing of any property of the Company located within the territorial jurisdiction of the U.S. or the proceeds thereof (“US Property”);

(b) taking or continuing any act to obtain possession of, or exercise control over, the Company or any of its US Property;

(c) commencing or continuing any actions or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or

regulatory action, proceeding or process whatsoever), including by way of counterclaim, (each, individually, an “Action”) against the Company or any of its US Property;

(d) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment, order or arbitration award against the Company obtained in connection with any Scheme Liability;

(e) commencing or continuing any act or proceeding to create, perfect or enforce any lien, attachment, set-off or other claim against the Company or any of its US Property, including, without limitation, rights under the Insurance Contracts;

(f) except as prohibited by § 1501(d) of the Bankruptcy Code, invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any Action arising out of a Scheme Liability and such statute, rule or requirement will be rendered null and void for Actions; provided however, that nothing in the order shall in any respect affect any Security Interest in existence as the Effective Date or the replacements for such Security Interest;

(g) except as prohibited by 11 U.S.C. § 1501(d), drawing down any letter of credit established by, on behalf of or at the request of, the Company unless expressly authorized by the terms of any contract or agreement pursuant to which the letter of credit has been established;

(h) except as prohibited by 11 U.S.C. § 1501(d), withdrawing from, setting-off against, or otherwise applying US Property that is the subject of any trust or escrow

agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established.

6. Except as provided in the Scheme, all Scheme Creditors that are parties to any trust, escrow agreement or similar arrangement in which the Company has an interest, shall be required to:

(a) provide notice to the Administrators' United States counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara Tapinekis), of any withdrawal from, set-off against, or other application of property that is the subject of any such trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Company to assess the propriety of such withdrawal, set-off or other application, including, without limitation, the date and amount of such withdrawal, set-off or other application and a copy of any contract, related trust or other agreement pursuant to which any such withdrawal, set-off or other application was made, and provide such notice and other information contemporaneously; and

(b) turn over and account to the Company for all funds resulting from such withdrawal, set-off or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established;

7. Except as provided in the Scheme, all Scheme Creditors shall be required to:

(a) turn over and account to the Company for any US Property of the Company, or proceeds thereof, that relate to any Scheme Liability, of which they have possession, custody or control;

(b) deliver to the Company any books, papers or records of the Company that relate to any Scheme Liability, of which they have possession, custody or control and all Scheme Creditors having any books, papers or records that the Company or Scheme Adjudicator may reasonably require in relation to their duties or related to any matter that may affect the implementation of the Scheme shall preserve them and submit them to the Company or Scheme Adjudicator, or their designees, for examination at all reasonable times; and

(c) to the extent they have a claim of any nature or source against the Company or any US Property or are a party to any proceeding in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, notify the Company, in accordance with the terms of the Scheme, and put the Administrators' United States counsel on the master service list of any such proceeding and to take such other steps as may be necessary to ensure that they receive (A) copies of any and all documents sent by the parties to such proceeding or issued by the court, administrator, arbitrator, regulator or similar official having jurisdiction over such proceeding, and (B) any and all correspondence or other documents circulated to parties named in the master service list;

8. Nothing herein shall prevent the continuance or commencement of proceedings against any insurer other than the Company (and HIC US as set forth above), provided however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or

entity other than the Company, such settlement or judgment shall not be binding on or enforceable against the Company;

9. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of the order or requests for any additional relief in the case filed under chapter 15 of the Bankruptcy Code and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court; and

10. No action taken by the Company, its successors, agents or representatives, or any of them, or its counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme, the order, the chapter 15 case, any further order for additional relief in the chapter 15 case, or any adversary proceedings in connection therewith, will be deemed to constitute a waiver of the immunity afforded to the Company, the Administrators, the Scheme Adjudicator or their successors, agents, attorneys or representatives pursuant to 11 U.S.C. § 1510; and

11. Nothing in this order shall alter or affect the terms of the Settlement Agreement or the venue and jurisdiction provisions thereof; and

12. This Order shall be in force as of the Effective Date and provided there is not an early termination of the Scheme in accordance with paragraph 7.3 of the Scheme. If the Scheme is terminated by the Administrators prior to the date upon which the Scheme is fully consummated, the Administrators shall immediately inform this Court of such termination; and

13. This Order shall be served:

(a) by United States mail, first class postage prepaid, upon all known potential creditors whose addresses are reasonably available to the Company (or their counsel, if known to the Company) on _____, 2009; and

(b) by publication in (i) *Insurance Day* (ii) the worldwide edition of the *Financial Times*, and (iii) the national edition of the *Wall Street Journal*, on _____, 2009 and (iv) *Business Insurance* on _____ (or as soon as reasonably practicable thereafter);

(c) and such service will be good and sufficient service and adequate notice for all purposes; and

14. The Chapter 15 Pleadings shall be made available by the Administrators upon request to the Administrators' U.S. counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara M. Tapinekis).

Dated: New York, New York
August __, 2009

United States Bankruptcy Judge

CLIFFORD CHANCE US LLP
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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x
In re: :
: :
Highlands Insurance Company (U.K.) : Chapter 15
Limited, (in administration) : :
: Case No. 07-13970 (MG)
: :
Debtor in a Foreign Proceeding :
----- x

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
PURSUANT TO BANKRUPTCY CODE SECTIONS
1521 AND 105(a) AND FED. R. BANKR. P. 7065
FOR PERMANENT INJUNCTION AND RELATED RELIEF**

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Attorneys for the Administrators

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----	X	
In re:	:	
	:	
Highlands Insurance Company (U.K.)	:	Chapter 15
Limited, (in administration)	:	
	:	Case No. 07-13970 (MG)
	:	
Debtor in a Foreign Proceeding	:	
-----	X	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
 PURSUANT TO BANKRUPTCY CODE SECTIONS
 1521 AND 105(a) AND FED. R. BANKR. P. 7065 FOR
PERMANENT INJUNCTION AND RELATED RELIEF**

Dan Yoram Schwarzmann and Mark Charles Batten (the “Administrators”), in their capacity as the duly appointed and recognized foreign representatives of Highlands Insurance Company (U.K.) Limited (in administration) (“HIC UK” or the “Company”), by their U.S. Counsel, Clifford Chance US LLP, submit this Memorandum of Law in Support of the Motion Pursuant to Bankruptcy Code Sections 1521 and 105(a) and Fed. R. Bankr. P. 7065 for Permanent Injunction and Related Relief (the “Motion”) filed simultaneously herewith.

I. PRELIMINARY STATEMENT

The Company is an insurance and reinsurance company incorporated in England in 1974 under the U.K. Companies Act 1948. The Company ceased writing new business in January 1994 and currently is in administration in the U.K. In the administration proceeding, the Administrators have proposed a scheme of arrangement which establishes a process by which claims of direct insurance creditors of the Company will be valued and are expected to be paid in full (the “Scheme of Arrangement”). The Scheme of Arrangement will conclude the run-off of the Company’s direct insurance business earlier and in a more efficient manner than would otherwise be the case in the absence of a Scheme of Arrangement.

Pursuant to the terms of the Scheme of Arrangement, Scheme Creditors¹ are prohibited from asserting claims that are to be administered pursuant to the Scheme of Arrangement other than in accordance with the terms of the Scheme of Arrangement. Accordingly, the Administrators are seeking permanent injunctive relief that would make the Scheme of Arrangement binding and effective in the U.S., and thereby enjoin Scheme Creditors from pursuing claims other than in accordance with the terms of the Scheme of Arrangement.

A key element of the Scheme is the implementation of the resolution of a vigorously contested dispute between the Company and HIC US, a domestic insurance company in a Texas receivership proceeding, as to whether the transfers of certain insurance and reinsurance policies to the Company by HIC US in 1986 and 1988 under U.K. statutory provisions (the “Section 51 Transfers”) effected a valid novation under U.S. federal and state law, and thus, whether such policies constitute liabilities of the Company or of HIC US. This issue is of such central

¹ Capitalized terms used but not defined herein shall have the meanings given to such terms in the Motion.

importance to the Company that due to the uncertainty surrounding litigation of the issue, the Company ceased paying claims in August 2006.

In May 2008, the Administrators and the Special Deputy Receiver of HIC US entered into a Settlement Agreement resolving this dispute. The Settlement Agreement provides for the payment by HIC US to the Company of \$13 million and, in exchange, the Company will administer the Section 51 Policies. It is expected that the payment of the Settlement Amount will enable the Administrators to make payment in full to Section 51 Direct Policyholders/Claimants.² As a condition precedent to effectiveness of the Settlement Agreement, policyholders must submit claims arising under Section 51 Direct Policies exclusively against the Company and must be enjoined from asserting such claims against HIC US.

To effectuate an earlier conclusion of the run-off the Company's direct insurance business and to implement the Settlement Agreement, the Administrators proposed the Scheme of Arrangement. The Scheme of Arrangement, once given effect in the U.S., would afford certainty to the Company, its creditors and HIC US with respect to the Section 51 Direct Policies and obviate the need for the continuance of complex and protracted litigation.

The Settlement Agreement has been approved by the Texas Court (*i.e.* the court overseeing the HIC US receivership proceeding) and the Administrators expect that by the time the Motion is heard, the Scheme of Arrangement, which implements the Settlement Agreement, will also have been approved by the English Court. Giving effect to the Scheme of Arrangement

² If it is determined that the Company will be unable to pay Scheme Creditors in full (subject to discounting at a rate designed to reflect a risk free rate of return and other relevant deductions, if any), the Scheme of Arrangement, and the non-debtor injunctive relief sought in the Motion, will be terminated.

in the U.S. and granting the relief requested in the Motion is consistent with the purposes of chapter 15 (international cooperation and providing ancillary assistance to foreign courts administering cross-border insolvency proceedings).

To prevent the Company's U.S. Scheme Creditors from pursuing actions against the Company with respect to claims to be administered by the Scheme of Arrangement, the Administrators require the ancillary assistance of this Court under chapter 15 and an order that will, *inter alia*, give full force and effect to the Scheme of Arrangement in the U.S. Absent the relief requested in the Motion, the Company and its Scheme Creditors will suffer irreparable harm insofar as the assets of the Company located in the United States will be left vulnerable to individual, rather than collective, creditor action and the effectiveness of the Scheme of Arrangement, would be at risk. Moreover, absent the Scheme of Arrangement becoming effective, the Administrators currently believe that the likelihood of payment in full to effected creditors would be significantly reduced. Accordingly, through the Motion, the Administrators seek relief that will maintain the collective nature of the English Proceeding and, to that end, require the Company's U.S. direct insurance creditors to pursue their claims against the Company in a centralized, collective proceeding under the Scheme of Arrangement.

II. FACTS

The Court is respectfully referred to the Motion and the Declaration of Dan Yoram Schwarzmann in support of the Motion, which set forth the relevant facts and are incorporated by reference herein.

III. JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the “Standing Order of Referral of Cases to Bankruptcy Judges” of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P). Venue is properly located in this District pursuant to 28 U.S.C. § 1410.

IV. ARGUMENT

A. The Administrators Are Entitled to Relief Pursuant to Section 1521(a)

Upon recognition of a foreign proceeding, section 1521(a) authorizes the Court to “grant any appropriate relief” at the request of the foreign representative where necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of the creditors, including,

- staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities;
- staying execution against the debtor’s assets;
- suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor; and
- granting any additional relief that may be available to a trustee, except for the relief available under sections 522, 544, 545, 547, 548, 550 and 724(e).

11 U.S.C. § 1521(a)(1), (a)(2), (a)(3), (a)(7). Courts may grant such relief only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected. *See* 11 U.S.C. § 1522(a).

By order dated January 22, 2008 the Court previously has granted recognition to the English Proceeding as a foreign main proceeding and the Administrators now are seeking the

relief sought in the Motion to enforce and give effect to the Sanction Order to be issued by the English Court with respect to the Scheme of Arrangement. Specifically, the Administrators have requested certain relief under section 1521 that is required to assist the English Court and the Administrators with the effective administration of the Company in the English Proceeding. Without the relief provided for in section 1521(a) with respect to the Company, the English Court would neither be able to ensure the fair and efficient administration of the Company in a manner that protects the interests of all creditors of the Company, nor protect and maximize the value of the Company's assets. Such relief therefore is necessary to effectuate the purpose of chapter 15 and is expressly authorized under section 1521 of the Bankruptcy Code.

The Administrators are specifically seeking an order, *inter alia*, channeling all claims of the Company's direct insurance business creditors against the Company, including claims of Section 51 Direct Policyholders/Claimants, into one collective proceeding in accordance with the Scheme of Arrangement and to protect the interests of Scheme Creditors in having their claims valued and paid on a consistent and non-discriminatory basis, in accordance with section 1522(a). Were that process to be disrupted by uncoordinated claim litigation or unilateral action by Scheme Creditors located in the U.S., the injury to the Company and its Scheme Creditors would be irreparable.

In connection with the channeling of claims set forth above, the Administrators are seeking that all Section 51 Direct Policyholders/Claimants be enjoined from asserting claims in respect of their Section 51 Direct Policies (against the Company or HIC US) other than as provided in the Scheme of Arrangement. As set forth in greater detail below, the injunction sought with respect to HIC US is an integral part of the Scheme of Arrangement and the

Settlement Agreement pursuant to which the Company will receive funds sufficient to enable it to satisfy Scheme Creditors' claims in full.

With the exception of the injunctive relief involving HIC US, which is addressed more fully in Section B below, courts have granted relief similar to the relief sought in the Motion with respect to schemes of arrangement under Part 26 of the Companies Act 2006 of Great Britain and its predecessor, section 425 of the Companies Act 1985 of Great Britain. *See, e.g. In re Petition of Thomas Klaus Freudenstein, as Foreign Representative of Global General and Reinsurance Company Limited and Global Rückversicherungs-AG*, Chapter 15 Case No. 08-14939 (RDD), Order Granting Recognition of Foreign Proceedings, Permanent Injunction and Related Relief (Bankr. S.D.N.Y. Jan. 21, 2009) (giving effect in the U.S. to scheme of arrangement under Part 26 of the Companies Act 2006); *In re Europäische Rückversicherungs-Gesellschaft in Zürich (European Reinsurance Company of Zurich)*, Chapter 15 Case No. 06-13061 (REG), Permanent Injunction and Order Granting Recognition of Foreign Nonmain Proceeding of European Reinsurance Company of Zurich Pursuant to 11 U.S.C. §§ 1507, 1517, 1521 (Bankr. S.D.N.Y. Jan. 22, 2007) (giving effect in the U.S. to scheme of arrangement under section 425 of the Companies Act 1985 of Great Britain); *In re ING Re (UK) Limited*, Chapter 15 Case No. Case No. 08-10018 (REG), Order Recognizing Foreign Main Proceeding of ING RE (UK) Limited and Permanent Injunction (Bankr. S.D.N.Y. Jan. 30, 2008) (giving effect in the U.S. to scheme of arrangement under section 425 of the Companies Act 1985 of Great Britain).

1. The Requirements for a Permanent Injunction Have Been Met in Accordance With Section 1521(e)

The standards, procedures and limitations applicable generally to an injunction also apply to relief sought under section 1521(a). *See* 11 U.S.C. § 1521(e). The relief sought in the Motion

is warranted under the standard applicable in the Second Circuit for granting a permanent injunction. That standard is essentially the same as the standard for a preliminary injunction,³ except rather than demonstrate a likelihood of success on the merits, the movant must actually succeed on the merits. *See NextG Networks of New York, Inc. v. City of New York*, No. 03 CIV 9672 RMB/JCF, 2006 WL 538189, at *8 (S.D.N.Y. Mar. 6, 2006). In addition, the movant must make a showing of the likelihood of irreparable harm, *i.e.*, an injury that cannot be redressed through financial compensation. *See id.* Irreparable harm must be likely and imminent, not remote or speculative. *See id.*; *Civic Ass'n of Deaf of New York City, Inc. v. Giuliani*, 915 F. Supp. 622, 631 (S.D.N.Y.1996).

Irreparable harm to an estate exists where the orderly determination of claims and the fair distribution of assets are disrupted. *See, e.g., Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 713-14 (2d Cir. 1987); *Cunard S.S. Co. Ltd. v. Salen Reefer Servs., AB.*, 773 F.2d 452, 458 (2d Cir. 1985) (“Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized, the scheme may fail.”) (citing *Canada S. Railway Co. v. Gebhard*, 109 U.S. 527, 539 (1883)); *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“As a rule . . . irreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.”).

In addition, the relief sought in the Motion may be obtained without undue hardship or prejudice to the rights of U.S. creditors. As shown in the Scheme Documents, the Scheme of Arrangement contemplates a means of claimant participation similar to that contemplated by the

³ The applicable preliminary injunction standard is (i) a likelihood of success on the merits and (ii) irreparable harm.

Bankruptcy Code. Moreover, the claims valuation process is applied uniformly to all Scheme Creditors, regardless of domicile. In addition, each Scheme Creditor is afforded adequate notice and an opportunity to be heard by the English Court. As such, the interests of the Company and its Scheme Creditors and other interested parties are sufficiently protected.

B. Injunctive Relief With Respect to HIC US is Necessary and Appropriate Under the Circumstances

In addition to injunctive relief with respect to the Company (*i.e.* the channeling of all claims with respect to direct insurance against the Company into the Scheme of Arrangement) and in order to enforce the Sanction Order in the U.S., the relief sought in the Motion includes an injunction prohibiting Section 51 Direct Policyholders/Claimants from pursuing claims based on Scheme Liability, including in particular any Section 51 Direct Claim against HIC US and outside the Scheme of Arrangement. Under the present circumstances, which as discussed below are highly unique and extraordinary, this Court possesses the authority under sections 105(a) and 1521 of the Bankruptcy Code to grant such relief.

Section 105(a) of the Bankruptcy Code authorizes bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” *See* 11 U.S.C. § 105(a). Any power that a court employs under section 105(a) must derive from some other provision of the Bankruptcy Code. *See Deutsche Bank AG London Branch et al v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 142 (2d Cir. 2005). As set forth above, upon recognition of a foreign proceeding and where necessary to effectuate the purpose of chapter 15 and to protect the assets of the debtor or the interests of the creditors, section 1521(a) authorizes the Court to grant certain additional relief at the request of the Administrators, including, *inter alia*,

- staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities; and
- granting any additional relief that may be available to a trustee, except for the relief available under sections 522, 544, 545, 547, 548, 550 and 724(e).

11 U.S.C. § 1521(a).

Courts have approved non-debtor releases in cases arising under chapters 7 and 11 of the Bankruptcy Code when some, but not necessarily all, of the following factors were present: (1) the estate received substantial consideration, (2) the enjoined claims were channeled to a settlement fund rather than extinguished, (3) the enjoined claims would impact the debtor’s reorganization and (4) the plan otherwise provided for the full payment of the enjoined claims⁴. *See id.* Notwithstanding, courts have provided that consideration of the appropriateness of a non-debtor injunction is not limited to the application of a concrete set of factors, but should be granted sparingly and only under circumstances that may be characterized as unique.” *In re Metromedia Fiber Network, Inc.*, 416 F.3d 142. As noted by this Court in *McHale v. Alvarez (In re The 1031 Tax Group)*, cases in this Circuit make clear that bankruptcy courts have “very limited power to approve settlements or chapter 11 plans containing permanent or channeling injunctions in favor of non-debtors,” Case No. 07-11448 (MG), Opinion & Order Granting Preliminary Injunction (Bankr. S.D.N.Y. 2008), and that the issuance of third-party releases are proper only in rare cases and under unique circumstances. *See In re Adelphia Commcn’s Corp.*, 364 B.R. 518, 529 (Bankr. S.D.N.Y. 2007).

For the reasons that follow, an injunction channeling all claims under the Section 51 Direct Policies into the Scheme of Arrangement and prohibiting Section 51 Direct

⁴ “Nondebtor releases may also be tolerated if the affected creditors consent.” *Id. see also; Matter of Specialty Equip. Cos., Inc.*, 3 F.3d 1043 (7th Cir. 1993 (Bankruptcy courts may release non-debtors from their debts if affected creditors consent).

Policyholders/Claimants from pursuing such claims against HIC US is appropriate under the present circumstances, which are highly unique, if not singular.

Firstly, this case is not a plenary proceeding. This is a chapter 15 case that is ancillary to a foreign main proceeding and by the date the Motion is heard, the Administrators expect that the English Court will have entered the Sanction Order which will provide for the channeling of all claims arising under the Section 51 Direct Policies through the Scheme of Arrangement. As such, the relief sought in the Motion is consistent with the purpose of chapter 15, which is to provide effective mechanisms for dealing with cases of cross-border insolvency, with the express objectives of cooperation between United States courts and foreign courts involved in cross-border insolvency cases. *See* 11 U.S.C. 1501. Moreover, “chapter 15 accords the court substantial discretion and flexibility.” *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 126 (Bankr. S.D.N.Y. 2007).

The relief sought in the Motion with respect to HIC US is appropriate because (i) the Settlement Amount paid by HIC US to the Company will provide substantial consideration to the Company’s estate, (ii) each of the Section 51 Direct Policyholders/Claimants’ claims will be channeled to an administered in accordance with the Scheme of Arrangement, and (iii) it is projected that the Settlement Amount will enable the Company to make payment in full (subject to discounting at a rate designed to reflect a risk free rate of return and other relevant deductions, if any, in accordance with the terms of the Scheme of Arrangement) to creditors subject to the injunction. If the Settlement Amount will not enable the Company to make full payment to Scheme Creditors, the Scheme of Arrangement and the injunctive relief sought in the Motion, will be terminated. Courts have acknowledged that a non-debtor injunction may be appropriate in circumstances where, as here, substantial consideration is received in exchange for the release

and the creditors to be enjoined are paid in full. *See, e.g., In re Adelpia, Commcn's Corp.*, 364 B.R. at 530 (“payment in full (or provision for payment in full) to affected creditors has been another basis historically found to justify channeling injunctions”); *In re Metromedia Fiber Network, Inc.*, 416 F.3d at 142 (noting that courts have approved non-debtor releases when, *inter alia*, the estate received substantial consideration, the enjoined claims were ‘channeled’ to a settlement fund rather than extinguished and the plan otherwise provided for the full payment of the enjoined claims); *In re Mrs. Weinberg's Kosher Foods, Inc.*, 278 B.R. 358 (Bankr. S.D.N.Y. 2002 (approval of non-debtor channeling injunction granted in a chapter 7 case where injunction was unnecessary to a reorganization, but necessary to settlement agreement entered into by chapter 7 trustee and creditors were given due notice of the proposed injunction and did not object).

The proposed injunction is an integral part of the Settlement Agreement between HIC US and the Company. Prior to the Settlement Agreement, HIC US and the Company were mired in a dispute with respect to the efficacy of the Section 51 Transfers. As such, the Section 51 Direct Policyholders/Claimants lacked certainty as to whether HIC US or the Company would be obligated or able to satisfy their claims, and the resources of both estates were likely to be further diminished in connection with the Texas Litigation. The Settlement Agreement, including the injunctive relief sought with respect to HIC US, has already been approved by the Texas Court after an evidentiary hearing. The Texas Court Order approving the Settlement Agreement contained specific findings that adequate and timely notice was provided to parties affected by the Settlement Agreement and that such parties were afforded a reasonable opportunity to object or be heard with respect to the Special Deputy Receiver’s request for approval of the Settlement Agreement. *See* Exhibit D to the Motion, Texas Court Order ¶¶ D, E. Moreover, the Texas

Court further found that Section 51 Direct Policyholders/Claimants would not be prejudiced by the Texas Court's approval of the Settlement Agreement. *See id.* at ¶ F. In addition, no party filed an objection to the Texas Court's approval of the Settlement Agreement. *See id.* p. 1.

Finally, as set forth in the Motion, the statutory requisite majority of Scheme Creditors voted to approve the Scheme of Arrangement and the Administrators anticipate that by the time the Motion is heard, the English Court also will have conducted a hearing to consider approval of the Scheme of Arrangement, which sets forth and implements the terms of the Settlement Agreement, and will have entered the Sanction Order approving such Scheme of Arrangement.

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V. CONCLUSION

For the reasons set forth above, the Administrators respectfully submit that the Motion satisfies the requirements for the injunctive and other relief sought therein. Unless the relief requested is granted, the Scheme of Arrangement may not become effective and the English Proceeding will be undermined with the consequence of imminent and irreparable harm arising to the Company and its Scheme Creditors through exposure to unilateral U.S. creditor actions in derogation of the collective interests embraced by the Scheme of Arrangement. In order to ensure equal and consistent treatment of all Scheme Creditors, each must similarly be bound and the assets of the Company similarly protected, irrespective of a diversity of domicile or location. For the foregoing reasons, the Administrators respectfully request that this Court grant the relief requested in the Motion.

Dated: July 1, 2009
New York, New York

CLIFFORD CHANCE US LLP

By: /s/ Jennifer C. DeMarco

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Attorneys for the Administrators

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----	X	
In re	:	
	:	
Highlands Insurance Company (U.K.)	:	Chapter 15
Limited, (in administration)	:	
	:	
	:	
	:	Case No. 07-13970 (MG)
Debtor in a Foreign Proceeding	:	
-----	X	

**DECLARATION OF DAN YORAM SCHWARZMANN IN
 SUPPORT OF MOTION PURSUANT TO BANKRUPTCY
 CODE SECTIONS 1521 AND 105(a) AND FED. R. BANKR. P. 7065
FOR PERMANENT INJUNCTION AND RELATED RELIEF**

DAN YORAM SCHWARZMANN, pursuant to 28 U.S.C. § 1746, hereby declares under penalty of perjury as follows:

1. I am Dan Yoram Schwarzmann of the London office of PricewaterhouseCoopers LLP (“PwC”), and together with Mark Charles Batten, also of the London office of PwC, I am authorized by the High Court of Justice of England and Wales (the “English Court”) to act as foreign representative of Highlands Insurance Company (U.K.) Limited (in administration) (“HIC UK” or the “Company”) in connection with the administration of the Company pursuant to the U.K. Insolvency Act 1986 (the “UK Insolvency Act”) and this Chapter 15 case.

2. I submit this declaration in support of the Motion Pursuant to Bankruptcy Code Sections 1521 and 105(a) and Fed R. Bankr. P. 7065 for Permanent Injunction and Related Relief (the “Motion”) filed simultaneously herewith.

BACKGROUND

The English Proceeding and the Chapter 15 Case

3. HIC UK is an insurance and reinsurance company incorporated in England in 1974 under the U.K. Companies Act 1948.

4. The Company is a wholly-owned subsidiary of Highlands Holdings (U.K.) Limited, which in turn is wholly-owned by Highlands Insurance Group, Inc., a corporation organized under the laws of the State of Delaware, U.S. (“HIGI”).¹

5. On October 25, 2007, the directors of the Company filed an application with the English Court requesting the appointment of the Administrators as the joint administrators of the Company.

6. Pursuant to a hearing held on November 1, 2007 (the “Administration Date”), the English Court entered an order commencing the administration proceeding (the “English Proceeding”) and appointing Mr. Batten and me (together, the “Administrators”) as the joint administrators of the Company to manage its affairs, business and property (the “Administration Order”).

7. Pursuant to the Administration Order, the English Court authorized the Administrators to commence this Chapter 15 case.

The Scheme of Arrangement

8. A scheme of arrangement pursuant to Part 26 of the Companies Act 2006, such as the scheme of arrangement dated 1 May 2009 and proposed in respect of the Company (the “Scheme of Arrangement”), is a compromise or arrangement between a company and its creditors or any class of them.

¹ Upon information and belief, on October 31, 2002, HIGI, together with several subsidiaries, filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. As a result of HIGI’s bankruptcy plan, which became effective on March 31, 2003, all the shares of HIGI were cancelled and new shares were issued to a Liquidating Trust, which now manages HIGI.

9. The Scheme of Arrangement, once effective, will establish a process by which the claims of direct insurance creditors of the Company will be valued and paid earlier than would be the case if such claims were permitted to mature and crystallize in the ordinary course of the administration proceeding. In the absence of the Scheme of Arrangement, I would not expect the claims against the Company to mature and crystallize for a number of years. As such, I believe that the Scheme of Arrangement will be the most efficient and effective method of making payment to persons who have, or may in the future have, a claim against the Company in relation to a direct insurance contract underwritten, entered into or assumed by the Company in the shortest practicable time.

10. In order for a scheme of arrangement to become legally binding, (a) a majority in number representing not less than 75% in value of creditors, or any class of them, must vote in favor of the scheme of arrangement at a specially convened meeting held at the direction of the English Court, (b) the English Court must grant an order sanctioning the scheme of arrangement, and (c) a copy of such order must be delivered to the Registrar of Companies in England and Wales.

11. On April 30, 2009, the English Court conducted a hearing and subsequently entered an order (the "April Order") directing the Administrators to convene a creditors' meeting (the "Creditors' Meeting") for the purpose of allowing Scheme Creditors to consider and vote on the Scheme of Arrangement. A certified copy of the April Order is attached to the Motion as Exhibit A.

12. In accordance with the April Order, by letter dated May 1, 2009, Mr. Batten and I notified Scheme Creditors that the Scheme of Arrangement was being proposed and that the Creditors' Meeting was scheduled to occur on June 18, 2009.

13. On May 1, 2009, Mr. Batten and I caused, amongst other things, a letter explaining the main provisions of the Scheme of Arrangement, a notice of the Creditors' Meeting and voting form (and guidance notes for completion thereof) (collectively the "Scheme Documents") to be mailed to those parties in respect of whom the Company's records indicate that they have or may have a claim against the Company, and, where known, to agents, representatives and brokers identified by the Company as having

placed insurance business with or on behalf of the Company (collectively, the “Notice Recipients”) at their last known address. A copy of the Scheme Documents is attached to the Motion as Exhibit B.

The Settlement Agreement

14. Upon information and belief, Highlands Insurance Company (“HIC US”), is an insurance company organized under the laws of the State of Texas and is also a subsidiary of HIGI. The Company has extensive reinsurance arrangements with HIC US.

15. Upon information and belief, in 1986, certain business written between 1978 and 1982 by HIC US’s’ London branch was transferred to the Company (the “1986 Transfer”) by way of statutory novation pursuant to Section 51 of the Insurance Companies Act 1982 of Great Britain. In return for the 1986 Transfer, HIC US entered into a 34% quota share reinsurance treaty with the Company in relation to the liabilities so transferred.

16. Upon information and belief, in 1988, the business written by HIC US between 1972 and 1977 through certain underwriting agents was also transferred to the Company by way of statutory novation (the “1988 Transfer” and together with the 1986 Transfer, the “Section 51 Transfers”). In exchange for the 1988 Transfer, HIC US entered into a quota share reinsurance treaty pursuant to which HIC US reinsured the Company in respect of 100% of the transferred business.

17. Upon information and belief, on November 6, 2003, HIC US was placed under a Rehabilitation Order by the Judicial District Court of Travis County, Texas (the “Texas Court”) and a Permanent Receiver was appointed to oversee the management of HIC US. The Permanent Receiver then named a Special Deputy Receiver to oversee the management of HIC US. On July 24, 2006, the Special Deputy Receiver filed a proposed rehabilitation plan in respect of HIC US in the Texas Court (the “Original Rehabilitation Plan”).

18. On August 21, 2006, the Company filed an objection to the Original Rehabilitation Plan in the Texas Court on the basis that the Original Rehabilitation Plan did not properly treat all creditors of HIC US in the same class equally. In particular, the Company was concerned that the policies transferred pursuant to the Section 51 Transfers (the “Section 51 Policies”) written in favor of U.S. domiciled

insureds covering risks in the U.S. (the “US Section 51 Policies”) would not be treated equally with “class 2” creditors of HIC US under such plan. As discussed below, the enforceability of the Section 51 Transfers was in dispute and was the underlying cause of the objection.

19. In this regard, the Company requested that the Special Deputy Receiver, whether pursuant to a revised rehabilitation plan or through a liquidation of HIC US, treat all such claimants equally and ensure that they were paid *pari passu* in the event of any inability of HIC US to pay the claims in full.

20. On April 18, 2007, the Special Master of the Texas Court issued a “Memorandum of Recommendation and Findings of Fact and Conclusions of Law,” which ultimately found that the Original Rehabilitation Plan lacked sufficient evidence to prove that all creditors of the same class would be paid in full and treated equally.

21. The Special Deputy Receiver filed an objection to this decision and requested a trial in the Texas Court, which request was granted.

22. Following commencement of the trial (the “Texas Litigation”), proceedings were discontinued pending settlement of the dispute between HIC US and the Company.

23. A central component of the dispute was the extent to which the Section 51 Transfers were enforceable in the U.S., and accordingly, whether the Company or HIC US was the proper entity obligated to policyholders on account of the U.S. Section 51 Policies.

24. Given the uncertainty surrounding the Texas Litigation and its outcome, the Company ceased paying claims in August 2006.

25. Since the commencement of the English Proceeding, the entry into a binding resolution of the Texas Litigation has been one of the Administrators’ key objectives.

26. On May 9, 2008, the Special Deputy Receiver, acting on behalf of HIC US, and I, in my capacity as Administrator and on behalf of the Company, entered into the Settlement Agreement Between Highlands Insurance Company in Receivership and Highlands Insurance Company (U.K.) Ltd. in

Administration (the "Settlement Agreement"). A copy of the Settlement Agreement and the first amendment thereto is attached to the Motion as Exhibit C.

27. On October 13, 2008, after notice and a hearing, the Texas Court entered the Order Approving Application for Authority to Settle and thereby approved the Settlement Agreement. A copy of the Texas Court Order is attached to the Motion as Exhibit D.

28. The Settlement Amount (as defined in the Motion), will be utilized to discharge claims arising out of those Section 51 Policies which are direct policies or contracts of insurance (the "Section 51 Direct Policies"), as well as the other purposes specified in the Scheme of Arrangement.

29. A key benefit of the Settlement Agreement is that it provides certainty to the Company, HIC US and Section 51 Direct Policyholders/Claimants² as to which party (*i.e.* the Company or HIC US) is obligated to make payments on claims arising under the Section 51 Policies and thereby obviates the need to litigate the issue on a one-off basis.

30. As a result of the Settlement Agreement, creditors holding claims under the Section 51 Policies should now be able to avoid the potential cost and uncertainty of claiming against two estates where the liability of both is in dispute.

31. The Company's receipt of the Settlement Amount means that the Company will have additional assets available to it and thereby makes it more likely that the allowed claims of Scheme Creditors will be paid in full.

32. I currently anticipate that once each Scheme Creditor's claim is valued and properly established, such claims will be paid in full. If the claims of Scheme Creditors are paid in full (as is currently anticipated), the ability of the Section 51 Direct Policyholder/Claimants to pursue HIC US should be immaterial.

² Capitalized terms not defined herein shall have the meaning given to such terms in the Scheme of Arrangement. To the extent that any definitions contained herein are inconsistent with or differ from definitions contained in the Scheme of Arrangement, the definition given to such term in the Scheme of Arrangement shall apply.

33. In the event that Mr. Batten and I determine that it is not possible to pay all Scheme Creditors in full, an event which I currently consider to be unlikely, the Scheme of Arrangement shall terminate and as a result, Scheme Creditors would no longer be prohibited from pursuing claims against HIC US.

Approval of the Scheme of Arrangement

34. In accordance with the April Order, on June 18, 2009, Mr. Batten and I convened the Creditors' Meeting, at which the requisite statutory majority of creditors voted in favor of the Scheme of Arrangement.

35. I anticipate that the English Court will conduct a hearing on or around July 30, 2009 to consider whether to sanction the Scheme of Arrangement. If the English Court enters an order approving the Scheme of Arrangement, Mr. Batten and I will promptly cause a notice to be filed with this Court and attach a certified copy of such order thereto.

36. Within 7 days of the Effective Date, Mr. Batten and I will cause notice to be mailed to the Notice Recipients at their last known address informing them that the Scheme of Arrangement is effective and a Claim Notification and a Final Claim Form will be enclosed therein.

37. Such notice will also advise Scheme Creditors that a Claim Notification must be submitted such that it is received by the Company no later than 5:00 p.m. (London time) on the first business day falling 90 elapsed calendar days after (but not including) the Effective Date and that a Final Claim Form must be submitted such that it is received by the Company no later than 5:00 p.m. (London time) on the first business day falling 180 elapsed calendar days after (but not including) the Effective Date.

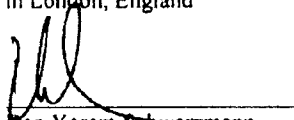
38. Mr. Batten and I will also cause notices of the Effective Date to be placed in *Insurance Day*, in the U.K., *Business Insurance*, in the U.S., *NRC Handelsblad*, in The Netherlands and the international editions of each of the *Financial Times* and the *Wall Street Journal*. Such notices also will be posted on the Company's website at www.ukhighlands.co.uk.

39. The relief sought in the Motion is necessary to effectuate the terms of the Settlement Agreement and thereby obtain for the Company the Settlement Amount, which will make it more likely that it will be possible to pay the claims of all Scheme Creditors in full, subject to discounting at a rate designed to reflect a risk free rate of return and other relevant deductions, if any, in accordance with the Scheme of Arrangement.

40. If the relief sought in the Motion is not granted in substantially the form set forth in the Proposed Order, attached as Exhibit D to the Motion, the Scheme of Arrangement may not become effective, the Settlement Amount will not be paid and the likelihood of full payment to Scheme Creditors will clearly reduce. Moreover, additional resources of the Company will need to be utilized to reach an alternative resolution of the Texas Litigation and the underlying dispute with respect to the Section 51 Transfers and pursuing an alternative Scheme of Arrangement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 30th day of June, 2009
in London, England


Dan Yoram Schwarzmann