Case No: **CR-2024-002460**

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
CHANCERY DIVISION
BUSINESS LIST

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **13 May 2024**

Before :

Sir Anthony Mann (sitting as a judge of the High Court)

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Between :

RELIANCE NATIONAL INSURANCE COMPANY (EUROPE) LIMITED	**Claimant**
- and -	
THE COMPANIES ACT 2006	**Defendant**

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- -

Richard Fisher KC and Adam Goodison (instructed by **Clifford Chance**) for the **Claimant**
Mr Simon Passfield KC instructed by Grande Ospedale Metropolitano "Bianchi Melacrino Morelli" de Reggio Calabria, a creditor

Hearing dates: **13th May 2024**

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APPROVED JUDGMENT

Sir Anthony Mann **Monday, 13 May 2024**
(**15:47** pm)

Judgment by **SIR ANTHONY MANN**

1. This is an application by Reliance National Insurance (Europe) Limited for an order convening a meeting for a proposed scheme of arrangement under Part 26 of the Companies Act 2006, in which Mr Richard Fisher KC led for the company and Mr Simon Passfield KC appeared for one of the creditors, which is an Italian Hospital, or Hospital Group, Grande Ospedale Metropolitano, Bianchi Melacrino Morelli de Reggio Calabria.

2. Mr Passfield's stance on this hearing was not to oppose the making of the order, or to have any particular observations on its contents, or what has gone before, but to put down a marker for his client as to the sort of information that his client would be expecting in order to be able to consider fairly, as he would say, the merits of the scheme at and before the scheme meeting, if I make the order sought.

3. In support of the application there are two witness statements from Mr James Bolton, a director of Reliance, as I shall call it, dealing with relevant matters, and the evidence runs to some three or four lever arch files. It includes a number of important financial or finance related documents.

4. The business of Reliance is that of an insurer and it is, and has at all material times, been in run-off. It is a UK registered company so that aspect of jurisdiction is already satisfied. There are two categories of liabilities of policies which are in run-off. One is Employers Liability Policies. They are not the subject of the scheme and I need say little or nothing more about them save for a brief observation at the end of this judgment..

5. The scheme in question affects the other part of the business which is medical negligence insurance. A predecessor company known as QBE issued medical negligence insurance policies to a number of Italian and Spanish institutions. There are no English policyholders. Over time claims have been made and settled. Those claims, together with claims which have not been acted on for a period of time, ranging from two years upwards, are treated as closed claims.

There are 322 open claims, that is to say, claims which are being actively pursued. 59 of those come from policyholders in Italy and 11 open claims come from two policyholders in Spain. All policyholders are to be the subject matter of the scheme, even those who are regarded as closed, those who have already had their claims, such as when they have made them, settled and those who have never claimed.

6. The background to this is in circumstances which can now be seen to be unfortunate. In 2018 this book of business - which was already essentially in run-off – was transferred out of the QBE company, known as QBE Insurance (Europe) Limited, by a scheme sanctioned pursuant to an order dated 15 November 2018. On that occasion, the transfer was said by all those who expressed a relevant view not to pose a material risk to the transferring policyholders. I have noted from the judgment of Mr Justice Marcus Smith, delivered at the adjourned sanction hearing, that the judge expressed misgivings about prejudice to existing policyholders in Reliance, but further actuarial evidence assuaged those concerns at a second hearing. The scheme to transfer out of QBE, therefore, went ahead. There was no suggestion that I can see recorded that there were any material misgivings about prejudice to the policyholders whose policy claims were transferred out to Reliance.

7. Unfortunately in 2020 and 2021, and thereafter, Reliance suffered various setbacks. The amount of the claims increased as a matter of fact and that affected the assessment of claims going forward. The level of claims came to be rather more than was anticipated. Furthermore, the estimated future costs of running claims increased as well. That led toa material deterioration in the regulatory capital ratios which became and have remained significantly below the required levels for some considerable time. Worse than that, if the company is not currently balance sheet insolvent it is, in the view of the directors, likely to become so in the very near future.

8. The effect of that is as follows: The company could pay some claims in full provided they are paid early enough in the course of the run-off, but later ones could not be paid in full or at all.

The deficit in the event of pursuing a run-off, which might take as long as 2030, is projected to be as much as 11.7 million euros. The directors, therefore, consider that in the absence of a scheme under the Act, the likely outcome of the present situation would have to be an administration, in order to avoid the unfortunate consequences to which I have just referred. In an administration, there would be a projected deficit of between 4.2 and 5.9 million euros. Policyholders would therefore not be paid in full.

9. Proper advice seems to have been taken in reaching that conclusion. I have been shown a report of experts indicating the various courses which might be open to the company's directors. That is to say, an administration, or continuing as they are together with a further alternative, and that advice seems to be proper and justifiable.

10. In those circumstances, this scheme is therefore proposed. The essence of the scheme is as follows. All scheme insurance creditors including -- that is to say all policyholders under the relevant medical negligence policies - will no longer be entitled to pursue their claims through the more normal court based routes. They will be obliged to have their claims adjudicated via a special scheme set up with scheme adjudicators and determined according to certain specified and already laid down criteria in tables which I am told are generally applied in assessing the value of claims in the two jurisdictions concerned. Thus, the matter will be removed from the court and court procedures. This way of going about things is said to be cheaper to run and to produce a quicker outcome.

11. The projected result of that is said to be that all scheme creditors will be paid in full, at least in the amounts established by the scheme. It has to be acknowledged that the amounts to which they would become entitled under the scheme might differ from the amounts which they would hope to receive in court proceedings, but the scheme is designed to produce a quicker and cheaper way of going about determining and paying their claims and paying them in full.

12. The principal saving is held to be one in relation to the costs and expenses of determining the claims. The scheme is therefore said to have the following advantages over the likely administration which would otherwise follow: It will be quicker, cheaper and produce a better financial outcome.

13. Furthermore, it is suggested that if there were an administration, the administrator would be quite likely p, or at least there is a good possibility that he or she would seek to, implement such a scheme anyway, though in that event there would be poorer returns because of the added costs involved in an administration which would not be incurred in the present scheme.

14. I am particularly concerned with the following matters at this hearing: First, whether proper notice of the scheme has been given. Second, whether the proposed classes of creditors is correct, third, whether there are any apparent roadblocks and, fourth, the adequacy of nformation given.

15. So far as notice is concerned, I am satisfied that proper notice of proper material has been given, principally via email, together with a scheme website and a general notification has also been given in published journals. The number of creditors concerned is relatively limited and the company has been able to satisfy itself that they have all actually received notice. Via that process, they have all had a proper chance to participate in these proceedings and to query the scheme if they wish to do so. That information has been received is demonstrated by the fact that at least four of the policyholders have contacted the company seeking information. One of them is Mr Passfield's client today. I am satisfied that the steps taken to give proper notice and the contents of what the proposed scheme creditors have received are proper for my purposes.

16. So far as classes are concerned, I have had my attention drawn by Mr Fisher to what can be described as the usual authorities, which I do not find it necessary to set out again in this judgment. It is proposed that there be one class, namely the class of policyholders which I have

described. As I have indicated, it includes policyholders with live claims, those with closed claims and those who have made no claims at all.

17. In my view, for the purposes of determining questions of class, there is no real difference between those policyholders. They are all in the same position now and would be in the same position under the relevant comparator, that is to say an administration. None of them have FSCS protection as they stand and all policies have the same legal rights generally. They are all of the same claims-made type where the period for making claims has long since expired and the relevant notice period, following on from the making of a claim, has also long since expired - that is to say, 2014. In the words of the authorities the interests of the policyholders are all sufficiently similar that they can properly consult together and there is more to unite them than to divide, if, indeed, there is anything at all to divide them; see *Re Telewest Communications plc (No 1)* [2005] 1 BCLC 752 and *Re Primacom Holding GmbH* [2012] EWHC 164 (Ch). They are all insurance debts which would have the same priority in an insolvency. No creditor has suggested any fracturing of the class should take place and I am satisfied that the proposed class is a proper one.

18. In this context, I mention one other class of insurance creditors not included in the scheme. That is to say, the Employers Liability Policyholders to which I have referred. The company has procured, or is procuring, that the liabilities under that business, and its administration, will be taken over by another company in the group via Deed Poll in consideration of a payment of £1 million. On the basis of those factors, I am therefore satisfied that the constitution of the one class is proper.

19. So far as roadblocks are concerned, an obvious roadblock which has to be considered is the enforceability of this scheme in the two jurisdictions in which it would effectively be applied, that is to say Italy and Spain. If there is an issue about that, that will be a matter for the sanctions hearing, but if there is an obvious problem, which is unaddressed, then it could

potentially amount to a roadblock which would stand in the way of my ordering the convening of the meeting and I should address it now.

20. The company has taken advice from reputable Italian and Spanish lawyers and the net effect of that advice, which I have seen, is that in both of those jurisdictions the effect of the scheme will be acknowledged and the scheme will be enforced. Each jurisdiction will go about that in a slightly different manner, but the key point is that the scheme would, to that extent, be recognised. That potential roadblock therefore does not exist, or at least it cannot be seen to exist at the moment, and therefore a recognition problem does not amount to a reason for my not ordering the convening of the meeting. There are no other apparent potential roadblocks which I need to take into account.

21. So far as the adequacy of the information given is concerned, extensive information about the background and the information in the scheme has been given or will be given to the scheme creditors. The information, so far as I can see, seems to be proper so far as it goes. However, I must mention another point relating to information at this stage. Mr Passfield, for his client, has appeared before me not so much to make submissions, but to put down a marker as to further information that will be required. He has emphasised that which hardly needs emphasising, which is the unfortunate circumstances of this case in that it arises out of a transfer out of a previous company on the basis of expectations which have turned out to be confounded. They were not confounded by reason of some subsequent unforeseeable intervening event. They were confounded -- as far as one can see at the moment -- by the fact that the assessment of claims that was made turns out to be an under-assessment and the assessment of the costs of administering the policies also turns out to have been a further significant under-assessment. That obviously raises questions which the scheme creditors will wish to investigate and Mr Passfield's clients have asked for information about that.

22. There is another factor which may well concern creditors and that is this. It was in 2020, according to the evidence, that the company started to appreciate its difficulties, which gave rise to decreases and ultimately shortfalls in its relevant capital ratios. That position has got worse over the years. However, it was also in April 2020 that this company paid a dividend of £10 million to its then holding company, a company which I am told is no longer its holding company.
23. Mr Passfield's clients are concerned to understand, to put it at its lowest, how that can have happened in the circumstances bearing in mind the proximity of the date of the payment of the dividend and the dates at which it began to become apparent that the ratios were failing and that therefore the expectations on which the original scheme was proposed may well have become confounded as has now been demonstrated. His client is understandably concerned to understand how all this has come about. His client therefore wishes to have the opportunity to investigate the real position, so far as it can, and the real position and the merits of a further investigation and perhaps pursuit of the matter.
24. It is to be noted that if £10 million of the dividends was recovered in an administration (and it is only an administrator who can investigate all these things) then that would turn a deficit into a surplus, looking at the matter fairly crudely on the basis of some overall figures given by Mr Bolton in his first witness statement.
25. These are matters which are then capable of making a difference to the assessment of whether there should be this scheme or whether the creditors might wish to take their chances in an administration with an administrator who can so far as appropriate investigate and pursue these matters.
26. Mr Passfield does not seek any particular relief in respect of those matters today. He is not seeking disclosure, or any particular order from me, and he does not, as I have indicated, resist the making of the convening order today. He merely wishes to have it put on record publicly

that his client expects to be provided with this information so it can make a proper choice as to its cause of action.

27. Since there is nothing for me to decide in relation to this matter, I need say nothing else, other than to record the entirely proper and understandable concerns of Mr Passfield's clients.
28. So far therefore I would be minded to make a convening order. I have seen the order and the matter and noted a lot of standard terms. Less than standard is the proposal that the meeting which I am asked to convene is to be a virtual meeting to take place with remote attendance by all creditors concerned. On the facts of this case and bearing in mind where they all, that is eminently sensible and I shall make an order which contains those provisions.
29. Mr Fisher has drawn my attention to one or two other less standard aspects of the order and I am satisfied with the order as it stands, save that a provision which as it stands allows for the company open-endedly to adjourn the sanction hearing as it thinks fit shall have a longstop date and the power to adjourn is only to exist if there is a proper reason to adjourn. Mr Fisher has accepted those amendments.
30. I turn now to the position of the regulators. I am told that they have been kept informed from almost the inception of the company's difficulties and have been liaising with the company in relation to relevant matters. The regulators, and in particular the PRA, have been informed about the scheme, which has taken some considerable time to develope. The regulators, and particularly the PRA, have not yet expressed a final view about the scheme and whether they would find it objectionable or not. The PRA originally asked for more time to consider the matter, which they were not given by the company, but they have now expressed a view that as things stand and subject to further consideration of certain matters, they would have no objection to the scheme as it stands; but that is not a final view.
31. Since the stance of the PRA is not its final stance they will in due course no doubt wish to finalise their views about this matter and to bring to a bear all considerations which their

regulatory status obliges them to do. No doubt the PRA will want to give particular attention to this scheme, bearing in mind the background of the 2018 transfer when all seemed to be well. That background raises obvious concerns, which the PRA will doubtless want to consider its view about carefully so far as it falls to it to do so, and the judge at the sanctions hearing will be likely to be particularly interested in what, if anything, the PRA has to say about that. It may be that the PRA will take the view that any observations about that do not fall within its regulatory obligations. I bear in mind that this is not the usual sort of insurance transfer scheme of the kind that took place in 2018. If that is the view that is taken then that will have to be taken into account by any judge before whom the sanction hearing comes, assuming for these immediate purposes that the scheme is approved by the creditors.

32. I am no way telling the regulators, and in particular the PRA, what they are to do, or to tell the PRA its job, and as I have said I bear in mind that this is not a normal insurance transfer scheme of the kind took place in 2018 under which the regulators have particular obligations. I am merely indicating something that it seems to me would be likely to be of some interest, to put it at its lowest, to any judge asked to sanction the scheme after a creditor vote, particularly if there is real opposition.

33. In those circumstances therefore, and for those reasons, I shall make the convening order in the form sought.