



Reliance National Insurance Company (Europe) Limited v The Companies Act 2006

Day 1AH1

May 13, 2024

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1 Monday, 13 May 2024.
2 (2.00 pm)
3 SIR ANTHONY MANN: Mr Fisher? Yes,
4 Mr Fisher.
5 MR FISHER: My Lord, in this matter
6 I appear along with Mr Goodison for the
7 company. Mr Passfield KC appears for one of
8 the policyholders, who I will refer to as
9 Calabria for ease of reference today.
10 My Lord, just to explain the system that
11 we have in place. We have attending via the
12 hybrid link 11 people, none of whom has asked
13 to address my Lord. Just to explain the
14 position, we have two representatives from the
15 PRA, three representatives from Calabria. We
16 also have a representative of another
17 policyholder who I shall refer to as Messina,
18 which we have seen some correspondence from.
19 Two from the company. One from Premia, our
20 claims handling adviser. One from
21 Ernst & Young, Mr Gill. And then we have three
22 translators.
23 My Lord, the intention, subject to
24 my Lord, is not that any make submissions to
25 you, but simply that through this process any

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1 who wish to understand what was happening will
2 be able to follow the hearing. We have got
3 simultaneous translators working, so that those
4 who are in Italy can hear an immediate
5 translation of what is said.
6 SIR ANTHONY MANN: Yes, is there a means
7 set up so that if, for example, the
8 translators, who are perhaps the most important
9 ones, or the two creditors, or the creditor
10 representatives can't hear for some reason or
11 other they can let us know so we can see if
12 we can do something about it? Is there a
13 channel of communication open?
14 MR FISHER: My Lord, I believe there is
15 through those behind me.
16 SIR ANTHONY MANN: I see somebody nodding
17 behind you.
18 MR FISHER: I am sure I will be passed the
19 message if that happens. All I would do is ask
20 that those who are attending remotely perhaps
21 ensure that their connection is muted in far as
22 it would otherwise enable them to address
23 the court.
24 SIR ANTHONY MANN: Yes, I am sure
25 they have all got their connections muted.

2

1 I think for all my part, if they will
2 forgive me for this, I think I would ask them
3 if they wouldn't mind turning their cameras
4 off. It's a bit distracting to have a screen
5 on and for it to switch from time to time from
6 person to person. Perhaps that message can be
7 got over bit by bit. A gentleman from — I see
8 it has worked already. Thank you very much.
9 MR FISHER: My Lord, I am grateful for
10 that.
11 My Lord, will have seen this is our
12 application.
13 SIR ANTHONY MANN: Can I just ask have all
14 the participants, in particular the creditors,
15 have they seen your skeleton argument?
16 MR FISHER: My Lord, it was put on the
17 website, on Friday. So — I am not able to say
18 whether they have or have not looked at it, but
19 we have made it available to any who have asked
20 to attend. Certainly my learned friend
21 Mr Passfield has had a copy since Friday as
22 soon as they informed they would be attending.
23 SIR ANTHONY MANN: So the Calabria and
24 Messina, who have attended today, they have
25 seen your skeleton — they saw your skeleton on

3

1 Friday for sure, because it was sent to them;
2 is that right?
3 MR FISHER: Certainly Calabria. Let me
4 doublecheck with Messina.
5 Yes. We didn't send it directly to
6 Calabria. We put it on the website. Sorry.
7 I beg your pardon. We didn't send it directly
8 to Messina. It was placed on the website. We
9 did send a copy to Calabria directly on Friday.
10 SIR ANTHONY MANN: But in order to see it
11 somebody would have had to have told somebody
12 to look on the website?
13 MR FISHER: Mr Goodison reminds me —
14 my Lord, is quite right, yes. I don't believe,
15 and again I will ask those to doublecheck
16 behind me, whether or not we mailed Messina
17 directly to inform them or the other creditors.
18 I will doublecheck whether or not they have
19 actually received the skeleton.
20 My Lord, we did when the PSL went out
21 obviously draw to all policyholders attention
22 that if they wish to attend and they wish to
23 have copies of the court documents they should
24 contact Clifford Chance and the company in
25 advance and, in fact, it's only Calabria who

4

1 have taken up that opportunity.
2 SIR ANTHONY MANN: Yes. I have seen your
3 skeleton and I have also got Mr Passfield's
4 note for which I am grateful.

5 MR FISHER: My Lord, I am grateful for
6 that and I hope my Lord received Bolton 2 this
7 morning.

8 SIR ANTHONY MANN: I received it. I have
9 only read it on screen. I think — is there a
10 hard copy available, please?

11 MR FISHER: I am sure there will be.

12 SIR ANTHONY MANN: I looked at the witness
13 statement and not the exhibits. I hoped
14 I would be provided with a hard copy.

15 MR FISHER: Let me see if we can deal with
16 that immediately.

17 SIR ANTHONY MANN: I better have it so far
18 as it is going to be necessary. While that is
19 happening —

20 MR FISHER: Yes.

21 SIR ANTHONY MANN: — if I just tell you
22 what I have read. I have read with the
23 appropriate — with the recommended attention
24 to detail your reading list basically. I have
25 skimmed the documents which you say should be

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1 skimmed and I have read with varying degrees of
2 attention documents which you say should said
3 should be read. So I have read very few of the
4 voluminous exhibits to Mr Bolton.

5 Submissions by MR FISHER

6 MR FISHER: My Lord, I am grateful for
7 that indication. My Lord I know is very
8 familiar with the scheme process and this is
9 the convening hearing. There are a limited set
10 of issues for us to attend to today.

11 Subject to my Lord, I intended to deal
12 with notice of a convening hearing and deal
13 with that relatively briefly in terms of us
14 having informed policyholders in advance of
15 this hearing, then to say something regarding
16 the financial position of the company and the
17 comparator and just to show my Lord in
18 particular the Interpath Report, which is —

19 SIR ANTHONY MANN: Which I haven't opened.

20 MR FISHER: And I didn't ask my Lord to
21 read it. I would like just to show my Lord
22 some of the detail in that. Then to, very
23 briefly, describe the proposed scheme, although
24 I suspect my Lord has read the skeleton.
25 My Lord will understand the type of scheme this

6

1 is.

2 SIR ANTHONY MANN: I understand the type
3 of scheme. I understand the mechanism
4 generally. What I didn't understand what was
5 the two — what can I call them? — techniques
6 for valuing the claim. There was an Italian
7 one and a Spanish one. I didn't understand
8 what they were. I couldn't actually see the
9 reference to them in the scheme document which
10 sets out the schemes unless I just missed it.
11 I don't quite understand what they are and how
12 they work. I don't think I need the detail,
13 but I would just like to complete that little
14 bit of the jigsaw in general terms.

15 MR FISHER: Yes. My Lord, I will take you
16 to that and show you how the references to what
17 are at the back of the scheme fit into the
18 scheme itself when we come to that.

19 My Lord, there were then the traditional
20 issues on convening so we have classes and then
21 any other roadblock jurisdiction and then
22 questions of information disclosure and the
23 directions through to convening.

24 My Lord, just by way of telegraphing, in
25 terms of class, I don't have a lot to add to

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1 what was in our skeleton. This is not one of
2 those cases where we submit there are
3 significant issues on class.

4 SIR ANTHONY MANN: Yes.

5 MR FISHER: Because they are all
6 policyholders with policies of the same type.

7 Similarly, on jurisdiction, there are
8 limited issues at this stage and so far as a
9 policyholder wishes to take issue with
10 recognition and sufficient effect, they can
11 challenge that at sanction, but we are going to
12 submit that, as matters currently stand today,
13 there is certainly sufficient evidence to
14 proceed to the question of convening the
15 meetings.

16 SIR ANTHONY MANN: I have read your
17 skeleton on the first of those issues. It
18 raises familiar issues. It cites the usual
19 suspects, as it were, and I shall not require
20 much from you on that.

21 MR FISHER: My Lord, I am grateful.

22 SIR ANTHONY MANN: I don't know what
23 Mr Passfield will say, but I don't think he is
24 going down that route. Just let me ask
25 Mr Passfield while he is here.

8

1 Mr Passfield, I have read your note.
2 Perhaps I have misread it. I have read your
3 note as effectively putting down a marker that
4 you want some more information. I understand
5 at one point your client was actually asking
6 for an adjournment of hearing, but I don't
7 detect that from your note.

8 MR PASSFIELD: No, I am not seeking an
9 adjournment, my Lord, nor am I objecting to the
10 convening of the meetings at this stage. You
11 are absolutely right it was to lay down a
12 marker and just flag up some concerns we have
13 on the papers, so no one will be under any
14 illusion when it comes to meeting and, if
15 necessary, sanction that if those concerns are
16 not assuaged then there may be a bit fight down
17 the line.

18 SIR ANTHONY MANN: Right. Thank you.

19 MR FISHER: My Lord, if I can then move to
20 the first question, which again I hope I can
21 deal with relatively concisely, which is the
22 question of sufficient notice of this hearing
23 being given to policyholders.

24 As my Lord knows, it's my client's
25 obligation to bring to the attention of those

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1 who are affected by the scheme that the
2 convening hearing is to occur and to do so with
3 sufficient time to enable them to appear today
4 to address issues which are relevant to
5 convening, so principally classes and
6 jurisdiction.

7 My Lord, I know you have indicated you
8 read the evidence. We set out there what had
9 been done. In broad terms, most policyholders
10 received notice four weeks ago through the
11 sending of a PSL, along with translations both
12 into Italian and into Spanish. That was the
13 typical manner of communicating with
14 policyholders.

15 SIR ANTHONY MANN: It was by the email
16 through PEC.

17 MR FISHER: My Lord, that is correct.

18 SIR ANTHONY MANN: Both in Italy and in
19 Spain. As I understand the evidence, or I
20 understood until Mr Bolton's second witness
21 statement this morning, because of the ability
22 to check the seat and so on, you believe that
23 everybody had actually received it. Originally
24 there was a glitch of a few and then you sent
25 it to another email address and there was no

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1 longer a glitch. That was the first sign of
2 evidence showed.

3 MR FISHER: Correct.

4 SIR ANTHONY MANN: This morning
5 Mr Bolton's later witness statement indicates
6 there was a bit of a problem with somebody in
7 Spain, but that has been fixed; is that right?

8 MR FISHER: Yes, that is exactly right.
9 There were eight bounce—backs originally, which
10 we resolved those issues by sending to
11 alternative email address. We didn't receive a
12 bounce—back from one of the Spanish brokers
13 with whom we normally communicate. We were
14 subsequently told at the end of last week that
15 the email had gone into the trash or some other
16 account in the email and they hadn't therefore
17 forwarded it on to the policy holder, but
18 they have now done so, as I understand it.

19 So my Lord, in relation to that particular
20 policyholder, we did do, we say, all that we
21 could reasonably do to bring to it their
22 attention. Insofar as an issue arises which in
23 due course they wish to raise with the court,
24 the court can undoubtedly take into account the
25 timing issue, which arose in terms of giving

11

1 them notice of the PSL, but I do submit that
2 the steps taken by the company were sufficient
3 to give reasonable notice of this hearing to
4 the policyholders.

5 SIR ANTHONY MANN: Yes.

6 MR FISHER: My Lord, the one point I did
7 just want to emphasise is that is the position
8 in relation to most policyholders, those with
9 both open and closed claims. The position in
10 relation to certain other policyholders was
11 slightly different, my Lord.

12 SIR ANTHONY MANN: It was.

13 MR FISHER: We have — Mr Bolton has split
14 the policyholders really into three categories.
15 Those with open claims.

16 SIR ANTHONY MANN: Yes.

17 MR FISHER: Those with closed claims
18 either by virtue of no action being taken.
19 There are then policyholders who have never
20 made a claim, so they never intimated anything
21 at all to the company or they have commuted
22 their policies. Now, my Lord in relation to
23 those policyholders, in fact the notice went
24 out later. It went out two and a half weeks
25 ago, rather than four weeks ago.

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1 My Lord, the only reason for that is that
 2 the company's focus was on those who have open
 3 and closed claims and then the company realised
 4 along with its advisers that it also should
 5 give notice to all policyholders even if they
 6 have commutated or they have never made a claim
 7 because the intention of the scheme is to bind
 8 all of those.
 9 SIR ANTHONY MANN: So the scheme binds all
 10 policyholders, even those who now haven't made
 11 a claim and who now on your case can never make
 12 a claim because, because — well, whether or
 13 not one is notified to them in time, they never
 14 notified you by whatever date it was in 2014.
 15 MR FISHER: Correct, my Lord.
 16 SIR ANTHONY MANN: So these are all
 17 policyholders with zero sums to vote with.
 18 MR FISHER: We believe they all have zero
 19 sum claims. That is right. We want to ensure
 20 there is no chance of anyone in due course
 21 asserting a claim and saying in fact, I am not
 22 time-barred, I have given notice in some
 23 particular way and we want therefore to bind
 24 everyone who has a contractual relationship
 25 with the company through a policy. Therefore,

13

1 they did receive their notice later.
 2 SIR ANTHONY MANN: They could actually
 3 contribute to the voting procedure by making
 4 the number voting but not the amounts?
 5 MR FISHER: Yes, my Lord.
 6 SIR ANTHONY MANN: The procedure could be
 7 skewed by that.
 8 MR FISHER: So it may well be when one
 9 looked at the chairman's report, care will need
 10 to be — attention will need to be drawn to the
 11 fact that there are policyholders and which
 12 different categories they might fall in, but
 13 for numerosity, my Lord, I can see my Lord's
 14 point, although it wouldn't be counted.
 15 My Lord, it would be a zero. I think their
 16 vote would be assessed as zero.
 17 SIR ANTHONY MANN: Yes, their vote would
 18 be assessed as zero, but they contributed
 19 numbers. If there is a problem about numbers,
 20 they could in theory affect the outcome, even
 21 though they have no material interest.
 22 MR FISHER: My Lord, I think it's right to
 23 say, and I will ask Mr Goodison to doublecheck,
 24 that they would be counted in terms of
 25 numerosity.

14

1 SIR ANTHONY MANN: They would have to be
 2 if their scheme closed.
 3 MR FISHER: Exactly, my Lord. We say that
 4 that is simply a consequence of having to bind
 5 in all policyholders, but obviously when
 6 my Lord, or whoever the matter came back
 7 before, to be satisfied as to whether or not
 8 the statutory jurisdiction requirements have
 9 been satisfied would look at the voting and
 10 take into account, potentially as part of the
 11 fairness analysis and whether votes should be
 12 discounted or disregarded, whether or not there
 13 was a preponderance of those voting who had
 14 zero claims which had skewed the numerosity
 15 requirement.
 16 SIR ANTHONY MANN: It would be likely
 17 potentially, if one is just looking at a worse
 18 case scenario, to make a difference if these
 19 individuals contributed to — the number voting
 20 in favour of the scheme pushed it over a —
 21 sorry, it's a majority, a simple majority,
 22 isn't it, pushed it to a simple majority?
 23 MR FISHER: Yes.
 24 SIR ANTHONY MANN: The sanction judge, who
 25 may or may not be me, unlikely but may or may

15

1 not be, would be not to — I suppose that is
 2 right. I suppose the sanction judge could say,
 3 well, it's unfair to approve the scheme when it
 4 was only pushed over by virtue of people who
 5 had no real material interest. If they pushed
 6 it the other way and vote against, then there
 7 is nothing to be done.
 8 MR FISHER: That is right, my Lord. We
 9 won't have met our statutory requirements.
 10 SIR ANTHONY MANN: They are not a separate
 11 class, are they?
 12 MR FISHER: We would say no. Simply
 13 insofar as they have claims under the policy,
 14 they will be valued at zero.
 15 My Lord, in terms of the assessment, it is
 16 something, with respect, we would say which
 17 arises at the question of sanction and
 18 fairness.
 19 SIR ANTHONY MANN: It would if their votes
 20 tilted the balance in favour of the scheme,
 21 because then it would be open to the court to
 22 say, well, it was only pushed over the edge by
 23 these people, it's not fair. If it went the
 24 other way, if they succeeded in voting down the
 25 scheme, then these who want to vote in favour

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1 in order to succeed, absent them, might be fed
2 up, but there is nothing the court can do about
3 that. In fact, there won't be a sanction here.

4 MR FISHER: No, and there is nothing
5 we can do about it other than reformulate a
6 different plan and see whether we could get
7 different support, were we able to do so at the
8 time.

9 SIR ANTHONY MANN: Right.

10 MR FISHER: But, my Lord, realistically,
11 equally, we suspect there would not be claims
12 being submitted by these policyholders, or they
13 will be valued at zero. The point I was simply
14 trying to emphasise is that they did receive
15 the PSL on a different timescale: as I said, it
16 is two and half weeks ago, rather than the four
17 weeks given to everyone else.

18 SIR ANTHONY MANN: You're not binding —
19 are you binding those who have had claims but
20 who have settled them?

21 MR FISHER: Yes.

22 SIR ANTHONY MANN: They are in as well?

23 MR FISHER: Yes.

24 SIR ANTHONY MANN: All policyholders are
25 in. They have never made a claim, they have

17

1 had claims that have settled, they have had
2 claims that were adjudicated on that paid out
3 absolutely everyone.

4 MR FISHER: Absolutely everyone.

5 SIR ANTHONY MANN: Right. The numbers
6 that I have been given, 322, plus 11 open
7 claims, 11 Spanish open claims, those are
8 the principal targets.

9 MR FISHER: Yes, my Lord.

10 Now, my Lord, the proof of the pudding, so
11 to speak, is in — is whether we have had
12 responses and we have, as my Lord has seen, had
13 some responses from policyholders. So a letter
14 has been effective to draw the scheme to the
15 attention of policyholders.

16 SIR ANTHONY MANN: You have had four,
17 I think.

18 MR FISHER: I think my Lord is quite
19 correct. I asked my Lord to look at those
20 letters in — as part of the reading list.
21 There were —

22 SIR ANTHONY MANN: I looked at the two,
23 the one from Calabria and Messina. I didn't
24 look at the others, which are referred to by
25 Mr Bolton but deal with different points.

18

1 MR FISHER: And my Lord is quite right.
2 There is a further one, which I shall refer to
3 as Catania referred to in Mr Bolton's second
4 witness statement. It looks substantively the
5 same as the Messina letter. It would suggest
6 that similar points are being taken by
7 the policyholders in terms of information
8 requests. The fourth letter was a request as
9 to whether it was possible to commute despite
10 the fact that the scheme had been launched, to
11 which the answer given was no.

12 My Lord, the substance of those letters
13 was very much on asking for more information.
14 How is it we have got to where we are and why
15 are you saying that you are going to have to
16 advance the scheme in the alternative to
17 administration?

18 SIR ANTHONY MANN: They are all, quite
19 understandably in my view, puzzled, if that
20 doesn't put it too mildly, by the fact that in
21 2018 the procedure was gone through, which
22 transferred these policies to Reliance, the
23 essence of which was you'll be all right,
24 you'll not be materially worse off than you are
25 under QBE. Then within two years, they got

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1 into difficulties. Then four years after that,
2 after a lot of working it out, they are being
3 told if you don't scheme, you won't be paid
4 fully. One can see why they would be
5 concerned.

6 MR FISHER: My Lord I think encapsulates
7 their concerns precisely. I do — I was going
8 to try and show my Lord the financial position,
9 the deterioration and what the company says has
10 happened, but my Lord, I don't for a moment
11 suggest it is anything other than unfortunate,
12 but the company has to deal with matters as we
13 stand at the moment.

14 SIR ANTHONY MANN: Are there any other
15 insurance schemes where there was a transfer
16 and it turned out the transferee was insolvent
17 and couldn't pay?

18 MR FISHER: I am not aware of one.

19 SIR ANTHONY MANN: This is the first time
20 this court has approved a Part VII Transfer
21 and, putting it very shortly, it hasn't worked,
22 or it has worked out badly?

23 MR FISHER: My Lord, I am not aware of
24 one. I can certainly ask — Mr Hertz for
25 Clifford Chance does a huge number of these and

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1 I will check whether he is aware of one.
2 SIR ANTHONY MANN: I would just like to
3 know the answer. It won't affect my judgment,
4 but I would and I suspect some of my colleagues
5 would be interested to know that.

6 MR FISHER: Yes. My Lord, I don't shy
7 from the fact that it is obviously unfortunate
8 and unattractive that a Part VII Transfer where
9 the evidence given to the court and the
10 Part VII is then approved that there will be no
11 detriment to policyholders that we end up in a
12 situation where the company some six years down
13 the line, is now saying, despite that, it is
14 facing significant financial difficulties, as a
15 consequence of the liabilities it took on under
16 the Part VII Transfer.

17 I am being passed notes as to when it has
18 happened before, but I will come back to,
19 my Lord, if I may.

20 It is unfortunate, but the obligation of
21 the directors is to do, based on the
22 information that they now have, what they
23 believe is in the best interest of the
24 creditors. For the reasons I am going to show
25 you, their view is that it is clear that a

21

1 proposed scheme is likely to be a better
2 outcome for these creditors than continuing in
3 a form of run-off.

4 SIR ANTHONY MANN: It's anticipated that
5 when all is this worked through and a million
6 pounds has been paid to the other company and
7 approved, (inaudible) forgotten and it's all
8 worked out, there will be nothing left for the
9 shareholders.

10 MR FISHER: My Lord, the current
11 indication, yes, is that there will be — it
12 will be a zero return to equity. All the money
13 will be used to meet the policyholder claim.

14 SIR ANTHONY MANN: Presumably originally
15 when this company took on these liabilities it
16 was hoped that they would be all sorted out and
17 there would be money in it for the group, but
18 that hasn't turned out to be the case.

19 MR FISHER: No, my Lord. There has
20 been — we'll look at the deterioration in the
21 financial position, but just to — I beg your
22 pardon — just to complete the position in
23 terms of notice, as I said, we have got —

24 SIR ANTHONY MANN: Yes.

25 MR FISHER: — the letters from the

22

1 creditors. In substance, they are asking for
2 more information. They hadn't seen the
3 Explanatory Statement and they hadn't seen the
4 witness statement from Mr Bolton, but they have
5 understandably asked for more information.
6 There was nothing in those letters which
7 addressed or suggested that the approach to
8 class was wrong, or that there was a
9 jurisdictional roadblock.

10 There was a reference, and I should just
11 show my Lord, in one of the letters, the
12 Messina letter, to a jurisdiction issue, a
13 migration of territorial jurisdiction to a
14 non-EU member state, but, my Lord, with
15 respect, I don't believe it identifies what we
16 would believe is certainly a jurisdictional
17 roadblock of the type that would prevent us
18 moving forward from here.

19 SIR ANTHONY MANN: Yes.

20 MR FISHER: My Lord, Mr Passfield's client
21 did ask we show you the letter. We drew it to
22 your attention in the reading list. Unless he
23 wants to make a point on it, I am going to
24 leave that to him.

25 SIR ANTHONY MANN: Do you mean the

23

1 Calabria letter?

2 MR FISHER: Yes, the long one.

3 SIR ANTHONY MANN: I have read it. Have
4 I mastered all the detail in it? No, I
5 haven't, but I have read it and I have seen the
6 sort of things it said. If it is necessary to
7 look at bits of it, Mr Passfield will no doubt
8 will draw it to my attention.

9 MR FISHER: My Lord, if I could then move
10 to the next topic, which is really just by way
11 of background the financial position and what
12 has happened.

13 SIR ANTHONY MANN: Let's just see if
14 we can shortcircuit this. It's useful I think
15 if from time to time I tell you what I have
16 understood, so you know what you may or may not
17 need to elaborate. Two things have contributed
18 to the present situation: one, some of the
19 claims turned out to be bigger than they
20 thought and two, the cost of all this has been
21 bigger than was thought; is that right?

22 MR FISHER: Yes, my Lord.

23 SIR ANTHONY MANN: Are you going to show
24 me information going to that, because that
25 would seem to me likely to take a long time?

24

1 MR FISHER: Well —
 2 SIR ANTHONY MANN: That is what it is said
 3 and, on the basis of that, there are some
 4 figures, which you no doubt want to show me
 5 from the report. Have I shortened matters?
 6 MR FISHER: You have, my Lord. If I could
 7 perhaps — the one thing I did want to show
 8 you, my Lord, was the Interpath Report that was
 9 put in place, because my Lord has identified
 10 what has been said in the evidence as to the
 11 reason why there is a deterioration.
 12 I just want to show my Lord the report
 13 that was commissioned from Interpath. So in
 14 2023 the company obtained some assistance from
 15 Ernst & Young and then an independent report
 16 from Interpath to test the conclusions that
 17 they were reaching regarding the likely outcome
 18 in different scenarios. My Lord, there is a
 19 copy in the convening bundle at page 456 so
 20 volume one of the hearing bundle.
 21 SIR ANTHONY MANN: Can I just reassure our
 22 shorthand writer before we go much further that
 23 if she wishes, we'll have a break in about half
 24 an hour or so from now. I assume you would
 25 like that. That is usually the case, right.

25

1 Tab which?
 2 MR FISHER: It is tab 17.
 3 SIR ANTHONY MANN: Bolton?
 4 MR FISHER: Correct, my Lord. I think it
 5 was commissioned by Mr Bolton. And if my Lord
 6 goes to page 462 in part of the introduction
 7 dealing with the scope of the work, so it is —
 8 SIR ANTHONY MANN: Which number am
 9 I looking at?
 10 MR FISHER: The number I have given is the
 11 red number.
 12 SIR ANTHONY MANN: Right.
 13 MR FISHER: But it's 370 of the other
 14 numbering.
 15 SIR ANTHONY MANN: If we just consistently
 16 go by the red numbers.
 17 MR FISHER: So, my Lord, in the
 18 introduction, the scope of the work, they are
 19 explaining what they have been asked to do.
 20 My Lord can see the second bullet point:
 21 "Interpath were engaged by RNICE to
 22 produce a brief report suitable to be shared
 23 with the Court ahead of the scheme convening
 24 hearing, summarising the following:
 25 "Independent review of the counter—factual

26

1 analysis commenting on reasonableness of the
 2 assumptions and methodology and confirming that
 3 the analysis correctly incorporates the
 4 information provided by the Company. Interpath
 5 are not undertaking an 'audit', assurance or
 6 independent check of the information
 7 supplied ..."
 8 And then:
 9 "Independent review and comment on the
 10 reasonableness of the Company's conclusion that
 11 it will likely enter an insolvency process
 12 should the Scheme not be approved."
 13 My Lord, it was produced and they were
 14 asked to produce an independent review for the
 15 purpose of providing to the court as part of
 16 this process.
 17 SIR ANTHONY MANN: This is looking forward
 18 saying this is where we are now, where the
 19 directors say we are now? Where do we go from
 20 here? That is this report. Is there anything
 21 in all this material which answers the question
 22 which the creditors, or some of them, will
 23 understandably want to have answered which is:
 24 how on earth did we get here in the first
 25 place? Is there anything in here dealing with

27

1 that, other than by the general statements by
 2 Mr Bolton as to what the problems were. They
 3 started to materialise about two years after
 4 the scheme I think.
 5 MR FISHER: The answer to that, my Lord,
 6 is no. This is —
 7 SIR ANTHONY MANN: There is nothing in
 8 there which addresses this point?
 9 MR FISHER: This is the forward looking
 10 analysis.
 11 SIR ANTHONY MANN: I know this is. When
 12 I say in here, I mean in all the documentation
 13 we have got, all the documentation.
 14 MR FISHER: My Lord, then the — it is the
 15 material that we have seen in Mr Bolton's first
 16 witness statement which is replicated in the
 17 Explanatory Statement in terms of the
 18 explanation of the material development, the
 19 materially adverse development in the claims
 20 history, the reference to how the Part VII
 21 moved liabilities over. There is an
 22 explanation of the dividend payment and the
 23 basis on which that was paid and then there is
 24 the analysis of how the MCR and the SCR has
 25 deteriorated as claims have been paid out.

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1 SIR ANTHONY MANN: That's where it is.
 2 MR FISHER: That is in there and this
 3 report is summarised in terms of the outcome,
 4 but I just wanted to show, my Lord.
 5 SIR ANTHONY MANN: No. I was just going
 6 down a sideshoot.
 7 MR FISHER: That material is there. What
 8 they do is they analyse the three alternative
 9 scenarios and if we go over the page to 465,
 10 you'll see the three scenarios which are
 11 considered. At the top of the page, the
 12 counterfactual analysis considers three.
 13 Scenario one is a continued runoff without
 14 scheme so that it stay as we are effectively .
 15 SIR ANTHONY MANN: Yet.
 16 MR FISHER: They say:
 17 "The results of this Scenario are set out
 18 in slide 11, and show that this is not a viable
 19 scenario as RNICE has forecast to run out of
 20 cash as well being balance sheet insolvent."
 21 Scenario two is impact of a scheme taking
 22 place and effective in late 2023 and that is
 23 the optimum outcome, hopefully a solvent
 24 outcome for policyholder.
 25 Scenario three is administration plus

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1 scheme. And in substance, my Lord, the reason
 2 why there is a difference there is the costs of
 3 administration and the anticipated slightly
 4 lower realisations in administration.
 5 My Lord, each scenario is then looked at
 6 by Interpath as to whether or not it is
 7 considered to be reasonable and the assumptions
 8 which have been made and they are set out in
 9 detail. The outcome, ultimately, is that they
 10 consider the assumptions broadly to be
 11 reasonable and, in particular, that insolvency
 12 is likely if a scheme is not approved.
 13 My Lord, that balance sheet conclusion is
 14 at page 472. My Lord can see:
 15 "The table below analyses the drivers of
 16 the difference between the ... balance sheet
 17 deficit under Scenario 1 (continued run off
 18 ...) and the 1.4 million balance sheet surplus
 19 under Scenario 2."
 20 Now, pausing there. This is based on
 21 figures as at the end of 2022. Now, the
 22 figures have got worse in that period.
 23 The report has not been updated because the
 24 directors have formed the view that it's not —
 25 it wasn't in the interests of creditors to

30

1 incur further fees when the position was clear,
 2 producing another report. But the significant
 3 difference is that a scheme offers the
 4 possibility and likelihood of a solvent
 5 outcome, because what it is doing is reducing
 6 the costs of the litigation and that is
 7 the principal driver behind the insolvency
 8 which is that the costs of the litigation in
 9 Italy, principally, which are booked under
 10 allocated loss and unallocated loss, are so
 11 significant that if we can eliminate them, with
 12 a cut-through scheme with expert determination
 13 as to the value of the claims,
 14 the policyholders won't lose out in terms of
 15 their return, but we'll save the cost of
 16 litigating .
 17 SIR ANTHONY MANN: Yes, they won't lose
 18 out in terms of the return if it is thought
 19 that an expert assessor will give the same
 20 thing that the court will give.
 21 MR FISHER: Yes, that is correct, my Lord.
 22 SIR ANTHONY MANN: Which depends on the
 23 mechanism, to which I have referred and which
 24 I don't — haven't yet found, seen or
 25 understood. I am not — I don't think I have

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1 to form a judgment upon that. That is right,
 2 isn't it?
 3 MR FISHER: Yes, my Lord. We will come to
 4 that. Those are — I'll take my Lord to the
 5 evidence on it, but the intention is that what
 6 is regarded as standard methodology for
 7 assessing the value of these types of claim in
 8 Italy and in Spain is being adopted by
 9 independent experts to determine what the right
 10 value for those claims is. There are various—
 11 there are a choice of different assessors and
 12 if the policyholder does not like a particular
 13 one, they can elect for another.
 14 The methodology of all it is intended to
 15 be effectively that these tables are used as a
 16 standard methodology for valuing the claims.
 17 SIR ANTHONY MANN: What they are valuing,
 18 what they are seeking to do is put a figure on
 19 what the successful claimant in the (inaudible)
 20 proceedings would recover, which has become
 21 quite a tricky task. They are not parties to
 22 that, fully parties to that claim.
 23 MR FISHER: No. My Lord can obviously see
 24 that one of — one of the reasons why this case
 25 in terms of the claim assessment has been so

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1 difficult is because of the nature of the
2 claims. One can immediately see, with great
3 sympathy, that for example a catastrophic brain
4 injury at birth type of claim can give rise to
5 all sorts of issues in terms of quantum and
6 additional claims being made as one moves
7 forward.

8 One of the reasons why, although as my
9 learned friend points out these are claims made
10 policies, which shouldn't continue beyond 2013,
11 is that this is long-tail litigation in the
12 sense of these are — some of these are very
13 big claims because serious injury has been
14 suffered. The intention is that what is being
15 offered to the policyholders is a uniform way
16 of assessing in accordance with established
17 principles. Now, that is what they are being
18 offered and the intention behind is that
19 everyone will save the cost of fighting about
20 the different claims and, therefore, the
21 outcome is likely to be optimum for everybody.

22 SIR ANTHONY MANN: Is that the same
23 methodology that was adopted in 2018?

24 MR FISHER: I don't know the answer to
25 that, my Lord. I can ask. If we can find out.

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1 SIR ANTHONY MANN: No.

2 MR FISHER: I understand —

3 SIR ANTHONY MANN: It is a question that
4 will occur to the creditors.

5 MR FISHER: I understand why my Lord
6 asked.

7 SIR ANTHONY MANN: I have serious
8 misgivings about this exercise you will
9 understand when the court is told in all
10 seriousness by all sorts of people and I have
11 actually read Mr Justice Marcus Smith's second
12 judgment, when he had the matter brought back
13 to him, because I found it and he needed to be
14 reassured, but on a different point as
15 I understand. He was concerned about the
16 existing Reliance policyholders, but
17 nonetheless the court on the basis of material
18 given, in good faith, and nobody is suggesting
19 otherwise, rather directors and any actuary
20 turns out to be — well, wrong is not quite the
21 right word — turns out to be disappointing, which
22 is an understatement.

23 Anyway, there we are. We better not dwell
24 on that too much. No doubt the regulators will
25 have. I would hope that the regulators will

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1 want to look carefully at this scheme. I will
2 say something about that in the judgment in the
3 particular circumstances of this case. They
4 are listening, aren't they?

5 MR FISHER: My Lord, they are. And they
6 have in the exhibit to Bolton 2 indicated that
7 based on what they have seen thus far, they are
8 not raising an objection to the directions
9 sought at this stage, but, obviously, any
10 comments my Lord makes regarding the role of
11 the regulator will be taken I am sure very
12 seriously, as they should be by everyone.

13 SIR ANTHONY MANN: I am not going to make
14 any comments about that, because I haven't been
15 into the detail of that. It just seems to me
16 that the public will expect that where the
17 expectations of the company and the actuary and
18 no doubt the regulators, in particular PRA,
19 have been confounded, the regulator will want
20 to make quite sure, so far as it lies within
21 the regulator's functions, that this scheme is
22 the way out.

23 I mean, in theory, it maybe that somebody
24 if pushed them hard enough, they would take a
25 view this is not the way out and you could have

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1 an administrator who can actually go back and
2 investigate and recover some money from
3 somebody else. That is a theory and one can
4 well imagine why that is not a very attractive
5 option, but it is a theory. I don't know
6 whether the regulators will think that is
7 within their scope. It will certainly be a
8 question for the creditors, but anyway I am not
9 going to tell the regulators what to do.
10 I think I will indicate what the court will
11 expect to see from them next time round, or the
12 sort of things one might expect to see from
13 them. I will come to that in due course.

14 MR FISHER: My Lord, I am grateful. If I
15 could just perhaps — just to pick up on one
16 point. Of course, yes, it's disappointing, but
17 it does not mean that anything that was said or
18 done at the time was wrong, because they are
19 forward-looking statements.

20 SIR ANTHONY MANN: I am not saying it was
21 wrong. I can quite see why people might wonder
22 whether there was something was wrong, and why
23 they might or might not think it should be
24 investigated, but from the court's point of
25 view, it's disappointing we were invited to

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1 sanction — Mr Justice Marcus Smith was invited
2 to sanction a scheme which has gone wrong.
3 Things go wrong. Commerce happens.

4 MR FISHER: I do understand. I do
5 understand where my Lord is coming from.
6 I just wanted to show you that material,
7 because we do say that this is a case where,
8 however we have got to where we have got to,
9 the current situation that the board is dealing
10 with is one where the evidence that they have
11 obtained is such that the conclusion reached by
12 the company's board is that it cannot in the
13 interests of creditors continue to pay people
14 out in full now, seeing that over the horizon
15 the current forecasts are that people would not
16 paid in full, in fact there would be a
17 shortfall.

18 SIR ANTHONY MANN: Very obvious insolvency
19 principle arises from it if that conclusion is
20 reached.

21 MR FISHER: Yes. Subject to the scheme
22 their evidence has been that if the scheme does
23 not proceed, that the company will be placed
24 into administration in England in short order,
25 because that is the information based on the

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1 current accounts that they have in terms of the
2 payment to creditors.

3 So my Lord, that is the context in which
4 we — in which the scheme is being put forward.

5 SIR ANTHONY MANN: Yes. I don't think
6 I need to see any more of this report. It is
7 summarised, I assume fairly, by Mr Bolton.

8 MR FISHER: If I can then just take you to
9 the scheme and try and answer the point my Lord
10 had regarding the methodology.

11 SIR ANTHONY MANN: I understand the
12 methodology for submitting claims. It can be
13 accepted and you can choose a new assessor and
14 so on and so forth. It's just the methodology
15 for assessing by which the assessors will
16 operate which was described by an Italian name
17 and a Spanish name. I didn't I think —
18 obviously, the names meant nothing to me, but
19 I didn't understand what in practice they might
20 mean. I didn't see a reference to them in the
21 scheme document but that may just because my
22 reading is too quick.

23 MR FISHER: Well, I don't know my Lord.
24 Let me — the methodology for the Italian
25 claims and then the Spanish claims is set out

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1 respectively in 216 of the bundle.

2 SIR ANTHONY MANN: Yes, submit some
3 document and the evaluations. The costs.

4 MR FISHER: Then the Milan tables or those
5 referred to at 219.

6 SIR ANTHONY MANN: I see. There.

7 MR FISHER: They are described as:

8 "The reason the Milan tables have been
9 selected is to ensure consistency for all
10 scheme claims understood by the company as a
11 fair approach, given these tables are applied
12 to all medical malpractice insurance claims in
13 Italy."

14 The links are given there.

15 SIR ANTHONY MANN: Do you know or can you
16 enlighten me as to how that actually works? Is
17 that a table saying broken arm, X; broken leg,
18 Y? Is it a mechanical thing like that?

19 MR FISHER: I will ask. I haven't looked
20 at them. I will ask whether that is —

21 SIR ANTHONY MANN: If it is that simple,
22 one wonders why it has taken so long to resolve
23 these claims, but anyway.

24 MR FISHER: Yes. My Lord, it is similar
25 in terms of the Spanish claims if we go to page

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1 225. You'll see there the Baremo Rate System.

2 My Lord, I will see if those behind me can
3 help with any of the details my Lord says
4 whether that is, as my Lord says, broken arm
5 gives you this, a broken leg gives you that.
6 I suspect there maybe more to it given the
7 nature of the injuries, but what the evidence
8 is, is that these are the standard way which
9 are used to assess these sorts of claims.
10 Obviously, at the end of the day, there is a
11 commercial decision for the policyholders as to
12 whether or not they are content to vote in
13 favour of a scheme which proposes that instead
14 of valuing or not.

15 That is ultimately the question for the
16 creditors and what we want to put to the
17 creditors is: do you prefer a scheme with this
18 sort of methodology to save the cost and we
19 believe bring a potentially solvent outcome or
20 do you want the alternative, which we currently
21 see to be likely to be administration, because
22 of the financial position that we are in?

23 SIR ANTHONY MANN: They may wish to assess
24 whether, I have forgotten what the figures are,
25 to recover 75% in administration, whether 100%

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1 of this is worth less or more than or the same
 2 as 75% of what they might think their bigger
 3 claim is.
 4 MR FISHER: Yes, my Lord. That is a
 5 question for them to weigh up.
 6 SIR ANTHONY MANN: If they all take a view
 7 this is the hopeless way of assessing the
 8 claims, they will say we'll take our chances in
 9 administration. I see. That is how it works.
 10 MR FISHER: My Lord, is exactly right.
 11 They are being offered the rights under the
 12 scheme incorporating that valuation process.
 13 Alternatively, if they don't want it, it will
 14 be an administration with a valuation process
 15 in administration.
 16 SIR ANTHONY MANN: Which, as you point
 17 out, might be the same as this one, if the
 18 administrator can convince them of that which
 19 you haven't convinced them.
 20 MR FISHER: Quite, my Lord, plus the
 21 inevitable costs of the admin process.
 22 SIR ANTHONY MANN: Yes.
 23 MR FISHER: That is financially where the
 24 company is and then the scheme in terms of what
 25 it is going to try and do.

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1 My Lord, we then move to the issues for
 2 convening which, as my Lord knows, are
 3 principally at this stage focused on what are
 4 described as jurisdiction issues and that is
 5 the question of class and then I have it as
 6 other jurisdiction issues.
 7 My Lord, on the question of class, we
 8 dealt with that in our skeleton argument.
 9 SIR ANTHONY MANN: I don't think — unless
 10 there is something you need particularly to
 11 draw to my attention, I don't need to be
 12 addressed on that.
 13 MR FISHER: I am grateful. My Lord, there
 14 is then the question of other jurisdiction
 15 issues. As my Lord is aware, traditionally at
 16 this point some consideration is given to
 17 whether or not there is what is described as a
 18 roadblock in some of the authorities, an
 19 obvious jurisdiction bar on the scheme going
 20 forward to creditors because it wouldn't be
 21 worth us continuing with the process given how
 22 obvious that issue is.
 23 SIR ANTHONY MANN: Let me see if I have
 24 understood this correctly. You say is this an
 25 English company and therefore subject to a

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1 Companies Act scheme. There is the question of
 2 whether these things are enforceable in Spain
 3 or in France and you have got expert advice
 4 which says it is enforceable in different ways
 5 I see — in Spain and Italy, I'm sorry, in
 6 Spain and Italy. So there is no apparent
 7 obvious roadblock for the moment in that
 8 respect and there is no other obvious
 9 jurisdictional point either.
 10 MR FISHER: My Lord is exactly right.
 11 SIR ANTHONY MANN: I don't need to hear
 12 from you further.
 13 MR FISHER: Those are the issues at this
 14 stage. If my Lord is satisfied on those
 15 points, the next step is the question of
 16 adequacy of the explanatory statement and the
 17 question of directions if my Lord is otherwise
 18 persuaded to convene the meeting.
 19 My Lord has helpfully indicated that you
 20 did glance through the Explanatory Statement.
 21 The — as my Lord knows, you're not required to
 22 formally approve the Explanatory Statement at
 23 this stage. The court checks the form and
 24 whether there are any obvious deficiencies, but
 25 it remains open to creditors to take issues

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1 with the adequacy of the information provided
 2 at sanction. And as my Lord will know, some of
 3 the recent schemes have failed where, despite
 4 the vote being in favour, the court has
 5 concluded that the consent given by the class
 6 was not given on a fully informed basis. And
 7 that is despite the relatively limited test at
 8 sanction, one of the ways in which the court
 9 has ensured it is content is by focusing on the
 10 adequacy of information at that stage.
 11 Now, I don't think there is a difference
 12 between my learned friend and I on that point,
 13 not least because we have argued it before.
 14 Ultimately, adequacy is to be assessed at the
 15 sanction hearing, but if there are things which
 16 it is obvious we have omitted, the court will
 17 at least try and draw attention and deal with
 18 those issues at this stage.
 19 Now my Lord, this Explanatory Statement is
 20 in, in my submission, very standard form. It
 21 contains information which largely replicates
 22 what was in the PSL and the witness statement.
 23 My Lord, it does contain references to the
 24 Part VII Transfer and the dividend. Can I just
 25 show my Lord where they are in light of the

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1 comments that my Lord has made?
 2 SIR ANTHONY MANN: Yes.
 3 MR FISHER: If my Lord take up the
 4 Explanatory Statement.
 5 SIR ANTHONY MANN: I looked at that on the
 6 screen so I haven't the faintest idea where it
 7 is physically in the bundle.
 8 MR FISHER: My Lord, it is tab C1, page
 9 116.
 10 SIR ANTHONY MANN: C1.
 11 MR FISHER: The first bundle.
 12 SIR ANTHONY MANN: I am looking at
 13 section C, tabs 35 to 72, what tab?
 14 MR FISHER: C1. It's back in the other
 15 bundle I think, my Lord. It is near the front
 16 near the witness statement in the other bundle.
 17 SIR ANTHONY MANN: C1, page?
 18 MR FISHER: 116 and 117.
 19 SIR ANTHONY MANN: The draft 8 May, why is
 20 it headed "draft"?
 21 MR FISHER: Because, my Lord, it won't be
 22 final until we have had the directions from
 23 my Lord if you are content to send something
 24 out.
 25 SIR ANTHONY MANN: Right.

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1 MR FISHER: My Lord, you can see at the
 2 top of 117 there is reference to the
 3 Part VII Transfer and the link to the
 4 information relating to it.
 5 SIR ANTHONY MANN: What is in that link,
 6 behind that link?
 7 MR FISHER: I did click on it, but it
 8 can't — I can get a list from my Lord of the
 9 material which are there.
 10 SIR ANTHONY MANN: What sort of materials?
 11 MR FISHER: It's the reports, my Lord,
 12 I was looking at by the — can we make a list
 13 of what is there?
 14 It is the summary report of the —
 15 SIR ANTHONY MANN: Mr Goodison has the
 16 computer. It is possible to give me a list by
 17 just reading it out, I am happy to hear from
 18 Mr Goodison, if I can hijack your submissions.
 19 MR GOODISON: It is the Part VII
 20 information. It's the circular, the summary
 21 report index, before legal notice, letters to
 22 co-insurers, letters to cover holder,
 23 policyholders, reassurances, Part VII scheme
 24 documents.
 25 SIR ANTHONY MANN: All the material that

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1 would have been before the court.
 2 MR GOODISON: All the material that would
 3 have been before the court.
 4 MR FISHER: We have the link and obviously
 5 the detail has not been set out.
 6 Then at 9 the dividend is described. And
 7 my Lord can see there a dividend of £10 million
 8 was paid to the company's shareholders, the
 9 then shareholders, they are not the current
 10 shareholders, with a view to supporting the
 11 shareholder group wider capital needs:
 12 "[It] was declared based on the ... 2019
 13 accounts, which showed net assets of USD 78.7
 14 million ... were signed in September 2020."
 15 Then there was a restatement reducing net
 16 assets to 73.1 million and:
 17 "The dividend was considered and approved
 18 by the board of directors in line with relevant
 19 requirements at the time. The Company held
 20 capital in excess of what was expected to be
 21 required to settle all remaining claims and
 22 costs for the duration of the run-off whilst
 23 continuing to meet its solvency capital
 24 requirement. The dividend was paid after
 25 making the Company's regulator, the PRA, aware

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1 of the intention and no objection was received.
 2 No other dividends had been made."
 3 SIR ANTHONY MANN: Just a second.
 4 I thought it was in 2020 that the company
 5 started to realise that its capital ratios were
 6 sort of going skewwhiff; is that right?
 7 MR FISHER: I think the evidence is in —
 8 SIR ANTHONY MANN: The implemented
 9 remediation plan in 2021, that is 43 of
 10 Mr Bolton's first.
 11 MR FISHER: It's 57 and 58 of Mr Bolton's
 12 evidence, my Lord.
 13 SIR ANTHONY MANN: Thank you.
 14 Yes, so in the year (inaudible) was paid
 15 the company had two years of underwriting
 16 losses. One of which was 21.4 million.
 17 MR FISHER: Yes.
 18 SIR ANTHONY MANN: Indeed, put a
 19 remediation plan in place in the next year.
 20 One can see why creditors are concerned.
 21 MR FISHER: If it helps, just for
 22 my Lord's note, if you look at 176 of the
 23 bundle, so appendix six, you can see a summary
 24 of the financial statements audited and then
 25 plus management and draft accounts up-to-date.

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1 And just for my Lord to note, you can see
2 in the net asset row, so about two thirds down,
3 the position 2018 in the accounts,
4 80 million—dollars; 2019 which are the accounts
5 by reference to which the dividend is paid,
6 73.1 million and then down to 38.1, 2020, and
7 you can see the reduction.

8 Now, my Lord, part of that is because it
9 is a company in run off and therefore you
10 are — you are paying claims and reducing
11 assets as you go anyway. So it isn't like a
12 trading company, and to be looked at in the
13 same way. One can see that the 2019 accounts
14 and the net asset position was significant. It
15 was based on that that the payment out was
16 made, but there is then, and I don't shy away
17 from it and the accounts show, a sudden
18 deterioration in terms of the net assets and
19 one can see it down to, as matters currently
20 stand, 1.2 million.

21 Now, my learned friend's clients have
22 raised concerns about how we are where we are
23 and what happened in relation to the Part VII,
24 what happened in relation to the dividend. We
25 have answered that insofar as we can. I think

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1 he is anticipating further information will be
2 provided.

3 Now, my Lord, from the company's
4 perspective, we wish to convince creditors of
5 the merits of the scheme, because if we don't,
6 we'll not meet our statutory majority. So we
7 are open to and planning to respond to
8 reasonable requests for information and insofar
9 as information is to be given to my learned
10 friend's clients, we will also put it on the
11 website so it is available to all creditors so
12 that there is equal access to information for
13 the purpose of voting. My Lord, as I said
14 earlier, whilst we understand why creditors
15 will be concerned at this proposal, ultimately,
16 the company is doing what it believes is in
17 their best interests on the information it now
18 has.

19 Now, my Lord, subject just to
20 showing my Lord those brief bits in the
21 Explanatory Statement, I didn't have anything
22 else particular to draw my Lord's attention to,
23 because what we have tried to do is keep the
24 Explanatory Statement updated and amended to
25 reflect the changes which we have made to

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1 Mr Bolton's statements and then to the letters
2 which have been going out to creditors and
3 although I can't say that word for word every
4 detail is included, in broad terms we believe
5 the substance of the information we have given
6 to other creditors when they have asked
7 particular questions is now reflected in the
8 Explanatory Statement.

9 Those letters which we received were
10 received before those creditors had in fact
11 seen Mr Bolton's evidence or the
12 Explanatory Statement. We are hopeful it will
13 provide an answer. We believe that it is an
14 adequate explanation of the scheme in its
15 merits and the alternative, but ultimately, as
16 I've said, the adequacy of that information
17 will be tested by whether it convinces
18 creditors and if there are matters which they
19 say are — they should have been told and have
20 not been told, then they — they won't vote or
21 they will take that point at sanction.

22 SIR ANTHONY MANN: Yes.

23 MR FISHER: My Lord, that is what I wanted
24 to say about the information provision.

25 The final section of my submissions was

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1 going be on the question of directions if
2 my Lord was prepared to convene the meeting,
3 I am happy to take my Lord through the order if
4 it helps now or whether you want to other from
5 my learned friend. I am in my Lord's hand.

6 SIR ANTHONY MANN: I will, but I am not
7 sure. Is there much to be said on that?
8 I have read the order. The key thing about it
9 is that it is going to be — it seems to me it
10 is going to be a virtual meeting because that
11 is the most sensible way of allowing
12 participation by creditors who are by
13 definition not here.

14 MR FISHER: Yes.

15 SIR ANTHONY MANN: Therefore, you put in
16 some elaborate mechanism to deal with that.
17 That is the key thing about it, is it?

18 MR FISHER: It is and there is one other
19 point that I wanted to draw to my Lord's
20 attention, which is not necessarily standard.
21 Paragraph two of the draft order which is at
22 page 12 and this provides that:

23 "The scheme meeting is to be on 28th
24 June 2024 (or as soon as reasonably practicable
25 after 10.00 am London time)"

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1 And then:
 2 "Or such other time ——"
 3 SIR ANTHONY MANN: Just give me a moment.
 4 Page 12. Yes, sorry. Start again.
 5 MR FISHER: I beg your pardon.
 6 Paragraph 2:
 7 "The scheme meeting will be held on
 8 28 June 2024 commencing at or as soon as
 9 reasonably practicable after 10.00 am London
 10 time."
 11 Then we have brackets:
 12 "Or such other time or date as the company
 13 may decide and notify to the policyholders."
 14 Now, my Lord, the bracketed language
 15 Mr Goodison and I have been discussing.
 16 I think we have varied experience. Obviously,
 17 there is a question as to whether it should
 18 simply be left to the company, whether there
 19 should be a backstop date, whether it should be
 20 notice or whether the court simply wishes to
 21 say, no, I am going to set the meeting time.
 22 If you want to change it, you should come back
 23 to court and apply for directions.
 24 As it is currently drafted, it would
 25 enable the company to have the scheme meeting

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1 at such time or date as the company may decide
 2 and notify to policyholders and although we
 3 believe an order may have been made in those
 4 form in some cases, neither of us is entirely
 5 convinced that certainly it is standard and
 6 obviously there is a question as to whether it
 7 should simply be left to the company, because
 8 information can then become out of date and so
 9 there are alternatives.
 10 If my Lord is in anyway minded not make
 11 the order note, I can simply take it out and
 12 we can have liberty to apply or one can have a
 13 backstop date, ie we could move it provided
 14 we give notice on 14 days to a time no later
 15 than whatever it would be and, I said, we were
 16 not actually aware of there being a
 17 particularly standard practice, other than we
 18 do not believe that language is what one could
 19 say is standard in every case so I wanted to
 20 specifically draw it to my Lord's attention.
 21 We think those are the options that my Lord
 22 has.
 23 Obviously, we would be minded to give us
 24 as much flexibility as possible and to enable
 25 us, if we are providing information, to have

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1 the ability to move the scheme meeting if it is
 2 thought in the interests of creditors to do so,
 3 much as the chairman can adjourn a meeting for
 4 particular reasons, but is this a wider power.
 5 As I said, my Lord, the alternative is we can
 6 apply or we can have a backstop date. I just
 7 wanted to draw my Lord's attention to it,
 8 because I don't believe that is a standard
 9 provision.

10 SIR ANTHONY MANN: That is very fair,
 11 Mr Fisher. It seems to me — I don't know
 12 whether Mr Passfield is going to make
 13 submissions on this. Are you, Mr Passfield?

14 MR PASSFIELD: I hadn't anticipated the
 15 point. If I can assist in anyway, I will.

16 SIR ANTHONY MANN: No, I just wanted to
 17 know whether I can just give my view now or
 18 whether I was going be cutting across what you
 19 are going to say. I can imagine in this case,
 20 bearing in mind where we now are and the
 21 request for information come in, it is
 22 conceivable you'll get some requests which
 23 you'll want to deal with and are not
 24 comfortable about dealing with or the creditors
 25 are not comfortable about receiving very

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1 shortly after or before this meeting, so this
 2 provision I think should be qualified in two
 3 ways.

4 Should they decide for good reason, and
 5 that is always open to debate, but at least it
 6 prevents arbitrariness, with a longstop date at
 7 any event no later than, what would you
 8 propose?

9 MR FISHER: I think, my Lord, if we
 10 could — Mr Goodison and I discussed. At the
 11 moment the sanction hearing is listed on
 12 22 July. If we have to move it, we would be
 13 looking at a sanction hearing presumably in
 14 September, or beginning of October so we would
 15 need —

16 SIR ANTHONY MANN: Why? If is it
 17 sufficiently urgent, can you not get a sanction
 18 hearing on as vacation business?

19 MR FISHER: We could, my Lord, but
 20 without — we would have to get it expedited
 21 and heard. My Lord, can I perhaps — perhaps
 22 we could have a — if we work on the basis of
 23 six weeks, a longstop of six weeks and then —

24 SIR ANTHONY MANN: I think a longstop of a
 25 month. It is fairly arbitrary. A longstop of

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1 a month takes us — six weeks takes you into
 2 the long vacation anyway, does it not?
 3 MR FISHER: Yes.
 4 SIR ANTHONY MANN: If we had a longstop
 5 date of a month, then you know when it is and
 6 if you might want a sanctions hearing you'll
 7 have to — you don't need to and if it's
 8 urgent, you clearly — you have then got time,
 9 you'll be able to apply, if it's necessary to
 10 do so, to a judge somewhere to have it
 11 certified as vacation business if you make a
 12 case for it, and it is necessary to do so.
 13 MR FISHER: Yes.
 14 SIR ANTHONY MANN: Does that make sense?
 15 MR FISHER: As I understand it, my Lord,
 16 we have a month. We can move the meeting by up
 17 to a month for good reason, and then we'll have
 18 to list a sanction or hearing accordingly and
 19 we would have to persuade the court that it was
 20 appropriate to be vacation business in that
 21 time.
 22 SIR ANTHONY MANN: Yes, say you had to
 23 move it by a week, then it may not be a
 24 problem. If you have to move it for
 25 four weeks, it will be a problem. If it is

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1 six weeks, it will inevitably be a problem.
 2 MR FISHER: My Lord, I am very grateful.
 3 Apart from that in the order, there was, there
 4 was nothing that — oh, my Lord, the only other
 5 provision just to mention, which is more normal
 6 in the insurance schemes, is the role of having
 7 an independent vote assessor. Just to explain.
 8 I don't have to show my Lord exact wording.
 9 The way in which the voting assessment is
 10 to work is that the Chair will form a view and
 11 in the event that however you calculate it, the
 12 scheme passes, so if you assume — if you take
 13 the creditor value for those which against, so
 14 they get the higher value, and if you take the
 15 company's value, if it's lower, for votes for,
 16 if however you calculate it the relevant
 17 statutory majorities are met, then there won't
 18 be any role for an independent vote assessor,
 19 because everything is being assumed in the
 20 creditors' favour and still we meet the
 21 statutory majorities and a report will be
 22 produced on that basis.
 23 If there is an issue about meeting those,
 24 then there is a role for the independent
 25 vote assessor who will produce a report and

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1 would have looked at the matters in more detail
 2 and then the court would be given all of the
 3 information at the sanction hearing to enable
 4 us to calculate off the independent
 5 vote assessor's calculation of the votes
 6 whether we had met the relevant thresholds.
 7 That is something which has been done in prior
 8 insolvent insurance schemes, my Lord, just
 9 because there can be more of an issue of
 10 valuing these claims than perhaps we see in
 11 some of the other financial schemes before us.
 12 SIR ANTHONY MANN: Because of the nature
 13 of the business, it is rather more difficult
 14 for the chairman just to take a view on that
 15 unassisted by anybody at all?
 16 MR FISHER: Correct, my Lord.
 17 SIR ANTHONY MANN: And if there debts or
 18 trade debts or whatever, a view can be taken.
 19 Since this is an unobserved, you are valuing
 20 the claim of a third party against your insured
 21 and there is more of a problem.
 22 MR FISHER: That is it, my Lord.
 23 SIR ANTHONY MANN: How will be the
 24 assessor assess them? By reference to those
 25 tables we have seen?

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1 MR FISHER: I think.
 2 SIR ANTHONY MANN: It is not specified, is
 3 it?
 4 MR FISHER: I think it is in his terms of
 5 appointment. Can I just perhaps come back to
 6 my Lord. I will just come doublecheck that.
 7 I did read it the other day. Can I just
 8 doublecheck. I think it's going to be —
 9 I will check and come back to my Lord on that
 10 point, but my Lord a part from that there is
 11 nothing else I wanted to draw my Lord's
 12 attention to in the draft order.
 13 SIR ANTHONY MANN: Just before you sit
 14 down, do you have any information from the
 15 notes to which you have been harassed about for
 16 the occasions, if any, on which an insurance
 17 scheme has put people into an insolvent —
 18 MR FISHER: One immediate example
 19 apparently is East West in relation to — which
 20 was a transfer from Zurich, a book of business
 21 from Zurich, and then East West which went
 22 into — may have had a scheme or possibly
 23 admin, but that was a — that is an insurer
 24 which took a Part VII Transfer and then got
 25 into financial difficulty. I don't have the

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1 details as to whether it was the book of
 2 business which transferred which caused the
 3 difficulties , which is obviously the primary
 4 issue in this matter.
 5 SIR ANTHONY MANN: Yes.
 6 MR FISHER: But we can see if there are
 7 other examples.
 8 SIR ANTHONY MANN: You needn't. It was a
 9 matter of judicial interest , rather than direct
 10 relevance, so don't trouble to do any more.
 11 MR FISHER: I am grateful.
 12 SIR ANTHONY MANN: Mr Passfield, before
 13 I hear you, we'll just have our shorthand
 14 writer's break. Is five minutes enough? Ten
 15 minutes please. We'll still finish this
 16 afternoon. 10 minutes.
 17 (3.11 pm)
 18 (a short break)
 19
 20 (3.24 pm)
 21 SIR ANTHONY MANN: Mr Passfield,
 22 Mr Fisher, I have been — had a message saying
 23 that the translators are having some difficulty
 24 picking up what we are saying so it maybe a
 25 transmission problem, it maybe a speaking too

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1 quickly problem, although I think we have both
 2 been quite good about that or may simply be
 3 some of the language we are using is technical.
 4 I can't go back and relive the morning, relive
 5 the first half of the afternoon, but we should
 6 bear in mind that. The microphone has been
 7 moved nearer. It is not very convenient there,
 8 but we'll see what we can do. In order to make
 9 sure that is remedied, we are obviously going
 10 to have a transcript of today. I assume it
 11 will be produced this evening in the normal
 12 way.
 13 MR FISHER: Yes, I believe it will.
 14 SIR ANTHONY MANN: Can I be assured it
 15 will go on the website so that an actual
 16 transcript is available if someone who was not
 17 sure what was said can actually look it up.
 18 I am not going to require you to put a
 19 translation on the website, but it can find its
 20 way into the hands of a translator —
 21 MR FISHER: Yes.
 22 SIR ANTHONY MANN: — in that event. Can
 23 that be done?
 24 MR FISHER: Yes.
 25 SIR ANTHONY MANN: One other thing, my

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1 clerk has forwarded me a message which will
 2 have come through to various people on your
 3 side, just so you know I have got it. It says,
 4 it is from Polyclinic of Messina. Is that what
 5 you referred to?
 6 MR FISHER: The Messina policyholder I
 7 think.
 8 SIR ANTHONY MANN: That is the one you
 9 referred to earlier and they point out that
 10 there is a big difference between the credits
 11 resulting to Polyclinic itself and those
 12 resulting from the debtors' documents,
 13 therefore a new submission of updated documents
 14 is requested.
 15 Is that what you have seen to which you
 16 referring early this afternoon?
 17 MR FISHER: I think, my Lord, the message
 18 was mentioned to me in the short adjournment.
 19 We weren't entirely sure as to the point being
 20 made. I think what I can — all I can say is
 21 that obviously at the moment there may be
 22 differences between the company and the
 23 creditors as to what claims there are. That is
 24 what the voting process will deal with,
 25 including the independent vote assessor.

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1 SIR ANTHONY MANN: I am merely pointing
 2 out that I have seen it. If you have seen it
 3 or got it, you need to respond to it in some
 4 appropriate way.
 5 MR FISHER: My Lord —
 6 SIR ANTHONY MANN: You may even have an
 7 explanation or you may want to seek an
 8 explanation. I am not going to direct an
 9 answer to that, but the court will expect an
 10 answer to that. We are used to in sanction
 11 hearings to seeing summaries of responses sent
 12 to creditors who raise questions, usually not
 13 as complicated a case as this, and no doubt the
 14 sanctions judge will expect the same in this
 15 case.
 16 MR FISHER: My Lord, I am grateful.
 17 Submissions by MR PASSFIELD
 18 SIR ANTHONY MANN: Thank you.
 19 Yes, Mr Passfield, as I have said, I have
 20 read your skeleton argument and correctly
 21 detected that your putting down a marker.
 22 MR PASSFIELD: Precisely, my Lord.
 23 SIR ANTHONY MANN: Do you need to add very
 24 much to it?
 25 MR PASSFIELD: I won't be more than about

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1 five minutes I think, my Lord. There are just
 2 a few points I wanted to stress beyond what is
 3 in the note based on what has come out of the
 4 debate.
 5 SIR ANTHONY MANN: Perhaps you can make
 6 sure you speak slowly please, Mr Passfield, so
 7 the translators at least have a fair chance of
 8 picking it up.
 9 MR PASSFIELD: My Lord, yes.
 10 SIR ANTHONY MANN: I have been told over
 11 the decades I speak too quickly, Mr Passfield,
 12 so there is nothing unusual as far as I am
 13 concerned about my request to you.
 14 MR PASSFIELD: It's a particular
 15 occupational hazard of mine my Lord — a
 16 transcriber who hasn't complained about pace.
 17 I will try and bear that in mind.
 18 SIR ANTHONY MANN: Let that be a lesson to
 19 you and let today be the first manifestation of
 20 that lesson.
 21 MR PASSFIELD: My Lord, yes. My client
 22 appears to be the single largest creditor by
 23 value affected by this scheme.
 24 SIR ANTHONY MANN: Is this a large
 25 hospital group or just one hospital?

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1 MR PASSFIELD: It is a large group which,
 2 I understand, operates one hospital, but a
 3 particularly big one.
 4 SIR ANTHONY MANN: One hospital within a
 5 group?
 6 MR PASSFIELD: I believe so.
 7 SIR ANTHONY MANN: Right.
 8 MR PASSFIELD: And as your Lordship
 9 observes, it is in a fairly invidious position,
 10 having entered into an insurance policy in QBE
 11 in 2018, sorry, before 2018, backed by two
 12 reinsurance policies. It is then subject to a
 13 court-approved transfer and then told now, some
 14 six years on, that there is insufficient money
 15 left in the pot and it has no right of recourse
 16 against the initial insurers that it has signed
 17 up with.
 18 It's clear on my view that something has
 19 gone badly wrong with this company. There is
 20 effectively two possibilities. The first is
 21 that the company entered into a bad bargain
 22 when it entered into the transfer or something
 23 has happened since that date to turn what was a
 24 good bargain into a bad one.
 25 SIR ANTHONY MANN: Or some combination

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1 perhaps.
 2 MR PASSFIELD: Or some combination, yes.
 3 Now, the company's case is that following
 4 the transfer it essentially lost more claims
 5 than expected, or the value of the payouts were
 6 greater than expected, and it incurred greater
 7 costs as a result of changing claim managers.
 8 As my learned friend has explained, all of
 9 the policies were written on a claims-made
 10 basis, which means that the policy only covers
 11 claims made by the end of 2013 by third parties
 12 and notified to the insurers by January 2014.
 13 So at the date of the transfer, both QBE and
 14 the company should have been aware of all
 15 potential claims. That begs the question
 16 whether the company was properly advised when
 17 it entered into the transfer in 2018 and
 18 therefore whether any claims lie against the
 19 company's advisers and/or the directors at that
 20 time.
 21 SIR ANTHONY MANN: Yet.
 22 MR PASSFIELD: We specifically asked for
 23 information about transfer for this very
 24 reason. Your Lordship has been taken to the
 25 letter. I just want to show you two

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1 paragraphs.
 2 SIR ANTHONY MANN: Yes.
 3 That is feedback from somebody who didn't
 4 have a microphone on.
 5 MR PASSFIELD: It should be tab 62 of
 6 volume two.
 7 SIR ANTHONY MANN: Yes.
 8 MR PASSFIELD: It is page C1400.
 9 SIR ANTHONY MANN: Yes.
 10 MR PASSFIELD: In paragraph 10 my clients
 11 ask for:
 12 "Detailed explanations and transmission of
 13 documents necessary to understand why the
 14 financial provisions transferred from QBE at
 15 the time of the portfolio transfer to Reliance
 16 proved insufficient ..."
 17 And they make the point about these being
 18 "claims made" policies and at 13 they ask for:
 19 "Details on the numerical forecasts
 20 contained in the transfer project from QBE to
 21 Reliance, analysing whether these have been
 22 maintained or proved incorrect ..."
 23 SIR ANTHONY MANN: Where are you reading
 24 there?
 25 MR PASSFIELD: This is paragraph 13 on the

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1 same page.
 2 SIR ANTHONY MANN: Yes.
 3 MR PASSFIELD: The response to those
 4 particular requests is on page 1414 behind the
 5 next tab.
 6 SIR ANTHONY MANN: Yes.
 7 MR PASSFIELD: Your Lordship will see that
 8 is what said is the due diligence for the
 9 transfer would have been carried out by
 10 ILS P&C Re.
 11 Pausing there, I understand that is the
 12 former shareholder and by its services company
 13 Armour Risk. That is the previous claims
 14 manager that was replaced increasing the cost.
 15 Armour Risk is no longer trading and the
 16 funds supporting ILS are in the process of
 17 become dissolved:
 18 "The company does not have access to
 19 whatever records were provided by QBE to ILS
 20 ... for their evaluation of the transferring
 21 portfolio."
 22 And the author goes on to say:
 23 "It's unlikely QBE would disclose its
 24 internal projections to potential buyers."
 25 It is slightly concerning because the

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1 company ought to have access to the due
 2 diligence documents in respect of the transfer
 3 it entered into in 2018, which we now know was
 4 on fairly disastrous financial terms.
 5 Certainly my client would expect the company to
 6 make all reasonable steps to obtain copies of
 7 those documents if they are not currently in
 8 their possession, because it's clearly
 9 materially relevant to an assessment of whether
 10 any claims arise out of the transfer.
 11 There is a second point which, as your
 12 Lordship observed in April 2020, which is after
 13 the writing should have been on the wall, a
 14 £10 million dividend was paid to the company's
 15 shareholder, that is to say ILS, and there are
 16 legitimate concerns as to the propriety of that
 17 decision and whether it gives rise to any
 18 claims against the then directors and or the
 19 shareholders.
 20 The reason why I raise these points today
 21 is that the scheme is prepared on the
 22 assumption that the relevant alternative is an
 23 insolvent administration in which policyholders
 24 will not be paid in full, but it does not
 25 appear, certainly from the documents provided

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1 to date, that the company has factored in
 2 potential recoveries that could be made in
 3 administration by pursuing the sorts of claims
 4 I have outlined a moment ago against advisers,
 5 directors and/or shareholders in respect of the
 6 transfer and/or the dividend and also the
 7 company assumes that an administrator would
 8 propose a scheme similar to that before this
 9 court, rather than carry on trading in related
 10 policies. Again, it's not clear whether that
 11 is a reasonable assumption or not in all the
 12 circumstances, particularly if there are
 13 potential claims.
 14 SIR ANTHONY MANN: If it doesn't, on their
 15 figures, then you'll be stuck with a lower
 16 recovery of whatever you say — whatever they
 17 say their 100% is. You won't get a full
 18 recovery. So they may or may not propose a
 19 scheme, but if they don't propose a scheme you
 20 won't get all our money.
 21 MR PASSFIELD: Well, if there are not to
 22 be other any recoveries from other sources.
 23 SIR ANTHONY MANN: It comes back to that.
 24 MR PASSFIELD: Assuming there isn't, it
 25 goes back to your Lordship's point, which is

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1 it's I think projected to be somewhere in the
 2 region of 70p to 80p in the Euro on the current
 3 value of the claim, as against 100% of whatever
 4 the arithmetical calculation of the value of
 5 the claim is, which could well be a
 6 significantly lower sum, because it depends
 7 upon applying this actuarial valuation to a
 8 claim and saying to the policyholder that is
 9 what we think your claim is worth, therefore
 10 this is what we'll pay you, even though you may
 11 have exposure to a greater sum if a court in
 12 Italy reaches it or in Spain, as the case may
 13 be, reaches a different conclusion. And of
 14 course in administration would bring into play
 15 a moratorium on enforcement action.
 16 So it's possible, and I am simply
 17 speculating at this stage without seeing any of
 18 evidence, the administrator may form a
 19 different view.
 20 SIR ANTHONY MANN: Well, because I have
 21 not thought, begun to think it through. Let's
 22 suppose there is a 10 million Euro recovery of
 23 the dividend cent, pounds, £10 million recovery
 24 of the dividend, just assume that for the
 25 moment, what difference would that make to the

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1 administration distribution figures? I haven't
2 looked to see what the total would be.

3 MR PASSFIELD: I confess I haven't done
4 the maths, but obviously it would increase the
5 pot.

6 SIR ANTHONY MANN: More than a small
7 amount de minimis? It is a simple calculation
8 I think. One has to see at the moment what the
9 asset — what the distributable assets are
10 likely to be. We are assuming how they would
11 be augmented by a £10 million recovery.

12 MR PASSFIELD: I accept the point. I can
13 see those to my left straining to give your
14 Lordship the answer by reply. That is one
15 potential recovery. You have my point.

16 SIR ANTHONY MANN: I was just taking that
17 as an example to see how much difference that
18 makes. These are not matters for me anyway.

19 MR PASSFIELD: Ultimately, they are
20 matters for my client and the other creditors.
21 What my client wishes to do is to test the
22 evidence put forward by the company and they
23 wish to do so by instructing their own IP to
24 provide an expert opinion on whether in fact
25 administration is worse than the scheme. And

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1 in order to do that they will need to have
2 access to the relevant documentation and so
3 your Lordship is absolutely right my role here
4 today is to lay down a marker so that there can
5 be no illusions as to the type of information
6 we wish to see, why we wish to see it and the
7 terms we have and, in particular, our primary
8 concern — the dividend is a part of it
9 admittedly, because it's somewhat unfortunate
10 that the company felt it appropriate to give
11 £10 million to its shareholders at a time when
12 it was already suffering fairly substantial
13 losses on claims, but the primary focus of our
14 consideration is how it was that the directors
15 of this company in 2018 felt it appropriate to
16 sign up to an acquisition of this insurance
17 business on the terms they did.

18 SIR ANTHONY MANN: Do the regulators have
19 any say about dividends paid in those
20 circumstances? I assume they don't have to
21 approve the payment of dividend. I don't know.

22 MR PASSFIELD: The evidence as
23 I understand it is they were informed of the
24 dividend and didn't raise any objections, but
25 that is not the same as them —

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1 SIR ANTHONY MANN: They were told.

2 MR PASSFIELD: — formally approving it.

3 SIR ANTHONY MANN: Yes, quite. That is
4 often what they say. They raise no objections.
5 It isn't for them to approve. They didn't
6 raise objections so the question might be what
7 were they told?

8 MR PASSFIELD: Precisely and, obviously,
9 the company's position is we had sufficient
10 distributable reserves as recorded in the most
11 recent filed accounts so therefore we could
12 lawfully pay a dividend.

13 SIR ANTHONY MANN: There is a difference
14 between lawfully paying and whether it is a
15 good idea.

16 MR PASSFIELD: Precisely. And one might
17 ask how could it be in the interests of the
18 company and creditors? I accept that post
19 (inaudible) there is an interesting question as
20 to at which point the interests of creditors
21 became paramount in this case or indeed
22 intruded, but it is a relevant part of the
23 factual matrix. And certainly given that from
24 2019 onwards it supposedly became apparent that
25 the policies were not as valuable as they might

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1 first have appeared or at least the company was
2 taking on greater losses than they thought,
3 there are question marks, to say it no higher
4 than that, as to the dividends.

5 SIR ANTHONY MANN: Yes.

6 MR PASSFIELD: And even more so around the
7 transfer. So those are the concerns of my
8 clients. We expect to have cooperation in
9 terms of the information we seek. I am not
10 today suggesting your Lordship should adjourn
11 consideration of the convening meetings, but if
12 that is not forthcoming then we'll have to
13 consider all our rights, including applying for
14 specific disclosure, applying to adjourn the
15 meeting if necessary, and ultimately voting
16 against this scheme and opposing at a sanction,
17 if we get there.

18 Unless I can assist further, my Lord, that
19 is really all I want to say.

20 SIR ANTHONY MANN: Thank you,
21 Mr Passfield. That is helpful.

22 Could you give me an answer to the
23 question I just raised about what difference
24 £10 million would make to the assets?

25 MR FISHER: Yes. If my Lord goes to page

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1 46 of the first bundle.
 2 SIR ANTHONY MANN: Is this Mr Bolton?
 3 MR FISHER: Mr Bolton where he sets out —
 4 SIR ANTHONY MANN: Paragraph?
 5 MR FISHER: It's paragraph 73.
 6 SIR ANTHONY MANN: Thank you. Right.
 7 MR FISHER: My Lord can see just over the
 8 page on — just over the page before — in the
 9 table the net asset position. One can see that
 10 10 million, I think it was then dollars, they
 11 are now stated in Euros, has a material impact
 12 in terms of recovery. So I am told it was
 13 £10 million, 11 million Euros—odd.
 14 SIR ANTHONY MANN: I am trying to carry
 15 the headings over from the previous page.
 16 So the assets, the cash, if one assumes it
 17 is added to cash, but it doesn't matter which
 18 you add it to, comes to 30 million, 20.1, yes?
 19 MR FISHER: Yes, my Lord.
 20 SIR ANTHONY MANN: Therefore, when you
 21 feed that through, a very simple exercise, it
 22 turns net assets to — from a liability to an
 23 asset.
 24 MR FISHER: In an admin.
 25 SIR ANTHONY MANN: In an admin, yes.

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1 Right that is helpful, thank you.
 2 Reply Submissions by MR FISHER
 3 MR FISHER: My Lord, it is probably
 4 unnecessary and unhelpful of me to say anything
 5 more than my learned friend is not opposing the
 6 directions. We hear what he says regarding
 7 information provision. As I said earlier, we
 8 are incentivised to give information and
 9 persuade creditors of the merits of this scheme
 10 and we'll therefore listen to reasonable
 11 requests for information and insofar as we are
 12 able to meet them, we'll then make that
 13 information available to all creditors so that
 14 they can assess the position and form a view on
 15 the merits of the scheme.
 16 My Lord, there is not a lot else I can say
 17 in circumstances where we have had discussions
 18 with policyholders for a considerable period
 19 and this point is only really being raised in
 20 the last week and so we will deal with the
 21 requests as they come in.
 22 My Lord, there were just a couple of
 23 points from the submissions before the short
 24 break. In terms of how the tables operate,
 25 my Lord, I am told that they give a range of

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1 potential damages for each type of injury and
 2 in relation to the injured individual and then
 3 family members and heirs and the like so there
 4 is an element of — so there is a range and
 5 therefore an element of judgment as to where
 6 within the range particular injury may sit and
 7 what the right level of compensation would be.
 8 SIR ANTHONY MANN: You describe the
 9 injury, you look it up and you find a range and
 10 you take something from the range. In some
 11 cases it's not going to be as simple as that.
 12 MR FISHER: My Lord, that is broadly it.
 13 My Lord, in terms of the question what
 14 approach would the independent vote assessor
 15 use, would they also have reference to the
 16 tables? Yes, they would look at the company
 17 information, the creditor information and then
 18 they would seek to apply the tables as well as
 19 they could in the time available, although the
 20 vote value is obviously not binding for
 21 admission value in the scheme itself.
 22 Then, my Lord, the final question just on
 23 the prior examples of this. It was pointed out
 24 the example I gave, East West, that is a
 25 Part VII book which was transferred from Zurich

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1 to East West. It related to property liability
 2 and it was cladding and, therefore, following
 3 Grenfell, the amount in terms of the reserves
 4 which had to be held suddenly increased
 5 exponentially. I did do that case Mr Hertz
 6 reminded me. I just completely forgot about
 7 it. There are examples I am sure we'll find,
 8 but that is obviously factually slightly
 9 different to this scenario because there was an
 10 obvious and clear event in terms of Grenfell
 11 and the change of the approach.
 12 SIR ANTHONY MANN: Yes.
 13 MR FISHER: They were all the points I had
 14 to deal with, unless I can assist you any
 15 further.
 16 SIR ANTHONY MANN: No, thank you very
 17 much.
 18 [Judgment redacted for approval]
 19 MR FISHER: My Lord, we are very grateful
 20 for that. I have no corrections at all. So
 21 we'll draw up an order in those terms.
 22 SIR ANTHONY MANN: Can I ask you something
 23 which I meant to ask. I forgot to check my
 24 notes to ask you about it. It won't I think
 25 make any difference to my judgment, but just so

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1 I — make sure I do understand this. The
 2 transfer out — it is not a transfer out. The
 3 assumption of liabilities under the employer's
 4 insurance liabilities is to be done by another
 5 company in the group for payment of a million
 6 pounds.
 7 MR FISHER: Correct.
 8 SIR ANTHONY MANN: Right. As I understand
 9 the evidence, it's assessed it will take
 10 £4 million to administer those policies.
 11 MR FISHER: To keep the company open and
 12 running to deal with those. So my Lord is
 13 correct. I think it was — may actually be
 14 5 million in the evidence.
 15 SIR ANTHONY MANN: It is a lot more than
 16 one million and no assets are being transferred
 17 in order to deal with those.
 18 MR FISHER: As I understand it, it is
 19 economies of scale, the dealing with them, they
 20 believe it's a deal which is proper and that
 21 is, as the directors explain, the best fee that
 22 they have been able to negotiate for this
 23 purpose.
 24 SIR ANTHONY MANN: I can see that. It's
 25 puzzling as to what is in it for any

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1 transferee. They are receiving a million
 2 pounds, that is all they are receiving, when
 3 the admin costs are going to be on the evidence
 4 at least that if not a lot more and then there
 5 is the amount to paid under it. I don't
 6 understand the business ratio for that. Is
 7 that a guilty conscience? It that what the
 8 company feels — the group ought to be
 9 something in? What is the — I didn't see
 10 anything in the evidence as to what the
 11 rationale is behind that somewhat surprising
 12 transaction.
 13 MR FISHER: Well, can we just. I can't —
 14 SIR ANTHONY MANN: The rationale from
 15 Reliance's point of view.
 16 MR FISHER: Yes. My Lord, I can't take
 17 you any further than what is said in the
 18 evidence about that. As my Lord says, it is
 19 addressed at 141, so it is page 68 and what is
 20 said is:
 21 " ... in a continued ordinary course
 22 run—off, the Company's estimated reserve for
 23 future costs of managing the UK Employers'
 24 Liability Policies is 5 million euro (which
 25 amount would need to cover management costs,

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1 audit costs, claims handling costs and
 2 regulatory fees) ... potentially represent a
 3 cost saving to the Company of approximately
 4 4 million euro before considering the costs of
 5 any such indemnity claims arising."
 6 SIR ANTHONY MANN: The saving of costs for
 7 the company means that somebody else has to
 8 incur those costs.
 9 MR FISHER: Yes.
 10 SIR ANTHONY MANN: It might be able to
 11 incur fewer costs — lower costs — lower costs
 12 than that, but unless they get it in well below
 13 a million and give themselves enough headroom
 14 to be able to pay out under the policies, it's
 15 a curious feature, isn't it?
 16 MR FISHER: As I say, my Lord, that is
 17 what is described in the evidence. I can't
 18 give any greater explanation for the commercial
 19 rational than what is there, but it maybe
 20 something we can improve on and explain further
 21 when we come to sanction.
 22 SIR ANTHONY MANN: I don't know whether
 23 the sanctioning judge will need to do that, but
 24 it is a curious matter. No doubt the creditors
 25 will, if they think it relevant, be puzzling

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1 over that themselves, but I leave that. It is
 2 just something which I wanted to make sure,
 3 first of all, I hadn't misunderstood and
 4 I don't seem to have done so.
 5 MR FISHER: No.
 6 SIR ANTHONY MANN: Yes. If you let my
 7 clerk have a draft of a Word version of the
 8 order to seal. I will make sure that is
 9 sealed.
 10 Otherwise, can I ask somebody on your
 11 side — there are boxes here — to remove the
 12 papers so they are not hanging around in
 13 the court. I don't need to retain them for the
 14 order. If I need anything, I have got them
 15 from the link supplied in any event, but I
 16 don't expect I will need them.
 17 Is there anything else in?
 18 MR FISHER: My Lord, there is not. We are
 19 very grateful.
 20 SIR ANTHONY MANN: No, Mr Passfield.
 21 MR PASSFIELD: Nothing from me.
 22 SIR ANTHONY MANN: Thank you.
 23 You'll make sure that the transcript does
 24 find its way onto the website as soon as
 25 practicable.

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1 MR FISHER: Yes, my Lord.
2 SIR ANTHONY MANN: I hope at least that
3 was successfully translated. Good, thank you
4 both.
5 (4.16 pm)
6 (Hearing adjourned)
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