

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT**

No 2714 of 2005

**The Honourable Mr Justice David Richards
25 July 2008**

**IN THE MATTER OF WHITELEY INSURANCE CONSULTANTS (IN
LIQUIDATION) (also known as Kingfisher Travel Insurance and Kingfisher
Insurance Services) (A Firm)**

**AND IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS
ACT 2000**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

MINUTE OF ORDER

UPON THE APPLICATION for directions issued by the Joint Liquidators (“the Liquidators”) of Whiteley Insurance Consultants (“WIC”) on 12 July 2007 (“the Application”)

AND UPON HEARING on 10-13 December 2007 Counsel for the Liquidators and the solicitor-advocate for the Financial Services Authority

AND UPON FURTHER HEARING on 25 July 2008 Counsel for the Liquidators and the solicitor-advocate for the Financial Services Authority

AND UPON READING the Second Witness Statement of Dan Yoram Schwarzmann dated 5 July 2007, the Third Witness Statement of Dan Yoram Schwarzmann dated 23 November 2007, the exhibits to those witness statements and the further documents listed on the Court file as having been read

AND UPON THE COURT DECLARING AND CONFIRMING THAT:

- (1) WIC effected and carried out insurance policies which were not underwritten by an authorised insurer (“Unauthorised Policies”) and was and is liable to policyholders as principal in respect of such policies.
- (2) Those policyholders who purchased Unauthorised Policies issued by WIC between 1 November 2001 and 13 January 2005 are entitled under section 26(2) of the Financial Services and Markets Act 2000 (“FSMA”) to return of the money they paid (“Premium”, as more fully defined in Schedule 1 to the Protocol at Annex 1 to this Order), but may instead elect to treat the policy of insurance as enforceable against WIC.
- (3) The Liquidators are to proceed on the basis that the discretion of the Court under section 28(3) FSMA would not be exercised to permit WIC to retain Premiums received in respect of Unauthorised Policies.
- (4) Policyholders who purchased Unauthorised Policies on or after 14 January 2005 are not entitled to return of Premium.
- (5) The Insurers (Reorganisation and Winding Up) regulations 2004 do not apply to WIC.
- (6) The Insurers (Winding Up) Rules 2001 (SI 2001/3635) (“the Insurers Rules”) do apply to the winding up of WIC and in particular to the valuation of Unauthorised Policies which had not expired at the date of the liquidation (whether issued before or after 14 January 2005).
- (7) Claims in respect of the unexpired portion of such policies as at the liquidation date of WIC fall to be valued in accordance with paragraph 3(2)(a)(ii) of Schedule 1 of the Insurers Rules.
- (8) Policyholders may have further claims for which they can prove in the liquidation of WIC (“the Liquidation”) in respect of:

- (a) claims (under policies of travel insurance issued on or before 13 January 2005 which the policyholder is electing to enforce, or under enforceable policies of travel insurance issued after 14 January 2005) in respect of insured events and losses which took place before the liquidation date;
- (b) claims for damages for breach of contract, in particular for the additional cost of travel insurance cover to replace cover under policies issued by WIC; and
- (c) incidental costs.

AND IT IS ORDERED AND DIRECTED AS FOLLOWS:

1. The Liquidators are to admit or reject claims from policyholders arising from or in respect of Unauthorised Policies in accordance with the Protocol at Annex 1 to this Order.
2. The Liquidators are to give notice of the Court's judgment on the Application, this Order and the Protocol to those who are or have been policyholders in respect of Unauthorised Policies, in the following manner:
 - i) A copy of the Judgment dated 25 July 2008 and this Order are to be made available for download as soon as reasonably practicable on the internet web-site at www.pwc.com/uk/whiteley;
 - ii) The Liquidators are as soon as reasonably practicable to send to all those policyholders (including former policyholders) of whose addresses they are aware a letter substantially in the form of the draft letter at Annex 2 to this Order, notifying them of the terms of this Order;
 - iii) The Liquidators are as soon as reasonably practicable to place an advertisement substantially in the form of the draft advertisement at Annex 3 to this Order in the following publications:

- a) Daily Mail;
- b) Yorkshire Post;
- c) Halifax Evening Courier;
- d) Travel Weekly;

and are at liberty to place further advertisements in such publications as they consider are likely to bring this Order to the attention of policyholders or former policyholders who may be entitled to claim in the Liquidation.

3. Where it appears to the Liquidators from the books and records of WIC or communications with a policyholder or former policyholder that the policyholder would be entitled to prove for dividend under the Insolvency Rules, the Liquidators may notify the policyholder of the amount for which he appears entitled to claim and invite the policyholder to confirm whether he wishes to claim in that amount.
4. Where the Liquidators have valued a policy for the purposes of the Insurers Rules, the notice required to be sent to the policyholder pursuant to rule 22(1) of the Insurers Rules may be sent by first class post and shall be deemed to have been served on the second day after it was posted.
5. The Liquidators have permission to make such minor corrections and modifications to the Protocol and its schedules as it reasonably appears to their solicitors may be made without requiring further decision of the Court.
6. Liberty to the Liquidators and any person affected by this order to apply. Any person other than the Liquidators is to give not less than three clear working days' notice of the intention to make such an application to the solicitors to the Liquidators, Berwin Leighton Paisner, of Adelaide House, London Bridge, London EC4R 9HA (tel: 020 7760 1000): ref DUL.

7. The Liquidators' costs of and incidental to the Application, beyond those for which provision is already made under the Order of Chief Registrar Baister dated 19 July 2007, are to be paid as an expense of the Liquidation.
8. The costs of the Liquidation Committee of and incidental to the Application are to be paid as an expense of the Liquidation, to be assessed on the standard basis if not agreed.

ANNEX 1

PROTOCOL

1. This Protocol sets out the basis on which, following the judgment of the Honourable Mr Justice David Richards dated 25 July 2008, the Joint Liquidators of WIC will admit or reject certain claims by holders of Unauthorised Policies to prove for dividend in the liquidation of WIC ("Claims").
2. Abbreviated terms in this Protocol have the meanings set out in Schedule 1. Schedule 2 contains guidance on how to identify an Unauthorised Policy.

Unauthorised Policies purchased in the Earlier Period

3. The Court has directed that holders of Unauthorised Policies purchased during the Earlier Period are entitled to return of premium if they are not treating their policy as enforceable, and that the Liquidators are entitled to proceed on the following assumptions:
 - i) the following policyholders would not wish to claim a return of Premium:
 - a) Any policyholder who has made and been paid a claim;
 - b) Any policyholder who had made a claim under their policy (greater than the Premium paid) which was due for payment at the Liquidation Date;
 - c) Any policyholder who has a claim (greater than the Premium paid) arising out of events which occurred before the Liquidation Date (whether or not a claim had been made before the Liquidation Date);
 - ii) other holders of Unauthorised Policies (including any policyholder who would have had a claim arising out of events after the Liquidation Date) would wish to claim a return of Premium.
4. The Court has further directed that those policyholders who are entitled to return of Premium are not entitled to interest on their claim for return of Premium, or to other compensation under section 26(1)(b) FSMA.
5. Where a policyholder has made or is making a claim under a policy purchased in the Earlier Period and part of the term of the policy had not expired at the Liquidation

Date, the Court has directed that the policyholder is also entitled to claim for the value of that part of the Premium which is proportionate to the unexpired portion of the policy period under paragraph 3(2)(a)(ii) of Schedule 1 to the Insurers Rules.

6. A policyholder may in principle prove under the Insolvency Rules for the following claims as damages for breach of contract:
 - i) The cost of replacement cover for a period covered by an Unauthorised Policy (as an alternative to a claim for return of Premium);
 - ii) Incidental costs.

Unauthorised Policies purchased in the Later Period

7. The Court has directed that holders of Unauthorised Policies purchased during the Later Period are not entitled to return of Premium.
8. A holder of an Unauthorised Policy purchased during the Later Period may prove under the Insolvency Rules for a claim under the policy which had arisen by the Liquidation Date.
9. Where part of the term of a policy had not expired at the Liquidation Date, the Court has directed that the value of the policy for which the policyholder is entitled to claim is the value of that part of the Premium which is proportionate to the unexpired portion of the policy period under paragraph 3(2)(a)(ii) of Schedule 1 to the Insurers Rules.

Admission and Rejection of Claims

10. The Joint Liquidators will therefore admit or reject Claims as set out in Part 1 (Earlier Period) and Part 2 (Later Period) of this Protocol, set out below.
11. In considering whether a policy was an Unauthorised Policy and whether a claim should be admitted, the Liquidators will take into account any replacement cover which may have been arranged by a travel agent.
12. While the Liquidators will admit Claims as set out above, a policyholder will not be precluded from formulating their claim on any other basis which may be open to them, subject to the rule prohibiting double-recovery.
13. The Liquidators will exercise their statutory powers and duties under the Insolvency Act and Rules in respect of proofs of debt and the admission, rejection and compromise of claims.

PART 1: Earlier Period

(Unauthorised Policies purchased between 1 November 2001 and 13 January 2005)

A where no claim has been or is being made under the policy:

A claim for full return of Premium will be admitted.

Where the existence of the policy and the amount paid appear from the records of WIC, the Liquidators may notify the policyholder of the amount for which it appears that they would be entitled to claim, and invite them to confirm that they wish to claim for that amount.

The Liquidators may require the policyholder to provide evidence sufficient to satisfy them as to the existence of the policy and the amount paid.

B where the policyholder has made a claim under the policy which has been paid by WIC prior to the Liquidation

A claim for return of Premium will not be admitted.

If the policy had not expired at the Liquidation Date, the policyholder will be admitted without proof under the Insurers Rules for an amount equal to that part of the Premium which is proportionate to the unexpired portion of the policy period.

C where an event or loss giving rise to a claim under the policy had occurred prior to the Liquidation Date but had not been paid (whether or not it had been notified to WIC at that date)

The claim will be admitted for proof under the Insolvency Rules subject to the terms of the policy and evidence sufficient to satisfy the Liquidators as to the existence of the policy and the insured loss.

A claim for return of Premium will not be admitted.

If the policy had not expired at the Liquidation Date, the policyholder will be admitted without proof under the Insurers Rules for an amount equal to that

part of the Premium which is proportionate to the unexpired portion of the policy period.

D where an event or loss giving rise to a claim under the policy occurred after the Liquidation Date

The claim will not be admitted.

The policyholder will be admitted without proof under the Insurers Rules for return of Premium (unless another claim is being made under the same policy in respect of an insured event or loss which occurred prior to the Liquidation Date, in which case paragraphs B or C above will apply) .

E where a claim is made for the cost of a policy to replace the unexpired period of a policy from WIC

A policyholder may claim the cost of alternative cover as damages for breach of contract, but will be required to give credit for any return or pro-rata return of Premium.

A policyholder will be treated as electing to receive the larger of (a) the Premium to be returned (or, where a claim has been or is being made, the proportionate amount of Premium for the unexpired period); and (b) the amount paid in respect of the replacement policy for the period covered by the policy from WIC.

A policyholder wishing to prove for alternative cover will be required to provide evidence sufficient to satisfy the Liquidators of the amount paid for the alternative policy and the period covered.

F where a claim is made for incidental costs and expenses

A policyholder may prove for incidental costs and expenses as a claim for damages for breach of contract, and will be required to provide evidence sufficient to satisfy the Liquidators of the amount and the circumstances.

G Claims for interest and other compensation under section 26 FSMA

Claims for interest and other compensation will not be admitted.

PART 2: LATER PERIOD (Unauthorised Policies issued on or after 14 January 2005)

- A** where an event or loss giving rise to a claim under the policy had occurred prior to the Liquidation Date but had not been paid (whether or not it had been notified to WIC at that date)

The claim will be admitted for proof under the Insolvency Rules subject to the terms of the policy and evidence sufficient to satisfy the Liquidators as to the existence of the policy and the insured loss.

- B** where a policy had not expired at the Liquidation Date

the policyholder will be admitted without proof for an amount equal to that part of the Premium which is proportionate to the unexpired portion of the policy period

- C** where a claim is made for the cost of a policy to replace the unexpired period of a policy from WIC

A policyholder may claim the cost of alternative cover as damages for breach of contract, but will be required to give credit for any pro-rata return of Premium.

A policyholder wishing to prove for alternative cover will be required to provide evidence sufficient to satisfy the Liquidators of the amount paid for the alternative policy and the period covered.

- D** where a claim is made for incidental costs and expenses

A policyholder may prove for incidental costs and expenses as a claim for damages for breach of contract, and will be required to provide evidence sufficient to satisfy the Liquidators of the amount and the circumstances.

- E** Claims for return of Premium

Claims for return of Premium or damages equal to the amount of Premium paid will not be admitted.

ANNEX 1: PROTOCOL

SCHEDULE 1

The following abbreviations are used in this Protocol

WIC	Whiteley Insurance Consultants (also known as Kingfisher Travel Insurance and Kingfisher Insurance Services)
Authorised Policy	a policy of insurance issued by WIC which (at the time it was purchased, or retrospectively) was underwritten by an authorised insurer, as described more particularly in Schedule 2
Unauthorised Policy	a policy of insurance issued by WIC which was not (at the time it was purchased, or retrospectively) underwritten by an authorised insurer, and which does not appear in the list of authorised policies contained in Schedule 2
the Earlier Period	the period between 1 November 2001 and 13 January 2005 inclusive
the Later Period	the period beginning on 14 January 2005
FSMA	the Financial Services and Markets Act 2000
the Insurers Rules	The Insurers (Winding Up) Rules 2001 (SI 2001/3635)
The Insolvency Rules	The Insolvency Rules 1986 (SI 1986/1925) as amended
the Liquidation	the liquidation of WIC
the Liquidation Date	15 June 2005
the Liquidators	Dan Yoram Schwarzmann and Nicholas Edward Reed, the Joint Liquidators of WIC, and any other person from time to time holding that office
Premium	all monies paid by or on behalf of a policyholder to WIC or to WIC's agent in connection with a policy