

# Lloyd's Members Agency Services Limited

Your ref:

Our ref: LMAS/MH/«MEMBER\_CODE»

Please reply to: LMAS  
Gun Wharf  
Dock Road  
Chatham Kent  
ME4 4TU

31 March 2006

«CorrespondenceName»

«Address\_Lines»

«Post\_Code»

«COUNTRY»

Telephone: 01634 39 «Extension

Facsimile: 01634 392081

Web site: <http://www.lmas.co.uk>

e-mail: «EMail»

## MEMORANDUM

### SYNDICATES 535/536 YEARS 1999 – 2001

#### LLOYD'S MEMBERS' COMPENSATION SCHEME

I refer to previous correspondence, in particular to my memorandum of 22<sup>nd</sup> December 2004 (a copy of which is attached), in connection with Syndicates 535/536.

Following this earlier correspondence some participating Names joined an Action Group with a view to obtaining redress through litigation. However, it has transpired that the Cotesworth 535/536 Action Group has made an application to Lloyd's seeking compensation for Names via the Lloyd's Members' Compensation Scheme.

Under the compensation byelaw it is incumbent upon Lloyd's, via their members' agents, to advise all participating Names in the above syndicates of this action and to provide them with, if they have not already done so, the opportunity to be included in the Action Group's claim.

I enclose a copy of the letter I have received from Paul Brady (solicitor with Lloyd's Legal Services department) which I trust is self-explanatory.

I have been advised that for "New Members Only" the cost of joining the Action Group will be £500 plus 1.75% of aggregate participation where the aggregate participation is £20,000 or less, where the aggregate participation is in excess of £20,000 a fee of 4.25% will be charged.

Quite clearly where you have a relatively small involvement in the syndicates you may consider that joining the group will have little or no value. I understand the Action Group is seeking full recovery of losses under the compensation scheme. However, I am unable to comment on the merits or otherwise of the case or indeed on the likelihood of a successful outcome.

cont/...

**If you wish to be party to the Action Group's claim, you should contact the Action Group at the address shown by no later than 30<sup>th</sup> April 2006.**

If you have any further questions to raise I shall do my best to answer them for you.

«LetterName»

Enc.

# Lloyd's Members Agency Services Limited

LMAS/MB/«MEMBER\_CODE»

22 December 2004

«CorrespondenceName»

ion»

«Address\_Lines»

«Post\_Code»

«COUNTRY»

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Gun Wharf  
Dock Road  
Chatham Kent  
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## MEMORANDUM

### SYNDICATES 535/536 YEARS 1999 TO 2001

Further to my memorandum of 12<sup>th</sup> October in connection with the above, representatives of LMAS attended the meeting called by Capita Syndicate Management Limited (Capita) for members agents on 19<sup>th</sup> October 2004, which outlined the Joint Provisional Liquidators (JPL) arguments which have prompted legal proceedings against, four individuals who were variously former Directors of Cotesworth & Co Limited (managing agent) and/or Cotesworth Capital Limited (the corporate member) and/or Luxemburg European Reinsurance SA (LURECO) the provider of the syndicates reinsurance cover. In addition, the joint liquidators are making claims against LURECO and the syndicate auditors and actuaries.

At the time of writing two Directors have filed their defence but the remaining two have been granted a further extension, until 21<sup>st</sup> January 2005, to present their defences. However rather than wait until that point is reached it is felt that you should be acquainted with the position at the present time to give you as much time as possible to consider what action, if any, you would wish to take.

At the meeting Capita provided a booklet setting out the salient facts and a copy is enclosed for your information.

The JPL's contend that the Directors of the managing agent breached their fiduciary and regulatory duties in connection with the conclusion of various transactions affecting or varying the syndicate's reinsurance programme. A similar claim is made against the Director of the corporate member as stated above and, in addition, its decision to continue underwriting as a corporate member and subsequently increasing their capacity on the syndicates.

cont/...

The claim against LURECO, in connection with its involvement with the reinsurance transactions, particularly wrongfully assisting the above Directors to commit a breach of duty and conspired by unlawful means to defraud or cause harm to the corporate member.

The JPL's are seeking reimbursement of all losses suffered on all years of account; their claim is for one of US\$75m.

The analysis prepared by Capita, based on the results of a nominal £10,000 share, indicates the rearrangement of the reinsurance programme has had a detrimental effect on the overall result of syndicate 535 of approximately 5% and 7½% for the 1999 and 2000 accounts respectively. The 2001 account shows a marginal surplus. For the 1999 account of Syndicate 536 the relevant detrimental effect is approximately 33% on a notional £10,000 share.

The syndicate's forecast results at the second quarter, June 2004, are as follows;

Syndicate	Year of Account	Current Forecast Loss %	Already Called %	Your Share on Syndicate (£) *
535	1999	98	88	«V1»
	2000	82	74	«V2»
	2001	68	75	«V3»
536	1999	119	101	«V4»

\* includes Bespoke and/or MAPA involvement.

On the basis of the information presented there appears to be a prima facie case to answer.

However, before you actively pursue the protective proceedings served on your behalf, and if you wish to do so **these must be instigated before 5<sup>th</sup> February 2005**, you should consider the complexity of the case, the undoubtedly lengthy legal process and, of course, the associated costs, but clearly there is the option for Names to form an action group.

A further meeting was called by Capita for Members Agents on 21<sup>st</sup> December at which time an update on the result for a notional £10,000 share was provided based on the 3<sup>rd</sup> quarter figures 2004. The forecast shows an improvement in the overall result of syndicate 535, 1999, 2000 and 2001 years of account. The syndicates Energy Account has seen a favourable movement between the 2<sup>nd</sup> and 3<sup>rd</sup> quarter which has caused the syndicate's actuaries to review the reserves held with the result that reserves have been released.

The impact of the above on syndicate 535 re-arranged LURECO reinsurance programme has seen the detrimental effect on the overall result reduce to 1.31% and 1.40% for the 1999 account and 2000 account respectively. The 2001 account marginal surplus has increased to 2.59%. **The loss position of the 1999 account of syndicate 536 remains unchanged**

cont/...

«CorrespondenceName»

- 3 -

It was the view of the Members Agents present that an opinion be obtained from David Tiplady of the firm Kendall Freeman as to the merits or otherwise of Names pursuing litigation, particularly in light of the revised position of syndicate 535. I shall write to you again once I have had his advice.

If you have any questions to raise in connection with this memorandum and enclosures, please let me know and I will do my best to answer them for you.

«LetterName»

Enc.

**STRICTLY CONFIDENTIAL**

Paul Box  
 LMAS  
 Lloyd's  
 Chatham  
 CH/L3



28 March 2006

Your reference  
 Our reference

Dear Mr Box

**Lloyd's Members' Compensation Scheme - Cotesworth Syndicates 535/536**

As you may be aware an Action Group representing certain individual members and quasi individual members who participated on syndicate 535 for the 1999-2001 years of account and syndicate 536 for the 1999 year of account have made an application to Lloyd's under the terms of the Members' Compensation Scheme ("the Scheme").

The background factual matters to which the application relates were outlined to members' agents at the meetings convened by Capita and by Lloyd's on 19 October and 21 December 2004.

The Council of Lloyd's has appointed a Members' Compensation Panel ("the Panel") to consider the Action Group's application. The Panel comprises three nominated members of Council and a copy of the Panel's terms of reference is attached.

Under the Members' Compensation Scheme Byelaw Lloyd's is required to notify members and their members' agents of the fact that an application has been received by Lloyd's. This is in order that any other relevant members on the syndicates in question may also make a similar application under the terms of the Scheme if they so wish. Accordingly, this letter should be treated as notice to other relevant members in accordance with the provisions in the Byelaw.

Under section 5(3) of the Byelaw any further members who wish to make an application must do so within 6 months of the date of this letter.

In the event that any further member wishes to pursue a claim as part of the current Action Group's application, we would ask that those further members notify the Action Group that they wish to be part of the Action Group's application as soon as possible. As the Action

Group's application is currently before the Panel, and given that the factual matters relating to the application have been made known to members' agents since 2004, we would ask that any further members who wish to be included as part of the current Action Group's claim contact the Action Group by no later than 30 April 2006.

The contact details for the Action Group are -

Cotesworth 535/536 Action Group  
c/o Mr Leon Metcalfe  
Lee Manor, The Lee  
Great Missenden  
Buckinghamshire HP16 9NA

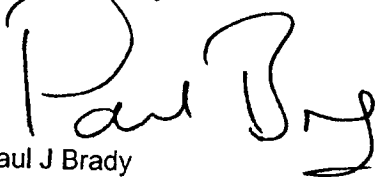
Tel – 01494 837 633  
Fax – 01494 837 674  
Email – [metcalfehome@aol.com](mailto:metcalfehome@aol.com)

The Action Group's solicitors are Clyde & Co (Mr Bryan Young).

This letter has been sent to each members' agent and to the ALM.

If you have any further queries relating to this matter please do not hesitate to contact me.

Yours sincerely



Paul J Brady  
Solicitor  
Legal & Compliance

Telephone +44 (0)20 7327 5750  
Fax +44 (0)20 7327 5414  
Email [paul.j.brady@lloyds.com](mailto:paul.j.brady@lloyds.com)

cc. Gavin Steele                      Secretary to the Council of Lloyd's  
Anthony Young                      Association of Lloyd's Members  
Bryan Young                          Clyde & Co.

Encl.

### **Terms of reference of the Panel**

The Council hereby resolves, in accordance with paragraph 7(5) of the Members' Compensation Scheme Byelaw and paragraph 3 of the Quorums and Appointment of Committees and Sub-Committees Byelaw, to appoint with immediate effect the Members' Compensation Panel.

1. The Members' Compensation Panel shall –
  - a. consider and administer the application made by the Cotesworth Action Group ("the application")
  - b. determine the procedure for and any procedural matters arising in connection with the consideration, administration and determination of the application;
  - c. provide one or more written reports to the Council; and
  - d. determine the application (save that it shall not make any final determination of the application before it has provided a report to the Council indicating the nature of the decision it is minded to take).
  - e. make any recommendations to the Council for the modification or amendment of the Members' Compensation Scheme (either in respect of the application of the Members' Compensation Scheme to the current application or generally).
2. The Members' Compensation Panel may exercise on behalf of the Council any power, discretion or function of the Council contained in the Members' Compensation Scheme Byelaw, and shall exercise the Council's duties under the Scheme.
3. The Members' Compensation Panel shall comprise Bill Knight (Chairman), Judith Hanratty and Andreas Prindl.