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to be true copy of the  
original.  
Signed.....

*DWB Lyle AWP*

NOT FOR SERVICE OUT  
OF THE JURISDICTION

714

1997 FOLIO NO.

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

B E T W E E N :

THE SOCIETY OF LLOYD'S

Plaintiff

- and -

MEADE MELVIN MCCAIN

Defendant



TO the Defendant Meade Melvin McCain of 15080 Green Circle Drive, Chesterfield, Missouri, MO 63017, U S A

**ORIGINAL**

This Writ of Summons has been issued against you by the above-named Plaintiff in respect of the claim set out herein.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office mentioned below the accompanying **Acknowledgment of Service** stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings the Plaintiff may proceed with the action and Judgment may be entered against you forthwith without further notice.

Issued from the Admiralty and Commercial Registry of the High Court this 24th day of March 1997

**NOTE:** This Writ may not be served later than four calendar months (or, if leave is required to effect service out of the jurisdiction, six months) beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

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## POINTS OF CLAIM

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### INTRODUCTION

1. The Plaintiff ("Lloyd's") is a Society and Corporation incorporated under the Lloyd's Acts 1871 to 1982 comprising all persons admitted as members of Lloyd's.
2. Lloyd's has at all times had power pursuant to the Lloyd's Acts 1871 to 1982, and in particular Sections 6 and 16 and Schedule 2 of the Lloyd's Act 1982, to make such byelaws as from time to time seemed requisite or expedient to the Council of Lloyd's ("the Council") for the proper and better execution of the Lloyd's Acts 1871 to 1982; for the furtherance of the objects of Lloyd's; and such byelaws as the Council thinks fit for any or all of the purposes specified in Schedule 2 of the Lloyd's Act 1982.
3. The Defendant was elected as an underwriting member of Lloyd's with effect from 01/01/80. In consideration of his admission to and/or continued membership of Lloyd's, the Defendant signed an undertaking with Lloyd's in which he expressly agreed that he would be bound by the provisions of the Lloyd's Acts 1871 to 1982, such byelaws as were made or were to be made thereunder and any direction given or provision or requirement made by the Council or on its behalf.
4. Pursuant to the powers conferred upon it by the Lloyd's Acts, Lloyd's on 18 July 1983 enacted The Substitute Agents Byelaw (No. 20 of 1983) and thereafter amended it by further byelaws on 8 September 1993 and 6 December

1995. In these Points of Claim the term "Substitute Agents Byelaw" refers to the byelaw in its form following these amendments. The Plaintiff will rely upon the provisions of the Substitute Agents Byelaw set out in Schedule 1.

5. Pursuant to the powers conferred upon it by the Lloyd's Acts, Lloyd's on 6 December 1995 enacted The Reconstruction and Renewal Byelaw (No. 22 of 1995). The Plaintiff will rely upon the provisions of The Reconstruction and Renewal Byelaw set on Schedule 2.

6. On 3 September 1996, pursuant to the powers conferred by the Substitute Agents Byelaw, the Reconstruction and Renewal Byelaw and Lloyd's Acts, the Council made the resolutions and directions set out in Schedule 3 hereto ("the Resolutions and Directions"), the terms and definitions of which are adopted in these Points of Claim. By the Resolutions and Directions:

(1) the Council appointed Additional Underwriting Agencies (No. 9) Limited ("the Substitute Agent") with immediate effect as substitute managing agent for the Defendant in respect of:

(a) such syndicates and closed year syndicates as are constituted for the 1992 or any earlier year of account of which the Defendant is a member in respect of the entire business of such syndicates and closed year business save for Relevant Syndicates and Relevant Business of any other syndicates;

(b) such syndicates as are constituted for the 1993 or any later year of account of which the Defendant is a member in respect of

that part of their underwriting business which comprises the Syndicate 1992 and Prior Business and all assets, cash and other items in respect of the Syndicate 1992 and Prior Business of such syndicates save for Relevant Syndicates and Relevant Business of any other syndicates;

- (2) the Council directed the Substitute Agent to do all such acts and execute all such deeds, instruments and documents relating to or in connection with the Business as may from time to time appear to the Substitute Agent to be requisite or expedient for the purposes of or in connection with the implementation of the Reconstruction and Renewal Proposals, including the Reinsurance Contract;
- (3) the Council directed the Substitute Agent to execute the Reinsurance Contract for itself, and on behalf of the Members, including the Defendant, in such form as the Council may direct;
- (4) the Council directed each of the Members, including the Defendant, to execute or concur in the execution of all contracts, deeds, assignments, mandates or other forms of authority reasonably required by or on behalf of the Substitute Agent for the purpose of carrying out the Business of the Member, including giving effect to the provisions of the Reinsurance Contract.

7. On 3 September 1996 pursuant to and in compliance with the Requirements and Directions, the Substitute Agent, acting on behalf of the Defendant, entered into the

Reinsurance Contract in the form directed by the Council with, Equitas Reinsurance Limited ("ERL").

8. The Reinsurance Contract contained the terms set out in Schedule 4 hereto.
9. On or by 3 September 1996, each of the determinations, resolutions and consents required by Clause 2.1 of the Reinsurance Contract before the obligations of ERL became unconditional had been made or received, and in the premises the Defendant's Name's Premium under the Reinsurance Contract, in the sum of £367,816.00 became due and payable at 12.00 BST (midday) on 4 September 1996. Particulars of the Defendant's Name's Premium appear in Schedule 5 hereto.
10. By an assignment evidenced by a Deed of Assignment dated 2 October 1996, ERL assigned all right, title, interest and benefit (present and future) in, under and pursuant to the Defendant's Name's Premium together with all right, title, interest and benefit (present and future) which may from time to time be distributed or derived from or accrue on or relate to the Defendant's Name's Premium. In accordance with Clause 5.8 of the Reinsurance Contract, notice of the assignment was given to the Substitute Agent on the Defendant's behalf on 3 October 1996, and notice was further given to the Defendant by letter from Lloyd's solicitors dated 24 February 1997. In the premises the said sum of £367,816.00 together with contractual interest thereupon is due and owing from the Defendant to Lloyd's.
11. Wrongfully and in breach of contract, and in breach of The Reconstruction and Renewal Byelaw, the Defendant has failed to pay the said sum of £367,816.00 or any sum to Lloyd's, by 4 September 1996 or at all.

12. Further Lloyd's claims interest on the said sum of £367,816.00 from 24 February 1997 until payment:

(1) pursuant to Clause 5.3 of the Reinsurance Contract at the rate of 2 per cent. per annum above the base rate of National Westminster Bank plc from time to time, being £13,954.33 to 23 March 1997 and continuing at the rate of £83.68 per day;

(2) alternatively pursuant to Section 35A of the Supreme Court Act 1981 at the rate of 8% per annum, being £14,027.39 to 23 March 1997 and continuing at the rate of £83.69 per day.

AND THE PLAINTIFF CLAIMS:

1. Pursuant to paragraph 10 above, £367,816.00
2. Pursuant to Clause 5.3 of the Reinsurance Contract, interest on £367,816.00 from 24 February 1997 until payment at the rate of 2 per cent per annum above the base rate of National Westminster Bank plc from time to time, being £13,954.33 to 23 March 1997 and continuing at the rate of £83.68 per day.
3. In the alternative to (2) above, interest on £367,816.00 from 24 February 1997 until payment pursuant to Section 35A of the Supreme Court Act 1981 at the rate of 8% per annum, being £14,027.39 to 23 March 1997 and continuing at the rate of £83.69 per day.

RICHARD AIKENS QC  
DAVID FOXTON

If, within the time for returning the Acknowledgment of Service, the Defendant pays the amount claimed and £589.25 for costs and, if the Plaintiff obtains an Order of Substituted Service, the additional sum of £47.75, further proceedings will be stayed. The money must be paid to the Plaintiff, his Solicitors or Agents.

This Writ was issued by Dibb Lupton Alsop, 6 Dowgate Hill, London EC4R 2SS (Ref: SGD) Solicitors for the said Plaintiff whose registered office is: One Lime Street, London, EC3M 7HA

1997 FOLIO NO.

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

B E T W E E N :

**THE SOCIETY OF LLOYD'S**

Plaintiff

- and -

**MEADE MELVIN MCCAIN**

Defendant

**WRIT OF SUMMONS**

Dibb Lupton Alsop  
6 Dowgate Hill  
LONDON  
EC4R 2SS

Tel: 0171 796 6625  
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F/E Ref : SGD



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SCHEDULE 1

The Substitute Agents Byelaw

1. The Council may, at its sole discretion, appoint a specified person to act as agent or sub-agent (a "Substitute Agent") for any underwriting member of the Society as to the whole or any part of that member's underwriting business:-
  - (a) where such member has no underwriting agent for the whole or such part of his underwriting business; or
  - (b) where in the opinion of the Council:
    - (i) such appointment is in the interests of such member; or
    - (ii) it is essential for the proper regulation of the business of insurance at Lloyd's ...
  
2. Where a Substitute Agent is appointed pursuant to this byelaw, the Council may give such directions as it considers appropriate:-
  - (a) to the Substitute Agent; and/or
  - (b) to an underwriting agent who at any time has acted for such member or who is subject to suspension (the "Prior Underwriting Agent");

in connection with the appointment of the Substitute Agent and the continuation of the agency business of the Prior Underwriting Agent or concerning the underwriting business of any member of the Society ...
  
3. Where a Substitute Agent is appointed pursuant to this byelaw, the Council may:-

(a) give such directions to any member of the Society ... as the Council may consider appropriate in connection with the appointment of the Substitute Agent and the continuation of the agency business of the Prior Underwriting Agent or concerning the underwriting business of any member of the Society or for the protection of any Lloyd's policy holder, the Society, any member of the Society ...

4. Where a direction is made under paragraph 2 or 3 of this byelaw, such direction shall take effect notwithstanding any contrary or inconsistent provision contained in any agreement between the Prior Underwriting Agent and any member of the Society.

## SCHEDULE 2

### The Reconstruction and Renewal Byelaw

#### 3. Power to promote Equitas scheme

(1) The Council may:

- (a) prepare and carry into effect the scheme forming part of the Reconstruction and Renewal Proposals (in this byelaw called "the Equitas scheme") for the reinsurance by a company formed or to be formed with the assistance of the Society ("Equitas") of certain liabilities of members or former members of the Society allocated or originally allocated to particular years of account on such terms... as may appear to the Council to be desirable or expedient; and
- (b) do all such things as may appear to the Council to be desirable or expedient for the purposes of or in connection with preparing and carrying into effect the Equitas scheme.

#### 4. Equitas reinsurance contracts

(1) Subject to the following provisions of this paragraph, the Council:

- (a) may direct members of the Society to enter into reinsurance contracts with Equitas with respect to such liabilities, for such premium to be paid or other consideration to be provided to Equitas, and generally on such terms, as shall be specified, provided or referred to in offers made by Equitas to the members concerned under the Equitas scheme;

- (b) may direct any underwriting agent for the time being

acting as such on behalf of a member of the Society to whom such a direction is given as is referred to in subparagraph (1)(a) is given to enter on behalf of that member into the reinsurance contract specified in that direction;

- (c) may direct any underwriting agent for the time being acting as such on behalf of a former member of the Society who remains subject to liabilities to which the Equitas scheme relates to enter on behalf of such former member into reinsurance contracts with Equitas with respect to such liabilities, for such premium to be paid or other consideration to be provided to Equitas and generally on such terms as shall be specified or referred to in an offer made by Equitas to that underwriting agent on behalf of the former member concerned under the Equitas scheme;
  - (d) may direct any such member of the Society or underwriting agent to execute all such deeds and documents and to do all such acts and things as may appear to the Council to be desirable or expedient in connection with or for the purposes of any such contract of reinsurance as is referred to in the preceding provisions of this subparagraph.
- (5) Every member of the Society or underwriting agent who enters into a contract of reinsurance with Equitas under this paragraph shall observe and perform the terms of that contract applicable to him or it and accordingly any failure on his or its part to observe or perform any such term shall be a failure to observe or perform an obligation imposed by this byelaw.

SCHEDULE 3

RESOLUTION AND DIRECTIONS OF THE COUNCIL OF LLOYD'S  
EFFECTIVE 3 SEPTEMBER 1996

Pursuant to the powers conferred by the Substitute Agents Byelaw (No. 20 of 1983) as amended, paragraph 6 of the Reconstruction and Renewal Byelaw (No.22 of 1995), section 6 of Lloyd's Act 1982 and all other powers enabling in that behalf the Council of Lloyd's ("the Council"):

**APPOINTMENT OF GLOBAL SUBSTITUTE MANAGING AGENT**

- (A) hereby resolves that Additional Underwriting Agencies (No. 9) Limited be and is hereby appointed with immediate effect to act as substitute managing agent (the **Substitute Agent**), for
- (i) the Members of such of the Syndicates and the Closed Year Syndicates as are constituted for the 1992 or any earlier year of account, in respect of that part of their underwriting business which comprises the entire business of such Syndicate or Closed Year Syndicate (except as otherwise set out herein in relation to Relevant Syndicates or the Relevant Business of any other Syndicate), and
  - (ii) the Members of such of the Syndicates as are constituted for the 1993 or any later year of account in respect of that part of their underwriting business which comprises the Syndicate 1992 and Prior Business of such Syndicates and all assets, cash and other items in respect of the Syndicate 1992 and Prior Business of such Syndicates (including assets and cash held in any Name's Premiums Trust Fund, LATF or LCTF and the right to recoveries under reinsurances, but excluding any assets or cash held in a Surplus Account which is in existence at the date of this resolution, outstanding cash calls, uncalled losses and open year deficiencies) except as otherwise set out

herein in relation to Relevant Syndicates or the Relevant Business of any other Syndicate; and

- (B) considers that it is appropriate pursuant to the appointment at (A) above (the **Appointment**) to give the directions set out below.

#### THE SUBSTITUTE AGENT

1. The Council hereby directs that the Substitute Agent shall have the following functions, powers and duties:

(i) to carry out all the functions, powers and duties of a managing agent for the Business attributable to that Member, being the functions, powers and duties hitherto carried out for that Member by the Prior Underwriting Agent of that Member;

(ii) to carry out the aforesaid functions, powers and duties on the terms and conditions contained in the Standard Managing Agent's Agreement set out in Schedule 3 to the Agency Agreements Byelaw (No. 8 of 1988), save that for this purpose:

(A) clause 3(j) shall be deleted;

(B) in clause 3(p) of that agreement the words "until such time as the liabilities arising out of that business are covered by reinsurance to close" shall be deleted;

(C) clause 6 shall be deleted;

(D) clause 8 shall be deleted;

(E) in clause 9.3, the sentence "Forthwith upon such determination ...Trustees" shall be deleted;

(F) clause 11 shall be deleted and replaced by the sentence "The Name shall not have any right to terminate the appointment of the Agent.";

(G) clause 11A shall be deleted;

(H) clause 14 shall be deleted;

- (iii) to do all such acts and things and execute all such deeds, instruments and documents relating to or in connection with the Business as may from time to time appear to the Substitute Agent to be requisite or expedient for the purposes of or in connection with the implementation of the Reconstruction and Renewal proposals (as defined in the Reconstruction and Renewal Byelaw (No. 22 of 1995)) including the Reinsurance Contract, the R&R Completion Agreement and the arrangements made by Lloyd's for the collection and delivery of money and other assets for the purpose of settlement of amounts payable under or in connection with the Reconstruction and Renewal proposals (and so that the following paragraphs are without prejudice to the generality of this paragraph);
- (iv) to execute the Reinsurance Contract for itself and on behalf of the Members in such form as the Council may direct and to undertake all obligations of the Substitute Agent under the Reinsurance Contract or the R&R Completion Agreement and to perform all functions necessary therefor or incidental thereto;
- (v) to execute the Centrewrite Reinsurance Contract, the PSL Companies Reinsurance Agreement, the E&O Companies Reinsurance Agreement, the Illinois Collateral Reinsurance, the Cession and Retrocession, the \$1104.70 trust and the Surplus Trust, the Syndicate PSL Administration Agreement, the Settlement Agreement, the R&R Completion Agreement and such other agreements as appear to the Substitute Agent to be necessary or desirable for the implementation of the Reconstruction and Renewal proposals or the arrangements made by Lloyd's for the collection and delivery of money and other assets for the purpose of