I direct pursuant to CPR Part 39 PD 6.1 that no official shorthand note shall be taken of this judgment and that this copy may be treated as authentic

Mr Justice Colman

FREDERICK ENOCH PRICE AND MARGARET ANN PRICE
AND
THE SOCIETY OF LLOYD'S

Judgment given by Mr Justice Colman
in Public
on 22nd October 1999

Mr Frederick Price in person and on behalf of Mrs Price.

Mr Mark Templeman and Mr James Collins on behalf of the defendants instructed by Lloyd's Legal Services Department.

Introduction

On 1st October 1998 Mr and Mrs Price started proceedings against Lloyd's claiming nine heads of relief. The points of claim were later amended with leave and, as such, include claims for relief, the nature of which is not always clearly identified, in respect of the following matters:

(i) It is alleged that there was a manifest error in the amount which Mr and Mrs

Price have been charged in respect of Equitas reinsurance premium in consequence of the R & R market settlement and that, had their premiums been properly calculated so as to take fully into account the £1.9 billion reduction in the global Equitas premium due to double counting of exposures, the amounts payable by them in respect of their accounts at Lloyd's would be very substantially reduced. I refer to this as "the Manifest Error Point".

(ii) It seems to be said that Lloyd's ought to have given Mr and Mrs Price the benefit of their "share" of this £1.9 billion, at least in their debt credits. I refer to this as "the Debt Credit Point".

(iii) Lloyd's is said to have withheld information as to the calculation of the Equitas premium in breach of duty to the claimants. I refer to this as "the Withholding of Information Point".

(iv) It is alleged that Lloyd's was in breach of its duty to the claimants by failing in 1989 to close down the managing agents of syndicates of which the claimants were members, namely Rose Thomson Young (Underwriting) Ltd ("RTY") or at least to provide to members of that agency's syndicates information as to the contents of a Lloyd's General Review Department report on RTY produced in September 1989. This had drawn attention to serious weaknesses in the control of the RTY syndicates and in the syndicate selection procedure. The claimants say that Lloyd's were acting in bad faith in failing so to act. I refer to this as "the RTY Point".

(v) The claimants allege that in respect of errors and omissions ("E&O") risks there was a breach of duty by Lloyd's in requiring that all claims against the names be treated as debits against underwriting names without giving them credit for claims made by them. This had the effect that names' solvency margins were reduced and they were therefore forced to cease underwriting, so losing the opportunity of deriving profits from continuing to underwrite during subsequent profitable years of account from 1993 onwards. It is alleged that Lloyd's acted in bad faith in this regard. I refer to this as "the E&O Claims Point".

(vi) It was said that Lloyd's failed in or about 1993 in breach of duty to intervene to cause the managing agents of Syndicate 780 to make prior year adjustments to the syndicate accounts and therefore to members' accounts so as to give credit to the claimants in relation to accounting errors which overstated losses in prior years due to the lack of a proper solvency committee for reinsurance. I refer to this as "the Syndicate 780 Point".

(vii) It was that Lloyd's was in breach of duty to the claimants in approving Knightstone, a new Lloyd's agent which took over RTY in 1992 and became insolvent in mid-1993 with the consequence that RTY names suffered losses in fees paid over and other payments made while it was trading and which have not been recovered from directors and staff at Knightstone by P&B (Run-Off) who replaced Knightstone. I was informed by Mr Price that this claim is not pursued. As at present advised this appears to me to be a sensible course as it would seem to be hopeless.

(viii) It is said that Lloyd's has committed the tort of harassment against Mrs Price. I refer to this as "the Harassment Point".

In response to these claims Lloyd's has served a defence and counterclaim by which it has denied liability and has counterclaimed for amounts said to be due to it under the Finality Statement, including the amount of Mr and Mrs Prices' Equitas premium. The total amounts counterclaimed by Lloyd's are:

(i) against Mr Price £488,731.14 together with interest of at least £115,648.52.

(ii) against Mrs Price £357,367.78 together with interest of at least £84,563.99.

It is the reinsurance premium constituents of these figures which Mr and Mrs Price allege are overstated due to manifest error (the Manifest Error Point).

There are before me two applications. Lloyd's apply under CPR 24: (i) for the claim to be dismissed on the grounds that the claimants have no real prospect of success on any of the matters raised in their points of claim and (iii) for summary judgment on the counterclaim against Mr Price and Mrs Price respectively for the amount shown as due on their respective Finality Statements and statements of account issued as part of the R&R system by Members Service Unit ("MSU") on the grounds that Mr and Mrs Price have no real prospect of successfully defending these claims. The claimants, on the other hand, apply for summary judgment on their claims and further apply for orders that Lloyd's counterclaims be dismissed substantially on the grounds that Lloyd's has no real prospect of succeeding in their defence or in their counterclaim. It will be apparent that the underlying issues

overlap, at least in respect of the Manifest Error Point and I shall accordingly, first consider the substance of that issue in the context of both applications.

The Manifest Error Point

The basis of this issue is as follows. Under R&R those underwriting members of Lloyd's who were on risk in respect of underwriting years 1992 and prior were to be re-insured in respect of the risks attributable to those years by Equitas. The details of the R&R scheme will he found more fully described in my judgment in Society of Lloyd's v. Leighs [1997] CLC 759 and it is unnecessary for present purposes to do more than identify the following features.

(i) The reinsurance of the 1992 and prior underwriting years was fundamental to the R&R settlement scheme. The calculation of the reinsurance premium was a matter of immense difficulty, not least because of the impact on market exposures of the LMX spiral. The reserving exercise necessary to calculate the global premium to be paid by the Lloyd's market to Equitas was undertaken with great care and after taking comprehensive outside expert actuarial advice: see Leighs, supra, pages 776 to 777. The global figure thus arrived at was the consequence of a process of reserving by reference to the book of business of each syndicate and the part of the global premium attributed to each syndicate was derived from that syndicate's exposures. The members of the syndicate then became liable to pay what was called "the Equitas additional premium" in accordance with the extent of their participation in the syndicate: see Leighs, supra, page 783 C-D.

(ii) The R&R scheme involved an offer being made to underwriting members of Lloyd's which they were obliged to accept by September 1996. Whether they accepted or not, they were obliged to pay the Equitas premium. They had to pay their proportion of those losses which had been identified as accruing to their syndicates up to 15 March 1996, including those attributable to 1993. If they had accepted Lloyd's offer, in consideration of waiving all claims against those involved in their underwriting in respect of the 1992 and prior years, they were entitled to what were termed "debt credits". These were contributions to their liability in respect of accrued claims and Equitas additional reinsurance premium from a number of different sources, including Lloyd's Central Fund, brokers, underwriting agencies and auditors. The impact of these debt credits was to reduce the total amount of what would otherwise be payable to Lloyd's by the member. Payment of the Equitas premium was to be made to Lloyd's and not to Equitas because, as described in Leighs, supra, Equitas had validly assigned the right to payment of the premium to Lloyd's.

(iii) As part of the process leading up to the putting forward of the offer contained in the Settlement Offer Document Lloyd's provided to each member an Indicative Finality Statement in March 1996. This was based on syndicate declared results up to 31st December 1994. It showed an indicative or provisional calculation of the Equitas additional premium. Then in August 1996 Lloyd's provided to each member a Finality Statement. This was based on the latest underwriting information and reserve figures in respect of each syndicate which had become available since preparation of the Indicative Finality Statement. These were the figures by reference to which the underwriting members were to decide whether to

accept the terms of the R&R settlement expressed in the Settlement Offer Document. Again it showed the amounts payable in respect of accrued losses and in respect of the Equitas additional premium.

(iv) Following the coming into operation of the R&R scheme MSU sent out to all the members an account notifying them of the amount which was due from each. If the member had accepted R&R, debt credits would be shown. If the member had not accepted R&R, these would not be shown and no deductions would be made on that account. It is in respect of the figures for the Equitas additional premium shown by MSU on these statements that Mr and Mrs Price contend that there has been a manifest error.

Before turning to the factual basis for this contention, it is necessary to look at the contractual relationship between the claimants and Lloyd's in relation to the payment of the premium. By the Equitas reinsurance contract each name undertook by clause 5.1(b)(i) to pay his proportion of the Syndicate Premium set out in Schedule 1. This was the Equitas additional premium which had been calculated as payable in respect of the future losses of the syndicate in question. The Equitas contract does not specify the methodology by which that premium was to be calculated. This is not surprising. Prior to R&R the process of reserving and the rating of the reinsurance to close or any other stop loss reinsurance cover would under the Lloyd's system of delegated syndicate management, be outside the province of the non-working names who were members of the syndicate. Once the R&R scheme came into operation in October 1996 the methodology which was actually adopted became binding on the members, whether or not they had accepted

the offer. The attempts by the names in Leighs, supra, to challenge that methodology as ultra vires the powers of Lloyd's failed. One of the grounds relied on was irrationality: see page 768. That argument was rejected by me at pages 784 to 785. Following that test-case decision, which was upheld by the Court of Appeal at [1997] CLC 1398, page 1403, it is no longer open to anybody to take issue with the methodology actually applied and reflected in the Finality Statements and MSU accounts.

By clause 5.10 of the Equitas reinsurance contract it was provided (references to CSU being to MSU and to ERL being to Equitas):

> "For the purposes of calculating the amount of any Name's Premium as set out in clause 5.1(b) and the amount of any Name's Premium discharged by the transfer of assets or the amount realised through the liquidation of Funds at Lloyd's for application in or towards any Name's Premium, the records of and calculations performed by the CSU shall be conclusive evidence as between the Name and ERL, in the absence of any manifest error. The amount so applied shall be the value received by ERL, net of any transaction or tax costs, and ERL shall be entitled to appropriate such amount toward the Syndicate Premium of any relevant Syndicate in its absolute discretion."

The factual basis for the assertion by Mr and Mrs Price that their MSU statements of account contain manifest errors is as follows.

Following the issue of the Indicative Finality Statements in March 1996 there was

continuing investigation by Lloyd's and those advising it as to the market reserve basis for the calculation of the Equitas additional premium. As a result it was ascertained that there had been a more robust reserving position in the market generally on marine, aviation and transport ("MAT") accounts than had previously been appreciated. However, this was not the case with long-tail risks, such as pollution and asbestos, and a number of the large catastrophe risks. In May 1996 Lloyd's issued to the names a document called "Reconstruction and Renewal" it was explained at page 5 that, for this reason, the amount required from the market in respect of Equitas additional premium had fallen from the £1.9 billion shown as the basis for the Indicative Finality Statements to a figure in the order of £1 billion. The document stated that the better reserve position accounted for more than half the 1992 and prior liabilities. It went on:

> "A thorough review of the balance of account liabilities, drawing on more than 200 actuarial reports relating to individual syndicates, has recently been completed. Further important work has concentrated on the reinsurance programmes of Lloyd's syndicates, concluding by far the most detailed analysis of syndicate reinsurance programmes ever undertaken at Lloyd's. This analysis has covered 220,000 reinsurance contracts placed with 5,500 reinsurers to protect Lloyd's syndicates from losses deriving from 1992 and prior liabilities. In the light of this work, the value of reinsurance potentially due to syndicates has increased - further reducing the cost to Names of funding the net liabilities.
>
> It must be pointed out, however, that not all Names will see lower Equitas

premiums as a result of the final reserving work. For a minority of syndicates, particularly some of those which underwrote long-tail business, the Equitas premium has increased."

I observe that it is common knowledge that many syndicates were at that time exposed to large catastrophe risks on their MAT accounts by reason of the operation of the LMX Spiral. Obviously, whether any particular name was eventually presented with a Finality Statement which showed a significantly lower Equitas additional premium than that shown on the Indicative Finality Statement depended on the extent to which it was ascertained that the reinsurance protections of that name's syndicate were greater relative to its reserves than had previously been anticipated. In the event the shortfall on reinsurance relative to reserves on MAT account was reduced by almost £1.9 billion, but on asbestosis, pollution and health hazard ("APH") risks the reserves were increased by £0.9 billion. This increase was spread across all syndicates regardless of their actual APH reserve position. The overall effect on the amount of Equitas additional premium charged to the market as a whole was thus a reduction of about £1 billion. This was reflected in the Finality Statement issued to the names in August 1996.

Mr and Mrs Price rely on the following as the key points in their argument.

(i) As indicated in the course of an open meeting between Equitas representatives and names on 17th September 1999, "double counting", that is to say multiple reserving for the same risk, was a feature within the mainstream LMX spiral and of the personal stop loss market. Accordingly, it is said, syndicates

participating in the LMX spiral could be expected to be entitled to a reduced Equitas additional premium once this double counting had been identified during the period after the Indicative Finality Statement.

(ii) In a trial before Morison J. in which various members of the Rose Thomson Young syndicates had successfully sued the managing agents it had been common ground and accepted by the judge that those syndicates wrote a similar book of business to that written by the Feltrim syndicates. In particular, they were LMX spiral participants like Feltrim.

(iii) By reason of previous double counting in the course of reserving, the Feltrim Syndicates' position had been revised by June 1996. In the substitute underwriters' report it is stated that Equitas had taken a more optimistic view of reserving than the then substitute underwriter of the Feltrim syndicates. Consequently, there was a substantial decrease in the Equitas premium on the basis of the 31st December 1995 syndicate accounts - by some £148 million overall. Gooda Walker spiral syndicates were similarly found to be better reserved than anticipated. By contrast, RTY Syndicate 255 reserves increased for the same period by £101,460,000.

(iv) Comparison between Mr and Mrs Price's Indicative Finality Statements and Finality Statements shows a modest reduction in the Equitas additional premium. Thus, Mr Price was assessed at £267,000, reducing to £216,104, and Mrs Price at £153,000 reducing to £74,844.

(v) The extent of these reductions is substantially less than could be expected if

the RTY syndicates' share of the market double-counting reduction of £1 billion were commensurate with that of Feltrim or the Gooda Walker spiral syndicates. The total reduction of his and Mrs Price's premium should have been at least £586,000 in his case and £269,000 in her case.

Mr Price submits on this material and on further detailed evidence that something has obviously gone seriously wrong with the calculation of the Equitas additional premium shown in the Finality Statement and charged in the MSU account the subject of this action. He is unable to say precisely how the error has occurred because he does not have the internal documents containing the calculation of the additional premium, but he submits that the disparity between the RTY and Feltrim and Gooda Walker revised figures leads inexorably to this conclusion.

The extent, if any, to which the premium assessed in the Indicative Finality Statement might be reduced in the Finality Statement would depend directly on the extent, if any, to which the syndicate's unprotected loss reserves had been adjusted. That in turn would depend on the extent to which so-called double-counting affected that particular syndicate. Even assuming that it was an LMX spiral participant, its exposure to catastrophe risks which had got into the spiral would depend on where that syndicate was positioned in the spiral in relation to that particular risk and at what point relative to the growth pattern of that risk its reinsurance protections would be exhausted. Calculation of the unprotected reserve for that loss would therefore depend on underwriters' perception of the future development of that loss relative to the availability of reinsurance protections. Different syndicates participating in the spiral might therefore be assessed as having

radically different exposures to the same spiral loss, depending on the extent to which their reinsurance protections were unexhausted at any one time.

Comparison of the 1996 syndicate reports for the Feltrim and RTY syndicates shows conclusively that although both were spiral participants, their exposures were seen to be quite different. Equally, their respective underwriters' reserving methodology might in the past have been different, and therefore different again from that adopted by Equitas. This comparison demonstrates that, far from the disparity between the premium reduction to Feltrim and that to RTY being clearly indicative of an obvious error in the calculation of the RTY names' premium, it is quite impossible to infer that any error has been made at all. Indeed, the variables affecting different syndicates participating in the LMX spiral together with the extremely comprehensive reserving research and investigation carried out by Lloyd's in preparation for the R&R calculations make it very improbable that any error occurred in the application by Lloyd's of the reserving methodology deployed for that purpose.

Unless Mr and Mrs Price can establish that there has been a manifest error "in the records of and calculations performed" by MSU, those calculations are conclusive evidence of their Equitas premium by reason of clause 5.10 of the reinsurance contract. In other words, they are precluded from going behind the stated figures unless they can show an arguable case that the figures are obviously wrong. This was decided by the Court of Appeal in Society of Lloyd's v. Fraser [1999] Lloyd's I&R Rep 156 at page 178 where Hobhouse LJ. observed, in the course of refusing leave to appeal against the judgment of Tuckey J.:

> "The figures are to be taken as correct unless in their own terms they manifestly cannot be correct or if the Name by pointing to some other piece of evidence can demonstrate that they clearly cannot be correct in some respect. It is for the Name to identify and demonstrate some clear error."

I would add that given the circumstances, described in my judgment in Leighs, which gave rise to the calculation of the market reserves and the consequent Equitas premium, it is hardly surprising that the reinsurance contract should have contained a provision directed to preventing names from challenging Lloyd's calculations. The reserving operation was a matter of no little controversy and the whole commercial viability of the R&R settlement rested on the certainty of Lloyd' premium calculations.

On analysis, as I have explained, the real substance of Mr and Mrs Price's complaint is that something must have gone awry with the reserve and premium calculations for their syndicate and that is exactly the area of investigation which clause 5.10 is designed to exclude. For these reasons I conclude that the Manifest Error Point provides Mr and Mrs Price neither with an arguable defence to Lloyd's counterclaim nor with an arguable claim for relief against Lloyd's. Nor does it provide them with any basis for their contention that Lloyd's has no real prospect of succeeding in its defence to their claim.

The Debt Credit Point

The calculation of the debt credits offered to names in their Finality Statements was

wholly unrelated to syndicate loss reserving. Those credits were the part of the consideration offered to be paid in exchange for the waiver by names of claims against Lloyd's and Lloyd's persons, such as brokers. The credits were contributed to by various parties at risk of claims. There is no basis upon which names can challenge the size of debt credits offered to names in their Finality Statements and then rejected when the settlement offer was rejected. There is simply no cause of action, simply because there is no enforceable duty to make an offer to settle which is in an amount which is either fair or accurate.

This point has no evidential contribution to make to the Manifest Error Point and, as Mr and Mrs Price now appear to accept, gives no grounds for a claim against Lloyd's.

The Withholding of Information Point

Mr and Mrs Price's complaint is that Lloyd's has declined to provide them, in response to their repeated requests, with information as to how their Equitas additional premium has been calculated. They rely on a "footnote" to a judgment of Tuckey J. given on 4th March 1998 in Fraser where he observed:

> "It is only fair that they (Names) should be able to ascertain without difficulty or delay what assets of theirs are available to meet a judgment for which they have not yet received credit".

I am not able to accept that Tuckey J. was referring in that passage to anything

beyond names' own available assets. It cannot be read in its context as exemplifying any wider principle entitling names to any information about the calculation of the Equitas premium. For reasons which I have already explained, that calculation was conclusive and could not be re-opened or questioned. That is clear from clause 5.10 as construed by the Court of Appeal in Fraser and, if there were to be no challenge to that calculation, there would be no purpose in a name having the information and accordingly no term could be implied in any relevant contract that Lloyd's would make the information available.

This point provides Mr and Mrs Price with no ground for relief or for any claim against Lloyd's.

The RTY Point

For it to be shown that this point has any real prospect of success or that there are any reasonable grounds for bringing the claim the first threshold matter to be established is that Lloyd's owed to syndicate members a contractual or statutory or common law duty so to regulate the market that it could be in breach of that duty if it failed to act in the manner asserted by Mr and Mrs Price.

There is strong authority that Lloyd's did not owe any such duty as is now alleged. It was held by Saville J. and the Court of Appeal in Society of Lloyd's v. Clementson [1995] CLC 117 that there was no implied term in the membership contract that Lloyd's would exercise reasonable skill and care or act in good faith in relation to the regulation of the market. In the earlier decision of Gatehouse J. -

Ashmore v. Corporation of Lloyd's [1992] 2 Lloyd's Rep. 620 - it was held that there was no implied term or statutory duty to alert names to defects in the management of syndicates.

In order to make good a claim for damages for breach of contractual, common law or statutory duty, it is in any event necessary to establish that Lloyd's acted in "bad faith" under section 14(3) of the Lloyd's Acts. That means that the conduct relied upon as the breach of duty must be tainted by fraud or in some material respect dishonest. Mere negligence is not enough. Nor is administrative incompetence. If in the absence of section 14(3) there would be no underlying enforceable duty to act, it is impossible to see how mere inactivity on the part of Lloyd's can be relevantly fraudulent or dishonest so as to provide a means of avoiding the effect of section 14(3).

Having considered the evidence adduced by Mr and Mrs Price as to the gross incompetence with which their syndicates were administered by RTY and by the underwriter, Mr Bullen, particularly with regard to the lack of errors and omissions cover, in 1990 and 1991 and as to what Lloyd's knew about this incompetence from the General Review Department report, from the Coopers & Lybrand Loss Review and from what emerged in the Berriman v. Rose Thomson Young case before Morison J., I am entirely unpersuaded that there is any prima facie case which could be made against Lloyd's that its inactivity was primarily or partially motivated by the personal interests of those taking the decisions and that therefore it had acted fraudulently or dishonestly, let alone in breach of any relevant duty. For these reasons this ground of claim has no real prospect of success.

The E&O Claims Point

The course adopted by Lloyd's of refusing to permit E&O claims against agents and E&O underwriters to be brought into account for the purposes of calculating the names' solvencies was a policy decision by Lloyd's taken for reasons which are entirely understandable. In calculating solvencies the reality of a pending claim requires that it be included in the debit side, whereas insurance or reinsurance cover can only he justifiably included on the asset side if it offers reasonably certain protection. The policy behind the prescribed syndicate audit methodology obviously treated the prospects of recovery as insufficiently certain to include the E&O protections as accountable protections. There is absolutely no evidence whatever that this auditing practice was otherwise than in good faith and for cogent policy reasons. Mr Price suggests that the council members had ulterior motives, in effect, in conflict of interest with the interests of names, in as much as they were intent on selling their agencies and in encouraging the introduction of corporate capital into Lloyd's. There is not a shred of evidence in support of this. There is nothing to suggest that any such allegation would have any real prospect of being established at a trial.

Even if Lloyd's were under any duty to names to prescribe any particular audit methodology, which, as I have held, it was not, there is no evidence of relevant bad faith and accordingly no route by which Lloyd's can be held liable for damages in respect of this matter.

The Syndicate 780 Point

This is in substance a claim that by reason of the poor administration of this syndicate by the syndicate managing agency which resulted in Mr Price's losses being overstated in prior years of account and in an excessively large reinsurance to close premium being charged for the benefit subsequent years of account. What then happened was that there developed a large surplus for the 1993 names. In the meantime, Mr Price had ceased to underwrite on this syndicate because of his solvency problems which would never have arisen had the losses not been over-estimated or if the accounts for prior years had been rectified.

This is the basis for an allegation that Lloyd's is liable for failing to regulate the market. Here again it was under no duty to the names to do so. Further, there is no evidence to suggest that failure to intervene on its part was due to any fraudulent or dishonest objective or in any other way was tainted by bad faith.

This point therefore does not give rise to a claim with any real prospect of success.

The Harassment Point

It is said that Lloyd's conduct from late 1995 amounts to harassment of Mrs Price. The facts relied upon are set out in paragraph 39 of the points of claim. They are very detailed and I do not repeat them here. The conduct amounting to harassment is said to be "action of gross bad faith". Mr Price says that mental harassment is relied upon.

The facts relied upon demonstrate that names of limited means confronted with Lloyd's demands for payment before and after R&R and who were necessarily constantly aware of the possibility of bankruptcy and the need to avoid making fraudulent preferences were placed in a situation causing them acute anxiety. Their financial situation had in many cases become extremely complex and, if Lloyd's maintained its claims, the future would appear to be very bleak. In these circumstances the maintenance of claims by Lloyd's and/or its refusal to provide hardship relief except on stringent conditions cannot give rise to a cause of action in respect of any civil wrong known to English law.

Apart from the Protection from Harassment Act 1997 there is an underlying tort at common law based on conduct calculated to cause physical or psychiatric harm deriving from mental stress: see Khorasandijan v. Bush [1993] QB 727.

The action alleged to have been taken by Lloyd's in this case, in my judgment, falls nowhere near the threshold of this tort. Lloyd's was simply trying to collect as much as possible of what it claimed was due from Mrs Price as a name bound by the R&R regime. Its conduct was not arguably calculated to cause her mental or physical harm.

Harassment is not defined under the 1997 Act. Under section 1(1) the conduct prohibited must not only amount to harassment but be known to do so or such as ought to be known to do so. Section 3 contemplates that the harassment may only cause "anxiety". Section 1(3) excludes from prohibited conduct cases where the

pursuit of the course of conduct was reasonable.

The circumstances of this case which are relied upon by Mrs Price do not fall without the Act. Lloyd's was pursuing its legal rights and remedies with determination, but that was what it was entitled to do. It could not be said to be acting unreasonably in the sense contemplated by section 1(3).

Conclusion

I therefore conclude that Mr and Mrs Price have no realistic prospect of defending Lloyd's claims and that Lloyd's are entitled to judgment on their counterclaim.

I further conclude that those claims against Lloyd's advanced by Mr and Mrs Price to which I have referred are misconceived and have no realistic prospect of success. I would only add that if any of them could be sustainable, that would not be a ground for granting a stay of execution of Lloyd's counterclaim. The effect of clause 5.5 of the Equitas reinsurance contracts is to prevent either a set-off or a stay of execution in respect of cross-claims as was held by me and by the Court of Appeal in Leighs. I have not referred specifically to every basis of claim put forward in Mr and Mrs Price's points of claim. Some of those not mentioned in this judgment, such as Mr Price's claim for remuneration for the work he has put in this case, assume the viability of the double counting defence and other points relied on and therefore are unsustainable. Others appeared in the course of argument to have been abandoned. If I have failed to mention any remaining live points, it is right to say that I have considered all that has been raised in the points of claim and that I

remain quite unconvinced that Mr and Mrs Price can establish any arguable or realistic basis for there having been any breach of duty or contract by Lloyd's, in bad faith or otherwise.

In the event I conclude that Mr and Mrs Price's claims should be entirely struck out in spite of the conviction, tenacity and courtesy with which Mr Price has argued his case.