U.S. Fourth Circuit says: British law is supreme

by John Hoefle

On Aug. 23, U.S. District Judge Robert Payne issued a temporary injunction against Lloyd's of London, prohibiting Lloyd's from imposing the terms and conditions of its Reconstruction and Renewal Plan (R&R) on any U.S. Name, as Lloyd's investors are known, and ordering Lloyd's to make full disclosure to the Names of the details of that plan, in accordance with the rules of the U.S. Securities and Exchange Commission (SEC). Judge Payne gave Lloyd's until Sept. 23 to provide the information, and ruled that the Names would have an additional 30 days to evaluate the information and decide whether to accept or reject Lloyd's offer. The ruling was a major victory for American Names, who have fought long and hard to defend themselves from the fraud perpetrated on them by Lloyd's.

Lloyd's immediately appealed the verdict, and on Aug. 27, a three-judge panel of the U.S. Fourth Circuit Court of Appeals in Baltimore reversed Judge Payne's decision and ordered him to dismiss the case.

The ruling, and its reversal, come at a critical time for Lloyd's, which is desperate to finalize its R&R plan. Lloyd's had given Names until Aug. 28 to accept or reject the plan, three days before Lloyd's annual Aug. 31 solvency test by the British Department of Trade and Industry. According to Lloyd's, were R&R to be delayed, it might fail its solvency test; were that to happen, it would collapse, Lloyd's claims, thereby collapsing in domino fashion the global insurance business, and then the global financial system. Lloyd's position, although it would never say it publicly in these terms, is that, were it to be forced to obey the law, the world as we know it would end.

The case (*Allen v. Lloyd's*), like several other suits filed by Names against Lloyd's, was thrown out of court because of a clause inserted in Lloyd's contract with its Names in 1986, which stipulated that any disputes between Lloyd's and the Names must be adjudicated in England, under English law. Lloyd's inserted the clause, because it knew that Names were about to be hit with billions of dollars of losses from asbestos and pollution claims, losses which it had hidden from Names for years, during which time Lloyd's insiders shifted those losses onto tens of thousands of Names recruited just for that purpose (see *EIR,* Aug. 9, "The British Empire's Lloyd's of London Conspiracy"). Lloyd's wanted any and all suits arising from its premeditated fraud upon the Names to be heard in England, where the laws and the political system are friendly to it, and where Lloyd's has had virtual immunity from suit by act of Parliament since 1982.

Although the appeals court cited the "in England under English law" forum-selection clause in dismissing the case—one of several appeals courts to do so—the real reason the case was dismissed, was political.

The forum selection clause is, in fact, illegal, according to the SEC, which filed an *amicus curiae* brief with Judge Payne, pointing out that the Securities Act of 1933 expressly prohibited investors from waiving their rights under U.S. securities law. The "in England under English law" clause, the SEC stated, was null and void, and could not be enforced.

That the appellate court would dismiss such an important case, involving such an obvious case of fraud, by citing a clause already stated by the SEC to be void, exposes clearly the political nature of this case. The fix, as they say, was in.

R&R is a fraud

The R&R scheme is the culmination of a 30-year conspiracy by Lloyd's to shift asbestos and pollution losses that would have otherwise been borne by British Empire insiders, onto what the Brits call the "colonials," the "commoners,"

and the "wogs." R&R contains two main elements. The first is the Settlement Offer, which absolves Lloyd's of any crimes it may have committed against Names in the past, and any crimes it may be committing now against the Names under R&R. It also contains a clause stipulating that any future litigation be heard in England, under English law. It is, in short, a remarkably one-sided document, and one which violates U.S. law. The second element of R&R is the formation of a new reinsurance company named Equitas, into which Lloyd's plans to dump all of its outstanding pre-1993 liabilities. With Equitas, Lloyd's is effectively unloading billions of dollars of current and future asbestos and pollution claims onto a new company; when Equitas fails, policyholders will have to sue the Names—many of whom are at or near bankruptcy—for payment, while Lloyd's will be free. The winners in R&R are Lloyd's, the City of London, and the British Empire. The losers are the Names and the policyholders, both of which face huge losses.

"The Names are being asked to forego claims against Lloyd's insiders, its officers and directors, its lawyers, its accountants, the Managing Agents it controls, and indeed against anyone in the Lloyd's enterprise who was involved in what is one of the most far-reaching and serious insurance frauds of record," Judge Payne stated in his 141-page opinion. "That the rights which Lloyd's insists the Names must surrender are valuable is proved beyond serious question by the sheer volume of claims successfully asserted against those involved in this fraud, and the fact that, to date, there have been judgments and awards in English courts and in arbitration of more than £1 billion."

Although Lloyd's and its officers are immune from suit under the Lloyd's Act of 1982, the Members' Agents and Managing Agents who work in the Lloyd's market are not, and some of them have been forced to pay huge judgments in fraud suits. However, thanks to the corrupt British courts, Lloyd's, and not the defrauded Names, got the money. Such funds account for about half of the $5 billion Lloyd's claims to be issuing as debt-reduction credits to Names who accept the R&R offer. Names who have successfully sued Lloyd's agents, but who do not accept the R&R agreement, will not get a penny of their just awards.

In the words of Judge Payne, "The Names cannot even have access to the fruits of the successful litigation efforts without accepting the Settlement Offer and R&R."

That the British courts would permit such a travesty, proves that U.S. Names will get no justice in England.

Full disclosure

The essence of the *Allen* suit against Lloyd's, is to force Lloyd's and Equitas to file the disclosure forms required by the SEC, detailing the risks involved to the investors. Lloyd's has refused to provide Names with sufficient information to judge the merits of Equitas, and has given the Names precious little time to make up their minds, trying to pressure the Names into signing quickly, reminiscent of the used car salesman who wants to hurry you into buying the car before you discover that there is no motor.

"The record discloses clearly that each time the Names have received information about the progress of R&R, it has differed in significant ways from previous installments of like information," Judge Payne wrote. He added that the R&R documents were "filled with many words and little data," and "laced with disclaimers that counsel against reliance." Using those documents, the judge said, "a Name cannot tell how his liability was calculated or whether it is long-term or short-term. Nor is it possible to verify the credit or premium calculations."

Far from over

Judge Payne's ruling may have been overturned, but Lloyd's troubles are far from over. State securities regulators in six states (Arizona, Illinois, Missouri, Tennessee, Utah, and West Virginia) have vowed to press forward with fraud actions against Lloyd's, rejecting the agreement negotiated between Lloyd's and the North American Securities Administrators Association (NASAA).

On Aug. 23, the same day as Judge Payne's ruling, Colorado Attorney General Gale Norton notified Lloyd's that several provisions in the Lloyd's-NASAA agreement, which had been signed by Colorado Securities Commissioner Philip Feigin, were in violation of state law and would have to be modified, and that her office was considering taking action against Lloyd's for consumer fraud.

Lloyd's is also facing trouble in New York, another state which signed the Lloyd's-NASAA agreement. New York Attorney General Dennis Vacco wrote a letter to Judge Payne on Aug. 21, expressing his "support for certain of the relief requested" by the Names, and recommending that "any disputes be resolved in the United States." Five days later, Vacco wrote a letter to the Names indicating that his acceptance of the Lloyd's-NASAA agreement "may be affected" by Judge Payne's ruling.

"The Lloyd's drama is far from over," a senior City of London source told *EIR*. "The Lloyd's fight is ultimately political, even down to the judges. What's at stake here is enormous. After the war, Lloyd's became the glue to bind major sections of the U.S. establishment to the British 'special relationship.' Because of Lloyd's size and influence, it was able to operate as a law unto itself. It could conduit large sums of capital across the Atlantic without any visible traces. The manner in which Lloyd's actually operates is the essence of the highest levels of the City power structure. This you will never find in books on Lloyd's. Only insiders are privy."

The London source cited the purchase by Munich Re, the largest reinsurance company in the world, of American Re; and the purchase by Swiss Re, the world's second-largest reinsurance company, of Mercantile and General Re, Britain's largest, as part of a reorganization in which European rivals are positioning themselves for "the event of at least a severe diminution of the global role of Lloyd's of London."