

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re :
 :
Highlands Insurance Company (U.K.) :
Limited (in administration), : Chapter 15
 :
 : Case No. 07-13970 (MG)
Debtor in a Foreign Proceeding :
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**ORDER GRANTING MOTION PURSUANT TO
BANKRUPTCY CODE SECTIONS 1521 AND 105(a) AND FED. R.
BANKR. P. 7065 FOR PERMANENT INJUNCTION AND RELATED RELIEF**

Upon the Motion Pursuant to Bankruptcy Code Sections 1521 and 105(a) and Federal Rule of Bankruptcy Procedure 7065 for Permanent Injunction and Related Relief (the “Motion”), the Memorandum of Law in support of the Motion (the “Memorandum of Law”) and the Declaration of Dan Yoram Schwarzmans in support of the Motion, (the “Schwarzmans Declaration,” and together with the Motion and Memorandum of Law, the “Chapter 15 Papers”), each filed on July 1, 2009 by Dan Yoram Schwarzmans and Mark Charles Batten (the “Movants”) in this case; and upon the Court’s consideration of the Chapter 15 Pleadings and the record of the hearing before this Court on August 18, 2009 and all prior hearings herein; and due notice of the Chapter 15 Pleadings being given thereof, which notice is deemed adequate for all purposes such that no other or further notice thereof need be given; and no objections to the relief requested in the Motion having been filed or raised thereto that have not been overruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, this Court hereby finds and concludes as follows:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Standing Order of Referral of Cases to Bankruptcy Judges of the United States District Court for the Southern District of New York (Ward, Acting C.J.), dated July 10, 1984; and

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and

C. Venue is proper in this District pursuant to 28 U.S.C. § 1410; and

D. The Movants, acting as the court-appointed joint administrators of Highlands Insurance Company (U.K.) Limited (In Administration) (the “Company”), are persons and the duly appointed foreign representatives of the Company (the “Administrators”) within the meaning of 11 U.S.C. § 101(24); and

E. The relief requested in the Motion is necessary to effectuate the purpose of chapter 15 and to protect the assets of the Company and the interests of its creditors, and is not manifestly contrary to the public policy of the U.S; and

F. Absent the requested relief, the Company may be subject to the prosecution of judicial, quasi-judicial, arbitration, administrative or regulatory actions or proceedings in connection with a claim against the Company or its property in the U.S. thereby interfering with and causing harm to, the Company and the English Proceeding,¹ and as a result, the Company and its creditors, as a whole, would suffer irreparable injury for which there is no adequate remedy at law; and

G. Absent the requested relief, the English Proceeding and the Administrators’ efforts in conducting the administration of the Company and the Scheme of Arrangement (the

¹ Capitalized terms not defined herein shall have the meaning given to such terms in the Motion.

“Scheme”) may be thwarted by the actions of certain creditors, a result inimical to the purposes of chapter 15 as reflected, *inter alia*, in 11 U.S.C. § 1501(a). Such actions may threaten, frustrate, delay and ultimately jeopardize the English Proceeding and the administration of the Company; and

G. The relief sought in the Motion will not cause undue hardship or inconvenience to parties in interest and, to the extent that any hardship or inconvenience may result, such hardship or inconvenience will be outweighed by the benefits to the Company, its estate and its creditors, as well as to the interests of cooperation between the courts of the U.S. and those of foreign jurisdictions; and

H. The relief requested in the Motion is necessary to the implementation of the Scheme and the effective resolution of disputes involving the Section 51 Transfers; and

I. The bankruptcy estate will receive substantial consideration in exchange for the release of claims against HIC US; and

J. The Settlement Amount will be used to pay claims of Scheme Creditors and the Administrators expect that allowed claims of Scheme Creditors will be paid in full (subject to discounting at a rate designed to reflect a risk free rate of return and other relevant deductions in accordance with the Scheme); and

K. The Administrators are entitled to the relief sought under 11 U.S.C. §§ 1521 and 105(a).

For all of the foregoing reasons, and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT as of the Effective Date and provided there has been no early termination of the Scheme:**

1. The Scheme shall be given full force and effect and be binding on and enforceable against all Scheme Creditors in the U.S.; and

2. All claims of Scheme Creditors shall be administered and adjudicated exclusively pursuant to the terms of the Scheme; and

3. All Section 51 Direct Policyholders/Claimants are required to make any and all claims in respect of their Section 51 Direct Policy and seek payment of such claims exclusively in accordance with the provisions of the Scheme and are precluded and enjoined from making any such claims except as specifically provided for under the Scheme; and

4. All Section 51 Direct Policyholders/Claimants are prohibited and enjoined from asserting any and all claims in respect of their Section 51 Direct Policy or seeking payment of such claims (including asserting or effecting a set-off based on such claims) against HIC US; and

5. Except as provided in the Scheme, all Scheme Creditors are permanently enjoined and restrained from taking any actions in contravention of, or that are inconsistent with, the terms of the Scheme or its administration, implementation or enforcement, including:

(a) transferring, relinquishing or disposing of any property of the Company located within the territorial jurisdiction of the U.S. or the proceeds thereof (“US Property”);

(b) taking or continuing any act to obtain possession of, or exercise control over, the Company or any of its US Property;

(c) commencing or continuing any actions or proceedings (including, without limitation, arbitration, mediation or any judicial, quasi-judicial, administrative or

regulatory action, proceeding or process whatsoever), including by way of counterclaim, (each, individually, an “Action”) against the Company or any of its US Property;

(d) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment, order or arbitration award against the Company obtained in connection with any Scheme Liability;

(e) commencing or continuing any act or proceeding to create, perfect or enforce any lien, attachment, set-off or other claim against the Company or any of its US Property, including, without limitation, rights under the Insurance Contracts;

(f) except as prohibited by § 1501(d) of the Bankruptcy Code, invoking, enforcing or relying on the benefits of any statute, rule or requirement of federal, state, or local law or regulation requiring the Company to establish or post security in the form of a bond, letter of credit or otherwise as a condition of prosecuting or defending any Action arising out of a Scheme Liability and such statute, rule or requirement will be rendered null and void for Actions; provided however, that nothing in the order shall in any respect affect any Security Interest in existence as the Effective Date or the replacements for such Security Interest;

(g) except as prohibited by 11 U.S.C. § 1501(d), drawing down any letter of credit established by, on behalf of or at the request of, the Company unless expressly authorized by the terms of any contract or agreement pursuant to which the letter of credit has been established;

(h) except as prohibited by 11 U.S.C. § 1501(d), withdrawing from, setting-off against, or otherwise applying US Property that is the subject of any trust or escrow

agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established.

6. Except as provided in the Scheme, all Scheme Creditors that are parties to any trust, escrow agreement or similar arrangement in which the Company has an interest, shall be required to:

(a) provide notice to the Administrators' United States counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara Tapinekis), of any withdrawal from, set-off against, or other application of property that is the subject of any such trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Company to assess the propriety of such withdrawal, set-off or other application, including, without limitation, the date and amount of such withdrawal, set-off or other application and a copy of any contract, related trust or other agreement pursuant to which any such withdrawal, set-off or other application was made, and provide such notice and other information contemporaneously; and

(b) turn over and account to the Company for all funds resulting from such withdrawal, set-off or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such trust, escrow or similar arrangement has been established;

7. Except as provided in the Scheme, all Scheme Creditors shall be required to:

(a) turn over and account to the Company for any US Property of the Company, or proceeds thereof, that relate to any Scheme Liability, of which they have possession, custody or control;

(b) deliver to the Company any books, papers or records of the Company that relate to any Scheme Liability, of which they have possession, custody or control and all Scheme Creditors having any books, papers or records that the Company or Scheme Adjudicator may reasonably require in relation to their duties or related to any matter that may affect the implementation of the Scheme shall preserve them and submit them to the Company or Scheme Adjudicator, or their designees, for examination at all reasonable times; and

(c) to the extent they have a claim of any nature or source against the Company or any US Property or are a party to any proceeding in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, notify the Company, in accordance with the terms of the Scheme, and put the Administrators' United States counsel on the master service list of any such proceeding and to take such other steps as may be necessary to ensure that they receive (A) copies of any and all documents sent by the parties to such proceeding or issued by the court, administrator, arbitrator, regulator or similar official having jurisdiction over such proceeding, and (B) any and all correspondence or other documents circulated to parties named in the master service list;

8. Nothing herein shall prevent the continuance or commencement of proceedings against any insurer other than the Company (and HIC US as set forth above), provided however, that if any third party shall reach a settlement with, or obtain a judgment against, any person or

entity other than the Company, such settlement or judgment shall not be binding on or enforceable against the Company;

9. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of the order or requests for any additional relief in the case filed under chapter 15 of the Bankruptcy Code and all adversary proceedings in connection therewith properly commenced and within the jurisdiction of this Court; and

10. No action taken by the Company, its successors, agents or representatives, or any of them, or its counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Scheme, the order, the chapter 15 case, any further order for additional relief in the chapter 15 case, or any adversary proceedings in connection therewith, will be deemed to constitute a waiver of the immunity afforded to the Company, the Administrators, the Scheme Adjudicator or their successors, agents, attorneys or representatives pursuant to 11 U.S.C. § 1510; and

11. Nothing in this order shall alter or affect the terms of the Settlement Agreement or the venue and jurisdiction provisions thereof; and

12. This Order shall be in force as of the Effective Date and provided there is not an early termination of the Scheme in accordance with paragraph 7.3 of the Scheme. If the Scheme is terminated by the Administrators prior to the date upon which the Scheme is fully consummated, the Administrators shall immediately inform this Court of such termination; and

13. This Order shall be served:

(a) by first class postage prepaid mail, upon all known potential creditors whose addresses are reasonably available to the Company (or their counsel, if known to the Company) on August 28, 2009 (or as soon as reasonably practicable thereafter); and

(b) by publication in (i) *Insurance Day* (ii) the worldwide edition of the *Financial Times*, and (iii) the national edition of the *Wall Street Journal*, on August 26, 2009 and (iv) *Business Insurance* on August 26, 2009 (or as soon as reasonably practicable thereafter);

(c) and such service will be good and sufficient service and adequate notice for all purposes; and

14. The Chapter 15 Pleadings shall be made available by the Administrators upon request to the Administrators' U.S. counsel, Clifford Chance US LLP, 31 West 52nd Street, New York, New York 10019 (Attn: Sara M. Tapinekis).

Dated: New York, New York
August 18, 2009

/s/Martin Glenn
United States Bankruptcy Judge