No. 10-1249

IN THE

Supreme Court of the United States

RICHARD A. TROPP,
ON BEHALF OF HIMSELF AND ALL OTHERS
SIMILARLY SITUATED,

Petitioner,

V.

CORPORATION OF LLOYD'S,
ALSO KNOWN AS THE SOCIETY OF LLOYD'S,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

BRIEF OF JEREMY MCBRIDE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

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[1] Pursuant to Rule 37.6, counsel for the amicus states that no counsel for a party authored this brief in whole or in part, and that no person other than the amicus or his counsel made a monetary contribution to the preparation or submission of this brief. The amicus acted for the petitioner before the European Court of Human Rights in a challenge to the denial of access to court by the United Kingdom through the protection extended to Lloyd's. This challenge was rejected on admissibility grounds. He has not acted for petitioner subsequent to that case. Counsel for petitioner and respondents received timely notice of amicus's intent to file this brief and have consented to its filing in letters on file with the Court.

SUMMARY OF ARGUMENT

The petition for certiorari addresses a serious problem affecting the accountability of the Society of Lloyd's ("Lloyd's") under English law. It concerns in particular the inability of persons to have claims with a clear foundation in law and fact that Lloyd's has breached obligations owed to them considered and determined by the English courts. Though this problem particularly affects the thousands of individuals and limited liability companies who join in groups to underwrite the insurance business ("Members"), it is a problem whose impact could be even more wide-ranging as the most recent generation of entities solicited by Lloyd's itself and its agents to join the Society as Members includes many fiduciary institutional investors.

Lloyd's is the beneficiary of a discrete legal system created especially for it by Parliamentary legislation and judicial decisions. That system effectively insulates Lloyd's from scrutiny and denies its individual Members due process. The problem of the non-availability of remedies for many arguable claims stems from the combination of the limited reviewability of the exercise of some of the extensive regulatory powers conferred on Lloyd's by the Lloyd's Act 1982 and the breadth of the interpretation given to an immunity which section 14(3) of that Act provides that Lloyd's should enjoy. The byelaws that Lloyd's is privileged to issue and which have the status of legislation are effectively not subject to judicial review. Though they are ostensibly subject to challenge as private laws, in practice that review has been limited by Lloyd's itself in the provisions included in the byelaws and by the extension of

public-function immunity to acts of Lloyd's that might more properly be construed as private regulatory functions.

A mandatory ground for refusing to recognize or enforce a foreign judgment is that it "was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law." Mr. Tropp and those similarly situated to him were not permitted to bring an effective challenge in any kind of judicial forum against Lloyd's. The perhaps unintended interplay of Parliamentary action and judicial decision-making has worked to deny Members of Lloyd's any remedy whatsoever from the acts of a private corporation. This court should not permit the Second Circuit to compound this injustice by recognizing and enforcing the judgment resulting from a proceeding in which the defendant, Mr. Tropp, had no opportunity to challenge the validity of the substantial liability unilaterally imposed on him without his consent.

ARGUMENT

I. The Case Presents The Remarkable Instance Of A Foreign Legal System That Insulates A Private Company From Responsibility For Its Wrongful Acts.

The petition for certiorari addresses a serious problem affecting the accountability of the Society of Lloyd's ("Lloyd's") under English law. It concerns in particular the inability of persons to have claims with a clear foundation in law and fact ("arguable claims") that Lloyd's has breached obligations owed to them considered and determined by the English courts. This is a problem that particularly affects its Members, i.e., the thousands of individuals and limited liability companies - often referred to as "Names" - who join in groups ("syndicates") to underwrite the insurance business. However, it is a problem whose impact could be even more wide-ranging as the most recent generation of entities solicited by Lloyd's itself and its agents to join the Society as Members includes many fiduciary institutional investors, notably church and university endowments, other not-for-profit trusts and pension funds, as well as public corporations.

Petitioner in this case is a victim of a U.K. legal system that has evolved so as to prevent Lloyd's from being accountable for its actions. Individuals who are Members of Lloyd's have no way to protect themselves from decisions made by Lloyd's that adversely affect them or their property interests. Lloyd's is the beneficiary of a discrete legal system created especially for it by Parliamentary legislation and judicial decisions that effectively insulates

Lloyd's from scrutiny and denies its individual Members due process. The judicial decision at issue in this case is not entitled to recognition and enforcement under New York's Uniform Foreign Country Money Judgments Recognition Act. Indeed, a mandatory ground for non-recognition is that the judgment for which recognition is sought "was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law."[2] New York's "system" approach requires recognition of a judgment such as this because of its focus solely on the legal system writ large – in this case the U.K. legal system. Yet the U.K. legal system here does not afford the plaintiffs in an entire sub-class of cases brought by Lloyd's Members, including the case brought by petitioner Tropp, any process whatsoever. Though it is quite clear the "due process" referred to in the Uniform Act does not require that a foreign legal system meet the idiosyncratic requirements of a particular U.S. state or country, the complete inability of Mr. Tropp to challenge acts ostensibly committed in his name and ostensibly conferring on him significant liability violates the international standard of due process incorporated by the Uniform Act.[3]

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[2] N.Y. C.P.L.R. § 5304(a)(1).

[3] *See, e.g., Sanchez Osorio et al. v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1328 (S.D. Fla 2009) (*affirmed on other grounds*, 2011 U.S. App. LEXIS 6208 (11th Cir., Mar. 25, 2011) ("[S]tatutes that condition the payment of substantial sums on a set of facts which the defendant is unable to controvert are presumptively unfair.").

II. The Regulatory Powers Conferred On Lloyd's Of London By U.K. Law Combined With Expansive Immunity Means A Complete Absence Of Due Process For Individuals With Viable Claims Against The Company.

The problem of the non-availability of remedies for many arguable claims stems from the combination of the limited reviewability of the exercise of some of the extensive regulatory powers conferred on Lloyd's by the Lloyd's Act 1982 – particularly those involving the adoption of its private byelaws which have the same legislative authority as regulations made by the Government and its agencies – and the breadth of the interpretation given to an immunity which section 14(3) of that Act ("the 1982 Act") provides that Lloyd's should enjoy.

A. Lloyd's Is Treated As A Public Entity Immune From Liability For Its Exercise Of Regulatory Functions But Is Not Subject To The Administrative Review That Governs Public Bodies.

Under section 6(2)(a) of the 1982 Act, Lloyd's Council is empowered to make byelaws both for the furtherance of the objects of Lloyd's and for a number of purposes, including the regulation of the relations between Members and Lloyd's agents (*i.e.*, the persons who solicit persons to join Lloyd's, manage the recruitment process, and advise Members each year on the syndicates on which they should put their capital at risk each year). The object of this provision is to facilitate the self-regulation of that part of the

insurance market that is operated through Lloyd's. All byelaws made under this provision – not just those issued pursuant to the exercise of Lloyd's' regulatory public functions – have been treated as having the legal force of delegated legislation.[4] However, their adoption and use are not subject to review by the Administrative Court under public law standards concerning legality, rationality and procedural fairness ("judicial review") but only to challenge in the civil courts for breach of private law rights such as breach of contract or the commission of a tort ("private law remedies"). Furthermore the exercise of these powers is not governed by the Human Rights Act 1998, which requires public bodies to act compatibly with the rights and freedoms in the European Convention on Human Rights by, *inter alia*, according due process and respecting the right to property.

Section 14(3) of the 1982 Act provides that "the Society shall not be liable for damages whether for negligence or other tort, breach of duty or otherwise ...". This immunity was solely intended to protect the self-regulatory scheme underpinned by the 1982 Act – *i.e.*, the public law functions entrusted to Lloyd's – from inappropriate challenges in the courts. However, the English courts have treated it as covering matters that go well beyond the performance of any public regulatory function, thereby precluding review of action taken both by the Society and its management pursuant to their own,

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[4] *Arbuthnott & Ors v Fagan & Ors, Feltrim & Ors*, 23 May 1994, QB (Comm).

essentially commercial, private interests. This interpretation is particularly significant from an accountability perspective when there is no other way of challenging the impact of an exercise of the regulatory powers on an individual's rights.

The problem of the non-availability of remedies for many arguable claims as a result of these two provisions – which was not envisaged by those drafting and adopting the 1982 Act – emerged in the course of litigation following the adoption by Lloyd's of the Reconstruction and Renewal Byelaw 1995, designed to effect a financial restructuring. It is thus a problem that is particularly relevant to the current proceedings brought against the petitioner.

1. Lloyd's Restructured Its Operations In A Manner Imposing Significant Liability On Petitioner And On Those Similarly Situated Without Their Consent.

Under the restructuring measure effected by the Reconstruction and Renewal Byelaw 1995, certain "Incurred But Not [yet] Reported" ("IBNR") liabilities were moved off the balance sheet of Lloyd's and transferred to a newly created captive reinsurer (Equitas) that would thereafter act as a run-off claims workout manager (*i.e.*, managing the insolvency workout needed where an insurer goes into liquidation), thereby freeing Lloyd's agents to solicit new capital.

At the same time, Lloyd's Council appointed Additional Underwriting Agencies (No. 9) Ltd. ("AUA9") – a wholly-owned subsidiary of Lloyd's – to act as a substitute agent in place of all the managing agents of all of its syndicates so as to give the consent

required for a Reconstruction and Renewal ("R & R") reorganization for all of the then 36,000 Members of Lloyd's. This appointment was made under the authority of the Reconstruction and Renewal Byelaw and the Substitute Agents' Byelaw (which was issued in 1983 and authorized Lloyd's Council to appoint a "substitute managing agent" when the original agent managing a syndicate became unable to act for its investors and as to its insured policy-holders).

AUA9 then purported to execute an "R & R" Contract ("the Contract") "for and on behalf of" all Members, with two Lloyd's officers signing in the name of AUA9.

Under the Contract all Members became liable to pay a reinsurance premium to Lloyd's' wholly-owned reinsurer, Equitas, for the mandatory reinsurance that it was to provide them to cover what Lloyd's stated to be their future IBNR liability. In addition they were committed to acknowledging more than the next half-century's liability as due straightaway, waiving any defenses against any claim by Lloyd's against them. That liability was 80 years into the then-future under the terms of Equitas trust documents, which were not disclosed to them at the time, and remain unknown to almost all of them today.

This position was primarily a consequence of paragraph 5.10 of the Contract, which provided that:

> For the purposes of calculating the amount of any Name's [R & R] Premium ..., [Lloyd's] calculation ... shall be conclusive evidence ... in the absence of any manifest error" (the "conclusive evidence clause").

However, the Contract also had a no set-off provision in paragraph 5.5 which precluded any issues of credits being raised by way of defense to any R & R claim for payment that might be made by Lloyd's. A right to set-off would have enabled Members to reduce the quantum of a claim against them by, for example, the amount of Members' trust fund assets that Lloyd's had taken from their agents in the run-up to R & R but which Lloyd's never subtracted from their R & R liability in the subsequent R & R claim against the Members.

Many Members were not aware at the time either that such a "paper" Agent as AUA9 existed and was acting in their name for the purpose of executing the Contract or that the Contract even existed. They were certainly never asked to give their consent to its conclusion and only became aware of its existence afterwards, particularly when Lloyd's took steps to enforce its terms.

Nonetheless the validity of the Contract was upheld by the Court of Appeal on the basis that it saw AUA9 as an underwriting agent with the capacity to act for Members as a substitute agent despite the control exercised over it by Lloyd's.[5] This ruling meant that the Contract – unilaterally imposed through the legislative power conferred on Lloyd's – could then be used to override claims and defenses which Members might have against Lloyd's.

As a result Members could either (a) accept Lloyd's statement of their alleged projected liability

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[5] *Society of Lloyd's v Leighs* [1997] C.L.C. 1398 (C.A.).

for more than the next half-century (albeit without any supporting documentation on the numbers) and agree to a settlement with Lloyd's in which they would waive claims for restitution and pay some, but not all, of that liability or (b) if they did not agree to settle, be sued for their entire next 80 years' alleged future "debt" payable all at once as a current liability.

2. *The Unauthorized Restructuring Of The Members' Contracts With Lloyd's Was Excluded From Judicial Review As A Private Rather Than Public Function.*

Attempts to dispute the extent of this liability – which was not even imposed with any advance notice – foundered because neither judicial review nor remedies based on private law were available for this purpose. Although judicial review is available with respect to those functions exercised by Lloyd's that are seen as public law ones, its relationships with its Members in the system of self-regulation are not considered to be governmental[6] and thus the courts had already held that action taken by Lloyd's with respect to R & R was not subject to judicial review since the byelaws, as well as the measures taken under them, were considered as having been adopted in a private capacity – a matter of internal business functions – rather than in exercise of any public functions.[7]

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[6] *Doll-Steinberg v Lloyd's* [2002] EWHC 419 (Admin).

[7] See *Lloyd's v Levy & Ors* [2004] EWHC 1860 (Comm), and *R on the application of West v. Lloyd's of London* [2004] EWCA 506 (Civ)., [2004] 3 All ER 251.

Even if such a ruling might seem questionable given the essentially legislative functions involved in issuing byelaws, it necessarily implied that private law proceedings should be the appropriate means of resolving any dispute about the basis on which the liability had been imposed, as in the unsuccessful proceedings already noted to dispute the use made by Lloyd's of the Substitute Agents Byelaw 1983 to appoint a wholly-owned substitute managing agent to conclude the Contract without the knowledge of the Members who became bound by it.

B. Private Law Remedies Were Equally Unavailing Due To The Exculpatory Provisions In The Byelaws And The Incursion Of The Immunity Doctrine Into Private Law.

Attempts to use private law remedies – whether by way of defense to claims brought against Members or by way of proceedings instituted by them against Lloyd's – have also been blocked, partly because of the terms of the Contract issued by Lloyd's in reliance on two byelaws and partly through reliance on the immunity conferred by section 14(3) of the 1982 Act.

Thus the conclusive evidence clause in the Contract was relied upon by both the Commercial Court[8] and the Court of Appeal (Civil Division)[9] as the basis for deeming that defenses to liability – both as to the alleged future debt itself and as to material

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[8] *Lloyd's v. Tropp* [2004] EWHC 1397 (Comm).

[9] *Tropp v. Lloyd's* [2004] EWCA 1544 (Civ).

or even willful error in its quantum – were precluded from argument.

As the Contract and the conclusive evidence provision in it were regarded as a valid exercise of the powers conferred on Lloyd's, the only possibility of overcoming the conclusive evidence clause considered by the courts to be open to Members would have been through showing arguable error on the face of the numbers given to the court by Lloyd's. However, this possibility could be of no assistance when the problem was not a mistake in calculation but the very basis on they had been compiled. Thus fresh evidence – pointing to losses having been wrongly attributed by Lloyd's to Members – could not be adduced to challenge the correctness of fact of those numbers.

Although the preclusion of the defenses that the petitioner wished to raise might seem an inevitable consequence of the terms of paragraph 5.10 of the Contract to which Members were ostensibly parties, it is a remarkable interference with the property rights of this individual – and indeed those of all Members of Lloyd's – for an entity to be empowered by Parliament with the capacity to compel participation in a contract on such terms when the persons affected have not even had an opportunity first to discuss the proposed measure effecting the contract with the entity concerned, particularly given their membership of it, or any effective notification of the provisions adopted before the execution of them was actually sought.

Even a Member's counter-claim against Lloyd's for damages for libel, slander and malicious prosecution or falsehood, pursuant to the defamation

exception expressly allowed by section 14(5) of the 1982 Act to the immunity from duties and liability in section 14(3), fell victim to the conclusive evidence provision in the Contract. This was on the basis that that provision required that any defamatory statements by Lloyd's as to the petitioner, even when made maliciously in the claim brought by Lloyd's, were to be deemed irrefutably "true" in law irrespective of their truth or otherwise in fact.[10]

Furthermore the suggestion by the Commercial Court and the Court of Appeal that certain counterclaims – suggesting that the liability arose out of inevitabilities (*i.e.*, losses that were known to have already occurred at the time of entering into an insurance contract) rather than fortuities (i.e., risks or losses which may or may not happen and thus constitute true insurance business[11]) – might be brought as new claims in a separate proceeding proved to be an entirely illusory option since such proceedings were subsequently found also to be precluded, this time by virtue of the immunity conferred by section 14(3) of the 1982 Act.

The immunity conferred by section 14(3) was held to be effective – while recognizing that Lloyd's "is not a public body, is not amenable to judicial review and is not amenable to the Human Rights Act" – because Lloyd's was performing regulatory

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[10] *Tropp v. Lloyd's* [2004] EWCA 1544, (Civ) para 20.

[11] *Ikerigi Cia Naviera SA v Palmer, The Wondrous* [1992] 2 Lloyd's Rep. 566 and *Manifest Shipping Co. Ltd. v. Uni-Polaris Shipping Co. Ltd.* [2001] UKHL 1.

functions,[12] although the acts at issue were taken in its private capacity under contractual authority rather than in exercise of public functions conferred by statute. Furthermore it was applied notwithstanding that Lloyd's when bringing proceedings to enforce the liabilities imposed by the Contract on Members was only acting as an assignee of Equitas which was clearly not exercising any regulatory function. This seems a particularly remarkable conclusion given that the issue in dispute was not the appropriate conduct of a Member in the handling of insurance business under his or her original contract on joining Lloyd's but the extent of the liability that could legitimately be imposed upon him through a second contract to whose terms he had not consented in his original contract 9 years earlier, and which had not been disclosed to him at that time when he was being induced to consent to the original contract.

The House of Lords refused to grant the petitioner leave to appeal the decision.

It should also be noted that even a claim for fraud in matters connected to the Contract cannot be brought. This is firstly because a fraud defense to an R & R claim would be considered to be precluded by the no set-off clause in paragraph 5.5 of the Contract.[13] Secondly, all affirmative fraud claims were held to be barred as a result of a case management order affecting all Members – and not

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[12] *The Society of Lloyd's v. Tropp* [2006] EWCA Civ 88, 23 January 2006, para. 22.

[13] *Society of Lloyd's v Leighs* [1997] C.L.C. 1398 (C.A.).

just those party to the proceedings in which it was made – notwithstanding that those claims might arise from facts occurring later than those in the case concerned and that they had not been pleaded or considered in the court making that order.[14] This was all the more significant as the exception to the immunity for bad faith has been treated narrowly, when applied to Lloyd's in particular, as equivalent only to affirmative fraud and not capable of embracing deliberate avoidance on the its part.[15]

C. The Current Situation Is The Result Of A Series Of Judicial Decisions Misapprehending The Intent Of Parliament.

The present position seems very far from the one that Parliament envisaged would ensue when enacting the 1982 Act. Thus the Under-Secretary of State for Trade, Mr. Reginald Eyre stated that the provision which became section 14(3):

> protects Lloyd's only against damages. It by no means rules out the process of judicial review of Lloyd's discharge of its regulatory duties. Where it is thought ... that [Lloyd's management] have exceeded their powers, failed to carry out their duties, or exercised them in an unfair or unreasonable manner, it would be open to aggrieved parties to seek judicial review by the High Court. A

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[14] *Laws v. Lloyd's* [2003] EWCA 1887, (Civ), para. 65(i) and 65(xii).

[15] *Tropp v. Lloyd's* [2004] EWCA 1544, (Civ), para 18.

> successful action could lead to an injunction or a declaration. ... I believe that this is a most important safeguard. The authorities at Lloyd's will be accountable in court for the fairness and reasonableness of what they do or omit to do.[16]

Similarly Nicholas Lyell QC, following a modification to the provision that became section 14(3), observed that:

> As a result of the change, one of the [members of the Lloyd's community] who feels himself unjustly treated ... can now go to the court for an injunction or a declaration .... [I]f injustice can be shown to have been done, there is a swift remedy. That is absolutely right. It is the kind of protection which they [the members] need.[17]

Furthermore Lord Mackay of Clashfern, the Lord Advocate, speaking for the Department of Trade subsequently stated that:

> ... it is right that the [Lloyd's] authorities' interpretation of their statutory functions [under the bill] should be open to scrutiny by the courts. Judicial review will be available as a remedy for oppressive or unfair acts, and nothing in the Bill affects that ... it is quite

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[16] Hansard, HC proceedings, 3 February 1982, cols 393-396H.

[17] Hansard, HC proceedings, 22 February 1982, col 397.

wrong to suggest that the Bill would put Lloyd's above the law.[18]

However, although the immunity in section 14(3) of the 1982 Act was understandably intended to provide a shield for Lloyd's in its capacity as statutory regulator when performing its public functions under the 1982 Act, it is now being used to protect acts of an essentially private character that impose substantive liabilities on its internal community of an extremely onerous character, tantamount to a lifelong indenture.

The attribution by the courts of this character to the immunity in section 14(3) can also be seen in the ruling in *Laws v. Society of Lloyd's*,[19] a case in which an attempt was made to challenge the immunity through reliance on the Human Rights Act 1998. However, Waller L.J. rejected the reliance upon the Human Rights Act 1998 – even if were applicable – on the basis, *inter alia*, that section 14 of the 1982 Act did not engage any remedy through the fair hearing or due process guarantee in Article 6 of the Convention[20] because it was not a mere procedural

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[18] Hansard, HL proceedings, 1 April 1982, col 1530.

[19] [2003] EWCA 1887, (Civ), unreported.

[20] Article 6 provides that: "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the

bar (*i.e.*, it was not a barrier to the bringing of proceedings in respect of a wide range of matters) but conferred a substantive immunity, in the sense of preventing rights and liability in respect of them from even arising.

Furthermore there is no safeguard that the international human rights standards that the United Kingdom has made a part of its constitutional framework will be respected where substantive obligations are being imposed on Members by Lloyd's pursuant to the extensive powers conferred by the 1982 Act since it has also been held that there could be neither judicial review of its functions nor any relief under the Human Rights Act 1998. The latter conclusion was based on a finding that the Society of Lloyd's was not a public authority for the purposes of the Human Rights Act 1998 and its objectives were commercial[21] so the prerequisite of public (or state) action for applying that Act did not exist. There is, therefore, a serious risk that Lloyd's will exercise the powers conferred on it in a way that unjustifiably interferes with the right of Members to the peaceful enjoyment of their possessions (*i.e.*, their right to the protection of their property) under Article 1 of the

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extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Art. 6(1), 213 U.N.T.S. 221, Europ. T.S. No. 5.

[21] *R on the application of West v. Lloyd's of London* [2004] EWCA 506 (Civ), [2004] 3 All ER 251.

First Protocol to the European Convention on Human Rights.[22]

Thus, notwithstanding that the intention of Parliament when adopting the 1982 Act was always that acts by Lloyd's in the exercise of its public functions should be subject to judicial review and its private law acts would be subject to private law procedures, the experience has shown that neither is possible so that Lloyd's and its management are not accountable however a function is classified.

English courts have frustrated the intention of Parliament and effectively undermined the rule of law in the relationship between Lloyd's and Members through an over-expansive interpretation of the immunity conferred by the 1982 Act and a failure to distinguish between the performance by Lloyd's of genuine public regulatory functions and the protection of its own commercial interests at the expense of those of its Members.

As a result the management of Lloyd's are not only free to determine the substantive rights and

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[22] Article 1 of the First Protocol provides that: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, Art. 1, 213 U.N.T.S 262, Europ. T.S. No. 9.

obligations of its individual Members but they are also protected from any rigorous scrutiny of factual issues underpinning both claims brought against it and defenses raised against claims which it brings itself. Such a situation not only runs counter to the interests of their principals - the Members - but also of both policy-holders and the public in protecting the market as a whole, as well as operating as a deterrent to potential fiduciary investors. It is also incompatible with the fundamental right of access to court.

Although it is undoubtedly possible to continue to raise objections to the correctness of both the restrictive approach to judicial review of measures taken in respect of Members and the breadth given to the immunity in section 14(3) of the 1982 Act, it is evident that the positions taken on these matters by the English courts have become settled law and thus binding so long as the 1982 Act remains in force.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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