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

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| *In re* | Chapter 15 |
| MARKEL CATCO REINSURANCE FUND LTD., *et al.*, | Case No. 21-11733 (LGB) |
| Debtors in Foreign Proceedings.[1] | (Jointly Administered) |

**DECLARATION OF SIMON APPELL IN SUPPORT OF THE MOTION FOR ENTRY OF AN ORDER GIVING FULL FORCE AND EFFECT TO BERMUDA SCHEMES OF ARRANGEMENT**

Pursuant to 28 U.S.C. § 1746, I, Simon Appell, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am over the age of 18 and, if called upon, could testify to all matters set forth in this declaration (this "**Declaration**").

2. I am one of two joint provisional liquidators of the above-captioned foreign debtors (collectively, the "**Debtors**"). The other joint provisional liquidator of the Debtors is John C. McKenna of Finance & Risk Services Ltd. (a "**JPL**" and together, with myself, the "**JPLs**"). Under the Recognition Order, Mr. McKenna and I were recognized as the duly appointed and authorized representatives of the Bermuda Proceedings within the meaning of Bankruptcy Code section 101(24) (collectively, the "**Foreign Representatives**") and are authorized to act on behalf of the Debtors in the Chapter 15 Cases.[2]

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[1] The Debtors are Bermuda companies registered with the Registrar of Companies in Bermuda. The Debtors' respective registration numbers are as follows: Markel CATCo Reinsurance Fund Ltd. (50599); CATCo Reinsurance Opportunities Fund Ltd. (44855); Markel CATCo Investment Management Ltd. (50576); and Markel CATCo Re Ltd. (50602). Each of the Debtors has its registered office located at Crawford House, 50 Cedar Avenue, Hamilton HM11, Bermuda.

[2] *See* Recognition Order ¶ 6.

3. I am a Managing Director of AlixPartners UK LLP. I have been a member of the Institute of Chartered Accountants in England and Wales since 1988. I have been a licensed insolvency practitioner in the United Kingdom since 2004. I am also an accredited mediator. I have more than 30 years' experience in corporate reconstruction, insolvency, and the investigation of complex financial transactions, in Europe, the United States, Asia, the Cayman Islands, and Bermuda.

4. I submit this Declaration in support of the *Motion for Entry of an Order Giving Full Force and Effect to Bermuda Schemes of Arrangement* (the "**Motion**"),[3] filed contemporaneously herewith.

5. Consistent with my role as a JPL and a Foreign Representative, I have gained knowledge of the Debtors' history, day-to-day operations, assets, financial condition, business affairs, and books and records. I am over the age of 18 and, except as otherwise indicated, all facts set forth in this Declaration are based upon (a) my personal knowledge; (b) my review of relevant documents, including documents prepared or filed in connection with the Bermuda Proceedings and the above-captioned chapter 15 cases (the "**Chapter 15 Cases**"); (c) information supplied to me by the Debtors' officers, directors, employees, or advisors; or (d) my experience and knowledge of the Debtors' assets and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

## BACKGROUND

6. I refer the Court to the Motion, the Verified Petition, and the First Appell Declaration, for a description of the Debtors, recent litigation commenced or threatened by

[3] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

investors in the Debtors, the potential consequences of such claims for the Debtors, and the events leading to the Bermuda Proceedings and the Chapter 15 Cases.

## I. Investor Litigation and Consequences of Investor Claims

7. As described in the Verified Petition, the Private Fund and the Public Fund (together, the "**Scheme Companies**") ceased accepting new investments in 2019 and since that time the Manager has been managing the CATCo Group's portfolios in order to run off the policies in an orderly manner. In light of recent developments regarding certain claims brought or threatened against parties indemnified by the Scheme Companies, however, the orderly return of capital has been put at risk and investors face potentially substantial delay in respect of the return of the remaining capital, as well as the potential depletion of fund assets as a result of any potential further litigation. The purpose of the Schemes and the Restructuring is to achieve an equitable resolution of potential claims by investors against the Scheme Companies, or parties indemnified by the Scheme Companies, in respect of losses suffered on their investments ("**Investor Claims**").[4]

8. As further described in the Verified Petition, following the losses suffered in 2018, certain investors threatened to bring claims against the former chief executive officer of the Manager, Anthony Belisle ("**Mr. Belisle**") in respect of their investments in the Private Fund. In October 2020 one such investor filed a claim in the United States against Mr. Belisle. In June 2021, a settlement was reached with respect to this claim.

9. The Debtors have informed me that, pursuant to their bye-laws, certain bilateral management agreements between the Manager and the other Debtors, and certain other agreements that the Debtors are party to, the Private Fund, the Public Fund, or the Reinsurer provided

[4] I understand from the Debtors' advisors that the Investor Claims that will be released pursuant to the Restructuring comprise the CATCo Claims and CATCo Liabilities, each as defined in the Deed of Release described below.

indemnities to a wide group of persons, including the Manager, its affiliates, directors and officers, and various related individuals and entities in connection with the Markel CATCo business ("**Indemnified Persons**"). Accordingly if Investor Claims were successfully brought against Indemnified Persons, the Debtors would ultimately be liable for any damages awarded and/or the costs of defending such claims.

10. As set out in the Explanatory Statement published by the Scheme Companies in respect of the Schemes, the Scheme Companies deny liability with respect to any Investor Claims and would intend to defend any asserted Investor Claims. The Scheme Companies do not believe any such claims would succeed. However, the Debtors have informed me that this does not exclude the possibility that certain Investor Claims could result in adverse judgments against the Scheme Companies and/or parties indemnified by the Scheme Companies.

11. Further, the Debtors have informed me that the Manager maintained a high degree of uniformity in communications with Private Fund Scheme Creditors, and all Private Fund Scheme Creditors received substantially similar communications form the Manager and Private Fund. For this reason, the Scheme Companies believe that if any Scheme Creditor does have a valid Investor Claim in relation to their investment, it would be likely that the other Scheme Creditors in their scheme voting class would have an equivalent claim against the Scheme Companies.

12. The Debtors' advisors have informed me that under Bermuda law, such Investor Claims (if successful) may, and associated indemnification obligations will, legally rank ahead of, and have priority of payment over, the interests of investors due to the investors holding equity interests. The Debtors believe that this could result in an inequitable distribution of fund assets, as investors who have asserted claims could be paid ahead of all other investors, notwithstanding the

Debtors' view, as described above, that all Scheme Creditors are likely to have equivalent claims to all other Scheme Creditors in each class. Consequently, the Scheme Companies determined that no further distributions to investors would be made until the risk of future investor claims being asserted against the CATCo Group is resolved.

13. The Debtors have informed me that shortly prior to the Convening Hearing, certain investors connected to Partners Capital LLP (collectively "**Partners**") and HWH Realty Holdings, LLC ("**HWH**" and together with "**Partners**," the "**Litigation Claimants**"), separately commenced litigation against Mr. Belisle in state and federal courts in Florida (the "**Florida Litigation**"). On February 3, 2022, without any admission of liability, the Manager (acting on its own behalf and on behalf of the Private Fund) and Markel Corporation entered into a settlement agreement with the Litigation Claimants (the "**Settlement Agreement**" and the settlement reached between the parties thereunder, the "**Settlement**"). The Settlement was entered into upon the approval of the boards of directors of the Private Fund and the Manager in accordance with the terms of the JPL Appointment Order, having consulted with the JPLs on the Settlement and the terms of the Settlement Agreement. The JPLs were not directly involved in the negotiations with the Excluded Creditors.

14. Pursuant to the Settlement, the Debtors' advisors have informed me that the Litigation Claimants have withdrawn their opposition to the Schemes, the Florida Litigation has been stayed and will be dismissed with prejudice following the date of the completion of the Restructuring (the "**Closing Date**"), and, on the Closing Date, Partners, HWH and the investors connected thereto that are party to the Settlement Agreement (the "**Excluded Creditors**") will receive (a) the then current net asset value of their shares in the Private Fund in full and final satisfaction of their interests in the Private Fund and (b) an additional payment of $20 million in

consideration for granting the releases to be given contractually under the Settlement Agreement (as more fully described in the Settlement, the "**Settlement Releases**") and dismissing with prejudice the Florida Litigation. The Debtors have also informed me that as part of the Settlement, the Excluded Creditors have been excluded from the Private Fund Scheme and are no longer Scheme Creditors.[5]

15. The Debtors' officers and advisors have informed me that the amounts payable to the Excluded Creditors pursuant to the Settlement will be funded by Markel Corporation and recoveries made under the Manager's D&O insurance policies and will accordingly not reduce recoveries that would otherwise be available to Investors in the Private Fund or the Public Fund pursuant to the Buy-Out Transaction. I have been further informed by the Debtors' officers and advisors that the Settling Insurers that have agreed to pay out on such claims have done so on the basis that they will be entitled to enforce the releases to be granted by the Excluded Creditors and the Scheme Creditors pursuant to the Settlement and the Schemes, respectively. The Settlement Agreement will terminate if the Restructuring is not implemented, and the Debtors expect that the Litigation Claimants will seek to pursue the Florida Litigation.

## II. The Restructuring and the Schemes

16. I have been informed by the Debtors that Markel Corporation decided to offer a buy-out transaction to investors in the Private Fund and the Public Fund, which will be implemented pursuant to the Schemes (the "**Buy-Out Transaction**" and the implementation of such Buy-Out Transaction through the Schemes and these Chapter 15 Cases, the "**Restructuring**") to (a) resolve the uncertainty around investor litigation; (b) reduce the risk of investors gaining an

[5] The Debtors believe that the prior opposition of the Excluded Creditors has already resulted in a substantial delay to the original timeline for the implementation of the Schemes, and, absent the Settlement, their continued opposition would likely have caused further expense and delay.

unfair advantage through litigation; and (c) facilitate the expeditious return of funds to investors. The Debtors have further informed me that the Restructuring cannot be implemented unless the Schemes are approved by the Scheme Creditors, sanctioned by the Bermuda Court, and enforced in these Chapter 15 Cases.

### A. Overview of the Buy-Out Transaction[6]

17. The Debtors have asserted that pursuant to the Buy-Out Transaction, the Scheme Creditors will receive a return of the net asset value ("**NAV**") of the Private Fund,[7] as well as their pro rata shares of $44 million to be provided by Markel Corporation. Markel Corporation will also contribute $25–30 million to cover the legal and other costs of the transaction, in order that such costs do not reduce the NAV available to investors.

18. My understanding is that Markel Corporation has also agreed to contribute approximately $14.8 million to pay an early consent fee to Scheme Creditors that timely agreed to support the transaction, and a work fee to certain investors involved in the negotiation and development of the proposal. I have been further advised by the Debtors that in addition, Markel Corporation will contribute $20 million less the amount of any insurance proceeds received, to fund the Settlement.

19. The Schemes are expected to be overwhelmingly accepted given the executed Investor Undertakings, which obligate Scheme Creditors to vote in favor of the Schemes. I have been informed by the Debtors that, once implemented, the Schemes will permit the Debtors to return capital expeditiously to the Scheme Creditors, while also allowing the Scheme Creditors to

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[6] Paragraphs 17, 22, and 25–26 are based on my review of the Explanatory Statement and information provided by the Debtors' advisors.

[7] As set forth in the Explanatory Statement, the aggregate net asset value of the Private Fund as of December 31, 2021 was $817.1 million. (The latest NAV available for the Aquilo Fund of the Private Fund is September 30, 2021 (adjusted for contingent loss provision.)

retain any upside after the return of the applicable portion of the Buy-Out Amount to the Funding Cos, and will provide for the orderly runoff of the remaining NAV under the protection of a court-sanctioned release of claims.

20. Moreover, the Debtors have informed me that the Buy-Out Transaction implemented through the Schemes will avoid the possibility of litigation and preempt an insolvent liquidation. The Debtors have also informed me that if parties were permitted to commence actions in the United States in contravention of the Schemes, the Debtors would be forced to utilize significant resources defending those actions.

21. The Relief Requested, including enforcement of the Releases and approval of the Injunctions, is thus necessary to protect the Debtors from the irreparable harm that they could suffer if the Schemes and the Buy-Out Transaction contemplated thereby were undermined.

22. **The Loans.** The amount of cash required to fund the immediate return of NAV to creditors (the "**Buy-Out Amount**") will be provided by certain of Markel Corporation's wholly owned subsidiaries (the "**Funding Cos**") pursuant to a loan agreement (the "**Purchase Price Loan Agreement**"), dated on or about the Closing Date. Specifically, the Debtors' advisors have informed me that the Funding Cos will loan (each, a "**Loan**") the Buy-Out Amounts to a wholly owned subsidiary of Markel Corporation under the Purchase Price Loan Agreement. The Loans will be co-borrowed by the Reinsurer. The Buy-Out Amount will be repayable to the Funding Cos upon funds becoming available to make such repayment, but will not accrue any interest or other charges. All other amounts being contributed by Markel Corporation are not repayable. I am informed by the Debtors that the Funding Cos would not be prepared to provide the Loans absent the Security and the other protections to be provided in favor of the Funding Cos with respect thereto.

23. I am informed by the Debtors that the Loans are an essential element of the Buy-Out Transaction, are necessary for the implementation of the Buy-Out Transaction, and critical to the overall success and feasibility of the Restructuring. I am informed that the creation and perfection of the Liens in connection therewith and the priority thereof, are necessary and appropriate for implementation of the Buy-Out Transaction and the Restructuring. I am further informed by the Debtors officers and advisors that the Loans are a necessary and critical component of the Buy-Out Transaction as they provide funding of the Buy-Out Amounts, which will be used to fund the distributions to Scheme Creditors.

24. Moreover, I am informed by the Debtors that the Lenders are only prepared to make the Loans available if the Loans and the Security are enforced in the United States. I am further informed by the Debtors that they do not have alternative funding sources currently available on equal or better terms than the terms of the Loans from the Lenders. Accordingly, the Debtors believe that, if they do not enter into the Loans on the terms required by the Lenders, there is a material risk that they will be unable to otherwise obtain the requisite financing to fund the Buy-Out Transaction, which would in turn jeopardize the Restructuring. The Purchase Price Loan Agreement does not provide for any interest to be paid on the Buy-Out Amounts, and accordingly is on terms which would not be available from any commercial lender.

25. **The Releases.** To enable the cash distribution to be paid to the Scheme Creditors on the Closing Date, and as a condition to and in consideration of the Buy-Out Transaction, each of the Scheme Creditors, the Private Fund, the Public Fund, the Manager, the Reinsurer, the Funding Cos, the Adverse Development Cover Provider, and Markel Corporation will, pursuant to the Schemes, become party to a deed governed by the laws of Bermuda (the "**Deed of Release**") pursuant to which such parties shall grant releases of any claims they have or might have against

the Scheme Companies and certain related entities and individuals, including the Indemnified Persons (as more fully described in the Deed of Release, the "**Scheme Releases**"). The Deed of Release also provides that the Deed Parties agree not to commence or take any actions against the Released Parties arising from any claims released under the Deed of Release (the "**Agreement Not to Sue**," and together with the Settlement Releases and the Scheme Releases, the "**Releases**"). I have been informed by the Debtors that the Settlement Releases are parallel releases to the Scheme Releases and the Agreement Not to Sue granted pursuant to the Schemes.

26. If the Schemes are approved by the Scheme Creditors and sanctioned by the Bermuda Court, the Debtors have informed me that all the Scheme Creditors will be bound by the Schemes and the Deed of Release, which will enable the Buy-Out Transaction to be completed.

27. Thus, the Releases represent integral parts of the Schemes. Moreover, I am informed by the Debtors that the Scheme Releases and the Agreement Not to Sue have been agreed to by nearly all Scheme Creditors pursuant to executed Investor Undertakings. I am also informed that the parallel Settlement releases given by the Excluded Creditors under the Settlement Agreement are correspondingly integral to the consummation of the Buy-Out Transaction as a whole and were consensually agreed to as part of the Settlement Agreement.

28. The Debtors believe that the Deed of Release and the Settlement Agreement will enable the Buy-Out Transaction to proceed as the threat of litigation being brought against the Scheme Companies or persons indemnified by the Scheme Companies will be eliminated. The Debtors also believe that the Releases will stop assets from being depleted to defend any litigation and prevent the Scheme Creditors and the Excluded Creditors from bringing Investor Claims.

29. Accordingly, I have been informed by the Debtors that Markel Corporation is only willing to provide funding for the Buy-Out Transaction on the condition that the Deed of Release

and the Settlement Agreement are enforced. This is because the repayment of the Buy-Out Amount pursuant to the Purchase Price Loan Agreement depends upon the orderly run-off of the Reinsurer. I have been informed that defending Investor Claims, whether brought directly against the Scheme Companies or indirectly through an indemnity claim, would hamper that run off and risk the repayment of the Loans.

30. The Debtors have informed me that, based on advice from their professionals, the Debtors believe that the failure of this Court to enforce the Schemes and the Buy-Out Transaction, including the Releases, and grant the Injunctions, would jeopardize the Restructuring, which would be detrimental to Scheme Creditors and would prevent the fair and efficient administration of the Debtors' assets. The Debtors have informed me that certain Scheme Creditors or other entities could then seek to obtain judgments in the United States against the Debtors or other Released Parties, including those entitled to indemnification by the Debtors, to, among other things, attempt to obtain greater recoveries than those to which they are entitled under the Schemes, resulting in the prejudicial treatment of certain creditors, unnecessary enforcement costs, and the piecemeal disposition of assets. Further, the Debtors believe that the Injunctions are necessary to prevent entities other than the Scheme Creditors from suing the Debtors and other Released Parties with respect to claims discharged and released pursuant to the Schemes.

31. To this end, entry of the Proposed Order, including the enforcement of the Releases and the approval of the Injunctions in support of the Restructuring, seeks to give effect to the orderly and equitable implementation of the Schemes, the Sanction Orders, and the Buy-Out Transaction (including the Settlement Agreement) in the United States, and, on the basis of the information provided to me by the Debtors and set out above, I believe such relief should be granted.

**WHEREFORE**, pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: February 23, 2022
London, United Kingdom

*/s/ Simon Appell*
Simon Appell