UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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 KEHINDE GEORGE IN SUPPORT OF MOTION FOR ENTRY OF AN ORDER GIVING FULL FORCE AND EFFECT TO BERMUDA SCHEMES OF ARRANGEMENT

Pursuant to 28 U.S.C. § 1746, I, Kehinde George, 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 Head of Insolvency and a Director of ASW Law Limited ("**ASW**") and Bermuda counsel for the above-captioned foreign debtors (collectively, the "**Debtors**"), each of which is incorporated under the laws of Bermuda.

2. As of the date hereof, the Debtors are subject to liquidation proceedings in the Supreme Court of Bermuda (the "**Bermuda Court**"), in which provisional liquidators have been appointed for the purpose of restructuring (the "**Provisional Liquidation Proceedings**") under Part XIII of the Companies Act 1981 (as amended, the "**Bermuda Companies Act**"), and to schemes of arrangement under section 99 of the Bermuda Companies Act commenced in the

[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.

Provisional Liquidation Proceedings (the "**Schemes**" and, together with the Provisional Liquidation Proceedings, the "**Bermuda Proceedings**").

3. On October 5, 2021, Simon Appell of AlixPartners UK LLP and John C. McKenna of Finance & Risk Services Ltd., in their capacities as the joint provisional liquidators and authorized foreign representatives (in such capacities, the "**JPLs**" or the "**Foreign Representatives**") of the Debtors, filed with this Court voluntary petitions for relief for recognition of the Bermuda Proceedings under Bankruptcy Code section 1515 on behalf of the Debtors (the "**Chapter 15 Petitions**") commencing the above-captioned chapter 15 cases (the "**Chapter 15 Cases**").

4. On November 4, 2021, this Court held a recognition hearing. Following the hearing, this Court entered an order recognizing the Bermuda Proceedings as foreign main proceedings under chapter 15 of title 11 of the United States Code (the "**Bankruptcy Code**") [Docket No. 23] (the "**Recognition Order**") and granting related relief.

5. I submit this declaration (this "**Declaration**") in support of the *Motion for Entry of an Order Giving Full Force and Effect to Bermuda Schemes of Arrangement* (the "**Motion**"),[2] filed contemporaneously herewith.

6. I am over the age of 18 and, except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my opinion based upon my experience and knowledge of the Debtors and my review of relevant documents or information supplied to me. In preparing this Declaration, among other things, I have reviewed (a) the Motion, (b) documents prepared or filed in connection with the Bermuda Proceedings, including the Schemes, the Explanatory Statement, and the Transaction Documents, and (c) relevant

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

provisions of the Bermuda Companies Act and other provisions of Bermuda law as they relate to chapter 15 of the Bankruptcy Code ("**Chapter 15**") and other aspects of U.S. bankruptcy law referred to in this Declaration. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

7. This Declaration comprises matters that are statements of my view of Bermuda law or statements of fact. Where the matters stated in this Declaration are statements regarding Bermuda law, such statements represent my view of Bermuda law as a barrister admitted and authorized to practice in Bermuda. Where the matters stated in this Declaration are statements of fact that are within my personal knowledge, they are true. Where the matters stated in this Declaration that are statements of fact that are not within my personal knowledge, they are derived, as appropriate, from documents maintained by the Registrar of Companies of Bermuda, from the records maintained by ASW as a result of advising the Debtors in connection with the Bermuda Proceedings, or from information supplied to me by or on behalf of the Debtors, and are true to the best of my knowledge, information, and belief.

PROFESSIONAL BACKGROUND

8. I was admitted as a solicitor of the Supreme Court of England and Wales in September 1985 and was called to the Bermuda Bar in January 1996. I have a Bachelor of Laws Degree with honours (King's College, London, 1982). I was employed as a corporate attorney in firms in the City of London (1983–91) and as a government lawyer in the Department of Trade and Industry of the UK Government, advising on insolvency (1991–95). I emigrated to Bermuda in November 1995 and was employed with the law firm of Milligan-Whyte & Smith (1995–99), before becoming a founding partner in the firm of Attride-Stirling & Woloniecki, the predecessor firm to ASW, in October 1999. My practice within Bermuda since 1995 has been primarily in the

fields of corporate restructuring and insolvency and related litigation. I have advised liquidators, provisional liquidators, creditors, shareholders, and regulators in relation to numerous local and cross-border insolvencies and restructurings and schemes of arrangement.

9. I am a member of the Bermuda Bar Association, INSOL, and a member and sit on the executive committee of the Restructuring and Insolvency Specialists Association (Bermuda branch).

10. My firm, ASW, has been retained by the Debtors in connection with this matter.

11. Although I am not a U.S. attorney and thus do not purport to make any statements concerning matters of U.S. law, I am fairly acquainted with Chapter 15.

STATEMENTS OF BERMUDA LAW AND PRACTICE

12. I respectfully refer the Court to the Motion, the Verified Petition, and the *Declaration of Kehinde George in Support of the Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representatives, and (III) Certain Related Relief* [Docket No. 4] (the "**First George Declaration**"), for a description of the sources and nature of Bermuda law and an overview of Bermuda liquidation and scheme proceedings.

I. Schemes of Arrangement Generally Under Bermuda Law

13. A scheme of arrangement is a statutory process under sections 99 and 100 of the Bermuda Companies Act whereby a compromise or arrangement between a company and its creditors or members (or any classes of its creditors or members) can become binding on the company and all of its affected creditors or members if (a) approved at Bermuda Court-directed meeting(s) by a majority in number, representing at least 75% in value, of those present and voting at the meeting(s) of each class of affected creditors or members; (b) sanctioned by the

Bermuda Court; and (c) a copy of the court order sanctioning the scheme is delivered to the Bermuda Registrar of Companies for registration.

14. A scheme of arrangement under the Bermuda Companies Act, like an English scheme of arrangement, is a flexible mechanism that can be used to encompass a large variety of compromises or arrangements between a company, whether solvent or insolvent, and its creditors or members. A scheme of arrangement is a useful tool for restructuring all or a certain part of a company's debt or effecting an agreement among the company and its creditors or members. A company does not need to be insolvent, or near insolvency, to propose and implement a scheme of arrangement. In fact, schemes of arrangement under section 99 of the Bermuda Companies Act are the current typical manner used to implement solvent restructurings in Bermuda.

15. A compromise or arrangement of the type envisaged here has the effect of discharging liabilities of the company concerned and, therefore, can facilitate the winding-up or restructuring of a company, as applicable.

16. The Bermuda Companies Act requires the following to occur in order for a scheme of arrangement to become legally binding on the company and on all of the creditors or members to whom it applies:

(a) the convening by the Bermuda Court of meeting(s) of the class or classes of creditors or members affected by the scheme of arrangement to vote on its approval;

(b) the issuance of an "explanatory statement" (which I understand to be similar to a disclosure statement under the Bankruptcy Code) to the affected creditors or members explaining the effect of the scheme of arrangement and addressing certain other statutory requirements;

(c) notification to affected parties of the date and time of the court-directed scheme meeting(s);

(d) the approval of the scheme of arrangement by a majority in number representing at least 75% in value of the class or classes of creditors or

members present and voting in person or by proxy at the scheme meeting(s) convened for such purpose;

(e) the sanction of the scheme of arrangement by the Bermuda Court following a full hearing (which I understand to be similar to a confirmation hearing under the Bankruptcy Code) of a petition to sanction the scheme; and

(f) the delivery of a copy of the order of the Bermuda Court sanctioning the scheme to the Registrar of Companies within such period as may be specified by order of the Bermuda Court or the scheme itself.

17. These provisions mirror the corresponding provisions in the UK Companies Act 1948 and are substantially similar to the scheme provisions in the UK Companies Act 2006. Accordingly, when considering these provisions, the Bermuda court mirrors the approach taken in England and other common law jurisdictions. The rationale for this approach was explained by Kawaley CJ in *Re Titan Petrochemicals Group Limited* [2014] Bda LR 90 at [12].

18. A scheme of arrangement cannot be sanctioned by the Bermuda Court unless the Bermuda Court is satisfied, among other things, that (a) the scheme of arrangement is in all circumstances fair and reasonable and (b) the classes of creditors or members voting in respect of the scheme of arrangement have been properly constituted. *See In re Telewest Commc'ns Plc* [2004] EWHC 1466 (Ch), [36]–[40]. Without the Bermuda Court's sanction of a scheme, a company cannot implement such scheme.

II. Practice Direction Letter, Application, and Convening Orders

19. The scheme process begins when a company (a) issues a practice direction letter in accordance with Circular No. 18 of 2007 of the Bermuda Court to the creditors or members affected by the scheme (this being a requirement for creditors' schemes only) and then (b) submits an application to the Bermuda Court seeking a hearing of the Bermuda Court to convene a scheme meeting(s) of the relevant class or classes of the company's creditors or members

proposed to be subject to the scheme to enable such parties to consider and vote on the proposed scheme of arrangement.

20. The purpose of a practice direction letter is to inform the creditors or members subject to the scheme of (i) the company's intention to promote a scheme, (ii) the purpose that the scheme is designed to achieve, (iii) the class composition of the creditors or members subject to the scheme for the purpose of voting on the scheme at the scheme meeting(s), and (iv) a company's intention to apply to the Bermuda Court to seek an order convening a meeting or meetings of the creditors or members subject to the scheme for the purpose of voting on the scheme. Applications for a convening order at a convening hearing are usually made *ex parte*. However, scheme creditors will be put on notice that a convening hearing will be scheduled through the practice direction letter and of the proposed date for such a hearing (subject to court confirmation).

21. In designating and determining the appropriate class or classes of creditors or members for the purpose of voting on a scheme of arrangement, a company must consider whether the rights of the creditors or members within such class are not so dissimilar with respect to the company, both as such rights exist before the scheme and afterwards, so as to make it impossible for them to consult together in relation to the proposed compromise or arrangement with a view to their common interest. *See* Circular No. 18 of 2007 (Berm.); *In re Hawk Ins. Co Ltd* [2001] EWCA Civ 241, [26]; *In re UDL Holding Ltd* [2002] 1 HKC 172, 185–94 (Lord Millett NPJ); *In re T&N Ltd.* (No. 4) [2006] EWHC 1447 (Ch), [85]–[87]; *In re Lehman Bros. Int'l (Eur.) (Admin.)* [2018] EWHC 1980 (Ch), [70].

22. At a convening hearing, the Bermuda Court will consider the composition of the proposed class or classes of creditors or members, the nature of the proposed restructuring, and

the contents of the explanatory statement prior to making an order convening any scheme meeting.

III. Notice of Scheme Meetings and Explanatory Statement

23. Once an order convening the scheme meeting(s) has been issued, notice of the scheme meeting(s) must be given to all affected creditors or members prior to the meeting(s) in accordance with that order and the Bermuda Companies Act. Such notice must be accompanied by an explanatory statement that contains sufficient information regarding the company and explaining the effect of the scheme of arrangement following consummation, so as to allow a typical creditor or member to make an informed decision whether or not to support the proposed scheme of arrangement. *See* Companies Act § 100(1); *In re APP China Grp. Ltd.* [2003] Bda LR 50. The explanatory statement provides disclosure regarding the procedures to take place in the scheme. In particular, it must set out information regarding the proposals for the scheme, the affected creditors or members, the constitution of the creditor or member class or classes, material interests of directors, the scheme meeting or meetings, voting, and guidance on how scheme creditors or members may participate in the scheme of arrangement. I understand and have been advised by Skadden, Arps, Slate, Meagher, & Flom LLP, U.S. counsel (the "**U.S. Counsel**") to the Foreign Representatives, that an explanatory statement is comparable to the disclosure statement required under section 1125 of the Bankruptcy Code for solicitation of votes on a chapter 11 plan. Creditors or members are entitled to attend the scheme meeting in person, by authorized representative (if a corporate entity) or by proxy and may ask the scheme meeting's chairperson questions regarding the proposed scheme of arrangement and raise objections which must be recorded in the report of the meeting submitted to the Bermuda Court by the chairperson of the meeting.

IV. Distribution of Proceeds of Estates

24. Under Bermuda insolvency law, payments to creditors will generally rank in the following order: secured creditors with fixed charges, costs associated with the proceedings, certain employee debts, certain preferential payments, secured creditors with floating charges, unsecured creditors, shareholder loans and shareholder equity. Although I am not qualified in respect of the Bankruptcy Code, it is my understanding, based upon discussions with U.S. Counsel, that the rules and principles under Bermuda insolvency law governing the distribution of a company's assets are substantially similar to the rules and principles governing distribution of a company's assets under the Bankruptcy Code.

V. No Prejudice to Foreign Creditors

25. The Bermuda Companies Act does not favour local claimants or discriminate against claimants who are not citizens or residents of Bermuda. Bermuda law does not contain any provisions that create any prejudice or inconvenience for the processing of claims asserted by residents of the United States in a Bermuda scheme of arrangement proceeding. In addition, pursuant to the Bermuda Companies Act, creditors of a debtor company may assert their claims by mail and are not required to appear before the Bermuda court.

26. Thus, all Scheme Creditors are treated equally and consistently regardless of where they are domiciled.

VI. Voting

27. As noted above, each class of affected creditors or members will consider and vote on the proposed schemes of arrangement. Similar to English schemes, Bermuda schemes require a majority in number representing at least 75% in value of those present and voting in person or by proxy at the scheme meeting of each class or classes of creditors or members to vote in favour of the scheme of arrangement in order for the Bermuda Court to have jurisdiction

to sanction the scheme of arrangement. If any class of affected creditors or members does not approve the scheme (by the requisite majorities described above), the scheme cannot be sanctioned by the Bermuda Court and will not take effect. In other words, nonconsenting affected creditors or members can be bound by the terms of a scheme of arrangement only if all of the classes of affected creditors or members vote by the requisite majorities in favour of the scheme. Thus, unlike the confirmation provisions of chapter 11 of the Bankruptcy Code, as explained to me by U.S. Counsel, cross-class cramdown is not permissible.

28. The voting majorities are confirmed by the chairperson at the scheme meeting(s). To confirm the voting majorities, the chairperson tabulates the votes of affected scheme creditors or members submitted at each scheme meeting. The chairperson is often assisted in this task by an adviser appointed specifically to assist the company with, among other things, the task of tabulating votes. If the requisite majorities of attending and voting creditors or members approve the scheme of arrangement, the chairperson provides a report and sworn statement as evidence thereof to the Bermuda Court in support of the application for sanction of the scheme.

VII. Bermuda Court Sanction of Schemes of Arrangement

29. Assuming the requisite majorities have been obtained at the scheme meetings, a company must petition the Bermuda Court to sanction the scheme of arrangement at a sanction hearing for it to become binding on all of the affected scheme creditors or members, whether or not they voted in favour of the scheme of arrangement. I understand and have been advised by U.S. Counsel that a sanction hearing is comparable to a confirmation hearing on a chapter 11 plan of reorganization under Bankruptcy Code section 1128. Similar to a confirmation hearing, at a sanction hearing all of the creditors or members of a company who are intended to be bound by the scheme have, subject to compliance with the Bermuda Court's directions, an opportunity

to raise objections to the scheme of arrangement and to present evidence, which is consistent with U.S. standards of due process.

30. Following the sanction hearing, the Bermuda Court may sanction a scheme of arrangement unconditionally, sanction a scheme of arrangement conditionally upon certain modifications or amendments to the scheme of arrangement, or refuse to sanction the scheme of arrangement.

31. The Bermuda Court will consider five criteria in exercising its discretion as to whether or not to sanction a scheme. *See In re Telewest Commc'ns Plc* [2004] EWHC 1466 (Ch). In particular, the Bermuda Court must be satisfied that:

(a) sufficient steps have been taken to identify and notify all interested parties;

(b) the statutory requirements and all directions of the Bermuda Court have been complied with;

(c) the class or classes of creditors or members are properly constituted;

(d) no issue of coercion must arise; and

(e) the compromise or arrangement proposed under the scheme of arrangement is such that an intelligent and honest man, being a member of the relevant class of scheme creditors or members concerned and acting in respect of his interests, might reasonably approve it.

32. Further, the Bermuda Court will not sanction a scheme of arrangement unless it is satisfied that the scheme is in all circumstances fair and reasonable. *See id.* at [38]; Circular No. 18 of 2007 (Berm.); *In re Hawk Ins. Co. Ltd.* [2001] EWCA Civ 241; *In re UDL Holding Ltd.* [2002] 1 HKC 172, 185–94 (Lord Millett NPJ); *In re T&N Ltd.* [2006] EWHC 1447 (Ch), [85]–[87]; *In re Lehman Bros. Int'l (Eur.) (Admin.)* [2018] EWHC 1980 (Ch), [70]. In addition, the Bermuda Court will not sanction a scheme that is *ultra vires*. *See In re Oceanic Steam Navigation Co. Ltd.* [1939] 1 Ch 41. The Bermuda Court does not judge the business merits of

proposed schemes and generally refrains from second-guessing commercial decisions made at a scheme meeting or meetings.

33. If the Bermuda Court issues a sanction order sanctioning a scheme of arrangement, the scheme will only take effect once a copy of the Bermuda Court's order sanctioning the scheme has been delivered to the Bermuda Registrar of Companies for registration. Upon such delivery, the scheme is binding and effective on all affected creditors or members according to its terms, irrespective of whether such creditor or member (a) actually received notice pursuant to the methods of notice required by and approved in the convening order, (b) participated at any scheme meeting, or (c) voted at any scheme meeting. The ultimate legal effect of the arrangement envisaged by the scheme of arrangement can, in limited circumstances, be subject to additional conditions as agreed to between the company and its creditors or members as part of the scheme of arrangement.

VIII. Releases

34. Under Bermuda law, a scheme of arrangement can be used to affect creditors' rights with respect to third parties. *Re APP China Group Ltd* [2003] Bda L.R. 50, page 12-13. It is very common for schemes of arrangement to confer a power of attorney on the scheme company (or a third party) to execute a deed of release or other relevant contractual documents on behalf of creditors. *See, e.g.*, *Re ColourOz Investment* 2 LLC [2020] B.C.C. 926 at [74]-[75] per Snowden J, following *Re Premier Oil plc* [2020] CSOH 39 at [218]-[230] per Lady Wolffe. In addition, schemes of arrangement under Bermuda law are substantially similar to schemes in the United Kingdom where third-party releases are often granted. *See Re Lehman Brothers (Europe) (No.2)* [2009] EWCA Civ 1161 per Patten LJ at 65; *Re AI Scheme Ltd* [2015] 1233 (Ch) at [18] per Norris J; *Re Noble Group Ltd* [2019] BCC 349 (sanction judgment) at [24]-[35]

and *Re Gategroup Guarantee Ltd* [2021] EWHC 304 (Ch) at [163] per Zacaroli J. Accordingly, non-consensual, third-party releases are permissible under Bermuda law.

THE BERMUDA PROCEEDINGS

35. Prior to the launch of the Schemes, the Scheme Companies sought support for the Buy-Out Transaction from Scheme Creditors. By the time the Schemes were launched on October 27, 2021 a very high percentage of Scheme Creditors had entered into the Investor Undertakings to support the Buy-Out Transaction. Nonetheless, three groups of Scheme Creditors initially opposed the Schemes. The largest of those investors withdrew their opposition and entered into an Investor Undertaking to support the Buy-Out Transaction on December 3, 2021.

36. On December 2 and 3, 2021, the remaining two groups, being 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**").

37. On December 7 and 8, 2021, the Bermuda Court held the hearing on the applications by the Scheme Companies for orders convening meetings of their respective investors to vote on the Schemes (the "**Convening Hearing**"). Parties-in-interest, including the Litigation Claimants, who raised various issues in opposition to the Schemes, were given an opportunity to be heard on procedural and jurisdictional issues regarding the Schemes including, among other things, the Scheme Releases.

38. 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**"). On February 3, 2022, the Excluded Creditors' attorneys wrote to the Bermuda Court to confirm that the Excluded Creditors withdrew their opposition to the Schemes.

39. Following the Settlement, I understand from the Debtors that the Scheme Companies sought consent from the Supporting Investors to amend the Investor Undertakings to (a) extend the termination date of the Investor Undertakings to 11:59 pm (Bermuda time) on March 31, 2022, and (b) amend the Buy-Out Transaction to provide for certain improved transaction terms and to facilitate the Settlement. I have been further informed by the Debtors that the improvements to the Buy-Out Transaction included increasing the Additional Consideration to be paid to investors by $10 million (from $34 million to $44 million) and increasing the Administrative Expenses Contribution from $20 million to an amount equal to the total costs of the Buy-Out Transaction (an estimated $5–10 million increase). The amendments were approved by over 93% of Private Fund Supporting Investors and the Investor Undertakings were accordingly amended for all Supporting Investors, as announced by the Scheme Companies on February 11, 2022.

40. Thereafter, a further directions hearing was held on February 16, 2022, at which the Bermuda Court ruled in the Scheme Companies' favour on the issues raised at the Convening Hearing (with written reasons to follow) and issued orders on the record authorizing the Scheme Companies to convene the Scheme Meetings (the "**Convening Orders**"). On February 18, 2022, the Scheme Companies provided notice of the Scheme Meetings to all affected Scheme Creditors, in accordance with the Convening Orders. Such notice was accompanied by instructions on how to access the Explanatory Statement containing the Schemes and information regarding the Scheme Companies and explaining the effect of the Schemes following their

consummation, so as to allow Scheme Creditors to make an informed decision whether or not to support the proposed Schemes (the "**Explanatory Statement**"). I understand that the Explanatory Statement was posted to the Case Website on February 18, 2022.

41. The Scheme Meetings are scheduled to be held on March 4, 2022, due notice having been given to all Scheme Creditors on February 18, 2022. The Sanction Hearing has been requested to be scheduled in mid-March 2022 (depending on availability of the Bermuda Court).

ENFORCEMENT OF THE SCHEMES

42. I believe that the Relief Requested in the Motion, including enforcement of the Schemes, the Sanction Orders, the Deed of Release and the Settlement Agreement, including the Releases thereunder, as well as a grant of permanent injunctive relief to support the proper implementation of the Schemes, would not cause undue hardship or prejudice to the rights of any creditor or interested party based in the United States.

43. The Bermuda Companies Act does not favour local claimants or discriminate against claimants who are not citizens or residents of Bermuda. Bermuda law does not contain any provisions that create any prejudice or inconvenience for the processing of claims asserted by residents of the United States in a Bermuda scheme of arrangement proceeding. Under the Schemes, each of the Scheme Creditors' claims are valued proportionately to their shareholdings and each are offered the opportunity to file claims if they believe that the amount stated by the Scheme Companies is incorrect. Non-Bermudian Scheme Creditors have the same rights in this respect. Additionally, almost all of the Scheme Creditors are non-Bermudian and all are treated the same under the Schemes. Finally, pursuant to the Bermuda Companies Act, creditors of a debtor company may assert their claims by mail and are not required to appear before the Bermuda court.

44. Moreover, priority in right of payment and in distribution of proceeds under Bermuda insolvency law is substantially similar to the manner in which I understand from U.S. Counsel that such rights and distributions would be made under the Bankruptcy Code. In particular, there is a similar order of payments to secured, priority, and ordinary unsecured creditors.

45. As noted above, the Bermuda Court will consider five criteria in exercising its discretion as to whether or not to sanction a scheme and any releases contained therein, including with respect to sufficient notice, compliance with all statutory requirements and directions of the Bermuda Court, proper class constitution, lack of coercion, and reasonableness. The Bermuda Court will not sanction a scheme of arrangement unless it is satisfied that the scheme is in all circumstances fair and reasonable.

46. Here, the Schemes do not differentiate amongst the Scheme Creditors based on nationality; all the Scheme Creditors are entitled to participate in the Bermuda Proceedings and are classified together based on a similarity of their legal rights against the Debtors in respect of the applicable Scheme.

47. Each step taken in the Bermuda Proceedings has been taken with ample notice to the Scheme Creditors, and the procedures utilized comport with fundamental standards of due process. For example, the Scheme Creditors and other affected parties were given 25 days' advance notice of the Convening Hearing and have been given 14 days' advance notice of each of the Scheme Meetings and 21 days' notice of the provisional date for the Sanction Hearing. Further, the claims of the Scheme Creditors in each class were classified with other similarly situated claims or interests. The Scheme Creditors were given the opportunity to attend, raise objections, and present evidence to be heard by an impartial judge at the Convening Hearing and

will be able to do so at the Sanction Hearing. All of the Scheme Creditors were also provided with a link to the Explanatory Statement filed in the Scheme Proceedings, links to certain Transaction Documents and voting forms, which contained all information reasonably necessary for the Scheme Creditors to make an informed decision about the merits of the Schemes.

48. The record of the Bermuda Proceedings is clear and fulsome regarding the just treatment of Scheme Creditors with respect to the Schemes and the Releases. The Deed of Release and the effect thereof was initially described in detail in the practice direction letter issued to all Scheme Creditors at the commencement of the Scheme Proceedings on October 28, 2021. The Scheme Creditors and the Bermuda Court had the opportunity to evaluate the Deed of Release prior to and at the Convening Hearing.

49. The Deed of Release was made available to the Scheme Creditors as part of the notice of the Scheme Meetings along with the documents posted to the Case Website with the Explanatory Statement on February 18, 2022. The Scheme Creditors will have a further 14 days to review the Deed of Release prior to the Scheme Meetings and will have the opportunity to lodge any objections to the Transaction Documents, including the Deed of Release, or otherwise to the Schemes, including in respect of the Transaction Documents and the Settlement, at the Sanction Hearing.

50. In addition, Scheme Creditors will be able to consider and contest the Releases at the proposed Sanction Hearing. At a sanction hearing, all of the creditors or members of a company who are intended to be bound by the scheme have, subject to compliance with the Bermuda Court's directions, an opportunity to raise objections to the scheme of arrangement and to present evidence.

51. As demonstrated above, the procedures for participating in and voting on the Schemes under Bermuda law are applied uniformly to all of the Scheme Creditors, wherever they reside, and the panoply of rights of the Scheme Creditors to participate in and object to the Scheme processes in regular proceedings before the Bermuda Court is discussed above with respect to the recognition of the Schemes. The Debtors have sought to effect adequate notice to all the Scheme Creditors regardless of their location. The Debtors likewise implemented voting procedures to ensure that all the Scheme Creditors can participate in any discussions taking place and can vote directly.

52. Thus, in my view, because the Schemes are not contrary or prejudicial to the interests of the creditors in the United States and because liquidation and scheme proceedings held in Bermuda should be given full effect in the United States, general principles of comity require that the Relief Requested be granted.

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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
Hamilton, Bermuda

/s/ Kehinde George
Kehinde George