

**IN THE HIGH COURT OF JUSTICE**  
**000018**

**BUSINESS AND PROPERTY COURTS**

**COMMERCIAL COURT (QBD)**

**FINANCIAL LIST**

**FINANCIAL MARKETS TEST CASE SCHEME**

**The Honourable Mr Justice Butcher**

**BETWEEN:**

**THE FINANCIAL CONDUCT AUTHORITY**

**Claimant**

**-and-**

**(1) ARCH INSURANCE (UK) LTD**

**(2) ARGENTA SYNDICATE MANAGEMENT LTD**

**(3) ECCLESIASTICAL INSURANCE OFFICE PLC**

**(4) HISCOX INSURANCE COMPANY LTD**

**(5) MS AMLIN UNDERWRITING LTD**

**(6) QBE UK LTD**

**(7) ROYAL & SUN ALLIANCE INSURANCE PLC**

**(8) ZURICH INSURANCE PLC**

**Defendants**

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**DIRECTIONS**

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**UPON** hearing Leading and Junior Counsel for each of the

Parties

**AND UPON** considering the Claimant's application dated 9

June 2020 **AND UPON** the First Case Management

**Claim No. FL-2020-**

**23 Jun 2020**



FL-2020-000018

Conference

**IT IS ORDERED THAT:**

- 1 The trial of the claim shall be expedited.
- 2 Subject to the following directions, the Financial Markets Test Case Scheme shall apply to the claim.
- 3 Any Defendant which has not filed and served an Acknowledgment of Service shall do so as soon as practicable and in any event by 4pm on 16 June 2020.
- 4 There shall be a Case Management Conference listed for 26 June 2020 ('the Second CMC') with a time estimate of 1 day and to be held remotely.
- 5 The trial of the action shall be listed to commence on 20 July 2020 with a time estimate of 8 days (excluding pre-reading, the precise time for which is to be agreed by the parties in due course so far as possible, but currently estimated to be a minimum of 3 days).
- 6 The trial shall be heard by a court consisting of Butcher J and Flaux LJ.
- 7 The parties shall conduct all preparation for trial on the assumption that the trial will be conducted (wholly or partly) remotely.
- 8 Subject to further order of the Court, and if the proceedings are conducted wholly as video proceedings, the Court directs pursuant to Schedule 25 of the Coronavirus Act 2020 that, so far as practicable, the proceedings at the Second CMC and the trial of the action are to be broadcast by publicly live-streaming them on the internet.

- 9 The FCA shall post a notice on its website of the direction made in the above paragraph.
- 10 The parties shall forthwith carry out discussions as to trial bundles, such discussions to cover: (a) the use of an electronic hosting solution for the bundles; and (b) the bundles' structure and content. If and insofar as such discussions have not previously led to agreement:
- (a) By 12 noon on 19 June 2020, the FCA shall provide to the Defendants its proposals on the matters set out in (a) and (b) above; and
  - (b) By 4pm on 23 June 2020, the Defendants shall provide their responses to such proposals.
- 11 Any party seeking permission to rely on factual evidence in the trial that has not been agreed shall by 5pm on 23 June 2020 file and serve an application for such permission together with a copy of the relevant evidence and any hearsay notices where required by CPR, r33.2.
- 12 Any party seeking permission to rely upon expert evidence in the trial shall by 5pm on 23 June 2020 file and serve an application for such permission together with a copy of the expert evidence for which permission is sought, save that the parties shall not seek permission to rely upon expert evidence in relation to the issue of actual prevalence of COVID-19 (including as raised by paragraphs 26, 27, 28.3 and 28.4 (and the correlative declarations in section P, paragraph (7)) of the Particulars of Claim) at the trial referred to at paragraph 5 above.
- 13 The FCA must by 4 pm on 17 June 2020 publish a notice on its website

to the effect that any non-party wishing to make an application under paragraph 2.5 of Practice Direction 51M should make any such application by 5pm on 24 June 2020 on notice to all parties to the litigation, any such application to be returnable at the Second CMC.

14 The FCA shall provide to the Defendants its proposed trial timetable by 12 noon on 19 June 2020.

15 The Defendants shall provide their responses to the FCA's proposed trial timetable by 4pm on 23 June 2020.

16 The Defendants shall serve their Defences by 23 June 2020. Each Defendant shall plead separately to the part of the Particulars of Claim which concern it and will, so far as practicable, avoid unnecessary duplication in response to the aspects of the Particulars of Claim which are common to all Defendants.

17 The 25 page limit for the Defences required by the Commercial Court Guide be disapplied.

18 The Defendants shall provide to the Claimant any further proposed scenarios by way of assumed facts that are intended to be drawn upon by the Court to assist in the determination of the disputed issues by 5pm on 24 June 2020.

19 The FCA shall file and serve its skeleton argument for the Second CMC by 4pm on 24 June 2020.

20 The Defendants shall file and serve their skeleton arguments for the Second CMC by 1pm on 25 June 2020.

21 The Claimant shall serve a Reply to the Defendants' Defences by 4pm on 3 July 2020.

22 The 25 page limit for the Reply required by the Commercial Court

Guide be disapplied.

- 23 The parties shall cooperate with a view to agreeing a list of issues for the trial.
- 24 If the parties have not previously been able to reach agreement:
  - (a) By 4pm on 4 July 2020, the FCA shall provide to the Defendants its proposed list of issues; and
  - (b) By 4pm on 7 July 2020, the Defendants shall provide their responses to the same.
- 25 If, after completion of the steps in paragraph 24 above, the parties are unable to reach agreement in respect of the list of issues, the parties shall have liberty to apply to the Court for a determination of any disagreement relating to the list of issues.
- 26 The FCA shall publish all statements of case on its website as soon as practicable and in any event no later than 24 hours after their service.
- 27 Any questions as to publication of other documents that are not otherwise resolved in advance shall be dealt with at the Second CMC.
- 28 There be liberty to any party to apply to vary the terms of this Order.
- 29 There be no order as to costs.

Date Order made: 16 June 2020