

# Anderson Kill & Olick, P.C.

## POLICYHOLDER ADVISOR

The Policyholder Law Firm



### Crazy Schemes: Orion and London & Overseas Insurance Companies

By Mark Garbowski

Policyholders with London Market insurance policies are probably familiar with the U.K. schemes for winding up the affairs of both insolvent and sometimes solvent insurance companies. One such scheme expects to wind up next year with a handful of twists that merit special attention, including for policyholders who are absolutely certain that they have no claims and will never have claims against the insolvent company seeking to conclude its affairs. In fact, policyholders whose habit is to ignore U.K. schemes of arrangement should review the scheme details and decide whether to engage this time.

#### The U.K. Scheme Process: Overview and Background

Generally, London Market insurance companies seeking to wind up their affairs use a “scheme” process. This is similar in some ways to U.S. liquidation procedures, but usually moves much faster. In sum, once an inactive insurance company sets up the scheme and it is approved by a court, a scheme plan is adopted and soon thereafter dates are set requiring policyholders and other claimants to submit and provide evidence for their claims by a certain date. Because this usually happens fairly quickly, the schemes typically allow for

the submission of future expected claims. These usually involve, but are not limited to, environmental or asbestos-type claims that the policyholder already faces and expects to keep facing into the future.

In addition to moving more quickly than similar U.S. proceedings, the U.K. version differs in at least one additional, significant way. In the United States, generally only insolvent insurance companies are liquidated. In the United Kingdom, solvent companies can take advantage of the same scheme process to wind up their affairs, and force policyholders who purchased occurrence-based policies that would otherwise remain available indefinitely into the future, to estimate and justify their future claims today. If new claims turn up unexpectedly after the claim is required to be submitted and disposed of, the policyholder will not be able to recover from that company.

Solvent companies in the United Kingdom can take advantage of this process in two ways. First, solvent companies that have ceased writing new policies (aka being in run-off) can apply for a scheme to wind up their affairs. Second, solvent and active companies can dispose of a limited part of their business, if it was written as part of a pooling arrangement and insolvent members of the pool are

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setting up a scheme. Then the solvent company can opt to go along for the ride, and either require or allow policyholders submitting claims against the insolvent scheme to also submit claims against the solvent portion of the same pool.

### **The Orion and London & Overseas Insurance Company Insolvent Scheme**

Orion Insurance (now known as OIC Run-Off Limited) and London & Overseas Insurance are currently in an insolvent scheme with a solvent adjunct. At the time of this article, no dates have been firmly set, but the scheme administrators currently expect a bar date sometime in 2013 with a policyholder/creditors vote in June 2013. Policyholders who have not perfected their claims should become aware of these upcoming dates as they become settled, and those with already approved claims who have been receiving partial payments should also determine if they need to engage in next year's events.

The solvent adjunct to the insolvent portion is being handled in a novel fashion that will require policyholders to make decisions that are not common in these schemes.

In brief, policyholders with claims against the solvent portion can opt not to pursue future claims against the solvent portion at this time, and retain their solvent coverage, but if they do submit them, they will get the solvent portion of their future claims paid with no present value discount plus a 10% bonus. On the other hand, if more than 30% of the solvent scheme portion (as measured by claim value) does opt out, then the entire scheme is abandoned and even the insolvent companies will simply remain in run-off. As a further complicating factor, policyholders with no currently expected claims against either the solvent or insolvent portion of the scheme would have to submit their decision to opt out in order to retain the potential future value of their solvent policies that were part of the pool. Accordingly, policyholders who routinely ignore U.K. schemes, but who have London Market policies in which with Orion or London & Overseas participate, should review the scheme details and decide whether to engage in the process this time. Finally, if this scheme is successful, we can expect future schemes to copy and perhaps build upon this formula. ▲

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### **About Anderson Kill & Olick, P.C.**

Anderson Kill practices law in the areas of Insurance Recovery, Commercial Litigation, Environmental Law, Estate, Trusts and Tax Services, Corporate and Securities, Antitrust, Bankruptcy, Real Estate and Construction, Anti-Counterfeiting, Employment and Labor Law, Captives, Intellectual Property, Corporate Tax, Health Reform and International Business. Recognized nationwide by Chambers USA for Client Service and Commercial Awareness, and best-known for its work in insurance recovery, the firm represents policyholders only in insurance coverage disputes — with no ties to insurance companies and has no conflicts of interest. Clients include Fortune 1000 companies, small- and medium-sized businesses, governmental entities, and nonprofits as well as personal estates. Based in New York City, the firm also has offices in Ventura, CA, Stamford, CT, Washington, DC, Newark, NJ and Philadelphia, PA.

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