

Party: Applicant / Proposed Representative  
Witness: N A Purslow  
Number of Statement: Third  
Dated: 3 July 2021

**IN THE COMPETITION APPEAL TRIBUNAL**

**Case no. 1329/7/7/19**

**B E T W E E N : -**

**MICHAEL O'HIGGINS FX CLASS REPRESENTATIVE LIMITED**

**Applicant /  
Proposed Representative**

**-and-**

- (1) **BARCLAYS BANK PLC**  
(2) **BARCLAYS CAPITAL INC.**  
(a company incorporated under the laws of the State of Connecticut, United States of America)
- (3) **BARCLAYS EXECUTION SERVICES LIMITED**  
(4) **BARCLAYS PLC**  
(5) **CITIBANK N.A.**  
(a national banking association incorporated under the laws of the United States of America)
- (6) **CITIGROUP INC.**  
(a company incorporated under the laws of the State of Delaware, United States of America)
- (7) **JPMORGAN CHASE & CO.**  
(a company incorporated under the laws of the State of Delaware, United States of America)
- (8) **JPMORGAN CHASE BANK, NATIONAL ASSOCIATION**  
(a national banking association incorporated under the laws of the United States of America)
- (9) **J.P. MORGAN EUROPE LIMITED**  
(10) **J.P. MORGAN LIMITED**  
(11) **NATWEST MARKETS PLC**  
(12) **NATWEST GROUP PLC**  
(13) **UBS AG**  
(a company incorporated under the laws of Switzerland)

**Respondents /  
Proposed Defendants**

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**THIRD WITNESS STATEMENT OF  
NEIL ANDREW PURSLOW**

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I, **NEIL ANDREW PURSLOW**, of Therium Capital Management Limited, whose registered address is 11 Staple Inn, London WC1V 7QH, **WILL SAY**:

### **Introduction**

1. I am a Director, Co-Founder, and Chief Investment Officer of Therium Capital Management Limited (“**TCML**”). TCML is a UK-based company, wholly owned by Therium Group Holdings Limited (“**TGHL**”), which is registered in Jersey. For ease, I will collectively refer to TCML, TGHL, Therium Litigation Finance Atlas AFP IC and their affiliates as “**Therium**” in this witness statement. Therium’s business is litigation funding and it is funding the Applicant / Proposed Class Representative.
2. I have previously provided two witness statements in relation to the above matter (the “**Proposed Proceedings**”) dated 28 July 2019 (my “**First Statement**”) which was filed with the Competition Appeal Tribunal (the “**Tribunal**”) on 29 July 2019 and 23 April 2021 (my “**Second Statement**”).
3. This is my third witness statement in these proceedings. It is provided to the Tribunal to explain a correction in the details provided by Michael O’Higgins FX Class Representative Limited (the “**O’Higgins Application**”) in relation to the anti-avoidance endorsements (“**AAE**”) put in place in relation to the O’Higgins PCR’s after the event (“**ATE**”) insurance cover.

### **The O’Higgins PCR’s AAE premiums**

4. Based on recent discussions with Ms Belinda Hollway of Scott+Scott UK LLP (“**Scott+Scott**”), I am informed that certain information relating to the level of the AAE premiums to be paid by the O’Higgins PCR was inadvertently omitted by the O’Higgins PCR in materials provided in the Proposed Proceedings.
5. In particular, the O’Higgins Application provided a “Neutral Statement of the O’Higgins PCR on Benefits to the Class” dated 29 June 2021 (the “**Neutral Statement**”), which contained an explanation of the ATE and AAE arrangements. I have reviewed the Neutral Statement and can confirm that the information in relation to premiums paid so far is correct insofar as it relates to the £500,000 plus IPT for the inception of AAE on the primary layer of ATE. In addition, however, the O’Higgins PCR is due to pay further

premiums on the AAE in relation to the excess layers of ATE and on the third excess layer of the ATE insurance in the event that it is certified by the Tribunal and prevails in the carriage dispute against Mr Evans. These contingent premiums amount to £1.5 million plus IPT.

6. For completeness, I have reviewed (and I refer to) Ms Hollway's witness statement of today's date ("**Hollway 6**") in which she explains the position in further detail.

### **Therium's position in relation to the AAE on the Excess Layers**

7. As the person at Therium with responsibility for the relationship with the O'Higgins PCR in the Proposed Proceedings, I can confirm that Therium will fund the costs of the AAE on the excess layers.
8. Our expectation would be that the AAE premium costs will either be met in the following ways:
  - a. By the existing funding commitment under the O'Higgins LFA. In this regard, I note that the O'Higgins PCR's revised budget submitted on 11 June 2021 (the "**Revised Budget**") shows that an estimated £16,343,820 remains available post-CPO.<sup>1</sup> As per the Neutral Statement, the original budget was prepared as a realistic estimate of costs containing headroom and, by the conclusion of the proceedings, the actual costs ultimately incurred are likely to differ materially from those budgeted and there may be headroom; and/or
  - b. In the event that the effect of the AAE premium costs cannot be covered within the remaining Revised Budget, then by an increase in the funding commitment. This can be done by Therium agreeing to an increase in the capital allocated to the case. Alternatively, it is likely that costs will be recovered from the Proposed Defendants in the event that the O'Higgins PCR is certified and wins the carriage dispute, and it would be a relatively minor adjustment to re-cycle those funds so as meet the impact of the AAE premium costs on the O'Higgins PCR's budget.

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<sup>1</sup> See Appendix 1 of the Neutral Statement.

9. Given the above two routes to meet the AAE premium costs within the budget, we would normally regard it as premature to agree relatively small changes to the budget of this nature at this early stage in the proceedings and such adjustments would be dealt with, if necessary, in aggregate, later in the case.
  
10. In light of the foregoing, I can confirm, from Therium's perspective, that nothing has changed in respect of the AAE arrangements since the terms were agreed with the insurers and approved by the Proposed Defendants in June 2020.<sup>2</sup>

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



**Signed:** .....

**NEIL ANDREW PURSLOW**

**Date: 3 July 2021**

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<sup>2</sup> See Hollway 6 for details of the agreement with the Proposed Defendants.

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