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Not Your Average Coffee Shop: Lloyd's of London—A Twenty-First-Century Primer on the History, Structure, and Future of the Backbone of Marine Insurance

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I. INTRODUCTION

Lloyd's of London repeatedly presents itself in all facets of maritime litigation. However, much of what Lloyd's does and how it actually functions continues to be an enigma for both student and practitioner alike. The purpose of this Article is to illuminate the origins, structure, and future of Lloyd's of London, and in doing so, provide a clear

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explanation to the gentle reader of how this vital marine insurance organization interacts within the maritime commercial environment.

II. FROM HUMBLE BEGINNINGS TO COMMERCIAL MARITIME GIANT: A HISTORICAL PERSPECTIVE

> One of the most important local objects in the commerce of this enterprising county and indeed of the globe itself, is Lloyd's Coffee House, a name which is derived from the first person who kept it, and who little imagined that it would progressively acquire a celebrity as great in the annals of the commercial world, as that of any sovereign in the history of courts.[1]

To seventeenth-century Londoners, the simple coffeehouse represented "the center of social life."[2] It was a place where citizens could escape the puritanical and austere aspects of 1650s English society, and within a short time, the coffee shop phenomenon had "fastened itself on London."[3] Accordingly, during this industrious period of the British Empire, vast amounts of commercial transactions began to take place within their modest confines, with business literally occurring around the coffee table.[4] On the roster of official coffeehouses for the year of 1687 appeared one Edward Lloyd, who decided to open his coffeehouse close to St. Catherine's Landing on Tower Street near the Thames River in downtown London.[5] "Undoubtedly, Lloyd's early clientele must have been largely composed of seafaring persons, including captains and 'ships husbands' who met there to transact their day-to-day business."[6] Furthermore, the early Lloyd's coffeehouse doubled as an auctioning block for the sale of seafaring vessels.[7] Ultimately, because of the constant association of this distinctive class of businessmen and their trade at the coffee shop, Lloyd's coffeehouse began to develop a growing reputation as a maritime commercial meeting place.[8]

The day-to-day business of his early seafaring customers proved to be quite profitable for Lloyd. In 1691, he relocated his coffeehouse to a larger building on Lombard Street, which attracted wealthier merchants

1. SHOLTO PERCY & REUBEN PERCY, 18 THE PERCY ANECDOTES 175 (1823).
2. RAYMOND FLOWER & MICHAEL WYNN JONES, LLOYD'S OF LONDON: AN ILLUSTRATED HISTORY 19 (1974).
3. D.E.W. GIBB, LLOYD'S OF LONDON: A STUDY IN INDIVIDUALISM 3 (1972).
4. FLOWER & JONES, *supra* note 2, at 19.
5. *Id.* at 20.
6. *Id.*
7. GIBB, *supra* note 3, at 7.
8. FLOWER & JONES, *supra* note 2, at 22.

to his establishment.[9] It was at this point in Lloyd's career that he embarked on two innovative ventures, both of which would ultimately have the effect of cementing his institution as a maritime commercial powerhouse.[10] Lloyd first began by creating a network of correspondents located in surrounding ports and abroad who could report on the movement of specific vessels and other maritime-related information.[11] This further strengthened his establishment as a strategic nexus for admiralty-related industry.[12] Lloyd thereafter synthesized the shipping intelligence gleaned from these correspondents into a weekly trade paper, which could then be distributed throughout the London maritime market.[13] Accordingly, merchant businessmen reading the *Lloyd News* could keep abreast of nearby port information, ship schedules, and even receive periodic updates concerning maritime affairs in foreign lands.[14] Oddly enough, the publication of his maritime broadsheet lasted a mere five months.[15] However, "[b]y drawing the public's attention to Lloyd's as a nerve-center of shipping news [the *Lloyd News*] had attracted merchants and ship-owners to the coffee-house . . . [and] the insurance business in due course grew out of this connection."[16]

By 1710, Lloyd's was considered the "chief commercial Saleroom of London," and by Edward Lloyd's death in 1713, "his establishment could safely be described as the acknowledged headquarters of maritime affairs."[17] However, there is no evidence that any significant amount of marine insurance underwriting occurred at Lloyd's during this period.[18] In fact, D.E.W. Gibb, a prominent member of Lloyd's, notes that "of the date when its permanent occupation, its predestined business of marine insurance, started we have no idea."[19] What can be gleaned from historical accounts is that during the late seventeenth and early eighteenth century, groups of retired ship's captains began associating at Lloyd's and extending their expertise to the blossoming area of marine insurance.[20] After all, their unique capability and experience particularly enabled them to gauge the respective marine risks involved in a proposed venture

9. *Id.*
10. *Id.* at 23.
11. *Id.* at 22.
12. *Id.*
13. *Id.*
14. *Id.*
15. GIBB, *supra* note 3, at 8.
16. FLOWER & JONES, *supra* note 2, at 24.
17. *Id.* at 29.
18. *Id.* at 40.
19. GIBB, *supra* note 3, at 18.
20. FLOWER & JONES, *supra* note 2, at 31.

and thereafter calculate the specific insurance rates for individual ships.[21] Although many of these merchants were underwriting their own risks (or the risks of their friends sitting across the table), they were arguably the early prototype of the modern marine insurance underwriter, sans syndicate.[22]

During Lloyd's dramatic rise in stature, the volume of marine insurance gradually began to increase throughout Britain.[23] So, too, did the underwriters, brokers, and insurance companies who attempted to gain a piece of the action. Although there were other establishments that accommodated marine underwriters, Lloyd's specifically offered "the best available news service about the world's shipping, messages from the Admiralty and from every British port, gossip brought by homeward-bound skippers . . . and reports of casualties at the moment when they first reached London."[24] Accordingly, it is understandable that many underwriters, and now brokers, began gravitating to Lloyd's during this period to conduct their marine insurance business.

Interestingly, the fundamental methods of placing marine insurance during this time were roughly similar to modern practices.[25] The early eighteenth-century marine insurance market was, like today's market, made up of brokers and underwriters.[26] Insurance coverage was obtained by a potential assured first approaching a broker (known in the historical vernacular as an "office-keeper"), who thereafter discussed the nature and details of the proposed policy.[27] After this conversation, the broker would draft the insurance document.[28] The broker would then "hawk" the risk around the various coffeehouses until the risk was fully assumed by the various underwriters.[29]

It is important to note that, at this stage in the process, marine insurance underwriting was open "to anyone who fancied to have a flutter."[30] Accordingly, because of a lack of underwriter legitimacy, marine insurance was still a highly speculative industry and was considered to be fundamentally disorganized.[31] A British merchant's

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21. *Id.*
22. *Id.* at 24.
23. GIBB, *supra* note 3, at 38.
24. *Id.*
25. FLOWER & JONES, *supra* note 2, at 40.
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.* at 44.

letter during this chaotic period highlights the uncertainty and angst in placing such insurance within the early London market:

> Put yourself in my position as a merchant, and think what my situation is when I insure under the present system. I must go to the office where an office-keeper only attends who can't certainly inform me who shall subscribe my policy but I must leave directions with him to procure me one for such a sum. If it be a large one perhaps it may be some time before I can have it completed and when my policy is completed I find persons' names to it I have no acquaintance with or knowledge of. It is impossible I can be thought to have what satisfaction is necessary in an affair upon which my whole fortune depends.[32]

The well-grounded concern exemplified in this testimonial came to a head when, in 1720, British Parliament enacted "the Bubble Act," which had drastic effects upon the British marine insurance market and inadvertently established Lloyd's of London as "the great center and stronghold of marine insurance."[33] The Bubble Act responded to the generally speculative nature of eighteenth-century British marine insurance by holding that only two officially chartered corporations, the Royal Exchange Assurance Corporation and the London Assurance Corporation, could underwrite marine insurance.[34] This meant that "apart from [these] two insurance corporations no firm could now write a marine policy without incurring heavy penalties."[35] Accordingly, the Bubble Act prohibited the insurance of ships at sea by any other partnership or firm.[36] However, "private and particular persons" could continue to underwrite policies—and so they did.[37] Individual underwriters, facing what was perceived at the time to be a fierce competition, united at the obvious nexus of British maritime commerce and chose Lloyd's coffeehouse as their official headquarters.[38] Lloyd's therefore provided a perfect *physical* site for the underwriters to meet and sell marine insurance individually.[39] Eventually, the two newly created corporations fell into serious financial difficulty and shifted their focus

32. *Id.*
33. *Id.*
34. *Id.* at 45.
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. Edinburgh Assurance Co. v. R.L. Burns Corp., 479 F. Supp. 138, 144, 1980 AMC 1261, 1268 (C.D. Cal. 1979).

to other nonmarine-related risks.[40] Within a generation of this unforeseen realignment, Lloyd's "dominated the world of marine insurance."[41]

III. "INDIVIDUALLY WE ARE UNDERWRITERS BUT COLLECTIVELY WE ARE LLOYD'S": A MODERN PERSPECTIVE[42]

A. *A Contemporary Cast of Characters*

Modern Lloyd's received its official incorporation in 1871 by an act of Parliament.[43] Furthermore, pursuant to the British Lloyd's Acts of 1871 and 1982, it currently "oversees and regulates the competition for underwriting business ... [and] has statutory powers granted by Parliament to regulate the affairs of the international insurance market in London."[44] However, it is surprising to note that Lloyd's is not, and has never been, an insurance company.[45] Although some people might say that they "have insurance with Lloyd's," it must be observed that the organization does not sell insurance itself and is never at risk on the insurance sold upon its floor.[46] Additionally, Lloyd's does not accept premiums.[47] This somewhat odd set of facts begs the question: If Lloyd's is not structured like a traditional insurance company, then how does it operate? To answer this question, one must first understand and appreciate the unique relationship between the modern Lloyd's underwriting agent, the "Name," and the "Lloyd's syndicate."

Historically, the marine underwriter who became a member of Lloyd's constituted the direct individual who subscribed to the risk and "signed on the policy a line for himself and himself alone."[48] Implicit with his signature was the underwriter's pledge to be subjected to personal *unlimited liability* in the event of a loss, thereafter making him totally liable for everything that he guaranteed to the assured.[49] This "every man for himself" style of marine insurance underwriting changed significantly in the late nineteenth century with the birth of the underwriting agent, the "Name," and the Lloyd's syndicate.[50] An underwriting agent is an underwriter who has the authority to write a line

40. GIBB, *supra* note 3, at 33.
41. FLOWER & JONES, *supra* note 2, at 45.
42. Antony Brown, Hazard Unlimited 24 (1987).
43. *Edinburgh Assurance*, 479 F. Supp. at 144, 1980 AMC at 1269.
44. Lipcon v. Underwriters at Lloyd's, London, 148 F.3d 1285, 1288 (11th Cir. 1998).
45. *Edinburgh Assurance*, 479 F. Supp. at 144, 1980 AMC at 1269.
46. *Id.*
47. *Lipcon*, 148 F.3d at 1288.
48. GIBB, *supra* note 3, at 177.
49. FLOWER & JONES, *supra* note 2, at 127.
50. *Id.*

of insurance for another member at Lloyd's, and his introduction onto the marine insurance scene was both a logical and powerful progression.[51] First, by now having the capacity to "spread the risk" to other Lloyd's members, the underwriter could transact a greater volume of business than if he were to subscribe to the risk alone.[52] Additionally, this agency relationship allowed nonmaritime experts to approach an erudite underwriter and get him to accept risks on their behalf: the risk writing remained in *his* hands, and the others were essentially silent capital partners to his insurance venture.[53] Each silent partner/member who joined forces with a given underwriter thereafter became known as a Name, with the underwriter being labeled as his "agent."[54] In this fashion, it is easy to appreciate the logic of the investment. If the risk did *not* materialize, then each Name would share severally a portion of the group's income via premium payments.[55] If the risk *did* materialize, then the potential liability of a given Name depended upon his percentage share of the group.[56] Traditionally, the Names were also subject to unlimited liability and pledged the entire wealth of their estate to meet their percentage of the loss.[57]

The Lloyd's syndicate was born out of this unique arrangement.[58] A Lloyd's syndicate is the relationship described above—a group of individuals (who are now known as Names) that have chosen to collectively band together and pool their capital resources to participate in the underwriting of marine insurance risks.[59] Presently, "Underwriting Agencies, which act as syndicates, compete for the insurance business."[60] At the head of each underwriting agency is the managing underwriter agent, who "must attract not only underwriting business from brokers but also the capital with which to insure the risks that are underwritten."[61] The necessary capital that fuels the managing underwriter agent's opportunity to underwrite a risk is supplied by the Names.[62] Each Name

51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. Theodore A. Boundas, Lloyd's and the London Insurance Market 1999: Capitalizing on Change 63 (1999).
56. Edinburgh Assurance Co. v. R.L. Burns Corp., 479 F. Supp. 138, 144, 1980 AMC 1261, 1269 (C.D. Cal. 1979).
57. BOUNDAS, *supra* note 55, at 56.
58. FLOWER & JONES, *supra* note 2, at 127.
59. *Edinburgh Assurance*, 479 F. Supp. at 144, 1980 AMC at 1269.
60. Lipcon v. Underwriters at Lloyd's, London, 148 F.3d 1285, 1288 (11th Cir. 1998).
61. *Id.*
62. *Id.*

is required to provide capital as security to support their total Lloyd's underwriting business.[63] This amount is known as "Funds at Lloyd's."[64] The level of Funds at Lloyd's accordingly determines the amount of business an individual Name can underwrite.[65] The total amount that a syndicate (i.e., group of Names) can underwrite is known as "capacity," and "the total capacity of the Lloyd's market in any given year is the aggregate capacity of all syndicates for that year."[66]

In order to be vested with "Name status" and thereafter be allowed to participate in the modern Lloyd's market via a syndicate, an individual must become a "member" of the Society of Lloyd's.[67] The prospective Name must first buy a plane ticket to London, because in order to become a member, it is necessary that he sign articles at Lloyd's agreeing to *exclusive* British jurisdiction over all potential membership disputes.[68] After such niceties, the person will sign additional agreements, submit proof of financial means, and deposit an irrevocable letter of credit in favor of Lloyd's.[69] Upon becoming a member, the new Name is free to participate in the selection of underwriting agencies that will receive his precious Funds at Lloyd's.[70] However, in a departure from historical practice, the modern Name does not deal *directly* with Lloyd's or the underwriting agent.[71] Rather, the Name will be represented by a "member's agent," who takes on a fiduciary role by assisting the Name in choosing a specific underwriting agency/syndicate.[72]

Ultimately, the actual potential liability of a given Name depends upon his "percentage share" of the syndicate of which he is a member, as well as the percentage of the risk to which his syndicate is subscribed.[73] Accordingly, a Name's choice in selecting a syndicate "is of the utmost financial importance because a Name is responsible for his share of an agency's losses."[74] This important decision, however, is mitigated by the fact that a typical Name spreads underwriting capacity to a number of

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63. Lloyd's, *Lloyd's of London: Market Structure*, *at* http://www.lloyds.com/index.asp?itemid=2664 (last updated Nov. 26, 2004).
64. *Id.*
65. *Id.*
66. *Id.*
67. *Lipcon*, 148 F.3d at 1288.
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. Edinburgh Assurance Co. v. R.L. Burns Corp., 479 F. Supp. 138, 144, 1980 AMC 1261, 1269 (C.D. Cal. 1979).
74. *Lipcon*, 148 F.3d at 1288.

syndicates.[75] Generally, a typical Name will underwrite in 40 to 100 syndicates.[76]

B. Placing a Risk on the Floor of Lloyd's: Giving Underwriters "The Slip"

With all Names in place, their Funds at Lloyd's secured, and syndicates eagerly awaiting brokers to present them with risks, it is easy to appreciate that the purchase and sale of marine insurance upon the floor of the underwriting room at Lloyd's occurs in a unique fashion. To illustrate the process, assume that a shipowner needs to obtain hull insurance for a recently built oil tanker. The shipowner (a.k.a. "potential assured") would begin the transaction by first approaching a marine insurance broker to obtain the desired coverage.[77] The Committee of Lloyd's must officially approve of this specific broker, because only "Lloyd's brokers" are permitted to place risks with Lloyd's underwriters on the floor of "the room."[78] If the broker agrees to search for the insurance, then the recognized custom of the London insurance market would treat this broker as an agent of the potential assured.[79] Thereafter, the potential assured is recognized as the broker's client.[80]

Our broker would subsequently proceed to the floor of Lloyd's and attempt to place the shipowner's risk with various underwriting agencies.[81] Each underwriting agency maintains a "box" on the floor at Lloyd's, and within this booth sits that specific syndicate's underwriting agent, who waits for individual brokers to approach him with possible insurance risks.[82] This unique physical arrangement traces its origin back to the original coffee shop of Lloyd's, where ship's captains, the "prototypes of the modern underwriter," would stake out specific tables to conduct their business.[83]

After selecting a specific box, the broker will produce for the underwriter's consideration a document known as a "broker's slip."[84] This relatively simple piece of paper would contain the details of the

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75. BOUNDAS, *supra* note 55, at 64.
76. *Id.*
77. *Edinburgh Assurance*, 479 F. Supp. at 145, 1980 AMC at 1270.
78. *Id.*
79. *Id.* at 144, 1980 AMC at 1269.
80. *Id.*
81. *Id.* at 145, 1980 AMC at 1270.
82. *Id.*
83. FLOWER & JONES, *supra* note 2, at 24.
84. *Edinburgh Assurance*, 479 F. Supp. at 145, 1980 AMC at 1270.

shipowner's risk that the broker is trying to insure.[85] The broker and the underwriter would then negotiate over the slip, and the insurance terms and rate of premium would thereafter be established.[86] The specific underwriter who structures this initial transaction and settles the terms of the insurance agreement by signing the slip generally becomes known as the "lead underwriter," and his syndicate will usually be considered transformed into the "market lead" for that particular risk.[87] "The lead underwriter then subscribes his syndicate to a particular percentage of the risk, for example, five percent."[88] To do this, the underwriter would place his initials on the broker's slip, along with the particular percentage that he is subscribing to on behalf of his syndicate.[89] "By placing his initials on the slip, the underwriter considers that he has created an insurance contract between the individual members of his syndicate and the insured."[90]

The broker, now having obtained the agreement of one underwriting agent (on behalf of his syndicate) to take on 5% of the risk, retains the broker's slip and approaches other syndicates or insurance companies to cover the remaining 95% via the same procedure.[91] "Each subsequent underwriter may express no interest, may agree to the terms on the same premium rate, require a higher premium rate, or require different terms."[92] This process continues until the broker has obtained various underwriter's commitments subscribing to 100% of the risk on the slip.[93]

Upon total completion, the broker would contact our shipowner and confirm that the risk is fully subscribed, or "completed."[94] "Participating underwriters on the risk [would] receive a copy of that part of the slip containing terms and conditions for their files."[95] Thereafter, the broker would register the completed slip with the Lloyd's Policy Signing Office, which will soon take over from the broker all policy production tasks.[96]

At this point in the process, no official policy has yet been issued to the shipowner, who is now known as the "assured." Accordingly, in order for the assured to "have some evidence of the insurance placed during

85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.*, 1980 AMC at 1271.
93. *Id.*
94. *Id.*
95. *Id.*
96. T. RICHARD KENNEDY: LLOYD'S AND THE LONDON INSURANCE MARKET 62 (1999).

the period after the slip is completed but before the policy is issued, brokers may furnish the insured with a cover note memorializing the fact of insurance."[97]

Once the assured's policy is firmly in place, the assured's calculated premium on the policy will be sent to the Lloyd's Central Accounting Office.[98] In the event of a claim, the assured will report the details to the Lloyd's broker, who thereafter would report the issue to the lead underwriter.[99] "Often the market lead among the underwriters handles the claim, and other insurers follow the lead unless they have a major disagreement."[100] While the lead underwriter's handling of the claim is often accepted by the other underwriters, the lead's actual authority to bind the following market is controlled by various clauses in the policy documents. There are a range of such clauses, culminating in what is known as a "full-follow" clause. Where a "full-follow" clause is absent, the lead underwriter does not have authority to bind the following market.[101]

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97. *Edinburgh Assurance*, 479 F. Supp. at 146, 1980 AMC at 1272.

98. BOUNDAS, *supra* note 55, at 39.

99. *Id.*

100. *Edinburgh Assurance*, 479 F. Supp. at 146, 1980 AMC at 1272.

101. *See, e.g.*, Roadworks (1952) Ltd. v. J.R. Charman, [1994] 2 Lloyd's Rep. 99, 105, 1994 WL 1062274 (holding that under proper follow-the-leader clause, leading underwriter acts as agent of following market). For examples of effective full-follow clauses, see, e.g., Progressive Casualty Insurance Co. v. C.A. Reaseguradora Nacional de Venezuela, 803 F. Supp. 1069, 1071 (S.D.N.Y. 1992), *rev'd*, 991 F.2d 42 (2d Cir. 1993):

> [I]t is agreed, with or without previous notice, to follow the leading London Underwriters in regard to alterations, extensions, additions, endorsements and attaching and expiry dates and also in regard to survey and settlement of claims and returns, whether liable or not liable, even if settlement is made 'without prejudice' or on 'ex gratia' basis.

See also Navegacion Goya, S.A. v. Mut. Boiler & Mach. Ins. Co., 411 F. Supp. 929, 933 n.2 (S.D.N.Y. 1975):

> This insurance is subject to the same gross rate, terms and conditions as British Underwriters and it is agreed to follow British Underwriters in regard to alterations, extensions, additions, endorsements and cancellation and also in regard to surveys and settlement of claims and returns including appointment of surveyors and attorneys.

See also Antilles S.S. Co. v. Members of Am. Hull Ins. Syndicate, 539 F. Supp. 572, 573 (S.D.N.Y. 1982):

> The non-Syndicate defendants contracted in their policy to "follow the leading Underwriter (the Syndicate) in all or any settlements or agreements pertaining to losses and/or claims, including legal proceedings, and in the settlement thereof . . . ."

See also LCI Shipholdings, Inc. v. IF P&C Ins., Ltd., 2003 WL 21219903, at *2 (E.D. La. 2003):

> All underwriters hereon shall follow the decisions of the Leading Underwriter with regard to all matters involving claims, including but not limited to, appointment of surveyors, attorneys, and other experts; payments and settlements of claims, including requests for payments on account; and payment of legal fees and other costs.

Even when a full-follow clause is present in the policy documents, the broker will typically present claims to the lead underwriter, and then to an association designated to represent the other syndicates on the policy. This association was formerly known as the Lloyd's Underwriters Claims and Recovery Office (LUCRO), then as the Lloyd's Claims Office (LCO), and most recently as Xchanging Claims Service (XCS).[102] If the existence of coverage and the amount of the claim is confirmed by the lead underwriter, by XCS on behalf of the other syndicates, and by any other insuring entities whose assent is required for a settlement, the broker begins the process of drawing capital down from central accounting.[103] The broker would then distribute the funds to the shipowner/assured.[104]

Implicit within the entire above-mentioned transaction is the overriding duty of "utmost good faith" that is mutually owed between the assured, the broker, and the underwriter. Fundamentally, the marine insurance contract is *uberrimae fidei*—requiring the highest degree of good faith.[105] The historical origins of this duty "can probably be traced to the early coffee-house days when the writing of insurance on ships and cargoes in far away ports would have been impossible without complete and utter candor as to all material aspects of the risk."[106] Accordingly, because the conduct of modern insurance business at Lloyd's "relies upon the respect, trust, and confidence between underwriters and brokers

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See also Roar Marine Ltd. v. Bimeh Iran Ins. Co., [1998] 1 Lloyd's Rep. 423, 425, 1997 WL 1103570:

> It is agreed with or without previous notice to follow leading British Underwriters in regard to agreements, alterations, extensions, additions, endorsements and cancellations and attaching and expiring dates, and also in regard to all decisions, surveys, the providing of bail and settlements in respect of claims and returns, but excluding ex gratia and without prejudice settlements.

For additional cases bearing on full-follow clauses, see *Barlee Marine Corp. v. Trevor Rex Mountain (The LEEGAS)*, [1987] 1 Lloyd's Rep. 471, 473, 1987 WL 491905; *BP Plc v. G.E. Frankona Reinsurance Ltd.*, [2003] 1 Lloyd's Rep. 537, 544, 2003 WL 1610230; *Irish Shipping Ltd. v. Commercial Union Assurance Co. Plc, (The "IRISH ROWAN")*, [1989] 2 Lloyd's Rep. 144, 1989 WL 649828; and *Armadora Occidental S.A. v. Horace Mann Ins. Co.*, [1977] 2 Lloyd's Rep. 406, 408, 1977 WL 60001. *Compare*, Thebes Shipping, Inc. v. Assicurazioni Ausonia SPA, 599 F. Supp. 405 (S.D.N.Y. 1984) (finding the following language insufficient to create agency power: "Warranted Following Main London Slip Lead by Lloyd's Underwriter HLQ").

102. CORPORATION OF LLOYD'S, LLOYD'S 1999 CLAIMS SCHEME AND USER'S GUIDE 1 (1999).

103. *Id.* at 4.

104. BOUNDAS, *supra* note 55, at 39.

105. Gulfstream Cargo, Ltd. v. Reliance Ins. Co., 409 F.2d 974, 981 n.20, 1966 AMC 385, 389 n.20 (S.D. Fla. 1966).

106. KENNEDY, *supra* note 96, at 64.

. . . the truthfulness, honesty and integrity of the participants" continues to be a critical part of the overall process.[107]

Throughout the Lloyd's transaction, the duty of utmost good faith requires the assured to disclose truthfully all facts that would either affect the underwriter's decision to accept the risk or which would affect his rating of the premium.[108] Furthermore, "the duty applies throughout the negotiation of a risk . . . and to any renewal of the insurance."[109] Reciprocally, an underwriter may find itself in a position where *it* has peculiar knowledge of facts of which the assured is ignorant; in such cases, the underwriter is bound to disclose them if they affect the risk.[110]

C. *Twenty-First Century Lloyd's Configuration*

By reviewing the basic structure of Lloyd's, the process of placing a risk in "the room," and the duties owed between the parties, it is clear that a symbiotic relationship exists between our cast of characters—the underwriter, the Name, the syndicate, and Lloyd's of London. However, there are additional structures in place within Lloyd's that are necessary to facilitate the underwriting of marine insurance.

1. Lloyd's Governance

Currently, the Council of Lloyd's governs the management structure of the entire organization and is responsible for the management and supervision of the Lloyd's insurance market.[111] The Council normally has six working, six external, and six nominated members.[112] Lloyd's members elect the working and external members, and the Governor of the Bank of England confirms the appointment of nominated members.[113]

The Council can discharge some of its functions directly by making decisions and issuing resolutions, requirements, and bylaws.[114] Other decisions are delegated to the Lloyd's Franchise Board, which serves as an important link between the Council and the syndicates.[115] The Franchise Board sets the franchise strategy and is responsible for risk

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107. *Id.* at 63.

108. *Id.* at 64-65.

109. *Id.* at 65.

110. Nicholas J. Healy, *The Hull Policy: Warranties, Representations, Disclosures & Conditions*, 41 TUL. L. REV. 245 (1967).

111. Lloyd's, *Lloyd's of London: Corporation Structure*, *at* http://www.lloyds.com/index.asp?itemid=2638 (last updated Jan. 31, 2005).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

management and profitability targets across the Lloyd's market.[116] This board lays down guidelines for all syndicates and operates a monitoring process to safeguard high standards of underwriting and risk management.[117] Finally, the Corporation of Lloyd's provides a platform from which the Lloyd's businesses can operate.[118] Its employees also act as the executive support for both the Council and the Franchise Board.[119]

2. Current Market Structure

The contemporary market structure of Lloyd's continues to utilize the time-tested broker/underwriter/syndicate method for transacting marine insurance. As of 2003, there were sixty-six insurance underwriting syndicates operating within the Lloyd's market, covering both marine- and nonmarine-related risks.[120] In regard to brokers, there are currently over 169 broker's firms working at Lloyd's, and each must pass a highly specialized accreditation process in order to transact business within the room.[121]

The most fundamental recent change in Lloyd's market structure has surfaced in the area of expanding Name membership to corporate investors. Recall that the original "member" of Lloyd's was an individual underwriter, who personally underwrote a line of marine insurance.[122] Next came the Name, who was an individual essentially "one step removed" from the underwriter, but who chose to participate in the insurance venture by contributing capital.[123] In both cases, the subjects were exposed to unlimited personal liability.[124] As Theodore Boundas notes, many Names were "willing, under the tradition of unlimited liability, to put all of their personal assets at risk" because "Lloyd's was so secure."[125] Even with significant fluctuations in the market, this upbeat investment philosophy apparently served Lloyd's well for over 300 years.[126]

116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. Lloyd's, *Lloyd's of London: Explanation of the Market*, *at* http://www.lloyds.com/index.asp?itemid=2605 (last updated Jan. 7, 2005).
121. *Id.*
122. GIBB, *supra* note 3, at 177.
123. FLOWER & JONES, *supra* note 2, at 127.
124. THEODORE A. BOUNDAS, UNDERSTANDING LLOYD'S AND THE LONDON INSURANCE MARKET 81 (1997).
125. BOUNDAS, *supra* note 55, at 9.
126. EILEEN M. DACEY, THE FUTURE OF LLOYD'S AND THE GLOBAL INSURANCE MARKET 14 (1993).

However, in the late 1980s and early 1990s, Lloyd's was broadsided by a high number of costly maritime-related catastrophes (Piper Alpha, M/V EXXON VALDEZ, etc.) that forced it to post devastating losses.[127] Although these losses were not uniformly distributed amongst the syndicates, it is illustrative to note that, from 1988 to 1992, the losses averaged about $461,000 per existing member.[128] "Individual investors, burned severely by those losses, were not anxious to put more money in."[129] This resulted in a departure of Names, and "[s]ince the total capacity of Lloyd's is the sum total of the individual Names' assets," a massive depletion of capacity in the market occurred.[130]

Lloyd's had to act fast to fill the capacity vacuum and did so by promulgating a "New Business Plan," which provided for the admission of corporate capital into the Lloyd's market.[131] This had never before been permitted and had far-reaching effects, with some commentators heralding the transformation as "the single most important structural change in Lloyd's 350-year history."[132] Because corporations by their nature cannot assume unlimited liability, they possess a finite amount of capital, and individual corporate shareholders "cannot be assessed for any sums beyond the extent of their investment in the company."[133] What this meant for Lloyd's investors was that "individual personal liability" would no longer be the yardstick for admission as an underwriter, and potential investors could thereafter cloak themselves with the protections of a corporation's limited liability.[134]

The effects of the New Business Plan and corporate member classes on the recent capital backing of the Lloyd's market have been remarkable. Four years after its introduction, the percentage of market capacity provided by corporate members had jumped from approximately 15% to 60%.[135] Presently, corporate capital makes up 87.5% of the Lloyd's market share.[136]

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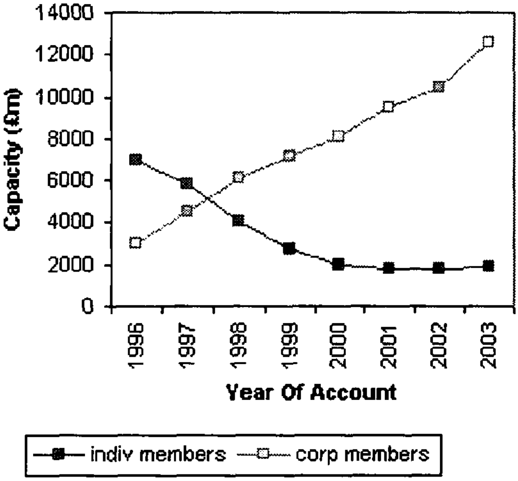
127. *Id.* at 14-24.
128. BOUNDAS, *supra* note 55, at 58.
129. *Id.* at 13.
130. DACEY, *supra* note 126, at 15.
131. *Id.*
132. BOUNDAS, *supra* note 55, at 9.
133. DACEY, *supra* note 126, at 16.
134. *Id.*
135. BOUNDAS, *supra* note 55, at 64.
136. Lloyds, *Lloyd's of London: Sources of Capital*, *at* http://www.lloyds.com/index.asp?itemid=3423 (last updated Dec. 4, 2004) [hereinafter *Sources of Capital*].



D. Changing Capital Backing for Lloyd's Market

A corollary to this dramatic rise in corporate capital has been the steady decline of individual members, from over 34,000 in 1988 to 6825 in 1998.[137] Currently, 768 corporate members provided £12,552m of capital and 2198 individual members provided £1,844m of capital to the Lloyd's market.[138] Many observers expect this decline in individual Name membership, and the subsequent increase in corporate capital, to continue.[139]

Lloyd's currently offers numerous categories of corporate membership to facilitate the extension of corporate capital.[140] In keeping with historical practice, individual Names (usually high-net-worth individuals) are still permitted to become members, but their exposure on underwritten risks remains unlimited.[141] The next class of membership is the Scottish Limited Partnership (SLP) member, essentially a limited liability company formed exclusively to underwrite insurance business at Lloyd's.[142] NameCos, the third class of membership, are "limited [liability] companies owned by one or more formal individual members as a mechanism to convert their unlimited underwriting into limited

137. BOUNDAS, *supra* note 55, at 64-65.
138. *Sources of Capital, supra* note 136.
139. BOUNDAS, *supra* note 55, at 64-65.
140. Lloyd's, *Lloyd's of London: Members, at* http://www.lloyds.com/index.asp?itemid=2666 (last updated Mar. 1, 2004).
141. *Id.*
142. *Id.*

liability."[143] Finally, Group Conversion Vehicles are "limited companies or SLPs and are formed to enable groups of individual members to convert their unlimited underwriting."[144]

IV. CONCLUSION

Edward Lloyd could not have imagined the dramatic effect that his modest coffee shop would have on the world's maritime insurance industry. From its humble beginnings as a simple meeting place for merchants and ship's captains, Lloyd's of London has emerged as the cornerstone of marine risk underwriting. Furthermore, the unique method which Lloyd's employs to underwrite marine risks continues to represent a time-tested system that is flexible enough to deal with future contingencies. Additionally, the recent financial changes which Lloyd's has undergone reflect the historic ideology of the organization to constantly adjust itself in order to meet the ever-changing needs of its unique clientele. Accordingly, because the longevity of this distinctive British organization will undoubtedly extend far into the future, it is important for those who both study and practice in the area of marine insurance law to understand the origins of Lloyd's and to appreciate how it will continue to progressively adapt itself to the maritime insurance market.

143. *Id.*
144. *Id.*