



**ENGLISH & AMERICAN  
INSURANCE COMPANY LIMITED**

**ANNUAL REPORT TO  
CREDITORS**

**26 November 2009**





**KPMG LLP  
Restructuring**

8 Salisbury Square  
London EC4Y 8BB  
United Kingdom

Tel +44 (0) 20 7694 1864  
Fax + 44 (0) 20 7694 3126  
DX 38050 Blackfriars

To all known creditors, potential creditors  
and brokers of English & American  
Insurance Company Limited

Contact EAIC Scheme Helpline  
+44 (0) 1452 330 514

[www.englishandamericanpools.com](http://www.englishandamericanpools.com)

26 November 2009

Dear Sir / Madam

**English & American Insurance Company Limited ('EAIC')  
The Scheme Administrators' Annual Report to Creditors**

**1 Introduction**

Further to our previous report to the creditors of English & American Insurance Company Limited on 10 November 2008, we are writing to update you on progress made to date.

**2 Summary**

- Following consultation with the Creditors' Committee, the Scheme Administrators have maintained the Scheme Payment Percentage at 35%.
- EAIC's liabilities as at 31 December 2008 are estimated at US\$1,039 million (2007 – US\$1,241 million). This is based on the best estimate of the 31 December 2008 year end actuarial review.
- EAIC's total assets as at 31 December 2008 are estimated at US\$451 million (2007 -US\$574 million) before set-off.
- US\$612 million of claims had been agreed as at 31 December 2008. Of those, US\$506 million of agreed claims had become Established Scheme Liabilities. Scheme Payments totalling US\$180 million have been made in respect of those liabilities.
- The Scheme Administrators believe that EAIC has reached a point with respect to its reinsurance collections and asset realisations such that it is appropriate to propose a "closing" or "cut-off" Scheme of Arrangement. The closure scheme will become effective during the next year. Further details are provided in section 6 of this report.



### 3 Scheme Payment Percentage

#### 3.1 *How is the Scheme Payment Percentage set?*

The Scheme Administrators review the Scheme Payment Percentage at least annually in consultation with the Creditors' Committee. Factors taken into account include current cash held, expected future asset realisations, expected future claims agreement levels and the remaining potential volatility of the account. Although the Scheme Payment Percentage can be varied downwards to deal with adverse developments, the objective in setting the percentage is to ensure that EAIC will be capable of meeting that same percentage on all liabilities reasonably expected to be admitted in the future.

#### 3.2 *What is the history of the Scheme Payment Percentage?*

The Scheme Payment Percentage is currently 35%. The dates on which the Scheme Payment Percentage was increased and its level since the commencement of the Scheme are as follows:

|                |     |
|----------------|-----|
| June 1997      | 5%  |
| June 1998      | 10% |
| March 1999     | 17% |
| September 2000 | 25% |
| June 2002      | 30% |
| April 2006     | 35% |

In addition the Scheme Administrators with the Creditors' Committee agreement have made higher accelerated final dividend offers to creditors with low ultimate expected balances. These higher offers to creditors with low balances were justified on the basis of efficiency savings.

#### 3.3 *What is the estimated ultimate Scheme Payment Percentage?*

The Scheme Administrators' current best estimate of the ultimate Payment Percentage is 43%. However this estimate is dependant on a wide range of factors including the volatility of claims, particularly for asbestos; levels of set-off; and levels of reinsurance recovery. It is possible that the ultimate Payment Percentage could vary significantly either above or below the 43% predicted.

### 4 Scheme Payments

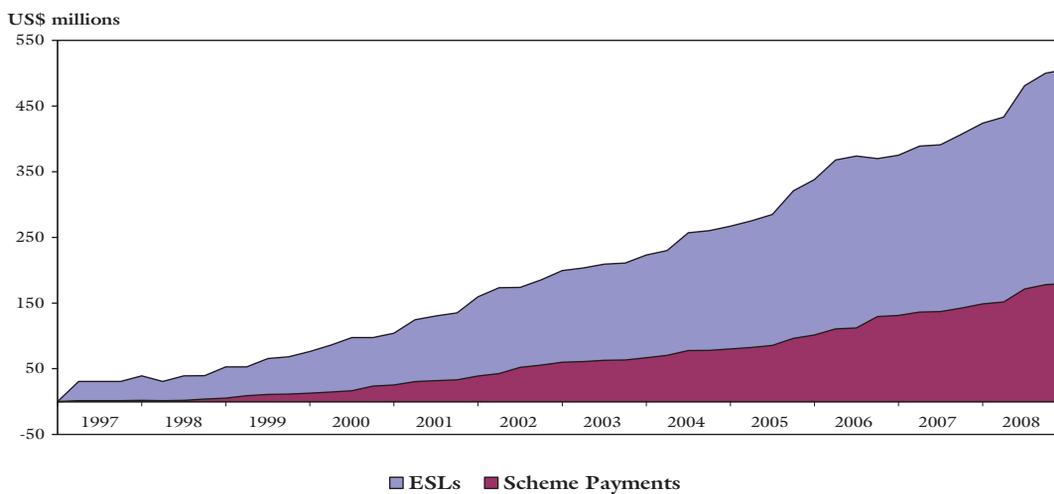
#### 4.1 *Who is eligible to receive Scheme Payments?*

Scheme Payments are made to creditors with Established Scheme Liabilities i.e. claims which have been agreed by the Scheme Administrators after taking account of any set-off, letter of credit recoveries or counter-claims. Claims are agreed in the normal course, or by binding commutation or other final settlement of liabilities. Payments are not made on the basis of case reserves or IBNR claims, unless through commutation or final settlement.

At any time a number of Scheme Payments may be withheld by PRO Insurance Solutions Limited ('PRO'), EAIC's run-off agents, as a result of incorrect creditor details. If you believe any Scheme Payments may not have been received by you as a result of inaccurate details please contact Ben Lambert at PRO Insurance Solutions Limited, Bruton Court, 38 Bruton Way, Gloucester GL1 1DA, UK or telephone +44 (0)1452 782 543 with up to date contact details.

4.2 How much has been paid to Scheme Creditors since the inception of the Scheme?

**Cumulative ESLs and Scheme Payments**



As at 31 December 2008, US\$506.0 million of claims had become Established Scheme Liabilities, resulting in Scheme Payments to creditors of US\$180.3 million. In addition, as at 31 December 2008 a further US\$105.9 million of claims had been agreed. These have not yet become Established Scheme Liabilities principally on the grounds of potential future set-off.

4.3 Policies issued by The Institute of London Underwriters ('ILU')

As outlined in Section 5 of the Explanatory Statement of the existing EAIC Scheme, the Company was a member of the ILU for a number of years. As a result, some Scheme Creditors of EAIC may also be entitled to receive payments from the ILU. There are two relevant periods: 3 July 1980 to 6 October 1983; and 1 September 1983 to 19 March 1993.

4.3.1 3 July 1980 to 6 October 1983 ('Marsh LOC Period')

Scheme Creditors whose policies incepted during the Marsh LOC Period may be entitled to payment by the ILU for the shortfall of their Established Scheme liability once agreed with EAIC. Policyholders who consider they may be entitled to payments should contact the ILU at The Institute of London Underwriters, International Underwriting Association, London Underwriting Centre, 3 Minster Court, Mincing Lane, London EC3R 7DD, UK.

Please refer also to section 6.2 for the impact of the closure scheme on these ILU policies.

4.3.2 1 September 1983 to 19 March 1993

ILU Policyholders who wrote business with EAIC after 1 September 1983 may have a guarantee claim against two related companies, English & American Group Plc and English & American Insurance Holdings Plc. These two companies were insolvent and had comparatively little assets (combined US\$15 million).

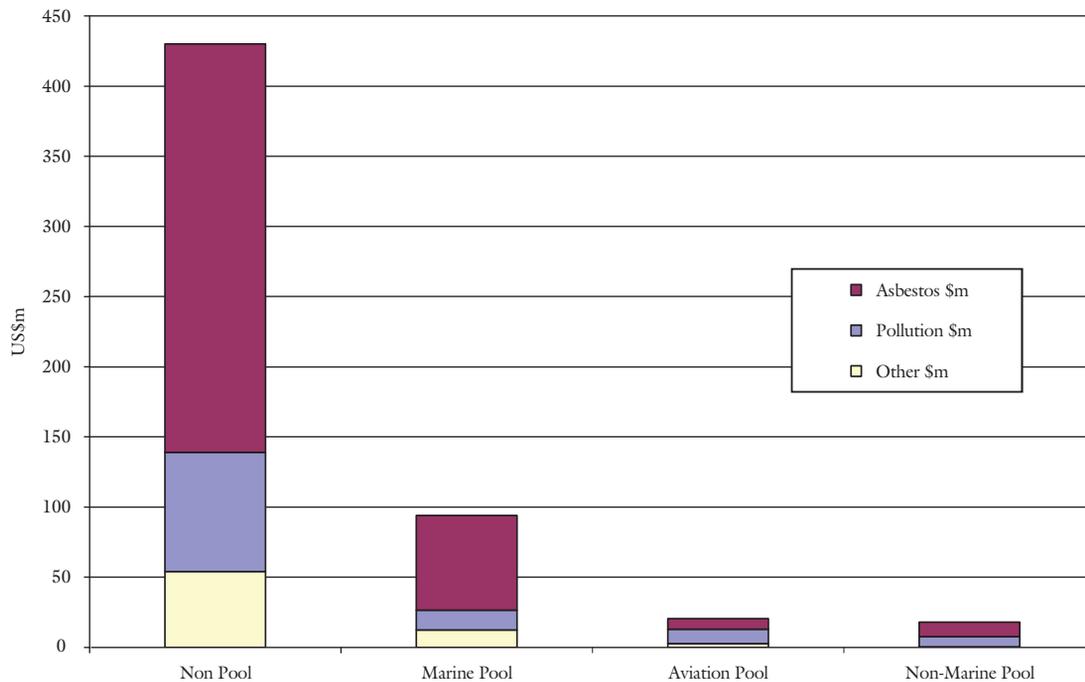
During July 2003 schemes were approved by creditors of these two companies, under which non-insurance creditors have received a full and final small dividend, and the balance of funds has been paid to EAIC to hold in trust for the relevant ILU Policyholder creditors. Creditors should continue to lodge their claims through PRO as usual. Final dividends paid by EAIC to these ILU Policyholders will have a very small uplift to reflect these funds.

5 Financial position

5.1 Actuarial review and reserves development

An actuarial review of both the English & American Underwriting Agency ('EAUA') Pool and Non-Pool business was conducted as at 31 December 2008. While the Pool reserves are broadly in line with the 31 December 2007 review, commutation and settlement activity on the Non-Pool account has led to a significant decrease in Non-Pool reserves. The account remains potentially volatile. The graph below shows the breakdown of the unagreed liabilities (future claims reserves) across the underwriting categories.

Analysis of APH Losses



5.2 Summary balance sheet as at 31 December 2008

The latest audited financial position of EAIC is summarised below.

| <b>English &amp; American Insurance Company Limited</b>  |                |                |
|--|----------------|----------------|
| <b>Summary Balance Sheet as at 31 December 2008</b>  |                |                |
|  | <b>2008</b>    | <b>2007</b>    |
|  | <b>US\$m</b>   | <b>US\$m</b>   |
| <b>Assets</b>  |                |                |
| Cash and investments   | 192.8          | 197.8          |
| Reinsurers' share of:  |                |                |
| – agreed claims  | 76.8           | 106.1          |
| – outstanding reserves   | 74.9           | 117.8          |
| – IBNR reserves  | 105.1          | 150.2          |
| Other assets   | 1.4            | 2.0            |
| Total assets   | <u>451.0</u>   | <u>573.9</u>   |
| <b>Liabilities</b>   |                |                |
| Due to policyholders   |                |                |
| – agreed claims  | 611.9          | 577.5          |
| – less scheme payments   | (178.4)        | (146.5)        |
| – outstanding reserves   | 177.1          | 253.3          |
| – IBNR reserves  | 388.2          | 498.5          |
| Provision for run-off costs  | 36.9           | 54.5           |
| Other creditors  | 3.5            | 4.0            |
|  | <u>1,039.1</u> | <u>1,241.3</u> |
| <b>Shareholders' deficit</b>   | <u>(588.1)</u> | <u>(667.4)</u> |
| Total liabilities  | <u>451.0</u>   | <u>573.9</u>   |
| <b>Notes to summary balance sheet</b>  |                |                |
| 1. The above amounts have been taken from the audited financial statements for the year ended 31 December 2008.  |                |                |
| 2. The actuarial best estimates of necessary IBNR reserves and corresponding reinsurance asset recoveries have been used.  |                |                |
| 3. No allowance has been made for set-off.   |                |                |
| <b>The summary balance sheet cannot be used to estimate the likely ultimate Scheme Payment Percentage. Set-off will have a significant effect on the value of reinsurance recoveries and there are still uncertainties surrounding the development of IBNR claims.</b> |                |                |

Copies of the audited accounts can be obtained from Companies House records.

5.3 *Receipts and payments to 30 June 2009*

A summary of the Scheme Administrators' receipts and payments from the commencement of the Scheme to 30 June 2009 is set out below.

| <b>English &amp; American Insurance Company Limited</b>                     |              |
|---|--------------|
| <b>Receipts and payments for the period 9 February 1995 to 30 June 2009</b> |              |
|   | <b>US\$m</b> |
| <b>Balance brought forward at 9 February 1995</b>                           | 13.1         |
| <b>Receipts</b>   |              |
| Reinsurance recoveries  | 448.0        |
| Recoveries from bank accounts and fund managers                             | 21.0         |
| Tax refunds   | 7.9          |
| Investment income   | 72.9         |
| Other receipts  | 3.1          |
| Total receipts  | <u>566.0</u> |
| <b>Payments</b>   |              |
| Scheme Administrators' fees   | 51.3         |
| KPMG actuarial fees   | 4.7          |
| Run-off managers' fees  | 72.5         |
| Legal fees  | 6.8          |
| Other professional and agents' fees   | 7.9          |
| VAT   | 12.8         |
| Other payments  | 9.9          |
| Scheme Payments to creditors  | 193.5        |
| Total payments  | <u>359.2</u> |
| Exchange rate gains   | <u>18.4</u>  |
| Funds held at 30 June 2009  | <u>188.4</u> |

## 6 Closure

### 6.1 Closure Strategy

As creditors will be aware, the existing EAIC scheme of arrangement (dated 1 June 2000) became effective in August 2000 which allowed it to continue to agree claims in the normal course and make Scheme Payments on a pro-rata basis to creditors with Established Scheme Liabilities. The Scheme Payment Percentage is discussed in section 3.

The Scheme Administrators believe that EAIC has reached a point with respect to its reinsurance collections and asset realisations such that it is appropriate to propose a “closing” or “cut-off” scheme of arrangement. This closure scheme will become effective during 2010.

A significant proportion of EAIC’s liabilities emanate from business written in one or more of: the EAUA Pools, the Transglobe Aviation Underwriting Syndicate Pool, and the E&A Re Pool (together the “Pools”). A number of other insurance companies also participated in these Pools. The Pools have been in run-off for sixteen years.

EAIC accounts for the largest share of the Pools’ liabilities. If EAIC were to implement its closure plans in isolation, the effect would be to create a fragmented pool administration, with the remaining Pools participants continuing in run-off, receiving claims notifications and collecting reinsurance balances as they arise. This may require policyholders to separate the presentation of their claims for collection between the Pools participants. It would therefore be more problematic and costly for both EAIC and its policyholders if EAIC were to close without the other Pools participants also closing their involvement in the Pools at the same time.

EAIC and 15 of the other Pools participants are proposing a closure scheme of arrangement. This will result in all of the liabilities of the Pools and their remaining reinsurance being valued in a consistent way. In order to preserve the benefits for policyholders of a unified closure the two Pool participants who are not proposing a closure scheme are willing to consider commuting with creditors of the Pools on parallel terms as if they were in the scheme.

The Scheme Administrators believe that the efficiencies of this unified closure strategy will result in a higher ultimate payment percentage for EAIC’s creditors than would otherwise be achieved if EAIC closed separately.

The closure scheme will incorporate an estimation methodology which will have the effect of estimating and crystallising almost all of EAIC’s remaining contingent liabilities. The value of these claims will then be applied to the remaining reinsurance programme. This will enable valuation statements to be prepared on a net basis for policyholders who are also reinsurers. Once these amounts are known, final dividends can then be calculated and paid to the majority of policyholders. Claims for contingent liabilities under particular ILU policies (discussed further below) will be excluded from the closure scheme.

## 6.2 Closure – ILU Policies

The closure scheme will exclude claims for outstanding or IBNR amounts under EAIC policies signed and issued by the Institute of London Underwriters (ILU) between 3 July 1980 and 6 October 1983, detailed in section 4.3.1 above. Marsh McLennan secured an irrevocable letter of credit in favour of the ILU on these policies, as a result of which policyholders may be entitled to additional payments on claims, in respect of these policies, settled in the normal course. The Scheme Administrators were unable to secure an undertaking from Marsh McLennan that cover from the letter of credit would attach to any contingent claims crystallised under the Scheme.

Policyholders with such future claims potential will therefore remain entitled to claim against EAIC in future. Claims under these policies which have not already become agreed prior to the bar date of the closure scheme are therefore excluded from the Scheme due to the risk that the policyholders would no longer have right to recourse under the letter of credit. Policyholders with such claims will remain entitled to claim against EAIC in the normal course in future.

## 6.3 Closure – Protected Policyholders

EAIC's Protected Policyholders (Scheme Creditors who have claims against EAIC which are protected by virtue of the Policyholders Protection Act 1975) will, subject to eligibility, still be entitled to receive payment from the Financial Services Compensation Scheme on their claims as they are agreed in the normal course in future.

The Practice Statement Letter from PRO, dated 15 October 2009, outlines the proposed Pools' Scheme and explains the action you may need to take. Please read this letter carefully and consider its contents. PRO are the Pools' run-off manager and the proposed Scheme Manager for the proposed unified Pools' Scheme.

A dedicated website for the Pools administration, contact details and news of developments of the proposed Schemes is available at [www.englishandamericanpools.com](http://www.englishandamericanpools.com).

## 6.4 Expected Closure Timetable

The current expected closure timetable, subject to the necessary court and creditor approvals, is as follows:

|                          |                  |
|--------------------------|------------------|
| Leave to convene hearing | 30 November 2009 |
| Scheme creditors meeting | April 2010       |
| Court sanction hearing   | June 2010        |
| Scheme bar date          | December 2010    |

## 7 Responsibilities and contact details

### 7.1 Scheme Administrators

The Scheme Administrators of EAIC are Mike Walker and Tom Riddell of KPMG LLP, London. The Scheme Administrators control the affairs of the company in accordance with the provisions of the existing Scheme. These include provision for consultation with the Creditors' Committee.

### 7.2 Creditors' Committee

The interests of creditors are represented by a Creditors' Committee of eight members. The Committee sanctions significant transactions (such as commutations), is involved in the setting

of the Scheme Payment Percentage, and approves the Scheme Administrators' fees. It is reported to on a quarterly basis and meets twice annually. The current constitution of the Committee is as follows:

| Member   | Represented by     |
|--|--------------------|
| Anderson Kill & Olick, on behalf of various US policyholders                   | Mr R Mark Keenan   |
| The Dow Chemical Company   | Mr G Smith         |
| EAUA Pool participants   | Mr M McKenzie      |
| Equitas Limited  | Mr R Williams      |
| Fireman's Fund Insurance Company   | Mr R Mehta         |
| International Policyholders Association  | Bette M Orr Esq    |
| Financial Services Compensation Scheme   | Ms Heather McMahon |
| Sheppard Mullin Richter and Hampton LLP, on behalf of various US policyholders | Mr M Katz          |

### 7.3 Run-off agent

The day to day management of the EAIC run-off, including maintenance of the records and handling of creditor enquiries in relation to claims adjustment, is the responsibility of PRO. PRO has also been responsible for the Pools run-off of the other Pools participants since the time of EAIC's failure, thereby ensuring continued unified management of Pool claims.

### 7.4 Policyholder enquiries

General queries about the Practice Statement Letter and proposed Pools' Scheme should be directed to Toby Wooldridge, PRO Insurance Solutions Limited, Bruton Court, Bruton Way, Gloucester GL1 1DA. UK (Email: Pro\_eauapools@pro-ltd.co.uk; Tel: +44 (0)1452 330 514; Fax: +44 (0)1452 523 437).

Creditors with claims adjustment queries should contact PRO on the EAIC helpline on +44 (0)1452 782 543.

All other enquiries should be directed to the Scheme Administrators at the following address: KPMG LLP, 8 Salisbury Square, London EC4Y 8BB, UK.

## 8 Annual meeting of creditors

In accordance with section 8.1.1 of the existing EAIC scheme, the Scheme Administrators and the Creditors' Committee have agreed that an annual meeting of Scheme Creditors should not be held in 2009, given that a closure scheme meeting is scheduled for April 2010.

An electronic copy of this report is available at [www.englishandamericanpools.com](http://www.englishandamericanpools.com).

Yours faithfully

For English & American Insurance Company Limited



Mike Walker  
Joint Scheme Administrator



Tom Riddell  
Joint Scheme Administrator

