

## EXECUTIVE RISK INSURANCE CLAIMS PROCESS OVERVIEW

All claims under the Executive Risk Services (“ERS”) D&O facility will be adjusted by Brit Insurance. Brit is a leading listed UK insurer with a market capitalization of £774 million, and is the primary Lloyd’s syndicate backing ERS. The syndicate has a capacity for 2005 of £500 million, provided 100% by Brit and benefits from the Lloyd’s market ratings of “A” from A.M. Best, Standard & Poor’s and Fitch Ratings.

Brit’s claims philosophy, as outlined on their website, is as follows:

“Brit Insurance wishes to provide all its clients with a fair and equitable resolution of claims made under its policies.

To achieve this goal Brit’s own technical claims team manages and works in conjunction with a number of Loss Adjusting firms, Third Party Administrators and Legal practices all of whose services are monitored against FSA (*Financial Services Authority – UK regulator*) and Lloyd’s standards.

Our expertise lies in the dynamic use of the skills and capability of this combined resource, in order to realize the objectives of Brit and its policyholders.”

The Brit claims department is staffed by a team of adjusters with experience in both US and Canadian D&O claims. Paul Sewell, the North American claims manager, has been involved in the adjustment of US and Canadian claims for over 12 years on a primary and excess basis. Paul has worked in the insurance industry for 23 years, holding a number of Director positions in brokerage and insurance companies.

Brit will generally appoint external service providers in Canada to assist in the resolution of the claim. Potential service providers go through a rigorous screening process, including a requirement to provide details on financial information, business history, expertise, resources, and information technology.

Once selected, a Service Agreement is put into place with each provider, addressing such areas as service standards, privacy, audit rights and disaster recovery plans, as well as operating guidelines in respect of case management, reserve estimates, reporting, and billing (including disbursements).

Service Agreements have been put in place with a number of law firms covering all provinces in Canada, including:

- Borden Ladner Gervais
- Burnet Duckworth & Palmer
- Dolden Wallace Folick
- Gowling Lafleur Henderson
- Nicholl Paskell-Mede
- Ogilvy Renault
- PMLaw (Paterson, MacDougall)
- Stikeman Elliott

with the firms being utilized in either a monitoring/coverage counsel role, or as defense counsel to the assured (at their option).

Other firms may be added to the list of approved providers, as circumstances warrant.

The service provided by these firms incorporates day to day correspondence with claimants and their representatives on issues including the status of claims and any issues being considered in relation to them.

Note that under the ERS D&O policy, the assured may choose their own counsel and have the costs covered, as long as this has been pre-cleared with Brit. Regardless of whether the assured chooses their own counsel or utilizes a law firm recommended by Brit, interaction with Brit is governed by Brit's Defense Counsel Guidelines. These Guidelines also address reporting and billing, and include the following statement:

"Brit is aware that as defense counsel your primary responsibility is to the assured. However compliance with these guidelines, which should not be seen in any way as limiting your primary responsibility and should be viewed as a reasonable template, will assist Brit and their monitoring counsel to evaluate exposure and to work closely with our assured in the defense and ultimate resolution of disputes. It is the philosophy of Brit to address and evaluate any claim as early in the process as possible and to work with our assured towards an early and realistic resolution of any dispute."

The Brit claims department was recently awarded the [2004 Insurance Day "Claims Team of the Year"](#) award. Judges comments included:

"Brit has a good reputation for service in the way that many others sadly still do not."

"Brit deserves this award if only because it is so rare that an underwriter actually has a transparent system."

Brit's claims philosophy and processes that led to this award are applied consistently across all lines of business worldwide, including Canadian D&O claims.

Every Lloyd's policy is backed by the "Lloyd's Chain of Security", and Lloyd's is subject to strict solvency requirements set by the UK government on its global business and the Superintendent of Financial Institutions Canada on its Canadian business.

These solvency requirements are consistently met, and part of the Chain of Security consists of assets held in trust by Lloyd's Underwriters in Canada, which were valued at \$2,586 million at December 31, 2004. Specifically, all claims reserves must be funded 100% by the applicable Lloyd's syndicate, with the monies held in trust at Citibank Canada.

Lloyd's Chain of Security:

1. *Syndicate level assets – Payment of claims takes precedence over distribution of profits.* All premiums received are held in trust and are available to meet claims and other underwriting liabilities. Syndicates are unable to receive profits until the underwriting account has been closed, three years later, and all outstanding liabilities have been provided for.
2. *Additional capital held at Lloyd's.* In case the premium trust funds prove insufficient, additional capital must also be held in trust at Lloyd's, based on the nature and amount of risk the syndicate underwrites.
3. *Other assets.* The syndicate is liable to the extent of their resources, should the funds in the first two links prove insufficient.
4. *Lloyd's central assets.* The Central Fund is available to back Lloyd's policies issued after 1993, in the event a claim cannot be met from other sources.