

UK HIGH COURT APPROVES SCHEME OF ARRANGEMENT FOR STRONGHOLD INSURANCE CO. AND SETS 10 AUGUST 2021 CLAIM SUBMISSION DEADLINE

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U.S. Litigation and Dispute Resolution

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INTRODUCTION

On 10 February 2021, the High Court of Justice of England and Wales issued orders approving the Schemes of Arrangement (Schemes), proposed by Stronghold Insurance Company Limited (Stronghold), an insolvent London Market insurer. The Schemes will now move forward with the claim submission and valuation processes. This article provides a brief history of Stronghold and its estate proceedings, and discusses certain key features of the Schemes for policyholders wishing to pursue a claim. Most notably, policyholders must prepare and submit their formal Final Claim Form and supporting information by 11:59 p.m. London time on *10 August 2021*, if they have not already done so.

BACKGROUND

Between 1962 and 1985, Stronghold was a relatively small London market insurer that wrote direct and reinsurance casualty coverage for U.S. businesses. When issuing direct insurance, Stronghold typically held a share of an excess, occurrence-based, general liability insurance policy issued by several London Market insurers. Stronghold ceased active underwriting in 1985, around the time environmental and health hazard claims from many U.S. policyholders began to proliferate. For the next 30 years, Stronghold operated in solvent run-off, writing no new business and paying claims of its policyholders on its 1962-1985 policies as they arose.

In 2016, Stronghold encountered difficulties in complying with the new capitalization requirements of the “Solvency II” European Union directives for insurance and reinsurance businesses. By 2018, Stronghold announced its intention to pursue a *solvent* scheme of arrangement in an attempt to expedite the final closure of its estate. To that end, Stronghold sought and obtained permission from the UK High Court to convene creditors’ meetings in February 2019 for the purpose of obtaining votes in favor of, or against, the proposed solvent scheme. For several reasons, however—including some creditors’ apparent plan to object—Stronghold cancelled the meetings and decided not to pursue a solvent scheme approach.

Instead, in early 2019 Stronghold concluded that it was insolvent on a balance-sheet basis, and ceased paying its creditors’ claims as of 31 May 2019. Then on 27 June 2019, Stronghold petitioned the High Court to place it into official “administration.” The court did so, and also approved the appointment of PricewaterhouseCoopers LLP (PwC) as the Administrators for Stronghold.

THE RECENT APPROVAL OF THE SCHEME AND SETTING OF THE CLAIM BAR DATE

In December 2019, Stronghold officially announced it was pursuing approval for two *insolvent* Schemes: a “Direct Creditors Scheme” for creditors whose claims are based on a direct policy of insurance from Stronghold, and a “General Creditors Scheme” for all other creditors including its reinsurance and retrocession business. Stronghold obtained the High Court’s approval to schedule virtual (due to COVID-19 concerns) creditors’ meetings for 2 February 2021, and issued notice of the planned meetings and the scheme documents to its known policyholders. The notice included instructions for any interested creditor to submit a Voting and Proxy Form (to cast a ballot in favor of, or against, the Schemes) by 1 February 2021.

The virtual creditors’ meetings went forward as planned on February 2nd, and Stronghold thereafter announced that the votes cast in favor of the Schemes more than satisfied the requisite majorities (in number and in total value) under UK law. In fact, Stronghold announced:

The Company is pleased to announce that Direct Scheme Creditors representing 100 per cent. in number and 100 per cent. in value of those Direct Scheme Creditors participating in the Direct Scheme Meeting (whether in person or by proxy) voted in favor of the Direct Scheme.

See Stronghold’s “Notice of the Result of the Direct Scheme Meeting, Feb. 4, 2021,” available [here](#).

Armed with this strong support in favor of the proposed Schemes, Stronghold went back to the UK High Court on 10 February 2021, and the court formally approved (a/k/a/ sanctioned) the Schemes. Most recently, Stronghold issued the following “Notice of Effective Date and Direct Final Claims Time” on February 15th, stating in salient part:

Notice is hereby given that:

- the Effective Date in respect of the Direct Scheme and the General Scheme is 11 February 2021; and
- the Direct Final Claims Time will occur at 11.59pm (London time) on 10 August 2021.

Important: All direct scheme creditors are reminded that they must submit their direct scheme claims to the company by no later than the direct final claims time.

No Direct Scheme Creditor shall be entitled to receive any payment from the Company under the Direct Scheme in respect of a Direct Scheme Claim unless that Direct Scheme Claim is:

- set out in an Existing Claim Form;
- set out in a Voting and Proxy Form in which the Direct Scheme Creditor has elected to have such form treated as its Claim Form; or
- notified to the Company by the Direct Scheme Creditor returning a completed New Claim Form in the form enclosed herein (containing instructions for its completion).

Direct Scheme Creditors who require a New Claim Form can download it from the Administrators' [website](#) or the Company's [website](#) (www.strongholdinsco.co.uk). An electronic copy of the New Claim Form is attached to this email. Alternatively, the Company will provide a paper copy free of charge to any Direct Scheme Creditor upon request [here](#).

Document available [here](#).

In summary, any policyholder of Stronghold that did not submit a Voting and Proxy Form for the February 2nd Direct Creditors Meeting and check the box on the Form stating it should be treated as a final Claim Form must complete and submit a Claim Form by 10 August 2021, in order to have its coverage claim valued for subsequent payment according to the Scheme.

Once the claim submission deadline is reached, Stronghold (with its administrators at PwC) will review each claim and assign it a value. Direct Creditors dissatisfied with the value assigned to their claims may challenge the value to the “independent adjudicator” appointed by the Scheme. That adjudicator is Barbara S. Jones, who currently is a partner at Bracewell LLP and formerly was a judge for the U.S. District Court for the Southern District of New York. After the overall claim-valuation process is completed, Stronghold/PwC will determine whether the estate has sufficient funds to pay all Direct Creditors 100 percent of their assigned claim values. If so, 100 percent will be paid, and any remaining funds will be distributed to the lower-preference creditors with approved claims. If there are not sufficient assets in the estate to pay approved Direct Creditors 100 percent, Stronghold/PwC will decide what lesser percentage can be paid, and pay it. Early indications conveyed orally by Stronghold/PwC are that they hope to begin payments on approved Direct Creditor claims by the late spring or early summer of 2022, although it certainly is possible that this timeline may be extended.

Lastly, and of significant importance as Direct Creditors begin to prepare and submit their Final Claim Forms, is the fact that, unlike many domestic insurer insolvencies in the United States, Stronghold's Scheme will assign value not only to the creditor's liquidated claims (*i.e., claims that already have been filed against the policyholder and resolved through settlement or judgment*) and to so-called contingent claims (*i.e., claims already filed against the policyholder and still pending as of the claim cut-off date*), but also to Incurred-But-Not-Reported (IBNR) claims. Stronghold's Scheme documents include detailed “Estimation Guidelines” outlining methods by which a policyholder may project its IBNR claims, their value, and how all or portions of those amounts would be appropriately allocated under the applicable state law to Stronghold. *See Schedules 1 and 2 to 16*

December 2020 Stronghold Direct Scheme Document, at pages 98 – 121, available [here](#). Merely to illustrate, the Estimation Guidelines provide guidance on how to estimate future costs associated with certain long-tail claims such as asbestos-related bodily injury claims, and acknowledge that the Administrators will consider how the potentially relevant U.S. state law treats issues such as trigger and allocation of loss across multiple triggered policies. Policyholders should carefully consider these matters, and would be well-advised to seek the advice of seasoned insurance coverage counsel to help ensure that any claims they may be able to pursue against Stronghold's estate are timely prepared and submitted—including proper consideration of all aspects of past, present, and future claims.

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