

**IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

CASE REFERENCE: MAN/00EX/LSC/2023/0049

B E T W E E N:

SOPHIE SARCOFSKY

Applicant

RMB 102 LTD

Respondent

WITNESS STATEMENT

TIM WILSON

I, **TIM WILSON** of E&J Estates, Prospect Place, Moorside Road, Winchester SO23 7RX **DO HEREBY STATE:-**

1. I am the Managing Director of E&J Estates, a trading style of Eyre & Johnson Limited, which manages the administration of the property estates for which RMB 102 Ltd and other companies are freeholder. I am also, separately, the insurance consultant to Penult Capital Partners Ltd, the company which arranges the insurance programme for RMB 102 Ltd and other companies. In this regard I am a Financial Conduct Authority Approved Person, individual reference no. TFW 010107. I have been involved consistently in property insurance for over 40 years, holding senior management positions in two large national brokers, a merchant bank and currently the group of which RMB 102 Ltd forms a part.
2. I make this Witness Statement on behalf of the Respondent, in response to the Application made by the Applicant pursuant to s.27A(1) of the Landlord and Tenant Act 1985 ("the Act"), in respect of Flats 1, 9, 27, 31, 41 and 68 Hollin Bank Court, 2 Bolton Road, Blackburn BB2 4GY ("the Properties"). In particular, I make this statement in response to the

Applicant's allegation that the insurance rent paid by the Applicant in respect of the insurance costs incurred during the years ending 2021, 2022 and 2023 were and are unreasonable, because:

- i. The remuneration that is paid to Penult Capital Partners Ltd is not a cost which is reasonably incurred.
 - ii. The insurance costs associated with Augustus Insurance Company Ltd (a captive insurance company) are not reasonably incurred.
3. For the avoidance of doubt, the E&J Group is not connected in any way to FirstPort, who are a separate company which manages Hollin Bank Court (with the exception of insurance) on behalf of CE Lock Mill Blackburn Limited, which is a party to the leases of flats at Hollin Bank Court as "the Company" (a third party residential management company).

Penult Capital Partners Ltd

4. Penult Capital Partners Ltd, ("PCP"), a company within the same group as the Respondent, has a regulatory status with the Financial Conduct Authority (FCA) for insurance intermediation. It is an Appointed Representative (registration no. 734456) of its two insurance brokers: Arthur J Gallagher (UK) Ltd and Lockton Companies LLP002E. Arthur J Gallagher (UK) Ltd are the brokers for Zurich, who insure Hollin Bank Court.
5. Under this authorisation, PCP provides insurance services in support of its group insurance programme through a dedicated insurance department, for which insurers award it a payment that is based on a percentage of the total insurance premium (net of Insurance Premium Tax). Our insurance broker receives a similar payment for the brokerage services that they supply. A detailed summary of those services can be found below. The percentages received by PCP and the broker, respectively, in the years 2021 – 2023 (inclusive) are set out in the table below:

	2021	2022	2023
Property	PCP: 10% Broker: 2.55%	PCP: 7.5% Broker: 2.58%	PCP: 5% Broker: 2.58%
Terrorism	PCP: 10.25%	PCP: 10.25%	PCP: 10.25%

	Broker: 7%	Broker: 7%	Broker: 7%
Engineering	PCP: 10% Broker: 10%	PCP: 10% Broker: 10%	PCP: 10% Broker: 10%
Excess Liability	PCP: 0% Broker: 17.5%	PCP: 0% Broker: 17.5%	PCP: 0% Broker: 17.5%

6. I attach, as **Exhibit TW1**, an agreement between Arthur J Gallagher (the broker) and PCP, as the broker's Appointed Representative. I further attach, as **Exhibit TW2**, a copy of the agreement between Arthur J Gallagher, PCP, Subsidiary Companies and others detailed specifically within the certificates of insurance including the Respondent. The agreed remuneration is set out at the end of that agreement.
7. Those payments do not inherently increase the insurance premium, since were PCP not to offer its services then the relevant functions would need to be provided by the broker or insurer.
8. The payments referred to above are not generated as a discount to the policy. Rather, they amount to consideration for work undertaken in administering the policies. They are not a rebate or reduction from the premium, but remuneration for services rendered.
9. As is widely understood, insurance premiums for multi-occupied buildings have increased materially in recent years. Insurers have re-examined the adequacy of pricing and their appetite for exposure to such buildings, as the scale of fire safety defects across the country have become clear.
10. In response to increasing premiums, PCP's remuneration levels have consistently reduced as a percentage of the gross premium, to ensure that it does not benefit artificially from rises in the premium and that the payment it is awarded continues to reflect fair value for the services provided.
11. It should be noted that in the very difficult insurance market conditions which have prevailed over the last several years, there has been a marked increase in the workload of the insurance department.

12. Comparative data included in the FCA's report on insurance for multi-occupancy buildings (September 2022) demonstrates that the current PCP combined (broker and freeholder) remuneration percentage (7.58%) is at the lowest end of market norms. I attach, as **Exhibit TW3**, a copy of the table from the report, illustrating insurance commission levels for multi-occupancy buildings in September 2022.
13. Arthur J Gallagher (UK) Limited provided the following peer group benchmark on freeholder retained commissions between PCP and other anonymised freeholder clients, attached as **Exhibit TW4**.
14. In its response to the FCA Policy Statement on Multi-Occupancy Buildings (29 Sept 2023), the British Insurance Brokers' Association estimated that average commission for this insurance class across the sector is currently in the region of 13%.
15. The FAQ section on the E&J Estates website contains 24 questions and answers relating to insurance, which include the role of PCP and questions about insurance commission: <https://eandjestates.co.uk/faqs/>. E&J Estates has also answered questions raised by the Applicant's father about the insurance of Hollin Bank Court. Copies of those emails are attached as **Exhibit TW5**.

Services Rendered

16. The principal insurance intermediation duties carried out by PCP are as follows:
 - Instructing and managing the appointed insurance brokers.
 - Collecting and providing to insurers detailed records of building construction, fire safety defects, remediation programmes and other underwriting information.
 - Responding to leaseholder queries and keeping website information up to date.
 - Attending claims related site meetings and liaison with loss adjusters. Providing evidence to insurers to support third party recovery actions. I attach the claims history for Hollin Bank as **Exhibit TW6**.
 - Managing periodic insurance market reviews and tendering exercises.
 - Managing the policy renewal process and mid-term alterations.
 - Provision of risk and claims statistics to insurers.
 - Complaints handling in line with Financial Conduct Authority standards.
 - Attending site surveys and managing subsequent insurer risk improvement requirements.
 - Managing a programme of rebuilding cost assessments, to ensure adequacy and sufficiency of sums insured.
 - Policy administration including, but not limited to, monthly premium bordereau and maintenance of policy records.
 - Compliance with all regulatory requirements for insurance mediation.
 - Ensuring insurance policy compliance with requirements of the Lease.
 - Managing supplier relationships and service standard.

- Staff training.

17. The principal duties of our insurance brokers are as follows:

- Designing, negotiating and implementing a suitable programme of insurances.
- Reviewing the financial security, service standards and stability of all Insurers.
- Undertaking periodic tender exercises.
- Managing premium payments.
- Establish a renewal timetable at least 5 months in advance of the renewal date to enable the timely collation of underwriting information and the review of programme design options.
- Offering a suitable risk control programme.
- Advising on changes in legislation and practice governing insurance purchasing.
- Reviewing contracts commenting on insurance implications.
- Managing claims and engaging and reviewing the service of Loss Adjusters.
- Providing Large Loss support.
- Facilitating the provision of loss data on a monthly basis.
- Attending periodic claims meetings and providing supporting management information.
- Maintaining a summary of all insurances arranged through our specialist database.
- Preparing, checking and issuing policy documentation.
- Attend meetings at agreed intervals

Competitiveness of Insurance Costs

18. To ensure that insurance premiums billed to leaseholders represent value for money, the group's programme is regularly tendered to the insurance market as an overall portfolio. PCP instruct the broker and manage their performance of the tender exercises, including ultimately selecting the insurer. The broker undertakes the tender, under PCP instruction, although markets approached are at their discretion, based on their knowledge of insurer appetite. Some buildings are also offered to insurers as stand-alone risks. Full competitive tenders were carried out for the portfolio in 2018 (where 16 markets were approached), 2021 (where 17 markets were approached), 2022 (where 11 markets were approached) and 2023 (where 10 markets were approached). In 2018, other insurers declined to quote due to the competitive nature of premiums. From 2021 to 2023, other insurers declined to quote as this type of residential risk was not in scope and insurers were not attracted generally to the risk profile presented by multi-occupied buildings. There was a credit in 2022 owing to a lowering of the insured value. A Reinstatement Cost Assessment dated 14th March 2022 is attached as **Exhibit TW7**.

19. Accordingly, our brokers approached on each occasion the entire UK market potentially underwriting risks of this profile, generally between 10 and 18 insurers. Alternative

insurers were not prepared on each occasion to offer terms, reflecting the difficulties in the market for this class of business.

20. We are confident therefore that the terms finally agreed were demonstrably competitive and reasonably arranged.

Captive Insurance Company

21. Augustus Insurance Company Ltd ("Augustus") is a full risk bearing insurance company registered in Guernsey and regulated by the Guernsey Financial Services Commission.
22. Augustus provides reinsurance policies to two major UK direct insurance companies involved in underwriting residential property risks. Both these companies are regulated by the FCA. This includes the Zurich Insurance Company portfolio within which Hollin Bank Court is insured. In the event of a claim, the direct insurers settle the cost in the first instance and then recover all or a proportion of their outlay from Augustus.
23. I attach the Captive Reinsurance Agreement as **Exhibit TW8**. Augustus insures the risks of fire, lightning, aircraft, explosion, storm, tempest, flood, escape of water, malicious damage and subsidence. On the Zurich portfolio it covers the first £500,000 of each claim for buildings insurance, subject to an annual aggregate maximum exposure of 125% of its premium allocation, which is as follows. The insurance premium received by Augustus, from Zurich, consisted of 22.45% of the total insurance premium across the whole of the Zurich portfolio (of which Hollin Bank forms part) in 2021, 22.45% in 2022 and 28.55% in 2023.
24. Augustus essentially provides protection against the multiple "attritional" losses which occur routinely on a large residential portfolio, but under a certain level (£500,000 in this case); for example, due to escape of water claims. Insurers value protection at this level because most claims on residential portfolios fall below the captive limit, leaving insurers to price their own premium allocation against the risk of larger losses. Insurers will also arrange further reinsurance in the open market for larger losses. It is fair to say that the premium allocation allowed to the captive by the insurer will reflect open market pricing. If Zurich could find materially lower reinsurance pricing elsewhere, it would take it.
25. Reinsurance facilities are essential to secure support from the direct insurance market for multi-occupancy residential risks, where insurers generally have in recent years limited their exposure to this class of business in the light of increased knowledge of the extent of fire safety defects and the growing incidence and cost of escape of water losses. The use of Augustus has enabled us to access insurance carriers which generally would not underwrite such residential portfolios, thus generating greater competition and more competitive pricing for the customer.

26. The premium received by Augustus for its exposure reflects general commercial pricing norms and is subject to appropriate governance and stress tests. Its pricing and accounting models reflect those of the sector as a whole. As is the case with any insurer, Augustus is exposed to losses as well as potential profits and indeed has incurred an overall underwriting loss in past financial years.
27. Augustus's only source of profit is its participation in underwriting risk. There are no other forms of income, direct or indirect, earned by it or any entity or person associated with it. As such, the involvement of Augustus is neutral to the pricing of the direct insurers' policies.
28. Potential conflicts of interest are managed by ensuring Augustus's shareholders are separate to those of RMB 102 Ltd. Augustus is not a member of the group of which RMB 102 Ltd forms a part.

Conclusion

29. In the light of the above, I would respectfully ask that the Tribunal determine that the insurance rent payable by the Applicant in respect of the Properties, during the years 2021 – 2023 (inclusive), is both payable and reasonable.

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:

Tim Wilson

Dated: