

NEWSSTAND

Solvent Schemes of Arrangement Revisited: The Scottish Lion Revived

March 2010

[Peter Fidler](#)

Readers of our [December 2009 issue](#) will recall that we wrote about the Scottish court decision on the Scottish Lion Insurance Company scheme of arrangement. Just before this issue went to press the decision of the Scottish court of appeal (the Inner House of the Court of Session) on the issue of whether “creditor democracy” would be allowed to prevail or whether unanimity was required became known. English lawyers familiar with schemes of arrangement will not be surprised that the Inner House decision has overturned Lord Glennie on this point.

The case has been sent back to Lord Glennie to decide the substantive issue of whether to exercise the discretion in favour of sanctioning the scheme. This will have to involve a review of the valuation of the votes, because the court will have to decide whether the statutory majority has in fact been obtained. If it decides that it has, the size of the majority will, according to the Inner House ruling, be a factor, but only one of a number of factors, relevant to the court’s decision.

Lord Glennie had had obvious sympathy with the observations of Mr Justice Lewison in the *British Aviation Insurance Company* case ([2006] 1 BCLC 665) where he had considered it unfair for insurance companies, who were in the risk business, to terminate cover and transfer risk back to dissenting policyholders, who were not. Although these comments were obiter, it would appear that the company will have a hard task in persuading Lord Glennie to sanction this scheme in the face of determined opposition from the opposing creditors. An early hearing is improbable as it would seem likely that substantial evidence will be required on the valuation issue. Even if the decision on the preliminary issue is not taken to the Supreme Court, it is not hard to imagine that the decision on whether to sanction the scheme might well be appealed. The ultimate decision on the issues in this case this would appear to be some way away.