IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

THE SOCIETY OF LLOYD'S, Plaintiff, vs. ROBERT W. FUERST, HORD HARDIN II, HAROLD F. ILG, WALTER A. KLEIN, MEADE M. McCAIN, JOHN J. SCHILLINGTON, CYNTHIA J. TODOROVICH and MICHAEL B. TODOROVICH, Defendants.	)	Case No: 4:03CV01113 HEA

DEFENDANTS ROBERT W. FUERST, MEADE M. McCAIN, HORD HARDIN II, WALTER A. KLEIN, CYNTHIA J. TODOROVICH AND MICHAEL B. TODOROVICH'S MEMORANDUM IN SUPPORT OF THEIR MOTION TO COMPEL DIRECTED TO PLAINTIFF

COME NOW Defendants Robert W. Fuerst, Meade M. McCain, Walter A. Klein, Cynthia J. Todorovich and Michael B. Todorovich, by their counsel Ted F. Frapolli, and in support of their Motion to Compel, state as follows:

Identity of Parties

The Society of Lloyd's, commonly known as "Lloyd's of London" ("Lloyd's) is a complex 300-year-old enterprise made up of syndicates which offer insurance and reinsurance over risks in every part of the world. It is a membership corporation composed of two types of members: (1) insiders, such as brokers, active underwriters and underwriting agents, who engage in the day-to-day business of insurance; and (2) underwriting members, known as "Names," who are the outside investors, those whose wealth provides the capital to Lloyd's. Names (the Defendants herein) pledge their entire wealth to back the insurance policies issued by Lloyd's syndicates, and

their liability on that pledge is unlimited. Prohibited by Lloyd's regulations from involving themselves in the business at Lloyd's, the Names are required to and do entrust their entire wealth to the underwriting agents, the active professional underwriters, insurance; and (2) underwriting members, known as "Names," who are the outside investors, those whose wealth provides the capital to Lloyd's. Names pledge their entire wealth to back the insurance policies issued by Lloyd's syndicates, and their liability on that pledge is unlimited. Prohibited by Lloyd's regulations from involving themselves in the business at Lloyd's, the Names are required to and do entrust their entire wealth to the underwriting agents, the active professional underwriters, and the syndicate managers who make the underwriting and management decisions for the syndicates. This case is one of many filed in the United States which Lloyd's will seek to collect judgments against numerous United States residents, aggregating approximately $100 million.

The Defendants in this case, as well as in the others, have refused to pay the amounts Lloyd's claims because they assert that they have been victims of one of the largest financial frauds in history. These Names have heretofore been barred from pleading and litigating this fraud, either offensively of the Courts of the United States (because of certain contractual choice of forum and choice of law clauses) or defensively in England (because of certain "pay now, sue later" and "conclusive evidence" clauses imposed on them by Lloyds).

Brief History of Prior Proceedings

In 1973, many executives with competing firms at Lloyd's knew that there was a serious threat to Lloyd's posed by asbestosis. (See Article "The Decline and Fall of Lloyd's of London," attached as Exhibit 1 to Defendants' Memorandum in Support of Their Tract 3 (Complex) Case Designation previously filed in this matter, hereinafter referred to as "Exhibit 1", and

incorporated herein as if fully set out). Many of Lloyd's knew in the late 1970s that they were facing a crises, and by 1982, the hierarchy at Lloyd's was, in essence, bankrupt. (See Time Article, Exhibit 1, p. 2). The only way that the asbestosis crises could be averted in any measure would be to go after new investors. Then, Lloyd's representative fanned the earth signing up new Names. They decided to solicit numerous Names who would not have been eligible for membership in Lloyd's previously.

Numerous new recruits, including the Defendants herein, were recruited for the syndicates most exposed to the asbestosis risk.

As a condition of membership, all Names at Lloyd's were required to sign the General Undertaking, a portion of which states:

- to comply with the provisions of Lloyd's Acts 1971-1982, any subordinate legislation made or to be made thereunder, and any direction given or provision or requirement made or imposed by the Council or any person(s) or body acting on its behalf pursuant to such legislative authority and shall become a party to, and perform and observe all the terms and provisions of any agreements or other instruments as may be prescribed and notified to the Member or his underwriting agent by or under the authority of the Council; and
- [to resolve all disputes arising out of the Name's membership at Lloyd's pursuant to English law, in the courts of England, and] "that a judgment in any proceeding brought in the English courts shall be conclusive and binding upon each party and may be enforced in the courts of any other jurisdiction."

By the late 1970's, information available to insiders at Lloyd's but not to outsider Names

revealed that a crisis was developing with respect to claims for injuries and death due to asbestos. Claims arising from latent diseases dating back to the 1930's and 1940's were being made on broadly-worded policies issued to United States companies decades earlier, and syndicate reserves were inadequate to handle them. In August, 1980, a consultive committee known as the "Asbestos Working Party," ("AWP") consisting of underwriters and managing agents of syndicates facing asbestos claims, was formed with the knowledge and support of the Council of Lloyd's. The AWP was established at Lloyd's to gather information about the scope of the problem and to coordinate efforts to address these claims, which were, according to one underwriter "the largest phenomena that has ever hit the casualty insurance industry," and according to an attorney advising the group, "the most significant legal and loss cost issue in the history of the insurance industry."

We are all aware of the devastating and long-reaching tentacles of the financial repercussions of the asbestos litigation.

Throughout this solicitation of business, at no point did Lloyd's or its representatives disclose to the Names the horrific and financially devastating circumstances of the asbestosis claims, although well known to Lloyds'. Lloyd's had written liability insurance for American asbestos companies since the 1930s with those policies still being in effect and **generally unlimited**. That is, there were no maximum amounts where the insurance stopped paying and no diseases were excluded from coverage which resulted in potential damage awards being unlimited.

The list of Names who were defrauded included Stephen Breyer, a Harvard-trained lawyer, named to the United States Supreme Court; Wall Street entrepreneur Dan Lufkin, founder of the renowned investment firm of Donaldson, Lufkin & Jenrette; Bruce Sundlun,

Governor of Rhode Island; Charles Schwab, and numerous others.

Although most of the Names (Plaintiff Lloyd's has claimed that Cynthia Todorovich was in default and not part of the litigation) the litigation in England lacked due process, fundamental principles of fairness, which Defendants herein claim, prevent this Court from recognizing the English judgment upon which this claim is based.

Fraud Perpetrated by Lloyd's

The Time Article, (Exhibit 1) tells, in a concise and poignant matter the fraud that was perpetrated upon the Names. While the article is not in evidentiary form, Defendants stand ready to prove the allegations therein demonstrating a fraud upon the Names.

Defendants' evidence will demonstrate that Lloyd's, when confronted regarding the asbestosis claims, told the Names despite this knowledge that "all this was known about and reserved for, it is all in the past, we never take risks with our new Names, this is the best time to join Lloyd's." (See Time Article, Exhibit 1, page 6).

It is important to understand the system whereby the syndicates publish and disclose profits and losses. "A Lloyd's syndicate waits two additional years to better account for unresolved or disputed claims. At the end of the third year, the underwriter in charge balances the accounts as best he can, estimating the size of unresolved claims and setting aside reserves to cover them. Unresolved claims can also be reinsured, assuming another syndicate willing to take them on can be found. However, if unresolved claims are still too numerous or large at the end of the third year to allow a closing of the books, the underwriter is supposed to leave his syndicate's books open until all claims are covered, even if it takes many years." (See Time Article, Exhibit 1, p. 8). Therefore, according to the Time Article attached, "when the asbestos claims were being processed at Lloyd's, the insiders knew this would take longer than three years

to be resolved. It is estimated that the asbestos claims were more than doubling for each year from the late '70s onward. Estimates of the eventual claims ranged over $100 billion, exceeding Lloyd's total reserves and the Names' combined assets." (See Time Article, Exhibit 1, p. 8). The Affidavit executed by Anthony John South, a British insurance expert, a member of Lloyd's from 1968 to 1994, put in a sworn affidavit prepared for a Lloyd's case pending in California, Mr. South testified that the Lloyd's insiders knew these claims and "disguised its problems by false accounting." (See Time Article, Exhibit 1, p. 8). In South's affidavit, he alleged the insiders devised a two part cover up. "First, in order to pose current 'profits,' they used funds that instead should have been set aside as reserves for future asbestosis claims. That is 'fraud anywhere in the world.'" "Second, Lloyds formed new syndicates with newly recruited Names who were oblivious to the asbestos problem, and had them reinsure the old syndicates." " In effect, the old Names, typically Lloyd's insiders, passed liability for enormous potential claims to new Names, none of whom had been warned about what they were about to reinsure." (See Time Article, Exhibit 1, p. 8). William H. Mohr, an Assistant Attorney General in New York, who conducted an extensive two-year investigation on Lloyd's stated that "Lloyd's. . .permitted the liabilities to be rolled forward onto an expanding pool of investors. . .without disclosure." (See Time Article, Exhibit 1, p. 8-9).

"According to investigators for the State of California, which brought a lawsuit in federal count in Los Angeles, Coleridge, Rokeby-Johnson and Parnell, as well as other Lloyd's insiders, conspired to defraud investors by lying to them about the risks of Lloyd's investments, especially the losses likely to be caused by massive asbestos claims as well as potentially huge claims for environmental damages at sites such as the Love Canal. The California State Government lawsuit was settled by a compromise so these charges were never tested in court. Amongst them

were claims that Lloyd's recruiters led potential investors to believe that the 'unlimited liability' clause in their contracts with syndicates was a 'mere formality,' part of an initiation rite to an exclusive club that had been in business for 300 years without loss." (See Time Article, Exhibit 1, p. 5).

Previous Litigation in England

The Names were able to litigate the issue and lost in England. The Affidavit of Michael David Friedman, attached as Exhibit 2 to Defendants' Memorandum in Support of Their Tract 3 (Complex Case Designation previously filed in this matter, hereinafter referred to as "Exhibit 2", and incorporated herein as if fully set out. The Affidavit was provided in a similar lawsuit filed in Tennessee by Lloyd's against certain Names. That Affidavit will be provided as well as the deposition of Michael David Friedman at a later date. However, the most cogent facts set out in the Affidavit of the solicitor who represented the Names regarding claims of fraud were as follows:

> 3. Since 1961, my experience in the law has been mostly concentrated in commercial litigation. My formative years, as an articled clerk from 1956 to 1961, and then from 1961 to 1968, were with the City of London firm,Middleton Lewis, which firm later merged with the firm of Lawrence Graham. Middleton Lewis acted as solicitors for a number of Lloyd's Members' and Managing Agents, and for many Lloyd's Names. I became involved with Lloyd's again in 1990 when the Names on the Oakeley Vaughan Syndicates retained me in connection with their claims against Lloyd's for breach of implied duty of care. I have also been engaged in all aspects of the litigation with the Society of Lloyd's ("Lloyd's") in the Commercial Court and the Court of Appeal in London which culminated in Summary Judgment being confirmed by the Court of Appeal on 31 July 1998 against approximately 650 Names. This Action was known as The Society of Lloyd's v. Fraser & Others ("Fraser").
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> 7. Part of Byelaw No. 22 involved "the Equitas Scheme," and within that scheme, a provision for the Equitas Reinsurance Contract ("Contract"). I am not aware that any of the approximately 2,500 Members of Lloyd's who I represented prior to August 31, 1996, ever saw or were made aware of the detailed provisions of the

Contract. To the best of my knowledge, the first time that any U.S. Names knew of the Contract was when they received a letter before action dated on or about October 3, 1996, from Dibb Lupton Alsop ("DLA"), the solicitors acting for Lloyd's. This letter claimed from U.S. Names their Equitas Premium pursuant to the Contract – which the letter stated had been entered into by them and was dated September 3, 1996.

8. Because I had not seen the Contract, I immediately requested a copy from DLA. I received such a copy on or about October 10, 1996. I saw that the Contract contained what has become known as the "pay now – sue later" provision at clause 5.5. The Contract was purportedly signed on behalf of U.S. Names by a wholly owned subsidiary of Lloyd's in the capacity of a substitute Members' Agent that had been imposed on the Names. This was directly contrary to the instructions given by many Names to their Members' Agents. Many of the Members' Agents declined to sign the Contract because they considered that were they to do so it would involve a conflict of interest. Their role was then abrogated by Lloyd's pursuant to its powers under the Byelaws.

11. In a series of decisions on preliminary issues, English Courts concluded that the "pay now – sue later" clause included in the Equitas Reinsurance Contract was effective against all Names, even assuming they could prove fraud by Lloyd's. *Society of Lloyd's v. Leighs Lyon & Wilkinson* (unpublished) (Q. B. Feb. 20, 1997) (all Names' non-fraud defenses barred); *Society of Lloyd's v. Wilkinson & Others* (unpublished) (Q. B. Apr. 23, 1997) (all Names' fraud defenses also barred – even assuming Lloyd's committed fraud). Appeals from these decisions were dismissed. *Society of Lloyd's v. Leighs Lyon and Wilkinson* (unpublished) (Court of Appeals, July 31, 1997).

13. The Court also rejected the attempt by some United States, Canadian and Australian Names to raise matters relating to the violation of the securities laws of their respective countries and/or states. The rejection was the consequence of the provision in the General Undertaking which all Names were required to enter into with Lloyd's as a condition of underwriting from January 1 1987 which provided for all matters regarding the underwriting of Names to be decided in the English courts under English law.

14. Were it not for the provisions of Clause 5.5 of the Contract, the Defendants would have been able to plead by way of Defense the fraudulent misrepresentations which at the time of these decisions the Defendants claimed had been made to them by the Plaintiffs. They would also have been able to counterclaim or apply to set-off against the amount claimed by the Plaintiffs the amount which they claimed to have suffered by way of damages as a result of the said fraudulent misrepresentations.

The Defense and the Counterclaim and/or the Set-Off would have been heard at the same time and as part of the Claim of the Plaintiffs.

15. Similarly, the "conclusive evidence" provision prevented Names from examining or even seeing the underlying documentation which gave rise to the calculations of the Equitas premium claimed from them. As a result, it was not possible for Names to know whether there was any manifest error within the underlying documentation.

16. The provision in clause 5.5 of the contract that the Defendants should "pay now" and then sue later is simply not practical. The costs of instituting proceedings against Lloyd's even as part of a grouping were substantial and for many of those Names who paid their Equitas Premium under protest there were insufficient funds remaining to enable them to participate in litigation against Lloyd's. This was especially the case where the banks or insurance companies who had guaranteed the Names' underwriting obligations to Lloyd's were seeking payment from the Names under their counter indemnities following the draw down by Lloyd's or which had issued letters of credit to Lloyd's by way of security against all the guarantees and letters of credit many of which counter indemnities were supported by charges over Names' homes by way of collateral security.

17. In four leading decisions, English courts did rule that Lloyd's Members' Agents, Managing Agents, and Auditors were guilty of negligence with respect to their Names. *Henderson, et al. v. Merett Syndicates, Ltd., et al.*, Nos. 1992/1946, etc., (Q. B. Division, Commercial Court, October 31, 1995); , Q. B. Division, Commercial Court (unpublished April 2, 1996); *Deany, et al. v. Gooda Walker Ltd., et al*. [1996] LRLR 183; *Arbuthnott, et al. v. Feltrim Underwriting Agencies, Ltd.*, [1996] LRLR 135. Although these cases awarded damages to Names aggregating approximately £1 billion, Lloyd's successfully decreed that all of the damages must be credited to the Premiums Trust Fund of each Name of which Funds Lloyd's was a Trustee. However, a substantial proportion of the damages awarded remained unpaid because the Errors & Omissions insurers of the agents and auditors, most of which insurance was itself placed within syndicates in the Lloyd's market, was wholly insufficient to meet the claims.

19. A number of Names against whom Summary Judgment was given in Fraser, but not the Tennessee Names, issued discrete and separate Counterclaims against Lloyd's in which they effectively became the Plaintiffs because of the provisions of Clause 5.5 of the contract. The Action is known as *The Society of Lloyd's v. Sir William Jaffray and Others ("Jaffray").*

20. Pursuant to Directions Orders issued by the Commercial Court in London in which *Jaffray* was to be tried, Lloyd's was instructed to give notice to all non-accepting Names that they had the right to become parties to *Jaffray* and if they did not they would be bound by the decisions of the Court in any event. Those who wished to consider joining *Jaffray* were not entitled to access to the disclosure produced by Lloyd's in the Action prior to joining. Although they would have been able to apply to become litigants in person they would not have been entitled to examine any witnesses at the trial but will have been able to submit a written statement. There is no right to a jury in England in such trials. All those joining *Jaffray* would have become liable for a several share of Lloyd's costs in the event that *Jaffray* was unsuccessful. Lloyd's claims that its costs up to the end of the *Jaffray* trial were approximately £20 million.

21. The issue at trial in *Jaffray* was confined to what was known as the "Threshold Fraud." The reason for such confinement as ordered by Mr Justice Colman on 30th June 1998 was because the Courts had ruled that there were no defences to Lloyd's claims as set out in paragraph 11 above. Until the Human Rights Act 1956 was adopted as part of English Law on October 2nd 2000 as referred to in paragraph 25 below, there could be no cause of action against Lloyd's other than one based on fraud because of the immunity provisions in section 14.3 of the Lloyd's Act 1982 as referred to in paragraph 33 below. Therefore, the only issue to be decided by the Court in "*Jaffray*" was whether Lloyd's made any misrepresentations which they knew to be untrue and/or as to which they were reckless as to whether they were true or false. Judgment was given against the Counterclaimants at first instance by Mr. Justice Cresswell in November 2000. Mr. Justice Cresswell held that Lloyd's did not make any representations to Counterclaimants on which they were entitled to rely.

22. A full Court of Appeal heard the Appeal of the Counterclaimants from this Judgment over a period of 13 days ending on March 27, 2001, and delivered its Judgment on July 26, 2001. The Court of Appeal unanimously held that there was a representation by Lloyd's that a rigorous system of auditing was in place which involved the making of a reasonable estimate of outstanding liabilities, including unknown and unnoted losses. The Court further held that these representations continued throughout the period 1981-1988, and that the representations were untrue during the whole of that period. However, the Court held that the Courterclaimants had failed to discharge the heavy burden of proof upon them that Lloyd's did not believe the representations to be true or that they either knew that they were or became untrue or were reckless as to whether they were true or untrue.

23. For the reasons referred to in paragraph 21 above, *Jaffray* did not involve any other claims under English Law. Thus, no consideration was given to what I understand to be the doctrine in the United States of fraudulent omission, nor was any consideration given to negligent misrepresentation or any statutory cause of action such as any violation of the United Kingdom laws relating to securities. In addition, no consideration was given to any foreign legal doctrine or laws by virtue of the forum selection/choice of law provision in the General Undertaking referred to in paragraph 13 above.

24. The doctrines of fraudulent concealment and/or fraudulent non-disclosure are not recognized under English Law.

25. As a result of the Judgment of the Court of Appeal referred to in paragraph 22 many of the Counterclaimants in *Jaffray* sought Permission to Amend their Counterclaims to plead negligent misrepresentation. Section 14 (3) of the Lloyd's Act 1982 precludes any such claim against Lloyd's unless the negligent misrepresentation was made in bad faith, that is to say that the misrepresentation was fraudulent under English law. On October 2, 2000 the Human Rights Act 1956 was adopted as part of English domestic law. The Counterclaimants contended that Section 14 (3) operates as an impediment to their access to Court to try their claim that the misrepresentation found by the Court of Appeal was made negligently and is therefore prohibited under Article 6 (1). Mr Justice Cooke handed down Judgment on May 23rd 2003 and held that the Counterclaimants were attempting to invoke Article 6 (1) of the Human Rights Act retrospectively (which analysis the Counterclaimants reject) and thus all claims by those who became members of Lloyd's after July 23rd 1982, which date the Court held was the operative date of the Lloyd's Act 1982, were prohibited from relying on negligent misrepresentation. In addition, the Judge identified numerous hurdles for those who joined before the Lloyd's Act to overcome before he would give Permission to anyone to Amend their Counterclaims.

It is particularly interesting that the Plaintiff has cited the case of *Bonny v. The Society of Lloyd's*, 3 F.3d 156, (7th Cir. 1993), *cert. denied*, 510 U.S. 1113 (1994). In that Mr. Friedman states that the *Bonny* Court had been "seriously mislead" by an affidavit submitted by Lloyd's by a Mr. Powell. (See ¶37 of Exhibit 2).

Mr. Friedman in his Affidavit points out a "fundamental difference between the law of

misrepresentation in most States of the United States and the law in England." Mr. Friedman states that "[u]nder English law there is no requirement for one party to disclose any matter to the party unless inquiry is made no matter what may be the state of knowledge or lack of knowledge of either party and however detrimental to the interests of one party the knowledge held by the other party may be." (See Exhibit 2, ¶ 44).

The common law developed in the United States and the State of Missouri accepts and embraces an unbridled recognition that fraud by omission of a material fact is an actionable fraud as well as a defense to contractual actions based upon fraudulently induced agreements. It is undisputable to most observers and scholars of American Jurisprudence that the fatal flaw of the English Courts to disallow the defense (and the offense by counterclaim) of fraud by omission would shock the judicial conscience of any jurist. It is an intrinsic misunderstanding of English law that forms the basis of the denial of the cases cited by Plaintiff in its Petition which has acted as alleged precedence in this case.

Lloyd's massive recruitment drive to bring in new Names and to persuade existing Names to increase their underwriting limits substantially was part of an elaborate and, based on the evidence which Defendants intend to introduce, clearly a fraudulent scheme in which to assuage and diminish the losses of the predominant principles at Lloyd's.

The States' Administrative Agencies Actions

During 1995, ten states, including Illinois, took enforcement action against Lloyd's for its activities in recruiting and defrauding investors in the United States, and thirty-eight others

opened investigations into Lloyd's recruitment activities in the United States.[1]

In fact, the Secretary of State of Missouri issued a Cease and Desist Order (later set aside) which delineated many of the facts herein stated herein regarding Lloyd's numerous misrepresentations and other improper actions perpetrated against the Names. (See Cease and Desist Order attached as Exhibit 3 to Defendants' Memorandum in Support of Their Tract 3 (Complex) Case Designation previously filed in this matter, hereinafter referred to as "Exhibit 3", and incorporated herein as if fully set out).

Other securities officials took similar actions. The Ohio Division of Securities issued a "Final Order to Cease and Desist" against R. W. Sturge, Ltd. and others for violations of the Ohio Securities Acts in connection with their solicitation of participants in Lloyd's.[2] Pennsylvania imposed a summary order to cease and desist.[3] In Colorado a judge held, after a full hearing, that Lloyd's was guilty of fraud and granted the Colorado Securities Commissioner's request for a preliminary injunction against Lloyd's.[4]

The state securities administrators, complaining of essentially the same behavior on the part of Lloyd's, eventually joined forces under the umbrella of the North American Securities Administrators Association ("NASAA") to coordinate their efforts to obtain relief for their constituents against Lloyd's.

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[1]The states which took enforcement action were Arizona, California, Colorado, Illinois, Kentucky, Missouri, Ohio, Tennessee, Utah and West Virginia.
[2]*In the Matter of R. W. Sturge, Ltd. et al.* No. 94-203 before the State of Ohio, Department of Commerce, Division of Securities.
[3]Commonwealth of Pennsylvania, Before the Pennsylvania Securities Commission, Administrative Proceeding Docket no. 9412-10.
[4]*Philip Feigin, Securities Commissioner for the State of Colorado v. Lloyd's, etc.*, No. 95 CV 5541 in the District Court, Denver County, State of Colorado. (Exhibit 20).

In 1996, in exchange for the offer by Lloyd's to provide an additional £40 million in credits to United States Names who were willing to accept Lloyd's settlement offer, the state securities administrators withdrew their actions, leaving to each Name the decision whether to accept the settlement offer or not.

On September 29, 1995, the Secretary of State of Illinois issued a Notice of Proposed Action against Lloyd's alleging that Lloyd's committed fraud and that it violated the registration and anti-fraud provisions of the Illinois Securities Act relating to registration of securities and dealers.

Legal Basis for Motion to Compel

The standard for relevance is set out in Federal Rule 26(b)(1) and gives the questioning party great latitude. As we all know, said rule provides that "[r]elevant information may not be admissible at trial if discovery appears reasonably calculated to lead to the discovery of admissible information.

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CERTIFICATE OF SERVICE

I certify that on the 23rd day of January, 2004, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following: Martin J. Buckley, Attorney for Plaintiff, 1139 Olive Street, Suite 800, St. Louis,

Missouri 63101; Alan C. Kohn, Esq., Attorney for Defendant Shillington, One US Bank Plaza, Suite 2410, St. Louis, Missouri 63101; Blake T. Hannafan, Esq., Michael T. Hannafan & Associates, Ltd., One East Wacker Drive, Suite 1208, Chicago, IL 60601; and Harold F. Ilg, 100 L'Ambiance Circle, Unit 202, Naples, Florida 34108.

/s/ Ted F. Frapolli