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. Scillington, Cynthia J. Todorovich and Michael B. Todorovich, Defendants.	)	Case No: 4:03CV1113 HEA

JOINT MOTION OF DEFENDANTS ROBERT W. FUERST, HORD HARDIN II, WALTER A. KLEIN, MEADE M. McCAIN, CYNTHIA TODOROVICH AND MICHAEL B. TODOROVICH FOR EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT PENDING COMPLETION OF DISCOVERY PURSUANT TO FED.R.CIV. P.56(f) AND FED.R.CIV. P. 6(b)

Comes now Defendants Robert W. Fuerst, Hord Hardin II, Walter A. Klein, Meade M. McCain, Cynthia Todorovich and Michael B. Todorovich, by their counsel, and for their Joint Motion for Extension of Time to Respond to Plaintiff's Motion for Summary Judgment Pending Completion of Discovery pursuant Fed.R.Civ.P. 56(f) and Fed.R.Civ.P. 6(b), state as follows:

1. Plaintiff filed its Motion for Summary Judgment on January 22, 2004.

2. Pursuant to Local Rule 7-4.01(B), "a party opposing a Motion for Summary Judgment under Fed.R.Civ.P. 56 shall file a memorandum and any appropriate documentary evidence twenty (20) days after being served with the motion."

3. This Court, pursuant to its Order of January 28, 2004, tolled the time required for the Defendants' responses to Plaintiff's Motion for Summary Judgment pending the resolution of various motions argued before this Court on January 26, 2004.

4. On October 22, 2003, Defendants propounded Interrogatories and Request to Produce Documents to Plaintiff.

5. Plaintiff has objected to substantially all of Defendants' Interrogatories and Request to Produce Documents.

6. On January 23, 2004, Defendants Robert Fuerst, Hord Hardin II, Walter Klein, Meade McCain, Cynthia Todorovich and Michael Todorovich filed their Motion to Compel Discovery Directed to Plaintiff due to Plaintiff's failure to provide essential, relevant and material discovery. The Court has yet had the opportunity to rule upon the Motion to Compel Discovery directed to Plaintiff.

7. On January 29, 2004, this Court ruled upon the aforementioned motions, and therefore the time to respond to Plaintiff's Motion for Summary Judgment has commenced once again.

8. Pursuant to Local Rule 7-4.01(B), Defendants responses to Plaintiff's Motion for Summary Judgment is due to be filed on February 16, 2004.

9. Defendants' counsel had scheduled an out of town family vacation prior to the service of Plaintiff's Motion for Summary Judgment and is scheduled to be out of town from February 15, 2004 through February 19, 2004. See Affidavit of Ted F. Frapolli marked as Exhibit A.

10. Plaintiff has filed in conjunction with its Motion for Summary Judgment the following:

a) Motion for Leave to File a Memorandum of Twenty Pages in Support of its Motion for Summary Judgment;

b) Plaintiff's Statement of Undisputed Material Facts comprising of ten pages and forty paragraphs of "Undisputed Material Facts;"

c) Plaintiff's twenty page Brief in Support of its Motion for Summary Judgment; and

d) A nine page "Declaration" of Nicholas P. Demery with approximately 159 pages of exhibits.

11. Rule 26 disclosures have not yet been exchanged, with same due by April 1, 2004.

12. The Case Management Order in this case provided that the motion packet rule, E.D. Mo. L.R. 4.05 shall not apply. The Court further stated that any Motion for Summary Judgment must be filed no later than October 1, 2004 with opposition briefs filed no later than November 2, 2004.

13. During the Rule 16 conference, Plaintiff's counsel did not raise an issue or inform the Court that he intended to file a Motion for Summary Judgment prior to the deadlines discussed, although Plaintiff did seek an expedited setting as a Track 1 case.

14. The complexity of this case, despite Plaintiff's assertion, has been initially discussed in the Defendant's Memorandum in Support of their Track 3 (Complex) Case Designation filed with this Court on October 1, 2003, marked as Exhibit B (without exhibits), and incorporated by reference as if fully set out herein.

15. A Time article (European edition) entitled "The Decline and Fall of Lloyd's of London" (attached as Exhibit 1 to Defendant's Memorandum in Support of their Track 3 designation) presents the history of fraud committed by Lloyd's in this case and for which the enforcement would be in violation of which Missouri Law and requires discovery includes, but is not limited, to the following:

a) The Time Article conveys in a concise and poignant manner the fraud that was perpetrated upon the Names. While the article is not in evidentiary form, Defendants stand ready, with adequate time to conduct discovery, 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, page 6).

b) 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, 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, 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, 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, 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, p. 8-9).

c) “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, p. 5).

d) The English Parliament, on July 23, 1982, gave Lloyd's exemption from lawsuits and held that Lloyd's could only be held liable for damages only if a plaintiff could prove "bad faith" which is difficult to establish under English law where the 'buyer-beware' principle is more formally established than in the United States." (See Time Article, p. 10).

16. The Affidavit of Michael David Friedman marked as Exhibit C and incorporated by reference as if fully set out herein, which was provided in a similar lawsuit filed in Tennessee by Lloyd's against certain Names renders opinions which contradict the affidavit presented by Plaintiff of a Mr. Nicholas Demery, the most cogent facts set out in the Affidavit of the solicitor who represented the Names in England regarding claims of fraud were as follows:

a. 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").

b. Part of Bylaw 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.

c. 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 Bylaws.

d. 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).

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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").*

k. 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.

l. 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.

m. 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.

n. 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.

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

p. 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.

17. 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 C, paragraph 44).

18. The Defendants require time to obtain a new affidavit or take the deposition of Mr. Freeman to specifically contest the following allegations (among others) set out in Mr. Demery's affidavit, to-wit (references are made to the paragraphs numbers Demery's affidavit paragraph 19):

(a) "Defendants had a full opportunity to present their defenses to payment of the Equitas premium in the English Court."

(d) "That Names were entitled to litigate claims of fraud in the inducement of their membership of, or underwriting at, Lloyd's as a defense are set out to their obligation to pay Equitas premium." (Affidavit of Ted F. Frapolli, Exhibit A)

19. **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.**

20. Defendants seek to obtain an Affidavit and deposition of Michael David Freeman, and this cannot be accomplished in the time provided to answer the Motion for Summary Judgment as Mr. Freeman resides in London, England, to the best of Defendants' knowledge. Mr. Freeman's

testimony will provide essential evidence that the enforcement of the English Court's Judgment would be against the Public Policy of Missouri.

21. 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 D). However, there was a subsequent agreement ("State Agreement," Exhibit E attached hereto) entered into between Lloyd's and the Missouri Names as a result of that Cease and Desist Order, which applies and provides in persistent part as follows:

> Article I (I) of the State Agreement provides that the State Names who are covered by the condition standstill Agreement of April 29, 1996 could choose as their finality obligation the lowest of the amounts shown in their indicative finality statements of March and June of 1996, and the finality statement of July of 1996. This part of the State Agreement (attached hereto as Exhibit F) was not modified by the Supplemental Agreement. (The pages of the State Agreement are unnumbered, but Article I, paragraph (I), appears on its fifth unnumbered page).

22. It is the Defendants' position that the Defendants herein are covered under this State Agreement, although the Conditional Standstill Agreement (marked as Exhibit G to the State Agreement) is not legible. An attempt is being made to obtain a legible copy from the Deputy Commissioner's Office, Colorado Securities Commission. Additional time to obtain that document is essential to the affirmative defense pleaded by Defendants in their Amended Answers, to-wit:

TWENTY-SECOND AFFIRMATIVE DEFENSE

Pursuant to an Agreement between Plaintiff and various State Securities Regulators dated July 11, 1996 ("State Agreement") as modified by a Supplemental Agreement dated September 24, 1996, Defendant could choose as his finality obligation the

lowest amounts shown in his indicative finality statements of March and June 1996 and the finality statement of July 1996. Further, Plaintiff did not comply with the conditions of said State Agreement to notify this Defendant of said offer to settle.

Therefore, should this Court find Defendant liable for the sums Plaintiff seeks, that amount should be the lowest amount shown in this Defendant's statements of March and June 1996 and the finality statement of July 1996.

23. Mary Hosmer, with the Office of the Secretary of State, Securities Division, has been presented with information that the Missouri Names were not provided notice of the agreement between Lloyd's and the State of Missouri. The State of Missouri is looking into these allegations, and according to Mary Hosmer, has stated that additional information has been requested. (See Affidavit of Ted F. Frapolli, paragraph 9)

24. Moreover, in addition to the duty implicit in Article I, paragraph (I) of the State Agreement, it is an explicit reference in Article I, paragraph E to the "mailing of Lloyd's settlement offer document to State Names." Clearly such a document was contemplated and it should be complied with the terms of Article I, paragraph (I). The duty that is implicit in Paragraph I becomes explicit in Paragraph E.

25. Defendants are prepared to submit Affidavits that they did not receive such notice, thereby violating Lloyd's agreement with the State of Missouri. Defendants require additional time to prepare said Affidavits for submittal to this Honorable Court.

26. Missouri Revised Statute §511.780.1 (1984), provides that a foreign country judgment is not conclusive if the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

27. Missouri Revised Statute §511.780.2 (1984) states that a foreign country judgment need not be recognized if:

(2) The judgment was obtained by fraud §511.780.2(2);

(3) The claim for relief on which the judgment is based is repugnant to the public policy of this state §511.780.2(3); or

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court §511.780.2(5).

28. Defendants seek the following discovery to be undertaken at this time:

a) Deposition of Nicholas P. Demery, whose nine page Declaration with one hundred and fifty nine pages of exhibits is the foundation upon which Plaintiff seeks its Motion for Summary Judgment. The deposition of Nicholas P. Demery is necessary both to substantiate the State Agreement and to refute the amount of money owed as well as the issues raised by Mr. Demery as to the process in England as well as proving that the enforcement of the English Judgment would be against Public Policy;

b) Deposition of the corporate designee of Lloyd's of London regarding the allegations set out in the Time Article attached as Exhibit B herein. This information will provide relevant and material information regarding the affirmative defenses raised by Defendants as to the fraud committed, as well as proving that the enforcement of the English Judgment would be against Public Policy;

c) Deposition of the Designee for the Secretary of State of Missouri, Securities Division, in regards to the agreement with the Names in conjunction with affirmative defense twenty-two of the Names Amended Answer. This deposition will substantiate that the amount allegedly owed the Names, even if so judgment is enforced, is erroneous and that there was a previous agreement between the parties which barred the Judgment in the English action;

d) Defendants seek to obtain a legible copy of the Conditional Standstill Agreement to the State Agreement (Exhibit F); and

e) Deposition and/or provide an Affidavit from Michael David Freeman regarding the issues set out in Defendants' Affirmative Defenses cited in their Amended Answers, and their Application to Missouri Revised Statute Section 511.780.

29. As stated, Missouri Revised Statute §511.780.2.(3) mandates that a foreign country judgment is not conclusive if the claim for relief upon which the judgment is based is repugnant to the public policy of this state. It is the belief of defendants that the facts stated in this motion provide the basis for discovery and would persuade this court that to enforce this judgment is repugnant to the public policy of this State. There has been no case law dealing with the public policy of this State and nor can other state's decisions mean that this State's public policy has not been violated.

30. Although the Defendants in this case have a compelling fraud story to tell, they have never been able to tell it, in spite of the fact that judgments have been entered against them by

English Courts and Lloyd's is now seeking to collect on these judgments before this Honorable Court. The Defendants have been unable to defend Lloyd's claims because of a series of procedural machinations that would make a mockery of American standards of justice and the public policy of this State. Consider the following:

a) After drawing down on the Defendants' letters of credit, Lloyd's, through its wholly-owned subsidiary, Equitas Reinsurance, Ltd., unilaterally issued mandatory cash calls obligating the Defendants to pay substantial sums to cover insurance losses;

b) When the Defendants refused to pay the cash calls or to enter into an agreement with Equitas requiring them to do so, Lloyd's unilaterally appointed a new agent for them without their knowledge or consent;

c) At Lloyd's direction, the new agent then signed the Equitas contract on behalf of the Defendants, purporting to bind the Defendants to a contract they never saw, signed, or approved;

d) The Equitas contract, to which the Defendants never agreed, bound the Defendants to a "pay now, sue later" clause that prevented the Defendants from raising any affirmative defenses – such as fraud, breach of fiduciary duty, or setoff – before having a judgment entered against them;

e) The Equitas contract, to which the Defendants never agreed, also bound the Defendants to a "conclusive evidence" clause that prevented the Defendants from conducting any discovery or raising any arguments to refute the basis

of the liability the Defendants allegedly incurred, the amount of the liability, or the method of calculation.

31. In short, in reaching the judgment's Lloyd's now seeks to enforce, the English Courts bound the Defendants to an unconscionable contract, precluded them from raising any affirmative defenses and prevented them from challenging the existence or amount of the alleged liability. Thus the judgments Lloyd's ask this Court to enforce were based upon sham contracts, a deprivation of property before the right to be heard and the complete inability of defendants to present contrary evidence or affirmative defenses. Remarkably, Lloyd's nonetheless brings this Motion claiming that the Defendants were afforded the opportunity for a full and fair trial in the English Court.

32. On February 3, 2004, Defendants' counsel inquired as to whether or not there could be an agreement as to an extension of time for response to conduct discovery. Plaintiff's counsel replied that they will not agree or consider any extension.

33. Further, Plaintiff's counsel has denied Defendants' request to take the deposition of Mr. Demery at any time in order to prepare an answer to Plaintiff's Motion for Summary Judgment. (See paragraph 28 of this Motion) Defendants have prepared a request to have the deposition of Mr. Demery taken on February 18, 2004, but again, Plaintiff's counsel indicates that they will not produce Mr. Demery for depositions.

WHEREFORE, Defendants Robert W. Fuerst, Walter A. Klein, Meade M. McCain, Cynthia J. Todorovich, Michael B. Todorovich and Hord Hardin II pray an Order of this Court delaying their response to the Motion for Summary Judgment pursuant to the Case Management Order, until November 2, 2004, or for a period of at least six (6) months; or for such other and further Orders as this Court deems just and proper.

LAW OFFICES OF TED F. FRAPOLLI

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Hord Hardin II

CERTIFICATE OF SERVICE

I certify that on the 12th day of February, 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