

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. Shillington, Cynthia J. Todorovich)
and Michael B. Todorovich,)
)
Defendants.)

Case No: 4:03CV1113 HEA

NOTICE OF DEPOSITION
[FRCP 30(b)]

TO COUNSEL AND PARTIES OF RECORD:

Martin J. Buckley, Esq.
Noce & Buckley, L.L.C.
1139 Olive Street, Suite 800
St. Louis, MO 63101

Blake T. Hannafan, Esq.
Michael T. Hannafan & Associates, Ltd.
One East Wacker Drive, Suite 1208
Chicago, IL 60601

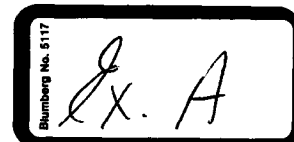
Alan C. Kohn, Esq.
Kohn Shands Elbert Gianoulakis
& Giljum, LLP
1 US Bank Plaza
St. Louis, MO 63101

Mr. Harold F. Ilg
100 L'Ambiance Circle, Unit 202
Naples, FL 34108

NOTICE IS HEREBY GIVEN that Defendants Robert W. Fuerst, Hord Hardin II, Walter A. Klein, Meade M. McCain, Cynthia J. Todorovich and Michael B. Todorovich will take the deposition upon oral examination of the following person at the date and time indicated:

<i>Name</i>	<i>Date</i>	<i>Time</i>
Nicholas P. Demery	February 20, 2004	9:00 a.m.


Such deposition shall be taken pursuant to Rule 30 of the Federal Rules of Civil Procedure, before a duly appointed, qualified and acting notary public authorized to administer oaths, at The Law Offices of Ted F. Frapolli, 275 North Lindbergh Boulevard, St. Louis, Missouri 63141, and shall continue thereafter from day to day, Saturdays, Sundays and holidays



excepted, until completed. The deposition shall be recorded stenographically and by sound recording on magnetic tape.

The deponent will be served with a subpoena duces tecum pursuant to Rule 45 FRCP requiring his attendance and the production of the materials specified in Exhibit A to this notice.

LAW OFFICES OF TED F. FRAPOLLI

By: 
Ted F. Frapolli #10480
275 North Lindbergh, Suite F
St. Louis, MO 63141
(314) 993-4261 telephone
(314) 993-3367 fax

Attorney for Defendants Robert W. Fuerst,
Walter A. Klein, Meade M. McCain,
Cynthia J. Todorovich, Michael B. Todorovich and
Hord Hardin II

CERTIFICATE OF SERVICE

I certify that on the 13th day of February, 2004, the foregoing was served via facsimile to: 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 mailed to Harold F. Ilg, 100 L'Ambiance Circle, Unit 202, Naples, Florida 34108.

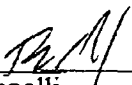

Ted F. Frapolli

EXHIBIT A—DOCUMENTS TO BE PRODUCED BY NICHOLAS P. DEMERY

1. A professional resume or curriculum vitae or any documents establishing his professional qualifications to provide the opinions stated in his Declaration attached to Plaintiff's Declaration ("Demery Declaration") filed January 22, 2004.
2. His complete file in connection with this litigation.
3. Any and all documents or information that led him to the conclusions in his Declaration.
4. Any and all files pertaining to Robert W. Fuerst, Hord Hardin II, Harold F. Ilg, Walter A. Klein, Meade M. McCain, John J. Shillington, Cynthia J. Todorovich and Michael B. Todorovich.
5. Any and all documents Lloyd's advice to "outside" or independent auditors, in connection with asbestos claims or damages or potential claims or damages.

MICHAEL T. HANNAFAN & ASSOCIATES, LTD.

One East Wacker Drive
Suite 1208
Chicago, Illinois 60601
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February 16, 2004

By Fax Only

Ted F. Frapolli, Esq.
275 North Lindbergh
Suite F
St. Louis, MO. 63141

Re: The Society of Lloyd's v. Fuerst et al.

Dear Mr. Frapolli:

We are in receipt of your February 11, 2004, letter and February 13, 2004, Notice of Deposition for Nicholas P. Demery. Your February 11 letter makes several assumptions regarding our positions in this case and we request that in the future you please stop making assumptions on our behalf. However, you are correct that we are not willing to agree to an extension of your clients' deadline for responding to Lloyd's Motion for Summary Judgment.

As discussed in Lloyd's Brief in opposition to your Motion to Compel and my February 10, 2004, letter to you, we disagree with your position that you are entitled to discovery regarding your clients' alleged "fraud" defenses. In addition, as you may know by now, there is overwhelmingly judicial precedence in the United States recognizing and enforcing Lloyd's English Judgments against Names identical to your clients. In fact, eight Circuit Courts of Appeals have unanimously held that the forum selection, choice of law, "pay now, sue later" and "conclusive evidence" clauses in the General Undertakings signed by the Names, including your clients, are valid and enforceable. See e.g., *The Society of Lloyd's v. Webb*, 303 F.3d 325 (5th Cir. 2002); *The Society of Lloyd's v. Ashenden*, 233 F.3d 473 (7th Cir. 2000); *Lipcon v. Underwriters at Lloyd's*, 148 F.3d 1285 (11th Cir. 1998), *cert. denied*, 525 U.S. 1093 (1999); *Stamm v. Barclay's Bank of N.Y.*, 153 F.3d 30 (2d Cir. 1998); *Richards v. Lloyd's of London*, 135 F.3d 1289 (9th Cir. 1998), *cert. denied*, 525 U.S. 943 (1998); *Haynsworth v. Lloyd's of London*, 121 F.3d 956 (5th Cir. 1997), *cert. denied*, 523 U.S. 1072 (1998); *Allen v. Lloyd's of London*, 94 F.3d 923 (4th Cir. 1996); *Shell v. R. W. Sturge, LTD*, 55 F. 3d 1227 (6th Cir. 1995); *Bonny v. The Society of Lloyd's*, 3 F.3d 156 (7th Cir. 1993), *cert. denied*, 510 U.S. 1113 (1994); *Roby v. Corporation of Lloyd's*, 996 F.2d 1353 (2d Cir. 1993), *cert. denied*, 510 U.S. 945 (1993);



and *Riley v. Kingley Underwriting Agencies, Ltd.*, 969 F.2d 953 (10th Cir. 1992), *cert. denied*, 506 U.S. 1021 (1992).

In addition, numerous district courts have also ruled in Lloyd's favor and enforced the English Judgments. See, e.g., *The Society of Lloyd's v. Mullin*, 255 F.Supp.2d 468 (E.D.P.A. 2003); *The Society of Lloyd's v. Hudson*, 276 F.Supp.2d 1110 (D.NV. 2003); *The Society of Lloyd's v. Shields, et al.*, No. 3:03-0032 slip op. (M.D.TN. Oct. 1, 2003); *The Society of Lloyd's v. Lebolt, et al.*, No. 02CV449-J (AJB), slip op. (S.D. Cal. May 29 2003); *The Society of Lloyd's v. Evnen*, No. 8:02CV118, slip op. (D. Neb. April 28, 2003); *The Society of Lloyd's v. Davies, et al.*, No. 1:02-cv-1602-GET, slip op. (N.D. Ga. April 23, 2003); *The Society of Lloyd's v. Borgers, et al.*, No. CV-02-0423-PHX-FJM slip op. (D. Az. March 28, 2003); *The Society of Lloyd's v. Blackwell, et al.*, No. 02CV448-J (AJB), slip op. (S.D. Cal. Feb. 26, 2003); *The Society of Lloyd's v. Bennett, et al.*, No. 2:02-CV-204TC, slip op. (D. Utah. Nov. 12, 2002); *The Society of Lloyd's v. Reinhart, et al.*, No. 02-264 LFG/WWD-ACE, slip op. (D. N.M. Sept. 30, 2002); *The Society of Lloyd's v. Grace*, 718 N.Y.S. 2d 327 (N.Y. App. Div. 2000); *The Society of Lloyd's v. Baker*, 673 A.2d 1336 (Me. 1996). We attached copies of the slip opinions to Lloyd's Brief in Support of its Motion for Summary Judgment and we trust that you can find on your own the copies of the reported decisions. Moreover, your clients' alleged fraud defenses were raised and resolved in *Society of Lloyd's v. Jaffray* (Court of Appeal 26 July 2002) and cannot be raised here. Finally, your February 11 letter again refers to Missouri's "public policy" differing from other states' public policy. However, you continue to neglect to include exactly what "public policy" you are talking about and how it differs from other states.

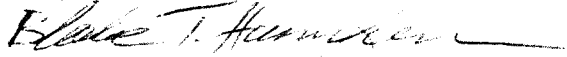
Notice of Deposition for Mr. Demery

Your statement that we "will not allow Mr. Demery to testify by deposition" is disingenuous. We are not agreeable to your suggestion to produce Mr. Demery for a deposition prior to the deadline for your clients' response to Lloyd's Motion for Summary Judgment. We do not believe that Mr. Demery's deposition is necessary to your clients' response to Lloyd's Motion for Summary Judgment. In addition, contrary to your February 11, 2004, letter, you did not serve us that day with a Notice of Deposition for Mr. Demery. In fact, we did not receive your Notice of Deposition until the afternoon of February 13, 2004.

We suggest that you withdraw your Notice of Deposition of Mr. Demery, which you have set for February 20, 2004, in St. Louis for the following reasons. Your clients have now filed two motions regarding discovery, a Motion to Compel and a Motion for an Extension of Time to Respond to Lloyd's Motion for Summary Judgment Pending Completion of Discovery, which are currently pending before the Court. As you know, Lloyd's has filed a brief in opposition to the Motion to Compel and will be opposing the Motion for an Extension of Time. Therefore, your Notice of Deposition for Mr. Demery is premature. This case also is the collection phase of the action that your clients lost in England and they are not entitled to attempt to re-litigate issues that were raised and resolved against them in England. As such, no discovery, including Mr. Demery's deposition, or an extension of time is needed to enable your clients to respond to Lloyd's Motion for Summary Judgment.

Furthermore, the Notice of Deposition for Mr. Demery does not comply with Federal Rule Civil Procedure 30(b)(1) which requires that you provide "reasonable notice" to all parties. One week's notice for Mr. Demery, whom you know resides in London, England, and us to travel to St. Louis for his deposition, is not "reasonable." Lloyd's Motion for Summary Judgment, including Mr. Demery's Declaration, was filed on January 22, 2004, yet you waited over three weeks to serve us with a Notice of Deposition. Finally, as you claim in your Motion for an Extension of Time, you want to procure an affidavit or deposition from Mr. Freeman, your clients' former English solicitor, yet you claim that additional time is needed to do so. Thus, you have implicitly conceded that your own notice for Mr. Demery's deposition is not reasonable. Therefore, please let me know by the end of business, 5:00 p.m. CST, tomorrow whether you will agree to withdraw your Notice of Deposition for Mr. Demery. If not, we will seek the appropriate relief from the Court.

Very truly yours,



Blake T. Hannafan

Cc: Martin Buckley

THE LAW OFFICES OF TED F. FRAPOLLI

ATTORNEY AT LAW
275 North Lindbergh, Suite F
St. Louis, Missouri 63141
Telephone: (314) 993-4261
Facsimile: (314) 993-3367
e-mail address: tfrapolli@birch.net

February 17, 2004

Via Facsimile: (312) 527-0220

Blake T. Hannafan, Esq.
Michael T. Hannafan & Associates, Ltd.
One East Wacker Drive, Suite 1208
Chicago, Illinois 60601

RE: The Society of Lloyd's vs. Robert W. Fuerst, et al.

Dear Mr. Hannafan:

We are in receipt of your letter of February 16, 2004. Clearly, you feel your correspondence or conversations with me are incomplete without a threat or snide remark thrown in for effect. In the future, my suggestion is that you keep to the facts and do not assume your tactics, if successful in the past, will serve you well in this case.

Yes, I understand you disagree with my position and yes the rote recapitulation of the cases in each letter, while impressive in appearance, fails to understand that this Court may require a more reasoned approach than your "we always win, should we not win now?"

By the way, I assume that you understand that your statement that each of those cases stand for each of your propositions is highly inaccurate.

As to the "public policy" I refer to, I am sorry you have been unable to ascertain that this Court would refer to Missouri public policy. If you require legal citations, please advise. How it differs from the other states, as I assume you realize, results from an in depth analysis of the facts posed to this Court.

As to disingenuous, why not try a more "honest" approach and leave the games for others? You have no intention to produce Mr. Demery for a deposition. We will not withdraw our Motion for Mr. Demery's deposition. In the future, assume that your tactics will result in similar attitudes to your approach.

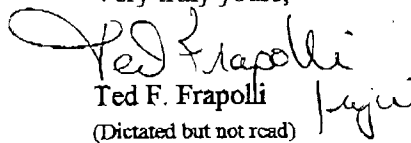
Finally, I assume you realize the need for Mr. Demery's deposition for use in our Reply to your Motion for Summary Judgment. While I appreciate your view that the problem lies with my delay, this is nothing more than your style rather than a substantive response.



Mr. Blake Hannafan
February 17, 2004
Page Two

I will be happy to discuss a withdrawal of the notice as to Mr. Demery if you wish to provide me with alternative dates by the end of business, 5:00 p.m. CST, tomorrow.

Very truly yours,


Ted F. Frapolli
(Dictated but not read)

TFF/mjw

cc: Martin J. Buckley, Esq. (via facsimile)
Alan C. Kohn, Esq. (via facsimile)

FILED

02 OCT 21 AM 10:48

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE SOCIETY OF LLOYD'S

Plaintiff,

v.

ROBERT C. BLACKWELL, ET AL.

Defendants.

Civil No. 02CV448-J (AJB)

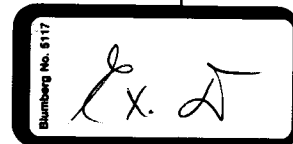
**ORDER DENYING DEFENDANTS'
REQUEST TO CONTINUE
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Before the court is Defendants' R. William Johnston, Frank F.S. Lin, Robert Kramer Lowry, Richard Rosenblatt and Robert L. Swisher's motion to continue the October 28, 2002 hearing date for plaintiff's motion for summary judgment. The following defendants, referred to collectively as "the Blackwell defendants" filed a notice of joinder: Robert C. Blackwell, Samme Jo Brady, John R. Dogerty, Joseph Melvin Gagliardi, Harry Walter Gorst, Frederick Gordon Graeber, Michael Calvin Hirsch, Ivars Ralph Janieks, William Dobson Kilduff, Jane Elizabeth Lamb, Donald Rudolph Laub, Geoffrey O. Mavis, William Fenton Miller Jr., Robert Marshall Morton, Charles Webb Ott, Ronald George Speno, Stephen John Wilsey, and Peter Francis Zinsli.¹ Plaintiff requested an opportunity to oppose the request and the court set an expedited briefing schedule. The court has

¹ Plaintiff notes that unlike the moving defendants, the Blackwell defendants have not requested any discovery. (Opp. Br. at 1 n.1; Alexander Decl. ¶ 4).

*Wole*¹

02CV448-J (AJB)



1 reviewed the papers filed and determined that the issue presented is suitable for decision without
2 oral argument. *See* Civ. L. R. 7.1.d.1. For the reasons set forth below, the motion is **DENIED**.

3 *Discussion*

4 **I. Legal standard**

5 Rule 56(f) sets forth a standard and procedure for parties that seek to continue a summary
6 judgment and engage in further, directed discovery. It provides in full that

7 Should it appear from the affidavits of a party opposing the motion that the party
8 cannot for reasons stated present by affidavit facts essential to justify the party's
9 opposition, the court may refuse the application for judgment or may order a
 continuance to permit affidavits to be obtained or depositions to be taken or
 discovery to be had or may make such other order as is just.

10 *See* Fed. R. Civ. P. 56(f). An order denying a Rule 56(f) motion is reviewed for abuse of
11 discretion and will be upheld if the circuit court determines that the requesting party "failed
12 diligently to pursue discovery in the past or if the movant fails to show how the information
13 sought would preclude summary judgment." *California Union Insurance Co. v. American*
14 *Diversified Savings Bank*, 914 F.2d 1271, 1278 (9th Cir. 1991) (citations omitted), *cert. denied*,
15 498 U.S. 1088 (1991). The trial court has sound discretion to grant a Rule 56(f) motion "if the
16 opposing party needs to discover essential facts." *Garrett v. City and County of San Francisco*,
17 818 F.2d 1515, 1518 (9th Cir. 1987). As long as the trial court exercises the discretion granted it
18 by Rule 56(f), its decision "will rarely be disturbed." *Id.* (reversing district court's order finding
19 plaintiff's Rule 56(f) motion "moot" and granting defendant's summary judgment motion).

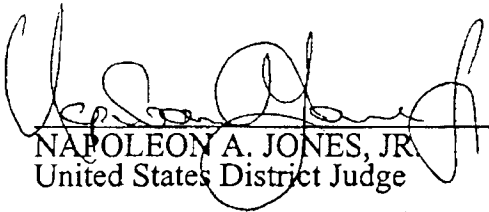
20 **II. Application**

21 Lloyd's obtained judgments in the English Court against defendants, each of whom is a
22 California resident. Those judgments remain unpaid and Lloyd's has filed the enforcement
23 action presently before this court. Plaintiff has moved for summary judgment seeking recogni-
24 tion and enforcement of the English Court's final judgment. Defense counsel filed a request to
25 continue the summary judgment motion. He requests a continuance for time to depose Lloyd's
26 counsel, Nicholas P. Demery, regarding each fact upon which Lloyd's relies to support its
27 Motion for Summary Judgment, and for time to obtain responses to written discovery. Defen-
28 dants believe that additional time would allow them to obtain information that would enable

1 them to present a list of defenses that the court need not repeat here because each of them raises
2 only a legal issue. Defendants have therefore not adequately explained the need for any
3 discovery. The summary judgment motion presents a very narrow legal issue. Any evidentiary
4 objections to Mr. Demery's declaration and the evidence it references should be submitted with
5 defendants' opposition brief. Accordingly, the requests for a continuance are **DENIED**. The
6 summary judgment motion is recalendared for hearing on November 4, 2002. Defendants shall
7 file their opposition brief and any supporting evidence on or before October 23, 2002. Any reply
8 brief and evidence in support thereof shall be filed on or before October 28, 2002.

9 **IT IS SO ORDERED.**

10 Dated: October 17, 2002


NAPOLEON A. JONES, JR.
United States District Judge

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13 cc: Magistrate Judge Battaglia
14 All Counsel of Record
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