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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THE SOCIETY OF LLOYD'S,)
)
Plaintiff,)
)
v.)No. 4:03-CV-01113 HEA
)
ROBERT W. FUERST, ET AL.,)
)
Defendant.)

MOTION HEARING

BEFORE THE HONORABLE HENRY E. AUTREY
UNITED STATES DISTRICT JUDGE

MARCH 16, 2004

APPEARANCES:

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REPORTED BY: ANGELA K. DALEY, CSR, RMR
 Official Court Reporter
 United States District Court
 111 South Tenth Street, Third Floor
 St. Louis, MO 63102
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PRODUCED BY COURT REPORTER COMPUTER-AIDED TRANSCRIPTION

1 (PROCEEDINGS STARTED AT 10:55 A.M.)

2 THE COURT: This is the matter of The Society of
3 Lloyd's versus Robert Fuerst, Hord Hardin, Harold Ilg, Walter
4 Klein, Meade McCain, John Shillington, Cynthia Todorovich, and
5 Michael Todorovich in case number 4:03-CV-1113 HEA. The
6 matter is before the Court for hearing on certain motions
7 filed by the parties. Plaintiff is present represented by
8 counsel; defendants relative the motions are present through
9 counsel. Are the parties ready to proceed?

10 MR. FRAPOLLI: Defendants are, Your Honor.

11 MR. HANNAFAN: Yes, Your Honor.

12 THE COURT: There are various motions before the
13 Court for hearing. I leave it to you all to decide which one
14 you want to proceed on first since you all did the work in
15 filing it.

16 MR. HANNAFAN: Your Honor, Blake Hannafan on behalf
17 of The Society of Lloyd's, and I would suggest, Your Honor,
18 that I think it probably makes the most sense to discuss the
19 defendant's Rule 56F motion which they have requested
20 additional time to take discovery, respond to the summary
21 judgment because I think if Your Honor -- depending on Your
22 Honor's ruling on that motion, the others may take care of
23 themselves.

24 THE COURT: Good enough.

25 MR. HANNAFAN: I leave it up to the defendants as

1 well.

2 MR. FRAPOLLI: I don't have an objection to that,
3 Your Honor.

4 MR. KOHN: That is fine with us, Your Honor.

5 THE COURT: That makes sense. All right. Let us
6 proceed.

7 MR. FRAPOLLI: Good morning, Your Honor. Judge, I
8 think that there is a lot of paperwork that's been filed and a
9 lot of arguing back and forth about whether or not there's a
10 need for discovery. I think I can boil it down to this.
11 There has been a couple of exhibits that have been filed by
12 the defendants. They are not admissible evidence. They are
13 not intended to be admissible evidence. One is a Time article
14 that talks about the fraud that was committed by Lloyd's. It
15 not only talks about it in terms of a reporter's viewpoint,
16 but also there is information from the New York Attorney
17 General. There is hearings that have been held in the
18 Congress, and I think it is fairly clear that there came a
19 time when Lloyd's knew they were in trouble. They knew they
20 had asbestosis claims that were going to ruin Lloyd's, and
21 they came over to get new investors. And there's also the
22 affidavit of Michael David Friedman who is an attorney who
23 handled the case for the Names over in England. And I say to
24 this Court this, that if you read the Time article and you
25 read the affidavit from Michael David Friedman and you come to

1 the conclusion that those matters if proved and if true
2 wouldn't make a difference to this Court in terms of
3 interpreting Missouri Revised Statute as to the recognition of
4 foreign judgments, then there is no need for discovery. But
5 if it matters to the State of Missouri as to their public
6 policy that Lloyd's comes over and intentionally and
7 fraudulently induces investors, then I think we have the right
8 to present evidence, vis a vis discovery, to be able to
9 present you facts that are admissible to argue against the
10 motion for summary judgment; specifically, the declaration of
11 Mr. Demery.

12 And counsel's right, there are the 160 pages of
13 exhibits. There's only a couple, that was a mistake. But
14 nonetheless, the deposition of Mr. Demery presents the
15 following story, and the story's important because you read it
16 in every brief that they file -- or almost every brief that
17 they file, and it's in their complaints about all the cases
18 they have won. They said we have had these issues litigated
19 over in England, and they say we shouldn't be allowed to
20 re-litigate these issues here now. They say that the law is
21 clear that an enforcement action is not an attempt to
22 re-litigate the issues. And I say to this Court and in
23 response to that that if you look at the affidavit of Michael
24 David Friedman, you will see that we never got to litigate
25 this issue in the beginning, never once. England, while the

1 mother of our common law, does not recognize fraud by the
2 omission. And as startling as that sounds -- and there is
3 another reason why that's startling -- as startling as that
4 sounds, that means exactly what you know it means and what I
5 know it means and what plaintiff knows it means. It means
6 they could come over and not tell Missouri Names that they
7 have gotten hit with tremendous asbestosis claims that were
8 going to ruin their company unless they got new investors.
9 You were in the Circuit Attorney's Office, my guess is you
10 know what that kind of a scam is called here in Missouri. Now
11 the fact of the matter is this, Judge, if you believe that
12 that's okay, that Missouri public policy would allow that to
13 occur, then there is no need for discovery.

14 Now the interesting thing about all the cases that
15 they cite in their complaint and they cite in almost
16 everything I get about all the cases they've won is this, and
17 it's really -- one of the main cases is the Ashenden case.
18 And in the district court -- it was really interesting because
19 the district court said this about the Ashenden case: It said
20 it is clear the Ashendens have been denied a meaningful
21 pre-deprivation hearing in the English Courts that entered the
22 motions for summary judgment against them due to the Pay Now
23 and Sue Later and the Conclusive Evidence clauses. Now the
24 Pay Now and Sue Later clause means that they can take your
25 property. You can't file a counter claim. You can't file a

1 setoff. Now just to be real clear, later on the Names file a
2 lawsuit against Lloyd's, but then they run into there is no
3 such thing as fraud by the omission. The Conclusive Evidence
4 Rule basically says you can't dispute our calculations, and
5 that was held -- upheld later on. So what Ashenden says is
6 this, it says, Look, okay, we may not like this and you've
7 been deprived of your pre-litigation right to offset and
8 counter claim, but you can go over in England and litigate
9 this. In fact, several of the cases they cite tell us we --
10 the Names can go over to England. What none of the Courts may
11 have known -- it is kind of hard to know what evidence was
12 presented to the Courts in those cases, but I believe I'm
13 accurate in saying that in the Ashenden case, there wasn't an
14 affidavit such as Mr. Friedman basically saying, Well, you
15 really can't go over to England because they don't recognize
16 fraud by the omission.

17 It is also not true that American Courts always
18 uphold British Court judgments, and I have cited a couple of
19 cases. But the basic fact of the matter is that if it is
20 repugnant to public policy, the United States Courts can
21 ignore a British judgment. And in fact, I even attach as an
22 exhibit, wrongfully by electronically but then gave it
23 physically, a case from the English Courts called Adam and
24 others versus Cape Industries where the Court goes through the
25 United States default judgment and their procedures to see if

1 it made sense to enforce the judgment.

2 So to recap this point, I believe that we're entitled
3 to come to this Court and conduct discovery both as to what
4 Mr. Demery has said has occurred, and that is that everything
5 was litigated over in England, nothing -- you know, that there
6 were no additional facts. I think we should be able to take
7 Mr. Demery's deposition. There are two cases presently
8 pending, which I notified the Court, in Washington and -- in
9 the state of Washington and in the state of Florida where
10 Mr. Demery's deposition has been taken within the last couple
11 of months. Same arguments were made and the Court allowed his
12 deposition to be taken. I think we are entitled to some
13 discovery in order to bring to this Court in admissible
14 evidence the matters that are in that Time article and the
15 matters that are in Michael David Friedman's affidavit.

16 MR. HANNAFAN: Yeah, go ahead, Mr. Kohn.

17 MR. KOHN: Your Honor, my name is Alan Kohn, and I
18 represent one of the defendants, Mr. Shillington, and I join
19 in Mr. Frapolli's remarks. I would just like to make two more
20 points very briefly. The Missouri Statute says that one of
21 the defenses in the foreign judgments action, that's Section
22 511.780, it says one of the defenses to the foreign judgment
23 actions is that the defendant in the proceeding in foreign
24 court did not receive notice of the proceedings in sufficient
25 time to enable him to defend. Now we don't believe --

1 Mr. Shillington, we don't believe he received any notice. We
2 can't find anything in his papers that would indicate that he
3 did receive notice. We want to check that out. We want to
4 submit interrogatories and a request to produce documents to
5 buttress our argument that he did not receive notice. They
6 say that some sort of a notice was sent to him on May 28,
7 1997, and then a default was obtained against him 27 days
8 later. Well, we say that is inadequate notice. We should
9 have more than 27 days to respond, even if we got notice, and
10 we said we did not have notice, so we want time to flesh that
11 out so that we can file meaningful documents in opposition to
12 the motion to dismiss.

13 The final issue that we want to call to the Court's
14 attention is the same statute in Missouri says that the
15 judgment can't be enforced if the proceedings in foreign court
16 was contrary to an agreement between the parties under which
17 the dispute was to be settled otherwise in proceedings in
18 court. Well, frankly, we don't know whether we come under
19 that rule, but we do know that in 1996, that was sometime
20 before they took a judgment against my client, there was an
21 agreement. The Secretary of State of the State of Missouri
22 entered into negotiations with the plaintiff, and an agreement
23 was reached by which the amount of any judgment they could
24 take against us would be less than the full amount. That is
25 our understanding. We want some time to look into that. I

1 want to find out whether that agreement applies to
2 Mr. Shillington. It would seem that it did because it applies
3 to all Missouri residents, and we want to find out if we got
4 the benefit of that judgment -- of that agreement. We are a
5 third party beneficiary to it. We want to find out whether
6 that agreement gives us grounds to say that if they can get a
7 judgment, it should be for less than the full amount as we
8 think the Missouri agreement says, but we don't know that for
9 sure. We want time to look into that. They know it. We
10 could submit interrogatories to them. Presumably, the State
11 of Missouri will help us on that without us having to take
12 their deposition even. Maybe we could get document production
13 from them. But we want time to pursue this.

14 You know, finally, I would say, Your Honor, they had
15 every right to file their motion for summary judgment now. I
16 understand that, but Your Honor's management order
17 contemplated summary judgment to be filed in the fall. And so
18 to give us another 60 or 90 days to pursue this thing will not
19 interfere with the Court's orderly administration of justice
20 because the Court didn't even anticipate that they would file
21 a summary judgment until the fall. So I think by giving us
22 this time, the Court has not delayed justice.

23 MR. HANNAFAN: Your Honor, Blake Hannafan on behalf
24 of Lloyd's. Just touching on Mr. Kohn's last point, certainly
25 our motion for summary judgment was filed properly. The case

1 management order set a deadline. It did not set a beginning.
2 I am not going to rehash that. I think it is certainly
3 proper. I am unaware of anything that says that we need to
4 inform the defendants when we are going to file summary
5 judgment. And at the time of the case management order, we
6 wanted a track one designation. Your Honor had a track two,
7 but this case is right for summary judgment.

8 Addressing the points raised by defendants' counsel,
9 Your Honor, the Ashenden case, Judge Posner from the Seventh
10 Circuit said it best when he said that each enforcement of a
11 foreign judgment in the United States is not supposed to turn
12 into two suits. It's supposed to be a collection action.
13 Mr. Frapolli and his clients are trying to make this a second
14 suit. The discovery that they want that they raise in their
15 motion to compel and also their Rule 56F motion, Your Honor,
16 relate to, as he stated, fraud from Time magazine article, the
17 Pay Now Sue Later clause, and the Conclusive Evidence clause.
18 That has already been resolved, and they are barred from going
19 forward.

20 Your Honor, as I think you're probably aware, the
21 General Undertakings that were signed by each defendant
22 state -- paragraph 2.1 states "the rights and obligations of
23 the parties arising out of or relating to the member's
24 membership of and/or underwriting of insurance business at
25 Lloyd's and any other matter referred to in this Undertaking

1 shall be governed by and construed in accordance with the laws
2 of England." Paragraph 2.2 says that "each party irrevocably
3 agrees that the Courts of England shall have exclusive
4 jurisdiction to settle any dispute in controversy." This
5 arises out of their Underwriting, Your Honor. The fraud was
6 raised. They admit that. In their brief they say that they
7 litigated the fraud claims in the Jaffray case in England and
8 they lost. The Pay Now Sue Later and the Conclusive Evidence
9 clauses also, Your Honor, contrary to Mr. Frapolli's
10 implications, the English Courts did not say you can't bring a
11 counter claim, you can't ask for setoff. They said that the
12 Pay Now Sue Later clause was valid and enforceable. They said
13 you can come and file your suits in a separate case. They
14 weren't prohibited from doing that, and hundreds of Names did
15 do that. Same with the fraud. The Conclusive Evidence again
16 unlike Mr. Frapolli stated, Conclusive Evidence did not
17 prevent them from challenging Lloyd's calculation. They were
18 allowed to challenge it. It would only be found in error if
19 they were able to show manifest error in the calculation.
20 That is what the English Court found, and that's what was
21 upheld in the Court of Appeals in England.

22 The Conclusive Evidence clause and the Pay Now Sue
23 Later clause have been addressed by several Courts in the
24 United States as well, Your Honor; in particular, the Seventh
25 Circuit in the Ashenden. With regards to the Pay Now Sue

1 Later clause, Judge Posner in his opinion in Ashenden said it
2 is almost identical to the multi employer pension funds under
3 federal law where the money is taken out and then they come
4 back and deal with it when they withdraw, which has been as
5 Judge Posner said found constitutional and doesn't violate due
6 process. He also addressed the Conclusive Evidence and said
7 again, they were able to raise these defenses, and any claims,
8 they have to go to England.

9 Now Mr. Frapolli mentioned at the beginning that the
10 Time magazine article, which is several years old, discusses
11 this fraud, alleged fraud, by Lloyd's, Your Honor. The
12 problem that knocks down that point is that the Missouri
13 Statute says that the judgment had to be obtained by fraud --
14 and this has been discussed by a couple of cases, Your Honor,
15 in identical suits by Lloyd's including the Mullin case and
16 the Shields case in Tennessee, which we have attached to our
17 summary judgment opinions -- they say it is fraud on the
18 Court, meaning bribery, things of that nature with the Courts.
19 Whether Lloyd's committed fraud or not doesn't matter. Now
20 certainly our position is they did not, and those claims were
21 raised in England and decided. However, the statute does not
22 say that a foreign judgment is unenforceable if there was
23 fraud committed between the parties; it says fraud on the
24 Court. There hasn't been any showing of fraud on the Court.
25 And certainly, Your Honor, as we have listed in numerous

1 cases, United States, Eighth Circuit Courts of Appeal, and the
2 Seventh Circuit did a significant discussion on this. The
3 system -- the English system of law and justice is above
4 reproach. As Judge Posner said, any argument otherwise
5 borders on risible. They cannot say that they did not get a
6 fair shake in England. And every Court, Your Honor, in the
7 United States that has dealt with this has agreed on that.

8 And Mr. Frapolli mentions that we cite these cases.
9 It is not because we are great lawyers on all these issues. I
10 am not saying that's why we should win this. The thing is,
11 there is nothing in their favor on the Pay Now Sue Later, the
12 Conclusive Evidence, the choice of forum. Also with
13 Mr. Demery's declaration and deposition, Your Honor, we cited
14 in our briefs, a number of other district courts have also
15 decided this and have said the enforcement under the Uniform
16 Act is a very narrow issue. Our summary judgment, Your Honor,
17 is a very narrow issue, and it is whether the judgments are
18 recognizable and enforceable. So the Time article
19 certainly -- the fraud by Lloyd's, that's already been
20 decided, and they can't re-litigate that here.

21 With Mr. Friedman's affidavit, Your Honor, I'm
22 confused as to why defendants think they need discovery from
23 my client. If Mr. Friedman has all this information and these
24 affidavits, then they can certainly use that in their
25 response. They haven't submitted an affidavit in this case.

1 They keep referring to one that was submitted in the Shield's
2 case in Tennessee, Your Honor, in which the Court's opinion
3 completely ignored it and granted summary judgment in Lloyd's
4 favor on identical issues. So Mr. Friedman, whether they can
5 get an affidavit from him, I don't know, but that's certainly
6 not up to us.

7 Mr. Frapolli also mentioned that there is this fraud
8 by the omission. Again, as we have pointed out in our brief,
9 the defendants don't like English law, and that is too bad.
10 They signed the General Undertakings which says that it will
11 be construed under English law. The Seventh Circuit again
12 addressed this and says all laws are not going to be the same.
13 All ideas of due process are not the same. Not every justice
14 system and not every country has identical laws to the United
15 States, but when you agree to those and you have exclusive
16 jurisdiction. And again, the General Undertakings have been
17 upheld by Eighth Circuit Courts of Appeal that they are valid
18 and that they need to go to England to have these resolved.
19 Now if he doesn't like the alleged fraud on the omission, but
20 he says -- he implies that Lloyd's is a company that comes
21 over and is fraudulently trying to save their own hide. That
22 is not the case, Your Honor. Lloyd's is not an insurance
23 company. Lloyd's is a regulator of an insurance market in
24 England. They are a parliament established and sanctioned
25 corporation. It is not like an Allstate Insurance Company

1 where they are the ones paying it out. The people that were
2 paying out losses on the alleged asbestos claims were the
3 defendants and the Names. They are the ones that are the
4 insurers, not my client. They are merely in charge of
5 regulating to ensure that when claims are made, they get paid.

6 I'm almost done, Your Honor, and then I will stop.
7 Again, the calculations on the Conclusive Evidence, that's
8 already been resolved. Their interrogatories and document
9 requests, they want to go over these computations of how the
10 Equitas premium was calculated. That was upheld in England.
11 It was confirmed on appeal. Every other Court has agreed that
12 that should be upheld. Finally, Your Honor -- well, two more
13 points and then I will be done, Your Honor. Mr. Demery's
14 deposition has been taken in two other cases as Mr. Frapolli
15 mentioned; however, they were voluntary. It was done by
16 phone. The Court did not rule that Mr. Demery had -- did not
17 order him to come and give a deposition.

18 Finally, with regards to the State agreement that
19 Mr. Kohn discussed, again, the summary judgment papers are
20 here. Mr. Frapolli, last time we were here, we didn't have a
21 State agreement. He now has one and has supplied that to the
22 Court and us. Again, Mr. Kohn said that they are not sure if
23 they are entitled to that. Their argument has been that
24 Lloyd's entered into an agreement with the State of Missouri.
25 They are not claiming that Lloyd's entered into an agreement

1 with their clients. And I know Mr. Kohn says that he believes
2 they're third party beneficiaries. I disagree. There is
3 nothing that states they are third party beneficiaries. That
4 is for another day. However, if they have the State
5 agreement, again that is something they can raise in summary
6 judgment right now. They do not need discovery from Lloyd's
7 or depositions. So Your Honor, we would respectfully request
8 that the defendants be denied any of their request of
9 discovery and respond to our motion for summary judgment.

10 THE COURT: Anything else, Mr. Frapolli?

11 MR. FRAPOLLI: I'll be brief, Your Honor.

12 Mr. Hannafan's mistaken about Mr. Demery's deposition. I
13 assure you it wasn't by consent in Florida, and it wasn't by
14 telephone. Mr. Demery actually had to show up in Florida to
15 give his deposition. I think Mr. Hannafan didn't listen to my
16 argument on one point. I just want to make it -- I didn't say
17 to this Court as he thought I did that we were not able to
18 raise the issues later on in another lawsuit. We were able to
19 raise the issues. They were issues that were not heard by the
20 Court because the English Court decided that fraud by the
21 omission is not recognized by their legal system. So we get
22 to the point, and Mr. Hannafan said and I wrote it down here,
23 it doesn't matter if there's fraud. Well, maybe it doesn't
24 matter. Maybe after your reading what I have asked you to
25 read in which you already probably have read, you will say it

1 doesn't matter if they came over here to commit a fraud. In
2 my heart and according to Missouri law, I believe it would be
3 repugnant to Missouri public policy to allow it. I do think
4 it matters if there is an intent to deceive. I don't
5 understand this point about Lloyd's -- I mean, I do understand
6 that Lloyd's isn't an insurance company, but if Lloyd's comes
7 over and signs up the Names and they know there is a bunch of
8 losses, I don't know if I understand how that gets Lloyd's off
9 the hook.

10 Let me just cover a couple of other things really
11 quick. It's in -- maybe it is one of those "what is" means.
12 Raised, litigated, already resolved, those are the words you
13 hear from the plaintiff. It is already resolved. It's
14 already been raised. It has already been litigated. What is
15 your definition of that, Your Honor, and what is the
16 definition of that in Missouri law. Does raised, already
17 litigated, already resolved mean the following: When Lloyd's
18 got into this problem, they thought up this scheme called
19 Equitas, and what they did was they did a forced agreement
20 with the Names. They didn't even notify the Names of the
21 agreement. The Names had previously told Lloyd's that they
22 would not allow their agents to enter into any additional
23 agreements with Lloyd's. They were discharged, and Lloyd's
24 appointed their own agents to accept service. Now the fact is
25 that Lloyd's say that doesn't matter because if you read the

1 general agreement, all the Courts have said that's okay, but
2 all the Courts have said you go to England to litigate this --
3 most of the Courts have said you go to England to litigate
4 this, and I wonder if those decisions would have been
5 different if they would have found out that fraud by
6 concealment wouldn't be heard over there. And I think that's
7 just the crux of the information. Does it matter to Missouri
8 law? It may not matter to other states. It may be that they
9 look at the facts and they say that people can come over here
10 and do these kinds of actions and it is not repugnant to their
11 state, but there is no State of Missouri decision that says
12 that it isn't repugnant to Missouri. And in fact, there is
13 plenty of Missouri cases, and I have cited a couple of them in
14 my brief, that will look at fraud and repugnant to public
15 policy as to sister states judgments, and if they do that for
16 sister states, surely, you know, we can do it for England.

17 THE COURT: All right.

18 MR. HANNAFAN: May I just real briefly, Your Honor,
19 unless Mr. Kohn has something.

20 MR. KOHN: No, go ahead.

21 MR. HANNAFAN: First of all, Your Honor, I want to
22 make sure that it is abundantly clear that Lloyd's denies that
23 there was any wrongdoing, any fraud in Missouri or anywhere
24 else.

25 THE COURT: I kind of figured.

1 MR. HANNAFAN: My point, Your Honor, was that under
2 the statute, it has to be the fraud on the Court. And one
3 other point with regards to Mr. Shillington, Your Honor, which
4 I forgot to mention, Mr. Kohn raised that he was a default in
5 England. As we said in our summary judgment papers, he was
6 sent a letter from his agent, and as Mr. Frapolli mentioned,
7 the agents were appointed by Lloyd's to accept service. That
8 was part of the General Undertaking. That was upheld as well,
9 tried in England and found to be acceptable and affirmed on
10 appeal. But with regards to Mr. Shillington, Your Honor, the
11 issue of the notice, he was sent the letter. Mr. Kohn says
12 then he had 27 days. A default was entered; however, as we
13 state in our summary judgment, Mr. Shillington still has never
14 tried to have that default set aside in England as well. He
15 certainly like in the U.S. Courts had that option. He didn't
16 do it. And that's all I have, Your Honor.

17 THE COURT: Mr. Kohn.

18 MR. KOHN: Just one thing on the agent. They say,
19 and it is in their papers that they sent, his agent sent a
20 letter. Well, that is another discovery we want to do because
21 it is my understanding that he agreed to a certain agent, and
22 then -- and he knew he had agreed to a certain agent. He gave
23 that agent certain instructions along with everybody else not
24 to accept an agreement they had with Equitas, and then Lloyd's
25 fired his agent and unbeknownst to him appointed another

1 agent. So they are relying on an agent that he never agreed
2 to, and we wanted discovery on that. They did an end run on
3 instructions to the agent he knew he had, appointed another
4 agent, and had that agent allegedly send a letter to him,
5 which he says he never received.

6 MR. HANNAFAN: Your Honor, on that point, if they
7 have documents to that, there's certainly things they can
8 raise in a response to summary judgment. Again, they don't
9 need discovery from Lloyd's. That's it, Your Honor.

10 THE COURT: Okay. Although I understand what you
11 said, Mr. Frapolli and Mr. Kohn, I'm a little amiss -- not
12 amiss, it is still unclear to me as to the basis for your Rule
13 56F motion. And you know, there are some substantive, albeit
14 procedural, issues that you address with regard to this that
15 when I try to put them within the framework of what this suit
16 is all about, I see them being out here someplace, a little
17 bit out of the box, and I think that considering that and
18 especially the issue of fraud in relation to my understanding
19 of the type of fraud within the statutory context and even as
20 you describe it, Mr. Frapolli, maybe it is just me, but I'm
21 inclined to deny the motion on 56F.

22 MR. FRAPOLLI: Judge, if I could just respond very
23 briefly. There is two things at work, and there is no
24 Missouri case that defines what fraud on a Court is, and I
25 will concede the point that most Courts have said that it is

1 not intrinsic fraud, that it's intrinsic. Mr. Hannafan talks
2 about bribery. That is the case. What we are relying on is
3 the Missouri statute that talks about that the claim for
4 relief on the judgment is repugnant to the public policy of
5 this state, and that is where I was addressing my -- and I
6 would say that --

7 THE COURT: So in connection with that phraseology?

8 MR. FRAPOLLI: Right, exactly, that if we can come to
9 the Court, as I said, and say to you if we could prove all of
10 this, would not the Court consider that a justiciable issue as
11 to whether or not it violates the public policy of Missouri.
12 If the Court in reviewing those accusations says, Look, those
13 allegations, even if true, would not -- do not merit
14 discovery, they wouldn't represent a violation of Missouri
15 public policy, well then that's the Court's decision in that
16 regard. The only thing I would say is that if the -- as to
17 the motion to give us time to discover, if you would at least
18 give us time to file a response to the motion for summary
19 judgment based on what we do have, then I would ask that on
20 behalf of my clients.

21 THE COURT: What about the motion to compel? That's
22 with regard to the deposition of Demery?

23 MR. FRAPOLLI: Yes.

24 THE COURT: Which kind of is connected with your Rule
25 56F?

1 MR. FRAPOLLI: It is, Your Honor.

2 THE COURT: Is there anything in regard to that
3 specifically you want to address? Just the motion?

4 MR. FRAPOLLI: I think you have heard the arguments,
5 Your Honor. If you have a specific question, I would be more
6 than happy...

7 THE COURT: No. I think the motion to compel is
8 denied, too. Considering the going back and forth that we
9 have done -- well, that you guys have done since the motion
10 was filed, it would probably be appropriate to give you some
11 additional time to file whatever you need to file in specific
12 opposition of their motion. Do you have any problem with
13 that, Mr. Hannafan?

14 MR. HANNAFAN: No, Your Honor. I'm not sure -- I
15 mean, I guess it would depend on how much time, but I
16 certainly don't have an objection to a modest extension, Your
17 Honor.

18 THE COURT: Eighteen months -- no, just kidding.

19 MR. FRAPOLLI: That will be fine, Your Honor.

20 THE COURT: 18 months would be good, yeah.

21 MR. KOHN: By agreement.

22 THE COURT: By agreement of the parties, yeah.
23 Twenty days?

24 MR. FRAPOLLI: Could we have 30?

25 MR. KOHN: I would like to have 30, Your Honor. We

1 have got to do some work here. We are having some
2 communication issues that we have to resolve.

3 THE COURT: Oh, you twisted my arm here, Mr. Kohn.
4 Yeah, 30 days.

5 MR. FRAPOLLI: Thank you, Your Honor.

6 MR. KOHN: Thank you.

7 MR. HANNAFAN: Your Honor, just from a housekeeping
8 matter, we had a motion for protective order regarding
9 Mr. Demery's deposition. Is that going to be granted, and
10 their motion to compel of his deposition denied?

11 THE COURT: Yeah. Or one way you could look at it is
12 that I guess if the motion to compel is denied, then the
13 protective order is moot.

14 MR. HANNAFAN: Moot, okay. I just wanted to make
15 sure it was clear.

16 THE COURT: Yeah.

17 MR. HANNAFAN: Thank you, Your Honor. I appreciate
18 it.

19 THE COURT: Yeah, there is one more. There is
20 Defendant's Fuerst's, Hardin's, Klein's, McCain's, and
21 Todorovich's motion to compel regarding affirmative claims.

22 MR. HANNAFAN: I'm sorry, Your Honor? They had a
23 motion to compel interrogatories and documents. They also had
24 a motion to compel Mr. Demery's deposition, the Rule 56F, and
25 then our motion for protective order. Those were the four

1 unless I am missing one.

2 MR. FRAPOLLI: No, those are the motions that are
3 pending.

4 THE COURT: All right. Was this one then with regard
5 to -- oh, production of interrogatories, right. Okay.

6 MR. HANNAFAN: So that would be denied as well?

7 THE COURT: Right.

8 MR. HANNAFAN: Your Honor, one other thing. I know
9 we did it on our motion for summary judgment. We had filed a
10 motion for I think it was four or five additional pages. We
11 had filed that along with our brief and motion. The basis was
12 that there are eight defendants and --

13 THE COURT: It was a page limitation.

14 MR. HANNAFAN: It was a page limitation, and I wasn't
15 sure if that would be granted.

16 THE COURT: And I think you filed it at the time that
17 you filed the motion.

18 MR. HANNAFAN: We did, Your Honor.

19 THE COURT: The request for leave and the motion were
20 filed at the same time. I just -- when I looked at that, I
21 just kind of assumed that it was moot, although I didn't say
22 anything since it was filed and it was over the page limit.
23 So either way, I can show it as moot since it has been filed
24 anyway or I can show it as granted, which is less confusing
25 for recordkeeping purposes. We'll show it as granted.

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MR. HANNAFAN: Okay. Thank you, Your Honor.

(PROCEEDINGS CONCLUDED AT 11:35 A.M.)

CERTIFICATE

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2
3 I, Angela K. Daley, Registered Professional Reporter
4 and Certified Shorthand Reporter, hereby certify that I am a
5 duly appointed Official Court Reporter of the United States
6 District Court for the Eastern District of Missouri.

7 I further certify that the foregoing is a true and
8 accurate transcript of the proceedings held in the
9 above-entitled case and that said transcript is a true and
10 correct transcription of my stenographic notes.

11 I further certify that this transcript contains
12 pages 1 through 26 inclusive and that this reporter takes no
13 responsibility for missing or damaged pages of this transcript
14 when same transcript is copied by any party other than this
15 reporter.

16 Dated at St. Louis, Missouri, this 29th day of March,
17 2004.

18
19
20 _____
21 /S/Angela K. Daley
22 Angela K. Daley, CSR, RMR
23 Official Court Reporter
24
25