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

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| The Society of Lloyd's,<br><br>Plaintiff,<br><br>vs.<br><br>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,<br><br>Defendants. | ) | Case No: 4:03CV1113 HEA |

**RESPONSE, EVIDENTIARY OBJECTIONS AND COUNTERSTATEMENTS OF DEFENDANTS ROBERT W. FUERST, HORD HARDIN II, WALTER A. KLEIN, MEADE M. McCAIN, CYNTHIA J. TODOROVICH AND MICHAEL B. TODOROVICH TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS**

Defendants Robert W. Fuerst, Hord Hardin II, Walter A. Klein, Meade M. McCain, Cynthia J. Todorovich and Michael B. Todorovich ("Names"), by their undersigned attorney, and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7-4.01(E), respectfully submit the following Response, Evidentiary Objections and Counterstatements to Plaintiff's Statement of Undisputed Material Facts in Support of Plaintiff's Motion for Summary Judgment:

**Preface**

Defendants respectfully renew their request for discovery in order to adequately and properly respond to Plaintiff's Statement of Undisputed Material Facts as set out in Defendants Motion for Extension of Time to Respond to Plaintiff's Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56(f) and Fed. R. Civ. P. 6(b).

**RESPONSE**

1. Undisputed.

As respects this action, Lloyd's proceeds against the Names in its capacity as the purported assignee of Equitas Reinsurance, Ltd. ("Equitas") a reinsurer.

2. Undisputed.

3. Undisputed.

4. Undisputed.

5. Undisputed.

6. Undisputed.

7. Objection. Vague and ambiguous as to the term "certain agreements."

Undisputed as to General Undertaking. These agreements were procured through Lloyd's material misrepresentations, omissions and concealments. (See Affidavits of Defendants Robert W. Fuerst, Hord Hardin II, Walter A. Klein, Meade M. McCain, Cynthia Todorovich and Michael B. Todorovich "Defendants' Affidavits" marked as Exhibits A through F attached hereto and incorporated by reference as if fully set out herein; see State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact, marked as Exhibit G attached hereto and incorporated by reference as if fully set out herein)

8. Undisputed. These agreements were procured through Lloyd's material misrepresentations, concealments and omissions. (See Defendants' Affidavits attached hereto; see State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto)

9. Undisputed to the extent the underwriting agent acted in a fiduciary capacity for Names and not as a "Lloyd's Agent" or "Substitute Agent" appointed by Lloyd's for Lloyd's purposes. (See Affidavit of Michael D. Freeman, ¶¶ 5, 8, marked as Exhibit H attached hereto and incorporated by reference as if fully set out herein)

10. Undisputed that the Names provided insurance through groups of Names called "Syndicates," but denied that the Defendants incurred liabilities with respect to insurance commitments he/or she undertook by assuming a portion of the Syndicates' risk in the Lloyd's market in that the agreements were procured through Lloyd's material misrepresentations, omissions and concealments. (See Defendants' Affidavits attached hereto; see State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto)

11. Undisputed.

12. Objection. This "fact" is compound and conclusory. *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 888 (1990) ("the object of Rule 56 is not to replace conclusory arguments in a pleading with conclusory allegations in an affidavit.").

Undisputed.

13. Objection. This "fact" is compound and conclusory. *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 888 (1990) ("the object of Rule 56 is not to replace conclusory arguments in a pleading with conclusory allegations in an affidavit.").

Disputed. The litigation that embroiled Lloyd's was not caused by the losses referred in paragraph 12 – it was caused by the massive fraud to close syndicates prematurely and to hide, dilute and export those losses to Names who were kept in the dark about the magnitude of the unprecedented risks being rolled forward from year to year. (See Defendants' Affidavits attached

hereto; see State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto)

Defendants object to the Demery Declaration to the extent and upon the grounds that the information in the declaration and supporting exhibits (1) is insufficient to establish the basis for admissible opinion testimony from Mr. Demery, either as a lay or expert witness; (Fed. R. Evid. 701, 702 et seq. and Fed. R. Civ. R. 56(e)); (2) constitutes hearsay for which no exception applies as the source of the information or the method or circumstances of preparation of the declaration and/or exhibit indicates lack of trustworthiness and has not been subject to cross-examination (Fed. R. Evid. 801, 802, 803(6)) and Fed. R. Civ. P. 56(e)); (3) constitutes Mr. Demery's legal conclusions and thus seeks to substitute his judgment for the judgment and discretion which the Court and/or jury is to exercise (Fed. R. Civ. P. 56(e)); and (4) has not been subjected to pre-trial disclosure or discovery by these Defendants (Fed. R. Civ. P. 37(c) 1 and Fed. R. Civ. P. 56(f)).

Defendants admit that they have not paid their underwriting obligations. Those obligations arose as a direct result of Lloyd's material misrepresentations, concealments and omissions. (See Defendants' Affidavits attached hereto; see State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto)

14. Objection. This "fact" is compound and conclusory. *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 888 (1990) ("the object of Rule 56 is not to replace conclusory arguments in a pleading with conclusory allegations in an affidavit.").

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701, 702 et seq. and Fed. R. Civ. R. 56(e)); (2) constitutes hearsay for which no exception applies as the source of the information or the method or circumstances of preparation of the declaration and/or exhibit indicates lack of trustworthiness and has not been subject to cross-examination (Fed. R. Evid. 801, 802, 803(6)) and Fed. R. Civ. P. 56(e)); (3) constitutes Mr. Demery's legal conclusions and thus seeks to substitute his judgment for the judgment and discretion which the Court and/or jury is to exercise (Fed. R. Civ. P. 56(e)); and (4) has not been subjected to pre-trial disclosure or discovery by these Defendants (Fed. R. Civ. P. 37(c) 1 and Fed. R. Civ. P. 56(f)).

Disputed. Lloyd's R&R plan had a number of components. It was a complex scheme, set forth by Lloyd's in only fragmentary fashion in informational materials provided to the Names. (See Freeman Affidavit, ¶¶ 6, 7 attached hereto)

15. Defendants object to the Demery Declaration to the extent and upon the grounds that the information in the declaration and supporting exhibits (1) is insufficient to establish the basis for admissible opinion testimony from Mr. Demery, either as a lay or expert witness; (Fed. R. Evid. 701, 702 et seq. and Fed. R. Civ. R. 56(e)); (2) constitutes hearsay for which no exception applies as the source of the information or the method or circumstances of preparation of the declaration and/or exhibit indicates lack of trustworthiness and has not been subject to cross-examination (Fed. R. Evid. 801, 802, 803(6)) and Fed. R. Civ. P. 56(e)); (3) constitutes Mr. Demery's legal conclusions and thus seeks to substitute his judgment for the judgment and discretion which the Court and/or jury is to exercise (Fed. R. Civ. P. 56(e)); and (4) has not been subjected to pre-trial disclosure or discovery by these Defendants (Fed. R. Civ. P. 37(c) 1 and Fed. R. Civ. P. 56(f)).

Undisputed.

16. Defendants object to the Demery Declaration to the extent and upon the grounds that the information in the declaration and supporting exhibits (1) is insufficient to establish the basis for admissible opinion testimony from Mr. Demery, either as a lay or expert witness; (Fed. R. Evid. 701, 702 et seq. and Fed. R. Civ. R. 56(e)); (2) constitutes hearsay for which no exception applies as the source of the information or the method or circumstances of preparation of the declaration and/or exhibit indicates lack of trustworthiness and has not been subject to cross-examination (Fed. R. Evid. 801, 802, 803(6)) and Fed. R. Civ. P. 56(e)); (3) constitutes Mr. Demery's legal conclusions and thus seeks to substitute his judgment for the judgment and discretion which the Court and/or jury is to exercise (Fed. R. Civ. P. 56(e)); and (4) has not been subjected to pre-trial disclosure or discovery by these Defendants (Fed. R. Civ. P. 37(c) 1 and Fed. R. Civ. P. 56(f)).

Undisputed.

17. Undisputed.

18. Disputed.

The 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. (See Freeman Affidavit, ¶ 11 attached hereto)

19. Undisputed.

20. Undisputed.

21. Undisputed to the extent that Defendants did not accept Lloyd's "Settlement Offer" and did not pay the Equitas premium.

22. Undisputed to the extent that Defendants did not accept Lloyd's "Settlement

Offer" and did not pay the Equitas premium.

23. Undisputed to the extent Equitas has assigned to Lloyd's the right to recover Equitas Premiums.

Defendants object to the Demery Declaration to the extent and upon the grounds that the information in the declaration and supporting exhibits (1) is insufficient to establish the basis for admissible opinion testimony from Mr. Demery, either as a lay or expert witness; (Fed. R. Evid. 701, 702 et seq. and Fed. R. Civ. R. 56(e)); (2) constitutes hearsay for which no exception applies as the source of the information or the method or circumstances of preparation of the declaration and/or exhibit indicates lack of trustworthiness and has not been subject to cross-examination (Fed. R. Evid. 801, 802, 803(6)) and Fed. R. Civ. P. 56(e)); (3) constitutes Mr. Demery's legal conclusions and thus seeks to substitute his judgment for the judgment and discretion which the Court and/or jury is to exercise (Fed. R. Civ. P. 56(e)); and (4) has not been subjected to pre-trial disclosure or discovery by these Defendants (Fed. R. Civ. P. 37(c) 1 and Fed. R. Civ. P. 56(f)).

24. Undisputed.

25. Undisputed.

26. Undisputed.

27. Undisputed.

28. Undisputed.

29. Undisputed as to Cynthia J. Todorovich.

30. Undisputed as to Defendants Robert W. Fuerst, Hord Hardin II, Walter A. Klein, Meade M. McCain and Michael B. Todorovich.

31. Disputed. The English Courts held that the Defendants were precluded from

raising defenses to payment of the Equitas premium on the grounds that Lloyd's had defrauded them. Further, under English law, Lloyd's is immune from liability in tort except for "bad faith," proof of which involves a very difficult burden. Under English law, fraudulent non-disclosure is not an actionable wrong and there was no remedy available to Defendants whether by way of defense or counterclaim, for Lloyd's concealment and non-disclosure of material facts of which Lloyd's had exclusive knowledge. The merits of Defendants' fraud claims and defenses against Lloyd's have not been actually litigated in any forum prior to this action. (See Freeman Affidavit, ¶¶ 11, 12, 14, 21, 23 and 24 attached hereto)

Defendants object to the Demery Declaration to the extent and upon the grounds that the information in the declaration and supporting exhibits (1) is insufficient to establish the basis for admissible opinion testimony from Mr. Demery, either as a lay or expert witness; (Fed. R. Evid. 701, 702 et seq. and Fed. R. Civ. R. 56(e)); (2) constitutes hearsay for which no exception applies as the source of the information or the method or circumstances of preparation of the declaration and/or exhibit indicates lack of trustworthiness and has not been subject to cross-examination (Fed. R. Evid. 801, 802, 803(6)) and Fed. R. Civ. P. 56(e)); (3) constitutes Mr. Demery's legal conclusions and thus seeks to substitute his judgment for the judgment and discretion which the Court and/or jury is to exercise (Fed. R. Civ. P. 56(e)); and (4) has not been subjected to pre-trial disclosure or discovery by these Defendants (Fed. R. Civ. P. 37(c) 1 and Fed. R. Civ. P. 56(f)).

32. Defendants object to the Demery Declaration to the extent and upon the grounds that the information in the declaration and supporting exhibits (1) is insufficient to establish the basis for admissible opinion testimony from Mr. Demery, either as a lay or expert witness; (Fed. R. Evid. 701, 702 et seq. and Fed. R. Civ. R. 56(e)); (2) constitutes hearsay for which no

exception applies as the source of the information or the method or circumstances of preparation of the declaration and/or exhibit indicates lack of trustworthiness and has not been subject to cross-examination (Fed. R. Evid. 801, 802, 803(6)) and Fed. R. Civ. P. 56(e)); (3) constitutes Mr. Demery's legal conclusions and thus seeks to substitute his judgment for the judgment and discretion which the Court and/or jury is to exercise (Fed. R. Civ. P. 56(e)); and (4) has not been subjected to pre-trial disclosure or discovery by these Defendants (Fed. R. Civ. P. 37(c) 1 and Fed. R. Civ. P. 56(f)).

Disputed. The English Courts held that Defendants were precluded from raising defenses to the payment of the Equitas premium on the grounds that Lloyd's had defrauded them. Further, under English law, Lloyd's is immune from liability and tort except for "bad faith," proof of which involves a very difficult burden. Under the English law, fraudulent non-disclosure is not an actionable wrong and there was no remedy available to Defendants, whether by way of defense or counterclaim, for Lloyd's concealment and non-disclosure of material facts of which Lloyd's had exclusive knowledge. The merits of Defendants' fraud claims and defenses against Lloyd's have not been actually litigated in any forum prior to this action. (See Freeman Affidavit, ¶¶ 11, 12, 14, 21, 23 and 24 attached hereto).

32.(a) Objection. Irrelevant.

Undisputed.

32.(b) Objection. Irrelevant.

Undisputed.

32.(c) Disputed. The English Courts held that Defendants Names were precluded from raising defenses to the payment of the Equitas premium on the grounds that Lloyd's had

defrauded them. Further, under English law, Lloyd's is immune from liability and tort except for "bad faith," proof of which involves a very difficult burden. Under the English law, fraudulent non-disclosure is not an actionable wrong and there was no remedy available to Defendants Names whether by way of defense or counterclaim, for Lloyd's concealment and non-disclosure of material facts of which Lloyd's had exclusive knowledge. The merits of Defendant Names' fraud claims and defenses against Lloyd's have not actually been litigated in any forum prior to this action. (See Freeman Affidavit, ¶¶ 11, 12, 14, 21, 23 and 24 attached hereto)

32.(d) Disputed. The English Courts held that Defendants Names were precluded from raising defenses to the payment of the Equitas premium on the grounds that Lloyd's had defrauded them. Further, under English law, Lloyd's is immune from liability and tort except for "bad faith," proof of which involves a very difficult burden. Under the English law, fraudulent non-disclosure is not an actionable wrong and there was no remedy available to Defendants Names whether by way of defense or counterclaim, for Lloyd's concealment and non-disclosure of material facts of which Lloyd's had exclusive knowledge. The merits of Defendant Names' fraud claims and defenses against Lloyd's have not actually been litigated in any forum prior to this action. (See Freeman Affidavit, ¶¶ 11, 12, 14, 21, 23 and 24 attached hereto)

32.(e) Disputed.

The English Courts concluded that the "pay now-sue later" included in the Equitas Reinsurance Contract was effective against all Names, even assuming they could prove fraud by Lloyd's. Further, the English Courts rejected the Names' challenges to the "conclusive evidence provision." (See Freeman Affidavit, ¶¶ 11, 12 and 15 attached hereto)

32.(f) Disputed.

The American Securities Law did not provide a defense to the payment of the Equitas Premium according to the English Courts. (See Freeman Affidavit, ¶ 13 attached hereto)

33. Undisputed.

34. Objection as to the meaning of "some defenses and found them lacking." But undisputed that leave to appeal was subsequently denied on July 31, 1998. Further, undisputed that all appeals from the entry of judgments have now been exhausted.

35. Undisputed.

36. Undisputed. Further answering, although the named Defendants were entitle to join the action, they would not have been entitled to examine any witnesses at trial, but would only be able to submit a written statement. All those joining said action would become liable for a several share of Lloyd's cost in the event that *Jaffray* was unsuccessful. Lloyd's claim that its cost up to the end of the *Jaffray* trial was approximately £20,000,000. (See Freeman Affidavit ¶ 20 attached hereto).

37. Disputed. The issue at trial in *Jaffray* was confined to what was known as the "Threshold Fraud." The reason for such confinement was because the Courts had ruled that there were no defenses to Lloyd's claims, and 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 of 1982. 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. (See Freeman Affidavit, ¶ 21 attached hereto)

38. Undisputed.

39. Undisputed.

40. Undisputed.

**COUNTERSTATEMENTS**

1. The last of the Lloyd's Acts was Lloyd's Act 1982 under which Lloyd's was given full self-regulatory status. In particular, Section 6 provides the Council of Lloyd's with the authority to execute, amend or revoke any Byelaw "as from time to time seen requisite or expedient" for the execution for the Lloyd's Acts 1871 to 1982. Under Section 14, the exclusion of liabilities of Lloyd's is expressly stated not to apply only if: "the act or omission complained of was done or omitted to be done in bad faith"; or was that of an employee and occurred carrying out "routine or clerical duties." (See Freeman Affidavit, ¶ 4 attached hereto)

2. Pursuant to the Lloyd's Act 1982, all Byelaws passed by the Council of Lloyd's, provided they are not ultra vires, have the force of English Law insofar as they purport to regulate the affairs of Lloyd's and its Members. The Byelaws include those which enable Lloyd's to (a) standardise and regulate the form of Members' and Managing Agency Agreements; and (b) impose a substitute Members' Agent on Names, if the Name's chosen Agent is disqualified or refuses to obey Lloyd's instructions. (See Freeman Affidavit, ¶ 5 attached hereto)

3. Another Byelaw is No. 22 of 1995 which came into effect on December 6, 1995, and is known as the Reconstruction and Renewal Byelaw ('the Byelaw"). It was passed when Lloyd's became aware that, if the radical steps set out in the Byelaw were not implemented, Lloyd's would be unable to continue as an insurance market as a result of: (a) the calamitous losses which the Market had sustained; (b) the High Court judgments which had been obtained against most of the Lloyd's Members' Agents and man of its Managing Agents; and (c) the sheer weight of pending and imminent further litigation against such bodies and against Lloyd's. (See

Freeman Affidavit, ¶ 6 attached hereto)

4. Part of Byelaw No. 22 involved "the Equitas Scheme," and within that scheme, a provision for the Equitas Reinsurance Contract ("Contract"). The Names never saw or were made aware prior to August 31, 1996 of the detailed provisions of the Contract. (See Freeman Affidavit, ¶ 7 attached hereto)

5. Mr. Freeman, the attorney for the Names in England, immediately requested a copy from Dibb Lupton Alsop ("DLA") the solicitors acting for Lloyd's which he received on October 10,1996. Mr. Freeman 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 the abrogated by Lloyd's pursuant to its powers under the Byelaws. (See Freeman Affidavit, ¶ 8 attached hereto)

6. Clause 5.10 of the Contract provides that: ". . . the records of an calculations performed by the CSU shall be conclusive evidence as between the Name and ERL in the absence of any manifest error." (See Freeman Affidavit, ¶ 10 attached hereto)

7. 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). (See Freeman Affidavit, ¶ 11 attached hereto)

8. The English Courts also rejected the Names' challenges to the "conclusive evidence" provision. *Society of Lloyd's v. Fraser & Others*, (unpublished March 4, 1998). On July 31, 1998, the Court of Appeal rejected the Names' application for leave to appeal the Fraser decision. *Society of Lloyd's v. Fraser & Others* (unpublished) (July 31, 1998). (See Freeman Affidavit, ¶ 12 attached hereto).

9. 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. (See Freeman Affidavit, ¶ 13 attached hereto)

10. 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. (See Freeman Affidavit, ¶ 16 attached hereto)

11. 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 1983; *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. (See Freeman Affidavit, ¶ 17 attached hereto)

12. These Defendants Names would not have entered into the Agreement with Lloyd's had they been advised of the issues involving reinsurance and the asbestosis liabilities at the time they were solicited. (See Defendants' Affidavits attached hereto; see State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto)

13. In connection with the offer and sale of Lloyd's securities, Missouri residents were advised by Members' Agents, among other things, that:

a. Lloyd's was a prestigious 300 year old insurance business which was successful and profitable. Members' Agents further stated that "We're professionals and have been at this for three hundred years. We know what we're doing;"

b. Participations in Lloyd's syndicates offered the potential to earn sizable profits, without committing substantial funds, with virtually no meaningful risk;

c. Participations in Lloyd's syndicates were "can't miss" investments;

d. Names could resign from Lloyd's and their Lloyd's syndicates at the end of the three year accounting period without further liability; and

e. The Names' only financial risk would be the loss of the letter of credit assigned to Lloyd's.

(See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 5)

14. The following representations were made by Members' Agents to convince Missouri Names to Continue to Underwrite:

a. A Name would be "switched away from the major loss making syndicates into alternative first class syndicates;"

b. A Name should increase his Premium Income Limit to help trade through temporary losses that the Name had experienced. The Name was informed that this practice was known as "trading on through" and was told that this would allow the Name to recoup his losses;

c. The market was firming up and Lloyd's was expecting a "good year, next year."

d. "Leaving Lloyd's would be a mistake;" and

e. The next year's syndicate profits would make up for any losses.

(See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 6)

15. Although Members' Agents advised Missouri residents that being a Name involved unlimited liability, this statement was almost always coupled with qualifying statements such as:

a. Lloyd's has "incurred losses in only two or three years in its 300 year history;"

b. "No Name has ever been called upon to put up money for a loss in the past;" and

c. The possibility of a Name incurring a loss was "unimaginable."

(See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 6)

16. In the materials provided to Missouri Residents, Lloyd's and its Members' Agents made the following representations concerning the fiduciary duty owed by Lloyd's to Names:

a. Names can expect Lloyd's to perform its obligations with the "utmost good faith;"

b. Members and Managing Agents will act in the best interests of Names;

c. The Council regulates the content of the information provided to Names about their investments; and

d. Members' Agents duties to Names included, among other things, keeping the Names informed at all times of material factors which may affect their investments.

(See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, pp. 6-7)

17. The terms of the Agreements and documents that were executed by Missouri residents were non-negotiable. (See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 8)

18. These Missouri Names were obligated to rely on their Members' Agents' advice because the Names were given little material information about the syndicates or the types of risks that the syndicates insured. The Members' Agents stated that they were the experts and that they would act in the Names' best interests. (See State of Missouri, Office of Secretary of State's

Order to Cease and Desist/Findings of Fact attached hereto, p. 9)

19. Members' and Managing Agents were in a position to place themselves, and did place themselves, in profitable syndicates that did not have significant liabilities for asbestosis and environmental pollution losses. (See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 9)

20. Missouri Names were contractually prohibited from interfering with the underwriting process and were passive investors in the syndicates they joined. (See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 9)

21. The Secretary of State for the State of Missouri found that Lloyd's had been engaged in the sale of a security. (See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 13)

22. In July 1993 the Loss Review Committee (The "Loss Review Committee") issued its report to the Council. The report contained the following disclosures concerning Lloyd's awareness of the potential for substantial losses from asbestosis and environmental pollution:

a. In the early 1950's, Lloyd's had a substantial market share of United States liability risks under policies that were interpreted by U.S. courts to cover losses arising from bodily injury and property damages caused by asbestos and environmental pollution;

b. By the mid-1970's, Lloyd's was aware of medical studies indicating that inhalation of asbestos was linked to the development of asbestosis and other terminal diseases in asbestos workers;

c. By 1979, Lloyd's had been made aware, by its U.S. counsel, of the need to increase its reserves to address the greatly increasing number of asbestos claims;

d. In or about 1980 Lloyd's established the Asbestos Working Party ("AWP") to

deal with these potential asbestos claims;

e. The AWP circulated throughout Lloyd's a letter dated August 5, 1980 that disclosed that asbestos manufacturer Johns-Manville had estimated that 2,400 to 3,000 lawsuits concerning asbestos would be filed in the next ten years;

f. At a November 10, 1981 meeting of Lloyd's "panel auditors", R.J. Kiln, chairman of Lloyd's audit committee, said he did not want to see asbestosis claims mentioned in the audit instructions to be used for determining the premium and reserves necessary to close syndicate UYAs;

g. At a January 15, 1982 meeting of Lloyd's panel auditors Ted Nelson, chairman of Lloyd's AWP, acknowledged that asbestosis claims will almost always arise in Lloyd's syndicates that have reinsured other Lloyd's syndicates;

h. On February 24, 1982, an employee of Neville Russell, on behalf of other panel auditors, wrote a letter (the "Neville Russell Letter") to Ken Randall, manager of Lloyd's audit Department, which stated:

   i. A substantial proportion of Lloyd's syndicates had losses, or potential losses, from asbestosis;

   ii. Syndicates with exposure to asbestosis claims were unable to quantify their final liability with the reasonable degree of accuracy necessary to close their UYAs;

   iii. "Total exposure to the [asbestos] problem appears to be considerably in excess" of Lloyd's estimate of asbestosis claimants; and

   iv. Most Lloyd's syndicates would incur losses on their own writings of reinsurance of syndicates with exposure to asbestosis and related claims.

i. In a meeting of Lloyd's auditing firms to discuss the Neville Russell Letter, Henry Chester of Lloyd's Audit Department stated that a syndicate's reinsurance of another syndicate could lead to the funneling of a large amount of liability into a small number of Names and therefore consideration was being given to asking syndicates to stop underwriting reinsurance in open years; and

j. In a letter dated March 18, 1982 to active underwriters and underwriting agents, Murray Lawrence, Deputy Chairman of Lloyd's, wrote that "potential claims arising in connection with asbestosis represents a major problem for insurers and reinsurers" and strongly advised Managing and Members' Agents "to inform their Names of their involvement with Asbestosis claims and the manner in which their

syndicates' current and potential liabilities have been covered."

(See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, pp. 16 - 18)

22. Despite the widespread knowledge of the growing asbestos problem within Lloyd's, Members' Agents recommended that Missouri Names invest in syndicates that had underwritten asbestos liabilities without disclosing to Missouri Names that the syndicates had asbestos liabilities. (See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 18)

23. In connection with the offer and sale of the memberships in Lloyd's and participation in Lloyd's syndicates to Missouri residents, Lloyd's misrepresented the following material facts:

a. Names could resign from a syndicate after the three year accounting period whereupon the investors' liability for losses on that syndicate would also end. In fact, syndicates with unquantifiable losses could remain open indefinitely and the Names' liability for those unquantifiable losses would continue;

b. RITC would cover liabilities which arose after the three year accounting period had ended. In fact, RITC was not available to certain syndicates in which Missouri Names' invested because those syndicates had unquantifiable losses;

c. No Name had ever been called upon to put up money for a Lloyd's loss. In fact this was not true;

d. Asbestosis and environmental pollution claims were a thing of the past. In fact, this was not true;

e. Investors were only liable for losses incurred by syndicates in which they invested. In fact, the investors were liable for losses incurred by other syndicates as a result of the investors' participation in the Central Fund and in the LATF; and

f. Investors were only liable for losses incurred by syndicates in which they invested. In fact, the investors were liable for losses incurred by other syndicates as a result

of the investors' participation in syndicates that reinsured losses in other syndicates.

(See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 20)

24. In connection with the offer and sale of memberships in Lloyd's and participations in Lloyd's syndicates to Missouri residents, Lloyd's omitted to state the following material facts:

a. Liabilities incurred by previous syndicate UYAs were passed on to later syndicates through RITC;

b. Cash calls could be made for syndicate losses without providing a specific accounting of those losses to the Names;

c. By becoming Names at Lloyd's, Missouri residents would incur liability for asbestosis and environmental pollution claims;

d. The findings of the AWP describing the magnitude and severity of asbestos liability faced by syndicates at Lloyd's;

e. After the findings of the AWP were made known to Lloyd's, certain syndicates with asbestosis liability continued to close and purchase RITC;

f. Pursuant to the Lloyd's Act of 1982, Lloyd's was granted immunity under U.K. law from liability for damages claims by members for negligence and breach of duty;

g. The findings and conclusions contained in the Cromer Report;

h. The memberships in Lloyd's and participations in Lloyd's syndicates were securities and that these securities were not registered with the State of Missouri;

i. Members' Agents and their employees wer not registered to sell securities in the State of Missouri;

j. Neither Lloyd's nor its Member's Agents were registered as broker-dealers in the State of Missouri; and

k. By becoming Names at Lloyd's, Missouri residents would, through Lloyd's' operation of the LATF, become liable for the losses of other investors.

(See State of Missouri, Office of Secretary of State's Order to Cease and Desist/Findings of Fact attached hereto, p. 20-21)

25. The Defendants Names incorporate by reference the Time article "The Decline and Fall of Lloyd's of London" and stand ready to prove the allegations therein if discovery is allowed. (See Time Article attached as Exhibit 1 to Defendants' Memorandum in Support of their Track 3 Designation which is incorporated by reference as if fully set out herein)

LAW OFFICES OF TED F. FRAPOLLI

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CERTIFICATE OF SERVICE

I certify that on the 15th day of April, 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
Ted F. Frapolli