

# **EXHIBIT A**

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

**AFFIDAVIT OF ROBERT W. FUERST**

The undersigned, Robert W. Fuerst, on oath deposes and states as follows:

1. I am of the age of majority, under no disability, and if called as a witness would be able competently to testify to the facts asserted herein, all of which are within my personal knowledge.
2. I am one of the defendants in the action captioned above.
3. I was born in Cleveland, Ohio on December 31, 1927, and I am 76 years of age. I've lived in Missouri since 1962.
4. I took early retirement in 1990 to care for my ill wife. I have practiced my profession of engineering on and off since then.
5. I was recruited in 1984 to be a Name by Mr. Louis D. Payne (a Missouri resident) on behalf of R.W. Sturge. Mr. Payne was an underwriter with R.W. Sturge since 1976. The recruitment took place in Missouri.
6. The recruiting literature given to me gave a glowing account of what a great shielded investment it was to be a Name. To say the least, the literature presented no information

as to the vulnerability of an investor faced because of Lloyd's liabilities of claims due to asbestos and pollution particularly in the United States. The document fell very short of "full and fair disclosure," a term I had been accustomed to expect committing my resources to an investment. Lloyd's also neglected to provide to me a copy of their 1982 by-law agreement with the English government whereby the only recourse I would have if I had a problem would be to litigate on the basis of their displaying "bad faith," whatever that means. Once again, an example of the absence of "full and fair disclosure."

7. At the time I was a professional engineer, I was engaged in remedying pollution problems, and had I known of Lloyd's entanglement in United States pollution problems, I definitely would have backed away from becoming a Name.

8. I became a Name on January 1, 1985 and underwrote the minimum of 200,000 pounds sterling. As time progressed, I was persuaded to increase my underwriting to 475,000 pounds sterling. When I wanted to roll back my financial exposure, I met with stiff resistance.

9. What Lloyd's failed to inform Names was that they increased the pure number of Names from about 4,500 to 34,000 Names while they increased their overall business very little. Such information would have sent a red flag as to how the investment could guarantee a fair return for all the additional people. The inducement to increase my underwriting was always accompanied by glowing reports of how things were going to really improve.

10. During my first three years of underwriting, I received approximately \$80,000 in "profits" on my investment. **NOTE:** These "profits" were later taken back by Lloyd's using cash calls and special personal reserve funds. To generate the cash, Lloyd's simply said that the reserves they set aside to pay claims was over funded and reduced the amount of reserves freeing

up cash that would be declared extraordinary “profits” to be distributed to the Names. This was Lloyd’s method of setting the hook.

11. Once Lloyd’s set the hook, their next step was to have the Names sign the infamous **FORUM CLAUSE** whereby the only recourse a Name would have would be in English courts under law governed by the 1982 by-law agreement. Lloyd’s would deny a name the right to underwrite at Lloyd’s if they did not sign the **FORUM CLAUSE**. **NOTE:** This was after a Name had received so-called “profits” which simply was dangling the carrot.

12. My present situation of having an English judgment enforced against me is not of my making. I applied to Lloyd’s to pay my assessment for Equitas and their Renewal and Reconstruction by filing the necessary forms. In my filing, I accept Lloyd’s offer with three exceptions. These were:

- (A) I would pay the \$100,000 assessment over a period of five years. Lloyd’s document entitled Renewal and Reconstruction (page 52) permits such an arrangement. This payment also carried an annual interest rate of eight percent.
- (B) The bank that would guarantee my signature would be of my choosing. The R&R document is not specific on this issue. It merely stated that a bank would have to guarantee my payments to Lloyd’s. I was merely attempting to obtain the best rate possible for me to meet my commitment.
- (C) I requested a further reduction in the amount owed. I stated that I had projected my living expenses and an additional \$60.00 per month would permit me to live in a manner that I was used to living. This would amount to \$720.00 per year or a net reduction of \$3,600 over the five year period.

13. **LLOYD'S RESPONSE WAS QUITE SIMPLE..THE AGREEMENT PRESENTED WAS UNCONDITIONAL.** There was no attempt to negotiate or explain why I was turned down. I know of one instance where Lloyd's did negotiate with the party and accepted much less than they requested.

14. To date, I have paid Lloyd's in excess of \$420,000. This included my so-called "profits," my original letter of credit, cash calls and my "personal reserve" account.

I declare under penalty of perjury under the laws of the State of Missouri, United States of America, that the foregoing is true and correct.

Signed this 13<sup>th</sup> day of April, 2004.

/s/ Robert W. Fuerst  
Robert W. Fuerst

STATE OF MISSOURI                    )  
  ) SS  
COUNTY OF ST. LOUIS                )

On this 13<sup>th</sup> day of April, 2004, before me personally appeared Robert W. Fuerst, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed and that the facts contained therein are true and correct to his best knowledge and belief.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written.

/s/ Mary Beth Arredondo  
Notary Public

My Commission Expires: 1/13/2007

**VERIFICATION OF SIGNED ORIGINAL DOCUMENT**

Pursuant to Local Rule 11-2.11, Ted F. Frapolli, Attorney for Defendants Robert W. Fuerst, Hord Hardin II, Walter A. Klein, Meade M. McCain, Cynthia J. Todorovich and Michael B. Todorovich hereby attests to the existence of a paper copy of the Affidavit of Robert W. Fuerst bearing the original signature of Robert W. Fuerst. The document was filed electronically on April 15, 2004 as an attachment to 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. Counsel will retain the paper copy bearing the original signature during the pendency of the litigation including all possible appeals.

LAW OFFICES OF TED F. FRAPOLLI

By:       /s/ Ted F. Frapolli        
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 15<sup>th</sup> 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