

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

THE SOCIETY OF LLOYD'S,)	
)	Case No.: 04CC-005430
Plaintiff,)	
v.)	
)	Division: 3
ROBERT W. FUERST, et. al.,)	
)	
Defendants.)	
)	

**MEMORANDUM IN SUPPORT OF JOINT MOTION OF DEFENDANTS
TO DECLARE THAT JUDGMENT IS NOT A JUDGMENT FOR
MONEY AND MAY NOT BE EXECUTED UPON AS SUCH**

COME NOW Defendants Cynthia Todorovich, Frank Fuerst, Walter A. Klein and John Shillington (collectively "Defendants"), by and through their undersigned counsel, and in support of their ***Joint Motion of Defendants to Declare That Judgment is not a Judgment for Money and May not be Executed Upon as Such*** (the "Motion") and state to this honorable Court as follows:

This action is another action filed in a long-standing dispute between the entity commonly known in the United States as "Lloyd's of London" ("Lloyd's") and the Defendants, who were misled into becoming members of various Lloyd's insurance syndicates. Lloyd's brought suit against Defendants, not in the United States where Defendants have resided for their entire lives, but in the United Kingdom. Not surprisingly, Lloyd's obtained what amounts to a default judgment (the "English Judgment") against Defendants. Lloyd's then used the rarely invoked

Uniform Foreign *Country* Money-Judgments Recognition Act (emphasis added) §511.780 RSMo. to obtain judgments against Defendants in the United States District Court for the Eastern District of Missouri (“Federal Judgment”). In that proceeding, the Defendants claimed that, for various reasons, the English Judgment did not meet the requirement for registration under the above act. Lloyd’s prevailed and, in a Pyrrhic victory, received exactly what it asked for – a judgment entered in the District Court against the Defendants for U.K. pounds. Lloyd’s now comes to this Court and seeks, once again, to register its judgment and make it a lien upon real estate in St. Louis County. The Federal Judgment, entered on or about July 12, 2004, is final and has not been appealed by any of these Defendants.¹ Lloyd’s time for filing a motion to amend the Federal Judgment under Federal Rule of Civil Procedure 59 has long since expired². Further, because Lloyd’s is the Plaintiff in the District Court action, it cannot rely upon FRCP 60(a) or (b) to amend the Federal Judgment. Dym v. North American Carbide Corporation, 95 F.R.D. 371, 372 (D.C. E.D. Pa. 1982)(“According to [Rule 60], the Court may relieve a party against whom a final judgment has been entered”). Further, because the English Judgment has merged into the Federal Judgment, Lloyd’s cannot now “re-register”

¹ One of the other defendants before the District Court has appealed to the U.S. Court of Appeals for the Eighth Circuit, but that appeal does not affect these proceedings.

² FRCP Rule 59(e) states: **Motion to Alter or Amend Judgment.** Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

the English Judgment even if it could attempt to have it amended in the Courts of the United Kingdom and even if the English Judgment was not final³. Nevertheless, Lloyd's now seeks a second (more correctly, a third) bite at the apple in this Court.

Since breaking its colonial ties with the United Kingdom in 1776 and since forming the United States of America, the Congress of this country deemed that dollars are the only lawful currency⁴. While English pounds may, on a given date, have an equivalency in U.S. dollars, they are not U.S. dollars. Missouri law recognizes foreign judgments-but only if they are entered in lawful money:

§ 511.778. Enforceability of judgment, when.

Except as provided in section 511.780, a foreign country judgment meeting the requirements of section 511.775 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign country judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

Missouri Courts require that a judgment must not only be definite and certain to be enforceable, but that it must also be in such form as the clerk of the Court is able to issue an execution upon which an officer may execute. Gerard v. Kodner, 468 S.W.2d 677 (Mo. App. St. Louis 1971); and Taylor v. Taylor, 367 S.W.2d 58 (Mo. App. St. Louis 1963).

³ Of course, if the English Judgment is not final, then it is not susceptible of registration in any event.

⁴ 31 U.S.C. §5103 provides the definition of Legal Tender: "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts."

The U.S. dollar is lawful money in the state of Missouri and not the English pound. The fact that English pounds can be sold on the market for US dollars does not make them money (as required by Missouri law) in this former British colony any more than gold, crude oil, soybeans, or any one of various commodities which has, at a given point in time, an equivalency in U.S. dollars. Missouri Supreme Court Rule 76.02 requires that a writ of execution be in a form setting out a judgment in dollars⁵. Missouri writs of execution must be issued in U.S. dollars pursuant to the rules and the official forms. There is no provision in the rules for converting a judgment once final from a foreign currency to U.S. dollars. Further, there is a question as to whether a U.S. court can even issue judgments in foreign currency. Thus, Lloyd's is stuck with exactly what it has consistently asked for: a judgment in pounds.

In short, in far away London Lloyd's used the law to its benefit to deprive the Defendants of their rights under the United States Constitution, convinced the District Court to enforce that judgment and got exactly what it wanted every step

⁵ **76.02. Form of Writ of Execution**

An execution *shall* be in the following form:(*emphasis added*)

The State of Missouri to the sheriff of any county in the State of Missouri:

Whereas, AB has on the ___ day of ___, 19___, obtained the judgment of this Court against CD upon which there is an unpaid balance of \$ ___, accrued interest to date of \$ ___ and costs of \$ ___, you are commanded to execute this writ by levying upon CD's property and on the ___ day of ___, 19 ___, certifying to this Court how you executed this writ.

of the way — a judgment in pounds. Lloyd’s now seeks execution as if it held a judgment in lawful currency; it does not. If it is too late for Defendants to plead the merits of their case here, it is also too late for Lloyd’s. After taking a default judgment in London and “registering” that judgment in the United States District Court, it is far too late under the Federal Rules of Civil Procedure for Lloyd’s to ask for a conversion of the judgment to lawful currency in the District Court. Further, this Court has no jurisdiction to alter or amend the Federal Judgment⁶.

This Court should enter an order limiting Lloyd’s to the terms of the English Judgment which Lloyd’s merged into the Federal Judgment and allow Lloyd’s the right to collect from Defendants any UK pounds they have in their possession, or by garnishing any UK pounds in the possession of third parties and declaring that, because the English Judgment and the Federal Judgment are not in money or otherwise in legal tender, any judgment entered by this Court shall not constitute a lien on any real estate owned by any of the Defendants.

⁶ Lloyd’s does not even ask this Court for such relief. Lloyd’s only request for relief is to register the Federal Judgment - a judgment for pounds sterling.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served this 5th day of January, 2005, by first-class mail, postage prepaid, to the following parties who did not receive service by electronic means:

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Each of Defendants