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

THE SOCIETY OF LLOYD'S,	)	
	)	
Plaintiff,	)	
v.	)	**Case No. 4:03CV1113 HEA**
	)	
ROBERT W. FUERST, et al.	)	
	)	
Defendants.	)	

REPLY MEMORANDUM OF PLAINTIFF THE SOCIETY OF LLOYD'S IN SUPPORT OF ITS MOTION TO CONVERT ITS JUDGMENTS AGAINST DEFENDANTS FROM POUNDS TO DOLLARS

Summary of Brief

Defendant Names are using baseless arguments to mislead the courts of Missouri and this Court that the Judgments against them are unenforceable and invalid. According to them, the Missouri Foreign Country Money-Judgments Recognition Act, R.S.Mo. § 511.770 *et seq.*, does not mean what it says and is a nullity. Under Defendants' theory, no foreign money judgment can be enforced against Missouri residents. There is no legal authority for the proposition they seek to invoke.

Contrary to Defendants' arguments, Lloyd's is not seeking any substantive change to the Judgments against Defendants. Instead, Lloyd's is merely asking the Court to perform a simple mathematical conversion from UK pounds to U.S. dollars as a result of Defendants' claims in the St. Louis Circuit Court that the Judgments are unenforceable and invalid under Missouri law because they are not denominated in U.S. dollars.[1] It cannot be disputed that this Court has discretion under Rule 60(a) and (b) to grant Lloyd's Motion and it may use its inherent equitable powers to prevent injustice from arising as a result of its Judgments. Defendants have essentially argued that this Court

[1] Lloyd's disputes Defendants' claims under Missouri law. However, in the interest of judicial economy and efficiency, Lloyd's has been and continues to be willing to accept payment in either UK pounds or U.S. dollars, as Defendants appear to prefer.

intentionally entered unenforceable Judgments which fail to comply with controlling law. This argument is not only illogical but there is no applicable authority for such a proposition. Therefore, a ruling in Defendants' favor, who seek to have this Court find its own Judgments unenforceable under Missouri law, would be unjust to Lloyd's. Regardless, if the Judgments are now deemed unenforceable and, thus void, then they should be amended under Rule 60(b)(4).

Defendants' most disingenuous --and principal-- argument is that Lloyd's never requested or intended its Judgments to be converted from British pounds to U.S. dollars and that Lloyd's did not identify a date for conversion. (See McCain Response at 5 and Fuerst et al Response at 2, 6, and 7). That is false. To the contrary, Lloyd's Complaint states that "Lloyd's seeks an order recognizing and enforcing the English Judgments, and entering judgment against each Judgment Debtor in the *dollar equivalent amount* of the English Judgment, with post-judgment interest, costs and fees." (emphasis added) (Complaint at ¶1.) In addition, Lloyd's Complaint states the amount of the English Judgments in British pounds, with approximate U.S. dollar amounts in parentheses, against each Defendant and states a date for conversion to U.S. dollars:

> For jurisdictional purposes, the equivalent dollar amounts for the Judgment against [Defendant's Name] has been calculated using the exchange rate as of July 28, 2003, of USD $1.62/UK £ 1. The judgment that Lloyd's seeks from this Court would be denominated in United Kingdom pounds sterling, and the conversion into United States dollar equivalents would be performed as of the date of Judgment. (Complaint at ¶¶27-32 and 34-35.) (Emphasis added.)

Therefore, contrary to Defendants' arguments, Lloyd's did request and assert a date certain upon which any conversion would occur. Defendants also failed to acknowledge this fact in their pleadings before the St. Louis Circuit Court.

The currency conversion date, i.e., the date of judgment, July 12, 2004, in this case, is supported by case law, including the Eighth Circuit's opinion in *Reliastar Life Ins. Co. v. IOA RE, Inc.*, 303 F.3d 874 (8th Cir. 2002), cited and discussed in Lloyd's Opening Memorandum. (Lloyd's Br. at 2-4 and 6). Furthermore, Defendants did not deny or dispute these statements pursuant to Rule

8 and are deemed admitted. (See, e.g., Answers and Amended Answers of Defendants). Defendants should not now be allowed to avoid satisfying their English Judgments which were entered against them almost seven years ago.

I. DEFENDANTS CONTINUE THEIR ATTEMPTS TO AVOID PAYING THEIR OBLIGATIONS TO LLOYD'S AT ANY COST

Defendants' Response Briefs to Lloyd's Motion to Convert and their filings in St. Louis Circuit Court show that they will continue to do or say anything at any cost to avoid paying their debts to Lloyd's. These undisputed facts highlight their obstructionism:

- Defendants, except Cynthia Todorovich and Shillington, both of whom defaulted in England, defended against Lloyd's causes of actions in England and lost. Defendants, except Todorovich and Shillington, appealed the Judgments in England and lost.

- Defendants then refused to satisfy the English Judgments and forced Lloyd's to bring this action. Defendants defended Lloyd's action for the recognition and enforcement of the English Judgments under Missouri law before this Court and lost.

- In October 2004, several Defendants refused to produce any documents regarding their assets to Lloyd's based on alleged Fifth Amendment protections. In addition, during an asset deposition, Defendant Shillington refused to answer any questions, based on alleged Fifth Amendment protection. Mr. Pressman informed Lloyd's counsel that he would instruct all of his clients to do the same.

- On December 20, 2004, Lloyd's filed a Petition for Registration of Foreign Judgment in St. Louis County registering the Judgments entered by this Court. Defendants ignored these filings. Finally, in late December 2004, Lloyd's counsel, Blake T. Hannafan, telephoned Mr. Pressman to discuss and schedule asset discovery depositions. Incidentally, a few days later, on January 5 and 10, 2005, Defendants filed motions in the Circuit Court of St. Louis seeking to invalidate the Judgments entered by this Court and hold them unenforceable.

Defendants now make several inconsistent arguments why this Court should not convert the Judgments from UK pounds to U.S. dollars, the currency in which they erroneously claim the Judgments must be denominated to be valid under Missouri law.

II. UNDER RULE 60(a) THIS COURT MAY ENTER AN ORDER CONVERTING LLOYD'S JUDGMENTS FROM UK POUNDS TO U.S. DOLLARS

A. This Court Has Discretion To Correct Clerical Mistakes Of The Court, Clerk Or Parties

Without any supporting citation, Defendants mistakenly claim that a "'clerical mistake' merely describes the type of error identified with mistakes in transcription, alteration or omission of any papers which are traditionally or customarily handled or controlled by a clerk." (Fuerst et al Response at 5). To the contrary, the Eighth Circuit squarely held that the district courts have discretion under Rule 60(a) to correct clerical errors of the Court, clerk or a party. *Alpern v. Utilicorp United, Inc.*, 84 F.3d 1525, 1539 (8th Cir. 1996) ("Although the rule usually applies to errors by the court or clerk, it may also be used to correct mistakes by the parties."). See also *Pattiz v. Schwartz*, 386 F.2d 300, 303 (8th Cir. 1968) ("'Relief may be had from the clerical mistakes of the court, clerk, jury or party.'") (quoting 6A Moore's Federal Practice, par. 60.06 (3), p. 4044 (2d Ed. 1966)). In addition, where the party's "intentions are clearly defined and 'all the court need do is employ the judicial eraser to obliterate a mechanical or mathematical mistake, the modification will be allowed.'" *Alpern*, 84 F.3d at 1539.

B. Lloyd's Complaint Requested Conversion From Pounds To Dollars And Identified A Date Upon Which To Base The Conversion

As noted above, contrary to Defendants' arguments, Lloyd's Complaint states that it sought Judgments denominated in UK pounds and then converted into U.S. dollars as of the date of this Court's Judgment. (Complaint at ¶¶ 27-32 and 34-35). Defendants never denied or disputed Lloyd's Complaint's request for the entry of Judgments in UK pounds or that the conversion to U.S. dollars would occur as of the date of judgment. Therefore, Defendants have waived any argument that such conversion is improper.

Defendants are correct that Lloyd's Complaint's prayer for relief did not also reference the conversion which, at most, is arguably a clerical error. However, based on the holding in *Alpern*,

because Lloyd's intentions were clear in its Complaint, which sought and stated a certain date for conversion of UK pounds to U.S. dollars, the omission in the Judgments is merely the type of mechanical and mathematical oversight contemplated by Rule 60(a) and which this Court can easily correct. Additionally, Lloyd's respectfully submits that this Court intended for the Judgments to be payable in UK pounds or the U.S. dollar equivalency as Lloyd's also intended and presumed. However, as a result of apparent oversight, this Court did not include a conversion date or rate as requested in paragraphs 27-32 and 34-35 of Lloyd's Complaint. These are clerical mistakes in nature arising from oversight and can be easily corrected under Rule 60(a).

C. Converting The Judgments From Pounds To Dollars Is Merely Mechanical And Mathematical

The conversion to U.S. dollars is not a substantive change; it is merely a mechanical and mathematical one as described in *Alpern*. It has no effect on the Court's ruling that Lloyd's was entitled to summary judgment on its claims seeking recognition and enforcement of the English Judgments. Contrary to Defendants' unsupported and inapposite arguments, Lloyd's is not asking this Court to "re-open the file, hear substantive evidence and make substantive rulings." (McCain Response at 7). No substantive evidence or rulings are required because this Court can take judicial notice of the conversion rate existing on July 12, 2004, and convert UK pounds to U.S. dollars. See Fed R. Ev. 201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."); Restatement (Third) Foreign Relations § 823 Note 5 ("Ordinarily, when a court in the United States converts a foreign currency obligation into dollars, it applies the exchange rate prevailing at the forum (or at the principal financial center, i.e. New York)."); Uniform Foreign-Money Claims Act § 7(b) ("A judgment or award on a foreign-money claim is payable in that foreign

money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate."). (Emphasis added.)

The conversion rate existing on July 12, 2004, is both generally known within the jurisdiction and capable of accurate and ready determination from any number of unquestioned sources, including the U.S. Federal Reserve Bank and New York's financial markets.[2] This is precisely the type of situation envisioned in *Alpern* in which "all the court need do is employ the judicial eraser to obliterate a mechanical or mathematical mistake." 84 F.3d at 1539. (Emphasis added.) Signally, Defendants do not dispute Lloyd's statement that the conversion rate on July 12, 2004, was £1=$1.864. Therefore, this Court should enter an order converting the Judgments from UK pounds to U.S. dollars or, in the alternative, merely adding the dollar amount to each Judgment (i.e., entry of Judgment in both dollars and pounds).

III. UNDER RULE 60(b) THIS COURT MAY ENTER AN ORDER CONVERTING LLOYD'S JUDGMENTS FROM UK POUNDS TO U.S. DOLLARS

A. Rule 60(b) Is To Be Liberally Construed And Is Grounded In Equity With The Purpose Of Preserving Justice

A Rule 60(b) motion is "committed to the sound discretion of the trial court." *MIF Realty L.P. v. Rochester Assocs.*, 92 F.3d 752, 755 (8th Cir. 1996). The Supreme Court has held: "The Rule [60(b)] does not particularize the factors that justify relief, but we have previously noted that it provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'" *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863-64 (1988) (quoting *Klapprott v. United States*, 335 U.S. 601, 614-615 (1949)). The *Liljeberg* Court also stated that "Rule 60(b)(6), upon which respondent relies, grants federal courts broad authority to relieve a party from a final judgment 'upon such terms as are just.'" *Id*. at 863. The Eighth Circuit agrees that Rule 60(b) motions "serve a useful, proper and necessary purpose in

[2] Attached as Exhibit 1 is the U.S. Federal Reserve's Board of Governors published exchange rates, including UK pounds, on July 12, 2004. On that date, the exchange rate was £1=$1.864.

maintaining the integrity of the trial process." *MIF Realty*, 92 F.3d at 755. In addition, the Eighth Circuit has held that "Rule 60(b) is to be given a liberal construction so as to do *substantial justice* and 'to prevent the judgment from becoming a vehicle of injustice.'" (Emphasis added) *Id.* (citations omitted). Furthermore, a Rule 60(b) motion "is grounded in equity and exists 'to preserve the delicate balance between the sanctity of final judgments ... and the incessant command of a court's conscience that justice be done in light of all the facts.'" *Id.* at 755-56 (citation omitted) (alterations in original). See also 11 Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure: Civil 2d § 2857, at 255 (2d ed. 1995) ("Equitable principles may be taken into account by a court in the exercise of its discretion under Rule 60(b)."). In *Paiz v. U.S. Postal Service*, 214 F.R.D. 675, 679 (N.M. D.Ct. 2003), a case relied upon by Defendant McCain, the court stated: "The Tenth Circuit has described this provision [Rule 60(b)(6)] as a 'grant reservoir of equitable power to do justice in a particular case.'" (citations omitted).

Defendants are attempting to use this Court's Judgments as "a vehicle of injustice" by filing motions in St. Louis Circuit Court and here, seeking to invalidate them. Equity and justice require the enforcement and conversion of Lloyd's Judgments because of Defendants' claims that judgments in Missouri must be denominated in dollars. Rule 60(b)(1) provides the Court with the discretion to correct mistakes, inadvertence and excusable neglect of the Court, Clerk or parties that are not clerical in nature. Defendants have argued that the Judgments do not comply with Missouri law because they are in pounds. Therefore, based on Defendants' arguments, this Court may grant relief under Rule 60(b)(1) due to either Lloyd's or its own mistake, inadvertence or excusable neglect regarding Missouri state law allegedly requiring judgment registration to be in U.S. dollars. Alternatively, Rule 60(b)(6) provides grounds for the relief sought. To find that Lloyd's may not enforce its Judgments in UK Pounds against Defendants (i.e., require them to purchase pounds) would invalidate Lloyd's English Judgments, which this Court found were required to be recognized

and enforced under Missouri law. Similarly, a finding that Lloyd's also may not enforce its Judgments for the U.S. dollar equivalence would have the same effect. Such a result is unjust and in clear conflict with Lloyd's Complaint, Missouri's Uniform Recognition and Enforcement Act, established case law and this Court's own Memorandum and Order entered on July 12, 2004. Finally, it is inconceivable to believe that this Court would intend for Lloyd's Judgments to be unenforceable and uncollectible.

B. Rule 60(b) Motions Can Be Brought By Any Party

Contrary to Defendants' arguments, nothing in Rule 60(b) prohibits Lloyd's, the successful plaintiff, from filing its Motion to Convert. Moreover, Defendants fail to cite any Eighth Circuit or Missouri district court opinion supporting their arguments. As several Defendants admit, in *Western Transp. Co. v. E. I. Du Pont de Nemours and Co.*, 682 F.2d 1233, 1236 (7th Cir. 1982), the Seventh Circuit relied on an Eighth Circuit decision for its holding that: "This rule [60(b)] is usually invoked by losing defendants rather than, as in this case, a winning plaintiff; but we assume it can be used, in an appropriate case, by such a one." (citing *Arkla Exploration Co. v. Boren*, 411 F.2d 879, 883-84 (8th Cir. 1969)). In *Arkla Exploration*, the successful plaintiff filed a motion under Rule 60 requesting that the judgment be amended to include prejudgment interest. 411 F.2d at 883. Similarly, in two other Eighth Circuit cases, *Spangle v. Ming Tah Elec. Co.*, 866 F.2d 1002 (8th Cir. 1989) and *Clarke v. Burkle*, 570 F.2d 824 (8th Cir. 1978), the Court reviewed Rule 60(b) motions brought by successful plaintiffs. See also, *Pattiz v. Schwartz*, 386 F.2d 300 (8th Cir. 1968) (review of successful plaintiff's Rule 60(a) motion). Therefore, Eighth Circuit case law supports Lloyd's entitlement to seek relief under Rule 60(b). Finally, jurisdictions in addition to the Seventh and Eighth Circuits have held that successful plaintiffs may file a Rule 60(b) motion. *Still v. Townsend*, 311 F.2d 23 (6th Cir. 1962) (reviewing merits of successful plaintiff's Rule 60(b) motion); *Star Brite Distributing, Inc. v. Gavin*, 746 F.Supp. 633, 649 n.8 (N.D. Miss. 1990) ("It appears clear that relief

under the first clause [of Rule 60(b)] is available to *any party* to an action, as evidenced by the difference in language between the parallel provisions of the first and second clauses. It further appears that relief under the third clause . . . is likewise available to any party, and may be raised by any party, or a non-party, or by the court on its own motion. The court does not hold that relief under rule 60(b) is unavailable to a plaintiff or to a successful litigant.") (emphasis added) (citing *Photzer v. Amercoat Corp.*, 548 F.2d 51 (2d Cir. 1977) and 7 Moore's Federal Practice, Paragraph 60.33 at 60-354); *Welty v. Russell*, 22 B.R. 143 (Bankr. D. Ore. 1982) (reaching merits of successful plaintiff's Rule 60(b) motion).

C. Defendants' Arguments Include Numerous Factual Inaccuracies

The cases discussed above reveal that several Defendants' argument that Lloyd's cannot file a Rule 60(b) motion because it succeeded in this matter is meritless. (Fuerst et al Response at 7-10; Fuerst et al memos in St. Louis Circuit Court at 2). Particularly offensive are Defendants Cynthia Todorovich, Fuerst, Klein and Shillington's January 5, 2005, Motion and Memorandum filed in St. Louis Circuit Court. (See Exs. 3 and 4 to Lloyd's Opening Brief). Inexplicably, these Defendants filed a second Memorandum with the same title on January 24, 2005, which was the same day that Lloyd's filed its Motion to Convert and Motion to Stay in this Court. It was Defendants' second Memorandum, with new exhibits and arguments, which they attached as an exhibit to their Response Brief in this Court. The inaccuracies, inconsistencies and misrepresentations in these papers are:

(a) Defendants' Motion, paragraph 2, states: "The Federal Judgment was never tried in any court in this country. Rather, it was only entered as the result of a Complaint filed asking the District Court to enforce a default judgment originally entered against Defendants in the United Kingdom." (emphasis added). This statement is false.

(b) The January 5, 2005, Memorandum on page 2 states "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." Defendants cite *Dym v. North American Carbide Corporation*, 95 F.R.D. 371, 372 (E.D. Pa. 1982) for this statement and misquote *Dym* as if it applies to both Rule 60(a) and (b) and any plaintiff. Likewise, in their January 24, 2005, Memorandum on page 2, Defendants make this same false statement and add a parenthetical stating a "successful plaintiff may not invoke Rule 60 to alter or amend judgment." The *Dym* case does not stand for these broad and misleading propositions. These

Defendants' Response Brief in this Court finally recognizes that fact and acknowledges that other courts have held otherwise, including courts that have relied on Eighth Circuit law.

(c) The January 5, 2005, Memorandum on page 5 states: "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." (emphasis added). This statement is intentionally misleading for several reasons, not the least of which are it ignores that only two defendants had defaults in England, that all other Defendants appealed and lost in England and implies that this Court did not allow them to contest Lloyd's action for recognition and enforcement.

Defendants also argue that Rule 60(b) relief is only allowed to "aggrieved" parties. (Fuerst et al Response at 7). Lloyd's disagrees with their misreading of Rule 60(b), which provides in part that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding . . . ." Assuming, *arguendo*, Defendants are correct, then Lloyd's is certainly "aggrieved" by this Court's Judgments. Based on the fact that Defendants are asking the St. Louis Circuit Court and this Court to find the Judgments unenforceable, it is clear that Defendants are attempting to use them as a sword against Lloyd's. Therefore, even under Defendants' own interpretation, Lloyd's is "aggrieved" and is entitled to Rule 60(b) relief.

D. Lloyd's Rule 60(b) Motion Was Timely Filed

Defendants' claim that Lloyd's Motion under Rule 60(b)(1) is untimely is wrong because Rule 60(b) states that such a motion "shall be made within a reasonable time, and for reasons (1), (2), and (3) *not more than one year after the judgment* . . . was entered or taken." (emphasis added). Defendants' reliance on *Spangle* that a Rule 60(b)(1) motion must be filed within 30 days of the judgment is misplaced. In *MIF Realty*, a 1996 Eighth Circuit opinion, the defendant cross- appealed and argued that the plaintiff's Rule 60(b)(1) motion, filed four months after the judgment was entered, and based on its own mistake, was untimely. 92 F.3d at 757. The *MIF Realty* court rejected this argument and held: "Where *mistake, inadvertence, surprise or excusable neglect* is alleged, a motion to set aside the judgment must be made within a reasonable time and *not more than one year after the judgment was entered.*" (emphasis added) *Id.*; *See also Pattiz*, 386 F.2d 100 (affirming

plaintiff's Rule 60(a) motion filed four years after judgment entered). As a result, the *MIF Realty* court held that the Rule 60(b)(1) motion was timely because it was brought within one year. 92 F.3d at 757. Finally, the *MIF Realty* court held that the Rule 60(b)(1) motion, filed four months after the judgment, was also brought within a reasonable time under Rule 60(b)(1). *Id*. Therefore, Defendants' argument that Lloyd's motion is untimely based on *Spangle*, a 1989 decision, is no longer supported by subsequent Eighth Circuit law. Moreover, the *MIF Realty* court included Judge Lay, who also took part in the *Spangle* decision. Regardless, the *Spangle* court's holding was limited solely to Rule 60(b)(1) and not any of the other five grounds included under the Rule.

Lloyd's Motion to Convert was filed within a reasonable time and within one year of the entry of the Judgments. As also discussed above, Lloyd's filed its Motion to Convert in response to Defendants' attempts to convince the St. Louis Circuit Court to invalidate this Court's Judgments. Before Defendants' actions in the Circuit Court, they made no formal objections to this Court's Judgments being denominated in UK pounds. Finally, Lloyd's Motion to Convert was filed within three weeks of Defendants' attempts to invalidate the Judgments. Accordingly, Lloyd's Motion to Convert was timely and filed within a reasonable time under Rule 60(b).

IV. THIS COURT'S JUDGMENTS AGAINST DEFENDANTS ARE ENFORCEABLE

A. Defendants Waived Any Objection To The Enforceability Of The Judgments In UK Pounds

This Court stated in its Memorandum and Order granting Lloyd's Motion for Summary Judgment that "Lloyd's brought this action in this Court seeking *recognition and enforcement* of the English judgments." (7/12/04 Order at 5) (Emphasis added.)[3] In addition, this Court stated that "Plaintiff seeks summary judgment against defendants . . . arguing that under the statute [Missouri

[3] Even if this Court denies Lloyd's Motion to Convert and its request to enter an order providing for a date and rate of conversion from UK pounds to U.S. dollars, Lloyd's does not concede that its Judgments entered by the Court are unenforceable here or in state court. As discussed in Lloyd's Opening Brief, Defendants can be made to satisfy the Judgments in UK Pounds. Lloyd's also filed a Motion to Stay Defendants from seeking to invalidate the Judgments in the St. Louis Circuit Court which should be granted under 28 U.S.C. § 2283 to protect and effectuate its Judgments.

Foreign Country Money-Judgments Recognition Act, R.S.Mo. § 511.770 *et seq.*], the judgments entered against defendants are enforceable in that they were duly entered in England and are entitled to recognition in this Court." (Order at 1-2). It is ludicrous for Defendants now, in light of the Court's Order, to argue that Lloyd's Judgments are unenforceable because they are in UK pounds.

No Defendant ever asserted during any of the proceedings in England or before this Court's Judgments were entered that Lloyd's could not collect the Equitas premiums in UK pounds or that the English Judgments were invalid or unenforceable in Missouri because they were entered in UK pounds. Therefore, they have waived their new arguments that the English Judgments are unenforceable because they are in UK pounds. Indeed, Defendant McCain now admits -- as he must -- that this Court can enter Judgments in foreign currency. (McCain Response at 5 and 7). While he concedes that the Judgment in UK pounds is not "invalid," he inconsistently claims that the entry in UK pounds makes it "unenforceable" and "defective." (Id. at 7). Then, in the next breath, he argues that the Judgment's grant of interest since March 11, 1998, is "invalid." (Id. at 7). However, if the Judgments in UK pounds are valid, as he admits, then they must be enforceable, valid and not defective.

Equally illogical is Defendants' argument that UK pounds are not "money." In both the "Fuerst Defendants" January 5 and January 24 memoranda filed in St. Louis Circuit Court, they claim that "the English Judgment and the Federal Judgment are not in money." (emphasis added) (See Memos at 5 and 7, respectively). First, nothing can be further from the truth and, second, they provide no authority that Missouri law requires judgments to be in U.S. dollars. Defendants' citations of §§ 511.760 and 511.778 do not support their arguments; they instead support Lloyd's. (See McCain Circuit Crt. Mtn at 1; Fuerst et al Jan. 5 Memo at 3). The Judgments entered against Defendants are in "money," "definite," and a "sum certain." To find otherwise flies in the face of this Court's July 12, 2004, Order recognizing and enforcing them under Missouri law.

B. Lloyd's Judgments Can Be Satisfied In Either UK Pounds Or Their U.S. Dollar Equivalents

As discussed in Lloyd's Opening Brief, the Eighth Circuit in *Reliastar Life Ins. Co. v. IOA RE, Inc.*, 303 F.3d 874 (8th Cir. 2002) and several other courts have held that judgments entered by United States courts can be denominated in foreign currency. (Lloyd's Opening Br. at 2-4). In addition, the *Reliastar* opinion implies, based on a Supreme Court opinion, that courts can require judgments entered in foreign currencies to be paid in that currency. 303 F.3d at 882. ("We infer from the Supreme Court's discussion in *Hicks* that such awards *may* be ordered to be paid in U.S. dollars, if the plaintiff so requests, . . . but that a district court *is not required* to order the award to be paid in U.S. currency.") (Emphasis in original.) Defendants have not disputed this statement of law.

The *Reliastar* court's holding relied heavily on the Restatement (Third) of Foreign Relations Law § 823. 303 F.3d at 883. In Comment (b) to § 823, the Restatement states:

> *A judgment denominated in a foreign currency may be satisfied either in that currency or by payment of an equivalent amount in dollars* measured by the rate of exchange in effect on the date of payment. (Emphasis added.)

Because Lloyd's Complaint sought Judgments in UK pounds, in which the English Judgments were expressed, and conversion to U.S. dollars on the judgment date, Defendants must satisfy their Judgments in either UK pounds or U.S. dollars. (See Complaint at ¶¶ 1, 27-32 and 34-35).

C. A Finding That This Court's Judgments Are Unenforceable Would Render Missouri's Foreign Country Money-Judgments Recognition Act Meaningless

The Missouri Foreign Country Money-Judgments Recognition Act, R.S.Mo. § 511.770 *et seq*, clearly provides for the recognition and enforcement of foreign money judgments, such as Lloyd's English Judgments. Obviously, these "foreign money judgments" are expressed in foreign currency. The Uniform Foreign-Money Claims Act, § 7(b), states: "A judgment or award on a foreign-money claim *is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate*."

(Emphasis added.) Although Defendants are correct that Missouri has not adopted this Act, 22 other states have adopted it, and it is consistent with the purpose of Missouri's Recognition Act.

Defendants fail to cite any authority from Missouri, the Eighth Circuit or any other jurisdiction that prohibits this Court from entering Judgments in a foreign currency. Likewise, Defendants fail to cite any Missouri or Eighth Circuit law that prohibits this Court from entering an order that Lloyd's Judgments may be paid either in UK pounds or U.S. dollars. Ignoring the Uniform Foreign-Money Claims Act and the Restatement (Third) of Foreign Relations, as Defendants argue the Court to do, would render Missouri's Recognition and Enforcement Act meaningless. Such a ruling also would fly in the face of established case law and common sense and would be unjust to Lloyd's under Rule 60(b)(6). Put another way, a finding that this Court's Judgments are unenforceable or that Defendants are not required to satisfy them in UK pounds would render Missouri's Foreign Country Money-Judgments Recognition Act useless and prevent any foreign creditor from ever having a foreign money judgment recognized and enforced in Missouri.

V. ASSUMING, *ARGUENDO*, THAT DEFENDANTS ARE CORRECT THAT THE JUDGMENTS ARE UNENFORCEABLE, THIS COURT NEVERTHELESS MAY GRANT LLOYD'S RELIEF UNDER RULE 60(b)(1), (4) or (6)

Defendant McCain's reliance on *Paiz* for the assertion that Rule 60(b)(1) relief is allowed "when the judge has made a substantive mistake of law or fact in the final judgment or order" actually bolsters Lloyd's Motion to Convert. (McCain Response at 4.) McCain has argued in the St. Louis Circuit Court and here that, because Missouri law applies, the Judgments are "defective" and "unenforceable" because they are stated in UK pounds. (McCain Response at 7). However, if Missouri law applies as Defendants claim, then based on *Paiz* the Judgments can be amended under Rule 60(b(1) based upon the Court's mistake regarding alleged Missouri law and the fact that Lloyd's requested conversion. Likewise, if the Judgments are "defective" and "unenforceable", then the Judgments are "void" and relief should be granted under Rule 60(b)(4). Even Defendants cannot

dispute that "unenforceable" is synonymous with "void." In fact, Black's Law Dictionary defines a "void judgment" as: "A judgment that has *no legal force* or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally." (emphasis added) Black's Law Dictionary (8th Ed. 2004); *See also*, Merriam-Webster Dictionary of Law (1996) (defining void as "of *no force* or effect under law") (emphasis added).

Finally, if the Court does not apply Rule 60(a) or 60(b)(1) or (4), relief should be granted here under Rule 60(b)(6) which allows the Court discretion to grant relief for "any other reason justifying relief from the judgment." A finding that this Court's Judgments against Defendants are unenforceable would be unjust and unfair to Lloyd's. First, it would invalidate the General Undertakings signed by all Defendants which obligated them to comply with Lloyd's bylaws and regulations. Second, it would overrule the decisions of the English trial and appellate courts that held Defendants had to pay Lloyd's their Equitas premiums. Third, it would ignore Lloyd's Complaint's requests that conversion occur on the date of judgment. Fourth, it would essentially overrule this Court's Order recognizing and enforcing the English Judgments. Fifth, it would allow Defendants, who have attempted to frustrate Lloyd's valid and legitimate collection efforts for many years, to avoid their obligations to Lloyd's that were upheld in both England and the United States. Therefore, the Court should exercise its discretion and equitable powers to prevent an unjust result and enter an order amending the Judgments to be payable in either UK pounds or U.S. dollars at the conversion rate as of the judgment day, July 12, 2004, which was £1=$1.864. Attached as Exhibit 2 is a table converting the Court's Judgments from UK pounds to U.S. dollars.

Conclusion

Based on the foregoing reasons and those discussed in Lloyd's Opening Brief, the Court should amend the Judgments against Defendants to reflect that they may be satisfied in either UK pounds or the U.S. dollar equivalence based upon the exchange rate existing on July 12, 2004, of

£1=$1.864. In addition, the Court should enter an order staying Defendants from seeking to invalidate the Judgments in the Missouri state courts.

Respectfully submitted,

/s Blake T. Hannafan
Blake T. Hannafan
One of the Attorneys
for the Society of Lloyd's

Dated: February 22, 2005

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of February, 2005, 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: Norman W. Pressman, Esq. ,121 Hunter Avenue, Suite 101, St. Louis, Missouri 63124-2082; Theodore J. Williams, Jr., Esq., Williams Venker & Sanders LLC, 10 South Broadway, Suite 1600, St. Louis, MO 63102; Harold Ilg (and Mail), 100 L'Ambiance Circle, Unit 202, Naples, FL 34108; Harold Ilg (and Mail), 16401 Ranchester Drive, Chesterfield, MO 63005; Martin J. Buckley, Esq., Buckley & Buckley, 1139 Olive Street, Suite 800, St. Louis, MO 63101-1928; and J. Talbot Sant, Jr., Armstrong Teasdale LLP, One Metropolitan Square, Suite 2600, St. Louis, MO 63102-2740 (by Mail).

/s/ Blake T. Hannafan