

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

THE SOCIETY OF LLOYD'S,

Plaintiff,

ROBERT W FUERST, et al.,

Defendants.

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No: 4:03CVO1113 HEA

**DEFENDANTS' FRCP 59(e), AND ALTERNATIVELY, FRCP 60(b)(6) MOTION TO
ALTER OR AMEND THE COURT'S AMENDED JUDGMENT
ENTERED FEBRUARY 25, 2005**

COMES NOW Defendants Cynthia J. Todorovich, Michael B. Todorovich, Robert Fuerst, Walter A. Klein, and John Shillington (collectively "Defendants"), and respectfully and without waiving their right to appeal this Court's February 25, 2005 Amended Judgment, hereby make their FRCP 59(e) and, alternatively, FRCP 60(b)(6) Motion to Alter or Amend that Judgment. The Court entered that Judgment pursuant to the Plaintiff's Motion to Convert the Judgment of July 12, 2004 from British Pounds to U.S. Dollars. In support of this Motion, Defendants state as follows:

1. On February 25, 2005, this Court entered an Amended Judgment with the value of the British Pound converted into the U.S. Dollar as of July 12, 2004, the date of this Court's Judgment on the original English Judgments against the Defendants, dated variously July 24, 1997 (Defendant Shillington), March 11, 1998 (Defendants Fuerst, Klein, and Todorovich), and May 14, 1999 (Defendant

Todorovich). Further, the Court assessed interest from March 11, 1998 with the value of the British Pound as of July 12, 2004. The Court did not assess the value of the British Pound pursuant to the terms of the contract between Plaintiff and Defendants, set forth at Schedule 4 to the English complaint upon which the English Judgment was entered against the Defendants. A true copy of the English complaint is attached hereto as Exhibit A.

2. In its February 22, 2005 Reply to Defendants' Memorandum in Opposition to Lloyd's FRCP 60 Motion, and for the first time, Plaintiff suggested that the conversion rate for British Pounds to U.S. Dollars should be as of July 12, 2004. In support of that argument, Plaintiff appended a copy of a report from the Federal Reserve. That document stated that the value of a British Pound to a U.S. Dollar on July 12, 2004 was \$1.864.

3. Until the Court's Amended Judgment of February 25, 2005, Plaintiff had made no attempt to amend the Judgment from British Pounds to U.S. Dollars nor had Plaintiff apprised Defendants as to the conversion rate it claimed was applicable to said Pounds. Without a Judgment setting forth the value of the claim in U.S. currency, these Defendants were not fully apprised of the amount of the Judgment, nor the exchange rate that Plaintiff sought.

4. As indicated, by Memorandum and Order dated February 25, 2005, and Amended Judgment entered on said date, this Court adopted Plaintiff's exchange rate without giving Defendants an opportunity to respond to this new

argument regarding the exchange date and rate, and entered Judgment against Defendants in the amounts shown in its Order.

5. Without waiving, to any extent, the Defendants' previous objections regarding the Court's amendment of the Judgment on February 25, 2005, the correct value of British Pounds as to United States Dollars is set out in the contract, styled "Undertaking" between the Defendants and Plaintiff. That contract, at Schedule 4, page 28, Paragraph 18 states:

"Where any amount payable by a Name hereunder in respect of his Name's Premium is an amount denominated in US Dollars or Canadian Dollars, then, unless the amount is paid out of the LATF (in respect of a US Dollar liability) or out of the LCTF (in respect of a Canadian Dollar liability), the Name shall instead pay an amount in sterling being one pound sterling for each US\$ 1.51 and one pound sterling for each Can\$ 2.05."

6. In The Society of Lloyd's v. Carl Evans Abramson, 2004 WL 690878 (N.D. Tex), the Court rejected Lloyd's argument that the exchange rate should be as of the date of the final English judgment in that case, (which also happened to be March 11, 1998), and instead enforced the above-quoted contract provision, and applied the exchange rate of \$1.51 to for each British pound. A copy of this unpublished opinion is attached hereto as Exhibit B.

7. Therefore, using that rate of 1.51 Dollars to the Pound, the Judgment for Plaintiff in U.S. Dollars against the Defendants would have been:

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Defendants and Respective Date of English Judgment and Time in Years prior to 7/12/04	Principal Amount of Judgments in UK Pounds	Conversion Rate Per Undertaking	Total of Judgment in US Dollars as of English Judgment Date
Robert W. Fuerst (3/11/98) (6.330)	£363,357	£1 = 1.51	\$548,669.07
Walter Klein (3/11/98) (6.330)	£195,833	£1 = 1.51	\$295,707.83
John Shillington (7/24/97) (6.966)	£88,282	£1 = 1.51	\$133,305.82
Cynthia Todorovich 5/14/99) (5.161)	£198,246	£1 = 1.51	\$299,351.46
Michael Todorovich (3/11/98) (6.330)	£846,759	£1 = 1.51	\$1,278,606.09

8. At 8% interest, the Judgments would have been the following amounts, as of July 12, 2004:

- A. Robert W. Fuerst \$826,514.98
- B. Walter Klein \$445,334.74
- C. John Shillington \$207,529.22
- D. Cynthia Todorovich \$422,956.16
- E. Michael Todorovich \$1,920,479.80

9. Without waiving, to any extent these Defendants' previous objections regarding the Court's amendment of the Judgment on February 25, or Defendants' position that the only legally correct exchange rate is the \$1.51 U.S. Dollars to one British Pound, in the event that the Court should rule that the conversion rate set forth in the Undertaking set forth above is not the correct conversion rate, then the correct value of British Pounds as to United States Dollars is as of the date that a

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Judgment was entered against these Defendants in the English court. Those dates are July 24, 1997 (Defendant Shillington), March 11, 1998 (Defendants Fuerst, Klein, and Todorovich), and May 14, 1999 (Defendant Todorovich).

10. As shown by Exhibit C attached hereto, the values of a British Pound in relationship to U.S. Dollar as of the various dates of judgment are shown below in Paragraph 11.

11. Therefore, using that rate, the Judgment for Plaintiff in U.S. Dollars against the various Defendants would be:

Defendants and Respective Date of English Judgment and Time in Years prior to 7/12/04	Principal Amount of Judgments in UK Pounds	Conversion Rate as of English Judgment date per	Total of Judgment in US Dollars as of English Judgment Date
Robert W. Fuerst (3/11/98) (6.330)	£363,357	£1 = 1.6418	\$596,559.52
Walter Klein (3/11/98) (6.330)	£195,833	£1 = 1.6418	\$321,518.62
John Shillington (7/24/97) (6.966)	£88,282	£1 = 1.6740	\$147,784.07
Cynthia Todorovich (5/14/99) (5.161)	£198,246	£1 = 1.6288	\$322,903.08
Michael Todorovich (3/11/98) (6.330)	£846,759	£1 = 1.6418	\$1,390,208.93

12. At 8% interest, the Judgments would have been the following amounts, as of July 12, 2004:

A.	Robert W. Fuerst	\$898,657.26
B.	Walter Klein	\$484,335.65
C.	John Shillington	\$230,129.35
D.	Cynthia Todorovich	\$456,197.47
E.	Michael Todorovich	\$2,094,210.73

13. Defendants submit herewith their Memorandum of Law in Support of Defendants' FRCP 59(e), and Alternatively, FRCP 60(b)(6) Motion to Alter or Amend the Court's Amended Judgment Entered February 25, 2005, Exhibit A, the English Complaint and Undertaking, Schedule 4, and Exhibit B, The Society of Lloyd's v. Carl Evans Abramson, 2004 WL 690878 (N.D. Tex.).

WHEREFORE, Defendants pray that this Court will amend or alter the Amended Judgment entered on February 25, 2005 to reflect the value of a British Pound to U.S. Dollars as the parties contracted, to wit, \$1.51 U.S. Dollars to a British Pound. If the Court should determine not to do so, then, in the alternative, and without waiving their objection thereto, Defendants pray that the Court will enter an amended or altered judgment as of the date the various Judgments were entered against the Defendant in the English courts, as set forth in Paragraph 11, *supra*, together with such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served this 9th day of March 2005, by first-class mail, postage prepaid, to the following parties:

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