

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

**THE SOCIETY OF LLOYD’S,** )  
 )  
 **Plaintiff,** )  
 )  
 v. )  
 )  
 **ROBERT W. FUERST, HORD HARDIN,** )  
 **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**

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION TO COMPEL  
DEFENDANT FUERST’S PRODUCTION OF DOCUMENTS  
AND APPEARANCE FOR A DEPOSITION**

**Introduction**

On July 12, 2004, the Court ordered summary judgment, recognizing and enforcing Plaintiff The Society of Lloyd’s (“Lloyd’s”) English judgments, in favor of Lloyd’s and against all Defendants. In addition, on July 12, 2004, the Court entered judgments against all Defendants, which were subsequently amended by the Court on February 25, 2005, and March 29, 2005, converting them from British pounds to U.S. dollars. Since August 2004, Lloyd’s has attempted to discover Defendants’ assets in its effort to collect the judgments. Lloyd’s has requested documents from all Defendants and noticed their asset depositions in St. Louis. Unfortunately, Defendant Fuerst has attempted to delay and frustrate Lloyd’s efforts to collect its judgment. As the Court is aware, certain Defendants, including Fuerst, had raised alleged 5<sup>th</sup> Amendment and Missouri Constitution privileges against self-incrimination. In addition, Fuerst and others attempted to have a Missouri state court find the Court’s judgments invalid and

unenforceable. Finally, they disputed the rate of conversion from British pounds to U.S. dollars used by the Court and attempted to amend the Judgments. Now Fuerst has failed to produce the requested documents in a timely manner and refuses to appear in St. Louis for his deposition, as previously noticed and agreed to by counsel. Therefore, Fuerst should be ordered to produce the requested documents immediately, appear for his deposition in St. Louis, within 14 days and pay Lloyd's its expenses, including attorneys' fees, incurred in bringing this motion.

**I. LLOYD'S HAS SERVED DEFENDANT FUERST WITH DOCUMENT REQUESTS AND NOTICES OF DEPOSITION**

Lloyd's attempts to procure documents and deposition testimony from Fuerst, is briefly described below:

- On August 30, 2004, Lloyd's served all Defendants, including Fuerst, with Requests for Production of Documents. (See Exhibit 1 attached).
- On September 7, 2004, Lloyd's served all Defendants, including Fuerst, with a Notice of Depositions and scheduled his deposition in St. Louis on October 22, 2004. (See Exhibit 2 attached). Fuerst never objected to being deposed in St. Louis.
- Fuerst, among others represented by Norman Pressman, responded to Lloyd's Requests for Production by refusing to produce documents claiming alleged protection under the 5<sup>th</sup> Amendment and the Missouri Constitution.
- On October 19, 2004, Mr. Hannafan attempted to depose Mr. Pressman's client John Shillington, but Mr. Shillington refused to answer any questions. Mr. Pressman told Mr. Hannafan, and subsequently the Court, that he would instruct all of his clients, including Fuerst, to refuse to answer any questions.
- On October 20, 2004, as a result of Mr. Pressman's statement that he would instruct all of his clients, including Fuerst, to refuse to answer any questions Mr. Hannafan and Mr. Pressman appeared before the Court regarding his clients' refusal to produce documents and answer deposition questions regarding their assets. Both Mr. Hannafan and Mr. Pressman filed briefs and presented arguments to the Court. (See Exhibit 3, Tr. of 10/20/04 hearing, attached). The Court held that Defendants, through the course of this matter, including filing affidavits, had waived the alleged privilege on many issues. (See Exhibit 3 at 26-27).

- In light of the Court's directions on October 20, 2004, Mr. Hannafan and Mr. Pressman agreed to postpone the remaining depositions, including Mr. Fuerst's, in St. Louis. (Exhibit 3 at 28-29).
- In March 2005, as discussed below, Mr. Pressman told Mr. Hannafan that his clients, including Fuerst, would produce documents, appear for depositions, and not assert their alleged 5<sup>th</sup> Amendment privilege.<sup>1</sup>
- On May 9, 2005, Richard Thames,<sup>2</sup> a Florida attorney also representing Fuerst, told Mr. Hannafan that Fuerst would produce documents and that he was available for his deposition the week of June 20, 2005. Based on this representation, on May 24, 2005, Mr. Hannafan sent Fuerst's counsel a Notice of Deposition for June 21, 2005, in St. Louis. (See Exhibit 4 attached).

Unfortunately, Fuerst has failed to produce the requested documents and his counsel has told Mr. Hannafan that Fuerst will not appear for a deposition in St. Louis, as previously noticed and agreed to by the parties. Instead, Fuerst is demanding that his deposition occur in Florida and it appears that Mr. Thames is attempting, again, to delay the date. (See Exhibit 5, May 25, 2005 letter, attached).

## **II. THE COURT SHOULD ORDER FUERST TO PRODUCE DOCUMENTS AND APPEAR FOR HIS DEPOSITION IN ST. LOUIS**

Fuerst and his counsel are intentionally attempting to delay and frustrate Lloyd's efforts to discover assets and collect a judgment that has been due and owing for several years. Federal Rule of Civil Procedure 37 provides that a party may file a motion to compel the production of documents and other discovery. Lloyd's has diligently attempted to work with Fuerst's counsel to procure the production of documents and the scheduling of an asset deposition. However, Fuerst has failed to produce the requested documents and has broken previous agreements to appear in St. Louis for his deposition.

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<sup>1</sup> In fact, Mr. Pressman's other clients, Defendants Cynthia Todorovich, Michael Todorovich and Walter Klein have produced some documents and been deposed by Mr. Hannafan in St. Louis.

<sup>2</sup> Richard Thames is an attorney from Jacksonville, Florida and has never filed an appearance in this matter.

**A. Lloyd's Requests For The Production Of Documents Relate To Fuerst's Assets And His Counsel Has Agreed To Produce Them**

As discussed earlier, Fuerst's counsel, Mr. Pressman, told Lloyd's in March 2005 that his clients, including Fuerst, would no longer assert their alleged 5<sup>th</sup> Amendment privilege to the production of documents regarding assets. However, Fuerst still has not produced any documents. On May 25, 2005, Mr. Thames sent Mr. Hannafan a letter (which he received on June 1) and stated that Fuerst is "collecting the documents." (See Exhibit 5 attached). During a phone conversation on May 9, 2005, Mr. Hannafan had requested that Mr. Thames produce Fuerst's documents within 2 weeks and he indicated that the production would occur within that time. Fuerst has offered no justification for his failure to collect and produce the documents that were requested in August 2004 and agreed to be produced by his counsel in March 2005.

**B. Fuerst's Counsel Is Attempting To Break Its Previous Agreement To Produce Fuerst In St. Louis For His Deposition**

Fuerst and his counsel's refusal to appear in St. Louis for a deposition is outrageous and sanctionable. Since approximately mid-March 2005, Mr. Pressman, during phone conversations and through e-mail with Mr. Hannafan, has agreed to produce Fuerst for a deposition in St. Louis. As shown in several attached e-mails, Mr. Hannafan and Mr. Pressman attempted to schedule Mr. Fuerst's deposition in St. Louis during the week of April 11, 2005, when Mr. Hannafan traveled to St. Louis to depose several other Defendants. There is no dispute that Mr. Pressman agreed to produce Fuerst in St. Louis as seen by the following:

- In his March 7, 2005, e-mail, in response to a phone call, Mr. Pressman stated: "Thanks for your call. I have written all five clients and expect to hear back from them in a week. I say *we should tentatively plan to do the depositions at your convenience during the week of April 11, 2005.*" (emphasis added) (See Exhibit 6 attached).<sup>3</sup>
- On March 14, 2005, Mr. Pressman stated: "Mr. Fuerst cannot make it until the end of April because of a medical condition. (Id.)."

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<sup>3</sup> Exhibit 6 includes several e-mails discussed below between Mr. Pressman and Mr. Hannafan.

- On March 21, 2005, Mr. Pressman stated: “Fuerst *can’t come for medical reason until the end of April* and that’s when I would want to do the rest.” (emphasis added). (Id.) Due to Fuerst’s “medical condition,” Lloyd’s agreed to postpone his deposition to late April or early May, at the same time as Defendant Klein’s deposition. (See Hannafan March 21, 2005, e-mail and Pressman March 31, 2005, e-mail (“I’d like to agree on April 26 and 27 for Fuerst’s and Klein’s depositions.”)).
- On April 4, 2005, Mr. Pressman e-mailed Mr. Hannafan and stated: “Will be in my office tomorrow with documents. I’ll see how [] voluminous the documents are. *Bob Fuerst is planning to be here [St. Louis] on the afternoon of April 26<sup>th</sup> for his deposition* and I’d like to confirm the time with you. *I’ll coordinate the Klein and Fuerst depo time with you so you can make one trip [to St. Louis].*” (emphasis added). (Id.). Mr. Hannafan called Mr. Pressman and told him that he could not depose Klein and Fuerst on April 26 and 27, but would come in early May, which they agreed upon.
- On May 2, 2005, Mr. Pressman e-mailed Mr. Hannafan and told him that “Fuerst has retain [sic] Florida Counsel who tells me he will produce Bob- I am being phased out” and that Mr. Thames was out of the office until May 9. (Id.)
- On May 9, 2005, Mr. Hannafan spoke with Mr. Thames to discuss the production of Fuerst’s documents and to schedule his deposition. Mr. Thames told Mr. Hannafan that he and his client would need a few weeks to produce them. In addition, Mr. Thames told Mr. Hannafan that, due to an upcoming trial, he could not produce Fuerst for a deposition until the week of June 20, 2005. Mr. Thames never stated that he would not produce Fuerst in St. Louis as previously agreed between counsel.
- On May 24, 2005, Mr. Hannafan sent Mr. Pressman and Mr. Thames a letter and a Notice of Deposition for Fuerst on June 21, 2005, at 10:00 a.m. in St. Louis. (See Exhibit 7 attached). In addition, as a courtesy, because Fuerst’s documents had not been produced, Mr. Hannafan sent Mr. Thames a copy of Lloyd’s August 2004 Document Requests. (Id.)
- During a phone conversation on May 31, 2005, Mr. Pressman told Mr. Hannafan that “there is going to be a fight over where the deposition will go” because Fuerst and Mr. Thames are in Florida. Mr. Hannafan reminded Mr. Pressman of his previous agreements to produce Fuerst in St. Louis. Mr. Pressman responded that because Fuerst now allegedly resides in Florida that Lloyd’s has to depose him there. Mr. Hannafan told Mr. Pressman that he was breaking their previous agreements and that Lloyd’s would file this Motion to Compel and seek its attorneys’ fees against him and Fuerst.
- On June 1, 2005, Mr. Hannafan received a May 25 letter from Mr. Thames stating that he would not produce Fuerst in St. Louis and indicating that he will likely attempt to delay the noticed date of June 21. (See Exhibit 5 attached).

**C. Fuerst Should Be Compelled To Appear For His Deposition In St. Louis**

The Eighth Circuit has held that “[i]t is well settled that the district court has great discretion in designating the location of taking a deposition.” *Thompson v. Sun Oil Co.*, 523 F.2d 647, 648 (8<sup>th</sup> Cir. 1975) (citing *Terry v. Modern Woodmen of America*, 57 F.R.D. 141 (W.D.Mo.1972)). In addition, Fed. R. Civ. P. 30(b) states that a notice of deposition “shall state the time and place for taking the deposition.” Lloyd’s September 2004 and May 2005 Notices of Deposition for Fuerst stated that his deposition would take place in St. Louis. There was never any objection to Lloyd’s September 2004 Notice of Deposition in St. Louis. Furthermore, on October 20, 2004, before the Court, the parties agreed to postpone them. (Exhibit 3 at 28-29).

The facts and circumstances of this case require that the Court order Fuerst to appear for his deposition in St. Louis. First, this case was filed and defended in St. Louis. Second, Lloyd’s noticed Fuerst’s deposition for October 22, 2004, in St. Louis, where he resided. Fuerst never objected to being deposed in St. Louis. Third, on October 20, 2004, the parties agreed to postpone the depositions, including Fuerst’s, in light of the Court’s directions regarding certain Defendants’ alleged privilege assertions. Fourth, Fuerst continued to fight Lloyd’s in St. Louis, including an attempt to have this Court’s July 12, 2004, Judgment found invalid and unenforceable. Fifth, as discussed earlier, Fuerst’s counsel and Lloyd’s counsel discussed on numerous occasions potential dates for his deposition in St. Louis and Fuerst’s counsel agreed to produce him St. Louis. (See Exhibit 6 attached). Finally, Fuerst and his counsel’s recent revelation that he resides in Florida and would not appear for his deposition in St. Louis is pure gamesmanship designed to delay and frustrate Lloyd’s attempts to collect its Judgment. Regardless of his current residence, Fuerst has not and cannot argue that he was not a resident of St. Louis when his deposition was noticed in September 2004, and in October 2004 when his

counsel agreed to postpone it. Therefore, he should be compelled to appear for his asset deposition in St. Louis as previously noticed and agreed to by the parties.

**D. The Court Should Order Fuerst And His Counsel To Pay Lloyd's Its Expenses, Including Attorneys' Fees, Incurred In Bringing This Motion**

Based on the foregoing, it is clear that Fuerst and his counsel believe that they can ignore the Federal Rules, break agreements with Lloyd's counsel and intentionally delay Lloyd's efforts to collect its Judgment without any consequences. Fortunately, Rule 37, entitled "Failure to Make Disclosure or Cooperate in Discovery; Sanctions," provides Lloyd's with recourse. Rule 37(a)(2)(B) provides:

If the motion [to compel] is granted or if the disclosure or requested discovery is provided after the motion is filed, the court *shall*, after affording an opportunity to be heard, *require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees*, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action. (emphasis added).

As discussed above, Lloyd's and its counsel have made several attempts to procure Fuerst's cooperation in discovery. However, he and his attorneys have intentionally and deliberately refused to cooperate in discovery. Therefore, assuming that Lloyd's Motion to Compel is granted, Rule 37 requires that the Court order Fuerst and his counsel to pay Lloyd's its expenses, including attorneys' fees, incurred in making this motion.

**Conclusion**

Based on the foregoing, Lloyd's prays that the Court enter an order compelling Fuerst to immediately produce the documents requested by Lloyd's, appear for his deposition in St. Louis within 14 days and order Fuerst and his counsel to pay Lloyd's expenses, including attorneys' fees, incurred in bringing this motion.

Respectfully submitted,

Blake T. Hannafan  
Blake T. Hannafan  
One of Plaintiff's attorneys

Dated: June 3, 2005

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**CERTIFICATE OF SERVICE**

I certify that on the 3<sup>rd</sup> day of June, 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; J. Talbot Sant, Jr., Armstrong Teasdale LLP, One Metropolitan Square, Suite 2600, St. Louis, MO 63102-2740; Harold Ilg 100 L'Ambiance Circle, Unit 202, Naples, FL 34108 and 16401 Ranchester Drive, Chesterfield, MO 63005.

/s/ Blake T. Hannafan