

**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

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

On June 6, 2005, Fuerst and his counsel, Norman Pressman, filed a short and disingenuous brief in response to Lloyd’s Motion to Compel Fuerst’s Production of Documents and Appearance for a Deposition in St. Louis. Lloyd’s Motion to Compel, pursuant to Rule 37(a)(4)(A), also seeks to recover its expenses, including attorneys’ fees, incurred in bringing its Motion to Compel.

In his Response Brief, Fuerst and his counsel suddenly changed their position and have now agreed to appear in St. Louis on June 21, 2005, for Fuerst’s deposition and “provide documents in response to the document request.” (Response Br. at 2). Unfortunately, while Lloyd’s Motion to Compel (and its request for expenses) has forced Fuerst and his counsel to repair their broken agreements, Fuerst and his counsel still will not agree to produce all responsive documents and deliver them in a timely manner to Lloyd’s lead counsel, Blake Hannafan, in Chicago. To date, Fuerst and his counsel continue to break their previous

agreements to deliver the documents to Mr. Hannafan. Furthermore, Fuerst and his counsel also ignore the plain language of Rule 37 which, as discussed below, requires the Court to order Fuerst and his counsel to pay Lloyd's its expenses, including attorneys' fees, incurred in bringing this motion despite their recent about-face to produce Fuerst for his deposition in St. Louis.

I. FUERST SHOULD BE COMPELLED TO IMMEDIATELY PRODUCE ALL RESPONSIVE DOCUMENTS TO LLOYD'S COUNSEL, AS AGREED, IN ADVANCE OF HIS DEPOSITION

Fuerst has not agreed to immediately produce all responsive documents in advance of his deposition or that he will deliver them to Mr. Hannafan, as requested and previously agreed. In fact, his counsel continues to break agreements to provide discovery. On May 25, 2005, Mr. Thames sent Mr. Hannafan a letter and stated "it is our understanding that the documents responsive to your August 31, 2004 request for production of documents are being gathered. *We'll get them to you upon receipt.*" (emphasis added) (See Exhibit 5 to Lloyd's Opening Br.). In light of Fuerst's Response Brief, his statement that he will produce documents, and Mr. Thames letter, on June 7, 2005, Mr. Hannafan sent a letter to Mr. Pressman asking him to confirm that Fuerst would deliver to his office all responsive documents by June 14, one week prior to Fuerst's deposition. (See Exhibit 1 attached).

Mr. Pressman never responded to Mr. Hannafan. Instead, on June 7, Mr. Pressman called Lloyd's local counsel, Martin Buckley, and told him that he would not send copies of Fuerst's documents to Mr. Hannafan's office in Chicago.¹ This is in stark contrast to previous discussions and Mr. Thames' agreement to deliver them to Mr. Hannafan. Mr. Pressman told Mr. Buckley that Lloyd's could come and review the documents at his office. Mr. Pressman also told Mr. Buckley that he would no longer communicate with Mr. Hannafan regarding this matter.

¹ With regards to Mr. Pressman's other clients, he has produced responsive documents to Mr. Hannafan in Chicago.

Mr. Buckley told Mr. Pressman that Mr. Hannafan is Lloyd's lead counsel and that he needs to discuss this matter with him. Mr. Pressman has refused to do so. Finally, on June 13, 2005, Mr. Hannafan called Mr. Pressman to discuss scheduling a deposition for another Defendant and asked Mr. Pressman to confirm that he would deliver Fuerst's documents to Mr. Hannafan's office by June 14.² Mr. Pressman told Mr. Hannafan that he would have the documents by then, but would not deliver them and that they would only be available in St. Louis at his office if Mr. Hannafan wanted to hire a copy service. Mr. Hannafan reminded Mr. Pressman that this was contrary to their previous agreements, Mr. Thames' May 25 letter and that, as Mr. Pressman knew, he needed the documents at least a week before Fuerst's deposition.

Mr. Pressman told Mr. Hannafan that Mr. Thames' agreement to deliver the documents to Mr. Hannafan in Chicago was "contingent" on Fuerst's deposition occurring in Florida. Mr. Thames' agreement to deliver them to Mr. Hannafan does not say it is "contingent" on anything and there was never any such agreement with Fuerst. (See Exhibit 5 to Lloyd's Opening Br.). This is merely another example of Fuerst's and his counsel's broken promises and illustrates their intentions to delay and frustrate Lloyd's attempts to collect its Judgment. Therefore, Lloyd's Motion to Compel and request for expenses should be granted.

II. FUREST AND HIS COUNSEL SHOULD BE ORDERED TO PAY LLOYD'S EXPENSES, INCLUDING ATTORNEYS' FEES, INCURRED IN BRINGING THIS MOTION

A. Rule 37(a)(4)(A) Provides For The Payment Of Expenses, Including Attorneys' Fees, In Situations Identical To This Matter

Federal Rule of Civil Procedure 37(a)(4)(A) states: "If the motion is granted *or if the disclosure or requested discovery is provided after the motion was filed*, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated

² See Affidavit of Blake T. Hannafan, attached as Exhibit 2.

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 attorneys' fees" (emphasis added). Fuerst and his counsel should be ordered to pay Lloyd's expenses for several reasons. First, Fuerst has not yet produced the requested discovery, but claims he will do so. Second, Fuerst now refuses to deliver the documents to Mr. Hannafan as previously agreed. Third, Rule 37(a)(4)(A) specifically provides that the Court should require Fuerst and his counsel to pay Lloyd's expenses, including attorneys' fees, in this exact situation; namely when a party decides to cooperate after the other party has exerted the time, effort and expense to file a motion to compel. Fuerst and his counsel cannot ignore the rules and then hope to escape the consequences when they realize that they will lose. Finally, Fuerst and his counsel continue to delay this matter and act uncooperatively.

B. Fuerst And His Counsel Make Several Disingenuous And Baseless Arguments

Fuerst's argument that Lloyd's did not comply with Local Rule 37-3.04 is baseless. Contrary to Fuerst's interpretation, Local Rule 37-3.04 requires a statement that movant's counsel has conferred with opposing counsel in good faith or made reasonable efforts to do so. In accordance with this rule, Lloyd's explained in great detail, including attaching e-mails and letters as exhibits, its counsel's numerous good faith communications with opposing counsel. (See Lloyd's Motion, Opening Br. at 2-5 and attached Exhibits).

As discussed in Lloyd's Opening Brief, 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 (Fuerst's Florida attorney) are in Florida. When Mr. Pressman was reminded of his previous agreements to produce Fuerst in St. Louis, he stated that Fuerst now lives in Florida and

Lloyd's counsel had to travel there to depose him.³ However, during that conversation, Mr. Hannafan told Mr. Pressman that because he was breaking their previous agreements that Lloyd's would file, by the end of the week (Friday, June 3), a motion to compel and seek attorneys' fees against Fuerst and him. Mr. Pressman assured Mr. Hannafan that Lloyd's Motion to Compel would be denied. Moreover, on June 1, Mr. Hannafan received Mr. Thames' letter refusing to produce Fuerst in St. Louis. (See Exhibit 5 to Lloyd's Opening Brief). In light of this letter, it was clear to Lloyd's that Fuerst was refusing to appear in St. Louis as previously agreed. Mr. Thames' letter also strongly indicated that he would attempt to delay Fuerst's deposition due to a pending trial. (Id.). Fuerst and his counsel decided to gamble and call Lloyd's bluff. Unfortunately for them, Mr. Hannafan kept his word and filed this motion as promised.

Fuerst's argument that the proper location for Fuerst's deposition is "a complicated issue which Mr. Fuerst does not chose [sic] to litigate at this time" is also meritless and contrary to his counsel's statement that there would be a "fight" over the location. (Fuerst Response Br. at n.1). 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 (8th Cir. 1975) (citing *Terry v. Modern Woodmen of America*, 57 F.R.D. 141 (W.D.Mo.1972)). In addition, Fuerst's argument that it is little burden for Lloyd's counsel to travel to Florida, as opposed to St. Louis, to depose Fuerst misses the point. (Fuerst Response at n.1). Fuerst had been noticed for his deposition in St. Louis and the parties had agreed to depose him there. Moreover, Lloyd's counsel has attempted to depose several Defendants, including Mr. Pressman's other clients, in this matter during one day or during one round trip to St. Louis.

³ Fuerst is correct that Mr. Pressman said that he would talk to Mr. Thames and try to respond by June 6.

Having to travel to Florida would unnecessarily cause Lloyd's to expend additional fees and expenses.

Finally, Fuerst's statements that he will only appear for a "reasonable length of time" and that he "is not willing to be intimidated or treated rudely at a deposition by Mr. Hannafan" is surprising. (Id.). Lloyd's is entitled to depose Fuerst in accordance with the Federal Rules and intends to do so. However, Fuerst's implication of "intimidation" and "rude treatment" are unfounded and no such acts have ever been raised by Mr. Pressman or other counsel, including Alan Kohn, Tal Sant and Theodore Williams, who have appeared in this matter. Likewise, Fuerst's suggestion of a master in this case for Fuerst's deposition is silly. The Court is familiar with this case and the issues that have been raised and previously decided, including several Defendants' attempt in Missouri state court to have the Court's judgments declared invalid and unenforceable.

C. Fuerst Has Not Offered Any Real Justification For His Refusal To Cooperate In Discovery

In accordance with Rule 37(a)(4)(A), Fuerst has had his opportunity to be heard on this issue. However, he has not offered any real justification for his and his counsel's refusal to cooperate in discovery in this matter. Fuerst completely ignores that he had failed to produce any documents as requested and that, on May 31, Mr. Hannafan had told Mr. Pressman that Lloyd's would file its Motion to Compel and seek sanctions by June 3. Fuerst and Mr. Pressman decided not to cooperate by then. Therefore, the Court should grant Lloyd's Motion to Compel and order Fuerst and Mr. Pressman to pay Lloyd's expenses, including attorneys' fees, incurred in bringing this motion.

Conclusion

Based on the foregoing reasons, and those discussed in Lloyd's Opening Brief, Lloyd's prays that the Court enter an order compelling Fuerst to immediately produce and deliver the documents requested by Lloyd's to Mr. Hannafan, 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
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One of Plaintiff's attorneys

Dated: June 13, 2005

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CERTIFICATE OF SERVICE

I certify that on the 13th 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