

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

The Society of Lloyd's,)
)
 Plaintiff,)
) Case No: 4:03CV0113 HEA
 vs.)
) **JURY TRIAL DEMANDED**
 Robert W. Fuerst, Hord Hardin II, Harold F.)
 Ilg, Walter A. Klein, Meade M. McCain,)
 John J. Scillington, Cynthia J. Todorovich)
 and Michael B. Todorovich,)
)
 Defendants.)

**DEFENDANT CYNTHIA J. TODOROVICH'S AMENDED ANSWER
TO PLAINTIFF'S COMPLAINT FOR RECOGNITION
OF FOREIGN MONEY JUDGMENT**

Defendant Cynthia J. Todorovich, by her attorney Ted F. Frapolli, hereby files the following Amended Answer together with Affirmative Defenses to Plaintiff's Complaint for Recognition of Foreign Money Judgment:

1. Admitted in part; denied in part. Admitted that a money judgment was purportedly entered against Defendant Cynthia J. Todorovich ("Todorovich") in favor of The Society of Lloyd's ("Lloyd's") in the "English Court". Said judgment was improper for all the reasons set forth in the Affirmative Defenses asserted herein. Denied that there were premiums "due and owing" from Todorovich to Lloyd's or to Equitas Reinsurance Ltd. ("Equitas"). Defendant Todorovich denies that Missouri Revised Statute §511.770 *et seq.* and principles of comity allow recognition of the "English Judgments" for all the reasons set forth in the Assertive Defenses herein.

2. Admitted upon information and belief that Lloyd's is a corporation organized and existing under the laws of the United Kingdom with a principal place of business in London,

England. Also admitted that Lloyd's has solicited "Names" in groups known as syndicates to underwrite and fund its insurance market. Todorovich is without sufficient knowledge or information to form a belief as to the remaining averments and these are denied.

3. Defendant Todorovich does not have information in regards to the truthfulness of the allegations.

4. Defendant Todorovich denies that Hord Hardin II is a resident of the State of Missouri.

5. Defendant Todorovich does not have information in regards to the truthfulness of the allegations.

6. Defendant Todorovich does not have information in regards to the truthfulness of the allegations.

7. Defendant Todorovich does not have information in regards to the truthfulness of the allegations.

8. Defendant Todorovich does not have information in regards to the truthfulness of the allegations.

9. Admitted.

10. Admitted.

11. Admitted.

12. Defendant Todorovich denies that venue is proper in this District under 28 U.S.C. § 1391(a)(1) because not all judgment debtors reside in the State of Missouri and within this District.

13. Admitted that Todorovich funded and underwrote policies of insurance pursuant to the Lloyd's Acts. Further admitted that Todorovich conducted her business through agents who owed Todorovich contractual and fiduciary duties of care and loyalty which duties said agents blatantly

and completed violated.

14. Admitted that Lloyd's required that each of the Names sign certain agreements; denied that these agreements were valid or binding for the reasons set forth in the Affirmative Defenses asserted herein.

15. Admitted that the alleged contract contains the quoted language. Denied that the contract is enforceable or that Todorovich "has not yet fully satisfied all of her underwriting obligations" for the reasons set forth in the Affirmative Defenses asserted herein.

16. The Appellate decisions set forth in paragraph 16 speak for themselves and no response is required herein, save that Plaintiff appears to suggest to this Honorable Court that there is no to exercise its judicial duties, a suggestion which violates the rich tradition of this Honorable Court. It is denied, however, that the General Undertaking is valid and enforceable for the reasons set forth in the Affirmative Defenses asserted herein.

17. Admitted that the Names including Todorovich incurred significant losses; these losses were not due to any fault of the Names but instead were due to Lloyd's fraudulent actions as more particularly set forth in the Affirmative Defenses asserted herein. It is denied that Todorovich "defaulted" on any obligations to Lloyd's for the reasons set forth in the Affirmative Defenses. Todorovich is without sufficient knowledge or information to form a belief as to the truth of the remaining averments.

18. Admitted in part; denied in part. Admitted that Lloyd's attempted to force the Names into a reinsurance program including payment of additional premiums. Denied that the reinsurance program was for the benefit of the Names; instead, the reinsurance program was a means of purporting to ensure Lloyd's continued viability while extracting yet additional sums from the

Names. It is also denied that the so-called “Settlement Offer” was in reality a settlement offer, since it did not unequivocally extinguish the Names’ potential liabilities to Lloyd’s and contained other terms unacceptable to Todorovich. Todorovich is without sufficient knowledge or information to form a belief as to the truth of the remaining averments.

19. Admitted that Todorovich did not accept the “Settlement Offer”; Todorovich is without sufficient knowledge or information to form a belief as to the remaining averments, including the “full amount of Equitas Premium due and owing to reinsure her outstanding underwriting liabilities...” particularly since Lloyd’s has failed to provide any accounting of how Todorovich’s premiums were allegedly calculated.

20. Todorovich is without sufficient knowledge or information to form a belief as to the truth of these averments and accordingly these are denied.

21. Defendant Todorovich is without sufficient information to admit or deny the allegations contained in paragraph 21, and therefore denies same.

22. Defendant Todorovich has no knowledge as to the allegations contained in paragraph 22, and therefore denies same.

23. Defendant Todorovich is without sufficient knowledge or information to form a belief as to whether or not service was accomplished and/or proper under English Law, and therefore denies same.

24. Admitted in part; denied in part. Admitted that the English Court apparently rejected all of Todorovich’s defenses; denied that Todorovich a “full opportunity” to present and litigate her defenses.

25. Admitted that claims of fraud were asserted by Lloyd’s and that a trial occurred in

which judgment was entered in favor of Lloyd's and confirmed by the English Court of Appeals; however, Defendant Todorovich denies that the English Court afforded "due process" and the opportunity to fully litigate its claims due to procedural and due process deficiencies.

26. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

27. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

28. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

29. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

30. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

31. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

32. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

33. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

34. It is denied that the judgment is "final, conclusive and fully enforceable" since the judgment is improper for the reasons set forth in Todorovich's Affirmative Defenses. It is denied that Todorovich owes any sums to Lloyd's as the judgment is improper for the reasons set forth

herein and in Todorovich's Affirmative Defenses.

35. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

36. Said allegation is not directed to this Defendant and Defendant is without sufficient knowledge to admit or deny same.

37. Denied.

38. Admitted that Lloyd's has no other alleged judgments against Defendant Todorovich. Further, it is admitted that Lloyd has not entered into any agreement with this Defendant pursuant to which the disputes over payment of the Equitas premium was settled.

COUNT I

39. The averments of paragraphs 1 through 38 are incorporated herein by reference as though set forth *in extenso*.

40. The Missouri Uniform Foreign Money-Judgments Recognition Act speaks for itself and no response is required herein, but this Defendant denies that Plaintiff's judgment pleaded in its Complaint is conclusive or enforceable under said Act.

41. The Missouri Uniform Foreign Money-Judgments Recognition Act speaks for itself and no response is required herein, but this Defendant denies that Plaintiff's judgment pleaded in its Complaint is conclusive or enforceable under said Act.

42. Denied.

43. Denied that the English Court had proper jurisdiction over Defendant, since the "agreement" to submit to jurisdiction was procured by fraud and the purported "agent" was unilaterally appointed by Lloyd's with no input from Todorovich. Further, the "agent" breached his

fiduciary duty to this Defendant and acted outside the scope of his authority and in violation of Missouri law.

44. Denied. The Missouri Uniform Foreign Money-Judgments Recognition Act speaks for itself and no response is required herein, but this Defendant denies that Plaintiff's judgment pleaded in its Complaint is conclusive or enforceable under said Act. It is specifically denied, however, that this Court should enforce the English judgment.

45. The Appellate decisions set forth in paragraph 45 speak for themselves and no response is required herein, save that Plaintiff appears to suggest to this Honorable Court that there is no to exercise its judicial duties, a suggestion which violates the rich tradition of this Honorable Court. It is denied, however, that the General Undertaking is valid and enforceable for the reasons set forth in the Affirmative Defenses asserted herein.

COUNT II

46. The averments of paragraphs 1 through 45 are incorporated herein by reference as though set forth *in extenso*.

47. The Missouri Uniform Foreign Money-Judgments Recognition Act and Federal law speak for themselves and no response is required herein, but this Defendant denies that Plaintiff's judgment pleaded in its Complaint is conclusive and enforceable under said Act. It is specifically denied, however, that this Court should recognize or enforce the English judgment against Defendant Todorovich.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

At the time of the General Undertaking and other transactions between Todorovich and Lloyd's, Lloyd's represented to the Names including Todorovich that participating in the syndicates would be a profitable venture, while knowingly concealing and/or misrepresenting the significant potential liability and risks which the Names would incur through participation in the Lloyd's syndicates, particularly due to the enormous liability then being faced in the Lloyd's insurance market due to asbestos claims. Accordingly, Plaintiff's claim is barred since the General Undertaking and other contracts between Lloyd's and Todorovich, as well as participation in the reinsurance program, were procured by misrepresentation, fraud, fraud in the inducement, knowing concealment and/or non-disclosure, and/or negligent misrepresentation.

THIRD AFFIRMATIVE DEFENSE

As a consequence of all of the foregoing, Plaintiff's claim is barred in whole or in part by the doctrines of fraud, illegality, duress and/or estoppel.

FOURTH AFFIRMATIVE DEFENSE

The judgment obtained by Lloyd's against Todorovich should not be recognized and/or enforced by this Court since same was entered by the English Court without affording Todorovich her due process rights as recognized under the laws of England, the Constitution and laws of the United States, the Constitution and laws of the State of Missouri and other duly recognized rights, including failing and/or refusing to recognize Todorovich's substantial and valid defenses to the English judgments including the substantial evidence of fraud by Lloyd's.

FIFTH AFFIRMATIVE DEFENSE

The judgment obtained by Lloyd's against Todorovich should not be recognized and/or enforced by this Court since Lloyd's has not provided an accounting of how said judgment amount was calculated, has not traced its alleged damages to any particular undertaking or risk, and has not provided any evidence of how the amount allegedly due and owing was arrived at.

SIXTH AFFIRMATIVE DEFENSE

The judgment obtained by Lloyd's against Todorovich should not be recognized and/or enforced by this Court since Todorovich never consented to participation in the reinsurance program and payment of the Equitas premiums.

SEVENTH AFFIRMATIVE DEFENSE

The judgment obtained by Lloyd's against Todorovich should not be recognized and/or enforced by this Court since the contracts at issue, including participation in the reinsurance program, constituted a contract of adhesion and were not the product of arms-length transaction, and were the product of a breach of fiduciary duty and loyalty of agents appointed by Lloyd's.

EIGHTH AFFIRMATIVE DEFENSE

Todorovich has already incurred significant losses due to participation in the Lloyd's syndicates and her forced participation in the reinsurance program, including significant losses due to Plaintiff's fraud; accordingly, Plaintiff's judgment, to the extent any valid judgment exists, is subject to the defenses of offset and/or recoupment.

NINTH AFFIRMATIVE DEFENSE

Todorovich did not receive the benefit of the General Undertaking or of participation in the reinsurance program; and accordingly Plaintiff's claim is barred in whole or in part by the failure and/or want of consideration.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by its own assumption of the risk, and contributory and/or comparative negligence.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by its breach of the duty of good faith and fair dealing, breach of its fiduciary duty and breach of its duty of loyalty.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by its own failure to perform.

THIRTEENTH AFFIRMATIVE DEFENSE

Todorovich has paid all sums validly due and owing to Lloyd's, and therefore Plaintiff's action is barred in whole or in part by the doctrines of accord and satisfaction, payment, release and/or waiver.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that the actions of the so-called "agent" of this Defendant exceeded her authority and acted in violation of Missouri law.

SIXTEENTH AFFIRMATIVE DEFENSE

Enforcement of the Lloyd's judgment from the "English Courts" is against Missouri Public Policy in that Lloyd and its agents committed a fraud upon this Defendant and the general undertaking was the product and result of a fraudulent misrepresentation, reasonably relied upon by this Defendant, and resulted in damage and harm to this party.

SEVENTEENTH AFFIRMATIVE DEFENSE

Lloyd's is estopped from enforcing the judgment due to certain allegations set out in this Answer.

EIGHTEENTH AFFIRMATIVE DEFENSE

As an affirmative defense, this Defendant states that the enforcement of the general undertaking is unconscionable and therefore unenforceable in that there is an undue harshness in its terms due to the facts stated herein.

NINETEENTH AFFIRMATIVE DEFENSE

The change of the forum selection clause during the business relationship between Plaintiff and Defendant was without consideration.

TWENTIETH AFFIRMATIVE DEFENSE

As an additional affirmative defense, Defendant alternatively pleads that as to the forum selection clause:

- (a) Plaintiff misrepresented the Undertaking signed by this Defendant as to the extent and existence of the forum selection clause; or

- (b) Plaintiff materially mislead Defendant by failing to advise Defendant of the nature, purpose, oppressive and intentionally fraudulent intent behind said forum selection clause.

TWENTY-FIRST AFFIRMATIVE DEFENSE

As an additional affirmative defense, Plaintiff's Complaint should be dismissed for improper venue pursuant to 28 U.S.C. § 1391(a) in that, upon information and belief, Defendant Hord Hard II is not a Missouri resident, but resides in Michigan and was not subject to personal jurisdiction in this Judicial Circuit when the action was commenced.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Pursuant to an Agreement between Plaintiff and various State Securities Regulators dated July 11, 1996 ("State Agreement") as modified by a Supplemental Agreement dated September 24, 1996, Defendant could choose as his finality obligation the lowest amounts shown in his indicative finality statements of March and June 1996 and the finality statement of July 1996. Further, Plaintiff did not comply with the conditions of said State Agreement to notify this Defendant of said offer to settle. Therefore, should this Court find Defendant liable for the sums Plaintiff seeks, that amount should be the lowest amount shown in this Defendant's statements of March and June 1996 and the finality statement of July 1996.

WHEREFORE, Cynthia Todorovich respectfully requests that this Honorable Court dismiss Plaintiff's action and enter judgment in Cynthia Todorovich's favor and against Lloyd's together with costs, fees and such other sums as may be awarded.

