EXHIBIT 2

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THE SOCIETY OF LLOYD'S Plaintiff, v. BAMBI BYRENS, ET AL. Defendants.	Civil No. 02CV449-J (AJB) **ORDER:** **(1) DENYING DEFENDANT LEBOLT'S MOTIONS TO DISMISS AND TO STAY DISCOVERY AND RULE 26(a) DISCLOSURES; and** **(2) GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.** [Doc. Nos. 39, 97]

Plaintiff, the Society of Lloyd's ("Lloyd's"), has filed an action in this Court to enforce an English judgment pursuant to the Uniform Foreign Money-Judgments Recognition Act, Cal. Civ. Proc. Code §§ 1713 et seq. Defendant John Michael Lebolt moves to dismiss the Complaint for lack of personal jurisdiction and to stay discovery and Federal Rule of Civil Procedure 26(a) disclosures pending outcome. The Court determined the issues in question are appropriate for decision without oral argument. *See* Civil Local Rule 7.1(d)(1). For the reasons set forth below, the Court **DENIES** Defendant's Motions to Dismiss for Lack of Personal Jurisdiction and to Stay Discovery and Rule 26(a) Disclosures, and **GRANTS** Plaintiff's Motion for Summary Judgment.

Factual Background[1]

Pursuant to the *Lloyd's Acts* 1871-1982 ("Lloyd's Acts"), the British Parliament granted Lloyd's the authority to regulate and oversee the English insurance market. *Separate Statement of Material Facts in Support of Pl.'s Mot. for Summ. J.* (*"SSMF"*) ¶ 1. Lloyd's itself is not an insurer and does not insure risks. *Id.* Rather, insurance underwriters, which are organized into groups known as "syndicates," offer insurance and reinsurance of risks. *Id.* ¶ 2. Each syndicate is controlled by a Managing Agent who is responsible for attracting capital to insure the underwritten risks and supervising all underwriting activities . *Id.* ¶ 6. *See Richards v. Lloyd's of London*, 135 F.3d 1289, 1291 (9th Cir. 1998).

The money used to fund each syndicate comes from outside investors, commonly known as "Names." *SSMF* ¶ 2. Prior to becoming a Name in the Lloyd's market, one must execute a contract known as the "General Undertaking." *Id.* ¶ 5. Under this Agreement, each Name agrees (1) to comply with the provisions of the Lloyd's Acts, as well as any bylaws or regulations promulgated thereunder in connection with his or her membership of and underwriting at Lloyd's; and (2) to submit any dispute arising out of or relating to membership of and underwriting insurance business at Lloyd's for resolution by the English court pursuant to English law. *Id.* ¶¶ 5, 6.

The Names do not deal directly with Lloyd's or any of the underwriters, but must rely on Members' Agents for investment advice within the market. *See Richards*, 135 F.3d at 1292. Despite being a passive investor, each Name "accepts a certain amount of the premium paid for an insurance policy and is also assigned a correspondent *pro rata* share of the insurance risk." *Soc'y of Lloyd's v. Webb*, 156 F. Supp. 2d 632, 634 (N.D. Tex. 2001), *aff'd sub nom., Soc'y of Lloyd's v. Turner*, 303 F. 3d 325 (5th Cir. 2002). Although each Name is only responsible for a share of the syndicate's losses, "his [or her] liability is unlimited for that share." *Richards*, 135 F.3d at 1292. Nonetheless, so long as the amount paid for the *pro rata* share of expenses and

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[1] Most of this background information is taken from an Order issued by the Court that involves a factually similar case concerning the same Plaintiff and different defendants. *Soc'y of Lloyd's v. Blackwell*, 02CV448-J (AJB), Order Granting Pl.'s Mot. for Summ. Judgment (Feb. 26, 2003).

claims does not exceed the amount of premium and earned investment income, an investment in the Lloyd's market can be profitable. *See Webb*, 156 F. Supp. 2d at 634. As a result, approximately 10,000 United States residents found underwriting in Lloyd's market to be an attractive investment opportunity. *See Id.* at 635. Lebolt became a Name on October 13, 1972 and continued his relationship with Lloyd's until his resignation in December 1986. *Demery Decl.* ¶ 3; *Lebolt Decl.* ¶ 2; *SSMF* ¶ 3.

Lloyd's experienced an increase in asbestos and toxic tort claims in the early 1980s. *Webb*, 156 F. Supp. 2d at 635. Information about these claims, however, apparently was never distributed to the Names. *Id.* Concurrent with the rise of these claims, Lloyd's successfully lobbied Parliament for passage of the Lloyd's Act, an act "grant[ing] Lloyd's and its governing body extraordinary bylaw-making powers and immunity." *Id.* In return, Lloyd's agreed to "provid[e] better quality information to prospective Names." *Id.* By the early 1990s, Lloyd's market incurred substantial losses, totaling approximately £8 billion. *Id.*

To resolve the growing crisis relating to the "huge underwriting losses that threatened to destroy the London insurance market," *Soc'y of Lloyd's v. Ashenden*, 233 F.3d 473, 478 (7th Cir. 2000), Lloyd's established the Reconstruction and Renewal ("R&R") Plan in 1996. *SSMF* ¶ 7. Under the R&R plan, Lloyd's required Names to purchase reinsurance for any outstanding obligations prior to 1993 from a newly formed company, Equitas Reinsurance Ltd. ("Equitas"), through an appointed substitute agent. *Id.* ¶ 8. While preserving the right of insureds "to collect the proceeds from their insurance policies," the reinsurance also "protect[ed] the names from unlimited personal liability for the underwriting losses." *Ashenden*, 233 F.3d at 478. According to Lloyd's, the cost of reinsuring each Name's pre-1993 liabilities was individually calculated and charged to a given Name. *SSMF* ¶ 8.

In accordance with Lloyd's by-law powers under the Lloyd's Acts, Lloyd's appointed a substitute agent to execute the Equitas reinsurance agreement on behalf of the Names. *See Webb*, 156 F. Supp. 2d at 636. Consequently, Lebolt was contractually obligated to pay a premium to Equitas. The contract with Equitas contained a Service of Process Clause. *Demery Decl.* ¶ 5. By signing the contract, Lebolt irrevocably appointed Additional Underwriting

Agencies (No. 9) Limited ("AUA9") as his agent to accept service on his behalf for proceedings conducted in English courts. *Id.* In addition to the mandatory Equitas reinsurance, the R&R plan provided an *optional* offer of settlement ("Settlement Offer") to each Name with pre-1993 liabilities to terminate litigation and assist the Names with satisfying their obligations. SSUMF ¶¶ 8, 9. The Settlement Offer included individually calculated credits that were to be used to offset any underwriter liabilities, including the Equitas premium. *Id.* ¶ 98 Less than five percent of all Names, including Lebolt, refused to accept the optional Settlement Offer. *Id.* ¶ 11. Moreover, Lebolt refused to make payments under the mandatory Equitas agreement, which were due no later than September 30, 1996. *Id.*

Because some Names refused to comply with the Equitas agreement and pay their premiums, Lloyd's brought actions ("English Actions") against Names, including Lebolt, on November 18, 1996. *Demery Decl.* ¶ 4. In the English Actions, Lloyd's sought payment of the Equitas premiums and any unpaid interest and costs. *Id.* AUA9, the agent authorized to receive service of process on behalf of Lebolt, was duly served a Writ of Summons notifying Lebolt of the action on May 23, 1997. *Id.* ¶ 5, Ex. B at 9 ¶ 3; Def.'s Opp'n at 3. On May 28, 1997, AUA9 forwarded the Writ of Summons and form for Acknowledgment of Service to Lebolt's last known address:

> 7240 North Street Louis Street
> Skokie
> Illinois
> IL 60076
> USA

Demery Decl. ¶ 5, Ex. C at 16. Lebolt says he never received notice of the action or ever resided or maintained a business at the address in Skokie, Illinois. *Lebolt Decl.* ¶¶ 4, 5.

Lebolt did not contest any of Lloyd's claims in the English proceedings. *Demery Decl.* ¶ 5. On June 24, 1997, the English Court entered a default judgment in favor of Lloyd's against Lebolt. *SSMF* ¶ 15. Lebolt has not appealed the judgment or filed for a stay to prevent its enforcement. *Id.* ¶ 22. Interest has been accruing at the rate of 8% since judgment was entered. *Id.* Lebolt has not satisfied the judgment. *Id.* ¶ 24.

On March 8, 2002, Lloyd's filed a Complaint in this Court to enforce the English judgments pursuant to the Uniform Foreign Money-Judgments Recognition Act, Cal. Civ. Proc. Code §§ 1713 et seq. Lloyd's has filed identical actions across the nation. *See Turner*, 303 F.3d 325; *Ashenden*, 233 F.3d 473; *Soc'y of Lloyd's v. Grace*, 278 A.D.2d 169 (N.Y. App. Div. 2000). On October 1, 2002, Lebolt, the sole remaining defendant in this case, moved to dismiss for lack of personal jurisdiction. The motion has been fully briefed and has been under submission pending settlement negotiations. *Order Following Case Management Conference* (May 20, 2003) at 2.

Discussion

I. Motion to Stay Discovery and Rule 26(a) Disclosures

As an initial matter, the motion to Stay Discovery and Rule 26(a) Disclosures is DENIED because it is moot. Discovery has not yet been ordered in this case because of pending settlement negotiations. The Case Management Conference has been continued to July 16, 2003. *Order Following Case Management Conference* (May 20, 2003) at 2.

II. Motion to Dismiss for Lack of Personal Jurisdiction

Defendant submits the principal ways to exercise personal jurisdiction over a party are by consent, domicile in the forum, service within the forum and minimum contacts. *Def.'s Mem. of P. & A.* at 5. He argues the Court may not exercise jurisdiction over him because he did not consent to suit, he is not domiciled in California and he was not served within the state. *Id.* Defendant contends there is no general jurisdiction because he does not engage in substantial, continuous or systematic activities within the state. *Id.* at 6. He argues there is no specific jurisdiction because he did not have minimum contacts with California anytime during the sixteen year period of his business relationship with Lloyd's. *Id.* at 5. Defendant claims he currently has only an attenuated connection to California. Following termination of his business relationship with Lloyd's, Defendant purchased and currently owns residential property in northern California for investment purposes. *Id.* at 5-6. Defendant does not believe he has minimum contacts with the forum. *Id.* at 6.

Plaintiff argues Defendant is subject to personal jurisdiction in California on the basis of quasi in rem jurisdiction because Plaintiff has obtained a valid judgment against the Defendant. *Pl.'s Opp'n* at 1; *see Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1127 (2002). Plaintiff wishes to enforce the judgment by attaching Defendant's property. *Pl.'s Opp'n* at 1. Both Plaintiff and Defendant have identified one of Defendant's assets in the forum to satisfy the judgment. *Id.* at 2.

Defendant claims quasi in rem jurisdiction is not valid in this case because judgment was not rendered in a court of competent jurisdiction in the United States. *Def.'s Reply* at 2. He argues the ownership of chattel alone without minimum contacts cannot be a basis for jurisdiction because it violates the due process standards elaborated in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and *Shaffer v. Heitner*, 433 U.S. 186 (1977). *Id.* at 4. Thus, the parties disagree whether the Court has personal jurisdiction over Lebolt because he owns property in the state.

Quasi in rem jurisdiction is a form of personal jurisdiction based upon the defendant's ownership of property in the forum. *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 621 (1990). "Quasi in rem jurisdiction...and in personam jurisdiction, are really one and the same and must be treated alike." *Id.*; *see Shaffer*, 433 U.S. at 212 ("The fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification"). It allows a plaintiff to assert jurisdiction over a person's interests in specific property. *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958). The exercise of jurisdiction over a defendant's property allows a plaintiff to apply the defendant's interest in the property toward satisfaction of the plaintiff's claim. *See Glencore*, 284 F.3d at 1127, n.8. (citing *Hanson*, 357 U.S. at 246 n.12).

The exercise of quasi in rem jurisdiction must comport with the due process requirements set forth in the minimum contacts test of *International Shoe*. *Shaffer*, 433 U.S. at 212; *In re San Vicente Medical Partners, Ltd.*, 962 F.2d 1402, 1407-08 (9th Cir. 1992). The due process requirements are not aimed at helping a defendant escape enforcement of a judgment if that defendant, for example, removes the subject property to a forum that does not have personal

jurisdiction over the defendant. *Id.* at 210 (quoting Restatement (Second) of Conflict of Laws§ 66, Comment a.1). The Supreme Court and the Ninth Circuit recognize that a judgment may be enforced in a forum where the defendant owns property even if that property is not the subject of the underlying controversy. *Glencore*, 284 F.3d at 1127.

> Once it has been determined by *a court of competent jurisdiction that the defendant is a debtor of the plaintiff*, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.

Shaffer, 433 U.S. at 210 n.36 (emphasis added); *Glencore*, 284 F.3d at 1127. If the judgment is rendered in a forum that comports with the due process standards of *International Shoe*, then the forum trying to enforce the judgment "should have jurisdiction to attach that property." *Shaffer*, 433 U.S. at 209. Thus, if a court of competent jurisdiction has determined a defendant to be a debtor of the plaintiff, allowing jurisdiction in another forum to enforce the judgment remains within the parameters of due process.

Defendant, citing to *Glencore*, states that quasi in rem jurisdiction may be exercised if a court of competent jurisdiction *in the United States* renders a valid judgment against a defendant. However, there is no language in *Glencore* that supports this assertion. There must simply be *a court* of competent jurisdiction. Furthermore, the Full Faith and Credit Clause prevents debtors from escaping enforcement of judgments because it permits a valid judgment rendered in one state to be enforced in another. *Shaffer*, 433 U.S. at 210. Full faith and credit incorporates the same principles as comity, which allows for recognition of foreign courts as courts of competent jurisdiction. *See* Cal Code Civ. Proc. § 1713.3 ("The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit"); *see also Growe v. Emison*, 507 U.S. 25, 35 (1993) (full faith and credit is founded on the principles of federalism and comity); *see also Hilton v. Guyot*, 159 U.S. 113, 166-67 (1895) (judgments rendered in foreign courts of competent jurisdiction may be enforced in U.S. courts); *see also In re Hashim*, 213 F.3d 1169, 1171-72 (9th Cir. 2000) (noting Arizona law may recognize a foreign judgment in the same way it recognizes a judgment from another state).

Whether or not California is the most convenient forum for Defendant does not bear on the issue of whether jurisdiction may be exercised over Defendant in California.

Given the foregoing reasons, Defendant clearly is subject to personal jurisdiction in California on the basis of quasi in rem jurisdiction. Therefore, Defendant's motion to dismiss is DENIED.

III. Motion for Summary Judgment

A. Legal Standard

Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). One of the principal purposes of the rule is to dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

A moving party who bears the burden of proof at trial is entitled to summary judgment only when the evidence indicates that no genuine issue of material fact exists. Fed. R. Civ. P. 56(c); *Celotex*, 477 U.S. at 324. If the moving party does not bear the burden of proof at trial, he may discharge his burden of showing that no genuine issue of material fact remains by demonstrating that "there is an absence of evidence to support the non-moving party's case." *Id.* at 325. The moving party is not required to produce evidence showing the absence of a genuine issue of material fact on such issues, nor must the moving party support its motion with evidence negating the non-moving party's claim. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 885 (1990). Instead, "the motion may, and should, be granted so long as whatever is before the District Court demonstrates that the standard for the entry of judgment, as set forth in Rule 56(c), is satisfied." *Id.* (quoting *Celotex*, 477 U.S. at 323).

Once the moving party demonstrates either no genuine issue of material fact remains or there is an absence of evidence to support the non-moving party's case, the burden shifts to the party resisting the motion, who "must set forth specific facts showing that there is a genuine

issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). It is not enough for the party opposing a properly supported motion for summary judgment to "rest on mere allegations or denials of his pleadings." *Id.* Genuine factual issues must exist that "can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Id.* at 250.

B. Application

The question of law before this Court is whether the English judgment should be enforced pursuant to the Uniform Foreign Money-Judgments Recognition Act ("UFMJRA"). The UFMJRA ensures that United States money-judgments are recognized abroad because enforcement in several foreign nations depends upon reciprocity. *See* Jay M. Zitter, Annotation, *Construction and Application of Uniform Foreign Money-Judgments Recognition Act*, 88 A.L.R. 5th 545, 561 (2001). Accordingly, the majority of states have adopted the UFMJRA. Many states, including California, Texas, and Illinois, utilize substantially similar, if not identical, language. *See* Cal. Civ. Proc. Code §§ 1713 *et seq.* (West 1982); Tex. Civ. Prac. & Rem. Code Ann. § 36.001 *et seq.* (Vernon 1997); 735 Ill. Comp. Stat. Ann. 5/12-618 *et seq.* (West 1992).

Because jurisdiction in this Court rests upon diversity of citizenship, the substantive law of California should be applied to determine the effect of the foreign judgment. *See Bank of Montreal v. Kough*, 430 F. Supp. 1243, 1246 (N.D. Cal. 1977) (citing *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938)). Under California's adoption of the UFMJRA, "[a] foreign judgment [that is final and conclusive] is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit." Cal. Civ. Proc. § 1713.2. A foreign judgment is not conclusive, however, if "[t]he judgment was rendered under a *system* which does not provide impartial tribunals or procedures compatible with the requirements of due process of law." *Id.* § 1713.4(a)(1) (emphasis added). Moreover, a foreign judgment need not be recognized if "[t]he cause of action or defense on which the judgment is based is repugnant to the public policy of [California]." *Id.* § 1713.4(b)(3).

The Ninth Circuit has not resolved who carries the burden in foreign judgment enforcement actions. *See Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1409 (9th Cir. 1995)

(holding that "while the issue is extremely interesting, we need not resolve at this time...whether [the defendant] had to put in sufficient evidence to sustain a defense or whether [the defendant] had only to point to weaknesses in the [plaintiff's] case..."). Nonetheless, the court noted that "a strong argument can be made that a claimed lack of due process should be treated as a defense[,]...[which] would be consistent with the view of the leading commentary." *Id.* (citing 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1271 (2d ed. 1990)). Accordingly, the Court finds that Lebolt carries the burden of demonstrating that the English judgments should not be enforced and that he has not met that burden.

Lebolt does not argue that the default judgment offends California's public policy.[2] Rather, he argues that the default judgment cannot be enforced because although his designated agent for service of process was in fact served, the agent did not forward the documents to the correct address. Both parties agree that AUA9, Lebolt's appointed agent to receive service, received the Writ of Summons. *Demery Decl.* ¶ 5, Ex. B at 9 ¶ 3; Def.'s Opp'n at 3. Lebolt says

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[2] Pursuant to Cal. Civ. Proc. Code § 1713.4(b)(3), it is within the Court's *discretion* to decline recognition foreign money-judgments if "[t]he *cause of action* or defense on which the judgment is based is repugnant to the public policy of [California]." An underlying cause of action is contrary to public policy if it "violate[s] some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal.'" *Metro. Creditors Serv. of Sacramento v. Sadri*, 19 Cal. Rptr. 2d 646, 648 (Ct. App. 1993). The Ninth Circuit has noted that "the [public policy] exception should be interpreted narrowly, [] for 'few judgments fall in the category of judgments that need not be recognized because they violate the public policy of the forum.'" *In re Hashim*, 213 F.3d at 1172. *See also Webb*, 156 F. Supp. 2d at 643 (stating that "the level of contravention of [state] law has to be high" in order to "deny a judgment based on a public policy argument"). Accordingly, California courts have found foreign judgments and causes of actions to be in violation of public policy in very limited circumstances.

Lloyd's is enforcing a judgment for breach of a reinsurance contract. No California court has found such a cause of action and result to violate public policy. In addition, four other courts, in recognizing and enforcing judgments concerning the Equitas Agreement, have rejected public policy arguments. *Ashenden*, 1999 WL 284775 at **26-27 (N.D. Ill. Apr. 23, 1999) (enforcing English court judgment does not violate public policy), *aff'd*, 233 F.3d 473 (7th Cir. 2000); *Webb*, 156 F. Supp. 2d 643-44 (valid agreement to litigate in England under English law precludes argument that enforcement of Equitas Agreement is contrary to public policy); *Turner*, 303 F.3d 325; *Grace*, 718 N.Y.S.2d at 328 (the English judgments are valid and do not violate public policy); *Society of Lloyd's v. Bennett*, No, 2:02-CV-204TC at 15 (English judgments do not violate Utah public policy).

he had no "knowledge in fact" of the legal proceedings in England. *See Julen v. Larson*, 25 Cal. App. 3d 325, 328 (1972) (requiring "knowledge in fact" of a legal proceeding instituted in another country against a defendant in the United States).[3] Lebolt does not argue that service on the designated agent was improper or in any way in violation of English law. In fact, there is no indication in the record that he contested the default judgment in English court.

Neither does Lebolt specifically argue that the agent's failure to forward the documents to Lebolt's correct address mean that the default judgment was obtained by way of a system that does not "accord with the basics of due process." *See Pahlavi*, 58 F.3d at 1410 (citing *Hilton v. Guyot*, 159 U.S. 113, 205-06 (1895)). In order for a court to enforce a foreign judgment, the judgment must come from "a *system* of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries." *Hilton*, 159 U.S. at 202 (emphasis added). Enforcement of foreign judgments should not be refused "unless a foreign country's judgments are the result of outrageous departures from our own motions of 'civilized jurisprudence.'" *British Midland Airways Ltd. ("BMA") v. Int'l Travel, Inc.*, 497 F.2d 869, 871 (9th Cir. 1974) (citing *Hilton*, 159 U.S. at 205).

Cal. Civ. Proc. § 1713.4(a)(1) requires only that the *system* in which the foreign judgment was entered be "compatible with the requirements of due process of law." Applying the plain and unambiguous language of the statute, there can be little doubt that the English *system* comports with due process. The Ninth Circuit has noted that "[it] must decline, absent grave procedural irregularities or allegations of fraud, to impugn the lawfulness of the judgment of that judicial system from which our own descended." *In re Hashim*, 213 F.3d at 1172.

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[3] Lebolt relies heavily on *Julen*, where the court found that notice to the defendant of the foreign proceeding was not "reasonably calculated" because it was in the German language, which defendant did not read or understand, which caused defendant to have no "knowledge in fact" of the proceeding. Lebolt argues he similarly did not have "knowledge in fact" of the English action because the notice was sent to an address where Lebolt allegedly never lived. However, *Julen* is distinguishable from the present case because Lebolt appointed an agent to receive notice on his behalf, while the judgment debtor in *Julen* did not previously approve the method of service.

Because the United States "inherited major portions of their judicial traditions and procedure from the United Kingdom," *BMA*, 497 F.2d at 871, the English system "has procedures and goals which closely parallel our own." *In re Hashim*, 213 F.3d at 1172 (noting that "it could not be claimed that the English system is any other than one whose 'system of jurisprudence [is] likely to secure an impartial administration of justice'"). In fact, the origins of due process of law are located in English law. *See Dent v. West Virginia*, 129 U.S. 114, 123 (1889); *Hurtado v. California*, 110 U.S. 516, 528-32 (1884). As a result of the United States' deep roots in the English system, United States courts "are hardly in a position to call the Queen's Bench a kangaroo court." *BMA*, 497 F.2d at 871. *See also Ashenden*, 233 F.3d at 477 (holding that "whether England has a civilized legal system . . . is not open to doubt").

Due process in foreign judgment enforcement actions merely requires that the "foreign procedures are 'fundamentally fair' and do not offend against 'basic fairness.'" 233 F.3d at 477. The *Ashenden* court labeled this the "international concept of due process." *Id.*; *see also Webb*, 156 F. Supp. 2d at 641. Effecting service of process on a designated agent is a practice that comports not only with an international concept of due process, but which also comports with the United States' concept of due process. Federal and California law authorize specifically designated agents to accept service of process. *See* Fed. R. Civ. P. 4(e); Cal. Civ. Proc. Code § 416.90. When Lebolt signed the 1986 General Undertaking, he contracted to abide by agreements within the scope of the provisions set forth in the Lloyd's Acts, which include the Equitas agreement and designation of AUA9 as Lebolt's agent. *Id.*, *Demery Decl., Ex. A.* Thus, Lebolt duly appointed AUA9 to be his agent to receive service and AUA9 was properly served with the Writ of Summons. English Courts have upheld the validity of specifically designating AUA9 as an agent for service of process for other Names. *Pl.'s Mem. in Support of Mot. for Summ. J.* at 3. U.S. courts have enforced judgments that stem from the Equitas agreement. *See, e.g., Ashenden*, 233 F.3d 473; *Webb*, 156 F. Supp. 2d 632; *Grace*, 718 N.Y.S.2d 327.

Lebolt submits that whether he had effective notice of the legal proceedings in the English Court is a material fact in dispute, thus precluding an award of summary judgment. Lebolt, in a valid contract, voluntarily designated AUA9 as the appropriate agent to be served on

his behalf. Whether AUA9 actually notified Lebolt of the action is not an issue in this case. Because notice was properly given to Lebolt's duly authorized agent, there is no issue of material fact that remains in dispute.

Because Lebolt has failed to show there remains a material fact in dispute and that the judgment should not be enforced, the Court GRANTS Lloyd's motion for Summary Judgment and enforces the foreign money-judgment.

Conclusion

Having read the parties' briefs and supporting evidence and given thorough consideration to the arguments presented therein, **IT IS HEREBY ORDERED** that:

(1) Defendant Lebolt's Motion to Stay Discovery and Rule 26(a) Disclosures is **DENIED**;

(2) Defendant Lebolt's Motion to Dismiss for Lack of Personal Jurisdiction is **DENIED**; and

(3) Plaintiff's Motion for Summary Judgment is **GRANTED** and the English default judgment is accordingly enforced.

Dated: 5-29-03

NAPOLEON A. JONES, JR.
United States District Judge

cc: Magistrate Judge Battaglia
All Counsel of Record

U.S. District Court
Southern District of California
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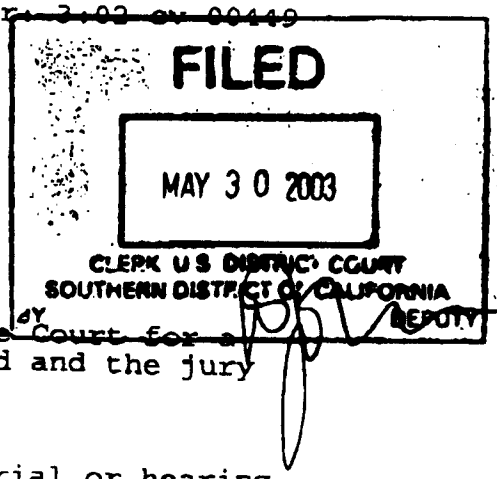
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

Case Number: ~~3:02-CV-00449~~



Society of Lloyds - PLAINTIFF

v.

Byrens - DEFENDANT

___ JURY VERDICT. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X DECISION BY COURT. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT
defendant John Michael Lebolt's motion to dismiss for lack of personal jurisdiction is denied. Defendant John Michael Lebolt's motion to stay discovery and Rule 26(A) disclosures pending outcome is denied. Plaintiff's motion for summary judgment against dft John Michael Lebolt is granted and the English default judgment is accordingly enforced.

5/30/03
Date

W. Samuel Hamrick, Jr.
Clerk

Entered on 5/30/03

pre - Jones
ref - Battaglia

112

U.S. District Court
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