IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:	:	**CASE NO. 04-61365**
	:	
JOHN S. ROBY,	:	**CHAPTER 7**
	:	
DEBTOR.	:	**JUDGE RUSS KENDIG**

OBJECTION OF JOHN S. ROBY TO MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR RELIEF FROM STAY

John S. Roby, the Debtor in the above-captioned chapter 7 case ("Mr. Roby" or the "Debtor"), by his attorneys Frost Brown Todd LLC, submits this objection to the Motion to Dismiss or in the Alternative Motion for Relief from Stay (the "Motion to Dismiss") filed by The Society of Lloyd's ("Lloyds"). In support of this objection, Mr. Roby respectfully states:

I. BACKGROUND

1. Lloyds has provided this Court with a cursory discussion of the events which gave rise to the debt allegedly owing to Lloyds. However, as set forth below, a complete discussion of the events leading up to this instant chapter 7 filing will clearly show that the Motion to Dismiss is without merit and should be overruled.

2. The Debtor was put under extreme financial pressure in connection with an investment in Lloyds. Several years ago, the Debtor was solicited to become, and did in fact become in 1979, a so-called "Name" in Lloyds (Member No. 20604X). For the reasons described more fully below, his involvement with Lloyds has already resulted in very substantial losses which have wiped out his original investment in Lloyds and left him vulnerable to large and potentially unquantifiable future liabilities.

3. Lloyds is a complex, 300 year old market made up of syndicates which offer insurance and reinsurance over risks in every part of the world. It is a membership corporation composed of two types of members: (1) insiders, such as brokers, underwriters and underwriting agents who engage in the day-to-today business of insurance; and (2) "Names" who are the outside investors whose wealth provides capital to Lloyds. Names pledge their entire net worth to back the insurance policies issued by Lloyds' syndicates, and their liability on that pledge in unlimited. Prohibited by Lloyds' by-laws from involving themselves in the business at Lloyds, the Names entrust their entire net worth to the underwriting agents who represent them at Lloyds and to the underwriters and managers who make the underwriting and management decisions for the syndicates.

4. Syndicates are groups of Names assembled by the Lloyds insiders. It is these syndicates which actually issue the insurance policies. Lloyds, at its peak, had over 400 operating syndicates. Names had no input into what risks the syndicates would insure or reinsure. Names did not know the identities of the policyholders of policies issued by syndicates to which they belong, but were personally liable to the policyholder in the event of a loss. Names were totally dependent upon their Members' Agents to recommend a balanced and safe spread of syndicate participation, and had no means whatsoever to judge whether their Members' Agents were carrying out that responsibility until it was too late.

5. Lloyds had already been in operation for approximately 200 years when it was incorporated by the Lloyds Act of 1871. That Act, and subsequent Lloyds Acts of

1888, 1911, 1925, 1951 and 1982, all of which are private Acts of Parliament, govern Lloyds, which is not subject to most of the provisions of English law governing corporations or insurance companies generally.

6. The 1982 Act made three significant changes to the structure of Lloyds. First, it created the Council of Lloyds, its governing body, which is dominated by insiders. Second, it gave that Council the power to enact by-laws for the governance of Lloyds, a power that had previously been held only by the members acting in a general meeting. Lastly, it gave the Society of Lloyds and members of its Council immunity from suits in tort, except in cases of defamation or unless bad faith could be shown. Through its power to enact by-laws, the Council controls every aspect of the Lloyds market including the admission and regulation of all brokers, underwriters, agents and Names and the selection of all auditors of Lloyds syndicates, all largely free from governmental oversight.

7. By the early 1980s, information available to insiders at Lloyds, but not to outsider Names, revealed that a crisis was developing with respect to claims for injury and death due to exposure to asbestos and other toxic substances. Claims arising from these latent diseases dated back to insurance policies issued in the 1940s and 1950s. Syndicate reserves were inadequate to handle these unanticipated claims. A group of insiders was appointed to study this problem in 1980 and to propose a solution. This group decided not to publish detailed information relating to these claims in the marketplace and to keep the true extent of the impending losses known only to the insiders.

8. At the same time that the full extent of these potential liabilities was being kept confidential, Lloyds was engaged in an aggressive campaign to obtain new members, and, thus, additional capital, without disclosing to the newly recruited Names that these losses could potentially affect their own financial position. In 1982, the most recent Lloyds Act was passed which granted by-law making power and immunity to the Lloyds insiders as described above. Although at the time the new Lloyds Act was passed, Lloyds had promised to improve the flow of information to outsider Names and prospective Names, this promise was not fulfilled even while Lloyds was continuing to aggressively pursue new Names. During the five years that Lloyds failed to keep its promise to improve information given to prospective Names, thousands of new Names joined Lloyds, including the Debtor and nearly all of the Names from the United States. Other existing Names were induced to vastly increase their investment in, and exposure to, Lloyds in those years. It is hard to imagine that any of these persons would have become Names, or increased their investment, had the full extent of the anticipated losses been disclosed to them.

9. It was not until 1991 that reported losses suddenly ballooned. Over the period 1991 through 1995 reported losses totaled £8 billion. No prediction or warning about these losses had ever been issued publicly by Lloyds until they began to occur. In England, English courts ruled in four cases that members' agents and Lloyds' auditors were guilty of negligence with respect to their Names. The evidence in these cases revealed the extent to which information about asbestos claims known to Lloyds insiders had not been revealed to the outsider Names. Although these cases awarded

damages to Names aggregating £1 billion, Lloyds promptly enacted a by-law, which, in effect, seized the proceeds of the last three of these judgments to be used not to benefit the individual Names who had been injured but to support the Lloyds market. Although the seizure was challenged by the Names, the Appellate Courts in England ultimately upheld Lloyds' claim that it had a right to seize these proceeds under its broad by-law power granted under the 1982 Act.

10. As losses mounted, Lloyds began to sue various Names in the courts of England seeking to recover unpaid cash calls, which had resulted from these huge losses. In connection with these suits, the English courts ruled that Lloyds had no implied duty of care and good faith to its Names to advance or protect their interests.

11. By early 1995, it was clear that the losses had spread so far through the syndicates, which were interlocked through reinsurance, that if something were not done to rescue the market, Lloyds might cease to exist as a going concern. Lloyds developed a program of reorganization known as "Reconstruction and Renewal". This plan provided for mandatory reinsurance of all years of account prior to 1993 into one reinsurance company established for that purpose by Lloyds, to be called Equitas. Lloyds calculated the premium needed for reinsurance to be £14.7 billion as against £9.9 billion of syndicate assets then on hand. The difference was to be made up by contributions from all of Lloyds Names in open syndicates, as well as brokers, auditors, agents and others, including funds contributed by Lloyds itself. Although these premiums were mandatory for Names still in open syndicates, no attempt was made to seek recovery from the Names, mostly wealthy Englishmen, who had participated in the

original closed syndicates, which had issued the policies from which the enormous losses had actually resulted. The Equitas contract, which all Names were deemed to have signed under Lloyds' by-law making power, included waivers of various procedural rights including choice of law and choice of forum clauses.[1] The Equitas contract did not, however, provide any indemnity or absolute release to the Names from further liability in connection with open syndicates. Lloyds made clear that if Equitas were unable to pay claims in full, further funds would be required of Names until all liabilities for these old policies had been paid. Lloyds also disclaimed any responsibility for the accuracy of the statements and financial information contained in the settlement proposal and required Names to waive any claims for rescission or damages based on possible misrepresentations contained in the settlement documents.[2]

12. Although approximately 85% of the Names worldwide accepted the settlement in 1996, many, including Debtor, did not. The lack of finality for the Names, and the requirement that the Name release parties who he believed had defrauded him, were central to the Debtor's decision to reject settlement. Equitas assigned its claims against the non-settling Names to Lloyds itself in exchange for the reinsurance premiums. Lloyds then set about suing these Names in English courts to enforce the Equitas agreement, which the Names had never, in fact, signed. In addition to choice

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1 If a name voluntarily agreed to the overall settlement, the Name would receive certain credits which would reduce the amount that he or she had to pay, but would also be required to release Lloyds's and its brokers, underwriting agents, auditors and other insiders from any potential liability to the Name. The Debtor has scheduled claims against Lloyds and certain related parties as assets of the estate. The value of these claims is not currently known, but could be very substantial. A settling Name also remained liable for additional amounts if needed to fund policy claims. Thus, the proposed "settlement" included a release of Lloyds and related parties but did not bring finality to the settling Name.

2 An audit was performed on Equitas by Coopers & Lybrand for the period September 1996 through

of law and choice of forum provisions, the Equitas agreement included a "pay now, sue later" clause which, in effect, provided that no Name could sue Lloyds for fraud, or anything else, until he had paid Lloyds in full the amount claimed by Lloyds under the Equitas agreement, whether or not the Name had the wherewithal to in fact make that payment. Thus, a Name who had been impoverished by Lloyds' losses would be unable to ever get his day in court. Furthermore, there is no guaranty, even if a Name paid Lloyds' claims in full and then recovered a judgment for fraud against Lloyds, that Lloyds would not simply seize the proceeds of the judgment for the benefit of policyholders as it had the prior judgments against members' agents and auditors. Notwithstanding the obvious unfairness and overreaching of imposing these conditions on Names who had never agreed to the Equitas contract in the first place, the English courts sustained the non-selling Names' obligations thereunder.

13. The English courts then turned to the question of the amount owed by individual Names to Lloyds. English courts, in making this determination, allowed Lloyds to calculate the amount owed to Lloyds and refused to permit discovery on this issue or take into account the evidence submitted by the Names showing that the amount had been miscalculated or was otherwise incorrect. All appeals from the judgment of the English courts have now been exhausted without the Names ever getting their day in Court. In effect, having once agreed to be governed by English law and Lloyds by-laws, Names were now deemed by the English courts to have waived virtually every due process right and to have consented to the entry of judgment against

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March 1997. The audit opinion, dated September 16, 1997, found "significant uncertainties" regarding estimates made by Equitas of future claims for which Names could ultimately be responsible.

them in whatever amount Lloyds, in its sole discretion, determined.[3]

14. Each Lloyds Name is thus subject to potentially unlimited liability to Lloyds should Lloyds' current estimate of potential losses be too low as were previous Lloyds estimates. (See Note 2 above.) In addition, Lloyds Names face the prospect of direct liability to the unknown holders of policies issued or reinsured by syndicates of which they were a part in amounts, and at time, which are impossible to determine. The greatest portion of these potential liabilities relate to insurance policies issued by now closed syndicates long before the Debtor became involved with Lloyds, which were reinsured by syndicates in which Debtor was involved.

15. Lloyds' potential claims against the Debtor include at least four parts. First, Lloyds may claim the Equitas premium for which a judgment was entered in England, plus interest. Second, Lloyds claims additional funds on behalf of its "Central Fund." The Debtor has been sued for nearly $900,000 by the Fund and further future claims may be asserted by the New Central Fund. Third, some Names were involved in litigation with Lloyds in England and lost. The English Courts have assessed costs and attorneys' fees against both the losing Names and other non-participating Names who might have benefited had the case gone the other way. Fourth, additional Equitas debt for additional losses.

16. It has been suggested that there will be additional sums due in excess of Equitas' judgment. These claims, in the aggregate, exceed the Debtor's overall non-

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[3] In a recent Northern District of Illinois case, Judge Lienenwebber found that the Names in that case, and by implication all of the similarly situated American Names, including the Debtor, did not receive an opportunity to litigate the merits of their position before judgment was entered against them in the English Court, but nevertheless allowed the judgment to be registered here based upon his interpretation of the relevant statute which is not applicable in bankruptcy. Lloyds v. Ashenden, N.D. Ill. Case No. 98 C

exempt net worth.

17. United States Courts have consistently ruled that policyholders of policies issued by Lloyds' syndicates have claims directly against the individual Names belonging to the syndicates issuing those policies. See, e.g., Long Island Lighting Company v. Aetna Casualty & Surety Company, et al., 1997 U.S. Dist. Lexis 13720 (S.D.N.Y. 1997). Policies issued by Lloyds syndicates are typically of substantial dollar amounts insuring against casualties of various kinds including, for example, claims by persons injured by exposure to asbestos and liability or casualty claims in connection with natural disasters, shipping accidents and the like. Such potential liability may extend for years, is of indeterminate amount and is owed to numerous unknown potential creditors.

18. The Debtor, faced with not only large disputed liabilities to Lloyds and its related entities, but also with contingent and potentially enormous claims by unknown policyholders, which in the aggregate easily dwarf the Debtor's net worth, came to believe that this bankruptcy proceeding was the only way to quantify his potential and disputed liability to Lloyds, related entities and policyholders, and obtain a fresh start.

19. The Debtor had previously obtained recoveries from lawsuits in England related to Lloyds claims against the Debtor. Before the funds could be turned over to Debtor, however, they were claimed by Lloyds.

20. This Debtor has already lost a $146,706 Letter of Credit, income for profitable syndicates taken by Lloyds to satisfy this debt, litigation recoveries of £131,666 and has spent approximately $100,000 in defense costs. He has been sued

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5335. The defendants have appealed from this ruling.

by Lloyds' Central fund in the amount of $888,905.

21. In addition to the foregoing, the precipitating event causing this filing was the recent action by Lloyds to enforce an English judgment against Debtor in the United States District Court for the Northern District of Ohio. That action is currently pending in that court, as Case No. 1:04-MC-00007-LW.

22. As discussed below, Lloyds has throughout its Motion to Dismiss misstated or mischaracterized the facts of this case in its attempt to dismiss the Debtor's chapter 7 bankruptcy case and to deny the Debtor a fresh start. For the reasons that follow, the Motion to Dismiss should be denied.

II. LAW AND ARGUMENT

A. The Debtor's chapter 7 case was filed in good faith

23. Section 707(a) of the Bankruptcy Code provides, in relevant part, that a "court may dismiss a case under this chapter only after notice and a hearing and only for cause . . . ." 11 U.S.C. § 707(a). "Cause" is not defined in section 707(a); stated instead are three non-exclusive, illustrative grounds for dismissal, none of which expressly identifies "bad faith" or "lack of good faith" as cause for dismissal. See McDow v. Smith, 295 B.R. 69, 74 (E.D. Va. 2003).

24. The Sixth Circuit Court of Appeals has recognized that bad faith may constitute a valid reason to dismiss a bankruptcy petition for cause under section 707(a) of the Bankruptcy Code. See In re Zick, 931 F.2d 1124 (6th Cir. 1991). However, in order to show bad faith, some sort of misconduct must be shown on the part of the debtor. See In re Josey, 169 B.R. 138, 140 (Bankr. S.D. Ohio 1994). In

Zick, the Sixth Circuit held that:

> Dismissal based on lack of good faith must be undertaken on an ad hoc basis. It should be confined carefully and is generally utilized only in those egregious cases that entail concealed or misrepresented assets and/or sources of income, and excessive and continued expenditures, lavish lifestyle, and intention to avoid a large single debt based on conduct akin to fraud, misconduct, or gross negligence.

931 F.2d at 1129 (internal citations omitted). A creditor must show more than some ability to repay debts in order to establish adequate cause for dismissal under section 707(a) of the Bankruptcy Code. See In re Hammonds, 139 B.R. 535, 542-43 (Bankr. D. Colo. 1992); see also In re Grand Valley State Univ. v. Hodge, 2004 U.S. Dist. LEXIS 6175 (W.D. Mich., March 30, 2004) (the fact that a debtor filed bankruptcy to avoid a single debt is not in and of itself sufficient cause to dismiss under section 707(a)); In re Bridges, 135 B.R. 36, 37-38 (Bankr. E.D. Ky. 1991) (section 707(a) dismissal not justified despite fact that the debtor had sufficient income to pay debts because moving creditor had failed to show fraud or misconduct).

25. Lloyds argues that Mr. Roby's chapter 7 petition was filed in bad faith for three reasons.[4] First, Lloyds contends that the Debtor seeks only to discharge one creditor – Lloyds – without any attempt to repay.[5] Second, Lloyds contends that the Debtor earns substantial income, makes charitable contributions, supports his wife and children, and enjoys a lavish lifestyle and, therefore, is not deserving of a fresh start. Finally, Lloyds contends that the Debtor's chapter 7 filing is an abuse of the bankruptcy

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[4] In addition, Lloyds contends that the Debtor's chapter 7 case should be dismissed for lack of good faith because "the case is a two-party dispute capable of adjudication under state law." See Motion to Dismiss at 4. However, as discussed *infra*, the mere fact that a bankruptcy filing involves primarily one creditor does not, by itself, constitute a lack of good faith so as to warrant dismissal. See Grand Valley State Univ. v. Hodge, 2004 U.S. Dist. LEXIS 6175 (W.D. Mich., March 30, 2004).

[5] As discussed below, Lloyds has again misstated the facts to this Court. The Debtor has in fact

process because it "is motivated by a desire to delay a creditor from enforcing its rights in an ongoing dispute."

26. First, Lloyds contends that seeking to discharge one creditor is an element of bad faith. In support of its contention, Lloyds relies on a bankruptcy court decision from the Northern District of New York – In re Griffieth, 209 B.R. 823 (Bankr. N.D.N.Y. 1996). In Griffieth, the debtors, both practicing physicians after-tax income of $14,168 per month, had failed to fully pay their federal income taxes for a period of 10 years, despite the ability to do so, incurring federal income tax liability of more than $500,000. Finding that the debtors were able to repay a substantial portion of their tax liability and that the debtors sought to discharge only one debt,[6] the bankruptcy court ordered the debtors' chapter 7 case dismissed for cause pursuant to section 707(a) of the Bankruptcy Code.

27. However, the Sixth Circuit in Zick did not hold that merely seeking to discharge the debts owing to a single creditor is evidence of bad faith. Instead, the court in Zick held that that bad faith may be found in cases involving just one creditor where there is an "intention to avoid a large single debt *based on conduct akin to fraud, misconduct or negligence*." 931 F.2d 1129 (emphasis added).

28. Lloyds does not contend, because it cannot contend, that the debt owing to Lloyds was based on any misconduct by the Debtor. As set forth above, the debt arose as a result of losses incurred by Lloyds with respect to claims for injury and death

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attempted to repay a substantial portion of his current debt to Lloyds.

[6] The court in Griffieth found that the debtors had in excess of $50,000 net discretionary income per year from which to pay their income tax liability, even after allowing for what the court characterized as numerous inflated expenses, including $1,900 per month in private school tuition and $2,100 per month in tithes.

due to, among other things, exposure to asbestos and other toxic substances. In fact, as set forth above, English courts previously ruled in four cases that it was the members' agents and Lloyds' auditors who were guilty of negligence with respect to their Names for not fully disclosing information about asbestos claims known to Lloyds insiders to the outsider Names. Here, the Debtor is an unfortunate debtor deserving of a fresh start and a discharge in his chapter 7 case. This is not the egregious case envisioned by the Sixth Circuit in Zick, or presented to the bankruptcy court in Griffieth, that would warrant dismissal under section 707(a) of the Bankruptcy Code.

29. Lloyds contends further that the Debtor has made no attempt to repay Lloyds. This is simply not true. As Lloyds correctly points out in the Motion to Dismiss, Lloyds has applied the proceeds of a letter of credit against its judgment. In addition, as set forth above, the Debtor had previously recovered in excess of £130,000 from lawsuits in England, but before the funds could be turned over to Debtor, they were claimed by Lloyds. Moreover, income from profitable syndicates was taken by Lloyds to satisfy the Debtor's debt. In short, the Debtor already has repaid some of his debt to Lloyds.

30. Moreover, settling the current, liquidated debt owed to Lloyds will by no means release the Debtor from liability to Lloyds. As set forth above, without a discharge in this chapter 7 case, the Debtor would remain liable to Lloyds for unknown and potentially limitless future liability. The Debtor should not be required to carry this liability for the remainder of his life; he is deserving of and entitled to a fresh start under chapter 7. Dismissal is not warranted under these circumstances.

31. Second, Lloyds contends that dismissal under section 707(a) of the Bankruptcy Code is warranted because the Debtor has neither changed his lifestyle nor tightened his belt to repay his debts, asserting that the Debtor's monthly payments for food, charitable contributions and entertainment are excessive. However, these payments are hardly evidence of the egregious case and lavish lifestyle envisioned by the Sixth Circuit in Zick and its progeny. See Zick, 931 F.2d at 1128 (noting as excessive monthly expenses of $9,620); see also In re Merritt, 2000 U.S. App. Lexis 6877 (6th Cir., April 12, 2000) (noting a lavish lifestyle which included maintaining a condominium in Vale, Colorado, valued at $359,280); In re Cassell, 1999 U.S. Dist. LEXIS 133489 (E.D. Mich., August 13, 1999) (noting a lavish lifestyle which included such extravagant vacations as a two-week African safari, a trip to the Cayman Islands, and an Idaho elk hunting vacation).

32. Lloyds points to certain specific monthly expenses of the Debtor as evidence of a lavish lifestyle: $600 per month food expense for the Debtor, his wife and one son, over $500 per month in recreation, over $500 per month in charitable contributions, and over $850 per month for support of two children. Lloyds suggests that with some belt tightening, the Debtor could begin to repay his debt to Lloyds. See id. at 7.

33. Lloyds would have this Court view the Debtor is "the clever and determined rich" See Motion to Dismiss at 6. As support of this contention, Lloyds points to income in recent years in excess of $25,000 from certain discretionary trusts and deferred compensation form Bank One of $5,000. As for the trust income, the

payments previously received by the Debtor wholly discretionary on the part of the trustee, who, in keeping with the settlers' wishes, will make no more distributions to the Debtor. As for the payments from Bank One, those payments also are discretionary and are in no way guaranteed payments to the Debtor.

34. Lloyds cites to a prior decision of this Court as support for its proposition that the Debtor's expenses are excessive. In In re Ciesicki, 292 B.R. 299 (Bankr. N.D. Ohio 2003), this Court held that a debtors' student loan debt was dischargeable in part under section 523(a)(8) of the Bankruptcy Code, finding, among other things, that the debtors' monthly food budget of $615 was not necessary in order to maintain a minimal standard of living. However, Ciesicki involved an attempt to discharge an otherwise nondischargeable debt, which required the debtors to establish, among other things, that they could not maintain a minimal standard of living based upon their current income and expenses. The present case is not a case of nondischargeability under section 523 of the Bankruptcy Code. If it where, Lloyds clearly could commence such an action. Nowhere does the court in Zick require such a heightened showing of need as required under section 523(a)(8) in order to demonstrate good faith; indeed, requiring debtors to make such a showing in order to stave off a dismissal attack under section 707(a) of the Bankruptcy Code would, in essence, elevate all dischargeable claims to nondischargeable status. Zick requires this Court to consider the egregious case; this is not that case.

35. In addition, Lloyds contends that the Debtor's monthly charitable contributions of in excess of $500 further demonstrate bad faith. Once again,

contributing $500 per month to a charity simply is not the kind of egregious conduct addressed by the Sixth Circuit in Zick. It is worth noting that Congress, in amending section 707(b) of the Bankruptcy Code, specifically restricted a bankruptcy court's ability to consider whether a chapter 7 debtor has made or continues to make charitable contributions in deciding whether to dismiss a case for substantial abuse under section 707(b).

36. Although section 707(a) of the Bankruptcy Code does not contain the same restriction, in adopting the "egregious" standard for bad faith dismissal under section 707(a), the Sixth Circuit in Zick clearly was concerned about preventing under section 707(a) the same type of substantial abuse prohibited by section 707(b).[7] The Sixth Circuit has adopted what is essentially a section 707(b) substantial abuse standard for section 707(a) bad faith dismissal. As such, this Court should not consider the Debtor's charitable contributions as a factor, in light of the fact that those contributions clearly do not rise to the level of egregious conduct.

37. Third, Lloyds alleges as bad faith the fact that the Debtor's chapter 7 bankruptcy petition was filed in response to the recent action by Lloyds to enforce its English judgment against Debtor in the United States District Court for the Northern District of Ohio. The Debtor disputes this allegation. As set forth above, the Debtor, faced with not only large disputed liabilities to Lloyds and its related entities, but also with contingent and potentially enormous claims of an indeterminate amount by unknown policyholders, now seeks to quantify his potential and disputed liability to

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[7] In fact, in reaching its holding, the Court in Zick relies in part on its previous holding in In re Krohn, 886 F.2d 123 (6th Cir. 1989), a section 707(b) "substantial abuse" case.

Lloyds, related entities and policyholders, and obtain a fresh start. The disputed and contingent claims of Lloyds and its related entities and policyholders in the aggregate easily dwarf the Debtor's net worth.

38. In support of its assertion that the Debtor's chapter 7 filing was "motivated by a desire to delay a creditor from enforcing its rights in an ongoing dispute," Lloyds relies on a decision of the United States Bankruptcy Court for the Northern District of Illinois, another case also involving claims of Lloyds against a Name. See In re Collins, 250 B.R. 645 (Bankr. N.D. Ill. 2000). In Collins, the court considered the totality of the circumstances and concluded that dismissal under section 707(a) of the Bankruptcy Code was warranted. The debtor in Collins earned in excess of $200,000 during the year prior to his chapter 7 bankruptcy filing, but that amount was substantially less than he had earned during prior years, because he had been preoccupied with the Lloyds' litigation. In addition, the debtor in Collins earned an additional $5,000 to $6,000 per month from Social Security and several pensions. The court in Collins found that the debtor enjoyed a lavish lifestyle, disclosing in his bankruptcy schedules total monthly expenses of $11,525, including during the year prior to his bankruptcy filing such extraordinary expenses as vacations costing at least $13,000, $30,000 in charitable donations, and $1,000 to each of his children at Christmastime. The court further found that the debtor had the ability to repay his debt to Lloyds our of future income but noted that the debtor had testified that he would stop working if denied bankruptcy relief.

39. Collins might be the egregious case envisioned by the Sixth Circuit in Zick, but the present case is not. The Debtor in the instant case is not living a lavish

lifestyle while refusing to repay his debt to Lloyds. As set forth above, the Debtor seeks to discharge not only the know claims of Lloyds but also the unknown, potentially limitless claims for which no amount of present belt-tightening could permit payment. The Debtor clearly is deserving of and entitled to a fresh start in this chapter 7 case.

40. Finally, Lloyds suggests that the totality of the circumstances constitutes "an egregious case in which the debtor has excessive expenditures and is attempting to avoid a single significant debt," pointing to the fact that the Debtor supports his family, holds certain assets in trust, relinquished ownership in a company shortly before commencement of this chapter 7 case, and sold certain stock in the past two years. As set forth above, the Debtor's expenditures are far from lavish. The only "excessive expenditures" cited by Lloyds are the Debtor's monthly food expense of $600, monthly charitable contributions in excess of $500, monthly recreation expenses of over $500, and over $850 in expenses supporting his children, surely not evidence of a "lavish" lifestyle that warrants bad faith dismissal. Moreover, even assuming the Debtor had done anything improper (which he did not) in supporting his family, holding certain assets in trust, relinquishing ownership in a company shortly before commencement of this chapter 7, or selling stock case, there is recourse available to the Debtor's estate and creditors, namely the chapter 7 trustee could commence causes of action under chapter 5 of the Bankruptcy Code.

41. As for the specific allegation that the Debtor sold his shares in his insurance agency for $6,000 one month prior to his chapter 7 filing, under the agency's code of regulations, the agency was authorized to purchase the Debtor's shares if a

creditor levied or threatened to levy on the Debtor's stock. The agency in fact acquired the stock pursuant to that authorization, and the chapter 7 trustee has made a demand on the Debtor for the $6,000 proceeds of that sale.

42. As for the specific allegation that the Debtor sold stock within the past two years worth between $35,000 and $40,000, the Debtor admits that shortly before the commencement of his chapter 7 case, he sold certain stock for $1,643.49 due to his concern over recent decline in the stock's value. The Debtor has agreed to turn that amount over to the chapter 7 trustee. As for any other prepetition stock sales, the sale of stock in any way indicative of bad faith for purposes of section 707(a) of the Bankruptcy Code, and Lloyds does not allege anything improper on the part of the Debtor with respect to any such sales.

43. Finally, an attempt to avoid a single debt, even if true, is not enough to warrant dismissal under section 707(a) of the Bankruptcy Code. Pursuant to Zick, there must be an intention to avoid a large single debt based on conduct akin to fraud, misconduct or negligence. Lloyds has not alleged, because it cannot, any conduct by the Debtor akin to fraud, misconduct or negligence in connection with his debt to Lloyds.

44. As set forth above, the Debtor seeks to discharge not only the know claims of Lloyds but also the unknown, potentially limitless claims for which no amount of present belt-tightening could permit payment. The Debtor clearly is deserving of and entitled to a fresh start in this chapter 7 case. As such, the Motion to Dismiss is not well

taken and should be denied by this Court.[8]

**B.	<u>Lloyds has failed to establish cause for relief from the automatic stay</u>**

45. Section 362(d) of the Bankruptcy Code provides, in relevant part that this Court "shall grant relief from the [automatic] stay . . . for cause, including lack of adequate protection of an interest in property . . . . " 11 U.S.C. § 362(d)(1). Lloyds requests, in the alternative, that this Court grant it relief from the automatic stay so that it can pursue enforcement of its judgment against the Debtor.

46. Lloyds first alleges that the Debtor's bad faith is cause for relief from the automatic stay. However, as discussed at length herein, the Debtor's chapter 7 filing was not done in bad faith. For the same reasons that this Court should deny the Lloyds' motion to dismiss this chapter 7 case, this Court should not grant relief from the automatic stay.

47. Lloyds suggests further that cause may be established upon consideration of (1) issues of judicial economy, (2) trial readiness, (3) resolution of preliminary bankruptcy issues, (4) the creditor's chance of success on the merits, and (5) the cost of defense or other potential burden on the bankruptcy estate. Lloyds characterizes the pending action in the United States District Court for the Northern District of Ohio as the "Litigation." However, to be clear, the Litigation involves nothing more than the domestication of a foreign judgment. It is nothing more than a collection action which, if successful, would entitle Lloyds to execute its judgment against the Debtor's non-exempt assets.

[8] Upon information and belief, the chapter 7 trustee does not support the Motion to Dismiss.

48. As Lloyds points out in the Motion to Dismiss, Lloyds and its related entities are the Debtor's only creditors. Completion of this chapter 7 case will result in the distribution of the Debtor's non-exempt assets to holders of allowed claims, the same result if this Court grants relief from the automatic stay. This Court is well equipped to oversee the distribution of assets; there is simply no reason to grant relief from stay under these circumstances. As such, the motion for relief from the automatic stay should be denied by this Court.

III. REQUEST FOR EVIDENTIARY HEARING

Finally, as set forth above, Lloyds has failed to establish a basis for either dismissal under section 707(a) of the Bankruptcy Code or for relief from the automatic stay under section 362(d) of the Bankruptcy Code. Accordingly, denial of the Motion to Dismiss is appropriate. Nonetheless, the Debtor respectfully requests that this Court treat the March 7, 2005 hearing on the Motion to Dismiss as a preliminary hearing and schedule a final hearing at which time evidence can be presented by the Debtor in opposition to the Motion to Dismiss.

WHEREFORE, the Debtor respectfully requests that this Court: (a) sustain the Debtor's Objection; (b) deny the Motion to Dismiss in its entirety; and (c) grant the Debtor such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: February 9, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was made via first class mail and/or ECF electronic noticing on February 9, 2005 upon:

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