Tab 1

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

THE SOCIETY OF LLOYD'S,

Plaintiff,

v.

CARL HERMAN ALMOND,

Defendant.

CASE NO. 03CP406076

MEMORANDUM AND ORDER

THIS MATTER is before the Court upon Plaintiff's December 2, 2004 Motion for Summary Judgment. On December 2, 2004, Plaintiff filed a Motion for Summary Judgment and the Declaration of Mr. Demery. On March 4, 2005, Defendant filed a Memorandum in Opposition to Plaintiff's Motion for Summary Judgment. On June 3, 2005, Plaintiff filed a memorandum of Law in support of Plaintiff's Motion for Summary Judgment against Defendant Almond. On June 6, 2005, Defendant filed an Affidavit of Carl Herman Almond Defendant. On June 8, 2005, the Court heard oral arguments from each of the parties. After considering the motion, the pleadings, the Affidavit of Mr. Demery, the Affidavit of defendant Carl Herman Almond, the applicable law and hearing the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

PROCEDURAL HISTORY AND FINDINGS OF FACT

Pursuant to the general principals of comity, Plaintiff the Society of Lloyd's ("Lloyd's") filed this lawsuit in the Court of Common Pleas, Fifth Judicial Circuit of the State of South Carolina on December 22, 2003 in order to enforce a final judgment (the "Judgment") that it obtained against defendant Carl H. Almond ("Defendant" or "Almond") in the High Court of Justice, Queen's Bench Division in London, England (the "English Court") on March 11, 1998 in the amount of £40,073.74. (Cmplt. ¶¶ 1, 20, 21). On March 4, 2004, Defendant filed an Answer and Counterclaim to the Complaint ("Answer") alleging that the Judgment should not be recognized because it was barred by the doctrines of "Statute of Frauds," "Lack of Agency," pre-English judgment "Payment," and "Breach of Contract Accompanied by a Fraudulent Act." Defendant further alleged that the Judgment should not be enforceable because it was rendered in violation of Defendant's due process rights and violates the public policy of the State of South Carolina. (Answer ¶¶ 20-45).

Plaintiff Lloyd's is not an insurer and does not insure risks. (Demery Decl. ¶ 4). Rather, pursuant to a succession of Parliamentary Acts, the *Lloyd's Acts* 1871 - 1982, Lloyd's is charged with the duty and authority to regulate an English insurance market located in London, England. (*Id.* ¶ 2). Defendant Almond is a "Name" in the Lloyd's market. (Demery Decl. ¶ 5). Names

are members of Lloyd's and the only providers of insurance in the Lloyd's market. (*Id.*) Names underwrite insurance in groups known as syndicates, but their obligation to pay claims on the policies they underwrite is personal and direct. (Demery Decl. ¶ 6),(Almond Aff. ¶ 2).[1]

In order to become a Name and/or continue underwriting, Defendant entered into certain agreements governing his membership of and underwriting in the Lloyd's market. (Demery Decl. ¶ 5). In one of those agreements, the 1986 General Undertaking, Defendant agreed, among other things, (a) to comply with the provisions of the *Lloyd's Acts* 1871-1982 and any byelaws, regulations, etc. duly promulgated thereunder in connection with his membership of and underwriting at Lloyd's, and (b) to submit any dispute arising out of or relating to his membership of, and/or underwriting of insurance business at, Lloyd's for resolution by the English courts applying English law, and (c) to consent to the jurisdiction of the English courts in connection with any suits brought against him in connection with his underwriting. (*Id.*)[2]

Defendant received notice of the 1986 General Undertaking before it went into effect on January 1, 1987. (Demery Decl. ¶ 5). In order to underwrite future policies in the Lloyd's market, Defendant was asked to sign the 1986 General Undertaking. (*Id.*). Defendant could have chosen not to sign the 1986 General Undertaking, stopped underwriting policies in the Lloyd's market, waited for his syndicates to close out or obtain reinsurance contracts, paid his underwriting liabilities from previous years and resigned. (*Id.*) Instead, Defendant signed the 1986 General Undertaking and continue underwriting in the Lloyd's market. (Demery Decl. ¶ 5).

In the late 1980s and early 1990s, Names in the Lloyd's market incurred significant underwriting losses. As a result, litigation began to embroil the Lloyd's market, and many Names either refused or became unable to satisfy their obligations to policyholders to make payment of valid claims. (*Id.* ¶ 7).

In 1995, Defendant Almond, along with other Names, filed suit against Lloyd's in the United States District Court of the Southern District of California. *Richards v. Lloyd's of London*, No. Civ.A.94-1211-IEG(POR), 1995 WL 465687, 1995 U.S. Dist. LEXIS 6888, Fed.Sec.L.Rep.(CCH) 98,801 (S.D. Cal. May 01,1995), *aff'd by*, 135 F.3d 1289 (9th Cir. 1998), *cert. denied*, 525 U.S. 943, 119 S.Ct. 365 (1998). In that case, Almond alleged that Lloyd's fraudulently induced him into signing the 1986 General Undertaking, that the 1986 General Undertaking was a contract of adhesion and that the choice of law and forum selection clauses contained therein ("Choice Clauses") were invalid and unenforceable. *Richards*, 1995 WL 465687* 8. The California District Court held that Almond as well as other Names participating in the Lloyd's market before signing the 1986 General Undertaking were not fraudulently induced into signing it and that the 1986 General Undertaking was not a contract of adhesion. *Id.*

---

[1] *See, e.g., Richards v. Lloyd's of London*, 135 F.3d 1289, 1291-92 (9th Cir.) (en banc), *cert. denied*, 525 U.S. 943 (1998) (describing the functioning of the Lloyd's market).

[2] The Fourth Circuit has held that the choice of law and choice of forum provisions in the General Undertaking are valid and enforceable. *Allen v. Lloyd's of London*, 94 F.3d 923 (4th Cir. 1996).

The District Court further noted that Names including Defendant Almond were provided with notice of the 1986 General Undertaking, could have refused to sign it, were not threatened with coercive cancellation fees or other coercive measures and that the potential consequences of refusing to sign the new undertaking did not create significant inequality of bargaining power between the Names and Lloyd's. *Id.* Additionally, the District court ruled that the Choice Clauses were valid, enforceable and operated to dismiss all of the Almond's claims. *Richards*, 1995 WL at * 10. The California District Court's determination that the 1986 General Undertaking and its Choice Clauses were valid and enforceable were essential to the final and valid judgment dismissing all of Almond's claims in that action.

In 1996, Lloyd's implemented the Reconstruction and Renewal Plan ("R&R") in order to address the disputes that threatened the viability of the Lloyd's market and placed policyholders who had paid premiums to Names at risk of non-payment of their claims. (*Id.* ¶ 8). The R&R plan had two separate components: (1) the requirement that each Name purchase reinsurance for his underwriting obligations on 1992 and prior underwriting years of account from a newly formed company, Equitas Reinsurance Ltd. ("Equitas") that would otherwise have been unavailable, and (2) an offer of settlement to each Name with liabilities on 1992 and prior underwriting years of account to end litigation and to assist the Names in meeting their liabilities ("the Settlement Offer"). (*Id.* ¶ 8). Pursuant to the Settlement Offer, each Name was offered an individually calculated package of "credits" that would serve to reduce the amount owed in respect of his or her underwriting liabilities, including the Equitas Premium. (*Id.*) A Name was not required to accept the Settlement Offer, and could choose to reject the settlement "credits" in order to remain free to litigate against Lloyd's or other participants in the Lloyd's market. (*Id.*) However, Lloyd's exercised its regulatory authority to require each Name to reinsure his or her outstanding 1992 and prior obligations with Equitas. (*Id.*) Consequently, regardless of whether they accepted the Settlement Offer, Names were required to make payment of their respective Equitas premium (the "Equitas Premium") and other outstanding underwriting obligations. (*Id.*) Defendant refused to accept the settlement offer and refused to pay his Equitas Premium. (Demery Decl. ¶ 9; Almond Aff. ¶ 25).

In accordance with the English forum selection provision in the 1986 General Undertaking, on November 18, 1996, Lloyd's commenced proceedings in the English Court against Defendant (the "English Action"). (Demery Decl. ¶ 11). In the English Action, Lloyd's sought payment of Defendant's Equitas Premium plus unpaid interest and costs. Lloyd's notified Defendant of the commencement of the English Actions by serving a writ of summons. (*Id.* ¶ 11). In his Affidavit, Defendant admits that he signed a form authorized the British law firm to accept service of process on his behalf. (Almond Aff. ¶ 28). In response to receipt of the summons, Defendant's solicitors of record, the firm of Grower Freeman and Goldberg, served the Acknowledgement of Service. (Demery Decl. ¶ 13 and Exhibit 4 thereto). By taking that action, English law dictates that Defendant appeared in the English Court and notified Lloyd's that he intended to contest its claim. (Demery Decl. ¶ 13). In his Answer, Defendant admits that "the English Courts had personal jurisdiction over [him], for reasons including but not limited to: his agreement in the General Undertaking to submit to the jurisdiction of the English Court with respect to the subject matter involved."(Answer ¶ 10; Cmplt ¶ 31).

Lloyd's properly served Defendant in the English Action, Defendant authorized English solicitors to accept service of process, his solicitors filed an Acknowledgment of Service of Writ

of Summons and he thereby made an appearance in the English Action. (Answer ¶ 10; Almond Aff. ¶ 28).

In the English Court, Defendant had a full opportunity to present his defenses to payment of the Equitas Premium. Specifically, Defendant had adequate notice and opportunity to present defenses that were in fact presented by other Names in a series of English proceedings including the following: (1) that Lloyd's lacked the regulatory authority under the *Lloyd's Acts* 1871-1982 to mandate that all Names purchase reinsurance coverage from Equitas; (2) that Lloyd's lacked the regulatory authority under the *Lloyd's Acts* 1871-1982 to appoint substitute agents to bind Names to the reinsurance contract with Equitas; (3) that Names were entitled to rescind their membership of Lloyd's as a result of alleged fraud in the inducement of their membership of, or underwriting at, Lloyd's; (4) that Names were entitled to litigate claims of fraud in the inducement of their membership of, or underwriting at, Lloyd's as a defense or setoff to their obligation to pay the Equitas premium; and, (5) that Names were not bound by certain provisions of the Equitas reinsurance contract, i.e., the "conclusive evidence" clause and the "pay now, sue later" clause.

The English trial and appellate courts considered and rejected each of these defenses as a matter of law. The English decisions left the Names, including Defendant, free to pursue any claims of fraud against Lloyd's in a separate proceeding. Though Defendant chose not to pursue such claims, hundreds of Names, including some Americans, brought fraud claims, identical to those alleged by Defendant, against Lloyd's. These claims were litigated on the merits in a trial lasting several months, ultimately resulting in a judgment in favor of Lloyd's in 2000. *Jaffray v. Society of Lloyd's* (High Court of Justice 3 November 2000), 2000 WL 1629463. This judgment was affirmed on July 26, 2002 by the English Court of Appeal in an exhaustive opinion spanning more than 300 pages that affirmed the trial court's rejection of the fraud claims against Lloyds. *Society of Lloyd's v. Jaffray* (Court of Appeal 26 July 2002), 2002 WL 1654876. Defendant asserts the very defenses and claims before this Court that he chose not to pursue in England and that have now been ruled on by the Courts of England.

Since the entry of the Judgment, it has been final, conclusive and fully enforceable in England. The Judgment has been accruing interest at a rate of eight percent (8%) since the date of judgment, 11 March 1998. (Demery Decl. ¶ 17). Defendant has not satisfied his judgment debt. (*Id.*)

CONCLUSIONS OF LAW

Under Rule 56, SCRCP, summary judgment is proper here since there is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law. *Sheppard v. Kimbrough*, 282 S.C. 348, 318 S.E.2d 573 (Ct.App.1984). Moreover, the mere fact that a case involves a novel issue does not render summary judgment inappropriate. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 320 S.C. 143, 463 S.E.2d 618 (Ct.App.1995), rev'd in part on other grounds, 327 S.C. 238, 489 S.E.2d. 470 (S.C. 1997). Here, the pleadings, affidavits, declarations, voluminous records from English proceedings and decisions from sister states are sufficient to resolve and apply the legal standards.

I. GENERAL PRINCIPALS OF COMITY

"The enforceability of judgments rendered by the courts of foreign nations is to be determined under the law of the state in which enforcement is sought." *South Carolina National Bank v. WestPac Banking Corp.*, 678 F. Supp. 598, 597 (D.S.C. 1987)[3] (citations omitted). To date, the courts of the State of South Carolina have not addressed the issue of recognizing and enforcing a foreign nation's judgment; however, the District Court of South Carolina has applied and we agree with the application of the general principles of comity announced in *Hilton v. Guyot*, 159 U.S. 113, 202-03, 16 S. Ct. 139, 158-59 (1895). *Id.*

> [W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.

Id. (quoting *Hilton v. Guyot*, 159 U.S. 113, 202-03, 16 S. Ct. 139, 158-59 (1895)). A foreign judgment should be recognized if: (1) the foreign court had personal and subject matter jurisdiction; (2) the defendant in the foreign action had adequate notice and opportunity to be heard; (3) the judgment was not obtained by fraud; and (4) enforcement will not contravene important public policy. *Id.* In this case, Defendant has not claimed or otherwise alleged that fraud - such as the presentation of false evidence or perjury - was committed on the English court to obtain the English Judgment.

According to the general principals of comity, this court is not to act as a forum for the Defendant to re-litigate the merits of the underlying case upon which the foreign judgment is based. Moreover, an action to recognize and enforce a foreign judgment does not serve as an additional avenue for Defendant to appeal the factual and legal rulings of the foreign court. *Id.*

This Court holds that the English Judgment should be recognized and enforced as a matter of law because (1) the English Court possessed both personal and subject matter jurisdiction, (2) Defendant had adequate notice and opportunity to be heard in the English Action, (3) the judgment was not obtained by fraud on the foreign court; and (4) enforcement of the English Judgment does not contravene an important public policy of the State of South

---

[3] Both parties cites *South Carolina National Bank v. WestPac Banking Corp.*, 678 F. Supp. 598, 597 (D.S.C. 1987). (Answer ¶ 14); (Plaintiff's Memorandum in Support of Summary Judgment p, 8).

Carolina. Furthermore, this courts recognition and enforcement of the English Judgment does not violate Defendant's due process rights.

While not binding authority, a recent ruling by the District Court of South Carolina addressing similar factual circumstances as here is persuasive. *See Lloyd's v. Krebs*, Ca No. 2:03-3952-18 (D. S.C., December 13, 2004). Judge Norton, in an unpublished opinion, granted Lloyd's motion for summary judgment against a similarly situated Defendant residing in Charleston, South Carolina. *Id.* Applying and interpreting South Carolina state law, Judge Norton ruled, prior to any discovery being conducted in the case, that the English Judgment in favor of Lloyd's and against the defendant (who was in the same relationship and position as Defendant Almond here) should be recognized and enforced, as a matter of law. *Id.* Judge Norton further held that the English Judgment obtained through the identical proceedings and manner as the Judgment obtained against Defendant Almond did not violate the public policy of the state of South Carolina. *Id.*

A. Defendant Was Subject to Jurisdiction of the English Court

Defendant was subject to jurisdiction of the English Court on a number of grounds. First, Defendant authorized a British law firm to accept service of process on his behalf. (Almond Aff. ¶ 28), thereby conclusively establishing personal jurisdiction. *See WestPac*, 678 F. Supp. at 600. Second, by signing the General Undertaking, Defendant irrevocably agreed to submit to the jurisdiction of the courts of England in connection with any dispute relating to his membership of or underwriting at Lloyd's, thereby conclusively establishing the English Court's personal jurisdiction over him. (Answer ¶ 10; Demery Decl. ¶ 5; *see also* General Undertakings, Ex. 2 to Demery Decl.).

The English Court also had subject matter jurisdiction to adjudicate the dispute between Lloyd's and Names. The dispute involved enforcement of debts owed by Defendant in respect of the reinsurance premium payable by him to Equitas, an English reinsurance company. That payment became due and owing as a result of the R&R plan which was implemented by Lloyd's as part of its regulatory function established by the Lloyd's Acts. Additionally, the reinsurance contract between each Name and Equitas included provisions designating English courts as the forum for, and English law as governing, any disputes relating to the reinsurance premium.

B. Defendant Had Adequate Notice And Opportunity To Be Heard In The English Action

Additionally, Defendant was afforded adequate notice and opportunity to be heard in the English Action. Generally, as long as the foreign court abides by "fundamental standards of procedural fairness," granting comity is appropriate. *See Cunard S.S. Co., v. Salen Reefer Services AB*, 773 F.2d 452, 457 (8th Cir. 1985). The English court system provides impartial tribunals and procedures compatible with the requirements of due process. *See Guinness*, 955 F.2d at 885 (granting summary judgment and holding that the English judgment was rendered by a fair and impartial tribunal and that the judgment debtor was accorded procedures comporting with the requirements of due process).

Defendant had a full and fair opportunity to be heard in the English Action. Lloyd's notified Defendant of the commencement of the English Actions by serving a writ of summons. (Demery Decl. ¶ 11). Defendant hired a British Law firm to accept service of process on his behalf. (Almond Aff. ¶ 28). Defendant signed an Acknowledgement of Service and his solicitors of record served it. (Demery Decl., ¶ 13; *see also* Ack. of Writ., Ex. 4 to Demery Decl.; Almond Aff. ¶ 28). By taking this action, Defendant appeared in the English Court and notified Lloyd's that he intended to contest its claim. (Demery Decl. ¶ 13). Defendant and his solicitors of record had adequate notice to present a defenses on his behalf and indeed that was done. (*Id.*) There can be no question that service upon agents specifically designated to accept service of process is compatible with South Carolina's requirements of due process, as it is specifically provided for by both federal and state rules. See S.C.R.Civ.P. 4(d)(1) (authorizing service on an individual by service on an agent appointed to receive service). Assuming Defendant's claim that he authorized the British law to only accept service and nothing more is true, then by his own admission Defendant was properly served and knew of the lawsuit filed against him in England, yet he chose to take no action. Defendant's position does not change the fact that he had an adequate opportunity to be heard in the English action. Rule 4(j) of South Carolina Rules of Civil Procedure states that "[n]o other proof of service shall be required when acceptance of service is acknowledged in writing and signed by the person served or his attorney, and delivered to the person making service." Accordingly, Plaintiff's service on Defendant is beyond reproach under South Carolina law.

Defendant claims that the English judicial system and specifically the rulings of the English Courts violated his due process rights, which effectively denied him an adequate opportunity to be heard. Defendants broad accusation indicting the English judicial system as a hole is completely unfounded.

In cases brought by Lloyd's to enforce judgments for the Equitas Premium against Names, U.S. courts have repeatedly held that the English courts afforded due process to Names. As the Seventh Circuit Court of Appeals stated:

> Any suggestion that [the English] system of courts 'does not provide impartial tribunals or procedures compatible with the requirements of due process of law' borders on the risible.

The Society of Lloyd's v. Ashenden, 233 F.3d 473, 476 (7th Cir. 2000); *see also The Society of Lloyd's v. Webb,* 156 F. Supp. 2d 632, 639-40 (N.D. Tex. 2001), *aff'd sub nom., Society of Lloyd's v. Turner,* 303 F.3d 325 (5th Cir. 2002) ("Given the structure of the English system, which is substantially similar to our own, [Defendant's] suggestion that the English court system does not provide tribunals compatible with due process is untenable"); *Turner*, 303 F.3d at 331 ("[B]ecause 'the courts of England are fair and neutral forums,' the district courts did not err in recognizing the Judgment that Lloyd's obtained there") (citations omitted); *Grace*, 278 A.D.2d at 172 (Names "were afforded notice and an opportunity to be heard in the underlying English action and, accordingly, the basic requisites of due process were met"). As these courts have made clear, the requirement of due process does not require that the procedural and substantive law of the foreign court be identical to those in the United States; all that is required is that the legal *system* rendering the judgment have procedures "'*compatible* with the requirements of due process and . . . that the foreign procedures are 'fundamentally fair' and do not offend against

'basic fairness.'" *Ashenden*, 233 F.3d at 477 (emphasis in original) (citations omitted); *Webb*, 156 F. Supp. at 640 ("American jurisprudence does not require that the procedures used in the courts of a foreign country be identical to those used in the courts of the United States") (citations omitted); *Turner*, 303 F.3d at 330 ("the foreign proceedings need not comply with the traditional rigors of American due process to meet the requirements of enforceability under the statute"). We find that the English judicial system is 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 202-03, 16 S. Ct. at 158-59.

This Court rejects Defendant's claims that the rulings by the English Courts regarding certain provisions in the R&R contract including the "pay now, sue later" and the "conclusive evidence" clauses violated his right to due process and/or otherwise denied him an adequate opportunity to be heard. Names were free to challenge Lloyd's authority to make the Equitas reinsurance mandatory, and the validity of various provisions of the Equitas reinsurance contract, and did so. The English Courts have ruled on these issues in Lloyd's favor and against the Names. The fact that Defendant chose not to join the other Names in pursuing these claims in England and is now dissatisfied with the English Court's ruling does not transform the substantive rulings of the English Courts into procedural violations.

C. Recognizing and Enforcing the English Judgment Does not Violate an Important Public Policy of the State of South Carolina.

Finally, enforcement and recognition of the English Judgment does not contravene an important public policy of the State of South Carolina. *See Lloyd's v. Krebs*, CA No 2:03-3952-18 (D. S.C., December 13, 2004)(finding that the English Judgment based on breach of contract claim did not violate an important public policy of the State of South Carolina). As noted above, the general principals of comity dictate that an action for recognition and enforcement of a foreign judgment neither serves as another avenue of appeal for the defendant from the foreign judgment, nor allows the defendant to re-litigate the merits of the underlying action upon which the foreign judgment is based. *Hilton v. Guyot*, 159 U.S. 113, 202-03, 16 S. Ct. 139, 158-59 (1895). Moreover, the mere differences between English and South Carolina law do not serve to make the recognition of the Judgment contrary to public policy. As aptly stated by the Fifth Circuit, the:

> enforcement of a judgment of a foreign court based on the law of the foreign jurisdiction does not offend the public policy of the forum simply because the body of foreign law upon which the judgment is based is different from the law of the forum or because the foreign law is more favorable to the judgment creditor than the law of the forum would have been had the original suit been brought at the forum. The very idea of a law of conflicts presupposes differences in the laws of various jurisdictions and that different initial results may be obtained depending upon whether the one body of law is applied or another.

Turner, 303 F.3d at 332-33 (citations omitted). The public policy exception to the recognition of foreign nation judgment is necessarily a limited one, because to hold otherwise would cause every difference in the laws of the two countries to result in a new trial on the merits.

Yet Defendant, in an attempt to re-litigate or appeal the Judgment, argues that the English Judgment is based upon erroneous factual finding and/or legal conclusions of the Court of England, and thus the English Judgment contravenes important public policies of the State of South Carolina. Defendant can neither re-litigate the merits of the English Court's rulings nor, can he effectively argue that the Judgment contravenes public policy. Defendant's claims do not raise to the high standard required by the limited public policy exception to recognizing a foreign judgment.

Defendant argues that the English Judgment is repugnant to South Carolina public policy because it is based on a contract that Defendant claims: (1) he did not execute and refused to enter into personally; (2) was executed on behalf of him by an agent who had been appointed by Lloyd's to act on the Defendant's behalf; (3) was to the detriment of the Defendant and to the benefit of the plaintiff; (4) the terms of which could not be negotiated; (5) the terms of which could not be refused; (6) had no terminus; (7) had no consideration; and (8) was a product of Lloyd's unilateral decision and self-instituted byelaws. All of these arguments were presented to the Courts of England and ruled on by the courts of England. In the English proceedings, Lloyd's presented evidence to address each of these arguments, and the English courts ultimately ruled in Lloyd's favor. Thus, Defendant's arguments are nothing more than a request that this court serve as a court of appeals to the English rulings. Defendant's accounting counterclaim is similarly nothing more than a request that this Court second guess the English Court's mathematical calculations of his outstanding debt. Defendant has pointed to nothing in the English proceedings that denied him a fair and adequate opportunity to litigate these very issues. In fact, according to Defendant he authorized service of process to be accepted and then did nothing to defend himself. Defendant's claims that he did nothing to defend himself in the English action after being given adequate notice should not be held against Lloyd's. Defendant has failed to established that English rule of law regarding contracts is fundamentally different from South Carolina contract law.

Additionally, Defendant is collaterally estopped from claiming that the 1986 General Undertaking is contract of adhesion and that the choice of law and forum selection clauses ("Choice Clauses") contained therein are invalid. Defendant Almond has already litigated these very issues to a final and valid judgment in the United States District Court of the South District of California. *Richards v. Lloyd's of London*, No. Civ.A.94-1211-IEG(POR), 1995 WL 465687, 1995 U.S. Dist. LEXIS 6888, Fed.Sec.L.Rep.(CCH) 98,801 (S.D. Cal. May 01,1995), *aff'd by*, 135 F.3d 1289 (9th Cir. 1998), *cert. denied*, 525 U.S. 943, 119 S.Ct. 365 (1998). According to South Carolina law, collateral estoppel bars the relitigation of an issue which was actually litigated and necessary to the outcome of a proper lawsuit. *McNaughton-McKay Electric Co. of N.C., Inc. v. Andrich*, 324 S.C. 275, 279, 482 S.E.2d 564, 566 (S.C. Ct. App. 1997). Collateral estoppel bars Defendant's litigation of these issues because: (1) the same issues; (2) were actually litigated; (3) determined by a valid and final judgment; and (4) such determination was essential to the prior judgment. *Id.* Defendant Almond and other Names filed a lawsuit against Lloyd's in the Southern District of California alleging that they were fraudulently induced into signing the 1986 General Undertaking, the General Undertaking was a contract of adhesion and

that Choice clauses contained therein were invalid and unenforceable. *Richards*, 1995 WL 465687* 8. The California District Court held that Almond as well as other Names participating in the Lloyd's market before signing the 1986 General Undertaking were not coerced into signing it and that the General Undertaking was not a contract of adhesion. *Id.* The California District Court further noted that Names including Almond were provided with notice of the 1986 General Undertaking, could have refused to sign it, were not threatened with coercive cancellation fees or other coercive measures and that the potential consequences of refusing to sign the new undertaking did not create significant inequality of bargaining power between the Names and Lloyd's. *Id.* Additionally, the California District court ruled that the Choice clauses were valid, enforceable and operated to dismiss all of the Plaintiffs' (including Almond) claims. *Richards*, 1995 WL at * 10. The California District Court's determination that the 1986 General Undertaking and its Choice clauses were valid and enforceable were essential to the final and valid judgment dismissing all of Almond's claims. Therefore, this Court finds that Defendant Almond is collaterally estopped from litigating the validity of the 1986 General Undertaking and its Choice clauses.

Defendant also complains that rulings by the English Court upholding certain provisions in the R&R Contract including the "pay now, sue later" and the "conclusive evidence" clauses violate the public policy of the State of South Carolina. For the same reasons that this Court found these rulings did not violate Defendant's due process rights, this Court finds that the English Court rulings do not violate the public policy of the State of South Carolina. The English Courts operating within a legal system that provides impartial tribunals and procedures compatible with the due process of law ruled on the very issues raised by Defendant and then entered a money judgment in Lloyd's favor.

In sum, there are no legal bases for denying recognition to the Judgment. Defendant concedes that the there are no other judgments between Lloyd's and Defendant that conflict with the Judgment entered against him. (Cmplt. ¶ 24, Answer ¶ 5, Demery Decl. ¶ 18). Lloyd's has not entered into any agreement with Defendant to settle this matter other than through the English action, which is a fact not contested by Defendant. (Demery Decl. ¶ 19). Thus, there remains no genuine issue of material fact. This Court recognizes the English Judgment entered against Defendant in the High Court of England on 11 March 1998 in the amount of £40,117.31 minus certain credits equaling £434.57 for a total of £39,682.74. Furthermore, the £39,682.74 has been accruing interest at a rate of eight percent (8%) or £8.70 per day since the date of judgment on 11 March 1998. (Demery Decl. ¶ 17). This Court grant Plaintiff's summary Judgment motion on June 8, 2005. Defendant's outstanding debt plus accrued interest as of June 8, 2005 equaled £62,685.54. The bank offered spot rate as of June 8, 2005 for converting British sterling pounds into United States dollars was £1.00 to $1.83. Thus, the amount owed by Defendant to Lloyd's in United States dollars as of June 8, 2005 was One Hundred Fourteen Thousand Seven Hundred and Fourteen Dollars and fifty-three cents ($114,714.53). After June 8, 2005, the Judgment shall be reflected in United States dollars and shall accrue interest at the legal rate proscribed by South Carolina statute.

IT IS, THEREFORE, ORDERED that Plaintiff's "Motion for Summary Judgment" is hereby GRANTED and that Defendant's counterclaim is hereby Dismissed.

This 8 day of ~~June~~ August, 2005.

Hon. James W. Johnson