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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD A. TROPP, Plaintiff, v. THE CORPORATION OF LLOYD'S, also known as The Society Of Lloyd's, Defendant.	07 Civ. 414 (NRB) **ECF Case** **REPLY DECLARATION OF RICHARD A. TROPP IN SUPPORT OF SUMMARY JUDGMENT MOTION AND IN OPPOSITION TO MOTION TO DISMISS**

Plaintiff Richard A. Tropp, declares, under the penalty of perjury, that the following is true and correct:

1. I submit this reply declaration to clarify how the undisputed facts show that I was denied all remedies in the UK solely because Lloyd's was the plaintiff. I will explain how my evidence of non-liability was submitted to the UK Courts, but not considered by them because there was no cause of action or remedy that permitted the UK Courts to consider the evidence. Similarly I will explain how the case of *Society of Lloyd's v. Jaffray,* 2000 WL 1629463 (Queen's Bench, Nov. 3, 2000) has nothing to do with my claims and did not provide me with an opportunity to be heard.

2. It is undisputed that I submitted fresh evidence of highly particularized issues of first impression which had never been argued before a UK court -- separately as to each of wrongful liability, and missing assets which should have cancelled that

liability even if it were not wrongful -- on why I was not liable for the amounts Lloyd's sought from me, but none of the evidence was considered on the merits because no remedy existed under UK law. Lloyd's has claimed that a number of the reasons I submitted were not true. For the most part, It does not deny that the rationale for the UK courts rejecting the evidence had nothing to do with its veracity, but only with the UK law that precluded the courts' consideration of the issues supported by my evidence because there was no remedy that could be granted by the UK court in response to those issues, either in defense or in my counterclaims. In outline, this Reply will:

(a) Issue by issue, clarify misstatements made by Lloyd's about my evidence;

(b) Show how there is no dispute that any claim I might have against my members' agent or my syndicates' managing agents is illusory, because in reality I could not gain relief by claiming against them even if the UK courts ordered it;

(c) Show how remedies that I sought in the UK on the basis that I was engaged in insurance business were precluded to me, even though Lloyd's emphasizes to this Court that its UK claim was about insurance transactions, and that it, Lloyd's, itself relies on that UK insurance law in coming before this court.

My Evidence Was Submitted To, But Not Considered By, The UK Courts

3. In general, Lloyd's has tried to make it appear that the UK Courts considered my evidence. Lloyd's Memorandum of Law in Opposition to Plaintiff's Motion for Partial Summary Judgment and in Support of Lloyd's Cross-Motion to Dismiss the Complaint ("Memo of Law") at 9-10. It is undisputed that I submitted evidence of my particularized issues to the UK Courts; the question is what consideration did the UK Courts give to my evidence. When the UK court refused "arguability" of my defenses on

the basis of the "conclusive evidence" clause and the “no set-off’ clause in the R&R Contract (collectively “Conclusive Evidence Clause”) (which in turn relied on the authority in UK law of Lloyd's' R&R by-laws), the UK court was refusing to let me argue my defense issues, and to hear them, on the basis that the court was precluded in law from considering those issues. These decisions were expressed in the language of issue preclusion in defense and of claim preclusion (cause of action estoppel) in counterclaim, not in that of admissibility of evidence. See Court of Appeals affirmance of Summary Judgment, Ex. AF to my moving declaration.

4. In UK procedure, the formal evidentiary effect of the preclusion of argument of my defense issues was that the courts accepted Lloyd's position that my evidence was all not "relevant" within the meaning of the UK law of evidence. This was so no matter what my evidence could show as to the fact issues I pleaded as defenses, nor how authoritatively and indisputably it did so, nor how compelling the questions might be of underlying substantive justice which my issues and evidence raised. My defenses could not meet the threshold burden of going forward in UK law, in the face of the preclusive wall of the Conclusive Evidence Clause.

5. Lloyd’s readily admits that all of my defenses were barred by the Conclusive Evidence Clause. Rule 56.1 Statement ¶27. However, Lloyd’s argues that under UK law, defendant/names had the ability to present their own evidence of “manifest error” that was admissible even under the Conclusive Evidence Clause, citing *Society of Lloyd’s v. Fraser* 1998 WL 1043675 (Court of Appeal, July 31, 1998). *Id*. ¶50. What Lloyd’s does not deny is that the *Fraser* case standard for gaining “arguability” of defenses was not followed in my case, despite my having submitted (a) fresh evidence

to the UK Courts supporting (b) fresh issues which had not been considered before by them (the two Fraser tests for overcoming the R&R “conclusive evidence” clause and being given leave to defend), to show “manifest error”. One key component of my claim of lack of due process was the UK Courts not following their own *Fraser* standard in my case, rejecting all of my evidence without considering it, and by doing so turning the R&R “conclusive evidence” clause from an in theory rebuttable presumption into an in reality irrebutable preclusion of “arguability” of my defense issues.

6. Similarly, when the UK Court refused "arguability" of my counter-claims on the basis this time of Lloyd's' unique statutory immunity in Lloyd's Act 1982 § 14, (“Lloyd’s Immunity”), the UK Court was refusing to let me argue my claims and to hear them on the basis that the court was precluded in law from (a) considering the rights of action (causes of action in UK common law and statute) on which I was relying, and separately was precluded from (b) granting all the remedies (in equity as well as in law) for which I pleaded. See Court of Appeals affirmance of the dismissal of my counterclaims, Ex. AH to my moving declaration. The formal position in UK law was that in light of the preclusion, the court deemed my evidence in counterclaim (as it previously had in defense) to be not "relevant" within the meaning of the law of evidence, because no matter <u>what</u> my evidence might have shown, the issues in counterclaim which I was supporting with that evidence could not be granted argument and hearing by the court.

7. In the declaration of Nicholas P. Demery (“Demery Dec.”) and Lloyd’s Rule 56.1 answer statement, Lloyd’s repeatedly recites as shibboleth that "virtually all the matters he [Tropp] has raised were actively litigated by him in the English proceedings", on the basis that I "asserted and submitted evidence in support of [my]

counterclaim[s]" (Demery Dec. ¶33) and that "Tropp... raised this issue and presented evidence on record in the English courts" (Lloyd's Rule 56.1 statement at *e.g.* ¶52, same formulation repeated at multiple points in it and in the declaration). The theme which Lloyd's presses on this motion as to each issue in my declaration is that I already **have** litigated the issue in the UK, with the corollary that a US court's hearing the issue now would be to relitigate it. Yes, I did have an opportunity to physically utter the sounds of my issues and of my evidence in the ritual of what UK courts called a "hearing." However, I was refused argument of all of those issues without exception, which means that the UK courts refused me opportunity for substantive "hearing", and refused substantively to consider my issues as there was no cause of action or remedy that permitted them to do so.

8. Lloyd's' declaration and Rule 56.1 Statement have painted a picture for the Court -- offered a conceptual framework, within which and through the prism of which they ask the Court to understand this case – which is disingenuous in presenting (a) what this case, and the whole class of R&R cases, are all about; (b) themselves; (c) me, in relation to them; and (d) the origin of my purported agreement in the R&R Contract to preclusion of my defences against Lloyd's' claim. These are fundamental points of fact context, which if the Court does not "get" them, the Court would be considering this case under a basic misunderstanding of what is really going on. Since these points do not directly address the due process question presented for the court in the instant motion for summary judgment, they are not addressed in the body of this declaration. Because it is critical that the Court "get" them, however, in order to understand this case in its underlying true context, and because Lloyd's'

representations to the Court on these points have been deceptive to a level of being in combination decisively misleading as to what is basically going on, I have submitted the points in Exhibit A to this declaration (entitled “What this case is really all about”).

9. The single individual issue of preclusion about which I feel most strongly is that of Lloyd’s having in their claim put the calumny of an alleged unpaid “debt” onto public record, which stigmatizingly dirties the good name I have spent my life living and building, without my being given opportunity in the UK courts for name-clearing remedy to restore reputation. Lloyd's' Rule 56.1 statement § 52 states that "Plaintiff's counterclaims for defamation and libel were... held to be legally insufficient” and denied hearing, but do not explain that this was on the basis primarily that absolute privilege of anything said by Lloyd’s in court overrides any evidentiary fact showing even of knowing false claim: "words used in Lloyd's pleading [of its claim] or witness statements [in support of that pleading]... are subject to absolute privilege, which even proof of malice does not lift." (UK counterclaims strikeout judgment of 5 Nov 2004, § 20). Secondly, in precluding hearing of my name-clearing counterclaims, the UK court circularly relied on the preclusion of my defenses previously (by the R&R "conclusive evidence" clause) as having retrospectively established the truth in law of what Lloyd's alleged as my “debt”, irrespective of its truth in fact. Parliament expressly had carved out a defamation exception in §§ 14(5) to Lloyd’s’ statutory immunity in Lloyd’s Act 1982 § 14 (“Lloyd’s’immunity”), precisely in order to protect members of the Lloyd’s community from slander or libel injury by Lloyd’s management if management were able to hide behind the § 14 immunity to preclude the process of judicial review on the facts. But when I sought the redress that Parliament in § 14(5) had pointedly meant to remain

available to Lloyd's members as an exception to the general immunity, the UK courts found other grounds to preclude me from hearing even in this.

The Jaffray Case Afforded Me No Opportunity to Be Heard

10. Lloyd's Memo of Law at 13 claims that my "procedural posture" is the same as the names in the Jaffray Case and implies that my claims were similar to those in the Jaffray Case. This implication is completely wrong. As Lloyd's admits, I was not a member of the Jaffray plaintiffs' group. Their claim in essence relied on Lloyd's having had a duty to disclose and to regulate during the early 1980s by advising them of what Lloyd's knew at that time about asbestos only, not also toxics contamination pollution or other long tail problems. The Jaffray claim was that Lloyd's failed by omission in that duty. As a result, the Jaffray Names claimed that their recruitment to Lloyd's (or their members' agents having induced them to stay in Lloyd's at that time, if they already were members) was fraud on the inducement.

11. My UK defenses and counterclaims did not rely on a duty which Lloyd's failed by omission to perform, but on proactive acts by Lloyd's. I do not seek to undo my agreement with Lloyd's on the basis of fraud, as did the Jaffray Names. I seek to enforce my agreement with Lloyd's. My case did not rely on proving what Lloyd's knew during the early 1980s, but on Lloyd's behavior 15-25 years later at the time of R&R (1996-98) through today. My case is not limited to or focused on asbestos liability in particular, alone, but relates to pollution and other long-tail IBNR liability in general.

12. My case does not rely on showing any conspiracy as opposed to the alleged conspiracy in the Jaffray Names' case in the early 1980s. The facts of my threshold documentation evidence speak for themselves as to what the Corporation of

Lloyd's knew during R&R in 1996-98, and what it knows today, right now, at a time it is pressing its R&R claim against me. The Jaffray Names alleged conspiracy at Lloyd's central level but did not develop or rely in their claim on evidence of their liabilities disaggregated down to the operating level of their syndicates; my evidence is fresh data and analysis which goes down to that syndicate operating level, on the numbers.

13. Aside from my issues of alleged wrongful liability being different from the matter considered by the UK courts in the Jaffray Case, the issues decided in the Jaffray Case have nothing to do with my new fact issues of alleged "missing assets": conversions of members' trust fund assets and other classes of assets by Corporation insider management during and after R&R, continuing as conversions and as concealment to the present day. All fact issues considered in Jaffray cover a time before Lloyd's had itself assumed duties as trustee of my and all other members' trust funds, for purposes of taking control of those trust assets itself and moving the cash under the cover of effecting R&R.

14. The particularized fresh issues that I was precluded from having heard, notwithstanding that the UK Court of Appeal in *Fraser* had expressly invited R&R defendants to submit such issues (and fresh evidence for them) to defeat the 'conclusive evidence" clause and thereby gain hearing of their defenses, divide into two classes: those issues that I pursued in defense and those that I pursued in counterclaim. The issues that I pursued in defense were foreclosed by the Conclusive Evidence Clause of the R&R Contract, in reliance by UK courts on the authority of Lloyd's' Substitute Agents and R&R Byelaws. The issues that I pursued in counterclaim were foreclosed by the Lloyd's Immunity.

Defense Issues

Long Tail Syndicates: Old carried-forward known "Inevitabilities" losses represented as if "current" insurance "Fortuities"

15. I had, and showed to the United Kingdom courts, substantial threshold evidence to support my claim that I was charged materially not with losses from the years in which I had underwritten insurance, but with a carry forward of inevitable losses from prior years, in the form of Incurred But Not yet Reported ("IBNR") liability which had not yet been realized as notified currently due claims, without adequate reserves to cover those liabilities See ¶¶ 42-54 of my moving declaration.

16. The only mention of this issue in Lloyd's responsive papers is in the Demery Declaration at ¶¶ 40 and 42-43 and Rule 56.1 Statement ¶¶38-39. Lloyd's does not dispute that the UK Courts failed to consider this evidence because no defense in reality existed, none was "arguable" in law, as a result of the Conclusive Evidence Clause, and separately no arguable right of action in counterclaim existed in law because of the Lloyd's Immunity. Rather Lloyd's argues that (a) I misinterpreted Lloyd's Equitas Quotations ("Equitas Quotes") supporting analysis of my syndicates (called Working Group: Gross Outstanding Claims in Ex. Q to my moving declaration); (b) Lloyd's had no responsibility for my syndicates' writing, in effect, phony re-insurance; and (c) I was warned by Lloyd's recruiting material that my syndicates would engage in reinsurance to close. None of these responses is correct.

17. Lloyd's claims I misread the Equitas Quotes tables because they do not show the entire history of the syndicate, only those claims that remained outstanding as of August, 1996. That is wrong. My moving declaration ¶42 stated precisely and correctly what the Equitas Quotes show about my syndicates, from which the R&R

liability in Lloyd's claim arises: those tables show this Court what the true nature of my R&R liability is, not a *cumulative* breakout of all of my syndicates' past losses as well, the straw man Lloyd's raises but which I had not said. The Equitas Quotes do show that as a "snapshot" as of August, 1996, the R&R liability which Lloyd's claimed against me was, on those syndicates, almost all from prior to 1985.

18. Moreover, although this is not evidence that I showed the UK courts, analysis of my long-tail syndicates' loss numbers would not be materially different if it were cumulative (loss already claimed and paid before R&R, as well as IBNR liability still outstanding at the time of R&R), rather than only forward-looking IBNR as of the moment of R&R. It would be an exaggeration to say overheatedly (the straw man which Lloyd's characterized me as saying, but I had not) that my syndicates did literally "no" pure-year real "current" (in an accounting standards sense) business in their years of account. However, for those particular syndicates (which overwhelmingly are the source of the R&R liability alleged against me by Lloyd's), it would materially be pretty close.

19. Those internal Equitas quotes tables show authoritatively not only that the R&R liability claimed against me by Lloyd's arising from those syndicates (whose IBNR is analyzed in the tables) was false statement by Lloyd's to the UK court, but also that Lloyd's had knowledge of this at the time of R&R.[1]

[1] Lloyd's also asserts that I misread Ex. S, the Syndicate Information Statement tax filings with IRS made by Lloyd's for my syndicates, in my moving declaration. (Demery Dec. ¶43). Lloyd's claims that "Closing RI Assumed" is an asset, not a liability. I stand by my interpretation. Moreover, whether the line is an asset or liability, the basic point remains the same. It is undisputed that the line refers to Reinsurance to Close, which is non-arms' length self-reinsurance by my syndicate's managing agent of IBNR liability from its own prior years. Thus, that line on Lloyd's' own tax filing for my syndicates has to refer to obligations assumed and assets therefore which arose prior to the years in which I was an underwriter. I also point out that if the line is an asset, the corresponding liabilities would have to be higher than this "asset" or there would be no need for an Equitas Premium because the syndicate would be solvent.

20. Lloyd's second attack -- that my claims should be against my agents, not Lloyd's -- misses the whole thrust of my defense. I was being sued by Lloyd's itself, on the basis of fact allegations made by Lloyd's itself, and for liabilities which Lloyd's represented to me and to the court as having been incurred as insurance underwriting business during my years of underwriting. My defense was that while I was liable for risks incurred during the years I was underwriting, the risks for which I was being sued were not incurred during the years of my underwriting; they were incurred years before, but falsely reported as being "current" insurance underwriting which was "current" business during my years (as well as, a separate point, that they had been incurred by self-RITC, a non arms' length sham which was not true "reinsurance" and was not true arms' length "business"). The evidence showed that Lloyd's knew this at the time of R&R when they told me that these were my losses, and at the time of their UK claim when they told that to the court, and, thus, that they willfully had made a false claim for which I should not have been liable. It was immaterial if it had been an agent who improperly had originally caused me to appear to be liable for risks incurred years before and which for me were what UK law calls "an inevitability" of already known previous loss, not what real insurance is, a then-current "risk" of loss. The issue is solely whether I should be liable in R&R and now to Lloyd's for these old risks, not who originally had caused me before R&R to be in this position. The claim of agent liability is a red herring that misses the entire focus of the defense.

21. Third, Lloyd's claims in its Rule 56.1 Statement ¶38 that its marketing brochure put me on notice that my syndicates would be doing some self-reinsurance to close, but fails to state that this reinsurance was to be incidental to the syndicate's then-

current real business. Nobody gave me notice that 98-99% of the liability accepted by my long-tail syndicates could be old carry-forward, as opposed to perhaps a single-digit percentage below the level of what UK or US law would consider ‘materiality”.

22. Certainly nobody gave me notice that the decision on the pricing of that "reinsurance" would be made by the same agent acting on both the buyers' and the sellers' side of the table, irredeemably conflicted, without arms' length scrutiny of the sufficiency of that pricing of the "reinsurance" premium (assets to be carried forward into the syndicate's future year) to cover the corresponding liabilities which were being transferred to future-year syndicate members such as me -- while his own financial interest was entirely on the side of the earlier buyer year syndicate’s members.

23. While the UK courts did mischaracterize my defenses based on “wrong years” insurance as possible claims against my agents, their actual *holding* was that the Conclusive Evidence Clause barred the evidence of the wrong years as manifest error. See Court of Appeals affirmance of Summary Judgment, Ex. AF to my moving declaration at ¶16, last sentence.

24. Thus, the Conclusive Evidence Clause precluded me from pursuing any remedy in defense as to old-year risks for which I should never have been responsible, which were not true “insurance business” in my years within the meaning of UK law or of industry usage, were (a separate issue) not true “<u>re</u>insurance” because they were not an arms’ length transfer of liabilities, were not “current” in a financial reporting sense under accounting standards, and were not even real “business” during my years, but a sham of it supported by misrepresented financial reporting which Lloyd’s knew by the time of R&R (if not well before, not at issue here) and knows today to have been false.

LMX Syndicates Also Materially Reinsured Long-Tail Environmental Old Liability, Though On Their Face They Appeared Mostly Catastrophe Risk

25. My losses from underwriting old risks, without my then-knowledge, arose not only from the Long Tail Syndicates but also from my London Market Excess of Loss ("LMX") syndicates, insofar as they carried unidentified long-tail IBNR liability embedded in property or casualty "excess of" loss coverage. Lloyd's did not address this issue at all in its responsive papers. The same analysis applies to these risks, as to the Long Tail Syndicates risks from years prior to my underwriting.

Long Tail Syndicates: Liabilities Incurred from Prohibited Environmental Risks.

26. Lloyd's admits that I had directed that I would not underwrite any environmental, including asbestos, risks. (Lloyd's Rule 56.1 Statement § 7). It does not deny that I sent my Members' Agent written instructions nor that I confirmed those instructions with Lloyd's officers in London at my Rota Committee screening interview, all record of which (minutes, Committee members' notes, transcript, tape if any) Lloyd's now says it has lost when I requested disclosure of those during my UK defense process. Rather Lloyd's claims that this was all the fault of my Members' Agents for which Lloyd's is not liable. (id § 8). Again, the role of the agent is a red-herring. If I had contemporaneously prohibited being placed on certain risks, up front at the time I joined, expressly, and in writing, then I should not be liable for those risks when sued on them. Moreover, the agents argument is irrelevant, as the UK Courts ruled against me on the grounds that they could not consider my claim because of the Conclusive Evidence Clause. *E.g.* CA affirming Summary Judgment, Ex. AF, ¶16, last sentence.

27. If the UK Courts *had* examined the merits, they would have found that:

(a) The Members' Agent was acting as Lloyd's agent, and could not have had authority to act as mine, before I agreed to join Lloyd's when the agent was soliciting me to sign the entering contract with Lloyd's itself;

(b) Lloyd's itself had become, at the time of R&R, my fiduciary when the Finality Statements alleging what I owed for my R&R liability were prepared and sent. Lloyd's itself prepared the numbers in those Statements and then represented them to me and to the UK court, and, thus Lloyd's itself was and is today liable for knowing misrepresentation of my liability to me and to the courts; and

(c) Any claim I had against my Members' Agents would be of no benefit to me because Lloyd's is entitled to seize the proceeds of such claims and to hold on to them for another 70 years, when I would be almost 130 years old if not dead.

28. The Demery Dec. ¶9 states, "Names are the only principals on which behalf an Agent may act. Agents did not act for or on behalf of Lloyd's in recruiting prospective Names...." This is not true:

> (a) a members' agent could not act on behalf of a prospective member whom he was soliciting, who had not yet joined Lloyd's, *before* that member had joined and had consented to have the members' agent act for him as his agent vis-a-vis syndicate managing agents;
>
> (b) when an agent was recruiting a prospective member to join, he was soliciting that member to be induced to sign an entering contract with Lloyd's itself, not with the agent;
>
> (c) my members' agent reported to me, as I showed in evidence to the UK courts, that my agent acted and was required to act as Lloyd's directed on multiple matters having to do with implementing R&R; and
>
> (d) on information, there was documentation as between Lloyd's and all members' agents, not disclosed to their members, in which Lloyd's instructed them (i) that they had duties toward Lloyd's, and (ii) on what acts they were required to perform, how, to meet those duties.

29. Whether Members' Agents in general and mine in particular acted for Lloyd's or not is a question of fact and of law (actual authority, apparent authority) that is, precisely, one of the central issues on which the UK courts precluded argument and substantive hearing to me in defense. See Court of Appeals decision affirming summary judgment, Ex. AF to my moving declaration at ¶ 16.

Extra Year's Material R&R Liability Alleged from Losses After Resignation Offered Timely in Year Before, but Which Lloyd's Would Not Accept

30. Lloyd's admits that I submitted my resignation from Lloyd's to my members' agent in writing on August 3, 1990, confirming my oral resignation in April, 1990. (Citation). However, Lloyd's contends that my resignation was ineffective because it was not made to an authorized officer or employee of Lloyds's (Citation). Lloyd's contends that the UK Courts rejected my claim of resignation on the grounds that it should have been asserted against his agents. Demery Dec. ¶35. In fact, the UK Courts never reached the merits of the resignation because of the Conclusive Evidence provision. Court of Appeals affirmance of Summary Judgment ¶¶14-19.[2], Ex. AF to my moving declaration. Both the Commercial Court and the Court of Appeals noted in dictum that I might have a claim against my members' agent. However, they did not hold that my resignation was ineffective because of what my members' agent did or did not do.

[2] The Court of Appeals in ¶18 stated that "Although he [I] wished to resign the fact is that he was not able to resign…" The Court never dealt with the question of whether my resignation was sufficient, as a matter of law. It just stated the fact that Lloyd's did not accept my resignation.

31. If the UK Courts had reached the issue of the effectiveness of the resignation, I submit they would have found the resignation effective for the following reasons:

(a) My members' agent represented to me before and after I became a member of Lloyd's that members' agents as a class were the parties authorized by Lloyd's to recruit or to process resignations from Names. On information, other members' agents would testify on this fact issue that this was their uniform understanding.

(b) My members' agent never said that they "could" not process my resignation. They said that they "would" not accept it, on the basis that it required 6 months' written notice in order to be effective for the next underwriting year, not the four months' notice that Lloyd's now admits for the first time was sufficient.

(c) At the time in summer 1990, on information and belief, Lloyd's was instructing members' agents to do all they could to keep their members from leaving and pulling the members' capital capacity out of the market.

(d) On information, my and other members' agents would testify to their understanding that it is not true that "His letter to his Members' Agent [as opposed to, to the Corporation of Lloyd's] did not satisfy the written notice requirement of the [Membership] byelaw, and... his Members' Agent... were [not] authorised to accept such written notice within the meaning of the bye-law."

32. The Demery Dec. ¶12 concludes on the resignation issue: "Lloyd's has no record of having received written notice of resignation from Tropp... or of having been notified of his desire to resign. There is no evidence that Lloyd's [as opposed to my members' agent] saw or received the letter of August 3, 1990." This is untrue. For example:

(a) Lloyd's' own US counsel LeBoeuf Lamb advised Lloyd's' Individual Members' Unit on July 28, 1994, a copy of which is attached as Ex. B, that this was one of four issues which LeBoeuf saw as requiring investigation by Lloyd's, as to seeming possible error in the liability that Lloyd's was at the time imputing to me, and

(b) I subsequently discussed this issue with multiple officers of Lloyd's, trying to (i) have my resignation (which Lloyd's has not accepted to this day) be effective

as of the end of 1990, and (ii) to have the 1991 liability which Lloyd's alleged against me be removed. Lloyd's' Chief Executive Mr. Sandler, e.g., directed me to raise this issue with the Head of Lloyd's' Central Services Unit, see letter of Sept 1, 1996 to Mr. Joseph Bradley of CSU at § 3, a copy of which is attached as Ex. C).

33. No UK court ever considered on the merits the evidence that my resignation was proper and if so, should estop Lloyd's from now claiming against me for tens of thousands of pounds in liability arising from the extra conscripted year before which I had resigned.

Funds Belonging To Me Paid To Equitas Without Reducing My Obligation to Lloyd's

34. Lloyd's concedes that its Statement of Reinsurance of December 27, 1997 (Ex. Z to my moving declaration) shows that £269,893 of assets belonging to me were transferred to Equitas (Demery Dec. ¶36). Lloyd's claims that these assets were deducted from my R&R liability before calculating the Equitas Additional Premium. While I discuss Lloyd's explanation below, Lloyd's does not claim that the UK Courts rejected my position because Lloyd's explanation was correct. Rather, the position was rejected because of the "Conclusive Evidence" clause of the R&R Contract § 5.10 . (UK summary judgment ¶¶ 20, 26, no right to see records which would support Lloyd's' conclusory "calculation" and either confirm or show absence of such netting out).

35. Lloyd's explanation flies in the face of the Statement of Reinsurance. It would follow from what Lloyd's is saying that the Statement should have said "R&R Liability - £654,225, then shown a coincidence, that the increase in my R&R Liability ("additional premium") was the same amount as the increase in assets conveyed.

36. When Lloyd's made this argument in the UK, I asked for disclosure of the raw information which would confirm that the £269,893 had already been netted out

elsewhere before Lloyd's began calculating the top line of my Finality Statement. Lloyd's refused to show me any internal book reconciliation which might corroborate that any such prior credit to me, for my share of the assets of my syndicates which were being reinsured into Equitas in R&R, had already been netted out to reduce my R&R liability. Any such "netting out" should be on my individual R&R "Debt Allocation Matrix" purported calculation, prepared by Lloyd's internally at the time of R&R, but Lloyd's has refused to disclose it to me.

37. Once again because the UK Courts did not get into the merits of my claim, but just accepted Lloyd's view of it, I did not get a hearing on this fact issue of simple math, which would have offset the majority of liability assessed against me.

Counterclaim Issues

38. In my counterclaims, I asserted an entirely different set of theories for recovery.[3] Since Lloyd's had unilaterally made itself my members' agent trustee starting in April, 1996, (See Amended Premium Trust Deed, Ex. H to my moving declaration), Lloyd's had a fiduciary duty to account to me for all assets of mine that it handled on my behalf. I asked for this accounting for five different classes of my money as to which I presented evidence that Lloyd's had received, but had not credited me.

39. Lloyd's appears to claim that AUA9 was substituted as my fiduciary, not Lloyd's itself, and that Lloyd's itself therefore owes me no fiduciary duty. Lloyd's Response to Rule 56.1 ¶¶18 & 74. Lloyd's has confused AUA9's substitution as managing agent of all syndicates which were going to be reinsured into Equitas in R&R, with the appointment of Lloyd's itself as substitute members' agent in the Amended

[3] In my defense, I raised as set-offs several of the issues that I later raised as counterclaims. My set-offs, however, were barred by Section 5.5 of the R&R Contract, commonly known as the pay first, sue later clause. My counterclaims were my "later" suit.

Premium Trust Deed, Ex H to my moving declaration. The difference is that a "managing" agent controls funds kept at the syndicate level, while a "members" agent controls funds kept at the individual Name level, after those funds were turned over to the members' agent (formally, to the Name) by syndicate managing agents. My claim is that Lloyd's, as my members' agent, violated its fiduciary obligations in refusing an accounting of my missing assets to me. Because the UK Courts never considered this claim on the merits, they never ruled on it as it applied to all five areas discussed below.

Stop Loss Insurance

40. Lloyd's does not dispute that I purchased Stop Loss Reinsurance for 1989, a year in which I incurred substantial losses, and that a payment is owing to me under that insurance policy. Lloyd's has received the insurance proceeds, but refuses to give me credit for those proceeds because I did not execute an assignment. However, the UK Court's basis for disregarding the proceeds from the stop loss insurance was the R&R Conclusive Evidence and No Set-Off Clauses in defense and Lloyd's Immunity in counterclaim, not my failure to execute the assignment. *See* Commercial Court decision granting Summary Judgment, Ex. AD to my moving declaration, ¶22, last sentence. CA affirmance of dismissal of counterclaims, Ex. AH to my moving declaration, ¶23. The Court's gratuitous reference to the assignment omitted to explain in its judgment the consequences of my executing the assignment. Let me explain.

41. When I had bought the stop-loss policy, I became a policy-holder, insured by my stop-loss syndicates. Their payment to me on my policy (through a stop-loss broker and my members' agent) had been seized by Lloyd's, rather than applied as intended to put a cap on my losses. There is no reason why I should have had to sign

anything to receive, as book credits which would have reduced my liability, my insurance proceeds -- which had simply been taken by Lloyd's, rather than forwarded to Equitas to cover my liabilities that had been reinsured in R&R into Equitas. If I had signed Lloyd's letter, I would have been assigning the money to the Corporation, not ensuring that it would be sent to the insurance claims reserves of Equitas (on my account), where the cash belonged to fulfill its contracted purpose as a catastrophic insurance policy. By signing, I would have been acquiescing to a *fait accompli* of conversion by the Corporation of my stop-loss proceeds.

42. Lloyd's was pressuring me to sign before settlement. I had told Lloyd's many times that if they implemented the settlement that their Chief Executive had agreed with me, I would sign the assignment. The issue was not that I refused to sign it, but that I refused to hand them tens of thousands of dollars outside the context of their executing on that promised settlement, on which they were not delivering.

43. My claim against Lloyd's for the stop-loss proceeds also should have been heard because as my unilaterally self-appointed members' agent trustee, Lloyd's had a fiduciary duty to account to me for all of my funds and assets that it handled in R&R. The proceeds from the stop-loss insurance are exemplary of these assets that Lloyd's held as my fiduciary. I should not have had to sign anything in order for my fiduciary to account to me for my money, or to credit it against their record of my liabilities.

44. My evidence of the stop loss proceeds defense fact issue, which was precluded from "arguability" to dispute quantum by the UK Courts, should have reduced my alleged R&R liability.

Profit Distributions To Me From My Pre-R&R Profit Making Syndicates

45. Lloyd's does not mention my failure to receive profits from my profitable syndicates. Lloyd's silence by inference admits my Members' Agent's reporting (shown to the UK court) that Lloyd's simply took those profits. My Members' Agent had intercepted the profits at Lloyd's direction in the years before R&R, after my syndicate's managing agents had distributed them to me, and sent them to Lloyd's under the "Collection and Distribution Arrangements" (a/k/a "the C&D Scheme").

46. The UK Courts' only reference to my failure to receive my profits is the CA affirmance of the dismissal of my counterclaims, Ex. AH to my moving declaration, ¶32. There the Court erroneously states that I did not plead my failure to receive the profits. I did plead the failure to receive the profits, in precisely the form (by reference to my earlier Part 18 documents on my Part 18 question 3) in which I had expressly been instructed and admonished to do so by the UK court, rather than repeating at length again in the counterclaim itself what I had already pleaded in the Part 18 points which were incorporated by reference in it.. See Defense and Counterclaim, Ex. P to my moving declaration ¶¶ 17, 25, However, the logic of the CA decision is clear -- even if the Court had seen how I pleaded the failure to receive my profits, I would have been barred by claim preclusion under Lloyd's Immunity from pursuing the claim.

Assets Stripped From My Pre-R&R Syndicates' Reserves That Should Have Been Paid To Equitas As Cash, Reducing My R&R Liability Pro Rata

47. Lloyd's does not comment upon my averment (on information from run-off agents of my syndicates before R&R and from specialized insurance industry press in the year after) that in the run-up to R&R sound assets were stripped from my pre-R&R syndicates that otherwise would have been forwarded to Equitas. These assets were

stripped based on a write-down of them forced onto my syndicates' run-off agents by Lloyd's' internal Equitas Working Group. If those assets, such as proceeds owed to my syndicates by non-Lloyd's reinsurers, had been transferred to Equitas, my share of my syndicates' assets would have reduced my R&R liability now alleged by Lloyd's.

R&R "Triple Profit Release" Future Fees Taken Out Of Reserves In Advance

48. Lloyd's does not deny in Demery Dec. ¶37 that the UK Courts never considered the merits of my R&R Triple Profit Release issue, of syndicate managing agents' taking 3 years of advance future commissions on projected future profit (which might or might not actually happen) out of my syndicates' reserves as part of R&R. These advance commissions were taken as fees out of reserves by the insider agents in cash into their own pockets with money which might otherwise have reduced the R&R liability of their syndicates' members. The UK Courts relied upon the Lloyd's Immunity to preclude inquiry by them into this issue. (See Commercial Court and Court of Appeal's decisions dismissing counterclaims, Ex.s AG[4] & AH to my moving declaration.)

49. Lloyd's refused UK disclosure on how much, if any, my syndicates' agents -- the managing agents of those syndicates on whose liability Lloyd's relies in its R&R claim against me -- took in advance fees out of my particular syndicates' reserves for themselves based on this future projected "profit" which had not yet been realized. Lloyd's did admit to the court that it allowed syndicate agents to do this under the R&R Triple Profit Release scheme, in cash into their own pockets, as a corollary to Lloyd's having directed the syndicate agents to reduce their syndicate's members' total R&R

[4] The Commercial Court in Ex. AG ¶13 states that Lloyd's position "seems to be the position on the evidence." "Seems to be" is not a holding, just a dictum. The holding is that the Court precluded triability of the issue based on the Lloyd's Immunity.

book liability by the members' share of their syndicate's projected then-next three years' profits (See my moving declaration ¶¶ 71-73).

50. Lloyd's also refused UK disclosure on how much of these R&R advance fees it had clawed back from its agents (as the R&R Settlement Offer provided for it to do). Lloyd's refused to disclose whether there was any recovery done by Lloyd's from its insider agents at all to Equitas' reserves held to cover post-R&R claims by policy holders who had insured with those syndicates, or (if not to Equitas) for distribution back to the individual members of those syndicates whose projected future profits turned into actual loss, once their syndicates' three-year cycle had closed after the time of R&R.

51. Equitas has reported, as I told the UK court, that there have been no such proceeds given to it by Lloyd's of recovery made by Lloyd's from its agents of such Triple Profit Release advance fees. Lloyd's would not, under questioning by the UK court, tell the judge that it ever has made any such recovery from its insider agents.

52. If the UK Courts had considered my evidence, they would have found an unresolved question, which should have been triable on the facts and subject to discovery since Lloyd's refused to make voluntary disclosure to me in reply to my Part 18 question 9 on it, in Lloyd's explanation that the Triple Profit Release applied to underwriting years 1993, 1994 and 1995, when I did not underwrite any risks. The syndicate tax return evidence I produced to the UK court (my moving declaration ¶ 52(b), exhibit S shows that Lloyd's, itself, reported to the IRS that my *earlier* underwriting year syndicates had *runoff* income in the "Triple Profit Release" tax years 1993, 1994, and 1995. This calendar year income was investment income and proceeds from reinsurers realized during, but not arising from underwriting by me *in* the

1993-95 syndicate years of account. These years, from whose reserves Lloyd's had told its agents to book a 3 years' advance release of projected future profit, were the next 3 underwriting years of account not yet closed at the time of R&R.

53. The UK courts refused argument by me for recovery of these funds converted by Lloyd's' agents out of syndicate reserves without the clawback recovery by Lloyd's after R&R which had been contemplated in the R&R Settlement Offer, my share of which (if any) had not been credited to reduce my R&R liability. Because of claim preclusion by the Lloyd's Immunity, there was no remedy to permit them to do so, and no basis for them to order discovery (for which the summary judgment judge had given me leave to apply on this issue, if my claims had survived strikeout on the law) to learn whether Lloyd's' statement (Demery Dec. ¶37) was true as to me in particular, or not.

My Share Of The Surplus Of £3.5 Billion On Debt Collections That Equitas Assigned To Lloyd's As Security For An Advance Of £285 Million From Lloyd's

54. Lloyd's does not, in Demery Dec. ¶¶ 38-39, dispute that Lloyd's advanced £285 million to Equitas as part of R&R in return for the assignment to it by Equitas of £3.809 billion of debt collections. The Demery Dec. does not discuss the basis for the UK Courts rejection of argument on this defense and recovery issue. (Court of Appeals Decision, Ex. AH to my moving declaration, ¶ 31); the CA's holding precluding my counterclaims in general based on Lloyd's Immunity barred the latter as well.

55. What Lloyd's argues is that I had no claim because out of the £3.809 billion in claims it received, it collected less than £285 million. Demery Dec. ¶39; Rule 56.1 Response ¶103. On the terms of the R&R assignment, this would mean that Lloyd's has not yet fully discharged its security interest in "debts" which Equitas assigned to it that were owed to Equitas, to secure the full repayment to Lloyd's of its

advance. If so, then there would in fact *be* no surplus arising from the R&R assignment as a windfall to the Corporation. If this were in fact true, Lloyd's could have mooted this issue both in defense and in counterclaim by making this disclosure in the UK proceedings. Instead Lloyd's refused to make disclosure on the R&R assignment issue as I had requested.

56. If Lloyd's failed to collect more than £285 million, the question remains, what happened to the £ 3½ billion surplus in RITC Debts which went off Equitas's books between the time of its second pro forma accounts (March 1997) and its first full-year actual ones (March 1998)? It went off Equitas' accounts, did not reappear in any public Lloyd's accounts, and there is no public book reconciliation of the missing surplus (or written off debt), much less a report of what happened to any cash (whether or not surplus) collected under by Lloyd's under the R&R assignment.

57. In accounting, every book entry has to have a corresponding double entry *somewhere*. If there were nothing to this issue, then why would Lloyd's not have disclosed to the UK court a book reconciliation of the unaccounted-for difference between the amount Lloyd's advanced to Equitas (£ 285 million) and the amount of RITC Debts that Equitas assigned in return to Lloyd's (£ 3,809 billion) to secure repayument of Lloyd's' advance? After that £ 3½ billion book surplus (whether or not actually collected by Lloyd's in cash) disappeared from Equitas's books to Lloyd's, where is Lloyd's' reconciling double entry?

58. Lloyd's' Rule 56.1 Statement ¶105 suggests that I misinterpreted what the £ 3,809 billion in R&R debt receivables on Equitas' books represented, and that the amount assigned to Lloyd's in the R&R assignment was a different smaller amount.

First, Lloyd's never said this in the UK, when refusing to make disclosure on the R&R assignment surplus issue I raised. Second, I never stated anywhere, as Lloyd's' Rule 56.1 ¶105 says, that the £ 3,809 billion represented all "assets from the syndicates that Equitas reinsured" which had as part of R&R been transferred to Equitas from those syndicates' reserves, but always referred to that number as being only what was reported in Equitas' financials as R&R debt receivables still outstanding after that transfer. Third, Equitas confirmed that the £ 3,809 billion means exactly what was reported to be on Equitas' pro forma accounts. Fourth, Lloyd's itself was the party which had represented those pro formas to Lloyd's and Equitas' New York State and UK regulators in Lloyd's R&R filings with them.

59. If what Lloyd's now represents in its Rule 56.1 Statement ¶105 were true, then what Lloyd's represented to the NY and UK insurance regulators in its R&R regulatory solvency filings on the future Equitas, as to the quantum of the R&R debt receivables which were booked as an asset on Equitas' pro forma balance sheet, would have had to have been false.

Any Claim I Have Against My Individual Agents Could Not Give Me Any Benefit.

60. The Demery Dec. at ¶ 35 suggests that a member of Lloyd's could sue his individual agents in the UK and benefit from the proceeds if he won. Thus, Demery argues that there is a remedy against the member's individual agents (members agent and his syndicate managing agents) in the alternative to one against Lloyd's. This remedy, however, is illusory. First, when Lloyd's is talking about distribution back to the winning plaintiff of his damages award left after his liabilities are covered, Lloyd's means 70 years from now, at the end of the 80-year term of the Equitas trust, for the duration of

which Lloyd's will hold his court ordered proceeds from the agent whom he had sue. I am in my late 50s. I would have to make it to almost 130 to see the benefit of any proceeds from a damages award ordered by a UK court from such action against my members' agent, my sham self-"reinsuring" syndicates' managing agents, or any other insider party against whom Lloyd's says I could claim instead of against Lloyd's itself.

61. Second, the implication of the Demery Dec. is that the fruit of damages awarded by a UK court to a member against his agents will go into insurance "reserves" held to satisfy his underwriting liability. This is not obviously true. The UK case law that Lloyd's cites, corroborating what I had represented to the court (Demery Dec. ¶35), allows the Corporation to seize those proceeds for *itself*, but does not require it necessarily to forward them to Equitas' insurance claims reserves.

62. There is no evidence that Lloyd's has in fact forwarded such damages recoveries by members from pre-R&R cases against their agents to Equitas, to hold in its reserves to cover policy-holder claims, as opposed to the Corporation seizing and keeping the cash proceeds of that litigation for itself.

63. Finally, on information, Lloyd's most often neither took such damages from its insider agents for itself nor forwarded them to Equitas for claims reserves as the UK court cases which I cited and Lloyd's repeats provide, but reportedly did not even collect the damages ordered by UK courts to be awarded to members. Instead, Lloyd's reportedly forgave the judgments against its insider agents rather than making the agents pay them, if those agents had participated in the R&R settlement (as almost all had) and had been released in it by Lloyd's. Purportedly, those agents who had lost in court had subsequently been released in R&R by the plaintiff members who had won

court orders against them, since the dummy Substitute Agent AUA9 is purported by Lloyd's to have "accepted" that release in the R&R Contract on behalf of all members to whom those court-ordered damages awards against their agents belonged.

64. Thus, any remedy that I might have against my agent's is illusory. The only real remedy that I could obtain is the accounting that I seek in this Court.

Even UK Remedy under English Law of Insurance Precluded by Lloyd's Immunity

65. Lloyd's characterizes its UK claim before this court as one of the regulation of insurance, and characterizes my being in Lloyd's as conducting insurance business under UK insurance statutes (Demery Dec. ¶¶ 2, 5; Lloyd's Rule 56.1 Statement ¶¶ 2, 3(b), 5(a)).

66. I do not dispute that I am subject to those statutes, and to the old English common law of insurance. Quite to the contrary, I relied in my defense on the protections generally available to all insurance underwriters and reinsurers under the UK's general law of insurance. I relied separately, in my capacity as also a reinsured policy-holder who had been reinsured into Equitas under R&R, on the protections for all insurance policy-holders ("assureds") under that UK law (My Part 24 Skeleton Argument of 18 May 2004 in opposition to summary judgment, ¶¶ 37-38, a copy of which is Ex. D and UK CA Appellant's Supplemental Skeleton Argument of 28 Oct 2004, appealing fthe summary judgment, at ¶¶ 1-34, headed "Defences under general law of insurance, and leading authority [under that law], brushed aside..."), a copy of which is Ex. E.

67. I relied centrally in my counterclaims as well on that UK law of insurance, in my capacity as an underwriter presumably covered by the protections offered by that law. I also relied, separately, on my capacity in UK law as a reinsured policy-holder who

was mandatorily made one by Lloyd's in R&R. (See, UK Respondent's Skeleton Argument of 30 Oct 2004 in opposition to strikeout of my counterclaims at ¶¶-12, 17, 21-22, 85, and 114-46, a copy of which is Exhibit F) and Grounds for Appeal, Appellant's Notice of 18 May 2005 requesting permission to appeal the strikeout of my counterclaims at ¶¶24-32, 76-78, a copy of which is Ex. G)

68. New York State public policy underlying insurance law, similarly to the policy in the law across the US, rests on a foundation of the doctrine of *uberrimae fidae*, "utmost good faith" [e.g. *Allendale Mut. Ins. Co. v Excess Ins. Co. Ltd.*, 992 F.Supp. 278, 282-283 (SDNY 1998). This doctrine arises from and precisely parallels the same bedrock principle in the old English common law of insurance, codified in Marine Insurance Act 1906 § 17 and applied by UK courts to all (non-marine) insurance contracts. My UK pleading relied squarely on the House of Lords' lead case which applied this doctrine to a duty of good faith in the individual claim, not only in the insurance contract. *Manifest Shipping v Uni-Polaris & Ors* [2001] UKHL 1 at ¶¶ 121-130 ("Deliberate avoidance... is failure to meet insurance law utmost good faith duty of disclosure; claim voided"). CA Grounds for Appeal, Ex. E, ¶77.

69. In reliance on the old English law of insurance, I argued that the liabilities alleged by Lloyd's against me, first at the time of R&R and now in its UK claim, were not -- either in fact, as my evidence showed, or under that venerable law -- "insurance." The R&R liabilities failed to meet the UK law standard of being "fortuities", but rather were what UK law calls "inevitabilities": already known prior loss, simply carried forward onto my years from prior ones. "Inevitability" is unenforceable as either insurance contract or

insurance claim under UK law, because it is not considered true "insurance" under UK law. (Skeleton Argument in opposition to strikeout, Ex. F, at ¶¶ 17, 21-22, 117-120.

70. Based on the threshold evidence I had shown to the UK court, I argued to it that (i) thosee R&R liabilities alleged by Lloyd's against me were not "insurance", but the product of an elaborate "Ponzi" (aka in UK law a "pyramid scheme"), and (ii) though the Ponzi was veiled from scrutiny by its esoteric complexity, Lloyd's had knowledge at the time of its claim that that's what my liability was, and that its claim was willfully false.

71. Further, I argued that the R&R liabilities alleged by Lloyd's against me fit squarely within the paradigm and the standards of the recent UK lead case on dishonest insurance claims which are unenforceable as arising from insurance contract, *Sphere Drake v Euro Intl, Stirling Cook Brown & Ors* [2003] EWHC 1636 (Comm) (Skeleton Argument in opposition to strikeout, Ex. E, ¶¶85, 131-145, comparing individual structural elements of my alleged liability point by point against the UK courts' standards in that case; UK CA Grounds for Appeal, Ex. F ¶¶ 76-78).

72. The UK courts held that though I am subject to the same **duties** and continuing liability under the UK law of insurance as is the largest corporate insurer, and though Lloyd's can proceed against me under that law (on which it now relies here), none of the **protections** of that law are reciprocally available to me in defense against Lloyd's in its expressly "insurance" claim against me, nor may I rely on the rights or the remedies in that law as the basis for counterclaim. . (CA strikeout appeal judgment § 24)

73. In defense, the Commercial Court ("Comm Ct.") and Court of Appeal ("CA") did so without reasoning, not even bothering to address my defenses under insurance law. In counterclaim, the Comm Ct (in strikeout judgment § 16) accepted

Lloyd's' position: that both my status in UK insurance law as an underwriter, and my obverse status as an "assured" whom Lloyd's had mandatorily reinsured into Equitas in R&R, were a mere "sub-set" of my capacity as a Name. On this basis (and without any law behind the “sub-set” point), the court held that I could not rely on any rights or remedies in the UK law of insurance, whether in my capacity as (as Lloyd's argues now to this court) a statutory underwriter **or** as an assured who had been reinsured in R&R: a reinsured policy-holder (who is supposed to be especially protected by UK law).

74. Rather, the Comm Ct held all my rights and remedies in the old English law of insurance and the modern UK statutory law on which Lloyd's now relies here to be precluded by the unique Lloyd's' Immunity. Ex. AG to my moving declaration.

75. The CA upheld this preclusion of my claims which relied on the UK law of insurance on the basis that I have no insurance contract with Lloyd's itself which would enable me to invoke those remedies of insurance law. (CA strikeout appeal judgment § 24). My contract with Lloyd's was, the CA said, merely one of joining a membership association (as if Lloyd’s were a British “club”), and thus claims under it did not engage UK insurance law, but were precluded by the Lloyd’s Immunity.

76. The net result is that Lloyd's can sue me in reliance on my original entering contract with Lloyd's -- on which Lloyd's relies here, while citing UK insurance law to this court for its authority -- but I can not defend or claim against Lloyd's in reliance on an underwriter's insurance law rights and remedies *under precisely that same contract*.

77. Moreover and separately, Lloyd's can sue me in reliance on the R&R Contract -- which Lloyd's represents to this court, all UK and US courts, UK and US

insurance regulators, and to the markets as being one of "reinsurance" -- but I can not reciprocally sue Lloyd's in reliance on rights as a reinsured (a fortiori, one "mandatorily" made a reinsured in R&R) policy-holder, an "assured" under UK law, those rights which any and every other underwriter reinsured in the UK would have.

78. This example of the Lloyd's Immunity precluding my insurance remedies in the UK shows how perniciously I was denied due process. Unfortunately, my insurance remedies were no different than my contract law, or accounting remedies. All were precluded by either the Conclusive Evidence provisions (in defense) or Lloyd's Immunity (in counterclaim), even statutory rights and remedies such as those in the Misrepresentation Act and the Unfair Contract Terms Act, and even equitable remedies.

What Lloyd's Does Not Deny

79. The Lloyd's Act 1982 §14 statutory immunity exempts Lloyd's from liability in "negligence or other tort", analogously to the US Federal Tort Claims Act. The Demery Dec. and Lloyd's Rule 56.1 Statement do not deny that when the UK Court of Appeal in my case construed the Lloyd's Immunity to preclude argument and hearing of my counterclaims, the CA (a) reaffirmed its prior holding in *Laws* that the immunity precludes all rights of action not only in tort but also in contract, including common law misrepresentation, statutory misrepresentation, and the Unfair Contract Terms Act; and that the CA (b) held to be precluded to me all rights of action under the old English law and modern UK statutory law of insurance (both in my capacity as an underwriter, and separately in my capacity as an "assured" in UK law because I had been reinsured into Equitas in the R&R reinsurance) , all of my rights under the UK law of principal and

agent (including the law on the “conflicted agent”), under the UK’s general Companies law, and all other rights of action on which I relied in my counterclaims.

80. The Lloyd's Immunity exempts Lloyd's from liability to the single specified remedy of "damages", but on its face leaves open all other remedies in UK common law, statutes, and equity. The legislative history of the Lloyd’s Immunity (as I showed the CA in an analysis of that history, which had been sealed in Parliament’s private bill files) memorializes that Parliament expressly had narrowed the immunity to cover only damages, by amending the original language proposed by Lloyd’s management so as to leave open all other remedies, and that Parliament did so expressly to ensure that the immunity would not shield Lloyd’s management’s acts from review by the judicial process. The Demery Dec. and Lloyd’s Rule 56.1 Statement do not deny that in construing the Lloyd’s Immunity to preclude my counterclaims, the UK CA has now held that all of the remedies for which I pleaded -- declaration, injunction, an accounting, specific performance on contractual duties, specific performance on statutory duties -- were constructively the equivalent of "damages" in financial effect, that in UK law the § 14 statutory term "damages" therefore constructively includes and precludes them all, and that they all were precluded to me.

81. The Lloyd's Immunity was enacted by Parliament as part of giving Lloyd’s strengthened self-regulatory powers in the Lloyd’s Act 1982. § 14 was intended by Parliament within that context to exempt Lloyd's from liability when Lloyd’s is performing its regulatory "public functions", exercising those powers which Parliament gave it in the Act for that purpose. The Demery Dec. and Lloyd’s Rule 56.1 Statement do not deny that in construing the Lloyd’s Immunity to preclude my counterclaims, (a) the UK CA

accepted Lloyd's' pleading that its R&R acts were done and its R&R claims are brought in its *private* capacity rather than in its "public functions" capacity (for the purpose of Lloyd's escaping being subject to the protections in UK public law, and with the result that Lloyd's' R&R acts are not judicially reviewable by UK courts under human rights law in the way that all acts by a "public authority" are, see Exhibit A at ¶¶ 16 ff.), but that (b) the CA nevertheless construed the § Lloyd's Immunity also to cover Lloyd's' merely private R&R acts and claims, even though brought in its commercial capacity (as opposed to in its statutory public-law one), and that on this basis the CA held all causes of action on which I relied in my counterclaims to be statutorily claim-precluded.

82. Lloyd's admits, indeed relies on in its R&R claim against me, that it brings its claim as assignee from Equitas (The R&R Deed of Assignment, Ex. Z to my moving declaration,¶¶ 84-85 is Schedule F to Lloyd's UK Particulars of Claim § 9, the relevant portion of the R&R Completion Agreement). Lloyd's has not denied that the Lloyd's Immunity does not cover Equitas, nor does Lloyd's assert that Equitas has any capacity in UK public law under the Lloyd's Act. Under the UK black-letter law of assignment, all defenses which would be available to a defendant against a claim by an assignor are supposed to follow that claim if it is brought by that assignor's assignee instead of by the assignor itself, meaning that all those defenses are to be available as defenses against the assignee exactly as they would have been against the assignor. The Demery Dec. and Lloyd's Rule 56.1 Statement do not deny that the UK CA nevertheless applied the Lloyd's Immunity to preclude me from relying, in defending against Lloyd's' admittedly private-law (not public law) R&R claim, on all the usual rights of action -- in UK contract law (the Unfair Contract Terms Act and Misrepresentation Act as well as

common law), corporate law, agency law, and the law of insurance -- which would indisputably have been available to me if Equitas, the assignor of that claim to Lloyd's, had brought the claim itself, instead of Lloyd's' having done so in (as Lloyd's expressly relied on) a capacity as assignee from Equitas.

83. The Demery Dec. and Lloyd's Rule 56.1 Statement do not deny that under Lloyd's Interpretation Byelaw (No. 1 of 1983) to which the UK courts have deferred, UK courts attribute statutory authority to all Lloyd's byelaws as being "statutory instruments" (aka in UK public law "subordinate legislation", with the same force in law as an official agency regulation): those byelaws issued by Lloyd's in its private, mere commercial, capacity as well as (rather than only) those issued when exercising its statutory "public functions" as self-regulator given to Lloyd's by Parliament in the Lloyd's Act. (Tropp moving declaration ¶¶ 97-98, 101-102).

84. The Demery Dec. and Lloyd's Rule 56.1 Statement do not deny that this deference by the UK courts to Lloyd's even merely private bylaws, as in general all carrying statutory authority in UK law, is the legal basis for Lloyd's having been able to rely, in its R&R claims, on its Substitute Agents and R&R Bylaws as conveying preclusive authority to the "conclusive evidence" clause in the R&R Contract which Lloyd's effected under those two Byelaws, and thereby as precluding my defenses (and those of all defendants in the R&R cases) to Lloyd's' R&R claim brought under the "conclusive evidence" and "no set-off" clauses of that Contract.

85. The Demery Dec. and Lloyd's Rule 56.1 Statement do not deny that Lloyd's committed the acts recounted as "abuses" of the UK courts' process (exhibit AB with my declaration § 91), nor that the UK courts took no judicial notice of those acts by

investigating or redressing them. Nor does Lloyd's deny that those acts individually and cumulatively "tilted the playing field" against me: prejudiced the UK judicial process against giving substantive hearing to my defenses.

Conclusion

86. This case is miscaptioned. It and the other R&R cases are in reality not “the Society” of Lloyd’s against one of its members, but Corporation of Lloyd’s management against its principals -- cloaking the insiders’ false claim for wrongful liability, and conversions from missing trust assets, behind the preclusive effects of the Society’s statutory immunity. If Lloyd’s had the usual corporate structure instead of its deterringly esoteric one, this case would swim into focus for the Court as just another familiar one of insider management self-dealing against their principals the shareholders. The question before this Court is not only whether it will choose to protect me as an American defendant who could not get his defenses substantively heard in the UK system and then could not get redress in counterclaim either, but whether it will let insider management continue to do so from behind the veil of their institution’s immunity, now to me, or will shine the disinfectant of sunlight onto the facts.

87. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.

Dated: New York, New York
June 18, 2007

/s/
Richard A. Tropp