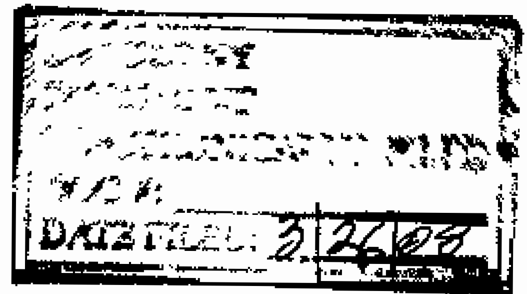

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
--X
RICHARD A. TROPP, individually, and on behalf of all others similarly situated,

Plaintiff,

- against -

THE CORPORATION OF LLOYD'S, also known as The Society of Lloyd's,

Defendant.
--X

MEMORANDUM AND ORDER

07 Civ. 414 (NRB)

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Plaintiff Richard Tropp brings this suit seeking (1) a declaratory judgment that a judgment obtained against him in England ("English judgment") by the Corporation of Lloyd's (also known as the Society of Lloyd's, hereinafter "Lloyd's") is unenforceable here under New York statutory law or the Due Process Clause of the Fifth Amendment; (2) an accounting of all transactions between himself and Lloyd's; (3) an injunction restraining Lloyd's from enforcing the English judgment in New York; and (4) class certification of all similarly situated plaintiffs.

Defendant Lloyd's moves to dismiss all claims pursuant to Fed. R. Civ. P. 12(b)(3) for improper venue, since Tropp agreed in the "Choice Clause" of his contract with Lloyd's to litigate all disputes with Lloyd's in England, or in the alternative pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

Tropp is an individual underwriter, or "Name," in the English insurance market that is regulated by Lloyd's. Whereas Tropp initially invested $160,000 (the bulk of his retirement savings) in that market, due to its collapse, unlimited personal liability, and, according to Tropp, mismanagement and fraud on the part of Lloyd's, Tropp now stands personally liable on a judgment entered by an English court for upwards of $900,000.[1] As discussed extensively below, the judgment represents both Tropp's purported individual underwriting losses as well as his share of a mandatory reinsurance premium imposed on all Names by Lloyd's.

This case presents the latest episode in an epic saga between Names such as Tropp and Lloyd's. The story - Dickensian in length and complexity - has been retold countless times by American courts. See, e.g., Soc'y of Lloyd's v. Siemon-Netto, 457 F.3d 94, 96 (D.C.Cir. 2006) ("Eight circuit courts have set forth the background information that is relevant to this appeal . . . [there is] no need to reinvent the wheel.")[2] Not only are the basic facts well-known, but the results are as well. Since the year 2000, by this Court's tally, Names have lost at least 25 separate challenges

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[1] A judgment against Tropp for £463,881.28 (including interest and costs) was entered by the High Court of Justice, Queen's Bench Division on May 24, 2004. See Declaration of Richard A. Tropp Ex. AE [Soc'y of Lloyd's v. Tropp [2004] EWHC 1397 (Comm.)(Gross, J.)]. Tropp subsequently was denied permission to appeal. Tropp Decl. Ex. AF, [Tropp v. Soc'y of Lloyd's [2004] EWCA Civ. 1544 (Waller, J.)]. The judgment is final. Under exchange rates as of March 24, 2008 (1.98 dollars to the pound) the judgment equates to approximately $918,484.93.

[2] See also Soc'y of Lloyd's v. Reinhart, 402 F.3d 982, 988 (10th Cir. 2005)("[N]umerous courts have summarized the basic facts applicable to the underlying litigation, and these facts are not in dispute").

in American courts (including appeals in eight federal circuit courts) to various aspects of the enforceability of English judgments obtained by Lloyd's.[3] Not a single Name has yet prevailed.

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[3] Names have generally lost challenges on one of two grounds. First, those Names that have sued Lloyd's here have lost on the basis of the "Choice Clause," which requires Names to litigate against Lloyd's in England under English Law. Second, Names against whom Lloyd's has sought to enforce judgments here have lost under the various states' enactments of the Uniform Foreign Country Money-Judgments Recognition Act, or under general common law principles of comity.

Cases that have enforced the Choice Clause include: Lipcon v. Underwriters at Lloyd's, 148 F.3d 1285 (11th Cir. 1998); Richards v. Lloyd's of London, 135 F.3d 1289 (9th Cir. 1998)(en banc); Haynsworth v. Corp. of Lloyd's, 121 F.3d 956 (5th Cir. 1997); Allen v. Lloyd's of London, 94 F.3d 923 (4th Cir. 1996); Shell v. R.W. Sturge, Ltd., 55 F.3d 1227 (6th Cir. 1995); Bonny v. Soc'y of Lloyd's, 3 F.3d 156 (7th Cir. 1993); Riley v. Kingsley Underwriting Agencies Ltd., 969 F.2d 953 (10th Cir. 1992).

Cases that have enforced Lloyd's judgments against Names include: Soc'y of Lloyd's v. Siemon-Netto, 457 F.3d 94 (D.C. Cir. 2005); Lloyd's v. Reinhart, 402 F.3d 982 (10th Cir. 2005), cert. denied 126 S.Ct. 366 (2005); Soc'y of Lloyd's v. Blackwell, 127 Fed.Appx. 961 (9th Cir. 2005); Soc'y of Lloyd's v. Borgers, 127 Fed. Appx. 959 (9th Cir. 2005); Soc'y of Lloyd's v. Fuerst, 138 Fed.Appx. 873 (8th Cir. 2005); Soc'y of Lloyd's v. Cohen, 108 Fed.Appx 126 (5th Cir. 2004); Soc'y of Lloyd's v. Mullin, 96 Fed. Appx. 100 (3d Cir. 2004); Soc'y of Lloyd's v. Shields, 118 Fed.Appx. 12 (6th Cir. 2004); Soc'y of Lloyd's v. Turner, 303 F.3d 325 (5th Cir. 2002); Soc'y of Lloyd's v. Ashenden et al., 233 F.3d 473 (7th Cir. 2000); Soc'y of Lloyd's v. Edelman, 2005 WL 639412 (S.D.N.Y. Mar. 21, 2005); Soc'y of Lloyd's v. Hudson, 276 F.Supp.2d 1110 (D. Nev. 2003); Soc'y of Lloyd's v. Byrens, U.S. Dist. LEXIS 26719 (S.D.Cal. May 29, 2003); Soc'y of Lloyd's v. Webb, 156 F.Supp.2d 632 (N.D.Tex. 2001); Soc'y of Lloyd's v. Anderson, 2004 U.S. Dist. LEXIS 7351 (N.D.Tex. Apr. 27, 2004); Soc'y of Lloyd's v. Campbell-White, 2005 U.S.Dist. LEXIS 22403 (D. Mass. Aug. 23, 2005); Soc'y of Lloyd's v. Grace, 718 N.Y.S.2d 327 (1st Dep't 2000); Collins v. Soc'y of Lloyd's, 874 So.2d 672 (Fla. App. 4 Dist., 2004). Additionally, the following cases enforcing Lloyd's judgments are unreported: Soc'y of Lloyd's v. Tufts, No. 03-2316 (E.D.Mo. May 18, 2004); Soc'y of Lloyd's v. McCarthy, No. 03-80247-CJV (S.D. Fla. July 16, 2003); Soc'y of Lloyd's v. Evnen, 02-CV-118 (D. Neb. Apr. 28, 2003); Soc'y of Lloyd's v. Davies, No. 02-CV-1602-GET (N.D.Ga. Apr. 23, 2003), aff'd No. 03-13794 (11th Cir. May 21, 2004); Soc'y of Lloyd's v. Bennett, No. 02-CV-204TC (D.Utah Nov. 12, 2003); Soc'y of Lloyd's v. Rosenberg, No. 02-1195 (E.D.Pa. Aug. 12, 2002); Soc'y of Lloyd's v. Ellis, No. 05-159-CA (Fla. Dist. Ct. 4th Dist. 2005); Soc'y of Lloyd's v. Almond, No. 03CP406076 (S.C. Cir. Ct. Richland 2005). See Defendant's Appendix of Unreported Decisions, attached to the Declaration of Nicholas P. Demery, and filed concurrently with Defendant's Motion to Dismiss.

Against this avalanche of prior case-law, Tropp argues that his case is different. However, as explained more fully below, even though Tropp's record may be more extensive, his legal claims do not differ in any material aspect from those of previous Names. Accordingly, we deny Tropp's motion for partial summary judgment, and we grant Lloyd's motion to dismiss the complaint on the basis of improper venue, or, in the alternative, for failure to state a claim.

BACKGROUND

While we concur with the D.C. Circuit that there is no need to reinvent the wheel, we need to provide enough factual background to set forth Tropp's arguments.

I. Tropp's Underwriting

A. The Lloyd's Insurance Market

Lloyd's is a 300-year-old market in which individual and corporate underwriters known as "Names" underwrite insurance. "The Corporation of Lloyd's, which is also known as the Society of Lloyd's, provides the building and personnel necessary to the market's administrative operations. The Corporation is run by the Council of Lloyd's,[4] which promulgates 'Byelaws,' regulates the market, and generally controls Lloyd's administrative functions."

[4] The Lloyd's Council is elected primarily by Managing Agents of the various syndicates.

Haynsworth v. The Corporation of Lloyd's, 121 F.3d 956, 958 (5th Cir. 1997).[5] See also Roby v. Corporation of Lloyd's, 996 F.2d 1553, 1357 (2d Cir. 1993)(stating that Lloyd's is a market "somewhat analogous to the New York Stock Exchange"). See Lloyd's Acts, 1871-1982.

In order to participate in the Lloyd's market, Names are required by English law to become members of the Society of Lloyd's.[6] As members, they underwrite insurance by joining various "syndicates" which pool and manage investments in assorted risks. While investment in Lloyd's has typically been a "profitable venture,"[7] Names are personally liable on losses incurred by the syndicates that they join, unless they buy a "stop-loss" insurance policy.[8]

Names' underwriting activities are mediated by two sets of agents - Members' Agents and Managing Agents. Members' Agents, somewhat analogous to brokers, open the Names' accounts, place their Names' on various syndicates, and generally oversee their Names' underwriting activities. Managing Agents, underwriting specialists, run the day-to-day business operations of each

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[5] See also Declaration of Nicholas P. Demery ¶ 3.

[6] Demery Decl. ¶ 5.

[7] Soc'y of Lloyd's v. Mullin, 96 Fed.Appx. 100, 102 (3d Cir. 2004)("Underwriting in the Lloyd's market has traditionally been a profitable venture, but Names began to incur substantial losses in the late 1980s and early 1990s.")

[8] See Tropp Decl. ¶¶ 20; 26-30.

syndicate, and decide which insurance policies to underwrite. Both sets of agents assume contractual responsibilities over Names' underwriting activities, and owe fiduciary duties to the Names.[9]

Each syndicate underwrites insurance for exactly one calendar year, beginning on January 1 and ending December 31. In order to calculate gains and losses, syndicates must stay "open" for at least three years afterwards.[10] After three years, a "closing" syndicate must find a new, open syndicate to reinsure its outstanding liabilities. This type of reinsurance is called "RITC" (reinsurance to close). In exchange for a certain premium, ("RITC premium"), a new syndicate agrees to accept the bundle of all outstanding liabilities from a closing syndicate, including the RITC policies that the closing syndicate itself had underwritten for prior syndicates. Thus, a single new RITC policy may pass down many syndicates' worth of outstanding liabilities, thereby exposing new syndicates to potentially vast pre-existing liabilities.

Pursuant to § 14(3) of the Lloyd's Act of 1982, Lloyd's itself, as regulator of the market, is provided with immunity ("Lloyd's Immunity") from suits brought by Names, except for claims of fraud or bad faith. See, e.g., Soc'y of Lloyd's v. Jaffray, 2000 WL 1629463 (Queen's Bench Division (Comm. Court), Nov. 3, 2000)(Creswell, J.) aff'd (2002) 146 S.J.L.B. 214 (AC), available

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[9] Compl. ¶¶ 26-34; Roby, 996 F.2d at 1357.

[10] See Demery Decl. ¶ 11.

at 2002 WL 1654876 at *1. See also Bonny v. Soc'y of Lloyd's, 784 F.Supp. 1350, 1359 (N.D.Ill. 1992)("Lloyd's immunity represents an important English public policy choice."). Members' Agents and Managing Agents, however, do not have such immunity. See, e.g., Soc'y of Lloyd's v. Robinson, 1 W.L.R. 756, 767 (House of Lords, 1999).

B. Tropp Becomes a Name

Tropp was recruited to join Lloyd's in 1987 through a Member's Agent named John Hayter.[11] Tropp had recently retired from his job at the United States Agency for International Development, and had worked previously at the Environmental Protection Agency, ("E.P.A.")).

Tropp complied with the various requirements to become a member of Lloyd's: he passed a means test to ensure he had the ability to meet underwriting obligations, signed the necessary contracts, posted a fully collateralized $160,000 letter of credit,[12] and went through the required screening interview with the Lloyd's Rota Committee on August 11, 1987. (As described by the Fifth Circuit: "Names must . . . personally appear in London before a representative of the Council of Lloyd's to acknowledge

[11] It appears that John Hayter originally worked for Hayter Agencies Ltd., and then later with a firm by the name of Hayter Brockbank.

[12] With leverage, such a letter of credit allowed Tropp to take on risks of up to $640,000.

their awareness of the various risks and requirements of membership, and in particular the fact that underwriting in the Lloyd's market subjects them to unlimited personal liability." Haynsworth, 121 F.3d at 958-59.

The central contract that Tropp signed with Lloyd's was the "General Undertaking."[13] The General Undertaking obliges Names to comply with all provisions of the Lloyd's Acts, as well as with any current or future Byelaws promulgated by the Council of Lloyd's.[14] Clause 2.2 (the "Choice Clause") requires Names to litigate any and all disputes with Lloyd's in English courts under English law, and also sets forth that the Names agree to personal jurisdiction in England, and that any final judgment against them rendered in England is enforceable in other jurisdictions.[15]

Because of his work at the E.P.A., Tropp was sensitive to looming environmental, particularly asbestos-related liabilities, and wished to avoid investing in any syndicates exposed to such environmental risks. Tropp apparently confirmed with the Lloyd's

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[13] See Tropp Decl. Ex. B. [General Undertaking between Richard A. Tropp and the Society of Lloyd's, effective as of January 1, 1988]; see also Demery Decl. Ex. 2 [same].

[14] Id.

[15] Clause 2.2 of the General Undertaking reads in pertinent part: "[T]he courts of England shall have exclusive jurisdiction to settle any dispute and/or controversy of whatsoever nature . . . . [the Name] irrevocably agrees that a judgment in any Proceeding brought in the English courts shall be conclusive and binding upon each party and may be enforced in the courts of any other jurisdiction." Tropp Decl. Ex. B at ¶ 2.2; Demery Decl. Ex. 2 at ¶ 2.2.

Rota Committee at his screening interview in August, 1987,[16] and again with his Member's Agent both orally and by letter dated September 11, 1987,[17] that he would not be placed on any syndicates exposed to such environmental risks. He also purchased stop-loss insurance. Tropp underwrote insurance through various syndicates for the years beginning on January 1, 1988, January 1, 1989, and January 1, 1990.

In April, 1990, however, things began to unravel. Tropp received back from Hayter Brockbank (his re-named Member's Agent) an uncashed check for his stop-loss insurance policy for his 1990 syndicates. Hayter Brockbank told Tropp that stop-loss insurance was no longer available. Tropp now maintains that this was a lie, since Hayter Brockbank's directors and officers had in fact procured stop-loss insurance to cover themselves for 1990 syndicates.[18]

Upon learning that he was no longer covered by stop-loss insurance, Tropp immediately tried to stop underwriting. Tropp

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[16] Tropp Decl. ¶¶ 12-13. Whereas Lloyd's Rota Committee normally retains minutes, transcripts, and tape recordings of Rota Committee meeting, Lloyd's has represented to Tropp that no such evidence can be found with respect to his August 11, 1987 interview. Id.

[17] Tropp. Decl Ex. F [Letter from Richard A. Tropp to John Hayter, dated September 11, 1987] ("This letter is to reconfirm. . . that you have placed me on no syndicate, under any circumstances, which either is or could become exposed to environmental liability of any kind. This is an absolute condition to my joining Lloyd's, to my approving the Syndicate Arrangements enclosed, and to my underwriting for all future years, and I rely on your assurance - per our discussions on this - that none of the syndicates onto which the agency places me will ever carry such potential liability.")).

[18] See Tropp Decl. ¶ 15.

called Hayter Brockbank and orally resigned for the following year, beginning January 1, 1991. But, apparently because Tropp was an army-reservist called up to active military duty, he did not send written notice of his resignation until months later, on August 3, 1990. At that time, Hayter Brockbank refused to recognize his resignation for 1991 - again fraudulently according to Tropp[19] - because they maintained that resignations must be made in writing by the end of June, at least six months prior to the start of the next calendar year. Therefore, Hayter Brockbank again placed Tropp on syndicates for the 1991 year, again without stop-loss insurance.[20]

C. Collapse of the Insurance Market

Tropp's loss of stop-loss insurance, and his having been, in his words, "conscripted" to underwrite for another year could not have come at a worse time. Beginning in the early 1990s, syndicates at Lloyd's were wracked by staggering losses of upwards of twelve billion dollars.[21] Ashenden, 233 F.3d at 478 ("Huge

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[19] Tropp Decl. ¶¶ 16-17. Tropp maintains that Lloyd's Byelaws only require four months notice before a resignation becomes effective. Lloyd's counters that Tropp erred by sending his August 3, 1990 letter only to Hayter Brockbank, and not to Lloyd's itself. Demery Decl. ¶ 12. Had Tropp written to Lloyd's itself, on August 3, 1990, the letter would have amounted to effective resignation. But, under Lloyd's Byelaws, Members' Agents are not authorized officers or employees of Lloyd's for purposes of accepting resignations.

[20] Tropp's resignation appears to have been effective at least for the 1992 calendar year. There is no evidence of any losses from 1992 syndicates.

[21] The $12 billion figure comes from Lloyd's itself. Demery Decl. ¶ 14. See also Edelman, 2005 WL 639412 at *3. A 1995 New York State Insurance

underwriting losses [] threatened to destroy the London insurance market"). The losses were due in large part to previously incurred but not yet reported environmental liabilities, which had cascaded down from previous syndicates through RITC reinsurance.

As the losses began to mount, Tropp received cash calls on his letter of credit in 1992, and then again in 1993,[22] to which he consented.[23] He then received a third cash call in 1994, which would have drained his original investment of $160,000 down to zero, and, according to Tropp, forced a second mortgage on his home.[24]

But, rather than accept the last cash call, Tropp began investigating. Tropp managed to inspect the accounts of six of his

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Department audit of Lloyd's for the period ended December 31, 1993 found an $18.4 billion deficiency. A copy of the report is available at www.truthaboutlloyds.com/regulation/ nyidreport.html.

[22] Tropp Decl. ¶ 18. Cash calls were typically made by Member's Agents, based on information provided to them by the managing agents for each of the Name's respective syndicates. See also Demery Decl. ¶ 12.

[23] Tropp Decl. ¶ 9.

[24] Tropp Decl. ¶ 19. We, like previous courts in Names' cases, remain sympathetic to the situation that Names found themselves in. As one English court put it:

> It is easy to understand the depth of feeling of those names who became members of Lloyd's between 1977 and 1987. They joined Lloyd's at a time when there were many syndicates infected with asbestos-related risks which were persistently underestimated. The procedure at Lloyd's was that each year's accounts were, at the end of a three-year period, closed into the next year's accounts. The effect was that the new names inherited losses of massive proportions.

Soc'y of Lloyd's v. Jaffray, (2002) 146 S.J.L.B. 214 (AC), available at 2002 WL 1654876 at *1.

largest-loss syndicates.[25] He also hired a forensic accountant, who determined that approximately 98-99% of Tropp's alleged losses stemmed from his being placed on syndicates which, ultra vires of his entering prohibition, were exposed to environmental risks through RITC policies.[26] According to Tropp, some of his syndicates were not underwriting any new policies at all, but only writing RITC reinsurance of earlier syndicates, which had been exposed to massive environmental risks. In addition, Tropp further learned that his Member's Agent had received "placement fees" for placing him on these risky RITC-heavy syndicates.[27]

Tropp then began negotiating with Lloyd's for a settlement. Tropp claims that he reached an agreement in principle with senior Lloyd's management in November, 1995, and was sent a "Settlement and Release Agreement" on December 11, 1995 that would have absolved him of liability.[28] Before any such agreement was formally executed, however, the Lloyd's Council announced its massive Reconstruction and Renewal Plan ("R & R") which applied mandatorily to all Names.

D. Lloyd's R & R

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[25] Tropp Decl. ¶¶ 21-25.

[26] Tropp Decl. ¶ 24.

[27] Tropp Decl. ¶ 22.

[28] Tropp Decl. ¶ 25.

The Lloyd's Council enacted the Reconstruction and Renewal plan ("R & R") to protect both those who had purchased insurance from Lloyd's and the Names themselves, who might otherwise face unlimited personal liability. See generally Ashenden, 233 F.3d at 478.[29] R & R had two major components.

First, Lloyd's syndicates transferred all "open" liabilities for 1992 and preceding years onto a new special-purpose entity called Equitas, which would reinsure those risks.[30] In order to pay for this reinsurance, Equitas assessed on each Name a premium (the "Equitas Additional Premium"), which was individually calculated based on the Name's current and projected future losses.[31] Equitas then assigned the right to collect these premiums to Lloyd's.[32]

Second, Lloyd's sent a "Settlement Offer" to each Name, whereby Names could agree to pay a discounted amount of moneys allegedly owed in exchange for a release from future liabilities. The Settlement Offer contained a "Finality Statement", which set forth the aggregate amount required to satisfy the Name's prior

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[29] For other descriptions of R & R, see Allen, 94 F.3d at 929-31; Haynsworth, 121 F.3d at 958-61; Roby, 996 F.2d at 1357.

[30] Tropp Decl. ¶ 30; Demery Decl. ¶ 15. Officially, Equitas is a holding company, owned by a trust, the beneficiaries of which are the reinsured Names, but the trust itself is controlled by the Lloyd's Corporation. Id.

[31] Technically, Names were assessed an "Equitas Premium," but only had to pay the amount by which the "Equitas Premium" exceeded their reserves with Lloyd's, hence their "Equitas Additional Premium." See, e.g., Lloyd's Memorandum of Law at 17 n.13; Tropp Decl. Ex. Z [Lloyd's Statement of Reinsurance issued to Mr. RA Tropp]. For the sake of convenience and brevity, we refer exclusively to the "Equitas Additional Premium."

[32] Demery Decl. ¶ 20; Reinhart, 402 F.3d at 991.

unpaid underwriting liabilities (if any) and the Equitas Additional Premium. The Finality Statement also included and an individually calculated package of "settlement credits" that each Name who accepted the Settlement Offer by a certain date could use to reduce the amount owed.[33]

Tropp received his Finality Statement in August, 1996. It called for him to pay £253,409 in uncalled accrued cash calls (with interest) from his 1989, 1990, and 1991 syndicates, as well as £114,439 for his Equitas Additional Premium, a total of £367,848.[34] Tropp was also offered £281,077 in settlement credits, meaning he would have to pay only £86,771 if he accepted the Settlement Offer.[35]

Names were given until September 11, 1996 to accept. Although the Settlement Offer was optional, Lloyd's exercised its regulatory authority to require all Names to reinsure outstanding liabilities with Equitas and pay the Equitas Additional Premium by September 30, 1996.[36] Lloyd's did so pursuant to its authority under § 18(b) of Schedule 2 of the Lloyd's Act of 1982 to appoint "substitute agents" for the Names whenever the Lloyd's Council deemed it necessary. Through a series of Byelaws and resolutions

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[33] Demery Decl ¶ 15 ; Allen, 94 F.3d at 927. In order to receive the settlement credits, Names had to agree to release not only Lloyd's, but also their Member's Agents, Managing Agents, and other market participants. Id.

[34] Tropp Decl. ¶ 34; Demery Decl. ¶ 16.

[35] Demery Decl ¶ 16.

[36] Demery Decl. ¶ 18; Turner, 303 F.3d at 327-28.

under this Act, the Lloyd's Council appointed an entity known as "AUA9" (Additional Underwriting Agencies (No. 9) Ltd.) as a "substitute agent" for the Names.[37] In turn, AUA9 signed the Equitas Reinsurance Contract ("Equitas Contract") with Lloyd's on behalf of all Names.[38]

According to Lloyd's, close to 95% of all Names agreed to the Settlement Offer by September 11, 1996.[39] A few Names, including Tropp, did not ("non-accepting Names").[40] It appears that Tropp refused to pay for a variety of reasons - he believed that the numbers in his Finality Statement were incorrect and overstated; he felt that the purported release would be ineffective since Lloyd's reserved the right to collect future shortfalls even from those Names who accepted;[41] but most of all Tropp was still engaged in his own negotiations concerning a personal settlement for far less.

Indeed, Tropp appears to have been engaged in negotiations with Lloyd's throughout the entire time period from 1995 to 2001. The parties seem to have drawn the closest a few years later, in 1998. For instance, Tropp received a letter dated July 9, 1998

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[37] See Byelaw No. 82 of 1995; AUA9 Resolution of 1996. The sole shareholder of AUA9 is the Society of Lloyd's. Siemon-Netto, 457 F.3d at 97.

[38] Demery Decl. ¶ 18.

[39] Demery Decl. ¶ 17; Soc'y of Lloyd's v. Ashenden, 233 F.3d at 478.

[40] While Lloyd's maintains that only about five percent of the Names did not accept their Settlement Offer, Tropp believes the number may be slightly higher. Tropp Decl. ¶ 33 n.2.

[41] See Tropp. Decl ¶¶ 31-32.

from the Head of Lloyd's Financial Recovery Department "reconfirming" that once the necessary paperwork was complete, Lloyd's would release Tropp in exchange for a payment of only $5,000.[42] Tropp later received similar letters confirming a settlement of £3,125 (approximately $5,000 at the time) on January 25, 2001, and March 15, 2001.[43] However, unfortunately for Tropp, the necessary paperwork was never completed.[44]

II. Legal Proceedings Arising From Lloyd's R & R

A. Lloyd Enforces the Equitas Premium

Lloyd's brought suits for breach of contract against non-accepting Names. Lloyd's efforts to collect were aided by two highly controversial clauses in the Equitas Contract - the "pay now, sue later" clause, and the "conclusive evidence" clause. The "pay now, sue later" clause forbid Names, in suits brought by Lloyd's, from raising any claims for set-off or fraud on the part

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[42] Tropp Decl. ¶¶ 35-37; Ex. L [Letter from Phillip R. Holden to Richard A. Tropp dated July 9, 1998].

[43] Tropp Decl. ¶¶ 35-37; Ex. M [Letters from Sarah Wilton, Financial Controller at Lloyd's to Richard A. Tropp dated January 25, 2001, and March 15, 2001].

[44] The ultimate reasons why a settlement was never finalized are missing from the record. The courts in England were sympathetic to Tropp's near-settlement, but found his legal estoppel argument unavailing. See e.g., Tropp v. Soc'y of Lloyd's [2004] EWCA Civ. 1544 (Waller, J.) at ¶ 20 ("I have to say that I have some sympathy with Mr. Tropp on that, as far as I have looked at the correspondence. But one thing is clear, and that is that the judge was right in law [that Tropp could not assert estoppel.]"). See also Soc'y of Lloyd's v. Tropp [2004] EWHC 1397 (Comm.)(Gross, J.) at ¶ 46 (noting that Tropp and Lloyd's were "within a whisker" of settlement, and "it is a matter to be much regretted . . [that they] drew further apart.").

of Lloyd's. Instead, Names had to press such claims in a separate proceeding, where the claims were denoted as "counterclaims." The "conclusive evidence" clause made Lloyd's determination of the amount of a Name's Equitas Additional Premium conclusive "in the absence of manifest error."

Non-accepting Names challenged the Equitas Contract, and specifically the "pay now, sue later" and "conclusive evidence" clauses, but to no avail.[45] Lloyd's won across the board, and courts unanimously upheld the validity of the Equitas Contract despite the fact it had only been signed on the Names' behalf by substitute agent AUA9. See generally Soc'y of Lloyd's v. Ashenden, 233 F.3d 473; Soc'y of Lloyd's v Leighs, [1997] C.L.C. 759 (QBD) available at 1997 WL 1104338, aff'd, Soc'y of Lloyd's v. Lyon, Leighs & Wilkinson, [1997] C.L.C. 1398 available at 1997 WL 1104500.

After winning judgments in England, Lloyd's sought to enforce judgments against non-accepting American names in United States courts. American Names fought the enforceability of the English judgments, contending that the pay-now-sue-later clause and the conclusive evidence clause deprived Names of due process of law, and rendered the English judgments unenforceable here. American

[45] See Demery Decl. ¶ 22. The defenses of the recalcitrant Names included that Lloyd's lacked the regulatory authority to require Names to purchase reinsurance from Equitas; that Lloyd's lacked the regulatory authority to appoint substitute agents to negotiate on behalf of Names; that Lloyd's lacked proper title to sue; that Names were entitled to litigate fraud in the inducement; and that Names were not bound by the "pay now, sue later" or the "conclusive evidence" clauses of the Equitas contract.

Names also lost these challenges across the board. See, e.g., Soc'y of Lloyd's v. Ashenden, 233 F.3d at 479-481; Soc'y of Lloyd's v. Edelman, 2005 WL 639412 at * 4-6 (S.D.N.Y. Mar. 21, 2005)(collecting cases and noting that Names had already lost challenges to English judgments in fourteen separate federal and state courts.)

B. Tropp's Legal Proceedings

Apparently since Tropp and Lloyd's were still negotiating, Lloyd's did not bring suit against Tropp in the first wave of enforcement actions in 1997 and 1998. But, as the parties never reached a final settlement, Lloyd's eventually sued Tropp on August 22, 2002 in the High Court of Justice, Queen's Bench Division.[46] Lloyd's sought £433,560.19, representing Tropp's unsatisfied underwriting liabilities, his unpaid Equitas Additional Premium, interest and costs.[47]

After yet another round of settlement talks failed,[48] Tropp moved to dismiss the complaint on April 28, 2003 for lack of proper

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[46] Demery Decl. ¶ 23.

[47] Interestingly, the amount claimed by Lloyd's, pre-interest and costs, was less that the amount on Tropp's Finality Statement. Apparently, Lloyd's did not sue Tropp for his "Central Fund Debt," one alleged component of the unpaid underwriting obligations. See Demery Decl. ¶ 25.

[48] Tropp Decl. ¶ 38; Demery Decl. ¶ 23. A sticking point appears to have been that Lloyd's was only willing to settle with respect to itself, whereas Tropp insisted that any settlement cover Lloyd's, Equitas, and any other subsidiary or affiliate.

service.[49] (Like other Names, Tropp was only served by means of his "substitute agent," the same AUA9 entity that had signed the Equitas Contract on his behalf.) The court denied Tropp's motion by order dated January 20, 2004.[50]

On May 14, 2004, Tropp filed his "Defence and Counterclaim."[51] Tropp argued inter alia that the Equitas Equitas Contract was invalid because it was signed by AUA9 on his behalf;[52] that his purported losses stemmed from risks that he had not agreed to underwrite, either because he refused from the inception to underwrite environmental risks or because he timely resigned from the 1991 syndicates;[53] that the Managing Agents of his syndicates were engaged in fraud and self-dealing in underwriting RITC policies exposed to massive environmental liabilities, and in churning Names' accounts;[54] that Lloyd's was aware of the Managing Agent's fraud and systematically failed to prevent it;[55] and also that Lloyd's was in possession of substantial funds that should

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[49] Tropp Decl. ¶ 39; Ex. N. [Tropp's Statement of the Case]. Tropp argued that Lloyd's had only served a local member's agent, wholly controlled by Lloyd's, and Tropp himself had never been properly served.

[50] Tropp Decl. Ex. O [Soc'y of Lloyd's v. Tropp [2004] EWHC 33 (Comm.)(Gross, J.)]]; Demery Decl. Ex. 5 [same].

[51] Tropp Decl. Ex. P. [Tropp's Defence and Counterclaim].

[52] Tropp Decl. Ex. P at ¶¶ 8-9.

[53] Tropp Decl. Ex. P at ¶¶ 22-24.

[54] Tropp Decl. Ex. P at ¶¶ 19-20.

[55] Tropp Decl. Ex. P at ¶ 38.

have been credited to Tropp's account but had not been, including his stop-loss insurance proceeds of £28,831.29 for his 1989 syndicates, various proceeds of other successful syndicates, proceeds from various Names' litigations against Managing Agents, and certain surpluses owing from Equitas to Lloyd's which Tropp maintained had never been properly accounted for.[56]

Following submission of written argument, documentary evidence, and oral argument by both parties, on May 24, 2004 the High Court of Justice, Queen's Bench Division granted summary judgment in favor of Lloyd's.[57] The court entered a 22-page opinion which summarized Tropp's arguments and the research he had done, but found that Tropp's objections to the Equitas Contract were precluded by earlier case-law;[58] that Tropp's allegations of malfeasance on the part of his Member's Agent and Managing Agents did not properly lie against Lloyd's, since Names themselves bore the risk of negligence or mismanagement on the part of their Agents;[59] and, ultimately, in light of the "conclusive evidence" clause and the "pay now, sue later" clause, Tropp's allegations against Lloyd's were not sufficiently plausible or well-plead to

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[56] Tropp Decl. ¶¶ 40-74; Ex. P at ¶¶ 25-28.

[57] Compl. ¶¶ 147, 149; Tropp Decl. Ex. AD [Soc'y of Lloyd's v. Tropp [2004] EWHC 1397 (Comm.) (Gross, J.)]; Demery Decl. Ex. 6 [same].

[58] Tropp Decl. Ex. AD at ¶¶ 16.

[59] Tropp Decl. Ex. AD at ¶¶ 16(1); 18 ("[C]omplaints about whether the Managing Agents were properly running the syndicate's business . . . do not lie against Lloyd's.").

meet the applicable standard of "manifest error" in the amount claimed by Lloyd's.[60] Accordingly, the court entered an order in the amount of £463,881.28, representing principal and interest owed to Lloyd's.[61]

Tropp then sought permission to appeal. Following another round of briefing, and another hearing, a judge of the Court of Appeals denied Tropp permission to appeal on November 2, 2004.[62] The appeals judge concurred with the court below that Tropp's challenge to the Equitas Equitas Contract as a whole was fruitless, since his claims regarding his entering prohibitions, being wrongly conscripted into underwriting for 1991, and fraud on the part of his Managing Agents in underwriting certain RITC policies lay properly against his Member's Agent or Managing Agents, not against Lloyd's.[63] In this light, Tropp's allegations against Lloyd's

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[60] Tropp Decl. Ex. AD at ¶¶ 17-18. Thus, the court concluded that "most of Tropp's arguments are . . . hopeless."

[61] Tropp Decl. Ex. AE [Order]; Demery Decl. Ex. 7 [same]. We note again that the court appears to have had much sympathy for Tropp's plight, and expressed regret that a settlement between Tropp and Lloyd's was never reached. The court examined the settlement documents and concluded that the parties were "within a whisker" of settlement, and "it is a matter to be much regretted . . [that they] drew further apart." Tropp Decl. Ex. AD at ¶ 46.

[62] Compl. ¶ 149; Tropp Decl. Ex. AF [Tropp v. Soc'y of Lloyd's [2004] EWCA Civ. 1544 (Waller, J.)]; Demery Decl. Ex. 8 [same].

[63] Tropp Decl. Ex. AF at ¶¶ 8-24. Indeed, Justice Waller concluded by suggesting that although Tropp would be disappointed by his decision to deny him leave to appeal, he believed that he was in fact doing Tropp a favor because an appeal would simply ratchet up the fees and costs that Lloyd's could eventually saddle onto Tropp. Tropp Decl. Ex. AF at ¶ 25.

failed to state a plausible claim of "manifest error" in Lloyd's calculations.

Next, unlike many American Names who later challenged English judgments in American courts, Tropp fought on. He pursued his counterclaim against Lloyd's in a separate proceeding,[64] maintaining that Lloyd's acted fraudulently and in bad faith, in particular by turning a blind eye on Managing Agents' RITC practices, which, in Tropp's account, were more like a Ponzi scheme than a legitimate investment. Tropp alleged "a systematic institutional performance failure by Lloyd's . . . in turning its head to and consciously avoiding . . . wrongful behavior by particular agencies which victimize Mr. Tropp and others on his particular syndicates."[65]

Following yet another round of written and oral arguments, and the submission of testimonial and documentary evidence, on November 5, 2004, the High Court of Justice struck Tropp's counterclaim.[66] The Court noted that while Tropp may have stated claims against his Member's Agent and Managing Agents, Lloyd's itself was not liable for the acts of those agents.[67] Further, Lloyd's was protected from suits for mere negligence by "Lloyd's Immunity" under section 14(3)

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[64] Compl. ¶ 149.

[65] Tropp Decl. Ex. P [Tropp's Defence and Counterclaim] at ¶ 38. <u>See also</u> Tropp Decl. Ex. AG [<u>Soc'y of Lloyd's v. Tropp</u> [2004] EWHC 3335 (Comm)(Gloster, J.)] at ¶ 5.

[66] Tropp Decl. Ex. AG. The court also denied Tropp leave to amend his complaint so as to add numerous other parties, including his Managing Agent and his Member's Agent.

[67] Tropp Decl. Ex. AG at ¶ 10.

of the Lloyd's Act of 1982, and any of Tropp's claims against Lloyd's that alleged more than negligence, i.e. actual fraud or bad faith on the part of Lloyd's, were not sufficiently well-plead and had no discernible prospect for success.[68]

Tropp sought leave to appeal the dismissal of his counterclaim on the grounds that the lower court had applied Lloyd's Immunity too broadly. In conjunction with his appeal, Tropp performed extensive research which showed that Parliament had only intended "Lloyd's Immunity" to protect Lloyd's acting in its public capacity as regulator of the insurance market, not in its private capacity as an institution; and that Lloyd's Immunity applied only to suits for damages, not suits seeking equitable remedies.[69] Tropp forcefully presented these arguments in his appeal, but on January 23, 2006 a judge of the Court of Appeals denied Tropp permission to appeal.[70] The judge commended Tropp's "redoubtable" research, but held that, even assuming *arguendo* that Tropp was correct, his counterclaim failed because his claim against Lloyd's *was* against Lloyd's in its public capacity as regulator of the insurance market,[71] and even though Tropp nominally sought equitable remedies

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[68] Tropp Decl. Ex. AG at ¶¶ 2, 17, 25. The court also dismissed Tropp's claims against Lloyd's for libel and slander as "unfounded."

[69] Tropp Decl. ¶¶ 92-92; Ex. AH [Soc'y of Lloyd's v. Tropp [2006] EWCA Civ. 88 (Rix, J.)] at ¶ 21-23; Demery Decl. Ex. 10 [same].

[70] Id. See also Compl. ¶¶ 150, 151.

[71] Tropp Decl. Ex. AH at ¶ 22.

such as a declaration, unwinding and disgorgement, his claims were in essence claims for monetary damages against Lloyd's.[72]

On April 27, 2006 Tropp petitioned the House of Lords for review of the Court of Appeals decision,[73] but his petition was denied by decision dated July 18, 2006.[74]

C. The Instant Suit

Tropp acknowledges that he has not paid Lloyd's judgment against him.[75] Upon receiving correspondence from Lloyd's suggesting that Lloyd's would seek to have its English judgment enforced in the United States,[76] Tropp filed the instant suit on January 18, 2007.

Tropp has now moved for partial summary judgment on his claim for a declaratory judgment that the English judgment is unenforceable here, and Lloyd's has moved to dismiss under both Fed. R. Civ. P. 12(b)(3) and 12(b)(6). After extensive briefing from both parties, this Court held oral argument on these cross-motions on December 7, 2007.

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[72] Tropp Decl. Ex. AH at ¶ 23.

[73] Tropp Decl. Ex. AJ [Tropp's Petition to the House of Lords].

[74] Compl. ¶ 153; Tropp Decl. Ex. AK [Tropp v. Soc'y of Lloyd's [2006] Parl. Deb. H.L. (5th ser.)(2006)(July 16, 2006)].

[75] Compl. ¶ 154.

[76] Tropp Decl. Ex. AL [Email from Ian Bradford, Lloyd's Legal & Compliance to Tropp, dated January 16, 2007].

DISCUSSION

I. Applicable Law

A. Summary Judgment

Tropp's motion for partial summary judgment under Fed. R. Civ. P. 56(c) may only be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). See, e.g., Amaker v. Foley, 274 F.3d 677, 682 (2d Cir. 2001).

B. Motions to Dismiss

For the purposes of Lloyd's motion to dismiss under Fed. R. Civ. P. 12(b)(3) for improper venue, given the forum-selection clause in the General Undertaking, Tropp bears the burden of making a *prima facie* showing by alleging facts which, if true, would support the court's exercise of jurisdiction. Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981); New Moon Shipping Co., Ltd. v. MAN B&W Diesel AG, 121 F.3d 24, 29 (2d Cir. 1997). When analyzing this preliminary showing, the facts must be viewed in the light most favorable to the plaintiff. Id.

In considering Lloyd's motion to dismiss for failure to state a claim under Fed. R. Civ. P (12)(b)(6), this Court must accept as true the facts alleged in the complaint, Bolt Elec., Inc. v. City

of New York, 53 F.3d 465, 469 (2d Cir. 1995), drawing all reasonable inferences in favor of the plaintiff. See Freedom Holdings, Inc. v. Spitzer, 357 F.3d 205, 216 (2d Cir. 2004). However, conclusory allegations and legal conclusions disguised as facts will not suffice to prevent a motion to dismiss. See De Jesus v. Sears, Roebuck & Co., 87 F.3d 65, 69 (2d Cir. 1996). Dismissal will be appropriate if the plaintiff has failed "provide the grounds upon which [his] claim rests through factual allegations sufficient to raise a right to relief above the speculative level." ATSI Commc'ns, Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 98 (2d Cir. 2007)(internal quotation marks omitted).

C. English Judgments

In the context of either of these cross-motions we may consider the various the decisions of the English courts as well as English statutes, either by means of judicial notice, see Lady Nelson, Ltd. v. Creole Petrol Corp., 286 F.2d 684, 686 (2d Cir. 1961)(taking judicial notice of an English statute), or because these statutes and decisions were incorporated by reference in Tropp's complaint. See Int'l Audiotext Network, Inc. v. Am. Tel. & Tel. Co., 62 F.3d 69, 72 (2d Cir. 1995) (per curiam)("The complaint is deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference")(quotations omitted); San Leandro Emergency Med. Group Profit Sharing Plan v. Philip Morris Co., 75 F.3d 801, 809

(2d Cir. 1996); see also Fed. R. Civ. P. 10(c) ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes."). Further, "even where a document is not incorporated by reference," this Court may nevertheless consider it where the complaint "relies heavily upon its terms and effect," which renders the document "integral" to the complaint. Int'l Audiotext, 62 F.3d at 72; Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002).[77]

II. The Choice Clause and Forum Selection

The first question presented by these motions is whether Tropp may pursue claims for relief against Lloyd's in this forum. In the Choice Clause of his General Undertaking, Tropp "irrevocably agree[d] that the courts of England shall have exclusive jurisdiction to settle any dispute and/or controversy of whatsoever nature arising out of or relating to the Member's membership of, and/or underwriting of insurance business at, Lloyd's."[78]

Forum selection and choice of law clauses are presumptively valid where the underlying transaction is fundamentally international in character. See M/S Bremen v. Zapata Off-Shore

[77] For the sake of completeness, we also note that for the purposes of Lloyd's motion to dismiss under Fed. R. Civ. P. 12(b)(3) for improper venue, we may also consider any documents outside the pleadings that are relevant to the question of venue. New Moon Shipping Co., Ltd. v. MAN B&W Diesel AG, 121 F.3d 24, 30 (2d Cir. 1997).

[78] See Tropp Decl. Ex. B [General Undertaking] at ¶ 2.2.

Co., 407 U.S. 1 (1972); Roby, 996 F.2d 1362-63 (noting that forum selection and choice of law clauses eliminate uncertainty in international commerce and insure that the parties are not unexpectedly subjected to hostile forums and laws). This presumption of validity may be overcome, however, by a clear showing that the clauses are "unreasonable" under the circumstances. The Bremen, 407 U.S. at 10. The Supreme Court has construed this exception narrowly: forum selection and choice of law clauses are "unreasonable" (1) if their incorporation into the agreement was the result of fraud or overreaching; (2) if the complaining party "will for all practical purposes be deprived of his day in court," due to the grave inconvenience or unfairness of the selected forum; (3) if the fundamental unfairness of the chosen law may deprive the plaintiff of a remedy; or (4) if the clauses contravene a strong public policy of the forum state. See The Bremen, 407 U.S. at 10,15,18; Roby, 996 F.2d at 1363. Thus, the burden is on Tropp to make a prima facie showing that one of these factors renders the forum selection clause unreasonable.

We note that not only one but two Second Circuit panels have held that the Choice Clause in the General Undertaking is enforceable against American Names. See Roby v. Corp. of Lloyd's, 996 F.2d 1353, 1363 (2d Cir. 1996)(affirming the district court's dismissal of Securities Act, Securites Exchange Act, and RICO claims brought by Names against Lloyd's on the basis of improper venue pursuant to the Choice Clause); Stamm v. Barclay's Bank of

N.Y., 153 F.3d 30, 32-33 (2d Cir. 1998)(reaffirming Roby and holding that the Choice Clauses are enforceable). Moreover, all seven other federal circuits to reach this issue have likewise held that the Choice Clause is not unreasonable.[79]

Applying this test, and following the Roby and Stamm courts, we easily dispose of the first two factors. First, Tropp does not contend that he was fraudulently induced into agreeing to the Choice Clause. Second, Tropp cannot argue that is it too inconvenient for him to litigate in England, as he has already done so extensively.

Tropp rests heavily on the third factor, that the Choice Clause will in effect deny him any remedy.[80] As construed by the Second Circuit, the inquiry under the third factor is whether the designated forum is inherently unfair or biased, or denies all remedies whatsoever: "It is not enough that the foreign law or procedure merely be different or less favorable than that of the United States. Instead, the question is whether the application of the foreign law presents a danger that the [] Names will be deprived of *any* remedy or treated unfairly." Roby, 996 F.2d at

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[79] See Lipcon v. Underwriters at Lloyd's, 148 F.3d 1285 (11th Cir. 1998); Richards v. Lloyd's of London, 135 F.3d 1289 (9th Cir. 1998)(en banc); Haynsworth v. Corp. of Lloyd's, 121 F.3d 956 (5th Cir. 1997); Allen v. Lloyd's of London, 94 F.3d 923 (4th Cir. 1996); Shell v. R.W. Sturge, Ltd., 55 F.3d 1227 (6th Cir. 1995); Bonny v. Soc'y of Lloyd's, 3 F.3d 156 (7th Cir. 1993); Riley v. Kingsley Underwriting Agencies Ltd., 969 F.2d 953 (10th Cir. 1992).

[80] See Tropp Reply Memorandum of Law at 4-5.

1363 (emphasis in the original)(citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 254-55 (1981)).

The fourth factor, whether the choice clause contravenes a strong public policy of the forum state,[81] is closely related to the third factor because Tropp argues that the application of English law would contravene New York's strong public policy of permitting claims to be heard on their merits.[82]

Indeed, Tropp is correct insofar as, under either the third or fourth factors, the availability of adequate remedies in England was central to the holdings in Roby and Stamm. Roby held that, "We are satisfied . . . that the Names have several adequate remedies in England to vindicate their substantive rights" 996 F.3d at 1364-65, and cautioned, "[w]e believe that if the Roby Names were able to show that available remedies in England are insufficient .

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[81] Under this factor, the Names in both Roby and Stamm had argued that the Choice Clauses were unenforceable because they served as a prospective waiver of the protections of the federal securities laws, and pursuant to section 14 of the Securities Act of 1933, 15 U.S.C. § 77n, and section 29(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78cc(a), such waivers are void and unenforceable. Indeed, the SEC submitted a brief in Stamm urging that Choice Clauses should be found to be unenforceable. However, the court in Stamm clarified that the relevant inquiry as to whether the Choice Clauses indeed waived the protections of the securities laws was the availability of adequate remedies for fraud in England. 153 F.3d at 33. Thus, apparently, Tropp does not raise any argument that the Choice Clause amounts to a waiver of the securities laws, and instead concentrates his argument on the availability of remedies, or lack thereof of, in England.

[82] Tropp Memorandum of Law at 20-21. Tropp makes this argument in the context of the Recognition Act, but we consider it here. The other public policy argument that Tropp makes in the context of the Recognition Act - that the Equitas Contract violates New York contract principles because it was signed by AUA9 on behalf of the Names - is less relevant here, as it goes more to whether the judgment itself, as opposed to the Choice Clause, contravenes New York public policy.

. . we would not hesitate to condemn the [Choice Clauses] as against public policy."). Id. In the same vein, Stamm acknowledged that the availability of remedies in England was the central holding in Roby: "our holding in Roby . . . primarily rested upon the adequacy of English law to deter fraud and misrepresentation, to encourage full disclosure, and to provide plaintiffs remedies in the event of a fraud. . . . English law remains adequate to discourage fraud and misrepresentation, and to provide Plaintiff with a remedy should a fraud be proven." Stamm, 153 F.3d at 33.

In his effort to distinguish what otherwise be binding precedent, Tropp argues that the analysis of earlier American courts rested on mistaken premises, since these courts did not have before them, and could not have anticipated, the decisions of the English courts dismissing Tropp's counterclaims on the basis of Lloyd's Immunity. According to Tropp's reading of precedent, previous American courts had only been confronted with Lloyd's cases in which American Names had not exhausted their remedies, and these courts upheld the validity of the Choice Clause because they understood that the Names would still be able to pursue remedies for fraud or mount defenses by means of counterclaim.[83] But the

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[83] As Tropp writes, "All Federal circuits have relied on what they understood to be US defendants' voluntary waiver of their rights to pre-judgment UK due process in defense, but no US court has ever had before it a record which could have shown it the unavailability for post-judgment UK remedies in counterclaim as well " Tropp Memorandum of Law at 5 (emphasis in the original).

decisions of the English courts in Tropp's case, he argues, particularly the application of Lloyd's Immunity, show that English law leaves Names without *any* actual remedy. Thus, because he exhausted remedies, Tropp argues that his record is the first complete record before an American court showing a total denial of due process, i.e. that there were no remedies available for fraud, and there was no available forum in England wherein he could present the merits of his claims.[84]

Tropp acknowledges that the English courts, while rejecting his claims against Lloyd's, stated that he could pursue separate claims against his Member's Agent or Managing Agents. Thus, a key element of Tropp's argument here is his contention that any legal claims he might have had against Member's Agents or Managing Agents were "not realizable in practice" because, as part of R & R, Lloyd's granted itself the right to take the proceeds of any such actions brought by Names against these Agents. According to Tropp, when Lloyd's takes the proceeds of these suits, it cross-collateralizes the money and holds the money for seventy years to off-set Names' potential future liabilities.[85] Tropp then points

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[84] Tropp thus urges that Lloyd's pulled off a "bait and switch": "When confronted with claims of lack of due process, Lloyd's, in those other [American] cases, pointed to all the remedies that it claimed existed in the UK that gave the hundreds of defendants ample opportunity to have their claims heard. But, in plaintiff's case, Lloyd's successfully took the position in the UK that those alternative remedies did not exist, even though it had assured US courts in those other cases that those same remedies were available to members." Tropp's Memorandum of Law at 2.

[85] See Oral. Arg. Tr., Dec. 7, 2007, 30:7-15.

out, again, that previous American decisions such as Roby had assumed that suits against Members' Agents and Managing Agents were an alternative avenue open to the Names to pursue remedies in England. See, e.g., Roby, 996 F.2d at 1365-66.

Tropp's arguments, however, do not withstand scrutiny. A close reading of Tropp's litigation in England shows that he was not denied *any* remedy, rather he simply was not victorious on the merits of his claims. When he presented his counterclaims, the court struck them not because relief was never available, but rather because Tropp's particular claims of fraud were not sufficiently well-plead to avoid the bar on negligence suits interposed by Lloyd's Immunity. In short, Tropp's evidence of fraud was found to be insufficient.

It is true that Lloyd's Immunity is a curtailment of possible remedies for the Names, but all legal systems employ certain doctrines that narrow the kinds of claims that can be bought, or prevent certain claims from being addressed on the merits. For example, statutes of limitations present time-bars, privileges such as the attorney-client privilege may deprive a plaintiff from procuring crucial evidence, and immunities for public and quasi-public bodies such as absolute immunity for prosecutors prevent certain suits *ab initio*. Moreover, the particular immunity at play in this case has been part of English law since 1982. Thus, at the time Roby and Stamm were decided, and certainly Ashenden, as discussed more extensively below, it was well-understood by

previous American courts that Lloyd's would enjoy immunity for suits other than for fraud.

We note further, although the point is not dispositive to our holding, that Tropp's protestations about the inability to sue his Member's Agent or Managing Agents appear to be vastly overstated (even understanding the facts in the light most favorable to Tropp).[86] It is undisputed that the proceeds of suits against agents accrue to Lloyd's in the first instance, but Lloyd's maintains that the proceeds are only held to cover the individual Name's outstanding liabilities, should there be any, much like a security interest.[87] Thus, the proceeds of any suit Tropp brought against his agents suits would not be commingled with other Names' proceeds, they *would* be used to offset Tropp's individual underwriting liabilities, and to the extent Tropp recovered any excess, he could collect in cash. Although Tropp disagrees with this understanding, it is the sworn testimony of Lloyd's in this

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[86] For Tropp's argument, see Tropp Memorandum of Law at 17-18.

[87] Demery Decl. ¶ 35.

case,[88] it is the understanding of all previous American courts,[89] and, pivotally, it is the understanding of the House of Lords itself, which decided that Lloyd's could retain such proceeds. As the House of Lords noted in the seminal case, "The 1995 amendments [which permit Lloyd's to take the proceeds of suits against agents] do not impose any new liability on Names. They do not require Names to pay more than they were already obliged to pay. They simply provide for additional security for pre-existing obligations." Soc'y of Lloyd's v. Robinson, 1 W.L.R. 756, 767 (House of Lords, 1999).

Thus, Tropp had available to him the same panoply of remedies as the previous Names in Roby and Stamm. The fact that he unsuccessfully exhausted his remedies does not mean that no remedies existed in the first place. We must bear in mind that the presence of procedural and/or substantive law in England that is less favorable to Tropp than laws in the United States does not by itself render the Choice Clause that he signed unreasonable. See

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[88] See Demery Decl. ¶ 35. Also, at oral argument, counsel for Lloyd's described what happened to proceeds of suits against Member's Agents and Managing Agents: "What would have happened, and what happened in a number of cases where Lloyd's Names did sue their agents was that the recoveries or settlements would be placed into a premiums trust fund which held all their reserves for all their underwriting. Because the recovery was related to underwriting, it became an underwriting asset and therefore would effectively reduce the amount that he still owed. . . [If] there was an excess, he would have gotten that money." Oral Arg. Tr. Dec. 7, 2007, 27:25 - 28:24.

[89] See, e.g., Roby 996 F.2d at 1365 ("[T]he contractual obligations imposing certain fiduciary and similar duties on Members' and Managing Agents . . [lead us to] believe that the available remedies and potential damages recoveries suffice to deter deception of American investors.").

Roby, 996 F.2d at 1363 ("It is not enough that the foreign law or procedure merely be different or less favorable than that of the United States.").

Accordingly, as Tropp has failed to persuade us that any of the four Bremen factors render the Choice Clause unenforceable, we hold that Tropp is prohibited by the Choice Clause from seeking remedies against Lloyd's in this forum.

III. Enforcement of the Judgment Under New York's Recognition Act

In the alternative, or because in any event Lloyd's would be required to bring a separate suit in this jurisdiction to enforce its judgment against Tropp, we hold that Tropp's complaint fails to state a claim on which relief may be granted. Tropp's legal claims as to the enforceability of the English judgment are no different from those of Names in previous cases, wherein New York courts have enforced similar judgments. See Soc'y of Lloyd's v. Edelman, 2005 WL 639412 (S.D.N.Y. Mar. 21, 2005); Soc'y of Lloyd's v. Grace, 278 A.D.2d 169, 718 N.Y.S.2d 327 (1st Dep't 2000).

The question of whether a foreign judgment is enforceable in this jurisdiction is a matter of state law. See Fed. R. Civ. P. 69(a)(1)("The procedure on execution [of a money judgment] . . . must accord with the procedure of the state where the court is located.") Accordingly, we turn to New York's enactment of the

Uniform Foreign Country Money-Judgments Recognition Act (the "Recognition Act"). N.Y. C.P.L.R. §§ 5302-09.[90]

The Recognition Act provides, in relevant part, that foreign country judgments that are "final, conclusive and enforceable where rendered" are enforceable in New York. N.Y. C.P.L.R. §§ 5303; see CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V., 100 N.Y.2d 215, 221 (2003). The general rule of enforceability is subject to two exceptions, first if the judgment "was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law," N.Y. C.P.L.R. § 5304(a)(1), or second if "the foreign court did not have personal jurisdiction over the defendant." N.Y. C.P.L.R. § 5304(a)(2).

In addition to these exceptions, the Recognition Act also provides courts with limited discretion to refuse to recognize a foreign country judgment if, inter alia, "the judgment was obtained by fraud" or "the cause of action on which the judgment is based is repugnant to the public policy of [New York]." N.Y. C.P.L.R. § 5304(b)(3)-(4).

Both this Court, in Edelman, 2005 WL 639412, and the Appellate Division, in Grace, 718 N.Y.S.2d 327, have held that Lloyd's judgments against American Names arising from Names' refusal to pay their outstanding underwriting losses and Equitas Additional Premium are enforceable under the New York Recognition Act.

[90] The parties are in agreement that the Recognition Act is controlling. Tropp Memorandum of Law at 3; Lloyd's Memorandum of Law at 11.

Additionally, many sister courts have similarly held,[91] either under versions of the Recognition Act, (which are substantially similar to New York's),[92] or under general common law principles.

Here, Tropp urges that the English judgment is unenforceable because (1) the English system denies Names due process; (2) the discretionary factors counsel against recognition; or (3) if the Recognition Act does not bar enforcement of the English judgment, then the Recognition Act is unconstitutional as applied. We consider each of these arguments in turn.

A. The English System Provides Due Process

Tropp's first argument as to why the English judgment should not be enforced under the Recognition Act is that the English system does not provide procedures compatible with due process of law. Tropp points to his litigation record, and the fact that at first he was only permitted to present his defenses against Lloyd's in a separate action, which he did, with the result that he was defeated by Lloyd's Immunity. He believes that this litigation history, along with his allegation that Lloyd's would hold and co-mingle any proceeds of suits he brought against his Member's Agent

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[91] For a partial list, see note 3, supra.

[92] See, e.g., Turner, 303 F.3d 325; Ashenden, 233 F.3d 473. We note that New York's enactment of the Recognition Act was specifically intended to be read in the same way as other states' enactments. See N.Y C.P.L.R. § 5308 ("This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact these provisions.").

or Managing Agent, shows that the procedures in Names' cases are not compatible with due process.[93]

This argument is not sustainable. As many courts have already discussed, the proper inquiry under the Recognition Act is whether the judgment in question was obtained from a system that affords due process of law, not whether a particular case was correctly decided. See, e.g., Ashenden, 233 F.3d at 476 ("We have italicized the word ["system"] that defeats the defendants' arguments . . . . The statute, with its reference to "system," does not support . . . a retail approach.") The reason for the "system"-level analysis, or "wholesale approach," as Judge Posner noted in enforcing a Lloyd's judgment in Ashenden, is that analyzing individual judgments would in effect give judgment debtors an appeal on the merits, and would be "inconsistent with providing a streamlined, expeditious method for collecting money judgments rendered by courts in other jurisdictions." Ashenden, 233 F.3d at 477.

Nevertheless, Tropp attempts to re-define the terms of the Recognition Act by arguing that the Names' cases are a special "sub-system" of English law. Such an argument is unsupported by the plain terms of the statute and by the relevant case-law.[94]

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[93] Tropp Reply Memorandum of Law at 2. As Tropp writes, "the UK courts' failure to make available . . . any remedy . . . prevented consideration of [Tropp's] evidence, [and] fails to provide minimum due process."

[94] Tropp's lone source of authority for contending that Names' cases should be deemed a separate "sub-system" of English law is his citation to a United States Supreme Court case, Parisi v. Davidson, 405 U.S. 34, 41 (1970), which held that a military serviceman could bring a habeas petition in federal court to obtain discharge from the armed forces, even though the military and civilian

Applying the Recognition Act's "system" approach, we follow Ashenden, Edelman, Grace, and all other decisions that have uniformly held that it "borders on the risible" to argue that the English system, from which ours explicitly derives, does not afford due process. Ashenden, 233 F.3d at 476.[95] See also British Midland Airways Ltd. v. International Travel, Inc., 497 F.2d 869, 871 (9th Cir. 1974)("United States courts which have inherited major portions of their judicial traditions and procedure from the United Kingdom are hardly in a position to call the Queen's Bench a kangaroo court."); Roby, 996 F.2d at 1363 ("United States courts consistently have found [English courts] to be neutral and just forums"); Edelman, 2005 WL 639412 at *3 ("It is incontrovertible that the English judicial system provides impartial tribunals and 'procedures compatible with the requirements of due process of law.'" (internal citations omitted); CIBC, 100 N.Y.2d at 222 (it "is beyond dispute" that the English judicial system affords litigants due process); Grace, 278 A.D.2d at 169, 718 N.Y.S.2d at 328; Porisini v. Petricca, 90 A.D.2d 949, 456 N.Y.S.2d 888, 890 (4th Dep't 1982).

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courts were distinct "systems" of justice in the United States. The case had nothing to do with the Recognition Act, however. Clearly, the word "system" may have different meanings in different contexts.

[95] As Judge Posner noted in Ashenden, whether England has a civilized court system that provides due process is neither a question of fact, nor a question of law, and federal courts in addressing this question may consult any relevant material. 233 F.3d at 477.

Not only does the English system as a whole provide due process, there is no evidence that it denied due process in Tropp's particular case. As discussed above, Tropp's arguments turn on his assertion that there were no available remedies in England. He then leans heavily on dicta from Judge Posner's opinion in Ashenden, wherein Judge Posner contemplated that if English law denied the Names any opportunity whatsoever to challenge the Equitas Additional Premium, that would amount to a denial of due process:

> If Parliament passed a law that the Equitas premium was whatever Lloyd's Council said it was, this would not be a denial of a procedural right of any of the names, but rather a revision of the substantive terms of the names' relation to Lloyd's. But if Parliament went further and precluded the names from challenging in court the applicability of the new law to them, that would be a curtailment of their procedural rights, and doubtless a deprivation of their property without due process of law.

Ashenden, 233 F. 3d at 478. Tropp argues that Judge Posner's latter scenario is precisely what happened to him. However, it is not: at six separate stages in the proceedings (including his motion to dismiss), the English system afforded Tropp an opportunity to be heard, and he submitted extensive briefings which were meticulously considered by judges. In turn, the judges issued 59 single-spaced pages of opinions (comprising some 178 separately numbered paragraphs). The fact that Tropp did not prevail in any

of these hearings does not mean that the English system lacks due process.

Each of the decisions in Tropp's litigation was on the merits. In the first set of proceedings, when Lloyd's sued Tropp to collect, the English court upheld certain expedited collection procedures. Many such procedures are familiar to American law, for instance 28 U.S.C. § 1346 provides that a taxpayer cannot bring suit to dispute a federal tax in federal district court until after he or she has paid the disputed tax. Flora v. United States, 362 U.S. 145, 177 (1960)("[Section] 1346(a)(1), correctly construed, requires full payment of the assessment before an income tax refund suit can be maintained in a Federal District Court.") See also Ashenden, 233 F.3d at 479 (noting that "pay now, sue later" is similar to the federal law system that requires a firm withdrawing from a multi-employer pension plan to pay the plan administrator's assessment first and reserve objections for a subsequent suit, 29 U.S.C. §§1399(c)(2) and 1401(d)).

In the second set of proceedings, when Tropp presented his counterclaims, the English courts held that Tropp's evidence was insufficient to state a claim of fraud on the part of Lloyd's. The courts based their decisions on the fact that Tropp was not suing his individual Member's Agent or Managing Agents, but Lloyd's, the regulator of the market, and that Lloyd's in its regulatory capacity has a well-established statutory immunity that protects it from suits for negligence. Not only are statutory immunities a

very familiar concept in American law, especially with respect to bodies charged with certain public law functions,[96] but moreover the presence of statutory immunities has nothing to do with "due process," since, as Judge Posner pointed out in Ashenden, due process under the Recognition Act is concerned only with *procedural* due process, not *substantive* due process. 233 F.3d at 480 ("[T]he cases that deal with international due process talk only of procedural rights. . . The only substantive basis that the [Recognition Act] recognizes for not enforcing a foreign judgment is that 'the cause of action on which the judgment is based is repugnant to . . . public policy'").

Further, we note that even at the time that Judge Posner crafted his Ashenden hypothetical on what would constitute a complete denial of due process, he was aware that certain Names had presented their arguments on counterclaims and had not succeeded. In fact, Judge Posner's Ashenden decision described the procedure by which Names were required to bring their defenses as counterclaims, cited to Soc'y of Lloyd's v. Jaffray, 2000 WL 1629463 (Queen's Bench Division (Comm. Court), Nov. 3, 2000)(Creswell, J.), and noted that "Some have now done so, and lost." Ashenden, 233 F.3d at 478. Jaffray was a consolidated litigation to bring all claims for fraud against Lloyd's in one

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[96] See, e.g., U.S. Const. amend. XI (state sovereign immunity); Kalina v. Fletcher, 522 U.S. 118 (1997)(prosecutorial immunity); Pierson v. Ray, 386 U.S. 547, 554 (1967) (judicial immunity).

proceeding. Approximately 200 non-accepting Names (a number of whom were U.S. Names) brought counterclaims against Lloyd's arguing that Lloyd's had made fraudulent misrepresentations to them about, among other things, the efficacy of its regulation. Following 64 days of trial, the Queen's Bench rendered judgment in favor of Lloyd's, largely on the grounds that there was not enough evidence of actual fraud on the part of Lloyd's.

Tropp argues that Jaffray is inapposite on a number of fronts, namely, that he did not join that litigation, that the Jaffray Names asserted claims of fraud from the 1980s only whereas Tropp's claims of fraud arose from 1995-96, and that in Tropp's case the court construed Lloyd's Immunity in a new and unprecedented way.[97] But none of these arguments alter the basic fact that the English courts found Tropp's evidence of fraud on the part of Lloyd's to be unavailing. Nor does it change the ability of Tropp to pursue actions against his Member's Agent or his Managing Agent, as previously discussed.

In sum, nothing within the constellation of claims presented in Tropp's complaint, even if true, could lead to the conclusion that the English system lacks procedures compatible with due process of law.

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[97] Tropp also asserts a number of other, less significant differences between his counterclaims and the Jaffray litigation, such as the fact that the Jaffray Names claimed that Lloyd's failures arose from omission, whereas Tropp asserted positive wrongful acts; and the Jaffray Names sought recission of their contracts with Lloyd's whereas Tropp only sought enforcement and an accounting.

B. The Recognition Act's Discretionary Factors

Tropp next argues that several of the discretionary factors related to the Recognition Act counsel against any potential enforcement. It is clear that these are not relevant.

First, Tropp claims that the judgment against him was "obtained by fraud," as set forth in C.P.L.R. § 5304(b)(3). Even assuming, *arguendo*, that Tropp's complaint states a claim that Lloyd's perpetrated a fraud on him, such a claim is patently insufficient under the terms of the statute. As this Court noted in Edelman, 2005 WL 639412 at *5, "The proper inquiry [under the Recognition Act] is not whether the underlying relationship that gives rise to the plaintiff's claims is tinged with fraud, but whether the foreign judgment itself 'was obtained by fraud.'" (citing Ackermann v. Levine, 788 F.2d 830, 841 (2d Cir. 1986); Koehler v. Bank of Bermuda Ltd., No. M18-302 (CSH), 2004 WL 444101, at *15-16 (S.D.N.Y. Mar. 10, 2004); Fairchild, Arabatzis & Smith, Inc. v. Prometco (Produce & Metals) Co., 470 F.Supp. 610, 615 (S.D.N.Y. 1979)). Quite simply, Tropp has not stated a non-frivolous claim that Lloyd's worked any kind of fraud on the English courts.

The second discretionary factor Tropp invokes is that the cause of action sued on violates the public policy of the state of New York.[98] C.P.L.R. § 5304(b)(4). But, as both Grace and Edelman

[98] Tropp Memorandum of Law, at 18-19.

have pointed out, the cause of action underlying Lloyd's judgments against the Names is simple breach of contract,[99] and causes of action for breach of contract do not violate the public policy of New York. See Grace, 718 N.Y.S.2d at 328 (English judgments against Names "do not violate any public policy of New York or the United States"); Edelman, 2005 639412 at *5-6 (holding under New York law that "the English judgments are enforceable and consistent with public policy.") Similarly, numerous other courts have held that Lloyd's judgments do not violate the public policies of respective states. See Turner, 303 F.3d at 333 (holding that Lloyd's action to collect the Equitas Premium is not contrary to Texas public policy); Ashenden, 233 F.3d at 478-70 (Illinois public policy); Mullin, 255 F.Supp.2d at 474-78 (Pennsylvania public policy); Siemen-Netto, 457 F.3d at 99-100 (District of Columbia public policy); Reinhart, 402 F.3d at 995 (New Mexico public policy).

Tropp is correct that the cause of action in Lloyd's case against him was not a run of the mill, or "plain vanilla" contract claim.[100] As discussed above, Lloyd's appointed a substitute agent, AUA9, who signed the Equitas Contract on behalf of all Names. This was done pursuant to a Byelaw that had been in existence at the

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[99] Tropp admits that the cause of action sued on was breach of contract, but argues that the contract was imposed on him unilaterally almost nine years after he signed the General Undertaking, and that Byelaws of Lloyds have the force of statute in England. Tropp Memorandum of Law, at 18-20.

[100] Tropp Memorandum of Law, at 18-20.

time that Tropp joined Lloyd's and agreed to be bound by all Lloyd's current or future Byelaws.[101] Regardless of whether such a scheme would be acceptable under New York contract law, we cannot say that the English courts' decision to bind the Names under these circumstances is repugnant to the public policy of New York. See Siemen-Netto, 457 F.3d at 94 ("It was no doubt risky for the [Names] to agree to be bound by future Byelaws in this way. But the General Undertaking was no contract of adhesion"); Reinhart, 402 F.3d at 996-97 (noting that the Names were "highly sophisticated investor[s] who had to pass a 'means' test.").

Thus, none of the discretionary factors in C.P.L.R. § 5304(b) render the English judgment against Tropp unenforceable under the Recogntion Act.

C. The Recognition Act is Not Unconstitutional as Applied

Tropp's last argument - that if the Recognition Act does not bar enforcement of the English judgment, then the Recogntion Act as applied to his case is unconstitutional under the Due Process Clause of the Fifth Amendment - is also meritless.

Tropp cites Bachchan v. India Abroad Publications Inc., 154 Misc.2d 228, 585 N.Y.S.2d 661 (Sup. Ct. 1992) for the proposition that an English court's reversal of the burden of proof in a way

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[101] Tropp's duly executed General Undertaking contained a clause that specified that he would be bound by any future Byelaws promulgated by the Lloyd's Council. See Tropp Decl. Ex. B [General Undertaking] at ¶ 1.

that runs afoul of a constitutional protection may render a foreign judgment unenforceable under the United States Constitution.[102] In Bachchan, a New York court refused to recognize an English libel award because English libel law places the burden of proof on the media to prove the truth of their statements. But the decision in Bachchan was based on significant, substantive differences between English and New York libel law. As many courts in Lloyd's cases have already noted, the substantive differences between English and United States contract law, by contrast, are minimal, and do not carry nearly the same public policy implications as the differences between American and English libel law. See, e.g., Siemon-Netto, 457 F.3d 94, 101-02 (D.C. Cir. 2005)(rejecting the argument that American courts' refusal to recognize English libel law judgments is persuasive authority in Lloyd's cases, where judgments were based on breach of contract). Accordingly, we reject the argument that the Recognition Act as applied to Tropp is unconstitutional.

CONCLUSION

[102] See Tropp's Memorandum of Law at 22-23. Tropp also attempts to argue that the Equitas Contract was a contract of adhesion because it was signed on his behalf by a substitute agent and therefore is not enforceable here under D.H. Overmyer v. Frick Co., 405 U.S. 174, 180 (1972) and Fuentes v. Shevin, 407 U.S. 67 (1972). See Tropp Memorandum of Law at 22-23 & n.6. Yet, Lloyd's is not seeking to enforce that contract here, but rather an English judgment. The standard for doing so does not require that we find the Equitas Contract itself to be binding under domestic contract law.

Tropp's travails with Lloyd's have been epic, and have resulted in enormous losses that Tropp never could have foreseen when he joined Lloyd's in 1987. Nevertheless, Tropp's current legal claims against Lloyd's are not sustainable. Tropp signed a contract wherein he agreed to be bound by all of Lloyd's past, present, or future Byelaws, and he further agreed to pursue claims against Lloyd's only in England. When he pursued them there, he lost, but only after presenting his arguments in five different fora.

Thus, Tropp's motion for partial summary judgment is denied, and Lloyd's motion to dismiss is granted pursuant to Fed. R. Civ. P. 12(b)(3) for improper venue, or, in the alternative, pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Tropp's complaint is dismissed in its entirety, and the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: New York, New York
March 25, 2008

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Copies of the foregoing Order have been mailed on this date to the following:

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