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3:02-CV-00448 SOCIETY OF LLOYDS V. BLACKWELL  
\*40\*  
\*STMTFACTS.\*

ORIGINAL

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16 THE SOCIETY OF LLOYD'S

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

17 THE SOCIETY OF LLOYD'S,

18 Plaintiff,

19 v.

20 ROBERT C. BLACKWELL, SAMME JO BRADY,  
21 COCO ALEXANDRA ELIZABETH CARTER,  
22 JOHN R. DOUGERY, JOSEPH MELVIN  
23 GAGLIARDI, HARRY WALTER GORST,  
24 FREDERICK GORDON GRAEBER, MICHAEL  
25 CALVIN HIRSH, IVARS RALPH JANIEKS,  
26 ROWLAND WILLIAM JOHNSTON, WILLIAM  
27 DOBSON KILDUFF, JANE ELIZABETH LAMB,  
28 DONALD RUDOLPH LAUB, FRANK F. S. LIN,  
ROBERT KRAMER LOWRY, GEOFFREY O.  
MAVIS, WILLIAM FENTON MILLER JR.,  
ROBERT MARSHALL MORTON, CHARLES  
WEBB OTT, RICHARD DAVID ROSENBLATT,  
RONALD GEORGE SPENO, ROBERT LYNN  
SWISHER, STEPHEN JOHN WILSEY, PETER  
FRANCIS ZINSLI, DOES 1-100 AS PERSONAL  
REPRESENTATIVES, BENEFICIARIES AND  
TRUSTEES OF THE TRUST OF ALFRED VERNE  
BALLARD'S ESTATE, DOES 1-100 AS  
PERSONAL REPRESENTATIVES,  
BENEFICIARIES AND TRUSTEES OF THE  
TRUST OF DELMAR ABSHER BRADY'S  
ESTATE,

Defendants.

FILED

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COURT CLERK, DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

Case No. 02 CV 0448 J (AJB)

SEPARATE STATEMENT OF  
MATERIAL FACTS IN  
SUPPORT OF PLAINTIFF  
THE SOCIETY OF LLOYD'S  
MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO  
FED. R. CIV. P. 56 AGAINST  
DEFENDANTS ROBERT C.  
BLACKWELL, SAMME JO  
BRADY, JOHN R. DOUGERY,  
JOSEPH M. GAGLIARDI,  
HARRY W. GORST,  
FREDERICK G. GRAEBER,  
MICHAEL C. HIRSH, IVARS  
R. JANIEKS, WILLIAM D.  
KILDUFF, JANE E. LAMB,  
DONALD R. LAUB,  
GEOFFREY O. MAVIS,  
WILLIAM F. MILLER, JR.,  
ROBERT M. MORTON,  
CHARLES W. OTT, RONALD  
G. SPENO, STEPHEN J.  
WILSEY, PETER F. ZINSLI

Date: October 28, 2002  
Time: 10:30 a.m.  
Courtroom: 2nd Floor, Room 12  
Honorable Napoleon A. Jones, Jr.

*ca*

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1 This statement of material facts pursuant to Rule 7.1(f) of the Local Civil Rules for  
 2 the Southern District of California is respectfully submitted on behalf of Plaintiff The  
 3 Society of Lloyd's ("Lloyds") in connection with its motion for summary judgment against  
 4 Defendants Robert C. Blackwell, Samme Jo Brady, John R. Dougery, Joseph M. Gagliardi,  
 5 Harry W. Gorst, Frederick G. Graeber, Michael C. Hirsh, Ivars R. Janieks, William D.  
 6 Kilduff, Jane E. Lamb, Donald R. Laub, Geoffrey O. Mavis, William F. Miller Jr., Robert  
 7 M. Morton, Charles W. Ott, Ronald G. Speno, Stephen J. Wilsey and Peter F. Zinsli  
 8 (collectively, the "Defendants").

UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
10 1. Lloyd's is not an insurer and does not 11 insure risks. Rather, pursuant to a 12 succession of Parliamentary Acts, the 13 <i>Lloyd's Acts</i> 1871 - 1982, Lloyd's is 14 charged with the duty and authority to 15 regulate an English insurance market 16 located in London, England.	Answers to Lloyd's Complaint of Defendants Blackwell, Brady, Dougery, Gorst, Graeber, Hirsh, Janieks, Kilduff, Lamb, Laub, Mavis, Miller Jr., Morton, Ott, Wilsey and Zinsli, dated April 30, 2002; and Defendants Gagliardi and Speno, dated May 16, 2002 ("Answers") ¶ 3; Declaration of Nicholas P. Demery ("Demery Decl.") ¶¶ 2, 4.
19 2. The only providers of insurance in the 20 Lloyd's market are underwriting 21 members of Lloyd's, who are known 22 as Names. Names underwrite 23 insurance in groups known as 24 syndicates, but their obligation to pay 25 claims on the policies they underwrite 26 is personal and direct.	Answers ¶¶ 3, 8; Demery Decl. ¶¶ 4, 7.
27 3. All of the Defendants are Names who 28 underwrote insurance in the Lloyd's	Answers ¶¶ 3, 4, 8; Demery Decl. ¶ 5.

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UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
market.	
4. As a condition of their membership of and/or underwriting at Lloyd's, Defendants entered into certain agreements governing their membership of and underwriting in the Lloyd's market, including the General Undertaking.	Answers ¶ 9; Demery Decl. ¶ 5.
5. In the General Undertaking, Defendants agreed, among other things, that they would comply with the provisions of the <i>Lloyd's Acts</i> 1871-1982 and any byelaws, regulations, etc. duly promulgated thereunder in connection with their membership of and underwriting at Lloyd's.	Answers ¶ 9; Demery Decl. ¶ 5.
6. The provisions of the General Undertaking requiring that all litigation between Lloyd's and the Names be conducted in the courts of England and governed by English law have been held valid and enforceable by an en banc panel of the United States Court of Appeals for the Ninth Circuit in <i>Richards v. Lloyd's of London</i> , 135 F.3d 1289 (9th Cir.	Answers ¶ 11.

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UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
<p>1998)(en banc), and the seven other federal appellate courts that have considered the issue. <i>Lipcon v. Underwriters at Lloyd's</i>, 148 F.3d 1285 (11th Cir. 1998); <i>Haynsworth v. The Corporation</i>, 121 F.3d 956 (5th Cir. 1997), <i>cert. denied</i>, 523 U.S. 1072 (1998); <i>Allen v. Lloyd's of London</i>, 94 F.3d 923 (4th Cir. 1996); <i>Bonny v. Society of Lloyd's</i>, 3 F.3d 156 (7th Cir. 1993), <i>cert. denied</i>, 510 U.S. 1113 (1994); <i>Roby v. Corporation of Lloyd's</i>, 996 F.2d 1353 (2d Cir. 1993), <i>cert. denied</i>, 510 U.S. 945 (1993); <i>Riley v. Kingsley Underwriting Agencies, Ltd.</i>, 969 F.2d 953 (10th Cir. 1992), <i>cert. denied</i>, 506 U.S. 1021 (1992); <i>Shell v. R.W. Sturge, Ltd.</i>, 55 F.3d 1227 (6th Cir. 1995).</p>	
<p>7. Pursuant to the Lloyd's Acts, Names could only participate in the Lloyd's market through an underwriting agent, who would contractually assume management responsibilities over Names' underwriting activities.</p>	<p>Answers ¶ 8; Demery Decl. ¶ 6.</p>
<p>8. In the late 1980s and early 1990s, Names in the Lloyd's market incurred</p>	<p>Answers ¶¶ 12, 13; Demery Decl. ¶¶ 8, 9.</p>

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UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
<p>aggregate underwriting losses of over \$12 billion. As a result, a significant amount of litigation began to embroil the Lloyd's market. In order to address these disputes - which threatened the viability of the Lloyd's market and placed policyholders who had paid premiums to Names at risk of non-payment in respect of valid claims - Lloyd's implemented the reconstruction and renewal ("R&amp;R") plan.</p>	
<p>9. Lloyd's R&amp;R plan had two separate components: (1) the provision of reinsurance otherwise unavailable to each Name in respect of his underwriting obligations on 1992 and prior underwriting years of account through a newly formed company, Equitas Reinsurance Ltd. ("Equitas"), and (2) an offer of settlement (the "Settlement Offer") was made to each Name with liabilities on 1992 and prior underwriting years of account to end litigation and to assist the Names in meeting these liabilities. The cost of reinsuring each Name's outstanding</p>	<p>Demery Decl. ¶ 8.</p>

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UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
1992 and prior liabilities was individually calculated and charged to the Name (the "Equitas Premium").	
10. Acceptance of the Settlement Offer was not mandatory. Names could choose to reject the Settlement Offer in order to remain free to litigate against Lloyd's or other participants in the Lloyd's market. However, Lloyd's exercised its regulatory authority to require each Name to reinsure his or her outstanding 1992 and prior obligations with Equitas. Therefore, even if the Settlement Offer was not accepted, a Name was still required to pay the full amount of his or her underwriting obligations, including the Equitas Premium. Names who wished to resign their membership of Lloyd's would be able to do so upon payment of their Equitas Premium and other outstanding obligations.	Demery Decl. ¶ 8.
11. The English courts have held, both prior to and since consummation of R&R, that Lloyd's was acting within its statutory authority as set forth in the <i>Lloyd's Acts</i> 1871-1982 in	Demery Decl. ¶ 8; <i>Society of Lloyd's v. Lyon, Leighs and Wilkinson</i> (Court of Appeal 31 July 1997).

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UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
implementing R&R.	
<p>12. Although approximately 95% of Names accepted the terms of their Settlement Offers, Defendants did not accept Lloyd's offer of settlement. The R&amp;R plan became effective on September 4, 1996, and by September 30, 1996, each Name was required to pay the Equitas Premium. Each of the Defendants failed to make such payment.</p>	<p>Answers ¶ 14; Demery Decl. ¶ 10.</p>
<p>13. The right to recover payment of the Equitas Premium was subsequently assigned to Lloyd's by Equitas, including the right for Lloyd's to sue in its own behalf to recover any unpaid Equitas premium.</p>	<p>Answers ¶ 15; Demery Decl. ¶ 11.</p>
<p>14. On various dates beginning in late 1996, Lloyd's commenced proceedings in the High Court of Justice, Queen's Bench Division, against each of the Defendants seeking payment of their respective Equitas Premium plus unpaid interest and costs (the "English Actions").</p>	<p>Answers ¶ 16; Demery Decl. ¶ 12.</p>
<p>15. Lloyd's notified each of the Defendants of the commencement of</p>	<p>Answers ¶ 17; Demery Decl. ¶ 12.</p>

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UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
<p>the English Actions by serving a writ of summons on various dates from 1996 to 1998.</p>	
<p>16. Each of the Defendants served an acknowledgement of service through their solicitors of record, the firm of Epstein Grower and Michael Freeman, acknowledging their appearance in the English Actions and notifying Lloyd's that they intended to contest Lloyd's claim.</p>	<p>Answers ¶ 17; Demery Decl. ¶ 13.</p>
<p>17. Lloyd's sought a final judgment against each of the Defendants pursuant to Order 14 of the English Rules of the Supreme Court. The English Courts had personal jurisdiction over each of the Defendants.</p>	<p>Answers ¶¶ 18, 30; Demery Decl. ¶ 14.</p>
<p>18. Between March 11, 1998, and December 4, 1998, the English Court issued judgments against each of the Defendants in favor of Lloyd's (the "Judgments").</p>	<p>Answers ¶ 21; Demery Decl. ¶ 15.</p>
<p>19. There were more than 32 days of hearings in trial and appellate courts in England before the Judgments were issued. At these hearings, Names</p>	<p>Demery Decl. ¶ 16.</p>

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UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
<p>raised a number of defenses to payment of their Equitas premium. These defenses were considered and rejected by the English courts.</p>	
<p>20. The English courts considered and rejected the argument that Lloyd's lacked the regulatory authority under the <i>Lloyd's Acts</i> 1871-1982 to mandate that all Names purchase reinsurance coverage from Equitas.</p>	<p><i>Society of Lloyd's v. Dennis Hugh Fitzgerald Leigh and others</i> (High Court of Justice February 20, 1997), <i>aff'd</i>, <i>Society of Lloyd's v. Lyon, Leighs &amp; Wilkinson</i> (Court of Appeal July 31 1997).</p>
<p>21. The English courts considered and rejected the argument that Lloyd's lacked the regulatory authority under the <i>Lloyd's Acts</i> 1871-1982 to appoint substitute agents to bind Names to the reinsurance contract with Equitas.</p>	<p><i>Society of Lloyd's v. Dennis Hugh Fitzgerald Leigh and others</i> (High Court of Justice February 20, 1997), <i>aff'd</i>, <i>Society of Lloyd's v. Lyon, Leighs &amp; Wilkinson</i> (Court of Appeal July 31 1997).</p>
<p>22. The English courts considered and rejected the argument that the Names were entitled to rescind their membership of Lloyd's as a result of alleged fraud in the inducement of their membership of, or underwriting at, Lloyd's.</p>	<p><i>Society of Lloyd's v. Wilkinson</i> (High Court of Justice April 23, 1997), <i>aff'd</i>, <i>Society of Lloyd's v. Lyon, Leighs &amp; Wilkinson</i> (Court of Appeal July 31 1997).</p>
<p>23. The English courts considered and rejected the argument that the Names were entitled to litigate claims of fraud in the inducement of their membership</p>	<p><i>Society of Lloyd's v. Wilkinson</i> (High Court of Justice April 23, 1997), <i>aff'd</i>, <i>Society of Lloyd's v. Lyon, Leighs &amp; Wilkinson</i> (Court of Appeal July 31</p>

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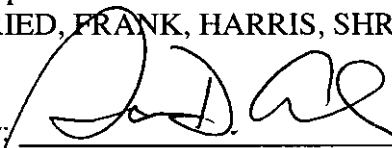
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UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
<p>of, or underwriting at, Lloyd's as a setoff to their obligation to pay the Equitas premium.</p>	<p>1997).</p>
<p>24. The English courts considered and rejected the argument that the Names were not bound by certain provisions of the Equitas reinsurance contract, i.e., the pay now, sue later clause and the conclusive evidence clause.</p>	<p><i>Society of Lloyd's v. Fraser &amp; Ors</i> (High Court of Justice March 4, 1998). Leave to appeal was denied on July 31, 1998, after argument was heard from June 15-19, 1998. <i>Society of Lloyd's v. Fraser &amp; Ors</i> (Court of Appeal July 31 1998).</p>
<p>25. The Judgments are final, conclusive and fully enforceable in England, and have been accruing interest at a rate of eight percent (8%) since the date each of the judgments was issued. No appeal is pending from any of the judgments, and no stay has been issued preventing their enforcement.</p>	<p>Answers ¶ 24; Demery Decl. ¶ 17.</p>
<p>26. There are no other judgments between Defendants and Lloyd's that conflict with the Judgments.</p>	<p>Answers ¶ 25; Demery Decl. ¶ 18.</p>
<p>27. Defendants have not satisfied their judgment debt.</p>	<p>Demery Decl. ¶ 17.</p>

1 DATED: August 13, 2002

Respectfully submitted,

2 Stephen D. Alexander  
3 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

4 By:   
5 \_\_\_\_\_  
6 Stephen D. Alexander  
Attorneys for Plaintiff The Society of Lloyd's

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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES ) ss

4 I am employed in the county of Los Angeles, State of California. I am over the age  
5 of eighteen years, and not a party to the within action. My business address is 350 South  
6 Grand Avenue, 32<sup>nd</sup> Floor, Los Angeles, California 90071.

7 On August 13, 2002, I served the following documents described as: **SEPARATE**  
8 **STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFF THE**  
9 **SOCIETY OF LLOYD'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO**  
10 **FED. R. CIV. P. 56 AGAINST DEFENDANTS ROBERT C. BLACKWELL, SAMME**  
11 **JO BRADY, JOHN R. DOUGERY, JOSEPH M. GAGLIARDI, HARRY W. GORST,**  
12 **FREDERICK G. GRAEBER, MICHAEL C. HIRSH, IVARS R. JANIEKS,**  
13 **WILLIAM D. KILDUFF, JANE E. LAMB, DONALD R. LAUB, GEOFFREY O.**  
14 **MAVIS, WILLIAM F. MILLER, JR., ROBERT M. MORTON, CHARLES W. OTT,**  
15 **RONALD G. SPENO, STEPHEN J. WILSEY, PETER F. ZINSLI** on the parties in this  
16 action by:

- 17  **(BY PERSONAL SERVICE)** I placed such envelope to be delivered to the  
18 offices of the addressee.
- 19  **BY U.S. MAIL.** I am "readily familiar" with the firm's practice of collection and  
20 processing correspondence for mailing. Under that practice it would be deposited  
21 with U.S. postal service on that same day with postage thereon fully prepaid at , in  
22 the ordinary course of business. I am aware that on motion of the party served,  
23 service is presumed invalid if postal cancellation date or postage meter date is more  
24 than one day after date of deposit for mailing in affidavit.
- 25  **BY FACSIMILE.** I sent such document from facsimile machine on August  
26 \_\_, 2002. I certify that said transmission was completed and that all pages  
27 were received and that a report was generated by facsimile machine , which  
28 confirms said transmission and receipt. I, thereafter, mailed a copy to the  
interested party(ies) in this action by placing a true copy thereof enclosed in  
sealed envelope(s) addressed to the parties listed below.
- (STATE)** I declare under penalty of perjury under the laws of the State of  
California that the above is true and correct.
- (FEDERAL)** I declare that I am employed in the office of a member of the  
bar of this court at whose direction the service was made.

23 Greg J. Ryan, Esq. 24 Law Offices of Greg J. Ryan, APC 25 1010 Second Avenue, Ste. 2500 San Diego, CA 92101	Theodore W. Grippo, Jr., Esq. Lindenbaum Coffman, Kurlander Brisky & Grippo, Ltd Three First National Plaza, Ste. 2315 Chicago, Illinois 60602-4206
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26 I declare that I am employed in the office of a member of the bar of this court  
27 whose direction the service was made. Executed on August 13, 2002, at Los Angeles,  
28 California.

*Patty Dinos*