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3:02-CV-00448 SOCIETY OF LLOYDS V. BLACKWELL

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *[Signature]* DEPUTY

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11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 THE SOCIETY OF LLOYD'S,  
14 Plaintiff,  
15 vs.  
16 ROBERT C. BLACKWELL, et al.,  
17 Defendants.

No. '02 CV 0448 J (AJB)  
(Related to '02 CV 0449)

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANTS R. WILLIAM  
JOHNSTON, FRANK F.S. LIN,  
ROBERT KRAMER LOWRY,  
RICHARD ROSENBLATT, and  
ROBERT L. SWISHER'S EX PARTE  
MOTION FOR PROTECTIVE ORDER  
PREVENTING DESTRUCTION OF  
DOCUMENTS AND REMOVAL OF  
DOCUMENTS FROM UNITED  
STATES

Hon. Napoleon A. Jones

18 R. WILLIAM JOHNSTON, FRANK F.S.  
19 LIN, ROBERT KRAMER LOWRY,  
20 RICHARD DAVID ROSENBLATT, and  
21 ROBERT L. SWISHER,  
22 Counterclaimants,  
23 vs.  
24 THE SOCIETY OF LLOYD'S,  
25 Counterdefendant.

ORIGINAL

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION.

3 This Court has broad discretion to make orders concerning discovery, including the  
4 authority to issue a protective order to prevent parties from destroying important evidence  
5 or removing such evidence from the country. To this end, defendants and counterclaimants  
6 R. WILLIAM JOHNSTON, FRANK F.S. LIN, ROBERT KRAMER LOWRY, RICHARD  
7 DAVID ROSENBLATT, and ROBERT L. SWISHER (“Johnston Defendants”) bring this  
8 *Ex Parte* Motion because the Johnston Defendants have reason to believe that plaintiff and  
9 counterdefendant THE SOCIETY OF LLOYD’S (“Lloyd’s”)’s intends to destroy relevant  
10 documents or remove such documents from the United States.

11 II. STANDARD FOR GRANTING PROTECTIVE ORDER.

12 Federal Rule of Civil Procedure (“FRCP”) 34(a) permits parties to request  
13 documents “which are in the possession, custody or control of the party upon whom the  
14 request is served.” FRCP 26(c) further provides that:

15 Upon motion by a party or by the person from whom discovery is sought,  
16 accompanied by a certification that the movant has in good faith conferred or  
17 attempted to confer with other affected parties in an effort to resolve the  
18 dispute without court action, and for good cause shown, the court in which  
19 the action is pending . . . *may make any order to protect a party from  
20 annoyance, embarrassment, oppression, or undue burden or expense.*

21 The Court may fashion any order necessary to protect the parties from discovery  
22 abuses: “[A] court may be as inventive as the necessities of a particular case require in  
23 order to achieve the benign purposes of [FRCP 26].” U.S. v. Columbia Pictures Indus.,  
24 Inc., 666 F.2d 364, 369 (9<sup>th</sup> Cir. 1981).

25 Parties are obligated to preserve evidence concerning litigation:

26 This obligation to preserve evidence arises when the party has notice that the  
27 evidence is relevant to litigation – most commonly when suit has already  
28 been filed, providing the party responsible for the destruction with express  
notice, but also on occasion in other circumstances, as for example when a  
party should have known that the evidence may be relevant to future  
litigation.

1 Kronisch v. U.S., 150 F.3d 112, 126 (7<sup>th</sup> Cir. 1998). Removing evidence from the country  
2 constitutes grounds for sanctions under FRCP 37 where removal of the evidence “clearly  
3 hinders the plaintiff’s ability to substantiate his claim.” Winters v. Textron, Inc., 187  
4 F.R.D. 518, 520 (M.D. Penn. 1999).

5 **III. GOOD CAUSE EXISTS FOR A PROTECTIVE ORDER**  
6 **PREVENTING LLOYD’S FROM DESTROYING DOCUMENTS OR**  
7 **REMOVING DOCUMENTS FROM THE UNITED STATES.**

8 On August 29, 2002, the Johnston Defendants served Request For Production of  
9 Documents (Set One) on Lloyd’s, seeking documents pertaining to investigations of  
10 Lloyd’s business practices in the United States, including but not limited to:

- 11 • Sworn statements given by Lloyd’s executives to the Department of Justice;
- 12 and
- 13 • Sworn statements given by Lloyd’s executives to the US Postal Inspector.

14 The Johnston Defendants submitted these requests to Lloyd’s for two reasons: First,  
15 these documents are necessary for the Johnston Defendants defense against Lloyd’s attempt  
16 to enforce English judgments against them. Second, the Johnston Defendants made these  
17 requests in order to support its counterclaim for Unfair Business Practices (Cal. Bus. &  
18 Prof. Code sections 17200 et seq.) against Lloyd’s.

19 Lloyd’s has already expressed reluctance to turn these documents over to the  
20 Johnston Defendants. On October 3, 2002, Lloyd’s informed counsel for the Johnston  
21 Defendants that they would not produce any documents. The Johnston Defendants then  
22 submitted an *Ex Parte* Motion For Continuance of Summary Judgment to this Court on  
23 October 4, 2002. On October 7, 2002, Lloyd’s served objections to the Johnston  
24 Defendants’ requests.

25 The Johnston Defendants subsequently learned that Lloyd’s is presently seeking to  
26 obtain approximately 400 sworn witness statements given by Lloyd’s executives to the  
27 Department of Justice and US Postal Inspectors, in an effort to destroy or remove such  
28

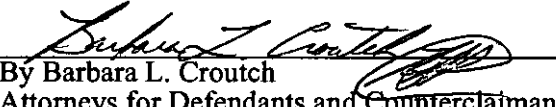
1 sworn witness statements from the United States. Under FRCP 34(a), the Johnston  
2 Defendants are entitled to responsive documents in Lloyd's possession. In the event that  
3 these sworn witness statements – or any other important documents concerning Lloyd's  
4 business practices in the United States – are destroyed or removed from the country, the  
5 Johnston Defendants' ability to prosecute their Unfair Business Practices counterclaim  
6 against Lloyd's would be greatly hindered. Moreover, without these documents, the  
7 Johnston Defendants will be unable to mount a defense against Lloyd's attempts to enforce  
8 the English judgments.

9 **IV. CONCLUSION**

10 For these reasons, the Johnston Defendants respectfully request that this Court grant  
11 their *Ex Parte* Motion For Protective Order Preventing Destruction Of Documents And  
12 Removal Of Documents From United States.

13 Dated: October 17, 2002

14 Respectfully submitted,  
15 PILLSBURY WINTHROP LLP  
16 BARBARA L. CROUTCH  
17 DAPHNE P. BISHOP

18   
19 By Barbara L. Croutch  
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21 WILLIAM R. JOHNSTON, FRANK F. LIN,  
22 ROBERT KRAMER LOWRY, RICHARD  
23 DAVID ROSENBLATT, and ROBERT L.  
24 SWISHER

PROOF OF SERVICE BY OVERNIGHT COURIER

I, Helen Chen, the undersigned, hereby declare as follows:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop LLP in the City of Los Angeles, California.

2. My business address is 725 South Figueroa Street, Suite 2800, Los Angeles, CA 90017-5406.

3. On October 17, 2002, in the city where I am employed, I served a true copy of the attached document titled exactly MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S R. WILLIAM JOHNSTON, FRANK F.S. LIN, ROBERT KRAMER LOWRY, RICHARD ROSENBLATT, and ROBERT L. SWISHER'S *EX PARTE* MOTION FOR PROTECTIVE ORDER PREVENTING DESTRUCTION OF DOCUMENTS AND REMOVAL OF DOCUMENTS FROM UNITED STATES by depositing it in a box or other facility regularly maintained by , an express service carrier providing overnight delivery, or delivering it to an authorized courier or driver authorized by the express service carrier to receive document, in an envelop or package designated by the express service carrier, with overnight delivery fees paid or provided for, clearly labeled to identify the person being served at the address shown below:

[See Attached Service List]

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of October, 2002, at Los Angeles, California.

  
Helen Chen

ATTACHMENT

(Lloyd's v. Blackwell)

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