



KAJ 10/29/02 14:45

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

99

OPPM.

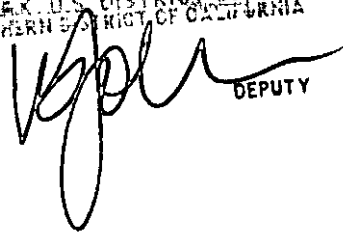
ORIGINAL

FILED

02 OCT 28 PM 2:20

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

BY:



DEPUTY

1 Stephen D. Alexander (SBN: 141099)
2 Susan C. Chun (SBN 193364)
3 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
350 South Grand Avenue, Suite 3200
4 Los Angeles, CA 90071-3406
Telephone: 213.473.2000
Facsimile: 213.473.2222

5 Of Counsel:

6 Debra M. Torres
7 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
8 One New York Plaza
New York, NY 10004-1980
9 Telephone: 212.859.8000
Facsimile: 212.859.4000

10 Attorneys for Plaintiff
THE SOCIETY OF LLOYD'S

11 UNITED STATES DISTRICT COURT

12 SOUTHERN DISTRICT OF CALIFORNIA

13 THE SOCIETY OF LLOYD'S,

14 Plaintiff,

15 v.

16 ROBERT C. BLACKWELL, SAMME JO BRADY,
17 COCO ALEXANDRA ELIZABETH CARTER,
18 JOHN R. DOUGERY, JOSEPH MELVIN
19 GAGLIARDI, HARRY WALTER GORST,
20 FREDERICK GORDON GRAEBER, MICHAEL
21 CALVIN HIRSH, IVARS RALPH JANIEKS,
22 ROWLAND WILLIAM JOHNSTON, WILLIAM
23 DOBSON KILDUFF, JANE ELIZABETH LAMB,
24 DONALD RUDOLPH LAUB, FRANK F. S. LIN,
25 ROBERT KRAMER LOWRY, GEOFFREY O.
26 MAVIS, WILLIAM FENTON MILLER JR.,
27 ROBERT MARSHALL MORTON, CHARLES
WEBB OTT, RICHARD DAVID ROSENBLATT,
28 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.

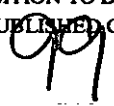
13 Case No. 02 CV 0448 J (AJB)

14 **PLAINTIFF THE SOCIETY**
15 **OF LLOYD'S OPPOSITION**
16 **TO BLACKWELL**
17 **DEFENDANTS' MOTION TO**
18 **STRIKE LLOYD'S CITATION**
19 **TO UNPUBLISHED CASES**

Reply

20 Date: November 4, 2002
21 Time: 10:30 a.m.
22 Courtroom: 2nd Floor, Room 12
23 Honorable Napoleon A. Jones, Jr.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
350 South Grand Avenue, Suite 3200
Los Angeles, CA 90071-3406



FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
350 South Grand Avenue, Suite 3200
Los Angeles, CA 90071-3406

1 Defendants' Motion to Strike Plaintiff Lloyd's Citation to Unpublished Cases should
2 be denied because it is based entirely on erroneous application of Ninth Circuit and
3 California Rules of Court. Both *The Society of Lloyd's v. Webb*, 156 F. Supp. 2d 632 (N.D.
4 Tex. 2001), *aff'd sub nom, Society of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002) and
5 *The Society of Lloyd's v. Reinhart*, Civil No. 02-264 (D. N. Mex. Sept. 30, 2002) are fully
6 citeable as persuasive authority.

7
8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. *The Society of Lloyd's v. Webb*, a Published District Court Opinion, was
10 Affirmed in a Published Opinion by the Fifth Circuit**

11 Defendants' objection to Lloyd's citation to the *Webb/Turner* decisions is entirely
12 frivolous because both the district court and Fifth Circuit decisions have been published and
13 are therefore fully citeable. See *The Society of Lloyd's v. Webb*, 156 F. Supp. 2d 632 (N.D.
14 Tex. 2001), *aff'd sub nom, Society of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002).

15 In any event, even if the *Webb/Turner* decisions were unpublished, citation to these
16 opinions would be governed by Fifth Circuit Rule 47.5.4, which expressly permits
17 unpublished Fifth Circuit decisions to be cited as persuasive authority.

18 **II. Citation to *The Society of Lloyd's v. Reinhart* is Proper**

19 Defendants' claim that Ninth Circuit Rule 36-3 and California Rules of Court, Rule
20 977(a) prohibit Lloyd's from citing the *Reinhart* decision is simply wrong, because these
21 rules do not apply by their own terms. Rather, citation to *Reinhart* is regulated by Tenth
22 Circuit Rule 36.3, which does not prohibit the citation of unpublished opinions.
23 Accordingly, Lloyd's citation to *Reinhart* is proper.

24 While Ninth Circuit Rule 36-3 does prohibit citation to unpublished opinions of
25 Ninth Circuit courts, that prohibition does *not* apply to unpublished opinions of other courts.
26 "Unpublished dispositions and orders of *this court* may not be cited to or by the courts of
27 this circuit..." Ninth Cir. R. 36-3 (emphasis added). *Reinhart* is not a Ninth Circuit opinion
28 and therefore does not fall within the purview of Rule 36-3.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
350 South Grand Avenue, Suite 3200
Los Angeles, CA 90071-3406

1 Similarly, California Rules of Court, Rule 977(a) does not apply to *Reinhart* because
2 it solely prohibits citation of unpublished opinions of *California* Courts of Appeal or of
3 appellate departments of the Superior Court of the State of California. California Court Rule
4 977(a).

5 Thus, neither Ninth Circuit Rule 36-3 nor California Rules of Court, Rule 977(a)
6 prohibits the citation of the *Reinhart* decision.

7 To the contrary, Tenth Circuit Rule 36.3, which directly applies to *Reinhart* -- an
8 opinion rendered by the district court in New Mexico, does not prohibit citations to
9 unpublished decisions.

10 For the foregoing reasons, Plaintiff The Society of Lloyd's respectfully requests that
11 the Court deny Defendants' Motion to Strike Plaintiff Lloyd's Citation to Unpublished
12 Cases.

13
14 DATED: October 28, 2002

Respectfully submitted,

15 Stephen D. Alexander
16 Helen B. Kim
17 Susan C. Chun

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

18
19 By: 

Stephen D. Alexander

Attorneys for Plaintiff The Society of Lloyd's

20
21
22 # 81259.6
23
24
25
26
27
28