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

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *[Signature]* DEPUTY

NON PRO TUNC
DEC 10 2002

1 Stephen D. Alexander (SBN: 141099)
2 Susan C. Chun (SBN: 193364)
3 Erin A. Walsh (SBN 217423)
4 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
5 350 South Grand Avenue, Suite 3200
6 Los Angeles, CA 90071-3406
7 Telephone: 213.473.2000
8 Facsimile: 213.473.2222

9 Of Counsel:
10 Debra M. Torres
11 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
12 One New York Plaza
13 New York, NY 10004-1980
14 Telephone: 212.859.8000
15 Facsimile: 212.859.4000

16 Attorneys for Plaintiff
17 THE SOCIETY OF LLOYD'S

18 UNITED STATES DISTRICT COURT
19 SOUTHERN DISTRICT OF CALIFORNIA

20 THE SOCIETY OF LLOYD'S,
21
22 Plaintiff,
23
24 v.

25 "BY Fax"
26 Case No. 02 CV 0448 J (AJB)

27 **PLAINTIFF THE SOCIETY
28 OF LLOYD'S OPPOSITION
TO MOTION TO STRIKE
LLOYD'S LETTER
SUBMISSION OF
NOVEMBER 19, 2002**

29 ROBERT C. BLACKWELL, SAMME JO BRADY,
30 COCO ALEXANDRA ELIZABETH CARTER,
31 JOHN R. DOUGERY, JOSEPH MELVIN
32 GAGLIARDI, HARRY WALTER GORST,
33 FREDERICK GORDON GRAEBER, MICHAEL
34 CALVIN HIRSH, IVARS RALPH JANIEKS,
35 ROWLAND WILLIAM JOHNSTON, WILLIAM
36 DOBSON KILDUFF, JANE ELIZABETH LAMB,
37 DONALD RUDOLPH LAUB, FRANK F. S. LIN,
38 ROBERT KRAMER LOWRY, GEOFFREY O.
39 MAVIS, WILLIAM FENTON MILLER JR.,
40 ROBERT MARSHALL MORTON, CHARLES
41 WEBB OTT, RICHARD DAVID ROSENBLATT,
42 RONALD GEORGE SPENO, ROBERT LYNN
43 SWISHER, STEPHEN JOHN WILSEY, PETER
44 FRANCIS ZINSLI, DOES 1-100 AS PERSONAL
45 REPRESENTATIVES, BENEFICIARIES AND
46 TRUSTEES OF THE TRUST OF ALFRED VERNE
47 BALLARD'S ESTATE, DOES 1-100 AS
48 PERSONAL REPRESENTATIVES,
49 BENEFICIARIES AND TRUSTEES OF THE
50 TRUST OF DELMAR ABSHER BRADY'S
51 ESTATE,
52
53 Defendants.

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

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

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

1 Defendants' Motion to Strike Lloyd's Letter Submission of November 19, 2002
2 should be denied because it attempts to exclude relevant legal authority from the Court's
3 consideration. Plaintiff The Society of Lloyd's has merely provided the Court with recent
4 authority, relevant to the matter, which was decided after the deadline for submission of
5 Lloyd's opposition to the underlying motion.

6 Defendants erroneously claim that Ninth Circuit Rule 36-3 and California Rules of
7 Court, Rule 977(a) prohibit citation to *Society of Lloyd's v. Bennett*, Civil No. 2:02-CV-
8 204TC (D. Utah Nov. 12, 2002). By their own terms, these rules do not apply to citation of
9 *Bennett*. Ninth Circuit Rule 36-3 applies only to citation of Ninth Circuit cases, and
10 California Rule of Court 977(a) prohibits citation of unpublished opinions of California *state*
11 courts. See Plaintiff The Society of Lloyd's Reply to Blackwell Defendants' Motion to
12 Strike Lloyd's Citation to Unpublished Cases, Oct. 28, 2002. By their own plain language,
13 these rules clearly do not apply to *Bennett*, an opinion of a district court in the Tenth Circuit.
14 Thus, the Court should accept and consider the *Bennett* decision.

15 Moreover, though Plaintiff does not believe it is proper to argue the relevance or
16 materiality of a case in a motion to strike, *Bennett* is clearly relevant to the issues in the
17 current action. The facts at the heart of the instant dispute – the defendants' membership in
18 Lloyd's as "Names", the Equitas settlement offer and subsequent challenges to it – are
19 identical to those at issue in *Bennett*. Furthermore, the *Bennett* court flatly rejected many of
20 the same arguments made by Plaintiffs in this action, citing other decisions that have
21 rejected them as well. *Society of Lloyd's v. Bennett*, Civil No. 2:02-CV-204TC at 11, *citing*
22 *Society of Lloyd's v. Ashenden*, 233 F.3d 473 (7th Cir. 2001); *Society of Lloyd's v. Turner*,
23 303 F.3d 325 (5th Cir 2002); *Society of Lloyd's v. Webb*, 156 F. Supp 2d 632 (N.D. Tex.
24 2001). Plaintiff's counsel, Theodore Grippo, is clearly aware of the relevance of the *Bennett*
25 decision, as he also represented the plaintiffs in that action.

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1 Plaintiff The Society of Lloyd's respectfully requests that the Court deny
2 Defendants' Motion to Strike Lloyd's Letter Submission of November 19, 2002.

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5 DATED: December 10, 2002

Respectfully submitted,

6 Stephen D. Alexander
7 Susan C. Chun
8 Erin A. Walsh
9 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

10 By: 

11 Stephen D. Alexander
12 Attorneys for Plaintiff The Society of Lloyd's

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

