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

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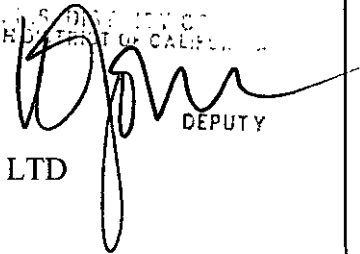
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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:



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17 RONALD GEORGE SPENO, STEPHEN JOHN WILSEY, PETER FRANCIS ZINSLI,

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

18 THE SOCIETY OF LLOYD'S,

19 Plaintiff,

20 v.

21 ROBERT C. BLACKWELL, SAMME JO BRADY,
22 COCO ALEXANDRA ELIZABETH CARTER,
23 JOHN R. DOUGERY, JOSEPH MELVIN
24 GAGLIARDI, HARRY WALTER GORST,
25 FREDERICK GORDON GRAEBER, MICHAEL
26 CALVIN HIRSH, IVARS RALPH JANIEKS,
27 ROWLAND WLLIAM JOHNSTON, WILLIAM
28 DOBSON KILDUFF, JANE ELIZABETH LAMB,
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.

) Case No. 02 CV 0448 J (AJB)

) **BLACKWELL DEFENDANTS**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **OPPOSITION TO PLAINTIFF**
) **LLOYD'S EX PARTE**
) **APPLICATION FOR ORDER**
) **DIRECTING ENTRY OF**
) **JUDGMENT**

) Courtroom: 2nd Floor, Room 12
) Honorable Napoleon A. Jones, Jr.



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ARGUMENT

**Certification Under Rule 54(b) Is Not Appropriate
and Would Violate Federal Policy**

Where the District Court's order granting summary judgment adjudicates fewer than all claims of all parties it is not a final appealable order. *Chacon v. Babcock*, 650 F.2d 221, 222 (9th Cir. 1981). The court is not *required* to enter a final judgment in an action involving multiple parties where the court resolves claims involving less than all parties. To the contrary, since separate, piecemeal appeals during a single litigation are inefficient and uneconomical, such judgments are contrary to the historic federal policy favoring one appeal on all issues as to all parties. *Curtiss-Wright Corp v. General Electric Co.* 446 U.S. 1, 8 (1980). Rule 54(b) certifications permit exceptions from this general policy only for those infrequent instances where awaiting a final judgment would be unduly harsh or unjust.

Although Rule 54(b) on its face does not limit the district court's discretion to certify an order or judgment, appellate courts have established standards for the issuance of such certification. (See *Curtiss-Wright Corp., supra* at 10). Thus, for purposes of Rule 54(b) analysis, the court must make a determination whether the appellate court will be required to address issues that are similar to those contained in the claims still pending before the trial court. *Morrison-Knudsen Co., Inc. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981). The claims disposed of by the certified judgment must be *severable* both legally and factually from the remaining claims, *Id*; See also *McIntyre v. United States*, 789 F2d 1408, 1410 (9th Cir. 1986) [appellate courts "particularly scrutinize" district court's Rule 54(b) certification to prevent unwarranted piecemeal appeals].

Here, plaintiff Lloyd's simply sets forth conclusory statements that there is no just reason for delay without providing the court with any factual basis. Moreover, not only are the claims disposed of by the Order against the Blackwell defendants *not severable* legally and factually from the remaining claims against defendant Lin, plaintiff Lloyd's concedes they are *identical*. Certification of judgments against the Blackwell defendants would lead to piecemeal appeals. Plaintiff has failed to show that deferring entry of judgment until the claims against

1 Lin are adjudicated is unduly harsh or unjust.

2 **Lloyd's Proposed Order Violates the Separate**
3 **Document Rule**

4 FRCP Rule 58 requires that every judgment be set forth in a *separate document* and
5 entered in compliance with FRCP Rule 79(a). Plaintiff Lloyd's complaint, at pages 11-12, sets
6 forth the amounts of the English judgments entered against each of the Blackwell defendants.
7 Plaintiff's Proposed Order fails to set forth each of these judgments in a separate document as
8 required under FRCP Rule 58.

9 **Lloyd's Proposed Order Violates the Dollar Judgment Rule**

10 Plaintiff Lloyd's Complaint, at pp. 11-12, sets forth the amounts of the English
11 judgments and the U.S. dollar equivalents but the proposed order fails to do so. U.S. Courts
12 almost universally require that judgments be enforced in terms of U.S. dollars under the
13 appropriately named "dollar judgment rule". *Business and Commercial Litigation in Federal*
14 *Courts* § 51.12, pg. 59 (Robert L. Haig ed.) (West Group ABA 2002). Plaintiff Lloyd's listing
15 of the judgments contains certain computational errors as to defendant Mavis (fails to subtract
16 payments of 72,250.78 pounds), Swisher (fails to subtract payments of 35,114.95 pounds), and
17 Ott (does not subtract payments of 10,599.50 pounds). Plaintiff Lloyd's should provide the
18 Court with a specific listing of each judgment in its' correct U.S. dollar equivalent.

19 **CONCLUSION**

20 As certification of judgments against the Blackwell defendants would lead to piecemeal
21 appeals and the claims are identical, not severable, from the remaining claims in the action,
22 Lloyd's motion for certification should be denied. As the Proposed Order violates the separate
23 document rule of FRCP 58 and the dollar judgment rule it should not be entered by the Court.
24 Deferring entry of these judgments until the remaining claims are adjudicated will promote

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1 efficient judicial administration, avoid the risk of separate, uneconomical appeals, and will
2 work no hardship or injustice on Lloyd's.

3 Respectfully submitted,
4 LAW OFFICES OF GREG J. RYAN, APC

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6 Dated: April 1, 2003

7 By: 
8 Greg J. Ryan, Esq.
9 Attorneys for Blackwell Defendants

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