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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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APR 21 2003

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13 **THE SOCIETY OF LLOYD'S**

14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

"By FAX"

16 **THE SOCIETY OF LLOYD'S,**

17 Plaintiff,

18 v.

19 **ROBERT C. BLACKWELL, SAMME JO BRADY,**
20 **COCO ALEXANDRA ELIZABETH CARTER,**
21 **JOHN R. DOUGERY, JOSEPH MELVIN**
22 **GAGLIARDI, HARRY WALTER GORST,**
23 **FREDERICK GORDON GRAEBER, MICHAEL**
24 **CALVIN HIRSH, IVARS RALPH JANIEKS,**
25 **ROWLAND WILLIAM JOHNSTON, WILLIAM**
26 **DOBSON KILDUFF, JANE ELIZABETH LAMB,**
27 **DONALD RUDOLPH LAUB, FRANK F. S. LIN,**
28 **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)

PLAINTIFF THE SOCIETY
OF LLOYD'S REPLY
MEMORANDUM IN
SUPPORT OF ITS MOTION
TO DISMISS
COUNTERCLAIMS BY
FRANK LIN AND ROBERT
LOWRY AND FOR
SUMMARY JUDGMENT
AGAINST DEFENDANTS LIN
AND LOWRY

Date: April 28, 2003
Time: 10:30 a.m.
Courtroom: 2nd Floor, Room 12
Honorable Napoleon A. Jones, Jr.

PLAINTIFF THE SOCIETY OF LLOYD'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS
COUNTERCLAIMS BY FRANK LIN AND ROBERT LOWRY AND FOR SUMMARY JUDGMENT

02 CV 0448 J (AJB)

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CR

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

1 Plaintiff The Society of Lloyd's ("Lloyd's") respectfully submits this Reply
2 memorandum to provide an update to the Court on the status of its Motion to Dismiss
3 Counterclaims and Motion for Summary Judgment against the two remaining defendants in
4 this action, Robert Lowry and Frank Lin, who is now proceeding pro per.

5 In Lloyd's *Ex Parte* Application for an Order Directing Entry of Judgments, filed
6 with the Court on March 21, 2003, Lloyd's indicated that it would be filing a dismissal for
7 Defendant Robert Lowry as soon as a settlement was reached and settlement documents
8 were executed. However, despite several requests to Kenneth Chiate, counsel of record for
9 Mr. Lowry, we have not concluded a settlement with Mr. Lowry. Last week, although
10 Lloyd's informed Mr. Chiate that any settlement proposals for Mr. Lowry would be
11 terminated if a signed agreement was not received by Friday, April 18, an executed
12 agreement was never provided. *See* Letter dated April 14, 2003 from Stephen Alexander,
13 counsel to Lloyd's, to Mr. Chiate, a copy of which is attached hereto as Exhibit A.
14 Accordingly, Lloyd's request that the Court, consistent with its February 24, 2003 Order
15 granting Lloyd's Motion for Summary Judgment against the other defendants in this action,
16 grant Lloyd's Motion for Summary Judgment against Defendants Lowry and Frank Lin.

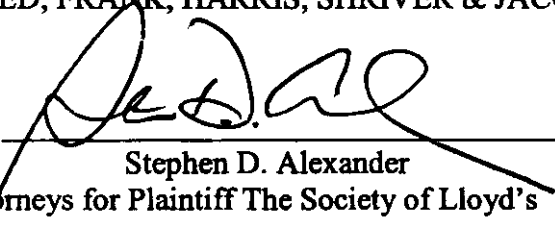
17 Moreover, Defendants Lowry and Lin have also failed to file any Opposition to
18 Lloyd's Motion to Dismiss their Counterclaims, which was due on April 14, 2003. As
19 demonstrated in Lloyd's Motion to Dismiss, dismissal of Lowry's and Lin's counterclaims is
20 mandated by *Richards v. Lloyd's of London*, 135 F.3d 1289 (9th Cir. 1998)(en banc), which
21 is controlling precedent in this Circuit. In *Richards*, the Ninth Circuit held that underwriting
22 members of Lloyd's ("Names") -- such as Lowry and Lin ("Claimants") -- were required by
23 forum selection and choice of law provisions in a written agreement known as the General
24 Undertaking to litigate any and all controversies related to Names' membership of and/or
25 underwriting at Lloyd's in the English courts, pursuant to English law. Because Claimants'
26 claims relate exclusively to their membership and underwriting obligations at Lloyd's,
27 Claimants are precluded from bringing suits against Lloyd's in the United States and must

1 pursue such claims in the English courts. Accordingly, Lloyd's requests that the Court grant
2 its Motion to Dismiss Claimants' Counterclaims with prejudice.

3 DATED: April 21/2003

Respectfully submitted,

4
5 Stephen D. Alexander
6 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

7 By: 
8 Stephen D. Alexander
9 Attorneys for Plaintiff The Society of Lloyd's

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April 14, 2003

By Facsimile and U.S. Mail

Kenneth R. Chiate
Quinn Emanuel Urquhart Oliver & Hedges, LLP
865 So. Figueroa Street, 10th Floor
Los Angeles, CA 90017

Re: **Lloyds vs. Byrens**

Dear Kenneth:

I am writing you regarding several open items in connection with the above matter.

1. **Lowery**

We have never received a signed settlement agreement for Mr. Lowry despite the fact that we have sent several copies to you. Frankly, I do not know if Lloyd's will accept one from him at this point. If you get me a signed agreement by Friday, April 18th I will try my best to get Lloyd's to sign.

2. **LeBoeuf**

We have not received copies of filed stipulations for dismissal for your clients regarding LeBoeuf.

3. **Rosenblatt**

I would like a status report on Rosenblatt's sale of his ranch.

Very truly yours,


Stephen D. Alexander

SDA:le

FRIED
FRANK
HARRIS
SHRIVER &
JACOBSON

A Partnership
Including
Professional
Corporations

New York
Washington
Los Angeles
London
Paris

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

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

On April 21, 2003, I served the following documents described as: **PLAINTIFF THE SOCIETY OF LLOYD'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS COUNTERCLAIMS BY FRANK LIN AND ROBERT LOWRY AND FOR SUMMARY JUDGMENT AGAINST DEFENDANTS LIN AND LOWRY** on the parties in this action by:

I sent such document from facsimile machine 213.473.2222 on April 21, 2003. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine 213.473.2222 which 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 envelop(s) addressed to the parties listed below.

BY U.S. MAIL. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at , in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Kenneth R. Chiate, Esq. Quinn Emanuel Urquhart Oliver & Hedges, LLP 865 So. Figueroa Street, 10th Floor Los Angeles, CA 90017 <u>(via facsimile and U.S. Mail)</u>	Frank F. Lin 4031 Ischia Drive Oxnard, CA 93035 <u>(via U.S. Mail only)</u>
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Executed on April 21, 2003, at Los Angeles, California.

Patty Flores
Patty Flores

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
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