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

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\*ANS.\*

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15 HARRY WALTER GORST, FREDERICK GORDON GRAEBER, MICHAEL CALVIN HIRSH, IVARS RALPH  
16 JANIEKS, WILLIAM DOBSON KILDUFF, JANE ELIZABETH LAMB, DONALD RUDOLPH LAUB,  
17 GEOFFREY O. MAVIS, WILLIAM FENTON MILLER JR., ROBERT MARSHALL MORTON, CHARLES  
18 WEBB OTT, STEPHEN JOHN WILSEY, and PETER FRANCIS ZINSLI.

19 **UNITED STATES DISTRICT COURT**  
20 **SOUTHERN DISTRICT OF CALIFORNIA**

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

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

FILED  
02 APR 30 PM 4:30

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

) Case No. 02 CV 0448 J (AJB)  
)  
) **ANSWER TO COMPLAINT;**  
) **REQUEST FOR JURY TRIAL**  
)  
)  
) JUDGE: Honorable Napoleon A. Jones  
) Presiding

*[Handwritten mark]*

1 Defendants ROBERT C. BLACKWELL, SAMME JO BRADY, JOHN R. DOUGERY, HARRY  
2 WALTER GORST, FREDERICK GORDON GRAEBER, MICHAEL CALVIN HIRSH, IVARS RALPH  
3 JANIEKS, WILLIAM DOBSON KILDUFF, JANE ELIZABETH LAMB, DONALD RUDOLPH LAUB,  
4 GEOFFREY O. MAVIS, WILLIAM FENTON MILLER JR., ROBERT MARSHALL MORTON,  
5 CHARLES WEBB OTT, STEPHEN JOHN WILSEY, and PETER FRANCIS ZINSLI., hereby respond  
6 to plaintiff THE SOCIETY OF LLOYD'S ("Lloyds") Complaint for Money Judgment and Order  
7 Recognizing Conclusiveness and Enforceability of Foreign Country Money Judgment as follows:

8 **Preliminary Statement**

9 Of course, were English law so deficient that the Names would be deprived  
10 of any reasonable recourse, we would have to subject [the choice clauses] to  
11 another level of scrutiny.

12 *Richards, et al. v. Lloyd's of London* 135 F.3d 1289, 1296  
13 (9<sup>th</sup> Cir. 1998).

14 This is that case. In cases in this court and throughout the United States, investors at  
15 Lloyd's ("Names") brought fraud claims relating to Lloyd's failure to disclose, *inter alia*,  
16 massive exposure to long tail liabilities for pollution and asbestos claims. Having been assured  
17 by Lloyd's that the Names would have adequate remedies and a fair day in court in England, this  
18 and other United States courts sent the Names to England to adjudicate Lloyd's fraud. Once  
19 free of the United States courts, Lloyd's implemented a scheme to deprive the Names of their  
20 property without due process of law.

21 Lloyd's first proposed to the Names a settlement that included the creation of a  
22 reinsurance entity known as Equitas. The Names in this case refused Lloyd's settlement offer  
23 and declined to join Equitas. Next, using powers granted only to Lloyd's under English law,  
24 Lloyd's appointed a "substitute agent" for the Names and directed that agent to sign the Equitas  
25 agreement on the Names' behalf, despite the Names having explicitly stated that they did not  
26 want to enter into the Equitas agreement.

27 The Equitas agreement contained two now infamous provisions. The first, known as  
28 "pay now, sue later," provided that the amounts purportedly due under the Equitas agreement

1 had to be paid without offset or counterclaim. The second, known as “conclusive evidence,”  
2 provided that the Names could not challenge the amount that Lloyd’s claimed was due.

3 Next, Lloyd’s filed suits in England against those Names who failed to pay the amounts  
4 they purportedly owed under the Equitas agreement that they refused to sign. When the Names  
5 attempted to assert the defense of fraud to Lloyd’s “contract” claims, the English court refused  
6 to hear that defense based upon the “pay now, sue later” provision. Despite substantial evidence  
7 that Lloyd’s could not correctly calculate the amount allegedly due from the Names, the English  
8 court awarded Lloyd’s the full amount it sought without permitting the Names any discovery or  
9 cross-examination regarding that amount.

10 Now Lloyd’s asks this court to implement the last step in its plan by enforcing the  
11 English judgments even though the English procedure denied the Names their fraud defense and  
12 did not permit them to challenge the amount of Lloyd’s claims. This Court and the California  
13 Uniform Foreign Country Money-Judgment Recognition Act stands as the last bulwark to  
14 prevent the Names from having to surrender still more of their property to the foreign entity that  
15 shamelessly defrauded them.

16 The California Recognition Act does not permit enforcement of judgments “rendered  
17 under a system which does not provide procedures compatible with the requirements of due  
18 process of law” and provides that judgments need not be recognized where the cause of action  
19 on which they are based are “repugnant to the public policy of this state”. California Code of  
20 Civil Procedure § 1713.4.

21 The English court’s refusal to permit the Names to assert fraud or any other defenses to  
22 Lloyd’s claims under the “contract” they never signed and the English court’s refusal to permit  
23 the Names discovery or the opportunity to challenge the amounts Lloyd’s claimed, denied the  
24 Names due process. Lloyd’s claims are also repugnant to the public policy of California as  
25 reflected in the California Insurance Code, the California Corporations Code, and the Unfair  
26 Trade Practices Act.

27 ///

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Answer

1  
2           1.        Answering paragraph 1, these defendants admit that the English Judgments were  
3 entered. Defendants are without sufficient knowledge or information to form a belief as to the  
4 truth of the remaining allegations in paragraph 1 and, on that basis, deny each and every  
5 remaining allegation.

6           2.        Answering paragraph 2, these defendants admit that Equitas assigned Lloyd's all  
7 rights of recovery under the Equitas Reinsurance Contract and that Lloyd's seeks recognition,  
8 enforcement, post-judgment interest, costs, and fees. Defendants are without sufficient  
9 knowledge or information to form a belief as to the truth of the remaining allegations in  
10 paragraph 2 and, on that basis, deny each and every remaining allegation.

11           3.        These defendants admit paragraph 3 for themselves only.

12           4.        These defendants admit paragraph 4 (a), (b), (d), (f), (g), (h), (i), (k), (l), (m), (q)  
13 (s) and (x). These defendants deny paragraph 4 (p), (r), and (w). Defendants are without  
14 sufficient knowledge or information to form a belief as to the truth of the remaining allegations  
15 in paragraph 4 and therefore make no answer thereto.

16           5.        Answering paragraph 5, these defendants admit that they are properly joined.  
17 Defendants are without sufficient knowledge or information to form a belief as the truth of the  
18 remaining allegations in paragraph 5 and therefore make no answer thereto.

19           6.        Answering paragraph 6, these defendants admit that the amount in controversy as  
20 to each of these defendants exceeds \$75,000, exclusive of post-judgment interest and costs and  
21 that this Court has diversity jurisdiction as to each of these answering defendants. Defendants  
22 are without sufficient knowledge or information to form a belief as to the truth of the remaining  
23 allegations in paragraph 6 and therefore make no answer thereto.

24           7.        Answering paragraph 7, these defendants admit that venue is proper in this  
25 district and that defendants Samme Jo Brady, William Fenton Miller, Jr. and Robert Marshall  
26 Morton reside in the Southern District of California. Defendants are without sufficient  
27 knowledge or information to form a belief as the truth of the remaining allegations in paragraph  
28 7 and therefore make no answer thereto.



1 running off, under a clause in the Equitas Reinsurance Contract known as “proportional cover,”  
2 and if, when and to the extent it does, the reinsured Names would be at risk for further liability  
3 to policy-holders. These answering defendants are without sufficient knowledge or information  
4 to form a belief as to the truth of the allegations that the cost of reinsuring each Name’s  
5 outstanding 1992 and prior liabilities (over and above Names’ existing reserves) was  
6 individually calculated and charged to the Names and, on that basis, deny those allegations.  
7 These answering defendants are without sufficient knowledge or information to form a belief as  
8 to the truth of the allegations that the Settlement Offers included both accrued losses that had  
9 not yet been paid and the Equitas Premium and, on that basis, deny those allegations. These  
10 answering defendants admit the remaining allegations of paragraph 13 for themselves only.

11 14. Answering paragraph 14, these defendants admit paragraph 14, except for the  
12 phrases “due and owing” and “benefitting from the reinsurance cover provided by Equitas” for  
13 the reasons stated above in paragraphs 12 and 13.

14 15. Answering paragraph 15, these defendants admit that Equitas assigned to Lloyd’s  
15 the right to recover Equitas Premiums. Defendants are without sufficient knowledge or  
16 information to form a belief as to the truth of the remaining allegations in paragraph 15 and, on  
17 that basis, deny each and every remaining allegation.

18 16. These defendants admit paragraph 16 for themselves only.

19 17. These defendants admit paragraph 17 for themselves only.

20 18. These defendants admit paragraph 18 for themselves only.

21 19. Answering paragraph 19, these defendants are without sufficient knowledge or  
22 information to form a belief as to the truth of the allegations therein and, on that basis, deny  
23 each and every allegation contained in paragraph 19.

24 20. These defendants admit paragraph 20 but affirmatively state that they were  
25 precluded from asserting claims of fraud against Lloyd’s as a defense.

26 21. Answering paragraph 21, these defendants admit that judgments were entered  
27 against them as alleged. Except as expressly so admitted, defendants deny each and every  
28 remaining allegation in paragraph 21. Defendants affirmatively state that in the English actions

1 they were barred from presenting any defense whatsoever.

2 22. These defendants admit paragraph 22.

3 23. Answering paragraph 23, these defendants admit that certain Names did bring an  
4 action against Lloyd's in the *Society of Lloyd's v. Jaffray*, but deny that these defendants were  
5 parties to said action.

6 24. These defendants admit paragraph 24.

7 25. These defendants admit paragraph 25.

8 26. These defendants hereby repeat and reallege their responses to paragraphs 1  
9 through 25 above as if fully set forth herein.

10 27. These defendants deny paragraph 27.

11 28. These defendants admit paragraph 28.

12 29. These defendants deny paragraph 29.

13 30. These defendants admit paragraph 30.

14 31. These defendants deny paragraph 31.

15 32. Answering paragraph 32, these defendants deny that the judgments rendered in  
16 England are conclusive in that they were rendered under procedures which were not compatible  
17 with the requirements of due process of law and were in violation of the public policy of the  
18 State of California and the United States.

19 33. Paragraph 33 is admitted, but these defendants deny that the cases cited therein  
20 are relevant to this action, and affirmatively state that other cases have denied recognition to  
21 judgments from England.

22 34. These defendants hereby repeat and reallege their responses to paragraphs 1  
23 through 33.

24 35. These defendants admit paragraph 35.

25 36. These defendants deny paragraph 36.

26 **FIRST AFFIRMATIVE DEFENSE**

27 **(VIOLATION OF DUE PROCESS)**

28 1. The judgments obtained by Lloyd's against these defendants are not entitled to



1 exemption applies. Lloyd's made material misrepresentations and omissions of fact in the  
2 documents that were provided to defendants. As a result, Lloyds violated California securities  
3 laws under California Insurance Code §820-860 and the California Corporations Code §2500 et  
4 seq., and violated the California Unfair Trade Practices Act (Civil Code §1750 et. seq.).

5 **THIRD AFFIRMATIVE DEFENSE**

6 **(RESERVATION OF RIGHTS)**

7 5. These defendants are informed and believe and thereon allege that they may have  
8 additional, as yet unasserted, defenses to Lloyd's complaint or any purported cause of action  
9 contained therein. These defendants specifically reserve the right to assert additional affirmative  
10 defenses as deemed appropriate at a later time.

11 6. Pursuant to FRCP 38, these defendants demand a trial by jury.

12 WHEREFORE, these defendants respectfully pray for judgment denying recognition and  
13 enforcement of the English judgments against them, denying all other relief claimed by Lloyd's  
14 herein, for their attorneys fees and costs, and for such other and further relief as to this Court  
15 appears just.

16  
17 Respectfully submitted,

18 LAW OFFICES OF GREG J. RYAN, APC

19  
20 Dated: April 30, 2002

21 By: Greg J. Ryan  
22 Greg J. Ryan, Esq.  
23 Attorneys for Defendants  
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11  
12 UNITED STATES DISTRICT COURT  
13 SOUTHERN DISTRICT OF CALIFORNIA

14 THE SOCIETY OF LLOYD'S,  
15  
16 Plaintiff,  
v.

) Case No. 02 CV 0448 J (AJB)

) **PROOF OF SERVICE**

17 ROBERT C. BLACKWELL, SAMME JO BRADY,  
COCO ALEXANDRA ELIZABETH CARTER, JOHN  
18 R. DOUGERY, JOSEPH MELVIN GAGLIARDI,  
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26 REPRESENTATIVES, BENEFICIARIES AND  
TRUSTEES OF THE TRUST OF DELMAR ABSHER  
27 BRADY'S ESTATE,

) JUDGE: Honorable Napoleon A. Jones  
Presiding

28 Defendants.

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I, Sheryl D. Adams, declare:

That I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action; and I am employed in the County of San Diego, California, within which county the subject mailing occurred. My business address is 1010 Second Avenue, Suite 2500, San Diego, California 92101.

On April 30, 2002, I served the following document(s):

- 1. ANSWER TO COMPLAINT; REQUEST FOR JURY TRIAL
- 2. OBJECTION TO LLOYD'S NOTICE OF RELATED CASE  
[Local Rule 40.1(e)]

**BY MAIL:** I declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business; and that a true copy was placed in a separate envelope, with postage thereon fully prepaid for each addressee named hereafter:

Steven D. Alexander (213) 473-2000  
 Fried, Frank, Harris, Shriver and Jacobson  
 350 South Grand Avenue  
 Two California Plaza, Suite 3200  
 Los Angeles, CA 90071-5438  
**Attorney for Plaintiff**  
**THE SOCIETY OF LLOYD'S**


**BY PERSONAL SERVICE:** I placed a true copy of the above documents in a sealed envelope clearly labeled to identify the attorney for the party being served, and personally caused said such envelope to be personally delivered by hand by DLS Attorney Service, leaving a copy with the receptionist or other person in charge at the office of each addressee named hereafter:

**BY FACSIMILE:** I declare that upon the prior agreement of the party being served, I served the above named documents by facsimile transmission during usual office hours from facsimile number (619) 239-5601, to a facsimile machine maintained by the person on whom it is served and that the transmission was reported as complete and without error. Thereafter, I mailed (by first-class mail, postage prepaid) a true copy to each addressee named hereafter:

**STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 30, 2002.

**FEDERAL:** I hereby certify that I am employed in the office of a member of the Bar of the Court at whose direction this service was made.

Executed April 30, 2002, at San Diego, California.

  
 \_\_\_\_\_  
 SHERYL D. ADAMS