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

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

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

17 THE SOCIETY OF LLOYD'S,

18 Plaintiff,

19 v.

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

Defendants.

Case No. 02 CV 0448 J (AJB)

**SEPARATE STATEMENT OF
MATERIAL FACTS IN
SUPPORT OF PLAINTIFF
THE SOCIETY OF LLOYD'S
MOTION FOR SUMMARY
JUDGMENT PURSUANT TO
FED. R. CIV. P. 56 AGAINST
DEFENDANT COCO
ALEXANDRA ELIZABETH
CARTER**

Date: October 28, 2002

Time: 10:30 a.m.

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

49

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

1 This statement of material facts pursuant to Rule 7.1(f) of the Local Civil Rules for
2 the Southern District of California is respectfully submitted on behalf of Plaintiff The
3 Society of Lloyd's ("Lloyds") in connection with its motion for summary judgment against
4 Defendant Coco Alexandra Elizabeth ("Defendant").
5

UNDISPUTED MATERIAL FACTS:	SUPPORTING EVIDENCE:
6 7 1. Lloyd's is not an insurer and does not 8 insure risks. Rather, pursuant to a 9 succession of Parliamentary Acts, the 10 <i>Lloyd's Acts</i> 1871 - 1982, Lloyd's is 11 charged with the duty and authority to 12 regulate an English insurance market 13 located in London, England. 14	Declaration of Nicholas P. Demery ("Demery Decl.") ¶¶ 2, 4.
15 2. The only providers of insurance in the 16 Lloyd's market are underwriting 17 members of Lloyd's, who are known 18 as Names. Names underwrite 19 insurance in groups known as 20 syndicates, but their obligation to pay 21 claims on the policies they underwrite 22 is personal and direct.	Demery Decl. ¶¶ 4, 7.
23 3. The Defendant is a Name who 24 underwrote insurance in the Lloyd's 25 market. 26 27 28	Demery Decl. ¶ 5.

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<p>4. As a condition of her membership of and/or underwriting at Lloyd's, Defendant entered into certain agreements governing her membership of and underwriting in the Lloyd's market, including the General Undertaking.</p>	<p>Demery Decl. ¶ 5.</p>
<p>5. The provisions of the General Undertaking requiring that all litigation between Lloyd's and the Names be conducted in the courts of England and governed by English law have been held valid and enforceable by an en banc panel of the United States Court of Appeals for the Ninth Circuit in <i>Richards v. Lloyd's of London</i>, 135 F.3d 1289 (9th Cir. 1998)(en banc), and the seven other federal appellate courts that have considered the issue.</p>	<p><i>Richards v. Lloyd's of London</i>, 135 F.3d 1289 (9th Cir. 1998)(en banc); <i>Lipcon v. Underwriters at Lloyd's</i>, 148 F.3d 1285 (11th Cir. 1998); <i>Haynsworth v. The Corporation</i>, 121 F.3d 956 (5th Cir. 1997), <i>cert. denied</i>, 523 U.S. 1072 (1998); <i>Allen v. Lloyd's of London</i>, 94 F.3d 923 (4th Cir. 1996); <i>Bonny v. Society of Lloyd's</i>, 3 F.3d 156 (7th Cir. 1993), <i>cert. denied</i>, 510 U.S. 1113 (1994); <i>Roby v. Corporation of Lloyd's</i>, 996 F.2d 1353 (2d Cir. 1993), <i>cert. denied</i>, 510 U.S. 945 (1993); <i>Riley v. Kingsley Underwriting Agencies, Ltd.</i>, 969 F.2d 953 (10th Cir. 1992), <i>cert. denied</i>, 506 U.S. 1021 (1992); <i>Shell v. R.W. Sturge, Ltd.</i>, 55 F.3d 1227 (6th Cir. 1995).</p>

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<p>6. Pursuant to the Lloyd's Acts, Names could only participate in the Lloyd's market through an underwriting agent, who would contractually assume management responsibilities over Names' underwriting activities.</p>	<p>Demery Decl. ¶ 6.</p>
<p>7. In the late 1980s and early 1990s, Names in the Lloyd's market incurred aggregate underwriting losses of over \$12 billion. As a result, a significant amount of litigation began to embroil the Lloyd's market. In order to address these disputes - which threatened the viability of the Lloyd's market and placed policyholders who had paid premiums to Names at risk of non-payment in respect of valid claims - Lloyd's implemented the reconstruction and renewal ("R&R") plan.</p>	<p>Demery Decl. ¶¶ 8, 9.</p>
<p>8. Lloyd's R&R plan had two separate components: (1) the provision of reinsurance otherwise unavailable to each Name in respect of his underwriting obligations on 1992 and prior underwriting years of account through a newly formed company,</p>	<p>Demery Decl. ¶ 9.</p>

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<p>Equitas Reinsurance Ltd. ("Equitas"), and (2) an offer of settlement (the "Settlement Offer") was made to each Name with liabilities on 1992 and prior underwriting years of account to end litigation and to assist the Names in meeting these liabilities. The cost of reinsuring each Name's outstanding 1992 and prior liabilities was individually calculated and charged to the Name (the "Equitas Premium").</p>	
<p>9. Acceptance of the Settlement Offer was not mandatory. Names could choose to reject the Settlement Offer in order to remain free to litigate against Lloyd's or other participants in the Lloyd's market. However, Lloyd's exercised its regulatory authority to require each Name to reinsure his or her outstanding 1992 and prior obligations with Equitas. Therefore, even if the Settlement Offer was not accepted, a Name was still required to pay the full amount of his or her underwriting obligations, including the Equitas Premium. Names who wished to resign their membership of Lloyd's</p>	<p>Demery Decl. ¶ 9.</p>

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<p>would be able to do so upon payment of their Equitas Premium and other outstanding obligations.</p>	
<p>10. The English courts have held, both prior to and since consummation of R&R, that Lloyd's was acting within its statutory authority as set forth in the <i>Lloyd's Acts</i> 1871-1982 in implementing R&R.</p>	<p>Demery Decl. ¶ 9; <i>Society of Lloyd's v. Lyon, Leighs and Wilkinson</i> (Court of Appeal 31 July 1997).</p>
<p>11. Although approximately 95% of Names accepted the terms of their Settlement Offers, Defendant did not accept Lloyd's offer of settlement. The R&R plan became effective on September 4, 1996, and by September 30, 1996, each Name was required to pay the Equitas Premium. Defendant failed to make such payment.</p>	<p>Demery Decl. ¶ 10.</p>
<p>12. The right to recover payment of the Equitas Premium was subsequently assigned to Lloyd's by Equitas, including the right for Lloyd's to sue in its own behalf to recover any unpaid Equitas premium.</p>	<p>Demery Decl. ¶ 11.</p>

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13. On November 18, 1996, Lloyd's commenced proceedings in the High Court of Justice, Queen's Bench Division, against Defendant seeking payment of Defendant's respective Equitas Premium plus unpaid interest and costs (the "English Action").	Demery Decl. ¶ 12.
14. Lloyd's notified Defendant of the commencement of the English Action by serving a writ of summons.	Demery Decl. ¶ 12.
15. Defendant served an acknowledgement of service through her solicitor of record, the firm of Epstein Grower and Michael Freeman, acknowledging her appearance in the English Action and notifying Lloyd's that she intended to contest Lloyd's claim.	Demery Decl. ¶ 13.
16. Lloyd's sought a final judgment against Defendant pursuant to Order 14 of the English Rules of the Supreme Court.	Demery Decl. ¶ 14.
17. On October 11, 1999, the English Court issued a judgment against Defendant in favor of Lloyd's (the "Judgment").	Demery Decl. ¶ 15.
18. There were more than 32 days of	Demery Decl. ¶ 16.

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<p>hearings in trial and appellate courts in England before the Judgment was issued. At these hearings, Names raised a number of defenses to payment of their Equitas premium. These defenses were considered and rejected by the English courts.</p>	
<p>19. The English courts considered and rejected the argument that Lloyd's lacked the regulatory authority under the <i>Lloyd's Acts</i> 1871-1982 to mandate that all Names purchase reinsurance coverage from Equitas.</p>	<p><i>Society of Lloyd's v. Dennis Hugh Fitzgerald Leigh and others</i> (High Court of Justice February 20, 1997), <i>aff'd</i>, <i>Society of Lloyd's v. Lyon, Leighs & Wilkinson</i> (Court of Appeal July 31 1997).</p>
<p>20. The English courts considered and rejected the argument that Lloyd's lacked the regulatory authority under the <i>Lloyd's Acts</i> 1871-1982 to appoint substitute agents to bind Names to the reinsurance contract with Equitas.</p>	<p><i>Society of Lloyd's v. Dennis Hugh Fitzgerald Leigh and others</i> (High Court of Justice February 20, 1997), <i>aff'd</i>, <i>Society of Lloyd's v. Lyon, Leighs & Wilkinson</i> (Court of Appeal July 31 1997).</p>

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<p>21. The English courts considered and rejected the argument that the Names were entitled to rescind their membership of Lloyd's as a result of alleged fraud in the inducement of their membership of, or underwriting at, Lloyd's.</p>	<p><i>Society of Lloyd's v. Wilkinson</i> (High Court of Justice April 23, 1997), <i>aff'd</i>, <i>Society of Lloyd's v. Lyon, Leighs & Wilkinson</i> (Court of Appeal July 31 1997).</p>
<p>22. The English courts considered and rejected the argument that the Names were entitled to litigate claims of fraud in the inducement of their membership of, or underwriting at, Lloyd's as a setoff to their obligation to pay the Equitas premium.</p>	<p><i>Society of Lloyd's v. Wilkinson</i> (High Court of Justice April 23, 1997), <i>aff'd</i>, <i>Society of Lloyd's v. Lyon, Leighs & Wilkinson</i> (Court of Appeal July 31 1997).</p>
<p>23. The English courts considered and rejected the argument that the Names were not bound by certain provisions of the Equitas reinsurance contract, i.e., the pay now, sue later clause and the conclusive evidence clause.</p>	<p><i>Society of Lloyd's v. Fraser & Ors</i> (High Court of Justice March 4, 1998). Leave to appeal was denied on July 31, 1998, after argument was heard from June 15-19, 1998. <i>Society of Lloyd's v. Fraser & Ors</i> (Court of Appeal July 31 1998).</p>


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24. The Judgment is final, conclusive and fully enforceable in England, and has been accruing interest at a rate of eight percent (8%) since the date the Judgment was issued. No appeal is pending from the Judgment, and no stay has been issued preventing their enforcement.	Demery Decl. ¶ 17.
25. There are no other judgments between Defendant and Lloyd's that conflict with the Judgment.	Demery Decl. ¶ 18.
26. Defendant has not satisfied her judgment debt.	Demery Decl. ¶ 17.

DATED: August 27, 2002

Respectfully submitted,

Stephen D. Alexander
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

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

#80227

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am employed in the county of Los Angeles, State of California. I am over the age
5 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.

6 On August 30 2002, I served the following documents described as: **SEPARATE**
7 **STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFF THE**
8 **SOCIETY OF LLOYD'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO**
FED. R. CIV. P. 56 AGAINST DEFENDANT COCO ALEXANDRA ELIZABETH
CARTER on the parties in this action by:

- 9 **(BY PERSONAL SERVICE)** I placed such envelope to be delivered to the
10 offices of the addressee.
- 11 **BY U.S. MAIL.** I am "readily familiar" with the firm's practice of collection and
12 processing correspondence for mailing. Under that practice it would be deposited
13 with U.S. postal service on that same day with postage thereon fully prepaid at , in
14 the ordinary course of business. I am aware that on motion of the party served,
15 service is presumed invalid if postal cancellation date or postage meter date is
16 more than one day after date of deposit for mailing in affidavit.
- 17 **BY FEDERAL EXPRESS OVERNIGHT DELIVERY.** I am "readily familiar"
18 with the firm's practice of collection and processing correspondence with Federal
19 Express on the same date that it is placed for collection. On August 30, 2002, I
20 placed such envelope to be delivered by Federal Express overnight mail to the
21 addressee listed above.

22 23 24 25 26 27 28	Coco Alexandra Elizabeth Carter 6 Buckskin Drive Weston, MA 02493-1130	Via U.S. Mail
	Charles Hicks Wedlake Bell 16 Bedford Street Covent Garden London WC2E 9HF	Via Federal Express (International)

23 I declare that I am employed in the office of a member of the bar of this court
24 whose direction the service was made. Executed on August 30, 2002, at Los Angeles,
25 California.

26 
27 Patty Flores
28

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350 South Grand Avenue, Suite 3200
Los Angeles, CA 90071-3406