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

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

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7 DAVID ROSENBLATT, and ROBERT L. SWISHER

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 THE SOCIETY OF LLOYD'S,
12
13 Plaintiff,
14 vs.
15 ROBERT C. BLACKWELL, et al.,
16 Defendants.

1 No. '02 CV 0448 J (AJB)
(Related to '02 CV 0449)

DEFENDANTS R. WILLIAM
JOHNSTON, FRANK F.S. LIN,
ROBERT KRAMER LOWRY,
RICHARD ROSENBLATT, and
ROBERT L. SWISHER'S EX PARTE
MOTION FOR CONTINUANCE OF
SUMMARY JUDGMENT

Hon. Napoleon A. Jones

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20 R. WILLIAM JOHNSTON, FRANK F.S.
21 LIN, ROBERT KRAMER LOWRY,
22 RICHARD DAVID ROSENBLATT, and
ROBERT L. SWISHER,
23 Counterclaimants,
24 vs.
25 THE SOCIETY OF LLOYD'S,
26 Counterdefendant.

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1 Defendants and counterclaimants R. WILLIAM JOHNSTON, FRANK F.S. LIN,
2 ROBERT KRAMER LOWRY, RICHARD DAVID ROSENBLATT, and ROBERT L.
3 SWISHER (“Johnston Defendants”) hereby move for an order postponing the hearing on
4 plaintiff and counterdefendant THE SOCIETY OF LLOYD’S (“Lloyd’s”)’s Motion For
5 Summary Judgment, pending completion of the Johnston Defendants’ discovery.

6 The Johnston Defendants are entitled to a continuance on the grounds that Lloyd’s
7 will not respond to discovery that is needed to oppose Lloyd’s Motion For Summary
8 Judgment. Specifically, Lloyd’s disclosed on October 3, 2002 that it will not:

- 9 a. permit the Johnston Defendants to depose Nicholas P. Demery,
10 although each fact upon which Lloyd’s relies to support its Motion
11 For Summary Judgment is based on Mr. Demery’s Declaration; or
- 12 b. respond to Requests For Production Of Documents and Requests For
13 Admissions, which were timely propounded.

14 The anticipated testimony of Nicholas P. Demery, and responses to the Johnston
15 Defendants’ Requests For Production of Documents and Requests For Admissions will
16 enable the Johnston Defendants to establish that there are numerous issues of material fact
17 in dispute, and thus Lloyd’s is not entitled to summary judgment because:

- 18 a. there is a difference between establishing the *conclusiveness* of the
19 foreign judgments and *enforcing* the judgments;
- 20 b. Lloyd’s fraudulently obtained the English judgments against the
21 Johnston Defendants;
- 22 c. Equitas never validly assigned to Lloyd’s the right to sue on the debts
23 purportedly owed by the Johnston Defendants, so Lloyd’s had no
24 right to obtain the English judgments in the first place;
- 25 d. Lloyd’s is trying to enforce confessions of judgment against the
26 Johnston Defendants, although no due process protections as
27 required by California law were present;


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- 1 e. Lloyd's has grossly inflated the amounts purportedly owed to
2 Lloyd's by each Johnston Defendant;
3 f. the Johnston Defendants were not permitted to assert Lloyd's fraud
4 as a defense in the English actions;
5 g. the second-highest court in England has now (after the judgments
6 against the Johnston Defendants were entered) confirmed that
7 Lloyd's made false representations to its investors for over a decade.
8 See Jaffray v. Society of Lloyd's, No. EWCA Civ 1101 (Court of
9 Appeal 2002); and
10 h. the Johnston Defendants have valid counterclaims against Lloyd's,
11 asserted in their counterclaims in this Court, that will establish that
12 Lloyd's, as a matter of law, should not be allowed to enforce the
13 English judgments based on California Business & Professions code
14 sections 17200 et seq.

15 This *Ex Parte* Motion For Continuance of Summary Judgment is based on Federal
16 Rule of Civil Procedure ("FRCP") 56(f), Local Civil Rule 7.1(g)(2), the concurrently-filed
17 Memorandum of Points and Authorities and Declaration of Kenneth R. Chiate, the record in
18 this action, and any evidence that may be presented at the hearing of this motion.

19 Dated: October 4, 2002

20 Respectfully submitted,
21 PILLSBURY WINTHROP LLP
22 KENNETH R. CHIATE
23 BARBARA L. CROUTCH
24 DAPHNE P. BISHOP

25 
26 By Kenneth R. Chiate
27 Attorneys for Defendants and Counterclaimants
28 WILLIAM R. JOHNSTON, FRANK F. LIN,
ROBERT KRAMER LOWRY, RICHARD
DAVID ROSENBLATT, and ROBERT L.
SWISHER

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JOHNSTON DEFENDANTS' *EX PARTE* MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT
No. '02 CV 0448 J (AJB)

PROOF OF SERVICE BY OVERNIGHT COURIER

I, Judy Iott, the undersigned, hereby declare as follows:

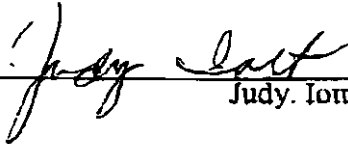
1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Winthrop LLP in the City of Los Angeles, California.

2. My business address is 725 South Figueroa Street, Suite 2800, Los Angeles, CA 90017-5406.

3. On October 4, 2002, in the city where I am employed, I served a true copy of the attached document titled exactly DEFENDANT R. WILLIAM JOHNSTON, FRANK F. S. LIN. ROBERT KRAMER LOWRY, RICHARD ROSENBLATT, and ROBERT L. SWISHER'S EX PARTE MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT, by depositing it in a box or other facility regularly maintained by , an express service carrier providing overnight delivery, or delivering it to an authorized courier or driver authorized by the express service carrier to receive document, in an envelop or package designated by the express service carrier, with overnight delivery fees paid or provided for, clearly labeled to identify the person being served at the address shown below:

[See Attached Service List]

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of October, 2002, at Los Angeles, California.



Judy. Iott

ATTACHMENT

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(Lloyd's v. Blackwell)

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