



KAJ 10/16/02 11:01  
3:02-CV-448 SOCIETY OF LLOYDS V. BLACKWELL  
\*61\*  
\*M.\*

ORIGINAL

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

1 Stephen D. Alexander (SBN: 141099)  
2 Susan C. Chun (SBN: 193364)  
3 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON  
4 350 South Grand Avenue, Suite 3200  
5 Los Angeles, CA 90071-3406  
6 Telephone: 213.473.2000  
7 Facsimile: 213.473.2222

8 Of Counsel:

9 Debra M. Torres  
10 FRIED, FRANK, HARRIS, SHRIVER & JACOBSON  
11 One New York Plaza  
12 New York, NY 10004-1980  
13 Telephone: 212.859.8000  
14 Facsimile: 212.859.4000

15 Attorneys for Plaintiff/Counter-Defendant  
16 THE SOCIETY OF LLOYD'S

17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 THE SOCIETY OF LLOYD'S,  
20  
21 Plaintiff,  
22 v.  
23 ROBERT C. BLACKWELL, et al.,  
24  
25 Defendants.

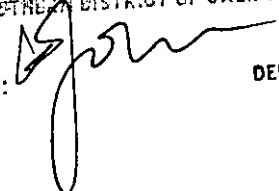
Case No. 02 CV 0448 J (AJB)

**PLAINTIFF/COUNTER-  
DEFENDANT THE SOCIETY OF  
LLOYD'S NOTICE OF MOTION  
TO DISMISS DEFENDANTS R.  
WILLIAM JOHNSTON, FRANK F.  
LIN, ROBERT KRAMER LOWRY,  
RICHARD DAVID ROSENBLATT,  
and ROBERT L. SWISHER'S  
COUNTERCLAIM FOR RELIEF  
AGAINST UNFAIR AND  
FRAUDULENT BUSINESS  
PRACTICES (Cal. Bus. & Prof.  
Code §§ 17200 et seq.)**

26 R. WILLIAM JOHNSTON, FRANK F. LIN,  
27 ROBERT KRAMER LOWRY, RICHARD  
28 DAVID ROSENBLATT, and ROBERT L.  
29 SWISHER,  
30 Counterclaimants,

Date: January 6, 2003  
Time: 10:30 a.m.  
Courtroom: 2nd Floor, Room 12  
Honorable Napoleon A. Jones, Jr.  
The Honorable Napoleon A. Jones

31 v.  
32 THE SOCIETY OF LLOYD'S,  
33 Counterdefendant.

FILED  
02 OCT 15 AM 11:55  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY:  DEPUTY

*ca*

*61*

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

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 6, 2003, at 10:30 a.m., or as soon  
3 thereafter as the matter can be heard by the above-entitled Court, located at 880 Front Street,  
4 San Diego, California 92110, Second Floor, Room 12, Plaintiff/Counter-Defendant The  
5 Society of Lloyd's ("Lloyd's") will and hereby does move the Court pursuant to Fed. R. Civ.  
6 Proc. 12(b)(3) to dismiss Defendants/Counter-Claimants R. William Johnston, Frank F. Lin,  
7 Robert Kramer Lowry, Richard David Rosenblatt, and Robert L. Swisher's (collectively, the  
8 "Claimants") Counterclaim for Unfair and Fraudulent Business Practices under Cal. Bus. &  
9 Prof. Code §§ 17200 *et seq.* for improper venue.

10 This motion is made upon the ground that dismissal of Claimants' counterclaims is  
11 mandated by *Richards v. Lloyd's of London*, 135 F.3d 1289 (9th Cir. 1998)(en banc), which  
12 is controlling precedent in this Circuit. In *Richards*, the Ninth Circuit held that underwriting  
13 members of Lloyd's ("Names") -- such as Claimants -- were required by forum selection and  
14 choice of law provisions in a written agreement known as the General Undertaking to  
15 litigate any and all controversies related to Names' membership of and/or underwriting at  
16 Lloyd's in the English courts, pursuant to English law. Because Claimants' claims relate  
17 exclusively to their membership and underwriting obligations at Lloyd's, Claimants are  
18 precluded from bringing suits against Lloyd's in the United States and must pursue such  
19 claims in the English courts.  
20

21 ///

22 ///

23 ///

24

25

26

27

28

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

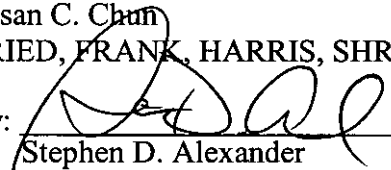
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

This motion is based upon this Notice of Motion and Motion, the accompanying memorandum of Points and Authorities, all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing on this Motion.

DATED: October 14, 2002

Respectfully submitted,

Stephen D. Alexander  
Susan C. Chan  
FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

By:   
Stephen D. Alexander  
Attorneys for Plaintiff/Counter-Defendant  
The Society of Lloyd's

# 80440

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, 32<sup>nd</sup> Floor, Los Angeles, California 90071.

6 On October 15, 2002, I served the following documents described as:  
7 **PLAINTIFF/COUNTER-DEFENDANT THE SOCIETY OF LLOYD'S NOTICE OF**  
8 **MOTION TO DISMISS DEFENDANTS R. WILLIAM JOHNSTON, FRANK F. LIN,**  
9 **ROBERT KRAMER LOWRY, RICHARD DAVID ROSENBLATT, and ROBERT L.**  
10 **SWISHER'S COUNTERCLAIM FOR RELIEF AGAINST UNFAIR AND**  
11 **FRAUDULENT BUSINESS PRACTICES (Cal. Bus. & Prof. Code § 17200 et seq.)** on  
12 the parties in this action by:

- 13  **(BY ELECTRONIC MAIL and U.S. MAIL)** by placing the document(s) listed  
14 above in a sealed envelope with postage thereon fully prepaid, in the United States  
15 mail at the address stated above. I am readily familiar with the firm's practice of  
16 collection and processing correspondence for mailing. Under that practice it would  
17 be deposited with the U.S. Postal Service on that same day with postage thereon  
18 fully prepaid at Los Angeles, California, in the ordinary course of business. I am  
19 aware that on motion of the party served, service is presumed invalid if postal  
20 cancellation date or postage meter date is more than one day after the date of  
21 deposit for mailing in affidavit; also by emailing pdf versions of said document.
- 22  **(STATE)** I declare under penalty of perjury under the laws of the State of  
23 California that the above is true and correct.
- 24  **(FEDERAL)** I declare that I am employed in the office of a member of the  
25 bar of this court at whose direction the service was made.

19 Kenneth R. Chiate 20 Barbara L. Croutch 21 Daphne P. Bishop 22 PILLSBURY WINTHROP, LLP 725 So. Figueroa Street, Ste. 2800 Los Angeles, CA 90017	
---	--

24 I declare that I am employed in the office of a member of the bar of this court  
25 whose direction the service was made. Executed on October 15, 2002, at Los Angeles,  
California.

26 Patty Flores  
Patty Flores

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