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SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

"By Fax"

THE SOCIETY OF LLOYD'S, Plaintiff, v. ROBERT C. BLACKWELL, SAMME JO BRADY, COCO ALEXANDRA ELIZABETH CARTER, JOHN R. DOUGERY, JOSEPH MELVIN GAGLIARDI, HARRY WALTER GORST, FREDERICK GORDON GRAEBER, MICHAEL CALVIN HIRSH, IVARS RALPH JANIEKS, ROWLAND WILLIAM 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.	Case No. 02 CV 0448 J (AJB) **PLAINTIFF THE SOCIETY OF LLOYD'S ~~OPPOSITION~~ Reply TO BLACKWELL DEFENDANTS' MOTION TO STRIKE LLOYD'S CITATION TO UNPUBLISHED CASES** Date: November 4, 2002 Time: 10:30 a.m. Courtroom: 2nd Floor, Room 12 Honorable Napoleon A. Jones, Jr.

Defendants' Motion to Strike Plaintiff Lloyd's Citation to Unpublished Cases should be denied because it is based entirely on erroneous application of Ninth Circuit and California Rules of Court. Both *The Society of Lloyd's v. Webb*, 156 F. Supp. 2d 632 (N.D. Tex. 2001), *aff'd sub nom, Society of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002) and *The Society of Lloyd's v. Reinhart*, Civil No. 02-264 (D. N. Mex. Sept. 30, 2002) are fully citeable as persuasive authority.

MEMORANDUM OF POINTS AND AUTHORITIES

I. *The Society of Lloyd's v. Webb*, a Published District Court Opinion, was Affirmed in a Published Opinion by the Fifth Circuit

Defendants' objection to Lloyd's citation to the *Webb/Turner* decisions is entirely frivolous because both the district court and Fifth Circuit decisions have been published and are therefore fully citeable. *See The Society of Lloyd's v. Webb*, 156 F. Supp. 2d 632 (N.D. Tex. 2001), *aff'd sub nom, Society of Lloyd's v. Turner*, 303 F.3d 325 (5th Cir. 2002).

In any event, even if the *Webb/Turner* decisions were unpublished, citation to these opinions would be governed by Fifth Circuit Rule 47.5.4, which expressly permits unpublished Fifth Circuit decisions to be cited as persuasive authority.

II. Citation to *The Society of Lloyd's v. Reinhart* is Proper

Defendants' claim that Ninth Circuit Rule 36-3 and California Rules of Court, Rule 977(a) prohibit Lloyd's from citing the *Reinhart* decision is simply wrong, because these rules do not apply by their own terms. Rather, citation to *Reinhart* is regulated by Tenth Circuit Rule 36.3, which does not prohibit the citation of unpublished opinions. Accordingly, Lloyd's citation to *Reinhart* is proper.

While Ninth Circuit Rule 36-3 does prohibit citation to unpublished opinions of Ninth Circuit courts, that prohibition does *not* apply to unpublished opinions of other courts. "Unpublished dispositions and orders of *this court* may not be cited to or by the courts of this circuit..." Ninth Cir. R. 36-3 (emphasis added). *Reinhart* is not a Ninth Circuit opinion and therefore does not fall within the purview of Rule 36-3.

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Similarly, California Rules of Court, Rule 977(a) does not apply to *Reinhart* because it solely prohibits citation of unpublished opinions of *California* Courts of Appeal or of appellate departments of the Superior Court of the State of California. California Court Rule 977(a).

Thus, neither Ninth Circuit Rule 36-3 nor California Rules of Court, Rule 977(a) prohibits the citation of the *Reinhart* decision.

To the contrary, Tenth Circuit Rule 36.3, which directly applies to *Reinhart* -- an opinion rendered by the district court in New Mexico, does not prohibit citations to unpublished decisions.

For the foregoing reasons, Plaintiff The Society of Lloyd's respectfully requests that the Court deny Defendants' Motion to Strike Plaintiff Lloyd's Citation to Unpublished Cases.

DATED: October 28, 2002

Respectfully submitted,

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