UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Nos. 95-55747, 95-56467

ALAN RICHARDS, et al.,

Plaintiffs-Appellants,

v.

LLOYD'S OF LONDON, et al.,

Defendants-Appellees.

On Appeal from the United States District Court

for the Southern District of California

BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

Should American investors in Lloyd's of London ("Lloyd's") be allowed to avoid written agreements they signed at the time they became partners in Lloyd's insurance syndicates?

Should Lloyd's be judicially estopped from asserting inconsistent positions with regard to enforcement of forum selection and choice of law clauses?

STATEMENT OF THE CASE

Amicus United Policyholders accepts the statements of the case filed by the parties and amicus curiae The Securities and Exchange Commission (SEC).

SUMMARY OF THE ARGUMENT

Through this litigation, American investors in Lloyd's insurance operations, who are commonly called "names," are seeking to avoid written agreements they signed at the time they became business partners in Lloyd's insurance syndicates, which sold insurance policies to American and other insurance policyholders. Plaintiffs, investors backed by the SEC, assert that their investment in Lloyd's insurance operations is subject to the securities law of the United States, and that the forum selection and choice of law clauses in their Lloyd's investment contracts, which require that matters relating to investment rights be adjudicated in and under the laws of England, should not be enforced.

By siding with the investors, the SEC has thrown the weight of its regulatory authority behind the American investors in Lloyd's and against the interests of American policyholders who depend on the security of their Lloyd's insurance policies.

While Lloyd's investment partners may have legitimate complaints about Lloyd's investment sales activity, these complaints pale into insignificance when compared to the insurance policyholders who paid millions and millions to be protected by the "impeccable security" of the "300 year tradition" of Lloyd's. If this security for policyholders is undermined by this litigation between Lloyd's and its investment partners American policyholders will have been deceived and will be denied insurance coverage they bought and paid for.

At the same time, Lloyd's, as any litigant, should not be allowed to play fast and loose with the American courts. Here, Lloyd's is attempting to do just that by asserting that forum selection and choice of law clauses must be enforced in litigation with their American investors but such clauses should not be enforced when contained in insurance policies sold to their American policyholders. Lloyd's is talking out of both sides of its mouth. Allowing Lloyd's to contradict its prior judicial representations will only undermine public confidence in the judicial system and embolden Lloyd's to continue to deny its insurance obligations to American policyholders. Accordingly, to the extent this Court retains jurisdiction, it should instruct the District Court to fashion a remedy, if appropriate, designed to ensure that policyholder rights to insurance coverage under Lloyd's policies are fully protected.