

FROM: Secretary to Lloyd's Disciplinary Board,
LOCATION: 86/425
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DATE: 4 September 2002
REFERENCE: 028/2002
SUBJECT: Notices of Censure: MILES SMITH plc (in liquidation); Mr MARTIN MANN; Mr JAMES PACKHAM; Mr PAUL JELlicoe
SUBJECT AREA(S): Disciplinary Proceedings
ATTACHMENTS: Four Notices of Censure
ACTION POINTS: **For information**
DEADLINE: **None**

Miles Smith plc (in liquidation) has admitted two charges of discreditable conduct. Mr Martin Mann, Mr James Packham and Mr Paul Jellicoe have each admitted one charge of discreditable conduct.

As a result of these proceedings the following penalties have been imposed:

- (i) **Miles Smith plc (in liquidation):**
- (a) that it be censured in the terms of the Notice attached to this Bulletin,
 - (b) that it pay a contribution of £2000 towards Lloyd's costs.
- (ii) **Mr Martin Mann:**
- (a) that his right to transact, or be concerned or interested in the transaction of, the business of insurance at Lloyd's or any class or classes of such business be suspended for a period of six months.
 - (b) a fine of £2,000,

- (c) that he be censured in the terms of the Notice attached to this Bulletin.
- (d) that he pay Lloyd's costs in the sum of £3000.

(iii) **Mr James Packham:**

- (a) that his right to transact, or be concerned or interested in the transaction of, the business of insurance at Lloyd's or any class or classes of such business be suspended for a period of six months.
- (b) a fine of £2,000,
- (c) that he be censured in the terms of the Notice attached to this Bulletin.
- (d) that he pay Lloyd's costs in the sum of £3000.

(iv) **Mr Paul Jellicoe:**

- (a) that his right to transact, or be concerned or interested in the transaction of, the business of insurance at Lloyd's or any class or classes of such business be suspended for a period of six months.
- (b) a fine of £2,000,
- (c) that he be censured in the terms of the Notice attached to this Bulletin.
- (d) that he pay Lloyd's costs in the sum of £3000.

Details of the events giving rise to the charges against Mr Martin Mann, Mr James Packham and Mr Paul Jellicoe are set out in the Notices of Censure attached to this Bulletin.

These cases were determined by the Lloyd's Disciplinary Board and their decisions give effect to a settlement of these proceedings agreed between each Defendant and the Council pursuant to paragraph 26.6 of the Lloyd's Disciplinary Rules (Schedule 2 to the Lloyd's Disciplinary Committee's Byelaw (No. 31 of 1996) as amended).

This Bulletin has been sent to all underwriting agents, Lloyd's brokers, corporate members, market associations, the ALM and recognised accountants.

A P Barber
Secretary to Lloyd's Disciplinary Board

NOTICE OF CENSURE

MILES SMITH PLC

(In Liquidation and Administrative Receivership)

Miles Smith plc has admitted two charges of engaging in or being associated with discreditable conduct and one charge of contravening or failing to observe the provisions of a Lloyd's requirement.

Failure to obtain Errors & Omissions Cover

Miles Smith plc ("Miles Smith") was a registered Lloyd's broker. One individual was employed by Miles Smith from 1 August 1998 to 9 September 1998 ("the first individual"). Two individuals were employed by Miles Smith from 17 August 1998 to 4 December 1999 ("the second and third individuals").

On 9 June 1999, Miles Smith informed Lloyd's Brokers Department that the second and third individuals were full-time employees of Miles Smith.

On 13 September 1999 Miles Smith submitted its Professional Indemnity return, which provided details of the Errors and Omissions cover in place for the year commencing 1 September 1999. The return contained a declaration that the cover obtained was in accordance with all the requirements of Lloyd's. In fact Miles Smith had taken no steps to ascertain whether the cover provided was in accordance with the requirements of Lloyd's.

Upon investigating the extent of cover provided, Lloyd's Brokers Department noticed that the second and third individuals had been excluded from any cover in respect of fraud and dishonesty and also that the first individual had been excluded from all sections of the policy. The cover was therefore not in accordance with the requirements of Lloyd's as contained in the Lloyd's Brokers Professional Indemnity "Errors and Omissions" Insurance Requirements (1990).

Miles Smith was asked to obtain retrospective Errors and Omissions cover for these three employees. On 23 November 1999 Miles Smith submitted a revised cover note by which retrospective cover was provided for the activities of the second and third individuals. This cover note revealed that the cover was on terms that Miles Smith would reimburse the underwriters for any payment made under the policy.

Failure to maintain an adequate system of control

The second and third individuals had set up a company, and certain business generated by the second and third individuals was conducted through that company ("the third party company") by way of an arrangement with Miles Smith.

The third party company was allowed to operate as a virtually autonomous unit within Miles Smith, without any regular reporting requirements or restrictions and without any regular review by Miles Smith of the third party company's business functions. The information supplied by the third party company to Miles Smith came almost entirely from the second and third individuals personally. These two individuals were responsible both for producing business and for conducting much of the administration in respect of it. This absence of any separation of duties meant that there were no real checks on the integrity of the information provided to Miles Smith.

There were potentially serious credit control deficiencies in the third party company's business. These included an absence of cash receipts and the recording of claim payments, the absence of any procedures either to identify the sources or amounts of aged debt or to deal with debtors and an indebtedness by the third party company to Miles Smith of US\$827,000 (although this figure was later reduced to \$200,000).

It should be made clear that in a review by HLB Kidsons (now Baker Tilly), a firm of chartered accountants, no evidence of fraud or dishonesty was found on business transacted by the second and third individuals via the third party company.

On 22 February 2000 Miles Smith finally obtained contingency cover for any dishonest or fraudulent acts of the first, second and third individuals during the period of their employment with Miles Smith.

By failing to check whether the Errors and Omissions cover complied with Lloyd's requirements, by placing cover on the terms set out above and by failing to ensure that any adequate structure was in place for monitoring the activities of the second and third individuals, Miles Smith engaged in discreditable conduct and failed to observe the provisions of a Lloyd's requirement.

The following penalty is to be imposed on Miles Smith:

- ◆ A Censure in the form of this Notice of Censure.

Miles Smith is to pay a contribution of £2,000 towards Lloyd's costs.

In imposing this penalty, Lloyd's has taken into account the fact of Miles Smith's liquidation. In addition, Miles Smith has co-operated fully with Lloyd's investigation. It has obtained and paid for effective contingency insurance cover for the activities of the first, second and third individuals at a premium of £57,500 plus insurance premium tax. Miles Smith has also commissioned a full report by Messrs. HLB Kidsons (now Baker Tilly) into the trading activities of the first, second and third individuals. This report reveals no evidence of dishonesty. As a result of Miles Smith's co-operation and its admission of the charges, the cost of contested disciplinary proceedings has been avoided. It should be stressed that all charges relate to the activities of the company prior to entering into liquidation and do not relate to, nor imply a criticism of the company since the appointment of the liquidators. These charges in no way whatsoever relate to Miles Smith Reinsurance Limited which is an independent company.

LLOYD'S DISCIPLINARY BOARD

NOTICE OF CENSURE

MARTIN MANN

Mr Martin Mann ("Mr Mann") has admitted one charge of misconduct, namely engaging in or being associated with discreditable conduct, within the meaning of paragraph 3(f) of the Misconduct and Penalties Byelaw (No. 30 of 1996).

Mr. Mann was the chairman and a director of Miles Smith, a registered Lloyd's broker.

On or about 18 August 1998, on behalf of Miles Smith, Mr Mann offered 2 individuals employment. Those offers were accepted.

Mr. Mann made those unilateral offers in spite of representations made to him by the managing director of Miles Smith and by the director then responsible for the marine department that neither of the individuals should be offered employment and, despite the absence of any further consultation with any other person at Miles Smith.

In appointing the individuals, Mr Mann accepts that he acted discreditably by failing properly to take into account the recommendations of the managing director and the marine director of Miles Smith. In addition he accepts that he ought to have taken further steps in order properly to ascertain whether the individuals were fit and proper persons to hold the positions for which they were employed, to have consulted with his board and others at Miles Smith and to have carried out a proper recruitment process.

Between 18 August 1998 and the date of the termination of their employment on 4 December 1999, the individuals carried on insurance broking business using a company which they had set up in their previous employment ("the third party company").

The third party company operated as a vehicle through which its clients could place business through producing brokers principally in the Far East, Taiwan, Australia, the Middle East and Saudi Arabia. It acted, effectively, as a placing broker. It was not registered with any regulatory body such as the IBRC, nor was it accountable to the regulatory division of Lloyd's.

After their employment with Miles Smith commenced, the individuals were allowed to continue to operate the third party company in the same way as before. In particular, prior to 20 August 1999, it issued its own insurance documentation (such as cover notes and debit notes) in the course of arranging its business while Miles Smith was used to issue debit notes to the third party company in respect of premiums which ought to have been paid to Miles Smith direct by the insured. Additionally, the third party company allowed clients to set off amounts owing by way of premiums against losses incurred.

The business carried on by the individuals ought not to have been carried on using the third party company .

The individuals operated the third party company as a virtually autonomous entity within Miles Smith. Their activities were not the subject of any or any proper monitoring or control. All information as to the activities of the third party company came from the individuals without there being in place any independent verification of such information.

By 5 November 1999, by reason of those arrangements and their failure properly to manage the affairs of the third party company, the individuals had failed to collect US\$827,000 of premiums (although this figure had been reduced to US\$200,000 by March 2000).

Mr. Mann accepts that he was aware of the activities of the third party company and ought not to have allowed Miles Smith to be used in this way. Further, he ought to have ensured that those activities were brought to the attention of the Board and to the compliance officer who was responsible for the control and monitoring of employees.

As the person responsible for their appointment and in the light of what he knew about their activities, Mr Mann failed to ensure that there were in place any or any proper systems of control or monitoring of the activities of the individuals and of the third party company.

It should be made clear that in a review by HLB Kidsons (now Baker Tilly), a firm of chartered accountants, no evidence of fraud or dishonesty was found on business transacted by the individuals via the third party company.

In particular, Mr. Mann failed to ensure that the terms and scope of their employment were properly recorded in writing so that they and others would know to whom they were answerable, failed to instruct them that they were not to carry on the business of the third party company and failed to take steps to ensure that those instructions were complied with. Further, he failed to ensure that their activities were properly supervised, monitored and reviewed, and that there was a director of the Board to carry out those tasks and to be responsible and speak for the activities of the two at board level. He failed to ensure that credit notes and debit notes were signed by a director of Miles Smith with experience in marine business and that there was a proper system in place for the prompt invoicing of amounts due and for the sending of reminders.

PENALTIES AND COSTS

The following penalties have been imposed on Mr Mann:

- (i) that Mr Mann's right to transact, or be concerned or interested in the transaction of, the business of insurance at Lloyd's or any class or classes of such business be suspended for a period of six months;
- (ii) a fine in the sum of £2,000;
- (iii) a Censure to be posted in the Room in the terms of this Notice of Censure.

Mr Mann shall pay the costs of Lloyd's in the sum of £3,000.

In imposing the penalty, the Disciplinary Board took into account, amongst other things, the facts that Mr Mann has admitted the charge against him and has co-operated fully with the Lloyd's formal inquiry into this matter and that Mr Mann, to date, has enjoyed an unblemished record at Lloyd's.

LLOYD'S DISCIPLINARY BOARD

NOTICE OF CENSURE

JAMES EDWIN CHRISTOPHER PACKHAM

Mr James Packham has admitted one charge of conducting insurance business in a discreditable manner within the meaning of paragraph 3(f) of the Misconduct and Penalties Byelaw (No. 30 of 1996).

Miles Smith plc ("Miles Smith") was a registered Lloyd's broker. Mr Packham was the managing director of Miles Smith.

On 1 August 1998 an individual commenced employment with Miles Smith ("the first individual"). On 17 August 1998 two individuals commenced employment with Miles Smith ("the second and third individuals"). The first individual remained in employment with Miles Smith until 9 September 1998. The second and third individuals remained in employment with Miles Smith until 4 December 1999.

On 13 September 1999 Miles Smith submitted to Lloyd's its Professional Indemnity return, which provided details of the Errors and Omissions cover in place for the year commencing 1 September 1999. The 1999 Lloyd's Errors & Omissions return contained a declaration that the cover was in accordance with all the requirements of Lloyd's. This declaration was signed by Mr Packham. He took no steps before signing it to check whether the cover satisfied the requirements of Lloyd's; nor was he informed by anyone at any time that it did.

The second and third individuals had been excluded from any cover in respect of fraud and dishonesty and the third individual had been excluded from all sections of the policy. The cover therefore did not meet the requirements of the Lloyd's Brokers Professional Indemnity "Errors and Omissions" Requirements (1990). In view of this, Lloyd's Brokers Department requested that further cover be obtained.

On 25 November 1999 cover notes P00369099, P00369199, P00369299 and P00369098, showing the extent of Errors and Omissions insurance cover for Miles Smith, were received by Lloyd's. This cover was arranged by Mr Packham. The cover notes showed that the third individual remained excluded from cover under all sections of the policy, and that cover had been arranged in respect of the activities of the second and third individuals on terms that Miles Smith would reimburse underwriters for any payments made. Had any claims been made, this may have affected Miles Smith's solvency position.

Further, and throughout the period when the second and third individuals were employed by Miles Smith, Mr Packham failed to ensure that any adequate structure was put in place for monitoring or controlling the activities of the second and third individuals. There were no

formal reviews of the work done by the second and third individuals at any time during their employment. By reason of the lack of any such structure, the second and third individuals conducted an unauthorised trading relationship with Miles Smith through their company (“the third party company”).

It should be made clear that in a review by HLB Kidsons (now Baker Tilly), a firm of chartered accountants, no evidence of fraud or dishonesty was found on business transacted by the second and third individuals via the third party company.

By failing to check whether the Errors & Omissions cover complied with Lloyd’s requirements above and by failing to ensure that any adequate structure was in place for monitoring or controlling the activities of the second and third individuals, Mr Packham engaged in discreditable conduct.

The following penalties have been imposed on Mr Packham:

- (i) That his right to transact, or be concerned or interested in the transaction of, the business of insurance at Lloyd’s or any class or classes of such business be suspended for a period of six months;
- (ii) Fine in the sum of £2,000; and
- (iii) Censure in the terms of this Notice of Censure.

Mr Packham has agreed to pay the costs of Lloyd’s in the sum of £3,000.

LLOYD’S DISCIPLINARY BOARD

NOTICE OF CENSURE

PAUL MARTIN JELLCOE

Mr Paul Jellicoe has admitted one charge of engaging in or being associated with discreditable conduct within the meaning of paragraph 3(f) of the Misconduct and Penalties Byelaw (No. 30 of 1996).

Miles Smith plc was a registered Lloyd's broker. Mr Jellicoe was a director of Miles Smith plc and also its compliance officer.

On 1 August 1998 an individual commenced employment with Miles Smith plc ("the first individual"). On 17 August 1998 two individuals commenced employment with Miles Smith plc ("the second and third individuals"). The first individual remained in employment with Miles Smith plc until 9 September 1998. The second and third individuals remained in employment with Miles Smith plc until 4 December 1999.

On 9 June 1999 Mr Jellicoe informed Lloyd's Brokers Department that the second and third individuals were full-time employees of Miles Smith plc. Mr Jellicoe knew, and had known since at least January 1999, that as well as being employees of Miles Smith plc, the second and third individuals had formed their own company ("the third party company") and were conducting business with Miles Smith plc through the third party company.

On 13 September 1999 Miles Smith plc submitted its Professional Indemnity return, which provided details of the Errors and Omissions cover in place for the year commencing 1 September 1999. The 1999 Lloyd's Errors & Omissions return contained a declaration that the cover was in accordance with all the requirements of Lloyd's. This declaration was signed by Mr Jellicoe. He took no steps before signing it to check whether the cover satisfied the requirements of Lloyd's; nor was he informed by anyone at any time that it did.

Upon Lloyd's investigating the extent of cover provided, Lloyd's Brokers Department noticed that the second and third individuals had been excluded from any cover in respect of fraud and dishonesty and also that the first individual had been excluded from all sections of the policy. The cover therefore did not meet the requirements of the Lloyd's Brokers Professional Indemnity "Errors and Omissions" Requirements (1990). Having been informed by Lloyd's Brokers Department of this, Mr Jellicoe wrote to Lloyd's confirming that the second and third individuals had been removed from the list of excluded persons and that he was therefore able to confirm that the policy was in line with the Lloyd's Brokers Professional Indemnity "Errors and Omissions" Requirements (1990)."

It subsequently became known to Lloyd's that cover had been arranged in respect of the activities of the second and third individuals on terms that Miles Smith plc would reimburse the underwriters for any payments made. Mr Jellicoe's letter of 8 November 1999 was seriously misleading in that it failed to mention that no cover had been obtained for the first individual's activities and that Errors and Omissions cover had been obtained on terms that Miles Smith plc would reimburse the underwriters for payments made.

Further, and throughout the period when the second and third individuals were employed by Miles Smith plc, Mr Jellicoe failed to conduct any adequate review of their activities. In particular, he failed to notice from August 1998 to January 1999 that the second and third individuals were trading with Miles Smith plc through their company, the third party company; thereafter, he failed sufficiently to investigate what trading had taken place between Miles Smith plc and the third party company. He therefore failed in his duty as Miles Smith plc's compliance officer. In addition he failed to ensure that the second and third individuals operated any effective system of credit control in relation to business conducted by them on behalf of Miles Smith plc.

It should be made clear that in a review by HLB Kidsons (now Baker Tilly), a firm of chartered accountants, no evidence of fraud or dishonesty was found on business transacted by the second and third individuals via the third party company

By failing to check whether the Errors & Omissions cover complied with Lloyd's requirements, by placing cover on the terms set out above and by failing to ensure that any adequate structure was in place for monitoring or controlling the activities of the second and third individuals, Mr Jellicoe engaged in discreditable conduct.

The following penalties have been imposed on Mr Jellicoe:

- (i) That his right to transact, or be concerned or interested in the transaction of, the business of insurance at Lloyd's or any class or classes of such business be suspended for a period of six months;
- (ii) Fine in the sum of £2,000; and
- (iii) Censure in the terms of this Notice of Censure.

Mr Jellicoe has agreed to pay the costs of Lloyd's in the sum of £3,000.

In imposing the penalty, the Disciplinary Board took into account, amongst other things, the fact that Mr Jellicoe admits the charge against him and has co-operated fully with the Lloyd's formal inquiry into this matter. He was under extreme pressure at the time because of the deteriorating circumstances of the business. He has worked in a professional capacity for 17 years, including 8 years at Lloyd's and to date he has had an unblemished record.

LLOYD'S DISCIPLINARY BOARD