

FROM: Secretary, Lloyd's Disciplinary Board
LOCATION: 58/SE1
EXTENSION: 5530
DATE: 24 December 2001
REFERENCE: 049/2001
SUBJECT: **BATES CUNNINGHAM UNDERWRITING LIMITED**
SUBJECT AREA(S): Formal Disciplinary Proceedings – Case No. LDB/0112/09
ATTACHMENTS: Notice of Censure
ACTION POINTS: **For information**
DEADLINE: **None**

Bates Cunningham Underwriting Limited (“Bates Cunningham”), which was at the time relevant to these proceedings a Lloyd's managing agent, has admitted one charge of discreditable conduct.

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

- 1) a fine of £150,000
- 2) the penalty of a Notice of Censure (a copy of which is attached to this bulletin)

In addition, Bates Cunningham is to pay the costs of Lloyd's of £19,000.

This case relates to the fact that in 1999 Bates Cunningham failed to disclose relevant information to Lloyd's and to the unaligned members on syndicate 877. Details of the events giving rise to the charge admitted by Bates Cunningham are set out in the attached Notice of Censure.

This case was determined by the Lloyd's Disciplinary Board and its decision gives effect to a settlement of these proceedings agreed between Bates Cunningham and the Council pursuant to paragraph 26.6 of the Lloyd's Disciplinary Rules (schedule 2 to the Disciplinary Committees 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.

AP Barber
Secretary
Lloyd's Disciplinary Board.

NOTICE OF CENSURE

BATES CUNNINGHAM UNDERWRITING LIMITED

The Lloyd's managing agent Bates Cunningham Underwriting Limited ("Bates Cunningham") has admitted a charge of engaging in discreditable conduct within the meaning of paragraph 3 (f) of the Misconduct and Penalties Byelaw (No 30 of 1996).

Bates Cunningham was at the time material to these proceedings the managing agent for syndicate 877. Torch Holdings Plc ("Torch") was the parent company of Bates Cunningham.

Background

At the start of the 1999 year of account, approximately 78% of the capacity on syndicate 877 was provided by the corporate member Torch Dedicated Corporate Member Limited ("Torch Dedicated"). Torch Holdings was also the parent company of Torch Dedicated. As a result Torch Dedicated's capacity was aligned to Bates Cunningham. The remaining capacity was provided by unaligned capital providers.

As the result of the level of capacity provided at the start of 1999 by Torch Dedicated, Bates Cunningham was required, pursuant to the Mandatory Offer Byelaw (No 5 of 1999), to make an invitation to the unaligned members of the syndicate to purchase their capacity. In addition, in April 1999 Bates Cunningham applied to Lloyd's for consent to effect a minority buy-out of the outstanding capital providers on the syndicate.

Relevant Events

In April 1999 the Board of Directors of Torch also decided to seek a purchaser for the business. At all Board meetings at Torch, persons who were also directors of Bates Cunningham were present.

In May 1999 Lloyd's granted permission in principle for Bates Cunningham to effect the minority buy-out. This was subject to Bates Cunningham/Torch Dedicated obtaining 90% of the capacity on the syndicate as a result of the mandatory offer. The benefits of the acquisition of all the capacity on the syndicate were explained to potential purchasers in an information memorandum circulated by Torch/Bates Cunningham's advisors to potential purchasers in June 1999.

In June 1999 Limit Plc registered an interest in purchasing Torch. Thereafter, it entered into discussions with Torch/its advisers regarding a possible purchase.

On 19 July 1999, Bates Cunningham made its mandatory offer to the unaligned capital providers. The offer price was 0.1p/£1 of capacity, this being the minimum price payable for capacity under the Major Syndicates Transactions Byelaw, calculated on the basis of the highest auction price achieved in the previous year's auction season.

During the period of the mandatory offer until it closed on 19 October 1999 Bates Cunningham/Torch pursued a dual policy of:

- 1: Negotiating for the sale of the entire issued share capital of Torch; and
- 2: Taking steps for Torch Dedicated to acquire all the capacity on syndicate 877.

Limit's commercial due diligence took place between 1 September and 7 October 1999 and formed the basis for price negotiations between 8 October and 15 October.

The necessary 90% threshold to effect the minority buy-out was reached on 7 October 1999. At that point Bates Cunningham applied to Lloyd's for permission to implement the minority buy-out.

On 15 October 1999 there was an agreement in principle for the sale of Torch to Limit. This was subject to completion of legal and financial due diligence and final board approval. The offer price for the shares of Torch Holdings was 68p.

Lloyd's gave permission to Bates Cunningham to effect the minority buy-out of the remaining capital providers on 21 October 1999.

On 28 October 1999 the Board of Torch considered Limit's offer to acquire the whole of the issued share capital of the company. The offer was still subject to due diligence. The Board considered that the offer was in the best interests of the company and decided to recommend the offer for acceptance to shareholders.

Limit concluded its financial and legal due diligence on 3 November 1999 and made a revised offer of 62p per share. On the same day Bates Cunningham bought out the remaining unaligned capital providers on syndicate 877.

On 12 November 1999 press releases were issued whereby Torch announced that they had agreed the terms of the recommended cash offer.

Criticisms of Bates Cunningham

Bates Cunningham ought to have, but did not, disclose to the relevant departments at Lloyd's and to the unaligned Names information to the effect that Torch was pursuing the sale of its entire issued share capital, which was information that was relevant for the relevant departments at Lloyd's and to the unaligned Names.

Bates Cunningham appreciated or ought to have appreciated that the disclosure of the selling process of Torch was relevant information as it may well have had the following effect:

- 1: Lloyd's may have postponed or suspended the mandatory offer process until after the sale process had been completed or until Bates Cunningham was prepared to make a proper disclosure to the unaligned Names;
- 2: Lloyd's may have refused consent for the minority buy-out;
- 3: The potential purchasers of Torch may have been less interested or only interested at a lower consideration had Torch not been able to sell itself with the benefit of 100% capacity on syndicate 877; and
- 4: The unaligned Names, or at least some of them, had they been told of the sale process, may have been reluctant to sell at 0.1p/£1 of capacity.

Therefore, Bates Cunningham failed to disclose relevant information as was required under the Lloyd's requirements regarding the disclosure of relevant information.

Disciplinary Proceedings

As a result of these disciplinary proceedings, Bates Cunningham has admitted a charge of discreditable conduct. The following penalties have been imposed on Bates Cunningham in relation to this matter:

- 1: A fine of £150,000; and
- 2: Notice of Censure in the terms of this notice.

Bates Cunningham has also agreed to pay Lloyd's costs in the amount of £19,000 arising from these proceedings.

In assessing these penalties, account has been taken in the fact that the relevant events occurred prior to acquisition of Bates Cunningham by Limit. The current management of Limit was not involved in managing Bates Cunningham at the relevant time. Account has also been taken in the fact that the current management of Bates Cunningham has co-operated at all times with the Lloyd's inquiry including the resolution of these proceedings, thereby avoiding the costs of a contested hearing before a disciplinary tribunal.

LLOYD'S DISCIPLINARY BOARD