

FROM: Secretary to the Lloyd's Disciplinary Board
LOCATION: 58/NW1
EXTENSION: 5530
DATE: 20 November 2000
REFERENCE: 082/200
SUBJECT: **COGENT RESOURCES LIMITED (FORMERLY R MEARS & CO LIMITED)**
SUBJECT AREA(S): Disciplinary Proceedings
ATTACHMENTS: Notice of Censure
ACTION POINTS: For information
DEADLINE: None

Cogent Resources Limited (formerly R Mears & Co Limited), a registered Lloyd's broker, has admitted two charges of conducting insurance business in a discreditable manner and one charge of engaging in or being associated with discreditable conduct.

This case was concluded before Lloyd's Disciplinary Board on 22 December 1999. Publication of this matter was delayed until the outcome of the related proceedings against Richard Mears was decided.

The following penalties have been imposed on Cogent Resources Limited:

- (1) A fine of £35,000; and
- (2) A Censure in the terms of the Notice of Censure attached to this bulletin.

There was no order as to costs.

Details of the events giving rise to the charges against Cogent Resources Limited are set out in the Notice of Censure.

In assessing the penalties imposed on Cogent Resources Limited, account was taken of the fact that it has admitted the charges against it and that the matters giving rise to those charges took place under a previous Board and management. Cogent Resources Limited has substantially reconstituted the Board and management of the company. There has been a

significant improvement in its compliance practice and procedures. Cogent Resources Limited has fully co-operated with Lloyd's investigations into this matter.

This bulletin has been sent to all underwriting agents and members agents (corporate advisers), corporate members, market associations, the ALM and recognised accountants.

A P Barber
Secretary to Lloyd's Disciplinary Board

NOTICE OF CENSURE

COGENT RESOURCES LIMITED

Cogent Resources Ltd ("Cogent") (formerly known as R Mears & Co Ltd ("RMC")), a registered Lloyd's broker, has admitted two charges of conducting insurance business in a discreditable manner and one charge of engaging in or being associated with discreditable conduct.

In 1992 and 1994 to 1996, RMC arranged marine re-insurance on behalf of a publicly owned insurance company in the Middle East ("the Reinsured"). The reinsurance was in respect of varying percentages of risks in respect of an ocean going fleet. On each occasion (save for one policy), the amount of premium shown on the debit note was misrepresented and an increased premium was paid by the Reinsured. The misrepresented amounts totalled \$1,031,845.

RMC made payments totalling \$730,000 from the increased amounts of premium in its US\$IBA to a senior person at the company whose insurance cover was reinsured through RMC. RMC believed that the money was paid either in order to induce the recipient to ensure that the Insured provided further business to the Reinsured or as reward for past business.

Further, a payment of £85,000 in 1992 was made by RMC to an account in New York, and other payments totalling \$160,735 were retained by the Reinsured out of the increased premiums. RMC believed that these payments were made to or for the benefit of a senior executive director of the Reinsured. RMC believed that the money was paid as a reward for introducing business to the Reinsured.

Additional payments from the US\$IBA totalling \$2,122,587.38 to various entities were made on the instructions of the Reinsured from sums which had been paid into the US\$IBA by the Reinsured. Inquiries to date have failed to identify the existence or identity of the beneficiaries of these payments. RMC did not ascertain that the purpose of such payments was in the ordinary legitimate course of RMC's business.

The senior person primarily responsible for this account at RMC has asserted that the Reinsured had asked for the premiums to be misrepresented in order to pay sums of money to the third parties. The senior executive director of the Reinsured has confirmed that this was the case. RMC says that the person primarily responsible for the account advised the Directors of RMC and the brokers concerned in RMC that he had been orally instructed by the Reinsured to misrepresent the premium figures on the cover notes and/or debit notes to be submitted to the Reinsured. RMC says that it understood from that person that the Reinsured was effectively run by its senior executive director who, they believed, had authority to act on behalf of the Reinsured.

RMC failed to prevent:

- Its employees raising and issuing false and potentially misleading cover notes, debit notes and credit notes which stated an inflated figure for the premiums in respect of risks arranged by RMC;
- monies being credited to its US\$ IBA and paid out to individuals which RMC believed were intended for and were used for the payment of inducements and/or payments of introductory fees;
- monies being withdrawn from the US\$ IBA and used for a purpose not permitted by the Lloyd's Brokers Byelaw (No. 5 of 1988);

In particular:

- No or no adequate steps were taken to check the accuracy or truthfulness of each of the cover notes, credit notes and debit notes which purported to charge inflated premiums;
- No or no adequate procedures were in place to check the nature of and the legitimacy of each payment into the US\$ IBA;
- No or no adequate procedures were in place to check that monies were being debited from the US\$ IBA only to persons and for purposes which were authorised by the Lloyd's Brokers Byelaw.
- Reliance was placed on the consent to the misrepresentation of the premiums and the payments to third parties given by a person who was believed to be benefiting personally from the payment by the Reinsured of sums in excess of the premiums payable to reinsurers;
- No or no adequate steps were taken to ensure that the person was authorised to give such consent;
- No or no adequate steps were taken to check with the Chairman or another independent Board member ("another Board member") that the Reinsured was aware that inflated premiums being represented on cover notes and that payments were being made to third parties and had consented to this being done;
- No or no adequate steps were taken to record in writing such consent of another Board member at the relevant time;
- No or no adequate enquiries were made as to the reasons behind the representing of inflated premiums and the payments to third parties;
- Cover notes and debit notes were created which misrepresented the premiums charged by Underwriters and which would be misleading to any person or body who was not aware of the misrepresentations.
- Payments were made to an individual connected with the company whose insurance cover was reinsured through RMC which may have conflicted with the duties of that person to his employer.
- No or no adequate steps were taken to check or record the true identities of each of the account holders to whom the other payments were made;

- No or no adequate policies were in place at RMC to prevent the matters set out above from occurring;
- No or no adequate procedures were in place at RMC to ensure that matters such as those set out above did not happen;
- No or no adequate systems of monitoring or audit were in place to detect such matters if they were to happen;
- No or no adequate steps were taken to prevent the person primarily responsible for this account from keeping key records, namely the original Telegraphic Transfer forms recording the payments to the third parties separately from the usual accounting records of RMC.

The following penalties have been imposed on Cogent Resources Limited:

- (1) A fine of £35,000; and
- (2) A Censure in the terms of this Notice of Censure.

Cogent has accepted the extremely serious nature of these charges but has pleaded in mitigation that the matters giving rise to them took place under the previous Board and management.

Cogent has subsequently substantially reconstituted the Board and management of the company.

Cogent has fully co-operated with and has continued to assist Lloyd's in its investigations. Cogent also instructed both solicitors and auditors to carry out their own investigations and copies of their reports were made available to Lloyd's. Cogent has incurred substantial costs in connection with these investigations.

There has been a significant improvement in its compliance practice and procedures.

Were it not for these actions taken by the new management of Cogent, a significantly higher penalty would have been imposed.

LLOYD'S DISCIPLINARY BOARD