

FROM: Secretary to the Lloyd's Disciplinary Board,
LOCATION: 58/NW1
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REFERENCE: 095/2000
SUBJECT: **EDWARD GRANT WHYTOCK**
SUBJECT AREA(S): Disciplinary Proceedings
ATTACHMENTS: Notice of Censure
ACTION POINTS: **For information**
DEADLINE: **None**

Edward Grant Whytock has admitted one charge of conducting insurance business in a discreditable manner.

This case was concluded before the Lloyd's Disciplinary Board. The following penalties have been imposed on Mr Whytock:

- (1) A fine of £5,000; and
- (2) A Censure in the terms of the Notice of Censure attached to this bulletin.

In addition, Mr Whytock has agreed to pay the costs of Lloyd's in the sum of £2,500.

Details of the events giving rise to the charges against Mr Whytock are set out in the Notice of Censure.

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

EDWARD GRANT WHYTOCK

Lloyd's broker Edward Grant Whytock ("Mr Whytock") has admitted one charge of misconduct namely, discreditable conduct contrary to the Misconduct, Penalties and Sanctions Byelaw (No.9 of 1993) in respect of conduct that occurred prior to 7 August 1996; and contrary to the Misconduct and Penalties Byelaw (No.30 of 1996) in respect of conduct that occurred thereafter.

On 30 June 1997 Nicholson Leslie Limited ("NL") became part of the Alexander Howden Group, and on 31 July 1997 the Alexander Howden Group changed its name to Aon Group Limited.

Mr Whytock was a broker working as a consultant to the aviation division of NL. Between 1995 and 1998, payments of commission were made to the Insurance Commissioner of an African country ("the Country") in connection with the placing of insurances and reinsurances of an airline company ("the Airline Company") in the international market.

In 1985 Mr Whytock met a businessman and lawyer ("B") working in London who had extensive business contacts in the Country. In or around June 1990, Mr Whytock met and renewed his contact with 'B' again. Further to discussions it was agreed that, in the event that 'B' was able to assist in the introduction of new business to NL, he would be remunerated by NL with a share of the resulting commission.

Sometime prior to 1994, 'B' returned to the Country and subsequently took up the position of Insurance Commissioner. Mr Whytock was not aware of his appointment.

Under domestic laws, the Airline Company was obliged to place 100% of its insurances with a state insurance company ("the Insurance Company"). In addition, the local insurers were obliged to reinsure a proportion to a state reinsurance company ("the Reinsurance Company"), who then reinsured themselves in the international market through the London based brokers. During 1993 and 1994, discussions took place between Mr Whytock and the Airline Company regarding the possible retention of NL as its broker; ultimately these discussions were unsuccessful.

On 30 September 1994, 'B' in his role as Insurance Commissioner, wrote to the Insurance Company detailing complaints by the Airline Company in the handling of its insurance requirements. Subsequently the Airline Company asked Mr Whytock to provide a report detailing how improvements may be made to the existing reinsurance arrangements; this was provided in early 1995.

On 27 February 1995, 'B' held a meeting with the Airline Company, the Insurance and the Reinsurance Companies to discuss the future placement of the insurances and reinsurances of the Airline Company and the report prepared by NL. In a letter dated 1 March 1995, the Airline Company informed NL that, following this meeting, it would likely be permitted to nominate a broker of it's choice.

On 3 March 1995, the Airline Company wrote to Mr Whytock noting that a number of its officials and the Insurance Commissioner would be visiting London, and wished to discuss insurances at a meeting on 20 March 1995.

During the course of this meeting, Mr Whytock became aware for the first time that the Insurance Commissioner was 'B'. At this meeting, 'B' reminded Mr Whytock of the agreement that they had made in 1990.

On 3 May 1995, 'B' in his role as Insurance Commissioner, wrote to the Insurance Company confirming that NL would be appointed as the broker in respect of the renewal of the Airline Company's insurances at 1 July 1995.

Further to the inception of the policy on 1 July 1995, Mr Whytock travelled to the Country to discuss with the Insurance Commissioner the levels of commission to be earned by each entity involved in the transaction. Mr Whytock also discussed the question of remuneration to be paid to the Insurance Commissioner by NL in the light of the arrangements that had previously been made between them. The policy was subsequently renewed.

In total, five payments were made to the Insurance Commissioner over the three-year period (1996-1998) totalling US\$96,500. A sixth payment was requested but stopped. Following a refusal to authorise payment in May 1998 by Aon's senior lawyer within the group, there were no further payments of commission to the Insurance Commissioner.

There is no evidence to suggest that any individual, other than the Insurance Commissioner, benefited personally from any insurances placed on behalf of the Airline Company. As promised in 1995, the reinsurance premiums charged since NL placed the business have been significantly reduced overall.

'B', in his official role as Insurance Commissioner played a prominent role in the appointment of NL as reinsurance brokers for the Airline Company reinsurances, and he did this against opposition from the state based Insurance and Reinsurance Companies involved in the risks. Prior to the appointment of NL as reinsurance brokers, Mr Whytock was aware not only of 'B's position, but also the role he was performing in relation to the appointment of NL.

Mr Whytock has by his actions committed acts of misconduct. Paragraph 3 of the Code of Practice for Lloyd's Brokers (6 July 1988)("the Code") states:

"Insurance brokers shall at all times conduct their business with utmost good faith and integrity".

Mr Whytock's actions in honouring the agreement to pay 'B' at a time when 'B' had become the Insurance Commissioner were in breach of this fundamental principle.

The following penalties have therefore been imposed upon Mr Whytock:

- (i) a fine of £5,000; and
- (ii) a Censure in accordance with the terms of this notice; and
- (iii) a contribution towards the costs of the Council of Lloyd's in the sum of £2,500.

In assessing the penalties and costs in this matter account has been taken of the following facts:

1. Mr Whytock did not sustain any direct financial benefit from the arrangements referred to above.
2. The arrangement between Mr Whytock and 'B' was made at a time when 'B' was not the Insurance Commissioner.
3. The payments made to the Insurance Commissioner were paid out of Aon's brokerage and there is therefore no issue of reparation to a 'victim'.
4. Mr Whytock has co-operated fully with the Lloyd's investigations into this matter, and has settled these proceedings and admitted liability at the earliest possible opportunity thereby avoiding the necessity of a hearing before a Disciplinary Tribunal.

LLOYD'S DISCIPLINARY BOARD