

FROM: The Secretary to Lloyd's Disciplinary Board
LOCATION: 86/G3
EXTENSION: 6835
DATE: 23 July 2003
REFERENCE: Y3100
SUBJECT: LLOYD'S DISCIPLINARY PROCEEDINGS CASE
NOS. LDB/0207/13, LDB/0207/13A & LDB/0207/13B
SUBJECT AREA(S): Moore Brown Barnes Ltd (in liquidation)
ATTACHMENTS: Five notices of censure
ACTION POINTS: **For information**
DEADLINE: **None**

On 26 July 2002 the Council of Lloyd's instituted formal disciplinary proceedings against five former directors of Moore Brown Barnes Ltd ("MBBL") in relation to the management of that company during the period between 4 August 1998 and 16 February 2000. The directors concerned were Alan Arthur Barnes, Howard Alan Barnes, George Kenneth Moore, Peter Richard Ovenden and Guy Lawrence Kerr Russell.

MBBL was registered as a Lloyd's broker on 4 August 1998 but was required to cease placing new and renewal business at Lloyd's with effect from 14 October 1999. Having transferred its active accounts to another Lloyd's broker in November 1999 the company was placed into voluntary liquidation on 16 February 2000, at which point it had a substantial shortfall on its insurance broking account.

The disciplinary proceedings against Messrs A. Barnes, H. Barnes, Moore and Russell were separately settled before Lloyd's Disciplinary Board between 6 December 2002 and 25 April 2003 and the disciplinary proceedings against Mr Ovenden were settled before a Lloyd's Disciplinary Tribunal on 8 July 2003. The following penalties and order for costs were imposed on the defendants:

Alan Arthur Barnes

- (i) The suspension for a period of ten years from 28 March 2003 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's without limitation as to class of business.
- (ii) The suspension for a period of ten years from 28 March 2003 of his right of admission to the Room and all other premises of the Society both in the United Kingdom and abroad.
- (iii) An agreed notice of censure.
- (iv) A contribution of £10,000 towards Lloyd's costs.

Howard Alan Barnes

- (i) The suspension for a period of three years from 6 December 2002 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's as: (a) a director, partner or manager of a Lloyd's broker; (b) a director, partner or manager of a Lloyd's underwriting agent; and (c) a director or manager of a corporate member of the Society.
- (ii) A fine of £10,000.
- (iii) An agreed notice of censure.
- (iv) A contribution of £30,000 towards Lloyd's costs.

George Kenneth Moore

- (i) The suspension for a period of two years and eight months from 25 April 2003 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's as: (a) a director, partner or manager of a Lloyd's broker; (b) a director, partner or manager of a Lloyd's underwriting agent; and (c) a director or manager of a corporate member of the Society.
- (ii) A fine of £8,000.
- (iii) An agreed notice of censure.
- (iv) A contribution of £38,500 towards Lloyd's costs.

Peter Richard Ovenden

- (i) The permanent suspension from 8 July 2003 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's without limitation as to class of business as: (a) a director, partner, employed manager or compliance officer of a Lloyd's broker; (b) a director, partner, employed manager or compliance officer of a Lloyd's underwriting agent; and (c) a director, employed manager or compliance officer of a corporate member of the Society.
- (ii) An agreed notice of censure.
- (iii) A contribution of £20,000 towards Lloyd's costs.

Guy Lawrence Kerr Russell

- (i) The suspension for a period of seven years from 6 December 2002 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's without limitation as to class of business.
- (ii) The suspension for a period of seven years from 6 December 2002 of his right of admission to the Room and all other premises of the Society both in the United Kingdom and abroad.
- (iii) A fine of £10,000.
- (iv) An agreed notice of censure.
- (v) A contribution of £30,000 towards Lloyd's costs.

The events that gave rise to the preferment of disciplinary charges against Messrs A. Barnes, H. Barnes, Moore, Ovenden and Russell and the nature of the charges that they have admitted are set out in the attached notices of censure.

This bulletin is being sent to all underwriting agents, approved run-off companies, Lloyd's accredited brokers, corporate members, market associations, the ALM, recognised accountants, the General Insurance Standards Council and the Financial Services Authority.

H.F. Walsh
Secretary to Lloyd's Disciplinary Board

NOTICE OF CENSURE

OF

ALAN ARTHUR BARNES

Alan Arthur Barnes has admitted four charges of failing to take reasonable steps in connection with the business of insurance to avoid risk of harm to Lloyd's policyholders, the Society, its members or those doing business at Lloyd's within the meaning of paragraph 3 (e) of the Misconduct and Penalties Byelaw (No. 30 of 1996) during the period from 4 August 1998 until 16 February 2000.

Alan Barnes joined Moore Brown Barnes Ltd ("MBBL") as the company's accountant in June 1994 and was appointed a director of that company in January 1995. He was also appointed the company secretary of MBBL and its holding company, Moore Brown Barnes Holdings ("MBBHL") (which positions he continued to hold until 26 January 1999) and the company secretary and/or a director or officer of seven of MBBL's sister companies (which positions he continued to hold on 16 February 2000). Mr Barnes had no experience of working in the insurance industry prior to joining MBBL, having previously been employed as a bookkeeper or accountant in other sectors of the economy since 1960.

At the material time Mr Barnes was the company accountant of MBBHL, MBBL and four of MBBL's five sister companies which acted as underwriting agents. As such he was responsible for handling all the non-insurance broking account book-keeping and accounting of these companies. He also acted as chief accountant and de facto finance director of the Moore Brown Barnes group of companies until 18 February 1999. Thereafter he nominally reported to the new chief financial officer of the group who became MBBL's finance director and who was responsible for administering the company's insurance broking account ("IBA") at the relevant time.

MBBL was registered as a Lloyd's broker on 4 August 1998; de-registered as a Lloyd's broker on 14 October 1999 (subject to the run off of its existing account as a Lloyd's broker); and placed into voluntary liquidation on 16 February 2000 with an estimated deficiency of £1,441,964 as regards unsecured creditors. At the time of its liquidation MBBL owed £1,311,818 in unpaid premiums for which it had previously been put in funds by coverholders for whom it placed business and £194,529 of claims for which it had previously been put in funds by underwriters. Lloyd's Claims Office subsequently calculated that MBBL owed US\$2,041,721 and £9,735 (£1,417,818 in aggregate) in unpaid claims. At the time that it was placed in liquidation MBBL was owed £1,034,437 by its holding and sister companies.

The misconduct that Mr Barnes has admitted involved six matters:

1. His part in the mismanagement of MBBL such that amongst other things it was unable to meet its IBA obligations as they fell due or at all.
2. Failing to ensure that MBBL submitted to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and those of its sister companies with which it had inter company balances at the end of 1998 on time or, in two cases, at all.
3. Permitting MBBL to include within its monthly solvency returns to Lloyd's for July-December 1999 inclusive the full value of debts that Lloyd's had previously required MBBL to discount from its monthly solvency returns and/or in respect of which there was no realistic prospect of payment being made to MBBL within 12 months.
4. Failing to ensure that Lloyd's was notified from about 8 December 1999 that MBBL was expected to become insolvent in or by February 2000.

The mismanagement of Moore Brown Barnes Ltd

During the period from 4 August 1998 until 16 February 2000 MBBL failed properly to discharge its regulatory and agency obligations as a Lloyd's broker. This manifested itself in the following ways:

- (i) MBBL's failure to comply with a variety of reporting conditions that were imposed on the company as conditions of its registration as a Lloyd's broker in a timely manner or in a number of instances at all.
- (ii) MBBL's failure to ensure that the monthly returns that Lloyd's required the company to submit to it were calculated accurately.
- (iii) MBBL's failure to maintain adequate capital and reserves as required by Lloyd's and to pass its Lloyd's solvency tests.
- (iv) MBBL's failure from 11 February 1999 to undertake solvency calculations in a form prescribed by Lloyd's prior to withdrawing brokerage from its IBA and to preserve such calculations until further notice. These solvency calculations were required to be signed by MBBL's finance director and compliance officer. Lloyd's imposed these requirements as an additional condition of MBBL's registration as a Lloyd's broker in February 1999 in order to prevent the overdraw of brokerage from MBBL's IBA and repeatedly reminded MBBL of the continued application of this condition during 1999. As a result of MBBL's failure to comply with this condition £2,502,110 was transferred from the company's IBA into its office account between 16 February 1999 and 16 February 2000 without any solvency calculation being made as prescribed by Lloyd's. Lloyd's discovered this situation itself after MBBL was placed into liquidation.
- (v) MBBL's failure from 14 October 1999 to seek Lloyd's written consent before withdrawing more than £50,000 of brokerage from its IBA in any seven day period. This requirement was imposed by means of a direction from the Sub-Group of the Lloyd's Regulatory Board that was responsible for de-registering MBBL as a Lloyd's broker on 14 October 1999. As a result of MBBL's failure to comply with this

direction £673,518 was withdrawn from the company's IBA after 14 October 1999 without Lloyd's knowledge or consent.

- (vi) MBBL's failure to meet its IBA liabilities as they fell due or at all such that at the time of its liquidation on 16 February 2000 it had the substantial IBA deficits referred to above.

The following were key factors in MBBL's failure to discharge its regulatory and agency obligations as a Lloyd's broker properly at the material time:

- (a) The fact that the accounting of MBBHL and MBBL's UK and Danish sister companies were all effected through the accounting records of MBBL which made it difficult to identify which balances belonged to which company and increased the likelihood of brokerage withdrawals.
- (b) The lack of effective accounting systems and controls within MBBL so as to facilitate the prompt reconciliation of payments to and by the company and so as to prevent the overdrawing of brokerage from the company's IBA.
- (c) The lack of suitable numbers of suitably qualified people with MBBL's Accounts Department to handle the accounting arrangements of the Moore Brown Barnes group of companies.
- (d) The failure of MBBL to keep its expenditure within the bounds of its income.
- (e) The provision of open-ended and/or interest free funding to MBBL's holding and sister companies and two other companies, and the failure to keep accurate records of such funding.
- (f) The diversion of management time from MBBL in favour of its trading sister companies, two of which were based in North America, two in the United Kingdom and one in Denmark.
- (g) The lack of awareness of the directors of MBBL of the company's financial position both in terms of its IBA and on a corporate basis.

Mr Barnes was obliged as a director of MBBL to exercise reasonable care, skill and diligence in the direction of the affairs of the company which included a duty to keep himself informed as to the affairs of the company and a continuing duty to supervise and control those affairs. In addition he was under a fiduciary duty to safeguard the assets of the MBBL for the benefit of the company and its creditors.

As a director of a Lloyd's broker Mr Barnes was under a duty to see to it that MBBL was able to account to its clients, which included a duty to safeguard and not to misapply client funds, and also to ensure that the company complied with its regulatory obligations.

As an accountant Mr Barnes had special knowledge, skills and experience that most of the other directors of MBBL did not possess. He must be judged accordingly when assessing whether he exercised reasonable care, skill and diligence in carrying out his duties as a director of MBBL.

Mr Barnes was primarily responsible for establishing the accounting arrangements of the Moore Brown Barnes group of companies that subsisted at time of MBBL's registration as a Lloyd's broker on 4 August 1998 and for managing those arrangements up until 18 February 1999. However, by his own admission he did not involve himself in MBBL's IBA as he did not understand insurance broking accounting nor how to use the computer system that MBBL used to record its IBA transactions. Instead he relied on others to administer MBBL's IBA.

The accounting arrangements of MBBL and its sister companies did not develop with the growth of these companies. The result was by August 1998 MBBL had very large unallocated cash and aged debtors balances and computerised accounting systems that were not integrated with one another nor readily accessible (which limited their functionality and necessitated the re-keying of data with attendant delays and errors). MBBL's Accounts Department was overstretched without the additional burden of handling the accounts of other group companies. Essentially this situation remained unchanged when Mr Barnes relinquished his position as chief accountant of the Moore Brown group of companies and finance director of MBBL on 18 February 1999, and it did not improve thereafter.

Mr Barnes had primary executive responsibility for the following matters at the material time: (a) the preparation of MBBL's management accounts and trial balances; and (b) the recording of MBBL's non-IBA inter company balances and other loans. He says that he also used to monitor the withdrawal of brokerage from MBBL's IBA against the brokerage recorded in the company's management accounts (via the office cash-book which he maintained). Subsequent events show that his bookkeeping left much to be desired. Thus:

1. The audited financial statements of MBBL for the year ended 31 December 1998 show that the company overstated its pre-tax profit by £160,984 (the discrepancy would have been substantially larger but for some unusual accounting adjustments made in August 1999).
2. The audited financial statements of MBBHL for the year ended 31 December 1998 show that the unaudited statements of MBBL's non-IBA inter company balances that were submitted to Lloyd's for the same period understated MBBL's inter company's debtors by £631,169.
3. Save for one month (July 1999) the brokerage income recorded in MBBL's management accounts for the period from August 1998 to 30 September 1999 did not correspond with the brokerage recorded in the company's brokerage income reports for the same period (which were supposed to be the source of the brokerage figures in the management accounts). The result was the cumulative brokerage income recorded in MBBL's management accounts for the first nine months of 1999 (according to which MBBL made a pre-tax loss of £152,813) was £101,210 higher than the aggregate brokerage income recorded in the company's brokerage income reports for the same period.
4. MBBL withdrew £1,116,834 more brokerage from its IBA than was booked in its management accounts in 1998 and £763,199 more brokerage than the combined booked income of MBBL and its two trading sister companies in the United Kingdom. The corresponding figures for 1999 were £851,034 and £288,259, MBBL's new finance director having calculated in January 1999 that these companies had a combined brokerage surplus of £5,802 at the end of 1998. The figures for paid

brokerage (which Mr Barnes did not monitor) are even worse. MBBL's accounting records indicate that during 1999 the company withdrew substantially more brokerage from its IBA than was logged as paid brokerage, with such paid brokerage representing approximately 49% of its booked brokerage.

These deficiencies indicate that Mr Barnes and by extension the other directors of MBBL did not have an accurate picture of MBBL's IBA or office account at the material time.

Mr Barnes acknowledges that as a director of MBBL and the company's accountant throughout the relevant period and the chief financial officer of the Moore Brown Barnes group of companies from 18 February 1999, he must bear some responsibility for the various failures and deficiencies referred to above.

Mr Barnes accepts that in his desire to promote the welfare of Moore Brown Barnes group of companies as a whole he failed to have due regard to the separate interests of MBBL itself and to supervise and control the affairs of that company effectively so as to ensure that it fulfilled its obligations as they fell due, whether from an IBA, corporate or regulatory perspective.

Failure to submit annual return and audited financial statements to Lloyd's on time or at all

As a new Lloyd's broker MBBL was required under the Lloyd's Brokers Byelaw (No. 5 of 1988) ("the Byelaw") to submit to Lloyd's audited financial statements for the year ended 31 December 1998 for itself and its holding company together with an annual return for the same period by no later than 30 June 1999.

On 11 May 1999 an assistant manager in Lloyd's Brokers Department notified the directors of MBBL that he had made it an additional condition of the company's registration as a Lloyd's broker that it would submit to Lloyd's by no later than 30 June 1999 audited financial statements for the year ended 31 December 1998 for those of its sister companies with which MBBL had an inter company balance at the end of 1998. MBBL accepted the imposition of this condition and was subsequently allowed until 6 July 1999 to submit the required financial statements.

In the event MBBL did not submit to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and two of its UK sister companies until 31 August 1999. No satisfactory explanation was provided to Lloyd's for the late presentation of these documents.

MBBL was additionally required to submit audited financial statements for its two North American sister companies for the year ended 31 December 1998 but never did so. Further no explanation was provided to Lloyd's for its failure to do so.

The failure of the directors of MBBL to ensure that MBBL submitted to Lloyd's on time or at all its annual return for 1998 and the financial statements that were required of it ("the required documents") caused the company to breach the provisions of paragraphs 7(1)(a), 44(1) and 44(3) of the Byelaw. Further the late submission of MBBL's audited financial statements for 1998 led to delays in the submission of the company's monthly returns to Lloyd's for July and August 1999 thereby occasioning further breaches of the company's conditions of registration as a Lloyd's broker.

MBBL's audited financial statements for 1998 showed a substantial deterioration in the results of the company as shown in its management accounts which had previously been disclosed to Lloyd's. The delay in the submission of MBBL's audited financial statements for 1998 to Lloyd's meant that Lloyd's learnt of the deterioration of MBBL's results later than it should have done.

The failure of the directors of MBBL to ensure the preparation of audited financial statements for its two North American sister companies for the year ended 31 December 1998 meant that those companies' 1998 accounts were not subject to independent verification or scrutiny. Further the viability of these companies as going concerns was not independently assessed.

Mr Barnes was responsible for producing trial balances for MBBL and its trading sister companies in the United Kingdom and North America for the year ended 31 December 1998. Having done so belatedly he left to MBBL's new finance director the preparation and submission to Lloyd's of the required documents. He took no further part in the preparation of these documents himself although he was shown various drafts of the financial statements of MBBL and its sister companies for the year ended 31 December 1998.

Mr Barnes was aware of MBBL's failure to submit the required documents to Lloyd's on time but did not seek to investigate this matter notwithstanding that he was told that the finalisation of MBBL's audited financial statements for 1998 was being held up because of problems with some IBA balances. Such was Mr Barnes' detachment from the preparation of MBBL's financial statements for 1998 that when he was unaware when questioned about the matter in April 2001 that they had eventually been signed and submitted to Lloyd's at the end of August 1999 (he was on holiday at the time). Mr Barnes never saw the audited financial statements of MBBL or MBBHL for 1998 nor indeed MBBL's annual return for the same period. As a result he was ignorant at the material time of the audited results of MBBL for 1998 and, by extension, of the substantial differences between those results and the results of the company as disclosed in MBBL's unaudited management accounts and solvency returns for the same period.

As a director of MBBL Mr Barnes had a duty to keep himself informed as to the affairs of the company and to ensure that it met its regulatory obligations as they fell due. Accordingly he should have ascertained the reasons for the delayed submission of the required documents and, in conjunction with his fellow directors, he should then have taken steps to ensure that this situation was notified to Lloyd's and remedied as soon as possible. He did not do so. Instead he chose to concentrate on his own executive responsibilities and left it to the other directors of MBBL to attend to the submission of the required documents.

In failing to ensure that MBBL submitted the required documents to Lloyd's on time or at all Alan Barnes failed to discharge his duties as a director of a Lloyd's broker properly.

Permitting the submission to Lloyd's of improper solvency returns

MBBL was required to submit monthly solvency returns to Lloyd's as one of its original conditions of registration. One of the requirements of Lloyd's Net Current Assets ("NCA") Test at the material time was that no credit was to be taken for non-insurance debtors that were not realisable within 12 months. This requirement was also relevant to the Net Tangible Asset ("NTA") test.

In April 1999 the Manager of the Brokers Department notified the directors of MBBL that he did not consider that the non-insurance inter company debt of MBBL's US sister company, JG Krok of Illinois Inc ("Krok"), to be realisable within 12 months and should accordingly be discounted from MBBL's NCA and NTA returns.

Krok's inter company debt to MBBL was shown as static in the latter's monthly returns to Lloyd's for May-August 1999 following which it was shown as non-existent. However, unbeknown to Lloyd's, MBBL continued to fund the operations of Krok from June 1999 until 16 February 2000 when MBBL was placed in liquidation.

Rather than showing Krok's inter company debt to MBBL from September 1999 as part of the latter's inter company balances, MBBL included the debt within MBBHL's inter company balances and took full credit for the same in its solvency returns for September-December 1999. The Krok debt accounted for 50-53% of MBBHL's inter company debt to MBBL from September to December 1999. The relevant calculations were performed by MBBL's new finance director.

MBBL did not inform Lloyd's of its treatment of the Krok debt notwithstanding that its directors were told by the Chairman of the Sub-Group of Lloyd's Regulatory Board that de-registered MBBL as a Lloyd's broker on 14 October 1999 that the Sub-Group regarded Lloyd's Solvency Requirements as being "of the highest regulatory significance as a breach of any such requirement may seriously jeopardise the position of MBB's creditors and therefore the reputation of the market as a whole".

In failing to disclose to Lloyd's its treatment of Krok's inter company debt to it in the period from 30 September 1999 MBBL improperly circumvented or purported to circumvent Lloyd's requirement that it should discount that debt from its NCA and NTA solvency returns with effect from 31 March 1999. Further, it was improper of MBBL to treat the Krok debt as an asset within its NCA and NTA solvency returns for September to December 1999 inclusive as being a debt of MBBHL because, following its failure to raise any additional capital, MBBHL (like Krok) was not in a position to repay that debt in full to MBBL within 12 months.

Mr Barnes knew of the requirement imposed by the Manager of the Brokers Department in April 1999 regarding the Krok inter company debt and of MBBL's continued funding of the operations of Krok thereafter. However, he failed to query or ensure that MBBL made known to Lloyd's its treatment of Krok's inter company debt within its solvency returns from September 1999 onwards for the purpose of obtaining Lloyd's consent to such treatment. Instead he took no interest in these matters (which he viewed as the responsibility of MBBL's new finance director and compliance officer) and attended to what he regarded as his own executive responsibilities. In acting as he did Mr Barnes failed to discharge his duties as a director of a Lloyd's broker properly.

MBBL's monthly returns to Lloyd's show that MBBHL's inter company debt to MBBL rose from £(79,087) in June 1999 to £807,905 in December 1999. Absent the provision of a substantial amount of new capital, MBBHL had no realistic prospect of being able to pay its inter company debt to MBBL from July 1999 (£221,403) within 12 months given: (a) it was wholly reliant on its five trading subsidiaries for income and these were all loss making in 1998 and three of them including MBBL were loss making in 1999; and (b) it had substantial pre-existing liabilities for which no provision had been made, including the need to make

capital payments totalling £325,000 in 2000, and a contingent capital gains tax liability that, if crystallised, was payable by October 2000. In the event MBBHL was unable to raise any additional capital during the latter part of 1999 or in 2000.

If MBBL had discounted inter company debt of MBBHL from its solvency returns then it would have had a substantial negative effect on MBBL's solvency position which would have signalled to Lloyd's in the latter part of 1999 that the company's solvency position was much worse than appeared to be the case.

Mr Barnes left to MBBL's new finance director the preparation of the company's solvency returns and did not concern himself with the contents of these documents. Instead he focussed on what he regarded as own executive responsibilities. As a consequence of his failure to question the treatment of MBBHL's inter company debt to MBBL in the latter's solvency returns to Lloyd's for July-December 1999 Mr Barnes permitted MBBL to breach Lloyd's solvency requirements by taking full credit for that debt in those returns in circumstances where he ought to have known that there was no realistic prospect of MBBHL being able to clear its debt within 12 months. In doing so he failed to discharge his duties as a director of a Lloyd's broker properly.

Failure to notify Lloyd's of the anticipated insolvency of Moore Brown Barnes Ltd

MBBL was required under the Byelaw to notify Lloyd's from 4 August 1998, amongst other things of, (a) any material change of circumstances which might affect its ability to service all its activities; and (b) any circumstance which might materially affect its present or future ability to comply with the Byelaw. Further, in February 1999 the manager of Lloyd's Brokers Department made it an additional condition of MBBL's registration as a Lloyd's broker that the company would immediately notify him by facsimile and post of the happening of certain events. These included (a) MBBL becoming unable to meet its debts as they fell due or its liabilities (taking into account contingent or prospective liabilities) exceeding its assets; and (b) MBBL becoming unable to meet its IBA liabilities as they fell due or its IBA liabilities exceeding its assets. Mr Barnes knew or ought to have known of each of these requirements.

On or about 22 November 1999 the directors of MBBHL were presented with a forecast which indicated that, in the absence of new capital, MBBL would be insolvent in or by February 2000 on a corporate basis. The meeting on 22 November 1999 was resumed on 1 December 1999 when it became apparent that none of the shareholders of MBBHL was prepared to subscribe additional capital in the company. Mr Barnes was made aware of these developments at a meeting of the directors of MBBL on 8 December 1999. At the same time he was told that the directors of MBBHL had received legal advice that MBBL should seek the advice of an insolvency practitioner. The directors of MBBL duly resolved to seek such advice that day.

By no later than mid-December 1999 MBBL began to have difficulties in meeting its IBA liabilities as they fell due. At or about the same time MBBL became unable to pay certain company expenses for want of available funds and the company's finance director began working on a statement of affairs in anticipation of the company's insolvency.

Mr Barnes was aware from about mid-December 1999 that MBBL was unable to pay certain premiums and certain claims for want of available funds notwithstanding that it had been put in funds to make such payments. At or about the same time he was aware that MBBL was

having difficulties in meeting its non-IBA liabilities as they fell due for want of available funds. The result was that he began to defer making payments from MBBL's office account pending receipt of further funds such that by 11 February 2000 he was found to be sitting on £194,529 of claims payments for which he was subsequently suspended from work on 14 February 2000.

As a director of MBBL Mr Barnes should have taken steps to ensure that Lloyd's was made aware of the projection that the company would be insolvent in or by February 2000 as soon as practicable after it became apparent that the shareholders of MBBL were not prepared to subscribe additional capital in that company. He did not do so. As a consequence MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Bylaw.

Similarly, it was incumbent on Mr Barnes to take steps to ensure that MBBL notified Lloyd's as soon as practicable of its inability to meet its IBA and other liabilities as they fell due. He did not do so. As a consequence MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Bylaw.

In failing to ensure that Lloyd's was promptly notified of MBBL's anticipated insolvency, the preparation of a statement of affairs for the company and MBBL's difficulties in meeting its IBA and non-IBA liabilities as they fell due, Mr Barnes failed to discharge his duties as a director of a Lloyd's broker properly. In addition to causing MBBL to breach of its regulatory obligations, such inaction was detrimental to interests of the company's IBA creditors to the extent that funds which should have been applied to meet MBBL's IBA obligations were withdrawn from the company's IBA and utilised for other purposes.

In the event it was not until 15 February 2000 that MBBL informed Lloyd's that it was in serious financial difficulty such that it was unable to meet its current IBA liabilities and consideration was being given to placing the company into a Creditors Voluntary Arrangement. The following day MBBL was placed into liquidation.

In addition to accepting this notice of censure, Mr Barnes has agreed to accept the following penalties and order for costs:

- (i) The suspension for a period of ten years from 28 March 2003 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's without limitation as to class of business.
- (ii) The suspension for a period of ten years from 28 March 2003 of his right of admission to the Room and all other premises of the Society both in the United Kingdom and abroad.
- (iii) A contribution of £10,000 towards Lloyd's costs.

BEFORE THE LLOYD'S DISCIPLINARY BOARD

**NOTICE OF CENSURE
OF
HOWARD ALAN BARNES**

Howard Alan Barnes has admitted four charges of failing to take reasonable steps in connection with the business of insurance to avoid risk of harm to Lloyd's policyholders, the Society, its members or those doing business at Lloyd's within the meaning of paragraph 3 (e) of the Misconduct and Penalties Byelaw (No. 30 of 1996) during the period from 4 August 1998 until 16 February 2000.

Mr Barnes was at the material time the joint managing director/ chairman and later chief executive officer of former Lloyd's broker Moore Brown Barnes Ltd ("MBBL"). He was also a director and a major shareholder in MBBL's holding company, Moore Brown Barnes Holdings Ltd ("MBBHL"), and a director or officer of each of MBBL's five sister companies which acted as underwriting agents.

MBBL was registered as a Lloyd's broker on 4 August 1998; de-registered as a Lloyd's broker on 14 October 1999 (subject to the run off of its existing account as a Lloyd's broker); and placed into voluntary liquidation on 16 February 2000 with an estimated deficiency of £1,441,964 as regards unsecured creditors. At the time of its liquidation MBBL owed £1,311,818 in unpaid premiums for which it had previously been put in funds by coverholders for whom it placed business and £194,529 of claims for which it had previously been put in funds by underwriters. Lloyd's Claims Office subsequently calculated that MBBL owed US\$2,041,721 and £9,735 in unpaid claims. At the time that it was placed in liquidation MBBL was owed £1,034,437 by its holding and sister companies.

The misconduct that Mr Barnes has admitted involved four matters:

1. His part in the mismanagement of MBBL such that amongst other things it was unable to meet its insurance broking account ("IBA") obligations as they fell due or at all.
2. Failing to ensure that MBBL submitted to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and those of its sister companies with which it had inter company balances at the end of 1998 on time or, in two cases, at all.
3. Permitting MBBL to include within its monthly solvency returns to Lloyd's for July-December 1999 inclusive the full value of debts that Lloyd's had previously required MBBL to discount from its monthly solvency returns and/or in respect of which there was no realistic prospect of payment being made to MBBL within 12 months.

4. Failing to ensure that Lloyd's was notified from about 1 December 1999 that MBBL was expected to become insolvent in or by February 2000.

The mismanagement of Moore Brown Barnes Ltd

During the period from 4 August 1998 until 16 February 2000 MBBL failed properly to discharge its regulatory and agency obligations as a Lloyd's broker. This manifested itself in the following ways:

- (i) MBBL's failure to comply with a variety of reporting conditions that were imposed on the company as conditions of its registration as a Lloyd's broker in a timely manner or in a number of instances at all.
- (ii) MBBL's failure to ensure that the monthly returns that Lloyd's required it to submit to it were calculated accurately.
- (iii) MBBL's failure to maintain adequate capital and reserves as required by Lloyd's and to pass its Lloyd's solvency tests.
- (iv) MBBL's failure to undertake solvency calculations in a form prescribed by Lloyd's prior to withdrawing brokerage from its IBA and to preserve such calculations until further notice. These solvency calculations were required to be signed by MBBL's Finance Director and Compliance Officer. Lloyd's imposed these requirements as an additional condition of MBBL's registration as a Lloyd's broker in February 1999 in order to prevent the overdraw of brokerage from MBBL's IBA and repeatedly reminded MBBL of the continued application of this condition during 1999. As a result of MBBL's failure to comply with this condition £2,502,110 was transferred from the company's IBA into its office account between 16 February 1999 and 16 February 2000 without any solvency calculation being made as prescribed by Lloyd's. Lloyd's discovered this situation itself after MBBL was placed into liquidation.
- (v) MBBL's failure to seek Lloyd's written consent before withdrawing more than £50,000 of brokerage from its IBA in any seven day period. This requirement was imposed by means of a direction by the Sub-group of the Lloyd's Regulatory Board that was responsible for de-registering MBBL as a Lloyd's broker on 14 October 1999. As a result of MBBL's failure to comply with this direction £673,518 was withdrawn from the company's IBA after 14 October 1999 without Lloyd's knowledge or consent.
- (vi) MBBL's failure to meet its IBA liabilities as they fell due or at all such that at the time of its liquidation on 16 February 2000 it had the substantial IBA deficits referred to above.

The following were key factors in MBBL's failure to discharge its regulatory and agency obligations as a Lloyd's broker properly at the material time:

- (a) The fact that the accounting of MBBHL and MBBL's UK and Danish sister companies were all effected through the accounting records of MBBL which made it difficult to identify which balances belonged to which company and increased the likelihood of brokerage withdrawals.

- (b) The lack of effective accounting systems and controls within MBBL so as to facilitate the prompt reconciliation of payments to and by the company and so as to prevent the overdrawing of brokerage from the company's IBA.
- (c) The lack of suitable numbers of suitably qualified people with MBBL's Accounts Department to handle the accounting arrangements of the Moore Brown Barnes group of companies.
- (d) The failure of MBBL to keep its expenditure within the bounds of its income.
- (e) The provision of open-ended and/or interest free funding to MBBL's holding and sister companies and two other companies, and the failure to keep accurate records of such funding.
- (f) The diversion of management time from MBBL in favour of its sister companies, two of which were based in North America, two in the United Kingdom and one in Denmark.
- (g) The lack of awareness of the directors of MBBL of the company's financial position both in terms of its IBA and on a corporate basis.

Although he was not himself an accountant Mr Barnes was obliged as a director of MBBL to exercise reasonable care, skill and diligence in the direction of the affairs of the company which included a duty to keep himself informed as to the affairs of the company and a continuing duty to supervise and control those affairs. In addition he was under a fiduciary duty to safeguard the assets of the MBBL for the benefit of the company and its creditors.

As a director of a Lloyd's broker Mr Barnes was under a duty to see to it that MBBL was able to account to its clients, which included a duty to safeguard and not to misapply client funds, and also to ensure that the company complied with its regulatory obligations.

As the joint managing director and from July 1999 the chief executive officer of MBBL Mr Barnes acknowledges that he must bear some responsibility for the failures and deficiencies noted above as he was in a large measure responsible for determining the strategic direction and priorities of MBBL. Although Mr Barnes relied on the competence of the qualified accountant that MBBL appointed at the time of its registration as a Lloyd's broker (Lloyd's required MBBL to appoint a new accountant to be responsible for its accounting functions), he accepts that in his desire to promote the welfare of Moore Brown Barnes group of companies as a whole he failed to have due regard to the separate interests of MBBL itself and keep himself appropriately informed as to the affairs of that company and to supervise and control those affairs in an effective manner.

Failure to submit annual return and audited financial statements to Lloyd's on time or at all

As a new Lloyd's broker MBBL was required under the Lloyd's Brokers Byelaw (No. 5 of 1988) ("the Byelaw") to submit to Lloyd's audited financial statements for the year ended 31 December 1998 for itself and its holding company together with an annual return for the same period by no later than 30 June 1999.

On 11 May 1999 an assistant manager in Lloyd's Brokers Department notified the directors of MBBL that he had made it an additional condition of the company's registration as a Lloyd's broker that it would submit to Lloyd's by no later than 30 June 1999 audited financial statements for the year ended 31 December 1998 for those of its sister companies with which MBBL had an inter company balance at the end of 1998. MBBL was subsequently allowed until 6 July 1999 to submit such financial statements.

In the event MBBL did not submit to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and its UK sister companies until 31 August 1999. No satisfactory explanation was provided to Lloyd's for the delay for the presentation of these documents.

MBBL was required to submit audited financial statements for its two North American sister companies for the year ended 31 December 1998 but never did so. Further no explanation was provided to Lloyd's for these omissions.

The failure of the directors of MBBL to ensure that MBBL submitted to Lloyd's on time or at all its annual return for 1998 and the financial statements that were required of it ("the required documents") caused the company to breach the provisions of paragraphs 7(1)(a), 44(1) and 44(3) of the Byelaw. Further the late submission of MBBL's audited financial statements for 1998 led to delays in the submission of the company's monthly returns to Lloyd's for July and August 1999 thereby occasioning further breaches of the company's conditions of registration as a Lloyd's broker.

MBBL's audited financial statements for 1998 showed a substantial deterioration in the results of the company as shown in its management accounts which had previously been disclosed to Lloyd's. The delay in the submission of these financial statements to Lloyd's meant that Lloyd's learnt of this deterioration later than it should have done.

The failure of the directors of MBBL to ensure the preparation of audited financial statements for its two North American sister companies for the year ended 31 December 1998 meant that those companies' 1998 accounts were not subject to independent verification or scrutiny. Further the viability of these companies as going concerns was not independently assessed.

Mr Barnes knew of the dates for the submission of the required documents and of the failure of MBBL to submit those documents to Lloyd's before 31 August 1999 and, in the case of MBBL's North American sister companies, at all.

As joint managing director and later chief executive officer Mr Barnes having ascertained the reasons for the delayed submission of the required documents to Lloyd's by MBBL's accounts department, should have ensured that this situation was rectified and that Lloyd's was notified of the position as soon as possible. He did not do so but left the matter in the hands of MBBL's Finance Director who took his annual leave in July 1999 without having resolved the situation.

In failing to ensure that MBBL submitted the required documents to Lloyd's on time or at all Mr Barnes failed to discharge his duties as a director of a Lloyd's broker properly.

Permitting the submission to Lloyd's of incorrect solvency returns

MBBL was required to submit monthly solvency returns to Lloyd's as one of its original conditions of registration. One of the requirements of Lloyd's Net Current Assets ("NCA") Test at the material time was that no credit was to be taken for non-insurance debtors that were not realisable within 12 months. This requirement was also relevant to the Net Tangible Assets ("NTA") Test

In April 1999 the Manager of the Brokers Department notified the directors of MBBL that he did not consider that the inter company debt of MBBL's US sister company, JG Krok of Illinois Inc ("Krok"), to be realisable within 12 months and should accordingly be discounted from MBBL's NCA and NTA returns.

Krok's inter company debt to MBBL was shown as static in the latter's monthly returns to Lloyd's for May-August 1999 following which it was shown as non-existent. However unbeknown to Lloyd's MBBL continued to fund the operations of Krok from June 1999 until 16 February 2000 when MBBL was placed in liquidation. Krok itself was subsequently sold as a going concern.

Rather than showing Krok's inter company debt to MBBL from September 1999 as part of the latter's inter company balances MBBL included the debt within MBBHL's inter company balances and took full credit for the same in its solvency returns for September – December 1999. The Krok debt accounted for 50-53% of MBBHL's inter company debt to MBBL from September to December 1999. The relevant calculations were performed by MBBL's accounts department.

MBBL did not inform Lloyd's of its treatment of the Krok debt notwithstanding that its directors were told by the Chairman of the Sub-Group of Lloyd's Regulatory Board that de-registered MBBL as a Lloyd's broker on 14 October 1999 that the Sub-Group regarded Lloyd's Solvency Requirements as being "of the highest regulatory significance as a breach of any such requirement may seriously jeopardise the position of MBB's creditors and therefore the reputation of the market as a whole".

The undisclosed inclusion of Krok's inter company debt within MBBHL's inter company debt to MBBL represented a contravention of the requirement imposed by the Manager of the Brokers Department in April 1999 regarding the Krok inter company debt and as such put MBBL in breach of paragraph 7(1)(a) of the Byelaw.

Mr Barnes knew of the requirement imposed by the Manager of the Brokers Department in April 1999 regarding the Krok inter company debt and of MBBL's continued funding of the operations of Krok thereafter. However, he failed to ensure that MBBL made known to Lloyd's its treatment of Krok's inter company debt within its solvency returns from September 1999 for the purpose of obtaining Lloyd's consent to such treatment. Instead he left that matter to MBBL's Finance Director. In so doing Mr Barnes failed to discharge his duties as a director of a Lloyd's broker properly.

MBBL's monthly returns to Lloyd's show that MBBHL's inter company debt to MBBL rose from £(79,087) in June 1999 to £807,905 in December 1999. Absent the provision of a substantial amount of new capital (which was discussed during the latter part of 1999), MBBHL had no realistic prospect of being able to pay its inter company debt to MBBL from

July 1999 (£221,403) within 12 months given: (a) it was wholly reliant on its five trading subsidiaries for income and these were all loss making in 1998 and three of them including MBBL were loss making in 1999; and (b) it had substantial pre-existing liabilities for which no provision had been made, including the need to make capital payments totalling £325,000 in 2000, and a contingent capital gains tax liability that, if crystallised, was payable by October 2000. In the event MBBHL was unable to raise any additional capital during the latter part of 1999 or in 2000.

If MBBL had discounted inter company debt of MBBHL from its solvency returns then it would have had a substantial negative effect on MBBL's solvency position which would have signalled to Lloyd's in the latter part of 1999 that the company's solvency position was significantly worse than appeared to be the case.

Mr Barnes mistakenly relied on his accounting colleagues so as to permit MBBL to breach Lloyd's solvency requirements by taking full credit for the inter company debt of MBBHL in its solvency returns for July-December 1999 in circumstances where he ought to have known that there was no realistic prospect of MBBHL being able to clear its debt within 12 months. In doing so he failed to discharge his duties as a director of a Lloyd's broker properly.

Failure to notify Lloyd's of the anticipated insolvency of Moore Brown Barnes Ltd

MBBL was required under the Byelaw to notify Lloyd's from 4 August 1998, amongst other things of: (a) any material change of circumstances which might affect its ability to service all its activities; and (b) any circumstance which might materially affect its present or future ability to comply with the Byelaw. Further, in February 1999 the manager of Lloyd's Brokers Department made it an additional condition of MBBL's registration as a Lloyd's broker that the company would immediately notify him by facsimile and post of the happening of certain events. These included (a) MBBL becoming unable to meet its debts as they fell due or its liabilities (taking into account contingent or prospective liabilities) exceeding its assets; and (b) MBBL becoming unable to meet its IBA liabilities as they fell due or its IBA liabilities exceeding its assets. Mr Barnes was made aware of these requirements as they were imposed.

On or about 22 November 1999 the finance director of MBBHL and MBBL presented to the other directors of MBBHL a forecast which indicated that, in the absence of new capital, MBBL would be insolvent in or by February 2000 on a corporate basis. The meeting on 22 November 1999 was resumed on 1 December 1999 when it became apparent that none of the shareholders of MBBHL was prepared to subscribe additional capital in the company.

By no later than mid-December 1999 MBBL began to have difficulties in meeting its IBA liabilities as they fell due. At or about the same time MBBL became unable to pay certain company expenses for want of available funds and MBBL's Finance Director began working on a statement of affairs in anticipation of the company's insolvency.

Mr Barnes was aware that MBBL was unable to pay the premium that it owed underwriters in December 1999 for want of available funds. Although he believed that this deficiency was largely caused by funds due being held back by a Canadian coverholder, he should have appreciated that if MBBL had insufficient funds to pay underwriters the premiums that it owed them it was likely that the company would have problems paying claims and general expenses in the absence of back to back funding of such payments.

As the chief executive officer of MBBL from July 1999 it was incumbent on Mr Barnes to ensure that the company notified Lloyd's of the projection that had been made by its Finance Director that it would be insolvent in or by February 2000, as soon as practicable after it became apparent that the shareholders of MBBHL were not prepared to subscribe additional capital in that company. He did not do so although the directors of MBBHL did seek legal advice and consulted insolvency practitioners regarding the anticipated insolvency of MBBL.

As a consequence of Mr Barnes' omission MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Bylaw.

Similarly, it was incumbent on Mr Barnes as the chief executive officer of MBBL to ensure that the company notified Lloyd's as soon as practicable of its inability to meet its IBA and other liabilities as they fell due. He did not do so but left that matter to MBBL's Finance Director. As a consequence of Mr Barnes' omission MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Bylaw.

In thus failing to ensure that Lloyd's was promptly notified of MBBL's anticipated insolvency, the preparation of a statement of affairs for the company and MBBL's difficulties in meeting its IBA and non-IBA liabilities as they fell due Mr Barnes failed to discharge his duties as a director of a Lloyd's broker properly. In addition to causing MBBL to breach of its regulatory obligations, such inaction was detrimental to interests of the company's IBA creditors to the extent that, (although Mr Barnes may not have been aware of this at the time), funds which should have been applied to meet MBBL's IBA obligations were withdrawn from the company's IBA and utilised for other purposes.

In the event it was not until 15 February 2000 that MBBL informed Lloyd's that it was in serious financial difficulty such that it was unable to meet its current IBA liabilities and consideration was being given to placing the company into a Creditors Voluntary Arrangement. The following day MBBL was placed into liquidation.

In addition to accepting this notice of censure, Mr Barnes has agreed to accept the following penalties and order for costs:

- (i) The suspension for a period of three years from 6 December 2002 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's as: (a) a director, partner or manager of a Lloyd's broker; (b) a director, partner or manager of a Lloyd's underwriting agent; and (c) a director or manager of a corporate member of the Society.
- (ii) A fine of £10,000.
- (iii) A contribution of £30,000 towards Lloyd's costs.

BEFORE THE LLOYD'S DISCIPLINARY BOARD

NOTICE OF CENSURE

OF

GEORGE KENNETH MOORE

George Kenneth Moore has admitted four charges of failing to take reasonable steps in connection with the business of insurance to avoid risk of harm to Lloyd's policyholders, the Society, its members or those doing business at Lloyd's within the meaning of paragraph 3 (e) of the Misconduct and Penalties Byelaw (No. 30 of 1996) during the period from 4 August 1998 until 16 February 2000.

Mr Moore was at the material time a director of former Lloyd's broker Moore Brown Barnes Ltd ("MBBL"). He was also a director of and a major shareholder in MBBL's holding company, Moore Brown Barnes Holdings Ltd ("MBBHL"), and a director or officer of each of MBBL's five sister companies which acted as underwriting agents.

In the period prior to the second week of July 1999 Mr Moore acted as one of the two controlling executive directors of MBBL. He was then prevailed on to take six weeks extended leave while consideration was given to his position within MBBL (certain of the company's directors wanted him to leave the company). In the event Mr Moore stayed away from MBBL for longer while he reflected on his own situation. The result was that Mr Moore withdrew from the day to day management of MBBL from about mid-July to late October 1999 although he continued to attend a number of meetings of the directors of that company and MBBHL during that period and was kept generally informed of developments within MBBL.

MBBL was registered as a Lloyd's broker on 4 August 1998; de-registered as a Lloyd's broker on 14 October 1999 (subject to the run off of its existing account as a Lloyd's broker); and placed into voluntary liquidation on 16 February 2000 with an estimated deficiency of £1,441,964 as regards unsecured creditors. At the time of its liquidation MBBL owed £1,311,818 in unpaid premiums for which it had previously been put in funds by coverholders for whom it placed business and £194,529 of claims for which it had previously been put in funds by underwriters. Lloyd's Claims Office subsequently calculated that MBBL owed US\$2,041,721 and £9,735 in unpaid claims. At the time that it was placed in liquidation MBBL was owed £1,034,437 by its holding and sister companies.

The misconduct that Mr Moore has admitted involved four matters:

1. His part in the mismanagement of MBBL such that amongst other things it was unable to meet its insurance broking account ("IBA") obligations as they fell due or at all.
2. Failing to ensure that MBBL submitted to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding

company and those of its sister companies with which it had inter company balances at the end of 1998 on time or, in two cases, at all.

3. Permitting MBBL to include within its monthly solvency returns to Lloyd's for July-December 1999 inclusive the full value of debts that Lloyd's had previously required MBBL to discount from its monthly solvency returns and/or in respect of which there was no realistic prospect of payment being made to MBBL within 12 months.
4. Failing to ensure that Lloyd's was notified from about 1 December 1999 that MBBL was expected to become insolvent in or by February 2000.

The mismanagement of Moore Brown Barnes Ltd

During the period from 4 August 1998 until 16 February 2000 MBBL failed properly to discharge its regulatory and agency obligations as a Lloyd's broker. This manifested itself in the following ways:

- (i) MBBL's failure to comply with a variety of reporting conditions that were imposed on the company as conditions of its registration as a Lloyd's broker in a timely manner or in a number of instances at all.
- (ii) MBBL's failure to ensure that the monthly returns that Lloyd's required the company to submit to it were calculated accurately.
- (iii) MBBL's failure to maintain adequate capital and reserves as required by Lloyd's and to pass its Lloyd's solvency tests.
- (iv) MBBL's failure to undertake solvency calculations in a form prescribed by Lloyd's prior to withdrawing brokerage from its IBA and to preserve such calculations until further notice. These solvency calculations were required to be signed by MBBL's Finance Director and Compliance Officer. Lloyd's imposed these requirements as an additional condition of MBBL's registration as a Lloyd's broker in February 1999 in order to prevent the overdraw of brokerage from MBBL's IBA and repeatedly reminded MBBL of the continued application of this condition during 1999. As a result of MBBL's failure to comply with this condition £2,502,110 was transferred from the company's IBA into its office account between 16 February 1999 and 16 February 2000 without any solvency calculation being made as prescribed by Lloyd's. Lloyd's discovered this situation itself after MBBL was placed into liquidation.
- (v) MBBL's failure to seek Lloyd's written consent before withdrawing more than £50,000 of brokerage from its IBA in any seven day period. This requirement was imposed by means of a direction by the Sub-group of the Lloyd's Regulatory Board that was responsible for de-registering MBBL as a Lloyd's broker on 14 October 1999. As a result of MBBL's failure to comply with this direction £673,518 was withdrawn from the company's IBA after 14 October 1999 without Lloyd's knowledge or consent.
- (vi) MBBL's failure to meet its IBA liabilities as they fell due or at all such that at the time of its liquidation on 16 February 2000 it had the substantial IBA deficits referred to above.

The following were key factors in MBBL's failure to discharge its regulatory and agency obligations as a Lloyd's broker properly at the material time:

- (a) The fact that the accounting of MBBHL and MBBL's UK and Danish sister companies were all effected through the accounting records of MBBL which made it difficult to identify which balances belonged to which company and increased the likelihood of brokerage withdrawals.
- (b) The lack of effective accounting systems and controls within MBBL so as to facilitate the prompt reconciliation of payments to and by the company and so as to prevent the overdrawing of brokerage from the company's IBA.
- (c) The lack of suitable numbers of suitably qualified people with MBBL's Accounts Department to handle the accounting arrangements of the Moore Brown Barnes group of companies.
- (d) The failure of MBBL to keep its expenditure within the bounds of its income.
- (e) The provision of open-ended and/or interest free funding to MBBL's holding and sister companies and two other companies, and the failure to keep accurate records of such funding.
- (f) The diversion of management time from MBBL in favour of its sister companies, two of which were based in North America, two in the United Kingdom and one in Denmark.
- (g) The lack of awareness of the directors of MBBL of the company's financial position both in terms of its IBA and on a corporate basis.

Although he was not himself an accountant Mr Moore was obliged as a director of MBBL to exercise reasonable care, skill and diligence in the direction of the affairs of the company which included a duty to keep himself informed as to the affairs of the company and a continuing duty to supervise and control those affairs. In addition he was under a fiduciary duty to safeguard the assets of the MBBL for the benefit of the company and its creditors.

As a director of a Lloyd's broker Mr Moore was under a duty to see to it that MBBL was able to account to its clients, which included a duty to safeguard and not to misapply client funds, and also to ensure that the company complied with its regulatory obligations.

As one of the two controlling executive directors of MBBL Mr Moore acknowledges that he must bear some responsibility for the failures and deficiencies noted above as he was in a large measure responsible for determining the strategic direction and priorities of MBBL prior to mid-July 1999 and, to a lesser extent, after November 1999. Although Mr Moore relied on the competence of the qualified accountant that MBBL appointed at the time of its registration as a Lloyd's broker (Lloyd's required MBBL to appoint a new accountant to be responsible for its accounting functions), he accepts that in his desire to promote the welfare of Moore Brown Barnes group of companies as a whole he failed to have due regard to the separate interests of MBBL itself and keep himself appropriately informed as to the affairs of that company and to supervise and control those affairs in an effective manner.

Failure to submit annual return and audited financial statements to Lloyd's on time or at all

As a new Lloyd's broker MBBL was required under the Lloyd's Brokers Byelaw (No. 5 of 1988) ("the Byelaw") to submit to Lloyd's audited financial statements for the year ended 31 December 1998 for itself and its holding company together with an annual return for the same period by no later than 30 June 1999.

On 11 May 1999 an assistant manager in Lloyd's Brokers Department notified the directors of MBBL that he had made it an additional condition of the company's registration as a Lloyd's broker that it would submit to Lloyd's by no later than 30 June 1999 audited financial statements for the year ended 31 December 1998 for those of its sister companies with which MBBL had an inter company balance at the end of 1998. MBBL was subsequently allowed until 6 July 1999 to submit such financial statements.

In the event MBBL did not submit to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and its UK sister companies until 31 August 1999. No satisfactory explanation was provided to Lloyd's for the delay for the presentation of these documents.

MBBL was required to submit audited financial statements for its two North American sister companies for the year ended 31 December 1998 but never did so. Further no explanation was provided to Lloyd's for these omissions.

The failure of the directors of MBBL to ensure that MBBL submitted to Lloyd's on time or at all its annual return for 1998 and the financial statements that were required of it ("the required documents") caused the company to breach the provisions of paragraphs 7(1)(a), 44(1) and 44(3) of the Byelaw. Further the late submission of MBBL's audited financial statements for 1998 led to delays in the submission of the company's monthly returns to Lloyd's for July and August 1999 thereby occasioning further breaches of the company's conditions of registration as a Lloyd's broker.

MBBL's audited financial statements for 1998 showed a substantial deterioration in the results of the company as shown in its management accounts which had previously been disclosed to Lloyd's. The delay in the submission of these financial statements to Lloyd's meant that Lloyd's learnt of this deterioration later than it should have done.

The failure of the directors of MBBL to ensure the preparation of audited financial statements for its two North American sister companies for the year ended 31 December 1998 meant that those companies' 1998 accounts were not subject to independent verification or scrutiny. Further the viability of these companies as going concerns was not independently assessed.

Mr Moore knew of the dates for the submission of the required documents and of the failure of MBBL to submit those documents to Lloyd's before 31 August 1999 and, in the case of MBBL's North American sister companies, at all.

As one of the two controlling executive directors of MBBL Mr Moore, having ascertained the reasons for the delayed submission of the required documents to Lloyd's by MBBL's accounts department, should have ensured that this situation was rectified and that Lloyd's was notified of the position as soon as possible. He did not do so but left the matter in the

hands of MBBL's Finance Director who took his annual leave in July 1999 without having resolved the situation.

In failing to ensure that MBBL submitted the required documents to Lloyd's on time or at all Mr Moore failed to discharge his duties as a director of a Lloyd's broker properly.

Permitting the submission to Lloyd's of incorrect solvency returns

MBBL was required to submit monthly solvency returns to Lloyd's as one of its original conditions of registration. One of the requirements of Lloyd's Net Current Assets ("NCA") Test at the material time was that no credit was to be taken for non-insurance debtors that were not realisable within 12 months. This requirement was also relevant to the Net Tangible Assets ("NTA") Test.

In April 1999 the Manager of the Brokers Department notified the directors of MBBL that he did not consider that the inter company debt of MBBL's US sister company, JG Krok of Illinois Inc ("Krok"), to be realisable within 12 months and should accordingly be discounted from MBBL's NCA and NTA returns.

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Rather than showing Krok's inter company debt to MBBL from September 1999 as part of the latter's inter company balances MBBL included the debt within MBBHL's inter company balances and took full credit for the same in its solvency returns for September – December 1999. The Krok debt accounted for 50-53% of MBBHL's inter company debt to MBBL from September to December 1999. The relevant calculations were performed by MBBL's accounts department.

MBBL did not inform Lloyd's of its treatment of the Krok debt notwithstanding that its directors were told by the Chairman of the Sub-Group of Lloyd's Regulatory Board that de-registered MBBL as a Lloyd's broker on 14 October 1999 that the Sub-Group regarded Lloyd's Solvency Requirements as being "of the highest regulatory significance as a breach of any such requirement may seriously jeopardise the position of MBB's creditors and therefore the reputation of the market as a whole".

The undisclosed inclusion of Krok's inter company debt within MBBHL's inter company debt to MBBL represented a contravention of the requirement imposed by the Manager of the Brokers Department in April 1999 regarding the Krok inter company debt and as such put MBBL in breach of paragraph 7(1)(a) of the Byelaw.

Mr Moore knew of the requirement imposed by the Manager of the Brokers Department in April 1999 regarding the Krok inter company debt and of MBBL's continued funding of the operations of Krok thereafter. However, he failed to ensure that MBBL made known to Lloyd's its treatment of Krok's inter company debt within its solvency returns from September 1999 for the purpose of obtaining Lloyd's consent to such treatment. Instead he left that matter to MBBL's Finance Director. In so doing Mr Moore failed to discharge his

duties as a director of a Lloyd's broker properly.

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If MBBL had discounted inter company debt of MBBHL from its solvency returns then it would have had a substantial negative effect on MBBL's solvency position which would have signalled to Lloyd's in the latter part of 1999 that the company's solvency position was significantly worse than appeared to be the case.

Mr Moore mistakenly relied on his accounting colleagues so as to permit MBBL to breach Lloyd's solvency requirements by taking full credit for the inter company debt of MBBHL in its solvency returns for July-December 1999 in circumstances where he ought to have known that there was no realistic prospect of MBBHL being able to clear its debt within 12 months. In doing so he failed to discharge his duties as a director of a Lloyd's broker properly.

Failure to notify Lloyd's of the anticipated insolvency of Moore Brown Barnes Ltd

MBBL was required under the Byelaw to notify Lloyd's from 4 August 1998, amongst other things of: (a) any material change of circumstances which might affect its ability to service all its activities; and (b) any circumstance which might materially affect its present or future ability to comply with the Byelaw. Further, in February 1999 the manager of Lloyd's Brokers Department made it an additional condition of MBBL's registration as a Lloyd's broker that the company would immediately notify him by facsimile and post of the happening of certain events. These included (a) MBBL becoming unable to meet its debts as they fell due or its liabilities (taking into account contingent or prospective liabilities) exceeding its assets; and (b) MBBL becoming unable to meet its IBA liabilities as they fell due or its IBA liabilities exceeding its assets. Mr Moore was made aware of these requirements as they were imposed.

On or about 22 November 1999 the finance director of MBBHL and MBBL presented to the other directors of MBBHL a forecast which indicated that, in the absence of new capital, MBBL would be insolvent in or by February 2000 on a corporate basis. The meeting on 22 November 1999 was resumed on 1 December 1999 when it became apparent that none of the shareholders of MBBHL was prepared to subscribe additional capital in the company.

By no later than mid-December 1999 MBBL began to have difficulties in meeting its IBA liabilities as they fell due. At or about the same time MBBL became unable to pay certain company expenses for want of available funds and MBBL's Finance Director began working on a statement of affairs in anticipation of the company's insolvency.

Mr Moore was aware that MBBL was unable to pay the premium that it owed underwriters in December 1999 for want of available funds. Although he believed that this deficiency was largely caused by funds due being held back by a Canadian coverholder, he should have appreciated that if MBBL had insufficient funds to pay underwriters the premiums that it owed them it was likely that the company would have problems paying claims and general expenses in the absence of back to back funding of such payments.

As a director of MBBL Mr Moore should have taken steps to ensure that the company notified Lloyd's of the projection that had been made by its Finance Director that it would be insolvent in or by February 2000, as soon as practicable after it became apparent that the shareholders of MBBHL were not prepared to subscribe additional capital in that company. He did not do so although the directors of MBBHL did seek legal advice and consulted insolvency practitioners regarding the anticipated insolvency of MBBL. As a consequence of Mr Moore's omission MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Bylaw.

Similarly, it was incumbent on Mr Moore as a director of MBBL to ensure that the company notified Lloyd's as soon as practicable of its inability to meet its IBA and other liabilities as they fell due. He did not do so but left that matter to MBBL's Finance Director. As a consequence of Mr Moore's omission MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Bylaw.

In thus failing to ensure that Lloyd's was promptly notified of MBBL's anticipated insolvency, the preparation of a statement of affairs for the company and MBBL's difficulties in meeting its IBA and non-IBA liabilities as they fell due Mr Moore failed to discharge his duties as a director of a Lloyd's broker properly. In addition to causing MBBL to breach of its regulatory obligations, such inaction was detrimental to interests of the company's IBA creditors to the extent that, (although Mr Moore may not have been aware of this at the time), funds which should have been applied to meet MBBL's IBA obligations were withdrawn from the company's IBA and utilised for other purposes.

In the event it was not until 15 February 2000 that MBBL informed Lloyd's that it was in serious financial difficulty such that it was unable to meet its current IBA liabilities and consideration was being given to placing the company into a Creditors Voluntary Arrangement. The following day MBBL was placed into liquidation.

In addition to accepting this notice of censure, Mr Moore has agreed to accept the following penalties and order for costs:

- (i) The suspension for a period of two years and eight months from 25 April 2003 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's as: (a) a director, partner or manager of a Lloyd's broker; (b) a director, partner or manager of a Lloyd's underwriting agent; and (c) a director or manager of a corporate member of the Society.
- (ii) A fine of £8,000.
- (iii) A contribution of £38,500 towards Lloyd's costs.

BEFORE THE LLOYD'S DISCIPLINARY TRIBUNAL

NOTICE OF CENSURE

OF

PETER RICHARD OVENDEN

The terms of this notice of censure are published by consent.

Peter Richard Ovenden has admitted six charges of failing to take reasonable steps in connection with the business of insurance to avoid risk of harm to Lloyd's policyholders, the Society, its members or those doing business at Lloyd's within the meaning of paragraph 3 (e) of the Misconduct and Penalties Byelaw (No. 30 of 1996) during the period from 4 August 1998 until 16 February 2000.

Mr Ovenden joined Moore Brown Barnes Ltd ("MBBL") in October 1995 as the company's director of operations which meant that he was responsible for the reconciliation and processing (but not the accounting) of premium and claim payments. On 13 August 1997 Mr Ovenden was appointed a main board director and the compliance officer of MBBL.

MBBL had five active sister companies at the material time, all of which acted as underwriting agents. Mr Ovenden was appointed a director and the compliance officer of MBBL's two UK sister companies and its Danish sister company in October 1997, November 1997 and March 1999 respectively. In addition, he acted as the compliance officer of MBBL's two sister companies in the USA and Canada from about November 1997 and March 1998 respectively although he was not formally registered as such in their respective domiciles.

On 18 November 1999 Mr Ovenden was given 12 months notice of the termination of his service agreement with MBBL as part of a redundancy programme. Mr Ovenden contended that he was entitled to 36 months notice of the termination of his service agreement. As a result relations between Mr Ovenden and certain of his colleagues deteriorated such that he instructed solicitors and he took to writing numerous file notes and memoranda, many of which were of a critical nature. Mr Ovenden also took extended leave during the second half of December 1999 although he remained in contact with the office while he was at home. These developments led to Mr Ovenden being excluded by his fellow directors from certain business discussions and to Mr Ovenden feeling that he was effectively excluded from participation in the management of the company. However, in January 2000 Mr Ovenden was asked to reconcile certain accounts and to review certain matters in anticipation of the insolvency of MBBL.

MBBL was registered as a Lloyd's broker on 4 August 1998; de-registered as a Lloyd's broker on 14 October 1999 (subject to the run off of its existing account as a Lloyd's broker); and placed into voluntary liquidation on 16 February 2000 with an estimated deficiency of

£1,441,964 as regards unsecured creditors. At the time of its liquidation MBBL owed £1,311,818 in unpaid premiums for which it had previously been put in funds by coverholders for whom it placed business and £194,529 of claims for which it had previously been put in funds by underwriters. Lloyd's Claims Office subsequently calculated that MBBL owed US\$2,041,721 and £9,735 (£1,417,818 in aggregate) in unpaid claims. At the time that it was placed in liquidation MBBL was owed £1,034, 437 by its holding and sister companies.

The misconduct that Mr Ovenden has admitted involved eight matters:

1. His part in the mismanagement of MBBL.
2. Failing to ensure from 11 February 1999 that solvency calculations were made in a form prescribed by Lloyd's prior to the withdrawal of brokerage from MBBL's insurance broking account ("IBA") and failing to ensure from 14 October 1999 that Lloyd's written consent was obtained prior to the withdrawal of more than £50,000 of brokerage from MBBL's IBA during any seven day period.
3. Wrongly stating to Lloyd's on 17 May 1999 that MBBL was complying with Lloyd's requirement that the company had to undertake a solvency calculation in a prescribed form prior to withdrawing brokerage from its IBA and to preserve such calculation until further notice.
4. Failing to ensure that MBBL submitted to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and those of its sister companies with which it had inter company balances at the end of 1998 on time or, in two cases, at all.
5. Writing a letter to Lloyd's dated 29 June 1999 in which it was wrongly stated that draft audited financial statements had been prepared for all companies with which MBBL had an inter company balance at the end of 1998 at a time when two of the companies concerned did not have auditors.
6. Co-signing a letter to Lloyd's dated 1 July 1999 in which it was wrongly stated that MBBL's American and Canadian sister companies had auditors.
7. Permitting MBBL to include within its monthly solvency returns to Lloyd's for July-December 1999 inclusive the full value of debts that Lloyd's had previously required MBBL to discount from its monthly solvency returns and/or in respect of which there was no realistic prospect of payment being made to MBBL within 12 months.
8. Failing to ensure that Lloyd's was notified from about 1 December 1999 that MBBL was expected to become insolvent in or by February 2000.

The mismanagement of Moore Brown Barnes Ltd

During the period from 4 August 1998 until 16 February 2000 MBBL failed properly to discharge its regulatory and agency obligations as a Lloyd's broker. This manifested itself in the following ways:

- (i) MBBL's failure to comply with a variety of reporting conditions that were imposed on the company as conditions of its registration as a Lloyd's broker in a timely manner or in a number of instances at all.
- (ii) MBBL's failure to ensure that the monthly returns that Lloyd's required it to submit to it were calculated accurately.
- (iii) MBBL's failure to maintain adequate capital and reserves as required by Lloyd's and to pass its Lloyd's solvency tests.
- (iv) MBBL's failure from 11 February 1999 to undertake solvency calculations in a form prescribed by Lloyd's prior to withdrawing brokerage from its IBA and to preserve such calculations until further notice
- (v) MBBL's failure from 14 October 1999 to seek Lloyd's written consent before withdrawing more than £50,000 of brokerage from its IBA in any seven day period.
- (vi) MBBL's failure to meet its IBA liabilities as they fell due or at all such that at the time of its liquidation on 16 February 2000 it had the substantial IBA deficits referred to above.

The following were key factors in MBBL's failure to discharge its regulatory and agency obligations as a Lloyd's broker properly at the material time:

- (a) The fact that the accounting of MBBL's holding company, Moore Brown Barnes Holdings Ltd ("MBBHL"), and MBBL's UK and Danish sister companies were all effected through the accounting records of MBBL which made it difficult to identify which balances belonged to which company and increased the likelihood of brokerage withdrawals.
- (b) The lack of effective accounting systems and controls within MBBL so as to facilitate the prompt reconciliation of payments to and by the company and so as to prevent the overdrawing of brokerage from the company's IBA.
- (c) The lack of suitable numbers of suitably qualified people with MBBL's Accounts Department to handle the accounting arrangements of the Moore Brown Barnes group of companies.
- (d) The failure of MBBL to keep its expenditure within the bounds of its income.
- (e) The provision of open-ended and/or interest free funding to MBBL's holding and sister companies and two other companies, and the failure to keep accurate records of such funding.
- (f) The diversion of management time from MBBL in favour of its sister companies, two of which were based in North America, two in the United Kingdom and one in Denmark.
- (g) The lack of awareness of the directors of MBBL of the company's financial position both in terms of its IBA and on a corporate basis.

As MBBL's director of operations Mr Ovenden was charged with assisting with the reduction of the company's unallocated IBA cash balances by matching of payments with individual insurance transactions. Regrettably little headway was made prior to 1998 and it was only after Lloyd's raised the issue as part of its consideration of MBBL's application to become a Lloyd's broker in December 1997 that a concerted effort was made to reduce MBBL's by then very substantial unallocated cash balances. Although Mr Ovenden gave commitments to clear MBBL's old unallocated cash balances by the end of 1998 this effort was not maintained after MBBL secured registration as a Lloyd's broker. Once MBBL became a Lloyd's broker the prime responsibility for the reconciliation of unallocated cash rested with the company's accounts department albeit the directors had collective responsibility in this regard. As a result MBBL's unallocated IBA cash balances rose from £7,863,000 at the end of 1998 to £13,582,000 at the end of 1999. The existence of such high unallocated cash balances meant that MBBL could not certain how much it owed or was owed by its insurance clients, which made it difficult to ensure that all sums due to the company were collected and increased the risk of the inadvertent funding of premiums and claims and the overdraw of brokerage.

Although he was not himself an accountant Mr Ovenden was obliged as a director of MBBL to exercise reasonable care, skill and diligence in the direction of the affairs of the company which included a duty to keep himself informed as to the affairs of the company and a continuing duty to supervise and control those affairs. In addition he was under a fiduciary duty to safeguard the assets of the MBBL for the benefit of the company and its creditors.

As a director of a Lloyd's broker Mr Ovenden was under a duty to see to it that MBBL was able to account to its clients, which included a duty to safeguard and not to misapply client funds, and also to ensure that the company complied with its regulatory obligations.

As a director and the compliance officer of MBBL Mr Ovenden acknowledges that he must bear some responsibility for the failures and deficiencies noted above, particularly those which bear directly on his own executive responsibilities as MBBL's director of operations and compliance officer. Although he relied on the competence of MBBL's Accounts Department as regards financial matters, Mr Ovenden accepts that he failed to keep himself informed as to the affairs of MBBL and to supervise and control those affairs in an effective manner so as to ensure that the company fulfilled its obligations as they fell due.

Failing to undertake solvency calculations or to seek Lloyd's consent prior to withdrawal of brokerage from Moore Brown Barnes Ltd's insurance broking account

With effect from 11 February 1999 Lloyd's required MBBL to undertake a solvency calculation in a prescribed form prior to withdrawing brokerage from its IBA and to preserve such calculation until further notice. Each solvency calculation was required to contain the following declaration and to be signed by MBBL's Finance Director and Compliance Officer:

“Notwithstanding that no audit has been carried out I have no reason to believe that the above [figures] are materially mis-stated”

These requirements were imposed as an additional condition of MBBL's registration as a Lloyd's broker in order to prevent the overdraw of brokerage from the company's IBA. It fell to Mr Ovenden as MBBL's compliance officer to make sure that the necessary solvency calculations were made by the company's accountants and, after those calculations had been

made and signed by MBBL's finance director, to sign counter-sign them and then ensure that they were safely stored until further notice from Lloyd's. He did not do so notwithstanding that Lloyd's repeatedly reminded MBBL of the continued application of the relevant condition during 1999. As a result, £2,502,110 was transferred from MBBL's IBA into its office account between 11 February 1999 and 16 February 2000 without any solvency calculation being made as prescribed by Lloyd's. Lloyd's discovered this situation itself after MBBL was placed into liquidation.

On 14 October 1999 the Sub-group of the Lloyd's Regulatory Board that was responsible for de-registering MBBL as a Lloyd's broker directed the company not to withdraw more than £50,000 from its IBA in any seven day period without the written consent of the Manager of the Monitoring Department. Further, when seeking such consent, MBBL was required to submit a solvency calculation of the sort referred to above. Accordingly, it fell to Mr Ovenden as MBBL's compliance officer to ensure that the relevant calculations were made and signed as required, and that being done, to ensure that they were submitted to Lloyd's by way of supporting an application for permission to make a brokerage withdrawal from MBBL's IBA. £673,518 was withdrawn from the company's IBA after 14 October 1999 without Lloyd's knowledge or consent. However Mr Ovenden was not always present at MBBL's premises during this period.

The withdrawal of brokerage from MBBL's IBA without any solvency calculation being made and, on those occasions where it was required, without Lloyd's consent, was detrimental to the interests of MBBL's clients, the underwriters with whom the company placed business at Lloyd's and to the Society. Moreover it was not in keeping with MBBL's agency and regulatory obligations.

In acting as he did Mr Ovenden conducted himself in a manner that was unbecoming a director of a Lloyd's broker and contrary to his specific duties as MBBL's compliance officer.

The making of an inaccurate representation to Lloyd's regarding the withdrawal of brokerage from Moore Brown Barnes Ltd's insurance broking account

During the latter part of April 1999 the Brokers Department conducted a review of MBBL which revealed amongst other things that the company had failed to comply with the registration condition that the department had imposed on 11 February 1999 regarding the undertaking of solvency calculations prior to the withdrawal of brokerage from its IBA. Two brokerage withdrawals had been made without any solvency calculation being made and those calculations which were made not been signed or made in the prescribed form. These matters were the subject of critical comment in the Brokers Department's report of its review, a draft of which was sent to MBBL on 6 May 1999.

Mr Ovenden responded to the Brokers Department's draft report by a letter dated 17 May 1999 in which he stated: "MBB[L] do not believe the Report to contain any factual inaccuracies". In the attachment to his letter which contained specific comments on the Brokers Department's draft report Mr Ovenden asserted that "all relevant parties had been reminded" of the condition regarding the undertaking of solvency calculations prior withdrawing brokerage from MBBL's IBA "and have signed off on their responsibilities and therefore this condition is being and will continue to be met". This statement was misleading because this condition was never adhered to by MBBL, which was something that Mr Ovenden knew or ought to have known since he was supposed to counter-sign each solvency calculation that Lloyd's required to be made. Mr Ovenden never corrected this statement.

In acting as he did Mr Ovenden conducted himself in a manner that was unbefitting a director and the compliance officer of a Lloyd's broker.

Failure to submit annual return and audited financial statements to Lloyd's on time or at all

As a new Lloyd's broker MBBL was required under the Lloyd's Brokers Byelaw (No. 5 of 1988) ("the Byelaw") to submit to Lloyd's audited financial statements for the year ended 31 December 1998 for itself and its holding company together with an annual return for the same period by no later than 30 June 1999.

On 11 May 1999 an assistant manager in Lloyd's Brokers Department notified the directors of MBBL that he had made it an additional condition of the company's registration as a Lloyd's broker that it would submit to Lloyd's by no later than 30 June 1999 audited financial statements for the year ended 31 December 1998 for those of its sister companies with which MBBL had an inter company balance at the end of 1998. MBBL accepted the imposition of this condition and was subsequently allowed until 6 July 1999 to submit the required financial statements.

In the event MBBL did not submit to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and its UK sister companies until 31 August 1999. No satisfactory explanation was provided to Lloyd's for the delayed presentation of these documents.

MBBL was also required to submit audited financial statements for its two North American sister companies for the year ended 31 December 1998 but never did so. Further no explanation was provided to Lloyd's for these omissions.

The failure of the directors of MBBL to ensure that MBBL submitted to Lloyd's on time or at all its annual return for 1998 and the financial statements that were required of it ("the required documents") caused the company to breach the provisions of paragraphs 7(1)(a), 44(1) and 44(3) of the Byelaw. Further the late submission of MBBL's audited financial statements for 1998 led to delays in the submission of the company's monthly returns to Lloyd's for July and August 1999 thereby occasioning further breaches of the company's conditions of registration as a Lloyd's broker.

MBBL's audited financial statements for 1998 showed a substantial deterioration in the results of the company as shown in its management accounts which had previously been disclosed to Lloyd's. The delay in the submission of MBBL's financial statements for 1998 to Lloyd's meant that Lloyd's learnt of this deterioration later than it should have done.

MBBL's failure to ensure the preparation of audited financial statements for its two North American sister companies for the year ended 31 December 1998 meant that those companies' 1998 accounts were not subject to independent verification or scrutiny. Further the viability of these companies as going concerns was not independently assessed.

Mr Ovenden knew of the dates for the submission of the required documents and of the failure of MBBL to submit those documents to Lloyd's before 31 August 1999 and, in the case of MBBL's North American sister companies, at all.

In failing to ensure that MBBL submitted the required documents to Lloyd's on time or at all Mr Ovenden failed to discharge his duties as a director and the compliance officer of a Lloyd's broker properly.

The making of misleading representations to Lloyd's regarding the submission of audited financial statements for Moore Brown Barnes Ltd's North American sister companies for 1998

As noted above, on 11 May 1999 Lloyd's made it an additional condition of MBBL's registration as a Lloyd's broker that it would submit to Lloyd's by no later than 30 June 1999 audited financial statements for the year ended 31 December 1998 for those of its sister companies with which MBBL had an inter company balance at the end of 1998. Those companies included JG Krok of Illinois Inc ("Krok") and Canadian Underwriting Agencies Inc ("CUAI").

On 29 June 1999 Mr Ovenden wrote to the Brokers Department to request a one week extension of time beyond 30 June 1999 in which to file audited financial statements for MBBL and other group companies. In his letter he stated: "We can confirm that the reports for all the companies have been drafted and we are clearing the last few details with regard to the overseas subsidiaries." This statement was misleading in that neither Krok nor CUAJ had auditors at the material time and no financial statements were produced for Krok for the year ended 31 December 1998.

On 1 July 1999 Mr Ovenden and MBBL's finance director wrote a letter to the Brokers Department in which they stated:

"We regret that we were unable to meet the reporting date requirements for MBB Ltd or MBB Holdings Ltd of 30 June 1999. The reason for the delay on MBB, has been the resolution of issues raised by auditors. These particularly related to the Overseas subsidiaries where regrettably due to this being their first full financial year end there had been [sic] late submissions from their auditors."

They went on to define MBBL's overseas subsidiaries as Krok and CUAJ and stated copies of audited financial statements for the year ended 31 December 1998 for these companies (amongst others) would be submitted to Lloyd's by 5 July 1999.

The statement that Mr Ovenden and MBBL's finance director made about Krok and CUAJ having auditors was incorrect in that neither company had an auditor at the material time. Consequently it was not possible for MBBL to submit audited financial statements for the year ended 31 December 1998 for these companies to Lloyd's by 5 July 1999. In making this statement Mr Ovenden says that he relied on MBBL's finance director.

Mr Ovenden now accepts that he should not have made the representations that he did and that subsequently Lloyd's should have been informed of the true position.

In acting as he did Mr Ovenden conducted himself in a manner that was unbecoming to a director and the compliance officer of a Lloyd's broker.

Permitting the submission to Lloyd's of inaccurate solvency returns

MBBL was required to submit monthly solvency returns to Lloyd's as one of its original conditions of registration. One of the requirements of Lloyd's Net Current Assets ("NCA")

Test at the material time was that no credit was to be taken for non-insurance debtors that were not realisable within 12 months. This requirement was also relevant to the Net Tangible Assets (“NTA”) Test.

In April 1999 the Manager of the Brokers Department notified the directors of MBBL that he did not consider that the inter company debt of MBBL’s US sister company, Krok, was realisable within 12 months and should accordingly be discounted from MBBL’s NCA and NTA returns.

Krok’s inter company debt to MBBL was shown as static in the latter’s monthly returns to Lloyd’s for May-August 1999 following which it was shown as non-existent. However, unbeknown to Lloyd’s MBBL continued to fund the operations of Krok from June 1999 until 16 February 2000 when MBBL was placed in liquidation. Krok itself was subsequently sold as a going concern.

Rather than showing Krok’s inter company debt to MBBL from September 1999 as part of the latter’s inter company balances MBBL included the debt within MBBHL’s inter company balances and took full credit for the same in its solvency returns for September – December 1999. The Krok debt accounted for 50-53% of MBBHL’s inter company debt to MBBL from September to December 1999. The relevant calculations were performed by MBBL’s accounts department.

MBBL did not inform Lloyd’s of its treatment of the Krok debt notwithstanding that its directors were told by the Chairman of the Sub-Group of Lloyd’s Regulatory Board that de-registered MBBL as a Lloyd’s broker on 14 October 1999 that the Sub-Group regarded Lloyd’s Solvency Requirements as being “of the highest regulatory significance as a breach of any such requirement may seriously jeopardise the position of MBB’s creditors and therefore the reputation of the market as a whole”.

The undisclosed inclusion of Krok’s inter company debt within MBBHL’s inter company debt to MBBL represented a contravention of the requirement imposed by the Manager of the Brokers Department in April 1999 regarding the Krok inter company debt and as such put MBBL in breach of paragraph 7(1)(a) of the Byelaw.

Mr Ovenden knew of the requirement imposed by the Manager of the Brokers Department in April 1999 regarding the Krok inter company debt and of MBBL’s continued funding of the operations of Krok thereafter. However, because he relied on MBBL’s finance director he failed to ensure that MBBL made known to Lloyd’s its treatment of Krok’s inter company debt within its solvency returns from September 1999 for the purpose of obtaining Lloyd’s consent to such treatment. In so doing Mr Ovenden failed to discharge his duties as a director and the compliance officer of a Lloyd’s broker properly.

MBBL’s monthly returns to Lloyd’s show that MBBHL’s inter company debt to MBBL rose from £(79,087) in June 1999 to £807,905 in December 1999. Absent the provision of a substantial amount of new capital (which was discussed during the latter part of 1999), MBBHL had no realistic prospect of being able to pay its inter company debt to MBBL from July 1999 (£221,403) within 12 months given: (a) it was wholly reliant on its five trading subsidiaries for income and these were all loss making in 1998 and three of them including MBBL were loss making in 1999; and (b) it had substantial pre-existing liabilities for which no provision had been made, including the need to make capital payments totalling £325,000

in 2000, and a contingent capital gains tax liability that, if crystallised, was payable by October 2000. In the event MBBHL was unable to raise any additional capital during the latter part of 1999 or in 2000.

If MBBL had discounted inter company debt of MBBHL from its solvency returns then it would have had a substantial negative effect on MBBL's solvency position which would have signalled to Lloyd's in the latter part of 1999 that the company's solvency position was significantly worse than appeared to be the case.

Mr Ovenden mistakenly relied on his accounting colleagues so as to permit MBBL to breach Lloyd's solvency requirements by taking full credit for the inter company debt of MBBHL in its solvency returns for July-December 1999 in circumstances where he ought to have known that there was no realistic prospect of MBBHL being able to clear its debt within 12 months. In doing so he failed to discharge his duties as a director of a Lloyd's broker properly.

Failure to notify Lloyd's of the anticipated insolvency of Moore Brown Barnes Ltd

MBBL was required under the Byelaw to notify Lloyd's from 4 August 1998, amongst other things of: (a) any material change of circumstances which might affect its ability to service all its activities; and (b) any circumstance which might materially affect its present or future ability to comply with the Byelaw. Further, in February 1999 the manager of Lloyd's Brokers Department made it an additional condition of MBBL's registration as a Lloyd's broker that the company would immediately notify him by facsimile and post of the happening of certain events. These included (a) MBBL becoming unable to meet its debts as they fell due or its liabilities (taking into account contingent or prospective liabilities) exceeding its assets; and (b) MBBL becoming unable to meet its IBA liabilities as they fell due or its IBA liabilities exceeding its assets. Mr Ovenden was made aware of these requirements as they were imposed.

On or about 22 November 1999 the directors of MBBHL were presented with a forecast by their finance director (who was also the finance director of MBBL) which indicated that, in the absence of new capital, MBBL would be insolvent in or by February 2000 on a corporate basis. The meeting on 22 November 1999 was resumed on 1 December 1999 when it became apparent that none of the shareholders of MBBHL was prepared to subscribe additional capital in the company. Not being a director of MBBHL Mr Ovenden was not present at either of these meetings. Mr Ovenden was made aware of these developments at a meeting of the directors of MBBL on 8 December 1999. At the same time he was told that the directors of MBBHL had received legal advice that MBBL should seek the advice of an insolvency practitioner. The directors of MBBL duly resolved to seek such advice that day.

By mid-December 1999 MBBL began to have difficulties in meeting its IBA liabilities as they fell due. At or about the same time MBBL became unable to pay certain company expenses for want of available funds and the company's finance director began working on a statement of affairs in anticipation of the company's insolvency. Mr Ovenden says that he was not aware of these difficulties until early January 2000.

As a director and the compliance officer of MBBL Mr Ovenden should have taken steps to ensure that Lloyd's was made aware of MBBL's finance director's projection that the company would be insolvent in or by February 2000 as soon as practicable after he was informed that the shareholders of MBBHL were not prepared to subscribe additional capital

in that company. He did not do so, his main concern in December 1999 and the beginning of January 2000 being to ensure that MBBL reported to Lloyd's his dispute with the company over the terms of his redundancy. As a consequence MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Byelaw.

Similarly, it was incumbent on Mr Ovenden to take steps to ensure that MBBL notified Lloyd's as soon as practicable of its inability to meet its IBA and other liabilities as they fell due. He did not do so until 15 February 2000 and then only as regards MBBL's IBA liabilities, notwithstanding that he was notified on 11 February 2000 that one of his fellow directors had admitted withholding approximately US\$500,000 of claims payments for want of available funds. As a consequence MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Byelaw.

In the light of the foregoing Mr Ovenden failed to discharge his duties as a director and the compliance officer of a Lloyd's broker properly. In addition to causing MBBL to breach of its regulatory obligations, such inaction was detrimental to interests of the company's IBA creditors to the extent that funds which should have been applied to meet MBBL's IBA obligations were withdrawn from the company's IBA and utilised for other purposes.

In the event it was not until 15 February 2000 that Mr Ovenden and MBBL's finance director informed Lloyd's that the company was in serious financial difficulty such that it was unable to meet its current IBA liabilities and consideration was being given to placing the company into a Creditors Voluntary Arrangement. The following day MBBL was placed into liquidation.

In addition to accepting this notice of censure, Mr Ovenden has agreed to accept the following penalties and order for costs:

- (i) The permanent suspension from 8 July 2003 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's without limitation as to class of business as: (a) a director, partner, employed manager or compliance officer of a Lloyd's broker; (b) a director, partner, employed manager or compliance officer of a Lloyd's underwriting agent; and (c) a director, employed manager or compliance officer of a corporate member of the Society.
- (ii) A contribution of £20,000 towards Lloyd's costs.

BEFORE THE LLOYD'S DISCIPLINARY BOARD

NOTICE OF CENSURE

OF

GUY LAWRENCE KERR RUSSELL

Guy Lawrence Kerr Russell has admitted six charges of failing to take reasonable steps in connection with the business of insurance to avoid risk of harm to Lloyd's policyholders, the Society, its members or those doing business at Lloyd's within the meaning of paragraph 3 (e) of the Misconduct and Penalties Byelaw (No. 30 of 1996) during the period from 4 August 1998 until 16 February 2000.

Mr Russell is a qualified accountant who joined Moore Brown Barnes Ltd ("MBBL") in July 1998 and was at the material time responsible for administering the company's insurance broking account ("IBA"). On 18 February 1999 Mr Russell was made the chief financial officer of the Moore Brown Barnes group of companies, having been appointed a director of MBBL on 26 January 1999 and a director and chief financial officer of MBBL's holding company, Moore Brown Barnes Holdings Ltd ("MBBHL"), on 10 February 1999. In addition, Mr Russell was an officer of MBBL's US sister company from about 18 February 1999 and a director of MBBL's Danish and two UK sister companies from March and September 1999 respectively. MBBL had five active sister companies at the material time, all of which acted as underwriting agents.

MBBL was registered as a Lloyd's broker on 4 August 1998; de-registered as a Lloyd's broker on 14 October 1999 (subject to the run off of its existing account as a Lloyd's broker); and placed into voluntary liquidation on 16 February 2000 with an estimated deficiency of £1,441,964 as regards unsecured creditors. At the time of its liquidation MBBL owed £1,311,818 in unpaid premiums for which it had previously been put in funds by coverholders for whom it placed business and £194,529 of claims for which it had previously been put in funds by underwriters. Lloyd's Claims Office subsequently calculated that MBBL owed US\$2,041,721 and £9,735 (£1,417,818 in aggregate) in unpaid claims. At the time that it was placed in liquidation MBBL was owed £1,034,437 by its holding and sister companies.

The misconduct that Mr Russell has admitted involved six matters:

1. His part in the mismanagement of MBBL such that amongst other things it was unable to meet its IBA obligations as they fell due or at all.
2. Failing to ensure that MBBL submitted to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and those of its sister companies with which it had inter company balances at the end of 1998 on time or, in two cases, at all.

3. Co-signing a letter to Lloyd's dated 1 July 1999 in which it was falsely stated that MBBL's American and Canadian sister companies had auditors.
4. Permitting MBBL to include within its monthly solvency returns to Lloyd's for July-December 1999 inclusive the full value of debts that Lloyd's had previously required MBBL to discount from its monthly solvency returns and/or in respect of which there was no realistic prospect of payment being made to MBBL within 12 months.
5. Failing to ensure from 11 February 1999 that solvency calculations were made in a form prescribed by Lloyd's prior to the withdrawal of brokerage from MBBL's IBA and failing to ensure from 14 October 1999 that Lloyd's written consent was obtained prior to the withdrawal of more than £50,000 of brokerage from MBBL's IBA during any seven day period.
6. Failing to ensure that Lloyd's was notified from about 1 December 1999 that MBBL was expected to become insolvent in or by February 2000.

The mismanagement of Moore Brown Barnes Ltd

During the period from 4 August 1998 until 16 February 2000 MBBL failed properly to discharge its regulatory and agency obligations as a Lloyd's broker. This manifested itself in the following ways:

- (i) MBBL's failure to comply with a variety of reporting conditions that were imposed on the company as conditions of its registration as a Lloyd's broker in a timely manner or in a number of instances at all.
- (ii) MBBL's failure to ensure that the monthly returns that Lloyd's required it to submit to it were calculated accurately.
- (iii) MBBL's failure to maintain adequate capital and reserves as required by Lloyd's and to pass its Lloyd's solvency tests.
- (iv) MBBL's failure from 11 February 1999 to undertake solvency calculations in a form prescribed by Lloyd's prior to withdrawing brokerage from its IBA and to preserve such calculations until further notice
- (v) MBBL's failure from 14 October 1999 to seek Lloyd's written consent before withdrawing more than £50,000 of brokerage from its IBA in any seven day period.
- (vi) MBBL's failure to meet its IBA liabilities as they fell due or at all such that at the time of its liquidation on 16 February 2000 it had the substantial IBA deficits referred to above.

The following were key factors in MBBL's failure to discharge its regulatory and agency obligations as a Lloyd's broker properly at the material time:

- (a) The fact that the accounting of MBBHL and MBBL's UK and Danish sister companies were all effected through the accounting records of MBBL which made it

difficult to identify which balances belonged to which company and increased the likelihood of brokerage withdrawals.

- (b) The lack of effective accounting systems and controls within MBBL so as to facilitate the prompt reconciliation of payments to and by the company and so as to prevent the overdrawing of brokerage from the company's IBA.
- (c) The lack of suitable numbers of suitably qualified people with MBBL's Accounts Department to handle the accounting arrangements of the Moore Brown Barnes group of companies.
- (d) The failure of MBBL to keep its expenditure within the bounds of its income.
- (e) The provision of open-ended and/or interest free funding to MBBL's holding and sister companies and two other companies, and the failure to keep accurate records of such funding.
- (f) The diversion of management time from MBBL in favour of its sister companies, two of which were based in North America, two in the United Kingdom and one in Denmark.
- (g) The lack of awareness of the directors of MBBL of the company's financial position both in terms of its IBA and on a corporate basis.

Mr Russell was obliged as a director of MBBL to exercise reasonable care, skill and diligence in the direction of the affairs of the company which included a duty to keep himself informed as to the affairs of the company and a continuing duty to supervise and control those affairs. In addition he was under a fiduciary duty to safeguard the assets of the MBBL for the benefit of the company and its creditors.

As a director of a Lloyd's broker Mr Russell was under a duty to see to it that MBBL was able to account to its clients, which included a duty to safeguard and not to misapply client funds, and also to ensure that the company complied with its regulatory obligations.

As a qualified accountant Mr Russell had special knowledge, skills and experience that the other directors of MBBL did not possess. He must be judged accordingly when assessing whether he exercised reasonable care, skill and diligence in carrying out his duties as a director of MBBL.

Although he was not responsible for establishing the accounting arrangements of the Moore Brown Barnes group of companies that subsisted at time of MBBL's registration as a Lloyd's broker on 4 August 1998, Mr Russell acknowledges that as MBBL's IBA accountant throughout the relevant period and the chief financial officer of the Moore Brown Barnes group of companies from 18 February 1999, he must bear some responsibility for the failures and deficiencies referred to above. It is to be noted that Mr Russell had primary executive responsibility for the following matters at the material time: (a) the integrity of MBBL's IBA and the calculation of the company's solvency returns to Lloyd's (although prior to his appointment as a director of MBBL on 26 January 1999 he reported to MBBL's original finance director in this regard); (b) the undertaking of solvency calculations that Lloyd's

required MBBL to undertake; and (c) the management of the accounting functions of MBBL during the period after 18 February 1999.

Although he identified the need (a) to integrate MBBL's computerised accounting systems and (b) to segregate the accounting of MBBL from that of its holding and sister companies, due in part to constraints of time and available funds, Mr Russell was not able to implement these vital reforms prior to the liquidation of MBBL. Similarly he was unable to recruit additional accounting staff although he recognised the need to do so and had identified one suitable candidate prior to Lloyd's decision to de-register MBBL as a Lloyd's broker at which point the matter was not pursued. As a consequence the organisation of accounting arrangements of the Moore Brown Barnes group of companies at the time of MBBL's liquidation essentially remained unchanged from when Mr Russell was appointed the chief financial officer of the Moore Brown Barnes group of companies. However the quality of MBBL's accounting controls deteriorated during this period as shown by the fact that the company's unallocated cash balances and aged debtors and creditors all increased during 1999 and, ultimately, by the fact that the company was unable to meet its IBA and other liabilities as they fell due.

Mr Russell says that he monitored the withdrawal of brokerage from MBBL's IBA against the booked income of the company and its two UK sister companies disclosed in their management accounts to ensure that there was no overdrawing of brokerage. Lloyd's has searched for but been unable to find any record that such monitoring took place. However the fact remains that during 1999 MBBL withdrew substantially more brokerage from its IBA than was booked in its management accounts. Further, MBBL's accounts department did not monitor the withdrawal of brokerage from MBBL's IBA against the company's paid brokerage income. MBBL's accounting records indicate that during 1999 the company withdrew substantially more brokerage from its IBA than was logged as paid brokerage, with such paid brokerage representing approximately 49% of its booked brokerage. These failings indicate that Mr Russell did not have an accurate picture of MBBL's IBA or office account at the material time.

Mr Russell accepts that in his desire to promote the welfare of Moore Brown Barnes group of companies as a whole he failed to have due regard to the separate interests of MBBL itself and to supervise and control the affairs of that company effectively so as to ensure that it fulfilled its obligations as they fell due, whether from an IBA, corporate or regulatory perspective.

Failure to submit annual return and audited financial statements to Lloyd's on time or at all

As a new Lloyd's broker MBBL was required under the Lloyd's Brokers Byelaw (No. 5 of 1988) ("the Byelaw") to submit to Lloyd's audited financial statements for the year ended 31 December 1998 for itself and its holding company together with an annual return for the same period by no later than 30 June 1999.

On 11 May 1999 an assistant manager in Lloyd's Brokers Department notified the directors of MBBL that he had made it an additional condition of the company's registration as a Lloyd's broker that it would submit to Lloyd's by no later than 30 June 1999 audited financial statements for the year ended 31 December 1998 for those of its sister companies with which MBBL had an inter company balance at the end of 1998. MBBL accepted the

imposition of this condition and was subsequently allowed until 6 July 1999 to submit the required financial statements.

In the event MBBL did not submit to Lloyd's its annual return and audited financial statements for the year ended 31 December 1998 for itself, its holding company and its UK sister companies until 31 August 1999. No satisfactory explanation was provided to Lloyd's for the delayed presentation of these documents.

MBBL was required to submit audited financial statements for its two North American sister companies for the year ended 31 December 1998 but never did so. Further no explanation was provided to Lloyd's for these omissions.

The failure of the directors of MBBL to ensure that MBBL submitted to Lloyd's on time or at all its annual return for 1998 and the financial statements that were required of it ("the required documents") caused the company to breach the provisions of paragraphs 7(1)(a), 44(1) and 44(3) of the Byelaw. Further the late submission of MBBL's audited financial statements for 1998 led to delays in the submission of the company's monthly returns to Lloyd's for July and August 1999 thereby occasioning further breaches of the company's conditions of registration as a Lloyd's broker.

MBBL's audited financial statements for 1998 showed a substantial deterioration in the results of the company as shown in its management accounts which had previously been disclosed to Lloyd's. Those management accounts had been prepared by MBBL's original finance director. The delay in the submission of MBBL's financial statements for 1998 to Lloyd's meant that Lloyd's learnt of the deterioration of MBBL's results later than it should have done.

The failure of the directors of MBBL to ensure the preparation of audited financial statements for its two North American sister companies for the year ended 31 December 1998 meant that those companies' 1998 accounts were not subject to independent verification or scrutiny. Further the viability of these companies as going concerns was not independently assessed.

Mr Russell knew of the dates for the submission of the required documents and of the failure of MBBL to submit those documents to Lloyd's before 31 August 1999 and, in the case of MBBL's North American sister companies, at all.

As MBBL's chief financial officer Mr Russell had primary executive responsibility for ensuring that the required documents were prepared and submitted to Lloyd's within the time limits stipulated for the submission of these documents. Making allowance for the unforeseen deterioration in MBBL's results for 1998, he failed to organise the preparation of the required documents in such a way as they were submitted to Lloyd's in a timely manner or at all. The fact Mr Russell took his annual leave (with the permission of MBBL's chief executive officer) and attended a conference of the executives of the Moore Brown Barnes group of companies in Spain when these documents were overdue suggests that the preparation of the required documents was not accorded the priority that it merited.

In failing to ensure that MBBL submitted the required documents to Lloyd's on time or at all Mr Russell failed to discharge his duties as a director of a Lloyd's broker properly.

The making of false representations to Lloyd's regarding the submission of audited financial statements for Moore Brown Barnes Ltd's North American sister companies for 1998

As noted above, on 11 May 1999 Lloyd's made it an additional condition of MBBL's registration as a Lloyd's broker that it would submit to Lloyd's by no later than 30 June 1999 audited financial statements for the year ended 31 December 1998 for those of its sister companies with which MBBL had an inter company balance at the end of 1998. Those companies included JG Krok of Illinois Inc ("Krok") and Canadian Underwriting Agencies Inc ("CUAI").

On 1 July 1999 Mr Russell and MBBL's compliance officer wrote a letter to the Brokers Department in which they stated:

"We regret that we were unable to meet the reporting date requirements for MBB Ltd or MBB Holdings Ltd of 30 June 1999. The reason for the delay on MBB, has been the resolution of issues raised by auditors. These particularly related to the Overseas subsidiaries where regrettably due to this being their first full financial year end there had been [sic] late submissions from their auditors."

They went on to define MBBL's overseas subsidiaries as Krok and CUAJ and stated copies of audited financial statements for the year ended 31 December 1998 for these companies (amongst others) would be submitted to Lloyd's by 5 July 1999.

The statement that Mr Russell and MBBL's compliance officer made about Krok and CUAJ having auditors was false and misleading in that neither company had an auditor at the material time. Consequently it was not possible for MBBL to submit audited financial statements for the year ended 31 December 1998 for these companies to Lloyd's by 5 July 1999.

As the chief financial officer of the Moore Brown Barnes group of companies Mr Russell ought to have known that neither Krok nor CUAJ had an auditor on 1 July 1999 and, consequently, he should not have made the representations that he did. Mr Russell says that he believed that these companies did have auditors on 1 July 1999 but accepts that he did not seek specific confirmation of this fact before confirming that they did do so. In failing to seek such confirmation Mr Russell acted rashly. Further, it was improper of him not to have corrected his misrepresentations as soon as he became aware of the true position which he did no later than 12 July 1999. As it was Lloyd's was left with the impression that Krok and CUAJ both had auditors on 1 July 1999 and that MBBL would be in a position to submit to it audited financial statements for these companies for 1998 imminently.

In acting as he did Mr Russell conducted himself in a manner that was not befitting to a director of a Lloyd's broker.

Failing to undertake solvency calculations or to seek Lloyd's consent prior to withdrawal of brokerage from Moore Brown Barnes Ltd's insurance broking account

With effect from 11 February 1999 Lloyd's required MBBL to undertake a solvency calculation in a prescribed form prior to withdrawing brokerage from its IBA and to preserve such calculation until further notice. Each solvency calculation was required to contain the following declaration and to be signed by MBBL's Finance Director and Compliance Officer:

“Notwithstanding that no audit has been carried out I have no reason to believe that the above [figures] are materially mis-stated”

These requirements were imposed as an additional condition of MBBL’s registration as a Lloyd’s broker in order to prevent the overdrawing of brokerage from the company’s IBA. It fell to Mr Russell to make the necessary solvency calculations and, after he had been appointed the chief financial officer of MBBL, to sign those calculations as the company’s finance director. He did not do so notwithstanding that Lloyd’s repeatedly reminded MBBL of the continued application of the relevant condition during 1999. As a result, £2,502,110 was transferred from MBBL’s IBA into its office account between 11 February 1999 and 16 February 2000 without any solvency calculation being made as prescribed by Lloyd’s. Lloyd’s discovered this situation itself after MBBL was placed into liquidation.

On 14 October 1999 the Sub-group of the Lloyd’s Regulatory Board that was responsible for de-registering MBBL as a Lloyd’s broker directed the company not to withdraw more than £50,000 from its IBA in any seven day period without the written consent of the Manager of the Monitoring Department. Further, when seeking such consent, MBBL was required to submit a solvency calculation of the sort referred to above. Accordingly, Mr Russell was responsible for undertaking and signing the relevant solvency calculations. He did not do so with the result that £673,518 was withdrawn from the company’s IBA after 14 October 1999 without Lloyd’s knowledge or consent

The withdrawal of brokerage from MBBL’s IBA without any solvency calculation being made and, on those occasions where it was required, without Lloyd’s consent, was detrimental to the interests of MBBL’s clients, the underwriters with whom the company placed business at Lloyd’s and to the Society. Moreover it was not in keeping with MBBL’s agency and regulatory obligations.

In acting as he did Mr Russell conducted himself in a manner that was not befitting to a director of a Lloyd’s broker.

Permitting the submission to Lloyd’s of improper solvency returns

MBBL was required to submit monthly solvency returns to Lloyd’s as one of its original conditions of registration. One of the requirements of Lloyd’s Net Current Assets (“NCA”) Test at the material time was that no credit was to be taken for non-insurance debtors that were not realisable within 12 months. This requirement was also relevant to the Net Tangible Asset (“NTA”) test.

In April 1999 the Manager of the Brokers Department notified the directors of MBBL that he did not consider that the inter company debt of MBBL’s US sister company, Krok, to be realisable within 12 months and should accordingly be discounted from MBBL’s NCA and NTA returns.

Krok’s inter company debt to MBBL was shown as static in the latter’s monthly returns to Lloyd’s for May-August 1999 following which it was shown as non-existent. However unbeknown to Lloyd’s MBBL continued to fund the operations of Krok from June 1999 until 16 February 2000 when MBBL was placed in liquidation. Krok itself was subsequently sold as a going concern.

Rather than showing Krok's inter company debt to MBBL from September 1999 as part of the latter's inter company balances, MBBL included the debt within MBBHL's inter company balances and took full credit for the same in its solvency returns for September-December 1999. The Krok debt accounted for 50-53% of MBBHL's inter company debt to MBBL from September to December 1999. The relevant calculations were performed by Mr Russell.

MBBL did not inform Lloyd's of its treatment of the Krok debt notwithstanding that its directors were told by the Chairman of the Sub-Group of Lloyd's Regulatory Board that de-registered MBBL as a Lloyd's broker on 14 October 1999 that the Sub-Group regarded Lloyd's Solvency Requirements as being "of the highest regulatory significance as a breach of any such requirement may seriously jeopardise the position of MBB's creditors and therefore the reputation of the market as a whole".

In failing to disclose to Lloyd's its treatment of Krok's inter company debt to it as at 30 September 1999 and its treatment of its continued funding of the operations of Krok thereafter, MBBL improperly circumvented or purported to circumvent Lloyd's requirement that it should discount from its NCA and NTA solvency returns with effect from 31 March 1999 as an eligible asset the non-insurance inter company debt that Krok owed to it. It was improper of MBBL to treat the Krok debt as an asset within its NCA and NTA solvency returns for September to December 1999 inclusive because, following its failure to raise any additional capital, MBBHL (like Krok) was not in a position to repay such sums in full to MBBL within 12 months.

Mr Russell knew of the requirement imposed by the Manager of the Brokers Department in April 1999 regarding the Krok inter company debt and of MBBL's continued funding of the operations of Krok thereafter. However, he failed to ensure that MBBL made known to Lloyd's its treatment of Krok's inter company debt within its solvency returns from September 1999 onwards for the purpose of obtaining Lloyd's consent to such treatment. Instead he left it to Lloyd's to query what had happened to the Krok debt. In acting as he did Mr Russell failed to discharge his duties as a director of a Lloyd's broker properly.

MBBL's monthly returns to Lloyd's show that MBBHL's inter company debt to MBBL rose from £(79,087) in June 1999 to £807,905 in December 1999. Absent the provision of a substantial amount of new capital (which was discussed during the latter part of 1999), MBBHL had no realistic prospect of being able to pay its inter company debt to MBBL from July 1999 (£221,403) within 12 months given: (a) it was wholly reliant on its five trading subsidiaries for income and these were all loss making in 1998 and three of them including MBBL were loss making in 1999; and (b) it had substantial pre-existing liabilities for which no provision had been made, including the need to make capital payments totalling £325,000 in 2000, and a contingent capital gains tax liability that, if crystallised, was payable by October 2000. In the event MBBHL was unable to raise any additional capital during the latter part of 1999 or in 2000.

If MBBL had discounted inter company debt of MBBHL from its solvency returns then it would have had a substantial negative effect on MBBL's solvency position which would have signalled to Lloyd's in the latter part of 1999 that the company's solvency position was much worse than appeared to be the case.

Mr Russell permitted MBBL to breach Lloyd's solvency requirements by taking full credit

for the inter company debt of MBBHL in its solvency returns for July-December 1999 in circumstances where he ought to have known that there was no realistic prospect of MBBHL being able to clear its debt within 12 months. In doing so he failed to discharge his duties as a director of a Lloyd's broker properly.

Failure to notify Lloyd's of the anticipated insolvency of Moore Brown Barnes Ltd

MBBL was required under the Byelaw to notify Lloyd's from 4 August 1998, amongst other things of: (a) any material change of circumstances which might affect its ability to service all its activities; and (b) any circumstance which might materially affect its present or future ability to comply with the Byelaw. Further, in February 1999 the manager of Lloyd's Brokers Department made it an additional condition of MBBL's registration as a Lloyd's broker that the company would immediately notify him by facsimile and post of the happening of certain events. These included (a) MBBL becoming unable to meet its debts as they fell due or its liabilities (taking into account contingent or prospective liabilities) exceeding its assets; and (b) MBBL becoming unable to meet its IBA liabilities as they fell due or its IBA liabilities exceeding its assets. Mr Russell was made aware of these requirements as they were imposed.

On or about 22 November 1999 Mr Russell presented to the other directors of MBBHL a forecast which indicated that, in the absence of new capital, MBBL would be insolvent in or by February 2000 on a corporate basis. The meeting on 22 November 1999 was resumed on 1 December 1999 when it became apparent that none of the shareholders of MBBHL was prepared to subscribe additional capital in the company.

By no later than mid-December 1999 MBBL began to have difficulties in meeting its IBA liabilities as they fell due. At or about the same time MBBL became unable to pay certain company expenses for want of available funds and Mr Russell began working on a statement of affairs in anticipation of the company's insolvency.

Mr Russell was aware from about mid-December 1999 that MBBL was unable to pay certain premiums and certain claims for want of available funds notwithstanding that it had been put in funds to make such payments. At or about the same time he was aware that MBBL was having difficulties in meeting its non-IBA liabilities as they fell due for want of available funds.

As MBBL's finance director Mr Russell should have taken steps to ensure that Lloyd's was made aware of his projection that the company would be insolvent in or by February 2000 as soon as practicable after it became apparent that the shareholders of MBBHL were not prepared to subscribe additional capital in that company. He did not do so nor was he instructed to take such action, although the directors of MBBHL did seek legal advice and consulted insolvency practitioners regarding the anticipated insolvency of MBBL. As a consequence MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Byelaw.

Similarly, it was incumbent on Mr Russell to take steps to ensure that MBBL notified Lloyd's as soon as practicable of its inability to meet its IBA and other liabilities as they fell due. He did not do so until 15 February 2000 and then only as regards MBBL's IBA liabilities. As a consequence MBBL breached the provisions of paragraphs 7(1)(a), 34, 48(3)(e) and 48(3)(j) of the Byelaw.

In failing to ensure that Lloyd's was promptly notified of MBBL's anticipated insolvency, the preparation of a statement of affairs for the company and MBBL's difficulties in meeting its IBA and non-IBA liabilities as they fell due, Mr Russell failed to discharge his duties as a director of a Lloyd's broker properly. In addition to causing MBBL to breach of its regulatory obligations, such inaction was detrimental to interests of the company's IBA creditors to the extent that funds which should have been applied to meet MBBL's IBA obligations were withdrawn from the company's IBA and utilised for other purposes.

In the event it was not until 15 February 2000 that Mr Russell and MBBL's compliance officer informed Lloyd's that it was in serious financial difficulty such that it was unable to meet its current IBA liabilities and consideration was being given to placing the company into a Creditors Voluntary Arrangement. The following day MBBL was placed into liquidation.

In addition to accepting this notice of censure, Mr Russell has agreed to accept the following penalties and order for costs:

- (i) The suspension for a period of seven years from 6 December 2002 of his right to transact, or to be concerned or interested in the transaction of insurance business at Lloyd's without limitation as to class of business.
- (ii) The suspension for a period of seven years from 6 December 2002 of his right of admission to the Room and all other premises of the Society both in the United Kingdom and abroad.
- (iii) A fine of £10,000.
- (iv) A contribution of £30,000 towards Lloyd's costs.