

**LLOYD'S OF LONDON
CENTRAL REGISTER**

Registered Number:

4441

FROM: Secretary to Lloyd's Disciplinary Board
LOCATION: 58/NW1
EXTENSION: 5530
DATE: 21 December 1998
REFERENCE: 122/98
SUBJECT: EXALL WARREN DARBY LIMITED
(CURRENTLY KNOWN AS "OROC (1998)
LIMITED"

SUBJECT AREA(S): Summary Disciplinary Proceedings
ATTACHMENTS: Notice of Censure
ACTION POINTS: For information
DEADLINE: None

Lloyd's broker Exall Warren Darby Limited (currently known as "OROC (1998) Limited")("Exall") has admitted the. following two charges of misconduct

- (i) Causing or permitting the placement of a retroactive policy of insurance where the premium paid was equivalent to the amount of a loss already incurred, without taking adequate steps to discover the true purpose of the transaction (contrary to the Misconduct, Penalties and Sanctions Byelaw (No. 5 of 1983)
- (ii) Contravention of paragraphs 22 & 23 of the Lloyd's Broker's Byelaw (No.5 of 1988) by permitting insurance monies to be paid to and from a non-IBA account

Full details of the events giving rise to the charges are contained in the attached Notice of Censure.

Exall has been fined a total of £26,000 and Censured in accordance with the terms of the attached Notice of Censure. In addition, Exall has agreed to pay £8,000 in costs to the Council of Lloyd's.

This case was determined by the Lloyd's Disciplinary Board and its decision gives effect to a settlement of these proceedings agreed between Exall and the Council pursuant to paragraph 3 of the Lloyd's Disciplinary Rules (Schedule 2 to the Disciplinary Committee's Byelaw (No. 31 of 1996).

Note

The risks inherent in a transaction of this nature are self-evident. By reason of the Policy being retroactive and involving as it did no risk to the insurance company, it was a transaction that was capable of being used for an unlawful purpose. It was therefore incumbent upon the broker to raise inquiry into the true purpose of the transaction. The penalties imposed in this case took account both of the fact that the events occurred in 1992, and that there was no suggestion that the company was knowingly involved in money laundering. Lloyd's brokers 'must ensure that that they comply with the obligations of the Criminal Justice Act 1993 and the Money Laundering Regulations 1993. Reference should be made to the recent Regulatory Bulletin issued by the General Manager, Enforcement, entitled "Money Laundering: Significant Issues Arising from Business Conduct Reviews" (ref. 121/98).

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

AP Barber
Secretary
Lloyd's Disciplinary Board

NOTICE OF CENSURE

EXALL WARREN DARBY LIMITED
(currently known as "OROC (1998) Limited")

Exall Warren Darby Limited (currently known as "OROC (1998) Limited") ("Exall") was at all material times a Lloyd's broker within the meaning of the Lloyd's Brokers Byelaw (No. 5 of 1988) ("the Byelaw"). Exall has admitted the following two charges of misconduct:

- (i) Discreditable conduct contrary to the Misconduct, Penalties and Sanctions Byelaw (No.5 of 1983) namely by causing or permitting the placement of a retroactive policy of insurance where the premium paid was equivalent to the amount of the loss already incurred
- (ii) Contravention of paragraphs 22 & 23 of the Lloyd's Brokers Byelaw (No.5 of 1988) by permitting insurance monies to be paid to and from a non-IBA account.

Permitting the placement of a retroactive policy of insurance where the premium paid equalled the amount of a known loss.

At all material times Exall employed Beric Anthony Usher ('Mr Usher') as a non-executive director engaged in general insurance broking business. Mr Usher was directly responsible to Robin Davidson, a director at that time.

In March 1992, Transport Management Europe Limited S.A. ("T.M.E."), a Belgian firm of brokers received instructions from a firm of French brokers, Societe Generale D'Assurances et de Prevoyance ("S. G.A.F") to obtain a consequential loss policy ("The Policy") for Bidermann International S.A. and/or Maurice Bidennann, a well known French fashion designer ("Bidermann"). The Policy was to cover an alleged loss sustained in a warehouse fire in 1991.

On 19 March 1992, TME requested that Exall assist in the placement of the Policy. The Policy was said by SGAF to be required because "the manager of Bidermann wants to show a policy to the Directors of an amount varying between 20 and 50 million FRF".

Mr Usher unsuccessfully sought to place the policy via a Connecticut based insurance broker, Castagna Specialty Risk, who expressed surprise that Bidermann would wish to pay the entire claim in premiums plus an additional deductible when it could pay the whole loss itself without having to pay the deductible.

Mr Usher placed the Policy with Alpine Assurance Limited, an insurance company registered in the Turks and Caicos Islands. The Policy term was 1 July 1990 – 30 June 1993, and the premium was 52 million French Francs. The Policy included a term that the insured was entitled to recover no more than the policy limit of 52 million French Francs, subject to a deductible of 2 million French Franc for each and every claim.

By a letter dated 3 April 1992, Mr Usher advised Bidermann Productions that Alpine had agreed a claim of FRF 52 million less the deductible of FRF 2 million. Mr Usher further asserted that Alpine had conducted "due investigations", and stated that all rights under the policy were extinguished since the claim exceeded the aggregate limit. On 8 April 1992, Bidermann executed a "Form of Release" agreeing that upon receipt of FRF50 million, Alpine would be released from any and all future liabilities arising under the Policy. By a letter dated 10 April 1992, Alpine authorised Exall to pay FRF 50 million to Bidermann.

On a date unknown, Mr Trevor A Darby, the Exall's Finance Director and Compliance Officer, requested the Clydesdale Bank, 30 Lombard Street, London ("the bank") to create a French Franc account in the name of Exall ("the Company account"). By a letter dated 13 April 1992, Exall advised the bank that the account would shortly receive a credit of FRF52 million representing the Policy premium, and instructed the bank that immediately these funds were received, Bidermann's account at Bank Nationale de Paris ("the Bidermann account") should be credited with FRF 50 million representing the funds settling the "claim".

On 21 April 1992, CBI TDB Union Bancaire Privee Geneve transferred FRF 52 million from its account at Societe Generale Paris into the Company account. On the same day, Clydesdale transferred the sum of FRF 50 million to the Bidermann account. Of the FRF 2 million deductible remaining in the Company account, FRF 1,500,000 was transferred to the insurance company on the authorisation of the Company; the balance being divided among the various intermediaries (including Exall) as commission.

Exall has admitted that by its actions it has engaged in discreditable conduct. By virtue of the Policy being retroactive and involving, as it did no risk to the insurance company, it was a transaction that was capable of being used for an unlawful purpose. In particular, there was a failure by Exall in the following respects:

- (i) a failure to carry out any or any proper investigations into the true purpose of the transaction
- (ii) a failure to supervise the activities of Mr Usher either properly or at all in relation to this transaction
- (iii) a failure to have in place any systems or any proper systems which would have put management on notice as to the nature of the transaction

Permitting insurance monies to be paid into and out of an account which was not an IBA

The above mentioned French Franc account was intended to be, and was operated as, an IBA within the meaning of the Lloyd's Brokers Byelaw (No.5 of 1988). Paragraph 22(3) of the Byelaw provides that a Lloyd's broker opening an insurance broking account with an approved bank shall inform the bank in writing that the bank is not to be entitled to any charge encumbrance, lien or right to set off, combination, compensation or a retention against monies standing to the credit of the account or against an approved IBA asset, and shall before operating the account obtain the bank's written acknowledgement of its agreement to these terms (this is usually known as the "exchange of letters").

Paragraphs 23 and 24 of the Byelaw provide respectively that all insurance monies be paid into an IBA and that only IBA's are to be used for payments to insurers, The French Franc account was not established as an IBA in accordance with paragraph 22 to the Byelaw. In

particular, there was no "exchange of letters" with the relevant bank. On or about 21st April 1992 the account was used to handle insurance transaction monies, and on or about 28th April 1992, the account was used to make payment to an insurer. In the circumstances Exall has admitted that it has permitted insurance monies to be paid to and from non-IBA account contrary to the requirements of the Byelaw.

The following penalties have therefore been imposed upon the Company:

- (i) for permitting the transaction, that it pay a fine of £20,000
- (ii) for contravening the provisions of the Lloyd's Brokers Byelaw (No.5 of 1988), that it pay a fine of £6,000
- (iii) that it be censured in accordance with the terms of this document
- (iv) that it pay a contribution towards Lloyd's costs of £8,000.

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

1. The Company has admitted the charges of misconduct and concluded a settlement without incurring the expense of contested disciplinary proceedings.
2. The Company has had no previous findings of misconduct.
3. There is no evidence that the directors of Exall were themselves a party to any unlawful activity.
4. The Policy was not placed at Lloyd's and therefore there was no direct risk to Lloyd's policyholders or members of the Society.
5. At the relevant time, Exall was undergoing a systems rationalisation following the purchase of Berisford Mocatta and was in the process of putting into place proper management control systems.
6. In November 1992 the Lloyds Brokers Department carried out a general review of the Company. As a consequence of this compliance review, the Company arranged for the French Franc account to be a properly established insurance broking account in accordance with the requirements of the Byelaw. The exchange of letters with the Clydesdale Bank PLC was completed on or around 9th December 1992. As from this date the account was a properly established IBA.