

FROM: Secretary to Lloyd's Disciplinary Board,
LOCATION: 58/NW1
EXTENSION: 5530
DATE: 6 January 2000
REFERENCE: 001/2000
SUBJECT: **COGENT RESOURCES LIMITED**

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

Cogent Resources Limited (formerly R Mears & Co Limited), a registered Lloyd's broker, has admitted two charges of engaging in discreditable conduct, four charges of using an Insurance Broking Account for an unauthorised purpose and one charge of failing to take reasonable steps in connection with the business of insurance to avoid causing risk of harm to Lloyd's policyholders, the Society, its members or those doing business with Lloyd's.

This case was concluded before Lloyd's Disciplinary Board. The following penalties have been imposed on Cogent Resources Limited:

- (1) A fine of £40,000; and
- (2) A Censure in the terms of the Notice of Censure attached to this bulletin.

There was no order as to costs.

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

In assessing the penalties imposed on Cogent Resources Limited, account was taken of the fact that it has admitted the charges against it, that there was no enrichment of any director or employee of the company, that no loss was suffered and that the monies have been recovered and returned to underwriters. When the matter came to light, Cogent Resources Limited reported it to Lloyd's. It has subsequently put into place new systems and personnel in order

to prevent such an event occurring in the future. Indeed, there has been a complete restructuring of Cogent Resources Limited and its Board of Directors.

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

Secretary to Lloyd's Disciplinary Board

NOTICE OF CENSURE

COGENT RESOURCES LIMITED
(formerly known as R Mears & Co)

Cogent Resources Limited ("Cogent") (formerly R Mears & Co Limited ("RMC")), a Lloyd's broker, has admitted two charges of engaging in discreditable conduct, four charges of using an Insurance Broking Account ("IBA") for an unauthorised purpose and one charge of failing to take reasonable steps in connection with the business of insurance to avoid doing risk of harm to Lloyd's policyholders, the Society, its members or those doing business with Lloyd's.

Discreditable conduct is constituted by the acts and omissions of RMC by its employee, Richard Mears, in seeking to remove money from an IBA, knowing that it did not belong to RMC, and the acts and omissions of RMC's employees, Mark Bishop and Mairi Mayhew in respect of their conduct in relation to the removal of that money.

The misconduct arose in respect of a sum of FRF996,824.60 (approximately £100,000) ("the Fund"). This sum was made up of overpayments in respect of three losses on reinsurance policies arranged by RMC on behalf of a captive insurance company ("the Company") in 1989 and 1990. In October or November 1990, the Fund was credited to the Company's IBA and was classified as unallocated cash on that account. It remained there until August 1996.

The head of the Non-Marine Claims Department of RMC queried the continued retention of the Fund with Richard Mears, the Managing Director of RMC and asked him for instructions.

He was told to "sit on" the money. Mr Mears was always aware of the Fund's continued existence and that the Fund did not belong to RMC.

Mr Mears used his knowledge of and control over the Fund and his position as Managing Director to arrange for the Fund to be removed from the IBA. In May or June 1996, Mr Mears instigated a plan under which it was agreed with a former employee of the Company ("the former employee"), that he and the former employee should arrange to remove the Fund from the IBA and that it should be paid, in whole or in part, to the former employee. That plan was dishonest. Mr Mears has stated that the purpose of this payment to the former employee was to provide him with an incentive to place future business with RMC. In August 1996, Mr Bishop, a director of RMC was aware that Mr Mears was proposing to transfer the Fund for the benefit of the former employee. Mr Mears told Mr Bishop that it was proposed to use the Fund to "ingratiate" the former employee.

On 10 September 1996, at Mr Mears' request, the former employee wrote a letter to RMC, which purported to be on the Company's headed paper. The letter requested payment of FRF996,824.60 to an account at a bank in Luxembourg ("BCEEL"). Acting upon that letter, on 23 September 1996, a Telegraphic Transfer Authority for that amount of money for the benefit of the Company was drawn up and signed by Mairi Mayhew, the Accounts Director of RMC and another director of RMC. The sum of FRF996,824.60 was transferred to BCEEL. However, the money was returned by BCEEL because the transfer was expressed to be for the benefit of the Company whereas the account number referred to was not the Company's. Mr Mears authorised and signed a letter (together with Mairi Mayhew) dated 4 November 1996 which was sent to BCEEL and which stated that due to an error the beneficiary was incorrectly shown.

On 18 November 1996, upon Mr Mears' request, the former employee again wrote a letter to RMC which purported to be on the Company's headed paper. The letter requested that payment be made to an account with the Allied Irish Bank in Jersey in the name of an investment company in Jersey ("the investment company"), unconnected with RMC. Mr Mears had earlier arranged with the investment company that this account would be available for the Fund. The former employee signed the letter purporting to be an officer of the Company when he was not in a position to do so. Mr Mears knew that the letter did not come from the Company, that the former employee was no longer an officer of the Company and that the former employee had no authority to act on behalf of the Company.

Acting upon the request contained in the second letter, on 20 November 1996, Mairi Mayhew drew up a further Telegraphic Transfer Authority in favour of the investment company account which was signed by Mr Bishop and by RMC's company secretary. Mr Bishop was aware of the significance of the Telegraphic Transfer. The money was then transferred to the investment company's account.

Mr Mears subsequently instructed the investment company to transfer half of the money to the BCEEL account in Luxembourg for the benefit of the former employee. The money was transferred on 2 December 1996. The balance of the Fund (the equivalent of approximately £50,000) remained in the investment company's account. Mr Mears did not inform the other directors of RMC that these monies had been retained.

At an emergency board meeting which was held on 17 February 1997 in order to discuss the matter, Mr Mears maintained that the Fund was being held on behalf of RMC although he had not previously informed the directors of this. However, he confirmed that he, in practice, was the only person who could authorise its removal from the account. At that board meeting, Mr Mears was suspended as Managing Director and as employee of RMC with immediate effect.

Having recovered the Fund from the investment company and the former employee, RMC returned the full sum to the relevant underwriters.

The facts set out above constitute breaches of the Lloyd's Brokers Byelaw (No. 5 of 1988) in that the uses to which the Fund was put were not uses permitted by that byelaw. These uses included the payment of the Fund, or part of it, to the former employee who was not a person to whom it could be legitimately paid; and the payment of the Fund in order to induce a potential client of RMC to provide business or additional business for RMC which otherwise might go elsewhere.

RMC failed to take reasonable steps in connection with this transaction, in order to avoid the risk of harm to Lloyd's policyholders, the Society, its members or those doing business with Lloyd's.

The following penalties have been imposed on Cogent:-

- (1) it is to pay a fine in the sum of £40,000; and
- (2) it is to receive a Censure in the terms of this Notice.

There was no order as to costs .

LLOYD'S DISCIPLINARY BOARD