

FROM: The Secretary to Lloyd's Disciplinary Board
LOCATION: 58/NW1
EXTENSION: 5530
DATE: 24 May 2001
REFERENCE: 028/2001
SUBJECT: **LLOYD'S DISCIPLINARY AND APPELLATE
PROCEEDINGS - CASE NO. LDB9903/08
(TYSER & CO, KLJ SAMENGO-TURNER, A
LEEK & M WINWOOD**

ATTACHMENTS: Four Notices of Censure
ACTION POINTS: For information
DEADLINE: None

Last year a Lloyd's Disciplinary Tribunal found Tyser & Co (a Lloyd's broker), Keith Lawrence John Samengo-Turner, Arthur Frank Leeks and Mark Winwood guilty of various charges of misconduct and imposed the following penalties and orders for costs:

Tyser & Co

Charges: (i) four charges of breaching the provisions of the Umbrella Arrangements Byelaw (No. 6 of 1988); (ii) three charges of detrimental conduct; (iii) two charges of breaching the provisions of the Misconduct (Reporting) Byelaw (No. 11 of 1989); and (iv) one charge of failing to take reasonable steps to avoid a risk of harm to Lloyd's policyholders, the Society, its members or those doing business at Lloyd's.

Penalties: (i) a fine of £65,000 and (ii) a Notice of Censure.

Costs order: the payment of £40,000 towards Lloyd's costs

Mr Samengo-Turner

Charges: (i) three charges of improper conduct; (ii) one charge of conducting insurance business in a discreditable manner or with a lack of good faith; and (iii) one charge of discreditable conduct.

Penalties: (i) the permanent suspension of his right of admission to the underwriting room and all other parts of the premises of the Society both in the United Kingdom and abroad; (ii) the permanent suspension of his right to transact or be concerned or interested in the transaction of any class of insurance business at Lloyd's; and (iii) a Notice of Censure
Costs order: the payment of £58,600 towards Lloyd's costs.

Mr Leeks

Charges: one charge of detrimental conduct:

Penalties: (i) a fine of £5,000 and (ii) a Notice of Censure

Costs order: the payment of £3,800 towards Lloyd's costs

Mr Winwood

Charges: (i) one charge of improper conduct; (ii) one charge of conducting insurance business in a discreditable manner or with a lack of good faith; and (iii) one charge of discreditable conduct.

Penalties: (i) the permanent suspension of his right of admission to the underwriting room and all other parts of the premises of the Society both in the United Kingdom and abroad; (ii) the permanent suspension of his right to transact or be concerned or interested in the transaction of any class of insurance business at Lloyd's; and (iii) a Notice of Censure

Costs order: the payment of £32,400 towards Lloyd's costs.

The charges of misconduct

The background to the disciplinary charges against each defendant is summarised in the attached Notice of Censure.

Mr Samengo-Turner's appeal

Mr Samengo-Turner subsequently appealed the decision of the Disciplinary Tribunal. Lloyd's Appeal Tribunal dismissed his appeal in its entirety and directed that he should pay Lloyd's £40,500 in respect of the costs of the appeal (over and above the costs that he had previously been ordered to pay by the Disciplinary Tribunal).

The above summary is based on the report of the decisions of the Disciplinary Tribunal and Lloyd's Appeal Tribunal, copies of which are available on request from the Secretariat to Lloyd's Disciplinary Committees and Appeal Tribunal on extension 6989 or 5530.

This bulletin is being sent to all underwriting agents, Lloyd's brokers, corporate members, market associations, the ALM, recognised accountants and the General Insurance Standards Council.

A. P. Barber
Secretary to Lloyd's Disciplinary Board

ANNEX 1

**IN THE MATTER OF DISCIPLINARY PROCEEDINGS UNDER
LLOYD'S ACTS 1871-1982 AND LLOYD'S BYELAWS**

TYSER & CO

NOTICE OF CENSURE

In proceedings before a Lloyd's Disciplinary Tribunal the Defendant Lloyd's broker, **Tyser & Co**, admitted various charges of misconduct arising out of the firm's dealings with Frederick Henderson & Co Ltd ("FH"), a non-Lloyd's broker. The other Defendants were Arthur Leeks (a former partner in Tyser & Co) and Keith Samengo-Turner and Mark Winwood (both former executive directors of FH, a company now in liquidation).

The background to the charges was that in 1990 Tyser & Co made arrangements with Mr. Samengo-Turner which were in 1991 formalised in a written shareholders' agreement. Under the arrangements FH was established with a view to it acting as insurance broker to clients with whom Mr. Samengo-Turner had personal contacts. FH was not, and was never intended to become, a Lloyd's broker. The majority of the shareholding in FH was beneficially owned by an offshore company at Mr. Samengo-Turner's direction with a minority being owned by Tyser & Co. Mr. Samengo-Turner was the full time Managing Director with Mr. Winwood also becoming an executive director at his behest.

The other two directors were two (now retired) partners of Tyser & Co, Mr. Leeks and Mr. Donald Carpmael.

It was an essential feature of the contractual arrangements that Tyser & Co would provide FH with access to Lloyd's and, in particular, permit FH to place risks with Lloyd's underwriters by the use of Tyser & Co slips. And, this is what Tyser & Co in fact did until the Autumn of 1996. The conclusion and implementation of the contractual arrangements involved plain and obvious breaches of the Umbrella Arrangements Byelaw. This would have been obvious to Tyser & Co if any of its partners had given any proper thought to the matter and indeed (which they had not) ever read the Byelaw.

The charges which Tyser & Co admitted fell into four categories:

- (1) Breaches of the Umbrella Arrangements Byelaw
- (2) Allowing Mr. Samengo-Turner and Mr. Winwood to use Tyser & Co sponsored passes for entry to the Room for the purpose of placing business with underwriters as if they were employees of Tyser & Co, which they were not
- (3) Failures to exercise any control or supervision over the activities of FH such that in the event (i) premiums in excess of £900,000 were paid to FH by one of its clients but went missing and were never forwarded by FH to underwriters and (ii) client claims, although eventually paid in full, were only paid after very great delay, trouble and not inconsiderable expense for the client

- (4) Failures to report to Lloyd's misconduct on the part of Messrs. Samengo-Turner and Winwood who, particularly in the case of the former, drew large sums of money out of FH for their own personal benefit by way of illegal directors' loans.

The history of Tyser & Co's dealings with Mr. Samengo-Turner disclosed in the Tribunal's view a lamentable state of affairs and serious misconduct. Nevertheless, after hearing the material witnesses from Tyser & Co the Tribunal concluded that this was not a case of a deliberate attempt by Tyser & Co to evade the Byelaws. The culpability on its part derived from ignorance and indifference to regulatory compliance coupled with extreme gullibility in its dealings with Mr. Samengo-Turner. The Tribunal noted that Tyser & Co not only did not seek to deny its fault but also had itself suffered serious financial consequences from its disastrous involvement with FH and Mr. Samengo-Turner, not least from itself having to pay underwriters over £300,000 in premiums which it never received from FH. The Tribunal also noted that the partners who had been primarily responsible for the arrangements with Mr. Samengo-Turner and who had been the Tyser & Co nominated directors of FH were now retired. Hence, the financial brunt of the disciplinary proceedings would be borne by the present partners who had less personal responsibility for what had occurred. The Tribunal concluded that Tyser & Co was genuinely sorry for what had happened and that this affair could properly be treated as a lapse, albeit a serious lapse, in what was otherwise a distinguished history of the firm.

In all the circumstances the Tribunal decided that the appropriate penalty for the misconduct of Tyser & Co was a fine of £65,000 and the posting of this Notice of Censure in the Room. It also ordered Tyser & Co to pay £40,000 towards the costs of the Council.

LLOYD'S DISCIPLINARY TRIBUNAL

ANNEX 2

**IN THE MATTER OF DISCIPLINARY PROCEEDINGS UNDER
LLOYD'S ACTS 1871-1982 AND LLOYD'S BYELAWS**

KEITH LAWRENCE JOHN SAMENGO-TURNER

NOTICE OF CENSURE

In proceedings before a Lloyd's Disciplinary Tribunal the Defendant, **Keith Lawrence John Samengo-Turner**, was found guilty of charges of misconduct arising out of his wrongful obtaining of passes to the Room and his conduct as Managing Director of Frederick Henderson & Co Ltd ("FH"), a former non-Lloyd's broker and a company now in liquidation. The other Defendants were Tyser & Co, Arthur Leeks (a former partner in Tyser & Co) and Mark Winwood, another director of FH.

The background to the charges against Mr. Samengo-Turner was that in 1990 Tyser & Co made arrangements with him which were in 1991 formalised in a written shareholders' agreement. Under the arrangements FH was established with a view to it acting as insurance broker to clients with whom Mr. Samengo-Turner had personal contacts. FH was not, and was never intended to become, a Lloyd's broker. The majority of the shareholding in FH was beneficially owned by an offshore company at Mr. Samengo-Turner's direction with a minority being owned by Tyser & Co. Mr. Samengo-Turner was the full time Managing Director with Mr. Winwood also becoming an executive director at his behest.

It was an essential feature of the contractual arrangements that Tyser & Co would provide FH with access to Lloyd's and, in particular, permit FH to place risks with Lloyd's underwriters by the use of Tyser & Co slips. And, this is what in fact happened until the Autumn of 1996. The conclusion and implementation of the contractual arrangements involved plain and obvious breaches of the Umbrella Arrangements Byelaw. Mr. Samengo-Turner was familiar with the Lloyd's market from his previous employment at Lloyd's brokers.

The misconduct charges of which Mr. Samengo-Turner was found guilty fell into the following categories:-

- (1) Obtaining an annual subscriber's pass by means of what was a deliberately untruthful declaration of his status and continuing to use that pass, and a subsequent substitute's pass, in order to transact insurance business in the Room when he must have known that he was not entitled to either of such passes
- (2) Drawing very large sums of money out of FH for his own personal benefit by way of illegal director's loans and not repaying them to the company
- (3) Failing as Managing Director of FH (i) to ensure that over £900,000 in premiums paid by a client to FH were paid over to underwriters, which in the event they never were and (ii) to process a client's insurance claims on behalf of the client.

At the outset of the disciplinary proceedings Mr. Samengo-Turner challenged the jurisdiction of the Tribunal to consider the charges against him. That challenge having failed, Mr. Samengo-Turner decided not to participate in the Tribunal's investigation of the merits of the charges against him. Accordingly, the Council had to, and did, prove its case against him in his absence. Mr. Samengo-Turner did, however, make representations as to his means when the Tribunal was considering penalty and costs.

Whilst the Tribunal did not have the benefit of hearing any possible explanation from Mr. Samengo-Turner in evidence from him, the evidence presented by the Council disclosed an overwhelming case of what was grossly improper, and indeed dishonest, behaviour on his part. Mr. Samengo-Turner's conduct has not only resulted in considerable financial loss within Lloyd's community but it has adversely affected the name and reputation of Lloyd's itself. The Tribunal was of the view that Mr. Samengo-Turner had shown himself by his conduct to be someone in whom no-one within the Lloyd's community could place any trust.

The Tribunal ordered that Mr. Samengo-Turner should be permanently banned from entering Lloyd's premises and from transacting business at Lloyd's. It also ordered that this Notice of Censure be posted in the Room. The Tribunal would also have fined Mr. Samengo-Turner a sum in excess of £100,000 but ultimately decided not to do so purely on account of the evidence as to his current means. The Tribunal did, however, order that Mr. Samengo-Turner pay the sum of £58,600 towards the costs of the Council and the Tribunal. It did so because, in not admitting the charges against him and in not co-operating, Mr. Samengo-Turner vastly increased the costs of the disciplinary proceedings.

LLOYD'S DISCIPLINARY TRIBUNAL

ANNEX 3

**IN THE MATTER OF DISCIPLINARY PROCEEDINGS UNDER
LLOYD'S ACTS 1871-1982 AND LLOYD'S BYELAWS**

ARTHUR FRANK LEEKS

NOTICE OF CENSURE

In proceedings before a Lloyd's Disciplinary Tribunal the Defendant, **Arthur Frank Leeks**, admitted a charge of misconduct arising out of the provision of a substitute's pass for another Defendant, Keith Samengo-Turner. The other Defendants were Tyser & Co (of which Mr. Leeks was formerly a partner and compliance officer) and Mark Winwood (a former director of Frederick Henderson & Co Ltd ("FH"), a non-Lloyd's broker and a company now in liquidation).

The background to the charge was that in 1990 Tyser & Co made arrangements with Mr. Samengo-Turner which were in 1991 formalised in written shareholders' agreement. Under the arrangements FH was established with a view to it acting as insurance broker to clients with whom Mr. Samengo-Turner had personal contacts. FH was not, and was never intended to become, a Lloyd's broker. The majority of the shareholding in FH was beneficially owned by an offshore company at Mr. Samengo-Turner's direction with a minority being owned by Tyser & Co. Mr. Samengo-Turner was the full time Managing Director with Mr. Winwood also becoming an executive director at his behest. Mr. Leeks and Mr. Donald Carpmael, another former partner in Tyser & Co, were also directors of FH.

It was an essential feature of the contractual arrangements that Tyser & Co would provide FH with access to Lloyd's and, in particular, permit FH to place risks with Lloyd's underwriters by the use of Tyser & Co slips. And, this is what Tyser & Co in fact did until the Autumn of 1996. The conclusion and implementation of the contractual arrangements involved plain and obvious breaches of the Umbrella Arrangements Byelaw. And, this would have been obvious to Tyser & Co if any of its partners, particularly Mr. Leeks as the compliance officer, had given any proper thought to the matter and indeed (which they had not) ever read the Byelaw.

The charge which Mr. Leeks admitted was one of conduct in a manner detrimental to the interests of Lloyd's policy holders, the Society, members of the Society, Lloyd's brokers, underwriting agents or others doing business at Lloyd's. An alternative charge, based on the same facts, of conducting himself in an improper manner was not pursued by the Council in the light of Mr. Leeks' admission of the former charge.

The facts underlying the charge were as follows. On 19th December 1994 Mr. Leeks countersigned an application form in his capacity as a partner in Tyser & Co for Mr. Samengo-Turner to be admitted to the Room as a substitute for the purpose of conducting insurance business. On the application it was stated that Mr. Samengo-Turner was an employee of Tyser & Co. In fact this was untrue. Mr Samengo-Turner was an employee of

FH, a non-Lloyd's broker, of which he was the full time Managing Director and for whose benefit he conducted all insurance business.

Having heard Mr. Leeks give evidence, the Tribunal concluded that Mr. Leeks had not intended to make a deliberately untrue statement on the application form. He treated the form as a mere formality which had to be completed to give effect to Tyser & Co's arrangements with Mr. Samengo-Turner. Probably he had not even read it before signing just as he had obviously not given any thought to other Lloyd's forms which he had signed from time to time on behalf of Tyser & Co. Whilst the Tribunal was prepared to accept that Mr. Leeks had not been dishonest, it was a serious dereliction of Mr. Leeks' duty and was all the worse for his actually being the Tyser & Co compliance officer.

In considering the appropriate penalty the Tribunal bore in mind that Mr. Leeks personally only faced one charge of misconduct in relation to one event. Mr. Leeks was entitled to credit for having admitted the charge. He is now retired and is no longer involved in any way with the Lloyd's market. He lives modestly and on modest financial resources. The Tribunal was also very sympathetic to his personal circumstances about which it was told.

In the circumstances the Tribunal decided that the appropriate penalty for the instance of misconduct on the part of Mr. Leeks personally was a fine of £5,000 and the posting of this Notice of Censure in the Room. It also ordered Mr. Leeks to pay £3,800 as a contribution towards the costs of the Council.

LLOYD'S DISCIPLINARY TRIBUNAL

ANNEX 4

**IN THE MATTER OF DISCIPLINARY PROCEEDINGS UNDER
LLOYD'S ACTS 1871-1982 AND LLOYD'S BYELAWS**

MARK WINWOOD

NOTICE OF CENSURE

In proceedings before a Lloyd's Disciplinary Tribunal the Defendant, **Mark Winwood**, was found guilty of charges of misconduct arising out his behaviour as an employee and director of Frederick Henderson & Co Ltd ("FH"), a former non-Lloyd's broker and a company now in liquidation. The other Defendants were Tyser & Co, Arthur Leeks (a former partner in Tyser & Co) and Keith Samengo-Turner, the former Managing Director of FH.

The background to the charges against Mr. Winwood was that in 1990 Tyser & Co made arrangements with Mr. Samengo-Turner which were in 1991 formalised in a written shareholders' agreement. Under the arrangements FH was established with a view to it acting as insurance broker to clients with whom Mr. Samengo-Turner had personal contacts. FH was not, and was never intended to become, a Lloyd's broker. The majority of the shareholding in FH was beneficially owned by an offshore company at Mr. Samengo-Turner's direction with a minority being owned by Tyser & Co. Mr. Samengo-Turner was the full time Managing Director. Mr. Winwood was initially an employee of FH and was subsequently appointed a director at Mr. Samengo-Turner's behest on 22 April 1992. Mr. Winwood's primary role within FH was to look after the administrative side of clients' insurance business. He was a Tyser & Co sponsored substitute at Lloyd's.

The misconduct charges of which Mr. Winwood was found guilty fell into two categories:-

- (1) Drawing sums of money out of FH for his own personal benefit by way of illegal director's loans and not repaying them to the company
- (2) Failing (i) to ensure that over £900,000 in premiums paid by a client to FH were paid over to underwriters, which in the event they never were and (ii) to process a client's insurance claims on behalf of the client.

At the outset of the disciplinary proceedings Mr. Winwood challenged the jurisdiction of the Tribunal to consider the charges against him. That challenge having failed, Mr. Winwood decided not to participate in the Tribunal's investigation of the merits of the charges against him. Accordingly, the Council had to, and did, prove its case against him in his absence.

Whilst the Tribunal did not have the benefit of hearing any possible explanation from Mr. Winwood in evidence from him, the evidence presented by the Council disclosed a serious case of dereliction of duty on his part. Mr. Winwood appears in practice to have been content simply to follow Mr. Samengo-Turner's lead and to have exercised no independent judgement about the propriety of how FH was run. Moreover, he too, like Mr. Samengo-

Turner albeit on a smaller scale, was prepared to draw money out of FH for his own personal benefit by way of illegal director's loans. The collapse of FH has not only resulted in considerable financial loss within the Lloyd's community but it has adversely affected the name and reputation of Lloyd's itself. As an executive director of FH, Mr. Winwood must bear his share of the responsibility. The Tribunal was of the view that Mr. Winwood had shown himself not to be someone who was fit to have business dealings with members of the Lloyd's community.

The Tribunal ordered that Mr Winwood should be permanently banned from entering Lloyd's premises and from transacting business at Lloyd's. It also ordered that this Notice of Censure be posted in the Room. In recognition of Mr Winwood's subsidiary role to that of Mr Samengo-Turner, it did not in his case think an additional financial penalty was appropriate but it did order that he should pay £32,400 towards the costs of the Council and the Tribunal.

LLOYD'S DISCIPLINARY TRIBUNAL