

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 333 OF 2009

BETWEEN:

- (1) CADOGAN PETROLEUM PLC
- (2) CADOGAN PETROLEUM HOLDINGS LIMITED
- (3) LLC ASTROINVEST-UKRAINE
- (4) USENCO UKRAINE

Plaintiffs

-AND-

- (1) MARK TOLLEY
- (2) MARKSMAN INTERNATIONAL LIMITED
- (3) SONICGUAGE INC
- (4) FIVE CONTINENTS FINANCIAL LIMITED

Defendants



WRIT OF SUMMONS

- TO:** (1) **Mark Tolley**
- (a) Apt 21, Building 23a Pushkinska Street
Kiev
Ukraine; and/or
- (b) The Yacht "ARENALINE", No 74
Panne A, Cap d'Ail Marine
Nice
France
- TO:** (2) **Marksman International Limited**
- c/o Odra (Seychelles) Limited
PO Box 983
Victoria
Mahe
Seychelles
- TO:** (3) **SonicGauge Inc.**
- Maples Corporate Services Limited
PO Box 309
Ugland House
South Church Street
George Town
Grand Cayman, KY1-1104
Cayman Islands

TO:

(4) Five Continents Financial Limited

4th Floor, Anderson Square
64 Shedden Road
George Town
Grand Cayman
Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within 28 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued: *10th* July 2009

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue, unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

GENERAL ENDORSEMENT

The First Plaintiff is a company incorporated in England and Wales and listed on the London Stock Exchange. The Second, Third and Fourth Plaintiffs are the First Plaintiff's direct or indirect subsidiaries.

The First Defendant was the former Chief Executive Officer of the First Plaintiff. The First Defendant was dismissed by the First Plaintiff in March 2009.

The First and Second Defendants (directly and/or indirectly) received substantial bribes and secret commissions from the Plaintiffs' suppliers and fraudulently represented the price of suppliers' goods and services to the Plaintiffs. Further the First and Second Defendants acted in breach of contractual and fiduciary duties in the management of the affairs of the Plaintiffs. Further the First and Second Defendants conspired with others to defraud and injure the Plaintiffs.

The Third and Fourth Defendants are companies incorporated in the Cayman Islands. The Third Defendant is a Cayman Islands Company which was established and its business facilitated by the First Defendant through the use of the Plaintiffs' assets and in breach of the First and Second Defendants' duties to the Plaintiffs.

The Fourth Defendant is the recipient of funds which the Plaintiffs claim are held on constructive trust for them as representing bribes or secret profits received by the Second Defendant on the instructions of the First Defendant from customers of the Plaintiffs.

The Plaintiffs' provisional estimate of the total value of their claim is in excess of US\$25,000,000.

The Plaintiffs claims are for the following relief, which is set out (for the avoidance of doubt) without any election being made between alternative remedies or causes of action.


1. In relation to bribes and secret commissions paid to, or to the benefit of, *inter alia*, the First and Second Defendants by means of (1) the payment of US\$2,140,000 made on 3 November 2008 by Global Process Systems LLC into the Second Defendant's account number 14001864 sort code 16-57-82 at Ansbacher (Jersey) Bank Limited, (2) the payment of Australian dollars to the value of US\$310,000 made on 3 November 2008 by Global Process Systems LLC for the benefit of the First Defendant into the account of Bennett Builders (SA) Pty Limited number 049066340 sort code 105-035 at Bank SA, Renmark, South Australia; and (3) all other payments made by Global Process Systems LLC, Global Process Systems Inc and Smith Eurasia Limited to or for the benefit of the First and/or Second Defendants between 2006 and June 2009:
 - 1.1 Accounts against the First and Second Defendants in relation to the said payments;
 - 1.2 Declarations that all such payments or their traceable proceeds are held on constructive trust for the First Plaintiff and orders for payment of the same to the First Plaintiff;
 - 1.3 Alternatively, orders for the payment of the balance of such accounts to the First Plaintiff as money had and received;
 - 1.4 Alternatively, against the Second Defendant as equitable compensation for knowing receipt of money paid in breach of fiduciary duty;
2. Further or alternatively, damages for fraud against the First and Second Defendants.
3. Further or alternatively, equitable compensation for breach of contract and fiduciary duty against the First and Second Defendants.
4. Further or alternatively, equitable compensation for dishonest assistance in breaches of fiduciary duty against the Second Defendant.
5. Further or alternatively, damages for conspiracy to injure and/or to defraud against the First and Second Defendants.
6. Further or alternatively, damages and/or equitable compensation for negligent mismanagement of the affairs of the Plaintiffs at common law against the First and Second Defendants.
7. A Mareva and/or Proprietary Injunction against the First Defendant and the Second Defendant.
8. In relation to the business of the Third Defendant:
 - 8.1 Accounts against the First and Second Defendants of their profits derived from the Third Defendant (whether in share dividends, salary,

consultancy fees, director's fees, consideration for the transfer of their shares (howsoever held) or otherwise) and Declarations that such profits or their proceeds are held on constructive trust for the First Plaintiff (alternatively an order for payment of the balance of that account to the First Plaintiff) and orders for payment of the same to the First Plaintiff;

- 8.2 Declarations that the shareholdings (whether direct or indirect) of the First Defendant and the Second Defendant in the Third Defendant are held on constructive trust for the First Plaintiff;
 - 8.3 An account of the profits of the Third Defendant and Declarations that such profits or their proceeds are held on constructive trust for the First Plaintiff (alternatively an order for payment of the balance of that account to the First Plaintiff);
 - 8.4 Declarations that the business, assets and goodwill of the Third Defendant are held on constructive trust for the First Plaintiff;
 - 8.5 Further or alternatively, equitable compensation for breach of fiduciary duty against the First Defendant;
 - 8.6 Further or alternatively, equitable compensation for dishonest assistance in breaches of fiduciary duty by the First Defendant as against the Second and Third Defendants;
 - 8.7 Further and alternatively, damages for conspiracy to injure and/or to defraud against the First and Second Defendants; and
 - 8.8 Further or alternatively, damages and/or equitable compensation for negligent mismanagement of the affairs of the First and Second Defendants at common law and/or in equity against the First Defendant;
9. In relation to the Fourth Defendant:
- 9.1 A Declaration that the payment of US\$3,118,500 and/or its traceable proceeds, paid to the Fourth Defendant on or about 1 June 2009 pursuant to an Investment Agreement Number MIL-5CONT-02 between the Fourth Defendant and the Second Defendant and dated 29 May 2009, is held by the Fourth Defendant on constructive trust for the First Plaintiff;
 - 9.2 An Order for the payment to the First Plaintiff of the US\$3,118,500 (together with any interest accruing thereto) by the Fourth Defendant pursuant to an Investment Agreement Number MIL-5CONT-02, entered into between the Fourth Defendant and the Second Defendant and dated 29 May 2009;
 - 9.3 An account of any profits made by the Fourth Defendant upon the sum of US\$3,118,500 and a Declaration that such profits or their proceeds are held on constructive trust for the First Plaintiff (alternatively an order for payment of the balance of that account to the First Plaintiff);
10. All such further or other Accounts, Inquiries, Declarations, Orders or Directions as may to the Court seem just or appropriate;
11. Such further or other relief as shall fully compensate the Plaintiffs for the wrongdoings of the First, Second and Third Defendants;

12. Interest on such damages and/or equitable compensation as the Plaintiffs may be awarded;
13. Further or other relief;
14. Costs.

Dated: ⁶10 July 2009



STUARTS WALKER HERSANT
Attorneys at Law for the Plaintiffs

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of each Defendant or by each Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If A Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

***See over for notes for guidance
Please complete overleaf***

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 28 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a **FIRM** and an attorney is not instructed, the form must be completed by a **PARTNER** by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual **TRADING IN A NAME OTHER THAN HIS OWN**, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a **LIMITED COMPANY** the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communication for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Endorsement by Plaintiffs' Attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Stuarts Walker Hersant
Attorneys-at-Law for the Plaintiffs
Cayman Financial Centre
36A Dr. Roy's Drive
P.O. Box 2510 GT
George Town
Grand Cayman

Attention: Richard Annette
Reference: 4300

Endorsement by Defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

