

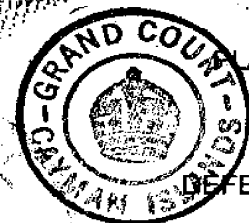
IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

FSD00040

CAUSE NO: FSD OF 2009

BETWEEN:

HERALD FUND SPC



PLAINTIFF

AND:

ERNST & YOUNG

FIRST

AND:

ERNST & YOUNG S.A.

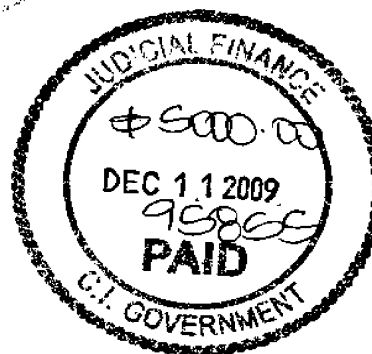
DEFENDANT

SECOND  
DEFENDANT

**WRIT OF SUMMONS**

TO:

Ernst & Young, a Cayman Islands partnership  
PO Box 510  
Suite 6401  
62 Forum Lane  
Camana Bay  
Grand Cayman KY1-1106  
CAYMAN ISLANDS



AND TO:

Ernst & Young S.A.  
7, Parc d'Activité Syrdall  
Luxembourg  
L-5365 Munsbach  
LUXEMBOURG

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

Within 14 days after the service of this Writ on you, the First Defendant, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

Within 28 days after the service of this Writ on you, the Second Defendant, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495GT, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 11th day of December, 2009

NOTE – This Writ may not be served on the First Defendant, no later than 4 calendar months, and on the Second Defendant, no later than 6 calendar 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.

- (c) the negligent misstatement of the First Defendant in the 2005, 2006 and 2007 Reports;
  - (d) interest thereon pursuant to section 34 of the Judicature Law (2007 Revision), on such sums as are found due to the Plaintiff and for such rate and for such period as the Court thinks fit; and
  - (e) such further or other relief as the Court thinks fit.
8. As against the Second Defendant, the Plaintiff's claim is for loss and damage suffered as a result of:
- (a) breach of the 2004, 2005 and 2006 Contracts and/or gross negligence, and/or breach of fiduciary duty, of the Second Defendant as the Plaintiff's auditor;
  - (b) the wilful default of the Second Defendant as the Plaintiff's auditor; and
  - (c) the negligent misstatement of the Second Defendant in the 2004, 2005 and 2006 Reports;
  - (d) interest thereon pursuant to section 34 of the Judicature Law (2007 Revision), on such sums as are found due to the Plaintiff and for such rate and for such period as the Court thinks fit; and
  - (e) such further or other relief as the Court thinks fit.

  
\_\_\_\_\_  
**WALKERS**  
Attorneys at Law for the Plaintiff

This Writ is issued by Walkers, Attorneys at Law, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9001, for the Plaintiff whose address for service is care of said Attorneys at Law.



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Service of the Writ is acknowledged accordingly

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(signed)  
Attorney for the

Address for service:

**Please complete overleaf**

**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 communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

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

Walkers  
Attorneys at Law  
Walker House  
87 Mary Street  
George Town  
Grand Cayman KY1-9001  
  
Ref: MG/83460

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

[Empty box for defendant's attorney indorsement]

**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 the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Courts Office, PO Box 495GT, 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 instalments 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 Acknowledgment of Service and return it to the Court's office.
2. For the purpose of calculating the period of 14 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 Court's office.