

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 136 OF 2010

BETWEEN:

THE INSURANCE COMPANY OF  
THE WEST INDIES (CAYMAN) LIMITED

PLAINTIFF

AND:

POLAR BEAR AIR CONDITIONING LTD.

DEFENDANT

WRIT OF SUMMONS

TO: Polar Bear Air Conditioning Ltd.  
P.O. Box 31198 SMB  
22 Regency Place  
Industrial Park  
George Town  
Grand Cayman



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of P.O. Box 472, George Town, Grand Cayman, in respect of the claim set out on the next page.

Within 14 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, PO Box 495 GT, 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 26<sup>th</sup> day of March, 2010

NOTE – This Writ may not be served later than 4 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.



## STATEMENT OF CLAIM

1. The Plaintiff is an insurer within the meaning of sections 2 and 15 of the Motor Vehicle Insurance (Thirty Party Risks) Law (2007 Revision) ("the Law").
2. The Defendant is an ordinary resident Cayman Islands company.
3. On 22<sup>nd</sup> April, 2005, The Insurance Company of the West Indies Limited, a foreign company registered in the Cayman Islands ("ICWI Jamaica"), in consideration of the payment of a premium of six hundred and fifty six Cayman Islands dollars and two cents (CI\$656.02), issued to the Defendant a commercial vehicle policy of insurance bearing policy number 21 MVMCMC 33811008 1 (the "Policy"), by which ICWI Jamaica agreed that for the period of twelve (12) months from 22<sup>nd</sup> April, 2005 to 21<sup>st</sup> April, 2006 it would, inter alia, indemnify the Defendant in the event of an accident caused by or arising out of the use of the Defendant's Chevrolet Astro motor vehicle, registration number 88346, (the "Vehicle") against all sums including a third party claimant's costs and expenses which the Defendant should become legally liable to pay in respect of:
  - (a) death of or bodily injury to any person, subject to a maximum sum payable of CI\$1,000,000.00; and
  - (b) damage to property, subject to a maximum sum payable of CI\$250,000.00 arising out of one event.
4. ICWI Jamaica also agreed, pursuant to the Policy, to indemnify any person authorized by the Defendant to drive the vehicle provided that such authorized drivers:
  - (a) were driving on the Defendant's order or with its permission;
  - (b) were over the age of 23 and under the age of 70 with a drivers licence for 1 year;
  - (c) observed and fulfilled and be subject to the terms of the Policy insofar as they could apply; and
  - (d) were not entitled to indemnity under any other policy.
5. The foregoing liability is such liability as is required to be covered by a policy of insurance under section 4(1) of the Law.
6. ICWI Jamaica made the contract of insurance on the basis of and in reliance upon the truth of a proposal form and declaration completed by a Mr. G. Mobley ("Mr. Mobley") on behalf of the Defendant dated 20<sup>th</sup> April, 2005 (the "Proposal Form"). In the Proposal Form the following questions, amongst others, were put to the Defendant under the section headed "THE DRIVERS (INCLUDING THE PROPOSER)":
  - (b) To the best of your knowledge has any intended driver of the motor vehicle not driven for any consecutive six (6) month period in the past five (5) years?

- (d) To the best of your knowledge does any person who will drive the motor vehicle suffer from a physical infirmity or from defective vision or hearing?
- (e) To the best of your knowledge in the past five (5) years has any person who will drive the motor vehicle: (1) been fined, (2) had their licence endorsed / revoked, (3) been prosecuted for a motoring offence?"

In each case, after the said questions, the Proposal Form contained boxes marked 'Y' and 'N' for the proposer to tick its answers 'yes' or 'no', and also either a line or further boxes for details to be provided in the event that the proposer answered 'yes' to any of the questions.

- 7. The Defendant answered 'no' to each of the questions set out in paragraph 6 above by ticking the boxes marked 'N' next to the questions.
- 8. On 1<sup>st</sup> January 2006, ICWI Jamaica transferred all liabilities under the Policy to the Plaintiff, The Insurance Company of the West Indies (Cayman) Limited, by way of an endorsement to the Policy.
- 9. On or about 22<sup>nd</sup> April 2006, the Defendant paid to the Plaintiff a renewal premium of CI\$583.13 and the Plaintiff duly renewed the Policy for an additional twelve (12) months and delivered to the Defendant a Certificate of Insurance for the period 22<sup>nd</sup> April, 2006 to 21<sup>st</sup> April, 2007. This renewal of the Policy was confirmed by way of an endorsement (Endorsement No. 615745) to the Policy dated 22<sup>nd</sup> May 2006.
- 10. On 4<sup>th</sup> January 2007, during the policy period and whilst the Certificate of Insurance was in full force and effect the Vehicle was involved in a collision (the "Collision") which resulted in the death of the late Glen McCalister Seymour (the "late Mr. Seymour").
- 11. At midnight on 21<sup>st</sup> April 2007 the Policy lapsed, but subsequently, on 24<sup>th</sup> April 2007, the Defendant paid to the Plaintiff a second renewal premium of CI\$583.13 and the Plaintiff duly reinstated the Policy for an additional twelve (12) months and delivered to the Defendant a Certificate of Insurance for the period 24<sup>th</sup> April, 2007 to 23<sup>rd</sup> April, 2008. This renewal of the Policy was effected by way of an Endorsement (Endorsement No. 734288) to the Policy dated 15<sup>th</sup> May 2007.
- 12. The representations of fact contained in the answers set out in paragraph 6 above were false in that the Defendant allowed Henry York Carter ("Mr. Carter") to drive the Vehicle, and Mr. Carter:
  - (a) had been disqualified from driving from 9<sup>th</sup> January 2000 to 9<sup>th</sup> January 2006, and, therefore, had not driven for a consecutive six (6) month period in the past five (5) years;
  - (b) is blind in his left eye, and, therefore, suffers from a physical infirmity and from defective vision; and
  - (c) has been prosecuted and convicted in respect of the following motoring offences:
    - (i) in June 1999, of driving without insurance, driving with an expired

registration, leaving the scene of an accident and reckless driving, resulting in fines;

- (ii) on 4<sup>th</sup> April 2000, of driving without insurance (for the second time) and driving whilst intoxicated, resulting in fines totalling C1\$650 and a two year disqualification from driving with effect from 9<sup>th</sup> January 2000;
  - (iii) on 9<sup>th</sup> July 2001, of careless driving, driving whilst disqualified, leaving the scene of an accident, moving a vehicle involved in an accident and driving without insurance (for the third time), resulting in fines totalling C1\$400, a 240 hour Community Service Order and a two year disqualification from driving with effect from 2<sup>nd</sup> January 2002;
  - (iv) also on 9<sup>th</sup> January 2001 (viz. a second set of offences), of driving without being qualified, driving without insurance, dangerous driving (manner and speed), failing to comply with an order given by a police officer and failing to comply with a traffic sign, resulting in fines totalling C1\$1,000, a suspended 6 month term of imprisonment and a further two year disqualification from driving with effect from 9<sup>th</sup> January 2004; and
  - (v) in May 2003, of driving while disqualified, driving without insurance, taking an automobile without the owner's consent, careless driving, and leaving the scene of an accident, resulting in a seven month term of imprisonment and further fines.
13. In the alternative to paragraph 12 above, if Mr. Carter was not an intended driver of the Vehicle at the time Mr. Mobley completed the proposal form and declaration on behalf of the Defendant in April 2005, and if the Defendant's representations of fact contained in the answers set out in paragraph 6 above were therefore true at the time of the proposal, the Defendant failed to comply with its continuing duty of utmost good faith by failing to disclose the facts set out in parts (a) to (c) of paragraph 12 above to the Plaintiff before allowing Mr. Carter to drive the Vehicle.
14. The facts set out in parts (a) to (c) of paragraph 12 above were material in that they would have influenced the Plaintiff, and would have influenced the judgment of any prudent insurer, in fixing the premium of insurance or deciding whether to take the risk of insuring the Defendant.
15. On or about 24<sup>th</sup> January 2007, Ms. Heather Lanigan of the Plaintiff telephoned Mr. Mark Veilleux, General Manager of the Defendant, and advised him that the Plaintiff was avoiding the Policy on the basis of the non-disclosure of material facts, including the non-disclosure of the fact that Mr. Carter is blind in his left eye and the non-disclosure of Mr Carter's previous convictions for motoring offences.
16. On 29<sup>th</sup> December 2009, Mr. Paul Aiken, as Personal Representative of the Estate of the late Mr. Seymour, issued a writ and began an action in this Honourable Court bearing cause number 636 of 2009, against the Defendant and Mr. Carter, claiming damages on the ground that the injuries sustained by the deceased were caused by Mr. Carter's negligent driving of the Vehicle. The claim is one in respect of liability which would have been covered by the terms of the Policy. The action has not yet been tried.

17. The Plaintiff was, in the premises, entitled to avoid the Policy pursuant to section 15(3) of the Law on the grounds that the Policy was obtained by the non-disclosure of material facts referred to in paragraph 11 above, and the Plaintiff did so avoid the Policy as set out in paragraph 15 above.

AND the Plaintiff claims:

- (1) a declaration that it was entitled to avoid the Policy dated 22<sup>nd</sup> April 2005 on the ground that the Policy was obtained by non-disclosure of material facts;
- (2) a declaration that the Plaintiff has duly avoided the Policy; and
- (3) costs.

*Ogier*

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**OGIER**

Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was issued by Ogier, Attorneys at Law, whose address for service is:  
89 Nexus Way, Camana Bay, Grand Cayman KY1-9007, Cayman Islands  
(Reference: 403165.00002/WRJ)

**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 Law Courts, P.O. 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 (ie., 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 is more than one) is required to complete an Acknowledgment of Service and return it to the Courts 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 of 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 his 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. \_\_\_ OF 2010

BETWEEN:

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THE WEST INDIES (CAYMAN) LIMITED

PLAINTIFF

AND:

POLAR BEAR AIR CONDITIONING LTD.

DEFENDANT

**ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important: Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ of Summons is being acknowledged.

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2. State whether the Defendant intends to contest or otherwise participate in the proceedings (*tick appropriate box*).

yes

no

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*).

yes

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Service of the Writ of Summons is acknowledged accordingly.

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**Defendant / Attorney for the Defendant**

Address for service:

**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 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.

OGIER  
Attorneys-at-Law  
89 Nexus Way  
Camana Bay  
Grand Cayman KY1-9007  
CAYMAN ISLANDS  
  
T: 345.949.9876  
F: 345.949.1987  
Ref: 403165.00002/WRJ

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