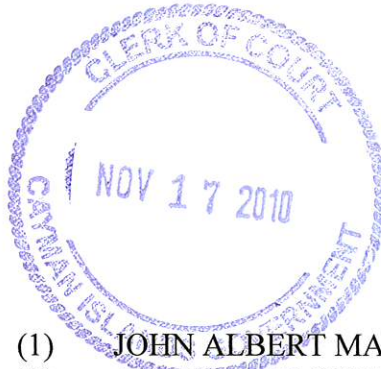


IN THE GRAND COURT OF THE CAYMAN ISLANDS

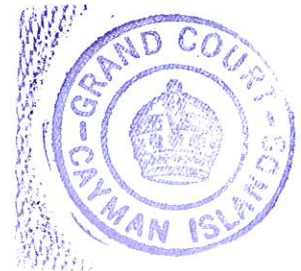


CAUSE NO: 421 OF 2010

BETWEEN: (1) JOHN ALBERT MARQUIS 1<sup>ST</sup> PLAINTIFF  
(2) ANTONETTE STEWART-MARQUIS 2<sup>ND</sup> PLAINTIFF

AND: BAF INSURANCE COMPANY (CAYMAN) LTD DEFENDANT

WRIT OF SUMMONS



TO: BAF INSURANCE COMPANY (CAYMAN) LTD  
Dot Com Centre, Dorcy Drive, Industrial Park  
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 [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, P.O. 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 17<sup>th</sup> day of November, 2010

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.

STATEMENT OF CLAIM

1. The First Plaintiff and Second Plaintiffs were at all material times employees of the Defendant and the Defendant was at all material times carrying on the business of insurance provider in the Cayman Islands.
2. On 4<sup>th</sup> November, 2009 the Defendant acquired the assets and liabilities of an insurance company by the name of British American Insurance Company (Cayman) Ltd. (hereinafter referred to as "BAICO"). At the time of the acquisition, the Defendant took responsibility for all contracts that were in force at the time together with all persons employed by BAICO. The Defendants also assumed all responsibilities of the staff and employees of BAICO including the First and Second Plaintiffs.
3. Following the acquisition of BAICO, the Defendant continued to employ the First and Second Plaintiffs and remunerated them in accordance with their previous contract of employment with BAICO. The Defendant continued to provide office space at No. 12 Alexander Place for the First and Second Plaintiffs to carry out their work. The necessary equipment and furnishings were provided by the Defendant. The hours of work were set by the Defendant and the First and Second Plaintiffs complied therewith. The First and Second Plaintiffs continued their duties as Consultant and Manager respectively and the Defendant continued to treat the employees in like manner as BAICO did. In other words, the Defendant took over the contracts of BAICO without any changes whatsoever.
4. On or around 15<sup>th</sup> November, 2009, the Defendant caused its servants or agents to enter into the First Plaintiff's office at No. 12 Alexander Place and removed the First Plaintiff's computer and telephone, leaving the First Plaintiff with no equipment to carry on his duties. The Defendant failed and/or refused to provide any office for the First Plaintiff to carry out his duties.

5. The First Plaintiff showed up at work every day for approximately three (3) weeks in the hope that the Defendant would provide him with work to do and a place to carry out his work as the Defendant had promised during their discussions to no avail. The First Plaintiff had no choice than to cease going to an empty office everyday with no work to do and informed the Defendant verbally on or around 15<sup>th</sup> November, 2010 that he could no longer work under those circumstances.
6. The Defendant has constructively and/or wrongfully terminated the First Plaintiff's contract of employment.
7. On 16<sup>th</sup> December, 2009 the Second Plaintiff received an undated letter from the Defendant terminating her employment relying on grounds of redundancy. The letter states *inter alia*:  
  
"The operation of the stand alone health insurance operation operated by BAICO Bahamas, reporting to BAICO Trinidad at Alexander place has been merged with the main operations of BAF. Due to that merge, the present economic conditions and the need to remain competitive the position of Manager is no longer required, effectively 16<sup>th</sup> December 2009."
8. The Defendant failed to follow the procedure and general aspects of the law relating to redundancy and as such has wrongfully terminated the Second Plaintiff's contract of employment.
9. It is worth giving a brief overview of the two (2) contracts that were taken over by the Defendant at the time of the acquisition of BAICO. The contract with the First Plaintiff was by oral agreement and the contract with the Second Plaintiff was in writing.

10. On or around November, 2009, the Defendant wrongfully terminated the First Plaintiff's contract and on 16<sup>th</sup> December, 2009 the Defendant wrongfully terminate the Second Plaintiff's contract of employment and the Defendant is therefore in breach of these two contracts and is liable to the First and Second Plaintiffs in damages, interest and costs.

**THE FIRST PLAINTIFF**

11. On 1<sup>st</sup> July, 2007, by way of an **oral agreement**, "BAICO" agreed to employ the First Plaintiff, **John Albert Marquis** as an Insurance Consultant in the Health Insurance Division and that the First Plaintiff would carry out his duties at No.12 Alexander Place, Dorcy Drive, Industrial Park, George Town, Grand Cayman, Cayman Islands. It was also agreed orally that the First Plaintiff's contract would be renewed every two years from 1<sup>st</sup> July, 2007.
12. It was orally agreed that the contract would be for a period of twenty-four (24) months from the 1<sup>st</sup> day of July 2007 and ending on the 30<sup>th</sup> day of June 2009. It was further orally agreed that at the end of the said period the contract (unless otherwise terminated) may be renewed for a similar or revised period on mutual agreement by the parties upon the same or revised terms and conditions.
13. There was no termination of the First Plaintiff's contract on 30<sup>th</sup> June, 2009 and so the First Plaintiff continued to work and by its conduct, the Defendant accepted that the Agreement was renewed for a further two (2) years up to 30<sup>th</sup> June, 2011 and continued to compensate the First Plaintiff in accordance with the same terms and conditions of the previous Agreement.

14. It was orally agreed that the First Plaintiff would receive remuneration as follows:
- (a) Salary of five thousand five hundred Cayman Islands dollars (CI\$5,500.00) each month payable on the 25<sup>th</sup> day of each calendar month commencing the 30<sup>th</sup> day of June 2007;
  - (b) An annual bonus payable at the end of the calendar year based on the net income target, of five hundred and fifty thousand Cayman Islands dollars (CI\$550,000.00), each calendar year running from 1<sup>st</sup> July to 30<sup>th</sup> June.
    - (i) If the First Plaintiff exceeded the net income target, he would receive: 6 months salary
    - (ii) If the First Plaintiff reached 100% of the net income target he would receive: 5 months salary
    - (iii) If the First Plaintiff reached 80%-99% of the net income target he would receive: 4 months salary
    - (iv) If the First Plaintiff reached 50%-79% of the net income target he would receive: 3 months salary
15. The First Plaintiff exceeded the target of CI\$550,000.00 for the period 1<sup>st</sup> July, 2008 to 30<sup>th</sup> June, 2009 is entitled to bonus equivalent to six (6) times his monthly salary which is  $CI\$5,500 \times 6 = CI\$33,000$ . The Defendant has failed to pay the First Plaintiff his bonus for the period 1<sup>st</sup> July, 2008 to 30<sup>th</sup> June 2009 and is liable to the First Plaintiff in that amount.
16. Over the previous years, the First Plaintiff has always exceeded the above target and collected his bonus accordingly.

Had the Defendant not wrongfully terminated the First Plaintiff's contract, the First Plaintiff would no doubt exceeded the target and would be entitled to further bonuses for the duration of the contract up to 30<sup>th</sup> June, 2011. The First Plaintiff has been deprived of bonuses for the period 1<sup>st</sup> July, 2009 to 30 June, 2011 (i.e. 2 years at CI\$33,000.00 per year.

17. It was also orally agreed that the First Plaintiff would be entitled to one (1) month paid vacation each year. The First Plaintiff had not been given any vacation since the beginning of the contract on 1<sup>st</sup> July, 2007 and so the Defendant is owing the First Plaintiff vacation for four years and four months at the rate of CI\$5,500.00 per year (i.e. 4 yrs 4 months x CI\$5,500).
18. Had the Defendant not wrongfully terminated the First Plaintiff's contract of employment the First Plaintiff would have received a further 1 year and 8 months in vacation pay for the duration of his contract up to 30<sup>th</sup> June, 2011 which amounts to CI\$5,500 x 1 yr and .8 months.
19. It was implied that the Defendant would comply with the statutory laws of the Cayman Islands and make the necessary contributions towards pension and pay medical insurance on behalf of the First Plaintiff.
20. Had the Defendant not wrongfully terminated the First Plaintiff's contract of employment, the First Plaintiff would be entitled to pension and medical insurance benefits.
21. It was orally agreed that the First Plaintiff would receive ten percent (10%) commission of the total gross sales each month. It was further agreed that the First Plaintiff would receive the monthly commission on the 15<sup>th</sup> of each subsequent month.

22. That Defendant continued to pay the First Plaintiff the 10% commission in accordance with his previous contract but has failed to pay the First Plaintiff any commission for the month of November, 2009. The total amount of the commission for December, 2009 would be approximately CI\$7,500.00 based on the commissions paid over the past previous months and new business coming in during that month. The Defendant is liable to the First Plaintiff for commission for the months of November, and December, 2009.
23. It was orally agreed that upon termination of the First Plaintiff's contract of employment that he would continue to receive all commissions payable from all existing and in force policies for the duration of such policies.
24. The First Plaintiff had a total number of sixty-two (62) policy holders at the time of his termination around 11<sup>th</sup> December, 2009 and is entitled to all commissions payable from January 2010 until termination of each policy.

#### **THE SECOND PLAINTIFF**

25. On 1<sup>st</sup> July, 2007, BAICO entered into a **written agreement** with the **Second Plaintiff, Antonette Stewart Marquis**, whereby the Second Plaintiff would provide the services of Manager and would carry out her duties at No.12 Alexander Place, Dorcy Drive, Industrial Park, George Town, Grand Cayman, Cayman Islands.
26. It was expressly agreed that the Second Plaintiff's contract would be renewed every two years from 1<sup>st</sup> July, 2007. It was also expressly agreed that the Agreement could be renewed for a similar period on the same terms and conditions by mutual agreement.

When the two (2) year period expired on 30<sup>th</sup> June, 2009, the Second Plaintiff continued to carry out her duties as she did under the previous Agreement and by conduct the Defendant accepted that the Agreement was renewed for a further two (2) years up to 30<sup>th</sup> June, 2011 and continued to compensate the Second Plaintiff in accordance with the previous Agreement. Paragraph 2 of the contract dated 1<sup>st</sup> July, 2007 states:

“This Agreement shall be for a period of twenty-four (24) months subject to the provisions contained herein commencing on the day of (sic) 1<sup>st</sup> day of July 2007 and ending on the 30<sup>th</sup> day of June 2009). At the end of the said period this Agreement (unless otherwise terminated) may be renewed for a similar or revised period on mutual agreement by the parties upon the same or revised terms and conditions”. (my emphasis)

27. Paragraph 6 of the Agreement dated 1<sup>st</sup> July, 2007 states that the Second Plaintiff, would receive remuneration as follows:
- (a) Salary of five thousand five hundred Cayman Islands dollars (CI\$5,500.00) each month payable on the 25<sup>th</sup> day of each calendar month commencing the 30<sup>th</sup> day of June 2007;
  - (b) An annual **bonus** payable at the end of the calendar year based on the net income target, of five hundred and fifty thousand Cayman Islands dollars (CI\$550,000.00), each calendar year running from 1<sup>st</sup> July to 30<sup>th</sup> June.
    - (i) If the Second Plaintiff exceeded the net income target, she would receive: 6 months salary

- (iii) If the Second Plaintiff reached 100% of the net income target she would receive: 5 months salary
- (iii) If the Second Plaintiff reached 80%-99% of the net income target she would receive: 4 months salary
- (iv) If the Second Plaintiff reached 50%-79% of the net income target she would receive: 3 months salary

28. With respect to paragraph 9(a) above, the Defendant has failed to pay the Second Plaintiff her salary of CI\$5,500.00 each month under the contract. Instead the Defendant has paid the Second Plaintiff monthly salary of CI\$3,500.00 from 1<sup>st</sup> July, 2007 to 31<sup>st</sup> March, 2010 which is 2 years and 8 months amounting to CI\$98,000.00. The Defendant should have paid the Second Plaintiff the sum of CI\$5,500 x 32 months. The Defendant is therefore owing the Second Plaintiff the difference between CI\$176,000 and CI\$98,000.
29. Had the Defendant not breached the contract the Second Plaintiff would continue to receive monthly salary of CI\$5,500.00 per month up to the end of the contract on 30<sup>th</sup> June 2011 which is from 1<sup>st</sup> April, 2010 to 30<sup>th</sup> June 2011 (i.e. 14 months times the monthly salary).
30. Paragraph 6(c) of the contract expressly states that the Second Plaintiff would receive housing allowance of CI\$1,000.00 each month. The Defendant has failed to pay housing allowance to the Second Plaintiff since 1<sup>st</sup> July 2007 up to the time of her dismissal on 16<sup>th</sup> December, 2009 which amounts to a total of 30 months. The Defendant is therefore indebted to the Second Plaintiff for housing allowance.
31. Had the Defendant not breached the contract, the Second Plaintiff would have continued to received CI\$1,000.00 per month as housing allowance up to the end of the contract on 30<sup>th</sup> June, 2011, which would be a further 18 months.

32. Clause 7 of the contract expressly states that the Second Defendant shall receive 10% commission of the total gross sales for each month. The Second Plaintiff was paid the 10% commission over the years on the 15<sup>th</sup> day of the following month as agreed but the Defendant has failed to pay the Second Plaintiff commission for the month of November and December, 2009.
33. Clause 17 of the contract expressly states that the Second Plaintiff shall be entitled to vacation in accordance with the Cayman Islands Labour Law, which in her case would be two (2) weeks each year. The Defendant failed to compensate the Second Plaintiff for vacation from 1<sup>st</sup> July, 2007 until her dismissal on 16<sup>th</sup> December, 2009. The Defendant is owing the Second Plaintiff vacation pay for 2 ½ years.
34. Had the Defendant not wrongfully terminated the Second Plaintiff's contract of employment the Second Plaintiff would have received a further 1 year and 6 months in vacation pay for the duration of her contract up to 30<sup>th</sup> June, 2011. The Defendant is therefore owing the Second Plaintiff vacation pay up to 30<sup>th</sup> June, 2011.
35. It was an implied term of the Agreement that the Defendant would comply with the statutory laws of the Cayman Islands and make the necessary contributions towards pension on behalf of the Second Plaintiff.
36. Had the Defendant not wrongfully terminated the Second Plaintiff's contract of employment, the Second Plaintiff would be entitled to pension benefits.
37. It was expressly agreed at paragraph 8 of the agreement that commissions shall be vested to the Second Plaintiff upon termination of her contract for the duration of the individual contracts. This means that the Second Plaintiff shall be entitled to all commissions payable by all existing and in force policies for the duration of such policies.

38. The Second Plaintiff had a total number of eleven (11) policy holders at the time of her termination on 16<sup>th</sup> December, 2009 and is entitled to all commissions payable from January 2010 until termination of each policy.
39. The Defendant is liable to the Second Plaintiff for all monies payable with respect to these commissions in an amount which cannot be calculated at this time.
40. The Defendant circulated and/or caused to be circulated to all the clients including the clients of the First and Second Plaintiff, a letter dated 18<sup>th</sup> December, 2009 informing clients that:-  
  
“Mr. John Marquis and Ms. Antonette Stewart have left the company with immediate effect and have no authority to transact business, collect premiums or represent BAF in any form.”
41. The said letter also states, *inter alia* that the contracts in force at the time of the acquisition remain in force under the Defendant’s band.
42. The Defendant with no apparent reason wrongfully caused the First Plaintiff and the Second Plaintiff’s signing powers to be removed from its Bank accounts and is in breach of the oral agreement in respect of the First Plaintiff and is in breach of Clause 5 of the written agreement in respect of the Second Plaintiff.
43. The circulation of the said letter and the removal of their signing powers from the bank accounts have caused much embarrassment and has damaged the reputation of the First and Second Plaintiffs being that the Cayman Islands is a very small jurisdiction and the tone of the letter has left an unfavourable and unpleasant picture in the minds of the clients as to the integrity of the Plaintiffs.

The circulation of such letter also creates an obstacle to the Plaintiffs in respect of gaining new employment in the insurance industry. The Defendant is liable to the First Plaintiff and the Second Plaintiff for damage to their reputation, embarrassment, hurt feelings and causing barrier to gaining new employment in their field of specialty i.e. insurance management and sales.

44. The Second Plaintiff will rely on the written agreement dated 1<sup>st</sup> July, 2007 at trial.
45. The Defendant is in breach of the said oral agreement with the First Plaintiff and the said written agreement with the Second Plaintiff and as a result of the breach the Plaintiffs have suffered loss and damage. The Defendant is therefore liable in loss and damages to the First and Second Plaintiffs.
46. The First Plaintiff and the Second Plaintiff claims interest pursuant to the Judicature Law on all sums found due to each of the above Plaintiffs at such rate and for such period as the Court deems fit.

AND THE FIRST PLAINTIFF AND SECOND PLAINTIFF claims:

1. Damages
2. Pre and Post-Judgment Interest
3. Costs

Dated this 17<sup>th</sup> day of November, 2010

*Facey-Clarke & Associates*

FACEY-CLARKE & ASSOCIATES

Attorneys-at-Law for the First and Second Plaintiffs

This Writ of Summons was filed by Facey-Clarke & Associates, Attorneys-at-Law for the Plaintiffs herein whose address for service is that of the said Attorneys-at-Law, Ground Floor, Unit 119, Elizabethan Square, George Town, Grand Cayman

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, 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 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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO:

OF 2010

BETWEEN: (1) JOHN ALBERT MARQUIS 1<sup>ST</sup> PLAINTIFF  
(2) ANTONETTE STEWART-MARQUIS 2<sup>ND</sup> PLAINTIFF

AND: BAF INSURANCE COMPANY (CAYMAN) 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 is being acknowledged.

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2. State whether the Defendant intends to contest 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  no

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