

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

BETWEEN:

CAUSE NO. FSD 12 OF 2011



Fairfield Sentry Limited (in Liquidation)



Plaintiff

-and-

Westport Capital Investments

Defendant



ORIGINATING WRIT OF SUMMONS

TO: Westford Capital Investments , Deutsche Bank International Trust Co. (Cayman) Limited, PO Box 1984, Boundary Hall, Cricket Square, 171 Elgin Avenue, Cayman Islands.

**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, 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

**ISSUED** this 13<sup>th</sup> day of January 2011

**IMPORTANT**

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

## STATEMENT OF CLAIM

1. The Plaintiff is a limited company originally incorporated in the British Virgin Islands in 1990 under the terms of the International Business Companies Act, 1984.
2. The Plaintiff was placed into liquidation by order of the High Court of the British Virgin Islands on 21 July 2009. The Plaintiff acts by its liquidators, Mr. Kenneth Kryz and Joanna Lau.
3. At all material times the Plaintiff operated as an investment fund and was recognised and regulated by the BVI Financial Services Commission as a professional fund under the terms of the Mutual Funds Act, 1996.
4. The Defendant is a limited company incorporated in the Cayman Islands in 1998 under the terms of the Companies Law.
5. Approximately 95% of the Plaintiff's funds were invested with Bernard L. Madoff Investment Securities LLC ("**BLMIS**").
6. On divers dates the Defendant subscribed for shares in the Plaintiff and the dates of the subscriptions the amount of shares allotted and the price paid for the shares allotted are set out in columns 1, 2 and 3 of Schedule 1 attached hereto.
7. The Plaintiff's Articles of Association (the "**Articles**") provided that the price at which shares in the Plaintiff were to be redeemed by investors should be calculated with reference to the Net Asset Value ("**NAV**") of the Plaintiff.
8. On divers dates the Defendant applied to redeem shares held by it in the Plaintiff in accordance with the Articles and the number of shares sought to be redeemed are set out in column 1 of Schedule 2 attached hereto ("**Schedule 2**").
9. On or about each of the dates set out in column 2 of Schedule 2 the NAV was calculated and the amount determined to be payable to the Defendant upon the redemption of the corresponding number of shares shown in column 1 of Schedule 2 was as set out in column 3 of Schedule 2.

10. On or about each of the dates set out in column 4 of Schedule 2 the Plaintiff redeemed the corresponding number of the Defendant's shares shown in column 1 of Schedule 2 in the corresponding sum shown in column 3 of Schedule 2 and each of such sums (in aggregate US\$1,785,946.26, hereinafter referred to collectively as the "Redemption Payments") was paid by the Plaintiff to the Defendant.
11. In respect of the said redemptions (and each of them) the NAV was calculated under a mistake of fact as, unbeknown to the Plaintiff, BLMIS was in fact operating a ponzi scheme and its investments were therefore lost from the date of the Plaintiff's investment with BLMIS.
12. In the premises, the NAV of the Plaintiff at all material times was nil or a nominal value and the Redemption Payments (and each of them) should accordingly have been nil or, in the alternative, a nominal sum.
13. In the circumstances, the Defendant has been unjustly enriched at the expense of the Plaintiff and the Defendant is liable to make restitution to the Plaintiff:
  - a. in the sum of US\$1,785,946.26, being the aggregate of the Redemption Payments; or
  - b. in the alternative the difference between the Redemption Payments and the said nominal amount.
14. Alternatively, if (which is denied) the Plaintiff is not entitled to restitution as claimed in paragraph 13 above, the Defendant has been unjustly enriched at the expense of the Plaintiff and the Defendant is liable to make restitution to the Plaintiff in the sum of US\$310,946.26 being the difference between the total subscription monies paid by the Defendant to the Plaintiff and the aggregate of the Redemption Payments paid by the Plaintiff to the Defendant.
15. Further or alternatively, the Plaintiff is entitled to set aside the redemption of the Defendant's shares on the grounds that the payment of the Redemption Payments (and each of them) was effected under a mutual mistake.
16. Further, the Plaintiff is entitled to interest in an amount to be assessed by the Court.

**AND THE PLAINTIFF** claims:

- (1) US\$1,785,946.26 alternatively such sum as the Court thinks fit;
- (2) interest on the said sum to be assessed;
- (3) further or other relief; and
- (4) costs.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of US\$1,785,946.26 (including interest and costs) further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.

*Forbes Hare (incorporating J. Barry Smith)*

Forbes Hare (incorporating J. Barry Smith) Attorneys-at-law for the Plaintiff

**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.

THIS **WRIT** was issued by Forbes Hare (incorporating J. Barry Smith), Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Elizabethan Square, PO Box 856, Grand Cayman KY1-1103 (REF: CRY/JJD)

**SCHEDULE 1**

**SUBSCRIPTIONS**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Dates of Subscription</b>	<b>Amount of Shares Allotted</b>	<b>Price Paid USD</b>
01 May 2001	651.7	500,000.00
04 June 2001	818.49	630,000.00
03 July 2001	194.42	150,000.00
31 July 2001	58.07	45,000.00
26 November 2001	185.6	150,000.00
TOTAL	1908.28	1,475,000.00

**SCHEDULE 2**  
**REDEMPTIONS**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
Number of Shares Sought to be Redeemed	Date of Calculation of NAV	Amount Determined to be Payable USD	Date of Payment of Redemption Proceeds
591.35	30 May 2002	500,000.00	12 June 2002
407.57	31 March 2003	367,000.00	14 April 2003
257.13	31 March 2004	250,000.00	21 April 2004
652.23	31 December 2004	668,946.26	14 January 2005
	<b>TOTAL</b>	<b>1,785,494.26</b>	

