

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO FSD 0072 OF 2014 ( )

BETWEEN:

CESSNA FINANCE CORPORATION

Plaintiff

-and-

ALLIANZ GLOBAL RISKS US INSURANCE COMPANY

Defendant

WRIT OF SUMMONS

TO: Allianz Global Risks US Insurance Company  
225 W Washington St STE 1800,  
Chicago IL 60606,  
United States of America

**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.

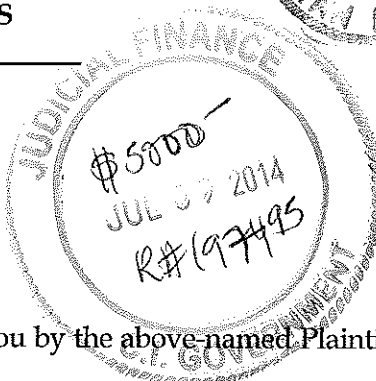
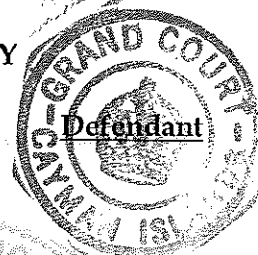
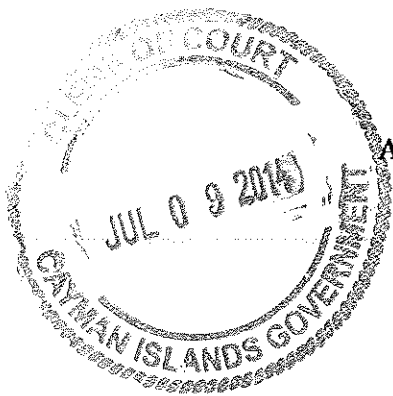
Issued this 9<sup>th</sup> day of July 2014.

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.

This Writ of Summons was issued by Mourant Ozannes, Attorneys at Law for the Plaintiff, whose address for service is 94 Solaris Avenue, Camana Bay, PO Box 1348, Grand Cayman KY1-1108 (ref: Error! Unknown switch argument.)



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO FSD OF 2014 ( )

BETWEEN:

CESSNA FINANCE CORPORATION

Plaintiff

-and-

ALLIANZ GLOBAL RISKS US INSURANCE COMPANY

Defendant

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STATEMENT OF CLAIM

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**(1) Introduction**

1. This dispute arises out of the seizure by the Brazilian government of an aircraft owned by the Plaintiff, operated by a company called TOBY and insured by the Defendant.

**(2) The Parties**

2. The Plaintiff is and was at all material times a company incorporated under the laws of Kansas, United States of America, which, amongst other things, provides financing in relation to new and used aircraft.
3. The Defendant is an insurance company incorporated under the laws of Illinois.

(3) **The Finance Lease**

4. By an Aircraft Lease, bearing number 01-0043476-0011134-01, dated 18th March 2008, ('the Lease') between the Plaintiff as owner and TOBY as lessee, the Plaintiff provided finance for the acquisition of a Cessna C680 aircraft, bearing registration VP-CAV on the Cayman Islands registry ('the Aircraft').
5. TOBY is and was at all material times a Cayman Islands exempted company having its registered office at Trident Trust Company (Cayman) Limited, PO Box 847, Grand Cayman, Cayman Islands.
6. The following, amongst other things, were material express terms of the Lease:

*"7. Insurance*

*(a) Hull and Liability Insurance. LESSEE shall, at LESSEE'S expense, secure and maintain in effect throughout the term of this Lease, as a minimum, hull and liability insurance coverage ("Hull and Liability Insurance") on the Aircraft as follows:*

- (i) Bodily Injury and Death Liability (Including Passengers) and Property Damage Liability ("Liability Insurance") \$25,000,000.00 Single Limit*
- (ii) Hull Insurance ("Hull Insurance") shall be in an amount at all times that is not less than the Stipulated Loss Value at the beginning of each policy period as determined by reference to Annex C to this Lease.*
- (iii) All Hull and Liability Insurance shall be written in the name of OWNER and LESSEE, shall name OWNER and LESSEE as loss payees as their respective interests may appear and name OWNER as an additional insured and shall provide for at least thirty (30) calendar days prior written notice to OWNER of any modification or cancellation. Hull Insurance shall cover all risk ground and flight, including a breach of warranty endorsement in favor of OWNER and provide coverage for foreign object damage and war and confiscation risk. All Hull and Liability Insurance shall be written by insurance companies and with terms (including, without limitation, maximum deductibles) acceptable to OWNER and shall provide for all claims and proceeds to be payable exclusively in US Dollars.*

- (iv) LESSEE shall furnish OWNER copies of all Hull and Liability Insurance policies and all endorsements and attachments thereto, whether the insurance is purchased at the beginning or during the term of this Lease.
- (v) If at any time any of the Hull and Liability Insurance shall cease to be in full force and effect, LESSEE shall:
  - a. Immediately ground or cause to be ground the Aircraft and keep the Aircraft grounded until such time as all Hull and Liability Insurance is in full force and effect again; and
  - b. Immediately notify OWNER of the non-compliance of the insurance and provide OWNER with full details of any steps LESSEE is taking or proposes to take, in order to remedy such non-compliance.

8. RISK OF LOSS. All risks of loss or damage to the Aircraft, from whatever cause, will be assumed by LESSEE on the Delivery Date until such time as OWNER transfers title to LESSEE or LESSEE returns the Aircraft to OWNER in accordance with the terms of this Lease. It is the intent of the parties that this Article 8 be construed in all events so that OWNER shall be paid in full for every loss, charge or expense it suffers or incurs in connection with any loss, damage, destruction, seizure, condemnation, confiscation or taking of the Aircraft, whether partial or total. Upon the occurrence of any such event, LESSEE shall promptly report the same to the Hull and Liability Insurance company, OWNER and all applicable federal, state, provincial, and other governmental agencies, shall furnish such information and execute such documents as may be required for OWNER to make a claim under the applicable Hull and Liability policies, and shall, in the case of any seizure, condemnation, confiscation or taking, take all necessary action to secure the release of the Aircraft and the rights and liabilities of the parties shall be as follows:

- (a) Total Loss. In the event the Aircraft:

...

- (iii) is lost due to a theft, hijacking or disappearance of the Aircraft or it is seized, condemned, confiscated, or is lost due to requisition of title, or, in any manner, taken by the Government of the United States, the Aviation Authority, or any other government or any political sub-division thereof or any agencies of such governments or political subdivisions, or by any terrorist or terrorist group or by any other party, person or

*persons whatsoever in any such case in circumstances where the Aircraft, or airframe is not restored to LESSEE or any permitted sub-lessee or operator of the Aircraft within a period of ninety (90) calendar days from the date of such occurrence,*

*LESSEE shall, on the earlier of ten (10) calendar days after any payment by the Hull Insurance company of any claim made in respect of any such total loss or ninety (90) calendar days after the date of any such total loss, pay OWNER an amount equal to the Stipulated Loss Value of the Aircraft on the date of such payment by LESSEE to OWNER as determined by reference to Annex C to this Lease, plus all other sums due and payable by LESSEE to OWNER under this Lease, less the amount of any proceeds of the Hull Insurance received by OWNER in respect of such total loss. LESSEE shall continue to pay the Rental Payments and all other sums due under this Lease as the same become due until receipt by the OWNER of payment from the Hull Insurance company and LESSEE as set forth above...*

#### **14. REMEDIES**

*(e) LESSEE shall reimburse, hold harmless, and indemnify OWNER for any expenses or other amounts (including, without limitation, OWNER's attorneys' fees, court costs and any other expenses OWNER incurs relating to the Aircraft) that OWNER incurs to collect damages or any other amounts that LESSEE owes under this Lease or to otherwise enforce or defend any of OWNER's rights under this Lease or with respect to the Aircraft. In addition, LESSEE shall reimburse, hold harmless, and indemnify OWNER for any expenses or other amounts relating to the disposition, return, repossession, sale or re-leasing, of the Aircraft, including, without limitation, the costs of ferry, storage, repairs, fuel, sales, commissions, marketing, advertising, conforming the Aircraft to the requirements of the return conditions of Article 11 and all other reasonable fees incurred by OWNER. LESSEE'S indemnification obligations under this Article 14 shall survive the termination, cancellation, or expiration of this Lease.*

**15. TRUE LEASE.** *This Lease is, and is intended to be, a true net lease for all purposes and LESSEE does not acquire any right, title or interest whatsoever, legal or equitable, in the Aircraft except its interest as a lessee under this Lease. Though LESSEE acknowledges and agrees that its only interest in the Aircraft is that of a lessee and that it does not acquire any other right, title or interest whatsoever, legal or equitable, in the Aircraft, LESSEE hereby grants OWNER a lien and security interest in all of LESSEE's interest in the Aircraft of whatever nature or description*

*that LESSEE may hereby or otherwise acquire, legal or equitable, and in all proceeds thereof, to secure all of LESSEE's obligations under this Lease and under any other agreement with OWNER...LESSEE agrees to pay to OWNER all amounts, liabilities and obligations as may be owed to OWNER under this Lease as such amounts become due...LESSEE's obligation to pay rent (and any other sum) under this Lease shall be absolute and unconditional and shall not be affected by any circumstances, including, without limitation: (i) any set off, counterclaim, recoupment, defense or other right which LESSEE may have against OWNER; (ii) any defect in title, airworthiness, condition, operation or fitness of use, any damage of the Aircraft or loss of possession of the Aircraft; (iii) any insolvency, bankruptcy, moratorium, reorganization or any other administrative or court proceeding by or against LESSEE, or (iv) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing...*

24. *Governing Law and Jurisdiction. This Lease shall be construed and interpreted in accordance with the laws of the State of Kansas..."*

7. The Plaintiff will refer as necessary to the Lease at trial for its full terms and effect.

**(4) The Insurance**

8. Pursuant to its obligations set out in Clause 7 of the Lease, TOBY, through its brokers United Insurance Brokers Limited ('UIB'), procured insurance in respect of the Aircraft and the Plaintiff's interests therein.

9. For the relevant period a policy of insurance, bearing Policy Number A5GA000588412AM ('the Policy') was issued by the Defendant.

10. The period of insurance under the Policy was 6th May 2012 to 6th May 2013 and the Policy was, subject to certain amendments and endorsements, written on AVN1C terms in respect of Hull and Liability insurance, and LSW555D terms in respect of Hull War.

11. By an endorsement to the Policy on AVN67B terms the Plaintiff was added as an Insured in the manner and to the extent set out therein and was noted as the 'Contract Party' for the purposes of such endorsement.

12. The Agreed Value of the Aircraft under the Policy was stated to be US\$14,000,000.

13. The following, amongst other things, were also express terms of the Policy:

*"Part B*

*Section one: Loss of or damage to Aircraft*

*Subject to the terms, conditions and limitations set out below, this Policy covers loss of or damage to the Aircraft stated in the Schedule against claims excluded from the Insured's Hull "All Risks" Policy as caused by:*

*...*

*(d) any malicious act or act of sabotage.*

*(e) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any government (whether civil, military or de facto) or public or local authority.*

*...*

*Furthermore this Policy covers claims excluded from the Hull "All Risks" Policy from occurrences whilst the Aircraft is outside the control of the Insured by reason of any of the above perils...*

*...*

*AVN67B (Hull War)*

*It is noted that the Contract Party(ies) have an interest in respect of the Equipment under the Contract(s). Accordingly, with respect to losses occurring during the period from the Effective Date until the expiry of the Insurance or until the expiry or agreed termination of the Contract(s) or until the obligations under the Contract(s) are terminated by any action of the Insured or the Contract Party(ies), whichever shall first occur, in respect of the said interest of the Contract Party(ies) and in consideration of the Additional Premium it is confirmed that the Insurance afforded by the Policy is in full force and effect and it is further agreed that the following provisions are specifically endorsed to the Policy:-*

*1. In respect of any claim on Equipment that becomes payable on the basis of a Total Loss, settlement (net of any relevant Policy Deductible) shall be made to, or to the order of the Contract Party(ies)...*

*...*

3. *The Contract Party(ies) are added as Additional Insured(s).*

...

5. *The cover afforded to each Contract Party by the Policy in accordance with this Endorsement shall not be invalidated by any act or omission (including misrepresentation and non-disclosure) of any other person or party which results in a breach of any term, condition or warranty of the Policy PROVIDED THAT the Contract Party so protected has not caused, contributed to or knowingly condoned the said act or omission."*

14. The Plaintiff will refer as necessary to the Policy and its endorsements at trial for its full terms and effect.

**(5) The Loss**

15. On or about 20th June 2012 the Aircraft was confiscated by the Brazilian authorities. The reason for the confiscation was the alleged improper use of the Aircraft by a Mr Lamacchia and/or his associates, contrary to the declarations and documentation filed upon the importation of the Aircraft into Brazil.

16. In the circumstances:

- a. The confiscation was not as security for any alleged debt;
- b. there is no provision under the relevant Brazilian law or laws for the return of the Aircraft, whether in return for payment or otherwise;
- c. as a matter of Brazilian law, the fact that the Aircraft is leased equipment will not result in its return to the Plaintiff by the Brazilian authorities;
- d. the Aircraft is a depreciating asset and the Brazilian judicial process is often subject to lengthy delays.

17. Attempts by TOBY and/or Mr Lamacchia to recover the Aircraft have not succeeded.

18. In the premises:

- a. recovery of the Aircraft by either TOBY and/or Mr Lamacchia and/or the Plaintiff is uncertain;
  - b. hence as a matter of law the Aircraft is a Total Loss within the meaning of the Policy;
  - c. given the Brazilian legal position and the fact that the Aircraft was not seized as any form of security, or in satisfaction of any alleged debt, but rather the intention of the Brazilian authorities is and was always to permanently deprive TOBY and/or Mr Lamacchia and/or the Plaintiff of the Aircraft when it was seized, recovery of the Aircraft was uncertain on or about 20<sup>th</sup> June 2012 and the Aircraft became a Total Loss within the meaning of the Policy as at that date, alternatively very shortly thereafter.
19. The Defendant admits that recovery of the Aircraft is uncertain, in that by letter of 12<sup>th</sup> March 2014 to the Plaintiff, it asserted amongst other things that:
- "Depending on the outcome of [Brazilian legal proceedings between TOBY and/or Mr Lamacchia and the Brazilian Government] the Aircraft may or may not become lost in due course."*
20. Accordingly, pursuant to clause 1 of AVN67B, the Plaintiff became entitled to the payment of US\$14,000,000 by the Defendant on or about 20<sup>th</sup> June 2012.
21. The Plaintiff duly presented a claim under the Policy.
22. Wrongfully, and in breach of contract, the Defendant has refused to indemnify the Plaintiff on a number of grounds, most recently in its letter of denial dated 12<sup>th</sup> March 2014.
23. Since the grounds advanced by the Defendant at various times are inconsistent, the Plaintiff will not attempt to anticipate or deal with them in this statement of case, but will respond as necessary to the grounds, if any, asserted and relied upon by the Defendant in its pleaded case.

**AND THE PLAINTIFF CLAIMS**

- (1) A declaration that the Aircraft is a Total Loss under the Policy and that the Plaintiff is accordingly entitled to payment of the Agreed Value of the Aircraft, being US\$14,000,000;
- (2) An order that the Defendant do pay the Plaintiff US\$14,000,000;
- (3) Interest Pursuant to section 34 of the Judicature Law (2013 Revision) at such a rate and for such a period as the Court in its discretion thinks fit;
- (4) Such further or other relief as the Court may direct;
- (5) Costs.

*Mourant Ozannes*

**Mourant Ozannes**

Dated this *9<sup>th</sup>* day of July 2014

**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 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 instalments or otherwise.

See over for notes for guidance

## 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 ..... 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  
FINANCIAL SERVICES DIVISION

Cause No FSD of 2014

BETWEEN:

CESSNA FINANCE CORPORATION

Plaintiff

-and-

ALLIANZ GLOBAL RISKS US INSURANCE COMPANY

Defendant

---

ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

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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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Service of the Writ is acknowledged accordingly

(Signed) .....

..... [Attorneys for the Defendant]

Address for service: (*See 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.

Mourant Ozannes  
Attorneys at Law  
94 Solaris Avenue  
Camana Bay  
PO Box 1348  
Grand Cayman KY1-1108  
  
ref: 8011161/60276354/3

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