

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 753 OF 2000

IN THE MATTER OF THE COMPANIES LAW (2000 REVISION)

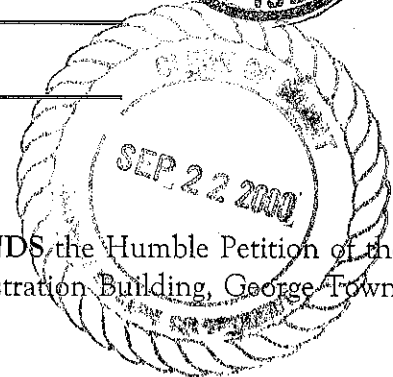
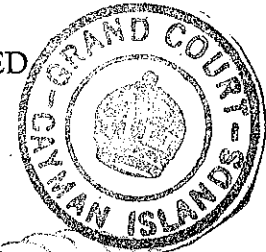
AND IN THE MATTER OF SECTION 16(4) OF THE COMPANIES  
MANAGEMENT LAW 1999

AND IN THE MATTER OF EVEREST MANAGEMENT LIMITED

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PETITION

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TO THE GRAND COURT OF THE CAYMAN ISLANDS the Humble Petition of the Governor of the Cayman Islands of Government Administration Building, George Town, Grand Cayman, Cayman Islands shows that:

1. Everest Management Ltd. ("Everest" or "The Company") is a company incorporated under the Companies Law (2000 Revision). Everest was incorporated on 5 December 1997 and was granted its Company Manager's licence on August 26, 1998.
2. Its registered office is situated at 3<sup>rd</sup> Floor Buckingham Square, West Bay Road, Grand Cayman.
3. On 19 April 2000 the Governor in Council appointed G. James Cleaver as Controller of the Company to assume control of its affairs, pursuant to his powers under Section 6(1) of the Companies Management Law 1999.
4. On 16 May 2000 the Controller submitted his completed report ("The Report") to the Governor in Council and the Cayman Islands Monetary Authority ("CIMA").
5. The Controller's unreserved recommendation as set out in The Report is as follows;

*"Everest should be placed into liquidation as soon as possible by a Petition presented on the just and equitable grounds and/or the ground of public interest by the Governor in Council pursuant to his power under Section 16(4)(d), following which all of its employees should be dismissed, including Patrick Tibbetts, the Chairman and director who remains employed by Everest. However, Everest's Company Manager's licence should not be revoked immediately but should be retained solely for the purpose of allowing its liquidators to cause it to provide management services to its existing clients until those clients have had an opportunity to pursue and receive*

*final dividends in respect of claims in the [Cash 4 Titles Ponzi Scheme] liquidations and recover sums held in bank accounts subject to freezing injunctions at Bank of Bermuda.”*

6. The Report also reached the following four conclusions:
  - (i) The Company might be viable as a going concern were its directors and in particular Patrick Tibbetts, allowed to resume control of the Company.
  - (ii) The Governor in Council has compelling reasons to decide not to allow Everest's directors to resume control of the Company.
  - (iii) If the Governor in Council concluded that it was not appropriate for Everest's directors to resume control of the Company, then Everest should be placed into liquidation forthwith.
  - (iv) The immediate revocation of Everest's company manager's licence would have adverse consequences in that it might prejudice the ability of innocent Cash4Titles Ponzi Scheme investors to pursue claims against the Cash4Titles Ponzi Scheme pooling companies in liquidation and to recover sums held in bank accounts subject to freezing injunctions at Bank of Bermuda the collectibility of certain of Everest's account receivable balances.
  
7. In light of the clear recommendations of the Controller's report the Petitioner seeks the compulsory winding up of the Company pursuant to his powers under Section 16(4)(d) of the Companies Management Law and further or alternatively under Section 94(d) Companies Law in that it is just and equitable in all circumstances that the Company should be wound up.

The grounds are as follows:

#### I. PERPETRATING THE CASH 4 TITLES FRAUD

8. Everest and Patrick Tibbetts its managing director and controlling mind and will of the Company appear to have had a significant involvement in a fraudulent scheme known as Cash 4 Titles ("C4T").
  
9. Cash4Titles was the trading name of C4T Management Inc., a U.S. registered corporation which ran car title loan shops in several southern states. The car title loan industry which C4T operated is legal. However, following an investigation by the Securities and Exchange Commission ("SEC") in October 1999, legal action was filed against two US nationals, Michael Gause ("Gause") and Richard Homa ("Homa") and others, and Gause, Homa and others were arrested on charges involving, amongst other things, fraud and conspiracy. Homa was the president of C4T Management, Inc.

The SEC investigation arose because of concern that investors who advanced funds on the understanding that their money would be invested in a legitimate enterprise were defrauded when that money was not invested in the C4T business but diverted to pay commissions to promoters, make interest and loan repayments to prior investors, and otherwise misappropriated.

10. Patrick Tibbetts described the general structure of the flow of funds into and out of C4T as follows:

*“Investor companies issued promissory notes to their beneficial owners and others, to advance funds which were invested in one of the intermediate pooling companies, for example, JMP. Those companies in turn invested into other “in” pooling companies beneficially owned by Gause, such as Inter-World, after which the funds were further invested into C4T (or so the investors may have been led to believe). Certain individual investors also placed funds directly with Inter-World. When interest payments or redemptions were due, funds flowed down through the “out” companies beneficially owned by Gause, such as Opal. Formal documentation was not always executed to formalise the loans made by the pooling company or between individual investors and the investor companies, but interest was paid periodically. The interest earned by the investor companies generally accrued at a lower rate of that earned by the intermediate pooling company. The difference represented commissions in which the beneficial owners of the pooling companies including for example, [Patrick Tibbetts] in the case of JMP, drew some for [his] own personal account.*

11. It appears that as a result of the fraudulent C4T scheme in excess of 1,000 investors suffered losses exceeding US\$200 million. Various Cayman Islands registered companies incorporated and managed by Everest and Zephyr International Ltd. (“Zephyr”) were involved in the fraudulent C4T scheme either as director investors or as a result of entering into transactions with such direct investors. 23 of these companies, 19 of which were previously managed by Everest, have now been placed into court appointed liquidation since October 1999 and G. James Cleaver and Phillip S. Stenger appointed Joint Official Liquidators.
12. Everest was established primarily in order to offer investors the opportunity to invest in the fraudulent C4T scheme. Prior to the incorporation of Everest Patrick Tibbetts, the Managing Director, was employed by Zephyr from December 1994 to December 1997 when he left to create his own management company. Zephyr and its managing director Lewis Rowe, are also very involved in the fraud. In the 6 month period prior to the granting of the Company’s management licence to Everest, 63 companies (“The K Corp. Companies”) were set up by K Corporate Services Ltd. (“K Corp”), a management company affiliated with the law firm of CS Gill & Co., following referrals from Patrick Tibbetts. The registered office of 62 of the K Corp. companies was subsequently transferred to Everest. Of these 62 companies 56 were connected with the Cash4Titles program.
13. At the time of the appointment of the Controller on 19 April 2000 there were 134 companies under the management of Everest, 13 of which were not active. Of the 121

active companies, 94 (including the 56 previously registered at K Corp) or approximately 78% had some involvement with C4T, having either made a C4T investment or having entered into transactions with companies which did so.

14. According to Everest's "Private Client Services" brochure, "the fundamental policy" driving Everest was "to introduce successful investment programs" to Patrick Tibbetts' clients "to create a win win scenario". Patrick Tibbetts held himself out to be an authorised representative of the car title loan program and he and Eva Forbes, a director and the company secretary of Everest, provided information to C4T perspective clients including a document entitled "Loan Highlights" which indicated that simple interest of 3% per month would be paid by wire transfer on promissory notes issued by car title loan company and that that company maintained a ratio of 3 to 1 collateral value to loans at all times.
15. Everest acted as a marketer and promoter of the fraudulent C4T scheme and facilitated the fraud by offering investors a one stop structured package including the incorporation of a Cayman exempt company to use as an investment vehicle , the introduction to a local bank and the establishment of a bank account for the transfer of funds, and thereafter general corporate management services.
16. To meet its business objectives after receiving its company's management licence in August 1998, Everest obtained detailed legal advice from Walkers in respect of the "US Cash 4 Titles Regime" (as C4T was described in Walkers invoice dated 21 October 1998) on confidentiality, on summary arrangements, on conduct of business within the Cayman Islands, on form/execution of promissory note, on structuring and on invested disclosure and information memorandum from investor. Everest utilised the advice from Walkers and their precedent documents to supply its clients with proforma drafts of all the necessary legal documents, including company incorporation documents, promissory notes, disclosure circular and subscription agreements needed to effect the investment in The C4T Scheme using a Cayman Islands exempted company.
17. Using the standard documents drawn up on Everest's behalf, the beneficial owners of single investor companies were in a position to make their investment by executing those documents and providing the funds. In this way it appears that Everest was able to assist clients to place funds into the fraudulent scheme relatively quickly and easily.
18. Everest also assisted investors who incorporated corporate vehicles for investment in the fraudulent Cash4Titles scheme with assistance in opening a bank account. Everest recommended that accounts be opened at the Bank of Bermuda (Cayman) Ltd. ("Bank of Bermuda").
19. Michael Day became a director of Everest on December 1, 1998, whilst employed at Bank of Bermuda as a manager of Customer Services. Mr. Day received approval from the Bank of Bermuda's managing director at the time, Stanley Wright to become a director of Everest. His annual fees were US\$5,000.00.00. Michael Day received

commission of US\$30,000.00 to US\$40,000.00 from C4T and was well aware that Everest's clients were mainly involved with C4T. Mr. Day resigned as Director in October 1999 at the request of the Bank of Bermuda.

20. Patrick Tibbetts, Eva Forbes, director and secretary of Everest and Joenell Ebanks, an employee of Everest, had a vested interest in the success of Everest and C4T beyond that arising by reason of their employment by Everest. They were the beneficial owners of pooling companies involved in C4T. Patrick Tibbetts caused JMP Ltd. (In Liquidation) a pooling company managed by Everest of which he was the beneficial owner to pay him in excess of US\$1 million from cash derived from commissions earned in relation to C4T. Patrick Tibbetts further caused another Everest managed company which he beneficially owned, MTM Ltd (in liquidation) to transfer US\$512,500 to him. He also personally invested US\$269,000.00 into C4T.
21. The due diligence undertaken by Everest in connection with Gause and Homa and agents and clients of C4T was inadequate when measured against accepted industry best practice guidance. The C4T related investment of Everest managed companies amounted to approximately US\$195 million. Despite this level of investment and its significance to the company, Everest did not request or obtain professional assurance as to the periodic trading performance of the business in which the C4T program invested or the existence of the assets employed in it. No periodic financial reports or trading projections were ever requested by or provided to Everest by Gause or Homa.
22. Patrick Tibbetts's personal relationship with Gause, his receipt of gifts from Gause and Homa and his travel and other dealings with them caused him to neglect to carry out sufficient due diligence in his and Everest's dealings with them.
23. The pattern and volume of payments from Inter-World Holdings (in liquidation) ("Interworld") to Opal Holdings (in Liquidation) ("Opal") from March to October 1999 as identified from Everest's cash sheets shows Everest's key role in the ponzi scheme: The transfers of investors' funds out of Inter-World were sent on Everest's instructions, not to C4T companies, but to Opal Holdings and then back to the intermediate pooling company. As early as March 1999 Everest's directors and employees knew or should have known that the scheme was a ponzi scheme since new investors funds' were used to pay interest on existing investors' loans or were otherwise misappropriated.
24. The individual directors of Everest's wholly owned company Everest Directors Ltd., ("Directors") which was the sole director of Inter-World and a signatory on Inter-World's bank account, Eva Forbes and Joenell Ebanks caused Inter-World to transfer approximately US\$72 million between February and October 1999 not into C4T businesses but directly to Opal, a Gause company. Everest's cash records show that in this period, Inter-World had receipts for approximately US\$93 million, of which US\$72 million was paid to Opal, approximately US\$13 million was paid to International Professionals Ltd., another Gause company and the balance to various other entities. The said sum paid to International Professionals Ltd. was in turn paid

to Sunset Financial Services LLC a C4T company, but the remainder of other payments out of Inter-World was not paid to companies concerned with the C4T legitimate business.

25. By authorising and allowing the transfer of funds from Inter-world to Opal instead of C4T onshore entities, Everest's subsidiary caused \$72 million under its control and held on trust for the benefit of the C4T investment scheme to be fraudulently diverted.
26. Everest's cash records show that between February and October 1999 Opal had receipts of approximately US\$111 million being the sum of approximately US\$72 million received from Inter-World, referred to above, approximately US\$31 million received from Sunset Financial Services LLC, approximately US\$6 million received from C4T Funding Inc. and approximately US\$2 million from other sources. Within the same period, the individual directors of Directors, which was the sole director of Opal and signatories on Opal's bank account, Eva Forbes and Joenell Ebanks caused Opal to pay approximately US\$74 million to 8 intermediate pooling companies. A further sum of approximately US\$25 million was paid out of Opal in various ways and as October 14, 1999 Opal had a balance of cash at the Bank of Bermuda amounting to approximately US\$10 million.
27. By authorising and allowing the above transactions Everest's wholly owned subsidiary allowed funds of at least \$25 million to be fraudulently diverted.
28. Everest by carrying out the said transactions contributed and assisted in the continuation of Cash 4 Titles fraud, since without a return of the said US\$74 million referred to above being paid back to existing investors the scheme would have collapsed at some stage prior to October 1999.
29. Further, no later than March 1999 based on the information on the Everest's cash records, the directors or employees of Directors and Everest would have been in a position to report a suspicious transaction to the Reporting Authority, which would have allowed the fraud in the Cayman Islands to have been discovered at this time.

## II. COMPLIANCE AND DUE DILIGENCE IRREGULARITIES

26. Although Everest client managed companies in Cash 4 Titles scheme amounted to approximately US\$195 million, Everest did not maintain or have access to its clients books and records and was thus unable to maintain a list of assets under administration.
27. Everest had little or no documentation regarding the following:
  - (a) the purpose of the investment authorised by the beneficial owner
  - (b) what assets were owned by the client company

- (c) the source of funds
  - (d) banking transactions
  - (e) documentation regarding incoming and outgoing funds and evidence
  - (f) evidence of authorisation of banking transactions.
28. There were no proper identification procedures in connection with the beneficial owners of managed companies:
- (a) there was limited or no background information held as to the identity of the beneficial owner
  - (b) there was no corporate questionnaire on file or the questionnaire was incomplete or the questionnaire was not signed.
  - (c) photo identification was indistinct or not on file.
  - (d) there were limited instructions regarding the formation of the company
29. The due diligence documentation concerning satisfactory references from a bank being a member of a recognised banking body, or legal firm being a member of a recognised legal body or an accounting firm being a member of a recognised accounting body was not followed by Everest in many instances.
30. There was no procedure in place to perform a periodic due diligence review after a client was accepted and after account opening documentation was submitted to the bank.
31. Everest maintained no or no proper, internal reporting procedures which would have allowed suspicious transactions to be detected and reported to the reporting authority. On October 20, 1999 Everest submitted a "report of suspicion of money laundering" to the Reporting Authority which was filed after an article reporting the arrest of Gause and the filing of the civil law suit by the SEC was published in the Wall Street Journal interactive website on October 15, 1999.
32. Patrick Tibbetts took no action on receipt of a fax dated September 8, 1999 received on September 13, 1999 from Professional Management Inc. ("PMI") which suggests that as of the date of the letter Patrick Tibbetts was already aware that there had been numerous enquiries from the SEC and the Federal Bureau of Investigations ("The FBI") regarding the investment of PMI's clients with Everest and advised that agents from the FBI searched PMI's offices on Friday September 3, 1999 looking for information regarding those investments. PMI stated that the FBI alleged that Everest was "a scam" and seized various documents relating to Cash4Titles.

33. Everest failed to maintain proper statutory records:

- (a) Minutes were incomplete
- (b) the form "Appointment of Bankers" was not on file or was unsigned
- (c) some Certificate of Incorporations were not on file
- (d) the Memorandum and Articles of Association were not on file
- (e) the Nominee Agreement was not on file
- (f) documents relating to the client's investment in the C4T programme, including the Promissory Note, the Subscription Agreement and the Disclosure Circular were not on file
- (g) the Register of Members was not updated, or not on file, or was updated incorrectly
- (h) the Administration Agreement was unsigned, incomplete, or not on file
- (i) copies of Annual Returns were not on file.

### III. THE COMPANY IS INSOLVENT

31. Everest is insolvent on a balance sheet basis. As at 19 April 2000 its assets, adjusted to include a bad debt provision of US\$254,000.00, amounted to US\$512,000.00. Its liabilities totalled US\$626,000.00. The management accounts show Patrick Tibbetts to be the only substantial creditor in the sum of US\$623,000.00 and the debt due to him relates to advances which he made from funds drawn from JMP International (In Liquidation) a C4T pooling company which he is beneficially owner.
32. Everest has insufficient cash to meet its immediate needs and in any event would require refinancing in order to remain viable after the immediate short term.
33. Everest has lost his core client base and professional reputation. Since 94 of the 121 active companies managed by Everest were involved in the Cash4Titles scheme which is now uncovered, the substratum of both Everest and indeed the 94 companies has fallen away, as mentioned above 19 of the managed companies are now in compulsory liquidation.

### CONCLUSION

34. By reason of the many facts and matters set out above, and in particular the key role played by Everest in the C4T fraud together with the numerous irregularities in

compliance, due diligence and record keeping within the Company, as well as its insolvency, it is just and equitable in all the circumstances that the Company be wound up.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:**

1. That Everest Management Ltd. be wound up by the Court in accordance with the provisions of the Companies Law (2000 Revision).
2. That the Company's Company Manager's licence be continued for the duration of the Liquidation.
3. That G. James Cleaver of Ernst & Young, PO Box 510GT, 4<sup>th</sup> Floor, One Capital Place, George Town, Grand Cayman be appointed Official Liquidator of the Company.
4. That the Official Liquidator be at liberty to exercise any of the powers contained in Section 109 of the Companies Law (2000 Revision) without the further sanction of this Honourable Court.
5. That the Official Liquidator do file with the Clerk of the Court a report in writing of the position of the progress made with the winding up of the Company and with the realisation of the assets thereof and as to any matters connected to the winding up of the Company, every 6 calendar months or as the Court may from time to time direct.
6. The Official Liquidator be at liberty to employ attorneys, counsel and professional advisors whether in the Cayman Islands or elsewhere as he may consider necessary to advise him in performance of his duties and on such terms as he may think fit.
7. That the fees and expenses of any such attorneys, counsel or professional advisors employed by the Official Liquidator to be paid out of the Company's assets be approved by the Court prior to any payment thereof.
8. That the Official Liquidator and his staff be remunerated at the expense of the Company at the following hourly rates:

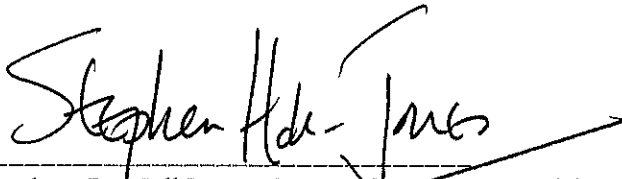
	US\$
Partner	400
Senior Manager	\$312.00
Manager	\$280.00
Senior Accountant	\$144.00

Administrative Assistant      \$92.00

and that any such fees and expenses to be paid out of the Company's assets be approved by the Court prior to any payment thereof.

9. That the costs of the Petitioner and the Petition be paid out of the assets of the Company.

10. Such further and/or other relief as this Honourable Court deems appropriate.



Stephen D. Hall-Jones, Senior Crown Counsel (Civil)  
Attorney General of the Cayman Islands

#### Notice of Hearing

This Petition having been presented to the Court on the      day of September 2000 will be heard at the Court House, George Town, Grand Cayman on the      day of September 2000 at 10:00 o'clock in the forenoon or as soon thereafter as the Petition can be heard.

This Petition is filed by Government Legal Department, 4<sup>th</sup> Floor Tower Building, George Town, Grand Cayman