

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 136 OF 2001

BETWEEN: DONALD JACKSON

PLAINTIFF

AND: CARIBBEAN HOME INSURANCE CO. LTD.

DEFENDANT

**WRIT OF SUMMONS**

TO: Caribbean Home Insurance Co. Ltd.  
P. O. Box 1582  
Commerce House, 2<sup>nd</sup> Floor  
7 Genesis Close  
George Town  
Grand Cayman, B.W.I.

THIS WRIT OF SUMMONS has been issued against you by the abovenamed 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 495, George Town, Grand Cayman B.W.I., the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

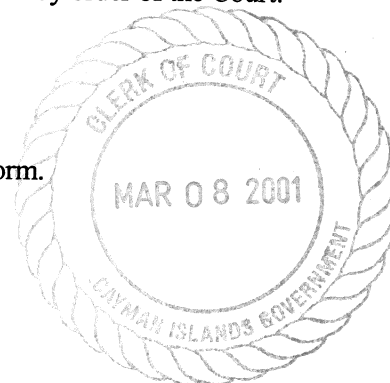
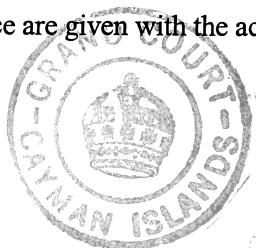
If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 8th day of March 2001.

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

### The Parties

1. The Plaintiff resides at 95 Invicta Drive, Coral Gables, West Bay, Grand Cayman, B.W.I. He is a Caymanian and does not require a gainful occupation license to work in the Cayman Islands. The Plaintiff has over 30 years experience in the insurance industry and was at all material times up to the 31<sup>st</sup> January 2001 the General Manager of the Defendant.
  
2. The Defendant is a foreign company incorporated under the laws of Trinidad and Tobago and was registered as a foreign company (register number 32009) in the Cayman Islands on the 25<sup>th</sup> April 1989 pursuant to the provisions of Part IX of the Companies Law. The Defendant has been operating in the Cayman Islands since 25<sup>th</sup> April 1989 and holds a Class "A" Insurance License No. 772 issued under The Insurance Law, 1979. It also is an "approved provider" in accordance with The Health Insurance Law, 1997 and The Health Insurance Regulations 1997. The Defendant's registered office is situated at P. O. Box 1582, Commerce House, 2<sup>nd</sup> Floor, 7 Genesis Close, George Town, Grand Cayman, B.W.I

### History of the Relationship between the Plaintiff and the Defendant

3. On the 14<sup>th</sup> November 1977 the Plaintiff was employed by The Home Insurance Co. ("HIC"). The Plaintiff was employed to set up and manage a branch of HIC in the Cayman Islands and a Power of Attorney was issued by HIC to the Plaintiff to conduct manage and carry on insurance business in the Cayman Islands on behalf of HIC. The Plaintiff's employment as Country Manager of the Cayman Islands operation included the following:-
  - (a) conduct, manage and carry on the usual insurance business of the Company in the Cayman Islands;
  
  - (b) carry out all formalities laid down by law and by regulations applying to the operations of an insurance company;
  
  - (c) sign the name of the Company whenever requisite;

- (d) accept, underwrite, subscribe, increase, cancel or reduce policies and contracts of insurance, guarantee, suretyship and reinsurance subject to limits supplied by the Company;
- (e) effect, cede, cancel or reduce reinsurance of any risks accepted;
- (f) ask, demand, collect, receive and take all necessary and lawful means to recover any and all moneys, debts or property of the Company;
- (g) adjust, settle, submit to arbitration, compromise, initiate, prosecute or defend all claims in favour of or against the Company alleged under any policy or contract issued or transaction subject to limits supplied by the Company;
- (h) initiate and defend lawsuits and equitable, admiralty, collection, administrative or judicial proceedings under any policy or contract issued or transaction and carry through to final judgement and terminate any and all such lawsuits and proceedings, and exercise all rights and utilise all recourse and remedies allowed by law or regulations applicable to such lawsuits and proceedings, without limitation whatsoever;
- (i) receive and accept service of process and all notices addressed to the Company;
- (j) rent and sign leases for premises to be used for Company purposes subject to notification to and approval or confirmation by the Company;
- (k) buy, receive or otherwise acquire ownership or possession of or any interest in any chattel or goods; to apply for and receive permits, licenses and other governmental orders or warrants in connection therewith; to do any act of management or conservation with respect to any chattel or goods and to sell, exchange, convey either with or without covenants, release surrender, mortgage, incur, pledge,



hypothecate, lease or otherwise dispose of any chattel or goods or any interest therein;

- (l) register documents;
  - (m) pay any and all taxes, fees and other governmental charges as determined by law;
  - (n) appoint with power of revocation, general agents, agents with limited powers and other agents with such powers and duties as may be mutually acceptable subject to notification to and approval or confirmation by the Company in each case;
  - (o) do, execute and perform any other act or acts, in addition to all the specific acts enumerated, which the attorney may deem necessary or desirable for the furtherance or protection of the interest of the Company;
  - (p) appoint one or more substitutes with power of revocation for the due exercise of any or some or all of the powers herein conferred, such appointment or appointments being subject to notification to an approval or confirmation by the Company.
4. HIC was a corporation registered in the United States of America and registered as a foreign company in the Cayman Islands pursuant to the Companies Law. HIC was a member of an association, namely, American Foreign Insurance Association ("AFIA"). In or about January 1984 AFIA merged its operations with CIGNA Worldwide ("CIGNA") which was created through the merger of Connecticut General ("CG") and Insurance Company of North American ("INA").
5. In or about April 1990 by an agreement between the Defendant and CIGNA the Defendant took over CIGNA's portfolio of insurance in the Cayman Islands held by CIGNA and it was further agreed that a branch of the Defendant should be managed in the Cayman Islands by the Plaintiff. This arrangement was confirmed in a letter dated the 28<sup>th</sup> March 1990 from



the Defendant to Mr. Gilbert C. Connolly, Superintendent of Insurance in the Cayman Islands. By a letter dated 25<sup>th</sup> April 1990 from the Defendant it was agreed that all terms and conditions previously enjoyed by all employees (including the Plaintiff) of CIGNA should remain in full force and effect.

6. As a result of the takeover by the Defendant of CIGNA's insurance policies, a Power of Attorney was granted to the Plaintiff by the Defendant on the 11<sup>th</sup> May 1990 to conduct, manage and carry on the insurance business of the Defendant the terms of which Power of Attorney remained the same as those in the previous Power of Attorney given to the Plaintiff by CIGNA. The Plaintiff will refer to the Power of Attorney dated the 11<sup>th</sup> May 1990 (which was in the same terms as the Power of Attorney referred to at paragraph 3 hereof) at the trial of this action for its full terms and legal effect.
7. Subsequently, in or about April 1999 Mr. Franklin de Nobriga was appointed managing director of the Defendant. Mr. de Nobriga restructured the company's Caribbean operation into 3 regions, namely, Northern, Southern and Eastern. As a result thereof the Plaintiff was designated the General Manager of Caribbean Home Insurance Co. Ltd. – Cayman and his duties now also included the additional responsibility of overseeing the Turks & Caicos branch which was operated by an agent of the Defendant, namely, United Reliance International Ltd. in that Island.
8. In the premises the Plaintiff has been associated in the capacity of General Manager with the management and operation of the Defendant and its predecessor's insurance business in the Cayman Islands for a period of 24 years i.e. from the 14<sup>th</sup> November 1997 to the 31<sup>st</sup> January 2001.
9. There is no written agreement between the Plaintiff and the Defendant specifically embodying the terms and conditions of the Plaintiff's employment by the Defendant as its General Manager but the said agreement under which the Plaintiff agreed to serve the Defendant and the Defendant agreed to employ the Plaintiff, as to its duration, was for an



indefinite period terminable on reasonable notice or alternatively, was an employment of the Plaintiff by the Defendant from year to year terminable on reasonable notice.

10. As at 31<sup>st</sup> January 2001 the Plaintiff was receiving from the Defendant by way of salary and other benefits for his employment and services as General Manager the following:-
  - (i) annual basic salary of CI\$156,000.00;
  - (ii) a Pension of CI\$600.00 per month;
  - (iii) health insurance premiums for himself and his family in the sum of approximately CI\$500.00 per month;
  - (iv) vacation pay for a period of 5 weeks per annum being the sum of CI\$15,000.00;
  - (v) use of a company car and all the expenses in connection with the operation thereof;
  - (vi) an annual bonus of approximately CI\$50,000.00;
  - (vii) the use of a cellular phone;
  - (viii) life and travel insurance; and
  - (ix) entertainment allowance.
11. Pursuant to the said Power of Attorney dated the 11<sup>th</sup> May 1990, the Plaintiff performed on behalf of the Defendant all the duties which were specified therein.
12. By letter dated the 31<sup>st</sup> January 2001 Polack & Co. acting as attorneys-at-law for the Defendant sent to the Plaintiff a Deed of Revocation of the Power Attorney previously granted to the Plaintiff and the Plaintiff was advised that effective immediately the he was to take no further action on behalf of the Defendant.



13. Furthermore on the 1<sup>st</sup> February 2001, the day after the letter dated 31<sup>st</sup> January 2001 was received, the Defendant changed the locks at its offices without notifying the Plaintiff and thereby shut out the Plaintiff and denied him any further access to the Defendant's premises. Also, on the same day, namely, the 1<sup>st</sup> February 2001, a memo was sent to all offices of the Defendant advising them that Ricardo Lijertwood would assume the role of team leader of the Cayman Branch effective immediately until further advised.
14. The letter dated the 31<sup>st</sup> January 2001 and/or the matters referred to at paragraph 13 hereof constituted a wrongful repudiation by the Defendant of its agreement to employ the Plaintiff as General Manager in the Cayman Islands and also constituted as a matter of law a constructive summary dismissal of the Plaintiff as the Defendant's General Manager in that the said letter and/or the actions of the Defendant referred to in paragraph 13 hereof:-
  - (i) was in effect a demotion or change of status to the Plaintiff's employment;
  - (ii) undermined and/or destroyed the Plaintiff's position as the senior employee of the Defendant Company;
  - (iii) completely destroyed the relationship of confidence trust and respect between the Plaintiff as an employee and the Defendant as an employer and which is an implied term in all contracts of employment.
15. By letter dated 7<sup>th</sup> February 2001 from the Plaintiff's attorneys it was indicated on behalf of the Plaintiff that he was treating the actions of the Defendant as amounting to a wrongful constructive dismissal and/or a wrongful repudiation of the contract of employment and that the Plaintiff would be commencing proceedings in the Cayman Islands Court for loss and damage arising therefrom. The letter of the 7<sup>th</sup> February 2001 also denied all the fanciful and contrived allegations made in a letter dated the 31<sup>st</sup> January 2001 from the Defendant to the Plaintiff in which the Defendant attempted to justify the action taken by it.
16. The Plaintiff says that the agreement between the Defendant and the Plaintiff can only be determined for cause or by the giving of reasonable notice which in the premises would not have been less than 12 months notice.
17. By reason of the Defendant's breach of contract and wrongful dismissal of the Plaintiff from



the Defendant's employment on the 31<sup>st</sup> January 2001 the Plaintiff has suffered loss and damage.

**Particulars of the Plaintiff's Loss and Damage**

(i)	one year's salary to the Plaintiff ;	\$156,000.00
(ii)	bonus payment due to the Plaintiff for the year 2000;	\$60,000.00
(iii)	estimated bonus payment due to the Plaintiff for the year 2001;	\$50,000.00
(iv)	health insurance premiums due to the Plaintiff from the 1 <sup>st</sup> February 2001 to the 31 <sup>st</sup> January 2002;	\$6,000.00
(v)	life insurance premiums due to the Plaintiff from the 1 <sup>st</sup> February 2001 to the 31 <sup>st</sup> January 2002;	\$1,540.00
(vi)	vacation pay for the year 2001;	\$15,000.00
(vii)	entertainment allowance;	\$6,000.00
(viii)	estimated car allowance due to the Plaintiff;	\$10,000.00
(ix)	pension payments due to the Plaintiff from the 1 <sup>st</sup> February 2001 to the 31 <sup>st</sup> January 2002;	\$7,200.00
(x)	estimated allowance for the use of a cellular phone from the 1 <sup>st</sup> February 2001 to the 31 <sup>st</sup> January 2002;	\$1,500.00
(xi)	estimated travel allowance from the 1 <sup>st</sup> February 2001 to the 31 <sup>st</sup> January 2002.	<u>\$4,800.00</u>
	TOTAL	<u>\$318,040.00</u>



18. The Plaintiff further claims interest pursuant to the Judicature Law (1995 Revision) and the Judgement Debts (Rates of Interest) Rules 2000 from the 1<sup>st</sup> February 2001 to the date hereof (i.e the 8<sup>th</sup> March 2001) on the said sum of \$318,040.00 at the rate of 8% per annum with interest amounting to \$2,509.56 and continuing from the 9<sup>th</sup> March 2001 until judgment herein or sooner payment at the rate of \$69.71 per day.

**AND THE PLAINTIFF CLAIMS:-**

- (1) Damages for breach of contract and/or wrongful dismissal.
- (2) Interest as pleaded.
- (3) Costs.
- (4) Such further and other relief as this Honourable Court deems fit.

Dated this 8<sup>th</sup> day of March 2001.



MYERS & ALBERGA  
Attorneys-At-Law for the Plaintiff

Settled by Ramon D. Alberga Q.C



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 136 OF 2001

BETWEEN: DONALD JACKSON

PLAINTIFF

AND: CARIBBEAN HOME INSURANCE CO. 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.

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

2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)  
 yes  no

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

Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney] for

[Defendant in person]

Address for service:

*Please complete 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.*

Myers & Alberga  
One Regis Place  
P.O. Box 472  
George Town  
Grand Cayman

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

[Empty box for defendant's attorney indorsement]

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 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.