



## STATEMENT OF CLAIM

1. The Plaintiff is an Inspector in the Royal Cayman Islands Police force. He has been a member of the RCIP since 1971 and has held the rank of Inspector since 1986. He is a Caymanian national and resides at West Bay, Grand Cayman, B.W.I.
  
2. The Defendant is a company incorporated under the laws in the Bahamas with limited liability and its head office is situated at Collymore Rock, P. O. Box 104, Bridgetown, Barbados. The Defendant was registered as a Foreign company (Official Company number 19792) in the Cayman Islands on the 17<sup>th</sup> day of January 1984 pursuant to the provisions of Part IX of the Companies Law. The Defendant holds a Class A Insurance License No. 444 issued under the Insurance Law 1979 effective on 16<sup>th</sup> February 1988. The Defendant's registered office is situated at Maples & Calder, Ugland House, P. O. Box 306, George Town, Grand Cayman, B.W.I.
  
3. On the 7<sup>th</sup> July 1998 the Defendant issued to the Plaintiff a policy of insurance known as a Life Protector Policy ("the Policy"). The Policy provided *inter alia*:
  - (a) That it was issued in consideration of the delivery of the application and the payment of the first premium.
  
  - (b) That it was subject to the terms and conditions therein stated and is effective in accordance to the said terms and conditions of the application.
  
  - (c) That the Defendant would pay the benefits of the Policy in accordance with the particulars of the Data Schedule, Section 1 attached thereto effective on the 7<sup>th</sup> July 1998 and terminating on the 7<sup>th</sup> July 2021.
  
  - (d) That the monthly premiums to be paid by the Plaintiff was CI\$240.50.

- (e) That the basic sum assured was CI\$100,000.
- (f) That the sum of CI\$100,000.00 would be payable by the Defendant to the Plaintiff if the Plaintiff suffered *inter alia* the illness of cancer as defined in clause 2(e) of the General Provisions and Conditions of the Policy as follows:

*Cancer - This means a disease manifested by the presence of malignant tumours, diagnosed not earlier than 90 days after the issue date of this Policy or, in the case of reinstatement of the Policy, 90 days after the date of the Certificate of Reinstatement, involving the uncontrolled growth and spread of malignant cells and the invasion of tissues. The term cancer includes leukaemia (excluding chronic lymphocytic leukaemia) and Hodgkin's disease. All non-invasive cancers in situ, tumours in the presence of any human immuno-deficiency virus and any skin cancer other than malignant melanoma are excluded.*

The Plaintiff will refer to the Policy at the trial of this action for its full terms and legal effect.

4. The Policy issued to the Plaintiff was sold to him by Mr. Edlin Myles ("Mr. Myles") who in 1998 was an employee of the Defendant and had been so employed for a period of 17 years. At all material times prior to July 2000 the Plaintiff dealt solely with Mr. Myles who acted as the agent of the Defendant.
5. Mr. Myles as agent for the Defendant recommended to the Plaintiff that monthly premiums should be paid by means of the cheque-o-matic system i.e. by signing post-dated counter cheques and that the Defendant would present these counter-cheques to the Plaintiff's bank on a monthly basis for payment of the monthly premiums to the Defendant. The Plaintiff questioned the reliability of this system.



Mr. Myles emphasised that this is a usual and customary practice of the Defendant. Further, Mr. Myles informed the Plaintiff that he could rely upon this practice because it was safe as the Plaintiff would be notified by the Defendant upon the last counter-cheque being presented and of any difficulties with respect to any payment. The Plaintiff and the Defendant, through its agent, Mr. Myles, agreed to the cheque-o-matic system and the Plaintiff signed 48 post-dated counter cheques and gave these counter cheques to Mr. Myles for presentation by him each month to the Plaintiff's bank in payment of the monthly premiums due by the Plaintiff to the Defendant. The counter cheques were presented each month to the Plaintiff's bank, namely, the Bank of Butterfield.

6. Pursuant to the agreement reached between Mr. Myles and the Plaintiff as set out in paragraph 5 hereof the Plaintiff provided a special account at the Bank of Butterfield and at all material times this account had sufficient funds to meet the monthly premiums due on the 7<sup>th</sup> day of each month when the counter cheques for such premiums were presented.
7. The post-dated counter cheques given by the Plaintiff to Mr. Myles and made payable to the Defendant were presented between July 1998 and 14<sup>th</sup> April 2000 and all such counter cheques were honoured.
8. Mr. Myles apparently resigned from the Defendant Company as of 30<sup>th</sup> March 2000. The Plaintiff was not advised of Mr. Myles' departure at that time and was not informed that the Policy was in the care of another employee of the Defendant. The Defendant, its servants or agents did not comply with the agreement reached between Mr. Myles on behalf of the Defendant and the Plaintiff and negligently failed after the 14<sup>th</sup> April 2000 (i.e. in respect of the monthly premiums due on the 7<sup>th</sup> May 2000 and thereafter) to present any further post-dated counter cheques signed by the Plaintiff and which such counter cheques would have been honoured had they been presented or to notify the Plaintiff as agreed in paragraph 5 above. In fact, on the 28<sup>th</sup> February 2000 the



Plaintiff deposited the sum of CI\$1,500.00 in the bank account referred to at paragraph 6 above to an amount already standing to the credit of the said account.

9. On or about the 26<sup>th</sup> July 2000 the Defendant through its agent, Mr. Norman Wilson, ("Mr. Wilson") by telephone informed the Plaintiff that the Policy had been lapsed due to non-payment of the monthly premium due on the 7<sup>th</sup> May 2000.
10. The Plaintiff did not permit the Policy to lapse and the lapsing thereof was not caused by any default on the part of the Plaintiff. The Plaintiff says that the lapsing of the Policy was caused by the Defendant's breach of the agreement made between the Plaintiff and Mr. Myles on behalf of the Defendant and/or alternatively, by the negligence of the servant and/or agent of the Defendant who assumed responsibility for the portfolio handled by Mr. Myles in failing to present the post-dated counter cheques for the monthly premiums signed by the Plaintiff and which would have been honoured had the said counter cheques been presented.
11. The Policy should never have been lapsed by the Defendant and the provisions relating to re-instatement of a lapsed policy have no application. The application for reinstatement that the Defendant insisted that the Plaintiff sign is a nullity and of no legal effect. The Plaintiff says the provisions of the reinstatement application cannot be relied upon by the Defendant for any purpose.
12. The Plaintiff attended the offices of the Defendant immediately after receiving the said telephone call and met with Mr. Wilson. The Plaintiff protested about the lapsing of the Policy by the Defendant and informed Mr. Wilson of the method of payment of the monthly premiums agreed between himself and Mr. Myles as agent for the Defendant. The Plaintiff pointed out that the action taken by the Defendant to lapse the Policy was illegal and unjustified and that if the Defendant



had presented the counter cheques as agreed that the Policy would not have been lapsed and that the Defendant had wrongly and unjustifiably done so.

13. Mr. Wilson accepted that the Defendant was at fault in not presenting the counter cheques as the Defendant had previously agreed to do and that the lapsing of the Policy had not taken place as a result of any default on the part of the Plaintiff. Mr. Wilson stated that the Policy would be reinstated by the Defendant and proceeded to fill out an application for re-instatement and which he requested the Plaintiff to sign. The Plaintiff objected and stated that this was surely unnecessary. The Plaintiff was assured by Mr. Wilson that his position under the Policy issued to him on the 7<sup>th</sup> July 1998 would not be changed and “that everything would be OK if he signed the form”. Acting on this assurance the Plaintiff complied with the request to sign the form. The Plaintiff followed the instructions of Mr. Wilson and the form that the Plaintiff was requested to sign is in the handwriting of Mr. Wilson.
14. The Plaintiff repeats paragraphs 10 and 11 hereof.
15. Subsequent to the meeting with Mr. Wilson on the 26<sup>th</sup> July 2000 the Plaintiff received through the post a letter from the Defendant dated the 10<sup>th</sup> July 2001 and which read as follows:

*“Your policy is now in a lapsed condition due to the non-payment of the monthly premium due on 07/05/00. As a result, you are currently unprotected in the event of untimely death or disability.*

*We would like to encourage you to reinstate this policy and indeed there are a number of options available to facilitate this. If your Sales Representative has not yet contacted you, please contact our Customer Service Department immediately and our personnel will work towards facilitating your needs.*



*We look forward to hearing from you.”*

16. On the 13<sup>th</sup> October 2000 the Defendant issued to the Plaintiff a Certificate of Reinstatement of the Policy No. 01324519 and the Plaintiff's monthly premiums were debited from his account between the period August 2000 to May 29<sup>th</sup> 2001.
17. On the 24<sup>th</sup> October 2000 more than 15 months after the Policy had been issued, the Plaintiff was diagnosed with cancer of the prostate. He underwent major surgery on the 18<sup>th</sup> April 2001.
18. On the 15<sup>th</sup> December 2000 the plaintiff submitted a claim under the Policy. The Defendant has wrongfully refused and continues to refuse without any justification to honour the Plaintiff's claim and to discharge its obligations to the Plaintiff under the Policy.
19. The Plaintiff says that in the circumstances reinstatement of the Policy does not as a matter of law mean new insurance or taking out a new policy but means that he was restored to all the benefits accruing to him under the original policy of insurance. The Plaintiff further says that the Policy was lapsed as a result of the negligence and breach of contract on the part of the Defendant, its servants or agents and repeats paragraphs 10 and 11 hereof.
20. The Plaintiff further says that the diagnosis of his prostate cancer was more than 90 days from the date of the issue of the Policy to him on the 7<sup>th</sup> July 1998 and that the 7<sup>th</sup> July 1998 and not the 13<sup>th</sup> October 2000 is the relevant and material date from which the period of 90 days commences to run.
21. In the premises the Plaintiff says that the Defendant is in breach of the contract of insurance issued to him on the 7<sup>th</sup> July 1998 and which was wrongfully lapsed on the 7<sup>th</sup> May 2000 by reason of the Defendant's negligence and/or breach of



contract and that the Defendant is liable to pay to the Plaintiff the amount of CI\$100,000.00 together with interest thereon from the 24<sup>th</sup> November 2000.

**Particulars of Damage**

Damages	CI\$100,000.00
Less amount credited pursuant to letter from the Plaintiff to the Defendant dated 16 <sup>th</sup> November 2001	1,683.50
	CI\$ 98,316.50

AND the Plaintiff claims against the Defendant:-

- (1) the sum of CI\$100,000.00 under the terms of the Policy #1324519 less the sum of CI\$1,683.50 amounting to CI\$98,316.50.
- (2) alternatively, damages in the sum of CI\$100,000.00 for negligence and/or breach of contract in allowing the Policy to be lapsed in May 2000 less the sum of CI\$1,683.50 amounting to CI\$98,316.50
- (4) interest pursuant to the section 34 of the Judicature Law (1995 Revision) at the statutory rate of 6 ¼% per annum as follows:
  - (i) on the sum of CI\$100,000.00 from the 24<sup>th</sup> October 2000 to the 17<sup>th</sup> June 2001 (i.e. CI\$17.12 x 237 days) in the amount of CI\$4,057.44;
  - (ii) on the sum of CI\$98,316.50 from the 18<sup>th</sup> June 2001 to the date hereof, namely, the 30<sup>th</sup> November 2001 (i.e. CI\$16.84 x 166 days) in the amount of CI\$2,795.44 and



- (iii) on the sum of CI\$98,316.50 from the 1<sup>st</sup> December 2001 to the date of Judgment against the Defendant and thereafter until payment of the said judgment sum at the said statutory rate per annum (i.e. CI\$16.84 per day).
  
- (4) alternatively, interest on such sum as is awarded to the Plaintiff from the 24<sup>th</sup> October 2000 continuing thereafter until payment of the judgment sum or at such other rate and for such other period as the Court may find just pursuant to the Judicature Law (1995 Revision) and the Judgment Debts (Rate of Interest) Rules 2001 or pursuant to the inherent jurisdiction of the Court.
  
- (5) the costs of and incidental to these proceedings
  
- (6) such further and other relief as may seem just to this Honourable Court.

Dated this 30<sup>th</sup> November 2001

  
\_\_\_\_\_  
MYERS & ALBERGA

SETTLED BY:  
Ramon D. Alberga QC  
Myers & Alberga

TO: The Clerk of the court

AND TO: The Defendant

This Writ of Summons was issued and Statement of Claim was filed by Myers & Alberga, attorneys-at-law for and on behalf of the Plaintiff herein whose address for service is care of One Regis Place, 2<sup>nd</sup> Floor, P.O. Box 472, George Town, Grand Cayman, B.W.I.



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>757</sup> OF 2001

BETWEEN: KENROY GEORGE LUMSDEN PLAINTIFF  
AND: CAPITAL LIFE 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 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  
Fort and Mary Streets  
P.O. Box 472  
George Town  
Grand Cayman B.W.I.

*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.