

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 354 OF 2002

BETWEEN: AMERICAN SAFETY INSURANCE GROUP LTD. Plaintiff  
AND: MERCURY INCORPORATED Defendant



WRIT OF SUMMONS

TO: Mercury Incorporated  
c/o Bank of Butterfield International (Cayman) Ltd  
P.O. Box 705 GT  
Butterfield House  
Fort Street  
Grand Cayman  
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 495 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement with the time stated, or if you return the Acknowledgement 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 May, 2002.

NOTE - This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

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

## STATEMENT OF CLAIM

1. In this pleading, the following abbreviations are used and the meanings ascribed to the abbreviations are facts upon which the Plaintiff relies:
  - “Holdings” means American Safety Holdings Ltd, a Georgia, U.S.A. corporation and a subsidiary of the Plaintiff which carries on business as an insurance holding company.
  - “Lademan” means Steven M. Lademan, a resident of the State of Michigan, U.S.A. and at all material times a director and shareholder of the Defendant.
  - “L&W” means L & W Holdings Ltd, a Nevada, U.S.A. corporation which at all material times carried on business as an insurance holding company.
  - “Pegasus” means Pegasus Insurance, a company incorporated in the Cayman Islands, which at all material times carried on business as an insurance company.
  - “PMI” means PMI Management Inc, a Michigan, U.S.A. corporation which at all material times carried on business as an insurance agency and managing agent.
  - “Willoughby” means John Willoughby, a resident of the State of Michigan, U.S.A. and at all material times a director and shareholder of the Defendant.
2. The Plaintiff is a company duly incorporated in Bermuda and having its registered office at 44 Church Street, Hamilton, Bermuda. It carries on business as an insurance holding company, whose shares are listed on the New York Stock Exchange.
3. The Defendant is a company duly incorporated in the Cayman Islands and having its registered office at Bank of Butterfield International (Cayman) Limited, P.O. Box 705 GT, Butterfield House, Fort Street, Grand Cayman, Cayman Islands. At all material times it was a shareholder in Pegasus.
4. Pursuant to three written Stock Purchase Agreements dated 6th January 2000, Holdings and the Plaintiff agreed to purchase all of the shares in each of PMI, L&W and Pegasus (“Acquisition”).
5. Pursuant to the terms of the Acquisition, Holdings entered into Stock Purchase Agreements with the shareholders of PMI and L&W and the Plaintiff entered into a Stock Purchase Agreement with the shareholders of Pegasus. The Stock Purchase Agreements contained, inter alia, the following express terms and conditions (using the numbering in the said Agreements):

### 3.8 Financial Statements

- (a) *Sellers and the Company have previously delivered to Buyer true and complete copies of (i) the audited balance sheets of the Company as of*

*December 31, 1998 and the related statements of operations, shareholders' equity and cash flows for the fiscal year then ended, including the footnotes to such statements, additional or supplemental information supplied therewith and the report prepared in connection therewith by the independent certified public accountants reviewing such financial statements; and (ii) interim unaudited financial reports prepared through June 30, 1999 (the documents described in clauses (i) and (ii), collectively, the "Financial Statements") which are attached as Schedule 3.8. The Financial Statements (a) are in accordance with the books and records of the Company; (b) present fairly the assets, liabilities and financial condition of the Company as of the respective dates of the Financial Statements, and the results of operations for the periods then ending; and c) have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved.*

- (b) *The Company has no liability or obligation, whether accrued, absolute, or contingent that is not reflected or reserved against in the Financial Statements, except for those that are not required by generally accepted accounting principles to be included on such Financial Statements. Any items of income or expense which are unusual or of a non recurring nature are separately disclosed in the Financial Statements.*

### **3.9 Books and Records**

*The books and records of the Company are true, accurate and complete and, where appropriate, have been maintained in accordance with generally accepted accounting principles applied on a consistent basis. At Closing, all such books and records, including without limitation all Tax Returns (as defined below) will be in the possession of the Company.*

### **3.28 Absence of Certain Changes**

*Except as disclosed on Schedule 3.28, since the most recent Financial Statements the Company has conducted its operations and business only in the ordinary course, and has not:*

- (a) *suffered a material adverse change in the business, financial condition, operating results, earnings, assets, customer, supplier, employee and sales representative relations, business prospects, insurance licenses or authorizations, business conditions or financing arrangements of the Company, or suffered any material casualty loss or damage to the assets of the Company (whether or not covered by insurance);*

### **3.33 Disclosure**

*No representation, warranty or statement made by Sellers or the Company in this Agreement, or any document furnished or to be furnished to Buyer pursuant to this Agreement, contains or will contain any untrue statement of a material*

*fact, or omits or will omit to state any material fact necessary to make the statements contained in this Agreement or such other document not misleading. The fact that Sellers or the Company has delivered copies of certain documents to Buyer shall not alone constitute disclosure of facts required to be disclosed on any Schedule to this Agreement, unless such document is expressly referenced in such Schedule. Receipt by Buyer of such documents and notice of their contents (other than by reference on a Schedule) shall in no way limit Sellers' or the Company's obligations or Buyer's rights under this Agreement.*

#### *4.7 Investigation*

*Buyer acknowledges that it has investigated the business of the Company in connection with the transaction contemplated by this Agreement. Notwithstanding any knowledge of facts determined or determinable by Buyer as a result of such investigation, Buyer shall have the right to rely on the representations, warranties, covenants and agreements of Sellers and the Company contained in this Agreement. Each representation, warranty, covenant and agreement of Sellers and the Company contained in this Agreement is independent of each other representation, warranty, covenant and agreement.*

#### *Article 7*

#### *Conditions Precedent to Buyer's Obligations*

*The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions on or before the Closing Date, unless specifically waived in writing by the Buyer prior to the Closing Date:*

#### *7.1 Representations and Warranties*

*The representations and warranties of Sellers and the Company contained in this Agreement shall have been true and correct on the date of this Agreement and shall be true and correct on the Closing Date (as defined in Section 9.1) as though made on and as of the Closing Date.*

#### *12.1 Survival of Representations*

*All representations and warranties of the parties contained in this Agreement or otherwise made in writing in connection with the transactions contemplated by this Agreement shall survive the execution and delivery of this Agreement for a period of ten years from the Closing Date.*

#### *12.5 Designation and Appointment of Sellers' Agent*

*Sellers agree to execute, contemporaneously with the execution of this Agreement, a designation and appointment in the form attached as Exhibit[E] F, pursuant to which Sellers irrevocably designate and appoint Steven M. Lademan as Sellers' exclusive agent and attorney-in-fact for all purposes under this Agreement.*

The Plaintiff will rely on the full terms, meaning and effect of the Stock Purchase Agreements.

6. The Stock Purchase Agreement in relation to the acquisition by the Plaintiff of Pegasus ("Pegasus Agreement"), also contained, inter alia, the following express terms and conditions (using the numbering in the Pegasus Agreement):

*10.1 Indemnification by Certain Sellers*

*Steven M Lademan and John W Willoughby (who are two of the Sellers) and the Company (the "Seller Indemnitors") shall, jointly and severally, indemnify, defend and hold harmless Buyer and its officers, directors and affiliates (the "Buyer Indemnitees") from, against, and with respect to any and all loss, damage, claim, obligation, liability, cost and expense (including without limitation reasonable attorneys' fees and costs and expenses incurred in investigating, preparing, defending against or prosecuting any litigation, claim, proceeding or demand), of any kind or character (a "Loss") arising out of or in connection with any of the following:*

- (a) any breach of any of the representations, warranties or certificates of Sellers or the Company contained in or made pursuant to this Agreement;*
- (b) any failure by Sellers or the Company to perform or observe, or to have performed or observed, in full, any covenant, agreement or condition to be performed or observed by each pursuant to this Agreement. Notwithstanding anything contained herein to the contrary, the Company and Sellers (other than Steven M. Lademan and John W. Willoughby) shall have no indemnification obligation under this Section 10.1 to Buyer after the Closing date, it being understood and agreed that Steven M. Lademan and John W. Willoughby shall thereafter be solely obligated for all indemnification obligations hereunder, and all Sellers (including Messrs. Lademan and Willoughby) hereby irrevocably waive any and all rights that they may have for contribution or indemnity, express or implied, from the Company, or other amounts or damages whatsoever from the Company arising from all indemnification obligations of Messrs. Lademan and Willoughby to Buyer hereunder.*

*12.14 Governing Law*

*This Agreement shall be governed by the laws of the Cayman Islands without regard to conflicts of laws principles.*

*12.15 Jurisdiction; Venue; Service of Process*

*Each of the parties to this Agreement submits to the non-exclusive jurisdiction of the courts of the Cayman Islands or Bermuda in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect*

*of such action or proceeding may be heard and determined in any such court. Each of the parties acknowledge that such courts of the Cayman Islands or Bermuda shall have jurisdiction and venue in any action or proceeding arising out of or relating to this Agreement and each party specifically waives any claims or objections to jurisdiction and venue. Any party may make service on any other party by sending or delivering a copy of the process to the party to be served at the address and in a manner provided in Section 12.6; provided, however, that nothing in this Section 12.15 will affect the right of any party to serve legal process in any other manner permitted by law or at equity. Each party agrees that a final judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or at equity.*

#### **12.16 Legal Fees**

*In the event that any legal action relating to this Agreement is brought by a party, the party ultimately prevailing in such legal action shall be entitled to receive from the non-prevailing party, in addition to any other damages or relief, reasonable attorneys fees and costs incurred as a result of such action(s) which shall include legal fees and costs relating to any appeal(s). The term "party ultimately prevailing" shall mean the party awarded the greater damage or other relief pursuant to the judicial determination by a court of last resort or by a lower court for whose final order no appeal has been taken and time therefore has elapsed.*

The Plaintiff will rely on the full terms, meaning and effect of the Pegasus Agreement.

7. In performance of the Stock Purchase Agreements, and in particular clause 1.2 of the Pegasus Agreement which required the purchase price to be distributed in certain ways, funds were distributed to, and for the benefit of, the Defendant as follows:
  - (1) US\$200,000 was paid by the Plaintiff to the Defendant as final payment in respect of the Defendant's management contract with Pegasus.
  - (2) US\$650,000 was paid by the Plaintiff to Pegasus on behalf the Defendant, to release a security interest over real estate in the Cayman Islands commonly known as Villas of the Galleon, Block J #67, West Bay Road and more formally known as Block and Parcel No 11D 1/11H67, West Bay Beach North.
  - (3) US\$359.68 was paid by the Plaintiff to the Defendant to purchase the Defendant's shares in Pegasus.

("the Funds")

8. In March 2000 the Plaintiff discovered that Lademan and Willoughby had misrepresented the business affairs and financial condition of L&W, PMI and Pegasus such that the Plaintiff had been fraudulently induced into purchasing the outstanding stock of such companies and that Lademan, Willoughby, and the selling shareholders including the Defendant had breached their representations and warranties in the Stock

Purchase Agreements and that certain of the representations and warranties made therein were intentionally false and misleading.

### Particulars

- (1). In breach of clause 3.8(a) of the Stock Purchase Agreements the financial statements, balance sheets, financial reports and claim records of L&W, PMI and Pegasus did not present fairly the assets, liabilities and financial condition of those companies as of their respective agreements because they materially understated the loss reserves for insurance claims and were devoid of information about adverse development of claims losses and expenses, thereby substantially understating the liabilities of the companies.
- (2). In breach of clause 3.8(b) of the Stock Purchase Agreements, L&W, PMI and Pegasus had liabilities and obligations which were not reflected in the financial information and documentation provided to the Plaintiff prior to closing.
- (3). In breach of clause 3.9 of the Stock Purchase Agreements, the books and records of L&W, PMI and Pegasus were not true, accurate and complete nor were they maintained in accordance with generally accepted accounting principles.
- (4). In breach of clause 3.28(a) of the Stock Purchase Agreements, L&W, PMI and Pegasus had suffered a material adverse change in their business, financial condition, operating results, earnings, assets and business prospects which was not disclosed to the Plaintiff and was intentionally concealed by Lademan and Willoughby.
- (5). In breach of clause 3.33 of the Stock Purchase Agreements, the representations, warranties and statements made by Lademan and Willoughby contained untrue statements of material facts and omitted material facts.
- (6). In breach of clause 7.1 of the Stock Purchase Agreements, the representations and warranties of Lademan and Willoughby were not true and correct.
- (7). In breach of clause 7.2 of the Stock Purchase Agreements, Lademan and Willoughby did not comply with and perform all covenants, agreements and obligations required of them pursuant to the Stock Purchase Agreements.

### First Cause of Action: Constructive Trust

9. The Defendant received the Funds with full knowledge of the fraudulent acts, omissions and misrepresentations, breaches of contract and/or breaches of trust by Lademan and Willoughby.
10. The Defendant is liable to account to the Plaintiff for the sum of US\$850,359.68 as a constructive trustee on the ground of its dishonest assistance of each of Lademan and Willoughby's fraudulent acts, omissions and misrepresentations, breaches of contract and/or breaches of trust.

11. In the premises, the Defendant is liable to transfer all trust property to the Plaintiff under a vesting order or to account for the same and, in so far as the Defendant may no longer hold sufficient funds, in damages for breach of trust by way of equitable compensation.

**Further and/or Alternative Cause of Action: Fraudulent Misrepresentation**

12. The Plaintiff was induced to enter into the Pegasus Agreement, by the Defendant's misrepresentations as pleaded in paragraph 8 above.
13. The Defendant made the representations fraudulently knowing that they were false or alternatively recklessly, not caring whether they were true or false.
14. Further or in the alternative, if (contrary to the Plaintiff's primary case) each or any of the representations was not made fraudulently, the Plaintiff will rely upon the provisions of Part III of the Contracts Law (1996 Revision).
15. As soon as the Plaintiff discovered the true facts, by a letter to Lademan and Willoughby dated 14<sup>th</sup> April 2000, the Plaintiff rescinded the Pegasus Agreement.
16. As a result of the Defendant's misrepresentations, the Plaintiff has suffered loss and damage, full particulars of which will be given before the trial of this action.

**Further and/or Alternative Cause of Action: Conspiracy**


17. In the premises, on or before 6th January 2000 the Defendant, Lademan and Willoughby wrongfully and with intent to injure the Plaintiff and/or to cause loss to the Plaintiff by unlawful means namely the fraudulent acts, omissions and representations as pleaded in paragraph 8 conspired and combined together to defraud the Plaintiff.
18. As a result of the Defendant's conspiring to injure or cause loss to the Plaintiff, the Plaintiff has suffered loss and damage, full particulars of which will be given before the trial of this action.
19. The Plaintiff claims and is entitled to interest on all sums found to be due to it in accordance with statute law.

**AND THE PLAINTIFF CLAIMS:**

1. A declaration that the Defendant is liable to account to the Plaintiff for the sum of US\$850,359.68 or such other sum as the Court thinks fit as a constructive trustee on the ground of its dishonest assistance in each of Lademan's and Willoughby's fraudulent acts, omissions, misrepresentations, breaches of contract and/or breaches of trust.

2. An order that the Defendant pay to the Plaintiff US\$850,359.68 or such other sum as the Court thinks fit.
3. For declarations, accounts, orders and inquiries in connection with paragraph 10.
4. Rescission of the Pegasus Agreement and all other agreements between the parties.
5. Damages in the amount to be assessed pursuant to paragraphs 11, 16 and 18.
6. A declaration that the Plaintiff is entitled to enforce any judgment against the Defendant against all the property comprised in West Bay Beach North, Block 11D, Parcel 1/11H67.
7. Such other interim relief in relation to staying these proceedings as may be necessary or appropriate in the interests of justice.
8. An inhibition or such other interim relief as shall prohibit the registration of any dealing with the property comprised in West Bay Beach North, Block 11D, Parcel 1/11H67.
9. Interest pursuant to Statute.
10. Costs pursuant to clause 12.16 of the Pegasus Agreement and costs pursuant to the provisions of the Grand Court Rules.
11. Such further or other relief as the Court thinks fit.

Dated this 13<sup>th</sup> day of May, 2002

  
\_\_\_\_\_  
Maples and Calder

This Writ was issued by Maples and Calder, attorneys-at-law for the Plaintiff, whose address for service is Uglan House, South Church Street, PO Box 309GT, Grand Cayman, Cayman Islands (Ref: 281155-01-MWI)

BETWEEN: AMERICAN SAFETY INSURANCE GROUP LTD. Plaintiff
AND: MERCURY INCORPORATED Defendant

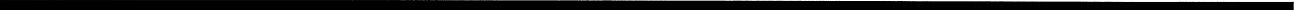
ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

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 [ ] No [ ]



Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

**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.

**Maples and Calder  
Ugland House  
P.O. Box 309 GT  
George Town  
Grand Cayman  
Att: AJJ/MWI (281155-01)**

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]

**Acknowledgement of service of writ of summons (0.12, r.3)**

**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 495 GT, 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.