

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 801 OF 2003

BETWEEN:

DONALD ERWAY(1)
DENNIS COSTIN(2)

PLAINTIFF



AND:
THEO BULLMORE AND SIMON WHICKER
As Joint Provisional Liquidators For
National Warranty Insurance Risk Retention Group

DEFENDANT

WRIT OF SUMMONS



TO: THEO BULLMORE AND SIMON WHICKER As Joint Provisional Liquidators for National Warranty Insurance Risk Retention Group of KPMG, Cayman Islands, 2nd Floor, Century Yard, Cricket Square, George Town, 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, 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 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 9th day of December, 2003

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 Acknowledgement of Service are given with the accompanying form.

STATEMENT OF CLAIM

AND THE PLAINTIFF claims:

1. Upon the Petition of National Warranty Insurance Risk Retention Group ("the Company") presented to this Court on 4th June, 2003 for the winding up of the Company on just and equitable grounds in accordance with Section 94 (d) of the Companies Law (2003 Revision) (" the Law") an Order was made on 1st August 2003 that the Company be wound up by this Court under the provisions of the Companies Law (2003 Revision) and that Simon Lovell Clayton Whicker and George Theodore Lanyon Bullmore of KPMG, P.O. Box 493GT, Century Yard, Grand Cayman be and are hereby appointed Joint Official Liquidators of the Company.
2. The Plaintiffs were prior to the winding up of the Company the Directors of the Company.
3. The Company's constitution contains an indemnity clause at Article 126 of its Articles of Association which reads as follows:

"The Directors, Auditors and Officers for the time being of the company and any trustee for the time being acting in relation to any of the affairs of the Company and their heirs, executors, administrators and personal representatives respectively shall be indemnified out of the assets of the Company from and against all actions, proceedings, costs, charges, losses, damages and expenses which they or any of them shall or may incur or sustain by reason of any act done or omitted in or about the execution of their duty in their respective offices or trusts, except such (if any) as they shall incur or sustain by or through their own willful neglect or default respectively and no such Director, Auditor, Officer or trustee shall be answerable for the acts, receipts, neglects or defaults or any other Director, Auditor, Officer of trustee or for joining in any receipt for the sake of conformity or for the solvency or honesty of any banker or other persons with whom any monies of the Company may be lodged or deposited for safe custody or for any insufficiency invested or for any other loss or damage due to any such cause as aforesaid

or which may happen in or about the execution of his office or trust unless the same shall happen through the willful neglect or default of such Director, Auditor, Officer or trustee.”

4. Pursuant to this clause the Company had taken out a policy of insurance including but not limited to negligence or wrongful acts committed during employment for all employees, management, officers and directors. The coverage terminated on December 1st, 2000 this policy was not renewed after December 1st, 2000.

5. Rex Moats, General Counsel to the Company, prepared a resolution that was adopted by National Warranty’s Board on April 15, 2003 which obligated the Company to “defend, indemnify, and hold harmless all employees, management, officers and directors” against claims arising out of their employment by the Company (“the First Resolution”). The First Resolution was redrafted on May 1, 2003 to provide limits on the Company’s obligation to indemnify. While the modified resolution was not adopted, it was again revised to add two additional former employees as indemnified parties. On the 22nd of May, 2003 the Board of Directors who desired that all employees or representatives, all attorneys, management, officers and directors should “be defended, indemnified and held harmless, if such persons were sued in matters arising out of their employment with or services” for the Company, passed a resolution (“the Resolution”) that certain specified amounts of money be transferred from the Company “to a trust account for the benefit of the named parties for the legal defense of matters, actual or threatened related to their employment with or services for Company or to matters in which the named parties relied upon information provided by an outside source.....” The names of those to be protected (“the Affected Parties”) is then set out in the following manner,

| | | |
|----------|-----------------------------------|-----------|
| Director | Donald G. Erway and Neva K. Erway | \$200,000 |
| Director | Dennis Costin | \$200,000 |
| | Barry Lake | \$200,000 |
| | Jerry Gilbert | \$100,000 |
| | John Howard | \$100,000 |

| | |
|------------------|-------------|
| Jana L. Miller | \$ 50,000 |
| Randall Erway | \$ 50,000 |
| Scott Emery | \$ 50,000 |
| Patrick Boley | \$ 50,000 |
| Sheila Burroughs | \$ 50,000 |
| Rex Moats | \$ 50,000 |
| Theresa Oakeson | \$ 50,000 |
| Total: | \$1,150,000 |

6. Pursuant to the terms of the Resolution the Company transferred \$1,050,000 (“the Retainer”) to trust accounts of three law firms for the benefit of the Affected Parties.
7. The Defendants have stated that the transfer of the Retainer pursuant to the Resolution was improperly paid out of the Company’s assets and constitutes property of the Company and should be returned to the Company. The Defendants have made written demand on the Plaintiffs for the return of the Retainer. The Defendants state that the Plaintiffs acted in breach of their fiduciary duty to the Company and in particular to the general body of creditors in passing the Resolution and transferring the Retainer.
8. The Plaintiffs deny that the passing of the Resolution or the transfer of the Retainer were in breach of their fiduciary duty to the Company as Directors of the Company and assert that the Retainer should remain in trust in accordance with the terms of the Resolution until the purposes of the trust have been met or the trust has expired.

AND THE PLAINTIFFS SEEK

1. A declaration that in passing the Resolution and transferring the Retainer the Plaintiffs did not breach the fiduciary duty owed by them to the Company as directors of the Company and that the Resolution and the acts done pursuant to it were done *intra vires* and the Retainer is validly held in trust in accordance with the terms of the Resolution

and does not constitute property of the Company which should be returned to the Company at this time.

2. Costs of this Action.

Solomon Harris
Plaintiffs' Attorney 9th December 2003.