

IN THE GRAND COURT OF THE CAYMAN ISLANDS

432  
CAUSE NO    OF 2005

BETWEEN:

SUNSHINE SUITES, LTD

Plaintiff

-and-

N.E.M. (WEST INDIES) INSURANCE LIMITED

Defendant



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**WRIT OF SUMMONS**

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TO: N.E.M (West Indies) Insurance Limited  
C/o Fidelity Insurance Cayman Limited  
PO Box 2174 GT  
36E Dr Roy's Drive  
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 28 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, PO Box 495 GT, George Town, Grand Cayman, 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 19<sup>th</sup> day of September 2005

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.

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STATEMENT OF CLAIM

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1. The Plaintiff is a duly incorporated company having its registered office at PO Box 1994GT, Queensgate Building, 4<sup>th</sup> Floor, 113 South Church Street, George Town, Grand Cayman, Cayman Islands, and carrying on business as the owner of a hotel, bar and restaurant known as "Sunshine Suites" situated at Block 11D Safe Haven, West Bay Road, Grand Cayman ("the Premises").
2. The Defendant is an insurance company whose registered office is at 12 Abercromby Street, Port of Spain, Trinidad, West Indies and which is licensed to carry on insurance business in the Cayman Islands.
3. By a written contract of insurance, policy reference number NEMCCB099907612/01 ("the Policy"), the Defendant insured the Plaintiff and the Premises against the perils specified in the Policy, subject to the terms and conditions of the Policy.
4. The Policy was in full force and effect for the 13 month period from 2<sup>nd</sup> January 2004 to 1<sup>st</sup> February 2005.
5. The Policy contained express terms and conditions, inter alia, entitling the Plaintiff to indemnity in the event that it suffered losses as a result of interruption of the business of the hotel, bar and restaurant.

Particulars

5.1 Pursuant to the Hotel All Risks Advice of Insurance dated 22 January 2004:

5.1.1 The Defendant was the Carrier;

5.1.2 The Sum Insured for Hotel Business Interruption was US\$1,000,000;

5.1.3 The Sum Insured for Restaurant/Bar Business Interruption was US\$150,000.

5.2 The Business Interruption Extension (Section B of the Policy) stated:

5.2.1 "This Policy is extended to cover loss resulting from necessary Interruption of Business caused by Direct Physical Loss or Damage, as covered by the policy (sic) to which this Extension is attached, to property insured by this Policy."

5.2.2 In the event of such Direct Physical Loss or Damage, Underwriters were and are "liable for the Actual (sic) loss sustained by the Insured resulting directly from such necessary Interruption of Business, but not exceeding the reduction in Gross Earnings, as defined hereafter (sic), less charges and expenses which are not necessary during the Interruption of Business, for a period not to exceed the lesser of:

(a) such length of time as would be required, with the exercise of due diligence and dispatch, to repair, rebuild or replace such part of the property as has been destroyed or damaged,

nor

(b) eighteen (12) (sic) calendar months,

commencing with the date of such Direct Physical Loss or Damage and not limited by the expiration of this Policy."

6. On or about 12 September 2004 the Premises were damaged by Hurricane Ivan and the hotel, bar and restaurant were forced to close resulting, inter alia, in losses to the Plaintiff covered by the Business Interruption Extension of the Policy totalling US\$1,427,930 (comprised of US\$1,254,218 for hotel business interruption and US\$173,712 for bar/restaurant interruption) which sums were checked, reviewed and approved as correct and accurate by the Defendant's agent Matson, Driscoll & Damico Ltd in a report dated 10 June 2005.
7. The Plaintiff has demanded payment of US\$1,150,000 for the Insured Losses but in breach of the Policy the Defendant has failed and or refused to pay.
8. The Plaintiff claims interest pursuant to the Judicature Law (2004 Revision).

**AND THE PLAINTIFF CLAIMS:**

- (1) Judgment against the Defendant in the sum of US\$1,150,000.00;
- (2) Interest pursuant to the Judicature Law (2004 Revision);
- (3) Costs;
- (4) Such further or other relief as the Court deems fit.

Maples and Calder

Maples and Calder  
Attorneys-at-law for the Plaintiff

This Writ was issued by Maples and Calder, Attorneys for the Plaintiff whose address for service is Ugland House, South Church Street, PO Box 309GT, George Town, Grand Cayman. (Ref. MWI/SPD/612182-01/1478690)