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**STATEMENT OF CLAIM**

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**The parties**

1. The Plaintiff is an insurance company incorporated in Trinidad and Tobago, which at all material times has carried out business in the Cayman Islands through its agents, Fidelity Insurance (Cayman) Limited and Balderamos Insurance Services Ltd.

2. The Defendant is a Caymanian, who has resided at all material times in Grand Cayman, Cayman Islands.

**The salvage vehicles**

3. On or about 11<sup>th</sup> September 2004, Hurricane Ivan hit the Cayman Islands, causing substantial damage to about 194 vehicles which were owned by the Plaintiff's Insureds, and which, as a result of the damage sustained, were written off as salvage. Upon making payment to its various Insureds, the Plaintiff became the legal owner of the vehicles ('the Salvage Vehicles').

**The agreement and its terms**

4. On or about 2<sup>nd</sup> December 2004, the Plaintiff and the Defendant entered into a written agreement ('the Agreement'), a copy of which is attached at Appendix A, whereby it was expressly agreed that:

(a) the Defendant would pay the Plaintiff the sum of CI\$97,000.00 (ninety seven thousand CI dollars) for the Salvage Vehicles (a list of which was set out in the Agreement). In particular, the Defendant would pay the Plaintiff by delivering a cheque of CI\$48,500.00 to Fidelity Insurance, the Plaintiff's agent, on or before 31<sup>st</sup> December 2004, and a further cheque of CI\$48,500.00 to Fidelity Insurance, the Plaintiff's agent, on or before 31<sup>st</sup> January 2005;

- (b) upon payment as set out above, the Defendant would become the legal owner of the Salvage Vehicles;
- (c) the Defendant would ship the Salvage Vehicles out of the Cayman Islands, but not to any other Caribbean countries;
- (d) insofar as the Defendant was unable to ship any of the Salvage Vehicles out of the Cayman Islands, the Defendant would destroy or strip the said Salvage Vehicles, which would only be used for spare parts;
- (e) if the Defendant did not perform his obligations under the Agreement, the Plaintiff reserved the right to void the Agreement and/or to have the vehicles returned.

5. The Agreement further contained implied terms that:

- (a) the Defendant would ship the Salvage Vehicles out of the Cayman Islands, but not to any other Caribbean countries, within a reasonable period of time, which the Plaintiff will contend was a period of not more than 6 months after signing the agreement, i.e. by no later than 2<sup>nd</sup> June 2005;
- (b) the Defendant would indemnify the Plaintiff against any liabilities, loss or damage that the Plaintiff might sustain in the event that the Defendant failed to carry out his obligations under the Agreement.

**Breach of agreement by the Defendant**

6. The Defendant has acted wrongfully and in breach of the Agreement, in that:

**PARTICULARS OF BREACH OF AGREEMENT**

- (a) The Defendant has failed to pay the Plaintiff, or its agent, the sum of CI\$48,500.00 on or before 31<sup>st</sup> December 2004;
  - (b) The Defendant has failed to pay the Plaintiff, or its agent, the sum of CI\$48,500.00 on or about 31<sup>st</sup> January 2005;
  - (c) The Defendant has failed to ship any or all of the Salvage Vehicles out of the Cayman Islands within a reasonable period of time or at all. Without prejudice to the generality of this allegation, the Plaintiff avers in particular that:
    - (1) At least one of the Salvage Vehicles, a 2002 Ford Explorer, registration number 65398, is still being stored at GT Automotive Imports;
    - (2) At least one of the Salvage Vehicles is being driven on the roads in the Cayman Islands.
  - (d) In the alternative, the Defendant has failed to destroy or strip the said Salvage Vehicles, and to use them only for parts.
7. The Defendant made part payments in respect of the said debt by two cheques of CI\$10,000 dated 28 January 2005. Save as aforesaid the debt remains outstanding.
8. As a result of the matters set out above, the Defendant still owes and is liable to pay the Plaintiff the sum of CI\$77,000.00.
9. The Plaintiff is further entitled to interest pursuant to section 34 of the Judicature Law (1995 revision) as follows:

- (a) on the sum of CI\$48,500.00, from 31<sup>st</sup> December 2004 until 28 January 2005;
- (b) on the sum of CI\$48,500.00, from 28 January 2005 until payment or judgment; and
- (c) on the sum of CI\$48,500.00, from 31<sup>st</sup> January 2005 until payment or judgment; and/or
- (d) On such sums at such rates and for such periods as the Court deems fit.

10. Further or alternatively, the Plaintiff is entitled to an indemnity from the Defendant against any liabilities, loss or damage that the Plaintiff might sustain or incur as a result of the Defendant's breaches of contract.

11. For the avoidance of doubt, the Plaintiff hereby reserves its right to avoid the contract and/or to have the vehicles returned, in the event that the Defendant fails to make payment of the principal sum and interest.

**AND THE PLAINTIFF CLAIMS:**

- 1. Judgment for the principal sum of CI\$77,000.00;
- 2. Interest pursuant to section 34 of the Judicature Law (1995 revision);
- 3. An indemnity against any liabilities, loss or damage that the Plaintiff might sustain as a result of the Defendant's breaches of contract;
- 4. Costs;

5. Such further and or other relief as the Court deems appropriate.

Dated this: 22<sup>nd</sup> day of November 2005

Filed this: day of November 2005



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**CAMPBELLS**  
Attorneys-At-Law  
For the Plaintiff

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>534</sup> OF 2005

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

AND: JOHN MCLEAN JR. FIRST DEFENDANT

ACKNOWLEDGEMENT 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.

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

3. State whether the Defendant intends to contest the proceedings (tick appropriate box)  
 yes  no  N/A

4. 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  N/A

Service of the Writ is acknowledged accordingly

Address for service:  
CAMPBELLS  
ATTORNEYS -AT -LAW  
P.O. BOX 884 GT  
GRAND CAYMAN  
CAYMAN ISLANDS REF: STM/09025

### 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.*

John McLean  
P O Box 11876 APO  
Grand Cayman  
Cayman Islands

Campbells  
Attorneys at Law

PO Box 884 GT  
George Town  
Grand Cayman  
Ref: STM/0925

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

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, 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 installments 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 his 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.