

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: *12* OF 2006

B E T W E E N:



COMMERCIAL DRYING TECHNOLOGIES, INC.

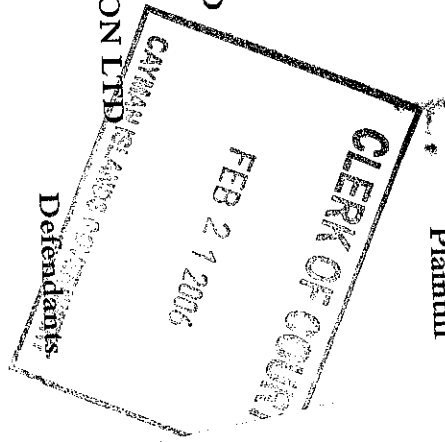
Plaintiff

AND

(1) EMBASSY INVESTMENTS LIMITED

(2) HYATT BRITANNIA CORPORATION LTD

Defendants



WRIT OF SUMMONS

TO: (1) Embassy Investments Limited of the Hyatt Hotel 747 West Bay Road,  
P.O. Box 884GT, Grand Cayman.

(2) Hyatt Britannia Corporation Ltd of Hyatt Hotel, 747 West Bay Road,  
P.O. Box 1588GT, Grand Cayman.

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 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        day of February 2006

**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

1. The Plaintiff is a company incorporated in the State of New Jersey, United States of America and having its principal place of business at 1520 Street, Route 37 West, Toms River, N.J, USA. The Plaintiff is a disaster recovery company specialising in treating water damaged properties. Its address for service is in care of its attorneys-at-law, Appleby Spurling Hunter.
2. The 1<sup>st</sup> Defendant is a company incorporated in Jersey, Channel Islands, and is registered as a foreign company in the Cayman Islands under registration number 130074 with its registered office at Campbells Corporate Services Limited, 4th Floor Scotiabank Building, P.O. Box 268GT, George Town, Grand Cayman. At all material times, the 1<sup>st</sup> Defendant was the legal owner of lands upon which the Hyatt Regency Grand Cayman operates.
3. The 2<sup>nd</sup> Defendant is a resident company incorporated in the Cayman Islands under registration number 24359 on 16 May 1986 and having its registered office at Caledonian Bank & Trust Limited, First Floor Caledonian House, 69 Dr Roy's Drive, P.O. Box 1043GT, George Town, Grand Cayman. At all material times, the 2<sup>nd</sup> Defendant was the managing agent for the Hyatt Regency Grand Cayman.
4. Hyatt Regency Grand Cayman (the "**Hyatt**") is the hotel operation and facility located on lands owned by the 1<sup>st</sup> Defendant, Block 12C Parcel 27, Block 12D Parcel 24 and Block 12 D Parcel 79REM1. The Hyatt is owned and/or operated by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
5. At all material times, Asif Bhatia (hereinafter "**Mr. Bhatia**") held himself out to be the owner and representative of the Hyatt and a Director of both the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant. Further and alternatively, Mr. Bhatia held himself out as having authority to bind both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on matters relating to the Hyatt relevant to this proceeding.
6. At all material times, Mark Bastis (hereinafter "**Mr. Bastis**") was the General Manager of the Hyatt and had authority to bind both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Alternatively, Mr. Bastis held himself out as having authority to bind both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on matters relating to the Hyatt relevant to this proceeding.
7. On or about 11 & 12 September 2004, Hurricane Ivan caused extensive damage to

- the Hyatt largely caused by the intrusion of rain water and/or storm surge into the buildings.
8. The Hyatt was insured for hurricane damage provided at a primary level by AIG Europe (UK) Ltd (“AIG”).
  9. On learning of the Hurricane Ivan related damage, Keith Culley, (“Mr. Culley”) an AIG general loss adjuster, flew to the Cayman Islands on or about 18 September 2004 to assist the Hyatt with recovery and reconstruction efforts. Shortly thereafter, Mr. Culley met with Mr. Bastis, the then General Manager of the Hyatt, and other Hyatt executives.
  10. Being experienced in disaster recovery situations, Mr. Culley recommended to the Hyatt executives that various contractors be brought in to assist with recovery efforts, including environmental engineers, JC Broderick & Associates and water damage experts Commercial Drying Technologies, Inc (the Plaintiff). Mr. Culley’s recommendations were accepted and agreed to by Mr. Bastis and, alternatively, by Mr. Bhatia. Mr. Culley then assisted with contacting the Plaintiff and other contractors and creating a work schedule.
  11. Mr. Bhatia met the representatives of the Plaintiff at the airport in the Cayman Islands on first arrival. Messrs. Bhatia and Bastis, on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, assisted or arranged assistance to the Plaintiff upon and following arrival to the Cayman Islands by:
    - a. Arranging accommodation;
    - b. Arranging food and transportation;
    - c. Obtaining work permits for the Plaintiff’s workers;
    - d. Permitting Hyatt employees to assist the Plaintiff in its work;
    - e. Providing general assistance and facilitating the Plaintiff’s efforts to dry the Hyatt.
  12. On or about 25 to 30 September 2004, JC Broderick & Associates, together with the Plaintiff, conducted moisture probe detections and mould inspections of the various Hyatt buildings and took various temperature and humidity readings. These inspections were carried out as requested by Messrs. Bastis and Bhatia on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
  13. The inspections revealed exceptionally high levels of humidity in the majority of the

Hyatt buildings. The Plaintiff will rely on the written reports of JC Broderick & Associates.

14. On the basis of the aforesaid inspections and readings, Mr. Culley and/or Norman Taylor, an insurance loss adjuster hired by AIG, recommended to the Hyatt executives, including Messrs. Bastis and Bhatia, that the buildings needed to be dried urgently in order to prevent mould contamination of undamaged property. This recommendation was accepted and agreed to by Mr. Bhatia and/or Mr. Bastis on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

15. The Plaintiff was accordingly orally instructed by Mr. Bhatia and/or Mr. Bastis on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on or about 30 September 2004 to commence the drying work. Alternatively, Mr. Culley and/or Mr. Taylor were authorised by Mr. Bhatia and/or Mr. Bastis on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to instruct the Plaintiff to commence the drying work which instructions were duly given to the Plaintiff by Mr. Culley and/or Mr. Taylor on or about 30 September 2004. Further or alternatively, the Plaintiff was orally instructed by Mr. Culley and/or Mr. Taylor on or about 30 September 2004 to commence the drying work, which instructions were ratified by Mr. Bhatia and/or Mr. Bastis on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

16. The drying work conducted by the Plaintiff commenced on or about 30 September 2004 and consisted of installing, running and maintaining various industrial dehumidifiers, air scrubbers, fans and related equipment together with the electrical generators needed to power this equipment.

17. A substantial portion of the equipment required by the Plaintiff was transported to the Cayman Islands by aircraft which was approved by Mr. Bhatia. Mr. Bhatia personally assisted with the unloading of the Plaintiff's equipment. Further, Mr. Bhatia either directly assisted or arranged for assistance with customs related procedures required in having the Plaintiff's equipment lawfully enter the Cayman Islands. To facilitate expedient customs processing, the Plaintiff was advised by Mr. Bhatia that its equipment was to be labelled in a manner to identify that the equipment was to be used for the Hyatt.

18. To give effect to the aforesaid instructions, the 2<sup>nd</sup> Defendant agreed with the Plaintiff on or about 30 September 2004 that certain of the Plaintiff's personnel would be temporarily employed by the 2<sup>nd</sup> Defendant to assist the Plaintiff in the drying of the Hyatt buildings. The Plaintiff will refer to and rely on the work

permits applied for and obtained by the 2<sup>nd</sup> Defendant for certain of the Plaintiff's personnel, in support of this conclusion. The 2<sup>nd</sup> Defendant paid for these personnel to assist the Plaintiff in the drying of the Hyatt buildings.

19. It was an express or implied term of the agreement regarding the employment of the 2<sup>nd</sup> Defendant's personnel to assist in the drying of the Hyatt buildings between the 2<sup>nd</sup> Defendant and the Plaintiff that the Plaintiff would continue to be paid its usual and/or customary alternatively reasonable rates for the labour performed by the Plaintiff's personnel and would be reimbursed for all expenses incurred in relation to works performed by the Plaintiff in relation to the Hyatt. Further, it was an express or implied term of the agreement that the Plaintiff would provide the necessary drying equipment to the 2<sup>nd</sup> Defendant's use at the usual and/or customary alternatively reasonable rental rates for the equipment supplied.

20. As a result of the acceptance by the Plaintiff of the instructions by the 1<sup>st</sup> Defendant and/or, alternatively, the 2<sup>nd</sup> Defendant to provide drying services to the Hyatt, a contract was formed between the Plaintiff and the 1<sup>st</sup> Defendant and/or the 2<sup>nd</sup> Defendant. The express or implied terms of the agreement were as follows:

- a. The Plaintiff would provide drying and related services to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the Hyatt at its usual and customary rates or, alternatively, industry standard rates;
- b. The 1<sup>st</sup> and, alternatively, the 2<sup>nd</sup> Defendant or one of them would pay the Plaintiff such rates on a timely basis;
- c. The Plaintiff would mobilize promptly;
- d. The 1<sup>st</sup> and, alternatively, the 2<sup>nd</sup> Defendant or one of them, would utilize insurance proceeds to pay the usual and customary rates;
- e. the Plaintiff would be reimbursed for all expenses properly incurred by it in relation to drying services provided to the Hyatt.

21. On the instructions of the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant and in accordance with the agreement pleaded above, the Plaintiff duly commenced the drying of the Hyatt buildings on or about 30 September 2004 and continued to provide such services on a daily basis until on or about 15 January 2005.

22. Alternatively, the Plaintiff's services were freely accepted by the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant or one of them with full knowledge that the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants would be liable for the cost of such services, Further or alternatively, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were incontrovertibly benefited by the provision of the

- Plaintiff's services at the expense of and to the detriment of the Plaintiff. The Plaintiff pleads and relies on the doctrine of unjust enrichment and states that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have been unjustly enriched by the Plaintiff's services and there is no juristic reason for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to retain such unjust enrichment.
23. On or about 4 October 2004, the Plaintiff submitted to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants or alternatively one of them on behalf of the Hyatt, a projected daily charge estimate of US\$61,723.00 per day for the cost to perform the agreed drying services based upon a 30-45 day project period. The total projected costs amounted to more than US\$1.8 million based on that preliminary time frame to dry the Hyatt Buildings.
24. Within 3 weeks of the commencement of the drying exercise, it became apparent that the projected timeframe would need to be extended by up to a further 16 weeks and this was conveyed by the Plaintiff to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants or one of them on behalf of the Hyatt.
25. On or about 16 October 2004, the Plaintiff submitted a proposal to Mr. Bastis that, given the uncertainty as to the length of time that the drying project would likely take, the Plaintiff would charge a lump sum fixed cost price of US\$2,750,000 for the entire drying project, regardless of duration. It was an implied term of the proposal that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, or one of them would accept the offer within a reasonable time.
26. On or about 8 November 2004, the Plaintiff prepared and delivered to Mr. Bhatia a letter requiring that the terms of payment for the Plaintiff's contract be agreed to by the Hyatt, failing which the Plaintiff have to consider ceasing work. The terms of payment referred to in that letter were *inter alia* the following:
- a. that the US\$2,750,000 fixed cost price be confirmed;
  - b. with payment to be made by way of an initial payment of US\$850,000;
  - c. followed by weekly payments of US\$200,000 for 9 consecutive weeks beginning on 12 November 2004; and,
  - d. with a final payment of US\$100,000 due 10 weeks after 12 November 2004.
27. On or about 9 November 2004, the Plaintiff submitted a follow-up payment proposal to Mr. Bhatia acting on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to confirm the arrangements as to payment for the Plaintiff's agreed to services on the same terms as the 8 November 2004 letter. It was further proposed that the initial deposit payment of US\$850,000 be paid to the Plaintiff, with the 1<sup>st</sup> Defendant's

authorisation, directly by AIG.

28. On or about 10 November 2004, the 1st Defendant paid the sum of US\$200,000 to the Plaintiff pursuant to the terms of the 8 November 2004 letter and agreed to instruct AIG to pay the initial deposit payment of US\$850,000. In so doing, the 1<sup>st</sup> Defendant tacitly agreed to the payment terms proposed by the Plaintiff. Further or alternatively, the 1<sup>st</sup> Defendant is estopped by its conduct in paying the first US\$200,000 instalment to the Plaintiff and agreeing to authorise the initial deposit payment of US\$850,000 from AIG to the Plaintiff, from now denying its liability to the Plaintiff on the proposed and agreed to payment terms.
29. Alternatively, in the event that the terms of the 16 October 2004 proposal as reduced to writing in the 9 November 2004 proposal did not form an agreement between the Plaintiff and the 1<sup>st</sup> and 2<sup>nd</sup> Defendants or one of them, the Plaintiff claims that it is entitled to recover on a quantum meruit basis a reasonable fee for the services provided to the Hyatt.
30. The reasonable market value of the services provided by the Plaintiff between 30 September 2004 and 15 January 2005, inclusive of disbursements, is US\$4,673,048.99 calculated at the Plaintiff's discounted rates approved by and accepted by AIG and the insurance industry. Further particulars are provided in Schedule 1 hereto and will be provided by discovery.
31. Despite demand and in breach of the contract between the Plaintiff and the 1st Defendant and/or alternatively the 2<sup>nd</sup> Defendant, alternatively in breach of the 1<sup>st</sup> Defendant's and/or alternatively the 2<sup>nd</sup> Defendant's duty to pay the Plaintiff for the value of services received, the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant have neglected or failed to pay or arrange for payment to the Plaintiff of any further sum besides the US\$200,000 payment mentioned in paragraph 26 above.
32. On or about 6 January 2005, Mr. Culley spoke with Mr. Bhatia concerning the final insurance payment of US\$4.5 million which was due to be made shortly thereafter by AIG. During that conversation, Mr. Bhatia made it clear that AIG should not make any payments to the Hyatt's contractors directly, but that the 1<sup>st</sup> Defendant would arrange to pay the contractors separately once the insurance payment was received by it. The Plaintiff will rely on the contents of an exchange of emails dated 7 January 2005 between Mr. Culley and Mr. Bhatia in support of this contention.
33. By reason of the Plaintiff's provision of services to the 1<sup>st</sup> and the 2<sup>nd</sup> Defendants, the

Plaintiff has suffered loss in not being able to rent its equipment and personnel out to persons requiring such services in the USA, at a time of great need for such services in Florida and the Gulf Coast.

34. The Plaintiff is entitled to and claims interest on all sums found due to it pursuant to section 34 of the Judicature Law (1995 Revision), alternatively pursuant to the Court's equitable jurisdiction, from the date hereof until judgment, alternatively at such rates and for such periods as the Court shall think fit.

AND THE PLAINTIFF claims:

- A) As against both the 1<sup>st</sup> and the 2<sup>nd</sup> Defendant or, alternatively, one of them:
- (i) Payment of the sum of US\$2,550,000.00 pursuant to the agreement pleaded in the Statement of Claim;
  - (ii) Alternatively to paragraph (i), payment of the sum of US\$4,473,049 being a quantum meruit claim for value of the goods and services provided to the Defendants as set out in Schedule 1 to this Statement of Claim;
  - (iii) All further necessary or appropriate accounts, inquiries, declarations, orders and such other relief as the Court shall think fit;
  - (iv) Interest, to be assessed, pursuant to section 34 of the Judicative Law (2002 Revision) for such period and at such rate as the Court shall deem just, alternatively pursuant to the equitable jurisdiction of the court; and

(v) Costs.

Dated the 20 day of February 2006

  
APPLEBY SPURLING HUNTER

THIS WRIT was issued by Appleby Spurling Hunter of Clifton House, 75 Fort Street, P. O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. NVJ/10655.001), Attorneys-at Law for the Plaintiff.

**Interest Indorsement**  
**Pursuant to GCR Order (6)(2)(f)**

Interest on the contract claim of US\$2,550,000.00 is calculated as follows:

1. The prescribed interest rate is 3% per annum;
2. The date from which interest is calculated is 15 January 2005;
3. The total amount of interest claimed as of the date of commencement of the proceeding ((17 Feb 2006) is US\$83,416.82
4. The amount of interest daily from 18 February 2006 is 209.59

Interest on the quantum meruit claim of US\$4,473,049 is as follows:

1. The prescribed interest rate is 3% per annum;
2. The date from which interest is calculated is 15 January 2005;
3. The total amount of interest claimed as of the date of commencement of the proceeding ((17 Feb 2006) is US\$146,324.70
4. The amount of interest daily from 18 February 2006 is US\$367.65

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgement 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 Acknowledgement 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 of "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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, 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*

*Please complete overleaf*

**Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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.

**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.

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

Appleby Spurling Hunter  
Attorneys-at-Law  
Clifton House  
75 Fort Street  
P.O. Box 190 GT  
George Town  
Grand Cayman  
Ref: WAS/10655/001

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