

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

CAUSE NO: 78 OF 2006

(1) CAYMAN GENERAL INSURANCE CO. LTD

(2) THE PROPRIETORS OF STRATA PLAN No. 151
KNOWN AS WINDSOR VILLAGE

AND

(1) CRAWFORD ADJUSTERS (CAYMAN) LIMITED

(2) BOULD PATERSON LIMITED

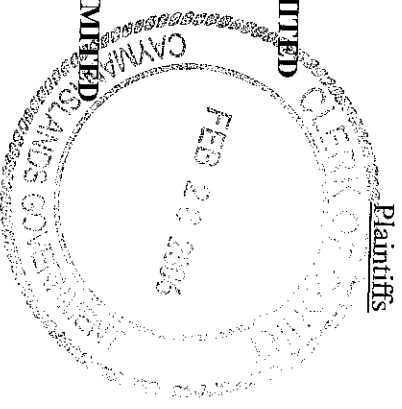
(3) ALASTAIR PATERSON

(4) HURLSTONE LIMITED

(5) HURLSTONE GENERAL CONTRACTORS LIMITED

(6) JOHN HURLSTONE

(7) ROBERT HURLSTONE



Plaintiffs



Defendants

WRIT OF SUMMONS

To: **The Defendants**

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out in the attached Statement of Claim.

Within Fourteen days (14) 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, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 28th 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 Acknowledgment of Service are given with the accompanying form

Statement of Claim

The Parties

1. The 1st Plaintiff (“Cayman General”) is a company registered in the Cayman Islands which provides insurance including property insurance.
2. The 2nd Plaintiff (“Windsor Village”) is a corporation established under s.5 of the Strata Titles Registration Law (1996 Revision) and comprised of the proprietors of the strata lots shown on the strata plan registered as no. 151 known as Windsor Village. Windsor Village consists of buildings, amenities and land located at Block 7D, Parcel 30(a) South Sound, Grand Cayman.
3. The 1st Defendant (“Crawford Adjusters”) is a company registered in the Cayman Islands which provides loss adjusting services.
4. The 2nd Defendant (“Bould Paterson”) is a company registered in the Cayman Islands which describes itself as providing property and development consultancy services.
5. The 3rd Defendant (“Mr Paterson”) is a director of both Bould Paterson and Crawford Adjusters.
6. The 4th Defendant (“Hurlstone”) and the 5th Defendant (“Hurlstone Contractors”) are companies registered in the Cayman Islands which provide building and contracting services.
7. The 6th Defendant (“Mr John Hurlstone”) and the 7th Defendant (“Mr Robert Hurlstone”) are the directors, alternatively the shadow directors, alternatively *de facto* directors of Hurlstone and/or Hurlstone Contractors.

Relationship between the Parties

Cayman General and Windsor Village

8. By policy number 01FF08960727 renewed 6 August 2004 to 6 August 2005 Cayman General agreed to insure Windsor Village against loss or damage to certain items of property caused by perils including hurricane (the “Windsor Village Policy”).
9. As a result of Hurricane Ivan, which made landfall in Grand Cayman between 11th and 12th September 2004, Windsor Village sustained significant loss and damage. Cayman General accepted that it was liable to fund the costs of reinstatement to the extent that the loss and damage had occurred to insured items of property.

Cayman General and Crawford Adjusters

10. Prior to Hurricane Ivan, Mr Paterson, together with a Mr Jonathan Nicholson and a Mr Martyn Bould had formed and become the directors of Crawford Adjusters. At a meeting shortly after Hurricane Ivan they represented to Mr Danny Scott, President of Cayman General, and Mr Kenneth Osbourne, Vice-President of Cayman General that Crawford Adjusters was an affiliate of Crawford & Co., an internationally recognised loss adjusting concern.

11. As a result, on or about 18 September 2004 Cayman General and Crawford Adjusters entered into a verbal contract in accordance with which Crawford Adjusters agreed to provide loss adjusting services to Cayman General in respect of the Windsor Village claim.

12. Thereby Crawford Adjusters came under contractual duties to:

- (1) establish the amount at which Cayman General should settle Windsor Village's claim and prepare reports demonstrating this;
 - (2) review advances requested by Windsor Village and/or those employed by Windsor Village in respect of reinstatement work and make recommendations as to the quantum of advances that should be made by Cayman General out of the final settlement amount payable to Windsor Village; and
 - (3) review the work that had been done at the Windsor Village site to ascertain that prior advances had been properly applied in the satisfactory completion of work before recommending further advances.
13. As a contract to provide professional services, this contract included an implied duty to exercise reasonable skill and care. In the alternative, by assuming responsibility to Cayman General for the provision of loss adjusting services Crawford Adjusters came under a duty to exercise reasonable skill and care in the tort of negligence.

14. Further, in performing these services Crawford Adjusters was acting as an agent of Cayman General and as such owed Cayman General fiduciary duties:

- (1) not to prefer its own interests or the interests of others to those of Cayman General; and
- (2) to act in the best interests of Cayman General.

15. Crawford Adjusters continued to provide loss adjusting services and to owe the aforementioned duties at all material times.

Windsor Village and Bould Paterson

16. On or about 14 September 2004 Mr Patrick Harrigan, Chairman of the Windsor Village Strata Executive Committee (the "SEC"), met Mr Paterson at Windsor Village.
17. Mr Harrigan had known Mr Paterson for a number of years and as a result knew that Mr Paterson had been a quantity surveyor for entities owned and controlled by the Hurstone family which had built Phase 1 of Windsor Village in or about 1988. He also knew that Mr Paterson had been retained as project manager for work done to reinstate Windsor Village after it had been damaged by Hurricane Michelle in 2001.
18. As a result of the above, and having obtained the requisite consent of the SEC, Mr Harrigan invited Mr Paterson to act as project manager for the reinstatement work and Mr Paterson agreed.
19. Subsequent to this conversation, Mr Paterson informed Mr Harrigan that together with Mr Nicholson and Mr Bould he had incorporated Bould Paterson and that the three of them were the directors. On behalf of Bould Paterson Mr Paterson offered to provide quantity surveying and project management services in respect of Windsor Village.
20. On or about 27 October 2004 a written contract was executed by Mr Paterson on behalf of Bould Paterson and Mr Harrigan on behalf of Windsor Village whereby Bould Paterson contracted to provide the following services:

"Quantity Surveying

- Determine requirements for the reconstruction from both Strata and individual owners
- Advise on all financial implications of project including liaising with owners
- Develop the scope of damage repair work to establish a more definitive schedule of work for pricing
- Prepare an outline construction programme
- Prepare an outline cash flow of financial requirements
- Prepare outline budgets for all aspects of the works to be carried out
- Prepare tender documents for competitive bidding or for negotiation with a selected contractor
- Implement tendering or negotiation procedures
- Prepare construction contracts including specifications and contract conditions
- Contract and cost control and monitoring throughout the construction programme including valuing change orders, preparing interim certificates of payment, interim financial reporting, final accounting
- Assisting in financial control, liaising with owners and bankers
- Continued liaison with insurers and loss adjuster

Project Management

- Establish lines of communication between the Strata, the owners, the construction team and consultants
- Advise on and appoint other professionals required for the project e.g. engineers, attorneys etc.
- Advise on and establish liaison with third parties e.g. planning department, building control
- Advise on appointment of contractor
- Agreement of cost plan and programme for the work

- Set up administration procedures including nature and frequency of meetings, reporting procedures etc.
 - Monitor progress of the project
 - Monitor performance of the various parties
 - Coordinate all activities on site including ensuring outstanding decisions are made to meet programme requirements, information is produced as required, contractors performance is on target and maintenance of financial control
 - Monitor all operations and resolve problems
 - Report to Strata and owners
 - Test and commission the buildings on completion
 - Prepare a schedule of defects on completion and supervise their correction
- Assist in the final occupancy”

21. As a contract to provide professional services, this contract included an implied duty to exercise reasonable skill and care. In the alternative, by assuming responsibility to Windsor Village for the provision of these services Bould Paterson came under a duty to exercise reasonable skill and care in the tort of negligence.

22. Further, in performing these services Bould Paterson was acting as an agent of Windsor Village and as such owed Windsor Village fiduciary duties:

- (1) not to prefer its own interests or the interests of others to those of Windsor Village; and
- (2) to act in the best interests of Windsor Village.

23. Bould Paterson provided the aforementioned services and owed the aforementioned duties at all material times.

Mr Paterson

24. Mr Paterson was the director of Crawford Adjusters responsible for carrying out loss adjustment work on the Windsor Village claim at all material times.

25. Furthermore, Mr Paterson was employed as project manager in his personal capacity from 14 September 2004 to 27 October 2004 and thereafter was the director at Bould Paterson responsible for the services provided to Windsor Village by Bould Paterson at all material times. Mr Paterson was assisted in the discharge of this responsibility by Mr Malcolm Stephenson from about 25 January 2005 to about 19 April 2005 and by Mr Patrick Ullrich thereafter.

Windsor Village and Hurlstone

26. At about the same time as the agreement was entered into between Bould Paterson and Windsor Village, Mr Paterson proposed to Mr Harrigan that Hurlstone should be used to carry out the reinstatement works at Windsor Village and on 19 October 2004 sent an e-mail to Mr Harrigan requesting that Mr Harrigan authorize him to issue a letter of intent.

27. Having obtained the requisite consent of the SEC Mr Harrigan agreed and on 5 November 2004 a letter was sent to Hurlstone by Mr Paterson *qua* project manager on behalf of Bould Paterson as agent of Windsor Village which read as follows:

"SUBJECT TO CONTRACT"

"Attention: John Hurlstone"

"Dear Sir

"RE: WINDSOR VILLAGE RECONSTRUCTION CONTRACT"

"We have been instructed by the Proprietors of Strata Plan # 151 to inform you that it is their intention to execute a contract with you for the reconstruction of the Windsor Village development to include the damage caused by hurricane Ivan.

"We request you to commence work immediately with site clearing, demolition and other works as directed. The reconstruction will be under the direction and instruction of B P Consultants who are the Project managers of record. APEC Engineers will be the structural engineers. This instruction is subject to us agreeing the terms of a contract as well as an acceptable contract price, however we confirm that we have advanced C\$250,000 for initial expenses. We also note that we would like to discuss a suitable contract programme for a phased completion of the work."

28. Subsequently on 25 January 2005 a further letter was sent to Hurlstone for the attention of Mr John Hurlstone by Mr Paterson *qua* project manager on behalf of Bould Paterson as agent for Windsor Village which stated *inter alia*:

"1. The Strata Corporation, with whom you are contracted, and to whom you will be eventually more formally contracted, are reluctant to sign a formal contract until such times as their financial exposure is definitively established. It is hoped that this will be completed within the next 60 days [...]"

4. The intended contract will be the CASE Standard Form of Contract 1994 (without quantities) and those conditions of contract will apply as required until such times as the final terms, including the contract sum, are agreed"

29. In the event, the final terms including the contract sum were not agreed and no formal contract was executed by the parties.

30. In the premises a contract was formed between Windsor Village and Hurlstone in accordance with which:

(1) Hurlstone undertook to provide construction services and complete the reinstatement work required in relation to the loss and damage occasioned to Windsor Village by Hurricane Ivan.

(2) In the absence of a contract sum, there falls to be implied into the contract on the basis of business efficacy a term that Windsor Village would pay Hurlstone for work completed satisfactorily on a *quantum meruit* basis.

(3) Because the contract was to provide professional services, there falls to be implied into the contract on the basis of business efficacy a term that Hurlstone would exercise reasonable skill and care. In the alternative, by assuming responsibility to Windsor Village for the completion of the reinstatement work, Hurlstone was under a duty to exercise reasonable skill and care in the tort of negligence.

31. In the alternative Windsor Village and Hurlstone's failure to reach an agreement on the final terms of the contract including price meant that no contract came into being with the result that:

- (1) Hurlstone was entitled to a *quantum meruit* by way of restitution for such work as it completed satisfactorily; and
- (2) Hurlstone owed Windsor Village a duty to exercise reasonable skill and care in the tort of negligence by virtue of assuming responsibility for the completion of such work.

Sub-contracting by Hurlstone

32. Shortly thereafter Hurlstone sub-contracted elements of the reinstatement work to Hurlstone Contractors.

33. In the premises Hurlstone remained entitled to payment of a *quantum meruit* from Windsor Village in respect of works completed by Hurlstone Contractors at Windsor Village on Hurlstone's behalf but was also liable to pay damages in contract, in the alternative the tort of negligence, for any failure by Hurlstone Contractors to complete such work with reasonable skill and care.

Advances made to Hurlstone by Cayman General

Amounts and dates of advances

34. Consistent with the letter of intent and upon the recommendation of Mr Paterson acting *qua* project manager on behalf of Bould Paterson, Mr Harrigan had sent an e-mail to Judy Campbell of Cayman General on 22 October 2004 requesting that Cayman General make an advance payment of CI\$250,000 to Hurlstone out of the amount that was ultimately to be paid to Windsor Village in respect of its claim under the Windsor Village Policy. At the same time Mr Paterson acting *qua* loss adjuster on behalf of Crawford Adjusters recommended to Cayman General that this advance should be made.

35. Thereafter further advances were made to Hurlstone by Cayman General bringing the total advanced by Cayman General to Hurlstone out of the amount that was ultimately to be paid to in respect of Windsor Village's claim under the Windsor Village Policy to CI\$2,900,000.

36. The amounts of these advances and the dates upon which they were made are as follows:

Date	Amount (CIS)	Balance (CIS)
<i>Opening balance</i>	-	250,000
26 November 2004	250,000	500,000
31 January 2005	500,000	1,000,000
2 March 2005	400,000	1,400,000
23 March 2005	500,000	1,900,000
25 April 2005	500,000	2,400,000
27 May 2005	500,000	2,900,000

Representations made by Mr Paterson qua loss adjuster on behalf of Crawford Adjusters

37. The above advances were made by Cayman General in reliance upon representations made by Mr Paterson acting *qua* loss adjuster on behalf of Crawford Adjusters between November 2004 and May 2005 that work equal to the value of the advances made had been completed by or on behalf of Hurlstone and/or Hurlstone Contractors and that additional advances were required for the completion of additional work.

Particulars of Representation

38. On 15 January 2005 Crawford Adjusters sent a Loss Adjuster Report which was signed by Mr Paterson. This represented that the advances made thus far had been applied towards reinstatement works and that the further advance was required to fund further works as follows:

“Demolitions and site clean up is well advanced however [it] will be a continuing process over the next few weeks as the engineer decides the extent of some of the structural damage.

The sea wall is under construction. [...]”

Our budgets for the projected settlement are attached for perusal and we confirm that we have reviewed clean up expenses and costs to date and are satisfied that not only are the funds being properly applied but the insured and his contractor are making every effort to expedite works at the most economical price.

We have already recommended advances in a total amount of CUS\$500,000 [i.e. the initial advance of CUS\$250,000 on 22 October 2004 and the further advance of CUS\$250,000 on 26 November 2004] however in an effort to expedite contracts and the works on site we now recommend an additional advance in a further amount of CUS\$500,000 [i.e. the advance eventually made on 31 January

2005]. The insured has given written instructions for the funds to be paid directly to the Contractor for disbursement.”

[Words in square brackets added]

39. The advance of C1\$400,000 on 2 March 2005 was made pursuant to a letter sent to Cayman General by Crawford Adjusters on 14 February 2005 and signed by Mr Paterson which represented that work to reinstate the property was progressing satisfactorily and that the additional advance was required to fund:

“[a] payment to the contractor for work in progress to the structure/floors of the two front blocks, the roofs of all blocks, materials on site, materials purchases and a balance of clean up. Whilst this includes a payment towards the underpinning of the foundations on the front two blocks, it does not include work to the sea wall which is for the account of the Strata Corporation directly”

40. The advance of C1\$500,000 on 23 March was made pursuant to:

(1) a letter sent to Cayman General by Crawford Adjusters on 19 March 2005 and signed by Mr Paterson repeating the representation that the work to reinstate the property was progressing satisfactorily and further representing that the additional advance was required to fund:

“[a] payment to the contractor for work in progress to the ongoing structure/floors and roof of the two front blocks, the remaining roofing material, materials on site (lumber/sheetrock), materials purchases (windows, doors, insulation, air conditioning units, ongoing electrical, plumbing works[]]. Whilst this includes a payment towards the underpinning of the foundations on the front two blocks, it does not include work to the sea wall which is for the account of the Strata Corporation directly”

and

(2) an e-mail sent by Mr Paterson *qua* loss adjuster on behalf of Crawford Adjusters to Cayman General on 21 March 2005 which represented that in the absence of an advance there would be no funds to meet expenses that were about to become due as follows:

“Gentlemen,
sorry to put you under pressure but I thought this letter had been delivered to you last week. Somehow it fell through the net! In any event, can I ask you a favour by processing it quickly as the contractor requires the funds prior to Easter which is apparently on us this weekend. They have considerable expenses to honour this week. If there is a problem please call but thanks in anticipation of your speedy reaction. Apologies for putting you under pressure.

Alastair”

41. The advance of C1\$500,000 on 25 April 2005 was made pursuant to:

(1) a letter sent to Cayman General by Crawford Adjusters on 20 April 2005 and signed by Mr Paterson which also repeated the representation that the work to reinstate the

property was progressing satisfactorily and represented that the additional advance was needed as follows:

“This certification includes not only an advance for kitchens (7 NO) but final payment for roofing materials, windows, doors etc which have not[] arrived on the island. AC equipment is being installed and electrical works [are] substantially advanced”

and

(2) an e-mail sent by Mr Paterson *qua* loss adjuster on behalf of Crawford Adjusters to Cayman General on 21 April 2005, which represented that in the absence of an advance there would be no funds to pay for materials that had arrived as follows:

“Please find attached a recommendation for payment on the above. We note that we anticipate this to be the final request prior to finalizing the claim next month. As usual, we are under pressure to release funds quickly as materials are on the dock and cannot be released until paid for! We thank you for rushing this through and note that should you have any query please contact us.

Regards

Alastair”

42. The advance of C\$500,000 on 27 May 2005 was made pursuant to a further e-mail sent on 26 May 2005 by Mr Paterson *qua* loss adjuster on behalf of Crawford Adjusters which represented that a further advance was required to pay for all of the works completed up until the final loss adjuster’s report was finalized and that thereafter additional advances would need to be made for additional works as they were completed as follows:

“Gentlemen,

I should have sent this e-mail yesterday however I thought I might have had the adjustment complete by today. Unfortunately although it is substantially complete, I cannot definitely close it out until early next week. As a result can I request an advance to Hurlstone Ltd in an amount of C\$500,000 to be paid on Friday. Apologies for the short notice however this is the last advance with remaining funds to be forwarded to the Strata based on Project Manager’s certificates. Any queries please call.

Alastair”

43. Furthermore, on 15 June 2005 a Final Loss Adjuster Report was sent to Cayman General from Crawford Adjusters which was signed by Mr Paterson. This report contained a schedule setting out the costs of the various elements of work that were required to reinstate Windsor Village (the “Costs Schedule”). One of the columns on the Costs Schedule was entitled “to date” and set out a figure for each element of work. This constituted a series of representations as to the amounts that had been expended on works completed by or on behalf of Hurlstone and/or Hurlstone Contractors at Windsor Village together with a representation

that the total amount expended to date (including preliminaries overheads and profits) was C1\$3,735,518.

Advances made to Hurlstone by Windsor Village

Amount and date of advance

44. In addition to the monies advanced by Cayman General in respect of the costs of reinstatement of insured property at Windsor Village, Windsor Village paid C1\$150,000 to Hurlstone on 21 January 2005 by way of an advance for the costs of reinstating the uninsured sea wall.

Representations made by Mr Paterson qua project manager on behalf of Bould Paterson

45. The advance was made by Windsor Village in reliance upon a representation of fact made by Mr Paterson qua project manager on behalf of Bould Paterson that an estimate had been made setting the cost of reinstating the sea wall at approximately C1\$450,000 in an e-mail dated 18 January 2005 as follows:

Particulars of Representation

“The sea wall is under construction and as we have now received the foundation underpinning design this will be carried out at the same time. The price for this work is being negotiated however the wall will be the account of the Strata as it was not insured. We have not yet been able to definitely identify the final costs of the wall and the underpinning due to the nature of the ground however our estimate is approximately C1\$450,000 and the Strata will be responsible for approximately 50% [i.e. C1\$225,000]. This is only an indication at present and will be finalized over the next couple of months.”

46. Subsequently the Costs Schedule in the Final Loss Adjuster Report of 15 June 2005 included a representation that C1\$540,500 worth of work (including a proportionate amount of preliminaries, overheads and profits) had been carried out to underpin and construct the sea wall of which Windsor Village was responsible for C1\$270,250.

47. Although this was prepared by Mr Paterson qua loss adjuster on behalf of Crawford Adjusters primarily for the benefit of Cayman General, Mr Paterson had also made the representation qua project manager on behalf of Bould Paterson to Windsor Village by sending a draft version of the Costs Schedule containing an identical figure for the cost of the sea wall in an e-mail to Mr Harrigan on 9 June 2005.

Representations made by Hurlstone, Hurlstone Contractors, Mr John Hurlstone and Mr Robert Hurlstone

Particulars of Representation

48. Given that the representations made by Mr Paterson, Crawford Adjusters and/or Bould Paterson contained representations of fact as to:

- (1) the works which had been completed by or on behalf of Hurlstone and/or Hurlstone Contractors;
- (2) the works to which further advances would be applied; and
- (3) the actual and estimated cost of such works,

it is to be inferred that these facts were also represented to Mr Paterson and through him to Crawford Adjusters and Bould Paterson by Mr John Hurlstone and/or Mr Robert Hurlstone and through one or both of them by Hurlstone and/or Hurlstone Contractors.

49. Furthermore, on 30 June 2005 Mr Robert Hurlstone wrote a letter to Bould Paterson on behalf of Hurlstone confirming that representations had been made that reinstatement works had been completed to the value of the amounts advanced:

“We have made numerous requests over past ten weeks for full payment to reflect the value of work that has been completed to date based on our understanding of the contract sum. We have received payments on account which do not reflect the full value of the works (or the value of materials that are currently on site or those that have been purchased and are pending delivery). We consider that approximately C1\$750,000 is due to us at this time. We have received numerous assurances that settlement of this amount would be imminent, but have yet to receive payment. We respectfully request that this payment is issued immediately.”

50. Given that Mr Robert Hurlstone and/or Mr John Hurlstone and through one or both of them Hurlstone and/or Hurlstone Contractors, as well as Mr Paterson and through him Bould Paterson knew that C1\$2,900,000 had been advanced by Cayman General and C1\$150,000 by Windsor Village, this constituted a further representation by Mr Robert Hurlstone and through him Hurlstone that C1\$3,800,000 worth of work had been completed by or on behalf of Hurlstone and/or Hurlstone Contractors at the Windsor Village site. Furthermore

Transmission of representation

51. To the knowledge of Mr John Hurlstone and/or Mr Robert Hurlstone and, through one or both of them Hurlstone and/or Hurlstone Contractors:

(1) at all material times Mr Paterson was acting on behalf of Crawford Adjusters in respect of his activities *qua* loss adjuster and on behalf of Bould Paterson in respect of his activities *qua* project manager; and

(2) at all material times Crawford Adjusters and Bould Paterson were agents for Cayman General and Windsor Village respectively.

52. In the premises Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone knew that representations made by them to Mr Paterson in the aforementioned capacities would be passed on to Cayman General and Windsor Village.

53. In addition Mr Robert Hurlstone's representation that an additional C1\$750,000 was due in respect of works completed by or on behalf of Hurlstone and/or Hurlstone Contractors was repeated in a letter sent by Campbells acting in their capacity as Attorneys-at-law for Hurlstone and Hurlstone Contractors to Quin and Hampson, Attorneys-at-law for Cayman General and copied to Mr Harrigan in his capacity as Chairman of the SEC, on 11 July 2005 which referred to this amount as a "debt currently outstanding". Given their respective knowledge as to the amounts advanced set out above, this constituted a further direct representation to Cayman General and Windsor Village by Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone that C1\$3,800,000 worth of work had been completed at Windsor Village.

The cessation of work by Hurlstone and Hurlstone Contractors

54. As mentioned in the passage from the letter sent by Mr Robert Hurlstone on 30 June 2005 set out above, no further advances had been made by Cayman General after 27 May 2005.

55. The reason for this was that on or about 10 June 2005 Mr Harrigan had been informed by Mr Ulrich that in the course of assisting Mr Paterson in his loss adjusting activities he (Mr Ulrich) had become concerned about the amount of work that had been completed at Windsor Village as compared with the quantum of advances that had been made and at the amounts that were being charged for the elements of work that had been completed.

56. These concerns were passed on by Mr Harrigan to Mr DeLessio, Vice President of Cayman General and the decision was taken that no further advances would be made until proof was provided that work to the value of the advances had been completed by or on behalf of Hurlstone and/or Hurlstone Contractors.

57. Thereafter Mr John Hurlstone and/or Mr Robert Hurlstone ordered almost all of the workmen employed by Hurlstone and/or Hurlstone Contractors off the site at Windsor Village on or about 24 June 2005 and failed to attend a site meeting on 28 June 2005.

58. Mr Paterson then sent an e-mail *qua* project manager on behalf of Bould Paterson to *inter alios* Mr Harrigan on 1 July 2005 informing him that Hurlstone would not re-commence work until further advances were made.

59. This constituted a repudiatory breach by Hurlstone of its contractual obligations to complete the reconstruction works at Windsor Village. However, in the interests of having the project completed as expeditiously as possible, Windsor Village attempted to persuade Mr John Hurlstone and Mr Robert Hurlstone and through them Hurlstone and Hurlstone Contractors to remobilize and act in accordance with the contract between Windsor Village and Hurlstone during July and August 2005.

60. Despite these attempts Hurlstone remained in repudiatory breach of contract by insisting that before Hurlstone would resume performance of its contractual duties Windsor Village and Cayman General had to sign a memorandum of agreement which, according to a letter sent by Mr John Hurlstone on behalf of Hurlstone on 8 August 2005, was to include provisions in accordance with which *inter alia*:

(1) Hurlstone was to be entitled to present a further claim to Mr Paterson *qua* loss adjuster on behalf of Crawford Adjusters for certification of the works completed to date including materials on site and for further advances to be paid to suppliers and sub-contractors;

(2) Windsor Village and Cayman General were to enter into a formal contract which was to include a mobilization sum.

61. Hurlstone's refusal to re-commence work at the site in the absence of an agreement in the terms set out above was repeated in letters sent by Mr John Hurlstone on behalf of Hurlstone on 17 August 2005 and 19 August 2005.

62. These letters also constituted further representations by Mr John Hurlstone and through him Hurlstone that the CJS\$2,900,000 advanced thus far had been applied by or on behalf of Hurlstone in the completion of works to reinstate Windsor Village and that further advances were required to make payments to suppliers and sub-contractors.

Quantity and quality of work completed at Windsor Village

Quantity of work

63. In order to find out how much work had in fact been completed at the Windsor Village site, Cayman General commissioned Mr Alan Purbrick of Capital Consulting International to make a site visit between 22 and 26 August and to prepare a report showing the value of the

work that had been completed by or on behalf of Hurlstone and/or Hurlstone Contractors at Windsor Village (the "First CCI Report").

64. Mr Purbrick found CI\$929,944.61 worth of materials and reinstatement works completed by or on behalf of Hurlstone and/or Hurlstone Contractors at the site of which he apportioned CI\$817,505.86 in respect of insured property and CI\$112,438.75 in respect of the sea wall. These figures are further particularized in Appendix A.

Acceptance of Hurlstone's repudiatory breach

65. At this point Windsor Village accepted Hurlstone's repudiatory breach of contract by declining to enter into the memorandum of agreement and instead appointing M&J Construction Cayman Ltd ("M&J Construction") to commence completing the reinstatement works from 29 August 2005.

Quality of work

66. In completing the reinstatement works at Windsor Village M&J Construction discovered that substantial elements of the works undertaken by or on behalf of Hurlstone and/or Hurlstone Contractors had been completed defectively.

67. Following a site visit between 5 and 8 February 2006 Mr Purbrick prepared a second report (the "Second CCI Report") which *inter alia* identified work that had been completed defectively and that was not in compliance with Cayman legislation and building codes, and adjusted the values given for the work completed at Windsor Village by or on behalf of Hurlstone and/or Hurlstone Contractors to take this into account. It concluded that an adjustment of CI\$165,507.00 needed to be made to the value of reinstatement works assessed as completed by or on behalf of Hurlstone and/or Hurlstone Contractors in the First CCI Report. The adjustment required is further particularized in Appendix B. Thus according to the Second CCI Report when the figure of CI\$929,944.61 is adjusted in this way, the value of materials and works completed by or on behalf of Hurlstone and/or Hurlstone Contractors at Windsor Village was CI\$764,437.61 of which CI\$651,998.86 should be apportioned in respect of insured property and CI\$112,438.75 in respect of the sea wall.

Falsity of representations

68. In light of the findings contained in the First and Second CCI Reports, the representations set out above made by Crawford Adjusters, Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone, were false.

Particulars of Falsity

69. CI\$764,437.61 worth of work adjusted for defective and non-compliant work, in the alternative CI\$929,944.61 worth of unadjusted work, had been undertaken to reinstate Windsor Village as compared to:

(1) the CI\$3,735,518 that Crawford Adjusters, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone, represented had been completed to date in respect of insured loss in the Final Loss Adjuster Report of 15 June 2005; and

(2) the CI\$3,800,000 worth of work that Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone represented had been completed by or on behalf of Hurlstone and/or Hurlstone Contractors in the letter sent by Mr Robert Hurlstone on behalf of Hurlstone on 30 June 2005 and the letter sent by Campbells on 11 July 2005.

70. CI\$651,998.86 worth of work adjusted for defective and non-compliant work, in the alternative CI\$817,505.86 worth of unadjusted work, had been completed to reinstate insured property at Windsor Village as compared to the CI\$2,900,000 that had been advanced by Cayman General and that Crawford Adjusters, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone represented had been applied to the completion of reinstatement works on insured property by or on behalf of Hurlstone and/or Hurlstone Contractors.

71. CI\$112,438.75 worth of work had been completed to reinstate the sea wall at Windsor Village as compared with:

(1) The representation by Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone that they had made an estimate of CI\$225,000 for the approximate cost to Windsor Village of reinstating the sea wall;

(2) the CI\$235,000 worth of work that Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone represented had been completed and was to be paid for by Windsor Village in the Final Loss Adjuster Report of 15 June 2005.

The Defendants' states of mind

72. In making the above false representations Crawford Adjusters, Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone acted fraudulently in that such representations were made with the knowledge that they were false, or recklessly in the sense of being careless as to whether the representations were true or false.

Particulars of Fraud

73. As to Crawford Adjusters, Bould Paterson and Mr Paterson:

- (1) By virtue of their respective roles as loss adjuster and project manager, Crawford Adjusters and Bould Paterson knew, and were under contractual duties to monitor:
 - (a) whether the advances made by Cayman General and Windsor Village had been applied in full for the completion of reinstatement works at Windsor Village by Hurlstone and/or Hurlstone Adjusters;
 - (b) whether additional advances were required to fund payments due to suppliers and/or subcontractors and additional reinstatement work; and
 - (c) the quantum of advances that had already been made to Hurlstone from Cayman General and Windsor Village.
- (2) Furthermore, as director responsible for the loss adjusting and project management work carried out at Windsor Village by Crawford Adjusters and Bould Paterson respectively, Mr Paterson also knew the information set out in paragraph 73(1)(a) to (c) above.
- (3) In light of this knowledge and the gross disparity between the amounts advanced to Hurlstone from Cayman General and Windsor Village and the value of work actually completed at Windsor Village by or on behalf of Hurlstone and/or Hurlstone Contractors, the representations made by Crawford Adjusters, Bould Paterson and/or Mr Paterson are incapable of an honest explanation and must have been made with knowledge of or recklessness as to their falsity.
- (4) Further, as Crawford Adjusters, Bould Paterson and/or Mr Paterson made these representations together with recommendations that advances would be made, they intended Cayman General and/or Windsor Village to rely on them in making such advances.

(5) Further or in the alternative, in making these misrepresentations and failing to disclose the amounts by which Hurlstone had been overpaid for the work completed by or on behalf of Hurlstone and/or Hurlstone Contractors Crawford Adjusters and Bould Paterson acted in breach of their fiduciary duties to Cayman General and Windsor Village respectively in that they preferred the interests of Hurlstone and/or Hurlstone Contractors to those of Cayman General and Windsor Village and failed to act in the best interests of Cayman General and Windsor Village.

74. As to Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone:

- (1) Mr John Hurlstone and/or Mr Robert Hurlstone were responsible for the work carried out by or on behalf of Hurlstone and/or Hurlstone Contractors at Windsor Village and therefore one or both of them, and through one or both of them Hurlstone and/or Hurlstone Contractors knew:
 - (a) how much work had been completed at Windsor Village;
 - (b) how much such work was worth;
 - (c) whether additional advances were needed to fund payments due to suppliers and/or subcontractors and additional reinstatement work; and
 - (d) the quantum of advances that had already been made to Hurlstone from Cayman General and Windsor Village.
- (2) In light of this knowledge and the gross disparity between the amounts advanced to Hurlstone from Cayman General and Windsor Village and the value of work actually completed at Windsor Village by or on behalf of Hurlstone and/or Hurlstone Contractors, the representations made by Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone, are incapable of an honest explanation and must have been made with knowledge of or recklessness as to their falsity.
- (3) Further, given that Mr John Hurlstone and/or Mr Robert Hurlstone and through one or both of them Hurlstone and/or Hurlstone Contractors knew that these representations would be relied upon by Windsor Village and Cayman General in making advances to Hurlstone and that such advances would be to their advantage, it is to be inferred that they intended that Windsor Village and Cayman General should so rely on them.

Particulars of Conspiracy

(4) Further given the level of knowledge and states of mind set out above of Crawford Adjusters, Bould Paterson Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone as to the reinstatement works at Windsor Village together with the interdependence of their respective representations, it is to be inferred that in making these fraudulent misrepresentations Crawford Adjusters, Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone acted in combination.

Claims made by the Plaintiffs

75. In the premises Cayman General and Windsor Village make the following claims:

Claims in the tort of deceit

- (1) Crawford Adjusters, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone are liable to pay damages to Cayman General in the tort of deceit for the loss and damage Cayman General has suffered as a consequence of the fraudulent misrepresentations made by them together with simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision);
- (2) Further, Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone are liable to pay damages to Windsor Village in the tort of deceit for the loss and damage Windsor Village has suffered as a consequence of the fraudulent misrepresentations made by them together with simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

Conspiracy to use unlawful means

- (3) Further or in the alternative, in making these fraudulent misrepresentations Crawford Adjusters, Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone conspired and combined together with intent to cause loss using unlawful means, namely deceit, and did cause loss with the result that they must pay damages in the tort of conspiracy for the loss and damage Cayman General and/or Windsor Village has suffered thereby together with simple interest at

such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

Breach of fiduciary duty

(4) Further or in the alternative, Crawford Adjusters is liable to account to Cayman General by paying equitable compensation in respect of the loss and damage Cayman General has suffered as a consequence of Crawford Adjusters' breaches of fiduciary duty in favouring the interests of Hurlstone and/or Hurlstone Contractors over those of Cayman General and failing to act in the best interests of Cayman General by making these fraudulent representations and failing to disclose the amount by which Hurlstone had been overpaid for the work completed by or on behalf of Hurlstone and/or Hurlstone Contractors, together with compound interest on this sum pursuant to the Court's equitable jurisdiction, alternatively, simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

(5) Further or in the alternative, Bould Paterson is liable to account to Windsor Village by paying equitable compensation in respect of the loss and damage Windsor Village has suffered as a consequence of Bould Paterson's breaches of fiduciary duty in favouring the interests of Hurlstone and/or Hurlstone Contractors over those of Windsor Village and failing to act in the best interests of Windsor Village by making these fraudulent representations and failing to disclose the amount by which Hurlstone had been overpaid for the work completed by or on behalf of Hurlstone and/or Hurlstone Contractors, together with compound interest on the sum pursuant to the Court's equitable jurisdiction, alternatively, simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

Dishonest assistance

(6) Further or in the alternative, Mr Paterson dishonestly assisted Crawford Adjusters and/or Bould Paterson in the breaches of fiduciary duty set out above by making the above fraudulent representations on their behalf in his capacity as the director responsible for loss adjustment and project management at Crawford Adjusters and Bould Paterson respectively and must account as a constructive trustee by paying equitable compensation in respect of the loss and damage Cayman General and/or Windsor Village has suffered as a consequence of such breaches of fiduciary duties

together with compound interest on the sum pursuant to the Court's equitable jurisdiction, alternatively, simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

Particulars of Dishonesty

By virtue of the matters pleaded in respect of Mr Paterson's fraudulent state of mind at paragraphs 73 (2) and (3), Mr Paterson knew or was reckless to the fact that the actions he took to assist Crawford Adjusters and Bould Paterson would be regarded as dishonest by honest people.

Negligent misrepresentation

(7) In the alternative Crawford Adjusters is liable to pay contractual damages to Cayman General, in the alternative damages in the tort of negligence, for the reasonably foreseeable loss and damage Cayman General has suffered as a result of Crawford Adjusters' failure to take reasonable care in making the misrepresentations set out above together with simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision);

(8) In the alternative Bould Paterson is liable to pay contractual damages to Windsor Village, in the alternative damages in the tort of negligence, for the reasonably foreseeable loss and damage Windsor Village has suffered as a result of Bould Paterson's failure to take reasonable care in making the misrepresentations set out above together with simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision);

Loss and damage

Cayman General

76. As a consequence of:

- (1) its reliance upon the fraudulent misrepresentations made by Crawford Adjusters, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone;
- (2) further or in the alternative the conspiracy between Crawford Adjusters, Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone;

- (3) further or in the alternative the breaches of fiduciary duty committed by Crawford Adjusters with the assistance of Mr Paterson;
- (4) in the alternative as a reasonably foreseeable consequence of its reliance upon the negligent misrepresentations made by Crawford Adjusters;

Particulars of Loss and Damage

77. Cayman General:

- (1) advanced C1\$2,900,000 to Hurlstone in respect of C1\$651,998.86 worth of reinstatement work adjusted for defective and non-compliant work, alternatively C1\$817,505.86 worth of unadjusted work, carried out by Hurlstone and/or Hurlstone Contractors on insured property and thereby lost C1\$2,248,001.14, alternatively C1\$2,082,494.14; and
- (2) remained liable to pay for the reinstatement work that had been represented as complete and as a result suffered consequential loss because of the additional costs of having to pay a new contractor to take on a distressed project, which costs would not have been incurred in the absence of the aforementioned misrepresentation, conspiracy and/or breach of fiduciary duty. These costs were also considered in the Second CCI Report and assessed as C1\$649,415.00. They are further particularized in Appendix C

78. Accordingly Cayman General suffered loss and damage of C1\$2,897,416.14, alternatively C1\$2,731,909.14.

Windsor Village

79. As a consequence of:

- (1) its reliance upon the fraudulent misrepresentations made by Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone as set out above;
- (2) further or in the alternative the conspiracy between Crawford Adjusters, Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone;
- (3) further or in the alternative the breaches of fiduciary duty committed by Bould Paterson with the assistance of Mr Paterson;
- (4) in the alternative as a reasonably foreseeable consequence of its reliance upon the negligent misrepresentations made by Bould Paterson;

Particulars of Loss and Damage

80. Windsor Village advanced C1\$150,000 in respect of C1\$112,438.75 worth of reinstatement work in respect of the sea wall and thereby lost C1\$37,561.25.

Recovery for exposing and resisting conspiracy

81. Further or in the alternative, as a consequence of exposing and resisting the conspiracy between Crawford Adjusters, Bould Paterson, Mr Paterson, Hurlstone, Hurlstone Contractors, Mr John Hurlstone and/or Mr Robert Hurlstone, Cayman General and/or Windsor Village have incurred expense in investigating and uncovering the conspiracy and are entitled to recover such expense by way of further damages in the tort of conspiracy. Particulars of expenses will be provided in due course.

Windsor Village's claim against Hurlstone in contract and/or tort

82. In the alternative, on the hypothesis that there was a contract between Windsor Village and Hurlstone, Hurlstone acted

- (1) in repudiatory breach of contract by:
 - (a) failing to complete the reinstatement works at Windsor Village;
 - (b) failing to complete works for which it had been paid;which repudiatory breach was accepted by Windsor Village; and
 - (2) in breach of contract and/or its duty of care owed in the tort of negligence by failing to use reasonable skill and care with the result that such works were defective and not in compliance with Cayman legislation and building codes;
- and is liable to pay contractual damages to Windsor Village or in the alternative damages in the tort of negligence for the reasonably foreseeable loss and damage suffered by Windsor Village together with simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision)

Particulars of Loss and Damage

83. As a reasonably foreseeable consequence of the breaches set out above:

(1) Windsor Village was compelled to use another contractor to complete the reinstatement works at Windsor Village resulting in additional costs assessed in the Second CCI Report as CI\$649,415 and further particularized in Appendix C.

(2) further:

(a) CI\$3,050,000 was paid by or on behalf of Windsor Village in respect of work worth CI\$764,437.61 when adjusted for defective and non-compliant work with the result that Windsor Village has lost CI\$2,285,562.39;

(b) in the alternative CI\$3,050,000 was paid by or on behalf of Windsor Village in respect of work worth CI\$929,944.61 (unadjusted for defective and non-compliant work) with the result that Windsor Village has lost CI\$2,120,055.39 and furthermore has had to pay CI\$114,136.15 to cure the defects in such work. The costs of cure were considered in the Second CCI Report and are further particularized in Appendix D.

84. Accordingly Windsor Village has suffered loss and damage of CI\$2,934,977.39, alternatively CI\$2,883,606.54.

Windsor Village's claim against Hurlstone in restitution and/or tort

85. In the alternative and on the hypothesis that there was no contract between Windsor Village and Hurlstone, Hurlstone was paid CI\$3,050,000 by or on behalf of Windsor Village in respect of work worth CI\$764,437.61 on a *quantum meruit* basis adjusted to take account of the defects in such work with the result that it received CI\$2,285,562.39 upon a consideration that had totally failed and therefore has been unjustly enriched by this amount at the expense of Windsor Village and must make restitution of this amount to Windsor Village together with simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

86. In the alternative and on the hypothesis that there was no contract between Windsor Village and Hurlstone, Hurlstone was paid CI\$3,050,000 by or on behalf of Windsor Village in respect of work worth CI\$929,944.61 (unadjusted for defective and non-compliant work) on a *quantum meruit* basis and having assumed responsibility for the completion of the reinstatement works with reasonable skill and care, acted in breach of its duty to use such care and skill in the completion of the works with the result that it is also liable to:

- (1) Make restitution of CI\$2,120,055.39; and
- (2) pay damages in the tort of negligence to compensate Windsor Village for its economic loss in making good the defects,

together with simple interest at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

Particulars of Loss and Damage

87. The costs of cure of CI\$114,136.15 as particularized in Appendix D.

AND THE FIRST PLAINTIFF CLAIMS

As against the 1st, 3rd, 4th, 5th, 6th and 7th Defendants

- (1) C1S\$2,897,416.14, in the alternative C1S\$2,731,909.14, by way of damages in the tort of deceit together with simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

As against the 1st Defendant

- (2) Further or in the alternative C1S\$2,897,416.14, in the alternative C1S\$2,731,909.14, by way of equitable compensation together with compound interest thereon pursuant to the Court's equitable jurisdiction, alternatively, simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).
- (3) In the alternative C1S\$2,897,416.14, in the alternative C1S\$2,731,909.14, by way of contractual damages, or in the alternative damages in the tort of negligence, together with simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

As against the 3rd Defendant

- (4) Further or in the alternative C1S\$2,897,416.14, in the alternative C1S\$2,731,909.14, by way of equitable compensation together with compound interest thereon pursuant to the Court's equitable jurisdiction, alternatively, simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

As against all Defendants

- (5) Further or in the alternative C1S\$2,897,416.14, in the alternative C1S\$2,731,909.14, together with such amount of the expense of exposing and resisting conspiracy as the court sees fit by way of damages in the tort of conspiracy together with simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).
- (6) All necessary consequential orders, accounts and inquiries.
- (7) Costs.
- (8) Further or other relief.

AND THE SECOND PLAINTIFF CLAIMS

As against the 2nd, 3rd, 4th, 5th, 6th and 7th Defendants

- (1) C1\$37,561.25 by way of damages in the tort of deceit together with simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

As against the 2nd Defendant

- (2) Further or in the alternative C1\$37,561.25 by way of equitable compensation together with compound interest thereon pursuant to the Court's equitable jurisdiction, alternatively, simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).
- (3) In the alternative C1\$37,561.25 by way of contractual damages, or in the alternative damages in the tort of negligence, together with simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

As against the 3rd Defendant

- (4) Further or in the alternative C1\$37,561.25 by way of equitable compensation together with compound interest thereon pursuant to the Court's equitable jurisdiction, alternatively, simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

As against the 4th Defendant


- (5) Further or in the alternative:
- (a) C1\$2,934,977.39, in the alternative C1\$2,883,606.54 by way of damages for breach of contract together with simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).
- (b) In the alternative C1\$2,285,562.39 as money had and received together with simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).
- (c) In the alternative C1\$2,120,055.39 as money had and received and C1\$114,136.15, by way of damages in the tort of negligence (together, C1\$2,234,191.54) together with simple interest thereon at such rates and for

such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).

As against all Defendants

- (6) Further or in the alternative C1\$37,561.25 and such amount of the expense of exposing and resisting conspiracy as the court sees fit by way of damages in the tort of conspiracy together with simple interest thereon at such rates and for such periods as the court thinks fit pursuant to s.34 of the Judicature Law (2004 Revision).
- (7) All necessary consequential orders, accounts and inquiries.
- (8) Costs.
- (9) Further or other relief.

DATED this day of February 2006


QUIN & HAMPSON
Attorneys-at-Law for the First Plaintiff

To: The Clerk of the Court
And to: The Defendants

This Writ of Summons is filed by Quin & Hampson, Attorneys-at-Law for the First Plaintiff whose address for service and correspondence is that of their Attorneys-at-Law, 3rd Floor, P.O. Box 1348 GI, Grand Cayman.

Appendix A

**Work completed by or on behalf of Hurlstone and/or
Hurlstone Contractors at Windsor Village according to the First CCI Report**

ELEMENT	RECOMMENDED SETTLEMENT	OWNERS ACCOUNT	TOTAL	TO DATE	%age of Recommended Settlement	A. PURBRICK ESTIMATE	AP Estimate as %age of Recommended Settlement
Walling / partitions	89,120.00		89,120.00	80,208.00	90%	40,262.55	45%
Suspended floors	111,600.00		111,600.00	111,600.00	100%	37,875.00	34%
Stairs and Rails	83,620.00		83,620.00	41,810.00	50%	7,920.00	9%
Windows and doors	369,076.00		369,076.00	295,261.00	80%	84,868.00	23%
Wall finishes including tile and paint	487,806.00		487,806.00	243,903.00	50%	120,603.00	25%
Ceilings	236,249.00		236,249.00	153,562.00	65%	70,738.50	30%
Floor finishes	333,907.00		333,907.00	50,086.00	15%	0.00	0%
Cabinets/vanities/shelving/accessories	620,000.00		620,000.00	124,000.00	20%	1,000.00	0%
Bathroom fixtures	162,000.00		162,000.00	16,200.00	10%	0.00	0%
Plumbing installation	109,000.00		109,000.00	92,650.00	85%	2,000.00	2%
Electrical installation	323,000.00		323,000.00	290,700.00	90%	50,850.00	16%
Air conditioning	285,000.00		285,000.00	256,500.00	90%	80,214.00	28.15%
Appliances	153,000.00		153,000.00	0.00	0%	0.00	0%
sub-total	3,363,378.00	0.00	3,363,378.00	1,756,480.00		453,831.05	
Underpinning/foundations	235,000.00		235,000.00	235,000.00	100%	8,502.50	4%
Sea wall	0.00	235,000.00	235,000.00	235,000.00	100%	93,698.96	40%
Exterior paint and wall repairs	57,555.00		57,555.00	5,756.00	10%	8,488.00	15%
Trellises and porches	57,500.00		57,500.00	5,750.00	10%	0.00	0%
Underground plumbing and sewage treatment	95,000.00		95,000.00	57,000.00	60%	0.00	0%
Roof structures and trim	161,675.00		161,675.00	145,508.00	90%	42,932.00	27%

ELEMENT	RECOMMENDED SETTLEMENT	OWNERS ACCOUNT	TOTAL	TO DATE	%age of Recommended Settlement	A. PURBRICK ESTIMATE	AP Estimate as %age of Recommended Settlement
Roof coverings and decking	446,336.00		446,336.00	334,752.00	75%	18,240.00	4%
Pool repairs	32,500.00		32,500.00	0.00	0%	0.00	0%
Cabana repairs	15,000.00		15,000.00	0.00	0%	0.00	0%
Dock repairs	40,000.00		40,000.00	0.00	0%	0.00	0%
Preliminaries	337,796.00	17,625.00	355,421.00	208,143.00	62%	70,098.05	21%
Overheads and profit	337,796.00	17,625.00	355,421.00	208,143.00	62%	70,098.05	21%
sub-total	5,179,536.00	270,250.00	5,449,786.00	3,191,532.00		765,888.61	
Demolitions	115,920.00		115,920.00	115,920.00	100%	27,538.00	24%
Clean up debris labour	270,480.00		270,480.00	270,480.00	100%	47,750.00	18%
Clean up debris equipment	108,424.00		108,424.00	108,424.00	100%	0.00	0%
Storage containers	49,163.00		49,163.00	49,163.00	100%	0.00	0%
sub-total	5,723,523.00	270,250.00	5,993,773.00	3,735,519.00		841,176.61	
Professional fees	286,176.00		286,176.00	0.00	0%	0.00	0%
Materials	0.00	0.00	0.00	0.00		88,768.00	
TOTAL CLAIM	6,009,699.00	270,250.00	6,279,949.00	3,735,519.00		929,944.61	
Less: Depreciation	309,948.00	309,948.00	619,896.00	0.00	0%	0.00	0%
Less: Deductible	204,900.00	204,900.00	409,800.00	0.00	0%	0.00	0%
ANTICIPATED NET CLAIM	5,494,851.00	-244,598.00	5,250,253.00	3,735,519.00	68%	929,944.61	18%

Apportionment of work between insured property and the sea wall

Total cost for all insurance-related works undertaken at Windsor Village during A Purbrick visit of 22 nd to 26 th August 2005	CIS\$817,505.86
Total for sea wall works	CIS\$112,438.75
Total	CIS\$929,944.61

Appendix B

Adjustments required to CCI First Report to reflect defective and non-compliant work completed by or on behalf of Hurlstone and/or Hurlstone Contractors at Windsor Village

Defective/Non-compliant Elements	Value in CCI First Report (CIS)	Adjusted value (CIS)
<i>Elements found to be defective</i>		
Underpinning patio slabs	10,203	0
Replace 'Ice & Water' shield	21,888	0
Remove & re-set 47 double patio sets	109,980	0
Damaged materials	7,380	0
<i>Non-compliant elements</i>		
Reconstruct 13 sets of timber stairs	10,296	0
Non-flushing of electrical conduit	5,760	0
TOTAL	165,507.00	0

ADJUSTMENT REQUIRED: CIS165,507.00

Appendix C

Additional costs associated with Hurlstone's non-performance

Additional cost item	Cost (CIS)
Re-establishing site mobilization	100,000
Completion of distressed project	480,000
Additional site security	69,415
TOTAL	649,415.00

Appendix D

**Cost of curing defective work completed by or on behalf of
Hurlstone and/or Hurlstone Contractors**

Elements of Work	Cost of cure (CIS)
<i>Elements found to be defective</i>	
Underpinning patio slabs	4,165.60
Replace 'Ice & Water' shield	1,366.38
Remove & re-set 47 double patio sets	39,567.47
Removal and replacement of damaged materials	14,031.53
Repair of roof leaks	13,056.18
<i>Non-compliant elements</i>	
Reconstruct 13 sets of timber stairs	37,280.24
Non-flushing of electrical conduit	4,668.75
TOTAL	114,136.15

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO:

OF 2006

BETWEEN:

(1) CAYMAN GENERAL INSURANCE CO. LTD

(2) THE PROPRIETORS OF STRATA PLAN No. 151
KNOWN AS WINDSOR VILLAGE

Plaintiffs

AND

(1) CRAWFORD ADJUSTERS (CAYMAN) LIMITED

(2) BOULD PATERSON LIMITED

(3) ALASTAIR PATERSON

(4) HURLSTONE LIMITED

(5) HURLSTONE GENERAL CONTRACTORS LIMITED

(6) JOHN HURLSTONE

(7) ROBERT HURLSTONE

Defendants

**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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]
Address for service:

Please complete overleaf

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.

Messrs. Quin & Hampson
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN

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