

IN THE GRAND COURT OF THE CAYMAN ISLANDS

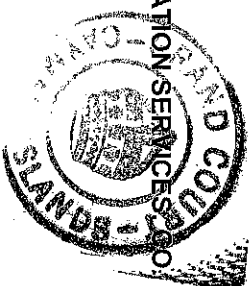
CAUSE NO. *335*

OF 2006

BETWEEN:                   TRAFFIC INSURANCE LTD.

Plaintiff

AND:                         (1) DISTRIBUTION TRANSPORTATION SERVICES, INC.  
                                  (2) THOMAS J. KOMADINA SR.  
                                  (3) DONNA M. KOMADINA



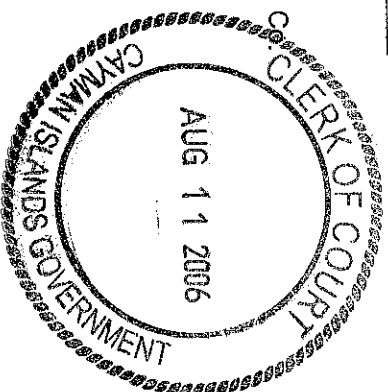
Defendants

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WRIT OF SUMMONS

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TO:                         Distribution Transportation Services, C.  
                                  755 Parr Road  
                                  Wentzville  
                                  MO 63385  
                                  Missouri  
                                  United States of America



TO:                         Thomas J. Komadina Sr.  
                                  756 Grandpas Lane  
                                  O'Fallon  
                                  MO 63366 - 1062  
                                  Missouri  
                                  United States of America

TO:                         Donna M. Komadina  
                                  756 Grandpas Lane  
                                  O'Fallon  
                                  MO 63366 - 1062  
                                  Missouri  
                                  United States of America

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 28 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued: 11 August 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.

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## STATEMENT OF CLAIM

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### The Parties

1. The Plaintiff is a Cayman Islands Exempted Limited Liability Insurance Company.
2. The Plaintiff is a group captive insurance company and was exclusively formed for trucking companies based in the United States. The Plaintiff is engaged in providing reinsurance in respect of an Insurance Programme consisting of workers' compensation, commercial general liability and commercial automobile liability and physical damage insurance coverages written by United States licensed insurance companies for participants, or affiliated entities of participants, in the Plaintiff.
3. The First Defendant is a company incorporated in Missouri, the United States of America and, at all material times, carried on, inter alia, the business of providing trucking and transportation property brokerage services.
4. The Second Defendant is the President of the First Defendant. The Third Defendant is a Vice President of the First Defendant. Both the Second and Third Defendants are residents of the United States of America. At all material times, the Second and Third Defendants have been and continue to be shareholders in the Plaintiff.

### The Information Memorandum

5. Pursuant to an Information Memorandum dated 1 February 1998 (the "**Information Memorandum**"), the Plaintiff required that each shareholder in the Plaintiff, whose risks are to be reinsured, or which has one or more affiliates whose risks are to be reinsured, contribute capital to the Plaintiff by purchasing a Unit consisting of one Common Share and one Preferred Share.
6. Accordingly, pursuant to the Information Memorandum, the Plaintiff offered to unrelated prospective participants, who were trucking based companies incorporated in the United States, the right to have their risks (and/or the risks of one or more of their affiliates) reinsured by the Plaintiff pursuant to an Insurance Programme as defined in the Information Memorandum. The Second and Third Defendants on their own behalf and/or on behalf of the First Defendant agreed to be bound by the terms of the Information Memorandum pursuant to the terms of the Subscription Agreement pleaded at paragraphs 20 and 22 herein.
7. The Plaintiff will rely upon the full Information Memorandum for its contents, terms and effect. In particular, the Information Memorandum explained that:-  
  
**"Premiums and Assessments**  
  
Although it is anticipated that the net proceeds from this Offering, together with premiums, interest and other income will be sufficient to permit the Company to pay its insured losses and expenses, there can be no assurance that additional funds will not be required.

Each member is subject to the right of the Company to make assessments (adjustments) of additional funds in the form of an additional premium in the event that losses attributable to such

member exceed anticipated losses utilized in determining such members' insurance premium. Such premiums are payable directly by the Shareholder insured to the Company. See "Business of the Company – The Insurance Program" below; the Experience Rated Premium Loss Formula (Exhibit F) and the Shareholder Agreement (Exhibit E). Members are required to provide security for such obligations. See "Business of the Company – Acceptable Security" below".

8. In the premises, the basis on which Assessments could be made was clearly explained in, inter alia, the Information Memorandum.

#### **The Shareholder Agreement**

9. On 17 August 1998, the Plaintiff and the Second and Third Defendants entered into a Shareholder Agreement (the "**Shareholder Agreement**"), governed by Cayman Islands Law, pursuant to which the Second and Third Defendants became shareholders in the Plaintiff.

10. Further, on 17 August 1998, one Redeemable Preferred Share in the Plaintiff was issued to the Second and Third Defendants jointly and one Ordinary Share in the Plaintiff was also issued to the Second and Third Defendants jointly.

11. The Second and Third Defendants entered into the Shareholder Agreement either on their own behalf or on behalf of the First Defendant or on behalf of both themselves jointly and severally and the First Defendant. The First, Second and Third Defendants are hereinafter referred to as the Defendants.

12. The Plaintiff will rely upon the full Shareholder Agreement for its contents, terms and effect. In particular, clauses 3.1 and 3.3 of the Shareholder Agreement provide as follows:-

"3.1 Experience Rated Formula. The Shareholders and each of them hereby agree to be bound by the Experience Rated Formula in relation to the calculation of premiums and the distribution of losses and costs among the Segregated Accounts, the obligation of Shareholders for assessments, and all related and dependent matters"; and

"3.3 Compliance. Each Shareholder hereby undertakes to comply with the provisions of the Memorandum of Association, Articles of Association, and all policies and procedures duly adopted by the Board of Directors of the Company or the Company in Annual Meeting. In addition, each Shareholder acknowledges and agrees with the Company that its shareholding is not an entitlement to have its risks underwritten by the Company and that the Company will only underwrite risks where the Board of Directors has determined that the claims experience, loss control procedures and results of the proposed insured are satisfactory".

13. In respect of clause 3.1 above of the Shareholder Agreement, "Shareholder's Obligations" are defined in clause 1.27 of the Shareholder Agreement as:-

"1.27 Shareholder Obligations means the financial obligations due by each Shareholder to the Company, including, but not

limited to, premium payments, assessment obligations (including IBNR reserve assessments), losses, fixed costs, legal and administrative costs and charges generally recognized in insurance accounting, all as the same may be determined by the Board of Directors of the Company from time to time and whose determination of such obligations shall, absent manifest error, be final and binding on all parties. Premium assessments made by the Board of Directors for any policy year shall be limited to an amount equal to 100 percent of the "A" Fund (as defined in the Experience Rated Premium / Loss Formula attached to the Company's Information Memorandum as Exhibit F) portion of the premium paid by each shareholder to an issuing insurance company for such policy year".

14. As a consequence of the Second and Third Defendants entering into the Shareholder Agreement, as pleaded at paragraph 9 above, the Second and Third Defendants became members of the Plaintiff group captive insurance company and obtained the benefit of insurance coverage on behalf of, inter alia, the First Defendant.

15. Further, pursuant to clause 3.1 of the Shareholder Agreement, the Second and Third Defendants on their own behalf jointly and severally and/or on behalf of the First Defendant, expressly agreed to be liable for, inter alia, all "assessment obligations" ("**Assessments**") rendered by the Plaintiff, as calculated in accordance with the Experience Rated Formula.

16. Further, as a consequence of becoming Shareholders and members of the Plaintiff group captive insurance company and/or pursuant to the terms of the Policy pleaded at paragraph 24 below, the Second and Third Defendants on their own behalf jointly and severally and/or on behalf of the First Defendant also agreed to be liable for all Automobile Liability Deductibles (as defined at paragraph 23 below) which fell due as a result of any relevant claims made against the First Defendant.

17. Pursuant to clause 7.1 of the Shareholder Agreement, the Second and Third Defendants on their own behalf jointly and severally and/or on behalf of the First Defendant agreed that:-

"7.1 Amendment; Termination. This Shareholder Agreement may not be amended or terminated except upon written agreement of the Shareholders owning at least eighty percent of the outstanding Common Shares and Preferred Shares of the Company".

18. Further and/or in the alternative, the Second and Third Defendants rights as Shareholders could be varied with the consent in writing of the holders of three-fourths of the issued shares of the Common or Preferred Shares or with the sanction of a resolution passed by the holders of not less than three-fourths of the Shares of that class at a separate general meeting of the holders of Shares of that class as prescribed by Article 16 of the Plaintiff's Articles of Association.

19. In the premises, it was agreed between the Plaintiff and the Second and Third Defendants (either on their own behalf jointly and severally and/or on behalf of the First Defendant) that the Shareholder Agreement could be amended by appropriate Shareholder Resolution either in accordance with the terms of the Shareholder Agreement and/or in accordance with the terms of the Articles of Association of the Plaintiff.

### The Subscription Agreement

20. In addition, on 17 August 1998, the Second and Third Defendants entered into a Subscription Agreement, governed by Cayman Islands Law, with the Plaintiff.
21. The Plaintiff will rely upon the full Subscription Agreement for its contents, terms and effect.
22. In particular, clause 2.7 of the Subscription Agreement provides that:-

“2.7 Governing Documents. The Subscriber understands that the rights and obligations of the Subscriber are governed by the Information Memorandum, and by the Memorandum of Association, the Articles of Association, the Company’s Policies & Procedures Manual, the Shareholder Agreement, the Company’s Experience Rated Premium/Loss Formula in the form attached to the Information Memorandum, and this Subscription Agreement. The Subscriber hereby accepts and agrees to be bound by the terms and conditions of these documents, copies of each of which are attached to the Company’s Information Memorandum previously provided to the Subscriber and any amendments thereto from time to time”.

### The Insurance Coverage

23. The insurance is provided by the Program Insurance Company (which is a licensed and “A” rated United States insurance carrier). The Insurance is issued subject to the terms and conditions of the policy issued to the First Defendant. In that regard, the Defendants negotiated with the Program Insurance Company a reduction in the premiums due by agreeing to a deductible (the “**Automobile Liability Deductible**”).
24. A Policy of Insurance (the “**Policy**”) was then issued by the Program Insurance Company to, inter alia, the First Defendant and the First Defendant has had the benefit of that Policy. A New Policy was thereafter re-issued annually, insurance coverage being in effect from 1 March 1998 to 28 February 2003.
25. The Policy expressly included an amendment in respect of deductible liability coverage. In that respect, the Second and Third Defendants and/or the Defendants expressly agreed to reimburse the Automobile Liability Deductible to the Policy issuer pursuant to the afore-mentioned amendment to the Policy. The Amendment to the Policy expressly stating:-

**“Our Right to Reimbursement**

To settle any claim or suit we may pay all or any part of any deductible shown in the Schedule. If this happens, you must reimburse us for the deductible or the part of the deductible we paid”.

### Payments made by or on behalf of the Defendants

26. In practice, and in accordance with the course of dealings between the Plaintiff and the Defendants, in respect of the Automobile Liability Deductible, the Plaintiff would pay the full amount of any relevant claim and then be entitled to recoup from the First Defendant and/or the Defendants relevant Automobile Liability Deductibles.

27. In accordance with the agreements between the parties and the course of dealings between the parties, the First Defendant on its behalf and/or on behalf of the Second and Third Defendants paid the Plaintiff in respect of Automobile Liability Deductibles as they arose from March 1998 to in or about January 2003.

28. Further, in accordance with the agreements between the parties and the course of dealings between the parties, the First Defendant on its behalf and/or on behalf of the Second and Third Defendants paid the Plaintiff in respect of the Assessments due as they arose from March 1998 to in or about December 2002.

#### **The Revised Information Memorandum**

29. In or about July 2003, notice of a Shareholders meeting was given to the Second and Third Defendants.

30. On 8 August 2003, a Shareholders meeting of the Plaintiff took place at the Waterfront Hotel in Vancouver, British Columbia, Canada.

31. On 8 August 2003, at the above-mentioned Shareholders meeting, a revised Information Memorandum dated 1 August 2003 (the "**Revised Information Memorandum**") was adopted by way of a Shareholders special resolution passed by the Common Shareholders in the Plaintiff.

32. In the premises, the special resolution pleaded at paragraph 31 above authorized valid amendments to the Information Memorandum pursuant to the Articles of Association of the Plaintiff.

33. The Plaintiff will rely upon the full Revised Information Memorandum for its contents, terms and effect. In particular, the Revised Information Memorandum explained that:-

#### **"Premium Assessments**

Although it is anticipated that the capital contributions made by the Members, together with premium, investment and other income, will be sufficient to permit the Company to pay its insured losses and expenses, there can be no assurance that additional funds will not be required.

Each Shareholder insured is subject to the right of the Company to require assessments (adjustments) of additional funds in the form of additional premiums in the event that incurred losses, consisting of paid losses, reserves for incurred but not reported claims (IBNR), reserves for claims which have been reported and allocated loss adjustment expenses, attributable to such shareholder insured exceed the anticipated losses utilized in determining such Shareholder insured's initial insurance premium and, in certain cases, if group losses exceed expectations. Further, additional insurance premiums may be assessed if the Company's actual expenses exceed the estimate of Company fixed costs used in setting the initial premiums for the policy year, or if the Company has a negative return on its investments for such year. Such additional insurance premiums are payable directly by the Shareholder insured to the Company. See "Business of the Company – The Insurance Program" below, the Experience Rated Premium/Loss Formula (Exhibit F)

and the Shareholder Agreement (Exhibit E). Shareholder insureds are required to provide security for their potential additional premium assessment obligations. See "Business of the Company – Acceptable Security" below".

34. In addition, the Revised Information Memorandum also provided:-

**"Dispute Resolution**

Any disputes or differences arising out of, or with reference to the interpretation, application or effect of, this Information Memorandum (including Exhibits and Supplements hereto), or any part hereof or thereof or any disclosure or failure to disclose herein or therein or arising from the Shareholder Agreement, the Articles of Association or any aspect of the Company or its operations, shall be adjudicated exclusively in the Courts of the Cayman Islands, sitting in the Cayman Islands, and each person subscribing for a Unit will be required to irrevocably waive any objection to the jurisdiction of such Courts for any reason, including on the grounds of unsuitability or inconvenience of forum or venue; any such adjudication shall be binding on the Company and its Shareholders".

**The Revised Shareholder Agreement**

35. On 8 August 2003, also at the above-mentioned Shareholders meeting pleaded at paragraph 30 above, a revised Shareholder Agreement dated 1 August 2003 (the "**Revised Shareholder Agreement**"), governed by Cayman Islands Law, was adopted by way of a Shareholders special resolution passed by the Common Shareholders in the Plaintiff. The Plaintiff will rely upon the full Revised Shareholder Agreement for its contents, terms and effect.

36. In the premises, the special resolution pleaded at paragraph 35 above authorised valid amendments to the Shareholder Agreement pursuant to the Articles of Association of the Plaintiff and/or pursuant to Section 7.1 of the Shareholder Agreement, as pleaded at paragraph 17 above.

37. Clauses 3.1 and 3.3 of the Revised Shareholder Agreement are in the same terms as clauses 3.1 and 3.3 of the Shareholder Agreement referred to at paragraph 9 above.

38. In respect of clause 3.1 of the Revised Shareholder Agreement, "Shareholders Obligations" are defined in clause 1.26 of the Revised Shareholder Agreement as:-

"1.26 Shareholder Obligations means the financial obligations due from each holder of a Common Share (or its Insured affiliate) to the Company, including, but not limited to, premium payments, additional premium assessment obligations (including IBNR reserve assessments), collateral for deductibles if required by a policy-issuing Program Insurer, losses, loss reserves, allocated loss adjustment expense, fixed costs (as estimated initially and as subsequently adjusted to reflect actual operating expenses), funding requirements arising from negative investment returns, legal and administrative costs and charges generally recognized in insurance accounting, all as the same may be determined by the Directors from time to time and whose

determination of such obligations shall, absent manifest error, be final and binding on all parties. Shareholder obligations continue throughout an applicable policy year, even if coverage is terminated prior to year-end. Premium assessments made by the Directors for any policy year (in addition to the initial premium charged) are currently limited generally to an amount equal to 150% of the A Fund (as defined in the Experience Rated Formula as it may be modified by the Directors from time to time) portion of the premium paid by each Shareholder (or its Insured affiliates) to the policy-issuing Program Insurer for such policy year”.

39. The Revised Shareholder Agreement also contains the following exclusive Jurisdiction Clause in favour of the Courts of the Cayman Islands:-

“Any dispute or difference arising with reference to the formation, interpretation, application or effect of this Shareholder Agreement or any part hereof or any action or failure to act hereunder or otherwise arising hereunder, or with respect to the Company or its operations, shall be adjudicated exclusively in the Courts of the Cayman Islands, sitting in the Cayman Islands, and the parties hereto irrevocably waive any objection to the jurisdiction of such Courts for any reason, including on the grounds of unsuitability or inconvenience of forum or venue; any such adjudication shall be binding on each of the parties hereto; and the Judgments of such Courts may be entered in any Court having jurisdiction thereof. The Shareholders and each of them expressly submit to the Jurisdiction of the Courts of the Cayman Islands in connection with any such dispute or difference as is referred to in this Section 6”.

**The Debts Due – Automobile Liability Deductibles**

40. In respect of the monies due for Automobile Liability Deductibles, invoices were submitted by the Plaintiff to the First Defendant in respect of the periods and for the amounts as specified in the schedule below:-

Invoice Date	Amount Past Due
January 2003	\$3,044.17
February 2003	\$5,834.39
April 2003	\$21,500.00
July 2003	\$1,778.41
August 2003	\$2,500.00
September 2003	\$1,200.00
October 2003	\$2,500.00
December 2003	\$10,000.00
January 2004	(\$10.00)
April 2004	\$8,800.00
August 2004	\$6,615.61
October 2004	\$1,750.00
January 2005	\$24,500.00

February 2005	\$9,000.00
May 2005	\$3,271.63
August 2005	\$3,354.00
January 2006	\$3,756.22
<b>Total Due</b>	<b>US\$109,394.43</b>

**The Debts Due – Assessments**

41. In respect of the monies due for Assessments, these were prepared by the Plaintiff and sent to the First Defendant on a quarterly basis each year, the Assessments due being determined as at 1 March, 1 June, 1 September and 1 December of each year.

42. The following amounts relate to the underwriting years specified below, albeit the actual debts have only been determined in subsequent years once all claims and other matters have materialized and developed; the obligation to pay therefore arising subsequent to the claim period. The amounts due have therefore crystallised in subsequent years and the amounts claimed reflect the current amounts outstanding as at the date of this Writ and Statement of Claim:-

<b>Claim Period</b>	<b>Amount Due</b>
1998/1999	\$455
1999/2000	\$4,892
2000/2001	\$33,463
2001/2002	\$108,719
2002/2003	\$76,574
<b>Total Due</b>	<b>US\$224,103</b>

**The First Demand Letter**

43. In accordance with the terms of the Information Memorandum and/or the Revised Information Memorandum and the Shareholder Agreement and/or the Revised Shareholder Agreement, by letter dated 4 January 2006 (the “**First Demand Letter**”), marked for the attention of the Second Defendant, the Plaintiff demanded payment from the First Defendant of US\$219,345 due in Assessments and US\$105,638 due in respect of Automobile Liability Deductibles to August 2005.

44. The Plaintiff received no response whatsoever from the First Defendant and/or the Defendants to the First Demand Letter and the Defendants have failed to pay the whole or any part of the amounts outstanding.

**The Second Demand Letter**

45. Further, and again in accordance with the terms of the Information Memorandum and/or the Revised Information Memorandum and the Shareholder Agreement and/or the Revised Shareholder Agreement, by letter from the Plaintiff’s Attorney’s, Sturats Walker Hersant, to the First Defendant dated 20 April 2006 (the “**Second Demand Letter**”), marked for the attention of the Second Defendant, the Plaintiff demanded payment from the First Defendant of US\$219,345 due in Assessments and US\$105,638 due in respect of Automobile Liability Deductibles to May 2005 for the second time.

46. The Plaintiff also received no response whatsoever from the First Defendant and/or the Defendants to the Second Demand Letter and the Defendants have failed to pay the whole or any part of the amounts outstanding.

**Amounts currently due**

47. In addition to the sums claimed in the First and Second Demand Letters, additional Automobile Liability Deductibles were incurred of US\$3,756.22 in January 2006. As a consequence, the total now due to the Plaintiff in respect of Automobile Liability Deductibles is US\$109,394.43. In addition, the Assessments due have further increased, as a result of claims development, to US\$224,103.
48. Wrongfully and in breach of both the Information Memorandum and/or Revised Information Memorandum and the Shareholder Agreement and/or the Revised Shareholder Agreement, the Defendants have failed to pay the sums due of US\$224,103 due in Assessments and US\$109,394.43 due in respect of Automobile Liability Deductibles.
49. The Plaintiff is entitled to and claims payment of the sum of US\$333,497.43 from the Defendants under the terms of the Information Memorandum and/or Revised Information Memorandum and the Shareholder Agreement and/or the Revised Shareholder Agreement.
50. Further, the Plaintiff is entitled to interest pursuant to the Judicature Law (2004 Revision) at such rate and from such date and on such amount as this Honourable Court thinks fit.

**And the Plaintiff Claims:-**

1. The sum of US\$333,497.43 alternatively Damages;
2. Interest pursuant to the Judicature Law (2004 Revision) at such rate and from such date and on such amount as this Honourable Court thinks fit;
3. Further and/or other relief; and
4. The costs of this action on the Indemnity Basis to be taxed if not agreed.

Dated: 11 August 2006



**STUARTS WALKER HERSANT**  
**Attorneys at Law for the Plaintiff**