

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 582 OF 2007

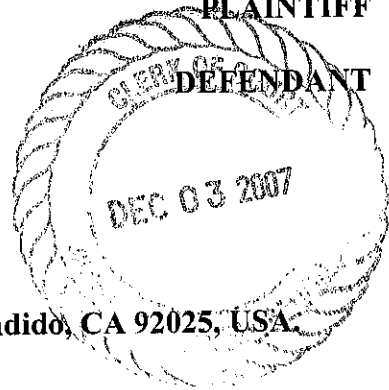
BETWEEN: ARTISANS INSURANCE LTD

PLAINTIFF

AND: RICHARD J. SMERUD

DEFENDANT

WRIT OF SUMMONS



TO: Richard J. Smerud, 3667 Camino Marglesa, Escondido, CA 92025, USA.

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

Within **14 days** after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495, George Town, Grand Cayman KY1-1106, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

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

Issued this *30th* day November of 2007.

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

1. The Plaintiff is a Cayman Islands exempted company registered on 29 September, 1998. The Plaintiff has its registered office at PO Box 10027, Grand Cayman, KY1-1001, Cayman Islands. The Plaintiff was incorporated to provide reinsurance cover in connection with a captive insurance program for the Plaintiff's members or companies affiliated with its members. The insurance cover provided was underwritten by United States licensed insurance companies.
2. The Defendant is a director of a company incorporated in the United States of America, Surecraft Supply, Inc. which has its registered office at 2875 Executive Place, Escondido, CA 92029, USA.
3. The Defendant is a shareholder of the Plaintiff, being the registered holder of one Common share and one Preferred share. The Plaintiff and Defendant entered into a written Shareholder Agreement as amended (the "Shareholder Agreement") and a written Subscription Agreement (the "Subscription Agreement") both dated 2nd September, 1999. In the Shareholder Agreement, the Defendant agreed, amongst other things, to undertake to satisfy and discharge the Shareholder Obligations in full when the same are due.

- a. Clause 1.25 of the Shareholder Agreement states:

"Shareholder means a person who is the registered holder of a Common Share and/or a Preferred Share ..."

- b. Clause 1.26 of the Shareholder Agreement states:

"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 170% 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.”

c. Clause 3.3 of the Shareholder Agreement states:

“Compliance. Each Shareholder hereby undertakes to satisfy and discharge the Shareholder Obligations in full when the same are due. Each Shareholder hereby undertakes to comply with the provisions of the Memorandum, Articles and all policies and procedures duly adopted by the Directors or the Shareholders. In addition, each Shareholder acknowledges and agrees with the Company that its shareholding is not an entitlement to have its risks (or its affiliates’ risks) underwritten by the Company and that the Company will only underwrite risks where the Directors have determined that the claims experience, loss control procedures and results of the proposed insured are satisfactory.”

d. Clause 2.7 of the Subscription Agreement states:

“Governing Documents. The Subscriber understands that the rights and obligations of the Subscriber are governed 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 (see Exhibit F to the Company’s 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.”

e. Article 16 of the Articles of Association states:

- (a) The Directors, in respect of each Unit, shall apply subscription proceeds (including share premium paid in respect thereto) from the allotment and issue of each Share comprised in each such Unit in the books of the Company to a separate and distinct fund (a “Class Fund”) established for that Unit and the assets and liabilities and income and expenditure attributable thereto shall be applied to such fund subject to the provisions of this Article.*
- (b) In the case of any asset or liability (including any expense) of the Company which the Directors do not consider is attributable to a particular Class Fund, the Directors shall allocate such asset or liability among all of the Class Funds upon such basis as they shall, in their discretion, determine.*
- (c) For the purposes of this Article 16, the Directors shall have an absolute discretion to determine what assets and liabilities and*

which income and expenditure is attributable to and shall be applied to the Class Fund established and maintained in respect of each Unit.

(d) The Directors may, in the books of the Company, transfer any asset or liability to and from any Class Fund or Class Funds if they determine, in their discretion, that such transfer is necessary to more equitably reflect the interests of the Members holding the Unit or Units in respect of which the relevant Class Fund or Class Funds are established and maintained in those assets or liabilities of the Company or any part thereof.

4. The Plaintiff will rely on the terms of the said Shareholder Agreement, Subscription Agreement and Articles and all documents incorporated thereby for their full meanings, terms and effect.
5. The Plaintiff participated as a reinsurer for the first three years of the insurance program with coverages including workers' compensation and employer's liability, commercial automobile liability and physical damages, and commercial general liability. The first three years were the 1998/1999, 1999/2000, and 2000/2001 policy years (the "GL Years").
6. Commercial general liability coverage was no longer reinsured upon completion of the 2000/2001 policy period. The decision to discontinue commercial general liability from the program was based on the United States policy issuance carrier and aggregate excess reinsurer's growing concern with the members' ability to control construction defect litigation.
7. Several years after completion of the 2000/2001 policy period, reports of significant loss development in the GL Years were discussed at Plaintiff board meetings along with discussions of potential solutions.

8. A methodology to allocate US\$10,000,000 of excess of aggregate losses from the GL Years to the Shareholders and various vendors of the Plaintiff was approved at the March 2007 Board of Directors and Shareholders meetings.
9. In May 2007 an offer was obtained from Zurich North America ("Zurich") to commute the GL Years for a premium of US\$15 million.
10. A commutation agreement was approved by the Board of Directors of the Plaintiff by significant majority and also approved by a Special Resolution of the Shareholders (requiring greater than 75% approval of all the Shareholders) on June 26, 2007. The commutation agreement was entered into between the Plaintiff and Zurich on July 1, 2007 (the "Agreement"). Terms approved by the Board of Directors and the Shareholders are outlined in the document entitled "General Liability Years, Commutation Material, June 2007" ("Commutation Materials"). The terms included in the Commutation Materials that allocated the liabilities to the Shareholders and various vendors of the Plaintiff were based on the methodology established at the March 2007 Board of Directors meeting.
11. The Commutation Materials included the amounts allocated to each individual member of the Plaintiff, including the Defendant.
12. In accordance with Article 16 of the Articles, the Directors are permitted to allocate any liabilities to any unit if they determine, in their discretion, that such allocations accurately reflect the interests of the members.
13. The Plaintiff, therefore, entered into the Agreement in respect of all liabilities in excess of the aggregate coverage limit for the GL Years. The Plaintiff further allocated the losses in excess of the aggregate coverage amounts in respect of the GL Years among the class funds of members and established a method to obtain any applicable payments due in accordance with the Commutation Materials.

Members who had a net negative balance (as outlined in the Commutation Materials as the amount due from the member offset by the member's capital, security, investment income, and underwriting profit related to non GL Years with IBNR) (the "Net Balance") were to be billed in equal quarterly instalments over a 24 month period. Pursuant to the Commutation Materials, any member who defaulted on any amount due would lose the right to pay the Net Balance by way of instalments and the full amount due, no longer offset by the member's capital, security, investment income, and underwriting profit related to the non GL Years with IBNR (the "Gross Balance"), from each member would become due and owed immediately.

14. In accordance with the Commutation Materials, the Subscription Agreement and the Shareholders Agreement, a demand was sent to the Defendant on 24th July, 2007. A further demand was sent on the 29th August, 2007. A demand letter for the Gross Balance was sent by Turner & Roulstone on 23rd October, 2007 which demanded the sum of US\$622,250.
15. In breach of the Commutation Materials, the Subscription Agreement and the Shareholders Agreement, the Defendant has refused and/or failed to pay.
16. In accordance with the Commutation Materials, the Subscription Agreement, the Shareholders Agreement and the Collections Policy approved by the Board of Directors of the Plaintiff at the August 2002 and March 2003 board meetings, the Gross Balance is hereby due.
17. Therefore, the Gross Balance sum due from the Plaintiff is as follows:-

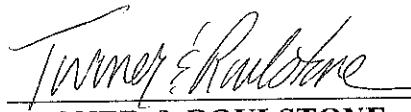
	US\$
GL Years Member Contribution	271,392
Unpaid Premium Assessments for GL Years	210,134
Outstanding Collateral	49,651

Outstanding Premium Assessments Non GL Years	18,648
Additional Gross Assessments Non GL Years	72,425
Finance charges on unpaid assessments	761
Balance due from Defendant	623,011

AND THE PLAINTIFF claims:

1. The sum of US\$623,011
2. Interest; and
3. Costs.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed of US\$623,011 plus costs of US\$4,456.52 further proceedings will be stayed. The money must be paid to the Plaintiff or his Attorney.



TURNER & ROULSTONE
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Turner & Roulstone, Attorneys-at-law for the Plaintiff whose address for service is Strathvale House, 90 North Church Street, George Town, Grand Cayman, Cayman Islands.

BETWEEN: ARTISANS INSURANCE LTD PLAINTIFF
AND: RICHARD J. SMERUD DEFENDANT

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

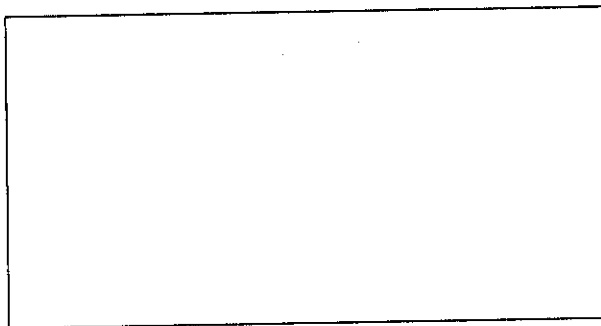
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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.

Turner & Roulstone
Attorneys-at-Law for the Plaintiff
Strathvale House
90 North Church Street
PO Box 2636
Grand Cayman KY1-1102
CAYMAN ISLANDS
Ref: RL/as/0411-0013

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



DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, PO Box 495G, George Town, Grand Cayman

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Questions 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an 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 its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.