

**BETWEEN:**

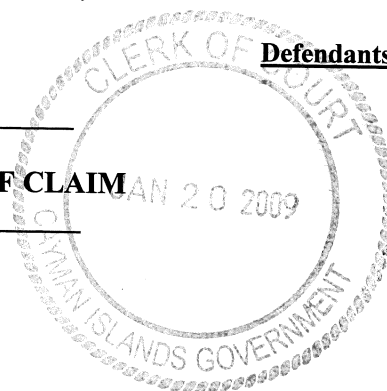
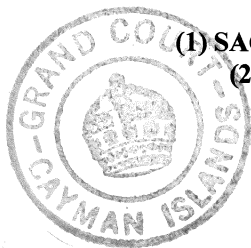
- (1) HURLSTONE LIMITED
- (2) HURLSTONE GENERAL CONTRACTORS LIMITED
- (3) JOHN HURLSTONE
- (4) ROBERT HURLSTONE

Plaintiffs

**-AND-**

- (1) SAGICOR GENERAL INSURANCE (CAYMAN) LIMITED
- (2) THE PROPRIETORS OF STRATA PLAN NO. 151  
(KNOWN AS WINDSOR VILLAGE)

Defendants



AMENDED STATEMENT OF CLAIM

I. The Parties

1. The First Plaintiff (“**Hurlstone Ltd**”) and the Second Plaintiff (“**HGCL**”) are companies registered in the Cayman Islands and carry on business as general building contractors.
2. The Third Plaintiff is a director and beneficial owner of Hurlstone Ltd and the Fourth Plaintiff is a director and shareholder of HGCL.
3. The First Defendant (“**Sagicor**”) is a company registered in the Cayman Islands which provides insurance including property insurance.
4. The Second Defendant (“**Windsor Village**”) is a corporation established under section 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 is located at Block 7D, Parcel 30(a), South Sound, Grand Cayman.
5. At all material times, Sagicor was the insurer of Windsor Village.

## II. Cause No. 78 of 2006

6. On 28 February 2006, Sagicor (which was then named Cayman General Insurance Co Ltd) and Windsor Village issued proceedings against the Plaintiffs (as well as against three other parties, namely Crawford Adjusters (Cayman) Limited, Bould Paterson Limited and Mr Alastair Paterson) under Cause No. 78 of 2006 (“**the Proceedings**”).

7. On 28 February 2006, Sagicor and ~~Windsor Village~~ applied for and obtained an *ex parte* “Mareva” injunction against the Plaintiffs (“**the Mareva**”) freezing all their assets up to CI\$3m.

7A. The Plaintiffs will say that in obtaining the Mareva Sagicor acted on behalf of itself as well as on behalf of Windsor Village and/or with the knowledge and authority of Windsor Village:

(1) The amount secured by the Mareva was CI\$3,229,210.60 which was based on a claim of CI\$3,073,325.02 which covered not merely the claim that Sagicor was making but amply secured Windsor Village;

(2) Windsor Village and Sagicor acted by the same attorneys. Furthermore, Mr Danny Scott who was responsible for instructing the said attorneys on behalf of Sagicor was also one of the proprietors of the Windsor Village Strata Plan;

(3) It is to be inferred from the foregoing that:

(i) It had been agreed as between Windsor Village and Sagicor that Sagicor would nominally make the application for the Mareva on its own;

(ii) Windsor Village knew and approved of the application for the Mareva and the material on which it was based.

7B. By reason of the matters aforesaid Windsor Village in substance obtained the Mareva for themselves and/or were Sagicor's undisclosed principals when that application was made. References hereafter in this Statement of Claim to the Mareva having been obtained by both of the Defendants is to be understood in this sense.

8. The Proceedings were based on allegations concerning the work undertaken by the Plaintiffs in relation to the clean up and reinstatement works carried out by them between about October 2004 and July 2005 at Windsor Village following damage caused to the site by Hurricane Ivan (which had caused damage on or about 11 and 12 September 2004).

9. The allegations and claims made by Sagicor and/or Windsor Village against the Plaintiffs in the Proceedings included, *inter alia*, the following:

- (1) that the Plaintiffs had committed the tort of deceit by fraudulently misrepresenting the value of the work which they had carried out at Windsor Village;
- (2) that the Plaintiffs were party to a conspiracy with intent to cause loss using unlawful means, namely deceit;
- (3) that the Plaintiffs had acted in repudiatory breach of contract by failing to complete the reinstatement works at Windsor Village and by failing to complete works for which it had been paid;
- (4) that the Plaintiffs had acted in breach of contract and/or their duty of care owed in the tort of negligence by failing to use reasonable skill and care with the result that their work was defective and not in compliance with Cayman legislation and building codes;
- (5) that the Plaintiffs were liable to pay damages and make restitution of a sum in excess of CI\$3 million;

10. The Plaintiffs denied the claims made against them in Cause No. 78 of 2006. Hurlstone Ltd counterclaimed for loss of profit caused by the wrongful exclusion of the Plaintiffs from the Windsor Village site and the prevention of them completing the reinstatement work.
11. On 21 November 2008, ~~Sagicor the Defendants~~ applied for and obtained *ex parte* a discharge of the Mareva which ~~they~~ it previously obtained on 28 February 2006 and which had remained in place against the Plaintiffs from that date. That discharge occurred only 5 working days before the trial of the action under Cause No. 78 of 2006 (with a 15 day estimate) was due to commence.
12. On 3 December 2008, the Honourable Mr Justice Henderson dismissed all of the claims brought by the Defendants against the Plaintiffs under Cause No. 78 of 2006. The Learned Judge gave judgment in favour of Hurlstone Ltd in respect of its counterclaim for loss of profits and also ordered the Defendants to pay the Plaintiffs' costs on an indemnity basis from the issue of proceedings up to and including 3 December 2008 (and on a standard basis thereafter). An inquiry as to the damages to which the Plaintiffs are entitled as a result of the Mareva was also directed. These decisions were embodied in an Order dated 9 December 2008.

### **III. Abuse of Process**

13. The institution and prosecution of the proceedings under Cause No. 78 of 2006 were undertaken maliciously and without reasonable cause and constituted an abuse of process of this Court (both by virtue of the manner in which that was done and by virtue of the purpose for which it was done) which was in that:
  - (1) As to the absence of reasonable cause the Plaintiffs say that:

- (i) There was no credible material available to the Defendants or to their attorneys to justify a plea of fraud or conspiracy and there was no justification for bringing such claims.
  - a. The allegations were entirely based on the reports of one Alan Purbrick who had been retained by the Defendants in August ~~2006~~ 2005 in which he valued the work carried out by the Plaintiffs at less than CI\$1m.
  - b. Mr Purbrick had no appropriate experience to express opinions on labour and material rates prevailing in the Cayman Islands whether at all or for construction projects similar to Windsor Village which at least Sagicor knew through its Mr Frank Delessio. Mr Purbrick had not been able to value the works from his own knowledge because of rates on the Cayman Islands and for that purpose he had to obtain schedules of material and labour rates from Sagicor or an associated company and/or other loss adjusting firms.
  - c. Mr Purbrick's only experience on the Cayman Islands (at "Ocean Club") had been as a loss adjuster employed by insurers in which he valued work at 50% of the subsequently agreed value.
  - d. The Defendants had in fact instructed Mr Purbrick to arrive at a substantially lower valuation than the total amount which had been paid to the Plaintiffs. Such an instruction is to be inferred from the following:
    - (aa) Mr Purbrick did not include anything for the value of the clean-up of the site even though the Defendants well knew that the Plaintiffs had carried out that work on the site given that the clean-up

work had been costed by Mr Paterson and the Defendants had reached agreement in respect of the amount to be allowed in respect of the clean-up with Mr Paterson.

- (bb) Mr Purbrick's initial instructions came from Mr Delessio and not from the attorneys of the Defendants and those instructions and his subsequent discussions with Mr Delessio and Mr Ulrich are not fully documented.
- (cc) No other expert was retained or asked to value the work to cross-check Mr Purbrick's evaluation even when the Defendants became aware that his values were seriously at odds with 3 experts retained by the Plaintiffs (and its co-defendants).
- e. As the Defendants well knew, in preparing his reports, Mr Purbrick carried out a visual inspection and made no attempt to look at drawings in preparing his report or to consult Mr Paterson or the consulting engineers, Apec Consulting Engineers Ltd, or the architect in order to enable him to measure the works that had been undertaken.
- f. The reports prepared by Mr Purbrick were seriously flawed and his final figures were grossly inaccurate by reason of the un-commercial rates used by him for labour and materials, by virtue of his failure to measure the works properly and because of his omission of clean-up costs.
- g. There was not a shred of evidence of any collusion or arrangement between the Plaintiffs (and their co-

defendants) to justify an allegation of conspiracy and no basis for making a plea of fraud or deceit.

h. The pleadings of fraud and conspiracy were inadequately particularised and pleaded in that they failed adequately or at all, to:

(aa) plead any agreement, combination, understanding or concert between or amongst the Plaintiffs (or their co-defendants);

(bb) plead any common intention of the Plaintiffs (or their co-defendants);

(cc) plead any intention or motive on the part of the Plaintiffs (or their co-defendants);

(dd) particularize the fraudulent misrepresentations alleged to have been made by the Plaintiffs (or their co-defendants).

(ii) On 28 February 2006, the Defendants sought and obtained the Mareva against the Plaintiffs by relying on the reports of Mr Purbrick which were unreliable and incomplete. At the hearing before the Honourable Chief Justice Smellie, ~~the Defendants~~ Sagicor falsely represented that Mr Purbrick had experience of building projects in the Cayman Islands. The true position was that Mr Purbrick had only ever been retained on one single project in the Cayman Islands (Ocean Club) and his work on Ocean Club tended to show that he did not know labour and material rates prevailing locally from his own knowledge. ~~The Defendants~~ Sagicor concealed from the Honourable Chief Justice that Mr Purbrick's valuation on Ocean Club had been less than 50% of the agreed true value of the works or very

substantially less. The limitations of Mr Purbrick's opinions were known (at least) to Mr Delessio of Sagicor. The Defendants Sagicor also falsely stated at the *Mareva* hearing (by relying on Mr Purbrick's first report) that:

- a. The Plaintiffs had withdrawn from the Windsor Village site and had not intended to carry out further works whereas the Defendants had in fact excluded them from the site from 1 July 2005 and had themselves indicated that they did not want to continue with the contract to complete the works and/or had repudiated the contract.
- b. It was unusual in the construction industry that the Plaintiffs had not provided a scope of works or a schedule of rates as this left the parties in a position in which they could not value the work (implying that this had been a deliberate omission to facilitate over-charging) whereas the true position was that this had been the responsibility of the Strata Owners and that it had not been possible to produce a scope of works at the commencement of the works.
- c. Mr Purbrick had been able to verify his measurements with information from Mr Delessio and Mr Ulrich "both of whom had been involved with Windsor Village immediately following the hurricane and who were therefore able to clarify what work had been undertaken" by Hurlstone Ltd whereas the true position was that neither of them had been there at that time and Mr Delessio had not in fact arrived until 15 June 2005 shortly before the Plaintiffs were locked out of the site.

Both the Defendants knew of the facts and matters described above which rendered the above statements untrue. Sagicor had

been left to obtain the Order on behalf of Windsor Village and their attorneys did nothing to correct the false representations made by Sagicor at the hearing.

(2) The proceedings under Cause No. 78 of 2006 were maliciously brought and prosecuted by the Defendants with a view to extorting a financial settlement from the Plaintiffs.

(i) The Defendants made the allegation of fraud and conspiracy without probable cause and they were ultimately abandoned by the Defendants. It is to be inferred that they were not brought with a view to seeing those claims decided.

(ii) It was also unnecessary to make allegations of fraud or conspiracy if the purpose had been merely to achieve a fair accounting of the value of the works.

a. The substance of the case against Hurlstone Ltd and HGCL was that they had been overpaid for work done but that merely required an accounting.

b. Instead the Defendants made allegations of deceit and conspiracy against the Plaintiffs which it was not necessary to make.

c. Accordingly, it is to be inferred that the Defendants had another purpose.

~~(ii)~~(iii) The Defendants obtained the Mareva and knew and intended that the allegations made by the Defendants herein would gain publicity and place the Plaintiffs under the maximum amount of financial pressure:

- a. In addition to the false statements made to the Court at the hearing there had been no attempt by the Defendants to engage with the Plaintiffs and discuss or negotiate a revaluation of the work.
  - b. The Mareva received immediate and widespread publicity.
    - (aa) Immediately after the Mareva was granted, the Order was presented by the Defendants to Scotia Bank (where the Plaintiffs held accounts). The manager of the George Town branch of Scotia Bank was forced to tell Hurlstone contractors and employees that Hurlstone cheques could not be cashed and to “go home”.
    - (bb) An article appeared in the Cayman Compass setting out the existence of the *Mareva* and the allegations against the Plaintiffs on the basis of which the Order had been made.
- (3) In the premises the proceedings under Cause No. 78 of 2006 insofar as they alleged fraud and conspiracy amounted to an abuse of process.
  - (4) Windsor Village authorised Sagicor to act on its behalf in negotiations with the Plaintiffs and the conduct of these proceedings and left it to Sagicor to deal with them. The Plaintiffs will say that in the premises they are liable for the abuse of process of Sagicor.
14. By reason of the aforesaid abuse of process the Plaintiffs have suffered loss and damage:

## **Particulars of Loss and Damage**

The heads of loss which the Plaintiffs are able to give at the date hereof are as follows:

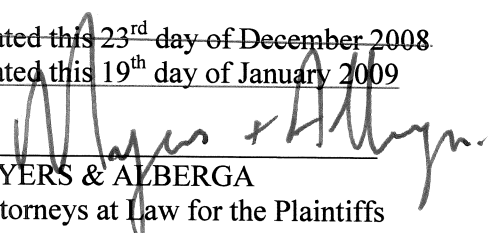
- (1) Damage to the business reputation of each of the Plaintiffs flowing from the allegations of fraud and conspiracy and the Mareva;
  - (2) Loss of the opportunity (and thereby profit) for each of the Plaintiffs of successfully tendering or being otherwise retained for construction projects from February 2006;
  - (3) Loss of market share and turnover for Hurlstone Ltd and HGCL during a period when there was a significant increase of business in the construction industry in the Cayman Islands;
  - (4) Loss of development opportunities and opportunity to hire out equipment and plant.
  - (5) Damage to the personal reputation of John and Robert Hurlstone as a result of being accused of fraud and being subject to the Mareva.
15. The Plaintiffs also claim aggravated damages by reason of the actions, conduct and motives of the Defendants in respect of the pleading, prosecution and presentation of their case.
16. Further or alternatively, the Plaintiffs claim exemplary damages by reason of the Defendants' actions being calculated to secure a pecuniary advantage for themselves at the expense of the Plaintiffs.
17. Further, the Plaintiffs are entitled to interest pursuant to section 34(1) of the Judicature Law at such rate, from such date and on such amount as this Honourable Court thinks fit.

**AND THE PLAINTIFFS CLAIM:**

- (1) Damages;
- (2) Aggravated and/or exemplary damages;
- (3) Interest;
- (4) Costs;
- (5) Such further and/or other relief as this Honourable Court thinks fit.

THOMAS LOWE QC  
ANDREW MOLD

~~Dated this 23<sup>rd</sup> day of December 2008.~~  
Dated this 19<sup>th</sup> day of January 2009

  
MYERS & ALBERGA  
Attorneys at Law for the Plaintiffs

TO: The Clerk of the Court

AND TO: First Defendant  
c/o Mourant

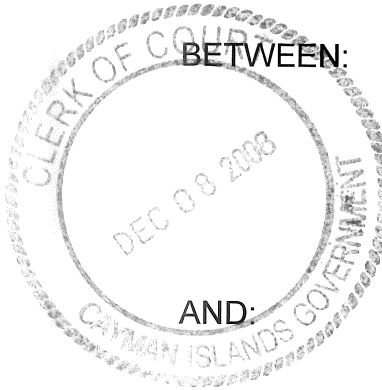
AND TO: Second Defendant  
c/o Appleby

This Amended Statement of Claim is filed by Myers & Alberga, Attorneys-at-Law for the Plaintiffs, whose address for service is Harbour Place, 103 South Church Street, P.O. Box 472, Grand Cayman, KY1-1106, Cayman Islands, BWI

No. 1  
Writ of Summons (0.6, r.1)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No.: <sup>573</sup> of 2008



BETWEEN:

- (1) HURLSTONE LIMITED
- (2) HURLSTONE GENRAL CONTRACTORS LIMITED
- (3) JOHN HURLSTONE
- (4) ROBERT HURLSTONE



PLAINTIFFS

AND:

- (1) SAGICOR GENERAL INSURANCE (CAYMAN) LIMITED
- (2) THE PROPRIETORS OF STRATA PLAN No. 151

DEFENDANTS

**WRIT OF SUMMONS**

TO: (1) SAGICOR GENERAL INSURANCE (CAYMAN) LIMITED  
(2) THE PROPRIETORS OF STRATA PLAN No. 151  
C/o Mourant  
Attorneys-at-Law  
Third Floor  
Harbour Centre  
P.O. Box 1348  
Grand Cayman KY1-1108  
Cayman Islands

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

Within [14 days] after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 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



## INDORSEMENT

The Plaintiffs claim against the Defendants damages, exemplary damages and interest for malicious prosecution and/or abuse of process in respect of proceedings the short title and reference to the record of which is Sagicor General Insurance (Cayman) Limited et al. v. Crawford Adjusters (Cayman) Limited et al. Cause No. 78 of 2006.



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MYERS & ALBERGA

Attorneys-at-law for the Plaintiffs

THIS WRIT was issued by Myers & Alberga, Attorneys-at-Law whose address for service is P.O. Box 472, Harbour Place, Second Floor, 103 South Church Street, George Town, Grand Cayman, KY1-1106, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2008

BETWEEN: (1) HURLSTONE LIMITED  
(2) HURLSTONE GENERAL CONTRACTORS LIMITED  
(3) JOHN HURLSTONE  
(4) ROBERT HURLSTONE

PLAINTIFFS

AND: (1) SAGICOR GENERAL INSURANCE (CAYMAN) LIMITED  
(2) THE PROPRIETORS OF STRATA PLAN NO. 151  
(KNOWN AS WINDSOR VILLAGE)

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.*

Myers & Alberga  
Harbour Place, 2<sup>nd</sup> Floor  
103 South Church Street  
Grand Cayman KY1-1106  
Cayman Islands

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

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE**  
**OF WRIT OF SUMMONS**

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

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 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 the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

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

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

***See over for notes for guidance***

