

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. **G0336** of 2008



BETWEEN:

**PACIFICOR OFFSHORE FUND, LTD**

[A company incorporated under the laws of the Cayman Islands]

AND:

**ASIACITI TRUST NEW ZEALAND, LTD**

[A company incorporated under the laws of New Zealand]



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**WRIT OF SUMMONS**

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TO: **Asiaciti Trust New Zealand, Ltd** whose address for service is 41 Shortland Street, Plaza Level, Auckland, New Zealand

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

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court office, P.O. Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the

proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 15<sup>th</sup> day of July 2008

**NOTE** - This Writ may not be served later than 4 calendar months or, if leave is required to effect service out of the jurisdiction, 6 months beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgement of Service are given with the accompanying form.

## STATEMENT OF CLAIM

1. The Plaintiff, Pacifcor Offshore Fund, Ltd. (the “Fund”) is a company incorporated in the Cayman Islands.
2. The Fund contracted with Pacifcor, LLC (the “Manager”), a Delaware limited liability company, for the provision of investment management services for the Fund.
3. On dates between September 2005 and August 2007, the Defendant, Asiaciti Trust New Zealand Ltd., (the “Investor”) subscribed for shares in the Fund. The Investor subscribed in its capacity as Trustee for third parties. More particularly:

<b>Date</b>	<b>Subscription</b>
September 2005	\$400,000
January 2007	\$450,000
June 2007	\$1,000,000
August 2007	\$8,000,000
<b>Total</b>	<b>\$9,850,000</b>

4. At all material times prior to 18 December 2007 the relationship between the Investor and the Fund was governed, *inter alia*, by the terms of the Fund’s Confidential Offering Memorandum dated March 2007 (the “March 2007 COM”). The Fund will rely upon the terms of the March 2007 COM for its full meaning, terms and effect.
5. By letter dated 8 October 2007 (the “Shareholder Letter”) a director of the Fund, Mr. Michael Klein, wrote to the shareholders seeking their consent to vary the terms of the March 2007 COM and enclosed with the letter a draft consent to the

variation and a confidential offering memorandum dated December 2007 (the "December 2007 COM"). The Fund will rely upon the December 2007 COM for its full meaning, terms and effect.

6. The Shareholder Letter :

- a. Invited the shareholders to consent to a variation of the March 2007 COM such that following the 31 December 2007 redemption date shares could only be redeemed at the end of each quarter provided that 90 days notice in advance had been given by the shareholder to the Fund of the shareholder's intention to redeem at the end of the quarter; and
- b. Informed shareholders that if they did not consent to the amendment to the March 2007 COM, then their shares would be compulsorily redeemed as of 31 December 2007.

7. The December 2007 COM, which was provided to the shareholders under cover of the Shareholder Letter, provided:

- a. *"Generally, each Shareholder may redeem all or a portion of its Shares as of the last day of each calendar ~~month~~<quarter> by providing written notice thereof to the Fund. ~~The redemption amount at the end of any month may be up to the entire amount of Shares held by such Shareholder if the redemption notice is provided at least thirty (30) days prior to the requested redemption date~~< at least ninety (90) days prior to such day; provided that no redemption of Shares may be made until the last day of the calendar quarter that occurs at least twelve (12) months after the date such Shareholder initially purchased Shares in the Fund (such period of time is hereinafter referred to as the "Lock-Up Period")>.*

*<Notwithstanding the foregoing, during the Lock-Up Period a Shareholder may redeem all or any portion of its Shares at the end of a calendar quarter with ninety (90) days prior written notice by paying the Fund an amount equal to four percent (4%) of the value of the redemption proceeds (the "Redemption Fee"). Any Redemption Fee may be reduced or waived by the Board of Directors in its sole discretion. The*

Redemption Fee will be deducted from the redemption proceeds and will remain an asset of the Fund. >"

8. By a letter dated 18 December 2007 (the "Consent Letter") the Investor consented to the changes proposed in the Shareholder Letter.
9. In reliance upon the Consent Letter the Fund did not redeem the Investor's investment on 31 December 2007.
10. By a letter dated 27 December 2007 addressed to "Pacifcor Offshore Fund" and sent by mail to the offices of the Manager, the Investor purported to request a redemption of its full investment (the "Purported Redemption Request").
11. The March 2007 COM and the December 2007 COM both provided:

**"Redemption requests must be made by mail or facsimile (with the original to follow promptly by mail).** No payments will be made to a redeeming Shareholder until the original redemption request has been received by the Administrator. Redemption requests may be submitted by fax to the Administrator at (441) 296-1301 Attention: Transfer Agency Department, provided that: (i) the original signed redemption request is received by the Administrator prior to the redemption date; and (ii) the investor receives written confirmation from the Administrator that the faxed redemption request has been received. Investors failing to receive written confirmation from the Administrator within five (5) days should contact the Administrator to obtain the same. Failure to obtain such written confirmation will render faxed instructions void. **If by mail, the Shareholder's request should be made by letter addressed to [the Fund], c/o the Administrator.** Unless otherwise agreed by the Fund, once delivered, a redemption request is irrevocable." (Emphasis added)

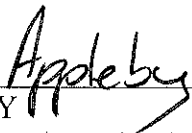
12. The Administrator was defined in both the March 2007 COM and the December 2007 COM as Forum Fund Services, Ltd., Washington Mall I, 3<sup>rd</sup> Floor, 22 Church Street, Hamilton HM11, Bermuda.

13. The Purported Redemption Request was invalid as it was not mailed to the Administrator as required by the March 2007 COM and the December 2007 COM.
14. Neither the March 2007 COM nor the December 2007 COM provided for service of redemption notices by email.
15. The Purported Redemption Request stated that the Investor “[understood] that notices given to Pacificor by 31 December 2007 will result of (sic) distributions of liquidated funds on or before 31 January 2008”.
16. There was no redemption date of 31 January 2008, the next redemption date was 31 March 2008.
17. On 24 January 2008 the Fund, by its counsel, wrote to the Investor and informed the Investor that its Purported Redemption Request would be treated by the Fund as a request for redemption at 31 March 2008.
18. Pursuant to the provisions of the March 2007 COM and the December 2007 COM, the Fund was entitled to treat, in its discretion, any invalid redemption request as valid and did so for the benefit of the Investor. Had the Fund not waived its strict contractual rights, the Investor would not have been entitled to redeem its investment prior to 30 June 2008 at the earliest.
19. The Investor has contended that it was entitled to be paid the proceeds of the redemption, following the Purported Redemption Request, with a value calculated as at 31 January 2008. It was not so entitled.
20. The Fund redeemed the Investor’s shares with a value date 31 March 2008 and paid the Investor the sum of \$7,210,030.19 pursuant to the terms of the December 2007 COM.

AND THE PLAINTIFF CLAIMS:

1. A declaration that:
  - a. The Fund was not obliged to redeem the Investor's investment with a redemption date of 31 January 2008;
  - b. The Purported Redemption Request was not a valid and binding notice of redemption;
  - c. The Purported Redemption Request did not oblige the Fund to redeem the Investor's investment with a redemption date of 31 January 2008; and
  - d. The Fund has complied with its obligations in respect of the redemption of the Investors' investments in the Fund.
2. Costs; and
3. Such further or other relief as this honourable court may order.

Dated this 15<sup>th</sup> day of July 2008

  
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APPLEBY  
Attorneys-at-Law for the Plaintiff

Filed by Appleby, attorneys for the Plaintiff, whose address for services is PO Box 190GT, Clifton House, 75 Fort Street, George Town, Grand Cayman, Cayman Islands. (Ref: GH/13791.003)

**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 495 GT, 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*

*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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2008

B E T W E E N:

**PACIFICOR OFFSHORE FUND, LTD.**  
[A company incorporated under the laws of the Cayman Islands]

**Plaintiff**

AND

**ASIACITI TRUST NEW ZEALAND, LTD.**  
[A company incorporated under the laws of New Zealand]

**Defendant**

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**ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

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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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged:
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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

YES

NO

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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

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Service of the Writ is acknowledged accordingly

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Attorneys for Defendant

Address for service:

**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.*

Appleby  
Attorneys-at-Law  
Clifton House  
75 Fort Street  
P.O. Box 190 GT  
George Town  
Grand Cayman  
Ref: [13791.003]

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

[Empty box for Defendant's Attorney Indorsement]

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

[Empty box for Defendant's Attorney Indorsement]