

**IN THE SUPREME COURT OF BELIZE, A.D. 2009**

**CLAIM NO: OF 2009**

**IN THE MATTER OF an application under Section 20 of the Belize Constitution**

**AND**

**IN THE MATTER OF SECTIONS 1, 2, 3, 6, 16, and 17 of the Belize Constitution**

**AND**

**IN THE MATTER OF the Belize Telecommunications (Amendment) Act, 2009**

**AND**

**IN THE MATTER OF Statutory Instrument No. 104 of 2009, Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009**

**BETWEEN:**

**THE TRUSTEES OF THE BTL EMPLOYEES TRUST**

**Claimant**

**THE ATTORNEY GENERAL OF BELIZE**

**(On behalf of the Government of Belize)**

**Defendant**

**- and -**

**THE MINISTER OF PUBLIC UTILITIES**

**Second Defendant**

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**FIRST AFFIDAVIT OF KEITH ARNOLD**

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I, Keith Arnold, of 6779 Columbia Avenue, Lake Worth, FL 33467, United States of America MAKE OATH AND SAY as follows:

1. I am a trustee of the BTL Employees Trust (the **Employees Trust**), the Claimant in these proceedings. I am also a Belize citizen. The facts in this affidavit are, save where is otherwise stated or appears from the context, within my personal knowledge and are true to the best of

my belief. Until 25 August 2009 I was also the Chairman of the Board of Directors of Belize Telemedia Limited, formerly Belize Telecommunications Limited (**Telemedia**), having held this position since October 2005.

2. This is my first affidavit in these proceedings and is made in support of the Claimant's claim that the *Belize Telecommunications (Amendment) Act, 2009* (the **Act**) and Statutory Instrument No 104 of 2009, *Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009* (the **Order**) are in breach of the Constitution of Belize (the **Constitution**) and therefore void. The Act and the Order are now produced to me and marked "Exhibit KA1" and "Exhibit KA2".
3. The First Respondent in these proceedings is the Attorney-General of Belize of 2nd Floor, East Block Building, Belmopan City, Belize (the **Attorney-General**). I am informed by counsel to the Claimant that, pursuant to Section 42(5) of the Constitution, civil proceedings against the Government shall be taken in the name of the Attorney-General. Moreover, it is the role of the Attorney-General by custom to present a bill to the Governor General for assent pursuant to section 81 of the Constitution. The Attorney-General is the principal legal adviser to the Government of Belize (the **Government**).
4. The Second Respondent in these proceedings is the Minister of Public Utilities of NEMO Building, Belmopan City, Belize (the **Minister**).
5. This affidavit is arranged as follows:
  - 5.1 **Section A** sets out a summary of the Act and of the Order;
  - 5.2 **Section B** sets out the background to the Employees Trust, its interest in a company called Sunshine Holdings Limited (**Sunshine**) and in Telemedia, and to the telecommunications market in Belize;
  - 5.3 **Section C** sets out the Government's publically stated reasons for enacting the Act and the Order;
  - 5.4 **Section D** sets out the legal background to these proceedings; and
  - 5.5 **Section E** contains a conclusion.

**A. Summary of the Act and the Order**

6. On 24 August 2009, the Honourable Prime Minister Dean Barrow tabled the Act in the House of Representatives. All three readings of the draft Bill were completed in one day. I am advised that the speed with which the legislation was passed was exceptional. The opposition party were presented with the bill only that morning, leaving little, if any, room for debate in the House in relation to this extraordinary measure. I also note that Prime Minister Dean Barrow himself stated that the lack of notice of the legislation was to be "regretted" but explained that this was a deliberate move by the Government to frustrate opposition to this measure (see the Prime Minister's speech to the House of Representatives on 24 August 2009, now produced to me and marked **Exhibit "KA3"**). On 25 August 2009, it was approved by the Senate and passed to the Governor General for enactment.
7. Section 63 (Assumption of control by Government on revocation of licence or for a public purpose) of the Act provides that:

"63. (1) *Where the licence granted to a public utility provider is revoked by the Public Utilities Commission, or where a licensee ceases operations or loses control of operations, or where the Minister considers that control over telecommunications should be acquired for a public purpose, the Minister may, with the approval of the Minister of Finance, by Order published in the Gazette, acquire for and on behalf of the Government, all such property as he may, from time to time, consider necessary to take possession of and to assume control over telecommunications, and every such order shall be prima facie evidence that the property to which it relates is required for a public purpose.*"
8. The Act defines "property" in Section 63(9) in very broad terms and includes shares, stock and assets.
9. Under Section 63(10) of the Act the Minister of Public Utilities has the power to make an order acquiring Telemedia's property for and on behalf of the Government by statutory instrument.
10. Section 67 of the Act provides for certain assumptions to be taken into account when assessing the value of compensation for any acquisition of property. Those assumptions seek in a number of ways to restrict the value of compensation. Further, as I explain in more detail below, section 70 of the Act prevents the Government from paying any compensation without National Assembly approval.
11. On 25 August 2009, the Order was passed, compulsorily acquiring, amongst others, Sunshine's 22.39% shareholding in Telemedia and the Employees Trust's 100% shareholding

in Sunshine (i.e. the entire issued share capital of Sunshine, held on trust for the beneficiaries of the Employees Trust).

12. The Order states that the acquisition was for a public purpose, namely:

*"the stabilisation and improvement of the telecommunications industry and the provision of reliable telecommunications services to the public at affordable prices in a harmonious and non-contentious environment"*.

13. The acquisition of Sunshine's shareholding in Telemedia and of the Employees Trust's shareholding in Sunshine was published in the Gazette on 25 August 2009 (now produced to me and marked **Exhibit "KA4"**), and the former shareholders were sent a Notice of Acquisition on 27 August 2009 (now produced to me and marked **Exhibit "KA5"**).
14. In total, 94% of the entire issued share capital of Telemedia was compulsorily acquired under the Order. An interim board was appointed which includes Nestor Vasquez, a Commissioner of the Public Utilities Commission, as the new executive Chairman, the Prime Minister's son, Anwar Barrow, and the Prime Minister's ex-wife, Lois Young-Barrow.
15. The Employees Trust seeks Declarations that the Act and the Order do not comply with sections 3, 6 and 17 of the Constitution. The Declarations sought are set out in full in the Fixed Date Claim Form which this affidavit accompanies.

**B. Background to the Employees Trust**

16. The Employees Trust was created on 16 September 2005, with a variation to the Trust Deed being agreed on 15 June 2007 (a copy of the consolidated Trust Deed is now produced to me and marked **Exhibit "KA6"**). It is a discretionary trust, and was established for the benefit of the employees of Telemedia (or Belize Telecommunications Limited, BTL as it then was). Dean Boyce and I are the only trustees. Clause 3 of the Employees Trust Deed provides:

*"SUBJECT to Clause 4 herein, the Trustees shall hold the Trust Property and the income derived therefrom UPON TRUST for the Trust Purposes and to pay therefrom all the proper costs and expenses incurred by the Trustees in establishing and administering the Trust and the Trust Property and subject thereto to pay or apply the income towards or for the advancement or in furtherance of such Trust Purposes in such manner and in such proportions as the Trustees together with the Protector may from time to time in their absolute discretion determine with power for the Trustees at any time and from time to time to pay or apply the whole or any part or parts of the income of the Trust Property."*

17. Clause 2(h) of the Employees Trust Deed in turn defines "Trust Purposes" as:

*"Trust Purposes" means the use of the Trust Property for the long term benefit of the Beneficiaries and such other purposes related thereto as may be approved from time to time by the Protector and the Trustees in consultation with the Employee Representatives".*

18. The Employees Trust beneficially owned all the issued share capital of Sunshine, which in turn initially owned 20% of the issued share capital of Telemedia. Subsequently Sunshine acquired a further 2.39% of Telemedia's issued share capital. Subject to the terms of the Trust, therefore, the employees of Telemedia (of whom the vast majority are Belizean) had a beneficial interest in 22.39% of the company in which they worked. The Employees Trust owned this 22.39% of the issued share capital of Telemedia, through Sunshine, until the Order was passed on 25 August 2009.
19. Before Sunshine's acquisition of an interest in Telemedia, the telecommunications industry in Belize was in an extremely poor condition. The actions of the then Government had led to a rapid deterioration in telecommunication services, squandering earlier investment and progress made by BTL, and culminating in a nationwide strike by BTL employees in April 2005 which completely shut down the nation's telecommunication services. Historically, Telemedia's statutory predecessor, BTL, had been the monopoly telecommunications service provider in Belize. However, the market was liberalised in 2002 with the grant of a new licence to International Telecommunications Limited (**Intelco**). This liberalisation did not have the desired effect, as Intelco failed to deliver the services and network coverage it had promised, and eventually a receiver was appointed by one of Intelco's creditors. Meanwhile, BTL continued to invest heavily in Belize's telecommunications infrastructure, deploying a new GSM (Global System for Mobile communications) network and modernising operations from late 2002, and continuing the expansion of GSM system, and upgrading and expanding a number of other systems through 2003. At this time the Government held around 31% of the shares in BTL.
20. Despite these investments and BTL's successful record, in December 2003 the Government asked the majority shareholder, Carlisle Holdings Limited, to sell its stake of around 52% in Telemedia to the Government, who would in turn on-sell these shares to a new private operator, along with the Government's 31%. The Government attempted to sell the shares in March 2004 to Innovative Communication Corporation LLC (**ICC**), a company run by a US entrepreneur called Jeffery Prosser, who was also its controlling shareholder. The Government at this time made certain commitments to ICC with respect to the industry structure in Belize, as part of its plans to develop and enhance telecommunications services in Belize.

21. ICC paid for the BTL shares by debt on which it subsequently defaulted and ICC and Mr Prosser eventually filed for bankruptcy in the US. Nevertheless, ICC controlled Telemedia for some ten months, and the business deteriorated substantially in this period, with reduced investment and with over BZ\$20 million being removed from the company without proper authorisation. Due to ICC's failure to pay for the shares in BTL, in February 2005, the Government exercised its security and took back the original Carlisle Holdings shares, amounting to 52% of the shares, that it had previously sold to ICC.
22. In April 2005 the BTL employees, seeking to secure possession of the shares representing 52% of the ownership, implemented a nationwide strike, which resulted in a complete shut-down of the nation's telecommunications services for a week and a half, plus physical damage to equipment and fiber optic cables. The Government managed to restore service, using the nation's Security Services and with the help of non-BTL telecommunications engineers, however it was clear that a proper and permanent solution was required.
23. It was against this background that the Government sought to enlist the help of BTL's former management. The Government recognised that, in order to make BTL a viable proposition for private shareholders, whilst at the same time facilitating the development of telecommunications services across Belize, it would have to agree to structural changes in the telecommunications industry, and give written assurances to BTL going forward. As a result, on 19 September 2005, BTL and the Government entered into an "Accommodation Agreement". Thus, following a period of turmoil, a new start was made in the telecommunications industry. I verily believe that this new start, through the Accommodation Agreement, was vital to bringing stability and investment to the sector, and that Telemedia (and BTL before it), was achieving precisely those results in the years through to 2009 before the Act and the Order were passed.
24. Once the Accommodation Agreement had been concluded in 2005, the Government sold a 20% shareholding in Telemedia to Sunshine. This acquisition, costing BZ\$40 million, was funded by way of a BZ\$20 million loan from the Government and the Social Security Board and by way of a US\$10 million bank loan from the British Caribbean Bank Limited. Interest payments on the BZ\$20 million loan were accumulated, unpaid for the first five years, representing an increasing liability which the Employees Trust would have to meet in due course. Thus, as of March 2009, the Trust's total outstanding liabilities were some BZ\$51 million. Following the purchase in 2005 (and a further pro-rata distribution of shares in BTL to the existing shareholders), the shares held by Sunshine in Telemedia, namely 11,092,844 ordinary shares, became, beneficially, part of the Employees Trust trust property.

25. An essential part of the rationale for the Accommodation Agreement was to allow Telemedia to invest heavily in the telecommunications market and it has done so since 2005, including commencing a major network replacement and expansion. In October 2007 a BZ\$100 million capital investment programme was begun to upgrade and expand the existing GSM network and to deploy a new wireless platform to deliver high speed internet and expanded voice services to rural communities. The provision of service to Telemedia customers has been stable and affordable, with a large number of price reductions across a range of services, with not one service price being increased in recent years, and with a constant growth in customers and services. In addition, Telemedia has improved enormously the relationship between management and employees at all levels. In short, I verily believe that the new owners had cured the chaos that had previously bedevilled the Belize telecommunications sector and had brought growth, innovation and reliability.
26. As well as its investment in the telecoms sector, Telemedia also became a leading corporate citizen in Belize, placing great importance on its social contribution. Through several schemes which were implemented by Telemedia, over BZ\$1 million was donated to the Belizean community in the financial year 2007/2008. For example through its High School Scholarship Programme Telemedia has supported 75 students at any one time with free tuition, school fees and text books. Similarly, through the Free Internet to Schools programme over 117 schools have been given free access to the internet, which has benefited over 50,000 students in primary and secondary schools and in tertiary level institutions. Telemedia has also supported various sports in Belize and sponsored the Telemedia Swoosh Female Cycling Team and the Telemedia Female Softball Team. Further details of these contributions and achievements are set out in the Directors' Report for 2008 (a copy of the Report is now produced to me and marked "Exhibit KA7").
27. Immediately before the Act and the Order, therefore, I verily believe that Telemedia was a stable, accountable, reliable and profitable company which was committed to developing the telecommunications sector in Belize. Telemedia has had an historically complex relationship with the Government, but at the time the Order was passed I verily believe that this was not affecting the service provided to its customers. Moreover, disputes between Telemedia and the Government have never previously involved the Employees Trust.
28. The Employees Trust was established to ensure that a portion of the benefit of Telemedia's efforts and investments were safeguarded for the employees. The Employees Trust gave employees an incentive to work for, and share in, the success of the company and to help promote Telemedia's long-term development and to engender a good working environment. In view of the reasons which the Government has given for the Act and the Order (as to which

see Section C below), it is important to realise quite what major steps Telemedia had taken in this respect. Since 2005, nearly one quarter of Telemedia's shares had been acquired for the employees' benefit and were held on trust for them. Further, the Government's acts came just at the time that employees were about to benefit from the Employees Trust. That is, as I described above, in its early years, the Employees Trust had been unable to make distributions to the employees, partly because of the need to meet the debt obligations which the Employees Trust had incurred in buying shares. However, by the time of the compulsory acquisition, the Employees Trust held just over 11 million shares, with an accumulating net worth (even using the net book value of Telemedia as a basis – the market value would be considerably more) of some BZ\$14 million (including BZ\$15.9 million of 10% Loan Notes). Put another way, the value of the Employees Trust's shareholdings in Telemedia had increased from nil, to some BZ\$14 million, in just three and a half years. This represented real value accumulated for the company's employees, and with the expectation of a very substantial further improvement in value. Indeed, during the Prosser months, and before the signing of the Accommodation Agreement, the management and staff of BTL expressed an interest in purchasing shares in the company. The Employees Trust seemed to meet that desire of the staff to have a genuine stake in Telemedia.

29. As a result, the Trust had begun to issue staff with reports about its financial status and to select suitable persons to act as staff representatives with whom the trustees could consult, for example, to select the criteria we should apply when deciding how to make distributions to employees (a BTL Employees Trust bulletin dated 19 May 2009 is now produced to me and marked **Exhibit "KA8"**). I also verily believe that the existence of the Employees Trust made Telemedia a more attractive proposition for outside investors, because they had the assurance that employees would feel that they had an incentive to remain with, and committed to, the company.
30. The Act contains a mechanism for compensation for the holders of shares which were forcibly purchased by the Order. Nothing has yet been paid to those former shareholders. In fact one of the curious features of the legislation is that the Government forcibly acquired not just the shares which were held by Sunshine, but has in addition actually acquired all of the shares in Sunshine itself.

### **C. The Government's publically stated position**

31. The Honourable Prime Minister Dean Barrow gave a lengthy speech to the House of Representatives on 24 August 2009 when tabling the Act (the full text of the Prime Minister's speech is produced to me and marked **Exhibit "KA3"**). The Prime Minister purportedly set



out a detailed background to Telemedia, its ownership, its relationship with the Government, and what he referred to as "*the infamous secret Accommodation Agreement*". In fact many of the Prime Minister's assertions about Telemedia were factually wrong, to the detriment of the Claimant in this action. Despite the Order's claim that it was intended to secure "*a harmonious and non-contentious environment*", the Prime Minister made no reference to the Employees Trust or to Sunshine. Moreover, the Prime Minister gave no evidence that there were any difficulties with working relationships at Telemedia, or that there were any other problems with the company.

32. The Prime Minister stated inter alia:

*"[...] Michael Ashcroft had Telemedia invoke arbitration in London to enforce the Accommodation Agreement. And he obtained a judgment of BZ\$38.5 million and a court mandated requirement that government now begin to honor the Accommodation Agreement. Well I have said that as God is my witness I will never pay that award. But it doesn't stop there. In April of 2009 Telemedia informed the government of further claims they will make to the London Court of International Arbitration and that the size of a new award "could pale the current award of 38 million into significance".*

*Mr. Speaker, Members, fellow Belizeans: this is intolerable. I, and the United Democratic Party government, in the name of the people will put up with it no longer. That an agreement so patently illegal, so patently immoral, so patently anti-Belize, should continue to torture us, to bleed us, to subject us to this death by a thousand cuts, cannot for one second more be countenanced. This is our House, this is our country. Here we are masters, here we are sovereign. And with the full weight of that sovereignty we must now put an end to this disrespect, to his chance taking, to this new age slavery. There will thus be no more Telemedia awards against us; no more Telemedia court battles; no more debilitating waste of government's energies and resources; and there will be no more suffering of this one man's campaign to subjugate an entire nation to his will. After long and sufficient consideration, therefore, and in the exercise of that national power that is ours by Constitution and inalienable right, this government will now acquire Telemedia.*

...

*As well, we are only acquiring the 94% or so of Telemedia that is controlled by the Ashcroft interests. The shareholding owned by the Belizeans will be left intact.*

...

*This is not an ad hominem move; it is to deal with a structural problem... This, I repeat then, is only about Telemedia; and no more and no less than a case of the Belizean national interest trumping any other consideration".*

33. As regards the Accommodation Agreement, far from being "*so patently illegal*", a London Court of International Arbitration (the LCIA) arbitral tribunal found only this year that the Accommodation Agreement was valid and legally enforceable. I am advised that the Government has not even challenged the legality of the Accommodation Agreement before

the LCIA. Moreover, I verily believe that the Government's repeated claims that the Accommodation Agreement was "secret" are not correct – I am advised that the LCIA arbitral tribunal found that the Government was fully aware of its existence when it was concluded in 2005.

34. Moreover, the purported rationale for the Act and for the Order no longer even existed because Telemedia had already accepted the Government's repudiatory breaches of the Accommodation Agreement earlier that day, i.e. before the legislation had even been enabled (see the Channel 7 Article "*Telemedia Transfers Ownership of Channel 5*" dated 24 August 2009, a copy of which is now produced to me and marked **Exhibit "KA9"**). However, the Prime Minister did not report this to the House. Indeed, it appears that what actually happened is that the Government nationalised Telemedia in an attempt to avoid having to honour its contractual obligations. I understand that the question of whether the Government was obliged to honour those contractual obligations, as recognised by the LCIA arbitral tribunal, was at that time before the Supreme Court of Belize in *The Attorney General of Belize v Belize Telemedia Limited & Belize Social Development Limited* - Claim No: 317 of 2009. The Government clearly did not want to wait for the outcome of those proceedings. Moreover, it is not clear how the nationalisation of an entire company is necessary in order to avoid a contractual claim.
35. The Prime Minister claimed that "*we are only acquiring the 94% or so of Telemedia that is controlled by the Ashcroft interests. The shareholding owned by the Belizeans will be left intact.*" However, Sunshine and the Employees Trust held 22.39% of the shares in Telemedia, on behalf of the employees of Telemedia who are Belizeans. Lord Ashcroft has absolutely no interest in these shares. It is clear that the stated effect of the Act and the Order was wrong and that the means adopted do not correspond with the aim of acquiring Lord Ashcroft's interests.
36. According to the Channel 7 news item "*Johnny Briceno & Francis Fonseca Vote Against Takeover*" dated 24 August 2009, the Honourable John Saldivar, Minister of Public Service said the nationalisation "*is a small price to pay to give assurance to our Belizean people that this government, this Cabinet, and our Prime Minister are loyal to only one people and that is the Belizean people*" (a copy of the article is now produced to me and marked **Exhibit "KA10"**). The Honourable John Saldivar seems to have ignored the fact that a large proportion of Telemedia was already owned on behalf of its Belizean workforce. Moreover, the stated legal basis for the Act and for the Order are "*the stabilisation and improvement of the telecommunications industry and the provision of reliable telecommunications services to the public at affordable prices in a harmonious and non-contentious environment*".

37. I see no point of contact between this and "*demonstrating the loyalty of the Government to the people of Belize*", nor do I understand how demonstrating such loyalty can provide legal justification for deprivation of property. Similarly, the Prime Minister's desire "*with the full weight of [parliament's sovereignty to] put an end to this disrespect*" does not, I am informed and do verily believe, provide legal grounds for this legislation.
38. In a press release of 7 September 2009, Telemedia stated that a meeting had been held between the new board of directors which was appointed after the Act and the Order were passed and the existing Telemedia employees. The release stated that: "*this was an essential dialogue, as one of the main strategies of the new board is to encourage full participation of the employees in the future growth and development of the Company*" (a copy of the press release is now produced to me and marked **Exhibit "KA11"**). As I explained above, there has been no suggestion that the employees did not participate fully in the development of Telemedia. The fact that 22.39% of the issued shares of Telemedia were held on trust for their benefit by the Employees Trust before the nationalisation clearly shows that Telemedia was already committed – indeed legally bound - to such participation.
39. The Prime Minister did not refer to the Employees Trust, and the reason for acquisition of its shareholding in Sunshine until several days after the Act and the Order were passed. In the Channel 5 Article "*Employees Trust shares in Telemedia worth over \$100 million*" of 7 September 2009 the Prime Minister explained his position in relation to the Employees Trust:

*"In terms of the employees trust, the objective of the government is to try and arrange it so that in fact, the trust can become operative and so that through that trust, the employees can genuinely own the shares – I think it's about eleven million dollars worth."*

The Employees Trust was operative, and the employees were "*genuinely*" the beneficial owners of the shares. As noted above, the ongoing process for the appointment of staff representatives is indicative of the operation of the Employees Trust. The article rightly continues: "*the BTL Employees Trust still exists as a separate legal entity, and is not controlled by the Government*" (a copy of the article is now produced to me and marked **Exhibit "KA12"**). Thus, the Government's actions have nothing to do with allowing the trust to "*become operative*": the trust was "*operative*", but may now cease to be so, because it has had its assets forcibly taken. Indeed, the fact that the Government also nationalized the shares of Sunshine Holdings, suggests that the Government was deliberately targeting the Employees Trust in a discriminatory manner and not securing the country's telecommunications sector.

**D. Legal background to this Claim**

40. Section 3(d) of the Constitution of Belize (the **Constitution**) provides that:

*"Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right... to each and all of the following, namely...*

*(d) protection from arbitrary deprivation of property."*

41. Section 17(1) of the Constitution provides that:

*"No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that:*

*(a) prescribes the principles on which and the manner in which reasonable compensation therefore is to be determined and given within a reasonable time; and*

*(b) secures to any person claiming an interest in or right over the property a right of access to the courts for the purpose of:*

*(i) establishing his interest or right (if any);*

*(ii) determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition;*

*(iii) determining the amount of the compensation to which he may be entitled; and*

*(iv) enforcing his right to any such compensation."*

42. I am advised that Sections 3(d) and 17(1) of the Constitution are intended to provide protection against the deprivation of any and all property, save as provided in subsection 17(2).

43. Thus, the Constitution makes clear that the right to ownership and enjoyment of private property are fundamental rights of "every person in Belize". While the Constitution does not prohibit the compulsory acquisition of property, I am advised that any such acquisition must comply with sections 3(d) and 17: namely, it must be done in accordance with a law that provides for reasonable compensation and the right of any person claiming an interest in the property to go to Court to establish his interest and determine whether the acquisition was for a public purpose.

44. Section 6(1) of the Constitution provides that:

*"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."*

45. Further, section 16(3) of the Constitution provides that no law can discriminate against any person on the grounds of, among other things "*place of origin*".
46. I verily believe that an acquisition must not be discriminatory, nor detract from an individual's equality before the law or entitlement to the equal protection of the law. The Government has asserted that the Act is constitutionally compliant and therefore the expropriation of certain shareholder's interests is not unlawful. I am advised and verily believe that this is false.

***The compulsory acquisition was not carried out for a "public purpose"***

47. I verily believe that both the legislation itself, and the compulsory acquisition pursuant to the Order, were not carried out for a "*public purpose*", which I am advised is a requirement of Section 17(1) of the Constitution. As explained in Section A above, the public purpose set out in the Order as the basis for the decision to nationalise Telemedia are:
  - 47.1 the stabilisation and improvement of the telecommunications industry;
  - 47.2 the provision of reliable telecommunications services to the public at affordable prices; and
  - 47.3 to create a harmonious and non-contentious environment.
48. However, the stated public purpose which is set out in the Order does not correspond with the Honourable Prime Minister Dean Barrow's explanation to the House of the reasons for the acquisitions when he tabled the legislation. Not only is the acquisition of the Employees Trust's interests inconsistent with the stated objective in the legislation, but the Prime Minister has made clear that he had quite different motives for the nationalisation to the stated public purposes in the Order.
49. Further, even on its own terms, the purposes stated in the Order do not correspond with the form of the measures adopted. For example:
  - 49.1 Telemedia already provided a stable, reliable and affordable service. Neither the Act, nor the Order, nor the Government's public statements have provided any evidence suggesting that Telemedia was failing to provide such services. Nor do the Act or the Order deal with the stability, provision or affordability of services. In short, there is simply no link between the legislation and its purported purpose;
  - 49.2 Telemedia was undertaking improvement works to the telecommunications network;

- 49.3 there had been no complaint from the Government or the Public Utilities Commission about the service Telemedia was providing; and
- 49.4 had there been any such recurrent complaint, the Government could have threatened to revoke Telemedia's licence. No such threat or complaint was received and, even if it had been, nationalisation was a completely disproportionate response to any such issue.
50. In fact, rather than helping to stabilise the sector (assuming for the sake of argument, that there was a problem in the sector to be resolved), press reports have highlighted how disruptive the nationalisation will be:
- (a) In a Channel 7 on 24 August 2009 "*Johnny Briceno & Francis Fonseca Vote Against Takeover*", the Honourable Francis Fonseca was reported as questioning the Government's rationale: "*will this in fact put an end to those legal challenges or will it in fact create a new round of legal challenges, a new series of legal, constitutional and other wise battles. That is a very important question... because one of the primary arguments being advanced for the move today is that we're going to put an end to litigation. But is that in fact so, are we not in fact entering into a new era of litigation*" (a copy of this report is now produced to me and marked **Exhibit "KA10"**). This very claim itself is evidence that what the Honourable Francis Fonseca said was correct and that the legislation adopted has already had the opposite effect of its ostensible purpose.
  - (b) In a Channel 5 interview on 24 August 2009 "*Opposition says PM sending wrong message to investors*" with John Briceño, Leader of the Opposition, Mr Briceño is reported as highlighting his concerns for future foreign investment in Belize, especially when "*the government of the day can just arbitrarily decide – because they can't get what they want – decide that they are going to take over your company*". Mr Briceño continued making the point that a Government should not simply create its own way of dealing with problems that can be resolved by the courts: "*In a democracy, there are ways of dealing with this. We have access to the courts and the government has been going to the courts and they should continue fighting – they have already won some cases. So now why the haste? Why turn it around and go into nationalising a private company?... This is not going to solve the issues that are affecting the Belizean people*" (a copy of this report is now produced to me and marked **Exhibit "KA13"**).

(c) The Belize Chamber of Commerce & Industry (the **BCCI**) issued a press release on 24 August 2009 commenting on the Act and noting its concern about the legislation (a copy of this press release is now produced to me and marked **Exhibit "KA14"**). The BCCI noted that the nationalisation "*sets a dangerous precedent, wherein the business community at home and abroad may be more discriminatory when considering future investments in our country*". The BCCI continued "*notwithstanding the government's assertion that the said acquisition is for public purpose, the suggestion of future divestments again reinforces the above concerns*". The BCCI asked the Government to slow down the nationalisation to allow consultation with the business community – a request that was ignored.

(d) Channel 7 reported the Honourable Michael Finnegan, Minister of Housing on 24 August 2009 as stating: "*this government felt that this was the only way to bring an end to the chaos that was happening in the telecommunication industry*" (a copy of this report is now produced to me and marked **Exhibit "KA10"**). As I pointed out above, it was precisely the actions of the recently dispossessed shareholders and managers which had cured the earlier chaos: the Honourable Michael Finnegan was referring to something which did not exist.

(e) International press comment has also questioned the wisdom of this move in terms of foreign investment. In an article written in *Telecoms.com* in September 2009, which I understand is the leading online source of freely available intelligence for the telecoms industry, Tammy Parker commented that:

*"Belize's government has said that it hopes the full nationalization of BTL is temporary, since it would like to offer shares to other investors, to encourage investment and competition in the nation's telecommunications market.*

*But potential investors will be wary of entering a country where the government so wantonly takes command of a private business and place the prime minister's family members on the board, whether for seemingly good reasons or not. And Belize's government still wants individual institutions and people to be limited to a stake in BTL of 25% or less, ensuring that none has majority control. The ownership restriction is likely to turn off potential investors, keeping major regional players, such as America Movil, Cable & Wireless and Digicel, far from Belize's shores."*

(a copy of this article is now produced to me and marked **Exhibit "KA15"**)

(f) In addition, Dr Carl Ross, who I understand is the Managing Director of Investments at Oppenheimer & Company, Inc. a leading investment bank, said this in a recent commentary on Belize:

*"This [the compulsory acquisition of Telemedia's shares] is important for two reasons. The First is obvious. It sets a terrible precedent for foreign investors thinking about investing in Belize....Investment capital in Belize is scarce. The country needs FDI [foreign direct investment]. This cannot be good for prospects. The second is that the government must pay compensation for the asset seizure. The previous owners believe the company to be worth \$300 million. The government has said it is worth \$150 million. If the settlement is anywhere in that bid-offer spread, it represents a huge contingent liability. What foreign investor would buy this asset now, after what has happened? The local market is not nearly deep or large enough to finance it."*

(a copy of this article is now produced to me and marked **Exhibit "KA16"**)

51. The Government has asserted that it intends to sell on the assets that it has acquired under the Act and Order. In his speech to the House on 24 August 2009, the Prime Minister said:

*"Belizeans will be invited to purchase the shares now being acquired in Telemedia by the government. In other words there is no intention for the government to hold onto those shares. This acquisition is rather to give all Belizeans a chance to invest once again in a company that has proven to be a money maker."*

52. I verily believe that this again suggests that the acquisition was not for the stated purposes. Those purposes included *"the stabilisation and improvement of the telecommunications industry and the provision of reliable telecommunications services"*. It is impossible to see how the forcible deprivation of one set of shareholders of their shares, the holding by the Government of those shares for an indeterminate period, and their subsequent on-sale to unknown persons, can produce or be conducive to stabilisation (assuming that a need for such stabilisation actually existed).
53. Nor is there any connection between this stated purposes and any improvement in the provision of services. Indeed, as I have already noted, the forcible acquisition of shares and security can only deter potential investors. This is even clearer given that the entire Board of Directors of Telemedia was replaced by the government on the day the legislation was enacted. As a result, Telemedia has lost its experienced management team, which again cannot be conducive to stability or reliability.
54. In addition, Dean Barrow has told the House that he wishes to achieve the *"re-Belizeanization of the company"*. In the absence of any controls on the sale to foreign investors, this aim will not be met. Further, as the Employees Trust operates for the benefit of the employees of Telemedia, who are mainly Belizean, the nationalisation has actually had the opposite effect and removed Telemedia's assets from the very hands into which the Government says it intends to put the property. This highlights quite how arbitrary the expropriation of Sunshine was.



55. I do not believe that, before the Act and the Order, the telecoms sector in Belize was unstable or in need of reform. On the contrary, I believe that Telemedia was working efficiently to provide a good, reliable and affordable service in a difficult and developing market. Even if it were, the reforms envisaged by the stated public purpose could only come about by changes to the regulation and licensing system. The Prime Minister has been reported as discussing the future of the telecoms landscape in Belize. An Amandala report entitled "*PUC to chart new telecoms landscape – more*" dated 1 September 2009 states:

*"Prime Minister Dean Barrow said that the PUC would have to "clarify the telecoms landscape" but their intention is to develop legislation to broaden the use of VoIP in Belize, as a part of an above-board legislative framework. Exactly what this means has not been clarified, because, according to Barrow, assessing the state of affairs at BTL is taking precedence. "I don't say it would be done immediately", said Barrow... he hinted that full liberalisation of VoIP would make the BTL deal not so attractive to foreign investors"*

(a copy of this report is now produced to me and marked **Exhibit "KA17"**). This does not suggest a planned coherent strategy for stabilisation or 'Belizeanization' of the telecommunications industry. Rather, it suggests that the strategy is yet to be developed – highlighting another gap between the Government's stated public purpose and the means adopted. The fact that the Act and the Order were rushed into law in just two days and without consultation, and without any prior notification to the Opposition Party, is symptomatic of the fact that reform of the sector was not the Government's motive.

56. The Prime Minister's stated position in the House, the concept of "*public purpose*" in the Act and the stated public purpose in the Order do not correlate. Rather, his speech reveals the true 'mischief' at which the legislation was aimed, namely the Lord Ashcroft's interests. In a Channel 7 article on 25 August 2009 entitled "*Senate Approves BTL Takeover Bill*", Senator Douglas Singh stated:

*"I want to remind this House that in our national anthem there is a phrase that says "despots must flee". In the concise Oxford dictionary, despot is defined as a ruler who exercises absolute power especially in a cruel or oppressive way. Well Michael Ashcroft is the ruler over BTL and he exercises that power in a cruel and oppressive manner and fitting to Samuel Haynes 1925 anthem and certainly he had some vision in that context, the despot must flee or be forcefully made to do so".*

(a copy of the article is now produced to me and marked **Exhibit "KA18"**) This is further evidence of the Government's misunderstanding of the reality of the situation: Telemedia was not "*ruled*" by Lord Ashcroft. It was not controlled in a cruel or oppressive way and the Government has not produced any evidence that it was.

57. Even if it could be said that removing the Accommodation Agreement was for a public purpose (which I do not believe to be the case), as explained above, a desire to remove the Accommodation Agreement was in any event misplaced. By the time Dean Barrow tabled the legislation before the House, the Agreement had already been repudiated (a copy of this repudiation letter is now produced to me and marked **Exhibit "KA19"**). Therefore, any "mischief" caused by the Accommodation Agreement was not removed by the Act or by the Order. In any event, even if Telemedia had not accepted the Government's repudiatory breaches of the Accommodation Agreement, the acquisition of Sunshine, and Sunshine's interest in Telemedia have nothing to do with either the provision of services or the removal of the Accommodation Agreement.
58. However, the Prime Minister's speech to the House also left no doubt that the Government's intention was to remove the perceived threat from the Accommodation Agreement. He implied that the Accommodation Agreement was a threat to the fibre of the Belize nation and the sovereignty of parliament. However, as explained above, the LCIA has held the Accommodation Agreement to be valid, lawful and binding, and if the Government wanted to contest this finding, I am advised there are forums available to it – both in any enforcement proceedings in Belize or internationally, and in the courts of supervisory jurisdiction of the arbitration proceedings in London. In fact, legal proceedings had been begun to determine these issues between the Government and Telemedia. For example, in Claim 317 of 2009 (described above) the Government successfully sought injunctive relief against Telemedia to prevent enforcement of the aforementioned LCIA award.
59. The former shareholders of Telemedia have been denied the right to whatever benefits resolution of the dispute surrounding the Accommodation Agreement would have brought. That is, for example, the LCIA gave its judgment on the basis of the Government's past breaches of the Accommodation Agreement. However, the former shareholders have now been denied the fruits of that judgment and have been offered no compensation. I am advised and do verily believe that this is in breach of Article 17(1)(a) of the Constitution which provides that, in order to be constitutionally compliant, state deprivation of property must be accompanied by "*reasonable compensation... given with a reasonable time*".
60. Thus, not only is the nationalisation of Sunshine and its interests disproportionate to the purported purposes, they are *entirely irrelevant* to those purposes. I am advised and do verily believe that the legislation was therefore not "*duly carried out for a public purpose*" as required by s17 of the Constitution.

***The Order is in breach of the principle of the separation of powers***

61. By using the forced nationalisation as a way to terminate the litigation between the Government and Telemedia the Prime Minister is attempting to oust the jurisdiction of the courts. I am advised that this contravenes the principle of separation of powers and is unconstitutional. The Government used legislation to end an ongoing commercial dispute with private citizens: as the Prime Minister said in his speech to the House on 24 August 2009, his aim was that "*There will... be no more Telemedia awards against us, no more Telemedia court battles*". In short, what the Government has sought to do is strip away Telemedia's *de facto* access to the courts by appointing placemen to its Board such as Anwar Barrow, the Prime Minister's son, A Ian Slusher, Financial Advisor to the Prime Minister, Audrey Wallace, Chief Executive Officer in the Office of the Prime Minister and Lois Young Barrow, the Government's favoured legal counsel as Company Secretary who, even though, for example, the LCIA's award is worth BZ\$38 million, will not seek to enforce it on Telemedia's behalf against the Government because the Government (its adversaries in the arbitration) do not wish it to. Thus, the Act and the Order *de facto* oust the decision making powers of the court and provide no compensation to the shareholders who would otherwise have received the benefit of the LCIA's judgment. As noted above, the issues were before the Belize Supreme Court when the legislation was passed.
62. As I said above, the Prime Minister has publically stated that he will never pay the LCIA's award. I am informed and do verily believe, that such a decision is one which is properly for the courts, and not the Prime Minister, to make. However, the Prime Minister's comment does reveal the true motives.
63. I am aware that there is a subsisting dispute relating to the validity of the Accommodation Agreement between the Government and the former shareholders of Telemedia. Telemedia's former shareholders have been denied the benefit of access to the courts in relation to the dispute relating to the Accommodation Agreement. Given the publicly stated intention to remove the perceived threat of the Accommodation Agreement, I am advised and verily believe that the Order is a conflation of executive, legislative and judicial powers in one person, namely the Minister, which is in breach of the principle of the separation of powers which underpins the Constitution.
64. In addition, the appointment of Nestor Vasquez as Chairman of the interim Board of Directors, who is also a Commissioner for the Public Utilities Commission, undermines the PUC as an impartial regulator – the very same regulator that would surely have a key role to

play in improving and stabilising the telecommunications sector in Belize if the stated public purpose for the legislation were genuine.

***The Act and the Order are discriminatory***

65. The Prime Minister left no doubt that his intention is to take Telemedia from the hands of the Ashcroft entities (despite the fact that Lord Ashcroft himself holds no beneficial interest in Telemedia, Sunshine or the Employees Trust). Thus the Government decided to expropriate 94% of the shares of Telemedia as opposed to the entire issued share capital. This represents deliberate targeting of what the Government wrongly believed were a single man's interests.
66. In his speech to the House on 24 August 2009, the Prime Minister actually said "*we are only acquiring 94% or so of Telemedia that is controlled by the Ashcroft interests*" thus making it clear that it is a discriminatory, ad hominem move. The publically stated purposes could have been achieved by acquiring a 51% holding, or 100%. By contrast, the sole logic for acquiring 94% emerges from Dean Barrow's repeated references to what he wrongly understood to be Lord Ashcroft's interests in Telemedia. Thus the selection is arbitrary and the measure itself is disproportionate because the Government's stated aims could have been achieved by nationalising a smaller percentage or, indeed, by much less extreme measures than forcible acquisition.
67. The Prime Minister made clear repeatedly in his speech to the House of 24 August 2009 that the legislation was directly targeted at favouring Belizeans over other persons. Thus he stated that:

*"[following the acquisition] the re-Belizeanization of the company will be complete... [the government was determined to see an end to the Accommodation Agreement so that] Belizean dignity would be upheld, Belizean pride and Belizean patriotism and Belizean patrimony vindicated... the very blood coursing through our Belizean veins obliges us to act... The shareholding owned by Belizeans will be left intact... the safeguards to protect Belizean shareholders will be re-established... This... is... no more and no less than a case of the Belizean national interest trumping any other consideration"*

He therefore made clear that a primary motive of the legislation was to target perceived foreign interests.

68. It is also clearly discriminatory against the Employees Trust, which is a legally established, independent discretionary trust operating for the benefit of Telemedia's employees and which has no relationship to Lord Ashcroft.

69. Therefore, I am advised and do verily believe that the legislation is thus a discriminatory and ad hominem move which is in breach of Articles 6(1) and 16 of the Constitution.

### ***Compensation***

70. The Act states at section 65(1) that "*reasonable compensation within a reasonable time*" must be paid to the owner of property acquired under the Act. I am advised that for the acquisition of property to be constitutional, such a provision is required by section 17(1)(a) of the Constitution. This means that the Employees Trust is entitled to compensation for the acquisition of its interests. However, inclusion of this provision is not enough, the compensation must actually be reasonable. However, the Act contains several assumptions upon which the compensation must be based, which in my opinion are not reasonable or proportionate. I verily believe that this renders the legislation unconstitutional, as these assumptions do not take into account the fair market value of Telemedia, and so will not provide the Employees Trust with "*reasonable compensation*".
71. I also note that section 71 of the Act provides that all amounts awarded by way of compensation are to be paid out of monies voted by the National Assembly of Belize. However, no such monies have been voted and, in a democratic system, the Government of Belize cannot at this stage know that any such monies will ever be voted, let alone within the "*reasonable time*" within which section 17(a) of the Constitution requires compensation to be paid. Thus, the Employees Trust, and the other shareholders, have already been deprived of their property with no assurance that compensation will ever be paid, or that any compensation will be "*reasonable*", as is again required by the Constitution. The Act and Order make no provision for ensuring that compensation will be paid if the National Assembly does not vote funds, nor does it deal with the possibility that the National Assembly may vote less compensation than the Government has agreed.

### **E. Conclusion**

72. The Act and the Order are ad hominem in nature, discriminatory, arbitrary, disproportionate not in accordance with their stated purpose and are in fact intended to interfere with the findings of the LCIA in LCIA Arbitration No. 81079 that the Accommodation Agreement is valid, lawful and binding on the Government and with numerous other cases before the Belize Courts.

73. In light of the foregoing, I respectfully request that this Honourable Court grant the Employees Trust the relief sought in the Fixed Date Claim Form accompanying this Affidavit.

**Certificate of Truth**

I certify that I believe that the facts stated in this fixed date claim form are true.

*Keith Arnold*

Keith Arnold

Trustee

STATE OF FLORIDA  
COUNTY OF BROWARD

Sworn to (or affirmed) and subscribed before me this 9th day of October 2009, by KEITH ARNOLD  
as TRUSTEE for OTL EMPLOYEES

TRUST  
NOTARY PUBLIC-STATE OF FLORIDA  
F. Corrales  
Commission # DD519394  
Expires: FEB. 16, 2010  
Bonded thru Atlantic Bonding Co., Inc.

*F. Corrales*  
(Signature of Notary Public - State of Florida)

Personally Known \_\_\_\_\_ OR Produced Identification X

Type of Identification Produced: US PASSPORT

FILED by GODFREY P. SMITH of Marine Parade Chambers, Attorneys-at-Law for the Claimants.

The Claimants' address for service is:

Godfrey P. Smith  
Marine Parade Chambers  
Cor. Gaol Lane/Marine Parade  
P.O. Box 1861  
Belize City, Belize, C.A.

FAO: Mr Godfrey Smith

Tel: (501) 223-3045

Fax: (501) 223-3671

DATED this \_\_\_\_\_ day of October in the year of Our Lord 2009

**IN THE SUPREME COURT OF BELIZE, A.D. 2009**

**CLAIM NO: OF 2009**

**IN THE MATTER OF an application under Section 20 of the Belize Constitution**

**AND**

**IN THE MATTER OF SECTION 3, 6, 16 and 17 of the Belize Constitution**

**AND**

**IN THE MATTER OF the Belize Telecommunications (Amendment) Act, 2009**

**AND**

**IN THE MATTER OF Statutory Instrument No. 104 of 2009, Belize Telecommunications  
(Assumption of Control over Belize Telemedia Limited) Order, 2009**

**BETWEEN:**

**THE TRUSTEES OF THE BTL EMPLOYEES TRUST**

**Claimant**

**THE ATTORNEY GENERAL OF BELIZE**

**(On behalf of the Government of Belize)**

**Defendant**

**- and -**

**THE MINISTER OF PUBLIC UTILITIES**

**Second Defendant**

**FIXED DATE CLAIM FORM**

**APPLICATION FOR CONSTITUTIONAL REDRESS**

***(Rule 56.7)***

**Claim Form**

The Claimant, Mr. Keith Arnold, of 6779 Columbia Avenue, Lake Worth, FL 33467, United States of America, on behalf of the **TRUSTEES OF THE BTL EMPLOYEES TRUST**, a trust duly formed and existing under the laws of Belize

claims against

the First Defendant, **THE ATTORNEY GENERAL OF BELIZE**, Attorney General's Ministry, Belmopan City, Cayo District, Belize

and

the Second Defendant, **THE MINISTER OF PUBLIC UTILITIES**, NEMO Building, Belmopan City, Belize.

1. Pursuant to Rule 56 of the Supreme Court (Civil Procedure) Rules the Claimants seeks the following relief:

- (a) A Declaration that the Belize Telecommunications (Amendment) Act, 2009 and Statutory Instrument No. 104 of 2009 Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009 are contrary to Sections 3(d) and 17 of the Constitution of Belize and are unconstitutional and void;
- (b) A Declaration that the Belize Telecommunications (Amendment) Act, 2009 and Statutory Instrument No. 104 of 2009 Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009 are contrary to Sections 3(a) and 6(1) of the Constitution of Belize and are unconstitutional and void;
- (c) A Declaration that the Belize Telecommunications (Amendment) Act, 2009 and Statutory Instrument No. 104 of 2009 Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009 are contrary to Section 16 of the Constitution of Belize and are unconstitutional and void;
- (d) A Declaration that the Belize Telecommunications (Amendment) Act, 2009 and Statutory Instrument No. 104 of 2009 Belize Telecommunications (Assumption of Control over



Belize Telemedia Limited) Order, 2009 are in breach of the doctrine of the Separation of Powers enshrined in the Constitution of Belize and are unconstitutional and void;

- (e) A Declaration that the Belize Telecommunications (Amendment) Act, 2009 and Statutory Instrument No. 104 of 2009 Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009 are contrary to Section 68 of the Constitution of Belize and are therefore unconstitutional and void;
- (f) Such other declarations and orders and such directions as this Honourable Court may consider appropriate for the purpose of enforcing or securing the enforcement of the aforementioned Declarations and Orders;
- (g) Damages including punitive damages;
- (h) Interest;
- (i) Such other reliefs as the Court deems just and equitable; and
- (j) Costs.

2. The Grounds of this Application are:

- (a) As a result of the Belize Telecommunications (Amendment) Act, 2009 (the **Act**), the Minister of Public Utilities (the **Minister**) has the power to compulsorily acquire and take possession of for and on behalf of the Government any or all of the shares, stock, interests of all kinds or assets of Belize Telemedia Limited (**Telemedia**). The Act gives the Minister the power to make an order by statutory instrument with legislative effect;
- (b) As of result of Statutory Instrument No. 104 of 2009 Belize Telecommunications (Assumption of Control over Belize Telemedia Limited) Order, 2009 (the **Order**), the Minister of Public Utilities acquired the entire issued share capital of Sunshine Holdings Limited (**Sunshine**) and 94% of the issued share capital of Belize Telemedia Limited. 22.39% of the shares in Telemedia were held by Sunshine;
- (c) The Order stated that this acquisition was for a public purpose, namely:

*"the stabilisation and improvement of the telecommunications industry and the provision of reliable telecommunications services to the public at affordable prices in a harmonious and non-contentious environment".*

(d) Section 3(d) of the Constitution of Belize (the **Constitution**) provides that:

*"Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –*

...

*(d) protection from arbitrary deprivation of property."*

(e) Section 17(1) of the Constitution provides that:

*"No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily acquired except by or under a law that:*

*(a) prescribes the principles on which and the manner in which reasonable compensation therefore is to be determined and given within a reasonable time; and*

*(b) secures to any person claiming an interest in or right over the property a right of access to the courts for the purpose of:*

*(i) establishing his interest or right (if any);*

*(ii) determining whether that taking of possession or acquisition was duly carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition;*

*(iii) determining the amount of the compensation to which he may be entitled; and*

*(iv) enforcing his right to any such compensation".*

(f) Sections 3(d) and 17(1) of the Constitution are intended to provide protection against the arbitrary deprivation of any and all property, save as provided in subsection (2). There was no national emergency, labour unrest, service failure or other reason to justify the action by the Government on 24 and 25 August 2009 to acquire compulsorily and take possession of Sunshine Holdings Limited's shareholding in Telemedia and the Claimants' shareholding in Sunshine. Such action by the Government was arbitrary and was not carried out for a public purpose.

(g) The Act and the Order are therefore in breach of the Fundamental Rights and Freedoms in Sections 3(d) and 17(1) of the Constitution and are unlawful and unconstitutional.

(h) Section 3(a) of the Constitution provides that:

*"Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political*

*opinions, colour creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –*

*(a) life, liberty, security of the person, and the protection of the law;"*

(i) Section 6(1) of the Constitution provides that:

*"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."*

(j) The Act allows for the possibility that only certain shares in Telemedia could be compulsorily acquired. The Order provided for this – only 94% of the issued share capital of Telemedia was compulsorily acquired. In this sense, the Act, and the Order, are discriminatory and ad hominem in nature. The Claimant is being denied its rights to the equal protection of the law, in breach of Sections 3(a) and 6(1) of the Constitution. The Act and the Order are unlawful and unconstitutional.

(k) The Government has, by the Prime Minister's own admission, used the Act and the Order to end an ongoing commercial dispute with a private citizen. The Act and the Order de facto oust the jurisdiction of the courts and are in breach of the doctrine of the Separation of Powers enshrined in the Constitution and are therefore unconstitutional and void;

(l) Section 16 of the Constitution provides:

*"Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect".*

(m) The National Assembly therefore cannot pass law which discriminates against any person on the grounds of, among other things "*place of origin*". The Prime Minister has stated that the Act and the Order seek to achieve the "*re-Belizeanisation*" of Telemedia, therefore discriminating against any non-Belizean. The Act and the Order are contrary to Section 16 of the Constitution of Belize and are therefore unconstitutional and void;

(n) Section 2 of the Constitution provides:

*"This Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void."*

(o) The Act and the Order are unlawful and unconstitutional and therefore void.

3. An affidavit in support of this Claim is filed herewith.

**Certificate of Truth**

I certify that I believe that the facts stated in this fixed date claim form are true.

*Keith Arnold*

Keith Arnold

Trustee

STATE OF FLORIDA  
COUNTY OF GRAND

Sworn to (or affirmed) and subscribed before me this 9th day of OCTOBER 2009, by KEITH  
ARNOLD as TRUSTEE for BTL EMPLOYEES

TRUST  
NOTARY PUBLIC-STATE OF FLORIDA  
F. Corrales  
Commission # DD519394  
Expires: FEB. 16, 2010  
Bonded Thru Atlantic Bonding Co., Inc.

*F. Corrales*  
(Signature of Notary Public - State of Florida)

Personally Known \_\_\_\_\_ OR Produced Identification X

Type of Identification Produced: US PASSPORT

FILED by GODFREY P. SMITH of Marine Parade Chambers, Attorneys-at-Law for the Claimants.

The Claimants' address for service is:

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Belize City, Belize, C.A.  
FAO: Mr Godfrey Smith

Tel: (501) 223-3045  
Fax: (501) 223-3671

DATED this \_\_\_\_\_ day of October in the year of Our Lord 2009

**MARINE PARADE CHAMBERS**  
Attorneys-at-Law for the  
Claimants

Per: GODFREY P. SMITH

**TO: The Attorney General of Belize  
East Block  
Independence Hill  
Belmopan City**

**The Minister of Public Utilities  
NEMO Building,  
Belmopan City,  
Belize**



You may:

**A. Admit the claim**

If so, you should complete and return the form of acknowledgement of service to the court office within 14/28 days stating this. You may attend the first hearing if you wish to do so.

**B. Dispute the claim**

If so, you should complete and return the form of acknowledgement of service as under A. You should also file at the court office and serve on the claimants' legal practitioner (or the claimant if the claimant has not legal practitioner):

- (a) a defence if the claim form was accompanied by the claimants' statement of claim,
- OR
- (b) an affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the claimant

within 28/42 days for the day on which the claim form was served on you. Your defence or affidavit must set out briefly ALL the facts on which you rely to dispute the claim made against you.

**You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.**

**C. Make a claim against the claimant**

If so, you should complete and return the form of acknowledgement of service as under A. You must file a statement of claim (a counterclaim) setting out full details of what you claim against the claimant and the facts on which you will rely. This must be done within 28/42 days of the date on which the claim form was served on you. The statement of claim should set out ALL the facts on which you rely in disputing any part of the claimants' claim against you.

**You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.**