



ONE CARIBBEAN...  
ONE COMPANY

Southern Main Road, Claxton Bay, Trinidad, West Indies.  
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Website: [www.tclgroup.com](http://www.tclgroup.com)

July 17, 2014

Mrs. Marlene Street-Forrest  
General Manager  
The Jamaica Stock Exchange  
40 Harbour Street  
Kingston  
**JAMAICA**

Dear Mrs. Street-Forrest:

**Re: Requisition to Call a Compulsory Meeting of Shareholders of Trinidad Cement Limited**

Trinidad Cement Limited has received a Requisition to Call a Compulsory Meeting of Shareholders under Section 133 of the Companies Act of Trinidad & Tobago.

We enclose for your attention, a copy of this Requisition dated June 24, 2014 (excluding signature pages) as well as the Company's response to the requisitioning shareholders dated July 14, 2014.

Both documents will be posted on the Group's website ([www.tclgroup.com](http://www.tclgroup.com)) from today.

Yours faithfully,  
**TRINIDAD CEMENT LIMITED**

  
**KATHRYNA BAPTISTE**  
Group Manager Legal/ Company Secretary

Encl:

**TRINIDAD AND TOBAGO**

24 June, 2014

In the matter of section 133 of the Companies Act, Chap 81:01

**REQUISITION TO CALL A COMPULSORY MEETING  
OF SHAREHOLDERS**

**To:** Trinidad Cement Limited (hereinafter referred to as "the Company")

**And To:** Mr. Andy Jeevan Bhajan (Chairman)  
Dr. Rollin Clifton Betrand  
Mr. Bevon Rockville Francis  
Mr. Carlos David Hee Hounq  
Mr. Jean Michel Marie Roger Allard  
Dr. Leonard Alfred Nurse  
Mr. Alejandro Alberto Ramirez Cantu  
Mr. Brian William Young  
Mr. Wayne Leslie Yip Choy

**ALL Directors and in care of:** The Company  
Southern Main Road,  
Claxton Bay  
**TRINIDAD**

We the following shareholders:

**WILNET HOLDINGS LTD  
HELEN BHAGWANSINGH  
KAMAL ALI  
STEPHEN ESPINET  
ALESCON READYMIX LIMITED  
ISSA NICHOLAS HOLDINGS LIMITED  
NICHOLAS DEVELOPMENT LIMITED  
MASA INVESTMENTS LIMITED  
BOURNE INVESTMENT INC.  
TATIL LIFE ASSURANCE LTD. A/C C  
SIERRA TRADING  
NATIONAL INSURANCE BOARD  
BALENO HOLDINGS INC.  
REPUBLIC BANK LIMITED  
TRINIDAD AND TOBAGO UNIT TRUST CORPORATION  
MAYFAIR TRINIDAD LIMITED  
ANTONIA PHILLIP  
TRINTRUST LIMITED A/C 1088**

being persons holding in aggregate 54.7% of the issued shares of the Company,  
such aggregate being not less than 5% of the issued shares of the Company that  
carry the right to vote at the meeting hereinafter referred to, hereby requisition,

the directors of the Company to call forthwith a compulsory meeting of the shareholders of the Company for the following stated purposes:

- A. To forthwith and immediately remove the following individuals as Directors of the Company:

**Mr. Andy Jeevan Bhajan;  
Dr. Rollin Clifton Betrand ;  
Mr. Bevon Rockville Francis;  
Mr. Carlos David Hee Hounq;  
Dr. Leonard Alfred Nurse; and  
Mr. Brian William Young;**

and

- B. To thereafter, forthwith and immediately, elect the following individuals as Directors of the Company for a term from the date of their election to the close of the first annual meeting following their election:

<u>NAME</u>	<u>ADDRESS</u>	<u>OCCUPATION</u>
(1) <b>Wilfred Espinet</b>	# 1 Mary Street, St. Clair, Trinidad	- Businessman
(2) <b>Alison Lewis</b>	5 Ben Ali Drive, Petit Valley	- Rtd. Public Servant
(3) <b>Chris Dehring</b>	# 1 Gainsborough Avenue, Kingston 6, Jamaica	- Businessman
(4) <b>Nigel Edwards</b>	# 82, Independence Square, Port of Spain, Trinidad	- Businessman
(5) <b>Francisco Aguilera</b>	Ave. Ricardo Margain Zozaya 325 Col. Valle del Campestre San Pedro Garza Garcia, N.L., 66265, Mexico	- Engineer
(6) <b>Carlos Alberto Palero</b>	Edificio Credicorp Bank Panama Pisco 28 Calle 50 Bella Vista, Panama 5 Aptdo 7262 Republica de Panama	Engineer

(7) **Glenn Hamel-Smith**, Eleven Albion Street  
Dere & Albion Streets  
Port of Spain, Trinidad

Attorney at Law

This requisition is being made pursuant to Section 133 of the Companies Act 1995, Ch. 81:01 of the Laws of the Republic of Trinidad and Tobago.

*Pursuant to section 133(2) of the Companies Act 1995, Ch. 81:01 of the Laws of the Republic of Trinidad and Tobago, this requisition may consist of several documents of like form with each being signed by one or more of the indicated shareholders of the Company.*

**THE LAW OFFICES  
OF  
DR. CLAUDE DENBOW S.C.  
Attorneys-at-Law**

CLAUDE H. DENBOW, LL.M, PH.D. (LOND.) of Gray's Inn BARRISTER  
DONNA A. DENBOW, B.A., LL.B (U.W.I.)  
JEROME R.D. RAJCOOMAR, LL.B, (U.W.I), LEC

14<sup>th</sup> July, 2014

To: Wilnet Holdings Ltd.  
Helen Bhagwansingh  
Kamal Ali  
Stephen Espinet  
Alescon Readymix Limited  
Issa Nicholas Holdings Limited  
Nicholas Development Limited  
Masa Investments Limited  
Bourne Investments Limited  
Tatil Life Assurance Ltd. A/C C  
Sierra Trading  
National Insurance Board  
Baleno Holdings Inc.  
Republic Bank Limited  
Trinidad and Tobago Unit Trust Corporation  
Mayfair Trinidad Limited  
Antonia Phillip  
Trintrust Limited A/C 1088

Dear All,

**RE: REQUISITION FOR A SHAREHOLDERS MEETING UNDER SECTION 133 OF  
THE COMPANIES ACT**

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We act on behalf of Trinidad Cement Limited in this matter and have been instructed to reply to the Requisition for a Shareholders Meeting pursuant to **Section 133 of the Companies Act ("CA")** dated 24<sup>th</sup> June, 2014.

We regret to inform you that the Requisition cannot be entertained. This is because we have advised our client that the submission of the Requisition and any steps taken to implement same will expose all of the relevant parties to liability for contempt of Court. Our reasons for so advising are set out hereunder.

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**TRINIDAD**  
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1. Relationship between the Requisition of 24<sup>th</sup> June, 2014 and the Shareholders Proposal of 14<sup>th</sup> June, 2013

- (i) It is clear that there is a fundamental link or connection between the Requisition just submitted and the Shareholders Proposal which was submitted on 14<sup>th</sup> June, 2013 (**"the 2013 SP"**).
- (ii) The 2013 SP nominated 5 persons to stand for election as directors of TCL at its Annual Meeting scheduled for 12<sup>th</sup> July, 2013. Those 5 persons were nominated with a view to replacing 5 directors of TCL whose terms of directorship expired at the aforementioned dated. The directors whose terms expired were Dr. Rollin Bertrand, Mr. Bevon Francis, Mr. Carlos Hee Hounq and Mr. Brian Young and Mr. Jean Michel Allard a "designated director". The persons nominated for election to replace them were Messrs. Garth Chatoor, Emile Elias, Imtiaz Rahaman, Kelvin Mootoo and Gregory Thomson.
- (iii) The 2013 SP was signed by 11 shareholders. Out of those 11, 10 have also signed the Requisition. The only missing person is Brimont Limited. In addition to the 10 continuing shareholders there have been 8 others added, namely Sierra Trading, National Insurance Board, Baleno Holdings Inc., Republic Bank Limited, Trinidad and Tobago Unit Trust Corporation, Mayfair Trinidad Limited, Antonia Phillip and Trintrust Limited A-C 1088.

2. Purpose and Scope of the Existing Legal Proceedings

- (i) There currently exists in the High Court in **Claim No. CV2013-02864** pending proceedings involving the 11 shareholders to the 2013 SP, as Claimants against TCL as a Defendant/Counterclaimant and Republic Bank Limited (**"RBL"**) as a Defendant to the Counterclaim (**"the existing legal proceedings"**). The Claimants obtained an injunction to restrain the holding of TCL's Annual Meeting scheduled for 12<sup>th</sup> July, 2013, consequent upon TCL's refusal to comply with the Claimants' request to include the 2013 SP in the documentation sent out to shareholders for the aforementioned meeting. That injunction which is still in force has prevented the holding of an Annual Meeting for 2013 or any subsequent year. Accordingly the directors of TCL who the Claimants were seeking to replace by the persons nominated in the 2013 SP still remain in office and are clearly a source of continuing annoyance to the Claimants.
- (ii) In view of the foregoing, it is eminently reasonable to conclude that the Requisition of 24<sup>th</sup> June, 2014 is really a follow up to and another route which is being adopted by the Claimants and the 8 new entrants who have now

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joined them, for the purpose of replacing the Board of TCL which they have failed to do so far.

3. **Summary of the Purpose and Scope of the Existing Injunction**

- (i) It is important to set out in summary form the terms and purpose of the injunction. On its face the injunction prohibits **"the holding of the Annual Meeting of TCL on 12<sup>th</sup> July, 2013 or otherwise until the hearing and determination of the claim made in the matter"**.
- (ii) It is important to note the background against which this injunction was obtained. At TCL's Annual Meeting scheduled for 12<sup>th</sup> July, 2013, there were 5 directors whose terms expired and offered themselves for re-election. They were:
  - (a) Dr. Rollin Bertrand
  - (b) Mr. Bevon Francis
  - (c) Mr. Carlos Hee Houn
  - (d) Mr. Brian Young
  - (e) Mr. Jean Michel Allard

In the normal course of events they would have been re-elected to the Board without opposition.

- (iii) The 2013 SP was rejected by the TCL Board because, **inter alia**, it was not genuine. The 2013 SP was lacking in bona fides because whilst purporting to be a Shareholders Proposal emanating from a group of shareholders who had collaborated together, it was actually a device orchestrated and arranged by a group of TCL's creditors led by RBL, who were using the Claimants as a front to effect its plan of action to have its nominees elected as directors of TCL. In other words the 2013 SP was to be regarded as a misleading document contrary to **Section 150 (1) of the CA**.
- (iv) However Mr. Wilfred Espinet as the lead Claimant in the existing legal proceedings in conjunction with Mr. Ian De Souza of RBL saw and seized the opportunity to replace those directors. The mechanism used was the 2013 SP, the main plank of which was to nominate 5 individuals to be directors of TCL.
- (v) It was because of the refusal of the TCL Board to entertain the 2013 SP and include it as one of the documents sent out to shareholders in the Notice of the Meeting that the existing legal proceedings were commenced. The main relief sought and granted was an injunction to restrain the holding of the meeting at which the 5 abovementioned directors were destined to be re-

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elected to the Board in the absence of opposition. The purpose of the injunction was therefore to prevent the unopposed re-election of the 5 directors aforementioned and to seek to ensure the preservation of the status quo or existing state of affairs pending the hearing and determination of this matter at a Trial.

- (vi) At this point it is relevant to note that the legal effect of the injunction pending the hearing and determination of the matter at the Trial was to retain in office the 5 aforementioned incumbent directors by reason of **Section 71 (6) of the CA**. That provision states:

**"...if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until successors are elected."**

- (vii) Consequently, by reason of the conjoint operation of the injunction and **Section 71 (6) of the CA**, the 5 individuals aforementioned are to remain in office until the hearing and determination of the Trial in the existing legal proceedings as to what is to be done about their status. That is the present position. The question of the election or removal of the 5 incumbent directors whose terms have expired is now a matter exclusively within the jurisdiction of the Court to be decided upon at the end of a Trial after hearing the evidence. That question is not subject to be decided upon by the Claimants who are required to respect the order of the Court. Indeed all the requisitioning shareholders are required to respect the order of the Court.
- (viii) It cannot be overemphasized that the 8 new entrants are in no position to claim ignorance or lack of knowledge of the injunction. This is because TCL has been at pains over the past year to communicate to its shareholders the existence of the injunction. This has been done first of all by releases on its website, and secondly the injunction has been dealt with in detail at pages 14 and 15 of TCL's Annual Report for 2013 with an insert in that report which has been posted out to all shareholders. Accordingly the 8 new entrants will be very much aware of the injunction and will be exposed to liability for contempt of Court as set out hereunder.

**4. The Importance of a Trial as mandated by the Court of Appeal**

- (i) It cannot be overemphasized that the Court of Appeal clearly contemplated that this matter should stay frozen as stated above until a final order is made at the Trial. For instance, it is stated at **paragraph 27** of the Court of Appeal judgment as follows:



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**"The order itself restrained the holding of the AGM on 12<sup>th</sup> July, 2013 or otherwise until the hearing and determination of the claim. Under the order the matter was adjourned to 19<sup>th</sup> July, 2013. This clearly indicates that the Trial Judge intended the order to be interim as opposed to final. In any event, as we have seen there are issues of fact and law to be determined before any final order is made."**

(ii) Earlier at paragraph 16 the Court said as follows:

**"The issue as to whether RBL is in fact the protagonist in the plot is a question of fact which cannot be determined on the affidavit evidence... This is a matter which will require cogent evidence and cross-examination at the end of which a trial court will make a finding of fact."**

#### **5. Contempt of Court**

- (i) We are of the clear view that there are 2 types of contempt which arise in this case. The first is the disobedience to a Court order by a person who has been restrained from taking steps by an injunction. The second type of contempt is by a third person not named in the order but who aids and abets the disobedience to the order or engages in conduct which interferes with the due administration of justice pursuant to that order.
- (ii) The foregoing has been made clear in the judgment of the House of Lords in England in the case of **Attorney General v. Times Newspapers Limited (1992) 1AC 191** at page 227H to page 228A where Lord Jauncey stated as follows:

**"In relation to injunctions there is ample authority to the effect that contempt can take two forms, namely, (1) disobedience to the order by the person named therein, and (2) aiding and abetting by a third person of the person named in the order to disobey it. In the first case the person named is in contempt because he is in direct breach of the order. In the second case the third party is in contempt not because he has disobeyed the order, which is not binding upon him, but because he has assisted the named person to disobey the order and has thereby himself interfered with the administration of justice which requires that the order be obeyed."**

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- (iii) In this case we consider that our client TCL falls within the first type of contempt and that you the requisitionists fall within the second type of contempt for the reasons set out hereunder.

#### **6. Contempt of Court by TCL**

- (i) In this case should the directors of TCL accede to the Requisition, they would be setting up a contest as to the continuing terms on the TCL Board of the individual incumbent directors named in the Requisition, 4 of whom were to come up for re-election at the Annual Meeting on 12<sup>th</sup> July, 2013 (namely Dr. Rollin Bertrand, Mr. Bevon Francis, Mr. Carlos Hee Houn and Mr. Brian Young). We consider that such conduct would be in direct conflict with the existing injunction which prohibits an election in relation to those individuals until a decision has been made as to what is to be done after the hearing and determination of the existing legal proceedings. In light of the clear indication by the Court of Appeal that this matter should be brought to Trial in order for the findings of fact to be made, this would in our view constitute an interference with the course of justice as prescribed by the Court and expose the directors of TCL to contempt of Court.
- (ii) We are of the clear opinion that it does not matter whether the contest for the directorship is to take place at an annual meeting or a meeting which is sought to be called under **Section 133 of the CA**. This is because the clear intent is that the question of an election of directors, opposed or unopposed, is a matter for judicial determination which is already before the Court awaiting determination.

#### **7. Contempt of Court by the Requisitionists**

- (i) Ten of the requisitionists are Claimants in the existing proceedings who obtained the High Court injunction which was continued by the Court of Appeal. The other 8 requisitionists are new entrants. For the purpose of considering the law of contempt in relation to their conduct in submitting the Requisition, they will be treated separately.
- (ii) The 8 new entrants to this matter who have signed the Requisition for the meeting pursuant to **Section 133 of the CA** are also exposed to being held in contempt of Court. It is irrelevant that they are not parties to the existing legal proceedings. Their exposure to liability for contempt of Court stems from the fact that their conduct in requisitioning a meeting for the purpose of removing incumbent directors whose positions have been preserved on the Board by an injunction constitutes an interference with the due administration

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of justice. The conduct of such a third party has been clearly dealt with in the leading judicial statements on this matter.

- (iii) The legal position here is perhaps best summarized in the judgment of Lord Oliver in the **Times Newspaper** case at page 224 D-E where it is stated as follows:

**"If the court has taken into its hands the conduct of the matter to the extent of ordering the interim preservation of the interest of the plaintiff so that the issue between him and the defendant can be properly and fairly tried, it has to be accepted that that is what the court had determined that the interests of justice require. The gratuitous intervention of a third party intended to result in that purpose being frustrated and the outcome of the trial prejudiced, must manifestly interfere with and obstruct what the court has determined to be the interests of justice. Those interests are not dependent upon the scope of the order."**

**8. Conduct of 10 Claimants in submitting the Requisition for Meeting: Contempt of Court**

- (i) A question of contempt arises not only in relation to disobedience of an order made against a party, but also in respect of all litigants who have notice to the order. It is their duty to respect the terms of the order since by invoking the Court's jurisdiction the matter now resides exclusively for the Court's determination. **A party cannot change his mind and act contrary to the injunction which he obtained because he chooses to adopt a different strategy. All parties are required to obey the Court order.**
- (ii) The foregoing principles have been clearly stated in the leading judgment of Lord Nicholls in the case of **Attorney General v. Punch Limited (2003) 1AC 1046** where at paragraph 32 he stated as follows:

**"Equally clearly, if a temporary injunction is to be effective the law must be able to prescribe appropriate penalties where a person deliberately sets the injunction at naught. Without sanctions an injunction would be a paper tiger. Sanctions are necessary to maintain the rule of law; in the language of the Convention, to maintain the authority of the judiciary. If the rule of law is to be meaningful, the decision of the court on how, and to what extent, the status quo should be maintained pending the trial must be respected. It must be respected by third parties as well as the parties to the proceedings."**

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- (iii) Subsequently in the judgment of Lord Hope at **paragraph 100** in the **Punch case**, it is made very clear that when an injunction is granted pending final determination the matter is exclusively within the Court's domain for a decision. It is not possible for any litigant to intervene in order to extinguish or destroy the status quo which has been preserved by an injunction. In that regard Lord Hope stated as follows:

**"But this does not alter the fact that the court's purpose, when it grants the order, is to preserve the rights of the parties pending a final determination of the issues between them by the court. Furthermore, as Lord Oliver said in Attorney General v Times Newspapers Ltd [1992] 1 AC 191, 223 A-B, "purpose" in this context refers not to the litigant's purpose in obtaining the order or in fighting the action, but to the court's purpose. That is the purpose which the court was intending to fulfil in seeking to administer justice between the parties in the particular litigation of which it has become seised."**

## **9. Conclusion**

- (i) In view of the foregoing judicial pronouncements at the highest level, we are of the firm view that should any steps be taken to accede to or act upon the Requisition submitted on the 24<sup>th</sup> June, 2014 all parties would be exposed to liability for contempt of Court. Accordingly we have advised TCL not to accede to the Requisition.
- (ii) In addition please be informed that should you take any steps to convene the meeting requisitioned, then our instructions are to bring to the Court's attention the issue of contempt by your goodselves.

## **10. Other Issues apart from Contempt of Court**

Although we are of the firm view that the contempt of Court point is a definitive answer and bar to the Requisition for the meeting, nonetheless there are other grounds upon which we will rely on behalf of TCL should that ever become necessary. At this stage we will merely mention those grounds in brief and will not particularize same unless that becomes necessary some time in the future. Those grounds are as follows:

- (i) The Requisition is not to be regarded as bona fide in the best interests of TCL. This is because such a drastic change to the Board as is sought to be implemented would in the normal course be accompanied by reasons in support of same. No reasons have been given. In our view there are no good commercial reasons to justify a fundamental change to a Board of

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Directors which has effected a turnaround of the company and presided over its return to profitability. The return to profitability is well documented in TCL's Annual Report to Shareholders 2013.

- (ii) That the Requisition on the face of it in terms of reference to the individuals proposed as directors is defective because of the absence of sufficient information for the TCL Board and the shareholders to make an informed decision.
- (iii) That the Requisition comes within the exception set out in **Section 133 (3) (c) of the CA** when taken in conjunction with **Section 119 (b) of the CA**. The words relied on in the latter provision are "**redressing a personal grievance against the company and its directors**". We consider that the evidence in the witness statements in the existing legal proceedings provides more than sufficient evidence to support the foregoing contention.
- (iv) The Requisition is tainted by improper purpose because at least 3 of the main requisitioning shareholders, Mr. Wilfred Espinet, Republic Bank Limited ("**RBL**") and Sierra Trading, have been motivated by ulterior purposes in providing their support for the Requisition. In that regard we note with respect to the 3 persons as follows:

**(a) Mr. Wilfred Espinet**

Mr. Espinet is currently the subject of an investigation by the Trinidad and Tobago Securities and Exchange Commission ("**SEC**") for both Insider Trading and price rigging, contrary to the specified provisions of the **Securities Act 2012**. Those investigations have been prompted by complaints by TCL.

**(b) RBL**

- i. RBL is a Defendant to TCL's Counterclaim in the existing legal proceedings between **Wilnet Holdings Limited & Ors. v. TCL**. You should all be aware of the following matters with regard to the conduct of RBL in this matter as set out hereunder.
- ii. RBL is currently the subject of investigation by the SEC with regard to price rigging under the **Securities Act 2012**. The managing director of RBL in Barbados is the subject of an investigation by the Central Bank as to whether he is a **fit and proper** person to be involved in the management of a financial institution. That investigation was initiated after a complaint by TCL bringing to the attention of the Central Bank its complaint

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about the role of RBL in the existing legal proceedings. In addition Mr. De Souza is also the subject of a SEC investigation for insider trading and price rigging.

- iii. RBL at the outset had denied its involvement in orchestrating and arranging the 2013 SP submitted on 14<sup>th</sup> June, 2013, the rejection of which led to the aforementioned existing legal proceedings.
- iv. RBL's initial denial of any involvement has been emphatically unmasked by not only the letter of 19<sup>th</sup> November, 2013 from its attorneys, Messrs. J.D. Sellier & Co., but also by all the evidence and the witness statements filed in preparation for the Trial of the existing legal proceedings.
- v. All of the foregoing matters are to be dealt with at the imminent trial, and as the Court of Appeal has mandated the issues of fact in this matter need to be determined at the Trial.
- vi. It is also to be noted that RBL's undoubted involvement in the 2013 SP carries certain consequences for the existing legal proceedings as referred to by the Court of Appeal at paragraph 24 of its judgment given on 20<sup>th</sup> November 2013.

**(c) Sierra Trading/Cemex**

- i. In June to August 2002, Cemex as the parent company of Sierra Trading made a takeover bid (through its wholly owned subsidiary Cetacea Investments Limited) to acquire the issued capital of TCL. That takeover bid was defeated.
- ii. However the Requisition has now presented Cemex with the opportunity to acquire control of TCL by having 4 of its directors on the Board. Accordingly Cemex is now opportunistically seizing the chance presented by this Requisition to acquire control of TCL without having to go through the rigorous and costly process of satisfying the Securities law regime of Trinidad and Tobago under the Securities Act of 2012.

The foregoing matters represent in summary form the other grounds apart from contempt of court which will be relied upon to impugn the Requisition, should that ever become necessary.

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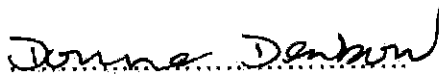
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**11. Resolution and Disposition of Matter**

- (i) It is apparent that all the parties in this matter are locked into a situation which can only be resolved by going along 2 routes. The first would require all the parties to sit down and agree on a Board of Directors. If not, then the matter will have to go down the road to a Trial.
- (ii) We have been informed by the Registry of the Supreme Court that following the death of the late Mr. Justice Hannays, the new judge to hear this matter will be Mr. Justice Seepersad. The matter will come up before him for directions on 18<sup>th</sup> September, 2014.
- (iii) However such a Trial is unlikely to commence before the end of 2014 and possibly can take us well into 2015 before a judgment is available at the earliest.

Please be guided accordingly.

Yours faithfully,

  
Donna Denbow

DD: db

cc: Trinidad Cement Limited