

## **Exhibit H**

F.P. 7/5/05

IN THE COUNTY COURT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. **05 - 3 9 3 5 CC 26**

COMMUNITY BANK OF FLORIDA

Plaintiff

vs.

HEMISPHERE NATIONAL BANK and  
RICHARD E L FOGERTY, IN HIS  
CAPACITY AS OFFICIAL LIQUIDATOR  
FOR BANCREDIT CAYMAN LIMITED,  
In Liquidation also known as  
Bancredito Cayman Limited

Defendant.

\_\_\_\_\_ /

**COMPLAINT**

**COMMUNITY BANK OF FLORIDA**, by and through its undersigned counsel,  
sues the Defendants, HEMISPHERE NATIONAL BANK and  
RICHARD E L FOGERTY, IN HIS CAPACITY AS OFFICIAL LIQUIDATOR  
FOR BANCREDIT CAYMAN LIMITED, In Liquidation also known as  
Bancredito Cayman Limited and for its cause of action would state:

1. That this is an action for damages wherein the amount in controversy exceeds \$5,000 but is less than \$15,000,
2. That **COMMUNITY BANK OF FLORIDA** is a Florida banking corporation doing business in Dade County, Florida.

3. That the Defendant, THE HEMISPHERE NATIONAL BANK, is a corporation doing business in Miami-Dade County, Florida, and is *sui juris*.
4. That the Defendant, RICHARD E L FOGERTY in his capacity as Official Liquidator for BANCREDIT CAYMAN LIMITED, In Liquidation, also known as Bancredito Cayman Limited (hereafter "Bancredit"), conducted business in Miami-Dade County, Florida, and received the benefit of the wire transfer referred to herein which was originated from Miami-Dade County, Florida, and is accordingly *sui juris*.

**FACTS COMMON TO ALL COUNTS**

5. That Brooks Tropicals Purchasing, Inc. (hereafter "Brooks") is a customer of Community Bank of Florida (hereafter Community Bank).
6. That on or about September 11, 2003, Community Bank received directions from Brooks to wire transfer \$7,825.00 to a Cayman Island corporation known as "Cococaribe." A copy of the document is attached as **Exhibit "A."**
7. That Cococaribe maintained an account with Bancredit and Community Bank's customer instructed that the funds be transferred to Bancredit to the account of Cococaribe. **(Exhibit "A")**

8. That Hemisphere National Bank was the correspondent bank for Bankcredit and, for this reason; Community Bank transmitted the wire transfer to Hemisphere National Bank with instructions for the funds to be transferred to Bankcredit for further credit to the Cococaribe account. A copy of the document verifying this is attached as **Exhibit "B."**
9. Brooks Tropical, as the originator of the request, advised that its customer, Cococaribe, did not receive the wire transfer requested and received a return of its funds.
10. That on October 2, 2003, Community Bank demanded a return of funds from Hemisphere National Bank, a copy of which is attached as **Exhibit "C."**
11. That Hemisphere National Bank responded that it was unable to comply with the demand because it had previously transferred the wire transfer of funds to Bankcredit. Hemisphere advised that it attempted but could not secure a return of these funds from Bankcredit because it was in Receivership (**See Exhibit "D"**).
12. That on May 18, 2005, Community Bank renewed its demand for Hemisphere National Bank to return the funds or provide proof that the wire transfer had been

completed and the funds transferred to Bancredit. (**See Exhibit "E"**).

13. That Hemisphere National Bank did not return the funds or provide proof that these funds had been previously transferred to Bankcredit.
14. That on September 5, 2003, Bancredit was placed into Receivership and Richard E L Fogerty (hereafter "Fogerty") was appointed Joint Official Liquidator.
15. That the wire transfer, if made, would have been received by Bankcredit after liquidation. Specifically, on or after September 11, 2003.
16. That since liquidation had been commenced by Bankcredit before it received the transfer of funds it should have declined the wire transfer or returned the funds it had received back to the Plaintiff.
17. That on or about June 18, 2004, Fogerty sent a letter notifying all parties having transactions with the Cayman Island bank that he was appointed Liquidator and would be dealing with these claims on an individual basis. A copy of this letter is attached as **Exhibit "F."**
18. That on May 27, 2005, Plaintiff made demand on Bankcredit to return the funds. A copy of the letter is attached as **Exhibit "G."**

COUNT I

19. Plaintiff reaffirms and realleges each and every allegation contained in the Facts Common to All Accounts, and would allege:

20. That on or about September 11, Defendant, Hemisphere National Bank, received \$7,825.00 that was the property of the Plaintiff as described herein.

21. That Hemisphere National Bank failed to complete the transfer to Bankcredit and therefore converted to its own use the funds transmitted to it by the Plaintiff which was the property of the Plaintiff having a value of \$7,825.

22. That Hemisphere National Bank converted to its own use, the funds transmitted by wire transfer that was the property of the Plaintiff of the value of \$7,825.00

WHEREFORE, Plaintiff demands judgment against the Defendant, **Hemisphere National Bank.**

COUNT II

23. Plaintiff reaffirms and realleges each and every allegation contained in the Facts Common to All Accounts, and in the alternative:

24. That in the event Bankcredit did, in fact, receive the funds represented by the wire transfer then it did

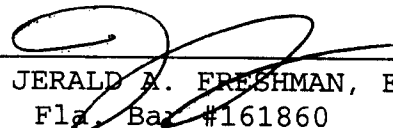
not place the funds in the account of its customer, Cococaribe, but retained the funds for its own benefit.

25. That Bankcredit converted the funds represented by the wire transfer to its own benefit which was the property of the Plaintiff in the value of \$7,825.

WHEREFORE, Plaintiff, in the alternative, demands judgment for damages against Defendant, Bankcredit.

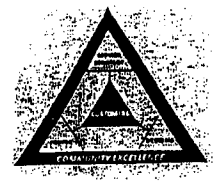
Dated this 27th day of July, 2005.

FRESHMAN FRESHMAN & TRAITZ, P.A.  
Attorneys for Plaintiff  
9155 S. Dadeland Blvd.  
Dadeland Centre, Suite 1014  
Miami, Florida 33156  
Phone: (305) 670-1400  
Fax: (305) 670-1410

by   
JERALD A. FRESHMAN, ESQ.  
Fla. Bar #161860



# WIRE TRANSFER FORM



DATE: 9-11-03 ABA #: 066010351

AMOUNT: 7825.00 FEE: 15.00

RECEIVING FINANCIAL INSTITUTION: Hemisphere National Bank  
ADDRESS:  
CITY: Miami STATE: FL COUNTRY:

NAME OF BENEFICIARY: Bancredito Cayman Limited  
ADDRESS: (REQUIRED)  
CITY: STATE: COUNTRY:  
BNF ACCOUNT NUMBER (REQUIRED): 010050871

F/C NAME OF INSTITUTION:  
ADDRESS:  
CITY: STATE: COUNTRY:

REFERENCE: F/C/T Cococaribe To PURCHASE FRUITS  
Acct# 71521

NAME OF SENDER: Brooks Tropicals  
ACCOUNT #: 208829906  
ADDRESS: (REQUIRED) 18400 SW 256 St  
CITY: Homestead STATE: Fl COUNTRY:  
PHONE NUMBER (REQUIRED) 305 247-3544 SS#/EIN# (REQUIRED)

I agree that the above information is correct, and that I have requested this transfer of funds.

SIGNATURE: Authorization on file

Community Bank of Florida (CBF) will make every effort to expedite the transfer of funds. Delays may arise in delivery to beneficiary through control of CBF. This form does not constitute a guarantee of funds delivery.

TEST:		EMPLOYEE NAME	<u>Natasha Johnson</u>
TIME RECEIVED:		OFF/MNGR APPRV.	
CALLBACK VERIFY	<u>Nancy</u>	SIG. VER.	<u>DN</u>
BAL VER.	<input checked="" type="checkbox"/>	HOLD CODE	<input checked="" type="checkbox"/>

EXHIBIT A

User: F6SEED1 14:26:24 09/11/2003 Funds Transfers : Verify a Message V2.60.70  
 File: FLTRANJ Record: 7 New Status: TO Appl Sequ #: 000007 Queued for Transmission  
 Standard Import Screen

Sender ABA: 067008993 Name: COMMUNITY BK OF FL  
 Receiver ABA: 066010351 Name: HEMISPHERE MIA Type Code: 1000  
 Amount: 7,825.00 Bus Function Code: CTR Ref #: 200011682  
 2000}000000782500}C3100}067008993COMMUNITY BK OF FL\*(3320}200011682\*(3400}066010  
 51HEMISPHERE MIA\*(3600}CTR(4200}D010050871\*BANCREDITO CAYMAN LTD\*(5000}D2088299  
 6\*BROOKS TROPICALS\*(5100} \*COMMUNITY BANK OF FLORIDA\*(6000}F/C/T COCCOCARIBE\*ACC  
 # 71521\*REF: TO PURCHASE FRUITS\*

IAD 20030911 F6QCGDSC 000008 URC FT0009 PDM Rf-IMAD

Outgoing message URC: FT0009, Queued on HQ. 09/11/03 14:26:39

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FUNDS SHORT ACKNOWLEDGEMENT				
Cycle Date	Lterm	Seq#	Queued Time	URC
) 2003 09 11	F6QCGDSC	000008	09/11 14:27	FT0009
) 2003 09 11	F6B7222F	000071	09/11 14:27	

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EXHIBIT B

User: F6MPPD1 14:25:46 10/02/2003 Funds Transfers : Verify a Message V2.60.70  
 File: FLTRANJ Record: 11 New Status: TQ Appl Sequ #: 000011 Queued for Transmission  
 ##### FT P ##### FT OUTGOING ##### URC: FT0011 #####

{1520} IMAD: 20031002 F6QCGDSC 000011  
 {3100} Sender: 067008993 COMMUNITY HOMESTEAD {2000} Amount: \$7,825.00  
 {3400} Receiver: 066010351 HEMISPHERE NAT'L {3600} Bus Function Code: SVC  
 {1510} Type Code: 1007

{3500} Prev Message IMAD: 20030911F6QCGDSC000008  
 {9000} Free Format Text: OUR OUTGOING WIRE TRANSFER REF:IMAD  
 20030911 F6QCGDSC 000008 URC FT0000  
 9 SENT ON 09/11/2003 ORIGINATOR:  
 BROOKS TROPICALS 208829906 BENEFICI  
 ARY: BANCREDITO CAYMAN LTD 01005087  
 1 FCT COCOCRIBE A/C#71521 FOR  
 USD7,825.00 ORIGINATOR REQUEST RETU  
 RN OF FUNDS. PLEASE RETURN FUNDS  
 ASAP. ANY QUESTIONS PLEASE CALL  
 NATASHA JOHNSON (305) 245-2211 EXT.  
 334. THANK YOU!

{3320} Sender Ref:  
 #####

>> Outgoing message URC: FT0011, Queued on HOST 10/02/03 14:26:20

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FUNDS SHORT ACKNOWLEDGEMENT					
Cycle Date	Lterm	Seq#	Queued Time	URC	
IMAD: 2003 10 02	F6QCGDSC	000011	10/02 14:27	FT0011	
OMAD: 2003 10 02	F6B7222F	000084	10/02 14:27		

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305-341-5300

EXHIBIT C

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##### 02 ##### FT PROD ##### FT INCOMING ##### SERVICE #####
<3100> Sender: 066010351 HEMISPHERE NAT BK (2000) Amount: $0.00
<3400> Receiver: 067008993 COMMUNITY BK OF FL (3600) Bus Function Code: SVC
<1510> Type Code: 1090
<9000> Free Format Text: ATTN:W/TFR
OUR IMAD 20030911F6QCGDSC000008
DD:09/11/03 USD:$7,825.00
ORG:BROOKS TROPICALS
BEN:BANCREDITO CAYMAN LTD
PLS BE ADV WE CANNOT RET THE FUNDS
FOR USD$7,825.00 AS BANCREDIT CAYM
AN HAS BEEN INTERVENED BY THE CAYMA
N MONETARY AUTHORITIES. CONSEQUENTLY
WE CAN NOT DETERMINE WHEN AND IF
THIS FUNDS WILL BE RETURNED.
REGARDS, T. VAZQUEZ - W/T MANAGER
20031003F6B7222F000044
<1520> IMAD:
<3320> Sender Ref: 002
<1110> Timestamp: 10031557FT01
<1120> DMAD: 20031003F6QCGDSC00001810031557FT01
#####

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**EXHIBIT** D

Brooks Tropical

LAW OFFICES  
**FRESHMAN FRESHMAN & TRAITZ**  
PROFESSIONAL ASSOCIATION

JERALD A. FRESHMAN  
LAWRENCE N. FRESHMAN  
JAMES J. TRAITZ  
NICOLE L. GILMORE  
JEANNE K. SPITAL

9155 SOUTH DADELAND BOULEVARD  
SUITE 1014  
MIAMI, FLORIDA 33156

TELEPHONE (305) 670-1400  
TOLL FREE (800) 317-8525  
FAX (305) 670-1410

May 18, 2005

Via Fax 305-592-5711  
and U.S. Mail

Hemisphere National Bank  
8600 N.W. 36th Street  
Suite 800  
Miami, Florida 33166

Phone 305-341-5300

Re: Community Bank of Florida claim regarding payments to  
Bancredit account holders made through account  
number 010050871 at Hemisphere National Bank

Gentlemen:

Our office represents Community Bank of Florida. I have been advised by my client that Hemisphere National Bank was the correspondent bank for Bancredit and, in this regard, a wire transfer was transmitted to you by my client on behalf of Brooks Tropical for the funds that Community Bank ultimately transferred to Bancredit Cayman Limited for further credit to Cococaribe's account #71521. Your bank advised my client that because of actions taken by the Cayman Islands Monetary Authority, the beneficiary was unable to receive the funds.

I am enclosing the wire transfer sent on 9-11-03 as well as the message from Hemisphere Bank. As reflected in these documents, the outgoing wire transfers where the originator was Brooks Tropical and the beneficiary was Bankcredit Cayman Limited for the account of Cococaribe under the above-referenced account number for \$7,825.00. The originator requested a return of the funds. Community Bank requested that your bank return the funds as soon as possible.

**EXHIBIT E**

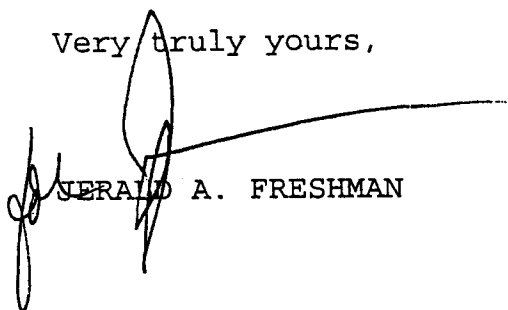
Page 2  
May 18, 2005

Community Bank wishes to secure your assistance with documents to verify that you, in fact, did wire transfer these funds to Bankcredit Cayman Limited. I would appreciate it if you would transmit proof of the transfer to my office within seven (7) days. In the event that the transfer to Bankcredit Cayman Limited was, in fact, not made and that you are still retaining the funds, please return the funds to my office within the aforementioned seven-day time frame.

If you have any questions or desire any additional information, please contact me.

For your easy reference I am also enclosing the Community Bank wire transfer form.

Very truly yours,



GERALD A. FRESHMAN

JAF:lrg  
Enclosures  
cc: Daniel P. Lipe



Ernst & Young  
P.O. Box 1102 GT  
Bermuda House, 4th Floor  
British American Centre  
Dr. Roy's Drive  
Grand Cayman  
Cayman Islands  
British West Indies

Phone: (345) 946-0081  
Fax: (345) 946-0082

June 18, 2004

TO ALL ACCOUNT HOLDERS OF  
BANCREDIT CAYMAN LIMITED  
WITH FUNDS PAYABLE THROUGH  
HEMISPHERE NATIONAL BANK

Dear Sirs

**Bancredit Cayman Limited - In Liquidation ("Bancredit")**

**Re: Payments into your account with Bancredit made through account no. 010050871 at Hemisphere National Bank ("the HNB Account")**

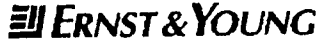
On May 31, 2004 Jim Cleaver and I were appointed Joint Official Liquidator's of Bancredit by order of the Grand Court of the Cayman Islands.

I have been in consultation with my legal advisors in respect of payments made into your account through the HNB Account and how such payments should properly be dealt with. The funds held in the HNB Account have been transferred at my request to a bank account under my control.

Any amounts that were paid through the HNB Account for your account would have been credited to your account at Bancredit. Any credit balance on your account as at the date of liquidation will represent an unsecured claim against Bancredit.

Please note that the above guidelines are general in nature and that all claims will be dealt with on an individual basis. The Liquidators will deal with the adjudication of claims in due course.

In order that your claim may be dealt with as soon as possible upon the liquidation of Bancredit, please ensure that I have received copies of all documentation relating to amounts paid to your account through the HNB Account including the relevant wire instructions. There is no requirement to resend information that has previously been provided to the Joint Controllers.



Ernst & Young  
P.O. Box 1102 GT  
Bermuda House, 4th Floor  
British American Centre  
Dr. Roy's Drive  
Grand Cayman  
Cayman Islands  
British West Indies

Phone: (345) 946-0081  
Fax: (345) 946-0082

June 18, 2004

TO ALL PAYORS TO ACCOUNT HOLDERS OF  
BANCREDIT CAYMAN LIMITED THROUGH  
HEMISPHERE NATIONAL BANK

Dear Sirs

**Bancredit Cayman Limited - In Liquidation ("Bancredit")**

**Re: Payments to Bancredit account holders made through account no. 010050871 at  
Hemisphere National Bank ("the HNB Account")**

Please see the attached letter to certain account holders of Bancredit. The letter explains the Liquidator's position in respect of payments made to Bancredit account holders through the HNB Account.

If you have any queries please write to me at this office or alternatively contact my colleague Andrew Morrison on (345) 814 4019 or [andrew.morrison@ky.ey.com](mailto:andrew.morrison@ky.ey.com).

Yours faithfully  
For and on behalf of  
Bancredit Cayman Limited

Richard E L Fogerty  
Joint Official Liquidator

Brooks Tropicals  
=

LAW OFFICES  
**FRESHMAN FRESHMAN & TRAITZ**  
PROFESSIONAL ASSOCIATION

JERALD A. FRESHMAN  
LAWRENCE N. FRESHMAN  
JAMES J. TRAITZ  
NICOLE L. GILMORE  
JEANNE K. SPITAL

9155 SOUTH DADELAND BOULEVARD  
SUITE 1014  
MIAMI, FLORIDA 33156  
TELEPHONE (305) 670-1400  
TOLL FREE (800) 317-8525  
FAX (305) 670-1410

May 27, 2005

Via Fax 345-946-0082  
and U.S. Mail

Mr. Richard E. L Fogerty  
Joint Official Liquidator  
Ernst & Young  
P. O. Box 102 GT  
Bermuda House, 4th Floor  
British American Centre  
Dr. Roy's Drive  
Grand Cayman Cayman Islands

Re: Bancredit Cayman Limited - In Liquidation  
("Bancredit") Payments to Bancredit account holders  
made through account no. 010050871 at  
Hemisphere National Bank ("the HNB account")

Dear Mr. Fogarty:

Our office represents Community Bank of Florida who transmitted a wire through Hemisphere National Bank on September 11, 2003. I have reviewed the documents and ascertained that the bank in which you have been appointed as a Joint Official Liquidator was placed into Controllership on September 5, 2003 and therefore preceded the wire transfer.

I reviewed your letter of June 18, 2004 advising that as the Liquidator you would be dealing with the claims on an individual basis. You should know that Community Bank of Florida is making a claim by virtue of the fact that the wire transfer was made after the bank was placed in Controllership.

I am enclosing the documents establishing the wire transfer transmitted by Community Bank on behalf of its customer, Brooks Tropicals for the funds that Community Bank

**EXHIBIT G**

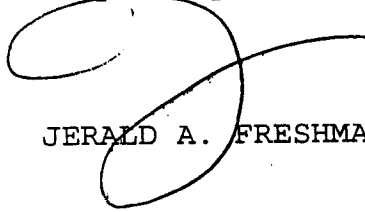
Page 2  
May 27, 2005

ultimately transferred to Bankcredito Cayman Ltd. for further credit to Cococaribe Account number 71521.

I would appreciate it if you would confirm that Bancredit did, in fact, receive the wire transfer funds from Hemisphere National Bank after Bancredit went into Controllership and return the funds represented by the wire transfer to my client. Specifically, you should issue a check payable to Community Bank of Florida and directed to my office at the address listed on this letterhead.

If you have any questions, please contact me office; otherwise, I look forward to receiving confirmation of the recredit.

Very truly yours,



JERALD A. FRESHMAN

JAF:lrg  
Enclosures  
cc: Daniel P. Lipe