

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**IN THE MATTER OF s. 280 of the Companies Act, 1992**

**B E T W E E N:**

- (1) LADY HENRIETTA ST GEORGE**
- (2) JAMES FITZROY, EARL OF EUSTON**
- (3) CHRISTOPHER CAFFERATA**  
**(as executors of the estate of Edward St. George)**
- (5) CAROLINE ST GEORGE**
- (6) INTERCONTINENTAL DIVERSIFIED CORPORATION**  
**(a Cayman Islands company)**

**Plaintiffs**

**- and -**

- (1) SIR JACK HAYWARD**
- (2) HANNES BABAK**
- (3) PORT GROUP LIMITED**
- (4) THE GRAND BAHAMA PORT AUTHORITY LIMITED**
- (5) FIDUCIARY MANAGEMENT SERVICES LIMITED**  
**(a Cayman Islands company)**
- (6) SEASHELL INVESTMENTS LIMITED**

**Defendants**

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**AFFIDAVIT**

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I, **CHARLES GILLIS**, of the City of Fort Lauderdale, Florida, United States of America, **MAKE OATH** and say as follows:

1. I make this Affidavit in support of the Plaintiffs' application for certain relief in relation to Port Group Limited ("PGL") and Grand Bahama Port Authority Ltd ("GBPA"). The facts and matters set out

in this Affidavit are either within my own knowledge and are true, or are known to me from the sources stated and are true to the best of my knowledge and belief.

2. I was involved in the management and operation of PGL and GBPA from the late 1980's until July 2006. From the late 1980s until the end of 2004 I was director of special projects for PGL and GBPA and was responsible for bringing foreign investments to the island of Grand Bahama. I acted as Mr St George's "right hand man", assisting him in attracting investors to Freeport. After that time, from shortly after Mr St George's death in late 2004 until my resignation in July 2006 I also became a director of PGL and for the past year have been a director of Grand Bahama Power Company ("**GB Power**"), the electricity supply company in Grand Bahama.
  
3. I resigned my positions with PGL and GB Power on 31<sup>st</sup> July 2006. The reasons for my resignation were my grave concerns following the apparent appointment of Mr Hannes Babak as chairman of PGL and GBPA and his apparent executive control over those companies. I was in particular concerned about Mr Babak's approach to corporate ethics and the regulatory responsibilities of GBPA, as I shall set out in greater detail below. Although my involvement with PGL and GBPA overlapped with that of Mr Babak for only a short period (a couple of months), I formed the view in that time that Mr Babak was wholly unethical in his approach to corporate governance and his regulatory responsibilities.

## **Mr Babak's plans for the share sale of GB Power**

4. I was involved with Mr Babak during this time through my role as a director of GB Power. GB Power is 50% owned by ICD Utilities Ltd (which is in turn 50% owned by Lady Henrietta St George) and 50% owned by Mirant Bahamas, the subsidiary of a major US corporation. In mid-2006 Mirant announced its intention to sell its entire holding in GB Power.
5. During that time I heard Mr Babak discuss the proposed share sale of GB Power as follows. ICD Utilities has a right of first refusal to purchase the shares held by Mirant in GB Power. Mr Babak discussed the possibility of persuading Lady Henrietta to sell the right of first refusal, and to sell it prematurely; i.e., before Mirant even invited bids and received an offer. At the outset this seemed improper because ICDU's shareholder agreement with Mirant prohibits the hypothecation of ICDU's equity. Further, the companies which would be honestly bidding on these assets would waste millions of dollars in due diligence toward a deal that was already fixed.
6. In this discussion Mr Babak said that this right could be sold to a third party, possibly to an "associate" of his in the cement business (although I understood him to be referring to himself, a nominee, or a business in which he had an interest), and that the purchaser of the right of pre-emption would then purchase Mirant's shares in GB Power and so gain a substantial controlling interest in GB Power. Mr Babak then said in this discussion that the purchaser (i.e. himself) would be able to extract profits from GB Power and inflate its own

profits, by (for example) selling fuel to GB Power at an artificially inflated price and purchasing electricity from GB Power (to produce the cement) at an artificially reduced price, or by GB Power's paying the new cement company some form of phony industrial development incentive. Of course, this would have the effect of prejudicing the interests of the other shareholders of GB Power (including of course Lady Henrietta and employee-shareholders of the company) but that did not appear to concern Mr Babak.

7. I further heard Mr Babak discuss his options if he was unsuccessful in this scheme. He stated that he would persuade Lady Henrietta to sell her shares or some of her shares in GB Power at an artificially deflated price in order to depress the share price of GB Power (I understand that Lady Henrietta was indeed seeking to sell some shares in GB Power at this time). He would then purchase GB Power shares (again, possibly through a nominee) and use this as a means of acquiring control or influence over GB Power. This would then enable him to establish the links with the cement company described above, and effectively transfer profit out of GB Power and into his cement company.
  
8. I further recall hearing Mr Babak discuss ways in which to force GB Power to allow his cement company to generate its own power, contrary to the exclusive right to produce electricity held by GB Power. He discussed the possibility of using rate-setting and other regulatory pressure from GBPA to force GB Power to do this. I understand that Mr Babak was discussing using his position at GBPA to exercise this regulatory control in a way so as to pressure

GB Power into favouring his own company, notwithstanding that this would cause a loss to the shareholders of GB Power.

9. When discussing the above, Mr Babak suggested that I should not worry about the ethical implications as we could “squeeze” GB Power and thus generate lots of money, some of which he would pass on to me. I was put off by this way of doing business.

### **Mr Babak and Tractebel Ltd**

10. I remember hearing Mr Babak discuss using his position at GBPA to further the interests of his “friend’s” cement company on a further occasion, as follows. A new cement production plant would require considerable acreage. For this purpose Mr. Babak wished to acquire land adjacent to Freeport Harbour over which Tractebel Ltd has obtained an option. Tractebel obtained the option on this land in order to seek to construct a Liquefied Natural Gas facility. Tractebel also obtained a licence from GBPA to do so, and made an initial payment of its annual licence fee to GBPA. However, since the LNG project has yet to obtain government approval (the approval process is ongoing) Tractebel has for a period been excused payment of the annual licence fee by GBPA. This arrangement with Tractebel occurred prior to Mr Babak’s involvement with GBPA.
11. In order to exert pressure on Tractebel, Mr Babak has used his position at GBPA to demand payment of the periodic licence fee which had been suspended for some time. This has caused immense consternation with Tractebel and soured its relations with GBPA.

12. Within a very short period of working with Mr Babak I become alarmed at his conduct and decided I no longer wished to work in the same corporate environment as him, or to have my name as a director associated with his actions. I resigned shortly afterwards.

*Charles Gillis*

SWORN to at *Broward County*  
this *1<sup>st</sup>* day of *NOV.*, 2006 )

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**BEFORE ME,**

**NOTARY PUBLIC**

*Gladys Johnston*



GLADYS JOHNSTON  
MY COMMISSION # DD 442468  
EXPIRES: June 20, 2009  
Bonded Thru Budget Notary Services