

**SIXTEENTH ANNUAL**

**WILLEM C. VIS  
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Vienna, Austria  
3 to 9 April 2009

Organized by:

**Association for the organisation and promotion of the  
Willem C. Vis International Commercial Arbitration Moot**

and

**SIXTH ANNUAL**

**WILLEM C. VIS (EAST)  
INTERNATIONAL COMMERCIAL ARBITRATION MOOT**

Hong Kong  
23 - 29 March 2009

Organized by:

**The Chartered Institute of Arbitrators (East Asia Branch)**

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Horace Fasttrack  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo  
Tel. (0) 146-9845  
Telefax (0) 146-9850

August 15, 2008

Arbitration Institute  
of the Stockholm Chamber of Commerce  
P.O. Box 10500  
S-103 21 Stockholm  
Sweden

Subject: Request for Arbitration and Statement of Claim

Dear Sirs:

I represent Mr. Joseph Tisk, doing business as Reliable Auto Imports. Pursuant to Article 2 of the SCC Institute Arbitration Rules Mr. Tisk hereby submits his request for arbitration against UAM Distributors Oceania Ltd and Universal Auto Manufacturers, S.A. The request for arbitration also includes the statement of claim required by Article 24. I enclose a copy of my power of attorney to represent Mr. Tisk in this arbitration.

The total claimed is USD 382,000 plus interest and costs. The registration fee of EUR 1,875 has been transferred to the account of the Stockholm Chamber at the Danske Bank Stockholm. A copy of the transfer order is attached.

Mr. Tisk nominates Ms. Arbitrator 1 as arbitrator in this dispute. Her curriculum vitae is attached.

The place of arbitration is Vindobona, Danubia, which I understand to be acceptable under Article 20 of your Arbitration Rules.

Sincerely yours,  
(Signed)  
Horace Fasttrack

Encl:  
Power of Attorney  
Request for Arbitration and Statement of Claim  
Transfer Order for Registration Fee  
Arbitrator 1 curriculum vitae

Arbitration Institute  
of the Stockholm Chamber of Commerce

Joseph Tisk, doing business as Reliable Auto Imports  
Claimant

v.

UAM Distributors Oceania Ltd  
First Respondent

and

Universal Auto Manufacturers, S.A.  
Second Respondent

Request for Arbitration and Statement of Claim

I. Parties

1. Mr. Joseph Tisk, claimant, doing business under the trade name of Reliable Auto Imports, is located at 114 Outer Ring Road, Fortune City, Mediterraneo. The telephone number is (0) 479 2323. The telefax number is (0) 479 2323 9 and the e-mail address is [office@autoimports.mb](mailto:office@autoimports.mb).
2. Mr. Tisk is represented in this arbitration by Horace Fasttrack, Advocate, 75 Court Street, Capitol City, Mediterraneo. His telephone number is (0) 146-9845. His telefax number is (0) 146-9850 and the e-mail address is [fasttrack@law.mb](mailto:fasttrack@law.mb).
3. Mr. Tisk is a sole trader car dealer in Mediterraneo. He purchases consignments of new and used cars in foreign countries and imports them for sale in Mediterraneo. He has all of the required licenses and permits for his activities.
4. UAM Distributors Oceania Ltd (hereafter UAM), first respondent, is a corporation organized in Oceania. It is located at 125 Ocean Boulevard, Port City, Oceania. The telephone number is (0) 253 6814. The telefax number is (0) 253 6817 and the e-mail address is [sales@uamdo.oc](mailto:sales@uamdo.oc).
5. Universal Auto Manufacturers, S.A. (hereafter "Universal"), second respondent, is a corporation organized in Equatoriana. It is located at 47 Industrial Road, Oceanside, Equatoriana. The telephone number is (0) 927 8275. The telefax number is (0) 927 8280 and the general e-mail address is [info@uam.eq](mailto:info@uam.eq).
6. Universal is a major manufacturer of automotive products. It sells through subsidiaries, main importers and franchised dealers in more than 120 countries. For each country where Universal has no importer and no franchised dealership network, it allocates it to one or more importers in an appropriate one of the 120, the allocation generally taking into account geographical proximity.

7. UAM was at the time of the events leading to this arbitration the authorized importer into Oceania of automotive products manufactured by Universal. It had a non-exclusive right to sell cars into Mediterraneo, where Universal has no franchise, service or other representation.

8. Insolvency proceedings were commenced in regard to UAM on April 9, 2008. The insolvency representative appointed by the competent court in Oceania is Ms. Judith Powers, 450 Center Street, Port City, Oceania. The telephone number is (0) 856 45 90. The telefax number is (0) 856 45 99 and her e-mail address is [Judith.powers@insolvency.oc](mailto:Judith.powers@insolvency.oc).

## II. Facts

9. Universal developed a new model of its Tera small car, which received enthusiastic reviews in the trade press. Mr. Tisk negotiated a contract with UAM to purchase 100 of the Tera cars, which was signed on January 18, 2008. (Claimant's Exhibit No. 1) The cars were to be transported in a number of separate consignments from Oceania to Mediterraneo by ship as space was available in order to reduce shipping costs. The contract price was USD 7,600 per automobile CIF Fortune City, Mediterraneo, for a total of USD 760,000. Under the payment term in the contract 50% (USD 380,000) was paid as a deposit on January 23, 2008; 25% was due 15 days after arrival of the last shipment of cars to Mediterraneo and the remaining 25% 60 days after arrival.

10. The first consignment of 25 cars were shipped on February 6, 2008, and arrived in Fortune City on February 11, 2008. They cleared customs on February 18, 2008, and they were available to Mr. Tisk that day for transport to his showroom and the area where they would be stored awaiting sale.

11. When the cars were driven from the port to the showroom and to the storage area it was noted that the engines did not run smoothly with such severe misfiring that they were practically undriveable. Since Mr. Tisk operates on a sales-only basis, which is common in Mediterraneo, he employs no mechanics or other service personnel. If he needs a mechanic, he hires one. In this case he contacted the mechanic that he had used in the past when he had had a need for service on a car manufactured by Universal. In the evening of February 21, 2008, the mechanic inspected ten of the cars to see if he could determine why the engines were not running smoothly and whether he could remedy the problem. He reported that he was not able to determine what was wrong with the cars, though he did suggest that an Engine Control Unit (ECU) problem seemed likely.

12. Mr. Tisk telephoned Mr. Samuel High, Sales Manager of UAM, first thing the following morning to report the situation. Mr. High replied that this was the first time he had ever heard of any such difficulty with the Tera cars. He said that he would consult with his service personnel and, if necessary, with Universal. Mr. Tisk confirmed the telephone call by letter sent by e-mail. (Claimant's Exhibit No. 2)

13. On February 27, 2008, Mr. Tisk received a telephone call from Mr. High in which he said that his service personnel did not know what the problem was, although an "ECU" issue seemed a strong possibility; another possibility was a fuel pressure issue. Mr. High had had several telephone conversations with Mr. Harold Steiner, Regional Manager for Universal, and with key Universal technical personnel. Mr. Tisk could expect a telephone call from Mr. Frank Jones, an

engineer in the Tera development team at Universal. The telephone call from Mr. Jones took place later that day. Mr. Jones asked Mr. Tisk to describe exactly how the cars sounded when the engine was running. At the end of the conversation he said that there were several possible sources of the problem. The most likely was that the ECU was not working properly. Although that seemed the most logical explanation, it would be very surprising. The ECUs that had been used in the cars shipped to Mediterraneo had been manufactured by Bering Engine Controls, which he said was a very reliable company. However, the cars Mr. Tisk had received were from the first production run of Tera cars using those particular ECUs.

14. When Mr. Tisk asked how long it would take to repair or replace the ECUs, Mr. Jones replied that first it would be necessary to see whether he was correct in his surmise that it was the ECU that was giving rise to the problem. That could only be done by examining the cars shipped to Mediterraneo. The procedure that would be required to resolve the issue was potentially somewhat complicated. While the ECU itself was readily accessible, some of the sensors it monitored were not.

15. Mr. Jones said that he would report the contents of the telephone conversation to Mr. Steiner. At Mr. Tisk's request Mr. Jones confirmed the procedure that might have to be followed in a message the same day. (Claimant's Exhibit No. 3)

16. The following day, February 28, 2008, Mr. Steiner sent a message in which he informed Mr. Tisk that he had discussed the matter with both Mr. Jones and with Mr. High of UAM Distributors Oceania. UAM was responsible to Mr. Tisk for the condition of the cars. However, since the procedure already outlined by Mr. Jones required special equipment not available in either Mediterraneo or Oceania and because Universal did not wish there to be any doubts about the reliability of the Tera cars, Universal would undertake the repairs without admission of liability. Mr. Tisk could expect the Universal technical personnel to arrive within three days. The necessary tools and equipment would be shipped by air to Mediterraneo so that the Universal personnel would be able to start immediately. (Claimant's Exhibit No. 4)

17. Mr. Tisk immediately sent a message to Mr. Steiner asking just how long it would take to fix the cars. (Claimant's Exhibit No. 5) Mr. Steiner replied that he could not be sure until his personnel had arrived, identified the actual fault and repaired a sufficient number of the cars to be sure. However, he was sure that it would not be very long. (Claimant's Exhibit No. 6) Mr. Tisk telephoned Mr. Steiner to attempt to get a more precise answer to the question as to how long it would take before he would have cars ready for sale. Mr. Steiner told him on the telephone that he would probably start having cars ready for sale within one week. When Mr. Tisk asked Mr. Steiner to guarantee that the first of the cars would be ready for sale within one week, Mr. Steiner answered that it would be impossible to guarantee such a result, but he was sure it would happen. Mr. Tisk then asked whether Mr. Steiner could guarantee that there would be cars for sale within ten days, Mr. Steiner replied that until at least one of the cars had been fixed, it could not be known for certain that the problem could be fixed. If the ECUs and sensors had to be replaced, which Mr. Jones had assured him was unlikely, it would take more time. If there was some more fundamental problem, it might take longer. When Mr. Tisk mentioned the threatened airport strike in Mediterraneo, Mr. Steiner said he hoped it would not occur, since that would obviously delay the arrival of the Universal personnel and equipment.

18. This put Mr. Tisk in a difficult position. He had already paid USD 380,000 to UAM for the Tera cars. Since the cars were not fit to be sold, he could not expect any income from them until they were repaired. Mr. Steiner could not even guarantee that the cars could be fixed, much less in what period of time they would be fixed. If the cars could not be fixed and there was no income from them, Mr. Tisk faced the likelihood of becoming insolvent unless he could recoup the USD 380,000. In the meantime the Tera cars were occupying expensive storage space.

19. Mr. Tisk had been approached on February 12, 2008, by Patria Importers, Ltd, hereafter Patria, with an offer of 20 new Indo cars. The cars could be shipped immediately and would arrive within five days. (Claimant's Exhibit No. 7) The Indo cars are in the same class of automobile as the Tera. Patria had the same type of arrangement with the manufacturer, World Wide Auto, S.A., that UAM had with Universal. Mr. Tisk had previously purchased Indo cars from Patria and had sold them successfully. Nevertheless, with the receipt of the Tera cars on February 11, Mr. Tisk was not in a position to accept Patria's offer and he rejected the Patria offer on February 19, 2008. (Claimant's Exhibit No. 8)

20. When Mr. Tisk received the information from Mr. Steiner that there could be no guarantee as to when or if the Tera cars he had received could be fixed and ready for sale, he decided that, if Patria would offer him acceptable payment terms, he would accept the offer and terminate his contract with UAM. After a telephone conversation with Mr. Rudolph Holzman, General Manager of Patria, in which generous payment terms were offered, Mr. Tisk accepted the offer for the Indo cars on February 29, 2008. (Claimant's Exhibit No. 9)

21. The same day he sent a message to Mr. High at UAM to notify him that he was canceling the contract. In the message Mr. Tisk indicated that he would arrange for the storage of the cars that had already arrived until UAM was able to arrange for their shipment out of Mediterraneo; the storage to be for UAM's account. Mr. High should cancel any plans he might have had to ship the remaining 75 cars. He also demanded return of his down payment of USD 380,000. (Claimant's Exhibit No. 10) He then sent a message to Mr. Steiner to notify him of the cancellation of the contract with UAM so that Mr. Steiner could cancel his plans to send service personnel and equipment to Mediterraneo. (Claimant's Exhibit No. 11)

22. Universal did not send the service personnel and equipment to Mediterraneo. The defective Tera cars were shipped from Mediterraneo to Universal in Equatoriana on May 17, 2008.

23. On June 19, 2008, Mr. Steiner sent a letter to Mr. Tisk stating that all 25 of the Tera cars that had been returned to Universal had been repaired. He stated that they also could have been repaired while they were in Mediterraneo. (Claimant's Exhibit No. 12)

24. The following day, June 20, 2008, Mr. Tisk replied that he was pleased to learn that the cars had been repaired. It was unfortunate that Mr. Steiner could not have given a guarantee of such a result when he had asked for it. He would have been pleased to have had the Tera cars for sale. However, the entire tone of the exchange had convinced him at the time that it was fruitless to count on repair of the cars in time for him to continue his business. He reiterated his request for the return of the USD 380,000. (Claimant's Exhibit No. 13)

### III. Applicable law

25. The contract has no choice of law clause. Equatoriana, Mediterraneo, Oceania and Danubia are all party to the United Nations Convention on Contracts for the International Sale of Goods (CISG).

26. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments. Equatoriana, Mediterraneo, Oceania and Danubia are all party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

### IV. Arbitration Jurisdiction

27. The arbitration clause is found in paragraph 13 of the contract. It provides as follows:

“Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal will consist of three arbitrators. The seat of arbitration shall be Vindobona, Danubia. The language to be used in the arbitral proceedings will be English.”

28. On April 11, 2008, Mr. Tisk received a letter from Ms. Judith Powers. (Claimant’s Exhibit No. 14) The letter indicated that UAM had entered insolvency procedures on April 9, 2008, and she had been appointed by the court in Oceania as the Insolvency Representative. The letter, which was a form letter sent to all parties that had contracted with UAM, stated that under the law of Oceania any forum selection clause in any contract with UAM, including an arbitration clause, was automatically terminated. According to the letter, all claims against the insolvent UAM had to be filed with her. Furthermore, under the insolvency law of Oceania any claims against the insolvent UAM would be adjudicated in the court charged with the insolvency procedures. In the case of UAM the court charged with the insolvency procedures was the district court in Port City, Oceania.

29. Although the arbitration agreement may be abrogated in respect of the law of Oceania and in the insolvency proceedings in Oceania, the law of Oceania does not govern arbitral proceedings in Danubia. Therefore, the arbitration agreement is still in force in Danubia. Mr. Tisk would be able to enforce any award in his favor in other countries that are party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards where UAM may have assets. It is believed that UAM does have assets in other countries that will not be subject to the insolvency proceedings in Oceania.

30. Universal is bound by the arbitration clause in the contract between Mr. Tisk and UAM. UAM was a joint venture between Oceania Partners and Universal to market cars manufactured by Universal in the region comprising the countries of Oceania, Patria and Mediterraneo. It has been widely reported in the automotive trade press that Universal owned 10% of UAM with Oceania Partners owning the remaining 90%. It had also been widely reported that, because of conflicts between Universal and Oceania Partners, Universal had been considering withdrawing its support of UAM. On April 14, 2008, five days after the commencement of the insolvency



procedures in regard to UAM, Mr. Harold Steiner was quoted in the Business News of Equatoriana that Universal was “fortunate to have made new arrangements to market our products throughout the area previously serviced by UAM. Our local partners in Patria Importers have long experience in the automotive industry.” (Claimant’s Exhibit No. 15) In an interview published a week later Mr. Steiner stated that Universal and UAM had worked closely together for fifteen years developing the market for Universal products. He went on to say that “we (Universal) have been fortunate to have been able to establish a new marketing activity for Oceania and Mediterraneo based in Patria.” (Claimant’s Exhibit No. 16)

31. The close connection between Universal and UAM is also shown by the extent to which Universal was prepared to send its personnel and equipment to Mediterraneo to attempt to fix the defective cars shipped to Mr. Tisk.

32. Consequently, Universal is bound by the contract dated January 18, 2008, between Mr. Tisk and UAM, including the arbitration agreement contained therein.

#### V. Substantive Legal Conclusions

33. The sale of cars that were so defective that they could not be resold to the public and justifiable doubts that they could be repaired within a time that would not seriously threaten his financial position resulted “in such detriment to [Mr. Tisk] as substantially to deprive him of what he [was] entitled to under the contract ... .” CISG, Article 25. Universal was the manufacturer of the cars. It had created a fundamental breach of the contract and Mr. Tisk was justified in avoiding it. CISG, Article 49(1)(a).

#### VI. Appointment of Arbitrator

34. The Claimant appoints the following individual as its party-appointed arbitrator:

Ms. Arbitrator 1  
14 Advocate Way  
Oceanside, Mediterraneo

Tel: (0) 614-1570  
Fax: (0) 614-1571  
Email: arbitrator1@lawyers.mb

#### VII. Relief

35. Joseph Tisk, doing business as Reliable Auto Imports, requests the Tribunal to find:

- that the Tribunal has jurisdiction to consider the dispute between Joseph Tisk doing business as Reliable Auto Imports as claimant and UAM Distributors Oceania Ltd and Universal Auto Manufacturers, S.A. as respondents;
- that Universal is liable for the breach by UAM of the contract of sale dated January 18, 2008;
- that there was a fundamental breach of the contract;

- that Mr. Tisk was justified in avoiding the contract on February 29, 2008;
- that UAM Distributors Oceania Ltd and Universal Auto Manufacturers, S.A. are jointly and individually responsible to reimburse Mr. Tisk USD 380,000;
- that UAM Distributors Oceania Ltd and Universal Auto Manufacturers, S.A. are jointly and individually liable for the USD 2,000 storage costs;
- that Mr. Tisk should recover interest and arbitration costs.

36. Mr. Tisk requests the Tribunal to order UAM Distributors Oceania Ltd and Universal Auto Manufacturers, S.A. jointly and individually

- to pay Mr. Tisk the sum of USD 382,000,
- to pay interest on the said sum from January 23, 2008 to the date of payment, and
- to pay the costs of arbitration.

(Signed)

Horace Fasttrack

August 15, 2008

## Claimant's Exhibit No. 1

## Contract Excerpts

1. UAM Distributors Oceania Ltd will sell and Mr. Joseph Tisk, doing business as Reliable Auto Imports, will purchase 100 new 2008 model Tera cars.
2. The price is USD 7,600 per automobile (USD 760,000) CIF Incoterms 2000 Fortune City, Mediterraneo. Payment of fifty percent (50%) as down payment prior to shipment. Twenty-five percent (25%) due 15 days after arrival of the last shipment of cars to Mediterraneo. The remaining 25% is due 60 days after arrival.
3. Partial shipment allowed. Shipment from Oceania to Mediterraneo as space is available.

\*\*\*

13. Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal will consist of three arbitrators. The seat of arbitration shall be Vindobona, Danubia. The language to be used in the arbitral proceedings will be English.

\*\*\*

(Signed)  
Samuel High  
Sales Manager  
UAM Distributors Oceania Ltd

(Signed)  
Joseph Tisk  
General Manager  
Reliable Auto Imports

January 18, 2008

Claimant's Exhibit No. 2

Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo  
Tel. (0) 479 2323  
Telefax (0) 479 2323 9  
[office@autoimports.mb](mailto:office@autoimports.mb)

February 22, 2008

Mr. Samuel High  
Sales Manager  
UAM Distributors Oceania Ltd  
125 Ocean Boulevard  
Port City, Oceania

Sent by e-mail

Re: Engine problems with Tera cars

Dear Mr. High:

This is to confirm our telephone conversation earlier this morning.

When the Tera cars were driven from the port to my place of business the engines were not running smoothly and, in fact, misfired so badly that they were close to undriveable. My mechanic inspected ten of them but he could not determine the cause of the problem. There are no other resources available to me in Mediterraneo to diagnose the difficulty.

I look forward to learning of the response from your service personnel and/or Universal.

It is important that these cars are available for sale very soon. I have almost no other stock to place on the showroom floor and obviously no Tera cars. I look forward to your prompt response.

Yours sincerely,  
(Signed)  
Joseph Tisk  
General Manager

## Claimant's Exhibit No. 3

Universal Auto Manufacturers, S.A.  
47 Industrial Road  
Oceanside, Equatoriana  
Tel. (0) 927 8275  
Telefax (0) 927 8280  
[info@uam.eq](mailto:info@uam.eq)

Frank Jones  
Chief Engineering Officer

February 27, 2008

Mr. Joseph Tisk, General Manager  
Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo

Sent by e-mail

Repairing ECU in Tera cars

Dear Mr. Tisk:

I am quite surprised that you are having the difficulties with the Tera cars that you outlined to me on the telephone. As you know, the Tera has received very favorable reviews. We consider it to be a well engineered automobile.

From your description of the way in which the engine is running, I believe that one possibility is that the problem may lie in the lead that takes a sensing from the flywheel to the Engine Control Unit that gives the revolution counter its feed data. If a "dry" electrical connection has developed, the ECU would have intermittent problems leading to the situation you described. The ECUs that were used in the cars shipped to you were manufactured by Bering Engines Controls, which is a very reliable company. However, the cars shipped to you were in the first production run using those particular ECUs and it is always possible that problems may have developed.

As I told you on the telephone, since ECUs and attendant sensors used in modern cars are so reliable, it was not thought necessary to make any part of the system easily accessible for repair. The procedure to diagnose the problem and fix it, if it is indeed what I suspect, is somewhat complicated. It would go like this:

- (i) It would be necessary to put each vehicle on a lift in order to gain access to the aerodynamic and underbody water shielding in order to remove them.
- (ii) The vehicle would then need to be set at an appropriate height to gain access with specialized hand tools to take off the anti-theft shielding;

- (iii) Access to the engine sensors would require removal of engine and transmission and that would require purpose-built cradles.
- (iv) Further specialized tooling would be required to remove the affected ECU and engine sensors from the vehicle. At that point it would be possible to determine whether it would be possible to reprogram the ECUs (“reflashed” is the technical term) or whether it would be necessary to replace them and/or the sensors.
- (v) Any replacement ECU would be delivered with a blank memory and would then need reassembling into the vehicle. A Universal-trained technician with specialized computer equipment would then have to attach to the ECU and select the correct program for vehicle derivative and emissions level etc. of the fitted engine type; the program would then be ‘flashed’ to the ECU
- (vi) The anti theft and other shields could then be replaced and the aerodynamic undershields refitted.

If the problem is only within the ECU itself, investigation and rectification would be much simpler (no engine removal etc) but we do not know yet whether this is the case. What I have outlined above should be regarded as a “worst case” scenario.

I will report our conversation to Mr. Steiner, who will be responsible for the arrangements.

Sincerely,  
(Signed)  
Frank Jones

## Claimant's Exhibit No. 4

Universal Auto Manufacturers, S.A.  
47 Industrial Road  
Oceanside, Equatoriana  
Tel. (0) 927 8275  
Telefax (0) 927 8280  
[info@uam.eq](mailto:info@uam.eq)

Harold Steiner  
Regional Manager  
Oceania, Mediterraneo, Patria

February 28, 2008

Mr. Joseph Tisk, General Manager  
Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo

Sent by e-mail

Repairing ECU in Tera cars

Dear Mr. Tisk:

I have discussed the problems you have encountered with the Tera cars shipped to you with Frank Jones and with Mr. High at UAM Distributors Oceania.

UAM is, of course, responsible to you for the condition of the Tera cars it has sold to you. However, the procedure outlined to you by Mr. Jones on the telephone, and confirmed in his letter sent to you by e-mail yesterday, calls for special equipment and specially trained personnel that UAM does not have.

Universal does not wish you to have any doubts about either the quality of the Tera brand of our cars or of the intention of Universal to stand behind its product. Therefore, we have agreed with Mr. High that Universal would undertake the repairs without admission of liability.

Our technical personnel will arrive in three days. The necessary tools and equipment will be shipped by air to Mediterraneo so that our personnel can begin immediately.

We are pleased that you have chosen to sell the Tera automobile in Mediterraneo and look forward to a long and mutually profitable relationship with you.

Yours sincerely,  
(Signed)  
Harold Steiner

Claimant's Exhibit No. 5

Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo  
Tel. (0) 479 2323  
Telefax (0) 479 2323 9  
[office@autoimports.mb](mailto:office@autoimports.mb)

February 28, 2008

Mr. Harold Steiner  
Universal Auto Manufacturers, S.A.  
47 Industrial Road  
Oceanside, Equatoriana

Sent by e-mail

Repairing ECU in Tera cars

Dear Mr. Steiner:

Thank you for your message. I am very pleased that Universal will undertake the repairs and that your technical personnel will arrive in Mediterraneo within three days.

I would ask you just how long it will take for the cars to be fixed.

Yours sincerely,  
(Signed)  
Joseph Tisk  
General Manager



## Claimant's Exhibit No. 6

Universal Auto Manufacturers, S.A.  
47 Industrial Road  
Oceanside, Equatoriana  
Tel. (0) 927 8275  
Telefax (0) 927 8280  
[info@uam.eq](mailto:info@uam.eq)

Harold Steiner  
Regional Manager  
Oceania, Mediterraneo, Patria

February 28, 2008

Mr. Joseph Tisk, General Manager  
Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo

Sent by e-mail

Repairing ECU in Tera cars

Dear Mr. Tisk:

I appreciate the concerns you have expressed in your message to me today. I wish to assure you that everything possible will be done to speed the repair of the cars sent to you.

You have asked me how long it will take for the cars to be fixed. It is not possible to answer that question with any precision until our personnel have arrived and fixed several of the cars. However, I am sure that it will not be very long before you will have the Tera automobile on your showroom floor.

Yours sincerely,  
(Signed)  
Harold Steiner

## Claimant's Exhibit No. 7

Mr. Rudolph Holzman  
General Manager  
Patria Importers, Ltd  
14 Portside Quay  
Scania, Patria

February 12, 2008

Mr. Joseph Tisk, General Manager  
Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo

Indo cars

Dear Mr. Tisk:

You have successfully marketed the Indo automobile in Mediterraneo in the past. I am sure that you would wish to have a further opportunity to do so.

We have on hand 20 Indo cars that we would be prepared to ship to you immediately on receipt of your order.

I look forward to your positive reply and to the continuation of our mutually advantageous relationship.

Sincerely,  
(Signed)  
Rudolph Holzman

## Claimant's Exhibit No. 8

Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo  
Tel. (0) 479 2323  
Telefax (0) 479 2323 9  
[office@autoimports.mb](mailto:office@autoimports.mb)

February 19, 2008

Mr. Rudolph Holzman  
General Manager  
Patria Importers, Ltd  
14 Portside Quay  
Scania, Patria

Indo offer

Dear Mr. Holzman:

Your letter of February 12, 2008, has been received with appreciation.

The Indo cars have indeed sold well in Mediterraneo. I am sure I will be ordering more of them from you in the future.

However, it appears to me that at present further sales of the Indo would be slow. As soon as I see the market improving, I will immediately turn to you for further supply.

Please do not take this in any way as a rejection of the Indo or of our relationship. I value both highly.

Very sincerely yours,  
(Signed)  
Joseph Tisk  
General Manager

Claimant's Exhibit No. 9

Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo  
Tel. (0) 479 2323  
Telefax (0) 479 2323 9  
[office@autoimports.mb](mailto:office@autoimports.mb)

February 29, 2008

Mr. Rudolph Holzman  
General Manager  
Patria Importers, Ltd  
14 Portside Quay  
Scania, Patria

Sent by e-mail

Indo purchase

Dear Mr. Holzman:

As I told you on the telephone, I am now prepared to accept your offer of the 20 Indo cars.

I also appreciate that you are flexible about the payment terms. I can handle a 10% down payment. Send me a contract and an invoice and the payment will be made immediately.

Very sincerely yours,  
(Signed)  
Joseph Tisk  
General Manager

## Claimant's Exhibit No. 10

Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo  
Tel. (0) 479 2323  
Telefax (0) 479 2323 9  
[office@autoimports.mb](mailto:office@autoimports.mb)

February 29, 2008

Mr. Samuel High  
Sales Manager  
UAM Distributors Oceania Ltd  
125 Ocean Boulevard  
Port City, Oceania

Sent by e-mail

Re: Cancellation of contract

Dear Mr. High:

As you have undoubtedly been made aware by Mr. Steiner, he could not guarantee that the problem with the Tera cars could be fixed promptly. He could not even guarantee that it could be fixed at all. The very real possibility that there will be a strike at the airport in Mediterraneo making it impossible for the Universal personnel and equipment to arrive just aggravates matters.

I do not need to dwell on my situation. It is simply not possible for me to exist without product that I know is ready for sale. Unfortunately, that is not the case with the Tera cars that you sent to me.

I am forced therefore to cancel the contract immediately. The 25 cars you have already shipped to me will be stored at your expense until you have arranged for them to be shipped from Mediterraneo. You should cancel any arrangements you may have made to ship the remaining 75 cars. Please return the USD 380,000 down payment as soon as possible.

I am very sorry for this development, but I really have no other choice.

Sincerely yours,  
(Signed)  
Joseph Tisk  
General Manager

Claimant's Exhibit No. 11

Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo  
Tel. (0) 479 2323  
Telefax (0) 479 2323 9  
[office@autoimports.mb](mailto:office@autoimports.mb)

February 29, 2008

Mr. Harold Steiner  
Regional Manager  
Universal Auto Manufacturers, S.A.  
47 Industrial Road  
Oceanside, Equatoriana

Sent by e-mail

Re: Cancellation of contract

Dear Mr. Steiner:

I have just sent a message to Mr. High at UAM Oceania in which I informed him that I was cancelling the contract for 100 Tera cars.

Your inability to guarantee me that the Tera cars would be fixed promptly, or even that they could be fixed at all, has left me no alternative. I cannot afford to wait with this uncertainty.

I have also informed Mr. High that the 25 cars already sent to me would be stored at his expense until he had arranged for them to be shipped from Mediterraneo.

Under the circumstances there is no reason for you to send your personnel or equipment to Mediterraneo.

I regret this development.

Sincerely yours,  
(Signed)  
Joseph Tisk  
General Manager

## Claimant's Exhibit No. 12

Universal Auto Manufacturers, S.A.  
47 Industrial Road  
Oceanside, Equatoriana  
Tel. (0) 927 8275  
Telefax (0) 927 8280  
[info@uam.eq](mailto:info@uam.eq)

Harold Steiner  
Regional Manager  
Oceania, Mediterraneo, Patria

June 19, 2008

Mr. Joseph Tisk, General Manager  
Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo

By e-mail

Tera cars

Dear Mr. Tisk:

The Tera cars that were shipped to us on May 17, 2008 arrived in Oceanside on June 5.

We immediately inspected them to determine the cause of the problem that you had experienced with them. As Mr. Jones had thought might be the case, the problem related to the ECU. However, it was not the ECU itself but the lead that takes a sensing from the flywheel to the ECU that gives the revolution counter its feed data had developed a 'dry' electrical connection. That is what caused the ECU to have the intermittent problems when you drove the cars.

Although the procedure for accessing the ECU was somewhat complicated, as Mr. Jones had indicated, the entire procedure was not difficult and all 25 of the cars were quickly fixed. It is unfortunate that you were not willing to wait for our technical personnel before you breached the contract you had with UAM.

It is necessary that I report our findings to Ms. Judith Powers, the Insolvency Representative for UAM. I cannot comment on your prospects of claiming the USD 380,000 in the UAM insolvency proceedings, but informally, I believe that it may be difficult.

In spite of these developments, I look forward to a future order from you for the Tera from Patria Importers, our new authorized importer for the region.

Yours sincerely,  
(Signed)  
Harold Steiner

## Claimant's Exhibit No. 13

Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo  
Tel. (0) 479 2323  
Telefax (0) 479 2323 9  
[office@autoimports.mb](mailto:office@autoimports.mb)

June 20, 2008

Mr. Harold Steiner  
Regional Manager  
Universal Auto Manufacturers, S.A.  
47 Industrial Road  
Oceanside, Equatoriana

Sent by e-mail

Re: Tera cars

Dear Mr. Steiner:

I am in receipt of the letter you sent me yesterday.

I am pleased to learn that the difficulty with the Tera cars sent to me could be repaired so easily and quickly.

It is unfortunate that you were not able to give me the assurances that I needed at the time I asked for them. The situation I faced was one of great uncertainty. Most of my working capital was tied up in those cars. You know that the banking facilities in Mediterraneo are not what they are in Equatoriana. They simply do not finance working capital. If I had waited and you had not been able to repair the cars, or to have done so quickly, it could have been the end of my business here.

It does little good now after the fact to tell me that all would have been fine if I had waited. That was not a viable option at the time; isn't hindsight wonderful?

I will continue to claim return of the entire USD 380,000 from one source or another.

Sincerely yours,  
(Signed)  
Joseph Tisk  
General Manager



## Claimant's Exhibit No. 14

Ms. Judith Powers  
450 Center Street  
Port City, Oceania  
Tel. (0) 856 45 90  
Telefax (0) 856 45 99  
Judith.powers@insolvency.oc

April 11, 2008

Mr. Joseph Tisk  
Reliable Auto Imports  
114 Outer Ring Road  
Fortune City, Mediterraneo

Insolvency Proceedings in respect of UAM Distributors Oceania Ltd

Dear Mr. Tisk:

This is to inform you that insolvency proceedings were commenced on April 9, 2008, in respect of UAM Distributors Oceania Ltd. I was appointed the representative in insolvency by the Regional Court of Port City, in which the insolvency proceedings will be conducted.

All claims that you may have against the insolvent should be presented to me within sixty days from the opening of the proceedings. The requisite forms are attached.

Any claims that the insolvent may have against you will also be adjudicated in the Regional Court in which the proceedings are conducted. You will be given due notice of any such claim and will be entitled to be heard and represented in court.

As a consequence of the law of Oceania, the opening of the insolvency proceedings automatically voids any choice of forum clause, including any arbitration agreement, that may exist in any contract between you and the insolvent.

I stand ready to give you such assistance, including where to find more information about the insolvency law of Oceania, as I am permitted to give.

Your sincerely,  
(Signed)  
Judith Powers  
Certified Insolvency Representative

## Claimant's Exhibit No. 15

Excerpt from article in Business News of Equatoriana, dated April 14, 2008

“As previously reported, UAM Distributors Oceania Ltd entered insolvency proceedings on April 9. This left Universal Auto Manufacturers without a distributor in Oceania. UAM was also responsible for Mediterraneo and Patria. Universal was quick to react to this development and has established a new joint venture in Patria to service the area. Mr. Harold Steiner, Universal's Regional Manager, stated `We are fortunate to have made new arrangements to market our product throughout the area previously serviced by UAM. Our local partners in Patria Importers have long experience in the automotive industry.’”

## Claimant's Exhibit No. 16

Article in Business News of Equatoriana, dated April 21, 2008

An Interview with Universal Official

Business News interviewed Harold Steiner, Universal Regional Manager for Oceania and adjacent countries. Following is an excerpt from that interview.

**Business News:** *UAM Distributors was your authorized distributor for Oceania for many years.*

**Steiner:** We worked closely together for the past fifteen years developing the market for Universal products in that part of the world. It is a great loss that they have become insolvent.

**Business News:** *Your partner in UAM, Oceania Partners, has asserted that Universal interfered in the operations of UAM. There was an implication that this was the cause of the insolvency.*

**Steiner:** About a year ago Oceania Partners decided that UAM should undertake certain activities that we thought would be detrimental. We attempted to bring about a change of course. We had some influence in the company, but we did not succeed. It was those attempts on our part that were termed "interference".

**Business News:** *The insolvency of UAM distributors leaves Universal without an authorized distributor in Oceania.*

That is correct. We have been fortunate to have been able to establish a new marketing outlet for Oceania and Mediterraneo based in Patria. We hope to have the same success with that enterprise that we had had with UAM for the past fifteen years.



**ARBITRATION INSTITUTE**  
**OF THE STOCKHOLM CHAMBER OF COMMERCE**

20 August 2008

**Joseph Tisk**  
Advocate Horace Fasttrack

*By fax*

Dear Sir,

**Arbitration V (000/2008) Joseph Tisk. ./ 1.UAM Distributors Oceania Ltd. 2. Universal Auto Manufacturers, S.A.**

The Arbitration Institute of the Stockholm Chamber of Commerce (the SCC) hereby confirms receipt of your Request for Arbitration and the Registration Fee.

The Request for Arbitration has been forwarded to UAM Distributors Oceania Ltd. and to Universal Auto Manufacturers, S.A.

Yours sincerely,

ARBITRATION INSTITUTE OF THE  
STOCKHOLM CHAMBER OF COMMERCE

*Legal Counsel, SCC*



**ARBITRATION INSTITUTE**  
OF THE STOCKHOLM CHAMBER OF COMMERCE

Stockholm, 20 August 2008

**UAM Distributors Oceania Ltd.**

*By courier/By registered mail*

**Universal Auto Manufacturers, S.A.**

Dear Sirs,

**Arbitration V (000/2008) Joseph Tisk. ./.** 1. **UAM Distributors Oceania Ltd.** 2. **Universal Auto Manufacturers, S.A.**

Joseph Tisk has requested arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the SCC).

You are, in accordance with article 5 of the SCC Rules, requested to submit an Answer to the SCC by 4 September 2008, at the latest.

The SCC notes that three arbitrators shall be appointed pursuant to the arbitration agreement of the parties. Following articles 5 (1) and 13(4) the Answer shall include contact details of the arbitrator jointly appointed by the Respondents.

The Answer may be brief.

You are also kindly asked to submit to the SCC a Power of Attorney for your counsel, if any.

Yours sincerely,

ARBITRATION INSTITUTE OF THE  
STOCKHOLM CHAMBER OF COMMERCE

*Legal Counsel, SCC*

Copy: Advocate Horace Fasttrack

Encls: Request for arbitration

The Rules of the Arbitration Institute of the Stockholm Chamber of Commerce  
(SCC Arbitration Rules)

Information Brochure about the SCC

Ms. Judith Powers  
450 Center Street  
Port City, Oceania  
Tel. (0) 856 45 90  
Telefax (0) 856 45 99  
Judith.powers@insolvency.oc

August 25, 2008

Arbitration Institute  
of the Stockholm Chamber of Commerce  
P.O. Box 10500  
S-103 21 Stockholm  
Sweden

**Arbitration V (000/2008) Joseph Tisk. ./ 1.UAM Distributors Oceania Ltd. 2. Universal Auto Manufacturers, S.A.**

Dear Sirs:

I am in receipt of your letter to UAM Distributors Oceania Ltd, dated August 20, 2008, in which you informed it of the arbitration claim filed against it in the Arbitration Institute of the Stockholm Chamber of Commerce.

As indicated in my letter of April 11, 2008 to Mr. Joseph Tisk, copy attached, insolvency proceedings were instituted in respect of UAM Distributors Oceania Ltd on April 9, 2008. As of that date all forum selection clauses, including arbitration agreements, in all contracts to which UAM Distributors Oceania Ltd was a party, were automatically voided by virtue of the Law on Insolvency of Oceania. Consequently, as Insolvency Representative in the insolvency proceedings in regard to UAM Distributors Oceania Ltd, neither I nor UAM will participate neither in the appointment of an arbitrator in this matter or in any arbitral proceedings that might be conducted.

I trust that your institution will act accordingly.

Your sincerely,  
(Signed)  
Judith Powers  
Certified Insolvency Representative

Encl. Tisk letter, April 11, 2008

Cc. Universal Auto Manufacturers, S.A.

Joseph Langweiler  
Lawyer  
14 Capitol Boulevard  
Oceanside, Equatoriana  
Tel. (0) 214 77 32  
Telefax (0) 214 77 33  
langweiler@host.eq

1 September 2008

Arbitration Institute  
of the Stockholm Chamber of Commerce  
P.O. Box 10500  
S-103 21 Stockholm  
Sweden

**Arbitration V (000/2008) Joseph Tisk. ./ 1.UAM Distributors Oceania Ltd. 2. Universal Auto Manufacturers, S.A.**

Dear Sirs:

I represent Universal Auto Manufacturers, S.A . in this matter. The power of attorney is enclosed.

The statement of claim indicates clearly that Universal Auto Manufacturers, S.A. did not sign or otherwise become party to the contract of sale or the arbitration agreement between Mr. Tisk and UAM Distributors Oceania Ltd. There is, therefore, no basis for any further proceedings in this matter as far as Universal Auto Manufacturers, S.A. is concerned.

So as not to be subject to arbitral proceedings without its participation under Article 30(2) of your rules, an answer to the statement of claim is attached. The jurisdictional arguments are stated as well as the fact that there was no fundamental breach of contract. Since the facts are so clearly set forth in the statement of claim, there is no expectation of any further Statement of Defence pursuant to your rules, Article 24(2).

(Signed)  
Joseph Langweiler

Encl. Power of Attorney  
Answer

Arbitration Institute  
of the Stockholm Chamber of Commerce

Joseph Tisk, doing business as Reliable Auto Imports  
Claimant

v.

UAM Distributors Oceania Ltd  
First Respondent

and

Universal Auto Manufacturers, S.A.  
Second Respondent

**Arbitration V (000/2008)**

Answer of Universal Auto Manufacturers, S.A., Second Respondent

1. Universal Auto Manufacturers, S.A., hereafter Universal, is represented by Joseph Langweiler, 14 Capitol Boulevard, Oceanside, Equatoriana, Tel. (0) 214 77 32, Telefax (0) 214 77 33, E-mail langweiler@host.eq.

2. Universal denies that the Arbitration Institute of the Stockholm Chamber of Commerce has jurisdiction over it in respect of the contract dated January 18, 2008 entered into by Joseph Tisk, doing business as Reliable Auto Imports, and UAM Distributors Oceania Ltd, hereafter UAM.

3. In respect of the merits of the claim, Universal denies that it has any liability for breach of the sales contract by reason of the problems with the Engine Control Units in the cars shipped to Mr. Tisk by UAM.

Jurisdiction

4. The Statement of Claim clearly indicates that Universal was not a party to the contract of sale or to its arbitration clause. There is no basis for any proceedings in arbitration against Universal in this matter.

5. As indicated in the letter from Ms. Judith Powers to Mr. Joseph Tisk (Claimant's Exhibit No. 14) the arbitration clause in the contract between Mr. Tisk and UAM became void when insolvency proceedings were commenced in respect of UAM. Therefore, since the arbitration clause no longer exists, it cannot be the basis for any alleged jurisdiction over Universal.



## Merits

6. The letter from Mr. Harold Steiner, dated June 19, 2008, indicates that the defects in the operation of the Engine Control Units in the cars shipped to Mr. Tisk had been fixed with no difficulties. (Claimant's Exhibit No. 12) As a result there was no "fundamental breach" of the sales contract as it is defined in Article 25 of the United Nations Convention on Contracts for the International Sale of Goods.

Relief requested

7. Universal requests the tribunal to declare that it has no jurisdiction in regard to Universal.

8. If the tribunal were to decide that it had jurisdiction in regard to Universal, the tribunal is requested to declare that there was no fundamental breach of the contract and that, therefore, Mr. Tisk was unjustified in cancelling the contract.

8. Universal requests the tribunal to award it its costs of arbitration.

(Signed)  
Joseph Langweiler

September 1, 2008



**ARBITRATION INSTITUTE**  
**OF THE STOCKHOLM CHAMBER OF COMMERCE**

Stockholm, 4 September 2008

**Joseph Tisk**  
Advocate Horace Fasttrack

*By fax*

Dear Sirs,

**Arbitration V (000/2008) Joseph Tisk. ./.** 1.UAM Distributors Oceania Ltd. 2. Universal Auto Manufacturers, S.A.

The Answer dated 1 September 2008 from Universal Auto Manufactures, S.A. and the letter of 25 August 2008 from Ms. Judith Powers, Insolvency Representative of UAM Distributors Oceania Ltd, are enclosed to the Claimant and copied to each of the Respondents respectively.

In accordance with article 5 of the SCC Rules the Claimant is hereby given an opportunity to comment on the Answer. The comment, if any, shall be submitted by 11 September 2008.

Yours sincerely,

ARBITRATION INSTITUTE OF THE  
STOCKHOLM CHAMBER OF COMMERCE

*Legal Counsel, SCC*

Copy: **representative for Respondent 1**  
**representative for Respondent 2**

Encls: the above mentioned Answer from Respondent 1 and Respondent 2

Horace Fasttrack  
Advocate at the Court  
75 Court Street  
Capitol City, Mediterraneo  
Tel. (0) 146-9845  
Telefax (0) 146-9850

September 11, 2008

Arbitration Institute  
of the Stockholm Chamber of Commerce  
P.O. Box 10500  
S-103 21 Stockholm  
Sweden

**Arbitration V (000/2008) Joseph Tisk. ./ 1.UAM Distributors Oceania Ltd. 2. Universal Auto Manufacturers, S.A.**

Dear Sirs:

I am in receipt of your letter of 4 September 2008 conveying the Answer of Universal Auto Manufacturers, S.A. and the letter of 25 August 2008 from Ms. Powers.

Neither the Answer nor Ms. Power's letter add anything new. Therefore, the claimant, Mr. Tisk, has no comments to make on them except to reiterate what has already been said in the Statement of Claim.

Sincerely yours,  
(Signed)  
Horace Fasttrack



**ARBITRATION INSTITUTE**  
**OF THE STOCKHOLM CHAMBER OF COMMERCE**

Stockholm, 20 September 2008

**Joseph Tisk**  
Advocate Horace Fasttrack

*By fax*

**UAM Distributors Oceania Ltd.**

**Universal Auto Manufacturers, S.A.**

Dear Sirs,

**Arbitration V (000/2008) Joseph Tisk. ./ 1.UAM Distributors Oceania Ltd. 2. Universal Auto Manufacturers, S.A.**

The SCC has decided as follows.

- I. The SCC does not manifestly lack jurisdiction over the dispute.
- II. As Respondent 1 has failed to make an appointment, all arbitrators shall be appointed by the SCC pursuant to art. 13 (4) of the SCC Rules.
  - (1) Mr. X  
[contact details]  
is appointed chairman of the arbitral tribunal.
  - (2) Mr. A  
[contact details]  
is appointed arbitrator.
  - (3) Mr.B  
[contact details]  
is appointed arbitrator.

The confirmation of acceptance of the appointment by the arbitrators and their CVs will be provided to the parties in due course.

III. The advance on costs is fixed to EUR 39 000 to be paid by the parties with half by the Claimant and half by the Respondents jointly. Since the Claimant has already paid EUR 1 500 as registration fee, the advance on costs shall be provided by Joseph Tisk with EUR 18 000 and by UAM Distributors Oceania Ltd. and Universal Auto Manufacturers, S.A. jointly with EUR 19 500.

The parties are requested to pay, by 01 October 2008 the above amounts to

Bank: Danske Bank Stockholm  
BIC: DABASESX  
Favour: The Stockholm Chamber of Commerce  
IBAN: <IBAN>

When effecting the above payments, Claimant is asked to indicate **000/2008 C** and Respondents are asked to indicate **000/2008 R1 and 000/2008 R2** respectively as reference.

As soon as the advance on costs has been provided, the SCC will refer the case to the arbitral tribunal.

Yours sincerely,

ARBITRATION INSTITUTE OF THE  
STOCKHOLM CHAMBER OF COMMERCE

*Legal Counsel, SCC*

Arbitration Institute  
of the Stockholm Chamber of Commerce

Joseph Tisk, doing business as Reliable Auto Imports  
Claimant

v.

UAM Distributors Oceania Ltd  
First Respondent

and

Universal Auto Manufacturers, S.A.  
Second Respondent

**Arbitration V (000/2008)**

Procedural Order No. 1

1. This arbitration was brought by Joseph Tisk, doing business as Reliable Auto Imports, against UAM Distributors Oceania Ltd, First Respondent, hereafter UAM, and Universal Auto Manufacturers, S.A., Second Respondent, hereafter Universal. The arbitration is based on an arbitration agreement contained in the contract of sale between Mr. Tisk and UAM dated January 18, 2008.

2. UAM is currently in insolvency proceedings in Oceania. In a letter to the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) dated August 25, 2008, the Insolvency Representative appointed by the court, Ms. Judith Powers, stated that the commencement of insolvency proceedings automatically voided the arbitration agreement under the law of Oceania. She indicated that neither she nor UAM would engage further in the arbitration. The tribunal will proceed with the arbitration in regard to UAM pursuant to the SCC rules, Article 30(2).

3. Universal submitted a short Answer to the Statement of Claim in which four submissions were made.

1) It was never a party to the arbitration agreement contained in the contract of sale between Mr. Tisk and UAM;

2) Under the insolvency law of Oceania the arbitration agreement was automatically made void when insolvency proceedings were commenced in respect of UAM. Universal claims that the current non-existence of the arbitration agreement extends to any possible extension of the agreement to Universal;

3) It is not liable for the breach by UAM of the contract of sale between Mr. Tisk and UAM;

4) Although there may have been a breach of contract when there were problems with the Engine Control Units in the cars delivered to Mr. Tisk in Mediterraneo, there was no fundamental breach of the contract and Mr. Tisk improperly cancelled the contract.

4. Mr. Tisk states that Universal was so involved with UAM and with the contract in question that it is bound by the arbitration agreement and is liable for the breach of the contract by UAM. He states that the insolvency law of Oceania does not reach the existence of arbitration agreement itself but only its effect in Oceania. Finally, he acknowledges that the cars could in fact have been repaired promptly, but that it was something that could be known only after the fact. He states that there was fundamental breach because the insecurity of the situation was so serious for him on February 29, 2008, that he had been substantially deprived of what he was entitled to expect under the contract.

5. The parties were notified on September 20, 2008, that the SCC Board did not find that there manifestly was a lack of jurisdiction. Therefore, the Board did not dismiss the case under SCC rules, Article 10(i). The alleged lack of jurisdiction can still be raised before the tribunal.

6. The Board also decided that, since there were two respondents and they did not agree on the nomination of an arbitrator, the Board would appoint the tribunal. The parties have been furnished with the confirmation of acceptance of appointment by the arbitrators and their CVs and they have indicated that they have no objection to the members of the tribunal.

7. The SCC has notified the tribunal that it has received the advance on costs and has referred the case to the tribunal.

8. On 2 October 2008 the tribunal conferred by means of a conference call as to the procedure that should be followed in the arbitration. Of immediate relevance is that the Presiding Arbitrator was authorized to make procedural decisions, subject to later approval by the tribunal.

9. On 3 October 2008 the Presiding Arbitrator held a conference call with Mr. Horace Fasttrack, counsel for claimant Joseph Tisk, and Mr. Joseph Langweiler, counsel for second respondent Universal and the following procedure was agreed upon.

10. It is not expected that there will need to be an extensive procedure to determine facts at this stage of the arbitration. Those factual issues that may need to be developed at this first stage of the arbitration will be determined in accordance with the procedures found in the Rules of the Sixteenth Annual Willem C. Vis International Commercial Arbitration Moot. In accordance with those Rules questions may be submitted to Professor Eric Bergsten by e-mail at [eric.bergsten@chello.at](mailto:eric.bergsten@chello.at), by Thursday, 23 October 2008. The answers to the requests for clarification will be distributed in Procedural Order No. 2 as promptly thereafter as possible.

11. It was agreed that a memorandum further developing his legal arguments should be prepared by Mr. Tisk for submission by e-mail by Thursday, 4 December 2008. Universal Auto Manufacturers, S.A. is to submit its memorandum by e-mail by Thursday, 22 January 2009.

12. The memoranda should discuss the following issues. In regard to jurisdiction of the Tribunal:

- Whether or not Universal was ever bound by the arbitration agreement in the contract between Mr. Tisk and UAM; and
- Whether the insolvency law of Oceania by which the arbitration clause became void in Oceania upon the commencement of insolvency proceedings in regard to UAM affects the jurisdiction of the tribunal proceedings in Danubia.

13. In regard to the merits, the memoranda should discuss:

- Whether Universal should be held liable for the breach of the contract by UAM; and
- Whether there was fundamental breach of the sales contract authorizing Mr. Tisk to avoid the contract.

14. The memoranda should not discuss any issues as to the amount of restitution, if any, damages or the allocation of the costs of the arbitration.

15. Oral arguments will be scheduled in the month of April 2009 in Vindobona (Vienna) and in March in Hong Kong. All participants in the Vienna arguments will be invited to a welcoming event followed by a reception on the evening of Friday, 3 April 2009. Arguments will take place beginning the following morning, Saturday, 4 April 2009. Participants will also be invited to a welcoming party sponsored by the Moot Alumni Association on Thursday evening, 2 April 2009. Participants in the Hong Kong arguments will receive their schedule independently.

(Signed)

Chairman of the Arbitral Tribunal

October 3, 2008



Arbitration Institute  
of the Stockholm Chamber of Commerce

Joseph Tisk, doing business as Reliable Auto Imports  
Claimant

v.

UAM Distributors Oceania Ltd  
First Respondent

and

Universal Auto Manufacturers, S.A.  
Second Respondent

**Arbitration V (000/2008)**

Procedural Order No. 2

In conformity with the instructions given in Procedural Order No. 1 there have been a number of requests for clarification. There follow in this Procedural Order the clarifications requested.

**Applicable Legal Rules**

**1. Are any of the countries involved members of the European Union?**

No.

**2. Has Equatoriana or Mediterraneo adopted the UNCITRAL Model Law on Cross-Border Insolvency?**

Yes, both have. However, neither Polaria nor Danubia have done so.

**3. When Danubia adopted the UNCITRAL Model Law on International Commercial Arbitration, with 2006 amendments, which version of Article 7 did it adopt?**

Version II.

**4. Does Danubia have any policy in regard to the relationship between insolvency proceedings and arbitration?**

No, the issue has not as yet arisen in Danubia.

**5. Is an arbitration clause void ab initio or voidable upon the commencement of insolvency proceedings under the insolvency law of Oceania?**

It is void ab initio.

**6. Under the otherwise applicable law of any of the countries involved, is there a direct action by a sub-purchaser against a manufacturer for defects in the product?**

In Mediterraneo there is such a rule in favor of a consumer, but not in regard to a commercial sub-purchaser. The other countries involved have no such rule. Universal gave no manufacturer's guarantee of quality of the Tera cars that would have been in favor of Mr. Tisk.

**7. Are any of the countries involved party to the Convention on Agency in the International Sale of Goods (Geneva, 17 February 1983)?**

Equatoriana, Mediterraneo and Oceania are all party to the Convention. (You may assume that the Convention has come into force.)

**8. Are Equatoriana, Mediterraneo and Oceania common law or civil law countries?**

Oceania is common law, Equatoriana is civil law and Mediterraneo's legal system does not fall into either category.

**9. Does paragraph 14 of the Procedural Order mean that, while no "issues as to the amount of restitution, if any, damages or the allocation of the costs of the arbitration" should be discussed in the memoranda, they might be discussed in the oral arguments?**

No. Procedural Order No. 1, and particularly paragraph 14, applies to the oral arguments as well as the memoranda.

**10. May it be assumed that the statements as to the contents of the telephone calls as set out in the statement of claim are true and correctly described?**

They may be taken as being correct. If either of the respondents contests their accuracy or if the tribunal has any doubts, Mr. Tisk is prepared to submit a witness statement describing them or to appear in person for questioning by counsel for the respondents and the tribunal.

**11. What does UAM stand for?**

Universal Auto Manufacturers.

**12. What was the nature of the governance of UAM?**

UAM is a corporation organized under the law of Oceania. In 1997 Universal was seeking an establishment in the region encompassing Oceania and several surrounding countries as a means marketing motor vehicles manufactured by Universal. There were no existing establishments that met its requirements. It contacted Oceania Partners, among others, to consider creating a new company that would undertake the task. Oceania Partners is a partnership that has investments in

a number of enterprises in Oceania. Oceania Partners agreed to do so if Universal would also make an equity investment in the new company. There was no requirement that Universal invest in Oceania Partners itself. UAM was consequently established as a company with liability of its shareholders limited to the extent of their investment. Oceania Partners owned 90 percent of the new company and Universal owned 10 percent. The Governing Board consisted of five persons, four of whom represented Oceania Partners' investment and one of whom represented Universal's investment. Under the law of Oceania the Governing Board has the authority to establish overall policy of the company but day to day management is the responsibility of the management, which reports to the Governing Board. The management of UAM consisted of citizens of Oceania who were otherwise unconnected to either Oceania Partners or Universal. The 10 percent ownership by Universal did not give it a right to block actions agreed to by a majority of the Governing Board.

**13. Was there a distributor agreement between Universal and UAM?**

Yes.

**14. Did the distributor agreement have an arbitration clause?**

Yes. The clause called for arbitration at the Equatoriana International Arbitration Centre.

**15. Was there an agreement between UAM and Universal that Universal was responsible for fixing Tera cars or other motor vehicles manufactured by Universal?**

No such arrangement existed in general, although Universal had taken responsibility in one previous situation similar to the one in the current case. The agreement with UAM by which Universal would repair the cars sold to Mr. Tisk was an ad hoc arrangement. Universal was, of course, liable to UAM under the CISG for any defects in regard to the cars sold by it to UAM.

**16. Was Universal aware of the general conditions in the contract between UAM and Mr. Tisk, including the arbitration clause?**

Yes. Universal reviewed the form contracts used by its authorized distributors to be sure there was nothing that violated Universal's policies regarding the sale of its motor products. Those contracts were similar in their terms, but Universal did not mandate any of their terms or their wording. The contract between UAM and Mr. Tisk was on the form provided by UAM. Universal did not deal directly with any retailer of its motor products in the area serviced by UAM.

**17. Was UAM aware of the size of Mr. Tisk's business and of the general business situation in Mediterraneo, including the availability of repair facilities?**

Yes. Mr. Tisk had purchased Universal cars from UAM in the past. In any case, UAM was well aware of the general business throughout the geographical area in which it is located and to which it exports Universal motor products. While Universal did not know the details of Mr. Tisk's financial position, it did know that banks in Mediterraneo did not lend to businesses to furnish them with working capital. This was in part because the law in Mediterraneo did not

provide for a security interest (or lien) against personal property, including inventory, except by means of a pledge.

**18. Had the cars been inspected prior to their delivery to Mr. Tisk?**

The cars had been inspected by Universal at the factory prior to shipment to UAM and by UAM on receipt. The problem with them manifested itself only once they were driven, which had not happened prior to their delivery to Mr. Tisk.

**19. How were the cars transported from Universal to UAM and from UAM to Mr. Tisk?**

The cars were transported from Universal's factory to the port by a transporter. They were carried by ship from Equatoriana to Oceania and by a transporter from the port to UAM. The same transporter carried the cars from UAM to the port, from which they were carried to Mediterraneo by ship. The first time they were driven was from the port in Mediterraneo to Mr. Tisk's premises.

**20. Who owned the cars while they were in the possession of UAM?**

As an authorized distributor, UAM purchased the cars from Universal. All of the cars in the possession of UAM belonged to UAM. Universal had received full payment for them. UAM was the only company authorized to import Universal cars into Oceania. It had a non-exclusive right to export them to Mediterraneo. Other authorized distributors also had the right to export Universal motor products to Mediterraneo.

**21. Why were the 25 cars shipped from Mediterraneo to Universal in Equatoriana and who paid for the shipping?**

When Mr. Tisk avoided the contract, whether the avoidance was justified or not, the ownership of the cars reverted to UAM. The cars were of little immediate value to UAM as long as they were in Mediterraneo and unrepaired. Universal was interested in determining the source of the problem. There were discussions between UAM and Universal as to what should be done with the 25 cars but no agreement had been reached prior to the commencement of UAM's insolvency procedures. When the insolvency proceedings were commenced, the cars were part of the assets that came under the administration of Judith Powers, the Insolvency Representative. Finally, Universal and Ms. Powers agreed to a sale of the cars to Universal. Universal arranged and paid for their transportation to Equatoriana.

**22. How long did it take for Universal to fix the 25 cars after their arrival in Equatoriana?**

The source of the problem was found on the first day and was fixed that day. All 25 cars had been fixed within five working days.

**23. Was the equipment and personnel used by Universal to determine the source of the problem and to repair the cars the same as that which Universal had planned to send to Mediterraneo?**

Yes.

**24. What happened to the 25 cars after they had been repaired?**

They were included in the Universal's stock of newly manufactured cars and sold to one of Universal's distributors.

**25. Why did Mr. Tisk allow the cars to be shipped to Universal although he had not been reimbursed either the USD 380,000 he had paid on the contract or the USD 2,000 storage charge?**

That is a matter that is protected by attorney-client privilege.

*(For information, but not as part of the facts available for argument: When Mr. Tisk learned that Universal had purchased the 25 cars in his possession from UAM's Insolvency Representative, he and Mr. Fasttrack considered notifying Universal that he would retain the cars until "he [had] been reimbursed his reasonable expenses by the seller", as he had a right to do under CISG, Article 86, and insist that restitution of the cars and the down payment (partial payment) be done simultaneously, as provided in CISG, Article 81(2). They then decided that it might be counter-productive. The only significant value that the cars had to Universal was to determine the source of the problem that Mr. Tisk had had with them, and there had been no reports of the same difficulty with other cars not sold to UAM. The amount of the down payment, USD 380,000, represented the full payment for 50 cars. It was highly unlikely that Universal would pay that amount to gain possession of 25 defective cars. If Universal decided not to take the cars, they would remain in Mediterraneo and Mr. Tisk would have to arrange for their disposal. It was better to have Universal take them and relieve Mr. Tisk of responsibility for them.)*

**26. What has happened to the 75 cars that were to be shipped to Mr. Tisk by UAM?**

On February 29, 2008, when Mr. Tisk avoided the contract, UAM had in stock 120 cars that met the description in the contract of Tera automobiles to be shipped to Mr. Tisk. The particular cars that would be shipped had not yet been identified. Between February 29, 2008 and the commencement of the insolvency proceedings on April 9, 2008, ten of the cars had been sold.

**27. Why was there a three day delay between February 18, 2008, the day the cars cleared customs and were available to Mr. Tisk and February 21, 2008, the day when they were inspected?**

The mechanic Mr. Tisk hired for that purpose was not available until the evening of February 21.

**28. Was the three and a half weeks between the conclusion of the contract between Mr. Tisk and UAM and the arrival of the 25 cars in Mediterraneo anticipated by Mr. Tisk?**

Yes. Mr. Tisk knew that it would take approximately three weeks for the first of the shipments of the Tera automobiles to arrive and he had planned his business activities accordingly.

**29. Have the problems that existed in the cars shipped to Mr. Tisk appeared in other Tera cars?**

Of the 120 Tera cars in the possession of UAM on February 29, 2008 fifteen were found to have the same problem. The forty cars with the problem turned out to have been assembled on the same day. The speculation is that there was some sloppy work done on one particular day that was not repeated. The problem has not arisen in regard to any other Tera cars.

**30. How much did the Indo cars cost Mr. Tisk?**

The price was USD 7,700 per automobile.

**31. What actions has Mr. Tisk taken to recover the USD 380,000 deposit from UAM?**

Mr. Tisk, through his lawyer Horace Fasttrack, demanded that UAM return the deposit. The demand was made by letter dated March 20, 2008. UAM did not respond to the letter. No claim has been filed in the insolvency proceedings.

*(For information, but not as part of the facts available for argument: Mr. Fasttrack had advised against filing a claim in the insolvency proceedings. If the avoidance of the contract was not justified, Mr. Tisk had breached the contract by purporting to avoid it. Such a counter-claim would surely have been raised by Ms. Powers. Of course, she might have appeared in the arbitration that is now going on and raised the same counter-claim, although that was unlikely in view of her statement that the arbitration clause was void as of the commencement of the insolvency proceedings. In any case, Mr. Fasttrack thought it better to have the counter-claim adjudicated in the arbitration, if necessary, than in the court in Oceania in insolvency proceedings.)*

**32. What was nature of the actions taken by Universal that Oceania Partners claimed was interference in UAM?**

Oceania Partners wished to expand the operations of UAM by creating subsidiaries in several of the countries to which UAM had been re-exporting cars. That was expected to require a substantial investment in capital. Universal resisted those plans on the grounds that the market was not sufficiently large to warrant the investment. Because of the restricted nature of the market in several of those countries, UAM proposed to sell cars manufactured by producers other than Universal in addition to the Universal cars. Universal resisted that proposal as well. Nevertheless, Oceania Partners prevailed and significant sums were expended by UAM in preparation for the expansion. The preparations had not reached the point where UAM had acquired any assets in those other countries. The cash flow from existing operations was not sufficient to fund the investment. Universal refused to participate in any additional financing and Oceania Partners did not have sufficient capital to fund the expansion on its own. As a result, UAM reached the point that it could no longer meet its obligations and the insolvency proceedings were the result.

**33. When did Universal first approach its new distributor in Patria?**

The first approach was made by the firm in Patria in October 2007. Serious discussions began only in February 2008 when Universal began to doubt whether UAM would be able to continue in business for much longer. The final agreement was reached immediately after the opening of

the insolvency procedures in regard to UAM. It may be noted that Patria Importers also sells Indo cars.

### **34. Does UAM have assets in States other than Oceania?**

UAM has a claim for money due in Polaria. The debtor does not dispute the existence of the claim or its amount. UAM has no creditors in Polaria. On 21 August 2008 Mr. Tisk petitioned the court in Polaria to issue an order for preliminary measures in support of the arbitral proceedings it had instituted in Danubia by which the payment of the claim would be stopped in order to safeguard payment of the award Mr. Tisk anticipated in the arbitral proceedings. On 23 August 2008 Ms. Powers, as Insolvency Representative of UAM, requested the court in Polaria to order the payment of the claim to the estate of UAM as part of the assets to be distributed in the insolvency proceedings. The court in Polaria issued an order directing the debtor to pay the acknowledged debt into the court until the court had reached a final decision as to its disposition. The debtor duly paid the sum to the court. The court in Polaria has the following questions before it, none of which is governed by statutory law or has previously been decided: 1) Whether it can grant provisional measures in support of an arbitration taking place in a foreign state, 2) Whether a foreign insolvency representative can appear before the courts of Polaria.<sup>1</sup>

### **35. Did the threatened airport strike take place?**

No it did not. The contract between the airport and the personnel had expired and the negotiations for a new one had been difficult. In 2006, the last time the contract had expired, there had been a strike that closed the airport completely. After three days the State had intervened and under pressure from the State an agreement had been reached. This year the State had announced that it did not intend to intervene, although it was generally believed that at some point it would if the strike lasted for more than a week or two. That belief was not tested since, at the last minute, an agreement was reached between the airport and the personnel. The threat of the strike was featured in the newspapers and news broadcasts on radio and television in Mediterraneo since it would have an important effect on business and personal travel. The airport was the only one in Mediterraneo that had international connections.

(Signed)

Chairman of the Arbitral Tribunal

November 4, 2008

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<sup>1</sup> See Draft UNCITRAL Notes on cooperation, communication and coordination in cross-border insolvency proceedings, A/CN.9/WG.V/WP.83, para. 75, "In States that have not adopted the [UNCITRAL] Model Law [on Cross-Border Insolvency], that right of direct access might be limited by formal requirements or by domestic law". (www.uncitral.org).

Arbitration Institute  
of the Stockholm Chamber of Commerce

Joseph Tisk, doing business as Reliable Auto Imports  
Claimant

v.

UAM Distributors Oceania Ltd  
First Respondent

and

Universal Auto Manufacturers, S.A.  
Second Respondent

**Arbitration V (000/2008)**

Procedural Order No. 3

Numbers 2 and 34 of Procedural Order No. 2 are incomplete. It should be stated that Polaria is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

(Signed)  
Chairman of the Arbitral Tribunal

November 10, 2008