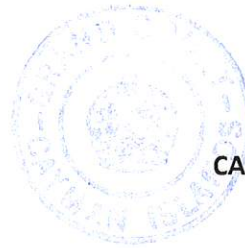


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION



391

CAUSE NO: OF 2010

BETWEEN:

ELBERT RIVERS YATES

PLAINTIFF

AND:

WATLER'S METAL PRODUCTS LIMITED

FIRST DEFENDANT

MICHAEL RANCE

SECOND DEFENDANT

WRIT OF SUMMONS

TO: Watler's Metal Products Limited  
P.O. 219  
28 Lincoln Drive  
North Sound Road  
Cayman Islands  
Michael Rance #28 Lincoln Drive  
Robert Watler



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this <sup>26</sup> day of October 2010.

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

## STATEMENT OF CLAIM

1. The Plaintiff is a male d.o.b. 10 May 1944 and is a citizen of the Cayman Islands.
2. The First Defendant is a limited liability company operating in the Cayman Islands.
3. The Second Defendant is an individual who at all material times was acting as an employee, servant or agent of the First Defendant.
4. On the 23<sup>rd</sup> December 2009 at approximately 6.09 a.m. the Plaintiff was driving a Toyota Hiace van, registration #90123 on the West Bay Road, George Town, Grand Cayman in the direction of George Town in the vicinity of Comfort Suites.
5. Suddenly and without warning a mechanically propelled vehicle, namely a JLG 80 HX boom lift, owned by the First Defendant and being driven by the Second Defendant, an employee or agent of the First Defendant and acting in the course of his employment along Piper Way from the Plaintiff's right drove across the said junction and collided with the Plaintiff's vehicle. The boom lift was extended and collided with the Plaintiff's vehicle.
6. At the material time the vehicle was not insured and the Second Defendant was not in possession of a special licence to drive same. Possession of a policy of insurance relating to the vehicle in relation to third party risks and a special licence to drive such a vehicle were legal requirements in the Cayman Islands at the time of the accident.
7. The Plaintiff claims that the accident was caused by the negligence of the Second Defendant an employee or agent of the First Defendant acting in the course of his employment.
8. Particulars of Negligence

The Second Defendant was negligent in that he:

- (a) Failed to give precedence to the plaintiff who had the right of way.
- (b) Failed to give any or any sufficient warning of his intention to turn across the traffic.
- (d) Failed to keep any or any proper look out.
- (e) Failed to stop, slow down, steer or otherwise control his motor vehicle so as to avoid colliding with the plaintiff's vehicle.
- (f) Emerged from a side road in circumstances where it was dangerous to do so.
- (g) Colliding with the Plaintiff's vehicle.
- (h) Exposing the Plaintiff to a foreseeable risk of injury.
- (i) Failed to take any adequate care for the safety of the Plaintiff.

- (ii) Driving with a boom lift extended on a public road.
  - (iii) Driving with a boom lift extended at a height likely to collide with other vehicles.
  - (f) Failed to leave sufficient gap in the traffic so as to be able safely and properly make his manoeuvre without colliding with the plaintiff's bus.
9. As a result the Plaintiff, who is now aged 56 years, having been born on the 10<sup>th</sup> May 1944 suffered pain, injury, loss and damage.

**Particulars of injuries**

- 10. The Plaintiff suffered multiple facial injuries including fractures to his right maxilla, lower zygomatic bone, and both nasal bones. He suffered a severe laceration to the face requiring extensive surgery and leaving him permanently disfigured.
- 11. The Plaintiff suffered abdominal compartment syndrome requiring a decompressive laparotomy.
- 12. The Plaintiff was taken to Miami by air ambulance for treatment and remained hospitalized for 12 weeks.
- 13. The Plaintiff continues to suffer from the injuries sustained and requires further treatment.

**Particulars of Special Damage**

- 14. The Plaintiff has been unable to work since the date of the accident.
- 15. The Plaintiff was a self employed bus driver earning approximately CI\$2,500 per month.
- 16. The Plaintiff has been unable to work and continues to be unable to work as a result of his injuries. He has suffered loss of earnings from the 23<sup>rd</sup> December 2009 to date of issue of Writ and continuing at the rate of CI\$2,500 per month.
- 17. The bus was written off in the accident. The vehicle was insured third party. The bus was worth CI\$6,000.
- 18. Such loss of earnings is expected to continue to date of trial.

**Medical Costs to date**

- 19. The Plaintiff has incurred medical expenses. Such medical expenses will be forwarded in due course once received from the various service providers.

### **Particulars of General Damages**

20. The Plaintiff claims for personal injuries suffered as outlined above.
21. The plaintiff has suffered a loss of amenities of life as a result of his injuries. The Plaintiff is unable to socialize as he did prior to the accident. The Plaintiff is permanently disabled and disfigured as a result of the accident and his life will never return to it's previous state.
22. The Plaintiff claims for loss of earnings from the date of trial until retirement age.
23. The Plaintiff will suffer medical expenses for the date of trial for the rest of his life.
24. The Plaintiff will incur costs for future care.
25. These injuries, loss and damage were caused by the negligence of the defendants.

### **AND THE PLAINTIFF claims:**

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2007 Revision)
3. Costs
4. Such further and other relief as this Court may deem just



**Samson & McGrath**

**Attorneys for the Plaintiff**

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE**  
**OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

## Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.



Attorney for

Please complete overleaf

**Notes on address for service**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Samson & McGrath  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.