

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No.: 2 of 2011

BETWEEN:

ADELETTE PIENAAR HOUSE



Plaintiff



(1) CAYMAN ISLANDS HEALTH SERVICES  
AUTHORITY

(2) DR. HALDA SHAW

Defendants

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WRIT OF SUMMONS

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- TO:
1. The Cayman Islands Health Services Authority, 95 Hospital Road, George Town, Grand Cayman, Cayman Islands.
  2. Dr. Halda Shaw, 6a Highland Drive, Kingston, 19, Jamaica.

**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 495, George Town, Grand Cayman, KY1-1106, 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: 4 January 2011.

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.

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### **STATEMENT OF CLAIM**

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1. The First Defendant is and at all material times was the Health Authority responsible for the provision of health care services and facilities in the Cayman Islands. As such the First Defendant:
  - 1.1 Was responsible for the provision of medical and surgical services at the Cayman Islands Hospital (also known as the George Town Hospital);
  - 1.2 Owed to the Plaintiff a direct and non-delegable duty of care, in contract and tort, whilst she was a patient in receipt of treatment at the Cayman Islands Hospital; and
  - 1.3 In discharging its duty to the Plaintiff, was and is vicariously responsible for the acts and omissions of its staff, and all

others to whom it delegated the discharge of its responsibilities (including the Second Defendant).

2. The Second Defendant is and at all material times was a Consultant Ear Nose and Throat Surgeon.
3. Pursuant to an Agreement made on 22 November 2009 with the First Defendant, the Second Defendant was a visiting clinician agreeing to provide the services of a visiting Oral Surgeon to the First Defendant on an as needed basis for the period of one year.
4. Further, the Second Defendant whilst he was the Plaintiff's treating surgeon owed her a duty of care in tort.
5. The Plaintiff was born on 15 August 1978.
6. In September 2009, during the course of investigations for headaches, the Plaintiff underwent an ultrasound scan of the neck and parotid gland. The scan demonstrated a 26 x 22 x 17 millimeter solid lesion of the right parotid with a necrotic centre.
7. On 15 October 2009, fine needle biopsy of the parotid revealed a benign pleomorphic adenoma.
8. On 18 February 2010, the Plaintiff was referred to Dr. Jha, an ENT specialist at the Cayman Islands Hospital. Dr. Jha then referred the Plaintiff to the Second Defendant for surgical / further management.
9. On 3 March 2010, the Plaintiff had her first consultation with the Second Defendant, at the Cayman Islands Hospital. At that time she was 35 - 36 weeks pregnant. Examination revealed a 2.5

centimeter mass in the right parotid, near the posterior border of the mandible. The Second Defendant advised that the tumour should be removed. It was explained that the procedure would take 1 - 2 hours; that her face might experience weakness; but any weakness would be mild and would go in about 2 weeks. No mention was made of paralysis. The procedure was scheduled for June 2010, after the Plaintiff had given birth.

10. The Plaintiff decided to proceed with the proposed surgery. The First Defendant's fees for the surgery and associated medical and pharmaceutical provision were \$7,067.15. The surgery was to be performed by the Second Defendant.
11. In the premises, there were terms of the contract between the Plaintiff and the First Defendant that:
  - 11.1 The surgery would be performed with all due care and skill.
  - 11.2 The First Defendant would engage reasonably competent staff to perform the surgery.
12. Further or alternatively, the First Defendant owed the Plaintiff a non-delegable duty of care in tort to ensure that the surgery was performed with reasonable skill and care.
13. The Second Defendant, as the doctor performing the surgery, owed the Plaintiff a duty of care to exercise the care and skill to be expected of a reasonably competent surgeon with expertise in ear, nose and throat surgery.

14. On 4 June 2010, the Plaintiff underwent right partial superficial parotidectomy at the Cayman Islands Hospital, performed by the Second Defendant, assisted by Dr. Jha. The Operation Note states that the facial nerve was identified at the anterior mastoid region and that the branches were followed during the initial dissection. The parotid was excised above the nerve, the mass delivered, part of the gland excised with most of the superficial lobe preserved.
15. After initial wound closure bleeding was noted and the wound was opened and a small bleeder was ligated. After closure bleeding was noted again, the wound was reopened and two bleeders were identified, one of which was thought to possibly be a branch of the retromandibular vein. Both were ligated. There is no record of the facial nerve being identified during these explorations for haemostasis.
16. During the course of the procedure the surgeon placed sutures through and around the facial nerve. The Plaintiff thereby suffered a dense right facial nerve paralysis. The following day the Plaintiff was seen to have a facial palsy.
17. It is the Plaintiff's case that proper identification and preservation of the facial nerve is a basic surgical principle when performing parotid gland surgery. Identification and protection should be established before attempting to ligate a bleeding vessel.
18. The procedure on 4 June 2010 was performed negligently by the Second Defendant, whereby the First and Second Defendants are in breach of duty in contract and tort.

### Particulars of Negligence of First / Second Defendants

#### 18.1 The surgeon(s):

- 18.1.1 Failed to visualise / identify the right facial nerve during the course of the explorations for haemostasis.
- 18.1.2 Failed to preserve the facial nerve throughout the procedure.
- 18.1.3 Failed to ascertain that the structure being treated during the course of achieving haemostasis was a vessel rather than a nerve (as was the case).
- 18.1.4 Caused or permitted the placing of sutures around and through the facial nerve.
- 18.1.5 Failed to check the positioning of the sutures or otherwise appreciate that the nerve had been sutured.
- 18.1.6 Failed to make any or any adequate exploration of the wound during the immediate postoperative period.
- 18.1.7 In the premises, failed to conduct the surgical procedure with the skill and care to be expected of a reasonably competent neck surgeon.

18.1.8 In so far as the damage was caused by an assistant during the course of the surgery, the Second Defendant failed to supervise that other surgeon, whether adequately or at all.

**Particulars of Breaches of Contract  
by the First Defendant**

18.2.1 The surgery was not performed with all due care and skill.

18.2.3 The First Defendant did not engage reasonably competent staff to perform the surgery.

19. As a result of the matters complained of the Plaintiff suffered injury, and has been put to loss and expense.

**Particulars of Injury**

19.1 But for the aforesaid negligence the Plaintiff would have made a swift recovery from the surgery, with the potential to return to work within 10 to 14 days.

19.2 She has suffered a complete paralysis of the right facial nerve (Brackmann Grade 6), with facial asymmetry.

19.3 She has undergone the following surgical procedures to date (at the Massachusetts Eye and Ear Infirmary, Boston, USA):

*7.7.10: right facial nerve exploration with superficial parotidectomy and neurolysis. Multiple heavy*

*coated vicryl sutures were found to have been put through and around the nerve at the time of the original surgery. The sutures were removed.*

*8.7.10: platinum weight placed in the right upper eyelid.*

- 19.4 The facial paralysis has affected the Plaintiff's ability to eat normally; she has difficulty with speech; and breathing through the right nostril. She has experienced discomfort, dryness and blurring of vision to the right eye.
- 19.5 She has now been diagnosed with astigmatism due to the weight of the lid; exposure keratitis and a dry eye.
- 19.6 She has difficulty sleeping. She suffers from depression. She is acutely aware of her appearance, and is greatly distressed by it. She has become withdrawn. Her relationships with family and friends have been badly affected.
- 19.7 Spontaneous improvement in the paralysis is now unlikely.
- 19.8 Options for surgical reconstruction include nerve grafting; slings/implants; and muscle transfers. The aim will be to achieve improved upper lid closure, protection of the cornea, normal resting symmetry and improve the smile. Full symmetry and function will never be achieved.
- 19.9 The Plaintiff is currently employed as a Sales Representative for Federal Express, but she has been unable to return to work, and is currently not in receipt of pay.

### Particulars of Special Damage

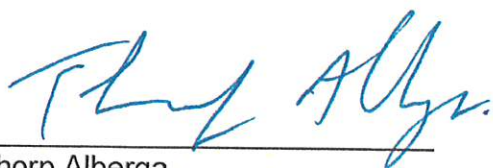
To be advised in a separate Schedule of Loss.

20. Further the Plaintiff claims interest pursuant to the *GCR* on the amounts found due, at such rates and for such periods as the Court thinks fit.

#### AND THE PLAINTIFF CLAIMS:

1. General and Special Damages;
2. Interest pursuant to the *Judicature Law* (2007 Revision) and the *Grand Court Rules* (1995 Revision);
3. Costs; and
4. Such further and/or other relief as may be just.

DATED: 4 January 2011



Thorp Alberga  
Attorneys-at-Law for the Plaintiff

If, within the limited for returning the Acknowledgment of Service the Defendant pays the amount claimed to the Plaintiff or its Attorneys further proceedings will be stayed.

TO: The Clerk of the Court

AND TO: THE CAYMAN ISLANDS HEALTH SERVICES AUTHORITY,  
the First Defendant of 95 Hospital Road, George Town,  
Grand Cayman, Cayman Islands.

AND TO: DR. HALDA SHAW, the Second Defendant, 6a Highland  
Drive, Kingston, 19, Jamaica.

This **WRIT OF SUMMONS** and **STATEMENT OF CLAIM** was issued by  
Thorp Alberga, Attorneys-at-Law for and on behalf of the Plaintiff whose  
address for service is Harbour Place, P.O. Box 472, Grand Cayman KY1-  
1106 (Ref: CMD/H0384-001).

## IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN CAUSE No. of 2011

ADELETTE PIENAAR HOUSE

Plaintiff

AND

(1) CAYMAN ISLANDS HEALTH SERVICES  
AUTHORITY

(2) DR. HALDA SHAW

Defendants

**ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

 yes no

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3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)

 yes no

Service of the Writ is acknowledged accordingly

\_\_\_\_\_  
(Signed).....

[Attorney] for

[Defendant in person]

Address for service:

*Please complete overleaf*

**Notes on address for service**

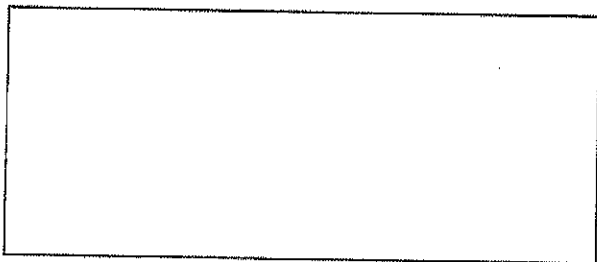
**Attorney:** Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

**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.

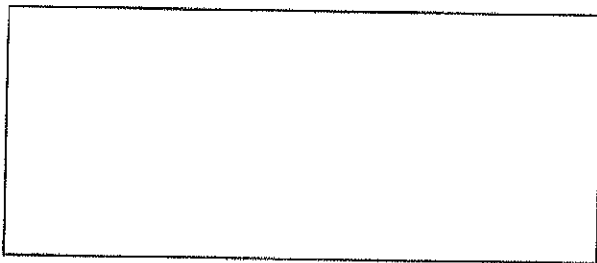
*Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.*

Thorp Alberga Attorneys-at-Law P.O. Box 472 Grand Cayman, KY1-1106 Cayman Islands Attorney: Christopher McDuff Phone: (345) 949-0699 Facsimile: (345) 949-8171 Email: <a href="mailto:cmcduff@thorpalberga.com">cmcduff@thorpalberga.com</a> Ref: CMD/H0384-001.
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*Indorsement by First Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.*



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



**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 495, Grand Cayman, KY1-1106.
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 installments or otherwise.

**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.