

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 313 OF 2007

BETWEEN

EDGAR GEORGE COLE

PLAINTIFF

AND

JAMES SMITH, AS THE PERSONAL REPRESENTATIVES OF DWIGHT DIEDRICK,
DECEASED

FIRST DEFENDANT

AND

ROBERT WATLER JR., TRADING AS WATLER'S METAL PRODUCTS COMPANY LTD
SECOND DEFENDANT

AND

WATLER'S METAL PRODUCTS LTD

THIRD DEFENDANT

RE-AMENDED WRIT OF SUMMONS

To: James Smith, as The Personal Representatives of Dwight Diedrick, deceased
~~339 Bodden Town Road~~
~~Bodden Town, Grand Cayman~~
258 Town Hall Road,
West Bay, Grand Cayman.

and

Robert Watler Jr., trading as Watler's Metal Products Company Ltd
Sparky's Drive
PO Box No. 219
Grand Cayman KY1-1501
Cayman Islands

and

Watler's Metal Products Ltd
Sparky's Drive
PO Box No. 219
Grand Cayman KY1-1501
Cayman Islands

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 Fourteen days [14] 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 19th day of July, 2007

Amended pursuant to an Order of the Court dated the 4th day of December 2007

And Amended pursuant to GCR Order 20 rule 1 on the 8th day of January 2008

And Re-Amended pursuant to a Consent Order of the Court dated the 13th day of May 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.

Pursuant to an Order of the Court dated the 4th day of December 2007, the period of service of this Writ was extended for three months from the date of the Order.

IMPORTANT

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

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THIRD DEFENDANT

RE-AMENDED STATEMENT OF CLAIM

1. The Plaintiff is a Jamaican national and a maintenance worker who, up to the 19th day of January, 2005, was employed by Island Company Maintenance Company as a maintenance worker at various company properties in the Cayman Islands. The Plaintiff earned a salary of CI\$1,500 a fortnight or CI\$39,000 a year.
2. Dwight Deidrick, deceased, was at all material times the employee of the Second Defendant. In the alternative, Dwight Deidrick, deceased, was at all material times the employee of the Third Defendant. The Second Defendant is also the beneficial registered owner of a Chevrolet Silverado pickup truck bearing registration number 98 036 registered under the name of Robert Watler ("the Second Defendant's motor vehicle") and authorized the First Defendant to drive the Second Defendant's motor vehicle. Alternatively, the Third Defendant was authorized by the Second Defendant to authorize the First Defendant to drive the Second Defendant's motor vehicle, and did so authorize the First Defendant to drive the Second Defendant's motor vehicle.
3. On the evening of 19th of January, 2005 at about 7:59pm, the Plaintiff had finished work and accepted a ride in the Second Defendant's motor vehicle being driven by Dwight

Deidreick, deceased. At the material time Dwight Deidreick, deceased, was authorized to drive the Second Defendant's motor vehicle.

4. The Plaintiff was a front seat passenger in the Second Defendant's motor vehicle travelling in a northerly direction along the Quarry Products Road in East End when the accident occurred.
5. Whilst driving at excessive speed in a 30mph zone the driver lost control of the vehicle and collided with a tree on the left hand side which stood approximately 7 feet from the road's edge. The vehicle subsequently burst into flames. Both the driver and the Plaintiff were pulled from the burning vehicle by a passing motorist who called 911. Both driver and Plaintiff were later transported by ambulance to the George Town Hospital suffering from severe injuries as a result of the accident.
6. Upon arrival at the George Town Hospital it was discovered that the Plaintiff was unable to move any of his limbs. An x-ray of the Plaintiff's spine revealed an anterior dislocation of C₄ on C₅ with approximately 50 percent of the body's depth anterior displacement. Later that evening, a CT scan of the spine revealed a fracture and an anterior dislocation of C₄ on C₅.
7. Once the Plaintiff was stabilized, the Plaintiff was transferred to Critical Care Unit and monitored overnight. The Plaintiff was then air ambulated to University Hospital West Indies (UHWI) in Jamaica.
8. Upon being transferred to University Hospital West Indies (UHWI) in Jamaica on 20 January 2005, an MRI revealed that the Plaintiff had suffered an anterior dislocation of C₄ and C₅ with associated fractures of C₄ and C₅ requiring surgical fixation of cervical spine C₄ - 6. The Plaintiff was later transferred to Sir John Goldings Rehabilitation Centre where he received physiotherapy, occupational therapy, and the necessary medical and psychiatric treatment for 2 months.

9. The Plaintiff is now in a Quadriplegic state with double incontinence and requires the use of pampers and a catheter on a daily basis.
10. The driver of the vehicle, Dwight Diedrick, deceased, died on 22 January 2005 as a result of the injuries.
11. The accident was caused solely by the excessive speeding and negligence of the driver, who was the Second Defendant's employee, in the driving, management and control of the Second Defendant's motor vehicle.

PARTICULARS OF NEGLIGENCE OF THE FIRST DEFENDANT

- (a) Veering from the main road without ensuring that it was safe to do so.
 - (b) Failing to exercise all necessary caution before leaving the main road.
 - (c) Failing to stop, swerve or otherwise manoeuvre the vehicle in time to avoid the collision.
 - (d) Failing to exercise all necessary caution in order to ensure the safety of passengers in the vehicle.
 - (e) Failing to observe and drive within the speed limit as prescribed by law.
 - (f) Driving without regard to the circumstances which made it impossible to avoid the collision.
12. The Second Defendant is vicariously liable for the negligence of the First Defendant because at the time the accident occurred, the First Defendant was authorized to drive the Second Defendant's vehicle and was in fact driving the vehicle in the course of his employment. In the alternative, the Third Defendant is vicariously liable for the negligence of the First Defendant because at the time the accident occurred, the First Defendant was authorized by the Third Defendant to drive the Second Defendant's vehicle and was in fact driving the vehicle in the course of his employment.

13. As a consequence of the Defendants' negligence alone, the Plaintiff has suffered very severe personal injury, has been put to expense and has suffered loss and damage.

PARTICULARS OF LOSS AND INJURY

- (a) The Plaintiff, whose date of birth is 1 May 1977, required full mobility and the use of all limbs to effectively perform his duties as a maintenance worker whilst employed by Islands Companies. As a result of the motor vehicle accident and spinal cord injury, the Plaintiff is a double incontinent Quadraplegic who requires the use of pampers and a catheter on a daily basis.
- (b) An x-ray of the spine at the George Town Hospital revealed an anterior dislocation of C₄ on C₅ with approximately 50 percent of the body's depth anterior displacement. A CT scan of the spine also revealed a fracture and an anterior dislocation of C₄ on C₅.
- (c) At UHWI, an MRI confirmed that the Plaintiff had suffered a marked anterior dislocation of C₄ and C₅ with associated fractures of C₄ and C₅ vertebrae resulting in surgical fixation of cervical spine C₄₋₆.
- (d) After receiving physiotherapy, occupational therapy, and the necessary medical and psychiatric care at the Sir John Golding Rehabilitation Centre, on the Plaintiff's last day of treatment, 29 April 2005, muscle power in all limbs remained at Grade '0'. There was no improvement since the time of admission to the Rehabilitation Centre when the Plaintiff had no muscle power in both upper and lower limbs with sensory impairment from T₄ level.
- (e) After leaving the Rehabilitation Centre on 29 April 2005, the Plaintiff requires assistance on a daily basis in addition to his family's assistance, for which he pays, and has developed ulcers and bed sores and requires dressing twice per month. In the past the Plaintiff travelled on several occasions to Alexandria Hospital for treatment and now continues to travel regularly to the St. Ann's Bay Hospital and occasionally to Central Medical Labs Ltd in Kingston for outpatient treatment.

- (f) The Plaintiff, at the time of his injury and after undergoing surgical operations and the necessary therapies with no improvement, has experienced emotional trauma and is also depressed as result of his physical condition and his permanent dependence on others for his basic needs.
- (g) The Plaintiff is no longer able to engage himself in any form of physical activity whether for gainful employment or socially due to the spinal cord injury and Quadraplegia.
- (h) The Plaintiff will continue to be double incontinent and dependant on pampers and catheters along with assistance from others for the rest of his life. The Plaintiff will also have to incur the future costs of purchasing sanitary supplies due to his being double incontinent.
- (i) The Plaintiff will continue to require frequent dressing of bed sores and and may require surgery at some future date. The Plaintiff will also have to incur the future costs of frequent dressing of bed sores and any surgery necessary in the future.

14. The Plaintiff has suffered special damages as follows:

PARTICULARS OF SPECIAL DAMAGES TO DATE

		CIS
1.	Loss of Earnings of CI\$1,500.00 a fortnight from 18 January 2005 to 19 July 2007	97,500.00
2.	Medical Costs from 19 January 2005 to 29 April 2005 JA\$109,880.00	1,373.50
3.	Cost of Pampers JA\$700.00 per week from 18 January 2005 to 19 July 2007 JA\$88,200.00	1,102.50
4.	Cost of urine bags JA\$875 per week from 16 February 2005 to 19 July 2007 JA\$106,750.00	1,334.38
5.	Cost of catheter JA\$230.00 per month from 16 February 2005 to 19 July 2007 JA\$7,015.00	87.69
6.	Assistance in the home JA\$5,000.00 per week from February 2005 to 19 July 2007 JA\$630,000.00	7,875.00
7.	Transportation Costs to date (42 trips x JA\$4,000.00) JA\$168,000.00	2,100.00
	TOTAL	<u>CIS111,373.07</u>

15. The Plaintiff's Loss of Earnings and medical expenses as set out in Paragraph 8 above are continuing.

AND THE PLAINTIFF CLAIMS:

- (a) Special Damages of CI\$111,373.07;
- (b) General Damages;
- (c) Pre-Judgment and post-judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
- (d) Further and/or other relief;
- (e) Costs.

STATEMENT REGARDING INTEREST

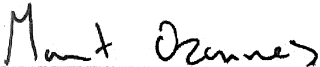
The Plaintiff claims interest from the 19th day of January, 2005 at the rate of 7.25% per annum or as may be varied from time to time by the Grand Court Rules.

STATEMENT REGARDING INSURER

The Defendant is insured by Balderamos Insurance Services Ltd., Crighton Building, P.O. Box 30619, Grand Cayman, KY1-1203, Cayman Islands.

DATED this 19th day of July, 2007

Amended pursuant to an Order of the Court dated the 4th day of December 2007
And Amended pursuant to GCR Order 20 rules 1 and 3 on the 8th day of January 2008
And re-Amended pursuant to a Consent Order of the Court dated on the 13th day of May 2011



QUIN & HAMPSON MOURANT-DU-FEU & JEUNE MOURANT OZANNES
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: James Smith, as The Personal Representatives of Dwight Diedrick, deceased
~~339 Bodden Town Road~~ 258 Town Hall Road, West Bay, Grand Cayman.

and

Robert Watler Jr., trading as Watler's Metal Products Company-Ltd
Sparky's Drive P.O. Box 219
Grand Cayman, KY1-1104 1501, Cayman Islands

and

Watler's Metal Products Ltd
Sparky's Drive
PO Box No. 219
Grand Cayman KY1-1501, Cayman Islands

THIS RE-AMENDED WRIT OF SUMMONS AND STATEMENT OF CLAIM was issued by Messrs. ~~Quin & Hampson, Mourant du Feu & Jeune~~, Mourant Ozannes, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, KY1-1108 (ref: ~~MR/3553-0000~~ 2035243/DIXEN/MdFJ/2622455/1)

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 installments or otherwise.

See over for notes for guidance

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 authroised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.

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ROBERT WATLER JR., TRADING AS WATLER'S METAL PRODUCTS COMPANY-LTD

SECOND DEFENDANT

AND

WATLER'S METAL PRODUCTS LTD

THIRD DEFENDANT

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.

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

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

yes

no

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

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.

Mourant du Feu & Jeune Ozannes
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN KY1-1108 (Ref: MR/3553-0000)
2035243/DIXEN/MdFJ/2622455/1

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