

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No.: G 65 of 2011

BETWEEN:

INDIA LILY AUSTIN (A Minor acting by her Mother and  
Next Friend, JULIET AUSTIN)

Plaintiff

AND

~~CAYMAN ISLANDS HEALTH SERVICES AUTHORITY  
THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS~~

Defendant

---

AMENDED WRIT OF SUMMONS

---

TO: ~~The Cayman Islands Health Services Authority, 95 Hospital Road,  
George Town, Grand Cayman, Cayman Islands.~~  
The Attorney General of the Cayman Islands, Government  
Administration Building, 5<sup>th</sup> Floor, 133 Elgin Avenue, George Town,  
Grand Cayman, Cayman Islands.

**THIS AMENDED 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 Amended 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: 1 March 2011-30 June 2011

NOTE - This Amended 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.

---

### AMENDED STATEMENT OF CLAIM

---

#### Introduction

1. The Plaintiff was born on 1<sup>st</sup> September 2001 at the Cayman Islands Hospital. She is a minor and sues by her mother and next friend.
2. The Defendant is named pursuant to Section 11(2) of the Crown Proceedings Law (1997 Revision) and. At all material times, the Cayman Islands Government was ~~the Health Authority~~ responsible for the provision of health care services and facilities in the Cayman Islands. As such the Defendant:
  - 2.1 Was responsible for the medical, nursing, midwifery and obstetric care at the Hospital;

- 2.2 Owed to the Plaintiff and her mother a duty of care in contract and/or tort, in and about the management of the Plaintiff's delivery; and
- 2.3 In discharging its duty, 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.
3. The essence of the claim is that on 1<sup>st</sup> September 2001, in the course of her mother's labour, the Plaintiff was showing signs of fetal distress. There was a delay between the decision to proceed to emergency Caesarean section at 04.00 hrs and the Plaintiff's eventual delivery at 05.23 hrs. The Plaintiff should have been delivered by 04.30 hrs. As a consequence of that delay the Plaintiff suffered hypoxia, resulting in brain damage.

#### **History of Labour and Delivery**

4. The Plaintiff is her mother's second child. Mrs. Austin's first child was delivered in 1998, following a premature labour at 34 weeks, by Caesarean section because of breech presentation.
5. Mrs. Austin subsequently became pregnant with the Plaintiff, the estimated date of delivery being 12<sup>th</sup> September 2001. The pregnancy progressed normally, with routine antenatal care. She was last seen in the antenatal clinic on 29<sup>th</sup> August 2001, when the plan was to see her in a week and perform a further membrane sweep.
6. On 31<sup>st</sup> August 2001 at about 10.30 hrs Mrs. Austin presented at the Hospital with a history of spontaneous rupture of the

membranes at 38 weeks. On examination there was a cephalic presentation, 2/5<sup>ths</sup> palpable. Clear liquor was draining. The first CTG recording was started: that trace was reassuring.

7. A further CTG trace from about 12.12 hrs was reassuring.
8. At about 17.00 hrs Mrs. Austin was seen by Dr. Richter, Consultant Obstetrician, and it was decided to allow her to go into spontaneous labour, but to consider induction the following morning, if necessary.
9. Between about 18.23 hrs and 19.33 hrs there was a further CTG trace, which was reassuring.
10. At about 1.00 hrs on 1<sup>st</sup> September 2001 Mrs. Austin was experiencing contractions. She drew to the midwife's attention that her Birth Plan stated that the baby needed continuous monitoring throughout labour (Dr. Jenkinson having recorded that this was needed '*as prev c/s*'). The midwife said that they didn't do that as it was better for her to walk around during labour.
11. At 03.00 hrs the contractions were becoming stronger. The next CTG trace commenced at about 03.10 hrs: the baseline appears to have been 110bpm, with a deceleration to 70bpm at 03.25. Vaginal examination was performed at 03.15 hrs, which showed the cervix to be 3cm dilated. Oxygen was given via face mask and Mrs. Austin was turned into a left lateral position.
12. The CTG then improved with a baseline between 110 to 120bpm with good variability and some accelerations. Dr. Richter was called at about 03.30 hrs. At 03.38 hrs there were decelerations

down to 90bpm, in time with contractions (which appear to have been 3 in 10 minutes). At 03.50 hrs the FHR was mostly between 90 and 100bpm, with an occasional increase to 130. This trace was therefore suspicious.

13. Dr. Richter applied a fetal scalp electrode at 04.00 hrs, giving a reading of 95bpm. Intravenous Ventolin was commenced and it was decided to proceed to stat emergency Caesarean section.
14. At 04.10 hrs the night supervisor was informed; the anaesthetist Nurse Hessing was paged; and the paediatrician was called and informed. There was no response from the anaesthetist.
15. Between 04.00 hrs and 04.05 hrs the FHR was between 90 and 110bpm with good variability and no particular pattern. At 04.05 hrs a pattern developed with a baseline between 90 and 100bpm and late decelerations down to 60. There was a lack of variability. Contractions appear to have been 5 to 6 in 10 minutes, most lasting for more than 60 seconds. This was a pathological trace, indicating a low baseline, lack of variability and late decelerations. This trace continued until 04.20 hrs.
16. Meanwhile, at 04.25 hrs the anaesthetist's home number had been located and the anaesthetist was called and informed. Mrs. Austin was transferred to the operating theatre at 04.30 hrs.
17. At about 04.30hrs the trace recommenced, with a baseline of 110 and poor variation but no decelerations. At 04.37 hrs the baseline was 115 with poor variability and no decelerations.

18. Between 04.40 and 05.00 hrs the baseline was about 100 with good variability and no decelerations. This increased to 115 at 05.00 hrs. The recording stopped at 05.02 hrs. Anaesthesia was not commenced until about 05.05 hrs.
19. The operation was started by Dr. Richter at 05.15 hrs and the Plaintiff was delivered by lower segment Caesarean section at 05.23 hrs.
20. At birth the Plaintiff was in poor condition, flat, limp with no spontaneous respiration. Her Apgar scores were 4, 5 and 7 at 1, 5 and 10 minutes. There is no record of cord blood gases. Resuscitation was commenced. She was transferred to the Neonatal Unit where she showed signs of seizure activity. She has developed the signs of hypoxic ischaemic encephalopathy and now has permanent brain damage.

### **Allegations**

21. The Plaintiff's injuries were caused by the negligence of the Defendant, acting by its servants or agents, in the respects particularised below.

### **Particulars of Negligence**

- 21.1 Caused or permitted there to be an unacceptable delay in the decision to delivery time interval. Whilst it should be possible to deliver in a shorter time, delivery should have been achieved within 30 minutes at the latest. The Plaintiff should therefore have been delivered by 04.30 hrs.

- 21.2 Failed to act appropriately upon the abnormalities shown on the CTG trace. At 04.00 hrs the trace was pathological, and the decision taken at that time to proceed to an emergency section was the correct one. Then taking 1 hour and 23 minutes to achieve a delivery represented unacceptable practice.
- 21.3 Failed to have an Anaesthetist on call in the Hospital. This resulted in a delay whilst she attended the Hospital, and anaesthetic was not given until 05.05 hrs.
- 21.4 By those at the Hospital, failed to make immediate contact with the Anaesthetist; or by the Anaesthetist herself failed to be contactable. For whatever reason, it seems that the initial attempt at 04.10 hrs did not result in the Anaesthetist being made aware of the situation at that time.
- 21.5 Failed to have adequate resident staffing levels at the Hospital.
- 21.6 Failed to have an operating theatre with clinical staff ready and available so as to be in a position to proceed expeditiously with the foreseeable procedure of emergency Caesarean section.
- 21.7 Failed to institute, operate or maintain a safe and appropriate system for dealing with emergency / 'category 1' Caesarean sections.
- 21.8 Caused or permitted the Plaintiff to become progressively hypoxic whilst in utero.

- 21.9 In the premises, failed to provide a reasonable level and standard of obstetric care at the Hospital.
22. Had the Plaintiff been delivered at 04.30 hrs she would have been born in good condition, without suffering brain injury. The probability is that even had she been delivered at 05.00 hrs she would not have suffered any significant problems.
23. As a result of the matters complained of the Plaintiff suffered injury, and has been put to loss and expense.

#### **Particulars of Injury**

- 23.1 The Plaintiff suffered hypoxic ischaemic encephalopathy.
- 23.2 MRI scanning shows abnormality to the peritrial white matter and thinning of the corpus callosum.
- 23.3 The Plaintiff was noted from an early age to have muscle stiffness and decreased upper body strength. She exhibited slight reduction in manual dexterity and visual motor integration skills, with a reduction in strength to her dominant right hand.
- 23.4 She experiences speech and language disorder.
- 23.5 She has diffuse neuro-psychological processing deficits. Her memory is impaired and she has ongoing problems with

literacy and numeracy at school. There are difficulties with executive functioning and auditory processing tasks.

23.6 The Plaintiff has undergone physiotherapy; occupational therapy; and speech and language therapy. She needs classroom support. This is likely to continue.

23.7 She is unlikely to achieve her otherwise full educational ability, which will affect her employment prospects.

### **Particulars of Special Damage**

To be advised in a separate Schedule of Loss.

Claims are likely to be made in respect of:

23.7.1 Care.

23.7.2 Cost of medical treatment, and associated travel.

23.7.3 Speech and language therapy.

23.7.4 Physiotherapy.

23.7.5 Occupational therapy.

23.7.6 Educational support.

23.7.7 Loss of earnings / disadvantage on the open labour market.

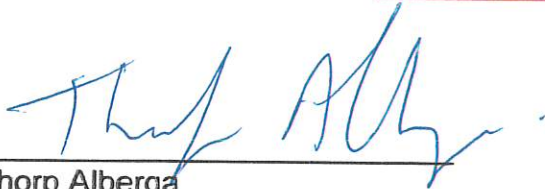
24. Further the Plaintiff claims interest pursuant to the GCR on the amounts found due, at such rates and for such periods as the Court thinks fit.

AND the Claimant claims:

(1) General and Special Damages;

- (2) Interest pursuant to Section 34 of the Judicature Law (2007 Revision) and the Grand Court Rules (1995 Revision) and the Judgment Debts (Rates of Interest) Rules 2008.
- (3) Costs; and
- (4) Such further and/or other relief as may be just.

DATED: ~~1 March 2011~~ 30 June 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 Defendant of 95 Hospital Road, George Town, Grand  
Cayman, Cayman Islands.~~  
THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS,  
Government Administration Building, 5<sup>th</sup> Floor, 133 Elgin  
Avenue, George Town, Grand Cayman, Cayman Islands.

This AMENDED WRIT OF SUMMONS and AMENDED 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/A621-001).

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE No.: G65 of 2011

BETWEEN:

INDIA LILY AUSTIN (A Minor acting by her Mother and Next Friend, JULIET AUSTIN)

Plaintiff

AND

~~CAYMAN ISLANDS HEALTH SERVICES AUTHORITY  
THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS~~

Defendant

ACKNOWLEDGMENT OF SERVICE  
OF AMENDED 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

no

---

Service of the Amended Writ is acknowledged accordingly

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

[Attorney] for

[Defendant in person]

Address for service:

***Please complete overleaf***

**Notes on address for service**

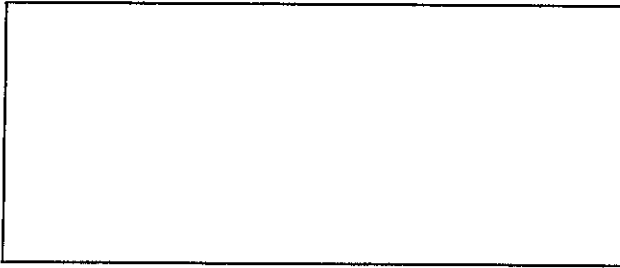
**Attorney:** Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

**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: [cmcduff@thorpalberga.com](mailto:cmcduff@thorpalberga.com)  
Ref: CMD/A0621-001.

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

A large, empty rectangular box with a thin black border, intended for the indorsement of the defendant's attorney or the defendant. The box is currently blank.

**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.