

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 270 OF 2012

BETWEEN GODEFRIDUS HENDRIKS

1st PLAINTIFF

AND A. HENDRIKS VAN-OORSCHOT

2nd PLAINTIFF

AND DR. BRIAN BACKMAN

DEFENDANT



WRIT OF SUMMONS

*TO: DR. BRIAN BACKMAN
4 Windward Place
93 Smith Road
George Town
Grand Cayman.*



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 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 Acknowledgement of Service, stating therein whether you intend to contest these proceedings.

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

Issued this day of 2012

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 Acknowledgement of Service are given with the accompanying form.

ENDORSEMENT

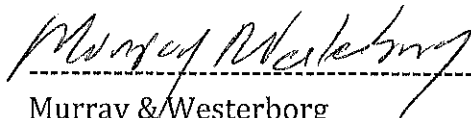
The First Named Plaintiff is a 62 year old practicing Physician who resides in the Cayman Islands at 60 Philipp Crescent Drive, West Bay, Grand Cayman and claims damages against the Defendant in that from on or about the 19th day of March 2010 the Defendant, who was at all material times the person responsible for the care, management, surgery and control over the First Plaintiff's illness, acted so negligently that the Plaintiff suffered distress, damage and injury.

The Second Plaintiff, the wife of the first Plaintiff is a 66 years old and claims against the Defendant for damages for emotional distress, and stress due to the difficulties caused by Defendant's negligent care, management, surgery and control over the First Plaintiff and was a person whom the Plaintiff ought reasonable to have in his contemplation in his treatment of the First Plaintiff.

And the Plaintiffs claim;

1. Damages
2. Cost
3. Interest
4. Such further or other reliefs.

Dated the 1st day of May 2012



Murray & Westerborg
Plaintiffs' Attorneys-at-Law

THIS WRIT was issued by Murray & Westerborg, Attorneys-at-Law, for and on behalf of the Plaintiffs whose address for service is that of their said Attorneys-at-Law, The Second Floor (South West Wing) Cayman Shipping Centre Building, 10 Shipping Lane, George Town, Grand Cayman.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO.

OF 2012

BETWEEN GODEFRIDUS HENDRIKS

1st PLAINTIFF

AND A. HENDRIKS VAN-OORSCHOT

2nd PLAINTIFF

AND DR. BRIAN BACKMAN

DEFENDANT

STATEMENT OF CLAIM

1. The First Plaintiff is a sixty-two year old Physician who is registered to practice in the Cayman Islands, and together with the Second Plaintiff resides at 60 Philipp Crescent Drive, West Bay, Grand Cayman.
2. The second Plaintiff is the wife of the First Plaintiff and is sixty-six years of age.
3. The Defendant is and was at all material times a practicing medical practitioner, registered to practice in the Cayman Islands and is or was at all material times a Specialist in Urology or held himself out so to be.
4. Since on or about the 19th day of March 2010 the First Plaintiff consulted with the Defendant in respect of a medical condition and the Defendant since that date and until on or about the 17th day of December 2010 had control, management, and administered the medical care and attention that the first Plaintiff's illness demanded.
5. On or about 18th day of March 2010 the First Plaintiff presented to the Emergency Department of the Cayman Islands Health Services Authority Hospital in George Town, Grand Cayman ("George Town Hospital") with gross hematuria and retention of urine. The First Plaintiff was eventually able to void urine and was thereafter allowed to return home.
6. On the morning of the 19th March 2010 the First Plaintiff returned to the George Town Hospital with retention of urine. A Foley catheter was passed and the Defendant, who was informed of the First Plaintiff's condition, took over the management of the First Plaintiff's condition.
7. On our about the 19th day of March 2010 the Defendant diagnosed the First Plaintiff as suffering from acute and chronic inflammation of the prostate with complete obstruction by very large and long lateral lobes that project into the bladder. The Defendant also found an area of tissue necrosis on the left Anterolateral aspect of the Intravesical projection of the prostate and noted, "some bleeding was seen".

8. The Defendant ordered a bladder biopsy on the 19th day of March 2010 and the same was sent to Regional Laboratories in Fort Lauderdale, Florida, for consultative review.
9. On the 20th day of March 2010 the First Plaintiff again presented to the George Town Hospital with retention of urine. Following a telephone consultation with the Defendant, the attending Emergency Room physician placed a U-catheter to drain the urine and advised the First Plaintiff that it was to remain in the bladder for four to five days and that the First Plaintiff was to undergo a trial of spontaneous voiding or keep the U-catheter until the Defendant returned to Grand Cayman in mid April 2010. The First Plaintiff kept the U-catheter in until the Defendant returned to Grand Cayman in mid April 2010.
10. On or about the 31st day of March 2010 a report was prepared by Dr. Shravan K. Joyti at the George Town Hospital on the bladder biopsy which had been taken from the First Plaintiff.
11. On or about the 1st day of April 2010 Dr. Salina Lucero of the Regional Laboratories, Fort Lauderdale, Florida, prepared a report on the bladder biopsy taken from the Plaintiff and which had been sent for consultative review.
12. The review by both Drs. Joyti and Lucero concluded that the biopsy was consistent with the high-grade transitional cell carcinoma and suggestion of invasive urothelial carcinoma.
13. On or about the 21st day of April 2010 the Defendant performed transurethral resection of the bladder under general anaesthesia and bladder and prostate biopsies were taken for consultative review by Dr. Joyti and Dr. Lucero.
14. The review by both doctors prepared on the 29th and 5th April 2010 respectively confirmed the presence of invasive high-grade urothelial carcinoma in both the bladder and the prostate.
15. On the 19th day of July 2010 the Defendant performed a cystoscopy on the First Plaintiff under local anaesthesia.
16. On the 21st day of July 2010 the Defendant performed a transurethral resection of the bladder under general anaesthesia. Biopsies were taken of the bladder and sent to Dr. Joyti for consultative review.
17. The report prepared by Dr. Joyti on the 27th day of July 2010 confirmed the presence of high-grade invasive urothelial carcinoma of the bladder.
18. The First Plaintiff remained under the care of the Defendant and on the 8th September 2010 the first of six weekly therapies with BCG was begun.

19. During the course of the BCG therapy the Plaintiffs noted that the First Plaintiff was losing weight. The First Plaintiff also began having increasingly severe pain in his lower limbs and in particular the right lower limb. The Plaintiffs brought their observation to the Defendant who responded that he did not know of such symptoms being associated with BCG therapy.
20. On or about the 24th day of November 2010 the Defendant performed a cystoscopy on the First Plaintiff under local anaesthesia.
21. On or about the 1st day of December 2010 The Defendant performed a transurethral resection of the First Plaintiffs tumours under general anaesthesia.
22. On or about the 6th day of December 2010 Dr. Cheryl Reichert prepared a histology report in respect of the First Plaintiff and found that the First Plaintiff's bladder showed a high-grade urothelial carcinoma invasion of the submucosa and muscularis propria.
23. On the 7th day of December 2010 the Defendant summoned the First and Second Plaintiffs to his office.
24. On the 7th day of December 2010 at his said office the Defendant advised the Plaintiffs that the pathology report of the 1st December 2010 showed "for the first time" lymphatic invasion of the bladder.
25. The Defendant advised the Plaintiffs that in light of the said report it was necessary for the First Plaintiff to go overseas for radical cystectomy.
26. The First Plaintiff had been under the care of the Defendant from on or about the 19th day of March 2010 and up until the 7th day of December 2010 had not been advised by the Defendant of the true state of his condition or of the details of the previous pathology reports.
27. The Defendant referred the First Plaintiff to the Anderson Cancer Clinic in Houston.
28. The First Plaintiff after consulting by telephone with Prof. Brian Miles, Clinical Professor of Urology and Medical Director of Robotic Surgery at the Baylor College of Medicine in Houston, decided to have the radical cystectomy procedure carried out by Prof. Miles instead.
29. The First Plaintiff was initially clinically assessed by Prof. Miles on or about the 17th day of January 2011 and was diagnosed to be suffering from stage T4 bladder carcinoma.
30. Diagnostic testing in the form of CT scans of the abdomen and pelvis were performed on the First Defendant for the first time at the said Baylor College of

Medicine in Houston and revealed that the First Plaintiff was suffering from extensive metastatic disease of the liver, lumbar sacral spine and a massive bladder carcinoma of the sacral area.

31. The said findings, following the CT scan, indicated that radical cystectomy was not an option for treating the First Plaintiff and that chemotherapy was the only viable treatment option for the First Plaintiff.
32. Consequent on the said findings the First Plaintiff was referred by Prof. Miles to Prof. Amato, a Urogenital Oncologist, who commenced treating the First Plaintiff on or about the 23rd day of January 2011.
33. The First Plaintiff has subsequently received copies of his medical records which show a history of pathological reports indicating his true ailment and which were not acted on by the Defendant or brought to the attention of the First Plaintiff.
34. The First Plaintiff claims that his then and current condition was caused or contributed to by the treatment and management of his illness by the Defendant.
35. The First Plaintiff claims that the Defendant was negligent in his treatment, care and management of the First Defendant during the period 19th March 2010 to the 17th December 2011, while he was a patient of the Defendant.

PARTICULARS OF NEGLIGENCE

- a. Failing and/or neglecting to perform the proper treatment and/or surgery within a reasonable time or at all.
- b. Failing to act under the General Medical Council care guide in providing or arranging for and/or adequately assessing the First Plaintiff's condition taking account of the history (including the symptoms and physiological and social factors), patient's views and where necessary examining the patient.
- c. Failure to refer the First Plaintiff within a reasonable time to another practitioner when this was in the patient's best interest.
- d. Failing to provide effective treatment to the First Plaintiff although the tumours recurred every time in the same bladder site when it was invaded and some tissue taken away.
- e. Failing to keep clear and accurate records of the biopsy reports taken from the Plaintiff.
- f. Failing to discuss the pathology reports with the First Plaintiff.
- g. Failing to diagnose the stage T-4 histology of the bladder carcinoma in April 2010.
- h. Failing to refer the First Plaintiff in April 2010 for radical cystectomy, which would have been in the best interest of the First Plaintiff.
- i. Failing to inform the First Plaintiff that two-thirds of his bladder wall was carcinoma in situ, in a timely manner.

- j. Providing the wrong treatment to the First Plaintiff in the prescription of 6-week course of BCG therapy.
 - k. Failing to pay sufficient or any attention to the First Plaintiff's severe symptoms of lower back pain in both legs and in particular his right leg, and his ongoing weight loss.
 - l. Referring the First Plaintiff to undergo radical cystectomy overseas when such treatment would have been improper given the First Plaintiff's suffering from extensive metastatic disease.
 - m. Failing to diagnose the Plaintiff's suffering from metastatic disease.
 - n. Failing to provide documentation to the doctors treating the First Plaintiff overseas.
 - o. Failing to carry out all the necessary tests required of someone presenting with the condition of the First Plaintiff.
 - p. Providing care, monitoring and treatment to the First Plaintiff that fell below the standard of care that is required in a Medical Practitioner for the disease that the Plaintiff was suffering from.
36. As a consequence of the negligence of the Defendant the First Plaintiff suffered injury, loss and damages.

PARTICULARS OF INJURY OF FIRST PLAINTIFF

- (a) Loss of Weight
- (b) Excruciating pain in lower back
- (c) Compression Fracture
- (d) Painful neuropathy in fingers and feet
- (e) Blurred Vision
- (f) Imbalance
- (g) Erectile dysfunction

PARTICULARS OF SPECIAL DAMAGES

(i)	Transportation Costs (Air & Ground)	US\$10,411.80
(ii)	Accommodation Costs (Hotel/Apartment)	US\$ 9,863.45
(iii)	Medical Costs (Dr. Backman)	US\$ 1,500.00
(iv)	Telecommunication Costs (continuing)	US\$ 1,390.00
(v)	Home Care (Cayman) (continuing)	<u>US\$ 4,500.00</u>
		US\$27,665.25

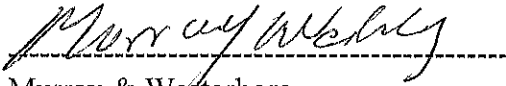
37. The Second Plaintiff has suffered emotional stress, pain, trauma, discomfort, lack of sleep and consistent grief as a consequence of learning of the negligence of the Defendant in the treatment of the First Plaintiff.

AND THE PLAINTIFFS CLAIM:

- 1. Special damages

2. General Damages for negligence
3. Cost
4. Interest at such rate and for such period as deemed necessary
5. Further or other relief

Dated this 1st day of May 2012

A handwritten signature in cursive script, appearing to read "Murray & Westerborg", is written over a horizontal dashed line.

Murray & Westerborg
Plaintiffs' Attorneys-at-Law

THIS STATEMENT OF CLAIM is filed by Murray & Westerborg, Attorneys-at-Law, for and on behalf of the Plaintiffs whose address for service is that of their said Attorneys-at-Law, The Second Floor (South West Wing) Cayman Shipping Centre Building, 10 Shipping Lane, George Town, Grand Cayman.

Acknowledgment of service of writ of summons (O.12, r.3)

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.

BETWEEN GODEFRIDUS HENDRIKS

1st PLAINTIFF

AND A. HENDRIKS VAN-OORSCHOT

2nd PLAINTIFF

AND DR. BRIAN BACKMAN

DEFENDANT

**ACKNOWLEDGEMENT 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 judgement being entered against a Defendant whereby he May have to pay the costs of applying to set it aside.

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

2. State whether the Defendant intends to contest the proceedings (tick the 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 judgement 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 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 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:

Murray & Westerborg
Attorneys-at-Law
Second Floor (South West Wing)
Cayman Shipping Centre Building
10 Shipping Lane
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: