

Writ of Summons (O.6, r.1)

LEGAL AID NO: 30/10

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 381 OF 2012

BETWEEN RICARDO ROBERTSON

PLAINTIFF

AND HARVEY'S CONSTRUCTION LTD

1<sup>ST</sup> DEFENDANT

AND GARY O'NEIL BOWEN

2<sup>ND</sup> DEFENDANT



SPECIALY ENDORSED WRIT OF SUMMONS

TO: DEFENDANTS:

1<sup>ST</sup> DEFENDANT: HARVEY'S CONSTRUCTION LTD c/o P. O. Box 806 GT Grand Cayman, Cayman Islands.

2<sup>ND</sup> DEFENDANT: Held at Her Majesty's Pleasure c/o Northward Prison, Northward, Grand Cayman, Cayman Islands, BWI

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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 7<sup>th</sup> day of September 2012

NOTE - This Writ may not be served later than 4 calendar 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, Mr. Ricardo Kenroy Robertson, whose date of birth is 25 May 1977, was at the time a 32 year old Jamaica national who was employed in the capacity of Heavy Equipment Operator receiving a wage of \$13.00 per hour on a three year work permit expiring September 2011. The Plaintiff was employed with the 1<sup>st</sup> Defendant, Harvey's Construction Ltd., since July 2004.
2. On 7 September 2009 the Plaintiff was assaulted by Mr. Gary O'Neil Bowlyn also a Jamaica national and a coworker at a work site on Anthony Drive Windsor Park George Town with a hammer.
3. He was transported by private motor vehicle to the Health Services Authority ("HAS") in George Town. On the same day he was transferred to Chrissie Tomlinson Memorial Hospital where Dr. James Akinwumi, a Neurosurgeon, at Chrissie Tomlinson Memorial Hospital performed brain surgery on him and who further advised, in short, and amongst other things, that Mr. Robertson is not to travel for period of six months. The Plaintiff due to his condition still has not been able to travel.
4. Since his injury the Plaintiff has not received any compensation for sick leave and all other consequential payments. The Plaintiff lived with his fiancée who assisted with his living expenses and cared for him but since the accident the relationship has broken down. The Plaintiff's employer has since cancelled his health insurance and pension benefit since December 2009. The Plaintiff's work permit was cancelled on 1 March 2010. The Plaintiff received no payments following the termination of his employment. The Plaintiff's employer arranged and paid for his mother to be brought from Jamaica and by offering to pay her C\$10,000 to remove the Plaintiff from the jurisdiction at a time when the Plaintiff was not fit to travel and also promising that he would send a payment monthly to the Plaintiff's mother was admitting its responsibility for the accident.
5. The injuries to the Plaintiff were caused by the negligence of the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.

### Particulars of Negligence

6. The 1st Defendant and or its servants or agents were in breach of their statutory duty of care and their common law duty of care to the Plaintiff by virtue of their acts or omissions. The 1st Defendant and/or its servants or agents were aware or were made aware of the harassment of the Plaintiff and his request that the employees desist from interfering with him whilst he was at work. The 1st Defendant and/or its servants or agents were aware of an earlier altercation on the

- same day as the final incident between the Plaintiff and the 1st Defendant. But for such conduct being permitted to continue and a failure to stop such conduct such altercations at the place of work whilst the Plaintiff was working would not have occurred.
7. The 2nd Defendant is in breach of his duty of care to the Plaintiff in that he harassed the Plaintiff at his place of work by, for instance, publicly questioning his sexual orientation and that of his family members and his fiancée, which harassment was known to his fellow employees and others and occurred on a regular basis over a period of some three years. That after a second altercation broke out that day between the Plaintiff and the 2<sup>nd</sup> Defendant, the 2<sup>nd</sup> Defendant used, amongst other things, excessive force when fighting the Plaintiff and by that he used a hammer to repeatedly hit the Plaintiff about his head which led to the Plaintiff suffering the injuries as set out below.
  8. On 16 March 2012 the Defendant was convicted in the Grand Court of the Cayman Islands sitting at George Town, Grand Cayman, in Indictment number 31 of 2010 on his plea of not guilty of grievous bodily harm under Penal Code (R2010). The said conviction is relevant to the issue of negligence and the Defendant intends to rely on it as evidence in this action.
  9. By reason of these matters, the Plaintiff sustained injuries and he has suffered loss and damage.

#### **Particulars of Injuries**

10. As a result of receiving several blows to his head the Plaintiff received a depressed skull fracture, extradural hematoma with subarachnoid blood, large intracerebral hemorrhage and thus a major head injury, profound speech deficit and possibly severe expressive dysphasia, weak down the right side of his body and a broken left little finger. The Plaintiff will rely on the report of Dr. Ajit Mathew M.D. Consultant General Surgeon dated 6 October 2009.

#### **Particulars of Special Damage**

11. The Plaintiff incurred substantial special damages. Such loss included loss of income from the date of the accident to today. Medical expenses incurred at Chrissie Tomlinson Memorial Hospital totaled at that time \$32,196.37. The Plaintiff Health Insurance paid \$19,847.61 and \$9,227.24 was discounted by the hospital. The Plaintiff's co-payment was \$3,121.52. Following surgery the Plaintiff was transferred back to HSA where he remained until discharged on 4 October 2009. The Plaintiff's Medical bills incurred at HSA amounted to CI\$25,258.72. The Plaintiff's insurance provider paid \$5,152.39 and there

remains an unpaid balance of \$20,106.33. the total owed to HSA at that time was \$25,344.25. Those charges include some charges for physiotherapy. Mr. Robertson's insurance plan with his employer was a standard one with British American, thus only covering \$25,000.00 per episode. He was admitted to the Critical ward and later transferred to medical ward. The Plaintiff will particularise all damages as he is still in need of medical treatment.

AND the Plaintiff claims

- (i) Damages
- (ii) Further, pursuant to The Judicature Law (1995 Revision), the Defendant is entitled to and claims interest on such sums as are found to be due at such rate and for such period as the Court shall think fit.
- (iii) Costs



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Clyde H. Allen, Chambers

THIS WRIT was issued by Clyde H. Allen, Chambers on behalf of the Plaintiff whose address for service is P.O. Box 31076 SMB, 2nd Floor, Suite 9, Jack & Jill Building, 19 Fort Street, KYI-1205, George Town, Grand Cayman, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. OF 2012

BETWEEN RICARDO ROBERTSON PLAINTIFF  
AND: HARVEY'S CONSTRUCTION LTD DEFENDANT  
AND: GARY O'NEIL BOWLYN 2<sup>ND</sup> 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 a 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

Address for service: (please see overleaf)

*Please complete overleaf*