

No. 1  
Writ of Summons (0.6, r.1)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

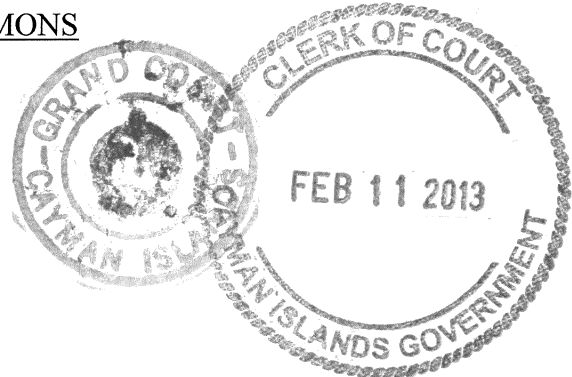
CAUSE NO: *44* OF 2013

BETWEEN: ALEXANDER CHESLEY BROWN - PLAINTIFF  
AND: THE RITZ CARLTON, GRAND CAYMAN - 1<sup>st</sup> DEFENDANT  
CYNTHIA BEDFORD - 2<sup>nd</sup> DEFENDANT

WRIT OF SUMMONS

TO : THE RITZ CARLTON, GRAND CAYMAN  
: CYNTHIA BEDFORD

PO BOX 32348 KY1-1209  
SEVEN MILE BEACH,  
GRAND CAYMAN,  
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 [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, 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 this 11<sup>th</sup> day of February 2013.

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.

## STATEMENT OF CLAIM

AND THE PLAINTIFF claims:

1. That throughout his life he has been employed in the tourism industry. Specifically in the positions of Bell Man/House Man at the Treasure Island Resort, the Westin Casuarina Resort and Spa and the Ritz Carlton, Grand Cayman.
2. That he was employed with the 1<sup>st</sup> Defendant in the position of House Man between 2009 and 2011. His duties consisted of, amongst other things, transporting amenities such as towels and wash cloths around the hotel, ensuring the halls were kept clean and basically any manual labour required for the completion of housekeeping duties in the area that he was assigned to.
3. That a short while after he began his shift at 7am on 11<sup>th</sup> February 2011, he received instructions via his handheld radio from the Housekeeping Coordinator, Ms. Cynthia Bedford (the 2<sup>nd</sup> Defendant), to relocate a refrigerator from a storage room on the second floor to Room 475 as there were "V.I.P." guests waiting for the refrigerator to be placed in the room as well as other amenities before they could occupy the room.
4. That in order to transport the refrigerator, he had to place it in a linen cart which is normally used to transport laundry and other items around the hotel. The linen cart was not an appropriate vehicle for transporting the refrigerator as in order to place the refrigerator in and out of the cart, it would have to be raised over the top of the bin which he estimated to have been between 3.5 and 4 feet, possibly higher. On previous occasions he, as well as other housekeeping staff, used a more appropriate cart for transporting heavy items such as refrigerators. This was the cart which was otherwise used for transporting champagne glasses. Unlike the linen cart, that cart had no sides so heavy objects could be placed on or off the cart safely without having to reach into it and lift the object being carried over a high brim as was necessary with the linen cart. Unfortunately, on the morning when he sustained his injury he was refused use of this cart by the Kitchen Manager, so he had to use the linen cart which is used by the housekeeping staff.
5. That on the way to the room he received another radio transmission from the Housekeeping Coordinator (2<sup>nd</sup> Defendant) inquiring as to whether he had placed the refrigerator in the room yet. He replied that he was presently on his way to the room with the refrigerator to which the 2<sup>nd</sup> Defendant replied that he needed to hurry up because the guests were waiting.
6. That upon reaching the doorway of room 475 he stopped the linen cart in the hallway and proceeded to take the refrigerator out of the cart. After having reached into the cart to lift the

refrigerator out of the cart and whilst lifting the refrigerator over the brim, he suddenly felt an extreme pain in his lower back and he felt as if he had lost all sensation in his legs. He was unable to sustain the weight of the refrigerator at this point and had to drop it back into the linen cart. His legs became unable to sustain the weight of his body and as he felt himself falling to the floor he grabbed the linen cart with both arms and held on tightly.

7. That one of his co-workers witnessed the entire incident. That co-worker called the Loss Prevention office on the radio and told them what had happened. He described the pain he was feeling to his co-worker. In addition to the immense pain in his lower back and losing all sensation in his legs, he felt as if the muscles in his abdomen had suddenly weakened as well. As a result of the co-worker's call on the radio, two Loss Prevention officers arrived with a wheelchair. Both of them and another co-worker physically placed him in the wheelchair. Due to the immense pain that he was experiencing and his inability to support his own weight, an ambulance was called to transport him to the George Town Hospital for treatment.
8. That when the ambulance personnel arrived they told him that he should try to walk. He told them that he was unable to stand up on his own. Consequently he was then transported to the hospital by ambulance.
9. That upon arriving at the hospital, he underwent x-rays of his back. Despite being treated with strong pain relievers and muscle relaxers the pain in his back remained although it did lessen to a limited extent with the medication. As a result of the medication's failure to consistently and completely alleviate the pain in his back, Doctors subsequently ordered an MRI and CT-Scan to further evaluate his injury.
10. That the results of the MRI procedure showed that he suffered prolapsed discs in his lower back sometimes referred to as "herniated" or "slipped" discs and that the medical evidence supports this finding. He has never had any back problems prior to the injury which he sustained whilst he was lifting the refrigerator over the brim of the linen bin at the Ritz Carlton Grand Cayman.
11. That as a result of the disabling effects of his injury, he has had to visit various doctors, both specialists and general practitioners, over a dozen times for treatment of the consistent severe pain he has experienced as well as visits to a Chiropractor. The medical evidence will also support this. He considers that the risks associated with the available treatment options which include, among other things, permanent paralysis and death, far outweigh the benefits, especially given the fact that no benefits are guaranteed from the available treatment options.
12. That after he was injured, recognising the fact that his injury had rendered him unable to perform his House Man duties, the management at the Ritz Carlton Grand Cayman (1<sup>st</sup> Defendant) transferred him to another position with much less physically strenuous duties. These new duties did not require any heavy lifting or walking back and forth across the hotel's large property. He was instructed to dust tables, fold hand towels, vacuum the men's room and other duties which were

not very physically strenuous in nature. When he returned to work he was told by the Human Resources Director, Ms. Janette Goodman, not to be "a hero". He understood this to mean that he should not overly exert himself and aggravate his injury again and that if he needed to take a break because he was experiencing pain from his injury, that he should go into the changing room. Ms. Goodman also told him that if the pain was too unbearable on a particular day that he couldn't come to work that would be fine and they would understand.

13. He did experience severe pain often when he returned to work after his injury which resulted in him having to take rest breaks to attempt to alleviate the pain. Although he was unable, at times, to even bend his body enough to enter/exit his car to travel to work therefore resulting in him being unable to report for work on some days, he never took advantage of the fact that he was injured to miss work or take breaks at work. On most occasions he persevered through severe pain to complete his duties competently because he, generally, loved to work, loved his job and providing for his family was very important to him.
14. That a few months after returning to work following his injury, the empathy initially shown to the him by the management seemed to dissipate as their attitude towards his injury changed. At this point he was treated by the management as if he was exaggerating the severity of the pain from his injury or that he should have recovered from the injury by then as if it was a common cold or flu.
15. That the management of The Ritz Carlton Grand Cayman (1<sup>st</sup> Defendant) in fact knew that exaggerating the effects of his injury or missing work for deceptive reasons would be utterly inconsistent with his character and demonstrated work ethics which they were well aware of. Soon after starting his employment with the 1<sup>st</sup> Defendant he was transferred to "the Residences" area of the property which is an area in which only staff who perform their duties exceptionally well were assigned to because it is a much more demanding role than similar roles in "the Hotel" area.
16. That further evidence that management was well aware of his exceptional work ethics and good character before his injury disabled him from performing up to the high standards he had set for himself and, indeed, maintained throughout his 20 year career in the Tourism Industry is the fact that he was nominated for the "Five Star Employee Award" by management. The Five Star Employee Award honours employees who have demonstrated exceptional qualities based on qualifications such as providing the hotel's guests with the utmost service, acting as ambassadors of The Ritz-Carlton, exceeding job expectations and serving fellow employees with respect and dignity. He has worked in the tourism industry for over 20 years and has built a reputation as a hard-working employee over the years.
17. That his employment was ultimately terminated by the 1<sup>st</sup> Defendant, his last day at work was the 6th January, 2012. In the termination letter the Human Resources Director, Janette Goodman, states, "*you experienced extended periods of absence from work complaining of an injury to your back, these periods began in March through May and again in July, and repeated as you felt you were unable to work. As your customary role involves a significant amount of manual handling, the*

*hotel has used its best efforts to identify sedentary duties for you in order to permit you to return to work. Unfortunately, you did not feel able to cope with these tasks, and it has not been possible to identify any other alternative, less physically demanding, role in the hotel to which you could be transferred."*

18. That it was wrong for the 1<sup>st</sup> Defendant to terminate him for the reasons that they did because the injury which resulted in him being absent from work and hindered him from performing his duties was directly caused by the performance of his duties in the way he was instructed to perform them by the 2<sup>nd</sup> Defendant. That since his injury, the 1<sup>st</sup> Defendant now requires staff lifting heavy objects to wear back braces.
19. That to this day, he is unable to complete simple tasks such as sweeping, raking or washing the dishes. Upon commencing these tasks he is fine on most occasions, but within a short period of time he starts to experience severe lower back pain which sometimes extends to one or both of his legs. On most occasions he is not able to complete these simple tasks.
20. That as a result of his injury his daily life has been seriously impacted. He is no longer able to financially support his three children, his wife or himself not only due to the termination of his employment by the 1<sup>st</sup> Defendant and the injury he sustained while employed and working for the 1<sup>st</sup> Defendant, but also because the job skills which he has acquired over the years have all been in positions which require manual labour. He has no experience in office positions and no education related to less strenuous occupations.
21. That the pain in his back and at times in his legs lessened slightly over the course of the first year of his injury, however, at this point almost two years after the injury occurred he is still plagued by severe back pain when he stands for too long, walks for more than a couple of minutes, does any activities where the muscles in his back are used even for simple tasks such as washing dishes, sweeping, raking, washing a vehicle etc. To this day, many nights he has to sleep on his sofa with his legs and back positioned at a particular angle to prevent severe cramps from occurring in his legs while he is sleeping. Needless to say, he would much rather sleep in his own bed with his wife, however, his injury has prevented both him and his wife from experiencing even this simple comfort on many occasions since he sustained his injury. Furthermore, his sexual performance has been adversely impacted by his injury which has in turn created additional emotional distress for him and his wife and additional strain on their marriage.
22. That, given the manifest negligence on the part of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants which gave rise to the circumstances in which he sustained his injury, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are unreservedly liable for both the occurrence of his injury as well as any and all of the various consequential losses which he and his family have had to endure which are recognised by statute and/or common law as losses which he and his family are entitled to be compensated for. This conclusion is based upon careful consideration of the applicability of well-established common law principles and relevant statutory

provisions which govern, inter alia, an Employer's Duty of Care to an employee and the circumstances which constitute a failure on the part of the Employer to properly discharge this duty.

23. That the simple safety equipment and precautionary measures which could have greatly reduced the likelihood of injury to him and indeed other employees of the 1<sup>st</sup> Defendant could not on any reasonable analysis be considered cost-prohibitive or impracticable.

24. That in the circumstances, he verily believes :

- a) That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants owed a duty of care to him to ensure that he had the proper equipment, tools, training and instructions to carry out his duties safely and efficiently and that this is a well established and settled principle of law as laid down in **sections 58 and 62 of the Labour Law (2011 Revision)** and in **Wilsons and Clyde Coal Co v English [1938] AC 57;**
- b) That an Employer is vicariously liable for any torts committed by its employees in the course of their employment and that this is a well established and settled principle of law as laid down in **Wilsons and Clyde Coal Co v English [1938] AC 57.** Further, that the 2<sup>nd</sup> Defendant was and is an employee of the 1<sup>st</sup> Defendant ;
- c) That in the circumstances of this case, 1<sup>st</sup> and 2<sup>nd</sup> Defendants were in breach of the duty of care which they owed to the him and that this is a well established and settled principle of law as laid down in **Clifford v Charles H. Challen & Son Ltd [1951] 1 KB 495.** Furthermore, that this breach of duty directly resulted in him being injured in the way that he was; and
- d) That the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are jointly and severally liable for the resulting losses which he suffered and continues to suffer as a result of his injury which has rendered him unable to work. This is supported by **Livingstone v Raywards Coal Co. (1880) 5 App Cas 25, 39.**

25. That in the circumstances, the losses for which he is entitled to compensation include, but may not necessarily be limited to :

- i. Emotional distress experienced by both him and his family caused by the various physical, financial and sexual disabilities which are directly and exclusively caused by the injury he sustained while employed by the 1<sup>st</sup> Defendant;
- ii. Pain and suffering that he has had to endure on a regular basis as a result of the symptoms from the injury;
- iii. Any and all past and future medical expenses directly attributed to the injury;
- iv. Any and all past and future financial losses, including but not necessarily limited to loss of salary, directly caused by his injury; and
- v. Any and all interest that may have accrued on these losses.

26. Costs in this cause.



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**CHARLES E. CLIFFORD, JP**

Clifford Law Associates

On behalf of the Plaintiff **ALEXANDER BROWN**

THIS WRIT was issued by *Charles Clifford, Attorney-At-Law of Clifford Law Associates on behalf of the Plaintiff*, whose address for service is PO Box 190 KY1-1601, Grand Cayman, Cayman Islands.

**Acknowledgement of service of writ of summons (0.12, 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 495, 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**

**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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2013

BETWEEN: ALEXANDER CHESLEY BROWN - PLAINTIFF

AND: THE RITZ CARLTON, GRAND CAYMAN - 1<sup>st</sup> DEFENDANT  
CYNTHIA BEDFORD - 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 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.*

**CLIFFORD LAW ASSOCIATES**  
**Attorneys-At-Law**  
**P.O. Box 190, KY1-1601**  
**5<sup>th</sup> Floor, Genesis Building**  
**George Town**

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

[Empty box for defendant's attorney indorsement]