

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC 190 OF 2013
LEGAL AID #38 of 2007

BETWEEN:

DONETTE THOMPSON
(acting through her next friend NOREEN THOMPSON)

PLAINTIFF

AND:

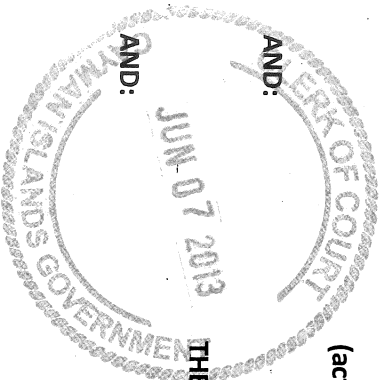
THE CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

FIRST DEFENDANT

AND:

DR GILBERTHA ALEXANDER

SECOND DEFENDANT



WRIT OF SUMMONS



TO: Dr. Gilberta Alexander
c/o Cayman Islands Health Services Authority
PO Box 915 GT
Grand Cayman

and

Cayman Islands Health Services Authority
PO Box 915 GT
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 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this day of June 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

1. At all material times the 1st Defendant maintained and operated the George Town Hospital. The 2nd Defendant was the staff physician specialising in Obstetrics and Gynecology and on duty on the 8th July 2005 at the George Town Hospital.
2. The Plaintiff who is a minor brings this action through her next friend and mother, Noreen Thompson.
3. On the 8th July 2005 Noreen Thompson was admitted to the said hospital having been booked in by prior arrangement for induction of labour and for the birth of her daughter Donette who was born on the following day.
4. At all times material to this action the 1st Defendant operated the aforesaid hospital which was staffed by doctors, nurses and midwives including the 2nd Defendant, who were servants or agents of the Defendant acting in the course of their employment, and the Defendants, their aforesaid servants or agents, throughout the events particularised hereafter, owed the plaintiff a duty to exercise all reasonable care, skill, competence and diligence in the course of the induction and management of the labour and the delivery of the Plaintiff, and they and each of them knew or ought to have known that a failure so to do might result in personal injury to the Plaintiff.
5. In the course of the aforesaid induction and management of labour and delivery of Donette and in purported performance of the aforesaid duty, the Defendants' servants or agents and in particular the said Dr. Alexander allowed the management and delivery of the child to occur as follows:
 - 5.1 Labour was induced twice on 8th July 2005 with Prostin being administered and once on Saturday 9th July 2005.
 - 5.2 The 2nd Defendant saw Noreen Thompson at 11:35 hours on 9th July 2005 and observed she was distressed with pain, the foetal heart was reactive and contractions were moderate to strong.
 - 5.3 At 15:45 hours on 9th July 2005 the cardiotocograph (CTG) became non-reassuring with late deceleration. Attempts were made by the midwife to alleviate any possible cord compression by turning Noreen Thompson on to the left side. A vaginal examination was performed and the cervix was found to be 9cm dilated.
 - 5.4 At 16:25 hours the abdominal monitor showed frequent, strong contractions with the suggestion of late decelerations and quick recovery. It is alleged that this was clearly a non-reassuring CTG.

- 5.5 From 16:30 hours onwards the CTG became pathological, indicating the onset of chronic hypoxia. There was repeated prolonged deceleration of the foetal heart rate and the Plaintiff's pH and oxygen levels would have declined slowly and steadily after this.
- 5.6 From 17:05 to 17:20 hours a prolonged bradycardia commenced with no variability in the foetal heart rate of 90 beats per minute to 110 beats per minute, indicating severe hypoxia. As a result of this severely pathological CTG Noreen Thompson was transferred to the operating room at 17:30.
- 5.7 A general anaesthetic was administered to Noreen Thompson at 17:45 hours and at 17:50 hours a lower segment caesarean section was commenced and completed at 18:35 hours.
- 5.8 At birth the Plaintiff was limp with no respiratory effort. Respiratory effort was only established after two minutes with treatment from the medical team. The Plaintiff sustained bilateral brachial plexus injury as a result of birth injuries alongside serious neurological injuries (including seizures and cortical blindness) which resulted from hypoxic ischemic encephalopathy.
6. As a result of her injuries The Plaintiff was transferred to Miami Children's Hospital by air ambulance for further treatment.
7. The injuries to the Plaintiff were caused by the negligence of the 1st Defendant and its employees who were being led by the 2nd Defendant, Dr Alexander.
8. By reason of the matters aforesaid the Plaintiff who is now aged 7 having been born on July 9, 2005 suffered pain, injury, loss and damage.

Particulars of injury

9. The plaintiff who was born on the 9 July 2005 sustained the following injuries:
 - a) Hypoxic ischemic encephalopathy;
 - b) Static encephalopathy manifested by spastic quadriplegia and seizures;
 - c) Microcephaly;
 - d) Minor congenital malformations with psychomotor delay;
 - e) Micrognathia possibly linked to Robin's syndrome or Treacher Collins's syndrome;
 - f) Bilateral brachial plexus injury resulting in residual deformity of her right hand due to a lower trunk lesion;
 - g) Dysmorphic features including torticollis; and
 - h) Cortical blindness; and as a consequence of these injuries
 - i) Global developmental delay.

10. As a result of her injuries the Plaintiff has severe disabilities and is likely to need 24 hour care for the foreseeable future. It is unlikely she will ever be able to lead an independent life and her lifespan may have been significantly reduced.

11. A full report detailing the prognosis for the Plaintiff will be served in due course.

Particulars of special damage

12. The Plaintiff has, through her mother, a liability to the Treasury Department of the Cayman Islands Government of CI\$154,115.95 for hospital care in Cayman and Miami as a result of the traumatic delivery.

12.1 The Plaintiff has suffered other past loss which will be quantified in due course.

Particulars of negligence of the 2nd Defendant

13. Failing to communicate properly with the rest of the medical team so all parties were aware of the urgency of the situation;

13.1 Failing to make the decision to perform an emergency Caesarian section quickly enough after realizing that instrumental delivery was not possible;

13.2 Allowing a delay of one hour to occur from the discovery of a pathological CTG to the delivery of the Plaintiff;

13.3 Failed to act with the urgency required in light of the prolonged bradycardia;

13.4 Failing to deliver the Plaintiff within 30 minutes of the onset of a pathological CTG, resulting in severe hypoxic ischemic encephalopathy;

13.5 Applying undue force to the Plaintiff's head and neck in order to achieve delivery resulting in the Plaintiff suffering bilateral brachial plexus palsy;

13.6 Failing to provide a proper standard of care;

13.7 failed to appreciate or appropriately treat the degree of traumatic damage and in the premises failed in time to commence adequate or appropriate repair or treatment of that damage;

13.8 In the premises failed to take any or any adequate or timely steps properly to treat the Claimant or take care for her safety thereby exposing her to foreseeable risk of pain, injury, loss and damage.

Particulars of Negligence of the 1st Defendant

14. The Plaintiff repeats the allegation of negligence against the 2nd Defendant at paragraph 13 above as against the 1st Defendant, its servants or agents.

14.1. in the premises, failing to treat the Claimant adequately or at all;

AND the Claimant claims:

- (1) Damages.
- (2) The Plaintiff claims interest pursuant to section 34 of the Judicature Law (2007 Revision) on the amount found to be due to the Plaintiff at such rate and for such periods as the court thinks fit.
- (3) Costs.

Samson & McGrath

Samson & McGrath
Attorneys for the Plaintiff

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC OF 2013
LEGAL AID #38 of 2007

BETWEEN

DONETTE THOMPSON
(acting through her next friend NOREEN THOMPSON)

PLAINTIFF

AND

THE CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

FIRST DEFENDANT

AND

DR GILBERTHA ALEXANDER

SECOND 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.

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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
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Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

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.

Samson & McGrath
Attorneys at Law
3rd Floor Genesis Building
Genesis Close
PO Box 446
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.