

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

CAUSE NO: G 0208 OF 2013

**BETWEEN                      MARK RAE SMITH**

**PLAINTIFF**

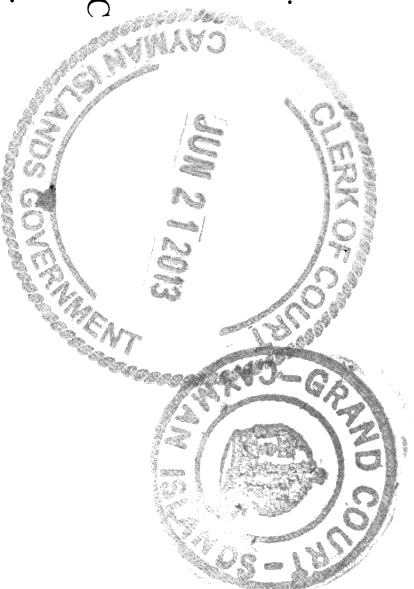
**AND                                      CAYMAN ORTHOPAEDIC GROUP LTD.                      1<sup>st</sup> DEFENDANT**

**AND                                      DR. FRANK SMITH                                      2<sup>nd</sup> DEFENDANT**

WRIT OF SUMMONS

TO:    CAYMAN ORTHOPAEDIC  
      GROUP LTD.  
      1 Smith Road Plaza, Smith Rd.  
      George Town, PO Box 11698  
      Grand Cayman KY1-1009

AND TO: DR. FRANK SMITH  
          c/o CAYMAN ORTHOPAEDIC  
          GROUP LTD.  
          1 Smith Road Plaza, Smith Rd.  
          George Town, PO Box 11698  
          Grand Cayman KY1-1009



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. The Plaintiff is a sixty year old business man who was a patient of the 1<sup>st</sup> Defendant who placed him in the care of the 2<sup>nd</sup> Defendant an Orthopaedic Surgeon, practicing from the premises of the 1<sup>st</sup> Defendant, at 1 Smith Road Plaza, George Town, Grand Cayman, Cayman Islands.
2. The 1<sup>st</sup> Defendant is a Cayman Islands company that purports to specialize in orthopaedic surgery and treatment, employing several medical practitioners who visit the Cayman Islands periodically providing such service to the Caymanian people.
3. The 2<sup>nd</sup> Defendant is a member/owner of the 1<sup>st</sup> Defendant and is duly registered practitioner in the Cayman Islands specializing in Orthopaedic/Reconstructive Surgery.
4. In or about April 2012 the Plaintiff was referred to the 1<sup>st</sup> Defendant by his family Physician Dr. Mohanty. He was seen by the 2<sup>nd</sup> Defendant who diagnosed severely advanced medial compartment osteoarthritis of the left knee and recommended surgery and left knee hemiarthroplasty surgery (placement of bone with prosthesis on one side of the joint)("Surgery").
5. On the 8<sup>th</sup> of May, 2012, the 2<sup>nd</sup> Defendant performed the Surgery on the Plaintiff.
6. On the 14<sup>th</sup> of May 2012 the Plaintiff attended the 1<sup>st</sup> Defendant's offices and was seen by Dr. P. Ali. The Plaintiff complained of severe pain, swelling and bruising in and around the area of the site of the Surgery.
7. On the 16<sup>th</sup> of May 2012 the Plaintiff, still complaining of severe pain, swelling and bruising from the Surgery, was again seen by Dr. Ali at the offices of the 1<sup>st</sup> Defendant and his status was that of recent post knee hemiarthroplasty, left with a post operative hematoma.
8. The Plaintiff continued to be seen for his complaint at the offices of the 1<sup>st</sup> Defendant by various members of the 1<sup>st</sup> Defendant. He was reassured that the discomfort he was suffering from the Surgery was normal and given pain medication along with advice on physiotherapy for his knee.
9. The Plaintiff attended the offices of the 1<sup>st</sup> Defendant for check up and complaining of pain and extreme discomfort from the Surgery and was seen on the 23<sup>rd</sup>, 24<sup>th</sup> and 26<sup>th</sup> of July, 2012 by the 2<sup>nd</sup> Defendant.

10. On the 23<sup>rd</sup> of July 2012 on the Plaintiffs' insistence a post operative X-Ray was finally done by the 2<sup>nd</sup> Defendant which revealed shifting of the tibial component.
11. On the 27<sup>th</sup> of August 2012, it was decided that the Plaintiff would be scheduled for surgery by Dr. Pervez Ali to rectify the shifting of the tibial component. This was nearly a month after the x-ray showed that diagnosis.
12. The Plaintiff underwent two subsequent surgeries:
- a. On the 27th of September, 2012 to remove his prosthesis to treat the area presumed to be infected, along with debridement of affected joint tissues.
  - b. On the 23<sup>rd</sup> of October, 2012, a revision left total knee arthroplasty was carried out.
13. The 2<sup>nd</sup> Defendant was negligent in performing the initial surgery and failing to diagnose and treat the Plaintiff and/or failing to treat the Plaintiff in timely manner and by reason of which the Plaintiff has suffered pain injury loss and damage.

**Particulars of Negligence:**

- (i) Negligently failing to diagnose the Plaintiff's condition and wrongfully prescribing painkillers alone.
- (ii) Failing to take any proper and timely X-rays or CT Scans.
- (iii) Failing to take other appropriate action in a timely fashion.
- (iv) Failing to perform the surgery competently.
- (v) Failing to consider or to make the correct diagnosis.
- (vi) Failing to act on the x-ray of July 2012 and to take the corrective surgical measures in a timely fashion.
- (vii) Wrongfully advising the Plaintiff that the Surgery would heal without taking proper investigatory actions to confirm the Plaintiff's true medical position.
- (viii) Failing to treat the Plaintiff adequately or at all.
- (ix) Failing to analyze appropriately or at all the evidence contained in the said x-rays.

14. By Reason of the above the Plaintiff has suffered pain injury loss and damage.

15. Notwithstanding the 2<sup>nd</sup> Defendant's negligence when the Plaintiff continued to complain of pain at the 1<sup>st</sup> Defendant's offices, its servants or agents failed to recognize the cause of the symptoms or to identify the necessary remedial action warranted for several months and kept sending the Plaintiff home and as a result thereof the Plaintiff's pain suffering damage, loss was prolonged or enlarged.

**Particulars of Negligence of the 1<sup>st</sup> Defendant:**

- (i) The Plaintiff repeats the allegations of negligence against the 2<sup>nd</sup> Defendant at Paragraph 10 above as against the 1<sup>st</sup> Defendant, its servants or agents.
- (ii) In the Premises failing to treat the Plaintiff adequately or at all.

16. By reason of these matters the Plaintiff has suffered pain, injury, loss and damage.

**Particulars of loss and damage**

17. The Plaintiff's work, social, recreational and other activities have been adversely affected.

18. The Plaintiff claim includes the cost of assistance within the home that his family provided to him gratuitously on account of his incapacitation following the Surgery as well as loss of income.

19. The calculations of this claim is set out in the Schedule of Past and Future Expenses served with this Statement of Claim

20. The particulars of the Plaintiff's injury is that:

- (i) The Plaintiff lacks approximately 10% of the extension of the knee.
- (ii) The Plaintiff is left with a painful, scarred left knee which does not allow him to kneel, stoop, run or sprint.

Particulars

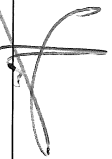
**PLAINTIFF CLAIMS:**

- 1. Special Damages
- 2. General Damages
- 3. Interest on Special Damages in accordance with the Rules of the Grand Court and Section 34 of the Judicature Law (2007 Revision) from the date of service of the Writ herein until the date of judgment.

**AND THE PLAINTIFF ALSO CLAIMS AGAINST THE DEFENDANTS:**

- 1. Damages
- 2. Interest
- 3. Cost

Dated the 21 day of June, 2013

  
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H. Phillip Ebanks

Attorney at Law for the Plaintiff

**Schedule of Past and Future Expenses**

**MARK RAE SMITH**

Dates: 8<sup>TH</sup> May 2012 through March 2013

- |  |             |
|--|-------------|
| 1. <u>Loss of Income to date</u><br>13 months @ \$7500 per month                                     | \$97,500.00 |
| 2. <u>Domestic Help</u><br>18 weeks @ \$400.00 per week  | \$15,200.00 |
| 3. Transportation/ Taxis   | \$750.00    |
| 4. Miscellaneous<br>Physiotherapy<br>Doctor visits (not covered by insurance)<br>Pharmacy/Medication | \$900.00    |

**Total** = \$114,350.00

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF  
WRIT OF SUMMONS

1. The accompanying form of Acknowledgement 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:G OF 2013**

**BETWEEN MARK RAE SMITH**

**PLAINTIFF**

**AND CAYMAN ORTHOPAEDIC GROUP LTD. 1<sup>st</sup> DEFENDANT**

**AND DR. FRANK SMITH 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 Delay may result in judgment being entered  
directions and notes for guidance against a Defendant whereby he may have to  
carefully before completing this form. If pay the costs of applying to set it aside.  
any information required is omitted or  
given wrongly, THIS FORM MAY  
HAVE TO BE RETURNED.

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

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  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

**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 plaintiffs Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

**H. Phillip Ebanks, Attorney at Law**  
62 Hospital Road Plaza Unit H  
Hospital Rd, George Town  
PO Box 30422, Grand Cayman KY1-1202  
Phone: 749 8082  
Email: pebanks@permierrgroup.ky

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

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