

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:

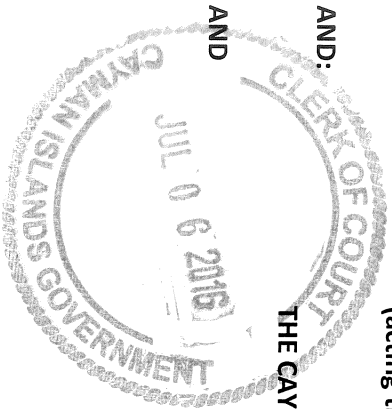
THE CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

FIRST DEFENDANT

AND

DR GILBERTHA ALEXANDER

SECOND DEFENDANT



RE-AMENDED STATEMENT OF CLAIM

AMENDED PURSUANT TO ORDER OF COURT DATED 27 JUNE 2016

1. At all material times the 1<sup>st</sup> Defendant maintained and operated at George Town Hospital. The 2<sup>nd</sup> defendant was the staff physician specialising in Obstetrics and Gynaecology and on duty on the 8<sup>th</sup> 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 8<sup>th</sup> 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 1<sup>st</sup> Defendant operated the aforesaid hospital which was staffed by doctors, nurses and midwives including the 2<sup>nd</sup> 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 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 8<sup>th</sup> July 2005 with Prostin being administered on Saturday 9<sup>th</sup> July 2005.
- 5.2 The 2<sup>nd</sup> Defendant saw Noreen Thompson at 11:35 hours on 9<sup>th</sup> 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 9<sup>th</sup> July 2005 the cardiocotocograph (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 16:20 hours, the Second Defendant attended Noreen Thompson and performed a vaginal examination. At 16:25 hours the abdominal monitor showed frequent, strong contractions with the suggestion of late deceleration 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. At 16:40 hours "fully dilated" is written on the CTG. At 16:55 hours the Second Defendant decided to perform an emergency Caesarean Section. At 16:55 hours it is written "operating room called for emergency Caesarean Section."
- 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 18:36 hours. The Plaintiff was born at 17:55 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 1<sup>st</sup> Defendant and its employees we were being led by the 2<sup>nd</sup> Defendant, Dr Alexander.
8. By reason of the matters aforesaid the Plaintiff 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 quadriparesis and seizures;
  - c) Microcephaly;
  - d) Minor congenital malformations with psychomotor delay;
  - e) Micrognathia possibly linked to Robin's syndrome or Treacher Collin'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 that 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 2<sup>nd</sup> 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 Caesarean section quickly enough after realizing that instrumental delivery was not possible at about 16:40 hours;
- 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 Failing to act with the urgency required in light of the prolonged bradycardia;
- 13.4 Failing to deliver the Plaintiff within 30 minutes of onset of the 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 Failed to perform the Caesarean Section within 30 minutes of the decision at 16:55 hours.
- 13.9 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.
- 13.10 Failing to provide appropriate training to the clinicians to ensure that an emergency Caesarean Section is performed with all due expedition and in particular, within 30 minutes.
- 13.11 Failing to have any or any proper system for performing emergency Caesarean Sections in order to ensure that that they are performed with all due expedition and in particular, within 30 minutes.
- 13.12 Failing to ensure that there was appropriate teamwork and co-ordination between the clinicians in order to ensure that the emergency Caesarean Section was performed with all due expedition and in particular, within 30 minutes.
- 13.13 Failing to provide the Plaintiff and her mother with appropriate obstetric care.

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

14. The Plaintiff repeats the allegation of negligence against the 2<sup>nd</sup> Defendant at paragraph 13 above as against the 1<sup>st</sup> Defendant, its servants or agents.
- 14.1 In the premises, failing to treat the Claimant adequately or at all;

**Section 12 of the Health Services Authority Law (2010 Revision)**

15 By their Defences, the First and Second Defendant purport to rely upon section 12 of the Health Services Authority Law (2010 Revision) which, it is contended, regulates the liability of the Defendants in respect of claims for damages.

15.1 It is denied that section 12 applies to the Plaintiff's claim for damages arising from the negligence of the First Defendant, their servants or agents and/or the Second Defendant. Further or in the alternative, the Health Services Authority Law (2016 Revision) applies to the Plaintiff's claim.

15.2 Further or in the alternative, in so far as the Court determines that section 12 applies to the Plaintiff's claim for damages herein (which is denied), the Plaintiff will seek a declaration that the section is incompatible with Part 1, Bill of Rights, Freedoms and Responsibilities, of the Cayman Islands Constitutional Order 2009 and in particular:

- a. Section 2: Life
- b. Section 3: Torture and inhuman treatment
- c. Section 7: Fair trial
- d. Section 9: Private and family life
- e. Section 17: Protection of children

pursuant to section 23 of the said Order.

**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) A declaration that section 12 of the Health Services Authority Law (2016 Revision) applies to the Plaintiff's claim
  - (4) In the alternative, a declaration that section 12 of the Health Services Authority Law 2010 is incompatible with Part 1, Bill of Rights, Freedoms and Responsibilities, of the Cayman Islands Constitution Order 2009
- ~~(3-4-5)~~ Costs.

Amended this 5<sup>th</sup> day of July 2016



**Samson & McGrath**  
**Attorneys at Law for the Plaintiff**