

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ¹⁵ OF 2014

BETWEEN:

LEONEL BUSH WHITTAKER

PLAINTIFF

AND:

McALPINE LIMITED

DEFENDANT

WRIT OF SUMMONS



TO: McALPINE LIMITED
253 Dorsey Drive
Industrial Park
P.O. Box 711, George Town,
Grand Cayman, KY1-1107

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 February, 2014.

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 who was born on 22nd March 1963 was at all material times employed by the defendant as a Labourer.
2. On the 30th September, 2008 while the Plaintiff was employed as aforesaid he was stepping on a "form board" erected by the defendant, its servants or agents, when the form board collapsed or gave way causing the Plaintiff to fall to ground on a piece of steel protruding on the ground. As a result he sustained injury, loss and damage as hereafter stated.
3. The Plaintiff's accident was caused by the negligence and breach of duty of the defendant, its servants or agents.

PARTICULARS OF NEGLIGENCE

The defendant, its servants or agents, were negligent in that they:

- (i) constructed the form board unsafely;
- (ii) used defective or substandard materials in its construction;
- (iii) failed to heed or observe the dangerous condition of the form board;
- (iv) failed to remove, bend or knock the steel safely into the ground;
- (v) failed to alert or warn the plaintiff who was at all material times ignorant of the presence of the steel;
- (v) caused, permitted or required the plaintiff to work on the form board when they knew or ought to have known of its dangerous conditions and its proximity to the steel.

The plaintiff will rely on the maxim *res ipsa loquitur*

PARTICULARS OF INJURY

- (i) Traumatic tear in posterior urethra.
- (ii) Continuous obstruction of urinary flow from scarred tissue (require surgical intervention for next 8 to 10 years)
- (iii) Erectile Dysfunction
- (iv) Further details of the plaintiff's injuries and recommended treatment are contained in the reports of Dr. Backman dated 27th August, 2013 and 25th October, 2013.

PARTICULARS OF SPECIAL DAMAGES

No loss in salary
Employer paid all medical bills
Transportation Cost.....TBA
Other pharmaceutical cost.....TBA

The plaintiff will file and serve a supplemental schedule to Special Damages in this cause when such further items have been quantified.

PARTICULARS OF FUTURE MEDICAL COST

(See medical report dated 25th October, 2013)

(i)	Follow up surgeries 1630 x 3 x 10.....	\$48900.00
(ii)	Consultation Cost 125 x 4 x 10	\$ 5000.00
(iii)	Consultation & Treatment for Erectile Dysfunction 1500x20 (i.e.to age 70).....	\$30000.00
(iv)	Other pharmaceutical cost.....	TBA
(v)	Transportation Cost.....	TBA

The plaintiff will file and serve a supplemental schedule to future medical cost in this cause when such further items have been quantified.

AND THE PLAINTIFF claims:

1. Damages;
2. Interest pursuant to the Judicature Law (2007 Revision) and the Grand Court Rules (1995 Revision);
3. Costs;
4. Such further and/or other relief as may be just.

If, within the time for returning the Acknowledgment of Service, the Defendant pays the total amount claimed to the Plaintiff or his Attorney including interest and costs further proceedings will be stayed.



Signature of plaintiff's Attorney

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 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.

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PLAINTIFF

AND:

McALPINE LIMITED

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

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.

Dennis E. Brady
Trinity Square, Building B-3
Eastern Ave, George Town
Grand Cayman, KY1-1009
1-345-946-3203

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