

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

**CAUSE NO: 162 OF 2017**

**BETWEEN:**

**JOHN SURDEEN**

**PLAINTIFF**

**AND:**

**NATIONAL CONCRETE LTD**

**DEFENDANT**



**WRIT OF SUMMONS**

**TO:** National Concrete Ltd

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff of 350 Raven Avenue, Spotts Newlands, Grand Cayman 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 *28<sup>th</sup>* day of September 2017.

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.

And as a Noticed Party to:  
British Caymanian Insurance Company Limited  
BritCay House  
236 Eastern Avenue  
George Town  
P.O. Box 74  
Grand Cayman KY1-1102

## STATEMENT OF CLAIM

1. At all material times the Plaintiff was the driver of a Toyota Corolla registration 95589 and the Defendant was the owner of a Mack DMM69065 registration number 131 878 being driven by their employee Richard Coley in the course of his employment. The Defendant is vicariously liable for the negligence of their employees.
2. On the 2<sup>nd</sup> October 2014, the Plaintiff was travelling on Shamrock Road, Grand Cayman in an Easterly direction. He indicated to turn right and came to a stop; a flatbed truck behind him also came to a stop when the Defendant's aforementioned employee drove the Defendant's vehicle into collision with the rear of the flatbed truck forcing it into collision with the Plaintiff's stationary vehicle.
3. At all material times the Defendant's vehicle was insured with British Caymanian Insurance Company Ltd who had issued a policy of insurance relating to the vehicle in accordance with the Motor Insurance (Third Party Risks Law).

### Particulars of negligence

4. The accident was caused by the negligence of the Defendants' servant or agent, Richard Coley, in the course of his employment with the Defendant in that he;
  - 4.1 drove too fast in all of the circumstances;
  - 4.2 failed to keep any or any proper look out;
  - 4.3 failed to adequately control his vehicle;
  - 4.4 failed to see the Plaintiff in time or at all;
  - 4.5 failed to apply his brakes whether in time or at all;
  - 4.6 res ipsa loquitur
5. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

### Particulars of General Damage

6. The plaintiff's date of birth is the 9<sup>th</sup> April 1969 and at the date of the accident he was 45 years old.
7. Immediately after the accident, the Plaintiff was aware of pain in his back radiating down his right leg. He was taken to the Accident and Emergency Department at George Town Hospital by ambulance.
8. He underwent radiology and was discharged with medication.
9. The pain remained severe and the Plaintiff reattended the Accident and Emergency Department 5 days' post-accident.
10. The Plaintiff's back pain continued to get worse and he attended his GP on a number of occasions and was referred for physiotherapy.
11. Due to continued pain, the Plaintiff sought the advice of Dr Stanley and Dr Akinwunmi.
12. The Plaintiff had a facet Joint injection from Dr Akinwunmi to alleviate the pain.
13. The Plaintiff continues to have regular ongoing treatment for pain management including acupuncture, traction physiotherapy and pilates.

14. The Plaintiff was involved in a high-energy road accident which caused him to suffer a significant back injury, which precipitated symptoms from his mild pre-existing underlying degenerative change.
15. The plaintiff still suffers discomfort in his back and leg particularly if standing/sitting for long periods of time or when particularly active. He has been referred for further imaging and review with a neurosurgeon.
16. The Plaintiff relies on the medical reports of Mr O'Dowd dated 29<sup>th</sup> August 2016 and 14<sup>th</sup> August 2017.
17. In addition to Pain Suffering and Loss of Amenity, the Plaintiff also pursues claims for Handicap on the Open Labour Market, Future Care, and Future Treatment which will be particularized in due course.

**Particulars of Special Damage**

18. See attached Schedule of Special Damages.
19. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2013 Revision) at half the rate as prescribed under the Judgment Debts (Rates of Interest) Rules (as amended) from the 2<sup>nd</sup> October 2014 to Trial.

**AND THE PLAINTIFF claims:**

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2013 Revision)
3. Costs

  

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**KSG Attorneys-at-Law**  
**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.

**BETWEEN:**

**JOHN SURDEEN**

**PLAINTIFF**

**AND:**

**NATIONAL CONCRETE LTD**

**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.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes

no

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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

**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.

KSG Attorneys-at-Law  
4<sup>th</sup> Floor Harbour Centre  
42 North Church Street  
PO Box 2255  
George Town  
KY1-1107  
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.

[Empty box for defendant's Attorney indorsement]

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
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**SCHEDULE OF SPECIAL DAMAGES**

<b>1</b>	Loss of Income	28,647.62
	<p>The Plaintiff is the owner of Earthworks Landscaping Ltd and employs approximately 10 people. He has both a supervisory and physically active role within his Company.</p> <p>For the 3-month period from the 2<sup>nd</sup> October 2014 – 2<sup>nd</sup> January 2015 the Plaintiff was significantly restricted in the work which he was able to do. The Company suffered a loss of income as a result. In this period the Company income was \$98,169.50 For the same period for the previous 2 years the Plaintiff earned an average of \$126,817.12, the Plaintiff claims a loss of income accordingly.</p> <p><math>126,817.12 - 98,169.50 = 28,647.62</math></p> <p>The Plaintiff is still restricted and is likely to incur further loss of income. The Plaintiff is concerned that he may not be able to return to such an active role and in relation to new business he feels he may have lost out on when incapacitated.</p>	
<b>2</b>	Care	7,390.00
	<p>For the first 3 months, post-accident, the Plaintiff was extremely limited as to what he could do and required Care and assistance.</p> <p>The Plaintiff required assistance from his partner with cooking, washing, laundry, shopping, cleaning and other household chores. <math>14 \text{ hours} \times 18 \text{ weeks} \times \\$10.00 = \\$2,520.00</math></p> <p>In addition, he required his niece to drive him to the Scans he underwent. <math>2 \text{ hours} \times 2 \times \\$10.00 = \\$40.00</math></p>	

	<p>After the initial period the Plaintiff still required care and assistance from his partner particularly with any chores involving lifting such as taking out the garbage, laundry and shopping. He is also unable to undertake DIY and Gardening at his own home which he did previously and is now undertaken by his employees.</p> <p>138 weeks (to 30<sup>th</sup> September 2017) 3.5 hours x 138 weeks x \$10 = \$4,830.00</p>	
<b>3</b>	Medication	586.81
	The Plaintiff paid co-pay for prescriptions for Norflex, Cataflam, Co-dydramol, Diazepam, Zantac, Xanax, Voltaren and Medrol	
<b>4</b>	Physiotherapy	1,345.00
	Following referral, the Plaintiff initially attended Physiotherapy at Cayman Physiotherapy, Between the 8 Oct 2014 and 13 Nov 2014, he had 13 treatment sessions at \$100.00 per session (one at \$105) and also purchased a Foam Roller \$40.00	
<b>5</b>	Cayman Clinic	375.90
	<p>The Plaintiff has attended with his GP Dr Osterloh Cayman Clinic on a number of occasions.</p> <p>13 Oct 2014 – 120.00 24 Oct 2014 – 75.00 11 Nov 2014 – 100.00 25 March 2015 – 9.20 23 Oct 2015 – 47.99 17 July 2017- 23.71</p>	
<b>6</b>	CIHSA	858.55
	The Plaintiff attended George Town Hospital following the accident. His Health Insurers have made payment in respect of part of the costs but presently there is an outstanding balance.	
<b>7</b>	CTMH	4,078.29
	The Plaintiff has attended CTMH on a number of occasions.	
<b>8</b>	Cayman Islands Imaging	239.80
	14 April 2016 – 239.80	
<b>9</b>	3T Cayman	933.30

	The Plaintiff had to pay co-pay in respect of his radiology 17 November 2014 - \$348.48 23 March 2015 - \$322.74 21 September 2015 \$262.08 (unpaid)	
<b>10</b>	Island Medical Center – Dr Gregory Lippitt	3,705.00
	To date 56 sessions at CI\$65.00 per session and the purchase of a chiropractic cane at \$65.00. 4, 8, 11 Dec 2014 5, 8, 12, 15, 19, 28, Jan 2015 4, 17 Feb 2015 3, 6, 9, 12, 16, 24, 27, 31, March 2015 8, 18 April 15 4 x June 2016 27 June 2016 ?, 8, 29 July 2016 5, 25 Aug 2016 23 Sep 2016 5, 12, 26 Oct 2016 7, 10 Nov 2016 8, 13, 20, 27 Feb 2017 6, 13 March 2017 May 2017 20, 24, 28, July 2017 2, 10, 17, 28 August 2017 7, 11, 15 September 2017	
<b>11</b>	Cayman Neurosurgeon	100.00
	The Plaintiff has paid co-pay for treatment from Dr Akinwunmi, neurosurgeon  15 Jul 2015 \$50.00 30 Sep 2015 – \$50.00	
<b>12</b>	Med Lab	25.00
	5 April 2016 – 25.00	
<b>13</b>	Pilates – Cayman Physiotherapy Ltd	1515.00
	The Plaintiff has had 38 sessions of pilates to date at varying costs depending on length per session.  31 Oct 2016 – \$55.00 7 Nov 2016- \$55.00 23 Nov 2016 – \$55.00 30 Nov 2016 \$55.00 7 Dec 2016 – \$55.00 5 Jan 2017 - \$55.00 12 Jan 2017 - \$55.00 26 Jan 2017 - \$35.00 31 Jan 2017 - \$35.00	

	13 Feb 2017 - \$35.00 20 Feb 2017 - \$35.00 27 Feb 2017 - \$55.00 6 March 2017 - \$60.00 13 March 2017 - \$35.00 20 March 2017 - \$35.00 27 March 2017 - \$35.00 3 April 2017 - \$35.00 10 April 2017 - \$35.00 18 April 2017 - \$35.00 24 April 2017 - \$35.00 1 May 2017 - \$35.00 9 May 2017 - \$35.00 16 May 2017 - \$35.00 23 May 2017 - \$35.00 29 May 2017 - \$35.00 5 June 2017 - \$35.00 12 June 2017 - \$35.00 20 June 2017 - \$35.00 30 June 2017 - \$35.00 July 2017 - \$35.00 11 July 2017 - \$35.00 July 2017-\$35.00 24 July 2017 - \$35.00 31 July 2017 - \$35.00 7 Aug 2017 - \$35.00 28 August 2017 - \$35.00 4 September 2017 - \$35.00 11 September 2017 - \$35.00	
<b>14</b>	Traction – Cayman Physiotherapy	960.00
	The Plaintiff was advised to undergo traction physiotherapy and to date has had 24 sessions at CI\$40.00 per session  23 March 2017 27 March 2017 4 April 2017 6 April 2017 10 April 2017 12 April 2017 18 April 2017 20 April 2017 25 April 2017 27 April 2017 2 May 2017 4 May 2017 May 2017 11 May 2017 16 May 2017 18 May 2017 23 May 2017	

	25 May 2017 31 May 2017 July 2017 31 July 2017 15 Aug 2017 28 Aug 2017 12 Sep 2017	
<b>14</b>	Therapeutic Massage	380.00
	24 March 2016 - \$100.00 20 April 2016 - \$100.00 19 May 2016 - \$100.00 27 September 2016 - \$80.00	
<b>15</b>	Travel Costs	750.00
	The Plaintiff has had to travel to hospital, medical treatment and physiotherapy on approximately 150 occasions at an average cost of \$5.00 per trip.  In addition, the Plaintiff incurred travel costs whilst attending the medico-legal appointment.	
<b>16</b>	Police Report	100.00
<b>17</b>	MRI Scan Sep 2017 (US\$360.00)	295.20