

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

Cause No.                      of 2020

BETWEEN:

ANDREW ANTONIO PARCHMENT

PLAINTIFF

AND

CAYMAN WHOLESALE & RETAIL ICE CREAM LTD.  
T/A Door to Door Ice cream & More

DEFENDANT



**WRIT OF SUMMONS**

TO: Cayman Wholesale & Retail Ice Cream Ltd.  
T/A Door to Door Ice cream & More  
61 Captain Curry Drive  
Town Hall Road  
PO Box 31404  
West Bay  
Grand Cayman KY1-1206

**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 495, 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 31<sup>st</sup> day of December 2020

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 was at the material times an employee of the Defendant company. The said employment was one to which the Labour Law (2011 Revision) applied.
2. The Plaintiff was employed as an ice cream van driver / server.
3. On 19<sup>th</sup> March 2020 whilst in the course of his employment the Plaintiff was involved in a road accident when he was the driver of a motor vehicle, namely a 1986 model Chevrolet ice cream van bearing registration number 136 918. The said vehicle was supplied and insured and maintained by the Defendant and or was equipment necessary for the Plaintiff to perform the work for which he was employed.
4. The said vehicle suffered a mechanical failure whilst it was moving and the Plaintiff thereby lost control and the vehicle collided with a utility pole on the Shamrock Road, Grand Cayman in the vicinity of the Savannah Primary School.
5. The said accident was caused by the negligence and or breach of duty of the Defendant or its servants or agents.

### PARTICULARS OF NEGLIGENCE AND OR BREACH OF STATUTORY DUTY AND OR BREACH OF DUTY AT COMMON LAW

The Defendant or its servants or agents:

- (a) Supplied for use by the Plaintiff a motor vehicle that was or was likely to become unsafe for use
- (b) Caused or permitted the Plaintiff to use a vehicle that was unsafe and or did suffer a mechanical failure namely a collapse of the front suspension
- (c) Failed to inspect the vehicle or cause it to be inspected for mechanical defect properly or at all
- (d) Failed to maintain or cause to be maintained the vehicle in a proper or safe or roadworthy condition
- (e) Failed as aforesaid when it was known or ought to have been known that the vehicle had previously suffered a similar mechanical failure to the same part of the front suspension on or about 17<sup>th</sup> May 2019

- (f) Failed to insure the vehicle on a comprehensive basis so as to cover the driver in the event of an accident and or failed to have in place any other policy of insurance to cover injury to its employee
  - (g) Failed to have any or any proper regard for the health, safety and welfare of the Plaintiff contrary to section 58 of the said Labour Law
  - (h) Failed to have or to maintain a safe system of work and or to provide or to maintain safe equipment for use at work
  - (i) Failed in the circumstances to discharge the common duty of care owed to its employees and to the Plaintiff in particular and or failed to have any proper regard for the safety of the Plaintiff.
6. Further or in the alternative the Plaintiff contends that the facts speak for themselves and will seek to rely upon the maxim *res ipsa loquitur*.
7. By reason of the matters aforesaid the Plaintiff has suffered pain, injury, loss and damage.

#### PARTICULARS OF GENERAL LOSS

The Plaintiff was born on 10<sup>th</sup> October 1987 and is presently aged 33. He was aged 32 at the date of accident.

He suffered multiple injuries when he jumped from the vehicle before the collision between the vehicle and the utility pole. He did not lose consciousness but was in extreme pain and discomfort and was taken to hospital by ambulance and treated initially at the Accident & Emergency department at George Town Hospital.

His injuries were initially diagnosed as:

- a. A displaced comminuted intra-articular fracture to the right distal radius in more than three parts and a fracture to the right ulnar styloid (this was an open fracture)
- b. A displaced comminuted intra-articular fracture to the left distal radius in more than three parts and a fracture to the left ulnar styloid
- c. A fracture to the distal left triquetrum
- d. A fracture to the left capitate
- e. Multiple lacerations, abrasions and contusions to both elbows and knees

- f. Compartment syndrome to the right forearm, and
- g. Post-traumatic carpal tunnel syndrome to the right median nerve.

He underwent surgery to clean and debride the wounds and was subsequently operated on multiple times to close and fix the open fractures and apply skin grafts. To date the Plaintiff has endured operative treatments on 20<sup>th</sup> March, 27<sup>th</sup> March, 30<sup>th</sup> March, 2<sup>nd</sup> July and 17<sup>th</sup> July 2020.

The Plaintiff's recovery is not yet complete, and he reserves the right to furnish further or updating medical evidence in support of his claims.

He has a reduced range of movement in both wrists. He continues to suffer a loss of dexterity to both hands particularly his dominant right hand and reduced grip strength bilaterally. He continues to suffer pain and discomfort and requires help with day-to-day activities and personal care.

He has not since been able to return to work and was effectively terminated from his employment when his work permit was not renewed (purportedly by reason of 'redundancy').

The Plaintiff remains unable to work pending a full or further recovery and is likely to be at a disadvantage on the open labour market for the foreseeable future.

His pre-accident pastimes and activities have been curtailed.

#### PARTICULARS OF SPECIAL LOSS

The Plaintiff's losses are continuing and will be set out more fully in a detailed Schedule of Loss to be provided.

For the purposes of this Statement of Claim the Plaintiff sets out the following Heads of Loss:

- (a) Loss of earnings to date and continuing
- (b) Loss of medical insurance and benefits
- (c) Disability on the open labour market
- (d) Medical expenses and uninsured outlay
- (e) Travel and expenses for medical assessments and treatment

8. The Plaintiff is entitled to and claims interest on such damages as may be awarded to him pursuant to section 34 of the Judicature Law (2017 Revision) at such rate and for such period as the Honourable Court may deem fit.

**AND THE PLAINTIFF claims:**

- (a) General Damages (to be assessed)
- (b) Special losses as aforesaid and continuing
- (c) Interest as aforesaid
- (d) Costs
- (e) Such further and other relief as the Honourable Court shall deem fit.

Dated 31<sup>st</sup> December 2020

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**McGrath Tonner**

**Attorneys to the Plaintiff**

To,  
The Clerk of the Courts

And to:  
The Defendant

**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 495, 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**

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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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.

McGrath Tonner  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close  
PO Box 446  
George Town  
Grand Cayman  
File ref. 14712-001

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]

## Dr. Hesham Sida

FRCS Ed. MSc Orth. BMSc. MBChB  
Consultant Trauma & Orthopaedic Surgeon  
P.O. Box: 12428  
Grand Cayman, KY1-1011  
Tel.: (345) 939-2500

August 19th 2020

Re- Andrew Parchment

Date of Birth: 10/10/1987

### Diagnosis:

1. MVA.
2. Orthopaedic allercare.

Date of injury: 19/03/2020.

Nature of injury: MVA.

Date of Recent Surgery: 17/07/2020

### Surgical Procedures:

#### Left wrist:

1. Removal of below elbow scotch cast left wrist.
2. Removal of staples and sutures left wrist.
4. Application of Futuro splint left wrist.

#### Right wrist:

1. Removal of deep orthopaedic implants right wrist.
3. LA Block right wrist.
4. Application of below right elbow Scotch Cast.
5. Application of Special Sling.

Date of Surgery: 02/07/2020

### Surgical Procedures:

1. Removal of deep orthopaedic implants left wrist.
2. Micro vascular repair left radial artery.
3. LA Block left wrist.
4. Application of below left elbow Scotch Cast.

Date of Surgery: 20/03/2020

### Surgical Procedures:

1. External Fixation of right distal radius.
2. External fixation left distal radius.
3. PC fixation fracture right Triquetrum.

4. Fasciotomy decompression right forearm.
5. Median nerve decompression right wrist.
6. Debridement skin and subcutaneous tissue right elbow.
7. Debridement skin and subcutaneous tissue left elbow, forearm and wrist.
8. Debridement skin and subcutaneous tissue right knee.
9. Debridement skin and subcutaneous tissue left knee.
10. LA Block right wrist and forearm.
11. LA Block left wrist and forearm.
12. Removal of right below elbow Scotch Cast.
13. Removal of left below elbow Scotch Cast.
14. Application of Vacuum Negative Pressure Dressing.
15. Application of Special Sling left upper limb.
16. Application of Special Sling right upper limb.

Date of Surgery: 27/03/2020

Surgical Procedures:

1. Removal of External Fixator fracture distal right radius.
2. Removal of External Fixator fracture distal left radius.
3. Open fixation intra-articular distal right radius fracture, more than 3 parts.
4. Open fixation intra-articular distal left radius fracture, more than 3 parts.
5. Debridement skin and subcutaneous tissue left forearm and wrist.
6. Application of below left elbow Scotch Cast.
7. Application of Vacuum Negative Pressure Dressing.
8. Removal of sutures.
9. Removal of 2 K wires distal left radius.
10. Removal of K wire distal right radius.
11. Application of Special Sling left upper limb.
12. Application of Special Sling right upper limb.

Date of Surgery : 30/03/2020

Surgical Procedures:

1. Fasciocutaneous flap right forearm.
2. Application of Vacuum Negative Pressure Dressing right forearm.
3. Application of below left elbow Scotch Cast.
4. Removal of below left elbow Scotch Cast.

Dear Dr. Sekhar,

Mr. Parchment was reviewed today at the Cayman Hand Centre. He was concerned that his wound may have gaped open. He is pain free. Thumb flexion and extension were bilaterally full. There was no neurovascular deficit. The wounds has revealed a linear scab following what appears to be a small superficial bleed at the site. The remaining wounds have healed nicely with no evidence of infection or inflammation. A betadine


swab and rubbing alcohol were applied to the scab site. This was superficial and clean and the alcohol failed to elicit a stinging sensation.

Treatment plan:

1. Patient was advised to refrain from massaging the wound site and to keep it clean and dry.
2. He was advised to keep his wrists, fingers and thumbs exercising.
3. He is allowed to drive and go back to work.
4. No loading or sports allowed for 3 months.

Follow up: in 6 months XOA.

Sincerely,

  
**Dr. Hesham Sida**, FRCS Ed., MSc. Orth. BMSc, MRBCh  
Consultant Trauma & Orthopaedic Surgeon  
Cayman Hand Centre