

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 127 OF 1998

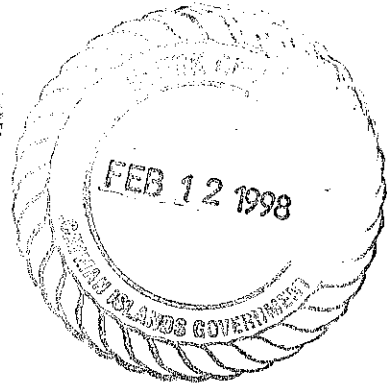
BETWEEN:	FLOYD WADE WILLYARD	PLAINTIFF
AND:	CARIBBEAN UTILITIES CO. LTD.	FIRST DEFENDANT
AND:	PRO BUILT LIMITED	SECOND DEFENDANT
AND:	HYDES & SONS LIMITED	THIRD DEFENDANT

WRIT OF SUMMONS

To: Caribbean Utilities Co. Ltd.,
Registered Office, P.O. Box 38,
George Town, Grand Cayman.

To: Pro Built Limited,
Registered Office, P.O. Box 866,
George Town, Grand Cayman.

To: Hydes & Sons Limited,
Registered Office, P.O. Box 364,
George Town, Grand Cayman.



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 day of February, 1998.

NOTE - This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledge of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is an American Citizen who was, at all material times, employed by the Second Defendant as a metal building erector. The Plaintiff was born on the 5th day of April, 1955 and was accordingly at the date of the incident referred to herein aged 40.
2. The First Defendant is a company incorporated in the Cayman Islands and has its Registered Office at P.O. Box 38, George Town, Grand Cayman. The First Defendant is licensed by the Cayman Islands Government to undertake the sole supply of electricity to the Cayman Islands.
3. The Second Defendant is a company incorporated in the Cayman Islands and has its registered office at the offices of Truman Boddin & Company, P.O. Box 866, George Town, Grand Cayman. The Second Defendant was at all material times the lawful employer of the Plaintiff. The Second Defendant carries on the business, (inter alia), of metal building erectors, the servicing and repair of metal buildings, steel fabrications, and standing seam roof system insulation and repair. At all material times the Second Defendant was employed by the Third Defendant to erect a metal frame for a building (the "Building") on land owned by the Third Defendant on Shedden Road, Grand Cayman the location of which is more particularly described in the Cayman Islands Land Registry as being Registration Section George Town Central Block 14C Parcel 280, (the "Premises").
4. The Third Defendant is a Limited Company having its Registered office at P.O. Box 364 George Town, Grand Cayman and trades under the name of Hydes & Son. The Third Defendant specialises in the manufacture and installation of patio and pool enclosures, security screens, screen doors and sliding screen doors, screen repairs, aluminum railings and hurricane shutters. At all material times (and by virtue of an agreement) the Third Defendant engaged and/or employed the Second Defendant to erect a steel-framed building (intended to be used for the business purposes of the Third Defendant) at the premises.
5. A high-tension electricity supply wire was run and maintained by the First Defendant in close proximity to the building. This line supplied light and power to other buildings in the immediate vicinity of the premises.

6. The construction of the building for the Third Defendant commenced sometime in or around 1995. As part of the construction works the Second Defendant had to operate a crane at the premises. On or about the 5th September 1995 the boom or alternatively part of the said crane came into contact with the said power line causing an explosion and a disruption of the electricity supply to all buildings in the vicinity.
7. Immediately following the incident referred to in paragraph 6 above the First Defendant was notified and a representative and/or agent thereof attended at the site. In the course of repairing the burnt line and restoring the supply of power the First Defendant's representative and/or agent indicated to the Second Defendant and/or Third Defendant that the danger resulting from the said power line would be removed, either by re-routing the said line or by cutting off the power thereto or by the installation of protectors thereon which would ensure that the line was safe and that no similar incident would occur.
8. The First named Defendant, despite its undertaking to do so failed to take any of the above mentioned steps or any steps to make the said power line safe and free from danger to anyone working on the building at the premises.
9. On the 2nd October, 1995 whilst the Plaintiff was working above ground level in the course of erecting the steel frame for the building he was electrocuted when a steel angle iron which was being put into position prior to installation by him either came into contact with the said power line or came into close proximity thereto. As a result of coming into contact with or into close proximity with the said power line the Plaintiff was electrocuted with approximately 7,000 volts of electricity and he suffered serious permanent personal injury and loss and damage as a result.
10. By letter dated 26th October, 1995 the First Defendant denied all liability to the Plaintiff and contended that the accident on the 2nd October, 1995 occurred as a result of the failure by the Plaintiff, the Second Defendant, and/or the Third Defendant to follow proper safety precautions.

11. The said injuries, loss and damage suffered by the Plaintiff were solely caused by the negligence and/or breach of duty of the First Defendant and/or the negligence and/or breach of duty of the Second Defendant and/or the negligence and/or breach of duty of the Third Defendant or alternatively by the negligence and/or breach of duty of all the Defendants or their servants or agents.

**PARTICULARS OF NEGLIGENCE AND/OR BREACH OF DUTY OF
THE FIRST DEFENDANT**

- (a) Running and allowing to remain in place a dangerous power line in close proximity to the building which they knew or ought to have known was in the course of construction.
- (b) Failing to take any adequate precautions to ensure that the overhead power line was safe and would not cause any damage to anyone working in close proximity thereto when they knew or ought to have known that the said overhead line was dangerous and constituted a hazard.
- (c) Failing to take any or sufficient steps to make the said power line safe which their servant and/or agent had indicated would be done on or around 5th September 1995.

**PARTICULARS OF NEGLIGENCE AND/OR BREACH OF DUTY OF
THE SECOND DEFENDANT**

- (a) Requiring the Plaintiff as its servant to work above ground level in close proximity to a power line which it knew or ought to have known was in a dangerous or unsafe condition.
- (b) Failing to provide the Plaintiff with safe premises in which to work.
- (c) Failing to provide and/or devise a safe system of work for the Plaintiff.
- (d) Failing to take any steps to ensure that the said power line had been made safe by the First Defendant after the incident of the 5th September 1995 before requiring the Plaintiff to work in close proximity thereto.
- (e) Failing to warn the Plaintiff of an unusual danger of which it knew or ought to have known.

- (f) Failing to make the site as safe as it could have been made by the exercise of reasonable care and skill.

**PARTICULARS OF NEGLIGENCE AND/OR BREACH OF DUTY OF
THE THIRD DEFENDANT**

- (a) Failing to ensure that corrective measures had been taken by the First Defendant after the incident of the 5th September 1995 before requiring the Second Defendant and/or its servants and agents (including the Plaintiff) to work in close proximity to the said power line.
- (b) Although they knew or ought to have known that the said overhead line was not safe and constituted an unusual danger they failed to warn the Second Defendant and/or its servants or agents (including the Plaintiff) of the said danger.
- (c) Failing to ensure that the said site on which they required the Second Defendant and/or its servants or agents (including the Plaintiff) to work was as safe as reasonable care and skill could make it.
- (d) Further and/or alternatively failing in its duty to prevent the Plaintiff as an invitee from sustaining damage from unusual danger of which they knew or ought to have known.

The Plaintiff will also rely on the doctrine of Res Ipsa Loquitur.

PARTICULARS OF PLAINTIFF'S INJURIES

- (a) The Plaintiff was electrocuted when a steel angle iron which was being put into position prior to installation came into contact with or alternatively came into close proximity with an electrical power line. The Plaintiff thereafter immediately stopped breathing but was resuscitated by his brother and another co-worker whilst remaining on the beam he was working on. He was taken to the Cayman Islands Hospital and shortly thereafter transferred by air ambulance to the Baptist Hospital in Miami, U.S.A., where he remained from the 2nd October 1995 to 20th October 1995. Prior to his arrival at the Baptist Hospital and whilst under

medical care in the Cayman Islands the Plaintiff was diagnosed as having suffered a cardiac arrest that required six defibrillations prior to his returning back to sinus rhythm.

- (b) On arrival at Baptist Hospital the Plaintiff came under the primary care of Dr. Mark Sachs. The Plaintiff continued to be in respiratory failure and was totally dependent on a ventilator. The Plaintiff was unresponsive when admitted to the intensive care unit and was kept intubated and mechanically ventilated.
- (c) From the cardiac stand point the Plaintiff developed a cardiomyopathy, possibly secondary to myocardial stunning produced by the electrical discharge and the defibrillations. His left ventricular function, as assessed by echocardiography upon admission was poor with an ejection fraction between 25% to 30%. The anterior wall was noted to be nearly agenetic. The left ventricular function was complicated by the development of congestive heart failure that was cleared with the use diuretics.
- (d) The Plaintiff was also suffering anoxic encephalopathy, rhabdomyolysis, potential renal failure, and multiple fluid electrolyte abnormalities.
- (e) The Plaintiff was also treated initially for severe electrical burns. On arrival at Hospital he had evidence of at least second, possibly third degree burns throughout his body. He was taken to surgery where he underwent an extensive debridement of burns to his left arm, chest, left flank, left leg, right leg, and right hand totalling a total of 10% total body surface area. The majority of the burns were second degree in nature, although there were areas of third degree burns involved. There was no burnt tissue into muscle that could be identified. The burns were consistent with that of an electrical injury with evidence of "arc burns" to his left leg in particular.
- (f) From a neurological stand point initial consultation seemed to indicate that the Plaintiff had suffered severe post-anoxic encephalopathy, post electrocution. The Plaintiff was comatose, emerging to a deep stupor with minimal grimace.

- (g) The Plaintiff also had neurogenic dysphasia and malnutrition. Due to that an esophagogastroduodenoscopy was performed with placement of percutaneous endoscopic gastronomy tube.
- (h) The Plaintiff was subsequently transferred to Tampa General Hospital and at that time he came under the care of Dr. Batas. He was felt to have a post-anoxic encephalopathy with cognitive and functional deficits, status-post rhabdomyolysis, anemia, thrombocytopenia, cardiomyopathy, pulmonary edema and aspiration. The Plaintiff since the accident suffers permanently from chronic swallowing difficulty and is at high risk of aspiration despite receiving instruction to assist with such problem.
- (i) The Plaintiff was initially under in-patient care at Tampa General but was later transferred to the out-patient setting. A psychological evaluation revealed diminished mentation, poor constructive skills, poor judgment, excessive talking and behavioral modification necessary. He was seen by a Dr. Passaro, neurologist, who felt he was disinhibited, agitated with impaired intention.
- (j) A functional capacity evaluation done at Tampa General on 10th January 1996 revealed diminished functional activity, poor body mechanics, deconditioning and decreased strength. On the 16th February 1996 the Plaintiff had a psychological evaluation by Dr. Powers at the University of South Florida College of Medicine and this revealed a dementia secondary to electric injury and anoxia with irritability, concentration difficulty and spiritual preoccupation. He had sleep studies performed which revealed a rhythm disorder.
- (k) The Plaintiff's neurological symptoms include change of mental status with dyslexia, diminished comprehension, trouble with word finding, stuttering, diminished spelling and writing and pronunciation. His memory is reduced, particularly for recent events. His calculations are markedly reduced. He feels he gets easily frustrated and irritable, particularly when he finds that he is making mistakes. He has had back pain since the episode as well as ataxia of gait with difficulty with tandem, particularly in the right leg which is splayed out.
- (l) Prior to the accident the Plaintiff was in excellent health and had no history of any family illnesses or neurological problems.

- (m) The Plaintiff has been left with bilateral cortical dysfunction with significant cognitive disturbance. He has also secondary severe psychological problems secondary to frustration and difficulty handling his loss of abilities. These include headaches, sleep disturbance, irritability, poor social interactions, sexual dysfunction, severe depression, severe sleep disturbance, severe fatigue and severe inability to motivate himself. He has marked light sensitivity and difficulty in paying attention and concentrating. He also has markedly increased frustration and low tolerance.
- (n) The likelihood of significant spontaneous restitution is poor. The Plaintiff will need palliative rehabilitation function, including cognitive rehabilitation, psychological treatment, anti-depressants and supportive care.
- (o) There is a very real residual fear that the Plaintiff's internal organs may have suffered damage and further medical evaluation and/or treatment may be necessary. In addition there is also a very real fear that the Plaintiff's mental function will deteriorate further and that other as yet undiagnosed or unidentified emotional and psychological problems could emerge.
- (p) The Plaintiff is diagnosed as being totally unemployable for any reasonable work at the current time, probably forever. As a result of the injuries received by the Plaintiff on 2nd October 1995 the Plaintiff has undergone a complete adverse change in his life. He has diminished long-term memory, limited short-term memory and his mental and physical capabilities, including his coordination, ability to walk as before, talk, strength, mental capacity and quality of life has been drastically reduced. The injuries sustained by the Plaintiff are permanent and the Plaintiff has little chance of significant improvement. The Plaintiff's life expectancy may have been reduced.

PARTICULARS OF SPECIAL DAMAGES

Medical expenses

Medical expenses at Baptist Hospital
and Tampa General, and continuing

US\$141,713.11

(of which the Second Defendant has paid approximately
US\$44,343.31)

Loss of income

From October, 1995 to January, 1998 ... 27 months
(and continuing) average @ US\$ per month \$6,271.04 US\$169,318.08

Expenses relating to attendance on Plaintiff -

Accommodation US\$ 1,240.00

Other associated miscellaneous for living expenses

In U.S.A. from 1.11.95 to March, 1996 (5 x \$1,000.00) US\$ 5,000.00

Food supplements for Plaintiff estimated at US\$ 1,000.00

Loss of income incurred by fiancée (\$3,000.00 x 8 months) US\$ 24,000.00

Cost of up keep of apartment in the Cayman Islands (October to
March) US\$ 5,335.37

Rehabilitation travel US\$ 1,235.00

US\$348,841.56

The Special Damages are continuing. In particular the Plaintiff continues to suffer and claims loss of income and future earnings at the rate of US\$6,271.04 per month. Also the Plaintiff continues to incur and claims the cost of all future medical expenses and/or care.

In the premises the Plaintiff claims against all defendants or one or other of them:

1. Damages.
2. Interest pursuant to the Judicature Law and the Grand Court Rules.

3. Costs.
4. Such further and/or other relief as may be just.

DATED this day of February, 1998.

QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

To: The Clerk of Court

And to: The First Defendant
 The Second Defendant
 The Third Defendant

This Writ of Summons is filed by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff herein whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, George Town, Grand Cayman.

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 installments or otherwise.

See over for notes for guidance

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 his 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. 127 OF 1998

BETWEEN:	FLOYD WADE WILLYARD	PLAINTIFF
AND:	CARIBBEAN UTILITIES CO. LTD.	FIRST DEFENDANT
AND:	PRO BUILT LIMITED	SECOND DEFENDANT
AND:	HYDES & SONS LIMITED	THIRD 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 the Defendants whereby they 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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

Address for service:

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.

Messrs. Quin & Hampson
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
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]