

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 134 OF 1998

BETWEEN:

(1) ALETA JO STURDIVANT (widow)
(2) MELLON BANK, N.A. (f/k/a Girard Bank)
(Executors of The Estate of Ralph Allen Sturdivant, Deceased)
Plaintiffs

AND :

(1) PARROTS LANDING WATER SPORTS
LIMITED
(2) CHARLES EMMERSON BOXWELL
(3) DUANE ALAN BRINSON
(4) FREDERIK MEINTJES

Defendants

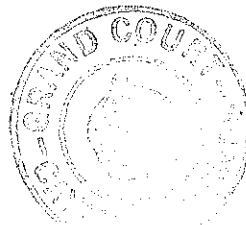
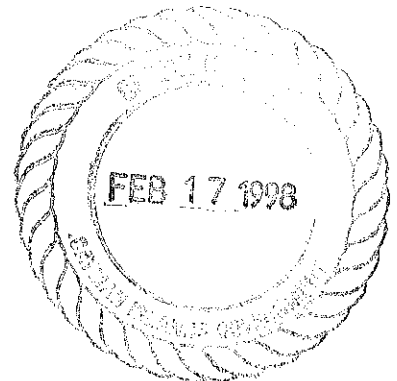
WRIT OF SUMMONS

TO: PARROTS LANDING WATER SPORTS LIMITED
South Church Street
George Town, Grand Cayman, Cayman Islands, B.W.I

TO: CHARLES EMMERSON BOXWELL
7550 Folsom Auburn Road
Folsom, CA 95630-1769, USA

TO: DUANE ALAN BRINSON
c/o Monroe & Shapiro, LLP
Suite 312 Pacific Plaza
2200 Pacific Coast Highway
Hermosa Beach
California 90254-2702, USA

TO: FREDERIK MEINTJES
c/o Monroe & Shapiro, LLP
Suite 312 Pacific Plaza
2200 Pacific Coast Highway
Hermosa Beach
California 90254-2702, USA



17th February 1998

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

FIRST DEFENDANT: WITHIN 14 DAYS after service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

SECOND, THIRD AND FOURTH DEFENDANTS: WITHIN 28 DAYS after service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495GT, 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 of Service 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 17TH day of February 1998.

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.

THIS WRIT was issued by Ian Boxall & Co., Attorneys at Law for the Plaintiffs, whose address for service is CIBC Financial Centre, PO Box 1234, George Town, Grand Cayman, Cayman Islands, B.W.I.

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STATEMENT OF CLAIM

1. The Plaintiffs are the executors of the Estate of Ralph Allen Sturdivant, deceased ("the deceased") who died on 3rd March 1995, and probate of whose Will was granted to them as the executors named in his last will out of the Camden County Surrogate's Court of the State of New Jersey in the United States of America on 23rd March 1995 and re-sealed in the Grand Court of the Cayman Islands on the 3rd day of February 1998, and they bring this action for the benefit of the widow and children of the deceased as well as for the benefit of his Estate.
- 2.1 On 3rd March 1995 the deceased died while taking part in a scuba diving expedition organised by the First Defendant and supervised by its agents the Third and Fourth Defendants. The Second Defendant was another diver taking part in the expedition.
- 2.2 The deceased met the Second Defendant in the van driving to the dive boat . The First Defendant's servant or agent van driver allocated the deceased, a certified SCUBA diver for two (2) months, and the Second Defendant, a certified SCUBA diver for approximately six (6) years, to be diving "buddies" for the First Defendant's dives scheduled for that day.
- 2.3 The Third Defendant was the Dive Instructor and the Fourth Defendant was the Dive Master for the First Defendant's organised dives on 3rd March 1995 on the boat named the *Amazon* which was owned and operated by the First Defendant.
- 2.4 The deceased and the Second Defendant participated in two dives on the afternoon of March 3, 1995. The first dive was at a site known as the "Japanese Gardens" (the "First Dive"). The second dive was at a site known as "Kent's Cave" (the "Second Dive"). Both the First and Second Dives were operated by the First Defendant operating by and through its Dive Master, the Fourth Defendant, and its Dive Instructor, the Third Defendant.
- 2.5 During the First Dive, the deceased and the Second Defendant dove together and alone. During the course of that First Dive, the air in the deceased's tank ran low and the deceased signalled to the Second Defendant that the air in his tank had run low. The deceased and the

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Second Defendant then proceeded to return to the *Amazon*. Prior to returning to the *Amazon*, the Second Defendant decided to continue his dive and he separated from his dive buddy, the deceased, who was obliged to return to the *Amazon* alone.

- 2.6 The Third and Fourth Defendants observed the deceased return to the *Amazon* alone and separated from his diving buddy, the Second Defendant. The Third and Fourth Defendants did not provide any instruction to the deceased and/or to the Second Defendant when he later returned alone to the *Amazon* to not separate during a dive. After observing the separation during the course of the First Dive, at no time did the Third and/or Fourth Defendants take any precaution to ensure that such a separation not occur on future dives.
- 2.7 During the Second Dive, the deceased and the Second Defendant were again allowed to dive together and alone. During the course of the Second Dive, the deceased's air tank again ran low, he indicated to the Second Defendant that his air had run low, and the Second Defendant indicated to the deceased to rise to the surface alone while he continued his dive. At such time, the Second Defendant separated again from the deceased.
- 2.8 At approximately 4:15 p.m. on March 3, 1995, the deceased was found dead lying face down at a depth of approximately thirty-five (35) feet below surface level.
- 2.9 The deceased died as a result of the negligence of
 - (a) the First, Third and Fourth Defendants in the operation and supervision of the dives in which the deceased participated on March 3, 1995; and
 - (b) the Second Defendant in abandoning his diving buddy during the course of a SCUBA dive on March 3, 1995.

Particulars of Negligence

I: Negligence of the First Defendant

- a. Allowing the deceased and the Second Defendant to continue as diving buddies on the Second Dive on March 3, 1995 after knowing that the Second Defendant had abandoned the deceased and not returned to the boat with him during the First Dive.

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- b. Not instructing or advising the Second Defendant and the deceased to not separate during the course of the Second Dive on March 3, 1995 after knowing that they had separated on the First Dive.
- c. Failing to ascertain the level of experience or training of any of the divers before the diving began.
- d. Failing to appreciate the fact that the deceased was a novice diver.
- e. Failing to enforce the most basic safety rule of diving -- "stay with your buddy".
- f. Failing to provide a dive operation safe for divers of the deceased's experience.
- g. Failing to operate the March 3, 1995 dive with adequate diving rules and regulations.
- h. Failing to adequately supervise the divers on March 3, 1995.
- i. Failing to insure that diving buddies did not separate during the course of the March 3, 1995 dive.
- j. Failing to instruct adequately or at all the divers on March 3, 1995 or ever on the requirements of the "buddy system" -- namely, that divers shall not at any time separate during the course of a dive and should a separation ever occur that the divers in question be severely reprimanded in front of all other divers present and not allowed to dive again as buddies and hence *if* allowed to re-dive at all that day to be re-buddied with other divers who have been warned of the previous breach of the fundamental rule.
- k. Failing to adopt and/or enforce adequate policies and procedures regarding the conduct of divers in the course of its dives.
- l. Failing to train, supervise, instruct, test and certify adequately or at all divers' qualifications who participated on its dives.
- m. Failing adequately or at all to train, supervise, instruct, test and certify the instructors and operators of its dive operations.

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- n. Failing to warn prospective divers of its being a substandard dive operation.

II: Negligence of The Second Defendant

- a. Abandoning the deceased during the Second Dive when his air tank was low.
- b. Violating the buddy system by abandoning the deceased during the course of the Second Dive.
- c. Abandoning the deceased during the Second Dive when he knew that the deceased was a novice diver.
- d. Abandoning the deceased during the Second Dive when he knew that the deceased was having trouble with the air in his tank -- namely, that it had run low on the First and Second Dives.
- e. Failing to ascertain the deceased's experience as a diver and/or failing adequately or at all to look out for and monitor the progress and safety of the deceased novice diver and/or taking advantage of the deceased's novice status to permit and/or encourage and/or insist upon the repeated flagrant breaches of the fundamental rule of diving safety: never leave your buddy

III: Negligence of The Third and Fourth Defendants (and each of them)

- a. Allowing the deceased and the Second Defendant to continue as diving buddies on the Second Dive on March 3, 1995 after knowing that the Second Defendant had abandoned the deceased and not returned to the boat with him during the First Dive.
- b. Not instructing or advising the Second Defendant and the deceased to not separate during the course of the Second Dive on March 3, 1995 after knowing that they had separated on the First Dive.
- c. Failing to ascertain the level of experience or training of any of the divers before the diving began.
- d. Failing to appreciate the fact that the deceased was a novice diver.

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- e. Failing to enforce the most basic safety rule of diving -- "stay with your buddy".
 - f. Failing to provide dives safe for divers of the deceased's experience.
 - g. Failing to operate the March 3, 1995 dive with adequate diving rules and regulations.
 - h. Failing to adequately supervise the divers on March 3, 1995.
 - i. Failing to ensure that diving buddies did not separate during the course of the March 3, 1995 dive.
 - j. Failing to instruct adequately or at all the divers on March 3, 1995 or ever on the requirements of the "buddy system", namely, (i) that divers shall not at any time separate during the course of a dive and (ii) that should a separation ever occur that the divers in question be severely reprimanded in front of all other divers present and not allowed to dive together again as buddies and *if* allowed to re-dive at all that day to be re-buddied with other divers who have been warned of the previous breach of the fundamental rule.
3. In consequence of this accident, the deceased drowned on 3rd March 1995.

Particulars of Injuries

The deceased suffered the terror and agony of drowning alone.

4. Particulars pursuant to the Torts (Reform) Law (1996 Revision) as amended are:

- (a) The names of the persons for whose benefit this action is brought are:

Aleta Jo Sturdivant, the widow of the deceased, aged 50, born on 25th August 1947;

Ralph Sturdivant, Junior, the son of the deceased, aged 18, born on 23rd October 1979.

Ivana Sturdivant, the daughter of the deceased, aged 16, born 25th October 1981.

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- (b) The nature of the claim in respect of which damages are sought is:

At the time of the death the deceased was 47 years of age, he enjoyed good health and lived a happy and vigorous life. He was the Chairman of the Board of Directors and Chief Executive Officer of Sturdivant & Co., Inc. which he founded in 1988. Sturdivant & Co. provided supervisory investment portfolio management services on a discretionary basis. At the time of the deceased's death Sturdivant & Co. was managing 20 accounts with a total market value of US\$327,410,000. The average account size was US\$16,370,000 while the median was US\$13,060,000. The largest account was US\$58,400,000. The deceased's income (after payment of all taxes) for the three years preceding his death (1994, 1993 and 1992) was US\$624,496.00, US\$525,457.00 and US\$363,847.00 per annum, respectively. The deceased had prospects of considerable advancement in his career. His income was likely to increase progressively from year to year; it is estimated that in five years it would rise to approximately US\$1,553,879.00 per annum (after payment of all taxes), and in ten years to approximately US\$3,866,547.00 per annum (after payment of all taxes), and to continue to increase thereafter. The deceased paid all the outgoings of the house occupied by him and his family at their home in Cedarbrook, New Jersey, U.S.A., and he further paid all the other outgoings of his family. In addition, the deceased paid his widow a personal allowance of approximately US\$7,000.00 per month, and he further paid the school fees of his children, and intended in due course to pay for their future education at University level. Mr. Sturdivant also paid expenses for the care of his son and dependent, Ralph Sturdivant, Junior, who was born a quadriplegic and is and will continue for his lifetime to be totally dependent and requires 24 hour nursing care.

5. The widow and the children of the deceased were wholly dependent upon him for support, and by his death they have lost this means of support and have suffered loss and damage and bereavement.

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6. Further by reason of these matters, the deceased during his lifetime suffered from the terror of drowning and the injuries sustained by him in consequence whereof his Estate has suffered loss and damage.

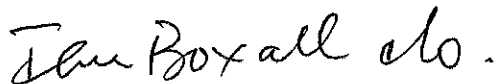
Particulars

Funeral Expenses	US\$13,000
Loss of expectation of life	CI\$2,000 or such figure the Court may determine to be just and appropriate

7. Further the Plaintiffs claim interest on damages pursuant to section 34 of the Judicature Law (1995 Revision) at such rate and for such period as the Court may determine.

And the Plaintiffs as Executors claim against the Defendants and each of them:-

- (1) Damages under the Torts (Reform) Law (1996 Revision);
- (2) Damages under the Estates Proceedings Law (1995 Revision);
- (3) Interest on Damages pursuant to section 34 of the Judicature Law (1995 Revision) as aforesaid.
- (4) The *ad valorem* fee payable upon entering the Judgment for damages herein.



Ian Boxall & Co.
Attorneys for the Plaintiffs

Dated this 17th day of February 1998.