



**ND COURT OF THE CAYMAN ISLANDS
ION**

**CAUSE NO: OF 2022
LACV 0127 OF 2021**

TYREE HERNANDEZ

PLAINTIFF

AND:

THE NATIONAL ROADS AUTHORITY

DEFENDANT

WRIT OF SUMMONS

TO:

The National Roads Authority

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 (or, if leave is required to effect service out of the jurisdiction, such other period is as specified in the attached Acknowledgement of Service of Writ of Summons) 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 2022.

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 and Statement of Claim is issued by KSG Attorneys at Law for the Plaintiff whose address for service is 4th Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman. P.O. Box 2255 GT, KY1-1107.
[KG/01299]

STATEMENT OF CLAIM

1. The Plaintiff is a resident of the Cayman Islands who was employed by the Defendant from 11 September 2006 to 31 December 2020, and at all material times.
2. The Defendant is the National Roads Authority of the Cayman Islands, a body corporate with responsibility for the administration, management, control, development and maintenance of the public roads and related facilities of the Cayman Islands.
3. The Plaintiff was employed by the Defendant in the capacity of Machine Operator. The principal accountabilities of his role were the operation of heavy equipment such as bulldozers, graders, rollers, dump trucks, tar trucks, and paving machines. He also used hand tools, such as rakes, when required.
4. The Plaintiff was owed a duty of care by the Defendant to ensure his health, safety and welfare at work and ensure that he was provided with a place of work, plant and systems of work and systems of handling articles and equipment that were safe and without risks to his health.
5. Between 1 October 2018 and 1 March 2019, during the Plaintiff's employment with the Defendant, he worked on 3 projects in George Town, Grand Cayman, as part of the same team, these being (i) Crewe Road, (ii) Linford Pierson Highway, and (iii) the Mango Tree / CNB Roundabout Connector) ("Projects"). The Plaintiff's primary duty in the Projects was to operate a Volvo vehicular compactor machine ("Roller") used to achieve density requirements for surfaces such as roads, walkways, and parking lots. The Roller is a vibrating machine.
6. Between 1 October 2018 and 1 March 2019, the Roller was faulty, in particular: (i) there was a problem with the shock absorbers in the operator's seat of the Roller, in that the shock absorbers were either missing or faulty, defective or damaged ("Shock Absorber Issues"); and (ii) there was a slow oil leak from the vibratory drum of the Roller which caused extraordinary vibrations to the operator of the Roller ("Oil Leak").
7. On a number of occasions between 1 October 2018 and 1 March 2019, the Plaintiff reported the Shock Absorber Issues to the superintendent of base and road works of

the group to which he was assigned, Mr Ellington Forbes, and to his fleet manager, Mr Colford Scott. No action was taken to properly investigate or repair the Roller.

8. On a number of occasions between 1 October 2018 and 1 March 2019, the Plaintiff reported the Oil Leak, and that as a result of the Oil Leak he was experiencing extraordinary vibrations as operator of the Roller, to Mr Ellington Forbes. Mr Ellington Forbes reported the Oil Leak to Mr Colford Scott, who spoke to the Plaintiff about the Oil Leak but failed and/or refused to undertake proper repairs.
9. Prior to the Projects commencing, the Plaintiff regularly operated other vibrating heavy machinery for the Defendant, including two asphalt rollers and a CAT base roller.
10. Prior to, and including, 1 March 2019, whilst working on the Projects, the Plaintiff reported to his foreman, Chris Jackson, and his supervisor, James McField, that the road surface was fully compacted and no longer required use of the Roller. The Plaintiff was directed by the same men to continue using the Roller, and did so for several days after the requisite compaction had been achieved. Use of the Roller on fully compacted road surface caused excessive vibrations to be experienced by the Plaintiff as operator.
11. Use of the Roller for the Projects, and/or earlier use of the vibrating machinery by the Plaintiff caused the Plaintiff injury, which he first experienced as an intense burning pain in his arms and shoulders, particularly his right arm, on 1 March 2019.
12. On or around 3 April 2019, the Plaintiff was diagnosed with a Type II Superior Labral Anteroposterior Tear ("Tear") by MRI scan in his left shoulder.
13. In or around May 2019, despite the injury, and the Defendant's knowledge of the injury, the Plaintiff was instructed by Mr Ellington Forbes to assist Mr Anthony Ebanks and Mr Franklin Smith with the installation of pedestrian crossing lights on the Mango Tree / CNB roundabout. This work further exacerbated the Plaintiff's injury.
14. On or around 12 September 2019, the Plaintiff underwent surgery to repair the Tear.
15. Following the injury, the Plaintiff was unable to return to work for more than a few days at a time and was on sick leave for the majority of the remainder of his employment with the Defendant.

16. On 29 October 2019 a Medical Board Certificate was issued by the Health Services Authority Medical Board which advised that the Plaintiff should retire on medical grounds, and on 31 December 2020 the Plaintiff was retired on medical grounds from his employment with the Defendant. This was a result of the Plaintiff's injury from use of the Roller and/or other vibrating heavy machinery.
17. It is the Plaintiff's case that at all relevant times the Defendant had or ought to have had knowledge that the exposure to vibration through the use of the Roller and other vibrating heavy machinery posed a foreseeable risk of injury and that such risk was reasonably avoidable.
18. This injury was caused by the negligence of the Defendant, its servants or agents, whether during the Projects, or during the Plaintiff's prior employment with the Defendant.

PARTICULARS OF NEGLIGENCE

The Defendants, their employees or agents were negligent in:

- a. Instructing, causing or permitting the Plaintiff to use, upon a regular basis, heavy vibrating tools when the Defendants knew or ought to have known that such tools caused severe vibration to be experienced by the Plaintiff throughout his body, and to such an extent that the same was likely to injure him.
- b. Failing to warn the Plaintiff about the possibility of developing injuries resulting from vibrating machinery.
- c. Failing to provide a system of rotation of tasks in the work which they required the Plaintiff to do, whereby the Plaintiff's use of the Roller might have been alternated with other work.
- d. Requiring the Plaintiff to use the Roller for excessive periods of time, thus increasing the risk of vibration injury.
- e. Failing to give the Plaintiff any guidance as to the manner in which to avoid injury from vibration.

- f. Failing to take any precaution to reduce the risk of injury from vibration or to dampen the vibration, despite the fact that by the time at which they employed the Plaintiff they knew or ought to have known the risks of injury from vibration.
 - g. Failing to service the Roller regularly as required.
 - h. Failing to repair the Roller's Oil Leak from the vibratory drum.
 - i. Failing to heed the Plaintiff's notifications that the Roller was faulty in that there were Shock Absorber Issues, and failing to take appropriate investigatory and remedial actions prior to requiring or permitting the Plaintiff to continue using it.
 - j. Requiring the Plaintiff to continue working with the Roller on a fully compacted road surface, despite having been informed that the road surface was fully compacted.
 - k. Failing to institute or enforce any adequate system of work to ensure that the Plaintiff's exposure to vibration would be reduced.
 - l. Failing to warn the Plaintiff of the risk of developing vibration injury if he used the Roller regularly and continuously.
 - m. In the premises, the Defendants exposed the Plaintiff to a risk of vibration injury of which they knew or ought to have known, and to an unnecessary risk of injury.
19. By reason of the facts and matters set out above the Plaintiff has suffered personal injury, loss and damage.

PARTICULARS OF INJURY

- a. Upper extremity dysesthesia and parasthesia;
- b. Extreme anterior right shoulder pain;
- c. Intermittent pins and needles along the right medial forearm with variable tingling into the thumb index and middle finger of the right hand;
- d. Dysesthetic sensation along the radial half of the right hand ring finger;

- e. Extreme pain through his right hand and numbness in the 4th and 5th digits upon arm extension;
- f. Pain in his shoulders, neck, and hands;
- g. Type II Superior Labral Anteroposterior Tears of both the left and right shoulders;
- h. Left shoulder impingement;
- i. Surgery on the Tear on or around 12 September 2019;
- j. C5/C6 chronic disc degeneration;
- k. Tendinopathy of left rotator cuff;
- l. Bilateral shoulder tendinitis;
- m. Rotator cuff tendinitis;
- n. Vibration trauma to the upper limbs.
- o. Altered blood circulation in both hands.

PARTICULARS OF LOSS AND DAMAGE

These are contained in the attached schedule of loss and damage.

Statement Regarding Interest

20. The Plaintiff claims interest at the rate of 2 3/8% per annum on sums found due to the Plaintiff for such periods as the Court orders to the date of judgment or sooner payment pursuant to the Judicature Act (2017 Revision) and the Judgment Debts (Rates of Interest) Rules as amended from time to time.

AND THE PLAINTIFF CLAIMS:

- (1) Damages;
- (2) Interest for such period and at such rate as the court thinks fit pursuant to section 34 of the Judicature Act (2017 Revision);
- (3) Such further or other relief that the Court deems fit;
- (4) Costs.

This Writ and Statement of Claim is issued by KSG Attorneys at Law for the Plaintiff whose address for service is 4th Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman. P.O. Box 2255 GT, KY1-1107.
[KG/01299]

DATED this 4th day of February 2022.



KSG Attorneys-at-Law
Attorneys for the Plaintiff

This Writ and Statement of Claim is issued by KSG Attorneys at Law for the Plaintiff whose address for service is 4th Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman. P.O. Box 2255 GT, KY1-1107.
[KG/01299]

**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.

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

**CAUSE NO: OF 2022
LACV 0127 OF 2021**

BETWEEN:

TYREE HERNANDEZ

PLAINTIFF

AND:

THE NATIONAL ROADS AUTHORITY

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

This Writ and Statement of Claim is issued by KSG Attorneys at Law for the Plaintiff whose address for service is 4th Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman. P.O. Box 2255 GT, KY1-1107.
[KG/01299]

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
4th Floor Harbour Centre
42 North Church Street
PO Box 2255
Grand Cayman KY1-1107
Cayman Islands

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]