

STATEMENT OF CLAIM

1. At all material times the Defendant owned and operated a lumber store, under the name, Cox Lumber Store ("the store"). At the material time, the Store was situated on Eastern Avenue, George Town, Grand Cayman, Cayman Islands, and was in the business of selling hardware to the general public.
2. At all material times the Plaintiff attended the Defendant's store as a customer/invitee.
3. On the 19th day of June, 1996 at or around 3.30 p.m., the Plaintiff attended the Defendant's store to purchase some plywood. On arrival at the Defendant's store the Plaintiff requested assistance from a staff member as servant and agent of the Defendant. The Plaintiff was instructed by the said staff member to attend the lumberyard. Whilst in the general open area the Plaintiff was struck in her head by the boom of a forklift being operated and driven by a servant or agent of the Defendant.
4. The said accident was caused by the negligence of the Defendant, and the negligence of the Defendant's servant and agent in and about the driving, management, care and control of the forklift whilst in the course of his employment by the Defendant.

PARTICULARS OF NEGLIGENCE

The Defendant was negligent in :-

- (a) Failing to take any or any reasonable care to see that customer/the Plaintiff would be reasonably safe in using the premises;
- (b) Permitting the Plaintiff to walk along the open area when they knew or ought to have known that it was unsafe and dangerous for her to do so;
- (c) Causing or permitting the forklift to be operated in such a position in relation to the Plaintiff so as to cause her to be struck in the head;
- (d) Failing to take any or any adequate precautions to ensure that the forklift was not operated in such a manner and in such a place and at such a time so as to expose the Plaintiff to injury;
- (e) Causing or permitting the operation of a forklift in such a manner and in such a place and at such a time when they knew or they ought to have known that it was unsafe or dangerous to so do;
- (f) Failing to provide staff to accompany the Plaintiff in or about any area of the premises, which they knew or ought to have known [might] expose her to danger or injury;

- (g) Failing to provide staff to traverse in the Plaintiff's stead, any and any area of the premises which they knew or ought to have known [might] expose the Plaintiff to injury or harm;
- (h) Directing the Plaintiff to traverse any and any area of the premises, which they knew or ought to have known [might] expose her to danger or injury;
- (i) Failing to provide the Plaintiff with any or adequate protective gear when they knew or ought to have known of the use and/or operation of forklifts on or about the premises;
- (j) Failing to select and employ a proper and competent operator of the forklift;

PARTICULARS OF NEGLIGENCE OF THE FORKLIFT DRIVER AS SERVANT AND AGENT OF THE DEFENDANT:

- (a) Failing to keep any or any proper look out;
- (b) Failing to see the Plaintiff in time or at all;
- (c) Failing to accord precedence to the Plaintiff as she walked along the open area of the premises;
- (d) Failing to stop and wait before attempting or commencing, to operate the forklift in the open area where the Plaintiff was walking;
- (e) Driving or maneuvering the fork lift so as to strike the Plaintiff in the head;

- (f) Failing to stop, slow down, swerve or to otherwise so to manage or to control the fork lift so as to avoid striking the Plaintiff;
 - (g) Failing to give the Plaintiff any or any adequate or effective warning of the presence and/or operation of the forklift in the open area, at the material time or at all;
 - (h) Failing by means of horns or lights or otherwise howsoever, to adequately or in time to warn the Plaintiff of the approach of the fork lift;
5. The Plaintiff will rely on the doctrine of Res Ipsa Loquitur;
6. The Plaintiff was born on the 15th March, 1965. At the time of the accident the Plaintiff was three months pregnant and by reason of the matters aforesaid the Plaintiff suffered pain and suffering, loss and damage.

PARTICULARS OF INJURY

- (i) Unconsciousness
- (ii) Nervous shock;
- (iii) Haematoma on the forehead;
- (iv) Fractured left elbow;
- (v) Bruising left and right thighs, ankle, coccogeal area;

- (vi) Abrasions to left shoulder;
- (vii) Black eye, stiff neck, retrograde amnesia;
- (viii) Anxiety and distress re development of fetus/child;
- (ix) Post traumatic migraine headaches, and related symptoms;
- (x) The Plaintiff continues to suffer from symptoms of post-traumatic migraine headaches and continued anxiety about her child's normal development. The Plaintiff is a psychiatric social worker, working primarily with emotionally disturbed and abused children. As result of the residual symptoms the Plaintiff experiences extreme difficulties in performing her day to day work duties. Some days she is unable to work at all. Before the accident the Plaintiff intended to pursue doctoral studies. Her injuries have seriously affected the possibility of her fulfilling such aspirations. Present diagnosis indicates that the recurring migraines suffered by the Plaintiff will be indefinite. She will continue to require medical treatment and routine medical assessments. Further, the Plaintiff's condition has introduced additional stress to her family life, and has limited her ability to enjoy her favorite recreational outdoor activities of surfing and wind surfing. As a result of the injuries sustained the Plaintiff was absent from work for a period of time and as such suffered loss of earnings.

AND THE PLAINTIFF CLAIMS:-

- (1) Special damages in the amount of CI\$5,799.08 and continuing;
- (2) General damages including damages for pain suffering and loss of amenities;

- (3) Loss of earnings of CI\$6,102.53;
- (4) Such interest pursuant to Section 34 of the Judicature Law to be assessed; and
- (5) Costs.

DATED this 18th day of June, 1999.

Quin & Hampson
QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

THIS WRIT OF SUMMONS was issued by Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, George Town, Grand Cayman, B.W.I.

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.

BETWEEN: ANN MORRIS Plaintiff

AND: COX LUMBER CO 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]