

IN THE GRAND COURT OF THE CAYMAN ISLAND

**CAUSE NO. 600 of 2000
LEGAL AID NO. 77 of 2000**

BETWEEN:

LEROY WRIGHT

PLAINTIFF



AND:

CAYMAN SANDBLASTING LTD

FIRST DEFENDANT

AND:



HADSPHALTIC INTERNATIONAL LTD

SECOND DEFENDANT

WRIT OF SUMMONS

TO: Cayman Sandblasting Ltd
P.O. Box 753 GT
George Town, Grand Cayman

AND TO: Hadsphaltic International Ltd
c/o Coutts Cayman Ltd.
P.O. Box 707 GT
Coutts House, West Bay Road
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 GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and Judgement may be entered against you forthwith without further notice.

Issued this 24th day of July, 2000

NOTE: This Writ may not be served later than 4 calender months beginning with the date of the issue unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgement of Service are given with the accompanying form

STATEMENT OF CLAIM

1. The Plaintiff is a Jamaican citizen who at all material times was employed as a mason by the First Defendant under work permit # 7353. The Plaintiff was born at St. Elizabeth, Jamaica on 5th day of February, 1953, and, at the date of the incident referred to herein, he was 47 years of age.
2. The First Defendant is a company incorporated in the Cayman Islands. Contrary to the provisions of sections 50 and 51 of the *Companies Law* (2000 Revision), the First Defendant has not filed a Notice of Situation of Registered Office with the Cayman Islands Companies Registry. This Defendant carries on a business of sandblasting, masonry, and carpentry. At all material times, the First Defendant was the lawful employer of the Plaintiff.
3. The Second Defendant is a company incorporated in the Cayman Islands, and has its Registered Office at Coutts Cayman Ltd, P.O. Box 707 GT, Coutts House, West Bay Road, Grand Cayman. This Defendant carries on a business of general building contracting.
4. At all material times, the Plaintiff was employed at a workplace located at the Caribbean Utilities Company South Sound substation, which workplace was operated by the Second Defendant pursuant to a contract with Caribbean Utilities Company Limited, the occupier, the details of which contract are at present unknown to the Plaintiff. At all material times, the Plaintiff was employed at the said workplace pursuant to a labour subcontracting agreement between the First Defendant and the Second Defendant, the details of which agreement are at present unknown to the Plaintiff.
5. On the 29th day of March, 2000, the Plaintiff was working on scaffolding at a level of twelve to fifteen feet above ground. He was tying wire on the side of a building. The scaffolding upon which he was working was defectively assembled. At the place where the Plaintiff was working, the footing consisted of two 2x10 boards, side by side. There were inadequate supplies of scaffolding material on the site, and some of the boards were too short for secure use. The way in which boards were laid made them unstable. As well, the area for standing was too narrow. Further, there were no safety members or cross-pieces in place to prevent a person from falling. While he was working, the Plaintiff stepped backwards, lost his balance, and fell to the ground. He struck his head and lost consciousness. He was taken by ambulance to George Town Hospital. His next memory is of awaking during medical treatment in the Emergency Department of the hospital.
6. As a result of this incident, the Plaintiff suffered temporary and permanent personal injuries, loss, and damages.
7. The injuries, loss, and damages suffered by the Plaintiff were caused solely 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 or, alternatively, by the negligence and/or breach of duty of both Defendants or their servants or agents.

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

- (a) Failing to advise or instruct the Plaintiff properly, or at all, in the correct manner of erecting scaffolding, and/or failing to ensure that the Second Defendant did so;
- (b) Failing to supervise the Plaintiff properly or at all, and/or failing to ensure that the Second Defendant did so;
- (c) Failing to provide a competent labour foreman at the workplace and/or failing to ensure that the Second Defendant provided a competent labour foreman at the workplace, in that the foreman present at the time of the incident, who was provided by the Second Defendant, was not qualified to provide effective supervision.
- (d) Failing to provide proper and/or adequate scaffolding material at the workplace, and/or failing to ensure that the Second Defendant did so.
- (e) Failing to provide proper and/or adequate footing on the scaffolding as erected at the workplace, and/or failing to ensure that the Second Defendant did so.
- (f) Failing to provide proper and/or adequate safety bars or cross-pieces on the scaffolding as erected at the workplace, and/or failing to ensure that the Second Defendant did so.
- (g) Failing to provide proper and/or adequate protective headgear at the workplace, and/or failing to ensure that the Second Defendant did so.
- (h) Failing to provide and maintain a safe and proper system of working at the workplace or to instruct the Plaintiff to follow that system, and/or failing to ensure that the Second Defendant did so.
- (i) Failing to ensure a safe workplace and/or failing to ensure that the Second Defendant did so.
- (j) Failing to warn the Plaintiff of the dangers of working on the scaffolding as erected and/or failing to prevent him from doing so.
- (k) Requiring the Plaintiff, a mason, to do the work of a steel erector, in dangerous circumstances, without adequate training and experience.
- (l) In breach of section 56 of the *Labour Law* (2000 Revision), failing to ensure so far as is reasonably practicable the health, safety and welfare at work of the Plaintiff, and/or failing to ensure that the Second Defendant did so;
- (m) In breach of section 60, subsection (c) of the *Labour Law* (2000 Revision), failing to ensure that suitable protective equipment was furnished to the Plaintiff, and/or failing to ensure that the Second Defendant did so.

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

- (a) Failing to advise or instruct the Plaintiff properly, or at all, in the correct manner of erecting scaffolding, and/or failing to ensure that the First Defendant did so;
- (b) Failing to supervise the Plaintiff properly or at all, and/or failing to ensure that the First Defendant did so;
- (c) Failing to provide a competent labour foreman at the workplace and/or failing to ensure that the First Defendant provided a competent labour foreman at the workplace, in that the foreman present at the time of the incident, who was provided by the Second Defendant, was not qualified to provide effective supervision.
- (d) Failing to provide proper and/or adequate scaffolding material at the workplace, and/or failing to ensure that the First Defendant did so.
- (e) Failing to provide proper and/or adequate footing on the scaffolding as erected at the workplace, and/or failing to ensure that the First Defendant did so.
- (f) Failing to provide proper and/or adequate safety bars or cross-pieces on the scaffolding as erected at the workplace, and/or failing to ensure that the First Defendant did so.
- (g) Failing to provide proper and/or adequate protective headgear at the workplace, and/or failing to ensure that the First Defendant did so.
- (h) Failing to provide and maintain a safe and proper system of working at the workplace or to instruct the Plaintiff to follow that system, and/or failing to ensure that the First Defendant did so.
- (i) Failing to ensure a safe workplace and/or failing to ensure that the First Defendant did so.
- (j) Failing to warn the Plaintiff of the dangers of working on the scaffolding as erected and/or failing to prevent him from doing so.
- (k) Requiring the Plaintiff, a mason, to do the work of a steel erector, in dangerous circumstances, without adequate training and experience, and/or failing to make adequate inquiry of the First Defendant as to the Plaintiff's training, qualification, and/or experience in the erecting of steel buildings.
- (l) In breach of section 56 of the *Labour Law* (2000 Revision), failing to ensure so far as is reasonably practicable the health, safety and welfare at work of the Plaintiff, and/or failing to ensure that the First Defendant did so;
- (m) In breach of section 60, subsection (c) of the *Labour Law* (2000 Revision), failing to ensure that suitable protective equipment was furnished to the Plaintiff, and/or failing to ensure that the First Defendant did so.

PARTICULARS OF THE PLAINTIFF'S INJURIES

- (a) When the Plaintiff fell from the scaffolding and struck the ground, he lost consciousness. He was removed from the workplace by ambulance and taken to George Town Hospital. Initial medical examination revealed a scalp laceration, severe tenderness of the right lumbar muscles, moderate tenderness of the left lumbar muscles, and blood in the urine. Subsequent radiological investigation showed fractures of the the transverse processes of vertabrae L2, L3, and L4. He was admitted as an in-patient and remained in hospital until his discharge on April 3, 2000.
- (b) Specialist follow-up care and investigation at George Town Hospital, Chrissie Tomlinson Memorial Hospital, and Cayman Medical & Surgical Centre Ltd have revealed:
- (i) numbness in both arms up to shoulders;
 - (ii) persistent back, shoulder, neck and scalp pain;
 - (iii) swelling/infected haematoma of right forearm (surgery performed);
 - (iv) probable early or mild median nerve compression at the level of carpal tunnel on the right side;
 - (v) probable compression of the lower plexus and/or vertabra C8 nerve root;
 - (vi) probable chronic denervation and reinnervation at vertabra C6;
 - (vii) black outs.
 - (viii) depression
- (c) The Plaintiff remains unfit for employment and medical investigations are continuing. The most recent recommendations, as the result of an electrodiagnostic consultation, are:
- (i) that an MRI be done on the Plaintiff's cervical spine to rule out intracanal pathology at the vertabrae C5-C6 and C7-T1 levels;
 - (ii) that the Plaintiff be referred for a neurological consult;
 - (ii) that extensive physiotherapy be considered, along with "trigger point" injections, to help reduce neck and shoulder girdle spasms and dysfunction.
- (d) Prior to the incident, the Plaintiff was in excellent physical health and well able to discharge the duties and functions of his employment. He had no history of bone, joint or neurological pathology.

- (e) The Plaintiff continues to suffer from the said injuries. He is unable to work, and his quality of life has been drastically reduced. It is not yet known whether any of his injuries are permanent. It is not yet known whether he will be able to return to his usual vocation or whether he will require re-training for some other vocation.

PARTICULARS OF SPECIAL DAMAGES

Medical expenses (continuing)

To date, the Plaintiff's medical expenses have been paid by or on behalf of the Second Defendant

Loss of income (continuing)

From 30 March 2000 to 24 July 2000, 40 hours per week @ CI\$11.00 per hour:	CI\$6,776.00
less, paid to the Plaintiff by the Second Defendant, from March 30, 2000 to July 14, 2000	<u>(CI\$4,940.00)</u>
Balance:	CI\$1,836.00

The Plaintiff continues to suffer loss and claims loss of income and future earnings at the rate of CI\$440.00 per week.

WHEREFORE THE PLAINTIFF CLAIMS

1. Damages
2. Interest pursuant to the *Judicature Law* and the Grand Court Rules
3. Costs
4. Such further and/or other relief as counsel may advise and to this Honourable Court may seem just.

Dated this 24th day of July, 2000



BROOKS & BROOKS
 Attorneys At Law for the Plaintiff

THIS WRIT OF SUMMONS was filed by Brooks & Brooks, Attorneys-at-Law, for and on behalf of the Plaintiff herein, whose address for service of process is that of his/her said Attorneys-at-Law, at One Artillery Court, Shedden Road, George Town, P.O. Box 1355 GT, Grand Cayman.

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LEROY WRIGHT

PLAINTIFF

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CAYMAN SANDBLASTING LTD

FIRST DEFENDANT

AND:

HADSPHALTIC INTERNATIONAL LTD

SECOND DEFENDANT

ACKNOWLEDGEMENT 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

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 (Please tick box)

Yes

No

Service of Writ is acknowledged accordingly

Signed _____

(Attorney) for

(Defendant in Person)

Please complete overleaf

Address for service:

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 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 the Plaintiff's Attorney (or by the plaintiff if suing in person) of his name, address and residence, if any, in the box below:

**Brooks & Brooks
Attorneys-at-Law
P.O. Box 1355 GT
One Artillery Court, Shedden Road
George Town
GRAND CAYMAN**

Indorsement by the Defendant's attorney (or by the Defendant if suing in person) of his name, address and residence, if any, in the box below:

DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE

The accompanying form of *Acknowledgement 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 GT, George Town, Grand Cayman.

Notes for Guidance:

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Court's Office.
2. If you wish to defend claims made in the writ of summons or originating summons, or intend to attend the proceedings and to participate in them so far as necessary (although not necessarily in an adversarial manner) you should tick the "Yes" box in paragraph 2 of the Acknowledgement of Service.
3. For the purpose of calculating the period of 14 days for acknowledging service, a writ of summons or originating summons served on the Defendant personally is treated as having been served on the day it was delivered to him.
4. 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 or originating summons*)".
5. 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.
6. 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.
7. 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.
8. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
9. A Defendant acting in person may obtain help in completing the form at the Court's Office.