

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. ⁷⁹⁴ OF 2001

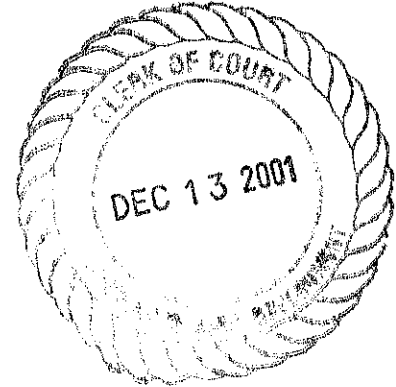
BETWEEN	AMANDA DINAN	PLAINTIFF
AND	CAYMAN MEDICAL AND SURGICAL CENTRE LTD.	1 st DEFENDANT
AND	DR. SARAH de ALWIS-SENEVIRTANE	2 nd DEFENDANT

WRIT OF SUMMONS



TO: Cayman Medical and Surgical Centre Ltd.
Rankin's Plaza
Eastern Avenue
Grand Cayman

AND TO: Dr Sarah de Alwis-Senevirtane
Cayman Medical and Surgical Centre Ltd.
Rankin's Plaza
Eastern Avenue
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 Fourteen days [14] 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this ^{12th} day of *December*, 2001

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.

STATEMENT OF CLAIM

1. The Plaintiff is a housewife and was born on 12th October, 1969.
2. The First Defendant at all material times operated a medical and surgical centre at Rankin's Plaza, Eastern Avenue, George Town, Grand Cayman.
3. The Second Defendant is a consultant obstetrician and gynaecologist who at all material times carried on a practice at the First Defendant's medical and surgical centre.
4. The Plaintiff will contend that the Second Defendant was at the material time a member of the First Defendant's medical staff and accordingly the First Defendant is vicariously liable for the actions and omissions of the Second Defendant during the course of his practice at the First Defendant's medical and surgical centre. Alternatively, the Plaintiff will contend that the First Defendant provided to the Second Defendant the opportunity to come into contact with the public in general, and the Plaintiff in particular, and the First Defendant benefited from the fact that the Second Defendant carried on his practice at the First Defendant's medical and surgical centre. Accordingly, the First Defendant is vicariously liable for any loss arising from the negligence of the Second Defendant during the course of his said practice at the First Defendant's medical and surgical centre.
5. On the morning of 12th July, 1999 the Plaintiff attended the First Defendant's medical and surgical centre pursuant to a previous appointment for the performance of a surgical procedure which involved a laparoscopy, hysteroscopy with dilation and curettage. The procedure usually involves, in part, the insertion of instruments known as a hysteroscope and a laparoscope through the abdominal cavity. These instruments are used for the visual inspection of various reproductive organs. The procedure was performed by the Second Defendant, who was assisted by an anaesthesiologist Dr Karin Asher-Osborne, and nursing staff. Dr Asher-Osborne and the nursing staff were under the supervision of the Second Defendant.
6. The Second Defendant explained to the Plaintiff that the procedure was "routine". It was expected that the procedure would have been completed in a matter of two (2)

hours and that the Plaintiff would have been discharged from the clinic on the very same day.

7. The Second Defendant knew that the Plaintiff was scheduled to be married on 30th July, 1999 and the procedure was in fact scheduled to allow the Plaintiff time to recover sufficiently to proceed without discomfort with her wedding and honeymoon which were scheduled to take place in Hawaii.
8. During the course of the procedure, either by the surgical equipment coming into contact with the Plaintiff's right thigh or by some other means, the Second Defendant or some member of the surgical team caused the Plaintiff to suffer a fourth degree burn to the outer aspect of her's right thigh.
9. The injury suffered by the Plaintiff was not one of the risks of the procedure being performed by the Second Defendant, and was therefore due entirely to the negligence of the Second Defendant or the surgical staff under his supervision.

PARTICULARS OF NEGLIGENCE OF SECOND DEFENDANT

- (a) Causing the surgical equipment to come into contact with the Plaintiff's thigh thereby burning her;
- (b) Failing to take adequate steps to ensure that the surgical equipment was properly grounded or otherwise rendered safe when they knew or ought to have known that the same was likely to come into contact with the Plaintiff's leg;
- (c) Failing to prevent the surgical equipment from coming into contact with the Plaintiff's leg;
- (d) Failing to take appropriate steps to ensure that the Plaintiff's leg was adequately protected from possible injury by the surgical equipment coming into contact with it;
- (e) Failing to exercise due care and attention in the performance of the surgical procedure.
- (f) Failing properly to supervise the persons under his supervision in carrying out their respective functions throughout the procedure.

10. Further, or alternatively, the First Defendant was negligent in its management and control of its medical and surgical centre.

PARTICULARS OF NEGLIGENCE OF FIRST DEFENDANT

- (a) Failing to provide the Plaintiff with a competent surgeon and supporting staff to perform the procedure.
 - (b) Failing to establish procedures which would have reduced or prevented the risk of the injury the nature of that suffered by the Plaintiff.
 - (c) Exposing the Plaintiff to the risk which it ought to have foreseen and therefore ought to have taken adequate precautions to avoid injury to the Plaintiff.
11. As a consequence of the above premises, the Plaintiff has suffered severe physical, emotional and psychological injury and has incurred loss and damage.

PARTICULARS OF INJURY

- (a) The Plaintiff suffered a fourth degree burn on the outer aspect of the right thigh. The burn penetrated three layers of skin and underlying tissue. The Plaintiff experience severe physical pain for a number of weeks. The treatment required that the Plaintiff clean and dress the wound twice per day, which was a painful, time-consuming and embarrassing task.
- (b) The Plaintiff also suffered severe psychological stress as a consequence of the injury. The Plaintiff had been scheduled to get married and to have her honeymoon in Hawaii. The Plaintiff had to endure the process of the preparations for her wedding as well as the wedding ceremony and the honeymoon with the pain, discomfort and embarrassment of having an unsightly wound on her leg. The bandage used to dress the wound was unsightly, and throughout her honeymoon, the Plaintiff was unable to allow any water to come into contact with the wound.

- (c) The Plaintiff had to receive hospital treatment for the wound while she was on her honeymoon. She was unable for over a month to have a proper shower. She was unable to swim or to expose her thigh.
- (d) The wound left a comma shaped scar on the outer aspect of the Plaintiff's thigh. The upper portion of this comma measures 30mm x 17mm and the lower portion 17mm x 14mm. The Plaintiff has had consultation with plastic and reconstructive surgeons and the advice given is that nothing can be done to improve the scar and the scar will therefore be present for the rest of the Plaintiff's life.
- (e) The Plaintiff is therefore very uncomfortable in wearing bathing suits or shorts, and has already experienced the embarrassment of having to explain to curious onlookers who, if they see the scar, ask questions as to its origin.

PARTICULARS OF SPECIAL DAMAGE

(a)	Past Medical Expenses		
	- Dr Tash	-	US\$110.32
	- Dr Kauai, medical clinic, Hawaii	-	US\$80.00
	- Maui Memorial Medical Centre	-	US\$278.00
	- Sundry bandages, medication, etc.	-	US\$100.00

(b) **Wasted Vacation**

Dr deAlwis and Dr Asher-Osbourne knew that the Plaintiff had intended to proceed on her wedding and honeymoon, and therefore ought reasonably to have foreseen that the Plaintiff's vacation would have ruined if they failed to take reasonable care in performing the surgical procedures. The Plaintiff's honeymoon was totally ruined as

a consequence of her injuries and treatment she had to undergo during the period, and as a consequence the Plaintiff seeks to recover the full cost of this wasted vacation.

TOTAL COST - US\$36,132.33

(Particulars are set out in the attached schedule)

AND THE PLAINTIFF CLAIMS:

- (i) Damages;
- (ii) Interest pursuant to the Judicature Law and the Grand Court Rules;
- (iii) Such further and/or other relief as may be just;
- (iv) Costs.

DATED this *12th* day of *December*, 2001

Quin & Hampson

QUIN & HAMPSON
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: Cayman Medical and Surgical Centre Ltd.
Rankin's Plaza
Eastern Avenue
Grand Cayman

And to: Dr Sarah de Alwis-Senevirtane
Cayman Medical and Surgical Centre Ltd.
Rankin's Plaza
Eastern Avenue
Grand Cayman

THIS STATEMENT OF CLAIM is filed by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff, whose address for service and correspondence is 3rd Floor, Harbour Centre, P.O. Box 1348, George Town, Grand Cayman, Cayman Islands, B.W.I.

Hotel US\$	Car Rentals/ Air Fares US\$	Sundry/Monies/ Tours, Etc. US\$	Wedding Expenses US\$	TOTAL US\$
10.16				10.16
1,862.83				1,862.83
1,217.99				1,217.99
	466.62			466.62
1,345.85				1,345.85
		61.37		61.37
		208.33		208.33
		120.68		120.68
	434.08			434.08
1,336.29				1,336.29
		57.23		57.23
		155.21		155.21
		94.81		94.81
		293.49		293.49
		23.91		23.91
		660.00		660.00
		141.30		141.30
		47.05		47.05
		36.46		36.46
	436.56			436.56
1,184.94				1,184.94
194.23				194.23
142.56				142.56
	1,509.01			1,509.01
	1,318.51			1,318.51
	1,509.01			1,509.01
	1,628.01			1,628.01
		4,000.00	1,000.00	5,000.00
		2,000.00		2,000.00
		1,500.00	500.00	2,000.00
<u>12,606.89</u>	<u>8,767.84</u>	<u>10,651.52</u>	<u>4,106.08</u>	<u>\$36,132.33</u>

Filed by Messrs. Quin & Hampson, Attorneys-at-Law for the Plaintiff, whose address for service and correspondence is 3rd Floor, Harbour Centre, P.O. Box 1348, George Town, Grand Cayman, Cayman Islands, 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 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 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 authroised 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

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CAUSE NO. OF 2001

BETWEEN AMANDA DINAN PLAINTIFF

AND CAYMAN MEDICAL AND SURGICAL CENTRE LTD. 1st DEFENDANT

AND DR. SARAH de ALWIS-SENEVIRTANE 2nd 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

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.