

IN THE GRAND COURT OF THE CAYMAN ISLANDS

**LEGAL AID**

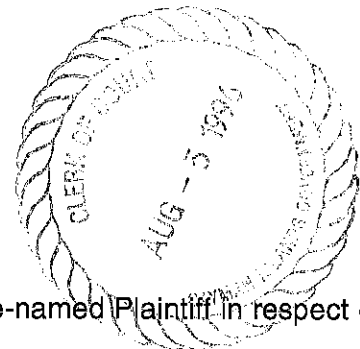
CAUSE NO. *404* OF 1996

BETWEEN: **BETTY LOU TIBBETTS** Plaintiff

AND: **THE ATTORNEY GENERAL** Defendant

**WRIT OF SUMMONS**

TO: **THE ATTORNEY GENERAL**  
c/o Government Administration Building  
George Town,  
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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this *5th* day of *AUGUST*, 1996.



NOTE - This Writ may not be served later than 4 calendar months beginning with the date of issue unless renewed by order of the Court.

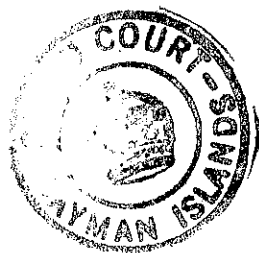
**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.



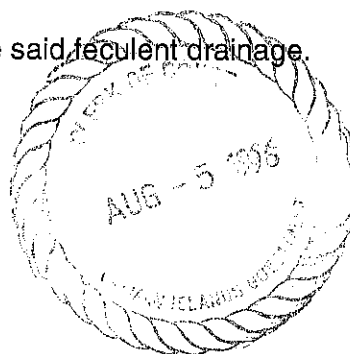
## STATEMENT OF CLAIM

1. The plaintiff is a Caymanian who is domiciled and resident in Grand Cayman.
2. The plaintiff's claim herein is against Her Majesty in right of Her Government in the Islands ("Government") and is brought under sec. 3 and 9 of The Crown Proceedings Law (R).
3. The plaintiff was admitted, on or shortly before 9th August, 1993, at the George Town Hospital ("the hospital") to undergo medical treatment, including surgery.
4. The hospital was, at that time, and at all relevant times, owned, managed, operated and controlled by the Cayman Islands Health Services Authority ("the Authority").
5. Government is the successor to the liabilities of the Authority under the provisions of sec. 2(a) of The Health Services Authority (Dissolution) Law, 1993.
6. The plaintiff underwent a hysterectomy at the hospital on 9th August, 1993.
7. The surgeon who performed the said hysterectomy, a Dr. Vaughan, was, at that time and at all other relevant times, a servant of the Authority.
8. All other medical personnel who assisted Dr. Vaughan when he performed the said hysterectomy and who attended, and gave care to, the plaintiff at the hospital before, on or after 9th August, 1993 were servants of the Authority.
9. The plaintiff developed feculent drainage via her vagina after the above hysterectomy. Such drainage was a direct result thereof.
10. Such feculent drainage appears to have been caused by a pelvic abscess and an enterovaginal fistula. If that is the case, such abscess and fistula were the direct result of the above hysterectomy.





11. The above hysterectomy was performed, and the plaintiff's pre- and post-operative treatment was given, under the control of Dr. Vaughan and of medical personnel who were all, at the relevant times, servants of the Authority in a facility which was controlled by it.
12. The plaintiff does not know what happened during the above hysterectomy nor does she know what pre- and post-operative treatment was given to her, by Dr. Vaughan and any other medical personnel, at the hospital.
13. On 5th December, 1994, the plaintiff, through her attorneys-at-law, requested a number of documents contained in the medical records of her hysterectomy and of her pre- and post-operative treatment from Government. That request was denied on 9th December, 1994.
14. The above hysterectomy did not normally carry the inherent and specific risk of post-operative feculent drainage via the patient's vagina.
15. Feculent drainage via the vagina does not normally occur after the hysterectomy which the plaintiff underwent at the hospital in the absence of negligence and/or breach of their duty of care to the patient on the part of the surgeon and/or of the medical personnel who performed the surgery and/or played any other role in the plaintiff's treatment.
16. It is impossible for the plaintiff to know how she developed feculent drainage via her vagina as a result of the above hysterectomy, save that it appears to have been caused by a pelvic abscess and an enterovaginal fistula. It is impossible for the plaintiff to know how she would have developed such abscess or fistula.
17. The above feculent drainage was caused by the negligence of Dr. Vaughan and/or of other medical personnel who performed, or assisted in, the above hysterectomy and gave her pre- and post-operative care at the hospital and by the breach of their duty of care to the plaintiff.
18. The plaintiff suffered loss and damage as a result of the said feculent drainage.





**PARTICULARS OF DAMAGES**

A few days after undergoing the above hysterectomy, one of the plaintiff's lungs collapsed and a blockage occurred in her intestine. She remained for two days in the surgical ward and was then moved to the intensive care unit of the hospital. She was hospitalised for ten days.

The plaintiff was discharged from the hospital on 18th August, 1993. She went home and, a few days later, she developed a fever. She attempted to contact her attending physician who was, by then, a Dr. Lindore, a servant of the Health Authority, without success. She developed an infection in her bladder, for which she was prescribed an antibiotic. She began to pass stool through her vagina and was admitted to the hospital again on 23rd August, 1993. She remained there for eleven days and was told that she would have to undergo surgery at the Cleveland Clinic in South Florida. She was advised by members of the hospital personnel that her transportation by ambulance from the airport to the Cleveland Clinic would be arranged.

The Plaintiff was sent to South Florida by commercial airliner on 3rd September, 1993. No ambulance was waiting for her when she arrived in Miami and she was compelled to take a shuttle bus, where she discharged stool through her vagina, to her great embarrassment.

The plaintiff could not undergo surgery immediately upon her arrival at the Cleveland Clinic because her blood count was too low. Her surgery took place on 7th September, 1993. The procedure was dangerous and complicated. Approximately one foot of ileum was resected.

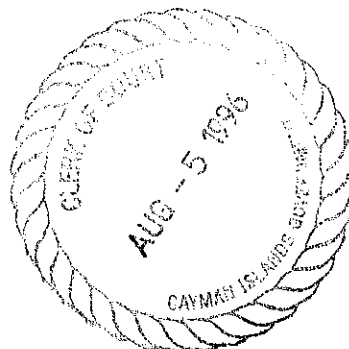
The plaintiff underwent, inter alia, lung therapy and, after her discharge from the Cleveland Clinic, stayed with her sister, Mary Banks, a nurse, in New Orleans.

She was finally able to return to the Cayman Islands after a few months.



**PARTICULARS OF SPECIAL DAMAGES**

Airline tickets for the plaintiff, her husband,  
her son and a nurse (approximately)



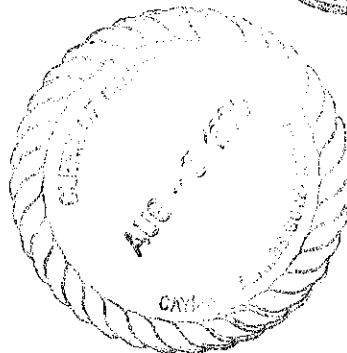
CIS\$1,000.00

Ground transportation to Cleveland Clinic

50.40



Hotel in South Florida (husband and son)	1,260.00
Taxi fare for son (hotel to Miami airport)	50.40
Taxi fare for plaintiff and husband (Cleveland Clinic to Miami airport)	50.40
Airfare for plaintiff and husband (Miami to New Orleans)	463.68
Nursing care and accommodation in New Orleans	4,872.00
Attendance by physician, medication and dressing in New Orleans	1,008.00
Taxi fare from New Orleans airport (plaintiff and husband)	67.20
Taxi fare to New Orleans airport (plaintiff)	67.20
Lost income	4,800.00
Husband's lost income	1,800.00
Cleveland Clinic	36,922.38
Physician's care in Grand Cayman	561.00
Medication in Grand Cayman	<u>723.10</u>
<b>TOTAL</b>	<b><u>CI\$53,695.76</u></b>



**PARTICULARS OF GENERAL DAMAGES**

The plaintiff will be under doctors' care for the rest of her life. She can no longer eat most of the food which she enjoyed prior to her hysterectomy. She suffers from frequent infections, for which she must take medication.



The plaintiff was totally humiliated during the shuttle bus ride between the Miami Airport and the Cleveland Clinic for the reasons set out above.

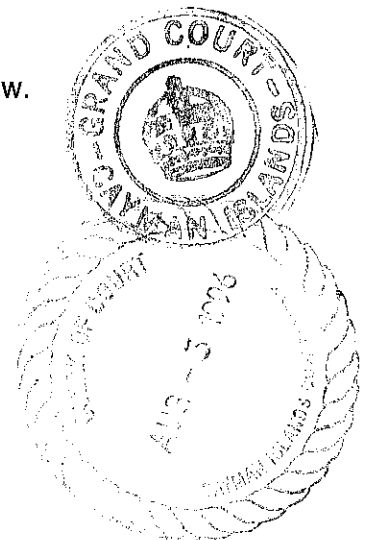
The plaintiff is in almost constant pain. She must be careful not to lift or move heavy objects and, as a result, she cannot play with her grand children in a normal fashion.

The plaintiff has suffered psychiatric damage as a result of the events which followed her hysterectomy and she will never be able to lead a normal life.

19. The Authority was vicariously liable to the plaintiff for the said damages.
20. Government is liable towards the plaintiff for the said damages.

**AND THE PLAINTIFF CLAIMS FROM THE DEFENDANT:**

- (a) SPECIAL damages in the amount of CI\$53,695.76.
- (b) GENERAL damages.
- (c) PRE-JUDGMENT interest at the rate of 8 3/8% until 31st January, 1996 and, thereafter, at the rate of 7 3/8% or at such other rate as may be determined from time to time under the provisions of The Judicature Law (1995 revision).
- (d) POST-JUDGMENT interest at the rate provided for under the said Law.
- (e) FURTHER and/or other relief.
- (f) THAT the defendant pay the plaintiff's costs of the action.



2000

12

12/12/00

STATEMENT AS TO INTEREST

- a) The plaintiff claims interest on the Special Damages claim in the amount of CI\$53,695.76 from the 1st January, 1994 to the 31st January, 1996 at the rate of 8 3/8 % and thereafter, to the 5th August, 1996 at the rate of 7 3/8 % and thereafter, at the said rate of 7 3/8 % or as may be varied from time to time by the Grand Court Rules.
- b) As at the date of issue of this Writ of Summons, the total amount of interest claimed is CI\$11,397.49.
- c) The amount of interest accruing each day hereafter is CI\$10.84.

STATEMENT REGARDING INSURER

The Plaintiff does not know whether the Defendant was insured.

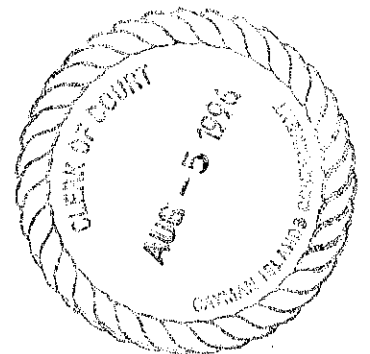
DATED this 5<sup>TH</sup> day of AUGUST, 1996.



**QUIN & HAMPSON**  
**Attorneys-at-law for the Plaintiff**

TO: The Clerk of the Court

TO: THE ATTORNEY GENERAL  
c/o Government Administration Building  
George Town,  
GRAND CAYMAN



THIS Writ of Summons and Statement of Claim is filed by Quin & Hampson, the attorneys-at-law for the Plaintiff, whose address for service is 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

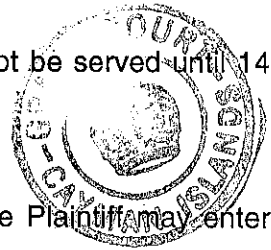
After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman

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.

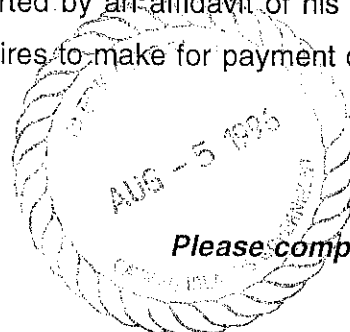
If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant

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*



*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 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.

CAUSE NO. 404 OF 1996

BETWEEN: BETTY LOU TIBBETTS Plaintiff

AND: THE ATTORNEY GENERAL 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

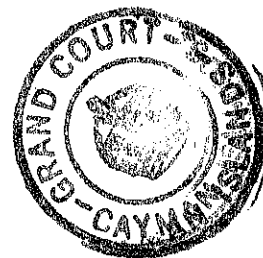
Service of the Writ is acknowledged accordingly

(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  
Harbour Centre, Second Floor  
P.O. Box 1355  
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.*