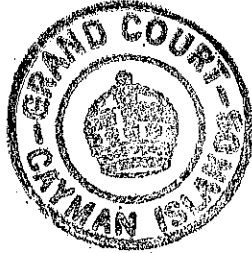


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 405 OF 2006

BETWEEN: GARETH FORBES PLAINTIFF

AND: THE PORT AUTHORITY OF THE CAYMAN ISLANDS DEFENDANT



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WRIT OF SUMMONS

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TO: The Port Authority of the Cayman Islands  
P.O. Box 1358  
Grand Cayman KY1-1108  
Cayman Islands



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 28<sup>th</sup> day of September, 2006

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 was born on the 2<sup>nd</sup> of September, 1977.
  
2. The Defendant is a body corporate established under section 3 of the Port Authority Law (1999 Revision) and by section 6 of the said Law has statutory duties and responsibilities including:
  - (a) the general management and control of all ports;
  - (b) the provision, maintenance and control of cranes, launches, lighters, rafts, trucks, capstans, winches, windlasses, bollards and other machinery, apparatus, tackle and gear used in all ports and territorial waters for the securing, loading, unloading and maintenance of vessels;
  - (c) the loading and unloading of vessels; and
  - (d) the establishment and supervision of safety measures in respect of vessels or classes of vessels in ports and territorial waters.
  
3. At all material times the Plaintiff was employed by the Defendant as a stevedore at the George Town Port situated in the George Town Commercial District ("the Port"). The Port Authority Law (1999 Revision) at all material times applied to the Port. The Labour Law (2001 Revision) at all material times also applied to the Port.
  
4. On 7<sup>th</sup> October 2005 at approximately 7:00 p.m. ("the material time") the Plaintiff was working at the Port and was part of a team which was given the specific task of unloading the ship the "*M/V Transport*" which had recently arrived from New Orleans carrying a cargo of lumber. The other members of the team were Giovanni Garro, the crane operator, and Edward Kerr, the signal man. Both men were at the material time employees of the Defendant. The team was under the supervision of the Operations Manager, Dale Christian, also an employee of the Defendant.

5. The cargo was made up of different types and sizes of lumber including plywood, 2 inches x 4 feet, 2 inches x 6 feet and 2 inches x 8 feet. The lumber was being carried as 'loose cargo'; it was not being transported in containers. The usual method employed by the Defendant to unload loose cargo such as lumber is to use a lifting device specially manufactured by the Port Authority for such a purpose.
6. This lifting device is commonly referred to as a 'spreader bar' and is approximately 10 feet long and 5 feet wide. The spreader bar is attached to the crane by four cables, one at each of its corners, which are then hooked onto the crane. Because the spreader bar is smaller than the normal head handler it is the most suitable lifting device with which to unload loose cargo such as lumber.
7. At the material time, a spreader bar was not being used to unload the cargo of lumber. Instead, a much larger lifting device called a head handler, measuring 20 feet x 8 feet and expandable to 40 feet, was being used. A head handler is the lifting device which is commonly used to remove containers from ships' holds. Using the head handler is not the common practice employed by the Port Authority to unload loose cargo such as lumber.
8. The head handler, due to its size and weight, is usually hooked to the crane by two cables at each of its four corners. At the material time, the head handler was only attached to the crane with one cable at each of its corners.
9. Giovanni Garro was not the usual of the operator of the crane which was being used to unload the cargo from the *M/V Transport*. Giovanni Garro was neither certified nor properly trained to operate the crane that he was operating at the material time. The usual operator of the crane was Eddie Howell who is more experienced than Giovanni Garro and is also certified to operate the crane that was being used to unload the cargo of lumber.

10. The decision as to which crane and which lifting device was to be used to unload the various types of cargo from each ship is taken by the crane operator and the Port Manager. At the material time, the crane operator took the decision to use the head handler, as opposed to the spreader bar, to unload the cargo. The head handler was attached to the crane by only one cable at each of the four corners of the head handler.
11. At the material time the Plaintiff was working in the hold of the *M/V Transport* to hook the straps on the head handler unto the stacks of lumber. The Plaintiff was standing on top of three containers stacked on top of each other and unloading the lumber by stacking it onto the head handler so that it could be lifted out of the hold by the crane.
12. Whilst the crane was lifting a stack of lumber measuring 2 inches x 12 feet, the stack of lumber became lodged under a lip or overhang within the hold of the ship where it was effectively rendered immobile. As a result of this the Plaintiff started to work on a bundle of plywood in an attempt to carry on with the job of unloading the ship.
13. Because the bundle of plywood was jammed against another bundle the straps around the bundle started to slip. The normal procedure in such a situation, as the Plaintiff understood it, was to cross the cables which attach the head handler to the cage to ensure that the straps would hold the bundle tightly together and would not slip, which is exactly what the Plaintiff did.
14. It is also standard procedure as the Plaintiff understood it for such a situation to re-hook the straps to the lifting device before it is lifted out of the hold.
15. The Plaintiff did not get a chance to re-hook the straps to the lumber. The operator did not lower the spreader bar as he should have done in the circumstances. Unknown to the Plaintiff, and without any warning to the Plaintiff by the crane operator or the signal man, the crane operator proceeded to lift the bundle of lumber out of the hold.

16. Whilst the crane was lifting the stack of lumber out of the ships' hold, the straps that attached the lumber to the spreader bar broke and the stack of lumber started to fall towards the Plaintiff.
17. The Plaintiff tried hurriedly to get out of the way of the falling lumber. His way was blocked in one direction by a number of electricity poles stacked in the hold of the ship and when he turned in another direction his way blocked by two containers. The Plaintiff then began to run to safety and jumped about 9 to 10 feet from the top of a stack of lumber. As he was in the process of so doing the stack of lumber came crashing down on him.
18. The Plaintiff was struck multiple times by the falling lumber, causing severe injuries to his right arm.
19. The Plaintiff landed approximately one foot away from where the majority of the stack of lumber landed in a pile. The Plaintiff tried to get up and get out of the ship's hold but found that he was unable to move, as he was in a lot of pain. After a short period of time the Plaintiff was helped out of the hold by two of his colleagues.
20. The aforesaid incident and the consequential personal injury, loss and damage suffered by the Plaintiff were caused by the negligence of the Defendant and the negligence of the Defendant's servants or agents and by the Defendant's breaches of its statutory duties under the Port Authority Law (1999 Revision) and the Labour Law (2001 Revision).

#### PARTICULARS OF NEGLIGENCE

21. The Defendant was negligent in that it:
  - (a) failed to have an experienced or certified crane operator operating the crane that was unloading the cargo of lumber;

- (b) allowed an inexperienced and un-certified crane operator to operate the crane;
- (c) allowed an inexperienced and un-certified crane operator to operate the crane without the supervision of a certified crane operator;
- (d) failed to follow the standard procedure for unloading loose cargo such as lumber by not using a lifting device that was specifically designed and manufactured to lift loose cargo such as lumber;
- (e) failed to have or to make available straps of a sufficient strength to bear the weight of the lumber that the crane was lifting;
- (f) failed to have a safety officer employed on Port Authority property and failed to take any or any adequate precautions for the safety of the Plaintiff whilst he was engaged in the said work;
- (g) exposed the Plaintiff to a risk of injury of which they knew or ought to have known;
- (h) failed to have an adequate system of supervision in place for the unloading of the cargo of lumber;
- (i) failed to make and keep the Plaintiff's place of work safe for him, failed to provide him with safe plant and equipment, failed to provide a safe system of work within which the Plaintiff was required to carry out the tasks assigned to him, provided the Plaintiff with plant and equipment which was unsafe and dangerous and exposed the Plaintiff to an unnecessary risk of injury.

22. The Defendant's servants or agents were negligent in that:
- (a) the crane operator failed to use the appropriate device for unloading loose lumber from the hold of the *M/V Transporter*;
  - (b) the crane operator failed to ensure that the cargo was properly attached to the lifting device before starting to lift the cargo from the hold of the ship;
  - (c) the signal man failed to warn the crane operator that the cargo was not properly attached to the lifting device on the crane;
  - (d) the signal man signaled the crane operator to start lifting the cargo from the hold of the ship when the cargo was not securely fastened to the lifting device attached to the crane;
  - (e) the signal man failed to notice that the Plaintiff was in the process of properly attaching the cargo to the lifting device on the crane and nonetheless gave a signal to the crane operator to start lifting the cargo.
  - (f) The signal man failed to give any or any appropriate signal to the crane operator or to the Plaintiff or to take any other action which might have warned either the crane operator or the Plaintiff of impending danger.

#### PARTICULARS OF BREACHES OF STATUTORY DUTIES

23. The Defendant breached its statutory duties under the Port Authority Law (1999 Revision) in that:
- (a) by failing to employ and making available a safety officer, and by failing to ensure that the crane was operated by a properly trained and experienced crane operator, failed to provide any adequate or proper management of the Port at the material time;
  - (b) it failed to provide an adequate crane, tackle, gear or other machinery to be used for the unloading of the *M/V Transporter*;
  - (c) it failed to provide any adequate material, supervision or system of work for the loading and unloading of the *M/V Transporter*;

- (d) it failed to establish and provide any adequate supervision of safety measures in respect of the unloading of the M/V *Transporter* whilst it was at the Port.
24. The Defendant breached its statutory duties under sections 58 and 60 of the Labour Law (2001 Revision) in that it:
- (a) failed to ensure that machinery being operated at the Port was at the material time operated and maintained in such a manner as to be safe for all employees;
  - (b) failed to ensure that the Plaintiff had an adequate means of escape when presented with the danger of the stack of lumber falling towards him.
25. By reason of the matters aforesaid, the Plaintiff has suffered personal injury, loss and damage.

#### PARTICULARS OF INJURIES

The Plaintiff was caused pain, suffering and loss of amenities as follows:

##### *Principal injury, pain and suffering*

The Plaintiff suffered an open both-bone fracture along with a crush and compartment syndrome to his left forearm. The Plaintiff has undergone five (5) surgeries, including skin grafts to his forearm and, as a result, has a large, unsightly scar on his arm.

##### *Hospital treatment, nursing and domestic care and attention required*

The Plaintiff was transported to George Town Hospital by ambulance soon after the incident took place. At George Town Hospital he was stabilized and treated for shock and pain before he was transported by Air Ambulance to the Kendall Regional Medical Centre in Miami, Florida. At the Kendall Regional Medical Centre the Plaintiff underwent surgery which entailed an open reduction and internal fixation of his fractures, compartment releases and the wound was eventually closed with a split-thickness skin graft. The Plaintiff's injuries also included some radial nerve palsy and there was also a fracture to his elbow.

The Plaintiff remained hospitalised in Miami for a period of five (5) weeks. His mother also took time off work and looked after him in Miami for this period of time as his injury prevented him from being self-sufficient and mobile.

After surgery the Plaintiff underwent significant rehabilitation and physiotherapy in an attempt to restore wrist extension and the extension of the MP joints and extension of his fingers. Emphasis was placed on rehabilitation of the forearm, the elbow and his fingers.

#### **Other adverse effects and loss of amenity**

(a) *Effects on ability to work*

The Plaintiff was partially disabled and unable to work for a period of approximately nine (9) weeks. During this period the Plaintiff was unable to do any strenuous activities which would have been a necessary aspect of his job as a stevedore. After the Plaintiff's return to work he still experienced significant discomfort from exertion and was not given any work to do as he could not lift even very light objects. After a few weeks the Plaintiff was re-assigned to work as a tally clerk. The Plaintiff struggled with even this light workload and found that his injury gave him discomfort and experienced swelling around the wound.

(b) *Effects on social, domestic and leisure pursuits*

The Plaintiff was healthy and active prior to the accident but has found the pursuit of his former activities to be very difficult. The Plaintiff found it very difficult to do even the most simple of everyday tasks, such as opening a bag of potato chips.

#### ***Prognosis***

The Plaintiff will require ongoing rehabilitation and physiotherapy of his forearm, his wrist and his fingers. He will also continue to suffer pain and discomfort. The Plaintiff has made good progress and has recovered some movement and extension in his elbow. It is expected that the Plaintiff will experience permanent stiffness in his wrist and will

be unable to make a full fist or to hyperextend his fingers. The significant and unsightly scar on his forearm is permanent and the Plaintiff finds this awkward and embarrassing.

**PARTICULARS OF SPECIAL DAMAGES**

See Interim Schedule of Losses attached.

The special damages are continuing.

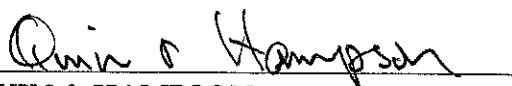
The Plaintiff will claim for the costs of any future surgery, treatment and rehabilitation.

24. The Plaintiff also claims interest on any sum due to him pursuant to section 34 of the Judicature Law at such rate and for such period as to this Honourable Court seems just.

**AND 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 may be just.

Dated the 28<sup>th</sup> day of September, 2006

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

TO: The Clerk of the Court

AND TO: The Port Authority  
c/o Broadhurst Barristers  
Grand Cayman

**THIS WRIT** was issued by Messrs. Quin & Hampson whose address for service is Harbour Centre, 3<sup>rd</sup> Floor, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands.

Schedule of Losses - Gareth Forbes

US\$

Loss of wages

Karen (5 weeks @ CI\$650.00)	3,250.00	
Karen (2 weeks @ CI\$650.00)	1,300.00	
<b>TOTAL CI\$</b>	<b>4,550.00</b>	<b>5,548.78</b>

Hotel Accommodation

Hotel 10/11/05 - 10/13/05	204.14	
Hotel 10/13/05 - 11/11/05	1,460.03	
Hotel 12/11/05 - 12/17/05	612.42	
Hotel 1/26/06 - 1/29/06	435.06	
Hotel 2/22/06 - 2/24/06	251.50	
Hotel 3/5/06 - 3/16/06	1,403.91	
Hotel 5/31/06 - 6/03/06	343.47	
		<b>4,710.53</b>

Car Rental

10/26/05 - 11/11/05	1,279.54	
16-Mar-06	865.64	
		<b>2,145.18</b>

Meals (35 days @ CI\$35)	1,029.00	
<b>TOTAL CI\$</b>	<b>1,029.00</b>	<b>1,254.87</b>

Airline Tickets

17 October 05 - Karen Miami to Cayman	249.10	
20 October 05 - Karen roundtrip	353.50	
November 05 - Karen roundtrip	352.50	
11 December 05 - Gareth roundtrip	352.50	
26 January 06 - Gareth roundtrip	372.30	
26 February 06 - Gareth roundtrip	292.30	
5 March 06 - Karen roundtrip	292.30	
5 March 06 - Gareth roundtrip	292.30	
31 May 06 - Gareth roundtrip	272.30	
		<b>2,829.10</b>

Medical Expenses

30 December 05 - George Town Hospital	4,387.29	
3 January 06 - RVC Rehab Services/CTMH	507.32	
Cayman Rehab services	1,265.00	
<b>TOTAL CI\$</b>	<b>6,159.61</b>	<b>7,511.71</b>

25 January 06 - Miami Hand Center	1,155.00	
11-26 October 05 - Kendall Regional	173,042.50	
28 October 05 - Medication	36.89	
8 November 05 - Medication	71.39	
1 February 06 - Sheridan Health Corp.	1,836.00	
1 February 06 - Sheridan Health Corp.	2,244.00	
1 February 06 - Sheridan Health Corp.	1,428.00	
6-8 March 06 - Kendal Regional	3,159.20	
Photocopy charges for medical records	235.70	
		<u>183,208.68</u>

<b>Sub Total USD\$</b>		<b>207,208.85</b>
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Reimbursements from Insurance

1/16/06 - Miami Hand Center	30,000.00	
1/16/06 - Miami Hand Center	554.00	
1/16/06 - Kendal Regional Radiology	<u>32.80</u>	
<b>TOTAL USD</b>		<u>30,586.80</u>

<b>OUTSTANDING TOTAL USD\$</b>		<u>176,622.05</u>
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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 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 405 OF 2006

BETWEEN: GARETH FORBES PLAINTIFF

AND: THE PORT AUTHORITY OF THE CAYMAN ISLANDS 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  
Ref: HGR/jcb/3429-0000

*Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.*