

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 0006 OF 2008

BETWEEN CIARA HERRARA-FREDERICK

**(A Minor, suing by her mother and
next friend, Doris Morris)**

PLAINTIFF

AND

THE HEALTH SERVICES AUTHORITY

1st DEFENDANT

AND

DR. GILBERTHA ALEXANDER

2nd DEFENDANT

WRIT OF SUMMONS

**TO: THE HEALTH SERVICE AUTHORITY
c/o George Town Hospital
Grand Cayman**

**DR. GILBERTHA ALEXANDER
c/o George Town Hospital
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 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 Acknowledgement of Service, stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or 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 4th day of January 2007

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 Acknowledgement of Service are given with the accompanying form.

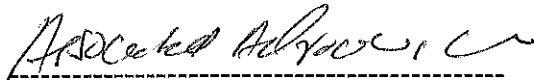
ENDORSEMENT

The Plaintiff claims against the Defendants to recover damages for negligence in that the Second Named Defendant, an employee/servant or agent of the First Named Defendant negligently delivered the Plaintiff on or about the 10th November 2005 at the George Town Hospital thereby resulting in the Plaintiff suffering from the birth defect of severe right brachial plexus injury.

AND THE PLAINTIFF CLAIMS:

1. Damages;
2. Interest pursuant to the Judicature Law;
3. Costs.

Dated this 4th day of January 2008.



Associated Advocates Chambers
Plaintiff's Attorneys-at-Law

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

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.

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. If you wish to defend claims made in the Writ of Summons, or intend to attend the proceedings and to participate in them in so far as necessary (although not necessarily in an adversarial manner) you should tick the “Yes” box in paragraph 2 of the Acknowledgment of Service.
3. 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.
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)”.
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 Courts Office.

BETWEEN CIARA HERRARA-FREDERICK
(A Minor, suing by her mother and
next friend, Doris Morris)

PLAINTIFF

AND THE HEALTH SERVICES AUTHORITY

1st DEFENDANT

AND DR. GILBERTHA ALEXANDER

2nd 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 judgement being
entered against a Defendant whereby he
May have to pay the costs of applying to
set it aside.**

1. State the name of the Defendant by whom or on whose behalf the service of this Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick the 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 judgement 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 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 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:

ASSOCIATED ADVOCATES CHAMBERS
SECOND FLOOR [EAST WING] FIS BUILDING
196 SHEDDEN ROAD
GEORGE TOWN
GRAND CAYMAN
CAYMAN ISLANDS

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]

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2007

BETWEEN CIARA HERRARA-FREDERICK
(A Minor, suing by her mother and
next friend, Doris Morris) PLAINTIFF

AND THE HEALTH SERVICES AUTHORITY 1st DEFENDANT

AND DR. GILBERTHA ALEXANDER 2nd DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is a Minor, born on the 10th day of November 2005 and is suing by her mother and next friend, Doris Morris, and both are resident in the Cayman Islands.
2. At all material times the First Defendant owned, managed and administered the George Town Hospital (“the Hospital”) pursuant to the Health Services Authority Law (2005 Revision) and provided medical, specialist and other medical services, including obstetric and gynaecology services.
3. The First Defendant employed or engaged the medical, surgical, nursing and other staff who worked in the Hospital and, accordingly, the First Defendant is also liable in respect of any breach of duty or negligence on their part.
4. At all material times the Second Defendant was an employee, agent and or servant of the First Defendant and held herself or caused herself to be held out by the First Defendant as an obstetrician and/or gynaecologist capable of competently performing and delivering live births at the Hospital.
5. The Defendants jointly or severally owed a duty to the care to the Plaintiff in relation to her delivery on the 10th November 2005, including all matters arising out of or incidental thereto. Without limiting the generality of this duty, the duty of care comprised the following:
 - (a) a direct. Non-delegable duty of care to ensure that reasonable care was at all times taken in relation to the medical, nursing and other care with which the Plaintiff was provided by or on behalf of the Hospital; and
 - (b) a duty at all times to take reasonable care to ensure that there was a safe system of health care provided at the Hospital. This duty comprised, inter

alia, the employment of competent medical staff trained in the discipline in which they practiced or allowed so to do by the Hospital.

6. On or about the 10th day of November 2005 the pregnant mother of the Plaintiff, Doris Morris, presented herself at the Hospital for the purposes of a safe delivery of her unborn child ('the Plaintiff').
7. The attending physician was the Second Named Defendant.
8. The prenatal care of the Plaintiff was within accepted standards of care. The ultrasound examinations excluded any possible intrauterine causes of brachial plexus injury. The labor progress was normal thus excluding any abnormal forces capable of causing an in-utero injury. The rate of dilation was normal and there was also a normal descent. There was no evidence of severe infant pain thereby excluding any stretching of the brachial plexus during labor.
9. During the course of delivery the Plaintiff developed the condition known as shoulder dystocia and in order to combat the same the Second Defendant applied excessive downward traction and/or tilting of the Plaintiff's causing severe nerve root damage and severe brachial plexus injury to the Plaintiff.
10. The matters set out above were caused by the negligence of the Second Defendant, the servant or agent of the First Defendant.

Particulars of Negligence

- (a) Applying excessive downward traction to the Plaintiff's head during delivery.
 - (b) Applying excessive tilting to the Plaintiff's head during delivery.
 - (c) Failing to avoid the use of strong traction to the Plaintiff's head during delivery.
 - (d) Failing to stop the head traction of the Plaintiff after it was unsuccessful the first time.
 - (e) Continuing to apply head traction to the Plaintiff when it was unsafe and improper so to do.
 - (f) Failing to employ other and safer methods such as the McRoberts' Manoeuvre and the Cephalic Replacement Manoeuvre.
11. By reason of the above the Plaintiff has suffered pain injury loss and damage.

Particulars of Injury

- (a) severe right brachial plexus birth injury;
- (b) total paralysis of the right upper extremity;
- (c) limited movement of the digits on the right hand;

(d) permanent neurological damage.

Particulars of Loss and Damage

- [i] The Plaintiff was born on the 10th November 2005 and is now aged two years.
 - [ii] The Plaintiff's work, hobbies, social, recreational and other activities will be adversely affected by the injury.
 - [iii] The Plaintiff will in the future require extensive reconstructive and other surgery.
 - [iv] The Plaintiff's claim includes a claim for handicap on the open market.
 - [v] Full and complete particulars of the Plaintiff's loss and damage will be served prior to the trial of this Cause.
 - [vi] The Plaintiff's claim includes such sum expended by her mother in obtaining medical treatment for the Plaintiff and such other expenditure made necessary by the injury to the Plaintiff in the past and which are continuing and details of all of which will be provided and set out in a Schedule of Damage to be served prior to the trial of this Cause.
12. For the avoidance of doubt, the Plaintiff's case as to causation will be that the permanent neurological damage sustained by the Plaintiff, which left her with Brachial Plexus Palsy, occurred during the course of delivery on the 10th November 2005 because of the inappropriate and excessively forceful manoeuvres undertaken by the Second Defendant to relieve shoulder dystocia which complicated her delivery.
13. The Plaintiff's claim includes a claim for interest pursuant to the Judicature Law for such periods and at such rates as the Court may award.

AND THE PLAINTIFF CLAIMS:

- 1. Damages
- 2. Interest pursuant to the Judicature Law
- 3. Costs.

Dated the 4th day of January 2008



Associated Advocates Chambers
Attorneys-at-Law for the Plaintiff