

Re-Amended pursuant to the Order of the Grand Court dated 9<sup>th</sup> December 2011  
Amended pursuant to the Order of the Grand Court dated 8<sup>th</sup> October 2008

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

CAUSE NO: 200 OF 2008

**BETWEEN:** SHARON PATRICIA SMITH also known as  
SHARON SCOTT SMITH (Widow and Administratrix  
of the Estate of Michael Steven Smith Deceased)  
MICHAEL STEVEN SMITH  
(~~by SHARON PATRICIA SMITH, his next friend~~)  
**AND:** **DR. KANTAMNENI VIVEKANAND**  
**AND:** **DOCTORS' ASSOCIATES LTD.**  
**AND:** **DR. SCOTT MCFARLANE**  
**AND:** **GAYMAN DENTAL CLINIC LIMITED**  
**AND:** **DR. DAVID G. GODFREY**

**PLAINTIFF OF COURT**  
JAN 09 2012  
**FIRST DEFENDANT**  
**SECOND DEFENDANT**  
**THIRD DEFENDANT**  
**FOURTH DEFENDANT**  
**FOURTH DEFENDANT**

**RE-AMENDED WRIT OF SUMMONS**

**TO:** **THE FIRST DEFENDANT, DR. KANTAMNENI VIVEKANAND**

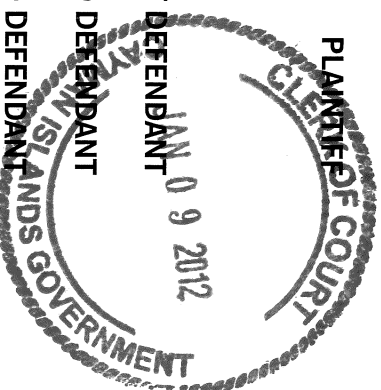
**OF:** Smith Road Plaza  
Smith Road  
George Town  
Grand Cayman  
Cayman Islands, BWI

**AND TO:** **THE SECOND DEFENDANT, DOCTORS' ASSOCIATES LTD.**

Whose Registered Office is situate at  
269 Selkirk Drive  
George Town  
Grand Cayman  
Cayman Islands, BWI

**AND TO:** **THE THIRD DEFENDANT, DR. SCOTT MCFARLANE**

**Of:** Cayman Clinic  
Crewe Road  
George Town  
Grand Cayman  
Cayman Islands, BWI



**AND TO: ~~THE FOURTH DEFENDANT, CAYMAN DENTAL CLINIC LIMITED~~**

~~Whose Registered Office is situate at  
Caribbean Management Ltd.  
5<sup>th</sup> Floor Bermuda House  
Dr. Roy's Drive  
George Town  
Grand Cayman  
Cayman Islands, BWI~~

**AND TO: THE FOURTH DEFENDANT, DR. DAVID G. GODFREY**

Of Cayman Clinic  
Crewe Road  
George Town, Grand Cayman  
Cayman Islands, BWI

**THIS RE-AMENDED 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 Re-Amended 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 21<sup>st</sup> day of April 2008.

Amended this 10<sup>th</sup> day of October 2008

Re-Amended this 9<sup>th</sup> day of January 2012

NOTE – This Re-Amended 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.

INDORSEMENT

The Plaintiff claims as Administratrix of the Estate of Michael Steven Smith Deceased (the "Deceased") for:

(A) Damages under The Torts Reform Law (1996 Revision) for the benefit of the dependents of the Deceased namely the Plaintiff and her two children Jason Smith and Jenique Smith; and

(B) Damages under the Estates Proceedings Law (1995 Revision) for the benefit of the Deceased's Estate;

arising out of the death of the Deceased by reason of the negligence and/or breach of contract and/or breach of duty of the Defendants, their servants or agents in the treatment of the Deceased on the 2<sup>nd</sup> May 2005 at Cayman Clinic on Crewe Road, Grand Cayman in consequence of which the Deceased died on the 19<sup>th</sup> September 2010.

~~The Plaintiff's claim is for damages for injury and loss sustained as a result of the negligence and/or breach of contract and/or breach of duty of the Defendants, their servants or agents in the treatment of the Plaintiff on the 2<sup>nd</sup> May 2005 at Cayman Clinic on Crewe Road, Grand Cayman, Cayman Islands, BWI.~~

AND the Plaintiff claims:-

1. Damages;
2. Further or other relief;
3. Interest pursuant to Section 34 of the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules 1995 (as amended) at such rate and for such period as the Court thinks just;
4. Costs.

*Charles Adams Ritchie & Duckworth*

Attorneys-at-Law for the Plaintiff

THIS RE-AMENDED WRIT was issued by Charles Adams Ritchie & Duckworth, attorneys-at-law for the Plaintiff herein, whose address for service is P.O. Box 709, Grand Cayman, Cayman Islands, BWI.

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF RE-AMENDED 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 Re-Amended 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 Re-Amended 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 instalments 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 its 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.



**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.

Charles Adams Ritchie & Duckworth  
P. O. Box 709  
Zephyr House, Mary Street  
George Town, Grand Cayman  
Cayman Islands, BWI  
KY1-1107

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

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Amended By Consent Pursuant to GCR Order 20 Rule 12

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

CIVIL DIVISION

**CAUSE NO 0200 OF 2008**

**BETWEEN:**

SHARON PATRICIA SMITH also known as

**PLAINTIFF**

SHARON SCOTT SMITH (Widow and Administratrix

of the Estate of Michael Steven Smith Deceased)

MICHAEL STEVEN SMITH

(by SHARON PATRICIA SMITH, his next friend)

**AND:**

**DR. KANTANNENI VIVEKANAND**

**FIRST DEFENDANT**

**AND:**

**DOCTORS' ASSOCIATES LTD.**

**SECOND DEFENDANT**

**AND:**

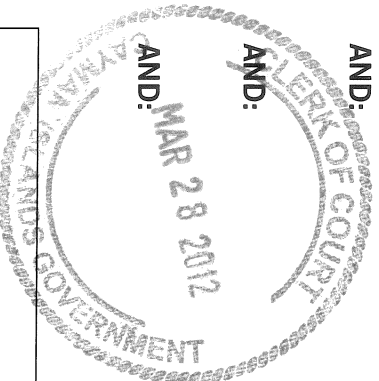
**DR. SCOTT McFARLANE**

**THIRD DEFENDANT**

**AND:**

**DR DAVID G. GODFREY**

**FOURTH DEFENDANT**



**AMENDED STATEMENT OF CLAIM**

1. ~~The Plaintiff is 51 years of age, a Caymanian, and married with two children. He was formerly a director of Reliable Industries Ltd., Reliable Supply and Distributors Ltd., Truly Nolan (CI) Ltd. and Tru-Rel Holdings Ltd and remains a shareholder of those companies.~~

1. The Plaintiff is the widow and Administratrix of the estate of Michael Steven Smith ("Mr Smith") who died on the 19<sup>th</sup> September 2010, Letters of Administration were granted to the Plaintiff out of the Grand Court of the Cayman Islands (In Probate) on 1<sup>st</sup> September 2011.

2. Mr Smith was a Caymanian. He was married with two children namely, Jason Smith ("Jason") born on 2<sup>nd</sup> November 1986 and Jenique Smith ("Jenique") born on 22<sup>nd</sup> August 1990.

3. Mr Smith was 53 years of age at the time of his death. Prior to sustaining the injuries described herein, Mr Smith enjoyed good health. He was a good husband and father and he was a happy, energetic and hardworking man. He was generous towards his family, but frugal in respect of his own wants. He had been employed throughout his working life since leaving college and, prior to sustaining the injuries described herein, he was a director and shareholder of the family business of Reliable Industries Ltd. ("Reliable") as well as Reliable Supply and Distributors Ltd., Truly Nolen (C.I.) Ltd. and TruRel Holdings Ltd.

4. The Plaintiff, Jason and Jenique (together described as "the Dependants" below) were largely if not wholly dependent upon Mr Smith for support, and by his death they have suffered loss and damage.

5. Mr Smith's death was caused by the Defendants' negligence and breach of duty of care and/or breach of contract.

6. The Plaintiff brings these proceedings:-

(a) on behalf of the Dependants pursuant to the provisions of the Torts (Reform) Law (1996 Revision); and

(b) on behalf of the estate of Mr Smith ("the Estate") pursuant to the provisions of The Estates Proceedings Law (1995 Revision).

~~2-7. The Plaintiff continues brings these proceedings\_ by his next friend and wife, Sharon Patricia Smith ("Mrs. Smith"), who was appointed his guardian by the Court in Cause No. 458 of 2005 by pursuant to an order dated 29<sup>th</sup> November 2005<sup>th</sup> December 2011. By that order Mrs. Smith\_ has full power to manage the estate and effects of the Plaintiff and has the power to inter alia, conduct legal proceedings on his behalf. the Plaintiff is entitled to continue. as~~

Administratrix of the Estate, the proceedings in this action between the Plaintiff and the Defendants herein on behalf of the Dependents and the Estate.

8. The First Defendant (hereinafter referred to as "Dr. Vivekanand") is licensed and registered as a health practitioner in the Cayman Islands under the Health Practice Law (2005 Revision) (the "Law").

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4-9. At all material times Dr. Vivekanand held himself out as a specialist in anaesthesia and the majority of his work as a health practitioner in the Cayman Islands is in this field. He carries on his practice as a doctor of medicine and a specialist in anaesthesia at Smith Road Plaza on Smith Road, on the Island of Grand Cayman.

5-10. Dr. Vivekanand is the sole registered shareholder of the Second Defendant, Doctors' Associates Ltd. ("DAL"), a company incorporated under the laws of the Cayman Islands as a resident company. DAL is described in the Cayman Islands Health Practitioner Register (as at September 2007) as the employer of Dr. Vivekanand.

6-11. The Third Defendant (hereinafter referred to as "Dr. McFarlane") is licensed and registered as a health practitioner in the Cayman Islands under the Law.

7-12. Dr. McFarlane practices as a dental surgeon at Cayman Dental Clinic, Crewe Road, George Town, on the Island of Grand Cayman.

8-13. The Fourth Defendant (hereinafter referred to as "Dr. Godfrey") is licensed and registered as a health practitioner in the Cayman Islands under the Law.

9-14. Dr. Godfrey practices as a dental surgeon at Cayman Dental Clinic Crewe Road George Town on the Island of Grand Cayman.

10-15. At all material times Dr. Godfrey was the proprietor of Cayman Dental Clinic and employed Dr. McFarlane as a dental surgeon at that Clinic.

~~11-16.~~ DAL is the holder of a certificate to operate a health care facility issued by the Health Practise Commission in accordance with the relevant provisions of the Law.

~~12-17.~~ Dr. Vivekanand, DAL, Dr. McFarlane and Dr. Godfrey shall hereinafter collectively be referred to as the "Defendants".

~~13-18.~~ The Plaintiff ~~Mr Smith~~ was at all material times a patient of Dr. McFarlane and/or Dr. Godfrey. In or about April 2005 ~~the Plaintiff~~ Mr Smith agreed to undergo dental implant surgery (hereinafter referred to as the "dental procedure") for the removal of two wisdom teeth. In a consultation with Dr. McFarlane on the 20<sup>th</sup> April 2005 and on Dr. McFarlane's recommendation ~~the Plaintiff~~ Mr Smith agreed to be sedated for the dental procedure.

~~14-19.~~ Dr. McFarlane and/or Dr. Godfrey recommended Dr. Vivekanand to ~~the Plaintiff~~ Mr Smith -as being a local health practitioner who specialized in the field of anaesthesia and as someone who was suitably qualified and experienced to provide the necessary and appropriate anaesthetic care for ~~the Plaintiff~~ Mr Smith -during the course of the dental procedure.

~~15-20.~~ Dr. McFarlane and/or Dr. Godfrey were under a duty to ensure or alternatively it was a term of the contract (whether express or implied) between ~~the Plaintiff~~ Mr Smith and Dr. McFarlane and/or Dr. Godfrey that the dental procedure would be carried out by competent professionals who would exercise reasonable care and skill in the treatment of ~~the Plaintiff~~ Mr Smith during the course of the dental procedure including the provision of such anaesthetic care of ~~the Plaintiff~~ Mr Smith as may be necessary and appropriate.

~~16-21.~~ The Plaintiff ~~Mr Smith~~ relying on the recommendation of Dr. McFarlane and/or Dr. Godfrey agreed that Dr. Vivekanand should be retained as the anaesthetist on duty for the purpose of the dental procedure which had been scheduled for the 2<sup>nd</sup> May 2005.

~~17-22.~~ Dr. McFarlane and/or Dr. Godfrey thereafter employed or otherwise retained Dr. Vivekanand to provide the necessary and appropriate anaesthetic care for ~~the Plaintiff~~ Mr Smith during the dental procedure on the 2<sup>nd</sup> May 2005.

~~18-23.~~ Further and/or in the alternative to paragraph 17 above, ~~the Plaintiff~~ Mr Smith entered into a contract with Dr. Vivekanand and/or DAL under which ~~the Plaintiff~~ Mr Smith engaged Dr. Vivekanand to provide the necessary and appropriate anaesthetic care of him during the dental procedure.

~~19-24.~~ As a health practitioner specializing in the field of anaesthesia, Dr. Vivekanand was under an obligation and/or duty once he accepted ~~the Plaintiff~~ Mr Smith as a patient to exercise reasonable care and skill in his care and treatment of him during the dental procedure and in particular to display and exercise the reasonable care and skill of a competent health practitioner practicing as an anaesthetist. Alternatively, this aforesaid obligation and/or duty was an implied term of the contract that existed between ~~the Plaintiff~~ Mr Smith and Dr. Vivekanand and/or DAL referred to in paragraph 18 above.

~~20-25.~~ Dr. Vivekanand was also under an obligation and/or duty whether at law or under the terms of the contract referred to at paragraph 18 above, to advise and warn ~~the Plaintiff~~ Mr Smith of all risks involved in undergoing the dental procedure under sedation, in particular, the risk of death or brain injury.

~~21-26.~~ At no time prior to the commencement of the dental procedure were the risks identified in paragraph 20 above explained to ~~the Plaintiff~~ Mr Smith, whether adequately or at all, by Dr. Vivekanand or anyone else. In the result, it is ~~the Plaintiff's~~ Mr Smith's case that there was no informed consent by him to undergo the dental procedure under sedation.

~~22-27.~~ The dental procedure was undertaken at Cayman Dental Clinic as scheduled at approximately 2 pm on the 2<sup>nd</sup> May 2005. The dental procedure was conducted under local anaesthesia provided by Dr. McFarlane, accompanied by sedation provided by Dr. Vivekanand.

~~23-28.~~ According to the dental records 4 ml of the local anaesthetic Ildocaine 2% with epinephrine 1 in 100,000 (the epinephrine is included to reduce haemorrhage) was injected by Dr. McFarlane. ~~The Plaintiff~~ Mr Smith was initially responsive.

~~24-29.~~ Dr. Vivekanand made the following entries on his "Anaesthetic Chart" (the "Chart"):-

(i) He noted that ~~the Plaintiff~~ Mr Smith had no pre-existing medical problems.

(ii) He recorded that the blood pressure was about 135/85 mmHg, and that the pulse rate was 80 beats/minute and that oxygen saturation was 96% before the dental procedure started.

30. According to the Chart the following steps were taken by Dr. Vivekanand to sedate ~~the Plaintiff~~ Mr Smith:-  
25.

(i) At around 2:10 pm, the sedative and anxiolytic drug midazolam was administered in a dose of 2 mg, followed by a dose of 1 mg.

(ii) Shortly afterwards, a dose of Toradol (ketorolac) 30 mg was given.

(iii) At approximately 2:15 pm the potent opioid analgesic fentanyl was administered in a dose of 50  $\mu$ g (0.05 mg).

(iv) Additional doses of midazolam were given between 2:20 pm and 2:25 pm, noted as '1 + 1' mg, and at 2:40 pm (1 mg).

(v) Additional doses of fentanyl were given between 2:20 and 2:25 pm (50  $\mu$ g + 50  $\mu$ g), and shortly after 2:40 pm (50  $\mu$ g).

26-31. Following sedation a flap was raised to begin the sinus lift. ~~The Plaintiff~~ Mr Smith became less responsive. According to the Chart the blood pressure decreased during the dental procedure to 110-115/75 mmHg and heart rate decreased to just under 70 beats/minute.

27-32. According to Dr. Vivekanand's Chart, it was noted at 2:55 pm that the oxygen saturation and pulse rate of ~~the Plaintiff~~ Mr Smith had decreased. The Chart reflects that, the oxygen saturation was erratic and the pulse rate had decreased to 37 beats/minute with "respiratory effort".

~~28-33.~~ At some point Dr. Vivekanand terminated the dental procedure. Cardiopulmonary resuscitation was then provided and the nurse on duty was instructed to call an ambulance. The ambulance arrived at approximately 3 pm and ~~the Plaintiff~~ Mr Smith was transferred to George Town Hospital. ~~The Plaintiff~~ Mr Smith was subsequently air ambulated later ~~that evening or early~~ the next morning to Baptist Hospital in Miami, Florida, USA.

~~29-34.~~ ~~The Plaintiff~~ Mr Smith suffered a period of cerebral hypoxia during the dental procedure as a result of either central respiratory depression, or upper airway obstruction due to a severely impaired conscious level. ~~The Plaintiff~~ Mr Smith ~~has~~ suffered severe and permanent brain damage.

~~30-35.~~ The Defendants, their servants or agents, were negligent and in breach of their duty of care and/or in breach of contract by failing to provide competent professionals who would exercise reasonable care and skill in the treatment of ~~the Plaintiff~~ Mr Smith during the course of the dental procedure including the provision of such anaesthetic care of ~~the Plaintiff~~ Mr Smith ~~as~~ may be necessary and appropriate and/or by failing to exercise reasonable care and skill in the treatment of ~~the Plaintiff~~ Mr Smith ~~during~~ the dental procedure and, in particular, failing to exercise the reasonable care and skill of a competent health practitioner practising as an anaesthetist.

### **PARTICULARS**

- (i) A reasonably competent and experienced anaesthetist would have known that the safest technique when anaesthetising a patient is to achieve what is commonly referred to as “conscious sedation” in which the patient remains responsive to command during the operation but is better able to tolerate injection of local anaesthetic.
- (ii) A reasonably competent and experienced anaesthetist would have known that the doses of midazolam and fentanyl which ~~the Plaintiff~~ Mr Smith ~~received~~ were far more than would be required to produce the desired “conscious sedation” and were very likely to produce “deep sedation”.

- (iii) A reasonably competent and experienced anaesthetist would also have known that the use of midazolam and fentanyl in the doses given carried with it very significant risks of impaired ventilation and upper airway obstruction due to a depressed conscious level.
- (iv) The effects of midazolam and fentanyl are very variable. Consequently, the drugs should be administered in small, incremental doses, and additional doses should be administered only if there is evidence that they are required. A reasonably competent and experienced anaesthetist would have known that the effects of these drugs must be monitored extremely closely for the following reasons:-
- (a) The effect of midazolam is delayed, and administration of an additional dose before the last dose has reached its peak effect, runs the risk of overdose.
- (b) The drugs are synergistic with regard to their effects on conscious level and respiratory depression which causes a progressive increase in the concentration of carbon dioxide in the alveoli of the lungs and in the blood, and this can result in a progressive decrease in the amount of oxygen in the blood; loss of consciousness may result in total obstruction of the airway as a result of posterior movement of the tongue and loss of tone in the muscles in the pharyngeal wall, resulting in the rapid onset of hypoxaemia.
- (v) Whilst modest reductions in arterial oxygen saturation are innocuous, once the oxygen saturation reaches approximately 90%, a relatively small further reduction in oxygen tension results in a substantial reduction in oxygen saturation. Oxygen saturations of approximately 50% result, within 1-2 minutes, in cardiovascular failure. Once the cardiovascular system fails, the brain becomes hypoxic within approximately one minute and ceases to function effectively. Within approximately 3 minutes, permanent damage to the brain starts to occur. The longer the period of cerebral hypoxia, the greater is the degree of damage to the brain.

- (vi) During the course of the dental procedure, ~~the Plaintiff's~~ Mr Smith's oxygen saturation decreased progressively, which, in the absence of any other obvious cause, is an indication that the alveolar and arterial carbon dioxide concentrations were increasing as a result of depression of ventilation.
- (vii) Values of oxygen saturation are displayed on the pulse oximeter continuously with a value updated every 2-3 seconds. Pulse oximeters usually default to providing both visual and auditory alarms if the oxygen saturation decreases below a certain value, usually 95%. Alarms should not be disabled, so that even if not looking continuously at the monitor screen, the anaesthetist is alerted to a significant decrease in oxygen saturation by an alarm sounding.
- (viii) By a letter dated 30th November 2006 to the Plaintiff's attorneys Dr. Vivekanand stated that a pulse oximeter was in use during the dental procedure on ~~the Plaintiff~~ Mr Smith.
- (ix) Where respiratory depression is caused by either midazolam or fentanyl (or both), the respiratory rate usually decreases progressively. The anaesthetist should carefully monitor the respiratory rate of the patient so that he is able to detect the early onset of respiratory depression in the patient and take steps to prevent it becoming more severe.
- (x) The development of a very low heart rate during the course of the dental procedure was a clear indicator of a very low oxygen saturation. Oxygen saturation needs to decrease to at least 60% before cardiovascular depression or brain damage are likely to occur.
- (xi) Bradycardia or cardiac arrest caused by acute, severe hypoxaemia usually responds very rapidly to restoration of an oxygen supply to the lungs and cardiac massage, provided that it is detected and treated promptly. The fact that cardiac arrest occurred during the dental procedure and did not respond very rapidly to restoration of an oxygen supply to the lungs and cardiac massage is a clear indication that there was a significant delay in the recognition of the onset of severe hypoxaemia and cardiovascular failure.

(xii) In the premises, Dr. Vivekanand:-

- (a) Failed to appreciate and/or recognise that achieving “conscious sedation” of the ~~Plaintiff~~ Mr Smith during the dental procedure would have reduced the risk of impaired ventilation or upper airway obstruction;
- (b) Failed to appreciate and/or recognise that the doses of midazolam and fentanyl were far more than would be required to produce the desired “conscious sedation” and were far more likely to produce a state of “deep sedation”.
- (c) Failed to appreciate and/or recognise that the use of midazolam and fentanyl in the doses given could significantly increase the risk of impaired ventilation and upper airway obstruction due to a depressed conscious level.
- (d) Failed to discuss with the ~~Plaintiff~~ Mr Smith whether adequately or at all, the significant risks involved in the adoption of the proposed method of sedation before the commencement of the dental procedure; and in particular failed to warn the ~~Plaintiff~~ Mr Smith, whether adequately or at all, of the risk of death or brain injury.
- (e) Failed to appreciate and/or recognise that the use of these drugs to acquire a state of deep sedation would require him to be particularly vigilant in monitoring the ~~Plaintiff~~ Mr Smith for any signs of a decrease in oxygen saturation and/or of respiratory depression or arrest.
- (f) Failed to notice or heed whether properly or at all the progressive decrease in the respiratory rate and oxygen saturation of the ~~Plaintiff~~ Mr Smith during the dental procedure.
- (g) Failed to make use of the pulse oximeter available.
- (h) In the alternative to (g) above, failed to have any or any proper regard to the readings displayed on the pulse oximeter during the dental procedure.

- (i) Failed to activate the visual and auditory alarms on the pulse oximeter.
- (j) In the alternative to (i) above failed to have any or any proper regard to the visual and auditory alarms that were activated by the pulse oximeter during the dental procedure.
- (k) Failed to devote to ~~the Plaintiff~~ Mr Smith, whether adequately or at all, his full and proper care and attention during the dental procedure; and in particular, at one point during the dental procedure he absented himself from the room in order to take a call on his cell phone.
- (l) Failed to interpret, whether adequately or at all, the clear signs of progressive respiratory failure of ~~the Plaintiff~~ Mr Smith which would have been present before his pulse rate decreased.
- (m) Failed to intervene before profound hypoxaemia had occurred to the extent that cardiovascular failure was taking place.
- (n) Failed to restore oxygenation of the lungs promptly which would have prevented cardiac arrest and cerebral damage.
- (xiii) Further and in light of the foregoing, DAL and/or Dr. McFarlane, and/or Dr. Godfrey failed to provide a suitably experienced and competent anaesthetist to care for ~~the Plaintiff~~ Mr Smith during the dental procedure.
- (xiv) The Plaintiff will further, if necessary, rely upon the doctrine of *res ipsa loquitur*.

~~31-36.~~ By reason of the said Defendants' negligence and breach of duty of care and/or breach of contract, ~~the Plaintiff~~ the Dependents and the Estate have ~~has~~ suffered loss and damage:-

## **PARTICULARS OF INJURIES**

- (i) ~~The Plaintiff~~ Mr Smith has suffered a severe injury to the brain as a consequence of the brain being deprived of an adequate supply of oxygen during the dental procedure for a period likely to be in excess of 5 minutes.
- (ii) Within a few hours of ~~the Plaintiff's~~ Mr Smith's presentation to the Emergency Room at George Town Hospital, he had myoclonic jerking and myoclonic seizures. This is a common manifestation of extreme injury to the brain from low oxygen and/or low blood flow and these clinical accompaniments to such an injury are notoriously associated with a poor neurological prognosis.
- (iii) Following admission to Baptist Hospital in Miami it was noticed that ~~the Plaintiff's~~ Mr Smith's trachea was intubated. He was suffering from tonic-clonic activity. His pupils were fixed and dilated. He was unresponsive to any verbal or noxious stimuli. The possibility of irreversible brain damage was considered and an MR scan of the brain was undertaken on 4<sup>th</sup> May. This showed scattered white matter ischaemic small vessel disease but no evidence of oedema or infarction.
- (iv) Tracheostomy was performed on 12<sup>th</sup> May 2005 and rehabilitation therapy was started. An electroencephalogram was performed On 25<sup>th</sup> May 2005; this showed generalised slowing with intermittent bipleds consistent with some anoxic injury. The investigation was repeated on 9<sup>th</sup> June 2005 and showed an abnormal trace consistent with a moderately severe encephalopathy. Mr. Smith developed deep venous thrombosis. He was weaned successfully from artificial ventilation of the lungs. He was admitted to Jackson Memorial Hospital on the 29<sup>th</sup> June 2005, where a diagnosis of hypoxic encephalopathy was recorded, with severe dysautonomia resulting in difficulties in controlling blood pressure. There was no organised volitional or purposeful communication.
- (v) ~~The Plaintiff is~~ Mr Smith was neurologically profoundly impaired somewhere within the continuum of vegetative state and minimally conscious state.

(vi) ~~The Plaintiff~~ Mr Smith ~~had~~has no clear or consistent interaction with his environment and remains bedridden with severe muscle contractures, full dependent care, and incontinence.

(vii) For the rest of his life, ~~the Plaintiff~~ Mr Smith ~~will~~remained in a similarly devastated state requiring around-the-clock medical care.

(viii) ~~The Plaintiff~~ Mr Smith ~~has~~remained hospitalized since ~~from~~ the 2<sup>nd</sup> May 2005 ~~until~~ his death on 19<sup>th</sup> September 2010. ~~and is currently an in-patient at the Jackson Memorial Long Term Care Center in Miami, Florida, USA.~~

~~(viii)(ix)~~ Mr Smith who was aged 53 having been born on 1<sup>st</sup> June 1957 died on 19<sup>th</sup> September 2010 as a result of the injuries described herein.

#### PARTICULARS OF SPECIAL DAMAGE

37. ~~The Plaintiff will provide such further~~ Particulars of the pecuniary loss sustained by Mr Smith and his family prior to his death are set out in an Interim Schedule of Damages dated 14<sup>th</sup> May 2010 (the relevant losses being up to the dates referred to in the said Schedule). ~~His claim as may be necessary or appropriate following receipt of the Defendants' discovery in this action.~~

32.

~~33-38.~~ Particulars of the Plaintiff's pecuniary loss sustained by the Dependants and the Estateless, ~~damage and expense~~ will be set out in an amended Interim Schedule of Damages which shall be served on the Defendants in due course. ~~accordance with the Order dated 8<sup>th</sup> October 2008.~~

#### PARTICULARS OF LOSS OF DEPENDANCY

39. The Dependants upon whose behalf these proceedings are brought are:-

- (i) The Plaintiff, the widow of Mr Smith now aged 50 having been born on 18<sup>th</sup> July 1961; and

- (ii) Jason, the son of Mr Smith now aged 25 having been born on 2<sup>nd</sup> November 1986; and
- (iii) Jenique, the daughter of Mr Smith now aged 21 having been born on 22 August 1990.
40. But for the injuries and death of Mr Smith, Mr Smith had a normal life expectancy and an expectation of remaining a director and shareholder of Reliable and of remaining in gainful employment thereby until well past the normal retirement age.
41. Upon eventual retirement Mr Smith had expectation of enjoying pension income.
42. As a result of Mr Smith's death, the Dependants suffered loss.
43. At the time of his death, Mr Smith was a healthy and happy man aged 53. Mr Smith did not gamble, drink alcohol or smoke. He was a director, shareholder and the driving force behind Reliable and was responsible for securing contracts and developing the business generally. Reliable was and still is a family business over which Mr Smith had de facto control. Given his position with Reliable, Mr Smith was able to pay himself a monthly 'wage' of approximately C1\$10,000 per month. However, this wage could fluctuate (in amount) from month to month depending on his family's financial needs at any given time. Mr Smith was also able to use Reliable's income to cover his and his family's expenses for which he was largely, if not solely responsible. Mr Smith could therefore be fairly described as the family's major breadwinner. Mr Smith was extremely generous towards his family but frugal in respect of his own wants. In addition to providing a very comfortable lifestyle for his family he was able to indulge his son's hobby of jet ski racing, which included the very significant costs involved in the purchase, maintenance and operation of jet skis in addition to the travel and accommodation costs associated with Jason's participation in races both locally and abroad. Similarly, Mr Smith also supported his daughter, Jenique's, passion for horse riding which had included the cost of purchasing and lodging her horses, riding lessons, equipment costs and medical bills. Mr Smith was also generous with his wife, particularly at Christmas, when he usually purchased her

expensive jewellery. Mr Smith would also pay for family vacations as well as trips to restaurants and shows.

44. Further, on behalf of the Estate, the Plaintiff claims funeral expenses.

34. 45. Further, the Plaintiff on behalf of the Dependents and the Estate claims interest on any damages they may be awarded pursuant to Section 34 of the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules 1995 (As Amended) at such rate and for such period as the Court thinks just.

35. 46. The Plaintiff's loss is losses suffered by the Dependents and the Estate are continuing.

#### **AND THE PLAINTIFF CLAIMS:-**

1. Damages for loss of dependency pursuant the Torts (Reform) Law (1996 Revision). ~~(both general and special).~~

2. Damages (both general and special) for the Estate of Mr Smith pursuant to the Estates Proceedings Law (1995 Revision).

2.3. Further and/or other relief.

3.4. Interest pursuant to Section 34 of the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules 1995 (as amended) at such rate and for such period as the Court thinks just.

4-5.          Costs.

Dated this 10<sup>th</sup> day of October 2008.

Amended this 28<sup>th</sup> day of March 2012.



Charles Adams Ritchie & Duckworth  
Attorneys-at-Law for the Plaintiff

This Amended Statement of Claim was filed by Charles Adams Ritchie & Duckworth, Attorneys-at-Law for the Plaintiff, whose address for service is 2<sup>nd</sup> Floor Zephyr House, 122 Mary Street, PO Box 709, George Town, Grand Cayman, KY1-1107, Cayman Islands.

2<sup>nd</sup> Floor Zephyr House, 122 Mary Street, PO Box 709, George Town, Grand Cayman, KY1-1107, 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 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 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 21<sup>st</sup> day of April 2008.

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.

### INDORSEMENT

The Plaintiffs claim is for damages for injury and loss sustained as a result of the negligence and/or breach of contract and/or breach of duty of the Defendants, their servants or agents in the treatment of the Plaintiff on the 2<sup>nd</sup> May 2005 at Cayman Clinic on Crewe Road, Grand Cayman, Cayman Islands, BWI.

AND the Plaintiff claims:-

1. Damages;
2. Further or other relief;
3. Interest pursuant to Section 34 of the Judicature Law (2007 Revision) and the Judgment Debt (Rates of Interest) Rules 1995 (as amended) at such rate and for such period as the Court thinks just;
4. Costs.

*Charles Adams Ritchie & Duckworth*

Charles Adams Ritchie & Duckworth  
Attorneys-at-Law for the Plaintiff

THIS WRIT was issued by Charles Adams Ritchie & Duckworth, attorneys-at-law for the Plaintiff herein, whose address for service is P.O. Box 709, Grand Cayman, Cayman Islands, BWI.

**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 4956G, 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 instalments 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 its 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. OF 2008

BETWEEN:	MICHAEL STEVEN SMITH	PLAINTIFF
	(by SHARON PATRICIA SMITH, his next friend)	
AND:	DR. KANTAMENI VIVEKANAND	FIRST DEFENDANT
AND:	DOCTORS' ASSOCIATES LTD.	SECOND DEFENDANT
AND:	DR. SCOTT McFARLANE	THIRD DEFENDANT
AND:	CAYMAN DENTAL CLINIC LIMITED	FOURTH 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.
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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.
 

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)
 

yes	no
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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	no
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Service of the Writ is acknowledged accordingly

(Signed) .....  
Attorney for .....

**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 plaintiffs Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Charles Adams Ritchie & Duckworth  
P.O. Box 709  
Zephyr House, Mary Street  
George Town, Grand Cayman  
Cayman Islands, BWI  
KY1-1107

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

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