

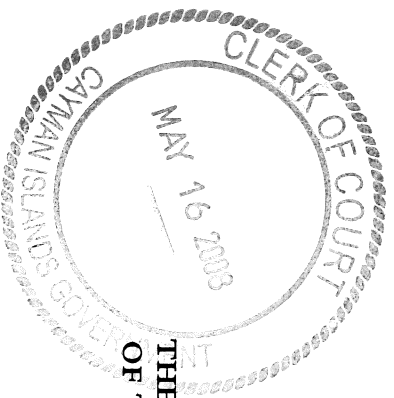
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ^{ca45} OF 2008
LEGAL AID NO. 44 OF 2003

B E T W E E N:

JOSHUA JAMES BODDEN
(a minor and a person under disability
acting by his mother and next friend Fiona Chambers)

Plaintiff



**THE ATTORNEY GENERAL
OF THE CAYMAN ISLANDS**



AND

Defendant

WRIT OF SUMMONS

TO: The Attorney General of the Cayman Islands
Government Administration Building
4th Floor
Elgin Avenue
George Town
Grand Cayman
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 495 GT, 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 *16th* day of May 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.

Issued by Appleyby of Clifton House, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. NB/10599.001)

STATEMENT OF CLAIM

Parties

1. The Plaintiff is a minor and is under disability and, accordingly, is represented in this litigation by his next friend, namely his mother, Ms. Fiona Chambers (“**Ms. Chambers**”). Ms. Chambers was at all material times an individual and a Caymanian resident in Bodden Town, Cayman Islands. Ms. Chambers’ postal address is P.O. Box 2534, KY1-1104 and her address for service is in care of her attorneys, Appleby, at P.O. Box 190, KY1-1104.
2. The averments set out in the Plaintiff’s claim relate to the negligent conduct of the George Town Hospital (the “**Hospital**”) and its employees and specifically relate to the medical treatment provided to Ms. Chambers during the birth of her son Joshua James Bodden (“**Joshua**”) on 25 and 26 January 1997.
3. The Cayman Islands Government (the “**Crown**”), at the relevant time, had general charge and management of the Hospital and is vicariously liable for the acts and omissions of the Hospital and its employees.
4. The named Defendant is the Attorney General of the Cayman Islands in accordance with the *Crown Proceedings Law* (1997 Revision).

The Pregnancy and Birth

5. Ms. Chambers’ pregnancy was uneventful and she attended all regular appointments and examinations during the term of her pregnancy. Dr. Panos Maouris (“**Dr. Maouris**”) was the gynaecologist and obstetrician who regularly examined Ms. Chambers during her pregnancy. Dr. Maouris never reported or advised that he had noticed anything unusual or out of the ordinary during the term of Ms. Chambers’ pregnancy or that there were any complications or problems with the foetus.

6. Ms. Chambers' water broke on the morning of 25 January 1998. She was admitted to the Hospital at 3:30pm, placed under the care of Dr. Maouris and had intermittent and irregular contractions over the course of that night and into the day of 26 January 1998.
7. Ms. Chambers' labour did not establish regularly at first and Dr. Maouris ordered an intravenous infusion of Syntocinon be commenced on the morning of 26 January 1998. Syntocinon is a drug used to cause, to augment or to stimulate uterine contractions during labour.
8. The use of Syntocinon, the adjustment of the dosage of Syntocinon in response to observations of Joshua himself and Joshua's Cardiotoocograph ("CTG") and the care provided by Dr. Maouris, the midwives and other employees of the Hospital were negligent in this case for the reasons set out below.
9. Until approximately 3:30 p.m. on 26 January 1998, the midwives and other employees of the Hospital, under the control and direction of Dr. Maouris, had made proper interventions and observations in respect of administering care in the delivery of Joshua. In particular, Dr. Maouris, the attending midwives and the other employees of the Hospital had recognised the occasions when the Syntocinon had caused hyperstimulation of the uterine contractions and they adjusted the dosage accordingly.
10. From approximately 3:30 p.m. onwards on 26 January 1998, Dr. Maouris, the attending midwives and other employees of the Hospital failed to recognise, despite the obvious indications on Joshua's CTG, that the Syntocinon was causing uterine hyperstimulation and failed to reduce the dosage rate or stop the infusion entirely.
11. Uterine hyperstimulation was evidenced by the fact that Ms. Chambers was experiencing contractions at the rate of nine uterine contractions for every ten minutes on average during labour. The high end of the normal range of

- uterine contractions is five contractions for every ten minutes. This uterine hyperstimulation was a direct result of too high a dose of Syntocinon.
12. Uterine hyperstimulation led to hypoxia (a shortage of oxygen) in Joshua as a result of the too frequent contractions and the inability of the placenta to deliver sufficient oxygen between contractions.
 13. The appropriate response to this abnormally high frequency of contractions is to reduce the dosage rate or to stop the Syntocinon infusion entirely. Even though the midwives attending to Ms. Chambers noted that the foetal heart rate had fallen at approximately 3:36 p.m., they and Dr. Maouris failed to respond appropriately. Specifically, the midwives and Dr. Maouris failed or neglected to properly reduce the dosage rate or to stop the Syntocinon infusion at any time after approximately 3:36 p.m. and throughout the labour despite the abnormally high frequency of contractions, the drop in foetal heart rate and the clear indication of the abnormally high frequency of contractions on Joshua's CTG monitor.
 14. The midwives attending to Ms. Chambers and Dr. Maouris did note that the foetal heart rate had fallen but did not recognise the abnormally high frequency of Ms. Chambers' contractions and inaccurately recorded that her contractions were "moderate & irregular".
 15. The midwives attending to Ms. Chambers and Dr. Maouris then administered an incorrect treatment by increasing the dosage rate of the Syntocinon infusion rate from 90 to 120 drops per minute at approximately 6:30 p.m. on 26 January 1998. That incorrect treatment caused the intensification of Ms. Chambers' abnormal contractions.
 16. Dr. Maouris examined Ms. Chambers at approximately 6:50 p.m. on 26 January 1998 and inaccurately noted that the CTG reading was normal and that her contractions were "incoordinate" when in fact the contractions were regular and too frequent. Dr. Maouris ordered that the Syntocinon infusion be continued.

17. At approximately 9:00 p.m. the midwives attending to Ms. Chambers noted that the foetal heart rate was abnormal and administered oxygen to Ms. Chambers. The midwives also performed an examination of Ms. Chambers and found her to be 7 centimetres dilated and informed Dr. Maouris of same at approximately 9:15 p.m., but he failed or neglected to attend as required.
18. Had Dr. Maouris attended at or around that time he would have noted that Joshua's CTG reading was abnormal and that the foetal heart rate had fallen at approximately 9:06 p.m. This continued evidence of uterine hyperstimulation should have led the midwives and/or Dr. Maouris to stop the Syntocinon infusion immediately.
19. Dr. Maouris did finally attend at around 9:50 p.m. and on examining Ms. Chambers found her to be fully dilated and instructed her to begin pushing. Dr. Maouris, considering the fall in the foetal heart rate, the high rate of contractions and the uterine hyperstimulation, ought to have elected at that time to deliver Joshua by assisted delivery or by Caesarean section. Instead, Dr. Maouris delayed the delivery and subjected Joshua to further hypoxia.
20. By 9:50 p.m. on 26 January 1998 Ms. Chambers' cervix was fully dilated and the second stage of labour, namely delivery, could begin. Dr. Maouris, notwithstanding that he ought to have commenced assisted delivery at that time, advised Ms. Chambers to begin pushing and advised her that unassisted delivery could take up to 1 ½ hours.
21. The midwives attending to Ms. Chambers reduced the rate of the Syntocinon infusion at approximately 10:22 p.m. Joshua had by that time been exposed to an intermittent lack of oxygen since 3:36pm, significant lack of oxygen since 9:06pm and he suffered a complete collapse in his circulation at approximately 10:42 p.m., 15 minutes before he was born.
22. At approximately 10:45 p.m. Dr. Maouris recognised the need for assisted delivery which commenced at 10:49 p.m.

23. Joshua was finally born at 11:04 p.m. on 26 January 1998.
24. When Joshua was born he was purple, was described as "limp" and needed intensive resuscitation. His heart rate never recovered from the drop in heart rate that accompanied the circulatory collapse at approximately 10:42 p.m.

Treatment Required Following Birth

25. Following birth Joshua required resuscitation and artificial ventilating and he was treated in the Neonatal Unit at the Hospital for nearly one month.
26. Following discharge from the Hospital, Joshua was evaluated by a number of specialists and underwent a battery of tests and evaluations, the results of which are consistent with various conditions including, but not limited to, severe brain damage, hydrocephalus, blindness, epilepsy and quadriplegic cerebral palsy and requiring treatments including, but not limited to, a brain shunt, anti-epileptic medication, various splints, eyeglasses and a body brace.

PARTICULARS OF NEGLIGENCE

27. Dr Maouris, the attending midwives, other employees of the Hospital, the Hospital itself and the Crown each owed Joshua a duty of care to provide him with the quality of medical treatment expected of reasonable health care practitioners, facilities and administrators.
28. The Hospital had a further duty to ensure the competence, training and supervision of Dr. Maouris, the attending midwives and other employees of the Hospital treating Ms. Chambers and Joshua.
29. Similarly, Dr. Maouris had a duty to supervise the attending midwives and other employees of the Hospital treating Ms. Chambers and Joshua.

30. Dr. Maouris, the attending midwives and other employees of the Hospital were negligent in that:

- (a) Dr. Maouris failed to properly supervise attending midwives;
- (b) Dr. Maouris and the attending midwives and other employees under his supervision failed to recognise from approximately 3:30 p.m. on 26 January 1998 onwards that the Syntocinon infusion was causing uterine hyperstimulation;
- (c) Dr. Maouris and the attending midwives and other employees under his supervision failed to reduce or stop the Syntocinon infusion dosage as required;
- (d) Dr. Maouris failed to attend to the Plaintiff as required when the attending midwives noted that the foetal heart rate was abnormal and Ms. Chambers was 7 centimetres dilated;
- (e) Dr. Maouris and the attending midwives and other employees under his supervision continued to administer Syntocinon despite such treatment being the cause of the complications in Ms. Chambers' and Joshua's conditions;
- (f) Dr. Maouris and the attending midwives and other employees under his supervision failed to recognise the cause of the complications in the delivery and the deterioration in Ms. Chambers' and Joshua's conditions; and,
- (g) Dr. Maouris and the attending midwives and other employees under his supervision failed to recognise that the Plaintiff was in distress and failed to commence assisted delivery in a timely fashion, leading to further hypoxia and asphyxiation of the Plaintiff and to a full collapse of the Plaintiff's circulation for 15 minutes prior to his birth.

31. The Hospital was negligent in that:

- (a) it failed to employ competent and professional staff, midwives and physicians;

- (b) it failed to properly train its staff, midwives and physicians;
 - (c) it failed to ensure that the staff, midwives and physicians were properly supervised at all times; and,
 - (d) it allowed an excessive dose of Syntocinon to be administered and continued to be administered despite that treatment being the cause of the complications in Joshua's delivery.
32. The acts and omissions of Dr Maouris, the attending midwives, other employees of the Hospital and the Hospital itself amount to a breach of the duty of care and caused the injuries sustained by Joshua during his birth.
33. The Crown was negligent in that it breached its statutory duties including, but not limited to, the duty to administer the Hospital generally in an efficient manner and in such a way as to promote the health of the patients of the Hospital by allowing all of the above negligence to occur. *The Health Services Authority (Dissolution) Law, 1993* reverted to the Crown the duties of the former Health Services Authority as provided in *The Health Services Authority Law, 1991*.
34. The Crown is furthermore vicariously liable for the negligent acts and omissions of Dr. Maouris, the attending midwives and other employees of the Hospital and the Hospital itself as pleaded in paragraphs 30 and 31 above.
35. By reason of the foregoing the Plaintiff has suffered pain, injury, loss and damage for which the Crown is liable.

PARTICULARS OF INJURY

36. The Plaintiff, who was born at 11:04 p.m. on 26 January 1998 suffered:
- (a) a circulatory collapse and failure for 22 minutes prior to his birth;
 - (b) severe hypoxia and asphyxiation for more than 1½ hours prior to and during his birth;
 - (c) spastic cerebral palsy resulting from the asphyxiation at birth and causing joint contractures, problems with his hips, scoliosis and

gastro-oesophageal reflux, weight problems and recurrent infection;

- (d) respiratory difficulties;
- (e) severe mental retardation;
- (f) severe brain damage and developmental and physical disabilities;
- (g) cortical blindness;
- (h) regular and persistent epileptic seizures;
- (i) hydrocephalus; and,
- (j) sleep apnea.

37. Joshua is currently unable to see clearly, communicate, roll, sit or crawl, stand or walk, reach or grasp objects using his hands, eat without the aid of a pump or dress and is permanently incontinent. Joshua is bed-ridden and unable to perform any of the daily activities of life.

38. There is no reasonable prospect of Joshua recovering from these injuries and he will never be able to live independently or support himself financially.

PARTICULARS OF SPECIAL DAMAGE AND FUTURE LOSSES

39. The Plaintiff will provide full particulars of special damages in advance of the trial of this cause.

AND THE PLAINTIFF CLAIMS:

- 1. General Damages.
- 2. Special Damages and out of pocket and medical expenses.
- 3. Loss of future income.
- 4. Pre-judgment and post judgment interest as aforesaid in accordance with the *Judicature Law* (2004 Revision).
- 5. Costs on an indemnity basis or a standard basis in accordance with the Court Costs Rules as amended.
- 6. Such further and other relief as this Honourable Court may deem just.

Dated the

16th

day of May 2008



APPLEBY

Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court

AND TO: The Attorney General of the Cayman Islands
C/O Cayman Islands Government Legal Department
Ansbacher House
Grand Cayman, Cayman Islands

Issued by Appleby of Clifton House, 75 Fort Street, P.O. Box 190 GT, Grand Cayman, Cayman Islands (Ref. NB/10599.001)

**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 495 GT, 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

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 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
LEGAL AID NO. 44 OF 2003

B E T W E E N:

JOSHUA JAMES BODDEN
(a minor and a person under disability
acting by his mother and next friend Fiona Chambers)

Plaintiff

AND

THE ATTORNEY GENERAL 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

Attorneys for Defendant

Address for service:

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.

Appleby
Attorneys-at-Law
Clifton House
75 Fort Street
P.O. Box 190 GT
George Town
Grand Cayman
Ref. [10599.001]

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

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