

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 282 OF 2008
LEGAL AID: 88/07

BETWEEN:

EDEL ANTHONY HARRIS

PLAINTIFF

AND:

DENROL WELSH

FIRST DEFENDANT

NICOLA CHISHOLM T/A MAX TRUCKING

SECOND DEFENDANT

DWAYNE O'CONNOR T/A MAX TRUCKING

THIRD DEFENDANT



WRIT OF SUMMONS

To: Denrol Welsh
c/o Express Trucking
Off Godfrey-Nixon Way
Grand Cayman

And to: Nicola Chisholm and Dwayne O'Connor
t/a Max Trucking
Sound Way
Grand Cayman



THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within Fourteen days [14] after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to

contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this day of June 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.

STATEMENT OF CLAIM

1. The Plaintiff was at the material time a Solid Waste Driver Assistant employed by the Department of Environment and Health, Cayman Islands.
2. The First Defendant is a truck driver who was at the material time driving trucks for the Second and Third Defendants.
3. The Second and Third Defendants were at the material time the First Defendant's employer and the registered owner of International Truck registration number 90695 ("the International Truck").
4. At the material time on Wednesday 29 June 2005 at about 9.20 am, the Plaintiff was, in the course of his employment, standing at the rear end of a Department of Environment garbage collection truck which was parked adjacent to Mr. Malachi Nelson's yard on the south side of Shamrock Road.
5. At the material time, the First Defendant was driving the International Truck traveling along Shamrock Road headed easterly towards Bodden Town on the north side of Shamrock Road.
6. On approaching the Department of Environment garbage collection truck, the First Defendant swerved the International Truck across the road onto the south side of Shamrock Road and collided with the back of the Garbage Truck striking the Plaintiff in the process.
7. The accident was caused solely by the negligence of the First Defendant in the driving, management and control of the International Truck.

PARTICULARS OF NEGLIGENCE

- (a) Failing to keep proper lookout when he knew or ought to have known that there were or that there were likely to be sanitation workers in the rear of the said Garbage Truck;
 - (b) Failing adequately or at all to observe or heed the presence of the sanitation workers, in particular, the Plaintiff, in the vicinity of the Garbage Truck;
 - (c) Failing to stop, swerve or otherwise maneuver the International Truck in time so as to avoid the collision;
 - (d) Colliding with the Plaintiff;
 - (e) Failing to give any or any adequate warning of his approach or intention to swerve across the road onto the other side;
 - (f) Driving in excess of the allowed speed limit; and
 - (g) Driving in an easterly direction in the west bound lane.
8. The Second and Third Defendants are vicariously liable for the negligence of the First Defendant because at the time the accident occurred, the First Defendant was authorized to drive the International Truck and/or was in fact driving the vehicle in the course of his employment.
9. As a consequence of the First Defendant's negligence, the Plaintiff has suffered personal injury, has been put to expense and has suffered loss and damage.

PARTICULARS OF PLAINTIFF'S INJURY

- (a) The Plaintiff, whose date of birth is 8 September 1962, was transported to George Town Hospital by ambulance after the collision. He sustained a direct trauma injury to the dorso-lateral aspect of the left foot and ankle resulting in a fracture of the fifth metatarsal of the left foot along with various soft-tissue injuries.

- (b) The Plaintiff also sustained an open wound to the dorso-lateral aspect of the foot that has resulted in a scar. He was treated with pain medication at the hospital and his wounds were stitched and dressed.
- (c) The Plaintiff attended physiotherapy for 2 months after the accident to treat his lower back and left foot. The Plaintiff returned to work 7 months after the accident.
- (d) For over 12 months after the accident, the Plaintiff suffered from a continuing burning pain beneath the scar on the dorso-lateral aspect of the right forefoot; pain at the base of the left fifth metatarsal, and pain inferior to the left lateral malleolus – all the areas of direct trauma.
- (e) On 26 May 2006, the Plaintiff consulted Dr. Raymond Anthony, Podiatrist at The Chrissie Tomlinson Memorial Hospital complaining of the left foot pain he has been experiencing since the accident. Dr. Anthony diagnosed a healed fracture of the fifth metatarsal plus provisional diagnoses of traumatic arthrosis of mid-foot joints and/or exterior tendonitis.
- (f) Due to the continuing pain, the decision was made to rest the foot in a below-knee cast for 4 weeks. On 23 June 2006, the Plaintiff was placed in such a cast and given crutches to enable non-weight-bearing on the left foot. The cast was removed on 24 July 2006.
- (g) By 21 August 2006, there was an 80%-90% reduction in foot pain. The 5th metatarsal remained a little tender to direct pressure and there was general swelling of the foot and ankle. The Plaintiff was fitted with a foot support to reduce the stress on the tendons and joints of the foot, and advised to wear a compression sock to reduce the swelling.
- (h) Up until October 2007, the Plaintiff continued to complain of some residual pain, which can be described as "burning" beneath the scar on the dorso-lateral aspect of his left foot. He also experienced pain anterior of the lateral malleolus, and pain beneath the left forefoot. Together, these were diagnosed as Extensor Digitorum Longus tendonitis, anterior talo-fibular ligament strain, and metatarsalgia. The Plaintiff was treated with ice packs once a day, compression bandage,

plus a course of anti-inflammatory medication. New foot supports were prescribed for better support of the mid-foot.

- (i) After undergoing an MRI, the Plaintiff, on 2 October 2007, received cortisone injections into the two main areas of tenderness. Since mid-October 2007, the pain beneath the scar was completely resolved; and the pain under the left forefoot has been much better with a modified foot support; and the pain in the left ankle has significantly improved with a little discomfort, especially with increased activity.
- (j) However, the Plaintiff still suffers from occasional severe back pain and experiences back spasms if he sits for too long. He is unable to lift heavy weights and unable to sit for more than 50 minutes at a stretch.
- (k) As a result of the accident, the Plaintiff, who played cricket competitively in the league, has had to give up playing cricket. He is unable to walk for the purposes of exercise and has difficulty standing for long periods or dance during social functions.

- 10. The Plaintiff claims general damages for pain and suffering and loss of amenities.

PARTICULARS OF SPECIAL DAMAGES

- 11. The Plaintiff's medical expenses and wages during his time off work and treatment periods were paid by his employers. The injuries arising from this accident have had an adverse impact on the Plaintiff's earning capacity and the Plaintiff has suffered loss of earnings, which is still continuing.
- 12. As a Solid Waste Driver Assistant employed by the Department of Environment, the Plaintiff worked overtime an average of 15 hours a week being paid CI\$10.68 per hour. Since the accident, the Plaintiff, was unable to continue working as a Solid Waste Driver Assistant and was reassigned to an office job where he was not entitled to any overtime. As a result, the Plaintiff has suffered an average loss of income of CI\$301.75 a fortnight or CI\$603.50

a month since the accident and continuing. As at 30 May, 2008, the Plaintiff has suffered a loss of CI\$21,122.50 in overtime payments.

13. The Plaintiffs also claim future loss of income.

AND THE PLAINTIFF CLAIMS:

- (a) Special Damages of CI\$21,122.50;
- (b) General Damages;
- (c) Pre-Judgment and post-judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
- (d) Costs;
- (e) Further and/or other relief.

STATEMENT REGARDING INTEREST

The Plaintiff claims interest from the 29 June 2005 to 30 June 2006 at the rate of 3% per annum and thereafter at the rate of 7.25% per annum or as may be varied from time to time by the Grand Court Rules.

Interest from 29 June 2005 to 30 June 2006 totals CI\$635.41 at the daily rate of CI\$1.74.

Interest from 1 July 2006 to 30 May 2008 totals CI\$2932.70 at the daily rate of CI\$4.20.

STATEMENT REGARDING INSURER

The Defendants are insured by British Caymanian Insurance Ltd., 236 BritCay House, Eastern Avenue, George Town, Grand Cayman.

DATED this ^{17th} day of June 2008



Mourant du Feu & Jeune
Attorneys-at-Law for the Plaintiff

This WRIT AND STATEMENT OF CLAIM was filed by Mourant du Feu & Jeune, Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands. (RAMMU/2038322/1199239/3724-0000)

**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. OF 2008

IN THE MATTER OF THE ESTATE OF THOMAS WILLIAM BERRY,
DECEASED

AND IN THE MATTER OF THE ESTATE OF HELLINGTON BERRY,
DECEASED

AND IN THE MATTER OF THE TRUSTS LAW (2007 REVISION)

BETWEEN: EDEL ANTHONY HARRIS PLAINTIFF

AND: DENROL WELSH FIRST DEFENDANT

NICOLA CHISHOLM T/A MAX TRUCKING SECOND DEFENDANT

DWAYNE O'CONNOR T/A MAX TRUCKING THIRD 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.

Mourant du Foe & Juene
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN (ref: MR/3724-0000)

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