



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

**CAUSE NO:                      OF 2020**  
**LACV 0166/2015**

**BETWEEN:**

**CALLIE BODDEN**

**PLAINTIFF**

**AND:**

**DR SARATH DE ALWIS**

**1<sup>st</sup> DEFENDANT**

**AND:**

**THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS**

**2<sup>nd</sup> DEFENDANT**

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**WRIT OF SUMMONS**

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TO: The 1<sup>st</sup> Defendant  
Dr Sarath De Alwis

And To: The 2<sup>nd</sup> Defendant  
The Attorney General

**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, 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 *19<sup>th</sup>* day of October 2020.

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, whose date of birth is 25<sup>th</sup> October 1999, resides in the Cayman Islands at 7 Fairbanks Road, George Town, Grand Cayman.
2. The 1<sup>st</sup> Defendant was at all material times an obstetrician, who treated the Plaintiff's mother, Dawn Bodden during the term of her pregnancy from 8<sup>th</sup> March 1999 and supervised and administered the birth of the Plaintiff at George Town Hospital (the Hospital) on the 25<sup>th</sup> October 1999.
3. The 2<sup>nd</sup> Defendant is named in these proceedings by virtue of Section 11 of the Crown proceedings Law (1997 revision). At all material times the Cayman Islands Government (CIG) was charged with responsibility for the operation, management and administration of the Hospital and was at all material times the employer of midwives, medical, nursing and other staff at the Hospital.
4. At all material times, the midwives, nurses and other staff were servants or agents of the CIG, acting in the course of their employment in the management, treatment and care of Dawn Bodden and the delivery of the Plaintiff throughout the events more particularized hereafter.
5. Dawn Bodden became pregnant with the Plaintiff in or about February 1999. Her ante-natal care was under the care of the 1<sup>st</sup> Defendant at the Hospital controlled by the CIG. Her estimated date of delivery was the 11<sup>th</sup> November 1999.
6. Upon the advice and recommendation of the 1<sup>st</sup> Defendant, Dawn Bodden attended at the Hospital on 25 October 1999. She was admitted for induction of labour on the same date.
7. The significant events in the management, treatment and care of Dawn Bodden during her pregnancy, labour and the delivery of the Plaintiff were as follows:
  - 7.1 She had a cervical stitch sited on the 17 April 1999.
  - 7.1 She underwent testing for gestational diabetes on the 9 April 1999, 8 July 1999, and 30 September 1999, all with normal results.

- 7.2 On the 15 October 1999 she had the cervical stitch removed and underwent a fetal growth scan which estimated the fetal weight as 7lb 1oz.
- 7.3 On the 25 October 1999 at 0745 hours she was admitted for induction of labour due to suspected macrosomia. She was contracting and a vaginal examination showed that her cervix was 3cm. Fetal movements were felt. Fetal heart rate was 140. Cephalic presentation was confirmed at 3/5<sup>th</sup>. No contractions were noted. Artificial rupture of the fetal membrane was performed with clear fluid.
- 7.4 At 1045 hours a vaginal examination showed the cervix to be 4cm dilated and she requested an epidural.
- 7.5 At 1200 hours she was experiencing an urge to push. Vaginal examination showed her cervix was 5cm dilated. She was given the epidural.
- 7.6 At 1240 hours she was experiencing the urge to push. Cervix was 7cm dilated with some descent in the level of the head. The 1<sup>st</sup> Defendant was informed.
- 7.7 At around 1300 hours she underwent a vaginal examination by the 1<sup>st</sup> Defendant and was found to be fully dilated and began pushing.
- 7.8 At 1315 hours her contractions slowed and syntocinon was started.
- 7.9 At 1330 she was pushing and there was acute fetal distress, the baby was diagnosed with shoulder dystocia.
- 7.10 At 1342 hours following traction to the fetal head, the Plaintiff was born weighing 9lbs 4 ounces. The Plaintiff had Apgar scores of 4 at 1 minute, 8 at 5 minutes and 9 at 10 minutes. The Plaintiff had a left sided Erb's palsy.
8. In breach of the Defendants' duty to exercise reasonable care, skill and diligence in the performance of their duties, the delivery of the Plaintiff was undertaken negligently by the 1<sup>st</sup> Defendant and/or other servants or agents of the CIG.
9. As a consequence of the Defendants' negligence, permanent damage was caused to the Plaintiff's right brachial plexus, resulting in Erb's Palsy and the Plaintiff suffered pain, injury, loss and damage.

### **Particulars of Negligence of the 1<sup>st</sup> Defendant**

- 9.1 failing to deal with a case of shoulder dystocia during the second stage of labour in accordance with accepted teaching and methodology;
- 9.2 failing to place Dawn Bodden into the McRoberts position;
- 9.3 failing to apply or direct a midwife to apply, any or any appropriate suprapubic pressure;
- 9.4 applying excessive traction to the Plaintiff's head;
- 9.5 failing to recommend a Caesarian section as alternative method of birth;
- 9.6 generally, failing to exercise reasonable care, skill, competence and diligence in the delivery of the Plaintiff.

### **Particulars of Negligence of the CIG**

10. The CIG is vicariously liable to the Plaintiff for any injury, loss or damage caused to the Plaintiff as a result of the negligence of its employees who:

- 10.1 failed to accurately estimate the fetal weight during the ultrasound on the 15 October 1999;
- 10.2 administered a Syntocinon infusion when Dawn Bodden was already fully dilated;
- 10.3 failing to deal with a case of shoulder dystocia during the second stage of labour in accordance with accepted teaching and methodology;
- 10.4 generally, failing to exercise reasonable care, skill, competence and diligence in the delivery of the Plaintiff.

### **Particulars of Injury**

11. As a result of the Defendants' negligence in management, treatment and care of Dawn Bodden and in the delivery of the Plaintiff, the Plaintiff suffered the following injuries:

- a) Right humeral fracture at birth;
- b) Left upper brachial plexus injury;
- c) Erb's palsy on the left side;
- d) Klumpke's paralysis affecting predominantly the 7<sup>th</sup> and 8<sup>th</sup> cervical nerves.
- e) Limitation in range of motion in the lower extremities of the right arm;
- f) Active and passive limitation of left shoulder elevation and external rotation;
- g) Persistent tightness of the latissimus dorsi and teres major;
- h) Internal rotation contracture with tightness of pectoralis major;
- i) Weakness of wrist extension and elbow flexion contracture.

### **Particulars of Special Damages**

12. The Plaintiff's particulars of special damages will be supplied at a later date by way of a schedule of loss including but not limited to past and future claims for the cost of medical treatment, loss of earnings, travel and gratuitous care.

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

- (a) General damages;
- (b) Special damages;
- (c) Interest on general damages and special damages pursuant to the provisions of the Judicature Law (2017) Revision;
- (d) Such further or other relief as this Honourable Court deems just;
- (e) Costs.



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**KSG**

**Attorneys for the Plaintiff**

**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**

**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.

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**BETWEEN:**

**CALLIE BODDEN**

**PLAINTIFF**

**AND:**

**DR SARATH DE ALWIS**

**1<sup>st</sup> DEFENDANT**

**AND:**

**THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS**

**2<sup>nd</sup> 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 the Plaintiff

**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.

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

KSG  
Attorneys at Law  
4<sup>th</sup> Floor Harbour Centre  
42 North Church Street  
PO Box 2255 KY1-1107  
George Town  
Grand Cayman

Endorsement 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 endorsement]