

IN THE GRAND COURT OF THE CAYMAN ISLANDS

**CAUSE NO: 174 OF 2021
LACV0050 of 2019**

BETWEEN:



JOHN WESLEY

PLAINTIFF

AND:

CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

DEFENDANT

WRIT OF SUMMONS

TO: Cayman Islands Health Services Authority

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 13 day of August 2021.

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 20 August 2000, resides in the Cayman Islands at 146 Botanic Park Road, North Side, P.O. Box 12309, KY1-1011, Grand Cayman.
2. At all material times the Plaintiff was a patient under the care of the servants or agents of the Defendant ("HSA") at its hospital known as Cayman Islands Hospital ("Hospital"), save where specifically identified. At all material times the Defendant was charged with responsibility for the operation, management and administration of the Hospital, and was at all material times the employer of medical, dental, nursing, and other staff at the Hospital.
3. At all material times, the dentists, doctors, nurses, and other staff were servants or agents of the Defendant (save where specifically identified), acting in the course of their employment in the management, treatment and care of the Plaintiff throughout the events more particularised hereafter.
4. On 1 February 2018, the Plaintiff presented at the Hospital for extraction of tooth UR6 (being the first right maxillary molar) following: decay of UR6 commencing in 2014; a root canal procedure on the root of UR6 in January 2016; and apical surgery on the root of UR6 on 26 April 2017.
5. The significant events in the management, treatment and care of the Plaintiff by Dr Michael Leon ("Dr Leon"), Dental Officer of the Defendant on 1 February 2018 were as follows:
 - 5.1 Plaintiff was given local anaesthesia following which the extraction procedure of tooth UR6 was begun;
 - 5.2 The tooth UR6 shattered during the procedure;
 - 5.3 The roots of UR6 were noted to be visible subgingivally;
 - 5.4 The mesio-buccal and mesio-distal roots of UR6 were successfully removed following bone removal;
 - 5.5 Removal of the palatal root was attempted and failed;
 - 5.6 Iatrogenic damage was caused to the mesial wall of the root of the neighbouring

tooth UR5, through being nicked with a bur or other dental tool used in the extraction of UR6;

- 5.7 Dr Leon decided to leave the palatal root in place due to its proximity to the maxillary sinus;
 - 5.8 The socket of UR6 was packed with gel-foam;
 - 5.9 Plaintiff was prescribed oral antibiotics Cleosin 300mg tds for one week and Motrim 400mg tds for one week.
 - 5.10 Plaintiff was provided with no further treatment advice, recommendations, or referrals by the Dr Leon or other employees of the Defendant.
6. The Plaintiff returned to the Hospital twice in the following week for appointments with Dr Leon as a result of extreme ongoing oral pain. The Plaintiff was prescribed additional pain medication and was advised that the pain would soon settle. No investigations were performed into the cause of the ongoing pain.
 7. On or around 10 February 2018, the Plaintiff again returned to the Hospital due to continued pain. Dr Harold Phillips ("Dr Phillips"), an employee of the Defendant, examined the Plaintiff and conducted an oral x-ray. Dr Phillips discovered damage to the root of UR5 resulting from the extraction of UR6, and obvious infection. Dr Phillips advised removal of UR5, removal of the remainder of the tooth UR6, bone graft due to bone loss, and implants in place of UR5 and UR6.
 8. On or around 12 February 2018, the Plaintiff visited the Defendant's referring endodontist Dr Chernin and Dr Naude Dreyer ("Dr Dreyer") to discuss forthcoming treatment and referrals. Dr Dreyer acknowledged that urgent care was required.
 9. There were no maxillo-facial surgeons within the Cayman Islands who had the necessary expertise to carry out the remedial surgery required at the time. Despite this, the Defendant delayed in providing an overseas referral to a maxillo-facial surgeon.
 10. Whilst awaiting a referral for the recommended surgery, the Plaintiff's infection in UR5 worsened and spread to his sinuses.

11. On 1 March 2018, the Defendant provided an overseas referral for the Plaintiff to Dr Jose Garri ("Dr Garri"), a maxillo-facial surgeon who operates from the Baptist Hospital and/or Mosa Surgery, in Miami, Florida (Dr Garri, the Baptist Hospital, and Mosa Surgery are not related to the Defendant). This referral was marked STAT but was limited to the removal of the palantal root of tooth UR6.
12. On or around 5 March 2018, Dr Garri inspected the Plaintiff's teeth and extracted the palantal root of UR6 in accordance with the referral from the Defendant.
13. The Plaintiff continued to suffer sinus pain and pain in tooth UR5 and sought a further referral from the Defendant for the extraction of tooth UR5 and other procedures identified as medically necessary by Dr Phillips in paragraph 8 above.
14. The Defendant provided a second referral whilst the Plaintiff remained in the United States.
15. On 13 March 2018 Dr Garri inspected tooth UR5 and assessed that the prognosis to try to save the tooth and its root canal was poor. He extracted tooth UR5.
16. On 10 April 2018, Dr Garri performed surgery on the Plaintiff due to continued pain.
17. The Plaintiff continued to suffer from recurrent acute sinusitis and barosinusitis and required balloon sinuplasty surgery, which was performed on 26 April 2018 by Dr Andrew Rivera (who is not related to the Defendant).
18. On 13 September 2018, Dr Garri performed a right maxillary sinus lift and alveolar ridge preservation on the Plaintiff.
19. Because the Plaintiff required multiple further oral surgeries, he spent the majority of his time in Miami, Florida between 4 March 2018 and August 2019. During this period, the Plaintiff suffered continuing medical complications.
20. In breach of the Defendant's employees' duties to exercise reasonable care, skill and diligence in the performance of their duties, the care of the Plaintiff was undertaken negligently by the Defendant and its servants and/or agents.
21. As a consequence of the negligence of the employees of the Defendant, the Plaintiff suffered iatrogenic damage to the root of UR5, extraction and prosthodontic replacement of UR5, a bone graft, recurrent sinusitis and sinus surgery, and significant post-operative complications including as a result of long-term opioid and antibiotic prescriptions. The

Plaintiff suffered pain, injury, loss, and damage.

22. The Defendant 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.

Particulars of Negligence

- 22.1 Failure to exercise reasonable care, skill and diligence in the performance of the extraction of tooth UR6, resulting in iatrogenic damage to the mesial wall of the tooth UR5 during the extraction;
- 22.2 Failure to investigate and identify the cause of the Plaintiff's ongoing pain following the extraction of tooth UR6 on 1 February 2018;
- 22.3 Failure to refer the Plaintiff for prompt remedial surgery following the failure to remove the palatal root of tooth UR6, and following discovery of iatrogenic damage to the root of tooth UR5;
- 22.4 Failure to provide an initial referral in respect of tooth UR5.

Particulars of Injury

23. By reason of the aforesaid, the Plaintiff was caused injury, pain, suffering, and loss of amenity:

- 23.1 Pain and infection in the root of tooth UR5;
- 23.2 The need to extract tooth UR5;
- 23.3 The need for prosthodontic replacement of UR5;
- 23.4 The need for an alveolar bone graft to preserve the alveolar ridge following extensive bone loss;
- 23.5 Sinus infections and need for sinus surgeries including a balloon sinuplasty surgery and a right maxillary sinus lift;
- 23.6 Insomnia resulting from extreme oral pain;
- 23.7 Opioid dependency following prescriptions for Percocet and oxycodone for pain relief;
- 23.8 Colon inflammation due to use of prescribed opioids, requiring colonoscopy and endoscopy;
- 23.9 Steroid injections into the colon due to complications from use of prescription opioids;
- 23.10 Clostridium difficile infection resulting from use of antibiotics between February

2018 and May 2018;

- 23.11 Daily headaches and chronic migraine commencing in or around May 2018, with photophobia, vertigo and blurred vision;
- 23.12 Persistent pain in stomach and chronic pain on left side of abdomen;
- 23.13 Frequent doctor visits;
- 23.14 Worsening of depression and social phobia;
- 23.15 Inability to complete, and graduate from, high school due to pain and medical appointments.

Particulars of Special Damages

24. 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.



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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LACV0050 of 2019**

BETWEEN:

JOHN WESLEY

PLAINTIFF

AND:

CAYMAN ISLANDS HEALTH SERVICES AUTHORITY

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 no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for the Plaintiff

Please complete overleaf

Notes on address for service

THIS Writ and Statement of Claim was issued by KSG Attorneys-at-Law, 4th Floor Harbour Centre, 42 North Church Street, George Town. P.O. Box 2255 KY1-1107, Cayman Islands. John Wesley v Cayman Islands Health Services Authority

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
4th 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]