

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 336 OF 2006

BETWEEN:

THOMAS FARRELL

First Plaintiff

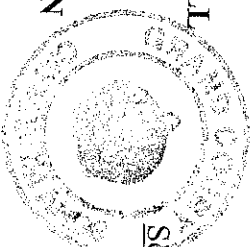
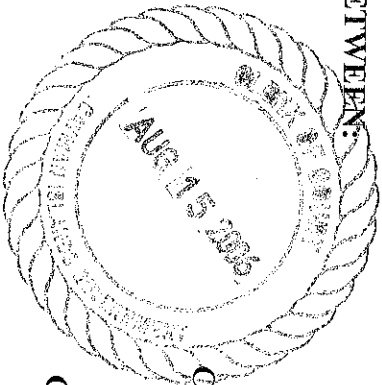
CATHERINE FARRELL

Second Plaintiff

-AND-

CHARLES J. BODDEN

Defendant



WRIT OF SUMMONS

TO: CHARLES J. BODDEN

30 Heron Lane
North Side Road
Grand Cayman
Cayman Islands, B.W.I.

AND TO:

DEREK E. BOGLE & ASSOCIATES
Pasadora Place
Smith Road
P.O. Box 701 GT
Grand Cayman, B.W.I. (Pursuant to GCR Order 6, Rule 4.)

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

Within fourteen (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, PO Box 495 GT, Grand Cayman, Cayman Islands, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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 August 2006

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 issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

This Writ of Summons was issued by Broadhurst Barristers, Attorneys for the Plaintiffs, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, Grand Cayman, Cayman Islands, British West

STATEMENT OF CLAIM

1. The First Plaintiff is an American citizen residing at #84 Saw Mill Road, Cold Spring, New York 11724, USA. He is employed as a financial consultant with Ernst & Young.
2. The Second Plaintiff is also an American citizen and the spouse of the First Plaintiff. She also resides at #84 Saw Mill Road, Cold Spring, New York 11724, USA. The Second Plaintiff was a homemaker at the time of the accident.
3. The Defendant is Caymanian and resides at #30 Heron Lane, North Side Road, Grand Cayman.
4. On or about the 30th of December 2003 at approximately 11:45 pm the First and Second Plaintiffs, were in the process of crossing the West Bay Road in the region of the Hyatt Hotel. They were crossing from the west side to the east side of the street.
5. Prior to the Plaintiffs completing their crossing of the street, the Defendant driving a Honda Civic motor vehicle registration number 80 555, who was travelling south bound, struck them at speed.
6. The car was not licenced to the Defendant but he was driving with the owner's permission. The registered owner of the car is Ernest D. Henry of 88 Coemer Drive, Walkers Road, George Town, Grand Cayman.
7. As a result of the collision, the First and Second Plaintiffs suffered personal injuries, pain and suffering and both were taken to the George Town Hospital by ambulance.
8. The said accident was caused by the Defendant's negligence and or breach of statutory duty under Sections 59 and 60 of the Traffic Law (2001 Revision).

PARTICULARS OF NEGLIGENCE

The Defendant was negligent and is guilty of breaches of the said statutory duties by:

- a) Failing to exercise due care and attention when using the road and to have due regard to the safety and comfort of other road users and the preservation and protection of public and private property;

- b) Failing to drive in such a manner so as to have full control of the vehicle at all times;
- c) Driving at a speed which was too fast in the circumstances;
- d) Failing to keep any, or any proper, look-out or to have any sufficient regard for pedestrians;
- e) Driving the vehicle so as to collide with the First and Second Plaintiffs;
- f) Failing to stop, to slow down, to swerve, or control his vehicle so as to avoid the accident;
- g) Failing to give any adequate warning of his approach;
- h) Failing to see the First and Second Plaintiffs in sufficient time to avoid colliding with them or at all; and
- i) Failing to exercise reasonable skill and care to be expected of a reasonably skilful and careful driver in the circumstances.

9. By reason of the Defendant's negligence and/or breach of duty the First Plaintiff and the Second Plaintiff have suffered injury and loss and damage.

PARTICULARS OF INJURIES

First Plaintiff

The First Plaintiff suffered very serious injuries as a result of the accident and continues to suffer as a result of the injuries sustained. The injuries include:

- (i) closed head injury with severe post concussion syndrome resulting in mood disorder, memory impairment, attention and cognitive deficits;
- (ii) depression;
- (iii) exhaustion;
- (iv) sleep disorder;
- (v) lowered libido;
- (vi) 8 distinct spinal fractures;
- (vii) shattered left shin and hip;
- (viii) chest injuries- multiple right sided rib fractures;
- (ix) punctured lung;
- (x) frozen left shoulder;
- (xi) right hand fracture;

- (xii) nasal fracture;
- (xiii) facial scars;
- (xiv) scarring to body; and
- (xv) multiple abrasions and lacerations.

The First Plaintiff was born on November 20, 1954 and was 49 years old at the time of the accident. He lost consciousness at the scene of the accident and was taken to the George Town Hospital by ambulance.

The First Plaintiff had both a chest and naso-gastric tube placed in his stomach. Skin staples were placed over his right shoulder. As there were multiple serious injuries he was stabilized and subsequently airlifted to the Jackson Memorial Hospital in Miami on December 31, 2003. He arrived with decreased mental status. He remained at Jackson Memorial Hospital for 2 weeks. His left leg was treated for a comminuted fibular head and neck fracture that was impacted and laterally displaced, as well as a comminuted mid shaft tibial fracture with approximately one-half shaft's width medial displacement of the distal fragment. He underwent a complex reduction of segmental left tibia/fibula fracture utilizing the Iizarov external fixator.

On January 14, 2004, he was subsequently airlifted and admitted to the Huntington Hospital in New York for a further 10 days. The First Plaintiff remained bedridden for over 3 weeks. He was finally transferred to the Burke Rehabilitation Centre on January 23, 2004 for an additional 3 weeks.

In April 2004, the First Plaintiff returned to the Huntington Hospital, New York, where the external fixator was removed from his lower extremity.

On March 4, 2005, the First Plaintiff underwent an operative arthroscopy and manipulation under anesthesia; arthroscopic capsular release of rotator interval; arthroscopic subacromial decompression and acromioplasty of the left shoulder at the Hospital for Special Surgery.

The First Plaintiff enjoyed a healthy lifestyle prior to the accident and had no functional limitations whatsoever. As a result of his closed brain injury, he continues to suffer from attention and cognitive deficits, and is both immediate and remote memory impaired. Since the accident he has had to work very hard to be able to continue to perform on a satisfactory basis in his employment. The First Plaintiff also suffers from depression and becomes easily fatigued. All these factors have interfered significantly with his personal life and reduced his work capacity. These disabilities are likely to be permanent.

The First Plaintiff's other physical injuries have affected him permanently. It appears that he will never regain full range of motion in his left shoulder which affects his ability to play golf. He will continue to experience pain in

the area of the fractures to his ribs and his left leg is still a source of pain. The injuries have permanently affected the First Plaintiff's day to day life. Prior to the accident the First Plaintiff had been an avid runner. As a result of his injuries he is no longer able run.

The First Plaintiff reserves his right to expand upon the above at the trial of this matter.

The Second Plaintiff

The Second Plaintiff suffered serious injuries as a result of the accident and continues to suffer as a result of the injuries sustained. The injuries are as follows:

- (i) oblique fracture, right distal tibial shaft, open;
- (ii) open wound to the right leg necessitating skin graft from donor site;
- (iii) obvious deformity of the right leg;
- (iv) multiple skin grafts from left thigh;
- (v) torn lateral meniscus to left knee and chondromalacia patella requiring arthroscopy;
- (vi) multiple permanent scarring on lower extremities; and
- (vii) multiple contusions and abrasions

The Second Plaintiff was born on September 27, 1958 and was 45 years old at the time of the accident. She was taken to the George Town Hospital by ambulance and was admitted. She was subsequently airlifted to Jackson Memorial Hospital in Miami where she underwent fixation of her right tibia and fibula fracture with an intramedullary rod and screws on January 6, 2004. She remained hospitalized through January 11, 2004 and was discharged in a wheelchair and subsequently progressed to a walker, crutches and a cane.

In February 2004, the Second Plaintiff underwent a skin graft procedure at the Huntington Hospital in New York to treat the open wound in her right leg. The skin graft was taken from her left thigh to her right leg.

The Second Plaintiff underwent operative arthroscopy to her left knee in August 2004. She still suffers ongoing pain in her left knee and walks with a limp.

On April 18, 2006 the Second Plaintiff underwent arthroscopic right knee surgery and removal of the hardware from her initial right leg operation. These latter surgeries took place at the Huntington Hospital. The right leg has an obvious deformity and there is also unsightly upper left thigh multiple skin grafts secondary to the injury.

The Second Plaintiff continues to suffer from her injuries which appear to be permanent and have impacted her day to day living. Further, she was an avid runner but has been unable to do so since the accident and the potential for her to be able to run again in the future is very unlikely.

The Second Plaintiff reserves her right to expand upon the above at the trial of this matter.

PARTICULARS OF SPECIAL DAMAGES

First Plaintiff

The First Plaintiff has incurred and continues to incur medical expenses as a result of the accident. As a result of his injuries, the First Plaintiff was unable to work for 6 months. He has subsequently resumed work but as indicated works very hard in order to compensate for his cognitive deficit. The First Plaintiff will likely need to undergo psychotherapy and will also continue to need extensive physiotherapy for a long period of time. Full particulars of the First Plaintiff's special damages and losses, which are continuing, will be provided at trial.

Second Plaintiff

The Second Plaintiff has incurred and continues to incur medical expenses as a result of the accident. It is estimated that the Second Plaintiff will continue to need extensive physiotherapy for an extended period of time. Full particulars of the Second Plaintiff's special damages and losses, which are continuing, will be provided at trial.

10. Further, the First and Second Plaintiffs seek interest on the above special and general damages pursuant to s.34 of the Judicature Law (2002 Revision) at the prescribed rate from the date of accident until the date of issue herein and thereafter upon any sum awarded.

AND THE FIRST PLAINTIFF CLAIMS:

- (1) Damages;
- (2) Pre and Post-Judgment interest on the above damages in accordance with Section 34 of the Judicature Law (2002 Revision);

- (3) Such further and other relief as this Honourable Court deems just.

AND THE SECOND PLAINTIFF CLAIMS:

- (1) Damages;
- (2) Pre and Post-Judgment interest on the above damages in accordance with Section 34 of the Judicature Law (2002 Revision);
- (3) Such further and other relief as this Honourable Court deems fit.

Dated this ^{15th} day of August 2006.

Broadhurst Barristers

BROADHURST BARRISTERS

Attorneys-at-Law for the Plaintiffs

This Statement of Claim was issued by Broadhurst Barristers, Attorneys for the Plaintiffs, whose address for service is 40 Linwood Street, P.O. Box 2503 GT, Grand Cayman, Cayman Islands, British West Indies.

INDORSEMENT AS TO INSURER OF MOTOR VEHICLE

The Plaintiffs' claim arises out of the use of a motor vehicle on a public road. The insurer of the vehicle of the Defendant named herein is Derek E. Bogle & Associates Insurance Ltd., whose address is Pasadora Place, Smith Road, P.O. Box 701 GT, Grand Cayman, Cayman Islands, British West Indies.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.
2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for fourteen (14) days after his Acknowledgement, 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.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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. ³³⁶ OF 2006

BETWEEN:

THOMAS FARRELL

First Plaintiff

CATHERINE FARRELL

Second Plaintiff

-AND-

CHARLES J. BODDEN

Defendant

ACKNOWLEDGEMENT 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 see 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 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.

BROADHURST BARRISTERS
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BRITISH WEST INDIES

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