

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

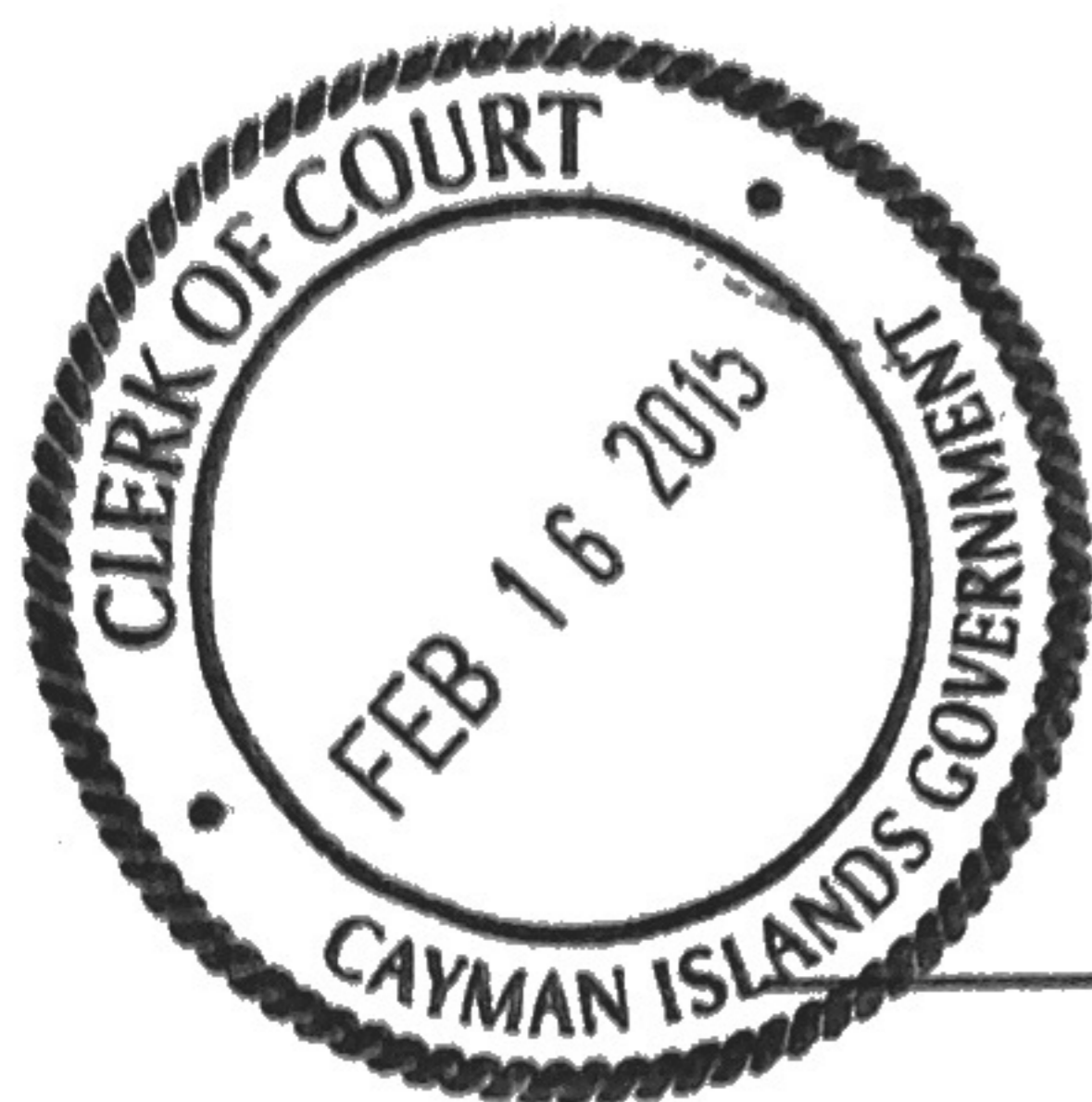
CAUSE NO: <sup>G-0023</sup> OF 2015

BETWEEN:

BRIAN TOMLINSON

AND

NATIONAL ROADS AUTHORITY



Plaintiff

Defendant

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WRIT OF SUMMONS

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TO: National Roads Authority  
370 North Sound Road  
P.O. Box 10426  
Grand Cayman KY1-1004  
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 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 16 day of February 2015



## STATEMENT OF CLAIM

### The Parties

1. The Plaintiff (**Mr Tomlinson**) is a citizen of the United States of America and since 1989 has had Caymanian status. Mr Tomlinson became a Naturalised British Overseas Territories Citizen in 2006. At all material times he has been resident in Grand Cayman.
2. Mr Tomlinson's postal address is 467 North Side Road, PO Box 2288, George Town, KY1-1107, Cayman Islands.
3. The address for service is c/o his attorneys Appleby (Cayman) Limited, 75 Fort Street, Clifton House, P.O. Box 190, George Town, Grand Cayman KY1-1104
4. The Defendant is a statutory authority created by the National Roads Authority Law (2006 Revision) and is responsible for the building and maintenance of all roads in the Cayman Islands.

### Summary of Claim

5. Mr Tomlinson's claim is for damages for breach of contract and/or negligence in respect of his treatment by the Defendant in its capacity as his employer.
6. Mr Tomlinson was employed by the Defendant as Managing Director from 1 December 2007 to 30 November 2012 under a contract of employment dated 5 October 2007 (**the Contract**).
7. As a result of an ongoing pattern of, alternatively a succession of separate instances of, mistreatment by the Defendant, each instance of which was a breach of the Defendant's duty to take reasonable care for the health and well-being of Mr Tomlinson as its employee and/or a breach of a common law duty of care, Mr Tomlinson suffered serious deterioration to his health as particularised further below.
8. Further, the Defendant failed, in breach of an express contractual duty, to provide disability insurance, thereby compounding the effect of its other breaches.

### Duties owed by the Defendant

9. Mr Tomlinson will rely at trial on the contract for its full terms, true meaning and effect.



10. The Defendant owed Mr Tomlinson the express contractual duty to provide Mr Tomlinson with disability insurance pursuant to clause 7.9 of the contract of employment referred to in paragraph 6 above.
11. Further, the following duties were implied terms of the Contract:
  - a. The duty not to act without reasonable cause in a manner calculated or likely to damage or destroy the relationship of confidence and trust between the Defendant as employer and Mr Tomlinson as employee;
  - b. The duty to take reasonable care of the health and safety of Mr Tomlinson;
  - c. The duty to take reasonable steps to provide Mr Tomlinson with a safe workplace and safe system of work;
  - d. The duty to provide a suitable working environment, free of unacceptable behaviour;
12. The terms pleaded at 11 above are to be implied into the Contract as a matter of standard business practice in relation to the employment of a person and in the circumstances contemplated by the Contract, alternatively to give business efficacy to the same, alternatively as representing the obvious intention of the parties, alternatively as being of a type and to the effect to be implied in law into contracts of employment.
13. The Defendant owed Mr Tomlinson the statutory duty to ensure the health, safety and welfare at work of Mr Tomlinson as per section 58 of the Labour Law (2011 Revision).
14. The Defendant also owed the duties set out at 11b, 11c, and 11d above as aspects of its common law duty of care towards Mr Tomlinson.

#### **Breaches of duties**

15. The Defendant breached the duty pleaded at 11a above. The Defendant acted without reasonable cause in a manner calculated or likely to damage or destroy the relationship of confidence and trust between the Defendant as employer and Mr Tomlinson as employee.

#### **Particulars**

- a. The Defendant threatened Mr Tomlinson in 2008 with termination when he objected to Steve McField, a member of the Board of Directors of the Defendant (Directors) and an



Attorney, being appointed to provide legal services to the Defendant due to there being, in Mr Tomlinson's view, a conflict of interest. Mr McField was annoyed with the objection and sought to have Mr Tomlinson dismissed.

- b. The Defendant tried to persuade Mr Tomlinson to approve a sub-division road built by a specific paving company in October 2010 despite the paving company's material failing to comply with the Defendant's standards. The Deputy Chairman of the NRA Board, Troy Whittaker, visited Mr Tomlinson and tried to persuade Mr Tomlinson to approve this job;
  - c. The Defendant circumvented Mr Tomlinson's authority by having other sub-division roads built by the company referred to in paragraph 15b above approved by Mr Tomlinson's Deputy, Paul Parchment, without Mr Tomlinson's knowledge;
  - d. The Defendant sought to have Mr Tomlinson's contract terminated when he responded truthfully to a request for information under the Freedom of Information Law 2007 concerning the paving of roads and parking lots in Cayman Brac. The Directors intended to dismiss Mr Tomlinson until they received a letter from the Freedom of Information Office confirming that Mr Tomlinson's actions were lawful;
  - e. The Defendant dismissed Mr Tomlinson following an incident which began in February 2012. In February 2012 Mr Tomlinson reported to the Cayman Islands Governor an irregularity between the then Premier McKeeva Bush and the Collector of Customs which involved the Collector of Customs approving an importation of illegal explosives on instruction from the Premier despite Mr Tomlinson refusing this importation. In his role with the Defendant Mr Tomlinson was responsible for the approval of all imports of explosives into the Islands, and his actions had been perfectly correct. However, on 10 April 2010 Mr Tomlinson was informed by Richard Christiansen, a Licensed Blaster, that he had "not pleased" the Premier and the Premier would seek to have him removed from his post. Mr Tomlinson's employment terminated on 30 November 2012, with the Defendant giving inconsistent reasons of budget cuts on the one hand, and sickness absence on the other.
16. In breach of the duty pleaded at 11b above, namely the implied contractual and common law duty to take reasonable care of the health and safety of Mr Tomlinson , and the duty pleaded at 11c above, namely the implied contractual duty to take reasonable steps to provide Mr Tomlinson with a safe workplace and safe system of work, and the duty pleaded at 13 above, namely the statutory duty to ensure the health, safety and welfare at work of Mr Tomlinson as per section 58 of the Labour Law (2011 Revision), the Defendant caused Mr Tomlinson



stress beyond the normal stress that could reasonably be expected with such a role and therefore created an unsafe working environment.

### Particulars

- a. The Defendant failed to prevent Mr Tomlinson from working in an environment that was unsafe due to it being stressful beyond the normal expected stress that such a role would bring in that the Defendant:
- b. The Defendant failed to protect Mr Tomlinson's safety by threatening Mr Tomlinson with termination as set out at 15a above;
- c. The Defendant failed to protect Mr Tomlinson's safety by applying pressure upon Mr Tomlinson to approve a sub-division road built by a specific paving company in October 2010 despite the paving company's material failing to comply with the Defendant's standards as set out at 15b above;
- d. The Defendant failed to protect Mr Tomlinson's safety by circumventing his authority as set out at 15c above;
- e. The Defendant failed to protect Mr Tomlinson's safety by seeking to have Mr Tomlinson's contract terminated when he responded truthfully to a request for information under the Freedom of Information Law 2007 as set out at 15c above; and
- f. The Defendant dismissed Mr Tomlinson as set out at 15e above;
- g. The Defendant failed to take remedial steps to protect Mr Tomlinson's safety by failing to ensure that the nature of the work that Mr Tomlinson was required to perform was always lawful once it became or should have reasonably been apparent to the Defendant that Mr Tomlinson was suffering from work related stress;
- h. The Defendant failed to take remedial steps to protect Mr Tomlinson's safety by failing to support and reassure Mr Tomlinson once it became apparent or should reasonably have been apparent to the Defendant that Mr Tomlinson was suffering from work related stress;
- i. The Defendant gave Mr Tomlinson notice of termination of his employment in June 2012 which amounted to an unfair dismissal despite being aware that Mr Tomlinson



was suffering from Chronic Fatigue Syndrome and that the additional stress of termination would exacerbate Mr Tomlinson's injury.

17. In breach of the duty pleaded at 11d above, namely the implied contractual duty to provide a suitable working environment, free of unacceptable behaviour, the Defendant failed to take reasonable steps to protect Mr Tomlinson from bullying and unauthorised interference in his duties.

#### **Particulars**

- a. The defendant threatened Mr Tomlinson with termination as set out at 15a above;
  - b. Tried to persuade Mr Tomlinson to approve a sub-division road built by a specific paving company in October 2010 despite the paving company's material failing to comply with the Defendant's standards as set out at 15b above;
  - c. Circumvented Mr Tomlinson's authority as set out at 15c above;
  - d. Sought to have Mr Tomlinson's contract terminated when he responded truthfully to a request for information under the Freedom of Information Law 2007 as set out at 15d above;
  - e. Dismissed Mr Tomlinson further to pressure from the then Premier as set out at 15e above;
  - f. Failed to take remedial steps to protect Mr Tomlinson's safety by ensuring that the nature of the work that Mr Tomlinson was required to perform was always lawful once it became or should have reasonably been apparent to the Defendant that Mr Tomlinson was suffering from work related stress;
  - g. Failed to take remedial steps to protect Mr Tomlinson's safety by supporting and reassuring Mr Tomlinson once it became apparent or should reasonably have been apparent to the Defendant that Mr Tomlinson was suffering from work related stress;
18. In breach of the express contractual duty pleaded at 10 above, namely the duty to provide Mr Tomlinson with disability insurance pursuant to clause 7.9 of the contract of employment referred to in paragraph 6 above, the Defendant failed to provide Mr Tomlinson with Disability Insurance.
19. As a result of the matters set out above, Mr Tomlinson has suffered injury, loss and damage.



### **Particulars of injury**

20. Mr Tomlinson has been diagnosed with Chronic Fatigue Syndrome;
21. Mr Tomlinson has been unable to work at all since June 2012;
22. Mr Tomlinson is unable to carry out "normal everyday tasks" and is considered disabled;
23. Prior to Mr Tomlinson's injury he enjoyed an active social life and was involved in many activities which he cannot now enjoy;
24. Mr Tomlinson currently has no prospects of recovery;

### **Causation**

25. Mr Tomlinson's injury was a reasonably foreseeable result of his treatment by the Defendant;

### **Loss**

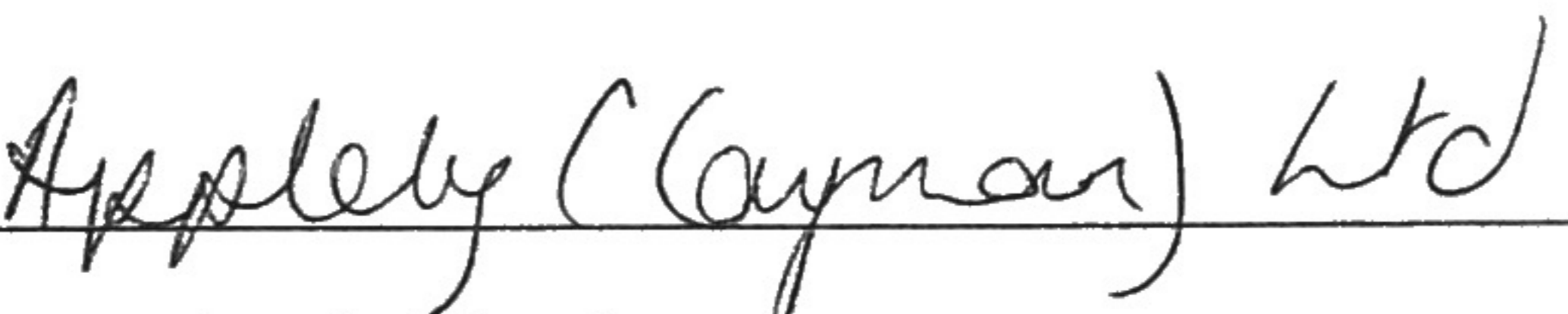
26. As a result of the Defendant's breaches, Mr Tomlinson has suffered the following losses:

### **Special Damages**

27. As a result of his injuries, Mr Tomlinson has or will incur loss either on his own behalf or will claim on behalf of those providing assistance to him, as follows:
  - a. Medical expenses for the treatment of his injury;
  - b. Expenses incidental to the obtaining of medical treatment;
  - c. Expenses sustained for the period of convalescence;
  - d. Loss of income since June 2012;
  - e. Ongoing medical expenses and claims for unpaid assistance on behalf of those provided.

AND THE PLAINTIFF claims:

- (1) General damages for pain and suffering and loss of amenities;
- (2) Special Damages, details of which are to be provided prior to trial;
- (3) Damages for breach of contract as particularised above;
- (4) Pre-judgment and post-judgment interest in accordance with Section 34 of the Judicature Law (2013 Revision);
- (5) Costs.

  
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Appleby (Cayman) Ltd.

THIS WRIT was issued by Appleby (Cayman) Ltd. whose address for service is 75 Fort Street, Clifton House, P.O. Box 190, George Town, Grand Cayman KY1-1104 Ref: 417832.0001.