**Form SA**

Rule 5.02(1)

**IN THE COUNTY COURT OF VICTORIA AT MELBOURNE**

**DAMAGES AND COMPENSATION LIST GENERAL DIVISION**

BETWEEN

**BRAD HALE**

and

**BELLVOIR FOOTBALL CLUB**

and

**SOUTH REGIONAL JUNIOR FOOTBALL LEAGUE**

and

**BEACHFRONT CITY COUNCIL**

 Cl-14-98988

Plaintiff

First Defendant

Second Defendant

Third Defendant

**WRIT**

Date of document: 24 July 2014 Filed on behalf of: The Plaintiff Prepared by:

**Moulds Inkley Lawyers**

Level 16

53 Swanson Street

MELBOURNE VIC 3000

Solicitor's Code: 50 6974

DX:

Tel:

Fax:

Ref: HBS: 568998

Attention:

 Email: reception@gcl.com.au

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by -

1. filing a "Notice of Appearance" in the Registrar's office in the County Court Registry, 250 William Street, Melbourne, or, where the writ has been filed in the office of a Registrar out of Melbourne, in the office of that Registrar; and
2. on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows -

1. where you are served with the writ in Victoria, within 10 days after service;
2. where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
3. where you are served with the writ in Papua New Guinea, within 28 days after service;
4. where you are served with the writ in New Zealand under Part 2 of the Trans­ Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
5. in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, $0.00 and $0.00 for the legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

**FILED** July 2014

REGISTRAR

THIS WRIT is to be served within one year from the date it is filed or within such further period as the Court orders.

**STATEMENT OF CLAIM**

1. The First Defendant is and was at all relevant times the occupier of Brook Reserve, Ash Street, Bellvoir in the State of Victoria **("the premises").**
2. The Second Defendant is and was at all relevant times an incorporated association pursuant to the laws of Australia and capable of being sued as such.
3. The Third Defendant is and was at all relevant times:
	1. a body corporate pursuant to the *Local Government Act* 1989 (VIC) and capable of being sued as such;
	2. the occupier of, and/or had the care and control of the premises.
4. On 29 June 2009, the Plaintiff whilst lawfully upon the premises suffered injury when he landed left foot first into the cyclone fence which encircled the perimeter of the oval at the premises where he was playing football **("the incident").**
5. It was known, or should have been known, to the First, Second and Third Defendants that the boundary line was located too close to the fence thereby presenting a hazard to the Plaintiff.
6. The incident and the Plaintiff's injuries were caused by the negligence of the First and Second Defendants, its servants or agents; and/or the breach of duty the First and Second Defendants owed to the Plaintiff whilst he was lawfully upon the premises.

**PARTICULARS OF BREACH OF DUTY OF THE FIRST AND/OR SECOND DEFENDANTS**

1. Permitting the boundary line to be too close to the fence at the premises.
2. Failing to ensure sufficient distance between the boundary line and the fence at the premises.
3. Failing to ensure compliance with the preferred minimum distance specified by the Australian Football League Victoria between the boundary line and the oval.
4. Failing to comply with the Australian Football League Victoria Preferred Facilities Guidelines.
5. Failing to ensure that the distance between the boundary line and the fence allowed for adequate run off by the Plaintiff.
6. Requiring the Plaintiff to play on the oval despite the presence of a hazard or obstacle.
7. Knowing that the fence presented a hazard to the Plaintiff and failing to provide any or any adequate warning as to the close proximity of the fence.
8. Failing to have any or any adequate system in place for the identification and/or rectification of potential hazards at the premises.
9. Failing to have in place appropriate risk management policies.
10. Knowing that the fence presented a hazard and failing to undertake any adequate rectification or removal of the cyclone fencing.
11. Failing to heed complaints that the close proximity of the fence to boundary line presented a hazard.
	1. Failing to act after other people sustained injury due to the fence being too close to the boundary line.

m. Failing to take reasonable care for the safety of the Plaintiff.

1. Further, or in the alternative, the incident and the Plaintiff's injuries were caused by the negligence and/or breach of duty of the Third Defendant.

**PARTICULARS OF NEGLIGENCE OF THE THIRD DEFENDANT**

The Plaintiff refers to and repeats particulars (a) to (m) of paragraph 6 and says further:

1. Failing to take reasonable care for persons such as the Plaintiff lawfully upon the premises.
2. Permitting the boundary line to be located so as to present an increased risk of injury to the Plaintiff.
3. Failing to take any or any adequate steps to ensure that the boundary line was not located too close to the fence.
4. Failing to direct the First or Second Defendants to rectify the state of the premises.
5. Failing to direct that the boundary line be relocated so as to avoid or minimise risk of injury.
6. Permitting the Plaintiff to play football at the premises when it knew, or ought to have known, that the premises presented a hazard.
7. Failing to warn the Plaintiff that it was unsafe to play football on the oval at the premises.
8. Failing to prohibit sporting activity at the premises until the hazard was rectified.
9. Further, or in the alternative, the First, Second and/or Third Defendants as occupiers of the premises owed the Plaintiff a duty pursuant to section 14B(3) of the *Wrongs Act* 1958 to take such care as in all the circumstances was reasonable to see that the Plaintiff was not injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the premises.
10. Further, or in the alternative, the Plaintiff's injuries were caused by a failure of the First, Second and/or Third Defendant to comply with the standard set out in section 14B(3) of the *Wrongs Act* 1958 in that the First, Second and/or Third Defendants, their employees or agents, failed to provide such care as in all the circumstances was reasonable to ensure that the plaintiff was not injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the state of the premises.

**PARTICULARS OF BREACH**

The particulars of paragraphs 6 and 7 above are referred to and repeated.

1. By reason of the matters aforesaid, the Plaintiff has suffered injury, loss and damage.

**PARTICULARS OF INJURY**

1. Dislocation of tibiofemoral joint requiring surgical intervention resulting in common peroneal nerve avulsion.
2. Rupture of anterior and posterior cruciate ligaments.
3. Capsule rupture.
4. Disruption of posteriolateral corner and meniscal tears of the left knee.
5. Consequential post-operative skin necrosis and infection requiring skin graft.
6. Left foot drop.
7. Scarring and disfigurement.
8. Anxiety and depression.

**PARTICULARS OF LOSS OF EARNINGS AND LOSS OF EARNING CAPACITY**

The Plaintiff was born on 11 February 1992.

As at the date of the incident the Plaintiff was employed as a carpenter.

Since the date of the incident the Plaintiff has experienced periods of unemployment due to injury.

The Plaintiff is at risk of unemployment and/or underemployment in the future and accordingly makes a claim for both past and future economic loss.

Full details of economic loss will be provided closer to the date of hearing.

**PARTICULARS OF HOSPITAL AND MEDICAL EXPENSES**

The Plaintiff has incurred various hospital, medical and like expenses.

To the extent that he is required to reimburse the Health Insurance Commission, he claims an indemnity.

The Plaintiff will require medical care in the future, including physiotherapy and specialist consultations.

Further, the Plaintiff is physically restricted and will attract damages on the principles in *Griffiths v Kerkemeyer.*

Full particulars of the Plaintiff's claim for hospital, medical and like expenses shall be provided subsequent to the receipt of notice of charge from the Health Insurance Commission and prior to the trial of this proceeding.

**AND THE PLAINTIFF CLAIMS: DAMAGES**

Dated 24 July 2014

Moulds Inkley Lawyers

1. Place of trial - Melbourne
2. Mode of trial - Judge alone
3. This writ was filed for the Plaintiff by Moulds Inkley Lawyers, solicitors, of Level 16, 53 Swanston Street, MELBOURNE VIC 3000
4. The address of the Plaintiff is C/- Moulds Inkley Lawyers, Level1 6, 53 Swanston Street, MELBOURNE VIC 3000.
5. The address for service of the Plaintiff is Moulds Inkley Lawyers, Level 16, 53 Swanston Street, MELBOURNE VIC 3000
6. The address of the First Defendant is 7 Spray Street, BELLVOIR VIC.
7. The address of the Second Defendant is Level 2, Regional Development Pavilion, Moreland Recreation Reserve, Linton Street Moreland VIC
8. The address of the Third Defendant is 16 Sovereign Avenue, BEACHFRONT VIC