

Form 43.2-B

**Form of order of court for recovery of documents in personal injuries action**

IN THE COURT OF SESSION

In the Cause (Cause reference No.     )

SPECIFICATION OF DOCUMENTS

[A.B.] (*designation and address*), Pursuer

against

[C.D.] (*designation and address*), Defender

Date: (*date of posting or other method of service*)

To: (*name and address of party or parties from whom the following documents are sought to be recovered*)

You are hereby required to produce to the agent for the pursuer within seven days of the service on you of this Order:-

[*Insert such of the following calls as are required.*]

1. All books, medical records, charts, X-rays, notes and other documents of (*specify name of each medical practitioner or general practitioner practice named in summons in accordance with rule 43.2(1)(b)*), and relating to the pursuer [*or, as the case may be*, the deceased], in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature, extent and cause of the pursuer's [*or, as the case may be*, the deceased's] injuries when he attended his doctor on or after (*specify date*) and the treatment received by him since that date.
2. All books, medical records, charts, X-rays, notes and other documents of (*specify, in separate calls, the name of each hospital or other institution named in summons in accordance with rule 43.2(1)(b)*), and relating to the pursuer [*or, as the case may be*, the deceased], in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature, extent and cause of all injuries from which the pursuer [*or, as the case may be*, the deceased] was suffering when he was admitted to that institution on or about (*specify date*), the treatment received by him since that date and his certificate of discharge, if any.
3. The medical records and capability assessments held by the defender's occupational health department relating to the pursuer [*or, as the case may be*, the deceased], except insofar as prepared for or in contemplation of litigation, in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show the nature and extent of any injuries, symptoms and

condition from which the pursuer [*or, as the case may be, the deceased*] was suffering and the nature of any assessment and diagnosis made thereof on or subsequent to (*specify date*).

4. All wage books, cash books, wage sheets, computer records and other earnings information relating to the pursuer (*or, as the case may be, the deceased*) (N.I. Number (*specify number*)) held by or on behalf of (*specify employer*), for the period (*specify dates commencing not earlier than 26 weeks prior to the date of the accident or the first date of relevant absence, as the case may be*) in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries showing or tending to show:-

- (a) the pursuer's [*or, as the case may be, the deceased's*] earnings, both gross and net of income tax and employee National Insurance Contributions, over the said period.
- (b) the period or periods of the pursuer's [*or, as the case may be, the deceased's*] absence from employment over the said period and the reason for absence;
- (c) details of any increases in the rate paid over the period (*specify dates*) and the dates on which any such increases took effect;
- (d) the effective date of, the reasons for and the terms (including any terms relative to any pension entitlement) of the termination of the pursuer's [*or, as the case may be, the deceased's*] employment;
- (e) the nature and extent of contributions (if any) to any occupational pension scheme made by the pursuer [*or, as the case may be, the deceased*] and his employer;
- (f) the pursuer's present entitlement (if any) to occupational pension and the manner in which said entitlement is calculated.

5. All accident reports, memoranda or other written communications made to the defender or anyone on their behalf by an employee of the defender who was present at or about the time at which the pursuer [*or, as the case may be, the deceased*] sustained the injuries in respect of which the summons in this cause was issued and relevant to the matters contained in the statement of claim.

6. Any risk assessment current at the time of the accident referred to in the summons or at the time of the circumstances referred to in the summons giving rise to the cause of action (as the case may be) undertaken by or on behalf of the defender for the purpose of regulation 3 of the Management of Health and Safety at Work Regulations 1992 and subsequently regulation 3 of the Management of Health and Safety at Work Regulations 1999 [*or (specify the regulations or other legislative provision under which the risk assessment is required)*] in order that excerpts may be taken therefrom at the sight of the Commissioner of all entries relating to the risks posed to workers [*or (specify the matters set out in the statement of claim to which the risk assessment relates)*].

7. Failing principals, drafts, copies or duplicates of the above or any of them.

*(Signature, name and business address of the agent for the pursuer .)*

## NOTES

- (1) The documents recovered will be considered by the parties to the action and they may or may not be lodged in the court process. A written receipt will be given or sent to you by the pursuer, who may thereafter allow them to be inspected by the other parties. The party in whose possession the documents are will be responsible for their safekeeping.
- (2) Parties are obliged by rules of court to return the documents to you when their purpose with the documents is finished. If they do not, you will be entitled to apply to the court, under rule 35.3(9) of the Rules of the Court of Session 1994, for an order to have this done and you may apply for an award of the expenses incurred in doing so. Further information about this can be obtained from the General Department, Court of Session, 2 Parliament Square, Edinburgh, EH1 1RQ (Tel. 0131-225-2595).
- (3) If you claim that any of the documents produced by you are **confidential**, you must still produce such documents but may place them in a separate sealed packet by themselves, marked “CONFIDENTIAL”. In that event they must be delivered or sent by post to the **Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, EH1 1RQ**. Any party who wishes to open the sealed packet must apply to the court by motion. A party who makes such an application must intimate the motion to you. [Note: While Part 1 of Schedule 4 of the Coronavirus (Scotland) Act 2020 continues in force confidential documents can be submitted to the Deputy Principal Clerk of Session in electronic form via Objective Connect. Further information on this procedure can be obtained by emailing [gcs@scotcourts.gov.uk](mailto:gcs@scotcourts.gov.uk).]
4. Subject to paragraph (3) above, you may produce these documents by sending them by registered post or by the first class recorded delivery service or registered postal packet, or by hand to *(name and address of the agent for the pursuer)*.

## CERTIFICATE

*(Date)*

I hereby certify with reference to the above order of the Court of Session in the cause *(cause reference number)* and the enclosed specification of documents, served on me and marked respectively X and Y:-

(1) That the documents which are produced and which are listed in the enclosed inventory signed by me and marked Z, are all the documents in my possession falling within the specification.

*or*

That I have no documents in my possession falling within the specification.

(2) That, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession. These documents are as follows:- (*describe them by reference to the descriptions of documents in the specification*). They were last seen by me on or about (*date*), at (*place*), in the hands of (*name and address of the person*).

*or*

That I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification.

*(Signed)*

*(Name and address)*