

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 243 2009

BETWEEN:

DAMION ONEIL BROWN

PLAINTIFF

AND:

GARFIELD "JUNIOR" LINDO

DEFENDANT



WRIT OF SUMMONS

TO: Garfield "Junior" Lindo
of Kingston, Jamaica

Name and address of Defendant's motor vehicle insurer:

British Caymanian Insurance Company Limited
P.O. Box 74 BritCay House, 236 Eastern Avenue, Grand Cayman KY1-1002

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of the Sir John Golding Rehabilitation Centre, Kingston, Jamaica in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, 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 any 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 May 2009.

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 that date of original issuance unless renewed by order of the Court

IMPORTANT

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

BETWEEN:

DAMION ONEIL BROWN

PLAINTIFF

AND:

GARFIELD "JUNIOR" LINDO

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff, Damion Oneil Brown, is a Jamaican national born 5 September 1981, and currently resides and is being treated at the Sir John Golding Rehabilitation Centre, Kingston, Jamaica, but at all material times resided in George Town, Cayman Islands and was employed as a greenskeeper in the Golf Maintenance Department with the Britannia Golf Club, operated by Grand Cayman Beach Suites at Seven Mile Beach, Grand Cayman.
2. The Defendant, Garfield "Junior" Lindo is a Jamaican national presently residing in Jamaica, but at all material times was employed in George Town, Grand Cayman and resided at Randike Gardens, George Town, Grand Cayman.
3. The Defendant was at all material times the owner and operator of a 1996 Honda Civic motor vehicle bearing Cayman registration plate number 114591, hereinafter referred to as the "Defendant's motor vehicle".
4. On 22 November 2008 at or about 2:00 a.m., the Plaintiff was a front seat passenger in the Defendant's motor vehicle which was being operated by the Defendant east bound on Eastern Avenue in the vicinity of the Church of God of the Prophecy, when the Defendant's motor vehicle left the roadway, mounted the sidewalk on the southside of Eastern Avenue and crashed through a fence and collided with a utility pole located immediately adjacent to the parking lot of the Church of God of the Prophecy.

Particulars of negligence and breach of duty of care

5. The Plaintiff states that the aforesaid collision occurred as a result of the negligence of the Defendant in the operation of the Defendant's motor vehicle, particulars of which negligence are as follows:

- (a) He was operating the Defendant's motor vehicle at an excessive and dangerous rate of speed in the circumstances;
 - (b) He failed to maintain proper control of the Defendant's motor vehicle and to maintain the vehicle on the roadway and within the proper lane for traffic;
 - (c) He failed to slow down the Defendant's motor vehicle or to apply his brakes promptly, in time or at all;
 - (d) He attempted to overtake another motor vehicle when it was not reasonable or safe to do so; and
 - (e) He was operating the Defendant's motor vehicle in a careless manner.
6. In the circumstances of a single vehicle accident, where the Defendant's motor vehicle left the roadway and collided with a fence and utility pole, the Plaintiff pleads and relies on the doctrine of *res ipsa loquitur* as to the negligence of the Defendant in the operation of the Defendant's motor vehicle.

Particulars of Plaintiff's injuries

7. As a result of the collision and the Defendant's negligence as aforesaid, the Plaintiff sustained serious personal injuries including but not limited to the following:
- a) a C7 burst fracture;
 - b) multiple bilateral rib fractures 2- 8 on left side;
 - c) left humeral fracture with radial nerve injury;
 - d) bilateral haemopneumothoraces
 - e) bilateral pulmonary contusions; and
 - f) cardiac contusion.
8. As the result of his injuries as aforesaid the Plaintiff has been hospitalized and has undergone extensive treatment initially at the George Town Hospital where he was stabilized and following evacuation by air on 23 November 2008 was treated and remained in the Intensive Care Unit of the University Hospital of the West Indies at Mona, Jamaica until 16 December 2008 when he was discharged to the Tony Thwaites Wing of the University Hospital of the West Indies where he was treated until 10 February 2009. While at the University Hospital of the West Indies he underwent and was treated for the following:
- a) a C7 corpectomy;
 - b) a bilateral chest tube for bilateral pneumothorax;
 - c) a right thoracostomy and reinsertion of left pleural drain on 23 November 2008;
 - d) open reduction and internal fixation of comminuted left humeral fracture on 23 November 2008;
 - e) emergency flexible bronchoscopy/mucus plug evacuation from trachea-bronchial tree on 29 November 2008 and 10 December 2008;
 - f) failure to wean off vent and tracheostomy placed on 10 December 2008;
 - g) emergency tracheostomy and thoracostomy removal on 13 December 2008
 - h) penile skin excoriation secondary to appliance application;
 - i) MRSA septicemia; and
 - j) recurrent pneumonia.

9. On 10 February 2009 the Plaintiff was transferred to the Sir John Golding Rehabilitation Centre at Mona, Jamaica, for rehabilitation treatment. The Plaintiff has received extensive treatment and therapy is left at the present time with the following injuries and symptoms:
 - a) a T1 American Spinal Injury Association Classification, Class "A" spinal cord injury – the Plaintiff's spinal cord is disrupted at the thoracic 1 vertebrae level resulting in loss of motor and sensory function from the nipple level down;
 - b) left radial nerve injury;
 - c) neurogenic bladder and bowel, requiring intermittent catheterization and bladder and bowel management;
 - d) Intermittent Autonomic Dysreflexia related to constipation or bladder infection;
 - e) persistent severe headaches;
 - f) postural hypotension and dizziness;
 - g) nerve pain in his chest and lower body;
 - h) limited tolerance for sitting upright;
 - i) pain and weakness in his left arm related to the radial nerve injury; and
 - j) depression.
10. The Plaintiff is a paraplegic, permanently disabled, wheel chair bound and dependent upon others for his basic care and personal hygiene. The Plaintiff suffers pain and discomfort related to his injuries requiring ongoing medical treatment and medication. He suffers from constipation and requires intermittent urinary catheterization and wears diapers for bowel management.
11. The Plaintiff has suffered a serious loss of amenities and his quality of and enjoyment of life has been reduced with substantial limitation of his recreational, social, sexual, lifestyle activities and functional ability, including his ability to play golf which he formerly enjoyed. His ability to interact with and to support his daughter, Imani Brown (born 6 November 2006) and residing in Montego Bay, Jamaica has been reduced and impaired. The Plaintiff is exposed to increased risk of depression, disease, infection and medical problems related to his disability and as the result will require future medical treatment. The Plaintiff will rely inter alia on the medical reports of Dr Paula Dawson dated 4 and 9 March 2009 and Dr Shamir Cawich dated 5 March 2009.

Special damages

12. The Plaintiff has and will continue to incur expenses for medication, diapers, catheterization supplies, wheelchair and assistive devices. He will upon discharge from the Sir John Golding Rehabilitation Centre require a health care aide or other home help on a daily basis and will require a customized wheelchair accessible home and wheelchair accessible transportation or a vehicle equipped for hand control operation. Full particulars and quantification of these special damages, including allowances for inflationary aspects will be provided to the Defendant prior to trial.
13. The Plaintiff will receive care and assistance provided in part by family and friends and the Plaintiff accordingly seeks an award as part of his claim for special damages by way of compensation for such caregivers, based on their hours actually and reasonably spent on caring for him at commercial hourly rates. Full particulars and quantification of this claim including inflationary aspects will be provided to the Defendant prior to trial.
14. On the recommendation of Dr Dawson the Plaintiff presently requires, but cannot afford, specialized rehabilitation therapy for spinal injury patients at an Acute In-Patient Rehabilitation Facility which treatment is not available in Jamaica, but which treatment is available at the Shepherd Center in Atlanta, Georgia and other facilities in the United States. The Plaintiff will provide full particulars of the cost of such rehabilitation treatment to the Defendant prior to trial.

15. The Plaintiff will require future medical care and attention as the result of complications, his increased risk of disease and injury and the necessary contingencies of his disability. The Plaintiff seeks an award for the projected cost of that future care and treatment, full particulars of which projected cost will be provided to the Defendant prior to trial.
16. By reason of his relative youth, inexperience and vulnerability, the Plaintiff will reasonably require the services of a trust company, financial advisor or investment manager to manage the monies paid under any award made by this Honourable Court. Full particulars of the projected cost of such financial advice and management will be provided to the Defendant prior to trial.
17. The Plaintiff pleads that his future expenses, treatment and future care costs for life are to be calculated using an Ogden Tables (6th Edition) Table 1 multiplier of 29.61 based on his age at trial (28) and a 2.5% discount rate.
18. Commencing in 2004 the Plaintiff was employed at the golf course at Wyndham Hotel, Montego Bay where he learned to play golf. In 2006 he commenced employment as caddie at the White Witch at the Ritz-Carlton Golf & Spa Resort, Rose Hill, Jamaica as a golf caddy. In October 2008 he accepted employment in Grand Cayman and was at the time of this accident employed as a greenskeeper in the Golf Maintenance Department of the Britannia Golf Course, operated by Grand Cayman Beach Suites at Seven Mile Beach, Grand Cayman where he earned CI\$5.50 per hour, plus average gratuities of CI\$2.39 per hour for a 40 hour week plus statutory pension benefit of 5% and health insurance, for a total of CI\$17,231.76 per annum including CI\$820.56 pension contribution.
19. The Plaintiff pleads that he is completely disabled from employment in any occupation for which he is reasonably suited by reason of his skill, training and abilities. Alternatively and in any event the Plaintiff pleads that with respect to any residual earning capacity, such income potential is likely to be dependent in large part upon the beneficence or charitable nature of any employer and that in the circumstances a substantial *Smith v. Manchester Corp.* award of damages by reason of the Plaintiff's compromised position in the competitive labour market as the result of his disability.
20. The Plaintiff pleads that but for this accident he would have worked in some income producing capacity whether in the Cayman Islands or Jamaica until age 70. The Plaintiff accordingly claims a loss of future income to age 70. As a result of this accident and his injuries as aforesaid, the Plaintiff has and will suffer a loss of income calculated and claimed as follows:

Present loss of income

22 November 2008 to 22 May 2009, i.e. 0.5 years x CI\$17,231.76 per year: CI\$8,615.88

Future loss of income

Ogden Tables (6th Edition) calculations

Plaintiff's age at trial (dob 5 September 1981):	28
Retirement age:	70
Discount rate:	2.5%
Ogden Table 11 multiplier:	25.25
Ogden Table A multiplier:	0.89
Revised multiplier (25.25 x 0.89):	22.47
Multiplicand:	CI\$17,231.76
Future loss of income to retirement at 70	
22.47 x 17,231.76:	CI\$387,197.64

21. The Plaintiff pleads and relies on s.34 of the Judicature Law (2007 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to the s.34 of the said Law, and claims interest on his general and special damages and costs as follows:

- (a) Pre-judgment (simple) interest on his general and special damages awarded, from:
 - (i) 22 November 2008 (the date the Plaintiff's cause of action arose) to 30 November 2008 at the rate of 7 1/4% per annum; and
 - (ii) 1 December 2008 to the date of trial at the rate of 5% per annum.
- (b) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the rate at the rate of 5% per annum or such other rate then prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules; and
- (c) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 5% per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest);

subject always to the discretion of this Honourable Court.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) General damages for pain and suffering and loss of amenities to be assessed;
- (b) *Smith v. Manchester Corp.* award to be assessed;
- (c) Special damages as pleaded above to be assessed;
- (d) Pre-judgment and post-judgment interest as more specifically pleaded above; and
- (e) His costs of this action; and
- (f) Such further and other relief as to this Honourable may seem just.

DATED at Grand Cayman this 12th day of May 2009

NELSON & CO.

Nelson & Co.
Attorneys for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

TO: The Clerk of the Grand Court

AND TO: Garfield "Junior" Lindo

BETWEEN:

DAMION ONEIL BROWN

PLAINTIFF

AND:

GARFIELD "JUNIOR" LINDO

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 intend to contest the proceedings (tick appropriate box)

Yes No



3. If the claim against the Defendants 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 Plaintiffs (tick box)

Yes No



Service of the Writ is acknowledged accordingly

Signed

Attorney for

Address for service:

Please complete 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 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.

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

Nelson & Company
Attorneys at Law
PO Box 2075
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1105
CAYMAN ISLANDS
Attn: Steven Barrie

Indorsement 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 indorsement]

**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 495, 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 instalments 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 (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.