

Amended pursuant to GCR Order 20 rule 1(1) on 16th June 2009

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ²⁹⁰ OF 2009

**BETWEEN: BRITISH CAYMANIAN INSURANCE
COMPANY LIMITED**

PLAINTIFF

AND: GARFIELD "JUNIOR" LINDO

DEFENDANT



AMENDED WRIT OF SUMMONS

TO: Garfield "Junior" Lindo of 141 Sitwell Road, Belford Estate, Bodden Town, Grand Cayman 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 495, George Town, Grand Cayman **KY1-1105**, 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 16th day of June 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 the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

THIS AMENDED WRIT is filed by Campbells, Attorneys at Law for the Plaintiff whose address for service is 4th Floor, Scotia Centre, P.O. Box 884, Grand Cayman KY1-1103 CAYMAN ISLANDS. Tel: 949 2648 Fax: 949 8613 (Ref: STM/KAH/BH/sam/15976)

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CAUSE NO: OF 2009

**BETWEEN: BRITISH CAYMANIAN INSURANCE
COMPANY LIMITED**

PLAINTIFF

AND: GARFIELD “JUNIOR” LINDO

DEFENDANT

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is an insurance company incorporated in and regulated by the laws of the Cayman Islands.
2. By a policy of insurance numbered 00046654, effective from ~~6th February 2007~~ until 5th February 2008 1st August 2008 to 31st July 2009 (“the Policy”), the Plaintiff agreed to provide third party motor vehicle insurance to the Defendant in respect of a black Honda Civic motor vehicle registration number 114-591 (“the Vehicle”).
3. The Plaintiff is entitled to, and hereby does, avoid the Policy on grounds of material non-disclosure and/or material misrepresentation.

PARTICULARS

4. On or about 6th February 2007, the Defendant signed a proposal form for private car insurance addressed to the Plaintiff (“the Proposal Form”).
5. The Proposal Form contained the following statements and representations on behalf of the Defendant:

9. The Plaintiff's underwriters agreed to write the Policy in reliance upon the proposal form. In so doing, they were induced to underwrite the policy by the Defendant's material non-disclosure and/or misrepresentation.
10. The Plaintiff's underwriters would not have underwritten the Policy if they had been aware of the Modifications, alternatively they would have asked for an increased premium alternatively, their underwriting decision would have been influenced by knowledge of the existence of the Modifications.
11. In the circumstances, the Plaintiff is entitled to avoid the Policy, and hereby does so.
12. Further or alternatively, the Vehicle had significant physical and mechanical defects:
 - (a) The Vehicle had been flood damaged, probably during Hurricane Ivan.
 - (b) The wiring harness between the engine computer and the distributor had been spliced
 - (c) The power lead to the master fuse box was corroded.
 - (d) The rear seat and parts of the floor well were rusted
 - (e) The Vehicle had previously been involved in an accident, and had suffered major damage to the right front end sub-frame and left-side B pillar and roof area. Attempts had been made to repair and/or conceal this damage by welding and/or filling the left side B pillar and roof.
 - (f) The Vehicle exhibited 2 VIN numbers, one on the chassis and one on the dashboard. The original dashboard had been replaced from a vehicle formerly registered in the Cayman Islands under registration no. 68 278,

which vehicle had been written off as a flood damaged vehicle after Hurricane Ivan in September 2004.

- (g) The airbags were non-functioning, due to corrosion of electrical wiring and electronic components, which was the result of water damage caused by flooding.
- (h) The driver's side airbag was disconnected.
- (i) The warning lightbulbs from the dashboard had been removed.
- (j) The muffler had rusted through.
- (k) The engine was not the original factory fitted engine, but was an engine from a different car with a different engine capacity.
- (l) The battery hold down brace was not properly tightened.

("the Defects").

- 13. The Defects rendered the Vehicle unroadworthy and/or indicated a lack of proper maintenance.
- 14. The Defendant either knew or ought to have known about some or all of the Defects and failed to disclose them to the Plaintiff's underwriters. In so doing, he failed to disclose material facts and/or misrepresented a material fact to the Plaintiff's underwriters.
- 15. The Defendant was obliged to disclose the existence of the Defects by reason of the notice starting "**IMPORTANT**" at the top of the proposal form. Further, by failing to disclose the existence of some or all of the Defects, the Declaration which he signed at the foot of the Proposal Form was untrue.

16. The Plaintiff's underwriters agreed to write the Policy in reliance upon the proposal form. In so doing, they were induced to underwrite the policy by the Defendant's material non-disclosure and/or misrepresentation.
17. The Plaintiff's underwriters would not have underwritten the Policy if they had been aware of any of the Defects, alternatively they would have asked for an increased premium alternatively, their underwriting decision would have been influenced by knowledge of the existence of the Defects.
18. In the circumstances, the Plaintiff is entitled to avoid the Policy, and hereby does so.
19. Further, the Plaintiff believes that the Vehicle may have been written off as a result of the flood damage which is apparent in the Vehicle, which was probably caused by Hurricane Ivan in September 2004 and/or as a result of the accident which gave rise to the Defects set out in Paragraphs 12(e), 12(f) and 12(k) above (and possibly others). The Proposal Form stated that the Defendant had purchased the Vehicle in June 2004. In the circumstances, the Defendant was or ought to have been aware of any insurance claim made in respect of the Vehicle but he failed to disclose that fact to the Plaintiff's underwriters. Such failure, if proved, would again be a material non-disclosure and would entitle the Plaintiff to avoid the Policy. Full particulars will be provided in due course.
20. On 22nd November 2008, at approximately 2am, the Vehicle, driven by the Defendant, was involved in a serious road traffic accident on Eastern Avenue, George Town, Grand Cayman.
21. The Defendant and his passenger (Mr. Damion O'Neil Brown) were severely injured and Mr. Brown has issued proceedings in the Grand Court (Cause no. 243 of 2009) against the Defendant for damages for personal injuries caused by the accident.

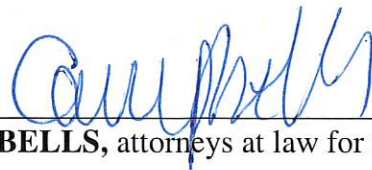
22. By reason of the matters set out above, the Plaintiff seeks and is entitled to a declaration that it is not required to indemnify the Defendant in respect of the claim for damages brought by Mr. Brown in Cause no. 243 of 2009, nor to pay any sum to Mr. Brown pursuant to the terms of the Motor Vehicle Insurance (Third Party Risks) Law, 2007 Revision.

AND THE PLAINTIFF CLAIMS:

- (1) A declaration that it is entitled to avoid the Policy on grounds of material non-disclosure of relevant fact(s) and/or false representation of material fact(s)
- (2) Rescission of the Policy
- (3) a declaration that it is not required to indemnify the Defendant in respect of the claim for damages brought by Mr. Brown in Cause no. 243 of 2009, nor to pay any sum to Mr. Brown pursuant to the terms of the Motor Vehicle Insurance (Third Party Risks) Law, 2007 Revision.
- (4) Costs
- (5) Such further or other relief as this honourable Court thinks just.

Dated 16th June 2009
Filed 16th June 2009

Amended this 16th day of June 2009



CAMPBELLS, attorneys at law for the Plaintiff

To: The Clerk of the Court

And to: The Defendant

THIS AMENDED STATEMENT OF CLAIM is filed by Campbells, Attorneys at Law for the Plaintiff whose address for service is 4th Floor, Scotia Centre, P.O. Box 884, Grand Cayman KY1-1103 CAYMAN ISLANDS. Tel: 949 2648 Fax: 949 8613 (Ref: STM/KAH/BH/sam/15976).

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2009

BETWEEN: BRITISH CAYMANIAN INSURANCE COMPANY LIMITED **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.

GARFIELD "JUNIOR" LINDO

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes	no
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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	no
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Service of the Writ is acknowledged accordingly

(Signed).....

[Attorney for] the Defendant

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

<p>Campbells, attorneys at law 4th Floor, Scotia Centre Albert Panton Street PO Box 884 Grand Cayman KY1-1103 Cayman Islands</p> <p>Tel: 345 949 2486 Fax: 345 949 8613 Email: khoughton@campbells.com.ky Ref: STM/KAH/ sam/15976</p>
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Indorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.

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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 KY1-1106.

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

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, 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.