

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO. 408 OF 2009
LEGAL AID NO. 216 OF 2008

BETWEEN LOXLEY SOLOMON PLAINTIFF

AND GAFRY WILSON FIRST DEFENDANT

 STANTON PEART SECOND DEFENDANT

WRIT OF SUMMONS

To: Gafry Wilson
 26 Hope Drive
 George Town
 Grand Cayman

And: Stanton Peart
 Apartment #1
 Hope Drive, Smith Road
 George Town
 Grand Cayman



THIS WRIT 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 this action. If you intend to defend this action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the *Acknowledgment of Service* form.

If you fail to satisfy the claim or to return the *Acknowledgment of Service* form containing full particulars of your defence, the Plaintiffs may apply for a **default judgment** without any further notice to you.

Issued this 26th day of August, 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.

STATEMENT OF CLAIM

1. At the material time the Plaintiff, a police officer, was driving a Nissan Laurel motor car registration number 76476 owned by the Plaintiff. The First Defendant was driving a International dump truck motor vehicle registration number 107485 ("the truck").
2. At approximately 12:30 pm on 23 July 2007, the Plaintiff was driving the Nissan, in the vicinity of Cascade Drive, George Town, heading east from George Town when the truck driven by the First Defendant along the same road travelling in the opposite direction collided with the Plaintiff's vehicle.
3. The First Defendant caused the truck to veer of his lane and crash into the front of the Plaintiff's vehicle in the opposite lane.
4. At all material time the Second Defendant was the registered owner of the truck and the employer of the First Defendant. The First Defendant was driving the truck in the course of his employment.
5. The accident was caused solely by the negligence of the Defendants.
6. By reason of the Defendants' negligence, the Plaintiff has suffered pain, injury, loss and damage.

PARTICULARS OF NEGLIGENCE OF THE FIRST DEFENDANT

- (1) Failing to keep any proper look out;
- (2) Failing to see the Plaintiff's car in time or at all;
- (3) Failing to adequately or at all to observe or heed the presence of the Plaintiff's car;

- (4) Failing to steer or control the truck to avoid the collision with the Plaintiff's car;
- (5) Failing to stop in his lane;
- (6) Driving into the path of and colliding with the Plaintiff's car.

PARTICULARS OF THE PLAINTIFF'S INJURIES

- (a) The Plaintiff, whose date of birth is 26 September 1976, was transported to the George Town Hospital after the collision. He sustained injuries to his right shoulder and right scapula region. A series of x-rays were carried out. Norflex was prescribed.
- (b) On 24 October 2007, the Plaintiff was seen again at the George Town Hospital outpatient department. He complained of painful restriction of movement in his right shoulder despite a course of physiotherapy. Upon examination he was diagnosed with post-traumatic instability in the right shoulder, right rotator cuff tear, dysrhythmic right shoulder movement, reduced internal rotation in the right shoulder and tenderness in the right supraspinatus and rotator cuff. An MRI was prescribed.
- (c) Since the motor vehicle accident, the Plaintiff continued to suffer upper back pains, neck pains and right scapular pains. He complained of numbness and tingling in his hands and problems sleeping. He was seen at the Florida Spine Institute in Clearwater, Florida on 9 September and 11 September 2008. X-ray and MRI were carried out.
- (d) The x-rays of 9 September 2008 revealed that the Plaintiff was suffering a disc protrusion/bulge at the C5-6 level which may have caused a blunt injury to the ulnar

nerve. Upon physical examination, the Plaintiff had some mechanical/radicular pain into the right scapular primarily in the vertebral border. A recommendation was made for the Plaintiff to see another specialist to address his right scapular pain with possible parascapular trigger point injections.

- (e) The Plaintiff then visited the specialist on 10 September 2008. An EMG was performed which shows abnormal and consistent with the right C5-6 myotomal radiculopathy. He was then referred to see the original doctor for treatment with cervical ESI.
- (f) On 11 September 2008, the Plaintiff again attended his initial doctor at Florida Spine Institute. It was concluded that the Plaintiff's EMG studies was consistent with a C5-6 Radiculopathy and MRI studies showed disc herniation at C5-6. It was recommended that the Plaintiff avoid strenuous activity and heavy lifting of the upper extremity. The Plaintiff then returned to the Cayman Islands.
- (g) On 12 February 2009, The Plaintiff attended the George Town Hospital complaining of back pain. Torodol , Norflex and Lorezapan were given. The Plaintiff also received a sick note for two days absence from work.
- (h) As a result of the accident the Plaintiff is no longer able to lift heavy weights, and suffers back spasms and pains if he stands for too long.
- (i) The Plaintiff, who was a Police Officer for over 14 years, became unable to continue with his work as an Operational Police Officer and now is restricted to the role of an Instructing Police Officer. The Plaintiff has now lost his job satisfaction.

- (j) The Plaintiff still has problems sleeping unless heavily medicated and is tardy in his daily chores as a result of lack of sleep and restricted movements.
 - (k) The Plaintiff is unable to continue working out at the gym with heavy weights or other strenuous exercises, which he used to enjoy. The Plaintiff has not been able to lift his children as he did before.
 - (l) The Plaintiff needs to undergo further medical procedures to alleviate the pain and to improve the use of his right shoulder.
7. The Plaintiff has suffered special damages, which is continuing. The injuries arising from the accident have had an adverse impact on the Plaintiff's physical capacity and the Plaintiff has suffered some loss of enjoyment of life, which is still continuing and is expected to continue in the foreseeable future.

PARTICULARS OF SPECIAL DAMAGES

- (a) The Plaintiff incurred medical expenses in the amount of CI\$3,530.14.
 - (b) The replacement value of the Plaintiff's car is CI\$7,000.00.
8. The Plaintiff claims general damages for pain and suffering, loss of amenities and future medical expenses.

AND THE PLAINTIFF CLAIMS:

1. Special Damages of CI\$10,530.00;
2. General Damages;
3. Pre-Judgment and post-judgment interest in accordance with Section 34 of the Judicature Law (2004 Revision);

4. Costs;
5. Further or other relief.

STATEMENT REGARDING INSURER

The Defendant is insured by British Caymanian Insurance Co. Ltd., Box 74, BritCay House, 236 Eastern Avenue, George Town, Grand Cayman, KY1-1102, Cayman Islands.

DATED this 26th day of August, 2009



MOURANT du FEU & JEUNE
Attorneys-at-Law for the Plaintiff

To: The Clerk of the Court

And to: Gafry Wilson
26 Hope Drive
George Town, Grand Cayman

And to: Stanton Peart
P.O. Box 13
George Town, Grand Cayman

THIS WRIT was issued by Messrs. Mourant du Feu & Jeune, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, B.W.I.
Ref: 2040349/BUSHS/MdFJ/2086671/1

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 495G, 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 installments 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 authroised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.

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BETWEEN LOXLEY SOLOMON PLAINTIFF

AND GAFRY WILSON FIRST DEFENDANT
STANTON PEART SECOND DEFENDANT

ACKNOWLEDGMENT OF SERVICE

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 intends to contest the proceedings (*tick appropriate box*)

yes

no

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

Service of the Writ is acknowledged accordingly

(Signed)

[Attorney] for

[Defendant in person]

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.

Messrs. Mourant du Feu & Jeune
Attorneys-at-Law
Third Floor, Harbour Centre
P.O. Box 1348
George Town,
GRAND CAYMAN (RAMMU/BUSHR)

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

THIS WRIT was filed by Mourant du Feu & Jeune, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is Second Floor, Harbour Centre, George Town, P.O. Box 1348, Grand Cayman KY1-1108, Cayman Islands. Ref: 2040349/BUSHS/MdFJ/2086671/1