

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 415 2010

BETWEEN:

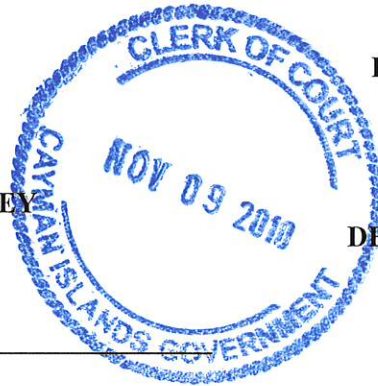
HERBERT COHEN

PLAINTIFF

AND:

RICHARD HARVEY

DEFENDANT



WRIT OF SUMMONS

TO: RICHARD HARVEY
4 Hardy Street
George Town, Grand Cayman

Name and address of Defendant's motor vehicle insurer:

The Insurance Company of the West Indies (Cayman) Limited
150 Smith Road, George Town
P.O. Box 461, Grand Cayman KY1-1106

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of Laguna Del Mar, Seven Mile Beach, Grand Cayman 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 9th day of November 2010.

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 original issuance unless renewed by order of the Court

IMPORTANT

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

BETWEEN:

HERBERT COHEN

PLAINTIFF

AND:

RICHARD HARVEY

DEFENDANT

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STATEMENT OF CLAIM

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1. The Plaintiff, Herbert Cohen, resides at 31 Laguna Del Mar, Seven Mile Beach, Grand Cayman and is a Canadian national and retired real estate developer.
2. The Defendant resides in Grand Cayman and at all material times was a sergeant employed with the Royal Cayman Islands Police Service.
3. The Plaintiff's claim arises from the use by the Defendant of a motor vehicle upon a road and required to be insured pursuant to the Motor Vehicle Insurance (Third Party Risks) Law 2007 Revision. The insurer of the Defendant's motor vehicle at all material times was the Insurance Company of the West Indies (Cayman) Limited, and notice of these proceedings will given to the said insurer in accordance with the provisions of the said Law.
4. On 5 November 2008 the Plaintiff was a pedestrian crossing Elgin Avenue in George Town proceeding west in the direction of the Vehicle Licensing office, accompanied by Roslyn Ceresne in reasonable and prudent manner, and had crossed half way across Elgin Avenue when suddenly and without warning the Defendant operating a Honda Accord motor vehicle bearing registration number 129225 exited from the parking lot of the RCIPS and turning to proceed downtown operated his vehicle in such a manner that his violently collided with the Plaintiff and Roslyn Ceresne.
5. The force of the impact with the front of the Defendant's vehicle was such that it bodily threw the Plaintiff to the ground, causing injuries and damages. The Plaintiff state that Elgin Avenue was entirely unobstructed at the time, and he was proceeding across Elgin Avenue in a prudent walking fashion and was run down for no apparent reason, save that the Defendant reportedly lacks vision in one eye.

### **Particulars of negligence**

6. The Plaintiffs state that the aforesaid accident occurred solely as the result of the negligence of the Defendant in the operation of his motor vehicle, particulars of which negligence are as follows:
  - (a) He was operating his motor vehicle at an excessive and dangerous rate of speed in the circumstances;
  - (b) He was operating his motor vehicle in a careless manner and without reasonable consideration for the Plaintiffs established on and crossing the roadway;
  - (c) He exited from the RCIPS parking lot and turned onto the roadway without ensuring that he could safely and reasonably do so;
  - (d) He failed to maintain a proper look out or to take sufficient or any precautions to avoid running down the Plaintiffs;
  - (e) He was operating a motor vehicle on the highway when his ability to do so was seriously impaired by the loss of vision in one eye, and failed to take sufficient precautions to ensure that he did not present a danger to others in the circumstances;
  - (f) He was driving undue haste and without due care and attention, being late for his attendance at Court that morning; and
  - (g) He failed to slow down his motor vehicle or to apply his brakes promptly, in time or at all.
7. In the circumstances where the Defendant operated his motor vehicle such as to run down the Plaintiff who was well established upon and crossing the roadway the Plaintiff pleads and rely on the doctrine of *res ipsa loquitur* as to the negligence of the Defendant in the operation of his motor vehicle.

### **Particulars of injury**

8. The Plaintiffs state that as the result of the negligence of the Defendant in the operation of his motor vehicle the Plaintiff sustained serious personal injuries, the particulars of which are set out below:
  - (a) Multiple bruising, soft tissue injuries and trauma including variously his left elbow, left thumb, left calf and right knee;
  - (b) A traumatic injury to the patellar femoral joint of his right knee, resulting in stiffness and pain in his right knee particularly at the insertion of the patellar femoral ligament and the development of crepitus in the knee and a limited range of motion;
  - (c) A traumatic injury to his left thumb with pain at the metacarpal phalangeal joint, with crepitus at the trapeziometacarpal joint and subluxation of that joint and osteophyte formation in that joint and ossification of the radial collateral ligament of the trapeziometacarpal joint secondary to the trauma.

9. The Plaintiff was treated initially at the George Town Hospital, and attended for treatment there after upon Dr John Addleson, his general practitioner. The Plaintiff relies upon the reports of Dr Addleson dated 19 November 2009 and 11 May 2010 in which Dr Addleson describes the Plaintiff's knee and thumb injury as "permanent." The Plaintiff underwent physiotherapy and massage treatment with little improvement in his symptoms.
10. The Plaintiff attended upon Dr Fred Smith, Orthopaedic and Reconstructive Surgeon for further investigation including x-rays of his right knee and left thumb. Dr Smith recommended strengthening of the right knee and the use of a knee cap stabilizer brace and the application of a splint to the Plaintiff's left thumb, short of surgery to replace the trapeziometacarpal joint with a prosthesis. The Plaintiff relies on the report of Dr Smith dated 14 June 2010.
11. At the present time the Plaintiff suffers from:
  - (a) continuing intermittent gnawing pain in his right knee aggravated by running and sustained positions of the knee and which disturbs his sleep and for which he obtains temporary relief from pain killers; and
  - (b) a constant gnawing pain in the base of his left thumb varying in intensity and which is aggravated by pushing, pulling or carrying using the left thumb and which is temporarily eased by avoiding use of the thumb.
12. The Plaintiff born 4 March 1934 was, prior to this accident, a competitive and dedicated triathlete and regularly competed in triathlon events. As the result of this accident and the injury sustained to his knee he is no longer able to compete competitively being limited by knee pain and now runs approximately 20 miles per week accompanied by pain and discomfort, and his fitness level is reduced.
13. As a result of the injury to his left thumb the Plaintiff's use of his left hand in the activities of daily living is limited and restricted, being unable to apply pressure with his left thumb, i.e. effectively oppose his left thumb. The Plaintiff is limited in activities which involve the use of his left thumb such as opening jars, squeezing, carrying or gripping items. The Plaintiff faces the prospect of continued pain in his left thumb with possible surgery to replace the trapeziometacarpal joint offering the only prospect of relief.
14. 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 and lifestyle activities.

**Special damages**

15. The Plaintiff has sustained special damages, including the following:

Medlab:	CI\$171.25
Dr John Addleson:	CI\$85.00
CIHSA (George Town Hospital):	CI\$211.70
Dr Frank Smith:	Cdn\$127.85
Hamilton Health Sciences:	Cdn\$604.20

Further and full particulars of the Plaintiff's special damages will be provided to the Defendant prior to trial.

16. 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 her general and special damages awarded, from:
    - (i) 5 November 2008 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 or such other rate as may be fixed pursuant to the Judgement Debts (Rates of Interest) Rules 1995;
  - (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);

THE PLAINTIFF THEREFORE CLAIMS:

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

**DATED** at Grand Cayman this 9<sup>th</sup> day of November 2010

HAMPSON & CO

Hampson and Company  
Attorneys for the Plaintiff

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** are filed by Hampson and Company, attorneys for the Plaintiff, whose address for service is that of his said attorneys, at Citrus Grove, 5<sup>th</sup> Floor, Goring Avenue, George Town, P.O. Box 698, Grand Cayman KY1-1107, Cayman Islands

**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.

Hampson and Company  
Attorneys-at-Law  
Citrus Grove, 5<sup>th</sup> Floor, Goring Avenue  
P.O. Box 698  
Grand Cayman KY1-1107  
Cayman Islands

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

BETWEEN:

HERBERT COHEN

PLAINTIFF

AND:

RICHARD HARVEY

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 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

Service of the Writ is acknowledged accordingly

Signed .....

Attorney for the Defendant

Address for service:

Please complete overleaf

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.