

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 31 OF 2012

BETWEEN:

ANTHONY DEVIN BERRY

PLAINTIFF

AND:



BARTON MANDEL SOLOMON

DEFENDANT

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WRIT OF SUMMONS

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TO: **BARTON MANDEL SOLOMON**  
57 Mimosa Lane  
Bodden Town, Grand Cayman



Name and address of Defendants' motor vehicle insurer:

Royal Star Assurance Ltd  
Represented by Fidelity Insurance (Cayman) Ltd.  
Cayman Financial Centre, 36A Dr. Roy's Drive  
P.O. Box 2174, Grand Cayman KY1-1105

**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiff, of 74 Shirley Towbis Lane, Bodden Town, 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 20<sup>th</sup> day of January 2012.

**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:**

**ANTHONY DEVIN BERRY**

**PLAINTIFF**

**AND:**

**BARTON MANDEL SOLOMON**

**DEFENDANT**

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**STATEMENT OF CLAIM**

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1. The Plaintiff is Caymanian born 13 September 1991 and resides at 74 Shirley Towbis Lane, Bodden Town, Grand Cayman and is currently a student attending college in Houston, Texas, and was at all material times the operator of a Honda Civic motor vehicle bearing registration plate number 140370, hereinafter referred to as the "Plaintiff's vehicle".
2. The Defendant resides at 57 Mimosa Lane, Bodden Town, Grand Cayman and is employed by the National Roads Authority, and was at all material times the operator of a Chevrolet Silverado pick-up truck bearing registration plate number 83856, hereinafter referred to as the "Defendant's vehicle".
3. The Plaintiff's claim arises from the use of a motor vehicle (the Defendant's vehicle) upon a road by the Defendant, Barton Mandel Solomon, who was at all material times operating the vehicle with the express permission of the First Defendant and required to be insured pursuant to the Motor Vehicle Insurance (Third Party Risks) Law (2007 Revision). The insurer of the First Defendant's motor vehicle at all material times was Royal Star Assurance Ltd, through its local agent/representative, Fidelity Insurance (Cayman) Ltd. and notice of these proceedings will be given to the said Royal Star Assurance Ltd through its agent/representative, Fidelity Insurance (Cayman) Ltd., in accordance with the provisions of the said Law.
4. On 22 May 2010 at or about 1:00 a.m. the Plaintiff was operating the Plaintiff's vehicle on Northward Road proceeding in the direction of H.M. Prison Northward in a reasonable and prudent manner and approaching the intersection with Crysdel Road, when suddenly and without warning the Defendant operating the Defendant's vehicle failed to obey the stop sign posted for traffic on Crysdel Road, or to yield the right of way to the Plaintiff's vehicle and violently collided with the left front fender of the Plaintiff's vehicle crushing it against the adjacent wall.

### **Particulars of negligence**

5. The Plaintiff states that the aforesaid accident occurred as the result of the negligence of the Defendant in the operation of the Defendant's vehicle, the 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 Plaintiff established on the roadway;
  - (c) He failed to bring his motor vehicle to a stop before entering on to Northward Road, or to yield the right of way to the Plaintiff's vehicle on Northward Road, Northward Road being a through road.
  - (d) He exited from Crysdel Road and entered onto Northward Road without ensuring that he could safely and reasonably do so;
  - (e) He failed to maintain a proper look out or to take sufficient or any precautions to avoid colliding with the Plaintiff's vehicle; and
  - (f) He failed to apply his brakes to stop his motor vehicle in observance of the stop sign, in time or at all.
6. In the circumstances where the Plaintiff's vehicle was established upon and had the right of way on a through road and where the Defendant's vehicle came into collision with the side of the Plaintiff's vehicle, 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 vehicle.

### **Particulars of injury**

7. The Plaintiff states that as the result of the negligence of the Defendant as aforesaid the Plaintiff sustained serious personal injuries, and was treated initially at the Emergency Department of the George Town Hospital for the following:
  - (a) multiple abrasions and deep lacerations to the forehead extending into the hair region, including a 2cm laceration to the mid forehead, a jagged 4.5cm horizontal laceration across the lower forehead with underlying swelling, and a 1cm laceration to the left eyebrow.
  - (b) skin loss of the lacerated tissue to his forehead;
  - (c) abrasions to the third and fourth fingers and right knee; and
  - (d) soft-tissue injuries to the left knee and left fifth finger resulting in soreness and stiffness.
8. The Plaintiff underwent x-rays and the lacerations were sutured at the George Town Hospital and he was discharged on pain medication and anti-inflammatories, and was referred to Dr Carlos Sedano, plastic surgeon of TrinCay Medical Services, Camana Bay, Grand Cayman.

9. The Plaintiff experienced the onset of pain in his left hip days later and re-attended at the George Town Hospital on 27 May 2010 for further examination and x-rays of his hips.
10. The Plaintiff was off work from his employment with Accurate Enterprises for two weeks as the result of his injuries and lost CI\$960.00 in pay.
11. On 24 September 2010 the Plaintiff underwent an ultrasound examination of his forehead scarring at the direction of Dr Sedano which revealed multiple linear echogenic solid lesions scattered beneath the scarred tissue. On 19 November 2010 Dr Sedano performed exploratory surgery on the Plaintiff's forehead to remove suspected foreign bodies.
12. The Plaintiff continued to suffer from prominent and highly visible keloid scarring to his central forehead and in his report of 16 March 2011 Dr Sedano recommended that the Plaintiff undergo laser treatment in an effort to improve the appearance of the scarring.
13. The Plaintiff consulted with Dr Michel Siegel, facial plastic surgeon, of Houston, Texas on 9 August 2011 and underwent further x-ray examination which did not disclose any glass in his forehead. In his report dated 10 October 2011 Dr Siegel recommended that the Plaintiff undergo a minimum of two laser treatments to the scarring on his forehead, followed by an assessment of the position, at a cost of US\$750.00 per treatment.
14. The Plaintiff relies on the report of Dr Sedano dated 16 March 2011 and the report of Dr Siegel dated 10 October 2011.
15. The Defendant's insurer has failed despite repeated requests to fund the cost of investigation and laser treatment by Dr Siegel as aforesaid, and the Plaintiff who is unable to afford this treatment will make application for interim payment pursuant to GCR Order 29/10.
16. At the present time the Plaintiff, 20 years old, suffers from the embarrassment and upset of having red, highly visible and prominent keloid scarring in the centre of his forehead.

**Special damages**

17. The Plaintiff has sustained or will sustain special damages, including the following:

Loss of income with Accurate Enterprises:	960.00
TrinCay Medical Services (Dr Sedano):	259.08
Dr Michel Siegel consultation fee US\$100 at CI\$0.82/US\$1.00:	82.00
Taxi fare to Dr Michel Siegel's offices US\$120 at CI\$0.82/US\$1.00:	98.40
Dr Michel Siegel minimum US\$1,500 at CI\$0.82/US\$1.00:	<u>1,230.00</u>
	<b>\$2,629.48</b>

Any further particulars of the Plaintiff's special damages will be provided to the Defendant prior to trial.

18. 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 May 2010 to 31 October 2010 at the rate of 5% per annum; and
  - (ii) 1 November 2010 to the date of trial at the rate of 2 $\frac{3}{8}$ % per annum or such other rate as may be fixed pursuant to the Judgment 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 of 2 $\frac{3}{8}$ % 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 2 $\frac{3}{8}$ % 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;
- (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 20<sup>th</sup> day of January 2012.

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.