

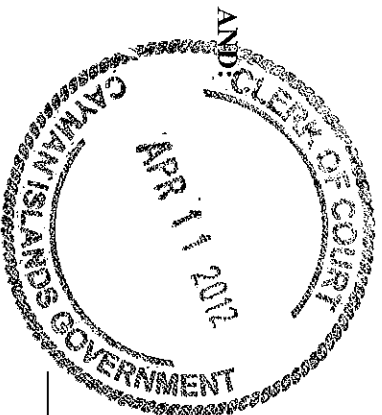
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 189 OF 2012

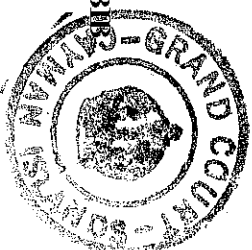
BETWEEN:

ELAINE RANKINE DUNBAR

PLAINTIFF



ANTHONY HARBIB



DEFENDANT

WRIT OF SUMMONS

TO: ANTHONY HARBIB
Grand Cayman

Name and address of Defendant's motor vehicle insurer:

Insurance Company of the West Indies
150 Smith Road Plaza
P.O. Box 461, Grand Cayman KY1-1106

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of 60 Kennedy Drive, P.O. Box 1614, George Town, Grand Cayman KY1-1109 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 11th day of April 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:

ELAINE RANKINE DUNBAR

PLAINTIFF

AND:

ANTHONY HABB

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is a businesswoman, resident in the Cayman Islands and possesses Caymanian status. She was born 25 June 1956 and resides at 60 Kennedy Drive, George Town, Grand Cayman. At all material times she was the owner and operator of a Honda Civic motor vehicle (hereinafter referred to as the “Plaintiff’s vehicle”).
2. The Defendant resides in Grand Cayman and was at all material times the operator of a Toyota minivan motor vehicle (hereinafter referred to as the “Defendant’s vehicle”).
3. The Plaintiff’s claim arises from the use of a motor vehicle upon a road by the Defendant, 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 Insurance Company of the West Indies and notice of these proceedings will be given to the said insurer in accordance with the provisions of the said Law.
4. On 14 April 2009 at or about 3:30 p.m. the Plaintiff was operating the Plaintiff’s vehicle in a generally southbound direction on North Sound Road approaching the Butterfield Bank roundabout. The Plaintiff was wearing the seat belt with which her vehicle was equipped and had brought the Plaintiff’s vehicle to a complete stop in the curb lane and was waiting for oncoming traffic on the roundabout to clear before proceeding east bound on North Sound Road in the direction of its intersection with Shedden Road, when suddenly and without warning the Defendant, operating the Defendant’s vehicle, collided violently with the rear of the Plaintiff’s vehicle pushing the Plaintiff’s vehicle ahead some 10 to 15 feet into the intersection.

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 in a careless manner and without reasonable consideration for other users of the road including the Plaintiff;
 - (b) He failed to keep a proper look out or to take sufficient or any precautions to avoid colliding with the rear of the Plaintiff's vehicle;
 - (c) He failed to apply his brakes promptly, in time or at all;
 - (d) He was operating the Defendant's vehicle at an excessive rate of speed in the circumstances;
 - (e) He attempted to enter the roundabout without ensuring that he could safely and reasonably do so;
6. In the circumstances where the Defendant's vehicle came into collision with the rear 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. Shortly after the accident, the Plaintiff began experiencing neck pain. She initially consulted with Dr. Alvaro Armiñan at Rapha Medical Centre on the evening of 14 April 2009.
8. On 15 April 2009 the Plaintiff consulted with Dr. Clarence Charles at Rapha Medical Centre for a follow-up visit. She was experiencing increased pain in her neck and back, she had difficulty moving her body and an inability to turn her neck. She also experienced generalized aches and pains all over her body.
9. The Plaintiff underwent an abdominal ultrasound to check her liver, spleen and to check for any internal bleeding. She also had x-rays of the spine, chest and lumbo-sacral area to check for fractures. She was prescribed a muscle relaxant and a sleep aid.
10. On 22 April 2009 the Plaintiff attended at Rapha Medical Centre for a further follow-up visit. She continued to experience neck and back pains and generalized aches and pains all over her body. In addition, she experienced a severe headache and elevated blood pressure, with numbness and shooting pains in both arms. Dr. Charles referred her to a chiropractor for treatment.
11. On 19 August 2009 the Plaintiff consulted with Dr. Mel Vance, Chiropractor at Island Chiropractic & Wellness Centre for treatment of the severe back pain she continued to experience. A neurological scan and physical exam confirmed the back pain with severe point tenderness in the lumbar spine and some tenderness in the cervical spine. The Plaintiff attended for a further 6 treatments during August and September 2009.

12. On 13 April 2010 Dr Clarence Charles found that she continued to experience neck and back pain with spasms in her back and radiation of pain and associated numbness into her hands and feet.
13. The Plaintiff returned to Dr. Mel Vance on 17 April 2010 for further adjustment of her back. She subsequently had a further 12 treatments, but experienced only temporary relief following each chiropractic adjustment.
14. In September 2010 the Plaintiff saw Dr Stewart Bailey, orthopaedic surgeon, on referral by Dr Clarence Charles at which time Dr Bailey made a diagnosis of a whiplash type injury to the Plaintiff's cervical and lower lumbar spine, with persistent limitation with regard to many activities with a likelihood that she would have intermittent chronic complaints when exposed to household and other activities which required bending, lifting twisting and prolonged symptoms.
15. The Plaintiff has sought investigation and treatment additionally in Jamaica and Cuba, but despite extensive treatment over the past three years, including extended chiropractic and physiotherapy treatment she is left with chronic pain in her neck and low back with radiation of pain and numbness into her arms and legs which severely limits her activities and her enjoyment of life.
16. The Plaintiff relies on the following medical reports:
 - (a) Dr Alavaro Arminan dated 22 April 2009;
 - (b) Dr Clarence Charles dated 24 June 2009
 - (c) Dr Clarence Charles dated 7 June 2010;
 - (d) Dr Mel Vance dated 30 June 2010; and
 - (e) Dr Stewart Bailey dated 27 September 2010.

17. At the present time the Plaintiff continues to have pain and stiffness in her lower back which is enhanced by prolonged sitting, bending and lifting. She has difficulty performing activities of daily living, such as sweeping or mopping and including the cleaning of her 10 room apartment property located at 60 Kennedy Drive, George Town.

Special damages

18. As a result of her injuries as aforesaid the Plaintiff has since the date of the accident been unable to perform the necessary cleaning, chores and gardening to maintain and operate her ten room apartment property and has been compelled to obtain a work permit for and to employ a helper at a cost of \$150.00 per week commencing approximately two months after the subject motor vehicle accident.
19. The Plaintiff has sustained special damages to date including but not limited to the following (a full schedule of loss will be provided prior to trial):

Cost of a helper (14 June 2009 to 11 April 2012)	22,050.00
147 weeks x \$150.00 per week:	18.70
Quality Pharmacy:	127.75
Valu-Med Pharmacy:	525.00
Carmen Martinez, Physiotherapy:	1,290.00
Dr. Mel Vance, Chiropractor:	

Total: \$24,011.45

20. The Plaintiff will sustain future expense secondary to the employment of a helper in relation to her apartment building at \$150.00 per week/\$7,800.00 per year, based on retirement at age 75, and calculated as follows:

Ogden Tables (6th Edition) calculations

Plaintiff's age at trial (dob 25 June 1956):	56
Retirement age:	75
Discount rate:	2.5%
Ogden Table 14 multiplier:	14.33
Multiplier:	\$7,800.00
Future loss of income to retirement at 70	
14.33 x \$7,800.00:	<u>\$111,774.00</u>

Interest

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 s.34 of the said Law, and claims interest on her general and special damages and costs as follows:
- (a) Pre-judgment interest on her general and special damages awarded, from:
 - (i) 14 April 2009 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) Her costs of this action; and

(e) Such further and other relief as to this Honourable may seem just.

DATED at Grand Cayman this 11th day of April 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 her said attorneys, at Citrus Grove, 5th Floor, Goring Avenue, George Town, P.O. Box 698, Grand Cayman KY1-1107, Cayman Islands.