

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: *242* OF 2013

BETWEEN:

ROYAL STAR ASSURANCE LTD

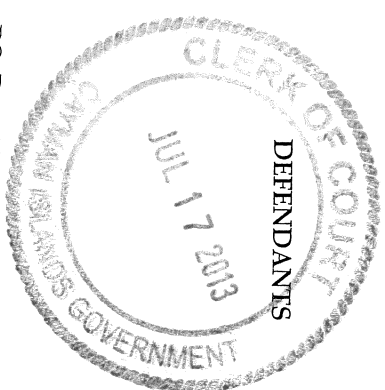
PLAINTIFF

AND:

- (1) ALLAN A. FOSTER
- (2) WILLIAM CAUSELY ARCHER



WRIT OF SUMMONS



TO: ALLAN A. FOSTER of 51 Trumbach Drive, Boddan Town, PO Box 1136, KY1-1503, Grand Cayman

AND TO: WILLIAM CAUSELY ARCHER of 9 Kennedy Drive, Grand Cayman, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of Cayman Financial Centre, P.O Box 2174, Dr Roys Drive, Grand Cayman in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 17<sup>th</sup> day of July 2013.

NOTE this Writ may not be served later than 4 calendar 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.

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DEFENDANTS

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STATEMENT OF CLAIM

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1. The Plaintiff is an insurance company incorporated in and regulated by the laws of the Cayman Islands.

The Policy

2. By a policy of insurance numbered CAYMC5371, effective from 14 December 2009 to 13 December 2010 ("the Policy"), the Plaintiff through its agent, in consideration of a premium of C\$675.00 agreed to provide third party commercial motor vehicle insurance to the First Defendant in respect of a Ford F350 motor vehicle registration number 131 835 ("the Vehicle").
3. On 13 December 2009 the Plaintiff, by its agent, delivered to the First Defendant a certificate of insurance in accordance with the provisions of the Motor Vehicle Insurance (Third Party Risks) Law (2007 Revision).
4. The Plaintiff made the contract of insurance, which was a renewal, on the basis of a Proposal form and declaration made by the First Defendant dated 8 October 2008 ("the Proposal")
5. In or around 2.00pm on 24 June 2010, the First Defendant sought to effect a change to the Policy. The First Defendant gave instructions to the Plaintiff by its agent to add the Second Defendant as a new named driver to the Policy.
6. The Plaintiff agreed to effect the change to the Policy and contract of insurance and to provide third party commercial motor vehicle insurance to the Second Defendant in respect of the Vehicle on the basis of a form entitled "*Instructions to Effect a Change in a Policy*" ("the New Driver Proposal") and signed by the First Defendant.
7. At 2.10pm on 24 June 2010, the Plaintiff, by its agent, delivered to the First Defendant a new certificate of insurance, naming the Second Defendant as person entitled to drive the vehicle.

**Material Non-Disclosure/Misrepresentation**

8. In the New Driver Proposal the First Defendant answered the question:

*"Has Driver been involved in ANY accident in the last 3 years?"*

with the word "No".

9. This statement and representation of fact contained in the answer set out at paragraph 8 above, was incorrect misleading and false. The Second Defendant had in fact been involved in a road traffic accident earlier in or around 12.34pm on 24 June 2013 ("the Accident").
10. At the time of the Accident, the Second Defendant was driving the Vehicle when it collided with another motor vehicle being driven by Mr. Gordon Michael Owens of 24 Kingbird Drive, George Town, Grand Cayman.
11. Mr. Gordon Michael Owens has alleged that he was injured and suffered loss and damage as a result of the Accident. He has issued proceedings against the First and Second Defendants in the Grand Court (Cause 210 of 2013) seeking damages. The action is yet to be tried.
12. The failure of the First Defendant to answer properly the question posed in the New Driver Proposal Form, as described at paragraph 8, constitutes a failure to disclose material facts and/or misrepresentations as to material facts made to the Plaintiff's Underwriters
13. The First Defendant either knew or ought to have known about the Accident and failed in answering the New Driver Proposal to disclose it to the Plaintiff's underwriters. In so doing, he failed to disclose a material fact and/or misrepresented a material fact to the Plaintiff's underwriters.
14. The Plaintiff's underwriters agreed to effect and write the change to the Policy and contract of insurance in reliance upon the New Driver Proposal. In so doing, they were induced to underwrite the change to the Policy and contract of insurance by the First Defendant's material non-disclosure and/or misrepresentation.
15. The misrepresentation by the First Defendant was material in that it would have influenced the judgment of any prudent insurer in fixing the premium or determining whether to take the risk.
16. The Plaintiff's underwriters would not have underwritten and/or effected the change to the Policy and contract of insurance if they had been aware of the Accident, alternatively they would have asked for an increased premium or alternatively their underwriting decision would have been influenced by knowledge of the Accident.
17. Further or alternatively, the First Defendant was in breach of his duty to disclose to the Plaintiff's underwriters all material facts in that he failed to disclose the Accident.
18. In the circumstances, the Plaintiff is entitled to, and hereby does avoid the Policy on grounds of the material non-disclosure and/or material misrepresentation of the First Defendant.

#### Contract Claim

19. Further or in the alternative, the Proposal contained the following declaration by the First Defendant:-

*"I/We warrant the above statements and particulars which I/we have read over and checked are true, and that the vehicle (or vehicles) above referred to is/are in good condition and repair. I/we desire to effect an insurance with the Company on the terms, conditions and exceptions of the Policy to be issued by the Company. I/We agree that this Proposal shall form the basis of the contract between me/us and the Company and shall be deemed as incorporated in the Policy to be used".*

20. As a result of the declaration contained within the Proposal and signed by the First Defendant as set out at paragraph 19 above, the statements made within the Proposal and the New Driver Proposal formed the basis of the contract between the Plaintiff and the First Defendant. In the premises, when the First Defendant answered the question in the New Driver Proposal as set out at paragraph 8 above, he warranted that this was true.

21. The Plaintiff avers that as the Second Defendant had been involved in the Accident, the First Defendant is in breach of this warranty. Accordingly, and in the circumstances, the Plaintiff is entitled to avoid the Policy, and hereby does so.

#### No Indemnity

22. The following were relevant terms of the Policy:-

##### SECTION 2: LIABILITY TO THIRD PARTIES

##### 2.1 INDEMNITY TO THE POLICYHOLDER We will indemnify You against legal liability for:-

(a) *Death or bodily injury to any person (other than to a passenger carried in the insured Vehicle unless that passenger is a passenger who is being lawfully carried by reason of or in pursuance of a contract of employment).....*

##### 2.2 INDEMNITY TO OTHER PERSONS We will indemnify:-

(a) *Any person entitled to drive as defined by the Certificate of Motor Insurance who is driving the Insured Vehicle with Your permission.....*

##### GENERAL EXCEPTIONS APPLYING TO THE WHOLE POLICY

*We will not be liable in respect of:-*

.....2. *any claim arising while any Insured Vehicle in connection with which indemnity is or would otherwise be provided under this Policy is being:*

(a) *Driven by a person other than You or who is not an Authorised Driver entitled to drive as stated in the effective Certificate of Insurance.....*

23. Accordingly, pursuant to the terms of the Policy, it was condition precedent to the liability of the Plaintiff that if the Vehicle was driven by any other person it had to be driven with the First Defendant's permission any that person had to be entitled to drive the Vehicle as defined by the effective Certificate of Insurance.

24. Further, it was an explicit exception to the indemnity provided by the Plaintiff, under the terms of the Policy, that liability would not arise in respect of any claim arising while the Vehicle was being driven by a person who was not an authorised driver entitled to drive as defined in the effective Certificate of Insurance.

25. The Plaintiff avers that the First Defendant failed to fulfil the conditions precedent. At the time of the Accident, in or around 12.34pm on 24 June 2010, the Second Defendant was not entitled to drive the Vehicle and was not named in the effective Certificate of Insurance.

26. As a result, in the circumstances, the Plaintiff is not liable to indemnify the First and/or Second Defendant for any damage or loss caused by him during the course of his operating the Vehicle under the terms of the Policy, or at all.

**AND THE PLAINTIFF CLAIMS**

- (1) A declaration that, Mr. William Causely Archer, the Second Defendant was not an authorised driver entitled to drive the Vehicle under the Policy until 2.10pm on 24 June 2010;
- (2) A declaration that, the Plaintiff is entitled to avoid the Policy on grounds of material non-disclosure of relevant fact(s) and/or false representation of material fact(s) and/or breach of warranty;
- (3) Rescission of the Policy;
- (4) A declaration that the Plaintiff is not required to indemnify either the First or Second Defendant in respect of the claim for damages brought by Mr Gordon Owens in Cause no. 210 of 2013, nor to pay any sum pursuant to the terms of the Vehicle Insurance (Third Party Risks) Law, 2012 Revision;
- (5) Costs; and
- (6) Such further or other relief as this Honourable Court deems just.

DATED at Grand Cayman this 17<sup>th</sup> day of July 2013

*Nelson & Co*

Nelson & Co.  
Attorneys for the Plaintiff

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelson & Co., Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of his said attorneys at 31 The Strand, P.O. Box 2075, Grand Cayman KY1-1105 Cayman Islands.

TO: The Clerk of the Grand Court

AND TO: Allan A. Foster and William Causely Archer

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ROYAL STAR ASSURANCE LTD

PLAINTIFF

AND:

(1) ALLAN A. FOSTER

(2) WILLIAM CAUSELY ARCHER

DEFENDANTS

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

**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.

Nelson & Company  
Attorneys at Law  
PO Box 2075  
31 The Strand  
46 Canal Point Drive  
Grand Cayman KY1-1105  
Attn: C Flanagan Ref 4046-01

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

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

## 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.