

IN THE GRAND COURT OF THE CAYMAN ISLANDS

60220  
CAUSE NO: OF 2014

BETWEEN:

SHELDON ANDERSON

AND:



ERIC TEX BARNES



PLAINTIFF

DEFENDANT

**WRIT OF SUMMONS**

**TO: ERIC TEX BARNES**  
of 51 Success Circle, George Town, Grand Cayman

This claim arises out of the use of a motor vehicle on a road, and the name and address of Defendant's motor vehicle insurer is as follows:

Cayman First Insurance Company Limited  
3rd Floor, Harbour Place  
103 South Church Street  
P.O. Box 2171, Grand Cayman KY1-1105

**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiff of Carmen Boulevard, 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 2<sup>nd</sup> day of October 2014.

**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:**

**SHELDON ANDERSON**

**PLAINTIFF**

**AND:**

**ERIC TEX BARNES**

**DEFENDANT**

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**STATEMENT OF CLAIM**

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1. The Plaintiff is Caymanian, born 17 January 1969 and resides at 34 Templeton Street, George Town, Grand Cayman.
2. The Plaintiff was at material times the owner and operator of a 2013 BH G6 Dura-Ace Reynolds Assault model bicycle, hereinafter referred to as "the Plaintiff's bicycle".
3. The Defendant resides at 51 Success Circle, George Town, Grand Cayman and was at material times the owner and operator of a 1999 Ford F250 pick-up truck bearing registration plate no. 98 508, hereinafter referred to as "the Defendant's vehicle".
4. 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 Vehicle Insurance (Third Party Risks) Law (2012 Revision). The insurer of the Defendant's vehicle at all material times was Cayman First Insurance Company Limited and notice of these proceedings will be given to the said insurer in accordance with s.15(2)(b) of the said Law.
5. On 3 May 2014 at or about 6:07 a.m. the Plaintiff was operating the Plaintiff's bicycle proceeding eastbound on Shamrock Road in Savannah, Grand Cayman, wearing an approved cycling helmet, followed by Karen Woodham Henry ("Ms Henry"), his training companion, on her bicycle.
6. The Plaintiff was proceeding lawfully eastbound in the eastbound lane of Shamrock Road just east of the Countryside Shopping Plaza, when suddenly and without warning Ms Henry was struck from the rear by the Defendant's vehicle immediately following which the Plaintiff and the Plaintiff's bicycle were also struck violently from behind by the Defendant's vehicle. The Plaintiff was struck by the front grill of the Defendant's vehicle, thrown onto the hood of the Defendant's vehicle then projected forward by the force of the Defendant's vehicle landing heavily on the roadway on left side of his body and sliding along the roadway inter alia on the left side of his face.

### **Particulars of negligence**

7. 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 failed yield up sufficient of the eastbound lane to the Plaintiff proceeding lawfully on the roadway ahead of him;
  - (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 bicycle lawfully established on and proceeding on the roadway contrary to s. 68(g) of the Traffic Law, 2011, and paragraph 4.4 of the Road Code of the Cayman Islands 2012, promulgated under s.106 of the Traffic Law, 2011;
  - (c) He was operating the Defendant's vehicle in a careless manner, and without reasonable consideration for other users of the road including the Plaintiff;
  - (d) He was inattentive and or/distracted by the use of his cell phone whilst operating the Defendant's vehicle contrary to s.78 of the Traffic Law, 2011, and paragraph 3.1 of the Road Code of the Cayman Islands 2012;
  - (e) He was operating the Defendant's vehicle at an excessive and dangerous rate of speed in the circumstances; and
  - (f) He failed to apply his brakes promptly, in time or at all.
8. In the circumstances where the Defendant while operating the Defendant's vehicle rear-ended the Plaintiff, 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 and General Damages**

9. As a result of the negligence of the Defendant as aforesaid, the Plaintiff sustained numerous cuts and abrasions to his face, arms and legs, and soft tissue injuries to his neck, shoulders and lower back. He was treated initially at the Emergency Department at George Town Hospital and prescribed painkillers and muscle relaxants and referred for physiotherapy.
10. Following his discharge from George Town Hospital, the Plaintiff sought treatment from Dr Matthias Herzig, orthopaedic and trauma surgeon, at the Chrissie Tomlinson Memorial Hospital.
11. The Plaintiff is continuing his medical treatment under the care of Dr Herzig, and continues to attend physiotherapy sessions on a weekly basis. He continues to experience soft tissue complaints in his neck, shoulders, upper back, left shoulder blade and his lower back.
12. The Plaintiff's employment in sales requires him to engage in lifting and moving of merchandise on a daily basis, and his injuries have interfered with his ability to perform the essential duties of his employment and caused anxiety and stress.
13. The Plaintiff is a cycling enthusiast and owns and operates "Bicycle Mobile Repairs", as sole proprietorship. Despite the Plaintiff's passion for cycling the Plaintiff now suffers from extreme anxiety when contemplating cycling and has to date been wholly unable to return to cycling because of his anxiety and fear of being struck by vehicular traffic.

### Particulars of Special damages

14. The Plaintiff is employed as a sales agent with Cayisle Enterprises Ltd. carrying on business as C.E.L. Distributors. As a result of his injuries, the Plaintiff was off work for three days, suffering a loss of income of CI\$632.45.
15. The Plaintiff has incurred liabilities on account of medical treatment including the co-pay for treatment he received at the George Town Hospital, Chrissie Tomlinson Memorial Hospital, and under Dr Herzig's care.
16. The Plaintiff's bicycle, a carbon-fibre frame 2013 BH G6 Dura-Ace Reynolds model, and cycling accessories were destroyed in the accident as aforesaid, and the Plaintiff has suffered their loss as a result.
17. The Plaintiff has sustained special damages, as follows:

#### *Loss of income*

\$18.48/hour x 24 (5-7 May 2014): CI\$632.45

#### *Property damage*

2014 BH G6 Dura-Ace Reynolds Assault bicycle	6,400.00	
Shipping costs for bicycle	175.00	
Import duty at the rate of 22% on bicycle	1,446.50	
CygoLite Trion 1300 LED headlight	269.99	
Specialised S3 cycling helmet	160.00	
Mission Enduracool instant cooling arm sleeves	43.99	
Import duty at 22% (on headlight, helmet and arm sleeves)	<u>104.28</u>	
	US\$8,599.76 @ CI\$0.82	
		CI\$7,051.80
<b>Total</b>		<u>CI\$7,684.25</u>

18. Further particulars of any other special damages including any subrogated claim advanced on behalf of the Plaintiff's health insurer, Aetna Insurance, will be provided to the Defendant prior to trial.

### Claim for interest

19. The Plaintiff pleads and relies on s.34 of the Judicature Law (2013 Revision) and the Judgment Debts (Rates of Interest) Rules 1995 as amended 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 3 May 2014 (the date the Plaintiff's cause of action arose) to judgment at the rate of 2 3/8% per annum;
  - (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 3/8% per annum; 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 3/8% per annum.

**THE PLAINTIFF THEREFORE CLAIMS:**

- (a) General damages for pain and suffering and loss of amenities to be assessed;
- (b) Special damages including loss of income;
- (c) Pre-judgment and post-judgment interest pursuant to s.34 of the Judicature Law (2013 Revision) and Judgment Debts (Rates of Interest) Rules 1995 as amended, and as more particularly pleaded above; and
- (d) His costs of this action, and such further and other relief as to this Honourable Court may seem just.

**DATED** at Grand Cayman this 2<sup>nd</sup> day of October 2014.

*Hampson and Co.*  
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Hampson and Company  
Attorneys for the Plaintiff

**THIS STATEMENT OF CLAIM** is 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.