

BETWEEN:

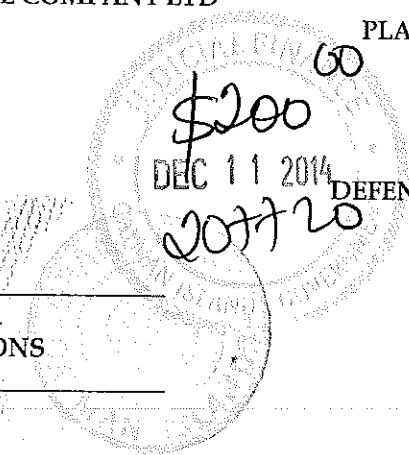
BRITISH CAYMANIAN INSURANCE COMPANY LTD

PLAINTIFF



AND  
EVERTON BELL

DEFENDANT



WRIT OF SUMMONS

TO: EVERTON BELL of Lake Willow, Bodden Town, PO Box 11832 APO, KY1-1011, Grand Cayman, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of BritCay House, 236 Eastern Avenue, P.O Box 74 GT, Grand Cayman, Cayman Islands 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 11th day of December 2014.

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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2014

BETWEEN:

BRITISH CAYMANIAN INSURANCE COMPANY LTD

PLAINTIFF

AND:

EVERTON BELL

DEFENDANT

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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 00039752, effective from 4 August 2011 to 3 August 2012 ("the Policy"), the Plaintiff, in consideration of a premium of CI\$982.00 (inclusive of Stamp duty) agreed to provide comprehensive motor vehicle insurance to the Defendant in respect of a Chevrolet Tahoe motor vehicle, registration number 111886 ("the Vehicle").
3. On 9 September 2011 the Plaintiff, delivered to the Defendant a certificate of insurance in accordance with the provisions of the Motor Vehicle Insurance (Third Party Risks) Law (as amended).
4. The Plaintiff made the contract of insurance, which was a renewal, in reliance upon a Proposal form and declaration signed and made by the Defendant on or around 5 July 2005 ("the Proposal").

**The Proposal and Subsequent Renewals**

5. The Proposal completed by the Defendant was in the Plaintiff's standard form.
6. The Proposal form contained the following endorsement warning the Defendant thus:

*IMPORTANT: You should inform British Caymanian of all facts likely to influence the acceptance and rating of your proposal. If you withhold information, any policy subsequently issued may be declared to be void...*

3. Have you been convicted of any traffic offences in the last five years? If Yes, give details including date, offence and penalty for each such conviction
- |                          |                                     |
|--------------------------|-------------------------------------|
| Yes                      | No                                  |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |

#### DECLARATION

*I/We wish to effect and insurance with British Caymanian Insurance Company Limited. I/We declare that the above statements and particulars are complete and correct, and no material fact has been mis-represented, mis-stated or withheld. I/We agree that this proposal shall form the basis of the contract between me/us and British Caymanian and I/We agree to accept British Caymanian's usual form of policy for insurances of this nature. If this proposal has been written by anyone else that person is my agent for that purpose and not the agent of British Caymanian...*

7. In the Proposal, the Defendant answered the question:

*"3. Have you been convicted of any traffic offences in the last five years? If Yes, give details including date, offence and penalty for each such conviction" ("Question 3")*

In the negative by marking an "X" in a box labelled "No".

8. In reliance upon the information provided by the Defendant and payment of the premium calculated on the basis of this information, a policy of comprehensive motor insurance was effected by the Plaintiff in respect of the Vehicle for the period 5 July 2005 through to 4 July 2006.
9. Subsequently, the Defendant renewed his policy of motor insurance for the Vehicle on a yearly basis effective for the following periods:
- 10 July 2006 through 9 July 2007
  - 18 July 2007 through 17 July 2008
  - 18 July 2008 through 17 July 2009
  - 18 July 2009 through 17 July 2010
  - 18 July 2010 through 17 July 2011
  - 4 August 2011 through 3 August 2012
10. On each occasion that the Defendant renewed his policy of motor insurance he was aware and/or ought to have been aware of his positive obligations of disclosure to the Plaintiff in respect of any additional facts that were material to the risk they were underwriting.

11. Prior to effecting the renewal on 18 July 2007, the Defendant was written to by his insurance broker/agent, Cayman Insurance Centre Ltd in connection with the renewal of his motor insurance policy by letter dated June 13 2007. This letter *inter alia* stated that:

*"Any alteration in the risk should be intimated to the Company in order for us to upgrade our records. It is important that you advise us of any traffic offences incurred by the insured or any driver of your vehicle in the last policy year and of any incidents/claims that we have not already been advised of..."*

12. Further, the Plaintiff avers that Section 3, clause 10 of the terms of the Policy ("Section 3") put the Defendant on notice that he was required to inform the Plaintiff of any changes at any time to the information provided in the Proposal. It states:

*"Section 3: General Conditions Which Apply to the Whole Policy*

*Material Alterations*

(10) *If there is any material change during the Period of Insurance to any information which you previously disclosed to us, it is a condition precedent to our liability under this Policy that:*

- (a) *you must tell us immediately; and*
- (b) *without prejudice to General Condition (4), we will be entitled to increase and/or vary the terms, conditions or exceptions to this Policy in respect of the unexpired Period of Insurance to reflect the altered risk. If you are not sure whether a change is material, you should tell us."*

13. The Defendant did not at any time inform the Plaintiff of any material changes to the information previously provided in the Proposal or of any additional facts relevant to the risk they were underwriting.
14. Accordingly, absent any such disclosures to the Plaintiff by the Defendant, the Proposal formed the basis of the contract of insurance between the Plaintiff and the Defendant for each renewal of the Policy.

**Conviction**

15. On 25 September 2006, in the Summary Court at George Town, Grand Cayman the Defendant was convicted of Driving whilst under the Influence of Alcohol, Careless Driving and Speeding. He was disqualified from driving between 25 September 2006 and 24 September 2007 and was fined. ("the Conviction").
16. In accordance with Section 52 of the Evidence Law (2011 Revision) the Plaintiff intends to adduce evidence of the Conviction at the trial of this action. The issue in the proceedings to which the Conviction is relevant, is set out below.

### Material Non-Disclosure/False Representation

17. In the circumstances, the Defendant's statement and representation of fact declared and warranted to be true and contained in the answer to Question 3 on the Proposal, was incorrect, misleading and false at the time the Policy was renewed and effected on 4 August 2011.
18. The failure of the Defendant to disclose to the Plaintiff the fact that he had been convicted of traffic offences for which he was disqualified from driving and fined in the 5 year period between 4 August 2006 and 4 August 2011, constitutes a failure by the Defendant to disclose material facts and/or a false representation of a material fact made to the Plaintiff's underwriters.
19. The Defendant knew about the Conviction and failed to disclose it to the Plaintiff's underwriters. In so doing, he failed to disclose a material fact and/or misrepresented/ falsely represented a material fact to the Plaintiff's underwriters.
20. The Plaintiff's underwriters agreed to effect, renew and write the Policy and contract of insurance in reliance upon the answers in the Proposal which were warranted as true at the date of the renewal. In so doing, they were induced to renew and underwrite the Policy and renew the contract of insurance by the Defendant's material non-disclosure and/or false representation.
21. The material non-disclosure and/or false representation and misrepresentation of fact by the Defendant was material in that it influenced the judgment of the Plaintiff's underwriters and/or would have influenced the judgment of any prudent insurer in fixing the premium or determining whether to take the risk.
22. The Plaintiff's underwriters would not have underwritten the Policy and renewed the contract of insurance if they had been aware of the Conviction.
23. The Defendant was in breach of his duty and obligation to disclose to the Plaintiff's underwriters all material facts in that he failed to disclose the Conviction.
24. In the circumstances, the Plaintiff is entitled to, and hereby does avoid the Policy pursuant to Section 15(3) of the Vehicle Insurance (Third Party Risks) Law (2012 Revision) on grounds that the Policy was obtained by the Defendant by the material non-disclosure of the Conviction and/or the false representation of the material fact of the Conviction.

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### Contract Claim

25. Further or in the alternative, the Proposal contained the following declaration by the Defendant:-  
  
*I/We wish to effect and insurance with British Caymanian Insurance Company Limited. I/We declare that the above statements and particulars are complete and correct, and no material fact has been misrepresented, mis-stated or withheld. I/We agree that this proposal shall form the basis of the contract between me/us and British Caymanian and I/We agree to accept British Caymanian's usual form of policy*

*for insurances of this nature. If this proposal has been written by anyone else that person is my agent for that purpose and not the agent of British Caymanian...*

26. As a result of the declaration contained within the Proposal and signed by the Defendant as set out at paragraph 25 above, the statements made within the Proposal formed the basis of the contract between the Plaintiff and the Defendant. In the premises, when the Defendant answered the question 3 in the Proposal as set out at paragraph 7 above, he warranted that this was true.
27. The Plaintiff avers that as the Defendant had been knew of the Conviction, he is in breach of this warranty. Accordingly, and in the circumstances, the Plaintiff is entitled to avoid the Policy, and hereby does so.
28. Further or in the alternative, Pursuant to Section 3 of the Policy, set out at paragraph 10 above, it was a condition precedent to the liability of the Plaintiff that the Defendant must inform it of any material changes to the information previously provided which occurred during the period of insurance.
29. The Plaintiff will aver that, by failing to inform it of the Conviction at any time or at all, the Defendant failed to fulfil this condition precedent.
30. As a result, and in the circumstances, the Plaintiff is therefore not liable to indemnify the 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.
31. Further or in the alternative, as a result of the Declaration contained within the Proposal and signed by the Defendant as set out at Paragraph 6 above, the statements made within the Proposal formed the basis of the contract between the Plaintiff and the Defendant. As a result, when the Defendant answered Question 3 negatively, he warranted that this was true.
32. The Plaintiff avers that as the Defendant had been convicted of traffic offences he was in breach of this warranty. Accordingly, and in the circumstances, the Plaintiff is entitled to avoid the Policy, and hereby does so.

#### **Road Traffic Accident**

33. On 23 September 2011 the Defendant was involved in a Road Traffic Accident ("the Accident") with Mr. James Tarr.
34. Mr. Tarr has alleged that he was injured and suffered loss and damage as a result of the Accident. He has issued proceedings against the Defendant in the Grand Court (Cause 209of 2014) seeking damages. The action is yet to be tried.
35. On 25 June 2012 in the Summary Court at George Town, Grand Cayman the Defendant was subsequently convicted of offences arising out of the Accident including driving whilst under the influence of alcohol. ("the Second Conviction") He was disqualified from driving for one year commencing 30 January 2012 and was fined.

36. In accordance with Section 52 of the Evidence Law (2011 Revision) the Plaintiff intends to adduce evidence of the Second Conviction at the trial of this action. The issue in the proceedings to which the Second Conviction is relevant, is set out below.

#### No Indemnity

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

*"Section 4: Exclusions Which Apply To The Whole Policy  
We will not be liable*

1. *For any claim whilst the Motor Vehicle is being driven by, or is in the care custody or control of:.....*

*..... c. any person driving or using the Motor Vehicle in contravention of any law.*

*Where however we are required to indemnify you or the driver of the Motor Vehicle solely because of the requirement of the compulsory motor insurance legislation in operation within the Cayman Islands, then the minimum limits as required of an insurance policy by that law shall apply."*

38. Accordingly 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 in contravention of any law.
39. The Plaintiff avers that as a result of the Second Conviction the Plaintiff is not liable to indemnify the Defendant for any claim, damage or loss caused by him during the course of his operating the Vehicle under the terms of the Policy, or at all.
40. In the alternative, the Plaintiff avers that if it is required to indemnify the Defendant (which is denied) then any indemnity is limited to the minimum limits set out in section 4 of Vehicle Insurance (Third Party Risks) Law (2012 Revision).
41. By reason of all the matters set out above, the Plaintiff seeks and is entitled to a declaration that it is not required to indemnify the Defendant in respect of any claim for damages arising out of the Accident, nor to pay any sums pursuant to the Law pursuant to the terms of the Vehicle Insurance (Third Party Risks) Law (2012 Revision).

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#### AND THE PLAINTIFF CLAIMS

- (1) A declaration that, the Plaintiff is and/or was entitled to avoid the Policy *ab initio* on grounds of material non-disclosure of relevant fact(s) and/or false representation of material fact(s) and/or breach of warranty;
- (2) Rescission of the Policy;

- (3) A declaration that the Plaintiff is not required to indemnify the Defendant in respect of any claim for loss or damage brought by Mr. James Tarr in Grand Court Cause 209 of 2014 arising out of the Accident, nor to pay any sums, pursuant to the Law pursuant to the terms of the Vehicle Insurance (Third Party Risks) Law (2012 Revision).
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems just.

DATED at Grand Cayman this 11<sup>th</sup> day of December 2014

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:** The Defendant

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2014

BETWEEN:

BRITISH CAYMANIAN INSURANCE COMPANY LTD

PLAINTIFF

AND:

EVERTON BELL

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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intend to contest the proceedings (tick appropriate box)  
 Yes                      No                     

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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                     

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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/S Barrie

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

[Empty box for Defendant's Attorney indorsement]

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.