



**THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO: 0001 OF 2015

BETWEEN:

PHYLLIS HIGGINS

PLAINTIFF

AND:

TONY CHISHOLM

DEFENDANT



WRIT OF SUMMONS

TO: Tony Chisholm

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an 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 5th day of January, 2015.

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 issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

And as a Noticed Party to:
Cayman First Insurance Company Limited
3rd Floor, Harbour Place
103 South Church Street
P.O. Box 2171
Grand Cayman KY1-1105

STATEMENT OF CLAIM

1. At all material times the Plaintiff was the owner and driver of a Toyota Windom registration 143391 and the Defendant was the driver of a Toyota Hilux registration 132790.
2. On the 26th January 2012 the Plaintiff was proceeding correctly in her vehicle along North West Point Road in West Bay, Grand Cayman. She was in the vicinity of the property known as 55 North West Point Road when suddenly and without warning the Defendant travelling in the opposite direction drove onto the incorrect side of the road and into collision with the Plaintiffs correctly proceeding vehicle.
3. At all material times the Defendant was insured to drive the Toyota Hilux registration number 132790 with Cayman First Insurance Company Ltd who had issued a policy of insurance relating to the vehicle in accordance with the Motor Insurance (Third Party Risks Law).

Particulars of negligence

4. The Defendant was negligent in that he:
 - a) drove too fast in all of the circumstances;
 - b) failed to keep any or any proper look out;
 - c) drove on the wrong side of the road;
 - d) failed to see the Plaintiff in time or at all;
 - e) failed to apply his brakes whether in time or at all;
 - f) drove his vehicle while impaired by alcohol
5. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

Particulars of General Damage

6. The Plaintiff's date of birth is the 18th August 1959 and she is currently 55 years old.
7. Following the accident the Plaintiff was taken to George Town hospital by ambulance.
8. The plaintiff sustained injuries to the right hand side of her body including her shoulder, neck, back, knee, leg and ankle. In addition she hit her chest on the steering wheel.
9. At hospital she underwent a number of tests including x-rays and a CT scan. She remained in hospital until 30th January 2012.
10. As a result of the injury to her shoulder, she underwent surgery to repair her right rotator cuff on the 26th October 2013.
11. She underwent physiotherapy three times a week and continues to undertake home exercises.
12. The Plaintiff will rely on expert evidence in support of her injuries.

13. In addition to Pain Suffering and Loss of Amenity, the Plaintiff also pursues claims for Future Care, Future cost of medication and Future Loss of Earnings which will be particularized in due course.

Particulars of Special Damage

14. See attached Schedule of Special Damages.

15. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2013 Revision);

AND THE PLAINTIFF claims:

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2013 Revision)
3. Costs



Samson & McGrath
Attorneys for the Plaintiff

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SCHEDULE OF LOSS

Item	Description	Value in CI\$
1	Write off of vehicle less salvage	3,000.00
2	Towing Fee	180.00
3	Storage (227 days @ \$10 per day = \$2,700 – reduction agreed)	800.00
4	Rental vehicle (4 th September 2012 – 28 th November 2012)	2,576.00
5	Vehicle Valuation	100.00
6	Cayman Islands Hospital (22/7/12)	27.12
7	MRI Scans (3T Cayman, 16/01/13)	1,857.70
8	Cayman Orthopaedic Group Consultation (25/2/13)	220.00
9	Chrissie Tomlinson Memorial Hospital Fee (27/9/13)	330.75
10	MRI Right Knee (Winchester MRI 29/11/13) (US\$338.82)	277.83
11	Cayman Islands Hospital Receipt (28/10/13)	16.50
12	Physiotherapy (Therapeutic Associates) November 2013 (US\$169)	138.58
13	Chrissie Tomlinson Memorial Hospital Fee as at 17/9/14	1,801.52
14	RVC Rehab Services	14,760.13
15	Therapeutic Physiotherapy Bands	20.00
16	Cayman Islands Imaging (14/7/14)	221.47
17	Set of 10lb Weights (Recommended by Physiotherapist)	50.00
18	Physiotherapy stick for shoulder exercises	65.00
	Total:	26,442.60
19	Past Loss of Earnings	30,400.00
	31 months x \$1,000	31,000.00
	Less	600.00
	Prior to the accident the Plaintiff was employed on a Full Time basis by Cache Ltd from December 2010. Immediately following the accident the Plaintiff took 2 weeks sick leave. Despite her attempts to return to work after this date it was apparent to her and her employer that she was unable to	

Item	Description	Value in CI\$
	<p>continue to work and her employment ceased on the 23/04/12.</p> <p>The Plaintiff was paid C\$1,000 per month.</p> <p>She was paid in full until the end of April 2012 Despite the Plaintiffs ongoing problems, she has attempted to obtain further employment but is limited in what she is able to do.</p> <p>In January/February 2014 she obtained employment with Creative Occasions – The Flower shop but this shut down after 4 weeks of employment. She earned \$150 per week for 4 weeks.</p> <p>The Plaintiff continues to seek employment but her ongoing loss at this time is CI\$1,000 per month.</p>	
20	Medication	175.00
	<p>The Plaintiff takes Paracetamol on a regular basis to alleviate her symptoms.</p> <p>She purchases approximately one packet per month at a cost of \$5.00</p> <p>To date 35 months x \$5.00 = 175.00</p> <p>The Plaintiff continues to use medication and her ongoing loss is \$5.00 per month.</p>	
21	Past Care	15,078.00
	<p>Following the accident, the Plaintiff was in hospital for 4 days. After this she had the use of a walker. For the first 3 weeks post-accident, the Plaintiff was extremely limited as to what she could do and required Care and assistance.</p> <p>The Plaintiff required assistance from family and friends to bathe, get dressed, cooking, washing, laundry, shopping, cleaning and other household chores. This level of care continued for approximately 3 weeks post-accident.</p> <p>24 hours x 3weeks x \$14.00 = \$1,008.00</p> <p>Following her shoulder surgery, the Plaintiff again required significant assistance due her restricted mobility for a period of 3 months.</p> <p>The Plaintiff required assistance from family and friends to bathe, get dressed, cooking, washing, laundry, shopping,</p>	

Item	Description	Value in CI\$
	<p>cleaning, household chores and transport to medical/physiotherapy appointments. This level of care continued for approximately 3 months post-surgery.</p> <p>25 hours x 13 weeks x \$14.00 = \$4,550.00</p> <p>Other than the higher level of care required immediately post-accident and post-surgery, the Plaintiff has an ongoing need for care since the accident. This is met by her daughter who she lives with and involves assistance in brushing her hair, applying lotions, assistance dressing and any other matters she requires assistance in as a result of her restricted mobility.</p> <p>As at 30th December 2014, 152 weeks have passed since the accident. Deducting the 16 weeks when a higher level of care was required.</p> <p>5 hours x 136 weeks x \$14.00 = \$8,610.00</p> <p>The Plaintiff continues to require care as above.</p>	
	TOTAL	72,095.60

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 495G, 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

Please complete overleaf

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.

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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 intends 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

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

Samson & McGrath
Attorneys at Law
5th Floor Genesis Building
Genesis Close
PO Box 446
George Town
Grand Cayman KGR/

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