

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. **Go087** OF 2015

BETWEEN:

**DIANDRA ESTELLE WHITTAKER**

Plaintiff

-AND-

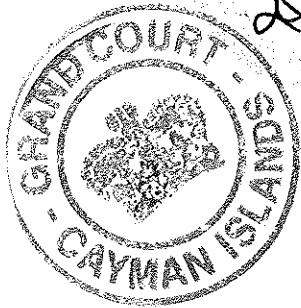
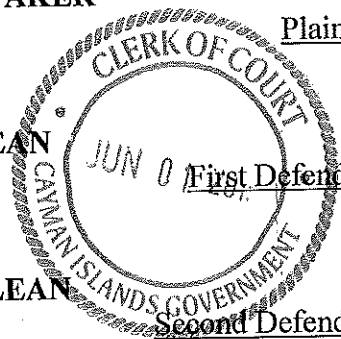
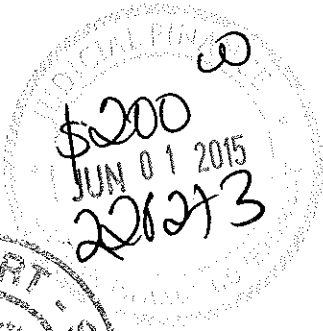
**JASON ANTHONY MCLEAN**

First Defendant

-AND-

**HARRISON HEINNIS MCLEAN**

Second Defendant



**WRIT OF SUMMONS**

TO: JASON ANTHONY MCLEAN  
AND TO: HARRISON HEINNIS MCLEAN  
AND TO: CAYMAN FIRST INSURANCE

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 495, 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 1<sup>ST</sup> day of June 2015

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of 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.

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## STATEMENT OF CLAIM

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1. The Plaintiff is an individual residing in Grand Cayman, Cayman Islands and was born on 31 January 1989.
2. The First Defendant is an individual residing in Grand Cayman, Cayman Islands and was born on 30 August 1986.
3. The Second Defendant is an individual residing in Grand Cayman, Cayman Islands, was born on 20 June 1962 and is the First Defendant's father.
4. At all material times, the Second Defendant was the occupier of the property located at 247 Discovery Way, Bodden Town (the Second Defendant's Residence).
5. At all material times, the Second Defendant was the registered owner of a 2005 Ford Explorer registration number 98062 (the "Second Defendant's Vehicle").
6. On the evening of 31 May 2012 the First Defendant and the Second Defendant were at the Second Defendant's Residence, together with others, and were consuming alcohol.
7. On the evening of 31 May 2012 the Second Defendant give the First Defendant permission to use the Second Defendant's Vehicle.
8. At approximately 3.51am on 31 May 2012 the Plaintiff was a passenger in the Second Defendant's Vehicle while the First Defendant was driving and the First Defendant failed to adequately negotiate a bend in the road, causing the Second Defendant's Vehicle to leave the road, roll and collide with vegetation on the side of the road (the "Accident").
9. The Accident was caused by the First Defendant's negligence and/or breach of statutory duty under sections 67 and 68 of the Traffic Law 2011.

### **Particulars of First Defendant's Negligence**

The First Defendant was negligent and is guilty of the breaches of the said statutory duties by:

- a. Failure to exercise due care and attention when using the road and to have due regard to the safety and comfort of other road users and the preservation and protection of public and private property;
  - b. Failure to drive in such a manner to have full control of the vehicle at all times;
  - c. Failure to keep in the left half of the road;
  - d. Driving at a speed that was too fast in the circumstances;
  - e. Losing control of the vehicle so that it left the road and crashed;
  - f. Failure to stop, slow down or in any way manage or control the Vehicle so as to avoid the collision;
  - g. Failure to exercise the kind of reasonable skill and care to be expected of a reasonably skilful and careful driver in the circumstances;
  - h. *Res Ipsa Loquitur*. The First Defendant drove the vehicle off the road, causing the Vehicle to roll and collide with vegetation. No other vehicles were involved in the Accident and there were no obstacles in the road or other factors contributing to the Accident. The only inference that can be drawn from the circumstances of this Accident is that the First Defendant was negligent.
10. The Accident was caused and / or contributed to by the Second Defendant's negligence.

#### **Particulars of Second Defendant's Negligence**

11. The Second Defendant was negligent by:
- a. Permitting the First Defendant to use the Second Defendant's Vehicle when the Second Defendant knew or ought to have known that the First Defendant was under the influence of alcohol.
  - b. Permitting the First Defendant to use the Second Defendant's Vehicle when the Second Defendant knew or ought to have known that the First Defendant had been disqualified from driving and did not have a valid drivers licence.
  - c. Permitting the First Defendant to use the Second Defendant's Vehicle when the Second Defendant knew or ought to have known that the Second Defendant's Vehicle did not have a certificate of roadworthiness.
12. Further, the Plaintiff intends to adduce evidence at trial that on 24 September 2013 the First Defendant was convicted of the following criminal offenses in respect to his driving on the occasion of the said Accident:
- a. Driving While Under the Influence of Alcohol;
  - b. Dangerous Driving at Speed;
  - c. Driving While Disqualified.

The Plaintiff intends to rely on these convictions in support of the allegation that the First and Second Defendants' negligence.

13. By reason of the First and/or Second Defendant's negligence and/or breach of statutory duty the Plaintiff suffered injury, loss and damage.

#### **Particulars of Injury**

The Plaintiff suffered serious, multiple injuries as a result of the Accident and continues to suffer as a result of the injuries sustained. The injuries include:

- a. Multiple comminuted fractures of the right hand;
- b. Foreign bodies in right hand;
- c. Amputation of dominant right hand at the wrist;
- d. Constant phantom pain in place of amputated dominant right hand;
- e. Constant pain in right forearm;
- f. Deep laceration to left elbow;
- g. Loss of skin to left elbow;
- h. Significant scarring to left elbow and forearm;
- i. Ongoing pain and sensitivity of left elbow and left forearm;
- j. Frustration from loss of amenity;
- k. Difficulty sleeping;
- l. Loss of balance;
- m. Increased incidence of other injuries;
- n. Headaches;
- o. Loss of self esteem and self worth caused by prejudice against disability;
- p. Relationship breakdown;
- q. Depression.

#### **Particulars of Loss**

- r. Past and future medical expenses in the Cayman Islands and abroad;
  - s. Expenses incidental to receiving medical treatment;
  - t. Loss of income;
  - u. Disadvantage on the labour market.
14. The Plaintiff's losses are ongoing and there is significant likelihood of further treatment being necessary in the future. The Plaintiff needs a prosthetic hand, which will need to be maintained throughout her life. Further particulars of the Plaintiff's loss will be provided prior to trial.

#### **AND THE PLAINTIFF CLAIMS:**

- A Damages;

- B Pre-Judgment interest on damages pursuant to the Judicature Law;
- C Post-Judgment interest on damages pursuant to the Judicature Law;
- D Costs;
- E Such other relief as this Honourable Court sees fit.

  
BROADHURST LLC.

To: The Clerk of the Court  
And To: The First Defendant, Jason Anthony McLean  
And To: The Second Defendant, Harrison Heinnis McLean  
And To: Cayman First Insurance (as insurers of the subject vehicle)  
PO Box 2171  
Grand Cayman KY1-1105  
Harbour Place, 3<sup>rd</sup> Floor  
103 South Church Street  
Cayman Islands

**INDORSEMENT AS TO INSURER OF MOTOR VEHICLE**

The Plaintiff's claim arises out of the use of a motor vehicle on a public road. The insurer of the vehicle driven by the First Defendant named herein is Cayman First Insurance, whose address is P PO Box 2171, Grand Cayman KY1-1105, Cayman Islands.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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 installments or otherwise.

**Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>60087</sup> OF 2015

BETWEEN:

DIANDRA ESTELLE WHITTAKER

Plaintiff

-AND-

JASON ANTHONY MCLEAN

Defendant

-AND-

HARRISON HEINNIS MCLEAN

Second Defendant

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ACKNOWLEDGEMENT OF SERVICE  
OF WRIT OF SUMMONS

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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 intends 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  
[Defendant in Person]  
Address for service:

*Please see 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 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.

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

BROADHURST LLC.  
ATTORNEYS-AT-LAW  
40 LINWOOD STREET,  
GEORGE TOWN,  
CAYMAN ISLANDS

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