

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: 134 OF 2015
LACV 0299/2013

BETWEEN:



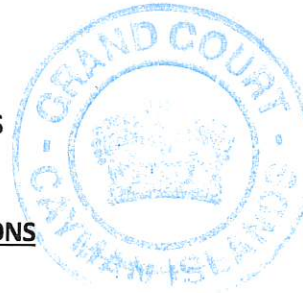
ANTHONY SINCLAIR

PLAINTIFF

AND:

KEITH COLLINS

DEFENDANT



WRIT OF SUMMONS

TO: Keith Collins

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 30th day of July 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.

STATEMENT OF CLAIM

1. The Defendant was at all material times an Attorney at Law admitted to practice in the Cayman Islands and the Plaintiff was his Client.
2. On the 12th September 2011, the Plaintiff was involved in a motor vehicle collision for which he sustained personal injuries, loss and damage.
3. Liability for the said motor vehicle collision was not disputed by the other driver. The Plaintiff initially communicated with the responsible driver's Insurer, namely, British Caymanian Insurance Company ("BritCay") directly.
4. The Plaintiff was unclear as to the settlement proposals made by BritCay and thus in or around the start of October 2011, the Plaintiff retained and employed the defendant as his Attorney for reward to advise and act for him in his claim for personal injuries, loss and damage against the responsible driver. The defendant agreed to act for the plaintiff and in consideration of same; the Plaintiff paid to the defendant an initial retainer in the sum of CI\$100.00.
5. Pursuant to this retainer, the Plaintiff was a client of the Defendant and it was an implied term of the contract that the Defendant would exercise all due professional care, skill and diligence as to be expected from a reasonably competent Personal Injury Attorney in relation to the performance of his services under the contract.
6. Further, or in the alternative, the Defendant owed the plaintiff a duty of care in performing his services as an Attorney.
7. On the 11th October 2011, the Defendant presented the Plaintiff's case by way of a letter to BritCay. This letter confirmed the Plaintiff was still symptomatic and under the cover of a sick note until 28th October 2011.
8. The letter presented the Plaintiff's special damages and also described his injuries and placed a valuation on his general damages of CI\$4,500.00 utilizing case law from Kemp and Kemp.
9. The letter also included a claim for Legal Fees totaling CI\$1,125.00.
10. Subsequently, BritCay allegedly made an offer of \$4,750.00, in respect of General damages, special damages and legal costs which the Defendant advised the Plaintiff to accept.
11. The Plaintiff instructed the Defendant to reject the offer, but was subsequently advised by the Defendant that BritCay refused to increase their offer and advised him to accept the offer.
12. In the circumstances and in reliance on the advice of the defendant, the plaintiff reluctantly accepted the offer and signed a release totaling \$4,750.00. The terms and effect of the release were not explained to the Plaintiff by the Defendant nor was he provided an opportunity to consider the same.
13. The Plaintiff received a draft from the Defendant in the sum of \$2,613.00 and his hospital fees were paid directly to Cayman Islands Health services Authority in the sum of S1,069.93.

14. Following the receipt of the damages, the Plaintiff developed Myosistis Ossificans of the right hip which has been attributed to the index accident. He requires surgery and will incur further losses as a result.
15. The Plaintiff has been unable to recover further compensation from BritCay as he signed a release indemnifying them from any future claims.
16. In breach of contract and/or negligently, the Defendant failed to exercise the care and skill to be expected of a reasonably competent Personal Injury Attorney.

Particulars of breach of contract and/or negligence

16. The Defendant was negligent and in breach of contract in that he:
 - a) Failed to give the Plaintiff any or any appropriate advice regarding the offer;
 - b) Failed to obtain from the Plaintiff or to heed or act upon adequate instructions concerning the nature, circumstances and history of his injury.
 - c) Failed to seek medical records or a medical opinion on the extent of the plaintiff's injury which would have led to appropriate advice on the quantum of the claim.
 - d) Failed to warn the Plaintiff of the risks of settling his claim within 5 weeks of the accident and whilst still symptomatic
 - e) Caused, permitted or suffered the plaintiff's claim in the aforesaid action to be settled for a sum for insufficient to compensate the plaintiff for the injury, loss and damage suffered as a result of the motor vehicle accident;
 - f) Failed to protect the interests of the Claimant and exposed him to a foreseeable risk of loss and damage
 - g) Failed adequately whether in time or at all to protect the Claimant's interests or advise him as to what steps he himself should take in order to protect his own interests in the matter of his aforesaid claim.
 - h) Failed to explain the consequences of signing a release;
 - i) Failed to keep any or any appropriate record of advice given to the Plaintiff;
 - j) Failed to keep appropriate records or provide the Plaintiff written advice.
17. By reason of the aforesaid, the Plaintiff has lost all prospects of recovering damages in excess of CI\$4,750 from Britcay in respect of the accident and has thereby been deprived of the said damages and he has thereby suffered loss and damage.

Particulars of General Damage

18. The Plaintiff's date of birth is the 2nd October 1983 and he is currently 31 years old.
19. Following the accident the Plaintiff was taken to George Town hospital by a co-worker.
20. The plaintiff sustained injuries to his neck, back and leg. He was provided with a collar and pain relieving medication.
21. He re-attended the hospital on the 14th September 2011 due to pain in his lower back and right groin.


22. He again attended the hospital on the 3rd October 2011 with continued pain and was placed on a sick note for light duties only until the 28th October 2011.
23. On the 24th January 2012, the Plaintiff again attended George Town Hospital due to pain in his right hip. He was diagnosed as suffering from Myositis Ossificans of the right hip as a result of the motor vehicle accident.
24. The Plaintiff requires surgery but is not able to fund the same.
25. The Plaintiff has ongoing symptoms and will rely on expert evidence in support of his injuries.
26. 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

27. See attached Schedule of Special Damages.
28. 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

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

CAUSE NO: OF 2015

BETWEEN:

ANTHONY SINCLAIR

PLAINTIFF

AND:

KEITH COLLINS

DEFENDANT

SCHEDULE OF SPECIAL DAMAGES

<u>Item</u>	<u>Description</u>	<u>Value in CI\$</u>
1	CIHSA Balance	854.63
2	Pre-operation costs (x-rays and review)	TBA
3	Cost of Future Operation	TBA
4	Travel and Accommodation costs for Future Operation	TBA
5	Loss of Earnings from Future operation	TBA
6	Care after Future Operation	TBA
7	Medication	50.00
8	Miscellaneous expenses, telephone calls, letter etc.	100.00

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.

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

CAUSE NO: OF 2015

BETWEEN:

ANTHONY SINCLAIR

PLAINTIFF

AND:

KEITH COLLINS

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.

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.