

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO: 229 OF 2016  
- LACV 174/2014

BETWEEN:

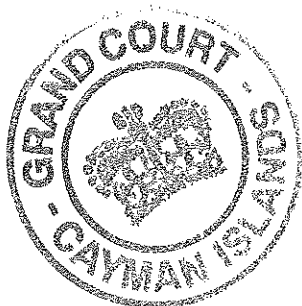
ALVIS MCLEAN

PLAINTIFF

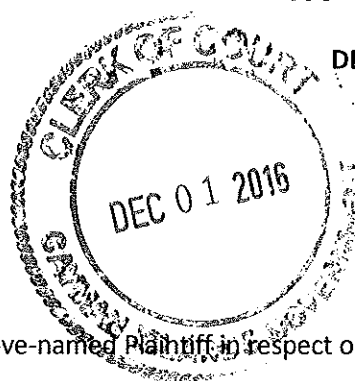
AND:

RAHEEM DILBERT

DEFENDANT



WRIT OF SUMMONS



TO: Raheem Dilbert

**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 <sup>th</sup> 30 day of November, 2016.

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:

Island Heritage Insurance Company  
Island Heritage House  
128 Lawrence Boulevard  
PO Box 2501  
KY1-1104

## **STATEMENT OF CLAIM**

1. The Plaintiff's date of birth is the 11 April 1964 and his address is 77 Hawkins Drive, Windsor Park Grand Cayman.
2. At all material times the Plaintiff was the driver of a Hyundai registration 133310 and the Defendant was the driver of a Chevrolet Trailblazer Registration Number 103616.
3. On the 6<sup>th</sup> December 2013 at approximately 9am, the Plaintiff was stationary in the vehicle which was positioned on Discovery Drive waiting to proceed onto Shamrock Road. As he was stationary, the Defendant who was proceeding along Shamrock Road in an Easterly direction being pursued by the Police, lost control of his vehicle and drove into collision with the Plaintiff's stationary vehicle forcing it off the road and into the bushes/trees on the side of the road.
4. At all material times the Chevrolet Trailblazer Registration Number 103616 was insured with Island Heritage 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**

5. The Defendant was negligent in that he:
  - a) failed to keep any or any proper look out;
  - b) failed to see the Plaintiff in time or at all;
  - c) failed to apply his brakes whether in time or at all;
  - d) drove too fast in all the circumstances;
  - e) failed to steer or control his vehicle so as to avoid the said collision.
6. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

### **Particulars of General Damage**

7. The Plaintiff's date of birth is the 11 April 1964 and he is currently 52 years old.
8. The Plaintiff was trapped in his vehicle with the engine resting on his leg/abdomen. He had to be cut out of his vehicle by emergency services.
9. Following this the Plaintiff was placed on a backboard, provided with a cervical collar and taken to George Town hospital by ambulance where he remained overnight.
10. He underwent numerous investigations including CT scans to the cervical spine and abdomen.
11. The plaintiff was diagnosed as having sustained a fractured left tibia and a laceration to his chin.
12. His leg was placed in a brace and he was provided with a walker and subsequently crutches to mobilize. He was discharged the day after the accident and prescribed pain relieving medication.

13. He was non-weight bearing for 6 weeks.
14. He remained under the care of Dr Pai in the Orthopaedic department of the hospital and underwent physiotherapy. 6 months' post-accident his fracture had united, but he suffered wasting of the muscle and continued pain, he continued the recommended exercises at home.
15. The Plaintiff continues to suffer pain in his leg/foot on a daily basis, this is particularly bad after working. He takes Aleve/Advil on a regular basis.
16. The Plaintiff had Polio in his left leg as a child but this didn't cause him any restrictions other than a slight limp. He now walks with a more pronounced limp.

**Particulars of Loss and Damage**

17. See attached Schedule of Special Damages.
18. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2013 Revision) at half the rate as prescribed under the Judgment Debts (Rates of Interest) Rules (as amended) from the 6<sup>th</sup> December 2013 to Trial.

**AND THE PLAINTIFF claims:**

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

*Samson & McGrath*  
Samson & McGrath  
Attorneys for the Plaintiff

BETWEEN:

ALVIS MCLEAN

PLAINTIFF

AND:

RAHEEM DILBERT

DEFENDANT

SCHEDULE OF SPECIAL DAMAGES

**1. EARNINGS**

- 1.1 The accident occurred when the plaintiff was 49 years old. At that time the plaintiff was employed full time by S&S Pools as a pool supervisor and technician.
- 1.2 He earned \$450.00 per week working 5 days a week.
- 1.3 He was unable to work at all for 7 months post-accident
- 1.4 The Plaintiff returned to work in July 2014 initially doing half days due to his physical limitations and undertaking less manual tasks for some time.
- 1.5 He currently works 4 days a week and earns \$350 per week. He suffers from considerable pain in his foot whilst working.
- 1.6 In addition to his employment with S & S pools, he was also self-employed, undertaking pool maintenance for various clients for one day of the weekend. Since the accident he has not been able to continue this due to his physical limitations and also due to the fact that in his absence the jobs were awarded to another individual or company.
- 1.7 On average he earned \$815.00 per month undertaking this additional work.
- 1.8 The claim for loss of earnings is therefore put on the following basis: -

S & S Pools

Loss from date of accident to July 2014 - 30 weeks x \$450 per week = \$13,500

Reduced pay from return to work to date – 126 weeks x \$100 per week = \$12,600

Self Employed Work

36 months x \$815.00 = \$29,340

Loss \$55,440.00

**2. CARE AND ASSISTANCE**

Following the accident, the Plaintiff required significant care from his family as he was restricted in many tasks.

For the first 6 months post-accident the Plaintiff needed significant assistance for personal hygiene and household tasks which he would have done previously including but not limited to; dressing/bathing/ /driving/cooking/shopping/yard work/general maintenance and general fetching and carrying.

3 hours x 7 days per week x 26 weeks x \$10.00 = 5,460

After that time, the Plaintiff continues to need occasional assistance that he would not have done prior to the accident in particular for yard work or physical tasks.

2 hours per week x 130 weeks x \$10.00 = 2,600

Loss \$8,060.00

**3. MISCELLANEOUS EXPENSES**

Description	CI\$
Lease Car	450.00
Police Insurance Report	100.00
Travel to medical Appointments	200.00
Over the Counter Medication (\$10 per month x 36 months)	360.00
Cost of obtaining Medical Records from CIHSA	132.00
<b>TOTAL</b>	<b>\$1,242.00</b>

The Plaintiff will provide a full Schedule of Loss to particularise all special damages to the date of trial in due course in the proceedings.

**FUTURE**

The Plaintiff will pursue future claims for loss of earnings, care, and potential medical treatment.

**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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CIVIL DIVISION

CAUSE NO: 229 OF 2016  
LACV 174/2014

BETWEEN:

ALVIS MCLEAN

PLAINTIFF

AND:

RAHEEM DILBERT

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 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

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  
5<sup>th</sup> 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.

[Empty box for defendant's attorney indorsement]