

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 231 OF 2016
L/A: 85 OF 2015

BETWEEN:

ROBERT ALPHONSO HITCHMAN

Plaintiff

AND



CLAIRE ISABEL SCOTT

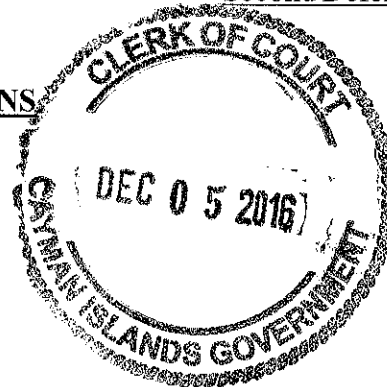
First Defendant

AND

GUARDIAN GENERAL INSURANCE LIMITED

Second Defendant

WRIT OF SUMMONS



TO: CLARE ISABEL SCOTT
9 PARSONS CIRCLE
GEORGE TOWN
GRAND CAYMAN
CAYMAN ISLANDS

AND TO: GUARDIAN GENERAL INSURANCE LIMITED
c/o CAMPBELLS ATTORNEYS-AT-LAW
PO BOX 884
GRAND CAYMAN KY1 – 1103
CAYMAN ISLANDS

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, PO 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 day of December, 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.

STATEMENT OF CLAIM

1. At all material times, the First Defendant was a motor vehicle driver insured by the Second Defendant.
2. The Second Defendant is an insurance company who provides private motor car insurance.
3. The First Defendant had in place a valid private motor car insurance policy with the Second Defendant under policy number 67856.
4. The Plaintiff, who was born on 24th April 1991, is employed as an Assistant Rigger/Junior Telecoms Installer with Business Solution Technology Group (BSTG), which at the time of the accident had been contracted by LIME (Cable & Wireless) to assist with rigging operations on South Church Street, George Town. The Plaintiff's responsibilities included feeding cable through light poles and underground passages, including manholes.
5. On 6th December 2013, the Plaintiff and his colleague were working at the junction of South Church Street and Parsons Circle. The back of their truck was facing South Church Street in order for the mechanical bucket to be able to reach a light pole which was close to a manhole on South Church Street.
6. The Plaintiff retrieved orange safety cones from the truck and lined the cones from the front of the truck on Parsons Circle on to South Church Street and around the manhole. After safely preparing the cones, the Plaintiff observed that the traffic obeyed the cones as usual, so removed the manhole cover. He went into the manhole and started pulling cable from the light pole, whilst his colleague operated the mechanical bucket.
7. When pulling the cable through the manhole the Plaintiff's lower body was submerged, while his torso, shoulders and head were visible above the manhole. As he was pulling the cable through the hole, the First Defendant drove over the visible cone barriers where the Plaintiff was carrying out work and ran over the Plaintiff with her motor vehicle. The Plaintiff felt a heavy impact to his back, which immediately pushed him forward, causing his helmet to fall off his head and crushing his body against the side of the manhole. The Plaintiff screamed out with the pain and as he tried to move, he felt a second impact to his back.
8. The Plaintiff was able to exit the manhole and initially stand up, but he immediately felt severe pain in his chest. He fell to the ground and started to roll from side to side because of the pain. A male passer-by held the Plaintiff on the ground and advised him not to move until the ambulance arrived. An ambulance was called and arrived some time thereafter, and the Plaintiff was taken to George Town Hospital where he was admitted to the Critical Care Unit.

9. The Royal Cayman Islands Police Service (“RCIPS”) attended at the scene in order to investigate the accident. The RCIPS completed a Motor Vehicle Accident Report and a Summary of Facts. The Accident Report confirms that the accident was caused by a silver Suzuki Vitara with registration 141 330, which was registered to and driven by the First Defendant at the time.
10. The Plaintiff sustained various injuries from the accident which continue to cause him pain and impact upon various aspects of his life.

PARTICULARS OF NEGLIGENCE

11. Following the investigation by RCIPS, the First Defendant was charged with several driving offenses and on 16th December 2014, she was convicted by the Summary Court of the following:-
 - i. Careless Driving - Fined \$500.00 or 1 month imprisonment, disqualified for 2 months;
 - ii. Driving without being licenced - Fined \$200.00 or 20 days imprisonment;
 - iii. Using a vehicle with expired license - Fined \$90.00 or 9 days imprisonment; and
 - iv. Using a vehicle without a certificate of roadworthiness.
12. The First Defendant was negligent in that she:
 - a) caused the accident due to her failure to pay attention to the road whilst in charge of a motor vehicle;
 - b) negligently drove the motor vehicle by failing to discharge the duty of care she owed to the Plaintiff.
 - c) failed to drive as any reasonably prudent driver would have done by disobeying the orange warning cones that had been placed on the road and hitting the Plaintiff with her motor vehicle.
13. If the First Defendant had driven as a reasonably prudent driver would have, she would have obeyed the orange warning cones and avoided running over the Plaintiff with her motor vehicle, thus avoiding the injuries and ongoing health difficulties the Plaintiff has endured for the last 3 years.
14. In the Sentencing Note produced by The Summary Court dated 24th December 2014, the Court found that “*on approaching the junction and the truck, Miss Scott could not have been in any doubt that she should have been paying attention to potential hazards*”, and that the orange cones “*would have been visible to Miss Scott in South Church Street had she looked left*”. The Court indicated that the

First Defendant's "*failure to look to her left for hazards* [before entering the main road] *was a fundamental failure*", and that her actions fell towards the "*medium to high range of culpability*". It was also stated that the injuries sustained by the Plaintiff were "*the consequences of the* [First] *defendant's carelessness*".

15. As a result of the failure of the First Defendant, the Plaintiff suffered significant personal injuries, expense, loss and damage.

PARTICULARS OF PERSONAL INJURIES

16. As a result of the accident, the Plaintiff sustained the following trauma injuries:-

- a) Fractured ribs 1st, 2nd, 5th, 6th, 7th and 8th on right;
- b) Pulmonary contusion right middle lobe;
- c) Two pulmonary haemorrhages right lower and right middle lobe;
- d) Haemothorax;
- e) Fractured sternum;

17. In addition to the above injuries, the Plaintiff continues to suffer from the following symptoms:-

- a) Chronic pain to his back, ribs and chest;
- b) Intermittent paraesthesias in left lower limb;
- c) Restriction in his range of movement;
- d) Pain when standing/walking;
- e) Annular bulge of discs in his spine;
- f) Loss of lumbar lordosis in his spine due to muscle spasms;
- g) Intermittent difficulty in breathing;
- h) Shortness of breath on exertion at least once a day;
- i) Nocturnal cough and choking with occasional blood tinged sputum;
- j) Apnoea and daytime hypersomnolence;

- k) Deconditioning of respiratory reserves;
 - l) Chest tightness and wheezing;
 - m) Anxiety and low mood.
18. The Plaintiff's home life and enjoyment of life has been significantly affected by his injuries.

PARTICULARS OF GENERAL DAMAGES

19. At the time of the accident, the Plaintiff was 22 years of age and fit and well with no medical complaints. The above-referenced issues have arisen solely as a result of his injuries from the accident.
20. The above symptoms have resulted in a noticeable restriction in the Plaintiff's range of movement, and discomfort when undertaking normal day-to-day activities. He continues to complain of pain at night when he goes to bed, and prolonged standing greater than 45 minutes and/or walking slowly for more than 30 minutes causes him pain and discomfort.
21. The Plaintiff relies upon analgesia every day of his life as a result of his injuries from the accident. At present, he takes pregabalin once a day at bedtime and chlorzoxazone twice a day. He has been prescribed pregabalin to relieve the pain from his damaged nerves, and chlorzoxazone which is a muscle relaxant to ease his muscle spasms and the pain arising from them.
22. The Plaintiff's fractured ribs and sternum injuries arising from the accident continue to contribute to the pain and intermittent exacerbations the Plaintiff suffers on a daily basis. His injuries have reached maximum medical improvement and are unlikely to improve in future. The Plaintiff will require analgesia for the pain related to the chest wall injuries suffered in the accident for the rest of his life.
23. The Plaintiff's respiratory-related issues are as a result of the trauma he suffered during the accident on 6th December 2013. The breathlessness he experiences is related to deconditioning of his respiratory reserves and weight gain as a result of the decrease in exercise levels as a consequence of the pain he suffers due to the trauma. The Plaintiff has reached maximum medical improvement from the injuries suffered and his injuries will not improve.
24. The Plaintiff's enjoyment of life has been detrimentally impacted as a result of the injuries sustained in the accident. Prior to the accident the Plaintiff enjoyed playing soccer, jogging or going to the gym every day. As a result of his injuries,

he requires to avoid any physical activity where possible, and he is unable to continue his hobbies and other recreational activities which always provided him with significant enjoyment and satisfaction prior to the date of the accident.

25. As a result of being unable to do exercise or play sports, the Plaintiff's weight has increased by approximately 38lbs since the accident. His psychological wellbeing has been negatively impacted as he is unable to exercise and has put on weight. Up until the accident, the Plaintiff had been fit, healthy and active but the injuries arising from the accident have made it impossible for his body to tolerate the same level of exertion without experiencing significant pain.
26. The pain and breathing difficulties which have arisen from the accident have also had a detrimental impact on the Plaintiff's ability to be intimate with his partner. He now experiences difficulty breathing, requiring the use of an inhaler, and pain in his chest and back during and after intercourse. These issues are likely to continue for the rest of his life and will affect his current relationship and any future relationships.
27. As a result of the accident, the Plaintiff now suffers from anxiety. Even when walking a short distance, he worries about being struck by a car. This is a significant problem for him as he occasionally has to walk to catch the bus to and from work. Prior to the accident he did not have any such anxiety.
28. The Plaintiff will rely on the medical reports of Mr. Sameer Singh and Dr. Peter Turkington.

PARTICULARS OF SPECIAL DAMAGES

29. The Plaintiff's pay, promotional prospects and employability have been significantly impacted as a result of the injuries he sustained from the accident. The Plaintiff is only 25 years old and the injuries he sustained from the accident will affect his capacity to work for the rest of his life.
30. The Plaintiff's degree of breathlessness and chest wall pain arising from the injuries from the accident will affect his employability, and it is unlikely that he will be able to work in a role which has a physical component, such as a rigger, in the future. The Plaintiff will require to adapt in his current role of technician by continuing to take regular breaks at work and limiting the strain on his body.
31. The Plaintiff's position in the competitive labour market has been considerably weakened as a result of his injuries. There is an existing and permanent reduction in the Plaintiff's earning capacity for which he requires to be compensated.
32. The Plaintiff's employer has confirmed that the Plaintiff's working hours have been reduced since the accident as they now require to be selective with the type

of tasks they assign to the Plaintiff. The Plaintiff is no longer selected to undertake heavy lifting tasks or any role which would put stress or strain on his body.

33. Prior to the accident the Plaintiff was being trained to climb electrical towers. The change of role would have resulted in an increased base salary to the Plaintiff. The Plaintiff is no longer capable of being trained in that role as a result of the injuries he has sustained from the accident. The Plaintiff's employment prospects and salary have been hindered as a result.

34. Full particulars of the Plaintiff's damages and loss will be contained in a subsequent schedule.

AND THE PLAINTIFF claims:

1. General damages;
2. Special damages;
3. Pre-judgment interest in accordance with section 34 of the Judicature Law (1995 Revision);
4. Further and applicable other relief as this Honourable Court deems just; and
5. Costs.



Chapmans
Attorney for the Plaintiff

Dated: 5th December 2016

This **Writ and Statement of Claim** was issued by Chapmans, Attorneys-at-Law for and on behalf of the Plaintiff whose address for service is that of his said attorneys, 81 West Church Street, P.O Box 742, Grand Cayman KY1-1303 (HM/LCC/1282-0002)

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 installments or otherwise.

See over for notes for guidance

Please complete overleaf

Notes for Guidance

1. Each Defendant (if there is 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.

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.

CHAPMANS
Attorneys-at-Law
81 West Church Street
P.O. Box 742
West Bay KY1 -1303
CAYMAN ISLANDS
(Ref: HM/LCC/1282-0001)

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]