

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION



CAUSE NO: 43 OF 2017

BETWEEN:

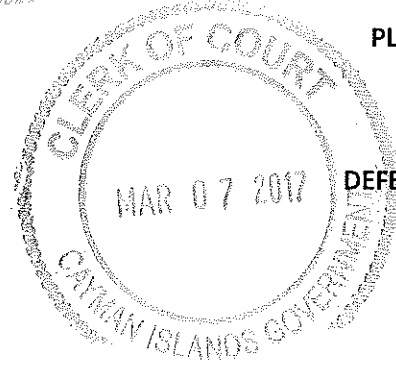
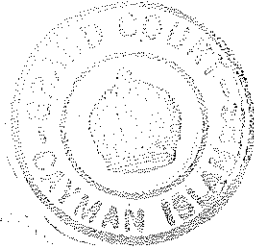
DERREN BURLINGTON

PLAINTIFF

AND:

ROWAN HUNTE

DEFENDANT



WRIT OF SUMMONS

TO: Rowan Hunte

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of 24 Mona Lisa Way, West Bay, Grand Cayman 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 7 day of March 2017.

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:
British Caymanian Insurance Company Limited
BritCay House
236 Eastern Avenue
George Town
P.O. Box 74
Grand Cayman KY1-1102

STATEMENT OF CLAIM

1. At all material times the Plaintiff was the driver of a Kia Sportage SUV registration 151679 and the Defendant was the driver of a BMW 528 registration number 113968.
2. On the 8th March 2014, the Plaintiff was travelling along North Sound Road, Grand Cayman in a southerly direction. He approached the intersection with Shedden Road intending to travel straight across. The traffic light was green and thus the Plaintiff proceeded across the intersection when suddenly and without warning the Defendant turned right across the path of the Plaintiff's correctly proceeding vehicle causing a collision.
3. At all material times the Defendant was insured to drive the BMW registration number 113968 with British Caymanian Insurance Company Ltd who had issued a policy of insurance relating to the vehicle in accordance with the Motor Insurance (Third Party Risks Law).
4. The accident was caused by the negligence of the Defendant.

Particulars of negligence

- 4.1 drove too fast in all of the circumstances;
 - 4.2 failed to give way to the Plaintiff's correctly proceeding vehicle;
 - 4.3 failed to keep any or any proper look out;
 - 4.4 failed to adequately control his vehicle;
 - 4.5 failed to see the Plaintiff in time or at all;
 - 4.6 failed to apply his brakes whether in time or at all;
 - 4.7 *res ipsa loquitur*
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 21st September 1969 and he is currently 46 years old.
7. Following the accident, the Plaintiff was taken to CTMH by his fiancé Allison Lovinggood. He saw his GP Dr Sidney Ebanks who provided him with muscle relaxers, pain medication and a neck brace.
8. He subsequently saw Dr Ebanks who referred him to Dr Tenson Edmonds at RVC for physiotherapy. He had extensive treatment between the 14th March 2014 and the 9th April 2015 and was then referred to see Dr Herzig, Orthopaedic Surgeon.
9. Dr Herzig arranged for X-rays and an MRI scan and advised him to have an injection into the nerve in his back to alleviate the symptoms.
10. The injection was performed by Dr Starkman but had very limited benefit and he was advised to have further investigations.

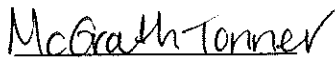
11. He travelled to the University of Miami Spine Institute for continued treatment where Dr Levi, arranged a CT scan and advised an open spinal procedure which was then performed on the 3rd September 2014.
12. The Plaintiff remained in a wheelchair until December 2014.
13. At 3 years post-accident, the Plaintiff continues to suffer considerable pain in his neck and back. The level of pain has improved since the operation but is still persistent and permanent in nature.
14. The Plaintiff relies on the medical reports of Mr Mackay dated 15th April 2015 and 25th October 2015.
15. In addition to Pain Suffering and Loss of Amenity, the Plaintiff also pursues claims for Future Care, and Future Loss of income which will be particularized in due course.

Particulars of Special Damage

16. See attached Schedule of Special Damages.
17. 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 8th March 2014 to Trial.

AND THE PLAINTIFF claims:

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


McGrath Tonner
Attorneys for the Plaintiff

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: OF 2017

BETWEEN:

DERREN BURLINGTON

PLAINTIFF

AND:

ROWAN HUNTE

DEFENDANT

SCHEDULE OF SPECIAL DAMAGES

<u>Item</u>	<u>Description</u>	<u>Value in CI\$</u>
1	Loss of Income	\$367,064.90/\$202,226.88
	<p>Prior to the accident, the Plaintiff worked as a boat captain/fisherman. It had been his intention to commence his own Charter Business, Georgia Girl Charters but he was unable to do so due to his injuries.</p> <p><u>8 March 2014 – 26 December 2015</u></p> <p>For the period from the 8th March 2014 - 31 Dec 2014 (42 weeks) the Plaintiff calculates his Earnings would have been as follows: -</p> <ul style="list-style-type: none"> • The Plaintiff was unable to carry out 6 vessel deliveries at a loss of CI\$76,608.00 • The Plaintiff cancelled a Charter booking for mid-March 2014 at a loss of CI\$714.00 • Loss of Maintenance/Servicing heavy equipment for HE Heavy equipment Ci\$6,000.00 • Loss of Fish Sales - Utilising a conservative estimate of catching 210lb of fish (Wahoo/Tuna/Dolphin) per week 210 x CI\$5.00 per lb = CI\$1,050.00 42 weeks x 1050.00 = CI\$44,100.00 • The Plaintiff would also receive substantial tips which would normally equate to 25% of the Captain/Charter fees 77,322.00 x 25% = CI\$19,330.50 • The Plaintiff did not have any associated costs attributed to these earnings. When carrying out vessel deliveries, all costs such as fuel, docking, insurance etc are covered by the vessel owner. In 	

Item	Description	Value in CI\$
	<p>terms of income from fish sales, he was paid for his Captain Services and all associated costs were covered by the owner of the boat and the fish sale split with any crew.</p> <ul style="list-style-type: none"> • Total lost income for 42 weeks = CI\$146,752.50 • Weekly average = CI\$3,494.10 <p>Number of weeks from date of accident to commencing Georgia Girl business on 23 December 2015 = 94 weeks</p> <p style="text-align: center;">94 x \$3,494.10 = CI\$328,445.40</p> <p>The Plaintiff gives credit for earnings made during this period whilst driving the public buses in the sum of CI\$3,055.50 and for salvage work in Cayman Brac in the sum of CI\$2,500.00.</p> <p>Loss = CI\$322,889.90</p> <p>In the alternative, the Plaintiff would have commenced his Charter business, Georgia Girl Charters at this time and thus claims loss of profit. The Plaintiff believes <u>there would have been an overlap</u> between commencing his business and carrying out vessel deliveries as above.</p> <ul style="list-style-type: none"> • Since starting the business on the 23 December 2015 until 28 February 2017 (62 weeks) the Plaintiff's Income was US\$158,770.63 (CI\$129,371.92) • His expenditure (excluding mate and maintenance costs as they would not have been required if the accident had not occurred). <ul style="list-style-type: none"> ▪ Fuel = CI\$9,379.62 ▪ Trade and Business Licence = CI\$600 (\$300 annually) ▪ Wifi = CI\$1,120 (\$80 per month) ▪ Port Authority Annual inspection = CI\$100 (\$50 annually) ▪ Business Cards = CI\$141.04 (\$70.52 annually) ▪ Docking, Electricity, Water = CI\$4,900 (\$350 per month) ▪ Snacks, Ice, Bait = CI\$4,520 (\$40 per trip) ▪ Hooks, Lures, Leaders etc. CI\$700 (\$50 per month) 	

Item	Description	Value in CI\$
	<p style="text-align: right;">Total expenditure = \$21,460.66</p> <ul style="list-style-type: none"> • Profit = (CI\$129,371.92 – CI\$21,460.66) =CI\$107,911.26 • Weekly Profit = CI\$1,740.50 • Number of weeks from date of accident to commencing business on 23 December 2015 = 94 weeks • 94 x \$1,740.50= \$163,607.00 <p>The Plaintiff gives credit for earnings made during this period whilst driving the public buses in the sum of CI\$3,055.50 and for salvage work in Cayman Brac in the sum of CI\$2,500.00.</p> <p>Loss = \$158,051.88</p> <p><u>23 December 2015 – 28 February 2017 (62 weeks)</u></p> <ul style="list-style-type: none"> • The Plaintiff's profit during this time is reduced due to his ability to carry out physical tasks and maintenance. In the absence of his injury the Plaintiff would be running the charters without a mate and undertaking his own maintenance. • The Plaintiff spends \$675.00 every 6 weeks for maintenance he previously undertook himself equating to \$5,850.00 per annum. • The Plaintiff is on average taking out 3 charters per week. The Plaintiff hires a mate at a cost of \$200 for all trips which he previously would have done on very limited occasions. The Plaintiff is paying his employee in the region of \$31,200 per year. • The Plaintiff's loss of profit is \$37,050 per annum equal to \$712.50 per week <p>Loss = \$44,175.00</p> <p>Past Loss of Earnings = \$367,064.90/\$202,226.88</p>	
2	Care	19,410.00
	<p><u>8 March 2014 – 14 March 2014</u></p> <p>In the first week post-accident the Plaintiff was confined to bed. All his care was provided by his partner, Allison Lovinggood which included cooking /helping him bathe/helping him get in and out of</p>	

Item	Description	Value in CI\$
	<p>bed/dressing/housework and generally bringing him anything he needed.</p> <p>He required such assistance for approximately 8 hours per day.</p> <p>8 hours x 7 days' x \$10.00 per hour = \$560.00</p> <p><u>15 March 2014 – 23 August 2014</u></p> <p>For the 5 months following the accident the Plaintiff was able to get out of bed and undertake personal hygiene requirements. However, he still required significant care from Allison which included taking him to a large number of medical/physiotherapy appointments. In addition, when Allison returned from work she would take over looking after him as above and also undertake all of the household chores such as cleaning, washing and ironing clothes, cooking, shopping which was shared prior to the accident.</p> <p>2 hours per day x 7 days a week x 23 weeks' x \$10.00 per hour = \$3,220.00</p> <p><u>24 August 2014 – 11 September 2014</u></p> <p>The Plaintiff travelled to the United States for treatment and surgery, he was accompanied by Alison Lovinggood who provided significant care.</p> <p>6 hours per day x 19 days' x \$10.00 per hour = \$1,140.00</p> <p><u>12 September 2014 – 9 December 2014</u></p> <p>Upon return from having surgery in the United states the Plaintiff was in a wheelchair. Whilst Allison was at work, her daughter, Karlie Lovinggood provided care by assisting the Plaintiff to get around in the wheelchair, bringing him food and drinks and helping me to get in and out of the wheelchair. When the Plaintiff was in the wheelchair Allison also had to pack and unpack the wheelchair whenever the Plaintiff was transported.</p> <p>3 hours per day x 88 days x \$10.00 per hour = \$2,640.00</p> <p><u>10 December 2014 – 14 December 2014</u></p>	

<u>Item</u>	<u>Description</u>	<u>Value in CI\$</u>
	<p>The Plaintiff and Allison returned to the United States for the Plaintiff's three-month post-operation follow up at Jackson Memorial hospital.</p> <p>5 hours per day x 5 days x \$10.00 per hour = \$250.00</p> <p><u>15 December 2014 – 5 March 2017</u></p> <p>The Plaintiff required ongoing care although to a lesser extent. Allison lifts all the heavy groceries, luggage (when applicable), anything of a heavy / awkward nature. She also completes household tasks previously undertaken by the Plaintiff such as, cleaning the cat litter boxes, lifting truck tailgate, changing a/c filters and light bulbs in the house She also regularly applies heat, ice to the Plaintiff's back.</p> <p>10 hours per week x 116 weeks' x \$10.00 per hour = \$11,600</p>	
3	Cayman Islands Imaging – March 2014	273.19
4	TrinCay – May 2014	36.48
5	Dr Ebanks – May 2014	29.44
6	The Medical Specialist (radiology) - 2014	1567.77
7	3T Cayman – May 2014	32.68
8	Cayman Neurology and Pain Management – May 2014	100.00
9	Dr Lockhart - June 2014	247.00
10	Dr Quartly - June 2014	247.00
11	Dr Ebanks - June 2014	19.55
12	MRI Scans - July 2014	290.00
13	Dr Lockhart - October 2014	176.83
14	Dr Ebanks - October 2014	17.20
15	Prescriptions - November 2014	4.71
16	RVC Rehab - Various	4517.32
17	Hernia Repair Surgery – April 2015	666.00
18	Hotel (US\$1083.20) Sep 2014	888.22
19	Hire Car (US\$300) – August/September 2014	246.00
20	Sustenance 2 x \$50 x 19 days– August/September 2014	1,900.00
21	Flights (US\$788.50) – December 2014	646.57
22	Hotel (US\$427.13) – December 2014	350.25
23	Hire Car– December 2014	176.44
24	Sustenance 2 x \$50 x 5 days – December 2014	500.00
25	BritCay Health Insurance Subrogated Claim	81,433.77
Total		480,841.32/316,003.30

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 2017

BETWEEN:

DERREN BURLINGTON

PLAINTIFF

AND:

ROWAN HUNTE

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.

McGrath Tonner
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.