

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO ~~70~~ OF 2017

BETWEEN:

ALEX WILLIAM BALLS

PLAINTIFF

AND

BEEDYAWATTE SHEWRAJ

FIRST DEFENDANT

AND

SAXON MOTOR & GENERAL INSURANCE MGA COMPANY LTD
(TRADING AS SAXONMG)

SECOND DEFENDANT



Amended WRIT OF SUMMONS

TO: BEEDYAWATTE SHEWRAJ

AND TO: SAXON MOTOR & GENERAL INSURANCE COMPANY MGA LTD
(TRADING AS SAXONMG)

This claim arises out of the use of a motor vehicle on a road, and the named Defendant benefits from a motor vehicle insurance policy with the following insurance company:

Saxon **MGA Motor & General Insurance Company Ltd** (T/A SaxonMG)
DMS Corporate Services Ltd
PO Box 1344
dms House
20 Genesis Close
George Town
KY1-1108
Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of a claim set out on the next page.

Within 14 days after 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 495GT, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement 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 20th day of April 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.

INDORSEMENT OF INSURER

The Plaintiff's claim arises out of the use of a motor vehicle on a public road. The insurer of the **FIRST DEFENDANT** named herein is Saxon **Motor & General Insurance MGA Company Ltd** for whom also trades under the name SaxonMG.

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STATEMENT OF CLAIM

1. On or about 13th August 2014, the Plaintiff who was driving a Black Yamaha XTZ 125 motor-cycle, registration number 134915, within the speed limit along Shamrock Road, Grand Cayman, was involved in a road traffic accident (“the accident”).
2. The accident occurred when the First Defendant, who had been driving a Blue Hyundai Elantra motor-car registration number 134412 in the opposite direction to the Plaintiff along Shamrock Road, turned right from a stationary position on the said road across the Plaintiff’s path. It was the First Defendant’s intention to turn right from Shamrock Road into Northward Road.
3. The Plaintiff was obliged to break heavily to try to avoid colliding with the First Defendant’s motor car but he was unable to avoid a collision. His left hip impacted with the First Defendant’s motor car and he was thrown over the back of the motor car, rolling over the same and landing on his side.

4. The First Defendant at all material times had the benefit of a contract of motor insurance (“the contract”) with the Second Defendant. The contract indemnifies the First Defendant in respect of this claim brought against her by the Plaintiff for damages arising from the accident.
5. Pursuant to s.15(1) Motor Vehicle Insurance (Third Party Risks) Law (2012 Revision) the Second Defendant must pay to the Plaintiff the total such sums as are awarded herein against the First Defendant in damages in respect of the First Defendant’s liability to the Plaintiff, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any law relating to interest on judgments. Notice of these proceedings is also given to the said insurer in accordance with section 15(2)(b) of said Law.
6. The accident was caused by the negligence of the First Defendant.

PARTICULARS OF NEGLIGENCE

- a. Failing to drive with due care and attention;
- b. Failing to keep a proper look out;
- c. Failing to see the Plaintiff before turning across his path;
- d. Assumed, without looking or looking sufficiently carefully, that there was no vehicle behind a navy coloured vehicle which was travelling along Shamrock Road ahead of the Plaintiff;
- e. Failing to give the Plaintiff any or any sufficient time to pass before executing her right turn;
- f. Pulled to the right across the Plaintiff’s path as soon as the navy coloured vehicle had passed ahead of him;

g. Failing to stop, slow down, swerve or in any other way so to manage and control her motor car as to avoid the accident.

7. The Plaintiff will rely upon:

a. the First Defendant's plea of guilty to the offence of careless driving in respect of the accident;

b. the conviction of the First Defendant before the Cayman Islands Traffic Court on 14th September 2016 of careless driving in respect of the accident.

8. As a consequence of the negligence, the Plaintiff, who was born on 6th June 1996, has suffered injury, loss and damage.

PARTICULARS OF INJURY

The Plaintiff was, before the accident, a keen skateboarder. As a result of the disability from his injuries, he has been unable to return to this activity.

a. Multiple abrasions and bruising;

b. Traumatic injury to the left acetabulum of the hip;

c. Psoas tendinitis associated with the full thickness labral tear leading to a psoas tenotomy;

d. Tear of ligamentum teres;

e. A number of operations in the United States of America to improve the function of the hip and to reduce symptomatology associated with the traumatic injury to the left hip;

f. Further surgery may well be required in respect of his injuries cited above, as his prognosis is not presently clear.

9. The Plaintiff will rely upon medical reports for further particulars and for evidence of the alleged injuries suffered and the effect upon him, his present condition, prognosis and his likely future requirements for medical care. **A copy of which will be served in due course.**

PARTICULARS OF SPECIAL DAMAGE

10. A schedule of Special Damage with full particulars will be served in due course

11. In summary, these heads of loss are:

- a. Medical expenses;
- b. Medical expenses which the Plaintiff is under an obligation to reimburse to his insurance company for the medical fees incurred this far and for such future medical expenses as they may meet on his behalf;
- c. Loss of earnings;
- d. Travelling expenses;
- e. Care and assistance;
- f. Hotel expenses;
- g. Rental car expenses;
- h. Additional expenses – such as (but not limited to) mobile phone charges.

PARTICULARS OF FUTURE LOSS

12. In summary, these heads of loss are:

- a. Future Loss of earnings: At the time of the accident the Plaintiff was studying Engineering at the University College, Cayman Islands and was due to commence his second year in September 2014. On the day of the accident, the Plaintiff was engaged in a summer internship with the Department of Planning to further his education in Architecture. It was expected that after this second year at University College the Plaintiff would attend a University in Canada or the UK to study to become an Architect;
- b. Future Loss of Pension rights;
- c. Loss of employment prospects: Following recovery from the major effects of the accident, the Plaintiff was unable to resume his studies and he is presently employed as a Bank Teller at Cayman National Bank;
- d. Travelling expenses;
- e. Ongoing care, assistance and attention;
- f. Household and Gardening Assistance;
- g. Medical costs and treatments.

13. The claim in respect of future pecuniary loss will be advanced on an actuarial basis applying a multiplier based upon expert evidence.

CLAIM FOR INTEREST

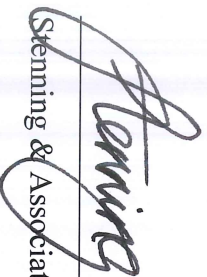
14. The Plaintiff pleads and relies upon section 34 of the Judicature Law (2013 Revision) and the Judgement Debts (Rates of Interest) Rules 1995 as amended and claims interest on his general and special damages and costs as follows:

- a) Prejudgement (simple) interest on his general and special damages awarded from 13th August 2014 (the date the Plaintiff's cause of action arose) to judgement at a rate of 2.25%
- b) Post-judgment interest upon the principal amount of the judgement with the effect from the date of service of the judgement at a rate 2.25%; and
- c) Interest on all fixed and/or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at a rate of 2.25%

AND the Plaintiff claims:

- (i) General damages for pain and suffering and loss of amenities to be assessed;
- (ii) Special damages including loss of income;
- (iii) Pre-judgment and post-judgment interest pursuant to section 34 of the Judicature Law (2013 Revision) and Judgement Debts (Rates of Interest) Rules 1995 as amended, and more particularly pleaded above;
- (iv) Costs; and
- (v) Such further and other relief as the Court may deem just.

DATED this 20th day of April 2017



Stenning & Associates

Attorneys for the Plaintiff

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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PLAINTIFF

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BEDDYAWATTE SHEWRAJ

FIRST DEFENDANT

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(TRADING AS SAXONMIG)

SECOND 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).....

Attorneys for First and Second Defendants

Please complete overleaf

THIS STATEMENT OF CLAIM is filed by Stenning & Associates, attorneys for the Plaintiff, whose address from service is that of his attorneys, at 3rd Floor, 433 west Bay Road, Georgetown, P.O. Box 901, Grand Cayman KY1-1103, Cayman Islands.

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.

STENNING & ASSOCIATES
Attorneys-at-Law
3rd Floor, Marquee Place,
433, West Bay Rd,
George Town,
Grand Cayman.

REF: JS/CR/1582/001

Indorsement by defendants Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.