

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: **G0078** OF 2017

BETWEEN:

ANNE MARIE TOMLINSON

Plaintiff

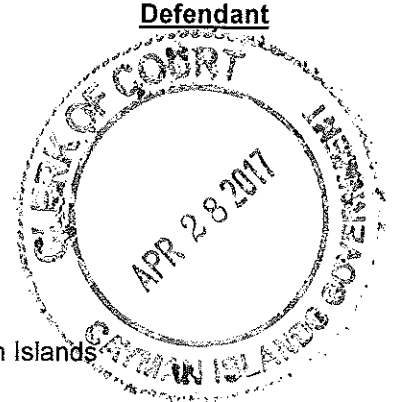
AND

MICHAEL JERALD YONKER

Defendant



WRIT OF SUMMONS



TO: Michael Jerald Yonker
 288 Woodland Drive, Bodden Town, Grand Cayman, 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 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating 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 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 **28** 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 Acknowledgement of Service are given with the accompanying form.

And as a Notified Party to:

Cayman First Insurance Company Limited

3rd Floor, Harbour Place
103 South Church Street
P.O Box 2171
Grand Cayman
KY1-1105
Cayman Islands

STATEMENT OF CLAIM

1. At all material times the Plaintiff was the owner and driver of a Toyota Hiace ("the Toyota"), registration number 125108 and the Defendant was driver of a Dodge Ram 2500, registration number 98009 ("**Dodge Ram**").
2. On 14 November 2014 the Plaintiff was travelling in an Easterly direction along Shamrock Road, Grand Cayman. The Plaintiff was correctly proceeding in the nearside lane when the Defendant suddenly and without warning, drove his vehicle from the middle lane into the nearside lane, colliding with the rear offside corner of the Toyota.
3. At all material times the Defendant was insured to drive the Dodge Ram with Cayman First Insurance Company, who had issued a policy of insurance relating to the said vehicle, pursuant to the Motor Insurance (Third Party Risks) Law (2012 Revision).
4. The accident was caused by the negligence of the Defendant in that he:-

PARTICULARS OF NEGLIGENCE

- (i) Attempted to change lanes, from the middle to nearside lane, when it was unsafe to do so;
 - (ii) Drove into collision with the Plaintiff's vehicle which was already situated in the nearside lane;
 - (iii) Failed to heed and observe the presence of the Plaintiff's vehicle in the nearside lane;
 - (iv) Failed to wait until it was safe and clear from him to change lanes;
 - (v) Drove too fast in all the circumstances;
 - (vi) Failed to keep any or any proper look out;
 - (vii) Failed to adequately control his vehicle;
 - (viii) Failed to see the Plaintiff's vehicle in time or at all;
 - (ix) Failed to brake and or take any evasive action so as to avoid a collision;
 - (x) Failed to take reasonable care in all the circumstances; and
 - (xi) *Res Ipsa Loquitur*
5. By reason of the aforesaid, the Plaintiff has sustained personal injury, loss and damage.

PARTICULARS OF INJURY

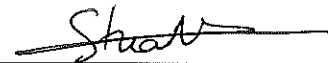
6. The Plaintiff, whose date of birth is 19th September 1965, was 49 years old at the date of the accident. The Plaintiff was taken by ambulance to George Town General Hospital, Grand Cayman, where she was seen by medical staff.
7. The Plaintiff sustained injuries to her chest, upper abdomen, and knees which caused her pain, swelling and discomfort. The Plaintiff will rely on medical evidence in support of her claim for personal injury, such evidence to be served during the course of the proceedings.

PARTICULARS OF SPECIAL DAMAGE

8. The Defendant caused significant damage to the Plaintiff's vehicle which resulted in repair costs of **CI\$12,258.64**.
9. The Plaintiff claims interest pursuant to Section 34 of the Judicature Law (2007 Revision) alternatively pursuant to the equitable jurisdiction of the Court at such rate and for such period as the Court deems appropriate.

AND THE PLAINTIFF claims:

1. General and Special Damages.
2. Interest pursuant to Section 34 of the Judicature Law (2007 Revision).
3. Further and other relief as deemed appropriate.
4. Costs.



STUARTS WALKER HERSANT HUMPHRIES
Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court
AND TO: The Defendant

BETWEEN:

ANNE MARIE TOMLINSON

Plaintiff

AND

MICHAEL JERALD YONKER

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 of Summons is acknowledged accordingly

(Signed) _____
Attorney for

NOTE 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/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her 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/her name, address and reference, if any, in the box below.

FAO: Ms Farrah Sbaiti
STUARTS WALKER HERSANT HUMPHRIES
Attorneys-at-Law
4th Floor, Cayman Financial Centre
36A Dr. Roy's Drive
P.O. Box 2510 GT
George Town
Grand Cayman, KY1-1104
Cayman Islands

Tel: 345 949 3344
Fax: 345 949 2888
Ref: RTA/FCS/6639

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

DIRECTIONS FOR ACKNOWLEDGEMENT 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, PO Box 495, 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 of Guidance

Notes for Guidance:

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement 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/her.
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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his 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.