

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 100 OF 2017

BETWEEN:

ANDRES JAMES

PLAINTIFF

AND:

YVONNE LORETTA CHAMBERS



WRIT OF SUMMONS



TO: YVONNE LORETTA CHAMBERS
of 79 Sitwell Road, Boddan Town, Grand Cayman

This claim arises out of the use of a motor vehicle on a road, and the name and address of Defendant's motor vehicle insurer is as follows:

British Caymanian Insurance Co. Ltd.
BritCay House, 236 Eastern Ave.,
P.O. Box 74, Grand Cayman, KY1-1102, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff of Red Bay, Prospect, Grand Cayman, Cayman Islands in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands 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 any 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 13th day of June 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 original issuance unless renewed by order of the Court.

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

BETWEEN:

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DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is a Jamaican national and resides at Red Bay, Prospect Grand Cayman, and was at the material time employed as a general labourer / grounds man / landscaper with Oaktree Services. The Plaintiff, and was at all material times the owner and operator of a 2003 Honda Accord motor vehicle bearing registration plate no. 145 242, hereinafter referred to as “the Plaintiff’s vehicle”.
2. The Defendant resides in Bodden Town, Grand Cayman and was at all material times the owner and operator of a Ford Explorer SUV motor vehicle bearing registration plate no. 111 678, hereinafter referred to as “the Defendant’s vehicle”.
3. The Plaintiff’s claim arises from the use of a motor vehicle upon a road by the Defendant, required to be insured pursuant to the Vehicle Insurance (Third Party Risks) Law (2012 Revision). The insurer of the Defendant’s vehicle at all material times was British Caymanian Insurance Co. Ltd. and notice of these proceedings will be given to the said insurer in accordance with s.15(2)(b) of the said Law.
4. On 16 August 2016 at or about 8:46 a.m. the Plaintiff was operating the Plaintiff’s vehicle westbound on Shamrock Road in the vicinity of Lower Valley heading west towards George Town in a lawful and prudent manner. The Plaintiff had just left his then home in the Northward area of Bodden Town and was proceeding to his sister’s home at Smith Road Villas, George Town.
5. The Plaintiff was operating his vehicle well within the speed limit and was followed west bound on Shamrock Road by a number of other vehicles heading towards George Town. In the vicinity of house # 2516 on Shamrock Road, there is a slight right hand bend on the road heading west and a slight rise or elevation in the roadway in the vicinity of the home at No. 2516 Shamrock Road.
6. As the Plaintiff approached this bend and slight rise in the road at this location he observed a large SUV, i.e. Defendant’s vehicle, approaching eastbound at a high rate of speed. As the Defendant’s vehicle approached his, it failed to follow the bend in the road at this location and entered the Plaintiff’s westbound lane for traffic, proceeding head-on towards the Plaintiff’s

- vehicle. With a head-on collision imminent, and with a substantial stone wall immediately to the left of the soft shoulder of the road, the Plaintiff's only option in the situation of emergency created by the Defendant's vehicle, was to turn the Plaintiff's vehicle to the right into the eastbound lane in an effort to avoid a head-on collision with the on-coming Defendant's vehicle.
7. The Plaintiff states that as he turned the Plaintiff's vehicle sharply to the right and accelerated toward the east bound lane in a desperate effort to avoid a collision with the oncoming Defendant's motor vehicle, the Defendant evidently woke up and/or realised that she was in the wrong lane and sought to correct her error and at the last moment steered back into the eastbound lane.
8. As a result of the Defendant's last minute corrective actions, the Defendant's vehicle collided with that of the Plaintiff in the eastbound lane with the Plaintiff's vehicle sustaining heavy damage to the front left and the Defendant's vehicle to the front right, with the damage to the vehicles consistent with the angle of impact and the driver actions as described above.
9. The Plaintiff states that two independent witnesses being drivers following the Plaintiff's and the Defendant's vehicles respectively will confirm that the collision occurred as the result of the Defendant's vehicle initially entering the westbound lane, with the Defendant believed to have fallen asleep at the wheel prior to the accident, and the driver immediately behind her attempting to rouse her prior to the accident by using his horn.
10. The Plaintiff will rely *inter alia* on the opinion of Jeffrey Armstrong, Forensic Engineer, dated 18 January 2017 as to the mechanism of the accident as pleaded above.

Particulars of negligence

11. The Plaintiff pleads that the collision as aforesaid and injuries and damages sustained by him occurred as the result of the negligence of the Defendant in the operation of the Defendant's vehicle, in that she failed to maintain her vehicle in the lane for eastbound traffic on Shamrock Road, and negligently entered the lane for westbound traffic creating a situation of emergency and danger for the Plaintiff, who in the agony of collision created by the Defendant's negligence took the only evasive action reasonably available by steering into the eastbound lane, at which moment the Defendant belatedly sought to correct her error, resulting in an angled head-on collision in the eastbound lane.
12. The further particulars of negligence of the Defendant are as follows:
- (a) She fell asleep at the wheel of the Defendant's vehicle;
 - (b) She drove when she knew or ought to have known that she was impaired by fatigue or lack of sleep, including having just worked a night shift, and unable to exercise due care and attention in the control of her vehicle;
 - (c) She failed to maintain her eastbound vehicle in the lane for eastbound traffic on Shamrock Road;
 - (d) She caused or permitted her vehicle to enter the westbound lane for traffic, creating a situation of emergency and danger for the Plaintiff;

- (e) She was operating the Defendant's vehicle at an excessive rate of speed in the circumstances;
- (f) She failed to slow or stop her vehicle when she ought reasonably have done so, or to apply her brakes promptly, in time or at all;
- (g) She to take reasonable or sufficient precautions to avoid a collision with the Plaintiff's vehicle; and
- (h) She was operating the Defendant's vehicle in a careless fashion and without reasonable or sufficient regard for other users of the road.

Particulars of Injury and General Damages

- 13. The Plaintiff was transported to the George Town Hospital (Cayman Islands Health Services Authority) by ambulance, and was initially treated at the Emergency Department of the George Town Hospital.
- 14. The Plaintiff sustained inter alia:
 - (a) a comminuted intraarticular fracture of his heel bone;
 - (b) abrasions and lacerations to his knees; and
 - (c) lacerations and abrasions to his right leg.
- 15. The Plaintiff returned to the Emergency Room on two separate occasions due to the pain in his right foot, and underwent physiotherapy at George Town Hospital until November 2016 when his health insurance was exhausted.
- 16. On 16 November 2016 the Plaintiff was advised by his treating surgeon, Dr Sekhar Kadiyala, Orthopaedic Surgeon, that he may develop osteoarthritis in his ankle and may be required to undergo surgical fusion of his right ankle joint.
- 17. The Plaintiff continues to experience persistent chronic pain in his right ankle, but lacks funds to pursue medical treatment and investigation.
- 18. The Plaintiff remains off-work as the result of his ankle injury and has suffered a loss of his amenities, and has had his recreational and social activities and interests impaired as the result of his injuries; and has been unable to return to his previous sports of basketball and running. As a Jehovah's Witness he has been unable to walk sufficiently to perform "ministry" door to door as part of his beliefs.

Special damages

- 19. At the time of this accident the Plaintiff was employed with Oaktree Services as a labourer / grounds man / landscaper earning \$350.00 per week. Oaktree Services has refused to re-engage him because of his ankle injury. The Plaintiff is unable to work consistently in labouring or physical jobs because of his chronic ankle pain, and has in recent months only been able to find casual part-time employment.

20. Full particulars of the Plaintiff's loss of income and special damages including any subrogated claim advanced on behalf of the Plaintiff's health insurer will be provided prior to trial.

21. The Plaintiff has required the assistance of his mother during his rehabilitation and recovery post-accident and a claim will be advanced for gratuitous care provided by his mother who flew from the US to assist him, during the period post-accident and through to January 2017.

Endorsement as to interest

22. The Plaintiff pleads and relies on s.34 of the Judicature Law (2013 Revision) and the Judgment Debts (Rates of Interest) Rules 2010 as amended and claims interest on his general and special damages and costs as follows:

- (a) Pre-judgment (simple) interest on his general and special damages awarded, from 11 May 2013 (the date the Plaintiff's cause of action arose) to the date of trial at the rate of 2½% per annum.
- (b) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the rate of 2½% per annum or such other rate then prevailing in accordance with the Judgment Debts (Rates of Interest) Rules 2010; and
- (c) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certificates of taxation respectively and at the rate of 2½% per annum or such other rate prevailing in accordance with the Judgment Debts (Rates of Interest) Rules 2010.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) General damages for pain and suffering and loss of amenities to be assessed;
- (b) Special damages including loss of income;
- (c) Pre-judgment and post-judgment interest pursuant to s.34 of the Judicature Law (2013 Revision) and the Judgment Debts (Rates of Interest) Rules 2010 as more particularly pleaded above;
- (d) His costs of this action, and such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 13th day of June 2017

HAMPSON & CO,

Hampson and Company
Attorneys for the Plaintiff

THIS STATEMENT OF CLAIM is filed by Hampson and Company, attorneys for the Plaintiff, whose address for service is that of his said attorneys, at Citrus Grove, 5th Floor, Goring Avenue, George Town, P.O. Box 698, Grand Cayman KY1-1107, Cayman Islands.