

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION REGISTRY**

CAUSE NO: 142 OF 2017

BETWEEN:

SILDA KARENE DILBERT

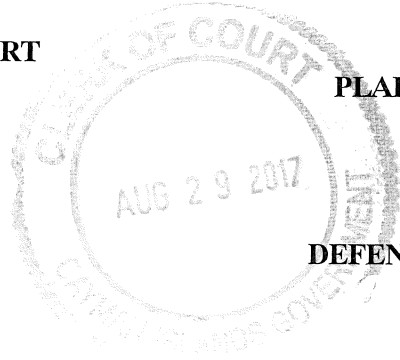
PLAINTIFF

AND:



IRA LEVINE

DEFENDANT



WRIT OF SUMMONS

TO: IRA LEVINE
New York, U.S.A.

Name and address of Defendant's motor vehicle insurer:

Insurance Company of the West Indies (Cayman) Limited
150 Smith Road
P.O. Box 461, Grand Cayman KY1-1106

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of 25A Rosette Close, West Bay, Grand Cayman 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 29th day of August 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.

BETWEEN:

SILDA KARENE DILBERT

PLAINTIFF

AND:

IRA LEVINE

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is a Caymanian, resident in West Bay, born 22 August 1952, and was at the time of the subject accident employed as a cleaner with Comfort Suites.
2. The Defendant is a resident of New York, a visitor to the Cayman Islands, and was at all material times the driver of a black Jeep Wrangler bearing registration number 146 331 (hereinafter “the Defendant’s vehicle”), owned by and rented by the Defendant from Able Car Rentals Ltd, a company duly licensed for the provision of car rentals.
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 Motor Vehicle Insurance (Third Party Risks) Law (2012 Revision). The insurer of the Defendant’s motor vehicle at all material times was the Insurance Company of the West Indies (Cayman) Limited and notice of these proceedings will be given to the said insurer in accordance with the provisions of s.15(2)(b) of the said Law.
4. On 25 February 2015 at or about 12:24 p.m. the Plaintiff was a passenger, seated at the rear of a Toyota Hiace bus (hereinafter “the bus”), bearing registration number 102 648, and being driven by Rohan Donovan Smith along North West Point Road, West Bay in a generally northerly direction, in the vicinity of the Turtle Farm and the Tortuga Liquors store, when suddenly and without warning, the Defendant operating the Defendant’s vehicle, attempted to exit the private driveway from the Tortuga Liquors store and to turn right (southbound) on North West Point Road, and in doing so drove violently into the left side of the bus which was proceeding lawfully on North West Point Road.
5. As a result of the collision with the left side of the bus as aforesaid the Plaintiff was thrown violently from her seat and against the right side of the bus, sustaining injuries as detailed below.

Particulars of negligence

6. The Plaintiff states that the said accident occurred as the result of the negligence of the Defendant in the operation of the Defendant's vehicle, the particulars of which negligence are as follows:
 - (a) He failed to keep a proper or any look out or to take sufficient or any precautions prior to pulling out of Tortuga Liquors, and attempting to enter onto North West Point Road from a private driveway;
 - (b) He failed to yield the right of way to the bus which was lawfully proceeding on North West Point Road and had the right of way;
 - (c) He failed to apply his brakes promptly, in time or at all; and
 - (d) He was operating the Defendant's vehicle in a careless manner.
7. In the circumstances where the Defendant's vehicle came into collision with the side of the bus which had the right of way, the Plaintiff pleads and relies on the doctrine of *res ipsa loquitur* as to the negligence of the Defendant in the operation of the Defendant's vehicle.

Particulars of injury

8. The Plaintiff states that as the result of the negligence of the Defendant as aforesaid the Plaintiff sustained serious personal injuries. As a result of the force of the collision and the impact with the side of the bus, she experienced pain on the left side of her chest, and had to be taken to the Emergency Room of the George Town Hospital for examination and treatment. Several ribs on her left side were bruised and she was prescribed pain medication and given two weeks off work.
9. The Plaintiff continued to experience pain in her mid-lower chest requiring her to return to the Emergency Room for treatment. She was prescribed further pain medication and advised to stay off work for a further two weeks.
10. The Plaintiff continued to exhibit pain on the left side of her trunk under her left breast, and of her left shoulder. The Plaintiff was under the care of Dr Sook Yin, General Practitioner, whose diagnosis on 20 March 2015 was that the Plaintiff suffered from musculoskeletal inflammation consistent with injuries sustained from the motor vehicle accident referred to above. The Plaintiff was prescribed Cataflam, Tylenol 3, Voltaren Gel, and was referred by Dr Yin to physiotherapy, which commenced on 20 April 2015 at the George Town Hospital. The Plaintiff was also put on further sick leave until 10 April 2015.
11. The Plaintiff underwent physiotherapy treatment on 9, 20 and 28 April; 6, 8, 11, 15, 20, 22, 25 and 27 May; 4, 8, 11, 16 and 23 June; 1, 15, 20, 24, and 29 July; 5, 7, 12, 14, 20 and 21 August 2015; 3, 15, 18 and 25 February; 1, 4, and 16 March 2016.
12. On 13 August 2015, the Plaintiff underwent an MRI scan, the results of which pointed to disc bulging with an annular tear at the T12-L1 level. The Plaintiff continued to suffer from pain in her cervical spine area, from limited motion, and also from numbness down her left arm and left leg. Following the MRI scan, Dr Yin referred the Plaintiff to Dr Hesla, Orthopaedic Specialist, at the George Town Hospital.

13. The Plaintiff was seen by Dr Hesla on 14 October 2015. During this visit, Dr Hesla ordered further x-rays and further MRI scans of the cervical spine and left shoulder, which were performed on 4 December 2015. The scan of her left shoulder showed that the Plaintiff was suffering from partial supraspinatus undersurface tear, a tear in her posterior glenoid labrum, AC joint hypertrophy causing impingement on the supraspinatus, and subdeltoid and subacromial bursitis.
14. Following the MRI scans, the Plaintiff was seen by Dr Hesla on 20 January 2016. During this consultation, Dr Hesla indicated that the Plaintiff suffered from whiplash injury to the neck, which was supported by clinical findings of muscular tendon distortion of neck muscles.
15. The Plaintiff has been under the care of Dr John Lee, Pain Specialist, at the George Town Hospital for pain management. She has seen Dr Lee on 18 June, 15 July, 20 August, 8, 15 and 29 September, 20 October, 4 and 11 November 2015, and 7 January, 9 March, and 5 May 2016, and 3 May 2017.
16. Dr Lee administered rib blocks on the Plaintiff on 15 September and 20 October 2015. In his consultation note of 11 November 2015 Dr Lee has stated that this appeared to be a long term pain problem and in his note of 7 January 2016, that he doubted that the Plaintiff could return to work.
17. Despite extensive medical treatment and investigation since the subject accident, including extended physiotherapy treatment, the Plaintiff continues to suffer from chronic pain in her neck, lower chest, left shoulder, and left leg.
18. The Plaintiff has produced to the Defendant's attorneys complete copies of her medical reports and records documenting her injuries and treatment history set out above.
19. As a result of her injuries the Plaintiff's activities and her enjoyment of life has been limited, and she has been forced to rely on the assistance of her daughter, providing gratuitous care for her.

Special damages

20. The Plaintiff was initially placed on sick leave from her employment with Comfort Suites following the accident. She has remained disabled from returning to her former employment as a cleaner with Comfort Suites, and as the result of her continuing disability and absence from work Comfort Suites advised that effective 14 March 2016 it had terminated her employment and was no longer holding her job open for her.
21. The Plaintiff's net income from her employment with Comfort Suites at the time of the accident was \$810.00 biweekly. The Plaintiff's loss of income to date is accordingly calculated as follows:

Loss of income due as of 31 August 2017
 24 April 2015 – 31 August 2017 (61.5 pay periods x CI\$810.00): CI\$49,815.00

22. The Plaintiff has incurred liabilities on account of the insurance co-pays due for her surgeries and medical treatment she has received. Full particulars of these and other special damages including any subrogated claim advanced on behalf of the Plaintiff's health insurer, and claim for gratuitous care provided by the Plaintiff's daughter, will be provided to the Defendant prior to trial.

23. But for the Plaintiff's injuries the Plaintiff planned to work with Comfort Suites or in other form of comparable employment to age 75. Her future loss of income claim is calculated and claimed as follows:

Ogden Tables (7th Edition) Supplementary (March 2017) calculations

Plaintiff's age at trial (March 2018):	65
Retirement age:	75
Discount rate (effective 20 March 2017 Damages Act 1996):	-0.75%
Ogden 7 th Edition (Supplementary) Table 14 multiplier:	9.86
Multiplicand:	\$21,060.00
Future loss of income to retirement at 75	
9.86 x \$21,060.00:	<u>\$207,651.60</u>

Interest

24. The Plaintiff pleads and relies on s.34 of the Judicature Law (2007 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to s.34 of the said Law, and claims interest on her general and special damages and costs as follows:
- (a) Pre-judgment interest on her general damages awarded at the rate of 2% per annum from the date of service of the Writ of Summon herein, and
 - (b) Pre-judgment interest on her special damages from the date of the subject accident, at half the currently prescribed rate of 2 $\frac{3}{8}$ % per annum or under the Judgment Debts (Rates of Interest) Rules 1995;
 - (c) Post-judgment interest upon the principal amount of the judgment with effect from the date of service of the judgment at the rate of 2 $\frac{3}{8}$ % per annum or such other rate then prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules; and
 - (d) 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 2 $\frac{3}{8}$ % per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest).

THE PLAINTIFF THEREFORE CLAIMS:

- (a) General damages for pain and suffering and loss of amenities to be assessed;
- (b) Special damages as pleaded above;
- (c) Pre-judgment and post-judgment interest as more specifically pleaded above;
- (d) Her costs of this action; and
- (e) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 29th day of August 2017.

Hampson and Co.
Hampson and Company
Attorneys for the Plaintiff

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2017

BETWEEN:

SILDA KARENE DILBERT

PLAINTIFF

AND:

IRA LEVINE

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
Defendant

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 Plaintiffs' Attorney of his name, address and reference, if any, in the box below.

Hampson and Company
Attorneys-at-Law
5th Floor, Citrus Grove
Goring Avenue
PO Box 698
Grand Cayman KY1-1107
Cayman Islands

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]