

BETWEEN:

SAXON MOTOR & GENERAL INSURANCE COMPANY LIMITED

PLAINTIFF

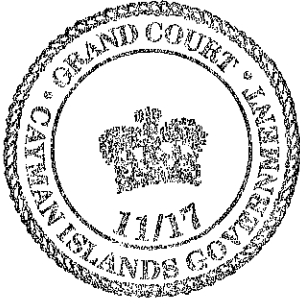
AND:

DESMOND ROY HUTCHINSON

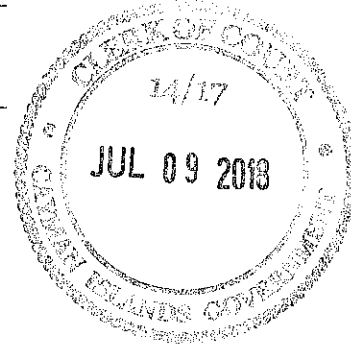
1ST DEFENDANT

JIMMY ALEXANDER BERTRAND BENITES

2ND DEFENDANT



WRIT OF SUMMONS



TO: **Desmond Roy Hutchison**
46 Oakland Close off Oakmill Street
Windsor Park, George Town

AND TO: **Jimmy Alexander Bertrand Benites**
11 Rockpalm Drive
Beach Bay, Bodden Town

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of DMS House, 20 Genesis Close, George Town, 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 9th day of July 2018.

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:

SAXON MOTOR & GENERAL INSURANCE COMPANY LIMITED

PLAINTIFF

AND:

DESMOND ROY HUTCHINSON

1ST DEFENDANT

JIMMY ALEXANDER BERTRAND BENITES

2ND DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff, Saxon Motor & General Insurance Company Limited, (“**Saxon**”) is a duly incorporated Cayman Islands company with a registered office located at DMS House, 20 Genesis Close, George Town and carries on business in the Cayman Islands as a Class “A” licenced general insurer in accordance with the provisions of s.4 of the Insurance Law (2008 Revision), and *inter alia* as an authorized insurer of vehicles pursuant to the provisions of the Vehicle Insurance (Third Party Risks) Law (2012 Revision) (the “**Law**”).
2. The 1st Defendant, Desmond Roy Hutchinson (“**Hutchinson**”), born 10 May 1963 is a Jamaican national and resides at 46 Oakland Close, off Oakmill Street, Windsor Park, George Town. At all material times Hutchinson was the owner and operator of a 2002 Honda Accord motor vehicle bearing registration plate no. 152 424 (the “**Motor Vehicle**”).
3. The 2nd Defendant, Jimmy Alexander Bertrand Benites (“**Benites**”), born 19 September 1997 resides at 11 Rockpalm Drive, Beach Bay, Bodden Town.

The Proposal

4. On 28 November 2017 Hutchinson signed and submitted to Saxon a written proposal seeking third party liability insurance coverage for the use and operation of the Motor Vehicle (the “**Proposal**”). In the Proposal Hutchinson was asked a number of questions to which he responded as follows:

Driver Summary

.....

Do you, . . . suffer . . . from any physical infirmity?	No
Do you, or any other person who to your knowledge will drive, take prescription medication?	No
Is there any other material information about your driving history or personal circumstances that should be disclosed?	No

Driving History

Has there been any violation or accident in past five (5) years?

No

5. The Proposal concluded with a Declaration signed by Hutchinson which provided in its material part as follows:

Please read the following carefully, and then re-read the questions in this form and the answers you have provided before signing the form.

I/We declare and warrant that the answers and statements given in this form are true and are within my/our knowledge. There is no other material fact or circumstance which should be disclosed. I/We agree that this declaration shall be held to be promissory and shall form the basis of the contract between me/us and Saxon Motor & General Insurance Company Ltd. (SaxonMG)

I understand and agree that if any answers or statements in this form are not in my/our handwriting, the person(s) who filled in these answers and statements shall be deemed to be my/our agent(s) for this purpose. *I/We agree to accept a policy subject to the terms, conditions and exceptions prescribed by SaxonMG for this class of risk.*

....

Name: Desmond Hutchinson

Signature: [signed]

Date: 28.11.2017

[emphasis in italics added]

The Policy

6. On the basis of the representations made by Hutchinson in the Proposal, upon which Saxon relied, and in consideration of payment of a premium of \$392.00, Saxon was induced to and issued to Hutchinson on 28 November 2017 a policy of motor vehicle insurance being policy no. P06152016-KY-029295 effective from 28 November 2017 and expiring on 5 July 2018 (the "**Policy**") in accordance with the provisions of s.4(1) of the Law.
7. By the Policy Saxon agreed to indemnify Hutchinson inter alia against liability for death or bodily injury to any third party arising out of his use of the Motor Vehicle on the road to a maximum of \$1,000,000.00, in accordance with and subject to the terms of the Policy and the Law.
8. Saxon pleads and relies on the terms and conditions of the Policy including those set out in Saxon's "Private Motor Vehicle Flexi Policy" document which formed part of the Policy and contained the following express conditions:

CONDITIONS WHICH APPLY TO THE WHOLE POLICY

2. YOUR DUTY

You are to observe faithfully and satisfy, fulfil and meet all the conditions of the Policy, in so far as they relate to anything that You, or any person claiming to be indemnified, are to do or not to do. *The truth of the statements and answers You gave in the proposal form and compliance, observance and fulfilment of the terms and conditions of the Policy are conditions precedent to our duty to indemnify You or any person seeking to be indemnified under the Policy.*

13. KEEPING YOUR POLICY UP TO DATE

Tell Us immediately if anything changes which might affect the insurance. *Any change that materially affects the Policy and increases the risk that You do not advise Us of gives Us the right to void the Policy.* We need to know things such as any changes to the Motor Vehicle which will affect its performance, if You change the Motor Vehicle, if You sell the Motor Vehicle, make any modifications to it from the manufacturer's original specifications, change Your occupation, change the use of the Motor Vehicle, change any named Authorised Driver, make any claim or have an incident likely to give rise to a claim under this or any other motor vehicle insurance policy, incur any convictions or fixed penalties or have any pending prosecutions.

[emphasis in italics added]

The Accident

9. On 23 February 2018 at approximately 8:30 a.m. Hutchinson was operating the Motor Vehicle eastbound on Smith Road in George Town, a short distance east of the traffic light controlled intersection of Smith Road and Huldah Avenue, when the Motor Vehicle left the travelled portion of the road and allegedly struck Benites who was walking on a footpath adjacent to Smith Road allegedly causing Benites serious personal injuries (“**the Accident**”).
10. Following the Accident Hutchinson reported to Saxon that he had blacked out, lost consciousness, or possibly fell asleep while driving the Motor Vehicle and had no recollection of the Accident from the moment he drove past the Tropical Diner on Smith Road, until he regained consciousness or was roused in his vehicle, some moments later and a short further distance down Smith Road, when he was told he had struck Benites while driving.

The Proceedings

11. On 16 April 2018 Benites represented by Broadhurst LLC, Attorneys at Law, commenced proceedings against Hutchinson in the Grand Court of the Cayman Islands as Cause No. 71/2018 alleging negligence on the part of Hutchinson in his operation of the Motor Vehicle and claiming damages on account of personal injuries allegedly sustained in the Accident (the “**Proceedings**”).

The Material Non-Disclosure/False Representation

12. Investigation by Saxon following the Accident determined the following facts on which Saxon relies:
 - (i) That this was not the first time that Hutchinson had passed out or lost consciousness while driving, but the “last time it happened” according to him, he “felt it coming on and pulled off the road . . . but this time it came sudden [*sic*]” and he was evidently unable to pull off the road before passing out;
 - (ii) That Hutchinson had been diagnosed with obstructive sleep apnea sometime prior to March 2017 and was given some tablets for it, which he took on only an irregular basis;
 - (iii) That Hutchinson had a history of severe and uncontrolled high blood pressure dating to at least 1999; and
 - (iv) That Hutchinson was seriously non-compliant with his physician’s recommendations as to medication for his high blood pressure (which medication carried the risks of side effects), took such medication on only a sporadic basis, and was not taking his blood pressure medication since at least the day before the Accident.

13. In the Proposal as set out at paragraph 4 above Hutchinson had:
 - (i) denied that he “suffer[ed] . . . from any physical infirmity”;
 - (ii) denied that he took “prescription medication”; and
 - (iii) denied that there was any other “material information” as to his “personal circumstances” which should be disclosed.
14. Saxon pleads that in the premises Hutchinson’s failure to disclose these facts (or any of them) to Saxon in his Proposal (or at any time subsequently) was a material non-disclosure, and/or constituted by the Proposal (and his continuing non-disclosure) a representation that was false in a material particular, within the meaning of s.15(3) of the Law and the definition of “material” under s.15(5) of the Law, since if disclosed by Hutchinson to Saxon would have influenced the judgment of SaxonMG in determining to decline to accept the risk by issuing the Policy to him, or would have issued the Policy to him at a higher premium.
15. Saxon pleads further that Hutchinson was at common law under a duty of utmost good faith in submitting the Proposal to Saxon and seeking to induce Saxon to enter into a contract of insurance with him, and was obliged to disclose all material facts to Saxon including his medical history and those medical conditions to which he was subject, and that after submitting the Proposal Hutchinson owed Saxon a continuing and ongoing duty of disclosure both at common law and by virtue of the terms and conditions of the Policy including the provisions set out at paragraph 8 above.
16. Saxon has to-date been unable to obtain from the Royal Cayman Islands Police Service a certificate as to Hutchinson’s driver history. Saxon reserves the right to rely on any driving violation or accident disclosed by Hutchinson’s driver history and not disclosed to Saxon, as a further material non-disclosure, and/or representation on the part of Hutchinson which was false, when such certificate as to Hutchinson’s driving history is obtained.

Section 15(3) proviso notice

17. By letter of 24 April 2018 and in compliance with the proviso to s.15(3) of the Law Saxon gave notice to Benites by his attorneys in the Proceedings specifying the non-disclosure and false representation as set out at paragraphs 12-15 above on which Saxon relied (and reserving the position in regard to the matters at paragraph 16 above), and that it was avoiding the policy on these grounds.
18. By letter dated 26 April 2018 to Hutchinson Saxon set out the circumstances of the matter and asserted that it was entitled to avoid the policy by reason of Hutchinson’s non-disclosure and/or misrepresentation. The letter asserted that Saxon was entitled to avoid or had avoided the policy. Saxon will rely upon the said letter as evidence that it has avoided the policy alternatively as notice to Hutchinson that it is entitled to avoid the policy.

The declaratory relief sought

19. Saxon pleads accordingly that by reason of the foregoing that it has avoided the policy alternatively that it was and is in the premises entitled to avoid the Policy on the grounds that it was obtained by reason of non-disclosure and/or false representation as set out at paragraphs 12-15 above (and reserving the position in regard to the matters at paragraph 16). Saxon seeks a declaration in

accordance with the provisions of s.15(3) of the Law that it has avoided the policy alternatively that it was and is entitled to avoid the Policy, and in consequence thereof not liable to indemnify Hutchinson under the Policy, nor liable under s.15(1) of the Law to pay any sums to Benites on account of any judgment obtained by him against Hutchinson in the Proceedings.

THE PLAINTIFF THEREFORE CLAIMS:

- (a) A declaration that it has avoided the policy alternatively that it was or is entitled to avoid the Policy on the grounds of non-disclosure and/or false representation set out above;
- (b) A declaration that the Policy is avoided accordingly;
- (c) Its costs of this action; and
- (e) Such further and other relief as to this Honourable Court may seem just.

DATED at Grand Cayman this 9th day of July 2018.

HAMPSON . CO,

Hampson and Company

Attorneys for the Plaintiff, Saxon Motor & General Insurance Company Limited

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