

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

CAUSE NO: 97 OF 2019

**BETWEEN:**

**SHARON AUSTIN**

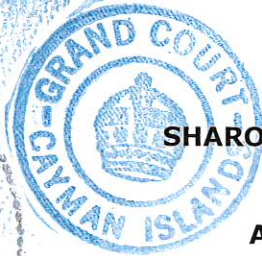
**PLAINTIFF**

**AND:**

**COLBURN MARTIN**

**DEFENDANT**

**WRIT OF SUMMONS**



**TO:** Colburn Martin

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff of 55 Dantzler Drive, Cayman Brac 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, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein 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 Acknowledgment 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 17<sup>th</sup> day of June 2019.

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.

And as a Noticed Party to:

British Caymanian Insurance Company Limited  
BritCay House  
236 Eastern Avenue  
George Town  
P.O. Box 74  
Grand Cayman KY1-1102

## STATEMENT OF CLAIM

1. At all material times the Plaintiff was the owner and driver of a Suzuki Cultus registration 142259 and the Defendant was the driver of a Chevrolet Silverado registration 137424.
2. On the 2 July 2016 at approximately 7.30pm, the Plaintiff was travelling along Southside Road West in a westerly direction and the Defendant's vehicle was travelling in the opposite direction. The Defendant lost control of his vehicle and swerved into the path of the Plaintiff causing an impact and pushing her vehicle backwards off the road and into the vegetation.
3. At all material times the Defendant's vehicle was insured with British Caymanian Insurance Company Ltd who had issued a policy of insurance relating to the vehicle in accordance with the Motor Insurance (Third Party Risks Law).

### Particulars of negligence

4. The accident was caused by the negligence of the Defendant in that he;
  - 4.1 failed to keep any or any proper look out;
  - 4.2 failed to see the Plaintiff's vehicle in time or at all;
  - 4.3 drove into the Plaintiff's path when it was unsafe and dangerous to do so;
  - 4.4 failed to apply his brakes whether in time or at all;
  - 4.5 failed to steer or control his vehicle so as to avoid the said collision;
  - 4.6 failed to maintain his vehicle within his own lane;

The Plaintiff further relies on the maxim of *res ipsa loquitur*.

5. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

### Particulars of General Damage

6. The Plaintiff's date of birth is the 12 September 1963 and at the date of the accident she was 52 years old.
7. Her airbag deployed on impact, and she was trapped in her vehicle for approximately one hour before she was taken to Faith Hospital by ambulance. She was stabilized, underwent limited radiology, was sutured, her left knee dislocation was reduced, and a traction splint put in place.
8. She was then transferred to George Town Hospital, Grand Cayman for further treatment. She was diagnosed as having suffered multiple injuries including: -
  - multiple bruises and lacerations
  - multiple rib fractures
  - lung contusions
  - right femoral fracture
  - dislocated left knee
  - pelvic fracture
  - bilateral tibia fractures
  - left toe fracture
  - left and right-hand fractures

9. She was admitted to the critical care unit and underwent a blood transfusion. She was placed on an IV with various medications.
10. She was referred for specialist Orthopaedic care at Health City Cayman Islands and was admitted on the 3 July 2016 where she underwent surgery on her fractured right femur and wound debridement and suturing of her thigh and left-hand lacerations.
11. On the 13 July 2016 she underwent further surgery namely an open reduction, internal fixation of her left tibia.
12. On the 19 July 2016 she underwent surgery to her right hand and open reduction and fixation with dual buttress plate on the right tibia.
13. She was bedridden with a catheter and developed a urinary tract infection.
14. Her knee braces were removed on the 24 August 2016 and she underwent regular physiotherapy whilst an inpatient.
15. She remained an inpatient at Health City until the 30 September 2016. She was discharged with an automatic wheelchair after release as she could not use one of her hands.
16. She was unable to return to Cayman Brac due to the ongoing treatment she required and remained in Grand Cayman. She remained for one year before returning to Cayman Brac to return to work as deputy headteacher.
17. She reattended Health City on the 17 November 2017 where her fractures were confirmed to have united. She had continued issues with her both legs and was advised to continue physiotherapy.
18. When she returned to Cayman Brac she continued to have physiotherapy at Faith Hospital which continues, currently on a twice weekly basis.
19. She started using a walking frame one-year post accident and currently uses a walking stick. Walking is very difficult, she moves very slowly and with significant pain. She often has difficulty balancing. She avoids stairs where possible and if she must take them it is with extreme pain and difficulty
20. She suffers from a very painful chest making it difficult to wear a seatbelt.
21. Her hands that were badly fractured in the accident continue to cause her pain and she has to be very cautious about what she lifts. Two of her fingers on her right hand are deformed and remain painful. She doesn't have a tight grip in her hand and as a result frequently drops items.
22. She is left with a rod running from her right hip to knee and metal plates and screws to her knee and both ankles, she is also missing muscles in her thighs.
23. She still experiences severe pain in her legs, hips and back and discomfort in her feet. She is unable to stoop or kneel, which is worsened due to her missing thigh muscles.
24. She suffered many lacerations which are healing but leaving significant body scarring.

25. She is only able to drive very short journeys and is scared to drive at night as she has flashbacks of the Defendant's headlights coming towards her at top speed before colliding into her vehicle. She suffers significant anxiety and has consulted with a psychologist. She is supported by her sister substantially who is a trained counsellor for her church.
26. She has considerable difficulty sleeping, both due to the pain and anxiety
27. The Plaintiff continues to suffer from her injuries and she finds working extremely difficult and painful. She takes codeine and paracetamol regularly including every night.
28. The Plaintiff will rely on expert evidence in support of her injuries.
29. In addition to Pain Suffering and Loss of Amenity, the Plaintiff also pursues claims for Future Care, and Future Loss of income which will be particularized in due course.

### **Particulars of Special Damage**

30. The Plaintiff's particulars of special damage will be forwarded in due course by way of a Schedule of Loss including but not limited to claims for cost of medical treatment, accommodation, travel, property damage, domestic assistance and gratuitous care.

### **Conviction**

31. The Plaintiff intends to adduce evidence that the Defendant was convicted of the offences of dangerous and careless driving at the Grand Court, George Town, Grand Cayman as a result of his driving resulting in the collision.
32. The conviction for dangerous and careless driving was recorded on 30 April 2018 by Justice Wood.
33. The conviction is relevant to the issue of the negligent driving of the defendant resulting in the collision.

### **Statement as to Interest**

34. The Plaintiff will claim interest pursuant to section 34 of the Judicature Law (2017 Revision) at half the rate as prescribed under the Judgment Debts (Rates of Interest) Rules (as amended) from the 2 July 2016 to Trial.

### **AND THE PLAINTIFF claims:**

1. General and Special Damages
2. Interest in accordance with the Judicature Law (2017 Revision)
3. Costs

*KSG*

**KSG Attorneys-at-Law**  
**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.



**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.

KSG Attorneys-at-Law  
4<sup>th</sup> Floor Harbour Centre  
42 North Church Street  
PO Box 2255  
George Town  
KY1-1107  
Grand Cayman

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