

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

CAUSE NO: 102 OF 2020

BETWEEN:

SARAH FAWKES

PLAINTIFF

AND:

CLAIRE COMBE

DEFENDANT



WRIT OF SUMMONS

TO: Claire Combe
46 Hospital Road
George Town, Grand Cayman

Name and address of Defendant's motor vehicle insurer:

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



THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of 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 26th day of June 2020.

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
CIVIL DIVISION**

CAUSE NO: OF 2020

BETWEEN:

SARAH FAWKES

PLAINTIFF

AND:

CLAIRE COMBE

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is Caymanian, and at all material times was a front seat passenger in a right hand drive Toyota motor vehicle owned and operated by one, Arianna Wheeler, ("the Wheeler motor vehicle").
2. The Defendant is Caymanian, and was at all material times the owner and operator of a Toyota Rav4 motor vehicle, bearing registration plate no. 95151 ("the Defendant's motor 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 Motor Vehicle Insurance (Third Party Risks) Law (2012 Revision). The insurer of the Defendant's motor vehicle at all material times was Cayman First Insurance Company 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 1 November 2017 at or around 9:00 p.m. the Wheeler motor vehicle operated by Arianna Wheeler, and in which the Plaintiff was a seat belted front left seat passenger, had entered on the King's Gym roundabout from the Linford Pearson Highway and was established on the said roundabout intending to exit from the roundabout onto Old Crewe Road, and was engaged in lawfully exiting off the roundabout onto Old Crewe Road when suddenly and without warning the Defendant's motor vehicle operated by the Defendant, failed to yield the right of way to the Wheeler motor vehicle and attempted to enter onto the roundabout and in so doing broadsided the left side of the Wheeler motor vehicle with such force that it caused it to roll onto its top, causing the Plaintiff inter alia to hit her the left side of her head on the interior of the Wheeler vehicle.
5. The Defendant fled the scene of the accident but was apprehended shortly thereafter.
6. The Plaintiff states that the accident as aforesaid was caused or contributed to as the result of the negligence of the Defendant in:
 - (a) Failing to yield the right of way to the Wheeler vehicle established on the roundabout;
 - (b) Attempting to enter onto the roundabout when it was unsafe to do so;
 - (c) Failing to keep a proper or any look out;

- (d) Failing to apply her brakes promptly, in time or at all or to take reasonable or sufficient precautions to avoid an accident;
 - (e) Operating the Defendant's vehicle in a careless manner and without reasonable or due consideration for other users of the road.
7. In the circumstances where the Wheeler motor vehicle which had the right of way and was broadsided by the Defendant's motor vehicle 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 and the collision as aforesaid the Plaintiff sustained serious personal injuries, the particulars of which are set out below.
- 9. The Plaintiff was initially treated at the Emergency Department of the George Town Hospital where she underwent radiological examination and an MRI of her low back and left shoulder and was prescribed muscle relaxants, analgesics and anti-inflammatories for soft tissue injuries, and was referred for physiotherapy treatment.
- 10. The Plaintiff experienced nerve involvement with radiation of pain into her left leg, and pain and stiffness in her left shoulder and upper and lower back. Despite extensive physiotherapy treatment her low back pain became chronic and she was referred by Dr John Addleson/Dr Martinez for an MRI on 29 May 2018 which disclosed disc protrusion at L4-L5.
- 11. The Plaintiff was seen in consultation by Dr Timothy Carey, Orthopaedic Surgeon, on 11 December 2018 for her ongoing low back pain and radiation of that pain into her legs. Dr Carey, noted her chronic symptoms were complicated by anxiety and possible depression and referred the Plaintiff to Dr Caroline Quartly, Physical Medicine and Rehabilitation Specialist, whom she saw on 1 February 2019.
- 12. Dr Quartly recommended a number of treatment modalities, approaches and further investigation, including further physiotherapy and a neurocognitive assessment for possible acquire brain injury, but which the Defendant's insurer, Cayman First Insurance Limited, has failed to fund.
- 13. The Plaintiff has produced to the Defendant's insurer, Cayman First Insurance Limited, her medical reports and medical records documenting her injuries and treatment as set out above, as those reports and records have become available to her.
- 14. As a result of her injuries the Plaintiff continues to suffer chronic low back pain and discomfort, and limitation of movement in her lower back, anxiety and depression.
- 15. The Plaintiff has suffered a loss of amenities and her quality of and enjoyment of life has been reduced with substantial limitation of her recreational, social and lifestyle activities including her former enjoyment of playing soft ball, squash, swimming, running and exercising in the gym.

Special damages

- 16. The Plaintiff has incurred out of pocket expenses and medical treatment expenses, including but not limited to the following:

Medical expenses paid by Britcay Insurance:	\$6,777.36
Medical treatment co-pays:	\$911.30
Repair cell phone:	\$343.00

Total:

\$8,031.66

17. Full particulars of the Plaintiff's special damages will be provided to the Defendant prior to trial.

Interest

18. The Plaintiff pleads and relies on s.34 of the Judicature Law (2017 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;
- (b) Pre-judgment interest on her special damages from the date of the subject accident, at half the currently prescribed rate of 2½% 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 2½% 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 2½% per annum or such other rate prevailing in accordance with s.34 of the Judicature Law and the Judgment Debts (Rates of Interest) Rules.

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 26th day of June 2020

HAMPSON - 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 Apollo House East, 4th Floor, 87 Mary Street, George Town, P.O. Box 698, Grand Cayman KY1-1107.

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

CAUSE NO: OF 2020

BETWEEN:

SARAH FAWKES

PLAINTIFF

AND:

CLAIRE COMBE

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 intend 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

Attorney for the Defendant

Address for service:

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 (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Hampson and Company
Attorneys-at-Law
Apollo House East, 4th Floor,
87 Mary Street, George Town
P.O. 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.

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, 61 Edward Street, P.O. Box 495, George Town, Grand Cayman KY1-1106.

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 (or 28 days in the case of a writ served outside the jurisdiction pursuant to an order of the Court), 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.