



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

Cause No. 23 of 2021

BETWEEN:

RIZALYN SANTIAGO MERCADO

PLAINTIFF

AND

MARTA TERESA GZELLA PLATA

DEFENDANT

WRIT OF SUMMONS

TO: Marta Teresa Gzella Plata
672 West Bay Road
Grand Cayman
Cayman Islands

AND TO:

Saxon MG
Saxon Centre
14 Saturn Close
Eastern Avenue
PO Box 1094
Grand Cayman KY1-1102
Cayman Islands

[Served pursuant to the provisions of s15 of the Vehicle Insurance (Third Party Risks) Law
(2012 Revision)]

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff 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 495, 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 4 day of February 2021

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.

STATEMENT OF CLAIM

1. On 20th February 2018 the Plaintiff was the driver of a Hyundai i10 motor vehicle with registration mark 144 006 on the North Sound Road in George Town, Grand Cayman.
2. At around 5.10pm in the vicinity of the Jacques Scott premises on the North Sound Road at the traffic light intersection the Defendant came into collision with the Plaintiff's vehicle. The Defendant was driving a Jeep Wrangler motor vehicle with registration mark 177 357 owned in the name of Pawel Tomasz Plata and insured under a policy of insurance with Saxon MG motor insurers.
3. The said accident was caused by the negligence and or breach of a common law duty of care of the Defendant.

PARTICULARS OF NEGLIGENCE and or BREACH OF DUTY

The Defendant,

- (a) Drove into the back of the vehicle driven by the Plaintiff (which was stationary at traffic lights)
 - (b) Failed to observe or to heed the traffic conditions on the road and or at the junction ahead
 - (c) Drove too fast in the circumstances
 - (d) Failed to keep any or any proper lookout
 - (e) Failed to stop or to slow down in time so as to avoid a collision
 - (f) Failed to brake or to steer or otherwise control the vehicle so as to avoid a collision
 - (g) Failed in all the circumstances to discharge the common duty of care owed to other road users and to the Plaintiff in particular.
4. By reason of the matters aforesaid the Plaintiff has suffered pain injury loss and damage.

PARTICULARS

The Plaintiff was born on 19th June 1983 and is aged 37. She was aged 35 at the date of accident.

- (1) She had given birth by Caesarean section in the months before the accident and suffered discomfort and low back pain radiating to the right gluteal region following the accident.

- (2) On medical advice she undertook a course of physiotherapy treatment. Her symptoms were not significantly alleviated by the physiotherapy and she was forced to stop the course of treatment.
- (3) On 19th July 2018 she underwent CT scans to the lumbo-sacral spine and the examination report by Dr Mohanty at Heath City, Cayman Islands noted no fracture or subluxation but mild diffuse disc bulges at L4-L5 and L5-S1 levels causing mild spinal canal stenosis and bilateral mild neural foraminal stenosis.
- (4) Now at almost three years post-accident the Plaintiff has ongoing symptoms and is diagnosed with degenerative disc disease / herniated discs at L3/L4 and L4/L5 – surgical treatment is recommended, and it is noted that the accident aggravated or accelerated pre-existing degenerative changes to her spine. She is presently back in her native Philippines but is expected to return to the islands in the near future.
- (5) She continues to suffer from pain and discomfort, with restriction in movement and managing the care of her young child day to day. She avoids lifting heavy objects and needs to wear back support when travelling or driving. She struggles to stand or sit for long periods of time and has disturbed sleep.
- (6) She is likely to be at a disadvantage on the open labour market as and when she is able to return to full time work.
- (7) Further particulars are provided in the report of Renato D Lipana, Jr. MD, FPOA dated 12th November 2020 and the report dated 20th July 2018 of Dr Tanuj Gupta, Consultant Radiologist both served herewith.
- (8) The Plaintiff reserves the right to provide full and further particulars and or updating medical evidence.

PARTICULARS OF SPECIAL LOSS

The Plaintiff's losses are continuing and will be set out more fully in a detailed Schedule of Loss to be provided.

For the purposes of this Statement of Claim the Plaintiff sets out the following Heads of Loss:

- (9) The cost of repairs to her motor vehicle (estimated at CI\$300)
- (10) Loss of earnings to date
- (11) Disability on the open labour market
- (12) Medical expenses and out of pocket expenses and uninsured co-pay contributions and her insurer's outlay and physiotherapy costs to date.

5. The Plaintiff is entitled to and claims interest on such damages as may be awarded to her pursuant to section 34 of the Judicature Law (2017 Revision) at such rate and for such period as the Honourable Court may deem fit.

AND THE PLAINTIFF claims:

- (a) General damages (to be assessed)
- (b) Special damages as aforesaid
- (c) Interest as aforesaid
- (d) Costs
- (e) Such further and other relief as the Honourable Court shall deem fit.

McGrath Tonner

McGrath Tonner
Attorneys for the Plaintiff

To: The Clerk of the Court

And to: The Defendant

RENATO D. LIPANA, JR., MD, FPOA

ORTHOPAEDICS & SPINE SURGERY

Fellow Philippine Orthopaedic Association

[rdlipana@yahoo.com/](mailto:rdlipana@yahoo.com) Cellular Phone No.: 0920-901-9272

ST. LUKE'S MEDICAL CENTER

QUEZON CITY

279 E. Rodriguez Sr. Blvd Q.C.
Suite 112 Medical Arts Bldg.
Monday to Sat 9-12am
Tel: 723-0101 loc. 6112

GLOBAL CITY -TAGUIG

32nd St. Global City, Taguig
Suite 226 Medical Arts Bldg.
Monday to Friday: 3-6pm
Tel: 789-7700 loc. 7226

MEDICAL REPORT

November 12, 2020

To Whom It May Concern:

I have seen and examined RIZALYN MERCADO 37y/o female complaining of back pain. History started February 20, 2018 when she was involved in motor accident at Cayman Island. She was bumped at the rear of the car while her vehicle was at a complete stop. She suddenly felt severe low back pain. The pain was aggravated by walking temporary relieved by rest. She underwent 10 sessions of physical therapy which afforded no relief of symptoms. Two weeks prior to consult, the pain is radiating to the left foot. Increasing severity of the symptoms thus sought consult at my clinic.

MRI was done and showed desiccated disc and herniated disc on L3/L4 and L4/L5 left greater than right. Physical examination revealed tenderness lower back. Motor strength is 4/5 on the left ankle dorsiflexion and toe extension. 10% sensory deficit on the L4 and L5 dermatome. She is diagnosed to have Degenerative disc disease/Herniated disc L3/L4 and L4/L5. I advised that she undergoes surgery as soon as possible: Transforaminal Interbody Fusion L3/L4 and L4/L5 using pedicle screws and interbody peek cages. She needs 10 to 12 sessions of physical therapy after the surgery.

Her accident had aggravated or accelerated the degeneration of the spine. Her present diagnosis would not have later future problems with the spine. The proposed surgery will fix her back so she can return to her normal and usual activities. Three to six months after the surgery, she can lift and do strenuous activities. Thank you very much.

Sincerely yours,



RENATO D. LIPANA JR., M.D. FPOA
Attending Physician



EXAMINATION REPORT

NAME : Mercado Rizalyn	DOB: 19/06/1983	DATE: 19/07/2018
REF : Dr.Mohanty	SEX: Female	MRN : 90010000015606

CT LUMBOSACRAL SPINE (PLAIN AND CONTRAST)

CLINICAL DETAILS: Low backache radiating to right gluteal region.

TECHNIQUE: Axial sections of the lumbosacral spine from L1 to S1 vertebra were performed without and with intravenous contrast.

FINDINGS:

- No fracture or subluxation is noted. The spine is normal in alignment.
- The lumbar vertebral bodies show normal bone density and stature.
- The vertebral bodies and intervertebral disc spaces appear normal.
- No abnormal contrast enhancement is seen.
- Both sacro-iliac joints are unremarkable to the extent visualized.
- The pre and paravertebral soft tissues are normal.
- From L1-L2 to L3-L4: Disc spaces are normal. There are no significant spinal canal / neural foraminal stenosis. The facet joints are unremarkable.
- At L4-L5 and L5-S1: Disc heights are maintained. There are mild diffuse disc bulges causing mild spinal canal stenosis and bilateral mild neural foraminal stenosis. The facet joints are unremarkable.

IMPRESSION:

- **At L4-L5 and L5-S1: Mild diffuse disc bulges causing mild spinal canal stenosis and bilateral mild neural foraminal stenosis.**

<i>* This is a digitally signed valid document</i>		Signature	Date / Time
Digitally validated and reported by	Dr. Tanuj Gupta DMRD, DNB Consultant Radiologist		20-7-2018 8:33:00(GMT +0530)
Transcribed by	Mr. Ravi Kumar	-	-

This report has been generated from NH Teleradiology 24/7, a service of Narayana Health.

**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 495, 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

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.

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BETWEEN:

RIZALYN SANTIAGO MERCADO

PLAINTIFF

AND

MARTA TERESA GZELLA PLATA

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).....

Attorney for

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

McGrath Tonner
Attorneys at Law
5th Floor Genesis Building
Genesis Close
PO Box 446
George Town
Grand Cayman
Ref. 14756-001

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]