

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

CAUSE NO: 211 OF 2021

BETWEEN:

FITZROY CLARKE

PLAINTIFF

AND:

ROBERT MATTHEW SMITH

DEFENDANT



WRIT OF SUMMONS

TO: Robert Matthew Smith

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of West Retreat, Portland, Jamaica 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 day of October 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.

And as a Noticed Party to:
The Insurance Company of the West Indies Limited
150 Smith Road
George Town
P.O. Box 461
Grand Cayman KY1-1106

STATEMENT OF CLAIM

1. At all material times, the Plaintiff was the owner and driver of a Toyota Corolla registration 114 820 and the Defendant was the driver of a Ford Edge registration number 134 502.
2. On the 14 September 2019 at approximately 8.30pm, the Plaintiff was driving along Shamrock Road in an easterly direction and the defendant was travelling in the opposite direction. The Defendant lost control of his vehicle and veered onto the eastbound lane and into collision with the right side of the Plaintiff's vehicle and causing him to lose control of his vehicle and hit a wall.
3. The Plaintiff had to be extracted from his vehicle by Fire and Rescue personnel.
4. At all material times the Defendant's vehicle was insured with The Insurance Company of the West Indies Limited who had issued a policy of insurance relating to the vehicle in accordance with the Motor Insurance (Third Party Risks Law).

Particulars of negligence

5. The accident was caused by the negligence of the Defendant in that he;
 - a) failed to keep any or any proper look out;
 - b) failed to see the Plaintiff's vehicle in time or at all;
 - c) drove into the Plaintiff's path when it was unsafe and dangerous to do so;
 - d) failed to apply his brakes whether in time or at all;
 - e) failed to steer or control his vehicle so as to avoid the said collision;
 - f) failed to maintain his vehicle within his own lane;

The Plaintiff also relies on the doctrine of *res ipsa loquitur*.

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

Particulars of General Damage

7. The plaintiff's date of birth is the 5 February 1974 and at the date of the accident he was 45 years old.
8. He was placed on a backboard, sedated, intubated and taken to the Accident and Emergency Department at George Town Hospital by ambulance.
9. His initial assessment at the hospital confirmed a severe head injury, blunt chest trauma with lung contusions and pericardial effusion. His GCS on arrival was 7/15.
10. He underwent emergency endotracheal intubation and thereafter a chest tube was placed.

11. He underwent CT scans, and a decision was made to transfer him to Health City Cayman Islands the same day due to the complexity of the injuries and pericardial effusion.
12. When admitted to Health City Cayman Islands he underwent a median sternotomy, drainage of the hemopericardium and repair of a perforation to the right atrial appendage. He was admitted to the ICU and remained intubated.
13. On the 18 September 2019 he underwent a further operation to debride his right shoulder and remove foreign bodies. It was discovered that his deltoid muscle was completely destroyed.
14. On the 23 September 2019 he underwent surgery to amputate his right index finger due to gangrene.
15. He was discharged on the 5 October 2019 with a diagnosis of the following: -
 - Right frontal fracture of the head
 - Fracture of manilla and the frontal sinus and bilateral maxillary hemo-sinuses
 - Lefort 3 facial injury
 - Right frontal and cerebellar contusion with underlying infarction
 - Right fractured mandible
 - Cervical Spine fracture at C7
 - Rib fractures
 - Lung contusion
 - Right scapular fracture
 - Right deltoid muscle injury
 - Right index finger amputation
 - Pulmonary embolism
16. He was advised to return for physiotherapy and dressing changes twice weekly and with medication and further appointments for continued care.
17. Following discharge, he was also diagnosed as suffering myositis ossificans of his shoulder and was deemed unable to work.
18. He attended with Dr Foley on the 31 October 2019 with blurring to his vision, this has not improved, and he is unable to drive due to his distorted eyesight.
19. He is left with no sense of smell from his right nostril.
20. Due to his inability to work, the Plaintiff moved back to Jamaica in December 2020. He continues to suffer from his injuries and remains under the care of his physicians requiring continued treatment.
21. In addition to his physical injuries, the Plaintiff also suffers anxiety as a result of the accident and impact on his life.

22. The Plaintiff will rely on expert evidence in support of his injuries.

23. In addition to Pain Suffering and Loss of Amenity, the Plaintiff also pursues claims for Future Care, Future medical treatment and Future Loss of income which will be particularized in due course.

Particulars of Special Damage

24. 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 loss of earnings, cost of medical treatment and gratuitous care.

Conviction

25. The Plaintiff intends to adduce evidence that the Defendant was convicted of the offences of driving under the influence of alcohol and careless driving at the Summary Court, George Town, Grand Cayman as a result of his driving resulting in the collision.

26. The conviction for dangerous and careless driving was recorded on 1 December 2020.

27. The conviction is relevant to the issue of the negligent driving of the defendant resulting in the collision.

AND THE PLAINTIFF claims:

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



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.

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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.

KSG Attorneys-at-Law
4th 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.

[Empty box for defendant's attorney indorsement]