

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO 199 OF 1999

BETWEEN: DONATT P. GILPIN

Plaintiff

AND: HAZEL VIOLETA WHITTAKER

Defendant

WRIT OF SUMMONS

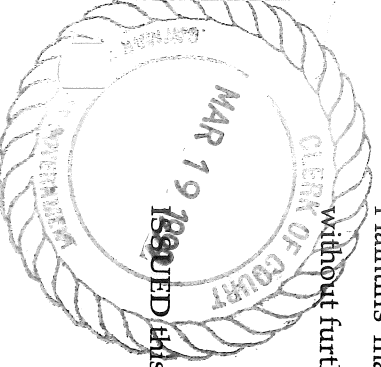
To: HAZEL VIOLETA WHITTAKER  
P.O. BOX 1275  
GEORGE TOWN  
GRAND CAYMAN



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, PO Box 496, 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 Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.



19<sup>th</sup> day of March, 1999.

**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 Acknowledge of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff was at the material time a resident of Grand Cayman.
2. The occupation of the Defendant is unknown.
3. On the 19<sup>th</sup> day of March 1996, the Plaintiff was the driver of a Toyota Tercel, registration No. 52679 owned by his then employers, Budget Car Rentals.
4. On the 19<sup>th</sup> March, 1996 at the material time, the Defendant was the driver of a Toyota Mini Van, Registration No. 55061.
5. At approximately 2.25p.m. on the 19<sup>th</sup> March 1996 the Plaintiff and the Defendant were driving along Walkers Road in the vicinity of East Boulevard (also known as Boiler's Road). The vehicle that the Defendant was driving was travelling on the said road behind the said vehicle being driven by Plaintiff. The Plaintiff upon approaching Boiler's Road indicated his intention to turn right and came to a complete stop near the centre line of the road and there waited for oncoming traffic to pass so as to make the intended turn. The vehicle being driven by the Defendant soon thereafter collided with the rear end of the vehicle being driven by the Plaintiff, causing an accident and propelling the Plaintiff's vehicle approximately 56 ft. 8 inches forward and across the road and into a tree.
6. The said accident was caused by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

The Defendant was negligent in that she -

- (a) Drove too fast in all the circumstances;
- (b) Failed to keep any or a proper look out;

- (c) Failed adequately or at all in time or at all to see, heed or act upon the vehicle position or stationery state of the vehicle the Plaintiff was driving ;
  - (d) Failed adequately or in time or at all to act upon the vehicle being driven by the Plaintiff, or the light indicators on the rear of the vehicle being driven by the Plaintiff;
  - (e) Drove in such a manner as to impact the vehicle being driven by the Plaintiff in such a way as to propel it forcefully into another object.
  - (f) Drove into the rear of and collided with the vehicle being driven by the Plaintiff;
  - (g) Failed to apply her brakes at all or in time;
  - (h) Failed to stop, to slow down, to swerve or otherwise failed to manage or control her vehicle so as to avoid the aforesaid collision;
  - (i) Failed to take any adequate care for the safety of the Plaintiff;
  - (j) Exposed the Plaintiff to a foreseeable risk of injury;
7. By reasons of the matters aforesaid the Plaintiff who is now aged 36, (having been born on 3<sup>rd</sup> August 1962) suffered pain, injury, loss and damage.

**PARTICULARS OF INJURY**

- Concussion to the head;
- Cervical spine strain;
- Thoracolumbar strain;
- Post concussion syndrome;
- Post whiplash syndrome;

(a) The Plaintiff was born on the 3<sup>rd</sup> of August 1962 and was 33 at the date of the accident. Prior to the accident the Plaintiff was in good health. In the accident there were two violent impacts which contributed to the Plaintiff's injuries. The first impact occurred when the vehicle that the Defendant was driving struck the vehicle the Plaintiff was driving and the second, when the vehicle the Plaintiff was driving struck a tree. The Plaintiff was forcibly jolted in the vehicle he was driving at the time of the said impact. The Plaintiff lost consciousness and was transported to George Town Hospital where he awoke ½ hour after arrival. The Plaintiff initially suffered a concussion to the head as a result of the impact. At the time severe pains in the neck were experienced.

(b) Since the accident the Plaintiff has consulted with several doctors and obtained further treatment. The Plaintiff still suffers from a strain to the neck and lower back, dizziness and headaches and sensitivity to sunlight. He has sustained *inter alia* concussion to the head; cervical spine strain; thoracolumbar strain; post concussion syndrome; post whiplash syndrome. The injuries the Plaintiff sustained substantially contributed to him having to leave the job he had at the time of the accident.

(c) The Plaintiff is a Mason by trade. He attempted to return to this line of employment after the accident but was unable to continue due to the injuries he sustained. The nature of the injuries have restricted the Plaintiff in the work he is able to perform and he is handicapped in the labour market. The disabilities are permanent with a real potential for accelerated degeneration of the affected areas. The Plaintiff will require ongoing treatment to prevent accelerated degeneration and provide pain control. The Plaintiff is still seeking the assistance of specialist to diagnose the extent of the disabilities that appear to arise from the trauma to his head.

(d) The Plaintiff is still undergoing treatment and the full extent of his prognosis is unknown.

8. The Plaintiff will rely on the doctrine of Res Ipsa Loquitor.

9. The Plaintiff will rely on any conviction recorded against the Defendant for careless driving or any related offence arising from the accident in the Summary Court or the

Grand Court, as evidence of the negligence of the Defendant. Any said convictions which arose out of the said accident are relevant to the issues in this action.

10. Further the Plaintiff claims interest pursuant to Section 34 of the Judicature Law on any amount found to be due to the Plaintiff at such rate and for such period as the court thinks fit.

11. And the Plaintiff claims:-

- (a) Damages;
- (b) Such interest pursuant to Section 34 of the Judicature Law to be assessed;
- (c) Costs.

PARTICULARS OF SPECIAL DAMAGES

(A) Medical Bills

1. Dr. Joseph Marzouca:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
12 <sup>th</sup> August 1996	Treatment	\$ 80.00
7 <sup>th</sup> February 1997	Treatment	\$ 45.00
15 <sup>th</sup> February 1997	Treatment	\$ 70.00
15 <sup>th</sup> February 1997	Treatment	\$ 5.00

2. Medical Lab

12 <sup>th</sup> August 1996	Treatment	\$ 28.00
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3. Dr. Krishna

<u>Date</u>	<u>Description</u>	<u>Amount</u>
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26 <sup>th</sup> March 1996	Medical Consultation	\$	100.00
2 <sup>nd</sup> August 1996	Medical Visit	\$	70.00

4. **George Town Hospital**

19 <sup>th</sup> March 1996 to			
5 <sup>th</sup> June 1996	Treatment	\$	327.00

5. **Dr. Delroy Fray**

6 <sup>th</sup> August 1996	Office Visit to Jamaica Jam \$2,800.00 convert at 0.0257	\$	71.96
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6. **Dr. Fidel S. Goldson, D.C.**

12 <sup>th</sup> January 1999	Treatment	US\$	70.00
20 <sup>th</sup> January 1999	Treatment	US\$	175.00

7. **Ralph Boujolly, O.D.**

17 <sup>th</sup> July 1998	Treatment	US\$	45.00
21 <sup>st</sup> July 1998	Treatment	US\$	60.00

8. **Edmars Drugs Ltd.**

26 <sup>th</sup> March 1996	Prescription	\$	13.71
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9. **Photo Pharm**

7 <sup>th</sup> February 1997	Prescription	\$	44.90
15 <sup>th</sup> February 1997	Prescription	\$	21.10

10. **Eckard Drug, Florida**

2 <sup>nd</sup> June 1998	Prescription	US\$	7.99
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(B) Loss of Earnings - To be assessed.

(C) Any further or out of pocket expenses

- (D) Medical expenses and special damages continue and the Plaintiff reserves the right to claim any other item of special damage that has or may have arisen as a result of the accident.

ENDORSEMENT TO INSURER

The Defendant was insured by Cayman Insurance Centre Ltd.

Dated this 14<sup>th</sup> day of March, 1999

Quin & Hampson

Quin & Hampson

Attorneys-at-Law for the Plaintiff

**THIS WRIT** was issued by Messrs. Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiff herein whose address for service is that of their Attorneys-at-Law, Harbour Centre, Third Floor, PO Box 1348, George Town, Grand Cayman

**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*

## 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 his 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 1999

BETWEEN:

DONATT P. GILPIN

Plaintiff

AND:

HAZEL VIOLETA WHITTAKER

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 the Defendants whereby they 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

[Defendant in person]

Address for service:

**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.

Messrs. Quin & Hampson Attorneys-at-Law Third Floor, Harbour Centre P.O. Box 1348 George Town, GRAND CAYMAN
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Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

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