

IN THE GRAND COURT OF THE CAYMAN ISLANDS

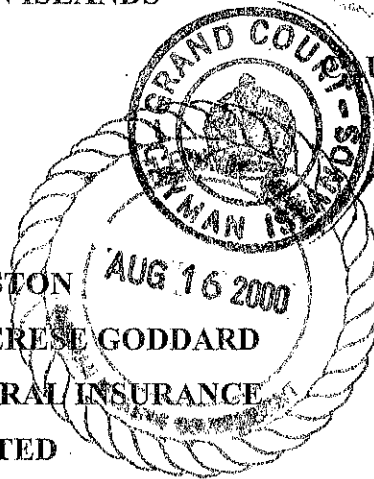
655
USE NO OF 2000

BETWEEN: SHELLY DILBERT

PLAINTIFF

AND: (1) LINNELL HURLSTON
(2) DONNETTE THERESE GODDARD
(3) MOTOR & GENERAL INSURANCE
COMPANY LIMITED

DEFENDANTS



TO THE DEFENDANTS:

(1) Linnell Hurlston
PO Box 412 West Bay
Grand Cayman

(2) Donnette Therese Goddard
PO Box 412 West Bay
Grand Cayman

(3) Motor & General Insurance Co. Ltd
PO Box 1094 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, P.O. Box 495 G.T., 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 **16th August 2000**

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

CAUSE OF ACTION AGAINST FIRST AND SECOND DEFENDANTS

1. The Plaintiff is a female who was born on 5th June 1970.
2. By a policy of insurance (number 14256) issued on 21st June 1996 (effective from 1st May 1996), (“the Policy”) by the Third Defendant as an authorised insurer within the meaning of the Motor Vehicle Insurance (Third Party Risks) Law, 1990 to the First Defendant, the Third Defendant (in consideration of the premium then paid by the First Defendant to the Third Defendant) agreed for the period of 1 year from 1st May 1996 to insure the First Defendant in respect of the death of or bodily injury to any person caused by or arising out of the use on a road of a motor vehicle. The Third Defendant further agreed, in consideration of the said premium, to insure the Second Defendant in respect of the death of or bodily injury to any person caused by or arising out of the use on a road of a motor vehicle driven by the Second Defendant.
3. On or around 21st June 1996, the Third Defendant, in pursuance of the said Law, delivered to the First Defendant in respect of the Policy, a certificate of insurance (number CIA/24990) in the prescribed form (“the Certificate”).
4. On or around 9th June 1996 (during the currency of the Policy and while the Certificate was in full force and effect) the Second Defendant was driving a Chevrolet motor car registration 61 523 (“the Chevrolet”) from Palm Dale towards George Town. At or around the same time, the Plaintiff was driving a Ford Explorer motor car registration 60 674 (“the Explorer”) from Palm Dale towards George Town. The Second Defendant deliberately and/or recklessly and/or negligently caused the Chevrolet to collide with the rear of the Explorer on 3 or 4 separate occasions whilst driving along that stretch of road.
5. Upon reaching the vicinity of Cayman Veterinary Clinic, the Second Defendant caused the Chevrolet to overtake the Explorer and swerve in front of the Explorer, causing the Explorer to leave the road and collide with both the Cayman Veterinary Clinic’s wall and a Third party’s adjacent wall (“the Third Party Wall”). As a result of such running off the road by the Defendant, the Explorer was severely damaged.

6. The said collision was caused by the Second Defendant in that she:
 - 6.1 Deliberately drove in such a manner as to run the Explorer off the road; further or alternatively,
 - 6.2 Attempted an overtaking manoeuvre when it was unsafe to do so; further or alternatively,
 - 6.3 Failed to stop, steer, slow down or manage the Chevrolet, so as to avoid striking the Explorer in which the Plaintiff was travelling; further or alternatively
 - 6.4 Failed to observe or heed the presence of the Explorer in which the Plaintiff was travelling.

7. The said collision was also caused by the Second Defendant's breach of the duties imposed upon her by Sections 52 and 55 of the Traffic Law (Law 16 of 1993) in that she failed to:
 - 7.1 exercise care and attention when using the road; further or alternatively
 - 7.2 drive in such a manner as to have full control of her vehicle at all times; further or alternatively
 - 7.3 drive at such a speed and in such a manner as to be able to stop in an emergency;
 - 7.4 keep watch of the road in front of her; further or alternatively
 - 7.5 give prior warning of any intended manoeuvre by means of a prescribed hand or traffic indicator signal; further or alternatively
 - 7.6 manage the Chevrolet so as to be able to stop within the limit of vision available at a given time.

8. On or around 4th March 1999, the Second Defendant was convicted before Magistrate Ramsay-Hale at the Summary Court of the Cayman Islands (Indictments 2711/96, 2713/96 and 2707/96) on her own plea of reckless driving, moving a vehicle involved in an accident and damage to property with respect to the matters pleaded at paragraphs 4 & 5 above. The Plaintiff will rely upon those convictions at the trial hereof, since they relate to the issue of the Second Defendant's negligence herein.

9. Further, on 31st March 1999 the Second Defendant was sentenced by Magistrate Ramsay-Hale at the Summary Court of the Cayman Islands under Indictment No. 2707/96 to pay

compensation of CI\$16,040.00 to the Plaintiff within 6 months ("the Compensation Order"). The Second Defendant has failed and refused to pay any money in relation to the Compensation Order. The Plaintiff will rely on the Compensation Order at trial, since it relates to the following issues:

- 9.1 The Second Defendant's liability to compensate the Plaintiff for the damage caused by the Second Defendant's negligent acts; and
- 9.2 The Third Defendant's liability to provide an indemnity to the Second Defendant (and to pay damages to the Plaintiff under that indemnity) as set out in paragraph 14 below.

10 As a result of the said collision, the Plaintiff suffered damage to property as follows:

PARTICULARS OF DAMAGE TO PROPERTY

- 10.1 The Explorer was written off as being beyond economic repair;
 - 10.2 The Plaintiff suffered the loss of her insurance deductible of CI\$960.00;
 - 10.3 The Plaintiff was further forced to pay cost of repairs to the Third Party Wall in the sum of CI\$965.00;
 - 10.4 The Plaintiff incurred further costs in obtaining police reports (CI\$25.00), auto appraisal report (CI\$120.00) and pro-rated insurance premium (CI\$628.00).
11. The Plaintiff claims total damages for injury to property as noted at paragraph 10 above of CI\$18,738.00.
 12. The Plaintiff claims interest under Section 34 of the Judicature Law (1995 Revision) calculated as follows:

9 th June 1996 – 31 st January 1998 (601 days) @ 7.375% per annum	CI\$2,275.44
1 st February 1998 – 31 st December 1998 (333 days) @ 7.875% pa	CI\$1,346.24
1 st January 1999 – 16 th August 2000 (592 days) @ 7% pa	<u>CI\$2,539.68</u>
Total Interest claimed	CI\$6,161.36

Interest continues to accrue at the daily rate of CI\$4.78 from today's date until judgment or sooner payment. Alternatively, the Plaintiff claims interest at such rates and for such periods as the court may think just, pursuant to Section 34 of the Judicature Law (1995 Revision).

CAUSE OF ACTION AGAINST THIRD DEFENDANT

13. The Plaintiff repeats paragraphs 1 –12 above inclusive.

14. At all material times, the Third Defendant is and was an insurance company, which provided insurance cover to the First and Second Defendant under the terms of the Policy. The Plaintiff avers that, having provided insurance cover to the First and Second Defendants, the Third Defendant is bound to indemnify the First and Second Defendants (“the Indemnity”) in respect of any successful claim made by the Plaintiff and/or in respect of the Compensation Order, pursuant to the Motor Vehicle Insurance (Third Party Risk) Law 1990. Further, the Plaintiff avers that, pursuant to the Indemnity, the Third Defendant is liable to pay the Plaintiff, all such sums as this Honourable Court may find due to the Plaintiff from the First and/or Second Defendants.

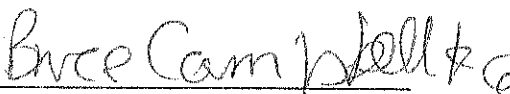
THE PLAINTIFF CLAIMS AGAINST THE FIRST AND/OR THE SECOND DEFENDANT:

1. Damages.
2. Interest thereon pursuant to Section 34 of the Judicature Law (1995 Revision) as aforesaid.
3. Costs.

THE PLAINTIFF CLAIMS AGAINST THE THIRD DEFENDANT

1. A declaration that the Third Defendant is liable to indemnify the First and/or Second Defendant pursuant to the Motor Vehicle Insurance (Third Party Risk) Law 1990.
2. Damages, pursuant to the Indemnity referred to at paragraph 14 above.
3. Interest thereon pursuant to Section 34 of the Judicature Law (1995 Revision) as aforesaid.
4. Costs.

If within the time for returning the acknowledgment of service the Defendant pays the total amount claimed of CI\$18,738.00, Interest of CI\$6,161.36 on the said amount continuing at the rate of CI\$4.78 per diem from today's date until payment, plus the further sum of CI\$737.38 for fixed costs and fees, further proceedings will be stayed. The funds must be paid to the Plaintiff or its attorney.


BRUCE CAMPBELL & CO
Attorneys at Law for the Plaintiff

THIS WRIT was filed by Messrs BRUCE CAMPBELL & CO, Attorneys at Law for the Plaintiff, whose address for service is 4th Floor, Bank of Nova Scotia Building, George Town, Grand Cayman, Tel : 949 2648; Fax 949 8613. (Ref: JRM/DAS)

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COMPANY LIMITED

DEFENDANTS

ACKNOWLEDGEMENT 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.

2. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged -

3. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)
 yes no

4. 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

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.

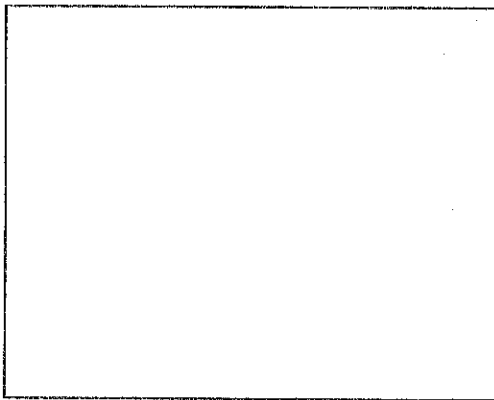
Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited 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.

Bruce Campbell & Co. (Ref:))
P O Box 884 G.T.
George Town
Grand Cayman

Tel: 949 2648
Fax: 949 8613

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, 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 installments 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.