

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 90 OF 2003

BETWEEN:

TUBAL MONTAGUE

Plaintiff

-AND-

SAMUEL URSUA

Defendant

WRIT OF SUMMONS

TO: SAMUEL URSUA
#44 Palm Dale, Crew Road
Grand Cayman, Cayman Islands

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 fourteen (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 495 GT, Grand Cayman, 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 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 18th day of February 2003

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 issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff resided at #252 Mangrove Avenue in George Town, Grand Cayman and was born on the 25th of April 1947. The Plaintiff's present address is SS Old Green Vale Rd., Manderville Post Office, Manchester, Jamaica.
2. The Defendant resides at #44 Palm Dale, Crew Road in George Town, Grand Cayman.
3. On February 22, 2000 at approximately 10:00 am the Plaintiff, a cyclist, was traveling along Crew Road towards Smith Road. The Defendant was driving a Toyota Hiace, registration number 73848, along the same road in the opposite direction traveling towards Red Bay. The accident occurred when the Defendant negligently so drove his vehicle, whilst making a right hand turn so as to turn immediately in front of the Plaintiff causing the Plaintiff to run into the left rear end of the Defendant's vehicle. The force of the impact caused the Plaintiff to be thrown to the ground and as a result of the collision the Plaintiff was knocked unconscious.
4. As a result of this, the Plaintiff suffered personal injuries and pain & suffering and was rushed to George Town Hospital by ambulance.
5. The said accident was caused by the Defendant's negligence and or breach of statutory duty under Sections 59 and 60 of the Traffic Law (2001 Revision).

PARTICULARS

The Defendant was negligent and is guilty of breaches of the said statutory duties by:

- (a) Failing to exercise care and attention when using the road and to have due regard to the safety and comfort of other road users and preservation and protection of public and private property;
- (b) Driving too fast in all the circumstances;
- (c) Failing to give right of way to the Plaintiff before making a right hand turn;
- (d) Failing to give any or any sufficient warning of his approach;
- (e) Failing to keep any or any proper look out;
- (f) Failing to drive in a manner as to have full control of the vehicle at all times;

- (g) Failing to give way to all approaching vehicles before making a right hand turn;
 - (h) Failing to drive at such a speed and in such a manner and at such a distance as to be able to stop in an emergency without being involved in a collision;
 - (i) Failing to keep a watch on the road behind and in front of the vehicle;
 - (j) Failing to give prior warning of any intended maneuver by means of the prescribed hand or traffic signals;
 - (k) Failing, in circumstances where any intersection or road or junction is without a traffic sign or signal giving priority to any road, to drive in such a way as to avoid the possibility of collision with any other road user, irrespective of the relative size or condition of the intersection or adjoining roads; and
 - (l) Res Ipsa Loquitur.
6. Further the Plaintiff intends in reliance on section 39 of the Evidence Law (1995 Revision) to adduce evidence at trial that the Defendant was charged and convicted with Careless Driving in respect of his driving on the occasion of the said accident, as evidence of his negligence.
7. By reason of the Defendant's negligence and breach of duty the Plaintiff has suffered loss and damage.

PARTICULARS OF INJURIES

The Plaintiff suffered injuries as a result of the accident. These injuries included:

- i. Unconsciousness;
- ii. A laceration to the upper orbit;
- iii. Swelling and bruising of the face;
- iv. Bruising to his right arm;
- v. Bruising to his chest;
- vi. Restricted movement in neck;
- vii. Head aches; and
- viii. Development of a respiratory infection.

As a result of the injuries the Plaintiff was forced to remain at home for a period of 8 weeks to recover. Over that time he experienced frequent headaches and had a great deal of difficulty eating due to his injuries to his head. Although the Plaintiff has largely recovered he still suffers from intermittent headaches as a result of the injuries. The extent to which the Plaintiff will be able to recover from his injuries is still unknown.

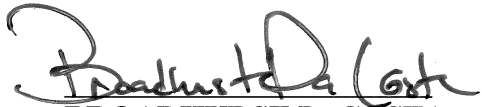
PARTICULARS OF SPECIAL DAMAGES

The Plaintiff has incurred medical expenses and loss of income as a result of the accident. Full particulars of the Plaintiff's special damages and losses will be provided at trial.

AND THE PLAINTIFF CLAIMS

- (1) Damages;
- (2) Pre-Judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
- (3) Post-Judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
- (4) Costs; and
- (5) Such further and other relief as this Honourable Court deems just.

Dated this 18th day of February 2003.


BROADHURST DaCOSTA
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was issued by Broadhurst DaCosta, Attorneys for the Plaintiff, whose address for service is 40 Linwood St, P.O. Box 2503 GT, Grand Cayman, Cayman Islands, British West Indies.

INDORSEMENT AS TO INSURER OF MOTOR VEHICLE

The Plaintiff's claim arises out of the use of a motor vehicle on a public road. The insurer of the vehicle of the Defendant named herein is Cayman General Insurance Co Ltd., whose address is P.O. Box 2171 GT, 3rd Floor Harbour Place, 103 South Church Street George Town.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

BETWEEN:

TUBAL MONTAGUE

Plaintiff

-AND-

SAMUEL URSUA

Defendant

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.

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 []

Service of the Writ is acknowledged accordingly

(Signed) _____

[Attorney] for

[Defendant in Person]

Address for service:

Please see 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 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.

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

BROADHURST DaCOSTA
ATTORNEYS-AT-LAW
40 LINWOOD STREET
PO BOX 2503 GT
GEORGE TOWN, GRAND CAYMAN
CAYMAN ISLANDS, BRITISH WEST INDIES

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