

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 245 OF 2004

BETWEEN:

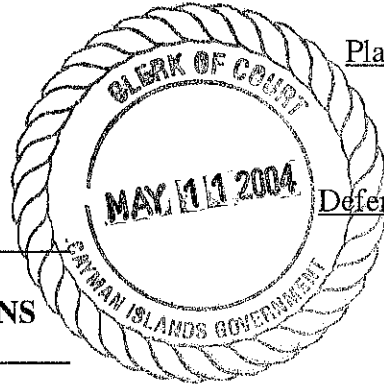
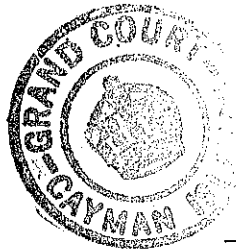
DIANA COLE

Plaintiff

- and -

ERIC K. BURKE

Defendant



WRIT OF SUMMONS

TO: ERIC K. BURKE
#37 Hillandale
West Bay, 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 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, P.O. Box 495GT, 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 day of , 2004

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 lives at #127 Raleigh Quay, Governor's Harbor, Grand Cayman, Cayman Islands and was born on the 18th day of July 1953.
2. The Defendant lives at #37 Hillandale, West Bay Grand Cayman.
3. On Wednesday the 11th day of February 2004, at approximately 8:15 p.m. the Plaintiff, a pedestrian, was crossing West Bay Road in the vicinity of the Governor's Residence while, at the same time, the Defendant, was driving a Nissan Sunny Reg. #86859, which was registered in his own name was traveling North on West Bay Road.
4. An accident occurred when the First Defendant so negligently drove the Nissan Sunny that he struck the Plaintiff causing the Plaintiff to be thrown to the ground.
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/or in breach of statutory duty under Sections 59 and 60 of the Traffic Law (2001 Revision) in that he:-

- (a) Drove too fast in all the circumstances;
- (b) Failed to give precedence to the Plaintiff crossing the road;
- (c) Failed to give any or any sufficient warning of his approach;
- (d) Failed to keep any or any proper lookout;
- (e) Failed to stop, slow down, steer or otherwise control his motor car so as to avoid hitting the Plaintiff;
- (f) Failed to drive in such a manner as to have full control of the vehicle at all times;

- (g) Failed to drive at such a speed and in such a manner and at such a distance from other vehicles as to be able to stop in an emergency without being involved in a collision;
 - (h) Failed to drive with due care and attention;
 - (i) Failed so as to manage the vehicle as to be able to stop within the limit of vision available at any given time;
 - (j) Failed to comply with the road code.
6. By reason of the Defendant's negligence and the Plaintiff has suffered pain and injury and sustained loss and damage.

PARTICULARS OF INJURIES

- (1) Unconsciousness, Concussion and pre-accident and post-accident amnesia.
- (2) Large scalp laceration
- (3) Fractures of the C spine #6 and #7
- (4) Fractures of the T spine #1
- (5) Fracture of the Tibia
- (6) Fracture of the ankle
- (7) Fracture of the 1st distal phalanx
- (8) Fracture to the 2nd rib.
- (9) Swollen Tibia and Fibula
- (10) Bruising to the right foot.
- (11) Minor Bruising on the right side of the face
- (12) Pre-accident and post-accident amnesia

The Plaintiff was 52 years of age at the date of the accident. As a result of the accident the Plaintiff was knocked unconscious at the scene. The Plaintiff had to be taken by ambulance to the George Town Hospital where she was admitted for treatment. Upon diagnosis she was found to have sustained serious injuries. As a

result of the injuries, the Plaintiff remained at the hospital until the 18th day of February 2004. The extent to which the Plaintiff will be able to fully recover from his injuries is still unknown. Further medical evidence and particulars of the Plaintiff's injuries will be provided prior to trial. The Plaintiff reserves the right to plead fuller and better particulars injuries when further medial becomes available.

7. As a result of the injuries the Plaintiff has suffered special damages.

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 prior to trial.

AND THE PLAINTIFF CLAIMS

- (1) Damages;
- (2) Pre-Judgment and Post Judgment interest on the said damages in accordance with Section 34 of the Judicature Law (1995 Revision);
- (3) Costs.

Dated this 10th day of May 2004



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 Defendants named herein is British Caymanian Insurance Co. Limited, whose address is P.O. Box 74 GT, Britcay House, 236 Eastern Avenue, George Town, Grand Cayman, Cayman Islands, BWI

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.

**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 judgement 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.

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CAUSE NO. 245 OF 2004

BETWEEN:

DIANA COLE

Plaintiff

- and -

ERIC K. BURKE

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 over leaf...

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, BWI

Endorsement 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 endorsement]