

IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: 251 OF 2005

BETWEEN:

HUGH GERALD AUBRECHT

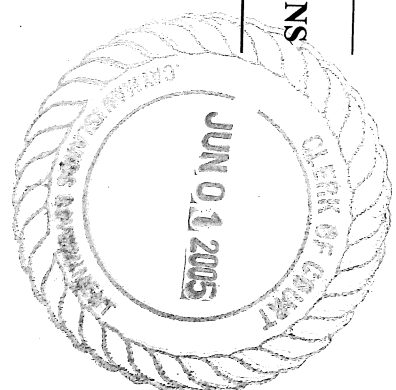
PLAINTIFF

AND:

RUPERT GEORGE ANGEL

DEFENDANT

WRIT OF SUMMONS



TO: RUPERT GEORGE ANGEL

30 Senders Road
Birch Tree Hill
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 (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, George Town, Grand, Cayman, the accompanying Acknowledgement of Service stating 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 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 June, 2005.

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

1. At all material times the Plaintiff was a resident of the Cayman Islands.
2. At all material times the Plaintiff was the owner and rider of a Norton Commando motorcycle bearing registration number 55-588.
3. At all material times the Defendant was the owner and driver of a Dodge Ram 250 motor vehicle bearing registration number 74-378.
4. On 10th December 2002 at approximately 7:40 a.m., the Plaintiff was travelling at a lawful speed in a northerly direction on Stadium Road, West Bay, Grand Cayman. In or about the vicinity of the junction of Stadium Road and Birch Tree Road on which the Plaintiff's motorcycle had the right of way, the Defendant's motor vehicle travelling towards the Plaintiff's motor in a southerly direction on Stadium Road, suddenly and without any indication or warning made an immediate right hand turn so as to proceed to enter Birch Tree Hill Road whereby his vehicle crossed directly into the path of the Plaintiff's motorcycle and in doing so collided with the Plaintiff's motorcycle (the "collision")
5. The collision was caused as a result of the negligence and/or breach of statutory duty of the Defendant.

Particulars of Negligence

- (a) Driving without due care and attention with regard to all the circumstances;
- (b) Failing to remain in care and control of his motor vehicle at all times;
- (c) Failing to indicate his intention to make a right hand turn when he knew or ought to have known that it was unsafe to do so;
- (d) Making a right hand turn when he knew or ought to have known it was unsafe to do so;
- (e) Driving directly into the path of the Plaintiff's motorcycle giving the Plaintiff no opportunity to avoid the collision;
- (f) Driving at such a speed so as to be unable to stop in the event of an emergency;
- (g) Driving too quickly in all of the circumstances;
- (h) Failing to keep a proper or any look out or to have any sufficient regard for others travelling on the road;
- (i) Failing to give any or any adequate warning of his approach when he knew or ought to have known that such warning was reasonable in all of the circumstances;
- (j) Failing by means of the brakes, steering gear or otherwise so as to manage and/or control his motor vehicle so as to avoid the collision.

6. Further, the Plaintiff intends to rely as evidence of the Defendant's negligence on section 39 of the Evidence Law (1995 Revision) to adduce evidence at trial that the Defendant was on 12th April 2005 convicted in the Summary Court of careless driving contrary to section 69 of the Traffic Law (2001 Revision) in respect of the collision. Particulars of the Defendant's sentence by the Summary Court will be provided prior to trial.

7. By reason of the Defendant's aforesaid negligence and breach of duty, the Plaintiff suffered catastrophic personal injury, loss, damage and expense.

Particulars of Injury and/or Damage

- (a) Closed head injury;
- (b) Severe brachial plexus injury on the right side from C5 level to C1;
- (c) Right hemopneumothorax;
- (d) Injury to the right subclavian axillian artery requiring surgical intervention;
- (e) Right clavicular fracture;
- (f) Phantom upper right limb pain;
- (g) Vascular injury to right upper limb;
- (h) Neurological deficit;
- (i) Fractured ribs;
- (j) Restricted range of motion of fingers, wrist, elbow and shoulder;
- (k) Fractures of the hamate bone with fracture dislocations of the 4th and 5th metacarpals;
- (l) Fractured right femur;
- (m) Fractured right tibia requiring surgical intervention;
- (n) Fractured right fibula requiring surgical intervention;
- (o) Osteomyelitis of right tibia and fibula requiring debridement;
- (p) Numbness to left foot;
- (q) Soft tissue injury to neck;
- (r) Soft tissue injury to back;
- (s) Bruising;

- (t) Multiple lacerations;
 - (u) Amnesia;
 - (v) Depression;
 - (w) Mood swings;
 - (x) Headaches;
 - (y) Fatigue;
 - (z) Insomnia;
 - (aa) Special damages including medical expenses, particulars of which will be provided upon discovery and which are continuing;
 - (bb) Loss of income as a result of the Plaintiff's inability to re-engage in employment as a result of his injuries; and
 - (cc) Cost of future care.
8. As a result of the Defendant's negligence, the Plaintiff suffered personal injuries and required gratuitous care which was provided to him initially by his then fiancée Mary McCullum and latterly by members of his immediate family in Canada. Full particulars of his care and associated expenses will be provided upon discovery.
9. As a further result of the Defendant's negligence, the Plaintiff claims loss of future earnings, past and present earning capacity, handicap on the labour market, as well as further medical and other associated expenses.
10. The Plaintiff claims interest at the prevailing statutory rate.

WHEREFORE THE PLAINTIFF claims:

- (a) General damages;
- (b) Special damages (to be assessed);
- (c) Pre-Judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
- (d) Post-Judgment interest in accordance with Section 34 of the Judicature Law (1995 Revision);
- (e) Further and/or other relief; and
- (f) Costs.

Dated the 1st day of June 2005.



CAMPBELL

ENDORSEMENT 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 Defendant named herein is **British Caymanian Insurance Co. Ltd.**, Box 74GT, Elizabethan Square, George Town, Grand Cayman.

THIS WRIT and STATEMENT OF CLAIM was issued by Campbells, Attorneys-At-Law for the Plaintiff whose address for service is P. O. Box 884GT, Scotiabank Centre, 4th Floor, George Town, Grand Cayman (STM/Alk/10639)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 051 OF 2005

BETWEEN: HUGH GERALD AUBRECHT PLAINTIFF
AND: RUPERT GEORGE ANGEL 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.

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

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

(Signed) _____

Attorney for

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.

Campbells Attorneys-at-Law
P.O. Box 884 GT
Scotiabank Building
George Town
Grand Cayman

Tel: 949 2648
Fax: 949 8613
Ref: STM//RK/10639

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.