

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 180 OF 2006

B E T W E E N :

MARVYA JONES

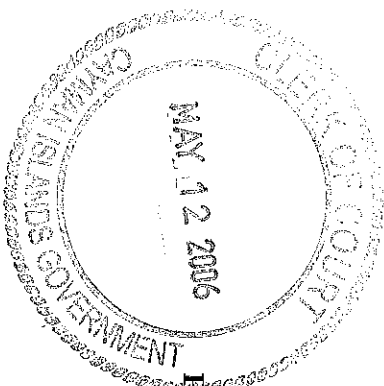
MAY 12 2006

PLAINTIFF

AND

RICHARD K. POWERY

DEFENDANT



WRIT OF SUMMONS

TO: Richard K. Powery
37 Montrose Way
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 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 495GT, Grand Cayman, 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 12th Day of May 2006.

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 Acknowledgement of Service are given with the accompanying form.

INDORSEMENT OF INSURER

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 Motor & General Insurance Company Limited. The address for service is PO Box 1094 GT, 320 Shedden Road, Grand Cayman, Cayman Islands.

STATEMENT OF CLAIM

1. The Plaintiff is a United States National and resident, who at all material times was a resident of the United States of America with an address of 384 Smith Road, Groton, New York, United States of America. Her address for service is in care of her attorneys, Appleby Spurling Hunter, P.O. Box 190 GT, Grand Cayman, Cayman Islands.
2. The Defendant is an individual who at all times material to issues in this proceeding was a resident of the Cayman Islands. The Defendant was, at 7 November 2004, the owner and operator of a Toyota Supra bearing registration number 101-588 (hereinafter the “**Defendant’s vehicle**”).
3. On Sunday 7 November 2004 an accident occurred involving the Plaintiff as an occupant of a vehicle being driven by a Ms. Michelle Barnes (“**Ms. Barnes**”) and the Defendant’s vehicle. The details of which are as follows:
 - a. Shortly after approximately 2:50 p.m. on 7 November 2004, Ms. Barnes was operating a vehicle (hereinafter “**Ms. Barnes’ vehicle**”), a Honda Civic bearing registration number 83-424 and was travelling along Hirst Road near Oleander Estate in the area of Savannah/Newlands. Whilst travelling along Hirst Road from Savannah and towards Newlands, Ms. Barnes’ vehicle was struck by the Defendant’s vehicle causing damage to Ms. Barnes’ vehicle, injury to the Defendant and injury to three other occupants of Ms. Barnes’ vehicle including serious injury to the Plaintiff.
 - b. Due to the speed of the Defendant’s vehicle, the impact of the collision was sufficient to cause major damage to both Ms. Barnes’ vehicle and the Defendant’s vehicle and to cause injury to all five occupants of both vehicles, including serious injury to the Plaintiff.
 - c. The weather and visibility conditions reported at the time of the accident were good, being dry weather and daylight.
 - d. The road was in good condition and traffic was light at the time of the accident.
 - e. Ms. Barnes was operating her vehicle appropriately at the time of the accident and she was operating her vehicle on the correct side of the road.

4. The Defendant caused the accident by failing to keep control of his vehicle and slamming his vehicle into Ms. Barnes' vehicle.
5. The Defendant was charged by the Royal Cayman Islands Police with careless driving as a result of the accident. The Defendant was found guilty and was convicted of careless driving in relation to the accident by Magistrate Donalds of the Summary Court of the Cayman Islands on 12 April 2006.
6. The Plaintiff makes claim for injuries sustained and damages incurred as a result of the said accident pursuant to *The Torts (Reform) Law (1996 Revision)* and the common law. The Plaintiff states that the Defendant negligently operated the Defendant's vehicle and as a result of such negligence caused the above-described accident.

PARTICULARS OF NEGLIGENCE

7. The accident and the resulting injuries to the Plaintiff resulted from the Defendant's negligence in the operation of his motor vehicle. The particulars of the Defendant's negligence are as set out below:
 - a. In operating his vehicle at such speed, in excess of the posted speed limit of 25 m.p.h.;
 - b. In operating his vehicle in such a manner and at such distance from Ms. Barnes' vehicle that he was unable to stop in an emergency without being able to avoid a collision, contrary to Section 60(2)(g) of the *Traffic Law (2003 Revision)*;
 - c. In failing to keep any or, alternatively, any proper lookout;
 - d. In failing to operate his vehicle in such a manner that he would be able to stop within the limit of vision at any given time;
 - e. In failing to observe Ms. Barnes' vehicle;
 - f. In failing to give prior warning of any intended manoeuvre by means of the prescribed hand or traffic indicator signals;
 - g. In failing to apply his brakes or direct the course of his motor vehicle so as to avoid a collision with Ms. Barnes' vehicle;
 - h. In failing to drive in a manner as to have full control of his vehicle at all times and in driving in a careless manner;
 - i. In failing to comply with all traffic signs and signals;
 - j. In failing to operate his motor vehicle with due care and attention and, or alternatively, without reasonable consideration for other persons using the road as both motorists and as

passengers of vehicles and, or alternatively, at a speed that was excessive relative to the road, traffic, visibility or weather conditions;

- k. In operating his vehicle when he was an incompetent driver lacking any reasonable skill or self-command and ought not to have attempted to operate a motor vehicle; and,
- l. Such further and other negligent acts, omissions or statutory breaches as may be discovered or disclosed prior to trial.

8. The fact the Defendant drove his vehicle into Ms. Barnes' vehicle, which was travelling in the opposite direction to the Defendant and in the opposite lane at the time of the collision is evidence in itself of negligence and breach of the common law and statutory duties that the Defendant owed to the Plaintiff. The Plaintiff pleads and relies on the doctrine of *res ipsa loquitur*.

9. By reason of the Defendant's negligence the Plaintiff has suffered serious physical injuries and has suffered pain and has suffered past and will continue to suffer future losses and damages all of which the Defendant is responsible for at law and in equity.

PARTICULARS OF INJURIES

10. As a result of the accident, the Plaintiff suffered injuries which are summarised, but not limited to, as follows:

- a. Fractured nose;
- b. Fractured left wrist;
- c. Fractured right elbow;
- d. Fractured right leg in two places;
- e. Multiple contusions and lacerations; and,
- f. Ongoing pain, discomfort and headaches.

11. At the time of the accident, the Plaintiff was 54 years of age (date of birth 19 August 1950). She enjoyed excellent health and lived a full and busy work and social life prior to the accident. As a result of the negligence of the Defendant, the Plaintiff has suffered loss or damage as follows:

- a. loss of income;

- b. loss of professional opportunity;
- c. special damages for medical care and other expenses arising from the accident and her injuries;
- d. general damages for pain, suffering and loss of amenities;
- e. losses for paid and unpaid assistance;
- f. pre-judgment and post-judgment interest in accordance with the Judicature Law (as amended); and,
- g. such other loss as may later be claimed.

12. The Plaintiff will provide specific details of the claim for special damages prior to trial.

13. As a result of the above, the Plaintiff is entitled to the relief claimed in this proceeding.

AND THE PLAINTIFF CLAIMS as follows:

- i. Loss of income;
- ii. Loss of professional opportunity;
- iii. Special damages for medical care and other expenses arising from the accident and her injuries;
- iv. General damages for pain, suffering and loss of amenities;
- v. Losses for paid and unpaid assistance;
- vi. Pre-judgment and post-judgment interest in accordance with the Judicature Law (as amended); and,
- vii. Such other loss as may later be claimed; and,
- viii. Such further and other relief as this Honourable Court deems appropriate.

Dated: 10th May 2006

Appleby Spurling Hunter
Appleby Spurling Hunter
Attorneys-at-Law for the Plaintiff

TO: The Clerk of the Court
Court House
Grand Cayman

AND TO: The Defendant

AND TO: Motor & General Insurance Company Limited
320 Shedden Road
P.O. Box 1094 GT
Grand Cayman, Cayman Islands

Filed by Appleby Spurling Hunter, Attorneys-at-Law for the Plaintiff, whose address for service is
75 Fort Street, P.O. Box 190 GT, George Town, Grand Cayman (Ref:CJJ/11025.001)

**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, P.O. Box 495 GT, 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 indorsed on the Writ (i.e. the words of "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 Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 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 instalments or otherwise.

See over for notes for guidance

Please complete overleaf

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 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 its 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: 180 OF 2006

B E T W E E N:

MARVA JONES

PLAINTIFF

AND

RICHARD K. POWERY

DEHPNDANT

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 fully 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

Attorneys for Defendant _____

Address for service:

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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.

Appleby Spurling Hunter
Attorneys-at-Law
Clifton House
75 Fort Street
P. O. Box 190 GT
George Town
Grand Cayman
Ref: [CJ]/11062.0011

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