

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Hand # 23107

CAUSE NO: OF 2008

GOLD



BETWEEN

LYDIA POWERY

PLAINTIFF

AND

FITZROY BURKE

DEFENDANT

WRIT OF SUMMONS

**TO: FITZROY BURKE
105 PALM DALE
CREWE ROAD
GEORGE TOWN**



**AND: BRITISH CAYMANIAN INSURANCE
Po Box 74 GT
BRITCAY HOUSE
EASTERN AVENUE
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 495G, 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 this day of March 2008.

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. The Plaintiff is a citizen of the Cayman Islands and currently resides at 97 Devonshire Road, Newlands, Grand Cayman. At the time of the accident the plaintiff was the owner and driver of a Kia Sportage, registration number 96528.
2. The Defendant was at the time of the accident a resident of the Cayman Islands and was the owner and driver of a Chevrolet Lumina registration number 60363.
3. On the 19th March 2005 at approximately 8.50 a.m. the Plaintiff was driving along Sheddon road in the direction of Eastern Avenue when she stopped to give way to a vehicle turning across her path.
4. The Defendant was driving in the same direction as the Plaintiff and proceeded to drive into the back of the Plaintiffs car, causing extensive damage to both vehicles.
5. The Plaintiff went to hospital due to the injuries sustained.
6. The collision occurred due to the negligence of the Defendant in and about the care, management, driving and control of his motor vehicle on the 19th March 2005.
7. Particulars of Negligence
 - (a) Driving too fast in the circumstances
 - (b) Failing to keep any or a proper look out
 - (c) Driving without due care and attention
 - (d) Failing to avoid a collision
 - (e) Failing to stop, swerve or otherwise manoeuvre the vehicle in time to avoid a collision.

8. As a result of the Defendant's negligence, the Plaintiff has suffered personal injuries, loss and damage.

9. Particulars of Personal Injury

- (a) General pain and suffering including pain to neck and shoulders
- (b) Brachial plexopathy
- (c) Facet Syndrome
- (d) Cervical myofascial pain
- (e) Headaches
- (f) Loss of consciousness

As a result of this accident the Plaintiff suffered pain in her occipital region radiating into the left cervical paraspinal area and left shoulder blade.

Plaintiff also suffered from shooting pains in the lateral and dorsal aspect of the left forearm. She further suffered from numbness and tingling in her left thumb and the lateral aspect of her left hand including the first and second metacarpal regions.

Headaches

The Plaintiff continues to suffer from daily debilitating headaches starting from the left shoulder blade and radiating into the cervical paraspinal region into her head.

Neck and Shoulders

Continued tenderness, stiffness, aching and pressure in the neck and shoulder areas.

Brachial Plexopathy

The Plaintiff has suffered a permanent disability which will require attention in the long term. Permanent partial Impairment rating as per the American Medical Association Guidelines to the Evaluation of Permanent Impairment, Fourth Edition is 21%.

The Plaintiff is no longer capable of full time employment and has suffered a diminution to the quality of her life.

The Plaintiff is no longer capable of carrying out daily tasks nor able to take part in sporting and social functions as she did prior to her injuries.

The Plaintiff continues to suffer from the injuries sustained and relevant reports will be prepared in due course.

10. Particulars of Special Damage

(a) The Plaintiff has incurred medical expenses and will continue to do so. Particulars of this claim will be forwarded when complete.

(b) The Plaintiff has suffered loss of earnings and will suffer loss of earnings from now until retirement age. Such losses will be particularized at a later date.

(c) The Plaintiff will need continued care and assistance domestically and will incur additional living expenses due to her injuries.

AND THE PLAINTIFF claims:

1. Damages
2. Interest in accordance with the Judicature Law (2007 Revision)
3. Costs
4. Such further and other relief as this Court may deem just

STATEMENT REGARDING INSURER

The Defendant was insured by British Caymanian Insurance

Samson & McGrath

Samson & McGrath
Attorneys for the Plaintiff

THIS WRIT was issued by Samson & McGrath, Attorneys for the Plaintiff whose address for service is 3rd Floor Genesis Building, Genesis Close, P.O. Box 446 GT, George Town, Grand Cayman

**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 495G, 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 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 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 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.

Please complete 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 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.

Samson & McGrath
Attorneys at Law
3rd Floor Genesis Building
Genesis Close
PO Box 446
George Town
Grand Cayman

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