

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 281 OF 2008

BETWEEN

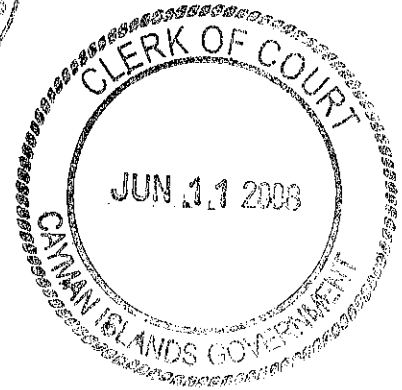
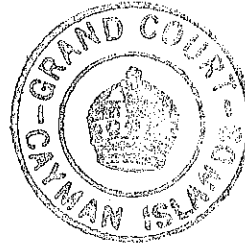
RICARDO MARTINEZ

PLAINTIFF

AND

CRYSTAL EBANKS

DEFENDANT



WRIT OF SUMMONS

To: Crystal Ebanks
#15 Spotts Newlands Road
Grand Cayman

THIS WRIT 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 this action. If you intend to defend this action, in whole or in part, you must set out full particulars of your defence in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or to return the Acknowledgment of Service form containing full particulars of your defence, the Plaintiffs may apply for a default judgment without any further notice to you.

Issued this 11th day of June, 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. At the material time the Plaintiff, a heavy equipment operator, was driving a Suzuki car registration no.89015 rented from Coconut Car Rental. The Defendant was driving a Honda car registration no. 110926.
2. At approximately 1:00 pm on 14 June 2005 the Plaintiff was driving the Suzuki, in the vicinity of Mangrove Avenue, Prospect, heading east from George Town when a collision occurred with the Defendant's Honda along the same road travelling in the opposite direction as the Defendant tried to make a right turn onto Mangrove Avenue.
3. The accident was caused solely by the negligence of the Defendant.

### PARTICULARS OF NEGLIGENCE

- (1) Failing to keep any proper look out;
- (2) Failing to see the Plaintiff's car in time or at all;
- (3) Failing to adequately or at all to observe heed the presence of the Plaintiff's car;
- (4) Failing to steer or control the motor car or to apply her brakes adequately or at all so as to avoid colliding with the Plaintiff's car;
- (5) Failing to accord precedence to the Plaintiff's car as it was being driven along a major road;
- (6) Attempting to make a right turn when it was in all the circumstances unsafe to do so;

(7) Failing to wait until the Plaintiff's car passed before making a right turn

(8) Driving into the path of and colliding with the Plaintiff's car.

4. By reason of the Defendant's negligence, the Plaintiff has suffered pain, injury, loss and damage.

#### **PARTICULARS OF PLAINTIFF'S INJURY**

- (a) The Plaintiff, whose date of birth is 19 March 1975, was transported to the George Town Hospital after the collision. He sustained multiple abrasions to his forehead and lacerations with small fragments of embedded glass in his face. A CT scan and x-rays were carried out. Voltaren and Norflex were prescribed.
- (b) There is now a permanent and dominant scar on the Plaintiff's face. This scar commences at the mid line in the middle of his forehead and runs obliquely upwards and then downwards and horizontally across the forehead into the temporal hairline. This creates a three limb scar. The first limb measures 25 mm x 3 mm; the second limb measure 27 x 4 mm; and the third limb measure 70 mm x 3 mm.
- (c) On 15 June 2005 the Plaintiff complained of pain and tenderness over the medial aspect of the right knee and left heel. The Plaintiff suffered bilateral neck stiffness. Plaintiff was advised to continue crutches and to book follow up in the orthopaedic clinic. Sick leave was given for one week.
- (d) On 23 August the Plaintiff was treated for persisting pains in the right knee and neck and intermittent pains in the lower back. The Plaintiff was diagnosed with difficulty to straighten right knee fully and walking was painful.

- (e) The Plaintiff received physiotherapy. The plaintiff has not recovered fully and will need further treatments.
  - (f) As a result of the accident the Plaintiff is no longer able to lift heavy weights and suffers back spasms if he sits for too long.
  - (g) The Plaintiff became unable to continue with his work as a heavy equipment operator and has difficulty standing for long periods and is embarrassed of the scar on his face.
  - (h) The Plaintiff needs to undergo further medical procedures to alleviate pain, improve the use of his right knee and receive cosmetic surgery on the gross scar on his face.
5. The Plaintiff has suffered special damages, which is continuing. The injuries arising from the accident have had an adverse impact on the Plaintiff's earning capacity and the Plaintiff has suffered loss of earnings, which is still continuing.

#### **PARTICULARS OF SPECIAL DAMAGES**

- (a) The Plaintiff incurred medical expenses in the amount of CI\$5,284.09.
- (b) The Plaintiff was employed with George's Equipment as a heavy equipment operator earning a salary of CI\$4,160.00 per month. As a part of his duties as a heavy equipment operator, the Plaintiff needed to sit for long hours and manoeuvre the heavy equipment; lift heavy weights; use his knees to press the pedals of the heavy equipment for long hours and attend work six days per week.
- (c) As a result of the accident, the Plaintiff became unable to carry on his job as a heavy equipment operator. The Plaintiff was not able to work from the date

of the accident and, as a result, on 1 December 2005, he lost his job with George's Equipment.

- (d) The Defendant was unemployed until February 2008. Since February 2008 he has been employed with D & S Holdings as a supervisor earning on average CI\$2,000.00 per month.
- (e) The Plaintiff had a small farm which generated an average income of CI\$800.00 per month. As a result of the accident, he has been unable to tend to the farm and his income from the farm since the accident is nil.
- (f) As of 15 June 2008, the Plaintiff has suffered a loss of income amounting to CI\$167,560.00.

6. The Plaintiff claims general damages for pain and suffering, loss of amenities and future medical expenses.

**AND THE PLAINTIFF CLAIMS:**

- 1. Special Damages of CI\$172,846.01 ;
- 2. General Damages;
- 3. Pre-Judgment and post-judgment interest in accordance with Section 34 of the Judicature Law (2004 Revision);
- 4. Costs;
- 5. Further or other relief.

**STATEMENT REGARDING INTEREST**

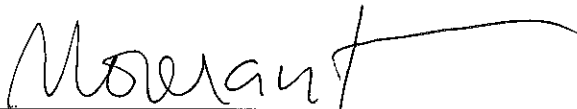
The Plaintiff claims interest from 1 July 2005 to 30 June 2008 at the rate of 3% per annum and thereafter at the rate of 7.25% per annum or as may be varied from time to time by the Grand Court Rules.

Interest from June 2005 to June 2006 totals CI\$1,938.00 at the daily rate of CI\$5.10.

Interest from July 2006 to June 2008 totals CI\$17,284.44 at a daily rate of CI\$23.64.

Interest due to the date of issue totals CI\$19,222.44 from June 2005 to June 2008 and is continuing until judgment or sooner payment at the daily rate of CI\$23.64.

DATED this 11<sup>th</sup> day of June, 2008



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**MOURANT du FEU & JEUNE**  
**Attorneys-at-Law for the Plaintiff**

To: The Clerk of the Court

And to: Crystal Ebanks  
#15 Spotts Newlands Road  
Grand Cayman

THIS WRIT was issued by Messrs. Mourant du Feu & Jeune, Attorneys-at-Law for the Plaintiff whose address for service and correspondence is P.O. Box 1348, Third Floor, Harbour Centre, George Town, Grand Cayman, B.W.I.

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 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 authroised 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO.      OF 2008

BETWEEN                      RICARDO MARTINEZ                      PLAINTIFF

AND                              CRYSTAL EBANKS                      DEFENDANT

ACKNOWLEDGMENT OF SERVICE

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.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*)

yes

no

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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

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Service of the Writ is acknowledged accordingly

(Signed) .....

[Attorney] for

[Defendant in person]

Address for service:

*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.*

Messrs. Mourant du Feu & Jeune  
Attorneys-at-Law  
Third Floor, Harbour Centre  
P.O. Box 1348  
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.*

[Empty box for defendant's attorney indorsement]