

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

60464
CAUSE NO. ___ OF 2012

BETWEEN:

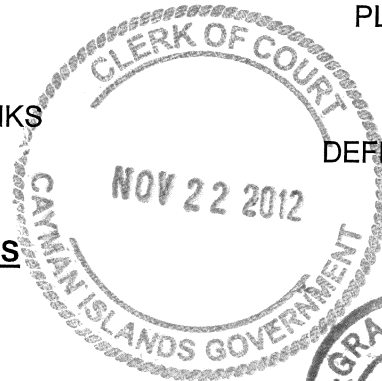
THE INSURANCE COMPANY OF
THE WEST INDIES (CAYMAN) LIMITED

PLAINTIFF

AND:

VICTORIA JANE BANKS

DEFENDANT



WRIT OF SUMMONS



TO: Victoria Jane Banks
P.O. Box 1643
63 Lakeside Villas
Esterley Tibbetts Highway
George Town
Grand Cayman KY1-1109

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of 150 Smith Road, P.O. Box 461, George Town, Grand Cayman KY1-1106, 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 495 GT, 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 22nd day of November, 2012

NOTE – This Writ may not be served later than 4 calendar 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 an insurer within the meaning of sections 2 and 15 of the Vehicle Insurance (Thirty Party Risks) Law (2012 Revision) (the "**Law**").
2. The Defendant is a resident of the Cayman Islands.
3. On 22 May 2009, the Plaintiff, in consideration of the payment of a premium of six hundred and forty six Cayman Islands dollars and thirty five cents (CI\$646.35)(as a first quarterly instalment of a total premium of CI\$2,020.68), issued to the Defendant a policy of motor vehicle insurance bearing policy number '34594221 1' (the "**Policy**"), by which the Plaintiff agreed that for the period of twelve (12) months from 22 May 2009 to 21 May 2010 it would, *inter alia*, indemnify the Defendant in the event of an accident caused by or arising out of the use of the Defendant's Chevrolet Trailblazer motor vehicle, registration number 132 916 (the "**Vehicle**"), against all sums including a third party claimant's costs and expenses which the Defendant should become legally liable to pay in respect of:
 - (a) death of or bodily injury to any person, subject to a maximum sum payable of CI\$1,000,000.00; and
 - (b) damage to property, subject to a maximum sum payable of CI\$250,000.00 arising out of one event.
4. The foregoing liability is such liability as is required to be covered by a policy of insurance under section 4(1) of the Law.
5. The Plaintiff made the contract of insurance on the basis of and in reliance upon the truth of a proposal form and declaration completed by the Defendant dated 22 May 2009 (the "**Proposal Form**"). In the Proposal Form the following question, amongst others, was put to the Defendant under the section headed "THE DRIVERS (INCLUDING THE PROPOSER):-"
 - (e) *To the best of your knowledge in the past five (5) years has any person who will drive the motor vehicle: (1) been fined, (2) had their licence endorsed / revoked, (3) been prosecuted for a motoring offence?"*After the said question, the Proposal Form contained boxes marked 'Y' and 'N' for the proposer to tick its answer 'yes' or 'no', and also further boxes for details to be provided in the event that the proposer answered 'yes' to the question.
6. The Defendant answered 'no' to the question set out in paragraph 5 above by ticking the box marked 'N' next to that question.
7. As stated in paragraph 3 above, the Plaintiff duly issued the Policy, for the period 22 May 2009 to 21 May 2010. In May 2010, the Defendant failed to ask the Plaintiff to renew the Policy, and the Policy therefore expired on 21 May 2010.
8. On or about 21 June 2010, the Defendant sought to reinstate the then lapsed Policy, and the Plaintiff agreed to reinstate it for the period 21 June 2010 to 20 June 2011. The

Defendant duly paid to the Plaintiff a renewal premium of CI\$543.99 (as a first quarterly instalment of a total premium of CI\$1,683.96) and the Plaintiff duly renewed the Policy for an additional twelve (12) months and delivered to the Defendant a Certificate of Insurance for the period 21 June 2010 to 20 September 2010 (on the basis that further certificates would be issued as and when the remaining quarterly instalments were paid). This renewal of the Policy was confirmed by way of an endorsement (Endorsement No. 1153503) to the Policy dated 21 June 2010.

9. On or about 15 June 2011, the Defendant asked the Plaintiff to renew the Policy for a third year, and the Plaintiff agreed to extend the Policy for the period 21 June 2011 to 20 June 2012. The Defendant duly paid to the Plaintiff a renewal premium of CI\$440.82 (as a first quarterly instalment of a total premium of CI\$1,359.72) and the Plaintiff duly renewed the Policy for an additional twelve (12) months and delivered to the Defendant a Certificate of Insurance for the period 21 June 2011 to 20 September 2011 (again on the basis that further certificates would be issued as and when the remaining quarterly instalments were paid). This renewal of the Policy was confirmed by way of an endorsement (Endorsement No. 1305040) to the Policy dated 21 June 2010.
10. On or about 14 October 2011, the Defendant paid the second quarterly instalment of the insurance premium, in the sum of CI\$306.30, to the Plaintiff and on 14 October 2011, the Plaintiff delivered to the Defendant a Certificate of Insurance for the period 14 October 2011 to 20 December 2011 (the "**Certificate of Insurance**").
11. On 30 November 2011, during the third policy period and whilst the Certificate of Insurance was in full force and effect the Vehicle was involved in a collision (the "**Collision**") which resulted in, *inter alia*, the death of the late Richard Douglas Martin (the "**late Mr. Martin**").
12. On or about 14 May 2012, the Summary Court of the Cayman Islands circulated its Traffic Court hearing list, which set out details of the matters listed before Chief Magistrate Hall. That hearing list provided, *inter alia*, that the Defendant was due to appear in the Summary Court for a mention on a number of prosecutions for motoring offences, including charges in indictment 05818 of 2010 for: i) careless driving; ii) driving under the influence of alcohol; and iii) using a vehicle with an expired licence (the "**Motoring Prosecutions**").
13. The Defendant failed to comply with her continuing duty of utmost good faith by failing to disclose the fact that she was facing the Motoring Prosecutions when she renewed the Policy in June 2010 or in June 2011.
14. Although the Plaintiff does not know the specific date on which the Motoring Prosecutions were brought against the Defendant, it is clear that they were brought prior to the June 2011 renewal, as the indictment is indictment number 05818 of 2010, which means that the Motoring Prosecutions were brought during the year 2010.
15. The fact that the Defendant was facing the Motoring Prosecutions was material in that it would have influenced the Plaintiff, and would have influenced the judgment of any prudent insurer, in deciding whether to take the risk of insuring the Defendant or fixing the premium of insurance.

16. On or about 30 July 2012, Ms. Heather Lanigan of the Plaintiff sent a letter to the Defendant by registered mail, in which the Plaintiff advised the Defendant that it was avoiding the Policy on the basis of the non-disclosure of a material fact, namely the non-disclosure of the fact that the Defendant was facing the Motoring Prosecutions.
17. On or about 14 November 2012, Mrs. Susan C. Yee, as widow and executrix of the Estate of the late Mr. Martin, issued a writ and began an action in this Honourable Court bearing Cause Number 453 of 2012, against the Defendant and a Mr. Patrick Ramon Brooks-Dixon ("**Mr. Brooks-Dixon**"), claiming damages on the ground that the death of the late Mr. Martin was caused by Mr. Brooks-Dixon's negligent driving of the Vehicle. The claim is one in respect of liability which could have been covered by the terms of the Policy. The action has not yet been tried.
18. The Plaintiff is and was, in the premises, entitled to avoid the Policy on the grounds that the renewal of the Policy was obtained by the non-disclosure of the material fact referred to in paragraph 13 above, and the Plaintiff did so avoid the Policy as set out in paragraph 16 above. Pursuant to section 15(3) of the Law the Plaintiff is accordingly not liable to pay any sums pursuant to section 15(1) of the Law.

AND the Plaintiff claims:

- (1) a declaration that it was entitled to avoid the Policy dated 22 May 2009 on the ground that the renewal of the Policy was obtained by the non-disclosure of a material fact;
- (2) a declaration that the Plaintiff has duly avoided the Policy; and
- (3) costs.



OGIER

Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was issued by Ogier, Attorneys at Law, whose address for service is:
89 Nexus Way, Camana Bay, Grand Cayman KY1-9007, Cayman Islands (Reference: 403165.00022/WRJ)

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 495GT, 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 (ie., 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 is 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 of 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. ____ OF 2012

BETWEEN:

THE INSURANCE COMPANY OF
THE WEST INDIES (CAYMAN) LIMITED

PLAINTIFF

AND:

VICTORIA JANE BANKS

DEFENDANT

**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 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 of Summons is being acknowledged.

2. State whether the Defendant intends to contest or otherwise participate in 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 of Summons is acknowledged accordingly.

Defendant / Attorney for the Defendant

Address for service:

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 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.

OGIER
Attorneys-at-Law
89 Nexus Way
Camana Bay
Grand Cayman KY1-9007
CAYMAN ISLANDS

T: 345.949.9876
F: 345.949.1987
Ref: 403165.00022/WRJ

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