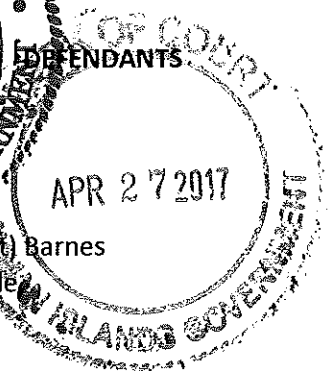
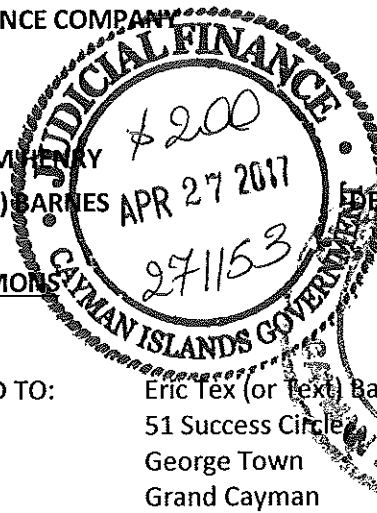


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 76 OF 2017

BETWEEN: COLONIAL MEDICAL INSURANCE COMPANY LIMITED PLAINTIFF

AND: (1) KAREN WOODHAM HENRY (2) ERIC TEX (OR TEXT) BARNES DEFENDANTS



WRIT OF SUMMONS

TO: Karen Woodham Henry
Of: 112 Berry Drive, Bodden Town Grand Cayman

AND TO: Eric Tex (or Text) Barnes
OF: 51 Success Circle George Town Grand Cayman

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff of Jardine House, 33-35 Reid Street, Hamilton HM12, Bermuda 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 495, George Town, Grand Cayman KY1-1106, 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: 27 April 2017

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.

ENDORSEMENT PURSUANT TO GCR Order 6 rule 4 (1) as to MOTOR VEHICLE INSURER

Cayman FIRST Insurance Company Limited, 3rd Floor Harbour Place, 103 South Church Street Grand Cayman

THIS WRIT is filed by Campbells, the Plaintiff, whose address for service is Floor 4 Willow House, Cricket Square, George Town, Grand Cayman (Ref: AJW/KAH/aw/16110-26427)

BETWEEN: COLONIAL MEDICAL INSURANCE COMPANY PLAINTIFF  
LIMITED

AND: (1) KAREN WOODHAM HENRY  
(2) ERIC TEX (OR TEXT) BARNES DEFENDANTS

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STATEMENT OF CLAIM

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- 1 The Plaintiff ("Colonial") is a limited company incorporated in Bermuda and which carries on the business of, amongst other things, the provision of health insurance to companies carrying on business in the Cayman Islands, holding a Class A External Insurer licence issued by the Cayman Islands Monetary Authority.
- 2 The First Defendant (the "KWH") was at all material times an employee of NCB (Cayman) Ltd. ("NCB"). At all material times, NCB provided health insurance to its employees through a policy underwritten by Colonial, numbered 000032-00 (the "Policy"). KWH was at all material times enrolled as an Insured (and Covered) Person under the Policy, with identification number 032000013 M1.
- 3 The Policy contains, amongst others, the following express terms:

***Subrogation***

*The Insurer shall be subrogated - for medical, dental, orthodontic and vision overage within the limit of the expenses reimbursed by the Insurer - in the rights and actions of the Insured Person against any third party responsible for the claim.*

***Right of Recovery***

*The Insurer has the right to recover amounts overpaid to, or on behalf of, a Covered Person as benefits under this Policy.  
In the event a Covered Person is entitled to payment or reimbursement from any other person or organization as a result of a legal action or claim that is due to*

*an Injury or Illness or to Worker's Compensation for which medical or dental or vision benefits have been paid under this Policy, the Insurer shall have the right to have a lien on the proceeds of any recovery from such person or organization, whether by judgment, settlement, or otherwise, but not to exceed the lesser of: a) the total amount of such benefits paid for the Injury or Illness; and b) the amount actually recovered by the Covered Person for medical or dental expenses for such Injury or Illness, less legal fees and costs paid from that amount to pursue the recovery c) the Insurer's recovery under this provision will be limited to the amount paid by the third party, or that party's insurer, that exceeds the Covered Person's total loss due to the Injury, i.e., after the Covered Person has been made whole for the total loss sustained.*

*The Covered Person shall take no action to prejudice the Insurer's right of recovery and shall execute and furnish such papers or other information as the Insurer may require.*

- 4 Further or alternatively, Colonial is entitled to be subrogated to any rights and action of an Insured Person against any third party responsible for the claim as a matter of common law, alternatively by reason of a term implied into the policy as a matter of business efficacy alternatively, in order to prevent the unjust enrichment of KWH at the expense of Colonial.
- 5 On or about 3 May 2014, KWH was riding her bicycle east along Shamrock Road, Grand Cayman. The Second Defendant ("**Barnes**"), who was driving a Ford F250 truck registration number 98508, collided with KWH (the "**Accident**") causing her personal injuries, loss and damage.
- 6 Colonial has paid benefits under the Policy for KWH's medical treatment arising as a result of the injuries sustained by KWH as a result of the Accident, in the sum of US\$305,021.77 (the "**Benefits**")
- 7 KWH has issued proceedings in the Grand Court against Barnes (Cause no. GO201 of 2014 – the "**Proceedings**"), claiming damages for her losses sustained as a result of the Accident. Mr. Barnes, acting through attorneys appointed by his insurers, admitted liability for the Accident in an Amended Defence filed on 27 May 2015. Damages remain to be assessed.

- 8 In a Schedule of Special Damage/Loss filed in the proceedings by KWH's attorney on 7 May 2015, in breach of KWH's obligations under the Policy, no provision has been made has been made.
- 9 Nevertheless, Barnes' insurers, CaymanFirst, have on behalf of Barnes, upto and including the date of issue of these proceedings, made interim payments to KWH in the sum of approximately CI\$330,000, by way of payment to KWH's attorney in the Proceedings, Clyde Allen.
- 10 An as yet unheard application for a further interim payment of CI\$300,000 has been made by Mr. Allen and KWH's behalf in the Proceedings, supported by an affidavit of KWH filed on 12 December 2016.
- 11 Wrongfully, and in breach of her obligation under the Policy, KWH failed to recognise Colonial's lien (referred to in Paragraph 3 above) and to pay over sums recovered from CaymanFirst to Colonial. If and to the extent that funds derived from the sums paid to Mr. Allen by CaymanFirst remain in the possession of KWH or Mr. Allen as her attorney and agent, Colonial hereby asserts and is entitled to its lien and to payment of those sums up to the amount of the Benefits.
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- 12 Further or alternatively, if and to the extent KWH and Mr. Allen as her agent retain less than the amount of the Benefits, Colonial has, as a result of KWH's breach of contract referred to in Paragraph 11 above, suffered loss and damage in the amount of the balance, for which KWH is liable.
- 13 Further or alternatively, pursuant to its rights of subrogation referred to in Paragraphs 3 and/or 4 above, Colonial is entitled, as against Barnes, and hereby does maintain the rights of KWH to claim damages from him in respect of sums properly due from him to her in relation to her medical costs insured under the Policy.
- 14 Further or alternatively, Colonial is entitled against both Defendants to a declaration that, if and to the extent that further recoveries are made as a result of the Proceedings (for example by interim payment or final settlement), it is entitled to maintain a

contractual lien up to the amount of any outstanding balance of the Benefits and to payment for that balance.

- 15 Further, Colonial seeks and is entitled to claim interest pursuant to section 34 of the Judicature Law (2013 Revision) at such rate and from such date and on such amounts as this honourable Court thinks fit.

#### **AND THE PLAINTIFF CLAIMS**

(1) Against The First Defendant:

- (i) A declaration that it is entitled to a contractual lien over sums recovered from or on behalf of the Second Defendant upto the sum of US\$305,021.77
- (ii) Payment of any sums remaining in the possession of the First Defendant and/or her attorney (acting as her agent) derived from sums received from CaymanFirst upto the sum of US\$305,021.77
- (iii) Damages in respect of the balance between the sum of US\$305,021.77 and any sum recovered under Paragraph (ii) above.
- (iv) A declaration that it is entitled to maintain and exercise the First Defendant's right to claim damages against the Second Defendant
- (v) Interest pursuant to the Judicature Law (2013 Revision) at such rate and from such date and on such amounts as this honourable Court thinks fit.

(2) Against the Second Defendant:


- (i) A declaration that it is entitled to maintain and exercise the First Defendant's right to claim damages against the Second Defendant
- (ii) Damages as set out in Paragraph 13 above.

(3) Against both Defendants:

- (i) A declaration that, if and to the extent that further recoveries are made as a result of the Proceedings (for example by interim payment or final settlement), it is entitled to maintain a contractual lien up to the amount of any outstanding balance of the Benefits and to payment for that balance.
- (ii) Costs.
- (iii) Such further or other relief as this honourable court thinks fit.

Dated 27 April 2017

Filed: 27 April 2017

  
\_\_\_\_\_  
CAMPBELLS  
Attorneys for the Plaintiff

BETWEEN: COLONIAL MEDICAL INSURANCE COMPANY PLAINTIFF
LIMITED

AND: (1) KAREN WOODHAM HENRY
(2) ERIC TEX (OR TEXT) BARNES DEFENDANTS

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 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 [ ] no

Service of the Writ is acknowledged accordingly

(Signed).....

Attorney for

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.

Campbells  
Floor 4 Willow House, Cricket Square  
George Town  
Grand Cayman KY1-9010  
Cayman Islands  
(Ref: AJW/KAH/aw/16110-26427)

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]

**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.