

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 110 OF 2018

BETWEEN:

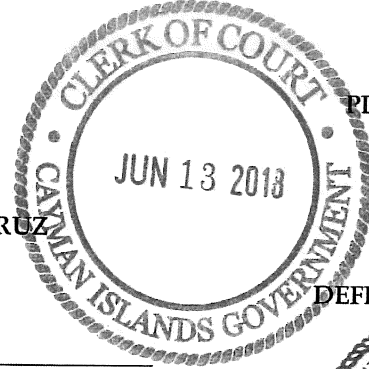
MICAH JENSEN

PLAINTIFF

AND:

WILLIE HURLSTON-CRUZ

DEFENDANT



WRIT OF SUMMONS

TO: WILLIE HURLSTON CRUZ of 24 Ruby Lane, West Bay Grand Cayman, Cayman Islands

INDORSEMENT AS TO INSURERS OF MOTOR VEHICLE (PURSUANT TO GCR O6. R4)

AND AS NOTICE PARTY TO:

THE INSURANCE COMPANY OF THE WEST INDIES (CAYMAN) LIMITED
150 Smith Road
P.O. Box 461
Grand Cayman
KY1-1106

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of Unit 14, Elkhorn Crescent, Coral Gables, West Bay, Grand Cayman, in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands 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 any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 13th day of June 2018.

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2018

BETWEEN:

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PLAINTIFF

AND:

WILLIE HURLSTON-CRUZ

DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is a male, born 3 July 1976 and his present address is Unit 14, Elkhorn Crescent, Coral Gables, West Bay, Grand Cayman.
2. At all material times the Defendant was the male driver of a Toyota Rav 4 motor vehicle registration 146 957 ("The Rav 4").
3. At all material times the registered owner of the Rav 4 was a third man, Troy Claxton, who had permitted the Defendant to drive the Rav 4 and who held an insurance certificate issued in respect of the Rav 4 with the Insurance Company of the West Indies ("ICWI") pursuant to section 4 (3) of the Vehicle Insurance (Third Party Risks) Law (2012 Revision).
4. On 30 April 2017 at around 01:00hrs the Plaintiff was a pedal bicyclist proceeding correctly along West Bay Road towards West Bay, in the vicinity of Discovery Point Club, the Christopher Columbus Condos and the West Bay Fire Station. The Plaintiff was wearing a helmet with reflective stripes and the bicycle was equipped with front and back lights which were illuminated.
5. The Defendant was driving the Rav 4 along the same road in the same direction behind the Plaintiff.
6. Suddenly and without warning, the Rav 4 driven by the Defendant collided with the Plaintiff's bicycle from behind. The Plaintiff was knocked off the bicycle onto the front windshield and bonnet of the Rav 4 and then dropped off onto the road shoulder. The Rav 4 dragged the bicycle underneath the front end tearing the back wheel off, then came to a stop 381 feet from the point of impact.
7. The accident was caused by the negligence and / or breach of a common law duty of care by the Defendant.

Particulars of negligence and or breach of duty

8. The Defendant
 - (a) Drove too fast in the circumstances;

- (b) Drove carelessly;
- (c) Failed to keep any or any proper lookout or be aware of the road and or traffic conditions ahead;
- (d) Failed to slow down or stop in time;
- (e) Failed to control his vehicle or swerve or otherwise take evasive action to avoid a collision;
- (f) Collided with the Plaintiff's bicycle; and
- (g) Failed in all the circumstances to discharge the common duty of care owed to other road users and to the Plaintiff in particular.

Conviction

- 9. On 26 September 2017, in the Summary Court at George Town, Grand Cayman, the Defendant pleaded guilty in respect of criminal case number 03978/2017 for careless driving and driving under the influence of alcohol arising from the manner and standard of his driving at the time of the collision with the Plaintiff. On 4 December 2017 the Defendant was duly convicted and sentenced to a period of disqualification from driving and fined ("The Conviction")
- 10. In accordance with section 52 of the Evidence Law (2018 Revision) the Plaintiff intends to adduce evidence of the Conviction at the trial of this action. The Conviction is relevant to the issue of negligence and / or breach of duty of care as alleged.
- 11. By reason of the matters aforesaid the Plaintiff has suffered pain injury loss and damage.

Particulars of General Damage / Injury

- (a) The Plaintiff, who was born on 3 July 1976 and was aged 40 at the date of the accident, suffered a loss of consciousness and was conveyed by ambulance to George Town Hospital;
- (b) The Plaintiff further suffered head injuries (multiple haemorrhagic cerebral contusions, particularly in the right hemisphere);
- (c) A pelvic injury consisting of a fracture of the left superior pubic ramus extending into the anterior acetabulum;
- (d) Multiple rib fractures;
- (e) A pneumothorax on the left side;
- (f) Left shoulder pain due to a clavicle separation;
- (g) Severe bruising down the ride side of his back and buttocks;
- (h) Left hip injury;

- (i) Left leg injury and pain;
 - (j) Multiple abrasions to the left side of the back, the face and to the head which required sutures; and
 - (k) Visible permanent scars to the forehead and left arm.
12. The Plaintiff has been in the care of an orthopaedic surgeon and physiotherapist. Full and further particulars may be provided by way of medico-legal report to be obtained.
13. The Plaintiff was unable to work at all for 20 weeks following the accident. He was first able to commence work again on 9 September 2017.
14. As a result of his injuries, the Plaintiff suffered considerable pain and discomfort and a significant loss of mobility. He was unable to partake in his preferred leisure pursuits of fishing, swimming and dog-walking.
15. The Plaintiff's injuries and treatment are ongoing. Further particulars of the Plaintiff's injuries will be provided prior to trial.

Particulars of Special Damage

16. The Plaintiff will file and serve a full Schedule of Loss as and when all items of loss have been quantified.

The heads of special loss include,

- i) Loss of earnings to date (to be confirmed);
 - ii) The Plaintiff's medical expenses through the Health Services Authority and other medical facilities and for physiotherapy (to be confirmed);
 - iii) Personal assistance rendered to the Plaintiff between 24 May 2017 and 9 September 2017;
 - iv) Police accident report fee of CI\$100;
 - v) Out of pocket expenses for painkilling medication to date (to be confirmed and continuing) and travel /accommodation expenses to attend medical appointments (to be confirmed); and
 - vi) The costs of a replacement bicycle and back-pack (to be confirmed).
17. The Plaintiff claims interest pursuant to section 34 of the Judicature Law (2007 Revision) on the amount found to be due to the Plaintiff at such rate and for such periods as the Court thinks fit.

AND THE PLAINTIFF CLAIMS

- (i) General and Special Damages;
- (ii) Pre-Judgment interest upon the general and special damages with effect from 30 April 2017 to the date of trial at the rate of $2\frac{3}{8}$ % per annum or at such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time;
- (iii) Post-Judgment interest upon the principal amount of the Judgment with effect from the date of service of Judgment at the rate of $2\frac{3}{8}$ % per annum and/or such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2012, as amended from time to time;
- (iv) Costs; and
- (v) Such further or other relief as this Honourable Court deems just.

DATED at Grand Cayman this 13th day of June 2018



Nelson & Co.
Attorneys for the Plaintiff

TO: The Clerk of the Grand Court

AND TO: Willie Hurlston-Cruz

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 2018

BETWEEN:

MICAH JENSEN

PLAINTIFF

AND:

WILLIE HURLSTON-CRUZ

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 is being acknowledged.

2. State whether the Defendant intend 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 the Defendant

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

Nelson & Company
Attorneys at Law
PO Box 2075
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1105
Attn: N Dixey Ref 6192-01

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 495, 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

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.