

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

CAUSE NO: 146 OF 2019

BETWEEN:

SAXON MOTOR & GENERAL INSURANCE COMPANY LIMITED

PLAINTIFF

AND:

SEAN COOMBS

1<sup>ST</sup> DEFENDANT

AND:

ANTHONY CHAMBERS

2<sup>ND</sup> DEFENDANT



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WRIT OF SUMMONS

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TO: Sean Coombs  
Unit 11, Southern Skies  
71 South Sound Road  
South Sound, Grand Cayman

Anthony Chambers  
154 Stilwell Road, Belford Estates  
Bodden Town, Grand Cayman



**THIS WRIT OF SUMMONS** has been issued against you by the above named Plaintiff, of DMS House, 20 Genesis Close, George Town, Grand Cayman in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you, (or where this Writ is served on you out of the jurisdiction pursuant to an Order of the Court, within 28 days) 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 Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 29<sup>th</sup> day of August 2019.

**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 original issuance unless renewed by order of the Court.

**IMPORTANT**

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

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STATEMENT OF CLAIM

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1. The Plaintiff, Saxon Motor & General Insurance Company Limited, ("**Saxon**") is a duly incorporated Cayman Islands company with a registered office located at DMS House, 20 Genesis Close, George Town and carries on business in the Cayman Islands as a Class "A" licenced general insurer in accordance with the provisions of s.4(3)(a) of the Insurance Law, 2010, and *inter alia* as an authorized insurer of motor vehicles pursuant to the provisions of the Vehicle Insurance (Third Party Risks) Law (2012 Revision) ("**the Law**").
2. The 1<sup>st</sup> Defendant, Sean Coombs ("**Coombs**"), born 12 March 1968 resides at Unit 11, Southern Skies, 71 South Sound Road, South Sound, Grand Cayman and at all material times was the owner and operator of a 2008 Toyota Hilux Double Cab pick-up truck bearing registration plate no. 131 629 ("**the Motor Vehicle**").
3. The 2<sup>nd</sup> Defendant, Anthony Chambers ("**Chambers**"), born 31 March 1981 resides at 154 Stilwell Road, Belford Estates, Bodden Town, Grand Cayman and at all material times was the owner and operator of a Honda Civic motor vehicle bearing registration plate no. 77 143 ("**the Chambers vehicle**").

*The Proposal*

4. On 30 January 2013 Coombs signed and submitted to Saxon a written proposal ("**the Proposal**") seeking "Comprehensive" insurance coverage for the use and operation of the Motor Vehicle as a "Private" vehicle. In the Proposal Coombs was asked a number of questions to which he responded as follows:

Has the vehicle been modified in any manner from its factory condition? No

Will the vehicle be used for commercial or business purposes? No

Will the vehicle tow a trailer? No

Any other material information that you wish to disclose? [no response]

5. The Proposal concluded with a Declaration signed by Coombs which provided in its material part as follows:

**Please read the following carefully, and then re-read the questions in this form and the answers you have provided before signing the form.**

*I/We declare and warrant that the answers and statements given in this form are true and are within my/our knowledge. There is no other material fact or circumstance which should be disclosed. I/We agree that this declaration shall be held to be promissory and shall form the basis of the contract between me/us and Saxon Motor & General Insurance Company Ltd. (SaxonMG)*

I understand and agree that if any answers or statements in this form are not in my/our handwriting, the person(s) who filled in these answers and statements shall be deemed to be my/our agent(s) for this purpose. *I/We agree to accept a policy subject to the terms, conditions and exceptions prescribed by SaxonMG for this class of risk.*

....

Name: Sean Coombs

Signature: [signed] "Sean Coombs"

Date: 01/30/2013

[emphasis in italics added]

#### *The Policy*

6. On the basis of the representations made by Coombs in the Proposal, upon which Saxon relied, and in consideration of payment of a premium of \$780.00, Saxon was induced to and issued to Coombs a policy of motor vehicle insurance being policy no. 01302013-KY-011352 effective from 30 January 2013 to 30 January 2014 ("**the Policy**") in accordance with the provisions of s.4(1) of the Law, and insuring Coombs' use and operation of the Motor Vehicle in accordance with the terms of the Policy.
7. Upon the issuance of the Policy Coombs was provided with the following comprising the terms of the Policy and on which Saxon relies:
- (i) A complete copy of SaxonMG's printed "Motor Vehicle Policy";
  - (ii) The "Schedule" forming part of the Motor Vehicle Policy;
  - (iii) The "Vehicle Summary" summarizing the coverage; and
  - (iv) The Certificate of Insurance.
8. The Vehicle Summary recorded that coverage was "Comprehensive - Private", and under the heading "Limitations of Use" provided as follows:

*Social or domestic or pleasure purposes and for your own personal business. Motor Vehicles subject to this Limitation must not be used for commercial travelling, racing, pacemaking, reliability trials, speed testing, hire or rental, the carriage of goods or samples*

*in connection with any trade or business or for any purpose in connection with the motor trade.*

[emphasis in italics added]

9. The Certificate of Insurance provided inter alia:

*Social or domestic or pleasure purposes and for your own personal business. Motor Vehicles subject to this Limitation must not be used for commercial travelling, racing, pacemaking, reliability trials, speed testing, hire or rental, the carriage of goods or samples in connection with any trade or business or for any purpose in connection with the motor trade.*

[emphasis in italics added]

10. The Motor Vehicle Policy at page 10 set out “General Exclusions which apply to the whole policy” and which provided as follows:

We shall not be liable in respect of:

....

2. any accident, loss, damage, or liability caused, sustained or incurred whilst the Motor Vehicle is being used otherwise in accordance with the limitations as to use [stated on the Summary to the Policy];

11. The Motor Vehicle Policy at page 19 set out “Conditions which apply to the whole policy”, of which Condition 13 provided as follows:

**13. KEEPING YOUR POLICY UP TO DATE**

*Please tell us immediately if anything changes which might affect your insurance. Any change that you do not advise us of may mean that your Policy is void. We need to know things like if you change your Motor Vehicle, if you sell your Motor Vehicle, make any modifications to it from the manufacturer's original specifications, change your occupation, change the use of the Motor Vehicle, change any named driver on the Policy Schedule, any claim or incident, any convictions or fixed penalties and any pending prosecutions.*

[emphasis in italics added]

12. By the Policy Saxon agreed to indemnify Coombs inter alia against liability for death or bodily injury to any third party arising out of his use of the Motor Vehicle on the road to a maximum of \$1,000,000.00 per claim and \$5,000,000.00 in the aggregate in accordance with and subject to the terms of the Policy and the Law.

*Renewals of the Policy*

13. The Policy lapsed on 30 January 2014. Coombs subsequently applied to Saxon to renew the Policy some six months later on 18 July 2014 (expiring on 18 July 2015), and again on 17 July 2015 (expiring on 18 July 2016). On each renewal of the Policy Coombs attended at the offices of Saxon and the terms of the Proposal, and the questions asked in the Proposal were reviewed with him and he was expressly asked whether there had been any changes from the representations made to Saxon in the Proposal, including specifically whether the Motor Vehicle was being used to tow a trailer and

whether the Motor Vehicle was being used for other than private and personal use. Coombs denied any changes from the Proposal originally submitted or any changes in the use of the vehicle.

14. Coombs was provided on each renewal of the Policy with further and current copies of the Motor Vehicle Policy, the Schedule, the Vehicle Summary and the Certificate of Insurance. In each case the Motor Vehicle Policy, the Vehicle Summary and the Certificate of Insurance provided to Coombs contained the provisions set out at paragraphs 9, 10 and 11 above, advising inter alia that the insured use of the Motor Vehicle was limited under the Policy to social, domestic or pleasure purposes and was not to be used in connection with any trade or business.

#### *The Accident*

15. On Saturday 18 June 2016 at or about 7:30 a.m. Coombs was operating the Motor Vehicle east-bound on Shamrock Road in Spotts, Grand Cayman, in the immediate vicinity of Ocean Club, accompanied in the front passenger seat by one Scottie Blair ("**Blair**"), and towing a heavily loaded trailer attached to the Motor Vehicle, when the Motor Vehicle crossed the centre line of Shamrock Road entered into the westbound lane and came into collision with the Chambers vehicle operated by Chambers which was proceeding westbound on Shamrock Road, causing damage to the Chambers vehicle and (it is now alleged by Chambers) injury to Chambers ("**the accident**").
16. At the time of the accident Coombs was operating the Motor Vehicle in the course and scope of his employment with Trevor Watkins ("**Watkins**") as property manager of Watkins' substantial properties at Kaibo and Grand Harbour, being so employed by Watkins, Mondays through to Saturdays (as was Blair also), and was using the Motor Vehicle to tow a trailer owned and provided by Watkins.
17. The trailer as aforesaid had been modified by the addition of plywood sideboards in order to carry topsoil, dirt or aggregates, in a manner for which the trailer was not originally designed or intended.
18. Coombs, assisted by Blair, had loaded the trailer with topsoil at Watkins' Grand Harbour premises that morning and was using the Motor Vehicle to tow the heavily loaded trailer and were proceeding to Vigoro Nursery in Lower Valley to collect a tree, and intended to then continue to Watkins' second residence in Kaibo, Grand Cayman, where the tree was to be planted and the topsoil off-loaded.
19. Coombs had been so employed by Watkins as salaried property manager since March 2014. His employment with Watkins required that he have a truck and he had been using the Motor Vehicle in connection with and in support of Watkins' landscaping business on a regular basis during that time, including for the transportation of fellow employee, Blair, for towing Watkins' trailer, and otherwise as required by Watkins, when Watkins' own truck was not available.
20. Coombs had purchased a universal trailer ball hitch from Parkers Auto Parts approximately a year prior to the accident and had since then used the Motor Vehicle so equipped with the ball hitch to tow Watkins' trailer on a regular basis, again in connection with and in support of his employment by Watkins, and Watkins' interests.
21. The trailer owned by Watkins and operated by Coombs was not licenced or plated, nor was it insured as required by the Law, being a "vehicle" as defined by s.2 of the Law.
22. Saxon states that the trailer being towed unlawfully as aforesaid, was heavily loaded, or overloaded, and/or exceeded the towing capacity of the Motor Vehicle, and the accident occurred when the trailer began swinging and upon braking action by Coombs jack-knifed with the weight of the trailer forcing the Motor Vehicle into the lane for on-coming traffic coming into collision with the Chambers

vehicle. It appears also that the trailer hitch was improperly secured with a nail in an improvised manner.

23. On 13 July 2016 Coombs disclosed to Saxon that he had allowed the Policy to lapse on 30 January 2014 and left the Motor Vehicle parked for some months before renewing it with Saxon on 18 July 2014 by reason of the fact that during that period Coombs' driver's licence was under suspension for twelve months following his guilty plea in Summary Court to a charge of driving while under the influence of alcohol.

*The Material Non-Disclosure/False Representation*

24. Saxon pleads that in the premises Coombs failed to disclose to Saxon in his Proposal, on his renewals of the Policy, or at any time prior to the accident, the following facts:

- (a) That the Motor Vehicle had been modified from its factory condition by the installation of a trailer hitch receiver and a universal ball mount;
- (b) That he was using the Motor Vehicle to tow a trailer;
- (c) That he was using the Motor Vehicle for other than social or domestic or pleasure purposes or for his own personal business;
- (d) That he was using the Motor Vehicle for commercial and/or business purposes including for the carriage of goods and fellow employees, and towing a trailer for his employer, Watkins;
- (e) That he was using the Motor Vehicle, including towing Watkins' trailer, in connection with a trade or business being landscaping for his employer, Watkins;
- (f) That he had been convicted on a guilty plea of the offence of driving while under the influence of alcohol and his driver's licence had been subject to suspension for twelve months including during the period generally from January to July 2014.

25. Saxon pleads further that Coombs' failure to disclose these facts (or any of them) to Saxon in his Proposal, on his renewals of the Policy, or at any time prior to the accident was a material non-disclosure, and/or constituted by the Proposal (and his continuing non-disclosure) a representation that was false in a material particular, within the meaning of s.15(3) of the Law and the definition of "material" under s.15(5) of the Law, since if disclosed by Coombs to Saxon would have influenced the judgment of Saxon in determining to decline to accept the risk by issuing or renewing the Policy to him, or would have issued or renewed the Policy to him at a higher premium.

26. Saxon pleads further that Coombs was at common law under a duty of utmost good faith in submitting the Proposal to Saxon and in renewing the Policy, and seeking to induce Saxon to enter into a contract of insurance with him, and was obliged to disclose all material facts to Saxon including his conviction for driving under the influence of alcohol, and that after submitting the Proposal, and after renewing the Policy respectively Coombs owed Saxon a continuing and ongoing duty of disclosure as to the facts in paragraph 24 above both at common law and by virtue of the terms and conditions of the Policy including the provisions of the Policy set out at paragraph 11 above.

27. Saxon has to-date been unable to obtain from the Royal Cayman Islands Police Service a certificate as to Coombs' driver history. Saxon reserves the right to rely on any driving violation or accident disclosed by Coombs' driver history and not disclosed to Saxon, as a further material non-disclosure, and/or representation on the part of Coombs which was false, when such certificate as to Coombs' driving history is obtained including by disclosure by Coombs and/or by order of the Court in the within proceedings.

*The Proceedings*

28. On 17 June 2019 Chambers represented by KSG Attorneys at Law, commenced proceedings against Coombs and Watkins in the Grand Court of the Cayman Islands as Cause No. 98/2019 (the "Proceedings") alleging negligence on the part of Coombs in his operation of the Motor Vehicle resulting in the accident and claiming damages on account of personal injuries allegedly sustained by Chambers in the accident, and alleging also that Coombs was at the time of the accident acting in the course of his employment with Watkins such that Watkins was vicariously liable for Coombs' negligent operation of the Motor Vehicle.

*Section 15(3) proviso notice*

29. By letters of 1 and 6 July and 25 August 2016 in compliance with the proviso to s.15(3) of the Law Saxon by its attorneys gave notice to Chambers specifying the non-disclosure and false representation as set out at paragraphs 15-26 above on which Saxon relied and that it was avoiding the Policy on those grounds.
30. Following the issuance of the proceedings by letter dated 21 June 2019 to KSG Attorneys, Saxon by its attorneys, provided Chambers with further copies of the said letters of 1 and 6 July and 25 August 2016 in compliance with the proviso to s.15(3) of the Law and reiterated that Saxon was avoiding the Policy on the grounds of non-disclosure and false representation as set out at paragraphs 15-26 above.

*The declaratory relief sought*

31. Saxon pleads accordingly that by reason of the foregoing that it is entitled to avoid the Policy issued to Coombs on the grounds that it was obtained by reason of non-disclosure and/or false representation as set out at paragraphs 15-26 above (and reserving the position in regard to the matters at paragraph 27).
32. Saxon seeks a declaration in accordance with the provisions of s.15(3) of the Law that it is entitled to avoid the Policy, and in consequence thereof not liable to indemnify Coombs under the Policy, nor liable under s.15(1) of the Law to pay any sums to Chambers on account of any judgment obtained by him against Coombs in the proceedings.

**THE PLAINTIFF THEREFORE CLAIMS:**

- (a) A declaration that it is entitled to avoid the Policy on the grounds of non-disclosure and/or false representation as more particularly pleaded above;
- (b) A declaration that the Policy is avoided accordingly;

(c) Its costs of this action; and

(e) Such further and other relief as to this Honourable Court may seem just.

**DATED** at Grand Cayman this 29<sup>th</sup> day of August 2019.

HAMPSON . CO

Hampson and Company

Attorneys for the Plaintiff, Saxon Motor & General Insurance Company Limited

**THIS STATEMENT OF CLAIM** is filed by Hampson and Company, attorneys for the Plaintiff, whose address for service is that of its said attorneys, at Apollo House East, 4<sup>th</sup> Floor, 87 Mary Street, George Town, P.O. Box 698, Grand Cayman KY1-1107, Cayman Islands.