

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. G 181 OF 2019



BETWEEN: MARGETA FACEY-CLARKE FIRST PLAINTIFF

AND: RIANNA ROOPCHAND SECOND PLAINTIFF

AND: THE ATTORNEY GENERAL OF THE
CAYMAN ISLANDS (for and on behalf of
the Cayman Islands Judicial Administration) FIRST DEFENDANT

AND: LEROY WHORMS SECOND DEFENDANT

AND: KAYLEE WHORMS THIRD DEFENDANT



TO: The Attorney General of the Cayman Islands
Government Administration Building
Elgin Avenue, George Town, Grand Cayman

AND TO: Mr. Leroy Whorms, George Town, Grand Cayman

AND TO: Kaylee Whorms, George Town, Grand Cayman

AND TO: Royal Star Assurance Ltd.
Cayman Financial Center
Dr. Roy's Drive, George Town, Grand Cayman
949-7221

AND TO: Caribbean Alliance Insurance Company Ltd.
Second Floor, Alissta Towers, George Town, Grand Cayman
949-9744



WRIT OF SUMMONS

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within Fourteen days (14) 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, Grand Cayman KY1-1106, 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 an 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 30th day of October, 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 issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

Introduction of the parties

1. The **First Plaintiff** is a practicing attorney at law in the Cayman Islands since 19th February 2003 and is currently employed by Facey-Clarke & Associates Ltd.
2. In regards to the slip and fall incident on 11th November, 2016, the **First Plaintiff** was an invitee and/or a lawful visitor to the Judicial Administration Building located at 61 Edward St, George Town, Grand Cayman, Cayman Islands also known as the Law Courts (hereinafter referred to as the Premises).
3. The **First Defendant** is a Government Body incorporated under the laws of the Cayman Islands and was the owner and occupier of the Premises described at paragraph 2 above.
4. In regards to the motor vehicle accident on 18th January, 2019, the **First Plaintiff** was the registered owner of a 2012 Silver Mercedes Benz motor vehicle with license number 152605 (hereinafter referred to as the Mercedes Benz).
5. The **Second Plaintiff** was the lawful and authorized driver of the Mercedes Benz.
6. The **Second Defendant** was the registered owner of a 2008 blue Honda Fit, license number 175940 (hereinafter referred to as the Honda Fit).
7. The **Third Defendant** was the driver of the Honda Fit.

Claim Against the First Defendant

Note: For the sake of clarity, the Second Plaintiff makes no claim against the First Defendant

8. In regards to the First Plaintiff's claim against the First Defendant, the First Plaintiff repeats paragraphs 1, 2 and 3 above.
9. On 11th November, 2016 at around 11:00 a.m., the First Plaintiff was walking down the two steps in Court Room number 2 that leads to the attorneys well when suddenly and without warning, she tripped and fell down the steps and fell flat on her stomach. After hitting the floor, the First Plaintiff slide a few inches on her stomach and then came to a stop.
10. The First Plaintiff had arrived to court at around 9:45am on that morning and had discussions with her client before proceeding to take her seat and await the arrival of the presiding Judge who was not yet present in the court room at the time of the fall. The First Plaintiff had already put her files and hand bag in her seat earlier and was not carrying anything in her hand at the time she tripped and fell.
11. The First Plaintiff's client, Ms. Saralee Connor was in the waiting gallery right behind the First Plaintiff when she fell who ran towards her to assist her up from the ground. Other persons in the court room who witnessed the fall were the court stenographer, Ms. Karen Myren who was sitting directly in front of the staircase where the First Plaintiff fell. Cayman News 27 reporter, Mr. Pat Critchlow and another reporter was also present in the court room and were to the left of the said staircase. A Mr. Bruce Lenny was also in court room number 2. Attorney Ms. Martha Rankine was already in the well to the right of the First Plaintiff when she fell.

Particulars of Negligence claimed by the First Plaintiff against the First Defendant

The First Defendant were negligent in that they:-

- (a) failed to ensure that the steps were safe by complying with the Standard Building Code for the Cayman Islands and thus breached its common law duty of care to ensure the First Plaintiff was reasonably safe in using the Premises;

- (b) The steps on the stair case were of uneven height and do not meet the requirement of the Cayman Islands Building Code and Regulations.
 - (c) failed to maintain and/or lay carpeting on the floor that was reasonable safe for the First Plaintiff and other members of the public to walk upon;
 - (d) failed in its duty to take any or any reasonable care to see that the First Plaintiff would be reasonably safe in using the premises;
 - (e) exposed the First Plaintiff, whilst she was an invitee to the premises, to the risk of damage or injury as a result of unsafe steps and/or carpet of which the First Defendant knew or ought to have known;
 - (f) failed in its duty to take any adequate or effective precautions to ensure that the steps and carpet were safe and would not cause injury to the First Plaintiff;
 - (g) caused or permitted the steps and carpet to become or to remain in an unsafe and dangerous state;
 - (h) failed in its duty to give the First Plaintiff any or any sufficient warning of the state and condition of the steps and carpet;
 - (i) was aware and/or should have been aware that the carpet was worn, slippery and hazardous but did not make any effort to replace it; and
 - (j) in all circumstances failed to discharge its common law duty of care to the First Plaintiff as well as its statutory duty to her under the Cayman Islands Building Code and is in breach of the said Law.
12. As a result of the First Defendant's negligence, the First Plaintiff suffered pain, suffering, loss and damage and loss of amenities of life.

13. In regard to her claim against the First Defendant, the First Plaintiff will say *res ipsa loquitor*.

Particulars of Injuries of First Plaintiff as a result of the slip and fall accident

14. The First Plaintiff sustained injuries to her neck, middle and lower back. She also sustained bruises to both knees and injury to her right wrist.
15. The First Plaintiff was taken by ambulance to the Accident and Emergency Department of the Cayman Islands Health Services Authority where she was treated for pain and a torn muscle, assessed then released. She was referred to physical therapy and to see the Hospital's neurosurgeon.
16. The First Plaintiff continued to experience sharp pains in her neck, back and hands with severe numbness to hands and weakness in both legs. She was unable to sit, stand, walk, bend forwards or backwards, turn from side to side without experiencing pain.
17. The First Plaintiff had purchased plane tickets for a family vacation and had to leave the next morning after the fall (12th November, 2016) with the use of a wheel chair through the airports and had to use a scooter to mobilize whilst on her shopping trip with her family. She was in constant agonizing pain throughout the entire vacation despite taking pain killers. Her entire family vacation was ruined. She continued to have pain after returning to the Island.
18. The First Plaintiff underwent surgery to her neck (C5-C6 spine) on 16th November, 2018 at the Laser Spine Institute in Tampa Florida, U.S.A. She was accompanied by her son and her daughter. Her son had to take time off work without pay. The both cared for her before and after the fall and provided nursing care at the hotel after surgery.

First Plaintiff's Claim Against the Second Defendant and the Third Defendant

19. In regards to the First Plaintiff's claim against the Second Defendant and Third Defendant, the First Plaintiff repeats paragraphs 1, 4, 5, 6, 7, 13, 14, 15, 16 and 18 above.
20. In regards to the Second Plaintiff's claim against the Second Defendant and Third Defendant, the Second Plaintiff repeats paragraphs 1, 4, 5, 6 and 7 above.
21. On the 18th day of January 2019 at around 1:00 pm, the Second Plaintiff, restrained with seat belt, was driving the Mercedes Benz vehicle in the vicinity of the Camana Bay roundabout.
22. The First Plaintiff was a front seat passenger restrained with seat belt in the Mercedes Benz.
23. The Second Plaintiff was driving in a westerly direction coming from Lawrence Boulevard heading east onto the Camana Bay roundabout and going towards Emeritus Drive connecting to get into the Camana Bay complex. She was going for lunch with the First Plaintiff and to run errands.
24. The Second Plaintiff was about halfway around the said roundabout when she noticed the Third Defendant stopped at the white dotted line before entering the roundabout. The Third Defendant was coming from West Bay end, under the bridge, driving from North to South. Suddenly and without warning, the Third Defendant, not looking in front of her, drove onto the roundabout without due care and attention and drove her vehicle into the left rear side of the Mercedes Benz causing damage to both the Honda Fit and the Mercedes Benz.
25. The Second Plaintiff saw that the Third Defendant was not looking in front of her. She was looking east to her right. The Second Plaintiff accelerated to avoid the Third Defendant colliding with the Mercedes Benz but the Third Defendant continued to look east to her right and drove her vehicle into the Mercedes Benz, causing damage to the left rear side bumper.

26. The Second Plaintiff had her left indicator on signaling that she was turning left to exit the roundabout onto Emeritus Drive leading into Camana Bay and the Third Defendant saw the indicator or should have seen the indicator, but nonetheless, drove onto the roundabout and collided with the Mercedes Benz.
27. Immediately after the crash, the Second Plaintiff took photographs of the damage to the left front bumper of the Honda Fit as well as photographs of the damage to the left rear side bumper of the Mercedes Benz.
28. The Third Defendant's negligent driving resulted in her crashing the Honda Fit into the Mercedes Benz.
29. Neither the First Plaintiff nor the Second Plaintiff are responsible for the damage caused to the left front bumper of the Honda Fit.
30. The First Plaintiff and the Second Plaintiff will rely on the fact that the Third Defendant pleaded guilty to careless driving in the Summary Court before the Honorable Magistrate Donalds on 15th August 2019 and she was ordered to pay a fine for careless driving.
31. The Second Defendant and the Third Defendant are liable for the cost to repair the First Plaintiff's vehicle and the First Plaintiff claims the cost to repair her vehicle as set out under the particulars of loss and damage below.
32. The motor vehicle accident was caused as a result of the negligence of the Third Defendant.

Particulars of Negligence and Breach of Statutory Duty

33. The Third Defendant was negligent and is at fault for the accident in that she:-
 - a. Failed to keep a proper lookout or indeed any lookout at all;

- b. Failed to apply her brake and/or failed to keep her foot on her brake until it was safe to proceed onto the roundabout;
 - c. Was stopped at the white lines before entering the roundabout and should have given way to the Mercedes Benz that was already on the roundabout but failed to do so; and
 - d. Made no attempts to apply her brakes or steer or otherwise control the Honda Fit so as to avoid hitting the Mercedes Benz.
34. The Third Defendant is in breach of Section 11(2)(j) of the Traffic Control Regulations (2012 Revision) which states:-
- “where there is a road marking as specified in paragraph (i) means a vehicle shall give way to traffic approaching on your immediate right.”
35. The Third Defendant is also in breach of section 3.11.1 of the Road Code of the Cayman Islands 2012 which states:-
- “When reaching the roundabout, always give way to vehicles approaching from your immediate right ...”
36. As a result of the matters aforesaid, in so far as it relates to the Second Defendant and the Third Defendant, the First Plaintiff suffered pain and suffering and loss of amenities of life, as well as loss and damage.
37. The Second Plaintiff suffered pain and injury. The pain, injury, loss and damage was as a result of the Third Defendant’s negligence.
38. The loss and damage was all reasonable foreseeable and the Third Defendant is liable to compensate the First Plaintiff and the Second Plaintiff for their pain and suffering, injuries, loss and damage and loss of amenities of life.

Particulars of Injury caused by the Third Defendant as it relates to the First Plaintiff

- a. As a result of the motor vehicle accident, the First Plaintiff suffered chronic neck, middle and lower back pain. She underwent surgery to L4-L5 lumbar spine on 8th February, 2019 at Laser Spine Institute, Tampa Florida, USA.
- b. She also suffered loss of sensation in left leg, difficulty walking, sitting, standing, bending, weakness, clumsiness, loss of balance, pain exaggerated on movements. Numbness in hands and greater toe.
- c. Cervical spine tenderness at C3 to C7 levels, shock-like sensations in all four limbs, L4-L5 disc prolapse.
- d. Severe aggravation to recent disc replacement surgery to C5-C6 cervical spine on 16th November, 2018.

Particulars of Injury caused by the Third Defendant as it relates to the Second Plaintiff

39. The Second Plaintiff suffered whip lash type injury to her neck and back radiating upwards to her head and outwards to her shoulders.

Brief History of First Plaintiff/Loss of Amenities

40. The First Plaintiff who was born on 14th July, 1961 was 54 years old at the time of the slip and fall accident. She was 57 years old at the time of the motor vehicle accident. She is an attorney-at-law by profession and specializes in civil and criminal litigation as well as probate and administration, family, immigration and other general litigious matters.
41. The deterioration of her health since the slip and fall accident caused the First Plaintiff to suffer severe financial setbacks to the extent that she was unable to maintain the overheads

associated with her office and around February, 2018, she was forced to part with her executive legal assistant that was employed by her law office for over 12½ years.

42. The First Plaintiff was diagnosed with back problems in 2013 for which she received treatment such as pain medication, physical therapy, massage, ice, heat, acupuncture and exercise. She recovered well and lived a fairly healthy and active life style until she slipped and fell down two steps at the above mentioned Premises on 11th November, 2016.
43. The First Plaintiff continues to suffer pain in her neck, middle and lower back which radiates to her upper and lower limbs. She continues to be monitored by doctors and specialists both locally and overseas and is undergoing physical therapy and taking pain medications to ease the pain.
44. After the slip and fall accident on 11th November, 2016, the First Plaintiff's health deteriorated. The pain in her head, neck, middle and lower back got worst and was managed by pain medication, physiotherapy, massage, ice, heat, acupuncture and exercise over a period of about 1 ½ years.
45. On one occasion, after the slip and fall injury, the First Plaintiff was drying her legs in a bending position after getting out of her shower to go to work and was unable to stand up or walk. She experienced excruciating and agonizing pain to her head, neck, middle and lower back which radiates to her upper and lower limbs and toes. She was picked up from her home by ambulance and taken to the accident and Emergency Department of Health City Hospital. She was treated by her neurosurgeons, Dr. Susheel Wadwa and Dr. Manjunatha of Health City Hospital and released with pain medication and placed on strict bed rest for several days.
46. After the slip and fall accident, the continuous striking pain in her head, pain in her neck, back, shoulders, hands, legs, feet together with restless nights and inability to sit, stand or walk became so severe that MRI was done which resulted in the First Plaintiff undergoing disc replacement to her neck (C5-C6 level) on 16th November, 2018.

47. Prior to the slip and fall accident and the motor vehicle accident, the First Plaintiff enjoyed going to the gym where she participated in low impact exercise classes such as aerobics and spinning. She also enjoyed gardening such as planting vegetables and fruit trees and cleaning her yard. She loved picking fruits from her trees such as apples, mangoes, coconuts, breadfruits, cherries, ackees and naseberries. The First Plaintiff enjoyed dancing, walking, travelling, cruising, shopping in big malls and socializing.
48. After the slip and fall accident and the motor vehicle accident, the First Plaintiff's life style has changed completely. She is not able to walk, sit, dance or stand for long periods without experiencing pain. She cannot bend, or reach up her hands or run without pain. She is unable to do her gardening and house hold chores such as sweeping, mopping, washing, cleaning in general without pain. Driving aggravates her neck and spine.
49. The First Plaintiff had to move out of her master bedroom on the second floor of her home as she is unable to climb stairs. She has been unable to climb the stairs to attend to her client's court cases on the second floor of the main court house which does not have an elevator. She continues to be fearful when walking up or down two or three steps and will avoid steps if possible.
50. In regards to the motor vehicle accident, the First Plaintiff was previously diagnosed with low back pain radiating to her left. She had lumbar stenosis to L4-L5 disc with radiculopathy pre and post surgery. She had lumbar spondylosis but superimposed upon this was the motor vehicle accident on 18th January, 2019 which created a new left-sided radicular pain.
51. Findings at surgery included ligamentous hypertrophy with neural impingement to the L4-L5 vertebrae.
52. Medical review on 31st December, 2018 indicated that the First Plaintiff was 90% recovered from surgery to her neck on 16th November, 2018. The motor vehicle accident not only created a new injury to her lumbar spine but aggravated her previous spinal injuries including the recent surgery to her neck.

53. Shortly after the First Defendant ran her vehicle into the Mercedes Benz, the First Plaintiff started to feel pain in her lower back coupled with tingling, weakness and numbness in her left leg radiating down to her foot and toes. She was taken by ambulance to the Accident and Emergency Department of the Cayman Islands Health Services Authority. Whilst at the Accident and Emergency Department, the Plaintiff left leg became very numb and she was unable to stand, walk or lift her left leg.
54. The First Plaintiff received injection for pain to her neck, shoulders, back, wrist and lower limbs at the Health Services Authority. Despite the injection to ease the pain, the pain got worst. She was later that night transferred by ambulance to Health City Cayman Islands Hospital where she was hospitalized for 4 days from 18th to 21st January, 2019. She was placed on sick leave for several weeks after the motor vehicle accident.
55. The First Plaintiff flew to Laser Spine Institute, Tampa, Florida for review and further intervention and assessment of her injuries. She was accompanied by her daughter as she was not able to travel without assistance. She was examined by her Neurosurgeon, Dr. Reginald Davis of Laser Spine Institute who ordered MRI and x-rays of the cervical, thoracic and lumbar spine. This was performed at Laser Spine Institute, on 4th February, 2019 and surgery was performed to the L4-L5 spine on 8th February, 2019 at Laser Spine Institute. She was accompanied and cared for by her daughter.
56. Surgery to C3-C4 level is still on review.
57. The First Plaintiff was on and off work for numerous days as a result of the slip and fall accident on 11th November, 2016. She continued to be on and off work since the fall. She was also placed on sick leave for a further 12 weeks following surgery to C5-C6 cervical spine on 11th November, 2018.
58. The First Plaintiff was on sick leave for a further 12 weeks following the motor vehicle accident on 18th January, 2019.

59. The First Plaintiff continues to be on and off work for a number of days due to pain and suffering and to attend doctors and ongoing physical therapy and exercises.
60. The First Plaintiff is severely limited in her daily activities and has not been able to return to full time employment since the slip and fall incident and motor vehicle accident. She continues to be on and off work either because of excruciating pain, inability to sit, stand, walk, mobilize in general, attending doctors, neurosurgeons and physiotherapists, travels overseas for further medical intervention relative to the injuries she sustained in the slip and fall incident and the motor vehicle accident.
61. The First Plaintiff continues to operate her law office single handedly, although no longer on a full time basis. Due to further financial constraints as a result of her incapacity to work on a full time basis, she was compelled to give notice to vacate her law office at Elizabethan Square where she operated her law practice for 16 years since 28th October, 2003.
62. The First Plaintiff is a single parent and is unsure where and how she will continue her law practice as of 2nd November, 2019. She continues to experience severe pain on and off sometimes up to a period of 3 weeks to one month despite medications and physical therapy. She is under constant review for spinal care management by her neurosurgeons.
63. The First Plaintiff has to, from time to time, use a wheel chair and/or scooter to get around airports, in malls and supermarkets both on Island and overseas. She has to get assistance to dry and apply body lotion to her legs and to get on with her usually energetic and happy lifestyle. She is unable to continue working as she did prior to the slip and fall accident and the situation has gotten worst since the motor vehicle accident. She is unable to drive most times due to pain in neck, lower back and legs. She is partially handicapped and her life will never be the same again.
64. The First Plaintiff will rely on medical report from Neurosurgeon, Dr. Reginald Davis at trial if necessary.

Special Damages for First Plaintiff

- a. Past loss of income as an attorney-at-law from 11 November, 2016 to present
- b. Medical Expenses from 11 November, 2016 to present
- c. Travel expenses to and from doctors locally and overseas from 11 November, 2016 to present
- d. Accommodation whilst overseas from 11 November, 2016 to present
- e. Past nursing care from 11 November, 2016 to present
- f. Past home care from 11 November, 2016 to present
- g. Cost of medical aids and equipment from 11 November, 2016 to present

Particulars of Damage to Mercedes Benz

- a. As it relates to the Second Defendant and the Third Defendant, estimated cost of repair to Mercedes Benz
- b. Replacement vehicle whilst Mercedes Benz is being repaired.

General Damages for First Plaintiff

- a. Pain and suffering and loss of amenities of life
- b. Loss of enjoyment of job
- c. Miscellaneous

Future Loss for First Plaintiff

- a. Future loss of income
- b. Future loss of earning capacity
- c. Future medical care
- d. Future home care
- e. Future travel expenses
- f. Future accommodation expenses
- g. Future aids and equipment
- h. Loss of medical insurance benefits

- i. Future DUI
- j. Miscellaneous

Brief History of Second Plaintiff

65. The Second Plaintiff was born on 27th April 2001 and was 17 years and 9 months old at the time of the motor vehicle accident. She is a student at Florida Virtual Online Institution. A few days after the accident she started to experience severe striking headaches and dizziness, pain in her neck which radiated to her shoulders and upper back. She attended the Doctor's Express Clinic and was assessed and treated.
66. The Second Plaintiff suffered whip lash type injuries.

Special Damages for Second Plaintiff

- a. Medical Expenses from 18th January, 2019 to present
- b. Travel expenses to and from doctor

General Damages for Second Plaintiff

- a. Pain and suffering
 - b. Miscellaneous
67. The First Plaintiff is entitled to, and claims interests against the Second Defendant and Third Defendant pursuant to the Judicature Law on all amounts found to be due to her at such rate and for such period as the Court thinks fit.
68. The Second Plaintiff is entitled to, and claims interests against the Second Defendant and Third Defendant pursuant to the Judicature Law on all amounts found to be due to her at such rate and for such period as the Court thinks fit.


69. AND the First Plaintiff claims against the First, Second and Third Defendants as follows:-

- (i) Damages
- (ii) Pre-Judgment and Post Judgment Interests.
- (iii) Costs

70. AND the Second Plaintiff claims against the Second and Third Defendants as follows:-

- (iii) Damages
- (iv) Pre-Judgment and Post Judgment Interests.
- (iii) Costs

Dated this 30th day of October, 2019



Facey-Clarke & Associates Ltd.
Attorneys-at-Law for the First Plaintiff
and the Second Plaintiff

This Writ was issued by Facey-Clarke & Associates, Attorneys-at-Law for the First Plaintiff and the Second Plaintiff herein whose address for service is that of their said Attorneys-at-Law, George Town, Grand Cayman. **For service or delivery of documents please call 345 917 6351**

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.

Facey-Clarke & Associates
Barristers & Attorneys-at-Law
P.O. Box 2545, Grand Cayman KY1-1104
George Town, Grand Cayman
Cayman Islands, B.W.I.
Email: mclarke@candw.ky

For service or delivery of documents please call 345 917 6351

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