

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2020

BETWEEN:

**DARYL RENEE BARNES-NEWELL
(Administrator of the Estate of Shaun Newell)**

PLAINTIFF

AND:

**(1) KERRON BIGGS
(2) JERRY WOOD**

RESPONDENTS



WRIT OF SUMMONS

To: Kerron Biggs Bodden Town Grand Cayman, Cayman Islands	And to: Jerry Woods Bodden Town Grand Cayman, Cayman Islands
And to: Saxon Motor & General Insurance Company Ltd. 14 Saturn Close, Eastern Avenue, P.O Box 1094, Grand Cayman KY1-1102 (Endorsement to Defendants Insurer)	

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 14 days after the service of the 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, 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 an intention to contest the proceedings, the Plaintiff may proceed with the action and judgement may be entered against you forthwith without further notice.

Issued this ___ day of _____ 2020.

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 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 the widower and Administrator of the Estate of Shaun Newell (the deceased), who died on 25th November 2019 and late of 93 Tennyson Street Bodden Town, Grand Cayman having been granted Administration on 6th November 2020. The Plaintiff brings this action on behalf of the Estate of the deceased and for the benefit of the dependents of the deceased under and by virtue of the Estates Proceedings Law (1995 Revision) and The Torts (Reform) Law (1996 Revision).
2. The 1st Defendant was at all material times the driver of school bus with registration number 165 218. The 2nd Defendant was at all material times the owner of the school bus with registration 165 218.
3. On or about the 25th November 2019 after traffic stopped in both directions the 1st Defendant, Kerron Briggs so negligently drove, operated, managed and maneuvered the motor vehicle with registration number 165 218 when he entered from the minor road, Mimosa Lane onto the main thoroughfare of Shamrock Road in the District of Bodden town, so that the said motor vehicle registered 165 218 came violently into collision with motor cycle with registration 149 519 being ridden by the deceased, Shaun Newell, resulting in severe personal injuries, loss, damages and ultimately the death of Shaun Newell.
4. The said collision was caused by the negligence of the 1st Defendant.

PARTICULARS OF NEGLIGENCE

- a) Driving in an aggressive manner and or at an excessive speed having regard to the circumstances.
- b) Driving in a dangerous and/or reckless manner
- c) Driving without any or any sufficient consideration for users of the road.
- d) Driving without due care and attention.

- e) Driving the said motor vehicle without reasonable concern for the safety of other road users, and in particular the deceased.
- f) Failing to keep any or any proper look out
- g) Failing to keep a straight and/or safe course
- h) Failing to keep at a safe distance or any sufficient distance between the deceased and the Defendant's motor vehicle
- i) Failing in time or at all to observe or heed the presence of the deceased, Shaun Newell on the roadway
- j) Operating the said motor vehicle in a negligent and/or inattentive manner so as to expose other road users and in particular the deceased to the risk of harm, loss and damage.
- k) Failing to stop, to slow down, to swerve or in any other way manage or control the said motor vehicle so as to avoid colliding with the deceased.
- l) Failing to keep any or any proper and effective control of the motor vehicle registered 165 218 of which he was driving.
- m) failed to ensure that it was safe to enter the main thoroughfare from the minor road of Mimosa Lane;
- n) demonstrated driving without reasonable concern for the safety of other road users, particularly Mr. Newell.

5. By reason of the negligence of the Defendant, the said Shaun Newell sustained severe injuries from which he died on the same day and he lost the expectation of a long and happy life and his estate has suffered damages and incurred expenses.

PARTICULARS OF INJURIES

- i. Rupture of heart with blood in chest cavity
- ii. Laceration of Liver
- iii. Subarachnoid Haemorrhage
- iv. Death

Please note that further Particulars of Injuries will be added once they become available.

PARTICULARS OF DEPENDENCY PURSUANT TO THE TORTS (REFORM) LAW

6. The claim under the Tort (Reforms) Law is brought on behalf of the following Dependents of the Deceased:
 - I. Daryl Renee Barnes-Newell, widow of the deceased, who was born on 22nd December 1994.
 - II. Reniah Renee Newell, daughter of the deceased who was born on 31st May 2013.
 - III. Desrine Douglas Newell, mother of the deceased
 - IV. Veni Newell, father of the deceased
7. The deceased, **SHAUN NEWELL** who was born on October 11th, 1984 and was 35 years old, immediately prior to his death. He was employed as a **construction labourer** earning and approximately KYD\$24,960.00 per annum. He was also a barber by trade.
8. The deceased was in good health and lived a full and busy life. The Plaintiff, the deceased's daughter and the deceased's parents has lost the financial support of the Deceased. The Plaintiff has also loss the value of her husband, her daughter has lost the benefit of paternal care and the deceased parent has loss a loving son that supported and care for them and for which those losses are claimed.
9. The deceased was helping to build the family home on property the parties had, and the Plaintiff have had to engage third parties at expense to do this.

PARTICULARS OF DEPENDANTS' LOSS

A schedule containing details of the financial and other benefit provided by the Deceased to the dependants is attached.

10. In addition to their loss as dependants of the Deceased, the dependents have also suffered emotional distress and bereavement by his death.

11. In addition, the Plaintiff as the Deceased's personal representative OR the Plaintiff as a dependant of the Deceased incurred the expenses of and related to the Deceased's funeral.


PARTICULARS OF SPECIAL DAMAGES AND FUNERAL EXPENSES

The attached schedule, already referred to above, contains details of the associated and funeral expenses.

12. Further, the Claimant claims interest pursuant to section 34 of the Judicature Law (2017 Revision) or otherwise at such rate as this Honourable Court deems fit.

AND THE CLAIMANT CLAIMS: -

- a) **Damages on behalf of the deceased's estate under the Tort (Reform) Law (1996 Revision) for Loss of Expectation of Life**
- b) **Lost Years**
- c) **Emotional distress and bereavement**
- d) **Damages for negligence.**
- e) **Interest thereon for such rate and for such period as this Honourable Court deems just pursuant to the Judicature Law (2017 Revision).**
- f) **Costs**
- g) **Such further and/or other relief as this Honourable Court deems fit.**



CP ATTORNEYS
ATTORNEYS-AT-LAW FOR THE PLAINTIFF

This **Writ** is filed by **CP Attorneys**, Attorneys-at-Law for and on behalf of the **Plaintiff**, whose address for service is 325 Owen Roberts Drive, 2nd Floor Andy's Rental Car Building, George Town, P.O Box 561, Grand Cayman KY1-1602, Cayman Islands, Telephone 345-322-8088, 345-925-4621.

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PLAINTIFF

AND:

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(2) JERRY WOOD

RESPONDENTS

SCHEDULE OF FINANCIAL LOSS, FUNERAL EXPENSES AND LOSS OF BENEFITS

D.O.B of deceased: 11 th October 1984 Date of Death: 25 th November 2019 Age at Death: 35.12 years old Age at schedule: 36.09years Life Expectancy: 79.8 ¹ Annual salary: KYD\$24,960.00 Education: O'level and trade school (barber)	D.O.B of Plaintiff: 22 nd December 1994 Age at schedule: 25 years old Plaintiff life expectancy: 84.7 ²
Reniah Renee Newell: (daughter) 31 st May 2013. Age at Schedule: 7 yrs., 5 months and 14 days	Date Proceedings Issued: Date of Service: Date of Schedule: 17 November 2020

¹ https://www.eso.ky/life-expectancy-for-the-cayman-islands_12237.html#5

² Ibid (note 1)

1. Multiplicand

1.1 Using the customary modern practice (Harris-v-Empress Motors [1983] 3 ALL ER 561 and Carter-v-D.V Dawson Et. Al 1998 CILR 204) to reduce the annual salary for the amount deceased would have used on himself by 25% noting a wife and a child the dependency multiplicand is KYD\$18,720.00.

1.2 This would continue until the minor is 24 years old to complete Higher Education. Thereafter the multiplicand would be KYD\$16,723.20 thereafter (16.54 years from date of schedule)

1.3 From retirement at 65 years old it would be likely that he would need to continue to work to support his family and would likely have to fall back on his trade as a barber which traditionally pays approximately \$300/wk. However, consider that his potential clientele would be older persons at that stage it would likely be less and therefore reduced to \$200/wk or \$10,400 per annum. The dependency rate would be $\$10,400 \times \frac{2}{3} = \$6,932$. It would be unlikely that he could continue past 70 years old.

2. Pain, suffering and loss of amenity:

Immediate death

3. Loss expectation of Life

3.1 \$2000.00³

4. Past Loss and Past Loss of dependency

DATE	DESCRIPTION	ACCOUNT BALANCE
25 th November 2019 to 25 November 2020	Past Dependency loss multiplicand x .75 KYD\$24,960 x.75 = \$18,720	\$18,720.00
25 th November 2019 to 25 November 2020	Loss of Pension contribution by employer of 5%	\$1,248.00

³ Carter (as Administratrix of estate of D.V Carter, deceased)-v-D.A. Dawson, A.B. Dawson, F.M. Dawson and British Caymanian Insurance (1998 CILR 204)

25 November 2019	Health Service Authority Receipt 4514264	195.20
25 th November 2019 To 25 th November 2020	Payment to third party to clear land, tile, paint, input windows, shingle, cabinet, cutout sink and some plumbing (256sq foot home) With average cost be sq ft being \$136 and assuming he would have done 1.3 of the work himself.	\$11,489.28
Total past loss dependency		\$31,652.48
Interest	Add 7.38%	<u>\$33,988.43</u>

5. Property Damage

DATE	DESCRIPTION	ACCOUNT BALANCE
25 th November 2019	Motor cycle	\$3,300.00
Deceased clothing	Jeans, work boots, helmet, backpack	\$300.00
Sub-total		\$3,600.00
Interest	Add 7.38%	<u>\$3,865.68</u>

6. FUTURE LOSS (estimated)

to be assessed

6.1 The Ogden table is not reflective of the Cayman community⁴, and that the proper approach should be the conventional approach without recourse to the Ogden tables.

6.2 Like the Chief Justice in the Carter case the deceased would necessarily have to work post retirement to be able to care for himself and family. He is a construction worker but likely would continue in self-employment as a barber thereafter. It would be unlikely that he would be able to continue this beyond 70.

6.3 The deceased was earning \$24,960.00 and a family man therefore this would be: \$18,720. He would continue to contribute this amount until his daughter reached the age of 24 years old (finished higher education). Therefore, the dependents would have loss 18 years at this rate. $18 \times \$18,720.00 = \mathbf{\$336,960.00}$

6.4 Thereafter, his only likely dependent would be the Plaintiff as his parents would also likely not have been around anymore. Therefore, the multiplicand would change to \$16,723.20 until the age of retirement at age sixty five or 11 years.. This will be $11 \times \$16,723.20 = \mathbf{\$183,955.20}$.

6.5 Due to his low income, he would have to continue in self employment plying his original trade of barbering which due to his age he could likely only continue to do for the next 5 years. The usual income for a barber is \$300 but due to his age, it would be unlikely that he would be able to make this and reduction of 1/3 is made to what is believed to be the average weekly salary of a barber to \$200 or annually of \$10,400 or \$6,932 with 33% reduction. Therefore, the amount from retirement to 70 years old is $5 \times \$6,932.00 = \mathbf{\$34,660.00}$

6.6 Net financial dependency loss would be $(\mathbf{\$336,960} + \mathbf{\$183,955.20} + \mathbf{\$34,660.00}) = \mathbf{\$555,575.20}$

6.7 There would be loss of service to the family of helping with repairs and maintenance and building their home. Monthly gardening is approximately \$100.00 per month and an estimated 4 maintenance call out per year of approximately \$150 each which could have been provided by the deceased. This would be provide an estimate loss of service of \$1800 per year. He would be able to continue to do this considering his health it is submitted until he was 65 years old similar to the government retirement age. This is $29 \text{ years} \times \$1800 = \mathbf{\$52,200.00}$.

⁴ Ibid (Note 3 - Carter Case)

6.8 Total future loss of dependency is \$555,575.20 + \$52,200.00 = \$607,775.20.

7. Loss of Pension earning

DATE	DESCRIPTION	ACCOUNT BALANCE
Loss of Pension	The Plaintiff would have contributed 5% and his employers contributed matching 5% or \$1248/annum up to 65 year old	37,440.00
Total		\$37,440.00

8. Funeral Expenses

DATE	DESCRIPTION	ACCOUNT BALANCE
5 December 2019	Funeral Home Expense- Bodden Funeral Home	CI\$2,500.00
2 January 2020	Bodden Funeral Home-sending remains to Jamaica	CI\$750.00
November 2019	Cost associated with nigh night Cayman	\$500.00
November 2019	Alcohol Cost Cayman Nigh Night	\$590.33
December 2019	Travel expense to funeral in Jamaica for wife, daughter, mother in law, brother and sister @app 350 each	CI\$1,750.00
December 2019	Funeral Expense Jamaica and nigh night approximate	CI\$5000.00
Sub -total		CI\$11090.33
Interest on funeral expenses	7-3/8%	CI\$818.47
Total		CI\$11,908.80

9. Total **CI\$694,978.11**

CP Attorneys

CP Attorneys, Attorneys for the Plaintiff

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICES
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 "Statements of Claim" appear on the top of page 2) the Defence must be served within 28 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgement is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 28 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 judgement 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 28 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 (.....)" his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorized 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.

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(Administrator of the Estate of Shaun Newell)**

PLAINTIFF

AND:

**(1) KERRON BIGGS
(2) JERRY WOOD**

RESPONDENTS

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 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
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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
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Service of this Writ is acknowledged accordingly

(Signed) _____
Defendant/Attorney for the Defendant

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 communication 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.

CP Attorneys
325 Owen Roberts Drive,
2nd Floor Andy's Rental Car Bldg.
P.O. Box 561
Grand Cayman, KY1-1602
Cayman Islands.

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]