

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: OF 12 2021

BETWEEN:

JENNIFER LA GRANDE

PLAINTIFF

AND:

SHERENE NELSON

DEFENDANT

WRIT OF SUMMONS

TO: Sherene Nelson
77 Abbey Way
George Town
Grand Cayman



Name and address of the Defendant's motor vehicle insurer:

Island Heritage Insurance Company Ltd
Island Heritage House
128 Lawrence Boulevard
PO Box 2501, Grand Cayman, KY1-1104

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff, of 63 Beach Bay, Bodden Town, PO Box 580, Grand Cayman, KY1-1602, Cayman Islands 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 21st day of January 2021.

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.

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STATEMENT OF CLAIM

1. The Plaintiff is a Caymanian, born on 14 July 1966, and at all material times was a driver of a right hand drive black BMW 320I, motor vehicle, bearing registration plate 168510 ("the Plaintiff's motor vehicle").
2. The Defendant was born on 22 April 1987 and was at all material times the driver and operator of a Toyota Lite Ace motor vehicle, bearing registration plate no. 137945 ("the Defendant's motor vehicle"). The owner of the Defendant's motor vehicle was Khadine Kadia Moodie of 77 Abbey Way, George Town.
3. The Plaintiff's claim arises from the use of a motor vehicle upon a road by the Defendant, required to be insured pursuant to the Motor Vehicle Insurance (Third Party Risks) Act (2012 Revision). The Insurer of the Defendant's motor vehicle at all material times was Cayman Heritage Insurance and notice of these proceedings will be given to the said insurer in accordance with the provisions of s 15(2)(b) of the said Act.

The Accident

4. On 25 January 2018 at or around 8:20am, the Plaintiff's motor vehicle was travelling west along Shamrock Road in the vicinity of the entrance to Selkirk Drive, opposite the Peanuts (Red Bay Rubis) Petrol station. The Plaintiff's motor vehicle was stationary in the left lane in slow moving traffic. The Plaintiff was wearing her seatbelt and driving safely. At the

same time, the Defendant's motor vehicle was travelling east along Shamrock Road in the right lane in the vicinity of Bimini Drive.

5. The Defendant lost concentration and took her eyes of the road for a few seconds. This allowed the Defendant's motor vehicle to collide with orange traffic markers in the road, and the Defendant then swerved sharply to the right and lost control. The Defendant's motor vehicle veered across the eastbound lanes, mounted the centre median, then across the west bound lanes and collided with the right front end of the Plaintiff's motor vehicle.
6. The collision was with such force that it caused the Plaintiff's motor vehicle to spin in an anti-clockwise direction. The airbags in the Plaintiff's motor vehicle deployed. The Defendant's motor vehicle continued in motion until it collided with the chain-link fence on the south side of Shamrock Road.
7. The collision between the Defendant's motor vehicle and the Plaintiff's motor vehicle occasioned damage to the Plaintiff's motor vehicle and injuries to the Plaintiff.
8. The Police attended at the scene of the accident, and the Defendant gave a statement to the police under caution accepting liability.
9. The accident was caused by the negligence of the Defendant.

Particulars of Negligence

10. The Plaintiff states that the accident as aforesaid was caused or contributed to as the result of the negligence of the Defendant in that she:
 - (a) Failed to keep any or any proper look out
 - (b) Failed to see the orange markers on the road in time or at all
 - (c) Failed to adequately control her motor vehicle
 - (d) Operated her motor vehicle in a careless manner and without reasonable or due consideration for other users of the road.
 - (e) Failed to apply her brakes in time or at all, or to take reasonable or sufficient precautions to avoid an accident,

11. In the circumstances where the Plaintiff's motor vehicle was stationary in slow moving traffic, and was hit on the front right end by the Defendant's motor vehicle after the Defendant through inattention had lost control of her motor vehicle and first collideded with orange markers, and then veered across the central median, the Plaintiff pleases and relies upon the doctrine of *res ipsa loquitur* as to the negligence of the Defendant in the operation of the Defendant's motor vehicle.
12. By reason of the aforesaid, the Plaintiff has suffered personal injury, loss and damage.

Particulars of General Damages

Physical Injuries

13. Full particulars of the Plaintiff's injuries and general damages will be provided to the Defendant prior to trial.
14. At the point of the collision, the Plaintiff suffered immediate pain to her right shoulder, lower back, neck, right hand, and right knee. She was attended to at the scene of the accident by paramedics, and placed in a hard collar and taken to George Town Hospital by ambulance.
15. Upon arrival at the hospital, tenderness to the left forearm and dorsum right hand was noted. An abrasion was noted to the medial aspect of the right forearm. Tenderness was noted in the lower lumbar and central spine.
16. The examination at the hospital did not reveal any fracture or dislocation at that time, nor was any acute bony injury identified. However, the Plaintiff's neck remained painful with movement. The hard collar was removed, and a soft collar was provided. The Plaintiff was discharged with painkillers and anti-inflammatory medication.
17. Following the accident, the Plaintiff was unable to work for three weeks and took sick leave.

18. As a result of the accident, the Plaintiff has continued to suffer from debilitating whiplash symptoms and weakness to her right side. Her pain has been to her neck, spine, pelvis, arms and right knee. She has also suffered severe headaches and an acute loss of energy and an onset of lethargy. After the accident, the Plaintiff was referred to a neurosurgeon, and received extensive physiotherapy for the neck symptoms, attending multiple bi-weekly (initially) and weekly sessions between February 2018 and October 2018.
19. Nearly three years post accident, the Plaintiff continues to suffer pain and discomfort as aforesaid. In particular, the Plaintiff is still suffering from acute right knee pain, neck pain and regular headaches.
20. The Plaintiff pleads that her physical symptoms are wholly attributable to the accident. In the alternative, the Plaintiff pleads that the accident exacerbated or accelerated pre-existing medical conditions.
21. The Plaintiff reserves the right to instruct such medical experts as may be required to establish the nature of her injuries, attribution, and prognosis.
22. As a result of the accident, the Plaintiff has suffered a loss of amenities and her quality of and enjoyment of life has been reduced with substantial limitation of her recreational, social and lifestyle activities including her former enjoyment of running, exercising in the gym, and walking her dog.

Psychological Injuries.

23. The Plaintiff has suffered psychological injuries. The accident itself was a terrifying experience which resulted in immediate shock.
24. The Plaintiff's psychological symptoms since the accident include flashbacks, and she is now a very nervous driver and cannot drive at all at night. As a passenger the Plaintiff is anxious, and will frequently hold on to the seat in fear. The physical pain the Plaintiff continues to suffer has resulted in her being short-tempered with friends and colleagues.

Loss of congenial employment

25. As a result of her injuries, the Plaintiff has been unable to continue her evening and weekend part time work as a personal trainer and fitness instructor. She had undertaken this work in addition to her duties with the RCIPS. The accident has amounted to a loss of congenial employment.
26. The Plaintiff has worked a police officer with the RCIP since 2007. Between 2011 and July 2020 she the capacity of a specialist firearms officer. These duties involved the Plaintiff carrying heavy equipment and required a high level of physical fitness, and the ability to drive at night, at high speed and in high intensity situations. As a result of her continuing symptoms, the Plaintiff had to give up these preferred duties and instead transfer to the domestic violence unit, occasioning a further loss of congenial employment.

Loss of Earnings, and disability on the labour market

27. Since the Plaintiff transferred to the domestic violence unit due to her symptoms, she no longer has the opportunity to earn the overtime she previously received in the firearms unit. The accident has placed the Plaintiff at a greater risk of unemployment or early retirement than would otherwise have been the case, and she is now at a disadvantage in the labour market.

Particulars of Special Damages

28. The Plaintiff has incurred out of pocket expenses and medical treatment expenses, including, but not limited to, the following:
- i) Medical expenses from the Health Services Authority (**HSA**) (25 January 2018) paid by government insurance: \$4,442.28
 - ii) Spine X-Ray Health City (15 February 2018) \$111.20
 - iii) MRI Cayman 3T (12 June 2019) \$TBC
 - iv) Physiotherapy \$TBC

- | | | |
|-----|-------------------------------------|----------|
| v) | Painkillers and anti-inflammatories | \$TBC |
| vi) | Police Report | \$100.00 |

29. The Plaintiff also claims for the two hours of care she received with her daily domestic needs for the days following the accident at a rate of \$20 per day for 14 days.
30. Full particulars of the Plaintiff's special damages will be provided to the Defendant prior to trial.

Interest

31. The Plaintiff pleads and relies upon s. 34 of the Judicature Act (2017 Revision) and Rules 4 and 5 of the Judgment Debts (Rates of Interest) Rules 1995 as varied by the Judgment Debts (Rates of Interest) Rules 2006 and 2008, promulgated by the Rules Committee pursuant to s. 34 of the said Act, and claims interest on her general and special damages and costs as follows:
- (a) Pre-Judgment interest on her general damages awarded at the rate of 2% per annum from the date of service of the Writ of Summons herein;
 - (b) Pre-Judgment interest on her special damages from the date of the subject accident, at half the currently prescribed rate of $2\frac{3}{8}\%$ per annum or under the Judgment Debts (Rates of Interest) Rules 1995;
 - (c) Post-Judgment interest upon the principal amount of the Judgment with effect from the date of service of the judgement at the rate of $2\frac{3}{8}\%$ per annum or such other rate then prevailing in accordance with s. 34 of the Judicature Act and the Judgment Debts (Rates of Interest) Rules; and
 - (d) Interest on all fixed or assessed costs and orders running from the date of service of the orders or certifiacares of taxation respectively and at the rate of $2\frac{3}{8}\%$ per annum

or such other rate then prevailing in accordance with s .34 of the Judicature Act and the Judgment Debts (Rates of Interest) Rules

THE PLAINTIFF THEREFORE CLAIMS

- (a) General Damages, including (but not limited to) damages for pain and suffering and loss of amenities to be assessed;
- (b) Special damages as pleaded above and further to be assessed.
- (c) Pre-Judgment and post-judgment interest as more specifically pleaded above;
- (d) Her costs of this action; and
- (e) Such further and other relief as to this Honourable Court may seem just

DATED at Grand Cayman this 21st day of January 2021

Nelsons

Nelsons

Attorneys for the Plaintiff

TO: The Clerk of the Grand Court

AND TO: Sherene Nelson

AND TO Island Heritage Insurance Company Ltd
Island Heritage House
128 Lawrence Boulevard
PO Box 2501, Grand Cayman, KY1-1104

THIS STATEMENT OF CLAIM is issued by Nelsons. Attorneys-at-Law Ltd, attorneys for the Plaintiff, whose address for service is that of her said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman KY1-1201

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JENNIFER LA GRANDE

PLAINTIFF

AND:

SHERENE NELSON

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.

Nelsons Attorneys at Law
PO Box 30069
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1201
Attn: N Dixey / C Flanagan

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

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.