



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

CAUSE NO. OF 2022

BETWEEN:

<p>ARRIEL DEACON, DANIQUE NELSON and RICARDO WELCOME</p>	<p><u>First Plaintiff</u> <u>Second Plaintiff</u> <u>Third Plaintiff</u></p>
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-and-

<p>PAUL ANTHONY ALBERGA, CIRCLESQUARE LTD., T/A CIRCLESQUARE and PERSON UNKNOWN</p>	<p><u>First Defendant</u> <u>Second Defendant</u> <u>Third Defendant</u></p>
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WRIT OF SUMMONS

TO: First Defendant,
 Paul Anthony Alberga
 140 Omega Drive, Patricks Island

TO: Second Defendant,
 Circlesquare Ltd. T/A Circlesquare
 140 Omega Drive, Patricks Island

TO: Third Defendant,
 Person Unknown

With Notice To: Royal Star Insurance Company
O/A Vanguard Risk Solutions,
formerly known as
Fidelity Insurance (Cayman) Limited
36A Dr. Roy's Drive, 3rd Floor
P.O. Box 92174 George Town
Grand Cayman KY1-1105

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

Within 14 days 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 495G, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an 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 10 day of June 2022.

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

1. At all material times the First Plaintiff, Arriel Deacon, (“Arriel”) was the lawful driver of a 2009 Honda Fit motor vehicle bearing registration 198 536.
2. The Second Plaintiff, Danique Nelson was a seat-belted passenger in the Honda Fit motor vehicle bearing registration 198 536.
3. The Third Plaintiff, Ricardo Welcome, was the lawful owner of the Honda Fit motor vehicle bearing registration 198 536.
4. The First Defendant, Paul Anthony Alberga, was at all material times the owner of a Toyota Tacoma pick-up truck, registration 119 206. He was at all material times the proprietor of the Second Defendant, Circlesquare Ltd. T/A Circlesquare.
5. The Second Defendant, Circlesquare Ltd. T/A Circlesquare, was at all material times a building contractor/construction company, and owned and operated by the First Defendant.
6. The Third Defendant, Person Unknown, was at all material times the employee of the First Defendant and/or the Second Defendant, and was the negligent driver of the Toyota Tacoma pick-up truck, registration 119 206, for which the First Defendant and/or the Second Defendant are vicariously liable.
7. At all material times the First Defendant and the Second Defendant’s vehicle was insured with RoyalStar Assurance Company, now operating as Vanguard Risk Solutions (formerly operating as Fidelity Insurance (Cayman) Limited) who had issued a policy of insurance relating to the vehicle in accordance with the *Motor Insurance (Third Party Risks Law)*.
8. On the 15th of April 2020 at approximately 18:32, the Plaintiffs, Arriel Deacon and Danique Nelson, properly seat-belted, were travelling in the direction of ICCI when on approaching

the junction of Moonbeam Drive, the Third Defendant, operating the First Defendant's pickup truck, with consent and during the course of his employment, dangerously pulled out in front of their vehicle, making a right turn in front of them, when he did not have the right of way to do so. In order to avoid a collision with the Third Defendant's vehicle, the First Plaintiff was forced to take immediate action and steered her vehicle to the left and in so doing, lost control of the vehicle, which struck a guard rail, spun, and slammed into the wall of a residence at 536 Hirst Road, damaging a retaining wall, before coming to rest in the middle of the roadway ("the Collision").

9. The Collision was caused by the negligence of the Third Defendant and/or his breach of his statutory duties under Sections 67 and 68 of the *Traffic Act 2021*.

Particulars of Negligence

10. The Collision was wholly caused or contributed to as a result of the negligence and breach of duty, including breach of statutory duty, breach of contract and nuisance of the Defendants herein, and/or their servants, agents or employees in that they:
 - a) made a right hand turn when it was unsafe to do so;
 - b) failed to give way;
 - c) failed to drive at a speed and in a manner and at a distance from other vehicles as to be able to stop in an emergency;
 - d) failed to keep any or any proper look out;
 - e) failed to see the Plaintiffs' vehicle in time or at all;
 - f) failed to give way to vehicles on the main road;
 - g) failed to steer or control the vehicle so as to avoid putting the Plaintiffs in a situation of danger and emergency;
 - h) drove at a speed which was too fast in all the circumstances;
 - i) failed to keep a watch on the road for vehicles with the right of way;
 - j) failed to manage the vehicle so as to be able to stop within the limit of vision available at any given time;
 - k) failed to obey the rules of the road;

- l) failed to stop, slow down or swerve, or in any way so to manage or control the vehicle;
 - m) failed to exercise due care and attention when using the road and failed to have due regard to the safety of the Plaintiffs and other road users;
 - n) failed to drive in such a manner to have full control of the motor vehicle at all times;
 - o) failed to remain at the scene of an accident caused by their negligence;
 - p) failed to cooperate with police and insurance companies;
 - q) failed to exercise reasonable skill and care to be expected of a reasonably skillful and careful driver in all the circumstances; and
 - r) failed to take reasonable care in all the circumstances.
11. The First Defendant and/or the Second Defendant were and are vicariously liable for the acts and omissions of the Third Defendant for negligently causing the Collision while acting in the course of his employment at the material time.
12. By reason of the Defendants' negligence and breaches of duty, the Plaintiffs have suffered personal injury, losses and extensive damages.

Particulars of Injuries

As to the First Plaintiff, Arriel Deacon:

13. The First Plaintiff, Arriel Deacon, whose date of birth is the 12 September 1997, was 22 years old at the date of the Collision.
14. The collision was high impact and caused the airbag in the Plaintiffs' vehicle to be deployed.
15. Immediately after the Collision, the First Plaintiff was treated by emergency medical personnel at the scene and attended the Emergency Department of George Town Hospital for further treatment.

16. The First Plaintiff sustained the following injuries:

- a) Fractured and shattered right femur requiring surgery and metal rod and pins;
- b) Right knee split open, requiring tendon replacement;
- c) Foot long gash on left leg;
- d) Lower back pain;
- e) Swollen ankles;
- f) shoulder pain;
- g) neck pain;
- h) knee pain;
- i) severe headaches;
- j) severe insomnia and brain fog;
- k) anxiety;
- l) flashbacks;
- m) fear of driving;
- n) personality changes; and
- o) post-traumatic stress disorder.

17. At the time of the Collision, the First Plaintiff was employed as a babysitter/helper for a family. She was on covid-related leave from employment. However, due to her severe injuries she has not been able to return to that employment.

18. The First Plaintiff reserves the right to provide further and better particulars of her injuries prior to trial.

As to the Second Plaintiff, Danique Nelson:

19. The Second Plaintiff, Danique Nelson, whose date of birth is the 11 May 1996, was 24 years old at the date of the Collision.

20. The Collision was high impact and caused the airbag in the Plaintiffs' vehicle to be deployed.
21. Immediately after the Collision, the Second Plaintiff was treated by emergency medical personnel at the scene and attended the Emergency Department of George Town Hospital for further treatment. She remained under observation for two days.
22. The Second Plaintiff sustained the following injuries:
 - a) Body bruising and seatbelt injury;
 - b) Whiplash;
 - c) Back pain;
 - d) Chest pain;
 - e) Ruptured cyst;
 - f) Anxiety;
 - g) Flashbacks;
 - h) fear of being in a vehicle; and
 - i) post-traumatic stress disorder.

As to the Third Plaintiff, Ricardo Welcome:

23. The Third Plaintiff, Ricardo Welcome, whose date of birth is the 10 June 1980, is out of pocket for the following:
 - a) Total loss of Honda Fit vehicle;
 - b) Costs of property damage repair to wall of residence at 536 Hirst Road;
 - c) Gratuitous Care provided to Arriel Deacon; and
 - d) Past loss of income.

Particulars of Special Damages

24. At the time of the Collision, the First Plaintiff was employed as a babysitter/helper. She has been unable to return to work in that capacity. She has suffered a past and future loss of income.

25. The Plaintiffs have suffered loss and incurred expenses as a result of the Collision which are ongoing. Full particulars of special damage will be supplied at a later date by way of a Schedule of Damages, including but not limited to claims for costs of medical treatment, past and future loss of earnings, travel, equipment, future care costs, gratuitous care, interest and costs. Full particulars of the Plaintiffs' special damages and losses will be provided at trial.

Statement as to Interest

26. The Plaintiffs claim interest pursuant to section 34 of the *Judicature Act (2021 Revision)* at half the rate as prescribed under the *Judgment Debts (Rates of Interest) Rules* (as amended) from the 15 April 2020 to Trial.

AND THE PLAINTIFFS CLAIM:

1. General Damages;
2. Special Damages;
3. Pre-Judgment interest in accordance with Section 34 of the *Judicature Act (2021 Revision)*;
4. Post-Judgment interest in accordance with Section 34 of the *Judicature Act (2021 Revision)*;
5. Costs;
6. Such further or other relief that this Honourable Court deems just.

Dated this 10th day of June 2022.



BROADHURST LLC
Attorneys-at-Law for the Plaintiffs

This Writ of Summons and Statement of Claim is issued by Broadhurst LLC, Attorneys-at-Law for the Plaintiff whose address for service is 4th Floor, Monaco Towers, 54 Edward Street, P.O. Box 2503, Grand Cayman, KY1-1104, Cayman Islands.

INDORSEMENT AS TO INSURER OF MOTOR VEHICLE

The Plaintiffs' claim arises out of the use of a motor vehicle on a public road. The insurer of the vehicle of the First Defendant named herein is RoyalStar Assurance Company (formerly operating as Fidelity Insurance Company (Cayman) Limited and now operating as Vanguard Risk Solutions), whose address for service 36A Dr. Roy's Drive, 3rd Floor, P.O. Box 2174, George Town, Grand Cayman KY1-1105.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgement 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, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgement 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 endorsed on the Writ (i.e. the words “Statement of Claim” appear on the top of page 2). The defence must be served within fourteen (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 endorsed on the Writ, the defence need not be served until fourteen (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 fourteen (14) days after his Acknowledgement, 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 installments or otherwise.

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of fourteen (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 authorized to act on behalf of the Company, but the Company can take no further steps in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL HEALTH 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO: OF 2022

BETWEEN:

**ARRIEL DEACON,
DANIQUE NELSON
and RICARDO WELCOME**

First Plaintiff
Second Plaintiff
Third Plaintiff

-and-

**PAUL ANTHONY ALBERGA,
CIRCLESQUARE LTD., T/A CIRCLESQUARE and
PERSON UNKNOWN**

First Defendant
Second Defendant
Third Defendant

**ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him/her 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 intends 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
[Defendant in Person]
Address for service: