



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

**CAUSE NO: OF 2022**

**BETWEEN:**

**BRITISH CAYMANIAN INSURANCE COMPANY LTD**

**PLAINTIFF**

**AND**

**GLENTON TELFER**

**DEFENDANT**

---

**WRIT OF SUMMONS**

---

**TO: MR. GLENTON TELFER** of 1669 Bodden Town Road, P.O. Box 103, Grand Cayman, KY1-1501, Cayman Islands

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff, of BritCay House, 236 Eastern Avenue, P.O. Box 74 GT, Grand Cayman, 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, KT1-1106, Cayman Islands the accompanying Acknowledgment of Service stating therein whether you intent 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 judgement may be entered against you forthwith without further notice.

Issued this 30 day of August 2022.

**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.

### STATEMENT OF CLAIM

1. The Plaintiff is an insurance company incorporated in, and regulated by, the laws of the Cayman Islands.

#### The Policy

2. By a policy of insurance numbered 083823F0001, effective from 29 October 2021 to 28 October 2022 (**the Policy**), the Plaintiff, in consideration of a premium of CI\$543.25 (inclusive of Stamp Duty) agreed to provide third party motor vehicle insurance to the Defendant in respect of a Subaru Legacy motor vehicle bearing registration number 200288 (**the Vehicle**).
3. On 29 October 2021, the Plaintiff issued to the Defendant a certificate of insurance in accordance with the provisions of the Vehicle Insurance (Third Party Risks) Act (2012 Revision) (**the Act**).
4. The Plaintiff made the contract of insurance in reliance upon a Proposal from and declaration signed and made by the Defendant on or around 6 April 2021 (**the Proposal**).

#### The Proposal and Subsequent Renewals

5. The Proposal completed by the Defendant was in the Plaintiff's standard form.
6. The Proposal form contained the following endorsement and declaration warning the Defendant thus:

***NB:*** You must inform British Caymanian Insurance Company (BritCay) of all the facts likely to influence the acceptance and rating of your proposal. If you withhold information, any policy subsequently issued may be declared void. All questions must be answered.

#### ***Declaration***

*I/We wish to effect and insurance with British Caymanian Insurance Company Limited. I/We declare that the above statements and particulars are complete and correct, and no material fact has been mis-represented, mis-stated or withheld. I/We agree that this proposal shall form the basis of the contract between me/us and British Caymanian and I/We agree to accept British Caymanian's usual form of policy for insurances of this nature. If this proposal has been written by anyone else that person is my agent for that purpose and not the agent of British Caymanian...*

7. In the Proposal, the Defendant answered the following question in Part 2 – Details of the Vehicle

*Does the vehicle have any modifications? If Yes, please state details and value*

in the negative by ticking a box labelled “No”.

8. In reliance upon the information provided by the Defendant and payment of the premium calculated on the basis of this information, a policy of third-party motor insurance in respect of the Vehicle was effected by the Plaintiff for the period 6 April 2021 to 28 October 2021.
9. Subsequently, the Defendant renewed his policy of motor insurance for the Vehicle for a further year effective for the period 29 October 2021 to 28 October 2022 (**the Renewal**).
10. At the time the Defendant completed the Proposal, at the inception of the Policy, and upon the Renewal he was aware and/or ought to have been aware of his positive obligations of disclosure to the Plaintiff in respect of any additional factors that were material to the risk they were underwriting.
11. Section 3, clause 10 of the terms of the Policy (**Section 3**) put the Defendant on notice that he was required to inform the Plaintiff of any changes at any time to the information provided in the Proposal. It states:
- If there is any material change during the Period of Insurance to any information which You previously disclosed to Us, it is a condition precedent to Our liability under this Policy that:*
- a. you must tell Us immediately; and*
- b. without prejudice to Condition (4), We will be entitled to increase or reduce the Premium and/or vary the terms, conditions or exclusions of this Policy in respect of the unexpired Period of Insurance to reflect the altered risk. If You are not sure whether a change is material, You should tell Us.*
12. The Defendant did not at any time inform the Plaintiff of any material changes to the information previously provided in the Proposal or of any additional facts relevant to the risk they were underwriting.
13. Accordingly, absent any such disclosure to the Plaintiff by the Defendant, the Proposal formed the basis of the contracts of insurance between the Plaintiff and the Defendant.

**Modifications**

14. On 8 July 2022, the Defendant admitted to the Plaintiff, via their attorneys Nelsons, that he was aware that modifications were made to the vehicle prior to his purchase of the vehicle. Such modifications include an aftermarket turbo and aftermarket rims. The Defendant accepted that he was aware of the modifications at the time of purchase and therefore, at the time of completing the Proposal, inception of the Policy and at the time of Renewal. Furthermore, the Defendant accepted that all modifications to the Vehicle were carried out prior to his purchase of the Vehicle and not by him.
15. The Vehicle was inspected by Mr. Colin Redden of Vehicle Solutions on 16 March 2022. His inspection revealed that the Vehicle had the following modifications:
  - (i) Aftermarket rims and tires
  - (ii) Cross drilled brake rotors
  - (iii) Manual adjustable coil over struts with Blitz manually adjustable top plates
  - (iv) Aftermarket Turbo with high performance redish/orange hoses and a cone filter
  - (v) Aftermarket exhaust with heat shield wrap with header type where it mounts to the engine head
  - (vi) Aftermarket gauges that are mounted on top of the steering column a, Air Fuel Ratio gauge, Divot oil temp and water temp gauges mounted in between the center AC vents in the dash, the Prosport Performance boost gauge mounted on top of the dash by the oil temp and water temp gauges.
16. Mr. Redden also noted that there may be other modifications that were not visible on his inspection and would require further teardown from the current state of the Vehicle.

**Material Non-Disclosure/False Representation**

17. In the circumstances, the Defendant's statement and representation of fact declared and warranted to be true and contained in the answer to Part 2 of the Proposal was incorrect, misleading and false at the time the Policy was effected on 6 April 2021, and renewed on 29 October 2021.
18. The failure of the Defendant to disclose to the Plaintiff the modifications to the Vehicle, of which he was aware prior to the completion of the Proposal and inception of the Policy, constitutes a failure by the Defendant to disclose material facts and/or a false representation of material fact made to the Plaintiff's underwriters.
19. The Defendant knew about the modifications and failed to disclose them to the Plaintiff's underwriters. In doing so, he failed to disclose a material fact and/or misrepresented/falsely represented a material fact to the Plaintiff's underwriters.
20. The Plaintiff's underwriters agreed to effect and write the Policy and contract of insurance in reliance upon the answers in the Proposal which were warranted as true

at the date of the Proposal. In doing so, they were induced to issue and underwrite the Policy and the contract of insurance by the Defendant's material non-disclosure and/or false representation.

21. The material non-disclosure and/or false representation and/or misrepresentation of fact by the Defendant was material in that it influenced the judgment of the Plaintiff's underwriters and/or would have influenced the judgment of any prudent insurer in fixing the premium or determining whether to take the risk.
22. The Plaintiff's underwriters would not have underwritten the Policy and renewed the contract of insurance on the terms provided, if at all, if they had been aware of the modifications.
23. The Defendant was in breach of his duty and obligation to disclose to the Plaintiff's underwriters all material facts in that he failed to disclose the modifications to the Vehicle.
24. In the circumstances, the Plaintiff is entitled to, and hereby does, avoid the Policy pursuant to Section 15(3) of the Act on the grounds that the Policy was obtained by the Defendant by the material non-disclosure of the modifications to the Vehicle and/or the false representation of the material fact of the modifications to the Vehicle.

### **Contract Claim**

25. Further or in the alternative, the Proposal contained the following declaration by the Defendant:

*I/We wish to effect and insurance with British Caymanian Insurance Company Limited. I/We declare that the above statements and particulars are complete and correct, and no material fact has been mis-represented, mis-stated or withheld. I/We agree that this proposal shall form the basis of the contract between me/us and British Caymanian and I/We agree to accept British Caymanian's usual form of policy for insurances of this nature. If this proposal has been written by anyone else that person is my agent for that purpose and not the agent of British Caymanian...*

26. As a result of the declaration contained within the Proposal and signed by the Defendant as set out at paragraph 22 above, the statements made within the Proposal formed the basis of the contract between the Plaintiff and the Defendant. In the premises, when the Defendant answered Part 2 in the Proposal set out at paragraph 7 above, he warranted that this was true.
27. The Plaintiff avers that as the Defendant knew or ought to have known of the modifications, he is in breach of this warranty. Accordingly, the Plaintiff is entitled to,

and hereby does, rescind the contract. In the circumstances, the Plaintiff is entitled to avoid the Policy, and hereby does so.

28. Further or in the alternative, pursuant to Section 3 of the Policy set out at paragraph 10 above, it was a condition precedent to the liability of the Plaintiff that the Defendant must inform it of any material changes to the information previously provided which occurred during the period of insurance.
29. The Plaintiff will aver that, by failing to inform it of the modifications at any time or at all, the Defendant failed to fulfil this condition precedent and the Plaintiff is therefore entitled to, and hereby does, rescind the contract.
30. As a result, and in the circumstances, the Plaintiff is therefore not liable to indemnify the Defendant for any damage or loss caused by him during the course of his operating the Vehicle under the terms of the Policy, or at all.

### **Road Traffic Accident**

31. On 1 March 2022, the Defendant was involved in a road traffic accident (**the Accident**) on Bodden Town Road, Grand Cayman wherein his vehicle collided with a vehicle driven by Ms Eleina Ebanks (**the Third Party**).
32. The Third Party has alleged that she was injured and suffered loss and damage as a result of the Accident.

### **No Indemnity**

33. By reason of all the matters set out above, the Plaintiff seeks and is entitled to a declaration that it is not required to indemnify the Defendant in respect of any claim for damages arising out of the Accident, nor to pay any sums pursuant to the Law pursuant to the terms of the Act.

### **AND THE PLAINTIFF CLAIMS**

- (1) A declaration that, the Plaintiff is and/or was entitled to avoid the Policy *ab initio* on the grounds of material non-disclosure of relevant fact(s) and/or false representation of material fact(s) and/or breach of warranty;
- (2) Rescission of the Policy;
- (3) A declaration that the Plaintiff is not required to indemnify the Defendant in respect of any claim for loss or damage brought by Ms Eleina Ebanks arising out of the Accident, nor to pay any sums, pursuant to the Law pursuant to the terms of the Act.
- (4) Costs; and
- (5) Such further or other relief as this Honourable Court deems just.

**DATED** at Grand Cayman this 30 day of August 2022

Nelsons

---

**Nelsons**

Attorneys for the Plaintiff

**THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM** is issued by Nelsons Attorneys-at-Law, attorney for the Plaintiff, whose address for service is that of their said attorneys at 31 The Strand, P.O. Box 30069, Grand Cayman, KY1-1201, Cayman Islands.

**TO:** The Clerk of the Grand Court

**AND TO:** The Defendant – Glenton Telfer, 1669 Bodden Town Road, P.O. Box 103, Grand Cayman, KY1-1501

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

**CAUSE NO: OF 2022**

**BETWEEN:**

**BRITISH CAYMANIAN INSURANCE COMPANY LTD**

**PLAINTIFF**

**AND**

**GLENTON TELFER**

**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**

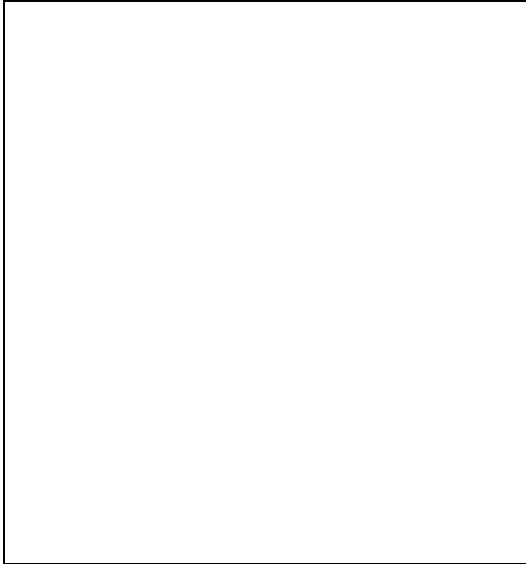
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

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: C Flanagan/N McMahon
---

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.