



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

CAUSE NO: OF 2023

BETWEEN:

CELINE MACKEN

Plaintiff

AND

BARRINGTON STULTZ

Defendant

WRIT OF SUMMONS

TO: Barrington Stultz
33 Humber Lane
George Town
Cayman Islands

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

Within fourteen (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, 61 Edward Street, 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 judgment may be entered against you forthwith without further notice.

Issued this 29th day of September 2023

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 issued unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgement of Services are given with the accompanying form.

STATEMENT OF CLAIM

1. At all material times, the Plaintiff, Celine Macken, of 962 South Church Street, George Town, Cayman Islands, was the owner and operator of a grey Cervelo S5 Pedal bicycle (the “Bicycle”).
2. The Defendant, Barrington Stultz, of 33 Humber Lane, George Town, Cayman Islands, was at all material times the owner and operator of a Honda CRV, with motor vehicle registration number 77138.
3. On the morning of November 9, 2022, the Plaintiff was travelling north on her bicycle, in the bicycle lane along Esterly Tibbetts Highway. The Defendant was also driving north along Esterly Tibbetts Highway. In the vicinity of the Kimpton Hotel, the Defendant, without warning, suddenly swerved to the left and into the bicycle lane thereby colliding with the Plaintiff. The Defendant failed to stop after the collision and instead continued heading towards West Bay.
4. As a result of the collision, the Plaintiff was thrown from the Bicycle and suffered severe injuries and had to be transported by ambulance to the hospital.
5. The said collision was caused by the Defendant’s negligence and/or breach of statutory duty under Sections 67 and 68 of the *Traffic Act* (2023 Revision).

PARTICULARS

6. The Defendant was negligent and is guilty of the said statutory duties by:
 - a) Failing to keep any or any proper look out in front of him;
 - b) Failing to see the Plaintiff in time or at all;
 - c) Driving too fast in all the circumstances;
 - d) Colliding with the Plaintiff’s bicycle;
 - e) Failing to exercise due care and attention when using the road and neglecting to have due regard to the safety of other road users;
 - f) Failing to drive in such a manner as to have full control of his vehicle at all times;
 - g) Failing to drive at a speed and in a manner and at a distance from other road users so as to be able to stop in an emergency without being involved in a collision;
 - h) Failing to maintain lane discipline;
 - i) Failing to apply his brakes whether in time or at all;
 - j) Driving at a speed that was too fast in the circumstances;
 - k) Failing to steer or control his vehicle so as to avoid the said collision;
 - l) Acting recklessly with disregard for the safety of others;

- m) Failing to comply with all traffic signs and signals;
 - n) Failure to manage the vehicle so as to be able to stop within the limit of vision available at any given time;
 - o) Failing to stop, to slow down, to swerve, or do anything to manage or control his vehicle so as to avoid the collision;
 - p) Failing to exercise reasonable skill and care to be expected of a reasonably skillful and careful driver in the circumstances;
 - q) Failing to take reasonable care in all the circumstances; and
 - r) Failure to comply with the Road Code of the Cayman Islands.
7. On July 19, 2023, the Defendant pled guilty to the criminal charge of Careless Driving and was convicted accordingly under charge number 00652/2023. The Plaintiff relies on this conviction insofar as it is relevant to the Plaintiff's civil claim of negligence in this Statement of Claim.
8. The Plaintiff will, in accordance with Section 52 of the *Evidence Act* (2021 Revision), adduce evidence at trial that the Defendant was convicted of careless driving in respect of his actions on November 9, 2022 which caused the collision. For the purposes of Order 18, Rule 7A of the Grand Court Rules:-
- (i) the Defendant pled guilty to the criminal charge of Careless Driving on July 20, 2023;
 - (ii) A conviction of Careless Driving was entered against the Defendant.
 - (iii) the finding of culpable negligence to the criminal standard is relevant to the issue of negligence in this civil claim.
9. Further or alternatively, the Plaintiff will rely on the doctrine of *res ipsa loquitor* in that the Defendant drove into the side of the Plaintiff's Bicycle.
10. By reason of the Defendant's negligence and breach of duty the Plaintiff has suffered serious and permanent injuries, losses and extensive damages.

PARTICULARS OF INJURIES TO THE PLAINTIFF

11. The Plaintiff, Celine Macken, whose date of birth is 18 May 1960, was 62 years old at the date of the collision. The collision was high impact and immediately afterward, the Plaintiff was treated by ambulance personnel at the scene and attended the Emergency Department of George Town Hospital for further treatment.
12. The Plaintiff suffered very serious injuries as a result of the collision which required immediate surgery. The Plaintiff continues to suffer as a result of the injuries sustained. The injuries include, but are not limited, to the following:

- a. Distal right transcondylar fracture requiring surgical implantation of plates and screws;
 - b. Grade 4 collum femoris fracture to right hip requiring total hip replacement;
 - c. Restricted Myopathy of the calf muscle;
 - d. Periorbital Haematoma;
 - e. Multiple skin abrasions and lacerations over face and body;
 - f. Permanent scarring;
 - g. Back pain;
 - h. Leg pain;
 - i. Fatigue;
 - j. Anxiety;
 - k. Flashbacks; and
 - l. Post Traumatic Stress Disorder.
13. The Plaintiff continues to suffer from several of the above injuries and is impacted by them on a daily basis. Full particulars of the Plaintiff's injuries and the impact of them upon her will be provided prior to trial.

PARTICULARS OF SPECIAL DAMAGE

14. At the time of the collision, the Plaintiff was employed as a Financial Controller at Kirk Freeport. She was unable to work for an extensive period. She has therefore suffered a past and future loss of income and earning capacity.
15. The Plaintiff has 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 loss, including but not limited to claims for loss of income, medical treatment, travel, gratuitous care, interest and costs. Full particulars of the Plaintiff's special damages and losses, which are continuing, will be provided prior to trial.
16. The Plaintiff claims pre and post judgment interest pursuant to section 34 of the *Judicature Act (2021 Revision)* in accordance with the *Judgment Debts (Rates of Interest) Rules* (as amended).

AND THE PLAINTIFF CLAIMS:

- A. General damages;
- B. Special damages;
- C. Pre-judgment interest on damages pursuant to the *Judicature Act (2021 Revision)*;
- D. Post-judgment interest on damages pursuant to the *Judicature Act (2021 Revision)*; and

E. Costs.

Dated this 29th day of September 2023

A handwritten signature in blue ink, appearing to read "Broadhurst", is written over a horizontal line.

BROADHURST LLC
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim was 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' claims arise out of the use of a motor vehicle on a public road. The insurer of the vehicle of the Defendant named herein is Cayman First Insurance, Cayman First Centre, 17 Vibert Bodden Drive, George Town, Grand Cayman, KY1-1105, Cayman Islands.

INDORSEMENT AS TO INTEREST

Interest on both general and special damages in accordance with the *Judicature Act (2021 Revision)* in accordance with the *Judgment Debts (Rates of Interest) Rules* (as amended) to be assessed.

**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.

Please complete overleaf

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 its 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 2023

BETWEEN:

CELINE MACKEN

Plaintiff

AND

BARRINGTON STULTZ

Defendant

ACKNOWLEDGEMENT 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 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:

Please see 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 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.

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

**BROADHURST LLC
ATTORNEYS-AT-LAW
4th FLOOR MONACO TOWERS
54 EDWARD STREET
GEORGE TOWN
P.O. BOX 2503
GRAND CAYMAN
KY1-1104**

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