

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Plaintiffs

- and -

Defendants



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**STATEMENT OF CLAIM**

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TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

**IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE AMOUNT OF THE PLAINTIFF CLAIM**, and \$1,000.00 for costs, within the time for serving and filing defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff claim and \$500.00 for costs and have the costs assessed by the court.

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Dated: July 27, 2018

Issued by: \_\_\_\_\_

Address of Court Office:

**TO:**

## CLAIM

1. The Plaintiff, \_\_\_\_\_, claims:

- (a) General damages for pain and suffering and loss of enjoyment of life, in the amount of \$ \_\_\_\_\_; and
- (b) Damages in the amount of \$ \_\_\_\_\_ for loss of past and future pecuniary losses, including loss of housekeeping capacity, and future care costs, the particulars of which will be provided prior to, or at, the trial of this action;
- (c) Special damages in an amount to be determined, the particulars of which will be provided before trial;
- (d) a declaration that the Plaintiffs are entitled to receive from the Defendant, \_\_\_\_\_ all sums which the Plaintiffs are legally entitled to recover from the Defendant, \_\_\_\_\_, as a result of the motor vehicle accident on \_\_\_\_\_ as described below, pursuant to the OPCF 44R-Family Protection Coverage endorsement of \_\_\_\_\_, policy number \_\_\_\_\_;
- (e) pre-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (f) post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (g) her costs and disbursements of this action on a substantial indemnity basis, together with all applicable taxes; and
- (h) such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, \_\_\_\_\_, claims:

- (a) Damages in the amount of \$ \_\_\_\_\_ for the loss of care, guidance and companionship and for the loss of interdependent relationship resulting from the

injuries sustained by his wife, \_\_\_\_\_, pursuant to the *Family Law Act*, R.S.O. 1990, c. F. 3.

- (b) pre-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (c) post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (d) his costs and disbursements of this action on a substantial indemnity basis, together with all applicable taxes; and
- (e) such further and other relief as this Honourable Court may deem just.

3. The Plaintiff, \_\_\_\_\_, by her Litigation Guardian, \_\_\_\_\_, claims:

- (a) Damages in the amount of \$ \_\_\_\_\_ for the loss of care, guidance and companionship resulting from the injuries sustained by her mother, \_\_\_\_\_ pursuant to the *Family Law Act*, R.S.O. 1990, c. F. 3.
- (b) pre-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (c) post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (d) her costs and disbursements of this action on a substantial indemnity basis, together with all applicable taxes; and
- (e) such further and other relief as this Honourable Court may deem just.

4. The Plaintiff, \_\_\_\_\_, by his Litigation Guardian, \_\_\_\_\_, claims:

- (a) Damages in the amount of \$ \_\_\_\_\_ for the loss of care, guidance and companionship resulting from the injuries sustained by his mother, pursuant to the *Family Law Act*, R.S.O. 1990, c. F. 3.
- (b) pre-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (c) post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (d) his costs and disbursements of this action on a substantial indemnity basis, together with all applicable taxes; and
- (e) such further and other relief as this Honourable Court may deem just.

5. The Plaintiff, \_\_\_\_\_, by her Litigation Guardian, \_\_\_\_\_ claims:

- (a) Damages in the amount of \$ \_\_\_\_\_ for the loss of care, guidance and companionship resulting from the injuries sustained by her mother, pursuant to the *Family Law Act*, R.S.O. 1990, c. F. 3.
- (b) pre-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (c) post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (d) her costs and disbursements of this action on a substantial indemnity basis, together with all applicable taxes; and
- (e) such further and other relief as this Honourable Court may deem just.

## BACKGROUND

6. On \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_") was travelling southbound on \_\_\_\_\_ in the \_\_\_\_\_. At or around the same time, the Defendant, \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_"), was



making a left turn from \_\_\_\_\_ onto \_\_\_\_\_. Upon making the turn, \_\_\_\_\_, not noticing \_\_\_\_\_'s vehicle, collided with \_\_\_\_\_'s vehicle. As a result of this, a motor vehicle accident ensued (hereinafter referred to as the "accident").

### THE PARTIES

7. \_\_\_\_\_ resides in the City of \_\_\_\_\_, in the Province of \_\_\_\_\_, with her husband, the Plaintiff herein, \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_").
8. Mr. and Ms. \_\_\_\_\_ are the mother and father of the Plaintiffs, \_\_\_\_\_, and \_\_\_\_\_.
9. The Defendant \_\_\_\_\_ resides in the City of \_\_\_\_\_, in the Province of \_\_\_\_\_ and was at all times the owner and operator of a \_\_\_\_\_ bearing license plate number \_\_\_\_\_.
10. The Defendant, The \_\_\_\_\_ (hereafter "\_\_\_\_\_"), is an insurance company carrying on business throughout the Province of \_\_\_\_\_ with its head office located in \_\_\_\_\_. At all material times, \_\_\_\_\_ was the insurer of \_\_\_\_\_ pursuant to policy number \_\_\_\_\_, which policy includes an OPCF 44R-Family Protection Coverage endorsement, which was in effect on the date of the accident.

### NEGLIGENCE OF THE DEFENDANT

11. The Plaintiffs state that the accident was the result of the negligence of \_\_\_\_\_ which particulars as to his negligence include, but are not limited to, as follows:
  - (a) he failed to stop, as required by law, at the stop sign at the intersection of \_\_\_\_\_ and \_\_\_\_\_;
  - (b) he failed to keep his vehicle under proper control at all material times;
  - (c) he drove at an excessive rate of speed and at a rate of speed greater than was reasonable in the circumstances;

- (d) he was driving at such a rate of speed that he could not control his motor vehicle within his range of vision;
- (e) he failed to keep a proper lookout for other vehicles;
- (f) he operated his vehicle without due care and attention and without reasonable consideration for others using the said highway;
- (g) he was operating his vehicle when he knew, or ought to have known, that it was not in fit or proper mechanical condition;
- (h) at all material times, he failed to have the brakes on his vehicle in proper working order;
- (i) in the alternative, at all material times, he failed to properly apply his brakes, or to do so at all;
- (j) he was an incompetent driver lacking in reasonable skill, ability, training and self-command and ought not to have attempted to operate his vehicle at the material times hereto;
- (k) at the material times, he failed to give any warning of his approaching vehicle, though such warning was reasonably necessary under the circumstances;
- (l) he was affected by drugs, alcohol, sleep deprivation or some other ailment or intoxicant that affected his ability to operate his vehicle at the material times hereto;
- (m) at the material times hereto, his faculties of observation, perception, judgment and self-control were so affected and impaired by his voluntary ingestion of alcoholic beverages and/or drugs that he no longer had the capacity to operate a motor vehicle with the caution characteristic of a reasonably careful driver who has all such faculties available to them;
- (n) he operated his vehicle while distracted by food, drink, stereo, cellular phone, or one or more other items inside the vehicle;

- (o) he did not avoid the accident when he could have done so by the exercise of reasonable care and skill;
- (p) he created an emergency and a situation of danger;
- (q) he had the last clear chance to avoid the accident and failed to take the appropriate steps to do so;
- (r) he failed to follow the rules of the road, as required by the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended;
- (s) he failed to give the right-of-way, when he was legally obligated to do so; and
- (t) such further and other particulars as to the negligence of \_\_\_\_\_ as may become known and as counsel may advise.

**DAMAGES -**

12. As a result of the accident, \_\_\_\_\_ sustained permanent serious impairments of important physical, mental and psychological functions. Her injuries include, but are not limited to, the following:

- (a) Bulging discs;
- (b) Upper back pain;
- (c) Lower back pain;
- (d) Leg pain;
- (e) Knee pain;
- (f) Buttocks pain;
- (g) Difficulty sleeping;
- (h) Anxiety;



(i) Depression;

(j) Mood swings; and,

(k) Other injuries, the particulars of which shall be provided to the defendants prior to the trial of this action.

13.                has sought many forms of therapy, including physiotherapy, chiropractic therapy, physiatrist therapy and registered massage therapy. Despite doing everything within her power to manage her symptoms, her injuries and limitations continue to interfere with all aspects of her daily life.
14.                will require ongoing treatment as a result of the motor vehicle collision, which will continue for the rest of her life.
15. Prior to the accident,                enjoyed a variety of activities, including running in marathons, biking, skiing, spinning (standing bicycle) classes and boot camp classes. She enjoyed spending time with her husband and                children and shared some of these activities with them. Due to injuries suffered as a result of the accident, she can no longer participate in these activities to the same extent if at all and her relationship with her husband and                children has suffered as a result.
16.                has experienced a decrease of enjoyment of life as a result of the accident. She is unable to participate in family, recreational, social, household and employment activities to the extent to which she participated in such activities prior to the accident.
17. Prior to the accident,                was in prime physical condition, regularly ranking "bronze" or "silver" in her work's fitness tests. As a result of the injuries sustained in the accident, she has had to go on medical leaves for work. Given the nature of her employment,                s injuries have resulted in a loss of competitive advantage and will result in a future loss of income.
18. As a result of the accident and her resultant impairments,                has relied on assistance from family and friends for tasks such as grocery shopping, meal preparation, childcare and housekeeping tasks.

19. [redacted] will continue to suffer pain, disability, limitation of movement, depression and emotional difficulties, which will permanently impair her enjoyment of life. She claims damages for same, the particulars of which shall be provided prior to trial.
20. As a result of the injuries she sustained in the accident, [redacted] has suffered a loss of housekeeping and handyperson capacity. She will require assistance in the future to complete such chores. She is entitled to claim for these and other expenses that she will incur throughout her lifetime.
21. [redacted] has incurred, and will continue to incur, medical and other out-of-pocket expenses as a result of the accident, including expenses for medication, therapy, rehabilitation, medical treatment, transportation costs and other forms of care. She claims damages for same, the particulars of which shall be provided prior to trial.
22. As a result of the negligence of [redacted] has suffered other pecuniary damages up to the present and will continue to suffer other pecuniary damages in the future. She claims damages for same, the particulars of which will be provided prior to trial.

#### **INSURANCE COVERAGE AND POLICY**

23. The Plaintiffs plead that, at all material times hereto, [redacted] was the named insured under the policy written by [redacted], and further state that, at all material times, this policy and the OPCF 44R-Family Protection Coverage endorsement were in full force and effect.
24. The Plaintiffs are thereto entitled to receive from the Defendant, [redacted], all sums that they are legally entitled to recover from the Defendant, [redacted] pursuant to the OPCF 44R-Family Protection endorsement of [redacted]'s policy.

#### **DAMAGES – FAMILY LAW ACT CLAIMS**

25. As a result of the accident, the *Family Law Act* Plaintiffs have been deprived of the benefit of care, guidance and companionship which had been and would normally be provided by [redacted] had she not suffered injuries in the accident.

26. The *Family Law Act* Plaintiffs further state that, as a result of the accident and resultant injuries suffered by \_\_\_\_\_, the Plaintiffs have incurred and will continue to incur out-of-pocket expenses, the full particulars of which will be provided prior to the trial of this matter.

#### **STATUTORY RELIANCE**

27. The Plaintiffs plead and rely upon the provisions of:

- (a) The *Highway Traffic Act*, R.S.O. 1990, c.H.8;
- (b) The *Courts of Justice Act*, R.S.O. 1990, c.C.43;
- (c) The *Negligence Act*, R.S.O. 1990, c.N.1;
- (d) The *Family Law Act*, R.S.O. 1990, c. F.3;
- (e) The *Insurance Act*, R.S.O. 1990, c.I.8; and
- (f) Such further and other legislation as it may apply.

#### **TRIAL**

28. The Plaintiffs propose that this action be tried in the City of \_\_\_\_\_, Province of \_\_\_\_\_.

Dated: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Lawyer for the Plaintiffs**

Court File No.

**et al.**  
Plaintiffs

- and -

**et al.**  
Defendants

**ONTARIO  
SUPERIOR COURT OF  
JUSTICE**

Proceedings Commenced at

**STATEMENT OF CLAIM**

Tel.:  
Fax:

*Lawyers for the Plaintiffs*