

14-48443

Court File No. 6465/13

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JODI GAWRYLASH, MICHAEL GAWRYLASH, KAY GAWRYLASH
and CHRIS GAWRYLASH**

Plaintiffs

- and -

**JAMES M CONNELLY, THE CITY OF HAMILTON,
THE DOMINION OF CANADA GENERAL INSURANCE COMPANY
AND JOHN DOE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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 or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

Date: Nov. 25/13

Issued by: **M. TOMCZYK**
Local Registrar

Address of court office:
491 Steeles Avenue East
Milton, Ontario L9T 1Y7

TO: James Connelly
255 Webster Road
Hamilton, On L8G 5H5

AND TO: THE CITY OF HAMILTON
City Clerk's Office
71 Main St West
1st Floor
Hamilton, On L8P 4Y5

AND TO: THE DOMINION OF CANADA GENERAL INSURANCE COMPANY
1275 North Service Road West, 2nd Floor
Oakville, Ontario
L6M 3M3

AND TO JOHN DOE

CLAIM

1. The Plaintiffs claim:
 - (a) General damages in the amount of \$2,000,000.00 ;
 - (b) Damages pursuant to the *Family Law Act*, R.S.O. 1990 c. F. 3 and amendments thereto in the amount of \$200,000.00;
 - (c) Prejudgment and post judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended;
 - (d) Their costs of this action on a substantial indemnity basis plus GST and;
 - (e) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiffs reside in the Province of Ontario. The Plaintiffs MICHAEL GAWRYLASH and KAY GAWRYLASH are the parents of the Plaintiff, JODI GAWRYLASH and CHRIS GAWRYLASH is the brother of the Plaintiff JODI GAWRYLASH.
3. The Plaintiff, JODI GAWRYLASH, was at all material times the driver of a 2002 Jeep Liberty motor vehicle (hereinafter referred to as the "Gawrylash vehicle").
4. The Defendant, THE CITY OF HAMILTON, was at all material times responsible for the maintenance, construction, servicing, inspection, designing of the roadway, shoulders, signage and traffic control on the ramp leading from the southbound Red Hill Valley Parkway to the King Street exit in the City of Hamilton.

5. The Defendant, THE DOMINION OF CANADA GENERAL INSURANCE COMPANY (hereinafter referred to as "DOMINION") was at all material times the insurer of the 2002 Jeep Liberty motor vehicle driven by the Plaintiff, JODI GAWRYLASH, pursuant to a policy of automobile insurance (policy number APP4128950) issued by Dominion to the Plaintiff MICHAEL GAWRYLASH (hereinafter referred to as the "Policy"). The Policy contained coverage for damages caused by the unidentified, uninsured and inadequately insured motorists. Full particulars of the said policy are known to the Defendant, DOMINION.

6. The Defendant, JAMES CONNELLY, resides in the City of Hamilton, in the Province of Ontario and at all material times was the owner/operator of a motor vehicle on the date in question namely December 3, 2011 (hereinafter referred to as the "Defendant motor vehicle")

7. The Defendant, JOHN DOE, was the operator an unknown motor vehicle that was being operated on the Red Hill Valley Parkway at the time and place in question (hereinafter referred to the "John Doe motor vehicle")

THE COLLISION

8. On or about the 3rd day of December 2011, the Plaintiff, JODI GAWRYLASH, at all material times was exiting from the southbound lanes of the Red Hill Valley Parkway onto the exit ramp for King Street in the City of Hamilton.

9. At the same time and place the Defendant, JAMES CONNELLY, and/or the Defendant, JOHN DOE, were also exiting onto the King Street ramp from the southbound lanes of the Red Hill Valley Parkway and changed lanes abruptly directly in front of the Gawrylash motor vehicle causing it to take evasive action.

10. The Gawrylash motor vehicle braked and attempted to avoid contact with the Defendant motor vehicle and/or John Doe motor vehicle, but veered uncontrollably to the left shoulder, colliding with the southernmost end of the shoulder barrier, which precipitated the Plaintiff motor vehicle flipping over and into the grassy gully adjacent to the exit ramp.

THE NEGLIGENCE

11. Particulars of the negligence of the Defendant, THE CITY OF HAMILTON, is as follows:
 - (a) It knew or ought to have known that the posted ramp speed was not properly determined or posted in accordance with the accepted industry standards;
 - (b) It failed to design and construct an exit ramp that could safely take highway speed traffic from the Parkway to the King Street stop light.
 - (c) It failed to take any or reasonable steps to design, construct, inspect and maintain the aforesaid roadway ramp and shoulder on the highway in a safe and reasonable condition.
 - (d) It failed to warn exiting King Street traffic of the dangerous condition of the ramp.
 - (e) It failed to construct and install an adequate guardrail to protect users of the King Street ramp from leaving the travelled portion of the ramp.
 - (f) It failed to construct and install an adequate guardrail to protect users of the King Street exit ramp from leaving the travelled portion of the ramp;
 - (g) It failed to post a proper ramp speed notice at an allocation where the motoring public would be able to safely adjust their speed;

- (h) Such other grounds as counsel as further discovery and investigation may reveal.
12. The particulars of negligence as against the Defendants, JAMES CONNELLY AND/OR JOHN DOE are as follows:
- (a) they changed from the right hand lane of the exit ramp directly in front of the Gawrylash motor vehicle when it was unsafe for them to do so;
 - (b) They failed to safely signal their intention to change lanes in favour of the Plaintiff JODI GAWRYLASH;
 - (c) They failed to reduce their speed while exiting the King Street Ram when it was safe to do so; and
 - (d) Such other grounds as further investigation and or discovery may reveal.

THE LAW

13. The Plaintiffs plead and rely upon the provisions of:
- (a) *The Highway Traffic Act*, R.S.O. 1990 c. H. 8 as amended;
 - (b) *The Courts of Justice Act*, R.S.O. 1990 c. C. 43 as amended;
 - (c) *The Family Law Act*, R.S.O. 1990 c. F.3 as amended;
 - (d) *The Negligence Act*, R.S.O. 1990 c. N.1 as amended; and
 - (e) *The Ontario Insurance Act*, R.S.O. 1990, c.l-18, as amended.

ACTUAL NOTICE

14. The Defendant, THE CITY OF HAMILTON, received prompt and actual notice of the aforesaid collision and injury and at all times material since the accident has had the opportunity to fully investigate the circumstances of the accident, and

preserve all relevant evidence and has been fully aware of the potential claim of the Plaintiffs.

THE DAMAGES


15. The Plaintiff, JODI GAWRYLASH, on account of the aforesaid negligence of the Defendants, sustained permanent, catastrophically determined, serious impairments of important physical, mental and psychological functions as a result of injuries which are physical and psychological in nature, including but not limited to:
 - (a) Closed head injury;
 - (b) Subarachnoid haemorrhage;
 - (c) Left subdural haemorrhage;
 - (d) Multiple vertebral fractures;
 - (e) Right rib fractures;
 - (f) Sternum fracture
 - (g) Liver and spleen injuries requiring surgery;
 - (h) Retroperitoneal hematoma;
 - (i) Avulsion fracture of the ileum;
 - (j) Chest infection;
 - (k) Bladder infection; and
 - (l) Additional miscellaneous injuries as disclosed and recorded in the medical records.

16. As a result of these injuries the Plaintiff, JODI GAWRYLASH, required numerous surgeries and institutionalization until discharged to her family's home on July 13th 2012 and as such, has suffered and will continue to suffer pain, disability, limitation of movement, cognitive dysfunction, and emotional difficulties which have and will permanently impair her enjoyment of life and her ability to earn an income.

17. Furthermore, the plaintiff, JODI GAWRYLASH, has suffered loss of earnings, a loss of competitive advantage and her ability to engage in activities of daily living has been severely restricted.
18. She has incurred and will incur medical, hospital, rehabilitation and other expenses for the rest of her lifetime.
19. The Plaintiffs as insured persons within the meaning of the policy, claim against the Defendant, DOMINION, for any damages found to be caused as a result of the negligence of an unidentified, uninsured or inadequately insured motorist.

FAMILY LAW ACT CLAIMS

20. The Plaintiffs, MICHAEL GAWRYLASH, KAY GAWRYLASH and CHRIS GAWRYLASH, as a result of the negligence of the Defendants and the injuries to JODI GAWRYLASH have suffered a loss of care, guidance and companionship and have provided services to the plaintiff JODI GAWRYLASH and have suffered pecuniary loss as a result of the injuries to JODI GAWRYLASH and plead and rely upon the provisions of the *Family Law Act*, R.S.O. 1990 c. F3.

DATED: NOVEMBER 25, 2013


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Court File No.

GAWRYLASH et al

v

Connelly et al

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at **MILTON**

STATEMENT OF CLAIM

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OF THE ORIGINAL PROCESS
ISSUED HEREIN
COPIE CONFORME
L'ACTE INTRODUCTIF D'INSTANCE
DANS LA PRESENTE AFFAIRE
Solicitor for Plaintiff
H. Bruce T. Hillyer
Attesté du demandeur