

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAHALETCHUMI NAGARASA

Plaintiff

and

**TIFFANY ASHLEE SINGH, JOACHIM VONDEHN, MUSKOKA HOME
SERVICE, REVEKKA STASI, ANDREAS TSANGARIS, UTHAYAVANAN
MAHALINGAM and MALARVILI NADARAJAH**

Defendants

**STATEMENT OF DEFENCE & CROSSCLAIM
OF THE DEFENDANTS,
REVEKKA STASI AND ANDREAS TSANGARIS**

1. The Defendants, Revekka Stasi and Andreas Tsangaris (“the Defendants”) admits the allegations contained in paragraphs 8 and 9, 12 A., 12.B., 12.C., 12.F., 12.G., of the Statement of Claim.
2. The Defendants deny the allegations contained in paragraphs 10, 12.D., 12.E., 13, 14, 15, 16, 17 18, 19, 20, 21 22, 23, and 24 of the Statement of Claim.
3. The Defendants have no knowledge with respect to the allegations contained in paragraphs 2, 3, 4, 5, 6, 7 and 11 of the Statement of Claim.
4. The Defendants further state that at all times she acted in a prudent and careful manner and her vehicle was in a fit and proper condition. The Defendants deny any want of care, breach of duty or negligence on their part and deny any liability for the said accident and holds

the Plaintiff to the strictest proof thereof. The Defendants states that the accident occurred entirely as a result of the negligence of the co-defendants.

5. The Defendants plead that if the Plaintiff sustained the damages as alleged, which is not admitted but specifically denied, such damages were sustained as a result of the negligence of the Plaintiff in that:
 - (a) she failed to properly utilize and fasten the safety equipment with which the Defendants' vehicle was equipped, including seatbelts contrary to Section 106 of The *Highway Traffic Act*, R.S.O. 1990, Chapter H.8 and amendments thereto..
 - (b) she was sitting in an unsafe manner or positioned her body in a manner that she ought to have known would increase her risk of injury if a motor vehicle accident occurred.
 - (c) she was distracting the driver while he was attempting to operate the motor vehicle.
6. The Defendants state that the damages claimed by the Plaintiff, or a portion thereof, were caused by accidents, injuries, illnesses or other medical, health related or psychological conditions suffered by the Plaintiff before and/or after the accident and not as a result thereof.
7. In the alternative, the Defendants state that the Plaintiff's injuries or damages are temporary in nature and which through the passage of time and appropriate medical treatment have already fully resolved or will fully resolve.
8. The Defendants deny that the Plaintiff sustained a permanent serious disfigurement or permanent serious impairments of an important physical, mental or psychological function

as a result of which she is not entitled to claim damages, as defined in section 267.5 of *the Insurance Act* and Ontario Reg. 461/96 and Ontario Reg. 391/03. Further, the Plaintiff's claim is subject to the deductible set out in section 267.5(7)(3)(i)(b) and section 5.1 of Ontario Reg. 461/96. The Defendants plead and rely upon *The Insurance Act*, R.S.O. 1990, Chapter I.8 and amendments thereto.

9. The Defendants deny that the Plaintiff has suffered a loss of income, loss of competitive advantage or loss of earning capacity and puts the Plaintiff to the strictest proof thereof.
10. In the alternative, the Defendants state that if the Plaintiff did suffer a loss of income or loss of earning capacity, which is specifically denied, the calculation of damages should be in accordance with section 267.5 of the *Insurance Act*, Ontario Reg. 461/96, and Ontario Reg. 391/03.
11. In the same alternative, the Defendants state that if the Plaintiff suffered any inability to work or a loss of income, which is specifically denied, then the Defendants are also entitled to a deduction of all collateral benefits or income continuation benefits that the Plaintiff has available to her.
12. The Defendants deny that the Plaintiff suffered any losses for out-of-pocket expenses for health care, hospitalization, medication, therapy, rehabilitation, medical treatment, attendant care, caregiving, transportation or housekeeping and home maintenance services.
13. The Defendants further deny that the Plaintiff suffered any continuous, permanent diminution in her ability to engage in activities of daily living or recreational activities, and

specifically deny that the Plaintiff experienced a loss of housekeeping, attendant care, or caregiving capacity or efficiency.

14. In the alternative, the Defendants state that the Plaintiff has been or would be entitled to benefits under her own policy of motor vehicle insurance and pleads a release to the extent of all benefits available to or received by her. The Defendants plead and rely upon Section 267.8 of the *Insurance Act*, R.S.O. 1990, Chapter I.8 and all amendments thereto.
15. The Defendants are a “protected defendant” pursuant to and under the Insurance Act. The Defendants plead and rely upon the provisions of the said *Insurance Act*, and in particular ss.267.3 to 267.11 of the *Insurance Act*.
16. The Defendants further plead and rely upon s. 267.11 of the *Insurance Act*, and state that the Plaintiff’s claim is limited in that it shall not include any amount to compensate for income tax payable for damages that may be awarded for income loss or loss of earning capacity (loss of competitive advantage).
17. Pursuant to s. 267.5(7), and subject to subsection (8), the Plaintiff’s claims for non-pecuniary loss are, by law, required to be reduced by the statutory deductible applicable at the time of the award of damages, if any.
18. The Defendants state that the Plaintiff’s claims are too remote and that she has failed to properly mitigate them.
19. The Defendants state that the Plaintiff failed to comply with the provisions of the Ontario Regulation 461/96 made under the *Insurance Act*, and entitled “Court

Proceedings/Automobile Accidents that occur on or after November 1, 1996”, and therefore the Plaintiff is not entitled to payment of her costs.

20. The Plaintiff, at the time of the motor vehicle accident, is or was entitled to the benefits of insurance as provided under the provisions of the *Statutory Accident Benefits Schedule*, as amended, of the *Insurance Act*. The Defendants are entitled to be released from liability to the Plaintiff to the extent of any payments made or available to the Plaintiff under the provisions of the *Statutory Accident Benefits Schedule*.
21. The Defendants plead that it is entitled to be released from liability to the Plaintiff to the extent of any collateral benefits made or available to the Plaintiff.
22. The Defendants deny that the Plaintiff is entitled to prejudgment interest by reason of the delay and laches and on the grounds that the Plaintiff has not supplied to the Defendants such documentary or other evidence on which the Defendants might reasonably assess the Plaintiff’s claims.
23. The Defendants plead that the Plaintiff has failed to comply with the provisions of Section 258.3(1) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended. The Defendants therefore plead that the Plaintiff’s non-compliance disentitles the Plaintiff to pre-judgment interest and that such non-compliance ought to be considered by this Honourable Court in awarding costs.
24. The Defendants further plead and rely upon the provisions of the following legislation and all amendments thereto:
 - (a) *Courts of Justice Act*, R.S.O. 1990, c. C.43.

(b) *Highway Traffic Act*, R.S.O. 1990, Chapter H.8.

(c) *Insurance Act*, R.S.O. 1990, Chapter I.8.

(d) *Negligence Act*, R.S.O. 1990, Chapter N.1.

25. The Defendants therefore submit that the within action be dismissed with costs payable to the Defendants on a substantial indemnity basis.

CROSSCLAIM

26. The Defendants repeat the allegations of negligence as against the Defendants, Tiffany Ashlee Singh, Joachim Vondehn, Muskoka Home Service, Uthayanvanan Mahalingam and Malarvili Nadarajahe, as claimed in the Statement of Claim.

27. The Defendants therefore crossclaim against the Defendants, Tiffany Ashlee Singh, Joachim Vondehn, Muskoka Home Service, Uthayanvanan Mahalingam and Malarvili Nadarajahe, as follows:

(a) for complete contribution and indemnity;

(b) their costs of this crossclaim; and

(c) such further and other relief as this Honourable Court may deem just.

December 8, 2022

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RCP-E 47A (July 1, 2007)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE & CROSSCLAIM

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File Number: MAT1074

RCP-F 4C (September 1, 2020)