**Court File No. XX-XXXXX**

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**[PLAINTIFF]**

**Plaintiff**

**- and -**

**[DEFENDANT]**

**Defendant**

**STATEMENT OF DEFENCE AND CROSSCLAIM [AND COUNTERCLAIM]**

1. The Defendant admits paragraph 3 of the Statement of Claim, and admits that on or about the time and place described in paragraph 5 of the Statement of Claim, the vehicle owned and operated by the Defendant came into contact with a vehicle operated by the Plaintiff. Except as is hereinafter expressly admitted, the Defendant denies the remainder of the allegations contained in the Statement of Claim and puts the Plaintiff to the strict proof thereof.
2. The Defendant has no information to either admit or deny the ownership aspect described in paragraph 2 of the Statement of Claim.
3. The Defendant pleads that the aforesaid motor vehicle accident was caused solely as a result of the negligence of the Plaintiff, [NAME], the particulars of which are as follows:
   1. he failed to maintain a proper lookout;
   2. he failed to operate his motor vehicle in a safe and prudent manner;
   3. he created a situation of danger and emergency from which the Defendant was unable to extricate himself;
   4. he suddenly braked, without any warning and without using any signals, while travelling on a busy street in heavy traffic;
   5. he failed to apply the brakes properly or at all, or in the alternative, he was operating a motor vehicle with defective brakes;
   6. on the occasion in question, his faculties of observation, perception, judgment, and self-control were impaired by the consumption of alcohol, drugs, lack of sleep, fatigue, or some combination or another;
   7. he failed to take reasonable care to avoid an accident which he saw or should have seen was likely to occur;
   8. he failed to equip his motor vehicle with adequate or sufficient lights or to keep the same in fit and proper working condition or in the alternative, he failed to have his lights activated.
4. [If applicable] - In the alternative, the Defendant pleads that the aforesaid motor vehicle accident was caused as a result of the negligence of the co-Defendant, [NAME], and this Defendant adopts as its own and repeats the allegations as against the co-Defendant [NAME] contained in paragraph 6A of the Statement of Claim.
5. This Defendant further pleads that the Plaintiff was negligent in failing to use properly or at all the seatbelts, shoulder harnesses, and head restraints with which the vehicle in which he travelled was equipped.
6. This Defendant pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c.N.1 and the amendments thereto.
7. This Defendant denies that the Plaintiff suffered the injuries, losses and damages as alleged, or at all, and puts the Plaintiff to the strict proof thereof.
8. In the alternative, if the Plaintiff has suffered the injuries, losses and damages alleged, which is not admitted, but specifically denied, then such injuries, losses and damages are excessive, too remote, and the Plaintiff has failed to mitigate them.
9. This Defendant pleads that the Plaintiff, who claims general damages arising out of a motor vehicle accident, is precluded from doing so on the basis that any injuries that the Plaintiff might have sustained in the motor vehicle accident have not resulted in permanent serious disfigurement or permanent serious impairment of an important physical, mental or psychological function. This Defendant pleads and relies upon the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, and in particular s. 267.5(5) as further defined at s. 4.2 of Ontario Regulation 461/96, as amended.
10. This Defendant denies that the Plaintiff has adduced the evidence necessary to prove a permanent serious impairment of an important physical mental or psychological function has occurred. This Defendant pleads and relies upon s. 4.3 of Ontario Regulation 461/96, as amended.
11. In the event this Honourable Court should find that the Plaintiff sustained serious disfigurement or serious impairment of an important, physical, mental or psychological function, which is not admitted but specifically denied, this Defendant pleads that the Plaintiff’s impairment or disfigurement is attributable to one or more of the following, or any combination thereof, namely:
    1. pre-existing casualty, injury or illness;
    2. post-accident casualty, injury or illness;
    3. *novus actus interveniens*.
12. In the event that the Plaintiff is able to establish that he is not precluded from claiming non-pecuniary general damages in this lawsuit, the Defendant denies that the Plaintiff’s non-pecuniary general damages in this lawsuit exceed the applicable amount to avoid application of the statutory deductible, such that this Defendant pleads that any award of non-pecuniary general damages must be reduced by the applicable statutory deductible as stipulated in the *Insurance Act*. The Defendant pleads and relies upon the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, in particular s. 267.5(8), and s. 5.1(1) of Ontario Regulation 461/96, as amended.
13. This Defendant pleads that, with respect to the Plaintiff’s claims for damages for income loss and loss of earning capacity, the Plaintiff is not entitled to recover the following damages:
    1. damages for income loss suffered in the seven days after the accident giving rise to this claim;
    2. damages for income loss sustained prior to trial in excess of 70% of the Plaintiff’s gross income loss (80% of net if MVA before September 1, 2010);
    3. damages for loss of earning capacity incurred before trial in excess of 70% of the Plaintiff's gross loss of earning capacity (80% of net if MVA before September 1, 2010).

This Defendant pleads and relies upon s. 267.5(1) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended.

1. This Defendant claims a reduction of all claims for income loss and loss of earning capacity to the extent of:
   1. all payments received by or available to the Plaintiff before trial for statutory accident benefits in respect of income loss and loss of earning capacity;
   2. all payments received by or available to the Plaintiff before trial for income loss or loss of earning capacity under the laws of any jurisdiction or under an income continuation benefit plan;
   3. all payments received by the Plaintiff before trial under a sick leave plan arising by reason of the Plaintiff’s occupation or employment.

This Defendant pleads and relies upon s. 267.8(1) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended.

1. This Defendant pleads and the fact is that the Plaintiff has not sustained a permanent serious disfigurement or permanent serious impairment of an important physical, mental or psychological function as a consequence of the accident giving rise to this claim and consequently, the Plaintiff is not entitled to recover damages for health care expenses. This Defendant pleads and relies upon s. 267.5(3) of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.
2. In the event that this Honourable Court holds that this Defendant is liable to the Plaintiff for health care expenses, this Defendant pleads that the Plaintiff’s damages for health care expenses must be reduced by the following amounts:
   1. payments available to or received by the Plaintiff prior to trial for statutory accident benefits in respect of health care expenses;
   2. payments received by the Plaintiff before trial under any medical, surgical, dental, hospitalization, rehabilitation or long term care plan or law.

This Defendant pleads and relies upon s. 267.8(4) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended.

1. With respect to any claims advanced by the Plaintiff for pecuniary loss other than damages for income loss, loss of earning capacity or health care expenses, this Defendant pleads that any such claims for other pecuniary loss must be reduced by all payments received by or available to the Plaintiff before the trial of the action for statutory accident benefits in respect of pecuniary loss, other than income loss, loss of earning capacity and expenses for health care. This Defendant pleads and relies upon the provisions of s. 267.8(6) of the *Insurance Act*, R.S.O. 1990 c. I.8 as amended.
2. This Defendant pleads that this action is premature and that the Plaintiff is precluded from bringing this action because the Plaintiff has failed to take the necessary steps required by s. 258.3(1) of the Insurance Act, R.S.O. 1990, c. I.8, as amended, as follows:
   1. the Plaintiff has failed to apply for statutory accident benefits;
   2. the Plaintiff has failed to serve written notice of the intention to commence the action within 120 days after the accident giving rise to the claim;
   3. the Plaintiff has failed to provide this Defendant with information prescribed by the regulations within the time period prescribed by the regulations;
   4. the Plaintiff has failed to undergo medical examinations as requested by this Defendant;
   5. the Plaintiff has failed to provide this Defendant with a statutory declaration describing the circumstances surrounding the incident and the nature of the claim being made;
   6. the Plaintiff has failed to provide this Defendant with evidence of the Plaintiff’s identity.
3. With respect to the Plaintiff’s claim for pre-judgment interest, this Defendant plead that the Plaintiff is not entitled to pre-judgment interest for any period of time before notice of the Plaintiff’s intention to bring this action was served upon this Defendant.
4. This Defendant therefore submits that the Plaintiff’s claim as against her should be dismissed with costs.

**AND BY WAY OF CROSSCLAIM:**

1. This Defendant crossclaims against the Defendants, [NAME, NAME], for:

(a) contribution and indemnity, and any other relief over, as against the Defendants, \_\_\_\_\_ , in respect of any judgment as against this Defendant, in favour of the Plaintiffs in this action;

(b) its costs of defending this action and prosecuting this crossclaim;

(c) interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

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

1. In support of this crossclaim, this Defendant relies on the allegations against the Defendants, \_\_\_\_\_, appearing above in this pleading, as well as the allegations against the Defendants, \_\_\_\_\_, as set out in the Statement of Claim.

**AND BY WAY OF COUNTERCLAIM:**

1. This Defendant counterclaims against the Plaintiff, [NAME], for:

(a) contribution and indemnity in respect of any judgment awarded to the [OTHER PLAINTIFF], against the Defendant;

(b) its costs of defending the main action and prosecuting this counterclaim;

(c) interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

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

1. The Defendant pleads and adopts the allegations against the Plaintiff [NAME] as contained above in this Statement of Defence.
2. The Defendant proposes that the counterclaim be tried at the same time or immediately following the trial of the main action.

[DATE]

**[DEFENCE COUNSEL]**

TO:

**[Plaintiff Counsel]**