RULE 5.02 (1)

### IN THE COUNTY COURT OF VICTORIA AT MELBOURNE

**DAMAGES & COMPENSATION LIST GENERAL DIVISION**

FORM 5A

### No:

CI 14-97888

**6DC PTY LTD**

C/o: MacFlood Lawyers, Level 51, 11 Bourke Street, Melbourne VIC and

**DAVID DUNLEAVY**

Of: 27 Mitchell Street, North Ringwood

**Plaintiff**

**Defendant**

**WRIT**

Date of document: 27 June 2014 Filed on behalf of: The Plaintiff Prepared by: MacFlood Lawyers Level 51, 11 Bourke Street

Melbourne VIC 3000

Solicitors Code: 250054

Tel. No.

Fax. No:

Ref: K5258, 9597052

**TO THE DEFENDANT**

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by-

1. filing a "Notice of Appearance" in the Registrar's office in the County Court Registry, 250 William Street, Melbourne, or, where the writ has been filed in the office of a Registrar out of Melbourne, in the office of that Registrar; and
2. on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

IF YOU FAIL to file an appearance within the proper time, the plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

THE PROPER TIME TO FILE AN APPEARANCE is as follows-

1. where you are served with the writ in Victoria, within 10 days after service;
2. where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
3. where you are served in the writ in New Zealand or in Papua New Guinea, within 28 days after service;
4. where you are served with the writ in any other place, within 42 days after service.

IF the plaintiff claims a debt only and you pay that debt, namely, $144,465.67 and $1,661.10 for legal costs to the plaintiff or his solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

FILED

**Registrar**

THIS WRlT is to be served within one year from the date it is filed or within such further period as the

Court orders,

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### IN THE COUNTY COURT OF VICTORIA AT MELBOURNE

**DAMAGES & COMPENSATION LIST**

**GENERAL DIVISION No:**

**6DC PTY LTD ACN 146 066 695**

*Clo:* MacFlood Lawyers, Level 51, 11 Bourke Street Melbourne VIC and

**DAVID DUNLEAVY**

Of: 27 Mitchell Street, North Ringwood VIC

**Plaintiff**

**Defendant**

**STATEMENT OF CLAIM**

Date of document: 27 June 2014 Filed on behalf of: The Plaintiff Prepared by: MacFlood Lawyers Level 51, 11 Bourke Street

Melbourne VIC 3000

Solicitors Code: 250054

Tel. No.:

Fax. No:

Ref: K5258, 95970523

1. At all material times:
	1. The Plaintiff was the registered owner of a vehicle bearing registration number W41 IE ("the Plaintiff's vehicle").
	2. The Defendant was the driver of a vehicle which was towing a trailer bearing registration number 68371S ("the Defendant's vehicle").
2. On or about 3 September 2012, the Plaintiff's vehicle was travelling along Hume Highway, Glenrowan, in the State of Victoria, when the Defendant drove so negligently as to cause the Defendant's vehicle to collide with the Plaintiff's vehicle and the Plaintiff has suffered loss and damage.
3. The collision was caused solely by the negligence of the Defendant.

**Particulars of Negligence of the Defendant**

1. Failure to keep a proper lookout
2. Failure to change lanes with safety
3. Failure to maintain adequate lane discipline

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## (iii) Failure to brake, swerve, slow down or otherwise control the vehicle so as to avoid collision

1. Failure to heed the presence of the Plaintiff's vehicle on the roadway
2. Failure to take any or any reasonable evasive action so as to avoid the collision;
3. Driving without due care and attention;
4. Failure to keep a proper lookout; and
5. Failure to comply with the Road Rules and/or Regulations.
6. As a consequence of the Defendant's negligence, the Plaintiff has suffered loss and damage totalling $144,465.67:-

**Particulars of Loss and Damage**

|  |  |
| --- | --- |
| Part A- Total loss of vehicle |  |
| Pre Accident Value | $132,350.00 |
| Less salvage | - $16,363.64 |
| Plus towing | $3,260.00 |
| Plus Commission | $216.00 |
| Sub-total | $119,462.36 |
| Plus Assessment fee | $1,115.00 |
| Total | $120,577.36 |

Part B – Loss of Profits

1. The Plaintiff's vehicle was the only vehicle operated by the Plaintiff for income producing purposes at all relevant times.
2. As a result of the collision, the Plaintiff was without a vehicle for income producing purposes from 3 September 2012 to 29 October 2012, being a total of 56 days.
3. Prior to the collision, the Plaintiff's vehicle was in operation on average,

5.5 days per week.

1. The Plaintiff claims loss of profits at the rate of $542.92 per day.
2. But for the collision, the Plaintiff's vehicle would have been on the road for 44 working days.

(vi) 44 days @ $542.92 per day equals $23,888.31.

|  |  |
| --- | --- |
| Part C - Summary |  |
| Total Loss of Vehicle | $120,577.36 |
| Loss of Profits | $23,888.31 |
| Total | $144,465.67 |

**HOW MUCH ARE YOU CLAIMING**

(a) $144,465.67

1. Interest pursuant to statute
2. Costs
3. Any other Orders deemed necessary by the Court

**Solicitor for the Plaintiff**

1. Place of trial: Melbourne
2. Mode of trial: Judge alone
3. This writ was filed for the Plaintiff by MacFlood Lawyers, Solicitors of Level 51, 11 Bourke Street, Melbourne VIC 3000
4. The address of the Plaintiff is c/o: MacFlood Lawyers, Level 51, 11 Bourke Street, Melbourne VIC 3000
5. The address for service of the Plaintiff is c/o: MacFlood Lawyers, Level 51, 11 Bourke Street, Melbourne VIC 3000
6. The address of the Defendant is 27 Mitchell Street, North Ringwood VIC