

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**FRANK PLANTER**

Plaintiff

-and-

**GARETT DENISON and THE CITY OF LONDON**

Defendant

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**PRE-TRIAL MEMORANDUM OF THE DEFENDANT  
GARRETT DENISON**

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**PART I – SETTLEMENT BRIEF**

1. The defendant, Garrett Denison (hereinafter “the Defendant”), states that both liability and damages are in dispute.

**THE PARTIES**

2. This claim arises from a motor vehicle collision that took place on or about March 18, 2016 (the “Collision”).
3. The plaintiff, Frank Planter (hereinafter “the Plaintiff”), was a twenty-one year old Ivey Business School student at Western University. At the time of the Collision, the Plaintiff was a pedestrian walking across an unlit cross-walk on Richmond Avenue near the intersection of Oxford Street.
4. The Defendant was a forty-two year old factory worker, employed in St. Thomas, Ontario.
5. The Defendant, The City of London (hereinafter referred to as the “Co-Defendant”), was at all times responsible for the maintenance of the lights above the crosswalk.

**BACKGROUND**

6. The Collision occurred at or about 1:43 am on March 18, 2016 at a crosswalk located approximately 200 metres south of the intersection of Oxford Street and Richmond Avenue in London, Ontario.

7. The weather was clear and dry, and the temperature was approximately 10 degrees Celsius.
8. At that time of night, there was a half-moon that provided limited light. The lights above the crosswalk were burnt out, providing no indication of its existence to oncoming traffic.
9. At all material times, the maintenance and repair of the crosswalk lights were the responsibility of the Co-Defendant, The City of London.
10. The Defendant was driving northbound on Richmond Avenue in his 2009 Ford F150 truck, at approximately 65 kilometers per hour, when suddenly and without warning, the Plaintiff entered the unlit crosswalk directly in the path of oncoming traffic.
11. The Plaintiff was dressed in festive St. Patrick's Day clothing, and appeared to be intoxicated.
12. The Defendant made all efforts to safely come to a full stop to avoid contact with the Plaintiff, but was unable to do so.

### **LIABILITY**

13. The Defendant denies any negligence on his part with respect to the Collision.
14. It is respectfully submitted that the Defendant drove carefully and diligently while driving slightly above the speed limit and maintained a proper lookout.
15. After police investigation, no charges were laid against the Defendant for speed infractions.
16. The Defendant relies on the engineering expert report of Aaron Anchor, of Spiral Engineers, an experienced expert in accident reconstruction. The Anchor Report indicates that, given the lack of lighting above the crosswalk, no reasonable person driving as much as ten kilometers below the speed limit, would be able to stop in time to avoid the collision.
17. The lights above the crosswalk were the responsibility of the Co-Defendant, The City of London, and were in a state of disrepair at the material time. These lights are typically used in urban areas where pedestrian crossings would be an unexpected hazard to motorists, and are intended to warn motorists of pedestrians.
18. The Defendant submits that the Plaintiff was contributorily negligent in that he did not ensure that he could safely cross Richmond Avenue before entering the subject crosswalk. In fact, the Defendant submits that the Plaintiff knew that the lights above the crosswalk were in disrepair, yet proceeded to cross the road with a complete disregard for his own well-being.
19. In the evening prior to the Collision, the Plaintiff had consumed approximately ten beers. The Defendant submits that the Plaintiff's intoxication impaired his judgment and led him to negligently cross the road. The Defendant submits that the Plaintiff was the author of his own misfortune.
20. The Defendant relies on the report of toxicologist expert, Dr. Sally Cider, a highly-respected expert with 18 years' experience. Her report indicates that the consumption of six or more

beers on an individual who does not usually drink is drastic, and would greatly impair one's ability to gauge distance and speed of an oncoming vehicle.

21. Given the Plaintiff's contributory negligence and the Co-Defendant's negligent maintenance and repair of the crosswalk lights, the Defendant takes a no liability position.

## **DAMAGES**

22. Given the Defendant's no liability position, it is respectfully submitted that he is not responsible for any alleged injuries sustained by the Plaintiff.

23. However, should any degree of liability be found on this Defendant, it is submitted that the alleged damages do not meet the statutory threshold of a serious and permanent impairment of an important physical, mental or psychological function. Further, or in the alternative, if in fact it is found that the Plaintiff meets the statutory threshold, the Defendant submits that the damages will not surpass the deductible.

24. The Defendant relies on the report of neurological expert, Dr. Sari Rebral, who has determined that the Plaintiff did not sustain a serious and permanent impairment. Dr. Rebral also concluded that there was no traumatic brain injury sustained in the accident, and that there would be no cognitive deficits affecting the Plaintiff's activities of daily living.

25. On the basis that the Plaintiff did not sustain serious and permanent injuries~~a serious and permanent injuries~~, the Defendant takes the position that there is are insufficient grounds to substantiate a loss of income claim and/or a future care claim.

26. At the time of the Collision, the Plaintiff had only recently secured a summer internship at Goldman Sachs. There is no evidence to indicate that he would have been successful there, or that he would have secured a full time position.

27. All of which is respectfully submitted.