

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2025/0035 formerly ANUHCV2019/0469

BETWEEN:

[1] JEROME HUGHES

Claimant

And

[1] EMILE THIBOU

[2] WEST INDIES OIL COMPANY LTD.

Defendants

Appearances:

Mr. Lawrence Daniels with Mr. Fitzmore Harris for the Claimant

Mr. Kemar Roberts for the First Defendant

Mr. Justin Simon KC with Ms. Shannon Potter for the Second Defendant

2026: March 12;
May 22.

Ruling

(Application to Appoint Expert Witnesses)

[1] **WILLIAMS, J.:** This is the court's ruling on the Claimant's application for permission to rely on the evidence of two proposed expert witnesses. These are Mr. Michael A. Pouncey, described as a Certified Environmental Consultant and Corrective Action Project Manager and Mr. Matthew C. McCabe, described as a forensic economist.

[2] It should be noted that this matter was set down for trial on 1st and 2nd July 2025. However, on 17th June 2025 the Claimant filed the instant application. On 25th June 2025 the Court vacated the trial dates and adjourned the matter for hearing of the application. Costs thrown away were also awarded to the Defendants.

Late Application

- [3] **Rule 11.3 of the Civil Procedure Rules (Revised Edition) 2023** provides as follows:

“(1) So far as is practicable all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-trial review.

(2) If an application is made which could have been dealt with at a case management conference or pre-trial review, the court must order the applicant to pay the costs of the application unless there are special circumstances.”

- [4] The affidavit in support of the application gives no reason at all for filing this application years after Case Management Conference was held in this matter. Mr. Harris on behalf of the Defendant attempted to give evidence on this issue from the bar table. However, the Court stopped him from doing so. Thus, even if the Claimant's application is successful, he will be required to pay the Defendants' costs.
- [5] The applications arise in the context of a personal injury claim. The Claimant alleges that he was injured on 12th October 2016 while engaged in work connected with the dismantling of an above-ground oil storage tank on the Second Defendant's premises. He contends that the accident was caused by the negligence of the Defendants.
- [6] The Claimant seeks to rely on Mr. Pouncey in relation to tank dismantling, tank removal, safety procedures and alleged failures in the method of work. He seeks to rely on Mr. McCabe in relation to the quantification of alleged economic loss.
- [7] The Defendants oppose the appointment of both proposed expert witnesses applications. In summary, they contend that the proposed evidence is not reasonably required for the just resolution of the proceedings. In particular, they submit that the proposed reports improperly contain factual findings, legal

conclusions and advocacy. They also complain that the proposed evidence is not in the form required by **CPR 32.6**.

The Governing Principles

- [8] Expert evidence is governed by **Part 32** of the **Civil Procedure Rules (Revised Edition) 2023**. **CPR 32.2** provides:

“Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.”

- [9] **CPR 32.3** provides that an expert witness has a duty to help the court impartially on matters within the expert’s expertise. In **TUI v. Griffiths**¹ the UK Supreme Court outlined an expert’s role as follows:

“[36] In this judgment I address civil proceedings and leave to one side questions of criminal procedure. It is trite law that as a generality in civil proceedings, the claimant bears the burden of proof in establishing his or her case. It is trite law that the role of an expert is to *assist* the court in relation to matters of scientific, technical or other specialised knowledge which are outside the judge’s expertise by giving evidence of fact or opinion; but the expert must not usurp the functions of the judge as the ultimate decision-maker on matters that are central to the outcome of the case.”

- [10] In **John Oliver Dryud v. Palmavon Jasmin Webster**² the Court of Appeal adopted the guidance of the UK Supreme Court in **Kennedy v. Cordia**³ in relation to the admissibility of expert evidence. The court stated:

“[97] In **Kennedy v Cordia**, Lord Reed and Lord Hodge, giving the unanimous opinion of the Supreme Court, formulated (at para. 44), four considerations which govern the admissibility of expert evidence in civil proceedings. These are:

- (i) Whether the proposed evidence will assist the court in its task;
- (ii) Whether the witness has the necessary knowledge and experience;
- (iii) Whether the witness is impartial in his or her presentation and assessment of evidence and;
- (iv) Whether there is a reliable body of knowledge or experience to underpin the expert’s evidence.”

¹ [2023] UKSC 48 at paragraph 36

² John Oliver Dryud v. Palmavon Webster AXAHCVP2021/0010 decided 27th April 2022 (unreported)

³ [2016] 1 WLR 597 at para 43.

- [11] In this case the main issue which arises is that of necessity. The Court of Appeal in **John Oliver Dryud v. Palmavon Jasmin Webster** has provided guidance on this issue. The court stated:

“[101] An important principle is that a judge considering an application to rely on expert evidence, must caution himself or herself against too rigid an interpretation of what expert evidence of fact is necessary to assist the court. In relation to that category of expert evidence, the test for its admissibility is not strict necessity “as otherwise, the court could be deprived of the benefit of a skilled witness who collates and presents to the court in an efficient manner the knowledge of others in his or her field of expertise.” Where skilled evidence of fact is likely to be of assistance to the efficient and proper determination of the issues in the case, the judge ought to admit it.”

- [12] Taking the foregoing into consideration, the proposed expert evidence will be examined to assess whether it is necessary to resolve the issues in these proceedings. The expert evidence is contained in two witness statements. One dated 25th June 2025 signed by Mr. Pouncey and another of the same date signed by Mr. McCabe. The form of this evidence will be the subject of comment later in this decision.

Mr. Michael A. Pouncey

- [13] The Court will first consider the application as it concerns Mr. Pouncey. It is accepted that he appears to have experience in matters relating to environmental consulting, corrective action, and above-ground storage tanks. That, however, is not the end of the inquiry. The question is not merely whether the proposed witness has expertise. The question is whether his expert evidence is reasonably required for the just resolution of the issues in this claim.

- [14] Having reviewed the proposed evidence, the Court is not satisfied that the threshold is met. The proposed report does not confine itself to neutral technical assistance on matters of tank dismantling or safety practices. It goes considerably further. It makes assertions about matters which are for the court to determine, including the

circumstances of the accident, responsibility for the worksite, the existence and breach of duties, and the cause of the Claimant's injuries.⁴

[15] In particular, the report appears to proceed from selected factual assumptions drawn from the Claimant's case and then expresses conclusions in a manner which risks usurping the function of the court. It does not merely explain technical standards or industry practice. It seeks, in substance, to tell the court where responsibility lies.

[16] Those issues can be resolved by the court based on the pleadings, witness statements, documents, medical evidence and submissions. The court does not require an expert to decide whether a worksite was unsafe in the broad manner proposed by the report. The application for permission to rely on Mr. Pouncey's evidence is dismissed.

Mr. Matthew C. McCabe

[17] The Court will now consider the application in relation to the forensic economist Mr. McCabe. His proposed evidence is directed to the calculation of alleged economic loss, including lost earnings, future loss of earnings, work life expectancy, life expectancy, future medical expenses, discounting and inflation.

[18] Again, the question is not whether Mr. McCabe has professional qualifications. The question is whether his evidence is reasonably required to resolve the proceedings justly. This does not appear to be the case at all. The assessment of damages for personal injury is a matter which courts routinely undertake. The court is well able to assess past loss of earnings, future loss, loss of earning capacity, medical expenses and other heads of loss by reference to the admissible evidence and the applicable legal principles. These principles are well-established and do not require elaboration here.⁵

⁴ See Part E of the Witness Statement of Mr. Pouncey filed 25th June 2025

⁵ See generally *Alphonso v. Ramnath* (1997) 56 WIR 183

[19] In this case, the proposed economic evidence depends heavily on assumptions concerning the claimant's medical condition, functional limitations, earning capacity, future employability, future care or treatment needs and life expectancy. Those assumptions must first be established by medical evidence. A forensic economist cannot supply those foundations.

[20] The Court must also consider proportionality. The introduction of forensic economic evidence at this stage of the proceedings would add cost and complexity. It may generate further questions, responsive evidence, and satellite disputes about assumptions. The Court is therefore not persuaded that such additional cost and complexity are justified in this case. The application for permission to rely on the evidence of Mr. McCabe is dismissed.

Procedural Irregularity

[21] Finally, the proposed expert evidence appears to have been placed before the court in a manner which treats them as evidence before permission has been granted. This is not the proper procedure as provided by **CPR 32.6**.⁶ Further, **CPR 32.7** requires that expert evidence should be given in the form of a written report and not as a witness statement

Conclusion

[22] The proposed evidence report does not satisfy the threshold under **Part 32**. Mr. Pouncey's proposed evidence trespasses into contested factual and legal issues which are for the court to determine. Mr. McCabe's proposed evidence is not reasonably required because the court can assess the Claimant's alleged economic loss on the basis of medical evidence and assisted by submissions from counsel. The Claimant's application is therefore dismissed in its entirety.

⁶ See *South Asia Energy Limited v Hycarbex-American Energy Inc.* SKBHCVAP2017/0016 decided 13th April 2018 at paragraph 27 (unreported)

[23] This application has delayed trial of this matter by over one year. This delay is unacceptable in the context of an incident which took place nearly ten years ago. Accordingly, the Court Office will be directed to list this matter for trial in the period September to December 2026. I trust that the parties will be in a position to proceed when the matter is listed for trial.

Order

[24] It is ordered as follows:

1. The Claimant's application for permission to rely on expert evidence from Mr. Michael A. Pouncey and Mr. Matthew C. McCabe is dismissed.
2. Costs of the application to the Defendants to be assessed if not agreed within twenty-one (21) days of this order.
3. The Court Office shall list this matter for trial in the term September to December 2026 with a duration of two (2) days.
4. The Claimant shall have carriage of this order.

Rene Williams
High Court Judge

By The Court

Registrar