

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO.: ANUHCV2015/0073

BETWEEN:

GAH-YIN WONG

Claimant

And

LICS LIMITED

Defendant

APPEARANCES:

Mr Cosbert Cumberbatch and Mr Anthony Greere for the Claimant
Ms E. Ann Henry QC and with her Ms Mandi Thomas for the Defendant

2020: October 26 & 27;
November 17 (written closing submissions);
2021: November 22;
Re-issued: December 6

JUDGMENT

Introduction/Background

[1] **PHILLIP, J:** This is a claim for personal injuries sustained by Mr Gah-Yin Wong (“the claimant”) while in the course of his employment with the company LICS Limited (“the defendant”) located on All Saints Road, St. John’s, Antigua. The claimant claim is in tort for negligence by the defendant’s as the claimant’s employers and or breach of its statutory duty towards the claimant under the Antigua and Barbuda Labour Code¹ (“the Labour Code”). The defendant denies that it was negligent or in breach of its statutory duties regarding the circumstances in which the claimant sustained the injuries and contends that the accident was wholly caused or contributed to by the claimant’s negligence.

¹ Cap. 27 of the Laws of Antigua and Barbuda

The Claimant's Case

- [2] The claimant gave evidence supporting his claim and called three other witnesses: his mother, Ms Kim Wong and two medical doctors, Dr Steve Christopher Richards and Dr Ian Walwyn. The claimant was employed by the defendant from March 2008 to 2nd May 2014 when the defendant terminated his employment without compensation for injuries he sustained on 28th October 2013, when there was an explosion at the defendant's oxygen filling Plant.
- [3] The claimant avers the defendant's operation involved dealing in liquid and gaseous oxygen, liquid and gaseous carbon dioxide, argon and refrigeration gases, acetylene and Helium, nitrous oxide, gaseous and gaseous granular chlorine and nitrogen. He was engaged in bottling and transporting them to various points throughout the State of Antigua and Barbuda. He alleges that an explosion occurred in his face when he removed a cylinder cap to refill it with oxygen, burning his face, hand, chest and eyes and temporarily blinding him. His face was completely discoloured; there was temporary unconsciousness.
- [4] The claimant, who was 27 years old, was rushed to Mount St. John's Medical Centre, where he remained for about two weeks in the Intensive Care Unit (ICU) and then on the general ward for a further two weeks. The claimant avers that he had to attend several specialist doctors in Antigua and Barbuda and overseas because of his injuries. When the claimant returned to work after the incident, he was again assigned to fill carbon dioxide tanks; he was on sick leave on several occasions and was later terminated (without compensation for his injuries) as unfit for further employment. This situation gave rise to the present claim.
- [5] The claimant contends the defendant's breach of statutory duty and negligence caused the explosion. The defendant failed to conduct its operation following standard safety precautions and, in particular, the Labour Code. The claimant pleaded a list of twelve alleged particulars of negligence and four alleged breaches of statutory obligations under the Labour Code. He also particularised his injuries and listed his medical and other expenses.

The Defendant's Case

- [6] In defence of the claim, the defendant called three witnesses: Mr Roger Lewis, the general manager of the defendant for over twenty years, Mr Rohit Dukhram, the assistant supervisor at the defendant for the past twenty years and before that was engaged in gas manufacturing for ten years in Guyana as a supervisor, and Mr Peter Williams, the defendant Plant Supervisor, employed with the defendant since April 1986. The defendant also intended to call Mr Arden Barnett, a court-appointed expert who was unavoidably absent, to testify at the trial. Still, the parties agreed that his attendance might be excused and relied on his report without the need to call him.
- [7] The defendant contends that it was not in breach of its common law duty of care to the claimant, neither was it in breach of any of the statutory duties alleged in the amended statement of claim or at all. It provided the claimant with all appropriate protective gears recommended for use when carrying out the functions for which it employed the claimant. The claimant's duties and functions did not expose him to any particular risk of injury to the eyes, and he was trained in all operational and safety procedures.
- [8] Further, the defendant contends that the explosion did not happen in the manner described by the claimant in his statement of case, that is, while he was "removing a cylinder cap to refill it with oxygen". The defendant contends that the explosion happened after the claimant had started the refilling process and not otherwise. In fact, the explosion occurred because of the presence in the cylinder at the start of the refilling process of combustible material that ignited by the heat generated by the process. Any injury, loss, or damages the claimant may have suffered by the explosion was wholly caused, or in the alternative and which is not admitted, substantially contributed to by the claimant's negligence. Thus the defendant is not liable to the claimant in damages.

Issues for Determination

- [9] The following are the issues arising for determination, as I see them:
- (1) Whether the defendant was negligent and breached its common law duty of care as the claimant's employer.
 - (2) Whether the defendant as the employer was in breach of any statutory duties imposed by Labour Code, as alleged by the claimant.

- (3) Whether the claimant caused or contributed to the explosion that injured him and the percentage of his contribution.
- (4) Whether in the circumstances the claimant is entitled to any damages and how much.

Issues 1: Common Law Duty as Employer

[10] As the claimant's employer, there is no contest that the defendant owed him a personal duty of care recognised at common law. What is an issue is whether the defendant breached this duty. The employer's common-law duty to an employee is to take reasonable care for his employee's safety by providing a competent workforce, adequate plant and equipment, a safe system of working including effective supervision, and a safe place of work. The test for an employer's common law liability as now applied in our courts is stated in the well-known case, **Stokes v Guest Keen and Nettleford (Bolt and Nuts) Ltd.**² by Swanwick, J. thus:

"... the overall test is still the conduct of the reasonable and prudent employer, taking positive thought for the safety of his workers in the light of what he knows or ought to know; where there is a recognised and general practice which has been followed for a substantial period in similar circumstances without mishap, he is entitled to follow it, unless in the light of common sense or newer knowledge it is clearly bad; but, where there is developing knowledge, he must keep reasonably abreast of it and not be too slow to apply it; and where he has in fact greater than average knowledge of the risks, he may be thereby obliged to take more than the average or standard precautions. He must weigh up the risk in terms of the likelihood of injury occurring and the potential consequences if it does; and he must balance against this the probable effectiveness of the precautions that can be taken to meet it and the expense and inconvenience they involve. If he is found to have fallen below the standard to be properly expected of a reasonable and prudent employer in these respects, he is negligent."

[11] The claimant's amended statement of claim alleges as his particulars of negligence that the defendant:

- (1) Failed to provide protective gear to cover the claimant's face, eyes, hands, and upper body while carrying out dangerous tasks.
- (2) Failed to provide the claimant with such information instructions and training as was adequate and appropriate to enable the claimant to know the risk that personal protective equipment would have prevented, especially the risk of blindness and serious injury resulting from the explosion.
- (3) Failed to set up and implement a safe system of work for the claimant.

² [1968] 1WLR 1776 at 1783

- (4) Failed to provide the claimant with a safe place of work.
- (5) Failed to give the claimant adequate instruction on how to pattern his work.
- (6) Failed to give the claimant adequate training.
- (7) Failed to give the claimant supervision.
- (8) Failed to provide the claimant with safe plant and equipment.
- (9) Failed to provide the claimant with safe fellow workers.
- (10) Failed in all the circumstances to take reasonable care for the safety of the claimant.
- (11) Exposed the claimant to an unnecessary risk of injury by not providing a safe working environment.
- (12) Failed to take proper or sufficient measures for the general safety and wellbeing of the claimant or to provide a safe system of work.

[12] The claimant's evidence on this issue contained in his witness summary and by way of amplification and comments is that he was trained on the job to be a Plant operator trainee. His duties involved filling various types of cylinders with different gases. He worked on my own for the past two (2) years as an oxygen Plant operator. When the explosion occurred, he was not wearing any protective equipment as he was never supplied with any by the defendant, nor was he instructed to wear any. He received the full blast of the explosion in my chest, face and hands. During my seven years working at the defendant, he was not aware of any inspection of the various cylinders or any training and safety programs designed to protect the employees in the event of explosions.

[13] The claimant did confirm that all workers who came to work at the Plant received relevant portions of the defendant's operating instructions manual. The other parts of the manual were in the Plant building in an accessible place. He commented, however, that it only refers to excerpts of the operation manual of the Plant itself as well as a reference book about different gases. The claimant confirmed that the Plant sometimes experiences slow periods, and during such times, Mr Williams would sometimes do what is called "dry runs". Instead of having workers sit idly, Mr Williams would take them through testing and filling cylinders while asking questions about each process stage. Still, he commented that it does not involve all the Plant operations – the Plant operation is on a somewhat limited basis. It operates as needed, but when working, it is a 24 hours operation. So, day to day operation of the facility would consist of filling cylinders as they come in. The claimant also commented on the evidence of Mr Dukhram that the procedure for filling oxygen cylinders is

fairly simple, and an average person would understand with little to a modest amount of training. He said filling cylinders is not a complicated process – it is quite similar to filling tyres. The operation of the Plant is more complicated.

[14] In cross-examination, the claimant admitted that the defendant's Plant operations are the manufacturing of gases and receiving training at the defendant to:

- (1) Conduct a visual inspection of the cylinders, which he would do before commencing to fill the cylinders.
- (2) Clean the cylinder valve and the body of the cylinder because the dirty cylinder posed safety issues if attempting to fill it. The fateful cylinder's valve did appear to be oily and dirty.
- (3) Vent the cylinder by opening it very slowly to allow the contents to escape, allowing you to observe any odour while venting and detect any contaminants that will stop him from filling it with gas.

He also acknowledged being provided with gloves and, on my initiative, got steel-toe boots.

[15] The Hon. Mr Justice of Appeal Michael Gordon, QC in **Joseph Gaylord v Constance Conover (Formerly Gaylord)**³ reminded us that: "*The old, trite, true statement that he who asserts must prove still rules in our courts.*" Thus, the burden of proving the defendant's negligence regarding its common law duty of care rests with the claimant. He must prove on a balance of probability the alleged particulars of negligence as pleaded.

[16] The claimant has not put before the court evidence upon which I may be satisfied the defendant failed as alleged in the particulars of negligence. There is no evidence of the adequate or appropriate standard that the defendant was reasonably required to meet and what obtained to determine that there was a failure or breach to meet the requisite standard. There is evidence, which the claimant confirms, that he was trained on the various aspects of the operation, particularly the Inspection, cleaning, venting and filling of the cylinders, which he was doing on his own for at least two years before the accident.

³ Grenada Civil Appeal No.11 of 2005 (delivered 22nd May 2006)

- [17] Further, the operating practice at the defendant's Plant of trans filling the cylinders was ongoing for many years. The claimant knew of this operational practice and engaged in it for at least two years without any mishap. Indeed, Mr Lewis' evidence is: he was quite taken aback by the incident occurring that day; since the inception of the defendant, there has never been an explosion or any accident similar to that which involved the claimant. Neither has there been any such incident after the one involving the claimant. Similarly, Mr Dukhram indicates that he will not say that the operations at a Plant similar to the defendant are inherently dangerous. Nor is it known that explosions occur in Plants like the defendant – this incident with the claimant is his first experience in his over thirty-seven years in the gas industry.
- [18] There is no evidence before me to show the claimant or anyone for that matter had any knowledge or reasonable foresight that any accident might occur. Thus in the absence of specific evidence of negligence and the history of years of safe operation of filling the cylinders without any complaint or incident, the claimant has failed to make out his case for common law negligence.

Issue 2: Statutory Duties Imposed by the Labour Code

- [19] Turning now to the defendant's statutory duty under the Labour Code, it is worthy of note that the basis for proving liability for breach of the common law duty is different from that required where a breach of statutory duty is alleged. In **McGovern v British Steel Corporation**⁴ Ralph Gibson, LJ. helpfully summarised the distinction, which Ellis, J. quoted with approval in **Cheryl Malone v AMS Financial Services Limited**,⁵ thus:

“At common law the question whether the defendant was negligent in doing what he did or in failing to do what it is alleged he ought to have done is to be decided by reference to whether a reasonable man, being under a duty of care, would have foreseen the risk of injury to the plaintiff from the action or inaction alleged. Where the statute imposes an absolute obligation to do, or not to do, the relevant act, then the question of whether the defendant should reasonably have foreseen the risk of injury is, in my opinion, precluded both as to the existence of the duty and as to remoteness. The question of foreseeability may, however, be relevant to proof of breach if the terms of the statute or regulation so provide: thus the question whether a part of the machinery is dangerous for the purposes of s.14 of the Factories Act 1937 (1961) is to be decided by foreseeability or risk of injury: see *Close v Steel Company of Wales Ltd* (1962) AC 367; *F E Callow (Engineers) Ltd v Johnson* (1971) AC 335.”

⁴ [1986] IRLR 411

⁵ BVIHCV2013/0241 (delivered 13th May 2020)

[20] The statutory obligations under the Labour Code that the defendant allegedly breached follows:

“D 13. (1) It shall be the responsibility of the operator of any workplace to ensure that –

(a) ...

(b) Suitable goggles or protective screens shall be provided to protect the eyes of any persons employed in a process involving a special risk of injury to the eyes;

(c) Where a work process involves a reasonable possibility of injury to other parts of an employee’s body, suitable protective equipment shall be furnished;

(d) ...

(e) Where persons are employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances shall be provided and maintained;

(f) Where a process involves heat or steam, facilities adequate to protect workers therefrom shall be provided and maintained”.

[21] Accordingly, what the claimant must show is that the Labour Code regulated the action which is the cause of the damage or injuries; that he is within the category of persons the Labour Code intended to protect; and the damage or injury suffered was of a kind that the Labour Code intended to protect. In short, he must show that he is within the ambit of the Labour Code.

[22] The task in which the claimant was engaged when the incident happened was the trans-filling of an oxygen cylinder, and this is the work process with which the court is concerned. Mr Dukhiram summarised this process in his evidence thus: The procedure for filling oxygen cylinders is fairly simple. An average person would understand with little to a modest amount of training. Cylinders are to be tested manually by the person operating the shift before being filled.

[23] The procedure involves a pressure test, as well as visual and odour inspections. The cylinders for filling are connected to a manifold. There must be at least two cylinders attached to the manifold at all times when filling the cylinders. That is because a single valve on the manifold carries what is known as two pigtails or hoses connected to the cylinders’ valve. A pigtail cannot be left hanging while filling a cylinder from a valve. Another cylinder with the valve closed would be connected to the pigtail, not in use, acting as a dummy. The oxygen source is a storage tank outside the building where the manifolds are located. The processing of filling cylinders with oxygen is this. After testing the cylinder to ensure it meets the standard for filling, the cylinder is connected by its valve to the manifold. The person filling the cylinder would then go to the storage tank, turn on the oxygen supply, and return to the manifold. At the manifold is a gauge, which indicates when the cylinder or

cylinders are full. Then the valve on the manifold is turned off, and then the supply from the storage tank is turned off.

[24] It appears that the process for trans-filling oxygen cylinders summarised by Mr Dukhram to which there was no challenge does not involve exposure to wet or to any injurious or offensive substance and or heat or steam. Therefore, the claimant failed to establish that sections D13 (1) (e) and (f) obligations of the Labour Code are applicable or regulate the work process in which he was engaged when he was injured. There is no evidence of this effect.

[25] On the other hand, from the evidence, especially Mr Dukhram and Mr Williams', I find some inherent risks to one's eyes and body while working with pressurised gas. Indeed, they both acknowledged that escaping pressurised gas can cause injury to the face, hand and body; it can blow you away and even knock you down, although Mr Dukhram was not prepared to say that it would cause burning. He said if oxygen is compressed with oil or grease, you would have combustion – it would cause a fire, and it may cause serious injuries depending on the pressure. Mr Williams agreed in cross-examination that if gas escapes at high pressure, protective gear will reduce the risk of injuries. Still, the defendant's witness did not accept that the industry requires goggles or is inherently dangerous. They maintain the standard protective equipment of the industry were gloves to protect the hands from sharp edges on the cylinders and generally for use when dealing with cylinders and steel-toe boots to protect the feet from any cylinder that may fall onto the feet while working, which the claimant had.

[26] Sections D13 (1) (b) and (c) of the Labour Code impose an absolute obligation on the employer to provide suitable goggles or protective screens to protect the eyes where there is a special risk of injuries to the eye and protective equipment to protect the other parts of the body, respectively. This involves an objective and impersonal test that is not dependent on the worker's skills, training, diligence, or otherwise but instead on the risk of injury to the worker. Indeed, we are reminded by Lord Cooper in ***Mitchell v North British Rubber Co.***⁶, in considering whether a machine is dangerous and requires to be fenced under the Factories Act that it is dangerous if:

“... in the ordinary course of human affairs, danger may be reasonably be anticipated from its use unfenced, not only from the prudent, alert and skilled operator intent on his task, but

⁶ [1945] SC (J) 69 at 73

also to the careless or inattentive worker whose inadvertent and indolent conduct may expose him to the risk of injury or death from the unguarded part.” [underline added]

[27] The question begs, therefore, what is meant by ‘special risk’. The Concise Oxford English Dictionary⁷ defines ‘special’, an adjective, as “*better, greater, or otherwise different from what is usual.*” Accordingly, in its natural and ordinary meaning, ‘special risk of injuries to the eye’ must mean greater risk, different from the usual in the ordinary course of human affairs, of injury to the eyes. The issue is whether it is possible for pressurised gas escaping or the compressing of oxygen in a contaminated oily or greasy cylinder leading to combustion and fire when trans-filling an oxygen cylinder. In my view, it is undeniably possible. The evidence of Mr Barnett confirmed this when he concluded that opening the cylinder valve too quickly can generate tremendous heat due to adiabatic compression. Reference to European Industrial Gas Association (EIGA) Safety News Letter SAG NL/87/09/E Typical Oxygen Filling Incidents does state, “Incorrect activities and related human errors can cause violent pressure shock and high gas velocity which could lead to ignition caused by friction, turbulence and/or adiabatic compression. The probability of ignition is even higher in the presence of particles and/or grease.”

[28] I am satisfied there was a greater risk, different from the usual in the ordinary course of human affairs, of injury to the eyes or other parts of the body for a person engaged in the trans-filling of oxygen as the claimant was engaged. I agree with the submission of the claimant’s counsel that the Labour Code was enacted to protect employees employed in occupations such as the one in which the claimant was engaged. The defendant failed to comply with the statutory stipulation of sections D13 (1) (b) and (c) of the Labour Code. At the time of the incident, the claimant was not wearing protective gear of any kind, neither gloves nor goggles, chest protection, or hand or body protection. The defendant had not provided any protective equipment except gloves.

Issue 3: Whether the Claimant caused or contributed to the explosion that injured him and the percentage of his contribution

[29] The claimant’s position is that the explosion occurred when he opened the cylinder. His witness summary states: he opened the cylinder, and a blast of pressure hit him. He staggered back and felt his shirt torn off him. He managed to close the cylinder after the pressure blast, and shortly

⁷ 10th ed. Revised

after, he could not see. His vision was impaired. At the trial, the claimant clarified that when he said a blast of pressure hit him, he recalled being hit with a force and knocked back. He said he was double-checking the connection and inspecting the manifold to ensure that everything was in place and not opened except for the cylinder, and he felt the force of pressure, and he was pushed back. Instinctively, he said he closed his eyes when he felt the force, but he was already exposed to the cylinder's contents. The claimant, in cross-examination, acknowledged that the fateful cylinder valve appeared to be oily and dirty. He said he did not go into details in the statement, but the reference to carrying all checks necessary was concerning the fateful oxygen cylinder and not carbon dioxide as recorded. He said he cleaned the valve, opened it slowly to check it for pressure, and recalls the pressure knocking him over. There is no evidence or suggestion from the claimant as to how the combustion happened.

[30] On the other hand, the defendant contends that the explosion did not happen in the manner described by the claimant; instead, it happened after the claimant had started the refilling process and not otherwise. The defendant contends that the said accident was wholly caused or contributed to by the claimant's negligence. His failure to adhere to the cylinder refilling procedures: to conduct the necessary checks before he attempted to refill the cylinder to ensure that no combustible material was in the cylinder; and to properly vent and or vacuum and odour test the cylinder before trying to fill the cylinder or to so at all. The defendant maintains the explosion occurred due to combustible material in the cylinder at the start of the refilling process ignited by the heat generated by the process.

[31] None of the defendant's witnesses was present at the site of the explosion. Only the claimant was present. However, Mr Dukhram indicates that he saw cylinders lying on the ground upon going into the oxygen Plant. He recalled a small cylinder connected to one of the manifolds and dangling from one of the pigtails. He cannot remember if there were other cylinders attached to the said manifold, but it was clear that there was some explosion in the Plant.

[32] Similarly, Mr Williams said he was in the office when I heard a loud explosion. He immediately ran in the direction of the gas filling area of the Plant. On his way down, there was black soot coming out the Plant's windows and doors. He kept calling out to the claimant, who was inside, until the claimant answered. He wanted to go in, but he could not see. The claimant answered by saying,

“I’m coming, I’m coming. I wasn’t filling any cylinder”, and he kept repeating this. Mr Williams said when the soot was gone, he went inside where the claimant was working. He saw cylinders lying on the floor. The fateful cylinder brought in earlier by the customer hung from a pigtail or hose on the manifold as if being filled. It was not damaged.

[33] Further, the defendant relies on the report of Mr Barnett to support its contention. Mr Barnett visited the defendant’s Plant on 30th December 2013 to investigate and determine the factors and events that would have led to an explosion at the oxygen filling Plant on 28th October 2013, resulting in injury to the claimant. He met with Mr Williams and Mr Dukhram, who had submitted statements of the incident that he reviewed before proceeding onto the Plant facility. It is noteworthy that there is no indication that he spoke with or received any statement from the claimant.

[34] Mr Barnett determined that according to DOT (Department of Transportation) regulations specified in The Code of Federal Regulations 49 CFR: 180.209 (Table 1), the fateful cylinder, serial # 000773, was required to be requalified (Hydro-tested) after every five years of service which was past its required service at the time in question. No attempt should have been made to refill it. The cylinder’s internal threads were completely destroyed, and the cylinder material, including the inner walls, had an ash grey discolouration. The damage indicates that the cylinder experienced a combustion reaction resulting in tremendous heat that destroyed the material of the cylinder. Also, the internal discolouration on the cylinder strongly suggests the combustion reaction took place within the cylinder walls. There is no indication of damage or discolouration on the external surface of the cylinder.

[35] Further, the valve remains recovered from the said cylinder show that the entire valve body, the area housing the valve seat and the valve safety, was destroyed. This damage to the valve internals indicates direct exposure of this area to the combustion reaction, which could have only occurred if the valve was in the open position. The base of the valve, which is the threaded area that attaches to the cylinder, is wholly destroyed. In contrast, the valve nozzle (the threaded part used to connect the cylinder to fill) and the valve hand-wheel are intact, confirming that the explosion occurred from within the cylinder. This means that a possible combustible mixture within the cylinder became ignited by a heat source to produce the explosion, which can indicate that the cylinder refilling procedures were not properly adhered to because if any residual contents were discovered, the

cylinder should have been vented and or vacuumed before filling. However, the combustion residue contained within the cylinder could not be analysed during the investigation. Thus, it could not be determined if the cylinder was contaminated with any foreign substance.

[36] Mr Barnett explained for the combustion to occur within the cylinder, there must be an ignition source. This heat source could have resulted from adiabatic compression of the contents of the cylinder upon filling. Compressing the cylinder's contents by filling generates heat, and an explosion will occur once this temperature exceeds the auto-ignition temperature of any combustible mixture or material inside the cylinder. Opening the cylinder valve too quickly can generate tremendous heat due to adiabatic compression. Reference to European Industrial Gas Association (EIGA) Safety News Letter SAG NL/87/09/E Typical Oxygen Filling Incidents does state, "Incorrect activities and related human errors can cause violent pressure shock and high gas velocity which could lead to ignition caused by friction, turbulence and/or adiabatic compression. The probability of ignition is even higher in the presence of particles and/or grease." Also, the valve seat material, usually made from Teflon, may have been the fuel if the temperature in the cylinder reaches its auto-ignition temperature

[37] There is no definitive evidence as to what exactly caused the explosion. However, the preponderance of the evidence both from the claimant and the defendant, especially Mr Barnett, suggests that the claimant was indeed trans filling the cylinder when the blast occurred, and I so find. Still, there is no direct evidence supporting the defendant's allegation that the accident was wholly caused or contributed to by the claimant's negligence. However, the court may draw certain inferences from the evidence before it that the explosion should not have occurred but for the claimant's negligence. This is where the thing causing the damage was under the sole control of the claimant, and the accident was such that it would not ordinarily have happened without the claimant's negligence. In **Bennett v Chemical Construction (GB) Ltd**⁸, Davies LJ said regarding the court's reliance on the doctrine of *res ipsa loquitur* that:

"In my view it is not necessary for that doctrine to be pleaded. If the accident is proved to have happened in such a way that prima facie it could not have happened without negligence on the part of the defendants, then it is for the defendants to explain and show how the accident could have happened without negligence. As I have said, they made no attempt to

⁸ [1971] 3 ALLER 822

do that in this case. In my judgment this is really a classic case of *res ipsa loquitur*. Here one has the panel being moved by the defendants' men, and it falls. It should not have fallen.

[38] The claimant was in sole control of the refilling process before the explosion, and he has not explained what would have caused the explosion. He has carried out the oxygen trans filling process before for two to three years without any incident. Therefore, having considered all of the evidence, it is more probably that the claimant would have done or not done something in the trans filling process that caused the explosion. This negligence would have contributed to the cause of the injuries he sustained.

[39] There is no dispute that the defendant did not provide the claimant with suitable goggles or protective screens for the eyes and protective equipment for the other parts of the body. Equally true is that the claimant suffered injuries while working at the defendant's oxygen from an explosion. I did find that the claimant's negligence caused the explosion, but this does not absolve the defendant of total liability to the claimant's for the injuries sustained. They were obligated to provide the claimant with goggles and other safety equipment, which they did not do. As mentioned before, the Labour Code intends to protect employees employed in occupations as engaged by the claimant, whether they are negligent or otherwise.

[40] There is no credible evidence of the level of protection that suitable goggles or protective screens for the eyes and protective equipment for the other parts of the body would have provided to the claimant from the blast. Such evidence would have assisted the court in determining the extent of each party's liabilities for the claimant's injuries. Still, having breached its statutory duties, the defendant can not be excused from primary responsibility for the claimant's injuries suffered. I am satisfied that the appropriate protective gears would have afforded the claimant a significant level of protection, so I hold the defendant as seventy-five per cent responsible for the claimant's injuries. Accordingly, the claimant is twenty-five per cent contributorily negligent.

Issue 4: Whether in the circumstances the claimant is entitled to any damages and how much

[41] It is now well settled that an employee injured due to an employer breach of its statutory duty will recover damages to so as far as possible compensate the employee for the injuries sustained.

Cornilliac v St. Louis⁹ laid down the now well-established matters for consideration in assessing

⁹ (1965) 7 WIR 491

general damages thus: the nature and extent of the injuries suffered, the nature and gravity of the resultant physical disability, the pain and suffering endured, the loss of amenities suffered, and the extent to which financial prospects have been affected.

[42] In his amended statement of claim, the claimant has pleaded particulars of his injuries and claims general damages, special damages (which was particularised), interest on special damages, costs and further or other relief.

[43] On the other hand, by its amended defence, the defendant denies the alleged injury, loss, and damage and puts the claimant to strict proof. However, the defendant has not sought to challenge the claimant's evidence on the injuries, loss or damage he suffered. The only challenge by the defendant in this regard was an objection to the introduction by the claimant into evidence of receipts that were not part of the list of standard disclosure nor on the list of agreed or not agreed to documents and were not mentioned in the claimant's witness summary. I upheld the objection under CPR 28.13 (1), so most unfortunately for the claimant, there is no evidence before me proving his special damages.

Special Damages

[44] Special damages must be pleaded with particulars and proven to recover. In *Ilkiw v Samuels*¹⁰, Lord Diplock puts it succinctly:

“Special damages in the sense of a monetary loss which the plaintiff has sustained up to the date of trial must be pleaded and particularise. It is plain law that one can recover in an action only special damages which has been pleaded and of course proved.”

Similarly, in *Bonham-Carter v Hyde Park Hotel*¹¹ Lord Chief Justice Goddard stated:

“... plaintiffs must understand that if they bring actions for damages it is for them to prove their damages; it is not enough to write down particulars, and so to speak, throw them at the head of the court saying ‘This is what I have lost, I ask you to give me these damages.’ They have to prove it.”

¹⁰ [1963] 1 W.L.R. 991 at 1006.

¹¹ (1948), 64 T.L.R. 177 at 178.

The court is mindful of the possibility of a nominal award for special damages in the absence of specific evidence in proof of same,¹² but there must at least be a basis for such an award. The claimant offered no evidence or assistance to decide on the special damages claimed, even for a nominal award.

General Damages

- [45] The claimant's evidence of his injuries is that an explosion occurred in his face when he removed a cylinder cap to refill it with oxygen, burning his face, hand, chest and eyes and temporarily blinding him. He said the blast tore off his shirt and knocked him back. His vision was impaired. He was rushed to Mount St. John's Medical Centre in intensive care and had a coma induced for over a week. He remained in intensive care for about two weeks and then transferred to Medical-Surgical Ward for another two weeks. His face was wholly discoloured – blackened, and his vision was severely affected. He attended several specialist ophthalmologists, namely Dr Walwyn in Antigua and Dr Nigel Barker in Barbados. The incident left him in great pain and unable to go out into the light because of the damage to his eyes. He had to wear prescribed dark glasses for some time due to the tenderness of his eyes. He said he also saw Dr Winter Crookendale, a reconstructive surgeon, and he travelled to the United States for further medical treatment.
- [46] The claimant's photographs in an injured condition were admitted into evidence, which the claimant submits will give the court a clear picture of the trauma and pain the claimant must have endured. The images are indeed quite graphic, but without more does not assist the court in assessing the nature of the injuries and the pain and suffering endured by the claimant. In this regard, I much prefer to rely on the evidence of the medical experts.
- [47] The claimant called two medical doctors as witnesses. On 28th October 2013 at Mount St. John's Medical Centre, Dr Richards examined the claimant, who denied respiratory symptoms but had 19% partial-thickness thermal burns to his head, face, neck, torso and upper extremities, and bilateral thermal keratopathy. The detailed assessment states:
- (1) General - a young man in severe painful distress, pale but not cyanosed.
 - (2) Head - 4.5% partial-thickness burns to the face with singeing of the frontal scalp hair, eyebrows and nasal hair.

¹² Brentlie Charles aka Brentley Charles v Marcus Corridon, Claim No. SVGHCV2002/0506 at para. 27

- (3) Eyes - bilateral thermal keratopathy (see ophthalmologists report).
- (4) Neck - Partial-thickness burns to most of the anterior aspect of the neck.
- (5) Chest - 6% partial-thickness burns to the proximal half of the anterior chest wall
- (6) Upper limbs - 4% partial-thickness burns to the right upper limb, and 4.5% partial-thickness burns to the left upper limb.

His prognosis is that the claimant should completely recover from his burns injuries with an acceptable cosmetic outcome. On 5th May 2014, Dr Richards confirmed that the claimant remains incapacitated by pain in the vicinity of his burns wounds, which hampered him in executing his current duties at work. He suggested the claimant may be more amenable to less strenuous tasks.

[48] Dr Walwyn first saw the claimant at the Male Surgical Ward of Mount St. S John's Medical Centre. The claimant sustained first and second-degree burns over his body and had facial and periorbital burns with bilateral thermal keratopathy, denuding the epithelium for the conjunctiva and cornea and singeing the lashes. Dr Walwyn noted corneal stromal oedema in both eyes and bilateral traumatic iritis. There were no focal corneal infiltrates or opacities but stromal haze of both corneas. Dilated funduscopy was within normal limits. He acknowledged that high astigmatism might cause blurry vision but opined that the claimant's past ocular history of being prescribed astigmatism was non-contributory.

[49] Further, the claimant fell in the bath on the planned discharge date, sustaining a laceration to the left brow and the left lower lid's subciliary region. The surgical team sutured him, and he was discharged a week later, on 22nd November 2013. He saw the claimant for follow up at his private ophthalmic practice regularly. On the last examination on the 21st December 2013, the claimant's best-corrected vision was 20/40 and 20/100 in the right and left eyes, respectively. The pupils were 3mm and equally reactive. The intraocular pressure was 13 and 14mmHg in the right and left eyes, respectively. Slit-lamp examination revealed normal ocular adnexia except for some patchy skin depigmentation/hyperpigmentation. The epithelium was intact for both eyes; however, there was some persistent mid-stromal corneal haze with the left worst than right. The anterior chambers were quiet. Fundoscopy revealed clear crystalline lenses, and the posterior segment was unremarkable, as was the extraocular motility.

- [50] Dr Walwyn assessed the claimant as having bilateral thermal keratopathy, which is slowly improving on conservative management. His prognosis for his vision improvement is good but depends on further clearing of the stromal haze and will need further follow up. He believed the claimant would benefit from a consultation with Dr Nigel Barker, a cornea and external disease specialist in Barbados, for assessment and possible further management. Dr Walwyn concluded that the claimant has done well on conservative topical treatment but has persistent corneal scarring, which causes decreased vision compared to his premorbid state. This decreased vision is associated with glare and chronic mild ocular irritation.
- [51] The unchallenged evidence is the claimant sustained burns to 19% of his total body area - just shy of being described as severe burns in an adult. Indeed, Dr Richards indicated the more significant concern was that the burns were facial burns with the risk of thermal burns to the patient's airway. There were facial and periorbital burns with bilateral thermal keratopathy. In my view, by any evaluation, the injuries sustained by the claimant were severe. Naturally, too, the claimant would have no doubt been in severe painful distress, as Dr Richards describe. The only evidence of a possible resultant physical disability is that keloids developed on many parts of the body and persistent corneal scarring, which causes decreased vision compared to his premorbid state. There was no elaboration of these matters, but I am mindful that I must consider these facts in the overall award to the claimant. Similarly, there is no evidence before me concerning the effect on the financial prospect of the claimant, and so there can be no award under the head of damages.
- [52] On the head of damages of loss of amenities, the claimant's evidence is that keloids developed on many parts of the body, and the appearance of keloids affected him psychologically. He does not enjoy activities and socialising as he used to before the incident, as attention is invariably drawn to his skin condition resulting from the burns. The claimant submits that this situation is inevitable, more so for a young man. The defendant raised and the claimant confirmed he married on 14th February 2014 within months of the accident; he migrated to the United States towards the end of 2014 and has since fathered a child. The suggestion seems to be that the claimant's psychological and social life was not as severely affected as he makes it out to be.
- [53] I accept, however, that there will inevitably be some loss of amenities by the claimant. Still, there is no evidence of the areas or extent of the keloids or how he was affected social and psychological.

I have seen the claimant at the trial (albeit via zoom), and the area of his body visible to me appears normal. I hold that there is no basis for a substantial award for loss of amenities in the circumstances.

[54] The claimant urged an award in the region of \$175,000.00 for pain and suffering, \$60,000.00 for loss of amenities, and six per cent interest (6%) on general damages from service of the claim form on 9th March 2015. He submitted the cases¹³ **RE CT, Weinberger v Jacobs** and **M (a child) v London and Quadrant Housing Trust** to support his claim of damages for pain. He argued that these cases involving burns adjudicated between 1994 and 2000 show that damages were awarded or agreed in the region of £20,000.00 to £25,600.00, and the damages awarded must be revised. However, these cases are not helpful because the victims were infants 26 and 16 months and a child six years old, which is a significant distinguishing feature as the claimant was 27 years old at the time of the incident. The claimant also relied on the case **Oscar Frederick v Liat (1974) Ltd**,¹⁴ which concerned injuries - compression of sciatic nerve roots at L4-L5; multiple disc herniation in cervical spine C4/C5, CC3/4 and C5/C6; and surgery at the level of L4/L5 and L5/S1. These injuries are significantly different from the claimant's injuries, so the case is of no assistance.

[55] The often-cited dictum of Lord Hope of Craighead in **Wells v Wells**¹⁵ reminds us that the assessment of general damages in personal injury cases is not a pure science. The court seeks to provide reasonable compensation for the pain and suffering and loss of amenities. He stated:

“The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the Court's basic estimate of the plaintiff's damage”.

[56] In keeping with this principle, in respect of the burns, I have considered the case of **Rhea Fletcher v Nicholina James**.¹⁶ Ms Fletcher was 31 years old when the defendant threw hot water on her. She suffered first and second degree burns to the breasts, second degree burns to the right of the abdomen, second-degree burns of both arms, first-degree burns to upper thighs, scarring and hypopigmentation of the skin. Ms Fletcher also suffered pigmentary changes to the left arm and left

¹³ KEMP & KEMP The Quantum of Damages, Volume 4 Quantum Summaries JSB Guidelines, paras 3-004 to 3-006

¹⁴ Claim ANUHCv 2007/0391 (delivered 31st May 2010)

¹⁵ [1998] 3 All ER 481

¹⁶ CLAIM NO:SLUHCv2018/0558 (delivered 17th February 2020)

thigh, darkening and thickening of the right flank and right thigh skin, which were noted to have become flatter but still very dark. Of note, this blistered and became infected at the time of the burning. Post-inflammatory hyperpigmentation distributed to the left areola, right medial breast 3-4.00 region, left distal posterior upper arm, perumbilical skin, and right anterior proximal thigh.

[57] Ms Fletcher prognosis in light of her injuries: lighter or darker discolouration than the surrounding skin, which could take months to years to normalise, that it is important that there is sun avoidance and sun protection, that there can be drying to the skin, that cosmetic glycolic acid peels may prove necessary. Ms Fletcher said she was scarred physically and mentally by the attack. She cries and feels emotional having to revisit the malicious assault/incident. She was continuously in excruciating pain in the area of her thighs, and there was a gland near my vagina, so walking was challenging for the first four weeks. The court considered that Ms Fletcher had suffered first and second degree burns to several parts of her body. The injuries affected her pigmentation, and her recovery period was several months. Also, the injuries were a direct result of the senseless actions of the defendant. The court awarded Ms Fletcher \$35,000.00 in general damages for pain and suffering and loss of amenities.

[58] The learned Master (Ag) in **Fletcher** cited and considered **Levenson Sandy v Antigua Public Authority and Another**,¹⁷ where Mr Sandy suffered second-degree burns to both sides of his face, upper central chest, right forearm and hand. The skin had been burned off those areas, which caused some degree of scarring, despite extensive plastic surgery. Mr Sandy had reconstructive surgery. The court awarded \$44,145.15 for special damages and \$65,000.00 general damages. And **Lloyd v Poon Tips Ltd**,¹⁸ where there were burns over 20% of Lloyd's body, the most severe burns were on the legs and feet. The award was \$76,757.00, which is equivalent to \$30,693.82 (adjusted to November 2002).

[59] In **Michael Smith v Delta Petroleum (Caribbean) Ltd**,¹⁹ Mr Smith was 47 years old at the judgement. On 3rd April 2006, while pumping gasoline from the defendant's fuel tanker for a customer, the truck exploded, and he suffered grave injuries:

(1) Partial-thickness second-degree skin burns to the face and both forearms.

¹⁷ Claim No. ANUHCV1998/0156 (delivered 29th July 2003)

¹⁸ 19 T.T.J. (IV) 163

¹⁹ Claim No. BVIHCV2008/0035 (delivered 31st August 2012)

- (2) L5-S1 disc tear without herniation.
- (3) Aggravation and acceleration of previously asymptomatic l4-5 degenerative disc disease.
- (4) Subluxation of the right acromio clavicular joint.
- (5) Smoke-inhalation injury.
- (6) Post-traumatic stress disorder.
- (7) Depression.

[60] After his discharge from the hospital, Mr Smith continued receiving treatment for his burns and the psychological effects of the accident. He also received and continues to receive treatment for back pain at the University of Miami Hospital in the United States of America. Mr Smith claims that he will require a more permanent and invasive solution to manage his back pain. He presented in court with a battery-operated ANS device attached to his waist that alleviated the pain with varying degrees of tolerance initiated with a dial. The pain in his back caused him difficulty sleeping and sitting. He cannot work. The skin on both his face and arms has not fully healed, which causes him great embarrassment and distress, and he continues to suffer from post-traumatic stress syndrome, often experiencing flashbacks. He cannot assist his wife with household chores or contribute equally as before and is now forced to leave the brunt of the work to his wife, a nurse who works shifts. He also experienced a loss of libido, which has no doubt affected his marital relationship. He also spoke of his inability to enjoy pastimes that he engaged in before the accident.

[61] The medical evidence confirmed Mr Smith has post-traumatic stress disorder and chronic pain from burns and lower back injuries. The doctor found that Mr Smith has significant functional and social impairments and requires long-term medication and continuous psychological review. His psychiatric injury will impair his ability to work and needs assessment for his readiness for work. His day-to-day existence is severely affected by his injuries as he suffers from depressed moods and experiences flashbacks brought on by certain stimuli. He has suffered significant psychological impairment and needs continued therapy for the foreseeable future, including bi-weekly sessions to help address self-esteem and monitor his mood and suicidal risk. He will need to remain on medication mid to long term as there is no cure for his illnesses. In her opinion, there is no prospect of a full recovery for Mr Smith. The court found that considering the nature of the accident giving rise to the injuries, the sum of \$75,000.00 as general damages would be fair and reasonable compensation for the nature and extent of his injuries and resulting disabilities had Delta been

wholly responsible. In addition, the court considered the sum of \$20,000.00 for loss of amenities as Mr Smith had suffered and will continue to suffer long term serious loss of amenities.

[62] Similarly, concerning the claimant's injury to the eyes, I considered these cases: In ***Jaimason Samuel v Lincoln Prescott***,²⁰ the plaintiff, a 15 years old pupil at the Grammar School at the time of the incident in 1995, was accidentally shot in the left eye by the defendant with an air gun. There was a giant retinal tear on the inside of the eye. The plaintiff can now count fingers with the injured eye at one metre. He has graduated from the Grammar School and enrolled at the Pratt Institute in Brooklyn, New York, studying Architectural Design and Building Construction. He has enjoyed technical drawing since his school days. His original ambition had been to become an airline pilot, but his injury had precluded that. Architectural Design was a second or fall-back choice for a career. As a result of the loss of sight in his eye, the plaintiff no longer participates in body contact sports such as football, which he used to enjoy. The steady focusing on fine lines in his study of architecture causes his eyes to water with tears and pain. He will have to endure this discomfort all his life. At the accident, he suffered excruciating pain, particularly felt when his eye was open. The left eye tended to open with the right one, so he had to keep both eyes shut for periods. He has a licence to drive now but finds that to see properly, he must drive with his head turned to an angle. This is an attempt to let his right eye see both forwards and towards the left as he has lost bi-focal vision, and depth perception would be difficult. On the other hand, the injury has healed nicely from an aesthetic point of view. Looking at the plaintiff, you would hardly know that something was wrong with his left eye. There is no scarring or discolouration visible.

[63] The court considered that the plaintiff is maimed for life, which has always been a serious thing. This maiming will adversely affect him in many ways, some apparent now and others not presently obvious. He will have to be cautious throughout his life. He will be less able to defend himself if under physical threat. He was put to a certain amount of pain and suffering through the carelessness of the defendant. For the balance of his life, the plaintiff will suffer inconvenience and discomfort. There is no way to accurately or objectively value "pain and suffering" or "loss of amenities," so the court must do the best it can in the circumstances as they appear in the evidence, and an award of EC\$45,000.00 for pain and suffering and loss of amenities seems appropriate.

²⁰ St. Vincent and the Grenadines High Court Civil Suit No.111 of 1996 (delivered 22nd February 2000)

[64] In **Calvin Regis v E. S. Dolland & Association Ltd.**,²¹ Mr Regis was 20 years old at the time of the accident in which he suffered a permanent injury to his right eye while working. On 3rd June 2011, whilst using a grinder, the metallic blade of diameter about 3.5 to 4.0 inches broke off and caused an ocular and upper facial injury to the claimant's right eye. On examination, his visual activity was the right eye - no light perception, and left eye 20/20 vision. There was a penetrating wound to his right eye. He had surgery under a general anaesthetic on the right eye, and as far as visual activity was concerned, there was no light perception in the right eye. Dr McGuire opined that it was unlikely the claimant would see out of his right eye again and concluded that the claimant was legally blind in his right eye. He also confirmed the claimant had adhesions of the conjunctiva of his right eye that was excised. Mr Regis spent seven days in hospital after the procedure.

[65] The court found little direct evidence under the head loss of amenities but opined it is right to determine damages in the objective loss of amenities. Hence, loss of enjoyment of life and the hampering effects of the injury in the usual social and personal routine of life, with the probable impact on the health and spirits of the injured party, are all proper considerations to be taken into account. Also to be taken into account is that Mr Regis will not lead the life he wanted to lead or may have led. When considering all of the above and the limited evidence provided, the court awarded Mr Regis \$55,000 for pain and suffering and \$40,000 for loss of amenities, a total sum of \$95,000.00.

[66] The court in **Regis** considered the case of **Fabian Haywood v Andrew Ollivierre**,²² where 21 years old suffered from a 3cm laceration on the left eyebrow. The wound included the penetration of the left orbit, left eyeball, and left anterior sinus wall, resulting in the complete loss of the left eye. The loss of his vision meant Mr Haywood lost depth perception and could no longer judge distances. He cannot engage in the recreation of softball cricket as he was wont to do before his injury. Mr Haywood is now forever debarred from engaging in any activity that demands the ability to judge distances. He has a significant handicap in the labour market. Before the accident, Mr

²¹ CLAIM NO. GDAHCV2012/0293 (delivered 19th October 2015)

²² St. Vincent and the Grenadines High Court Civil Claim No. 278 of 2004 (delivered 4th April 2007)

Haywood worked as a security guard. He still does so, but it is undeniable that many opportunities to improve his lot in life are now closed to him. Mr Haywood was awarded \$8,000.00 for pain and suffering and \$75,000.00 for loss of amenities. The total award for general damages was \$83,000.00.

Conclusion and Disposal

- [67] The burn injuries in the present case, predominantly partial-thickness or first-degree burns, appears to have affected a greater area of the body than in either **Fletcher** or **Smith**. However, I believe that the impact of the other injuries in **Smith** was much more significant than the burns and would expect that a larger proportion of the award was for those other injuries and not the burns. On the other hand, although the affected area, in this case, appears more aligned to the injuries in **Sandy**, they are less severe because the burns in **Sandy** were second-degree burns. Still, bearing in mind the age of these awards, there will need to be an adjustment for inflation over the years.
- [68] Guided by the above authorities and observation, I have considered the nature and extent of the claimant's injuries, and he was in severe painful distress. He was hospitalised for one month, of which he was in intensive care for two weeks; however, it is significant to note the claimant was in an induced coma for about a week, so he felt no pain for that period. Also noteworthy, the claimant's prognosis is that he should completely recover from his burns injuries with an acceptable cosmetic outcome, which appears to be the case from my observation of him at the trial. Consequently, I find that an appropriate award for pain and suffering for the burns is \$65,000.00, which does not take account of the claimant's contributory negligence that I will address at the end.
- [69] I addressed the eyes' injuries separately, although arising from the same incident, because of its distinct impact on a victim. Still, I am conscious of the possibility of double compensation and have kept it in mind. The extent of the claimant's eye injuries is no way near as severe as the victims in the cases considered above, where there was a total loss of sight or determined to be legally blind. Dr Walwyn's evidence is that the claimant suffered bilateral thermal keratopathy, which on conservative management is slowly improving. His prognosis for the claimant's vision improvement is good but depends on further clearing of the stromal haze and will need further follow up. There is persistent corneal scarring, which causes decreased vision compared to his premorbid state. This decreased vision is associated with glare and chronic mild ocular irritation. Therefore,

considering the cases age and the difference in the injuries, an award of \$15,000.00 for pain and suffering will be reasonable.

[70] As indicated above, there is no reliable evidence of loss of amenities by the claimant. However, the claimant's inevitable objective loss of amenities, such as loss of enjoyment of life, the hampering effects of the injury in the usual social and personal routine of life, with the probable impact on the health and spirits of the injured party needs correctly be taken into account. I have considered the nature and extent of the claimant's overall injuries, particularly his resultant disability of persistent corneal scarring that causes decreased vision compared to his premorbid state, and determined that an appropriate award for loss of amenities will be \$40,000.00.

[71] In sum, the claimant's award of general damages will be \$80,000.00 for pain and suffering and \$40,000.00 for loss of amenities, a total of \$120,000.00 reduced by 25% for the claimant's contributory negligence.

[72] I, therefore, enter judgment for the claimant and now order the defendant to pay:

- (1) General damages in the sum of \$90,000.00.
- (2) Interest of 5% per annum under Section 7 of the Judgments Act of Antigua and Barbuda on the general damages from judgment to payment.
- (3) Prescribed costs of \$13,500.00.

Postscript

[73] I note that although the claimant failed on his claim for special damages, there is no denying that he suffered loss and incurred expenses consequent upon the explosion and his injuries. Accordingly, the defendant may wish to consider even an exgratia payment in this regard, but I leave that for possible discussion between the parties.

**Justice Rohan A Phillip
High Court Judge**

By the Court

Registrar