

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law & Equity Division
Claim No. 2017/CLE/gen/00284

B E T W E E N

WAYNE NEELY

Claimant

AND

THE ATTORNEY GENERAL

First Defendant

AND

MINISTRY OF TRANSPORT & AVIATION

Second Defendant

AND

THE DEPARTMENT OF PUBLIC SERVICE

Third Defendant

Before: The Honourable Madam Justice Camille Darville Gomez
Appearances: Murrio Ducille KC, Krysta Mayson Smith and Brian Bastian for the Claimant
Rashied Edgecombe and David Whyms for the Defendants
Hearing Dates: 25 October 2023; 15 November 2023; 28 November 2023
Submissions Received: 5 November, 2024; 8 April, 2025

Negligence — Breach of statutory duty — Workplace health and safety — Alleged Exposure to mold — Duty of care under the Health and Safety at Work Act

RULING

DARVILLE GOMEZ, J

This action concerned a claim in negligence and breach of statutory duty arising from the Claimant's alleged exposure to mold in his workplace. The Plaintiff asserted that over several years he was required to work in unhealthy office environments, first at Lynden Pindling International Airport and later at the

JL Centre, and that those conditions caused or materially contributed to his respiratory illness, diagnosed as Mold Hypersensitivity Syndrome.

The Defendants denied liability, maintaining that complaints were investigated, testing and remediation were undertaken, and air-conditioning systems were overhauled. They argued that they discharged their duty by taking reasonably practicable steps to safeguard employees, and that the Claimant failed to prove causation on a balance of probabilities.

After considering the oral testimony, documentary evidence, and written submissions, the Court concluded that while complaints and visible deterioration were established, the Plaintiff had not proved that the workplace conditions caused or materially contributed to his illness. The medical evidence was found insufficient to establish causation, particularly in the absence of objective testing linking the condition to mold exposure. Accordingly, the claim was dismissed.

Introduction

- [1.] This action arose out of the Defendants' alleged breach of statutory duty and negligence.
- [2.] Mr. Neely commenced this action by a generally endorsed Writ of Summons filed on 3rd March 2017. His Statement of Claim was filed on 22nd August 2019 and amended on 10th August, 2022.
- [3.] I set out below his claim as particularized in his Amended Statement of Claim.

1. The Plaintiff is a citizen of the Commonwealth of The Bahamas. At all material times, the Plaintiff was employed by the Government of the Commonwealth of the Bahamas via the Third Defendant, the department of Public Service and posted to the Bahamas Department of Meteorology (c/o the Ministry of Environment and Natural Resources) as Meteorological Officer I.

2. From on or about 2006 to 2016, the Plaintiff was stationed at the premises known as the Bahamas Department of Meteorology office located at the "old section" of the Sir Lynden Pindling International Airport (LPIA). The Department of Meteorology was at all material times under the direction and responsibility of the Third Defendant. Between the said timeframe, the Department of Meteorology was at all material times the occupier of the LPIA and LPIA was at all material times the responsibility of the First Defendant.

3. From on or about 2016 to late January 2019/early February 2019, the Plaintiff was stationed at the premises known as the "JL Centre" located at Blake Road in the Western District of the Island of New Providence of which, at all material times, the Bahamas Department of Meteorology was the occupied

4. From on or about late January 2019/early February 2019 to present, the Plaintiff was stationed at the "Upper Air Station" of the LPIA. The Department of Meteorology was at all material times the occupier of the LPIA and LPIA was at all material times the responsibility of the First Defendant.

5. The Second Defendant is an official Government Ministry and the Third Defendant is an official Governmental Body both of the Commonwealth of the Bahamas. The Second Defendant permitted the Third Defendant and/or agreed with the appropriate agents of the Third Defendant to have the Bahamas Department of Meteorology stationed at their facilities at LPIA. In any event, the LPIA premises and

"JL Centre" are government owned. In consideration of the foregoing, this action is instituted against the Crown by virtue of the named First Defendant pursuant to Section 12 of the Crown Proceedings Act, Chapter 68 of the Statute Laws of the Commonwealth of the Bahamas.

6. The Third Defendant was at all material times responsible for the actions, non-action and overall functioning and management of the Bahamas Department of Meteorology where the Plaintiff was posted by them upon employment. While it was the duty of the agents of the Department of Meteorology to report Industrial Accidents and/or complaints to the Third Defendant on behalf of employees under their immediate control, it was equally the responsibility of the Third Defendant to regularly make health and safety checks at the Department of Meteorology absent specific reports.

7. In the course of the Plaintiff's employment from on or about January 2012 to present, he was continually exposed to mold produced in his working area, deplorable working conditions poor system of work which the active Defendants laid down for him and required him to follow.

8. What is even more upsetting to the Plaintiff is that even after the Plaintiff formally and properly complained to the appropriate agents of the active Defendants, nothing was done or seen to be done to correct the issues complained of with swiftness, urgency or at all. Additionally, the Plaintiff was never presented with any evidence that his repeated complaints were referred to the Third Defendant nor was he provided with any evidence that his immediate supervisors reported the unsafe and unsanitary work conditions which were plain for all on the premises to see. The Plaintiff complains that he was initially hopeful that when he was relocated from LPIA to Blake Road then back to another section of LPIA, the conditions would have been improved however, he met the same exact concerns previously complained of which led to the worsening of his health.

9. By reason of his exposure to mold and unsanitary, unhealthy, below-par work conditions, the Plaintiff has been caused injury, loss and damage, loss of amenities, experienced pain and suffering and there are serious risks of further deterioration to the Plaintiffs overall health, physically and mentally.

10. The Plaintiffs injury, and consequential loss, and the risks of further deterioration to his overall health were caused by the active Defendant's breach of statutory duty inclusive of their failure to take the necessary and required steps to remedy the repeated complaints of the Plaintiff at either work location and/or stations.

11. Therefore, the Plaintiff brings this action and claims damages, interest pursuant to the Civil Procedure (Award of Interest) Act, interest on any award from the time the complaint arose until payment, and further or any other relief the Honorable Court deems just.

PARTICULARS OF BREACH OF STATUTORY DUTY

- a) The active Defendants failed to provide and maintain a working environment for the Plaintiff that was at the material time, so far as reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for the Plaintiffs welfare at work, contrary to the relevant sections of the Health and Safety at Work Act in particular Sections 4(1) and (2) 5, and 7. We also commend Section 25 of said act for the purposes of this action.
- b) The active Defendants failed to take notice and/or reasonable steps to provide a safe work environment in response to the letters written by the Plaintiffs Doctor outlining the negative effect the mold and/or unsanitary working conditions was having on the Plaintiffs health.

- c) The active Defendants failed, until on or about January 2019 (after when the Plaintiff had been stationed at the Blake Road Location for some two (2) years), to take any measures to protect the Plaintiff against inhalation of mold, to prevent its accumulation in its premises and/or to provide and/or maintain suitable and/or sufficient exhaust appliances, contrary to section 4(1) of the Health and Safety at Work Act. Even then, the only measure was finally honoring the Plaintiffs request for transfer. Consequently, on or about the latter part of January 2019/early February 2019 the Plaintiff was transferred back to the LPIA office but in another section referred to as the 'Upper Air Station'. While the Plaintiff was relieved that the active Defendants appeared to finally be taking his concerns seriously, to his dismay, when he reported to the 'Upper Air Station' the building was unkept, still unsanitary and mold was still present. Then, on or about the 24th May 2020 the ceiling collapsed, water settled on the ground and remained there, the area remained dirty and unkept and mold remained. To date, the 'Upper Air Station' remains unsanitary and unsafe for the Plaintiff and/or any person to work from.
12. Further, or alternatively, the Plaintiffs injury and consequential loss, and the risk of development of other conditions as detailed below, were caused by the negligence of the Defendants.

PARTICULARS OF NEGLIGENCE

- a) Paragraphs 6 through 8 are repeated.
- b) The active agents of the named Defendants failed to take notice of the dangers presented by the presence of mold and/or unsanitary, unhealthy work conditions to the health of workmen inclusive of the Plaintiff at both the LPIA and Blake Road locations. In all the circumstances, the active agents of the named Defendants were negligent from the onset in ensuring, so far as is reasonably practicable, the health, safety and welfare at work for the Plaintiff and other employees.
- i. That on or about the year 2014, the Plaintiff complained to the Director of the Department of Meteorology (Mr. Trevor Basden) and had a meeting with the Director of the Department of Meteorology in relation to a complaint of the presence of mold and unsanitary work conditions in the LPIA location. Present at that meeting were Ms. Denise Hepburn (Human Resources Officer).
- ii. That on or about December 2017, the Plaintiff complained to the Director of the Department of Meteorology (Mr. Trevor Basden) and had a meeting with Mr. Basil Dean (Deputy Director), Ms. Denise Hepburn (Human Resource Officer) and Jeffrey Simmons about the presence of mold and unsanitary work conditions at the Blake Road location.
- iii. That on or about the latter part of January 2019/early February 2019 the Plaintiff was transferred back to the LPIA location but to the 'Upper Air Station' section. The Plaintiff complained to the appropriate agents of the

active Defendants that the building was unkept and mold was still present resulting in the continued affecting of his and fellow co-workers' health. Then, sometime on or about the 24th May 2020 the ceiling collapsed and water continued to settle on the ground. Once again, the relevant agents of the active Defendants were alerted and complained to. Notwithstanding same, nothing was done until on or about December 2021 when the building was shut down for about a week to address the mold issue.

- iv. That with respect to Industrial Accident complaints, the Plaintiff filled out the necessary forms for his immediate supervisors/managerial staff who in return failed and/or refused to and/or provided no evidence that they forwarded the complaints on to the Third Defendant for their input and/or involvement and/or assistance. There was equally no evidence that agents of the Third Defendant operating from the Department of Meteorology, complained to the Ministry of Public Service from their own knowledge of the hazardous work conditions, inclusive of mold, existing at the Department of Meteorology even after much of the concerns were made public via various media outlets.
 - c. The agents of the active Defendants failed, in all the circumstances, to provide the Plaintiff with a safe place or system of work, failed to supervise him in an appropriate and safe environment by ensuring that the legally required safety precautions were followed, and, in all aspects, exposed him to unnecessary risk of health. Fellow co-workers, agents of the active Defendants and even some members of the general public can confirm the poor work conditions at the various work stations run by the active Defendants.
 - d. Failure to relocate the Plaintiff to a clean air-working environment and/or an area free from mold contrary to the advice of the Plaintiffs Doctor.
 - e. Even after the Ministry of Environment and Natural Resources formally condemned the side of the building where the Department of Meteorology is stationed, the active Defendants are still forcing the Plaintiff, and others, to work at said LPIA location in moldy and/or substandard, unsanitary conditions.
13. As a result of the matters stated above, the Plaintiff has suffered injury, risk of further injury, consequential loss, opportunity loss +has endured tremendous pain and suffering which has collectively resulted in loss of amenities.

**PARTICULARS OF INJURIES
AND RISK OF FURTHER INJURY**

- a) The Plaintiff, has already suffered serious injury, as detailed below, and is at significant risk of deterioration and the development of further disease.
- b) From on or about the year 2014 the Plaintiff realized that he was suffering from headaches to a degree higher than what could be considered usual or

normal.

- c) From on or about January 2016, the Plaintiff has suffered from severe attacks of coughing. On 31st May 2016, the Plaintiff presented to Dr. Kevin Moss, MD, FCCP of the Pulmonary & Critical Care Institute Bahamas Ltd. A computerized tomography (CT) scan of the Plaintiffs chest was done on 3rd June 2016 which revealed bilateral lung inflammation. The Plaintiffs headaches also continued.
- d) Further, the Plaintiff has been diagnosed with Mold Hypersensitivity which is a chronic disease. This has resulted in him losing at minimal forty (40) pounds over a two (2) year time frame.
- e) The Plaintiff suffers from the inability to walk minimal distances or climb stairs without experiencing breathlessness. This is coupled with a persistent cough. These ailments in particular have resulted in the Plaintiff's glucose levels rising to unmeasurable levels.
- f) In November 2018, the Plaintiff was hospitalized for an entire month because he was totally paralyzed. His medication dosages increased and he was treated for '*mold and lack of the mineral Potassium*' related illnesses.
- g) By reason of the development of the condition, the Plaintiff has suffered severe anxiety and depression as he is aware of the risk of developing a terminal disease from the diagnoses he has already received.
- h) The Plaintiff's health condition has not improved to date and he remains under medical care.

PARTICULARS OF CONSEQUENTIAL LOSS

- a) The Plaintiff was unable to work for very long periods as a result of his injuries and/or ailments.
- b) The Plaintiff's finances began to significantly deplete after the agents of the active Defendants continually made deductions from his salary due to him having to take more than the usual sick time allotted to him.
- c) Due to new ailments arising out of the medical diagnoses, the Plaintiff was forced to spend additional funds on emergency medical trips to doctors.
- d) The Plaintiff has loss professional opportunities due to his inability to work in general *i.e. international speaking engagements etc.*

PARTICULARS OF PAIN AND SUFFERING

- a) The Plaintiff has tremendously suffered as a consequence of the complaints levied against the active Defendants as particularized herein.

- b) He has had to endure the hassle and inconvenience of repeated and emergency doctor visits as well as the expenses relative thereto. Having repeatedly been found unfit for work, the Plaintiff was forced to follow the orders of his medical team in an effort to preserve his life. Not only was this stressful but the Plaintiff complains that the treatment required for his diagnoses is long and arduous.
- c) Prior to becoming ill, the Plaintiff had an unblemished attendance, punctuality and performance record with his employer. The Plaintiff is pained by the fact that this situation has not only affected his ability to perform at his usual high standard but has also resulted in a strained relationship between the agents of the active Defendants. An example of this strain continues to be evident as he has repeatedly requested copies of additional pay stubs and/or documents concerning him and his employ only to be delayed or outright denied copies of same. The Plaintiff verily believes that this is only happening because the agents of the active Defendants are aware of his ongoing claim against them.
- d) The Plaintiff has further suffered in that due to the amount of sick leave he required, the agents of the active Defendants began to make deductions from his salary commencing on or about August 2016.
- e) The Plaintiff has further experienced pain and suffering due to the fact that he was ordered to return to work by the active Defendants under the guise that his health concerns at the office were rectified only to learn upon compliance that they were not. This alone frustrated the Plaintiff as his health was continuously being jeopardized by the active Defendants and it appeared as if they did not take his complaint, or the doctor's advice to them, with complete seriousness.
- f) The shifting of the Plaintiffs work station between three (3) different stations has in and of itself resulted in unnecessary suffering for the Plaintiff who had to endure the hassle of uprooting and readjusting each time. This is exacerbated not only due to the time it took for any relocation request made by him to be considered and/or approved but because each time he presented himself to work, he was hopeful that the environment had improved but it had not.
- g) The Plaintiff could not understand the agents of the active Defendant's reluctance and/or decision not to move with alacrity to correct the health issues at work particularly in the face of the publicity of the same issues nationally via various media outlets. This confused and hurt the Plaintiff who was a stellar employee until his health issues arose and still worked to the best of his ability whenever his health permitted him to. To date, the Plaintiff has been under the employ of the Third Defendant for thirty (30) years and some, and remains confident that the Third Defendant can do nothing but speak of his high level of contributions to the organization leading up to June 2016 when his health took a tum for the worse.
- h) The Plaintiff has endured pain and suffering simply by worrying over his health. He is conflicted knowing that it is necessary for him to work in order to earn a

living but that if he continues to work in unsafe and unsanitary conditions, he could lose his life. This is a daily stress for the Plaintiff who remains employed to the Third Defendant and stationed at the Department of Meteorology at its LPIA "Upper Air Station" location which is a building/section of LPIA condemned by the Department of Environment and Natural Resources years ago and under both administrations.

- i) The Plaintiff has endured further pain and suffering simply by worrying over his finances. He complains that while the pay deductions increased, his financial responsibilities not only remained but increased due to the accumulation of medical bills/expenses. Further, he has not been promoted nor has his salary increased since 2016.
- j) The Plaintiff also became embarrassed by his inability to perform his tasks at his place of employment in the usual manner but also in his time away from the office. The Plaintiff, being highly degreed, has given several presentations locally and internationally in his professional capacity. He has appeared on tv shows and been featured in international reads such as "National Geographic" *inter alia* but his health condition has forced him to reject opportunities he would have otherwise taken. The same has resulted in increased mental anguish for him.
- k) Having regard to the forgoing, the Plaintiff has developed continuous sensations of feeling overwhelmed, anxious and depressed. Consequently, he has caused initial contact to be made with the office of a local Mental Health Care Professional who referred him to his professional website to gather quotes. The advice forthcoming was that after the initial consultations, fifty (50) sessions are usually recommended.
- l) The Plaintiff is further handicapped in his ability to finance his usual way of life.

PARTICULARS OF LOSS OF AMENITIES

- a) Paragraphs i - l under the Particulars of Pain and Suffering are repeated.
- b) The Plaintiffs way of life has drastically changed as a consequence of his health concerns.
- c) The Plaintiff was a very active person, known for his meteorological contributions locally and internationally and has been forced to refuse opportunities leaving him with a sense of under-accomplishment.
- d) In addition to his in-person local and international contributions, in and out of office, the Plaintiff is an author having written at least twelve (12) books on hurricanes in The Bahamas and The Americas. His diminished health has resulted in his inability to write and publish any further books. As such, he complains that his reputation as an author continues to be impacted and his ratings which are primarily boosted through publicity have substantially dropped. It should be noted that prior to the Plaintiffs

health challenges, he was featured on international television and/or radio stations/shows such as but not limited to PBS/Nova, Weatherbrains, Jeopardy and Who Wants to be a Millionaire. The Plaintiffs body of work has also constantly been used as research material for the National Hurricane Center and his poor health has caused him not to further develop and/or advance his already existing body of work.

- e) The Plaintiff complains that he is no longer able to walk minimal distances or climb stairs without being out of breath. He has a persistent cough and persistently experiences breathlessness. He was known to be a physically active person who jogged almost every day but these ailments in particular have impacted his ability to exercise as he usually would.
- f) The above ailments at (e) have also significantly impacted his sex life.
- g) The above ailments at (e) have also impacted the speed and time it would have normally taken him to complete any task whether it be professional or personal.
- h) The entirety of the Plaintiffs health condition has also impacted his social life. He is unable to drink alcohol as it is not recommended nor is he able to feel like himself in any public or social setting which is bound to be disturbed by his incessant coughing and breathlessness and/or need to take his medications.

[4.] By their Amended Defence filed on 13 September 2022, the Defendants contended that they had taken all reasonably practicable steps to safeguard the health, safety, and welfare of their employees, including the Claimant, in accordance with the Health and Safety at Work Act. They asserted that a specialist was engaged to investigate reports of mold, and that, following the results of that investigation, remediation experts were contracted to clean both the Lynden Pindling International Airport premises and the JL Centre, Blake Road offices of the Bahamas Department of Meteorology. The Defendants further maintained that regular inspections and cleanings were carried out thereafter. In those circumstances, they denied liability and required the Claimant to strictly prove each allegation advanced.

The Issues

[5.] The issues for determination are therefore as follows:

1. whether the defendants owed the plaintiff a duty of care and statutory duty in respect of his working environment;
2. whether the defendants breached any such duty;
3. whether the plaintiff proved that the defendants' breach caused or materially contributed to his illness; and
4. what relief, if any, should be granted.

Claimant's Case

- [6.] The Claimant filed a witness statement which stood as his evidence-in-chief and called two witnesses: (i) Michael Stubbs, the retired Deputy Director of the Department of Meteorology and (ii) Dr. Kevin M Moss.

The Claimant- Wayne Neely

- [7.] Mr. Wayne Neely, a Meteorological Officer employed by the Government of The Bahamas, testified that he was stationed at the Meteorological Office located on the second floor of the old section of the Sir Lynden Pindling International Airport. He stated that from as early as 2012, the second floor, including his office, was an unsafe place to work. He described persistent roof leaks which caused rainwater to seep through the sheetrock and onto the floor. According to his testimony, newspapers and pails were used to collect and absorb the water. He further averred that other floors in the building were in a similar state and observed that offices located on those floors began relocating between 2012-2014. He stated that, during that time, the vacated offices were battered up by the agents and/or servants of the Defendants, which resulted in inadequate ventilation in the building. During this period, he said that the Department of Meteorology was the only office occupying the premises. Mr. Neely concluded that, due to the persistent leakage and inadequate ventilation, mold began to grow and eventually became visible to the naked eye. He stated that sometime between 2012-2014 he made several complaints to the Director and the Deputy Directors about what he termed "*the hazardous and unsafe work environment*" that he was subjected to. According to his evidence, the issue was not resolved and he was not transferred to another location despite his repeated complaints. He maintained that, notwithstanding repeated reports to the Department, no effective remedial action was taken. He further testified that he voiced his concerns of the poor and unhealthy working conditions while being interviewed by NB12 sometime in 2014. He said that his conditions worsened in 2014 and that other staff members developed flu like symptoms and had to seek medical attention. After the interview, he testified that he wrote to the Minister of Transport & Aviation rehashing his concerns. He said that the premises were deep cleaned one day after the interview; however, to his knowledge, the premises were not deep cleaned anytime thereafter.
- [8.] He explained that in 2015 the working conditions continued to be in a dire state, the air conditioning unit malfunctioned and mold reappeared. He further observed that there was no janitorial services for extended periods of time, which exacerbated the mold problem. He said he voiced his concerns to his superiors including Mr. Michael Stubbs, the Deputy Director of the Department of Meteorology, during staff meetings and through correspondence. Sometime in February, 2015, he developed a cough and began sneezing blood, was often fatigued and his voice was hoarse. According to his evidence, these symptoms did not subside but in fact they worsened, prompting him to seek medical assistance. He first attended the Flamingo Gardens Clinic, where he was found unfit to work for three days. As his condition did not improve, he subsequently sought treatment at the Pulmonary & Critical Care Institute, where he was seen by Dr. Kevin Moss,

who diagnosed him with Mold Hypersensitivity Syndrome and prescribed medication. Mr Neely testified that he was off work from 4 June, 2016 to 19 June, 2016. During that period, he underwent a CT scan which revealed that he had bilateral lung inflammation. He returned to work in June 2016 but experienced no improvement in his condition and was granted further sick leave from 20 June to 10 July, 2016. He again sought further medical attention and was found unfit to work from 11 July, 2016 until 8 August, 2016. He further testified that he received a letter from the Human Resources Manager, dated 9 August, 2016 advising that he had been placed on 7/8th pay from 26 July to 8 August, 2016. The letter also indicated that a total of 7 weeks and 3 days had been deducted from his vacation leave and that his sick leave had been extended for the period of 9 August to the 6 September, 2016. Finally, the letter confirmed that his salary was to be deducted commencing September, 2016.

[9.] Mr. Neely subsequently obtained another extension of sick leave and did not return to work until December 2016. Upon his return to work he reported to the JL Centre on Blake Road despite his reservations that it was mold free. He contacted the Permanent Secretary, Mrs Armbrister, to voice his concerns. Upon being reassured that there was no mold, he returned to work but noticed large patches of mold within the building. He addressed this issue at a meeting with the Senior Deputy Director, the Deputy Director and Mrs Hepburn, the Human Resources Manager. It was his evidence that he would soon begin experiencing similar symptoms as before and was found unfit to work from 31 January to 14 February, 2017. On 28 March, 2017, his physician provided his attorneys with a medical report confirming that he was suffering from Hypersensitivity Syndrome and advising that he should not return to work until his work environment was remediated for mold. Mr. Neely claimed that his work environment did not improve and that he was again found unfit to work from 26 June, 2017 until 5 July, 2017. During that period, he underwent a scan performed at Doctor's Hospital . Upon returning to work in July 2017 he was again found unfit to work in October from 13 October to the 17 November, 2017, and thereafter from 18 November, 2017 to 17 December, 2017. He further testified that he was found unfit to work again on 20 March, 2018, in the month of July, 2018, on 28 September, 2018, and in November, 2018, during which month he was hospitalized. On 4 December, 2018 he was again found unfit to work.

[10.] Mr. Neely stated that, as a result of prolonged exposure to these conditions he developed serious health problems, including chronic cough, fatigue, hoarseness, and episodes of sneezing blood. He said that in 2016 he was diagnosed with Mold Hypersensitivity Syndrome and bilateral lung inflammation. According to his evidence, his physician, Dr. Kevin Moss, repeatedly recommended that he be transferred to a clean, mold-free environment; however these recommendations were not acted upon.

[11.] He further recounted that subsequent relocations, including to the JL Centre on Blake Road and later to the Upper Air Station at LPIA, did not resolve the problem, as those premises also suffered from mold and leaks. His condition worsened over time, requiring repeated medical treatment,

hospitalizations, and extended sick leave, often with reduced pay or deductions from his vacation entitlement.

- [12.] Mr. Neely's evidence is that his health deterioration, repeated absences, and financial losses were directly caused by the Defendants' failure to provide a safe workplace, and that he continues to incur medical expenses as a result.

Michael Stubbs

- [13.] Michael Stubbs, the Deputy Director of the Bahamas Department of Meteorology testified that in 2014 he was the officer in charge of the forecast section of the Met Department and that it was located at the old section of Sir Lynden Pindling International Airport and comprised three floors. He confirmed that between 2012-2014 the air condition unit of the premises began to malfunction and that the unit was eventually shut down sometime in 2015. He said that there was little to no ventilation in the office and his colleagues voiced their concerns about it and the overall working conditions. He confirmed that the building was not frequently cleaned and was unhealthy for employees and visitors due to the broken windows, poor ventilation, non-sanitary common areas and a roof that leaked. He testified that mold was visible to the naked eye on areas such as doorways and the walls. He confirmed that he had received a number of medical certificates from Mr. Neely and that even when he did appear to work that he almost always looked ill and therefore unfit to perform his duties. He testified that he relayed whatever concerns were made to him by the staff about the unsafe working conditions to the Director of Meteorology. He corroborated the evidence of the Claimant that the building was closed for deep cleaning on one occasion; however, he was unaware whether any further cleaning took place after that.

Dr. Kevin Moss

- [14.] Dr. Kevin Moss, a pulmonologist and consultant physician, provided a witness statement regarding his treatment of Wayne Neely. He first examined Neely in May 2016 when Neely presented with a chronic cough and reported that his symptoms—coughing, wheezing, shortness of breath, hoarseness, and fatigue—were linked to his work environment at the old airport terminal, where visible mold was present. Despite courses of antibiotics, antihistamines, and steroids, Neely's symptoms persisted. Dr. Moss diagnosed him with Mold Hypersensitivity Syndrome, confirmed by pulmonary function tests showing mild obstruction and restriction, and a CT scan revealing bilateral lung inflammation.
- [15.] Dr. Moss advised Neely not to return to work until the environment was remediated, but when Neely did return, his symptoms recurred. Over subsequent visits, Neely continued to suffer from a cough, chest discomfort, hoarseness, headaches, flank pain, and even blood-tinged sputum. Dr. Moss consistently recommended that Neely be transferred to a clean, mold-free workplace, stressing this in multiple letters to the Department of Meteorology and the Occupational Health &

Safety Unit between 2016 and 2019. He noted that Neely's condition improved when away from the contaminated environment but worsened upon returning.

- [16.] Throughout his care, Dr. Moss emphasized that Neely's health problems were directly related to mold exposure and repeatedly urged the authorities to relocate him to a safe environment as he was strongly impressed from photographs shown to him by the Claimant of his working environment at the Sir Lynden Pindling International Airport that mold was present there, though he could not definitively determine the causative environment from which the Claimant's illness was derived.
- [17.] He testified that the last time that he saw Mr Neely was on 7 May, 2019 and he was in stable condition but he was advised to follow up in three months.

Closing Submissions – Claimant

- [18.] In Closing Submissions, Counsel for the Claimant submitted that the evidence against the Defendants "*incontestably reveals breach of statutory duty and negligence*".
- [19.] Counsel argued that the central issue in this case is the impact of the proven existence of mold on the Defendants' employees which through the Claimant's testimony remained "*unshaken*" during trial.
- [20.] Relying on the evidence of expert witness Ryan Anthony, Counsel submits that it was incumbent on the Met Department to follow his recommendations to remediate the source of mold in its premises. Counsel contended, however, that the Met Department failed to do so.
- [21.] Counsel maintained that in fact, the Defence closed its case without producing any evidence that "true" remediation was carried out effectively, or at all.
- [22.] On the other hand, Counsel emphasized that the Claimant did all that he could do to "*better the mold situation at his offices*" by reporting the conditions to his supervisor, voicing concerns at meetings, lodging formal complaints with the relevant authorities and writing letters to the then Minister in charge.
- [23.] Taken together, Counsel submits that the Claimant's case was strengthened by:
- a. The "*uncontroverted*" medical evidence of Dr Moss;
 - b. Evidence that mold existed or was suspected in the Claimant's workstations;
 - c. Evidence of the Claimant's repeated complaints;
 - d. Confirmation by defence witness Mary Butler that the photos shown to Dr Moss depicted areas at the UAS and the JL Centre;
 - e. Photographic evidence of the "*deplorable mold conducive conditions*";
 - f. Mary Butler's evidence that the National Insurance Board advised the Met Department to vacate the JL Centre due to complaints about the building's condition;
 - g. Valerie Storr's evidence that some of the Claimant's medical records supported his diagnosis;

- h.* PS Armbrister's acknowledgment of mold related health challenges at the JL Centre;
- i.* The condemnation of the LPIA building;
- j.* Media publicity highlighting the poor conditions in the Met Department; and
- k.* The absence of any evidence from the Defence establishing an alternative causative link for the Claimant's illness.

- [24.] The Claimant submits that the Defendants failed to discharge the duty of care owed to him under both statute and common law. In this regard, it is contended that the Health and Safety at Work Act, Ch. 321C imposes a positive obligation upon employers to provide a safe system of work, adequate training, and proper equipment, and that the Defendants did not meet this standard. In support of this submission, the Claimant relies upon the principle articulated in **Wilson & Clyde Coal Co. Ltd v English [1938] AC 57**, that the employer's duty is personal and non-delegable, and upon **Bonnington Castings Ltd v Wardlaw [1956] AC 613**, where Lord Reid held that an employee need only establish, on a balance of probabilities, that the employer's breach of duty materially contributed to the injury. The Claimant also relied upon **Samantha Russell v Commonwealth Bank 2012/CLE/gen/00934**, where Winder J accepted medical evidence that continuous workplace exposure was the probable cause of the claimant's ailments, underscoring that liability may be established where the work environment materially contributed to harm. Against this backdrop, it is submitted that the Defendants cannot escape liability by asserting that the duty owed is not absolute, as the authorities demonstrate that once a breach of the duty of reasonable care is shown, and that breach materially contributed to the injury, liability attaches. The Claimant therefore contends that the Defendants' reliance on the proposition that employees bear responsibility for their own safety does not absolve them where the system of work provided was unsafe or inadequate, and that the evidence establishes that the Defendants' breach materially contributed to the Claimant's injury.
- [25.] Developing this argument, Counsel further submitted that the Claimant was exposed to the conditions he complained of for more than nine (9) years during the course of his employment, and that his exposure in any event was more than *de minimis* (**Bonnington**). Counsel submitted therefore, that liability attached to the Defendants for the material contribution of their guilty environment to his illness over the years and consequently their material increase of his risk of contracting it (**Sienkewicz**).
- [26.] On this basis, Counsel submitted that the Claimant discharged his burden of proof, and had the Defendant complied with their statutory duties from the outset, the mold growth and unsanitary conditions would likely have been prevented.
- [27.] This submission must be considered against the well-established principles governing causation in tort. As a general rule, a claimant will only have a cause of action if he can prove, on a balance of probabilities, that the defendant's tortious conduct caused the damage for which compensation is claimed (**Sienkiewicz v Greif (UK) Ltd and Willmore v Knowsley Metropolitan Borough Council [2011] UKSC 10**).

- [28.] Ordinarily, the test for causation is the long settled “but for” test where the Claimant must show that, “but for” the defendant’s wrongful conduct, he would not have sustained the harm or loss in question (**Fairchild v Glenhaven Funeral Services Ltd and Others [2002] UKHL 22**). Exceptionally, however, this is not so, as in some circumstances a lower degree of causal connection will suffice (**Sienkiewicz v Greif (UK) Ltd and Willmore v Knowsley Metropolitan Borough Council [2011] UKSC 10**).
- [29.] In addition to **Sienkiewicz and Willmore**, the Claimant relied on the following authorities in support of its case: **Bonnington Castings Ltd v Wardlaw [1956] AC 613 and Williams (Respondent) v The Bermuda Hospitals Board (Appellant) (Bermuda) [2016] UKPC 4 Privy Council Appeal NO 0110 of 2014**.
- [30.] In **Bonnington**, the House of Lords held that a defendant is liable for a divisible, dose-related disease (such as pneumoconiosis) where it’s breach of duty made a material contribution to the injury. A “material contribution” was explained by Lord Reid at page 621 to mean a contribution that is more than negligible, even if it is not the sole or predominant cause.
- [31.] Similarly, in **Williams**, the Privy Council affirmed **Bonnington**, holding that in cases of indivisible injuries, liability arises where a negligent delay or act made more than a negligible contribution to the overall injury. Precise quantification of the contribution in such circumstances is not required.
- [32.] Taking these authorities together, Claimant’s Counsel submitted that they establish two related principles. First, where a disease is indivisible (i.e. mesothelioma), liability may attach where the defendant’s breach *materially increases* the risk of contracting the disease and secondly, where the disease is divisible (i.e. pneumoconiosis), liability arises if the breach *materially contributes* to the disease.

Defendants’ Case

- [33.] The Defendants deny liability in negligence, breach of statutory duty, or otherwise and contend that the Claimant is not entitled to the relief claimed or to any relief at all.
- [34.] The Defendants called as witnesses, Mary Butler, Chief Meteorological Officer, Valerie Storr, Chief Executive Secretary & Human Resources Manager and Anthony Ryan, Mold Assessment, Mold Remediation and Indoor Air Quality Expert.

Mary Butler

- [35.] Mary Butler is the Chief Meteorological Officer at the Department of Meteorology and has been employed there for 34 years. She was posted at the JL Building on Blake Road after the Met Department was relocated to that location. She testified that she knew Mr. Neely from the time he commenced employment with the Department but had the opportunity to work closely with him between the years 2016 to 2019. She explained that there is an inability to regulate the temperature

in the JL Building hence, it is either too cold, or the air conditioning is not on. She averred that other tenants of the building, viz., Department of Civil Aviation along with the Department of Meteorology had reported issues to the National Insurance Board, the owner of the building, which caused several remediation exercises to be conducted over the years. Therefore, she formed the view that the complaints of mold or suspected mold had never been ignored. Finally, she testified that she was unaware of anyone else within the Department complaining of illness caused by exposure to mold.

Valerie Storr

- [36.] Ms. Valerie Storr, Chief Executive Secretary and acting Human Resources Manager in the Department of Meteorology, testified that she has known Mr. Neely since 2008. She stated that when Mr. Neely was relocated to the JL Centre Building in 2016, he complained of illness allegedly caused by mold exposure. However, she noted that testing of the Department's space revealed no elevated mold levels and that no other staff members reported respiratory issues. She explained that all of Mr. Neely's complaints were referred to the building's owners, the National Insurance Board, who were diligent in conducting testing and remediation.
- [37.] Ms. Storr further stated that between 2016 and 2019 Mr. Neely submitted numerous sick notes and spent substantial time away from the building, often more than he spent at work. Despite this, he remained insistent that his illness was linked to the JL Centre, and he was eventually relocated to the Upper Air Station. She emphasized that this location was minimally occupied, regularly cleaned, and never shown by expert testing to have elevated mold levels.
- [38.] She added that Mr. Neely continued to report sick after leaving the JL Centre, but departmental records did not attribute those absences to respiratory or mold-related issues. Ms. Storr also described Mr. Neely's employment as tenuous, noting that he had been subject to disciplinary proceedings for conduct in the Department and in the public domain, including a "show cause" letter in 2015 regarding breaches of the code of conduct. Although termination was considered, it was never effected.
- [39.] Ms. Storr concluded that the Department consistently treated Mr. Neely fairly, addressed his concerns appropriately, and acted diligently in response to his complaints.

Anthony Ryan

- [40.] Anthony Ryan, a Public Analyst with over three decades of experience in environmental monitoring and risk assessment, provided a witness statement concerning the conditions at the JL Centre Building. He explained his qualifications to include degrees in chemistry and multiple certifications in mold assessment, remediation, and environmental inspection.

- [41.] Ryan stated that in December 2015, EMRAD conducted a visual inspection of the JL Centre focused on occupational health and safety, and in April 2016, indoor air quality testing was carried out. Air samples from the three floors in the JL Centre were sent to Pro Lab in the United States. While most results showed no elevated mold spores, three areas did show elevations, prompting a full remediation of the facility out of caution. Importantly, he noted that the elevated results were not in areas occupied by Mr. Neely.
- [42.] Following remediation, further testing in June 2016 confirmed that mold spore levels were no longer elevated, indicating that the remediation was successful. Ryan added that subsequent remediation efforts and a complete overhaul of the air conditioning system in late 2017 to early 2018 further improved indoor air quality. Continued testing through early 2020 consistently showed no elevated mold levels in the building.
- [43.] He explained that “elevation” of mold refers to spore counts higher than expected compared to controls, usually linked to water intrusion. He acknowledged that mold exposure can affect the human body, but emphasized that such effects are not specific to any condition called “Mold Hypersensitivity Syndrome,” a diagnosis with which he was unfamiliar. Instead, he described mold as an allergen that can trigger reactions measurable through IgE blood levels, and noted that mold can also produce mycotoxins that contaminate food supplies.
- [44.] Ryan’s evidence therefore highlighted that while mold was detected at certain points, remediation was undertaken, subsequent testing confirmed safe levels, and the building’s air quality was affirmed through repeated assessments. He questioned the medical characterization of “Mold Hypersensitivity Syndrome” but acknowledged that mold exposure can cause varying degrees of allergic or toxic effects depending on circumstances.

Defendants’ closing submissions

- [45.] In their Closing Submissions, Counsel for the Defendants argued that the Claimant failed to establish both negligence and causation.
- [46.] Counsel submitted that the Defendants had taken all steps that were “reasonably practicable” to ensure a safe working environment, as required under section 4 of the Act. Counsel emphasized that the statutory duty imposed is one of reasonable care, not absolute safety. Accordingly, it was submitted that the Defendants could only be found in breach if they had failed to take any measures to reduce mold levels to a safe threshold.
- [47.] Counsel contended that the Defendants had discharged their duty by implementing the following measures:
- a.* Deep cleaning the old section of the LPIA and undertaking roof repairs;
 - b.* Overhauling the air conditioning system at the JL Centre in 2017/2018;

- c.* Conducting multiple air quality tests and remediation exercises at the JL Centre during the Claimant's tenure; and
- d.* Reassigning the Claimant to alternate work locations in response to his complaints.

[48.] In support of their position, they relied on the testimony of Mr Ryan, who stated that:

- a.* Mold is ubiquitous in the environment;
- b.* The mere visual presence or suspicion of mold does not establish elevated mold levels;
- c.* Only elevated mold levels pose a risk to the respiratory system;
- d.* Between April 2016 and 2020, no elevated mold levels were detected in the Claimant's workspace, the building's foyer, or the stairwell;
- e.* Air quality testing conducted at the JL Centre between June 2016 and 31 January 2020 revealed no elevated mold levels anywhere in the building;
- f.* The remediation efforts undertaken in June 2016 were successful; and
- g.* If elevated mold levels had existed, multiple employees—not just the Claimant—would likely have been affected.

[49.] Counsel for the Defendants further submitted that the Claimant's own admissions weakened the element of causation, noting that he was absent from the workplace for a continuous period of at least nine (9) months between late 2015 and late 2016, and during that same period he was diagnosed with Mold Hypersensitivity Syndrome.

[50.] Counsel also contended that the Claimant's sick leave commenced only after the old section of the airport had been closed. Further, Counsel noted that he did not enter the JL Centre until after remediation efforts had been completed and air quality testing confirmed that the environment was safe.

[51.] Counsel relied on the medical evidence of Dr Moss, who testified that:

- a.* The Claimant's CT scan dated 3 June 2016 revealed only lung inflammation;
- b.* Lung inflammation may result from various conditions unrelated to mold exposure;
- c.* A CT scan cannot confirm mold exposure;
- d.* The Claimant's condition had resolved by 2019; and
- e.* He was unable to identify the environmental source of the Claimant's illness.

[52.] Counsel therefore submitted that the only reasonable inference to be drawn from the Claimant's evidence is that, if he did suffer illness due to mold, it "must have come from some other environment."

[53.] In the circumstances, Counsel argued that the Claimant failed to prove, on a balance of probabilities, that his illness was caused by workplace mold exposure or that the Defendants materially contributed to his injury and loss.

Law, Analysis and Discussion

[54.] As set out above, the issues for determination are as follows:

1. whether the defendants owed the plaintiff a duty of care and statutory duty in respect of his working environment;
2. whether the defendants breached any such duty;
3. whether the plaintiff proved that the defendants' breach caused or materially contributed to his illness; and
4. what relief, if any, should be granted.

I will address each issue in turn. *Issue 1: Whether the defendants owed the plaintiff a duty of care and statutory duty in respect of his working environment*

[55.] The Claimant's claim is advanced in negligence and under section 4 of the Health and Safety at Work Act Ch. 321C, which imposes on an employer a duty, so far as is reasonably practicable, to ensure the health, safety and welfare at work of its employees.

[56.] It reads as follows:

“- 4

(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular —

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

Section 5 then provides:

5. (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he

conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety

Further, at Section 7, it is stated that:

7. It shall be the duty of every employee while at work —

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and

(b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.”

- [57.] The statutory framework reflects a well-established legal principle that an employer owes a duty of care to its employees to provide a safe system and place of work, which is also owed under common law. The duty is personal to the employer and a failure to perform it constitutes negligence **Wilson and Clyde Coal Company v English 1937 SC HL 46**.
- [58.] However, the standard required is one of reasonable care, not absolute safety **Latimer v AEC Ltd [1953] A.C. 643; Ferguson v Grand Bahama Power Co Ltd [2011] 2 BHS J No 2**. As Hall J (as he then was) observed in **Mackey-Bethel and Canadian Imperial Bank of Commerce [1993] BHS J No. 8**, “employers have no duty to ensure that the workplace is risk free”. Rather, they need only take “reasonable precautions” to protect their employees who also retain a measure of responsibility for their own safety.
- [59.] That issue is not central to the determination of this case.

Issue 2: Whether the defendants breached any such duty

- [60.] The Court has accepted that the Defendants owed the Claimant both a common law and statutory duty of care to provide a reasonably safe working environment. The Claimant alleged that mold was present throughout the workplace, visible to the naked eye, and that this condition posed a risk to health and safety. The burden of proof rests on the Claimant, who must show on a balance of probabilities that the Defendants’ breach of duty either **caused or materially contributed** to his injury (**Bonnington Castings Ltd v Wardlaw [1956]AC 613**).
- [61.] The Claimant relied upon authorities concerned with material contribution and material increase in risk, including **Bonnington supra, Sienkiewicz v Greif (UK) Ltd; Willmore v Knowsley Metropolitan Borough Council [2011] UKSC 10** and **Williams v The Bermuda Hospitals Board [2016] UKPC 4**. I accept the legal propositions for which those cases stand. However, those authorities do not relieve a claimant of the burden of establishing an evidential link between the alleged exposure and the injury said to have resulted from it.
- [62.] The Court is satisfied, on the balance of probabilities, that over time there were repeated complaints concerning the condition of the Claimant’s working environment, made by him and

others including Mr. Michael Stubbs and Dr. Moss. Those complaints included concerns about mold or suspected mold. The Court further accepted that visible deterioration, staining, and dampness caused by leaks were present, and that what the Claimant and other witnesses believed to be mold on doors and elsewhere appeared in photographs admitted into evidence. These matters formed part of the Claimant's concern about the safety of the premises. The Court does not reject the Claimant's evidence that he regarded the working conditions as unpleasant and concerning.

- [63.] However, the existence of complaints and the presence of visible discoloration or suspected mold do not, without more, establish negligence or causation. The critical issue remains whether the Defendants failed to take such steps as were reasonably practicable to maintain a safe workplace, and whether the Plaintiff has discharged the burden of proving, on a balance of probabilities, that the conditions complained of either materially contributed to his illness or materially increased the risk of contracting it.
- [64.] On the evidence before the Court, I find that the Defendants were on notice of the complaints regarding the conditions in the premises both at LPIA and the JL Centre.
- [65.] However, I am also satisfied that the Defendants did not simply ignore the complaints. The Defendants' witness, Mr. Anthony Ryan, a mold specialist was engaged to inspect and assess the premises, testing was undertaken, remediation was arranged on more than one occasion, and further steps were taken in relation to the air-conditioning system at the JL Centre in or about 2017 or 2018.
- [66.] Moreover, the Claimant and his witness, Mr. Stubbs in their evidence in chief recalled that there had been a remediation exercise undertaken at LPIA.
- [67.] It was also pellucid that a remediation exercise was also undertaken at the JL Centre. I refer to the exchanges between Mr. Neely and the Permanent Secretary, Mrs. Armbrister regarding the state of the building.
- [68.] Mr. Neely testified that he contacted the Permanent Secretary, Mrs Armbrister regarding the state of the JL Centre because of his reservations that it was mold free. In the Agreed Bundle of Documents, by an email dated 15 December, 2016 to Mrs Armbrister from Mr. Neely, he said as follows:

Good morning Mrs. Armbrister, as requested, last week, I have submitted all of the required documents to Mrs. Charlow at NIB and she informed me that those files will be forwarded to Mrs. Bodie when she returns to office hopefully last Friday or today. Healthwise, I am slowly improving and did my final chest x-ray on Thursday of last week and the results will be forwarded to my doctor, Dr. Kevin Moss and he will look at the first x-ray showing significant mold infestation in my lungs and this one (6 months later) I did on Thursday and will compare the results of the two and then by looking at the scanned results, he will then make an informed decision about me returning to work and what time. I am presently ready to go back to work as soon as possible and miss my job considerably. I thank you so much for your help in seeing that this matter is resolved ASAP.

[69.] In an email in response to Mr. Neely also dated 15 December, 2016 from Mrs. Armbrister she addressed his concern as follows:

Mr. Neely: Thank you for your email. I sincerely hope that your health will continue to improve. Regarding your recent calls on your concern regarding the Directorate's decision to post you temporarily in the JL Centre Building, kindly note that the mold issue in that building has been addressed by the National Insurance Board, under the oversight of the Environmental Monitoring & Risk Assessment Division of the Department of Environmental Health. It is noted that a small amount of employees from government agencies in that building previously reported health challenges apparently related to the mold issue. However, as a result of remediation action taken by the NIB, the employees have returned to work with no further challenges. This being the case, I wish to assure you that I am satisfied that there is no ongoing issue in the JL Centre Building which would adversely affect your health and I am therefore unable to intervene in any decision taken by Met. Management in respect of your temporary return to work there.

[70.] The Defendants relied on evidence of continued testing and remediation of the JL Centre, including a complete overhaul of the air-conditioning system between 2017 and 2018. Although the Claimant criticized the absence of testimony from the actual remediators, the Court found that omission insufficient to establish breach.

[71.] The Defendants attached significant weight to the evidence of Anthony Ryan, who's testing consistently showed that mold levels in the Plaintiff's work area were not elevated compared to control samples, indicating air quality similar to outside conditions. While the Claimant argued that Ryan's repeated attendances demonstrated recurrence and inadequate remediation, the Court found the more persuasive inference to be that complaints were investigated and acted upon.

[72.] On the totality of the evidence, I am not satisfied that the Claimant has proved that the Defendants failed to do what was reasonably practicable or otherwise fell below the standard of reasonable care.

[73.] Accordingly, the claim fails on breach.

Issue 3: Whether the plaintiff proved that the defendants' breach caused or materially contributed to his illness

[74.] If I am wrong on breach, I would in any event have found that causation was not proved.

[75.] The claimant relied heavily on the evidence of Dr. Kevin Moss in an effort to establish that his respiratory complaints and related condition were caused by exposure to mold in the workplace. I have considered that evidence with care. In my judgment, while Dr. Moss was plainly a qualified and experienced physician in the field of pulmonology and internal medicine, his evidence fell short of proving, on a balance of probabilities, that the claimant's working environment was the operative or substantial cause of his condition.

- [76.] Dr. Moss's evidence was, at its highest, that the claimant's presentation was consistent with mold hypersensitivity syndrome. That opinion was based on the history given by the Claimant, the symptoms described, and the reported association between those symptoms and the environment in which the Claimant said he worked. However, the Court must distinguish between a clinical impression formed for treatment purposes and proof of legal causation. The fact that a condition is consistent with a particular exposure does not, without more, establish that such exposure was in fact the cause of the injury complained of.
- [77.] Of central importance is Dr. Moss's candid acceptance that he was not an environmental specialist, mold assessor, or mold remediator. He did not visit the premises, conduct or interpret environmental sampling, or otherwise identify the presence, level, or type of mold in any scientifically reliable way for the purpose of attributing causation. He was therefore not in a position to say, from any direct environmental assessment, that the claimant's workplace was the source of the exposure alleged.
- [78.] Further, Dr. Moss accepted that mold is ubiquitous in the environment and that only some persons are hypersensitive to it. He also accepted that a person who is hypersensitive may react in more than one environment. In my view, that evidence materially weakens the Claimant's case on causation. It leaves open the real possibility that, even if the claimant did suffer from mold hypersensitivity, the relevant exposure may have arisen from some other environment, or from multiple environments, rather than from the workplace alone.
- [79.] The objective medical findings also do not advance the claimant's case sufficiently. Dr. Moss referred to the CT scan showing bilateral lung inflammation. However, he accepted in cross-examination that such inflammation is non-specific and may arise from a range of causes, including viral infection, bacterial infection, smoke, chemicals, and other conditions. He also accepted that the scan could not identify mold as the cause of that inflammation. Thus, the radiological evidence did not provide any reliable basis upon which the court could conclude that workplace mold exposure caused the Claimant's condition.
- [80.] In **Samantha Russell v Commonwealth Bank 2012/CLE/gen/00934**, the court held that the claimant had to prove on a balance of probabilities that the defendant's breach caused or materially contributed to the injuries alleged. Importantly, even after finding an unsafe workplace and breach of duty, the Honourable Mr. Justice Ian R. Winder (as he then was) did not infer causation for every condition complained of. Instead, he limited recovery to those symptoms actually proved to have been caused or materially contributed to by the exposure, and rejected other alleged conditions as unproven. The same approach should be applied here: even if breach were established, Mr. Neely must still prove a sufficient causal connection between the alleged breach and each injury claimed.
- [81.] It is also of note that no test was performed which could specifically and reliably connect the claimant's symptoms to mold exposure in the workplace. Dr. Moss accepted, for example, that no

IgE test had been done unlike in **Samantha Russell v Commonwealth Bank** supra where blood testing was undertaken to identify mold antigens. More fundamentally, there was no medical or environmental evidence linking the claimant's complaints to any measured mold exposure at his place of work. The evidential gap is therefore significant. The court is being asked, in essence, to infer causation from symptoms, history, and suspicion, but the law requires proof on a balance of probabilities.

[82.] I also consider significant the evidence that the Claimant was absent from the work environment for extended periods. Mr. Neely in his evidence in chief said that he was off work from 4 June, 2016 to 19 June, 2016 and then returned to work and showed no improvement. Therefore, he was off again from 20 June, 2016 until December, 2016. He returned in December, 2016 to work at the JL Centre and began experiencing similar symptoms as he had before and was found unfit to work from 31 January to 14 February, 2017 and then returned to work. He claimed that his work environment did not improve and he was found unfit to work again between 26 June to 5 July, 2017. Upon returning to work in July, 2017 he was found unfit to work from 13 October to 17 December, 2017. Then again, for various periods in 2018 in March, July, September, November when he was hospitalized and then off again on 4 December, 2018.

[83.] That fact presents a further difficulty for the Claimant's case on causation. Where a claimant is removed from the allegedly harmful environment for substantial intervals, it becomes more difficult to conclude that exposure in that environment was the substantive or effective cause of the ongoing condition. If symptoms persisted notwithstanding prolonged absence from work, that tends to weaken the inference that the workplace was the source of the continuing problem. At the very least, it raises the possibility of some other source of exposure or some other cause not attributable to the defendants.

[84.] I refer to Dr. Moss' cross examination on this issue:

"mold hypersensitivity's syndrome is a constellation of symptom that is related to a particular environment. Once the individual is out of the environment, the symptoms would subside. They return to the environment, they have an exacerbation."

"So, yes, you can be out of the environment and you go back in the environment and your symptoms subside or if you treat it and your symptoms subsides. But once exposed to mold, whether in that same environment or another, the symptoms can return."

[85.] I accept that Dr. Moss genuinely held the view that the claimant suffered from mold hypersensitivity syndrome. I do not reject his evidence as dishonest or lacking in professional competence. However, the issue before the court is not whether the Claimant may have suffered symptoms compatible with mold hypersensitivity, but whether the Claimant has proved that the defendants' workplace conditions caused that injury. On that issue, Dr. Moss's evidence was necessarily limited. It did not exclude other causes. It did not identify the workplace as the source of exposure. It did not establish that workplace exposure was the dominant, substantial, or effective cause of the claimant's condition.

- [86.] In the final analysis, I am unable to find that the medical evidence proves causation. Dr. Moss's evidence supports a possibility, and perhaps even a suspicion, that mold exposure may have played some role in the claimant's symptoms. But possibility is not enough. The Court must be satisfied on a balance of probabilities. In the absence of reliable environmental evidence, in light of the non-specific nature of the clinical findings, and bearing in mind the Claimant's extended periods away from the workplace, I am not so satisfied.
- [87.] The Claimant's reliance on material contribution authorities does not cure those evidential deficiencies. Those authorities do not eliminate the need for proof that the Defendants' breach contributed in fact to the injury. Here, the factual link has not been established to the required standard.
- [88.] Accordingly, I find that the Claimant has failed to prove, on a balance of probabilities, that the Defendants breached any duty owed to him or that any act or omission on their part caused or materially contributed to his illness.
- [89.] Therefore, in the circumstances, I do not need to consider the fourth issue of what relief, if any, should be granted.
- [90.] The claim is dismissed with costs to be paid by the Claimant to the Defendants, such costs to be assessed by the Court on the papers unless otherwise agreed.
- [91.] The Claimant is entitled to his fixed costs of \$750.00 payable pursuant to the Order of this Court dated 25th January 2023.

Dated this 13th day of March, 2026



Camille Darville Gomez
Justice