

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION**

CLAIM NO. 2017/CLE/GEN/00200

BETWEEN

TORRY ARMSTRONG

CLAIMANT

AND

SOL PETROLEUM BAHAMAS LIMITED

DEFENDANT

Before: The Hon. Chief Justice Sir Ian R. Winder

Appearances: Nadia Wright with Eugeina Butler for the Claimant
Keith Major Jr., Dennise Newton-Briggs and Audley Hanna Jr. for the
Defendant

Hearing date(s): 1 July 2025, 2 July 2025, 9 October 2025, 13 November 2025, 21
November 2025, 20 February 2026 and 27 February 2026

JUDGMENT

WINDER, CJ

This is the claim of Claimant (Armstrong) in negligence alleging injury and damage arising out of a fall on the premises of the Defendant (Sol) on 2 June 2014.

[1.] The Claim was brought by Writ of Summons dated 21 February 2017. In the Statement of Claim (Re-Amended), Armstrong set out his claim as follows:

2. On the 2nd June 2014, the Claimant was at all relevant times a Director and President of the Incorporated Bahamian company called and known as Corporate Travel Management Ltd (“CTM”) and whom acted inter alia as driver on behalf of CTM, attended the Defendant’s premises in order to retrieve avgas. The Plaintiff entered the said premises for purposes related to or ancillary to the contractual relationship concluded between CTM and the Defendant. Whilst at the premises, the Claimant alighted from his vehicle and, as he did so, stepped upon a metal grate covering the product recovery trench which collapsed causing the Claimant to sustain personal injury.
3. The said accident was caused as a result of the negligence of the Defendant, their employees or agents, the particulars of which are as follows.

PARTICULARS OF NEGLIGENCE AND/OR BREACH OF DUTY

As to the Defendant:

- a) Causing the metal grate to be or to become or to remain a danger and a trap under foot in the premises.
 - b) Causing or permitting the metal grate to deteriorate to the point that the same collapsed.
 - c) Failing to cause the metal grate to be repaired.
 - d) Failing to devise or enforce any adequate system for the inspection and maintenance of the premises which would have ensured that the presence of the faulty metal grate was detected and the same repaired and/or removed before the Claimant’s accident.
 - e) Breach of implied warranty that the premises were as safe as reasonable care and skill could make them.
4. By reason of the negligence and/or breach of duty of care of the Defendant, the Plaintiff has suffered pain, injury, loss and damage.

PARTICULARS OF INJURY

The Claimant, who was born the 18th July 1955, who is now aged 68 suffered pain, injury, loss and damage. His injuries are as follows:

- (1) A bilateral full thickness tear (torn rotator cuff) in both shoulders;
- (2) Multiple disc prolapses;
- (3) Cervical spondylosis;
- (4) Cervical facet joint arthropathy;

(5) Soft tissue stenosis and herniated disc (as per Dr. Ekedede)

[2.] Sol defended the claim in a Defence which provided as follows:

2. Save that it is admitted that the Plaintiff complained of having suffering an injury at the Terminal on 2nd June 2014 after having stepped on a metal grate covering a product recovery trench the Defendant neither admits nor denies Paragraph 2 of the Amended Writ of Summons. The Plaintiff is therefore required to prove that he is a Director and President of CTM, the purposes for which he attended the Terminal, and that the metal grate collapsed, as alleged in Paragraph 2 of the Amended Writ of Summons.
3. The Defendant denies that the accident complained of by the Plaintiff was caused by the negligence of the Defendant, its employees or agents, as alleged in Paragraph 3 of the Amended Writ of Summons, and/or as particularized in the subparagraphs thereto, or at all. The Defendant states that the accident was caused by and/or contributed to by the negligence of the Plaintiff.

PARTICULARS OF NEGLIGENCE

CONTRIBUTORY NEGLIGENCE OF THE PLAINTIFF

The Plaintiff was negligent and/or contributed to the accident complained of in that he failed to:

- a. Approach the metal grate with due care and attention;
- b. Have any or due regard for his own safety;
- c. Avoid walking on the metal grate;
- d. Take any or any reasonable measures to avoid any personal injuries while walking upon the metal grate;
- e. Take any or any proper steps to ensure that the metal grate was safe to walk upon;
- f. Have due any or any due regard for his footing when he stepped on the metal grate; and
- g. Take any reasonable care for his own safety in all of the circumstances;

It is denied that the Plaintiff suffered pain, injury, loss and damage as pleaded in Paragraph 4 of the Amended Writ of Summons and or/as particularized in the subparagraphs thereto and/or as set out under any of the Sub Headings thereto, or at all. The Defendant therefore requires the Plaintiff to prove same. Further, the Defendant states that the Plaintiff's current condition stems from degenerative changes due to aging and not from the accident complained of by the Plaintiff, or any accident at all. Moreover, the Defendant avers that all of the particulars under the Heading 'Particulars of subsequent related injuries' refer to and those injuries were caused by separate, unrelated and subsequent accident which is far too remote to be capable of conferring any liability upon the Defendant having transpired approximately five (5) years after the initial alleged injury herein. Further, the Defendant

avers that, to the extent that the Plaintiff did incur the injuries set out under the aforesaid heading, in any event, such injuries were incurred as a result of the Plaintiff's own negligence and/or contribution to the subsequent accident complained of...

[3.] At trial Armstrong gave evidence and called Dr. Katheyn DeSouza (Dr. DeSouza), Javon Roberts and Dr. Carlton Chambers (Dr. Chambers). Sol called Gareth Stubbs, John Archer (Archer) and Dr. David Barnett (Dr. Barnett) as witnesses in its case.

Armstrong's evidence

[4.] Armstrong gave evidence by way of a witness statement and a supplemental witness statement and was subject to cross-examination and re-examination.

[5.] Armstrong's evidence is that he is retired. He stated that he formed Corporate Travel Management Limited ("CTM"), was self-employed there, and, before the incident, drove for CTM collecting aviation gas from Sol's premises, having done so from about 2008. He said that the frequency of visits varied with the season, sometimes as few as two times per week and sometimes as many as six or seven, and that prior to the incident, the drivers were himself and Mr. Javon Roberts.

[6.] Armstrong further said that after the 2014 accident he ceased to do physical driving work for CTM, but continued in a supervisory and advisory role. He also said that he performed supervisory work for Odyssey, while another mechanic undertook the physical work.

[7.] As to the accident itself, Armstrong stated that as he crossed the metal grate that was covering the product trench it suddenly collapsed causing him to fall on his right knee and hand. While trying to regain his balance the other part of the grate gave way under his feet and he fell into the opening landing on his left shoulder, rolling a complete summersault. He says that he felt immediate and intense pain which prevented him from standing.

[8.] Armstrong says that he was assisted to his feet by Javon Roberts and Sol's security guard, Archer. He says that he reported the incident to Sol's on duty Plant manager. Armstrong says that the depth from the street level to the bottom of the inside of the drainage way was approximately 9 inches deep. The area was described as rough concrete with steel grates laid on top of the gap. Armstrong produced photographs which he says describes the failing structural integrity of the grates and surrounding concrete at Sol's facility.

[9.] Armstrong says that as a result of the accident he sustained extensive injuries to his right knee, both shoulders and severe cramps, tingling numbness that completely changed his life.

[10.] Armstrong accepted in cross-examination that there was a discrepancy between his reamended amended statement of claim and his witness statement. He agreed that the version in the pleading suggesting that, upon alighting from the vehicle, he stepped on the grate and fell was “not correct.” His evidence was that, after entering the premises, the truck was filled, quality-control checks were done, and he was given the relevant documentation; it was on his way back to the truck that he stepped on the grate, which collapsed into the trench and caused him to lose his balance and fall. He also said that he had crossed the grates earlier without incident and, despite many prior visits to the defendant’s premises over the years, could not recall any previous problem of that kind. He testified that after the incident he drove the truck off the premises himself and completed delivery of the aviation gas that day.

[11.] On the issue of medical attention, Armstrong accepted that the records showed that he first attended Dr. Dane Bowe on 3 July 2014 and that some 31 days passed between the date and that attendance. He explained that, immediately after the accident, he took over-the-counter medication, namely Aleve, and that within five to seven days he contacted Dr. Bowe after experiencing intense pain. He said that the delay in seeing Dr. Bowe was due to the time it took to obtain the appointment.

[12.] Mr. Armstrong further accepted that he continued attending Sol’s premises on certain dates after the accident. He said he had no choice, because the only other trained driver, Mr. Roberts, had gone to New York to collect another truck for the company, and that aviation fuel haulage required training and approval and could not simply be assigned to an ordinary driver.

[13.] With respect to prior and subsequent medical history, Armstrong accepted there had been earlier incidents, including one in the 1980s and another in 2013, which had affected his shoulders and at least his left knee, though he maintained that the complete tears to both rotator cuffs occurred in the 2014 accident at Sol’s premises. He also accepted that he was involved in a later car accident on 9 December 2018, but said he did not intentionally withhold that information and did not see its relevance to the present claim.

[14.] Finally, in relation to the photographs exhibited to his witness statement, Armstrong explained an image which showed that the area after the accident had been covered with a steel plate. In another image, Armstrong showed the trench after later repairs.

Katheyn DeSouza

[15.] Dr. DeSouza gave evidence by way of a witness statement and a supplemental witness statement and was subject to cross-examination and re-examination.

[16.] DeSouza identified herself as a physician specializing in physical medicine and rehabilitation and sports medicine. In her evidence, Dr. DeSouza said that she had first seen Armstrong on 17 November 2016, not 10 November 2020, and that the purpose of that first visit was to evaluate left-knee pain for possible hyaluronic acid injections. She also said that there had been another visit on 17 October 2016 in connection with a lumbar epidural and a post-epidural visit, and that there were no visits between October 2016 and 2020 after that. She accepted that these earlier visits were not mentioned in her report.

[17.] When questioned about why those matters were omitted, DeSouza initially said that the report was a disability evaluation and did not include the patient's history, but then corrected herself and said that it did include a history. She nevertheless maintained that the history was not incomplete and explained that, for a disability evaluation, the history was based on the patient's current functional position and what was going on at the time of the examination.

[18.] DeSouza was taken to Dr. Barnett's report and, after reading parts of it, agreed with Dr. Barnett's characterization that she had accepted that the treatment she administered to Armstrong had not been proven to resolve the issues in his left shoulder and left knee. She also said that her report showed Armstrong's current level of disability, but that she was not able to speak to the cause of that disability beyond recording that Armstrong told her he had fallen on 2 June 2014. She confirmed that she was therefore only able to indicate what was reported to her.

[19.] She further said that Armstrong had not reported to her a slip and fall in the 1980s, a fall on 30 July 2013, a car accident on 9 December 2018, or another incident on 27 February 2019. When asked whether that previous information would have been relevant to her assessment, she answered no, but accepted that it was possible that such incidents and injuries could have had an impact on his current impairment. She also agreed that it was possible that some of the ailments she observed were the result of natural degeneration due to aging, and that posture, weight, and overall general health could affect degenerative conditions.

Javon Roberts

[20.] Javon Roberts gave evidence by way of a witness statement and was subject to cross examination and re-examination.

[21.] Javon Roberts gave evidence that he resides at Pride Estate, Nassau, Bahamas, and that he works at Corporate Travel Management, describing himself as "Truck Manager."

[22.] In cross-examination, Roberts said he could not recall when he started working with CTM, but confirmed that he was still involved with the company. He said that he maintained all the trucks

and all truck operations, and also described himself as a partner in the company. As to the day of the incident, Roberts said that he was with Armstrong at Sol's premises and that he usually accompanied him when aviation gas was being collected. He confirmed that he was also a driver for CTM in 2014.

[23.] Roberts said that when they arrived, Armstrong did not fall when he first exited the truck, and that he too exited the truck. Roberts said that, after exiting the truck, he stood at the computer station at the loading rack, and that after the truck was filled he walked to the nearby security booth and spoke with Mr. Archer while waiting for Armstrong to return from the administrative office. He clarified that he was at the loading rack first, and only went to the security booth after the truck had been filled. He further said that access to both the computer station and the security booth required crossing the metal grates over the product recovery trench. He said that while he and Mr. Archer were standing side by side facing the rack, he saw Armstrong leave the administrative office and make his way back toward the loading rack.

[24.] According to Roberts, Armstrong stumbled because the grate "fell in," but did not fall into the trench itself. He said that Mr. Armstrong first fell on his knees, then when he tried to recover himself "the next one fell in" and he stumbled again, falling on his shoulder or side. Roberts said that he and Mr. Archer then went over to assist him and picked him up.

[25.] Roberts said that Armstrong did not, at that time, say that he was in pain. He estimated that Armstrong remained inside the office for more than 30 minutes but less than an hour. Roberts said he was not inside with Armstrong because he had to move the truck from under the rack. Finally, Mr. Roberts said that he, not Armstrong, drove the truck away from the premises and completed the delivery of the aviation gas that day. He rejected the suggestion that Armstrong had driven the truck off the premises and delivered the gas.

Dr. Carlton Chambers

[26.] Dr. Carlton Chambers gave evidence by way of a witness statement and a supplemental witness statement and was subject to cross examination and re-examination.

[27.] In cross-examination, Dr. Chambers said that he first saw Armstrong on 20 October 2016 in relation to complaints of lower back pain, neck pain, and bilateral shoulder pain. He accepted that his first report was dated 1 July 2017, about eight months later, and explained that although he recorded information when treating patients, preparation of medical reports could take time depending on his clinical workload. He said that the report was based on the notes and medical records from that visit.

[28.] Dr. Chambers said he could not recall whether he had seen Armstrong between 20 October 2016 and 1 July 2017, explaining that his office had transitioned from paper to electronic medical records and that he did not then have immediate access to the written records. He also said he was not aware that Armstrong had received a lumbar epidural injection from Dr. Katherine De Souza on 17 October 2016, and accepted that this was not referred to in his first report.

[29.] Dr. Chambers confirmed that he had prepared two reports between 2016 and 2024. On the issue of pain, he said it was not necessarily the case that a person injured in an incident would experience immediate pain. He described several possible explanations for delayed pain, including distracting pain from another injury, elevated adrenaline in an acute event, and the later onset of muscle spasms and inflammatory processes. He said there were different scenarios in which someone could have an injury and not feel pain at the time, although he also said that it would be unusual for pain to begin as late as 31 days after an injury, even though pain could continue beyond that period if the cause had not been addressed.

[30.] He further accepted that it was possible that the ailments for which Mr. Armstrong consulted him could have resulted from natural degeneration or other preexisting conditions. He agreed that posture, excessive weight, general health, and age could all affect degenerative conditions, and that a degenerative condition could trigger the pain sensations reported by Mr. Armstrong.

[31.] When asked about the nature of his reports, Dr. Chambers agreed with the description of a medical-legal report as one prepared by an independent medical professional to assist a court in determining liability, quantifying damages and compensation, and assessing future care needs. He accepted that he had described both of his reports as medical-legal reports. However, he rejected the suggestion that he had ignored preexisting conditions. Referring to his second report, he pointed out that it mentioned left shoulder arthroplasty secondary to left shoulder degenerative disease and also recorded past medical history including back pain in the 1980s, spinal surgery in the 1990s, and cervical spine surgery in 2014.

[32.] Dr. Chambers said that he did not independently investigate Armstrong's medical history but relied on the history reported to him by Armstrong. He said he did not recall being told about an accident on 30 July 2013 or an accident on 27 February 2019, and said that the omission of the 2013 accident from his report was because he did not recall being advised of it. He also said he had no record of an injury in 2018, though he did have a record of a May 2019 hand injury. He accepted that undisclosed and undiscussed events in a patient's history could have an impact on a physician's findings.

[33.] He further confirmed that, when preparing his second report, he had reviewed Dr. Barnett's report. Although he accepted that the July 2013, December 2018, and February 2019 incidents were probably discussed in Dr. Barnett's report, he said he did not use Dr. Barnett's report to prepare his own report. He maintained that his report was based on the history given to him by Armstrong and denied that he had ignored those matters. More generally, he said that clinical medicine depends on trust between doctor and patient and that he necessarily relied on what a patient presented and reported to him; if a patient did not disclose an accident, he had no way of exploring it.

Gareth Stubbs

[34.] Gareth Stubbs gave evidence that he lives at #33 Silver Gates Drive and is employed by the defendant as a tank truck driver. He described his responsibilities as loading fuel, driving the truck, and delivering fuel to customers.

[35.] In cross-examination, Mr. Stubbs accepted that his job responsibilities did not include inspection of the floors or grates on the premises. He also said that he was not present on 2 June 2014 when Armstrong fell and could not speak specifically to the condition of the grates at the time of the incident.

[36.] When asked about maintenance, Mr. Stubbs said that if he saw an incident or something needing correction, he would report it and it would be dealt with. He also accepted that he had not brought any document to court showing how the defendant maintained the drains or any report confirming the date of the last maintenance of the drains.

[37.] In re-examination, Mr. Stubbs said that at the time he had worked for Sol for around 16 years as a driver. He said that he had never had issues traversing the drains in the terminal. He further said that, if there were an issue with a drain, the area would be cordoned off and the ramp shut down until the matter was sorted out. He added that the drains were usually kept in good condition and usually fitted because otherwise truck movements would be hindered.

John Archer

[38.] Mr. John Archer gave evidence by way of a witness statement and was subject to cross examination and re-examination.

[39.] In cross-examination, Archer said that he had worked at The Bahamas Maritime Connection Limited since 2005. He agreed that he was loyal to the company and would cooperate

with Sol in the matter. He was then taken to paragraph 5 of his witness statement, where he had stated that on 23 June 2014, he was stationed at the terminal and was inside the security booth.

[40.] Archer further said that he did not actually see Armstrong fall. Rather, he saw Armstrong getting up off the ground, rushed out of the security booth, and went over to assist him. He said that when he was assisting Armstrong, Armstrong said that the drainage “give way” and caused the fall.

[41.] In re-examination, Archer confirmed that he did not see Armstrong fall, but saw him getting up off the ground. He rushed to assist him and asked whether everything was okay; according to Archer, Armstrong replied that everything was okay.

Wayne Francis

[42.] Wayne Francis gave evidence by way of a witness statement and was subject to cross examination and re-examination.

[43.] Wayne Francis, the operations manager at Sol, testified that he has worked with the company for 17 years and also serves as its Health, Safety, and Environment focal point since 2014. He confirmed that Sol maintains a strict routine maintenance schedule, including daily walk-around inspections and checklists, which cover areas such as the metal grates on the premises. However, under cross-examination, he admitted he could not produce documentation showing the last inspection date prior to Armstrong’s fall in June 2014 and had no records in court to prove the grates were in good repair at that time. He denied that his appointment as safety focal point was a response to the accident, and while he was not present when Armstrong fell, he acknowledged that assessments and follow-up measures were taken afterwards.

[44.] In re-examination, Francis explained that the routine maintenance involved daily, weekly, and monthly checklists, as well as hazard identification processes, and that the grates were subject to visual inspections as part of these checks.

David Barnett

[45.] Dr. David Barnett gave evidence as Sol’s medical expert and confirmed that he had examined Mr. Armstrong for the purpose of the litigation rather than as a treating physician. He accepted that he often gives evidence on behalf of corporate and institutional defendants and that a significant portion of his income comes from legal medical work, but he rejected the suggestion that his report was skewed in Sol’s favour, stating that his duty was to the court.

[46.] In relation to Armstrong's medical condition, Dr. Barnett said that Armstrong had noncommunicable diseases including high blood pressure and diabetes, and that when such conditions are uncontrolled they contribute to wear and tear or damage throughout the body's organ systems. He said that lack of control could be assessed from matters such as repeated elevated blood pressure readings and HbA1c results. Although challenged on the basis that he is an orthopaedic specialist rather than an endocrinologist, he maintained that any trained doctor should be able to diagnose high blood pressure and diabetes, while accepting that specialist referral may be appropriate for treatment and control.

[47.] Dr. Barnett also referred to general research showing that degeneration occurs at an earlier age in persons with noncommunicable diseases such as diabetes, and he said that uncontrolled NCDs logically enhance degeneration. He accepted that the statement about research was based on general research, though he said such research had to be applied to the situation under consideration and described the point as ubiquitous rather than something requiring citation to a specific study.

[48.] Barnett further said that Armstrong had some degenerative changes and that degeneration would be expected in a man who was almost 60 years old at the time. In his view, stiffness is not ordinarily a feature immediately after trauma unless there is some pre-existing wear and tear, and he described it as basic pathology that trauma should generally declare itself within 72 hours, or at a stretch 96 hours, subject to some exceptions such as distraction injuries.

[49.] On the question of treatment delay, Dr. Barnett pointed to the fact that, despite describing serious injuries, Armstrong did not seek medical attention until he consulted Dr. Bowe on 3 July 2014, some 31 days after the accident. He said that, from his dealings with Dr. Bowe's office, patients calling for appointments were generally seen within a week, and he disagreed with the proposition that it was usual in The Bahamas for it to take weeks to get an appointment with a specialist. He also said that Dr. Bowe's notes, which he had enclosed, recorded that Armstrong said he had had an accident a week earlier, which he said was consistent with his own position.

[50.] Dr. Barnett referred to a radiologist's report and to findings of chronic and longstanding degeneration in the supraspinatus tendon and muscle, which in his view were not post-accidental changes because such changes take years to develop. He also said that physical activity does not stop the degenerative process, although it may mean that joints do not pain as much.

[51.] In discussing Dr. Ekedede's report, Dr. Barnett said he respectfully disagreed with the comment that Armstrong would not be able to operate heavy equipment or machinery in the future, explaining that his comments were based on what Armstrong told him he was in fact doing after

the accident, namely continuing to drive heavy-duty trucks in emergencies or when another driver was ill or absent, albeit less frequently than before.

[52.] Barnett concludes that Armstrong had a pre-existent and ongoing clinical and radiographic degeneration in his spine, both shoulders, left elbow and both knee joints prior to the Accident in 2014. Barnett assesses Armstrong's impairment as a result of the Accident at 25% but this would not have prevented Armstrong from performing his job which he was doing subsequent to the accident.

The issues

[53.] The issues for determination are:

- (1) Whether Sol breached its duty as an occupier to Armstrong;
- (2) Whether any, and to what extent, any damage caused by such a breach is attributable to Sol.
- (3) Whether Armstrong had contributed to the negligence.

Law analysis and disposition

[54.] The issue for determination is that of occupier's liability. Occupier's liability does not impose a strict or absolute duty on an occupier, such as Sol, to prevent any and all damage to an invitee or licensee. The state of the law was ably put by Sawyer J. (as she then was) in the case of **Cox v Chan** [1991] BHS. J. No. 110. At paragraph 21, of the decision, Sawyer J (as she then was) states:

“[I]t is clear from the decided cases, including *Indermaur v. Dames*, that the duty of care which a person like the defendant owes to a person like the plaintiff is not an absolute duty to prevent any damage to the plaintiff but is a lesser one of using reasonable care to prevent damage to the plaintiff from an unusual danger of which the defendant knew or ought to have known and, I may add, of which the plaintiff did not know or of which he could not have been aware. If it were otherwise then the slightest alleged breach of such a duty would lead to litigation and could, perhaps, hamper the progress of quite lawful and needful businesses.”

[55.] Armstrong's case is that the law imposes a duty on occupiers to take reasonable care to ensure that persons lawfully entering their premises are reasonably safe in doing so but that in this case Sol, as such an occupier failed to do so. He says that Sol's liability is glaring as it breached

its duty of care by failing to upkeep the metal grate and or allowing the same to deteriorate or fall into disrepair which became a hazard to him.

[56.] Armstrong says that the grates were not a hidden danger, they were a part of the main pathway and would have been subject to ordinary and repeated use, making it foreseeable that failure to inspect or maintain them would expose lawful visitors to risk. Armstrong says that Sol's witness Wayne Francis, the Operations Manager admitted that he could not verify that Sol had a routine maintenance schedule in place to ensure that its grounds are kept in good repair. Armstrong also relied on Francis' acceptance that there was no evidence before the Court to demonstrate that the grates on Sol's premises were in good repair prior to the fall.

[57.] Armstrong also relies on Francis' acceptance that measures were put in place by Sol only after the fall. Armstrong submitted that "the foreseeability of harm arising from a corroded or unstable structural fixture, such as a metal grate is self-evident and that Sol ought to have known that without proper maintenance, this type of surface could become unstable over time. Armstrong says that a comprehensive safety audit could have revealed this hazard and subsequently prevented Armstrong's fall.

[58.] Sol contends that Armstrong seeks to shift the burden of proof on Sol and advances the position that both Francis and Stubbs failed to bring any documentation to court to prove that Sol maintained and kept the Terminal's premises in good condition. Sol says that while it is not in dispute that it owed a duty of care generally to persons lawfully on its premises, it denies that it breached any duty of care owed to the Armstrong. Sol says that it is not for it to prove that there was a maintenance system in place or that the metal grates were kept in good repair, but the burden of proof lies with Armstrong to demonstrate to the Court that the metal grates were not kept in good repair and that there was either no maintenance system in place or no reasonable maintenance system in place. Sol relies on the decision in **Tyson Strachan v Albany Resort Operator Ltd.** [2022] 2 BHS J. No.93 and say that "he who asserts must prove".

[59.] Sol argues that alternatively, even if Armstrong is able to establish a breach, the ultimate position is that there are no injuries or loss alleged by Armstrong that are attributable to any negligence or breach of duty by Sol. Sol submitted that it had a health and safety system in place to ensure the safety of all persons who traversed its premises. Armstrong was a regular visitor to the Terminal, having visited the Terminal previously, and having returned to the Terminal following the Alleged Incident. Armstrong produced no evidence to illustrate any problems encountered during his continuous visitations to the Terminal. Moreover, the evidence given on behalf of Sol, namely; the viva voce evidence of Mr. Gareth Stubbs established that in 16 years, there were no issues with Sol's premises that resulted in a visitor or employee sustaining damages. Additionally, the evidence of Mr. Wayne Francis illustrated that Sol maintained a safe system of

work in that there were maintenance checks that were done on a daily basis. Armstrong's own evidence alluded to the fact that he traversed the premises thousands of times without incident.

[60.] Armstrong's case is that Sol's liability is self-evident, which raises the issue of *res ipsa loquitur*. The doctrine of *res ipsa loquitur*, which translates to, the thing speaks for itself, is a rule of evidence rather than a substantive principle of law. It is applied in cases where the claimant cannot precisely identify the act or omission that caused the harm but can demonstrate that the harm is more likely than not attributable to the defendant's failure to exercise reasonable care. This doctrine shifts the evidential burden to the defendant, requiring them to prove that the incident occurred without negligence on their part.

[61.] I accept that Armstrong raises this without pleading it, however no such pleading is required. This was considered by Jones JA in the Court of Appeal case of **Tyson Strachan v Albany Resort Operator Ltd**. At paragraph 47 Jones JA stated:

47. *Res ipsa loquitur* describes evidence from which one can draw an inference of negligence. The respondent contended that *res ipsa loquitur* was not an issue raised in this case. They argue that there was no reason for the court to consider the doctrine, as the appellant did not plead it, nor was it in their submissions. In *Bennett v Chemical Construction (G.B.) Ltd*, [1971] 1 W.L.R. 1571 the UK Court of Appeal held that *res ipsa loquitur* does not need to be specifically pleaded. In that case, the plaintiff was injured when a panel, being moved by employees of the defendant, fell. The judge held it was not possible to determine exactly what happened, but took the view that it could not have occurred without the defendant's employees being negligent. The plaintiff did not plead *res ipsa loquitur*, nor did it appear in the judgment. On appeal, the court held that the case was a classic case of *res ipsa loquitur*, which was covered by the allegation of negligence in the pleadings. Davies LJ said:

"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. The defendants made no attempt to do that in this case. In my judgment this is really a classic case of *res ipsa loquitur*. Here you have the panel being moved by the defendants' men, and it falls. It should not have fallen. The defendants might, as Edmund Davies L.J. said in the course of the argument, if it were so, have called evidence to show that one or more of the men had a sudden stroke or something of that kind, which no one could foresee. But here the panel fell, and I entirely agree with the judge that it could not possibly have fallen without some apparent negligence on the part of the defendants.

[62.] For the doctrine to apply, Armstrong must establish that the accident is of a kind that ordinarily does not happen without negligence, and the instrumentality causing the harm was under Sol's control. If the defendant provides no explanation, the inference of negligence remains, and the claimant's case is established. However, if the defendant adduces evidence, the court must evaluate whether it is still reasonable to infer negligence from the mere fact of the accident.

[63.] The Privy Council decision in the case of **Airport Authority v Western Air Ltd (The Bahamas)** 2020 UKPC 29 affirmed the operation of the doctrine in The Bahamas. In **Airport Authority v Western Air**, the Appellant, the statutory body established under the Airport Authority Act 2000, owned and operated the Lynden Pindling International Airport in Nassau. The respondent was an airline operator that owned a Metro III aircraft, which, on 26 April 2007, was stolen from Apron 5, a restricted zone of the airport. The Appellant, as the statutory body, was responsible for controlling access to that zone at the time of the theft. The respondent sued the appellant in the Supreme Court for negligence and relief on the doctrine of *res ipsa loquitur*. The trial judge Adderley J, (as he then was) found that the doctrine applied and this was confirmed by the Court of Appeal and Privy Council.

[64.] The Privy Council found that all three elements of the doctrine were satisfied: the theft of the aircraft was an unexplained occurrence, it would not have happened without negligence, and the circumstances pointed to the negligence of the appellant, the Airport Authority. At paragraph 51 of the decision it outlines the operation of the doctrine:

51. Quite apart from this, any careful examination of the circumstances of the theft admits of no other conclusion than that the three requirements were present. The theft of the aeroplane was an unexplained occurrence; it would not have happened in the ordinary course of things without negligence on the part of someone other than the respondent; and the circumstances pointed unmistakably to the negligence in question being that of the appellant, rather than any other person or agency. There was nothing untoward about the application of the doctrine by the trial judge nor its endorsement by the Court of Appeal.

[65.] The plea of *res ipsa loquitur*, where applicable, shifts the burden to Sol to demonstrate that it did in fact exercise reasonable care, notwithstanding the occurrence of the event. The collapsing of a metal grate, of the kind which forms the subject matter of this case, which is laid atop a rough concrete gap does not ordinarily collapse. It does not occur where such a metal grate is kept in good repair. It is indeed an unexplained occurrence; it would not have happened in the ordinary course of things without negligence on the part of someone other than Armstrong; and the circumstances pointed unmistakably to the negligence in question being that of Sol, rather than any other person or agency. I am therefore satisfied that the doctrine of *Res Ipsa Loquitur* applies.

[66.] In the circumstances, the burden is placed on Sol to demonstrate that it discharged its duty of care. On the evidence, which I accepted, I did not find that Sol, at the relevant time, had a proper system of maintenance in place with respect to the metal grate. In my view, the vigilance of Sol, with respect to the maintenance system in place concerning the metal grate, came into prominence following Armstrong's fall.

[67.] In any event, I am satisfied on the evidence that there was ample material on which I could find that there was evidence of fault on the part of Sol, without resort to the doctrine of *res ipsa loquitur*. As indicated above, on the evidence which I accept, Sol paid no attention to ensuring that the area was properly maintained and regularly examined. Sol's vigilance, with respect to the maintenance system in place concerning the metal grate, came into prominence following Armstrong's fall.

[68.] In the circumstances I find that Sol is liable to Armstrong in occupier's liability.

[69.] Sol argues that if the Court were to find that Armstrong had successfully proved negligence on behalf of Sol, that it ought to find that Armstrong's own negligence significantly contributed to his injuries. Sol says that the evidence shows that Armstrong did not pay due care and attention to what he was doing and as a result, did not have regard for his own safety. Sol says that as Armstrong is unable to positively state how he came to fall on the grate, and as there are inconsistencies in the account of the fall, the only reasonable inference is that he failed to exercise due care and attention. Sol submits that Armstrong suffered injury due to his failure to take reasonable care for his own safety, and as such, the court ought to find that he is contributorily negligent. Sol does not suggest what percentage contribution ought to be allocated.

[70.] While Armstrong seemed to be very accident-prone, I was not satisfied that Sol had demonstrated any contributory negligence on his part in respect of this incident. Where the challenge exists in this case is determining what injury, if any, are attributable to Sol as Armstrong had sustain injuries prior to the fall at Sol's premises and following the fall at Sols' premises.

[71.] Sol says that the expert medical evidence before this court, all agreed that Armstrong's previous injuries and natural degeneration contribute to his condition. As such, Sol says that Armstrong will have an impossible task in seeking to convince this Honourable Court upon the evidence that he has adduced, that there exists any nexus between the conduct of Sol, and the damages allegedly sustained by Armstrong.

[72.] I should indicate at this point that I generally accepted Armstrong's evidence as truthful despite the minor discrepancy as to whether the incident occurred going to or coming from the administration office. I preferred the independent evidence of Javon Roberts, who I found to be truthful. Armstrong was on his way back to his truck when he stepped on the metal grate, which

collapsed into the trench causing him to lose his balance and fall. I accepted that Armstrong stumbled because the grate "fell in," but did not fall into the trench itself. He first fell on his knees, then when he tried to recover himself another grill fell in and he stumbled again, falling on his shoulder and side.

[73.] Armstrong did not attend to a physician immediately following the incident and in fact first attended some 31 days later. Armstrong continued to attend Sol's premises on certain dates after the accident and work as he had done prior to the fall. In my view, and supported by the report of Dr. Barnett, this was an indication of the severity of the injury such that he could self medicate with over-the-counter medication.

[74.] I accepted most of the expert opinion evidence of Dr. Barnett, notwithstanding his propensity to appear in personal injury claims primarily for insurers of defendants alleged to have been tortfeasors. I had difficulties in accepting the evidence of the experts advanced by Armstrong, notwithstanding their caliber and credibility, as Armstrong was not completely forthright with them, having failed to give them his complete medical history.

[75.] None of the physicians who treated Armstrong in the months after the incident gave evidence. Dr. Ekedede, who treated him a year after the accident, provided a witness statement but did not attend Court to give evidence. Dr. Chambers and Dr. DeSouza did not see Armstrong until 2016.

[76.] The evidence revealed the following medical history of Armstrong, prior to the fall of 2 June 2014:

- (1) In the 1980s Armstrong slipped on oil while working as an aircraft mechanic. The injury involved damage to spinal discs, which Dr. Barnett says could advance the natural degenerative process. Dr. Barnett accepted that the incident would have occurred about 30 years earlier and that he had not reviewed medical records confirming a diagnosis of injured discs or treatment for that condition, explaining that after so many years such records would likely have been disposed of and that he therefore had to depend on what the patient said.
- (2) On 30 June 2013, a year prior to the fall which is the subject of this action, Armstrong suffered a fall and presented at Doctor's Hospital Blake Road. He was assessed by Dr. Clinton Clark who confirmed that Armstrong struck his head during the fall and that his left shoulder was dislocated. In November 2013, at a subsequent visit, Armstrong complained of ongoing pain in both his right shoulder and right knee joint. A radiographic examination showed that he had degenerative osteoarthritic changes in both joints.

[77.] Dr. Barnett's evidence revealed the following medical history of Armstrong, following the fall at Sol's premises on 2 June 2014:

- (1) On 3 July 2014, some 31 days after the accident Armstrong presented himself to Dr. Dane Bowe, for the first time.
- (2) MRI ordered by Dr. Bowe revealed loss of normal cervical lordosis which showed loss of normal cervical lordosis which is in keeping with longstanding chronic and pre-existing changes which were in concurrence with the medical history that Armstrong had neck issues for several years as stated by Bowe.
- (3) Armstrong began to have lower back pain sometime in June 2015, over a year after the Accident. He stated that the pain was associated with numbness in both the lower extremities. An MRI performed by Dr. Ekedede, on the lower back showed degenerative changes in the spinal region. (Barnett says that accident is blameworthy for a minor contribution to the objectively seen ongoing degeneration, as there was no complaints until over a year after the accident it cannot be stated that it has caused any acute problems. Chronic degeneration in ones spine is characterized by alternation period of symptoms and pain free periods.)
- (4) On 20 August 2015, Armstrong attended Dr. Gibson who recommended surgeries to mitigate and or correct the pain emanating from his neck be performed prior to surgeries to correct issues to his shoulder and cervical spine.
- (5) On 17 October 2016, Armstrong saw Dr. Katherine De Souza in connection with a lumbar epidural and a post-epidural visit.
- (6) On 20 October 2016, Armstrong first saw Dr. Chambers in relation to complaints of lower back pain, neck pain, and bilateral shoulder pain. (Dr. Chambers stated that the report was based on the notes and medical records from that visit.)
- (7) On 17 November 2016, Armstrong saw Dr. De Souza the purpose of the visit was to evaluate left-knee pain for possible hyaluronic acid injections.
- (8) On 9 December 2018, Armstrong was involved in a car accident. (Dr. Barnett says that this injury now contributes, to a minor degree, to Armstrong's long-term joints)
- (9) On 27 February 2019, Armstrong sustained a serious hand injury. (Dr. Barnett says that this injury now contributes, to a minor degree, to Armstrong's long-term joints)

[78.] I accepted the opinion evidence of Dr. Barnett that:

- (1) Armstrong had a pre-existent and ongoing clinical and radiographic degeneration in his spine, both shoulders, left elbow and both knee joints prior to the Accident in 2014.

- (2) Armstrong's impairment as a result of the Accident at 25% but this would not have prevented Armstrong from performing his job which he was doing subsequent to the accident.
- (3) Armstrong's subsequent injuries in 2018 and 2019 now contribute, to a minor degree, to Armstrong's long-term joints.

[79.] This is clearly a case of making an assessment in the midst of pre-existing injuries. A useful discussion is to be found in the Supreme Court decision of **McCoy v. Williams and another; Clarke v. Williams and another** [2014] 1 BHS J. No. 112. At paragraphs 23-30 the Court stated as follows:

23 The law on pre-existing injuries provides that in considering the damages that should flow to McCoy following the December 2009 accident the Court must have regard to the general principles which provide that while a tortfeasor must take his victim as he finds him he is not liable for any injury that was not caused by the accident. Guidance on this principle is set out in the case of *Cutler v. Vauxhall Motors Ltd.* [1970] 2 All ER 56.

24 The principle in *Cutler* was restated by Sir Denys Williams in *Brewster v. Davis* (1992) 42 WIR 59 where it was said:

The editors of *Salmond & Heuston on the Law of Torts* (19 Edn) page 613 state the 'egg-shell skull' rule as the seventh exception to the principle of *The Wagon Mound* [1961] 1 All ER 404 that reasonable foreseeability is the test of remoteness:

'This seventh exception, to the effect that the amount of damage need not be foreseen, is illustrated by the well-established rule that, at least so far as the physical condition of the victim is concerned, abnormal circumstances existing at the time of the wrongful act do not negative causal connection. So if the consequence of a slight personal injury are aggravated by the state of health of the person injured, the wrongdoer is nonetheless liable to the full extent, though he had no knowledge of that state of health and no reason to suspect it. So in the leading case of *Smith v Leech Brain & Co Ltd* [1962] 2 QB 405 it was held that if a victim of a negligent act suffers from a pre-cancerous condition which is activated by that act, the wrongdoer is responsible for all the disastrous consequences. This is always known as the "egg-shell skull" rule, although there appears to be only one case in which the plaintiff suffered from this peculiar disability. After a period of uncertainty it has now been held in England, Scotland, Ireland, New Zealand and Canada that *The Wagon Mound* did not affect the "egg-shell skull" rule.'

In this case the plaintiff's kidneys were malfunctioning on the date of the accident on account of the inflammatory response to SLE and the stress exacerbated her condition producing acute renal failure. I hold that the

'eggshell skull' rule is still part of the law of Barbados and for the purposes of that rule there is in my judgment no difference between inflamed kidneys and a thin skull, a bad heart or a pre-cancerous condition. Accordingly, I hold that a causal link has been established between the defendant's negligence and the plaintiff's acute renal failure.

Mr Baker's evidence is that on a balance of probabilities the lupus would have developed in any event; that the accident was irrelevant because the plaintiff was destined for the serious illness that followed. On this evidence Mr. Alleyne submits that the plaintiff should not be awarded any damages at all or, at least, damage should be apportioned. He relies on *Cutler v Vauxhall Motors Ltd* [1970] 2 All ER 56 for his submission that there should be no award.

In that case the plaintiff grazed his right ankle in November 1965 by reason of his employer's negligence. In May 1966 he was found to have a varicose condition of both legs which must have existed before November 1965 and an ulcer at the site of the graze. The ulcer necessitated an operation to strip the veins of the right leg and it was decided to treat the left leg similarly. This operation was performed in 1966 and after it the plaintiff was off work for a while and then on light work only for a time which caused him £173 net loss of wages. If he had not grazed his ankle, a similar operation, with similar consequences would have been necessary in 1970 or 1971. In an action by the plaintiff against his employers for damages in negligence, Donaldson J awarded £10 damages for the graze and the consequent discomfort, but refused to award damages in respect of the £173 loss and the discomfort of undergoing the operation. The decision was upheld by the Court of Appeal on the ground that, although the loss had already been sustained at the date of the trial, future probabilities were to be taken into account in determining whether the plaintiff was entitled to recover in respect of the loss and there was no reasonable probability that, even if the plaintiff had not suffered the graze, he would have avoided having to undergo an operation similar to that which he had in fact undergone, at a cost at least equivalent to £173. Karminski LJ said that the varicose condition, was in existence before the accident and I would have required surgical treatment in any event in the foreseeable future. The accident merely advanced the date of the operation.

25 It is not disputed that McCoy had preexisting degenerative disc disease which required surgical operation prior to the December 2009 accident. The medical evidence does not suggest that the December 2009 accident either accelerated the need for surgery or made it more prominent (or urgent) or that his degeneration was impacted by the December 2009 accident.

26 As McCoy cannot seek to profit from the tort, allowances must be made and taken into account for the expenses that he would have naturally incurred arising from the previous accidents and the degenerative disc disease. Further guidance is found in the case of *Salih & Anr. v. Enfield Health Authority* [1991] 3 All ER 400, per Slade LJ

The object of the court in awarding damages in tort for pecuniary loss is so far as possible to restore the victim to the same overall financial position as that in which he would have found himself if the tort had never been committed. However great its sympathy with the plaintiff, it is not entitled to give him an adventitious profit. While no authority which has been cited to us is closely parallel to the present case, the closest is perhaps the decision of this court in *Cutler v Vauxhall Motors Ltd* [1970] 2 All ER 56, [1971] 1 QB 418. Butler-Sloss LJ has already summarised the facts of that case, in which the majority decided that the court was entitled to advert to future probabilities, when considering whether the plaintiff was entitled to recover an item of financial loss (£173) which, as at the date of the trial, he had suffered as a result of the defendants' negligence, and that it would not be right to recoup him for this head of expense since in all probability he would at some subsequent date have had to bear it in any event.

Similarly in the present case, if the defendants' negligence had not occurred, the plaintiffs would on the balance of probabilities have had to incur the basic cost of maintaining at least one further child in any event. They are being compensated under a separate head in respect of the additional expense they have suffered and will suffer by reason of Ali's being born disabled. In my judgment the court is not entitled to have regard to this disablement in deciding what financial award (if any) should be made to them in respect of the basic cost of Ali's maintenance. It might have happened that, notwithstanding his mother's contact with rubella infection and the defendants' faulty advice, Ali was born a normally healthy baby. If that had happened, though the plaintiffs would not doubt still have had a claim for nominal damages against the defendants, I think that, in view of their stated previous wish and intention to have two more children, it could not have been right for the court to make any award in their favour in respect of the basic cost of Ali's maintenance. To do so would have left them with a profit. I can see no sufficient justification for making an award under this head merely because, in the event, he was born handicapped.

27 The purpose for PSLA is "as nearly as possible to get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation" (as per Blackburn LJ in *Livingstone vs. Rawyards Coal Co.* (1880) 5 Appeal Case 25).

28 I accept the findings of Dr. Munnings, who saw the patient contemporaneously with the injury, that in fact new injuries occurred as a result of the December 2009 injury. I find

however that these new injuries were relatively minor in comparison to McCoy's existing injuries. ...

30 I find that in the circumstances the new injury sustained by McCoy should, according to the Judicial College Board, fall within the upper end of the minor injuries range for back injuries. It should therefore be compensated in an award of damages in the amount to \$11,000.

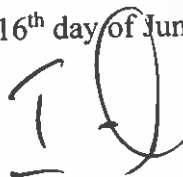
[80.] I am satisfied on the evidence which I have seen and heard, and which I accept, that Armstrong's injury arising from the fall ought to be limited to the injury to his shoulder and upper limbs and to his right knee. I also accept and find as a fact that his shoulders and right knee were already the subject of pre-existing damage which occurred on 30 June 2013, when he fell hitting his head and dislocating his shoulder. In November 2013 he continued to experience ongoing pain in both his right shoulder and right knee joint. A radiographic examination taken at that time showed that he had degenerative osteoarthritic changes in both joints and confirmed that Armstrong had ongoing pre-existing degeneration in both shoulder joints and along with other upper and lower extremity joints.

[81.] Armstrong's evidence spoke to an injury to his knees but this was not pleaded in his Claim.

[82.] I also did not accept that there was a sufficient connection with the back injury aspects of Armstrong's particulars of injury, namely: (2) Multiple disc prolapses; (3) Cervical spondylosis; (3) Cervical facet joint arthropathy; and, (4) Soft tissue stenosis and herniated disc. As indicated above Armstrong does not complain of these injuries until over a year later and there is a known history of pre-existing damage to Armstrong's back prior to the fall of 2014.

[83.] Having regard to my findings and limitations discussed above, I direct the parties to provide written submissions within 21 days as to the appropriate award of damages and for costs. As to special damages, I direct Armstrong to produce a schedule of the special damages items, isolating those related only to the injury for which I have found Sol liable. I invite the parties to agree this schedule, in default of such an agreement I will have to make the appropriate determination.

Dated the 16th day of June 2026

A handwritten signature in black ink, appearing to be 'I W', written over a horizontal line.

Sir Ian Winder
Chief Justice