

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

Claim Nos. CLE/GEN/01581/2012

And CLE/GEN01582 /2012

BETWEEN

DOROTHEA COLLIE

HELEN SAUNDERS

Claimants

AND

LOMBARD ODIER & CIE (BAHAMAS) LIMITED

Defendant

Before: The Honourable Mr Justice Darron D. Ellis

Appearances: Kahlil Parker and Robertha Quant for the Claimants

Adrian Hunt and Michaela Sumner-Budhi for the Defendant

Hearing Dates: 27, 28 and 29 May 2024; 22 April 2025; 1 August 2025

JUDGMENT

Common Law and Equity Division — Consolidated workplace personal injury claims — Alleged exposure to poor air quality, mould, fungi, airborne debris and fungal structures — Employer's common law duty of care — Alleged breach of statutory duty under the Health and Safety at Work Act — Causation — Competing expert medical evidence — Loss of earnings.

The Claimants, Dorothea Collie and Helen Saunders, were employees of Lombard Odier & CIE (Bahamas) Limited (the Defendant) at its offices on the 2nd Floor of Goodman's Bay Corporate

Centre, West Bay Street, New Providence. Both Claimants allege that, during their employment, they were exposed to poor air quality, mould, fungi, airborne debris and fungal structures in the workplace, and that the Defendant knew or ought to have known that the workplace was unsafe.

The Claimants plead negligence and breach of statutory duty, alleging that the Defendant failed to maintain a safe workplace, failed to warn employees of environmental hazards, failed to properly maintain or install a safe air duct system, and failed to provide an alternative safe working environment. They claim that these breaches caused a range of physical and psychological injuries, including chronic fatigue, cognitive and memory problems, alleged toxic mould exposure, and chronic inflammatory response syndrome. The Defendant disputes liability and causation.

Held: The Defendant was in breach of its common law duty to provide a reasonably safe place and system of work and its statutory duty under **section 4(1) of the Health and Safety at Work Act**. The workplace was shown to have been affected over time by water intrusion, poor ventilation, stale air, airborne debris, and at least some mould- and fungal-related contamination, and those conditions were not adequately disclosed to the employees and/or managed to protect the Claimants. The Claimants proved that those workplace conditions materially contributed to real compensable respiratory, fatigue-related, headache, cognitive, and related symptoms. The Claimants did not prove the wider range of diagnoses and lifelong consequences alleged. The claims for post-termination loss of earnings also failed. Each Claimant was awarded BSD \$50,000 for pain, suffering and loss of amenity, together with the special damages found recoverable in her case.

(1) An employer owes a personal and non-delegable duty to take reasonable care for the safety of its employees, including the provision of a reasonably safe place and system of work. The standard is that of the reasonable and prudent employer having regard to what it knew or ought reasonably to have known at the material time: **Wilsons and Clyde Coal Co Ltd v English** [1938] AC 57; **Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd** [1968] 1 WLR 1776. **Section 4(1) of the Health and Safety at Work Act** imposed a parallel obligation to take reasonably practicable steps for the health, safety and welfare of employees.

(2) The Defendant was not required to provide a perfect or risk-free workplace, and the mere presence of mould or environmental imperfection was insufficient to establish negligence. The evidence nevertheless established recurring water intrusion, wet carpeting, inadequate ventilation and air-conditioning, stale air, elevated airborne debris and some fungal or mould material. The Defendant knew or ought reasonably to have known of the recurring environmental problems. Its response, although it involved contractors, investigation, and periodic cleaning, was not sufficiently timely, systematic, or effective. In particular, the Defendant did not adequately communicate material environmental findings to the Claimants, and it did not give appropriate warnings. The Defendant accordingly breached its common-law duty of care and its statutory duty under **section 4(1) of the Health and Safety at Work Act**.

(3) Mere exposure to a potentially harmful substance, without actionable personal injury or recoverable loss, does not itself sound in damages: **Cartledge v E Jopling & Sons Ltd**

[1963] AC 758; **Rothwell v Chemical & Insulating Co Ltd** [2007] ICR 1745. Where, however, exposure produces real bodily or functional impairment, actionable damage may be established: **Dryden v Johnson Matthey Plc** [2018] UKSC 18.

(4) The Claimants remained required to establish medical causation on the balance of probabilities. Where tortious exposure materially contributes to an indivisible injury or cumulative condition, causation may be established notwithstanding that other factors also contributed, provided the contribution was more than negligible: **Bonnington Castings Ltd v Wardlaw** [1956] AC 613; **Bailey v Ministry of Defence** [2009] 1 WLR 1052. That principle is to be distinguished from a case involving merely competing possible causes where the evidence does not establish that the Defendant's breach caused or materially contributed to the injury: **Wilsher v Essex Area Health Authority** [1988] AC 1074.

(5) Expert evidence must be evaluated by reference to the expert's relevant expertise, factual assumptions, methodology and reasoning, and its consistency with the evidence as a whole. The Court is not bound to accept an expert opinion merely because it is honestly and professionally expressed and may accept or reject expert evidence in whole or in part: **Kennedy v Cordia (Services) LLP** [2016] UKSC 6; **National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)** [1993] 2 Lloyd's Rep 68; **Bolitho v City and Hackney Health Authority** [1998] AC 232; **TUI UK Ltd v Griffiths** [2023] UKSC 48.

(6) The Claimant's expert witness evidence was accepted only in part. It supported the conclusion that prolonged exposure to poor indoor environmental conditions could materially contribute to respiratory, fatigue-related, headache, cognitive and associated symptoms and that the Claimants' symptoms were medically significant. On the evidence as a whole, this was not merely a case of several wholly distinct possible causes within **Wilsher**. The workplace conditions formed part of the cumulative causes of the respiratory, fatigue-related, headache, cognitive and associated symptoms proved and contributed to those symptoms to an extent that was more than negligible within the principles in **Bonnington Castings and Bailey**. The Defendant's breaches therefore caused or materially contributed to a narrower but genuine compensable injury in each Claimant.

(7) Personal injury damages are compensatory and must reflect the injuries and consequential losses actually proved: **H West & Son Ltd v Shephard** [1964] AC 326; **Heil v Rankin** [2001] QB 272. English awards and guideline figures may provide useful guidance in The Bahamas but do not constitute an inflexible tariff and must be considered with appropriate regard to local conditions: **Scott v Attorney General of The Bahamas** [2017] UKPC 15.

(8) General damages were therefore assessed by reference to the Claimants' proved and overlapping symptom complexes rather than by separately compensating every pleaded diagnosis. The Court considered relevant Bahamian and English comparators including **Samantha Russell v Commonwealth Bank** as its principal local comparator, and **Kennedy v London Ambulance Service NHS Trust** and **Van Wees v Karkour and Another** as qualified English cross-checks. It assessed the overall effect of the proved

injuries and avoided double recovery for overlapping symptoms without making separate awards for overlapping symptoms. Although the Claimants' injuries differed in presentation and course, the evidence did not establish a material difference in their overall compensable pain, suffering and loss of amenity warranting different awards.

(9) The Claimants failed to establish their substantial claims for past and future loss of earnings to the requisite standard. Special damages were recoverable only where specifically pleaded, sufficiently proved and causally related to the injuries established. The Court treated the expert report and retainer expenses as costs rather than recoverable special damages.

Authorities referred to:

Wilsons and Clyde Coal Co Ltd v English [1938] AC 57; **Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd** [1968] 1 WLR 1776; **Cartledge v E Jopling & Sons Ltd** [1963] AC 758; **Rothwell v Chemical & Insulating Co Ltd** [2007] ICR 1745; **Dryden v Johnson Matthey Plc** [2018] UKSC 18; **Bonnington Castings Ltd v Wardlaw** [1956] AC 613; **Bailey v Ministry of Defence** [2009] 1 WLR 1052; **Wilsher v Essex Area Health Authority** [1988] AC 1074; **Kennedy v Cordia (Services) LLP** [2016] UKSC 6; **National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)** [1993] 2 Lloyd's Rep 68; **Bolitho v City and Hackney Health Authority** [1998] AC 232; **TUI UK Ltd v Griffiths** [2023] UKSC 48; **H West & Son Ltd v Shephard** [1964] AC 326; **Heil v Rankin** [2001] QB 272; **Scott v Attorney General of The Bahamas** [2017] UKPC 15; **Samantha Russell v Commonwealth Bank**, 2012/CLE/gen/00934; **Van Wees v Karkour and Another** [2007] EWHC 165; **Kennedy v London Ambulance Service NHS Trust** [2016] EWHC 3145 (QB).

ELLIS J

Introduction

[1.] This proceeding arises out of consolidated claims by two former employees of the Defendant, who allege that they suffered personal injuries as a result of prolonged exposure to unsafe environmental conditions in the Defendant's workplace at Goodman's Bay Corporate Centre, West Bay Street, New Providence (the Workplace).

[2.] Dorothea Collie commenced employment with the Defendant in December 1979 and ceased work on or about 31 March 2013. Helen Saunders commenced employment on 2 September 1998 and ceased work on or about 30 March 2012. The Defendant moved its Workplace to the 2nd Floor of the Goodman's Bay Corporate Centre in or about April 2000. The Goodman's Bay Corporate Centre is a large, modern, multi-storey commercial office building situated in the Goodman's Bay area of New Providence, in the vicinity of West Bay Street. The building comprises several floors of office accommodation occupied by

various businesses, professional firms and other organisations, with shared entrances, corridors, elevators and other common areas serving the individual office spaces.

[3.] The Claimants' pleaded case is that the Workplace was affected by longstanding air-quality and environmental problems; that the Defendant knew or ought to have known of those problems; that it failed to warn, protect or relocate its employees; and that it failed to maintain the Workplace in a condition that was safe and without risk to health.

[4.] The claims are advanced in negligence and breach of statutory duty. The statutory duty relied on is **section 4 of the Health and Safety at Work Act**, pleaded as requiring every employer to ensure, so far as reasonably practicable, the health, safety and welfare at work of all employees and to maintain the workplace in a condition safe and without risks to health.

[5.] The injuries alleged by the Claimants are extensive and include chronic fatigue, cognitive and memory problems, respiratory and systemic complaints, toxic mould exposure, and chronic inflammatory response syndrome ("CIRS"), together with a number of more specific diagnoses pleaded in each action.

[6.] The medical causation issues are therefore central. The Claimants rely principally on the expert evidence of Dr Scott McMahon, who attributes their chronic systemic inflammation and related conditions to chronic exposure to the interior of the water-damaged Workplace. The Defendant relies on the expert evidence of Dr Charlisa Gibson, who disputes that the medical evidence establishes a direct causal relationship between the alleged Workplace exposure and the Claimants' chronic complaints. The Court must therefore consider not only what conditions existed at the Workplace and what the Defendant knew or ought to have known, but also whether the Claimants have proved, on the balance of probabilities, that any breach of duty caused the injuries and losses claimed.

The Re-Amended Statements of Claim

[7.] Each Claimant relies on a Re-Amended Statement of Claim dated 28 November 2024. Ms Collie pleads that she was at all material times employed by the Defendant as Vice President and that she was born on 3 August 1958. Ms Saunders pleads that she was at all material times employed by the Defendant as Operations & IT Manager and Assistant Vice President. She was born on 5 December 1958 and is a divorced mother of one child.

[8.] The central factual allegation in both claims is that the Defendant knew the Workplace had an air quality problem and was unsafe for the Claimants and their co-workers. The Claimants plead that in 2005 an employee in the same building, Genoveve Caso, who was said to have been getting sick continuously because of poor air quality, called the Ministry of Health to determine whether the Workplace was safe or posed a threat to employees' health. They plead that, to their knowledge, the Defendant did not allow the Ministry of Health to conduct tests, while the health of the Claimants and their colleagues continued to deteriorate as a result of exposure to poor air quality.

[9.] Ms Collie pleads that her diagnosis of autonomous nervous system dysfunction and other ailments came about as a result of exposure to airborne debris and several different species of mould and fungi at the Workplace. Ms Saunders similarly pleads that her diagnosis of auto-immune dysfunction and other ailments came about as a result of exposure to airborne debris and several different species of mould and fungi at the Workplace.

[10.] Both Claimants plead that the Defendant took no steps to notify, advise or warn them or their colleagues of the potential ill-effects of continued exposure to mould, fungi and airborne debris in the Workplace, and that the Defendant failed to provide an alternate and safe working environment.

[11.] The Claimants state in their pleadings that two reports from a company called Environmental, Asbestos, Mould and Abatement Contractors (EAMAC), dated 15 November 2011 and 4 May 2012, confirmed elevated levels of airborne debris and fungal structures and recommended cleaning action at the Workplace. The extent to which the underlying reports in fact support that formulation is a matter to which I return later in this Judgment. The Claimants further plead that the EAMAC testing showed contamination affecting the Workplace's air supply, carpet floor tiles, air duct system, grills, walls, furniture, room contents, and ceiling tiles.

[12.] It is further pleaded that the Defendant engaged EAMAC without notifying employees, did not disclose the results of the EAMAC testing, and issued no notices, warnings or other communications alerting the Claimants or staff to the alleged health hazards. The Claimants allege that the Defendant did not advise employees to exercise caution, seek medical attention, or consider that occupation of the Workplace was dangerous or potentially harmful to their health.

Negligence and Breach of Duty as Plead

[13.] The Claimants plead that their prolonged exposure to airborne and environmental hazards, and the injuries allegedly suffered as a result, were due to the Defendant's negligence. The pleaded particulars of negligence are materially the same in both claims. The Claimants allege that the Defendant, by itself or through its servants or agents:

- a. kept the Workplace in an unsafe condition, allowing it to become and remain water-damaged, wet, damp, contaminated by mould, "airborne debris" and "fungal structures", or otherwise dangerous;
- b. failed to provide notice or warning to the Claimants or other employees that the Workplace was water-damaged, wet, damp, contaminated, or otherwise dangerous;
- c. failed to erect signs or issue notices warning of airborne contaminants and other environmental hazards;

d. failed to properly maintain and/or install an air duct system that would not be hazardous to employees' health; and

e. failed to provide the Claimants and their co-workers with a safe work environment.

[14.] In addition to negligence, both Claimants plead breach of statutory duty under **section 4(1)** of the **Health and Safety at Work Act**, which imposes on every employer a duty to ensure, so far as reasonably practicable, the health, safety and welfare at work of all employees. The Claimants further rely on sections **4(2)(d)** and **(e)**, pleading that the Defendant's duty extended to ensuring that the Workplace was maintained in a condition safe and without risks to the Claimants' health. The Claimants plead that the Defendant failed to meet its statutory obligations by failing to maintain the Workplace and allowing it to become and remain unsafe and risky to health, thereby causing harm.

[15.] Ms Collie pleads that, by reason of the matters alleged, she sustained injuries, incurred loss and expense, and suffered damage. The pleaded injuries are: Autonomous Nervous System Dysfunction; Autoimmune Polyarthritis; Immune System Lupus Erythematosus; Mycotoxicity; Dermophytosis; Thyroidmegaly; Invasive Fungal Infection; Chronic Fatigue; Swollen Lymph Nodes; Lymphadenopathy; Digestive Discomfort and Irregular Bowel Motions; Hypoadrenalism; Pancreatic Insufficiency; Dysbiosis; Optical Injuries; Memory Loss; Toxic Mould Exposure; and CIRS.

[16.] Ms Collie pleads that, due to injuries caused by the Defendant's negligence, she became physically unable to work. The pleaded special damages include medical expenses, travel expenses, loss of earnings from March 2013 to January 2016, claimed loss of earnings and benefits from February 2016 to August 2023, half the cost of Dr Charles Kemp's report, and expenses associated with Dr McMahon.

[17.] Ms Saunders also pleads that, by reason of the matters alleged, she sustained injuries, incurred loss and expense, and suffered damage. The pleaded injuries are: Auto-Immune Dysfunction; Neuro-Vegetative Imbalances; Uncontrollable Blood Pressure; Endocrine Hormonal Disruption; Mycotoxicity; Dermophytosis; Thyroidmegaly; Invasive Fungal Infection; Chronic Fatigue; Psychological Distress; Optical Injuries; Memory Loss; Toxic Mould Exposure; and CIRS.

[18.] Ms Saunders pleads that she also became physically unable to work. The pleaded special damages include medical costs, travel expenses, loss of earnings from March 2012 to January 2016, half the cost of Dr Charles Kemp's report, and expenses associated with Dr McMahon.

[19.] Both Claimants claim damages for personal injury, pain and suffering, and loss of amenities; special damages; damages for breach of statutory duty; interest pursuant to the **Civil Procedure (Award of Interest) Act 1992**; costs; and such further or other relief as the Court considers.

[20.] The pleaded case, in short, is that the Defendant owed the Claimants duties as an employer at common law and under the **Health and Safety at Work Act**; that the Workplace was unsafe by reason of poor air quality, dampness, mould, fungi, airborne debris and fungal structures; that the Defendant knew or ought to have known of those conditions; that it failed to warn, protect or relocate the Claimants; and that each Claimant suffered personal injury, loss of earnings, medical expenses and other consequential loss as a result.

[21.] By its defence, the Defendant denied negligence, denied breach of statutory duty, denied that it failed to provide a safe Workplace, and denied that any condition in the Workplace caused or materially contributed to the Claimants' alleged injuries, loss, or damage. The Defendant maintained that reasonable steps were taken in response to any Workplace concerns and that the Claimants were not entitled to the damages or other relief claimed.

The Evidence

Dorothea Collie

[22.] Ms Collie described a number of water-intrusion and ventilation issues while employed with the Defendant. She stated that a few months after moving into the Goodman's Bay Corporate Centre, the Workplace client bathroom flooded due to plumbing issues, and water seeped into a nearby storage facility and kitchen. She also stated that in or about June or July 2005, the Workplace was without air-conditioning because the chiller system had malfunctioned; fans were used because the windows could not open; and the air remained stuffy and stale for approximately two months while the situation was being addressed.

[23.] Ms Collie stated that, in 2005, her co-worker Genoveve Caso complained of headaches and dizziness over several months and said that her symptoms were triggered when she arrived at work and did not affect her at home. Ms Collie said she encouraged Ms Caso to call the Ministry of Health and was later informed that the Ministry was not allowed to inspect the Workplace. She stated that she was not aware the Defendant was taking steps to improve workplace safety or air quality.

[24.] Ms Collie also gave evidence about water intrusion during Hurricane Wilma in 2005 and Hurricane Irene in 2011. She stated that her workspace was inundated with water during Hurricane Wilma, soaking the carpet, and that after Hurricane Irene, towels and carpets near the balcony doors and window ledges were soaked. She stated that potted plants in the office appeared to have green and black substances growing on them and were discarded.

[25.] Ms Collie stated that, in or about 2007, she began to notice that she was winded when climbing stairs and fatigued due to upper respiratory problems. She said she felt as though she was not obtaining sufficient oxygen and, as a result, she stopped exercising after work. She also stated that Ms Saunders complained of headaches, ringing in her ears and dizziness and told her that she felt her health was deteriorating due to the work environment.

- [26.] Ms Collie stated that, in 2007, she was assigned to allow Air Care Bahamas to enter the Workplace to inspect and clean the office ceiling vents and filters for mould, bacteria and fungi. Ms Collie stated that Ms Saunders told her that the Air Care Bahamas report indicated that more than 70% of the air in the office was contaminated, though Ms Collie herself did not produce that report.
- [27.] Ms Collie stated that, on one occasion in 2011, she experienced difficulty breathing at her desk, which she initially thought was an asthma attack. She said that Niekia Horton, the Defendant's chief operating officer, brought a ventilator for her to use. She said her respiratory conditions continued into 2012, requiring visits to the Walk-In Clinic for nebulisation therapy and causing her to leave work on occasions due to deterioration in her health.
- [28.] Ms Collie testified that, on 3 November 2011, Mr Enzo Swan collected samples from the Workplace for testing and later produced a report dated 15 November 2011 stating that there did not appear to be amplification of fungal structure at the time of sample collection, but airborne debris was present and cleaning activities were recommended. She stated that Mr Swan was later contracted by the Defendant to clean the ceiling, walls, vents and air ducts in areas identified in that report.
- [29.] Ms Collie stated that on 9 March 2012 she was in the Workplace during the cleaning process. She said that, while she was working at her desk, Mr Swan used a chemical without warning which caused her to cough uncontrollably, have runny eyes and a burning sensation in her eyes, scalp and skin. She stated that Mr Swan did not inform her that she needed to be elsewhere in the premises while he used the chemical.
- [30.] Ms Collie added that, in late April 2012, she consulted Dr Michael Ingraham on Ms Saunders' recommendation because she was suffering from fatigue, arm and leg joint pains, headaches and insomnia. She said Dr Ingraham diagnosed her with fungal and mould mycotoxins and recommended a second opinion.
- [31.] Ms Collie further stated that, in early May 2012, she photocopied documents from Indiana Mitchell's desk, including EAMAC letters/reports dated 15 November 2011, 2 May 2012 and 4 May 2012, which she said outlined the air quality in the Workplace. She stated that the Defendant did not disclose these findings to her or her colleagues.
- [32.] Ms Collie stated that, in May 2012, she and Ms Saunders attended a laboratory in Gainesville, Georgia for mould-exposure testing. Ms Collie stated that she and Ms Saunders were informed that her ochratoxin level was 4.2 ppb and Ms Saunders' was 6.2 ppb, and that they were told anything above 0.2 ppb was considered dangerous. She said their results were forwarded to the Mould Treatment Centres of America before their consultation, and that both were diagnosed with ochratoxin toxicity, hypertension urgency and elevated blood pressure, among other matters.

- [33.] Ms Collie stated that shortly after returning to work she experienced respiratory problems, difficulty breathing and shortness of breath, attended the Walk-In Clinic and was diagnosed with dyspnoea and acute bronchitis. She stated that she was unable to work from 20 May to 31 May 2012.
- [34.] Ms Collie testified that, by letter dated 20 September 2012, Christian Coquoz, the Defendant's managing director, was informed that Ms Collie had been diagnosed with autoimmune dysfunction as a direct result of exposure to a variety of species of mould and fungi, and that investigations indicated the exposure occurred in the Workplace.
- [35.] Ms Collie stated that repeated laboratory testing on 19 November 2012 showed her ochratoxin level had risen to 7.7 ppb, while Ms Saunders' level had reduced to 1.4 ppb. She attributed this difference to the fact that Ms Saunders no longer worked for the Defendant by that time and had been removed from the mould-infested environment, whereas she remained employed there.
- [36.] Ms Collie testified that, on 24 November 2012, she was present when Amro Builders replaced all ceiling tiles in the Defendant's office. She said the tiles had multiple black spots and water marks from water infiltration, and appeared to have mould and fungus growing on them.
- [37.] Ms Collie stated that the Defendant instructed her by letter dated 10 December 2012 to submit to a medical examination by a practitioner of the Defendant's choosing and to remain at home pending determination of her fitness to continue in post. She stated that she adhered to that request and later reiterated her willingness to be examined, but no one from the Defendant contacted her about the proposed evaluation. She stated that her employment was terminated effective 31 March 2013 and that she learned of this from a colleague's congratulatory note after a mass email was sent to staff.
- [38.] Ms Collie stated that, at no time during her employment, did the Defendant warn staff of mould infestation or inform them that it was trying to remediate air quality, despite having reports indicating elevated airborne debris. She stated that her health deteriorated significantly as a result of exposure to the unsafe and hazardous Workplace environment, and described memory problems, headaches, deteriorated eyesight, near accidents while driving, anxiety, depression, loss of independence and loss of her ability to sing as before.
- [39.] Additionally, Ms Collie gave evidence in chief about her salary and benefits. She said that her last monthly salary at the Defendant was approximately **\$7,230**. In cross-examination, Ms Collie gave evidence about her current work as an office clerk at the Church of God of Prophecy National Office, earning **\$1,700 per month**, with duties involving greeting people, attending to requests and going to the post office.
- [40.] Ms Collie was also cross-examined on her ongoing symptoms after leaving the Workplace. She accepted that she continued to receive treatment from Dr Ingraham and followed the Mould Treatment Centre regime after leaving the Workplace. When asked whether her condition improved after leaving, she said she continued to have "attacks",

including respiratory attacks, forgetfulness, nerve pain, forgetting things without knowing, and ongoing brain fog. She also accepted that she had seen specialists, including a pulmonologist and neurologist, but maintained that symptoms continued.

Helen Saunders

[41.] Ms Saunders stated that she was at all material times the Defendant's Operations & IT Manager and Assistant Vice President, employed at the Workplace. Ms Saunders stated that in or about June or July 2005 the Workplace was without air-conditioning because the chiller system had malfunctioned. She had recently returned from the Defendant's Switzerland head office, where she had been working on a special project. She stated that she began suffering from the flu and cold and that matters degenerated significantly in 2006, when she began to suffer consistent upper-respiratory issues and began attending the Sandyport Walk-In Clinic regularly.

[42.] Ms Saunders stated that in 2005 Genoveve Caso, an employee who also worked in the same building, complained to the Ministry of Health about the state and air quality of the Workplace, but that employees were never made aware of the results of any inspection and she was not aware of the Defendant taking steps to improve safety or air quality.

[43.] Ms Saunders stated that, in or about June or July 2007, the Defendant brought in Air Care Bahamas Limited to examine the Workplace because of a spate of upper respiratory illnesses among employees. She stated that the Defendant's Chief Operating Officer verbally advised her that Air Care Bahamas had found the office air significantly contaminated, but that employees were never advised of the testing results or allowed to see reports, and that she was not aware of any remediation work being conducted as a result.

[44.] Ms Saunders added that, from 2009, she attempted to identify the cause of her consistent illnesses. She raised concerns by email about old Hewlett Packard printers said to have been recalled in the United States for giving off toxic fumes, but stated that nothing was done. She also requested that the Defendant use plants to improve breathable air in the Workplace because there was little outside ventilation, but again stated that nothing was done.

[45.] Ms Saunders described significant illness episodes in March and June 2010. In March 2010, the Defendant's chief operating officer noticed her in distress, her sister collected her from the Workplace, and she was later taken by ambulance to Doctors Hospital, where doctors could not diagnose the cause of her illness and she was stabilised and discharged. In June 2010, she collapsed in the Workplace, an ambulance was called, and she was taken to Doctors Hospital, where again the cause was not diagnosed, and she was stabilised and discharged.

[46.] Ms Saunders stated that after Hurricane Irene in August 2011, when she returned to the Workplace, the windows had leaked, carpets were soaking wet, and that the managing director was unable to occupy his office due to water damage and mould. She

stated that water damage affected the entire office and that, while the carpets were dried out, filing cabinets near the windows were not moved to clean behind them.

[47.] Ms Saunders stated that she regularly complained to the Defendant about air quality and her protracted illness, but that, to her knowledge at the time, the Defendant failed or refused to take steps. She said that in September 2011 she began to be harassed by the chief operating officer, culminating in the Defendant offering her a separation package.

[48.] Ms Saunders stated that when she separated from the Defendant in March 2012 she did not know that the Defendant had engaged third-party contractors to investigate the Workplace air quality. She stated that she later discovered that EAMAC had been engaged on or about 15 November 2011 and had produced two reports confirming elevated levels of airborne debris and fungal structures and recommended cleaning action and activities. She stated that the Defendant did not disclose those findings to employees and that employees were not made aware of remediation or cleaning activities.

[49.] Ms Saunders stated that on or about 29 February 2012 she attended the Sandport Walk-In Clinic feeling very unwell and with high blood pressure. She later saw Dr Michael Ingraham, who diagnosed her with what she called "Toxic Building Syndrome" and whose tests determined that she had several different types of mould in her body.

[50.] Ms Saunders stated that after leaving the Defendant's employment on 30 March 2012, she did not return to the Workplace. Following Dr Ingraham's diagnosis, she investigated toxic mould exposure and concluded that her symptoms, similar to Ms Collie's, were associated with it. She and Ms Collie attended the Mould Treatment Centres of America in Atlanta, Georgia, where she said their toxic mould exposure diagnoses were confirmed.

[51.] Ms Saunders stated that, at the July 2012 visit to the Mould Treatment Centres of America, her reported level was 6.3 and Ms Collie's was 4.2. She stated that, on return testing in November 2012, her level had dropped to 1.4 after leaving the Workplace, while Ms Collie's had risen to 7.1 while she remained there. She said they were advised that anything above 0.2 was considered dangerous.

[52.] Ms Saunders stated that she continues to suffer the personal injuries and damage particularised in her Re-Amended Statement of Claim, although she felt considerably better after leaving the Workplace. She stated that the Defendant ignored her consistent complaints about air quality dating back to 2006 and failed to share information, advise, inform or warn employees when it had confirmed her suspicions.

[53.] Ms Saunders described the impact on her quality and enjoyment of life. She stated that she became afraid to travel or go anywhere, was exhausted, suffered memory loss and was regularly disoriented. She gave an example from 2014 when she drove on the wrong side of the road until her nephew intervened. She also stated that she developed a stutter while at the Workplace in 2012, which worsened but resolved after a year outside the

Workplace. She stated that she was physically unable to work between March 2012 and January 2016.

[54.] In cross-examination, Ms Saunders accepted that her evidence about Ms Caso's complaint to the Ministry of Health was based on what she had heard, and that she was not in Nassau at the time. She said that after returning in 2005 to the Workplace, her health began to deteriorate and she regularly attended the Sandyport Walk-In Clinic for upper respiratory issues.

[55.] Ms Saunders was cross-examined about Air Care Bahamas and the alleged information that office air was over 70% contaminated. She stated that she and other employees had flu-like symptoms or other ailments, although she could not recall how many or their names. She said Niekia Horton told her that over 70% of the office air was contaminated, but she accepted that she did not see a report and could not prove that conversation. She also said she had her home checked in 2012 to ensure it was not contaminated.

[56.] In re-examination, Ms Saunders said she made oral complaints and identified the persons to whom she complained as Christian, Niekia, Loron and "anyone who might have listened." The Court asked whether she suffered from short- and long-term memory loss. She answered that she had, and that she still had "blank moments", although not as badly as before. In further examination she stated that she had suffered nerve damage, severe insomnia and headaches.

[57.] The Court also received a Supplemental Witness Statement of Dorothea Collie and Helen Saunders, sworn on 23 May 2024, for the limited purpose of evidencing expenditure said to have been incurred in connection with Dr McMahon and the testing he requested. The statement then set out separate expenditure schedules for each Claimant. For Dorothea Collie, the schedule under "TAB-1" included, among other items, half the cost of Dr Charles Kemp's report, payments to Whole World Health Care, laboratory testing, JetBlue travel, and hotel accommodation, and totalled **\$16,532.03**. For Helen Saunders, the schedule under "TAB-2" included corresponding expense categories and stated a total of **\$10,051.02**.

Dr Scott McMahon

[58.] The Court received witness testimony and expert medical reports from Dr Scott McMahon in relation to the claims. Dr McMahon testified that he is a board-certified paediatric physician practising at Whole World Health Care, P.C., Roswell, New Mexico. He states that his practice focuses on evaluating chronic systemic inflammation from chronic mould exposure and that he maintains a database of approximately 2,000 patients. In his report, he further states that he has evaluated patients with reported mould and mycotoxin illness for nearly 14 years, has seen patients from the United States and 18 countries, and has authored or co-authored publications in the field.

[59.] Dr McMahon's evidence was based on his personal evaluation of the Claimants, review of their medical records, environmental materials, laboratory testing, visual contrast sensitivity testing, and his review of medical literature concerning chronic systemic inflammation and mould exposure.

[60.] Dr McMahon described his task as determining whether the Claimants met diagnostic requirements for chronic systemic inflammation, immune system dysfunction, endocrine system dysfunction, and/or neurological damage, and, if so, whether those conditions resulted from the Workplace.

Dorothea Collie

[61.] In his report dated 2 October 2023, Dr McMahon stated that Ms Collie had been in excellent health before working at the Workplace. He recorded that she developed 33 chronic systemic inflammation diagnostic symptoms while working at the Workplace. He stated that Ms Collie met the diagnostic criteria for chronic systemic inflammation, immune system dysfunction, endocrine system dysfunction, mycotoxicity and neurological damage described as toxic encephalopathy, cognitive decline and/or cognitive changes. He attributed these conditions to chronic exposure to the interior of the water-damaged Workplace and stated that the exposure was causative of her significant loss of energy, exercise intolerance, cognitive issues, headaches, neurological symptoms, shortness of breath, and other symptoms. He further stated that she would suffer from chronic systemic inflammation for the rest of her life and would require therapy for life.

Helen Saunders

[62.] In relation to Ms Saunders, Dr McMahon similarly considered whether her symptoms and objective findings supported chronic systemic inflammation and related conditions. Dr McMahon undertook an extended differential diagnosis for Ms Saunders. He considered, and rejected as sufficient explanations, conditions including allergies, asthma, diabetes, hypertension, congestive heart failure, lupus, osteoarthritis, hypothyroidism, anaemia, peptic ulcer disease, irritable bowel syndrome, mast cell activation syndrome, somatisation, malingering and munchausen's disorders. He stated that no other illness described all of the historical factors, physical findings, and improvement after leaving the Workplace, other than chronic exposure to elevated indoor mould and mycotoxins.

[63.] Dr McMahon then stated to a reasonable degree of medical certainty that Ms Saunders had chronic systemic inflammation due to chronic exposure to the interior of a water-damaged Workplace, and that she developed immune system dysfunction, endocrine system dysfunction, mycotoxicity and neurological damage described as toxic encephalopathy, cognitive decline and/or cognitive changes. He attributed those conditions to time spent in the contaminated interior of the Workplace and stated that they caused her significant loss of energy, exercise intolerance, cognitive issues, headaches, neurological symptoms, shortness of breath, and other symptoms. He further opined that she would suffer from chronic systemic inflammation and require therapy for the rest of her life.

[64.] Dr McMahon's evidence had already described the Claimants' main condition in terms of chronic systemic inflammation. He also introduced the term chronic inflammatory response syndrome ("CIRS") as the diagnostic label for that illness in the context of exposure to the interior of a water-damaged building. He did not treat the two expressions as referring to wholly separate conditions. Rather, his evidence was that chronic systemic inflammation was the underlying pathological process, and that CIRS was the syndrome or diagnostic label applied to that process. To avoid confusion, I treat his evidence as using "chronic systemic inflammation" to describe the essential disease process and "CIRS" to describe the syndrome label attached to it.

Dr McMahon's Response to Dr Gibson

[65.] Dr McMahon also provided reports responding to the opinions of Dr Charlisa Gibson (the Defendant's expert). Dr McMahon identified matters on which he believed he and Dr Gibson could agree, including that both were medically trained, both had decades of experience in their respective fields, neither was a toxicologist or immunologist, and both would understand the principles of laboratory reference ranges. He distinguished his theory of injury from mould infection, allergy, or direct toxicity, stating that he presented CIRS as a non-allergic immune system illness.

[66.] A central feature of Dr McMahon's response was his reliance on laboratory abnormalities as evidence of immune dysregulation. He explained the statistical basis of reference ranges and stated that Ms Collie and Ms Saunders both had abnormalities in innate immune system cytokines and innate immune system regulatory chemicals. He contended that these abnormalities were not plausibly explained by chance.

[67.] Dr McMahon accepted certain points from Dr Gibson's report, including that the Claimants had deficits in short- and long-term memory, that they attended Mould Centres of America with little or no improvement, that some EAMAC testing did not find fungal structures whereas later testing did, that moisture is a prerequisite for mould growth on indoor building materials, and that temporality alone does not prove cause and effect. However, he stated that temporality did not exclude a mould-based illness and that, in his opinion, the combination of temporality, symptoms, lack of alternative explanation, and abnormal laboratory testing made CIRS/ chronic systemic inflammation the more likely cause, with exposure at the Workplace as the trigger.

[68.] In his 6 May 2024 report, he criticised Dr Gibson's familiarity with CIRS and chronic systemic inflammation, contending that she had little or no experience in the field, had not researched or treated patients in this regard, and relied on limited literature which he described as inadequate.

[69.] Dr McMahon further stated that he did not regard Dr Gibson as an expert in CIRS and chronic systemic inflammation, contrasting her experience with his own. He stated that he had evaluated approximately 2,000 patients for the illness, written peer-reviewed

publications, taught providers, and testified as an expert in the United States and Canada in this regard.

[70.] In cross-examination, Dr McMahon accepted that his formal board certification is in paediatrics. He said that, although he is a paediatrician, his medical licence permits him to practise medicine he considers himself adequately trained to practise, and that in New Mexico no one had his credentials for children and adults with CIRS and chronic systemic inflammation. Dr McMahon rejected the suggestion that CIRS is a diagnosis of exclusion, stating that it has biomarkers and can be positively diagnosed.

[71.] The witness was also cross-examined on possible alternative explanations for the Claimants' symptoms. In relation to Ms Collie, Dr McMahon accepted that she had a hysterectomy with removal of ovaries, that she would have gone into menopause, and that some symptoms of menopause can include mood swings, sweating, hot flashes, headaches, stomach issues and, in some cases, brain fog. He accepted that some of Ms Collie's reported symptoms could have been contributed to by menopause, but said that laboratory tests showed CIRS was the reason and that such tests were not made abnormal by hysterectomy or ovary removal.

[72.] In re-examination, Dr McMahon explained the role of binders in treatment and stated that some patients improve merely by leaving a water-damaged building, particularly small children, but that older persons usually require binder therapy as well. He stated that neither Ms Saunders nor Ms Collie had effectively completed the binder step, which explained limited or no improvement.

[73.] In answer to the Court, Dr McMahon stated that mould spores can last up to 50 years or longer, and that fragments of old dead mould can contain chemicals and sometimes mycotoxins recognised by the immune system as foreign. He said spore-trap testing does not pick up those fragments. On further questioning, he accepted that mould would find humidity and food in a climate like The Bahamas, but stated that mould should not be inside buildings and that air-conditioning is used to keep humidity down. He stated that if humidity in the building reached 55–60%, that would be sufficient to cause mould to grow inside. He also said that CIRS is typically not an infection, but the body interpreting exposure as infection; while a massive exposure can trigger symptoms immediately, most patients develop it chronically over four to six months, sometimes less and sometimes more.

Patricia Lillian Gooding

[74.] The Court received evidence from Patricia Lillian Gooding. Her evidence concerns the condition of the Goodman's Bay Corporate Centre after the Claimants' employment period, including her own experience working in the building in 2017, complaints reported by personnel, and environmental investigations carried out by Clear Solutions, the Department of Environmental Health Services, and Pure Bahamas Ltd.

- [75.] Ms Gooding stated that she commenced her post as Head of the Human Resources Department for the Ministry of Foreign Affairs on the first and second floors of the Goodman's Bay Corporate Centre on 24 July 2017. She identified that building as the same building in which the Workplace had been located at all material times. Ms Gooding stated that her own health was severely affected by poor air quality and mouldy conditions in which the building was maintained. She said she experienced extreme flu-like symptoms and abdominal discomfort at the end of August 2017, about a month after beginning work in the building.
- [76.] Ms Gooding further stated that the air-conditioning vents and ceiling tiles in her office were surrounded by what appeared to be "mould spores", and that mould appeared on ceiling tiles throughout the building. As Head of Human Resources, Ms Gooding stated that it was brought to her attention that multiple personnel were experiencing sinus and flu-like symptoms, headaches, chest tightness, asthma, rashes, upper respiratory tract infections, and nosebleeds, among other ailments. She stated that she believed those conditions were linked to the poor air quality in the building.
- [77.] Ms Gooding stated that she fell ill as a result of exposure to airborne and environmental hazards in the building. She said her physician gave her time off until she was relocated to another posting outside the building, and that her symptoms and ailments improved once she was relocated.
- [78.] Ms Gooding stated that, at her employer's request and to assess the building's air quality and cleanliness, Clear Solutions initially evaluated the building in August 2017, and the Department of Environmental Health Services (DEHS) and Pure Bahamas evaluated it in September 2017.
- [79.] Ms Gooding summarised reports emanating from those evaluations as confirming that the building was significantly affected by mould, and as showing contamination affecting the air-conditioned duct system, walls and furniture. I treat that summary as her understanding of the reports rather than as technical evidence in its own right.
- [80.] The Clear Solutions report dated 30 August 2017 was addressed to the Ministry of Foreign Affairs and concerned the Goodman's Bay Corporate Centre. It recorded that air and swab samples were taken from three areas: the second-floor air-conditioning vents, the first-floor air-conditioning vents, and the outside atmosphere for indoor comparison. The Clear Solutions report stated that the air mould test results showed the presence of penicillium/aspergillus and cladosporium in the offices. It further stated that over-exposure to that type of mould can cause infections of the lymphatic system, lungs, liver, spleen, and bones, and deeper infections in immunocompromised persons.
- [81.] The same report stated that cladosporium was found in swab tests taken from the interior of the air-conditioning vents, and that the result was categorised as "Massive", meaning that fungal structures covered the entire sample or viewing area in more than one layer. The report stated that this suggested that the species was contaminating the entire air-conditioned duct system. It also stated that these moulds/fungi can cause hay fever,

asthma, rashes, headaches, chest tightness, and allergies, and that the source had to be removed to avoid further contamination.

[82.] According to the witness, Clear Solutions concluded that the amount and species of mould found were harmful to occupants and that the growth possibly resulted from a lack of air-conditioning maintenance, inadequate cleaning of air duct systems, condensation build-up, high humidity, insufficient return-air filtration, and lack of fresh-air ventilation. It recommended a follow-up visit to determine the cause of the mould infestation and to provide an updated quotation for remediation work.

[83.] The Dove Environmental laboratory material attached to the Clear Solutions report recorded the spore trap results for outside, the second-floor office and the first-floor office. The reported total spores per cubic metre were 2414 outside, 93 in the second-floor office and 373 in the first-floor office. The attached direct microscopic examination report recorded cladosporium and aspergillus/penicillium as massive on the second-floor air-conditioning vent, and cladosporium as massive on the first-floor air-conditioning vent.

[84.] The Environmental Monitoring and Risk Assessment Division of the Ministry of Foreign Affairs prepared the DEHS report. The DEHS report included an overview of mould, stating that if mould can be seen or smelled, a health risk may be present. It stated that the best practice is to remove mould and prevent future growth. It further noted that persons who may be adversely impacted by mould include those with weakened immune systems, young children, the aged, and persons with sensitivities or allergies.

[85.] Regarding the air-conditioning system, the DEHS report identified deficiencies in the building, including ill-advised storage of chemicals in the air-handling unit room, the installation of a main duct in a way that created turbulent air movement and condensation problems, and the use of the incorrect type of air-conditioning filters. The report noted that condensation usually leads to mould growth. The DEHS report also recorded indoor environmental observations, including copious amounts of water settled on the top surface of ceiling tiles in the storage area and the possibility of leaking air-conditioning or water lines within the ceiling space. It noted that carpeting may serve as a source of allergens if copious amounts of water is introduced during cleaning and frequent cleaning is absent.

[86.] The DEHS conclusion stated that addressing the identified deficiencies in a timely manner would provide a more suitable working indoor environment and potentially improve employee comfort and the sense of a healthy and safe workplace. It noted that mould growth and dust accumulation in the air-handling units and on air vents were at levels which could have been avoided through a proper and consistent building maintenance programme.

[87.] The DEHS recommendations included a thorough examination of the air-conditioning system by a qualified air-conditioning company, immediate correction of identified deficiencies, installation of correct filters, cleaning of the air-conditioning system guided by an assessment report, identification of possible sources of water leaks,

notification of the building owner about leaks, routine carpet cleaning, and establishment of a proper housekeeping and building maintenance programme.

[88.] The Pure Bahamas report dated 26 Sept 2017 was a mould inspection and remediation protocol report for the Ministry of Foreign Affairs at Goodman's Bay Corporate Centre. The Pure Bahamas report recorded that Wayne Farquharson visited the site on 19 September 2017, and that the assessment included interviews of property representatives, visual observations, a moisture survey, measurement of temperature and relative humidity, collection and laboratory analysis of spore trap air samples, and collection and laboratory analysis of direct samples.

[89.] The report recorded that a Ministry representative reported that several employees had complained of respiratory issues. On visual assessment, Pure Bahamas recorded no elevated moisture levels in the office space, but visible microbial growth in the northern kitchen air-conditioning vent and in the hallway outside the northern kitchen. Pure Bahamas stated that the purpose of spore trap air sampling was to approximate airborne microbial spore concentrations inside and outside the building, and that elevated airborne spore concentrations might indicate indoor microbial reservoirs or the need to clean personal effects as part of remediation. It stated that six spore trap air samples were taken and concluded that the air-sample results did not appear to indicate excessive mould growth in the office space.

[90.] However, the Pure Bahamas report also recorded direct sampling from the kitchen air-conditioning vent and the vent outside the kitchen. It stated that a high concentration of aspergillus was present on the sample from the hallway air-conditioning vent, with a concentration of cladosporium, and that a very high concentration of cladosporium was present on the sample from the northern kitchen air-conditioning vent, with a significant concentration of penicillium/aspergillus. It also recorded significant debris on the return vent in the western kitchen. Pure Bahamas concluded that the mould growth appeared to be related to lack of proper housekeeping and maintenance, and that dirt build-up on the return vent in the western kitchen was also the result of improper housekeeping. It recommended properly cleaning and disinfecting the air-conditioning system.

[91.] The Pure Bahamas remediation protocol stated that, based on microbial growth observed at air-conditioning vents and the swab laboratory results, the air-conditioning system should be cleaned. It stated that contaminated porous air-conditioning materials must be removed and replaced, and that fogging should not be performed.

[92.] The witness also referred to another Clear Solutions report dated 9 April 2018 which recorded that air and swab samples were taken from eight locations throughout the offices and the outside atmosphere for comparison.

[93.] Clear Solutions stated that the air mould test results showed the specific mould species present in the offices as penicillium/aspergillus. The report stated that the amounts found in the air were above normal and near to outdoor amounts, which it considered sufficient to label the office as mould contaminated.

[94.] In cross-examination, Ms Gooding confirmed that she started working in the building in 2017 and was not aware of anything before that date. She said she requested assessments after mould was identified in the building, searched for companies with mould expertise, contacted them, and received the reports as Human Resource Manager.

Dr Charles Kemp

[95.] Dr Kemp's evidence is directed to the environmental condition of the Workplace and the interpretation of laboratory mould testing and related air-quality materials concerning the Defendant's Workplace. Dr Kemp described himself as the chief executive officer of Clear Solutions Plus, a certified mould remediation, air duct cleaning, sanitising and renovation company. He stated that he had been a Certified Mould Remediation Contractor and Certified Air Duct Cleaning Specialist for approximately 13 years.

[96.] Dr Kemp stated that he had conducted assessments and remediation activities for multiple businesses in Goodman's Bay Corporate Centre. Based on that experience, he stated that the building's air supply systems, moisture control, and air-quality control were not effectively maintained, which contributed to concerns about potential mould growth and exposure. He also stated that, during one of his projects in the building, he observed persistent roof leaks, and that a leaking roof can cause mould growth due to excessive moisture.

[97.] Dr Kemp stated that he had reviewed and considered his report dated 18 September 2018 (the 1st Report) concerning two laboratory reports of testing done at the Workplace: an Aerobiology Laboratory report from 2011, including air testing for mould species, and a SanAir Technologies Laboratory report from 2012, including air testing and surface direct tape testing for mould species.

Aerobiology Laboratory Report dated 15 November 2011

[98.] In his 1st Report, speaking to the Aerobiology Laboratory report, Dr Kemp stated that the indoor air mould species found in the office and considered capable of causing harm to humans were aspergillus/penicillium, cladosporium, hyphal elements, and smuts/periconia/myxomycetes. He stated that acceptability was calculated by comparison with outside air test amounts and that, according to the formula he applied, indoor amounts should be 20% to 50% lower than outdoor amounts. On the basis of that comparison, Dr Kemp's 2018 report stated that the indoor levels were higher than the outdoor levels and that, based on the Aerobiology Laboratory report, the Workplace was considered to have unacceptable levels of indoor mould species present in the atmosphere.

[99.] The underlying EAMAC material attached to the Kemp materials records that, following air-quality sampling at the Workplace, the samples were analysed for fungal structures and airborne debris. EAMAC stated that the analysis did not indicate elevated levels of fungal structures, but did show elevated airborne debris levels. EAMAC concluded that fungal structures did not appear to be amplified at the time of sample

collection, but airborne debris was present and cleaning action activities were recommended.

SanAir Technologies Evidence Report dated May 2012

[100.] Dr Kemp's 1st Report stated that the indoor air mould species found in the SanAir test analysis, which he considered capable of causing potential harm to humans, were aspergillus/penicillium, curvularia, cladosporium, chaetomium, hyphal elements, and smuts/myxomycetes. He further stated that direct tape surface testing of the southside office walls showed ascospores. In the 2018 report, Dr Kemp stated that indoor levels were much higher than outdoor mould levels and that more mould species were present indoors, which he considered suggested hidden mould growth within the Workplace. Based on the SanAir Technologies Laboratory report, he concluded that the Workplace had unacceptable levels of indoor mould species in the atmosphere.

[101.] This report also included commentary on mould types and associated health symptoms. He stated, for example, that penicillium may cause hypersensitivity pneumonitis, asthma and allergic alveolitis in susceptible individuals, and that moulds and other fungi can adversely affect human health through allergic reactions, infections and toxic poisoning. He further stated that infants, children, elderly persons, immune-compromised patients, pregnant women and individuals with existing respiratory conditions and allergies were at higher risk for adverse health effects.

[102.] Dr Kemp stated that he had completed remediation work for the Defendant at the Workplace in October 2020. He described that work as consisting of air scrubbing, sanitising and ozone treatment. He stated that ozone treatment kills bacteria and airborne contaminants, including mould, and that he observed mould around the air-conditioning unit.

Dr Charles Kemp's 2nd Report

[103.] Dr Kemp further testified that, pursuant to the Court's instruction, he produced a 2nd Report identifying areas on which he agreed and disagreed with Wayne Farquharson (the Defendant's expert). The 2nd Report materially qualified Dr Kemp's 1st Report. He stated that, in his first submission, he had indicated that indoor levels were higher than outdoor levels because normal protocol required an outside reading for air-quality or mould testing. He then explained that, at first glance, he had assumed the "North Door Westside" column in the Aerobiology Laboratory results was an outdoor reading, but on closer examination he realised that assumption was incorrect. As a result, Dr Kemp stated that he agreed with Mr Farquharson that the levels were low. However, he maintained that, in his experience, mould or airborne debris, although present in small levels, may affect persons differently depending on the condition of the immune system.

[104.] Dr Kemp also revisited his earlier statement concerning the SanAir report. He recorded that he had previously stated that indoor levels were much higher than outdoor mould levels and that more mould species were present indoors, suggesting hidden mould

growth. On further review, however, he noted uncertainty as to whether the “North Side Door (outside)” sample location was outside the doorway or outside the building. Without clarification of the actual location, he withdrew that statement.

[105.] Finally, Dr Kemp stated in the 2nd Report that Goodman’s Bay Corporate Centre runs on a chilled water system, meaning all offices run off one air-conditioning system. He stated that, if one office experienced issues related to mould or fungal growth in the air-conditioning ducts, other offices might also have similar issues.

[106.] In cross-examination, Dr Kemp accepted that his title “Doctor” was not a medical qualification but one in business, and he accepted that, in his 2nd Report, he now agreed with Mr Farquharson that the relevant mould findings were low, although he maintained, based on his experience as a remediation contractor, that mould or airborne debris, even at low levels, may affect persons differently depending on the condition of the immune system.

[107.] In my judgment, Dr Kemp’s oral evidence materially narrowed the force of his earlier written environmental opinion. While I accept that he remained of the view that low levels of mould or airborne debris may still affect some individuals differently, I treat that latter proposition with caution because he expressly accepted that he is not medically qualified and was speaking from practical experience rather than clinical expertise.

Monica Collie

[108.] The Court received witness evidence from Monica Collie. Her evidence concerns the existence and provenance of video recordings of a meeting said to have taken place on 7 November 2012 involving Niekia Horton, the former chief operating officer of the Defendant, Dorothea Collie and her family. Monica Collie stated that she is Dorothea Collie's sister.

[109.] Monica Collie stated that, on 7 November 2012, Niekia Horton attended the home of Monica Collie’s sister, Patricia Pratt, located at No. 5 St. Croix Road. She stated that she met with Sharon Deveaux, Antoinette Collie, Patricia Pratt, and Dorothea Collie. Monica Collie stated that, as Ms Horton began to speak with her and her sisters, she recorded the conversation using her HTC My Touch cellphone. She stated that the phone was in good working condition at all material times.

[110.] Monica Collie exhibited as “MC-1” a jump drive containing copies of the videos she recorded. The Defendant objected to admission of the video on grounds of relevance and chain-of-custody/electronic-evidence requirements. The Claimants argued that Monica Collie recorded the meeting, was present when the file was transferred, purchased the jump drive, later viewed the footage, and confirmed it was the same footage she recorded. The Court was minded to admit the jump drive into evidence.

Defendant's Evidence

Dr Charlisa Gibson

[111.] The Court received evidence from Dr Charlisa Gibson on behalf of the Defendant. Dr Gibson's evidence addressed the alleged medical consequences of exposure to mould and airborne debris at the Workplace. Dr Gibson is licensed to practise medicine in Maryland, New York, and The Bahamas. She is an attending physician specialising in pulmonary and critical care medicine at the University of Maryland, Baltimore Washington Medical Centre, and a Clinical Assistant Professor of Medicine at NYU Langone Health. She also has admitting privileges at Doctors Hospital as a pulmonologist and critical care consultant physician.

[112.] The Defendant asked Dr Gibson to conduct medical examinations of the Claimants and provide expert medical reports concerning their claims. She reviewed the Claimants' medical records, pleadings, and other reports provided by the Defendant's attorneys, and conducted separate medical examinations of both Claimants on 23 January 2023 at Doctors Hospital.

[113.] Dr Gibson's general evidence was that mould is ubiquitous, that indoor mould development requires excess moisture, lack of ventilation and cold surfaces, and that mould can cause adverse human health effects through three mechanisms: harmful immune response, direct infection, and toxic-irritant effects from mould by-products. She stated that pulmonary illness caused by indoor mould can include allergic fungal rhinosinusitis, allergic bronchopulmonary aspergillosis, hypersensitivity pneumonitis, and asthma. Dr Gibson distinguished between accepted mould-related pulmonary or allergic illnesses and broader claims of inhalational mycotoxicity. She stated that mould-related toxicity from inhaled mycotoxins in non-occupational settings is not supported by current data.

Dorothea Collie

[114.] Dr Gibson examined Ms Collie at Doctors Hospital on 23 January 2023. She recorded that Ms Collie was helpful and cooperative, but that her reporting was limited by short- and long-term memory deficits. She noted a history of hypertension, hyperlipidaemia and a transient ischaemic attack in 2005, seasonal allergies, and complaints including reduced exercise tolerance, leg pains, chronic fatigue, shortness of breath, brain fog and depression. On examination, Dr Gibson recorded that Ms Collie was alert and oriented, with no aphasia, dysarthria or hoarseness.

[115.] Dr Gibson reviewed Ms Collie's medical history and records. She noted, among other matters, bilateral cellulitis and peripheral vascular disease in December 2010, normal inflammatory markers and chest x-ray at that time, treatment at the Mould Treatment Centres of America, chronic sinus findings on imaging, a small microadenoma, negative allergen profile testing to several moulds, and later records documenting complaints including swollen joints, digestive discomfort, hypoadrenalism and pancreatic insufficiency. Dr Gibson accepted that Ms Collie reported symptoms associated with

mould presence, but concluded that there was no definitive way of proving a specific causal relationship between exposure at the Workplace and her disease process or physical harm. She considered that Ms Collie may have had an acute irritant exposure at the Workplace which could have increased the risk of respiratory symptoms and lymphadenopathy, but noted that cleaning agents are the most commonly reported offending agents in an office space, and that rare levels of ascospores were found inside the Workplace.

- [116.] Dr Gibson did not accept that Ms Collie's persisting eye, neurological, cognitive or systemic complaints should be ascribed to mould. She stated that irritant effects of mould involving mucous membranes of the eyes and upper and lower respiratory tracts are transient, and that symptoms persisting weeks after exposure and accompanied by neurological, cognitive or systemic complaints should not be ascribed to mould. She rejected invasive fungal infection as a likely explanation. She observed that Ms Collie had normal eosinophil counts and a negative allergen panel, and that no specific mould species had been isolated from blood, urine, or tissue samples. She also considered alternative non-Workplace sources for mycotoxin exposure, including wine and coffee, and noted that Ms Collie's home had not been tested or treated for mould.
- [117.] Dr Gibson further stated that without further testing, Ms Collie's hypertension, prior mini-stroke and chronic ischaemic changes made it difficult to attribute her clinical findings solely to toxic mould exposure.
- [118.] Dr Gibson also considered it highly improbable that mould exposure caused systemic lupus erythematosus or autoimmune polyarthritis. She stated that no serological testing supported SLE, no inflammatory markers were positive, and alternative explanations existed for leg pain and chronic fatigue, including peripheral vascular disease and deconditioning. She further stated that intense airborne mould exposure is not a recognised cause of secondary immunodeficiency in humans. Dr Gibson concluded in her original report that there was limited evidence that Ms Collie generated a harmful immune response to mould.
- [119.] Dr Gibson accepted that some of the laboratory tests Dr McMahon relied on showed abnormalities, including low VIP and MSH and high C4a. However, she stated that caveats were required: low VIP levels can be seen in persons with high blood pressure; MSH deficiency could be secondary to Ms Collie's microadenoma; and elevated C4a can be seen in disorders not tested for and ruled out, including lyme disease, chronic fatigue syndrome, psoriasis, eczema, antiphospholipid syndrome, cancer, aids, schizophrenia and pancreatitis. Dr Gibson also rejected a clear diagnosis of endocrine dysfunction in Ms Collie. She similarly rejected a clear diagnosis of neurological damage, stating that there is no consensus as to the nature, pathophysiology or aetiology of neurological syndromes associated with mould exposure.
- [120.] Dr Gibson stated that Ms Collie had at least four documented medical diseases — lupus, autoimmune polyarthritis, high blood pressure and microadenoma — that could explain her symptoms, VCS testing and recent blood tests. Dr Gibson accepted that a temporal association may have been postulated between asthma-like symptoms and

Workplace mould exposure, but concluded that a true cause-and-effect relationship had not been established on a more thorough and extensive review.

Helen Saunders

[121.] With respect to Ms Saunders, Dr Gibson recorded that Ms Saunders reported no past medical history except infrequent epistaxis, and described symptoms including recurrent upper respiratory infections, chronic sinusitis, itching, stuttering, impaired memory, blurred vision, severe fatigue, anxiety, depression and mild cognitive deficits. Dr Gibson recorded that Ms Saunders had received treatment at the Mould Treatment Centres of America but reported no symptomatic improvement. On physical examination, Dr Gibson recorded that Ms Saunders was well-developed and well-nourished, alert and oriented, with no aphasia, dysarthria or hoarseness.

[122.] Dr Gibson reviewed Ms Saunders' medical history. Dr Gibson concluded that, although Ms Saunders reported common symptoms associated with mould, there was no definitive way of proving a specific causal relationship between Workplace exposure and her disease process or physical harm. She stated that the environmental findings did not, in her view, demonstrate mould at a level sufficient to account for the injuries alleged, and she relied, among other things, on findings which she understood to show only limited fungal presence of the type identified in the reports. Dr Gibson considered that a harmful immune response to mould was not shown.

[123.] Dr Gibson also rejected invasive fungal infection as a likely explanation. She recorded that no specific mould species was isolated from blood, urine or tissue samples, making invasive fungal infection less probable in an immunocompetent host. She also relied on Ms Saunders' lack of symptomatic improvement after antifungal treatment as suggesting that an alternate diagnosis should be considered. Regarding toxic mould exposure, Dr Gibson stated that any physical or psychological harm from the toxic-irritant effects of mould by-products could not be solely ascribed to inhalation of mould spores. She noted that ochratoxin A is produced by aspergillus and penicillium, not ascospores, and is a common food-contaminating mycotoxin. She observed that Ms Saunders reported drinking wine and coffee weekly, both of which she identified as possible sources of exposure.

[124.] Dr Gibson accepted abnormalities in Ms Saunders' laboratory tests, including low VIP and MSH and high C4a and TGF-B1, but stated that those abnormalities did not establish the diagnoses advanced by Dr McMahon. She said that low VIP levels are seen in persons with high blood pressure, that TGF-B1 increases with age, and that elevated C4a levels can be seen in several disorders that were not tested for and ruled out. Dr Gibson also stated that Ms Saunders' most recent blood work did not support a clear diagnosis of endocrine dysfunction or neurological damage. In relation to endocrine dysfunction, she again relied on cortisol variation through the day, lack of sample timing, and normal osmolality and ADH.

[125.] Dr Gibson concluded, in relation to Ms Saunders, that although a temporal association may have been postulated between her symptoms and mould exposure at the Workplace, a true cause-and-effect relationship had not been established on a more thorough and extensive review.

Dr Gibson's Response to Dr McMahon

[126.] Dr Gibson expressly addressed Dr McMahon's opinions that the Claimants had chronic systemic inflammation, immune dysfunction, endocrine system dysfunction, and neurological damage as a result of chronic exposure to the interior of the Workplace. She stated that her rebuttal focused on mould's potential health risks, the validity of CIRS, and the evidence relied on for immune dysfunction, endocrine dysfunction and neurological damage.

[127.] Dr Gibson acknowledged that Dr McMahon considered himself an expert. However, she contrasted his postgraduate medical training in paediatrics with her adult pulmonary and critical care expertise. She said she is a board-certified pulmonary and critical care physician trained in internal medicine, lung disorders, and critical illness affecting multiple organs in adult patients, and that she has personally managed hundreds of patients with fungal infections for over a decade. Dr Gibson said the notion that indoor mould growth can cause significant toxicity in occupants of mould-damaged buildings is controversial in the scientific literature. She said that in clinical practice she follows the advice and recommendations of the United States Centres for Disease Control and Prevention (CDC). She added that CDC guidance states that standards for judging acceptable or normal quantities of mould have not been established and that no clinically proven tests can pinpoint when or where a particular mould exposure took place.

[128.] Dr Gibson criticised the use of additional laboratory testing in 2023 to establish causation for alleged exposures more than a decade earlier. She stated that she had not recommended such testing because, in her opinion, it went against the standard of care. She considered that the tests Dr McMahon relied on either had unclear clinical significance, were more commonly used for research, or were not universally available outside the United States. In relation to CIRS, Dr Gibson stated that it was a collection of symptoms that was neither recognised nor made legitimate within medicine or the wider academic community, and that it had no World Health Organisation-approved ICD-10 code.

[129.] In cross-examination, Dr Gibson accepted that ICD codes are not all-encompassing and that the absence of an ICD code does not necessarily mean that a particular illness does not exist. She accepted that CIRS had been described as a syndrome based on symptoms in persons with exposure to a toxin and that cases had been recorded. She also accepted that a syndrome is a collection of symptoms and that diagnosis may involve identifying the nature of an illness by examination of symptoms. Dr Gibson accepted several general propositions concerning mould. She agreed that spores can enter indoor air from outside air through doors and windows, be carried in on people, pets, and items, and come from fungi growing indoors. She accepted that dead mould spores can create fragments, and that excessive moisture and lack of ventilation are prerequisites for indoor mould development.

That water intrusion makes an environment susceptible to mould. She also agreed that where there is excess moisture from water intrusion, faulty seals when it rains and lack of ventilation, mould would more than likely grow and spread if not abated.

[130.] Dr Gibson accepted that people may react differently to the same disease, treatment, and mould exposure; that mould can harm humans; that mycotoxins have been recorded as capable of causing disease and death; and that different people may have different tolerance levels to mould. She also accepted that some mould health effects may be short-term and some may be long-term, and that mould may manifest differently in individuals.

[131.] Dr Gibson accepted that mould exposure can cause multiple symptoms including allergic and pulmonary conditions; she read from her own report that persons allergic to mould may have sneezing, itchy watery eyes, runny nose, nasal congestion or itching of the nose, mouth and lips, and that pulmonary illness caused by indoor mould includes allergic fungal rhinosinusitis, allergic bronchopulmonary aspergillosis, hypersensitivity pneumonitis and asthma. She accepted that chronic sinusitis could be associated with mould exposure, but did not accept that mould on the material could be causally linked to the Claimants' thyroid conditions. She stated that mould exposure is a diagnosis of exclusion and that if other tests were normal, alternatives were ruled out, and significant mould exposure occurred, then that was the only explanation.

[132.] On claimant-specific matters, Dr Gibson accepted that Ms Collie had deficits in short- and long-term memory, headaches and chronic sinus congestion, but pointed to radiographic evidence of a microadenoma and sinusitis as possible explanations. She accepted that Ms Saunders had upper respiratory issues, sinusitis, generalised itching, and impaired short- and long-term memory, and that those were symptoms a person exposed to mould could display, but maintained that other testing and possible causes needed to be considered. Dr Gibson was also cross-examined on the EAMAC and Aerobiology/SanAir reports.

[133.] Dr Gibson accepted that if the 4 May EAMAC report indicated elevated fungal structures and elevated airborne debris, and the sampling reports did not show what fungal structures were present, it would not be accurate to say the only mould found was ascospores. She accepted that ochratoxin can be produced by aspergillus and penicillium, although it can also be found in food. She accepted that she reviewed the Aerobiology report and that multiple fungal species were identified in the building. She further accepted that she had not quoted mould levels in her report sufficient to cause injury. Still, she maintained that the levels found in the Workplace were not sufficient for the alleged injuries because allergy testing did not support an allergic response.

Wayne Farquharson

[134.] The Defendant's final witness was Wayne Farquharson. He described himself as a professional engineer, air-conditioning technician and mould remediator. He was tendered as an expert in mould remediation and air quality. His evidence concerns the interpretation of air-quality reports performed in respect of the Workplace in November 2011 and April

2012, and his response to the evidence and report of Dr Charles Kemp and Clear Solutions Plus.

[135.] Mr Farquharson stated that he is the President and Chief Operating Officer of Pure Bahamas Ltd., a Bahamian company that tests air quality and remediates heating and air-conditioning systems. He stated that he has engaged in that work since 2006 and has worked on numerous residential and commercial premises in The Bahamas, including assessing air quality for businesses in Goodman's Bay Corporate Centre.

[136.] Mr Farquharson stated in his report dated 30 March 2024 that he had received two laboratory reports: one by Aerobiology Laboratory and one by SanAir Technologies Laboratory, both referenced in the Clear Solutions' report dated 18 September 2018. His first point was that he could not see where either report included a control sample. He stated that control air samples are important because they provide a basis for comparison with indoor samples. Without a control sample, he considered it more difficult to determine the extent, if any, of indoor contamination. Although he accepted that some mould spores were confirmed in air samples in both reports, he stated that, without a base for comparison, he could not confirm that there was an infestation inside the office at that time.

[137.] In relation to the Aerobiology Laboratory report dated 15 November 2011, Mr Farquharson noted that the report stated that airborne debris was present and cleaning activities were necessary. He stated that the report indicated the level of debris inside the office ranged from 2 to 3 with a sensitivity of 4, and that this indicated some cleaning activity was necessary. However, without photographs or other evidence, he said he could not speak to the debris's location or source. Regarding the SanAir Technologies report, Mr Farquharson stated that none of the air samples showed a spore count greater than 27 per cubic metre. In his opinion, those counts were relatively small and did not indicate any indoor source of contamination.

[138.] Mr Farquharson further stated that, of the six direct samples taken in the SanAir report, only one showed signs of mould. That sample, from the "Office (South Side) Walls", confirmed ascospores, but the estimated amount was indicated as "Rare". He stated that he was not exactly sure how to interpret that term, but that taken at face value it appeared to indicate that the quantity found was small.

[139.] Mr Farquharson stated that, reading both reports, he saw minimal evidence of a lack of effective maintenance of the air-supply systems, moisture control, or air-quality control at Goodman's Bay Corporate Centre. Although the report indicated elevated debris in the air, he said it provided no evidence the debris came from the air-conditioning system. He also said he saw no humidity readings, photographs of damp spots, or visible mould in the reports, so he could not confirm a lack of moisture control.

[140.] Mr Farquharson also addressed the suggestion of hidden mould growth within the office. Based on the laboratory reports, and without further evidence, he said he could not confirm hidden mould growth. He referred to the Aerobiology Laboratory report, which stated that there did not appear to be amplification of fungal structures at the time of sample

collection. He stated that further evidence would be needed to verify the Workplace's indoor mould condition.

[141.] In cross-examination, Mr Farquharson accepted that mould affects people differently and that varying levels of mould may affect individuals differently. He accepted that he was unaware of the Environmental Protection Agency airborne mould contaminant standards, that high humidity and poor ventilation can worsen indoor pollution, and that air-conditioning systems and excess moisture can be sources of indoor pollution. He accepted that the reports he reviewed showed some mould spores in the Workplace, but stated that one report indicated a small level of mould inside the building.

[142.] Mr Farquharson explained the purpose of control samples. He said it is normal operating procedure to take an outdoor sample for comparison with indoor samples. He did not accept that the absence of an outdoor control meant the indoor test failed to reflect the level of mould inside; rather, he said the indoor samples indicated the level inside, while the control sample helps determine whether the source is indoors or outdoors. In answer to the Court, he said he would not rely fully on a test without an outdoor sample because it does not consider all aspects.

[143.] Mr Farquharson accepted that if the air-conditioning systems were not working for two to three months in a building whose windows could not open, it would be fair to say there was a high possibility that humidity levels would rise above 50 or 60%, creating an environment conducive to mould growth. He also accepted that ceiling tiles and sheetrock may hold moisture after leaks, depending on the material and saturation, and that improperly dried and shampooed carpets could become a source of mould growth. He accepted that if mould is in an air-conditioning system and the system distributes air throughout a zone, mould may be spread throughout that zone.

[144.] Mr Farquharson was taken to his 2017 Pure Bahamas report and Clear Solutions' 2018 report concerning the Ministry of Foreign Affairs at Goodman's Bay Corporate Centre. He accepted that visible microbial growth had been observed in the northern kitchen air-conditioning vent and the hallway outside the northern kitchen, and that aspergillus, cladosporium and penicillium appeared in those reports. When asked whether the repetition of similar mould findings within seven months showed the building had a mould problem, he responded that mould remediation is an ongoing process and that mould can germinate in 24 to 48 hours under the right conditions. Mr Farquharson accepted that there were issues with the building, including issues capable of affecting indoor environmental quality. He maintained, however, that later findings in one part of the building did not by themselves establish that the Workplace office had the same condition throughout the earlier period relevant to these claims.

FINDINGS ON WITNESS EVIDENCE

Dorothea Collie

[145.] I found Dorothea Collie to be a genuine witness who was plainly attempting to recount events as she experienced them. I accept that she believed the Workplace environment adversely affected her health and that she experienced real distress and ongoing symptoms which she associated with the conditions at work. Her evidence was valuable in providing the Court with a first-hand account of the day-to-day conditions in the Workplace, the complaints made, the manner in which remediation efforts were said to have been carried out, and the practical impact of those conditions on her.

[146.] I do not, however, accept every aspect of Ms Collie's evidence uncritically. In some respects, her evidence contained assumptions or conclusions that went beyond matters she could directly prove, particularly on technical issues such as the precise significance of testing results or the source and extent of mould contamination.

[147.] In addition, certain parts of her account require cautious treatment where they depended on what others told her or where documentary corroboration was lacking. I therefore treat Ms Collie as a credible witness of experience and symptoms, but not as a reliable source for technical or scientific conclusions. Overall, I accept Ms Collie's evidence insofar as it supports the existence of recurring Workplace problems, complaints, exposure, and real ill-health. I do not accept it as proving, by itself, the full medical causation case advanced in the proceedings.

Helen Saunders

[148.] I formed a similar view of Helen Saunders. I accept that she gave sincere evidence about her working conditions, the symptoms she experienced, and the practical impact of those symptoms on her health and functioning. Her evidence was important in establishing that the concerns about air quality and the Workplace environment were not isolated to one individual and that the conditions complained of were said to affect persons in the Workplace.

[149.] As with Ms Collie, however, I regard Ms Saunders' evidence as stronger on lived experience than on technical detail. Where her evidence moved from describing symptoms and events to attributing specific technical or medical significance to reports, contamination levels, or diagnoses, I treat it with caution unless independent material supports it. I therefore accept Ms Saunders' evidence as supporting the existence of Workplace concerns, exposure, and symptoms. Still, I do not treat it as establishing the broader medical case without expert evidence.

Patricia Lillian Gooding

[150.] Patricia Lillian Gooding's evidence was helpful as later background evidence concerning the condition of the Goodman's Bay Corporate Centre. It supports the

proposition that mould-, moisture-, and air-quality-related concerns later arose in the same building and that such concerns were not fanciful or inherently improbable.

[151.] At the same time, I do not regard her evidence as carrying substantial weight on the condition of the Workplace during the Claimants' employment. In cross-examination, she accepted that she only began working in the building in 2017 and had no knowledge of its condition before that date. I therefore treat her evidence, and the reports exhibited through her, as later contextual and corroborative material of limited weight only, and not as direct proof of the condition of the Workplace during the material period or of medical causation.

Wayne Farquharson

[152.] I found Mr Wayne Farquharson to be a measured and useful technical witness on air-quality testing, remediation practice, and the significance of the environmental sampling carried out at the premises. His evidence helped the Court understand the practical meaning of the reports and the limitations of certain testing methods. I accept that he brought relevant technical experience to the Court.

[153.] I also bear in mind, however, that Mr Farquharson was called on behalf of the Defendant and approached the matter from that perspective. While that does not disqualify his evidence, it requires the Court to examine carefully whether his conclusions were supported by objective reasoning. On balance, I consider his evidence reliable in relation to the interpretation of mould testing, remediation practice, and the proposition that the levels detected in 2012 were not shown to be heavily amplified. I therefore accept his evidence as relevant technical evidence tending against the most extreme version of the Claimants' environmental case, particularly the suggestion that the 2012 testing alone established heavy or clearly amplified mould contamination.

[154.] I do not, however, treat his evidence as resolving the entire matter in the Defendant's favour. Even if the technical testing did not show heavily amplified mould on every occasion, that does not negate recurring environmental problems or the possibility that Workplace conditions were unsafe.

Dr Charles Kemp

[155.] Dr Charles Kemp was a mixed witness. I accept that he sought to assist the Court and that, on fuller review, he was willing to correct aspects of his earlier opinion. That willingness to correct his position is to his credit. At the same time, those corrections materially limit the force of his evidence. In particular, where Dr Kemp withdrew or qualified earlier conclusions based on mistaken assumptions about outdoor comparison samples, the Court must be cautious about attaching substantial weight to his broader conclusions on the significance of the laboratory results.

[156.] I therefore accept Dr Kemp's evidence only to the limited extent that it supports the proposition that the Workplace gave rise to some mould- and airborne-debris-related environmental concern. I do not treat his evidence as carrying significant weight on the

medical question whether low levels of mould or airborne debris caused injury to these Claimants, that being outside his expertise.

Dr Scott McMahon

[157.] I am prepared to accept Dr McMahon's evidence in part. In particular, I accept it insofar as it supports the proposition that prolonged exposure to poor indoor environmental conditions, including mould-related conditions and airborne debris, caused or materially contributed to certain respiratory, fatigue-related, headache, cognitive, and related symptoms. I also accept his evidence insofar as it supports the conclusion that the Claimants' presentations were not medically insignificant and that the Workplace exposure materially contributed to some of the symptoms of which they complained.

[158.] I do not, however, accept Dr McMahon's evidence in full. Parts of his ultimate opinion depend upon a broader diagnostic and causal framework, including CIRS, which I am not prepared to adopt in its entirety on the evidence before me. Further, aspects of his reasoning depend upon laboratory testing undertaken many years after the Claimants ceased working in the premises. While I do not regard that material as irrelevant, I do not consider it sufficient to carry the whole of the broad causal case advanced. I therefore treat Dr McMahon as an important but only partially accepted witness.

Dr Charlisa Gibson

[159.] In my view, Dr Charlisa Gibson's evidence was important, particularly in testing the limits of the Claimants' medical case. I found Dr Gibson to be a careful and qualified physician who brought mainstream internal medicine, pulmonary, and critical care expertise to bear on the issues. Her evidence was especially helpful in identifying differential diagnoses, the need to rule out alternative causes, the significance and limits of later laboratory testing, and the caution required before attributing a broad range of symptoms to mould exposure alone.

[160.] I accept Dr Gibson's evidence in part, and in some important respects I prefer it to Dr McMahon's. In particular, I accept her criticism that the evidence does not establish the entire medical theory advanced by the Claimants, and that one cannot safely proceed as though every abnormality, diagnosis, and chronic symptom was proved to have been caused by the Workplace exposure. I also accept her evidence that later testing, standing alone, cannot conclusively identify when or where a relevant exposure occurred, and that alternative causes were not wholly excluded.

[161.] However, I also bear in mind an important limitation in Dr Gibson's evidence. She approached the case from the perspective of a specialist in internal medicine, pulmonary medicine, and critical care, and not as a practitioner shown to have the same claimed field-specific experience in CIRS as Dr McMahon. In that respect, I do not treat her as dispositive on the narrower question whether the Claimants' symptoms could fit within the CIRS framework as advanced by the Claimants. That limitation does not deprive her evidence of weight. Still, it means I place greater reliance on her evidence to test the breadth of the

Claimants' case, the adequacy of differential diagnosis, and the limits of late laboratory testing than I do to reject outright any environmentally related chronic illness theory.

[162.] Accordingly, I do not accept Dr Gibson's evidence as requiring wholesale rejection of the Claimants' case. I do not consider that Dr Gibson's evidence, properly understood and considered with the evidence as a whole, requires the conclusion that the Workplace conditions made no meaningful contribution to the Claimants' symptoms. The factual history of recurring environmental concerns, the testing and remediation record, and the Claimants' symptoms while still working in the premises provide a sufficient basis for a more limited finding than that urged by the Defendant. I therefore accept Dr Gibson's evidence as a restraint on the breadth of the Claimants' case, but not as a complete answer to it.

Relative Weight of Dr McMahon and Dr Gibson

[163.] Where Dr McMahon and Dr Gibson diverge, I do not wholly prefer one and reject the other. Rather, I accept each in part. I prefer Dr Gibson on the question whether the Claimants proved the full medical and diagnostic case advanced, including the proposition that the entirety of their conditions, losses, and continuing disabilities can safely be attributed to Workplace mould and airborne debris exposure alone. Her evidence is stronger on the need for caution, the existence of unresolved differential diagnoses, and the limitations of laboratory testing conducted many years later.

[164.] I prefer Dr McMahon, however, over any suggestion that the Workplace conditions were medically insignificant or incapable of contributing to real injury. I accept his evidence insofar as it supports the conclusion that the Workplace environment materially contributed to some of the Claimants' respiratory, fatigue-related, headache, cognitive and related symptoms; I do not, however, accept his broader CIRS-based framework in full or treat it as establishing the whole of the pleaded medical case.

[165.] The result is that I do not adopt the Claimants' medical case at its highest, but neither do I accept the Defendant's submission that the evidence compels total rejection of any causal link. Rather, the expert evidence, taken as a whole, supports a limited finding that the Defendant's breaches materially contributed to some injury, while falling short of establishing the full breadth of the case advanced by the Claimants.

Claimant's Submissions

[166.] In their closing submissions, the Claimants invite the Court to find that the Defendant negligently exposed them for years to an unsafe Workplace environment. Their case is that the Workplace was affected over an extended period by water intrusion, dampness, poor air quality, airborne debris, fungal structures, and mould contamination, and that the Defendant failed both at common law and under the **Health and Safety at Work Act** to provide a safe system and place of work.

[167.] The Claimants submit that the Defendant's negligence consisted not in a single isolated omission but in a continuing course of conduct. They contend that the Defendant failed to warn staff that the Workplace was hazardous; required the Claimants to continue working in the affected environment; carried out internal renovations and cleaning in a way that generated further dust and debris while staff remained at work; relied on inadequate testing methods that did not employ proper controls; remediated only selected portions of the Workplace rather than the Workplace as a whole; and failed to notify the landlord promptly of faulty seals around windows and doors or otherwise ensure that the sources of water intrusion were properly addressed.

[168.] According to the Claimants' narrative, the evidence showed that Workplace concerns first arose as early as 2005, when complaints were made about air quality and the Ministry of Health became involved. They say the Ministry observed dust on furnishings, carpets, and air-conditioning ducts, and recommended remediation while renovations were underway. They further submit that the Workplace experienced water intrusion events in 2005 and again in 2011, that the Defendant knew those events created a risk of mould growth, and that it nevertheless failed to adopt a thorough, transparent, and ongoing remediation regime.

[169.] The Claimants place significant emphasis on the testing conducted. They contend that the commercial testing commissioned by the Defendant in 2011 and 2012 confirmed the presence of multiple mould species, airborne debris, and fungal structures. They argue that the November 2011 and May 2012 reports, read together, demonstrated that the Workplace was not clean or safe in any meaningful sense, notwithstanding selective wording in one report referring to certain areas as safe or as not showing amplified fungal structures at a particular moment in time. They submit that the Defendant seized upon limited language in some reports while ignoring the broader significance of the findings, including the continued recommendation for cleaning action and mould remediation.

[170.] The Claimants also submit that the Defendant concealed the results of this testing from them and from staff generally. They argue that this concealment is central to the case: instead of warning staff, sharing the air-quality findings, or shutting down unsafe areas, the Defendant withheld the information, attempted quiet weekend remediation, and continued to require the Claimants to work in the environment. On their case, this was not merely a failure of communication, but part of the Defendant's overall breach of duty.

[171.] As to factual context, the Claimants rely on their length of service and work history to demonstrate that both were healthy, established professionals before the material period and that their symptoms developed while they were working in the Workplace. The submissions recount Dorothea Collie's long employment history and Helen Saunders' role

as Operations & IT Manager and Assistant Vice President, and assert that each began to experience deteriorating health in circumstances temporally connected to prolonged exposure to the Workplace.

[172.] The Claimants' causation case is that the mould, fungal structures, airborne debris, and poor air quality at the Workplace caused or materially contributed to the symptoms and conditions from which both Claimants suffered. They argue that the medical and technical evidence, taken together, supports a finding that both Claimants developed illnesses associated with toxic mould exposure, including CIRS, and that the Defendant's breaches were at least a material contributing cause.

[173.] The Claimants submit that the Court should prefer Dr McMahon's evidence to Dr Gibson's where the two diverged. They argue that Dr McMahon provided a coherent diagnostic explanation supported by laboratory findings, symptomatology, clinical history, and literature concerning CIRS and mould-related immune dysregulation. They contend that Dr Gibson's approach was overly dismissive, speculative as to alternative causes, and failed to identify another unifying diagnosis capable of explaining the Claimants' combined symptoms and abnormal results. They further submit that Dr McMahon's evidence was strengthened by the factual history of the Workplace and by technical evidence that mould affects individuals differently and that no fixed threshold is required before health consequences may arise.

[174.] In support of liability, the Claimants rely on the proposition that an employer's duty is personal and continuing and includes the duty to engage competent persons, adopt a safe system, and respond reasonably to known dangers. They also rely on comparative and local authorities discussed in the submissions, including **Samantha Russell v Commonwealth Bank** 2012/CLE/gen/00934, to demonstrate that an employer may be found liable where it permits employees to remain in a mould-affected workplace and fails to take timely and adequate remedial steps.

[175.] The Claimants contend that the Workplace exposure caused or materially contributed to their personal injuries, loss, and damage, including conditions diagnosed and described in the medical and expert evidence, and that judgment should therefore be entered in their favour with damages assessed in the sums of \$1,419,266.15 for Dorothea Collie and \$783,526.68 for Helen Saunders, together with the other relief claimed.

Defendant's Submissions

[176.] In its closing submissions, the Defendant invites the Court to dismiss both claims in their entirety. The Defendant contends that the Claimants failed to discharge the burden of proving either actionable negligence or any causal relationship between the conditions

in the Defendant's Workplace and the extensive injuries they allege. The Defendant's position is that the case must be analysed in two stages: first, whether the Claimants proved the pleaded acts or omissions said to amount to negligence or breach of statutory duty; and secondly, whether the Claimants proved that any such act or omission caused or materially contributed to the injuries particularised in the statements of claim. It submits that the Claimants failed at both stages.

[177.] On liability, the Defendant emphasises that it did not owe an absolute duty to ensure that no mould or airborne contaminant could ever exist in the Workplace. Rather, its legal obligation was to exercise reasonable care and take reasonable steps to provide a safe system and place of work. It contends that the evidence showed that it did so by responding to complaints, engaging cleaning and air-conditioning contractors, implementing Ministry of Health recommendations, commissioning testing, and carrying out remediation when issues were identified.

[178.] The Defendant submits that the Claimants' evidence did not establish that it allowed the Workplace to remain wet, damp, dangerous, or otherwise unsafe in the pleaded sense. It notes that the Claimants themselves acknowledged that, following incidents of water intrusion, the carpets were cleaned and dried and that contractors attended the premises. It argues that the Claimants' suggestion that damp or hazardous conditions persisted underneath furniture or in unseen areas was speculative and unsupported by reliable corroborating evidence.

[179.] The Defendant also argues that the Claimants' evidence concerning air quality, visible mould, musty odours, and internal warnings was weak, inconsistent, and in part hearsay. The Defendant further relies on evidence of the wider conditions within the Goodman's Bay Corporate Centre to argue that, even if mould existed in the Workplace, the Claimants failed to prove it originated there or it was attributable to any fault of the Defendant.

[180.] From this, the Defendant submits that any mould present in the Workplace may well have arisen from broader building-wide conditions rather than from any defect or omission within the Defendant's own control.

[181.] The Defendant also relies on the evidence of Wayne Farquharson and, in part, Dr Charles Kemp, to submit that the levels of mould detected in the Workplace in 2012 were low and that the evidence does not support a finding of long-standing amplified mould in the office under the Defendant's control.

[182.] On causation, the Defendant submits that the Claimants' case depends overwhelmingly on the evidence of Dr Scott McMahon, and that his evidence should be rejected or treated with extreme caution. It is argued that Dr McMahon's diagnosis of CIRS was methodologically unreliable, insufficiently grounded in accepted medical practice, and internally inconsistent.

[183.] The Defendant says that Dr Charlisa Gibson's evidence should instead be preferred. It characterises her evidence as clear, balanced, clinically grounded, and largely unshaken in cross-examination. Accordingly, the Defendant asks the Court to refuse all claims and relief sought against it, dismiss both actions, and award costs to the Defendant. The Defendant further submits that, if the Court rejects its primary case on liability and causation, any damages must in any event be assessed on a significantly narrower basis than that advanced by the Claimants.

Issues for Determination

[184.] The issues arising for determination may be stated as follows:

- I. Whether the Defendant owed the Claimants, as employees, a duty at common law and under the **Health and Safety at Work Act** to take reasonable care for their health, safety and welfare while they worked at the Workplace.
- II. Whether, during the period material to the Claimants' employment, the Workplace was affected by material problems of air quality, moisture, water intrusion, airborne debris, fungal structure, mould, or ventilation problems.
- III. Whether the Defendant knew or ought reasonably to have known of those conditions, including by reason of employee complaints, the complaint made to the Ministry of Health, Air Care Bahamas, attendance, EAMAC's sampling and reports, and the circumstances of water intrusion and air-conditioning difficulties.
- IV. Whether in light of that knowledge, the Defendant failed to take reasonable and timely steps to investigate, control or remediate the conditions and adequately protect and warn employees.
- V. Whether the Claimants were exposed in the Workplace to environmental conditions capable of causing injury.

VI. Whether those Workplace conditions caused or materially contributed to the injuries alleged by either Claimant.

VII. Whether the Claimants have proved the full range of injuries pleaded, including CIRS, toxic mould exposure, mycotoxicity, immune dysfunction, endocrine dysfunction, neurological injury, cognitive impairment, respiratory symptoms, psychological distress and loss of earning capacity, or whether they have proved only a narrower symptom-based injury case.

VIII. Whether the Claimants have proved recoverable special damages.

Applicable Law

Employer's Duty of Care

[185.] At Common Law, an employer owes a personal and non-delegable duty to take reasonable care for the safety of its employees, including the duty to provide a reasonably safe place of work, proper plant and equipment, competent staff, and a safe system of work, as stated in **Wilsons and Clyde Coal Company v English** [1938] AC 57. The content of the duty is measured by what a reasonable and prudent employer would do in light of what it knew or ought reasonably to have known at the relevant time. In exposure cases, an employer must keep reasonably abreast of developing knowledge and take such precautions as are reasonable in light of the risk and the means available to address it, as per **Stokes v Guest, Keen and Nettlefold (Bolts and Nuts) Ltd** [1968] 1 WLR 1776.

[186.] **Section 4(1)** of the **Health and Safety at Work Act** operates in parallel. The obligation is not to guarantee a perfect or risk-free workplace. The question is whether the Defendant took steps that were reasonably practicable to protect its employees once circumstances arose that disclosed, or ought reasonably to have disclosed, a material risk to their health, safety or welfare.

[187.] Negligence or breach of statutory duty does not give rise to compensatory damages without actionable injury or recoverable loss. Mere exposure, concern, or apprehension is insufficient as per **Cartledge v E Jopling & Sons Ltd** [1963] AC 758 and **Rothwell v Chemical & Insulating Co Ltd** [2007] ICR 1745. Where, however, the bodily or functional consequences are real and impair ordinary life or work, the law recognises actionable damage as in **Dryden and Others v Johnson Matthey Plc** [2018] UKSC 18.

[188.] The ordinary burden remains on the Claimants to prove, on the balance of probabilities, that the Defendant committed a breach and that the breach caused or

materially contributed to their injury for which compensation is sought. It was ruled in **Bonnington Castings Ltd v Wardlaw** [1956] AC 613 and **Bailey v Ministry of Defence** [2009] 1 WLR 1052 that in cases involving medical or scientific uncertainty, causation may nonetheless be established where a tortious exposure or breach made a material contribution to an indivisible injury or cumulative condition, provided the contribution was more than negligible.

[189.] It is nevertheless necessary to distinguish a material contribution to an injury from a case involving merely competing possible causes. Where the evidence establishes only that the Defendant's breach was one of several possible causes, without establishing on the balance of probabilities that it caused or materially contributed to the injury, causation is not proved as per **Wilsher v Essex Area Health Authority** [1988] AC 1074. The principle does not relieve a claimant of the burden of proving causation; it addresses how that burden may be discharged where the evidence establishes cumulative contributions to the injury.

Expert Evidence

[190.] Expert evidence is admissible where the subject matter is outside the ordinary knowledge of the Court and the expert's opinion will assist the Court. The expert must have relevant expertise, must give independent assistance, and must explain the factual and scientific basis of the opinion as per **Kennedy v Cordia (Services) LLP** [2016] UKSC 6 and **National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)** [1993] 2 Lloyd's Rep 68.

[191.] **Bolitho v City and Hackney Health Authority** [1998] AC 232 held that the Court is not bound to accept expert evidence merely because it is honestly held or professionally expressed. The reasoning and factual foundation of the opinion are central to the Court's evaluation. Where material expert evidence is challenged on an important point, fairness generally requires that the substance of the challenge be properly put, so that the expert has an opportunity to answer it, as in **TUI UK Ltd v Griffiths** [2023] UKSC 48.

[192.] In evaluating the competing expert evidence, I have therefore considered the relevant expertise of each expert witness; the factual assumptions upon which the opinions were based; the methodology employed; the extent to which alternative explanations were addressed; the consistency of the opinions with the lay, environmental and medical evidence; and the significance of concessions made in cross-examination.

[193.] The Court is entitled to accept expert evidence in whole or in part, or to reject it. The exercise is not an all-or-nothing choice between competing experts. The Court must determine what conclusions the evidence as a whole establishes.

Legal Analysis

Duty and Breach

[194.] Before turning to the environmental evidence and findings, it is convenient to identify briefly what is meant in this judgment by the terms “mould” and “water-damaged building.” For present purposes, mould may be understood as a collective term for various fungi that may occur in indoor environments. It is a natural and ubiquitous part of the environment and spreads by producing spores, which may enter indoor air from outside or from fungal growth within the building itself. Indoor mould development is commonly associated with excess moisture, dampness, water leaks, high humidity and inadequate ventilation, all of which may create conditions in which spores are produced and spread indoors.

[195.] In this judgment, a water-damaged building refers to an indoor environment affected by water intrusion, excess moisture, dampness, humidity or poor ventilation such that conditions exist for mould growth or the indoor spread of mould spores and related contaminants. On the evidence, a building which has suffered water intrusion and retained excess moisture may become susceptible to mould growth and spread, particularly if the condition is not properly abated.

[196.] Against that background, I turn to the environmental evidence. That evidence is to be assessed cumulatively and includes the Claimants’ evidence of repeated water intrusion, soaked carpets, damp conditions, and complaints about air quality and inadequate ventilation, together with the various environmental reports and the expert evidence on whether those conditions were capable of creating an indoor environment conducive to mould and airborne debris growth and spread. In particular, the lay evidence was that water repeatedly entered the Workplace and that the Workplace windows were sealed. Affected areas were not always properly dried or remediated. In contrast, the expert evidence accepted that excess moisture, water intrusion and poor ventilation may create conditions in which indoor mould may develop and spread if not properly abated.

[197.] I am satisfied that the Defendant owed both Claimants the duties identified above. I am also satisfied that, during the material period, the Workplace was affected by recurring environmental problems that required a reasonable employer to take effective protective action. I accept the Claimants’ evidence concerning recurring water intrusion, wet carpeting, sealed windows, periods of inadequate air-conditioning or ventilation, stale air and airborne debris. That evidence is materially supported by the environmental history and by the fact that investigation, cleaning and remediation became necessary.

[198.] I have taken particular account of Mr Farquharson’s evidence. I accept his evidence that the 2012 testing did not establish a heavily amplified mould condition and that the mould counts then recorded were relatively low. That evidence is important and prevents

me from finding that the Defendant maintained a Workplace containing continuously high or heavily amplified levels of mould throughout the material period. It does not, however, dispose of the wider question of workplace safety. The evidence disclosed that the Workplace was affected by recurring water intrusion, moisture-related concerns, ventilation and air-conditioning difficulties and elevated airborne debris, together with at least some fungal or mould material. In other words, it appears that the Workplace was in a water-damaged building.

[199.] The Defendant was not required to eliminate every environmental imperfection or every trace of mould. Nor is the mere presence of mould sufficient to establish negligence. The relevant question is whether, once the recurring environmental problems and employee concerns became known, the Defendant responded as a reasonable and prudent employer would have. I find that it did not. Although contractors attended and cleaning and other measures were undertaken from time to time, the response was not sufficiently timely, systematic or effective to address the recurring conditions. The Defendant failed to disclose the environmental reports. Further, the Defendant failed to communicate adequately material environmental findings to the Claimants and warn them of the potential significance of those findings. Given repeated water intrusion, ventilation failures, employee complaints, airborne debris findings, and the need for investigation/remediation, a reasonable employer should have adopted a more systematic, prompt, and precautionary response and kept employees properly informed and safe.

[200.] I therefore find that the Defendant failed to take reasonable precautions in response to a known or reasonably foreseeable Workplace hazard and was in breach of its common law duty and its statutory duty under **section 4(1)**.

Medical Causation

[201.] The more difficult question is causation. It is necessary to distinguish between proof that particular Workplace conditions were capable of producing symptoms of the kind complained of—general causation—and proof that those conditions did in fact cause or materially contribute to the symptoms of these Claimants—specific causation. I do not accept the Claimants' medical case at its highest, but the evidence does not justify the Defendant's contention that no causal relationship has been proved.

[202.] I accept Dr Scott McMahon's evidence only in part. I accept it insofar as it supports the conclusion that prolonged exposure to poor indoor environmental conditions, including airborne debris and at least some mould- or fungal-related contamination concern, indeed have caused or materially contributed to certain respiratory, fatigue-related, headache, cognitive and related symptoms suffered by the Claimants. I also accept his evidence

insofar as it supports the proposition that the Claimants' complaints were medically significant and that their symptom history was consistent with an environmental component.

[203.] I do not, however, accept Dr McMahon's evidence in its entirety. In particular, I am not prepared, without qualification, to adopt the broader case advanced on the Claimants' behalf that their condition amounted to CIRS or chronic systemic inflammation with lifelong, multisystem consequences. Parts of that case depend on a wider diagnostic and causal framework which remains contested and which, on the evidence before me, extends beyond what it is necessary or appropriate for the Court to accept. While I accept it to the extent that it supports a narrower and compensable symptom complex, I am not satisfied that the broader CIRS / chronic systemic inflammation case was sufficiently proved.

[204.] Dr Gibson's evidence was that a number of the broader diagnoses had not been confirmed by the necessary testing, including dedicated thyroid testing or ultrasound, adrenocorticotrophic hormone stimulation testing, and the specific investigations required for pancreatic insufficiency. In oral evidence, she maintained that no tests, imaging, or temporal material was sufficient to establish that mould exposure in this setting caused the specific disease or disorder alleged, particularly where many of the symptoms relied upon were non-specific and capable of alternative explanation. That caution is reinforced by Dr McMahon's own acceptance in cross-examination that CIRS is a relatively new field, that he had no formal training in adult medicine beyond medical school, and that other possible contributors, including menopause, could have played some part in the symptoms relied upon.

[205.] I also accept Dr Gibson's evidence in part. I accept her evidence concerning the need for caution, the existence of alternative explanations for some complaints, the limitations of the later laboratory testing, and the absence of sufficient proof for a number of the broader diagnoses advanced. Her evidence materially restrains the breadth of the Claimants' case. I do not, however, accept that it requires the Court to reject any meaningful causal contribution from the Workplace. Her evidence must be considered together with the contemporaneous factual history, the environmental evidence, the Claimants' medical histories and the concessions she made concerning the potential health effects of mould and poor indoor environmental conditions.

[206.] Dr Gibson accepted, among other things, that mould can adversely affect human health; that its effects may vary between individuals; that some effects may be short-term while others may persist; and that a number of the symptoms reported by the Claimants are symptoms which may occur following mould exposure. Those concessions are important

to general causation. They do not, standing alone, establish that this Workplace caused the Claimants' symptoms. The Court must therefore consider whether the evidence as a whole crosses the further evidential bridge from possibility to probability.

[207.] I have also considered Dr Edward Eden's opinions. However, because he was not called to give oral evidence, cross-examination did not test the reasoning underlying his opinions or the material areas of disagreement between him and Dr McMahon. In those circumstances, I attach substantially less weight to his opinions in resolving the central medical dispute than I do to the evidence of the experts whose conclusions were tested before the Court.

[208.] In my judgment, the evidence goes beyond establishing merely that the Workplace conditions could have caused the symptoms complained of. I reach that conclusion not from any single laboratory result or diagnostic label, but from the cumulative effect of the evidence. I have accepted that the Workplace experienced recurring water intrusion, ventilation and air-conditioning difficulties, wet carpeting and airborne debris, together with some fungal or mould-related material. Both Claimants developed relevant symptoms while working in that environment and sought medical attention for those symptoms. Their accounts of the Workplace conditions and of the development of their symptoms were substantially credible. The environmental concerns were sufficiently real to generate investigation, testing, cleaning and remediation. Dr McMahon regarded the symptom pattern and Workplace history as medically significant. At the same time, Dr Gibson accepted that exposure to mould and poor indoor environmental conditions can produce at least some symptoms of the kind complained about. In Ms Saunders' case, her evidence of material improvement after leaving the Workplace further supports a causal connection. Taken together, these matters satisfy me, on the balance of probabilities, that the Workplace conditions were not merely a possible explanation but materially contributed to at least part of the symptom complex experienced by each Claimant.

[209.] I have considered the alternative explanations identified by Dr Gibson, particularly in relation to Ms Collie. Those matters prevent me from attributing every complaint or diagnosis to the Workplace. They do not, however, persuade me that the Workplace made no material contribution at all. This is therefore not a case in which the Court is left merely to choose between several wholly distinct possible causes, as in **Wilsher**. Rather, insofar as the respiratory, fatigue-related, headache and cognitive symptoms which I accept are concerned, the evidence establishes that the Workplace conditions formed part of the cumulative causes of those symptoms and contributed to them in a manner that was more than negligible within the principle in **Bonnington Castings** and **Bailey**.

[210.] In relation to Ms Collie, I am satisfied that the Defendant's breach caused or materially contributed to her respiratory difficulty and breathlessness, fatigue, headaches and associated impairment. I am also satisfied, having regard to the totality of the evidence, that the cognitive complaints and psychological consequences which I later identify formed part of the same overall symptom picture. I do not find that the Workplace was the sole cause of every symptom she experienced, nor is such a finding necessary to the limited conclusion I reach.

[211.] In relation to Ms Saunders, I am satisfied that the Defendant's breach caused or materially contributed to her recurrent respiratory and sinus-type symptoms, fatigue, headaches and associated impairment. Her evidence that her condition improved materially after she ceased working in the Workplace, although not conclusive by itself, provides additional support for that conclusion. I am likewise satisfied that the cognitive and psychological consequences which I later identify formed part of the compensable symptom picture.

[212.] I therefore reject the Claimants' case insofar as it seeks to establish every pleaded diagnosis or to make good the full CIRS / lifelong multisystem case advanced on their behalf. To that extent, their medical case fails. I am nevertheless satisfied that each Claimant proved a narrower but genuine compensable injury, caused or materially contributed to by the Defendant's breach, comprising, in substance, respiratory, fatigue-related, headache, cognitive, and related symptoms, the precise extent of which I set out below. Liability is established only to that extent.

Assessment of Damages

[213.] Damages in personal injury proceedings are compensatory. They are intended to provide fair and reasonable compensation for proved pain, suffering, loss of amenity and pecuniary loss caused by the Defendant's wrong. They are not intended to compensate losses that, although pleaded, have not been proved, as in **H West & Son Ltd v Shephard** [1964] AC 326 and **Heil v Rankin** [2001] QB 272. In the Bahamian context, English awards and guideline material may assist but are not an inflexible tariff and must be applied with appropriate regard to local conditions, as stated in **Scott v Attorney General of The Bahamas** [2017] UKPC 15.

[214.] Consistently with my findings on causation, I assess damages based on the symptoms and impairments actually proved and not upon the footing that either Claimant has established every pleaded diagnosis or a fully established lifelong multisystem illness. General damages are therefore assessed for the proved symptom complex and resulting loss of amenity. Special damages are recoverable only insofar as they were specifically pleaded, sufficiently proved and reasonably incurred as a consequence of the injuries which I have found established.

Dorothea Collie Proven Injuries

[215.] In relation to Dorothea Collie, I find proved that she suffered workplace-related respiratory difficulty, breathlessness, mycotoxicity including hypoadrenalism, chronic fatigue, headaches, insomnia, memory impairment, cognitive fogging, anxiety, depression and substantial loss of amenity. I accept her evidence that she became winded when climbing steps, suffered persistent fatigue associated with upper respiratory problems, experienced headaches and insomnia, and required nebulisation treatment.

[216.] I also accept Ms Collie's evidence of continuing memory and cognitive difficulties, including lapses in concentration and recollection. I accept that those difficulties, together with the deterioration in her physical functioning, caused psychological distress and adversely affected her independence and enjoyment of life.

[217.] Dr McMahon's evidence provides medical support for the reality and significance of those injuries and for their association with the Workplace history. I rely upon his evidence to that limited extent.

Injuries Not Proven

[218.] I do not, however, find proved as separate compensable heads of injury every condition pleaded by Ms Collie. In particular, I do not treat as separately proved autonomous nervous system dysfunction, autoimmune polyarthritis, lupus, dermatophytosis, thyromegaly, invasive fungal infection, swollen lymph nodes, lymphadenopathy, digestive discomfort and irregular bowel motions, pancreatic insufficiency, dysbiosis, or every wider systemic consequence advanced in the broadest form of the case. Those conditions were not clearly established by lay or medical evidence, and Dr Gibson strongly challenged them by citing the lack of confirmatory testing or plausible alternative explanations.

[219.] Nor do I treat CIRS as a separate head of damage or as a diagnostic label which itself establishes additional compensation. I have accepted Dr McMahon's evidence only insofar as it supports the existence and medical significance of Ms Collie's persistent respiratory, fatigue-related, headache, cognitive and related symptoms. The damages assessment therefore proceeds by reference to the symptoms and functional impairment which I have actually found proved.

Helen Saunders Proven Injuries

[220.] In relation to Helen Saunders, I find proved that she suffered recurrent upper respiratory and sinus-type symptoms, episodes of acute distress and collapse, mycotoxicity, chronic fatigue, headaches, insomnia, memory impairment and loss, disorientation and substantial loss of amenity. I accept her evidence that her health deteriorated while working in the premises, that she required ambulance transfer and later collapsed at work, and that she suffered exhaustion, memory loss and episodes of disorientation. I reach that conclusion first from her own evidence, which I accept in those respects. I also accept her evidence of continuing memory difficulties, blank moments,

insomnia and headaches. As I have already indicated, I regard her evidence that she felt considerably better after leaving the Workplace, though she did not completely recover, as supportive of the limited causal conclusion which I have reached.

[221.] Dr McMahon's evidence likewise provides medical support for the reality and significance of the respiratory, fatigue-related, headache and cognitive symptoms which I have found proved. Again, I rely on his evidence to that limited extent, and not to establish every wider diagnosis he advanced.

Injuries Not Proven

[222.] I do not, however, find proved as separate compensable injury heads every condition pleaded by Ms Saunders. In particular, I do not treat as separately proved autoimmune dysfunction in the broad pleaded sense, neuro-vegetative imbalances, uncontrollable blood pressure as a Workplace-caused injury, dermatophytosis, thyromegaly, invasive fungal infection, or every wider systemic consequence advanced in the broadest form of the case. Those matters were not all distinctly established by the lay evidence, were not all expressly adopted by Dr McMahon as standalone diagnoses, and were specifically challenged by Dr Gibson.

[223.] For the reasons already given, I likewise do not treat CIRS as a separate head of damage in Ms Saunders' case. Dr McMahon's evidence is relevant insofar as it supports the reality and medical significance of the respiratory, fatigue-related, headache, cognitive and related symptoms which I have found proved. It does not establish, for the purposes of this judgment, every pleaded diagnosis, every alleged systemic consequence or the full lifelong prognosis advanced.

General Damages

Dorothea Collie

[224.] In assessing Ms Collie's damages for pain, suffering and loss of amenity, I treat her proved injuries as a single overlapping symptom complex rather than as separate injuries attracting separate awards. I regard **Samantha Russell v Commonwealth Bank** as the most useful local comparator. In that workplace-mould case, decided in 2019, the court awarded BSD \$25,000 after attributing to the workplace persistent headaches requiring medication, weight loss, fatigue and chronic fatigue, while declining to accept the wider range of conditions alleged. Adjusted by reference to the movement (inflation) in the All-Bahamas Consumer Price Index—from approximately 108 in July 2019 to 127.35 in June 2026—that award would have a present value of approximately BSD \$29,500. I use that updated figure only to preserve the comparative value of the 2019 award and not as a mechanical tariff.

[225.] Ms Collie's proved injuries extend beyond those accepted in **Russell**. They include persistent respiratory difficulty and breathlessness, chronic fatigue, headaches, insomnia, memory impairment and cognitive fogging. She required nebulisation treatment and was diagnosed with dyspnoea and acute bronchitis. I also take into account her continuing respiratory attacks, forgetfulness and brain fog after leaving the Workplace, together with the resulting anxiety, depression, reduced independence and interference with activities that had previously contributed to her enjoyment of life.

[226.] I have considered **Kennedy v London Ambulance Service NHS Trust** [2016] EWHC 3145 (QB) and **Van Wees v Karkour and Another** [2007] EWHC 165 (QB) as secondary cross-checks of the significance of the accepted symptoms and their effect on ordinary life. I give them less weight than **Russell** and do not treat their awards as a monetary range or as converted Bahamian tariffs. **Kennedy** involved continuing post-traumatic stress disorder, which I have not found here, while **Van Wees** concerned comparable fatigue, headaches and cognitive difficulties arising from a proved head injury. Those English decisions are therefore qualified guides and not converted tariffs. I take these features into account in assessing the nature, duration and practical effect of the injuries I have found attributable to the Defendant's breach.

[227.] I have also had regard, as a guide only, to the **Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases (16th edn OUP 2022)**. The Guidelines provide a range of £19,200 to £26,290 for bronchitis and wheezing affecting working or social life where substantial recovery is likely within a few years, and £10,640 to £19,200 for relatively mild asthma-like symptoms. I recognise that the Claimants' proved injuries do not fall neatly within any single bracket. Their respiratory complaints formed part of a wider constellation of symptoms, including fatigue, headaches and cognitive difficulties, and there is some overlap between those symptoms. The Guidelines are therefore useful as a reference point rather than a tariff. Consistently with the approach in **Sadler v Filipiak** [2011] EWCA Civ 1728, I must ultimately stand back and assess an award which fairly reflects the combined effect of the injuries proved, while avoiding double recovery for overlapping symptoms.

Helen Saunders

[228.] I likewise treat Ms Saunders' proved injuries as a single overlapping symptom complex rather than as separate injuries attracting separate awards. The inflation-adjusted value of the award in **Russell**, approximately BSD \$29,500, again provides the most useful local starting point. Ms Saunders' injuries also extend beyond those accepted in **Russell**. She suffered recurrent upper-respiratory and sinus-type symptoms, chronic fatigue, headaches, mycotoxicity, insomnia, memory impairment, disorientation and episodes of acute distress. Of particular significance are the two occasions upon which she required

ambulance transfer after becoming seriously unwell or collapsing, together with her evidence of exhaustion, blank moments and episodes of disorientation, including the incident in which she drove on the wrong side of the road.

[229.] I nevertheless take account of the course and duration of Ms Saunders' condition. She left the Workplace approximately one year before Ms Collie and acknowledged that she felt considerably better after doing so, although she did not recover completely. Her stutter resolved approximately one year after she left, and her continuing blank moments became less severe. Her acute episodes were serious, and her loss of amenity was substantial. I take account of both the seriousness of Ms Saunders' acute episodes and her material, but incomplete, improvement after leaving the Workplace when assessing the nature, duration and practical effect of her compensable injuries.

[230.] I have assessed each Claimant's injuries individually. Their symptoms were not identical in presentation or course. Ms Saunders' acute episodes and disorientation were serious; I also take into account her evidence that she felt considerably better after leaving the Workplace, although she did not recover completely. Ms Collie experienced respiratory difficulties and continuing cognitive and other complaints. Having weighed the nature, intensity, duration and practical effect of the injuries I have found attributable to the Defendant's breach, I am not satisfied that the evidence establishes a material difference in their overall compensable pain, suffering and loss of amenity warranting different awards. I therefore award each Claimant BSD \$50,000. The same award reflects my assessment of each claim as a whole; it is not a finding that their injuries or experiences were identical.

[231.] The award exceeds the adjusted value of **Russell** because, in each case, the injuries I have found attributable to the Defendant's breach included respiratory and cognitive effects, and a resulting loss of amenity, beyond those accepted in **Russell**.

Future and Past Loss of Earnings

[232.] I am not satisfied that either Claimant has proved the claim for post-termination loss of earnings. The difficulty is not simply one of arithmetic. Sufficient evidence must connect the proved injury to the asserted inability to work and establish the resulting financial loss. For example, there is no evidence proving that but for the injuries the Claimants would have continued working until a particular age and at a particular salary.

[233.] In Ms Collie's case, evidence shows that her former salary was approximately \$7,230 per month, that she subsequently worked as an office clerk, and that she now earns approximately \$1,700 per month. Ms Collie gave evidence that she remains physically unfit to re-enter the job market at her former level. That evidence may demonstrate a reduction in earnings. Still, it does not establish, on the balance of probabilities, that the difference was caused by the injuries which I have found proved or that she would

otherwise have remained employed by the Defendant, or at an equivalent salary, for the entire period claimed.

[234.] There is no sufficiently clear medical or vocational evidence identifying the period during which Ms Collie was incapable of work by reason of the proved injuries or the extent to which those injuries restricted her earning capacity. I therefore make no award for post-termination past loss of earnings.

[235.] Ms Saunders expressly stated that she was physically unable to work between March 2012 and January 2016. I accept that as evidence of her own experience, but there is no sufficiently clear medical or vocational evidence establishing that she was incapable of employment throughout that period by reason of the injuries which I have found attributable to the Workplace. I therefore make no award for post-termination past loss of earnings in her case.

[236.] The claims for future loss encounter the same evidential difficulty. Proof of symptoms does not, without more, establish a continuing pecuniary loss. The Court requires a sufficient evidential basis for determining both the extent to which the proved injuries impair earning capacity and the probable financial consequences of that impairment.

[237.] In Ms Collie's case, the pleaded calculation assumes a salary differential over a period extending to age 65. The arithmetic cannot establish the underlying factual assumptions. There is insufficient evidence that she would probably have remained with the Defendant, or in equivalent employment at the same level of remuneration, until that age or that the entirety of her present reduction in earnings is attributable to the injuries which I have found proved.

[238.] In Ms Saunders' case, there is likewise insufficient evidence to establish a permanent or long-term loss of earning capacity attributable to the proved injuries. Her evidence of considerable improvement after leaving the Workplace further militates against making the broad future loss award claimed. I therefore make no award to either Claimant for future loss of earnings or loss of earning capacity. Additionally, both Claimants received separation packages from the Defendant, the details of which they did not disclose to the Court.

[239.] I also do not regard these proceedings as establishing a separate claim for unfair or wrongful dismissal. The causes of action pleaded are negligence and breach of statutory duty together with consequential personal injury loss. The termination of the Claimants' employment forms part of the factual background but does not, without a separately pleaded and proved cause of action or proof of consequential wage loss caused by the injuries, provide an independent basis for an award of damages.

Special Damages and Medical / Testing Expenses

[240.] Special damages must be specifically pleaded and strictly proved. Proof that an expenditure was incurred is not sufficient on its own. The Court must also be satisfied that the expense was reasonably incurred as a consequence of the injury for which the Defendant is liable.

[241.] I distinguish three types of expenditure. First, reasonable medical attendances, investigations and testing directed to genuine symptoms may be recoverable where sufficiently proved and causally connected to the injury. Secondly, reasonable travel and accommodation expenses incurred in obtaining such medical investigation may also be recoverable. Thirdly, expenses incurred principally for forensic, expert or litigation purposes are not compensatory losses merely because a claimant paid them; such expenses are ordinarily matters for costs.

[242.] I have considered whether there is any inconsistency in allowing certain costs of testing, travel and accommodation while declining to allow expert-report and expert-retainer expenses. In my judgment, an important distinction exists. Although some of the testing and associated travel occurred after these proceedings commenced, I am satisfied that the items I allow were incurred, at least in substantial part, for the investigation and assessment of continuing symptoms that I have found to be genuine and compensable. Their recoverability does not depend upon my accepting the entirety of the CIRS diagnosis ultimately advanced. By contrast, the expert-report and retainer expenses identified below were directed principally to obtaining expert opinion or evidence to establish the Claimants' case, including the broader CIRS case, which I have not accepted in full. They are properly characterised as medico-legal or litigation expenses and, to the extent recoverable, fall to be considered as costs rather than damages.

Dorothea Collie

[243.] With respect to Ms Collie, I accept as proved and recoverable the following expenses: *Any Lab Test Now* receipt dated 18 September 2023 — \$2,665.00; *Kelso Medical Laboratory receipt* dated 25 September 2023 — \$1,442.10; *Kelso Medical Laboratory receipt* dated 15 November 2023 — \$345.40; *JetBlue receipt* — \$325.35; and *Hotel Hilton New York JFK Airport Receipt* — \$362.18, making a total of \$5,140.03. I am satisfied that those expenses were incurred in investigating the respiratory, fatigue-related, headache, cognitive, and related symptoms, which I have found proved, and were reasonable expenses associated with that investigation. I therefore allow them as special damages.

[244.] I also find proved as expenditure, but not recoverable as damages, half the cost of Dr Charles Kemp's report dated 18 October 2018 — \$550.00; *Bank Draft to Whole World Health Care* dated 23 December 2023 — \$5,000.00; and *Bank Draft to Whole World Health Care* dated 18 March 2024 — \$5,842.00, making a total of \$11,392.00. I do not allow those items because they are more properly characterised as expert-report, expert-retainer or medico-legal expenditure incurred for the litigation or in support of the broader CIRS case.

which I have not accepted in full. To the extent recoverable at all, they are more appropriately matters for costs.

[245.] I do not allow the remaining special damages pleaded by Ms Collie. Although there was evidence of some of the underlying medical attendances and other events, receipts or other item-specific proof did not sufficiently establish the precise sums claimed. Further, the substantial wage-loss components fail for the reasons already given. I therefore decline to award the balance claimed under those heads.

Helen Saunders

[246.] I adopt the same approach in relation to Ms Saunders. I accept as proved and recoverable the following expenses: *Any Lab Test Now* receipt dated 18 September 2023 — \$615.00; *Kelso Medical Laboratory* receipt dated 23 September 2023 — \$1,697.30; *Kelso Medical Laboratory* receipt dated 17 November 2023 — \$345.40; *Kelso Medical Laboratory* receipt dated 17 November 2023 — \$204.60; *JetBlue* receipt — \$325.35; and *Hotel Hilton New York JFK Airport* receipt — \$362.18. These total \$3,549.83. I am satisfied that those expenses were reasonably incurred in the investigation of the symptoms which I have found proved, and I therefore allow them as special damages.

[247.] I also find proved as expenditure, but not recoverable as damages, half the cost of Dr Charles Kemp's report dated 18 October 2018 — \$550.00; *Bank Draft to Whole World Health Care* dated 23 December 2023 — \$5,000.00; *Whole World Health Bank Transfer* — \$501.19; and *Whole World Health Payment* — \$450.00, totalling \$6,501.19. I do not allow those amounts as damages. They are more properly characterised as expert or medico-legal expenses incurred for the purposes of the litigation. In particular, the \$5,000.00 bank draft is expressly identified in the exhibit as an expert-witness retainer. To the extent recoverable, those expenses are matters for costs.

[248.] I do not allow the remaining special damages claimed by Ms Saunders. Although some underlying attendances and events were established, receipts or other item-specific evidence did not sufficiently prove the exact amounts, and the substantial wage-loss component fails for the reasons already given. I therefore decline to award the balance claimed under those heads.

Disposition

[249.] For the reasons set out above, I find that the Defendant was in breach of its common law and statutory duties to the Claimants and that those breaches caused or materially contributed to the limited injuries which I have identified.

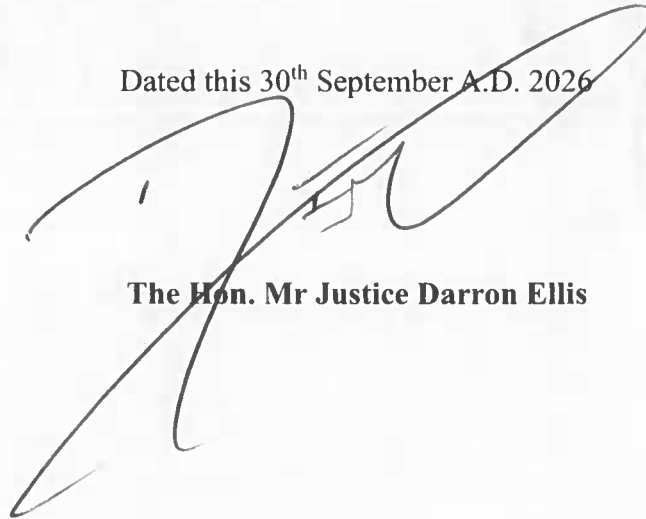
[250.] I award Dorothea Collie general damages for pain, suffering and loss of amenity of BSD \$50,000.00 and special damages of BSD \$5,140.03, making a total award in her favour of BSD \$55,140.03. I award Helen Saunders general damages for pain, suffering

and loss of amenity of BSD \$50,000.00 and special damages of BSD \$3,549.83, making a total award in her favour of BSD \$53,549.83. The aggregate amount of the decision is therefore **BSD \$108,689.86**. The said sums awarded attract interest at 3% per annum from the date of the filing of the Statement of Claim until judgment and shall bear interest at the statutory rate thereafter.

[251.] The Claimants shall be entitled to their reasonable costs. I propose to fix those costs and therefore invite counsel for the Claimants to file the necessary documents and the parties to provide submissions on costs, if not agreed within 21 days, to assist in determining the appropriate quantum.

[252.] I invite the parties to draft a Minute of Order reflecting the substance of this judgment, and I thank both counsel and all the expert witnesses for their assistance to the Court.

Dated this 30th September A.D. 2026

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned over the text of the judge's name.

The Hon. Mr Justice Darron Ellis