

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 358 OF 2005

BETWEEN RICHARD COLES PLAINTIFF
AND RONALD SHEALY DEFENDANT

Appearances: Mr. Hector Robinson and Mr. Murali Ram instructed by
Mourant du Feu & Jeune for the Plaintiff.

Mr. Lennox Sanguinette and Mr. H. Delroy Murray
instructed by Murray & Westerborg for the Defendant.

Before: Mr. Justice K. Harrison

Hearing Date: 30th June and 9th July 2009

JUDGMENT

Introduction

1 Mr. Richard Coles ("The Plaintiff") sues for damages for personal injuries sustained in a road traffic accident on November 27, 2002. Mr. Ronald Shealy ("The Defendant") failed to file a defence to the action hence a default interlocutory judgment was entered on August 31, 2006 in favour of the plaintiff for damages to be assessed.

2. The Plaintiff seeks damages for his pain and suffering and loss of amenities; medical and related expenses incurred by him, and his past and future loss of earnings. A number of items are no longer in dispute and have been agreed between the parties as follows:

1. Travel and medical expenses in Kingston - US\$ 2310.76
2. Medical expenses in Cayman and the US - US\$1,856.25
3. Medical expenses in 2006 - US\$90.19 (KYD 74)
4. Pain and suffering and loss of amenities - CI\$18,000.00
5. Interest on general damages - CI\$2,221.20

Total CI\$20,295.20

US\$ 4,257.20

3. The dispute in this assessment therefore relates only to the claim for loss of earnings past and future, and interest payable on special damages. A breakdown of the damages which the plaintiff says he is entitled to is set out in his amended Schedule of Damages exhibited below:

SECTION A

Special Damages to Date

	USD	KYD
Medical Expenses		
Travel & Medical Expenses in Kingston (Agreed)	2,310.76	
Medical Expenses in Cayman and the United Kingdom (Agreed).	1,856.25	
Medical Expenses in 2006 (Agreed)	90.19	74.00
Plaintiff's Loss of Earnings to Date.		

Loss of earnings as a legal practitioner for the year 2003 [USD 208,983.98 – 83,693.98]	125,289.90	
Loss of earnings as a legal practitioner for the year 2004 (discounted to reflect effect of Hurricane Ivan) [see para. 42 of Plaintiff's witness statement]	83,526.60	
Loss of earnings as a legal practitioner for the year 2005 (based on 2003 loss of earnings) [see para. 41 of Plaintiff's witness statement]	125,289.00	
Loss of earnings as a legal practitioner for the year 2006 [USD 208,983.88 – 83,443.49]	125,540.39	
Loss of earnings as a legal practitioner for the year 2007 [208,983.88 – 103,560.54]	105,423.34	
Loss of earnings as a legal practitioner for the year 2008 [USD 208,983.88 – 84,944.13]	124,039.75	
Loss of earnings as a legal practitioner for the year 2009 [USD 208,983.99 prorated: USD 87,076.62 – 30,326.02]	56,750.60	
SUB-TOTAL	750,118.18	74.00

SECTION B

Future Losses

	USD	KYD
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<p>Plaintiff's average loss of earnings calculated using his loss of earnings for the years 2006, 2007 and 2008 is approximately USD 118,000 per annum.</p> <p>Plaintiff is 62 years and 4 months old. Loss of earnings is calculated at USD118,000 per annum until retirement age 65 based on Plaintiff being 62 years of age and using the rate of return of 2.5%, therefore using a multiplier of 2.84</p>	<p>335,120.00 less 4 months' income [to account for being 4 months beyond age 62] of 39,333.00</p> <p>amounts to:</p> <p>295,787.00</p>	
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SECTION C

Other Heads of Claim

	USD	KYD
Pain and suffering of loss of amenities (Agreed)		18,000.00

SECTION D

Interest

	USD	KYD
Interest on general damages (KYD 18,000.00) at the rate of 2% per annum from		2,221.20

27 November 2002 to date of judgment. (Agreed)		
Interest on special damages at half the rate payable on judgments (2.5%) from 27 November 2002 to date of judgment (6.5 years)	121,894.17	

SECTION E

Total Value of Claim

	USD	KYD
SECTION A	750,118.18	74.00
SECTION B	295,787.00	
SECTION C		18,000.00
SECTION D	121,894.17	2,221.20
TOTAL	1,167,799.35	20,295.20

4. I heard evidence from the Plaintiff over a period of two days. He was thoroughly cross-examined in relation to the loss of earnings from his law practice. I also had the benefit of perusing the agreed medical reports of Dr. Caroline Quartly, submitted on behalf of the Plaintiff, and that of Dr. Grantel Dundas, Orthopedic Surgeon, and Dr. Trevor Golding, Radiologist, submitted on behalf of the Defendant.

5. The Defendant did not give evidence nor called any witnesses on his behalf.

The background.

6. The Plaintiff was born on 3rd March 1947 which means that he was 55 years old at the time of the accident. He graduated from law school in London, England in 1970 and founded his own firm of Solicitors in 1972. In 1992 he sold the firm to his partners and accepted the position as Attorney General of the Cayman Islands. He was the Attorney General from 20 November 1992, to 20 November 1998.

7. On November 27, 2002 at approximately 8:00 p.m., the Plaintiff was driving a Jeep Grand Cherokee in a southerly direction along West Bay Road, Cayman when, at the intersection of West Bay Road and the exit from the West Shore Centre Shopping Plaza, the Defendant, who was driving a Suzuki Vitara motor vehicle, suddenly and without warning turned right unto the southbound lane of West Bay Road. He proceeded on the incorrect side of the roadway, and drove directly towards the Plaintiff's motor vehicle.

8. In order to avoid a head on collision between the two motor vehicles, the Plaintiff braked and swerved quickly to the right into the centre turning lane but despite his attempts to avoid a collision, the Defendant's motor vehicle collided with his motor vehicle. As a result of the accident, the Plaintiff said he

experienced pain and stiffness in his back and neck. This manifested itself the night of the accident during the early hours of the following morning.

9. Following the motor accident, the plaintiff consulted Dr Addleson on 28 November 2002 who prescribed Brisiaflam and referred him to Medlab for X-rays. That same day he returned to see Dr Addleson with the X-rays and he referred him for physiotherapy. Physiotherapy was administered by Susan Watling on 2nd, 6th and 13th December 2002. On 6 January 2003 he consulted Dr Frank Smith at Cayman Orthopedic who in turn referred him to Dr Caroline Quartly *MD, FRCPC, FAAEM* at Cayman Medical. Dr. Smith did not prepare a written report.

10. The Plaintiff consulted Dr. Quartly on 19 February 2003 and she requested him to do further X-rays at Cayman Medical. She prescribed Mobic and Vioxx. She wrote a report on 2 March 2003.

11. In his evidence, the Plaintiff stated that there was significant exacerbation of the effects of a similar injury which he had suffered in October 1998 but from which, according to him, he had substantially recovered and was functioning normally. In her report of March 2, 2003, Dr. Quartly stated of the Plaintiff:

"I believe you are lucky that you are not more symptomatic and more restricted given your previous history of neck injury with known spondylitic changes, your long neck (biomechanically disadvantaged to sustain ligamentous injuries) and given the angle of impact. That, notwithstanding, the very presence of preexisting spondylitic change in whiplash-type injury is (by literature) associated with a more protracted course of recovery (and not infrequently a recovery that is incomplete)."

12. Dr Quartly's report dated June 17 2003 noted:

"The x-rays of your cervical spine done on April the 8th of this year show progression of the degenerative changes previously identified on x-rays on November the 28th, 2002 with marked narrowing and spondylitic changes most evident at C5 and C6-7.

There is a further significant posterior projection of the osteophytes at C6-7 and a marked reduction in cervical lordosis and definite reduction in ability to flex and extend the neck with some minor retrolisthesis at 4, 5, 6. You have disc space narrowing and spondylitic changes as well as zygapophyseal joint degenerative changes."

13. When the Plaintiff was last seen by Dr Quartly on 10 January 2006, she stated that there had been no significant change in his neck function. Dr. Quartly summarized the plaintiff's injury in these terms:

"In summary I believe that you are lucky that you are not more symptomatic and more restricted given your previous history of neck Injury with known spondylitic changes, your long neck (biomechanically disadvantaged to sustain ligamentous injuries) and given the angle of impact. That, notwithstanding, the very presence of preexisting spondylitic change in whiplash-injuries is (by literature) associated with a more protracted course of recovery (and not infrequently a recovery that is incomplete). Fortunately, you are well disciplined in taking the steps necessary to minimize static and/or dynamic loading of the neck. You will likely benefit from pharmacological intervention in combination with therapy and further adjustments to your home work station. Paying more attention to securing a more satisfactory pillow to support your neck at night is likely to increase your capacity to deal with the increased pain and loss of sleep efficiency. Unfortunately, not only does a non-restorative sleep pattern interfere with your cognitive abilities (abilities to concentrate and maintain emotional balance), but also your bodies ability to produce it's own natural pain killers (endorphins) is disrupted".

14. A request was made by the Defendant's insurers for the Plaintiff to be medically examined by their expert and as a result of this request the Plaintiff travelled twice to Jamaica to be medically examined by Dr. Grantel Dundas, an Orthopedic surgeon. On 13 February 2006 the Plaintiff was examined by Dr Dundas who found that he was:

"...tender at the lateral masses of C5, C6 and C7 bilaterally and tender in the apex of the posterior triangle of the neck on the right side."

15. An MRI was done at the request of Dr. Dundas by Dr. Trevor Golding.

The MRI confirmed the following impression:

"Small broad-based central disc herniation at C5-C6 and C6-C7 indenting ventral thecal sac at 70 at 71).

16. In his follow-up report dated March 22 2006, Dr. Dundas, inter alia, opined as follows:

"I am of the impression that the pre-existing degenerative disease has contributed to the level of impairment which is now exhibited by Mr. Coles but it would be very difficult, in the absence of a prior record of restricted range of motion, to decide the extent of the contribution to the injury under discussion. Suffice it to say, there are many people with degenerative changes in their cervical spine, who do not exhibit significant range of motion loss."

And further:

"I do not think that, with these degenerative changes in the disc and the associated apophyseal joints, he will ever experience full recovery."

"This impairment is expected to be permanent, partial, and irreversible."

"The condition is likely to remain static."

"Mr. Coles' complaints, the pain, stiffness and soreness in the neck are in keeping with the clinical and radiographic findings which have been manifested."

The effect of the injury and the plaintiff's earning ability

17. The Plaintiff described in his witness statement how the current injury had affected his earning potential. He stated at paragraph 20 of the witness statement as follows:

20. I was able to obtain some relief by making the ergonomic changes to my work environment as recommended by Dr. Quartly. However, on the whole, the problems that arose from the injury persist with significant discomfort and inconvenience to me. The injuries have had a significant effect on my ability to work as an Attorney throughout the working day. My ability to concentrate is affected by the constant pain that develops when I attempt to work for any prolonged period using a computer, which is a necessary part of my practice as an Attorney.

And at paragraph 33 he states:

33. As a result of the injury caused by the 2002 motor vehicle accident, I can only put in an average of 2.5 hours a day into my legal practice. Prior to this accident, I could put in at least an average of 4 hours a day. As a result, I have lost 1.5 hours of billable time a day. My legal practice consists of 219 working days in a year, excluding weekends, public holidays and vacation. On average I take 6 weeks vacation a year. The total billable time lost per year is therefore 328 hours.

18. The plaintiff seems to be saying that but for the later accident he would have been back to working up to and beyond 4 hours per day.

19. In support of his claim for loss of earnings, the Plaintiff relied primarily on a calculation of his billable hours per day multiplied by US\$550 an hour. On this

basis he said he had lost 328 hours per year at US\$550 an hour thereby amounting to US\$180,400 per year. (See paragraphs 33 and 34 of the witness statement)

20. The plaintiff also set out at paragraph 35, an alternative way of calculating his loss of earnings. He stated that he had compared his practice's Profit and Loss Statements for the years prior to the motor vehicle accident and such Statements subsequent to the motor vehicle accident.

21. Under cross-examination he told the Court that he was relying solely on his Profit and Loss Account Statements set out at paragraphs 35 through to 45 of his witness statement. He produced profit and loss accounts for his practice for the years 2000 through 2008, save for 2004 for which the data had been destroyed by Hurricane Ivan. These accounts have been prepared by him and were generated on the computer with the assistance of the accounting software known as Quickbooks Pro which is generally used by Attorneys at Law in their practice. He stated that he was qualified both in Solicitors/Attorneys accounts and Trust accounts having sat these subjects during his professional training. He had prepared Solicitors accounts for the law firm that he founded in England many years prior to coming to the Cayman Islands.

22. At paragraphs 37 – 45 inclusive he sets out the calculations for the years 2000 – 2008 inclusive as follows:

37. The 2000 Profit and Loss Statement would show that my net ordinary income was US\$145,960.70. At the time I was some way from substantial recovery from my 1998 neck injury.

38. The 2001 Profit and Loss Statement would show that my net ordinary income was US\$189,879.36. This is consistent with the physical improvement of my 1998 neck injury which allowed me to dedicate more time to my practice.

39. The 2002 Profit and Loss Statement would show that my net ordinary income for that year was US\$208,983.88. This is, again, consistent with the physical improvement of my 1998 neck injury which allowed me to dedicate more time to my practice. The motor vehicle accident occurred on 27 November 2002. As a result, my productivity for the month of December 2002 was drastically reduced.

40. The 2003 Profit and Loss Statement would show that my net ordinary income was significantly reduced to US\$83,693.98. This is a direct consequence of the neck injury I suffered as a result of the motor vehicle accident on 27 November 2003. My loss of income for the year 2003 was therefore US\$125,289.90.

41. The 2005 Profit and Loss Statement would show that my net ordinary income for that year reduced further to US\$50,788.48. The reduction from US\$83,693.98 to US\$50,788.48 was mainly due to the lack of economic activity in the first two months of the year 2005, being the after-effects of Hurricane Ivan. As this further reduction in my income cannot be attributed to my neck injury, for the purposes of calculating my loss of income for the year 2005, I shall use my 2003 income as a guide. The loss of income claimed for the year 2005 is therefore also US\$125,289.90.

42. The 2004 Profit and Loss Statement is not available as all raw data was destroyed by Hurricane Ivan. The best estimate of the 2004 loss of income would be by way of calculating the average between the losses for the years 2003 and

2005 and allowing a discount of 4 out of the 12 months for the lack of economic activity following Hurricane Ivan since the hurricane struck in September 2004. On the basis above, the loss of income claimed for 2004 is US\$83,526.60.

43. The 2006 Profit and Loss Statement would show that my net ordinary income for that year was US\$83,443.49. This was consistent with my 2003 income of US\$83,693.98. My loss of income for the year 2006 was therefore US\$125,540.39.

44. The 2007 Profit and Loss Statement would show that my net ordinary income for that year was US\$103,560.54. The increase in my earnings for the year 2007 compared to the previous year is mainly due to fees charged in a single large Probate estate. It is unlikely that this will be repeated in 2008. My loss of income for the year 2007 was therefore US\$105,423.34.

45. My total loss of income for the years 2003, 2004, 2005, 2006 and 2007 was therefore US\$565,070.13, excluding the loss of income for the year 2008 thus far".

23. At paragraph 46 the plaintiff stated that his claim for loss of earnings continues up to the date of judgment.

24. Under cross-examination the plaintiff told the Court that he was relying solely on the use of Quickbooks Pro in order to verify his profit and loss for the periods he claimed. It was not his intention he said, to verify the accounts by other means.

25. Bank statements were used in the process of generating the profit and loss. When he was shown the bank statements for the years 2005 and 2006 he agreed with Counsel for the Defendant that they had included items which were

not part of his earnings from his practice. The plaintiff was shown other bank statements which according to Mr. Sanguinette did not provide the incomes to match his profit and loss income statements. The plaintiff was very insistent however, in maintaining that the only earnings for "Coles' Account" were those contained in the profit and loss statements. He said he would distinguish the earnings for his practice from personal matters when he did the posting to Quickbooks Pro. He said that he posted the transactions as they were made but the prime source of posting was derived from the bank statements. Payments that were received as well as those paid out along with details of the transactions were posted to Quickbooks Pro and thereafter the software generated the profit and loss statements. He was asked by the Court whether or not the details of the documents could be downloaded from the Programme but he said he had never tried to do this.

The submissions

The medical evidence

26. Mr. Robinson for the plaintiff has submitted that the Court should find that the exacerbation of the plaintiff's condition by the 2002 accident has had the effect of reducing his ability to work and consequently his capacity to earn. He further submitted that the level of impairment is projected by Dr. Dundas to be "permanent, partial, irreversible", and as being "likely to remain static"

27. Mr. Sanguinette, for the Defendant, submitted that he had no quarrel with the statements made by Dr. Quartly in her medical reports. However, he argued that

none of the doctors had said how long the exacerbation of the Plaintiff's injuries would impinge on his disability. He submitted that whatever the defendant did to the Plaintiff on the 27th November 2002, that that exacerbation would in the normal circumstances range between six months to one year at most. He submitted that in any event, the medical evidence showed that the plaintiff would experience the exacerbation "down the road".

28. Mr. Sanguinette also submitted that based on certain aspects of Dr. Quartly's medical reports, the plaintiff had to live with his limitations. He submitted that the medical evidence did not support the Plaintiff's contention that the second accident had exacerbated the degeneration further. He submitted that the plaintiff had self-imposed the time limits of his working and that there was no medical evidence limiting the hours of his work.

29. With reference to Dr. Quartly's report issued in 2006, Mr. Sanguinette submitted that what the doctor is saying, is that at the end of the day there were no new symptoms which would indicate that the new injury had been superimposed in the old injury or that it did not create any further injury to accelerate the degeneration process already taking place. He submitted that what the plaintiff got was a shake up and that without any trauma he would still end up with problems.

The loss of earnings

30. Mr. Robinson submitted that the method used in assessing the Plaintiff's loss of earnings as set out in the Schedule of Damages, is reasonable and should be

accepted. He argued that it is more reliable than any attempt to do a mathematical calculation based on precise number of hours worked per day. He submitted that the profit and loss statements show an increase of his net income from 2000 to November 27, 2002 (date of the accident) and this seemed to be consistent with the recovery from the injuries which the plaintiff had sustained in the 1998 accident. Mr. Robinson also submitted that it was clear from the profit and loss statements that since 2003 there was a marked reduction in the plaintiff's net earnings and that this had remained consistent throughout the subsequent years. The plaintiff he said had conceded that there were reduced earnings for 2005, which had resulted from the downturn in the economic activity arising from the impact of Hurricane Ivan. The plaintiff had made a similar allowance for 2004.

31. On the issue of loss of earnings, Mr. Sanguinette for the Defendant referred to the case of **Ashcroft v Curtin** [1971] 1 WLR 1731 and to page 1738 in particular where his Lordship Edmund Davies L.J said:

In *Bonham-Carter v. Hyde Park Hotel Ltd.* (1948) 64 T.L.R. 177, Lord Goddard C.J., who found it possible to arrive at a conclusion despite the extremely unsatisfactory evidence as to damages, said, at p. 178:

"Plaintiffs must understand that, if they bring actions for damages it is for them to prove their damage; it is not enough to write down particulars, and, so to speak, throw them at the head of the Court, saying: 'This is what I have lost, I ask you to give me these damages. "They have to prove it."

32. He submitted that the Plaintiff's bank statements which were presented in order to assist with the preparation of the Profit and Loss statements did not

support the latter. Rather, he said, that they proved on a balance of probabilities the opposite. He submitted that the Court should find that the plaintiff had not proved his loss of earnings. He submitted that there ought to have been some sort of billing, invoices etc. that the plaintiff could have produced to the Court.

33. However, Mr. Sanguinette submitted that if the Court were minded to make an award for loss of earnings then a sum of US\$14,850.00 covering a period between 6-12 months would be quite appropriate.

The future loss of earnings

34. With regards to the claim for loss of future earnings, Mr. Robinson submitted that the plaintiff was entitled to an award for future loss of earnings. He submitted that a multiplier of 2.84 based on a rate of return of 2.5% should be adopted to calculate the damages under this head. He referred to and relied on the House of Lords authority of **Wells v Wells** [1999] AC 345 which principles have been adopted by this Court and approved by the Privy Council in **Eaton v Johnson** (2008) WL 168782. In **Wells** (supra) Lord Lloyd of Berwick explained the method of calculation inter alia, at page 364:

The starting-point is the multiplicand, that is to say the annual loss of earnings or the annual cost of care, as the case may be. (I put so-called *Smith v. Manchester* damages (*Smith v. Manchester Corporation* (1974) 17 K.I.R. 1) on one side.) The medical evidence may be that the need for care will increase or decrease as the years go by, in which case it may be necessary to take different multiplicands for different periods covered by the award. But to simplify the illustration one can take an average annual cost of care of £10,000 on a life expectancy of 20 years. If one assumes a

constant value for money, then if the Court were to award 20 times £10,000 it is obvious that the plaintiff would be over-compensated. For the £10,000 needed to purchase care in the twentieth year should have been earning interest for 19 years. The purpose of the discount is to eliminate this element of over-compensation. The objective is to arrive at a lump sum which by drawing down both interest and capital will provide exactly £10,000 a year for 20 years, and no more. This is known as the annuity approach. It is a simple enough matter to find the answer by reference to standard tables. The higher the assumed return on capital, net of tax, the lower the lump sum. If one assumes a net return of 5 per cent the discounted figure would be £124,600 instead of £200,000. If one assumes a net return of 3 per cent. The figure would be £148,800.

The same point can be put the other way round. £200,000 invested at 5 per cent will produce £10,000 a year for 20 years. But there would still be £200,000 left at the end

So far there is no problem. The difficulty arises because, contrary to the assumption made above, money does not retain its value. How is the Court to ensure that the plaintiff receives the money he will need to purchase the care he needs as the years go by despite the impact of inflation? In the past the Courts have solved this problem by assuming that the plaintiff can take care of future inflation in a rough and ready way by investing the lump sum sensibly in a mixed "basket" of equities and gilts. But the advent of the index-linked government stock ("I.L.G.S.") (they were first issued in 1981) has provided an alternative. The return of income and capital on I.L.G.S. is fully protected against inflation. Thus the purchaser of £100 of I.L.G.S. with a maturity date of 2020 knows that his investment will then be worth £100 plus x per cent of £100, where x represents the percentage increase in the retail price index between the date of issue and the date of maturity (or, more accurately, eight months before the two dates). Of course if the plaintiff were to invest his

ú100 in equities it might then be worth much more. But it might also be worth less. The virtue of I.L.G.S. is that it provides a risk-free investment”.

35. Mr. Robinson further submitted that the Court should use a multiplicand of US\$118,000.00 which is based on the plaintiff's average loss of earnings for 2006, 2007 and 2008. A multiplier of 2.84 should then be used and the sum of US\$295,787.00 would represent an award of future loss earnings.

36. Mr. Sanguinette submitted however, that there should be no award in respect of future loss of earnings.

Findings

37. I have seen and heard the plaintiff in the witness box and it is my view that he gave his evidence in a clear and impressive manner. I found him to be both credible and reliable in his account. I accept his evidence that his need to seek ongoing medical attention was as a result of the 2002 accident. I also accept Dr. Quartly and Dr. Dundas prognoses. The level of impairment as projected by Dr. Dundas was “permanent, partial, irreversible” and being “likely to remain static”.

38. In my judgment, I find that on a balance of probabilities, there was evidence of exacerbation of the Plaintiff's condition by the 2002 accident and this has had the effect of reducing his ability to work for the number of hours which he usually did. This has consequently affected his ability to earn in the manner which he was accustomed to. But for the 2002 accident, it is highly probable, that he would have been back to working 4 hours daily.

39. I accept the submissions made by Mr. Robinson that the Plaintiff's method of assessment was more reliable than any attempt to do a mathematical calculation based on precise number of hours worked per day. With a degree of reluctance I cannot accept Mr. Sanguinette's submissions. I find that the plaintiff had utilized his training and experience in the preparation of the profit and loss accounts. I also agree with Mr. Robinson when he submitted that it was only reasonable to expect that the Plaintiff did not keep a rigid schedule of work whether before or after the 2002 accident.

40. There were disparities in the figures between the plaintiff's profit and loss statements and those arrived at by the defence, but I accept his explanation that some of the items that were contained in the Bank Statements did not relate to the law practice.

41. I further accept that in order to mitigate his losses the plaintiff had to cut his office overheads. He had given up his office at Elizabethan Square and began working from home. He had also attempted at recruiting an associate but had to give up the idea due to the difficulties of attracting a sufficiently experienced lawyer to work in such a small firm.

The award

42. On the basis of my findings, it is now left for me to consider the quantum of damages that the Plaintiff is entitled to under the heads "loss of earnings" and "future loss of earnings".

Loss of earnings

43. The plaintiff's case for loss of earnings is set out in the Amended Schedule of Damages as follows:

Plaintiff's Loss of Earnings to Date.		
Loss of earnings as a legal practitioner for the year 2003 [USD 208,983.98 – 83,693.98]	125,289.90	
Loss of earnings as a legal practitioner for the year 2004 (discounted to reflect effect of Hurricane Ivan) [see para. 42 of Plaintiff's witness statement]	83,526.60	
Loss of earnings as a legal practitioner for the year 2005 (based on 2003 loss of earnings) [see para. 41 of Plaintiff's witness statement]	125,289.00	
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Loss of earnings as a legal practitioner for the year 2008 [USD 208,983.88 – 84,944.13]	124,039.75	
Loss of earnings as a legal practitioner for the year 2009 [USD 208,983.99 prorated: USD 87,076.62 – 30,326.02]	56,750.60	
SUB-TOTAL	750,118.18	

44. Accordingly, I award the sums specified in paragraph 43 above.

Future loss of earnings

45. It is clear from the medical evidence that the plaintiff's present condition is permanent and this as I have said would certainly have an effect on his earning capacity. At paragraph 47 of the plaintiff's witness statement he states:

"47. On the basis that I have now reached maximum recovery from the neck injury sustained in the November 2002 motor vehicle accident and my future loss of earnings can best be predicted on the basis of my 2007 loss of income, which would favour the Defendants as compared to using an average of the past 5 years, I claim loss of future earnings of US\$105,423.34 per year until my normal retirement age of 65 - I will be turning 65 on 3 March 2012".

46. Mr. Robinson suggested however that the multiplicand should be an average of the earnings for 2006, 2007 and 2008 which amounts to US\$118,000.00. I find no fault with this suggestion as it seems reasonable to me. I also agree with Mr. Robinson that the Ogden Tables ought to be used for ascertaining a suitable multiplier. The plaintiff being 62 years old, the multiplier produced by the Ogden Tables would vary it seems from a low of 2.74 to a high of 2.95. Mr. Robinson argued that a multiplier of 2.84 based on a return of 2.5% would be eminently reasonable. I agree with these submissions and therefore make an award of US\$295,787.00 for loss of future earnings.

Conclusion

47. There shall be judgment for the plaintiff as follows:

A. General Damages

(a) Pain and suffering and loss of amenities	KYD\$18,000.00
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with interest thereon at the rate of 2% per annum from November 27 2002 (as agreed) to today.

B. Future Loss of Earnings

An award of USD\$295,787.00

C. Special Damages

(a) Loss of earnings	US\$750,118.18
(b) Travel & Medical expenses in Kingston (agreed)	USD\$2,310.76
(c) Medical Expenses in Cayman and the U.K (agreed)	USD\$1856.25
(d) Medical expenses in 2006 (agreed)	KYD\$74.00

with interest thereon at the rate of 2.5% per annum from November 27, 2002 to today.

D. Costs

There shall be costs to the plaintiff to be taxed if not agreed.

Harrison J
Acting Judge of the Grand Court