5/9/08

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 890 of 2002

BETWEEN: **ALEXANDER BODDEN**

Plaintiff

AND: **SHANE SOLOMON**

Defendant

Appearances: **Mr. A. Hogarth Q.C. instructed by Mr. Kyle Broadhurst of Broadhurst Barristers for the Plaintiff**
Mr. N. Garnham Q.C. instructed by Mr. Shaun McCann of Campbells for the Defendant

Before: **Hon. Justice Henderson**

Heard: **April 21st 22nd, 23rd, 24th, 25th, 28th & 29th, 2008**

JUDGMENT

While walking on the edge of the Crewe Road bypass in the early morning of Sunday, December 16, 2001, Alexander Bodden was hit from behind by a motor vehicle driven by Shane Solomon. Mr. Bodden suffered catastrophic and permanent injuries. After a trial on the question of liability only, Sanderson, J. (Ag.) found that both parties had been negligent and apportioned 80% of the liability to Mr. Solomon and 20% to Mr. Bodden (his judgment is reported as *Bodden v. Solomon* 2004 – 05 CILR 397). This is my assessment of damages.

Mr. Bodden suffered compound fractures of the left ankle. He underwent vascular surgery and debridement for muscle necrosis, followed by an amputation of the left leg below the knee on

January 27, 2002. He is now able to walk using a prosthetic limb but sometimes requires the use of a wheelchair.

Mr. Bodden suffered a blood clot in the abdomen which required two laparotomies. He also needed an operation to repair a ventral hernia which was a direct result of the accident. He now suffers from some difficulty with bladder and bowel control and he is impotent. There is scarring on his back, left leg, and abdomen. He has reported some phantom pain in his missing limb.

Mr. Bodden suffered some form of brain injury in or after the accident. The cause of that injury is unclear: it may have been suffered in the accident itself or be linked somehow to the treatment he received later. In any event, the defendant accepts his obligation to compensate Mr. Bodden for the consequences of this brain damage. The problem has been complicated by anoxic encephalopathy incurred during Mr. Bodden's stay in hospital.

As a result of the brain injury, Mr. Bodden now has a decreased ability to learn and retain new information, executive dysfunction, and low language abilities. He suffers from a degree of heightened emotional lability. Some improvement has been noted in his cognitive functioning since he was in hospital.

Multipliers

Most of the relevant multipliers have been agreed. It is now accepted by both sides that Mr. Bodden has a life expectancy of a further 29.6 years, to age 71.4. Mr. Ian Wollach, the plaintiff's actuary, has calculated a multiplier for life expectancy of 19.67 based on these figures; the defendant is content with this estimate.

There is a dispute about the multiplier to be used for calculations concerning the working life of Mr. Bodden. The parties have agreed generally on the potential starting point. The Ogden Tables provide a multiplier to age 60 of 14.53 and one to age 65 of 17.55. Mr. Wollach has provided multipliers of 13.96 and 16.75 respectively.

These starting point multipliers take no account of contingencies other than mortality. The defendant argues that a significant adjustment must be made to take account of other contingencies including a somewhat elevated risk of early death due to Mr. Bodden's condition, the risk of being unemployed or partially employed, and the risk of illness and accident. He says that the starting point multiplier must be reduced by 14% to take these additional contingencies into account.

In support, Mr. Garnham relies upon section b, paragraphs 26 to 42 of the Ogden Tables and the research cited therein. This research, which is substantial, has been conducted entirely in the United Kingdom. Even from the brief description of it in the Ogden Tables, one can see that it rests heavily upon socio- economic conditions there which may well differ from those found in the Cayman Islands. The social welfare network is much less extensive here. We have no labour unions. On the other hand, there is little unemployment in the Cayman Islands and that has been so for many years.

No Cayman Islands authority has been cited for the proposition that the factors found in the Ogden Tables and derived from the U.K. research on contingencies other than mortality should be applied in the defendant's favour to an award here. The defendant bears the burden of showing that these adjustment factors and the research from which they are derived should have

application in the Cayman Islands. There is simply no evidence from which I can draw that conclusion.

The plaintiff suggests reducing the age 65 multiplier to 16 to make "suitable allowances for all differentials" (Plaintiff's Schedule of Damages and Future Loss, page 3). I accept that concession.

General Damages

There was a significant degree of agreement between the neuropsychological experts – Dr. Velikonja for the plaintiff and Dr. Pliskin for the defendant – but, where their evidence is in conflict, I prefer that of Dr. Velikonja. I found indications in the evidence that Dr. Pliskin's assessment of Mr. Bodden may not have been as thorough as that of Dr. Velikonja. In his report of his examination of January 29, 2007, Dr. Pliskin (at page 5) suggested that the Bonaventure Home might have the sort of programme from which Mr. Bodden would benefit. In fact, this Home is a facility for delinquent young men and would have nothing whatsoever to offer to Mr. Bodden; the suggestion is clearly the result of some misunderstanding on the part of Dr. Pliskin. Moreover, a few of Dr Pliskin's suggestions in evidence struck me as rather facile. When asked in cross-examination how much training or experience the primary care giver for Mr. Bodden would need (in a home environment) Dr. Pliskin said, "After two days of being with somebody, you have the experience" (transcript, page 184). No other expert witness agreed with that.

Dr. Velikonja (in her report of July 9, 2003, at page 9) found that Mr. Bodden had "few well preserved abilities" and a "notable decline compared to estimates of his pre-morbid abilities".

She found decreased general intellectual abilities in the verbal and visual domains and decreased academic skills. Mr. Bodden has poor motor strength and speed in his right hand and poor dexterity in both hands. He has ideomotor apraxia, sensory imperception and olfactory hallucinations. He suffers from decreased information processing speed and a short attention span. His ability to acquire, store and retrieve visual information is disrupted. There is significant overall memory impairment. He has poor executive and higher order integrative skills, including decreased adaptive problem-solving, cognitive inflexibility, impaired organizational skills and response inhibition. Dr. Velikonja found neuropathogenic changes in emotional functioning which cause inappropriate affect and uncontrolled moodiness. She characterized his neurocognitive deficits as "severe" and said they are "relatively permanent".

Mr. Bodden is able to walk short distances unaccompanied. He can get himself out of bed and into his wheelchair, can use the bathroom and can largely dress himself, but needs help with his socks and shoes. He can shower himself but needs to be supervised. He can use the television and can make telephone calls. He is able to get drinks or food from the refrigerator, but needs to be supervised. I accept the evidence of Mr. Bullock which suggests that Mr. Bodden can be left alone for short periods of time.

I find that Mr. Bodden's brain injury falls into the "moderately severe" category described in the Judicial Studies Board Guidelines. The description of such an injury there is:

> "The injured person will be very seriously disabled. There will be substantial dependence on others and a need for constant professional and other care. Disabilities may be physical; for example, limb paralysis, or cognitive, with marked impairment of intellect and personality".

The range of award (in CI dollars) suggested is $207,825 to $269,765. Mr. Bodden's brain injury falls in the middle of that range; but for his other injuries, the appropriate award of general damages would be $240,000.

I must, of course, take account of his very substantial additional injuries. He has lost his left leg below the knee. This was the result of an uncontrollable infection; there were several attempts to remove the infection which failed. Mr. Bodden's spleen was removed after the accident. He is impotent. He is also incontinent and suffers from urinary and fæcal mishaps. He suffers from depression. His life expectancy has been reduced by 7.4 years and his Class 2 diabetes has been brought forward by about four years.

It would be wrong in principle for me to award the guideline amount for each of these injuries individually. On the other hand, the collective impact of these additional injuries is substantial and justifies a significant increase over the amount which would be awarded for the brain injury alone. I am satisfied that the general damage award should increase to $325,000 in recognition of the full constellation of injuries and the resulting pain and suffering and loss of amenity.

Loss of Congenial Employment

Mr. Bodden's employment has been largely in the construction industry, supplemented by periods of work in a grocery store. He started as an unskilled carpenter's assistant and could have been expected, over the course of his working life, to acquire gradually the skill set required of a "top" carpenter in the construction trade.

There are indications in the evidence that Mr. Bodden may not have been entirely content with his work as a carpenter; he said he applied for a position as an airport security guard just prior to the accident.

The evidence does not satisfy me to the required standard that an award for loss of congenial employment is justified. I make no award under this head of damage.

Past and Future Wage Loss

By the age of 17 Alexander Bodden was working as a carpenter's helper for Hard Rock Construction on Grand Cayman. This was essentially unskilled labour but it did present him with an opportunity to learn carpentry. He was by all accounts a hard worker. There were times when Hard Rock had no work for Mr. Bodden to do and, on those occasions, he worked at Hurley's grocery store and at other unskilled jobs.

I heard evidence from Mr. Bodden, given under oath. He had some difficulty understanding the questions and expressing himself and showed a marked tendency to simply agree with leading questions. However, I consider at least a portion of his evidence to be reliable.

Mr. Bodden says that he has "never been out of work." His brother, John, testified that Mr. Bodden worked "pretty much seven days per week." A family friend, Elizabeth Bodden, said he worked just about every day and appeared never to be out of work. In cross-examination she agreed that there were "times" when he would take the weekend off. The plaintiff, in evidence which I accept, said his normal work day was nine hours per day. He liked to work Saturdays to earn extra money. There were periods when he could not work because of injuries. Roughly

three months before the accident, he missed three weeks of work due to a hand injury suffered on the job. He has also suffered injuries in fights.

Mr. Hyman Mullings, the plaintiff's employer at Hard Rock Construction, testified that Mr. Bodden had worked for him for three or four years assisting a carpenter. He said Mr. Bodden would work several weekend days per month as well as week days. Mr. Bodden started out earning $9 per hour and was paid 50% more for overtime. By the time of the accident he was earning $11 per hour. Mr. Mullings says that a top carpenter gets $15 per hour and assistant carpenters receive $13 per hour at the moment. In direct examination he estimated that Mr. Bodden would be making "$14 or $15 per hour today"; in cross-examination, this was modified to $13 or $14 per hour. Mr. Mullings provided his employees with sick pay when they had to miss work due to an injury suffered on the job.

The plaintiff's wife, Juana Bodden, testified (through an interpreter) that her husband "almost always" worked on Sundays. When there was no work at Hard Rock Construction he would seek out work with a Mr. Dixon or at Hurley's. She conceded that there were a few times when he was unable to find work.

I infer from all this that the plaintiff was an exceptionally industrious worker who would have continued to seek out employment as long as he was physically able to do so. Given the physical demands of the construction industry, I expect that he would have had to accept (with reluctance) a retirement at age 65; I will use that age for estimating his future earning loss.

There was evidence that Mr. Bodden had applied for a job as a security guard (a job which pays $18 per hour) at the airport shortly before the accident. He testified that he had received a letter

from the airport just the day before, presumably accepting him for the position. There is, however, no documentary evidence of this at all. No one from the Airport Authority was called to give evidence. The assertions in the plaintiff's evidence about pursuing a new career as an airport security guard do not demonstrate that the plan (if that is what it was) had crystallized to the extent that it should affect my assessment of the future wage loss. The evidence on the subject is scant and unreliable.

I approach the wage loss assessment on the footing that Mr. Bodden would have continued to work as an assistant carpenter, then a carpenter, and finally a top carpenter, while also working at other jobs to earn additional income.

The plaintiff would have progressed up the scale of hourly wages and would be earning $13.50 per hour at the present time. He would have continued to progress and would have become a "top carpenter" earning $15 per hour after January 1, 2014. He would have suffered the occasional period of unemployment due to an injury, for which he would not receive compensation. He would have experienced only minimal periods of unemployment due to unavailability of work and none due to a lack of initiative.

Based on these assumptions, I agree that only a very modest discount to the starting point multiplier is appropriate to reflect contingencies other than mortality. The appropriate starting point is a multiplier of 16.75 (as per Mr. Wollach's evidence); I adopt the submission of the plaintiff that a reduction of the multiplier to 16 to reflect these additional contingencies is appropriate.

Mr. Bodden's basic salary was $495 per week. The defendant has submitted an estimate of past wage loss adopting the assumptions described above and assuming that Mr. Bodden would, today, be earning $13.50 per hour. The calculation also assumes (reasonably) that he would have earned an average of five hours overtime per week. I accept the defendant's calculation as a reasonable one (for the past wage loss) based on assumptions supported by the evidence. I award to Mr. Bodden for past loss of earnings the sum of $201,871. The intermediate calculations, which I adopt, are contained in the defendant's closing argument.

On the same basis, the sum of $36,855 is the proper multiplicand for the future loss of earnings calculation for the period until January 1, 2014. After that date, Mr. Bodden would have been earning $15 per hour as a top carpenter and the multiplicand rises to $40,950. (Again, I assume a 45-hour work week with five hours per week of overtime at a rate of 1.5 times the basic hourly rate, for 52 weeks per year.) The correct multiplier for the plaintiff's entire working life is 16, as I have said above. He would have worked for 5.67 years from the date of trial at an hourly wage of $13.50; my award for this period is $208,967.85. He would have then worked for 10.33 years at an hourly rate of $15; my award for this period is $423,013.50. My total award for future wage loss is $631,981.35.

Cost of Past Care

The plaintiff is entitled to an in trust award for the care provided to him by his wife. The amount of this award should reflect the true value of what was provided. The wages lost by Mrs. Bodden represent the absolute minimum of what should be awarded.

Mr. Bodden was hospitalized from December 16, 2001 to June 28, 2002. Throughout this period of time Mrs. Bodden rarely left his side. She had been working for $6 per hour at Hurley's grocery store on Grand Cayman; she left this job to care for her husband.

Mr. Bodden was in a coma for about 20 days after the accident. As his condition gradually improved, Mrs. Bodden slept in a chair by his side and assisted in bathing him, taking him to the bathroom and changing his bandages. She said: "I worked as if I was a nurse." In doing so, she acquired a certain degree of expertise. Once Mr. Bodden returned to the Cayman Islands, he was cared for by his wife and (beginning sometime in 2004) by her 29 year old son Marcio Lozano. Mr. Lozano had been attending university with a view to taking a law degree; he abandoned that to assist his mother.

Mr. Lozano said he would "spend most of the day" with the plaintiff. He said Mr. Bodden can get from his bed to his wheelchair unassisted, but needs help in getting to the bathroom. He can dress himself but sometimes he makes mistakes while doing so. Mr. Bodden can move about the house in his wheelchair. He can shower himself but " needs to be watched." Mr. Lozano said that Mr. Bodden is sometimes able to make a phone call unassisted but at other times he has difficulty. He is capable of taking bits of food from the fridge and can walk short distances outside if someone is accompanying him. Mr. Lozano said that he cares for Mr. Bodden seven days per week.

Mrs. Bodden said that she has been looking after her husband together with her son for the past 7 years. She said she has been attending to her husband 24 hours per day. He is restless at night and often paces back and forth. Mr. Bodden is sometimes difficult: "he fights us, he insults." He often walks to the corner store, but no further.

I accept the evidence of Mrs. Bodden and Mr. Lozano. There is, however, other credible evidence which shows that Mr. Bodden can function on his own for limited periods of time. Since the accident, Mr. Bodden has divorced his first wife. Evidently, he instructed a lawyer on his own. He was deemed able to swear an affidavit in the proceeding.

A private investigator, Mr. Vassil Bullock, has observed Mr. Bodden walking alone to a nearby store. He has also observed Mr. Bodden on the verandah of his present residence with a young child but no other adult present for a period of 5 to 7 minutes. Mr. Bullock's characterization of this as "giving supervision to the child" is an overstatement: he is unable to say if any other adult was present inside the house.

I am satisfied that the care provided by Mrs. Bodden to her husband is significantly more arduous than her employment at Hurley's grocery store. In addition, by the process of caring for her husband and interacting with various medical professionals, she has acquired a certain level of expertise for which she should be compensated.

There was evidence that an agency called "Caring Hands" was charging $14 per hour for unskilled care of the sort provided by Mrs. Bodden and $21.50 for skilled care. The company is no longer trading. There is a suggestion in the evidence that the appropriate rate is closer to $12 per hour. Nonetheless, the defendant's expert on the cost of future care, Judy Farrimond, was content to base her own expert evidence on the fourteen dollar per hour figure.

The plaintiff has argued, unconvincingly, that the applicable rate of pay should be twenty per hour and that it should be assumed that Mrs. Bodden has worked to take care of her husband

sixteen hours per day, seven days per week. The defendant accepts the sixteen hours per day estimate for the period from June 29, 2003 to February 16, 2006. For the earlier period of homecare, from June 29, 2002 to June 28, 2003, the defendant's estimate is higher – eighteen hours per day. For the period from February 17, 2006 to the date of trial, the defendant says Mrs. Bodden should be compensated for twelve and a half hours per day.

In my view, the defendant's estimates of the time spent are at least reasonable, with one exception: Mrs. Bodden is entitled to be compensated at the rate of 18 hours per day for the care she provided in the hospital. I am also of the view that the defendant's expert's estimate of the appropriate hourly rate, $14, is correct even though she may have based her estimate upon an erroneous assumption that "Caring Hands" was still in operation.

The defendant says that a 10% discount to the total award for cost of past care is appropriate to reflect the fact that such care is provided out of affection for the plaintiff: *Burns v Davies* (unreported) Aug.7/98 (QB). There is reliable evidence that Mrs. Bodden's mental health has been affected adversely by the strain of caring for her husband. I consider that a reasonable justification for declining to apply any discount to her in trust award.

Mrs. Bodden has paid Mr. Lozano for his assistance in caring for Mr. Bodden. These payments have average $1,150 per month over a term of 4 years, for a total of $55,200.

In summary, my award for the cost of past care is as follows:

Time period	Hours of care per day	Value of care in CI dollars
December 16, 2001 to June 28, 2002	18	$ 48,888.00
June 29, 2002 to June 28, 2003	18	$ 91,728.00
June 29, 2003 to February 16, 2006	16	$215,712.00
February 17, 2006 to December 6, 2007	12.5	$114,975.00
December 7, 2007 to April 21, 2008	12.5	$ 23,800.00
SUBTOTAL		**$495,103.00**
ADD: Paid to Mr. Lozano		$ 55,200.00
TOTAL		**$550,303.00**

Cost of Future Care

There is a general consensus among the experts that Mr. Bodden needs to get out of the house more often and engage in social and rehabilitative activities. The defendant proposes that he spend his days at the Sunrise Centre in West Bay, a government-run facility. This would reduce the overall cost of future care substantially.

I have no hesitation in rejecting the Sunrise proposal. First of all, the Centre is full; Mr. Bodden's name has been placed on a waiting list. Although there are suggestions in the evidence that Mr. Bodden has already been assessed and approved for admission to the Centre, the evidence of Redentor Cordilla demonstrates only that a preliminary (and inadequate) assessment has been done. Angela Martins also testified to Government plans to expand the Centre which, if they are implemented, could expedite Mr. Bodden's admission. I do not consider these plans sufficiently advanced and certain to form a basis for my award calculation.

In any event, I doubt that the Sunrise Centre is a suitable venue for Mr. Bodden on a daily basis. It would seem there is only one patient there at the moment with a range of disabilities similar to those of Mr. Bodden. The evidence of Roberta Gordon and Redentor Cordilla did not satisfy me that the program at Sunrise would be suitable for this plaintiff and that his refusal to attend there is unreasonable.

Mr. Bodden does not want to attend the Sunrise Centre. While he obviously suffers from some serious deficits, I am satisfied that Mr. Bodden can exercise and should have a freedom of choice in the matter. From the relevant authorities, I draw these principles:

(1) There is no burden upon a plaintiff to show that his proposal for future care is reasonable; the defendant must show it is unreasonable.

(2) In assessing reasonableness, the fact that one course of future care is more expensive than another is not a significant consideration.

(3) An injured plaintiff is entitled to his freedom of choice provided he has the capacity to exercise it; if he does not, those looking after him are entitle to make the choice for him: *See: Rialis v. Mitchell* [1984] Times Law Reports, July 17; *Sowden v Lodge* [2005] 1 WLR 2129; *Wakeling v. McDonagh* [2007] EWHC 1201 (QB); *Massey v. Tameside and Glossop Acute Service* [2007] EWHC 317 (QB).

I would feel somewhat more sanguine in my decision to honour the plaintiff's choice if he had put a firm plan for future care before me. There is no real plan at the moment. What makes this of greater concern is the fact that the plaintiff has now received the sum of $980,988.26 in interim payments (in addition to payments to the medical treatment providers and in respect of treatment in the total amount of $310,453.73).

By far the most significance difference between the plaintiff's expert (Ms. Kirsten Cherian) and the defendant's expert (Ms. Judy Farrimond) concerning the cost of future care had to do with the qualifications of the primary care giver.

Ms. Cherian was firmly of the view that a worker lacking any specific training in working with people with traumatic brain injuries would not be appropriate. A trained person would ensure a suitable selection of activities for Mr. Bodden during the day. Stimulation and socialization would be made available.

Ms. Hazel Brown, a local nursing expert, has described the levels of training and experience in the Cayman Islands of Nursing Assistants (also known as Nurses' Aides), Licensed Practical Nurses, and Registered Nurses. The sort of person envisioned by
Ms. Cherian and Ms. Brown as the primary care giver is a Licensed Practical Nurse. She is supported in this by the opinion of Dr. Pickering and Dr. Lockhart.

Ms. Farrimond considered that an "HHA" worker (Home Health Assistant) at $14 per hour would be adequate as a primary care giver. She agreed in cross-examination, however, that the Assistant would require at least 3 months experience in dealing with people with traumatic brain injuries or, in the alternative, at least 3 months experience dealing with Alexander Bodden (transcript page 175). She conceded that the HHA would have to be instructed in dealing with individuals with disabilities. A Licensed Practical Nurse has 18 months of training and what Ms. Brown termed "a more in-depth understanding" of nursing. Such a nurse would have greater insight into Mr. Bodden's needs and "a much broader base from which to work." Both Ms. Cherian and Ms. Brown expressed the view that the most suitable sort of nurse for Mr. Bodden's day-to-day care

would be a Licensed Practical Nurse. I was impressed with their evidence and conclude, on the balance of probabilities, that a Licensed Practical Nurse is a reasonable requirement for the future care of Mr. Bodden.

The plaintiff's position is that a "day time carer" who is a Licensed Practical Nurse must be with Mr. Bodden 14 hours per day, seven days per week at a cost of $21.50 per hour. The annual cost claimed by the plaintiff for this item is $109,564 (see Plaintiff's Closing Submissions, tab 4). The plaintiff also claims for a "night time carer" at an annual cost of $41,600 (*ibid.).*

I consider each of these figures somewhat high. Mr. Bodden would be reasonably cared for by a Licensed Practical Nurse provided to him for 9 hours per day, seven days per week; I therefore award an annual amount of $70,120.96 for this item (9/14 x $109,564). I expect that Mrs. Bodden will provide for her husband's care, and provide for it very well, for seven hours per day, seven days per week. At a rate of $14 per hour, which is the appropriate rate to reimburse Mrs. Bodden for her contribution, the annual cost of her care is $35,672. The other annual costs claimed by the plaintiff under the head of future care - $480 for supervision and monitoring and $4,568.19 for holiday pay - are accepted as reasonable estimates.

Thus, my award under the heading of Cost of Future Care is a total of $110,841.15 per annum. The proper multiplier (provided by the plaintiff's expert, Mr. Wollach, and agreed) is 19.67, resulting in a total award for the cost of future care of $2,180,245.42.

Special Damages

By agreement, I award the sum of $35,620 to the plaintiff for the increase in his accommodation costs from the date of the accident to the date of trial.

There is a claim for the sum of $19,200 for the increased cost of utilities for the same period which does not appear to be disputed by the defendant; I award that amount also.

The plaintiff has provided two appendices (A and B) listing claims for special damages arising from the cost of travel, medications and medical treatment. The total amount claimed is $79,688.88, and this is awarded by agreement.

I award the sum of $24,400 for past transportation costs, by agreement.

I award him the agreed amount - $1,050 – for the cost of past podiatry care.

Agreed Future Costs

The parties are agreed that there should be an award for the future cost of medications at a total of $7,393.01 per year. The appropriate multiplier is 19.67; my award is $145,420.51.

There is also agreement between the parties on the future cost of medical services, including psychiatry, neurology, physiatry, urology, psychology, etc., in the total annual amount of $4,735.33 (the multiplier is 19.67) and a one time cost of $9,055. Thus, my award under this head is the sum of $102,198.94.

There is agreement as to the future annual cost of clothing, a wheelchair, canes, a bath chair, a showerhead, and bath mats: a total of $364.20. Applying the appropriate multiplier of 19.67, my award is $7,163.81.

I also award the sum of $877 for moving costs, grab bars and a cane; these are one time only costs.

Future Cost Items in Dispute

The plaintiff advances a claim on behalf of Mrs. Bodden for anti-depressant medication and psychological counseling. I am satisfied that Mrs. Bodden's mental health has been affected adversely by the strain of caring for her husband in what must have been very difficult circumstances. The cost of these medications and counseling cannot be recovered directly. However, I have taken them into account in deciding, as I did earlier, that my award for the cost of Mrs. Bodden's past care would not be reduced to reflect the fact that such care is provided out of love and affection.

Mr. Bodden requires a prosthetic limb and there is, of course, an annual cost of maintaining it. The defendant has also conceded that Mr. Bodden is entitled to the annual cost of a sport or swim (i.e., waterproof) prosthetic leg. The appropriate multiplier for the primary limb is 19.67 and that for the sport or swim prosthetic leg is 13.96 (i.e., the multiplier to age 60). The body of the plaintiff's closing submission makes no reference to the cost of the prosthetic leg and the final submission from the defendant (at paragraph 120) could be taken to suggest that there is agreement between the parties on the cost. However, the figures given there are considerably

lower than those advanced by the plaintiff's expert. The parties are at liberty to apply on this issue.

The plaintiff has argued for an award to provide him with a backup prosthetic leg, at significant cost. I do not consider this request to be reasonable. As one prosthetic leg is replaced by another, the older leg can be retained and used as a backup.

The evidence suggests that the plaintiff would have had diabetes in any event by the date of trial. For that reason, nothing can be awarded for future podiatry care.

The plaintiff has claimed for the cost of a case manager; he estimates the cost at $50 per hour and says that 26 hours per year will be needed. The evidence is lacking, but the defendant will accept the sum of $1,200 per year. I award that amount. The total award is $23,604 ($1,200 per year x 19.67).

A claim for the cost of financial case management and supervision was advanced by the plaintiff during opening argument. I do not understand this item to be pressed. In any event, the modern view is that such an award is not available because the 2.5% discount rate obviates the need for it (at least in theory): see *Page v Plymouth Hospitals NHS Trust* [2004] EWHC 1154 (QB); and *Eagle v Chambers* [2004] EWCA Civ 1033 (CA). The rationale of these two decisions has equal applicability in the Cayman Islands. I make no award under this head.

A related but different claim is for the cost of a receiver or trustee to handle the award, on the ground that the plaintiff is not able to manage his own financial affairs. That is indeed the case. There is an abundance of evidence that Mr. Bodden is incapable of taking charge of his own

financial affairs. There appears to have been a misunderstanding between the parties as to the status of this claim. Their arguments have not been developed. The parties are at liberty to apply on this issue.

I accept Ms. Cherian's opinion that Mr. Bodden's rehabilitation will be assisted by participating in activities (such as swimming, gym workouts, and making crafts) intended to develop and maintain his cognitive and physical abilities. I will award the annual sum of $500 (advanced by Ms. Cherian in her first report at page 27) but not the higher sum of $1,400 claimed in the plaintiff's final Schedule. Applying the multiplier of 19.67, my award is $9,835.

I will not award anything for the future cost of ophthalmology as I consider this requirement to be linked with the plaintiff's diabetes, which he would by now be suffering from in any event. Similarly, the plainiff's claim for the future cost of a dietician appears to be inflated artificially by his diabetic condition. I will award the amount conceded by the defendant for these services: a one time cost of $195 and $60 per year, for a total award of $1,032.60.

The size of the appropriate award for the services of Dr. Pickering, occupational therapy, neuropsychology, and physiotherapy are in dispute. Little was said about these individual claims; I was invited to settle upon a midway point between the figures advanced by the parties and will do so.

I award the sum of $1,400 annually for the future services of Dr. Pickering and $75 annually for occupational therapy. Applying the multiplier of 19.67, my total award for these items is $29,013.25. I also award a one time only sum of $6,200 for neuropsychology.

There is a considerable difference between the parties regarding the appropriate award for future physiotherapy. Ms. Cherian recommended an average of nine sessions per year for physio and two further sessions annually to monitor the plaintiff's home programme. She said that from the age of 50 onwards there should be ten additional sessions per year to manage degenerative symptoms and osteoarthritis development.

Ms. Farrimond was of the view that this was excessive. She asserted that four sessions per year plus one additional session for reassessment of the exercise programmme would be enough. The experts were agreed that each session will cost $75.

Dr. Pickering, a local doctor who has been treating Mr. Bodden and seeing him regularly, has suggested that annual physiotherapy evaluations are sufficient. On balance, the plaintiff has not established to the required standard the need for the amount of physiotherapy claimed. I will award the sum of $375 per year for five physiotherapy sessions, an award of $7,376.25 (using the 19.67 multiplier).

Future Accommodation

Prior to the accident, Mr. and Mrs. Bodden were living in rented accommodation which cost them $550. After Hurricane Ivan in September, 2004, rents rose dramatically throughout Grand Cayman. Since that time, rents have declined, but have not subsided to their pre-hurricane level. The plaintiff says that accommodation of a similar type would cost about $750 per month today, an increase in rent of 36%. I accept that as a reasonable figure. The defendant points to the fact that the rent at the accommodation in which the Boddens were actually living at the time of Hurricane Ivan increased from $800 to $1,400 per month, a jump of 75%. I consider that an

anomaly which cannot be taken as representative of any long-term trend in the rental market. There is no reliable evidence suggesting that rents today are, and in the future will be, 75% higher than they were prior to Hurricane Ivan. I assume that, but for the accident, Mr. and Mrs. Bodden would be paying rent of $750 per month.

The parties are agreed that the needs of the Boddens have changed dramatically because of the accident. Both parties say that the most reasonable course for Mr. and Mrs. Bodden would be to buy or build a house. The defendant concedes (Final Submission, paragraph 106) that Mr. and Mrs. Bodden now need a two-bedroom accommodation and that the cost of buying or building an appropriate house would be about $250,000. I accept that estimate. The plaintiff's expert has given evidence concerning the cost of three-bedroom houses but nothing arising from the accident has created a need for a third bedroom.

There is agreement that it would be wrong in principle to award to Mr. Bodden the net capital cost of purchasing or building a house. The appropriate award is 2.5% of this amount per annum over the lifetime of the plaintiff: see *Roberts v. Johnstone & Anr* [1989] 1 QB 878 (CA). That amount is $6,250. To that must be added the annual amount of the difference between the charges that the plaintiff will now have to pay and those he would have been liable to in any event. The defendant's concession (Final Submission, paragraph 109) that this difference is roughly $5,000 is a reasonable one. Finally, the annual amount of the rent the Boddens would have been paying had there been no accident (12 x $750 = $9,000) must be subtracted. The result is an additional accommodation cost of $2,250 per year caused by Mr. Bodden's injuries ($6,250 + $5,000 - $9,000 = $2,250). Applying the multiplier for life of 19.67, my award for the future cost of accommodation is $44,257.50.

Utilities are a relatively expensive commodity in the Cayman Islands. The plaintiff's need for larger accommodation as a result of the accident will inevitably increase the cost of utilities. Mr. Bodden suggests that this increased cost be valued at $1,200 per year. I consider that reasonable. Applying the appropriate multiplier of 19.67, my award for increased utilities cost is $23,604.

Interest

The total award in respect of past losses is exceeded by the interim payments made by the defendant since the accident. For that reason, I award no interest on the damage awards for past losses.

The plaintiff is entitled to interest in the General Damages award at the rate of 2% per annum from the date the writ was filed (December 6, 2002) to the date of trial: see *Panton v. Seymour* 2006 CILR 91. I award the sum of $34,957.53 for interest on general damages.

Appointment

The judgment of Sanderson, J. (Ag.) on liability apportions 20% of the liability to Mr. Bodden. The sum of $55,107.77, which is 20% of the amount paid by the defendant already to medical treatment providers, must therefore be deducted. In addition, of course, the entire award must be reduced by 20%. Finally, the interim payments in the amount of $980,988.26 must be deducted as well. With these adjustments, my net award is $2,662,401.70.

Conclusion

In summary, my award of damages is as follows:

SUMMARY OF AWARD

General Damages	$325,000.00
Past Wage Loss	$201,871.00
Future Wage Loss	$631,981.35
Cost of Past Care	$550,303.00
Cost of Future Care	$2,180,245.42
Special Damages	$159,958.88
Agreed Future Costs	$255,660.26
Future Cost Items in Dispute	$77,061.10
Future Accommodation	$44,257.50
Future Utilities	$23,604.00
Interest on General Damages	$ 34,957.53
Subtotal	**$4,484,900.04**
LESS: 20% contribution	$896,980.01
Subtotal	**$3,587,920.04**
LESS: interim payments (above)	$980,988.26
LESS: 20% of "paid directly to treatment providers" (above)	$55,107.77
NET AWARD	**$2,551.824.01**

The parties are at liberty to apply on the remaining issues, and on the question of costs if they are unable to agree.

Dated this 5th day of September, 2008

Henderson, J.

Henderson, J.
Judge of the Grand Court

GRAND COURT - CAYMAN ISLANDS