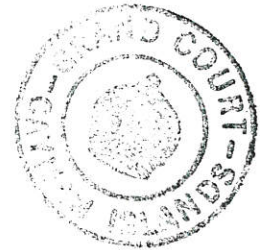
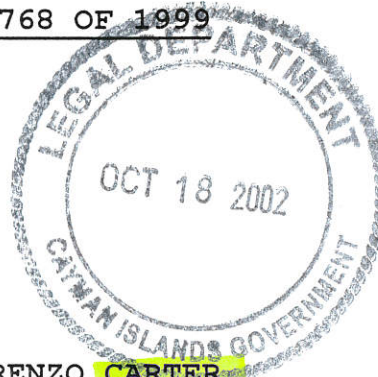


IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 768 OF 1999



B E T W E E N

WILLIAM LORENZO CARTER

Plaintiff

- and -

SCOTT'S INDUSTRIES LIMITED

Defendant

\*\*\*\*\*

ORAL REASONS FOR JUDGMENT of THE HONOURABLE

MR. JUSTICE HENDERSON on the 2nd

day of October 2002, George Town, Grand Cayman.

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APPEARANCES:

For the PLAINTIFF: MR. H. ROBINSON

For the DEFENDANT: MR. J. TARBOTON

1 WEDNESDAY, OCTOBER 2, 2002

2 UPON COMMENCING

(4:05 p.m.)

3  
4 O R A L R E A S O N S F O R J U D G M E N T

5  
6 HENDERSON, J. (Orally):

7 The plaintiff, William Lorenzo Carter, was  
8 born in Cuba on February 12th, 1935. After a  
9 long and industrious career as a seaman, as a  
10 labourer at various odd jobs (to which I will  
11 refer later) and as a contractor in the  
12 painting business, Mr. Carter, in October of  
13 1998, suffered a severe knee injury. The  
14 injury has been described as "an evulsion of  
15 the posterior tibial spine with a segment of  
16 the posterior plateau of the tibia."

17 The questions of liability and damages  
18 have been severed. My brother Kellock has now  
19 found the defendant liable for 50 percent of  
20 the damage suffered by the plaintiff. I have  
21 conducted the assessment of damage.

22 Mr. Carter is now a naturalized Caymanian.  
23 He attended primary school and secondary school  
24 in Cuba but has no technical or vocational  
25 training. He came here at the age of 20 in

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 1955. After working at a variety of labouring  
2 jobs, he took up a career on the sea working as  
3 a mess man, then as an ordinary seaman, then as  
4 an able seaman, and finally as a junior third  
5 mate. In 1978 he retired from the sea and  
6 began working for a variety of contractors on  
7 Grand Cayman Island. He was paid an hourly  
8 wage.

9 Eventually, Mr. Carter's industriousness  
10 and quality of work enabled him to start his  
11 own business, which he called Carter's  
12 Painting. He received contract work regularly  
13 from both government sources and private  
14 individuals and corporations. He has painted  
15 schools, police stations, this court building  
16 and other government offices, including the  
17 Governor's residence on several occasions. He  
18 has also been successful in securing contracts  
19 for the painting of private residences and  
20 other buildings such as restaurants and office  
21 buildings.

22 Mr. Carter, whom I found to be a credible  
23 witness in most respects, explained that he has  
24 painted both single-story and multi-story  
25 buildings, including many of the latter. This

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 work requires him to climb ladders and  
2 scaffolding. The contracts were done on a  
3 labour-only basis, meaning that the building  
4 owner would provide all of the paint and other  
5 materials and Mr. Carter would be paid for his  
6 labour.

7 He usually worked alone, to the extent  
8 that other painters took to referring to him as  
9 the "one man force". I accept his evidence  
10 that he obtained this work because of his  
11 personal reputation for good work and also  
12 because of his reputation for honesty. Often  
13 he would be required to work alone inside a  
14 residence while the owners were absent.

15 He has said that he was paid roughly \$15  
16 per hour. Mr. Carter kept no records of any  
17 consequence. There is other evidence that his  
18 rate of pay was approximately 10 to \$15 per  
19 hour. I estimate his hourly rate at \$12.50 an  
20 hour, although the way in which I have  
21 approached this damage assessment does not make  
22 that a material point.

23 As I have said, he kept no accounts; there  
24 was no need for it. He has no liability to pay  
25 income tax in the Cayman Islands and no legal

(HENDERSON, J. -- Oral Reasons for Judgment)

1 obligation to keep books of account at all.

2 In preparation of his damage claim,  
3 Mr. Carter compiled from memory and from the  
4 odd scrap of paper in his possession a list of  
5 the jobs he has worked upon since 1994. He was  
6 cross-examined extensively on this list.

7 I accept Mr. Carter's evidence  
8 unequivocally of his earnings prior to the date  
9 of the accident. In particular, I was  
10 impressed with his assertion that many of the  
11 jobs were performed for prominent members of  
12 the community, that the defendant had the  
13 applicable lists in its possession for some  
14 time, and that the defendant could have called  
15 evidence to counter the credibility of these  
16 lists if such evidence were available.

17 I also note that, in those cases where  
18 Mr. Carter's lists compiled from memory can be  
19 compared directly to government records, he has  
20 on some, although not all, occasions  
21 understated the value of the income derived  
22 from that source.

23 Combined with his demeanour, these factors  
24 convince me that he is telling the truth with  
25 respect to his earnings prior to the accident.

(HENDERSON, J. -- Oral Reasons for Judgment)

1           1998 was a special year for Mr. Carter.  
2           He visited the land of his birth for the first  
3           time in 43 years. He spent two months there.  
4           He was then ill for approximately two months  
5           with kidney stones. He continued working after  
6           recovery from the illness until, on October  
7           8th, 1998, he suffered the accident which is  
8           the subject of this proceeding.

9           On that day he went to the premises of the  
10          defendant on North Sound Road. After driving  
11          his vehicle on to the inspection platform,  
12          under the direction of an employee of Scott's  
13          Industries, Mr. Carter alighted from the  
14          driver's door on the left-hand side. There was  
15          no platform upon which he could stand, and he  
16          fell into the inspection pit - a drop of almost  
17          six feet from the bottom of the car. In doing  
18          so, he hit his right knee on the concrete  
19          floor.

20          I find that it was a severe injury. He  
21          immediately felt severe pain and weakness in  
22          the right leg and found himself unable to  
23          stand, at least without considerable  
24          assistance.

25          After a visit to the hospital, his right

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 leg was placed in a half cast to keep the knee  
2 stable. He was sent home on two crutches with  
3 instructions to put no weight on the injured  
4 leg.

5 On October 15th, 1998, an operation was  
6 performed on Mr. Carter's right knee. I make  
7 no finding as to how or to what degree of  
8 competence that operation was performed, as it  
9 may be the subject of a subsequent claim for  
10 contribution and indemnity by this defendant.

11 Mr. Carter was discharged from the  
12 hospital that afternoon, again on two crutches,  
13 and was given a prescription for painkillers to  
14 reduce the severe pain. I note that no  
15 prescriptions of any type have been entered in  
16 evidence. Notwithstanding that, I am satisfied  
17 from my assessment of his credibility that he  
18 was using prescription painkillers on a regular  
19 basis.

20 He remained on two crutches for almost a  
21 year. During that time he commenced  
22 physiotherapy. In all, he attended about 78  
23 physiotherapy sessions during the first year  
24 after the accident.

25 By the end of the first year, he was able

(HENDERSON, J. -- Oral Reasons for Judgment)

1 to walk without crutches but using a cane. He  
2 still requires the cane to walk. He still  
3 experiences severe pain in his right leg,  
4 particularly when the weather is wet and cloudy  
5 (a not infrequent occurrence in these islands).

6 He continues to exercise with a view to  
7 making his leg stronger and continues to use  
8 the cane. I accept his evidence that when  
9 Mr. Carter climbs stairs, or for that matter a  
10 ladder, he places the weight on his left leg  
11 then lifts the right leg up and places it  
12 beside the left. He repeats that process one  
13 step at a time. He finds himself unable to  
14 this day to bend the right leg at the knee. He  
15 agrees that he can sometimes climb two or three  
16 rungs on a step ladder and has done so to clean  
17 out gutters, for example, at his home. He has  
18 to do this slowly and cautiously and,  
19 significantly, he has to rest after a short  
20 period of exertion.

21 This contrasts with how he used to work  
22 before the accident. As a painter, he would be  
23 required to climb on to and off scaffolding and  
24 up very tall ladders on a regular basis. He  
25 was required to climb on to roofs and to

(HENDERSON, J. -- Oral Reasons for Judgment)

1 maneuver uneven surfaces, some of them at  
2 relatively steep angles and great height.  
3 This, of course, is a dangerous task which  
4 would be much more dangerous for Mr. Carter in  
5 his present condition.

6 The pain, which is still with him, he  
7 treats with a variety of prescription and non  
8 prescription medications, including: Oyster  
9 shell calcium; Bayer aspirin, of which he takes  
10 from six to ten a day; Tylenol arthritis pain  
11 tablets; sports cream; Arctic Ice Pain Free  
12 cream; and Advil.

13 I viewed a surveillance video of  
14 Mr. Carter which consisted of extracts taken  
15 from observations by a private investigator  
16 hired by the defendant. That investigator  
17 conducted personal surveillance on Mr. Carter,  
18 mostly at his residence, for a period of  
19 approximately 95 hours. The video showed that  
20 Mr. Carter was able to work, at least for  
21 relatively brief periods of time, at garden  
22 tasks. He was seen (using the cane) hauling a  
23 wheelbarrow with some trash in it. He was seen  
24 filling buckets with trash and carrying them.  
25 He was seen walking (with the aid of the cane)

(HENDERSON, J. -- Oral Reasons for Judgment)

1 on a road.

2 I also accept the evidence of Mr. Lewis  
3 that he saw Mr. Carter on a ladder cleaning out  
4 the gutters; the plaintiff admits that. The  
5 dispute between them, which is of some  
6 significance, is as to how high on the ladder  
7 Mr. Carter mounted.

8 Mr. Carter says he only went up two or  
9 three steps, which is all he could manage.

10 The investigator has sworn that he saw  
11 Mr. Carter at the top of the ladder. In  
12 cross-examination, he estimated that as being  
13 eight or nine steps.

14 On this point, I prefer the evidence of  
15 Mr. Carter to that of the investigator. There  
16 is no videotape evidence of Mr. Carter on the  
17 ladder. There were some aspects of the  
18 investigator's evidence that caused me some  
19 concern. I accept that Mr. Carter did not  
20 mount that step ladder more than three rungs.

21 I was not impressed with the evidence of  
22 Lee McLaughlin. His demeanour, and his  
23 apparent bias stemming from an earlier dispute  
24 over money with Mr. Carter and/or a dispute  
25 with Mr. Carter over an injury McLaughlin

(HENDERSON, J. -- Oral Reasons for Judgment)

1 suffered while working for him, convinces me  
2 that the evidence of Mr. McLaughlin is  
3 unreliable where it conflicts with that of the  
4 plaintiff.

5 I turn briefly to the medical evidence.  
6 None of the doctors were cross-examined. All  
7 of this evidence has been given in the form of  
8 written medical reports (which is provided for  
9 by the Rules of Court in this jurisdiction).

10 On April 13th, 1999, that is to say some  
11 seven months after the accident, Dr. S. Richie,  
12 an orthopedic surgeon, reported upon the  
13 findings of his examination of the plaintiff.  
14 He concluded that Mr. Carter had sustained a  
15 major injury of the right knee. He found that  
16 the range of motion in the knee seven months  
17 after the accident was between 10 and 50  
18 degrees. At physiotherapy he observed that  
19 Mr. Carter was able to increase that range of  
20 motion to approximately 65 degrees with a lot  
21 of pushing and pulling.

22 He commented:

23 In the long run, I do not expect  
24 this man to regain full motion. He  
25 still has discomfort and aching in

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 the knees which requires Motrin and  
2 Advil, but he does not have any  
3 night pain. I would not expect him  
4 to return to his previous  
5 occupation as a house and building  
6 painter. I would not expect that  
7 he would be able to climb ladders  
8 or scaffolding because of his stiff  
9 knee. This knee will improve for  
10 another six months to a year before  
11 he reaches maximum rehabilitation.

12

13 In a report dated July 7th, 2000, Dr. R.  
14 Gordon, an orthopedic surgeon, reported on his  
15 own examination of the plaintiff. He termed  
16 the result of the knee surgery as "very poor".  
17 He said:

18 On physical exam one can see that  
19 he has marked restricted range of  
20 motion, has poor patellar motion  
21 and has a poorly functioning right  
22 knee. This gentleman will be  
23 permanently partially disabled. He  
24 will be unable to climb ladders,  
25 crouch, run, climb or do the

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 majority of the job that he was  
2 doing prior to his injury. He will  
3 also have pain and will need pain  
4 medication in the future. This  
5 gentleman will also develop post  
6 traumatic osteoarthritis in his  
7 knee which at one point will prompt  
8 him to potentially have further  
9 surgery.

10  
11 In a report date February 11th, 2002,  
12 three-and-a-half years after the accident, Dr.  
13 David Olysav, an orthopedic surgeon, reported  
14 on his examination of Mr. Carter. He said  
15 that:

16 With age, Mr. Carter will develop  
17 traumatic arthritis and possibly  
18 lose motion in the knee. Dr.  
19 Olysav suggested that Mr. Carter  
20 could seek relief through a total  
21 knee replacement though, in the  
22 doctor's experience, this does not  
23 work well where the soft tissues  
24 around the knee are not in good  
25 condition.

(HENDERSON, J. -- Oral Reasons for Judgment)

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He went on to say that joint replacement for traumatic arthritis traditionally has a poor outcome. The doctor did add that he would expect Mr. Carter to obtain significant pain relief through this process. He also expected that the pain would become progressively less over time. As at the date of the report, it was Dr. Olysav's opinion that Mr. Carter continued to need a daily anti-inflammatory.

The doctors have not been cross-examined and their credibility has not been questioned. I accept those passages I have quoted as reliable.

In the result, I find that Mr. Carter is now permanently disabled from pursuing the occupation, that is to say, painting, which he pursued as at the date of the injury. I will address the question of mitigation later on.

I turn to the issue of pain and suffering and loss of amenities - in other words, general damages.

The parties are agreed that the Judicial Studies Board Guidelines provide at this point in their development a useful guide to an

(HENDERSON, J. -- Oral Reasons for Judgment)

1 assessment of general damages in a case such as  
2 this.

3 For the plaintiff, Mr. Robinson argued  
4 that this case falls in category B (a)(i) of  
5 the Knee Injuries section of the guidelines.  
6 While Mr. Tarboton (for the defendant) argued  
7 that it falls either in the (ii) description or  
8 the (iii) description under the same sub  
9 heading.

10 Having regard to the wording of the three  
11 descriptions, I am satisfied that this injury  
12 should be placed in category B(a)(ii). That  
13 category has the following description attached  
14 to it:

15 Leg fracture extending into the  
16 knee joint causing pain which is  
17 constant, permanent, limiting  
18 movement or impairing agility and  
19 rendering the injured person prone  
20 to osteoarthritis and the risk of  
21 arthrodesis.

22 I am further satisfied from the evidence  
23 and arguments that this injury should be placed  
24 in the mid range of that category. The mid  
25 range specifies a suggested award in English

(HENDERSON, J. -- Oral Reasons for Judgment)

1 pounds of £31,500. That is the half-way point  
2 between the top and the bottom of the updated  
3 figures.

4 I award to Mr. Carter as damages for pain  
5 and suffering and loss of his amenities, the  
6 sum of £31,500 converted to CI dollars at a  
7 conversion rate of 1.28. I leave it to counsel  
8 to do the mathematical figuring which results  
9 from this oral judgment.

10 In addition, I award interest on general  
11 damages at 2% from 27th January 2000 to 26  
12 September 2002. There was no dispute between  
13 the parties about that latter element of the  
14 award.

15 Mr. Carter has claimed some \$1,300 CI as  
16 the cost of past medical care. His evidence  
17 demonstrates only that he has spent \$456 CI on  
18 such items. There was a concession by the  
19 defendant, which I considered to be more than  
20 reasonable, that the plaintiff should be  
21 awarded about half of what he claims, that is  
22 to say \$650 CI. I award that to him now.

23 Much of the argument had to do with my  
24 award for past and future loss of earnings.  
25 The defendant accepted that there should be

(HENDERSON, J. -- Oral Reasons for Judgment)

1 some award for past loss of earnings although  
2 it took issue with the plaintiff as to how that  
3 should be calculated and what deductions should  
4 be made.

5 The defendant resisted any award at all  
6 for future loss of earnings, particularly in  
7 light of Mr. Carter's age, which was 63 at the  
8 time of the accident and 67 at the time of  
9 trial.

10 I have already indicated that I find his  
11 reconstructed list of earnings for the years  
12 prior to the accident, although wholly  
13 unsupported by documentary evidence, to be  
14 credible. These demonstrate that his average  
15 earnings between 1994 and 1998 amounted to  
16 \$3,348 per month, CI.

17 From that, something must be deducted to  
18 account for general overhead. Such things as  
19 gas and insurance on the vehicle that  
20 Mr. Carter must have been driving would need to  
21 be taken into account in order to arrive at his  
22 net income loss. Again, there is a complete  
23 absence of records and a complete absence of  
24 evidence which would allow me to do anything  
25 other than form the most general of estimates.

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 For the most part, the owners of the  
2 buildings provided to Mr. Carter the paint and  
3 other materials he needed to perform his work.  
4 It seems to me that it would be reasonable to  
5 deduct the sum of \$348 per month to represent  
6 general overhead.

7 That results in my conclusion that the net  
8 earnings of Mr. Carter in the years before the  
9 accident averaged \$3,000 per month.

10 He was off work for 48 months prior to the  
11 accident. The question becomes how much he  
12 would have earned during those 48 months, given  
13 some of the factors which I will now mention.

14 He was 63 at the time of the injury, a  
15 point at which some people have retired and  
16 many others are making imminent preparation for  
17 it. In addition, he suffered some health  
18 problems. Kidney stones prevented him from  
19 working for approximately two months in 1998.  
20 There is some evidence that he suffered from  
21 chest pains, albeit of a musculoskeletal  
22 nature. He took a two month vacation,  
23 atypically, in 1998, for the first time in many  
24 many years.

25 I infer from these factors, collectively,

(HENDERSON, J. -- Oral Reasons for Judgment)

1 that Mr. Carter was planning to slow down,  
2 although not retire abruptly, from the business  
3 of painting. He had no pension earnings  
4 available to him. He has a very industrious  
5 work record and strikes me as a person who  
6 probably enjoyed work.

7 In my view, he would have slowed as the  
8 years progressed but would not have stopped  
9 work entirely for some considerable period of  
10 time.

11 Mr. Tarboton also adduced reliable  
12 evidence that there has been a considerable  
13 decrease in the availability of government  
14 contracts in the years 2000, 2001, 2002. I  
15 accept that evidence, but I doubt that it would  
16 have had any direct effect on Mr. Carter's  
17 earnings because, as I have indicated, he would  
18 have been slowing down in any event for other  
19 reasons.

20 I turn to the question of the duty to  
21 mitigate.

22 There is a duty on every plaintiff to take  
23 all reasonable steps to mitigate the loss. It  
24 is not necessary in this jurisdiction that the  
25 duty to mitigate be pleaded expressly. The

(HENDERSON, J. -- Oral Reasons for Judgment)

1       burden of proving a failure to mitigate rests  
2       with the defendant. The defendant must satisfy  
3       me on the balance of probabilities that the  
4       plaintiff has not taken some particular  
5       reasonable step to mitigate the loss.

6               Here there was credible evidence from  
7       Mr. Tatum that it is entirely possible to  
8       attain painting contracts and have the work  
9       done by employees while the business owner  
10      simply supervises. Mr. Tatum has done that  
11      with considerable financial success over a  
12      period of several years.

13             The question is whether it would be  
14      reasonable to expect this particular plaintiff  
15      with these injuries, and in these circumstances  
16      (given his age), to restructure his business in  
17      that fashion. He has almost always worked  
18      alone. He has hired assistants on a couple of  
19      occasions. He is not a person who has any  
20      experience in the running of a business which  
21      employs other people.

22             I also accept Mr. Carter's evidence that,  
23      although he can get around, perform some work  
24      and mount a ladder to a certain extent, he  
25      finds these activities so tiring that he must

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 rest for significant periods of time after  
2 performing them. I accept his assertion that  
3 his injuries fatigue him sufficiently during  
4 the day that it would prevent him from working  
5 a full eight-hour day, even in a supervisory  
6 capacity.

7 What is the result of that? The defendant  
8 says that supervising does not require the  
9 supervisor to be present and active eight hours  
10 a day, five days a week - that it can be done  
11 more flexibly and less intensely than that.

12 The suggestion here is that Mr. Carter,  
13 having obtained a contract for the painting of  
14 a building, should hire assistants who may  
15 never have worked for him before and who may be  
16 unknown to him. Their abilities may or may not  
17 be high. He would not know that unless he  
18 keeps a close eye on them.

19 In effect, it is said that Mr. Carter is  
20 now capable, or was capable at the age of 64,  
21 of starting up a new business, embarking upon a  
22 new venture, and employing people who would  
23 require significant amounts of supervision.

24 I am not satisfied on the balance of  
25 probabilities that this amounts to a reasonable

(HENDERSON, J. -- Oral Reasons for Judgment)

1 step in the duty to mitigate. The defendant  
2 has failed to convince me that it would be  
3 reasonable to expect this plaintiff to pursue  
4 painting contracts in that manner. The result  
5 is that I make no deduction from my award for  
6 failure to mitigate.

7 I have already indicated that I think  
8 Mr. Carter's income would have declined  
9 naturally from year to year. In my view, had  
10 he not been injured, Mr. Carter would have  
11 earned \$36,000 CI the first year after the  
12 accident; \$33,000 the second year; \$30,000 the  
13 third; and \$27,000 the fourth. That results in  
14 a multiplicand of \$31,500. The multiplier for  
15 the award of past loss of earnings is four.

16 As Chief Justice Smellie did in Yates and  
17 Radtke, I would award interest on the award for  
18 medical costs and on the award for past loss of  
19 income at one-half the court rate.

20 I turn to the question of future loss of  
21 earnings.

22 Again, I would note that Mr. Carter is a  
23 proud man with a strong work record and a good  
24 work ethic. He had no pension to look forward  
25 to. There are also, however, indications of

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 failing health and of a natural desire on his  
2 part to decrease the intensity of his work  
3 schedule.

4 In my view, he would have continued to  
5 work at a declining rate past age 67 up until  
6 the age of 70.

7 I have referred, at the urging of counsel,  
8 to the Ogden Tables to obtain a multiplier  
9 which takes into account the contingencies of  
10 mortality, inflation, and a discount rate which  
11 reflects that the Court is awarding to  
12 Mr. Carter, now, the present value of his  
13 notional future income stream. It is true that  
14 these tables were designed for a very different  
15 society on the other side of the Atlantic  
16 Ocean, but in my view they are useful  
17 nonetheless. There is nothing more specific to  
18 which I can refer to take into account such  
19 things as the contingency of mortality. There  
20 is no developed body local case law on the  
21 contingencies to which the Ogden Tables refer.

22 The multiplier which is appropriate here  
23 is 2.34.

24 The multiplicand must recognize all of the  
25 same factors I have referred to above when

(HENDERSON, J. -- Oral Reasons for Judgment)

1 assessing his past loss of income. The  
2 earnings would have continued to decline. I  
3 set the multiplicand for this period at  
4 \$22,500 CI. Again, I leave it to counsel to do  
5 the appropriate mathematical calculations.

6 There is also before me a claim for future  
7 medical costs.

8 Mr. Carter has not, however, proven on the  
9 balance of probabilities that he will be  
10 subject to any such costs. The evidence  
11 satisfies me that there is a reasonable  
12 possibility that he will need a surgical  
13 operation in the future. But the evidence does  
14 not satisfy me to the required standard, or to  
15 any standard, that he will have to pay for that  
16 operation.

17 The evidence is that Mr. Carter obtains  
18 free medical treatment at the George Town  
19 Hospital on Grand Cayman Island, but would have  
20 to pay for a surgical operation performed in  
21 Miami or elsewhere. There is an absence of  
22 evidence as to whether the suggested knee  
23 replacement operation would be performed at  
24 George Town Hospital or would necessarily have  
25 to be performed in Miami.

**(HENDERSON, J. -- Oral Reasons for Judgment)**

1 I am therefore entirely unable to assess  
2 whether there is a contingency that the  
3 plaintiff will incur this cost in the future.  
4 This is an issue upon which the plaintiff bears  
5 the burden of proof. That element of the claim  
6 is therefore dismissed.

7 Those are my reasons for judgment.  
8 Counsel are each granted liberty to apply for  
9 any matters necessarily arising from this  
10 judgment, and may speak to costs if they are  
11 unable to agree.

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Henderson, J.

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THE HONOURABLE MR. JUSTICE HENDERSON

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