IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 310/88

7-06-90

BETWEEN:	HERBERT HUDDLESTON	PLAINTIFF
AND:	WAYNE HASSAN	FIRST DEFENDANT
AND:	CAYMAN AGGRESSOR LTD	SECOND DEFENDANT

Mr. Nigel Clifford - for the plaintiff
Mr. Ramon Alberga Q.C. with
Mr. A. Panton - for the defendants

JUDGMENT

Pirates' Week celebrations in 1987 were started off, as is usual, with a mock attack on George Town known as the Pirates' Landing. This event occurred on Saturday 24th October, 1987. During the Landing a large number of vessels were in and around Hog Sty Bay and were engaged in mock attacks on one another, occupants of one vessel spraying others with water from hoses, and missiles such as water-filled balloons and, it seems, eggs being thrown by revellers at each other. Two of the vessels in Hog Sty Bay on that day were the "Atlantis" submarine (hereinafter called "the Atlantis") and the "Cayman Aggressor III" (hereinafter called "the Aggressor"). Herbert Huddleston ("the plaintiff") was the surface officer of the Atlantis and, as such, was in charge of the vessel. He would send instructions from the deck of the submarine to the pilot who was below by means of a hand-held radio. At some stage the Atlantis engaged the Aggressor in battle and as the vessels were so engaged the plaintiff was hit in his right eye by a hard object and suffered quite serious injuries which I shall later describe. The plaintiff alleges that this hard object was ejected from a large catapult being operated from the Aggressor. A similar catapult was exhibited in Court and is operated by two or possibly three people. One person could, perhaps, operate it but from the demonstrations given in Court it would be difficult. The plaintiff claims damages for negligence or in the alternative damages for assault from Wayne Hassan (hereinafter called "Hassan"), who was in charge of the Aggressor at the time of the incident, and against Cayman Aggressor Ltd (hereinafter called "the Company") which owns the Aggressor. Hassan and the Company deny liability.

The plaintiff testified that he was on the deck of the Atlantis when they engaged the Aggressor. He had a radio in his hand or hanging around his neck by means of a lanyard. From two photographs taken from the Aggressor by Hassan it is also apparent that the plaintiff had a bottle in his left hand. The Atlantis had no water balloons on board but they were using a water hose and this was being aimed at the Aggressor by one Kenneth Wood. Another member of the crew, Perry Flook, was also on deck but, according to the plaintiff, he was hit on the leg by a water balloon fired from the Aggressor and he retreated inside the sail or conning tower.

The plaintiff had his back to the starboard rail of the Atlantis and was looking at the Aggressor. A catapult was being operated from the highest deck of the Aggressor. Edward Uditis (D.W.2) was on the sun deck and was aiming a water hose at the Atlantis in reply to Kenneth Wood. For a time the two vessels were locked in battle, about fifty to seventy-five feet apart according to the plaintiff. As the plaintiff was looking up at the direction of the catapult, his view partly obscured by the spray from the hoses, he saw a dark object coming towards him from ten feet away. He only had time to blink, he says, and the thought went through his mind to move but he did not have time to do so. The object hit him in the right eye and the force of it almost took him over the rail. He came close to being knocked unconscious. He heard a kind of explosion and he tasted beer and then blood. He put his hand to his eye and he was very bloody.

The plaintiff then asked Perry Flook to radio for help and a police boat came alongside and took him to the Atlantis dock and he was taken by police car to the hospital. When the policeman first came on board the Atlantis the plaintiff said he told him he had been struck by a bottle and he was in the police boat when it went alongside the Aggressor and the police officer repeated the accusation to the Aggressor's occupants. The reply was that they were firing water balloons and the police officer told them that a water balloon did not cause the plaintiff's injury. He told them they would be back.

Edward McLaughlin (P.W.2) is a senior pilot working for Atlantis submarines. He was on duty on the 24th October, 1987, and was taken out to the Atlantis in a small boat which can be seen in the photograph, Exhibit D2. The Atlantis was engaged in battle with the Aggressor when he boarded it. Mr. McLaughlin boarded the Atlantis towards the rear and the small boat continued round the stern after he disembarked from it. As he came forward Mr. McLaughlin saw the exchange of hose fire between the vessels and he saw the plaintiff leaning on the starboard rails. He saw the catapult on the upper deck of the Aggressor and two people must have been using it. They released a dark object from it which hit the plaintiff in the face and at the same time Mr. McLaughlin heard glass hitting the rails and hitting the deck. The witness saw fragments of green glass on the deck. He said there was no other boat in the immediate vicinity apart from the Aggressor. He went to the plaintiff who was bleeding.

When cross-examined Mr. McLaughlin said that he did not give a statement to the police and it could have been in the later part of last year when he was first called upon to remember the incident. He had not been called upon to give a statement before that but they had a talk at the Company about it and he first told people that he had seen the object come from the Aggressor at that meeting.

Vassal Johnson Jr. (P.W.3) is an employee of Atlantis submarines. He was on the dock at South Church Street on the 24th October, 1987, and he did not see the incident complained of. However in the evening of that day he went to George Town street dance and there had a conversation with one Gary Rutty who is associated with the Company. Mr. Johnson repeated to Mr. Rutty what he had been told about a bottle being fired at the plaintiff and Mr. Rutty said the only objects which had been fired were water balloons. Mr. Rutty said that a catapult had been used and mentioned that someone from another boat, the "Bahari", had been knocked to the deck by a water balloon that day.

I must say at once that I do not consider that his piece of evidence takes the case any further and I am attaching no weight to it in my deliberations.

Timothy Mark Burke (P.W.5) is the Operations Manager of Atlantis submarines. He was on the Atlantis dock when the incident occurred and he saw the plaintiff coming off the police boat. He said that a day or two afterwards he saw Hassan in the parking lot of the Island Taste restaurant. Hassan expressed concern about the plaintiff's condition. Mr. Burke explained that they had had to fly the plaintiff off the Island in an air ambulance. Hassan indicated during the conversation that he would be prepared to help out with medical costs. Mr. Burke appreciated the offer because they had just spent $5,000.00 to fly the plaintiff off the Island. They had another conversation a couple of days later, but this time they discussed the plaintiff's condition and no discussion took place about medical costs.

When cross-examined Mr. Burke said that when he had the conversation with Hassan he knew that the people from the Aggressor denied that a bottle was thrown.

Dr. Krishna Murti Mani (P.W.4) is a consultant opthalmologist practising in George Town. In fact he is the only resident opthalmologist in these Islands. He produced a bundle of reports and letters relating to the injury to the plaintiff.

Dr. Mani saw the plaintiff as an emergency patient at George Town Hospital on the 24th October, 1987. The plaintiff gave him a history of being hit in the right eye by a glass bottle which was thrown at him. The eye showed swelling of the lids with a laceration of the lower lid about an inch long on the inner aspect. There was oozing of blood in that area. The conjunctiva was congested and was lacerated in a triangular fashion in the medial side just adjacent to the limbus. The cornea, iris, lens and the posterior segment of the eye were normal. Vision was 20/40. The doctor stitched both lacerations under local anaesthesia. He saw the plaintiff the next morning and he noticed there was evidence of surgical emphysema of the lower lid and he could demonstrate diplopia (i.e. double vision) in the upper gaze. He diagnosed a blow-out fracture of the right orbit which in evidence the Doctor described in this way. The orbit is the bony socket in which the eye is placed. When a person with deep-set

eyes receives a blow in the eye a wave of shock goes through the four walls. The floor of the orbit is the thinnest bone and is more likely to crack. Such a crack is described as a blow-out fracture.

The plaintiff decided to go to the Bascom Palmer Eye Institute in Miami. There were two reasons for this. Firstly he wanted a second opinion and there was no other opthalmologist in Cayman, and secondly the plaintiff felt there was a piece of glass in his eye. A glass piece in the eye sometimes cannot be seen by normal X-ray and the Institute in Miami has specialist equipment which could detect it. As it was the Institute came up with no piece of glass, although a calcified spot, which was unconnected with the injury, was found. When the decision was made that the plaintiff go to Miami an air ambulance was hired. A flight by commercial airline would put the plaintiff at risk of inconsistent cabin pressures which may have given rise to a widening of the gap in the bone. Dr. Mani said that he felt it was not necessary for the plaintiff to go to Miami but it was reasonable.

Dr. Mani was of the view that a water balloon could not have caused that injury. His report was that he would go in favour of a glass bottle having caused the injury because it can cause a fracture like a blunt object and leave a laceration with clear cut edges. He felt that the blow came from the side or from below. If it had come from the left it would have hit the nose and if it had come from above it would have hit the eyebrow. However in re-examination he said it is difficult to say from which direction the blow came as it depends on the size and shape of the object.

Dr. Mani has examined the plaintiff on a regular basis and the patient has shown considerable improvement. His vision is now 20/20 unaided, i.e. normal, and there is no diplopia. The eye showed enopthalmos, that is it is sunken, and there is partial prosis, which is drooping of the upper lid. This can be rectified by cosmetic surgery but unless the patient feels he requires such surgery it is not recommended. The plaintiff testified that he is not unduly conscious about these factors. The plaintiff needs check-ups twice a year. Although there may be no future problems with the eye it is

possible that he could develop secondary glaucoma, retinal changes and retinal detachment at any time and it is impossible to estimate the percentage possibilities of these occurring.

The plaintiff testified that he had stayed in Miami a few days after being taken there, not having been admitted to hospital. For some time after the injury occurred he had blurred vision and quite a bit of pain, especially in the presence of light. There was only improvement after the better part of a month had elapsed. He did not attempt to read with the eye for some time and even now when he does close work for a couple of hours, as in reading or with a computer, he get eyestrain. He does not read very much in the evening and he has to be careful of the light. The eye becomes tired and the words blur. He has now left Atlantis and started partnership in an electronics business. He can work at a computer screen for a couple of hours and then he has to move on to other work. Dr. Mani testified that this tiredness can be the result of muscle damage. Spectacles may or may not correct the situation and the plaintiff testified that he had tried spectacles but they had not assisted him.

The first defendant, Mr. Hassan, testified that the Aggressor took its passengers aboard and he gave them a briefing about the Pirates' Landing. He told his passengers that it would be dangerous and that they would be throwing only water balloons. They had filled up a thirty-gallon trash can with water balloons. On the sun deck was a catapult of the type exhibited in Court which was meant to hurl water balloons. Many boats had such catapults on that day.

The Aggressor was approached by the Atlantis and the two photographs which he took demonstrate the activity between the two vessels. Hassan did not see anything other than water balloons thrown or hurled from the Aggressor. There is a policy of the Company that they do not allow bottles on board any of their vessels. They only carry canned beverages because of the chances of a passenger falling on deck with a bottle in his hand. They are cautions about liability because many of their passengers are United States citizens. There could be a bottle of, say, ketchup in the galley, but no bottle on deck.

Hassan testified that there were many boats firing on others that day and the Atlantis was not the only boat firing on them. When the police boat approached the Aggressor and the police officer accused them of throwing bottles he welcomed the officer on board to search his vessel. This the officer did and found no bottle on board. It is as well to record here that the written statement of Police Sergeant Gene Bodden was admitted by consent. He took the plaintiff off the Atlantis and the plaintiff complained that he believed someone from the Aggressor hit him with a green glass bottle. The officer went on board the Aggressor and spoke to the captain and Hassan. They told him they were only throwing water balloons. He searched the Aggressor's top deck and their ice chests and found only metal cans. No glass bottles of any kind were on the top deck. He had not seen any broken glass or bottles on the deck of the Atlantis.

Hassan said he visited Mr. Burke (P.W.5) on three occasions after the incident. He visited him first on the day of the Landing. He was concerned about the plaintiff's condition. He did not know the plaintiff personally but before they knew he had been flown off the Island and before they knew the nature of the injury he offered some help with the medical expenses. He was not asserting responsibility for the injury by so doing. There was a point when Mr. Burke told him the plaintiff said a bottle came from their boat and he became offended by that so he backed off.

When cross-examined Hassan said that when the vessels engaged there were many boats passing between them throwing all sorts of things including eggs. He got rid of the catapult after this incident because he did not think it a good idea to have one on board. The label on the catapult produced in Court bears a warning but he does not recall whether the one they had on the Aggressor bore a similar label. It was open to him to stop the catapult being used that day.

Edward Uditis (D.W.2) was on board the Aggressor on the afternoon of the Pirates' Landing and is pictured aiming a water hose at the Atlantis in the photograph, Exhibit D2. Next to him were people using a catapult to hurl water balloons. He said that there were no beer bottles or bottles of liquor on the sun deck. Before

they set off there was a briefing. The Company does not allow any glass containers on board. They only had the fire hose and the water balloons on board that day.

Jim Abercrombie Robinson (P.W.4) was also a passenger on board the Aggressor on the day in question. He confirmed that he saw no bottles of any kind on the sun deck on that day. He did not see anything other than water balloons being loaded into the catapult. He has never seen glass bottles or containers on board the Aggressor.

Anne Hassan (P.W.3) is the wife of Wayne Hassan and was Managing Director of the Company at the time of the 1987 Pirates' Landing. She was responsible for the supply of provisions, including bar provisions, for the Aggressor and no beer in bottles or glass containers were purchased for the trip. She confirmed the Company's policy only to stock beverages in cans. She saw no bottles of any kind on the sun deck on the afternoon of the 24th October, 1987, and she saw none being thrown or hurled from the sun deck.

The first question I have to decide is whether the plaintiff was hit in the right eye by a bottle or other hard object hurled from the Aggressor on the afternoon of the Pirates' Landing in 1987. I think it is accepted by both parties that the injury to the plaintiff was caused by a hard object and was not caused by a water balloon. The evidence, in any case, particularly that of Dr. Mani, points irresistibly to that conclusion.

There were various other theories for the cause of the injury put forward by counsel for the plaintiff in his opening, such as a water balloon knocking a bottle or radio held by the plaintiff into his face, but those theories were disposed of by the plaintiff himself who said, under cross-examination and quite firmly at that, that it was not his case that something he was holding was knocked into his face or that something hit an object on the deck which then flew into his face. His evidence was that he saw an object coming at him through the air.

Did that object come from the Aggressor? For him to succeed

the plaintiff must satisfy me on a balance of probabilities that it did. I found the plaintiff to be an impressive witness who stated his case fairly and did not give me the impression he was trying to exaggerate. His evidence was firm and unshaken that he was looking in the direction of the catapult on board the Aggressor when he was hit. He said if the object came from anywhere else it must have come from over the head of the man with the catapult.

His evidence was supported by Edward McLaughlin who said he saw the object released from the catapult and hit the plaintiff and he heard the sound of glass hitting the rails and deck. He saw fragments of green glass. Now the police officer, Police Sergeant Bodden, saw no glass but of course the hoses were spraying water at the time. Furthermore, the officer did not see a bottle on the deck of the Atlantis when it is clear there had been at least one there at the time of the injury. I am conscious of the possibility that the glass Mr. McLaughlin saw and heard was from the bottle held by the plaintiff. I am also aware of the distance in time between the incident and Mr. McLaughlin's recollection of it, but I found him to be an honest witness who was endeavouring faithfully and fairly to recollect events.

I accept that it is the policy of the Company, in operation on the day in question, that no glass containers should be on deck. I also accept that the defence witnesses did not see a bottle or other hard object loaded into the catapult. However they did not see every operation of the catapult during the whole of the exchange between the Atlantis and the Aggressor. Indeed none of the witnesses called remembered using the catapult that afternoon and they did not see the cause of the injury to the plaintiff. No witness was called who used the catapult. Defence witnesses have said that there were other vessels involved in engagements with the Atlantis but Mr. McLaughlin clearly stated that there was no vessel other than the Aggressor in the vicinity at the time. The photographs taken very shortly before the incident show no other boat within striking distance save the boat which brought Mr. McLaughlin to the Atlantis. I accept that the field of vision of the camera was limited but attention of the people in the photographs seems focused between the two vessels and not elsewhere.

It is accepted that for anyone to go between the two vessels would involve them in running a gauntlet of fire.

Dr. Mani has stated that because of the site of the injury he felt the blow came from the side or below but admitted that it is difficult to tell, as it depends on the size and shape of the object thrown.

I have considered Hassan's offer of assistance with the plaintiff's medical expenses and I found his explanations in connection therewith somewhat forced and unimpressive. He said he became offended when he heard the allegation about the bottle being thrown and so he backed away from his offer, yet he knew of the allegation immediately after the injury occurred and before the offer was made. However, I do not attach much weight to his offer because he has denied throughout that a bottle was involved.

After careful consideration of the evidence in its totality I believe the plaintiff and Edward McLaughlin. Wherever the glass seen and heard by Mr. McLaughlin came from he clearly saw an object hit the plaintiff which object caused the injury. I find the plaintiff has satisfied me that he was hit with a hard object, possibly a bottle, coming from the catapult on the sun deck of the Aggressor.

If there is liability on the part of Hassan I understand there is no dispute that the Company also attracts liability. From the evidence there is insufficient evidence to attach liability in assault to the defendants. Are they liable in negligence in view of the fact that it seems that one of their passengers or guests unbeknown to them, and indeed against their declared wishes, negligently or maliciously fired a hard object from the catapult? It has been argued for the plaintiff that if an owner of a boat allows his passengers to operate something so inherently dangerous as a catapult from it then unless he takes the greatest care, he must face the consequences. That he has a duty, in other words, to supervise its use most carefully. But it has occurred to me that it is at very least arguable that the defendants would not attract liability if a

passenger threw a bottle at the plaintiff as opposed to catapulting it at him, particularly in view of the Company policy to disallow glass bottles or containers on the decks. Should the defendants' duty be greater because a catapult was in use?

The answer is to be found in the words of Lord Macmillan in Glasgow Corporation v. Muir and others [1943] A.C. 448, 456:-

> "The degree of care for the safety of others which the law requires human beings to observe in the conduct of their affairs varies according to the circumstances. There is no absolute standard, but it may be said generally that the degree of care required varies directly with the risk involved. Those who engage in operations inherently dangerous must take precautions which are not required of persons engaged in the ordinary routine of daily life."

It seems that now the defendants acknowledge that a catapult is an inherently dangerous article which it is unwise to have on board their vessels. They have ceased to have them on board since this incident. However not a great deal of weight can be attached to that fact. As stated by Lord Thankerton in Glasgow Corporation v. Muir and others (supra) at pp. 454-5:-

> "The Court must be careful to place itself in the position of the person charged with the duty and to consider what he or she should have reasonably anticipated as a natural and probable consequence of neglect, and not to give much weight to the fact that a distressing accident has happened or that witnesses in the witness box are prone to express regret, ex post facto, that they did not take some step, which is now realized would definitely have prevented the accident."

Of course in this case the most the defendants can be said to have done by ceasing to have such catapults on board is to acknowledge that they are dangerous articles. And indeed these catapults are dangerous and I would favour the evidence of Mr. Uditis over the evidence of Mr. Hassan that a catapult of that kind is capable of firing an object of some weight with considerable force. That being so the defendants were under a duty to supervise its use so that no object of weight was fired from it.

It seems to me that although it was as equally foreseeable by

the defendants that a bottle would be thrown as it was that a bottle would be catapulted in the latter case because the use of a catapult is inherently dangerous and the consequences of its abuse that much more potentially dangerous, the standard of care to be expected from the defendants to prevent its abuse was far higher. I find they were negligent in failing to adequately supervise the use of the catapult.

Turning now to damages the first issue I have to decide is whether it is proper to allow the plaintiff the costs of the journey to the Bascom Palmer Eye Institute in Miami. Dr. Mani said that the undertaking of the journey was not necessary but it was reasonable. I am of the view that the plaintiff genuinely feared that a piece of glass remained in his eye. According to Dr. Mani he was entitled to a second opinion. I consider that in the circumstances the plaintiff is entitled to his costs for the journey to Miami. Having so found, special damages are agreed at $7,868.85.

I now have to decide what general damages I should award for pain, suffering and loss of amenities. I have been referred to one English case of Shepherd reported at paragraph 5-182/2 of Kemp and Kemp, The Quantum of Damages. There a male aged 39 at the date of the offence was hit in the eye with a blunt instrument and was stabbed in the back and throat. He suffered a blow-out fracture of the left orbital floor. He was in hospital for five days and had a sialastic implant inserted to support the orbital contents. He had no loss of visual amenity but was left with restricted movement of the left eye and consequent diplopia which would be permanent. He could not concentrate for more than two hours when driving and so he was unable to resume his pre-accident occupation as a taxi driver. He also had to give up his hobby of angling because he was unable to follow a float. He had superficial scars to the back and throat, the latter being hidden by a beard. General damages were awarded of £12,500.00. The award was three years ago.

I need not repeat the extent of the plaintiff's injuries or the prognosis. The plaintiff is now 46 years of age. It is clear that the injuries in Shepherd were greater than the injuries in this case. Of course inflation has taken its toll in the last three years.

I am also conscious that the value of money is different in Cayman than in Britain and Shepherd can be used as no more than a guide or a pointer to the kind of award to be expected in this jurisdiction. It is inappropriate to follow foreign awards by merely undertaking an arithmetical conversion of currencies. Different factors come into play. There is no full National Health Scheme in Cayman, and it follows there are no Governmental deductions from a person's income to fund such a scheme. The plaintiff will have to make his own financial arrangements for paying the fees for the future medical examinations which Dr. Mani says are necessary. The same applies to any potential future medical costs if the plaintiff suffers any further problems with the eye because of the injury. I am fully aware that the problems may not occur but I must put their potentiality into the balance when making my award.

Balancing one thing with another and doing the best I can I award general damages for pain, suffering and loss of amenities of $18,000.

Costs and interest at Court rates are also awarded to the plaintiff.

D. Schofield
Judge

7th June, 1990