

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

ADVOCACY PROGRAMME

YEAR II

CIVIL BRIEF

JAY JONES v. PAUL RHUDD

NORMAN DAVIS

PARTICULARS OF CLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

HCV 2 of 2008

BETWEEN	JAY JONES	CLAIMANT
AND	PAUL RHUDD	DEFENDANT

1. The claimant is the owner of motorcycle licensed ZY203.
2. On July 24, 2006, the claimant was riding his motorcycle on the Mona Road when a motorcar owned and driven by the defendant licensed XZ2400 collided into the claimant's motorcycle.
3. The said collision was caused by the negligence of the defendant.

PARTICULARS OF NEGLIGENCE

The defendant was negligent in:-

- (a) Failing to keep a proper lookout;
 - (b) Failing to see the claimant's motorcycle in time or at all;
 - (c) Driving from a private road unto the main road at a time when it was unsafe to do so;
 - (d) Failing to stop, slow down or steer so as to avoid the collision.
4. As a result of the matters set out above the claimant has suffered personal injuries, pain and damage.

PARTICULARS OF INJURY

The claimant who is 30 years old, having been born on January 16, 1978. He was hospitalized from July 24 – August 24, 2006. He suffered:

- (a) unconsciousness;
- (b) Fracture of the humerus with some bony fragments missing.
- (c) Injury to neurovascular structure of the right upper arm.
- (d) Fractures with displacement of carpal bones of left wrist and slight deformity.
- (e) Multiple lacerations and abrasions.
- (f) Amputation through the right mid-arm.
- (g) 100% permanent partial disability of the right upper extremity and 60% disability of the whole person.

The claimant will rely, as part of his case, on the medical report of Dr. Peter Falk, a copy of which was attached to the claim form and is attached hereto.

PARTICULARS OF SPECIAL DAMAGE

- (a) loss of earnings \$150,000 from July 24, 2006 to present and continuing at \$25,000 a month;
- (b) cost of domestic help - \$50,000 from August 24 to present at \$2,500 a week and continuing;
- (c) Transportation expenses to and from hospital - \$15,000;
- (d) Medical Expenses - \$300,000;
- (e) Loss of motorcycle - \$750,000

5. Further, the claimant claims interest pursuant to the Law Reform (Miscellaneous Provisions) Act on the amount found to be due to the claimant at such rate and for such period as the court shall think fit.

AND THE CLAIMANT claims:-

- (a) General damages
- (b) Special damages
- (c) Interest
- (d) Costs

Signed: Frank McKnight
Attorney-at-law

I certify that all the facts set out in this Particulars of Claim are true to the best of my knowledge, information and belief.

Dated the 24th day of January, 2008

Jay Jones
Signed: _____

The claimant's address for service is that of his Attorneys-at-Law, McKnight & White of 15 Integrity Way, Kingston 8 whose telephone number is 123-5454 and fax number is 123-5459.

Filed by McKnight and White, Attorneys-at-Law of 15 Integrity Way, Kingston 8 whose telephone number is 123-5454 and fax number is 123-5459.

EXPERT REPORT OF DR. PETER FALK

RE: JAY JONES
2007

DATE: January 20,

1. My name is Dr. Peter Falk and I reside at 38 Haynes Road, Kingston 08 and I am an orthopedic surgeon and practice at the University Hospital of the West Indies as well as in private practice, at Doctor's Haven, 13 Regent Street, Kingston 14.

2. I studied at the University of the West Indies and have a Bachelor of Surgery (BS) degree (Hon.) and a Doctor of Medicine (MD) degree and have been practicing medicine for 09 years and am a certified medical practitioner.

3. I have worked in the emergency room and surgical ward of the University Hospital of the West Indies since June 24, 2002.

4. On July 24, 2006, I was on duty at the University Hospital Emergency Room when a 30 year old male was admitted in an unconscious state. I was told by a woman who accompanied him and said her name was Sandra Rose that the man was her boyfriend, Jay Jones.

5. On examination I found that Mr. Jones was suffering from the following injuries:
 - (a) Unconsciousness;
 - (b) Compound fracture of the right humerus with some bony fragments missing;
 - (c) In jury to neurovascular structure of the right upper arm;
 - (d) Multiple lacerations and abrasions.

6. Mr. Jones was admitted by me to the surgical ward under my care. He regained consciousness two days after admission.

7. His upper right arm became septic and he underwent surgery on for the injuries to his right upper limb on July 26, 2008, and his right mid–arm (above the elbow) was amputated.
8. Mr. Jones was discharged from the hospital on August 24, 2006 and attended an outpatient clinic for three further months, till November 30, 2006.
9. I received oral instructions to prepare a Report on Mr. Jones’s injuries, treatment and any resulting permanent disability on December 15, 2006 from Mr. Frank McKnight, Attorney–at–Law at a conference at his office at 15 Integrity Way, Kingston 8 along with a consent form signed by Mr. Jones.
10. At this conference I was asked to provide an expert opinion on the injuries sustained by Mr. Jones, the treatment administered to him and on any resulting disability.
11. I have set out in paragraphs 4, 5, 6, 7 and 8 of this Report the injuries I observed and the treatment administered to Mr. Jones.
12. It is my professional medical opinion that Mr. Jones has a 60% permanent disability of the whole person and a 100% permanent partial disability of the right lower extremity as a result of the loss of his right arm. He also has a slight deformity of the left wrist with a permanent partial disability of 10% of that wrist. The degrees of disability in this Report of my opinion are in conformity with the Guidelines of the American Academy of Orthopedic Surgeons.

I understand that it is my duty to help the Court impartially on all matters relevant to my expertise and that duty overrides any obligation to Mr. Jones and his attorney who instructed me and who paid me for the report. I have read Part

32, in particular Rules 32.3 and 32.4 of the Civil Procedure Rules and state that I believe that I have carried out my duty in the manner set out in the Rules.

I have included all matters within my knowledge and area of expertise relevant to the issue on which my expert evidence is given. There is nothing to my knowledge which affects the validity of this report.

I certify that the matters contained in this Expert Report are true to the best of my knowledge and belief and outlines all matters within my knowledge and area of expertise relevant to the issue on which the expert evidence is given.

DATED THE 20th DAY OF January, 2007

Dr. Peter Falk _____

Dr. Peter Falk
BS, MD. (UWI)

DEFENCE AND COUNTERCLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

HCV 2 of 2008

BETWEEN	JAY JONES	CLAIMANT
AND	PAUL RHUDD	DEFENDANT

1. Paragraph 1 of the Particulars of Claim is admitted.
2. Paragraph 2 of the Particulars of Claim is denied. The collision occurred as the defendant was stationary at the entrance/exit gate of UWI and the claimant in overtaking a line of traffic on his side of the road, lost control of his motorcycle and collided into the defendant's motorcar.
3. The defendant denies that he was negligent or that the said collision was caused as alleged in paragraph 3 of the Particulars of Claim.
4. Further the defendant says that the said collision was caused by or contributed to the negligence of the claimant.

PARTICULARS OF NEGLIGENCE

- (a) Riding too fast;
 - (b) Overtaking a line of traffic when it was unsafe to do so;
 - (c) Entering the defendant's side of the road in the process of overtaking;
 - (d) Failing to stop, slow down or otherwise control his motorcycle so as to avoid the said collision.
5. The defendant agrees with the entire medical report of Dr Peter Falk but requires the defendant to prove the loss and damage claimed.

COUNTERCLAIM

6. The defendant repeats paragraphs 1-5 of the Particulars of Claim and says that by reason of the matters set out therein he suffered personal injuries, pain and suffering and damage.

PARTICULARS OF INJURY

The defendant who is 23 years old having been born on November 22, 1984, suffered:

- (a) Whiplash;
- (b) Severe neck pain with radiations of pain to shoulders;
- (c) Headaches.

The defendant will rely, as part of his case, on the medical report of Dr. Ian Gooper, a copy of which is attached.

PARTICULARS OF SPECIAL DAMAGE

(a) Repairs to motorcar	\$150,000
(b) Loss of use for 15 weeks at \$5,000 a week	\$ 75,000
(c) Medical expenses	\$ 10,000
(d) Assessor's Fee	\$ 4,000

7. Further the defendant claims interest pursuant to the Law Reform (Miscellaneous Provisions) Act on those amounts found due to the Defendant at such case and for such a period as the court should think fit.

AND THE DEFENDANT counterclaims:-

- (a) General Damages
- (b) Special Damages

- (c) Interest as above
- (d) Costs

I certify that all the facts set out in this Defence and Counterclaim are true to the best of my knowledge, information and belief.

Signed: Joseph Ingram
Attorney-at-law

Dated the 3rd day of February, 2008

Signed: Paul Rhudd

The defendant's address for service is that of his Attorneys-at-Law, Ingram, Osbourne & Crawford of 4 Respect Drive, Kingston 5 whose telephone number is 145-0017 and fax number is 145-0020.

Filed by Ingram, Osbourne & Crawford, Attorneys-at-Law of 4 Respect Drive, Kingston 5 whose telephone number is 145-0017 and fax number is 145-0020.

EXPERT REPORT OF DR. IAN GOOPER

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 2 of 2008

BETWEEN	JAY JONES	CLAIMANT
AND	PAUL RHUDD	DEFENDANT

MEDICAL REPORT FOR PAUL RHUDD

1. My name is Dr. Ian Gooper and I reside at 16 Anders Road, Kingston 07 and my office address is 04 Fairhaven Boulevard, Kingston 10 and I am a registered medical practitioner in private practice.

2. I studied at the University of the West Indies and have a Bachelor of Surgery (BS) degree (Hon.) and a Doctor of Medicine (MD) degree and have been practicing medicine for 25 years.

3. On July 26, 2006, I saw Mr. Paul Rhudd, who is a patient of mine, at my surgery at Fairhaven Boulevard about 10:00 a.m.

4. On examination I found the following injuries were noted by me:
 - i. Whiplash;
 - ii. Severe neck pain with radiations of pain to shoulders;
 - iii. Headaches.

5. I treated his injuries with a neck brace administered for 2 weeks and ordered bed rest for a week. The patient returned on February 1, 2007 and on examination, I formed the opinion that he had fully recovered from these injuries.

6. I received oral instructions to prepare a Report on Mr. Rhudd's injuries, treatment and any resulting permanent disability on January 30, 2008

from Mr. Rhudd at my surgery and to send a Report to his Attorney-at-law, Mr. Joseph Ingram. I examined him on that day and found no injuries or resulting disability.

7. I have set out in paragraphs 4 and 5 of this Report the injuries I observed and the treatment administered to Mr. Rhudd.
8. It is my professional medical opinion that Mr. Rhudd has suffered no permanent disability as a result of these injuries.

I understand that it is my duty to help the Court impartially on all matters relevant to my expertise and that duty overrides any obligation to Mr. Rhudd who instructed me and paid me for the report. I have read Part 32, in particular Rules 32.3 and 32.4 of the Civil Procedure Rules and state that I believe that I have carried out my duty in the manner set out in the Rules.

I have included all matters within my knowledge and area of expertise relevant to the issue on which my expert evidence is given. There is nothing to my knowledge which affects the validity of this report.

I certify that the matters contained in this Expert Report are true to the best of my knowledge and belief and outlines all matters within my knowledge and area of expertise relevant to the issue on which the expert evidence is given.

DATED THE 1st DAY OF February, 2008

-- *Ian Gooper* -----

Dr. Ian Gooper
BS, MD. (UWI)

REPLY TO DEFENCE AND DEFENCE TO COUNTERCLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO.

HCV 2 of 2008

BETWEEN JAY JONES CLAIMANT
AND PAUL RUDD DEFENDANT

1. the Claimant denies paragraph 2 of the Defence and Counterclaim and contends that the defendant was not stationary, and that he, the Claimant, was overtaking a line of traffic and lost control of his motorcycle, as alleged.
2. The Claimant denies paragraph 4 of the Defence and Counterclaim and the Particulars of Negligence set out therein and states that the collision was caused by the negligence of the Defendant and repeats paragraph 3 of the Particulars of Claim and the Particulars of Negligence set out therein.
3. Paragraph 6 of the Counterclaim and the Particulars of Injury and Particulars of Special Damage set out therein are denied, the Claimant agrees to the medical report attached.
4. The Claimant denies that the Defendant is entitled to the claims set out in paragraph 7 of the Counterclaim.

I believe the contents of this Reply and Defence to Counterclaim to be true and I am duly authorized to make this statement on behalf of the Claimant.

Dated the 10th day of February 2008

Frank McKnight

Signed: _____

Attorney-at-law for the Claimant

The claimant's address for service is that of his Attorneys-at-Law, McKnight & White of 15 Integrity Way, Kingston 8 whose telephone number is 123-5454 and fax number is 123-5459.

Filed by McKnight and White, Attorneys-at-Law of 15 Integrity Way, Kingston 8 whose telephone number is 123-5454 and fax number is 123-5459.

WITNESS STATEMENT OF JAY JONES

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

HCV 2 of 2008

Made on behalf of: Claimant
Witness: Jay Jones
Date made: January 14, 2008

Jay Jones states,

I am a 30 year-old grade 1 electrician and I live at 38A River Road, August Town, Kingston 7.

On July 24, 2006, at about 8:45 a.m. I was on my way home from a dancehall session in Standpipe, Liguanea. My friends promoted the session so I stayed behind to assist them packing up equipment. I was riding my Honda F2 'Ninja' motorcycle on Mona Road which leads into Hermitage Road. My girlfriend, Sandra Rose, who had accompanied me to the session, was a pillion rider.

On approaching the University Campus I noticed a line of traffic near the entrance/exit gate. The traffic lights were not working; I learned later that there was a power cut in the area. I also noticed a bus proceeding to the bus stop on the opposite side of the road. There was adequate space for me to overtake the line of traffic without entering the other side of the road. I was in the right lane heading towards August Town. The road consists of two lanes heading in that direction at the UWI gate. I proceeded to overtake.

On reaching immediately in front of the UWI gate, a motorcar drove from the campus into my path on my side of the road. I had no time to avoid a collision and collided into the right side of the car.

My girlfriend and I were flung from my motorcycle and I tried to break my fall with my hands. The next thing I knew was when I woke up in the University Hospital in great pain. I sustained a serious fracture and an amputation as a result of the collision. I was hospitalized for one month and then discharged. I returned to the hospital as an outpatient twice per week thereafter over a three-month period.

I am right-handed and as a result of the collision I have lost the use of my right hand for electrical work which requires precision type work and dexterity in both hands.

At the time of the collision I was earning approximately \$300,000 a year in contract jobs as an electrician. I had qualified as an electrician from UTech in 1998 and each year I was getting more jobs with prospects of increased earnings in this field.

There are many things which I used to enjoy prior to the collision which I am no longer able to do. I used to enjoy playing cricket and volleyball but I cannot do so now. Prior to the accident I lived alone in August Town in a rented apartment. However, since I now have difficulty doing household chores, such as washing and cooking, and taking care of myself, I have moved back to my mother's home in August Town on my discharge from hospital.

My mother is a retired teacher. Prior to the accident, she did not employ a household helper but with my being there I have had to do so. The helper is paid \$2,500 a week.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: *Jay Jones*
Date: *January 14, 2008*

WITNESS STATEMENT OF SANDRA ROSE

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

HCV 2 of 2008

Made on behalf of: Claimant
Witness: Sandra Rose
Date made: March 3, 2008

Sandra Rose says,

I am 24 years old and I live at 2B Stream Close, August Town, Kingston 7. I am unemployed.

On July 23, 2006, I accompanied my boyfriend, Jay Jones, to a dancehall session at Standpipe, Liguanea.

After the all night session my boyfriend and his friends spent a few hours packing up their equipment and making arrangements for a truck to collect it.

We left the session after 8:45 a.m. to go to August Town. We travelled on his Ninja motorcycle towards August Town via Mona Road and Hermitage Road.

On reaching in the vicinity of the main entrance/exit gate to the UWI, there was a line of vehicular traffic waiting to enter the campus. My boyfriend overtook this line of traffic. The traffic lights at the intersection were not working due to a power cut in the Mona area. There was a bus on the opposite side of the road but I don't recall where exactly it was located at the time.

The next thing that I recall was seeing a motorcar in the road on our side of the road. There was no time to avoid a collision. I fell from the motorcycle prior to its impact when my boyfriend attempted to swerve to avoid colliding with car.

I fell to the road in the vicinity of the entrance/exit gate. I sustained minor injuries and I have also sued the owner and driver of the motorcar.

Statement of truth.

I believe that the facts stated in this witness statement are true.

Signed: *Sandra Rose*

Date: *March 3, 2008*

WITNESS STATEMENT OF PAUL RHUDD

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

HCV 2 of 2008

Made on behalf of: Defendant
Witness: Paul Rhudd
Date made: February 2, 2008

Paul Rhudd states,

I am a 23 year-old Management Trainee at RCC Bank, New Kingston Branch, and a part time student at the University of the West Indies (UWI). I live at 15 Tear Drop Close, Kingston 5.

On July 24, 2006, at about 8:45 a.m., I had just left a class at UWI and was on my way to work at the bank. I was driving my silver Toyota Tercel motorcar.

I proceeded to the main entrance/exit, to the UWI on the Mona Road. There is a gate manned by security guards at this entrance/exit. After handing over my security pass to a security guard, I proceeded to the stop line at the junction of the road leading from UWI into the Hermitage Road.

I stopped my motorcar at the stopline with the intention of turning to my right in the direction of Liguanea. I had on my right indicator. At that time there was a line of cars to my right coming from the direction of Liguanea moving slowly into the campus because of the security checks there. The traffic light at the intersection of Hermitage Road and the road leading from UWI was not working as there was a power cut affecting the University. I was very cautious because of this.

Across the road from the entrance/exit, is a bus stop and bus bay. Students are frequently at this bus stop and there was a taxi picking up students at the

sidewalk just before the entrance to the bus bay closest to me. A bus was in the process of going around the taxi to enter the bus bay.

Whilst stationary at the stopline, I heard the roar of a motorcycle coming from the Liguanea direction. I then saw a motorcycle emerge from around the line of traffic at a tremendous speed and this was at about the same time the bus was entering the bus bay in the opposite direction.

The rider of the motorcycle in apparently attempting to avoid the bus and to get back onto his side of the road, lost control of the cycle and collided into the right front of my stationary motorcar. The motorcyclist and his pillion rider fell to the ground. The impact of the motorcycle caused me to lose control of my motorcar because my foot came off the brake, momentarily forcing it into the main road where I brought it to a stop on the left-hand side of the road.

I noticed that the rider of the motorcycle and the pillion rider were being assisted by security guards at the gate into a vehicle. I locked up my car and caught a passing taxi to the August Town Police Station. There I made a report.

I sustained minor injuries and a whiplash injury as a result of the collision. The right side of my car was extensively damaged. I was without the use of my car for 15 weeks.

I took sick leave from work with pay as a result of the collision for a week during which time I also did not attend classes at UWI. I wore a neck brace for 2 weeks.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: *Paul Rhudd*

Date: *February 2, 2008*

WITNESS STATEMENT OF PETRONA WILLIAMS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

HCV 2 of 2008

Made on behalf of: Defendant
Witness: Petrona Williams
Date made: March 20, 2008

Petrona Williams states,

I am a 30 year-old Security Guard employed to N. Tech Security Ltd., a security company which oversees security at the UWI Campus.

On July 24, 2006, I was on duty at the main entrance/exit gate to the campus on the Mona Road. I began duty at about 6:00 a.m. that morning.

On entering the campus, the drivers of vehicles are issued with security passes by the guard on duty at the main entrance/exit gate. The drivers keep these passes and surrender them to the guard at the gate prior to leaving the compound. The purpose of this system is to account for all vehicles entering and leaving the compound and to prevent unauthorized access to it.

My duty on July 24 was to collect security passes from the drivers of vehicles leaving the compound. While doing so I heard the roar of a motorcycle in the vicinity of the entrance/exit gate. I turned around just in time to see a motorcycle collide into a Tercel motorcar which was stationary at the junction of the road leading from the campus into Mona Road. The traffic lights were not working as there was a power cut affecting the entire university and August Town.

As a result of the collision, traffic started to immediately build up at the main entrance/exit to the campus and I had to begin diverting traffic to the other exits from the campus. Consequently I was unable to go the scene of the accident.

Sometime after the accident I saw the car involved in the collision on the campus. I mentioned to the driver that I had seen the collision. I did not give this statement until sometime later when the driver informed me that he could find no other witness to the collision.

Statement of Truth

I believe that the facts stated in this witness statement are true.

Signed: *Petrona Williams*

Date: *March 20, 2008*

ADJUSTER'S REPORT

FIX IT RIGHT ADJUSTERS LTD.

11 Ratty Way, Kingston 11
Tel: 876-777-5135 Fax: 876-777-2112

DIRECTOR: ABEL DAVIS

July 29, 2006

Fire & Accident Insurance Co. Ltd.
2 Outaway Close
Kingston 5

Dear Sirs:

In accordance with instructions given to us we have examined the vehicle mentioned below and set out our findings:

Insured: Paul Rhudd Third Party: Jay Jones Reg. No.: XZ2400
Make of vehicle: Toyota Model: Tercel Year: 2003
Mileage: 85,000 Remarks: Appears to be true
Engine No.: G13B-192132 Chassis No.: AB345-13885
Repairer's estimate: \$150,000 Prepared by Slick's Auto Sales
Our estimated value of the damage: \$150,000

Repair Basis

Total Loss Basis

Estimated Cost of Repairs: \$150,000

Estimated value of unit: \$350,000

Salvage: \$50,000

Amount of Loss: \$150,000

Amount of Loss: \$300,000

Comments:

We inspected this vehicle on July 29, 2006 and noted damage to the following items as a result of an impact to the right side:

Right front door
Right quarter panel

The estimate by Slick's Auto Sales is reasonable.

Abel Davis

Managing Director

ASSESSOR'S REPORT

Ram Jam Adjusters Ltd.

15 DOORWAY AVENUE, KINGSTON 10
TEL: 876-900-5879/900-4879

Fax: 876-900-5880

August 12, 2006

CIC Limited
14 Wheeler Way
Kingston 5

Dear Sirs:

In accordance with instructions given to us we have examined the motorcycle mentioned below on August 2, 2006:

Insured: Jay Jones Third Party: Paul Rhudd
Make of Motorcycle: Honda F2 Year: 2004
Mileage: 80,000
Engine No.: S-63111

Comments:

This motorcycle was extremely damaged as a result of an impact to its front and is totally destroyed. The pre-accident value of the motorcycle was \$750,000 and so the amount of loss on a total loss basis is \$750,000.

Willie Evans
Managing Director

Director: Willie Evans