

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

ADVOCACY PROGRAMME

YEAR II

CIVIL BRIEF

**JESSE JASON BROWN v. THE
METAL COMPANY LIMITED**

NANCY ANDERSON

PARTICULARS OF CLAIM

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NUMBER HCV 2010/856**

BETWEEN **JESSE JASON BROWN** **CLAIMANT**

AND **THE METAL COMPANY LIMITED** **DEFENDANT**

1. The Claimant was employed to the Defendant company as a welder at the company’s premises at 78A Factory Road, Kingston 27, in the parish of St. Stephen from October 1994 until May 2009.

2. In the course of his said employment, the Claimant’s job required him to weld large pieces of sheet metal together in the metal shop. The Claimant worked in a part of the factory that was some 10m by 10m.

3. In this shop there were three noise-producing machines:
 - (1) A sheet metal press that would punch holes in the metal for 8 hours per day;
 - (2) A high pressure hose assembly that was used to clean shavings off the metal for about 9 hours per day;
 - (3) A hammering machine that was used for about 6 hours per day to correct defects in the metal.

4. From 1994 – 2009, these three machines were operated together leading to excessive noise in the shop through the day, every work day.

5. The Claimant’s exposure to the noise damaged his hearing.

6. The Claimant's deafness was caused by the negligence of the Defendant in that it:

Particulars of Negligence

- (a) Failed to take any or any adequate precautions for the safety of the Claimant while he was engaged upon the said work.
 - (b) Failed to provide the Claimant with a safe place of work.
 - (c) Exposed the Claimant to a risk of damage or injury of which the Defendant knew or ought to have known.
 - (d) Failed to provide the Claimant with suitable ear plugs or ear muffs or other adequate equipment to enable him to carry out the work safely.
 - (e) Failed to provide training as to the need to wear ear muffs and/or ear plugs.
 - (f) Failed to erect barriers and/or otherwise soundproofing to the Claimant's working environment.
 - (g) In the premises, failed to provide or maintain a safe and proper system of work.
7. By reason of the matters aforesaid, the Claimant sustained severe injuries and has suffered loss and damages.

Particulars of Injuries

Severe damage to the cochlea in both ears;
Noise-induced hearing loss in both ears;
Total (100%) deafness in the right ear and 75% deafness in the left ear.

Particulars of Special Damages

Medical Expenses, and continuing	\$ 140,000.00
Prescription medicine, and continuing	<u>\$ 98,000.00</u>
Hearing Aids - (replaceable every 2 years)	<u>\$ 125,000.00</u>
TOTAL	\$ 363,000.00

The claimant will rely, as part of his case, on the medical report of Dr. Clive Raymond, a copy of which is attached hereto.

AND The Claimant claims:

1. Damages,
2. Interest, and
3. Costs.

Dated the 13 th Day of October. 2009

Signed Manly Wisdom, Q.C.
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.

Signed: Jesse Jason Brown
Claimant

The Claimant's address for service is that of his Attorney-at-law, Manly Wisdom, Q.C., of 97 Wales Street. Kingston whose telephone number is 123-4567/ fax - 234-5678.

DEFENCE

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NUMBER HCV 2009/856

BETWEEN JESSE JASON BROWN CLAIMANT

AND THE METAL COMPANY LIMITED DEFENDANT

1. It is admitted that the Claimant was employed to the Defendant as a welder for the period set out in paragraph 1 of the Particulars of Claim.
2. The Defendant admits paragraph 2 of the Particulars of Claim.
3. While the Defendant admits that the three machines described in paragraph 3 of the Particulars of Claim were in the shop, the Defendant denies that the machine are 'noise-producing' machines and that any one of them ran continuously for any time over 5 hours per day.
4. The Defendant denies that the three machines ran every work day from 1994-2009 and that they caused excessive noise for about 9 hours per day or any excessive noise at all.
5. The Defendant denies paragraphs 5 and 6 of the Particulars of Claim and the allegations of Negligence set out in paragraph 6.
6. The Defendant believes that the Claimant caused or contributed towards his injuries, in that he negligently:

Particulars of Negligence

- (a) Failed fully and properly to use the personal ear protectors which were provided by the Defendant;

- (b) Failed to use the switches to cut off the machines provided by the Defendant, when the noise became too loud or any of the machines ran too long;
- (c) Failed to report any defect in the personal ear protectors to the Defendant;
- (d) Failed to report any defect in the switches for the cutting off of the machines to the Defendant.

7. The alleged injuries, loss and damage are not admitted.

Dated the 12th day of November, 2009

Signed: Foster Daley
Attorney-at-law

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

Signed; James Wayne
- Managing Director,
The Metal Company Limited

FILED BY Foster Daley, Attorney-at-law, of 2010 Wales Street, Kingston in the Parish of Kingston whose telephone number is 987-1234/ Fax number - 987-5432.

EXPERT REPORT OF DR. CLIVE RAYMOND
RE: JESSE JOHN BROWN- D.O.B. 13/03/66

1. My name is Dr. Clive Raymond and I reside at 8 Gross Road, Kingston 08 and my office address is 04 Folley Street, Kingston 10 and I am a consultant surgeon with a speciality in ear, nose and throat and I also practice at the Medical Partners Hospital as well as 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 18 years and am a certified medical practitioner.
3. In May 2008, Mr. Jesse John Brown was referred to me by his family doctor for a complaint of loss of hearing.
4. Mr. Brown attended at my office on May 24, 2008 and told me that he worked in a shop where his job was to weld together sheets of metal. He also told me that the shop was very noisy as there were three machines operating in a zinc walled closed shop. He further told me that he had been working in the same shop for over fifteen years.
5. **Physical examination:** I conducted a total medical examination of Mr. Borwn on May 20, 2008. Aside from swelling on his left wrist which he attributed to having broken the wrist some five years before when he fell at home, I did not detect any deformities or abnormalities.
6. During this physical examination, it was clearly noticeable that he had difficult hearing me. Often I had to repeat questions and state them in a very loud manner. I therefore performed a thorough examination of both outer ears and inner ears with an otoscope as well as tested his hearing on an audiometer.

7. I diagnosed Mr. Brown with severe damage to the cochlea in both ears; noise-induced hearing loss in both ears: total (100%) deafness in the right ear and 75% deafness in the left ear.
8. **Treatment:** I prescribed the Melody TM Open Fit Hearing Aid A2 for both Mr. Brown's ears. This hearing aid costs US\$695 each and will need to be replaced every 5-6 years. This hearing aid cannot restore Mr. Brown's hearing to normal but can improve it by amplifying soft sound and reducing loud background noises.
9. **Follow-up:** I have seen Mr. Brown at three month periods since May 2008 and his condition remains outstanding and requires continuous treatment. I charge Mr. Brown \$10,000.00 per visit.
10. It is my opinion that if he had not worked for so long in such a noisy intensive atmosphere, Mr. Brown's hearing would not be so badly affected.
11. I received oral instructions to prepare a Report on Mr. Brown's condition, treatment and any resulting permanent disability on September 25, 2009 from Mr. Manly Wisdom, Q.C. Attorney-at-Law at a conference at his office at 97 Wales Street, Kingston along with a consent form signed by Mr. Brown.
12. I have been asked to provide an expert opinion on Mr. Brown's condition, the treatment administered to him and on any resulting disability.
13. I have set out in paragraphs 5 - 10 of this Report, the injuries I observed and the treatment administered to Mr. Brown.
14. It is my professional medical opinion that Mr. Brown has a 100% permanent hearing loss to his right ear and a 75% permanent hearing loss to his left ear. The degrees of disability in my opinion are in conformity with the Guidelines of the American Medical Association.

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. Brown 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 04th DAY OF October, 2009

-- *C. Raymond*-----

Dr. Clive Raymond
BS, MD. (UWI)

6. Aside from the individual welding equipment of four – five welders, including myself in the shop, there are three machines in the shop:
 - (a) a sheet metal press which is used to punch holes in the metal sheets and is manned regularly by two men;
 - (b) a high pressure hose assembly attached to a tank which is used to clean shavings off the metal sheets operated by one or two men;
 - (c) a hammering machine used to correct any defects in the metal sheets by ‘hammering’ out the defects, operated by 2–3 men.
7. From the first day I went into the shop I immediately noticed the high degree of noise that these machines produced working together for nearly the entire 9 hour shift.
8. I was not given any personal ear protectors when I began working at this shop, though I noticed that several of the men working in the shop were wearing different kinds of ear protection.
9. After working in this noise for about three months, I asked the supervisor, Mr. Dickie Douse, for some ear protection and he told me the company policy was that I had to bring my own protection. Mr. Douse died in 1999 in an accident at the factory. I spoke to no one else about the ear protection.
10. In 2000, Mr. Uriah Wellington, the new supervisor, gave all the men working in the shop personal ear protection gear which consisted of ear muffs, all of the same size, which did not fit me well and although I told the supervisor about the misfit, I did not receive any other ear muffs.
11. These ear muffs did not muffle all of sound the three machines made and over the years I noticed that I had a continuous ringing in my ears which never stopped. This ring also affected my

ability to hear people speaking and over the years I hear less and less and finally could only hear the ring noise in my ears.

12. I am the only welder or other employee of the company who has worked continuously in this shop; the other workers have either left the company or been transferred to another department or shop in the factory.
13. In February, 2008, I went to see my family doctor, Dr. Heather Henderson, about my hearing loss and she who referred me to a specialist, Dr. Clive Raymond. I saw him in May 2008 and am still his patient today. He diagnosed me with severe hearing loss and recommended some medicine and then equipped me with a hearing aid in one ear.
14. I told the supervisor at work about what the doctor had said. Mr. Wellington told me to be more careful and to always wear the personal ear protection given to me. I told him that I needed better ear muffs that fit closer, but he said these muffs were alright and that I was just too careless.
15. I also asked to be transferred to another department in the company, but Mr. Wellington told me there were no other jobs for me and I either continued doing my job or left. Around September 2008 I brought in a letter from Dr. Raymond and took it to the boss, Mr. Wayne, but he said I must continue to use the muffs.
16. Mr. Errol Richardson another welder was experiencing the same problem. Mr. Richardson is very boisterous and complained a lot. In January 2009, Mr. Wellington re-assigned him. In June 2009, Mr. Richardson left the work, he no longer works in the factory.
17. I continued working, trying my best to make certain I wore the ear muffs and even tied material around them to increase the

muffling. I was seeing Dr. Raymond every 3 months and still see him at these intervals. Each visit costs \$10,000.00.

18. The hearing aid Dr. Raymond equipped me with cost me US \$695.00.

19. In May 2009 I decided I could not continue working in the shop and I also decided to sue the company for the injuries and my medical expenses as well as the pain I have suffered.

STATEMENT OF TRUTH

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

Signed: *Jesse Jason Brown*

Date - February 04, 2010

WITNESS STATEMENT – ERROL RICHARDSON (Claimant)

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NUMBER HCV 2009/856

BETWEEN	JESSE JASON BROWN	CLAIMANT
AND	THE METAL COMPANY LIMITED	DEFENDANT

1. My name is Errol Richardson and I live at Suncity in the Parish of St. Catherine and am 46 years old and a welder by trade and I am presently employed as a welding instructor at H.E.A.R.T. Academy in Runaway Bay, St. Ann.
2. I worked at The Metal Company Limited from November 2006 to 2009 first as a welder and in January 2009 I was re-assigned to the Factory Office as a clerk in the Human Resources department. I left the company in June 2009 to take up the position with H.E.A.R.T.
3. I know Mr. Jesse Jason Brown, I call him 'Jesse James'. I met him in 2004 when I came to work at the metal shop at the factory. He was also a welder there and we worked the same shifts for over two years.
4. The very first thing I noticed about the shop the first day I came there was the noise. There were 3 very noising machines operating all day, every day: one punching holes in metal sheets, one hammering defects in the sheets and the other hosing down the sheets to clean off shavings.
5. Along with these three machines, there was the noise of the welding machines operated by at least four welders per day and the constant talking of 10 -12 men in the shop. It was an extremely irritating and I reported my concerns about the noise to the supervisor, Mr. Wellington, but he told me to keep quiet and accused me of being a trouble-maker.

6. I was given what the company called “a personal ear protection” device, but what was only an ill fitting ear muff to wear while I was there. If I wore the ear muff, I could not hear the other workers and if I did not wear it the noise was very loud.
7. I made numerous suggestions to the Supervisor many times, including shutting off the machines for periods of time during the day, running only one at a time, soundproofing the shop and replacing the ear muffs with better, more appropriate equipment. All my suggestions well on deaf ears and nothing was done; in fact Mr. Wellington said I was the only one complaining so I should just shut-up.
8. In January 2009, I was transferred to the Human Resources Department and given a lame job of filing papers in employees’ files all day so I looked for a better job and left in June 2009.
9. I have kept in touch with Jesse James and know of his problems with his hearing. The company does not care enough about its workers to put in place a safer system of work in the shop.
10. I have no loss of hearing and have had no problem with my hearing as I left the shop before anything happened to my hearing.

STATEMENT OF TRUTH

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

Signed: *Errol Richardson*

Date - February 04, 2010

5. Mr. Richardson has been a belligerent employee since he started working with the company in 2006 and has been reported for boisterous behaviour, rudeness to security personnel and sexual harassment of female employees on several occasions. He has been disciplined on two occasions, and has been suspended twice for one day and then for one week.
6. Mr. Brown has never been reported to me for any misbehaviour, nor has he ever been late for work or absent from work in nearly fifteen years of work at the company – he is an exemplary employee.
7. I am told by my Human Resources Manager, Ms. Henrietta Foster, that Mr. Brown is semi-literate and as not been transferred or promoted during his employment with the company due to his perceived inability to learn a new job.
8. It is common knowledge that machines will give off noise and in 2000 on the recommendation of a previous supervisor for the metal shop, Mr. Douse, personal ear protection gear was given out to all workers in the metal shop. The company policy is that this gear is replaced annually and to the best of my knowledge and believe the supervisors have been issuing new gear every year.
9. In 2008, I was shown a report on the possibility of soundproofing the entire metal shop, but I reject this proposal as it was extremely expensive and would not in my view have done anything to reduce the noise within the shop. I have carried out a careful and thorough search of my office since this court matter commenced and cannot find a copy of this report.
10. I do not believe that the noise caused by the machines in the shop is excessive and have been told that there are switches on all three machines which can be used to shut off the machines periodically.

11. I am confident that the company has done everything possible to make Mr. Brown's working conditions safe and to set up a proper system of work.
12. Mr. Brown no longer works for the company, he left in May 2009, due to medical reasons.

STATEMENT OF TRUTH

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

Signed: *James Wayne*
Date - February 04, 2010

WITNESS STATEMENT – URIAH WELLINGTON (Defendant)

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NUMBER HCV 2009/856

BETWEEN JESSE JASON BROWN CLAIMANT

AND THE METAL COMPANY LIMITED DEFENDANT

1. My name is Uriah Wellington and I reside and have my true place of abode and postal address at 43 Mount Vernon Road, Kingston 24 and I am currently the Assistant Manager for the day shift at The Metal Factory Limited. I have worked with the company for over 10 years from early 1999. Between 2000 and November 2009 I was the day-shift supervisor for the metal shop.

2. I know Mr. Jesse Jason Brown and saw him working in the metal shop when I came to work there as the supervisor for the day-shift in 2000.

3. The metal shop is within the company compound and is approximately 10m by 10m with a cement floor and is one of several such shops on the compound, but is the only one I have worked in. This metal shop was established to operate to weld and cut metal sheets in the same area. It was the only shop on the compound that did all of this in one shop. The shop was dismantled in November 2009 and the area where it once was is currently being cleared for construction of a showroom.

4. The shop was used to weld and cut metal sheets, and housed three machines for this purpose along with several teams of welders. The machines were: (1) a punch-hole metal press; (2) a hose assembly

and tank; and (3) a compression machine to correct defects in the sheets.

5. The machines did not all run together at the same time for the entire day, though there were periods when they would all be running. There are switches on each machine separately which any worker in the shop can use to turn off any machine. The machines make the shop noisy, but not excessively noisy, and I have been in other similar shops in other companies that are noisier.
6. Each January since I have been there, that is 2000; each worker is issued a personal ear protector that he can wear if he thinks the noise is too much at a particular time. Not all workers wear these and I have not worn mine ever since working in the shop.
7. Mr. Brown has never complained to me about the noise in the shop and I have seen him sometimes with the protector on and other times without it.
8. Mr. Brown is a reliable, steady worker, but not too smart. He has his way of doing things and no one can show him anything new. I cannot recall him ever being late or absent from work, although I have seen the Employment Record and see where I reported once that he was late, but that day we had a terrible storm and many men were late or did not even come to work.
9. I gave him two days off in May 2009 to do some tests. He did not tell me what they were for and I did not ask. He was that sort of man, very quiet and kept to himself.
10. For all the time I worked at the factory I only know a few workers who complained and the only name I remember was Mr. Errol Richardson. He was a very disruptive worker and was always complaining about something, from the lunch served to the noise

in the shop. I finally reassigned Mr. Richardson in January 2009 to the HR Department and he left the company in June 2009.

11. Mr. Brown came to me in late May 2009 after his 2 day sick leave and told me his hearing was affected by the noise in the shop and he wanted compensation from the company. I thought he was crazy and told him I would not help him.

12. I believe that Mr. Brown was too sensitive. Others doing the same job never complained to me about excessive noise once they wore the personal ear protection given out annually to all workers in the metal shop.

STATEMENT OF TRUTH

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

Signed: *Uriah Wellington*

Date - February 04, 2010

WITNESS STATEMENT – HENRIETTA FOSTER (DEFENDANT)

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NUMBER HCV 2009/856**

**BETWEEN JESSE JASON BROWN CLAIMANT
AND THE METAL COMPANY LIMITED DEFENDANT**

1. My name is Henrietta Foster and I live at 16 ½ Great Dase Street, Kingston 13 and I am a Human Resource Manager and currently am working at The Metal Company Limited.
2. I have worked at the company since January 2000 as the Human Resource Manager. The company currently has a staff of 130 workers, 75% are men and 20% women. The workers work in two shifts per day: 7:00 a.m. till 4:00 p.m. and 4:00 p.m. till midnight. There are 12 administrative personnel working in the offices, including the Managing Director, Mr. J. Wayne and myself. There are 20 supervisors, 10 on each shift.
3. Supervisors are assigned to teams of 10 to 20 men during a shift in a particular part of the factory. The supervisors are in charge of discipline, overtime allowances and deal with many of the concerns and complaints of the workers.
4. Mr. Uriah Wellington is a supervisor and has worked for the company since March 2000. He has an excellent record and is greatly respected by the men on his shift. There have been no complaints registered against him.
5. My duties include keeping a record of all employees, their contact information and any complaints raised by them or against them. I have never met and do not know the Claimant, Jesse Jason Brown. I have prepared an employment record concerning him from the

records in the HR office. These records were made by various accounting clerks, supervisors and administrative staff throughout the years. I am now shown this Record and identify it as Exhibit HF 1.

6. I am also in charge of issuing gear for use by employees. The gear is issued to Supervisors who request it for the workers and sign for it. The records show that Mr. Wellington was annually given 12 personal ear protectors for the workers on his shift, since 2000.
7. I do know Mr. Errol Richardson as he came into my office on several occasions, in fact a total of 31 times during the period November 2006 to January 2009. Nearly every time he came in he was complaining about something, from the quality of the lunches provided to the noise in the metal shop. Several times I had to remind him that complaints were to come through the supervisor. He complained that Mr. Wellington did not like him.
8. I investigated several of his complains and found them all baseless. I believe he was just a loud mouthed troublemaker.
9. In January, 2009 Mr. Richardson was reassigned to my department, I was not told why and I could not find much work that he was capable of doing. He resigned in June 2009.

STATEMENT OF TRUTH

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

Signed: *Henrietta Foster*

Date - February 04, 2010



THE METAL COMPANY LIMITED

78A Factory Road, Kingston 27

925-7689 "Our Motto is Excellence"

EMPLOYMENT RECORD: JESSE JASON BROWN,
18 Oxford Avenue, Kingston 14

Commenced work: October 02, 1994

Terminated: May 30, 2009

Reason for termination: health problems

Shift: day-shift

Position: welder

Date of changes in shift/position: None

Starting salary: \$4,000 per week

Current salary (May 2009) : \$66,500 per fortnight

RECORD OF REPORTS TO HR DEPARTMENT:

24/05/03 - Mr. Wellington reported worker sent home early with a bad cough.

17/06/05 - Worker given 2 days compassionate leave, his father died. (Mr. Wellington)

28/08/06 - Supervisor, Mr. Wellington, reported worker one hour late for work, said the rainy weather delayed his transportation.

23/05/09 - Worker given two days sick leave to take some tests, approved by Mr. Wellington.

Henrietta Foster

Prepared by _____

HENRIETTA FOSTER, HR MANAGER

September 30, 2009