IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2022/CLE/gen/01468

B E T W E E N

CHANDLER

Claimant

AND

(1) HISCOX DEDICATED CORPORATE MEMBER LIMITED

(2) CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING SEVERALLY ON GENERAL POLICY NO B1230GP04015A19

Defendants

Before:	**The Honorable Madam Justice Carla Card-Stubbs**
Appearances:	Ryan Brown of RBO Advisors for the Claimant
	Kevin Moree and Andrew Smith of McKinney, Bancroft & Hughes for the Defendants
Hearing date:	30 June 2026

Application for Leave to appeal, for an extension of time within which to appeal and for a stay of execution - Sections 10 and 11(f) Court of Appeal Act
Test to be applied for leave to appeal - Reasonable prospect of success - Whether raises issue which should in the public interest be examined or which requires clarification
Whether application for extension of time is premature or is within jurisdiction of the Court
Test for stay of execution – Stay of execution of costs order

Held: *Application dismissed in its entirety.*
The applicable test for leave is whether the proposed appeal has a realistic, not fanciful, prospect of success. Applicant failed to satisfy the Court that any of the grounds of the proposed appeal has a realistic prospect of success. Leave may also be granted where, even if the prospects threshold is not met, the appeal raises an issue which ought to be examined in the public interest or where the law requires clarification. The proposed appeal does not raise issues of public importance nor a point of law for general clarification. Any necessary extension of time for filing the notice of appeal is to be sought from the Court of Appeal. The Applicant failed to adduced evidence that payment or assessment of costs would stifle any appeal or render it nugatory.

RULING

CARD-STUBBS, J

INTRODUCTION

[1.] This is the Court's ruling on the Claimant's Notice of Application filed on 18 June 2026. By that application, the Claimant seeks:

1. Leave to appeal pursuant to section 11(f) of the Court of Appeal Act from this Court's ruling concerning the effect of Clause G of the Homeowners 3 - Special Form;
2. An extension of time within which to file a notice of appeal; and
3. a stay of proceedings pending the determination of the intended appeal.

[2.] For the reasons which follow, the application is refused. To the extent leave is required, the proposed appeal does not have a realistic prospect of success and this is not a case in which leave should be granted on public interest or law-clarification grounds. The application for an extension of time is refused. The application for a stay is also refused.

FACTUAL BACKGROUND

[3.] The Claimant owned a residence on a cay near Great Guana Cay, Abaco, an island in the Commonwealth of The Bahamas. That residence was insured under policy no. B1230GP04015A19 with the Defendants. The residence was destroyed during or after Hurricane Dorian in September 2019. The Claimant's case is that the residence was destroyed by fire or explosion. The Defendants' case is that it was destroyed by windstorm. Windstorm was an exclusion in the policy.

[4.] By writ of Summons filed October 19, 2022, the Claimant sued the Defendants for loss arising from "negligent performance and/or breach of the Defendants' obligations" under the policy.

[5.] The Defendants rely upon Clause G, a condition under the policy requiring any action against the Defendants to be commenced within two years after the date of loss. The policy includes Homeowners 3 - Special Form. Clause G, under the heading "Suit Against Us", provides:

> "No action can be brought against us unless there has been full compliance with all the terms under Section I of this policy and the action is started within two years after the date of loss."

[6.] The ruling which the Claimant seeks to appeal held, in substance, that Clause G was enforceable and that the current proceedings were barred because they were commenced outside the contractual two-year period.

[7.] The Claimant's/Applicant's Notice of Application (for leave to appeal, extension of time and stay of proceedings pending appeal) was filed on 18 June 2026. The application is supported by the affidavit of Jervon Herman Mackey, sworn on 17 June 2026.

[8.] By that application, the Applicant seeks:

(i) leave to appeal pursuant to section 11(f) of the Court of Appeal Act from this Court's ruling concerning the effect of Clause G of the Homeowners 3 - Special Form;

(ii) an extension of time within which to file a notice of appeal; and

(iii) a stay of proceedings pending the determination of the intended appeal.

[9.] The draft grounds of appeal as exhibited to the Notice of Application are quite extensive. The nine umbrella grounds are shown as:

1. That the Learned Judge erred in law by holding that parties to General Policy No. B1230GP04015A19 legally contracted out of section 5 of the Limitation Act 1995 by Clause G of the Homeowners 3 – Special Form.
2. The Learned Judge erred in law by finding that Clause G, which was not individually negotiated or given any prominence, does not derogated from Section 5 of the Limitation Act.
3. The Learned Judge erred in law and fact by holding that the meaning of Clause G of the Homeowners 3 – Special Form is clear thereby holding that Clause G is enforceable and bars the proceedings in the Court below that was commenced by Writ of Summons filed 19 October 2022.
4. Alternatively, having found the interpretation of Clause G is clear, the Learned Judge erred in law and fact by failing to determine whether there had been full compliance with all the terms under Section 1 of this policy to trigger the contractual limitation period set out in Clause G at or before the issuance of the Writ of Summons on 19 October 2022 or whether such language was lacking in precision to trigger the period of limitation.
5. That the Learned Judge misdirected herself on the law by holding that Clause G is not an unfair, unusual and/or onerous term and shifted the burden to the consumer to prove otherwise.
6. The Learned Judge erred in law by finding that adequate notice of Clause G was given to the Intended Appellant by email dated 2 January 2019, when no specific reference to same is set out in the said email. Due to the nature

of Clause G, specific notification was required.

7. The Learned Judge misdirected herself on the law and facts of **Super Chem Products Ltd v American Life and General Insurance Company Ltd and other** [2004] UKPC 2. There, the Court found that it was the insured's brokers who drafted the general terms and conditions that contained the exclusionary term. The opposite is true in this matter; all Forms that make up the insurance policy was drafted exclusively by the Intended Respondents or their agent, THB, and no evidence has been submitted in the Court below that USI Insurance Services Inc ever encountered such a term.
8. That the Learned Judge misdirected herself on the legal effect of Sections 3 and 4 of the UTCCA and common law having found that Clause G was sent to the Intended Appellant on 2 January 2019, which is after the Quotation, which forms the legal basis of the insurance contract, was agreed by the parties.
9. The Learned Judge misdirected herself on the law and facts by holding that Thompson Heath & Bond Limited and USI Inc, foreign insurance brokers and/or agents out of the United States of America, where insurance intermediaries within the meaning of the Insurance Act without any evidence to support same. To the contrary, the Learned Judge rejected evidence from the Insurance Commission of the Bahamas, which issued a Regulatory Due Diligence letter prior to trial on USI Insurance Services Inc and Jim Braniff III to confirm that they are not registrants under the Act. The consequence of the judgement is to allow non-registered foreign insurance intermediaries to negotiate insurance policies affecting risks within The Bahamas outside the parameter of the Insurance Act.

[10.] For purposes of this ruling, the grounds may fairly be grouped as follows:

1. Grounds 1 and 2: The Limitation Act - grounds concerning whether parties may contract out of, or derogate from, the Limitation Act 1995.

2. Grounds 3 and 4: Interpretation of Clause G and Compliance with Section 1 - grounds concerning the interpretation of Clause G, including the phrase "within two years after the date of loss".

3. Grounds 5 and 6: Unfairness, Onerous Terms and Notice - grounds concerning whether the Court was required to determine full compliance with Section I of the policy before applying Clause G.

4. Grounds 7 and 8: **Super Chem Products Ltd v American Life and General Insurance Company Ltd and other** [2004] UKPC 2and the Unfair Terms in Consumer Contract Act - grounds concerning whether Clause G was unfair, unusual or onerous, and whether adequate notice of it was given; the application of **Super Chem Products Ltd v American Life and General Insurance Company Ltd and other** [2004] UKPC 2and the Unfair Terms in Consumer Contract Act.

5. Ground 9: ground concerning the regulatory status or role of insurance intermediaries.

[11.] The Applicant lodged written submissions dated 29 June 2026. The Defendants/Respondents oppose the application by written submissions dated 29 June 2026. The Court heard oral submissions from Counsel on 30 June 2026

SUBMISSIONS OF THE PARTIES

Claimant's/Applicant's Submissions

[12.] The Applicant argues that the intended appeal has a realistic prospect of success and raises issues concerning the Limitation Act 1995, the Unfair Terms in Consumer

Contracts Act ('UTCCA'), and the interpretation and enforceability of Clause G in a homeowners insurance policy. The Applicant also contends that these issues should be examined by the Court of Appeal in the public interest or because the law requires clarification.

[13.] The Applicant contends that Clause G purports to require suit within two years after the date of loss, while sections 4 and 5 of the Limitation Act 1995 provide a mandatory statutory regime and do not permit contractual abridgement of the limitation period. The Applicant argues that the lower court erred in law when it relied on **Smith v Motor Owners Mutual Insurance Association Ltd [1983] BHS J No. 3**, because that decision pre-dated the 1995 Act. The Applicant argues that the wording of Clause G is not sufficiently clear to start time running from the date of loss itself and that the Court failed to examine the meaning of "loss" especially given the use of the word "occurrence" in the policy. The Applicant contends that the Court ignored authorities said to support accrual only once the right to sue exists. By way of evidence, the Applicant submits that underwriters were still investigating the claim as late as 24 August 2021, and that there was no evidence before the Court as to the date when the claim was denied. In addition, the Applicant argues that Clause G was not individually negotiated, may be onerous and unfair under the UTCCA, that no adequate notice of the clause was given when the contract was made, and that the Court failed to take into account evidence that a quotation existed. The Applicant further submits that a stay is justified because without it the appeal would be rendered nugatory and the Defendants filed no affidavit evidence demonstrating prejudice in the event of a stay.

Respondents'/Defendants' Submissions

[14.] The Defendants oppose the Applicant's application for leave to appeal, an extension of time to file a notice of appeal, and a stay of execution. The Defendants submit that none of the proposed grounds has a realistic prospect of success and refutes that the proposed appeal raises any issue warranting review in the public interest.

[15.] The Defendants contend that an extension of time must be sought in the Court of Appeal after leave is obtained and that any extension application is premature. The Defendants submit that there is no proper basis for a stay. They argue that the Applicant has offered no evidence that the appeal would be stifled, or that costs would be irrecoverable, or of any other special circumstance that would justify a stay. They submit that a stay is exceptional and that successful parties should not ordinarily be deprived of the fruits of judgment.

[16.] The Defendants' submission is that the order is an interlocutory order and that leave is required.

ROUTE TO APPEAL

[17.] Section 10 of the Court of Appeal Act provides for the appellate civil jurisdiction of the Court of Appeal. That Court has jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in civil proceedings. Section 10 provides:

> Subject to the provisions of this Part of this Act and to the rules of court, the court shall have jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in civil proceedings, and for all purposes of and incidental to the hearing and determination of any such appeal and the amendment, execution and enforcement of any judgment or order made thereon, the court shall, subject as aforesaid, have all the powers, authority and jurisdiction of the Supreme Court.

[18.] Section 11 of the Court of Appeal Act deals with restrictions on civil appeal. It also sets out the circumstances in which leave to appeal must be obtained. For these purposes, Section 11(f) provides:

> 11.No appeal shall lie —
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> (f) without the leave of the Supreme Court or of the court from any interlocutory order or interlocutory judgment made or given by a Justice of the Supreme Court except —
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> (i) where the liberty of the subject or the custody of infants is in question;
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> (ii) where an injunction or the appointment of a receiver is granted or refused;

> (iii) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability;
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> (iv) in the case of an order in a special case stated under the Arbitration Act;
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> (v) in the case of a decision determining the claim of any creditor or the liability of any contributory or the liability of any director or other officer under the Companies Act in respect of misfeasance or otherwise; or
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> (vi) in such other cases to be prescribed as are in the opinion of the authority having power to make rules of court, of the nature of final decisions.

[19.] The consequence of the statutory provisions is that an appeal lies as of right against a final order. No appeal lies from interlocutory orders unless leave is first obtained from the Supreme Court, save those excepted by Section 11(f) of the Court of Appeal Act.

LEAVE TO APPEAL

APPLICATION FOR LEAVE TO APPEAL - TEST TO BE APPLIED ON LEAVE TO APPEAL

[20.] **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another [2022] 2 BHS J. No. 160**, sets out the relevant test for a leave application in this jurisdiction. In dismissing an application for leave to appeal, the Honourable Mr. Justice Isaacs, JA, cited with approval the case of **Keod Smith v Coalition to Protect Clifton Bay SCCivApp. No. 20 of 2017**, which had adopted guidance from *Smith v Cosworth Casting Processes Limited* (1997) 4 All ER 840. At paragraph 55, Isaacs, JA noted:

> "55. In *Keod Smith v Coalition to Protect Clifton Bay* SCCivApp. No. 20 of 2017, Isaacs, JA, adopting the guidance from Lord Wolff in the case of *Smith v Cosworth Casting Processes Limited* (1997) 4 All ER 840, noted at paragraphs 23 through 27 of his judgment:

"23. The test on a leave application is whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying: per Lord Woolf in *Smith v Cosworth Casting Process Ltd* [1997] 4 All ER 840.

24. In a Practice Direction issued by the Court of Appeal in the United Kingdom in 1999 Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments) 1999 WLR 2, the following appears:

> ‘The general test for leave
>
> 10. There is no limit on the number of appeals the Court of appeal is prepared to hear. It is therefore not relevant to consider whether the Court of Appeal might prefer to select for itself which appeals it would like to hear. The general rule applied by Court of Appeal, and this is the relevant basis for first instance courts deciding whether to grant leave, is that leave will be given unless an appeal would have no realistic prospect of success. A fanciful prospect is insufficient. Leave may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal. Examples are where a case raises questions of great public interest or questions of general policy, or where authority binding on the Court of Appeal may call for consideration.
> 11. The approach will differ depending on the category and subject matter of the decision and the reason for seeking leave to appeal, as will be indicated below. However, if the issue to be raised on the appeal is of general importance that will be a factor in favour of granting leave. On the other hand, if the issues are not generally important and the costs of an appeal will far exceed what is at stake, that will be a factor which weighs against the grant of leave. (Emphasis added)

25 Also in those Practice Directions, the Court of Appeal dealt specifically with appeals from interlocutory orders:

> ‘Appeals from interlocutory orders
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> 17. An interlocutory order is an order which does not entirely determine the proceedings: see R.S.C., Ord. 59, r. 1A. Where the application is for leave to appeal from an interlocutory order, additional considerations arise: (a) the point may not be of sufficient significance to justify the cost of an appeal; (b) the procedural consequences of an appeal (e.g. loss of the trial date) may outweigh the

> significance of the interlocutory issue; (c) it may be more convenient to determine the point at or after trial. In all such cases leave to appeal should be refused.'

> 26 The Notes to Order 59/14/7 of the White Book 1997 which provides guidance on civil procedure in England, outlines the test for the grant of leave to appeal to the Court of Appeal there -
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> > 'The Court of Appeal will grant leave if they see a prima facie case that an error has been made (see (1907) 123 L.T.J. 202) or if the question is one of general principle, decided for the first time (Ex p Gilchrist Re Armstrong(1886)17QBD 521 per Lord Esher MR at 528) or a question of importance upon which further argument and a decision of the Court of Appeal would be to the public advantage (see per Bankes LJ in *Buckle v Holmes*[1926] 2 KB 125 at p. 127). Generally, the test which the Court applies is whether the proposed appeal has a reasonable prospect of success.'
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> 27 The approach of the English courts has generally been followed by the courts of The Bahamas when considering applications for leave to appeal and for leave to appeal out of time. I have been unable to find a local authority generally discussing the issue of leave to appeal to this Court but I am confident that the factors which call for consideration are much the same as those considered in leave to appeal out of time applications, of which there are many determined by the Court. …

[21.] As I understand it, on an application for leave to appeal, this Court must determine whether the proposed appeal has a realistic prospect of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying.

[22.] The Court of Appeal in **Maria Iglesias Rouco and another v Juan Sanchez Busnadiego and another** (cited above) also provided guidance on the test for challenging the exercise of a court's discretion. At paragraph 56 Isaacs, JA opined:

> 56. In order to succeed in challenging the exercise of a judicial discretion an applicant must persuade the Court that the Judge

> exercised the discretion under a mistake of law; or in disregard of principle; or under a misapprehension as to the facts; or that she took into account irrelevant matters; or that she failed to exercise her discretion; or finally, that the conclusion which she reached in the exercise of her discretion was outside the generous ambit within which a reasonable disagreement is possible. See G v G [1985] 2 All ER 225 (HL); *Hadmor Productions Ltd v Hamilton* [1983] A.C. 191 (HL).

[23.] In **Enos R Miller v McKinney, Bancroft & Hughes 2019/CLE/gen/00593 BS 2021 SC 13**, the learned judge, Honourable Madam Justice Indra Charles as she then was, considered the general principles of law governing whether leave to appeal should be granted. She concluded at paragraph 7:

> 7.Simply stated, the principles which can be distilled from the above cases are:
> 1. It is part of the function of the Court in considering applications for leave to appeal to weed out hopeless appeals;
> 2. The Court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal;
> 3. The Court may grant the application even if not so satisfied for other reasons. Those reasons include where the issue is one which it would be in the public interest for the Court of Appeal to examine, or where the case raises an issue where the law requires clarification; and
> 4. If there is any doubt whether leave should be granted, the safe course is to refuse leave, as it is always open to the Court of Appeal to grant leave.

[24.] That position was upheld at the Court of Appeal (**Enos R Miller v McKinney, Bancroft & Hughes** SCCivApp. No. 27 of 202)1 where the Appellate Court confirmed that the salient issue for determination is whether the intended appellant has any realistic prospect of succeeding on the proposed appeal. At paragraphs 14 to 16, the Honourable Mr. Justice Evans, JA, as he then was, wrote:

> **THE LEAVE TO APPEAL APPLICATION**
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> 14.In **Smith v Cosworth Casting Processes Limited** [1997] 4 All ER 840 Lord Woolf, opined as follows:
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> > "(1) The court will only refuse leave if satisfied that the applicant has no realistic prospect of succeeding on the appeal. This test is not meant to be any different from that which is sometimes used,

which is that the applicant has no arguable case. Why however this court has decided to adopt the former phrase is because the use of the word 'realistic' makes it clear that a fanciful prospect or an unrealistic argument is not sufficient.
(2) The court can grant the application even if it is not so satisfied. There can be many reasons for granting leave even if the court is not satisfied that the appeal has any prospect of success. For example, the issue may be one which the court considers should in the public interest be examined by this court or, to be more specific, this court may take the view that the case raises an issue where the law requires "clarifying."

15.**Keod Smith v Coalition to Protect Clifton Bay** SCCivApp. No. 20 of 2017 Isaacs, JA adopting the guidance from Lord Woolf noted, at paragraph 23 of the Judgment:

"23. The test on a leave application is <u>whether the proposed appeal has realistic prospects of success or whether it raises an issue that should in the public interest be examined by the court or whether the law requires clarifying</u>: per Lord Woolf in Smith v Cosworth Casting Process Ltd [1997] 4 All ER 840." [Emphasis added]

16.Notwithstanding the expansive nature of the intended appellant's submissions ***the salient issue for determination in this matter is whether the intended appellant has any realistic prospect of succeeding on his proposed appeal***….

[Emphasis added]

[25.] In **Bahamas Resolve Limited v DLC Investments Limited and another [2023] 1 BHS J No. 183,** Justice Klein too considered the test to be applied by the court in exercising its discretion whether to grant leave to appeal. He posited at paragraph 19:

19. The general test applied by first instance courts in deciding whether to grant leave is that leave will only be given where there are grounds with a realistic (not fanciful) prospect of success (*Swain v Hillman* [2001] 1 All ER 91, at pg. 92-j). Failing this, the matter must raise issues which ought to be examined in the public interest, or where the law is unclear: *Practice Direction (Court of Appeal: Leave to Appeal and Skeleton Arguments (I* 999) WLR 2; *Smith v. Cosworth Casting Processes Ltd.* (1997) 4 All ER 840.

[26.] Lastly, in **Darlene Allen-Haye v Keenan Baldwin and another [2021] 2 BHS J No 43,** the Court of Appeal considered the prospects of success of an appeal from an interlocutory decision dismissing an application for relief of sanctions. In doing so, the Honourable Madam Justice Crane-Scott, JA opined at paragraph 47:

> "47 While we appreciate that we are not hearing the appeal and are merely assessing the prospects of success of the intended appeal, we have nonetheless adverted to the following principle stated by Lord Justice Lawrence Collins in *Walbrook Trustee (Jersey) Ltd & ors v. Fattal & ors* [2008] EWCA Civ 427. Writing for the England and Wales Court of Appeal, Lord Justice Collins explained:
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>> "33 These were case management decisions. I do not need to cite authority for the obvious proposition that **an appellate court should not interfere with case management decisions by a judge who has applied the correct principles and who has taken into account matters which should be taken into account and left out of account matters which are irrelevant, unless the court is satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge.**" [Emphasis ours]

[27.] The applicable test for leave is whether the proposed appeal has a realistic, not fanciful, prospect of success. Leave may also be granted where, even if the prospects threshold is not met, the appeal raises an issue which ought to be examined in the public interest or where the law requires clarification. It is clear therefore that it is not enough for the Applicant to show that they would have preferred a different direction or that a different order could have been made. In order to succeed on an appeal they must show that the discretion was wrongly exercised or that the decision was plainly wrong. It is part of the Court's function on an application for leave to weed out appeals which are not realistically arguable.

LAW AND ANALYSIS

Route to Appeal - Final or Interlocutory Order

[28.] Section 11(f) of the Court of Appeal Act requires leave for an appeal from an interlocutory order or judgment of a Justice of the Supreme Court, subject to specified exceptions. A party does not require leave to appeal a final order.

[29.] The Applicant submitted that the impugned ruling is final, relying on what he submits is the approach in **Kozy Harbour Limited v Minnis 2019/CLE/gen/00555** and **White v Brunton [1984] 2 All ER 606**. The Applicant submits that in **Kozy Harbour Limited v Minnis 2019/CLE/gen/00555**, the Court granted leave to appeal to the Court of Appeal from an order of the Judge *ex abundanti cautela* and a stay of execution pending determination of the appeal "*on the ground*" that the order was a final order as opposed to an interlocutory order and no leave was required.

[30.] The Applicant's primary position was that the ruling is a final order. It was contended that the preliminary issue was in substance the first part of a final hearing and that the ruling disposes of the action.

[31.] The Defendants submitted that if the Applicant is correct that the order is final, the proper course is to pursue any available appeal in the Court of Appeal and that the leave application, in such a case, would be misconceived.

[32.] I do not accept that leave can, or ought to, be granted merely **ex abundanti cautela** in a case where it is uncertain as to whether the impugned decision is a final order or an interlocutory one, as suggested by the Applicant. A leave application must be determined by reference to the test for leave. I do not need to determine the final or interlocutory character of the order for the purposes of this application. If the order is final, leave is not required and the application for leave is unnecessary. If the order is interlocutory, leave is required and the Court must apply the test for leave. The Applicant is before me. I therefore will consider the application on the alternative basis that leave is required.

Grounds 1 and 2: The Limitation Act

[33.] The first two proposed grounds contend that the Court erred in holding that parties may contract out of, or derogate from, section 5 of the Limitation Act 1995 by Clause G. The Applicant submits that sections 4 and 5 of the Limitation Act are mandatory, that section 4 identifies the only circumstances in which limitation periods may be extended or postponed, and that Clause G impermissibly abridges the statutory six-year period for contract claims.

[34.] I am not satisfied that this ground has a realistic prospect of success. Clause G is a contractual suit limitation provision. It is a term of the insurance contract which defines the circumstances in which proceedings may be brought against the insurer. The Applicant has not identified language in the Limitation Act which expressly invalidates a shorter contractual suit period agreed by the parties. The Court was entitled to approach Clause G as a question of contract, construction, incorporation and enforceability.

[35.] I find that the question as to whether a Court has the jurisdiction to extend the limitation period for a party (based on statutory construction: **Neilly v Federal Management Systems (Bahamas) Ltd** [2011] 2 BHS J. No. 21) is a very different consideration and context from the issue as to whether parties may, by agreement, abridge the statutory time period. There is no language in the statute that prohibits such an agreement.

[36.] The Applicant also relies on the fact that **Smith v Motor Owners Mutual Insurance Association Ltd [1983] BHS J No. 3** pre-dated the Limitation Act 1995. That point does not, without more, demonstrate that the ruling is realistically appealable. The fact remains that the Applicant has not shown a statutory provision in the legislation on which he relies, which precludes parties to an insurance contract from agreeing a contractual period within which suit must be commenced.

[37.] I note that to the extent that the Applicant now advances an elaborate argument based on sections 4 and 5, I am not satisfied that the point was developed at the hearing in the same manner now being advanced for consideration and determination.

[38.] I find that the proposed ground does not disclose a realistic prospect of reversing the ruling.

<u>Grounds 3 and 4: Interpretation of Clause G and Compliance with Section I</u>

[39.] The third proposed ground contends that the Court erred in holding that Clause G is clear and enforceable. The Applicant submits that the phrase "after the date of loss" is ambiguous and should not be read as running from the date of the physical loss event. The Applicant relies largely on foreign authorities, including United States authorities, in which differently situated courts considered similar wording.

[40.] I am not satisfied that this ground has a realistic prospect of success. The clause is written in direct terms. It provides that no action can be brought unless the action is started within two years after the date of loss. In the context of this property policy and the facts of this case, the natural meaning of the words used is that time runs from the date of the insured loss event. That construction, employing the natural meaning, is also in keeping with the nature of an indemnity contract which is the nature of the insurance policy under consideration. Authorities on that point are captured in the Court's ruling, which ruling is the subject of the proposed appeal.

[41.] The Applicant contends that the foreign authorities submitted have grounded the jurisprudence in this area. Firstly, as shown in the ruling, this is not so given the learning on insurance policies. Secondly, the foreign authorities arise from their own statutory and doctrinal context. Thirdly, the foreign authorities relied upon by the Applicant are not binding on any court in this jurisdiction. They do not make it realistically arguable that this Court erred in applying ordinary principles of contractual interpretation to this policy.

[42.] The Applicant also relies on the policy definition of **"**occurrence" and suggests that because the policy did not use that defined term in Clause G, "loss" must be ambiguous. I am not persuaded that this provides a realistic ground of appeal. It is my view that the absence of the word "occurrence" does not render the phrase "date of loss" unclear in the context of a property damage claim.

[43.] In relation to this ground, I also note that, to the extent that the Applicant now advances an elaborate argument based on "occurrence" and "loss", despite a pleading based on "loss", I am not satisfied that the point was developed at the trial of the preliminary issues in the same manner now advanced for consideration and determination.

[44.] The fourth proposed ground is that, having found Clause G to contain cumulative preconditions, the Court failed to determine whether there had been full compliance with all terms under Section I of the policy, and when such compliance occurred.

[45.] This ground is has no realistic prospect of success and is not realistically arguable. Clause G contains two requirements: full compliance with Section I terms, and commencement of the action within two years after the date of loss. Even if the Court did not separately determine the first requirement, the Applicant still had to satisfy the second in order to bring suit. The Applicant's argument that both sides would have to be shown to be compliant with Section I is unpersuasive. That argument is not supported by the text of the Clause and such a construction could lead to an absurd result. I accept the submission of the Defendants that such a construction could open the door to the Defendants deliberately failing to comply with Section I so that they could not be sued. The Applicant's argument fails to take into account the rubric of the section, that is, "Suit against Us" meaning, in this case, suit against the Defendants. Additionally, and importantly, if the action was commenced outside the two-year contractual period, a determination of Section I compliance would not alter the result.

[46.] The Applicant seeks to treat Section I compliance as the trigger for the two-year period. That is not what Clause G says. The clause does not state that time runs from the time that the claim is rejected, completion of investigation, or full compliance with Section I. It states that the action must be started *within two years after the date of loss*.

[47.] Further, the drafted ground which raises an issue concerning Section I compliance which was not before this Court as a pleaded or live issue requiring this Court's determination. Such a determination would have to be made on factual evidence. A proposed appeal should not be used to introduce or recast factual issues that were not properly before the Court.

[48.] This ground is without merit and has no realistic prospect of success.

Grounds 5 and 6: Unfairness, Onerous Terms and Notice

[49.] The fifth and sixth proposed grounds challenge the Court's conclusions that Clause G was not unfair, unusual or onerous and that adequate notice of it was given. The Applicant submits that the term was not individually negotiated, was not specifically signposted, and was sent after the alleged quotation which the Applicant says formed the basis of the insurance contract.

[49.] These grounds do not have a realistic prospect of success. They challenge evaluative findings made on the evidence and the policy documentation. Clause G appeared within the policy wording under the heading "Suit Against Us." The policy documentation identified the relevant Homeowners 3 - Special Form. The policy was arranged through intermediaries.

[50.] A central difficulty in the case, and for the Applicant, is the alleged quotation. The Applicant submits that the quotation formed the contract and that Clause G came later. However, the quotation itself was not before the Court. Terms of the quotation were not before the Court. A purported date of conclusion of the contract based on the issue of a quotation and its acceptance was not before the Court. Without the quotation, the Court could not determine its date, contents, legal effect, or whether it contained or excluded Clause G or comparable terms.

[51.] The Applicant submits that the Defendant failed to put the quotation before the Court and that the Court ought to have, somehow, ensured that it was put in evidence. The absence of that evidence is not an error by the Court. If the quotation was central to the Applicant's case, it was for the Applicant to ensure that the document was before the

Court or to pursue appropriate procedural relief. It is not a realistic ground of appeal that the Court failed to make findings on a document not in evidence.

[52.] Nor am I satisfied that the Applicant's argument concerning industry practice in The Bahamas gives rise to a realistic prospect of a successful appeal. The question was whether Clause G, in this policy and on the admitted evidence, was incorporated and enforceable. The proposed ground does not show that the Court's conclusion was outside the permissible range of first-instance evaluation of the evidence before it.

<u>Grounds 7 and 8: Super Chem and the Unfair Terms in Consumer Contract Act</u>

[53.] The Applicant submits that the Court misapplied **Super Chem Products Ltd v American Life and General Insurance Company Ltd. [2004] UKPC 2**. The Applicant says that in **Super Chem Products Ltd v American Life and General Insurance Company Ltd.** the insured's broker prepared the standard terms, whereas in this case the terms were prepared by or on behalf of the insurers.

[54.] I am not satisfied that this ground has a realistic prospect of success. The distinction drawn by the Applicant does not demonstrate legal error. The Applicant's argument rests firmly on counsel's proposition of the facts in that case although counsel admitted that not many of the facts of the contract formation were reported. His advanced interpretation of the facts does not explain why the first instance judge would have queried whether the conditions under review had "come to the attention of the brokers." Nor does the Applicant's advanced interpretation of the facts in that case explain the Privy Council's "objective test" determination and statements including the sentence: "The decisive fact is that the brokers, *whatever they may have known*, committed the insured to a contract on all the standard form terms of the consequential loss policy." [Emphasis supplied]. The relevance of **Super Chem Products Ltd v American Life and General Insurance Company Ltd.** was the role of intermediaries and the circumstances in which an insured may be bound by policy terms arranged through its broker or agent. The Applicant has not shown that the ruling depended on a misstatement of the governing principle.

[55.] The related ground under the Unfair Terms in Consumer Contract Act also lacks a realistic prospect of success. The Court considered the question of fairness, notice and incorporation. The Applicant has not shown that the Court applied the wrong statutory test in a way that would realistically change the result.

[56.] To the extent that this ground again depends on the alleged quotation and the timing of the policy documents, it suffers from the same evidential difficulty already identified. The quotation was not before the Court.

Ground 9: Insurance Intermediaries and Regulatory Status

[57.] The ninth proposed ground concerns the alleged status of Thompson Heath & Bond Limited and USI Inc as insurance intermediaries and the evidence from the Insurance Commission of The Bahamas. The Applicant relies on correspondence indicating that USI Insurance Services Inc and Jim Braniff III were not known to the Commission, while Lloyd's of London was registered as an Association of Underwriters. I note for the record, that the correspondence mentioned was not allowed into evidence by the Court.

[58.] The Applicant's submission, in substance, is that a consequence from non-registration would be that the underwriters should have been subject to heightened due diligence or notice obligations to the insured. That submission is not premised on statute or an identified principle of common law that the Court should have taken into account. That submission does not identify a statutory consequence sufficient to undermine the ruling. Nor does that submission appear premised on any pleading that would have lead to a live issue at the trial of the preliminary issues.

[59.] This proposed ground is collateral to the dispositive issue. The ruling turned on the effect of Clause G. The Applicant has not shown how the alleged regulatory status of intermediaries would render Clause G void, alter the interpretation of the contractual two-year period, or make the action timely.

[60.] This ground has no realistic prospect of success.

<u>Public Interest and Clarification of Law</u>

[61.] The Applicant submits that leave should be granted because the appeal raises matters of public importance concerning the Limitation Act, the Unfair Terms in Consumer Contract Act, and insurance contracts in The Bahamas.

[62.] I accept that issues concerning insurance policies and consumer protection may, in an appropriate case, raise matters of public importance. This is not such a case. The proposed appeal is not one that raises discrete issues suitable for general clarification. The issues are closely tied to the particular wording, policy documentation, intermediaries and evidential record in this case. Further, several of the proposed grounds depend on evidence not before the Court, particularly the alleged quotation. It also seems to me that several points are being advanced in a manner not so articulated and argued in the course of the trial of the preliminary issues.

[63.] The public-interest test is not satisfied merely because a case involves insurance or consumer legislation. There must be a concrete question of law fit for determination by an appellate court based on the settled record of proceedings from the court below. The Applicant has not demonstrated the existence of such a question and I am not satisfied that such a question arises here.

[64.] Nor has the Applicant demonstrated that the law is unclear such as to require general clarification.

[65.] This application raises no issues of general legal importance.

Extension of Time

[66.] The Applicant also seeks an extension of time to file a notice of appeal.

[67.] If the order is final, leave is not required and the Applicant must pursue any appeal in accordance with the rules applicable in the Court of Appeal. If the order is interlocutory, the proper sequence is that leave is first sought from this Court. If leave is granted, any necessary extension of time for filing the notice of appeal is to be sought from the Court of Appeal. If leave is refused, the Applicant may seek leave and any necessary extension from the Court of Appeal.

[68.] That procedure is consistent with that set out by Lord Sumption at paragraph 8 of his judgment in **Junkanoo Estate Ltd and Others v UBS Bahamas Ltd.** [2017] UKPC 8, a case relied upon by the Defendants.

[69.] The application for an extension of time is premature and it is not properly made to this Court in the present circumstances. That application is refused.

Stay Pending Appeal

[70.] The Applicant seeks a stay pending appeal. The stated basis is that, absent a stay, the action would be dismissed before determination of the appeal and the Applicant would suffer prejudice.

[71.] The Court's jurisdiction in law and equity is specifically preserved by **Section 16 of the Supreme Court Act** as is its power to stay any proceedings. Section 16(3) provides:

> 16. (3) Nothing in this Act shall affect the power of the Court to stay any proceedings before it, where it thinks fit to do so, either of its own motion or on the application of any person whether or not a party to the proceedings.

[72.] The Respondent relied on the case of **Bahamas Resolve Limited v DLC Investments Limited and another [2023] 1 BHS J No. 183** as establishing the relevant principles for the grant of a stay. That case concerned an application for leave to appeal an Order granting vacant possession of commercial property. In its ruling, the court analyzed whether the order for vacant possession was final (no leave required to appeal) or interlocutory (leave required). In determining the application, the court applied the test of whether there was a realistic prospect of success on appeal.

[73.] The court also had to consider whether to grant a stay of execution pending appeal. In considering whether a stay of execution can be granted, the Honourable Justice Klein determined at paragraphs 85 to 86:

> <u>**Application for a stay of execution**</u>
> ***Legislative position and case law***
> 85
> The starting position is that while the court has a very wide discretion to grant a stay (s. 16(3) of the Supreme Court Act), an appeal does not automatically entitle an appellant to a stay of a judgment or order under appeal. Rule 12 of the Court of Appeal Rules provides:
>
> > 12. (1) Except so far as the court below or the court may otherwise direct —
> >
> > > (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
> > > (b) no intermediate act or proceeding shall be invalidated by an appeal.
> >
> > (2) On an appeal from the Supreme Court, interest at six per cent per annum for such time as execution has been delayed by the appeal shall be allowed unless the court otherwise orders.
>
> 86
> The principles to be applied when the court is faced with an application for a stay of a Court order pending the determination of any appeal were very neatly pulled together by Mostyn J in *NB v Haringey LBC* [2011] EWHC 3544 (Fam Div), and the authorities cited therein has been applied many times in the courts of The Bahamas (see, for example, the Court of Appeal decision in *The Bahamas Real Association v. George Smith (SCCivApp No. 169 of 2015)*. There, His Lordship said as follows (emphasis supplied):
>
> > "7. The leading authorities are *Hammond Suddard Solicitors v Agrichem International Holdings Ltd* [2001] EWCA Civ 2065, *Leicester Circuits Ltd v Coates Bros plc* [2002] EWCA Civ 474, *Contract Facilities Ltd v The Estates of Rees (deed)* [2003] EWCA Civ 465, the old Court of Appeal case of *Wilson v Church (No. 2)* [1879] 12 Ch Div, 454, an

unreported decision of the Court of Appeal, *Winchester Cigarette Machinery Ltd v Payne (No. 2)*, 15th December 1993, and a helpful decision which seeks to draw all the authorities together given by the Chief Judge of the High Court of Hong Kong, Ma J, *Wenden Engineering Services Co Ltd v Lee Shing UEY Construction Co Ltd*, HCCT No. 90 of 1999. In that latter case the Chief Judge stated:

> "7. The existence of merely an arguable appeal cannot by itself amount to a sufficient reason to justify a stay. It can be put this way, the existence of an arguable appeal, that is one with reasonable prospects of success, is the minimum requirement before a court would even consider granting a stay. In other words, however exceptional the circumstances may be otherwise justifying a stay of execution, if the court is not convinced that there exists arguable grounds of appeal no stay will be granted. Conversely, however, the existence of a strong appeal or a strong likelihood that the appeal will succeed, will usually by itself enable a stay to be granted because this would constitute a good reason for a stay. (See Winchester Cigarette Machinery Ltd)
>
> 8. In most cases the court will not be dealing with the extreme situations I have referred to. Often, it will be faced with simply the existence of an arguable appeal. Here, it becomes necessary for the appellant to provide additional reasons as to why a stay is justified. The demonstration of an appeal being rendered nugatory is one example albeit a common one. Here, where it is demonstrated that an appeal would be rendered nugatory if a stay was not granted the court may require no more than the existence of an arguable appeal. Correspondingly, where it cannot be shown that an appeal would be rendered nugatory if a stay were not granted, the court will require in the absence of any other factors the applicant to demonstrate strong grounds of appeal or a strong likelihood of success.

8. **From these authorities I derive the following five principles in relation to the application before me. First, the court must take into account all the circumstances of the case. Second, a stay is the exception rather than the general rule. Third, the party seeking a stay should provide cogent evidence that the appeal will be stifled or rendered nugatory unless a stay is granted. Fourth, in exercising its discretion the court applies what is in effect a balance of harm test in which the likely prejudice to the successful party must be carefully considered. Fifth, the court should take into account the prospects of the appeal succeeding. Only where strong grounds of appeal or a strong likelihood of success is shown should a stay be considered."**

[Emphasis supplied]

[74.] The principles of law operative on the court's exercise of its discretion as to whether to grant a stay pending appeal are well-established. I adopt the principles as summarized by Justice Klein in **Bahamas Resolve Limited v DLC Investments Limited and another**. I also find it useful and efficient to repeat this Court's summary of the principles as set out in **Jason Watson, Harold L. Watson and Gerald Mortimer v Miller Enterprises Ltd and Earl Miller** 2025/CLE/gen/00380 (Stay of execution) at paragraph 27:

27. The principles as set out in the authorities relied on by the parties can be summarized as follows:

1. The court has a wide discretion to grant or to refuse a stay. The question for the court is whether there is a risk of injustice to either or to both parties if it grants or refuses a stay.
2. The court must balance the risks of injustice to both parties. Key considerations include:
    i. Whether refusing a stay would render the appeal nugatory or cause it to be stifled.
    ii. Whether granting a stay would prevent the respondent from enforcing the judgment if the appeal fails.
    iii. Whether refusing a stay would make it difficult for the appellant to recover any monies or property if the appeal succeeds.
3. A stay is generally granted only if there are special circumstances, supported by evidence, that justify delaying the enforcement of a judgment. A successful party should not be deprived of the benefits of the judgment it holds unless there is good reason to grant a stay. An example of a good reason is where the appellant can provide evidence to show that without a stay, they would face significant harm, such as

financial ruin. In addition, the appellant must demonstrate that the appeal has some prospect of success.

[75.] Counsel for the Applicant submits that if the proceedings are not stayed, that the proceedings would be at an end and that there would be no appeal to be entertained by the Appellate Court. This argument goes against the very nature and purpose of an appeal. This argument also fails to take into account the nature of the appellate jurisdiction of the Court of Appeal as enshrined in section 10 of the Court of Appeal Act. If the Applicant pursues an appeal and succeeds, the Court of Appeal would be able to set aside the relevant order and restore or remit the action as appropriate.

[76.] The immediate remaining consequence of the ruling appears to be costs, to be assessed if not agreed. The Applicant has not adduced evidence that payment or assessment of costs would stifle any appeal or render it nugatory. The Defendants have indicated their willingness, if leave is granted, to "provide an undertaking to the Court, that any sums recovered in respect of costs will be preserved and not dissipated pending the final determination of the appeal." To me, this is adequate and appropriate protection to be given to an appellant in relation to any sums recovered for costs. Support for this approach is to be found in **Wilson v Church (No. 2) (1879)** 12 Ch. D 454. In those circumstances, there is no good reason to deprive the Defendants of the ruling in relation to costs. They are entitled to proceed to an assessment of costs in the absence of an agreement between the parties.

[77.] The application for a stay is refused.

CONCLUSION

[78.] For the reasons given, I am not satisfied that the intended appeal has a realistic prospect of success. I am not satisfied that this is a case in which leave should be granted because the proposed appeal raises a matter requiring examination in the public interest or clarification of the law.

[79.] The Claimant's/Applicant's application for leave to appeal is refused. The Claimant's/Applicant's application for an extension of time to file a notice of appeal is refused. The Claimant's/Applicant's application for a stay pending appeal is refused.

[80.] The Claimant/Applicant shall pay the Defendants'/Respondents' costs of this application, to be assessed if not agreed.

ORDER

[81.] For the foregoing reasons, the order of this Court is as follows.

IT IS HEREBY ORDERED THAT:

1. The Applicant's application by way of Notice of Application filed 18th of June 2026 is dismissed in its entirety.

2. The Respondents' costs of the application are to be paid by the Applicants, to be assessed by a Registrar, if not agreed.

Dated this 7th day of July 2026

Carla D. Card-Stubbs, J