

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law and Equity Side**  
**2007/CLE/gen/FP/00128**

**BETWEEN**

**JAMAL CLEARE**

**Claimant**

**AND**

**THE ATTORNEY GENERAL**

**1<sup>st</sup> Defendant**

**AND**

**THE COMMISSIONER OF POLICE**

**2<sup>nd</sup> Defendant**

**AND**

**SERGEANT 397 WILLIAM RAHMING**

**3<sup>rd</sup> Defendant**

**AND**

**SERGEANT 1539 KIRK BOWE**

**4<sup>th</sup> Defendant**

**BEFORE:** Assistant Registrar Rosanne Sweeting  
**APPEARANCES:** Ms. Ntshonda Tynes and Mrs. Tanisha Tynes-Cambridge for the Claimant  
Mr. Kirkland Mackey for the Defendants (No appearance by Counsel)  
**HEARING DATES:** June 25<sup>th</sup>, 2026

**RULING**

**Claimant's Applicant for Interim Payment**

## **Introduction**

1. The parties are before the Court on an application filed on behalf of the Claimant for an Order for interim payment pursuant to Parts 17.1(1)(m), 17.14 and 17.15 of the Supreme Court Civil Procedure Rules, 2022 ("CPR") and/or under the inherent jurisdiction of the Court.
2. The brief facts are that on January 17<sup>th</sup>, 2007 the Claimant was wrongfully arrested, continuously detained and assaulted while in police custody. As a result of the Defendants actions the Claimant sustained personal injuries. These injuries as pleaded in the Amended Statement of Claim filed October 10<sup>th</sup>, 2010 are (i) left side concussion; (ii) hypoxic injury; (iii) hearing loss in left ear; (iv) neck injury; (v) brain injury; (vi) non-displaced fracture of the base of dens with surrounding inflammation; (vii) left posterior temporal contusion with left petrosal fracture and hypoxic insult with significant speech and memory deficits; (viii) left sensori-neural hearing defect and (ix) un-displaced odontoid fracture.
3. This matter has been an ongoing battle for the Claimant to recover compensation as a result of the injuries he suffered while in police custody. The substantive trial was heard by then Justice Hartman Longley where it was held in his Decision dated June 23<sup>rd</sup>, 2011 that the Third and Fourth Defendant did not assault or batter the Claimant however the sum of \$750.00 in damages along with \$6,000.00 in legal costs were awarded to the Claimant on his claim for the wrongful detention. The Decision by the trial Judge was then appealed to the Court of Appeal where the Court of Appeal by its Judgment dated March 14<sup>th</sup>, 2013 dismissed the Claimant's appeal against the Trial Judge's decision on his claim for assault and battery and breaches of the Claimant's constitutional rights. However, the Court of Appeal found that the Trial Judge's award of the sum of \$750.00 in damages for the unlawful imprisonment was inappropriate and awarded the Claimant the sum of \$25,000.00 as compensatory and vindicatory damages. Following the Judgment of the

Court of Appeal in 2013 the matter was subsequently appealed to the Judicial Committee of the Privy Council. The Board in its Judgment dated December 4<sup>th</sup>, 2017 allowed the Claimant's appeal and directed that the claims relative to the assault be reheard by another Judge of the Supreme Court. Further to the Board's directive the parties on March 11<sup>th</sup>, 2021 agreed by consent that the issue of liability for assault and battery by the Third and Fourth Defendant respectively on January 17<sup>th</sup>, 2007 be determined in the Plaintiff's favour with damages to be assessed. The Judgment by Consent Order ("Consent Order") was filed on March 4, 2022. To date this Consent Order has not been set aside nor has it been appealed by any of the parties. On a review of the file before the Court it appears that the parties, in particular Counsel for the Claimant has made numerous attempts to have the Assessment of Damages hearing set down before the Court to no avail. In the circumstances, the Claimant is now before the Court on his application for interim payment as a result of the injuries sustained while in police custody almost twenty years ago.

4. The Claimant relies on the Affidavit evidence of Trevonia Blatch filed on June 10, 2026. The Claimant also relies on the Skeleton Arguments filed on June 10<sup>th</sup>, 2026 and their Arguments in Response filed June 23<sup>rd</sup>, 2026.
5. The Defendants did not file any Affidavit evidence in response however they rely on their Opposing Arguments filed June 18<sup>th</sup>, 2026.

### **Affidavit Evidence**

6. The Affidavit of Trevonia Blatch sets out the prolonged history of the instant matter at paragraphs two to five and has exhibited the Amended Statement of Claim filed October 8<sup>th</sup>, 2010, the Consent Order and the medical reports of the Claimant on which the Claimant relies on in support of the claim. Additionally, she states that she is told by Attorney Ntshonda Tynes that a conservative assessment of the Plaintiff's claim before

interest amounts to \$928,434.14 and when broken down would attribute \$867,866.14 for General Damages (Pain, Suffering and Loss of Amenities); \$27,200.00 for Loss of Earnings; \$16,358.00 for Medical Expenses and \$17,010.00 for Home Help with a total sum of \$928,434.14. She further states that she is told by Ms. Tynes that the Plaintiff is unemployed and is dependent on family members for financial support and continues to experience financial hardship.

7. The Court also refers to the Affidavit of Mr. Cleare filed on April 29, 2026 whereby he states that on May 11<sup>th</sup>, 2021 he obtained a Judgment by Consent against the Defendants for damages to be assessed; that he has sustained special damages amounting to \$60,568.00 and that he has sustained personal injuries particulars of both which appear in the Amended Statement of Claim. He further states that he was advised by his attorney that a conservative assessment of his claim inclusive of interest on damages from May 1<sup>st</sup>, 2007 (the date the Writ was issued) at 3% per annum amounts to \$1,457,491.37 and that there is legal authority that supports the awarding of interest at a higher rate which would significantly increase the damages payable to him.

### **The Law**

8. The Claimant makes his application pursuant to Parts 17.1(1)(m); 17.14 and 17.15 of the CPR. The relevant provisions are copied below.

*17.1 Orders for interim remedies: relief which may be granted. (1) The Court may grant interim remedies including —*

*...*

*(m) an "order for interim payment" under rules 17.14 and 17.15 for payment by a defendant on account of any damages, debt or other sum which the Court may find the defendant liable to pay.*

*17.14 Interim payments - general procedure.*

*(1) The claimant may not apply for an order for an interim payment before the end of the period for entering an acknowledgement of service applicable to the defendant against whom the application is made.*

*(2) The claimant may make more than one application for an order for an interim payment even though an earlier application has been refused.*

*(3) Notice of an application for an order must be —*

*(a) served at least fourteen days before the hearing of the application; and*

*(b) supported by evidence on affidavit.*

*(4) The affidavit must —*

*(a) exhibit any documentary evidence relied on by the claimant to support of the application;*

*(b) state the claimant's assessment of the amount of damages or other monetary judgment that are likely to be awarded; and*

*(c) if the claim is made under any relevant enactment in respect of injury resulting in death, contain full particulars of the —*

*(i) nature of the claim in respect of which the damages are sought to be recovered; and*

*(ii) person or persons for whom and on whose behalf the claim is brought.*

*(5) If the respondent to an application for an interim payment wishes to rely on evidence or the claimant wishes to rely on evidence in reply, that party must —*

*(a) file the evidence on affidavit; and*

*(b) serve copies on every other party to the application, at least seven days before the hearing of the application.*

*(6) The Court may order an interim payment to be made in one sum or by instalments.*

*17.15 Interim payments - conditions to be satisfied and matters to be taken into account.*

*(1) The Court may make an order for an interim payment only if —*

*(a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;*

*(b) the claimant has obtained an order for an account to be taken as between the claimant and the defendant and for judgment for any amount certified due on taking the account;*

*(c) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money, including costs, to be assessed;*

*(d) except where paragraph (3) applies, it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom an order for interim payment is sought for a substantial amount of money or for costs; or*

*(e) the following conditions are satisfied —*

*(i) the claimant is seeking an order for possession of land, whether or not any other order is also being sought; and*

*(ii) the Court is satisfied that, if the case went to trial, the defendant would be held liable, even if the claim for possession fails, to pay the claimant a sum of money for rent or for the defendant's use and occupation of the land while the claim for possession was pending.*

*(2) In a claim for personal injuries the Court may make an order for the interim payment of damages only if the defendant is —*

*(a) a person whose means and resources are such as to enable that person to make the interim payment;*

*(b) insured in respect of the claim; or*

*(c) a public authority.*

*(3) In a claim for damages for personal injuries where there are two or more defendants, the Court may make an order for the interim payment of damages against any defendant if —*

*(a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants, even if the Court has not yet determined which of them is liable; and*

*(b) paragraph (2) is satisfied in relation to each defendant.*

*(4) The Court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.*

*(5) The Court must take into account — (a) contributory negligence, where applicable; and (b) any relevant set-off or counterclaim.*

## **Discussion**

9. An interim payment is a form of interim relief in which a party to a proceeding may be ordered by the Court to pay a sum of money to the other party or into Court pending the outcome of the proceedings. It is not limited to a payment for a Claimant's proved special

damages at the date of such an application. In fact, an interim payment can and should be made to cover a reasonable proportion of the general damages for pain, suffering, and loss of amenities that the Claimant is expected to recover. It follows that the Court should be satisfied that the damages claimed are proven to a certain extent before awarding an interim payment.

10. The CPR states that an application for interim payment can be made at any time after the deadline for submitting an acknowledgement of service has passed. The application must be submitted by notice, outlining the grounds for the application. It must also be supported by an affidavit that verifies the special damages, if any, claimed by the Claimant up to that date, including the hospital and medical reports, if any, relied upon by the Claimant.
11. Once the Court is satisfied that an application for an interim payment complies with the procedural requirements prescribed by the CPR, it considers whether to exercise its discretion to grant an interim payment.
12. The Court's power to make an interim payment order is discretionary, but certain conditions or grounds must be satisfied before the Court's discretion is engaged. In determining whether to exercise its discretion to grant an interim payment, the Court must consider the relevant provisions of Part 17 of the CPR.
13. On review of Parts 17.14 and 17.15 of the CPR, the Claimant has filed his Notice of Application and an Affidavit in Support on which he relies that exhibits documentary evidence in support of the application and that the Affidavit states the assessment of damages that are likely to be awarded. In addition, the Defendants in this action have admitted liability to pay damages to the Claimant and the Claimant has obtained judgment against the Defendants for damages to be assessed inclusive of costs. Moreover, the

Defendants are persons whose means and resources are such to enable them to make the interim payment. It is noted that the Defendants did not file any Affidavit evidence in response to the Claimant's application.

### **Submissions**

14. The parties have provided to the Court their respective submissions.
15. The Claimant's submissions in summary are that liability has been established meaning that liability has been conclusively determine in the Claimant's favour and that there was no allegation of contributory negligence, no appeal was lodged therefore there is no realistic prospect of the Defendants escaping liability. It is their submission that the Court need only be satisfied that the interim payment amount is no more than a reasonable proportion of the likely amount of the final judgment.
16. The Defendants' submissions in opposition are that the medical reports of the Claimant's injuries that the Claimant seeks to rely upon in support of his application are more than nineteen years old and that no reliance could be placed on those report. Further, that the application is premature as there is no recent medical evidence before the Court in compliance with Parts 17.14(3), (4) and (5) of the CPR. In support of these submissions reference is made to the decision of **AML Brindell Pratt v AML Foods Limited 2021/CLE/GEN/01470**. It is his submission that the matter ought to proceed to the assessment of damages and not grant the order for interim payment.
17. In reply, Counsel for the Claimant submits that Parts 17.14(3), (4) and (5) of the CPR establishes the general procedure for making an application for interim payment and does not place any restriction or reference as to the age of medical evidence to be relied upon. Further, she submits that the medical evidence relied upon provides the diagnoses made within months of the catastrophic injuries sustained by the Claimant. It is her submission

that the Claimant has complied with the provisions of the relevant provisions of the CPR and in circumstances where liability has already been conclusively determined in the Claimant's favour the Claimant's medical reports provide sufficient information to enable the Court to make such an order.

## **Analysis**

18. The reference in the Defendants' submissions to the case of **Brindell Pratt v AML Foods Limited 2021/CLE/GEN/01470** emanates from an application by the Defendant for the Court to direct the Claimant to provide a signed medical authorization form in favour of the Defendant's doctor and to be examined by the same within a certain period of time. The Claimant in that case was employed by the Defendant and sustained injuries during the course of his employment. The Court in its consideration had to determine whether the Claimant should be compelled to undergo an independent medical examination by a doctor nominated by the Defendant. The Court ordered the Claimant to provide the signed medical authorization form in favour of the doctor the Defendant recommended or another suitably qualified medical practitioner nominated by the Defendant and submit to a medical examination in favour of the doctor recommended by the Defendant or another suitably qualified medical practitioner.
19. The Defendants' reliance on the instant case is misguided at best as the Court understands the Defendants objection to the Claimant's application for interim payment is that medical reports are old. As submitted by Counsel for the Claimant the provisions of Part 17.14 of the CPR do not place a restriction as to the age of a medical report when considering an application for interim payment. As the Court understands the submissions of Counsel for the Defendants, their main contention is the reliance on what they submit are old medical reports and not that the Claimant sustained these injuries. Moreover, the Defendants in

their Written Submissions have accepted that the injuries suffered by the Claimant are catastrophic injuries.

20. Therefore, the Defendants having admitted liability and the Claimant obtaining Judgment against the Defendants for damages to be assessed and the Defendants being persons whose means and resources are such to enable those persons to make an interim payment, the Court is satisfied that the conditions provided for in Parts 17.14 and 17.15 of the CPR have been met by the Claimant.

21. Part 17.15 (4) is also instructive in the context of this application; it reads:

(4) The Court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

22. It follows that the parties must put the Court in a position where it is able, at the time of the application, to determine the likely final judgment amount of the Claimant.

23. The Claimant in his application for interim payment seeks the sum of \$400,000.00 as interim payment or such other sum the Court considers just.

24. The Court in considering what is a reasonable proportion of the likely amount of the final judgment refers to the medical evidence as exhibited to both Affidavits in support and the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases, 18<sup>th</sup> Edition ("**Judicial College Guidelines**").

25. Counsel for the Claimant in Skeleton Arguments have set out the Claimant's current assessment of damages which were calculated by reference to the Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases (17<sup>th</sup> Edition, 2024). It is her submission that the medical evidence established that the Claimant suffered extremely serious injuries including a hypoxic brain injury resulting in impairment of sight, impairment of speech, impairment of abstract thought, memory deficits and

increased risk of epilepsy; fracture of the odontoid process giving rise to significant neck injury and associated soft tissue inflammation and fracture of the petrous temporal bone with injury to the cranial nerve resulting in partial hearing loss. She further submits that the quantified claim before interest exceeds \$928,000.00 as the bulk of the injuries suffered by the Claimant fall under category heads for Moderate Brain Damage; Severe Neck Injury and Significant Hearing Loss.

26. As the Court understands the diagnoses as found in the exhibited medical report of the injuries sustained by the Claimant, the Claimant will suffer lasting consequences or complications that will remain after the injury and that substantial deficits are likely to persist. Further, that the Claimant is at a substantial risk of enduring neurological and cognitive impairment.

27. On a review of the both the 17<sup>th</sup> and 18<sup>th</sup> Editions of the Judicial College Guidelines and the multiple injuries as pleaded in the Claimant's Amended Statement of Claim the bulk of the Claimant's injuries fall under the category "Brain Injury". The medical report of Dr. Ian McDowell states that the Claimant is "a young man with a left posterior temporal contusion associated with a presumed left petrosal fracture and hypoxic insult with significant speech and memory deficits". This is taken to mean that the Claimant suffered a traumatic injury to the left side of his head caused by significant impact which would place the categorization of this injury in the Judicial College Guidelines under moderate with the range from the most severe as £289,420.00 to the least severe as £56,890.00 when converted to BSD as \$386,699.67 to \$76,017.76.

28. Additionally, the Claimant has suffered "left sensori-neural hearing defect" which is hearing loss as identified in Dr. McDowell's report which is categorized under "Deafness/Tinnitus" and can be found under "Total Loss of Hearing in One Ear". The range

under this category would be at the top £60,160 to £41,320 and when converted to BSD as \$80,404.39 to \$55,220.48.

29. Lastly, the Claimant has suffered a severe neck injury described as an un-displaced odontoid fracture without cord injury (also known as a break in a specific bone in the upper neck where the broken pieces have not moved out of their normal position) as found in Dr. McDowell's report. This type of injury would be categorized as Moderate range from £50,850 as most severe to £18,150 as least severe under this category and when converted to BSD as \$67,950.35 to \$24,254.04.

### **Disposition/Conclusion**

30. The Claimant has submitted that the sum of \$400,000.00 is a reasonable proportion of the total overall sum of \$928,000.00 he anticipates will be awarded at assessment for his claim.

31. In the exercise of my discretionary power, considering the relevant categories and range of awards as found in the Judicial College Guidelines for the identified injuries, the relevant provisions of the CPR the Court will make an award of \$75,000.00 to Mr. Cleare as an interim payment. This amount is to be paid by August 3<sup>rd</sup>, 2026. The costs of this application are costs in the cause.

32. The Court will also direct the parties to have the assessment of damages hearing set down before a Registrar of this Court as soon as practicable.

**Dated this 3<sup>rd</sup> day of July, 2026**

  
**Rosanne O. I. Sweeting**  
**Assistant Registrar**

