IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division

2025/CLE/gen/FP/00131

B E T W E N

MICHAEL QUINTON LIGHTFOOT

Claimant

AND

ROYALSTAR ASSURANCE COMPANY LTD.

Defendant

Before: The Honourable Madam Justice Constance Delancy

Appearances: Ellsworth Darling, II for the Claimant
Vanessa Carlino for the Defendant

Hearing date(s): 12 March 2026

RULING

DELANCY, J

Brief Background

[1.] This is an application by the Claimant for interim payment in the sum of $200,000 pursuant to Part 17.14 to 17.17 inclusive of the Supreme Court Civil Procedure Rules ("CPR").

[2.] The Claim arises from a traffic collision on 10 November 2024 ("the accident"), with a vehicle driven by the Claimant and a vehicle driven by Clenae Howell (the insured driver of the Defendant). The Claimant sustain injuries as a result of the collision and was transported to the Rand Memorial Hospital.

[3.] The Claimant brought an action against the Defendant by Standard Claim Form and supported by Affidavit filed on 13 August 2025 seeking, *inter alia*, damages for personal injuries sustained as result of the traffic accident.

[4.] The Defendant filed a Defence on 16 September 2025 denying, *inter alia*, any injury and loss suffered by the Claimant as the injuries do not arise directly or proximately consequence of the accident; pleaded contributory negligence, exaggeration of symptoms and pre-existing degenerative conditions; and stated that it is not a proper party to the proceedings.

[5.] The Claimant filed a Notice of Application for Interim Payment supported by an Affidavit of the Claimant filed on 31 October 2025; and an Affidavit of Daniel Christopher Williams, II filed on 2 February 2026.

[6.] The Defendant filed an Affidavit of Kwesi Ryan on 19 January 2026 in response to the Claimant's application.

Law and Discussion

Preliminary Issue

[7.] The Road Traffic Act at Section 12(1) ("the Act") provides for the payments by an insurer arising from judgment and costs related thereto against its insured:

> If, after a certificate of insurance has been issued under subsection (4) of section 10 of this Act to the person by whom a policy has been effected, **judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) or paragraph (c) of subsection (1) of section 10 of this Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy,** then, notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, **the insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.**
>
> [Emphasis added]

[8.] The scope of Section 12(1) of the Act was succinctly summarized by Lord Mance in the Privy Council case of **Insurance Company of the Bahamas Ltd. v Antonio** (2015) UKPC 47 at paras. _

> **Section 12(1) …. is expressly concerned with cases where a judgment is obtained against an insured for third party liability "covered by the terms of the policy". In such a case, the insurers is obliged to meet the judgment and is precluded by section 12(1) from relying upon any entitlement to avoid or cancel, or any avoidance or**

<u>cancellation of, the policy, subject to protections and qualifications provided in section 12(2)</u>. [Emphasis added]

[9.] Counsel for the Claimant submits that the Claimant is a 41-year-old male electrician who was rendered unable to work as a result of injuries sustained in the accident. Counsel contends that Defendant having insured the driver of the motor vehicle that caused the accident has acknowledged liability by making voluntary interim payments is estopped by its conduct from asserting that it is not a proper party to these proceedings. Counsel for the Claimant relies on dicta in **McFall et al v Scotiabank Financial (Bahamas) Ltd. et al** (2022/CLE/gen/01767 para 51) and **Bank of The Bahamas Ltd v Herman Maycock et al** (2021/CLE/gen/00458 para 49), as examples and evidence of his ability to rely on estoppel.

[10.] Specifically, when going through the submissions of Counsel for the Claimant filed on the 27 February, 2026 at paras 27 and 28 submitted:

> 27. In the Bahamian decision of **McFall v Scotiabank Financial (Bahamas) Ltd** (Supreme Court of The Bahamas, 2024), the Court considered the doctrine of waiver by election and estoppel in the context of contractual rights and stated:
>
> "***If the Claimants conducted themselves in such a manner and/or elected to waive their rights an estoppel would be created as the Applicants contend. Waiver by election arises where a party elects between two inconsistent rights. The party must know of the facts which give rise to the two rights and must communicate the election to the other party in a clear and unequivocal manner... Once the election is made, it is final and cannot be recalled***."
>
> 28. In the Bahamian decision of **Bank of The Bahamas Ltd v Herman Maycock** (Supreme Court of The Bahamas, 2021), the Court considered an argument that the plaintiff's agreement to accept a lesser sum in settlement created an estoppel and stated:
>
> "***Mr Davis submits that the Plaintiff's agreement to accept the sum of $250,000.00 in settlement of the debt outstanding does not create an estoppel against the Plaintiff... However, the doctrine of estoppel may arise where a party has conducted itself in such a manner as to lead another party to believe that certain facts exist, and the other party has acted to his detriment in reliance on that belief***."

[11.] Further, the quote of *Strachan, J.* in the case of **McFall** reads as follows:

> [51.] If the Claimants conducted themselves in such a manner and/or elected to waive their rights an estoppel would be created as the Applicants contend. Waiver by Conduct or election also creates an estoppel as defined in ***Halsbury's Laws of England Estoppel (Volume 47 (2021)) - Reliance- Based Estoppel.***
>
> > ***Generally; "Parties to litigation who have continued the proceedings with knowledge of an irregularity of which they might have availed themselves are estopped from afterwards setting it up; and on a somewhat different principle, such a party cannot take advantage of an error to which he has himself contributed."***

[12.] However, upon the reading of the cases there is a discrepancy in the quotes. Namely, in the case of **Bank of The Bahamas Ltd *supra*** the quote of *Burnside, J. (Actg.)* at paras 49:

> ***"Mr Davis submits that the Plaintiff's agreement to accept the sum of $250,000.00 in settlement of the debt outstanding does not create an estoppel against the Plaintiff from enforcing its Judgment since in the first place, no consideration passed from the Defendants to the Plaintiff to support that agreement and in any event, the sum was never paid."***

[13.] The Court does not find the actual quotes, as they are, to be helpful in the Claimant's application.

[14.] Counsel for the Claimant further submits that there is sufficient medical evidence before the Court to establish that the Claimant suffered injuries as a result of the accident. That the Claimant requires ongoing treatment without which he would not be able to return to work; he has no other source of income nor does he receive any benefits from National Insurance to fund his treatment. Counsel argues that the sum being sought by the Claimant is reasonable taking into account the nature and scope of his injuries and his urgent financial needs.

[15.] The Defendant disputes that it is a proper party to the action as laid out in the Claimant's Standard Claim and Affidavit in support thereof. Counsel for the Defendant submits that its liability is contingent upon the insured driver's (the alleged tortfeasor) liability being established or judgment or conviction being entered against the insured driver. Further that in absence of a conviction against the insured driver the Claimant cannot bypass the statutory provisions in Section 12(1) of the Act and bring action directly against the Defendant. Counsel relies on the dictum of *Lord Brandon of Oakbrook* in the House of Lords case of **Bradley v Eagle Star Insurance Co. Ltd.** (1989) AC 957 (who adopted the dicta in an earlier case of **Post Office v Norwich Union Fire Insurance Society Ltd**. (1967) 2 QB 363):

> In my opinion the reasoning of *Lord Denning M.R.* and *Salmon L.J.* contained in the passages from their respective judgments in the *Post Office* case set out above, on the basis of which they concluded that, **under a policy of insurance against liability to third parties, the insured person cannot sue for an indemnity from the insurers unless and until the existence and amount of his liability to a third party has been established by action, arbitration or agreement, is unassailably correct**. I would, therefore, hold that the *Post Office* case was rightly decided, and that the principle laid down in it is applicable to the present case. [Emphasis added]

[16.] Counsel for the Defendant also submits that under the provisions of Section 12(2) of the Act, the Claimant is required to serve notice within 21 days of the commencement of proceedings on the Defendant (insurers) of their intention to commence proceedings. This is a mandatory requirement under the Act and there is nothing in the filings to indicate that the Claimant served notice on the Defendant (insurers) of his intention to commence proceedings. Further, the Claimant's reliance on estoppel is misconceived as it is trite law that it is not a sword, it is a shield, and does not create a cause of action and cannot be employed to circumvent statute. That cases of **McFall *supra*** and **Bank of Bahamas *supra*** have no bearing in this case as they dealt with contractual obligations under mortgages while the instant case falls squarely within a statutory provision.

[17.] Counsel for the Claimant argues that its assertion that the Defendant has admitted liability is supported by the following:

> (i) *the conclusive findings of the Royal Bahamas Police Force Road Traffic Report RAR #769/24 establishing Ms. Clenae Howell's responsibility for the collision; and*
> *(ii) the criminal charge of Driving Without Due Care and Attention, contrary to Section 46 of the Road Traffic Act, Chapter 220, for which Ms. Howell was issued a Fixed Penalty Notice #695024.*

[18.] The Court finds that, having reviewed the evidence in support of the application, that the Claimant was aware of the identity of the insured driver and the owner of the vehicle which she operated but chose, for whatever reason, not to join any other party in the proceedings, in this instance the alleged tortfeasor. The Court is satisfied that the provisions of Section 12(1) of the Act mandates that liability must first be established or an admission of liability before moving to have an insurer pay out such funds that a party may be entitled to under such judgment or order. The accident occurred in 2024; therefore, the Claimant is within the limitation period to amend his claim to join any other necessary party and take such prerequisite steps as required by Section 12(2) of the Act to regularize his claim.

[19.] Further, when applying the principles of promissory estoppel as submitted by the Claimant the Court is not satisfied that the Defendant has acted in a way to show that some liability existed to which the Claimants had relied upon to their detriment. Based on the evidence before the Court, every payment made was done gratuitously and not as a means of compromise before the filing of the action.

[20.] The Court is satisfied that from the outset of this matter the Defendant has pleaded/argued that an *irregularity* existed and the principle of reliance based estoppel as argued in **McFall *supra*** does not apply.

Substantive Application

[21.] Part 17 CPR provides the procedure to be followed on applications for interim remedies and Section III, Part 17.14 outlines the general procedure for an application for interim payments. Part 17.14(4) CPR provides that the affidavit in support of the application must:

> (a) exhibit any documentary evidence relied on by the claimant to support of the application;
> (b) **<u>state the claimant’s assessment of the amount of damages or other monetary judgment that are likely to be awarded;</u>**
>
> [Emphasis added.]

[22.] The Court may make an order for an interim payment only if "*the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant*" (*Part 17.15(1)(a) CPR*). The Court when considering whether to exercise its discretion on an application for an interim payment must proceed with caution as observed by *Lyons, J.* in **Collie v Turnquest** 2003/CLE/gen/698:

> As a general rule I tend to be cautious when ordering interim payments in personal injury matters. It is not unknown that interim orders are made, but at trial the plaintiff fares badly. Difficulty is then encountered in recovering the money paid over.

[23.] Part 17.15(2) CPR sets out the conditions to be satisfied and matters to be considered when determining whether to make an order for an interim payment with reference to personal injuries:

> (2) In a claim for personal injuries the Court may make an order for the interim payment of damages **<u>only if the defendant is</u>** —
>
> (a) a person whose means and resources are such as to enable that person to make the interim payment;
>
> (b) **<u>Insured in respect of the claim</u>**; or
>
> (c) a public authority. [Emphasis added]

[24.] The Court "*must not order for an interim payment of more than a reasonable proportion of the likely amount of the final judgment*." (*Part 17.15(4) CPR*). Further the Court must also "*take into account (a) contributory negligence, where applicable; and (b) any relevant set-off or counterclaim*" (*Part 17.15(5) CPR*).

[25.] Counsel for the Claimant submits that the request for an interim payment in the amount of $200,000.00 is reasonable. The Court, when applying Part 17.15 must look at what is a reasonable proportion of the *likely* amount of the final judgement. Where there is a personal injury, the injury has a figure attached that is usually a set range likely to be awarded based on the damage described. It is difficult for the Court to determine any other heads of damages as those would have to be assessed on a case by case basis.

[26.] When the Court considers the medical evidence filed in support of the claim, the Claimant would have suffered a back injury. The medical Report by Dr. David N. Barnett stated that the Claimant suffers "*tissue compression in his lower back, expressed by deficits in his lower extremities, plus or minus continence issues with his urinary bladder & lower bowel*." Further, in his recommendation for treatment, Dr. Barnett stated:

> *"d. i.* I therefore recommend that Mr. Lightfoot be treated conservatively, but he should first have a facet joint injection, (ML:6), which if needed can be repeated 3 to 4 times per year, but no less than 4-6 weeks apart.
>
> *ii.* After the first injection, Mr. Lightfoot should be referred for a course of physiotherapy, of no more than 12 sessions (ML:7). With a good response, the second & subsequent injections can be kept in abeyance.

> *3.a. However, the above stated protocols have to be enhanced by Mr. Lightfoot taking agency of returning his body weight to one appropriate for his height…"*

When the Court references **The Judicial College Guidelines** Sixteenth Edition ("JCG") the back injury would fall in the minor category, as the recommended course of treatment suggests recovery in or about a year. The JCG recommends a range of £7,890 to £12,510 which amounts to a range of approximately BSD$10,000 to BSD$16,000.

[27.] Counsel for the Defendant argues that the medical evidence before the Court suggests that the Claimant may have some longstanding degenerative spinal conditions. Counsel referred the court to the dicta of *Winder, J.* (as he then was) in **McCoy v Williams and Hunter; Clarke et al** BS 2014 SC 41 at para. 23 thereof:

> The law on pre-existing injuries provides that in considering the damages that should flow to McCoy following the December 2009 accident **the Court must have regard to the general principles which provide that while a tortfeasor must take his victim as he finds him he is not liable for any injury that was not caused by the accident.** Guidance on this principle is set out in the case of Cutler v. Vauxhall Motors Ltd. [1970] 2 All E.R. 56. [Emphasis added]

[28.] Counsel for Defendant also contends that the amount of the interim payment being requested by the Claimant is manifestly excessive, speculative and premature. That based on the medical evidence presently before the Court the sum sought is "*premised on worst case scenario outcomes, potential future medical procedure or projected future loss of earnings*". Counsel invites the Court to consider the case of **Eeles v Cobham Hire Services Ltd** (2009) EWCA Civ 204, which at para. 30 echoes the provisions of Part 17 CPR:

> We are quite satisfied that, **although the power to order an interim payment is a discretionary power, there is not an unfettered discretion**. The discretion is limited at the upper end by CPR r 25.7(4). **The court has no power to make an order for more than a reasonable proportion of the likely amount of the final judgment. It is true that the expression "reasonable proportion" leaves the precise limits of the jurisdiction somewhat uncertain.** But, for present purposes, it is sufficient to say that there is clearly no jurisdiction to order an interim payment of more than the likely amount of the final judgment. [Emphasis added]

[29.] The Court finds that the evidence currently before it does not demonstrate that future medical procedures are likely, nor the likelihood of a future loss of earnings. However, his actual loss of earnings is a likely damage to be awarded but Counsel has not demonstrated the amount that was actually lost. Therefore, Court has no means of determining how Counsel for the Claimant arrived at the figure of $200,000 claimed for, when the Court can only foresee a *likely* amount being that of his back injury. Counsel in this Court's view has not complied with Part 17.14(4) b. Further, the Court is not satisfied that the Defendant admitted liability as required pursuant to Part 17.15(1) and further the Defendant is not a proper party as required in Part 17.15(2).

[30.] The Court having considered the pleadings, the Affidavit evidence in support of the application and the oral and written submissions of the parties hereby:

a. The Defendant is not a proper party to the proceedings;
b. The Claimant is granted leave to amend its claim within 21 days hereof;
c. The application for interim payment against the Defendant is refused.

Dated 16 day of July, 2026

[Original Signed and Sealed]

Constance Delancy
Justice