

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION
Claim No. 00615 of 2018**

BETWEEN

THORNE CLARKE

Claimant

AND

**THE COMMISSIONER OF POLICE OF THE COMMONWEALTH OF THE
BAHAMAS**

First Defendant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Defendant

Before: The Honourable Madam Justice Camille Darville Gomez
Appearances: Christina Galanos and Kristina Saunders for the Claimant
Keith Cargill for the Defendants

Hearing Date: 27 July, 2026 and 6 August, 2026

*Civil Procedure – Interim Payment – Jurisdiction - Personal Injury – Medical Urgency – Quantum – Reasonable
Proportion – Final Judgment*

Background

- [1.] The Claimant commenced this action on 29 May, 2018 for damages against the Defendants after he was shot in the back by a police officer rendering him paralyzed from the sternum down. He was 22 years old.
- [2.] Judgment in Default of Defence was entered with leave on 24 September, 2019 and an assessment took place on 27 May, 2025 before Assistant Registrar, Jonathan Z. N. Deal with the final closing submissions received from the Defendants on 16 January, 2026.
- [3.] Damages have been assessed by the Claimant at \$2,064,219.41, contrasted with the Defendants' assessment of \$539,250.03. I refer to their Closing Submissions on Assessment of Damages:

GENERAL DAMAGES	
Pain and Suffering for Paraplegia (with loss of bladder and bowel sensation and loss of sexual sensation)	\$348,240.00
Exemplary Damages	\$5,000.00
Aggravated Damages	\$5,000.00
Grand Total	<u>\$358,340</u>

"The Defendants submit that the above sums of \$181,010.03 in special damages and \$358,240.00 in general damages equating to \$539,250.03 is sufficient compensation for the loss suffered by the Claimant."

- [4.] The parties are presently awaiting the ruling of the Assistant Registrar on the assessment.

The Application

- [5.] By a Notice of Application filed on 23 July 2026 ("application") the Claimant seeks an interim payment of \$200,000.00 by the close of business on 14 August, 2026 pursuant to Part 17.14 of the Supreme Court Civil Procedure Rules ("CPR"), and an order that the Defendants shall pay the Claimant's costs of the application, to be taxed if not agreed. On the same date, the Claimant filed an Affidavit in support of the application as well as a Certificate of Urgency.
- [6.] This application came before me in my capacity as duty Judge on 27 July and 6 August, 2026.
- [7.] The first hearing occurred less than the required fourteen (14) days after service of the Application. Rule 17.14(3)(a) of the CPR requires at least fourteen days' service before the hearing. Hence I adjourned the first hearing to give the Defendants an opportunity to properly consider and respond to the application. However, in light of the certificate of urgency, the medical evidence, the Defendants' appearance and the absence of identified prejudice caused by the abridged period, I exercise the Court's power under rule 26.1(2)(k) to shorten the time for compliance with rule 17.14(3)(a).
- [8.] The application arises from an asserted urgent medical need. Due to the Claimant's paralysis following the gunshot wound, he says that he has become prone to bedsores. He says that in or about February, 2026 he developed a severe stage 4 right gluteal pressure ulcer measuring approximately 6x4 cm. In or about 26 April, 2026 the ulcer became infected and he developed an extremely high fever rendering it difficult to speak. He was admitted to the Princess Margaret

Hospital where he remained for about nine days. Dr. Vernard McPhee has recommended surgery to close the bedsore and reduce the risk of further infection and complications.

- [9.] Given the circumstances, the Claimant says he must leave work daily at 2pm to lessen the chances of infection because sitting for excessive periods places him at a higher risk of infection. This has caused him to suffer anxiety about the loss of his job as well as about the ulcer becoming infected again and causing a re-admission to the hospital.
- [10.] Dr. McPhee has estimated the cost of surgery and aftercare at \$57,488.32 in addition to an already outstanding bill of \$11,358.89 due to him for the previous treatment of the bedsore. Dr. McPhee has made clear that the figure is just an estimate.
- [11.] While the figure of \$200,000.00 had been originally sought for the interim payment, at the second hearing the Claimant reduced it to \$100,000.00.
- [12.] The Defendants oppose the application and seek that it be dismissed or stayed, with costs.

The Parties' Positions

- [13.] The Defendants concede that the Court has jurisdiction. Their case is that the discretion should not be exercised because the assessment hearing has concluded and the reserved ruling is pending. They submit that the application is redundant, procedurally improper and an abuse of process; that any estimate by this Court would duplicate the Assistant Registrar's task; and that an excessive payment may be difficult or impossible to recover.
- [14.] In their submissions, the Defendants say:

"Whether the court has jurisdiction? We concede that it does.

Ordering an interim payment now would duplicate the very exercise already undertaken by the Assistant Registrar. The court would effectively conduct a parallel assessment of quantum.

We submit that judicial economy, consistency and proportionality all favour refusing this application."

- [15.] The Claimant submitted that Part 17 of the CPR contains no time-bar and expressly permits an application "*at any time*".
- [16.] He says that the Court can conservatively assess the likely judgment from the parties' completed quantum submissions. The Claimant's assessment is \$2,064,219.4, while the Defendants' assessment is \$539,250.03, including \$181,010.03 in special damages. On that basis, the Claimant submitted that \$100,000.00 is a reasonable proportion of the likely judgment, even on the Defendants' assessment, and that the medical evidence corroborates the need for immediate relief.

Issues

[17.] The issues for determination are:

- (i) Whether the application should be dismissed or stayed given that the assessment has concluded and judgment is reserved.
- (ii) Whether the Court can fix a reasonable proportion of the likely final judgment.
- (iii) If an interim payment is justified, the sum to be ordered.

[18.] The starting point on interim payments is the CPR which states as follows:

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.

17.3 Time when an order for interim remedy may be made.

(1) An order for an interim remedy may be made at any time, including —

(a) after judgment has been given; [...]

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.

(i) Whether the application should be dismissed or stayed given that the assessment has concluded and judgment is reserved.

[19.] The authorities on interim payments to which I refer below have generally addressed applications post liability and pre-assessment or prior to trial. This present case does not fall into any of these categories.

[20.] However, the governing principles for interim payments are contained in part 17 of the CPR and the court must exercise its discretion with regard to these principles.

[21.] However, it is still useful to consider the authorities and how these principles have been applied.

[22.] **Eeles v Cobham Hire Services Ltd [2009] EWCA Civ 204 (CA)** established that interim payments must be assessed conservatively, with sufficient headroom to guard against overpayment. A high proportion may nonetheless be justified where the underlying estimate itself is cautious. The guiding principle is not to deprive a claimant of sums they will almost certainly recover, but to avoid any material risk of overpayment. The assessment must therefore proceed on a conservative basis. Save in the limited circumstances identified in **Eeles**, the interim payment should represent a reasonable proportion of that assessment. A reasonable proportion may, in practice, be a high proportion, provided the assessment has been conservative. The objective remains to avoid the risk of overpayment, not to keep the claimant out of his money.

[23.] In **Beasley v Alexander [2013] EWHC 4739 (QB)**, the Court ordered an interim payment after liability had been determined in the claimant's favour but before damages had been assessed. The application was therefore made post-judgment on liability but pending the determination of quantum. In reaching its decision, the Court expressly relied upon the principles in **Eeles**.

[24.] Neither **Beasley** nor **Eeles**, however, addressed the situation where an interim-payment application is made after the quantum hearing has concluded but before delivery of a reserved judgment. In

both authorities, liability had been resolved but the assessment of damages was still outstanding. They therefore do not directly govern whether an interim payment may be ordered in the interval between the conclusion of an assessment hearing and the handing down of judgment, but they nevertheless assist on the governing requirements of conservatism, a reasonable proportion, and avoidance of overpayment.

- [25.] Similarly, in **Roger Brathwaite v Paulette Atkins, Civil Appeal No. 20 of 2016**, the Barbados Court of Appeal highlighted that a claimant's assessment of the likely final judgment is integral to any proper interim-payment determination. The Court must be furnished with material enabling it to estimate the likely final award and to determine whether the sum sought represents no more than a reasonable proportion. It is not sufficient merely to identify and quantify the immediate expense for which payment is requested. The Court must not order an interim payment exceeding a reasonable proportion of the likely amount of the final judgment. It was therefore impermissible for the judge to award the respondent's special damages claim as an interim payment unless it could be shown to be no more than a reasonable proportion of the likely final judgment.
- [26.] Taken together, **Eeles, Beasley**, and **Roger Brathwaite** affirm the principle that interim payments must be grounded in a conservative assessment of the likely final award, and must not exceed a reasonable proportion of that award. They do not, however, resolve the procedural question presented here. In the present case, the application is made after the conclusion of the quantum hearing but before delivery of the reserved judgment. The Court is therefore asked to determine whether, in that interval, it is appropriate to order an interim payment.
- [27.] The distinction is material. Once the quantum hearing has concluded, the Court has heard all evidence and submissions relevant to the assessment of damages. The likely final judgment is no longer a matter of preliminary estimation but awaits only the Court's formal determination. The question is whether, pending delivery of that judgment, the Court should nonetheless exercise its discretion to order an interim payment, and if so, on what basis.
- [28.] The policy considerations are finely balanced. On the one hand, the claimant should not be kept out of money which the Court has already heard evidence to support and which is likely to be recovered. The refusal of any payment until judgment is delivered may cause real hardship, particularly where the claimant has pressing needs or ongoing expenses.
- [29.] On the other hand, the Court must preserve the integrity of the reserved judgment process. Once the hearing concluded, the assessment of damages is no longer provisional but awaits only the Court's determination. To order an interim payment at this stage risks undermining the discipline of delivering a single, reasoned judgment on quantum. It may also create a material risk of overpayment if the reserved judgment ultimately awards less than the sum advanced.

[30.] The discretion must therefore be exercised cautiously.

[31.] In the present case, the claimant's medical evidence demonstrates an urgent need for surgery to treat a severe stage 4 pressure ulcer, with estimated costs of \$57,488.32 plus outstanding medical bills of \$11,358.89. His reduced working hours, anxiety over job security, and risk of re-admission to hospital highlights the urgency of the situation. These circumstances bring into sharp focus the hardship identified above and provide the basis upon which the Court must consider whether an interim payment is justified pending delivery of the reserved judgment.

[32.] I refer to the letter from Dr. McPhee:

"This letter serves to advise that Mr. Thorne Clarke is presently under medical care at my facility New Hope Medical Center for advanced wound care. Mr. Clarke first consulted 27.2.2026 for a very significant 6x4 cm deep stage 4 right gluteal pressure ulcer. He was injured in 2016 after a police involved shooting that resulted in his paraplegia.

His ulcer will require extensive advanced wound care inclusive of Vacuum Assisted wound closure (VAC dressing), debridement, suturing, eradication of MRSA infection and possible reconstruction with a gluteal flap procedure. Mr. Clarke is currently funding his care via a payment plan out of pocket and finding it financially challenging to maintain the mounting cost of equipment, labour and medications required to provide the level of wound care his body demands. Given the complexity and chronicity of the wound and constant risk for the development of complications he has requested a support letter in order to expedite his case before you in hopes of being able to meet his medical and basic living expenses.

Photo documentation of his wound and most recent culture report can be provided on request to underpin the severity of this medical issue. Should you require any further relevant information please do not hesitate to contact my office, as I will do my best to facilitate your needs.

Thank you for your understanding."

[33.] Judgment on liability was entered against the Defendants, therefore, the Claimant has passed the Part 17 rule 17.15(1)(c) test.

[34.] It is undisputed that the Defendants are public authorities, therefore, the Claimant has also cleared the Part 17 rule 17.15(2)(c) hurdle. Nor has it been suggested that there is an inability to satisfy the proposed order suggested.

[35.] Therefore, I reject the submission that the application is procedurally improper merely because the assessment hearing has concluded and judgment is reserved. Part 17.3(1) of the CPR permits an application "*at any time*". No provision has been identified which extinguishes the Court's power when evidence and submissions on quantum have closed but judgment has not yet been delivered.

- [36.] Nor do I accept that the application is, without more, an abuse of process. The Claimant is not asking this Court finally to determine quantum or to revisit evidence already heard by the Assistant Registrar. The present question is narrower: whether a payment on account can safely be ordered within the limit imposed by Part 17.15(4). The medical evidence relied upon discloses a concrete reason for urgency rather than mere dissatisfaction with the time taken to deliver the reserved ruling.
- [37.] I nevertheless accept the Defendants' submission that this Court must avoid a parallel final assessment and must proceed conservatively. The Assistant Registrar heard the evidence and retains responsibility for the final award. This ruling neither predicts the resolution of disputed heads of loss nor expresses any view on the proper global award beyond what is strictly necessary for this application.
- (ii) Whether the Court can fix a reasonable proportion of the likely final judgment.**
(iii) If an interim payment is justified, the sum to be ordered.
- [38.] In the circumstances, the Defendants' own quantum position supplies the appropriate conservative baseline. They have invited the Assistant Registrar to award \$539,250.03, of which \$181,010.03 is said to comprise special damages. That is not a judicial determination or formal admission that every component will be awarded. It is, however, a measured position adopted after the assessment hearing and demonstrates that a rational lower-end estimate is available without this Court resolving the wider dispute between \$539,250.03 and \$2,064,219.41.
- [39.] Pursuant to Part 17 rules 17.15(5)(a) and (b), there is no pleaded contributory negligence, set-off or counterclaim identified in the material before me. In the instant case, the Defendants never once alleged that contributory negligence was a live issue in this matter, and they never once pleaded or made an application for any set-off or counterclaim.
- [40.] The Claimant initially sought \$200,000.00 later reduced to \$100,000.00. While the urgency of his medical needs is accepted, the Court must remain guided by the principle that interim payments should not exceed a reasonable proportion of the likely final award.
- [41.] An award of \$100,000.00. would represent approximately 18% of the Defendants' proposed global award of \$539,250.03. By contrast, an award of \$80,000.00 represents approximately 14% of that figure. Both sums fall materially below the \$181,010.03 which the Defendants' own assessment attributes to special damages.
- [42.] The reduction from \$100,000 to \$80,000 reflects the Court's cautious approach. It ensures that the interim payment remains firmly within a conservative proportion of the likely final judgment, while still addressing the claimant's urgent medical needs and outstanding expenses. This balance

provides substantial headroom against the risk of overpayment, preserves the integrity of the reserved judgment process, and yet recognises the hardship which the claimant faces.

- [43.] The amount need not be confined exactly to the present surgical estimate. **Roger Brathwaite** established that the statutory measure is a reasonable proportion of the likely final judgment, not simply the amount of the immediate expenditure. At the same time, need remains relevant to the discretionary decision whether relief should be granted. Here, the estimated surgery and aftercare costs of \$57,488.32, the outstanding bill of \$11,358.89, and the express qualification that treatment costs may change together support an award greater than the current estimate while remaining below the sum originally sought. Dr. McPhee stated that the sum of \$57,488.32 *"is an estimate based on the anticipated course of treatment and may be subject to change depending on Mr. Clarke's medical condition, recovery progress, and any additional services that may become necessary."*
- [44.] I am therefore satisfied that \$80,000.00 is no more than a reasonable proportion of the likely final judgment and that it is just to exercise the discretion in the Claimant's favour.
- [45.] Despite the Claimant's relief to order that the interim payment be made by 14 August, 2026, I am unable to do so. The Crown Proceedings Act, Chapter 68 prescribes its own statutory process for satisfaction of such orders.
- [46.] There was nothing identified during the course of the hearing to displace the ordinary consequence that costs follow the event. Accordingly, I award the Claimant an interim payment of \$80,000.00 and his costs of the application to be summarily assessed on the papers, if not agreed between the parties.
- [47.] It is ordered that:
- (i) pursuant to rule 26.1(2)(k) of the CPR, the time for compliance with rule 17.14(3)(a) is shortened.
 - (ii) the Defendants shall pay the Claimant \$80,000.00 by way of interim payment on account of damages;
 - (iii) the interim payment shall be brought into account upon the final assessment of damages; and
 - (iv) the Defendants shall pay the Claimant's costs of this application, to be summarily assessed on the papers, if not agreed within thirty (30) days of the date of this ruling

[48.] For the avoidance of doubt, nothing in this ruling determines the final amount recoverable under any head of damage or otherwise limits the Assistant Registrar's determination of the reserved assessment.

Dated the 19th day of August, 2026

A handwritten signature in blue ink, appearing to read 'Camille Darville Gomez', with a stylized initial 'CD'.

Camille Darville Gomez
Justice of the Supreme Court