IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2020/CLE/gen/001365

B E T W E E N

RECHIEL SMITH

Claimant

AND

PERCIVAL WALDEN

First Defendant

AND

MINISTER OF PUBLIC WORKS

Second Defendant

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Third Defendant

Before:	**The Honorable Madam Justice Carla Card-Stubbs**
Appearances:	Mr. Byran Woodside of Counsel for the Claimant
	Mr. Randolph Dames of the Chambers of the Attorney General, Counsel for the Defendants
Hearing date:	Hearing on the written representations submitted by the parties ('on the papers')

Civil Procedure and Practice - Interlocutory applications – Application for specific disclosure - Rule 28.5(1)(b) and (c)(1) The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') – Whether documents directly relevant Rule 28.1(4) - Application to strike out paragraphs of the Defendant's affidavit – Contents of an affidavit - Court's power to strike out - Rule 26.3 CPR- Rule 30.3 CPR- Application to add additional witness – Rule 29.1(a) CPR – Rule 26.1(2)(w) CPR- Application for relief from sanctions – Rules 26.8. 26.9 CPR - Application for judgment on admissions- Rules 14.1 and 14.8(3) CPR

RULING

CARD-STUBBS, J

INTRODUCTION AND BACKGROUND

[1.] This ruling deals with several interlocutory applications brought by the parties after various case management orders and prior to trial. The substantive matter is a suit for personal injury.

[2.] The Claimant, Mr. Rechiel Smith, brought an action in negligence against Mr. Percival Walden (First Defendant), the Minister of Public Works (Second Defendant), and the Attorney General (Third Defendant) arising from an incident on November 13, 2019. Mr. Smith pleads in the specially endorsed Writ of Summons filed on December 22, 2020 that Mr. Walden negligently drove a Ministry truck that forcefully collided with his body while he, Mr. Smith, was on duty at the security booth, causing him injury. The Statement of Claim pleads that Mr. Smith has suffered personal injury, damage and loss.

[3.] The Defence, filed March 31, 2021, denies negligence and pleads that Mr. Walden was moving at a very low rate of speed towards the guard rail, that Mr. Smith was behind the gate with his back to the oncoming vehicle, that both the brakes and emergency brake failed, and that the truck hit the bump/pole/guard rail and came to a complete stop. The Defence pleads that at no time was Mr. Smith hit to the ground.

[4.] The pleadings closed and the parties proceeded to case management. A trial date was set. At the pre-trial review, the trial date was vacated as it became clear that several matters had yet to be addressed. On that occasion, the court determined to hear filed and outstanding interlocutory applications, including an application for further information. The court also gave the parties leave to file any new interlocutory application no later than September 29, 2023.

[5.] On June 1, 2023, the court convened, heard an application for further information and made an order for additional information in favour of the Claimant. On that date, the Court also made an order to facilitate the release of certain of the Claimant's medical records to the Defendant. Those orders spawned more interlocutory applications.

THE APPLICATIONS

[6.] I have before me the following 5 applications:

1. The Defendants' Notice of application for specific disclosure / discovery of medical records.
2. The Defendants' Notice of application to add an additional defence witnes
3. The Claimant's Notice of application for relief from sanctions.
4. The Claimant's Notice of application to strike out parts of the Third Respondent's affidavit.
5. The Claimant's Notice of application for judgment on admissions.

I will deal with each in turn.

<u>The Defendants' Notice of application for specific disclosure / discovery of medical records</u>

[7.] The Defendants' Notice of application for specific disclosure was filed on May 26, 2023. It is said to be made pursuant to Rule 28.5(1)(b) and (c)(1) The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR'). The application is supported by the Affidavit of Mr. Nevado Frazer filed May 30, 2023 and the Affidavit of Mr. Perry McHardy filed on October 30, 2023.

[8.] The Application seeks the disclosure of medical records of the Claimant. The Application represents the Defendants' attempt to obtain pre-accident and other medical records from 2019.

[9.] The evidence of Nevado Frazer by affidavit is that the Claimant submitted several medical certificates in April, May, June, July, and October 2019, including for periods when he was certified unfit for work. The Application seeks specific disclosure of those underlying medical records. The evidence of the Defendants is that the Claimant refused requests to be medically examined by the Defendants' medical professionals.

[10.] By paragraphs 6 to 9 of Mr. Frazer's affidavit, he avers:

> 6. The Claimant filed and provided the Office of the Attorney General with a list of documents and a bundle of documents. After reviewing the documents, it was noted that reference was made to numerous visits to different medical establishments after the date of the alleged incident 13th November, 2019.
> 7. Documents that were in the care of the Second Defendant revealed the Claimant submitted various medical certificates from different medical establishments prior to the alleged incident.
> 8. The medical certificates the Claimant submitted to the Second Defendant are as follows;
>   a. A medical certificate on 3rd April 2019 that the medical practitioner found the Claimant to be in good health and free from communicable diseases marked and exhibited as "NF1";
>   b. A medical certificate from the same medical practitioner certified that the Claimant is unfit to work from 1st May to 7th May, 2019, marked and exhibited as "NF2";
>   c. A medical certificate that the Claimant is unfit for work from the 7th May, to 12th May 2019 marked and exhibited as "NF3";
>   d. A medical certificate from 16 to 28 May, 2019 stating the Claimant unfit for work marked and exhibited as "NF4";
>   e. Medical certificate from 29 to 31st May, 2019 stating the Claimant unfit for work marked and exhibited as "NF5";
>   f. Medical certificate from the 31st May to 2nd June 2019 stating the Claimant unfit for work marked and exhibited as "NF6";
>   g. Medical certificate from the 12th June to 25th June 2019 stating the Claimant unfit for work marked and exhibited as "NF7";
>   h. Medical Certificate from the 1st July to 15th July, 2019 stating the Claimant unfit for work marked and exhibited as "NF8";
>   i. Medical certificate from the 16th to 19th October, 2019 stating the Claimant unfit for work marked and exhibited as "NF9".

9. I am informed by counsel for the Defendants, two requests were made to the Claimant to be medically examined by their medical professionals and the Claimant refused to be medically examined.

[11.] The application is also supported by the affidavit of Perry McHardy filed on October 30, 2023. In that affidavit, Mr. McHardy refers to this Court's order of June 1, 2023 requiring consent and release forms by which the Claimant consented to have medical records released to the Defendants. Mr. McHardy's evidence is that the Defendants' attempts to obtain the medical records subsequent to the order, have been unsuccessful. His evidence is, inter alia,:

4. That I am informed the Her Ladyship ordered on 1st June, 2023, the Claimant provide a consent and release form for his medical records to be released to the Defendants from the Department of Health and Kennedy Medical Center for periods in 2019.
5. That the medical consent forms were released and the Defendants made requests to the Department of Health and Kennedy Medical Center.
6. That to narrow the search in the Department of Health the Claimant informed the Defendants visited the Department of Health Elizabeth Estates Clinic.
7. That on 5th October, 2023, the Ministry of Health and Wellness, via letter, informed the Defendants there was no medical record for the Claimant. A copy of the letter is marked and exhibited "PM1".
8. That I was further informed from counsel in this matter, there was no favourable response in releasing the medical records from the Kennedy Medical Clinic though there was an assurance the medical clinic will reply to the Defendants.
9. In the circumstances the Defendants makes request for the Disclosure application to be heard, or the Claimant supply the requests relating to the medical records.

Law and Analysis – Specific Discovery

[12.] Part 28 CPR "sets out rules about the disclosure and inspection of documents": Rule 28.1(1). A party has a continuing duty to disclose directly relevant documents: Rule 28.1(4). Rule 28.1 deals with the scope of Part 28 and provides:

28.1 Scope of this Part.

(1) This Part sets out rules about the disclosure and inspection of documents.
(2) In this Part —

"copy" in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly; and

"document" means anything on or in which information of any description is recorded whether in writing, electronically or howsoever.

(3) A party "discloses" a document by revealing that the document exists or has existed.

(4) For the purposes of this part a document is "directly relevant" if —

(a) the party with control of the document intends to rely on it;

(b) it tends to adversely affect that party's case; or

(c) it tends to support another party's case,

but the rule of law known as "the rule in Peruvian Guano" does not apply to make a document "directly relevant".

[13.] Rule 28.5 sets out the nature of specific disclosure and provides as follows.

28.5 Specific disclosure

(1) An order for specific disclosure is an order that a party must do one or more of the following things —

(a) disclose documents or classes or categories of documents specified in the order;

(b) disclose documents relevant within the principles relating to discovery of documents, or, alternatively, directly relevant, to a specified issue or issues in the proceedings; or

(c) carry out a search to the extent stated in the order for —

(i) documents relevant, in the sense indicated in paragraph (b), or directly relevant to the proceedings or to a specified issue or issues; or

(ii) documents of a particular description or class or in a particular category or identified in any other manner, and disclose any documents within the scope of the order located as a result of that search.

(2) An order for specific disclosure may be made on or without an application.

(3) An application for specific disclosure is to be made on notice and unless in special circumstances at a case management conference.

(4) An application for specific disclosure may identify documents —

(a) by describing the class to which they belong; or

(b) in any other manner.

(5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

[14.] The criteria for the court to make the order is set out in Rule 28.6 CPR. That rule provides:

28.6 Criteria for ordering specific disclosure.

(1) When deciding whether to make an order for specific disclosure, the Court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.

(2) The Court must have regard to —

(a) the likely benefits of specific disclosure;

(b) the likely cost of specific disclosure; and

(c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.

(3) If, having regard to paragraph (2)(c), the Court would otherwise refuse to make an order for specific disclosure it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.

(4) If the Court makes an order under paragraph (3) it must assess the costs to be paid in accordance with rule 71.6.

(5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.

[15.] The guidance notes to Part 28, as appear in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024, are helpful in providing guidance and authorities for the factors that a Court ought to take into account in determining such an application. The notes read, in part,:

> The court will take into account all the circumstances of the case and in particular the overriding objective. The rationale for the discretion to order specific disclosure is that the overriding objective obliges the parties to give access to those documents which will assist the other's case. The court has a discretion as to whether it makes the order. It may make an order at any time, regardless of whether standard disclosure has already occurred.
>
> …
>
> The court will need to satisfy itself as to the relevance of the documents sought, and that they are or have been in the party's control, or at least that there is a prima facie case that these requirements will be met. The relevance of documents is analysed by reference to the pleadings, and the factual issues in dispute on the pleadings: Harrods Ltd v Times Newspaper Ltd [2006] EWCA Civ 294; [2006] All E.R. (D) 302 (Feb) at [12]. Where a claim is likely to turn on particular documents, there is a stronger case for an order to be made: Chantry Vellacott v Convergence Group plc [2006] EWHC 490 (Ch) Rimer J.

[16.] The Defendants make their application on the ground that the records sought are directly relevant and are necessary for the fair disposal of the matter (Rule 28.5(1)(b) and (c)(1) CPR).

[17.] In order to determine whether the document is directly relevant, a court may have regard to the pleadings and to the issues laid. I accept that the rule of law is as set out in **Proman Holdings (Barbados) Ltd. and another v CL Financial Ltd and others (2017) 91 WIR** where the Court of Appeal of Trinidad and Tobago considered the nature of documents to be disclosed pursuant to Part 28 of the Civil Procedure Rules of that jurisdiction. Rule 28.1(4) of those rules is framed in similar terms to the provisions of Rule 28.1(4) of this jurisdiction and provides:

> 28.1 (4). For the purposes of this Part a document is "directly relevant" if—
> (a) the party with control of the document intends to rely on it;
> (b) it tends to adversely affect that party's case; or
> (c) it tends to support another party's case, but the rule of law known as the "rule in Peruvian Guano" does not apply.

[18.] In **Proman Holdings (Barbados) Ltd. and another v CL Financial Ltd and others**, Mendoça JA. considered the meaning of "directly relevant" and held at paragraphs 13 to 16:

> **[13]** The CPR which replaced the RSC altered the position in two fundamental ways. First, the wording of the rule was changed. The nature of the documents that were to be disclosed under the CPR was no longer 'relating to matters in question in the action', which would include documents directly or indirectly relevant as explained in the *Peruvian Guano* case, but now had to be directly relevant. Second, and perhaps only for emphasis, the CPR expressly excluded the rule in the *Peruvian Guano* case. It is, therefore, patent that the intention of the CPR is to limit the scope of disclosure by adopting a narrower definition of relevance. For the purpose of specific disclosure under Pt 28 of the CPR, it is clear, therefore, that a document would not be directly relevant if it is a document that only may fairly lead to a train of inquiry which may produce any of the consequences outlined at r 28.1(4)(a), (b), or (c). It must be directly relevant to any one or more matters in issue in the proceedings within the meaning of r 28.1(4).
>
> **[14]** In this appeal, it has not been suggested that r 28.1(4)(a) is applicable. The Respondents do not intend to rely on the documents of which specific disclosure is sought. The relevant parts of the definition of 'directly relevant' to this appeal are (b) and (c) of r 28.1(4). The documents must, therefore, be directly relevant in that they tend to adversely affect the case of the Respondents or they tend to support the Appellants' case. The reference to 'case' in r 28.1(4) must take its meaning from r 28.5(5) as referring to one or more matters in issue in the proceedings. If an order for specific disclosure of the documents is to be made in this matter, it must be established that the documents are directly relevant, in that they tend to support the Appellants' case or tend to adversely affect the Respondents' case on any one or more matters in issue in the proceedings.
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> **[15]** It is, obvious, from the reasons of the Judge which we have set out earlier, that he paid close attention to the pleadings to determine whether the documents in respect of which specific disclosure is sought are directly relevant. We believe he was plainly correct to do so. As was noted in *Harrods Ltd v Times Newspapers Ltd* [2006] EWCA Civ 294, [2006] All ER (D) 302 (Feb) (where the English rule

> is similar to the rules under consideration here, in that it requires disclosure of documents on which a party relies or documents that may adversely affect his own or support another party's case) (at para [12] per Chadwick LJ):
>
> > 'In my view the judge was plainly correct to approach the application for further disclosure on the basis that it was essential, first, to identify the factual issue that would arise for decision at the trial. Disclosure must be limited to documents relevant to those issues. And, in seeking to identify the factual issues which would arise for decision at the trial, the judge was plainly correct to analyse the pleadings. The purpose of the pleadings is to identify those factual issues which are in dispute and in relation to which evidence can properly be adduced. It is necessary, therefore, to have in mind the issues as they emerge from the pleadings and are relevant in the present context.'
>
> **[16]** The pleadings, therefore, provide an essential focus. As was noted in the *Harrods* case, the purpose of the pleadings is to identify the factual issues in dispute and in relation to which evidence can properly be adduced. In this appeal, the pleadings consist of the statement of case of the Respondents as well as the defences filed on behalf of the Appellants and the replies thereto of the Respondents. If there is information provided under Pt 35, it would seem to us that would need to be considered as well. So too, any witness statements, in so far as they may serve to provide evidence of any facts sufficiently pleaded. In this appeal, however, only the pleadings have been put before the Court. **The question, therefore, is whether the documents of which specific disclosure has been sought are directly relevant to one or more matters in issue in the proceedings as may be shown on an analysis of the pleadings.**
>
> [Emphasis supplied]

[19.] In determining the application for before me, I consider the following factors:

A. Are the documents sought within the Claimant's control?
B. Are the documents sought directly relevant?
C. Are the documents sought exempted from disclosure?
D. Is specific disclosure necessary in order to dispose fairly of the claim or to save costs?

A. Are the documents sought within the Claimant's control?

[20.] The Claimant has a duty to disclose documents which are or have been in his control: Rule 28.2(1) CPR. A document is to be considered within his control if (i) he has/had it in his physical possession or (ii) has or had a right to inspect it or to take copies of it or (iii) has or had a right to possess it: Rule 28.2 CPR. The Claimant produced medical certificates for certain dates. Those dates must have/ought to have related to visits where the Claimant was attended to by the medical practitioner (or an associate) that issued the medical certificates.

[21.] It seems to me the Claimant, in the capacity of a patient, is entitled to inspect and/or to take copies of his medical records relating to such visits. There is no submission on his behalf that he is not so entitled. It is my determination that these are documents that are in his control.

B. Are the documents sought directly relevant?

[22.] In this case, the Statement of Claim pleads negligence on the part of the Defendant (including paragraphs 6, 8 and 9) and injury to the Claimant (including paragraphs 6 to 13). Particulars of special damage are pleaded and that item includes damages for sick leave because of the inability to work (including paragraphs 12 to 13).

[23.] The Defendants' case, as set out in the affidavit of Nevado Frazer, is that on medical records supplied by the Claimant, there are references to "numerous visits to different medical establishments after the date of the alleged incident" and that, based on their own records, the Claimant had submitted "various medical certificates from different medical establishments prior to the alleged incident" (paragraphs 6 to 8). The medical certificates, save one, declared the Claimant 'unfit for work'. They were issued for periods starting in May 2019 to October 2019, including one issued on October 22, 2019, less than one month before the incident.

[24.] The contention of the Defendants is that the injuries complained of may have pre-existed the incident and that, if that can be proven to be so, it would be adverse to Mr. Smith's Claim. I accept that submission. Mr. Smith's case is that it was the negligence of the Defendants that lead to the injury and the resulting losses flowing therefrom. If it can be proven that there were pre-existing injuries, then that would be relevant to causation and quantum of damages. The earlier medical records can be important in distinguishing between old symptoms and new symptoms. If there is a pre-existing condition, that is a position that would be adverse to the Claimant's case per Rule 28.1(4) CPR and therefore documents evidencing this would be directly relevant.

C. Are the documents sought exempted from disclosure?

[25.] There is no evidence or submission to this Court that would suggest that the documents are privileged or otherwise exempt from production.

D. Is specific disclosure necessary in order to dispose fairly of the claim or to save costs.

[26.] The court's task is not merely to determine whether the requested material is directly relevant, but whether the proposed order is necessary and proportionate for the fair and cost-effective determination of the claim.

[27.] I am satisfied that the requested documents are within the control of the Claimant and are sufficiently identified. The request is not a speculative search for a possible case. I am also satisfied that the documents are likely to assist the fair determination of the identified issues, especially that of whether the Defendants caused Mr. Smith's injury and whether the inability to work stemmed from injury caused by the Defendants. Without the disclosure, there is a real risk that the court would determine those issues in the absence of material evidence. The same information cannot reasonably be obtained from another source, or by a materially less burdensome method.

[28.] I also consider the burden and cost of compliance. The disclosure sought is targeted to identified documents and dates. It is not extensive nor should it be burdensome for the Claimant to comply. Its likely utility is proportionate to the work required. An order for specific disclosure in the circumstances will also serve to narrow the evidential dispute and may thereby save costs at later stages of the proceedings. An order for specific disclosure will not displace any current timetable.

[29.] It is my view that an order for specific disclosure in these circumstances will serve to deal with the claim fairly, expeditiously and at proportionate cost.

Conclusion – Specific Discovery

[30.] In the premises, the application for specific disclosure is acceded to in the terms set out below.

<u>The Defendants' Notice of application to add an additional defence witness</u>

[31.] The Defendants' Notice of application to add an additional witness was filed on September 29, 2023. It is said to be made pursuant to Part 1.1. and Rule 29.1(a) of The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') and the inherent jurisdiction of the court.

[32.] The Application of the Defendants seeks leave to call an additional witness, viz, Delarease Symonette, on the ground that the additional witness will provide content evidence relevant to the issues for trial and facts that need to be proved by that witness.

[33.] The Application is supported by the affidavit of Sophia Lockhart also filed on September 29, 2023. Her evidence is, inter alia, at paragraph 7:

> 7. The evidence of Ms. Symonette, will in summary include, the industrial entitlements given to the Claimant since his accident on 13th November, 2019, the extended sick leave granted to the Claimant, the Claimant, though medically cleared by his attending physicians, refused to return to work.

[34.] Sophia Lockhart's evidence is that the additional witness sought would also address the Claimant's current employment status with the Second Defendant. The case of the Defendants is that the evidence would relate to post-accident employment and benefits and not to the details of the November 13, 2019 incident.

Law and Analysis – Additional Witness

[35.] Part 29 CPR deals with evidence and Rule 29.1 deals with the power of the Court to control evidence. The Defendants rely on this provision to invoke this court's exercise of discretion. That rule provides:

> 29.1 Power of Court to control evidence.
> The Court may control the evidence to be given at any trial or hearing by giving appropriate directions, at a case management conference or by other means, as to the —
> (a) issues on which it requires evidence; and
> (b) way in which any matter is to be proved.

[36.] Part 29 works in tandem with Part 26 which addresses the Court's case management powers. Those powers include addressing specific and general matters of evidence, such as rules 26.1(f), 26.1(m), 26.1(p) and 26.1(v). In **Cuthbert James v Vida James [2014] ECSCJ**, the Court of Appeal of the Eastern Caribbean Supreme Court considered that the court's case management powers included the exercise of judicial discretion regarding the filing and acceptance of additional witness statements. There, the appellate court determined that the judge's discretion to allow additional witness filings flowed from the case management powers set out in Rule 26.1(2)(w) of the Civil Procedure Rules 2000 of that jurisdiction, which mirrors Rule 26.1(2)(v) in this jurisdiction. That provision reads:

> 26.1 Court's general powers of management.
> (1) The list of powers in this rule is in addition to any powers given to the Court by any other rule, practice directions or any enactment.
> (2) Except where these rules provide otherwise, the Court may —
> (v) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an Early Neutral Evaluation, or directing that such a hearing take place before a Court appointed neutral third party, with the aim of helping the parties settle the case.

[37.] It is my view that Rule 29.1 CPR by which the Defendants approach this Court and Rule 26.1(v) CPR together, and separately, vest the court with a discretion to consider the application before me. The Defendants also invoke the court's inherent jurisdiction to manage its process. Managing witness testimony, including the witnesses permitted to be called and the nature by which they give evidence, including the timetable for same, are all part and parcel of the Court's duty to manage cases and control the evidence.

[38.] In **Cuthbert James v Vida James**, the appellate court pronounced that the equivalent of Rule 26.1(v) CPR gives judges broad powers to manage cases and further the overriding objective of dealing with cases justly. The case also provides guidance on what factors a court ought to take into account in allowing the filing of additional witness statements. The appellate court noted that in determining such an application, the judge should consider:

1. The relevance and importance of the additional evidence.
2. Potential prejudice to the applicant if the witnesses were not allowed.
3. The absence of prejudice to the respondent.
4. The overriding objective of justice.

[39.] In that case, the court noted that a judge must balance procedural compliance with the need to ensure that all relevant evidence is considered, especially when no prejudice is caused to the other party. The court also observed that judges have ongoing discretion to revisit and adjust case management directions to ensure a fair trial.

[40.] In this case, I find that the issue of fitness to work as a result of the injury is directly raised by the Claimant. The proposed additional witness is said to address matters relating to the Claimant's industrial entitlements and current employment status. The evidence of this witness would be relevant in that regard if there were to be an assessment of damages.

[41.] I note that the substance of the witness statement is not before the Court. I consider it good practice for a party to exhibit a draft of the witness statement that is being sought to be allowed. This especially ought to be the practice after the date for filing witness statements is past. An exhibit of a copy of the proposed witness statement would serve to give the Court a better understanding of the nature and extent of the evidence that is the subject of the application. It will also be of assistance to the other party/parties who, no doubt, must determine whether to resist the application.

[42.] Having regard to the nature of the evidence being sought to be introduced, it appears that it is not a duplication of the evidence of any of the other witnesses who have already filed witness statements. This matter is now bogged down in interlocutory matters. A new trial date is to be fixed. There is no prejudice caused to the Claimant by the timing of the application nor, to my mind, is there any substantive prejudice since the nature of the evidence to be given concerns the Claimant's employment record and such evidence ought not to take the Claimant by surprise. It is also my opinion that, if the evidence is confined to those matters, then any residual prejudice can be cured by prompt service of the witness statement and an opportunity for the Claimant to respond.

[43.] The prejudice to the Applicant who seeks to file an additional witness statement should also be considered. It is my determination that the Defendants would be prejudiced in not being allowed to mount an answer to matters raised by the Claimant when to do so would not be procedurally disruptive and would not affect any trial deadline.

Conclusion – Additional Witness

[44.] I am therefore minded to grant leave on the terms set out below.

<u>The Claimant's Notice of application for relief from sanctions</u>

[45.] The Claimant's Notice of application for relief from sanctions was filed on October 5, 2023. It is said to be made pursuant to Rule 26.8 and Rule 26.9 The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR') and/or the inherent jurisdiction of the court.

[46.] The application is supported by the Affidavit of Andrea Knowles, filed October 5, 2023. She avers that interlocutory applications were due by September 29, 2023 under the June 1, 2023 order. She avers that the Keva Louis affidavit was only delivered on September 28, 2023 after being filed on September 26, 2023, leaving little time to prepare applications. The affidavit states that the failure to comply with the September 29, 2023 deadline was not intentional, that the applicant otherwise generally complied with relevant orders, and that granting relief would likely not affect trial dates.

[47.] The Claimant asserts that the applications were made late because the Respondents supplied the information after more than four months and only two days before the deadline. In effect, the Claimants attribute the late filings to the timing of the Respondents' disclosure.

Law and Analysis – Relief from Sanctions

[48.] Rule 26.8 CPR deals with relief from sanctions. It provides as follows:

> 26.8 Relief from sanctions.
> (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or Court order, the Court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need —
> (a) for litigation to be conducted efficiently and at proportionate cost; and
> (b) to enforce compliance with rules, practice directions and orders.
> (2) An application for relief must be supported by evidence.
> (3) The Court may not order the respondent to pay the applicant's costs in relation to any application for relief unless exceptional circumstances are shown.

[49.] Rule 26.8(1) CPR provides that, on an application for relief from a sanction imposed for a failure to comply with a rule, practice direction, or court order, the Court will consider all the circumstances of the case so as to deal justly with the application, including the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions, and orders.

[50.] Rule 26.9 CPR provides for the general power of the Court to rectify matters, viz the failure to comply with a rule, practice direction or court order where the consequence for the non-compliance has not been specified by any rule, practice direction, court order or direction.

[51.] In this jurisdiction, the case of **Andrew Smith and Sophia Smith v First Caribbean International Bank (Bahamas) Ltd and Insurance Management (Bahamas) Ltd**. **2020/CLE/gen/00662**, endorsed the approach to be taken in dealing with an application for relief from sanction. In that case, at paragraph 67, Hon. Chief Justice Winder adopted the three-stage approach in **Denton v TH White Ltd [2014] EWCA Civ 906**:

1. identify and assess the seriousness and significance of the breach;
2. consider why the default occurred; and
3. consider all the circumstances of the case so as to deal justly with the application.

[52.] In this case, the Claimant's application refers to a Court Order dated June 1, 2023. It seems to me that such a reference is an obvious error as the Court's order of that date did not provide for the filing of interlocutory applications. By Order of the Court dated May 18, 2023, the parties were at liberty to make any Interlocutory application to be heard no later than the 29th of September, 2023 unless a later application concerned newly acquired information not in the knowledge of the Applicant or new circumstances not contemplated by the Applicant. On October 2, 2023, the Applicant filed two applications, viz, Application to Strike out parts of the Third Respondent's Affidavit and an Application for Judgment on Admissions.

[53.] The Applications were filed after the deadline imposed by the Court and it is in that context that the Applicant seeks to have the applications heard. The Applicant explains that the Third Defendant did not serve the Applicant with the Affidavit of Keva Louis until the September 26, 2023. It was only after seeing the information deponed to that the Applicant could determine to make the filed applications. Significantly, the Defendant's affidavit was filed pursuant to a ruling of this court made on June 1, 2023 by which the Court ordered that specific information be supplied to the Applicant. The Applicant points out that the "requested information was provided to the Applicant more than four (4) months after the court's ruling, and two (2) days before the deadline of the 29th of September, 2023 imposed by the court for making any Interlocutory application."

[54.] In making the application for relief from sanctions, the Applicant relies on the three-stage approach set out in the case of **Denton v TH White [2014] EWCA Civ 906**, referred to above.

[55.] It is not necessary for me to traverse that well-known case here. This application can be dealt with succinctly. I find that the breach is not significant or serious, coming as it did, only a few days after the deadline. The Application for relief was made timeously. The reason for the non-compliance was, in the circumstances, a good reason. The hearing of the applications would not pose a threat to an impending deadline. I also take into account the nature of the applications. If the Applicant were to be successful on the applications, then they would serve to either refine the issues before the court or dispense with a contentious trial. Potentially, an order in favour of the Applicants could save costs and result in the efficient and proportionate use of the court's resources. There is no prejudice caused to the Defendants by the late filing and none is mounted on their behalf.

Conclusion – Relief from Sanctions

[56.] In all the circumstances, the application for relief from sanctions is granted and I proceed to consider the applications in turn.

<u>Claimant's Notice of application to strike out parts of the Third Respondent's affidavit</u>

[57.] The Claimant's/Applicant's Notice of application to strike out parts of the Third Respondent's (Keva Louis') affidavit was filed on October 2, 2023 and is said to be made pursuant to Part 30, Rule 30.3 CPR. It is supported by the Affidavit of Andrea M. Knowles filed on October 3, 2023.

[58.] In summary, the application to strike out parts of the affidavit of Keva Louis argues that the Keva Louis affidavit contains inadmissible material, fails to identify sources by name, and improperly attributes information to the Second Respondent as an incorporated body rather than to one or more officers. The Claimant submits that the content of the affidavit fails to comply with Rule 30.3 CPR because the Affiant fails to state which of the statements are made from the Affiant's own knowledge and which are matters of information and belief. The Claimant further submits that the Affiant fails to state her source of information.

Law and Analysis – Application to strike out parts of an affidavit

[59.] Part 30 CPR deals with Affidavits. A court may receive evidence orally or by affidavit: Rule 30.1(1). Rule 30.3 makes provisions for the contents of an affidavit. The relevant rule for the exercise of the court's jurisdiction to strike out an affidavit is Rule 30.3 (3). A court may strike out the whole or parts of an affidavit which is comprised of "scandalous, irrelevant or otherwise oppressive" content. Rule 30.3 CPR provides:

> 30. 3 Contents of affidavits.
> (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.
> (2) An affidavit may contain statements of information and belief —
> (a) if any of these Rules so allows; and
> (b) if the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates —
> (i) which of the statements in it are made from the deponent's own knowledge and which are matters of information orbelief; and
> (ii) the source of any matters of information and belief.
> (3) The Court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.

> (4) An affidavit containing any alteration may not be used in evidence unless all such alterations have been initialled both by the deponent and the person before whom the affidavit is sworn.

[60.] In this case, the Applicant seeks to strike out the entirety of the Affidavit save for paragraph 7.

[61.] Re paragraph 1: Turning to the challenged affidavit, I note that the Defendants' Affiant, Keva Louis, describes herself in the first paragraph as Counsel in the Office of the Attorney General. From the record, it is that office that has carriage of the matter. It is unclear to me why it is asserted by the Applicant's affiant that paragraph 1 of the Keva Louis' Affidavit "does not address the information which was requested of the Second Respondent". This seems to be a misrepresentation of the issue by the Applicant's affiant. This misrepresentation of the issue is cleared up by written submissions. I note that such written submissions do not have the force of an affidavit in support of an application.

[62.] As far as the failure to name the source of the information is concerned, it is not an unusual practice for attorneys to speak to matters of instruction without specifically referring to the source of that instruction. I note that the same style is adopted by the Applicant in the supporting Affidavit of Andrea Knowles which is said to be in support of this application. At paragraph 4 of her affidavit, Andrea Knowles purports to provide information concerning an order of this court. In her paragraph 2, she avers that her information is obtained in her capacity, presumably as legal assistant, and from "files, statements or documents". Andrea Knowles, legal assistant, has not, in paragraph 4 provided the source of her information, identified by name, which I understand to be the substance of one of the Applicant's complaints concerning the Defendant's affiant. I note that Andrea Knowles is a legal assistant and therefore cannot be said to have conduct of a matter in the way that an attorney admitted to the practice of law can. There are clearly matters in both affidavits which could have only come to the affiant by way of a source.

[63.] Be that as it may, I find that the matters deponed to by Keva Louis in paragraphs 1 to 3 are matters within her knowledge and in paragraphs 4 to 5 are discoverable on the record. Indeed, paragraphs 4 to 5 reflect the information provided in paragraphs 4 to 5 of the affidavit of Andrea Knowles. Paragraph 6 of the Keva Louis Affidavit purports to exhibit the answers to the questions sought by the Applicant. It is within the Applicant's knowledge whether such answers were provided.

[64.] I do not consider that the failure to name the source of information in these circumstances warrant striking out of the affidavit on that ground.

[65.] It also seems to me that if the Applicant's submissions were to be persuasive, then Paragraph 7 which does not admit of a named source ought to be subject to the same sanction. That the Applicant would exclude paragraph 7 from stricture, without legal reason, and without more, indicates to me that the application is strategic but not well-grounded in law. The Applicant seeks to save paragraph 7 of the impugned Affidavit in order to found an Application for Judgment on Admissions. There appears to be no reason why the Application for Judgment on Admissions could exist not on its own if that indeed is the goal of the party.

[66.] The Applicant also takes issue with the answers provided in the document exhibited to the Defendants' affidavit. The Applicant submits that the answers are non-responsive and therefore irrelevant. It seems to me that this submission too is misconceived. Rule 30.3 CPR concerns statements made within an affidavit that are irrelevant. The purpose of the Keva Louis affidavit, as I understand it, is to exhibit the return that was made to the Applicant's Request for information. In this case, the Affidavit merely serves to exhibit the answers given. It is not irrelevant that a return to the request for information was given. If the return is not compliant, or if the answers are insufficient or irrelevant, that poses a separate issue and the Claimant/Applicant is entitled to address the sufficiency of the answer or its admissibility by several means. However, an application to strike out evidence of the fact that a response was made, in these circumstances, is ill-founded.

[67.] It is my determination that the exhibit is not irrelevant because it is the evidence of the return made in purported compliance with the order of the court.

Conclusion – Application to strike out parts of the affidavit

[68.] The Application to strike out parts of the Affidavit of Keva Louis is dismissed.

The Claimant's Notice of application for judgment on admissions

[69.] The Claimant's Notice of application for an Order for Judgment on Admissions was filed on October 2, 2023 and is made pursuant to Part 14 Rule 14.1 and Rule 14.8(3) and Part 1, The Supreme Court Civil Procedure Rules, 2022, as amended ('CPR'). The application is supported by the affidavit of Andrea M. Knowles filed October 3, 2023.

[70.] The application is founded principally upon two documents produced by or on behalf of the Second Defendant: a security occurrence diary for November 13, 2019 ("the diary") and an industrial accident report prepared by Chief Security Officer Charles Munnings ("the accident report").

[71.] The Claimant submits that the diary and accident report were generated and produced by the Second Defendant, identify the First Defendant and the Second Defendant's truck, acknowledge that the truck struck the boom, and record that the incident injured the Claimant. He argues that these matters constitute admissions sufficient to establish liability and that a trial on liability would cause unnecessary delay and expense.

[72.] The Defendants oppose the application. They submit that neither document is a formal, clear or unequivocal admission of liability, that the Defence expressly disputes negligence, causation and injury; and that the material issues require determination at trial.

[73.] The Defendants submit that the documents are factual workplace records rather than admissions made for the purpose of the proceedings. They say that the diary is a brief occurrence entry which does not admit negligence, and that the accident report contains observations and impressions of its author, including qualified language such as “appeared.” They further rely on the express denials in the Defence and submit that breach, causation and damage remain contested.

Law and Analysis – Judgment on Admissions

[74.] The Applicant seeks the grant of a judgment on admissions pursuant to Rule 14.1 (2) and Rule 14. 8(3) of the CPR. The relevant rules are as follows.

> Rule 14.1 provides:
>
> 14.1 Making on admission.
>
> (1) A party may admit the truth of the whole or any part of any other party's case.
> (2) A party may do this by giving notice in writing, such as in a statement of case or by letter, before or after the issue of proceedings.
> (3) A defendant may admit the whole or part of a claim for money by filing an acknowledgement of service containing the admission.
> (4) The defendant may do this in accordance with the following rules —
> (a) rule 14.6;
> (b) rule 14.7; or (c) rule 14.8.
> (5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed costs if the admission is filed after the time for filing an acknowledgement of service has expired.
>
> Rule 14.8 provides:
> 14.8 Admission of liability to pay whole of claim for unspecified sum of money.
> (1) This rule applies where the —
> (a) amount of the claim is not specified;
> (b) defendant admits liability in the acknowledgement of service to pay the whole of the claim and does not offer to pay a specified sum of money or proportion of the claim in satisfaction of the claim;
> (c) defendant has not requested time to pay under rule 14.9; and
> (d) only remedy the claimant seeks is the payment of money.
> (2) The claimant may file judgment in Form G17.

> (3) Judgment will be for an amount to be decided by the Court and costs.

[75.] Rule 14.1 CPR permits a party to admit the truth of the whole or any part of another party's case. An admission may be made in writing, including in a statement of case or letter, before or after proceedings are commenced. Where an admission has been made, the Court may enter only such judgment as the applicant is entitled to obtain upon the terms and proper scope of that admission: Rule 14.4 CPR.

[76.] The jurisdiction is discretionary. Judgment on admissions is appropriate where the admission relied upon is clear, unambiguous and sufficient, whether by itself or when read with other undisputed matters, to establish the applicant's present entitlement to judgment. The Court should not use this summary procedure to resolve material factual disputes, weigh competing evidence, determine credibility or draw contested inferences which properly belong at trial.

[77.] I here recall the summary of the applicable principles by this Court as set out in **Sub Lieutenant Jamal Taylor v Royal Bahamas Defence Force and The Commander of the Royal Bahamas Defence Force 2022/CLE/gen/01424** at paragraphs 59 to 61:

> 59. An admission may be made in pleadings or in documents such as letters written before the action was brought. The admission must be clear and unambiguous: **Forbes v Ferguson and another [2010] 2 BHS J No.5**.
>
> 60. The effect of a clear admission of the whole or part of a claim is that the Defendant cannot, and should not, mount a defence to that claim, or that part of the claim, admitted. An admission is an admission as to liability. There may also be an admission as to quantum. If a specific sum is claimed, the admission may be to the specific sum or part thereof. When an admission is made, no issues are joined between the parties in that regard and therefore that part of the claim may be summarily disposed of. Such a disposition saves time and costs. Such a disposition effects a resolution, in part or in whole, for the affected parties.
>
> 61. Having regard to the effect of an admission, a court must consider (1) whether there is in fact a clear and unequivocal statement that amounts to an admission of the claim or part of the claim and (2) whether, in the circumstances, it would be just to grant such order "as it appears to the Court that the applicant is entitled to on the admission."

[78.] The nature of the admission must reflect the nature of the claim. In a negligence claim, the Claimant must establish the relevant duty, breach of that duty, injury or damage, and a causal connection between the breach and the injury or damage claimed. An admission must reflect these constituent parts. The mere proof of an accident does not, without more, establish liability. The case of **Blundell v Rimmer [1971] All ER 1072**, a case relied upon by the Defendants, illustrates the importance of this distinction. That case was decided under the former Rules of the Supreme Court regime but the principles are apposite for the CPR.

[79.] In **Blundell v Rimmer [1971] All ER 1072**, the Defendant's solicitors sent a letter to the Claimant giving notice, inter alia, that the Defendant did not intend "to contest the issues of negligence in this action…. The Defendant denies, however, that the Plaintiff did, in fact, suffer any damage as a result of the accident." Considering whether that amounted to a judgment on admission of facts under the then governing rule, RSC Ord. 27, r. 3., the learned judge, Payne J, held that an admission of negligence, coupled with a denial that any damage resulted, was insufficient to establish an entitlement to judgment because actionable negligence requires damage caused by the breach. He opined at page 1074 (paragraphs d to f):

> The short answer to this case, in my view is this. One takes the words '…such judgment or order as upon those admissions he may be entitled to…..' In an action for negligence, the cause of action has two elements: (1) the breach of duty to the plaintiff, i.e. in this case the negligence, and, (2) damage suffered by the plaintiff. The plaintiff does not establish any right to judgment without evidence and proof of those elements. The letter from the defendant's solicitors of 26th October 1970 was an admission only of negligence and it was a denial of damage, and until, therefore, damage was proved by evidence, the plaintiff in my view was not entitled to judgment on the admission, because no claim against the defendant had been established; no admissions of fact had been made on which he became entitled to a judgment or order in pursuance of RSC Ord 27, r 3.

[80.] **Blundell v Rimmer [1971] All ER 1072** was cited with approval by the Court of Appeal in **Rankine v Garton [1979] 2 All ER 1185** where the appellate court confirmed that for an admission in a claim in negligence to lead to a judgment on that admission, it must include an admission of breach of duty and of damage suffered as a result of that breach of duty.

[81.] The Court must also apply the overriding objective in Part 1 of the CPR. Saving time and expense is important, but expedition cannot justify entering judgment where liability depends upon genuinely disputed facts. In such circumstances, a trial is the process by which the case is dealt with justly.

[82.] In this case I must consider (1) the nature of the claim and (2) whether statements emanated from the Defendants amount to a clear and unequivocal statement constituting an admission of the claim or part of the claim. If so, I must also determine whether in the circumstances, it would be just to grant such order "as it appears to the Court that the applicant is entitled to on the admission."

Law and Analysis – Application for Judgment on Admissions

The pleadings – the nature of the Claim

[83.] The Claimant was employed by the Ministry of Public Works as a Security Officer. He alleges that on November 13, 2019, while he was on duty at the Ministry's compound on John F. Kennedy Drive, a white flatbed truck bearing government registration number GV 0384, and driven by the First Defendant, struck him and caused injury to his spine and lower back.

[84.] The Statement of Claim alleges that the First Defendant drove negligently by, among other things, failing to keep a safe braking distance, failing to exercise due care and attention, driving too fast, and failing to stop, slow down, swerve or otherwise control the truck so as to avoid the collision. The Claimant alleges personal injury, loss and damage and seeks general and special damages, interest and costs.

[85.] The Defence admits, among other matters, that the First Defendant was the driver the truck, that the Claimant was employed as a Security Officer, and that the Claimant was on duty at the material location. It nevertheless denies negligence and denies that any injury alleged by the Claimant resulted from negligence on the part of any Defendant.

[86.] In particular, the Defence pleads that the First Defendant approached the guard rail at a very low speed; attempted to apply the truck's brakes; attempted to apply the emergency brake when the truck continued moving; and brought the truck to a stop after it struck the boom, pole or guard rail. It also pleads that the Claimant stood behind the gate with his back turned towards the oncoming truck and that he was not knocked to the ground. Read as a whole, the Defence expressly denies the pleaded negligence and expressly disputes that the Claimant's alleged injuries resulted from any negligence of the Defendants. The Defendants' case is that the First Defendant approached at low speed, attempted to stop, experienced brake and emergency-brake failure, and acted with due care.

[87.] In essence, the nature of the claim is negligence – a breach of duty which led to the accident and caused injury to the Claimant. The Defendants deny being negligent and deny causing injury to the Claimant.

The security diary

[88.] The diary contains an entry which records, in substance:

> "Mr. Walden from the Road Section hit the ~~Stop~~ Security boom injuring S/A R. Smith his brakes fail on truck # 0384".

The time inserted is 2:09 pm and the initials "TW" appear beside the entry.

[89.] The diary is put forward as contemporaneous evidence that an incident occurred. Its entry supports the proposition that the First Defendant's truck struck the security boom and that the Claimant was reported injured. It also records an apparent brake failure.

[90.] The diary may be probative at trial. What it does not state is that the First Defendant drove negligently, or that any failure to maintain the truck was attributable to a Defendant, or that a breach of duty caused an injury compensable in this action. Its condensed description of the event cannot be construed as a reasoned acceptance of legal liability.

[91.] It also seems to me that the fact that the diary was kept or produced by the Second Defendant cannot transform entries made in it into an admission of the whole claim. There is before me, no confirmation of the author/authors of the notes and no indication whether, and how, such entries are attributable to the Defendants for these purposes. Questions may arise at trial as to the author of the entry, the source of the information, the circumstances in which it was recorded, its intended purpose, and the weight properly to be given to it. Those are evidential questions. Such questions ought not to be resolved summarily by treating the entry as an unequivocal admission.

The industrial accident report

[92.] The accident report, over the signature of Charles W. Munnings, Chief Security Officer, records that Mr. Munnings observed a white flatbed truck bearing government registration number 0384 approach the boom "with speed that was above normal and made impact with the boom with force damaging same". The accident report states that, seconds before impact, the Claimant turned his body in an attempt to avoid contact, but the boom appeared to contact his lower back and push him forward. The report also records that the driver said that he had tried to stop but that the brakes had failed. The report further records that the Claimant appeared to be in pain.

[93.] The accident report is more detailed and includes observations which, if accepted at trial, may materially support the Claimant's case. It records the author's perception that the truck approached at an above-normal speed, struck the boom with force, and that the boom appeared to contact the Claimant's lower back. However, I bear in mind that the report is an observer's account of the incident and prepared following a workplace incident. It is not expressed as an admission by the Defendants that the First Defendant breached a duty of care or that such breach caused the injuries and losses claimed. The report's language is observational and, in material respects, qualified. Its statement that the boom "appeared" to contact the Claimant's lower back is evidence to be tested, not an unequivocal concession binding the Defendants to liability.

[94.] The report also records the First Defendant's contemporaneous explanation that he tried to stop but that the brakes failed. That assertion does not necessarily absolve the Defendants, but neither does it establish negligence. The cause of the brake failure, the condition and maintenance of the vehicle, the First Defendant's speed and reaction, the Claimant's position, and the mechanics of any contact remain matters for evidence and determination. Those matters are not resolved by the report.

[95.] It is also my opinion that classification of the event as an "industrial accident," and the provision or acceptance of industrial injury benefits, do not by themselves constitute an admission of tortious liability in a civil claim in negligence.

[96.] Taken together, the pleadings, diary and accident report serve to establish facts that may be agreed/conceded: the First Defendant drove the Ministry's truck; the truck struck the boom; the Claimant was close to the boom; and an injury was reported following the event. The conceded facts may narrow the issues and shorten the trial. They do not, however, eliminate the need for trial.

[97.] To enter judgment, the Court would have to infer breach and causation from the diary and/or accident report and determine the legal effect of the reported brake failure which also appears in the accident report. Those matters are central disputed issues. There is no clear admission that the First Defendant drove without reasonable care, or that a Defendant was responsible for the alleged mechanical failure, or that the boom or truck contacted the Claimant in the manner alleged, or that the incident caused the injuries and losses for which damages are claimed.

Conclusion – on application for judgment on admissions

[98.] I do record that it is unclear to me whether the Defendants have adopted the documents diary and the accident report so that such documents could be classed as notices in writing given by a party under Rule 14.1(2) CPR. It is unnecessary for me to make a finding as to same and I do not do so.

[99.] This is a case of negligence. For the Claimant to succeed under Part 14 CPR, the Claimant must show an admission of a breach of duty (negligence) and an admission of damage said to flow from that breach of duty. It is my determination that the Claimant has not established a clear and unequivocal admission of all facts necessary to found judgment in negligence. The occurrence of the incident and the truck's contact with the boom are not equivalent to an admission of breach of duty, causation and actionable damage.

[100.] The Court therefore finds that neither the diary nor the accident report amounts to a clear and unequivocal admission upon which the Claimant is presently entitled to judgment on liability.

[101.] The application for judgment on admissions is accordingly dismissed.

COSTS

[102.] The Defendants have been successful in their applications for specific disclosure and to add an additional witness. The Claimant was successful in obtaining relief from sanctions. The Claimant was unsuccessful in his applications to strike out the affidavit of Keva Louis and for a Judgment on Admissions.

[103.] In the circumstances of this case, I make the costs order set out below.

ORDER

[104.] The order and directions of this Court are as follows:

IT IS HEREBY ORDERED THAT:

1. The Defendants' application for specific disclosure is acceded to.

2. All the medical notes relating to the Claimant of his visit with Dr. Martin H Brown of Kennedy Medical Center on the following dates are to be disclosed to the Defendants, viz,
    a. 3rd April, 2019,
    b. 1st May, 2019,
    c. 12th June 2019,
    d. 19th July, 2019,
    e. 16th October, 2019

3. All the medical notes relating to the Plaintiff of his visit at the Department of Public Health, Ministry of Health are to be disclosed to the Applicants, viz
    a. 7th May, 2019;
    b. 16 May, 2019;
    c. 28th May, 2018,
    d. st May 2019

4. The Medical Notes must be served on the Applicant within 21 days of the date of this ruling.

5. The Defendants' application to add Delarease Symonette as an additional witness is acceded to. The Witness statement of Delarease Symonette must be filed and served on the Claimant within 14 days of the date of this order failing which the Defendant may not call Delarease Symonette to give evidence at the trial without further order of this court.

6. The Claimant's application for relief from sanctions is acceded to.

7. The Claimant's application to strike out the affidavit of Keva Louis is dismissed.

8. The Claimant's application for a Judgment on Admissions is dismissed.

9. On the Defendants' application for specific disclosure, the Claimant shall pay the Defendants' costs of the application, such costs to be assessed by a Registrar, if not agreed.

10. On the Defendants' application to add an additional witness, each party shall bear its own costs.

11. On the Claimant's application for relief from sanctions, each party shall bear its own costs.

12. On the Claimant's application for application to strike out the affidavit of Keva Louis, the Claimant shall pay the Defendants' costs of the application, such costs to be assessed by a Registrar, if not agreed.

13. On the Claimant's application for application to for a Judgment on Admissions, the Claimant shall pay the Defendants' costs of the application, such costs to be assessed by a Registrar, if not agreed.

Dated this 12th day of August 2026

Card Stubbs

Carla D. Card-Stubbs, J