



# Chambers Global Practice Guides

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

# Insurance Litigation 2021

**The Bahamas: Law & Practice**  
Genell K Sands, Knijah A Knowles,  
Andrew CD Smith and Alexandria K Russell  
McKinney, Bancroft & Hughes

**The Bahamas: Trends & Developments**  
Genell K Sands  
McKinney, Bancroft & Hughes

[practiceguides.chambers.com](https://practiceguides.chambers.com)

# THE BAHAMAS

## Law and Practice

### Contributed by:

Genell K Sands, Knijah A Knowles,  
Andrew CD Smith and Alexandria K Russell  
McKinney, Bancroft & Hughes see p.16



## CONTENTS

<b>1. Rules Governing Insurer Disputes</b>	p.286	<b>5. Claims against Insureds</b>	p.295
1.1 Statutory and Procedural Regime	p.286	5.1 Main Areas of Claims where Insurers Fund the Defence of Insureds	p.295
1.2 Litigation Process and Rules on Limitation	p.286	5.2 Likely Changes in the Future	p.295
1.3 Alternative Dispute Resolution (ADR)	p.288	5.3 Trends in the Cost or Complexity of Litigation	p.295
<b>2. Jurisdiction and Choice of Law</b>	p.288	5.4 Protection against Costs Risks	p.296
2.1 Rules Governing Insurance Disputes	p.288	<b>6. Insurers' Recovery Rights</b>	p.296
2.2 Enforcement of Foreign Judgments	p.289	6.1 Right of Action to Recover Sums from Third Parties	p.296
2.3 Unique Features of Litigation Procedure	p.289	6.2 Legal Provisions Setting Out Insurers' Rights to Pursue Third Parties	p.296
<b>3. Arbitration and Insurance Disputes</b>	p.290	<b>7. Impact of COVID-19</b>	p.296
3.1 Enforcement of Arbitration Provisions in Commercial Contracts	p.290	7.1 Type and Amount of Litigation	p.296
3.2 The New York Convention	p.290	7.2 Forecast for the Next 12 Months	p.297
3.3 The Use of Arbitration for Insurance Dispute Resolution	p.291	7.3 Coverage Issues and Test Cases	p.297
<b>4. Coverage Disputes</b>	p.291	7.4 Scope of Insurance Cover and Appetite for Risk	p.297
4.1 Implied Terms	p.291	<b>8. Climate Change</b>	p.297
4.2 Rights of Insurers	p.292	8.1 Impact on Underwriting and Litigating Insurance Risks	p.297
4.3 Significant Trends in Policy Coverage Disputes	p.293	<b>9. Significant Legislative and Regulatory Developments</b>	p.297
4.4 Resolution of Insurance Coverage Disputes	p.293	9.1 Developments Affecting Insurance Coverage and Insurance Litigation	p.297
4.5 Position if Insured Party Is Viewed as a Consumer	p.293		
4.6 Third-Party Enforcement of Insurance Contracts	p.294		
4.7 The Concept of Bad Faith	p.294		
4.8 Penalties for Late Payment of Claims	p.294		
4.9 Representations Made by Brokers	p.294		
4.10 Delegated Underwriting or Claims Handling Authority Arrangements	p.295		

*Contributed by: Genell K Sands, Knijah A Knowles, Andrew CD Smith and Alexandria K Russell, McKinney, Bancroft & Hughes*

## 1. RULES GOVERNING INSURER DISPUTES

### 1.1 Statutory and Procedural Regime

The Commonwealth of The Bahamas, being a former colony of England and currently a member of the British Commonwealth of Nations, has based its legal system and law on the English common law tradition. Many of its laws and civil procedures derive from aspects of the English system before England transitioned to the Civil Procedure Rules in 1999. The Bahamas has built upon this foundation with amendments to this inherited system and the implementation of its own legislation promulgated by the parliament of the Commonwealth of The Bahamas.

#### Legislation

The Insurance Act of 2005 (as amended, the “Insurance Act”) and regulations made thereunder provide the primary regulatory framework for the domestic insurance business in The Bahamas. The Insurance Act provides for the establishment of a supervisory authority, namely the Insurance Commission of The Bahamas (“Insurance Commission”), and includes the regulation of insurance companies, underwriters and insurance intermediaries. The Insurance Act also imposes certain obligations on insurers and confers rights on the insured as well as their beneficiaries. The External Insurance Act of 2009 (“External Insurance Act”) regulates external insurance business from within The Bahamas, ie, insurance business where the risk is located outside The Bahamas. The Marine Insurance Act of 1908 (“Marine Insurance Act”) contains provisions which specifically relate to marine insurance.

#### The Insurance Commission

As a part of its regulatory functions, the Insurance Commission requires all registered insurance companies to have an internal complaints process, which allows a policyholder or benefi-

ciary to file a complaint with an insurer if they are not satisfied with a claims settlement. If it is not possible to resolve a complaint in favour of the policyholder or beneficiary, the claimant can file a complaint with the Insurance Commission. The Insurance Commission’s complaints process comprises of mediation and arbitration as provided for under Section 20(1) of the Insurance Act, which states that “(w)here, in relation to a policy, any dispute or difference arises between an insurer and a policyholder, the Commission may with the consent of the parties involved, act as arbitrator of the dispute or difference”. The arbitration would be conducted in accordance with the Arbitration Act of 2009 (the “Arbitration Act”). Otherwise, the Insurance Act and the External Insurance Act provide no other procedure for the resolution of insurance disputes.

The claimant or insured also has the right to seek redress through the litigation process in the courts, which is described more fully in **1.2 Litigation Process and Rules on Limitation**, provided their insurance contract does not require all disputes to be adjudicated through arbitration. Once a claim has been filed in court, the Insurance Commission’s alternative dispute resolution methods are suspended.

### 1.2 Litigation Process and Rules on Limitation

#### The Litigation Process

The Magistrates’ Court has jurisdiction to hear civil matters in which the value of the claim is up to BSD5,000. The Supreme Court of The Bahamas (“Supreme Court”) has jurisdiction to hear civil matters in which the value of the claim exceeds BSD5,000 as well as, among other things, actions seeking declaratory relief. Most insurance disputes are commenced in the Supreme Court by the plaintiff filing a Writ of Summons (“Writ”) or, less commonly, an Originating Summons. The defendant is required to enter an appearance in the action within 14 days

of being served with the Writ. The Writ or other originating process must be served personally on the defendant, although the court may make an order for substituted service of the originating process where appropriate. In certain cases specified in the Rules of the Supreme Court (RSC), service of notice of a Writ outside the jurisdiction of The Bahamas is permissible with the leave of the court.

Once the defendant has entered an appearance, the plaintiff serves a statement of claim, which provides detailed particulars of the plaintiff's claim. The defendant then enters a defence to the claim, and the plaintiff is at liberty to file a reply if necessary. If the defendant fails to enter an appearance or defence to the claim, the plaintiff may enter judgment in default of either appearance or defence, as the case may be, either with or without the leave of the court, depending on the type of action.

After the close of pleadings, the action is referred to a Case Management Conference before the trial judge, at which hearing, directions will be given for the preparation of the action for trial and a trial date will be set. The directions include, among other things, the discovery process and the exchange of written witness statements and expert witness statements by the parties. Interlocutory applications, dealing with procedural or evidential disputes, costs, the striking out of pleadings or portions thereof, and injunctive relief, may also be made prior to the trial. A plaintiff may also apply for summary judgment (without a trial) or the defendant may apply for the plaintiff's claim to be struck out.

In The Bahamas, civil trials are in the first instance heard before a single judge and are as a general rule open to the public. Although the judge may render their ruling immediately upon the conclusion of the trial, it is usual for judgment to be reserved to a later date to enable the judge

to consider the transcript of the proceedings, the evidence and the legal submissions.

An appeal from a judgment or order of the Supreme Court is made to the Court of Appeal of The Bahamas. An appeal from a judgment of the Court of Appeal, if permissible, lies to the Judicial Committee of the Privy Council in London, England, which is the final appellate court of the Commonwealth of The Bahamas. All appeals to the Privy Council must be made with leave to appeal from the Court of Appeal or special leave from the Privy Council.

### **General Rules on Limitation**

The limitation periods for different causes of action are set out in the Limitation Act, 1995 ("Limitation Act"). The Limitation Act provides a limitation period of six years for claims:

- based on a simple contract or on tort (not involving personal injuries);
- to enforce an award of an arbitrator not under seal (a deed);
- to enforce a judgment;
- to recover any sum recoverable by virtue of any written law; and
- to enforce a recognisance.

However, if the action arises out of an agreement by deed, the applicable limitation period is 12 years. An action for damages in respect of personal injuries and actions under the Fatal Accidents Act of 1976 must be brought within three years.

The limitation period begins to run from the date on which the cause of action accrued. In claims founded upon contract, the limitation period will run from the date of the breach of contract. In actions founded upon tort, the limitation period runs from the date when the act causing the damage occurred.

*Contributed by: Genell K Sands, Knijah A Knowles, Andrew CD Smith and Alexandria K Russell, McKinney, Bancroft & Hughes*

The Limitation Act provides for the extension of the limitation period in cases of disability, acknowledgement, part payment, fraud and mistake.

A limitation defence must be specifically pleaded by a defendant. The court is not entitled of its own motion to bar a claim which is not brought within the prescribed limitation period.

### **1.3 Alternative Dispute Resolution (ADR)**

Alternative dispute resolution (ADR) has been gaining popularity in this jurisdiction, particularly in contractual relationships, as many businesses have opted not to engage in litigation when dealing with disputes. To achieve this, they have relied on arbitration clauses in order to avoid prolonged and expensive proceedings through the courts. Another benefit of arbitration is that it is enforced through legislation and by the courts and is conducted in accordance with globally recognised standards. Arbitration will be discussed in more detail in **3. Arbitration and Insurance Disputes**.

The Supreme Court may also assist, as part of its case management process, by encouraging the parties to use any appropriate form of dispute resolution and by facilitating the use of such procedures. Section 8(4) of the RSC (as amended) empowers a judge to refer the parties to a mediator to consider the claim or any issue arising in the claim.

There are practitioners in the jurisdiction who are certified for all forms of ADR, such as members of ADR Bahamas and the Chartered Institute of International Arbitrators. However, forms of ADR other than arbitration have not been prevalent in The Bahamas. In the resolution of insurance disputes, insurance companies have always had an inclination towards negotiation to settle claims in order to reduce costs.

## **2. JURISDICTION AND CHOICE OF LAW**

### **2.1 Rules Governing Insurance Disputes**

Section 217 of the Insurance Act provides that, in the matter of policy interpretation, every policy issued in The Bahamas or to a person resident in The Bahamas through a person or office in The Bahamas shall be governed by the laws of The Bahamas and shall be subject to the jurisdiction of the courts of The Bahamas, notwithstanding any provision to the contrary in the policy or in any agreement relating to the policy.

A dispute over jurisdiction and/or choice of law which does not fall within the ambit of Section 217 of the Insurance Act would be resolved by reference to private international law principles. In determining what is the “proper law” governing the insurance contract, the court will consider whether there is an express or partial choice of law clause in the insurance contract. If there is none, the court will attempt to deduce the presumed intention of the parties from an examination of the terms of the contract and the contractual background. An arbitration or jurisdiction clause in the contract is viewed as an indication of the parties’ presumed intention to choose the law of the jurisdiction named as the proper law of the contract. If still undecided, the court will determine the system of law with which the transaction has the closest and most real connection.

The general rule is that, where the parties have bound themselves by an exclusive jurisdiction clause, effect should ordinarily be given to the obligation, in the absence of strong reasons for departing from it. Whether a party can show strong reasons, sufficient to displace the other party’s prima facie entitlement to enforce the contractual bargain, will depend on all the facts and circumstances of the particular case. In the

absence of an exclusive jurisdiction clause, the court will determine the natural forum for the trial of the action. The natural forum will be the country which has the most “real and substantial” connection with the action and the parties. The court will consider connecting factors such as the law governing the transaction, the place where the parties reside or conduct business, and the location and availability of witnesses.

## **2.2 Enforcement of Foreign Judgments**

Foreign judgments can be enforced by or against insurers in The Bahamas. The normal rules which apply to the enforcement of a foreign judgment would apply in the case of an insurer. The procedure to be adopted is dependent upon the country in which the foreign judgment was obtained.

The provisions of the Reciprocal Enforcement of Judgments Act of 1924 (REJA) have, to date, been extended to the following countries: Barbados, Bermuda, Jamaica, Leeward Islands, St Lucia, Trinidad, British Guiana (Guyana), British Honduras (Belize), Australia and the UK. A judgment or order in civil proceedings given or made by certain superior courts of one of the countries listed may be registered and enforced under the REJA by the judgment creditor making an application to the Supreme Court within 12 months of the date of the foreign judgment. Once registered, the foreign judgment becomes a judgment of the Supreme Court.

If the foreign judgment was obtained in a country to which the REJA does not extend, enforcement in The Bahamas may only be achieved under the common law, which requires the satisfaction of six specific conditions. If those conditions are satisfied, the proceedings are then conducted by the plaintiff serving a Writ on the defendant, in which the foreign judgment is pleaded as the basis for the claim. If the defendant enters an appearance, the plaintiff may apply for summary

judgment on the ground that the defendant has no defence to the claim.

## **2.3 Unique Features of Litigation Procedure**

In The Bahamas, civil cases are in practice not heard by a jury, although the RSC do make provision for a trial before a judge with a jury. Generally, the jurisdictional requirements of the courts of The Bahamas are based on whether or not a defendant can be effectively served within The Bahamas. A defendant may be served outside the jurisdiction of The Bahamas in certain cases stipulated under Order 11 of the RSC.

Where a plaintiff is not resident within the jurisdiction of The Bahamas and does not have any assets in The Bahamas, a defendant may apply for an order that the foreign plaintiff pay a sum of money into court to secure any possible cost order which may be made should the plaintiff’s claim be unsuccessful. The court action will be stayed pending the lodging by the foreign plaintiff of the “security for costs”.

The award of costs by the court (whether in interlocutory applications or the trial of the action) is within the court’s discretion. In the exercise of this discretion, “costs usually follow the event”, ie, the unsuccessful party will be ordered to pay the costs of the successful party save in exceptional circumstances. In exercising its discretion on costs, the court will have regard to all the circumstances, including the conduct of the parties (before as well as during the proceedings), whether a party was only partly successful and whether any admissible settlement offer or payment into court was made.



*Contributed by: Genell K Sands, Knijah A Knowles, Andrew CD Smith and Alexandria K Russell, McKinney, Bancroft & Hughes*

## 3. ARBITRATION AND INSURANCE DISPUTES

### 3.1 Enforcement of Arbitration Provisions in Commercial Contracts

The courts of The Bahamas enforce arbitration provisions in commercial contracts, including contracts of insurance and reinsurance. The term “arbitration agreement” is widely defined in the Arbitration Act as “... an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not”. No limit is placed on the nature of the contract, neither is there a requirement that the arbitration clause be contained in the contract itself, ie, it may be in a separate agreement.

### 3.2 The New York Convention

The Bahamas acceded to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“Convention”) on 20 December 2006. The Convention was incorporated into local legislation via the Arbitration (Foreign Arbitral Awards) Act, 2009 (“the 2009 Act”).

In addition to the above, Section 88(5) of the Arbitration Act provides that any award, irrespective of the country in which it was made, may be enforced in The Bahamas, subject to Sections 5 and 6 of the 2009 Act, by way of an application to the court. In accordance with Section 5 of the 2009 Act, a party seeking to enforce an arbitral award must provide the court with the following documents:

- the duly authenticated original award or a duly certified copy of it;
- the original arbitration agreement or a duly certified copy of it; and

- if the award or agreement is in a language other than English, a translation of the award or agreement certified by an official or sworn translator, or by a diplomatic or consular agent.

The enforcement of an arbitral award can only be refused in certain circumstances provided for in Section 6 of the 2009 Act. The party seeking to resist the enforcement must prove, on a balance of probabilities, one of the following:

- that a party to the arbitration agreement is under some incapacity under the law applicable to that party;
- that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereof, under the law of the state where the award was made;
- that the party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present their case;
- subject to subsection (4) of the 2009 Act, that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration;
- that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the state where the arbitration took place; or
- that the award has not yet become binding on the parties or has been set aside or upheld by a competent authority in the state in which, or under the law of which, the award was made.

Enforcement of an arbitral award may also be refused if the award is in respect of a matter which cannot be settled by arbitration, or where

it would be contrary to public policy to enforce the award.

### **3.3 The Use of Arbitration for Insurance Dispute Resolution**

Statistics obtained from the Annual Reports of the Insurance Commission demonstrate that arbitration is not a significant form of insurance dispute resolution within The Bahamas. In its 2020 Annual Report, the Insurance Commission indicated that it received 26 complaints. Of those, 17 were settled between the parties, with the remaining nine matters outstanding. A review of the previous year's statistics confirms that the arbitration process is not widely used as a mechanism to settle insurance disputes. Of the 108 complaints filed with the Insurance Commission between 2018 and 2020, only two utilised arbitration to settle the dispute.

Section 20 of the Insurance Act provides that, where the parties agree, the Insurance Commission may act as arbitrator in any dispute which may arise between the insurer and the policyholder. These arbitrations are private and governed by the rules and procedures set out in the Arbitration Act. Subject to any arbitration agreement between the parties, arbitral awards are appealable to the Supreme Court on very narrow grounds. A party desiring to challenge an award may do so on the basis of a serious irregularity affecting the tribunal, the proceedings or the award (Section 90 of the Arbitration Act) and/or a question of law (Section 91 of the Arbitration Act).

Section 90 of the Arbitration Act was considered by the Privy Council in the very recent decision of RAV (Bahamas) Ltd and another v Therapy Beach Club Incorporated (2021) UKPC 8. The Privy Council affirmed that, in determining whether a serious irregularity has occurred, the court is focused on due process and not the correctness of the decision reached. Additionally,

an irregularity in the process will only amount to a serious irregularity if the court considers that it has caused or will cause substantial injustice.

It ought to be noted that Section 91(2) of the Arbitration Act provides that an appeal on a question of law "... shall not be brought under this section except with the agreement of all the other parties to the proceedings". The proper construction of this section is currently before the Supreme Court awaiting determination.

## **4. COVERAGE DISPUTES**

### **4.1 Implied Terms**

There are no statutory provisions in the Insurance Act which incorporate implied terms into an insurance contract. However, the Marine Insurance Act contains a few provisions which incorporate implied warranties and conditions into a marine insurance contract. If these conditions are not fulfilled, the contract may be rendered invalid or the liability of the insurer may be affected.

The Marine Insurance Act provides for the following warranties:

- a promissory warranty, ie, a warranty whereby the insured:
  - (a) undertakes that some particular thing will or will not be done;
  - (b) undertakes that some condition will be fulfilled; or
  - (c) affirms or negates the existence of a particular state of facts; and
- an implied warranty of neutrality of the insurable property, meaning that there is an implied condition that the property will have a neutral character at the commencement of the risk and that, as far as the insured can control the matter, its neutral character will be preserved during the risk;



*Contributed by: Genell K Sands, Knijah A Knowles, Andrew CD Smith and Alexandria K Russell, McKinney, Bancroft & Hughes*

- an implied warranty of seaworthiness of a ship in a voyage policy, where there is an implied warranty that at the commencement of the voyage, the ship will be seaworthy for the purpose of the particular adventure insured and reasonably fit to encounter the ordinary perils of the port;
- an implied warranty in a voyage policy on goods and other movables that, at the commencement of the voyage, the ship is reasonably fit to carry the goods to the destination contemplated by the policy; and
- an implied warranty that the adventure insured is a lawful one.

The Marine Insurance Act also incorporates an implied condition that the adventure will be commenced within a reasonable time and that, if the adventure is not so commenced, the insurer may avoid the contract. There is also a codification of the general implied term of an insurance contract being based on the utmost good faith of both parties. In this regard, Section 19 of the Marine Insurance Act establishes the requirement for disclosure by the insured and their agents which is further discussed in **4.2 Rights of Insurers** and **4.9 Representations Made by Brokers**.

Under common law, the obligation on all parties to observe good faith towards each other at all material times and in all material matters has been held in most cases to be an implied term in an insurance contract. This is also the case with the obligation on the insured party and their agents to disclose material facts to the insurer as further discussed in **4.2 Rights of Insurers** and **4.9 Representations Made by Brokers**.

## 4.2 Rights of Insurers

Insurers are given a prevailing right to be informed of all material facts to properly assess risks prior to the inception of the policy. This right is established under common law and in

legislation, although primarily in reference to life and marine insurance policies in this jurisdiction.

Section 154 of the Insurance Act allows the insurer to avoid a life insurance policy if, in any proposal or other document on the faith of which the policy was issued or reinstated by the insurer, (i) the insured made a statement fraudulently, or (ii) being a material statement in relation to the risk of the insurer under the policy, the statement was made within a period of three years immediately preceding the date on which the policy is sought to be avoided or the date of death of the person whose life is insured, whichever is earlier.

In respect of any matter relating to the state of health of the person whose life is insured, Section 155 of the Insurance Act exempts or reduces the insurer's liability under a life insurance policy on the ground of the proposer having, when making the proposal or thereafter and before the making of the contract, either (i) made an untrue statement of their knowledge and belief as regards the matter, or (ii) failed to disclose to the insurer something known or believed by them as regards the matter.

The Marine Insurance Act establishes an obligation on the insured to disclose to the insurer all material facts in order to properly determine the risk. Section 19(1) states that the insured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the insured, and the insured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by them. If the insured fails to make such disclosure, the insurer may avoid the contract. Determining whether a particular matter which has not been disclosed is a material fact or not is, in each case, a question of fact. However, Section 19(3) provides that there are circumstances which the insured need not disclose unless it is directly enquired. These circumstances are:

- any circumstance which diminishes the risk;
- any circumstance which is known or presumed to be known to the insurer (the insurer is presumed to know matters of common notoriety or knowledge and matters which an insurer in the ordinary course of their business ought to know);
- any circumstance as to which information is waived by the insurer; and
- any circumstance which it is superfluous to disclose by reason of an express or implied warranty.

There is a large body of case law on the issue of material non-disclosure by the insured before entering into an insurance contract. Although the majority of cases are in reference to life insurance policies, the Court of Appeal of The Bahamas has provided overall guidance on this issue in its judgment in the case of *Colina v Enos Gardiner SCCivApp & CAIS No 117 of 2015*. It was determined that, as a general rule and subject to certain qualifications, the insured is obliged to disclose all facts material to an insurer's evaluation of the risks which are known or should be known to the insured, but which are neither known or should be known by the insurer. Any breach of this duty by the insured entitles the insurer to make the contract void as long as the insurer can prove that the non-disclosure induced the making of the relevant terms. Therefore, local case law confirms the rights of the insurer when it comes to the disclosure needed to properly assess the risk.

The insurer can, however, be said to have waived this right if, in the course of asking their evaluation questions, it is evident that the insurer is not interested in certain matters. Whether an insurer has waived this right, would be determined by an objective construction of the insurance proposal forms.

### **4.3 Significant Trends in Policy Coverage Disputes**

In the last 12 months, the most significant trends in policy coverage disputes have been claims (and the quantum thereof) arising out of the damages and loss caused by Hurricane Dorian. This Category 5 storm devastated two of the main islands of The Bahamas in September 2019, causing substantial damage and resulting in claims which are still in the process of being resolved.

### **4.4 Resolution of Insurance Coverage Disputes**

There are several ways in which insurance coverage disputes may be resolved. If a policyholder or beneficiary is not satisfied with a claims settlement, they may file a complaint with the insurer, which will be addressed through the insurer's internal complaint process. The Insurance Commission requires disputes on claim settlements to complete the internal complaints process, which is required of all registered insurance companies before a complaint can be filed with the Insurance Commission. If the matter is not resolved through the insurer's internal complaint process, a complaint filed with the Insurance Commission would be addressed by way of mediation and arbitration in accordance with Section 20 of the Insurance Act.

The policyholder is at liberty to forgo the complaints process and seek recourse through the courts on any issue arising out of the policy, barring an insurance contract which contains an arbitration clause. In those cases, the claimant would be restricted to an arbitration process unless the clause is invalid or not applicable to the dispute in question.

### **4.5 Position if Insured Party Is Viewed as a Consumer**

There is no legal distinction between, or classification of, the consumer or non-consumer in

*Contributed by: Genell K Sands, Knijah A Knowles, Andrew CD Smith and Alexandria K Russell, McKinney, Bancroft & Hughes*

insurance contracts in this jurisdiction. Regardless of whether the insurance is for personal use or for the purposes of trade and professional use, the obligations of good faith and disclosure are the same.

## **4.6 Third-Party Enforcement of Insurance Contracts**

In The Bahamas, the general rule is that a third party cannot enforce an insurance contract due to the common-law principle of privity of contract. This principle stipulates that no one may enforce all or part of a contract to which they are not a party. Therefore, a third party would not have the standing to enforce an insurance contract and would only have recourse against the insured based on a breach of the insured's duty towards the third party.

An exception to the general rule is created by statute for the benefit of beneficiaries of life insurance policies. Section 164 of the Insurance Act allows the beneficiary or their trustee to enforce the payment of funds under the policy even though there is no privity of contract. However, the section also grants the insurer the right to invoke any defence against the beneficiary or their trustee which would have been available to them against the policyholder or their personal representative.

Another instance where a third party is granted rights against the insurer through legislation can be found in Part III of the Road Traffic Act, which requires motor vehicles to be insured against third-party risks. Section 12 of the Road Traffic Act requires the insurer to pay sums awarded to a third party under a judgment against the insured even if the insurer is entitled to cancel or may have cancelled the insurance policy once certain conditions are met. This creates a statutory obligation on the insurer which can be enforced by the third party, through litigation if necessary.

## **4.7 The Concept of Bad Faith**

In this jurisdiction there is no tort of bad faith as in some other jurisdictions such as the United States and Canada. In those jurisdictions, a claim of bad faith can result in exemplary or punitive damages for a claim of unreasonable delay in payment against the insurer, whether the action is based in contract or tort. However, in this jurisdiction, the term "bad faith" is generally used in insurance law to describe fraud or a breach of good faith. Moreover, while an insurer may be liable for a claim of unreasonable delay in payment under a contract, exemplary or punitive damages would not be awarded.

## **4.8 Penalties for Late Payment of Claims**

The Insurance Act gives the Insurance Commission the power to suspend or cancel the registration of an insurance company, an association of underwriters, or an insurance intermediary for unreasonable delay in the payment or settlement of any claim arising under any policy issued by them or, in the case of an insurance intermediary, issued through them. However, there is no evidence of this power having been used for such purpose.

There is an understanding by most insurance companies that the longer the duration of the dispute, the higher the overall cost to settle. Accordingly, insurers prefer to settle disputes as quickly as possible. If a claim proceeds to litigation, the court may award interest on the damages awarded for a period prior to the date of the judgment. The insurer may also be liable for an award of costs against them.

## **4.9 Representations Made by Brokers**

The insured is bound by representations made by their broker through the law of agency. The broker is considered the agent of the insured. Therefore, the ordinary law of agency governs their relationship and makes the insured bound

to the acts and omissions of the broker, unless the broker acted outside the scope of their authority as dictated by their contract. For this reason, brokers are expected to act in the best interest of their client, exercise reasonable skill and care, and act with reasonable speed.

Before the issuance of a policy the insurer, in communication with the broker, is entitled to assume that the proposed insured has communicated to their broker all material facts within their knowledge which are relevant to the matter. Therefore, the rules of disclosure and good faith still apply.

These principles are codified in Section 20 of the Marine Insurance Act, which requires an agent for the insured to disclose to the insurer (i) every material circumstance which is known to the agent, and an agent is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, them, and (ii) every material circumstance which the insured is bound to disclose, unless it comes to their knowledge too late to be communicated to the agent.

#### **4.10 Delegated Underwriting or Claims Handling Authority Arrangements**

Delegated underwriting or claims-handling authorities are very common in the Bahamian insurance market. They originate from a history of foreign companies conducting business in the jurisdiction. It was more efficient for these companies to function through an agent with delegated authority than to establish their own local office. Even though there are now well-established local insurers, these types of businesses continue to operate through delegated authority.

They are particularly common with voluminous claims regarding catastrophic losses. Such arrangements also result in quicker settlements, eliminating the need for adjusters to repeatedly

seek approval from insurers on each and every loss.

These arrangements have not resulted in significant litigation issues other than on the rare occasion when there is a dispute arising out of the relationship between the insurer and the agent. However, since there is, in many cases, common ownership between local insurers and the major agents, disputes which require legal action are uncommon.

## **5. CLAIMS AGAINST INSURED**

### **5.1 Main Areas of Claims where Insurers Fund the Defence of Insureds**

Once an insurer has been notified of a claim against them, the insurer would usually fund the defence of the claim both prior to (during the negotiations stage) and after legal proceedings have been commenced, provided that the terms of the insurance contract have been adhered to. The main areas of claims where insurers fund the defence of insureds are motor insurance claims, general public liability claims, employer's liability claims and professional indemnity claims. In particular, insurers are keen to fund the defence of claims involving large losses, for example, large personal injury and property damage claims, as well as claims where fraud may be a factor.

### **5.2 Likely Changes in the Future**

No change is anticipated in the main areas of claims where insurers fund the defence of insureds.

### **5.3 Trends in the Cost or Complexity of Litigation**

The cost of defending a claim fluctuates, depending on a number of factors, including the nature of the claim, its complexity and its merits, whether any interlocutory applications are made

*Contributed by: Genell K Sands, Knijah A Knowles, Andrew CD Smith and Alexandria K Russell, McKinney, Bancroft & Hughes*

(eg, an application for an interim payment) and the stage at which the proceedings are resolved, ie, whether or not the action proceeds to a full trial. It is anticipated that the cost of defending a claim will continue to fluctuate in line with the said factors. However, in general, in the last few years insurers have seen an increase in the desire by third parties to litigate and an attendant overall increase in litigation costs. With respect to motor insurance, general public liability and employer's liability claims, in the last few years insurers have seen claims for more heads of damages and for higher amounts of damages, as local jurisprudence evolves and more judgments become available for review. The current trends are likely to continue.

## 5.4 Protection against Costs Risks

Although legal expenses insurance is available in some developed markets, it is not currently available in The Bahamas.

## 6. INSURERS' RECOVERY RIGHTS

### 6.1 Right of Action to Recover Sums from Third Parties

#### Subrogation

The law allows an insurance company to pursue a cause of action in recovery of sums, among other things, from third parties causing loss to an insured by way of subrogation.

An insurer's right of subrogation is principally founded on an implied term of the contract of insurance, whereby the insured owes a duty to the insurer to take proceedings against third parties in an effort to reduce loss suffered by the insured and account to the insurer for any benefit received from those proceedings.

In other instances, the right of subrogation is an express term in the contract of insurance. The

insurer may then rely on the subrogation clause of the contract as a legally enforceable term to have the rights of the insured conferred upon the insurer.

### 6.2 Legal Provisions Setting Out Insurers' Rights to Pursue Third Parties

The right of subrogation may be found in both statute and common law in The Bahamas.

#### Statute

The Marine Insurance Act is the only statute which outlines an insurer's right of subrogation. This right can be found in Section 80 and specifically refers to an insurer's right of subrogation where an insurer pays for a total loss or any apportionable part thereof. The insurer then becomes entitled to take over the interest in the insured subject matter and is thereby entitled to all the rights and remedies of the insured in respect of that subject matter.

#### Common Law

Under common law an insurer's right of subrogation was established by the House of Lords as an implied term of every insurance contract under the principles of equity in the case of *Napier and Ettrick (Lord) v Kershaw (1993) 1 All ER 385*. The courts will therefore enforce an insurer's legal right of subrogation in equity as an implied term of the insurance contract.

Where the right of subrogation is exercised by an insurer, the claim is brought in the name of the insured.

## 7. IMPACT OF COVID-19

### 7.1 Type and Amount of Litigation

The pandemic has thus far not affected the type or amount of insurance-related litigation in The Bahamas.

However, there have been some disputes arising out of the COVID-19 pandemic, as insurance policies have not been designed for the claims made due to the loss of rent and revenue caused by the economic downturn. There have also been a number of fraudulent claims where losses have been arranged in order to receive claim settlements. These issues have caused many insurance companies to become more vigilant and stringent in reviewing claims.

## **7.2 Forecast for the Next 12 Months**

With regard to general insurance business, there is not expected to be any change due to the way in which the policies are written. Peril-based policies do not cover pandemics. Most claims have arisen as a result of business interruption cover, very little of which is sold locally.

As far as long-term insurance business is concerned, claims and litigation may arise out of newly issued policies where the insured fails to disclose information about their COVID-19 related conditions.

## **7.3 Coverage Issues and Test Cases**

In The Bahamas the pandemic has thus far not given rise to any test cases of real importance.

## **7.4 Scope of Insurance Cover and Appetite for Risk**

Many insurance companies have begun to tighten coverage in an attempt to make it clear that claims concerning the pandemic are excluded from coverage. General insurance policies issued in 2021 now have a specific communicable disease exclusion added.

The pandemic has, in particular, highlighted the importance of having insurance for business interruption and loss of rent.

With regard to life insurance, there was a great degree of uncertainty regarding COVID-19 at

the beginning of the pandemic in 2020 and some local insurers opted to suspend the sale of new life insurance for about two months (late March to May, 2020). Once new business sales resumed, most insurance companies added the requirement of a COVID questionnaire to their life insurance assessment process. Reinsurers also created COVID guidelines focusing on exposure to the virus, travel and co-morbidities. These new requirements have resulted in applications being postponed or denied, which would previously have been approved or approved with a rating. These decisions are based on the specific factors presented in the application and each application is assessed on an individual basis.

# **8. CLIMATE CHANGE**

## **8.1 Impact on Underwriting and Litigating Insurance Risks**

The science behind climate change seems to indicate that more severe hurricanes and catastrophes, linked to the higher sea level, can be expected. Underwriting will be affected, as there will likely be more total losses, leading to an increase in the number of disputes regarding adequate sums insured, the application of average to submitted claims, and litigation resulting from those disputes. Also, insurance premium rates and catastrophe deductibles will likely go up to meet the increase in risks affecting the insurance market.

# **9. SIGNIFICANT LEGISLATIVE AND REGULATORY DEVELOPMENTS**

## **9.1 Developments Affecting Insurance Coverage and Insurance Litigation**

There have not been any significant legislative or regulatory developments which will significantly



*Contributed by: Genell K Sands, Knijah A Knowles, Andrew CD Smith and Alexandria K Russell, McKinney, Bancroft & Hughes*

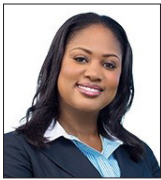
affect insurance coverage. However, in August 2020 the Insurance Commission indicated that it is undertaking a review of the insurance legislative regime in The Bahamas with the goal of ensuring that the relevant laws are current, modern and reflect international best practices. The Insurance Commission has also advised that one of its goals is to amalgamate the Insurance Act and the External Insurance Act. It is anticipated that at the conclusion of the review, significant changes may be made to the suite of laws regulating the insurance industry in The Bahamas.

The current Chief Justice of The Bahamas has foreshadowed significant reform of the RSC, which govern the practice of civil litigation. It was anticipated that the new rules would be enacted in early 2020. However, with the advent of the COVID-19 pandemic, the promulgation of the new rules has been delayed. Once enacted, the new rules will grant the court greater case management powers and will encourage greater use of ADR. These anticipated changes will likely improve the speed with which matters are dealt with and significantly reduce the cost of litigation, thereby improving access to justice.

**McKinney, Bancroft & Hughes** is one of the largest and oldest firms in The Bahamas and conducts an extensive international and domestic practice from its offices in Nassau, Lyford Cay and Freeport. The firm's litigation and dispute resolution practice group is comprised of 19 highly skilled specialists, who are effective and vigorous in court proceedings and arbitration matters, as well as around the negotiating table. The firm's lawyers have appeared in courts of first instance and every appellate court, inclusive of the Privy Council in London. Key areas of expertise include commercial liti-

gation; civil litigation; insurance litigation; trust litigation; cross-border litigation; asset tracing and fraud; arbitration, conciliation and mediation; insolvency and restructuring; and quieting of titles. The firm represents large national and international insurers and brokers as well as individual claimants and regularly provides advice in relation to policy disputes and claims settlements. McKinney, Bancroft & Hughes is a member of Lex Mundi, a global association of over 160 independent law firms in more than 60 countries.

## AUTHORS



**Genell K Sands** is a partner at McKinney, Bancroft & Hughes. She is a member of the firm's litigation and dispute resolution practice group and chair of the firm's labour and employment

practice group. The scope of her expertise includes civil and commercial litigation, insurance law, personal injury, industrial accident and fatal accident litigation, dispute resolution, company liquidations, banking litigation, trust litigation, debt recovery and employment law. For the past 23 years, Genell has represented large Bahamian and international insurers, agents and brokers. She regularly provides advice and representation in litigation in relation to all aspects of insurance law, including policy interpretation and disputes and claims settlements. She also uses her expertise in negotiation and litigation to obtain substantial settlements for individual claimants. Genell successfully represented a leading insurer in its appeal to the Privy Council in the landmark case of Insurance Company of the Bahamas v Eric Antonio.



**Knijah A Knowles** is a senior associate at McKinney, Bancroft & Hughes and practises primarily in the firm's litigation and dispute resolution, banking and finance, and trusts and

private client practice groups. Knijah is a former judicial clerk to the president and justices of the Court of Appeal of The Bahamas and has acted as legal officer to the president of the Caribbean Court of Justice. Knijah has a keen interest in public interest litigation, particularly matters which explore the intersection between gender rights and the law. She has published on both topics in the University of the West Indies Cave Hill and West Indian Law Journals. Knijah was called to the Bar of The Bahamas in 2012.

# THE BAHAMAS LAW AND PRACTICE

---

*Contributed by: Genell K Sands, Knijah A Knowles, Andrew CD Smith and Alexandria K Russell, McKinney, Bancroft & Hughes*



**Andrew CD Smith** is an associate at McKinney, Bancroft & Hughes and a member of the firm's litigation and dispute resolution, financial services and regulation, and tax and trade

practice groups. Andrew deals with a wide range of civil litigation cases, including insurance matters. He works with a number of underwriters and Bahamian insurance companies in providing legal opinions on the application of insurance policies under Bahamian law, particularly in light of the passage of Hurricane Dorian. He also represents Bahamian insurance companies in litigation arising from policies written in The Bahamas. In addition, Andrew's practice includes insolvency matters, employment disputes and corporate structuring, as well as business licence and tax matters.



**Alexandria K Russell** is an associate at McKinney, Bancroft & Hughes. She is a member of the firm's litigation and dispute resolution, and real estate practice groups. Alexandria has

assisted in a number of insurance litigation matters. The scope of her daily practice also includes civil litigation, real property litigation and quieting titles. Alexandria was called to the Bar of The Bahamas in December 2019. While attending Bar School at the Eugene Dupuch Law School in Nassau, she was a member of the Eugene Dupuch Law School Environmental Law Clinic.

---

## McKinney, Bancroft & Hughes

4 George Street  
Mareva House  
Nassau  
The Bahamas  
PO Box N-3937

Tel: +1 242 322 4195 9  
Fax: +1 242 328 2520  
Email: [nassau@mckinney.com.bs](mailto:nassau@mckinney.com.bs)  
Web: [www.mckinney.com.bs](http://www.mckinney.com.bs)



**McKINNEY**  
**BANCROFT**  
**& HUGHES**  
COUNSEL & ATTORNEYS

## Trends and Developments

*Contributed by:*

*Genell K Sands*

*McKinney, Bancroft & Hughes see p.22*

### The Impact of Climate Change on the Insurance Industry and Insurance Litigation in The Bahamas

The effects of climate change are being experienced globally and the Commonwealth of The Bahamas is no exception. The adverse effects of climate change have impacted and will continue to impact the insurance industry and insurance-related litigation in The Bahamas.

The Commonwealth of The Bahamas is an archipelago of more than 700 islands and cays in the western Atlantic Ocean. The majority of the land mass is within five metres above mean sea level, with the highest point being only 206 ft (63 m) above mean sea level. It is estimated that three quarters of the population and economy of The Bahamas are in Nassau (on the island of New Providence), which is the capital of The Bahamas. Grand Bahama and Abaco are the second and third most populated islands, with Freeport on Grand Bahama being considered the second city.

Over the past three decades, The Bahamas has experienced the direct impacts of climate change, particularly as it relates to hurricanes and tropical storms. Other adverse effects of climate change include higher temperatures, storm surges, a rise in the sea level, flooding and salt-water intrusion. The adverse effects of climate change are exacerbated by the geographical location and topography of The Bahamas.

#### *Major hurricanes*

Hurricanes, in particular, have increased in both frequency and intensity. Since 1999, there have been at least ten named hurricanes which have had a notable impact on some part of the archi-

pelago of islands. In the past decade, The Bahamas has experienced six major hurricanes, all ranging between category 3 and category 5 (the highest) on the Saffir-Simpson hurricane scale. These hurricanes have caused significant monetary loss to the insurance industry, environmental damage and, sadly, loss of life.

Particularly since 2015, The Bahamas has experienced the passage of the following four powerful storms.

- Hurricane Joaquin, a category 4 storm, devastated the south central Bahamas in October 2015. Hurricane Joaquin caused extensive damage to the infrastructure on several islands, as well as to buildings.
- Hurricane Matthew, another category 4 storm, struck New Providence and Grand Bahama and, to a lesser extent, the island of Andros, in October 2016. The total damage from Hurricane Matthew was estimated to be in the region of USD580 million.
- Hurricane Irma, a category 5 storm, caused major damage to property and infrastructure on the southern islands of The Bahamas in September 2017. The worst devastation occurred on Ragged Island which, following inspection by the National Emergency Management Agency, was declared uninhabitable.
- Hurricane Dorian made land fall on the islands of Abaco and Grand Bahama in September 2019. Hurricane Dorian was one of the strongest hurricanes ever recorded in the Atlantic and was the strongest hurricane ever to hit the Bahamas. Hurricane Dorian was a category 5 hurricane with winds exceeding 200 mph, storm surges exceeding 20 ft, and 4 ft of rain. Upon reaching Grand Bahama,

Hurricane Dorian remained near stationary for almost two days, thereby exacerbating the damage. Hurricane Dorian caused flooding and mass destruction on the islands of Abaco and Grand Bahama, resulting in over USD3 billion in damage and the loss of an undetermined number of lives, estimated to be several hundred.

### *Effect on the insurance industry*

Inevitably, the insurance industry in The Bahamas has been impacted by the adverse effects of climate change and in particular by the increase in the frequency and severity of hurricanes, increased flooding and storm surges. The greatest impact to the insurance industry has been the loss of and damage to residential and commercial properties. There were also significant motor and marine claims. According to the annual report for 2020 published by the Insurance Commission of The Bahamas, following the passage of Hurricane Dorian the insurance industry reported total insured losses which amounted to USD1.89 billion, of which USD1.8 billion was paid by 31 December 2020. The Insurance Commission further reported that, as the general insurance sector reinsures a significant portion of their risk, retained losses amounted to USD48.5 million.

### *Underwriting*

The underwriting of insurance risks has also been impacted. In respect of general insurance, premium rates and in some cases, catastrophe, deductibles for property insurance have increased and these will likely continue to increase to meet the greater risks affecting the insurance market. In its annual report for 2020, the Insurance Commission reported that the property line of insurance expanded by 7.3% or USD17.7 million during 2020, in part due to rate increases as a result of Hurricane Dorian. The increased severity of hurricanes and increased flooding have led to more total losses, result-

ing in more disputes regarding adequate sums insured, underinsurance and the application of the insurance principle of “average” to submitted claims. There has been a consequential increase in litigation resulting from these disputes. The frequency of hurricanes has also given rise to disputes and litigation concerning pre-existing damage which was not repaired from a prior hurricane.

### *Coastline insurance*

In some cases, insurers have refused to provide insurance cover for properties along the coastline. These properties sustain the brunt of the effects of hurricanes, storm surge, flooding, saltwater intake and wind damage. This is a significant development, as The Bahamas is an archipelago with many residential and commercial properties, including hotels and resorts, along its coastlines. Many foreign second-home owners also have properties along the coastline. A contraction in insurers willing to insure properties along the coastline will result in even higher insurance premiums being levied by insurers willing to insure the risks. Where financing through a bank or other financial institution is arranged, all-risks insurance, including catastrophe perils upon the property comprising the institution’s security, is typically mandatory.

### *Long-term insurance*

Long-term insurance business, ie, life and health insurance business, has not been significantly affected thus far by the effects of climate change. Hurricane Dorian saw the most significant loss of life from a hurricane in recent Bahamian history. The majority of those who lost their lives were on the island of Abaco. However, the majority of those persons did not have life insurance coverage. In respect of those who did have life insurance cover, insurers were faced with having to adjust their policies regarding the identification documents required for policyholders seeking to obtain policy benefits, as

many official documents were lost or damaged as a result of the storm. Insurers also had to determine whether provisions were necessary for potential death claims for missing persons. Health matters related to climate change may include heat stress and heat strokes, vector-borne diseases, and injuries and loss of life as a result of hurricanes, storm surges and flooding. Following the passage of Hurricane Dorian, insurers providing health insurance received a few claims for minor injuries such as lacerations and bruising, but no major claims or claims of great significance. There does not appear to have been an increase in life or health insurance premiums thus far directly tied to the effects of climate change. Nor has there been significant litigation arising out of these lines of insurance business as a result of the adverse effects of climate change.

#### *Ongoing adverse effects of climate change*

As the adverse effects of climate change continue, The Bahamas must brace for more frequent and intense impacts from hurricanes, storm surges, flooding and an overall rise in the sea level. There will be more flood-prone areas in The Bahamas, in particular in New Providence, due to the increased rainfall caused by climate change. Hotels, airports and seaports are under threat from the higher sea levels. Every sector of the economy in The Bahamas, including tourism, agriculture, fisheries and foreign investment, will be affected in some way by the adverse effects of climate change. The devastation unleashed by Hurricane Dorian has spawned discussions at the national level and among the insurance industry on the issues of climate change and national strategies for preparedness, including amendments to the building code, land use and land management, underinsurance, access to insurance and mandatory property insurance.

Bahamian households and businesses are encouraged to better protect themselves from

catastrophes related to climate change by taking the following measures:

- purchasing insurance coverage or better insurance coverage, particularly all-risks insurance;
- ensuring that buildings meet relevant building codes for catastrophic damage;
- ensuring that homes and other buildings are in good repair and are properly prepared for hurricanes; and
- regularly obtaining appraisals of the insured property to ensure that the property is at all times adequately insured and not underinsured.

#### *Protection of financial institutions*

Financial institutions such as banks are also urged to better protect themselves from catastrophes related to climate change. As previously stated, banks typically require borrowers who are pledging a building as collateral to purchase all-risks insurance on that building, which includes hurricane-related risks.

The insurance company is required to name the lending bank as a beneficiary of the insurance policy. Banks monitor the initial purchase of insurance as well as the ongoing renewal of insurance and are encouraged to be vigilant in this process. In a paper entitled “*Financial Stability Lessons from Hurricane Dorian (with additional lessons from the Covid 19 outbreak)* Central Bank of The Bahamas July 2020”, John Rolle, the Governor of the Central Bank of the Bahamas, pointed out that, following the passage of Hurricane Dorian, there were a minor number of partial losses associated with the following instances of poor procedures in the residential loan portfolio:

- there were some cases where insured buildings did not meet relevant building codes for storm resistance or where buildings were not



*Contributed by: Genell K Sands, McKinney, Bancroft & Hughes*

- in good repair before Hurricane Dorian, both of which complicated insurance recoveries;
- there were some cases where properties became under-insured with the passage of time, as the original valuations had not been updated for several years; and
- there were some instances where non-building assets (eg, docks, marinas and equipment) were pledged as a material part of the collateral package, but were not insured.

### *Development of a national land-use and management plan*

Consideration is being given to the development of a comprehensive national land-use and management plan which, among other things:

- incorporates climate change concerns and regulates the location of future settlements and urban developments, and the relocation of existing settlements, if necessary;
- establishes guidelines for the height of infrastructure relative to the mean sea level;
- incorporates climate change considerations in public building; and
- improves the building code to provide for stronger wind loads.

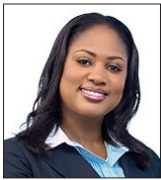
### *Conclusion*

Climate change is an issue which the insurance industry in The Bahamas will face for the foreseeable future. Litigation stemming from disputes and claims arising out of the adverse effects of climate change in The Bahamas, particularly in relation to damage caused by hurricanes, will likely increase going forward.

**McKinney, Bancroft & Hughes** is one of the largest and oldest firms in The Bahamas and conducts an extensive international and domestic practice from its offices in Nassau, Lyford Cay and Freeport. The firm's litigation and dispute resolution practice group is comprised of 19 highly skilled specialists, who are effective and vigorous in court proceedings and arbitration matters, as well as around the negotiating table. The firm's lawyers have appeared in courts of first instance and every appellate court, inclusive of the Privy Council in London. Key areas of expertise include commercial liti-

gation; civil litigation; insurance litigation; trust litigation; cross-border litigation; asset tracing and fraud; arbitration, conciliation and mediation; insolvency and restructuring; and quieting of titles. The firm represents large national and international insurers and brokers as well as individual claimants and regularly provides advice in relation to policy disputes and claims settlements. McKinney, Bancroft & Hughes is a member of Lex Mundi, a global association of over 160 independent law firms in more than 60 countries.

## **AUTHOR**



**Genell K Sands** is a partner at McKinney, Bancroft & Hughes. She is a member of the firm's litigation and dispute resolution practice group and chair of the firm's labour and employment

practice group. The scope of her expertise includes civil and commercial litigation, insurance law, personal injury, industrial accident and fatal accident litigation, dispute resolution, company liquidations, banking litigation, trust litigation, debt recovery and employment law. For the past 23 years, Genell

has represented large Bahamian and international insurers, agents and brokers. She regularly provides advice and representation in litigation in relation to all aspects of insurance law, including policy interpretation and disputes and claims settlements. She also uses her expertise in negotiation and litigation to obtain substantial settlements for individual claimants. Genell successfully represented a leading insurer in its appeal to the Privy Council in the landmark case of Insurance Company of the Bahamas v Eric Antonio.

---

## **McKinney, Bancroft & Hughes**

4 George Street  
Mareva House  
Nassau  
The Bahamas  
PO Box N-3937

Tel: +242 322 4195 9  
Fax: +242 328 2520  
Email: [nassau@mckinney.com.bs](mailto:nassau@mckinney.com.bs)  
Web: [www.mckinney.com.bs](http://www.mckinney.com.bs)



**MCKINNEY  
BANCROFT  
& HUGHES**  
COUNSEL & ATTORNEYS