



**McKINNEY  
BANCROFT  
& HUGHES**  
COUNSEL & ATTORNEYS



# The PERSONAL INJURY *Claim*

## What is a personal injury claim?

- A personal injury claim is a legal claim in civil law for compensation by a person who has been injured, usually in an accident, wholly or partly as a result of the fault of someone else. Personal injury includes physical and psychological injury to a person.
- The compensation claimed usually includes damages, interest and legal costs. Often the compensation will be paid by the wrongdoer's insurance company.
- The person who has been injured is referred to as the claimant or plaintiff while the wrongdoer is referred to as the respondent or defendant.

## How long do I have to make a personal injury claim?

- There is a three (3) year limitation period for personal injury actions arising out of a defendant's negligence, nuisance or breach of duty.
- A two (2) year limitation period applies to a personal injury action commenced against a vessel or the owner of a vessel by any person on board the vessel.
- A one (1) year limitation period may apply in some cases to a personal injury action commenced against a public authority for breach of a public duty owed generally to the public or to a section of the public. However, this shortened limitation period does not apply to all actions performed by public authorities.
- The limitation period most often runs from the date of the accident.
- However, the limitation period may run from a later date if the claimant first had knowledge of certain facts giving rise to the claim at such later date. Those facts include: (a) that the injury in question was significant; (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; (c) the identity of the defendant; and (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that other person and the additional facts supporting the bringing of an action against the defendant.

*The information in this article/update is provided for general informational purposes only. Nothing contained herein should be construed as legal advice from McKinney, Bancroft & Hughes, nor is it intended to be a substitute for legal counsel on any subject matter. No reader of this article/update should act or refrain from acting on the basis of any information included in this article/update without seeking the appropriate legal advice on the particular facts and circumstances at issue from a qualified lawyer duly admitted to practice law in the Commonwealth of The Bahamas*

## Client Focused. World View

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 the cities of Nassau and Freeport.

NASSAU FREEPORT LYFORD CAY [www.mckinney.com.bs](http://www.mckinney.com.bs)

Member  
**LexMundi**  
World Ready

## GENELL K. SANDS - Author

[gksands@mckinney.com.bs](mailto:gksands@mckinney.com.bs) | Tel: 242-322-4195

I am a Partner at McKinney, Bancroft & Hughes, one of the largest and oldest law firms in The Bahamas. I am a member of our firm's Litigation and Dispute Resolution practice group and Chair of our firm's Labour and Employment practice group. I am committed to providing excellent service and delivering results. The scope of my expertise includes civil and commercial litigation, insurance law, personal injury and fatal accident litigation, dispute resolution, company liquidations, banking litigation, trust litigation, debt recovery and employment law. I regularly appear before the Supreme Court and the Court of Appeal of The Bahamas, and I have also appeared before the Privy Council in the UK.

For the past 23 years I have represented national and international (UK, USA and Caribbean) insurers, agents and brokers. I am regarded as one of the leading specialists in the personal injury, fatal accident and insurance fields. My daily practice includes motor vehicle accident claims, slips and fall claims, industrial accident claims, property damage claims, medical negligence claims, fatal accident claims and policy disputes between insurers and their insured. I also use my expertise in negotiation and litigation to obtain substantial settlements for individual clients. I successfully represented a leading insurance company in its appeal to the Privy Council in the landmark case of Insurance Company of the Bahamas v. Eric Antonio. This was a case which involved a 'named drivers' clause in a motor vehicle insurance policy. This case had major implications for the insurance sector under the Road Traffic Act of The Bahamas. Recognizing my expertise in the personal injury field, I was invited to be a guest lecturer at the Eugene Dupuch Law School in The Bahamas. I was called upon to provide to the final year law students a practical approach to the handling of a personal injury claim. I have co-authored the Chambers and Partners Litigation Law and Practice Guide for The Bahamas for the years 2020 and 2021. I am also the leading author of the Chambers and Partners Insurance Litigation Practice Guide for The Bahamas 2021.

As the Chair of our firm's Labour and Employment practice group, I regularly advise on employment law, including terminations and dismissals. I have prepared and adapted employment contracts and employee handbooks to conform with Bahamian employment law, and I represent both employers and employees in employment disputes, mediation and litigation.

I advise and appear on behalf of liquidators and receivers, and I have been involved in liquidations of large international banks as well as companies in The Bahamas. I also regularly provide expert advice on Bahamian law to international law firms for use in foreign proceedings and arbitrations involving ships and crew members.

I was admitted to the Bar of England and Wales and the Bar of The Bahamas in 1998.



## Can I get an extension?

- The short answer is “no”, except in personal injury actions commenced against a vessel or the owner of a vessel by any person on board the vessel. In those cases the Merchant Shipping Act permits the Court to extend the limitation period to such extent and on such conditions as it thinks fit.
- The Limitation Act also permits the extension of the limitation period in the case of a claimant who is under a disability, i.e. a person who is an infant (under the age of 18 years) or of unsound mind. In such cases the relevant limitation period runs from the date when the person ceased to be under a disability or died, whichever event occurs first.

## How do I preserve my personal injury claim?

- If settlement negotiations have not been concluded prior to the expiration of the limitation period, a Writ of Summons should be filed on behalf of the claimant prior to the expiration of the limitation period to preserve the claimant’s cause of action.
- The Writ is valid for a period of one year from the date it is filed.
- The Writ does not have to be served on the defendant straight away. However, the Writ must be served within the one year period of its validity.

## What information should I obtain from or about the other party?

- The identity/correct name of the defendant, i.e.
  - whether it is an individual, a company or a firm; and
  - in the event of a motor vehicle accident where the driver is not the owner of the vehicle, the identity/name of both the driver and the owner and the purpose for which the vehicle was being driven at the time of the accident to decide whether vicarious liability on the part of the vehicle’s owner can be established.
- The name of the defendant’s insurer.
  - in the event of a motor vehicle accident, the name of the defendant’s insurer will be listed on the police report.

## What information and documents do I need to obtain following the accident to establish liability?

### **MOTOR VEHICLE ACCIDENT**

- Police report.
- Evidence of the speed limit and of any road signs, e.g. a stop sign.
- Witness statements.
- If the defendant was charged with an offence in connection with the motor vehicle accident:
  - evidence of the outcome of the criminal case; and
  - the transcript of the proceedings in the criminal case.
- Expert report/reconstruction of the accident.
- Reports/quotes stating the damage to the vehicles involved in the accident.
- Photographs/videos.
- Map/sketch plan.

### **SLIP AND FALL ACCIDENT**

- Incident report.
- Investigative report by the defendant.
- Witness statements.
- Photographs/video.

## ACCIDENT AT WORK

- Incident report.
- Investigative report/risk assessment report.
- Forms submitted to the National Insurance Board.
- Employee handbook.
- Health and safety manual or guidelines.
- Notices, reminders or other printed material.
- Claimant's employment contract/job description.
- Witness statements.
- Photographs/video.

## What heads of damages can I claim?

### GENERAL DAMAGES

- Pain, suffering and loss of amenities, i.e.
  - the claimant's injuries, medical treatment and prognosis, supported by:
    - Medical reports/assessments;
    - Therapy reports;
    - Reports of imaging studies, e.g. X-rays, MRIs, CT scans;
    - Hospital records;
    - Past medical records.
  - loss of amenities, i.e. sports, exercise, hobbies, gardening, do-it-yourself (DIY), inability to play with children.
- Handicap on the labour market/Smith v Manchester award, where the injuries/disability have left the claimant at a disadvantage on the open labour market in a pool of able-bodied applicants.
- Loss of consortium (consortium is companionship, love, affection, comfort, mutual services and sexual intercourse taken together).
- Loss of congenial employment.

### SPECIAL DAMAGES

These include all past expenses and losses incurred from the date of the accident up to the date of trial, for example:

- Medical expenses.
- Medication.
- Equipment and aids.
- Travel expenses.
- Accommodation.
- Transportation.
- Loss of earnings.
  - Loss of pension.
  - Housekeeping assistance.
  - Nursing care.
  - DIY.
  - Gardening.
  - Property damage which, in the event of a motor vehicle accident, would include:
    - » Loss or damage to the claimant's vehicle; and
    - » Loss of use of the vehicle/cost of a rental vehicle.

### FUTURE LOSSES

- These include all expenses or losses to be incurred in the future as from the date of trial.
- The list of items which may be claimed is the same as under the heading special damages.

- Quotes should be obtained where necessary.
- Distinguish between a fixed expense and a recurring expense/loss.
- In the event of a recurring expense/loss, establish the period of time over which the loss/expense will be incurred.

## Can I claim interest?

- Pre-judgment interest on damages can be awarded.
- The rate of interest and the period of time for which it is awarded is within the discretion of the Court.
- Pre-judgment interest can be claimed on general damages and special damages, but no pre-judgment interest is awarded on future losses.
- The current statutory rate of interest post-judgment is 6.25%.

## Can I claim costs?

- During the negotiation stage, legal costs are usually claimed at between 10% to 20% of the damages claim, inclusive of interest.
- Insurers typically offer between 10% to 15% as legal costs.
- If legal proceedings have been commenced, a claimant's damages claim may be settled, leaving the claimant's costs to be taxed by the Court if they cannot be agreed.
- The award of costs in a personal injury action is within the discretion of the Court. The general rule is that costs follow the event, with the successful party usually being awarded their costs.

## What if the claim is settled? What are the next steps?

- If the claim is settled before a Writ of Summons is filed,
  - the defendant/insurer will usually request that the claimant execute a Deed of Release.
- If the claim is settled after a Writ of Summons is filed,
  - the defendant/insurer will usually request that the claimant execute a Deed of Release and that the Writ of Summons filed in the action be marked as "settled";
  - depending on the stage of the litigation when the action is settled, the terms of the settlement may be embodied in a formal Court Order.
- In respect of a claim on behalf of a minor claimant/person under disability,
  - the Court's approval of the settlement is required and, if the Court's approval is not obtained, the settlement is not valid.
  - If a Supreme Court action has already been commenced, the application to obtain Court approval would be made in that action.
  - If the claim is settled prior to the filing of a Writ of Summons, a Supreme Court action would have to be commenced for the sole purpose of obtaining Court approval of the settlement. ■