In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025 No 144

BETWEEN **ALLIANZ SE** **PLAINTIFF**

AND

CAVELLO BAY REIUNSURANCE LIMITED **DEFENDANT**

REASONS FOR ORDER

MARTIN J

IN CHAMBERS

Appearances

Laura Williamson of Kennedys Bermuda Limited for the plaintiff

Alex Potts KC of 4 Pump Court and *Alexandra Schleup* of Conyers Dill & Pearman Limited for the defendant

Date of hearing: 22 June 2026

Date of circulation: 9 July 2026

Date of Reasons: 15 July 2026

Introduction

1. On 22 June 2026 the court dismissed the plaintiff's application for an order directing a split trial on liability and quantum in these proceedings. At the same hearing the court

granted the defendant's application for an order that the plaintiff provide further and better particulars of the amended statement of claim. The court promised to deliver short reasons for those decisions, and these are set out below.

2. The court will set out a brief description of the background to the application and then address the two decisions in turn. Because the court does not need to address the merits of the positions of the parties, the court will provide only a broad overview of the main issues to put these decisions into the context of the proceedings in which they have arisen.

The proceedings

3. The main issue to be determined in these proceedings is whether the defendant gave proper notice of a change in control under the terms of a Reinsurance Agreement dated 31 December 2018 which had been executed between the plaintiff and Fitzwilliam Insurance Limited, which and which was subsequently novated between the plaintiff and the defendant on 30 September 2022, under the terms of which the plaintiff became the Cedant. This will be referred to as the Reinsurance Agreement.

4. The Reinsurance related to a 50% quota share of the Cedant's first layer of excess of loss liability, net of the Recoverables (as defined), linked to a segregated account established by the defendant.

5. The excess of loss liability was reinsured on a 'follow the fortunes' basis for which a lump sum premium was paid to the defendant which was held as collateral for the reinsurance provided by the plaintiff under the 2018 Retrocession Agreement dated 31 December 2018 between Allianz Reinsurance America Inc ("AZRA") as ceding company and the plaintiff as reinsurer.

6. Under the terms of the Reinsurance Agreement, the plaintiff has a right to terminate the contract within 60 days of receiving notice of change in control event (as defined). Upon termination as a result of a change in control event, the plaintiff is entitled to a settlement of the net liability in its favour as at the date the notice of termination takes effect according to a formula set out in the Reinsurance Agreement.

7. In summary, the effect of the formula is that the plaintiff is entitled to receive an amount equal to (1) the aggregate fair market value of the Funds Withheld Assets (as defined) and any other assets held by AZRA or the plaintiff ultimately attributable to the risks reinsured under the Reinsurance Agreement, plus any accrued investment income or Recoverable received by the plaintiff since the last quarter end less any amounts paid by the plaintiff since the last day of the last quarter end and to the extent that that amount is less than the Quarterly Reserves (as defined), the defendant is to transfer to the plaintiff Acceptable Investments (as defined) with an aggregate fair market value equal to such shortfall; OR, if the amount is greater than the amount of the Quarterly Reserves, the plaintiff must transfer to the defendant Acceptable Investments with an aggregate fair market value equal to the excess. It is in effect a "truing up" calculation as at the effective date of the notice of termination.

8. In this case the plaintiff claims that a change in control event occurred when Enstar Group Limited ("Enstar") which owns the defendant was acquired by Sixth Street Capital ("Sixth Street") on 2 July 2025. The plaintiff claims that a valid notice of change in control was not given by the defendant under the terms of the Reinsurance Agreement and that the defendant is thereby in breach of its obligations under the change in control provisions because it did not receive a notice 60 days in advance of the change in control event.

9. The plaintiff seeks declarations that (i) the acquisition of Enstar by Sixth Street was a change in control event (ii) the defendant is in breach of the Reinsurance Agreement. In addition, the plaintiff seeks damages for the defendant's breaches of contract on the basis that it would have terminated two out of four contracts governed by the Reinsurance Agreement, and the defendant would have been required to transfer Acceptable Investments equal to the value of the shortfall calculated by reference to the formula summarised above.

10. For its part the defendant admits that there was a change in control but says that proper notice of the change in control was given in an email dated 29 July 2024 and that since the plaintiff did not exercise its right to terminate the contract within 60 days of that notice, the plaintiff lost its right to do so thereafter. The defendant therefore says it is not in breach of contract, and that it has no liability under the change in control provisions.

11. The defendant seeks by way of counterclaim against the plaintiff declarations that (i) the email notice was valid and effective (ii) because the defendant failed to exercise its rights within 60 days of that notice the defendant cannot seek to terminate the contract now.

The Split Trial application

12. The plaintiff has made an application to the court for a split trial as to liability and quantum. The court has power to order a split trial when it considers it just, fair and proportionate to do so, having regard to its ordinary case management powers under Order 33 rule 3 of the Rules of the Supreme Court of Bermuda 1985 ("the RSC") when interpreted and exercised with the considerations set out in the Overriding Objective under RSC Order 1A in mind. These considerations include (amongst others) saving expense, dealing with the case in ways which are proportionate, and the complexity of the case.

13. Ms Williamson submitted that these factors strongly support the exercise of the court's power to order a split trial because (a) the issues relating to damages will be complex and will require expert evidence which will involve considerable expense to prepare and court time to resolve (b) there is no prejudice to the defendant. Ms Williamson urged that it would be wrong in principle to require the plaintiff to prepare its case on quantum until the court has determined whether the plaintiff is correct in its contractual analysis. If the plaintiff fails to persuade the court that the defendant is in breach of its obligations, then the need for preparation of a detailed case, extensive disclosure and the preparation expert evidence falls away.

14. Mr Potts KC submitted that this is an overly simplistic assessment of the issues in the case. He submitted that a single trial as to liability and quantum is the general rule which should normally be applied unless (a) the determination of liability will be dispositive of the case (b) the split trial will not result in the likelihood of increased costs and duplication (including added strain on witnesses who may have to testify more than once). He submitted that where the issues of liability and quantum are intertwined (including, for example, causation and remoteness) a split trial is not appropriate. Mr Potts KC also submitted that the court should take into account the possibility of delay and increased costs arising out of possible appeals.

15. Mr Potts KC pointed to an emerging theme in the plaintiff's which raises an estoppel argument to the effect that even if the email notice was sufficient to meet the contractual requirements, the plaintiff says the defendant is estopped from relying on it by its conduct, or alternatively that the parties were labouring under a common assumption that a formal notice would be given and that the email notice was not being treated as the notice of a change in control event under the contract. Mr Potts KC suggested that it would be premature to order a split trial before the pleadings have defined al the relevant issues to be determined.

The court's assessment of the Split Trial application

16. In my judgment, the key question is whether the court considers that it is just, fair and proportionate to order a split trial on the particular facts of the case. I concluded that it is not appropriate to order a split trial in this case for the reasons explained below.

17. The English High Court has recently set out the considerations that a court should normally take into account when being asked to exercise its power to order a split trial. I can do no better than to adopt the expression of those considerations in this case, which are of general application to the equivalent provisions of the RSC.

18. In **APK Communications & Ors v Vodafone Ltd**[1] Bryan J summarised the applicable legal principles, at paragraphs 9 to 17 of his judgment:

> *"… **A split trial is an exception to the general rule that there will be a single trial and, as such, requires careful consideration and a very clear justification** – see Bindel v PinkNews Media Group Ltd [2021] 1 WLR 597* (sic) *at [33] per Nicklin J*[2]*.*
>
> …

[1] [2026] EWHC 811 (Comm) (26 March 2026),

[2] In **Bindel v PinkNews Media Group Ltd** [2021] EWHC 1868 (QB); [2021] 1 WLR 5497, Nicklin J said at para 33: "*A case in which the court directs determination of a preliminary issue that will require resolution of disputed issues of fact, including disclosure, witness statements and cross-examination, must be regarded as an exception to the general rule, and one that requires careful consideration by the court and very clear justification."*

"12. In Electrical Waste Recycling, Hildyard J provided guidance in the form of a non-exhaustive list of relevant factors to be taken into account in considering whether to split the trial at [5]. The bracketed comments which follow are my own:

> *"5. Where the issue of case management that arises is whether to split trials the approach called for is an essentially pragmatic one, and there are various (some competing) considerations. These considerations seem to me to include:*
>
> ***[Factor 1]** whether the prospective advantage of saving the costs of an investigation of quantum if liability is not established outweighs the likelihood of increased aggregate costs if liability is established and a further trial is necessary;*
>
> ***[Factor 2]** what are likely to be the advantages and disadvantages in terms of trial preparation and management;*
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> ***[Factor 3]** whether a split trial will impose unnecessary inconvenience and strain on witnesses who may be required in both trials;*
>
> ***[Factor 4]** whether a single trial to deal with both liability and quantum will lead to excessive complexity and diffusion of issues, or place an undue burden on the Judge hearing the case;*
>
> ***[Factor 5]** whether a split may cause particular prejudice to one or other of the parties (for example by delaying any ultimate award of compensation or damages);*
>
> ***[Factor 6]** whether there are difficulties of defining an appropriate split or whether a clean split is possible;*
>
> ***[Factor 7]** what weight is to be given to the risk of duplication, delay and the disadvantage of bifurcated appellate process;*
>
> ***[Factor 8]** generally, what is perceived to offer the best course to ensure that the whole matter is adjudicated as fairly, quickly and efficiently as possible.*
>
> *"6. Other factors to be derived from the guidance given by CPR Rule 1.4, which reflect a common sense and a pragmatic approach, may include:*
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> ***[Factor 9]** whether a split would assist or discourage mediation and/or settlement; and*
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> ***[Factor 10]** whether an order for a split late in the day after the expenditure of time and costs might actually increase costs."*

19. I had these factors in mind when approaching the application in this case and I set out below my own assessment of the factors which seem to me to be most relevant.

20. The first and most important consideration (in my view) is that the determination of liability is not likely to achieve any saving in costs overall, and on the contrary is more likely to increase the cost and complexity of the issues in the case, duplicate time and effort, as well as increase the strain on the witnesses and the demand on the deployment of court resources.

21. In the first place, while I accept that it is possible in theory to have liability for breach of contract without a quantifiable loss, resulting in an award of nominal damages, it would not be normal to order a split trial where the plaintiff is seeking an award of substantial damages. This is because the questions of causation, remoteness and mitigation are involved with the court's assessment of damages. A consideration of these questions is a necessary part of the court's determination of liability, especially in the context of the commercial background of the case. Moreover, in this case, there is or appears to be an alternative case based on estoppel or common assumption which will need to be resolved even if the plaintiff's primary claim on contractual interpretation fails. (Factors 1, 3, 4, 7 and 8).

22. In the second place, although the application is put on the basis of saving time and expense in the preparation of the case on quantum, it is tolerably clear that the plaintiff has made at least a preliminary assessment of its case on quantum because the plaintiff has decided to terminate two out of four contracts. This must be on the basis that the plaintiff has taken the position that the defendant has a net liability under the truing up formula in Reinsurance Agreement to pay or transfer assets to the plaintiff. This assessment is fortified by the other provisions of the Reinsurance Agreement which require the plaintiff to submit quarterly reports which track its liabilities under the underlying reinsurances. It is therefore very likely that the plaintiff already has access to a substantial body of information with which it could accurately plead the quantum of its claim. (Factor 8)

23. The suggestion that the plaintiff will have to incur substantial expense to quantify its claim is therefore unpersuasive. It may be true that an expert may have to give evidence as to the alternative calculations of interest or the fair value of Acceptable Investments, but it does not seem to the court that this is a basis on which to postpone the pleading of the plaintiff's claim as to damages. It is the normal duty of a plaintiff to plead the full claim at the outset of the case. This is not a case where it will be for the court to assess general damages in a tort claim. While the modern rules of causation and remoteness that apply to claims in contract and tort are well nigh indistinguishable, in this case the defendant's potential liability is based on a contractual formula. (Factor 6)

24. In the third place, it seems to me there is a significant risk of additional costs and delay being added to a split trial where there could be an appeal on liability which could put back the ultimate determination of the actual loss significantly. It also seems probable to me that the witnesses who are expected to give evidence on the question of estoppel and common assumption are also likely to give evidence about the commercial background of the contract for the purposes of both liability and quantum. This is not a case where any financial disparity of resources between the parties arises for consideration. (Factor 8)

25. Overall, in my view, the considerations set out in the Overriding Objective militate strongly in favour of a single trial as to liability and quantum at the same time, when the court can assess the whole case in one sitting. On balance therefore, despite the skilful presentation of the plaintiff's application, the court declined to grant it.

The defendant's application for further and better particulars

26. The defendant sought an order for the delivery of further and better particulars of the statement of claim. Mr Potts KC suggested that the deficiencies in the articulation of the claim arose because in its original form, the claim was framed as an anticipatory claim, which has now matured into an actual claim.

27. The principal issues in respect of which the defendant seeks better definition of the plaintiff's claims relate to (i) the allegation that the plaintiff would have terminated two contracts, when and on what basis and (ii) the calculations of the losses alleged to have been suffered by the plaintiff as a result of the alleged breaches of contract. Ms Williamson reasonably and properly indicated that if the court was not minded to grant her application for a split trial, then the plaintiff saw the need to plead their case on quantum in full and (in effect) accepted that the particulars sought by the defendant were unobjectionable in principle.

28. For the reasons given above, in my view it is necessary for the plaintiff to address the quantum aspect of the claim, and it is trite[3] that the plaintiff is under a duty to set out the particulars of its claim in full in the statement of claim so that (a) the defendant is put on notice of the way the plaintiff puts its claim and can answer it (b) the scope of disclosure can be defined and (iii) the parties can adduce evidence in relation to the issues joined, including any expert evidence.

29. Therefore, the court considered that the further and better particulars sought by the defendant ought to be provided by the plaintiff and acceded to the defendant's application.

Ex tempore ruling

30. For completeness of the record, at the close of the hearing the court gave an *ex tempore* decision in the terms recorded below.

> *"The court has decided to refuse the plaintiff's application for a split trial. The court will provide detailed reasons for the decision in due course, including references to the pleaded claims, and citations to relevant legal principles and authorities. The court will now briefly summarise the grounds on which it has refused the application.*
>
> *The general rule is that there should be one trial of all issues unless the court can be satisfied that there are clear reasons why it would be just and convenient to order a split trial in respect of liability followed by a trial on quantum of damage.*
>
> *To the extent that there is any distinction to be drawn in principle between a split trial on liability and the trial of a preliminary issue of fact or law as to liability, in this case the effect of making such an order would be the same. Therefore, I accept the submission that on the facts of this case reasons would need to be shown to justify the court in making an order to depart from the general rule.*

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[3] These are the basic requirements of the rules of pleading under RSC Order 18 and need not be set out here as there was no dispute over their scope or application.

It is clear is that the issues raised by the plaintiff in the statement of claim and in the reply and defence to counterclaim are intertwined with the question damages and that that it would not be possible or practicable to order a separation of liability and damages into two separate stages. These issues involve whether (i) a valid notice of change of control had been given (ii) what are the legal consequences that flow from that (iii) whether the plaintiff has suffered a recoverable loss and (iv) whether the defendant is estopped by its conduct from taking the position that there has been a valid notice of change in control.

It would not be possible to separate those issues into two stages of trial. It is obvious in my judgment that the question of breach, causation, remoteness, and amount of damages are all part of the elements that the plaintiff will have to establish in order to succeed at a trial on liability.

That would require not only the pleading of matters that relate to the calculation and quantification of the plaintiff's claim but also the calculation of the quantum of loss. In particular, the court cannot now make a determination of whether the alleged breach of contract relief resulted in any legally recoverable loss under the two relevant contracts. Further, there is no evidential basis on which the court could exercise a balancing act between the proportionality of splitting the trial and the costs and risks associated with doing so.

There is therefore no advantage to the court ordering a split trial and indeed the court does not presently see how one would be possible on the facts of this case. On the contrary, the interests of justice and a fair trial strongly militate in favour of a single trial where all the evidence and all the legal arguments can be addressed by the parties and considered by the court at one time.

Therefore, the court has refused the application for a split trial as to liability followed by a trial on damages.

In my judgment the plaintiff is required to plead all the elements of the claim for breach of contract so that the defendant can plead to them, investigate the basis of the claim actually and legally and provide relevant disclosure and prepare its evidence for trial. This may or may not include expert evidence.

The court is satisfied that the plaintiff has under its own control all of the relevant information that it needs to be able to prepare a claim that addresses the question of breach and the loss that is alleged to have flowed from the breach.

The plaintiff is required to set out all of those necessary particulars that give rise to a claim that will result in liability. The statement of claim is deficient in this respect and the court agrees that the further and better particulars requested are necessary for the fair disposal of the issues in the case. Therefore, the plaintiff is ordered to provide the particulars sought by the defendant in the request for further and better particulars set out in the defendant's summons."

Directions

31. At the conclusion of the hearing the court directed the plaintiff to provide the particulars requested within 28 days and gave a further 28 days for the defendant to file its responsive pleading and adjourned the balance of the directions for trial to a date for mention at 9.30 am on Thursday 10 September 2026.

Costs

32. The plaintiff failed to persuade the court to order a split trial and was ordered to provide the particulars sought. This is a discrete pair of related applications relating to the conduct of the proceedings and the provision of further and better particulars without which the case cannot progress.

33. The points raised were in my view sufficiently important to justify two counsel. This is ordinary hostile commercial litigation between two well resourced adversaries. There is no reason in my view to depart from the normal rule that costs follow the event and there is no practical or other principled reason why those costs cannot be taxed and paid now.

34. Accordingly, the court made an order that the plaintiff pay the defendant's costs of the application forthwith with a certificate for two counsel to be taxed on the standard scale if not agreed.

Time for application for leave to appeal

35. The court directed that since the court was intending to give formal reasons for its orders, the time limited for seeking leave to appeal should run from the date of the publication of reasons, not from the date of the decision.

Dated this 15th day of July 2026

THE SEAL OF THE SUPREME COURT OF BERMUDA

SIGNED

THE HON. MR. JUSTICE ANDREW MARTIN

PUISNE JUDGE OF THE SUPREME COURT