IN THE GRAND COURT OF THE CAYMAN ISLANDS
[illegible]ION

CAUSE NO. G 17 of 2022

DIANA BROWN

Plaintiff

AND: **DR. GEORGE MEGGS**

1st Defendant

AND: **CAYMAN ISLANDS HEALTH SERVICES AUTHORITY**

2nd Defendant

Appearances:	Ms. Nikue Assarpour of Priestleys for the Plaintiff Mr. Michael Wingrave of Dentons for the 1st Defendant Mr. Laurence Aiolfi and Mr. David Ramsaran of Mourant Ozannes (Cayman) LLP for the 2nd Defendant
Before:	Hon. Justice Richard Williams
Heard:	25 October 2022
Draft Judgment circulated:	03 November 2022
Date for final comments:	07 November 2022
Date of Judgment:	07 November 2022

HEADNOTE

Personal injury – Alleged clinical negligence - Application for an order for a split trial, with the issue of liability being heard prior to the issue of quantum pursuant to Order 33, r.4(2) GCR.

JUDGMENT

The Background

1. The Plaintiff is Diana Brown aged 52. She brings proceedings which were initiated by a Writ of Summons and Statement of Claim filed on 20 January 2022.

2. On 30 January 2019, the Plaintiff underwent a procedure known as a scheduled open uterine myomectomy ("the Surgery") for the removal of fibroids at the George Town Hospital, a facility administered by the Second Defendant, the Cayman Islands Health Services Authority.

3. The First Defendant, Dr. George Meggs, is a registered qualified medical practitioner practicing in obstetrics and gynaecology who was acting as a servant or agent of the Second Defendant at all material times. The First Defendant performed the medical procedure on the Plaintiff.

4. The Statement of Claim sets out the following background as pleaded by the Plaintiff. Prior to the surgery, the Plaintiff was asked to sign a Consent for Investigation and Treatment form by the First Defendant, who counter-signed the form. The Plaintiff pleads that in relation to the consent, the First Defendant was negligent because he:

(a) Failed to take reasonable care and/or acted in breach of his duty to ensure that the Plaintiff was properly advised and made aware of the associated risks of the Surgery including but not limited to the risks of:

i. bleeding, infection, pain and potential for damage to organs including the risk of perforation of or damage to the bowel; and/or
ii. hysterectomy and/or other procedures to repair any damaged organs; and
iii. adhesion formation;

(b) Failed to warn the Plaintiff that since she had previously undergone a myomectomy in 2008, it was likely she had extensive adhesions which would complicate any surgery.

(c) Failed to take reasonable care and/or acted in breach of his duty to ensure that Plaintiff was properly advised and made aware of the limitation of the Surgery and the absence of any guarantee that it would address the underlying problem, namely menorrhagia or that all of the fibroids will be removed and that some may grow and/or recur.

(d) Failed to take reasonable care and/or acted in breach of his duty to ensure that the Plaintiff was properly advised and made aware of possible alternative treatments, in particular the option of Uterine Artery Embolisation ("**UAE**") and/or hysterectomy. The Plaintiff should have been advised that a UAE is a proven treatment for adenomyosis and would have been more likely to address the Plaintiff's heavy periods than myomectomy alone.

(e) Advising the Plaintiff to do her own research by using the internet. The First Defendant had a duty to direct the Plaintiff to reputable information that included the risks and limitations of the procedure and alternate treatments.

(f) In the premises, failing to obtain the Plaintiff's informed consent to the Surgery.

The Plaintiff states that if she had been warned and informed of the above matters, she would not have agreed to undergo the surgery.

5. Following the Surgery, the Plaintiff had intermittent hypotensive episodes and was admitted to the Critical Care Unit for hemodynamic monitoring and ongoing blood transfusions. Late on the evening of 1 February 2019, the Plaintiff suffered a cardiac arrest and stopped breathing until she was resuscitated with chest compressions. CT Scans showed pneumoperitoneum and post-operative changes which were identified as being *"in keeping with hollow viscus perforation"*. The Plaintiff pleads that, on 2 February 2019, it was concluded that the pneumoperitoneum was a result of the Surgery and there was no evidence of peritonitis. The diagnosis at the point of discharge from the Hospital was "most likely" to be myocardial infarction. On the same day, the Plaintiff was admitted to the Health City Cayman Hospital and was found to have gross peritonitis. On 3 February 2019, at Health City, the Plaintiff underwent an emergency exploratory laparotomy and was found to have a perforation in the mid-sigmoid colon and a large area of denudation in the associated mesentery with local ischaemia. Her peritoneum was contaminated with blood and faeces. A sigmoid colectomy was performed and Hartmann's procedure with an end colostomy formed in the left iliac fossa. A pelvic hematoma was evacuated and a thorough peritoneal lavage was given. The Plaintiff was discharged from Health City on 15 February 2019 and later (on 18 April 2019) underwent laparoscopy assisted Hartmann's reversal under general anesthesia at that facility. This procedure revealed adhesions between the bowel and anterior abdominal wall and between loops of the bowel in the pelvis. Some of this detail is set out in the review of the clinical records conducted by Professor M R B Keighley MA MS FRCG, Professor of Surgery and Colorectal Expert in his Condition and Prognosis Medical Report dated 6 December 2021.

6. The surgery lasted for just over 2 hours. The Plaintiff contends that the First Defendant was negligent during the surgery in the following ways:

i. Perforated and/or damaged the sigmoid colon.

ii. Damaged the mesentery with the result that a segment of the bowel had no blood supply and became ischaemic.

iii. Failed to heed that he was dividing the mesentery and the sigmoid colon as opposed to adhesions around the uterus as he proceeded with the myomectomy.

iv. Removed adenomyotic tissue without obtaining the Plaintiff's consent.

v. Failed to appreciate and/or to take into account the proximity of the sigmoid colon during the Surgery.

vi. Failed to understand the anatomy and proceeded regardless of this.

vii. Failed to appreciate the difference between the bowel and its mesentery and the adhesions, thereby making a direct injury to the sigmoid colon and mesentry when erroneously believing he was dividing adhesions.

viii. Failed to adequately assess and inspect the bowel and check for any perforations of the sigmoid prior to closure.

ix. Failed to heed that damage had been caused to the sigmoid colon and the mesentery.

x. Failed to test the sigmoid colon to see if there was a perforation. The simplest way to check that there is no perforation in the sigmoid colon is to milk air into the sigmoid and then squeeze the two ends of the damaged area of the sigmoid by grasping the bowel at either side and checking under water to observe as to whether or not there is any gas leaking from a potential hole.

xi. Failed to call for a General Surgeon for assistance during the procedure.

xii. In the premises, failed to conduct the surgery to a reasonable standard and with reasonable skill and care.

7. In relation to the post-operative care, the Plaintiff contends that the First Defendant was negligent in the following way:

i. Failed to properly or adequately examine the Plaintiff post-operatively and detect pneumoperitoneum and/or bowel perforation and/or peritonitis.

ii. Failed to heed that the CT scan performed on 2 February 2019 showed changes suggestive of a hollow viscus perforation.

iii. Failed to correctly identify the cause of the pneumoperitoneum.

iv. Failed to undertake or ensure that an emergency laparotomy was undertaken.

v. In the premises, failed to provide the Plaintiff with adequate post-operative care.

8. In relation to the Second Defendant the Plaintiff repeats the above allegations of negligence against the Authority on the grounds that the Authority is vicariously and directly liable to the Plaintiff for the negligence of the First Defendant. It is also pleaded that the Second Defendant's clinicians provided the Plaintiff with the same negligent post-operative care as set out in paragraph 7 above.

9. It is contended that the alleged negligence of both Defendants resulted in the Plaintiff suffering personal injuries, loss and damage. The pleaded injuries are:

i. A perforation in the mid-sigmoid colon.

ii. Damage to the mesentery over the area of damaged bowel.

iii. A 15 cm length of sigmoid colon which became ischaemic due to the damaged mesentery.

iv. Faecal peritonitis.

v. Blood transfusions in the period from 12.35 on 30 January 2019 to 22.25 on 31 January 2019.

vi. A pelvic haematoma.

vii. A cardiac arrest due to her developing sepsis as a result of the perforation of the colon.

viii. The need for an emergency operation on 2 February 2019 during which a Hartmann's procedure was performed. A Hartmann's procedure is when a surgical resection of

the rectosigmoid colon with closure of the anorectal stump is performed and a colostomy created.

ix. A reversal of the Hartmann's procedure on 18 April 2019.

x. Ongoing abdominal pain and discomfort.

xi. Abdominal wall weakness.

xii. Fatigue.

xiii. A possible hernia related to the long midline laparotomy incision. In the alternative, the risk of such a hernia occurring.

xiv. Extensive abdominal scarring.

xv. Extensive abdominal adhesions which give rise to the risk of the Plaintiff suffering a bowel obstruction. Most bowel obstructions resolve with conservative treatment, but a small percentage require surgical treatment.

xvi. Psychiatric injury, including psychosexual sequelae. The Plaintiff intends to obtain a psychiatric report.

xvii. Chronic sensitivity of the abdomen causing limitations on normal sexual activity.

In relation to some of the injuries, reliance is placed on the above-mentioned report of Professor Keighley.

10. The First Defendant filed his Defence on 6 May 2022. The Defence contains a number of denials, some elaborations as well as appropriate admissions. In particular, in his Defence, the First Defendant denies any of the negligence claimed and that the Plaintiff is entitled to the relief that she claims. He denies that he was a servant of the Second Defendant because he was an independent surgeon.

11. The Second Defendant's Defence was filed on 24 June 2022. The Defence contains a number of denials, some very brief elaborations as well as appropriate admissions. The Second Defendant

pleads that the First Defendant was not acting as its servant or agent and that he was not one of its employees. The Defence pleads that the First Defendant was an independent medical practitioner directly engaged by the Plaintiff to perform the surgery. No contribution proceedings have been launched by either Defendant against the other.

12. With this background in mind, on 25 October 2022, I heard the Plaintiff's Summons for Directions dated 25 July 2022 and filed on 25 July 2022 along with her draft order for directions. Save for paragraph 10 in the draft order, with the need for some massaging of the dates set out in it, the rest of the draft order is uncontentious. This ruling primarily seeks to address paragraph 10 of a Summons for Directions whereby the Plaintiff seeks an order for a split trial, with the issue of liability being heard prior to the issue of quantum pursuant to Order 33, r.4(2) GCR. Both Defendants oppose the application for a split trial. No matter which way I rule on the split trial application, the parties have indicated that they are confident that the required directions which will flow from that decision will very likely be agreed.

13. I have received oral and written submissions made by the attorneys on behalf of all three parties concerning the bifurcation application. I have also read the pleadings filed to date (including the Schedule of Loss) and the above-mentioned Condition and Prognosis Report. I have reviewed the case authorities provided by the parties, as well as the authority of ***Conen v Payne and another*** (1974) 2 All ER 1109.[1]

14. At the end of the hearing, I informed the parties that I was adjourning to enable me to further consider the provided material and the submissions made before providing a reserved ruling. This is that reserved judgment dealing solely with the split trial issue.

[1] A copy of this case was provided by the Court to the parties at the outset of the hearing.

The Law

15. The Grand Court Rules do not include a specific provision for the Court in personal injury actions considering ordering a split trial similar to those set out at RSC 33 r.4(2A). However, pursuant to Order 33, r.4(2) GCR, the Court has a general power to order split trials, trials on different occasions of the issue of liability and the quantum of damages.

16. This Court had to grapple with the issue as to whether, upon application by a Plaintiff in a clinical negligence matter, there should be a split trial or not in its ruling in ***Herrara-Frederick v The Health Services Authority,*** *G06/ 2008 (unreported judgment 7 March 2014)*. In that Judgment, I reviewed a number of cases from England and Wales and Smellie C.J.'s ruling in ***Tassaruf Mevduati Sigorta Fonu v Wisteria Bay Limited, Utterton Limited, Abdallah Ibrahim Al-Ayed and Registrar of Shipping*** *[2007 CILR 310]*.

17. In my Judgment, I outlined some of the reasons why a split trial may be preferable in certain cases as follows:

> *"(i) that, having regard to the overriding objective,[2] by conducting separate liability and quantum hearing there is a better use of court time and resources, as well as a reduction of costs. In certain circumstances split trials may lead to a speedier conclusion, caused by the narrowing down of considerations, thereby saving costs;*
>
> *(ii) if liability is established following a split trial then both parties can focus on the issues of quantum without being distracted by the other issues of breach of duty and causation;*
>
> *(iii) if a Plaintiff succeeds on liability, this may promote negotiations leading to agreement and settlement out of court. However, I note that the 2nd Defendant submits that, as the Plaintiff suggests that there would be a potential savings of costs due to medical/expert evidence not being obtained unless necessary after the liability issue had been determined, it may well have the opposite effect as the parties will need to have such evidence to enable informed negotiations to take place at this time; and*

[2] 1.1 Preamble GCR - The overriding object of the Rules is to "*enable the Court to deal with every cause or matter in a just, expeditious and economical way*".

(iv) of course, if the claim does not succeed an early liability hearing will mean that the Plaintiff will know at an earlier stage that he is not successful and the matter will not be hanging over a Defendant for a potentially longer period of time."

18. However, I also recognised that *"in certain cases separate hearings may prolong the overall duration of the action, and may have the opposite effect in relation to costs by increasing them"*. I noted that:

> *"This is particularly so when one considers duplication of costs which would occur if causation arguments are linked to issues of condition and prognosis. For example, there may be an overlap of expert evidence."*

I highlighted that a split trial may also mean that the Plaintiff and the Defendants have to endure the stress of two trials rather than one.

19. More recently, in ***Arnage Holdings et al v Walkers (A Firm)*** FSD 105 of 2014 [unreported judgment 5 May 2021], Doyle J conducted a scholarly and more thorough review of the case law than the one conducted by me in ***Herrara-Frederick.*** Doyle J commented upon my Judgment and a number of local cases and oft referred to decisions from England and Wales. At paragraph 64 in his Judgment, Doyle J helpfully provided a concise summary of the general principles applicable when a court is considering whether or not to order a preliminary issue/split trial. I refer to them as being general in so far as they apply to any kind of case, whether relating to commercial matters or personal injuries. As I am unable to better state those principles, which I endorse, I set out in detail Doyle J's summary:

> *"(i) each case, of course, must be carefully considered in its own context and on its own facts and circumstances;*
>
> *(ii) the authorities require that a cautious approach should be taken and they warn against potential treacherous shortcuts. The trial of preliminary issues should not*

be taken unless to do so would be clearly conducive to the just and timely outcome of a case (Chief Justice Smellie in SPhinX[3]);

(iii) if considering a direction for a preliminary issues trial the court should examine the case as a whole, be assured that the issues to be singled out were amenable to proposed discreet treatment and should have regard to (a) whether determination of the issues would completely dispose of the case or at least a significant aspect of it (b) whether the costs and time involved in preparation for the trial itself would be significantly reduced (c) whether the issues could be determined on established facts or whether further examination of evidence was required (d) the degree of risk that a trial of preliminary issues would increase costs or delay the trial overall and (e) whether it would be just to make an order (Chief Justice Smellie in Ojjeh Trust[4], T Trust[5] and TMSF[6]);

(iv) the court should have regard to the factors outlined in the English case of Electrical Waste Recycling Group in particular (a) the possible saving of costs of a second trial (b) trial preparation (c) the inconvenience and strain on witnesses where evidence is required at both trials (d) complexity of a single trial (e) any particular prejudice to one or other of the parties if a split trial is held (f) difficulties of defining an appropriate split and whether a clear split is possible (g) risk of duplication, delay and appeals (h) whether a split trial would assist or discourage mediation and/or settlement (i) if an order for a split trial is made late in the proceedings whether the overall costs may actually increase (j) what is perceived to offer the best course to ensure that the whole matter is adjudicated fairly, quickly and efficiently as possible (Williams J in Herrara-Frederick and Gunn J in Edwards);

(v) there must be good and sufficient reason to split the trial to outweigh the sense and prescribed objective of dealing with as many aspects of the case as is practicable on the same occasion (Williams J in Herrara-Frederick);

(vi) where credibility and reliability of the parties and/or witnesses is interwoven throughout the issues in the case this would normally militate against a split trial as compartmentalising credibility in such circumstances is likely to cause prejudice to one or other parties by preventing the court from having all of the relevant

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[3] ***SPhinX Group of Companies*** 2009 CILR 28 at 39.
[4] ***Oijeh Trust*** *2008 CILR Note 3.*
[5] ***T Trust*** *2002 CILR Note 1.*
[6] See paragraph 16 above.

information before it when making its assessment of their evidence (Gunn J in Edwards[7])."

Particular factors in personal injury cases when considering a split trial

20. Having set out in the above paragraphs (i) the general principles on the power to order a split trial; (ii) some examples of the advantages of a split trial[8]; and (iii) some of the commonly expressed disadvantages of a split trial[9], one should also adapt the same to apply justly and conveniently to meet the nuances that arise in personal injury cases. The Authors of *Clerk & Lindsell on Tort (22nd Ed, 2018)* at *para 31-21* write that the *"problem for claimants arising from the rule that damages for one cause action must be recovered once and for all was tended to be at its most acute in claims for personal injuries"* and then added...

> *"The court has long had the power to postpone the trial of the issue of damages, or order the separate trial of liability and damages, a procedure most appropriate to cases of personal injuries where the claimant's medical prognosis has not settled. This can be combined with the power to make an interim award of damages. Separate trials may be ordered whenever it is just and convenient to do so..."*

The Authors then cited the case of ***Coenan v Payne*** *[1974 2 All ER 1109]*[10] in which Lord Denning M.R stated:

> *"In future the court should be more ready to grant separate trials than they used to do. The normal practice should still be that liability and damages should be tried together. But the court should be ready to order separate trials wherever it is just and convenient to do so.*[11]*"*

21. In a suitable case, when deciding whether to order a split trial, the Court should take a broad and realistic view of what is just and convenient, which should include the avoidance of unnecessary

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[7] ***Edwards v De Alwis-Seneviratne*** (unreported judgment 29 June 2018).
[8] Paragraph 17 above.
[9] Paragraph 18 above.
[10] It is relevant to point out that this case involved two consolidated actions concerning a road traffic collision between two vehicles.
[11] My emphasis underlining.

expense and the need to make effective use of court time. There is no reason to differentiate between an application by a plaintiff and one by a defendant, each case must be considered on its own circumstances. Therefore, the Court should conduct a "*pragmatic balancing exercise*"[12], balancing the advantages or disadvantages to each party, and should take into account the public interest that unnecessary expenditure of time and money in a lengthy hearing should not be incurred. As a consequence, although the normal practice is still that liability and damages be tried together, as I mentioned in ***Herrara-Frederick***, it is no longer the practice to make an order for separate trials only in extraordinary and exceptional circumstances, but a more robust case management and less restrictive approach is taken in personal injury cases. I have this in mind when I apply the general principles outlined by Doyle J. to the circumstances of this case. That said, although it may now be more commonplace for the Courts to order a split trial, especially in high value personal injury cases including clinical negligence cases, the Court must still exercise its discretion judiciously. The Court should consider a number of the above factors when exercising its discretion either way. The Court has a wide jurisdiction when considering Order 33, r.4(2) GCR. It must, when doing so, exercise its discretion in a manner which furthers the objects of the Overriding Objective, namely to provide the best way by which justice may be administered between parties, with the highest degree of accuracy, with expedition, and as economically as possible.

22. Following my direct question to Counsel for the Plaintiff, it became apparent that this is not one of those cases where it is being argued that there is considerable uncertainty at this stage about her client's future. This is a relevant factor in personal injury cases, as the greater the uncertainty of a plaintiff's future, arguably the more likely it will be that an order for bifurcation will be made if clarity will be gained in due course. Similarly, this is not one of those cases where it is being argued that there is great uncertainty in terms of the Plaintiff's prognosis and that the quantum hearing should be delayed to enable greater certainty. Also, this is not a case where it has been

[12] Hildyard J in ***Electrical Waste v Philips Electronics*** [2012] EWHC38, *para 7.*

submitted that the complexity of the facts would make it easier for a determination of liability as the facts are fresher in everyone's memory. No party has submitted that, having regard to the nature of the dispute and issues involved in this case, a single trial would impose an undue burden on a judge of the Grand Court. That said, I recognise that the clinical issues will not be straightforward and have a degree of complexity, but that is not unusual in clinical negligence cases.

The Plaintiff's reasons for there being a split trial

23. The Plaintiff submits that this case would be most appropriately dealt with by way of a split trial, as this would result in the matter being adjudicated as fairly, quickly and efficiently as possible. She states that a split trial would allow for better preparation and management and potentially offer significant cost savings and save court time.

24. She highlights that expert evidence on the issue of liability would likely be required from a Consultant General Surgeon, a Consultant Colorectal Surgeon, a Consultant Gynaecologist and a Cardiologist. Although stating in her written submissions that there would be a clear split in the expert evidence as the above experts evidence would deal specifically with liability (and other experts would deal with quantum), she rightly later acknowledged that there would likely be some overlap as some of the expert witnesses dealing with liability issues may well be needed to also give evidence in relation to the quantum issues. The split or demarcation is not as clearly divided as initially submitted by the Plaintiff. The unnecessary inconvenience (including the emotional strain, financial demands and occupation of valuable time) caused by some expert witnesses having to attend at two separate hearings would, when conducting the balancing exercise, be a factor to consider which may point one in a direction away from splitting the trial. In addition to that, I am conscious that proceedings of this nature may be stressful to all parties, including for the First Defendant being a member of the medical profession who is a party to a clinical negligence claim, and that two hearings may exacerbate that.

25. The Plaintiff submitted that there were good financial reasons for splitting the trial. Firstly because the second trial would not be needed if liability was not established and secondly in relation to the saving of the costs that would need to be expended on the experts dealing solely with quantum issues. The fact that a quantum hearing would in such circumstances not be needed is an important factor to consider, especially if the quantum hearing would be longer and more expensive than the liability hearing. The impression given to the Court is that little expert preparation has been undertaken hitherto so, understandably, without the insight that would be gained from those assessments, the parties were unable to provide me with any accurate time estimates for the length of the hearing(s). However, it appears from their representations that, due to the nature of issues raised by the Plaintiff concerning liability arising at different/separate stages of the medical treatment and relating to the consent form issue, the liability part of a hearing would likely be a more substantial than the quantum stage of the hearing, both in length and costs. The liability hearing would not be resolving something which could be characterised as being merely a short issue when compared with the quantum issue.

26. The Plaintiff informed the Court that expert evidence on the issue of quantum would likely have to be obtained from a Consultant Psychiatrist, a Psychosexual Therapist, a Consultant Plastic Surgeon and a Consultant Dermatologist. She said that the cost of instructing these experts would be considerable, especially after they started their assessments.[13] The Plaintiff contends that if the Defendants succeed on liability then those costs would have been wasted. It is submitted that it would be a far more economical approach to have the issue of liability resolved and then, if liability was established, have these experts become actively involved. I have taken into account and accept the clear force of both of these submitted factors when determining the issue before me.

[13] I note that no party has presented to the Court any evidence for the Court to reach an informed decision about the likely cost of experts.

27. Although, I recognise at **paragraph 24** that proceedings are stressful for all parties, this is not one of those cases where a plaintiff is submitting that she would be traumatised by having to face two formal court hearings involving sensitive and personal issues, but rather it is submitted that it may well be more emotionally unsettling for her to meet with each parties' quantum experts. It is submitted that this would be due to the sensitive nature of, for example, the psychiatric assessments, which could potentially traumatise the Plaintiff. Although Professor Keighley highlights that the Plaintiff is *"anxious about her future"* and *"emotionally shattered as a result of all that she has been through"* there is no evidence to support a contention that she would be traumatised or prejudiced by having to see these experts. I am conscious that, given the fields of some of the required experts may have to be instructed to carry out assessment in relation to the quantum stage, one would expect them to have the necessary psychiatric/psychological expertise to put a person that they were assessing at greater ease.

28. It is submitted that there may be further economical and case management advantages gained from a liability issue being determined first as it is suggested that it is *"entirely conceivable if not likely that should liability be established in Trial 1, an agreed resolution with respect to the appropriate quantum could be agreed thereafter"*. It is submitted that if liability were established at a separate hearing, the parties could subsequently concentrate on the issue of quantum free of doubts caused by undecided liability issues, which in turn may encourage case settlement negotiations as and when relevant expert evidence is obtained.

29. Counsel for the Plaintiff indicated that she has a concern that resolution would be delayed if there was not a split hearing, because the Plaintiff may not be able to obtain any assessments from the proposed overseas quantum experts until sometime in 2024. She contends that it would be more effective case management to hold the liability hearing as a separate hearing in 2023 if the parties were in a position to then proceed as their liability experts may more readily available, rather than the trial of both issues being delayed until a later date. Counsel for the Defendants both accepted

that where an insurance company is instructing such experts, they may be better placed to obtain their prompt services as they may likely have a pool of experts upon whose expertise they regularly call. They felt that their clients could instruct such experts in a timely fashion and that they would be able to have all of their expert reports in relation to the issue of quantum prepared within the same period as those sought to deal with the issue of liability. However, they quite fairly conceded that the time frame may be greater for the Plaintiff. Defence Counsel stated that the arguments in favour of/the merits of there being a single trial outweighed any possible delay and that they would still be advocating for a single trial, even if it were not able to commence until a date in 2024[14]. Regrettably, there was nothing before me to enable me to place great weight on the Plaintiff's estimation of the experts' availability. I was not told whether any of the relevant experts had already been consulted or whether they had confirmed their availability/time frames for the required assessment work. The impression I gained, based on the very limited information that was actually provided to me, was that the projected availability was not an informed estimate or concern.[15]

The Defendants' reasons for there being a single trial

30. The Defendants both agree that there should be a single trial and they are ad idem concerning the reasons for that. Over and above some of the Defendants' contentions which have been mentioned above when discussing the Plaintiff's submissions, the Second Defendant further contends that the Plaintiff has not established a good and sufficient cause for a split trial on the issue of liability and quantum and submits that it is just and convenient to deal with all the issues at the same hearing because:

(i) the quantum issues are not complex and do not need to be dealt with separately;

(ii) the hearing of a single trial will be not unmanageable for the Court;

(iii) the overall costs of trial will be increased if split trials are ordered;

[14] This was stated, although the Second Defendant had contended in its written submissions that a single trial was preferable as it would not delay the final conclusion of this matter - **see paragraph 30(v)** herein.
[15] However, I note that in the Schedule of Loss dated 20 January 2022 that the Plaintiff was at that time in the process of obtaining a medical report in respect to the psychiatric injuries.

(iv) trial preparation for the liability and quantum issues can properly be managed at the same time;

(v) a single trial will not delay the final conclusion of this matter;

(vi) there would be no prejudice to the Plaintiff in the event of a single trial;

(vii) the boundaries between the issues of liability, causation and quantum in this case are not clear and are likely to overlap; and

(viii) there is a risk of duplicating the costs of experts, whose evidence is likely to be relevant to both liability and quantum, and inconveniencing witnesses.

Counsel for the Second Defendant invited the Court to read his written submissions and informed the Court that he was adopting the more detailed written and oral submissions that had been made on behalf of the First Defendant.

31. The First Defendant importantly highlights that the quantum hearing will occupy a shorter amount of time than that which will be occupied determining the wider liability issues and that it would not merit a separate hearing. It is rightly felt that due to the overlap of issues between both that there was a risk of duplication, especially as some of the same expert witnesses may need to give evidence in relation to both liability and quantum. When considering the issue of costs, he holds the correct view in this particular case that the potential savings of costs arising out of an investigation of quantum if liability is not established does not outweigh the likelihood of increased aggregate costs if liability is established and there is a resulting trial. He contends that there would be no saving, if some of the experts have to be called at both hearings rather than having to attend at only one.

32. The First Defendant placed emphasis on his concerns about the Court hearing a separate quantum hearing having issues interpreting the preliminary hearing judgment or there being a *"differing judicial approach"* to the evidence. I do not share this concern, as the expectation would be that the same judge would hear both the liability and the quantum hearing.

33. Save for the additional expert witnesses, I accept the First Defendant's contention that, in this case where the quantum issues are more narrow, little would be added to the trial preparation for quantum to be considered at the same time as liability. There would be less potential duplication in the evidence and save for the costs of the additional experts, the trial related costs would be lower. In any event, for there to be an informed settlement, it is likely, having regard to the content of Professor Keighley's report[16], that the parties will have to pay regard to assessments conducted by the experts instructed on the quantum issue.

Conclusions

34. When considering the balancing exercise, I recognise that this case must be considered on its own facts. Therefore, although I have regard to the guidance helpfully provided in the case law mentioned herein, I approach the checklist or factors set out therein, acknowledging that they do not apply to every case, and should not be applied rigidly to every case. The circumstances in this case are not the same as in ***Herrara-Fredericks*** matter where there was a clearer demarcation and where the *"boundaries between liability, causation and quantum appear tolerably clear"*.

35. In the present matter, the above-mentioned potential issues concerning the ability of the Plaintiff to instruct some experts in a timely fashion aside, two hearings would more likely prolong the overall duration of the action, and would increase costs. This is particularly the case when one considers the duplication of costs which would occur as causation arguments are linked to issues of condition and prognosis. In this regard, it is conceded by Counsel for the Plaintiff that there would be some overlap of expert evidence.

36. I accept that a liability hearing would either (i) dispose of the matter if liability was not established; or (ii) potentially stimulate the parties into active settlement negotiations. The

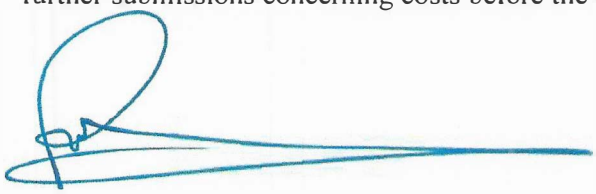
[16] For example at paragraph 6.6 of his report Professor Keighley stated that he was unable to comment on the emotional consequence of the injury and that that any such assessment must conducted by an expert in psychiatry.

general observation about negotiations would apply in the vast majority of cases and a Court would expect the parties to seriously embark on negotiation in such circumstances. However, in this matter to enable informed negotiations to take place and for Counsel to properly advise, the parties would need to have the sufficient insight that would flow from some of the experts whose assessments will concentrate on the issues touching on quantum. The Court expects that, once the parties have received their expert assessment reports and if the content points in a certain direction, the parties will conduct meaningful negotiations or even some form of mediation well before any hearing.

37. Even taking on the less rigid approach now taken in personal injury cases and despite recognising the force in some of the merits in the Plaintiff's submissions and the reasons for her bringing this application, after conducting the necessary pragmatic balancing exercise, I am not satisfied that it would be just and convenient for me in this particular matter to depart from the normal course and order a split trial with the issue of liability being determined first. Accordingly, I dismiss the application at paragraph 10 of the Plaintiff's summons for a split trial.

38. In light of this ruling, I invite the parties to provide me with their suggested agreed directions to a hearing to determine both liability and quantum.

39. I am minded to make an order to reserve costs at this time. However, the parties may make any further submissions concerning costs before the order is perfected.



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The Honourable Mr. Justice Richard Williams
JUDGE OF THE GRAND COURT