Neutral Citation Number: [2026] CIGC (FSD) 41

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 46 OF 2025 (NSJ)

BETWEEN:

(1) DICKENSON BAY HOTEL MANAGEMENT LIMITED
(2) WEST BAY MANAGEMENT LIMITED
(3) CLEARVIEW MANAGEMENT LIMITED
(4) GRANDE CASS. MANAGEMENT (BARBADOS) LIMITED
(5) GRENLAS MANAGEMENT GRENADA LIMITED
(6) BAY ROC LIMITED
(7) SANDALS ROYAL MANAGEMENT LIMITED
(8) SANDALS OCHO RIOS LIMITED
(9) RIOS HOTEL MANAGEMENT LIMITED
(10) BEACHES BOSCOBEL HOTEL MANAGEMENT COMPANY LIMITED
(11) SANDALS NEGRIL LIMITED
(12) BEACHES MANAGEMENT LIMITED
(13) OCHO RIOS HOTEL MANAGEMENT COMPANY LIMITED
(14) SANDALS WHITEHOUSE MANAGEMENT LIMITED
(15) SANDY BAY MANAGEMENT LIMITED
(16) CICERON MANAGEMENT LIMITED
(17) JAIRO MANAGEMENT LIMITED
(18) ROYAL BAY RESORT & VILLAS LTD.
(19) SANDALS RESORTS INTERNATIONAL 2000 INC.

Plaintiffs

AND

LANDON INSURANCE LTD.

Defendant

AND

(1) GENERAL INSURANCE CORPORATION OF INDIA
(2) AVIVA INSURANCE LIMITED
(3) SCOR GLOBAL P&C SE
(4) ABU DHABI NATIONAL INSURANCE COMPANY PJSC
(5) ATRIUM UNDERWRITERS LIMITED (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 609 AT LLOYD'S)
(6) LIBERTY CORPORATE CAPITAL LIMITED (AS SOLE MEMBER OF SYNDICATE 4472 AT LLOYD'S OF LONDON)
(7) LANCASHIRE SYNDICATES LIMITED (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 2010 AT LLOYD'S)
(8) TALBOT UNDERWRITING LTD (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 1183 AT LLOYD'S)
(9) BLENHEIM UNDERWRITING LIMITED (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 5886 AT LLOYD'S)
(10) ALLIED WORLD MANAGING AGENCY LIMITED (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 2232 AT LLOYD'S)
(11) CHUBB UNDERWRITING AGENCIES LIMITED (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 2488 AT LLOYD'S)
(12) HAMILTON INSURANCE DESIGNATED ACTIVITY COMPANY
(13) RIVERSTONE MANAGING AGENCY LIMITED (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 3500 AT LLOYD'S AND FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 5151 AT LLOYD'S)
(14) ENDURANCE WORLDWIDE INSURANCE LIMITED
(15) THE NEW INDIA ASSURANCE COMPANY LIMITED
(16) RENAISSANCERE SYNDICATE MANAGEMENT LIMITED (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 1458 AT LLOYD'S)
(17) MÜNCHENER RÜCKVERSICHERUNGS-GESELLSCHAFT AKTIENGESELLSCHAFT
(18) ROYALSTAR ASSURANCE LIMITED
(19) LIBERTY MUTUAL INSURANCE COMPANY
(20) LIBERTY SPECIALTY MARKETS AGENCY LIMITED
(21) AMERICAN INTERNATIONAL GROUP UK LIMITED
(22) AXA XL INSURANCE COMPANY UK LIMITED
(23) BARENTS RE REINSURANCE COMPANY INC.
(24) R+V VERSICHERUNG AG RÜCKVERSICHERUNG

(25) AXIS MANAGING AGENCY LIMITED (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 1686 AT LLOYD'S)
(26) ARK SYNDICATE MANAGEMENT 3902 (FOR AND ON BEHALF OF ITSELF AND ALL OTHER MEMBERS OF SYNDICATE 3902 (NOA) AT LLOYD'S)
(27) BERKLEY RE ON BEHALF OF W. R. BERKLEY EUROPE AG
(28) ASPEN INSURANCE UK LIMITED
(29) HANNOVER RUCK SE
(30) AIOI NISSAY DOWA INSURANCE CO., LTD.

Third Parties

Before:	**The Hon. Mr Justice Segal**
Appearances:	**Mr. Alex Potts KC instructed by Spencer Vickers and Clare Bradin of Conyers Dill & Pearman LLP on behalf of Landon Insurance Ltd.**
Heard:	**14 May 2026**
Draft judgment:	**20 May 2026**
Judgment delivered:	**28 May 2026**

JUDGMENT

Introduction

1. Last Thursday (14 May 2026) I heard an *ex parte* (on notice) summons dated 13 March 2026 (the ***Summons***) containing an application (the ***Service Out Application***) by Landon Insurance Ltd (***Landon***) for leave to serve its Amended Third Party Notice dated 25 November 2025 (the ***Amended Third Party Notice***), and any further amendments thereto, and any other related documents (the ***Documents***) out of the jurisdiction on various overseas reinsurers (the ***Overseas Third Party Defendants***). The Overseas Third Party Defendants are foreign corporate entities, incorporated and resident in the United Kingdom, Germany, and/or Japan. Mr Alex Potts KC appeared for Landon. A representative of Forbes Hare, the Cayman attorneys acting for certain of the Third Party Defendants attended the hearing only on watching brief.

2. Landon is the defendant in the main proceedings (the ***Main Proceedings***) which involve substantial business interruption insurance claims made by the Plaintiffs, as insureds under an underlying policy issued by Landon, against Landon as their captive insurer, following and relating to the COVID-19 pandemic. The Plaintiffs are all part of the group that own or operate the Sandals hotels group. They claim by their Writ and Statement of Claim that they are entitled as against Landon to receive payments in total in an amount in excess of $262,507,787 (plus interest). Landon (without prejudice to its defences to the Plaintiffs' claims) has made third party claims as reinsured against its thirty relevant reinsurers (the ***Third Party Defendants*** or the ***Reinsurers***).

3. There are two types of reinsurer. First, those reinsurers whose liability will attach on any claim (being the First to Fourth, Sixth to Fifteenth and Twenty-Second Third Party Defendants (the ***Primary Layer Reinsurers***) and secondly those reinsurers whose liability will only attach if there are multiple losses under the underlying policy which aggregate vertically (being the Fifth, Sixteenth to Twenty-First and Twenty-Third to Thirtieth Third Party Defendants) (the ***Excess Layer Reinsurers***).

4. Having been served with the Plaintiffs' Writ and Statement of Claim in the Main Proceedings, Landon has issued a third party notice against all of the Reinsurers (which has been the subject of minor amendments resulting in the Amended Third Party Notice). All of the Reinsurers, including the Excess Layer Reinsurers, are potentially implicated by the Plaintiffs' claim because the aggregate claim value exceeds the highest point of attachment (US$200 million excess Captive Retention) in the reinsurance.

5. All of the Primary Layer Reinsurers have appointed attorneys in the Cayman Islands to accept service and acknowledged service of the Amended Third Party Notice. In addition, a number of the Excess Layer Reinsurers have done the same.

6. The Summons therefore relates to the remaining minority of Reinsurers who have not yet accepted service of the Amended Third Party Notice. These are the Overseas Third Party Defendants.

7. All of the Overseas Third Party Defendants are Excess Layer Reinsurers, although their lowest points of attachment (the value of loss at which they are liable to indemnify Landon) vary between $25 million and $200 million. These points of attachment are the same or lower than those of the Excess Layer Reinsurers who have voluntarily accepted service.

8. The Overseas Third Party Defendants are similarly situated to a number of the other Excess Layer Reinsurers who have already accepted service (in that their respective alleged contingent liability as reinsurers attaches either at lower or identical points, and on identical legal theories, and on substantially the same or very similar facts). The Overseas Third Party Defendants' reinsurance contracts with Landon all contain exclusive jurisdiction clauses conferring jurisdiction on the Cayman Islands Courts, as well as Cayman Islands governing law clauses.

9. Landon's primary defence to and position in the Main Proceedings is that it does not have any liability to the Plaintiffs beyond the US$2 million already paid by it. If it is successful in that defence, no liability will arise under the reinsurance contracts and Landon will have no claim against the Overseas Third Party Defendants. The Plaintiffs' (current) position is that even if they succeed in establishing their claims in the full amount claimed, only the Primary Layer Reinsurers will be liable to Landon and the excess layers of reinsurance cover assumed by the Excess Layer Reinsures will not be engaged.

10. However, while such a result will be commercially convenient for Landon, it considers (at least at this early stage in the litigation) that there remains a real risk that the Plaintiffs' view (which has not yet been explained or justified) may be incorrect and that, if the Court rejects Landon's primary defence in the Main Proceedings and holds it liable to the Plaintiffs, the Court will also decide that on the proper construction of the reinsurance policies the liability of the Primary Layer Insurers will be limited and that Landon will need to look to and make claims against the Excess Layer Reinsurers. In these circumstances, Landon wishes to maintain and proceed with third party claims against all the Excess Layer Reinsurers and in order to do so it needs permission to serve the Amended Third Party Notice on the Overseas Third Party Defendants out of the jurisdiction where they have to date refused voluntarily to accept service.

11. Landon argues that despite the fact that it denies liability in the Main Proceedings, and despite the fact that of necessity the issue of whether Landon has claims against the Excess Layer Reinsurers have not yet been fully articulated or particularised in the Amended Third Party Notice, it should be granted leave to serve out. Landon submits that, having regard to the background facts and a reasoned and fair assessment of the issues that are likely to arise and be in dispute with (and between) the Reinsurers, the Court can conclude that there is a sufficient risk of Landon's defence being rejected and it being held to be liable to the Plaintiffs in amounts and on a basis that will trigger the liability of the Excess Layer Reinsurers to show that its third party claims raise a serious issue to be tried on the merits (this is the Merits Test which I explain and discuss below) and that it should be permitted at this stage to serve the Amended Third Party Notice out of the jurisdiction on the Overseas Third Party Defendants. Landon submits that all the other conditions for obtaining leave to serve out are also satisfied and that in the circumstances the Court should exercise its discretion to order service out on the Overseas Third Party Defendants.

12. Landon argues that it would be unjust and inexpedient to have the third party proceedings continue without the participation of a minority of the Excess Layer Reinsurers and that since many of the Excess Layer Reinsurers have already accepted service of the proceedings it is necessary and just that the Overseas Third Party Defendants should be joined as parties in order to ensure that it (Landon) is fully protected by permitting complete relief to be granted and a multiplicity of proceedings avoided.

13. At the end of the hearing on 14 May I explained to Mr Potts that I was minded to grant Landon's application but before forming a firm and final view and making my decision I needed to see a written summary of the submissions which Mr Potts had made at some length in his oral submissions concerning Landon's case that it satisfied the Merits Test. These submissions had been well explained by Mr Potts at the hearing but had not been dealt with in Landon's skeleton argument, certainly not in the detail adopted in his oral submissions (although Landon's evidence in support in Mr McKellar's First Affidavit had provided useful details) and I wished to ensure that there was a clear record of Landon's case on this important point before making my decision. Accordingly, I directed that Landon file a supplemental skeleton dealing with this issue and that the hearing be adjourned to allow me to review this, on the basis that if after having done so

I concluded that I was able to decide the Service Out Application I would do so and prepare a judgment setting out the reasons for my decision, but if not I would either raise any further issues in writing or direct that the Summons be restored and listed for a further hearing.

14. A few hours after the conclusion of the hearing Landon filed its Supplemental Skeleton. Having read this together with Landon's earlier skeleton, its application papers and its evidence and Mr Potts' oral submissions, I have concluded (recognising of course that this is an *ex parte* on notice application and that I have not heard from the Overseas Third Party Defendants) that Landon has satisfied the conditions for the granting of leave to serve out and that in all the circumstances this is a proper case for service out and that the Court ought to exercise its discretion to permit service of the Amended Third Party Notice (and the related documents) on the Overseas Third Party Defendants out of the jurisdiction. I now explain my reasons for this decision.

The Plaintiffs' claims, the underlying policy, the reinsurance contracts and the claims made in the Amended Third Party Notice

15. The Plaintiffs seek an indemnity from Landon for business interruption losses suffered at nineteen resorts due to the COVID-19 pandemic. These claims are made either on the basis that each of the Plaintiffs is a separate insured and entitled to claim in its own name or on the basis that the losses at each resort are distinct losses.

16. The Plaintiffs' losses are claimed under two business interruption extensions to the underlying policy. First, the Prevention of Access Extension (the ***POA Extension***) and secondly, the Disease, Murder and Closure Extension (the ***Disease Extension***). As regards the POA Extension, the Plaintiffs argue that government-imposed border closures, curfews, and other COVID-19 measures prevented guests from accessing the resorts. This, they claim, triggered the POA Extension, which covers business interruption losses when access to insured property is prevented by a non-excluded peril. As regards the Disease Extension, the Plaintiffs assert that the outbreak of COVID-19 near the Plaintiffs' resorts (within 10km) and/or cases at the premises itself triggered the Disease Extension, which covers losses from interruption due to notifiable infectious diseases.

17. The underlying policy is subject to an overall limit of *"up to $400,000,000 each and every loss excess of the Deductible(s) applicable to the loss as detailed hereon."* The POA Extension and the Disease Extension are subject to individual sub-limits of $15 million and $2 million, respectively. These sub-limits are expressed to be "*excess of the Deductible(s) applicable to the loss as detailed hereon.*"

18. The liability of the Overseas Third Party Defendants is contingent on Landon's liability to the Plaintiffs. It is Landon's position that subject to any individual defences under the reinsurance contracts, the respective liability of each of the Reinsurers (including the Overseas Third Party Defendants) follows the liability of Landon to the Plaintiffs. The reinsurance contracts state that *"All terms, clauses and conditions as Original Policy 16397909-18 in so far as may be applicable to this reinsurance."* Each Reinsurer took a distinct quota share (or shares) of reinsurance (the shares taken by the Overseas Third Party Defendants are set out in Mr McKellar's First Affidavit) and the liability of the Overseas Third Party Defendants to indemnify Landon was expressed as "*each and every loss property damage and business interruption combined.*" Under each reinsurance contract, the Reinsurer's liability was several and not joint.

19. As I have noted, the Plaintiffs argue that the underlying policy is a composite policy, insuring multiple entities (the First to Eighteenth Plaintiffs, each a resort operator). Alternatively, they argue that they have distinct claims under the underlying policy in relation to each resort. They further argue that these distinct claims are subject to individual sub-limits (i.e. per Plaintiff), such that the Plaintiffs are entitled to an aggregate indemnity in excess of $262,507,787 (before interest and giving credit for the $2 million interim settlement payment already paid), having suffered actual aggregate losses in excess of $534 million. The Plaintiffs therefore seek a declaration from the Court that Landon is liable to indemnify them for the claimed losses, or damages in the same amount

20. The Plaintiffs' Statement of Claim in the Main Proceedings refers to the reinsurance contracts as follows (my underlining):

> *"32. The said reinsurance arrangements are reflected in individual reinsurance slips between Landon and the different Reinsurers (together referred to as the "Reinsurance Contracts"). The Reinsurance Contracts specify the different limits and attachment points subscribed by each Reinsurer. Some Reinsurers'*

risk attaches at values less than USD 17m, and these Reinsurers are collectively referred to as the "Primary Layer Reinsurers". The remaining Reinsurers are referred to as the "Excess Layer Reinsurers".

33. There is no direct contractual relationship between the Plaintiffs and the Reinsurers (save to the extent Landon is also a Reinsurer). Each of the Reinsurance Contracts, however, adopt the terms and conditions of the Policy "in so far as may be applicable to this reinsurance". Further, it is understood that there is a dispute between the Primary Layer Reinsurers and Excess Layer Reinsurers (and/or multiple disputes between some combination of them) as to how the claims made herein by the Plaintiffs attach to some or all of the Reinsurance Contracts."

21. The Amended Third Party Notice states that (my underlining):

"2. By this Third Party Notice, the Defendant in the underlying matter, Landon, brings a claim against its Reinsurers, set out below, for a declaration that in the event, and to the extent, that Landon is obliged to indemnify the Plaintiffs in the underlying claim, then Landon's Reinsurers are obliged to indemnify Landon to the same extent, as set out below:

3. Landon's primary case in its Defence is that it is not obliged to indemnify the Plaintiffs for any or all of the losses claimed. However, insofar as it is found liable to indemnify the Plaintiffs, contrary to its primary case, Landon seeks the declaration below, and indemnity, as against its Reinsurers, the Third Party Defendants.

……

7. The Reinsurers are parties to individual contracts of reinsurance with Landon as particularised further below. Save where noted below, the contracts are on identical terms, and the operative terms are pleaded to below as the terms of the "Reinsurance Contract".

8. The contracts of reinsurance are facultative reinsurance contracts by which Landon ceded the risk on the Underlying Policy to the Reinsurers.

9. In addition to the Captive Retention, Landon retained 10% of the USD 25 million attaching at USD 25 million excess of the Captive Retention.

10. The contracts, particularised below, were placed through Landon's brokers, Willis Towers Watson.

……

13. Save as set out below, the terms of each of these reinsurance contracts were on materially identical terms:

13.1. Type of reinsurance was provided to be: "Reinsurance of: All Risks of Direct Physical Loss or Damage as Original Policy";

……

13.6. A choice of law and jurisdiction clause provided that: "The Reinsurance shall be governed by and construed in accordance with the law of Cayman Islands and each party agrees to submit to the exclusive jurisdiction of the courts of Cayman Islands in the event of a dispute arising hereunder"

…….

17. By reason of the terms set out or referred to at paragraphs 13 - 16 above, the contracts of reinsurance operated on a back-to-back basis, whereby Reinsurers' liability to Landon would (subject to any separate defences arising out of the reinsurance contracts themselves) follow that of Landon to [the Plaintiffs].

…….

21. For the reasons set out in the Defence, Landon's primary position is that it is not liable to indemnify the Plaintiffs as alleged in the underlying claim or at all.

22. However, insofar as Landon is found to be liable to the Plaintiffs for any sums in excess of the Captive Retention (inclusive of any interest found to be due and owing) Landon is entitled, under the terms of the reinsurance contracts, to an indemnity from Reinsurers, in accordance with their shares of each layer, in the same amount.

……..

I. AGGREGATION AS BETWEEN REINSURERS

27. Landon understands that there is a dispute as between certain Reinsurers as to if and how Landon's claim under the reinsurance contract aggregates and allocates the losses at each resort for which Sandals seeks coverage.

28. For present purposes, Landon takes no position on this point, which is a matter for the Reinsurers to determine themselves. Landon in any event brings its claim against the Reinsurers on a contingent basis, first, because Landon seeks this declaration in the alternative to its primary position in the Defence that it is not obliged to indemnify the Plaintiffs, and second because the liability of at least some of the Reinsurers depends on the determination of this dispute between Reinsurers.

J. THE DECLARATION SOUGHT

29. Landon claims for a declaration that the Reinsurers (individually, severally, and subject to their individual quota shares) are obliged to indemnify Landon

> *for all sums that Landon is found liable to pay to [the Plaintiffs] under the Underlying Policy as sought in the Statement of Claim or otherwise.*

22. Accordingly, as Mr McKellar confirmed at [101] of his First Affidavit:

> *In summary, the Defendant asserts that the reinsurance contracts operate on a "back-to-back" basis (i.e. if Landon is liable to the Plaintiffs, the Third Party Defendants are liable to Landon on the same terms). This is provided for in the reinsurance contracts for each of the Third Party Defendants (by way of example taken from RNR reinsurance contract B0804Q22743F19, at page 51): All terms, clauses and conditions as Original Policy 16397909-18 in so far as may be applicable to this reinsurance.*

The Service Out Application

23. The Service Out Application relies in the alternative on a number of the grounds (gateways) set out in GCR O.11, r.1, namely:

(a). GCR O.11, r.1(1)(c) read with GCR O.11, r.4: the claim in the Amended Third Party Notice is brought against a person who has been or will be duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto.

(b). GCR O.11, r.1(1)(d)(iii): the claim in the Amended Third Party Notice is brought to enforce a contract, or to recover damages [or obtain other relief] in respect of a breach of contract which by its terms is governed by the laws of the Cayman Islands.

(c). GCR O.11, r.1 (1)(d)(iv): the claim in the Amended Third Party Notice is brought to enforce a contract, or to recover damages [or obtain other relief] in respect of a breach of contract which contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract.

The applicable law in outline

24. The tests to be satisfied in order to obtain permission to serve out are well established. As I noted in my recent judgment in *Re Absolute Digital Technology Management LLC* (unreported, 14 April 2026) at [16] an applicant must satisfy the court that:

(a). there is a serious issue to be tried on the merits of the claim (that is a substantial question of fact or law or both). The Court will not permit service out of the jurisdiction if the claim is frivolous or groundless. The current practice in England and in this jurisdiction is that this is the same test as the test applied on an application for summary judgment, namely whether there is a real as opposed to a fanciful prospect of success (the ***Merits Test***).

(b). there is a good arguable case that the claim meets at least one of the grounds for service out of the jurisdiction set out in GCR O.11, r.1(1). This requirement seeks to ensure that there is a sufficient connection between the claim and this jurisdiction to justify the Court assuming jurisdiction over the dispute. The relevant standard is a good arguable case (the ***Gateway Test***).

(c). in all the circumstances Cayman is clearly or distinctly the appropriate forum for the trial of the dispute and the Court ought to exercise its discretion to permit service of the proceedings out of the jurisdiction. Cayman will be the appropriate forum if it is the most suitable jurisdiction for trying the claim in the interest of all the parties and in the interest of doing justice (the ***Appropriate Forum Test***).

25. It is also important to note that GCR O. 11, r.4(2) states that: "*No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order*."

26. As regards the Merits Test, the authorities (see the judgment of Lord Hamblen JSC in *Okpabi v Royal Dutch Shell* [2021] 1 WLR 1294 at [22]) make it clear that the analytical focus of the Court should be on the pleadings and whether, on the basis that the facts there alleged are true, the cause of action has a real prospect of success. The approach to be adopted by the Court was clearly and helpfully summarised by Lord Justice

Popplewell in the English Court of Appeal in *Kawaski Kisen Kaisha v James Kemball* [2021] 3 All ER 978 at [18] as follows:

> *"(1) it is not enough that the claim is merely arguable; it must carry some degree of conviction …. (2) the pleading must be coherent and properly particularised ….. (3) the pleading must be supported by evidence which establishes a factual basis which meets the merits test; it is not sufficient simply to plead allegations which is true would establish a claim; there must be evidential material which establishes a sufficiently argued case that the allegations are correct."*

27. The authorities also make it clear in respect of the Merits test that the Court is not to engage in a mini-trial without the benefit of disclosure; the Court is not to attempt to resolve conflicts of fact that are normally resolved in a trial process; the Court should look not just at the evidence before it but also evidence that can reasonably be expected to be available at trial and where the merits turn on a point of law, the Court may but is not required to decide the legal question that arises (see Richards J in *Lenovo Group Ltd v Interdigital Technology* [2024] RPC 23 and *Tulip Trading v Bitcoin Association for BSV* [2023] 4 WLR 16).

The Merits Test

The issues

28. Landon submits that it has established that its claims in the Amended Third Party Notice satisfy the serious issue to be tried test and rely on Mr McKellar's evidence in his First Affidavit in support of that submission. In the alternative, Landon submits that if the Court is not persuaded that there is, on the material presently available, a strong enough case against those Overseas Third Party Defendants to justify service of the Amended Third Party Notice out of the jurisdiction, the Court should not dismiss the Service Out Application but instead should adjourn it generally so that Landon can restore it for a hearing if it becomes necessary and appropriate to do so, and so that Landon does not lose the limitation protection associated with its issue of the Third Party Notice at this stage.

29. There are two main issues. First, whether Landon can properly maintain both (a) that for the purpose of the Main Proceedings is has a complete defence and no liability to the

Plaintiffs (with the consequence that it has no claim against the Reinsurers) and (b) for the purpose of its claims against the Reinsurers in the third party proceedings, that there is a serious issue to be tried on the merits. Second, whether the pleadings (the Amended Third Party Notice) and relevant evidence show a sufficiently articulated and particularised basis for claims against the Excess Layer Reinsurers (and therefore against the Overseas Third Party Defendants) and therefore whether the Service Out Application is premature. I shall refer to the first issue as the ***Inconsistency Issue*** and the second issue as the ***Premature Application Issue***.

Landon's pleaded case in respect of the claims against the Reinsurers

30. As I have noted above, Landon at [22] of the Amended Third Party Notice asserts a general claim for an indemnity in respect of any sums for which it is held liable to the Plaintiffs in excess of the Captive Retention. The claims are made "*under the terms of the reinsurance contracts*" and as against each Third Party Defendant "*in accordance with their shares of each layer, in the same amount.*"

31. In the Amended Third Party Notice, Landon deals briefly with the issue of whether any third party claim will have an impact on and result in a liability of the Excess Liability Insurers as follows (my underlining):

> *27. Landon understands <u>that there is a dispute as between certain Reinsurers as to if and how Landon's claim under the reinsurance contract aggregates and allocates the losses at each resort for which Sandals seeks coverage</u>.*
>
> *28. For present purposes, Landon takes no position on this point, which is a matter for the Reinsurers to determine themselves. Landon in any event brings its claim against the Reinsurers on a contingent basis, first, because Landon seeks this declaration in the alternative to its primary position in the Defence that it is not obliged to indemnify the Plaintiffs, and second because the liability of at least some of the Reinsurers depends on the determination of this dispute between Reinsurers.*

Landon's evidence

32. Mr McKellar in his First Affidavit describes the correspondence and discussions with the Reinsurers that have taken place to date (see [144]-[175]). He refers to correspondence with various groups of Reinsurers. He highlighted the following points (my underlining):

> *144.1.* *First, that (as is evident from the SoC at [75]), the Plaintiffs' expectation is that the Primary Layer Reinsurers will respond multiple times to each distinct claim and therefore that the losses, even if in the sums as claimed (which are more than three hundred million dollars), will only impact the Primary Layer Reinsurers. The Plaintiffs say further that given their understanding that there is a dispute between the Primary Layer Reinsurers and Excess Layer Reinsurers (and/or multiple disputes between some combination of them) on this point, they contend in the alternative that the reinsurance layers above the Primary Reinsurance Layer will also respond to the combined value of the Plaintiffs' distinct claims.*
>
> *144.2.* *Second, that Landon is essentially agnostic on the question of whether the Excess Layer Reinsurers are impacted by the losses. While Landon itself.retains 10% of the 25 million excess 25 million excess captive retention layer, giving it a total maximum liability of 2.5 million (of the more than three hundred million claimed), Landon is agnostic as to whether the balance of the sums reinsured are borne by the Primary Layer Reinsurers or the Excess Layer Reinsurers. The question of the exposure of the Excess Layer Reinsurers is primarily a dispute between the various Reinsurers.*
>
> *144.3.* *Third, that the Primary Layer Reinsurers have so far declined the opportunities that have been offered to them to explain the basis on which they may contend that the losses claimed can be aggregated under the reinsurance contracts such that they affect the Excess Layer Reinsurers.*
>
> *144.4.* *Fourth, that Landon has so far not explained, when asked in correspondence, the basis on which it is contended that the losses claimed can be aggregated under the reinsurance contracts such that they affect the Excess Layer Reinsurers.*

33. Mr McKellar gave a number of examples of Excess Layer Reinsurers stating that they failed to see how the losses could properly be treated as "*stacked*" and aggregated so as to reach the excess layers of the reinsurance. For example, on 16 January 2025 RNR wrote to Marsh stating that (see [158]): "*The only potential basis for an award against Landon in an amount above $17m is a determination that Sandals' losses from each location must be regarded as a separate loss. We fail to see how such losses could "stack" to reach our attachment level given that the reinsurance limits apply "each and every loss." Accordingly, we regard this as a matter for lower levels of reinsurance than those on which we participate*."

34. Mr McKellar exhibited a copy of a letter from the Plaintiffs' London solicitors Herbert Smith Freehills dated 18 June 2024 in which they recorded the discussions that had taken place as to the potential liability of the Excess Layer Reinsurers as follows (my underlining and emphasis):

> *2.5.1 We do not understand it to be in dispute that there is a sub-limit applicable for the Disease and Prevention of Access extensions of USD 2m and USD 15m 'each and every' loss respectively, thus a total sub-limit of USD 17m each and every loss.*
>
> *2.5.2 Sandals' position is that: (a) the Policy is a composite policy; (b) the claims comprise multiple losses; and (c) there is a separate sub-limit of USD 17m for each loss (per insured/resort). We understand that some or all reinsurers (or at least those that participated in the mediation) disagree that more than one sub-limit is available.*
>
> *2.5.3 Sandals' view is that the claims are confined to the primary layer — i.e. the primary insurers are liable for up to the USD 17m sub-limit for each loss. That will be Sandals' primary case in legal proceedings. However, since some or all primary reinsurers also disagree with that basis of allocation (if the claim is otherwise made out on the basis asserted by Sandals), Sandals also advances (and will advance in arbitration or litigation) the claims on the alternative basis that if the primary reinsurers are correct and the claims are not confined to the primary layer, then it automatically follows that the excess reinsurers are liable (i.e. it is the obverse of the primary case). There is no third way on allocation.*
>
> *2.5.4 Sandals cannot further articulate the basis on which primary reinsurers say that the excess reinsurers would be exposed by way of loss allocation, since to date they have declined to articulate that to Sandals despite being asked to do so by Sandals and Marsh.*
>
> *2.5.5 While Sandals' efforts to obtain clarity from the primary reinsurers on this point remain ongoing, **it is already clear that there is an allocation dispute between some or all reinsurers which will require resolution in legal proceedings**. Sandals will not, and does not need to, take any risk on this point.*"

35. Mr McKellar explained Landon's understanding of the potential liability of the Excess Layer Insurers and Landon's position as follows (my underlining):

> *176. As I say above, the Plaintiffs' expectation appears to be that the losses, even if in the sums as claimed (which are more than three hundred million dollars), will only impact the Primary Layer Reinsurers. This is because the Plaintiffs' expectation appears to be that the loss of each Plaintiff/Resort while subject*

to cumulative sub-limits of USD 17 million, will impact the reinsurance tower separately and individually, such that the primary layer is responsible for all of the losses.

177. *However, as I say above, the Plaintiffs say further that given their understanding that there is a dispute between the Primary Layer Reinsurers and Excess Layer point, they contend in the alternative that the reinsurance layers above the Primary Reinsurance Layer will also respond to the combined value of the Plaintiffs' distinct claims.*

178. *It is clear to Landon and to me that at least some of the Excess Layer Reinsurers do not necessarily share this view, or at least do not view this as a reason to not participate in these proceedings, as they have accepted and acknowledged service of the Amended Third Party Notice.*

179. *As I understand it, the difference between the two options can be illustrated as follows (by way of summary): If Landon is required to indemnify the Plaintiffs for 10 distinct losses under the POA Extension, with each subject to its own sub-limits, and each exhausting those sub-limits, then either: (a) those claims each individually impact the Primary Layer of the Reinsurance only, such that the Primary Layer Reinsurers pay all of the USD 150 million that this would amount to; or (b) those claims may be stacked and presented to reinsurers as a single loss so that all reinsurers attaching below USD$150 million are liable for their share of the overall loss, but are only liable once.*

180. *As I have tried to make clear in my affidavit, the issue between Landon and the Overseas Third Party Defendants is therefore not primarily whether Landon's reinsurance may be triggered, but whether the losses could ever reach the Overseas Third Party Defendants. Landon presently sees this as an issue that is mostly likely to be in dispute between the Excess Layer Reinsurers (including the Overseas Third Party Defendants) and the Primary Layer Reinsurers.*

181. *Landon's view, however, is that it is an issue which is best resolved (if it needs to be resolved) in these proceedings. In the interest of full and frank disclosure, and to explain why Landon has a good cause of action against the Overseas Third Party Defendants, Landon sets out what it understands the Overseas Third Party Defendants' case to be, and outlines what might be said in response. I understand that these are also points that may be addressed on Landon's behalf by its attorneys in their submissions.*

182. *The Underlying Policy and the reinsurance contracts refer not to "events" or "occurrences" giving rise to coverage but to "loss" or "losses". Neither "loss" nor "losses" is expressly defined in any of the agreements. These terms will therefore fall to be interpreted by the Court in both the Underlying Policy and in the reinsurance contracts.*

183. *In places, the Underlying Policy and the reinsurance contracts do use explicit aggregatory language to potentially connect multiple losses for the purposes of:*

183.1. Calculating the applicable deductible (see paragraph 96 above);

183.2. Calculating the sub-limits applicable to the Specification I coverage for property damage to landscaping (see paragraph 103.4 above); and

183.3 Calculating the Captive Retention for other perils (other than Natural Perils) in the reinsurance contracts (see paragraph 103.2 above).

184. This explicit language is apparently absent from the provision relating to sub-limits in the reinsurance contracts, which provide that they apply to "Each and every loss excess of deductibles and Captive Retention, unless otherwise stated" (see paragraph 103.3 above).

185. It is also apparently absent from the definitions of the limits in the reinsurance contracts which provide for limits "each and every loss property damage and business interruption combined" (see page 50).

186. As Landon and I understand it, the position of the Overseas Third Party Defendants is that because the limits and sub-limits in the reinsurance contracts are on an "each and every loss" basis any losses will apply sequentially and so do not stack such that the Excess Layers are not impacted.

187. Based on Landon's review and analysis to date, the Overseas Third Party Defendants appear to be correct that there is no language in the reinsurance contracts which would explicitly require multiple losses under the POA Extension be stacked for presentation to reinsurers.

188. However, the Overseas Third Party Defendants have not identified any language in the reinsurance contracts which explicitly requires the presentation of losses in the underlying contract as individual losses.

189. While the language of "each and every loss" without further explicit aggregatory language (such as is present elsewhere in the Underlying Policy) may arguably suggest that the Overseas Third Party Defendants are right that the losses will impact individually and will not erode up the reinsurance tower, it is not clear to Landon or to me that the argument is certain to succeed for a number of reasons (by way of summary only, and recognising that these are all points for legal submission):

189.1. First, the sub-limits are incorporated into all the Excess Reinsurers' reinsurance contracts (including those which attach at 200 million, above even the highest sublimit). This would not be necessary if losses with individual sub-limits could not stack to vertically erode the reinsurance tower;

189.2. Second, the sub-limits are said to follow the Captive Retention which contains annual aggregating language. On a proper construction of the reinsurance contracts, under Cayman Islands

law, it may be that this implies annual aggregation of the sub-limits;

189.3. Third, it may be that use of "combined" in relation to the limits applicable to each reinsurance contract, on a proper construction under Cayman Islands law, implies a level of aggregation of the losses; and

189.4. Fourth, it may be that language aggregating losses in the Underlying Policy in the reinsurance should be implied as a matter of law or fact.

Landon's case on the Merits Test as explained in its Supplemental Skeleton

36. In its Supplemental Skeleton, Landon set out its submissions on this issue as follows:

(a). the Plaintiffs claim that they are entitled, as against Landon, to receive payment in total of sums in excess of $262,507,787 (plus interest) under the underlying insurance policy. This sum is broken down as follows:

a. First Plaintiff (Antigua): $8,854,059.

b. Second Plaintiff (Bahamas): $14,669,871.

c. Third Plaintiff (Bahamas): capped at $17,000,000.

d. Fourth Plaintiff (Barbados 1): capped at $17,000,000.

e. Fourth Plaintiff (Barbados 2): capped at $17,000,000.

f. Fifth Plaintiff (Grenada): capped at $17,000,000.

g. Sixth Plaintiff (Jamaica): capped at $17,000,000.

h. Seventh Plaintiff (Jamaica): $10,122,840.

i. Eighth and Ninth Plaintiff (Jamaica): capped at $17,000,000.

j. Tenth Plaintiff (Jamaica): capped at $17,000,000.

k. Eleventh Plaintiff (Jamaica): $11,868,315.

l. Twelfth Plaintiff (Jamaica): $14,635,591.

m. Thirteenth Plaintiff (Jamaica 1): $227,624.

n. Thirteenth Plaintiff (Jamaica 2): $4,214,712.

o. Fourteenth Plaintiff (Jamaica): capped at $17,000,000.

p. Fifteenth Plaintiff (St Lucia): $14,094,798.

q. Sixteenth Plaintiff (St Lucia): $15,980,446.

r. Seventeenth Plaintiff (St Lucia): $16,839,530.

s. Eighteenth Plaintiff (Turks & Caicos): capped at $17,000,000.

t. All Plaintiffs (including Nineteenth Plaintiff): $138,595.50 (claim preparation costs).

(b). by way of its primary case (in its own Defence), Landon denies the Plaintiffs' claims in their totality.

(c). in the alternative, Landon maintains that the Plaintiffs' claims are limited, at most, to one single payment of $15,000,000 under the underlying policy, being the specific sub-limit applicable to alleged loss under the Prevention of Access extension (the Plaintiffs having already received a single payment of $2,000,000 which Landon says is the specific sub-limit applicable to alleged loss under the Disease Extension).

(d). however, Landon argues (without prejudice to its pleaded defence) that it is conceivable that the Court may reject its arguments at trial and grant the Plaintiffs' claims under the underlying policy in full, in circumstances where the underlying policy's primary Limit of Liability contemplates available insurance coverage of up to $400,000,000 for "*each and every loss*" and the Summary of Schedule of Values contemplates 12 months of Business Interruption Losses (if suffered) amounting to $612,595,311.

(e). Landon says that the Plaintiffs may manage to persuade the Court that the underlying policy is a composite policy in favour of some or all of them as separate individual Insureds, with each individual Plaintiff or resort owner/operator eligible to make a separate, individual claim against Landon up to the combined sub-limit sum of $17,000,000, i.e. a combined sum of $262,507,787 (plus interest) in total. Alternatively, the Plaintiffs may manage to persuade the Court that the sub-limit sum of $17,000,000 applies separately to "*each and every loss*" (which may require the Court to conclude that some or all of the Plaintiffs' claims relate to separate

"*losses*" rather than one single "*loss*" in circumstances where "*each and every loss*" is not expressly defined in the underlying policy).

(f). Landon noted that there are a number of important terms in the underlying policy and reinsurance documents that are undefined and a number of less than straightforward construction issues which are or are likely to be in dispute at trial. It also noted that loss aggregation issues (for reinsurance recovery purposes) of the type raised by these proceedings are notorious for generating disputes and raising difficult construction issues.

(g). to illustrate the construction issues which may arise, Landon referred to the reinsurance contract documents relating to UMR: B0804Q22743F19 (which were included in the hearing bundle) which were underwritten by RenaissanceRe Syndicate Management Limited (***RNR***) in favour of Landon. Landon noted and submitted that:

(i). the reinsurance contract documents did not appear to contain what could be described as a clear and express aggregation clause.

(ii). however, they did provide that the Limit of cover under the reinsurance contract was *"$50,000,000 each and every loss property damage and business interruption combined … excess of … $100,000,000* ***each and every loss property damage and business interruption combined****, which in turn Excess of Captive Retention*" (emphasis added) of which RNR was taking a 6% share. "*Captive Retention*" is then described as *"$850,000 in the* ***annual aggregate property damage and business interruption combined***" (emphasis added).

(iii). this language (if viewed in isolation from the totality of the potential factual matrix) gave rise to at least a reasonable argument that RNR's liability arises at a point when the *combination* (i.e. aggregation) by Landon of *each and every loss* that it has been exposed to (whether for property damage and/or business interruption losses) reaches the sum of $100,000,000 (net of its Captive Retention), at which point RNR is on risk for RNR's share of 6% of

all combined losses sustained by Landon between $100,000,000 and $150,000,000.

(iv). the mere fact that the Schedule of Sub-limits makes reference to Specification II Limits of Liability of $15,000,000 for Prevention of Access and $2,000,000 for Disease (apparently with respect to "*each and every loss excess of deductibles and Captive Retention*…") did not necessarily mean that it was to (or must only) be applied by the Court in the same way as the sub-limits might be applied under the Schedule contained in the underlying policy since there were material drafting differences between the two documents on their face, and the reinsurance conditions only incorporated "*All terms, clauses and conditions as Original Policy … **in so far as may be applicable to this reinsurance***" (emphasis added).

(v). further, the Information page suggested that RNR, as an Excess Layer Reinsurer, was itself informed (and aware) that the Plaintiffs' aggregate or combined business interruption values amounted to sums in excess of $600,000,000, i.e. in the case of a catastrophe implicating multiple properties of the Plaintiffs' there might be multiple applications of the sub-limits under the underlying Policy, with such liabilities being aggregated by Landon for reinsurance recovery purposes.

(vi). it could also be reasonably argued that there is a degree of commercial logic in Landon's insurance liabilities being shared across Landon's Primary Layer Reinsurers and Excess Layer Reinsurers in accordance with their fair respective shares, having regard to their respective positions on the reinsurance tower and the share of reinsurance premiums each received, especially if very large losses have been incurred by Landon when combined together, all relating to COVID 19.

(h). for the purposes of Landon's application for leave to serve out, Landon did not need to put the case against the Overseas Third Party Defendants too high, and it did not want to do so at this stage of the proceedings. However, Landon submits that, for the purposes of bringing its third party claims for contingent declaratory

relief on a protective and precautionary basis, the low threshold applicable to the Merits Test of reasonable arguability is appropriately satisfied, especially in circumstances where the reinsurance contracts each contain Cayman Islands law and Cayman Islands exclusive jurisdiction clauses.

The Inconsistency Issue

37. As I have noted, Landon submits that it is able to satisfy the low threshold test of reasonable arguability in relation to its third party claims against the Overseas Third Party Defendants. Landon submits that this is so despite the fact that it denies liability to the Plaintiffs in the Main Proceedings and the basis on which the Overseas Third Party Defendants (and all other Excess Layer Reinsurers) are said to be liable to it have not yet been pleaded or fully set out and formulated in correspondence between the parties. Landon has issued and wishes to serve a properly pleaded claim against all the Third Party Defendants, including the Excess Layer Reinsurers, which, having regard to the pleadings and the disputes referred to in the evidence clearly show that there is a serious issue to be tried as to whether Landon is liable to the Plaintiffs in amounts that will engage the excess layers of the reinsurance and whether the Excess Layer Reinsurers are and will be liable to Landon.

38. Mr Potts argued that there were cases in which courts had been prepared to accept that where a defendant to main proceedings denied liability but also issued third party proceedings it could be permissible and appropriate to view and assess the defence and the third party claim separately and treat each as giving rise to good arguable claims.

39. Mr Potts cited the judgment of Lord Justice Rix in the English Court of Appeal in *Konkola Copper Mines plc v Coromin Ltd* [2006] EWCA Civ 5 although he acknowledged that it was not directly on point. However, it does contain some relevant commentary and is worth discussing briefly.

40. In that case, reinsurers (R) applied to stay third party proceedings (under Part 20 of the CPR) commenced against them by Coromin, which had issued a layer of insurance to the insured Konkola under an all risks policy subject to English law and jurisdiction (and was a captive insurer set up to insure or reinsure risks relating to companies within the

group of which Konkola was a member). Zambian insurers had issued another layer of insurance to Konkola. Konkola had sued Coromin and the Zambian insurers in England. Konkola and the Zambian insurers then agreed that the liability of the latter should be determined in Zambian proceedings under Zambian law and that the English proceedings against them should be stayed (and that agreement was embodied in a consent order). Coromin, as the surviving defendant in the English proceedings, brought third party proceedings against the reinsurers. The reinsurers sought a stay of the third party proceedings both pursuant to a foreign jurisdiction clause which they said had been incorporated into the reinsurance policy (they said that the reinsurance contract was governed by an exclusive Zambian jurisdiction clause so that the third party proceedings should be stayed in favour of Zambian proceedings) and pursuant to the Court's inherent case management powers (the reinsurers argued that the third party proceedings were premature and should be stayed pending the outcome of Konkola proceedings in Zambia in order to avoid inconsistent decisions in Zambia and England).

41. Lord Justice Rix had said this (my underlining):

> *61. If the case management challenge is looked at strictly on its own terms, then it seems to me that it would be wrong to interfere with the judge's discretion. This is in the first place because the case management challenge is made on the basis that the jurisdictional challenge to the Part 20 proceedings has failed. In any event the KCM [Konkola] claim in England is properly based here jurisdictionally, is a case in good standing (see above), and it is a claim based on an English law and jurisdiction contract at least in part made or negotiated here through Aon. The same can of course be said about Coromin's Part 20 claim against the Reinsurers. The most that can be said on behalf of the Reinsurers is that, albeit as an endorsement to a global reinsurance contract itself made and negotiated in England through Aon and governed by an English law and jurisdiction clause, it is asserted that the extension of that contract to KCM was separately negotiated on KCM wording incorporating a Zambian law and jurisdiction clause. For these purposes there is no need for a choice between the contentions in the sense of finding that one party's version is to be characterised as a 'much better argument' than the other. Both KCM's and Coromin's claims are jurisdictionally soundly based here. There are competing submissions as to both claims with Coromin of necessity having to face both ways. It is undesirable for the court at an interim stage to say anything about the competing value of those claims, unless either it is forced to take a provisional view (as it may have to do for the purpose of a jurisdictional challenge, see Canada Trust) or unless one or other party undertakes the severe burden of seeking to show that its opponent's version has no real prospect of success. Thus it may be that both versions, considered separately, constitute good arguable cases. Where a choice between such versions does*

not have to be made (and should not be made) it is perfectly possible to think of each version as being a good arguable case. I would so regard the respective submissions set out above.

……

64. That case [Reichhold Norway ASA v Goldman Sachs International [2000] 1 WLR 173] may be compared with the present, where Coromin is not making concurrent claims but responding to a claim by seeking to pass it on to a reinsurer; where, if Coromin were to be found liable for KCM's all risks claim, it could be severely prejudiced if it could not in the same trial be entitled to seek to pass it on to the Reinsurers (or to Aon); and where if KCM succeeded in Zambia in proving a collapse within the named perils cover but the Reinsurers wished to dispute that result, Coromin could be similarly prejudiced. In its defence to the Part 20 proceedings, the Reinsurers do dispute any liability by Coromin to KCM: they say that there was no direct all risks insurance by Coromin of KCM; that any such direct insurance would have been illegal, and that in any event the incident at the mine was not a collapse.

……

67. As for the English proceedings, although I have already stated that it would be wrong to consider them in isolation from the overall situation, the judge did not make that error. But he was at least entitled to consider the ramifications of those proceedings, and his instincts as to how they might progress would at any rate be better founded than in the case of the Zambian proceedings. Thus he was, in my judgment, entitled to think that they could be efficiently processed; that it would be unfair to leave Coromin exposed without being entitled to progress its Part 20 claim against both the Reinsurers and Aon; that the validity of the Zambian claim under the named perils insurance would arise as an issue, whether that be in the course of KCM's claim against Coromin (e.g., as I would suggest, because of the 'other insurance' clause) or (as the Reinsurers themselves accept) because of their defence that KCM has no primary claim of any kind to make, a defence that Coromin would be forced to make in its defence as well; and that without permitting the Part 20 proceedings to progress together with KCM's all risks claim there would be the danger of inconsistent decisions within the English proceedings on top of the danger of inconsistent decisions between the English and Zambian proceedings. This court can do nothing about the latter, but I share the judge's concern not to take a step (that of staying the Part 20 proceedings) which would aggravate the risk of the former.

42. The relevant issue in this case was whether to grant a case management stay in the context of a jurisdictional challenge and parallel proceedings. Lord Justice Rix's comments at [61] regarding whether both Konkola's claim against Coromin in the main proceedings and Coromin's claim against the reinsurers in the third party proceedings could be

regarded as based on a good arguable case were made in the context of deciding whether to stay the third party proceedings and an assessment of the merits of the Coromin's claim for the purpose of deciding, as discussed at [67], whether Coromin would be prejudiced of the third party proceedings were stayed. Lord Justice Rix decided that in that context and where both sets of claims appeared to have a good foundation (and where jurisdiction was established) but were disputed there was no need to investigate too deeply or question whether Konkola's claim and Coromin's claim met the good arguable test threshold. But he did note that the position would be different where the Court was required to take a provisional view, as it was in the case of an application for a stay on the basis of the exclusive jurisdiction clause which the reinsurers claimed had been incorporated (in respect of which the test in *Canada Trust* applied). The judge had decided that the reinsurers had not shown a strong enough case that the reinsurance of Coromin that they had underwritten was subject to Zambian law so that on his provisional view of the evidence adduced he did not consider that the reinsurers had shown a good arguable case that they could invoke the Zambian law and jurisdiction clause against Coromin.

43. However, an application for leave to serve out does require the Court to take a provisional view of the merits of the relevant claim in accordance with the Merits Test. For this reason, Lord Justice Rix's comments are not directly relevant. But I treat his analysis as acknowledging, albeit within a different juridical framework (case management stay v leave to serve out), the need, in appropriate circumstances, to adopt a realistic and pragmatic view of the position of an insurer at the interlocutory stage before a detailed assessment of the merits of his liability and indemnity claim can be made, recognising the insurer's need to protect himself by commencing proceedings against his reinsurer. As Lord Justice Rix said, such an insurer "*of necessity*" has "*to face both ways*."

44. It seems to me that where there are material issues in dispute in the main proceedings against the insurer such that there is a realistic or real prospect of the insurer being held liable in amounts that will trigger and engage claims by it against Reinsurers, the fact that the insurer denies liability in those proceedings does not preclude it from showing that its third party claims against the reinsurers also raise a serious issue to be tried. Further, it seems to me that the Court is entitled to consider the issues in dispute between the insured and insurer and insurer and reinsurer in light of and having regard to all the

evidence and to make a realistic assessment of how the litigation based on the current pleadings and evidence is likely to develop, taking into account the realities of the parties' positions, without requiring every issue in dispute to be precisely formulated or articulated in the pleadings or in the evidence. While the Court must scrutinise the claims on which the application for leave to serve out is made as Mr Justice Sani said in *Qatar Airways Group QCSC v Middle East News FZ LLC* [2020] EWHC 2975 (QB) at [140], in the context of a jurisdictional challenge "*the Courts have emphasised that it is important to avoid over analysis of the facts at the stage of a jurisdictional challenge*" (quoted at [8.186] of Edmonds and Tulip, *Service in Civil Proceedings: Law and Practice*, OUP, 2026).

45. In the present case, it seems to me that Landon is able to satisfy the Merits Test in relation to the claims made in the Third Party Notice by reference to its pleaded case, the evidence it has adduced, the evidence that can reasonably be expected to be available at trial and an assessment of the issues in dispute between Landon and the Third Party Reinsurers (as well as the issues in dispute between them). This reveals that there are real and substantial issues in dispute regarding:

    (a). Landon's liability under the underlying policy, such that the Plaintiffs' claims against it give rise to substantial questions of law and fact as regards the scope and quantum of Landon's liabilities and in particular as to whether Landon is liable in amounts which would trigger the liability of the Excess Layer Reinsurers under the excess reinsurance.

    (b). the liability of the Excess Layer Reinsurers under the reinsurance contracts, such that Landon's third party claims in the Amended Third Party Notice against the Overseas Third Party Defendants can be said to give rise to substantial questions of law and fact as regards how the losses for which it may be liable are to be presented, dealt with and characterised under the reinsurance agreements.

46. Landon accepts that there is a serious issue to be tried as to whether it is liable to the Plaintiffs and as to quantum (see [126]-128] of Mr McKellar's First Affidavit). Landon also accepted that there was a serious issue to be tried as to whether or not the Plaintiffs were entitled to coverage under the POA Extension on the alleged grounds that ingress

and egress from their properties was prevented during the course of the COVID-19 pandemic as a result of Government restrictions in each of the relevant jurisdictions. Landon has set out a detailed defence to the Plaintiffs' claim for coverage under the POA Extension.

47. In the Amended Third Party Notice Landon has asserted a claim against all the Third Party Defendants including the Overseas Third Party Defendants. The declaration sought states that "*the Reinsurers (individually, severally, and subject to their individual quota shares) are obliged to indemnify Landon for all sums that Landon is found liable to pay to [the Plaintiffs] under the Underlying Policy as sought in the Statement of Claim or otherwise"* and at [28] of the Amended Third Party Notice it is said that "*Landon … brings its claim against the Reinsurers on a contingent basis … because the liability of at least some of the Reinsurers depends on the determination of this dispute between Reinsurers*." The pleadings acknowledge that there is a dispute as to whether the Excess Layer Reinsurers have a liability to Landon. This is stated at [75] of the Plaintiffs' statement of claim at [33] and at [27] of the Amended Third Party Notice. In his First Affidavit Mr McKellar explained the position of the Plaintiffs and the Reinsurers by reference to certain discussions and correspondence and confirmed his understanding of the position based on these discussions and that correspondence (while acknowledging that discussions were continuing and the parties' positions remained to be clearly and fully articulated and explained) that "*it is already clear that there is an allocation dispute between some or all reinsurers which will require resolution in legal proceedings*." Mr McKellar then went on to identify the issues that arose or were likely to arise regarding whether the Excess Layer Reinsurers were or would be liable (which were then explained by Landon in their written and oral submissions).

48. The key issue which, as Mr McKellar said, appears already to be clearly in dispute is whether the reinsurance agreements permit multiple applications of the sub-limits under the underlying policy, with such liabilities being aggregated by Landon for reinsurance recovery purposes. There is an issue and dispute as to whether the Primary Layer Reinsurers are required to respond multiple times to each distinct claim so that the losses, even if in the full amount claimed by the Plaintiffs, will only impact them. This would be on the basis that the loss of each Plaintiff/Resort, while subject to cumulative sub-limits of US$17 million, will impact the reinsurance tower separately and individually

and not be aggregated for reinsurance purposes. As Mr McKellar said this analysis arises "*because the limits and sub-limits in the reinsurance contracts are on an "each and every loss" basis any losses will apply sequentially and so do not stack such that the Excess Layers are not impacted.*" However, as Mr McKellar explained and the Plaintiffs have acknowledged (see Mr McKellar's First Affidavit at [177]), it is clearly arguable, based on the analysis of the widely drafted and unclear wording in the underlying policy and the reinsurance contracts, which omit definitions of terms and adopt the multiple use of similar language (which analysis is set out in Mr McKellar's evidence and in Landon's submissions, as summarised above), that the reinsurance contracts require or permit that losses with individual sub-limits be added together and "*stack vertically*" as a single loss for the purpose of the excess layer reinsurance. Mr McKellar's example at [179] of his First Affidavit made and explained the point well.

49. As Landon explained (and as was set out in Mr McKellar's First Affidavit), the Overseas Third Party Defendants (and the other Excess Layer Reinsurers) have not yet fully articulated (let alone pleaded) all of their potential defences to claims under the excess layers of the reinsurance. But this will be done in due course and in my view Mr McKellar's evidence has set out in sufficient detail the likely disputes and issues which arise and are likely to crystallise based on the views expressed by the Excess Layer Reinsurers (and the Plaintiffs) to date and a fair reading and analysis of the policy wording in light of the types of losses claimed by the Plaintiffs.

50. At [211] of Mr McKellar's First Affidavit he noted that immediately before filing the Service Out Application, Landon had made a final attempt to obtain the consent of the Overseas Third Party Defendants to service by circulating in draft a copy of the Service Out Application and of his affidavit. Mr McKellar set out the position and responses of the different firms of attorneys acting for the Overseas Third Party Defendants, which I have noted.

51. Mr Potts explained that an issue had arisen in discussions with Forbes Hare (acting for the Fields Howell Third Party Defendants) as to whether Mr McKellar had exhibited and relied on, when discussing the position of the Overseas Third Party Defendants, certain correspondence which Forbes Hare argued was subject to without prejudice privilege (the correspondence relating to an unsuccessful mediation between the parties) and that

Forbes Hare had requested that Conyers draw their letters on this issue to the Court's attention at the hearing, which Mr Potts did.

52. Mr McKellar explained the position in his First Affidavit as follows:

> *25. Sandals, Landon, and Reinsurers then agreed to enter into 'without prejudice' negotiations with respect to the claim, and a 'without prejudice' mediation was held in London in late 2023. In preparation for, and at the commencement of, the mediation, Landon understood that the lawyers representing Reinsurers at the mediation (the US law firm of Fields Howell LLP ("Fields Howell") and the UK law firm of DAC Beachcroft) were instructed on behalf of all of Landon's Reinsurers (acting collectively as a market, save only for Landon), although the lawyers later indicated to Sandals and to Landon that they were only formally instructed by a majority (but not all) of the Reinsurers. Various related letters were exchanged between Herbert Smith Freehills LLP ("HSF"), English solicitors for the Plaintiffs, Fields Howell, Dekra and Conyers in relation to the same. Copies of these letters are exhibited at pages 1297 to 1311. While Landon has been advised that some of these letters touch on matters that may be properly characterised as 'without prejudice' (and therefore inadmissible), and nothing in this Affidavit is intended to constitute a waiver by Landon of its own rights (or the rights of any other parties) of 'without prejudice' privilege, Landon has been advised that it is necessary and appropriate to explain the fact that Landon was led to believe (and relied on the fact) that Fields Howell and DAC Beachcroft represented that they had been appointed on behalf of all Reinsurers (save only for Landon) (being a fact that is not, in and of itself, covered by 'without prejudice' privilege).*
>
> *…….*
>
> *213. On 5 March 2026, Forbes Hare wrote to Conyers to confirm that they are content for Landon to file the Service Out Application, subject to Landon making certain amendments to this affidavit related to excluding what it considered to be without prejudice communications Forbes Hare's letter to Conyers is exhibited at pages ….*
>
> *214. On 6 March 2026, Maples wrote to Conyers and stated that "the Draft Application fails to articulate a case that our clients are liable as reinsurers, or how there is said to be an intra-reinsurer dispute involving our clients." Maples also confirmed that they did not have instructions to accept service of the documents filed in the proceedings on behalf of the Maples Third Party Defendants. A copy of Maples' letter is exhibited at page …*
>
> *215. In response, Conyers wrote to Forbes Hare on 10 March 2026 rejecting its request for the removal of certain information and documents, noting that: (i) without prejudice privilege does not prevent the information or documents to which it refers being included in the evidence in support of the Service Out*

> *Application; and (ii) the documents are required to be disclosed to the Court under Landon's duty of full and frank disclosure. A copy of Conyers' letter to Forbes Hare is exhibited at …*
>
> *216. On 12 March 2026, Forbes Hare responded to Conyers reiterating its position that the information and documents they had identified are subject to without prejudice privilege and should not be disclosed. Forbes Hare requested as follows: "In the event that your client continues to file the application and draft affidavit in its present form, we require you to bring this letter and our letter of 5 March 2026 to the judge's attention and notify him of our position that Landon will have unilaterally and unnecessarily waived without prejudice privilege by referring to and exhibiting the underlying without prejudice correspondence." A copy of this response is exhibited at pages … For the avoidance of any doubt, Landon does not agree with the contents of Forbes Hare's letter."*

53. Forbes Hare in their letter dated 5 March 2026 had referred to [25], [159] and [195] of the draft of Mr McKellar's affidavit (which I note are paragraphs [25], [160] and [196] in the final version of the affidavit).

54. Mr Potts said that the correspondence in question was not material or relied on for the purpose of the Service Out Application. The correspondence in question had, Landon said, confirmed and contained a representation that Fields Howell LLP, a US law firm, and DAC Beachcroft LLP a UK law firm, were instructed on behalf of all of Landon's reinsurers (acting collectively as a market) in connection with the mediation. Mr Potts said that the issue of who Fields Howell and DAC Beachcroft were acting for in that context was only relevant to an issue between Landon and the Third Party Defendants as to whether Landon had given proper notice of its claims to them. Further, the relevant communications were not privileged since statements as to the identity of the parties for whom solicitors/attorneys were acting in a mediation were not covered by without prejudice privilege.

55. It seems to me that I do not need to, and indeed should not at this stage, decide any dispute as to whether the correspondence in question is subject to without prejudice privilege and the consequences of the correspondence being referred to in and exhibited to Mr McKellar's First Affidavit, although I note the concerns raised by Forbes Hare and Landon's response. It seems to me that Mr McKellar's evidence as to the existence of a dispute between the parties (in particular the Primary Layer Insurers and the Excess Layer Insurers) relating to the extent to which the losses for which Landon turns out to

be liable will fall to be presented and will be covered entirely by the primary layer reinsurance or will engage and result in claims under the excess layer cover is not wholly based or dependent on the correspondence referred to by Forbes Hare.

The Premature Application Issue

56. As will be clear from the above discussion, I am satisfied, by reference to the materials relied on by Landon and currently available to the Court, that Landon has met the Merits Test in relation to the claims made in the Amended Third Party Notice. But I recognise that the basis on which the excess layers of the reinsurance and on which the Overseas Third Party Defendants (and other Excess Layer Reinsurers) are said to be liable under their reinsurance agreements has yet to be fully pleaded and that a number of these Reinsurers have expressed concerns about the third party proceedings being permitted to continue (and service out permitted) until Landon's full case and further particulars of the basis for its claims against the Overseas Third Party Defendants (and other Excess Layer Reinsurers) have been pleaded or at least clearly set out. I note for example the comments of Maples in their letter to Conyers dated 6 March 2026 (referred to in [214] of Mr McKellar's First Affidavit) that "*the Draft [of the Service Out] Application fails to articulate a case that our clients are liable as reinsurers, or how there is said to be an intra-reinsurer dispute involving our clients*").

57. I also note that, recognising this issue, Landon (as I have noted) in the alternative, had submitted that if the Court was not persuaded that there is, on the material presently available, a strong enough case against those Overseas Third Party Defendants to justify service of the Amended Third Party Notice out of the jurisdiction, the Court should adjourn the Service Out Application generally so that Landon could restore it for a hearing if it became necessary and appropriate to do so.

58. I have considered whether this is the fair and proper course, having regard to the position of Landon and the Overseas Third Party Defendants and the requirements of the overriding objective, but have concluded that it would not be. The issue before me at present relates solely to service of the Amended Third Party Notice. The Merits Test is designed to ensure that only claims with a sufficient prospect of being successful, which raise substantial questions of law or fact, should be allowed to trouble foreign-based

defendants and be served on them out of the jurisdiction. I am satisfied, as I have said, that Landon has pleaded claims against the Overseas Third Party Defendants and that the evidence shows that these raise real and substantial issues as to whether, and that is clearly arguable that, the excess layers of the reinsurance are and will be engaged if, as is also arguable, Landon is held liable to the Plaintiffs in sums above the threshold for the excess layers of the reinsurance. In these circumstances, it seems to me that Landon should be permitted to serve the Overseas Third Party Defendants so that all the Third Party Defendants will be joined and served and appropriate directions for the further conduct of the third party proceedings involving all the Third Party Defendants can be agreed or made by the Court. It may be (although I express no firm view on this, not having heard submissions or being aware of the full picture) that it will be consistent with the overriding objective for further steps in the Third Party Proceedings to be put on hold for a period pending further developments in the Main Proceedings and a decision as to how best to manage the Third Party Proceedings so as to avoid unnecessary expense. But I do not consider that it would be just or appropriate to make Landon wait before being able to serve the Overseas Third Party Defendants

The Gateway Test

59. As regards the necessary or proper party gateway, this Court applies the "*common question of law and fact*" test. This test will be satisfied where the "*liability of several parties, whether cumulative or alternative, depends upon one investigation*" (see, for example, *Banco Privado Portugues (Cayman) Ltd (In Official Liquidation) & Ors v Rendeiro & Ors* [2025] CIGC (FSD) 79 at [46] citing Smellie CJ's decision in *Ahmad Hamad Algosaibi and Brothers Company v SAAD Investments Company Limited & Anor* (unreported, Smellie CJ, 25 June 2010) which was upheld by the Court of Appeal at [2010] (2) CILR 289**)**.

60. In his judgment in *AK v Kyrgyz* [2012] 2 AC 495 (JCPC) at [87] Lord Collins said this:

> *"…. the question whether D2 is a proper party is answered by asking: "supposing both parties had been within the jurisdiction would they both have been proper parties to the action?": Massey v Heynes & Co 21 QBD 330 , 338, per Lord Esher MR. D2 will be a proper party if the claims against D1 and D2 involve one investigation: Massey v Heynes & Co , p 338, per Lindley LJ; applied in Petroleo Brasiliero SA v Mellitus Shipping Inc (The Baltic Flame) [2001] 1 Lloyd's Rep 203*

> *, para 33 and in Carvill America Inc v Camperdown UK Ltd [2005] 2 Lloyd's Rep 457 , para 48, where Clarke LJ also used, or approved, in this connection the expressions "closely bound up" and "a common thread": at paras 46, 49*."

61. As I have noted, the Amended Third Party Notice has been validly served against two thirds of the Reinsurers (including several of the Excess Layer Reinsurers). I accept Landon's submission that each of the Overseas Third Party Defendants are proper parties to the third party proceedings because the claims against the Overseas Third Party Defendants and the other Third Party Defendants arise out of the same or closely related facts and agreements with common terms and so can properly be said to "*involve one investigation*." The third party claims against the Overseas Third Party Defendants involve overlapping questions of law and fact with the claims against the Primary Layer Reinsurers and the Excess Layer Reinsurers who have acknowledged service because, as Landon submitted, (a) the reinsurance contracts are materially identical; (b) the factual issues that arise to be determined are substantially the same; (c) the legal issues that arise to be determined are substantially the same and (d) the claims by the Plaintiffs on the underlying policy are the same. As Landon noted, while the Overseas Third Party Defendants attach at different points of liability, all attach at or below $200 million and therefore, each of them have individual potential exposure to Landon's reinsurance claim.

62. As regards the breach of contract gateways under GCR O.11, r.1(1)(d)(iii) and (iv), it is clear that Landon has established that it has a good arguable case that the underlying policy and all of the relevant reinsurance contracts are (a) governed by Cayman Islands law, as expressly provided by applicable choice of law clauses and (b) are each subject to an exclusive jurisdiction agreement in favour of the Cayman Islands Courts.

The Appropriate Forum Test

63. This jurisdiction is clearly the most suitable jurisdiction for trying the claims in the Amended Third Party Notice in the interest of all the parties and in the interest of doing justice. These claims arise under Cayman law contracts and proceedings relating to the same or closely related subject matter have already been commenced here. Requiring the liability of the Overseas Third Party Defendants to be litigated in one or probably multiple other jurisdictions would be a recipe for procedural chaos. Not only would costs be multiplied but there would be delays and the risk of inconsistent decisions.

A proper case for service out

64. It seems to me that this is also, in all the circumstances, a proper case for service out on the Overseas Third Party Defendants. As I have noted, I have considered whether it would be preferable and in the interest of all the parties to decline to permit service out at this stage and to require Landon to wait until the details of its claims against the Overseas Third Party Defendants have been clarified and further particularised in its pleaded case or in correspondence. But, as I have said, that seems to me to be unnecessary and counterproductive when on a realistic and pragmatic view of the state of the case against the Excess Layer Reinsurers it is clear that there is a real risk that Landon will need to prosecute, and a properly arguable basis for, Landon's pleaded claims against the Overseas Third Party Defendants (and the other Excess Layer Reinsurers). In my view the concerns raised by the Overseas Third Party Defendants can be adequately and should be dealt with in the context of directions relating to the post-service steps to be taken in the Third Party Proceedings and not so as to prevent service of the Amended Third Party Notice at this time. Mr McKellar at [217]-[219] of his First Affidavit briefly mentions (sensibly in my view) the possibility of case management directions being given to "*limit the need for the active involvement of the Overseas Third Party Defendants (and the other Excess Layer Reinsurers) in those parts of the case that do not primarily concern them*." Mr Potts during his oral submissions mentioned that there had been some debate in the English authorities as to how best to conduct an insurer's proceedings in respect of third party claims against reinsurers but it seems to me (and I have not been shown or looked at the relevant authorities) that if there are issues as to when and how such proceedings are to be conducted that is a case management issue to be decided after service and do not require or justify a refusal to permit service out.

Declaratory sought in the Amended Third Party Notice

65. I am also satisfied that for the reasons given by Landon the declaration sought by Landon serves a useful purpose.

Methods of service

66. The proposed methods of service were explained in Landon's skeleton argument at [105]-[110] and relevant materials were included in Landon's authorities bundle.

67. I note that GCR O.11, r.4(1)(e) requires that the affidavit in support of the application for leave to serve out should state that "*if service is not to be effected personally the method or methods of service which are in accordance with the law of the country in which service is to be effected*" and that this has not been done (so far as I can tell). I have also not seen any expert evidence which confirms that the method of service selected by Landon will be in accordance with the laws of the countries of the Overseas Third Party Defendants where service is to be effected.

68. But I am prepared to grant leave to serve out despite such a failure to comply with this sub-rule on the basis that the order for service out will require that service on the Overseas Third Party Defendants be effected in accordance with the laws of the countries of the Overseas Third Party Defendants where service is to be effected. The explanation that Mr Potts gave during his oral submissions indicated that Landon has investigated the requirements of these local laws and that the chosen method of service will be in compliance with their laws.

Full and frank disclosure

69. I have noted and taken into account the matters disclosed by Landon by way of full and frank disclosure and fair presentation of their case.

The Hon. Mr Justice Segal
Judge of the Grand Court, Cayman Islands
28 May 2026