In The Supreme Court of Bermuda

CIVIL JURISDICTION

COMMERCIAL COURT

2024: No. 70

IN THE MATTER OF CASSATT INSURANCE COMPANY, LTD

AND IN THE MATTER OF THE COMPANIES ACT 1981

RULING

Date of Hearing: **1, 2 July 2025**
Date of Ruling: **18 July 2025**

Appearances: **Claire van Overdijk KC, Appleby (Bermuda) Limited, for Cassatt Insurance Company, Ltd.**

Kyle Masters, Matthew Summers, Carey Olsen Bermuda Limited, for the Petitioners

RULING of Mussenden CJ

Introduction

1. The Petitioners in this matter are Jefferson Health Northeast System and Abington Memorial Hospital. The Amended Petition seeks an oppression remedy pursuant to section 111 (the "**s.111 Remedy**") of the Companies Act 1981 (the "**Act**") on behalf of the Petitioners in their

capacity as shareholders of Cassatt Insurance Company, Ltd. (the "**Company**"). The oppressive conduct complained of in the Amended Petition explicitly includes the wrongful removal of the Petitioners as registered shareholders of the Company.

2. This matter comes before me on several applications by the parties. During the course of the hearings, the parties reached agreement in respect of some of the applications. This Ruling is in respect of the following applications:
    a. The Petitioners' Summons dated 20 June 2025:
        i. To re-amend the Amended Petition; and
        ii. To serve the Company's institutional shareholder, Grand View Health ("**Grand View**"), out of the jurisdiction and to do so by email.
    b. The Petitioners' Summons dated 24 June 2025:
        i. To adduce the First Affidavit of Gary Osborne ("**Osborne 1**"), Vice President, Alternative Risk Programs at Risk Partners, Inc., sworn 18 June 2025, an independent expert in the captive insurance industry;
        ii. To add Grand View as a party to these proceedings; and
        iii. For an injunction to restrict the Company from using its assets to fund this litigation, save certain actions.

3. The applications were supported by sworn affidavits and corresponding exhibits as follows:
    a. Lisa Ramthun, Vice President for Clinical Risks and Claims Management at Thomas Jefferson University and Jefferson Health ("**Ramthun 3**" sworn 20 May 2025, "**Ramthun 4**" sworn 6 June 2025 and "**Ramthun 5**" sworn 23 June 2025); and
    b. Eric Dethlefs, director of the Company ("**Dethlefs 1**" sworn 13 June 2025).

4. On 1 July 2025, I heard submissions from counsel for the Petitioners in respect of the applications to re-amend the Amended Petition and, on an *ex parte* basis, to add Grand View as a party and to serve Grand View out of the jurisdiction. In respect of the application to adduce the expert evidence, I heard submissions from counsel for the Petitioners and counsel

for the Company. I granted these applications and stated that I would give reasons which I now do.

5. On 2 July 2025, I heard the Petitioners' application for an injunction prohibiting the Company from using its assets to fund this litigation, save for certain actions, on an *inter partes* basis. I reserved my ruling in respect of that application and now issue it herein.

Background to the Applications

6. I provided the general background to the proceedings and a summary of the Petition in earlier Rulings.

7. I made a Directions Order dated 8 November 2024 which set out the procedure for a split trial of the Amended Petition. The documentation production had been extended by consent between the Petitioners and the Company.

8. During the course of the document production, correspondence flowed between the parties. Ramthun 3 and Ramthun 4 set out that Appleby, counsel for the Company, had informed Carey Olsen, counsel for the Petitioners, that Grand View was in the process of selling 100% of the shares in the Company to a Concert Group entity ("**Concert Deal**"). In or around August 2024, Cassatt RRG Holding Company ("**Cassatt RRG**") commenced negotiations with Concert Group for the sale of all the share and equity in the Company. The negotiations involved a non-disclosure agreement dated 12 August 2024 ("**Concert Deal NDA**") between Cassatt RRG and Concert Group Services, Inc. The Concert Deal NDA was executed on behalf of Cassatt RRG by William Black. The negotiations culminated in the execution of the stock purchase agreement dated 28 April 2025 ("**Concert Deal SPA**") amongst the Company, Grand View, Cassatt RRG, and Cassatt Solutions LLC ("**Concert Group NewCo**"). Concert Group NewCo is a special purpose vehicle created by Concert Group for the Concert Deal.

9. The Concert Deal SPA was signed on behalf of the Company and Cassatt RRG by Eric Dethlefs, and on behalf of Grand View by Douglas Hughes. Mr. Dethlefs is the President

and CEO of the Cassatt Group, and one of three directors of the Company. Mr. Hughes is the President and CEO of Grand View and the second of the three current directors of the Company.

10. The Petitioners stated that they did not become aware of the Concert Deal until May 2025 despite the fact that the Concert Deal had been subject to negotiation between the Cassatt Group and Concert Group since at least August 2024. The Petitioners also stated that, despite several applications and appearances in this Court and request to extend document production as well as related proceedings in the Vermont Superior Court in December 2024, the Cassat Group did not disclose the negotiation of the Concert Deal. Thus, the Company's letter dated 9 May 2025 was the first time the Petitioners were informed of the Concert Deal.

11. The Petitioners have had sight of the Concert Deal SPA which set out some of the terms of the sale. However, the Petitioners claim that they have not been provided with a complete copy of the Concert Deal SPA, including the Disclosure Schedules, with the result that the Petitioners do not have a complete understanding of the terms of the Concert Deal. On 20 May 2025 the Petitioners issued an inspection notice which required the Company to disclose various documents related to the Concert Deal which had been withheld by the Company in breach of an amended Directions Order ("**Withheld Documents**"). Upon review of the Withheld Documents, the Petitioners claim they are aware of the following terms:

    a. The recitals in the Concert Deal SPA confirm that Grand View (which is defined as "*Seller*") is purporting to sell to Concert Group NewCo (which is defined as "*Buyer*") all of the "*Equity Interests*" in the Company, including all shares and shareholder equity in the Company ("**Acquired Securities**").
    b. It has been represented to regulatory authorities that the Concert Deal will close on or about 1 July 2025.
    c. The Company, Grand View, and Cassatt RRG have all made certain representations and warranties to Concert Group NewCo, including warranting in Sections 3.1 and 4.3 that Grand View is the sole shareholder and entitled to all "*Equity Interests*" in the Company.

d. Section 2.2 of the Concert Deal SPA states that "*gross consideration*" of $4,450,000 is to be paid to Grand View for the Acquired Securities. That is comprised of: (i) $3,000,000 in cash to be paid by Concert Group NewCo, and (ii) $1,450,000 to be applied to settle and release Grand View from any obligation to pay the Company (**Debt Write-Off**) for unallocated loss adjustment expenses (**ULAE**).

e. Section 1.1 of the Concert Deal SPA, under "*Approved Seller Distributions*", states that the Company is permitted to make up to $3,450,000 in payments to Grand View prior to the closing of the Concert Deal (**Grand View Approved Distributions**).

f. Section 6.6 of the Concert Deal SPA states that the Company has agreed to continue paying all of its current employees, including Mr. Dethlefs and Mr. Black, for at least one year after the closing of the Concert Deal.

g. Article VIII of the Concert Deal SPA makes the closing of the Concert Deal subject to various consents and approvals, the details of which have not been fully disclosed.

12. The Petitioners also stated that the Withheld Documents show the following:

a. To fund the Concert Deal, the Company's current Board of Directors (**Board**) approved on 28 April 2025 a payment to Grand View of up to $2,500,000 for "*transaction expenses*" (**Grand View Expense Distribution**). Based on the documents disclosed by the Company to date, it is unclear whether the Grand View Expense Distribution is to be paid to Grand View in addition to the compensation from the Concert Deal.

b. The Concert Deal appears to involve direct and indirect compensation from the Company to Grand View of up to $7,400,000 plus a payment of $3,000,000 from Concert Group NewCo to Grand View. For example, the Concert Deal therefore represents a significant overpayment to Grand View of its less than one-third equity in the Company as valued in Willis Tower Watson plc's (**WTW**) Cassatt Internal Accounting Report dated 28 November 2023 (**November 2023 WTW Report**). The Petitioners cannot confirm whether that WTW valuation is also undervalue.

c. The Withheld Documents confirm that requests/applications for regulatory approval for the Concert Deal have already been submitted to the Bermuda Monetary Authority (**BMA**) and the Vermont Department of Financial Regulation (**DFR**)**.** The correspondence sent to the BMA and DFR confirms that, once the Concert Deal closes, the Company will be placed into run-off to be managed by Concert Group.

d. The fact that the Concert Deal represents significant windfalls for all parties involved (at the expense of the Petitioners) is unsurprising given the many apparent conflicts of the parties involved. For example, Terrence Power (the third director on the Company's current Board) is also a director of Strategic Risk Solutions, Inc., which is a longtime service provider to the Company and the largest shareholder (43.01%) and ultimate beneficial owner of Concert Group.

e. In an attempt to explain away Mr. Power's apparent conflict, his fellow director of the Company (Mr. Dethlefs) has claimed that "*at no time has Terence Power ever been an employee of any entity within the Strategic Risk Solutions group nor a director of Strategic Risk Solutions Bermuda Limited or Strategic Risk Partners*".

13. On 5 June 2025, the Company agreed to a Consent Order dated 5 June 2025 which, among other things, prohibited the Company from: (i) effecting any further changes to the Company's Register of Members, (ii) transferring legal title to the shares in the Company (including as part of closing the Concert Deal), and (iii) dissipating the assets of the Company to Grand View outside of the ordinary course of business. The Consent Order only maintains the status quo until this Court's determination of the Petitioners' Summons dated 6 June 2025 ("**Interim Relief Summons**").

Application to re-amend the Amended Petition

14. The Petitioners sought leave pursuant to Order 20 rules 5 and 7 of the Rules of the Supreme Court ("**RSC**") to re-amend the Amended Petition on the basis that the amendments are necessary given the recent discovery of the Concert Deal, Grand View's conduct and the interim relief being sought against the Company and Grand View. They assert that the Concert Deal could not have been discovered by the Petitioners sooner and that the details

of the ongoing negotiation of the Concert Deal were concealed by the Company from both the Petitioners and the Court. Thus, the Petitioners' proposed amendments seek to expand on the claims against the Company and Grand View which have only recently materialised noting that no limitation periods have expired and the Petitioners could commence new proceedings related to the Concert Deal if the application is refused.

15. Order 20 rule 5 provides that a writ may be amended with leave of the Court at any stage of the proceedings. Rule 7 modifies rule 5 so that it applies to originating processes such as the Amended Petition. Rule 8 also allows the Court to grant an amendment to an originating process if it is done for the purpose of assisting the Court in determining the real question in controversy between the parties.

16. In *Wilson and Craig v First Bermuda Securities Ltd and Others* [2002] Bda LR 60 (SC), Simmons J. stated that it was clear that the Court was vested with a discretionary power to grant leave to amend and that the general approach of the Court is that leave to amend ought to be allowed except for limited recognized exceptions. In the White Book 1999 at 20/8/9 it was confirmed that, as a general rule, no matter how late an amendment is sought, the Court should allow the amendment unless it will cause some injury or prejudice to the respondents which cannot be compensated by awarding costs.

17. I was satisfied that the application to amend met the requirements of the relevant rules and the factors set out in *Wilson and Craig* and in the White Book. Thus, I granted leave to re-amend the Amended Petition.

Application for leave to add Grand View as a party

Application for leave to serve Grand View out of the jurisdiction by email

18. The Petitioners sought leave to join Grand View as a Respondent on the basis that joining Grand View as a respondent is uncontroversial given that this is a shareholder oppression claim and Grand View is the Company's only other shareholder the Petitioners argue that Grand View must be a respondent given its role in the purported forced withdrawal of the

Petitioners from the Company and what appears to be Grand View's ongoing attempt to improperly benefit by selling the Petitioners' shares and equity in the Company as part of the Concert Deal.

19. The RSC Order 15 rule 6 empowers the Court to order any person to be added as a party who ought to have been joined as a party or whose presence is necessary to ensure that all matters in dispute in the cause may be effectually and completely determined and adjudicated upon. In the White Book 1999 at 15/6/7 it is stated that, prima facie, the plaintiff is entitled to choose the person against whom to proceed and to leave out any person against whom he does not desire to proceed.

20. I was satisfied that Grand View should be added as a party on the basis advanced by the Petitioners as set out above. Thus, I granted leave to add Grand View as party.

21. The Petitioners sought leave pursuant to RSC Order 11, rule 1 to serve Grand View out of the jurisdiction. Grand View is a Pennsylvania-based not-for-profit hospital and shareholder of the Company. Thus rule 1 requires the Court to grant leave prior to the Petitioners serving Grand View in the US.

22. In *Athene Holding Ltd v Central Laborers' Pension Fund*, [2019] Bda LR 48 (SC) (***Athene Pension***) at paragraphs 17 and 29, Hargun CJ set out the test for the Court to grant leave to serve out of the jurisdiction pursuant to Order 11, rule 1 of the *RSC*:

> *[17] With this background, I turn to the two applications: in relation to the application to serve out, I accept the general submission that the Court has to be satisfied that there is a serious issue which is reasonable to be tried on the merits, i.e., a substantial question of fact or law or both; secondly, that there is a good arguable case that the Plaintiff's claim, made in the originating summons, falls within one of the jurisdictional gateways; thirdly, that in all the circumstances, Bermuda is clearly and distinctly the appropriate forum for the trial of the dispute.*
>
> *[29] The fourth requirement is the evidentiary requirement, namely that has the Plaintiff in the Bermuda proceedings confirmed that this is an appropriate case, a good case, where the court should give leave to serve out. …*

23. In respect of the *Athene Pension* test, I was satisfied to grant leave for service out of the jurisdiction as follows:

a. First, I was satisfied that the Petitioners' claim raises a serious issue to be tried with respect to the ownership of the shares in the Company. The relief sought by the Petitioners includes the rectification of the Company's Register of Members and is also effectively a relief sought against Grand View which, according to the terms of the Concert Deal, is purporting to be the sole shareholder of the Company.
b. Second, I am satisfied the Petitioners have a good arguable case for the Court to grant relief under section 111 of the Companies Act 1981. Also, the Amended Petition seeks relief which may affect Grand View in its capacity as a member of a Bermuda-registered Company.
c. Third, I am satisfied that Bermuda is the appropriate forum for the trial of the Petitioners' oppression claim as the Amended Petition seeks relief pursuant to Bermuda legislation, with respect to a Bermuda-registered Company and in relation to the enforcement of the Company's governing documents which are governed by Bermuda law.
d. Fourth, I am satisfied on the Petitioners' evidence that this is a good case in which the Court should grant leave to serve out.

24. In respect of service by email, I am satisfied by Ramthun 5 that the SPA provides that Grand View may be served notices by email to dhughes@gvh.org and that such service would bring the documents to the attention of Grand View.

Application for leave to adduce Expert Evidence

25. The Petitioners sought leave, originally pursuant to RSC Order 38, rule 36 to admit the First Affidavit of Gary Osborne, Vice President, Alternative Risk Programs at Risk Partners, Inc. sworn 18 June 2025, an independent expert in the captive insurance industry, in support of the Interim Relief Summons dated 6 June 2025. However, at the hearing before me, the Petitioners submitted that they were also relying on RSC Order 1A in that the Overriding Objective applied in enabling the Court to deal with cases justly, relying on the Court of Appeal case in *C v D (re A and B (Minors))*, [2016] Bda LR 112. In that case, Bell JA at paragraph 11 found that "*Whilst it is the case that the Supreme Court Rules apply, the*

provision in question is not generally relied upon in an interlocutory matter such as was before the judge …" and *"… one would have expected the judge to have regard to the Overriding Objective … of enabling the court to deal with cases justly*". Further, Bell JA found that "*it was more than a little difficult to see the justification for taking a technical, legalistic approach to the admission of Dr. Marshall's letter on an interlocutory application*". He also noted that the exclusion of Dr. Marshall's letter meant that the judge only had the father's evidence as to the mother's mental conditions.

26. The Petitioners also relied on *Koza Ltd and Hamdi Akin Ipek v Koza Altin Isletmeleri AS* [2021] EWHC 786 (Ch) at paras 116 – 120 which addressed the issue of whether damages would be an adequate remedy for the company in that case. The Court found that, in respect of Mr. Ipek (the other shareholder), his own evidence was exceptionally coy about the extent of his personal assets outside Turkey.

27. The Petitioners submitted that Osborne 1, which was served on 19 June 2025, will reasonably assist the Court in resolving the Interim Relief Summons in a fair and expeditions manner and is therefore consistent with the Overriding Objective. They argued that they are at an information disadvantage due to the dearth of the information, which is under the custody and control of the Company, and which has failed or refused to disclose such information to them. Thus, Osborne 1 is necessary for the Petitioners to explain reasonably and put into context the Concert Deal for the benefit of the Court.

28. The Company submitted in response that the Petitioners had breached the Consent Order dated 5 June 2025 which allowed for witness evidence but did not provide for expert evidence. Thus, it had filed Dethlefs 1 in order to address the adequacy of damages in respect of the Petitioners' application for an interim injunction prohibiting the Concert Deal from closing. Further, Osborne 1 was served on 19 June 2025, the contents of which went to the heart of the matter of the dispute, which was for the Court to determine. In any event, the Company submitted that, if the Court was minded to grant leave to adduce Osborne 1, then they would seek an adjournment in order to obtain their own expert evidence.

29. The Company submitted that the cases relied on by the Petitioners were of no assistance to the Court, instead relying on the principle of natural justice meaning that a party has a right to know the case against them and the evidence on which it is based and is entitled to have the opportunity to respond to any such evidence. The Company also relied on the extract from the White Book at 38/36/2 commentary at page 3 that "*The Court has an inherent jurisdiction to refuse leave to adduce expert evidence where prejudice to a party to the action would be caused by the need to seek an adjournment of the trial to deal with such evidence* (*Winchester Cigarette Machinery Ltd. V Payne, The Times, October 19, 1993, CA).*"

30. In *Derk Koole v HG (Bermuda) Ltd* [2019] SC (Bda) 89 Civ, Subair Williams J set out a three-part test for granting leave to adduce expert evidence as follows:

> *"56. In this case, I must address my mind to the following triad of factors: (i) whether there is a need for expert opinion evidence in order to resolve any one or more of the relevant issues and (ii) if the opinion evidence does not meet the necessity threshold, whether, having regard to the Overriding Objective in the context of the proceedings as a whole, the opinion evidence would reasonably assist the Court in fairly and expeditiously resolving the proceedings as a whole and (iii) the competence of the proposed witness to give such expert evidence."*

31. In my view, I accepted that Osborne 1 was necessary to explain the background and give context to the factual circumstances of the case in respect of the Interim Relief Summons. Osborne 1 provides expert views about several issues in these proceedings including about captive insurance companies, run-off companies, protecting the interest of all equity owners, distribution, reserve liability for unallocated loss adjustment expense and discounted sales. Further, in addition to expert evidence being necessary, I find that it will reasonably assist the Court in fairly and expeditiously resolving the proceedings.

32. Further, in relying on *C v D*, I was satisfied that I should have regard to the Overriding Objective of enabling the Court to deal with the case justly by granting leave to the Petitioners to adduce expert evidence, bearing in mind that I was prepared to allow an adjournment in order for the Company to adduce its own expert evidence.

33. In light of those reasons, I granted leave to adduce the expert evidence of Osborne 1.

34. I note here that subsequent to my decision to admit Osborne 1, the parties agreed a four-week adjournment to enable the Company to seek an expert opinion in rebuttal to Osborne 1.

Application for an injunction to restrict the Company from using its assets to fund this litigation, save certain actions

The Petitioners

35. The Petitioners seek an interim injunction prohibiting the Company from expending its funds to litigate actively in opposition to the Petitioners' oppression claim. They presented a draft order which had the term for prohibiting the Company from expending its assets on defending the merits of the Petitioners' oppression claim or advancing the position of any shareholder, along with four exceptions to allow the Company to expend its assets to participate on a non-partisan basis:
    a. To comply with the terms of the Directions Order dated 8 November 2024 (as amended) or any other Order granted by this Court as against the Company;
    b. To the extent the Company must take steps to respond to any relief specifically sought against the Company in these proceedings;
    c. As part of this Court fashioning an oppression remedy during the second stage of the split trial of the Amended Petition; and
    d. With the written consent of the Petitioners and Grand View or otherwise with leave of this Court.

36. The Petitioners submitted that such an interim injunction would be consistent with the legal principle confirmed in *Westport Trust Company Ltd v Paragon Trust Ltd* [2010] Bda LR 35 (SC) at para 20, where Kawaley J (as he then was) found that a company must prove it has an independent position separate from a respondent shareholder prior to the company being permitted to expend its resources. In that same case, Kawaley J referred to the principles which apply in deciding whether a company's participation in the English

equivalent of our own section 111 petitions[1], according to Lindsay J in *Re a company (No. 1126 of 1992)* [1994] 2 BCLC 146:

> *"Firstly, there may be cases (although it is unlikely nowadays when wide objects clauses are the norm) where a company's active participation in or payment of its own costs in respect of active participation in a s459 petition as to its own affairs is ultra vires in a strict sense.*
>
> *Secondly, leaving aside that possible class, there is no rule that necessarily and in all cases such active participation and such expenditure is improper.*
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> *Thirdly, that the test of whether such participation and expenditure is proper is whether it is necessary or expedient in the interests of the company as a whole (to borrow from Harman J in ex p Johnson).*
>
> *Fourthly, that in considering that test the court's starting point is a sort of rebuttable distaste for such participation and expenditure, initial scepticism as to its necessity or expediency. The chorus of disapproval in the cases puts a heavy onus on a company which has actively participated or has so incurred costs to satisfy the court with evidence of the necessity or expedience in the particular case. What will be necessary to discharge that onus will obviously vary greatly from case to case.*
>
> *Fifthly, if a company seeks approval by the court of such participation or expenditure in advance then, in the absence of the most compelling circumstances proven by cogent evidence, such advance approval will obviously vary greatly from case to case."*

37. The Petitioners submitted that in *Annuity & Life Re Ltd v Full Apex (Holdings) Ltd (Ruling)*, [2012] Bda LR 80 (SC) at paragraph 15, Kawaley C.J. (as was then) summarised the test for determining if and to what extent a company should be permitted by the Court to expend its resources to defend a shareholder oppression claim:

> *[15] The test for determining whether a company should expend its funds on actively participating in a minority shareholder oppression petition is ultimately a simple one.* ***It entails determining whether such involvement is in the interests of the Company as a whole having regard to the nature of the allegations raised and their impact (if any) on interests other than those of the disputing shareholders****, being interests which the Company can legitimately claim the right to represent. …* [Emphasis added]

38. The Petitioners submitted that the same English law principle is explained in *Hollington on Shareholders' Rights*, 10th Ed (WestLaw), Ch 9 at 9-34, which cites *Koza Ltd v Koza*

[1] This is the footnote from Westport Trust Co Ltd – "*Section 459 of the Companies Act 1985 (UK), a modern derivation of section 210 of the UK Companies Act 1948 upon which our section 111 is based."*

Altin Isletmeleri AS, [2021] EWHC 786 (Ch) at paragraphs 64-77, as standing for the proposition that "… *if the real contest is between parties other than the company itself, it will be a misfeasance for the company's directors to cause its funds to be expended on the legal costs of that contest*." Thus, the Petitioners took the view that such misfeasance justifies granting an interim injunction in this case which prohibits the use of the Company's resources to fund the defence of the Petitioners' oppression claim on behalf of Grand View.

39. The Petitioners relied on the case of *King v KSGL* [2022] EWHC 1099 (Ch) at para 53 in respect of the role of the Company (and its subsidiaries), where it cited the case of *Re a Company No. 004502 of 1988, ex p Johnson* [1991] BCC 234 where it stated:

> *"However, Crossmore seems to have brought it to the profession's attention that on sect. 459 petitions, in particular, where a company is a necessary respondent, the company may be affected by the petition in two particular ways: it may have to give discovery of documents on what is sometimes called a pure sec. 459 petition, that is a petition simply seeking a buy-out by one section of the members of the other section of the members or some of them; further, it may be that the company itself might be ordered to buy back the shares which are in issue. Such an order plainly involves the company's interest and requires its representations for two reasons; first, the interest of creditors may be affected and, secondly, the interests of members as a whole may be affected in that the company should have sufficient moneys to carry on its business in a proper way after it has spent moneys on buying in shares. Apart from those interests, the company has no business whatsoever to be involved in the sec. 459 petition on the principle that, as was said in Pickering v Stephenson, the company's moneys should not be expended on disputes between shareholders."* [Emphasis added]

40. The Petitioners also relied on the case of *Gott v Hauge et al* [2020] EWHC 1152 (Ch) which reiterated that it is a well recognised principle of company law, and not in dispute, that a company's money should not be spent on disputes between company's shareholders. Thus, the Petitioners submitted that there was a heavy onus on the Company to ensure that there is no malfeasance on the part of the Company.

41. The Petitioners submitted that the Company's board of directors consists of Eric Dethlefs (appointed a director on 10 November 2020), Terence Power (appointed a director on 6 November 2013) and Douglas Hughes (appointed a director on 14 December 2021), all of which were subject to election by the Company's purported now-sole shareholder, Grand

View. Further, the Petitioners asserted that Mr. Dethlefs is due to receive a payout as part of the Concert Deal and Mr. Power had a connection to a related entity in the Concert Deal – such connection which was denied by the Company. Due to these factors, the Petitioners submitted that the directors could hardly be considered independent from the Company.

The Company

42. The Company objected to the injunction application and submitted that it was misconceived and that the Petitioners were attempting to obtain a tactical advantage by eliminating any opposition to the Re-Amended Petition. It submitted that the key point was that in the Re-Amended Petition, the Petitioners seek relief (in the form of rectification of the share register and a buy-out order) against the Company alone, noting that although the Petitioners have been granted leave to add Grand View as a party, the Re-Amended Petition does not contain any claim against Grand View, and even if the Petitioners were to add such a claim, the Re-Amended Petition would still contain a claim against the Company.

43. The Company also relied on *Koza* at para 76 submitting that the test was set out as follows:

> *"In my view, what these cases show is that the issue for the court is whether the claim or counterclaim was brought bona fide in the independent interests of the company or whether it was advanced as a response to or as part and parcel of the shareholders' dispute. The relevant question to ask is: is the company a genuine protagonist in proceedings against one of its members, or is the true nature of the dispute one in which it is the object over which its shareholders are themselves in dispute? In answering that question, the courts will always have regard to the substance of the dispute.*

44. The Company also relied on *Annuity & Life Re Ltd* at para 17 where Kawaley J stated:

> *"Implicit from a reading of the earlier portions of Harman J's judgment is that the company's participation at its own expense is not justified where it is "a nominal party to the sec 459 petition, but in substance the dispute is between two shareholders": per Hoffman J in Re Crossmore Electrical and Civil Engineering Ltd (1989) 5 BCC 37 at 38. The question of whether or not 'in substance the dispute is between two shareholders clearly turns on the facts of each case …".*

45. The Company submitted that the present case is not such a case as the Company is a real Respondent to the Re-Amended Petition and is the only Respondent against which the Petitioners seek any relief. Further, it is a case where the Company has an independent

position separate from Grand View as evidenced by the Re-Amended Petition which does not seek rectification or a buy-out against any other party other than the Company. Thus, any injunction restraining the Company from paying legal fees in opposition to the Re-Amended Petition would be wholly inappropriate as it would eliminate any opposition to the Petitioners' claim for substantive relief, leaving the Re-Amended Petition unopposed.

46. The Company referred to various documents to highlight that the proceedings are in essence a dispute in respect of the Company's governance and to reject the assertion that the Company has only ever been a nominal party.
    a. The Bye-Laws of the Company – Bye-Law 45 which makes reference to the Relationship with Shareholders Agreement;
    b. The Consolidated and Amended Shareholders' Agreement –
        i. Article IIB Qualifications of Institutional Shareholders - "Failure to Meet Requirements, Failure to qualify or to continue to meet the above stated qualifications of Institutional Shareholders shall be grounds for a forced withdrawal upon a vote of a majority of the Directors upon the terms set out in Article I Section C above.
        ii. Article VI Miscellaneous
            1. A - Agreement is binding on all parties or entities holding shares – Each person or entity who now or hereafter acquires any legal or equitable interest in any Shares shall be bound by terms of the Agreement.
            2. B – Injunctive Relief Specific Performance - The Company and the Institutional Shareholders recognize that the subject matter of this Agreement is of special, unique and extraordinary character, and agree that in the event of the violation or prospective violation of the terms conditions hereof, any party to this Agreement shall be entitled to institute and prosecute proceedings exclusively in the courts of Bermuda to enjoin such violation or the continuance thereof, to compel the specific performance of the provisions of this Agreement by any other party hereto and/or to seek any other relief

that arises out of any alleged violation(s) or prospective violation(s) of the terms and/or conditions of this Agreement. Such remedies shall be cumulative and not exclusive, and shall be in addition to and not in lieu of any other remedies which the parties may have.

c. The circumstances of the case and the Amended Petition show that the Petitioners:
    i. want an accelerated payment which they are not entitled to; and
    ii. contend (i) that the Board's decision to remove them as shareholders amounts to unfairly prejudicial conduct; that there has been an "irreparable rupture" and that a clean break is the "only realistic remedy in the circumstances"; and (iii) that the court should make an order requiring the Company to buy their shares in the Company.
d. The Re-Amended Petition
    i. Paras 57 – 62 – Attempts to wrongfully force the Petitioners out of the Company;
    ii. Paras 63 – 68 - Other attempts to improperly force the Petitioners out of the Cassatt Group;
    iii. Paras 69 – 74 – Oppression and loss of substratum; and
    iv. Paras 83 – 88 – Relief sought.

47. Thus, the Company submitted that in respect of the relief sought, there is no mention of Grand View, but there is relief sought against the Company. Thus, it would be inappropriate to bar the Company from using its assets to defend itself, even though Grand View has now been added to the proceedings.

Analysis

48. In my view, I am bound to take a hybrid approach, in that I decline the Petitioners' application for an injunction prohibiting the Company from using its own assets in the litigation in respect of the action against the Company, but I will grant the application in respect of any dispute between the Petitioners and Grand View. The Amended Petition started as against the Company and only very recently has Grand View been added to the

proceedings. Thus, I should approach the issue of using Company assets for funding litigation in respect of: (i) any issues as between the Petitioners and the Company as set out in the Amended Petition; and (ii) any issues as between the Petitioners and Grand View as set out in the Re-Amended Petition.

49. First, in my view the Company is not a nominal party in respect of the issues between it and the Petitioners as was set out in the Amended Petition. The Amended Petition started in respect of the conduct of the Company toward the Petitioners. Having reviewed the documents that were referred to above by the Company, it is clear that the Company is called upon to defend its conduct, as to my mind, applying the test set out in *Annuity & Life Re Ltd*, there is a real dispute about governance between the Petitioners and the Company, and consequently the Company's involvement is in the interests of the Company as a whole having regard to the nature of the allegations raised.

50. Second, upon review of the Amended Petition, the relief sought was for a buyout order and upon review of the Re-Amended Petition, the additional relief sought is against the Company, namely rectification of the share register. These kinds of issues, in particular, the buyback of shares, were identified in *King* where it cited the case of *Re a Company No. 004502 of 1988, ex p Johnson*, stating that such an order plainly involved the Company's interest and requires it representations for two reasons, that is the interest of creditors may be involved and the interests of members as a whole may be involved.

51. Thus, in light of the above reasons, I decline to grant an injunction in respect of the issues as between the Petitioners and the Company for the issues that were set out in the Amended Petition.

52. Third, the Re-Amended Petition has introduced a section entitled "The Concert Deal and Further Acts of Oppression". This is in relation to the purported sale by Grand View of 100% of the shares in the Company to a Concert Group entity. Upon a careful review of that section and the evidence, it is overwhelmingly clear that the Petitioners assert that the Company, Grand View and other have acted in concert against them to achieve certain results, namely the sale. In applying the principles set out in *Westport Trust Company Ltd*, I am not satisfied

that the Company has proven that it has an independent position separate from Grand View. In applying the principles set out in *Re a company (No. 1126 of 1992)*, advancing to the fourth stage of the approach, the starting point is to take a rebuttable distaste for Company participation and expenditure along with recognising that there is a heavy burden on the Company to establish a need to incur expense in the dispute. In applying the principles set out in *Annuity & Life Re Ltd* and *Koza Ltd*, in my view, the dispute about the Concert Deal is really between the Petitioners, Grand View and others.

53. Thus, in light of the above reason, I am satisfied that I should grant an injunction to prohibit the Company from using its assets for participation in the dispute as set out in the Re-Amended Petition in the section entitled "The Concert Deal and Further Acts of Oppression".

54. I note that the Court here has taken a hybrid approach based on the chronology and the facts of the case. I gave extensive consideration as to whether an injunction could be granted or not granted to the whole of the matters so that the terms of any order would be simple, clear and precise. However, I came to the conclusion that in respect of the issues as set out in the Amended Petition, the Company had a right to defend its corporate governance decisions as between it and the Petitioners, and it should not be denied the opportunity to do so. In respect of the issues between the Petitioners and Grand View as set out in the Re-Amended Petition, I took an approach of winding the clock back to examine whether the newly raised issues affected the original issues of governance as between the Petitioners and the Company so there was no need for a hybrid approach. However, I was not satisfied that they did so, and thus, I concluded that I was bound to treat the two main issues separately and to take the hybrid approach of granting the injunction for one part of the dispute but not the other. I then considered the Petitioners' draft Order with the four exceptions which allowed the Company to expend its assets in specific circumstances. The draft order will have to be re-drafted to reflect the decisions that I have made, in essence separating the original issues in the Amended Petition from the additional issues as set out in the Re-Amended Petition.

Conclusion

55. For the reasons set out above, I order that:

    a. An injunction is not granted in respect of the issues of governance as between the Petitioners and the Company as set out in the Amended Petition; and

    b. An injunction is granted in respect of the additional issues as between the Company and Grand View as set out in the Re-Amended Petition section "The Concert Deal and Further Acts of Oppression",

56. Unless either party files a Form 31TC within 7 days of the date of this Ruling to be heard on the subject of costs, I direct the following:

    a. No order as to costs for the applications:

        i. to re-amend the Petition;

        ii. to add Grand View as a party; and

        iii. to serve Grand View out of the jurisdiction by email;

    b. Costs shall follow the event in favour of the Petitioners against the Company on a standard basis, to be taxed by the Registrar if not agreed, in respect of the applications:

        i. to adduce expert evidence; and

        ii. for an injunction to prohibit use of the assets of the Company, limited solely to the relief granted under paragraph 55 (b).

    c. Costs shall follow the event in favour of the Company against the Petitioners on a standard basis, to be taxed by the Registrar if not agreed, in respect of successfully defending the Petitioners' application for an injunction seeking to prohibit the Company from expending its assets to defend the merits of the Petitioners' oppression claim.

Dated 18 July 2025

HON. MR. LARRY MUSSENDEN
CHIEF JUSTICE