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SPLIT THE DIFFERENCE - WHEN TO AVOID THE SIREN CALLS OF A QUICK ANSWER

In INEOS Racing Limited v Athena Racing Limited [2026] EWHC 2798 (Admlty), Mr Justice Andrew Baker has provided a useful reminder that an apparently discrete contractual construction issue will not necessarily be suitable for determination as a preliminary issue.

The decision will be of interest to parties in shipping and trade disputes, where claims frequently involve threshold questions of contractual interpretation alongside factually intensive disputes concerning performance, notices, documents and damages.

BACKGROUND

INEOS provided approximately £170 million to Athena under a 2021 partner agreement to support its campaigns in the America's Cup. Athena is the company behind Sir Ben Ainslie's bid, launched in 2013, to secure a British victory in the famous yachting competition.

In January 2025, INEOS announced that it would not renew the agreement.

The parties dispute whether Athena must hand over various assets purchased with INEOS's funding, including the *INEOS Britannia*, the racing yacht that competed in the 37th edition of the America's Cup.

Central to the dispute is whether clause 4.2.7 of the 2021 agreement entitles INEOS to those assets for free. INEOS says it does; Athena disagrees. Alternatively, INEOS seeks rectification of the agreement if clause 4.2.7 does not mean what INEOS says it means. A wider part of the dispute concerns factual questions about whether Athena or Ainslie, through another company, could secure funding for future America's Cup campaigns.

THE APPLICATION FOR PRELIMINARY ISSUES

At the first case management conference, INEOS applied for a split trial. Its narrowed application sought an early determination of the proper meaning and effect of clause 4.2.7, including the meaning of being "*able to find financial support or sponsorship*".

The proposed first trial would also have required the Court to address potentially admissible factual background.

Athena relied, among other matters, on alleged shared understandings concerning the role of the Royal Yacht Squadron and the potential tax consequences of an asset-transfer option.

INEOS initially sought to include further factual breach issues in the preliminary issue trial. The Court rejected this. In particular, the question whether Athena could obtain replacement financial support was unlikely to be a short, documents-only issue. It was likely to require witness evidence and involve challenges to the reliability of documents and witnesses.

THE COURT'S DECISION

Mr Justice Andrew Baker dismissed the application; the claim will now proceed through one pre-trial process towards a single final trial.

The Court stressed that the decision whether to order the trial of a preliminary issue is a case-management exercise directed by the overriding objective. It referred to the familiar warning that preliminary issues can have a "*siren song*": an issue may appear attractive for early determination, but splitting proceedings can end up increasing cost and delay, not reducing them.

Any decision about splitting a trial or ordering preliminary issues should therefore be taken after considering the benefits and risks on a case-by-case basis.

The Court's role is to step back and ask how clearly that balance appears to favour the split trial and how confident the Court can be that it can strike it accurately based on the information available at the time when the decision is being taken.

The key considerations in this case were:

+ The Court could accommodate a single trial in January or February 2028, which was neither unattractive nor disproportionate, particularly given that the proceedings had started only six months earlier. It means the case will be disposed of within 2 years of commencement which diminishes the benefits of an April 2027 trial of the preliminary issues.
+ If Athena succeeded on the construction issues, INEOS would still pursue its rectification claim and its alternative case that Athena is liable even on its own construction of clause 4.2.7. The preliminary trial would therefore achieve little, while creating a significant risk of duplicated disclosure, evidence and costs.
+ If INEOS won, a later trial might be narrower. But any overall saving was speculative.
+ There was a realistic prospect of an appeal whichever party lost on the preliminary issues. That would add cost and jeopardise the subsequent timetable.
+ A potential improvement in settlement prospects was too speculative to justify the split.
+ The proposed preliminary trial would have required Athena to change counsel because of an existing trial commitment, albeit the Court recognised that this factor would not have carried sufficient weight to rule against preliminary issues if the balance was otherwise in favour.

The Judge concluded that there was a real risk that a preliminary-issues order would cause injustice, but no equivalent risk in taking the claim to a single trial.

PRACTICAL POINTS

There are important procedural lessons in this case that apply to all disputes.

1. **A construction issue must be genuinely dispositive**

A short contractual point may be suitable for separate determination where its resolution will dispose of the claim or substantially reduce the issues to be tried. It is less likely to be appropriate where alternative claims—such as rectification, estoppel, misrepresentation or alternative contractual cases—will survive regardless.

2. **Don't underestimate the factual context of "pure" construction**

Contract interpretation often requires consideration of the admissible factual matrix. In a trade dispute, that may include market practice, communications, operational arrangements, prior dealings or the parties' shared understanding. If these matters require disclosure and witness evidence, a short preliminary issue may become much more complex.

3. Avoid splitting credibility issues

A split trial is unattractive where the preliminary issue would involve challenges to the reliability of documents or witnesses, but where the same evidence is also relevant to the wider dispute. It may be unfair and inefficient to assess credibility in instalments.

4. Consider the whole procedural timetable

Parties should assess not only the length of the preliminary trial, but also what happens afterwards. Running disclosure and witness-statement preparation in parallel may avoid delay but can eliminate the anticipated cost saving.

5. Factor in appeal risk and settlement realistically

An early determination of a contractual issue may assist settlement, but that possibility alone will rarely justify a split. Parties should account for the realistic possibility of an interlocutory appeal, particularly where the issue concerns the meaning of a commercially significant clause.

CONCLUSION

INEOS v Athena underlines that preliminary issues are not justified merely because a point can be decided quickly. For parties considering a split trial in a shipping or trade dispute, the central question is whether an early determination will produce a clear, reliable and proportionate saving in the litigation as a whole and not simply an early answer to one issue.

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