HOUSE OF LORDS : Lord Bingham of Cornhill Lord Mackay of Clashfern Lord Steyn Lord Hope of Craighead Lord Rodger of Earlsferry : 25th APRIL 2002

LORD BINGHAM OF CORNHILL, My Lords,

1. The issue in this appeal may be expressed in this way: if A, having sued B for damages for breach of contract, enters into a settlement with B expressed to be in full and final settlement of all its claims against B, is A thereafter precluded from pursuing against C a claim for damages for breach of another contract to the extent that this claim is for damages which formed part of A's claim against B? Expressed in another way, the issue is whether the majority decision of the House in ***Jameson v Central Electricity Generating Board*** [2000] 1 AC 455, properly understood, laid down any rule of law and, if so, whether that rule applies to successive contract-breakers as well as concurrent tortfeasors.

2. The facts giving rise to these issues have been very fully recorded in the judgment of Chadwick LJ in the decision of the Court of Appeal reported at [2001] Ch 173 at 180-188, paras 3-27, and are summarised in the opinion of my noble and learned friend Lord Mackay of Clashfern, whose summary I gratefully adopt and need not repeat. The issues in the appeal can, I think, be illuminated by resort to schematic examples.

3. A brings an action against B claiming damages for negligence in tort. The claim goes to trial, and judgment is given for A for £x. There is no appeal and the judgment sum is paid by B to A. £x will thereafter be taken, in the ordinary way, to represent the full value of A's claim against B. A cannot thereafter maintain an action for damages for negligence in tort against C as a concurrent tortfeasor liable in respect of the same damage for two reasons: first, such a claim will amount to a collateral attack on the judgment already given; and secondly, A will be unable to allege or prove any damage, and damage is a necessary ingredient for a cause of action based on tortious negligence. A cannot maintain an action against C in contract either, in respect of the same damage, for the first reason which bars his tortious claim. There is however no reason of principle, in either case, on the assumptions made in this example, why B should not recover a contribution from C under the Civil Liability (Contribution) Act 1978 as a party liable with him for the same damage suffered by A.

4. In a second example the facts are varied. A brings an action against B claiming damages for negligence in tort. The action does not proceed to judgment because B compromises A's claim by an agreement providing that he will pay A damages of £x, which he duly does. If £x is agreed or taken to represent the full value of A's claim against B, A cannot thereafter maintain an action against C in tort in respect of the same damage for the second reason given in the last paragraph, and although he is not precluded from pursuing a claim against C in contract in respect of the same damage he cannot claim or recover more than nominal damages. There is again, in the ordinary way, no reason of principle in either case, on the assumptions made in this example, why B should not recover a contribution from C under the 1978 Act as a party liable with him for the damage suffered by A.

5. There is, however, an obvious difference between the action which culminates in judgment and the action which culminates in compromise: that whereas, save in an exceptional case (such as ***Crawford v Springfield Steel Co Ltd***, unreported, 18 July 1958, Lord Cameron), a judgment will conclusively decide the full measure of damage for which B is liable to A, a sum agreed to be paid under a compromise may or may not represent the full measure of B's liability to A. Where a sum is agreed which makes a discount for the risk of failure or for a possible finding of contributory negligence or for any other hazard of litigation, the compromise sum may nevertheless be regarded as the full measure of B's liability. But A may agree to settle with B for £x not because either party regards that sum as the full measure of A's loss but for many other reasons: it may be known that B is uninsured and £x represents the limit of his ability to pay; or A may wish to pocket a small sum in order to finance litigation against other parties; or it may be that A is old and ill and prefers to accept a small sum now rather than a larger sum years later; or it may be that there is a contractual or other limitation on B's liability to A. While it is just that A should be precluded from recovering substantial damages against C in a case where he has accepted a sum representing the full measure of his estimated loss, it is unjust that A should be so precluded where he has not.

6. The majority decision of the House in ***Jameson v Central Electricity Generating Board*** [2000] 1 AC 455 appears to have been understood by some as laying down a rule of law that A, having accepted and received a sum from B in full and final settlement of his claims against B in tort, is thereafter precluded from pursuing against C any claim which formed part of his claim against B. I do not think that my noble and learned friend Lord Hope of Craighead, in giving the opinion of the majority of the House, is to be so understood.

7. Mr Jameson (A) had contracted lung cancer as a result of exposure to asbestos dust during his employment by B. He brought an action in negligence against B claiming damages. Very shortly before his death the claim was settled for £80,000, which was paid just after his death. It was appreciated that his claim on a full valuation was worth £130,000 but also that the outcome of the litigation was uncertain. About a year after his death, a claim on behalf of his widow was brought under the Fatal Accidents Act 1976 for damages for her loss of dependency. This second action was brought against C, in whose premises A had worked during some of the time when he had been exposed to asbestos dust during his employment by B. Section 4 of the 1976 Act, as substituted by section 3(1) of the Administration of Justice Act 1982, had the effect that the widow did not have, in estimating the value of her dependency, to give credit for the damages of £80,000 which she had inherited from A on his death. Thus, if the claim was maintainable, C would be potentially liable to the widow for a substantial sum and could look to B for contribution under the 1978 Act, and B would be potentially liable to contribute without any requirement that credit should be given for the £80,000 it had already paid. The widow could only maintain her claim against C if A, had he lived, would have been able to do so and it was held that A could not have done so because, by accepting £80,000 from B in full and final settlement of his claim, he had extinguished it and so had no claim which he could have pursued against C.

8. This conclusion was reached by a number of steps which included the following:
   (1) Proof of damage is an essential step in establishing a claim in tortious negligence ([2000] 1 AC 455, 472A-C).
   (2) Such a claim is a claim for unliquidated damages (473D, 474A).
   (3) Such a claim is liquidated when either judgment is given for a specific sum or a specific sum is accepted in a compromise agreement (473D, 474B, 474E).
   (4) A judgment on such a claim will ordinarily be taken to fix the full measure of a claimant's loss (473E, 474B).
   (5) A sum accepted in settlement of such a claim may also fix the full measure of a claimant's loss (473E, 474E-F): whether it does so or not depends on the proper construction of the compromise agreement in its context (473B, 476E, 474H).
   (6) On the facts of A's case, the sum accepted from B in settlement was to be taken as representing the full measure of A's loss: it followed that A's claim in tortious negligence was extinguished and he had no claim which could be pursued against C (476E).

   I do not think the first four of these steps are controversial. The fifth proposition may perhaps have been stated a little too absolutely in ***Jameson***, but as expressed above I do not think it can be challenged. There was clearly room for more than one view, as the division of judicial opinion in ***Jameson*** showed, whether the sum accepted in settlement by A was to be taken as representing the full measure of his loss, but if it did the conclusion followed: A could not have proved damage, an essential ingredient, in his action against C, and that was fatal to the widow's Fatal Accidents Act claim against C.

9. In considering whether a sum accepted under a compromise agreement should be taken to fix the full measure of A's loss, so as to preclude action against C in tort in respect of the same damage, and so as to restrict any action against C in contract in respect of the same damage to a claim for nominal damages, the terms of the settlement agreement between A and B must be the primary focus of attention, and the agreement must be construed in its appropriate factual context. In construing it various significant points must in my opinion be borne clearly in mind:

(1) The release of one concurrent tortfeasor does not have the effect in law of releasing another concurrent tortfeasor and the release of one contract-breaker does not have the effect in law of releasing a successive contract-breaker.

(2) An agreement made between A and B will not affect A's rights against C unless either (a) A agrees to forgo or waive rights which he would otherwise enjoy against C, in which case his agreement is enforceable by B, or (b) the agreement falls within that limited class of contracts which either at common law or by virtue of the Contracts (Rights of Third Parties) Act 1999 is enforceable by C as a third party.

(3) The use of clear and comprehensive language to preclude the pursuit of claims and cross-claims as between A and B has little bearing on the question whether the agreement represents the full measure of A's loss. The more inadequate the compensation agreed to be paid by B, the greater the need for B to protect himself against any possibility of further action by A to obtain a full measure of redress.

(4) While an express reservation by A of his right to sue C will fortify the inference that A is not treating the sum recovered from B as representing the full measure of his loss, the absence of such a reservation is of lesser and perhaps of no significance, since there is no need for A to reserve a right to do that which A is in the ordinary way fully entitled to do without any such reservation.

(5) If B, on compromising A's claim, wishes to protect himself against any claim against him by C claiming contribution, he may achieve that end either (a) by obtaining an enforceable undertaking by A not to pursue any claim against C relating to the subject matter of the compromise, or (b) by obtaining an indemnity from A against any liability to which B may become subject relating to the subject matter of the compromise.

In my consideration of this matter I have gained much assistance from the clear and illuminating judgments of the New Zealand Court of Appeal in ***Allison v KPMG Peat Marwick*** [2000] 1 NZLR 560 and from the perceptive critique of ***Jameson*** in ***Foskett, The Law and Practice of Compromise*** 5th ed, (2002), pp 119-125, paras 6-42-6-57.

10. For reasons given by my noble and learned friend Lord Mackay of Clashfern I do not conclude, on construing the compromise agreement made in this case, that it is to be taken as representing the full measure of the respondents' loss agreed between the parties to the compromise. The liquidator of Inter City had assigned to the respondents Inter City's claims against Equity & Law as well as against Target, but on terms that Inter City's creditors and the liquidator's costs were to be paid out of any sums recovered in preference to the respondents' claims. Target never withdrew its denial that it was responsible for loss caused by termination of the Equity & Law agreement. When the compromise agreement was made, Equity & Law was not a party to it and did not contribute to the £10 million paid in settlement, and no reference to the respondents' claims against it was made in the compromise agreement although the Equity & Law agreement (dealing with new business) was much more significant than the Target agreement. The respondents had notified Equity & Law of their intention to plead claims for damages for wrongful termination of the Equity & Law agreement in the action commenced by Equity & Law, and it cannot have been thought that they intended to leave themselves defenceless in that action. Equity & Law had never accepted that its summary termination of the Equity & Law agreement had been unjustified: it must have been apparent that the rehabilitation in business of the respondents depended on their showing or securing agreement that it had. There was nothing in the terms of the compromise agreement or in the relevant surrounding circumstances to suggest that the respondents entered into that agreement in full and final satisfaction of all their claims not only against Target but against Equity & Law as well. It follows that the compromise agreement did not extinguish or exhaust the claims which the respondents were entitled to pursue against Equity & Law. I agree with my noble and learned friend Lord Mackay that for the reasons he gives, with which I fully agree, and also for the short reasons given above, this appeal should be dismissed.

LORD MACKAY OF CLASHFERN, My Lords,

11. This is an appeal against the decision of the Court of Appeal dated 19 May 2000 allowing the respondents' appeal against the decision of Laddie J on 8 July 1999 dismissing, on a trial of a preliminary issue, the respondents' action against the appellants.

12. The respondents are the shareholders, and were formerly the directors, of Glyne Investments Ltd, which traded under the name of "Inter City". Inter City was engaged in the sale of investment products to members of the public as agent or representative for Target Life Assurance Co Ltd ("Target") and Target's associated company National Financial Management Corporation plc ("NFMC").

13. By agreement dated 25 April 1991 the first appellant purchased the sales and marketing division of Target and NFMC. Pursuant to that agreement, and by special arrangement with Lautro (the Life Assurance and Unit Trust Regulatory Organisation) the appellants established a joint marketing group with Target and NFNC ("the marketing group").

14. Following Lautro's approval of the joint marketing group, Target and NMFC closed to new business on 30 June 1991 and on 4 July 1991 Inter City entered into appointed representative agreements with Target ("the Target agreement") and with the appellants ("the Equity & Law agreement").

15. Under the Equity & Law agreement, Inter City was made an appointed representative of the appellants with a view to selling the appellants' financial products to members of the public. Under the Target agreement, Inter City was made an appointed representative of Target and NFMC with a view to enabling its representatives to continue to service Target/NFMC clients (since Target and NFMC had closed to new business there were no further Target/NFMC financial products to sell). The Target agreement, which referred to the fact that the appellants, Target and NFMC were members of the joint marketing group, incorporated the terms of the Equity & Law agreement, save in relation to three specified matters which are not relevant to the present appeal. Also on 4 July 1991 the respondents were each appointed by the appellants, Target and NFMC to be company representatives of the appellants, Target and NFMC for the purposes of the Lautro rules, and were separately appointed as company representatives by Inter City.

16. On 29 January 1993 Target (incorporating NFMC) gave notice to Inter City terminating the Target agreement with immediate effect under clause 8.1.2, which permitted summary termination if the appointed representative or a company representative engaged in conduct which in the absolute opinion of Target/NFMC was or was likely to be prejudicial to the business of Target/NFMC. As a result of this termination, Inter City lost its status as an appointed representative of Target/NFMC, and the respondents lost their status as company representatives of these companies. Target sought to justify this summary termination on the grounds that Inter City had been "churning" business. The letter of termination alleged that Inter City had "consistently failed to comply with Lautro regulations and have used sales techniques which in our opinion bring into disrepute the name of and the goodwill of Target". Notice of the termination of the Target agreement was given to Lautro and to the appellants. Churning is a description of a technique by which clients are persuaded to terminate an existing financial product and replace it with a new product as a result of which the commission payable to the person who made this arrangement on behalf of the seller of the financial product receives higher commission than he would do if the existing financial product had been continued.

17. By letter dated 8 February 1993, the appellants summarily terminated the Equity & Law agreement under clause 8.1.2. of the Equity & Law agreement. The letter did not identify any particular provision under clause 8.1.2. or give any reason for the termination. As a result of this termination, Inter City lost its status as an appointed representative of the appellants and the respondents lost their status as company representatives of the appellants.

18. By writ issued on 1 March 1993 Inter City sued Target for a declaration that Target remained liable to Inter City for commission under the Target agreement notwithstanding the purported termination of the Target agreement. The appellants were never made parties to the Target proceedings.

19. On 8 April 1993 Target served a defence and counterclaim in the Target proceedings alleging that Inter City had been caught "churning" business. Target purported to justify the summary termination of the Target agreement on the grounds of Inter City's alleged churning, and Target counterclaimed £3,330,000 (later reduced to about £1,765,000) which it said it would be required by Lautro to offer as compensation to those investors who had been subjected to "churning" by Inter City.

20. On 20 February 1996 the court ordered the trial of preliminary issues in the Target proceedings. The preliminary issues ordered to be tried were (1) whether Target's termination of the Target agreement was unlawful; (2) whether Target's refusal thereafter to pay renewal commissions earned by Inter City was unlawful; and (3) whether Inter City was liable in damages to Target for breach of the Target agreement. The central question for purposes of determining these preliminary issues was whether Inter City and the respondents had engaged in churning as alleged by Target.

21. Before the hearing of the preliminary issue in the Target proceedings, Inter City had on 18 July 1996 commenced a creditors' voluntary winding up on the basis that by reason of its liabilities it was insolvent and unable to pay its debts. Inter City was unable to continue trading because its income from renewal commissions had been withheld and serious allegations of mis-selling were being pursued against it and its company representatives.

22. Also on 18 July 1996 Inter City, acting by its liquidator, assigned to the respondents (who were its directors and shareholders) the full and exclusive benefit of all Inter City's rights of action against Target arising out of or in connection with the termination of the Target agreement, and against the appellants arising out of or in connection with the termination of the Equity & Law agreement. The assignment was made on terms that any monies received by the respondents in pursuance of their rights under the assignment should first be applied in full satisfaction of Inter City's creditors and the liquidator's costs, with the balance being available to the respondents for their own benefit. On 29 July 1996 the respondents were substituted for Inter City as plaintiffs in the Target proceedings. The respondents were granted legal aid to pursue the Target proceedings.

23. The trial of the preliminary issues in the Target proceedings came before Moses J in June 1997. On the tenth day of the hearing, Target unreservedly withdrew all of its allegations of churning and serious misconduct and conceded liability. In his judgment Moses J was highly critical of Target and observed that the result of Target's allegations and the termination of the Target agreement was that Inter City had gone into liquidation, that many dependent on Inter City had lost their jobs and that the respondents were placed in great personal difficulties as well as having difficulties in finding further work. Moses J ordered that the preliminary issues be determined in the respondents' favour and that Target's counterclaim be dismissed and that Target should pay the respondents' costs of the Target proceedings on an indemnity basis.

24. On 29 September 1997 Target (by then known as Hill Samuel Life Assurance Ltd) wrote to the Personal Investment Authority ("the PIA") to notify the PIA of the outcome of the trial of the preliminary issues and to withdraw unreservedly all allegations which had been made by Target against Inter City.

25. Meanwhile on 8 September 1997 the respondents had amended the re-amended statement of claim in the Target proceedings to include claims under the heading "Destruction of the Plaintiff's Business". They pleaded that Target's unlawful termination of the Target agreement was the "effective and dominant" cause of amongst other things, the termination of the Equity & Law agreement by the appellants and their refusal to pay any further commissions to Inter City. This was denied by Target who contended that the appellants had "*conducted their own investigation*" and had "*exercised an independent judgment in deciding to terminate the Equity & Law Agreement".* The respondents set out the losses said to have been suffered by Inter City as a result of the unlawful termination of the Target agreement. The losses pleaded included the loss of the value of the business of Inter City as a going concern, which included the loss of the commissions which had been withheld by the appellants consequent upon the termination of the Equity & Law agreement.

26. With a view to identifying the whole of the claim with which Target was faced, the respondents prepared a draft statement of claim in a further proposed action against Target which they sent to Target's solicitors on 3 February 1998. This statement contained claims by the respondents acting both in their own right and as assignees of Inter City's rights for damages in tort and for breach of contract in connection with the preparation and publication by Target of reports and references concerning Inter City and the respondents after the termination of the Target agreement. In that draft statement it was further alleged that it was foreseeable, by reason of the publication by Target of untrue references and reports, that amongst other things (1) the respondents would be unable to obtain employment in the financial services industry or elsewhere in responsible management positions and (2) Equity & Law would terminate the Equity & Law agreement. In paragraph 37 it was alleged that these things in fact occurred, and in paragraph 38 it was alleged that by reason of the termination of the Target agreement and the Equity & Law agreement and the provision of untrue and inaccurate references, the respondents each suffered substantial personal losses and damages.

27. By written agreement dated 23 April 1998 which was incorporated as a schedule to a consent order in the Target proceedings staying the Target proceedings, the respondents and Inter City acting by its liquidator agreed terms of settlement with Target, which had by then become Abbey Life Assurance Co Ltd ("the settlement agreement"). The appellants were not parties to the settlement agreement. The terms of this agreement are crucial to the decision of the issue between the parties in this appeal.

28. On 4 November 1993 and consequent upon the termination of the Equity & Law agreement on 8 February 1993, the first appellant commenced High Court proceedings against Inter City and the respondents for the repayment of advance commissions in the sum of £25,012.02 (plus interest) which had been paid pursuant to the Equity & Law agreement.

29. In a letter dated 2 November 1993 the respondents' solicitors had said that whether or not the advance commissions were repayable, Inter City and the respondents had a substantial set-off and counterclaim against the appellants for the wrongful termination of the Equity & Law agreement, with the result that Inter City and the respondents denied liability to the first appellant in the 1993 action.

30. On 22 December 1993 the first appellant erroneously obtained judgment in default against Inter City and the respondents in that action and this judgment was set aside by consent on 1 September 1997. No defence and counterclaim was served in this action and it became dormant. Nevertheless, the first appellant made a claim in Inter City's liquidation based on the judgment debt (since set aside), and the first appellant's claim for repayment of the advance commissions is, as confirmed by the liquidator, still a contingent claim in Inter City's liquidation. The claim for repayment advanced in the 1993 action which with interest now totals over £32,000 was incorporated into the appellants' counterclaim in the present proceedings. The appellants have confirmed that if the respondents are not entitled to pursue the present proceedings the appellants will not pursue the 1993 action nor their counterclaim in these proceedings, and the appellants will not seek to prove or continue to prove in Inter City's liquidation.

31. Following inconclusive correspondence the present proceedings were commenced by writ issued on 23 November 1998. The respondents claim on their own behalves and as assignees of Inter City. The validity of the assignment was challenged by the appellants, with the result that a protective writ in the name of Inter City was issued on 3 February 1999. By order dated 26 April 1999 the two sets of proceedings were consolidated.

32. The claims against the appellants in the writs are for (1) damages for breach of the Equity & Law agreement, (2) damages for negligence in publishing from and after 8 February 1993 unfair, inaccurate and untrue reports and references in respect of Inter City/the respondents, (3) in the alternative damages for breach of contract in respect of the same publications, (4) an order that the appellants supply the respondents with a list identifying to whom they had published reports/references (5) an order that the appellants issue a corrective statement retracting the errors and inaccuracies in the reports or references published, and (6) a declaration that the appellants remain liable to pay Inter City commissions on investment contracts introduced by Inter City, notwithstanding the termination of the Equity & Law agreement, and an order for payment of these commissions.

33. The statement of claim sets out loss and damage claimed as a result of the appellants not paying the commissions said to be owed to Inter City and the respondents, the loss and damage suffered by Inter City as a result of the appellants' alleged unlawful conduct, and the loss and damage claimed by the respondents in their personal capacities as a consequence of the appellants' alleged unlawful conduct. The respondents say that they will give the appellants appropriate credit for the sums recovered by the appellants from Target. The total sum recovered by the respondents from Target was £10m. The balance of the respondents' claim which is now being pursued by them in these proceedings is said by the respondents to be worth at least £8m.

34. The appellants, in their defence and counterclaim served on 1 February 1999, alleged that their termination of the Equity & Law agreement was lawful on the grounds that Inter City had been engaged in the improper conduct of churning Target investment policies into Equity & Law investment policies. By a letter dated 22 February 1999 the appellants refused to withdraw their allegation of churning at this stage and observed that if the allegations are proved, then it may be right that they should affect the respondents' reputation and integrity. The appellants have continued at all times thereafter to maintain their allegation of churning against the respondents and did so particularly in the hearing before the Court of Appeal. They declined to alter this position at the hearing before your Lordships. Although the appellants' position is that no further reports or references were given by them in respect of Inter City or the respondents after 1994 by letter dated 29 July 1999, the second respondent's application to become an appointed representative introducer of Allied Dunbar Financial Advisers Ltd was refused on the ground *that "the outstanding and to date, unresolved, issues with your previous financial services host company need to be resolved and finalised in order to meet the referencing requirements we undertake prior to issuing introducer contracts."*

    The unresolved issues referred to are with the appellants.

35. On 27 January 1999 the appellants commenced third party proceedings against Target. These proceedings have not got beyond the issuing of a third party notice and have been stayed by consent pending the resolution of the preliminary issue in the main proceedings.

36. The preliminary issue ordered to be tried is in these terms: *"What is the consequence for the plaintiffs' claims in these proceedings of the settlement contained within the order dated 23 April 1998 in the High Court Queen's Bench Division…made between the plaintiffs and Abbey Life Assurance Co Ltd and satisfied by the payment of £10m paid hereunder."*

37. The preliminary issue was tried before Laddie J, who 8 July 1999 declared that the consequence for the respondents' claims in these proceedings of the settlement agreement was that the respondents were precluded from continuing the proceedings, and ordered that the proceedings be dismissed. Laddie J gave permission to the respondents to appeal.

38. On 19 May 2000 the Court of Appeal unanimously allowed the respondents' appeal, the consequence of the Court of Appeal's order being that the settlement agreement does not inhibit the respondents from pursuing their claims in these proceedings against the appellants (save to the extent acknowledged in paragraph 80 of the statement of claim that appropriate credit is to be given to the appellants for the recoveries made from Target).

39. At first sight it would appear that the respondents are entitled to sue the appellants for any damage that they have suffered as a result of what they allege is the unlawful termination of the Equity & Law agreement on 8 February 1993. That agreement was a separate agreement from the target agreement. It was founded on allegations of improper dealings by the respondents which allegations have been adhered to up until the present time although Target has unreservedly withdrawn the allegations that Target had made to a similar effect in support of their termination of the Target agreement. The appellants were not parties to the settlement agreement between Target and the respondents. The submission that the settlement agreement precludes the respondents carrying on the present proceedings is based on the decision of your Lordships' House in ***Jameson v Central Electricity Generating Board*** [2000] 1 AC 455.

40. That case concerned Mr Jameson who a few days before his death had agreed to accept £80,000 from his former employer Babcock Energy Ltd "in full and final settlement and satisfaction of all the causes of action in respect of which the plaintiff claimed in the statement of claim". These were for negligence and/or breach of statutory duty in causing the disease of malignant mesothelioma from which he died by exposing him to asbestos at various premises at which he had been employed, including those of the defendant, for whom his employer had undertaken work. The fatal disease might have been caused by the negligence or breach of statutory duty of either or both of the employer and the defendant. If the employer was liable for causing the disease he was liable for the full extent of the damage which Mr Jameson suffered.

41. If the defendant was liable the damage caused by its negligence or breach of statutory duty would be included in the damage for which the employer was liable as the exposure at the defendant's premises was included in the exposure which Mr Jameson had suffered in his employment. The £80,000 was significantly less than the full liability value of the claim and in argument it was pointed out that the difficulties of establishing liability in negligence or breach of statutory duty against an employer for exposure to asbestos going back to the 1950s giving rise to mesothelioma were illustrated in a case such as ***Bryce v Swan Hunter Group plc*** [1988] 1 All ER 659. The House by majority held that Mr Jameson's agreement in the settlement to which I have referred precluded a claim by him against the defendant. Lord Browne-Wilkinson and Lord Hoffmann agreed with Lord Hope of Craighead whose detailed speech supported that result. Lord Clyde also delivered a detailed speech supporting the result but on somewhat different grounds and Lord Lloyd of Berwick dissented. I read the majority decision as authority for the proposition that where an action is founded on specified damage suffered by the claimant and the existence of that damage is essential to the success of the action, if the claimant has entered into an agreement under which he accepts a sum as full compensation for that damage, the action cannot proceed. Whether a particular agreement has that effect is a question of construction of the words, in the light of all the relevant facts surrounding it.

42. The argument for the appellants before your Lordships is substantially that the decision in the *Jameson* case precludes the present action against them just as the settlement in Mr Jameson's case precluded an action by his executors against the CEGB. The principal clause of the agreement by which the Target proceedings was settled is so far as material in these terms:

"This agreement is in full and final settlement of all claims and potential claims of whatsoever nature and kind (including interest and costs) which the parties have or may have against each other under or in respect of or arising out of or in connection with, whether directly or indirectly:

(1) the termination on 29 January 1993 of the Target agreement …

(2) the termination on 8 February 1993 of the Equity & Law agreement …

(3) the personal references, reports and statements made to third parties that were provided in respect of any of the claimants following the termination of any of the Target agreement and the Equity & Law agreement (or either of them);

(4) the matters at issue in action number 1993-G-No.-610 [that is an action about commissions];

(5) any claims or matters identified in the draft statement of claim provided by the plaintiffs' solicitors to the defendants' solicitors under cover of a letter sent on or about 3 February 1998;

and without prejudice the generality of the foregoing, the parties hereto agree not to commence or prosecute any proceedings against one another arising out of or in connection with such matters."

43. Clause 3 is a confidentiality clause which does not provide for disclosure of the settlement agreement to the appellants. Clause 5 is in these terms: *"Each of the parties hereto hereby unconditionally and irrevocably releases and discharges each other, and their respective directors, officers and employees from all or any liabilities, actions, causes of action, suits, demands of whatever nature …. in relation to or in any way connected with the matters specified in clause 2.1 above."*

44. The agreement contains no reference to any claims against the appellants.

45. The contractual damages for the destruction of Inter City's business claimed in the Equity & Law action in respect of the termination of the Equity & Law agreement are wholly encompassed within the damages claimed in respect of the termination of the Target agreement. Indeed the Target claim

was more extensive than the Equity & Law claim but it included all items of loss which are now claimed against Equity & Law under this general head. There are minor differences between the parallel claims made in this action and those in the Target action referred to by Chadwick LJ in the Court of Appeal. At the hearing before your Lordships, counsel for the respondents was content to accept that the claims for money in respect of those matters in both actions were the same. There are claims in the Equity & Law action which were not made against Target. These are the claims in respect of Equity & Law's refusal to withdraw or correct what was said to be the unfair and untrue allegations of churning and other serious misconduct. It has not been suggested that the appellants here were responsible for any damage caused by the termination of the Target agreement but it was alleged against Target that if the Target agreement was terminated Target should have had in contemplation that the Equity & Law agreement would be terminated in consequence.

46. In my opinion the damage on which the present action against the appellants is based is damage following on their termination of the Equity & Law agreement and the position which they have taken up and maintained in respect of allegations of churning and other serious misconduct. Similar allegations by Target made at an earlier stage were as I have said withdrawn unreservedly before the Target settlement was made.

47. In my opinion the damage for which Equity & Law are responsible to the respondents is the damage caused to them by the termination of the Equity & Law agreement and Equity & Law's maintenance of their position with regard to the allegations on which that termination was based to which they have adhered up until the present time. The claim against Target which has been settled was in respect of Target's conduct and the damage occasioned to the respondents by that. I cannot see that the decision of this House in the ***Jameson*** case provides any basis for saying that the action against the present appellants should not proceed. It is true that the contractual damages claimed in respect of the termination of the Equity & Law agreement are wholly encompassed within the damages claimed in respect of the termination of the Target agreement. The respondents here accept as I have already mentioned that they must give credit for sums paid by Target in respect of matters covered in the claims against the present appellants.

48. In respect of the claim for destruction of Inter City's business I do not find it possible to extract from the agreement with Target the inference that Target were necessarily accepting the full responsibility for that destruction and it is perfectly possible to read the settlement as a settlement of the claim for Target's part in that destruction not necessarily amounting to the full responsibility for that destruction.

49. The claim that Target is responsible in damages for the consequences of the termination of the Equity & Law agreement was denied in their defences by Target. That denial was not withdrawn as part of the settlement. The claims against the appellants, were the subject of a separate head in the assignation of Inter City's claims to the respondents. There was a separate action in court at the instance of the appellants against the respondents. The appellants had a contingent claim in the liquidation of Inter City. Although there is a provision in the settlement agreement protecting directors and employees of Target, there is no mention whatever of the appellants, and it appears that these appellants made no contribution whatever to the funds required to be paid by Target under the settlement.

50. In ***Jameson's*** case, if his employer had responsibility for the damage caused to him by exposure to asbestos the employer was responsible for the whole of that damage and that damage was the sole basis of the claim. Here, as I have said, the damage claimed against the appellants is not coincident with the damage claimed against Target which was the subject of the settlement and there is nothing in the Target settlement to show the extent to which Target accepted responsibility for the principal item of claim, namely the destruction of the Inter City business.

51. For these reasons I conclude that the Target settlement does not preclude the present action against the appellants.

52. I consider that the action should proceed and in the ordinary way an assessment should be made of the various claims and a value put upon them at the trial. If the total amount awarded in respect of the

heads of damage that are dealt with in the Target settlement exceed the amount of approximately £5m appropriated to them in the Target settlement the award to the respondents would be the difference allocated between Inter City and the individual respondents in proportion to their claims. If the amount awarded is less than £5m this case will have been shown to be unnecessary so far as these heads of claim are concerned and no doubt this would be appropriately reflected in the awards of costs.

53. In this action, the respondents claim: *"An order that the defendants issue a corrective statement forthwith retracting any and all errors and inaccuracies in such reports or references in such terms as are approved by the plaintiffs (such approval not to be unnecessarily withheld), and that the defendants do thereafter, at their own expense, supply such corrective statement to each of the parties listed pursuant to [the previous paragraph in the statement of claim which referred to a list of those to whom the defendants made these reports or references]."*

54. Apart from provisions in the statutory scheme for settlement of a defamation action into which a defendant enters voluntarily, this claim is without precedent. It was supported by counsel for the respondents on the basis that the court should fashion a remedy for breach of contract suitable to the circumstances. He accepted that a declaration could serve the purpose required. In my opinion, that is the appropriate remedy, if the relevant claims of fact in the action are proved. Even if the court so holds, the appellants might still genuinely believe the contrary and the court has no power to order a party to make a statement which he does not accept as true, however unreasonable the court may hold his non-acceptance to be. I would make it a condition of further progress if this claim is to be pursued that it be framed as a claim for an appropriate declaration.

55. For these reasons I am of opinion that this appeal should be dismissed.

LORD STEYN, My Lords,

56. I have read the opinions of my noble and learned friends Lord Bingham of Cornhill and Lord Mackay of Clashfern. I agree that this appeal should be dismissed for the reasons they have given.

LORD HOPE OF CRAIGHEAD, My Lords,

57. I have had the advantage of reading in draft the speeches of my noble and learned friends Lord Bingham of Cornhill, Lord Mackay of Clashfern and Lord Rodger of Earlsferry. I agree that the appeal should be dismissed for the reasons which they have given.

LORD RODGER OF EARLSFERRY, My Lords,

58. I gratefully adopt the account of the facts given by my noble and learned friend Lord Mackay of Clashfern. In light of it I can summarise the main points.

59. The respondents claim damages from AXA Equity & Law Life Assurance Society plc ("Equity & Law") for loss which they allege was caused by Equity & Law's breach of contract and negligence. The respondents sue both as individuals and as the assignees of Glyne Investments Ltd which traded under the name Inter City ("Inter City"). In connexion with the same events Inter City had previously sued the Target Life Assurance Co Ltd ("Target") for damages for breach of contract. Inter City's rights in that action were assigned to the respondents and it proceeded in their name. In April 1998 the action was settled by a compromise agreement and subsequent Tomlin order. In terms of the settlement Target paid the respondents £10m. The respondents did not, as individuals, raise proceedings against Target but, when the settlement of Inter City's claim against Target was being negotiated, a draft statement was drawn up setting out this aspect of the respondents' claim. It is common ground that, when the settlement was reached, it took account of the claims of both Inter City and the individual respondents. As counsel for Equity & Law put it, the statement of claim in the present action is, in effect, an amalgamation of the amended statement of claim for Inter City against Target and the draft statement of claim for the respondents as individuals against Target. In that situation Equity & Law argue, on the basis of ***Jameson v Central Electricity Generating Board*** [2000] 1 AC 455, that the settlement with Target precludes the respondents from pursuing their claims in the present proceedings against Equity & Law.

60. In ***Jameson*** Mr Jameson had been employed by Babcock Energy Ltd ("Babcock") between October 1953 and 1958. During that time he had worked at various places, including two power stations owned and

occupied by the Central Electricity Generating Board ("CEGB"). In the course of his work on the CEGB sites and elsewhere Mr Jameson was exposed to asbestos for relatively short periods. In 1987 he was diagnosed as suffering from malignant mesothelioma. He raised proceedings against Babcock in tort for damages for causing his illness. The defendants paid £75,000 into court and, soon after, just before Mr Jameson died, the proceedings were settled for the sum of £80,000 plus costs. The balance of the sum and costs due under the settlement was paid to Mr. Jameson's solicitors five days after his death when the court pronounced a Tomlin order giving effect to the settlement. At the time of the settlement between Mr Jameson and Babcock "the view of both parties' advisers was that the claim, including that for future loss of income, was worth about £130,000 if it were to succeed on liability, a valuation which the judge [in the proceedings against CEGB] said was reasonable." On the other hand, both advisers took the view that there were weaknesses in the claim, mainly because of the short periods of exposure to asbestos and because of doubts as to whether the dangers of exposure to asbestos had been sufficiently widely known at the time ([1998] QB 323, 332C - D per Auld LJ). In due course Mr Jameson's executors raised proceedings against CEGB under the Fatal Accidents Act 1976 for his widow's loss of dependency. In terms of section 1(1) as amended they could do so only if CEGB were a person who "would have been liable" to an action of damages for negligence and breach of statutory duty at the instance of Mr Jameson "if death had not ensued". By a majority, your Lordships' House held that CEGB would not have been liable to an action of damages at the instance of Mr Jameson since the effect of the settlement, when it had been implemented in full by Babcock, was to discharge the claim of damages against "the other concurrent tortfeasors" ([2000] 1 AC 455, 478F). They accordingly allowed the appeal and held that the executors' claim against CEGB was barred by Mr Jameson's settlement with Babock.

61. As that brief summary shows, the issue in *Jameson* was whether, having settled proceedings against one tortfeasor for less than the value of the claim if liability had been established, Mr Jameson could have sued another tortfeasor for damages on the ground that the tort of the second tortfeasor was also a cause of his mesothelioma. Here, by contrast, the question is whether the respondents, having settled proceedings for their loss caused by Target's breach of contract, can sue Equity & Law for part of that loss, on the basis that the alleged breach of contract by Equity & Law was also a cause of that part of their loss. In ***Jameson*** the two sets of proceedings would have been against separate but concurrent tortfeasors for causing the mesothelioma; here the two sets of proceedings are against companies who are alleged to have committed separate and overlapping breaches of contract which caused the part of the respondents' loss claimed in the proceedings against Equity & Law. As I explain in more detail below, the respondents' position in the action against Target was that their breach of contract had led to Equity & Law's breach of contract in terminating the Equity & Law agreement.

62. In ***Jameson*** there was a finding as to the value of Mr Jameson's claim for damages if Babcock had been found liable. In the present case, however, there is no similar finding as to the full value of the respondents' claim against Target: the respondents simply contend that their overall loss from the breaches of contract by Target and Equity & Law is £18m.

63. The decision in ***Jameson*** has been criticised - for example, in ***Foskett, The Law and Practice of Compromise*****, 5th ed** (2002), p 122, para 6-49 and by the New Zealand Court of Appeal in ***Allison v KPMG Peat Marwick*** [2000] 1 NZLR 560. The respondents' written case foreshadowed a possible challenge to *Jameson* on the basis of these criticisms. In the event, however, counsel did not argue that it had been wrongly decided. Both sides proceeded on the basis that *Jameson* was correctly decided: inevitably, however, each had a different view as to its effect in the present circumstances. In particular, as part of his argument, counsel for the respondents contended that the decision in *Jameson* applied only to concurrent tortfeasors and should not be extended so as to apply in the case of concurrent or overlapping contract breakers causing the same loss.

64. In giving the decision of the majority in *Jameson* my noble and learned friend Lord Hope of Craighead started from the statement of Lord Nicholls of Birkenhead in ***Tang Man Sit (Personal Representatives of) v Capacious Investments Ltd*** [1996] AC 514, 522. Discussing the limitations on a plaintiff's freedom to sue successively two or more persons who are liable to him concurrently, Lord Nicholls

said: *"A third limitation is that a plaintiff cannot recover in the aggregate from one or more defendants an amount in excess of his loss. Part satisfaction of a judgment against one person does not operate as a bar to the plaintiff thereafter bringing an action against another who is also liable, but it does operate to reduce the amount recoverable in the second action. However, once a plaintiff has fully recouped his loss, of necessity he cannot thereafter pursue any other remedy he might have and which he might have pursued earlier. Having recouped the whole of his loss, any further proceedings would lack a subject matter. This principle of full satisfaction prevents double recovery."*

Statements of the law to the same effect are to be found in Erskine's *Institute of the Law of Scotland* III.1.15, ***Steven v Broady Norman & Co*** 1928 SC 351 and ***Balfour v Archibald Baird & Sons Ltd*** 1959 SC 64. As Lord Justice-Clerk Thomson observed in ***Balfour,*** at p 73, if the pursuer *"has invited a competent court to give him full satisfaction for the loss sustained by him and if he is awarded damages on that footing that is an end of it. He has got all he is entitled to."*

65. It is not only a judgment that can have the effect of extinguishing the relevant loss: if one tortfeasor settles the victim's claim by paying him a sum which fully satisfies his right to damages for loss and injury, the victim cannot then sue any concurrent tortfeasor for damages for the same loss and injury. In ***Allison v KPMG Peat Marwick*** [2000] 1 NZLR 560, 589, para 134 Thomas J put the point in this way: *"Satisfaction discharges the loss. It is in the nature of an executed judgment in its effect. The loss no longer exists. There is nothing left for anyone to sue on; the injury or loss has been satisfied. As between the parties there is no problem. Where the co-defendants are concurrent tortfeasors, however, concurrently liable on a different cause of action, the satisfaction of one obligation cannot in itself discharge the other obligation. The concurrent tortfeasor will be released only if the satisfaction satisfies the injury or loss which flows from his or her separate cause of action. Its extinction is then independent of the agreement between the plaintiff and the defendant. Simply put, no injury or loss exists on which to sue."*

66. In ***Jameson*** ([2000] 1 AC 455, 472F - G) Lord Hope stated the main issue in the case in these terms: *"So the first question which arises on the facts of this case is whether satisfaction for this purpose is achieved where the plaintiff agrees to accept a sum from one of the alleged concurrent tortfeasors which is expressed to be in full and final settlement of his claim against that tortfeasor, if that sum is less than the amount which a judge would have held to be the amount of the damages which were due to him if the case had gone to trial and the defendant had been found liable."*

He answered this question by holding that a settlement, even though for less than the amount that a judge would have awarded on full liability, could constitute satisfaction of a plaintiff's claim with the effect of preventing him from suing any other tortfeasor for the same loss and injury. The significance of the agreement would be found in the effect which the parties intended to give it. The meaning which was to be given to the agreement would determine its effect: [2000] 1 AC 455, 473B - C. In deciding whether any particular settlement did indeed have this effect, the question was, said Lord Hope ([2000] 1 AC 455, 476E - F), *"not whether the plaintiff has received the full value of his claim but whether the sum which he has received in settlement of it was intended to be in full satisfaction of the tort."*