THE HON. MR. JUSTICE McKinnon : JUDGMENT

This is an appeal from the decision of Master Rose on 13th November 1998 whereby he ordered that the Defendant's application for certain relief be dismissed.

The relief sought was:

1. a declaration pursuant to Order 12, rule 8, that this Court has no jurisdiction over the Defendant in respect of the subject matter of the claim or the relief or remedy sought in the action and that this action be dismissed;
2. an Order under the inherent jurisdiction of the Court that all proceedings in this action be stayed;
3. an Order under Order 18, rule 19 that the proceedings be struck out.

Master Rose ordered that the proceedings be stayed pending determination of this appeal or further Order.

The background facts may be shortly stated. The parties entered into a written agreement dated 12th November 1997 for the supply by the Defendant to the Plaintiff of services in respect of software design for a system which the Plaintiff required for its own customers called a Point of Advice Service. Specific services were provided for in the contract. The Plaintiff says that the Defendant was unable or unwilling to provide those services within the required time scale, and accordingly, on 25th February 1998, the Plaintiff wrote to the Defendant accepting what it said was the Defendant's repudiation. That repudiation did not come out of the blue. There were discussions in January and February 1998 with a view to seeing what could be done to resolve the issues between the parties. However, the Plaintiff wrote the letter of 25th February, and thereafter there undoubtedly followed certain discussions both in writing and orally to discuss the issues which had arisen as a result of the Plaintiff accepting the alleged repudiation. On 22nd June 1998 the Plaintiff, through its solicitors, wrote a letter before action and sent a draft Statement of Claim. It was plain then that the Plaintiff intended to reply on its allegations of repudiation by the Defendant, in so far as it alleged that the Defendant was unwilling or unable to meet agreed deadlines under the written agreement, and that the Defendant was in anticipatory repudiation. The Defendant's case has always been that it was not in breach, and that the Plaintiff altered its requirements so as to make compliance with the deadlines impossible, and otherwise acted so as to put itself in breach of contract. Thus, the Defendant will, no doubt, in due course be counter-claiming.

There are three issues in this appeal:

1. Does the written agreement require the contractual procedure set out in Clause 33 thereof to be complied with before proceedings are issued?
2. If the answer to the first issue is yes, was the contractual procedure set out in Clause 33.1 commenced and completed between February and May 1998 so that any right to operate the contractual procedure was exhausted before the Defendant purported to give notice under Clause 33.1 on 20th July 199$?
3. If the answer to issue 2 is no, should the Court as a matter of discretion decline to grant the relief sought?

That was how Mr. Streatfield-James for the Defendant/Appellant formulated the issues.

In considering the first issue, I should set out the relevant provisions of Clause 33. The Clause is headed *"Disputes";*

33.1 In the event of any dispute arising between the Parties in connection with this Agreement, senior representatives of the Parties will, within 10 Business Days of a written notice from either Party to the other, meet in good faith and attempt to resolve the dispute without recourse to legal proceedings.

33.2 If the dispute is not resolved as a result of such meeting, either Party may, at such meeting (or within 10 Business Days from its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ("Neutral Adviser").

There is then provision for the appointment of the Neutral Adviser. The Clause continues:

33.6 If the Parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement will be recorded in writing and, once it is signed by their duly authorised representatives, will be binding on the Parties.

33.7 Failing agreement, either of the Parties may invite the Neutral Adviser to provide a non-binding but informative opinion in writing.

33.8 If the Parties fail to reach agreement in the structured negotiations within 45 Business Days of the Neutral Adviser being appointed then any dispute between them may be referred to the Court unless within a further period of 25 Business Days the Parties agree to arbitration in accordance with the procedure set out below.

33.9 Any dispute between the Halifax and Intuitive in connection with this Agreement that cannot be resolved by the above procedure will be referred to and determined by a sole arbitrator ("the Arbitrator"), the arbitration to be held in London or any other place nominated by the Arbitrator.

The remainder of the Clause deals with the appointment of the Arbitrator and the procedure for the arbitration.

Mr. Streatfield-James submitted that Clause 33 should be read as a whole. Clause 33 constituted a complete code for the resolution of disputes between the parties without recourse to legal proceedings if the parties chose to adopt that code. As he submitted, the Clause provided for a series of moratoria on the commencement of proceedings - a maximum of 10 days (Clause 33.1), a further maximum of 10 days (Clause 33.2), a further 10 days (Clause 33.3), 45 days (Clause 33.8) and a further 25 days for the Parties to agree to arbitration if they chose (also Clause 33.8). If an appropriate notice within Clause 33.1 was given by one party to the other, then Clause 33.1 required, as a mandatory provision, that the parties "meet in good faith and attempt to resolve the dispute without recourse to legal proceedings". Clause 33.2 was permissive, either party being free to propose to the other that structured negotiations be entered into. Once that was done, there was provision for the appointment of a Neutral Adviser. If the parties failed to reach agreement in the structured negotiations then, unless the parties agreed to arbitration, any dispute between them could then be referred to the Courts. Mr. Streatfield-James submitted that Clause 33 was akin to a **Scott -v- Avery** clause, i.e. where parties to a contract agreed that no action should be brought upon it until an arbitration award had been made. Thus, it was submitted that while litigation could be initiated on a contract containing such a clause, the condition precedent was a defence to the action. There was a contractual obligation under Clause 33.1 which should be enforced. These were all matters which were properly the subject of "party autonomy", that is, that the parties should have the right to decide how their respective rights should be enforced and how disputes between there should be resolved, subject to any question of public policy which did not apply here. Mr. Streatfield-,lames referred me to the White Hook at paragraph 72/A24, A3$, and A41 referring to the policy of the Commercial Court and its practice in appropriate cases at an interlocutory stage to make Alternative Dispute Resolution (ADR) Orders including mediation and conciliation. Mr. Streatfield-James submitted that there was here in Clause 33 an express contractual provision to similar effect so that the Court should be quick to uphold Clause 33.

Mr. Quest on behalf of the Plaintiff submitted that Clause 33 provided a procedure for structured negotiations, starting with a meeting and moving on (if so required) to mediation. He submitted that the whole process was optional. It had several steps but only began if one party gave notice that it required a meeting and only continued if one party opted to take the next step. Further, there was no provision that any dispute must be resolved by mediation or that any issue must be determined by an arbitrator. Nor was the completion of any particular step said to be a condition precedent to liability under the Agreement or to the commencement of proceedings, that is, there was no **Scott v Avery** clause. It cannot have been intended that the service of a written notice within Clause 33.1 should be mandatory. The purpose of the written notice was to tell the other party when the meeting was to be held. The notice was not a trigger or a gateway for a meeting to be held. There only needed to be something in writing to show the other party that there was to be a meeting. It would be very odd, Mr. Quest submitted, if there were a series of informal meetings and that later the whole process had to be repeated. As he submitted, if the parties were prepared to meet and did meet without a written notice, then all well and good. A written notice would not be needed. All that was needed was that there should be a "dispute arising between the parties in connection with this Agreement". None of the provisions in Clause 33 was expressed to be a condition precedent to liability or to the institution of legal proceedings. It may be that while the parties were in the thick of negotiations, there could not be legal proceedings. Some of the steps were mandatory, for example, by the use of the word "will" in Clause 33.1 and 33.4. The use of that word related to a meeting taking place and to meeting with the

Neutral Adviser. It was not provided that the holding of those meetings were conditions precedent to the institution of legal proceedings.

There is no express provision making compliance with Clause 33 a condition precedent to legal proceedings. Before me, Mr. Streatfield-James expressly said that he was not submitting that a **Scott v Avery** clause should be implied into Clause 33. I certainly agree with Master Rose that such a Clause could not be implied into Clause 33. I do not see that, upon a proper construction of Clause 33 looked at as a whole, that the contractual procedure in Clause 33 had to be complied with before proceedings were issued. I believe that Mr. Quest's submissions are correct and I accept them. Further, as will be seen later, I very much doubt that Clause 33 is enforceable.

As to the second issue assuming that my conclusion in respect of the first issue is wrong, it is necessary to consider what meetings were held. There were four meetings, namely, on 27th February, 13th March, 19th March and 8th May 1998.

The meeting on 27th February had been arranged some two weeks earlier, as part of discussions which were taking place about the contract as a whole. Clearly, following the "*termination" letter of 25th February, the nature of the meeting changed. There was nothing in writing which could be regarded as a written notice within Clause 33.1. There is a summary of that meeting prepared by the Plaintiff which is not agreed by the Defendant save as "very much a precis of what was discussed*". Mr. Fox, the Defendant's Managing Director, "*was concerned about the cancellation of the contract ..... however he accepted the position reached and therefore sought to rescue some value from the present situation for both sides*".

The next meeting was on 13th March. In preparation for that meeting Mr. Fox wrote to Mr. Black, the Plaintiff's Assistant General Manager, on 11th March 1998, So far as material it reads:

> *"Further to the meeting of 27th February with Andrew Jacobs, I would like confirm to my view of the situation you described in your letter of 25th February. This is to provide a shared basis for our discussion this Friday, when I trust we will be able to reach an agreement..... I am keen to reach an early and equitable negotiated settlement of the situation, which reflects the commitment and progress that Intuitive has made on the project and provides us with an opportunity to work together in the future".*

Mr.Black replied on 12th March, concluding the letter as follows:

> *"Without prejudice to the position set out above we wish to discuss an arrangement with you that reflects the above issues. George Scarlett, our IS Assistant General Manager, will be joining me at our meeting and I believe Gillian Dodd is coming with you. If you have any comments which you want to make prior to the meeting we would be pleased to consider them".*

There were various discussions at the meeting, the Defendant saying that they would send to the Plaintiff a solicitor's letter, having identified that they had already spoken to their lawyers.

The next meeting was on 19th March. On the previous day Mr. Fox wrote to Mr. Slack:

> *"Following our meeting on Friday, I am writing to formally respond to your letter of 12th March and to the Halifax's termination of the project by your letter of 25th February 1998..... Entirely without prejudice to Intuitive's rights in this matter I look forward to meeting you again this Thursday, as agreed, to see if we can amicably resolve the issues".*

Mr. Black said that he did not have the authority to write off the sum involved. This would rest with an Executive Director. Those representing Halifax at the meeting would be looked to for a recommendation.

There was then a six week odd gap in the correspondence. The next meeting was on 8th May. The Plaintiff's note of the meeting records as follows;

> *"CF said that Intuitive aimed to reach a settlement that day and asked whether those present from the Halifax had authority to do this..... CF said that Intuitive had taken legal advice and believed that they would be awarded between £2-3,000.000 if the case went to Court but he felt that both sides would want to avoid this. Intuitive felt it was for Halifax to make an offer ..... Intuitive decided that the meeting could not move further forward. Colin Fox said he intended to escalate the matter within both firms."*

The matter was in a sense escalated. The Defendant's Chairman and Chief Executive Officer wrote to the Chief Executive of the Halifax PLC on 14th May to set up a meeting at high level. The Plaintiff's solicitors

replied on 22nd May taking issue with the Defendant and asking who their solicitors were and whether they were instructed to accept service of proceedings on the Defendant's behalf. That prompted a reply from the Defendant's solicitors dated 29th May confirming that they had instructions to accept service of any proceedings. On 22nd June the Plaintiff's solicitors made a without prejudice offer to the Defendant's solicitors requesting a response by 1st July 1998 and enclosing a draft Statement of Claim. Extensions of time were requested and given until 20th July. By a letter of that date, the Defendant's solicitors purported to give "notice in writing pursuant to Clause 33.1..... that senior representatives of the Parties meet within 10 Business Days of the date of this letter in good faith to attempt to resolve the differences between us without recourse to legal proceedings". On the same day, the Defendant's solicitors set out their response to the Plaintiff's solicitor's letter of 22nd June. On 28th July the Plaintiff's solicitors wrote that written notice under Clause 33.1 had been given in March, there being no requirement that the written notice should actually refer to Clause 33. Further, they wrote that it was clear by the end of the meeting on 8th May that there was no point in pursuing further discussions, that the Defendant did not then take the option under Clause 33.2 of asking for the appointment of a Neutral Adviser and could not then reinitiate the procedure in Clause 33. On 30th July the Defendant' s sol icitors wrote saying that Clause 33. 1 had not been invoked until their letter of 20th July and that the Defendant would be applying to the Court for a stay of any proceedings that were issued until the Dispute Resolution Procedure in Clause 33 had been fulfilled.

Mr. Streatfield-James submitted that the meetings between 27th February and 8th May were not meetings under Clause 33.1. He submitted that the need for a written notice was not simply a formality. It was essential because it triggered the whole of the rest of the procedure. The Defendant did not regard the meetings as being under Clause 33 and clearly did not give any Clause 33 notice. It was not suggested otherwise. If the Plaintiff had wished the meetings to be held as Clause 33.1 meetings, it could have given a notice. It did not do so. There was nothing in writing which would be capable of constituting a notice. There was no evidence that the Defendant either agreed to the meetings being held under Clause 33.1 or waived the need for a written notice from the Plaintiff. Mr. Streatfield-James further submitted that the meetings could not in any event have been meetings under Clause 33.1 because such a meeting was required to involve at least the attendance on each side of senior representatives with authority to negotiate. That was not the case here. The mere fact that meetings were held without prejudice was clearly not enough. It was easy to see that parties might wish to meet informally before taking the next step and thus formalising the dispute.

Mr. Quest submitted that it was open to him to say that the meeting on 27th February was within Clause 33.1. That was because the giving of a written notice was not mandatory. As to the meeting on 13th March, Mr. Fox's letter of lath March was a sufficient request for a meeting under Clause 33.1. It did not matter that the meeting was already arranged. It could still be made a Clause 33.1 meeting. Further, the last paragraph of Mr. Black's letter of 12th March was sufficient written notice to be within Clause 33.1, if it was necessary to have a written notice under that clause. Mr. Quest submitted that there had already been a formal termination of the written Agreement. It was, therefore, difficult to see how there could be informal meetings followed later by meetings under Clause 33.1. It would have been surprising, he submitted, if at the end of that meeting it was not open to the Defendant to propose pursuant to Clause 33.2 that structured negotiations be entered into. If there were to be such structured negotiations, then that was the time for them to be held.As to the third meeting, held on 19th March, Mr. Fox's letter dated 18th March in his last paragraph was sufficient written notice under Clause 33.1. Mr. Quest submitted that the meeting was not intended to be "informal"; the parties were trying to reach a resolution of the dispute. It was, as Mr. Quest submitted, difficult in principle to see how the Defendant could not have said to the Plaintiff, "*you are in breach of Clause 33.1 if you do not attend.....*". As to the meeting on 8th May, Mr. Quest was prepared to accept that, if the Defendant wished to have recourse to Clause 33.2, then it should have done so either at that meeting or within 10 days from its conclusion. Mr. Quest submitted that it was odd that the Defendant's solicitors did not say that it was premature to have proceedings when they received the draft Statement of Claim sent with the Plaintiff's solicitor's letter of 22nd June. Instead, they asked for further time. He submitted that to ask for another meeting in their solicitor's letter of 20th July was no more than a tactical step directed to the gaining further time. At all events, no useful purpose could possibly really be served by having another meeting : there had already been four meetings.;

I do not find the second issue at all easy. I bear in mind that Mr. Streatfield-James did specifically ask me not to reach a decision on the facts, as that might prevent him from having a trial in respect of them. I respect that, although it is very difficult to see how Clause 33 could be pleaded as a viable defence to the Plaintiff's Statement of Claim. Like Master Rose, it seems to me unnecessary for me to decide the second issue, although I do incline strongly towards the view that the various meetings were held pursuant to Clause 33. I would have also thought that both parties were represented by appropriate "senior representatives".

As to the third issue, assuming that I am wrong in respect of the first and second issues, it is my conclusion that the Defendant is not entitled to a Declaration pursuant to Order 12, Rule 8. It is trite law that the existence of a mediation clause or even an arbitration clause does not result in the Court having no jurisdiction to hear the action. No clause in a contract can oust the jurisdiction of the Court; such clauses are against public policy. This principle applies even to compulsory arbitration clauses (see Chitty on Contracts volume 1, paragraph 15 - 015), even if in the form of a **Scottv Avery** clause (see Russell on Arbitration, 21st Edition, paragraph 2/053). If one party starts proceedings in breach of an arbitration clause, the Court does not and cannot decline jurisdiction; instead, in an appropriate case, it grants a stay under the Arbitration Acts. **Bernhard's Rugby Landscapes Limited v Stockley Park Consortium Limited** (Judgment No. 2), 22nd April, 1998 (unreported) relied on by Mr. Streatfield-James supports rather than contradicts the principle that the Court retains jurisdiction. The contract in that case contained a binding expert determination clause. His Honour Judge Humphrey LLoyd, Q.C. stated at page 37 of his judgment that if the Defendant wanted to challenge jurisdiction, it should have used the Order 12, Rule 8 procedure, but he held that the Court did in fact always have jurisdiction, subject to its power to stay or suspend proceedings in an appropriate case. I regard the application under Order 12, Rule 8 effectively as a non-starter.

As to the application for an Order that the proceedings be struck out pursuant to Order 18, Rule 19, it cannot be said that the pleadings on their face fail to disclose a reasonable cause of action or that they otherwise fall within that rule. It seems to me inconceivable that Clause 33 could be utilised either to bring the Plaintiff's proceedings within Order 18, Rule 19, or as part of the Defendant's pleaded Defence to the action in order to delay the proceedings.

As to the Defendant's application for a stay under the inherent jurisdiction of the Court, Mr. Streatfield--James said that this was his primary application. The Court has a statutory power under the Arbitration Acts to stay proceedings brought in breach of an arbitration clause. There is no such statutory power in respect of contractual clauses which do not fall within those Acts. The Court has a further, discretionary, power to stay proceedings where there is a dispute resolution clause which is "*nearly an immediately effective agreement to arbitrate, albeit not quite*" see **Channel Tunnel Group Limited v Balfour Beatty Construction Limited** [1993] AC 334, Lord Mustill at page 353. In that case the parties had agreed to submit the dispute to an panel of experts whose unanimous decision was binding on the parties unless referred to formal arbitration. Although the expert determination was expressly not an arbitration, it came close to it (see **Channel Tunnel** at page 352c). It is clear that the **Channel Tunnel** case was concerned with "an agreed method of resolving disputes" (see page 343 g -h), where the parties had agreed that "any dispute between them shall be otherwise determined" than by Court proceedings (see page 352 f-g), "agreements for the resolution of disputes" (see page 353 c), and cases where the parties had "promised to take their complaints to the experts and if necessary to the arbitrators" (see page 353d). Mr. Quest submitted that the Channel Tunnel principle did not extend and should not be applied to clauses such as Clause 33 requiring negotiation in good faith. They were of a fundamentally different nature. He submitted that a distinction could properly be drawn between procedures which are determinative and those which are not. Determinative procedures included arbitration clauses, binding expert valuations and third party certifications. In each case, the parties had agreed that certain issues would be finally and conclusively resolved by a third party and the Courts, therefore, refused to resolve those same disputes themselves. Non-determinative procedures including negotiation, mediation, expert appraisal and non binding rulings from a mediator. There, it was hoped that the procedure would assist the parties themselves in resolving their dispute, and the contract might provide the appropriate machinery, but there was no obligation to resolve the dispute in that way. Mr. Quest submitted that the Courts had consistently declined to compel parties to engage in co-operative processes, particularly "good faith" negotiation, because of the practical and legal impossibility of monitoring and enforcing the process (see **Courtney and Fairbairn Limited v Tolaini Brothers (Hotels) Limited** [1975]

1 WLR 297, **Walford vMiles** [1992] 2 AC 128 and **Paul Smith Limited v H & S International Holding Inc**. [1991] 2 Lloyd's Report 127, 131 col.1d).

I accept Mr. Guest's submissions. Clause 33 in no sense amounts to an arbitration agreement. The contrary is not suggested. It is not in any sense close to being "nearly an immediately effective agreement to arbitrate". Clause 33 does no more than make provision for the parties to negotiate, hopefully towards an agreement. Only if the negotiations fail does any question of arbitration arise and only then if the parties at that stage agree to arbitration. The parties have, in fact, in no sense bound themselves to any method of determining any dispute between them. Mr. Streatfield-James relied upon various dicta of Judge Hegarty, Q.C. sitting as a Judge of the High Court in **Cott, UK Limited v FE Barber Limited** [1997] 3 All ER 540. In that case, Judge Hegarty Q.C. applied the channel Tunnel principle so as to order a stay of proceedings where the parties had *"chosen some alternative means of dispute resolution*" (see page 548 ef). The difficulty about applying that case to the instant case is that the relevant clause in that case provided for disputes to be referred to a person who "*shall act as an expert and not as an arbiter and his decision shall be final and binding on the parties*" (see page 543 c-d). That was a case, like the Channel Tunnel case, where the parties had chosen a method alternative to Court proceedings of determining any dispute between them, i.e. a determinative procedure, unlike the non-determinative procedures provided for in Clause 33.

In addition to the powers of which I have spoken, the Court, as part of its role in supervising litigation, has an additional more general discretion to adjourn proceedings to encourage settlement between the parties. This reflects a desire for the resolution of disputes to be conducted in an efficient way. An example of the use of this additional discretion is to be found in the Commercial Court Guide part 21 set out in the White Hook, para. 72/A24. It is to be noted, however, that the usual practice in the Commercial Court is to consider ADR at the Summons for Directions, when the issues between the parties have been identified but the parties have not been put to the expense of preparing witness statements and experts reports.

It seems to me that the reasons why the Court should not exercise any discretion whether to stay these proceedings or to adjourn them for ADR are the same. The Plaintiff has not rushed to litigation or refused to consider a negotiated settlement. There have already been months of negotiations and correspondence between the parties. At the end of the process, it was sufficiently clear as I see it, that there was no point in holding further meetings. Even then, before formally issuing proceedings, the Plaintiff provided a draft copy of the Statement of Claim to the Defendant. The Defendant has had that draft Statement of Claim since about 22nd June 1998. The Defendant has chosen not to serve a Defence. As I see it, forced negotiations between the parties would be futile at the moment. The only real effect would he to increase the expense and further delay the service of a Defence and the proper identification of the issues between the parties.

My firm conclusions are that the Court has jurisdiction to hear the Plaintiff's claim and the Statement of Claim discloses a reasonable cause of action and is not plainly and obviously vexatious or frivolous. Further, to the extent that there is any discretion to stay the proceedings (which I doubt) or to adjourn the proceedings pending negotiations, I am quite clear that such discretion should not be exercised in favour of the Defendant.

Accordingly, this appeal is dismissed. I remove the stay, which Master Rose ordered pending the determination of this appeal.

There is a further Summons before the Court. It is the Plaintiff's summons dated 3rd December 1998 for an Order that the Defendant produce:

1. a copy of the insurance policy referred to in Clause 21 of the Written Agreement, and
2. evidence that this insurance policy was in force during the term of the Written Agreement and that the Defendant's insurers had noted the Plaintiff's interest far the term of the Written Agreement.

The relevant clause in the Agreement is Clause 21 which reads as follows:

"21. INSURANCE

Intuitive will maintain insurance cover in connection with its duties under this Agreement, covering such risks and in such amounts normally insured against by persons carrying on similar businesses in a prudent manner and so that the insurers recognise the Halifax's interests for the term of the Agreement. Intuitive will provide the Halifax with such information as the Halifax may reasonably require from time to time regarding the insurance cover. "

Mr. Streatfield-James took a number of objections to the relief sought. Firstly, he said that this matter had been left between the parties on the basis that it could be dealt with on Discovery. It was not suggested that such arrangement was arrived at or evidenced by anything in writing. Secondly, the action was stayed by Master Rose so that relief could not be sought. Thirdly, it was not certain on what basis the relief was claimed. Fourthly, there were substantive disputes as to the proper construction of Clause 21. Clause 21 was limited to the supply of information as may reasonably be required. This was not a request for information but for the insurance policy itself. As to the request for evidence that the policy was in force at the time, that was not a request for information. Finally, Mr. Streatfield-James submitted that the Agreement had been terminated and, thus, Clause 20.2 of the Agreement applied. That reads as follows;

"20.2 The ending of this Agreement will not affect any rights and remedies to which a Party may be entitled under this Agreement or at law."

Mr. Streatfield-James submitted that Clause 21 did not survive the ending of the Agreement because it did not give rise to any right or remedy.

Mr. Quest told me that there was no agreement or arrangement for this matter to be dealt with on Discovery. He agreed that it would be necessary for the Court to remove the stay before this application could be entertained. That I have done. The basis of the relief was that it arose from Clause 21 of the Agreement, as a contractual right. Mr. Quest submitted that an Order could be made for early discovery pursuant to Order 24. The obligation under Clause 21 to provide information was clearly a right or remedy within Clause 20.2. What was sought was obviously information. The Plaintiff wanted to know if the Defendant was properly insured at all material times.

Mr. Streatfield-James submitted that the insurance policy was not generally discoverable under Order 24 as it was not disclosable in respect of any issue in the action.

My conclusions are as follows.

It would not be right, it seems to me, to refuse the Plaintiff's application on the basis that there is some disputed arrangement, not in writing, that the matter should be left over until Discovery. It seems to me right to put that matter to one side. I have removed the stay ordered by Master Rose so that there is no impediment to my considering this application. It is clear that Clause 21 gives rise to a contractual right for the Plaintiff to be provided with such information as it may reasonably require from time to time regarding the Defendant's insurance cover as referred to in that clause. Whether or not an Order for Discovery of the relevant insurance policy could be made pursuant to Order 24, Rule 7 (3), the Plaintiff clearly has a contractual right to see the insurance policy (or to be told the contents of it). I am quite clear that the contractual right referred to in Clause 21 is a right or remedy within Clause 20.2. 1 am equally clear that what is sought is "such information" within Clause 21.

The Summons is not based on Order 24. If it were, I can see that there may be difficulty for the Plaintiff in showing to which issue or matter in question on the pleadings discovery of the insurance policy is directed (see **Baldock v Addison** [1995} 1 WLR 1587.

I can well understand why the Plaintiff should want the information requested in the Summons but I am not, without full argument, prepared to grant the relief sought particularly as it has not been made clear to me under which Order or rule in the White Hook the relief is sought. What I propose to do is to adjourn the Summons generally with liberty to restore. It may be that the Plaintiff will have to start a separate action to enforce its contractual rights under Clause 21 if the Defendant is not prepared to provide the information.

