**JUDGMENT : The Vice-Chancellor :** Chancery Division : 22nd May 2002

**Introduction**

1. The first defendant ("FIA") is the international body governing motorsport. It is an association constituted in accordance with the laws of the Republic of France. It governs the organisation of the Formula One World Championship ("F1") and owns the rights necessary for that purpose. The second defendant ("FOM") has an agreement with FIA for the exploitation of the commercial rights with respect to F1. The third defendant ("FOA") is the parent company of FOM against which no relief is now sought.

2. FIA and FOM and the twelve teams then engaged in F1 ("the Signatory Teams") entered into an agreement ("Concorde") for the regulation of F1 for the period 1st January 1998 to 31st December 2007. F1 was to be conducted in accordance with Concorde, the FIA Sporting Code ("the Code") and the FI Sporting Regulations from time to time published by FIA ("the Regulations").

3. Prost Grand Prix SA ("PGP") is a company incorporated in accordance with the laws of the Republic of France. It was one of the Signatory Teams. In the Constructors' Championship in F1 in 1999 and 2001 it came 7th and 9th respectively. On 13th November 2001 PGP submitted its entry for F1 in 2002 to FIA and its name appeared in the list of entrants published by FIA on a provisional basis on 3rd December 2001 and on a final basis on 13th February 2002. But in the meantime the Tribunal de Commerce de Versailles appointed administrators in respect of PGP on 22nd November 2001 and made an order for its compulsory winding up on 28th January 2002.

4. On 16th February 2002 the claimant ("Phoenix") made an offer to the liquidator of PGP for the purchase of certain of PGP's assets for US$2.2m. The offer was conditional on confirmation from FIA that Phoenix would enjoy the rights of PGP under Concorde and, consequently, would be eligible to compete in F1 2002. This offer was acceptable to the liquidator but rejected by the Tribunal de Commerce on 19th February 2002. Phoenix appealed. The appeal was heard by the Tribunal de Commerce on 28th February 2002 in the course of which a revised and unconditional offer was submitted by Phoenix for the purchase of substantially the same assets as before for 2.586m Euros. The court considered that this offer was acceptable and allowed Phoenix's appeal.

5. The order of the Tribunal de Commerce made at 1510 on 28th February 2002 was implemented by a deed of reiteration made between the liquidator of PGP and Phoenix on 2nd March 2002. It recorded that the property sold to Phoenix included "the entry form for [F1 2002] sent by PGP to [FIA] and the rights resulting therefrom".

6. F1 2002 opened with the Australian Grand Prix in Melbourne on 3rd March 2002. On 5th March 2002 Mr Max Mosley, the president of FIA, and Mr Bernard Ecclestone, the chief executive of FOM (which is ultimately owned by his family interests), made public statements to the effect that Phoenix was not entitled to participate in F1 2002 either in its own right or in right of the entry submitted by PGP on 13th November 2001. Since then the Malaysian, Brazilian, San Marino, Spanish and Austrian Grand Prixes have taken place without an entrant from Phoenix. Phoenix contends that FIA and FOM have without lawful justification impeded the attempts of Phoenix to compete. FIA and FOM contend that Phoenix has no right to do so. Phoenix also claims to be entitled to certain benefits under Concorde by virtue of PGP's participation in F1 2001 and the sale by the liquidator of PGP to Phoenix of the property to which the order of the Tribunal de Commerce applied.

7. On 4th April 2002 Phoenix commenced these proceedings against FIA, FOM and FOA. It seeks injunctions, both mandatory and prohibitive, designed to enable it to compete in the remaining 12 Grand Prix. It also claims benefits payable in accordance with Schedule 10 to Concorde by reference to PGP's participation in F1 2001. It applied for interim injunctions in relation to its alleged right to compete. FIA and FOM deny that Phoenix is entitled to any relief, whether interim or final. In addition they rely on an arbitration clause contained in clause 17.3 of Concorde and seek a stay of the proceedings pursuant to s.9 Arbitration Act 1996. Phoenix claims that s.9 is inapplicable but contends that, if it does apply, the interim relief sought should be granted under s.44 Arbitration Act 1996.

8. Thus the issues for my determination are:
   a) whether Phoenix has made out a case for interim injunctive relief;
   b) whether the proceedings should be stayed pursuant to s.9 Arbitration Act 1996; and if so
   c) whether such interim injunctive relief should be granted in any event pursuant to s.44 Arbitration Act 1996.

   At the outset it is essential to consider in some detail the relevant provisions of Concorde, the Sporting Code and the Regulations.

**Concorde, the Sporting Code and the Regulations**

9. As I have already recorded the parties to Concorde are FIA, FOM and the 12 Signatory Teams specified in Schedule 1. FIA is described as an association constituted in conformity with French law and enjoying consultative status at the Council of Europe and the United Nations. Its constitution is contained in certain statutes which, save for one provision, were not in evidence. The recitals to Concorde record the status of FIA as the sole international governing body for motor sport and the owner and organiser of F1.

10. By clause 1 the other parties acknowledged the rights of FIA and by clause 4 granted such further rights as FIA needed in order to stage F1 and enable the commercial exploitation of FIA's rights therein. By clause 4.1(d)(vii) the right to obtain sponsorship and advertising in respect of a particular team's participation was reserved to that team.

11. Recital C recorded that FIA had entered into an agreement with FOM in respect of the commercial exploitation of F1. By clause 3 FOM agreed to pay to competitors the benefits for which Schedule 10 provides. It is not entirely clear if the benefits are payable to a competitor who is not a Signatory Team, but that is not a point which I have to decide. The terms of Schedule 10 are confidential. For present purposes it is sufficient to record that a prescribed and substantial amount, some of which is directly related to the commercial exploitation of F1, is shared out in the payment of benefits to each Signatory Team therein defined. The amount of benefit is based in part on the place that that Signatory Team achieved in F1 for the previous year and in part on the number of cars and events in which it has competed in the current year. But if a Signatory Team fails to participate in an event then it ceases to be entitled to such payment and becomes liable instead to pay to the promotors of that event a sum calculated in accordance with Schedule 9. Schedule 10 para 6 recognises that the benefits for which that schedule provides are assignable by a competitor if certain conditions as set out therein are satisfied, one of which contemplates that the transferee would have been a competitor in relation to the chassis or name transferred.

12. Clause 5 contains a number of mutual undertakings. FIA undertakes to organise F1 for the years covered by Concorde. It acknowledges that Signatory Teams have a right to participate subject to fulfilling certain criteria. One of those criteria requires that team to have participated in each event in the previous year unless prevented by force majeure.

13. Clause 6 constitutes a body called the F1 Commission comprising some 25 members. The F1 Commission has a Permanent Bureau responsible for dealing with matters which are so urgent that they cannot await a meeting of the F1 Commission.

14. Clause 8 makes provision for technical regulations to be called Stable Regulations. In addition clause 8.11 contains an express acceptance by the parties of the FIA Regulations which may only be altered by unanimous agreement and with effect from 1st January in any year.

15. Clause 10 deals with entries. By clause 10.1 only a constructor may enter a car, unless clause 10.4 applies. A constructor is defined in Schedule 3 as a person, whether or not incorporated, "who owns the intellectual property rights to the rolling chassis it currently races..". Entries must be lodged with FIA by means of individual entry forms in the form set out in the Annex to the Regulations in force for the time being and containing an undertaking to be bound by and respect all the terms of Concorde. Once the entry has been accepted by FIA the constructor becomes a competitor within the definition of that term contained in clause 2.1. Clause 10.3 provides for payments by a competitor who fails to participate in an event "unless FI Commission decide to cancel the requirement" to make such payment. By clause 10.5 each competitor is required to pay to FIA a fee for a superlicence for each car to cover the management fees of FIA. Clause 10.6 imposes a limit on the number of cars which may participate; priority is to be given to those who have participated in earlier years.

16. Clause 11 provides for the calendar of events. There are to be 17 events in each year. Clause 12 provides for passes to be issued to each competitor free of charge entitling the holder to gain access to those parts of the circuit not open to the public.

17. Clause 14 headed Constructors, so far as material, provides, *"If any one of the Signatory Teams shall cease to be a constructor within the meaning of Schedule 3 hereto and/or to participate in the FIA FI Championship ("Cessation") its rights and obligations hereunder....shall immediately terminate. For the avoidance of doubt if a Signatory Team fails to participate in an Event, without prejudice to any other provision of this Agreement, its rights and obligations hereunder shall continue unless such failure to participate was due to the insolvency of the Signatory Team or as a result of the withdrawal of the Signatory Team from the remaining Events of the relevant FIA F1 Championship. Notwithstanding that the provisions of this Clause 14 shall be without prejudice to any of the accrued rights of the parties to this Agreement prior to or as a result of such Cessation, any privileges enjoyed by the Signatory Teams prior to the Cessation which are based on historic performance shall permanently cease immediately on such Cessation."*

18. Clause 16 contains a confidentiality clause. Clause 17.1 provides that Concorde is governed by English law. Clause 17.2 is a severability clause. Clause 17.3, so far as material, provides *"All disputes arising in connection with this present Agreement (other than a dispute falling within the provisions for the settlement of disputes in the Sporting Code) shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce in force at the date hereof by one or more arbitrators appointed in accordance with the said Rules. It is agreed that if such arbitrator(s) shall consider that his (their) award may depend upon a decision to be given in accordance with the Sporting Code the making of such award shall be suspended until after the notification of such decision (which must be final and conclusive) to such arbitrator(s). An award of the arbitrator(s) shall not be inconsistent with such decision aforesaid."*

    In accordance with clause 17.4 any such arbitration should take place in Lausanne, Switzerland.

19. Clause 19 deals with the term, commencement and application of Concorde. Clause 19.4 enables the later adherence of constructors who apply for the purpose to FIA and if "FIA has confirmed its agreement to them becoming a party (such agreement not to be unreasonably withheld) and provided that they do so within 30 days of their entry to F1 being accepted".

20. Clause 21 is an entire agreement clause and clause 22 contains provisions for assignment by FOM of its rights to enable a public flotation of shares of a company called Formula One Holdings Ltd on an international stock exchange.

21. Schedule 8 contained the Regulations then in force. But they have been superseded by the Regulations promulgated by FIA on 30th October 2001 which came into force on 1st January 2002.

22. The Regulations, which are binding on Signatory Teams pursuant to recital D to Concorde, themselves provide that F1 is the property of FIA. All participants are thereby required to undertake to apply as well as observe the rules governing F1 and must hold super-licences which are issued to competitors amongst others (Regulations 3, 6 and 10). Regulation 10 provides that applications for super-licences are to be made to FIA through the applicant's national body. Such super-licences are checked at the first event of each year's championship (Regulation 68). Further provisions regarding super licences are contained in the Sporting Code paras 47 and 108 to 125. The principle is that an applicant who is qualified for a licence should be granted one and FIA is bound to give its reasons for any refusal. Para 159 contains provisions for suspension, seemingly of the driver not his licence, by the national body only and then only in the case of grave offences.

23. Regulations 11 to 17 deal with the numbers of events in the year. Regulation 21 provides that the constructor of a rolling chassis is the person who owns the intellectual property rights therein. Regulations 42 to 48 deal with competitor's entries. They are to be made on the form annexed to the Regulations and accompanied by the requisite fee. It is not necessary to be a party to Concorde, either original or by subsequent adherence, to apply to be a competitor. Applications from teams not already competing will only be considered if there is a place available (reg.42). Any would be entrant who did not score any points in the previous year's championship must provide information about his finance and ability to perform his obligations. A would be entrant who did not take part at all in the previous year is required by Regulation 45 to provide a deposit of US$48m.

24. Regulation 72 provides that no car may take part in an event unless it has been passed by the scrutineers. Such scrutiny takes place between 10am and 4pm three days before the race in the garage assigned to that team (reg.70).

25. The Sporting Code also contains provision (para 180) for appeals to the national body in the case of a dispute arising between its own licence-holders. An appeal therefrom lies to FIA under Article 22 of its own statutes in the case of a dispute of "a sporting nature". There are associated provisions for the publication of judgments (rule 191) which were amended as recorded in European Council Regulation (2001/C 169/03) so as not to preclude pursuit of a right of action before a court or tribunal. It is not suggested that the dispute in this case is of a sporting nature but some reliance was placed by Phoenix on the amended rule 191(b) in connection with the application to stay.

26. Other provisions of the Regulations and the Code as well as of the conditions to be observed by applicants for certain national licences were also referred to at the hearing. I will deal with them as and when necessary when recounting the events to which they may be relevant.

**The Facts**

27. As I have already mentioned PGP came 9th in the constructors prize in F1 2001. Consequently it was entitled to expect benefits under Schedule 10 of Concorde as well as preference for its entry for F1 in 2002 pursuant to Clause 10.6. An entry in the prescribed form was submitted by PGP to FIA, in accordance with FIA regulation 42 on 13th November 2001. It contained all the necessary particulars, including the number of its national competition licence, 1399, issued by the French national authority, FFSA. PGP confirmed that it was a constructor within the meaning of Schedule 3 to Concorde and undertook to participate in each and every event in F1 2002. The name of the chassis was given as PROST, but the make of engine, the sponsor and the names of the drivers were to be advised. The application concluded with an undertaking on the part of PGP to be bound by and to observe the provisions of the Sporting Code, Concorde, the Technical Regulations and the Regulations. The application form required any changes to be notified to FIA within 7 days of the change. The form was signed by John Walton on behalf of PGP.

28. Administrators were appointed to PGP by the Tribunal de Commerce de Versailles on 13th November 2001. There is no evidence before me as to the effect under French Law of such an appointment, nor does any party rely on it. On 3rd December 2001 the provisional list of entrants for F1 2002 was published by FIA. The application of PGP was accepted in the name TBA PROST TBA. The TBA prefix and suffix refer to the unidentified engine maker and sponsor. The list referred to the fact that the names of drivers were shown subject to the grant of a super-licence. The need for a super-licence before participation for a team, as a competitor, arises from the provisions of Regulation 10. Thus, subject to the fact that the list was provisional, on 3rd December 2001 PGP became a competitor in F1 2002 within the meaning of clause 2.1 of Concorde but would only be allowed to participate in an event if it held a super-licence.

29. At a very late stage of the hearing I admitted a witness statement of M.Alain Prost produced by FIA. It was produced, no doubt, for the purpose of refuting the criticisms of the statements of Mr Max Mosley, the President of FIA, made by counsel for Phoenix. M.Prost states that by the beginning of January 2002 he had failed to find an engine at an acceptable price, had not obtained a sponsor and was not optimistic that PGP could avoid formal insolvency. He recounts how at that time he had a telephone conversation with Mr Mosley and told him that due to insolvency he did not think the PGP would be able to compete in the Australian Grand Prix to be held in

Melbourne on 3rd March 2002. In this respect he confirmed a statement to the like effect made by Mr Mosley in paragraph 21(2) of his third witness statement.

30. On 28th January 2002 PGP went into compulsory liquidation. There is nothing in Concorde providing for any automatic termination of that agreement in the event of the insolvency of a competitor or Signatory Team, though insolvency is a necessary ingredient of a cessation under clause 14. Similarly there is no expert evidence of French law suggesting that the legal effect of such a process under French Law is necessarily to cause a termination of Concorde by, for example, causing the assets of PGP to be transferred to others. It is clear that the power to sell them was exercisable by the liquidator with the approval of the court. That is what happened on 28th February 2002 and the three experts in French Law all agree that such sale was effective to vest in the purchaser such interest as PGP had, and was entitled to transfer, in the assets purportedly sold. The events leading up to and including such sale are crucial to the resolution of the applications before me.

31. On 13th February 2002 FIA published the entry list for F1 2002 containing 12 teams and 24 cars. PGP was included in respect of entries 18 and 19, the names of the driver, engine maker and sponsor being recorded as "TBA".

32. On 16th February 2002, Mr Charles Nickerson, the chief executive of Phoenix, made an offer to the liquidator of PGP to buy certain assets of PGP for US$2.2m. The offer was conditional on FIA confirming that Phoenix would thereby become entitled to the benefit of PGP's rights under Concorde including the right to participate in F1 2002. The offer recorded that Mr Nickerson had made an arrangement with Mr Tom Walkinshaw for the latter's company, TWR Group, to supply the necessary engines and transmission components. The offer extended to the intellectual and other property rights to chassis AP 04 and chassis AP 05 and all PGP's rights under Concorde. On 18th February 2002 Mr Nickerson and Mr Mosley communicated by telephone and fax. By fax Mr Nickerson indicated to Mr Mosley that he had made an offer which the liquidator of PGP had accepted and asked for authority to change the name of the team from PROST to D.A.R.T. Formula 1. In the course of the telephone conversation Mr Mosley was, according to Mr Nickerson, generally supportive of what Phoenix hoped to achieve. By his faxed reply Mr Nickerson acknowledged that the name he proposed should omit the words "Formula One" because of the prior rights of Mr Ecclestone of FOM. Instead he suggested that the team might be called "D.A.R.T Grand Prix Team". There was further correspondence between them on 19th February. Mr Mosley pointed out that the change of name could not proceed until Phoenix was in possession of "the team" and would involve the agreement of the Formula One Commission. He thought the process might not be completed before the Australian Grand Prix. Mr Nickerson replied to the effect that he could not say when he would be in possession of the team and asked what the position would be if the change of name was not accomplished before the Australian Grand Prix.

33. On 18th February 2002 the liquidator wrote to FIA seeking confirmation that PGP's rights to compete were transferable with or without a change of name. He also asked for other information to ascertain how long PGP's registration of F1 2002 remained valid, details of the official calendar for 2002 and the amount of the fine for non-participation payable to the promotors in accordance with Schedule 9 to Concorde. The liquidator received an answer from M de Coninck, the Secretary General of FIA, on 19th February 2002. He confirmed that the right to participate might be transferred with a change of name and supplied the other details sought. M. de Coninck also pointed out that the sale of certain assets of PGP, to which he understood that the liquidator had agreed, would need the consent of the Formula 1 Commission.

34. Phoenix's offer made on 16th February 2002 was rejected by the Tribunal de Commerce de Versailles in a ruling made on 19th February 2002. On 20th February, the liquidator wrote again to M de Coninck asking whether PGP's right to participate in F1 2002 could be exercised by a transferee without the benefit of the transfer of a chassis. He also asked for a valuation of the participation rights. M. de Coninck replied to the effect that it appeared that a transfer of the benefits might be possible if the name of the chassis, but not the chassis itself, was transferred. He indicated that he could not give a value of the participation rights as that was a commercial matter. In conclusion he asked to be informed of the negotiations for the takeover of PGP's assets in view of the imminence of the Australian Grand Prix on 3rd March.

35. There was a further exchange between the liquidator and M. de Coninck on 21st February. The liquidator sought confirmation that PGP's rights would be safeguarded beyond 2nd March notwithstanding the winding-up of PGP. M de Coninck pointed out that this was a matter of English law on which FIA could not comment. On 26th February there was a telephone conversation between the liquidator and Mr de Coninck regarding the designation of drivers and other matters. On 27th February M. de Coninck replied. He again pointed out that FIA could not provide an official interpretation of Concorde. He told the liquidator that there had been only one arbitration under clause 17.3 in 21 years and expressed the view that if PGP did not participate in the Australian Grand Prix but a new owner of that team claimed the benefits due to PGP he was likely to be opposed by FOM and be forced into an arbitration. He expressed the opinion that the arbitrators would conclude that PGP's non-participation in Australia was the result of insolvency so that the rights under Concorde would no longer exist.

36. In the course of the hearing considerable emphasis was placed by counsel for Phoenix on these exchanges between Mr Mosley and Mr Nickerson and between the liquidator and M de Coninck. The former and the failure of FIA to disclose much of the latter was relied on as showing that FIA was in breach of its duty of disclosure and that Mr Mosley's evidence is inconsistent with the contemporary correspondence. The latter was relied on as founding an estoppel by representation or convention precluding FIA from resiling from the views expressed from time to time by M.de Coninck. In my view these submissions are either irrelevant or wrong. They are irrelevant in that no resolution of disputed issues of fact can be made on these applications. They are wrong in that the

representations of M.de Coninck were not made or passed on to Phoenix so that there could have been no reliance on them.

37. It will be recalled that by Regulation 70 initial scrutineering for the Australian Grand Prix had to take place between 10 am and 4 pm three days before the race in the garage assigned for each team. Thus, allowing for the time difference, scrutineering should have been completed by 6am French Time on 28th February 2002. No car was submitted by or on behalf of PGP. Instead two nose cones were submitted for scrutiny on 2nd March, having been shipped from France following the order of the Tribunal de Commerce on 28th February 2002. Such scrutiny did not take place in any garage assigned to PGP, because none had been assigned, and no car from Team TBA PROST TBA appeared on the list of entrants published on 26th February or participated in the race. On 13th March 2002 Phoenix wrote to FIA seeking a waiver of the fine arising from the failure of PGP to participate in the Australian Grand Prix which they considered was payable pursuant to Concorde Schedule 9.

38. At the sitting of the Tribunal de Commerce on 28th February for the hearing of the appeal of Phoenix from the ruling made on 19th February Mr Nickerson submitted, as part of his submissions in support of the appeal, a revised offer. It was unconditional. The offer was of 2.586m. Euros. The offer was for both tangible and intangible elements of both Prost AP 05 Chassis project and Prost AP 04 single seaters. It was also for the rights deriving from Concorde "including the entry form" for F1 2002 sent by PGP to FIA as well as the benefits due to PGP under Concorde. The assets were described as "isolated" and not constituting an economic group. Mr Nickerson for himself and Phoenix undertook not to pursue the activity of PGP and acknowledged that the names "Prost" or "Alain Prost" did not come within the scope of the offer. The offer stated that *"the chassis are...nothing without the assembly of the other elements constituting the vehicle, and first and foremost the engines and transmission gear and electronic media".*

    It also recorded an acknowledgement by Mr Nickerson that he would be responsible for the assembly of engines and transmission parts on the chassis he recovered.

39. The record of the proceedings of the Tribunal de Commerce records the submissions of Mr Nickerson and of the liquidator. The latter pointed out that the earlier ruling had been made because the judge thought that the assets subject to the original offer constituted the business of PGP. He submitted that that was not the case with the revised offer. Mr Nickerson acknowledged that he was fully aware that neither AP 04 nor AP 05 was in running order and that it was his responsibility to assemble the missing elements to bring the car into compliance with 2002 standards. It appears that PGP was separately represented and that the court adjourned to enable all parties to consider what had been said. When the court reconvened there was further discussion of the merits of the appeal and of the revised offer. The outcome was that the Tribunal de Commerce allowed the appeal, ordered the transfer of ownership of the assets the subject of the offer as of 1510 hours that day and directed that the deeds to be drawn up be simple reiterations of the transfer ordered that day. It is not disputed that the process I have described was legally effective to transfer to Phoenix such of the assets as PGP had and was entitled to sell. Later the same day Mr Nickerson and the liquidator wrote to Mr Mosley confirming their desire that the benefits to which PGP was entitled under Schedule 10 to Concorde should be vested in Phoenix. They also confirmed the transfer from PGP to Phoenix of all rights enjoyed by PGP in its entry in 2002 F1.

40. The deed of reiteration was drawn up on 2nd March 2002. The Australian Grand Prix duly took place on Sunday 3rd March 2002. On 4th or 5th March 2002 Mr Walkinshaw received the two rolling chassis bought from PGP, AP 04 and AP 05, at his works in Oxfordshire. He proceeded to fit them with engines, gear boxes and other necessary components and, on 12th March 2002, despatched two complete racing cars to Malaysia for participation in the Grand Prix due to take place on Sunday 17th March.

41. In the meantime newspaper articles started to appear quoting Mr Mosley and Mr Ecclestone as casting serious doubts on the entitlement of Phoenix to compete in F1 2002 by virtue of its acquisitions from PGP. On 6th March 2002 Mr Nickerson wrote to FIA notifying certain changes to the PGP entry of 13th November 2001. On 7th March he wrote to FOM asking for passes for the Prost Team for the Malaysian Grand Prix. On 8th March 2002 Mr Nickerson and the liquidator of PGP formally confirmed to FIA the transfer to Phoenix of the entry of PGP for F1 2002. On 11th March 2002 M de Coninck wrote to Mr Nickerson to the effect that the changes to the PGP entry were accepted on a provisional basis "pending clarification of the legal position regarding the relevant French court". On 12th March 2002 Phoenix personnel, including drivers and mechanics, and two racing cars left England and arrived in Malaya on 13th March.

42. On 12th March 2002 FIA released a press statement in Geneva stating

    *"Phoenix Finance Ltd and Mr Charles Nickerson have informed the FIA that they have purchased certain assets from the judicial liquidator of Prost Grand Prix and have indicated that they intend to present two cars for scrutineering at the Malaysian Grand Prix.*

    *Having examined the judgment of the Tribunal de Commerce de Versailles (the court overseeing the liquidation of Prost Grand Prix), the FIA's advisers have noted that the court has not transferred Prost Grand Prix itself nor made any attempt to transfer the Prost Grand Prix entry in the 2002 Formula One World Championship, either to Phoenix Finance Ltd or to Mr Nickerson.*

    *The FIA has therefore informed Phoenix and Mr Nickerson that they are not entered in the 2002 FIA Formula One World Championship and that it cannot allow them to participate in Malaysia even on a provisional basis."*

    M de Coninck wrote to Mr Nickerson in the same terms.

43. On the same day lawyers for Phoenix protested to FIA asserting that the Press Release was inaccurate. On the second day of the hearing before me, but not earlier, counsel for FIA admitted that the Press Release was wrong to the extent that it stated that the French Court had not "made any attempt to transfer the Prost Grand Prix entry in the 2002 Formula One World Championship, either to Phoenix Finance Ltd or to Mr Nickerson". Counsel for Phoenix protested that no explanation had been given why the Press Release was issued, who decided to do so and on what it was based. None was forthcoming later either.

44. On 13th March 2002 Mr Nickerson sent to FIA in Geneva the documents he considered would be required to entitle PGP cars to participate in a Grand Prix. They included the International Entrant's licence no: 1399 issued by FFSA, the French National authority, to PGP for the 2001 season and referred to in PGP's original entry. They did not include any super-licence issued to PGP or Phoenix or an international entrant's licence granted by any national authority to Phoenix.

45. The Malaysian Grand Prix duly took place on Sunday 17th March. But the Phoenix cars did not participate. No garage space had been assigned to them and when the Press Release was shown to the FOM representative he stopped trying to find any. The cars did not go through the full scrutineering process required to be completed by 4pm on 14th March 2002 or at all. The Phoenix personnel together with the racing cars left for the United Kingdom on Monday 18th March.

46. On 21st March 2002 solicitors for Phoenix wrote to FIA. After setting out their client's version of events they stated that Phoenix was ready, willing and able to participate in the remainder of F1 2002 and asked for confirmation by return that it might do so. They indicated that if no such confirmation was forthcoming then Phoenix would have no alternative but to seek the assistance of the Court. On the same day Mr Nickerson wrote to FIA contending that Phoenix was a constructor within Schedule 3 of Concorde and seeking to become a party to Concorde pursuant to clause 19.4. Also on 21st March 2002 FFSA notified Phoenix's agent M.Vilmorin that it was suspending the international entrant's licence it had issued to PGP.

47. Following a letter before action written by the solicitors for Phoenix to FIA on 25th March 2002 these proceedings were issued on 4th April 2002 and the application of Phoenix for interim relief was launched. There was no letter before action, or other warning, sent by Phoenix or its solicitors to FOM or FOA.

48. Before turning to the nature of the proceedings issued on 4th April it is convenient to record certain later events. On 13th May FFSA confirmed to FIA that it had not issued any competitor's licence to PGP before 12th March 2002 and asked for its suspension to be given international effect. Such effect was given by FIA the same day.

49. The Brazilian, San Marino, Spanish and Austrian Grand Prix took place on Sunday 31st March, 14th April, 28th April and 12th May respectively. No person or car from Phoenix attended. There now remain only 11 Grand Prix in F1 2002. They take place on alternate Sundays from 26th May to 13th October.

**The Proceedings**

50. The Particulars of Claim attached to the Claim Form explain the interest of the various parties, the relevant provisions of Concorde and the background facts. In paragraph 25 it is asserted that by reason of the judgment of the Tribunal de Commerce and the deed of reiteration Phoenix acquired and is entitled to all PGP's rights under Concorde including PGP's rights to be paid the benefits (as defined) and its rights in the entry to F1 2002. In paragraph 26 Phoenix claims by virtue of its acquisition of the intellectual property rights on 28th February 2002 to have become a constructor for the purposes of Schedule 3 to Concorde and so to be eligible to be admitted to Concorde as a Signatory Team. In paragraphs 27 to 36 Phoenix sets out the course of events following 28th February 2002 much as I have described them. In paragraph 37 Phoenix contends that *"By reason of the acquisition of PGP's rights under Concorde and specifically the Prost Team's entry for the 2002 Championship, and by reason of its qualifying status as a constructor .... [Phoenix] has since 28th February been entitled to participate in the 2002 Championship and FIA...has had no basis on which to decide otherwise."*

Paragraph 38 asserts that *"In breach of the Defendants obligations under Concorde as a result of the pronouncements and/or decisions made by the Defendants or each of them [Phoenix] has not been permitted to participate in the 2002 Championship."*

The facts relied on are the alleged exclusion of Phoenix and its personnel and racing cars from the Malaysian Grand Prix circuit thereby preventing it from submitting its cars to scrutineering and depriving it of the opportunity to compete. Paragraphs 39 and 40 assert both consequential loss and the need for both interim and final injunctions.

51. In paragraphs 41 to 51 Phoenix sets out its claim to benefits pursuant to Concorde "and other sums...which would have been due to PGP during" F1 2002. It claims those sums with interest.

52. On 10th and 11th April FIA, FOA and FOM applied to the court for a stay of the proceedings under s.9 Arbitration Act 1996. On 8th May Phoenix issued an application for the grant of interim relief pursuant to s.44 Arbitration Act 1996. On 9th May FIA issued a further application for a stay of the proceedings under the inherent jurisdiction of the Court. The hearing commenced on Monday 13th May and lasted for three and a half days. At its commencement there were 14 witness statements. Seven more were produced in the course of the hearing. The issues shifted from time to time during the argument. In particular, the extensive evidence from the three expert witnesses on French law proved to be largely irrelevant. Neither party adduced any evidence from PGP until FIA tendered the witness statement from M Alain Prost at 2pm on the third day of the hearing. Phoenix having specifically disclaimed, in Mr Nickerson's second witness statement, reliance on any national competitor's

licence issued to Phoenix then sought to do so during counsel's reply on the first issue. At the commencement of the hearing counsel for Phoenix accepted that his client had no claim against FOA. I dismissed the application against FOA with costs. I did not at that stage dismiss the action against FOA in the belief, as I was told, that it would be immediately discontinued. I was concerned to be told at the conclusion of the hearing that discontinuance had not yet been effected.

**Has Phoenix made out a case for interim injunctive relief?**

53. Phoenix contends that its claim to be entitled to participate in F1 2002 raises a serious question to be tried, that damages could not be an adequate remedy for Phoenix if at the trial it is found to have the entitlement it claims and that, more generally, the balance of convenience favours the grant of an injunction rather than the converse. FIA disputes the first and third of these contentions. It submits that the remedy under the cross-undertaking in damages could not compensate FIA for the consequences of the grant of interim relief which turns out at trial to have been unjustified. FOM contends that even if a case for relief is made out against FIA there was and is no justification for joining or seeking relief against FOM as well.

54. Thus the first consideration must be whether Phoenix's claim does raise a serious question to be tried. It is based on the entry made by PGP in November 2001 and accepted by FIA in December 2001 and February 2002. There is no doubt that on, say 1st January 2002, PGP was a Signatory Team, and therefore a party to Concorde, a constructor, within the definition of Schedule 3 to Concorde and a competitor in F1 2002 within clause 2.1 of Concorde. As such PGP was entitled to all the rights and subject to all the liabilities conferred and imposed by Concorde.

55. It is not disputed that those rights and liabilities are governed by English law. Similarly it is not disputed that the order of the Tribunal de Commerce was effective to transfer to and vest in Phoenix such of those rights as were then subsisting and capable of being transferred. Accordingly the first question is whether at 1510 on Thursday 28th February 2002 PGP had any subsisting entitlement to compete. FIA contends that the answer is in the negative. It relies on the provisions of Clause 14 of Concorde in two separate respects. It contends that (a) by or at that time PGP ceased to be a constructor, and (b) by that time PGP had failed to participate in the Australian Grand Prix due to its insolvency. In either event the rights of PGP under Concorde immediately terminated.

56. A person may only be a constructor if (a) he owns the intellectual property rights in a rolling chassis, and (b) he "currently races" that chassis. In my view it is quite clear that PGP had ceased to be a constructor by 1510 European time on 28th February 2002. First, by the very act of transfer it ceased to be the owner of the intellectual property rights. Second, it could not be said at that time that PGP "currently race[d]" either AP 04 or AP 05. I am not, of course, referring to the fact that F1 2002 had not commenced but to the fact that PGP's activities had obviously ceased. It is unnecessary to reach any final view as to whether the conversation between M Prost and Mr Mosley to which I have referred in paragraph 29 above took place as alleged. But there is no dispute as to what took place before the Tribunal de Commerce, namely the disposition of PGP's assets by its liquidator. Phoenix contends that the fact that PGP had been put into compulsory liquidation on 28th January 2002 is not inconsistent with continuing its racing activity. There is no expert evidence of the French law of insolvency to support that submission. Assuming French law to be the same as English law it would be possible for the liquidator to continue a business, but it is clear beyond any doubt that this liquidator was not trying to do so. To the contrary, he was selling off the assets on a piecemeal basis thereby preventing any possibility of continuing its racing activities.

57. Similarly by 1510 on Thursday 28th February 2002 PGP had failed to participate in the Australian Grand Prix. AP 04 and AP 05 were not in Australia, were not in any condition to participate in any race anywhere and had not been submitted to the scrutineers in time. Clause 2.2 of Concorde defines an event as commencing at the scheduled time for scrutineering. By 1510 on 28th February 2002 such time had expired. It was certain that PGP could not take part in the Grand Prix even if the time for scrutineering had been extended by the stewards as permitted by Regulation 71 of FIA Sporting Regulations. These considerations confirm that PGP did not currently race either chassis at the time the intellectual property rights in them were transferred to Phoenix as well as support FIA's second point on Clause 14.

58. Given that Phoenix did not participate in the Australian Grand Prix clause 14 does not operate to terminate PGP's rights "unless such failure to participate was due to the insolvency of" PGP. Counsel for Phoenix contends that this is not an issue I should determine on this application; in particular he submits that I should not give any credence to the evidence of Mr Mosley. He relies on the provisions of clause 10.3 of Concorde, the fact that the list of entrants published by FIA on 13th February 2002 still contained team "TBA PROST TBA", and the nature of the questions asked by the liquidator of FIA in the letter of 18th February 2002 to which I have referred in paragraph 33 above.

59. The problem with this submission is that Phoenix has been unable to suggest any other reason why PGP failed to participate in the Australian Grand Prix. The uncontested facts of the compulsory winding up and the course of the proceedings before the Tribunal de Commerce concluding with the sale of the two chassis by the liquidator with the approval of that court show clearly that the failure of PGP to participate in the Australian Grand Prix was due to its insolvency. Clause 10.3 enables the promotors of a particular event to waive the payment required by Schedule 9 to be made by those who do not participate. It does not enable the promotors of that event or anyone else to waive the requirements or consequences of the breach of clause 14 or to attribute a failure to participate to some cause other than the real one.

60. Similarly the fact that on 13th February 2002 FIA continued to treat the entry of PGP as subsisting is irrelevant to the question of why PGP failed to participate in the Australian Grand Prix. The questions asked by the liquidator in his letter of 18th February 2002 may well indicate that he was exploring all possibilities of how best to realise PGP's interest in the accrued benefits arising under Concorde from its participation in F1 2001. They can have no bearing on the reason why PGP failed to participate in the Australian Grand Prix.

61. For all these reasons I conclude that there is no material issue of fact to preclude the conclusion for the purposes of these applications that the rights of PGP arising from its accepted entry to F1 2002 ceased before or in consequence of the transfer of those rights under the order of the Tribunal de Commerce made on 28th February 2002. Accordingly, in my judgment, there is no serious issue to be tried as to Phoenix's alleged entitlement to participate in F1 2002. Consequently it has failed to make out a case for the interim relief it seeks on that ground alone.

62. I should record that FIA also submitted that the rights claimed by Phoenix could not have been assigned by PGP even if they had not determined. FIA submitted that the rights could not be separated from the concomitant obligations and were in any event "personal" to PGP so as to be incapable of assignment. It was pointed out that Concorde was made by PGP and all the other Signatory teams as well as by FIA and FOM. Thus each team was interested in the proper performance of the obligations arising under Concorde of every other team and should not have foisted on them a team effectively chosen by only one of 14 parties to Concorde.

63. Counsel for Phoenix pointed out that there is nothing in Concorde to prevent the sale of the shares in a Signatory Team so as to cause a change in the identity of the personnel concerned. He contended that the "personal" element to be expected in a contract for participation in an activity such as Formula 1 racing arises not in the provisions of Concorde but in the regulatory schemes for licensing entrants, drivers and cars contained in the various Regulations and Codes which any competitor must observe. He submitted that just as a principal may not inhibit a commission agent's ability to earn his commission so there is an implied term in an agreement where the realisation of an assigned right depends on performance of the concomitant obligations that a party to it will not inhibit the performance of the obligations by an assignee of the benefit to enable its realisation.

64. I have serious reservations whether such an implication could be made. But the answer to the question is likely to depend on a close consideration of the facts, in particular evidence from others. Accordingly I would not at this stage reject these contentions of Phoenix as failing to raise a serious issue to be tried.

65. In case this matter goes further I should also indicate my conclusions regarding the balance of convenience on the assumption that I am wrong in my conclusion that Clause 14 of Concorde operated to terminate PGP's right to participate. In my view it is self-evident that damages would not be an adequate remedy for either Phoenix, FIA or FOM.

66. In the case of Phoenix sponsorship and its extent depends on achieving good enough results in the various Grand Prix of F1 2002. The realisation by Phoenix of the rights of PGP arising from the racing activities of the latter in F1 2001 depend on full participation in F1 2002. The accrual of benefits under Schedule 10 in F1 2003 and the preference for entries provided for in Clause 10.6 of Concorde also depend on participation in F1 2002. It is quite impossible to value the loss of those rights arising from the absence of interim injunctions if Phoenix succeeds at the trial.

67. In the case of FIA and, more particularly, the other parties to Concorde the effect and consequences of an unauthorised competitor are incapable of ascertainment. I do not doubt that points earned in a particular Grand Prix can be recalculated or reattributed if the cars entered by Phoenix wrongly compete. But the actual points earned are a small part of the problem. Who can tell what is the consequence of an unauthorised participation on grid placings, the course of a race or of a collision or accident. Whilst FIA is the owner and regulator of F1 FOM is the commercial exploiter. Just as the unknown consequences of an unauthorised participation in a race will affect the goodwill attached to F1 so they will have consequences for the exploitation of the associated commercial rights. Further I am not satisfied that Phoenix would be able to pay any sums found to be due on the cross-undertaking in damages. No accounts have been produced to indicate its financial position since the acquisitions from PGP. Its paid up capital was not sufficient to finance that acquisition. So, presumably, it is liable to creditors for the necessary loan. It has offered security in the sum of £250,000 but that seems to me to be inadequate in the circumstances of such an expensive activity as F1 racing.

68. The same considerations arise on a wider basis than the adequacy of a remedy in damages. The intended effect of the injunctions I am asked to make is to oblige FIA and FOM to permit Phoenix to compete in F1 2002 otherwise than by virtue of its own entry or in consequence of its adherence to Concorde under clause 19(4). In my view it would be wrong to do so, particularly in the absence of the other 11 parties to Concorde.

69. The fact is that Phoenix has not complied with the provisions for entrants provided for in Clause 10. Thus, it has not undertaken to be bound by and respect the terms of Concorde (cl.10.2), it has not undertaken to participate in each event (cl.10.3), it has not paid US$48m deposit to FIA (Regulation 45) or provided to FIA the other information thereby required.

70. Further, although on 21st March 2002 Phoenix applied to adhere to Concorde pursuant to Clause 19(4), the consent of FIA is required. FIA is not entitled unreasonably to withhold its consent to an application from a constructor. In the circumstances of this case there must be some doubt whether Phoenix is a constructor because although it now owns the intellectual property rights in AP 04 and AP 05 there is no evidence that it has ever

raced either of them. In any event I do not think that in the absence of the information and deposit to which I have referred a refusal by FIA to grant consent in the confused circumstances now prevailing could be regarded as unreasonable. By the same token it would be wrong to require the other parties to Concorde to regard Phoenix as an interim adherent.

71. Finally there is the all important consideration of the status quo. Phoenix has not hitherto competed in any F1 event. It would require a strong case on the merits to justify disturbing that position in anticipation of a trial.

72. Accordingly I conclude that Phoenix has not shown a serious issue to be tried entitling it to the final relief it seeks against any of the defendants. Even if it had the balance of convenience would dictate that the relief sought should be refused. In those circumstances it is unnecessary to consider all those other issues, such as whether and if so when Phoenix possessed the requisite national or super-licence either in its own name or in the name of PGP, which are relevant to the question whether if it had the right Phoenix would now be able to exercise it. For these reasons I dismiss Phoenix's application issued on 4th April 2002. It follows that the third issue to which I referred in paragraph 8 does not arise. Accordingly I dismiss the further application of Phoenix issued on 9th May 2002.

73. I should also deal briefly with the separate position of FOM. As I have already observed there was no communication between the solicitors for Phoenix and FOM before the proceedings were instituted. FOM is directly concerned in the claim of Phoenix to be entitled to the benefits earned in F1 2001 by PGP because, pursuant to Clause 3 and Schedule 10 of Concorde, it is for FOM to earn and pay them. But FOM was also made a defendant to the application for interim relief. In that connection it was the case for FOM from the outset that, as set out in paragraph 7(3) of the first witness statement of Ms Woodward Hill, *"...FIA alone determines and controls whether Phoenix (or any other entrant) can compete. FOM and FOA have nothing to do with deciding this: if FIA announces that an entry has been accepted and that a certain team can compete, that is the end of the matter as far as FOM and FOA are concerned. Unless and until it is informed otherwise by FIA, FOM and FOA will act on the basis of FIA's official entry list...There is no basis for a claim, let alone for any interim injunction against FOM and FOA in relation to eligibility to compete."*

74. Phoenix sought to avoid that conclusion by pointing to events, particularly the allocation of garages in Australia and garages and passes in Malaysia, in which, it asserted, FOM could be seen to be acting otherwise than in accordance with the directions of FIA. It was suggested that Mr Ecclestone and Mr Mosley effectively act in concert and without much regard to the wishes of the other 20 or so members of the F1 Commission. Phoenix claimed that their conduct was inconsistent with the undertakings given to the European Commission as recorded in a notice published on 13th June 2001 to the effect that the regulatory and commercial functions relating to F1 should be completely separate.

75. In the second witness statement of Ms Woodward Hill made on 22nd April 2002 after further statements of witnesses for Phoenix had been served she reiterated that *"If FIA allows Phoenix to compete, for example because it is ordered to do so, then neither FOM nor FOA can or will take any steps to prevent that participation and will abide by it. Again there is no need for any separate injunction against FOM or FOA."*

76. In my view the joinder of FOM to the first application for interim relief was unjustified. If the relief sought was granted against FIA then FOM would have no alternative but to observe it. As the provisions of Concorde, the Regulations and the Sporting Code make clear FIA regulates F1. FOM is concerned to exploit F1 commercially in accordance with the rights it enjoys conferred on it by FIA by the agreement referred to in Recital C to Concorde. I am unable to see how even if the conduct of FIA and FOM or of Mr Mosley and Mr Ecclestone was inconsistent with the undertakings given to the European Commission that would justify the joinder of FOM to this application. If the original joinder of FOM to the first application for interim relief was unjustified its further pursuit and the joinder of FOM to the second application, notwithstanding the witness statements of Ms Woodward Hill to which I have referred, is the more so. Even if I had concluded that Phoenix was entitled to interim relief against FIA I see no basis on which it would have been appropriate to grant such relief against FOM as well.

**Should the proceedings be stayed pursuant to s.9 Arbitration Act 1996?**

77. The arbitration clause is contained in Clause 17.3 of Concorde which I have set out in paragraph 18 above. FIA and FOM contend that the dispute as to PGP's entitlement to participate in F1 2002 or to the benefits for which Schedule 10 provides are both "disputes arising in connection with" Concorde. As such they contend that the provisions of clause 17.3 constitute an arbitration agreement within s. 6 Arbitration Act 1996, separable from the other provisions of Concorde as provided for by s.7, to which Phoenix, as the assignee of PGP, is a party in accordance with s.82(2). In those circumstances they rely on s.9(4) Arbitration Act 1996 which provides that *"On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed."*

78. Phoenix disputes this. It points out that both FIA and FOM specifically deny that Phoenix is entitled to succeed to the benefits of PGP under Concorde. It contends that they should not be permitted to contend for the purposes of resisting the claim for interim relief that Phoenix is not to be treated as a party to Concorde but for the purposes of obtaining a stay of the proceedings that it is. It is submitted that in those circumstances I should refuse a stay and give directions for the determination of the question whether or not there is an arbitration agreement binding on Phoenix. In that connection Phoenix relies on Merkin: Arbitration Law 1991-2002 para 6.14; ***Azov Shipping Co. v Baltic Shipping Co.*** [1999] 1 Ll.L.R. 68; ***Birse Construction Ltd v St David Ltd*** [2000] BLR 57 and ***Al-Naimi v Islamic Press Agency Inc.*** [2000] 1 Ll.L.R. 522.

79. Those cases would justify the contentions of Phoenix if there was a challenge to the validity of clause 17.3 of Concorde. But there is not. No one disputes the existence or validity of Concorde as a whole or of clause 17.3 in particular as between the original fourteen parties to it. The question is whether Phoenix is bound by it.

80. There is no dispute that the only rights of Phoenix which are relevant to this dispute are those of PGP under Concorde to which it claims the benefit under the sale by PGP as ordered by the Tribunal de Commerce. Even then the dispute is not as to the efficacy of the sale but as to whether and if so what rights PGP and its liquidator had and were entitled to sell. This too is a matter which arises directly from Concorde and its true construction and effect.

81. In ***Detlev Von Appen Gmbh v Wiener Allianz Versicherungs AG*** [1997] 2 Ll.R.279 the Court of Appeal considered whether the insurers for voyage charterers were entitled themselves to bring proceedings against time charterers notwithstanding an arbitration clause binding on its insured. The Court of Appeal answered that question in the negative. At pp. 285 and 286 Hobhouse LJ, with whom I agreed, pointed out that had the proceedings against the time charterer been taken by the voyage charterer they would have been a breach of the arbitration clause but that there was no contract between the insurer and the time charterer, the former being only the assignee of the voyage charterer. He referred to the provisions of s.136 Law of Property Act 1925 whereunder the assignee obtains the benefit of all remedies for enforcing the chose in action assigned to him but takes subject to equities, including in both cases the right and obligation to arbitrate. At p. 291 Sir Richard Scott V-C agreed. He pointed out that *"[the insurer] is bound by the arbitration agreement not because there is any privity of contract between [the insurers] and [the time charterers] but because [the voyage charterer's] contractual rights under the sub-charterparty to the benefit of which [the insurer] has become entitled by subrogation are, subject to the arbitration agreement which, too, is part of the sub-charterparty. [The insurer] cannot enforce those contractual rights without accepting the contractual burden, in the form of the arbitration agreement to which those rights are subject...."*

82. In my view that principle is directly applicable to this case. The rights, if any, of Phoenix are derived from those of PGP under Concorde and their sale by PGP and its liquidator to Phoenix. Phoenix is the assignee of PGP. It must take those rights subject to the obligation imposed by clause 17.3 to refer to arbitration any dispute in connection with their existence or extent.

83. The principle of ***Detlev Von Appen Gmbh v Wiener Allianz Versicherungs AG*** [1997] 2 Ll.R.279 also appears to me to be recognised by the provisions of Arbitration Act 1996 to which I have referred. Thus s.82(2) treats as a party to the arbitration agreement a person claiming under or through such a party. Accordingly were the roles to be reversed Phoenix, as a party to an arbitration agreement, would be entitled to apply for a stay of proceedings under s.9(1). S.9 does not stipulate that the proceedings to be stayed must be brought by another party to the arbitration agreement. But if such a requirement is to be implied s.82(2) provides that for the purposes of the Act Phoenix is a party.

84. In the light of this analysis it cannot be said that clause 17.3 is arguably either null and void, inoperative or incapable of being performed. Phoenix is as bound by its terms for the purposes of the Arbitration Act 1996 as is FIA or FOM. In those circumstances I am bound to make an order staying these proceedings and the alternative claim of FIA for a stay under the court's inherent jurisdiction does not arise.

**Conclusion**

85. For all these reasons

a) I dismiss the application of Phoenix issued on 4th April 2002 seeking interim relief;

b) I dismiss the application of Phoenix issued on 9th May 2002 seeking such interim relief under s.44 Arbitration Act 1996;

c) I grant the relief sought by the application issued by FIA on 10th April 2002 as amended;

d) I grant the relief sought by the application issued by FOM on 11th April 2002; and

e) I make no order on the application issued by FIA on 9th May 2002.

I have already dismissed the applications of Phoenix against FOA. If the action has not yet been discontinued against FOA I will dismiss it as well.

Mr. Andrew Hochhauser QC and Miss Monique Allan (instructed by Messrs Kingsford Stacey Blackwell) for the Claimant
Mr. Christopher Carr QC and Mr. Michael Sullivan (instructed by Messrs Herbert Smith) for the 1st Defendant
Mr. Thomas Beazley QC and Mr. Adam Lewis (instructed by Messrs McDermott Will and Emery for the 2nd and 3rd Defendants