JUDGEMENT : HIS HONOUR JUDGE COULSON QC : TCC. 28th January 2005.

[1] **INTRODUCTION**

1. By an Award arising out of an Arbitration between these parties and dated the 21st July 2004, the Arbitrator, Mr Peter Chapman, awarded the Defendants (who were the Claimants in the Arbitration and who I shall call "Nostell") £12,500 in respect of remedial works that they had carried out to the Stable Block at Nostell Priory in Yorkshire, and £191,164.65 in respect of remedial works to be carried out in the future at the Stable Block. The need for both sets of works was due to subsidence damage for which the Claimant (who was the Respondent in the Arbitration and who I shall call "the Authority") was liable in law.

2. By a Claim Form dated the 18th August 2004, the Authority seeks permission to appeal on nine questions of law said to arise out of the Award. Because the Claim Form was not in the correct N8 Form, the application for permission was not referred to me, or any other Judge of this Court, pursuant to CPR62PD to ascertain whether or not an oral hearing was required to supplement the written submissions made by the parties. The Part 8 Hearing on the 17th December 2004 was, to that extent, sought by the parties rather than the Court. In the circumstances, it was agreed with Counsel that they would make short oral submissions on the application for permission to appeal and I would then produce a written Judgment deciding that application.

[2] **BACKGROUND TO ARBITRATION**

3. The Stable Block at Nostell Priory was built in 1722 and, in 1760 and 1770, was extended and remodelled by Robert Adam. Principally as a result of this remodelling work, the Stable Block is a Grade I Listed Structure. In recent years, as the Arbitrator found in his Award, the Stable Block has not been the subject of a systematic maintenance system and, in consequence, is not in a particularly good condition. More recently still, it began to suffer from subsidence damage for which the Authority is responsible in law. The Arbitration was principally concerned with the proper scope of the appropriate remedial works to be carried out at the Stable Block arising out of that subsidence damage, with Nostell making a claim based on a much greater workscope than that contended for by the Authority.

[3] **THE COAL MINING SUBSIDENCE ACT 1991**

4. Under the Coal Mining Subsidence Act 1991 ("the Act"), on the occurrence of subsidence damage, the Authority's primary obligations arise under Sections 6, 7 and 8. Pursuant to Section 6, the Authority is obliged to serve on a party claiming subsidence damage ("the Claimant") a Schedule of the Remedial Work which the Authority considers would make good the subsidence damage to the reasonable satisfaction of the Claimant, together with an indication of the total cost which the Authority considers would be reasonable for the Claimant to incur in order to carry out that Remedial Work. If the Schedule is disputed within 28 days of receipt, the dispute is usually referred to the Lands Tribunal. If the Schedule is not disputed, the Authority then elects either to carry out the Remedial Work in the Schedule (Section 7 of the Act), or, pursuant to Section 8, to make a discretionary payment in respect of the cost of that Work.

5. The regime outlined above is subject to two principal exceptions, both of which are relevant to the Authority's application for permission to appeal in the present case.

6. The first exception concerns emergency remedial works. Emergency works can be carried out by the Claimant, who is then entitled to claim reimbursement from the Authority for the cost incurred without the need for a Section 6 schedule. Section 12 of the Act provides as follows:

   12 Payments in respect of emergency works

   (1) The payment required by Section 2 (4) above in respect of emergency works, that is to say, works urgently and reasonably required –

   (a) in order that the damaged property may continue to be used for the purposes for which it was used immediately before the damage became evident; or

   (b) in order to prevent the property being affected by further subsidence damage,

   is a payment equal to the cost reasonably incurred by any person other than [the Authority] in executing those works.

   (2) [The Authority] shall not be required to make any payment in respect of any emergency works executed by any other person in connection with any property -

   (a) unless that person –

(i) has given to [the Authority] as soon as was reasonably practicable in all the circumstances a notice containing adequate particulars of those works; and

(ii) has afforded [the Authority] reasonable facilities to inspect the property, so far as he was in a position to do so; or

(b) if the emergency works are executed after [the Authority] have elected under Section 10 above to make a depreciation payment in respect of the damaged property

(3) Any payment in respect of emergency works shall be made to the person or persons by whom the cost of executing the works in question is (or is to be) incurred; and if there are two or more such persons, the payment shall be apportioned between them -

(a) in such manner as may be determined by agreement; or

(b) in default of agreement, in shares corresponding to their respective shares in the cost

7. The second exception to the general regime outlined in paragraph 4 above concerns remedial work to ancient monuments or listed buildings. Section 19 of the Act provides as follows:

Ancient Monuments and Listed Buildings

(1) This section applies where any property which –

(a) is for the time being included in the Schedule of Monuments compiled and maintained under Section 1 of the Ancient Monuments and Archaeological Areas Act 1979;

(b) has been notified to [the Authority] by the Secretary of State as an Ancient Monument within the meaning of that Act for the time being under the care of the Secretary of State; or

(c) is a listed building within the meaning of Section 1 of the Planning (Listed Building Conservation Areas) Act 1990 … and is not of a description specified in an order made by the Secretary of State,

is affected by subsidence damage and the character of the property as one of historic, architectural, archaeological or other special interest is or may be affected by that damage.

(2) If and to the extent that it is reasonably practicable and in the public interest so to restore the property to its former condition as to maintain its character as one of special interest, this Part shall have affect in relation to the damages as if –

a) Section 6(2) (a) above defined "remedial works" as such works as are necessary for the purpose of so restoring the property; and

b) Section 10 above were omitted.

(3) Any question arising by virtue of Subsection (2) above as to whether or how far it is reasonably practicable or in the public interest to restore any property as mentioned in that subsection shall be determined by the Secretary of State.

(4) In this Section "former condition", in relation to any property, means a condition comparable to its condition immediately before the subsidence damage occurred.

[4] **THE AWARD**

8. As to Nostell's claims for the cost of remedial work to be carried out pursuant to Section 19 of the Act, it seems to me that the relevant parts of the Award are as follows:

Pages 15 – 16 : "Condition of the Buildings:

……One of the difficulties that faces me is the determination of the state of repair of the Stable Block before the mining subsidence – and hence the condition to which the building is to be returned to. From a practical perspective, it is not a simple task to repair building damage caused by mining subsidence (and to the quality envisaged by the Act) while stopping the repair so that the condition of the building is similar to that immediately before the subsidence occurred. Building repair methods are generally aimed at correcting the defect completely rather than carrying out a semi-repair … In my view, the condition of the property has to be taken as found and the only practical difference between a well-maintained building and one that is poorly maintained is the possibility that the repairs may need to achieve different end results. As alluded to above, difficulties arise in determining how to "half-repair" a building albeit to the quality as set out in the Act."

Pages 17-18 : "Interlocking:

The major, recurring issue that separates the parties is the extent of repair that is necessary to discharge the Respondent's liability. For example, there are several areas where the external walls are "bagging" – that is, the

external and internal skins are no longer interlocked and separated by a constant gap – the external skin having bulged outward creating an unequal cavity width. Mr Green for the Respondent argues that such situations require only wedging and re-pointing. Mr Wilshaw for the Claimants argues that the method of repair as suggested by Mr Green is merely cosmetic and would not fulfil the obligation imposed by the Act. I agree with Mr Wilshaw.

Section 19 of the Act applies to listed buildings and thus is applicable to the Stable Block at Nostell Priory. The remedial works for which the Respondent is responsible should be those works that, to the extent practicable, restore the building to its former condition and maintain its character as one of special interest (my emphasis). This to my mind is quite clear. The Act expressly requires the level of repair, in the case of a listed building, to be very thorough and in keeping with the historical importance of the building. Listed buildings, being part of the national heritage, are required to be maintained to high standards so that they continue to survive and endure for future generations. When such buildings are damaged by mining subsidence Parliament has expressly provided for this thoroughness of repair by the express words of the Act. The repairs suggested by Mr Green in connection with the bagging walls does not, to my mind, effect a repair to the damaged blockwork to the quality envisaged by the Act. I prefer Mr Wilshaw's suggested repairs or a rebuilding of the areas in question with ties incorporated between the skins."

Pages 19-20 : "Stonework:
"There are numerous cracks in ashlar stones on the external elevation. Mr Green suggests pointing these cracks with a putty lime mortar, pigmented to match the stones. Mr Wilshaw promotes the idea of replacement of the damaged stones with reclaimed ashlars. Mr Wilshaw rejects the visual and structural adequacy of a pointed repair. I agree with him. As with so many matters, neither repair (pointing with pigmented putty or replacement with a new or reclaimed block) will replicate the building's condition immediately before the subsidence occurred. However, bearing in mind the intent of Parliament as set out in Section 19 of the Act, I have no hesitation in deciding this matter in favour of the replacement block proposal. No matter how skilfully any pointing is done, I believe that putty lines over the surface of the damaged block will look visually intrusive – both immediately upon repair and subsequent to a number of years of weathering. I should just add that in giving consideration to these matters, I recognise, as Parliament did, that these buildings are to endure for many centuries to come. The repairs undertaken now need to stand the test of time."

On this part of Nostell's claim, the Arbitrator awarded them £191,164.65, against a total claim of about £500,000.

9. As to Nostell's claims for the cost of emergency work pursuant to Section 12 of the Act, I consider that the relevant parts of the Award are as follows:
Page 27 : "Roof Repairs
…..I also considered that the Respondent was sufficiently aware of what was happening at the Priory to satisfy the requirements of Section 12 (3) of the Act. Mr Darling's 'knockout point' is not taken on this occasion."

It should be noted that both parties are agreed that the reference to Section 12 (3) was a typographical error and the correct reference was to Section 12 (2).

Pages 28-29 : "Interior Repairs:
…I accept that these repairs were "emergency repairs" and thus payment is awarded in the sum of £12500 pursuant to Sections 2(4) and 12 of the Act."

[5] **THE RELEVANT QUESTIONS OF LAW/SECTION 19**

10. The Authority's complaints in respect of the Arbitrator's findings under Section 19 of the Act fall into two categories. Firstly, the Authority contends that the Arbitrator failed to make a finding under Section 19(1) of the Act "as to whether the character of the property as one of historic architectural, archaeological or other special interest was or may be affected by the subsidence damage". Secondly, the Authority contends that it was not open to the Arbitrator to find that Section 19(2) required that the level of repair of listed buildings was "very thorough and in keeping with the historical importance of the building" and/or that it required such buildings "to be maintained to high standards so that they continue to survive and endure for future generations." I deal with each of these points below, having first considered the necessary statutory test for permission to appeal under 69 of the Arbitration Act 1996.

[6] **SECTION 69 OF THE ARBITRATION ACT 1996**

11. In order for this Court to grant the Authority permission to appeal on these questions, it is necessary for the Authority to demonstrate that the requirements of Section 69 of the Arbitration Act 1996 have been met. Effectively, the Authority must show that:
    (a) the determination of the matters outlined in paragraph 10 above will substantially affect the rights of one or more of the parties (Section 69 (3) (a)) ;
    (b) these questions were matters which the Arbitrator was asked to determine (Section 69 (3) (b)) ;
    (c) the questions raised are **either** of general public importance and the Arbitrator's decision was open to serious doubt **or,** if the questions are not of general public importance, the Arbitrator was obviously wrong (Section 69 (3) (c)) ;
    (d) it is just and proper for the Court to determine the question (Section 69 (3) (d)).

12. As to the requirements at (a) and (b) above, the brief passages from the Award that I have set out at paragraph 8 above make plain beyond any doubt that the issue as to what remedial works were required under Section 19 of the Act lay at the heart of the Arbitration. Accordingly, applying the test set out by Lord Phillips MR in the **Northern Pioneer** [2003] Lloyd's Law Reports volume 1 page 212, to the effect that the issue on which permission to appeal is sought must have a substantial impact on the rights of the parties at issue in the arbitration, it is clear that the matters now raised under Section 19 by the Authority went to the essence of the rights alleged by both parties in the Arbitration. Furthermore, I also note that the matters in dispute under Section 19 may be worth in excess of £130,000. For those reasons, therefore, I consider that the Authority has made out the Section 69 criteria outlined in (a) and (b) above.

13. The next question which arises is whether the matters now raised under Section 19 are of general public importance; if they are, the Authority has to show that the Arbitrator's Award on Section 19 was open to serious doubt, whereas if they are not of general public importance, the Authority has to demonstrate that the Arbitrator was obviously wrong. I have reached the conclusion that the issues raised by the Authority under Section 19 of the Act, and outlined in paragraph 10 above, are matters of general public importance. Subsidence damage due to coal-mining affects about one thousand properties a year. In the past few years, there have been at least 36 claims for subsidence damage where the building affected is a listed building or an ancient monument. The evidence was that such claims arose with reasonable regularity. In those circumstances, it seems to me that the proper operation and application of Section 19 is a matter of general public importance. The question therefore becomes whether the Arbitrator's Award in respect of Section 19 of the Act is open to serious doubt. For the reasons set out in paragraphs 14-24 below, I have reached the firm conclusion that it is not open to serious doubt.

[7] **THE APPEAL UNDER SECTION 19 (1)**

14. It seems to me that there are three matters under Section 19 (1) which a Claimant (such as Nostell was in the Arbitration) must prove in order to rely on the regime in Section 19. First, the building in question has to be an ancient monument and/or a listed building, thus making it a building of historic, architectural, archaeological, or other special interest. Secondly, the building has to be affected by subsidence damage. Thirdly, it must be shown that the character of the building (as one of historical, archaeological, architectural or other special interest) is or may be affected by that subsidence damage. Success on each of these three points is therefore required in order to trigger a Section 19 Claim.

15. Mr Darling QC, who provided a written skeleton and clear oral submissions on behalf of the Authority, properly accepted that the first two ingredients were not disputed in the Arbitration. His complaint was that the Arbitrator did not make a finding that the character of the Stable Block was or may have been affected by the subsidence damage.

16. In my judgment, that is not a fair criticism of the Arbitrator. Although it is perfectly true that the Arbitrator seems at one point in his Award to jump straight to Section 19 (2) without making an express reference to the third ingredient of Section 19 (1), I think that it is clear, taking all of the extracts from the Award set out in paragraph 8 above into account, that the Arbitrator properly considered Section 19(1) and decided that the character of the Stable Block was affected by the subsidence damage. I refer in particular to the extract from pages 17-18 of the Award and the Arbitrator's reference to the need for the remedial works to maintain the character of the Stable Block "as one of special interest". That was a passage which the Arbitrator himself emphasised and underlined in his Award. It seems to me clear that that amounted to –

or at the very least incorporated- a finding that the character of the Stable Block was or may be affected by subsidence damage and that the remedial works were required to maintain the character of the building as one – in the words of the Act- of historical, architectural, archaeological, or other special interest.

17. I therefore reject the application for permission to appeal on the first two questions of law as formulated by the Authority, relating to Section 19 (1) of the Act. I consider that the Award made the necessary findings required under Section 19 (1).

[8] **THE APPEAL UNDER SECTION 19 (2)**

18. The first point to make about Sections 19 (2) and (3) of the Act is that any remedial works proposed by a Claimant (in this case Nostell) to restore the property to its former condition must be both reasonably practicable and in the public interest, and that, where either point may be in dispute, such dispute is to be decided by the Secretary of State. In this case, I am told that there was no relevant decision by the Secretary of State. It does not appear that there was or is any dispute between the parties as to the reasonable practicability of or the public interest inherent in the remedial works proposed by Nostell.

19. In those circumstances, under Section 19 (2), it seems to me that a Claimant such as Nostell must demonstrate that the proposed remedial works (for which they contend that the Authority must pay) will restore the property to its former condition so "as to maintain its character of special interest". I consider that, in the present case, the Arbitrator found that the remedial work proposed by Nostell did just that. In the passage on page 18 of his Award to which I have previously referred, the Arbitrator spells out the importance of ensuring that the remedial work which was carried out maintained the character of the Stable Block as one of special interest and he said that such works had to be "in keeping" with the historical importance of the building. When he then went on to address the specifics, in the two examples which I have cited relating to "Interlocking" and "Stonework", it is clear that the Arbitrator found in favour of Nostell on each point because he considered that it was only the works which they proposed which would maintain the character of the Stable Block as one of special interest. Accordingly, I do not consider that the Arbitrator's general approach under Section 19 (2) can be faulted.

20. Mr Darling QC's complaint is that, in the passage on page 18, the Arbitrator imported into his interpretation of the Act notions of "thoroughness" and "durability" which are not referred to in Section 19 (2). The mischief, he says, is that whilst the Act makes clear that remedial works must restore the building to its condition immediately before the subsidence damage occurred (Section 19(4)), the Arbitrator seems to be suggesting that the remedial works should somehow be of greater durability and quality than would otherwise be the case simply because the Stable Block was a listed building.

21. If the Arbitrator had been endeavouring to widen the test under Section 19 (2) in this way then I consider that such an approach would have been unwarranted. In any dispute under Section 19(2) the remedial works which are required are those necessary to restore the building in question to the condition that it was in prior to the subsidence damage, so as to ensure that, on completion of those works, the character of that building as one of special interest (whether architectural, archaeological or otherwise) had been maintained. It seems to me that this means that if, for instance, the building in question had a listed stone façade of special interest which cracked due to subsidence damage, then the repair or replacement of those parts of the façade which cracked must be such as to leave the building with a stone façade in the same general condition as it was before the cracking occurred, so as to maintain the special interest of that façade which had led to it being listed in the first place. It does not mean that, simply because the façade was listed, special stone of particular durability, and/or stone of considerably higher quality then the stone already in place and only available at huge expense, should be paid for by the Authority. Provided that the remedial works to be carried out restore the building to its former condition and, in so doing, maintain the character of the building as one of special interest, then I consider that separate questions as to the thoroughness or durability of the remedial workscope do not really arise; put another way, I believe that the thoroughness and durability of the remedial work carried out or paid for by the Authority under the Act may well be the same whether the building in question is a listed stately home (Section 19) or a terraced house (Section 6).

22. I am entirely satisfied that, notwithstanding the references to thoroughness and durability in the passage on page 18 of the Award, the Arbitrator did not apply the wrong test when considering the various

elements of the proposed remedial works which were in dispute. As previously noted, I have taken the "Interlocking" and the "Stonework" elements of the proposed remedial works by way of example. Each time, the Arbitrator had to choose between a repair scheme put forward by the Authority's expert which he regarded as cosmetic, and one which –in his view- sought to rectify in detail the problems which had occurred due to subsidence damage. Each time he found that it was the more detailed remedial works that were appropriate because those were the works which, in the words of Section 19 (2), maintained the character of the Stable Block as one of special interest. The Arbitrator therefore applied the right test under the Act.

23. For these reasons I have reached the firm conclusion that permission to appeal should not be granted in respect of the third question of law raised by the Authority under Section 19 (2) of the Act. The references to thoroughness and durability must be seen in context; they were simply the means by which the Arbitrator chose to explain that any remedial works carried out at the Stable Block must maintain its character as one of special interest. I do not consider that the Arbitrator was seeking to (or did) widen or extend the requirements of the Act; more significantly, I do not believe that, in relation to the individual elements of the remedial work in dispute, his Award did anything other than properly apply Section 19(2) of the Act to the particular elements of the dispute between the parties. Accordingly, I do not grant permission to appeal in respect of the Authority's application under Section 19 (2) of the Act.

[9] **CONCLUSION UNDER SECTION 19**

24. Accordingly, it will be seen that, although I have concluded that the three questions raised by the Authority under Section 19 of the Act are of general public importance, I reject the application for permission to appeal on those three questions because I do not consider that the Arbitrator's decision on these points was open to any serious doubt. The question at paragraph 11 d) above therefore does nor arise.

[10] **THE RELEVANT QUESTIONS OF LAW/SECTION 12**

25. The Authority's complaints in respect of the Arbitrator's findings under Section 12 of the Act fall into 3 categories. First, it is contended that the Arbitrator failed to make any finding as to whether Section 12 (1) (a) or 12 (1) (b) applied. Secondly, the Authority contends that the Arbitrator failed to make any finding that notice and inspection facilities had been given in respect of the emergency work under Section 12(2). Thirdly, the Authority contends that the Arbitrator failed to identify which of the three parties, to whom I have collectively referred as Nostell, actually incurred the expenditure under Section 12(3).

[11] **SECTION 69 OF THE ARBITRATION ACT 1996**

26. The requirements of Section 69 are summarised at paragraph 11 above. On the material before me, I conclude that the first two points outlined in paragraph 25 above were matters which the Arbitrator was asked to determine. It is unclear as to whether the third point was a matter that the Arbitrator was asked to determine. More fundamentally, I do not consider that the determination of any of these questions will substantially affect the rights and obligations of the parties. On any view, this claim is worth just £12,500. I do not therefore believe that the necessary requirement in Section 69 (3)(b) has been made out because I do not believe that a dispute in respect of £12,500 is, in all the circumstances, something which substantially affects the rights and obligations of these parties.

27. Further and in any event, I do not consider that these matters are of general public importance. Essentially, the complaints made under Section 12 of the Act are complaints about the findings of fact made by the Arbitrator which arose as a result of the particular events affecting the Stable Block. The factors which led me to conclude that the application in respect of Section 19 raised questions of general public importance (paragraph 13 above) seem to me to be wholly missing in respect of the application under Section 12. Therefore, in order for permission to appeal even to be considered by this Court, the Authority would have to demonstrate, in respect of each of these three areas of dispute that the Arbitrator was obviously wrong. I do not believe that the Authority can discharge such a burden.

28. For the reasons outlined in paragraphs 26 and 27 above, it seems to me that it would be wrong as a matter of principle to grant permission to appeal in respect of the remaining six questions arising under Section 12 of the Act. However, in the following paragraphs of this Judgment I have assumed, contrary to the views

expressed above, that it is appropriate for me to consider whether or not the Arbitrator's decisions in respect of Section 12 were, at the very least, open to serious doubt.

[12] **SECTION 12 (1)**

29. Pursuant to Section 12 (1) of the Act, emergency works are such works as are required in order to allow the damaged property to be used for the purposes for which it was being used immediately before the damage became evident or to prevent the property being affected by further subsidence damage. Although the Arbitrator did not specify precisely which category these works came into, it was clear that he considered that the works fulfilled one, if not both, of these requirements. He heard the evidence and he accepted expressly that the repairs were "emergency repairs" for the purposes of Section 12. It would be quite wrong for this Court to doubt, let alone interfere with, that finding. Therefore, I do not grant permission to appeal on questions 4 and 5 raised by the Authority.

[13] **SECTION 12 (2)**

30. The Authority's liability to pay for emergency works is only triggered if it can be shown that the Authority was given reasonable notice and afforded reasonable inspection facilities in respect of the proposed works. This was a matter expressly considered by the Arbitrator in respect of at least one element of the works, when he found at page 27 that the Authority was sufficiently aware of what was happening at the Stable Block to satisfy the requirements of Section 12 (2). Although that finding arose under "Roof Repairs", no reason has been advanced as to why that finding is not of general application. It seems to me that I could not interfere with or question the generality of that conclusion. In any event, it seems to me that the most that can be said by the Authority on this point is that the Arbitrator's way of dealing with these matters was too brusque; he rolled up a number of points together when making some of these findings. Whilst that may be a valid criticism of the Arbitrator's style, it does not justify granting permission to appeal on a point of this nature.

31. I should also add by way of completeness, that Mr.Darling Q.C. also complains that, even if I found that the point on page 27 of the Award was of general application, it would not be enough because 'sufficient awareness' on the part of the Authority was not the same as the requirement to give the Authority notice under Section 12 (2). Again, this is a very narrow ground of complaint which I consider to be a little removed from the realities of arbitration in the twenty-first century. In my judgment, the Arbitrator – albeit in a rather imprecise way – was making the simple point that notice had been given to the Authority and, as a result, they has acquired sufficient awareness of what was happening at the Stable Block to satisfy Section 12 (2).

32. For all these reasons, I do not grant permission to appeal on questions 6, 7 and 8 raised by the Authority.

[14] **SECTION 12 (3)**

33. I have already made the point that it is unclear to me whether or not this point was in issue in the Arbitration. If it was not, of course, the pre-condition under Section 69 (3)(b) has not been met in any event. But there is a further point which is fatal to any application for permission to appeal on the ninth and final question of law raised by the Authority. It seems to me that apportionment between the three parties (to whom I have referred generically as Nostell) is, ultimately, a matter for those three parties, and nobody else. I do not believe that it is a matter for the Authority and therefore I do not consider that it was a matter for the Arbitrator. The Arbitrator found that the £12,500 had been spent and he was therefore entitled to order the Authority to reimburse Nostell for that expenditure. The apportionment (if appropriate) of that money between the three parties making up Nostell was entirely a matter for them. Accordingly, I do not consider that this is a matter which could give rise to an appeal in any event.

[15] **CONCLUSION**

34. For all these reasons, I dismiss the Authority's application for permission to appeal.

Mr.Paul Darling Q.C. (instructed by DLA) for the Claimant
Mr.Philip Engelman (instructed by Ford & Warren) for the Defendants