

**JUDGMENT : HIS HONOUR JUDGE JOHN TOULMIN CMG QC TCC. 4<sup>th</sup> May 2000**

1. This action arises out of a fire which started at 6.00 am on 11th December 1995 and which within a short time destroyed Pride Valley's Factory at Seaham Grange in County Durham where the company makes speciality breads. The fire spread through the EPS insulating panels in the building with such force that it was too dangerous for the fire-fighters even to enter the building in order to try to put out the fire. The claim is that the fire was caused by the Defendants' negligence in failing to discharge their contractual duty of care as project managers of the project. There is a subsidiary issue as to whether Pride Valley contracted with Hall and Partners (a firm) or Hall and Partners (Contract Management) Limited, in relation to the first of the two stages of the project. I shall deal with this question after considering the main liability issue. Until then I shall refer to the Defendants as Halls.
2. In the course of the hearing I have received evidence from fire experts, Mr Calleja and Dr. Bland. I have been impressed by the extent to which they have been able to agree on important matters. This has meant that they needed to be called only to give brief oral evidence. I also heard expert evidence on project management from Mr Forbes Bramble for Pride Valley and Mr Warner from Halls. There is a serious issue and an important issue of law as to whether any, and if so how much, of their evidence is admissible. I shall return to this question later at paragraph 124 and following.
3. It is convenient to identify the key issues between the parties. They can be summarised as follows:
  - (a) What was the scope and extent of the services undertaken by Halls?
  - (b) Should Halls have given Pride Valley advice, particularly in relation to EPS panels and compartmentation which, if given, would have prevented or limited the spread of the fire?
  - (c) Did Halls give such advice?
  - (d) Were there any other steps which Halls should have taken which would have prevented or limited the spread of the fire?
4. There follow further questions raised by Halls:
  - (e) In the event of a finding that Halls failed to discharge its duty of care to give appropriate advice which would have prevented or limited the spread of fire, did Pride Valley suffer any loss as a result of this failure or would its Managing Director, Mr Rezaei, have disregarded such advice?
  - (f) Were the circumstances of the fire of December 1995 such as to break the chain of causation?
  - (g) If not, was there contributory negligence by Pride Valley, and if so, to what extent?
5. It is agreed that issues of quantum of damage will be left for a later hearing.

**THE FACTS**

6. Mr Rezaei came to England in 1978 when he was aged just over twenty. In 1981 he graduated from what was then Newcastle Polytechnic with a degree in electronic and electrical engineering. He continued to do research at Durham University in microwave communication. Halls have said that because he was sometimes called Dr. Rezaei, reflecting a qualification which he did not possess, I should regard his evidence as unreliable. I do not agree. Having heard his evidence on this subject I conclude that this issue does not help me one way or the other to evaluate the reliability of his evidence.
7. In 1990 Mr Rezaei realised that there was a large potential market in producing speciality breads such as nans and pitta breads. He designed and patented an automated baking process for such breads and started to market them under the name of Pride Valley Bakery. Production started in a small way from premises at Fairfield Industrial Park, Bell Quay, Gateshead.
8. The business was very successful. On the 1st August 1992 Pride Valley Foods Limited was incorporated with Mr Rezaei as Managing Director. The Chairman was Mr McKechnie, a prominent local businessman, who owned Derwent Valley Foods, a successful company in the food business.
9. Mr Rezaei decided that his business needed a purpose built factory. He approached three potential building contractors including Inline Construction NE Limited (Inline) He chose Inline.
10. Mr Rezaei intended to employ Inline as contractors to design and build the factory without any outside supervision but after discussing with Mr McKechnie how to proceed, he agreed to approach Mr Hall of Hall and Partners, a well known local firm of Chartered Quantity Surveyors and Estate Managers who had assisted Derwent Valley Foods as Project Managers when it had built its factory. Mr Hall was and is a Fellow of the Royal Institute of Chartered Surveyors and carries on a substantial practice in Newcastle.
11. Mr Rezaei said that he had little experience in construction and wanted to provide comfort for his financial backers. I accept this. I find also that Mr Rezaei was very much in control of the policy of his company and involved himself in day to day matters. He was dependent on his backers to provide the money for the building of the factory and had to take note of their opinions. Mr McKechnie took an active role as non-executive Chairman of the company.
12. Mr Hall met Mr Rezaei in early October 1992. There is a dispute as to whether or not Mr Thompson of Halls was at the meeting. Mr Rezaei said that the meeting lasted around one hour. Mr Hall told him that he had substantial experience in constructing large factories including food factories. Mr Hall told Mr Rezaei what services Halls could perform. Mr Rezaei told Mr Hall about the development of Pride Valley and how the construction of the factory represented a large step for the company. He said that it was important to keep costs as low as possible.

Mr Hall looked at the quotations and said that he had no problem with working with Inline but that Halls should be closely involved to safeguard Pride Valley's interests.

13. The letter from Halls dated 16th October 1992 reflected the discussions which Mr Rezaei described in his statement. Halls provided two options:  
Option 1 is described as a "Schedule of Project Design and Management Services" "Objective - to achieve through successful management from inception through design, construction, commissioning and hand-over a building which is delivered within agreed time, cost and quality parameters."  
Option 2 is described as a "Schedule of post bid submission Project Management Services." "Objective - to provide necessary service from tender stage only."
14. Mr Hall's recollection of this first meeting is broadly consistent with that of Mr Rezaei. Mr Hall said that he explained what services Halls could provide. Mr Hall placed greater emphasis than Mr Rezaei on the fact that Mr Rezaei's financial resources were very limited. Mr Hall said that Mr Rezaei insisted that he required the cheapest possible building that would meet current food and hygiene requirements. Mr Hall made a note at the meeting that Mr Rezaei wanted to keep the cost of the building down to £380,000. There is no note of any warning given to Mr Rezaei by Mr Hall about fire risks.
15. Mr Hall says that he had the initial impression that Mr Rezaei was reluctant to use "Halls" services but that after hearing the details of the services which Halls could provide, Mr Rezaei recognised the advantages of retaining their services. Mr Hall designated Mr Thompson to look after the day to day management of what subsequently became the contract between Pride Valley and Halls. Mr Thompson had started working for Halls in June 1992 and this was the first time that he had managed a project of this type. Before his first meeting with Mr Rezaei he had done some general reading and had found out about the specifications used in the building of the Derwent Valley factory.
16. Mr Rezaei, Mr Hall and Mr Thompson met on the 29th October 1992. Mr Thompson had prepared a feasibility estimate and outline specification which showed a total construction cost of £617,372 exclusive of VAT and fees.
17. The outline specification used 100 and 140 thick blockwood partitions for the internal walls and insulated doors to the Cold Store and Blast Freeze rooms and PVC hygienic wall lining to the preparation area.
18. Mr Hall said in his first statement dated 2nd July 1999 that they went through the specification in detail at the meeting. He said that Mr Rezaei referred to the EPS (expanded polystyrene) panels which were used in his existing factory as his preferred alternative. Mr Hall said that during the tour of Pride Valley's existing facility he, Mr Hall, referred specifically to the EPS panel system and its inherent combustibility factors and to the fact that insurance companies were increasingly insistent upon high levels of fire safety. Mr Hall said that Mr Rezaei was adamant that the budget had to be reduced to £400,000.
19. In his second statement dated 14th January 2000 Mr Hall said that at the meeting on the 29th October 1992 he asked Mr Rezaei if he realised that the panels were readily combustible. "I told him that polystyrene burns easily and can spread fire quickly."
20. Mr Hall said that Mr Rezaei told him that he had an excellent fire safety record. Mr Hall said in his statement that after they discussed locating heat producing plant and equipment near to this panelling system, "he responded by saying that the ovens would be located far enough from the walls to allow cleaning on all sides."
21. Mr Hall said that after the tour of the building he warned Mr Rezaei again against building the factory at the lowest possible cost. He said that Mr Rezaei replied that if Halls could not work to minimum standards he would find someone who could.
22. In oral evidence Mr Hall maintained that he advised Mr Rezaei that EPS panels could spread the fire rapidly and he advised Mr Rezaei against the use of the panels.
23. Mr Thompson's first account of the meeting is a little different from Mr Hall's first account. He said that Mr Hall advised Mr Rezaei that if he wished to use EPS panels he must understand that the material was combustible in the event of fire and could result in a rapid spread of fire at the premises. He went on: "He (Mr Hall) said that the use of such panels could accelerate the spread of fire. Ray Hall advised that the new facility and the quality of the building would be seriously compromised by his insistence on specification reductions."
24. Mr Rezaei agrees that he told Mr Hall that his budget estimate was too high. He says that he did not instruct Mr Hall to specify EPS panels and "I was certainly not advised by Ray Hall or anybody else at this meeting (or at any other time until after the fire) that EPS panels were highly combustible and their use could result in the rapid growth of fire."
25. On the 30th October 1992, Mr Hall wrote to Mr Rezaei to summarise Halls current position in relation to the project.  
*"Following the informative discussions with yourself which clarified a number of points both in relation to design and specification, we will now endeavour to evaluate the viability of the project at an overall contract sum of £450,000 (excluding land purchase, VAT and fees)."*  
*"Having said this, we do realise that your optimum figure would be in the region of £400,000 and so we will also investigate any possible options which may bring the total cost closer to this figure."*

26. There is no reference in this letter, directly or by implication, to the warnings which Halls say they gave at the meeting in relation to EPS panels. Nor did the letter suggest that the project could not be completed safely for such a low figure.
27. Halls then produced Feasibility Estimate No.2 and Outline Specification dated November 1992. The total construction costs had been reduced to £472,214 excluding VAT and fees. The wall and ceiling finishes now stipulated insulated PVC lining to food safe areas. The estimate excluded the cost of the ovens and the specialist equipment. It was, of course, understood that the factory was being built as a bakery making specialist breads and that these breads would be baked in ovens. The estimate made no reference to any reservations by Halls as to the use of EPS panels.
28. There was a further meeting between Mr Rezaei, Mr Thompson and Mr Hall to go through the revised feasibility estimate and outline specification. Mr Hall said that he recalled explaining to Mr Rezaei that Mr Rezaei was effectively rejecting Halls recommendation of masonry walls which would have formed an effective fire compartmentation. Mr Hall said that Mr Rezaei referred to his excellent safety record and said that EPS panels were standard throughout the food industry. Mr Hall says that he went on to recommend an M & E Consultant. He said that Mr Rezaei told him that he was capable of providing these consultancy services himself and did not need to employ an M & E Consultant.
29. In his witness statement, Mr Thompson said that they went through specification number 2 in detail, confirming the changes from specification number 1. *"Again we pointed out to Mr Rezaei the benefits of blockwork partitions against replacing the same with EPS panels."*
30. Mr Rezaei says in his statement that the meeting discussed the changes that had been made to achieve the reduction in price but he cannot remember any details.
31. It is not disputed that in early December 1992, approaches were made to contractors.
32. Halls, not surprisingly in view of the amount of work that they had done already, were anxious to finalise their fee arrangement. They wrote two letters to Mr Rezaei on 11th December 1992. The covering letter, written on Hall and Partners notepaper, enclosed a draft letter of appointment written on the notepaper of Hall and Partners Contracts Management Limited and a fee proposal.
33. The covering letter emphasised: *"I would reiterate my own preference in respect of the design of the project i.e. that it would be better for us to prepare the design and detailed specification in order to obtain the most competitive price in open tender from builders who would all be tendering on the same basis."*  
Mr Hall's preference was not accepted. Mr Rezaei went ahead with the cheaper design and build option.
34. The letter of appointment and the fee agreement dated 11th December 1992 were signed by Mr Hall, and by Mr Rezaei on 15 December 1992 and provided that in consideration for the services detailed in Appendix 1, Pride Valley would pay Halls a fixed fee of £20,000. It is accepted by Halls that in relation to this agreement ( and the later agreement ), Halls were under an obligation to exercise reasonable care and skill in relation to the duties which they agreed to undertake. It is also accepted that this included the giving of appropriate safety advice to Pride Valley.
35. Appendix 1 was headed "Schedule of Project Design and Management Services". Its stated objective was "to achieve through successful management from inception through design, construction, commissioning and hand-over, a building which is delivered within the agreed time, cost and quality parameters.
36. The schedule set out 23 items which included:
  - "1. Prepare and agree with the employer a schedule of requirements which the project is to meet and the specification appropriate for such requirements... .*
  - 3. Develop schedule of requirements into a design brief which incorporates and co-ordinates user needs and objectives.*
  - 4. Prepare outline sketch plan to include consideration of material selection having regard to suitability and longevity of life... .*
  - 9. Prepare appropriate Employers Requirements, specification and drawings including any necessary site investigations drawings from which the contractors will design the structure and submit competitive bids for the overall project in open tender... .*
  - 12. Confirm that all building regulation approvals and consents are obtained by the contractor, and check upon any further design work the Contractor considers necessary after the detailed design stage."*
37. I am satisfied that Appendix 1 sets out the responsibilities which Halls undertook in relation to phase 1 of the project. Of the two options, the agreement was closer to the original option 1 under which Halls undertook successful management from inception through design, construction and commissioning and hand-over of the building in that it required Halls to undertake some responsibilities for outline design and materials. The alternative option 2 proposal had required project management in the sense of co-ordination after the tender stage i.e. without any responsibility for outline design and materials.
38. Halls produced Feasibility Estimate No.3 with a cost of £517,523. The outline specification continued to specify insulated PVC linings for wall and ceiling finishes without any qualification by Halls, although Mr Hall says that he had advised Mr Rezaei that these finishes were unsuitable.

39. On 30th December 1992 Mr Thompson of Halls wrote to Mr Rezaei about the mechanical and electrical installations and suggested to him that he might wish to appoint a consultant engineer to vet all the existing proposals, "Failing this we will of course ensure that contractually the contractor bears full design responsibility for all the mechanical and electrical installations."
40. There followed in January 1993 a schedule of employers requirements and specifications prepared by Halls (Mr Thompson) and discussed with Mr Rezaei. These specified originally a fire compartment wall between the offices and production area and steel faced insulated panels for the ceiling finishes.
41. In February 1993 there was a further meeting between Mr Rezaei, Mr Hall and Mr Thompson to discuss the employers requirements. Amendments included the omission of a fire wall between the production area and the offices unless it was required by the Building and Fire Regulations. It was also agreed that Pride Valley would approve the mechanical installation.
42. The job was then put out to tender by Halls. Initially Hilbar Construction Limited (Hilbar) had the lowest tender and was favoured by Halls. A fax to Hilbar dated the 3rd March 1993 from Halls asked them to confirm that fireproof FRA polystyrene had been quoted for in the food safe panelling. Mr Thompson said that he discussed the issue of FRA with Mr Rezaei and explained to him that FRA helped to improve the low fire performance of EPS panelling. The Hilbar tender was £546,423 including an additional cost of £1,861 for fireproofing to the food safe panels. A note from Mr Hall in the course of the tendering process indicated that he was concerned about Hilbar's quality of workmanship. Despite this Halls recommended that the Hilbar tender should be accepted.
43. Mr Rezaei conducted separate negotiations with Inline whose original tender figure was £801,822. After his discussions, the tender figure was reduced to £626,000. On the 4th March 1993 Halls conducted further discussions with Inline and produced a revised tender figure of £579,500. Its note of client discussions said:  
*"the following points were clarified with Inline:  
Fireproofing to the food safe panels was included in their original tender. In addition we have been informed that their panels are faced with glass reinforced plastic which is a higher specification than coated metal."*
44. This revised tender included, among its suggested savings by Halls, the sum of £10,000 for reducing the thickness of the food safe panelling. This advice of Halls is inconsistent with the advice which they say they gave earlier in relation to EPS panels. Here Halls were suggesting that Pride Valley reduce its level of safety.
45. On 18th March 1993 a strategy meeting was held at Pride Valley's offices at which both Mr Rezaei and Mr McKechnie were present. The note of the meeting recorded that Pride Valley expected to exchange contracts with Inline on 23rd March 1993.
46. The phase 1 works started in April 1993.
47. The contract between Pride Valley and Inline in JCT Form with Contractor's Design was signed on 6th May 1993. Hall and Partners Contracts Management Limited was designated as the Employer's Agent. Under the contract Inline agreed to build the factory for the contract sum of £520,000.
48. The final account of 20th December 1994 showed a final figure of £606,183.14.
49. The plans for the proposed bakery were considered by the Fire Authority on 3rd June 1993. The fire report made a number of other comments but none relating to the use of EPS panels.
50. The first of a number of site meetings took place on 15th June 1993. Normally there were present at these meetings Mr Rezaei, Mr Thompson representing Halls, and Mr Gatenby representing Inline. At the first meeting Mr Gatenby handed over the latest construction drawings which were the subject of a discussion. There was also a discussion about problems which needed to be resolved relating to the mechanical installations.
51. Also on 15 June 1993 Scot-Tech produced its quotations for works including "enlargement of ductwork system to oven extract hoods." Halls instructed Inline to accept this quotation on 7 July 1993. Scot-Tech produced a schedule of works on 2 August 1993.
52. At the site meeting on 15th July 1993, Mr Gatenby requested details of the exact position of the ovens in the production hall and details of all holes to be cut in the food safe panelling. It was agreed that Mr Rezaei should supply the information as soon as possible. This followed up a similar request from Mr Gatenby on 9th July 1993.
53. At the site meeting on 9th August 1993, which was attended only by Mr Thompson and Mr Gatenby, Mr Gatenby confirmed to Mr Thompson that he was still awaiting these details which were actioned for Pride Valley to undertake.
54. Mr Thompson was responsible for agreeing cost estimates for works to be carried out by Scot-Tech as subcontractors for Inline subject to Mr Rezaei's approval - see Hall and Partners fax dated 10th August 1993.
55. Cost Report No.1 dated 20th August 1993 made it clear that the anticipated final account did not include Scot-Tech's direct works order with Pride Valley nor any allowance for the provision of oven hoods.
56. Following a site visit by Mr Thompson he was able to issue a certificate of practical completion for the works on the 18th October 1993. He noted that the ovens and flues were not yet in place. It is clear that the installation of the production lines and the ovens and flues took place after the factory had been built. It was always

understood by Halls that such equipment would be installed in a factory which had as its designated purpose that of a bakery.

57. On 4th November 1993, a short time after the certificate of practical completion, Halls wrote to a number of clients to inform them that Hall and Partners (a firm) was to cease trading and was to be merged with Hall and Partners Contracts Management Limited. Pride Valley was not given any notice. Mr Hall said that he understood that there was no need to do so because Pride Valley had contracted with the limited company. This remains in dispute.
58. On 8th December 1993 Easington District Council issued a fire safety completion certificate in relation to the work on phase 1.
59. A dispute arose between Pride Valley and Scot-Tech in relation to the ventilation system. Halls told Mr Rezaei in a letter dated 7th December 1993 that they would assist in resolving the dispute but only on a time-charge basis *"Given the fact that our original fee was extremely competitive and the fact that the works in dispute are outwith our original contract."*
60. In the course of discussions which then took place Mr Thompson requested Scot-Tech to provide a comprehensive list of design information which Scot-Tech would require to enable the project to proceed. Scot-Tech was also asked to confirm that the second oven which was being assembled was identical in every way to the first oven.
61. By a letter dated 26th January 1994 Mr Thompson advised that the ventilation system was not adequate for Pride Valley's needs and that remedial works were necessary. He again suggested that Halls' should be instructed to resolve the issue and that Mr Rezaei should agree to pay Halls costs. This is an example of the firm written advice which Halls gave when they thought it was appropriate to do so.
62. At the site meeting on 27th January 1994 the scheme for the ventilation of the ovens was discussed by Mr Rezaei, Mr Thompson, Mr Gatenby, and Mr Anson and Mr Foster from Inline.
63. The note indicates that the proposed scheme for ventilating the ovens was discussed in detail: *"The basic proposal now is to ventilate oven No.1 (pitta) and oven No.2 (nan) by means of a bifurcated fan and fresh air fan and to ventilate oven No.3 (lavash) directly to the outside building by non-mechanical means."*
64. The note of the meeting records that *"2.4 PVB (Pride Valley Bakery) raised the question of the heat which would emanate from the actual oven hoods themselves. ST (Scot-Tech) said that the hoods would be cooled to a certain extent from the fresh air being supplied to the area and did not see this as being a problem."*
65. On 28th January 1994 Mr Thompson gave his considered opinion in relation to the ventilation system. He identified the problem that the oven hoods were considerably larger than had been allowed for by Scot-Tech in their drawings. He pointed out that this had been agreed between Mr Rezaei and Scot-Tech and that Halls had not been involved at least until after their contract was complete.
66. After a considerable amount of negotiation, in which Mr Thompson was involved, (he says as an intermediary) Halls issued an instruction to Inline on 4th February 1994 on behalf of Pride Valley for:  
*A supply and extract ventilation system to the two ovens and a modification and extension to the lavash oven flue system to vent externally by non-mechanical means in the sum of £11,471, and  
Modifications to the existing ventilation system in the sum of £400*
67. On 8th February 1994 Scot-Tech quoted a price to Inline to fit a washable grease filter onto the nan line. In a separate quotation on 8th February 1994 Scot-Tech quoted a price for providing and installing a steel duct to each oven. The order specified that *"the duct shall terminate just above the food safe ceiling and be fitted with a marking flange."*
68. It is clear that Halls supervised the work on Pride Valley's behalf. On the 7th March 1994, Mr Thompson wrote to Mr Rezaei, *"Please find enclosed the valuations relating to the works to your oven hood. Would you please note that there is still an outstanding amount of £400 for which I am awaiting substantiation. The figure has not been included in the valuation."*
69. A Fire Report from Mr Pickersgill of 11th April 1994 by Lombard General Insurance Company was sent to Mr Quinn and Mr Ryder of Pride Valley. Its opinion of the risk was as follows:- *"This may be regarded as a good class food manufacturing risk of moderate fire inception hazard as the main process is baking. No frying undertaken. A high standard of cleanliness is maintained. The only adverse feature is the extensive use of combustible wall linings, ceilings and partitions. Stock is particularly susceptible to damage by heat, smoke, fire and water and spoilage."*
70. The reference to no frying undertaken may have been to a fire at the premises of Sun Valley Poultry in Hereford on 6th September 1994 which began in a frying machine and rapidly destroyed the building. Two members of the fire service lost their lives. A significant factor in the rate of spread of that fire was the presence, in the majority of areas, of linings of polystyrene encased in PVC coated steel sheeting. An article in the magazine *"Building Control"* in July 1994 referred to the fire and noted that the Building Regulations did not require cavity barriers or compartmentation.
71. In January 1994 Pride Valley was considering an extension to the factory at Seaham. Mr Rezaei sent a letter of intent to Inline dated 5th January, drafted by Halls, requesting them to carry out the work on an extension to the building at a price in the region of 1.2 million pounds.

72. On 19th July 1994, Mr Rezaei contacted Mr Hall to start discussions on the phase 2 extension.
73. In September/October 1994 there was a general discussion between Mr Rezaei, Mr Hall and Mr Thompson about phase 2. There is a dispute as to what was said. The meeting also included Mr Ryder, who was to be responsible for the project for Pride Valley although it was understood by all parties that Mr Rezaei would take the final decisions. Mr Thompson said that they discussed the quality and performance of the internal partitions and the various panels and their fire ratings. He said that he outlined how the panels would perform in the event of a fire. Mr Thompson also said that Halls advised that a stainless steel faced panel gave the best rating for reducing the spread of the flames. He also said that Mr Rezaei was not prepared to increase the phase 1 specification.
74. Mr Thompson said that Halls also advised that the Fire Officer might well require a fire wall to be constructed between the phase 1 factory and the extension in order to contain the spread of any fire.
75. In his written statement, Mr Hall said that they discussed in detail the alternatives available with reference to the types of panel that could be utilised including the fire ratings and performance in the event of fire. He also said that he raised the suggestion that the Fire Officer might well require a fire wall to be constructed between the new factory and the extension to contain the spread of fire. He said that Mr Rezaei rejected his advice.
76. Mr Ryder said in his statement that he was familiar with the requirements of fireproofing and the methods of fire protection within a production facility. He said *"we discussed the EPS panelling used in phase 1 and the alternatives available including fire ratings and their respective cost. Mr Rezaei made it clear that he was not prepared to incur any extra expenditure that was not absolutely necessary."*
77. Mr Rezaei said in his statement that EPS panels were discussed at the meeting. He had found the panels excellent in terms of hygiene and insulation. He said that alternatives were discussed. He said that Mr Thompson told him that the alternatives would cost over three times the cost of the EPS panels i.e. a cost of over £600,000. He said that he did not receive any warning at the meeting or otherwise as to the severe fire risk posed by the panels. He said that if he had been advised at the meeting that the panels should not be used in phase 2 that would have stuck in his mind. He said that he did not receive any such advice at any later meeting concerning the fire risk which EPS panels posed. He also said that he was not advised as to the necessity of having a fire break wall between phase 1 and phase 2. He said that if he had been so advised he would have accepted the advice.
78. The matter was taken further on the 6th October 1994 in the fee proposal for Project Design and Management Services in connection with the extension to the factory. Mr Thompson recommended the appointment of a services engineer to cover all the mechanical and engineering services, thus avoiding the problems which had occurred in the first phase of the bakery.
79. The fee which Halls charged for their services in relation to phase 2 is set out in the Memorandum of Agreement of 3rd November 1994 in the sum of £51,000. Appendix 1, setting out the schedule of Project Design and Management Services is in identical terms as for phase 1 except that it omitted item eight relating to the selection of suitable contractors. This provision was not necessary since it was always understood that Inline would undertake the project.
80. On 17th November 1994 Halls entered into an agreement with TG Armstrong and Partners who were appointed as service engineers for a fee of £4,000.
81. Also in November 1994 Halls produced its cost plan and outline specification for the factory and office extension. The total construction cost was to be the sum of £1,396,884 exclusive of VAT and fees.
82. The outline specification for the internal doors, wall and floor finishes was specified as insulated PVC linings. The note at the end of the specification stipulates that ovens, flour, silos and specialist equipment were to be excluded. It was understood by the parties that the panels were being installed in a bakery and in specifying the materials Halls would need to have had well in mind the purpose for which the extension was being built.
83. On 19th December 1994 Mr Ryder sent Pride Valley's service requirements for the factory extension.
84. There was a meeting to discuss the extension on the 25th January 1995 at which Mr Rezaei and Mr Thompson were present. Mr Thompson emphasised that he was not a mechanical and electrical specialist and that he was relying on his service consultant T G Armstrong and Partners. Mr Thompson's letter made various firm observations on the project and ended: *"I do not wish to appear negative but it is my duty as your Consultant to make you aware of the situation as I perceive it."*  
  
This is another example of Halls setting out their views in writing to Mr Rezaei when they felt that it was appropriate to do so.
85. After further negotiations the revised contract price agreed in February 1995 was £1,200,00. The contract was in the standard JCT Form with contractor's design.
86. On 5th May 1995 Mr Pickersgill surveyed the factory and considered the alterations which had been made to see whether or not they altered the fire risk. He noted in his report dated 22nd May 1995 that the main adverse feature regarding the existing risk was the extensive use of combustible wall linings, ceilings and partitions and that these features were to be repeated in the new extension. The report referred to a number of risk improvements which could be made. The letter code alongside each risk improvement denoted the action which Mr Pickersgill required to be taken. Categories A - D referred to measures that were required to be undertaken.

87. Category E referred to risk recommendations which while not mandatory were areas for risk improvement which if carried out might avoid the need for increased terms/excess levels at some future date. They included a number of items in Categories A-C and the following:  
"95/05 (E) Food Industry Insulation Panels  
*Panels incorporating either polyurethane or polystyrene insulation reflect an increased fire hazard. To improve the fire risk the following should be considered:-*  
*Non-combustible core panels using mineral wall instead of foam should be utilised.*  
*If alternative panels cannot be used then the ends of the sandwich panels must be sealed and locked together in a non-combustible wall intumescent seal."*
88. A requirement in Category (C) ( "must receive early attention" ) was a roller shutter between phase 1 and phase 2. The risk improvement requirements were passed on to Pride Valley on the 12th July 1995.
89. These matters were known to at least Mr Wharton who was Pride Valley's Operations Manager and Mr Quinn, the company's Accountant. They had actual or ostensible authority to receive communications on Pride Valley's behalf - (see *El Ajou v Dollar Land Holdings* [1994] 1 BCLC 464 at 472) and notification to them constituted notification to Pride Valley.  
  
The note of the site meeting on 22nd May 1995, at which Mr Ryder for Pride Valley, Mr Thompson and Mr Gatenby were present, said in relation to the extension that all outstanding matters with building control and the Fire Officer would be resolved that week.
90. It does not appear that either Mr Thompson or Mr Gatenby raised the question at the meeting of whether the food safe panels were appropriate or whether they constituted too great a fire risk.
91. On 25th May 1995 Mr Anson of Scot-Tech wrote to Mr Gatenby with copies to Mr Rezaei and Mr Thompson in relation to proposed modifications to the ventilation system in the production area. The letter noted that the *"extract system from the Nan oven is contaminated with grease and products of the process which are building upon ductwork internally and particularly on fan impeller"*  
  
*" This is resulting in considerably reduced airflows causing smoke spillage into the room and eye irritation to operators."*
92. At about this time there was a complaint about smoke and heat in the production room which was investigated by the Health and Safety Executive. It appears from Mr Rezaei's fax to Mr Anson of the 12th June 1995 that Mr Rezaei thought that these problems could be dealt with by adequate ventilation which would ensure that the production room remained at a constant temperature.
93. On the 5th July 1995 Mr Anson wrote to Mr Rezaei with a copy to Mr Gatenby in relation to the pitta oven:  
*"We understand that there is a possibility of temporarily redesignating this oven to produce nan breads. As there is no means of filtration we have recommended that the existing mechanical ventilation system remain until such time as the oven is used again only for Pitta production."*
94. Mr Anson also warned Mr Rezaei generally: *"We would also point out with any grease build up there must be a risk of fire hazard and would recommend that you monitor this situation."*  
  
This warning is of some significance in that it put Mr Rezaei on enquiry in relation to the risk of fire caused by the build up of grease, particularly relevant in the use of the pitta oven to produce mini nans. This warning was not acted on. Grease was allowed to build up in the pitta oven.

#### **THE FIRST FIRE ON THE PRODUCTION LINE**

95. There was a fire on the main production line at 2.00 am on 28th June 1995. The Fire Report from Miller Knight, the loss adjusters to Lombard Continental Insurance, said that at 2.10 am one of the employees heard noises coming from the extraction unit directly above the oven to the nan bread production line. The base of the stainless steel extraction unit was showing red. The production line was switched off immediately. Nevertheless within a short time, smoke was coming from the oven and spread throughout the building which was evacuated.
96. Apart from damage in the roof space to the electric motor and extraction unit, damage to the building was confined to the roof panels directly above the area of the extraction unit and to internal cladding in the production room. There was extensive damage to the oven. The control panels and switches had melted and the extraction unit needed to be replaced. Matters were discussed with Mr Rezaei. The machinery was cleaned and repairs to the machinery were put in hand.
97. The report emphasised that had it not been for the quick actions of the Pride Valley employees the loss would have been much greater.
98. In the event both the extraction unit and the oven needed to be replaced. This caused a lengthy interruption of the business. The claim was finally settled at £460,514.23 including loss adjusters fees. Although extensive damage occurred, the EPS panels did not ignite.
99. Mr Rezaei gave prompt instructions for Scot-Tech to provide a fire damper for the nan line above the grease filter.

100. By a letter dated 12 July 1995 written to Mr Quinn of Pride Valley, the agent of the Insurers ( Mr Brewis of Bishop Skinner Northern Limited) referred to the recommendation of Mr Pickersgill in May 1995 relating to Food Industry Insulation Panels. He said that " 95/05 has been included as extensive use of combustible wall linings was a major feature in a recent substantial fire (in excess of £5 million) in the food production industry. In all probability you will not be able to abide by this suggestion mainly on the basis of cost but I would appreciate your comments." I note that this was put to Pride Valley in the form of a suggestion and not a requirement.
101. By their letter of 13th July 1995 Scot-Tech indicated that there were problems with the availability of a fire damper and proposed an alternative option. There was no proposal to provide a fire damper ( or alternative option for the pitta line ) even though it was then being used for the production of mini-nans.
102. On 4th August 1995, Scot-Tech agreed to supply a grease filter for the nan line at a cost of £2,750. The reason why it was felt unnecessary to provide additional safety precautions for the pitta line was that pittas used very little oil. Nans on the other hand used a considerable amount of oil. Unfortunately the pitta line was already being used for the production of mini nans so this consideration should not have applied.
103. There is a dispute over what period mini-nans were produced on the pitta line. Mr Henry, then a Shift Manager at Pride Valley, said that it went on for six to eight weeks. Mr Ryder said it was for 30 - 40% of the time up to October/November i.e. it went on until within six weeks of the fire. Mr Robinson, then employed as Production Manager at Pride Valley, said in evidence that it went on for 30% -40% of the available time. In his oral evidence Mr Robinson described graphically the poor level of safety and cleanliness of the mini-nan line.
104. Site Minute No.6 of 15th August 1995 contained a postscript which said that *"the damaged food safe panelling over the existing high care area was inspected and found to be in extremely poor condition. Neither PVF or IC (Inline) were prepared to accept liability for the damage. It was agreed that IC would obtain a price for renewing the damaged areas and then the whole issue of liability etc: would be discussed. This needs resolving as a matter of urgency "*.
105. On 1st September 1995 Mr Anson of Scot-Tech wrote to Inline with an urgent copy to Mr Thompson regarding the effect of the increase in the oven sizes with the higher increase in heat and exhaust fumes. No changes were proposed to the pitta oven, *"As requested by the Client."* Changes were proposed to the ventilation of the nan line costing £30,000. The letter also advised that modifications would be required to the pitta line oven and that this would require further discussions with Pride Valley *" as we feel exhaust by natural means would not exhaust sufficient air "*. The letter concluded: *"As the project is nearing completion it is imperative that the contents of this letter are discussed with yourselves, the client and project Quantity Surveyors as a matter of urgency."*
106. On 11th September 1995 there was a further Site Meeting, No 7, at which Mr Thompson and Mr Gatenby were present with Mr Ryder from Pride Valley. Mr Ryder expressed Pride Valley's strong concern over the food safe panelling to the existing factory which seemed to be delaminating in a number of areas. Halls said that it would help if an independent expert could agree that the problem was occurring because of a latent defect in the panels such as defective bonding.
107. The areas of delamination of the panels of food safe cladding in the existing factory continued to be a source of concern to Mr Rezaei and Mr Ryder.
108. Mr Ryder wrote a detailed fax to Mr Thompson on 17th October 1995, copied to Mr Rezaei. He said in evidence that in the list he did not include areas where he considered the damage to panels was due to work being carried out internally, i.e. round the nan oven flue.
109. A further Fire Report was sent by Mr Pickersgill to Mr Quinn of Pride Valley as a result of a further survey on 2nd October 1995. Mr Pickersgill noted that there was a structural maintenance programme with ovens receiving attention on a daily, weekly or monthly basis. *"In the past the nan oven would produce carbon deposits but this problem has been substantially reduced following the installation of a new oil applicator."*
110. His opinion of the fire risk was that *"Fire inception hazard is moderate as the main process is baking. No frying undertaken."* He reiterated that the main adverse feature was the extensive use of combustible wall linings, ceilings and partitions but that this was not uncommon in the trade. This item is not, however, included in the list of risk recommendations i.e. recommendations for improvement that were required to take place or where it was advised that they should take place.  
  
It is significant that Mr Pickersgill had to note that the majority of the improvements required in his earlier report and referred to in Lombard's letter to Mr Brewis dated 27 June 1995, with completion dates of 1st August 1995 and 1st September 1995 had not been attended to.
111. An internal fire survey report of the Commercial Union in November 1995 noted that Pride Valley's major competitor in Scotland with similar insulated panels had suffered a serious fire earlier in the year which had put them out of business. The report advised *"In view of the large presence of highly combustible insulation materials and the inability to divide the risk I consider this risk should be declined."* This report was not sent to either of the parties

#### THE FIRE

112. On 11th December 1995, just before 6.00 am, the Durham Fire Service was called to a fire at the factory. The fire was not brought under control until 9.56 am, by which time the factory had been destroyed. In fact the



factory comprising some 72,000 square feet, had been completely destroyed in about 1 hour. The Fire Report said that cooking fats and oils ignited first and were mainly responsible for the development of the fire.

113. The speed with which Mr Rezaei dealt with the disaster was most impressive. Between January 1996 and May 1996, new premises were fitted out. Today the business is even more successful than it had been before.

#### The Cause Of The Fire

114. On 8th July 1999 the experts, Mr Calleja and Dr. Bland, agreed a statement of fact relating to the cause and spread of the fire. They concluded that the fire initially developed at the bottom of the flue serving the No 1 Pitta line and that it was caused by the ignition of cooking deposits, either by a burning brand from the flour sack used to light the burners which entered the flue system heating the cooking deposits, or by flame migration from the burners resulting in the ignition of cooking deposits on the underside of the hood. The main source of fuel for the fire was a substantial build-up of cooking deposits in the horizontal duct where after the fire a large quantity of burned deposits were apparent.
115. The experts concluded:  
*"3. There were sufficient cooking deposits in the flue system to fuel a fire of long enough duration to cause the vertical section of flue to glow red hot. It is likely that the hot flue pipe spread the fire to the polystyrene of the expanded polystyrene panels (EPS panels) either directly due to radiant or conducted heat or by causing the polystyrene to melt and flow onto the hot flue pipe."*
116. They went on to say that once the fire had spread to the EPS panels, it would have spread rapidly through the building due to the burning of the polystyrene. *"The panels would have delaminated and the burning polystyrene would have melted and flowed out spreading the fire to adjacent areas."*
117. The experts said that from their experience there was a risk of flue fire in gas fired cooking appliances due to the build up of deposits in the flue system. This risk which required special precautions does not exist in gas-fired space heating appliances.
118. In the view of these experts, the flue should have penetrated the ceiling and roof void within a factory-made insulated chimney. Alternatively there should have been a thick non-combustible sleeve around the flue pipe with sufficient insulating and screening properties so as to prevent the ignition of any combustible components of the ceiling or roof.
119. They also agreed that there was insufficient clearance and/or insufficient screening and insulation between the flue pipes and the EPS panels where the pipes passed through the ceiling and that the flue system should have been accessible for cleaning throughout its length.
120. Finally they also concluded that a properly designed automatic fire extinguishing system e.g. carbon dioxide incorporating fire dampers fitted to the oven and flue system, should have controlled the fire and prevented fire spreading to the building structure.
121. In relation to the installation the experts agreed: (i) that the Pitta line was a single skin flue; (ii) that if there was any oil in the pitta mix they would have expected some cooking deposits in the flue system but they could not quantify the amount that would have been deposited; (iii) if there was no oil in the pitta mix the cooking deposits must have come from the previous mini-nan production; and (iv) the mini-nan production would have caused significant quantities of deposits in the flue system.
122. The remaining question, upon which they gave brief and helpful oral evidence, related to the cooking deposits in the pitta mix. Mr Calleja said that any process involving cooking with oil either as a part of an ingredient mix or added to it will inevitably produce breakdown products and that will be significant in terms of fire risk because of the risk of ignition. He said that there was a more significant risk of a fire occurring sooner with the nan process, where oil is applied, than with the pitta process. The more deposits you have, the greater the severity of the fire. Cleaning would therefore, in his opinion, need to occur more frequently with mini-nans than pitta bread. There would be deposits even from the pitta bread which, over a period of time, would lead to a real risk of a fire occurring. This would be so even if the oil in the pitta mix was only of the order of 1% - 2%. Mr Calleja said that from his observations of the horizontal duct and the flue there was no provision by the manufacturers for the horizontal duct to be cleaned.
123. Dr. Bland, who had not been to the site and seen the debris, agreed in broad terms with Mr Calleja but was more doubtful as to the significance of the oil in the pitta bread. I accept Mr Calleja's evidence on these matters.

#### EXPERT EVIDENCE

124. The starting point in a discussion of the role of expert evidence is the judgment of Oliver J in *Midland Bank Trust Co Ltd v. Hettys, Stubbs and Kemp* [1979] 1 Ch 384 at 402, which has since been cited with approval many times. *"The extent of the legal duty in any given situation must, I think, be a question of law for the court. Clearly, if there is some practice in a particular profession, some accepted standard of conduct which is laid down by a professional institute or sanctioned by common usage, evidence of that can and ought to be received. But evidence which really amounts to no more than an expression of opinion by a particular practitioner of what he thinks and would have done had he been placed, hypothetically and without the benefit of hindsight in the position of the Defendants is of little assistance to the court; whilst evidence of the witnesses' view of what, as a matter of law, the solicitors duty was in the particular circumstances of the case, is I should have thought inadmissible for that is the very question which it is the court's function to decide."*

125. Oliver J went on to emphasise, also at page 402, that in many cases the extent of the professional's duty depends on the terms and limits of the retainer and any duty of care to be implied must be related to what he is instructed to do.
126. In *Bown v. Gould & Swayne* [1996] PNLR at 135 Simon Brown L J reinforced Oliver J's dictum that evidence which amounts to no more than an expression of opinion as to what the expert would have done, does not assist the court and an expression as to what he thinks should have been done usurps the function of the Judge.
127. In *re Barings PLC* [1999] 1BCLC433 at 489 Jonathan Parker J treated these principles as being of general application.
128. In *Pozzolanic Lytag v. Bryan Hobson Associates* [1998] 63 Con LR 81 at 92 Dyson J said:  
*"In my view the only issue to which expert evidence could properly have been directed was whether there is a common practice in the engineering profession as to what engineers who are engaged as project managers do in relation to the insurance obligations of contractors. That would have been a short point which should have resulted in short reports. Instead of this the experts prepared quite elaborate reports, dealing with a number of other issues which were inappropriate, and which no doubt added very considerably to the costs of this litigation... ."*  
*"The experts plainly went well beyond what the Official Referee had authorised. In view of the imminent implementation of the Woolf Reforms, it is now opportune for everyone who is concerned in civil justice to take a hard look at the whole question of expert evidence. It seems to me that all have a role to play in this, case management Judges, legal representatives and the experts themselves. Prolix experts' reports directed to issues with which they should not be concerned merely add to the expense of litigation. Everything possible should be done to discourage this. In appropriate cases, this includes making special orders for costs."*
129. In *United Bank of Kuwait v. Prudential Property Services* (Court of Appeal 27th November 1995 at page 28 of the transcript) Evans LJ adopted a somewhat more relaxed view in saying that in certain circumstances where the expert is in reality giving evidence of good practice in a particular field, evidence may be admitted in which he or she says what he would have done or would have expected to be done if the expert had been placed in a similar situation.
130. Evans LJ went on: *"I would hold that it is a mistake to include all experts in one category. They range from, for example, the translator of foreign languages to a person who can explain advanced scientific concepts and from describing practices in highly technical areas to those in other areas where the court has sufficient personal experience of its own.*  
*The interpretation of accounts, perhaps, comes midway in this scale. The courts, meaning individual Judges, may have some understanding of them but they cannot be confident. Therefore expert evidence is potentially available under both heads, that is to say as to practice and opinion because it is helpful in assisting the court to reach a fully informed opinion which in my judgment is the over-riding principle."*
131. If one concentrates on the Court's opinion that it is admissible for an expert to give evidence of good practice in a particular field and that this may, in certain circumstances, of necessity, require an expert to explain what he or she would have done in a particular situation, this judgment can be reconciled with those that I have already cited.
132. I also bear in mind that in *Sansom v. Metcalfe Hambleton* [1998] 26EG154 at 156, the Court of Appeal held that: *"A court should be slow to find a professionally qualified man guilty of a breach of his duty of skill and care towards a client (or third party) without evidence from those within the same profession as to the standard expected on the facts of the case and the failure of the professionally qualified man to measure up to that standard. It is not an absolute rule as Sachs LJ (in *Warboys v. Acme Investments Ltd* [1969] 4BLR133 at 139) indicated in his example but unless it is an obvious case, in the absence of the relevant expert evidence, the claim will not be proved."*
133. In *re Barings PLC* [1999] 1BCLC 433 at 493 Jonathan Parker J noted that *Bown v. Gould and Swayne* had not been cited as in *Sansom's case*.
134. I must bear in mind that S3 of the Civil Evidence Act 1972 ("The 1972 Act") provides that:  
*"1. Subject to any rules of court made in pursuance of Part 1 of the Civil Evidence Act 1968 or this Act, where a person is called as a witness in any civil proceedings his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence...*  
*(3) In this section "relevant matter" includes an issue in the proceedings in question.*
135. I agree with Jonathan Parker J's judgment in *re Barings* at page 493 that s.3 of the 1972 Act does not render relevant that which is irrelevant. The effect of Section 3 is to render expert evidence relevant to an issue in the proceedings subject to the over-riding requirement that the evidence is in fact relevant to that issue. Jonathan Parker J went on: *"Expert evidence as to what is the legal test in any particular case must be irrelevant notwithstanding that there may be an issue as to that very matter. On the other hand expert evidence on the question of whether that test has been satisfied may be relevant (e.g. if it relates to matters such as those to which Oliver J specifically referred in his dictum in *Midland Bank*) but it will not be relevant if on analysis it amounts to no more than an expression of opinion as to what the expert himself would have done in similar circumstances."*
136. In this case I made observations, both in the course of the interlocutory procedure and at trial, as to the value of expert evidence relating to project management. I expressed the view that what Halls had agreed to do depended on the terms of the contracts with Pride Valley and in particular on the scope of their duties as set out

in Appendix 1 to their terms of engagement. I was persuaded by Leading Counsel specialising in construction work that I should receive the evidence subject to questions of relevance and deal with the issue in my final judgment.

137. Mr Forbes Bramble for Pride Valley is a member of the Royal Institute of British Architects and of the British Academy of Experts. His report runs to over 100 pages with another 100 pages of Appendices. It deals with a number of questions which appear to have been posed by his own solicitors. Many of these are questions for the court and not questions for the experts. The report contains throughout many expressions of opinion as to what Mr Forbes Bramble himself would have done in similar circumstances. He proports to make many findings of fact on questions which are matters for the Judge. He makes judgments from the standpoint of a professional architect and designer on matters of professional practice which must be judged from the standpoint of a Chartered Surveyor who is acting as a Project Manger. His report offends against the established basis on which experts should give evidence. In particular I reinforce strongly the points made by Dyson J. in *Pozzolanic Lytag v Bryan Hobson Associates*, which I have cited above.
138. Mr Warner is head of the Building Consultancy Department of Richard Ellis St Quentin and is a professional Building Surveyor. He studied Project Management for his dissertation for a Masters Degree in architecture in 1975. His report is 17 pages in length. Mr Friedman for Halls puts forward the evidence of Mr Warner only on those matters of expertise on which I find that Mr Forbes Bramble's evidence is admissible.
139. Mr Warner's report sets out the views of the industry relating to EPS panels in 1992. It expresses views as to what Mr Warner concludes is acceptable practice for a Quantity Surveyor acting as a Project Manager. Mr Warner also expresses the view that once the fire had started in the flues, the poor detailing of the flues passing through the EPS panels was the root cause of Pride Valley's losses. This judgment is more within the expertise of the fire experts than that of the Project Manager. I have already accepted the evidence of the fire experts as to the cause of the fire.
140. There is an initial difficulty in accepting expert opinion evidence in relation to the duties of Project Managers. There is no chartered or professional institution of Project Managers nor a recognisable profession of Project Managers. In so far as it may be appropriate to accept expert evidence, the nature of the evidence that might be acceptable will depend on what the Project Manager has agreed to do. In some cases the Project Manager will be the Architect who will design the project and then, acting as Project Manager, supervise the contractor and the sub-contractors in carrying out the work. This is the role with which Mr Forbes Bramble is familiar. At the other end of the scale the Project Manager will supervise the work of the contractor and sub-contractors and ensure that the work is carried out in conformity with the design drawings. In these circumstances the Project Manager will have no design function even to the extent of providing an outline specification. This bears no relation to the function of the Architect acting to project manage his project.
141. In this case Halls agreed duties are set out in Appendix 1 of the agreements for phase (I) and phase (ii) of the project. They include:
  - "3. Development of the schedule of requirements into a design brief.
  4. Preparing an outline sketch plan to include consideration of material selection... .
  9. Prepare appropriate employers requirements, specification and drawings from which the contractor will design the structure and submit competitive bids for the overall project in open tender... .
  12. Confirm that all building regulation approvals and consents are obtained by the contractor and check on any further design work the contractor considers necessary at the design stage.
142. Halls were selected by Mr Rezaei as Chartered Surveyors not as Architects. They agreed to provide the design brief and specify the schedule of requirements and to manage the project through to completion. Apart from the fact that much of his evidence was in any event inadmissible in that it usurped the functions of the judge, Mr Bramble's evidence was given from the perspective of an Architect who was used to taking responsibility for designing a project and then project managing it.
143. While Mr Warner is a Chartered Surveyor with experience of project management his evidence in relation to the first agreement of experts also goes beyond what is appropriate. This may well be because out of an abundance of caution Halls felt it necessary to provide a brief reponse to Mr Forbes Bramble's Report.
144. I agree with Mr Friedman's criticism of the first joint statement of the experts. The only relevant issue on which these experts were qualified to give relevant evidence was issue three. *"To what extent could that risk (i.e. the fire risk of the baking operations undertaken in the factory ) have been reduced and at what cost by alternative means?"* Even here the agreement is to some extent overtaken by the evidence of the cost of the alternative panels which Mr Thompson estimated would cost three times the price of the EPS panels.
145. It is elementary that questions like Issue 10 - *was the Claimant, Inline and/or Scot-Tech negligent in any of the respects alleged at paragraph 30 and 31 of the defence?"* Should never have been asked of these experts or answered by them.
146. Having reviewed the evidence of these experts I remain of the view that they provide little or no assistance. I accept Mr Friedman's submissions on this aspect of the case.

## THE DUTIES OF HALLS

147. It is accepted that Halls were under a duty to exercise care and skill in carrying out their duties as project managers who had agreed to achieve through successful management from inception, through design, construction, commissioning and hand-over, a building which was delivered within the agreed time, cost and quality parameters.
148. The duties included specifically a duty to prepare a schedule of requirements in phase 1 for the construction of a bakery including the selection of appropriate materials.
149. In providing the outline specification and in selecting the materials Halls would need to have well in mind that the materials were being placed in a building that was to be used as a bakery. This meant that even though Halls did not commission the ovens, they must have foreseen that ovens would be placed within the building. By the time of phase 2, the ovens were in the building. Halls were required to consider the safety of the existing building and the appropriate design of the extension.
150. In carrying out these duties Halls were entitled to have regard to the requirements of the Planning and Fire Authorities and to the fact that the building would be inspected by Fire Assessors for insurance purposes who were specialists in assessing fire risks. They were under a duty to prepare a schedule of requirements which to their knowledge did not constitute a serious or unacceptable fire risk. If the employer wanted to specify materials which Halls did know constituted an unacceptable fire risk they were under a duty to warn the employer of the risk which they thought that the employer was undertaking.
151. In this case the general practice in the construction industry was that EPS panels were customarily used in food production factories - see Mr Rowe's evidence. Mr Rezaei said in evidence that EPS panels were an industry recognised product. Both at the time of phase 1 and phase 2 specialist insurers were prepared to accept the fire risk of using EPS panels, albeit with some unease.
152. In May 1994 Mr Pickersgill assessed the risk in phase 1 as "*a moderate fire inception hazard*".
153. In his report of 2nd October 1995, shortly before the fire, Mr Pickersgill's opinion of the fire risk was that "*fire inception hazard is moderate as the main process is baking*".
154. Halls' case is that they accept that they were under a duty to warn Mr Rezaei of any fire risks of which they knew and that they discharged this obligation by warning Pride Valley fully of the risks that Pride Valley was taking and that their warnings were rejected. The specific tasks which Halls agreed to undertake are set out in the twenty-three items of Appendix 1 to the Schedule of Project Design and Management Services and in particular to items 1, 3, 4, 9 and 12. The contract did not require Halls to undertake detailed design work itself but required it to undertake to produce a design brief an outline sketch plan and appropriate employers requirements, specification and drawings from which the contractor would design the structures.
155. These duties included specifying the materials to be used in the construction and fitting out of the factory. The duty to advise on overall design included the duty to advise on compartmentation.
156. It is clear that in arriving at the appropriate specification Halls had to have well in mind that this was a bakery which would house ovens and flues and that the materials which they specified would need to be such as to render the building reasonably safe from known hazards including fire.
157. There is really no dispute about the scope and extent of Halls' duties. Halls did provide sketch plans e.g. the plans for the proposed ground and first floor extension, drawing numbers J807.01 and J807.02, dated November 1994. Halls did specify EPS panels on the two contracts. Halls did not specify compartmentation between phase 1 and the new phase 2 building.
158. The issue between the parties is whether Halls did so having advised Mr Rezaei appropriately and had their advice rejected, or whether on the evidence Halls never advised Pride Valley appropriately about the dangers of using EPS panels and the necessity of compartmentation.
159. I am satisfied on the evidence that Halls knew that EPS panels were highly combustible, that they knew that if EPS panels were ignited there would be a rapid spread of fire. That in a bakery, even though the process was baking rather than cooking, there was a serious risk of fire. I am also satisfied that Mr Hall knew that FRA only had a minor effect in reducing such risks.
160. In answer to the question "Should Halls have given Pride Valley advice particularly in relation to the use of EPS panels and compartmentation which if given would have prevented or limited the spread of the fire? The answer is "yes". The advice that the Halls should have given in accordance with their knowledge at the time was
  - a) EPS panels were combustible and offered no resistance to fire.
  - b) If ignited there would be a rapid spread of fire.
  - c) EPS panels could accelerate the spread of fire.
  - d) There was a serious risk of fire if they were placed next to flues, hot plant or ovens.
  - e) The use of EPS panels would seriously compromise safety
  - f) The use of FRA would not reduce the risk significantly (although Mr Rezaei thought it would)
  - g) It was essential on safety grounds that a fire break should be installed between phase 1) and phase 2)
  - h) The use of EPS panels represented a much greater risk to safety to the building than available alternatives.

161. This knowledge of the danger of installing EPS panels went beyond that which was generally accepted by Fire Officers and others in the industry for whom the use of such panels was acceptable. If Halls had such knowledge at the time they should have communicated the nature and extent of the risk of the use of EPS panels to Pride Valley. Equally if they had regarded compartmentation as essential they should have communicated this to Pride Valley. They should also have ensured that these panels were not placed next to flues, hot plant or ovens. If Halls had given Pride Valley this advice and it had been accepted I find that on the balance of probabilities the fire would not have occurred.
- 162. Did Halls give such advice?**  
The evidence on this represents the clearest conflict in the case. On Mr Rezaei's case, when cross-examined about EPS panels Mr Rezaei was asked the following questions:  
*"Q When you were concerned with phase (1), you knew did you not that polystyrene was inflammable?*  
A. Polystyrene - yes.  
*Q. You knew did you not that EPS panels contained inflammable material?*  
A. Yes.  
*Q. You knew therefore that using them created a risk in the event that there was a fire?*  
A. No.  
*Q. Can you explain that answer please?*  
A. The explanation to that, my Lord, is that the risk of having polystyrene packaging that you have around the television, for example, if it catches fire, yes, it catches fire. It is combustible like everything else in this room. (Referring to the court room.) But it is confinable and on the information that I had is that because of the steel facings and of the ends being capped, and the fact that we had this FRA which I still do not know what the answer to it is, and the only thing I have is fireproofing which it is my belief controlled the thing and I had a hazardous or combustible material made non-combustible and it was put into my factory (sic) that was my final belief why would I have that idea that you suggest?"
163. Mr Rezaei was asked pointedly:  
*"Q You asked my Lord to believe that when you wrote down FRA even though as I understand what you are saying you knew that it stood for fire resistant additive, you thought it meant fireproofing in the sense that it would not catch fire?*  
A. Yes
164. When Mr Hall was asked about these matters he answered as follows:  
*"A. I was aware that they (EPS panels) were combustible and the effect which they would have.*  
*Q. You were aware that they had no resistance to fire?*  
A. Yes other than the flame retardant which had been added to them but I have not reasoned that that was a minor improvement.  
*Q. You knew that EPS panels could result in rapid spread of fire and indeed accelerate the spread of fire?*  
A. I was aware that it could spread fire quickly... .  
*Q. You were aware of that at the time in 1992?*  
A. Yes and I advised Mr Rezaei accordingly."
165. Mr Hall said in answer to me that he was not aware of the statistics that were building up around the country in terms of total loss fires and he also said that the full extent of their potential inflammability was not understood generally at the time.
166. The cross-examination went on:  
*"Q You knew they were combustible?*  
A. I knew they were combustible.  
*Q. You knew they offered no resistance to fire?*  
A. Yes.  
*Q. You knew that they could result in the rapid spread of fire?*  
A. Yes. I appreciated that anything that is combustible would add to the spread of fire  
*Q. You knew that EPS panels could result in a rapid spread of fire?*  
A. I was aware of that, yes, they spread fire quickly.  
*Q. And you knew that they could accelerate that spread of fire?*  
A. I have just explained. Anything that is combustible will accelerate the spread of fire."
167. In relation to the design of the flues, Mr Hall was asked:  
*Q. Is it right that you would have known that it was inappropriate to place hot flues through EPS panels without adequate protection fire-resistance wise between the flues and the EPS panels?*  
A. I would be aware that putting any sort of hot plant and if we could call flues hot plant or ovens next to such material you would run the risk of fire - yes."
168. Mr Hall said clearly that both in relation to EPS panels in phase 1 and phase 2 that Mr Rezaei was given clear advice and did not take it. Mr Hall went on to say in relation to phase one that he suggested to Mr Rezaei that he should check with his insurers.
169. Mr Hall and Mr Thompson conceded that they did not put into writing the advice which they say they gave although it was their practice to do so.

170. In relation to compartmentation Mr Thompson was asked in oral evidence in relation to phase 2:  
"Q. In the light of what you have told his Lordship about your views about EPS several years before, (namely that they were very combustible) you had a fear did you that if a fire started in phase 1 or phase 2, it could go right through the factory without a fire break?  
A. Yes.  
Q. That was your view at the time?  
A. Yes.
171. Judge Toulmin: Was that view expressed at the meeting?  
A. It was discussed at the meeting to pick up general design parameters. I did not discuss at the meeting that in the event of there being a fire in phase 1 the whole place would catch fire and spread through to phase 2. It was just discussed from the point of view of practical common sense, regardless of the risk of fire there should be a wall and it would be likely to be required by building control in any case."
172. Later in the cross-examination the following occurred:  
"Q. Your client was not prepared, you say, to follow your advice on the fire wall?  
A. Unless it was absolutely required by the regulations.  
Q. Your advice had been that the fire wall should be put in irrespective of what the Fire officer said?  
A. Yes.  
Q. Did you explain to Mr Rezaei at this meeting or at any time precisely why in your view a fire wall was required.  
A. Yes in short.  
Q. Did you explain it?  
A. Yes.  
Q. And did you tell him because there is a real risk that if a fire starts in one or other phase it will just spread through the existing wall?  
A. Yes.  
Q. So your client was failing to follow important safety advice which you believed yourself qualified to give?  
A. Yes."
173. By this stage Mr Ryder had taken over much of the day to day supervision on behalf of Pride Valley from Mr Rezaei. He was also at the meeting in October 1994. He did not recall Mr Hall saying words to the effect "We recommend that you put in a fire wall whether the Council recommend it or not.". He said that he would have remembered it if it had been said. He said he did recall at the meeting that he said that EPS panels were combustible although he agreed it was not in his written statement. He did not recall anyone saying that there was a very real risk that if a fire started in phase 1, it would spread through the existing wall.
174. Mr Ryder went on "At no stage did Hall and Partners ever turn round and say to Pride Valley **"You must not use that or we will walk away from this."** They explained various options with risks, with costs and we selected one of them."  
"Q. I will put it again they never advised against using EPS panels for stage 2?  
A. No."
175. Mr Ryder said in relation to the implication of there being no fire wall between phase 1 and phase 2 that there was a discussion about the openings but not about the wall itself.
176. It is relevant to note that in re-examination Mr Ryder said that even if there had been a strong recommendation for a fire wall, Pride Valley would not necessarily have put one in. He went on: "The building was constructed with the purpose of being as low cost as possible and if it was a statutory requirement of a building control to have a wall in then we would have put one in but if not we would not."
177. Mr Rezaei disputes this .He says that if the matter had been clearly explained to him and he had received clear advice from Halls that something had to be done he would have done it.

#### Conclusion on this issue

178. I find on the balance of probabilities that Halls did not give the advice that they say they gave. They did not give a warning to Mr Rezaei of the risks of fire which were commensurate with the dangers which they knew to exist. Had they given the advice in the form in which they say they did both in witness statements and in evidence and had that advice not been accepted by Mr Rezaei, I have no doubt that they would, as a competent and prudent firm of Quantity Surveyors and Project Managers, have given that advice in writing. If the advice had been given in the terms in which they say they gave the advice I have no doubt that there would have been a record by way of a letter to Pride Valley or at least an internal memorandum which either said in detail or made direct reference to advice which they had given in relation to the combustibility of the EPS panels and to the necessity for compartmentation or the minimal effect of the use of FRA. There is not even any internal memorandum which refers to the giving of such advice or even any reference in a note of any meeting from which one could infer that such advice had been given. I note also that this explanation was not given to PrideValley prior to the service of Halls' defence.
179. I accept Mr Rezaei's evidence that Halls did not say that the EPS panels were highly combustible or advise in terms that there should be compartmentation between phase 1 and phase 2 to prevent or limit the spread of fire or explain the minimal effect of FRA minimising fire risk. I find therefore that Halls failed to discharge their duty of care to give appropriate advice which would have prevented or limited the spread of fire.

**If Halls had given the advice, would Pride Valley have acted upon it?**

180. This is put by Halls on the basis that Mr Rezaei required the factory to be constructed at as cheap a price as possible. It is claimed therefore that Mr Rezaei would have rejected Halls' advice unless it was supported either by the Planning and Fire Authorities i.e. Easington District Council or Durham County Council and/or was required by his insurers. The evidence of Mr Ryder supported this in relation to compartmentation when he said in evidence that if it had been a requirement of building control to have a wall then Pride Valley would have done it but not otherwise. Mr Rezaei says that if the advice had been given in clear terms he would have accepted it even if it meant that the cost of the building was substantially increased.
181. I find that Mr Rezaei was an honest witness who now genuinely believes that if Halls had given the advice in the terms in which they say they did he would have accepted such advice and the fire would never have occurred.
182. I do not find that he would have done so. I have come to the conclusion that Mr Rezaei would have rejected Halls' advice unless it was supported by a requirement from the Planning or Fire Authorities and /or was required by his insurers.
183. I do not regard this attitude as unreasonable. He regarded the Planning/Fire Authorities as the experts and the insurers as the people who would carry the insurance risk. Halls' information did not include the statistics which were building up round the country in terms of total loss fires. These statistics were the most compelling evidence of the danger of rejecting Halls' advice.
184. Mr Rezaei was rightly concerned that the factory would conform to high standards of hygiene. He was also concerned that the factory should be built at the lowest cost. Mr Rezaei had used the EPS panels in his factory at Bill Quay. He was inclined to use them again- see the quotations that he himself obtained for the first contract. They were inexpensive and enabled the new factory to be built at a cost which he thought he could afford. He was even prepared to use them in the building of his new factory after the devastating fire on 11 December 1995 and was only prevented from doing so by Mr Rowe who told him that General Accident would not insure him if he insisted on using the panels.
185. I accept the evidence of Mr Ryder who said that if Halls had recommended that it was necessary to put in a fire wall between phases 1) and 2) Mr Rezaei would not have followed the advice unless the fire wall was required by building control.
186. I should add that it is also significant that Mr Rezaei did not act on the advice which he was given after the fire on 28 June 1995. It was no doubt some comfort on that occasion that the EPS panels did not ignite but despite the warning that the fire presented, no changes were proposed to the pitta oven at Mr Rezaei's request - see Mr Anson of Scot-Tech's letter to Inline dated 1st September 1995. This was at a time when the pitta oven was being used for mini-nans. Despite the increased danger of fire the pitta line was not modified. It is also an indication of Mr Rezaei's attitude to fire safety that he did not carry out promptly the modifications required by his insurers in the Report of May 1995.

**ISSUES OF LAW**

187. Since I have found that Pride Valley would not have acted on the warnings which Halls should have given, the issues of causation, contributory negligence and whether Halls contracted as a partnership or a limited company do not arise. I deal with them relatively briefly.

**CAUSATION/CONTRIBUTORY NEGLIGENCE**

188. In this case Halls say that if I find against them on the facts they are not liable because the chain of causation was broken. They argue further that if I find against them on causation, damages should be significantly reduced as a result of Pride Valley's contributory negligence.

**CAUSATION**

189. In *Caswell v. Powell Duffryn Associated Collieries Ltd* [1940] AC152 at 165 Lord Atkin said: "On the other hand if the Plaintiff were negligent but the negligence was not a cause operating to produce the damage there would be no defence. I find it impossible to divorce any theory of contributory negligence from the concept of causation."
190. In order to recover damages, the Claimant must show:
- (a) That the kind of loss for which he claims damages (but not necessarily its extent) was reasonably foreseeable, and
  - (b) That the loss which he suffered was in fact caused by the Defendants breach of duty - it is enough if the breach was an effective cause of the loss - see *Banque Bruxelles SA v. Eagle Star* [1995] 1QB375 per Sir Thomas Bingham MR at page 406E and
  - (c) the loss was not too remote - see Clerk & Lindsell on Torts 17th Ed 2 - 02 -- 2 - 31.
191. Although the chain of causation may be broken by the actions of the Claimants, by the actions of third parties or by intervening events in general, an act or event which is reasonably foreseeable will not be deemed to break the chain of causation - see *McGregor on Damages* 16th Ed paragraphs 151 ff .
192. In my view it was reasonably foreseeable that if EPS insulating panels, which were readily combustible were placed in close proximity with a process which involved baking a product which included oil, there was a foreseeable risk of fire. This risk was identified in the Fire Reports and those of the insurers. The estimate of the risk ranged from moderate from Mr Pickersgill, to so serious that the insurance should not be undertaken from the Commercial Union shortly before the fire.

193. I conclude on all the evidence that the loss i.e. damage by fire was entirely foreseeable and that the failure of Halls to warn Mr Rezaei of the nature and the extent of the risk of which they were aware would have been an effective cause of the loss if I had concluded that Pride Valley would have accepted and acted upon the advice.

#### **CONTRIBUTORY NEGLIGENCE**

194. The Law Reform (Contributory Negligence) Act 1945 provides as follows:-  
*Section 1(1) "Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the Claimant's share in the responsibility for the damage."*
195. *"The defence of contributory negligence is available whenever the Plaintiff's own negligence contributes to the damage of which he complains."* See **Clerk & Lindsell** (17th Ed (1995) at 3-10."
196. It does not matter in this regard whether the operative fault of the Claimant is prior, or subsequent, to the wrong doing of the Defendant. Broad common sense should be used to judge cause and effect on the facts of each particular case - see **Clerk & Lindsell** at 3-13.
197. In this case it is agreed by the fire experts that the fire was caused by the ignition of cooking deposits that had accumulated in the flue pipe of the number 1 pitta oven. This accumulation of cooking deposits was caused by Pride Valley's failure to clean the inside of that oven (and in particular the canopy and flue) adequately or at all and/or to modify the line to facilitate cleaning. Part of the problem occurred no doubt because the safety arrangements were made on the basis that the pitta oven would be used solely for pittas, which did not use much if any oil, and not for mini-nans which used a considerable amount of oil.
198. It is clear from Mr Henry's evidence that when the pitta line was being used for the production of mini-nans neither Mr Henry nor any of his staff cleaned the inside of the oven hood and the ducting above that oven. Further, as far as Mr Henry knew, and he was in a good position to know, no one else cleaned the inside of the oven or the flue.
199. The statement given by Mr Carne, the baker on the pitta line at the time of the fire, confirmed that (a) the oven had not been cleaned for three days before the fire, and (b) even when it was cleaned, the staff only wiped down the outside of the oven. They did not clean the inside of the oven hood or flue.
200. The expert evidence is clear that this level of cleaning would not prevent deposits from building up on the pitta line. Combustible deposits would also have built up within the flue to that oven.
201. I am satisfied therefore that deposits of oil built up on the pitta line either as a result of the small amount of oil in the pittas which were produced immediately before the fire and/or in the oil which had built up during the time of the mini-nan production and was not properly cleaned. I do not need to reach a conclusion as to whether or not the mini nans were produced from six to eight weeks from June 1995 or for the longer period which was given in evidence by Mr Ryder and supported by Mr Robinson. I find that oil had accumulated from the time of the mini-nan production on the inside of the oven hood or flue in addition to any oil which had accumulated from the resumed production of pittas.
202. On the 28th June 1995 there was a fire in the nan oven. As a result of that fire grease filters were fitted to the nan oven but not to the pitta oven. The purpose of those filters was to prevent the oily deposits from accumulating in the canopy and flue so as to avoid the possibility of a further fire on the nan line. No modification was made to the pitta oven even though the pitta oven was used for a substantial period of time for the production of mini-nans.
203. On the 5th July 1995 Scot-Tech warned Pride Valley of the fire hazard associated with any grease build-up if the pitta line was used for the production of nans. Scot-Tech recommended that Pride Valley should monitor this situation. Pride Valley was therefore warned in terms by Scot-Tech of the fire risks associated with the build up of grease on the pitta line.
204. Despite Pride Valley's knowledge and Scot-Tech's warning, Pride Valley continued to use the pitta line for the production of mini-nans, failed to fit a grease filter to the pitta line during such production, and failed to ensure that steps were taken to clean the inside of the oven canopy or the flue even though so much oil was being used in the production of mini-nans that it flooded onto the floor and burnt on the oven slats.
205. In my view this matter falls within the terms of the Law Reform (Contributory Negligence) Act 1945 in that Pride Valley suffered damage partly as a result of the fault of Halls and partly as a result of their own fault. The matters which I have just set out represent a serious fault on the part of Pride Valley. If I had concluded that Pride Valley was entitled to recover damages I should have reduced those damages by 50%.

#### **THE PARTNERSHIP ISSUE**

206. The issue between the parties is whether or not Halls contracted as Hall and Partners (a firm) or Hall and Partners Contracts Management Limited (a limited company). This issue must be decided objectively. The problem is encapsulated by the two letters sent to Mr Rezaei by Halls on 11th December 1992. The covering letter written on Hall and Partners notepaper, enclosed for consideration by Mr Rezaei a letter of appointment written on the notepaper of Hall and Partners Contracts Management Limited. Pride Valley say that both contracts were made with the partnership. Halls say that both contracts were made with the limited company. The signed contract



dated 11th December 1992 was on the notepaper of Hall and Partners Contracts Management Limited. The signatures at the end were given by Mr Rezaei on behalf of Pride Valley Bakery and by Mr Hall on behalf of Hall and Partners. The designation at the end of the proposal letter is not intended to give any indication as to whether or not either side was contracting as a limited company.

207. The previous correspondence between the parties is not conclusive but the letter of 16th October 1992 which set out the original analysis of the two alternative services to be provided by Hall and Partners refers in the notepaper to Hall and Partners having partners, Mr Hall, Mr Duncan, Mr Dunn and Mr Cosgrove. It was explained to me and I accept that there was nothing sinister in the fact that the only genuine partner in terms of equity was Mr Hall. It was accepted by Hall and Partners that Mr Hall, Mr Duncan, Mr Dunn and Mr Cosgrove were able to hold themselves out as being entitled to contract on behalf of the firm.
208. The next letter dated 29th October 1992 is again on Hall and Partners notepaper with reference to the same four named individuals as partners.
209. The feasibility estimate number 1 and outline specification is on the notepaper of Hall and Partners Chartered Quantity Surveyors Project and Estate Managers but does not make it clear whether this is Hall and Partners, the designated firm, or Hall and Partners the limited company.
210. The next letter from Mr Hall dated 30th October 1992 is on Hall and Partners Limited notepaper and it has three names at the bottom which make it appear that they are the three Directors.
211. Mr Rezaei did not sign the contract letter dated 11 December 1992 immediately after he received it. He also received a further letter from Hall and Partners signed by Mr Thompson and dated 15 December 1992 before he signed the contract. This letter was also on the notepaper of Hall and Partners Contracts Management Limited. This covering letter referred to a telephone conversation that day with Mr Hall and accepted that Mr Rezaei was not going to accept the full design service which Halls were offering. It was after receiving this letter that Mr Rezaei signed the earlier copy of the terms of engagement which had been enclosed with the earlier letter.
212. Having considered the evidence objectively I conclude that the contract was made with Hall and Partners Limited.

#### **CONCLUSION**

213. On my findings of fact Pride Valley 's claim fails and I find for the defendants.

Mr Robert Akenhead QC and Mr G Brown for the claimants instructed by Messrs Ward Hadaway  
Mr David Friedman QC and Mr R Anderson for the defendants instructed by Messrs Hammond Suddards