Judgment : His Honour Judge Bowsher Q.C. TCC. 9th August 2000.

Introduction

1. This is a trial of preliminary issues.

2. The issues ordered to be tried are:
   "(1) Assuming the facts stated in the Amended Particulars of Claim are true, and subject to any argument Stent may have under the Unfair Contract Terms Act 1977, do Gleeson's standard terms and conditions provide Gleeson with a complete Defence to Stent's claim?
   (2) Does the Unfair Contract Terms Act 1977 apply to condition 2.04 of Gleeson's standard terms and conditions or any other condition relied upon by Gleeson as providing it with a complete Defence."

3. The facts assumed to be true for the purpose of this trial and set out in the Amended Particulars of Claim are as follows. The claimants are piling contractors. The defendants are building and civil engineering contractors. In March, 1998, the defendants were the main contractors at a building site at New Clissold Leisure Centre, Hackney, London. The defendants were in control of the site, to which the provisions of the Occupiers Liability Act, 1957 applied. The claimants were on the site as lawful visitors pursuant to a sub-contract between them and the defendants. On 12 March, 1998, the claimants had on site a 50 ton Demag mobile crane of which they were sub-bailees. When that crane was stationary, it was struck by a tower crane operated by the defendants. The collision occurred, I am to assume, by reason of the defendants' negligence, breach of statutory duty under the Occupiers Liability Act, and breach of an implied term of the sub-contract, to which I shall refer. By reason of those breaches, the claimants suffered loss, namely, the cost of repairs to the crane and loss of hire costs of the crane totalling £30,521. I stress that I make no findings of fact or liability with regard to those matters. I merely make assumptions for the purpose of this trial.

4. The sub-contract between the parties was evidenced by correspondence, a Bill of Quantities, a Schedule of Attendances to be provided (on a form of the Federation of Piling Specialists), and a 5 page document headed "MJ Gleeson Group PLC, Sub-contract conditions, GLM/1 (For use where no standard form of Sub-contract is adopted)".

5. The defendants rely on clause 2.04 of GLM/1: *"The Sub-Contractor shall be responsible for and indemnify the Contractor against any claims in respect of plant or tools of the Sub-Contractor or his workmen which may be lost or damaged by fire or any other cause and also be responsible for and indemnify the Contractor against any claims by the workmen of the Sub-Contractor in respect of the risks he is required to insure against under Clause 2.01 hereof".*

   Clause 2.01 of those terms reads: *"The Sub-Contractor shall maintain insurance and indemnify the Contractor against the risks commonly insured against arising out of the Sub-Contract Works in respect of workmen, third parties ~~and adjoining property~~ and shall maintain or procure the taking out of such insurance in respect of self-employed workmen brought in by the Sub-Contractor, and upon demand produce to the Contractor his policies of insurance and premium receipts, and the Contractor may register its interest with the insurance companies concerned, if he so desires, and in the event of failure by the Sub-Contractor to comply with the provision of this clause, the Contractor may himself insure and deduct the cost of the premiums so incurred from any monies becoming due to the Sub-Contractor."*

6. The term assumed to be implied into the sub-contract was added to the Particulars of Claim by amendment as follows: ***"It was a term to be implied into the Sub-Contract by operation of law that Gleeson would not by themselves, their servants or agents, hinder or prevent Stent from carrying out its obligations in accordance with the terms of the Sub-Contract or from executing the Sub-Contract works in a regular and orderly manner."***

   I take the view that the implied term does not help the claimants' case because damages flowing from breach of that term would be different in kind from the damages claimed in this action. However, for the purpose of this trial of preliminary issues, I will assume that I am wrong about that and that the damages claimed do flow from the assumed breach of the implied term.

7. It has been pointed out by counsel that both parties to the contract are substantial companies and experienced in the construction industry. The sub-contract was negotiated at arms length and there were several amendments to the terms in GLM/1: for example, in clause 2.01 words were struck out which would have required the claimants to insure against risks to or perhaps from adjoining property.

8. Having regard particularly to the small amount in issue, the parties have decided to call no oral evidence. The evidence is limited to the contractual documents produced. It is accepted that in the circumstances I cannot deal with the issue of reasonableness under the Unfair Contract Terms Act, if that issue arises for consideration.

Construction of the sub-contract

9. Although attention has been concentrated on clause 2.04 of the terms GLM/1, that clause must, of course, be construed in the context of the whole of the contract (including the other documents) and in the context of two companies engaged together in a project involving dangerous work in a dangerous place, a building site.

10. It is easier to understand the second part of clause 2.04 than the first part. By the second part of the clause I mean the words: *"and also be responsible for and indemnify the Contractor against any claims by the workmen of the Sub-Contractor in respect of the risks he is required to insure against under Clause 2.01 hereof".*

11. Since it is envisaged by clause 2.01 that the contractor may register an interest with the insurers engaged by the sub-contractors, it was no doubt envisaged that the insurance to be taken out would benefit both the contractor and the sub-contractor. If a workman of the sub-contractor were injured on site, he might blame either or both the sub-contractor and the contractor. The intention of the contract is plainly that the risk of injury to such workmen is to be borne by the sub-contractor whoever is to blame and the sub-contractor is to insure against that risk. The sub-contractor is to indemnify the contractor against any action brought by the workmen or brought by the insurers by subrogation after paying out the workmen. Whether the words used are sufficient to cover liability arising out of the negligence of the contractor is another matter.

12. It is more difficult to understand the first part of clause 2.04, namely, the words: *"The Sub-Contractor shall be responsible for and indemnify the Contractor against any claims in respect of plant or tools of the Sub-Contractor or his workmen which may be lost or damaged by fire or any other cause."*

13. One can readily understand an indemnity against claims brought by workmen in respect of plant or tools belonging to the workmen. But what is the meaning of an indemnity against claims in respect of plant or tools of the sub-contractor? Such claims for damage or loss to the plant or tools could normally only be brought by the sub-contractor himself and so the sub-contractor is to indemnify the contractor against claims brought by himself. Counsel for the defendants submits that there are two types of indemnity, a true indemnity where A indemnifies B against claims brought by C, and indemnity which is in truth an exclusion of liability between A and B. On the defendants' case, the word "indemnify" must be read in both ways, with one meaning in respect of workmen's plant or tools and with another in respect of the sub-contractor's plant and tools. However, counsel for the claimant accepts that in the special circumstances of this case, where the plant actually belonged to a bailor, the plant should be accepted as "*the plant of the sub-contractor*", and in those circumstances, a claim might be brought by someone other than the sub-contractor, namely, the bailor.

14. The first submission made on behalf of the claimants is that clause 2.04 does not apply to the facts of this case at all because it is a true indemnity clause and not an exemption of liability clause. It was submitted that the clause is aimed at claims by third parties against the defendants in respect of the plant or tools of the claimants or their workmen, not claims by the claimants themselves against the defendants.

15. In considering that submission, and other submissions in this case, I bear in mind the well known principles enunciated in decisions cited in Chitty 28th edition paragraphs 14.05 to 14.019. In particular:
    a. Exemption clauses must be expressed clearly and without ambiguity or they will be ineffective.
    b. The burden is on the party seeking to rely on the exemption clause (if it is an exemption clause) to show that the clause, on its true construction, covers the obligation or liability which it is alleged to exclude.
    c. Any doubt or ambiguity will be resolved against the party seeking to rely on the clause.
    d. If there is any doubt or ambiguity, the words of the document are to be construed more strongly against the party who made the document and who seeks to rely on them.

16. In this connection, it is, of course, relevant that clause 2.04 comes from a document drafted by the defendants. While there were some amendments made to the form GLM/1 (including an amendment to clause 2.01 that is not directly relevant to the facts of this case) there was no amendment of clause 2.04.

17. I agree with the first submission made by counsel for the claimants. The clause plainly is aimed at claims made by parties other than the claimants against the defendants. If the clause is also to refer to claims made by the claimants themselves, then the word "indemnity" has to be used with two meanings and I see no reason why it should be so construed. It is at the very least not clear that the clause is intended to have the meaning contended for by the defendants and any doubt should be resolved against them.

18. On that short ground, I find in favour of the claimants. However, there are other difficulties about clause 2.04 with which I should deal.

19. If contrary to the view which I have formed, clause 2.04 should be construed so as to exclude some liability on the part of the defendants to the claimants, the question arises whether the liability excluded includes liability for the defendants' own negligence.

20. Nowhere in clause 2.04 is the word negligence or any synonym for it used. Counsel for the defendants points to the words "*lost or damaged by fire or any other cause*" and says that "*any other cause*" includes negligence. Counsel for the claimants submits that the words "any other cause" do not refer to causes denoting legal responsibility but refer to factual causes such as theft, accident, storm or act of God. As a matter of first impression, I prefer the latter view. The word "fire" is neutral as to fault and one expects the following words to be of the same nature. The references to insurance in the second part of the clause and in clause 2.01 strongly suggest that "*any other cause*" imports a list of factual causes such as one frequently sees in clauses requiring a party to insure.

21. Buckley L.J. in ***Gillespie Bros. & Co. Ltd v Roy Bowles Transport Ltd*** [1973] QB 400 at 419 said: *"It is however a fundamental consideration in the construction of contracts of this kind that it is inherently improbable that one party to a contract would intend to absolve the other party to the contract from the consequences of the latter's own negligence. The intention to do so must therefore be made perfectly clear, for otherwise the court will conclude that the exempted party was only to be free from liability in respect of damage occasioned by causes other than negligence for which he is answerable."*

22. That principle was applied by Hobhouse J. in ***Caledonia Limited v. Orbit Valve Co.*** [1994] 1 WLR 221 at 232: "The principle is that in the absence of clear words the parties to a contract are not to be taken to have intended that an exemption or indemnity clause should apply to the consequences of a party's negligence."

    At page 232, Hobhouse J. added: *"The parties to commercial contracts must be taken to know the principles of contractual construction and to have drafted their contract taking them into account. When the suggested result could have been easily obtained by an appropriate use of language but the parties instead only use general language, the result of the general principle is that the parties will not be taken to have intended to include the consequences of a party's negligence."*

    In the same case, in the Court of Appeal, Steyn L.J. elaborated on the same theme [1994] 1WLR 1515 at 1523: *"The printed conditions in the agreement in this case were plainly drafted by a lawyer. Why was an express reference to negligence not inserted? Similar questions have been posed on a number of occasions. Why do draftsmen not take note of the impact of a clear and consistent line of judicial decisions? For my part I have no doubt that the draftsman on the Underground to whom such a question was addressed would say* ***"one does not want to frighten off one or other of the parties****." Omissions of express reference to negligence tend to be deliberate."*

23. In the present case, as in the case before Steyn L.J., the printed conditions were plainly drafted by a lawyer. In addition to the use of lawyer's language throughout, GLM/1 contains many references to the provisions of statutes and statutory instruments regulating the building industry. The draftsman could easily have inserted words making it clear that the defendants were not to be responsible for their own negligence. If he had done so, it was likely that the words would be struck out (as other parts of the conditions were struck out) making it absolutely plain that there was no exemption of liability for negligence. A building site is a dangerous place and likely to be made more dangerous if one of the parties working there knows that he is not liable to pay compensation for the results of his own negligence. On grounds of safety and self-preservation, quite apart from financial considerations, one party on a building site will have every reason to be reluctant to grant an exemption of liability for negligence to another party working on the same site. Of course, such an exemption may be granted in the bargaining process in order to obtain a contract, but the grant of such an exclusion of liability is a very serious matter. Even valued in insurance premiums alone, it would be very expensive.

24. Lord Hoffman's enunciation of the five principles to be applied in construction of contractual documents made in ***ICS Limited v. West Bromwich Building Society*** [1998] AC 896 at 912 is well known. He said:

    "The principles may be summarised as follows:

    (1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

    (2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

    (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

    (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see ***Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.*** *[1997] A.C. 749*

    (5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in ***Antaios Compania Naviera S.A. v. Salen Rederierna A.B.*** *[1985] A.C. 191, 201:*

    > *"If detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."*

25. In the particular case before Lord Hoffman, the contract was so worded that, in Lord Hoffman's words (at page 914E) "the court is inevitably engaged in choosing between competing unnatural meanings". That is not the case here. Some of what was said by Lord Hoffman is not directly relevant to this case. But his references to the factual background are directly relevant, and that is why I have made some mention of the background.

26. In a case concerning an exclusion clause in a time charterparty, ***Industrie Chimiche v. Nea Ninemia Shipping*** [1983] 1AER 686, Bingham J. considered a number of the authorities and then made a lengthy citation from the judgment of May L.J. in ***Lamport & Holt Lines v. Coubro, The Raphael*** [1982] 2 Lloyd's Rep 42 at 49: *"Thus, if an exemption clause of the kind we are considering excludes liability for negligence expressly, then the Courts will give effect to the exemption. If it does not do so expressly, but its wording is clear and wide enough to do so by implication, then the question becomes whether the contracting parties so intended. If the only head of liability upon which the clause can bite in the circumstances of a given case is negligence, and the parties did or must be deemed to have applied their minds to this eventuality, then clearly it is not difficult for a Court to hold that this was what the parties intended – that this is its proper construction. Indeed to hold other wise would be contrary to commonsense. On the other hand if there is a head of liability upon which the clause could bite in addition to negligence then, because it is more unlikely than not that a party will be ready to excuse his other contracting party from the consequences of the latter's negligence, the clause will generally be construed as not covering negligence. If the parties did or must be deemed to have applied their minds to the potential alternative head of liability at the time the contract was made then, in the absence of any express reference to negligence, the Courts can sensibly only conclude that the relevant clause was not intended to cover negligence and will refuse so to construe it. In other words, the Court asks itself what in all the relevant circumstances the parties intended the alleged exemption clause to mean."*

27. Bingham J. then (at page 689) said:

"From the cases the following general conclusions in my opinion emerge.

1. Since it is inherently improbable that one party to a contract should intend to absolve the other party from the consequences of the latter's own negligence, the court will presume a clause not to have that effect unless the contrary is plainly shown by clear words or by implication.

2. Statements made in one case may assist in deciding another but cannot literally determine the decision, since in each case the task is one of construction to ascertain the actual or imputed intention of the parties to the contract in question.

*3. In carrying out that task of construction, the court should not treat commercial parties as if they were law students (see **The Raphael** at 46 per Donaldson J.). Often the test of what would be understood or intended by the ordinarily literate and sensible person will be appropriate (see **Hollier's Case** [1972] 2 QB 71 at 78 per Salmon L.J. and **The Raphael** at 51 per Stephenson L.J.). Picking up these references, counsel for the owners suggested that the court should adopt the standard of the intelligent layman. I accept that this will in many cases be an appropriate standard. But where a contract is made in a specialised business by two practitioners in that business I think a somewhat different standard is indicated, approximating to that of the reasonably informed practitioner in the field in question.*

*4. Where the words used are wide enough to cover negligent as well as non-negligent acts or omissions but practically speaking the clause lacks substance if it is not construed as covering negligent acts or omissions, the court may in the circumstances of a given case infer that the parties intended the clause to cover negligence (as in **the Raphael**) but it need not do so (see **Hollier's case**). All depends on the proper inference to be drawn in the instant case."*

28. With regard to Bingham J's fourth point, it should be remembered that the contract before me was made by experienced practitioners in a specialised business. It should also be remembered that the practitioner in that business who was putting forward his own printed form to be a part of the contract had the help of a lawyer in its drafting. What was said by Donaldson J. in the ***Raphael*** about not treating commercial parties as if they were law students does not detract from what was said by Hobhouse J. and Steyn L.J. in the ***Caledonia case.***

29. It was suggested by counsel that May L.J. acted inconsistently with his decision in ***The Raphael*** when he gave judgment in ***Hinks v. Fleet*** [1986] 2 EGLR 243. I do not so read his judgment in the latter case. In that case, the owner of a caravan park admitted vehicles to his park *"on condition that the park owner shall not be liable for loss or damage to (a) any vehicle or caravan (b) anything in, on or about any vehicle or caravan however such loss or damage may be caused"*. In ***Hinks v. Fleet,*** May L.J. considered and relied on certain authorities discussing the meaning of the words "however caused" in exclusion clauses. Those authorities included ***Gillespie Brothers v. Bowles Transport*** where, at page 415, Lord Denning M.R. described those words as "magic words". They have long been considered to be sufficiently wide to be regarded as an express reference to negligence in exclusion clauses. Because there is thought to be some conflict between the judgments of May L.J. in those two cases, it is particularly interesting to consider the speeches in the House of Lords in ***Smith v. South Wales Switchgear Limited*** [1978]1 WLR 165 where the decision of ***Gillespie Brothers v. Bowles Transport*** was considered.

30. In ***Smith,*** Viscount Dilhorne cited with approval the passage from the judgment of Buckley L.J. which I have quoted. Viscount Dilhorne then considered that case and others in the light of the tests for construction put forward by Lord Morton in ***Canada Steamship Lines v. The King*** [1952] AC 192. That was a decision of the Privy Council on appeal from the Supreme Court of Canada regarding a case governed by the law of Quebec. The decision of the Privy Council has nonetheless been held to state the law applicable to Scotland (***North of Scotland Hydro-Electric Board v. D & R Taylor*** [1956] SC 1) and to England and Wales.

31. Viscount Dilhorne dissented from the views of Buckley and Orr L.JJ. in ***Gillespie Brothers*** where they held that there was a express reference to negligence by the words *"save harmless and keep .. indemnified against all claims or demands whatsoever."* Lord Fraser at page 173 also said that he did not see how a clause can "expressly" exempt or indemnify the proferens against his own negligence unless it contains the word negligence or some

synoym for it. But at the same time, Lord Fraser said that he agreed with the decision in the ***Gillespie Brothers case.*** His dissent was on the question whether the clause in ***Gillespie Brothers*** should be considered under the first or the second of Lord Morton's tests in ***Canada Steamship Lines v. The King.***

32. Lord Keith, in ***Smith v. South Wales Switchgear***_approved statements of the Court of Appeal in ***Walters v. Whessoe*** [1968] 1 WLR 1056. Those statements were, per Sellers L.J.: *"It is well established that indemnity will not lie in respect of loss due to a person's negligence or that of his servants unless adequate or clear words are used or unless the indemnity could have no reasonable meaning or application unless so applied."*

    and per Devlin L.J.: *"It is now well established that if a person obtains an indemnity against the consequences of certain acts, the indemnity is not to be construed so as to include the consequences of his own negligence unless those consequences are covered either expressly or by necessary implication."*

33. In a number of cases since 1952, the courts have warned against a mechanistic application of the tests put forward by Lord Morton in ***Canada Steamship Lines v. The King.*** In ***Smith v. South Wales Switchgear*** [1978] 1 WLR 165 at 178 Lord Keith said that the principles expressed by Lord Morton in ***Canada Steamship Lines v. The King*** *"do not represent rules of law, but simply particular applications of wider general principles of construction, the rule that express language must receive due effect and the rule omnia praesumuntur contra proferentem."* In ***Caledonia Limited v. Orbit Valve Co.*** at page 227 Hobhouse J. said: *"As has been said on a number of occasions (see Salmon L.J. in **Hollier v. Rambler Motors (AMC) Ltd.** [19721 2 Q.B. 71, 80; May L.J. in **Lamport & Holt Lines v. Coubro & Scrutton (M. & I.) Ltd., (The Raphael)** [1982] 2 Lloyd's Rep. 42, 49-50 and Viscount Dilhorne in **South Wales Switchgear case** [1978] 1 W.L.R. 165, 168), what Lord Morton said was no more than guidance, and every contract has to be construed having regard to its own terms and context and the circumstances in which it was made. The question remains one of the construction of the contract, applying the established principles of construction. These include the principle that the parties to a contract are not to be taken to have agreed that a party shall be relieved of the consequences of its negligence without the use of clear words showing that that was the intention of the contract."*

34. The tests proposed by Lord Morton in ***Canada Steamship Lines v. The King*** were:

    (1) If the clause contains language which expressly exempts the person in whose favour it is made (hereafter called "*the proferens*") from the consequence of the negligence of his own servants, effect must be given to that provision. Any doubts which existed whether this was the law in the Province of Quebec were removed by the decision of the Supreme Court of Canada in ***The Glengoil Steamship Company v. Pilkington.***"

    (2) If there is no express reference to negligence, the court must consider whether the words used are wide enough, in their ordinary meaning, to cover negligence on the part of the servants of the proferens. If a doubt arises at this point, it must be resolved against the proferens in accordance with article 1019 of the Civil Code of Lower Canada: *" In cases of doubt, the contract is interpreted against him who has stipulated and in favour of him who has contracted the obligation."*

    (3) If the words used are wide enough for the above purpose, the court must then consider whether *"the head of damage may be based on some ground other than that of negligence,"* to quote again Lord Greene in the ***Alderslade*** case. The "*other ground*" must not be so fanciful or remote that the proferens cannot be supposed to have desired protection against it; but subject to this qualification, which is no doubt to be implied from Lord Greene's words, the existence of a possible head of damage other than that of negligence is fatal to the proferens even if the words used are prima facie wide enough to cover negligence on the part of his servants.

35. Applying those tests, I find that the words used by the defendants in GLM/1 do not satisfy the tests (1) or (2) of Lord Morton so as to exclude liability for negligence on the part of the defendants. It is not necessary for me to consider the controversial and much criticised third test.

36. As to the first test, there is plainly no reference in clause 2.04 to the word "*negligence*". The defendants submit that the words *"any claims in respect of plant or tools of the Sub-Contractor or his workmen which may be lost or damaged by fire or any other cause"* are apt to bring the contract within the first test, and for that purpose they rely on ***Hinks v. Fleet***. The words "*any other cause*" must be read with the words "lost or damaged by fire or any other cause" and for the reasons given earlier in this judgment I do not read them as having the same meaning as the words "however caused" in ***Hinks v. Fleet.*** The second test takes the matter no further, and the third test, on my view of the matter, does not arise for consideration and I need not consider the criticisms of that test.

37. Having taken this longer route through the authorities, I again find in favour of the claimants.

38. In argument, no distinction was made between liability for negligence and liability under the other causes of action alleged. For the purpose of answering the first preliminary issue, it is not necessary for me to distinguish between liability for negligence and liability for the other causes of action alleged.

Conclusion

39. I decide the first issue before me against the defendants. Assuming the facts stated in the Amended Particulars of Claim are true, and subject to any argument Stent may have under the Unfair Contract Terms Act 1977, Gleeson's standard terms and conditions do not provide Gleeson with a complete Defence to Stent's claim.

40. On that finding, no question arises for decision by me on the second issue before me.

41. I therefore give judgment for the claimants on this trial of a preliminary issue.

Coda

42. In all projects, the allocation of the risks of negligence and the duty to insure against those risks is a matter to be considered. Clear allocation of risk may reduce the likelihood of litigation or arbitration. The decisions of the courts, including this decision, should not be read as being opposed to such allocation of risk. All that is being decided in this case, as in others, is that the parties should be clear and explicit in their contracts so that parties start a project with clear knowledge as to where the risks lie rather than disputing the allocation of risk when the project goes awry. There is so much guidance in the decided cases on this topic that it would be easy for any lawyer for a contracting party to draft clear words excluding liability, if that is what his client wants, and the other party could then decide with informed consent whether he wants to accept that exclusion.

James Medd for the claimants (Solicitors: Wedlake Bell)
Charles Samek for the defendants (Solicitors: Kershaw Abbott)