JUDGMENT : His Honour Judge Peter Coulson QC: TCC. 25th January 2006

1. A point of some importance has arisen on the first day of the trial of this action. The Part 20 Claimant, whom I shall call Gurney, was originally sued by Pearson Pension Property Fund Limited ("Pearson") in connection with the collapse of part of a row of terraced properties in Beauchamp Place, London, SW 3, in October 1998. The properties were in the course of being extensively refurbished. Pearson were the owners of the properties, and they had engaged Gurney to act as the structural engineers for the refurbishment works. Gurney subsequently issued Part 20 proceedings against the other parties involved in the refurbishment works: Styles and Wood, the contractors; GMK, the Architects; and the two Gleeds companies referred to above who were, respectively, the Planning Supervisors and the Project Managers. I shall call them Gleeds. Gurney's Part 20 proceedings sought a contribution against each of these parties pursuant to the Civil Liability (Contribution) Act 1978. There were also separate Part 20 proceedings between Styles and Wood and their scaffolding sub-contractors, Fourways Limited.

2. In the last two weeks, Gurney has settled the main claim brought against them by Pearson. They have also settled their own Part 20 claims against Styles and Wood and GMK. In addition, Styles and Wood have compromised their claim against Fourways. Thus, the only remaining claims for trial are the Part 20 claims brought by Gurney against the two Gleeds companies.

3. One of the features of the expert evidence is the broad measure of agreement on a number of matters between all but one of the engineering experts, who have provided reports and signed the helpful Part 35.12 statement pursuant to earlier orders of the court. In a number of important respects, particularly relating to causation, Mr Jackson, the expert engineer instructed by Gurney, has found himself at odds with the views expressed by all the remaining engineering experts, including those of Mr Price, the expert engineer instructed by Gleeds. Now that Gurney has settled with all the other parties, Mr Sutherland is naturally keen to ensure that Gleeds cannot rely on the reports served on behalf of those other parties who are no longer in the action. Equally naturally, Mr Reed wishes to rely on the content of their reports and the agreements they reached pursuant to CPR 35.12.

4. On behalf of Gurney, Mr Reed relies on CPR 35.11, which provides: *"Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the trial."*

   Thus, he says, Gleeds do not need to make a formal application to use the reports of those engineering experts who will not now be giving oral evidence. However, Mr Reed accepted that it would be appropriate for the Gleeds companies to notify Gurney of the reports that they do seek to rely on in accordance with this rule. He also said that Gleeds could not ***'cherry-pick'*** those parts of the reports on which they wished to rely and exclude those parts that may be unfavourable to them: if Gleeds were entitled to rely on CPR 35.11 to use the report of another party, he submitted that the court had to have regard to the entirety of that report, and not just part of it.

5. Mr Sutherland disputes Gleeds' approach on two grounds. First, he says that CPR 35.11 does not apply, because the reference there to "a party [that] has disclosed an expert's report" must be a reference to a party in the ongoing proceedings, and, because Gurney have settled with those whose expert's reports Gleeds now wish to use, they are no longer 'parties' for the purposes of the rule, and rule is therefore of no application. Secondly, he argues that, in any event, the provisions of CPR 35.4(1) must still apply, pursuant to which *"no party may…put in evidence an expert's report without the court's permission."* Thus, he says, Gleeds must make a formal application to rely on the other engineering experts' reports which, for a variety of reasons, he would oppose.

6. In my judgment, the answer to Mr Sutherland's two points can be found in CPR 35.11 itself. It only applies where party A has already disclosed an expert's report and party B wants to rely on it as evidence at the trial. The disclosure of party A's report could only have occurred in accordance with CPR 35.4. In other words, it is a fundamental assumption within CPR 35.11 that there has already been compliance with CPR 35.4, and the report which party B now wishes to use is one for which the court has already given permission. In such circumstances, it is not necessary for party B to seek permission all over again; party B merely wishes to use a report for which permission has already been given.

7. Similarly, because CPR 35.11 assumes that party A's report has been disclosed in accordance with CPR 35.4, it does not matter whether, sometime after disclosure of that report, party A ceased to be a party to the proceedings. The reference to "a party [that] has disclosed an expert's report" in CPR 35.11 cannot be limited to those who happen to be parties to the proceedings at the time that that report is sought to be used by another: there is nothing in the rule which could limit its scope in that way. The reference in r.35.11 is to any party who has disclosed a report in accordance with r.35.4, whether they subsequently remain a party to the proceedings or not.

8. Prima facie, therefore, as a matter of straightforward construction of the CPR, Gleeds can use the engineering reports disclosed by Pearson, Styles and Wood, GMK, and Fourways. Moreover, I should say that, in my judgment, such a result is generally in accordance with the over-riding objective at CPR 1.1. It would be artificial, and possibly even misleading, in a case of this sort, for the court to have no regard whatsoever to the reports of the other experts, or the part played by those other experts in reaching the detailed contents of the CPR 35.12 joint statement.

9. That said, I am mindful of the need to ensure that any orders/directions in respect of expert evidence are proportionate. I also consider that it is important that Gurney fully understand which of the other engineering expert's reports Gleeds wish to rely on, and for what purpose. That would necessarily involve a consideration by Gleeds of the component parts of each report, even if it is right, as I think it must be, for the court to have regard to the report as a whole when arriving at its conclusions. In particular, I consider that Mr Sutherland needs to know, in advance of his cross-examination of Mr Price, Gleeds' expert engineer, what, if any, points arising from the other engineers' reports he may need to raise during his questioning. In addition, I believe he is also entitled to raise with the court any aspect of Gleeds' attempt to use particular parts of the other experts' reports if he considers that such use would, for specific reasons, be disproportionate or unfair. Of course, he cannot do that until he knows what reports and/or parts of the reports Gleeds wish to use, and why they wish to use them.

10. Accordingly, in the exercise of my trial management powers pursuant to the CPR, I order that, in the first instance, Gleeds must notify Gurney of which other engineering reports they want to use, which parts of those reports are particularly important, and why they want to use them. If, as a result of that notice, Gurney have any specific objection or point to make about the proposed use by Gleeds of a particular report, it can be considered at that stage.

11. Finally I should add this. Although I consider that, in general terms, it would be artificial for me to ignore entirely the views of the other engineering experts, it should not be thought that any great weight can be attached to the views of any expert who will not give oral evidence at the trial. Moreover, the fact that the majority of the engineering reports reach broadly similar conclusions on causation is also, of itself, of little account: cases of this kind are decided by reference to the quality of the expert evidence adduced at trial, and in particular the oral evidence. They are not determined by weight of numbers.

Mr Paul Sutherland and Mr Tim Chelmick (instructed by Reynolds Porter Chamberlain) for the Part 20 Claimant
Mr Paul Reed (instructed by Plexus Law) for the Part 20 Defendants