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CIVIL PROCEDURE NEWS

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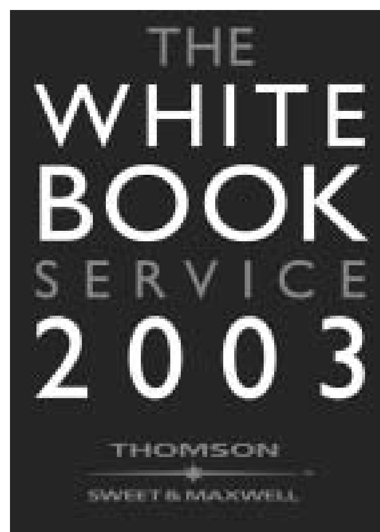

IN BRIEF

Cases

■ ORFORD v. RASMI ELECTRONICS [2002] EWCA Civ 1672; October 25, 2002, CA (Brooke L.J. & Bodey J.)
CPR rr.1.1, 1.4, 3.3, 3.4(2), 24.2, 24.4 & 25.1(1)—without proper disclosure of documents and exchange of witness statements, claim coming on for trial with parties acting in person—on own initiative, judge considering whether defendant (D) should be granted summary judgment and granting D judgment against claimant (C) accordingly—held, allowing C's appeal, although the judge had jurisdiction to act as he did, he had exercised it irregularly (see *Civil Procedure*, Autumn 2002, Vol.1, paras 3.3.1 & 24.4.8)

■ GIAMBRONE v. JMC HOLIDAYS LTD [2002] EWHC 495 (QB); 153 New L.J. 58 (2003) (Morland J. and assessors)
CPR rr.1.1, 19.11, 44.3 & 47.15, Practice Direction (Transitional Arrangements) para. 18—numerous claimants (C) bringing claims against holiday company (D) for illnesses contracted on their holidays—proceedings not subject to Group Litigation Order under r.19.11 or to costs sharing order under r.48.6A—D admitting liability—before disposal of issues of quantum, C applying for interim costs—certain of C's costs incurred before CPR came into effect—costs judge finding that costs claimed by C by reference to value and time spent seemed disproportionate—held, dismissing C's appeal, (1) the appeal was by way of review, not rehearing, and the court was not satisfied that the costs judge's decision was wrong, (2) when considering whether costs claimed are disproportionate, costs incurred pre-CPR should not be left out, (3) where liability has been admitted or determined, solicitors for claimants in group litigation are entitled to an adequate cash flow from defendants, (4) where amount of interim costs payments cannot be agreed, they should be dealt with cheaply and shortly by the nominated trial judge—procedure explained and trend towards "satellite litigation" about costs deplored—application of principles in *Lownds v. Secretary of State for the Home Department* [2002] EWCA Civ 265; [2002] 1 W.L.R. 2450, CA, to these circumstances explained—also observations on *Jefferson v. National Freight Carriers* [2001] All E.R.(D) 411 (Feb) (VAT and proportionality) (see *Civil Procedure*, Autumn 2002, Vol.1, paras 44.3.8 & 51PD.18)

■ HIGGS v. CAMDEN AND ISLINGTON HEALTH AUTHORITY [2003] EWHC 15 (QB); January 16, 2003, unrep. (Fulford J.)
CPR rr.44.3 & 44.5—child (C), seriously incapacitated as a result of brain damage at birth, bringing clinical negligence claim for £6.1m against health authority (D) and recovering damages of £3.5m—on detailed assessment, costs judge finding (1) that, given the weight of the case, the solicitor (X) acting for C was entitled to undertake the bulk of the work himself and was not obliged to delegate any of the work to a junior in his firm, and (2) that the hourly rates of X and the barrister instructed by him should be assessed at £300 and £350 respectively—held, dismissing D's appeal, in this heavy and difficult negligence claim (which was expertly run) (1) it was reasonable for X (a) to do the bulk of the work himself, and (b) to engage the services of a particular silk, and (2) although the hourly rate figures assessed by the costs judge were high they were appropriate—judge observing that the Guide to the Summary Assessment of Costs is only of limited assistance in a case such as this—*Simpson Motor Sales (London) Ltd v. Hendon Borough Council* [1965] 1 W.L.R. 112, ref'd to (see *Civil Procedure*, Autumn 2002, Vol.1, paras 47.14.7, 44.14.9, 47.14.6 & 48.16)

■ HIGHBERRY LTD v. COLT TELECOM GROUP PLC. [2002] EWHC 2503 (Ch); November 25, 2002, unrep. (Lawrence Collins J.)
CPR rr.32.5, Insolvency Rules 1986, rr, 7.7, 7.51 & 7.60, Insolvency Act 1986, s.8, Companies Act 1985, s.425—petition for administration order presented against listed company (D) by holders of notes (C) issued by D—C alleging that D likely to become both cash-flow and balance sheet insolvent—on basis that hearing of the petition will be a trial and therefore, there will be oral examination on witness statements as provided by r.32,5 unless the court orders otherwise, C applying for (1) disclosure of documents and the provision of information by D, and (2) directions for cross-examination of D's chief executive officer—held, dismissing application, (1) the CPR and the practice and procedure of the High Court apply to insolvency proceedings with any necessary modifications except so far as inconsistent with the 1986 Rules (r.7.51(1)), (2) the hearing of insolvency proceedings will normally be on the basis of written evidence, but (3) the court does have power to order disclosure of documents and information and to order cross-examination under rr.7.7 and 7.60, however (4) the 1986 Rules do not provide for disclosure akin to the procedure under the CPR, which is inconsistent with the 1986 Rules (see *Civil Procedure*, Autumn 2002, Vol.1, paras 2.1.4 & 32.5.1)

■ INDIVIDUAL HOMES LTD v. MACBREAM INVESTMENTS LTD *The Times,* November 14, 2002 (Mr Alan Steinfeld QC)
CPR rr.31.17, 34.2, 48.1 & 48.2, Supreme Court Act 1981, ss.34 & 51—claimants (C) bringing claim for specific performance on agreement with defendants—shortly before trial, C serving witness summons on employee (X) of bank (Y) requiring Y to attend and produce documents—as a result, Y providing documents—claim settled in course of trial—held, granting Y's application for order to be joined as party for purposes of costs incurred in disclosing documents (1) strictly speaking, the issue of the witness summons was an ineffective exercise, (2) C should have applied for production of the documents under s.34 and r.31.17, in which event X would have been entitled under r.48.1 to the costs of the application and costs incurred in complying with any order for disclosure—judge expressing view that, although no jurisdiction is given by Pt 34, the court would have jurisdiction under s.51 and r.48.2 to make an order for costs to compensate a witness for the costs incurred in complying with a witness summons to produce documents issued under r.34.2—*Aiden Shipping Co. Ltd v. Interbulk Ltd* [1986] A.C. 965, H.L., ref'd to (see *Civil Procedure*, Autumn 2002, Vol.1, paras 31.17.1, 34.2.1, 34.7.1, 48.2.1, and Vol.2, paras 9A-98 & 9A-265A)

■ LAW DEBENTURE TRUST CORPORATION (CHANNEL ISLANDS) LTD v. LEXINGTON INSURANCE CO. [2002] EWCA Civ 1673; November 11, 2002 (Simon Brown & Clarke L.JJ.)
CPR rr.1.1 & 17.1, Human Rights Act 1998, Sch. 1, Pt I, art. 6—claimant company (C) suing insurers (D) on policy of pecuniary loss indemnity insurance—D denying liability and advancing a contingent Pt 20 claim against brokers (X)—D applying for permission to amend its defence and Pt 20 claim—at case management conference, judge refusing application, principally because (1) the amendments raised a matter which could involve other parties in giving further disclosure of documents and producing revised and additional witness statements, (2) considerable arguments both on the law and about the facts would be involved, and (3) the "guillotine date", which had been previously fixed for any further amendments to statements of case, should be rigidly enforced—judge granting D permission to appeal—held, allowing D's appeal (1) amendments in general ought to be allowed, so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the efficient administration of justice is not significantly harmed, (2) where the effects of refusing an application for permission to amend would deprive a party of a defence, the court must carry out the necessary balancing exercise methodically and explain how it reached its ultimate decision, and it must have regard to the need for proportionality, (3) the Court will not interfere with a judge's exercise of a discretion to amend (or not to amend) a statement of case unless he erred in principle or was plainly wrong, (4) in this case, when the "guillotine date" for amendments was agreed, no one had in mind the particular point which subsequently arose, and which D wished to plead by amending their defence and Pt 20 claim, (5) in the circumstances, the judge erred in principle by treating the "guillotine date" as set in stone or to be enforced rigidly—*Cobbold v. London Borough of Greenwich* August 9, 1999, CA, unrep., *Morris v. Bank of America* [2002] EWCA Civ; 425; March 25, 2002, CA, unrep., ref'd to (see *Civil Procedure*, Autumn 2002, Vol.1, para. 17.3.5, and Vol.2, para. 3D-34)

■ MARKOS v. GOODFELLOW [2002] EWCA Civ 1542; October 11, 2002, CA, unrep. (Pill & Waller L.JJ.)
CPR rr.40.12(1) & 52.13(2), Access to Justice Act 1999, s.54(4)—on ground that matter was de minimis, trial judge dismissing claimant's (C) county court claim against defendant (D) for trespass to land—on C's appeal, High Court judge (1) refusing C permission to appeal, but (2) holding that any degree of trespass was actionable, and (3) ordering that judgment appealed should be corrected under the slip rule so as to state that C should have judgment for a nominal sum—held, granting C permission to make a second appeal, allowing D's appeal and remitting matter to High Court, (1) having found that the county court judge was wrong the High Court judge should have granted C permission to appeal, (2) the High Court judge had mis-used r.40.12, as the "slip rule" (a) is limited to genuine slips, (b) is only applicable to "an accidental slip or omission", and (c) cannot be used to change the substance of a judgment (see *Civil Procedure*, Autumn 2002, Vol.1, paras 40.12.1 & 52.13.1, and Vol.2, para. 9A-864)

■ R. (CAMPAIGN FOR NUCLEAR DISARMAMENT) v. PRIME MINISTER OF THE UNITED KINGDOM) [2002] EWHC (QB) 2712; *The Times*, December 27, 2002, DC (Simon Brown L.J. & Maurice Kay J.)
CPR r.44.3—CND (C), a private company limited by guarantee C, applying for permission to make claim for judicial review against Ministers (D)—D proposing to argue that C's claim was non-justiciable—C applying for a pre-emptive costs order—D's costs of permission hearing likely not

to exceed £25,000—held, granting application, (1) the discretion to grant a pre-emptive costs order should be exercised only in the most exceptional circumstances, (2) in exercising the discretion the court (a) must have regard (i) to the respective financial resources of the parties, and the (ii) amount of costs likely to be in issue, and (b) must (i) be satisfied that the issues raised are truly ones of general importance, and (ii) have sufficient appreciation of the merits of the claim in order to conclude that it is in the public interest to make the order, (3) in the circumstances it was right to afford C the relatively limited certainty that the order sought would provide—*R. v. Lord Chancellor, Ex p. Child Poverty Action Group* [1999] 1 W.L.R. 347; *R. v. Hammersmith and Fulham London Borough Council, Ex p. CPRE* [2000] Env L.R.544, ref'd to (see *Civil Procedure*, Autumn 2002, Vol.1, paras 1.3.5, 1.3.6, 44.3.8 & 48.15.5, and Vol.2, para. 9A-265)

■ SPENCER v. SILLITOE [2002] EWCA Civ 1579; October 22, 2002, CA, unrep. (Simon Brown, Buxton & Carnwath L.JJ.)
CPR r.24.2(a)(ii), Supreme Court Act 1981, s.69—employee (C), acting in person, bringing defamation claim against his corporate employers (D2), alleging that he had been libelled in a purported note of a confidential meeting between him and member (D1) of D2's human resources department published within the company—claim destined for trial by judge and jury under s. 69—D pleading justification and qualified privilege—D applying for summary judgment under r.24.2(a)(i) on ground that C had no real prospect of succeeding because the publication was an occasion of qualified privilege and without malice—judge finding that C's case was highly likely to fail at trial, and granting D summary judgment—held, allowing C's appeal (1) an application can be made under r.24.2(a) in defamation proceedings for the determination of questions which fall within the jurisdiction of the judge, (2) on such an application, it is open to a judge to come to the conclusion that the evidence, taken at its highest, is such that a jury properly directed could not properly reach a necessary factual conclusion, (3) D's principal defence was justification, and the case turned on a straightforward clash of evidence between C and D2 as to the issue of what transpired at a meeting at which they alone were present, (4) by focusing on qualified privilege and lack of malice, the judge was lead away from that issue at the summary judgment hearing, (5) it was an issue which C was entitled to have determined by a jury—Court observing that, on a r.24.2 application, judge should not embark on a mini-trial—*Safeway Stores v. Tate* [2001] 2 W.L.R. 1377, CA; *Alexander v. Arts Council for Wales* [2001] EWCA Civ 514; [2001] 1 W.L.R. 1840, CA; *Swain v. Hillman* [2001] 1 All E.R. 91, CA, ref'd to (see *Civil Procedure*, Vol.1, para. 24.2.4 & 53.2.1, and Vol.2, para. 9A-326.1)

Statutory Instruments

■ CIVIL PROCEDURE (AMENDMENT NO.2) RULES 2002 (S.I. 2002 No. 3219)
amend Civil Procedure Rules 1998—insert Pt 63 (Patents and Other Intellectual Property Claims), containing new rules governing the procedures for intellectual property rights, in particular patents, registered designs and registered trade marks, and replacing Practice Direction (Patents, Etc.) (49E)—make consequential amendments to r.49 (Specialist Proceedings)—amend r.24.13 (security for costs conditions) in light of *De Beer v. Kanaar & Co.* [2001] EWCA Civ 1318; [2003] 1 W.L.R. 38, CA—amend r.36.6 (offer by Pt 36 payment notice) and r.37.1 (payments into court under court order)—amend r.56.4 to add proceedings under the Commonhold and Leasehold Reform Act 2002 to list of miscellaneous proceedings about land provided for by Sect. II of Pt 56—in force April 1, 2003 (see *Civil Procedure*, Autumn 2002, Vol.1, paras 25.13, 36.6, 37.1, 49.1 & 56.4, and Vol.2, para. 2D-1)

■ CIVIL LEGAL AID (GENERAL) (AMENDMENT NO.2) REGULATIONS 2002 (S.I. 2002 No. 3033)
amend Civil Legal Aid (General) Regulations 1989 (S.I. 1989 No. 339)—apply to transitional cases to which 1989 Regulations continue to apply as provided by Access to Justice Act 1999 (Commencement No.3, Transitional Provisions and Savings) Order 2000 (S.I. 2000 No. 774)—make further provision as to deferment and recoupment of costs paid to a solicitor where 1989 Regulations have been breached, or where there has been an overpayment—apply regs. 105 and 105A to assisted proceedings in magistrates' courts—amend provisions as to late submission of bills of costs—in force December 31, 2002

IN DETAIL

Security for Costs

In modern times, the rules as to security for costs as contained in Section II of CPR Pt 25 (rr.25.12 to 25.15) have received more than their share of attention. Section II was added to Pt 25 by the Civil Procedure (Amendment) Rules 2000 and replaced Sch.1 RSC O.23. Rule 25.12 states that a defendant to any claim may apply for security for his costs of the proceedings. An application must be supported by written evidence. Where the court makes an order for security for costs, it will (a) determine the amount of security, and (b) direct (i) the manner in which, and (ii) the time within which the security must be given. Rule 25.13(1) states that the court may make an order for security for costs under r.25.12 if (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and (b) one or more of the conditions in para. (2) of the rule applies, or an enactment permits the court to require security for costs.

It is the conditions to be satisfied in para. (2) of r.25.13 that have attracted attention. With effect from March 1, 2002, sub-paras (a) and (b) of para. (2) were subject to minor amendments by the Civil Procedure (Amendment No. 5) Rules 2001 (S.I. 2001 No.4015) to take account of the coming into effect of Council Regulation (EC) No.44/2001 of December 22, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

After those amendments, paras (a), (b) and (c) of r.25.13(2) stated that the court may make an order for security for costs if:

"(a) the claimant is an individual-
(i) who is ordinarily resident out of the jurisdiction; and
(ii) is not a person against whom, a claim, can be enforced under the Brussels Conventions or the Lugano Convention or the Regulation, as defined by section 1(1) of the Civil Jurisdiction and Judgments Act 1982;
(b) the claimant is a company or other incorporated body-
(i) which is ordinarily resident out of the jurisdiction; and
(ii) is not a body against whom, a claim, can be enforced under the Brussels Conventions or the Lugano Convention or the Regulation;
(c) the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;"

It will be noted that para. (a) applies to an individual defendant and paras (b) and (c) (which are not mutually exclusive) apply to corporate defendants, with the difference between para. (b) and para. (c) being that the former attempts to restrict the circumstances in which security for costs orders may be made against claimant corporate bodies entitled to protection from discrimination by the Conventions (being a similar protection to that given to individuals by para. (a)). In *White Sea & Onega Shipping Co. v. International Transport Workers Federation* [2001] EWCA Civ 377; March 7, 2001, CA, unrep., Brooke L.J. noted that para. (b) was remedial and drafted in a manner designed to overcome the discriminatory effect of the rule it replaced (RSC O.23, r.1), and said the negative conditions in it restricting the jurisdiction of the Court are to be interpreted in the light of the history of the rule.

In *De Beer v. Kanaar & Co.* [2001] EWCA Civ 1318; [2003] 1 W.L.R. 38, CA. In that case the facts were that X, a consultant for a firm of solicitors (D), acted for C in failed negotiations to sell letters of credit. C brought a claim against D for restitution for sums paid to X during the negotiations. D alleged that the attempted sale was part of a fraudulent scheme. C was a Dutch national ordinarily resident in the USA with assets in Holland and Switzerland. The judge dismissed D's application for an order that C should give security for their costs. The Court of Appeal allowed D's appeal. The Court held (1) that both of the conditions stated in para. (a) were satisfied because, as not only (i) was C ordinarily resident out of the jurisdiction, but also, (ii) although he had assets in Convention countries (against which a costs order could be enforced), he was "not a person against whom a claim can be enforced" under the Conventions, and (2) that in the exercise of discretion, an order for security should be made. The Court observed that the provisions in r.25.13(2) relevant in this case were poorly drafted and should be given a purposive construction consistent with their purpose (which is to eliminate covert discrimination).

As a result of this criticism, and for the purpose of bringing the rules into accord with the decision of the Court in this case, r.25.13(2) has been amended by the Civil Procedure (Amendment No.2) Rules 2002 (S.I. 2002 No. 3219) r.3 (with effect from April 1, 2003). This has been accomplished by omitting para. (b) entirely and by making para. (a) applicable to both individual and corporate claimants. Thus r.25.13(2)(a) now reads as follows (para. (c) remains untouched):

"(a) the claimant is--

(i) resident out of the jurisdiction; but

(ii) not resident in a Brussels Contracting State, a Lugano Contracting State or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982;"

It will be noted that para. (a) now refers, not to s.1(1), but to s.1(3), of the 1982 Act. Section 1 was amended by the Civil Jurisdiction and Judgments Act 1995, and also by several statutory instruments coming into effect after r.25.13 first appeared in the CPR on May 2, 2000.

Summary judgment at trial

Before the CPR came into effect, the role of the summary judgment procedure was tolerably clear.It was a procedure designed to enable a plaintiff to get judgment against a defendant without a trial; it was a trial avoidance procedure. It had a very long history, with modest beginnings. The basic rule in Civil Procedure is that "he who alleges must prove". The judgment of the court in a disputed case is a serious matter and is not to be gained easily. A summary judgment procedure is potentially an unjust procedure. A procedure that relieves a claimant of the need to prove his case at trial, and which prevents a defendant from making his defence at trial, needs to be watched. A summary judgment though summarily arrived at is nevertheless a judgment. It is not a matter of the mere striking out of a statement of case.

Originally, the summary judgment procedure was limited to cases where the risk of any injustice being done to the potential judgment debtor was minimal. Over the years, the procedure was extended to an increasingly wide range of cases, and the risk of injustice increased significantly. Under the CPR, the test for summary judgment was lowered and the risk of injustice was increased yet again. Further, under the CPR, the procedure was extended so as to be available to defendants as well as to claimants. These developments have come about as much for the purpose of taking pressure of the trial courts as for the purposes of reducing costs and delays in individual cases.

CPR r.24.2(a)(ii) and (b) state that the court may give summary judgment against a defendant on the whole of a claim or on a particular issue if it considers that the defendant "has no real prospect of defending the claim" and there is "no other compelling reason" why the case or issue should be disposed of at a trial. (As is explained in the White Book at para. 24.2.1, these provisions are ineptly drafted, mainly because their provenance was not understood). Most lawyers would assume that the summary judgment procedure is a pre-trial procedure. But perhaps this assumption is wrong. Take the case of *James v. Evans* [2001] CP Rep 36, CA. Here the facts were that the administrator (C) of the estate of a deceased (X) brought a claim for possession against a farmer (D) who had been let into possession of a farm pending the completion of a contract of tenancy. The case was prepared for trial in the normal way and July 5, 1999, was fixed for the start of a three day witness trial in a county court. The parties, their legal representatives and their witnesses attended on that day, prepared to participate in a trial. However, at the outset the judge indicated that, having read the pleadings, witness statements and the documents, he had come to the preliminary conclusion that there was no real defence to the claim. The judge gave the claimant summary judgment, apparently purporting to act on his own initiative under r.24.2.

On appeal to the Court of Appeal (Butler-Sloss P. Thorpe L.J. and Wright J.), D argued (amongst other things) that the judge at trial did not have jurisdiction under r.24.2 to give summary judgment or, at least, if he had such jurisdiction he ought not have exercised it in the manner he did. In particular, D argued that, in these circumstances, summary judgment is a pre-trial, not a trial procedure, and in any event, summary judgment may not be given except on the basis of an application made by a party. Wright J., in giving the principal judgment of the Court in this case, was content to say, but without being specific, that there was no question that the judge had jurisdiction to proceed as he did on his own motion.

The Court of Appeal's judgment in James v. Evans was the judgment of a three-judge court. The case was referred to in the judgment of a two-judge court of the Court of Appeal in *Orford v. Rasmi Electronics* [2002] EWCA Civ 1672; October 25, 2002, CA, unrep. In this case, Brooke L.J. (sitting with Bodey J.) noted that James v. Evans did not figure in the White Book annotations on r.24.2, but it is not clear whether in doing so his lordship was intending to criticise the authors for a lapse or to praise them for their circumspection. In this case the facts were that an employee (C) brought proceedings in a county court against a company (D1) that formerly employed him and its managing director (D2) for misrepresentation and for defamation. The claim came on for trial with both C and D2 acting in person. The case had not been properly prepared. Until the morning of trial the parties had not disclosed documents or exchanged witness statements. At the start of the hearing the judge indicated to C that, in his view, the defendants had a complete defence to the misrepresentation claim. After giving the parties some time to consider the documents and witness statements, over the protests of C the judge gave the defendants summary judg-

ment on that claim under r.24.2(a)(i). The judge then proceeded to try the defamation claim, hearing the evidence and the submissions of the parties, and in the event dismissed the claim.

The Court of Appeal allowed C's appeal against the granting of summary judgment to the defendants on the misrepresentation claim and sent the matter back to a county court for the merits of that claim to be considered (as Brooke L.J. put it) "in an orderly manner". Bodey J. referred to James v. Evans and took the view that the Court was bound to conclude that the judge had jurisdiction to act as he did, but held that in the circumstances, and particularly bearing in mind that the parties were not represented, the judge had not exercised the jurisdiction properly. Brooke L.J. (perhaps with art. 6 considerations in mind) was more cautious and said he did not want to express any view on the question whether the trial judge had power to act as he did, preferring to wait for an occasion on which the point was fully argued by counsel. His lordship was at pains to point out that the circumstances in James v. Evans were quite different to the instant case. In James v. Evans all of the relevant material necessary for the judge to make his decision was before the court and the parties had adequate notice of it. Clearly his lordship believed that the reasoning in James v. Evans was sparse and wondered whether the conclusion that a judge has jurisdiction on his own initiative to grant summary judgment at the outset of a trial is derived from the provisions of CPR Pt 24 or from elsewhere.

Patents Court Guide and Website

The Chancery Guide is published in Volume 2 of *Civil Procedure* 2002, beginning at para. 1-1 (p.5). Ch.23 of that Guide deals with the Patents Court and Trade Marks. In para. 23.6 of the Chancery Guide (see para. 1-140, p.47) it is explained that the Patents Court has its own Court Guide, and it is further explained that, although that Guide should be consulted for detailed guidance as to the procedure in the Patents Court, certain particular matters (listed in para. 23.6) should be noted.

It is also said in para. 23.6 of the Chancery Guide, that Patents Court Guide may be consulted on the Patents Court website, and the address of that website is given as a sub-address of www.open.gov.uk. The correct address now is as follows:

www.courtservice.gov.uk/notices/pats/pat_guide.htm

White Book subscribers will find that the Patents Court Guide is printed in Vol.2 of *Civil Procedure*, beginning at para. 2D-28 (p.354).

CPR UPDATE

Further changes to the CPR have been made by the Civil Procedure (Amendment No.2) Rules 2002 (S.I. 2002 No. 3219). These changes come into effect on April 1, 2003. The most significant of the amendments is the insertion of Pt 63 (Patents and Other Intellectual Property Claims). The other amendments are explained briefly below.

Paragraph and page references are to *Civil Procedure*, Autumn 2002, Vol.1.

para.25.13 (p. 531)

In r.25.13 (Conditions to be satisfied), sub-rule (2) is amended by the omitting of para. (b) and para. (a) is substituted as follows:

"(a) the claimant is—
(i) resident out of the jurisdiction; but
(ii) not resident in a Brussels Contracting State, a Lugano Contracting State or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982;"

For an explanation of these changes, see the "In Detail" section of this issue of CP News (Security for Costs).

para.36.6 (p. 817)

In r.36.6 (Notice of a Part 36 payment), sub-rule (3) states that the court will serve the Pt 36 payment notice on the offeree unless the offeror informs the court, when the money is paid into court, that the offeror will serve the notice. And sub-rule (4) states that, where the offeror serves the Pt 36 payment notice he must file a certificate of service.

These provisions are now changed. Sub-rule (4) is omitted and sub-rule (3) is substituted as follows:

"(3) The offeror must—

(a) serve the Part 36 payment notice on the offeree; and
(b) file a certificate of service of the notice."

Sub-rule (5) remains as it is. These amendments reduce administrative burdens on court offices by shifting them to the parties (see also amendment to r.37.1 below).

para.37.1 (p. 834)

In r.37.1 (Money paid into court under a court order—general), sub-rule (1) states that, when a party makes a payment into court under a court order, the court will give notice of the payment to every other party.

Sub-rule (1) is now substituted as follows:

"(1) A party who makes a payment into court under a court order must -
(a) serve notice of the payment to every other party; and
(b) in relation to each such notice, file a certificate of service."

para.49.1 (p. 1165)

Rule 49(1) states that the CPR shall apply to the proceedings listed in r.49(2) subject to the provisions of "the relevant practice direction" which applies to those proceedings.

When the CPR came into effect in April 1999, seven discrete forms of proceedings were listed in r.49(2). They have been steadily reduced as new CPR Parts have been brought into effect. The list is now further reduced (down to one) by the insertion in the CPR of Pt 36 (Patents and Other Intellectual Property Claims). Thus r.49(2) is amended by the omitting of para. (d).

para.56.4 (p. 1317)

Rule 56.4 states that a practice direction may set out special provisions with regard to claims under four separate Acts of Parliament listed in the rule. The list includes, for example, the Access to Neighbouring Land Act 1992 and the Leasehold Reform, Housing and Urban Development Act 1993.

The list is amended by adding, after para. (d) "; and (e) the Commonhold and Leasehold Reform Act 2002."

A practice direction relating to proceedings under the 2002 Act will be published in due course.

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