JUDGMENT : Mrs Justice Arden : Chancery Division **:** 20th October, 1999

1. Introduction

1. This is an application by Mr Hadkinson for
   (1) an order that the stay imposed by paragraph 3 of my order dated 21 May 1999 on the grounds of his contempt of court in transferring monies in breach of a freezing order should be lifted, and
   (2) an order that the basis of assessment of costs in paragraph 5 of that order should be the standard basis and not the indemnity basis.

2. The applications were heard by me on 28 and 29 July 1999. Application notices were apparently issued very shortly after I gave judgment on 21 May 1999, but they were not served until 22 July. Notice of the application was also given by Mr Hadkinson in his affidavit sworn in support of this application on 2 July 1999, which was then served.. I was not given any reason for the delay in making the application. Since I gave my judgment, other parties, known to Mr Hadkinson, have through their solicitors asserted that they have obtained orders in Switzerland which may make it impossible for Mr Hadkinson to purge his contempt in the clearest way, that is restoring the monies transferred in breach of the freezing order.

3. Mr Matthew Collings appears for Mr Hadkinson. The application is opposed by FBME for whom Mr Stephen Smith appears. Mr Hadkinson's trustee in bankruptcy ("the Trustee") was served with these proceedings in accordance with my order dated 21 May 1999, and Mr Andrew Lenon has appeared in these proceedings on his behalf but not taken any part. I am told that FBME is a major creditor in Mr Hadkinson's bankruptcy and that FBME are in effect funding the Trustee.

The action and the freezing order

4. This is an action by FBME to recover advances made to certain of the defendants. These advances were secured by (among other things) a cross-guarantee given by Mr Hadkinson. FBME also make other claims, including a claim for damages from Mr Hadkinson for breach of fiduciary duty. Summary judgment has been obtained against Mr Hadkinson and other of the defendants in the sum of $11.5m. with interest and costs, but the Court of Appeal has granted permission to appeal against this. Three of the defendants have served a Part 20 claim. This was struck out in part by Master Ungley on 13 October 1998. An appeal against that order was allowed by me in part on 24 May 1999. There is also an appeal pending against that order. FBME claims that further monies have now fallen due from the First to Fifth Defendants and that the aggregate sum owed now exceeds $28m.

5. On 12 November 1997 Eady J made a world-wide freezing order against the First to Ninth Defendants. The order was stated to remain in force until trial unless previously varied or discharged. The order has been varied in minor respects but these variations are not relevant for present purposes. The order was served on the First Defendant on 19 November 1997. The material parts of the order were as follows.

   1. Disposal of assets

   1.1 The First to Ninth Defendants must not:-

   (a) remove from England and Wales or in any way dispose of or deal with or diminish the value of any of their assets and/or funds which are in England and Wales whether in their own name or not and whether solely or jointly owned up to the value of US$11,500,000 for each Defendant. ...

   (b) in any way dispose of or deal with or diminish the value of any of their assets and/or funds whether they are in or outside England or Wales whether in their own name or not and whether solely or jointly owned up to the same value ... ...

   2. Disclosure of information

   2.1 The First to Ninth Defendants must inform the Plaintiff in writing at once of

   (a) all their assets and/or funds and the assets and/or funds of any subsidiary, associated or other company of the Defendants or any one of them, or any other body corporate or unincorporated directly or indirectly controlled by the First to Ninth Defendants or any one of them (hereinafter referred to as the Worldwide Group or H&R Groups of Companies) whether in or outside England and Wales and whether in their own name or not and whether solely or jointly owned, giving the value, location and details of all such assets and/or funds ....”

Order dated 21 May 1999 for a stay

6. On 21 May 1999, I gave a judgment in which I found that Mr Hadkinson had been guilty of a contempt of this court in the following respects:
   (1) non-disclosure of his account at Barclays Bank Jersey ("Barclays Jersey") - Mr Hadkinson had failed to disclose that he had a bank account at Barclays Jersey in accordance with paragraph 2(1)(a) of the freezing order.
   (2) The Jersey transfers - Mr Hadkinson had transferred the sums of £4.235m and £35,117.68 from his account at Barclays Jersey in breach of paragraph 1(1)(b) of that order on 24 November and 8 December 1997 respectively. I refer to these as "the Jersey transfers".

7. In consequence I ordered that, save for specified limited purposes, Mr Hadkinson should not be at liberty to take any further step in the action or in his application for a stay of his bankruptcy without the leave of the court until he had complied with paragraph 2(1)(a) of the freezing order and purged his contempt. In addition I held that the stay should remain in place until Mr Hadkinson had disclosed any interest which he had under any trust, including any interest as a discretionary beneficiary, on 12 November 1997.

8. It was quite plain why I made an order for a stay. If the court makes an order it is to be obeyed and the court takes a strict view of non-compliance. If it did otherwise, it would be an encouragement to disobedience by others, or even by the same parties in the same proceedings. The policy is clearly expressed in the authorities considered in my judgment dated 21 May 1999. The same policy continues to apply at this stage, that is, when a party comes along to the court to apologise for what has happened and to ask to purge his contempt.

9. I made a further order that Mr Hadkinson should pay 80% of the claimant's costs of the application on the indemnity basis "provided that if the First Defendant makes an application to the court within 14 days of service of this order to the effect that the costs should be taxed on the standard and not the indemnity basis because the breaches of the order of Eady J were not made contumaciously, the determination of the basis of taxation of such costs shall await the outcome of such application".

10. Mr Hadkinson's case was that the monies at Barclays Jersey constituted third party monies and that accordingly he was not obliged to disclose these under the terms of the freezing order. I held that these monies should have been disclosed even if they belonged to third parties, and that accordingly Mr Hadkinson was in breach of the terms of the order. I did not make any finding as to whether Mr Hadkinson owned the monies in this account or not. That very issue is the subject of proceedings between the Trustee and Mr Hadkinson and therefore I held that that matter could not be argued before me on that occasion.

Mr Hadkinson 's affidavit on this application

11. Mr Hadkinson has filed an affidavit, sworn on 2 July 1999, for the purposes of this application. This affidavit is directed to four topics:

    1. disclosure of assets - Mr Hadkinson begins by dealing with some smaller matters before moving to some very substantial sums which he had not previously disclosed. Thus he reveals that on three accounts he overestimated or underestimated the balances at the date of the freezing order. The net effect is that his assets were understated by some $4,000 and £7,000.

    In addition he says that there were three accounts that he overlooked. There were two personal accounts with a total credit of less than £100 and an account in his name but belonging to H & R Europe Ltd in the sum of £20. Mr Hadkinson apologises for the incorrect information that he gave.

    Mr Hadkinson then deals with assets in his name but belonging to others. He refers to the Barclays Jersey account. He also refers to three further accounts:
    (a) Credit Libanais
    (b) Credit Lyonnais Geneva
    (c) Menatep Bank, Nicosia

    The credit balance at the Barclays Jersey account was about £4m. The balances at the other accounts were about $1.5m - $2m, $6.5m and $60,000 respectively. Accounts (a) (b) and (c) were not referred

to in the earlier proceedings before me. I directed that the Menatep Bank balance should be put on one side during the hearing of the present application as it is comparatively minor.

Mr Hadkinson does not state who the owners of the monies are or were, or the legal basis of their ownership, although he refers to evidence in proceedings in his bankruptcy, in which (I am told) his knowledge as to ownership is set out.

(2) The Jersey transfers - In his affidavit, Mr Hadkinson refers to the fact that the Jersey transfers are the subject of proceedings brought by the Trustee against Mrs Hadkinson and Miss Louisa Hadkinson pursuant to section 339 of the Insolvency Act 1986. He does not give any further detail of the Jersey transfers in his affidavit. In particular his affidavit does not explain or refer to the documents that were placed before me on the last occasion, which suggest that he considered that he was beneficially entitled to these monies at the time of transfer. These documents include the following hand-written letter authorising the Jersey transfer of £4.235m on 24 November 1997:-

"To Barclays Bank Finance

Company (Jersey Ltd)

24th/11/97

Dear Sirs/Madame

With Reference to Account Numbers 65335/001 and 65335/002 and 65335/003 Held at your Bank in Fixed Deposits

Maturing on the following Dates.
A = Account No' 65335/001 Maturing 2/11/97.
B = Account No' 65335/002 Maturing 6/3/98.
C = Account No' 65335/003 Maturing 2/1/98

I here by authorise you to transfer all funds as above into the name of Mrs Bernadette Margaret Hadkinson Re
Tiffany Theresa Hadkinson (4/5/84 BORN)
James Alberto Hadkinson (16/7/75 BORN)
Poppy Valentine Hadkinson (30/10/91 BORN)

Please consider this instruction as final.

Kindly confirm to me in writing that this authority has been carried out.

With thanks

[signature]

Charles Hadkinson

24th/11/97"

Mr Hadkinson says that it may be possible for this money to be transferred back, although accounts would have to be opened in order to do this and this may constitute a breach of existing injunctions as well as his obligations as a bankrupt. He adds that he is content to do what ever the court requires but that *"it may be more convenient for the monies to remain where they are, protected as they are, and subject as the sums of £4.2m and £35,000 (approx.) are to the Trustee's section 339 proceedings."*

Although Mr Hadkinson's affidavit does not say so, it would appear from inter-solicitor correspondence that I have been shown that the Jersey transfers were made to an account in the name of his wife at Barclays Jersey and then to an account in her name at Republic National Bank of New York (Suisse) S.A. ("RNB") in Geneva, and that subsequently the funds were transferred by Mrs Hadkinson into the name of two companies, which are said to be beneficially owned by her. The two companies are Poplin Group SA and Platinum International Inc. Some of the monies have been converted into securities. The solicitors for FBME say that these two companies are beneficially owned by Mrs Hadkinson .

In addition to this affidavit, I have been shown two letters. The first is a letter dated 15 July from Wragge and Co, who act for Mrs Hadkinson, the second a letter dated 27 July from Nabarro Nathanson, which states that their respective clients have obtained freezing orders over accounts at RNB in Switzerland. Nabarro Nathanson act for the third party investors who, on Mr Hadkinson's case, own the funds, and who are said (in an earlier letter dated 19 May 1999) to be represented by Mr Cthernychov and Mr Perchine, to whom reference is made below. In their letter Nabarro Nathanson state that their clients do not have any intention of removing this freezing order and will not agree to the monies being transferred back to Jersey. This latter information was effectively sprung on FBME and the Court. There is no proper explanation of the effect of the third party investors' actions. There has been no evidence of Swiss law. The order of the Swiss court has not been produced. Thus I cannot now assume that it is possible for the monies to be repatriated now, as Mr Hadkinson suggested in his affidavit.

(3) Disclosure of interests under trusts - Mr Hadkinson contends that he has complied with this part of my order. He gave information as to his interests under trust and he has offered to obtain copies of the relevant trust deeds. He contends that the order which I made does not require him to disclose the assets of the trusts.

(4) In support of his application that the basis of assessment of **costs** on that occasion should be the standard and not the indemnity basis, Mr Hadkinson says that when the freezing order was served he took advice from his then solicitor. This was Mr Sutton, a partner in a five-partner firm in Hampshire. Mr Sutton took Counsel's advice. He was advised that the order did not apply to assets that "were not theirs but someone else's." Mr Hadkinson says that he was anxious to get it right because he was conscious of the assets in his name which belonged to others. He says that *" The advice which I was given was that the injunction and the disclosure order affected my own assets, including anything in which I had a beneficial interest. It did not however include assets in my name which belonged to others. I received the same advice from my Cypriot lawyer, with whom I also raised the terms of the Mareva order. I remember him saying that hypothetically if he was similarly injuncted, he would not expect the injunction to catch assets in trusts of which he was a trustee, to accounts of which he was the account holder for other people's money (such as a client account)".*

Mr Hadkinson exhibits a conference note taken by Mr Sutton of advice given by Counsel on the telephone on Saturday 6 December to Mr Sutton personally. According to this conference note, it appears that Counsel advised that the disclosure should include *"all information concerning transactions matters of business conducted in relation to or on behalf of the Defendants. "In relation to" must be in relation to these parties as principals and not as agents. On that basis the Disclosure would cover any transactions or matters in which CRH had a beneficial interest. Applying this situation to [the name is blanked out], Disclosure would only be require[d] if when balancing all the facts known on a non-privileged basis, ECS had to conclude that the asset or transactions potentially liable to disclosure was beneficially owned by CRH."*

When I pointed out that this evidence was not confirmed by Mr Sutton or the Cypriot lawyer, a fax was obtained from Dr Andreas P Poetis, a lawyer in Larnaca, Cyprus confirming this evidence as far as concerns him. Mr Sutton however was on holiday and not contactable, but evidence was later submitted. I deal with this below.

In his affidavit, Mr Hadkinson apologises for the breaches of the freezing order that were found to have occurred.

Order of Lloyd J dated 15 July 1999 for cross-examination

12. On 15 July 1999, an application was made to the Interim Applications Judge, Lloyd J, for the cross-examination of Mr Hadkinson. The parties referred to *Comet Products UK Ltd v. Hawkex Plastics Ltd* [1971] 2 QB 67. In that case , the Court of Appeal held that an application to commit for contempt had a quasi-criminal aspect and that, as in that case the proposed cross-examination would be likely to cover broad issues in the action, as a matter of discretion the cross-examination ought not to be allowed. However, I note that Lord Denning MR held that, seeing that cross-examination was not to

be allowed, the judge might think it right to disregard the affidavit, or to give it very little weight (at 75F). The same point was made by Megaw LJ at the end of his judgment.

13. Lloyd J made an order that Mr Hadkinson should attend for cross-examination on this affidavit on the basis that cross-examination was to be confined to certain issues. In the course of his judgment, Lloyd J said *"It is clear and accepted that it would be entirely inappropriate on the pending application to enter into the question of what indeed was the true beneficial ownership of the monies in Barclays Bank Jersey account. That is in issue by the proceedings brought by the trustee in bankruptcy. It is one thing for assets to be in truth in a particular ownership and it is another thing for a person to say I believe them to be in a particular ownership. It is often found in these courts that a person believes that an asset belongs to him or her but that it turns out on a true analysis to belong to someone else. Mr Smith seeks an order the result of which will be that Mr Hadkinson cannot rely on his affidavit unless he is available for cross-examination and is submitted to cross-examination for that purpose."*

Mr Collings argued that cross-examination was relevant only to the application under paragraph 5 of my order dated 21 May 1999. Lloyd J rejected this argument:- *"It seems to me that the dichotomy that Mr Collings seeks to draw between what is relevant to purging the contempt and what is relevant to costs is an artificial division and one which begs questions as to what is necessary for the First Defendant to purge his contempt. As Mrs. Justice Arden has said in a passage that I quoted earlier, it is for the court to decide, on proper evidence, what the First Defendant must do to purge his contempt of the court. It seems to me that it may very well be relevant for the court, in that context, to be assisted in a way that is only possible with cross-examination as to what Mr. Hadkinson 's state of mind was when he committed what her Ladyship has found to be breaches of the orders."*

His order stated:- *That, subject to the discretion of the Judge before whom such cross-examination takes place to expand or restrict the ambit of cross-examination, the cross-examination be confined in principle to the following issues. viz.:*

the First Defendant's contention that he believed that the sums held in his name with the following banks did not belong to him beneficially, viz.:
Barclays Bank, Jersey;
Credit Libanais, Beirut;
Credit Lyonnais, Geneva; and
Menatep Bank, Nicosia; and
the First Defendant's contention that he believed at the time of the transfers of monies from the said accounts and his disclosures that the freezing injunctions and disclosure orders made herein did not concern those monies; and
the First Defendant's contention that he was advised by English Counsel and/or solicitors and by his Cypriot lawyer that the freezing injunctions made herein ***'did not apply to assets which were not theirs [viz. the assets of Ds 1-9] but someone else's****'."*

When this application came on for hearing I excluded cross-examination on the account at Barclays Jersey on the basis that the transfer was in issue in the bankruptcy proceedings and Mr Hadkinson should not be compelled in these proceedings to give evidence about that matter.

Cross-examination of Mr Hadkinson

14. Mr Hadkinson was cross-examined for the limited purposes mentioned. Because his cross-examination was limited, it was difficult to piece together much of this complex story. I gave him due allowance for that. Before he went in to the witness box I made it clear that I did not consider that I was bound to accept his affidavit and that his counsel should accordingly consider the position, in particular whether it was desired that Mr Hadkinson should give any further explanation. However, when, after an adjournment, Mr Hadkinson was called to give evidence the only supplemental matter which he was asked was about his movements about the time the freezing order was served. I refer to this evidence below. Despite giving Mr Hadkinson full allowance as I have said, and taking into account that he is clearly under considerable pressure from litigation in several directions, I formed the clear view on the totality of his evidence that I had to approach it with caution.

15. Mr Hadkinson accepts that he has given the court, the Official Receiver, his trustee in bankruptcy and others incorrect information on a number of occasions. For instance in a lengthy (second) affidavit sworn on 26 January 1998 Mr Hadkinson states that on the instructions of an institution called Effect Credit he paid a sum of money into an account at Chase Manhattan Private Bank in Geneva but that he did not know whose account it was. At paragraph 93 he said "...the account is not mine. I have no control over it. I do not know whose it is. I believe that it is Effect T's". Likewise in a written statement given to the Trustee on 16 March 1998 which starts "I confirm that my attention has been drawn to Section 5 of the Perjury Act 1911", Mr Hadkinson says categorically "I have never had a bank account with the Chase Manhattan Bank in Geneva". In giving evidence, however, Mr Hadkinson had to accept that $10m was paid into the account at Credit Lyonnais which he disclosed in his 11th affidavit from an account at Chase Manhattan Geneva. There is documentary evidence that he personally opened two accounts at Chase in Geneva. Mr Smith suggested to Mr Hadkinson that he gave this false answer so that the Official Receiver would not find out that he had declared that he was the beneficial owner of the very substantial funds in this account. By the time of the statement, the account had in fact been closed. Mr Hadkinson denied this allegation.

16. Mr Hadkinson admitted that his evidence under oath before the court had been inaccurate on a prior occasion. Mr Hadkinson gave evidence on oath before Mr Deputy Registrar Brettle on 17 March 1999. He said on that occasion that there were no profits on the monies received from investors because the freezing order "froze all the accounts". His case before this court is that he did not know that the freezing order affected the accounts containing monies which belonged to third party investors.

17. In addition there are also several instances of Mr Hadkinson making false statements to banks. On several occasions he has signed account-opening forms stating that he was the beneficial owner of the monies deposited, whereas if his evidence on this application is correct that cannot have been the case. He says that over the last 25 years there had been a lot of money belonging to other people in his name. He also claimed in giving his evidence that the reasons which he gave to Barclays Jersey for asking them to transfer £4.235m to his wife on 24 November 1997 - that it was part of a divorce settlement - were untrue. He was not in fact getting divorced from his wife. He gave the same reason to Menatep bank when he closed his account with them and made a transfer to his wife. He says now that the payment was to reimburse her for interior decorating services provided to the investors. He also gave the same reason to Chase Manhattan Bank, New York when he asked that bank to transfer approximately $57,000 (£33,612.65) to his wife's account at the Bradford and Bingley Building Society on 25 November 1997.

18. Mr Hadkinson also claimed to the local planning authority that he was proposing to live for the rest of his life in a house known as Rous Lench Court. Mr Hadkinson said that this was required because the local council wanted to stop the house being turned into a hotel or something similar. He admitted in cross-examination that he had told the council an untruth and that he did not intend to live in it.

19. It is highly regrettable that Mr Hadkinson should have conducted himself in these ways, particularly as regards his evidence to the court and the Official Receiver.

Where was Mr Hadkinson in the period between service of the freezing on his solicitors and the Jersey transfers?

20. Mr Hadkinson told the court that he had been advised about the freezing order on 18 November 1997 on the telephone by his English solicitor, Mr Sutton. Mr Hadkinson said that he had been in the UK from 20 to 24 November 1997, and that on that day he had gone to Jersey and returned the following day, 25 November 1997. He said that he was in England on the evening of 26 November and that on 27 November he attended a meeting with Counsel, and that as from the time that he was advised that the freezing order had been served he was continuously getting advice from his solicitors about the order and what he was able to do. Previously he had said that he had come to England on 24 or 26 November. For example in his affidavit sworn on 5 December 1997, he had said that he was in the Lebanon when the order was served and that he was able to come to England on 24 November and that legal advice was obtained on 27 and 28 November.

21. Moreover in a letter dated 1 April 1999, his solicitors told the Trustee's solicitors that between 20 and 23 November 1997 he had been in Egypt. Mr Hadkinson has two or three passports. His explanation for the change in his evidence was that some of the stamps were in Arabic and he said that he does not read Arabic and that he had drawn the conclusions from the stamp showing that he left the Lebanon on 20 November that he then went to the UK. He was thus in effect constrained to accept that he did not arrive in England until 24 November. He then went straight to Jersey and arranged the first Jersey transfer.

Mr Hadkinson's belief as to the ownership of the monies in the account

22. Mr Hadkinson was cross-examined about his belief that the monies in the Credit Lyonnais account belonged to third party investors. He was also asked about the Chase account. He said that the monies in the Chase account belonged to investors. He gave several explanations as to why he had been content to declare that he was the beneficial owner when he opened the account. He suggested that the statement was correct because he was entrusted with the money. He also said that if the investors had wanted to open the account in their own names they would have done so themselves. He said that he opened the Chase account for the purpose of third parties. He also said that his relationship with the people who entrusted him with the money did not entitle him to reveal their identity at the time. He also said that he was told not to reveal their identity. He believed that the investors were the beneficial owners of the account. The Chase account was opened for the benefit of an investor, Mr Boris Fyodorov, who had since died. He referred to an agreement that he had entered into with them. Later Mr Hadkinson used the same account to receive monies on behalf of other investors, a Mr Cthernychov and Mr Perchine. Mr Hadkinson said that Mr Fyodorov was the chairman of Effect-Credit.

23. As to the terms of his arrangements with these persons, Mr Hadkinson referred to a letter dated 31 January 1996 from National Credit Bank in Moscow ("NCB") which appointed him agent and adviser for the international business on behalf of the bank. The agreement stated that he was authorised to make investments at his discretion in a manner which would be profitable to the bank. The funds to be utilised would be generated by discounting 100 promissory notes issued to NCB's order by the Savings Bank of the Russian Federation (SBRF). Mr Hadkinson was to discount these notes. The profits would be shared between him and the bank in the ratio 25:75. (5% being for Mr Hadkinson's expenses). The appointment was for 5 years during which time reports and accounts were to be submitted.

24. Mr Hadkinson explained that these notes were given to him because NCB had failed to honour a guarantee as a result of which he came under a liability (seemingly of $14m) in Egypt under a promise that he had given that NCB would honour their debts. In the course of 1996, Mr Hadkinson was advised that it was illegal for NCB to have given him these notes. It appears that Mr Perchine and Mr Cthernychov came to Mr Hadkinson's rescue by taking back the notes for him and promising him instead that he would be given large sums for investment. This was done by another agreement to which Mr Hadkinson also referred. This was an agreement in writing dated 3 December 1996. This was made between Trident Finance (TF), represented by Mr Perchine, and Mr Hadkinson. The agreement refers to the 54 promissory Notes issued by SBRF. Mr Hadkinson says that these were the only promissory notes that he was given. He says that Cthernychov and Perchine advised him that SBRF had given the notes to NCB to enable it to show a stronger balance sheet and that NCB had nonetheless become insolvent and it had failed to return the notes. However it was illegal to hold them and they should be returned to SBRF.

25. Under this agreement TF agreed in exchange for the return of the notes to introduce Mr Hadkinson to financial institutions and wealthy investors for the purpose of exploring investment opportunities. In short TF as mediator would arrange for the return of the notes to SBRF and the problem in Egypt would be resolved in full and Perchine and Cthernychov would introduce Mr Hadkinson to investors for the purpose of exploring investment opportunities. Mr Hadkinson agreed to open an account at Menatep Bank in Nicosia. Mr Hadkinson was authorised to make investments in his own name or in the name of any company. The profits were to be divided between Mr Hadkinson and the investors in

the ratio mentioned. If any further sums were drawn down by Mr Hadkinson, they were to be reported to the investors or to TF. The amount of funds drawn down was to be deducted from Mr Hadkinson's share of the profit at the end of the calendar year when TF and Mr Hadkinson met to discuss the investment transactions concluded and to examine the accounts. Mr Hadkinson's agreement also gave Mr Hadkinson the right to carry forward drawings to a subsequent period. The agreement also provided that Mr Hadkinson would inform TF and /or the investors immediately if legal action was taken against Mr Hadkinson which would jeopardise and affect the interest of the investors resulting from the investments made. The agreement does not appear to define the investors or say who they are. On 6 February 1997, Mr Perchine wrote to Mr Hadkinson saying that the 54 promissory notes were returned for no consideration. He says in an affidavit sworn in the section 339 proceedings that the sums of $10.6m and $14.8m were credited to his account at Menatep Bank. He transferred sums totalling $19m from his account at Menatep Bank to Chase in Geneva. Of this some $10m went to Credit Lyonnais from where he transferred approximately $10m to Barclays Jersey. In this affidavit he explains that the reason why he asked Barclays Jersey to transfer the monies to Mrs Hadkinson was "that it was third party money which was entrusted to me for investment purposes and which was now at risk as a result" of the freezing order.

26. Mr Hadkinson said that the transfer of some $57,000 from Chase to his wife in November 1997 was made so that she could be reimbursed for her interior design work for the benefit of the investors.

27. Likewise Mr Hadkinson said that he believed that the account at Credit Lyonnais did not belong to him. He said he was given the right to structure the account in this way. He said that the same two men were beneficial owners of the assets deposited at Credit Lyonnais. He denied any question of money-laundering. Again here too he says that he was asked not to disclose the account. $14m was paid out of this account to Roxley Investments Ltd in connection with the Egyptian problem referred to above. $6.8m of this amount was not required for this purpose and on the instructions of the investors (given orally) it was transferred to their account at Credit Libanais after the date of the freezing order at some point in 1998.

28. Mr Hadkinson accepted that the monies paid into the account were used for his personal purposes. By a letter dated 6 December 1996 to Credit Lyonnais he authorised a transfer out of the account of $100,000 to his former partner, a transfer of $100,000 out of a receipt of $500,000 to a blocked account so he could obtain a Platinum Credit Card, and a transfer of most of the balance of $1.41m for investment on which he sought the bank's views as to the best rate. On the other hand he described the monies as his "share of profits generated from business". Mr Hadkinson says that he was entitled to make the personal drawings involved here because of the terms of the agreement with TF. Mr Smith demonstrated that the personal drawings were at one point some $15m, which would require a profit of some $60m. Mr Hadkinson said that the personal drawings were less than this because only part of the monies drawn down for the Egyptian problem was needed for this purpose. Mr Hadkinson accepted that the monies entrusted to him were some $45m. In Mr Hadkinson's view "$15m would be no problem". He said he could have made some $15m profit over two to three years. When asked a little later how long it would take to earn $60m, he gave the same answer. However he also said that the budgets for the H & R group showed that those companies were due to make $90m over the next 5 years. In re-examination Mr Hadkinson said that the H & R companies had planned to make "150-200% within 3 years". The monies now representing the monies the subject of the Jersey transfers had made profits in hedge funds of some 35-40% over eight months.

29. It was put to Mr Hadkinson that he must have believed that he was the beneficial owner of the money when he made the personal drawings, but Mr Hadkinson denied this.

30. Mr Hadkinson said that he had paid the credit balances at Credit Lyonnais and Credit Libanais back to the investors because Mr Cthernychov gave him oral instructions to do so on an unspecified date. It appears that there are close lines of communication between the investors and Mr Hadkinson even following Mr Hadkinson's bankruptcy. In all he appears to have transferred back some $6.5m and $2.5m to the investors from these accounts after the date of the freezing order. It also appears that representatives of Nabarro Nathanson have recently been to Cyprus to take instructions from a Mr

Nammour, who is a business associate of Mr Hadkinson and that Mr Hadkinson met them on this visit.

31. Mr Perchine and Mr Cthernychov were representatives for the H&R Group of companies in Moscow. Mr Hadkinson agreed that they were about 20 and 25 years old respectively. This is a very young age at which to be in charge of such large sums of money.

32. Mr Hadkinson accepts that after the date of the order a total of some $8 to $8.5m was transferred to an account in the names of Mr Cthernychov and Mr Perchine at Credit Libanais. Mr Hadkinson denied that he had any signatory power over this account.

What legal advice was given to Mr Hadkinson?

33. As I have said the order was served on Mr Hadkinson on 18 November 1997 and he was told about it by his solicitors that day. Mr Hadkinson says that they gave him 5 or 6 hours' advice per day on the telephone after this. He says that Mr Sutton did not fax him the order or any other document in this period. Mr Hadkinson said that his "first reaction when he was told about the freezing order on all the assets 'was what happens to the assets that I am holding on behalf of other people.'" Mr Hadkinson said that Mr Sutton knew that he was holding assets on behalf of third parties but that he did not know the details. He did not know where the assets were held but he had assisted Mr Hadkinson originally in setting up some of the companies to hold the assets. Mr Sutton had very little information - he did not for instance know about the personal drawings. Later Mr Hadkinson in cross-examination said: "I did not believe that the freezing order had anything to do with any monies I held in trust and I got legal advice to that effect continuously and I kept on asking the question because I was concerned that I was entrusted with the monies of others and did not know what to do. I did transfer the money out, but I did not believe that I was doing anything wrong whatsoever. I was told quite clearly that the freezing order did not apply to monies I was holding in trust for other people."

34. In the course of the hearing, a letter dated 28 July was produced from Mr Hadkinson's Cypriot lawyer, Dr Andreas P Poetis. This *said "The terms of the Mareva were discussed over a number of days, starting from the 19th November 97, and I was in agreement with the advice given to Mr Hadkinson by his English solicitors that the Mareva Injunction and disclosure order related to all of Mr Hadkinson's assets, whether they were in his name or not, but did not relate to any assets that did not belong to Mr Hadkinson, but were held by him as trustee for others or assets over which he had power of attorney but which did not belong to him."*

35. In addition, after the conclusion of the hearing, Mr Hadkinson's solicitors submitted copies of correspondence between Mr Sutton, Mr Hadkinson's English solicitor, and the solicitors for Mr Hadkinson's trustee in bankruptcy, Stephenson Harwood and between Mr Sutton and themselves. Although Mr Sutton was on holiday at the time of the hearing, there was no reason why this evidence could not have been obtained in advance of the hearing. Not surprisingly, Lovell White Durrant, solicitors for FBME, objected vigorously to its admission. Among other objections, the evidence was not provided under oath, and it is not even in the form of a witness statement. They further made the point that the information does not state that Mr Sutton advised Mr Hadkinson that the freezing and disclosure orders did not affect assets held by Mr Hadkinson in his name, but which Mr Hadkinson alleges belonged to others. They further object that if the evidence had been available in advance of the hearing, they would almost certainly have requested Mr Sutton's attendance for cross-examination.

36. I have considered these objections. As these are proceedings in which Mr Hadkinson seeks to purge his contempt, and to obtain the ability to pursue these proceedings, I consider that I should admit the new evidence. It does provide contemporaneous documentary confirmation that Mr Sutton spent time on the affairs of Mr Hadkinson and his companies on 20, 21, 24, 25 and 27 November and that Mr Sutton spoke to Mr Hadkinson on the telephone on 22 and 24 November. But there is no evidence in those documents that Mr Sutton actually advised Mr Hadkinson that the freezing order did not apply to transfers of assets belonging to third parties or in discretionary trusts although Mr Sutton says that this was his understanding. He adds that this "still is" his understanding, which is, to say the least, surprising in the light of the order dated 21 May 1999. The documents provide little clue even as to the topic on which advice was given. As the evidence is incomplete, and was not tested by cross-

examination or put to Mr Hadkinson in the course of his cross examination, the weight I can give it is small. However the letter from Dr Poetis tends to confirm Mr Hadkinson's evidence that he received some advice to the effect that the freezing order did not apply to assets in his name which belonged to other people, and this is also the inference from what Mr Sutton says.

The Jersey transfers

37. Some of Mr Hadkinson's evidence related to these transfers though they were outside the range of permitted cross-examination. However, there has been no investigation or explanation as to why Mr Hadkinson found it necessary to visit Jersey personally to authorise the transfer of funds on 24 November or why the transfer was to Mrs Hadkinson rather than the investors or TF or why immediately before the transfers Mr Hadkinson told the bank that the monies were to be transferred to Mrs Hadkinson as trustee for their children.

The parties' submissions

Onus and standard of proof

38. There was some discussion of onus and standard of proof. Mr Smith ultimately accepted that the criminal standard applies to any allegation of contempt, and, it must follow, to the question whether a contempt was contumacious or not. However, in this case, Mr Collings accepted that the onus of proof was on Mr Hadkinson to show that the stay should be lifted and that the basis for assessment of costs should be the standard basis and not the indemnity basis.

Evidence

39. Mr Smith submitted that the court should reject the evidence that Mr Hadkinson believed that he was not the beneficial owner. He also submitted that the court should find that Mr Hadkinson had committed a contumacious contempt because he had no reasonable grounds for concluding that he was entitled to transfer the asset.

40. He asked the court to find that Mr Hadkinson believed that he was the beneficial owner and that he did not want anyone to find out about these monies. He said that the size of the draw-downs made it clear that the story was improbable. He emphasised that FBME did not accept that the agreements on which Mr Hadkinson relied were in good faith or that they had anything to do with these transfers. The story about the investors was improbable. The court could wait to see the evidence put in on the application by the Trustee. He observed that the investors themselves had put in no evidence. The court did not have their names. There was no documentation to support their existence save for two brief letters from Nabarros. Cthernychov and Perchine were young men.

41. As regards legal advice, Mr Sutton was clearly given few details and it seemed unlikely that Mr Sutton would have given the advice suggested over the telephone. Not even a fee note from the solicitors had been produced. In any event Mr Hadkinson should not have relied on them because of the way in which the advice was given.

42. Mr Smith referred me to ***Z Bank v. DI and others*** [1994] 1 Lloyds Law Reports 656, in which Colman J held that the defendant bank was in contempt of court when, owing to a serious degree of negligence on the part of (in particular) its in-house counsel, it failed to stop operating a foreign exchange account following service of a freezing order. Colman J held that in the context of a freezing order carelessness might, in some cases, justify a punitive order. He said that the court would look at the gravity of the contempt (among other considerations) to decide how to exercise its punitive jurisdiction. Colman J held:- *"As reflected by the wording of O.45, r.5, 'neglect' to comply with the Court's order as well as 'refusal' to comply brings into play the Court's discretion as to a range of punishments including committal and sequestration of assets. That is not to say that the Court is obliged to punish every neglectful contempt. Clearly, unless the contempt is 'casual or accidental and unintentional' some penalty will normally be appropriate in support of the proper administration of justice and the protection of the orders of the Court: see Lord Wilberforce in* ***Heatons Transport****, sup., at p. 109E. That, however, does not mean that there are no cases of negligent contempt where a penalty in the form of committal or sequestration would be appropriate. For example, where a contemnor had committed an isolated breach of a Mareva injunction due to the negligence of those responsible for giving appropriate orders to junior staff or perhaps due to having received negligent legal advice and had*

attempted to purge the contempt by restoring the status quo as far as possible, it might well be quite unnecessary for the protection of the administration of justice for any penalty to be imposed. Where by contrast there has been a very culpable degree of negligence which has resulted in numerous breaches of the Court's order involving the abstraction of large sums of money, it will often be appropriate to impose not merely a nominal penalty but one which will be recognised as reflecting the serious view taken by the Court of the failure to comply with its orders.

In my judgment the present case clearly falls into the latter class. Here the degree of negligence on the part of those responsible for the administration of the bank and for advising those who managed it, notably Mr. A. and Mr. B. was considerable. There were repeated breaches of the order extending over a period of 5 months. When the bank came to appreciate that it had been in breach it failed to restore to the Bankers Trust account anything like sufficient funds to restore the status quo.

Accordingly I have come to the conclusion that the protection of the administration of justice in this case requires that an order for the sequestration of the bank's assets in London is appropriate."

Disclosure of assets

43. Mr Collings submitted that the effect of my earlier order was to require Mr Hadkinson to disclose assets of which he was the legal but not the beneficial owner. He submits that Mr Hadkinson has complied with the court's order.

44. Mr Smith submits that Mr Hadkinson was required to disclose a full composite list of his assets rather than disclose them by reference to earlier letters between solicitors. This is a submission about the presentation of the information rather than its content. A composite list was not required by my order or the order made by Eady J.

Trusts

45. The order on 21 May 1999 for disclosure of discretionary interests was in my view, as Mr Collings submitted, a new order. This was made because it was not clear (as a matter of law and fact) whether Mr Hadkinson had any interest in the assets subject to the trusts. There was no finding of contempt on this point (see the transcript, page 8). The order required only the interests to be disclosed, which Mr Hadkinson has now done. Mr Smith submits that FBME should be entitled to have disclosed to it any supporting documents for the family settlement, e.g. information as to the power pursuant to which Mr Hadkinson was removed as a beneficiary. If FBME seeks this additional information, it must apply for an order for it.

Return to Jersey or England of the Jersey transfers

46. Originally the only freezing orders in Switzerland were those obtained by Mrs Hadkinson and the Trustee. The order obtained by Mrs Hadkinson did not create any impediment to a re-transfer of the monies. The monies could then be held either in Jersey or within the court's jurisdiction. An order would need to be sought from the Swiss Court, but Mrs Hadkinson would, I infer, not oppose. The Trustee is in favour of retransfer. Mr Hadkinson has no objection although he suggests that it may be more convenient to leave the monies in Switzerland. Some securities would have to be sold.

47. The court has jurisdiction to compel a party to proceedings to make a transfer of assets abroad which are subject to a freezing order: ***Derby v. Weldon (No.6)*** [1990] 1 WLR 1139. Ergo, it is submitted the court should accept an undertaking from Mr Hadkinson to procure such a transfer.

48. The main issue is whether they can now be returned as the investors assert that they have obtained a freezing order on them in Switzerland. There is also an issue as to who is to pay the costs of any transfer. Mr Collings simply says that their attitude is "*unknown*" and that Mr Hadkinson, being bankrupt, could not pay those costs personally. It is not at all clear what effect the investors' action has, or whether any arrangements exist between Mr Hadkinson and the investors.

49. On the question of the costs of transfer, the Trustee submits that Mr Hadkinson should pay these. Of course Mr Hadkinson is a bankrupt and any order for costs again him personally is likely to be of little value.

Other transfers

50. Mr Smith submits that all transfers capable of being returned to the jurisdiction should be restored. As he puts it in his skeleton, *"as a matter of principle, unless there is good reason not to do so , the court should direct that Mr Hadkinson should procure that all assets transferred in breach of the freezing orders be returned if still in a transferable state, and all non-transferable assets secured"*. It is not clear to me which of the assets are indeed non-transferable, and if so how they should be secured. Any order for transfer should include any profits which have been made since the date of the transfer and form part of the deposit.

51. As regards the other transfers, Mr Collings says that Mr Hadkinson made full disclosure to the Trustee.

Conditions

52. Mr Smith submits that if the Court lifts the stay it should impose conditions to costs. Mr Collings submits that this is inappropriate because Mr Hadkinson is bankrupt and so far as third parties are concerned the court should not impose a condition which would have the effect of imposing liability on them because the court has not followed the non-party costs order procedure. Any order lifting the stay should not come into effect until after the costs have been paid. Mr Collings submitted that the jurisdiction to impose freezing orders should not be used oppressively, and he referred to ***AJ Beckhor Ltd v. Bilton*** [1981] QB 923 at 912 D-E. Ackner LJ held that a claimant who obtains a freezing order is in "a privileged position" and that this privilege must not be carried too far: *"The courts must be vigilant to ensure that the Mareva defendant is not treated like a judgment debtor."*

The Trustee's position

53. Mr Lenon made some brief submissions as follows. The Jersey transfers should be reversed. If further information is to be provided about the steps being taken to transfer the monies, the Trustee should have this information as well. The costs should be paid before the stay is lifted. Mr Lenon also pointed out that there was some positive evidence about the source of the monies. Also Mr Hadkinson has repeatedly stated that he is co-operating with the Trustee but that is not accepted by the Trustee.

Points not argued

54. It is important to note what was not argued. It was not for instance suggested that the freezing order was unfair or uncertain, and that Mr Hadkinson was misled. He was at all times advised by a solicitor. It is not suggested that Mr Hadkinson could not have appreciated from its terms that it related to third party assets. His case is that he had legal advice that it did not apply. Likewise, on FBME's side, it is not suggested that there should be any link with the Trustee's proceedings, so that any order lifting the stay is conditional on a final determination that the money the subject of the Jersey transfers belonged to third parties. Naturally FBME is pursing its own interests on this application, and that is a factor that I have to bear in mind. In addition, there was no argument on Mr Hadkinson's right to a fair trial on any issue of proportionality, but these are matters which I have considered.

My Conclusions

1. My findings on the evidence

55. The crucial factual issues in this case that throw light on the gravity of the contempt are:
    - to whom did the monies transferred in breach of the freezing order belong?
    - was Mr Hadkinson advised by his solicitor that he could make these transfers or did he do so deliberately in breach of the freezing order?

56. The first issue is not one which the court can decide on this application. I have to proceed on the basis that Mr Hadkinson is correct in saying that the monies belonged to third parties. In relation to the Jersey transfers, this is because the ownership of those monies is in issue in other proceedings. In relation to the other monies, the issue has not been fully investigated before me and would require a separate application.

57. I turn to the question whether Mr Hadkinson was advised by Mr Sutton that he could make these transfers. I have borne in mind that Mr Hadkinson is not to be held to have acted contumaciously on the civil standard of proof. In my judgment, for the reasons given below, it has not been shown that he acted deliberately or intentionally in breach of the order, and this would be so on either the civil or criminal standard of proof.

58. I am satisfied that Mr Hadkinson took advice from his solicitor and indeed his Cypriot lawyer in the period before he made the transfers. He did not, however, seek specific advice as to whether he could make the transfers in question. However, I am satisfied that he obtained general advice from Mr Sutton and Dr Poetis that the freezing order did not apply to third party monies in his name. This in my judgment remained the position at the time he made the further transfers in 1998.

59. However, Mr Hadkinson made the Jersey transfers before meeting his English solicitor in London and indeed travelled to Jersey specifically for the purpose of organising these transfers. They were transfers into the name of his wife. They are of very substantial sums of money. These transfers and the later transfers were not disclosed under the terms of the freezing order. If Mr Hadkinson had been acting circumspectly, in my judgment he would have specifically required to see a copy of the order and consulted his solicitors on the express question whether he could make any of these transfers. He did not do so and in all the circumstances having heard his evidence I take the view that he did so without exercising due care as to whether the court's order would be infringed. He did not act deliberately to breach the order but again he was neither specifically advised that he could make the transfers nor advised that he could not. He took a broad view of what he was told. Moreover, it seems to me that his attitude to the order was cavalier. As I have said, he took no steps to advise his lawyers of the precise steps he proposed. Nor did he ask for the general advice he was given to be communicated to him in writing or to see the order for himself. For all these reasons, he failed to take the care which he ought to have taken in relation to an order of the court. He should have sought specific advice and if in doubt the directions of the court. Mr Hadkinson cannot expect lenient treatment if this situation should arise again. A businessman with his commercial experience should be more aware of the potential complexities of the law. In my judgment, Mr Hadkinson's conduct was culpable to a serious degree.

60. There is an issue as to whether Mr Hadkinson believed that the investors owned the monies in the accounts at Credit Lyonnais and Credit Libanais. There has been no investigation into the actual ownership of those monies. Mr Smith has not persuaded me on the very limited material available to me that Mr Hadkinson did not believe that those monies belonged to the investors. The story is an extraordinary one and vital details are absent. There are features which excite suspicion. But the agreement with TF that he has produced provides some basis for his belief and I am not satisfied on the evidence before me that Mr Hadkinson did not expect to make substantial profits on the investors' monies. My conclusion, however, will not affect the ability of the court to come to some other conclusion when the matter has been fully investigated. Likewise, in relation to the monies in the account at Barclays Jersey, there is some evidence that it came from the account at Menatep Bank in Nicosia (as explained above), or from companies controlled by Mr Hadkinson. In those circumstances I am not satisfied that Mr Hadkinson could not have believed that it belonged to the investors.

2. Stay

Identifying the contempt

61. Mr Hadkinson's affidavit in support of this application shows that in addition to the Jersey transfers there were three further transfers by him of monies standing in accounts to his credit. Those accounts are listed above.

62. Mr Smith contends that the contempt has to be purged in relation to all the transfers in breach of the freezing order, and not simply the Jersey transfers. However at the time of my order dated 21 May the only breaches of the order of which FBME and the court were aware were the Jersey transfers and I therefore gave Mr Hadkinson the right to apply for the stay to be lifted once he had purged his contempt in relation to the Jersey transfers.

63. Now that there are further admitted transfers totalling some $8.5m which are equally in breach of the freezing order, I must decide how to deal with them. I do not think that I should ignore these transfers, particularly given their size. It would be open to me to impose a stay even without an application by Mr Smith for that purpose.

Should the stay be lifted?

64. This case is complex, and Counsel have cited little authority to guide the court. However, on the last occasion, Counsel cited four unreported decisions of the Court of Appeal, a decision of the House of Lords and a reported decision of the Court of Appeal. All these authorities are set out in my earlier judgment. I concluded from them that in deciding whether to order a stay *"I should bear in mind the paramount importance of ensuring the prompt and unquestioning observance of court orders and exercise my discretion in a way which would be in the best interests of achieving justice in the particular case while at the same time recognising the importance of upholding the proper administration of justice generally. I must also ensure that the sanction which the court imposes is in proportion to the gravity of the non-compliance."* (transcript page 16).

65. Lest there should be any mistake about it, there is a substantial public interest in ensuring that the orders of the court are observed. The significance of this is as great as the rule of law itself. Unless people respect the court's orders, and comply with them, the authority of the court may be undermined and those who need the assistance of the court may well be unable to rely upon it. If that happens, the stability of society and our democratic way of life will suffer. The order made against Mr Hadkinson was of a very serious kind. Moreover, as it affected assets of which only he had knowledge, the court must exact a high level of compliance.

66. Another quite separate but important point was made in ***Beeforth v. Beeforth***, (unreported, Court of Appeal 3 July 1998), cited to me on the application for a stay and referred to in my judgment. I said that in that case the judge had struck out the defendants' defence and counterclaim and entered judgment for the plaintiff. The action concerned the affairs of a partnership and the ownership of property said to belong to it. The defendants had failed, through the incompetence of their solicitors, to comply with an "unless" order to give discovery. Walker LJ, with whom Henry and Evans LLJ agreed, considered that the judge had failed to pay sufficient attention to the need for a balancing exercise or proportionality. There would be problems in the defendants pursuing a claim against their solicitors, and there would be issues between the parties which ought to be tried if they could not be settled. The court held that the defence and most of the counterclaim should be reinstated on the strictest terms as to compliance with the discovery order.

67. Although the judgments do not say so, it seems that the reference to proportionality here may be a reference to the concept of proportionality applied by the European Court of Human Rights under the European Convention on Human Rights. Although the Human Rights Act 1998, which gives further protection to those rights under our domestic law, does not take effect until 2 October 2000, the jurisprudence of that court may infuse and inform the exercise of judicial discretion even before that date. There is relevantly a right under Article 6 of the Convention to a fair trial. The courts have pointed out that this is not an unqualified right and is subject to the necessary rules of the forum (see for example ***R. v. Immigration Appeals Tribunal, ex parte S*** [1998] 1 NLR 168, 183-4 *per* Sullivan J; ***Fayed v. United Kingdom*** (1994) 18 EHRR 393). Those rules, of course, include the rule which led me to impose the stay. But ***Beeforth v. Beeforth*** shows that even where a court order has been disobeyed, proportionality applies. That means I must balance the clear public interest in ensuring that there is *"prompt and unquestioning observance of court orders"* (*per* Lord Bingham CJ in ***Arab Monetary Fund v. Hashim,*** unreported 21 March 1997, CA) with Mr Hadkinson's right to have his Part 20 claim and application for stay of his bankruptcy proceed in this court. I have borne these considerations in mind. They have led me to conclude that there is a wide range of outcomes on this application, and a careful exercise of judgment is needed to find the right one. These points subsume Mr Collings' submission based on ***AJ Beckhor v. Bilton*** (above).

68. If this had been a straight forward case, in which the assets had belonged to Mr Hadkinson and could now be returned, the contempt could be purged by arranging that re-transfer of assets. The court would also expect to consider exacting a fine and making an order for the payment of costs. In those circumstances the court may very well think it right not to lift the stay until all those matters have occurred. However, this case is far removed from that. In my judgment the court cannot now accept without question the evidence of Mr Hadkinson as to whether the money transferred out of the Jersey account can be repatriated. In addition, as a practical matter, I have been given no information as to

the amount of money in the account nor have I received any details of the profits made on it since the date of the transfer. Some of the monies have been invested in securities and I have no information as to these items.

69. I have given careful consideration to the question whether I should lift the stay in the present case. I have come to the conclusion that it should be lifted on terms and I will now state my reasons for that conclusion and the terms I propose to impose:

70. There is a "*paramount importance*" in exacting compliance with the orders of the court. In my judgment this will have been met by imposing the stay, requiring Mr Hadkinson to give an explanation and to attend for cross-examination, and by his submitting to the terms of the order which I propose. I reach that conclusion by balancing the paramount importance of securing compliance with orders of the court with the other considerations which I mention below. The fact that Mr Hadkinson is now represented by experienced Counsel and solicitors tends to suggest that Mr Hadkinson has now learnt his lesson.

71. Mr Hadkinson has been sued by FBME in these proceedings for sums now said to total $28m. He has been made bankrupt. He should be able to defend himself against FBME's claims and help to pay off his creditors. It is not legitimate to use the stay procedure for the purpose of stifling the Part 20 claim. At the present time, the Court of Appeal has to consider whether the current Part 20 claim should proceed. If it remains after the appeal it should be brought on as quickly as possible by means of active case management. In that way the court can control Mr Hadkinson's conduct of the litigation. In the light of what has happened he may expect the court to do so where appropriate with a tight rein. I have considered whether I should limit his Part 20 claim to the amount claimed against him. This was not suggested in argument to me and I think that it would be wrong to impose any such restriction because so long as he is a bankrupt his creditors (in theory at least) stand to benefit from this litigation. Accordingly I do not impose any such limitation. Similar considerations apply to any application for a stay of his bankruptcy.

72. The breaches of the order are not in my judgment continuing ones. What has happened is that Mr Hadkinson has made transfers in breach of the order. The transfers have been effected. If, as I must assume, the monies in question belong to third parties, the assets were never available to meet FBME's claims and thus no prejudice to FBME in that way has been suffered. The real prejudice to FBME is that if the assets cannot be returned Mr Hadkinson has denied the court the opportunity of deciding who are the owners and enforcing any order against Mr Hadkinson personally. This is not therefore a situation in which there is continuing non-compliance. If the stay cannot be lifted now - on, of course, the strictest terms - it is difficult to see when it can ever be lifted.

73. The Trustee has a freezing order in Switzerland over the monies transferred from Jersey.

74. FBME says that the disclosure made by Mr Hadkinson was inadequate. However, their complaint is that there should be a complete list. In my judgment it would be unduly onerous for Mr Hadkinson to have to produce a document which merely reassembles information that has already been given. If FBME consider that the information is deficient in some respect, they should specify that deficiency and make the appropriate application.

75. It is clearly right and important that so far as possible the assets transferred in breach of the freezing order should be returned to the United Kingdom. I propose therefore to exact an undertaking as a condition of lifting the stay from Mr Hadkinson that he will, on a continuing basis, take all such steps as are reasonably open to him to enable those transfers to be made. I am not limiting this undertaking to the Jersey transfers. It will apply in relation to all monies transferred in breach of the freezing order. The order will also provide that Mr Hadkinson should report at two monthly intervals on the progress that has been made in transferring the assets to the United Kingdom until the transfers are completed. The report should be served on the other parties to this litigation, and the Trustee. Transfers should be made into a bank account approved by the Trustee and FBME and should be in the names of Mr Hadkinson and the trustee in bankruptcy. The stay will be lifted 28 days after Mr Hadkinson has served his first report unless the court otherwise orders. These final words will give the court the

opportunity to review Mr Hadkinson's compliance with the undertaking if FBME or the Trustee so require. I will hear Counsel on the precise form of the undertaking.

76. I do not propose to impose a fine on Mr Hadkinson, but I direct that the question of whether a fine could or should be imposed on him should be reserved to the Judge who hears any application following any final determination against Mr Hadkinson that he owned the monies transferred in breach of the freezing order (or any of them): see paragraph 10 below.

77. I now turn to the costs of returning the assets which were the subject of the Jersey transfer: I am told that the funds also have made a substantial profit. It seems to me that in those circumstances the costs should be paid out of these funds if the beneficial owners agree, and that Mr Hadkinson should take all reasonable steps that he can to obtain their agreement. The same should also apply to the other assets transferred in breach of the order. All assets should be transferred in cash unless the Trustee and FBME agree.

78. Mr Hadkinson should pay the costs of this application (including those of the Trustee) on an indemnity basis. Subject as hereinafter mentioned, those costs must be paid before the stay is lifted. However, if Mr Hadkinson makes an application within 5 days accompanied by evidence showing that he is unable to pay these costs, giving reasons, and explaining how he has funded the application to impose a stay and this application, the court may decide that those costs need not be paid before the stay is lifted. The costs in question will be summarily assessed by me. I do not however make it a condition of the order that the costs of this application, or the previous application for a stay, should be paid by third parties. If FBME desire such an order they should make an application against those third parties and I will hear argument on whether I can direct Mr Hadkinson to disclose the names of those parties to FBME.

79. I have dealt with this application on the basis that Mr Hadkinson is not the beneficial owner of the monies transferred in breach of the freezing order. If there is a final determination against Mr Hadkinson that those monies (or any of them) did belong to him, then FBME is at liberty to apply to this court for a re-imposition of the stay and any other order thought fit.

80. I direct that there should be a case management conference in this case and request the parties to this application to give notice to parties to the case not involved on this application. The timing of this needs to be considered as the Part 20 claim is the subject of an appeal. It may be appropriate to give further consideration to alternative dispute resolution ("ADR"). This might in the first instance be limited to the matters raised in the Part 20 claim. I note that there are no particulars of loss. To assist the ADR process, it may be that the court should also direct particulars of the alleged loss.

3. Basis for payment of costs of stay application

81. Mr Collings accepted that the onus on this part of the present application was on Mr Hadkinson under the terms of the order of 21 May 1999. Mr Smith's argument was that Mr Hadkinson could not have believed that the monies deposited with the various banks belonged to third parties and that therefore his contempt must have been contumacious. I have dealt with this above. Mr Smith's cross-examination was limited to Mr Hadkinson's belief and could not go into the basis of beneficial ownership.

82. I consider that under the terms of my order of 21 May 1999 the court retained a discretion as to whether to accede to the application in any event. Having regard to the fact that it has been assumed that Mr Hadkinson did not own the monies the subject of the Jersey transfers, I have not had a full explanation of those transfers. In all the circumstances mentioned in this judgment, I consider that it would be inappropriate to exercise my discretion under the order of 21 May 1999 in favour of Mr Hadkinson. Therefore I decline to direct that the costs ordered to be paid on 21 May 1999 should be paid on the standard basis rather than the indemnity basis. Accordingly I dismiss that application.

Mr Stephen Smith of Counsel, instructed by Lovell White Durrant, appeared for the Claimant and Part 20 Defendants
Mr Matthew Collings of Counsel, instructed by D J Freeman, appeared for the First Defendant.
Mr Andrew Lenon of Counsel, instructed by Stephenson Harwood, appeared for the Trustee in Bankruptcy.