Manchester Concurrent Evidence Pilot

Interim Report

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Background

What is the problem?

1. Lord Justice Jackson's Interim and Final Reports raised concerns about the length of experts' reports and associated costs of expert evidence in civil litigation.[1] There have also been concerns raised elsewhere about the objectivity of experts' reports.[2] In considering the potential for reducing costs associated with expert evidence, Lord Justice Jackson's Final Report acknowledged that while a single solution would not be appropriate for all cases, alternative techniques for dealing with expert evidence could be tried for particular types of case. The Final Report referred to the success that had been achieved in Australian courts using the technique of *concurrent evidence* (colloquially referred to as "hot-tubbing") and recommended that a pilot scheme should be set up to assess the extent to which the technique could be used successfully in English courts.[3]

What is concurrent evidence?

2. The Hon Justice Peter McLellan, one of the most enthusiastic promoters of concurrent evidence in Australia, has recently published an article about the technique in which he describes the process of dealing with concurrent evidence as:

..a discussion chaired by the judge in which the various experts, the parties, the advocates and the judge engage in a cooperative endeavor to identify the issues and arrive where possible at a common resolution of them. Where resolution of issues is not possible, a structured discussion, with the judge as chairperson, allows the experts to give their opinions without the constraints of the adversarial process and in a forum which enables them to respond directly to each other. The judge is not confined to the opinion of one advisor but has the benefit of multiple advisors who are rigorously examined in public. [4]

How does concurrent evidence work?

3. The process is flexible and variations can be made depending on the nature of the case. Under the Court's direction, the basic approach is for the experts retained by the parties to prepare written reports in the normal way. The reports are exchanged and the experts are required to meet without the parties or their representatives to discuss those reports. This may be done in person or by telephone. The experts prepare a Joint Statement incorporating a summary of the matters upon which they agree, but also and very importantly, matters upon which they disagree. Before the trial the parties produce an agreed agenda for taking concurrent evidence based on the Joint Statement. This contains a numbered list of the issues where the experts disagree and must be provided in sufficient time to enable the judge to consider it properly. At trial, the experts are sworn together and take their place together at the witness table. Using the summary of matters upon which

[1] Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report,* 2010, Chapter 38.
[2] See for example Lord Woolf, *Access to Justice, Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales*, HMSO, London, 1995, p. 183
[3] Jackson, *Final Report*, Chapter 38, p384
[4] Hon. Justice Peter McClellan, 'New Method With Experts – Concurrent Evidence', *Journal of Court Innovation*, Winter 2010, pp 259-268.

they disagree, the judge chairs a "directed" discussion of the issues in disagreement. The process provides an opportunity for each expert to place his or her view on a particular issue or sub-issue before the court. The experts are encouraged to ask and answer questions of each other. The advocates also may ask questions during the course of the discussion to ensure that an expert's opinion is fully articulated and tested against a contrary opinion. At the end of the discussion, the judge will ask a general question to ensure that all of the experts have had the opportunity to fully explain their positions.

Experience in Australia

4. Reported experience of the use of concurrent evidence procedures in Australia is that it narrows the issues in dispute, it offers the opportunity for all of the expert evidence to be presented at the same time so remaining fresh in the mind of the decision maker, that it reduces any tendency toward partisanship on the part of experts and results in a saving in hearing time.[5]

5. Experience in the Federal Court of Australia suggests that having both parties' experts present their views at the same time is very valuable. In their report on civil justice in Australia more than a decade ago, the Australian Law Reform Commission reported the following experience among Federal judiciary:

> In contrast to the conventional approach, where an interval of up to several weeks may separate the experts' testimony, the panel approach enables the judge to compare and consider the competing opinions on a fair basis. In addition, the Court has found that experts themselves approve of the procedures and they welcome it as a better way of informing the Court. There is also symbolic and practical importance in removing the experts from their position in the camp of the party who called them.[6]

6. In their Final Report, *Managing Justice*, the ALRC recommended that "procedures to adduce expert evidence in a panel format should be encouraged wherever appropriate. The Commission recommends that the Family Court and the Administrative Appeals Tribunal establish rules or practice directions setting down such procedures, using the Federal Court Rules as a model."[7]

The Manchester Concurrent Evidence Pilot

7. Following the publication of the Jackson Final Report judges at the Manchester TCC and Mercantile Court, under the leadership of HHJ Waksman, agreed to participate in a pilot study of concurrent evidence. The pilot scheme involved judges in the court identifying cases suitable for a 'Concurrent Expert Evidence Direction' ("CEED") and then inviting parties to adopt the procedure at trial. The broad objectives of the pilot were to test whether it is more efficient in terms of costs to the parties and judicial/court resources for all experts to

[5] The Hon. Justice Garry Downes AM, *Concurrent Expert Evidence in the Administrative Appeals Tribunal : The New South Wales Experience,* Paper presented at the Australasian Conference of Planning and Environment Courts and Tribunals, Hobart, 27 February 2004 http://www.aat.gov.au/Publications/SpeechesAndPapers/Downes/concurrent.htm

[6] Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System,* ALRC Report No 89, January 2000, para 6.117 http://www.austlii.edu.au/au/other/alrc/publications/reports/89/ch6

[7] Ibid. Recommendation 67

give evidence concurrently rather than sequentially; to provide evidence about the types of case for which it is suitable; whether the process should be rolled out more generally and if so whether any changes should be made to the process before it is rolled out.

Procedure

8. The Court issued Guidelines in June 2010 for voluntary participation in the pilot (attached Annex A). It was agreed that cases identified as suitable for inclusion in the pilot would need to meet certain criteria. These were broadly:

- the complexity of issues subject to expert evidence;
- importance of expert issues to the case as a whole;
- number of experts and areas of expertise; and
- the extent to which the use of the concurrent evidence procedure is likely to help clarify or understand expert issues and save time and/or costs at the hearing.

9. The procedure was not to be recommended where the credibility or independence of any of the experts was in doubt.

The Pilot Evaluation Project

10. Before the details of the pilot were finalised, it was agreed that the **UCL Judicial Institute**[8] would monitor the pilot scheme as part of its civil justice research programme. The approach of the evaluation was to invite judges, barristers, solicitors and expert witnesses involved in the pilot to complete questionnaires providing their assessment of the process. The questionnaires were returned to UCL and the information not disclosed to any other party or to the court. A copy of the questionnaire is appended at Annex B.

11. The first case to adopt the concurrent evidence procedure at trial in the pilot was heard in December 2010 and since then the procedure has been used at trial in only two other cases.

12. However, between June 2010 and December 2011 the issue of concurrent evidence has been raised in around 15 or so additional cases where the parties agreed to enter the pilot and adopt the procedure, but then subsequently settled before trial (or in a few cases have not yet been tried). Since trials have not occurred in these cases they cannot be included in the analysis. A table listing the type of expert evidence involved in the cases that agreed to enter the pilot and the issues in dispute (prepared by HHJ Waksman) is appended at Appendix C. The table indicates that the concurrent evidence procedure had been agreed to in cases involving a wide range of types of expert evidence. The experience of the court is that parties and their representatives are generally receptive to the idea of adopting the concurrent evidence procedure in situations where a single joint expert is not appropriate. Judiciary in the Manchester court have taken steps to educate the profession about the procedure and it is their perception that any initial apprehension has now been overcome. The final report on the concurrent evidence pilot will seek to capture additional information about cases that settled after a CEED to discover whether the Direction, in itself, has any positive impact on settlement processes.

[8] http://www.ucl.ac.uk/laws/judicial-institute/

13. This interim report is based simply on the experience of parties involved in the three cases that proceeded to trial. **There is insufficient data to reach solid conclusions on the effectiveness of the procedure**, but the following analysis provides useful case study material which may assist in developing policy on the future of the concurrent evidence procedure. The analysis is based on 16 questionnaires returned by representatives, experts and three different judges involved in the three cases.

Analysis

Case A

14. The case concerned fitness for purpose of vehicles under a contract and involved expert evidence from engineers. The claimant succeeded at trial. Questionnaires were returned by the judge, solicitors and counsel for claimant and defendant and one expert, although each side had an expert at trial.

The Judge

15. The judge's evaluation was that the process had run smoothly. He commented that there had been a large amount of pre-reading and analysis before the trial, but felt that the procedure had worked well. The judge said that he had gained an immediate feel for the weight of each side's position because it was done side-by-side. The judge also felt that it was possible to narrow issues quickly.

The Representatives

16. All legal representatives made positive assessments of the process. In general the procedure was thought to be more efficient and easier for the court to compare the evidence of experts. It was also thought to encourage greater objectivity on the part of experts.

"This process has reduced time and expense for the parties. It also allowed the judge to take control of the evidence … but with some reluctance on the part of Counsel instructed for both parties." [Claimant's solicitor]

17. The areas in which there was less agreement was about cost savings and rigour. While one or two thought that costs had been saved, others thought that the procedure had been costs neutral.

18. A clear area of difference of perception regarded the rigour of the process. While the judge and the claimant's solicitor felt that the process had been more rigorous than the conventional approach to expert evidence, both barristers and the solicitor for the defendant felt that the process was **less** rigorous than sequential evidence and cross-examination.

The Experts

19. Only one of the two experts returned a questionnaire and the one returned was not fully completed. However, it is clear from the comments of the expert that he was broadly happy with the procedure, although he perceived no particular difference in the ease of the

process, nor any particular advantage. What he did remark on, however, was that he found the process less adversarial and that he found it easier to explain differences of view.

"The main benefit I found was when the other expert said something with which I did not agree, I could immediately explain my disagreement directly to the trial judge rather than have to explain it to my Counsel and for him then to cross-examine the other expert. Many times over my 43 years of giving evidence in the conventional manner, Counsel has not initially fully understood certain technical issues and it has taken several attempts and extended his cross-examination to clear up the issue to my satisfaction. The use of concurrent evidence where I could talk directly to the judge was a great improvement, in my opinion, and allowed points of disagreement to be cleared up quickly." [Expert]

Case B

20. This case concerned damage to cargo in transit and a question of causation. Expert evidence was provided by one expert for each side as to the presence of a damaging substance on the goods. The claimant succeeded. Questionnaires were completed by the judge, counsel and solicitors for claimant and defendant, and by an expert for each side.

The Judge

21. The judge felt that this was a case involving a modest amount of money but being fought on an issue of principle. His assessment of the case was that the use of the concurrent evidence procedure was **very positive**, being considerably **more efficient**, considerably **more focused** and **much easier** for the court to compare the evidence of the experts. He felt that there was little difference in the rigour of the process and no obvious impact on the level of objectivity of the experts. The main benefit for the judge was the opportunity to make sure that he had grasped the nature, scope and limitations of the technical procedures employed by the experts and what conclusions could properly be drawn from their use. **One concern was whether the procedure would be appropriate if there was likely to be any serious attack on the competence or impartiality of any of the experts.** Overall, the judge felt that the concurrent evidence procedure was most suitable where the expert issues are "fairly narrow".

The Representatives

22. With one exception, the legal representatives for claimant and defendant felt that the process was more efficient, more focused and easier for the court. The one exception was the solicitor for the defendant who provided neutral rather than negative responses, finding the process neither more efficient, nor more focused, nor easier than conventional methods of dealing with expert evidence. Again there was some diversion of views on the question of rigour, with counsel feeling that the process had been somewhat less rigorous. One of the barristers commented that it was difficult as counsel to prepare for the process, that it involved a lot of work for the judge, and that it was "not entirely satisfactory as to what happens when the judge finishes asking questions."

23. One of the solicitors wrote a lengthy note of his experience highlighting the impact of the procedure on focusing minds, including that of the judge, on the expert evidence **before** the trial. He also felt that the concurrent evidence procedure enabled the trial to be less adversarial and the role of the experts to be more directed toward assisting the trial judge.

"I feel that if concurrent expert evidence is fully developed that in time experts will understand that their role is to assist the Court rather than the party that instructs them. This mindset is changing, but I believe that the giving of concurrent expert evidence will take this to another level." [Solicitor]

24. There was little agreement on whether or not the procedure had saved parties' costs. Only one of the representatives felt that there had definitely been a cost saving, although all thought that some trial time had been saved.

The Experts

25. Both experts were positive about the process. They both thought that the process was more efficient, more focused and easier for the court to compare expert evidence. One felt that it made no difference to rigour or objectivity while the other thought that the procedure led to the evidence being subject to more rigorous testing and led to greater objectivity. Specific advantages from the experts' point of view were the ability to address the issues directly and deal with any disagreement immediately, and feeling at ease in the court. Neither was able to offer a view on whether the procedure had saved costs.

Case C

26. The third case concerned a boundary dispute and involved expert evidence about the precise location of the boundary. Some of the issues had been settled before trial but there remained an outstanding issue relating to one of the boundaries. Each side had an expert in surveying. The outcome was that the Defendant was successful. Questionnaires were returned by the judge and by counsel and solicitor for claimants only. The information relating to this case is therefore extremely sketchy.

The Judge

27. The Judge gave a positive evaluation of the process finding it more efficient, much more focused and more rigorous – by the Judge and by the experts. He felt that he was able to hear evidence on each issue from each expert before moving to the next issue, thus making it easier to compare expert evidence. The Judge did not feel that the procedure led to a greater degree of objectivity on the part of the experts, although he noted that they were both very experienced. As to costs, the Judge felt that court time had been saved (by about half), but that the parties' costs would have already been incurred.

The Representatives

28. Only the claimants' representatives returned questionnaires. They were both positive about the process finding it more efficient and more focused, and it is worth noting that the claimants in this case were the losing party. The solicitor felt that the process in this particular case had made it easier for the judge to compare evidence.

"In such a dispute where the margin of difference between the parties was in the order of 10 centimetres it was helpful to be able to compare the evidence of the experts on points where because of the small margin some understanding may have been lost by questions on the same point by opposing counsel being separated by perhaps an hour or more. In this

case comparison of the expert evidence was also assisted by a joint statement of the experts." [Solicitor]

29. Neither solicitor nor counsel for the claimants thought that the process had enhanced objectivity or rigour, with the barrister thinking that the process had been somewhat less rigorous than conventional procedure. Neither respondent thought that there had been any savings in costs.

Preliminary Observations

Benefits and disadvantages

30. It seems reasonable to conclude on the strength of admittedly slim evidence that the main benefits of the concurrent evidence procedure are to be found in the **efficiency** of the process, and the ease with which evidence can be given and differences of views examined and assessed. The procedure encourages representatives, experts and the judge to **focus** on the issues prior to the trial and to clearly identify areas of disagreement. Time at the trial is saved by this degree of focus and the job of the judge in evaluating disagreements is made easier by dealing with each area of disagreement before moving on to the next. As a procedure for **enhancing the quality of judicial decision-making** there seem to be significant benefits.

31. It is less clear whether the process is more or less **rigorous**. Counsel, on balance, seem to think that the process is **less rigorous**, while the experts, the judiciary and solicitors seem to be divided in their opinions. Some thought the process more rigorous, some thought it less, while others thought it made no difference. As to **objectivity**, again opinions are divided as to whether it makes no difference or leads to greater objectivity. No respondent thought that the concurrent expert evidence procedure led to less objectivity then sequential expert evidence.

32. It is difficult to draw any preliminary conclusions about the impact of concurrent evidence on **costs**. There is information about only three cases and even among these three there was little agreement about cost savings other than a saving in court time. While one or two respondents felt that there had definitely been a cost saving (one put the saving at £7,000-£10,000) others were either unsure or suggested that the saving in expert fees would be none or negligible. Where savings were calculated as being part of a day, it was felt that this would have no impact on expert fees since they charge by the day in any case.

"In this case, probably not much [cost saving], as in all likelihood the experts had a full day set aside and would have charged accordingly, and the time saving in the context of a three day case was not so great as to result in any saving in Counsel's fees." [Solicitor]

"Costs neutral because experts do not charge in 1/2 days they charge for whole days." [Solicitor]

33. One respondent felt that the procedure had definitely **increased costs** and one other thought that there had been either no saving or a possible increase in cost.

Preliminary Conclusion

34. The evidence of the pilot to date suggests that there are time and quality benefits to be gained from the use of the concurrent evidence procedure for expert evidence. So far there is no evidence of significant disadvantages from the point of view of the judiciary, counsel, solicitors or experts themselves. What is needed is a larger evidence base so that the use of the procedure in different kinds of cases can be evaluated and a wider range of experience relating to rigour and costs can be analysed. All but one of the respondents has agreed to be interviewed about their experience and these issues could be explored in more depth with those respondents. However, there remains a need for a larger database of cases before firm conclusions about the procedure can be drawn.

35. In light of the positive evaluations of those involved in this pilot to date, by those both on winning and losing sides of cases, and in light of the relatively large number of cases in which parties agreed to adopt the concurrent evidence approach but settled prior to trial, it would seem entirely appropriate that in the implementation of the Jackson Report recommendations the use of concurrent evidence should be included in the Part 35 Practice Direction as an optional procedure which can be adopted if the judge so directs.

ANNEX A

DRAFT GUIDELINES FOR THE VOLUNTARY PILOT OF THE TAKING OF CONCURRENT EXPERT EVIDENCE IN SUITABLE CASES IN THE MANCHESTER TCC AND MERCANTILE COURT COMMENCING Monday 21 June 2010

Introduction

1. These guidelines set out (a) the procedure to be adopted when determining whether a case is suitable for a Concurrent Expert Evidence Direction ("CEED"), (b) the procedure to be adopted prior to trial where a CEED is made and (c) the procedure to be adopted at the trial itself.

Identifying a suitable case

2. In relation to a new case, consideration should be given to the suitability of a CEED at the first or subsequent CMCs. In relation to existing cases, either party may apply to the Court for a CEED or the Judge may of his own motion invite consideration of it and convene a hearing for that purpose. In cases approaching trial, this may be done at the PTR. In any case where the Judge has not invited consideration of a CEED, either party may apply to the Court for such consideration to be given. In an appropriate case, where the Judge makes pre-CMC directions, those directions may include a request that the parties consider the appropriateness of a CEED for that case.

3. In considering whether or not to make a CEED, the following factors will be of particular relevance:

   (1) The number, nature and complexity of the issues which are or will be the subject of expert evidence ("expert issues"); there is, however, no presumption that a CEED is appropriate only where the expert issues are complex or unusual;

   (2) The importance of the expert issues to the case as a whole; there is, however, no presumption that a CEED is appropriate only where the expert issues are of central importance;

(3) The number of experts, their areas of expertise and their respective levels of expertise;

(4) The extent to which use of the concurrent evidence procedure is likely to:

(a) Assist in clarifying or understanding the expert issues, or any of them; and/or

(b) Save time and/or costs at the hearing;

(5) Whether there is any serious issue as to the general credibility or independence of one of the experts; if there is, a CEED is unlikely to be suitable.

4. A CEED may only be made by the Judge (a) after hearing submissions from the parties and (b) with their consent.

5. The CEED shall state that the oral evidence of the experts at trial shall be given concurrently, identifying the expert issue(s) and the experts to which it is to apply.

Pre-trial Procedure where a CEED has been given

6. The Court will make the usual directions as to the service of expert reports.

7. The Court will also make a direction for a meeting of experts and the provision of a joint statement pursuant to CPR 35.12 ("the Joint Statement"). However, in relation to the areas of disagreement, the statement should identify each area clearly and separately, by reference to a heading and number in the list of such areas. Each expert's position in respect such an area shall be set out, together with the reasons therefore. If the expert is relying on reasons given in the report already served, a clear cross-reference to the relevant part must be given.

8. Prior to the trial the parties shall produce an agreed agenda for the taking of the concurrent expert evidence based upon the Joint Statement ("the Agenda"). This will contain a numbered list of the issues where the experts disagree. It

must be provided in sufficient time to enable the Court to consider it properly and if possible, by the PTR.

Procedure at trial where is CEED has been given

9. The final form of the Agenda will be decided at the PTR or the trial by the Judge after hearing from the parties. The Judge may re-order, revise or supplement it. The Agenda should then be reduced into writing and made available to the experts before they give their evidence.

10. At the appropriate time, the experts who are to give their evidence concurrently will each take the oath or affirm and then take their place at the witness table.

11. Before the evidence starts, and after hearing from the parties, the Judge will identify to the experts any significant factual matters or issues which have arisen in the trial thus far and which may affect their evidence.

12. Subject to any further direction the experts will address the issues in the order in which they appear in the Agenda.

13. In relation to each issue to be addressed,

    (1) The Judge will initiate the discussion by asking the experts, in turn, for their views. Once an expert has expressed a view the Judge may ask questions about it. At one or more appropriate stages when questioning a particular expert, the Judge will invite the other expert to comment or to ask his own questions of the first expert;

    (2) After the process set out in paragraph (1) above has been completed for all the experts, the parties' representatives will be permitted to ask questions of them; while such questioning may be designed to test the correctness of an expert's given view, or seek clarification of it, it should not cover ground which has been fully explored already. In general a full cross-examination or re-examination is neither necessary nor appropriate;

(3) After the process set out in paragraph (2) above has been completed, the Judge may seek to summarise the experts' different positions on the issues, as they then are, and ask them to confirm or correct that summary.

14. It is highly desirable that the parties agree in advance that a transcript of the expert evidence be obtained and provided to the Judge in all but the simplest of cases.

Data for the Pilot Study

15. In order to obtain the material needed for an evaluation of the pilot,

(1) Judges will complete a suitable form

(a) Explaining why a CEED was made in that particular case and

(b) In the event that concurrent evidence was actually given at the trial, how helpful, or otherwise, the process was to the parties and the Court, and in what way;

(2) The parties in such a case will be invited to give their own evaluation on a suitable anonymous basis, and

(3) The experts concerned will also be invited to give their views on a similar basis.

ANNEX B QUESTIONNAIRE

THE RT.HON.LORD JUSTICE JACKSON
The Royal Courts of Justice, Strand, London, WC2A 2LL

I am grateful to you for participating in this pilot of concurrent evidence, which has been set up at the Manchester Mercantile and Technology and Construction Courts in accordance with recommendation 80 of the Review of Civil Litigation Costs Final Report: see pages 384-5 and 469 http://www.judiciary.gov.uk/about_judiciary/cost-review/reports.htm. In order that the effects of the procedure can be monitored, I would be most grateful if you could fill in the questionnaire below and return it to Professor Dame Hazel Genn at University College, London: laws-survey@ucl.ac.uk. Please ensure that you type "Concurrent evidence" in the subject box of your email.
If you wish to expand on your answers, please use continuation sheets. Your response will not be seen by any other party or by the court. It will be confidential to those academic staff at UCL who are carrying out the monitoring and assessment. Any published findings or data from the survey will be anonymised.

Yours sincerely,

Rupert Jackson

PLEASE ANSWER THOSE QUESTIONS WHICH ARE RELEVANT TO YOU

1. Name of case

2. In broad terms, what was the case about?

3. Your role (judge, barrister, solicitor, expert)

4. What was the result of the case?

5. What were the issues calling for consideration by the experts?

6. How many experts were called by each side and in what fields?

7. At what stage was the direction for concurrent evidence given?

8. What fees did the experts on your side charge:
   (i) Pre-trial?
   (ii) At trial?

9. How long did the expert evidence take at trial?

10. How long do you think the expert evidence would have taken at trial under the conventional sequential procedure?

11. What saving in costs or increase in costs do you think resulted from taking the expert evidence concurrently?

12. In your opinion, did this process cause the expert evidence to be presented:

   (i) More efficiently or less efficiently?
   (ii) More focused or less focused upon the real issues?
   (iii) Subject to more rigorous or less rigorous testing?
   (iv) With a greater degree of objectivity by the experts, or not?
   (v) In a way which made it easier or harder for the Court to compare the evidence of each of the experts?

13. [For experts only]

   (i) Prior to this case, had you given evidence in this way before?
   (ii) In general terms did you find it easier or harder to give your evidence in this

   (iii) Do you consider that your points of view on particular issues came across more or less clearly than when giving evidence in the conventional ?
   (iv) From the expert point of view did the process have any particular advantages or disadvantages for you?

14. In general terms, having experienced the use of concurrent expert evidence,

   (i) were you satisfied with the use of this process in this case?
   (ii) would you be more or less prepared to use it in a future case?
   (iii) do you regard it as being of particular benefit in a particular kind of case and if so what?

15. Any further comments upon the concurrent evidence procedure as used in this particular case or generally? Please use a continuation page if necessary.

16. Are you willing to discuss your experience of the new procedure with Dame Hazel Genn (either in addition to or instead of answering questions above)?

If so, what are your name and phone number?

Annex C
Cases entering concurrent evidence pilot where there has been no trial

Court	Type of expert evidence	Issue	Stage at which CEED made/suggested	Comment
Mercantile				
	Tax	Tax savings by incorporation of new business	CMC – to be confirmed by parties	Modest claim; both sides felt time and costs savings on highly discrete issues. C's Counsel familiar with CE; D not but attracted at outset.
	Engineer/ Surveyor and QS	Nature extent and cost of reinstatement works	Quantum CMC – parties prov. agreed – to confirm at later hearing	Time and costs would be saved; issues conveniently narrow. Same applies for cases below.
	Accounting	Breach of warranty in share sale agreement	At CMC. Both parties provisionally agreed, to confirm within 14 days.	
	Accounting	Breach of warranty in share sale agreement, share valuation	At CMC.	
	Equipment Engineering	Defective copying equipment	At PTR	Revised joint statement ordered to firm up expert issue agenda
	Packaging and sea water ingress and damage	Cargo claim	Post-CMC directions. Parties to consider giving expert evidence concurrently and to be decided at PTR	
	Surveyors	Defective building works	CMC	Provisionally agreed.
	Engineering	Negligent design, maintenance and repair of wine packing machinery	CMC	Substantial claim. C's sols had attended CE seminar and was immediately attracted, D agreed after concept explained

Court	Type of expert evidence	Issue	Stage at which CEED made/suggested	Comment
TCC				
	Surveyor	Quality of building works	Suggested and agreed at PTR	
	1. handwriting 2. IT	1. Disputed signature 2. Performance	At PTR both parties already proceeding on basis there would be CE. Judge revoked because both expert issues involved serious challenges to credibility of experts	
Chancery				
	QS	Works valuation	CMC or shortly after	Agreed on basis that time and costs would be saved.
	Valuer	Property valuation	As above	As above
	Valuer	Property valuation	As above	As above
	Forensic accountant	Share valuation	As above	As above
	Forensic accountant	Pension entitlements/ losses	Suggested at PTR	Both sides happy to consider for forthcoming trial