UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11**
MF GLOBAL HOLDINGS LTD., et al.,	:	
	:	**Case No. 11-15059 (MG)**
Debtors.[1]	:	
	:	**(Jointly Administered)**
MF GLOBAL HOLDINGS LTD., as Plan Administrator, and MF GLOBAL ASSIGNED ASSETS LLC,	:	
Plaintiffs,	:	
vs.	:	**Adv. Proc. No. 16-01251 (MG)**
	:	
ALLIED WORLD ASSURANCE COMPANY LTD., IRON-STARR EXCESS AGENCY LTD., IRONSHORE INSURANCE LTD., STARR INSURANCE & REINSURANCE LIMITED., and FEDERAL INSURANCE COMPANY,	:	**Ref. Docket Nos. 189, 188, 174, 14**
Defendants.	:	

SECOND DECLARATION OF JAYSON NATHAN WOOD
IN SUPPORT OF PLAINTIFFS' BRIEF IN OPPOSITION TO
DEFENDANT ALLIED WORLD'S MOTION TO DISMISS FOR IMPROPER SERVICE

[1] The debtors in the chapter 11 cases are MF Global Holdings Ltd.; MF Global Finance USA Inc.; MF Global Capital LLC; MF Global Market Services LLC; MF Global FX Clear LLC; and MF Global Holdings USA Inc. The Court entered an order of final decree closing the chapter 11 cases of MF Global Capital LLC, MF Global FX Clear LLC, and MF Global Market Services LLC on February 11, 2016.

I, **JAYSON NATHAN WOOD**, make this declaration based on my personal knowledge and pursuant to 28 U.S.C. § 1746. I hereby state as follows:

1. I am the head of the litigation and insolvency practice of Zuill & Co, a firm of barristers and attorneys in Bermuda. I was admitted to the Bar in Australia in 1989 and have more than 25 years experience in all aspects of corporate and insolvency litigation, with particular expertise in hedge fund collapses, shareholder disputes, corporate fraud, receiverships/liquidations, asset preservation and corporate reconstructions. I am admitted to practise as an attorney in Bermuda, the Cayman Islands and the British Virgin Islands.

2. I have been asked by U.S. Counsel representing MF Global Holdings Ltd ("MFGH") and MF Global Assigned Assets LLC ("MFGAA" and together, the "MFG Parties"), entities which my firm and I have acted for in related court proceedings in Bermuda, to provide counsel regarding Bermuda law on service of foreign proceedings in Bermuda. I am further advised that the questions arise out of proceedings in the U.S. Bankruptcy Court for the Southern District of New York against Allied World Assurance Company Ltd, an insurance company incorporated in Bermuda (hereafter referred to as "AWAC").

3. The purpose of my First Declaration filed in these proceedings and dated 20 July 2017 ("**JNW-1**") was to respond to the First Declaration of Mark Chudleigh dated 20 December 2016 insofar as it dealt with service of proceedings in Bermuda. I noted that Mr. Chudleigh, in his first declaration, only purported to deal with the requirements for service of Bermudian proceedings involving natural persons and not companies. I further set out the relevant provisions in the Bermuda Companies Act 1981 (the "**Companies Act**") dealing with service on a company incorporated under that statute and relevant Bermuda case law. I concluded that service by both the MFG Parties and the Bankruptcy Court on AWAC at its registered office in Bermuda complied with the statutory requirements of the relevant provision in the Companies Act, section 62A, and would, in my opinion, be deemed good service in Bermuda.

4. I file this Second Declaration in response to certain points made in the Second Declaration of Mark Chudleigh dated 31 July 2017 (hereafter referred to as "**Chudleigh-2**") but I would note that my opinion remains the same: service of these proceedings was properly effected on AWAC at its registered office in Bermuda, pursuant to section 62A of the Companies Act.

Section 62A as an alternative method of service

5. I would first note that neither in his first nor his second declaration does Mr. Chudleigh provide any authority, statutory or otherwise, stating that service of process on a company in Bermuda must be done only by personal service. Instead, Mr. Chudleigh states in his second declaration that, in his opinion as to statutory interpretation, section 62A remains subject to the mandatory provisions of Order 10 rule 1(1) of the Rules of the Supreme Court of Bermuda ("**RSC**") (see, e.g., paragraphs 13 and 21), and that the requirement under Order 10 rule 1(1) of the RSC for personal service "can only be displaced by another enactment (i.e. an

Act of Parliament or a statutory instrument), or by another Court rule, that states, in express terms, that personal service by the plaintiff or his agent is not required." [**Underlining my own**.]

6. The 1999 White Book (commonly referred to by Bermuda attorneys for guidance on the Rules of the Supreme Court) (Exhibit A) states in respect of personal service under the Rules at Note 10/1/5:

> "By operation of r. 1 (1) and r. 5, a writ of summons, an originating summons (other than an ex parte summons…), an originating notice of motion and a petition must be served "personally" on each defendant (unless such service is excepted under any particular rule or statutory enactment ***or*** an alternative method of service is authorised)." [**Emphasis my own**.]

7. It is precisely that latter point that I sought to make in my first declaration, namely that section 62A of the Companies Act authorises an alternative method of service on companies incorporated in Bermuda, as is AWAC. Mr. Chudleigh, at paragraph 22 Chudleigh-2, recognises that section 62A provides an alternative method of service but concludes that this is not in the alternative to Order 10 r. 1(1) (personal service) but to Order 65 r. 3[2] (personal service on a body corporate). Mr. Chudleigh goes further to conclude, at paragraph 26 of Chudleigh-2, that "*the true legal meaning of the words "leaving at" is that they are* synonymous *with personal service…"*

8. At paragraph 9, Mr. Chudleigh elaborates on a distinction between personal service and postal service made in his first declaration. In doing so, he appears to define the two types of service largely on the basis of the knowledge of the individual delivering the document, as follows:

> 9a. personal service, on the one hand (i.e. personal delivery by the Plaintiff, its Bermuda attorney or its Bermuda process server), **where the person effecting service does so consciously and deliberately (i.e. with knowledge of the nature and purpose of the documents being served**) by physically leaving the relevant document with the person or company being served; and
>
> 9b. service by post, on the other hand (i.e. indirect delivery by the Plaintiff or its Bermuda attorney sending a document through postal channels to the address of the person or company being served, whether through the Post Office, or through a courier company such as DHL or FedEx, in circumstances where the documents pass through

[2] 65/3 "Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, [be] effected by serving in accordance with rule 2 on the president or vice-president of the body, or the secretary or other similar officer thereof."

> many hands, and the **eventual postman or DHL courier that actually effects delivery has no knowledge of the nature and purpose of the documents being delivered, or even the contents of the envelope that is being delivered)**. [**Emphasis my own**.]

9. In *Forward v West Sussex County Council and others* [1995] 1 WLR 1469 (Exhibit B), the English Court of Appeal considered the benefits of personal service versus service by post, and held "that on a true construction of RSC Order 10 r. 1 (2)[3], service [by post] was **duly effected when the proceedings were brought to the notice of a defendant** and not on mere delivery of the writ to his last known address; that **since personal service guaranteed that the proceedings came to the defendant's attention** the alternatives provided by the rule were permitted because they founded a good working, but rebuttable presumption that they also would achieve that result; and that accordingly, in view of the plaintiff's concession, the writ had not been duly served on the fourth defendant and the judge's order would be set aside."

10. It is therefore not the knowledge of the person making the delivery that it is critical here but rather that the proceedings are brought to the defendant's attention; the latter is the point at which the proceedings are deemed to have been duly served. Applying that to the facts in the present case, I am instructed that and verily believe that there is no dispute here that the proceedings were brought to the defendant's attention as a result of service of the writ here: using DHL mail service, which included a courier component, that is, a DHL representative delivering the package to AWAC's registered address and obtaining a signature by AWAC's employee. In any event, as set out above, I am of the opinion that section 62A is an authorized alternative mode of service and therefore Mr Chudleigh is wrong that the statute incorporates a requirement for personal service, pursuant to RSC Order 10 r. 1. The comments of Chief Justice Kawaley in *Gleeson* and the distinction drawn between the mechanism for service on companies and on natural persons, at paragraph 36, so confirm:

> *"36. I see no reason why the principles which govern setting aside service irregularly made after the expiration of a limitation period should be different in the case of a company (**where the primary service rules are contained in section 62A of the Companies Act** as supplemented by case law on what constitutes substantial service) as opposed to the case of a natural person (**where the primary service rules are contained in the Rules** themselves as supplemented by case law on what constitutes substantial service.)"* [**Emphasis my own**.]

11. It is apparent, in my opinion (as I explain more fully below), that what Parliament intended in enacting section 62A was to prescribe the place for service on a company, not the method of service. In putting the emphasis on the place of service, Parliament has seemingly, and dare I

[3] Here the reference is to the pre-CPR UK Rules of the Supreme Court which allowed for service by post.

say, rather elegantly (although I do not have any way of knowing if this was intentional or not), obviated any need to dictate how service is effected. This is because in prescribing the place of service, i.e. at the registered office, service is automatically effected in the place where it will come to the notice of the corporate defendant. There is therefore nothing to be gained in taking that further to require personal service, as the benefit of personal service has already been achieved by dictating the location.

12. Mr. Chudleigh's mistake may be explained by his puzzling belief, evident throughout his declaration that the "person" in "personal service" is the person carrying the document. This interpretation is inconsistent with the authorities described herein and fails as a matter of logic. The "person" in "personal service" must properly be construed as the person (or in this case, the company) who is being served, that is the defendant. That is because the clear goal of service is to bring the proceedings to the knowledge of that defendant person or entity. The goal is not to ensure awareness of the individual effecting service.

DHL delivery is a mode of service authorized under section 62A; Chudleigh's interpretation re-drafts the statute, producing an absurd result

13. Section 62A of the Companies Act states that "*[A] document may be served on a company by leaving it at the registered office of the company*..." As I have already alluded to above, what is of central importance here is that the document is left at the registered office of the company. It is the place of service therefore, not the mode of service, that is prescribed by the statute.

14. Mr. Chudleigh has reached a contrary conclusion, stating that, in his opinion, "leaving" must mean personal service and he states further that this precludes service by post, including via mail that includes a courier component (the service's representative delivering the package and having it signed for by the addressee or its employees), such as DHL.

15. There is no question that section 62A expressly authorizes service at the registered office of a company and makes no express reference to service by post. As already noted in JNW-1 at paragraph 9, the statute has no doubt been drafted in such a way as to be read in conjunction with section 62(1) of the Companies Act, which states: "A company shall at all times have **a registered office in Bermuda which shall not be a post office box to which all communications and notices may be addressed."** [**Emphasis my own**.] Mr. Chudleigh also references section 62(1), Chudleigh-2 at paragraph 26d, but misinterprets its function.

16. Read together, there can be no doubt that service must be effected at the registered office which must be a physical office address, not a post office box. I do not however read that as precluding any form of service which is capable of being effected at the registered office, including via international mail with a courier component, but not by registered mail (as explained further below).

17. In a footnote to paragraph 6 of Chudleigh-2, Mr Chudleigh states there can be no doubt as a matter of Bermuda law that DHL is a postal channel, citing *T.O. Supplies (London) Ltd v Jerry Chreighton Ltd* [1952] 1 KB 42 (Chudleigh-2 at Exhibit I)[4]. What this English authority makes clear is that the definition of post includes registered mail but it does not in any way deal with international mail services, such as DHL or Federal Express, with a courier component.

18. Mr. Chudleigh does not provide further explanation but I assume in referencing *T.O. Supplies* he has concluded that a document sent by courier is analogous to a document sent by registered mail. If that is the case, I do not think that is a fair conclusion to draw in a Bermuda context given that in Bermuda a registered letter is, as I understand it, collected from and signed for at the post office. Contrast this with a document sent by international mail service with a courier component, which is signed for on delivery at a physical address. Here it was at AWAC's registered office in Bermuda.

19. In support of his contention that "leaving" a document is synonymous with personal service, Mr. Chudleigh, at paragraph 27(b) of Chudleigh-2, refers to a passage in *In re a Debtor (No. 441 of 1938)* [1939] Ch 251 (Chudleigh-2 at Exhibit L) where the English Court of Appeal held: *"...what is after all the essential thing in services…[is] that the documents served shall be brought to the personal knowledge of the person whose concern it is…In the case of a writ, it could not be suggested…that mere proof of delivery of a sealed envelope containing the copy of the writ…would be sufficient service*."

20. First I should point out that the issue in that case was service of a bankruptcy petition, which was governed at the relevant time by the Bankruptcy Rules 1915. Similarly, in Bermuda, neither the Rules of the Supreme Court nor anything in the Companies Act would apply to bankruptcy proceedings (which in Bermuda cannot be against a company). See RSC Order 1 r. 2 (2) which specifies that the RSC has no effect in relation to bankruptcy proceedings.

21. Further, *In re a Debtor*, is irrelevant on the present facts as it deals with service on an individual, not a company, "***the essential thing being that the documents served shall be brought to the personal knowledge of the person whose concern it is***." Under section 62A of the Companies Act, there is no requirement that a document be brought to the knowledge of a particular person. See in this regard the explanations by Chief Justice Kawaley (i) in *Gleeson*, distinguishing service between natural persons and companies (see *supra* paragraph 10 and JNW-1 at paragraph 12) and (ii) in *Kingate*, which I already referred to in my first declaration and which Mr Chudleigh deals with in Chudleigh-2 at paragraphs 13 and 23, that "section 62A was seemingly primarily enacted to lighten the burden of personal service on

[4] There do not appear to be any Bermuda authorities directly dealing with service by international mail service with a courier component nor am I aware of any English authorities directly dealing with this point.

officers of a local company under Order 65 rule 3." Mr Chudleigh states, at paragraph 23 of Chudleigh-2, that (i) the Chief Justice's commentary in *Kingate* does not mean that personal service is not a requirement under section 62A, and (ii) "that the "burden" that was being "alleviated", and to which Chief Justice Kawaley was likely referring, was the burden of effecting personal service on the individual officer of the Company by allowing documents to be personally served by leaving them at the registered office instead."

22. In *In re a Debtor*, which Mr Chudleigh relies on as authority for his proposition that personal service is required under section 62A, personal service is defined as requiring the petition to be brought to the personal knowledge of the *individual* debtor. However, Mr. Chudleigh himself accepts that there is no requirement under section 62A that service be on an individual (see above and at paragraph 23 of Chudleigh-2). The obvious question raised by *In re a Debtor*, is whether it is even possible to personally serve a document on a registered office (if there is no requirement that it be on a specified individual).

23. It is worth noting, further, that in *In re a Debtor* (which was on appeal from a decision of the Registrar), it was held that the Registrar was wrong for dismissing the petition on the basis that it had not been personally served on the debtor: *"In the present case, as I say, the Registrar dismissed the petition, but I cannot think that in doing so he can have had properly before his mind the fact that, on the facts of this case, the debtor had been fortunate enough to escape on a matter of great strictness and also that the result of dismissing the petition may be to work a serious injustice.* ***This is a case where a slip was made in the matter of service, and it seems to me that the Registrar ought not to have allowed that to lead to a dismissal of the petition, but ought to have given facilities for remedying it****." [****Emphasis my own****.]*

24. Taking all of these points into consideration, I remain of the opinion that section 62A of the Companies Act authorises an alternative mode of service on companies incorporated in Bermuda, the central requirement of which is that a document is left at a company's registered office but is not otherwise prescriptive, and in my opinion does not in any way preclude service via mail with a courier component such as DHL.

25. Throughout Chudleigh-2, Mr. Chudleigh sticks with his intransigent theme that personal service is required in Bermuda. By arguing that a personal service requirement extends to section 62A of the Companies Act (because Mr. Chudleigh claims that "leaving" actually means personal service) the statute would have to be re-drafted with "leaving" stricken out and "personally serving" substituted, and would read as follows:

> "*A document may be served on a company by ~~leaving~~* ***personally serving*** *it at the registered office of the company…"*

That is obviously not the language of the statute.

26. Mr. Chudleigh accepts (see paragraph 17, Chudleigh-2) that "document" under the Companies Act refers to all manner of documents including books, papers, reports, legal processes, and would include originating process.

27. To carry Mr. Chudleigh's argument through would lead to an absurd result that Parliament could never have intended. A good example of this can be seen in applying Mr. Chudleigh's interpretation (as above) to section 62A, by which ***all*** documents (not just originating process) would have to be personally served and would preclude any and all documents being sent to by post. A statutory provision to the effect would be far more onerous than service requirements for any documents other than originating process under the Rules of the Supreme Court and cannot be what Parliament intended in enacting section 62A of the Companies Act.[5]

Service of foreign process, as allowed for under Bermuda law

28. At paragraph 27 (b) of Chudleigh-2, Mr Chudleigh refers to RSC Order 69 – Service of Foreign Process and states as follows: "*RSC Order 69 provides for the service of foreign proceedings in Bermuda by way of personal service only, through a process server instructed by the Registrar of the Supreme Court of Bermuda.*"

29. With all due respect, Mr Chudleigh's statement above grossly overstates the effect of RSC Order 69, which does no more than regulate how service of **letters of request** (whether from a non-convention or convention country) is to be effected. See, for example, RSC Order 69 r. 3 (3):

> "(3) Subject to any enactment which provides for the manner in which documents may be served on bodies corporate and to any special provisions of the relevant Civil Procedure Convention, service of the process shall be effected by leaving the original process or a

[5] At paragraph 27(e) of Chudleigh-2, Mr. Chudleigh notes that the wording of section 62A is different than the statutory provisions of some other common law jurisdictions where the legislation provides that "a document may be served on a company by leaving it at, or posting it to, the company's registered office." His conclusion, however, that Bermuda requires only personal service does not follow.

Section 62A was added to the Companies Act by amendment in 1992 (a decade after the statute was enacted) for a specific purpose and it is therefore not surprising that it does not word for word track the wording of other jurisdictions' laws. As referred to above, the commentary in *Kingate* provides guidance as to rationale for section 62A being added. It was "seemingly primarily enacted to lighten the burden of personal service on officers of a local company under Order 65 rule 3." I also note my comments above at paragraph 15 in this regard. Section 62A must be read together with section 62 ("A company shall at all times have a registered office in Bermuda which shall not be a post office box to which all communications and notices may be addressed."). No such or similar provision to section 62 of the Bermuda Companies Act appears in the other common law statutes that Mr Chudleigh references.

copy of it, as indicated in the letter of request, and a copy of the translation with the person to be served."

30. RSC Order 69 therefore leaves the door open for service of foreign process under "any enactment which provides for the manner in which documents may be served on bodies corporate" (e.g. under section 62A of the Companies Act) ***and*** under "any special provisions of the relevant Civil Procedure Convention," which would include provisions in the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (the "**Hague Convention**") that authorize direct service of foreign proceedings on a defendant in Bermuda.

31. Bermuda is a party to the Hague Convention and has not objected to Article 10(a), under which there can be no doubt that service by post or mail is permitted, including as was effected in this case.

32. In addition to reasons above (especially paragraphs 25-27), the authorized use in Bermuda of post under the Hague Convention confirms that it is misleading and incorrect to suggest, as Mr Chudleigh does, that service by post is not permitted in Bermuda in any circumstance (apart from substituted service).

A defect in service would be unlikely to render proceedings a nullity, and would not do so here because AWAC was put on notice of proceedings

33. I have already stated above that I am of the opinion that service of these proceedings was validly effected on AWAC in accordance with the statutory requirements under section 62A of the Companies Act. Were I to be mistaken on that point, failure to comply with any service requirement would not necessarily invalidate or nullify proceedings. See RSC Order 2 r. 1 (non-compliance with rules) and RSC Order 2 r. 2 (application to set aside for irregularity).

34. See also *Gleeson* at 33 as already referred to in my first declaration and by. Mr Chudleigh at paragraph 24 of Chudleigh -2:

"33. *I accept Mr Frith's submission that failure to comply with the service requirements of section 62A of the Companies Act 1981 does not necessarily invalidate service. The converse position better reflects the true legal position. Where service is effected by leaving a document at the registered office, it is virtually impossible for the company so served to successful impugn the validity of service in accordance with the statute. Where a plaintiff departs from the prescribed service procedure, it will be a question of fact in each case as to whether the relevant form of service deployed either*

i. is not irregular at all because the fundamental requirements of service have in substance been met (ie ***informing the company***

> ***that, in the case of originating process, that the proceedings have been actively commenced****); or*
>
> *ii. is irregular because in more than purely technical terms effective* ***notice of the active commencement of the proceedings has not been given to representatives of the company putting them on notice*** *that unless they participate in the proceedings, default orders may be made against the company. [****Emphasis my own****.]*

35. In *Gleeson*, unlike in the present proceedings, no service was effected at the registered office of the relevant defendant (in accordance with section 62A) nor had there been service on any officer of the relevant defendant (although the Chief Justice queried whether RSC Order 65 r. 3 would strictly apply to an incorporated company, see at paragraph 34). Notwithstanding the difference in facts, the critical factor (again) was whether or not the defendant has been put on notice of the proceedings. AWAC was clearly put on notice of these proceedings.

Conclusion

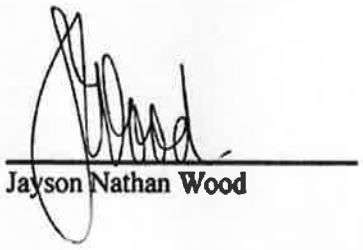
36. As I set forth in my first declaration and this declaration, Mr. Chudleigh's view that personal service is required as a matter of Bermuda law is incorrect. The statutory service provision in the Companies Act, section 62A, provides an alternative mode of service on a Bermuda company, as supported by the judicial decisions referred to herein.

37. Moreover, if I am mistaken that service was properly effected under section 62A of the Companies Act, then, service would still have been validly effected under the Hague Convention.

38. Finally, to the extent there was any deficiency in service (and I do not believe there was), it would not render the proceedings a nullity because AWAC was put on notice.

I declare under penalty of perjury under the laws of the United States of America and Bermuda that the foregoing is true and correct.

Executed: August 9, 2017
Hamilton, Bermuda



Jayson Nathan Wood

EXHIBIT A

THE SUPREME COURT PRACTICE

1999

1

Sweet & Maxwell

defendant but he acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he acknowledges service.

(6) Every copy of a writ for service on a defendant shall be sealed with the seal of the office of the Supreme Court out of which the writ was issued and shall be accompanied by a form of acknowledgment of service in Form No. 14 in Appendix A in which the title of the action and its number have been entered.

(7) This rule shall have effect subject to the provisions of any Act and these rules and in particular to any enactment which provides for the manner in which documents may be served on bodies corporate.

10/1/1 HISTORY OF RULE—Amended by S.I. 1979 No. 402; S.I. 1979 No. 1716 and S.I. 1982 No. 1111.

10/1/2 **Basic principle—service on each defendant** (r.1(1))—The basic principle is that a writ of summons, and the other forms of originating process to which r.1 applies by virtue of r.5, must be served on each defendant by the plaintiff or his agent (r.1(1)).

10/1/3 **Service by "plaintiff on his agent"** (r.1(1))—In the High Court, the responsibility of ensuring due service of the writ or other originating process on the defendant lies upon the plaintiff, who may effect such service either by himself or as is much more usual, by his agent. (A different practice prevails in the county court.) An exception exists in the case of the service of documents abroad by the methods provided by O.11, rr.6 and 7.

10/1/4 **Service within period of validity of process**—For the purposes of services, a writ or an originating summons is valid in the first instance for the limited period of time stipulated in O.6, r.8 (see also O.7, rr.6 & 7) and if it is to be duly effected service must be made within that period.

10/1/5 **Personal service**—By operation of r.1(1) and r.5, a writ of summons, an originating summons (other than an ex parte originating summons or an originating summons under O.113), an originating notice of motion and a petition must be served "personally" on each defendant (unless such service is excepted under any particular rule or statutory enactment or an alternative method of service is authorised). O.65, r.1 states that personal service of a document is to be effected where this is required by an express provision of the Rules or by an order of the Court. O.10, r.1(1) is an example of such express provision (for other examples, see the list in para. 65/2/3). According to O.65, r.2, personal service of a document (including a writ or other form of originating process) "is effected by leaving a copy of the document with the person to be served". For further information on the effecting of personal service, see "Manner of effecting personal service" (para. 65/2/4), "Time for effecting service" (para. 65/2/5).

10/1/6 **Exceptions to personal service of originating process**—There are the following exceptions under the rules to the requirement that the originating process must be served on each defendant:

(1) Where, instead of being served personally, the originating process is served by post (r.1(2)(a)) (see further para. 10/1/13 below).

(2) Where, instead of being served personally, the originating process is served by post or by insertion through the letter-box (r.1(2)(b)) (see further para. 10/1/15 below).

(3) Where the defendant's solicitor indorses on the writ or other originating document a statement that he accepts service on behalf of the defendant (r.1(4)) (see further para. 10/1/10 below).

(4) Where the defendant acknowledges service before service (r.1(5)) (see further para. 10/1/11 below).

(5) Where an order for substituted service is made (O.65, r.4).

(6) Where in an action in respect of a contract, the contract specifies the manner or place of service (r.3) (see further para. 10/3/2 below).

(7) Where in an action for possession of land, the court authorises service to be effected by affixing a copy of the writ to some conspicuous part of the land (r.4) (see further para. 10/4/1 below).

(8) Where any document is required to be served on the Crown for the purpose of or in connection with any civil proceeding (O.77, r.4).

(9) Where service is effected in a foreign country in accordance with the law of that country (O.11, r.5(3)).

(10) Where service of the writ is effected in an action against a foreign state (O.11, r.7, and the State Immunity Act 1978, s.12(1)).

(11) Service of writ in Admiralty action *in rem* (O.75, rr.8 and 11).

(12) Service of originating summons in summary proceedings for possession of land (O.113, r.4).

EXHIBIT B

A [COURT OF APPEAL]

*FORWARD v. WEST SUSSEX COUNTY COUNCIL AND OTHERS

1995 June 12; 30

Sir Thomas Bingham M.R., Rose and Hobhouse L.J.

B *Practice—Writ—Service—Service by post to defendant's last address known to plaintiff—Defendant not living at address and having no notice of proceedings—Writ not returned undelivered to plaintiff—Whether service valid—R.S.C., Ord. 10, r. 1(2)*

By a writ issued in 1988 the plaintiff began proceedings against a number of defendants claiming damages for personal injuries arising out of an accident in 1985. In 1989, within the 12-month C period then prescribed for service, the writ was purportedly served on the fourth defendant under R.S.C., Ord. 10, r. 1(2)[1] by sending a copy by ordinary first class post to him at his last address known to the plaintiff. The defendant had moved from that address in 1986 and had left the neighbourhood. No acknowledgement of service was entered by him but the writ was not returned undelivered to the plaintiff's solicitors. In 1993 the deputy district judge dismissed an application by the fourth D defendant's solicitors under R.S.C, Ord. 12, r. 8 and declared that the writ had been duly served on him under R.S.C., Ord. 10, r. 1(2). On the fourth defendant's appeal the judge affirmed that decision. On the hearing of the appeal the Court of Appeal granted leave to the fourth defendant to adduce fresh evidence, as a result of which the plaintiff conceded that the fourth defendant did not see the writ at the time that it was sent to him E or within a year thereafter.

On appeal by the fourth defendant:—

Held, allowing the appeal, that on a true construction of R.S.C., Ord. 10, r. 1(2) service was duly effected when the proceedings were brought to the notice of a defendant and not on mere delivery of the writ to his last known address; that since personal service guaranteed that the proceedings came to a defendant's attention the alternatives provided by the rule were F permitted because they founded a good working, but rebuttable, presumption that they also would achieve that result; and that, accordingly, in view of the plaintiff's concession the writ had not been duly served on the fourth defendant and the judge's order would be set aside (post, pp. 1474F–G, 1476C–H, 1477B–C, E–F).

The following cases are referred to in the judgment of the court:

G *Austin Rover Group Ltd. v. Crouch Butler Savage Associates* [1986] 1 W.L.R. 1102; [1986] 3 All E.R. 50, C.A.

Cooper v. Scott-Farnell [1969] 1 W.L.R. 120; [1969] 1 All E.R. 178, C.A.

Ladd v. Marshall [1954] 1 W.L.R. 1489; [1954] 3 All E.R. 745, C.A.

Lex Service Plc. v. Johns [1990] 1 E.G.L.R. 92, C.A.

Singh (Pargan) v. Secretary of State for the Home Department [1992] 1 W.L.R. 1052; [1992] 4 All E.R. 673, H.L.(Sc.)

H *White v. Weston* [1968] 2 Q.B. 647; [1968] 2 W.L.R. 1459; [1968] 2 All E.R. 842, C.A.

Willowgreen Ltd. v. Smithers [1994] 1 W.L.R. 832; [1994] 2 All E.R. 533, C.A.

The following additional case was cited in argument:

Practice Direction (Q.B.D.: Postal Service) [1985] 1 W.L.R. 489; [1985] 1 All E.R. 889

[1] R.S.C., Ord. 10, r. 1(2): see post, p. 1475F–G.

APPEAL from Tuckey J.

By a writ issued on 15 March 1988 the plaintiff, Keith Anthony Forward, began proceedings against the defendants, West Sussex County Council, Robert Jackson, Kenning Motor Group Plc. and Nicholas Phillip Hendricks, claiming damages for personal injuries and consequential loss or damage caused by the negligence of the second defendant, as servant or agent of the first defendant, and by the negligence of the fourth defendant, as servant or agent of the third defendant, arising out of a road traffic accident. On 10 February 1989 the plaintiff, in purported service of the writ, sent a copy to the fourth defendant by ordinary first class post to his last address known to the plaintiff at 3, Bignor Park Cottages, Bignor Park, Pulborough, Sussex. On 30 July 1993 the solicitors of the fourth defendant entered an acknowledgement of service on his behalf and on 3 August 1993 applied under R.S.C., Ord. 12, r. 8(1)(*a*) for service of the writ to be set aside. By his order dated 14 Janbuary 1994 Deputy District Judge Stanton declared that the writ had been duly served on the fourth defendant and by his order made on 28 February 1994 the judge affirmed that decision.

By an amended notice of appeal, dated 10 June 1994, and with leave of Roch L.J. the fourth defendant appealed on the grounds that (1) since the plaintiff had chosen to adopt postal service to serve him and since the writ had been posted to an address which he had left in all probability no later than November 1986, the judge was wrong to conclude that a party seeking to disprove postal service had to establish more than that the intended recipient had moved away before purported postal service; (2) the judge erred in failing to find that (a) the implication of postal service was that the whole transmission should be performed by "ordinary course of post" (see section 7 of the Interpretation Act 1978), that is, both the sending and the receiving by the intended recipient; (b) service by post was incomplete if not effected by ordinary course of post; (c) the presumption of good service by post was rebutted if actions by third parties (such as successive occupiers of the address) were needed to complete the transmission process; (d) the evidential burden was on the intended server to prove, on balance of probabilities, that some further act or acts took place to get the writ into the intended recipient's possession; and that evidential burden was assumed by a server who chose to adopt postal rather than personal service; (e) once the presumption of postal service was rebutted it was for the intended server to inquire as to the whereabouts of the intended recipient and/or to take further steps to ensure that the writ reached the intended recipient; and (3) the judge erred in failing to find that where the intended recipient had established on the balance of probabilities that he had moved away from an address some considerable time before purported service, that address could no longer be called his "address" within the meaning of R.S.C., Ord. 10, r. 1(2)(*a*). The "address" had to be one at which the intended recipient had some continuing presence.

By a respondent's notice, dated 10 May 1994, the plaintiff sought that the judge's order be affirmed on the additional or alternative grounds that (1) since the summons issued by the fourth defendant acknowledged on its face service of the writ on him, it should have been issued under R.S.C., Ord. 12, r. 8(1)(*b*), and not under rule 8(1)(*a*); (2) the fourth defendant's acknowledgement service of the writ on 30 July 1993, was a step in the action and/or an unconditional appearance barring him from disputing service of the writ.

A The fourth defendant applied to the Court of Appeal for leave (1) to amend the summons issued under R.S.C., Ord. 12, r. 8(1)(*a*) to seek an order under Ord. 12, r. 8(1)(*b*) that writ had not been duly served on him; and (2) to adduce further evidence. On the hearing of the appeal on 12 June 1995 the court granted both applications.

The facts are stated in the judgment of the court.

B *Roger Eastman* for the fourth defendant.
Charles Taylor for the plaintiff.

Cur. adv. vult.

30 June. The following judgment of the court was handed down.

C SIR THOMAS BINGHAM M.R. This is an appeal against a decision of Tuckey J. made on 28 February 1994. The appeal is brought with the leave of Roch L.J. Before the judge there were two issues. Only one of those remains live on appeal. That issue is whether the plaintiff's proceedings were duly served upon the fourth defendant in the action, Nicholas Phillip Hendricks. The judge held that the proceedings had been D served. The fourth defendant appeals against that decision.

On 22 March 1985 there was a collision between two vehicles in Glasshouse Lane, Petworth, West Sussex. The plaintiff was a passenger in the first of these vehicles, which was driven by the second defendant in the action in the course of his duties as a servant of the first defendant. The second vehicle was driven by the fourth defendant in the course of E his duties as a servant of the third defendant. The police attended at the scene of the accident and took details in the usual way. The fourth defendant gave his address as 3, Bignor Park Cottages, Bignor Park, Pulborough, Sussex. This was a cottage on the Bignor Park Estate owned by Viscount Mersey.

On 15 March 1988, just a week before expiry of the three year limitation period, the plaintiff issued a writ naming all four defendants. F Under the rules as they then stood, he had one year in which to serve the writ. As the year was drawing to a close, on 10 February 1989, the plaintiff served the fourth defendant by post. Relying on R.S.C., Ord. 10, r. 1(2)(*a*), his solicitors sent the writ to the fourth defendant by ordinary first class post at 3, Bignor Park Cottages which they regarded as his "last known address." The letter enclosing the writ was not returned to the G plaintiff's solicitors undelivered. But nor did they receive any acknowledgement of service. This is not as surprising as it might seem, for two reasons.

The first reason is that the writ was sent under cover of a letter of 10 February 1989, addressed to the fourth defendant, in which the plaintiff's solicitors wrote:

H > "We would mention that the service of the writ upon you at this stage is merely a formality as we intend pursuing the claim against the insurers to the county council [the first defendant] and the Kenning Motor Group [the third defendant]."

The solicitors did, however, describe it as necessary for the fourth defendant to complete and return to the court the form of acknowledgement of service, and they suggested that he complete it by indicating an intention to defend. The solicitors went on to say that the writ which

they had issued did not include a statement of claim so that the fourth defendant was not required to become involved in filing a defence at that stage.

The second reason is that the plaintiff's solicitors had up to then pursued their claim against the third and fourth defendants through the insurers of the first defendant. Not long after the accident, on 8 August 1985, the plaintiff's solicitors had given notice of claim against the third defendant. The third defendant replied that it had passed the communication to its insurers the General Accident. The General Accident had written to the plaintiff's solicitors on 7 October 1985 saying: "We confirm that liability will not be in dispute so far as your client is concerned." In reply to a further letter about a year later, the General Accident had written to the plaintiff's solicitors telling them that they had passed a letter from the solicitors to the Municipal Mutual, who were negotiating the claim. The Municipal Mutual was the insurer of the first defendant. In response to this invitation, the plaintiff's solicitors had dealt with the Municipal Mutual. On 7 April 1988 the plaintiff's solicitors had written to the General Accident to inform that insurer that a writ had been issued and to ask for the name of a solicitor who would accept service. The plaintiff's solicitors also sought confirmation that time for service of a full statement of claim could be extended until 21 days' notice had been given by the insurer's solicitors. The General Accident had replied saying that they had an agreement with Municipal Mutual for dealing with the plaintiff's claim, questioning whether it was necessary for the third defendant to be involved in proceedings. On 11 May 1988 solicitors instructed for the first defendant had written to the plaintiff's solicitors indicating that they would grant a general extension of time for service of the statement of claim subject to 21 days' notice. In the circumstances the plaintiff's solicitors were not very much concerned about a response from the fourth defendant, since they conceived themselves to be dealing with the first defendant and its insurers and solicitors, whom they understood to be dealing with the claim on behalf of all four defendants.

The period of one year allowed for service expired without proceedings having been served on the third defendant and no application for extension of time has ever been made so far as the third defendant is concerned. The result is that, whatever the outcome of this appeal, the plaintiff's claim against the third defendant is dead.

On (we are told, although the document itself is undated) 30 July 1993, an acknowledgement of service was completed by solicitors acting for the fourth defendant, presumably at the instance of the insurers of the third defendant. On 3 August 1993, those solicitors applied pursuant to R.S.C., Ord. 12, r. 8 for an order that service of the writ on the fourth defendant should be set aside. This application was based on Ord. 12, r. 8(1)(*a*). It has been pointed out that the application should have been made under Ord. 12, r. 8(1)(*b*), for an order declaring that the writ had not been duly served on the fourth defendant. This point is correct, and we have given leave to amend the summons accordingly.

The application came before Deputy District Judge Stanton on 14 January 1994 when he held (so far as relevant) that the writ had been effectively served on the fourth defendant on 10 February 1989.

There were before the deputy district judge on that occasion four affidavits, three sworn on behalf of the fourth defendant and one on behalf of the plaintiff. The plaintiff's solicitors' affidavit acknowledged

A that service had not been effected on the third defendant but outlined the history of the proceedings and contended that service had been duly effected on the fourth defendant by sending him a copy of the writ by ordinary first-class post to his last known address as permitted by R.S.C., Ord. 10, r. 1(2)(*a*). The affidavit sworn on behalf of the fourth defendant (again at the instance of the third defendant's insurers, because the fourth defendant was not personally involved at all) contended that he had never B been served with the proceedings. The third and fourth defendants' solicitors had been unable to contact the fourth defendant despite considerable efforts to do so. He was no longer living at 3, Bignor Park Cottages. He could not be found there. He had not been known at the address over the immediately preceding few years. The third and fourth defendants' solicitors had instructed inquiry agents, who deposed that they C had checked public records in respect of the electoral roll records held in relation to 3, Bignor Park Cottages, which showed occupiers named Hendricks up to and including the year 1985–1986, but occupiers named Hutchins in the year 1990–1991 and an occupier named Dahal in the year 1992–1993. The records disclosed a gap between 1986 and 1990. A check of the public records had disclosed no forwarding address for the Hendricks family. The third and fourth defendants' solicitors deposed D that when the fourth defendant had left the employment of the third defendant on 3 May 1985 he had had an address at 3, Bignor Park Cottages. The company had no other information. The inquiry agents had approached all recorded persons named Hendricks in the Worthing, Haywards Heath, Hove and Brighton areas but without tracing the fourth defendant. The Department of Social Security had declined to assist in E attempts to trace him.

The third and fourth defendants' solicitors appealed against the ruling of the deputy district judge that the fourth defendant had been effectively served. For the purposes of the appeal the solicitors swore a further affidavit. In this an account was given of a search of the electoral roll in Sussex, of a credit check against the fourth defendant, of a BT subscriber search, of inquiries of the third defendant, of inquiries made to the Post F Office, of inquiries to the Horsham District Council and of inquiries to the Weymouth District Land Registry. Contact had been made with the agent managing the Bignor Park Estate since 1988, and he had known of no occupant of 3, Bignor Park Cottages named Hendricks since that date. He had subsequently confirmed that from 24 November 1986 the cottage had been let to a Mr. Hutchins. The deponent swore that despite further G extensive inquiries it had not proved possible to trace the fourth defendant but that he must be presumed to have moved away from the area in 1986 leaving no forwarding address.

In his judgment, Tuckey J. directed himself on the need for a defendant claiming not to have been served to provide convincing evidence to that effect. He said:

H

> "Do the fourth defendants discharge that onus in the circumstances which I have related ? It seems to me that they have established that at the time this letter was sent Mr. Hendricks was not in fact living at 3, Bignor Park Cottages. Is that the end of the story? I do not think it is. I think that in a case where the evidence is that the letter has not been returned undelivered by the Post Office, and in a society where if people do move homes one is entitled to expect that they will leave forwarding addresses and people will forward on mail

which is received, it is not good enough merely to say in circumstances such as these, 'Well, he wasn't living there at the time: ergo he didn't get it.' I think that some further evidence is required to satisfy the court that these arrangements which in the ordinary way a court would expect to be made were not made or did not in fact result in this defendant receiving the document in question. There is no evidence whatsoever about this. Were it the case that the Hutchins had been traced and said 'These people disappeared off the face of the earth. We didn't have a forwarding address, and if anything came for them, we just chucked it away,' then that would go a long way to discharging the onus. However, there is no such evidence here. Therefore, I am not satisfied on the evidence which is now before the court that the defendants have established that the fourth defendant did not receive this letter. I read its terms simply to indicate that it was not a letter which would have spurred him into instant action. It was said that the letter was a mere formality. So, the mere fact that it produced no response is not indicative of non-receipt. It is at best neutral."

Solicitors acting for the third and fourth defendants appealed against this ruling. Spurred on by the judge's comments, they set about obtaining additional evidence to establish that there had been no arrangements for forwarding mail to the fourth defendant. Application was made to this court for leave to adduce the new evidence. The plaintiff opposed that application, contending that it was too late to make such application and that the third and fourth defendants' solicitors had failed to exercise reasonable diligence as required by *Ladd v. Marshall* [1954] 1 W.L.R. 1489. The third and fourth defendants' solicitors contended that they had exercised reasonable diligence, and argued that in any event the *Ladd v. Marshall* conditions did not apply with their full force where there had not been a trial on the merits. Attention was drawn to *The Supreme Court Practice 1995*, vol. 1, p. 998, para. 59/10/11.

The court gave leave to the fourth defendant to introduce the new evidence. In our judgment, his solicitors had exercised reasonable if not exceptional diligence. But in any event we accept the argument that the *Ladd v. Marshall* conditions do not apply with their full rigour in a case of this kind and that the court has a residual discretion to admit new evidence if it appears appropriate to do so. It was not suggested that the new evidence, if adduced, would not probably have an important influence on the result of the case, nor that it was other than credible. It is unnecessary to summarise the effect of the new evidence, because counsel for the plaintiff conceded (once the court had given leave to the fourth defendant to adduce the evidence) that the fourth defendant had not physically seen the writ at the time it was sent to him nor within a year thereafter. We must therefore proceed on the basis that the proceedings did not actually come to the notice of the fourth defendant.

This factual conclusion means that the case which we have to consider on appeal is quite different from that which came before Tuckey J. He was in our view quite right to be sceptical of the contention that the fourth defendant had not received the writ in the absence of compelling evidence to show that it had not been forwarded on to him, as would in the ordinary course be expected. Had he been laying down a rule to govern all cases, he might have been open to criticism; but it seems plain that he was confining his observation to the facts of this case and was

A not purporting to lay down any general rule. Had the case rested on the evidence that was before him, we should have been unwilling to disturb his conclusion.

The issue which we now have to resolve arises on the construction of R.S.C., Ord. 10, r. 1(2)(*a*). Is service duly effected if the proceedings are duly sent by ordinary first class post to the defendant at his usual or last known address and delivered at that address? The plaintiff argued that it B is. If judgment were entered in default following such service and the defendant were able to show that he had never received the proceedings and so had had no opportunity to defend, he would have strong grounds for asking that the judgment should be set aside. But that would not impugn the validity of the service as service, only the fairness of allowing the judgment to stand. Counsel for the fourth defendant challenged this C approach. It was a cardinal rule of procedure that a party should not in ordinary circumstances be answerable for a claim of which he had had no notice. If he could show that the proceedings, although sent to and delivered to the last of his addresses known to the plaintiff, had not in fact come to his notice then good service had not been effected. The real test was one of notice not delivery.

Section 7 of the Interpretation Act 1978 lays down the general rule D governing references to service by post. It provides:

> "7. Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document E and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

This refers to the service of all documents, not just originating process; and the presumption applies "unless the contrary intention appears" and "unless the contrary is proved." Assuming that this provision in principle applies, we have no doubt that effect must be given to rules of court F unless they are in strict accord with the section, because if they are different a contrary intention appears.

R.S.C., Ord. 10, r. 1(1), (2) and (3) are central to the argument. These paragraphs provide:

> "1(1) A writ must be served personally on each defendant by the plaintiff or his agent. (2) A writ for service on a defendant within the G jurisdiction may, instead of being served personally on him, be served—(*a*) by sending a copy of the writ by ordinary first class post to the defendant at his usual or last known address, or (*b*) if there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant. In sub-paragraph (*a*) 'first class post' means first class post which has been prepaid or in respect of which prepayment is not H required. (3) Where a writ is served in accordance with paragraph (2)—(*a*) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to or, as the case may be, inserted through the letter box for the address in question; (*b*) any affidavit proving due service of the writ must contain a statement to the effect that—(i) in the opinion of the deponent (or, if the deponent is the plaintiff's solicitor or an employee of that solicitor, in the opinion of

the plaintiff) the copy of the writ, if sent to, or, as the case may be, inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within seven days thereafter; and (ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee."

Thus rule 1(1) provides, as in past days, for personal service. The virtue of this of course is that it brings the proceedings to the notice of the defendant. But paragraph (2) provides for two alternatives to personal service: service by post and insertion through the letter box. Paragraph (3)(*a*) provides that the date of service shall in either of these two cases be deemed to be the seventh day after sending or insertion as the case may be.

So far as the post is concerned, we could understand seven days being allowed as a safe if rather gloomy estimate of the time taken for delivery of a letter by ordinary first class post. So it would be a possible construction of paragraph (3)(*a*) to hold that in order to show the contrary the defendant would have to show that the letter had not been delivered by the seventh day, or perhaps at all, it being irrelevant (if the letter had been duly delivered) whether it had come to the defendant's notice or not. But it is not possible to apply this construction to insertion through the letter box: if a letter is inserted through a letter box it can make no sense to treat the seventh day after insertion as the deemed date of service if service takes place on delivery and is not concerned with notice. Reading paragraph (3)(*a*) in relation to both the alternatives to personal service provided for in (2), it seems to us that the generous time limit provided for deemed service by first class post and the allowance of seven days after insertion through the letter box are to allow for the possibility that the letter may not come to the defendant's notice at once. If this is the correct construction, a defendant could show the contrary by showing either that the letter had not come to his notice until after the seventh day or that it had not come to his notice at all.

This construction is in our view strongly reinforced by paragraph (3)(*b*). An affidavit proving due service must contain a sworn statement not simply that there has been compliance with paragraph (2)(*a*) or (*b*) but also of the deponent's opinion that the letter, whichever mode of delivery was adopted, "will have come to the knowledge of the defendant within seven days thereafter." On the plaintiff's argument the requirement for this expression of opinion would be unnecessary: it would not matter for purposes of service whether the letter had come to the knowledge of the defendant within seven days or at all; there would be good service whether it had or not. Paragraph (3)(*b*)(ii) is neutral: in the case of proceedings sent by post where the letter had been returned to the plaintiff undelivered to the defendant as addressee there would not have been good service on either argument; even on the plaintiff's argument it would have been necessary to show delivery.

We were referred to a number of authorities. The plaintiff relied in particular on *Cooper v. Scott-Farnell* [1969] 1 W.L.R. 120; *Austin Rover Group Ltd. v. Crouch Butler Savage Associates* [1986] 1 W.L.R. 1102; *Lex Service Plc. v. Johns* [1990] 1 E.G.L.R. 92 and *Pargan Singh v. Secretary of State for the Home Department* [1992] 1 W.L.R. 1052. The fourth defendant relied in particular on *White v. Weston* [1968] 2 Q.B. 647 and *Willowgreen Ltd. v. Smithers* [1994] 1 W.L.R. 832. In so far as assistance

A is gained from general statements of principle, we would prefer to rely on the last two cases, which reflect the salutary principle that proceedings must be brought to the actual notice of a defendant unless this is shown to be impracticable. But none of these authorities concerns R.S.C., Ord. 10, r. 1 as it now reads or formerly read, and where (as here) the court is required to construe a detailed statutory code it is in our view dangerous to seek to apply statements made with reference to different B statutory codes. That might be necessary if the statutory code in question were not clear. In our opinion Order 10, rule 1 is quite clear. It would be surprising if the alternatives to personal service treated as irrelevant what personal service would guarantee, that the defendant had notice of the proceedings. We are satisfied this is not the case. The alternatives to personal service are allowed because they found a good working C presumption (rebuttable, but still a good working presumption) that they will bring the proceedings to the notice of the defendant.

At the end of the argument we invited counsel to investigate the provenance of the rule permitting service at the defendant's last known address. It appears that the change was made in 1979, following recommendations made by a working party under the distinguished chairmanship of Sir Jack Jacob Q.C., then the Senior Queen's Bench D Master. It is in our judgment evident from the working party's report that it was regarded as fundamental that "the person against whom a claim or remedy or relief is made or sought should have due notice of it so that he should have a reasonable opportunity to answer it" (paragraph 110) and that alternatives to personal service were recommended "on the assumption that service by post at the proper address would be effective E to bring the relevant document to the notice of the person to be affected thereby" (paragraph 135). This report strongly reinforces the conclusions we have reached on the construction of the rule.

On facts and argument quite different from those before the judge we would allow the appeal, set aside the judge's order and make an order under R.S.C., Ord. 12, r. 8(1)(*b*) declaring that the writ has not been duly served on the fourth defendant. In making that order we wish to make F clear that we are expressing no opinion at all on an issue which is not before us: that is whether, on the unusual procedural history of this case, the plaintiff may be able to enforce any liability which the fourth defendant would (if duly served) have been under against the insurers of the first defendant or the third defendant or both.

This is the judgment of the court.

G

Appeal allowed.
Leave to appeal refused.

Solicitors: Taylor Joynson Garrett; Neville & Co., Bognor Regis.

D. E. C. P.

H