

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CLAIM NO: HQ01X03736

B E T W E E N:

DENNIS TANNER

Claimant

- and -

(1) PETER JOHN FILBY

(2) ALAN G T HOWELL

Defendants

**FIRST WITNESS STATEMENT OF
DENNIS TANNER**

I, Dennis Tanner, of 11 Meadow Close, Hove, Sussex, BN3 6QQ **WILL SAY AS FOLLOWS:**

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1. Unless otherwise stated, the facts and matters referred to in this my witness statement are known to me personally and are true. Where the facts and matters are not within my own knowledge, they are known to me from the sources indicated and are true to the best of my knowledge, information and belief.

Summary

2. In summary, I have set out a description of the events leading up to the publication of the articles and letters in the February to April 2001 editions of *Which Kit?* magazine referred to in paragraphs 5-12 of the Particulars of Claim and which form the grounds of my defamation/malicious falsehood claims against the First Defendant ("Mr Filby") and the Second Defendant ("Mr Howell"). In particular, I have set out:

- (a) Part A: the background to my relationship with Mr Filby including the background to our respective interests in kit car magazines. I believe this is important in understanding the origins of the animosity felt by Mr Filby towards me;
- (b) Part B: the background to a claim I issued against Mr Filby in November 1998 in relation to an article he published in the September 1998 edition of *Which Kit?* about one of my products called the Pilgrim Sumo;
- (c) Part C: the background to my relationship with Mr Howell and the claim he brought against me in February 2000 in relation to a second-hand Pilgrim Sumo that I sold him on 24 August 1999;
- (d) Part D: Mr Howell's account of his dealings with me including the outcome of his claim that were published by Mr Filby in the February and March 2001 editions of *Which Kit?* and which I believe is false and untrue;
- (e) Part E: a description of the damage to my business and health that the publication of the said articles and letters caused.

Part A: Background to my relationship with Mr Filby

Origins of Pilgrim

- 3. In 1980 I graduated from the university of Brighton with an honours Degree in engineering. I worked for various companies as a production and/or design engineer including Eurotherm and AP Bessons. In 1984, I started working at Marconi Underwater Systems Limited where I worked on the design and building of torpedoes in the role of an electronics design engineer.
- 4. Since my youth, I have always had a hankering to start my own business so in 1985 I started a kit car business known as Pilgrim Cars. I decided to go into the kit car business because of an interest I had developed in the industry after reading a trade magazine called *Alternative Car*. (Incidentally, published at the time by Mr Filby). I chose the name "Pilgrim" after attending a Sunday church service where the hymn "To be a Pilgrim" had been sung.
- 5. Initially I went into partnership with William Harling who was expert in the use of glass-reinforced plastic from which we made car bodies. In 1992, I bought William Harling out and from that moment on operated the business as a sole trader. At about the same time I formed Pilgrim Cars Limited in order to have the name registered at Companies House so that nobody else would use the name. I was also acting on my accountant's

advice that there were risks in operating a business of this type as a sole trader. However, I did not transfer the business into Pilgrim Car Limited at that time for tax reasons and I continued at all times to operate as sole trader.

6. I considered transferring the business to Pilgrim Cars Limited again in 1995 and even arranged for letters to be printed with the company letterhead. However, for various reasons I again decided not to transfer the business to Pilgrim Cars Limited and continued to operate as a sole trader up to the time I sold the business in April of this year. I used the company letterhead in correspondence and on sales invoices having received thousands of them from the printers. However, I did not believe I was doing anything wrong in this and I certainly never held myself out to be a limited company in any other way.
7. At the very beginning, William Harling and myself operated from a small mews workshop in the centre of Brighton where we built car bodies from glass reinforced plastic. After only about a year we were forced by pressure of demand to take more spacious premises at an industrial estate in Shoreham. Less than a year after that, because of the growing demand, we moved again to even larger premises in Henfield where the business still operates. This was in 1987.
8. The products made by Pilgrim are known as "kit cars". These are cars that are built by private customers using a new body, chassis and other fittings supplied by a company like Pilgrim to which the customer adds axles, an engine and other mechanical components taken from a "donor" car. A donor car is an ordinary motor car such as a Ford Sierra or a Jaguar XJ6 from which a set of used mechanical parts can be extracted at minimal cost. Sometimes, Pilgrim would assemble the car itself using "donor" parts.
9. The first model produced by Pilgrim was the "Bulldog", a 1930's open roadster type vehicle in the style of a Morgan. I later introduced other models to expand the business. The "Sumo", a replica of the AC Cobra, was commercially the most successful model. It combined a number of design features that proved to be highly attractive to customers. The Sumo model could be purchased either with the "donor" parts coming from a Ford Sierra or a Jaguar XJ6. The latter was more expensive but considerably more powerful. I also sold a model called the "Haldane", which is a kit replica of a car originally manufactured by Austin-Healy.
10. I worked very hard at the design and construction of my cars and spent a great deal of time and money having test reports carried out on the chassis, body, seat belt fixings and most other major components to qualify my models for registration on an individual car by car basis in most European countries. The tests were carried out by various "type-approval" authorities in Europe such as RDW in Holland, TUV in Germany and

MIRA in the UK to name a few. I obtained type approval from these authorities to sell most of my models in these countries. My work in this respect opened a large and lucrative export market.

11. The business prospered in these early years. At least one Pilgrim kit was produced every working day and orders were being received at an even faster rate causing a healthy waiting list to grow. I believe that Pilgrim established a reputation amongst customers and other manufacturers as offering excellent quality at very competitive prices.
12. A consequence was that my firm entered into contracts with other kit car companies to produce their kits. For example, Pilgrim made bodies for other kit car manufacturers such as Southern Roadcraft Limited in Shoreham and RAM Limited in Newmarket both of which also manufactured Cobra replicas. Pilgrim also provided bodies for an E-type Jaguar replica manufactured by JPR in Chichester and a Lancia Stratos replica made by a company called Allora in Middlesex (to name just some).
13. Pilgrim did exceptionally well and made healthy profits from the beginning. Within two years of the business starting turnover, was approximately £600,000 per annum (representing between 100 and 150 kits sold) and my profit was about 10% of this after all costs were taken into account. I needed to sell approximately 100 kits per year to cover all my costs. Each kit sold thereafter transformed into pure profit. Additionally, there were a number of perks which went with the business. For example, I received free holidays from foreign dealers who sold my cars in their countries.
14. My own personal circumstances also improved. In December 1989, I moved into a large detached 4 bedroom house on the outskirts of Hove near to the Sussex Downs. My wife was able to concentrate on having and raising our 3 children and did not have to work out of necessity (although she assisted me with my business accounts before I sold Pilgrim this year). As my business grew, I started to look for additional investment opportunities within the kit car industry

My financial interest in Kitcars International Magazine (KCI) and Kit Car magazine

15. In February 1992 I took financial control of *Kitcars International* ("KCI") magazine. The company that had published the magazine had gone insolvent in 1991 and I purchased the rights to publish it from the company's official receiver. I also employed KCI's former editor, Mr Ian Hyne. Whilst KCI never lost money, it never made much of a profit either. In June 1995, I therefore purchased another magazine called *Kit Car*.

16. *Kit Car* had originally been set up by Mr Filby in the early 1980's but I believe it went insolvent after a couple of years and was taken over by John Blackburn Print Limited, one of Mr Filby's creditors, from whom I bought it in June 1995 for £25,000. I employed a new editor, Peter Coxhead but advertising and art-work were handled by my staff at *KCI*. I believed that with these economies of scale, I could improve profitability.
17. About 50% of revenue of the two magazines would come from advertising and 50% from sales. On those occasions when there was non-utilised advertising space, I told the editors to promote Pilgrim's products. I was not involved in the editorial content or the running of either of the magazines save in respect of financing them.

Mr Filby's magazine interests

18. Mr Filby publishes a magazine called *Which Kit?* and has done so since before I started Pilgrim. It was one of three specialist magazines for kit car enthusiasts, the others being *KCI* and *Kit Car*. All three magazines were very similar to each other in respect of content and differed only in style. At the time I started having an interest in the kit car magazines, *Which Kit?* was by far the better presented of the three and therefore the most popular. This continued to be the case until about 1998 since when I believe that the popularity of *Which Kit?* has declined. From when I started Pilgrim in 1985 until 1998 I advertised my products, such as the Bulldog, the Sumo and the Haldane in *Which Kit?* magazine nearly every month.

Mr Filby's interest in Limelight Exhibitions

19. Mr Filby is also involved in a company called Limelight Exhibitions Ltd ("Limelight") that he jointly owns with Sally Mitchell. Limelight organises kit car shows at Donnington Park racetrack, Stafford County showground, Kempton Park racetrack, Hickstead equestrian centre and a number of other venues. He has effective control of about half the kit car industry shows.
20. There are a lot of kit car trade shows. They range in size from big national events to club gatherings. In order of size, Stoneleigh is the biggest. After that comes Donnington, Exeter, Stafford, Kempton Park and Newark. Everybody in the industry displays their products at these shows. Members of the public also pay to attend the shows. The shows give the public a chance to compare kit car products made by different manufacturers. This is particularly important with Cobra replicas where there are about twelve different manufacturers making Cobra replicas. The show season starts in March and finishes in November and there are, on average, one show a month. Show organisers, including Limelight, will look to kit car magazines to advertise their shows paying, typically, £300 per page of advertising.

21. Generally, I would turn up at these shows with members of my staff and two to three vehicles on display and answer any questions customers have. This was because they were an excellent way to advertise and market both my vehicle products and magazines. I would normally sell two or three kits at each show and subsequently receive follow up orders from customers who had seen Pilgrim's models at the show.
22. I regularly used to attend all the shows that Limelight organised. Limelight's shows were always very well organised and after Stoneleigh, were amongst the best in the industry. However, for reasons set out below, I was prevented from attending Limelight's kit car shows after the Donnington show that took place in September 1998.

My first contact with Mr Filby

23. My first contact with Mr Filby was in early 1985 when I asked him to publish a feature about my prototype Bulldog kit car. I recall that he was not particularly interested in the technical aspects of the Bulldog but rather whether I could afford to advertise. I also recall him saying that nobody would make headway in the kit car industry without the support of his trade magazine. Mr Filby and I were in constant contact from that point onward.
24. Initially *Which Kit?* reported on my products and service very favourably. For example, the January 1991 edition of *Which Kit?* made the following comment about Pilgrim:

“What is also guaranteed is a highly professional back-up team in the form of Den Tanner and his employees who are dedicated to providing a service that is second to none.”
25. Another example of the favourable coverage Pilgrim received was in the July 1993 edition of *Which Kit?* which published a reader's letter which commented:

“We must emphasise the most wonderful help we’ve had from Dennis Tanner and co. Dennis always found time to help with our problems or would refer us to Mike, the engineer, who’s a genius at his job and also helped us no end... We want to say a BIG THANK YOU TO DENNIS AND CO.”
26. However, shortly after buying *Kit Car* in 1995, I began to receive less positive coverage about my business and myself personally. For example, the August 1995 edition of *Which Kit?* commented on the fact that two of the three kit car magazines available were under my control. The letter commented that "Mr Tanner thinks he is Rupert Murdoch!" and that by advertising in *Kit Car* and *KCI*, kit car manufacturers were:-

"...subsidising and enabling Mr Tanner to further his aims to be Der Fuhrer of the Kitcar Reich".

27. I complained to Mr Filby that the words were offensive and untrue but he refused to apologise and insisted that the words were truthful. I was not at all happy with this but decided not to pursue the matter because I believed that any financial damage arising from the words would have been difficult to prove.
28. I believe that the reason for this less positive coverage was that in addition to owning *KCI*, I had recently purchased *Kit Car* and Mr Filby felt threatened by the fact that both competing titles to *Which Kit?* were now under my control. I also believe that Mr Filby resented the fact that I had bought a magazine (*Kit Car*) that he had originally created in 1981.
29. From this time on, the relationship between Mr Filby and I became more strained. He also became less willing to give my products editorial coverage in *Which Kit?* By way of illustration, I had to pay not only for advertising in *Which Kit?* but also for most of the editorial coverage of my products in *Which Kit?* For example, in 1996 I had to give Mr Filby a complete Sumo kit and a number of accessories (together worth about £5000) so that he would publish a number of articles about Pilgrim's products including a series of articles on how to assemble one of my Sumo models. I resented having to pay for editorial coverage in this way but without agreeing to it I felt I was unlikely to get any editorial coverage at all. I was not happy with the amount of coverage I received for the kit I had given Mr Filby and had no coverage whatsoever in the first half of 1997. When I pointed this out to Mr Filby, he published a further article about the Pilgrim Sumo in the August 1997 edition of *Which Kit?*.

Sale of KCI to Filby

30. In January 1998 I agreed to sell *KCI* magazine to Mr Filby which I had been unable to operate profitably. I hoped this would improve our relationship. Mr Filby paid me £4,500 and agreed to give Pilgrim free advertisements for a limited period. It was also verbally agreed between us that Mr Filby would give Pilgrim fair editorial coverage in both *Which Kit?* and *KCI*.
31. Around this time, three very favourable articles about Pilgrim appeared in the February edition of the *Which Kit?* 'year book' for 1998. These recorded that:

- (a) the Pilgrim Sumo was one of ten kits that changed the history of kit cars;
- (b) my Pilgrim company was one of the top eight kit car companies in the UK;
- (c) my Bulldog, Sumo and Eagle models were amongst the top 50 best selling kits of all time.

I was pleased by the favourable tone of the articles and my hopes that the sale of *KCI* to Mr Filby would improve our relations seemed to have been well-founded.

32. However in the summer of 1998, Mr Filby telephoned me and accused me of various sharp practices. We arranged to meet at my offices where he complained:

- (a) that I had described *Kit Car* as the "biggest and best" on the front page of its spring 1998 edition;
- (b) that my advertising salesman, Mr Hole, had revealed what *KCI's* circulation was;
- (c) that my art staff had plagiarised advertising copy created by *Which Kit?'s* art staff;
- (d) that I had not passed on to him money that I had received for advertising in *KCI* (now under his ownership).

33. I was not prepared to accept that any of Mr Filby's complaints were bona-fide. I recall that during this meeting Mr Filby accused me of extortion and called me a "thief". I also recall that when he left my office, he said something to the effect that he was also capable of perverting the meaning of words to meet his commercial ends. He gave me the impression that he intended to resolve his grievances by means other than negotiation.

Part B: The 1998 Claim against Mr Filby

34. A few weeks after Mr Filby had come round to my office to accuse me of "sharp practices", *Which Kit?* published an article that I considered unfairly harmed by business and necessitated my formally bringing legal proceedings against Mr Filby and his publishing company, Blueprint Books Ltd and his editor, Ian Stent. The article appeared in the September 1998 edition of *Which Kit?* (that came out in August 1998) and was entitled "Cobra Choice". The first part of the article was a letter from a reader who had written to *Which Kit?* to ask whether he should build a Pilgrim Sumo with a Chevrolet V8 engine. The editorial reply stated:

"It would not be sensible to build a Sumo with Chevy V8 power as the chassis simply isn't up to it".

35. I strongly objected to the words for a number of reasons. Firstly, there was a Jaguar version of the Sumo that was specifically designed to carry a V8 Chevy engine (and other types of large American engines) that I had been selling for years without any kind of problem. Indeed, *Which Kit?* had frequently referred to the fact that Pilgrim Sumo was available with a more powerful engine but had never suggested that there was any problem with the chassis. Secondly, since February 1998, the Sierra version of the Sumo had been improved to the point where it could receive a Chevy V8 engine, something that *Which Kit?* itself had reported in its May 1998 edition.
36. As soon as I read the article, I telephoned Mr Filby for an explanation. His first reaction was that he was not prepared to listen to my complaint because I had not been prepared to listen to his complaints. However, he did say that if I could prove that his words were wrong then he *might* publish an apology.
37. I was contacted by dozens of past customers who were concerned that either I had misled them concerning the capabilities of the Pilgrim Sumo's chassis or whether some new information had come to light concerning a failure of a Sumo chassis that had been fitted with such an engine. I also discovered from letters and telephone calls with dealers and agents that a number of people had been dissuaded from purchasing my kit after reading the article. I was naturally very upset.
38. I took legal advice from my solicitors Coole & Haddock who advised me that on the basis of what I told them, the words published in *Which Kit?* were likely to be defamatory. They advised me that they should write to Mr Filby and ask for his proposals to make amends. I believe that Coole & Haddock wrote to Filby about four times but never received a response.
39. In the November 1998 edition of *Which Kit?* the following apology was published:
- "back in our September issue....we stated that the Pilgrim Sumo chassis wasn't suitable for Chevy small-block power. We were wrong. We are told by a Pilgrim spokesman that several Sumos have been powered by this engine, and by the small-block Ford V8, and that the chassis is well up to the job. Apologies to all concerned."
40. I did not regard the apology in *Which Kit?* as sincere because it said that the words were untrue only "according to a Pilgrim spokesman" which was hardly likely to reassure Pilgrim's customers. My view that the apology was not sincere was confirmed in a letter Mr Filby wrote to the Kit Car industry in which he said he had only printed the apology to keep the peace.

41. I spoke to my solicitors about the apology. Their advice was that the apology was an admission of liability which should ensure that my claim would be successful. I telephoned Mr Filby and told him that I was about to issue a claim unless he came up with an offer of financial compensation. He told me that there was no way my claim could succeed given that he had now apologised. When I told him that I wanted financial compensation because of lost orders, he replied "tough". I therefore instructed my solicitors to issue a claim for £36,000 representing the loss of profit on about eight kits. I also applied for an injunction preventing Mr Filby from publishing any further defamatory statements.
42. Shortly afterwards, I telephoned Mr Filby to say that my claim was ready and was in the process of being issued. I asked him if he was quite sure that he didn't want to try and settle? He invited me to his offices in Reigate. He asked me what the problem was and I referred him to the offending article in the September edition of *Which Kit?* I recall that, at some point during the meeting, he lunged at me and Sally Mitchell had to restrain him and tell him to calm down. He made it quite clear that he would not compensate me financially in any way although he did offer further editorial coverage by way of a feature in *Which Kit?*.
43. The meeting then concluded. On reflection, I didn't feel the offer was adequate so I wrote to him to say that, from now on, he should correspond with my solicitors.
44. Mr Filby never consulted me about the article nor has he ever explained the facts on which he relied to claim that he believed the chassis of my Pilgrim Sumos were not adequate to support the V8 engine. I can only put the publication down to the fact that he still harboured a grudge against me from our meeting in June/July when he had accused me of "sharp practices". My doubts that the article represented genuine journalism was later supported by the fact that the December 1998 edition of *Which Kit?* included a guide to Cobra replicas that acknowledged that there was a Jaguar based Sumo that could carry American V8 engines.

Relations with Mr Filby in 1999 and 2000

45. After I complained about the article in the September edition of *Which Kit?*, Mr Filby told me that Pilgrim was barred from Limelight's Donnington show that was due to take place in September 1998, although *Kit Car* was allowed to advertise at the show. Shortly after the claim against Mr Filby was issued, Mr Filby told me that Pilgrim and *Kit Car* would not be allowed to attend the Stafford kit car show organised by Limelight that was due to take place in March 1999. He also told me that I would not be allowed to attend other shows that year organised by Limelight including Hickstead (August 1999) and Donnington (September 1999). I tried to get tickets for the shows organised by

Limelight but was refused. The effect of being excluded from Limelight shows was very damaging to my business since they were an essential part of the marketing and advertising of my products.

46. I attended other independent shows that I was able to. I also made overtures to the owners of the other kit car shows to see if I could buy them. I bought the Harrogate show from Roger Cooling in January 1999 and ran that successfully in 1999, 2000 and 2001. I also agreed heads of terms to buy Stoneleigh from Roger Cooling although that deal never materialised.
47. Mr Filby refused to accept advertising from my businesses or anyone who he believed was assisting my efforts to organise my own shows. For example, in the belief I had brought the Stoneleigh show from Roger Cooling, Mr Filby wrote to Roger Cooling refusing to publish advertisements for the Stoneleigh show in *Which Kit?*.
48. In June 1999, Mr Filby asked *Kit Car* to advertise Limelight's Hickstead and Donnington shows that were due to take place in August and September 1999 respectively. I agreed on the condition that Pilgrim and *Kit Car* could attend. Mr Filby agreed and advertisements for the Hickstead and Donnington shows duly appeared in the August and September editions of *Kit Car*. Mr Filby then told me that I could not attend Donnington 1999 unless I removed certain advertisements promoting *Kit Car* from the magazine. When I refused, Mr Filby told me Pilgrim and *Kit Car* magazine could not attend the Donnington show.
49. I was disappointed that Filby had reneged on the deal and had sought to impose additional terms, particularly as I had published advertisements for Donnington in *Kit Car* on the understanding that I would be allowed to attend. From that moment on, I adopted a policy of not advertising any of Limelight's shows in *Kit Car* unless Limelight were prepared to allow Pilgrim and *Kit Car* to attend.
50. In 2000 I made enquiries about running a show at Donnington in April but did not pursue this. However, I did set up two new shows at Braintree and Malvern to make up for the fact that I had been excluded from the shows organised by Limelight. The date of the Braintree show ended up by being on the same date as the Kempton Park show organised by Limelight. Mr Filby accused me of deliberately trying to cause damage to the Kempton Park show and the industry as a whole and enlisted the support of the ASCM (Association of Specialist Car Manufacturers) to put pressure on me to advertise Limelight shows in *Kit Car*.

51. The result of the above was that I neither attended nor advertised Limelight's shows and *Which Kit?* never attended or advertised my shows. This reduced attendances at shows and had a damaging effect on the industry as a whole. I was always prepared to enter into an arrangement where we both attended and advertised each other's shows and made overtures to that effect through intermediaries. I even set out my proposals as to how such an arrangement would work. However, Mr Filby showed no intention of changing his position.
52. I was keen for the industry to see that Pilgrim and *Kit Car* were under separate ownership so towards the end of 2000 I arranged for my shares in *Kit Car's* publishing company, Kitcars International Ltd, to be transferred to Chris Smith, the managing director of Kitcars International Ltd, although he continued to hold them on trust for me.

Other examples of Mr Filby's malice

53. Around this time, Mr Filby also reported me to the Vehicle Inspectorate, Companies House and the Advertising Standards Authority. Furthermore, between December 1998 and December 2000 *Which Kit?* denied Pilgrim's products any editorial coverage.

Part C: Mr Howell's claim against me

54. My dealings with Mr Howell began in August 1999 when he purchased a second hand Sumo from me. He telephoned me in early August 1999 to ask if I had any second hand Sumos for sale. I recall he said that he had a Sumo brochure in which he had noted that Pilgrim occasionally sell second hand Sumos. I told him that I had in stock a second hand car that had been assembled by one of my former customers that he might be interested in.
55. I had acquired the car from a certain Mr Cadogan who had a job in repairing accident damaged vehicles including painting them. The registration document shows that the vehicle was first registered in March 1983. The engine in the vehicle had come from a 1990 Rover car and that the rest of the mechanical components had come from a 1983 Ford Sierra.
56. The car was mechanically complete but cosmetically incomplete in that it was not fitted with a convertible roof and other cosmetic embellishments. Furthermore it had certain faults. For example, the electronic sensor of its speedometer had been removed or omitted so that the odometer reading was zero. There were a host of other minor finishing touches that were also required. The engine and other mechanical parts also showed signs of wear and tear. In spite of the fact that the car was clearly a used vehicle, it was a very handsome one. I told Mr Howell there were a number of faults with the car which either he or I would have to correct before it could be used on the road.

57. A few days later Mr Howell came to inspect the vehicle. Tony Holmes dealt with him on that occasion. I am told by Tony Holmes that Mr Howell agreed to buy the car from my business provided it was fitted with a number of items including a soft top and bumpers and that alterations be made to the drivers seat position. Mr Howell also wanted the car to be taxed and MOT'd.
58. The necessary work was carried out by one of my mechanics in the factory and an overall check was also carried out. It was then test-driven over 32 miles.
59. The car was then taken to an MOT test centre called *Sussex Servicing* in the adjacent industrial estate in Small Dole where it was tested on a "rolling road" brake test machine. This revealed that the rear brakes were not operating efficiently. The car was therefore taken back to the factory where my mechanics changed the rear brake shoes and bled the brake hydraulic system. It was then re-tested at *Sussex Servicing* who issued it with an MOT test certificate confirming that it was roadworthy.
60. Mr Howell had been due to pick up the car on the morning of 24 August. However, because of the work that was required to the brakes, the car was not ready for collection until the afternoon. I recall that when Mr Howell arrived at about 3pm, he seemed quite agitated and said that he was in two minds as to whether or not he should go through with the transaction. This was the first time I met Mr Howell. I remember thinking that he seemed to be a rather unusual customer for a Sumo in that he was older than the typical Sumo customer.
61. Before Mr Howell paid he asked me to confirm that I would honour a 3-month warranty that he said he had been offered by Mr Holmes. It was normal for Pilgrim to give a 3-month warranty for vehicles of this type, so I was happy to give it.

Technical problems August-December 1999

62. Unfortunately, a number of things went wrong with the car. The first thing to go wrong with the car was that a fuse failed. Mr Howell telephoned me on 25 August, the day after he purchased the car, to let me know that he had had to replace a fuse. I was surprised by how upset Mr Howell was at such a minor problem. I offered to send Mr Howell a pack of assorted new fuses but he rather rudely declined my offer. He seemed to be indignant and made a point of telling me that he wasn't expecting me to be able to do anything. He also said that he was disgusted that I had not identified the fact that the fuse was going to fail. I asked him if there was anything I could do to make him feel better. He said there was nothing.

63. About 5 or 6 weeks later Mr Howell telephoned me again to say that his oil filler cap had fallen off. He asked if I would replace it which I said that I would do. He made it clear that he was very angry that the cap had fallen off. I was again surprised by how angry he was at the loss of an oil filler cap, a relatively minor problem. He also said that there was another matter he was angry about which he wished to speak about when he came to my factory to collect the cap.
64. Mr Holmes dealt with Mr Howell when he came to the factory. I am told by Mr Holmes that when Mr Howell collected the oil cap, he said that he was disgusted that it should have fallen off and that, as a result, he had "totally lost confidence in the car". Mr Holmes has told me that he thought Mr Howell's behaviour was totally out of proportion to the problem and Mr Howell had made a fool of himself. He also told me that after Mr Howell left the factory, the staff in the workshop had had a good laugh on account of Mr Howell's behaviour.
65. On 18 October 1999 Mr Howell wrote to me to say that the car had broken down after its first long drive and that a number of repairs had had to be carried out. These included fitting a new fuel pump and in line filter, balancing the carburettors and correcting the ignition timing. He also wrote that he had concerns about the car's brakes, which he said would need attention and invited me to give comment. I replied that the car was second-hand and that the repairs and adjustments that had had to be carried out were unsurprising given the car's history.
66. There were further exchanges of correspondence in the course of which Mr Howell accused me of trying to "wash [my] hands of any problem" which seemed "rather bad for customer relations". I replied that he had involved third parties to carry out the repairs without giving me the opportunity of doing them myself (which would have been free under the 3-month warranty). I also offered to deal with any other problems, including obtaining a new MOT in respect of the brakes. Mr Howell replied to this letter saying that he had "totally lost confidence in the car". I believe that Mr Howell had no justification for this comment or his general dissatisfaction with the assistance I had offered him.

Further technical Problems - January and February 2000

67. During the months of January and February 2000 Mr Howell telephoned me on at least four more occasions. I can't recall the exact dates but my recollection is that the first of these conversations took place shortly after the Christmas/New Year holidays because it brought me back down to earth after a pleasant break. The first time he called me, Mr Howell complained that the clutch master cylinder of the car had developed a leak. I offered to fit new seals to it but Mr Howell refused my offer saying that the advice of his

garage was to fit a whole new master cylinder, something that I considered unnecessary. He further accused me of being unprofessional and unwilling to help.

68. Shortly after this, I was also telephoned by TMC Gaspower Ltd, a firm of mechanics whom Mr Howell had asked to carry out repairs to the brakes of his car. The mechanic sought advice in relation to repairs being carried out to the car's brakes. I advised the gentleman at considerable length and in detail as to what had been done by Pilgrim to the rear brakes. I advised firstly that he should look at the master cylinder. He told me that his company had replaced the master cylinder a month previous. Next I advised he looked at the front brake callipers saying that their complete removal and strip-down would reveal the cause of the difficulties.
69. The next time Mr Howell called, he complained that the zipper on his side screen window had broken. I offered to have it repaired by the supplier, Polyfacto, at Pilgrim's expense even though, by this time, the warranty period had expired. Mr Howell accepted this offer although he accused me of "fobbing him off" onto somebody else. Again, Mr Howell was rude to me and ungracious in his acceptance of my offer to assist him without charge. Because of the attitude Mr Howell had clearly taken against me, I asked my secretary, Penny Wain-Heapy, to deal with the matter.
70. A day or two later, Mr Howell called me on his mobile phone from the side of the road to say that the front suspension of the car had collapsed. He told me that the AA mechanic who had gone to his assistance had attributed the collapse of the front suspension to the loss of a "nylock" nut securing one of the front uprights because it had been used twice. He also said the sump was leaking oil. I invited Mr Howell to have the car towed to my garage so that I could look at it myself and make appropriate repairs. He asked me whether I would pay to have the vehicle towed to my garage. When I reminded him that he had the benefit of AA recovery insurance he accused me of trying to wriggle out of my responsibilities and then hung up on me.
71. About a week or two after the crash, Mr Howell telephoned me again to say that his gearbox had developed a noise and asked if I would install a new gearbox free of charge. I said I would be happy to look at it and do appropriate repairs but suggested that it might only be necessary to replace a noisy bearing. Mr Howell said he wanted a complete new gearbox and nothing less would be acceptable. He called me a "bodger" and then hung up on me.

72. Throughout my dealings with Mr Howell, he was rude and offensive in spite of the efforts of myself and my staff to be helpful and offer assistance. I do not believe that I am exaggerating when I say that on each and every occasion I spoke to him he called me a "bodger" or "unprofessional" or indirectly implied these things.
73. Towards the end of February 2000, I received a letter from Mr Howell informing me that he was issuing a claim against me for the cost of the repairs.

The trial of Mr Howell's claim

74. The trial of Mr Howell's claim took place in the Tunbridge Wells County Court on 28 December 2000 in front of District Judge Lethem. I recall that driving conditions were poor that day on account of bad weather and I arrived at Court 20 minutes late. When I arrived at Court, I was surprised to see that Mr Filby was sitting in the seat behind me.
75. The majority of Mr Howell's claim against me was rejected by Mr Justice Lethem. In particular, Mr Justice Lethem held that Mr Howell had unreasonably denied me an opportunity to repair the car and that I was not responsible for the collapse of the car's front suspension. A copy of Mr Justice Lethem's judgment is attached to my Amended Particulars of Claim.
76. However, I was held liable in respect of two minor defects (a faulty fuel pump and clutch master cylinder) and was ordered to pay Mr Howell £72 plus £204 in costs amounting to a total of £276.
77. I believe the problem with the fuel pump was caused by dirt getting into the fuel tank after Mr Howell had purchased the car. As for the leak in the clutch master cylinder, I believe that this was due to normal wear and tear of the "donor" part and a quite usual problem to occur in a second hand car of this type.
78. I had a brief conversation with Mr Filby and Mr Howell outside the Court room. I remember that they both looked dejected. Mr Howell implied that I had misled the Judge. Mr Filby warned me that I had not heard the last on the matter and said words to the effect that he would remove the smug grin from my face. I wished both gentlemen a pleasant New Year and walked out of the Court. A note of a conversation I had with Mr Howell on 16 May 2001 records that he said "I should have won and you know it." This supports the impression Mr Howell gave after the trial that he considered that he lost his case.

Warrant of execution

79. Mr Howell telephoned me on or about 4 January 2001 complaining that he had not received the money that I had been ordered to pay. I replied that I would pay as soon as the Court Order arrived. The Court Order arrived on 18 January 2001. On 22 January 2001, I wrote Mr Howell a letter enclosing a cheque for £276 although I do not think the letter was posted until a few days later when I received a Notice of Issue of Warrant of Execution dated 23 January issued by Mr Howell against "Pilgrim Cars Ltd". I assumed that when Mr Howell received my cheque, he would inform the bailiffs that he had been paid.
80. About a week later a bailiff visited my factory and asked to speak to somebody in connection with "Pilgrim Cars Ltd". I spoke to the gentleman and explained that "Pilgrim Cars Ltd" was a dormant company with no assets. I explained that I traded under the name Pilgrim, showed him my cheque book to confirm this and asked if he was sure that it was "Pilgrim Cars Ltd" that he was after. He said that he was quite certain and thanked me for my assistance and left.
81. About a week after that, in the second or third week of February 2001, Mr Howell telephoned me again. He was incandescent with rage. He said that the bailiffs had returned his Warrant saying that the debt was not collectable. Mr Howell said that he would pursue me to the High Court if necessary to get his money. I explained that I had sent him a cheque for £276. He said that this was not enough because there was now an additional £45 warrant fee. He also said that my cheque was "no good anyway" although he did not explain why. He later told my secretary, Penny Wain-Heapy, that I had altered the cheque by "tippexing" the "Ltd" from it. This was nonsense.
82. About a week later Mr Howell telephoned me again. He said that he had issued a new warrant against me and wanted a further £45 in addition to the £45 for the first warrant. He made various threats, including publishing his complaints in *Which kit?* and disrupting my trade at forthcoming kit car shows. By this time I had lost patience with Mr Howell so I asked my secretary, Penny Wain-Heapy, to deal with any future calls and make a note of what Mr Howell said. I subsequently wrote Mr Howell a letter dated 7 March 2001 in which I advised him to forget the past.
83. Mr Howell telephoned Pilgrim and spoke to my secretary on 9 March 2001 then again on 12 March 2001. On both those occasions, he threatened bankruptcy proceedings which he would publish in *Which Kit?* if I didn't pay the additional £90 he was seeking. He also indicated that he intended to disrupt my business at a forthcoming trade show. He repeated these threats in a letter dated 17 March 2001.

84. On 6 April 2001, Mr Howell telephoned me and informed me that he intended to cause trouble at the Detling Kit Car show in Kent that was due to take place that weekend.

Other examples of Mr Howell's Malice

85. Mr Howell has initiated an investigation by the Inland Revenue into my business affairs and a further investigation by the Vehicle Inspectorate in relation the Sumo he purchased from Pilgrim.

Part D: Publication of the February, March, April 2001 Articles in *Which Kit?*

86. Throughout Mr Howell's proceedings against me described above, I was continuing my claim against Mr Filby in relation to the article published in the September 1998 edition of *Which Kit?* A seven day trial had been listed to start on 27 March 2001. All the preparations for the trial were complete except for the preparation of the trial bundles. The exchange of lists of documents, witness statements and experts reports had all been handled by my solicitors, Coole & Haddock.

87. In November 2000, I was advised by Coole & Haddock that it would cost me as much as £6,000 for each day of the 7 day trial. This was on top of the £18,000 I had already spent so far. They also advised me that, even if I won, Mr Filby may not have sufficient funds to pay my legal costs. They recommended that I put forward an offer to settle my claim on a drop hands basis on the condition that Mr Filby gave an undertaking not to mention any of my products in *Which Kit?* I was worn down by the litigation that had now been going on for over two years. On top of all this, my business was clearly suffering from the litigation and the acrimony between *Which Kit?* and my businesses, I was also worried about the additional costs of taking the matter to trial. I therefore accepted their advice and instructed them to write the letter. However, the offer was not accepted.

88. I was concerned by Coole & Haddock's estimate of the cost to bring the matter to trial. I also had lost confidence in their ability to effectively litigate my claim and naively believed I could do a better job myself. I therefore decided not to instruct them any longer and from the end of December 2000 acted in person.

Notice in Which Kit? soliciting complaints with Pilgrim Sumos.

89. Around this time, the November 2000 edition of *Which Kit?* carried a notice concerning one of my products - the Pilgrim Sumo, the same model that Mr Howell had purchased. The notice stated that *Which Kit?* would like to hear from owners of Pilgrim Sumos, whether still being assembled or completed and on the road:

"particularly in respect to any examples that may have suffered any problems. We're conducting a unique survey and would like to hear of your experiences both good and bad"

Similar notices appeared in the December 2000 and January, February and March 2001 editions. I had never seen a notice of this kind in any kit car magazine in my 20 years of reading them. I supposed it must be to do with the litigation with Mr Filby. I was very concerned about the damage such notices could do to my business as they clearly implied there was a fault with the model.

December 2000 edition of Which Kit?

90. The December 2000 edition of *Which Kit?* carried an article under the letters section of the magazine entitled "*Ill Winds Blowing*". The letter described the experiences of the reader's "friend" who was building a kit car from "another manufacturer". Although the manufacturer was not named, the letter criticises both the quality of the kit car components and the back-up service supplied by the manufacturer.

January 2001 edition of Which Kit?

91. The January 2001 edition of *Which Kit?* (which came out in December 2000) referred to the "*Ill Winds Blowing*" article and named the manufacturer as "Haldane, part of the Pilgrim Cars set-up". *Which Kit?* claimed that Pilgrim were a renegade manufacturer who should be exposed and driven out of the arena? I was horrified when I saw the story and Pilgrim's reputation tarnished in this way. I recall that the customer involved was George Peat. Like every kit car builder Mr Peat had experienced problems in building his car. I had regular contact with him throughout his build and helped him and provided him with the parts he needed.
92. The unfairness of the article was noted by my customers. For example, on 28 December 2000 Bob Burchell wrote a letter to *Which Kit?* that commented on his good experiences with Pilgrim. However, *Which Kit?* chose not to publish the letter.
93. I telephoned Mr Stent, the editor of *Which Kit?* to complain about the "*Ill Winds Blowing*" article. He said that irrespective of whether the article was fair it would do *Which Kit?* no good as it was clearly vindictive towards me. He told me that he had resigned from his job as editor partly because of *Which Kit?*'s editorial policy towards me. He also warned me that there was far worse to come in the next and subsequent editions of *Which Kit?*

February 2001 edition of Which Kit?

94. In the third week of January 2001, the February edition of *Which Kit?* was published. This edition contained the first of the articles which form the basis of my current claim against Mr Filby and Mr Howell. The article, a copy of which is attached to my Amended Particulars of Claim is entitled "*Tale of a Pilgrim*" and includes the full text of a letter written by Mr Howell to *Which Kit?* dated January 2001 concerning his dealings with Pilgrim and the legal proceedings he brought against me.
95. The article completely misrepresents the dealings I had with Mr Howell and the conclusions reached by District Judge Lethem at the trial of Mr Howell's claim. Firstly, the article alleges that I and my staff had adopted an attitude to the problems Mr Howell had of: "It's nothing to do with us". In fact, I had offered Mr Howell help on each occasion that he asked for it. This was in spite of the fact that Mr Howell had been rude and abusive to myself and staff. In his judgment, District Judge Lethem determined that I had been unreasonably denied the opportunity of repairing Mr Howell's car.
96. Secondly, the article alleged that the Sumo had not been mechanically checked and was not roadworthy when it had been sold to Mr Howell. Again, this was completely untrue. As described above, the car had been checked by my mechanics and had passed an MOT the day that Mr Howell picked up the car.
97. Thirdly, the article alleged that Mr Howell had "successfully" sued me. Again, this misrepresented the outcome of Mr Howell's claim which was that he recovered only £72 of a £1,300 claim. The note of my conversation with Mr Howell referred to in paragraph 78 above makes clear Mr Howell considered that he had "lost" the trial.
98. Fourthly, the article infers that the collapse of the front suspension was Pilgrim's fault. Again, this was completely untrue. The reason why the nylock nut failed could have been due to the way in which the car had originally been assembled by Mr Cadogan. Alternatively, the mechanics who repaired Mr Howell's brakes could have inadvertently loosened the nut causing it to fall off. In any event, District Judge Lethem specifically held that I had not been responsible for the failure of the nut.
99. Fifthly, the article stated that the car was new, when I had made clear to Mr Howell that it was a second-hand car that had been assembled by a previous owner. Mr Howell knew this to be the case when he bought it.
100. The article also inferred that Pilgrim was not a reputable company, that I would not have honoured the three month guarantee given to Mr Howell, that I was arrogant and had a

"disgusting" attitude, all which were completely untrue. The article ended by exhorting readers not to buy Cobra replicas from Pilgrim.

101. I was both angry about what had been published and very concerned about what damage might result both to my reputation and to my trade. It was clear to me that Mr Filby was behind the lies in the article. He had attended the trial of Mr Howell's claim so knew that District Judge Lethem had rejected Mr Howell's allegations that I had not offered him assistance and that I was responsible for the collapse of the car's front suspension. He also knew that I had only been found liable in respect of two minor faults that had developed after the car had been purchased by Mr Howell which could have arisen in any second hand car.
102. Immediately the article was published I started receiving phone calls. One of the first was from a man named Mark Harrison at a firm called "Hallmark Cars" who are dealers in Cobra replicas (including the Pilgrim). He told me that one of his customers had cancelled an order for a Sumo V8 he had in stock because of this article and had ordered a DAX Cobra in its place. Mark warned me to "do something before your business is ruined".
103. I tried to limit the damage caused by the article to my business by writing two "standard" letters dated 21 January 2001 to "Dear Newsgroup" and "Dear Manufacturer" which sets out my version of events. The first of these was posted on the Cobra Club Forum site on the internet from where it was copied to other "notice boards". The second was circulated to all the advertisers on *Kit Car* magazine's database. I sent hard copies of both these letters to Mr Filby.

Mr Filby's letter of 1 February 2001

104. Shortly after the publication of "*Tale of a Pilgrim*" in *Which Kit?* I received a threatening letter from Mr Filby dated 1 February 2001 (a copy of which is attached to my Amended Particulars of Claim). The letter accused me of bringing an "unnecessary and vindictive" legal action against him and of intentionally trying to disrupt the lives of Mr Filby and Sally Mitchell and the position of *Which Kit?*. The letter continued by expressing Mr Filby's intention to "fight back". The letter said that Mr Howell's story would be "reassessed" in the next edition of *Which Kit?* (the March edition) and that "this is just the start of a whole series of features exposing [my] sub-standard products and unprofessional attitude to business overall". The letter then threatened the publication of a whole series of negative articles about Pilgrim that he proposed publishing in the magazine. The letter concluded that the only way to stop these threatened publications was for me to drop my claim against him and pay his legal costs.

105. I was shocked by this letter which I have been advised by my solicitors amounts to blackmail. I contacted Brighton police saying that it seemed that I was being blackmailed. They said that because the letter was marked "without prejudice" it could not amount to blackmail. I have since been advised by my solicitor that this is not the case.
106. I was so worried by Mr Filby's threat that, a few days later (7 February), I applied to Court for an injunction preventing Filby carrying out his threats. The hearing took place on 13 February but I was not successful.
107. I was very disappointed that I had been unsuccessful in my injunction application. I was also intimidated by Mr Filby's threats, fearful about the damage he was threatening to do to my business and worried about my ability to handle a seven day trial without legal representation and anxious about the expense the claim had so far cost me. I therefore wrote to Mr Filby's solicitors on 14 February 2001 and started settlement negotiations.

March 2001 edition of Which Kit?

108. Whilst negotiations were taking place I was appalled to find that Mr Filby had continued his vendetta against me in the March 2001 edition of *Which Kit?* Under the title "*After-Sales Service - How Good?*" there was an article that summarised the *Tale of a Pilgrim* article in the previous edition. In particular, the article referred to Pilgrim's "appalling treatment" of Mr Howell and the "non-existent level of after-sales service". It also repeated the allegation in the earlier article that the car had not been mechanically checked, that Pilgrim had refused to help Mr Howell in any way and that Mr Howell had taken Pilgrim to Court "winning his claim and gaining damages". The article ended by again exhorting anyone who wanted to buy a Cobra Replica not to go to Pilgrim. A copy of the article is attached to my Amended Particulars of Claim.
109. A reader's letter was published in the "Backchat" section of the magazine under the heading "*Pilgrim Tale Part 2*". The reader, Paul Southin of Stanford-Le-Hope in Essex, claimed that I had never replied to one of his letters. The editorial response to the letter again referred to Alan Howell's "shocking experience" that would do the kit car industry "no good at all". A copy of Paul Southin's letter and the editorial response is attached to my Amended Particulars of Claim.
110. It is not difficult to imagine the devastating affect the two articles combined were having on my business. For example, Bob Busbridge of Autotrak Corbretti forwarded me a letter he had received from a Mr Hamilton dated 27 February 2001 that indicated that he had changed his mind about building a Sumo because of what *Which Kit?* had published.

Settlement Agreement/April 2001 edition of Which Kit?

111. On 10 March, I believed I had reached an agreement with Filby's solicitors under the terms of which I paid Filby £9,500 in costs in return for which he agreed not to publish any "article" about me. My agreement to pay Mr Filby's legal costs was not because I no longer believed in the merit of my claim. Rather, it was because I had been intimidated by his threat to publish further negative articles about Pilgrim and because I doubted my ability to conduct the seven day trial without legal representation.
112. Unfortunately, there was subsequently a dispute between us as to the precise wording of the undertaking. I believed that in agreeing not to publish any "articles", Mr Filby was agreeing not to publish anything about me, including advertisements, letters and notices. However, Mr Filby argued that his undertaking did not extend to "letters and notices". The terms of settlement are still in dispute and are currently being determined by the Court of Appeal from whom the parties are awaiting judgment.
113. The reason why Mr Filby objected to the inclusion of "letters" became clear when the April edition of *Which Kit?* published further damaging letters about me.
114. Under the heading "*Pilgrim Persists...*", a letter from BI Fry of Basildon was published. The letter congratulated *Which Kit?* on the *Tale of a Pilgrim* article and commented that it had "cleared up the mystery of [*Which Kit?*'s] requests for Sumo owners to write to you if they had any problems with their cars". An editorial response to the letter refers to Pilgrim's "lousy treatment" of its customers.
115. In another letter published in the same edition, Peter Smith of Tiverton, Devon, a prospective purchaser of a Cobra replica, wrote that after reading the *Tale of a Pilgrim* article, he had crossed Pilgrim off his list of potential suppliers and had thrown Pilgrim's brochure in the "laugh-and-tear-up tray where it belongs".
116. The editorial response to this letter implied that Mr Howell had not received payment of his damages "despite having the bailiff sent in". This was untrue since I had sent Mr Howell a cheque at the end of January. The editorial response commented that a further letter from Mr Howell, presumably relating to his allegation that I did not pay him damages, would be published in the next edition. Copies of those letters and the editorial responses are attached to my Amended Particulars of Claim.
117. It is difficult to describe the feelings of hurt and anger that Mr Filby's actions in *Which Kit?* caused to me. It was clear to me that he was intent on pursuing his vendetta against me, even to the extent of flagrantly disregarding an agreement that we had reached to settle the dispute.

118. I gained some consolation from letters of support. One such example is a fax I received from Ian Castle expressing his support for me and my products that he had sent to *Which Kit?* for publication. Not surprisingly, *Which Kit?* didn't publish the letter in the same way *Which Kit?* hadn't published Bob Burchell's email referred to in paragraph 92 above. Another example was a letter from Rob Goddard which *Which Kit?* didn't publish either. I also got some consolation from the messages of support I received on Cobra Club forum on the internet.
119. Although there were no further damaging articles or letters, the June 2001 and July 2001 editions of *Which Kit?* continued to include notices inviting owners of Pilgrim Sumos to write in with problems. Following the publication of the June 2001 advertisement I made another application for an injunction to stop Mr Filby publishing any similar notices until the determination of the issue of what, if anything, had been agreed. At the hearing, Mr Filby gave an undertaking that he would not publish any articles or readers letters and neither would he publish notices or advertisements except in neutral terms.
120. I exchanged some further correspondence with Mr Filby and Mr Howell during the summer. I also recall a telephone conversation that took place on 16 August 2001 when Mr Filby told me that he was going to resume publishing as soon as it was prudent for him to do so. He claimed to have "fresh material that you would be astonished at".
121. Both Mr Howell and Mr Filby insisted that what had been published in *Which Kit?* was true. I therefore felt that I had no alternative but to issue the current claim to settle matters once and for all.

Part E: Damage caused by the *Which Kit?* articles to my business and my health

Damage to business

122. Following the publication of the articles between February and April 2001, two things happened. First, there was a significant reduction in my trade compared to previous years. It was also clear that fewer people were visiting my factory to avail themselves of test drives. In fact on some Saturdays during February, March and April 2001 I received no visitors at all, which was unique in the 17-year history of my company. This made me anxious about my livelihood.
123. I also experienced a very significant reduction in the sales of brochures, assembly instruction manuals and video programmes. I estimate that my sales of literature in the first quarter of 2001 fell by 75% compared to the same period in 2000.

124. At the same time my workload increased as previous and potential customers began phoning me to enquire whether the articles were true. Obviously, I made clear that the contents of the articles were untrue.
125. Some potential customers telephoned to express concern about the level of service they might receive in the event that they were to purchase a kit. However there were far fewer such callers than there had been in previous years. Those that engaged me in conversation were guarded and suspicious. It seemed that those who did contact me had had some previous dealings with me and wanted to believe that my service was not as reported. Others told me that they did not believe that *Which Kit?* would publish an article without good reason. Others said that they would no longer buy my products now that my reputation was tarnished. A few accepted that I was sincere, honest and reliable but ultimately not enough of them to sustain my business. My trade suffered accordingly.
126. The fact that I was selling fewer kits meant that I was operating at reduced profitability. This led to every businessman's worst nightmare namely cash-flow difficulties. I had problems finding enough money to meet demands of suppliers, staff wages, and my own pay, which was placing me under severe pressure.
127. In addition, the fact that I remained under threat of further attacks by Mr Filby in *Which Kit?* made me feel helpless, hopeless and vulnerable.

Damage to my health

128. All this began to have a serious effect on my health. I became tense, defensive and irritable. I would re-live daytime conversations with customers concerning the articles during the evening, sometimes to a point which prevented my sleeping at night. On occasions I would have bad dreams and awake in the middle of the night. My anxiety was so severe on occasions that I dreaded going to work to face it all again.
129. All this time I was still trying to conclude settling my legal action against Mr Filby. This added to my stress and worries particularly as I was acting as a litigant in person to keep costs down.
130. I battled throughout the summer of 2001 to hold my business together. However in September 2001, I suffered a mental breakdown and had to take time off work to recover. I received treatment as an outpatient of the mental health unit of my local NHS mental health hospital in Hove, whom I continue to be under the care of. From September 2001 until April 2002 I made regular visits to that hospital where I received treatment from a Dr Grimbett. In the early stages he explained how I had entered into a

"hyper-manic state" for which he prescribed sedative and anti-psychotic drugs including chlorpromazine and he also advised rest. My mental health problems, induced by all the various stresses mentioned above, also put a strain on my marriage.

131. After about a month off work from mid September to mid October 2001, I believed I had recovered enough to return to work. However, upon my return, I found that I was subject to the very same pressures that had caused me to become ill in the first place. I very quickly became tetchy, irritable and sensitive when any question was put to me regarding any of the mentions of me in *Which Kit?*
132. By now, my business was not operating profitably and I decided I must sell it before such a sale was forced upon me either through commercial pressure or by reason of my health failing more catastrophically. I believe that I could have coped with either the commercial pressure, or the pressure of litigation or the personal attacks. However I could not cope with all three acting against me simultaneously.
133. From around mid November 2001, I attempted to find a buyer for my business. That was not an easy task because its profitability was non-existent. At various times during 1999 and 2000 Mr Holmes had made offers to purchase my Pilgrim business either in part or as a whole. Such offers were usually made in the cold winter months when trade was less brisk when I believe that Mr Holmes believed that I would be more willing to sell on favourable terms.
134. I recall that in the winter of 1999/2000 Mr Holmes offered me £300,000 for the whole business including its stock and work-in-progress. I declined that offer because I believed the business was worth more than that. I also told Mr Holmes that I needed a job and that was another reason why I didn't wish to sell at such a low price.
135. In the winter of 2000/2001, during the Christmas holidays, Mr Holmes reiterated the £300,000 offer and added that he would continue to employ me in a design and production engineering role for at least 3 years on a £30,000 salary. When I asked Mr Holmes in October or November 2001 if the offer were still open, he told me that it was not on account of the fact that he had spent his resources in purchasing a larger house. He also said that the damage done to the business by the articles and notices published in *Which Kit?* from January to June 2001 had diminished the output of my firm and had hence reduced its value. I finally sold Pilgrim to Mr Holmes for £100,000 which I consider well below what I would have achieved had the articles not appeared in *Which Kit?* and had the business remained operating profitably.

136. The loss of my business represents rather more than the sale of an asset. I have sold my livelihood, my dream, my life's work and my way of life. I am particularly saddened by the fact that I am no longer in a position to apprentice my son who leaves school next year. It is most unlikely that I shall ever be able to re-enter the kit car trade again because the proceeds of the sale of "Pilgrim" are insufficient to start up again. In any event my business reputation has been irreparably damaged by virtue of the articles. Mr Filby has neither retracted the content of the articles nor offered an apology nor otherwise attempted to put the record straight.
137. I am nearly 45 years old and have serious concerns about my future employment/career prospects. Whilst I am presently occupied in doing certain work for *Kit Car* magazine, I feel very much out of place in that I'm not a writer nor am I an art worker. I am qualified and experienced as an engineer and am yearning to get back into using my talents in my chosen discipline. I understand that employers tend to shun people of my age. I don't relish the prospect of setting up in business all over again in a field that is foreign to me.

I believe that the facts stated in this my witness statement are true.

Dated the day of August 2002

Signed _____

Dennis Tanner

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CLAIM NO: HQ01X03736

B E T W E E N:

DENNIS TANNER

Claimant

- and -

(1) PETER JOHN FILBY

(2) ALAN G T HOWELL

Defendants

**FIRST WITNESS STATEMENT OF
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