

**Judgment 12/2003**

**Beetle Holdings Limited et al  
v Perrot et al – Royal Court  
(Civil Action File 704)  
13<sup>th</sup> February, 2003**

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**Advocate – conflict of interest – confidential information acquired in previous employment – risk of inadvertent disclosure – injunction to restrain from acting**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY  
ORDINARY DIVISION**

The 13th day of February 2003 before Sir de Vic Carey, Bailiff; sitting alone

IN THE MATTER OF

BEETLE HOLDINGS LIMITED

First Plaintiff

ISLAND'S INSURANCE COMPANY LIMITED

Second Plaintiff

VANESSA JEAN GARNHAM

Third Plaintiff

JOHN ALFRED WATERMAN

Fourth Plaintiff

ALISON MARIA GUILMOTO

Fifth Plaintiff

EILEEN MAY LANYON

Sixth Plaintiff

MIKHAIL ZHIVILO

Seventh Plaintiff

v.

ROGER ALAN PERROT AND OTHERS

Practising together as OZANNES

Defendants

WHEREAS on 30th December, 2002 the Bailiff considered individual actions by the Plaintiffs seeking an injunction against the Defendants restraining them from acting for the various parties engaged in the litigation with the Plaintiffs and having heard thereon Advocates A.J. Ayres, P.T .R. Ferbrache and C.A. Tee Counsel for the Plaintiffs, Defendants and third parties (namely Y. Zhivilo and Base Metal Limited) respectively. the Bailiff this day GAVE JUDGMENT in the terms attached hereto and RESTRAINED the Defendants as sought.

S. M. D. ROSS  
Her Majesty's Deputy Greffier

**BLT (AJA)**  
**22.11.02**

BEETLE HOLDINGS LIMITED whose address for service is at 18 – 20 Smith Street in the parish of Saint Peter Port (hereinafter called “the Plaintiff”)

## **ACTIONS**

ROGER ALAN PERROT, RUPERT ARTHUR REES EVANS, GARTH TRISTEN ATHELSTAN BAINBRIDGE, PETER TERENCE RICHARD FERBRACHE, PETER ANDREW HARWOOD, EDWARD ARTHUR GERALD PRENTICE, DAVID CHRISTOPHER MOORE, ST. JOHN ANTHONY ROBILLIARD and JEREMY MARC WESSELS practising together as “Ozannes” of 1 Le Marchant Street in the said parish of Saint Peter Port (hereinafter called “the Defendants”) TO SEE the Court make Orders as set out below in the following circumstances:-

1. The Plaintiff is and was at all material times a Plaintiff in separate proceedings against Christies Limited in which damages and an injunction are claimed arising out of the breach of the terms of the lease of buildings let by Christies Limited (“the Main Action”).
2. At all material times the Defendants are and were the Advocates representing Christies Limited in the Main Action.
3. Between about May 2001 and June 2002 the Plaintiff was advised and represented by Advocate Jeremy Marc Wessels who at the time was a partner of Babbe Le Pelley Tostevin.
4. In the course of acting for the Plaintiff as aforesaid, Advocate Wessels became aware of confidential information of the Plaintiff.
5. On 3<sup>rd</sup> August 2002 Advocate Wessels made known his intention to resign from the partnership of Babbe Le Pelley Tostevin. On 2<sup>nd</sup> October 2002 Advocate Wessels commenced employment with or alternatively became a partner of the Defendants’ firm.

6. The Defendants intend, unless restrained by the Court, to continue to act for Christies Limited thereby exposing the Plaintiff to a real risk of inadvertent disclosure or misuse of its confidential information.

AND the Plaintiff claims:-

1. An injunction restraining the Defendants from advising or acting for Christies Limited in relation to matters involving the Main Action.
2. An injunction restraining the Defendants from acting for any other person or entity in connection with matters relating to the business or affairs of Christies Limited in respect of the Main Action.
3. An injunction restraining the disclosure of confidential information belonging to the Plaintiff to any person (other than the Plaintiff) and for the disclosure by the Defendants within seven days of this Order of all information (whether confidential or not) which has been supplied by the Defendants or any of them to any such person.

AND the Plaintiff claims the costs hereof on a full indemnity basis or on such other basis as the Court considers just.

Settled by Advocate A J Ayres

THE ISLANDS' INSURANCE COMPANY LIMITED whose address for service is at 18 – 20 Smith Street in the parish of Saint Peter Port (hereinafter called “the Plaintiff”)

## **ACTIONS**

ROGER ALAN PERROT, RUPERT ARTHUR REES EVANS, GARTH TRISTEN ATHELSTAN BAINBRIDGE, PETER TERENCE RICHARD FERBRACHE, PETER ANDREW HARWOOD, EDWARD ARTHUR GERALD PRENTICE, DAVID CHRISTOPHER MOORE, ST. JOHN ANTHONY ROBILLIARD and JEREMY MARC WESSELS practising together as “Ozannes” of 1 Le Marchant Street in the said parish of Saint Peter Port (hereinafter called “the Defendants”) TO SEE the Court make Orders as set out below in the following circumstances:-

3. The Plaintiff is and was at all material times the defendant in proceedings issued by James Leonard Smith arising out of the refusal of the Plaintiff to make payment of a claim by the said James Leonard Smith under an insurance policy issued by the Plaintiff (“the Main Action”).
4. At all material times the Defendants are and were the Advocates representing James Leonard Smith in the Main Action.
7. Between about 2<sup>nd</sup> June 1998 and about September 2002 the Plaintiff was advised and represented by Advocate Jeremy Marc Wessels who at the time was a partner of Le Pelley & Tostevin and, from June 2000 a partner of Babbe Le Pelley Tostevin.
8. In the course of acting for the Plaintiff as aforesaid, Advocate Wessels became aware of confidential information of the Plaintiff.
9. On 3<sup>rd</sup> August 2002 Advocate Wessels made known his intention to resign from the partnership of Babbe Le Pelley Tostevin. On 2<sup>nd</sup> October 2002 Advocate Wessels commenced employment with or alternatively became a partner of the Defendants' firm.

10. The Defendants intend, unless restrained by the Court, to continue to act for James Leonard Smith thereby exposing the Plaintiff to a real risk of inadvertent disclosure or misuse of its confidential information.

AND the Plaintiff claims:-

4. An injunction restraining the Defendants from advising or acting for James Leonard Smith in relation to matters involving the Main Action.
5. An injunction restraining the Defendants from acting for any other person or entity in connection with matters relating to the business or affairs of James Leonard Smith in respect of the Main Action.
6. An injunction restraining the disclosure of confidential information belonging to the Plaintiff to any person (other than the Plaintiff) and for the disclosure by the Defendants within seven days of this Order of all information, (whether confidential or not) which has been supplied by the Defendants or any of them to any such person.

AND the Plaintiff claims the costs hereof on a full indemnity basis or on such other basis as the Court shall consider just.

Settled by Advocate A J Ayres.

**BLT (SJB)**

**22.11.02**

VANESSA JEAN GARNHAM (née Bailey) whose address for service is at 18 – 20 Smith Street in the parish of Saint Peter Port (hereinafter called “the Plaintiff”)

## **ACTIONS**

ROGER ALAN PERROT, RUPERT ARTHUR REES EVANS, GARTH TRISTEN ATHELSTAN BAINBRIDGE, PETER TERENCE RICHARD FERBRACHE, PETER ANDREW HARWOOD, EDWARD ARTHUR GERALD PRENTICE, DAVID CHRISTOPHER MOORE, ST. JOHN ANTHONY ROBILLIARD and JEREMY MARC WESSELS practising together as “Ozannes” of 1 Le Marchant Street in the said parish of Saint Peter Port (hereinafter called “the Defendants”) TO SEE the Court make Orders as set out below in the following circumstances:-

5. The Plaintiff is and was at all material times the Plaintiff in proceedings against A. Hunter-Adam and the States of Guernsey Board of Health for damages as a result of personal injuries sustained during a caesarean section which she underwent in July 1997 (“the Main Action”).
6. At all material times the Defendants are and were the Advocates representing the States of Guernsey Board of Health in the Main Action.
11. Between May 1999 and June 2000 the Plaintiff was advised and represented by Advocate Jeremy Wessels who at the time was a partner of Le Pelley and Tostevin. Following the merger of that firm with Babbé Le Poidevin Allez in June 2000 the Plaintiff continued to be represented by Advocate Wessels, who was at that time a partner of Babbé Le Pelley Tostevin, until about October 2001.
12. In the course of acting for the Plaintiff as aforesaid, Advocate Wessels became aware of confidential information of the Plaintiff.

13. On 3<sup>rd</sup> August 2002 Advocate Wessels made known his intention to resign from the partnership of Babbé Le Pelley Tostevin. On 2<sup>nd</sup> October 2002 Advocate Wessels commenced employment with or alternatively became a partner of the Defendants' firm.
14. The Defendants intend, unless restrained by the Court, to continue to act for the States of Guernsey Board of Health thereby exposing the Plaintiff to a real risk of inadvertent disclosure or misuse of his confidential information.

AND the Plaintiff claims:-

7. An injunction restraining the Defendants from advising or acting for the States of Guernsey Board of Health in relation to matters involving the Main Action.
8. An injunction restraining the Defendants from acting for any other person or entity in connection with matters relating to the business or affairs of the States of Guernsey Board of Health in respect of the Main Action.
9. An injunction restraining the disclosure of confidential information belonging to the Plaintiff to any person (other than the Plaintiff) and for the disclosure by the Defendants within seven days of this Order of all information (whether confidential or not) which has been supplied by the Defendants or any of them to any such person.

AND the Plaintiff claims the costs hereof on a full indemnity basis or on such other basis as the Court shall consider just.

Settled by Advocate S J Bailey

**BLT (AJA)**

**22.11.2002**

JOHN ALFRED WATERMAN whose address for service is at 18 – 20 Smith Street in the parish of Saint Peter Port (hereinafter called “the Plaintiff”)

## **ACTIONS**

ROGER ALAN PERROT, RUPERT ARTHUR REES EVANS, GARTH TRISTEN ATHELSTAN BAINBRIDGE, PETER TERENCE RICHARD FERBRACHE, PETER ANDREW HARWOOD, EDWARD ARTHUR GERALD PRENTICE, DAVID CHRISTOPHER MOORE, ST. JOHN ANTHONY ROBILLIARD and JEREMY MARC WESSELS practising together as “Ozannes” of 1 Le Marchant Street in the said parish of Saint Peter Port (hereinafter called “the Defendants”) TO SEE the Court make Orders as set out below in the following circumstances:-

7. The Plaintiff is and was at all material times a prospective Plaintiff with a claim for damages for personal injury against the States’ Works Department for injuries sustained in an accident at work on 19<sup>th</sup> April 2001.
8. At all material times the Defendants are and were the Advocates representing the States’ Works Department in respect of a criminal prosecution under the Health and Safety at Work (General) (Guernsey) Ordinance, 1987.
15. Between April 2001 and August 2002 the Plaintiff was advised and represented by Advocate Jeremy Marc Wessels who at the time was a partner of Babbé Le Pelley Tostevin.
16. In the course of acting for the Plaintiff as aforesaid, Advocate Wessels became aware of confidential information of the Plaintiff.
17. On 3rd August 2002 Advocate Wessels made known his intention to resign from the partnership of Babbe Le Pelley Tostevin. On 2<sup>nd</sup> October 2002 Advocate Wessels commenced employment with or alternatively became a partner of the Defendants’ firm.

18. The Defendants intend, unless restrained by the Court, to continue to act for the States' Works Department thereby exposing the Plaintiff to a real risk of inadvertent disclosure or misuse of his confidential information.

AND the Plaintiff claims:-

10. An injunction restraining the Defendants from advising or acting for the States' Works Department in relation to matters involving the Plaintiff's accident at work on 19<sup>th</sup> April 2001.
11. An injunction restraining the Defendants from acting for any other person or entity in connection with matters relating to the business or affairs of the States' Works Department in respect of the Plaintiff's accident at work on 19<sup>th</sup> April 2001.
12. An injunction restraining the disclosure of confidential information belonging to the Plaintiff to any person (other than the Plaintiff) and for the disclosure by the Defendants within seven days of this Order of all information (whether confidential or not) which has been supplied by the Defendants or any of them to any such person.

AND the Plaintiff claims the costs hereof on a full indemnity basis or on such other basis as the Court deems just.

Settled by Advocate A J Ayres

**BLT (AJA)**

**22.11.02**

ALISON MARIA GUILMOTO whose address for service is at 18 – 20 Smith Street in the parish of Saint Peter Port (hereinafter called “the Plaintiff”)

## **ACTIONS**

ROGER ALAN PERROT, RUPERT ARTHUR REES EVANS, GARTH TRISTEN ATHELSTAN BAINBRIDGE, PETER TERENCE RICHARD FERBRACHE, PETER ANDREW HARWOOD, EDWARD ARTHUR GERALD PRENTICE, DAVID CHRISTOPHER MOORE, ST. JOHN ANTHONY ROBILLIARD and JEREMY MARC WESSELS practising together as “Ozannes” of 1 Le Marchant Street in the said parish of Saint Peter Port (hereinafter called “the Defendants”) TO SEE the Court make Orders as set out below in the following circumstances:-

9. The Plaintiff is and was at all material times the Plaintiff in separate proceedings against the States of Guernsey Board of Administration for damages arising out of the death of her husband on 10<sup>th</sup> August 1998 (“the Main Action”).
10. At all material times the Defendants are and were the Advocates representing the States of Guernsey Board of Administration in the Main Action.
19. Between August 1998 and November 1999 the Plaintiff was advised and represented by Advocate Jeremy Marc Wessels who at the time was a partner of Le Pelley and Tostevin.
20. In the course of acting for the Plaintiff as aforesaid, Advocate Wessels became aware of confidential information of the Plaintiff.
21. On 3<sup>rd</sup> August 2002 Advocate Wessels made known his intention to resign from the partnership of Babbe Le Pelley Tostevin. On 2<sup>nd</sup> October 2002 Advocate Wessels commenced employment with or alternatively became a partner of the Defendants’ firm.
22. The Defendants intend, unless restrained by the Court, to continue to act for the States of Guernsey Board of Administration thereby exposing the Plaintiff to a real risk of inadvertent disclosure or misuse of his confidential information.

AND the Plaintiff claims:-

13. An injunction restraining the Defendants from advising or acting for the States of Guernsey Board of Administration in relation to matters involving the Main Action.
14. An injunction restraining the Defendants from acting for any other person or entity in connection with matters relating to the business or affairs of the States of Guernsey Board of Administration in respect of the Main Action.
15. An injunction restraining the disclosure of confidential information belonging to the Plaintiff to any person (other than the Plaintiff) and for the disclosure by the Defendants within seven days of this Order of all information (whether confidential or not) which has been supplied to the Defendants or any of them to any such person.

AND the Plaintiff claims the costs hereof on a full indemnity basis or on such other basis as the Court shall consider just.

Settled by Advocate A J Ayres

**BLT (SJB)**

**22 November 2002**

EILEEN MAY LANYON whose address for service is at 18 – 20 Smith Street in the parish of Saint Peter Port (hereinafter called “the Plaintiff”)

## **ACTIONS**

ROGER ALAN PERROT, RUPERT ARTHUR REES EVANS, GARTH TRISTEN ATHELSTAN BAINBRIDGE, PETER TERENCE RICHARD FERBRACHE, PETER ANDREW HARWOOD, EDWARD ARTHUR GERALD PRENTICE, DAVID CHRISTOPHER MOORE, ST. JOHN ANTHONY ROBILLIARD and JEREMY MARC WESSELS practising together as “Ozannes” of 1 Le Marchant Street in the said parish of Saint Peter Port (hereinafter called “the Defendants”) TO SEE the Court make Orders as set out below in the following circumstances:-

11. The Plaintiff is and was at all material times the Plaintiff in separate proceedings against Teresa Moorman for damages arising out of injuries sustained following a road traffic accident on 13 June 1997 (“the Main Action”).
12. At all material times the Defendants are and were the Advocates representing Teresa Moorman in the Main Action.
23. Between June 2000 and August 2002 the Plaintiff was advised and represented by Advocate Jeremy Marc Wessels who at the time was a partner of Babbe Le Pelley Tostevin.
24. In the course of acting for the Plaintiff as aforesaid, Advocate Wessels became aware of confidential information of the Plaintiff.
25. On 3<sup>rd</sup> August 2002 Advocate Wessels made known his intention to resign from the partnership of Babbe Le Pelley Tostevin. On 2<sup>nd</sup> October 2002 Advocate Wessels commenced employment with or alternatively became a partner of the Defendants’ firm.

26. The Defendants intend, unless restrained by the Court, to continue to act for Teresa Moorman thereby exposing the Plaintiff to a real risk of inadvertent disclosure or misuse of his confidential information.

AND the Plaintiff claims:-

16. An injunction restraining the Defendants from advising or acting for Teresa Moorman in relation to matters involving the Main Action.
17. An injunction restraining the Defendants from acting for any other person or entity in connection with matters relating to the business or affairs of Teresa Moorman in respect of the Main Action.
18. An injunction restraining the disclosure of confidential information belonging to the Plaintiff to any person (other than the Plaintiff) and for the disclosure by the Defendants within seven days of this Order of all information (whether confidential or not) which has been supplied by the Defendants or any of them to any such person.

AND the Plaintiff claims the costs hereof on a full indemnity basis or on such other basis as the Court considers just.

Settled by Advocate S J Bailey

**BLT (AJA)**

**22.11.02**

MIKHAIL ZHIVILO whose address for service is at 18 – 20 Smith Street in the parish of Saint Peter Port (hereinafter called “the Plaintiff”)

## **ACTIONS**

ROGER ALAN PERROT, RUPERT ARTHUR REES EVANS, GARTH TRISTEN ATHELSTAN BAINBRIDGE, PETER TERENCE RICHARD FERBRACHE, PETER ANDREW HARWOOD, EDWARD ARTHUR GERALD PRENTICE, DAVID CHRISTOPHER MOORE, ST. JOHN ANTHONY ROBILLIARD and JEREMY MARC WESSELS practising together as “Ozannes” of 1 Le Marchant Street in the said parish of Saint Peter Port (hereinafter called “the Defendants”) TO SEE the Court make Orders as set out below in the following circumstances:-

13. The Plaintiff is and was at all material times a defendant in separate proceedings before the Royal Court which commenced in March 1999 brought by Ruslan Borisovich Shamurin. Base Metal Trading Limited and Yurii Yurievich Shivilo are also defendants in those separate proceedings (“the Main Action”).
14. At all material times the Defendants are and were the Advocates representing Ruslan Borisovich Shamurin in the Main Action.
27. Between about March 1999 and September 2002 the Plaintiff was advised and represented by Advocate Jeremy Wessels who at the outset was a partner of Le Pelley & Tostevin and from June 2000 was a partner of Babbe Le Pelley Tostevin.
28. In the course of acting for the Plaintiff as aforesaid, Advocate Wessels became aware of confidential information relating to the Plaintiff’s aforementioned case.
29. On 3<sup>rd</sup> August 2002 Advocate Wessels made known his intention to resign from the partnership of Babbe Le Pelley Tostevin. On 2<sup>nd</sup> October 2002 Advocate Wessels commenced employment with or alternatively became a partner of the Defendants’ firm.

30. The Defendants intend, unless restrained by the Court, to continue to act for Mr Shamurin thereby exposing the Plaintiff to a real risk of inadvertent disclosure or misuse of his confidential information.

AND the Plaintiff claims:-

19. An injunction restraining the Defendants from advising or acting for Mr Shamurin in relation to matters involving the Main Action.
20. An injunction restraining the Defendants from acting for any other person or entity in connection with matters relating to the business or affairs of Mr Shamurin in respect of the Main Action.
21. An injunction restraining the disclosure of confidential information belonging to the Plaintiff to any person (other than the Plaintiff) and for the disclosure by the Defendants within seven days of this Order of all information (whether confidential or not) which has been supplied by the Defendants or any of them to any such person).

AND the Plaintiff claims the costs hereof on a full indemnity basis or on such other basis as the Court considers just.

Settled by Advocate A J Ayres

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

ORDINARY DIVISION

<b>Between:</b>	<b>BEETLE HOLDINGS LIMITED</b>	<b>First Plaintiff</b>
	<b>ISLANDS' INSURANCE COMPANY LIMITED</b>	<b>Second Plaintiff</b>
	<b>VANESSA JEAN GARNHAM</b>	<b>Third Plaintiff</b>
	<b>JOHN ALFRED WATERMAN</b>	<b>Fourth Plaintiff</b>
	<b>ALISON MARIA GUILMOTO</b>	<b>Fifth Plaintiff</b>
	<b>EILEEN MAY LANYON</b>	<b>Sixth Plaintiff</b>
	<b>MIKHAIL ZHIVILO</b>	<b>Seventh Plaintiff</b>
	<b>v.</b>	
	<b>ROGER ALAN PERROT AND OTHERS</b>	
	<b>Practising together as OZANNES</b>	<b>Defendants</b>

**JUDGMENT OF SIR DE VIC CAREY, BAILIFF ON THE PLAINTIFFS INDIVIDUAL ACTIONS SEEKING AN INJUNCTION AGAINST THE DEFENDANTS RESTRAINING THEM FOR ACTING FOR VARIOUS PARTIES ENGAGED IN THE LITIGATION WITH THE PLAINTIFFS**

Date of Hearing: 30<sup>th</sup> December, 2002.  
Date judgment handed down: 13th February, 2003.

Advocate for the Plaintiffs: A. J. Ayres.  
Advocate for the Defendants: P. T. R. Ferbrache.  
Advocate for Mr. Y. Zhivilo and Base Metal Limited (3<sup>rd</sup> parties): C. A. Tee.

1. Introduction

In October of last year Advocate Jeremy Marc Wessels who was a partner in the practice of Babbé Le Pelley Tostevin decided to leave that practice and join the practice of Ozannes in which he has become a partner on 1<sup>st</sup> January, 2003. Mr. Wessels who has been at the Bar in excess of ten years has during his time with Babbés established himself as a competent litigator and he has had the conduct of many substantial matters that have come before the Court. Not surprisingly at the time he decided to make this move the opponents in a number of matters of which he had conduct were represented by Ozannes and Advocate Ayres has tabled on behalf of seven of Babbé Le Pelley Tostevin clients formerly

advised by Mr. Wessels applications that Ozannes should not, following the move of Advocate Wessels from Babbés to Ozannes, continue to represent the opposing parties in matters of which Advocate Wessels had conduct. In this small jurisdiction moves of active litigators from one practice to another are bound to give rise to the problems that I have to resolve in this case.

As this is to some extent a balancing act (subject to the reservation which I will refer to later) I enquired of Mr. Ayres at the outset whether these seven cases represented the extent of the problem which was presented to the clientele of Babbés following the departure of Mr. Wessels, as if there were others so minded the problem might present itself in a slightly different light. Mr. Ayres informed me that so far as he is aware there are no other cases where these problems exist. I directed that all seven applications should be heard together fully conscious that one of them that of Mr. Shamurin represented by Mr. Ferbrache and subsequently by Mr. Dawes against Base Metals and Yuri Zhivilo (represented by Advocates Carey Langlois) and Mikhail Zhivilo (represented by Mr. Wessels when he was at BLT) had involved a great deal of Court time principally before Lieutenant Bailiff Hancox, and had already been the subject of some decisions by him with regard to the application now before me.

## 2. The facts of each case

Mr. Ferbrache wishes me to consider each application separately, which is my duty in any event. Whether I can distinguish between them will become apparent when I have defined the legal principles I must apply. As there may be peculiar features of one or more of these applications which result in this Court reaching opposite conclusions on those applications from those that it has reached on the others I will with briefly summarising each application.

1. Beetle Holdings Limited. This company has employed BLT to pursue a claim against Christies Limited for which Advocate Peter Ferbrache acts, over a landlord/tenant action for damages and other relief in connection with an alleged breach of the terms of a lease. The Advocate dealing with the matter at BLT was Mr. Wessels. Mr. Bourne the managing director of Beetle claims that he took Mr. Wessels into his confidence particularly with regard to possible areas for compromise and he also deposes that there is one matter that has been disclosed to Mr. Wessels which could result in further litigation later. It is true that

these clients found that Mr. Wessels was rather too busy to deal with the matter and apparently Mr. Ayres took it over in June 2002. However, the allegation remains that Mr. Wessels is in possession of confidential information relating to how these clients see the outcome of the litigation with Christies Limited.

2. Islands' Insurance Company Limited. This BLT client was being sued by a Mr. Smith as the result of its refusal to make payment of a claim by Mr. Smith under an insurance policy. Mr. Smith was represented by Ozannes (Advocate Prentice). Mr. Wessels was the partner who dealt with this matter at BLT between 1998 and 2002, according to the affidavit of Mr. Rowe. Mr. Rowe says that Mr. Wessels knows confidential information provided both by Mr. Rowe and various experts that the insurance company have employed in regard to the credibility of the allegations being made by Mr. Smith.
3. Vanessa Jean Garnham. This lady is suing a gynaecologist and the Board of Health for damages for personal injuries sustained during a caesarean section. This lady gave her initial instructions in 1999 to Mr. Wessels, but thereafter has had less contact with Mr. Wessels than some of the other plaintiffs. In 2000 the matter was handed over to a New Zealand lawyer employed by the practice who later left. In 2001 the client was unhappy with Mr. Wessels for reasons that I would accept are almost certainly due to pressure of work rather than disinterest or incompetence on his part. Miss Bailey took over the matter at the client's request, but it seems that Mr. Wessels did stay in reserve to oversee the case and to take it to Court if it went that far. This client clearly was dissatisfied with the way Mr. Wessels dealt with her. He does appear to have been in overall charge of the matter and the client deposes that she feels that her position is unsatisfactory particularly as she happens to have lost confidence in Mr. Wessels for reasons which as I have indicated.
4. John Alfred Waterman. This gentleman is suing the States of Guernsey for an accident at work. The States of Guernsey have been prosecuted and fined for failure to provide a safe system of work. Originally the New Zealand lawyer dealt with the matter, but on the 23<sup>rd</sup> October, 2001, there was a meeting between Mr. Waterman and Mr. Wessels and there were a number of subsequent telephone conversations. Mr. Waterman claims that Mr. Wessels

knows the detailed factual background to his case, the names of witnesses and the evidence that they are able or not able to give and that he also has had access to medical notes and reports.

5. Alison Maria Guilmoto. This is a claim brought by widow against the Board of Administration following her husband's death. It is a sad and unusual case of a fisherman who was drowned when his van fell off the harbour slipway. Mrs. Guilmoto deposes that she has discussed all her personal details with Mr. Wessels and continues: "He also knows what resources I have to pursue this litigation and the extent to which I am prepared to go to see justice done. He knows the basis upon which I would be prepared to settle these proceedings. He has advised me on the strengths and weaknesses of the case, ...".
6. Eileen Lanyon. This lady has a personal injuries claim being dealt with by BLT as the result of a road traffic accident in June 1997. Originally she went to Babbé Le Poidevin Allez. Mr. Wessels seems to have taken over the matter on the merger although the New Zealand lawyer to whom I have referred and later a Mrs. Jay apparently dealt with it on a daily basis. We have in support of Mrs. Lanyon's case an affidavit in which she claimed that she had discussed her claim with him on 6<sup>th</sup> February 2001. She does not make any claim that Mr. Wessels is privy to confidential information which if it leaked out to her opponent's advocate would prejudice her. For this suggestion we have to look to Advocate S. J. Bailey's affidavit. According to Miss Bailey, Mr. Wessels would have become aware of the strengths and weaknesses of her claim and issues of tactics, strategy and evidence. Mrs. Lanyon's affidavit came in late and this point was not canvassed at the hearing.
7. Mikhail Zhivilo. Mr. Dawes acts for a Mr. Shamurin who as I have already mentioned has been involved in heavy litigation against three defendants Mr. Mikhail Zhivilo for whom Advocate Wessels has acted, a company called Base Metal Trading Limited and Mr. Zhivilo's brother Yuri. The latter two Defendants are represented by Advocate Tee of Carey Langlois, who on their behalf has put in a separate application for similar injunctive relief against Ozannes. Sadly, as is sometimes the case with litigation involving residents of the former socialist countries the claim is peppered with allegations of lawlessness and even

violence. Although Miss Tee has entered the fray on behalf of Base Metal and Yuri, basically the issue is the same namely that Mr. Wessels knows all about Mr. Mikhail Zhivilo's defence and this confidential information is at risk if Ozannes continue to represent Mr. Shamurin. The only difference is that if misused the information he has could prejudice Yuri and the Company as well.

### 3. Common features.

It is helpful to consider the common thread running through all seven applications and the principles to be applied generally in considering this kind of problem. Inevitably in a world where there is a greater mobility of lawyers from one practice to another it is unlikely to arise as infrequently as it did even ten years ago.

In all seven cases are allegations that the BLT clients have taken into their confidence Mr. Wessels to a greater or lesser extent, and in each case the client is saying that an undertaking from Mr. Wessels not to discuss his case with his new colleagues is not sufficient to give them the protection to which they are entitled. Mr. Ayres on behalf of the BLT clients has laid weight on the dicta of the House of Lords in the case of Prince Jefri Bolkiah v. KPMG 1999 1 All ER 517. On the other hand Mr. Ferbrache has referred me to the Court of Appeal decision in Koch v. Richards Butler 22<sup>nd</sup> August, 2002.

Before concentrating on those cases which are most recent decisions of the English Courts on the issue before me I think it is not unhelpful to go back to the original decision of this Court which first addressed the problem.

### 4. My decision in Loyalty Brokers Limited v. Cockram.

I accept what Mr. Ferbrache says in his skeleton about this being a decision that is ten years old, but I think it is somewhat disingenuous of to say that it is not binding on me. Quite apart from the fact that it is my own decision and the case did go to the Court of Appeal albeit only on the issue of whether the successful party should be able to recover his costs from the unsuccessful party. That case, as I have said, covered a very similar issue to that which arises here. The case involved one of the predecessor firms of BLT. The facts were that Advocate Allez who had been in the employment of Carey

Langlois decided to join up with Advocates Babbé and Le Poidevin to form the practice of Babbé Le Poidevin Allez. Advocate Babbé had acted for a Mr. Cockram in connection with a dispute with a company called Loyalty Brokers Limited who had been represented by Carey Langlois. Mr. Allez claimed that he had forgotten most of what he had learnt about this piece of litigation before he departed for his new practice. It was clear, however that he had been involved in assisting Advocate Greenfield with the Loyalty Brokers case and that he had spent a considerable amount of time with that company's principal, Mr. Moed. I reviewed the English learning such as there was at that time on this question and concluded that Babbé Le Poidevin Allez should not following Mr. Allez's joining that practice continue to act for Mr. Cockram. My conclusions can be found in the following passage on page 8 of the judgment

"In the circumstances of this case I consider that a reasonable man would say, to use Lord Justice Parker's words, [in Re a firm of Solicitors 1992 2 WLR at 809] "If I were in the position of the objector I would be concerned that, however unwittingly or innocently, information gained while the solicitor was acting for me, might be used against me". The very fact that Advocate Allez has at present, according to him dismissed from his mind the details of what he did for Mr. Moed and his company at Carey, Langlois & Co. in some ways increases the risk that, when as all Advocates do, he is having his brains picked by one of his partners on some point he may let slip something relating to a previous matter in which he has been involved and which turns out to be this very case."

I said at the time that as this was the first occasion on which this sort of issue had exercised the Guernsey Court and that in neither case could it be said that the actual clients on either side were in any way to blame for the situation that has arisen there should be in effect no order for costs. It was perfectly open to Mr. Cockram to appeal against the merits of my decision but he chose not to do so. I am quite certain that if the Court of Appeal had considered that I was seriously in error in the decision I made in that case it would have made some comment when dealing with the costs issues.

5. The evidence of Ozannes including that of Mr Wessels.

Various affidavits have been filed on behalf of the Defendants. Those of Mr. Ferbrache and Mr. Prentice relate solely to the proceedings involving the First and Second Plaintiffs respectively and do not deal with the general issues which I am currently considering. Mr. Dawes, who at the time was an employee of Ozannes, although he, like Mr. Wessels is now a partner, describes the steps taken to minimise any risk of leakage of information from Mr. Wessels to those in Ozannes who have conduct of the proceedings in which the seven Plaintiffs are involved. Mr. Dawes also makes comments on the

other Plaintiffs cases. I consider first Advocate Wessels an affidavit. Mr Wessels correctly identifies the relevant issues in respect of these applications as being whether there is a risk that he might inadvertently disclose any confidential information that he might possess in relation to the relevant cases and whether or not any special arrangements that Ozannes have put in place might be sufficient to persuade the Court not to grant any relief that the Court might otherwise prepared to grant. The affidavit then goes on to deal with two issues, which are not relevant. Firstly, the issue of Mr. Wessels' allegedly, shortly before leaving BLT, accessing the document management system and looking at papers in connection with the litigation involving the Plaintiffs has not been pursued and I have dismissed it from my consideration. The other issue he touches on is the actual or implied criticism of his handling of cases of some of the Plaintiffs. I have already indicated that I am fairly confident that any perceived failures result solely from the fact that Mr. Wessels had a very heavy caseload at BLT. However if a client has lost confidence in him like Mrs. Garnham says she has the value of any undertaking Mr. Wessels is now offering has to be considered in the light of that loss of confidence. The important thing is what Mr. Wessels says about the complaints of the seven Plaintiffs. In none of the cases does he claim not to have confidential information. What he is saying and I have to accept this as far as it goes is that he is conscious of the duty not to discuss these matters with anybody at Ozannes. He also has 13 years of experience of practising law in Guernsey throughout which time he has had to maintain strict confidentiality in respect of his various clients' business and again one accepts what he says. I turn to special arrangements that Ozannes have put in place, as described in Mr. Dawes' affidavit.

Mr. Dawes rightly acknowledges that the real thrust of the complaint of the seven Plaintiffs is the fear that they have that there is a serious risk of inadvertent disclosure of something about their cases by Advocate Wessels to other members of the practice who are representing their opponents. Mr. Dawes gives us some information concerning the geography of Ozannes offices from which it appears that the offices are neither modern nor open plan. The offices of Messrs. Prentice, Wessels, Ferbrache and Dawes are all said to be on different levels and to have their own fax machines, filing area and secretarial support. Mr. Dawes then identifies the steps he took to warn all the partners, fee earners and secretaries at Ozannes of the complaints made in the seven cases before me. He advised such

persons to be aware of these matters and avoid allowing anything relating to these cases to have anything to do with Mr. Wessels. He then refers to the position of barristers in England, which is of course, quite different. We all know that members of the same chambers regularly take matters against each other. That is not the point as I indicated in Loyalty Brokers, Guernsey advocates are like solicitors in England and similar rules must apply. He then makes the point that the fact that he and Mr. Wessels are good friends is not relevant and I tend to agree with this, although from the point of view of the BLT clients they may have difficulties if they see Mr. and Mrs. Wessels dining out with Mr. and Mrs. Dawes although their perception may change when they realise that in Guernsey certain litigators from opposing practices are actually married to each other.

Mr. Dawes then goes on to deal with the individual cases other than those dealt within the affidavits to which I have referred from Mr. Prentice and Mr. Peter Ferbrache. I will revert to these later.

6. New and old decisions of the English Courts.

The Prince Jefri case to which I have previously referred is perhaps the most important decision to have evolved in the ten years since Loyalty Brokers because it was the first occasion that the issues raised in the matter before me had been considered by the House of Lords. Previously the leading authority had been Rakusen v. Ellis Munday and Clarke [1912] 1 CH 831. The main speech in Prince Jefri came from Lord Millett. One reminds oneself that the facts in Prince Jefri's case were quite different. Prince Jefri had instructed KPMG to assist him in connection with heavy litigation he was personally involved in with a man called Manoukin. The level of service provided was such that KPMG's fees came to £4.6 million. A month or two later Prince Jefri who was the brother of the Sultan of Brunei and had enjoyed his confidence was himself the subject of an investigation in connection with the Brunei Investment Agency and that Agency wished to employ KPMG to produce a report on what had happened to the funds of the Agency whilst under Prince Jefri's stewardship. As he was no longer technically a client of KPMG, the accountants considered that they could accept this retainer, provided they put up Chinese walls between the team that had acted for Prince Jefri in the Manoukin litigation and the new team making the investigation on behalf of the Brunei Investment Agency. Here the problem arose because the same firm of accountants was acting in a matter in direct

conflict with the interests of its former client whereas in the matter now before me, the problem arises as a result of the emigration of Mr. Wessels from BLT to Ozannes.

At page 526 of the Report at letter g, Lord Millett summarised the basis of the jurisdiction in these words:-

"On this footing the court's intervention is founded not on the avoidance of any perception of possible impropriety but on the protection of confidential information."

Later in the judgment he reviews the issue of the degree of risk stating that if there is no risk of disclosure or misuse of confidential information there is no basis for granting relief (page 527 letter h).

His view is amplified at page 528 letter c when he says this:

"It is in any case difficult to discern any justification in principle for a rule which exposes a former client without his consent to any avoidable risk, however slight, that information which he has imparted in confidence in the course of a fiduciary relationship may come into the possession of a third party and be used to his disadvantage. Where in addition the information in question is not only confidential but also privileged, the case for a strict approach is unanswerable. Anything less fails to give effect to the policy on which legal professional privilege is based. It is of overriding importance for the proper administration of justice that a client should be able to have complete confidence that what he tells his lawyer will remain secret. This is a matter of perception as well as substance. It is of the highest importance to the administration of justice that a solicitor or other person in possession of confidential and privileged information should not act in any way that might appear to put that information at risk of coming into the hands of someone with an adverse interest.

Many different tests have been proposed in the authorities. These include the avoidance of 'an appreciable risk' or 'an acceptable risk'. I regard such expressions as unhelpful: the former because it is ambiguous, the latter because it is uninformative. I prefer simply to say that the court should intervene unless it is satisfied that there is no risk of disclosure. It goes without saying that the risk must be a real one, and not merely fanciful or theoretical. But it need not be substantial."

Lord Millett went on to say at page 529 letter c:

*The adequacy of the protective measures taken by KPMG*

Once the former client has established that the defendant firm is in possession of information which was imparted in confidence and that the firm is proposing to act for another party with an interest adverse to his in a matter to which the information is or may be relevant, the evidential burden shifts to the defendant firm to show that even so there is no risk that the information will come into the possession of those now acting for the other party. There is no rule of law that Chinese walls or other arrangements of a similar kind are insufficient to eliminate the risk. But the starting point must be that, unless special measures are taken, information moves within a firm. In *MacDonald Estate v Martin* (1990) 77 DLR (4<sup>th</sup>) 249 at 269 Sopinka J said that the court should restrain the firm from acting for the second client 'unless satisfied on the basis of clear and convincing evidence that all reasonable measures have been taken to ensure that no disclosure will occur'. With the substitution of the word 'effective' for the words 'all reasonable' I would respectfully adopt that formulation."

At page 530 he discusses the efficacy of a system of Chinese walls and says this:

"In my opinion an effective Chinese wall needs to be an established part of the organisational structure of the firm, not created ad hoc and dependent on the acceptance of evidence sworn for the purpose by members of staff engaged on the relevant work."

In contrast we have a later decision of the Court of Appeal where relief was refused in the case of Koch Shipping.

There the applicants had employed a firm of solicitors in connection with an arbitration involving a client of Richards Butler. The partner dealing with the arbitration retired and became a consultant of Richards Butler on three days a week. Richards Butler was a large shipping practice for the information that the emigrating solicitor had related to just one arbitration. The information which was confidential related solely to this arbitration because it so happened that another lawyer employed by the original solicitors also emigrated to Richards Butler at the same time as the lawyer, the subject of the objection, Ms. Peaston and he brought with him considerable knowledge about other matters relating to Koch's affairs over which there was no objection to Richards Butler sharing. The judge at first instance clearly found the case difficult because he said he would have refused the injunction if Richards Butler and Ms. Peaston had offered an undertaking that she would work from home or somewhere other than Richards Butler's London premises at Beaufort House in the City where the shipping department was established. In fact Richards Butler ceased to act for the opponents and so the objection became somewhat academic. However, they were allowed to appeal against the judge's decision and the Court of Appeal reviewed the peculiar facts of the case in great detail. Emphasis was laid on the integrity of solicitors and I would not want anything I say to be eroding the entitlement of Advocate Wessels and his colleagues from having their undertakings treated as of similar weight. The point however remains that this decision was very much on its own facts. At the end of the day the judges concluded that Richards Butler had been able to discharge the heavy burden that was placed on it. The position is crystallised in the judgment of Ward LJ at paragraph 60.

"60. I accept that to place Ms Peaston in purdah obviously reduces the risk of her talking to her colleagues or being seen by them when she does so, but the question remains whether Richards Butler have satisfied the court that there is no real (as opposed to fanciful) risk of disclosure were she to work on another floor in the building, in the light of the undertakings she has given. It is quite appropriate and proper for the court

to have regard to the extensive nature of those undertakings, given, I stress, by officers of the court and by persons of high professional standing and integrity. For my part I do not see that it is necessary to banish her from the building to render that bundle of measures an effective protection for the confidential and privileged information that the respondents are entitled to protect."

7. Conclusions:

There are a number of other differences in this case from that which pertains in the situation I have to consider. Ozannes must satisfy me that there is no real risk that if the Defendants whom they are currently representing continue to be represented by them confidential information relating to the affairs of the applicants will not be leaked to those persons in Ozannes who have the conduct of the opponent's litigation. I have studied what Mr. Dawes says, but with respect to him I feel that some of what he says misses the point. It is all very well to talk about separate rooms, separate fax machines, separate filing cabinets and separate secretaries. No one is seriously suggesting that Mr. Wessels will consciously involve himself in the matters which will be ongoing on behalf of the opponents. I see no real risk if a fax relating to one of these cases comes in on Mr. Wessels' fax machine by mistake that there is any great mischief. Mr. Wessels, if he happens to pick up the fax rather than his secretary, will merely pass it on to whoever has conduct of the matter.

As I understand it Ozannes have a litigation department in which, like many other litigation departments in a medium sized firm (which by U.K. standards Ozannes is) there is no natural division between the various members of the team. Clearly individual cases are assigned to individual members of the practice, but there are, in addition to the advocates who appear in Court before us, legally qualified and non legally qualified assistants who help prepare cases and deal with out of Court matters arising thereon.

Study of the Koch case shows that Ms. Peaston the solicitor with knowledge of the one offending case took steps to keep herself away from other members of the practice and in particular the team entrusted with acting for the opponent's of her former client. She did not attend departmental lunches, she did not go onto the same floor to the one they occupied. There is no serious suggestion that Mr. Wessels will be other than a gregarious member of the Ozannes litigation team. Neither does it appear to me (and of course I speak from some experience having seen Mr. Wessels and his colleagues

regularly performing in Court) that he is the kind of member of that team whose expertise will not be tapped by others. This is where the danger lies. How many times does a colleague ask whether one has experienced a particular situation arising in a case? A bell is rung. Recalled facts come out in a random order and where one has a situation that we have here of Mr. Wessels having intimate knowledge of the cases of these former clients the risk of his unwittingly disclosing to somebody in the Ozannes practice confidential information about their affairs is in my view real and not fanciful.

Ozannes therefore have not persuaded me to the extent that the solicitors in Koch were able to persuade the Court of Appeal that they could still act whilst retaining the services of the emigrating solicitor.

As I indicated this was an omnibus application in respect of seven particular cases. The fact that Mr. Wessels has not challenged the claim that he has acquired confidential information relating to the seven clients' affairs does indicate that all seven can be looked at together. Whilst the burden is initially on the Applicants to show that Mr. Wessels had confidential information, I am satisfied from the material before me that these allegations are made out in all but one of the cases before me. I am, however, a little troubled by the case of Mrs. Lanyon. She does not say that Mr. Wessels knows anything of a confidential nature concerning her affairs. All I have is Miss Bailey's general statement that he would have known the strengths and weaknesses of Mrs. Lanyon's case, but there is nothing said against this and in the absence of further investigation I do not think it right to say that a different line should be taken from the other cases. In any event once there is confidential information in the hands of the emigrating solicitor it does not seem to me that I have to enter into an assessment of the extent of that confidential information or of its nature. It is sufficient to say that there is, in my view, the real risk of disclosure that the decisions identify. To do otherwise would inevitably result, at the hearing between the parties, in revealing the real nature of the confidential information thereby disclosing particulars of the applicants cases to Ozannes.

I consider therefore applying the authorities both here and in England, Ozannes should be restrained in the way sought by the seven applicants. In my judgment in Cockram I hinted at the possibility that there might be problems peculiar to Guernsey when for some reason no other advocate could be found

to take the matter on from the advocates who were conflicted out. No suggestion of this kind has been made so far in this case and if there were evidence to support such a contention then I would have to look at the whole matter de novo.