

Judgment 37/2003

**Gilliam v NRG Benelux BV – Royal Court
(Civil action file 570) 22nd April, 2003**

Royal Court Civil Rules, 1989 – application for discovery – document referred to in a without prejudice letter.

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

22nd day of April, 2003 before Alan Robin Winston Hancox, Esquire, E.G.H., C.B.E., Lieutenant Bailiff; sitting alone.

IN THE MATTER OF

WILLIAM GILLIAM

Plaintiff/
Applicant

-v-

NRG BENELUX BV
(trading as “NRG DISTRIBUTION”)

Defendant/
Respondent

Whereas on the 7th day of April 2003, the Lieutenant Bailiff considered an oral application for an adjournment by the Defendant and heard thereon Advocates St. J. A. Robilliard and M.G. Ferbrache, Counsel for the Plaintiff and Defendant respectively;

The Lieutenant Bailiff this day gave judgment in the terms attached hereto and allowed the second part of the said application as sought and reserved the question of costs

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

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

Between:

WILLIAM GILLIAM

Plaintiff/Applicant

and

**NRG BENELUX BV
(trading as “NRG DISTRIBUTION)**

Defendant/Respondent

Judgment

1. This Application dated 27th January, 2003, is the second interlocutory proceeding brought in this action, the first being that the Plaintiff should provide Security for Costs which was decided on 2nd January, 2002. The present Application seeks first the production of the Employment Severance Agreement referred to in the letter from the Defendant Company (NRG) to the Plaintiff of 8th January, 2001, which is headed ‘Without Prejudice’, and secondly that that letter, together with any attachment thereto, be declared a discoverable document, with liberty to the Plaintiff to include (them) in the Trial Bundle. The attachments in question are presumably the minutes of the meeting of 8th January, 2001, and the letter referred to in paragraph 8 of those Notes. Counsel, Advocate Robilliard for the Plaintiff and Advocate Mark Ferbrache for NRG are not in agreement as to whether that meeting was conducted on a without prejudice basis or was a disciplinary hearing.

2. While the Application is expressed to be made under Rules 39, 41 and 43 of the 1989 Rules, I think it is fair to say that this is not truly an issue of discovery of documents, inasmuch as, as was pointed out by Lord Griffiths in Rush & Tompkins Ltd v. Greater London Council [1989] AC 1280 at page 1300 B-C, both parties are aware of the existence of the documents in question, and the issue is whether they should be protected from production as forming part of genuine without prejudice negotiations or discussions, or is otherwise privileged therefrom. I therefore propose to deal with the Application on the footing that a direction is required as to whether or not they should be produced under Rule 43. There is, moreover, a practical difficulty because it appears that neither party can at this moment in time lay their hands on the Severance Agreement, and so, as I understand Counsel, it is agreed that the first part of the instant Application should remain in abeyance because any Order made thereunder would be incapable of compliance.

3. At this stage it is appropriate briefly to recapitulate the facts which I set out in my earlier Ruling. The Plaintiff was employed as a Supply Manager by NRG with effect from 1st November, 1999, on the terms and conditions stated in its letter of 13th December, 1999, and in the Employee Handbook attached to that letter. The latter contained, *inter alia*, a statement of the employer’s right to dismiss the employee summarily for gross misconduct, and a provision for his suspension on full pay pending investigation thereof. By January, 2001, NRG had become dissatisfied with Mr. Gilliam’s conduct and proposed to dismiss him. With that object in view two meetings took place on the 5th and 8th respectively of that month, the minutes of which appear at pages 151, 152 and 153 of the consolidated bundle put in by Ozannes.

4. Mr. Robilliard has submitted, given that NRG wish to include the Minutes of the meeting of 8th January, that it would not be consonant with the ends of justice that the Severance letter should not go in as well, for the reason that without it the Jurats at the trial will have an

incomplete picture of the events leading up to, and the documentation relevant to, the Plaintiff's dismissal. It seems that in July, 2001, there was some correspondence between the Advocates which resulted in Mr. Robilliard agreeing to delete paragraph 6 of the original Cause, which recited a portion of the Without Prejudice letter of 8th January, 2001, containing the gravamen of NRG's complaint, namely that the Plaintiff had allegedly entered into a supply agreement without authority and in contra-vention of its policy. This was followed by correspondence in which attempts were made to agree the Trial Bundle, and it was not until Ozannes received Mr. Richardson's letter of 15th November, 2002, that he became aware that NRG's Advocates intended to produce the notes of the 8th January meeting.

5. Mr. Robilliard then requested production of the letter of 8th January, 2001, which I find surprising in view of the fact that an extract from this letter was set out in paragraph 6 of the original Cause (but subsequently deleted in the Cause Reformee). However, in his reply to Mr. Robilliard of 19th December, 2002, Mr. Richardson produced this letter, but made it clear in his next letter of 2nd January this year that the privilege attached to that letter was not to be regarded as being lifted or waived. This attitude was reinforced in his Affidavit of 7th March, 2003, where Mr. Richardson refers back to his letter of the previous 15th November and points out that the Defendant had objected to references being made in the Trial Bundle to Without Prejudice correspondence. He suggested that appropriate deletions were made so as to remove those references in the documents that were to be included. This, in effect, reiterated the stance adopted by Mr. Ferbrache on 16th February, 2001.

6. Mr. Robilliard sought production of the Employment Severance Agreement referred to in the without prejudice letter of 8th January, 2001, in his letter to Collas Day of 16th January, 2003, and challenged the claim of privilege for the Without Prejudice correspondence, enclosing the decision of *Morritt V –C. in Prudential Assurance Co Ltd v. Prudential Assurance Co Ltd of America* of 10th December, 2002, which refers to the earlier cases included in the Bundle as the Defendant's authorities. Mr. Robilliard stated that he would be applying to the Court for orders for the admission at the Trial of the letter of 8th January, 2001, and its accompanying documentation. This has led to the complaint in the last sentence of Mr. Richardson's Affidavit of 7th February, 2003, that the Plaintiff's Advocates had changed the basis of the proceedings, inasmuch as having agreed to the exclusion of the Without Prejudice letter of 8th January, 2001, and having taken active steps to have the reference to it deleted from the Cause, they are now seeking to have that same documentation adduced before the Jurats at the Trial.

7. As I have observed, Mr. Robilliard's response to this was that he had not been aware of the existence of the Notes of the meeting of the 8th January until he received the letter of 15th November, 2002, some fifteen months after filing the Cause Reformee in August, 2001. Accordingly he submitted that whatever the position was prior to that date, the scenario, so far as the Trial Bundle is concerned, changed when Collas Day intimated that they would be including these Notes. What I find hard to follow is that since the 8th January letter was referred to in the original Cause, and that letter clearly refers to the Employment Severance Agreement, the issue of the production of this document was not addressed much earlier than January of 2003. I also observe that it is unclear at this stage whether 'the attached letter' mentioned in paragraph 8 of the Notes of the meeting of that date is a reference to the Employment Severance Agreement or some other document.

8. Mr. Robilliard submitted that the label 'Without Prejudice' is not by any means conclusive that a document, or if it is advanced in relation to a discussion or meeting, the record thereof, are privileged from production at the trial. In this connexion he relied on *Unilever PLC v. The Procter & Gamble Co.* [2000] 1 W.L.R 2436, which is most useful in the instant case because it related to the issue of whether or not evidence was admissible of that which had transpired at a high-level meeting in Frankfurt in May, 1998, between representatives of the parties which, it was not disputed, had been agreed by each to be conducted on a without prejudice basis, rather than the

more usual situation where the admissibility of without prejudice correspondence arises for consideration.

9. Mr. Ferbrache also made extensive references to the Unilever case in support of his contention that the Notes related to a disciplinary hearing (as, indeed, had been clearly stated at the outset by Mr. Neville Roberts) and were not admissible as being held in the course of genuine negotiations conducted with a view to achieving a settlement of the dispute, but more particularly in support of his second proposition rejecting Mr. Robilliard's contention in his Affidavit of 21st March this year, that the letter and the Notes of the meeting of 8th January constituted a threat of dismissal if the terms offered were not accepted by his client. As such it would have formed a recognised exception to the without pre-judice rule as stated in Paragraph 9.115 of Matthews & Malek on Disclosure. In this context Mr. Ferbrache submitted that the category of threats covered by the exception was very narrow, and was confined, in effect to actionable threats.

10. In the Unilever case the Court of Appeal upheld the claim of privilege for the without prejudice meeting notwithstanding the fact that the defendant had threatened to bring an action for infringement of its patent which was said to be in contravention of Section 70 of the Patents Act 1977. Having considered the earlier cases, notably Kurtz v. Spence [1887] 58 L.T 438, at page 2448H, Robert Walker L.J said that the Court should give effect to the principles stated in the modern cases, in particular Rush & Tompkins v. Greater London Council [1989] 1 AC 1280, Cutts v. Head [1984] Ch 290, and Muller v. Linsley & Mortimer [1996] P.N.L.R. 74. He then continued at page 2449F:

“[The Frankfurt meeting] was a high level meeting between highly skilled professionals representing the interests of multinational groups which are household names.....it was an occasion for both sides to speak freely.”

Earlier he said:

““Whatever difficulties there are in a complete reconciliation of those cases they make it clear that the without prejudice rule is founded partly on public policy and partly in the agreement of the parties.....Parties cannot speak freely at a without prejudice meeting if they must constantly monitor every sentence, with lawyers or patent agents sitting at their shoulders as minders.”

11. In considering the Unilever decision it is important to remember that the judgment of Robert Walker L.J. (with whom Simon Brown L.J. fully agreed) was delivered in the context of the Patents Act 1977 (as was Kurtz v. Spence in relation to its predecessor, the Patents Designs & Trade Marks Act 1883) which contains specific legislation regarding threats to sue for infringement by the person who owns the patent, and it had been alleged that the respondent company had, in the course of the Frankfurt meeting, threatened Unilever with proceedings for infringement of their patent in relation to detergent washing tablets. However the leading judgment contains extensive citations from Rush & Tompkins v. G.L.C which was not a patent case. There the main contractors in a housing project had sued the GLC and the sub-contractors for a declaration that they were entitled to reimbursement from the GLC of any sum which they were liable to pay for loss and expense under the sub-contract. After without prejudice negotiations in correspondence the action by Rush & Tompkins against the GLC was compromised with a payment by the latter of £1.2 million.

12. However the action by Rush & Tompkins against the sub-contractors, Carey Contractors, remained extant but dormant. Subsequently Careys revived the action by adding a counterclaim against Rush & Tompkins for £150,582.86, and sought to discover the without prejudice correspondence that had ensued between Rush & Tompkins and the GLC. The claim to privilege for the correspondence was upheld by the trial judge. The Court of Appeal reversed his

de-cision, largely on the authority of the classic judgment of Lindley M.R in Walker v Wilsher [1889] 23 QBD 335, 337, holding that the purpose of without prejudice privilege is to enable parties to negotiate without the risk of their proposals being used against them if the negotiations fail. But the Court held that it was different if the negotiations succeeded and a settlement achieved in which case, page 1290:

“.....the privilege goes, having served its purpose. This will be the case whether the privilege is claimed as against the other party or parties to the negotiations, or as against some outside party.”

The decision of the Court of Appeal in Rush v. Tompkins was then itself reversed. Lord Griffiths rejected the Court of Appeal’s view that the privilege went if the without prejudice negotiations had succeeded. At page 1299D -G, he said in a passage which appears in all the other authorities in the bundle:

“The ‘without prejudice’ rule is a rule governing the admissibility of evidence and is founded upon the public policy of encouraging litigants to settle their differences rather than litigate them to a finish. It is nowhere more clearly expressed than in the judgment of Oliver L.J. in Cutts v. Head ‘(supra)’ 306:

‘That the rule rests, at least in part, upon public policy is clear from many authorities, and the convenient starting point of the inquiry is the nature of the underlying policy. It is that parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiationsmay be used to their prejudice in the course of such proceedings. They should, as it was expressed by Clauson J. in Scott Paper Co v. Drayton Paper Works Ltd [1927] 44 RPC 151,156 be encouraged fully and frankly to put their cards on the table.....The public policy justification, in truth, essentially rests on the desirability of preventing statements or offers made in the course of negotiations for settlement being brought before the Court of trial as admissions on the question of liability.’

The rule applies to exclude all negotiations genuinely aimed at settlement whether oral or in writing from being given in evidence.” (My emphasis).

13. The same passage was cited by the Deputy Judge in Smiths Group Plc v. George Weiss [2002] 22nd March, by Morritt V -C in Prudential Assurance Co Ltd v. Prudential Assurance Society of America [2002] EWHC 2809, both of which are included in the Defendants’ authorities, and referred to as a statement of the general rule by Simon Brown L.J. in Alizadeh v. Nikbin & Others [1993] The Times, March 19. The first related to manuscript notes of various meetings held in the course of the mediation process which the parties had pursued, and the second to correspondence for which privilege was claimed under the without prejudice rule. In the third case the privilege was held to protect from disclosure tape recorded negotiations between the first defendant and the plaintiff which had been agreed to be without prejudice.

14. As Mr. Robilliard said there is no disagreement between Counsel as to the law which should be applied, but they differ considerably on how it should be applied in the instant case. There can in my opinion be no doubt that Courts having to decide this issue should apply the passage from Lord Griffiths’ Speech, with which Lord Oliver, as he had by then become, and was a member of the House of Lords which heard the appeal in the Rush & Tompkins case, wholly concurred. It was also cited in full by Clarke L.J in Somatra Ltd v. Sinclair Roche & Temperley [2000] 1 WLR 2453 at paragraph 22, (in turn cited by the Deputy Judge in Smiths Group Plc v. George Weiss [2002] 22nd March), and by Morritt V -C in Prudential Assurance Co Ltd v. Prudential Assurance Society of America [2002] EWHC 2809, both being included in the

Defendants' authorities. The first related to manuscript notes of various meetings held in the course of the mediation process which the parties had pursued and the second to correspondence for which privilege was claimed under the without prejudice rule but none of which was so marked.

15. From the material with which the Court has now been provided it seems that the inception of events which led to the allegation of gross misconduct by the Plaintiff occurred on or about 19th December, 2000. The 'chain of events' since that date is referred to in the Notes of the meeting of 5th January (page 151 of the Bundle) to which there is also a reference to 'Appendix 1'. It is possible, but by no means certain that this is Item 4 of the documents called for in Mr. Robilliard's letter of 4th December, 2002, to which Mr. Richardson replied on 2nd January, 2003:

"Our clients are not aware that this document in fact exists."

He then, as it were, passes the ball back to Mr. Robilliard's court and asks him to disclose all relevant documentation 'surrounding the alleged minute.' I pause here to observe that there is no evidence that either of the meetings of 5th or 8th January were discussions conducted without prejudice. As Mr. Robilliard said, if it applied to either meeting, especially that of the 8th January, it is to be expected that there would be some statement or indication thereof at the commencement of the meeting, or that the Notes would be so headed. I contrast the situation in Smith v. Weiss (*supra*) in which the meetings that took place in the course of the mediation process were expressly agreed, in a written note signed by both sets of solicitors at the end of the first day, to be:

"....part of the mediation process on a confidential and without prejudice basis."

16. I would also observe that during the period when Mr. Gilliam was being investigated for gross misconduct no legal proceedings were in existence. It is in my view one thing for the parties to attempt to negotiate a settlement after proceedings have been instituted, and another for negotiations, if such they were in the instant case, to take place between the parties prior to such proceedings being launched. It is true that the rule of public policy originally propounded by Oliver L.J. and later adopted by Lord Griffiths, and cited by the authoritative Courts in the later cases included in the Bundle, is directed as much to encouraging people not to embark on litigation as to settling their disputes once litigation has begun (indeed Oliver L.J. expressly uses the phrase 'without resort to litigation'). In the latter case the parties are both, in all probability, being legally advised, and consequently there is a more level playing field, or greater equality of arms, however it is expressed. In the former case, particularly when questions between an employer and employee arise, when, unless a Union is involved, in the celebrated phrase

"The one has the power to dictate, the other no alternative but to submit."

It seems to me that unless the weaker party, (usually the employee) has been demonstrably shown to be aware of the implications of the blanket of 'without prejudice', and to have accepted that whatever takes place will be privileged from later production, he ought not to have that condition imposed on him.

17. It is also true that in the instant case, while the letter of the 8th January, as opposed to the Notes, was headed 'without prejudice', none of the other documents mentioned in the correspondence between the Advocates was so headed. At first sight the fact that one such document is so labelled would result in the inclusion of the other related documents, on the authority of Clarke L.J.'s statement in the Somatra case (*supra*), at paragraph 22, namely:

".....although the underlying basis of the rule is to exclude evidence of admissions, the concept of admissions must be given a wide meaning in this context so as in effect to {ex}clude all matters disclosed or discussed in the without prejudice discussions concerned."

18. The foregoing statements of principle are, of course on the basis that both the parties to the correspondence or discussions have agreed to treat them as without prejudice to their respective contentions and, consequently, as privileged from future disclosure. This is clear from the following passage from Robert Walker L.J.'s judgment in the Unilever case at page 2442D:

“The rule {is}based at least in part on public policy. Its other basis or foundation is in the express or implied agreement of the parties themselves that communications in the course of their negotiations should not be admissible in evidence if, despite the negotiations, a contested hearing ensues.”

The emphasis is mine. The above citation shows, in my opinion at any rate, that what can not be done is that one party should impose the condition of without prejudice on the other without his express or implied consent.

19. In the instant case there is no evidence that Mr. Gilliham agreed to the proceedings of the 5th or the 8th January, 2001, being without prejudice. Indeed the indications from both sets of Minutes are that he was, if not taken wholly by surprise, both ‘shocked’ and ‘flabbergasted’ by the turn of events, that he sought to apologise, and that a pistol was being placed to his head to agree to the terms in the attachment ‘or else’. In my judgment he was never given an opportunity to agree or disagree to the proceedings, or the correspondence, being privileged. It is possible that at that stage the question never occurred to him. Equally, from the material available to the Court it is not possible to infer circumstances from which his agreement to the privilege being attached can be inferred or implied.

20. From the foregoing I conclude that however the letter of the 8th January is headed, it cannot alter the fact that one of the two essential conditions of the rule of privilege from disclosure, namely the express or implied agreement of one of the parties, was never satisfied. As Lord Griffiths said, the application of the rule is not dependent on the use of the phrase ‘without prejudice’ but on the surrounding circumstances. On the documentation produced I find that the surrounding circumstances here are such that the rule should not apply.

21. This being so, I do not, strictly, need to consider the arguments addressed to me on the question of whether or not the threat contained in paragraph 8 of the Notes of the 8th January constitute an unlawful threat so as to come within one of the possible exceptions to the without prejudice rule. As to this aspect Hoffmann L.J. said in Muller v. Linsley & Mortimer (*supra*) at pages 79 to 80:

“Likewise, a without prejudice letter containing a threat is admissible to prove that the threat was made.”

22. Clearly the wording of paragraph 8 amounts to a statement that unpleasant consequences would ensue if Mr. Gilliham did not tender his resignation, and would come within the definition of a threat. I note that in the Unilever case there was a threat of legal proceedings, but that this did not deter the Court of Appeal from holding that the privilege protected the discussions from disclosure. It also held that Kurtz v. Spence, in which the threats made were admitted under the supposed exception to the rule, should no longer be regarded as good law. For my part I would not regard an authority on the special position of patent actions, in which, as I said, there is specific legislation in this respect, as binding in different circumstances. Moreover in Kitcat v. Sharp [1882] 48 L.T 64, which is an authority cited in the footnote to exception (b) in the text of Matthew & Malek, the threats uttered were of a totally different nature, being against a clergyman that the defendant would cause to be sent abusive matter to all the clergy in London if he did not desist from continuing proceedings which he had started. In the circumstances of this case, I doubt if the threat here was unlawful, being a statement of the consequences to the Plaintiff if he did not accept the terms attached to the Notes. However, as I have said, I prefer to rest my

decision on the basis that the without prejudice rule does not apply to the document sought by the Plaintiff's Advocate in this case, so that any exception to it does not, strictly, fall to be considered.

23. I take a similar view as regards the issue of whether there was a waiver of the Plaintiff's rights in regard to the letter of 8th January, which was the third head of Mr. Ferbrache's submissions in response to Mr. Robilliard's argument. As, in my judgment, the privilege does not attach to it, notwithstanding the without prejudice label, this point is not necessary for me to decide. If I had needed to do so, I should have held, in all the circumstances of the case, that there had been no waiver. For the foregoing reasons the second part of the Application of 27th January, 2003, is allowed.

A.R.W.Hancox
Lieutenant Bailiff
22nd April 2003.

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

Between:

WILLIAM GILLIAM

Plaintiff

and

NRG BENELUX BV
(trading as “NRG DISTRIBUTION)

Defendant

Judgment

1. There was an interval of sixteen months between the two interlocutory Rulings I have given in this case, the original Cause having been filed on 13th July, 2001, and the Cause Reformee on 3rd August of that year. According to the note on the Court File the hearing with Jurats was set for 2nd June, 2003, on 20th December last year, that is to say nearly five and a half months hence. On the case being listed for a pre-trial Review on 1st May, Advocate Mark Ferbrache applied for this case to be taken out of the hearing list for 2nd June on the ground that he is personally engaged in another trial with Jurats, albeit on *quantum* only, on the 27th May, and confirmed by Day L.B. on 6th May. If it goes on that case, Thompson & Le Noury v. Masterton & Bourne, will occupy at least three weeks, and will therefore clash with the hearing date set for the instant case and the ensuing week for which it is estimated to last.

2. In the Thompson & Le Noury case there are approximately sixteen experts, with their reports, who will have to come from England. Mr. Ferbrache needs time, he says, to go through these reports and arrange the attendance of the experts so as to cause the least expense possible. In this case he has been dealing with particular officers of the Defendant, who have reposed great confidence in him, for the purpose of securing instructions to defend the claim and pursue the counterclaim, which involve many and complicated issues. It will therefore be highly inconvenient to have to pass this matter to another partner in Collas Day, although Mr. Ferbrache accepts, as Advocate Robilliard representing the Plaintiff has pointed out, that Mr. Paul Richardson, who is a qualified barrister employed by that firm, and appears on their letterhead, has been handling the case and preparing it for trial throughout.

3. Perhaps unsurprisingly, Mr. Robilliard vigorously opposed the Application. He said that by the time the case comes on almost two years will have elapsed since the tabling of the Cause Reformee. His client has still not secured employment, largely because of this matter which is hanging over him. I observe that if he had to produce a reference from a past employer he would be unlikely to get it from NRG. Moreover there were other Advocates, skilled in Court work in Guernsey, who could take the case, and while that might involve more cost and expense, that would be comparatively minor compared with the cost and expense to his client, who has made arrangements to come to Guernsey for the trial, not to mention the injustice that would also be occasioned to him by any further delay.

4. There are several authorities on the issue of whether an adjournment should be granted and the factors on each side which have to be weighed and balanced by the Court addressing the issue. They are, in my view, best summarised by Sir Jocelyn Simon P. in Walker v.

Walker [1967] W.L.R. 330, when he stated the effect of the earlier Court of Appeal decision in Maxwell v. Maxwell & Keun [1928] 1 K.B 645 :

“Where the refusal of an adjournment results in serious injustice to the party requesting [it], the adjournment should only be refused if that is the only way that justice can be done to the other party. And secondly, although the granting or refusal of an adjournment is a matter of discretion, if an Appellate Court is satisfied that a discretion has been exercised in such a way that results in an injustice to one of the parties, such Appellate Court has both power and duty to review the exercise of this discretion.”

Other examples are to be found in Robinson v. Continental Insurance Co of Mannheim [1915] 1K.B 155, Nunim v. Benz [1941] Indian Law Reorts (Bombay Series) 648, Rose v. Humbles (Inspector of Taxes) [1972] 1 A.E.R 314, and R v. Ealing Justices [1999] Crim. L.R 840, cited by Day D.B. in Augustino de Sousa v. R Guernsey Criminal Appeal 19th November, 1999. In Maxwell v. Keun (supra)

It was said that counsel’s convenience is not sufficient unless he can show he is in the House of Lords or Privy Council, or there are other exceptional circumstances. Some cynics would say that the greater the personal difficulties of counsel the more ingenious will be the application!

5. The instant case does not involve counsel’s convenience. The reason advanced is perfectly genuine and legitimate. But having also paid regard to the seven principles set out in the Commentary to the Ealing Justices case, which are attached as an Annexure to this Ruling, I have no doubt that the injustice and potential loss caused to Mr. Gilliam would far transcend any caused to NRG by the fact of another Advocate in the same firm having to take over the conduct of this case, well over three weeks in advance of the hearing. For these reasons I refuse the Application.

A.R.W.Hancox
Lieutenant Bailiff
8th May 2003.