

DOCKET NO. FST-CV-155014808-S	)	SUPERIOR COURT
	)	
WILLIAM A. LOMAS	)	J. D. OF STAMFORD/NORWALK
	)	
Plaintiff,	)	
v.	)	
	)	AT STAMFORD
PARTNER WEALTH MANAGEMENT, LLC	)	
ET AL.	)	
	)	AUGUST 19, 2015
Defendants.	)	

**BRIEF IN FURTHER SUPPORT OF  
DAVID R. LAGASSE, ESQ.’S MOTION FOR ADMISSION *PRO HAC VICE***

Defendants Partner Wealth Management, LLC (“PWM”), Kevin G. Burns, James Pratt-Heaney and William Loftus (the “Individual Defendants” and, together with PWM, “the Defendants”) submit this Brief in Further Support of David R. Lagasse, Esq.’s Motion for Admission *Pro Hac Vice*.

This Court should grant Mr. Lagasse’s Motion for Admission *Pro Hac Vice*. Contrary to Plaintiff’s assertion, Mr. Lagasse possesses both expertise in the legal issues in which Plaintiff’s claims are based and a long-standing relationship with PWM, its management and the Individual Defendants, such that the Defendants’ choice of counsel trumps any state interest to the contrary. In addition, Mr. Lagasse’s knowledge of the facts on which this action turns are obtainable from PWM’s management, the Individual Defendants and the Plaintiff. Accordingly, Mr. Lagasse is not a necessary witness in this action.

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## FACTUAL BACKGROUND

The Plaintiff argues that the relevant time frame of this action begins with his decision to resign from the partnership on October 13, 2014. He claims that his resignation motivated the Individual Defendants to suddenly decide to amend the Limited Liability Company Agreement of Partner Wealth Management (the “Agreement”) (a copy of which is attached to the Plaintiff’s Affidavit as “Exhibit A”) to reduce the price payable to him to repurchase his ownership interest in PWM. In fact, the events that led to the amendment started at least as early as January 2013 and included the Plaintiff’s full participation.

PWM is a Connecticut limited liability company in which Plaintiff and the Individual Defendants each owned a 25 percent interest. (*See* Affidavit of Jeff Fuhrman (“Fuhrman Aff.”) ¶ 4.) PWM provides management and investment advisory services to clients of non-party LLBH Private Wealth Management, LLC (“LLBH”) pursuant to a management agreement between the two companies. *Id.* Although the Plaintiff and the Individual Defendants no longer have ownership interests in LLBH, the vast majority of PWM’s income is received as a percentage of the investment management fees generated by LLBH (the “Management Fee”). *Id.* Under the original terms of the Agreement, all income received by PWM is paid 25% to each partner, in accordance with each partner’s ownership interest, regardless of the each partner’s contributions to the firm. (Fuhrman Aff. ¶ 7.) The price paid to repurchase the ownership interest of a resigning member was derived from the way income was distributed and equaled 25% of 5 times

the Management Fees received as of December 31 of the year prior to the year in which the resignation occurs. (Fuhrman Aff. ¶ 17.)

In January 2013, the Plaintiff and the Individual Defendants (collectively, referred to as the “Partners”) engaged the services of a consulting firm, FA Insight LLC (“FA Insight”), to help them devise a new compensation plan for PWM. (Fuhrman Aff. ¶ 5.) The Partners desired to have the income division modified to reward individual partners for performance. (Fuhrman Aff. ¶ 7.) The scope of FA Insight’s engagement was expanded in February to encompass a full organizational review. (Fuhrman Aff. ¶ 5.) Based on FA Insight’s recommendations, the Partners collectively agreed to hire a Chief Operating Officer, whose responsibilities would include assisting the Partners to renegotiate PWM’s compensation structure. *Id.*

During the course of FA Insight’s discussions, in March 2013, the Plaintiff threatened to resign from PWM. *Id.* On or about April 29, 2013, the Plaintiff subsequently changed his mind and decided to stay with PWM. *Id.*

On July 29, 2013, the Partners hired Jeff Fuhrman as LLBH’s Chief Operating Officer and Chief Financial Officer of LLBH pursuant to their authority to select LLBH’s workforce under the management agreement between PWM and LLBH. (Fuhrman Aff. ¶ 6.) In addition to his responsibilities managing LLBH, Mr. Fuhrman was and is also responsible for providing professional management services for PWM. *Id.* The Partners tasked Mr. Fuhrman with developing and proposing the compensation structure. He recognized it would be necessary to

make substantial revisions to other portions of the Agreement and considered the benefits of PWM retaining professional advice to assist PWM. (Fuhrman Aff. ¶ 8.) Mr. Fuhrman consulted with a number of professionals, including professionals at Focus Financial Partners, LLC (“Focus”), the entity that owns LLBH, but ultimately recommended to the Partners that PWM retain Mr. Lagasse. *Id.* Mr. Fuhrman has worked with Mr. Lagasse in matters involving corporate transactions and executive compensation both personally and for a number of business entities in which Mr. Fuhrman served as a senior executive since approximately 1999. (Fuhrman Aff. ¶ 9; Affidavit of David R. Lagasse, Esq., (“Lagasse Aff.”) ¶ 4.) From this experience, Mr. Fuhrman knew that Mr. Lagasse possessed extensive experience drafting and negotiating performance driven compensation and equity arrangements for senior-level executives and partners in partnerships. (Fuhrman Aff. ¶ 9; Lagasse Aff. ¶¶ 3, 5.) This expertise aligned closely with PWM’s goal of amending the Agreement’s various provisions to make them more performance driven. (Fuhrman Aff. ¶ 9; Lagasse Aff. ¶ 6.)

On December 18, 2013, PWM’s members followed Mr. Fuhrman’s recommendation and formally retained Mr. Lagasse as counsel pursuant to an engagement letter, which is attached to the Plaintiff’s Affidavit as “Exhibit B.” (Fuhrman Aff. ¶ 10; Lagasse Aff. ¶ 6.) Although the retention letter refers specifically to advising on the “partner compensation plan,” Mr. Fuhrman informed Mr. Lagasse, and Mr. Lagasse understood that, PWM planned to have him work to

restate the Agreement once the Partners agreed to a revised compensation plan. (Fuhrman Aff. ¶ 11; Lagasse Aff. ¶ 6.)

In late 2013 and early 2014, Mr. Fuhrman held numerous discussions among the Partners to decide how to change the way PWM compensated them individually. (Fuhrman Aff. ¶ 12.) While Mr. Fuhrman discussed the proposed changes with Mr. Lagasse and solicited his advice, Mr. Lagasse did not participate directly in any of the conversations with the Partners. *Id.*

The Partners ultimately agreed that they would divide PWM's share of the Management Fee into two parts: a base income stream; and a performance income stream. (Fuhrman Aff. ¶¶ 12-13.) The base income stream was to have a minimum value equal to PWM's Management Fees for the fiscal year ending December 31, 2013, increased by 20% of the annual growth in the Management Fees thereafter and was to be distributed equally among the Partners based on their respective 25% ownership interests in PWM. (Fuhrman Aff. ¶ 13.) The performance income stream would be equal to 80% of the annual growth in the Management Fee and would be distributed to the individual partner whose clients were responsible for that growth in the Management Fee. *Id.*

Once the Partners reached a general agreement on how to change the compensation structure, Mr. Fuhrman instructed Mr. Lagasse to prepare an amendment to Article V of the Agreement, which is the compensation provision governing the Plaintiff's and the Individual Defendants' payment distributions and allocations. (Fuhrman Aff. ¶ 12.) After a few iterations,

all of the Partners, including the Plaintiff, agreed to the amendment and adopted it on May 1, 2014. *Id.*

Immediately following the adoption of the amendment changing the way in which PWM's annual income was allocated among the Partners, Mr. Fuhrman focused the Partners on the need to amend other provisions in the Agreement. (Fuhrman Aff. ¶ 14.) This included amending the provisions governing the price to repurchase a departing member's ownership interest in PWM to conform those provisions to the new compensation arrangements. *Id.*

On July 14, 2014, at the monthly executive committee meeting, Mr. Fuhrman made a formal presentation to the Partners outlining the major changes to the Agreement on which they needed to reach agreement. (Fuhrman Aff. ¶ 15, Exhibit 2.)

With respect to the price PWM would pay to repurchase the ownership interest of a departing member's partnership interest, the logical corollary to the amended performance-based compensation provision under Article V to which the Partners already agreed, was a similar mechanism to account for the individual Partner's performance in the price to be paid for a resigning Partner's ownership interest. (Fuhrman Aff. ¶ 17.) Accordingly, after a few iterations, Mr. Fuhrman proposed revising the calculation of the repurchase price to equal four times the base income stream, plus six times the performance income stream for the preceding four quarters (in lieu of five times all Management Fees), all multiplied by the departing Partner's percentage ownership interest. *Id.* In other words, the change in the repurchase price upon a

Partner's withdrawal from PWM was to be directly related to the prior changes made to the allocation of income agreed to by the Individual Defendants and the Plaintiff. *Id.*

Mr. Fuhrman proposed an initial timeline of the end of September to reach agreement and formally amend the Agreement. (Fuhrman Aff. ¶ 15.) Toward that end, Mr. Fuhrman met with the Individual Defendants and the Plaintiff numerous times to discuss the proposed changes to the Agreement. *Id.* The process of seeking agreement among the Partners on all of the changes to the partnership agreement proved difficult, requiring significantly more time than anticipated. (Fuhrman Aff. ¶ 18.)

While discussions continued, in late September, Mr. Pratt-Heaney told Mr. Fuhrman that he would like to sell a portion of his ownership interest. (Fuhrman Aff. ¶ 19.) Previously, Focus had offered to purchase any Partner's ownership interest at a 5.4 multiple of the Management Fee, a slight increase from the five times multiple provided in the Agreement. *Id.* Mr. Fuhrman and Mr. Pratt-Heaney approached Focus about the purchase opportunity. *Id.* Focus responded that they were not interested in acquiring Mr. Pratt-Heaney's ownership interest in PWM. *Id.* Focus did not want to purchase his equity because the split of the distribution of the Management Fees between a base amount and a performance amount meant Focus could not acquire a full participation in PWM's cash flow since it could not participate in the performance amount. *Id.*

On October 13, Mr. Fuhrman met with Mr. Burns, Mr. Loftus and the Plaintiff to let them know that Mr. Pratt-Heaney was offering to sell a portion of his ownership interest, that Focus

had declined to purchase the offered interest and that PWM's members therefore could purchase the offered interest. (Fuhrman Aff. ¶ 20.) The Agreement (again as originally drafted and as then proposed to be amended) did not require PWM or any of the Partners to purchase another Partner's ownership interest or set a purchase price for that purchase unless they withdrew from the company. *Id.* Accordingly, Mr. Fuhrman let them know that if a Partner was interested in purchasing Mr. Pratt-Heaney's partial interest, the Partner and Mr. Pratt-Heaney would have to agree on a price. *Id.*

Later that day, the Plaintiff submitted three months' notice of his decision to resign as a partner, to be effective January 14, 2015 (Plaintiff's Affidavit ¶ 5), and to sell his ownership interest back to PWM. (Fuhrman Aff. ¶ 21.) Immediately, the parties disputed the purchase price. *Id.* The parties were unable to reach a resolution. *Id.*

Meanwhile, the Individual Defendants continued to move forward with formally amending the Agreement. (Fuhrman Aff. ¶ 22.) Mr. Fuhrman directed Mr. Lagasse to amend and restate the Agreement to include the changes to which the Partners had agreed. *Id.* Mr. Lagasse delivered a draft of the amended and restated Agreement in early December. *Id.* The amended and restated Agreement included changes to a number of the Agreement's original provisions, including the calculation of the repurchase price of a resigning Member's ownership interest. (Fuhrman Aff. ¶ 23.)

On December 18, 2014, Mr. Fuhrman called a meeting with all of the Partners (including the Plaintiff) so that Mr. Lagasse could explain the modifications to the Agreement, including those pertaining to the purchase price withdrawing members were entitled to receive for their interests in PWM. (Fuhrman Aff. ¶ 23; Lagasse Aff. ¶ 11.) Mr. Lagasse explained to everyone at the meeting that he represented PWM, not its individual members, and informed the Partners that they were free to retain their own counsel to review the amended Agreement if they felt it necessary to do so. (Lagasse Aff. ¶ 13.) Mr. Lagasse also spoke to the Plaintiff prior to the meeting at which time the Plaintiff informed Mr. Lagasse that he opposed any amendment to the Agreement. *Id.* Mr. Lagasse suggested that the Plaintiff make his position clear at the start of the meeting to the Individual Defendants. The Plaintiff did so. *Id.* Mr. Lagasse did not take minutes of the meeting, but did take brief notes on the changes the Partners asked to be made to the draft, consisting of a single page of 8 x 14.5 inch paper. (Lagasse Aff. ¶ 15.)<sup>1/</sup>

Contrary to the Plaintiff's testimony that December 18 was the "key" meeting, this meeting was actually the last in a long series of meetings and discussion among the Partners that began in early 2013, almost two years earlier, to discuss amending and restating the Agreement. (Fuhrman Aff. ¶ 26.) Although Mr. Fuhrman consulted with Mr. Lagasse repeatedly throughout this process after his retention in December 2013, Mr. Lagasse did not meet or participate in the

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<sup>1/</sup> Local counsel for the Defendants is in the process of negotiating the disclosure of those notes with Plaintiff's counsel, so as to preserve any attorney-client or other privilege or protection provided by law as may apply to the same. *Id.*

discussions with the Individual Defendants or the Plaintiff except for the December 18 meeting. (Fuhrman Aff. ¶ 16.)

## ARGUMENT

### **I. Defendants Have Shown Good Cause For Mr. Lagasse’s Admission *Pro Hac Vice* Based on His Unique Expertise and Detailed Knowledge of PWM’s Compensation Structure**

Mr. Lagasse has shown good cause for his admission *pro hac vice* as counsel for Defendants in this action based on his expertise in the area of partnership compensation and the specific knowledge he possesses of PWM’s compensation structure as a result of his continuous representation of the company over a period of more than 18 months.

Section 2-16 of the Connecticut Practice Book provides that an attorney who is in good standing at the bar of another state may, for good cause shown, be permitted to practice before the state courts of Connecticut. Conn. Prac. Book § 2-16. “Good cause” may include “a showing that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar. [or] the attorney has acquired a specialized skill or knowledge with respect to the client’s affairs important to the trial of the cause . . .” *Id.*

Further, “[a] litigant’s request to be represented by counsel of his choice, when freely made, should be respected by the court, unless some legitimate state interest is thwarted by admission of the out-of-state attorney.” *Herrmann v. Summer Plaza Corp.*, 21 Conn. 263, 269 (1986) (quoting *Enquire Printing & Publishing Co. v. O’Reilly*, 193 Conn. 370, 374-75 (1984)).

As the Supreme Court of Connecticut noted, “[i]n this period of greater mobility among members of the bar and the public, and the corresponding growth in interstate business, a court should reluctantly deny any application to appear *pro hac vice*.” *Enquire Printing & Publishing Co.*, 193 Conn. 370, 375.

As set forth in detail in the affidavits of Jeff Fuhrman and David Lagasse, Mr. Lagasse has developed extensive knowledge of PWM’s performance driven compensation and equity arrangements and has unique expertise in this area of the law, the understanding of which is central to the issues Plaintiff raises in this litigation. Mr. Lagasse’s work on the equity buy-out provisions of the Agreement was not, as Plaintiff claims, a “discrete” service unconnected to his prior engagement by PWM, but was part of a broader process of restructuring partner compensation to reward and compensate the Partners’ individual performance, which the Plaintiff and the Individual Defendants negotiated over the course of 2013 and 2014.

The Plaintiff’s claim that Mr. Lagasse’s unique expertise in performance driven compensation and equity arrangements is not critical to his representation of Defendants blatantly ignores the fact that the central issue in this litigation is Plaintiff’s challenge to PWM modifying the Agreement to tie the value of each partner’s ownership interest to the changes in the annual compensation structure to reward individual performance. As both Mr. Fuhrman and Mr. Lagasse make clear, the change in the purchase price upon a Partner’s withdrawal from PWM is *directly related* to the prior changes made to the allocation of income that the Partners,

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including the Plaintiff, requested and to which they agreed on May 1, 2014. (Fuhrman Aff. ¶ 17; Lagasse Aff. ¶ 8.)

Mr. Lagasse's expertise and his familiarity with PWM's compensation structure are essential to understanding the claims in this litigation. The Defendants have shown good cause why they should be permitted to receive the benefits of Mr. Lagasse's deep familiarity with PWM's compensation methods and his prior expertise in structuring similar provisions. Accordingly, Mr. Lagasse's motion should be granted. *See Wissink v. Goodrich*, No. 353773, 1994 Conn. Super. LEXIS 2904 \*5 (Conn. Super. Ct. Nov. 16, 1994) (out-of-state attorneys' experience handling complex medical malpractice cases warranted admission to represent plaintiff *pro hac vice*).<sup>2</sup>

Further, Mr. Lagasse's representation of PWM with respect to restructuring the Agreement's member compensation and buy-out provisions involved a longstanding and ongoing relationship dating back to late 2013. Plaintiff mischaracterizes the modifications to the compensation and buy-out provisions as "two discrete matters." They are not; they are highly interrelated and involve the same overarching business goal of tying member remuneration more closely to individual performance. Mr. Lagasse's work on the Agreement's various provisions overlapped significantly over a period of several months and involved repeated discussions with Mr. Fuhrman and an intimate knowledge of PWM's business.

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<sup>2</sup> Copies of all unreported cases are attached hereto as Exhibit 1.

Plaintiff's challenge to admitting Mr. Lagasse is thus reduced to a challenge that Mr. Lagasse has represented PWM, not the Individual Defendants, for a relatively short period (now 18 months). The extent and duration of Mr. Lagasse's relationship with the Individual Defendants, standing alone, does not weaken the Defendants' showing of good cause. *See Stamford Wrecking Co. v. City of New Haven*, No. 07-5013102S, 2008 Conn. Super. LEXIS 2398 \*9 (Conn. Super. Ct. Sept. 23, 2008) ("a pre-existing relationship is not a requirement to a finding of good cause"); *Zogaj v. Kaczmarek*, No. 07-5004755, 2007 Conn. Super. LEXIS 3127 (Conn. Super. Ct. Nov. 27, 2007) (out-of-state counsel was entitled to admission *pro hac vice* absent preexisting relationship with the plaintiff where counsel possessed specialized expertise relating to the litigation). Plaintiff's challenge also ignores the fact that Mr. Fuhrman, PWM's senior executive, has a 16 year professional relationship with Mr. Lagasse. (Fuhrman Aff. ¶ 9.)

Accordingly, because Mr. Lagasse has both a unique expertise that is critical to this litigation and a longstanding relationship with PWM, Defendants have shown good cause and the Court should grant Mr. Lagasse's motion for admission *pro hac vice*.

## **II. Mr. Lagasse is Not a Necessary Witness in This Litigation**

The Plaintiff's argument that Mr. Lagasse should be disqualified from representing the Defendants because Plaintiff intends to call him as a witness because of his attendance at a single, December 18 meeting fails to satisfy the standard for disqualification set forth in Connecticut's Rules of Professional Conduct.

The Connecticut courts have concluded that the Plaintiff has to meet a high burden “before disqualifying an attorney and negating the right of a client to be represented by counsel of choice.” *Blakemar Construction, LLC v. CRS Engineering, Inc.*, No. 04-0412727S, 2005 Conn. Super. LEXIS 385 \*4-5 (Conn. Super. Ct. Feb. 9, 2005) (internal quotations omitted). “[B]ecause of the serious impact attorney disqualification has on a party’s right to counsel of its choice, such relief ordinarily should be granted only when a violation of the Canons of the Code of Professional Responsibility ‘poses a significant risk of trial taint.’” *Westerly Capital, LLC v. Windmill Mgmt., LLC*, No. 08-6000954S, 2008 Conn. Super. LEXIS 2826 \*8 (Conn. Super. Ct. Oct. 30, 2008) (quoting *Vincent v. Essent Healthcare of Connecticut*, 465 F.Sup.2d 142, 145 (D.Conn. 2006)).

Rule of Professional Conduct 3.7 provides that “[a] lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a *necessary* witness ...” (emphasis added). Following the Connecticut court’s reluctance to disqualify a party’s choice of counsel, “whenever an adversary declares his intent to call opposing counsel as a witness, prior to ordering disqualification of counsel, the court should determine whether counsel’s testimony is, in fact, genuinely needed.” *Atlantic Richfield Co. v. Canaan Oil Co.*, 202 Conn. 234, 248-49 (1987) (internal quotations omitted), *overruled on other grounds, Santopietro v. City of New Haven*, 239 Conn. 207, 213 n.8 (1996). An attorney’s testimony is only genuinely needed if the attorney is a

*necessary* witness *and* the information the attorney possesses *cannot* be obtained from other sources.

Applying this standard, the Connecticut Court of Appeals recently rejected a plaintiff's claim that defense counsel was a necessary witness. That Court noted:

A necessary witness is not just someone with relevant information . . . but someone who has material information that no one else can provide. Whether a witness ought to testify is not alone determined by the fact that he has relevant knowledge or was involved in the transaction at issue. Disqualification may be required only when it is likely that the testimony to be given by the witness is necessary. Testimony may be relevant and even highly useful but still not strictly necessary. A finding of necessity takes into account such factors as the significance of the matters, weight of the testimony and availability of other evidence . . . *There is a dual test for necessity. First the proposed testimony must be relevant and material. Second, it must be unobtainable elsewhere.*

*Dinardo Seaside Tower Ltd. v. Sikorsky Aircraft Corp.*, 153 Conn. App. 10, 49 (Conn. Ct. App. 2014) (emphasis in original). Under this standard, Mr. Lagasse's testimony is not "necessary" in this action.

As set forth in Mr. Fuhrman's and Mr. Lagasse's affidavits, the Individual Defendants, the Plaintiff and Mr. Fuhrman had extensive discussions leading to the formal amendment of the Agreement, including its repurchase provisions, prior to the December 18 meeting. Mr. Lagasse did not participate in any meeting among the Plaintiff, the Individual Defendants and Mr. Fuhrman in the two years leading up to the December 18 meeting. (Fuhrman Aff. ¶ 16.) He therefore cannot testify to what occurred at any of those meetings.

Mr. Lagasse's testimony is also not a necessary witness for the December 18 meeting. Mr. Fuhrman called the meeting solely for the purpose of having Mr. Lagasse explain the changes made to the Agreement to PWM's Partners. (Fuhrman Aff. ¶ 23; Lagasse Aff. ¶ 11.) Any information relating to Plaintiff's claims that was disclosed at the meeting is equally available from the Individual Defendants or Mr. Fuhrman, all of whom, along with Plaintiff himself, were present throughout the entire meeting.

Plaintiff simply fails to explain how information concerning the December 18 meeting or any information of the events preceding that meeting can only be obtained from Mr. Lagasse.

A brief review of the Plaintiff's list of the issues about which he would ask Mr. Lagasse in his brief makes the point that Mr. Lagasse is not the only witness available to testify. Even assuming the issues Plaintiff identifies are relevant and material -- a claim Defendants dispute -- Mr. Lagasse is not the sole witness from whom Plaintiff can obtain this information:

<b>Issue</b>	<b>Witness</b>
• When was Mr. Lagasse retained, for what purpose and by whom?	Mr. Fuhrman
• Who he considered to be his client(s)?	Mr. Fuhrman
• Whether he represented the Individual Defendants and, if so, whether he purported to represent [the Plaintiff] as well?	Mr. Fuhrman
• What discussions he had with, and what direction he received from, whoever retained his services?	Mr. Fuhrman

- What objectives he sought to accomplish on behalf of his client(s)? Mr. Fuhrman  
Individual Defendants  
Plaintiff
- What he did? Mr. Fuhrman  
Individual Defendants  
Plaintiff
- What he observed and heard at the December 18 meeting, including any private discussions he may have had with [the Plaintiff]? Mr. Fuhrman  
Individual Defendants  
Plaintiff
- Whether there was a dispute between and among the members of PWM at the December 18 meeting? Mr. Fuhrman  
Individual Defendants  
Plaintiff
- Whether there was dispute between and among the members of PWM at the December 18 meeting? Mr. Fuhrman  
Individual Defendants  
Plaintiff
- Whether the dispute predated that meeting? Mr. Fuhrman  
Individual Defendants  
Plaintiff
- How he addressed that meeting? Mr. Fuhrman  
Individual Defendants  
Plaintiff
- Whether he ever advised that the dispute required the members of PWM to proceed through independent counsel and, if not, why not? Mr. Fuhrman  
Individual Defendants  
Plaintiff
- Whether there was a vote of the members at the December 18 meeting or at any other time? Mr. Fuhrman  
Individual Defendants  
Plaintiff

- Whether he kept notes at the December 18 meeting? Mr. Fuhrman<sup>3/</sup>
- What discussion he had with the Individual Defendants following the December 18 meeting? Mr. Fuhrman  
Individual Defendants
- Why he included Lomas as a signatory on the proposed amended PWM agreement? Mr. Fuhrman
- What steps he took, if any, to secure Lomas' signature on the proposed amended PWM agreement? Mr. Fuhrman

The above issues are fully within the knowledge of the Plaintiff, the Individual Defendants or Mr. Fuhrman. Accordingly, Plaintiff has failed to meet the significant burden of demonstrating that Mr. Lagasse is a necessary witness in this action and that Defendants should be deprived of their essential right to counsel of their choice.

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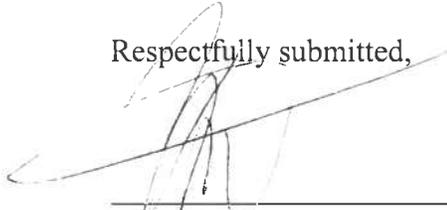
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<sup>3</sup> As noted in Footnote 1, Mr. Lagasse's notes for the meeting will be provided to the Plaintiff pursuant to stipulation.

**CONCLUSION**

For all of the foregoing reasons, Defendants respectfully request that the Court grant Mr. Lagasse's motion for admission *pro hac vice*.

Respectfully submitted,



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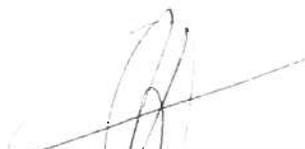
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of August 2015, I caused the foregoing Brief in Further Support of David R. Lagasse, Esq.'s Motion for Admission *Pro Hac Vice* to be served via electronic mail on counsel as follows:

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Richard J. Buturla

# **EXHIBIT 1**



RITA A. WISSINK v. ISAAC GOODRICH, ET AL

NO. 35 37 73

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF NEW  
HAVEN, AT NEW HAVEN

1994 Conn. Super. LEXIS 2904

November 16, 1994, Decided

November 16, 1994, Filed

NOTICE: [\*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

JUDGES: Fracasse

OPINION BY: FRACASSE

OPINION

MEMORANDUM OF DECISION

Presently before this court is plaintiff's motion for admission of two attorneys at law pro hac vice.

The plaintiff, Rita Wissink, filed a four count, revised complaint on August 2, 1994, against the defendants Dr. Isaac Goodrich and the Neurological Associates of New Haven. She alleges that the defendant, Dr. Goodrich, was negligent in performing back surgery on her. The plaintiff specifically alleges that he failed to obtain proper informed consent, failed to provide proper pre-operative treatment, failed to diagnose her condition properly, performed the operation improperly, and failed to give her proper post-operative treatment.

On June 28, 1994, plaintiff, through her attorney, who is admitted to the bar of this State, filed a motion for admission pro hac vice of Bertram Fisher and Kevin McDonald, each of whom is a member of the Bar of the State of New York, in good standing. Defendants, on July 21, 1994, filed an objection to said motion.

Section [\*2] 24 of the Practice Book states that "an attorney who is in good standing at the bar of another state . . . may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal. . . ." *Herrmann v. Summer Plaza Corp.*, 201 Conn. 263, 267, 513 A.2d 1211. The application must be accompanied by an affidavit attesting to the professional conduct and status of the attorney. Practice Book § 24. An attorney from Connecticut must be present at all proceedings, sign all documents, and take responsibility for the appearing attorney. Practice Book § 24. Good cause "shall be limited to facts or circumstances affecting the personal or financial welfare of the *client* and not the *attorney*." (Emphasis added.) *Herrmann v. Summer Plaza Corp.*, supra, 267, quoting Practice Book § 24. The factors in establishing good cause under § 24 may include a showing of a relationship between attorney and client predating the cause of action or subject matter of the litigation at bar, the [\*3] specialized skill or knowledge of the attorney seeking to appear, or the inability of the

litigant to obtain representation by Connecticut counsel. *Id.*, citing Practice Book § 24.

As to the procedure followed in this case, this court observes that the proper procedure to follow under said § 24 is the presentation of a written application by a "member of the bar of this state"; the filing of a motion by plaintiff through her Connecticut attorney is not appropriate. *Silverman v. St. Joseph's Hospital*, 168 Conn. 160, 180, 363 A.2d 22.

"The decision to grant or deny an application to appear pro hac vice rests within the sound discretion of the court." *Enquire Printing & Publishing Co. v. O'Reilly*, 193 Conn. 370, 373, 477 A.2d 648. The court considers the "facts or circumstances affecting the personal or financial welfare of the client." *Enquire Printing & Publishing Co. v. O'Reilly*, supra, 193 Conn. 375. "This limited scope of inquiry strikes the balance between the state's interest in regulating attorneys seeking to be admitted to practice pro hac vice and the litigant's interest in obtaining counsel of his own choice. In this period of greater mobility among members [\*4] of the bar and the public, and the corresponding growth in interstate business, a court should reluctantly deny an application to appear pro hac vice. A litigant's request to be represented by counsel of his choice, when freely made, should be respected by the court, unless some legitimate state interest is thwarted by admission of the out-of-state attorney." *Id.*

In the present case, improper and proper reasons for this court to grant the motion have been presented. Lawyers are not in the business of financing litigation. The court must look at the client's and not the attorney's welfare when deciding whether to grant an admission pro hac vice. See *Silverman v. St. Joseph's Hospital*, 168 Conn. 160, 178-79, 363 A.2d 22. It is irrelevant to the court's decision regarding this motion whether a solo practitioner can afford the costs and expenses of litigation. It is the party and not the lawyer who is ultimately responsible for the costs and expenses of litigation. Rule 1.8 Rules of Professional Conduct. A lawyer's lack of financial resources to fund litigation is an improper factor for this court to consider.

Beyond this impermissible argument of a lawyer's lack of financial resources, [\*5] based on the supporting papers, the plaintiff does establish good cause for the admission pro hac vice of out-of-state counsel. Attorneys Bertram Fisher and Kevin McDonald focus their practice

on medical malpractice cases and are experienced in handling complex medical malpractice cases. Each of them is admitted to the Bar of the State of New York and each is in good standing. Importantly, the plaintiff was unable to find additional Connecticut counsel to assist in her representation. The plaintiff's Connecticut counsel will be present at all proceedings and will sign all documents as required under Practice Book § 24. Finally, the defendants do not advance a legitimate state interest which would be thwarted by the admission pro hac vice of each attorney.

Based on the supporting papers, good cause has been shown to admit pro hac vice each of the out-of-state attorneys and to conclude their admission will beneficially affect her welfare. The court should grant the plaintiff's motion for admission of the individual attorneys Bertram Fisher and Kevin McDonald subject to certain requirements.

Accordingly, the individual attorneys, Bertram Fisher and Kevin McDonald, are admitted pro [\*6] hac vice, and upon filing an appearance in this case each attorney shall be subject to the laws of Connecticut, the Connecticut Rules of Professional Conduct and the rules of practice regulating the conduct and practice of attorneys admitted for all purposes in this state, and shall be subject to discipline including contempt, and reprimand, suspension, or revocation of his privilege to practice pro hac vice.

Also, on filing an appearance in this case, each attorney

(1) shall execute and file with the clerk a completed appearance form together with (i) a written commitment to observe the Connecticut Rules of Professional Conduct and other rules regulating the conduct and practice of attorneys admitted to practice in this State; (ii) a duly acknowledged instrument in writing setting forth counsel's address, which each counsel shall keep current, and designating the Chief Clerk of the Superior Court for the Judicial District of New Haven at New Haven as his agent upon whom process and notice may be served; and (iii) a written commitment to notify said clerk of counsel's resignation from practice in any state or jurisdiction in which said person has been admitted to practice law, or [\*7] of any censure, reprimand, suspension, revocation or other disciplinary action relating to his right to practice in such state or jurisdiction.

Service of process on the clerk pursuant to the designation filed as aforesaid shall be made by personally delivering to and leaving with the Chief Clerk, or with a deputy or assistant authorized by the clerk to receive service, duplicate copies of such process together with a fee of \$ 20. Service of process shall be complete when the clerk has been so served. The clerk shall no later than the seventh day following such service send one of the copies to counsel to whom the process is directed, by certified mail, return receipt requested, addressed to counsel at the most current address in this court file.

Such service shall have the same effect as if made personally upon counsel in any action or proceeding brought against counsel and arising out of or based upon

any conduct relating to this case, including (a) legal services rendered or offered to be rendered by the counsel to residents of the State of Connecticut, relating to this case, and (b) any contempt and disciplinary proceeding relating to this case.

In imposing any sanction against [\*8] counsel pro hac vice, the court may act sua sponte or on the recommendation of the statewide grievance committee. To the extent feasible, the court shall proceed in a manner consistent with the Practice Book rules governing discipline of the bar of the State of Connecticut.

Fracasse, J.



Stamford Wrecking Company v. City of New Haven et al.

CV075013102S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF FAIRFIELD  
AT BRIDGEPORT

2008 Conn. Super. LEXIS 2398

September 23, 2008, Decided

September 23, 2008, Filed

NOTICE: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

New York law firm of Satterlee Stephens Burke and Burke. The defendant City of New Haven filed an objection to the application; the application was denied by the court, Arnold, J., on April 14, 2008, for "non-compliance with provisions of Practice Book Sec. 2-16."

JUDGES: [\*1] Barbara N. Bellis, J.

OPINION BY: Barbara N. Bellis

OPINION

Subsequently, on June 24, 2008, local counsel for the plaintiff filed two separate applications to admit Attorney Saurack and Attorney Belmonte pro hac vice. The defendant City of New Haven filed its objection to [\*2] same on July 1, 2008. <sup>1</sup> The plaintiff filed its reply on July 10, 2008, and filed supplemental affidavits on August 5, 2008.

*MEMORANDUM OF DECISION*

The matter presently before the court arises out of an alleged agreement between the plaintiff, Stamford Wrecking Company, and the defendant City of New Haven relating to asbestos abatement of the Macy's Building located at 20 Church Street in New Haven, Connecticut. Also named as defendants are Payne Environmental, LLC, Neil Payne, Dunn Environmental, Inc. and Richard Dunn, all of whom were allegedly engaged in environmental monitoring of the project.

On April 1, 2008, local counsel for the plaintiff filed an application to admit Walter A. Saurack and Christopher R. Belmonte pro hac vice. Both Walter Saurack and Christopher R. Belmonte are members of the

1 According to the objection which was e-filed by counsel on behalf of the city, all defendants joined in the objection.

Connecticut Practice Book §2-16 governs the admission of attorneys from other jurisdictions to appear before the courts in Connecticut. It provides in relevant part as follows:

An attorney who is in good standing at the bar of another state . . . may, upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state, be permitted in the

discretion of the court to participate to such extent as the court may prescribe in the presentation of a cause or appeal in any court of this state; provided, however, that (1) such application shall be accompanied by the affidavit of the applicant (a) certifying whether such applicant has a grievance pending against him or her in any other jurisdiction, has ever been reprimanded, suspended, placed on inactive status, disbarred, or otherwise disciplined, or has ever resigned from the practice of law and, if so, setting forth the circumstances concerning [\*3] such action, (b) designating the chief clerk of the superior court for the judicial district in which the attorney will be appearing as his or her agent upon whom process and service of notice may be served, (c) agreeing to register with the statewide grievance committee in accordance with the provisions of this chapter while appearing in the matter in this state and for two years after the completion of the matter in which the attorney appeared, and to notify the statewide grievance committee of the expiration of the two year period, and (d) identifying the number of cases in which the attorney has appeared pro hac vice in the superior court of this state since the attorney first appeared pro hac vice in this state and (2) a member of the bar of this state must be present at all proceedings and must sign all pleadings, briefs and other papers filed with the court and assume full responsibility for them and for the conduct of the cause and of the attorney to whom such privilege is accorded . . . Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include a showing [\*4] that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause,

or that the litigant is unable to secure the services of Connecticut counsel.

"The decision to grant or deny an application to appear pro hac vice rests within the sound discretion of the court. Although the court receiving an application for admission pro hac vice has broad discretionary power, the exercise of that power is not unfettered. Our federal and state constitutions prohibit requiring applicants--including those who request admission for special and infrequent occasion--to possess qualifications that have no rational connection with the applicant's fitness or capacity to practice law. A trial court entertaining an application for admission pro hac vice must also consider the interests of the client who seeks to have the out-of-state attorney admitted. The right to have counsel of one's own choice, although not absolute, is important enough to require a legitimate state interest before a person can be deprived [\*5] of that right. In fact, Practice Book 24 embodies this constitutional mandate, requiring the court to consider the facts or circumstances affecting the personal or financial welfare of the client, when reviewing the application. This limited scope of inquiry strikes the balance between the state's interest in regulating attorneys seeking to be admitted to practice pro hac vice and the litigant's interest in obtaining counsel of his own choice. In this period of greater mobility among members of the bar and the public, and the corresponding growth in interstate business, a court should reluctantly deny any application to appear pro hac vice. A litigant's request to be represented by counsel of his choice, when freely made, should be respected by the court, unless some legitimate state interest is thwarted by admission of the out-of-state attorney." *Enquire Printing and Publishing Co. v. O'Reilly*, 193 Conn. 370, 373-75, 477 A.2d 648 (1984) (citations omitted; internal quotations omitted).

In the present matter, the applications presented by local counsel are in order, and are accompanied by the requisite affidavits of out-of-state counsel, both of which are more detailed than the affidavits submitted [\*6] with the first application which was denied by Judge Arnold. Now, the affidavits of Attorney Belmonte and Attorney Saurack, both dated June 16, 2008, satisfy the requirement that out-of-state counsel's participation be limited to "special and infrequent occasion" by indicating that the affiants had not previously appeared pro hac vice in the Connecticut Superior Court on any matters. The

prerequisite that the out-of-state attorney be a member in good standing of the bar of another state, the District of Columbia, or commonwealth of Puerto Rico is satisfied as well, as each affidavit lists the courts with whom each affiant is a member of good standing. The affidavits otherwise meet the requirements of 2-16, with minor exception.<sup>2</sup>

2 While each affidavit avers that the affiant has no grievance pending against him in any jurisdiction, and has never been "reprimanded, suspended, placed on inactive status, disbarred, or ever resigned from the practice of law," Practice Book §2-16 requires the affiant to certify as well whether the affiant has ever been "otherwise disciplined." Both affidavits fail to address that. Additionally, while the affidavits indicated that the affiants agree to register [\*7] with the statewide grievance committee for the pendency of this matter and for a period of two years following its completion, §2-16 also requires the affiant to identify and notify the statewide grievance committee of the expiration of the two-year period; the affidavits fail to satisfy that latter requirement.

The defendants take the position that the affidavits "fail to provide any facts or circumstances affecting the personal or financial welfare of the client sufficient for a finding that the Applications are in fact being made for good cause." They argue in their brief that the statements in the affidavits, including the statements that "the outcome of the subject asbestos abatement litigation will have a direct impact on the Plaintiff's financial welfare," are merely unsupported assertions. They posit that while the affidavits assert that the "firm has specialized expertise, skill and knowledge with respect to Plaintiff's asbestos related claims,"<sup>3</sup> they fail to specify whether that is a result of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar as set forth in Practice Book §2-16.

3 The supplemental affidavits [\*8] filed on August 5, 2008 expand on the experience of the affiants. The supplemental affidavits clarify that the attorneys themselves, and not just their firms, are experienced in litigation involving asbestos exposure. Specifically, with respect to Attorney Belmonte, the supplemental affidavit outlines his

five-year involvement in approximately twenty cases pending in state and federal courts in New York dealing with property damage caused by asbestos in building materials. Attorney Saurack's supplemental affidavit identifies, *inter alia*, his experience working on approximately fifteen cases pending in state and federal courts in New York and state court in New Jersey involving personal injury and property damage caused by asbestos in building materials.

Practice Book §2-16 provides that good cause for allowing out-of-state counsel the privilege of appearing pro hac vice "shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney." §2-16 further provides that "[s]uch facts *may* include a showing that by reason of a long-standing attorney-client relationship predating the cause of action or subject matter of the litigation [\*9] at bar, the attorney has acquired a specialized skill or knowledge with respect to the clients' affairs important to the trial of the cause, or that the litigant is unable to secure the services of Connecticut counsel." (Emphasis added.) "These factors are not exclusive and allow the court to determine good cause based on additional evidence." *Zogaj v. Kaczmerek*, Superior Court, judicial district of Waterbury at Waterbury, Docket No. 07-5004755 (November 27, 2007, Agati, J.) [44 Conn. L. Rptr. 565, 2007 Conn. Super. LEXIS 3127] (granting application, where there was no pre-existing attorney client relationship between the plaintiffs and out-of-state counsel, where out-of-state counsel specialized in birth-related medicine malpractice claims, and where admission would not violate any legitimate state interest).

As in the *Zogaj* case, out-of-state counsel here have sworn in their affidavits to considerable experience in a specialized area relating to asbestos exposure and/or remediation. While there does not appear to be a pre-existing relationship, a pre-existing relationship is not a requirement to a finding of good cause, and the court is cognizant of the weight that should be accorded to a plaintiff's desire to [\*10] have counsel of its own choosing.

Additionally, in the present case, there is no indication of any legitimate state interest that would override a party's right to have counsel of its own choosing. As pointed out by the court in *Yale Literary Magazine v. Yale University*, 4 Conn.App. 592, 605, 496

A.2d 201 (1985), aff'd 202 Conn. 672, 522 A.2d 818 (1987), legitimate state interests thwarted by the admission of out-of-state counsel, sufficient to overcome a litigant's right to have counsel of her own choosing, have generally involved violations of the disciplinary rules of the code of professional responsibility, or issues relating to control of the court docket. Here, the defendants do not advance any argument that admission of out-of-state counsel here will thwart any legitimate state interest nor is any such issue apparent. See e.g. *Corcoran v. German Society*, Superior Court, Judicial District of New London, Docket No. 562775, 2003 Conn. Super. LEXIS 1644 (May 20, 2003, Hurley, J.) (granting plaintiff's application, where out-of-state attorneys had a prior relationship with the plaintiff and experience in trying gender discrimination cases, and where the defendant did not present any evidence that a state interest would be thwarted).

For the [\*11] foregoing reasons, the court finds as follows. Good cause exists for extending the privilege of appearing pro hac vice to out-of-state counsel, based upon the affidavits, which indicate that the plaintiff, which will be directly financially impacted by the outcome of this litigation, seeks to have out-of-state counsel, who have significant experience, in the subject matter, represent it. If the applicant files, within four weeks, supplemental affidavits, indicating that the affiant has never been "otherwise disciplined," and that the affiant agrees to identify and notify the statewide grievance committee of the expiration of the two-year period, the applicant will have then met the established standard set forth in our rules of practice, and the court will then grant the admission of proposed counsel pro hac vice, subject to the following conditions:

1. Attorney Neal Moskow will sign all pleadings, briefs, requests and applications by the plaintiff with this court and will assume full responsibility for all filings and for the conduct of Attorneys Saurack and Belmonte.

2. Attorney Moskow will be responsible to pay all court fees and court

reporters' costs incurred in the prosecution [\*12] of this action.

3. Service of any pleading on Attorney Moskow shall be deemed compliance by any party with the rules of practice requiring service on any party.

4. Attorneys Saurack and Belmonte will be subject to all rules of the court and noncompliance with any rule will subject them personally and/or collectively to termination to this limited admission to appear before the court in this case.

5. Attorney Moskow shall not ask the court to be relieved of the requirement that he will familiarize himself with this matter and be personally present for all legal proceedings.

6. Attorneys Saurack and Belmonte, within fifteen days of this decision, shall comply with all Practice Book provisions relative to admission pro hac vice including but not limited to:

a) Paying all fees associated with the Client Security Fund;

b) Registering with the Statewide Grievance Committee;

c) Filing of a certificate of Good Standing from the bar of their state.

BELLIS, J.



Sihana Zogaj et al. v. John Kaczmarek et al.

CV075004755S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF  
WATERBURY AT WATERBURY

2007 Conn. Super. LEXIS 3127

November 27, 2007, Decided  
November 27, 2007, Filed

**NOTICE:** THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

**JUDGES:** [\*1] Salvatore C. Agati, J.

**OPINION BY:** Salvatore C. Agati

**OPINION**

*MEMORANDUM OF DECISION RE MOTION FOR PRO HAC VICE ADMISSION OF KENNETH M. SUGGS AND MARIA H. DAWSON (# 104) AND GILES H. MANLEY (# 111)*

This action was commenced by the parents of Sihana Zogaj, a minor child against the defendants; Dr. Kaczmarek, Specialists in Women's Healthcare, P.C. and Greater Waterbury Health Network, Inc. for alleged claims of medical malpractice by the defendants associated with her birth.

Counsel representing the plaintiffs is the Law Office of R. Bartley Halloran. The plaintiffs have filed motions for Pro Hac Vice Admissions of individual counsel Kenneth M. Suggs, Marina H. Dawson and Giles H.

Hanley of the law firm of Janet, Jenner & Suggs, LLC of Baltimore, Maryland. In addition to the motions filed by the plaintiffs with supporting affidavits filed for each of the proposed attorneys, the court has reviewed the objections filed by all the defendants, the supporting memoranda filed by all parties and the court heard testimony at a hearing held on the motions.

In summary, the plaintiffs are seeking the admission of the above-referenced attorneys pro hac vice because of their specialization, concentration and expertise in [\*2] birth-related medical malpractice claims.

The defendants are objecting to their admission pro hac vice on various grounds: 1) that there is no pre-existing attorney-client relationship between plaintiffs and the proposed attorneys, (i.e. good cause has not been established by the plaintiffs); 2) plaintiffs have failed to demonstrate an inability to retain Connecticut counsel who specialize in medical malpractice suits of this type; and 3) the admission of proposed counsel could violate legitimate state interests (i.e. how the court will effectively administer the prosecution of this case and how the court must protect Connecticut attorneys from out of state attorneys representing litigants in these type of actions).

The admission of an attorney from another jurisdiction to appear before the courts in Connecticut is governed by Connecticut Practice Book §2-16, which in

pertinent part provides guidance to the court on what facts are to be considered by the court in making its decision as follows:

. . . Good cause for according such privilege shall be limited to facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include [\*3] a showing that by reason of a longstanding attorney-client relationship predating the cause of action or subject matter of the litigation at bar, the attorney has acquired a specialized skill or knowledge with respect to the client's affairs important to the trial of the cause, or that the litigant is unable to secure the services of Connecticut counsel.

These factors are not exclusive and allows the court to determine good cause based on additional evidence.

The court resolves the first and second grounds raised by the defendants based on the testimony provided by Mr. Shukrije Zagaj, the father of Sihana Zogaj, who instituted this action on behalf of his child. Mr. Zogaj testified that he immigrated to this country and therefore does not have a strong command of the English language. However, upon inquiry by the court, he testified that he had a longstanding attorney-client relationship with Attorney Richard Tolisano with whom he has complete confidence and trust. As a result of his child's birth trauma, he consulted with Attorney Tolisano who referred him to Attorney Halloran. He further testified that he trusts and respects Attorney Halloran's opinion and representation. He indicated [\*4] that he agreed with Attorney Halloran's advice to seek representation for this child's cause of action by the pro hac vice counsel which are being proposed by the plaintiff.

The standard by which a court evaluates a motion for pro hac vice admission is well defined. "The decision to grant or deny an application to appear pro hac vice rests within the sound discretion of the court . . . The court must not abuse its discretionary powers, however, and reject the petition without giving due consideration to the petitioner's request. The right to have counsel of one's own choice, although not absolute, is important enough to require a legitimate state interest before a person can

be deprived of that right . . . In this period of greater mobility among members of the bar and the public, and the corresponding growth in interstate business, a court should reluctantly deny an application to appear pro hac vice. A litigant's request to be represented by counsel of his choice, when freely made, should be respected by the court, unless some legitimate state interest is thwarted by admission of the out-of-state attorney." (Citations omitted; internal quotation marks omitted.) *Herrmann v. Summer Plaza Corp.*, 201 Conn. 263, 268-69, 513 A.2d 1211 (1986).

Based [\*5] on the standard as established, the court finds that admission of proposed counsel pro hac vice to represent the plaintiffs is reasonable and permissible.

however, the court must still deal with the issue of whether or not admission pro hac vice is a violation of legitimate state interests,

Research of relevant Connecticut case law reveals two categories of state interests which have been judicially determined "sufficient" so as to compel denial of motions for pro hac vice admission. The first relevant interest is the court's efficiency and docket control. In *Herrmann v. Summer Plaza Corp.*, *supra*, 201 Conn. 269, our Supreme Court stated that "[t]here is a legitimate state interest in granting the trial court the power to control its own docket." There, the Supreme Court affirmed the trial court's denial of the pro hac vice motion of an out-of-state attorney, as the granting of such motion would have "necessitated further continuance of the case" and would have thwarted the legitimate state interest "of docket control and expeditious caseflow management." *Id.*, 270.

The second circumstance in which our courts have found a legitimate state interest concerns the potential for ethical violations. [\*6] "The legitimate state interest thwarted by the admission of an out-of-state attorney, sufficient to overcome the litigant's right to have counsel of his choice, generally involves ethical problems caused by allowing out-of-state counsel to appear." *Yale Literary Magazine v. Yale University*, 4 Conn.App. 592, 605, 496 A.2d 201 (1985), *aff'd*, 202 Conn. 672, 522 A.2d 818 (1987). See, e.g., *Enquire Printing & Publishing Co. v. O'Reilly*, 193 Conn. 370, 374-77, 477 A.2d 648 (1984) (where both parties intended to call the defendants' out-of-state attorney as a witness during the trial, the attorney would be unable to represent the defendants pursuant to the Code of Professional Responsibility);

*Gamlestaden PLC v. Lindholm*, Superior Court, judicial district of Stamford-Norwalk at Stamford, Docket No. CV 93 0127912, 1994 Conn. Super. LEXIS 1667 (Karazin, J., June 29, 1994) (the court found a conflict with the out-of-state attorneys' representation of the defendants in violation of the Rules of Professional Conduct, namely, the existence of a continuing attorney-client relationship with an entity related to the case, where confidential information had been exchanged).

The court concludes that based on the case law, the admission [\*7] of Attorneys Suggs, Dawson and Manley pro hac vice would not be a violation of any legitimate state interests at this time. The case is in its infancy on its litigation track, therefore, there would not be any undue delay. Also, there is no evidence of ethical violations by any of the proposed attorneys.

The court will grant the motion for admission of Attorneys Suggs, Dawson and Manley pro hac vice with the following conditions:

1. Attorney Halloran will sign all pleadings, briefs, requests and applications by the plaintiff with this court and will assume full responsibility for all filings and for the conduct of Attorneys Suggs, Dawson and Manley.

2. Attorney Halloran will be responsible to pay all court fees and court reporters' costs incurred in the prosecution of this action.

3. Service of any pleading on Attorney Halloran shall be deemed compliance by any party with the rules of

practice requiring service on any party.

4. Attorneys Suggs, Dawson and Manley will be subject to all rules of the court and non-compliance with any rule will subject them personally and/or collectively to termination to this limited admission to appear before the court in this case.

5. Attorney Halloran shall [\*8] not ask the court to be relieved of the requirement that he will familiarize himself with this matter and be personally present for all legal proceedings.

6. Attorneys Suggs, Dawson and Manley, within fifteen days of this decision, shall comply with all Practice Book provisions relative to admission pro hac vice including but not limited to:

a.) Paying all fees associated with the Client Security Fund;

b.) Registering with the Statewide Grievance Committee;

c.) Filing of a certificate of Good Standing from the bar of their state.

7. The court orders all counsel, including pro hac vice counsel, to appear at a Status Conference in six months to review how the case is progressing relative to pleadings and discovery.

AGATI, J.



Blakemar Construction, LLC v. CRS Engineering, Inc. et al.

CV040412727S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF  
FAIRFIELD, AT BRIDGEPORT

2005 Conn. Super. LEXIS 385

February 9, 2005, Decided

February 9, 2005, Filed

NOTICE: [\*1] THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

JUDGES: SKOLNICK, J.

OPINION BY: Skolnick

OPINION

*MEMORANDUM OF DECISION*

Before the court is defendant's, CRS Engineering, Inc. and Robert Schulz's motion to disqualify Blakemar Construction, LLC's counsel and his law firm should be granted on the ground that Blakemar's counsel George Lawler from this case on the grounds that attorney Lawler and his firm would be called as a material witness in this matter.

The plaintiff, Blakemar Construction, LLC, filed a complaint alleging that it entered into a written agreement with the defendants, CRS Engineering, Inc. and Robert Schulz, to purchase land. The plaintiff claims that, as part of the agreement, the defendants were to grant an easement from an adjoining property to the subject land,

and to cooperate with the plaintiff in securing municipal approvals for building on the land. It is further alleged that once the plaintiff received the approval to build on the land with the condition that the land have the necessary easement, the defendants informed the plaintiff that it had sold the adjoining [\*2] property without first granting the plaintiff the necessary easement, thereby negating the contract.

On August 24, 2004, the defendants filed a motion to disqualify the plaintiff's counsel and his law firm on the ground that the plaintiff's counsel is to be called as a material witness in this matter. The defendants did not submit a memorandum of law in support of their motion, and the plaintiff did not file a written opposition to the motion, although it did argue against the motion at short calendar.

"Rule 3.7 of the Rules of Professional Conduct governs whether an attorney should be disqualified when he or she is a necessary witness. The rule states [in relevant part]: (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where: (1) The testimony relates to an uncontested issue; (2) The testimony relates to the nature and value of legal services rendered in the case; or (3) Disqualification of the lawyer would work substantial hardship on the client." (Internal quotation marks omitted.) *Matlis v. Probate Appeal*, Superior Court, judicial district of Tolland at Rockville, Docket No. CV

03 0082717 (November 19, 2004, Scholl, [\*3] J.). "Disqualification of counsel is a remedy that serves to enforce the lawyer's duty of absolute fidelity and to guard against the danger of inadvertent use of confidential information." (Internal quotation marks omitted.) *Bergeron v. Muckler*, 225 Conn. 391, 397, 623 A.2d 489 (1993).

"The Superior Court has broad discretionary power in ruling upon a motion to disqualify." *Anziano v. Harbor Hill Care Center, Inc.*, Superior Court, judicial district of Middlesex at Middletown, Docket No. CV 04 0103648 (November 2, 2004, Aurigemma, J.). The court "must be solicitous of a client's right freely to choose his counsel . . . mindful of the fact that a client whose attorney is disqualified may suffer the loss of time and money in finding new counsel and may lose the benefit of its longtime counsel's specialized knowledge of its operations . . . The competing interests at stake in the motion to disqualify, therefore, are: (1) the defendant's interest in protecting confidential information; (2) the plaintiffs' interest in freely selecting counsel of their choice; and (3) the public's interest in the scrupulous administration of justice." (Citations omitted; internal quotation [\*4] marks omitted.) *Bergeron v. Muckler*, *supra*, 225 Conn. 397-98.

"Whether a witness ought to testify is not alone determined by the fact that he has relevant knowledge or was involved in the transaction at issue. Disqualification may be required only when it is likely that the testimony to be given by the witness is necessary." (Internal quotation marks omitted.) *Anziano v. Harbor Hill Care Center, Inc.*, *supra*, Superior Court, Docket No. CV 04 0103648. "[A] strong showing that the testimony of the opposing attorney is truly necessary is required before the court may grant a motion to disqualify opposing counsel . . . Testimony may be relevant and even highly useful but still not strictly necessary. A finding of necessity takes into account such factors as the significance of the matters, weight of the testimony and availability of other evidence." (Citation omitted; internal quotation marks omitted.) *Mallis v. Probate Appeal*, *supra*, Superior Court, Docket No. CV 03 0082717.

"A party moving for disqualification of an opponent's counsel must meet a high standard of proof." (Internal quotation marks omitted.) *Penna v. Margolis*, Superior Court, judicial [\*5] district of New Haven, Docket No. CV 03 0475408 (February 9, 2004, Zoarski, J.T.R.). "Before permitting a party to disqualify an attorney the moving party bears the burden of proving facts which indicate disqualification is necessary. The courts should act very carefully before disqualifying an attorney and negating the right of a client to be represented by counsel of choice." (Internal quotation marks omitted.) *Somers & Associates, P.C. v. Kendall*, Superior Court, judicial district of Windham at Putnam, Docket No. CV 064478 (February 23, 2001, Foley J.).

The defendants, in their motion, have not met the requisite standard of proof. They have not provided any evidence nor alleged any facts which would indicate that the plaintiffs counsel is a necessary witness in this case. They have merely stated in their motion that the plaintiffs counsel is a material witness to this action. "The mere statement that the attorney will be a necessary party witness [does] not support [the] motion." (Internal quotation marks omitted.) *Mallis v. Probate Appeal*, *supra*, Superior Court, Docket No. CV 03 0082717.

"Disqualification is both harsh and draconian, and . . . the movants have [\*6] a heavy burden to show clearly that disqualification is warranted . . . The courts should act very carefully before disqualifying an attorney and negating the right of a client to be represented by counsel of choice." (Citation omitted; internal quotation marks omitted.) *Id.* The defendants have not met this burden here.

Therefore, the motion to disqualify the plaintiff's counsel is denied without prejudice to renewal if it should appear that the plaintiff's counsel will be a necessary witness at trial taking into account the factors proving necessity enumerated above.

SKOLNICK, J.



Westerly Capital, LLC on behalf of itself and derivatively on behalf of Sagecrest,  
LLC v. Windmill Management, LLC et al.

CV086000954S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF  
STAMFORD-NORWALK, AT STAMFORD

2008 Conn. Super. LEXIS 2826

October 30, 2008, Decided  
October 30, 2008, Filed

NOTICE: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

JUDGES: [\*1] Taggart D. Adams, J.

OPINION BY: Taggart D. Adams

OPINION

*MEMORANDUM OF DECISION RE MOTION TO DISQUALIFY COUNSEL (106.00)*

*Background and Facts*

In this action the plaintiff, a non-managing member of Sagecrest LLC, an investment fund, sues Windmill LLC, the manager of Sagecrest and three individuals who are the principals of Windmill for, *inter alia* breach of fiduciary duty, breach of contract and for violation of the Connecticut Unfair Trade Practices Act, General Statutes §§42-110a et seq. (CUTPA) alleging that the fund's assets and business have been mismanaged in various ways.

The individual defendant Richard Weyand has

moved to disqualify two attorneys who appeared on the plaintiff's complaint as "of counsel," Paul Kaplan and Richard Schulman, respectively identified as a partner of, and counsel to, the law firm of Bryan Cave LLP, as well as the firm itself. The pro hac vice admissions of Messrs. Kaplan and Schulman to represent Westerly Capital were granted in early July 2008. Weyand's motion to disqualify is based on Rule 1.7(a) of the Rules of Professional Conduct adopted in Connecticut. Rule 1.7(a) prohibits a lawyer from representing a client if the representation involves a "concurrent conflict of [\*2] interest." A concurrent conflict exists if the representation of one client "will be directly adverse to another client." Rule 1.7(a)(1).

Mr. Weyand contends that the firm of Bryan Cave was representing two entities of which he was the principal owner at the time the complaint against him in this action was filed in this court on June 10, 2008 with Mr. Kaplan's and Mr. Schulman's names on it as "of counsel." According to Weyand this constituted a "concurrent conflict." Westerly Capital contends that Mr. Kaplan is no longer a partner of Bryan Cave, and has been a partner in the law firm of Arent Fox LLP, since July 28, 2008 "just days after he filed his motion" to be admitted pro hac vice to represent Westerly Capital. Furthermore, Westerly Capital contends that Bryan Cave did not represent Weyand personally and Kaplan had no knowledge of Weyand's affairs on those of the two

entitles represented by Bryan Cave. <sup>1</sup>

<sup>1</sup> The parties agree that the motion to disqualify Schulman and Bryan Cave are moot. Schulman has withdrawn his appearance and no attorney of Bryan Cave is presently representing Westerly Capital.

The facts set forth in the record of this case are as follows. While at Bryan Cave [\*3] in May 2008, Kaplan was approached to represent Westerly Capital in this action. A conflicts check request was submitted and no conflict with Weyand appeared. Kaplan Affidavit, August 15, 2008, PP5-6 and Ex. A thereto. Weyand states in his affidavit that he is the 95% owner of Discovery Resources Group for which Bryan Cave provided a tax opinion in early 2008 and that he is the 95% owner of an entity known as W Properties which Bryan Cave presently represents in connection with a private placement. Weyand Affidavit, July 16, 2008, PP5-6. Kaplan drafted the complaint which was filed in this court on June 10, 2008. Kaplan's and Schulman's motions for admission to represent the plaintiffs were dated June 10, 2008 and granted on July 1, 2008. On June 19, 2008 an e-mail was sent to Kaplan who practiced litigation in Bryan Cave's New York City office from Daniel Cullen a partner in Bryan Cave's Chicago office. The e-mail read as follows:

Please note that we currently represent two companies, W Properties, LLC and Discovery Resources and Development, LLC (the "Companies").

Our main contact at the Companies is Peter Thiessen, the CFO. Peter sent me the attached e-mail and complaint, which names [\*4] Richard Weyand as an additional defendant. Peter has informed me that Richard Weyand is an owner of the Companies--our clients. Peter believes there is a conflict and feels we should withdraw from representing the plaintiff in the attached case.

Please let me know when you might be available to discuss.

Kaplan Affidavit, September 26, 2008, P2 and Ex. A thereto. After discussion, the Bryan Cave conflicts

committee advised Kaplan that Weyand's membership in the two LLC's represented by Bryan Cave did not make Weyand a client of Bryan Cave, and there was no conflict of interest in the firm's representation of Westerly Capital in this case. *Id.*, P3.

On July 28, 2008 Kaplan became a partner of Arent Fox. While he was at Bryan Cave, he was primarily a commercial litigator and worked little in tax and private placement matters. Kaplan, August 15, 2008 Affidavit, PP3-4. There is no evidence that he had or has any confidential information of Weyand, and no evidence that the work of Bryan Cave for the two LLC's is in any way related to this litigation.

#### *I. Discussion*

Westerly Capital contends that Weyand was not a client of Bryan Cave and even if he was, Bryan Cave no longer represents Westerly Capital [\*5] because Kaplan is not a partner of Bryan Cave. The court is not persuaded. First, courts have not been bound by a strict construction of the attorney client relationship. In *Glueck v. Jonathan Logan, Inc.*, 653 F.2d 746 (2dCir. 1981), Judge Newman, in connection with a motion to disqualify, stated that [t]he issue is not whether . . . the relationship . . . is in all respects that of attorney and client, but whether there exists sufficient aspects of an attorney-client relationship for the purposes of triggering inquiry into the potential conflict involved . . ." *Id.* 748-49; see also *Colorpix Sys. of American v. Broan Mfg. Co.*, 131 F.Sup.2d 331, 336 (D.Conn. 2001). In *Glueck* the Second Circuit referred to a party who was not a "traditional" client, but who nevertheless was entitled to an inquiry into a potential conflict as a "vicarious" client. This court is not bound by Bryan Cave's determination that Weyand was not a client, and it concludes that Weyand's super majority interest in the two LLC's represented by Bryan Cave qualifies him for consideration as a vicarious client of Bryan Cave. Therefore, there was a concurrent conflict of interest between Bryan Cave's client Westerly [\*6] Capital and vicarious client Weyand, and Weyand is entitled to an inquiry into the potential conflict. Second, the conflict lasted more than two months, rather than the "few days" intimated by Westerly Capital. <sup>2</sup> Indeed, the conflict existed when the pro hac vice motions were filed and

when they were granted. Having said all of that, the court is mindful that there are strong policy reasons for allowing a party to select its own counsel. Moreover, in two well regarded decisions involving vicarious clients the courts have looked for something more than a violation of the Code of Professional Responsibility to support an attorney disqualification.<sup>3</sup> In *Glueck, supra*, the Second Circuit held that the heavy burden to avoid disqualification placed by Canon 5 [similar to Rule 1.7(a)] "is properly imposed when a lawyer undertakes to represent two adverse parties both of which are his clients in the traditional sense. But, when an adverse party is only a vicarious client by virtue of membership in an association, the risks against which Canon 5 guards against will not inevitably arise." *Glueck, supra*, 653 F.2d 749. Therefore, the Second Circuit imposed a "substantial relationship test" to [\*7] the effect that whenever a lawsuit is sufficiently related to the matters which the representation of the association covers so as to create a realistic risk that one of the parties will not be represented with vigor, or that unfair advantage will be taken of another party, there should be disqualification. The Second Circuit's concern was focused on whether a trial might be tainted or the free flow of information from a client to the law firm be inhibited. This substantial relationship test is akin to the more relaxed conflict provisions relating to former clients. See Connecticut Rules of Professional Conduct, §1.9.

2 Westerly Capital concedes it misread the docket sheet when stating that Kaplan's pro hac vice motion was granted on July 25, 2008.

3 The Rules of Professional Conduct based on Model Rules promulgated by the American Bar Association in 1983 have been adopted by Connecticut and most other jurisdictions, supplanting the Canons and Code of Professional Responsibility discussed in *Glueck*. However, as will be seen, cases construing the older Code remain relevant today.

Similarly in *Westinghouse Elec. Corporation v. Ken-McGee Corporation*, 580 F.2d 1311 (7th Cir.), cert. denied, [\*8] 439 U.S. 955, 99 S. Ct. 353, 58 L. Ed. 2d 346 (1978), a law firm represented an association on

legislative business and was prosecuting an antitrust case against three members of the same association. The Seventh Circuit chose not to decide whether every association member was a law firm client, but found the dual representation was barred under the circumstances of the case because association members had divulged confidential information to the law firm, and the legislative matter and antitrust suit were substantially related. *Id.*, 1319, 1321-22.

The United States District Court for the District of Connecticut has adopted the Connecticut Rules of Professional Conduct. In two quite recent cases that District Court has referred approvingly to the statement in *Glueck* that because of the serious impact attorney disqualification has on a party's right to counsel of its choice, such relief ordinarily should be granted only when a violation of the Canons of the Code of Professional Responsibility "poses a significant risk of trial taint." See *Vincent v. Essent Healthcare of Connecticut*, 465 F.Supp.2d 142, 144 (D.Conn. 2006); *Data Capture Solutions Repair & Remodeling Inc. v. Symbol Technologies, Inc.*, 3:07 CV 0237 (JCH) 2008 U.S. Dist. LEXIS 83595 (October 17, 2008).

This [\*9] court follows the path charted by *Glueck*. In this case there is no evidence that Kaplan obtained or had access to any confidential information of Weyand held by Bryan Cave, and little possibility he would have such access in the future since he no longer is a Bryan Cave partner. Therefore, there should be no impediment placed on free communication between Weyand and Bryan Cave and no evidence that the trial of this case would be tainted. While Weyand argues to the contrary, this court also finds there is no substantial relationship between the litigation commenced by Westerly Capital and tax and securities work undertaken by Bryan Cave for Weyand. Hence, the court finds there to be an insufficient basis to disqualify Kaplan.

The portion of motion seeking to disqualify Attorney Kaplan is denied. The remaining portions of the motion are denied as moot.

TAGGART D. ADAMS