

## Representation of LL

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Sir Philip Bailhache, Jurats de Veulle, Nicolle
<b>Judgment Date:</b>	09 December 2010
<b>Neutral Citation:</b>	[2010] JRC 221
<b>Reported In:</b>	[2010] JRC 221
<b>Court:</b>	Royal Court
<b>Date:</b>	09 December 2010

**vLex Document Id:** VLEX-793595457

**Link:** <https://justis.vlex.com/vid/representation-of-ll-793595457>

### Text

[2010] JRC 221

ROYAL COURT

(Samedi Division)

Before:

Sir Philip Bailhache, **Kt., Commissioner and** Jurats de Veulle **and** Nicolle.

In the Matter of A

And in the Matter of Article 51 of the Trusts (Jersey) Law 1984 (As Amended)

**Advocate** R. J. MacRae **for the Representor (LL).**

B—sole **Member of the Plan (English Solicitor present).**

**Advocate** F. B. Robertson **bon behalf of E (wife of B).**

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**The Deponent (D) present in Court.****Authorities**

*Re The S Settlement 2001/154.*

**THE COMMISSIONER:**

- 1 This is an application made by Representation by LL to which we refer as the "Trustee" which is the trustee of a trust known as "A" which is a retirement benefits scheme established in 2006 under irrevocable trusts by the employer to provide benefits for B to whom we shall refer as the "Member". Clause 19 of the trust deed provides that the Trust is governed by and is to be construed in accordance with Jersey Law. The trust fund is now worth £25,000,000. The trust deed defines the "Death Beneficiaries" and the Court is satisfied that representatives of that class of beneficiaries have been convened and that all proper parties are before the Court. The representation was first presented to the Court on 5<sup>th</sup> November, 2010, and those parties were convened at that time.
- 2 The matter comes before the Court because B has been engaged in divorce proceedings with his now former wife (E) and an order has been made by the Family Division of the High Court of Justice in England awarding a lump sum to E of £6,015,115. An additional payment of £100,000 has been ordered by way of interest on that lump sum. B has requested the Trustee to exercise its power under the Rules established by the Trust to transfer the monies representing the lump sum award from the trust fund to E. There is no question but that the Trustee has power to make that payment; Rule 8(3) provides:-

***"The Trustees may...transfer or assign part of the Member's account to or for the benefit of the Member's spouse or ex-spouse in connection with any divorce or separation proceedings relating to the Member without the Member's entitlement to benefits under the Plan being forfeited."***

- 3 The Trustee has made this Representation to the Court under the conventional arrangements set out in *Re The S Settlement 2001/154*, seeking the blessing of the Court to the proposed payment as being a momentous decision for which it is appropriate to seek the approval of the Court. As counsel for the Trustee has submitted, the questions which the Court has to ask itself are these:-

(i) Is the Court satisfied that the Trustee has formed its opinion or reached its decision in good faith that the circumstances of the case render it desirable and proper to make the payment in question?

(ii) Is the Court satisfied that the opinion formed or decision taken is one of which a reasonable trustee properly instructed could have arrived?

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(iii) Is the Court satisfied that the opinion arrived at or the decision taken has not been vitiated by any actual or potential conflict of interest which might have affected its decision?

- 4 The Court is entirely satisfied that all these questions can be answered in the affirmative. Counsel has placed before the Court documentary evidence of the concurrence of the Member, of E and of all those Death Beneficiaries who had been convened to the proceedings.
- 5 We accordingly conclude that this is a proper and reasonable exercise of discretion by the Trustee and we will make the order set out in the draft placed before us by counsel for the Trustee, subject to the minor amendment which has been agreed between him and counsel for E. We also order for the avoidance of doubt that the costs of E, of and incidental to the representation, be paid by the Trustee on the usual indemnity basis out of the assets of the Trust.