

Frere Cholmeley



DG 2 BBT

(no 2nd carbon)

10 DOWNING STREET

From the Principal Private Secretary

3 July 1986

Dear Gerald,

O/F
Perhaps you
should have
these?

I should be grateful for advice on how, if at all, to respond to the letter attached from Frere Cholmeley, a firm of solicitors. With their letter they have sent to Christopher Monckton, a former member of the Prime Minister's Policy Unit, a Re-Re-Re-Amended Writ of Summons and Statement of Claim for his attention, pursuant to their clients' instructions.

You will need some background.

Christopher Monckton was until very recently, as a temporary civil servant, a member of the Prime Minister's Policy Unit here. He resigned on 30 June. While a member of the Unit he interested himself, for reasons which are obscure, in the controversy over the rival merits of short/fat hull and conventional long/thin design of naval warships. So far as I am aware, his superior in the Unit was unaware of his interest in this matter until he produced a thick dossier on the controversy. Arising from the controversy there is, so I understand, a legal action in which the Osprey Company are alleging infringement of copyright by British Shipbuilders of a certain warship design. This is the action which is referred to in the legal papers attached. I believe that Monckton had contacts with those concerned with the Osprey Company while he was compiling the dossier on the short/fat ships controversy. The Ministry of Defence are aware of all this background.

It is regrettable, to say the least, that Monckton has had contacts with one of the parties to this legal dispute; moreover, the sending of the legal documents to his work address at "The Prime Minister's Policy Unit" suggest that he involved himself in these matters in his work capacity. But so far as I can see, the documents did not seek to involve Monckton in the legal processes. He knows that we have the documents; and indeed his secretary has given him a copy.

SPW

* I should be grateful for advice on what to do with Frere Cholmeley's letter. Should we return it to them saying that Monckton no longer works here, or pass the originals to him or what?

I am copying this letter and enclosure to Sir Clive Whitmore (Ministry of Defence).

N. L. Wicks
Nigel Wicks

* letter dated 27.6.86
on Pt 10.

N. L. Wicks

Gerald Hosker, Esq.,
Deputy Treasury Solicitor

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BM2ARR

10 DOWNING STREET

From the Principal Private Secretary

10 July 1986

Dear Gerald,

OSPREY LIMITED AND ANOR V BRITISH SHIPBUILDERS AND OTHERS

Thank you for your letter of 9 July. As you suggested, I have sent a simple acknowledgement to Frere Cholmeley and attach a copy for your information.

As you asked, I am now enclosing a copy of the dossier which Monckton prepared for the Prime Minister. It is the document on the red flag immediately below. Your people may also be interested to see the Policy Unit files on this subject. A glance at the papers may fill you with some disquiet. (Incidentally, we have been unable to find the top copy of the dossier. Our filing people here recall returning it to the Policy Unit but it is not there now. I have no evidence that Monckton took it away with him though that is always a possibility).

I should add to the information in my letter of 3 July that Monckton is now working for the "Today" newspaper as, I think, an Associate Editor.

I have not taken copies of the paper attached with this letter.

** most of what I saw
for the first time today.*

Nigel Wicks
Nigel Wicks

(N.L. WICKS)

G.A. Hosker, Esq.,
Deputy Treasury Solicitor

CONFIDENTIAL

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late

BM

10 DOWNING STREET

From the Principal Private Secretary

9 July 1986

**OSPREY LIMITED AND ANOR V BRITISH SHIPBUILDERS
AND OTHERS**

I am sorry that I have not written before now to acknowledge receipt of your letter of 27 June, sent to us under your reference FGP/JPC/MHDP.

(N.L. Wicks)

Messrs Frere Cholmeley



Queen Anne's Chambers
28 Broadway London SW1H 9JS

Telephones DIRECT LINE 01-~~273~~X 210 3049
SWITCHBOARD 01-273 3000
Telex 917564 GTN 273

Our reference

9th July 1986

Your reference

N L Wicks Esq
Principal Private Secretary
10 Downing Street
London SW1

Dear Nigel,

OSPREY LIMITED AND ANOR V BRITISH SHIPBUILDERS AND OTHERS

Thank you for your letter of 3rd July with the enclosures.

2. I think that, for the moment, it would be advisable for nothing more than a pro forma acknowledgment to be sent to Messrs Frere Cholmeley's letter of 27th June addressed to The Hon. Christopher Monckton. There are several issues which need to be clarified before we can assess how this matter might prudently be handled and I have discovered that there is a history of attempts by the plaintiffs to involve the Government, principally the Ministry of Defence, in the proceedings.

3. Perhaps it would be useful if I explained some of the background. The litigation is due to come to trial in January next year and Professor Rawson, an authority on naval design, is likely to be a witness. He was in the Procurement Executive at the Ministry of Defence at the time of the competition by tender for the design of the patrol craft for Hong Kong. He is at present on secondment to Brunel University and since his move there, Messrs Frere Cholmeley have interviewed him in the presence of a representative from this office.

4. Although the dossier was compiled by Mr Monckton without the knowledge of his superior, there may be a potential difficulty insofar as it may contain evidence which could be of use to one of the parties in the proceedings. It is conceivable that he obtained material which was made available to him as a member of the Prime Minister's

Policy Unit when it would not have been disclosed elsewhere. Thus, it is this aspect which needs to be examined fully.

5. As you will appreciate, if one or more of the parties is or becomes aware that Mr Monckton had acquired relevant evidence which is not already in their possession, an attempt might be made to secure its production. That is probably the worst situation we could face. The best would be that the dossier is found to contain merely duplicates of documents which are already in the hands of the parties to the litigation and hence there would be no danger that discovery would be sought. In the circumstances, I think that the only safe course would be for me, and probably a specialist litigation lawyer, to see the papers so that an assessment can be made of their calibre. We would be willing to read them at Number 10 if that is judged to be more convenient than for them to be sent to me.

6. If you agree to the proposal, arrangements will have to be made for the inspection of the dossier. Once this step has been taken I shall be able to advise you on what implications there may be for the action and whether there is anything which can be done to avoid further involvement in it. In addition, I should be able to provide you with guidance on what a response should be made to Messrs Frere Cholmeley. In the meantime, I return their letter of 27th June so that you may issue a formal acknowledgment of its receipt.

Yours ever
Gerald Hosker

G A Hosker

cc Mr J D Howes (T.Sol)



FRERE CHOLMELEY

S. J. MOSLEY
G. H. SOUTHERN
H. R. D. BILLSON
PETER MARTIN
J. B. GOUGH
W. S. GIBBS
K. E. P. J. HARDING
D. G. HAWKINS
J. B. BRODIE
E. T. RAZZALL

M. B. BOREHAM
N. B. BAKER
J. L. DREWITT
F. G. PRESLAND
A. F. HANCOCK
C. A. GLYN DAVIES
D. C. WILLIS
I. R. GIBSON
A. J. PATTERSON
J. H. COOKE
S. C. SUGAR

R. C. STEEL
A. D. JENKINS
S. M. TAYLOR
N. E. VALNER
S. C. HAMILTON
N. A. CHAPMAN
J. M. BALFOUR
S. N. J. PULLEN
C. F. EADIE
R. M. BOTT

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MONACO

24 BD PRINCESSE CHARLOTTE
MONTE CARLO
Telephone: 93 50 85 70
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Your Ref.

Our Ref.

FGP/JPC/MHDP

27th June 1986

Dear Sir,

Osprey Limited and Anor. v. British Shipbuilders and Others

We enclose copies of the Re-Re-Re-Amended Writ of Summons and Statement of Claim for your attention, pursuant to our clients' instructions.

Yours faithfully,

Frere Cholmeley

For the attention of The Hon.
Christopher Monckton,
The Prime Minister's Policy Unit,
10, Downing Street,
London, SW1.

NAT IND

SHR BUILDING

PT II

Amended this 19th day of June 1981 pursuant to RSC O.20 r.1

Re-amended this 11th day of September 1981 pursuant to leave of Master Gowers dated 10th September 1981

Re-re-amended this third day of November 1982 pursuant to leave of Mr. Justice Peter Gibson dated 21st October 1982

Re-re-re-amended this 7th day of May 1986 pursuant to leave of Master Chamberlain dated 30th April 1986

IN THE HIGH COURT OF JUSTICE

1981-O-No. 1533

CHANCERY DIVISION

GROUP B

B E T W E E N :

(1) OSPREY LIMITED

(2) T.T. BOAT DESIGNS LIMITED

Plaintiffs

- and -

(1) BRITISH SHIPBUILDERS (A Corporate Body)

(2) ~~VICKERS SHIPBUILDING GROUP LIMITED~~
BRITISH SHIPBUILDERS HYDRODYNAMICS LIMITED

(3) REGINALD JACK DANIEL

(4) DAVID IAN MOOR

(5) VICKERS SHIPBUILDING & ENGINEERING LIMITED

Defendants

To the Defendants British Shipbuilders (a corporate body),
and ~~Vickers Shipbuilding Group Limited~~ British Shipbuilders
Hydrodynamics Limited both of 136 Sandyford Road, Newcastle
upon Tyne, NE2 1QE, Reginald Jack Daniel of British
Shipbuilders, 197 Knightsbridge, London SW7 1RB, David I.
Moor of Ship Model Experiment Tank, 222 London Road, St.
Albans, Herts., AL1 1JE, Vickers Shipbuilding & Engineering
Ltd., 136 Sandyford Road, Newcastle upon Tyne, NE2 1QE.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the back.

Within 14 days after the service of the Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office mentioned below the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the Central Office of the High Court this 3rd day of April 1981.

Note:- This Writ may not be served later than 12 calendar months beginning with that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

The Plaintiffs' claim is for

1. An Injunction to restrain the First and Second and Fifth Defendants and each of them whether acting by their respective directors, officers, servants, agents or otherwise howsoever from doing the following acts or any of them, that is to say:
 - (i) Infringing the Plaintiffs' copyright in drawing number 165.2082 and/or in earlier versions thereof and in drawings for the Azteca Fishery Protection and Patrol Craft by reproducing the same or a substantial part thereof whether in the form of other drawings or in three dimensional form and whether directly or indirectly;
 - (ii) Making use of or disclosing the First Plaintiff's confidential information relating to its Osprey 50 metre patrol craft or infringing the Plaintiff's copyright by developing, producing, selling, researching into or using in any way any naval designs or projects in which any direct or indirect use has

been and/or could be made of the Plaintiffs' drawing number 165.2082 or any copy thereof or any confidential information derived therefrom directly or indirectly or by use of it, whether alone or in association with other naval designs or projects of whatever size.

2. An injunction restraining the Third and Fourth Defendants and each of them whether acting by themselves or their servants or agents or otherwise howsoever from doing or authorising the doing of any of the acts specified in paragraphs 1(i) and (ii) of the prayer herein.

~~3.7. An Order for an enquiry as to Damages including exemplary and/or aggravated damages and/or damages under s.17(3) of the Copyright Act 1956) for infringement of copyright, conversion and breach of confidence ~~or at the Plaintiff's opinion option an account of profits in respect thereof and payment to the Plaintiff by the Defendants of such sum found due to it on the taking of such enquiry or account together with interest pursuant to statute until payment.~~~~

3A. Interest pursuant to to s.35A Supreme Court Act 1981.

4.7. An Order for the delivery up to the Plaintiffs upon oath of all infringing copies and materials the dealing with which by the Defendants and each of them would be a breach

of the Injunctions prayed for in 1 and 2 hereof or any of them as are in the possession, power, custody or control of the Defendants or any of them.

5. An Order for the disclosure by the Defendants and each of them upon oath of the names and addresses of all natural or corporate persons or any of them to whom the Defendants have disclosed the Plaintiffs' drawing number 165.2082 or any copy or model thereof or any information contained therein or elicited therefrom.

6. Further or other relief.

7. Costs.

This Writ was issued by Messrs. Frere Cholmeley of 28 Lincoln's Inn Fields, London, WC2A 3HH, Solicitors for the said Plaintiffs whose addresses are (1) 10 Lefebvre Street, St. Peter Port, Guernsey, Channels Islands (2) The Embankment, Bembridge, Isle of Wight, PO35 5NS.

The First Plaintiffs are a Company incorporated outside the Jurisdiction and carry on business at the address shown above.

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

GROUP B

B E T W E E N :

(1) OSPREY LIMITED

(2) T.T. BOAT DESIGNS LIMITED
Plaintiffs

- and -

(1) BRITISH SHIPBUILDERS (A
Corporate Body)

(2) ~~VICKERS SHIPBUILDING GROUP
LIMITED~~

BRITISH SHIPBUILDERS
HYDRODYNAMICS LIMITED

(3) REGINALD JACK DANIEL

(4) DAVID IAN MOOR

(5) VICKERS SHIPBUILDING &
ENGINEERING LIMITED

Defendants

RE-RE-RE-AMENDED
WRIT OF SUMMONS

Messrs. Frere Cholmeley
28 Lincoln's Inn Fields
London, WC2A 3HH

Tel: 01 405 7878
Ref: FGP/JPC

Solicitors to the Plaintiffs

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

GROUP B

Writ Issued the 3rd day of
April 1981

(1) OSPREY LIMITED

(2) T.T. BOAT DISIGNS LIMITED
Plaintiffs

-and-

(1) BRITISH SHIPBUILDERS
(A Corporate Body)

(2) BRITISH SHIPBUILDERS
HYDRODYNAMICS LIMITED

(3) REGINALD JACK DANIEL

(4) DAVID IAN MOOR

(5) VICKERS SHIPBUILDING
& ENGINEERING LIMITED
Defendants

RE-RE-RE-AMENDED
STATEMENT OF CLAIM

FRERE CHOLMELEY
28 Lincoln's Inn Fields
London WC2A 3HH

Tel: 01 405 7878

Ref: FGP/JPC

Solicitors for the Plaintiffs

Amended this 9th day of September 1981 pursuant to leave of Master Gowers

Re-amended this 3rd day of November 1982 pursuant to leave of Mr. Justice Peter Gibson dated 21 October 1982

Re-re-amended this 9th day of December 1983 pursuant to leave of Master Chamberlain dated 23 November 1983

Re-re-re-amended this 7th day of *May* 1986 pursuant to leave of Master Chamberlain dated 30th April 1986

IN THE HIGH COURT OF JUSTICE

1981 O. No. 1533

CHANCERY DIVISION

GROUP B

Writ issued the 3rd day of April 1981

(1) OSPREY LIMITED

(2) T.T. BOAT DESIGNS LIMITED

Plaintiffs

- and -

(1) BRITISH SHIPBUILDERS (A Corporate Body)

(2) BRITISH SHIPBUILDERS HYDRODYNAMICS LIMITED

(3) REGINALD JACK DANIEL

(4) DAVID IAN MOOR

(5) VICKERS SHIPBUILDING & ENGINEERING LIMITED

Defendants

RE-RE-RE-AMENDED STATEMENT OF CLAIM

1. The First Plaintiff is a limited company incorporated

in Guernsey, Channel Islands, on the 21st July 1977 for the purpose of developing the design of the class of naval vessel known as "Osprey". The Second Plaintiff is a limited company incorporated in England on the 28th July 1961 for the purpose of designing marine hulls.

2. The First Defendant is a body corporate established by the Aircraft and Shipbuilding Industries Act 1977.

3. The Second Defendant (previously known as ~~"Wickens Shipbuilding Group Limited"~~ "Joseph L. Thompson & Sons Limited") is a limited company which became a member company of the First Defendant on the coming into force of the Aircraft and Shipbuilding Industries Act 1977 on the 1st July 1977.

4. The Third Defendant has at all material times acted on behalf of the First Defendant in his capacity as a ~~director~~ ~~and~~ member of the Board of the First Defendant with responsibility for warship building.

5. The Fourth Defendant has at all material times acted on behalf of the Second Defendant and/or the Fifth Defendant in his capacity as superintendent and local director of the ship model experiment tank at St. Albans Hertfordshire (hereinafter called "the S.M.E.T.") ~~of the Second Defendant~~ being part of the assets and undertaking of the Fifth Defendant acquired by the Second Defendant with effect from

the 1st April 1981.

6. The First Plaintiff and/or the Second Plaintiff ~~is~~ are and ~~has~~ have at all material times been the owners of the copyright in, inter alia, the United Kingdom in an original unpublished artistic work in the form of a two-dimensional lines plan No. 165.2082 illustrating the three-dimensional form of the hull of a fast offshore naval patrol vessel called the "Osprey" (hereinafter called the "lines plan") and also in earlier versions or drafts of the lines plan made by employees of the Second Plaintiff in April 1976, May 1976, August 1977 and November 1977.

6(a). The Second Plaintiff has at all material times been the owner of the copyright in, inter alia, the United Kingdom in original unpublished artistic works in the form of two-dimensional plans illustrating the three-dimensional form of the hull of and other parts of the Azteca Fishery Protection and Patrol Craft made by employees of the Second Plaintiff in 1972 (hereinafter called "the Azteca Plans").

7. The First Plaintiff and/or the Second Plaintiff ~~has~~ have at all material times been the owners of and entitled to possession of the lines plan. Further, the lines plan is and has at all material times been a document of a confidential character containing confidential information about the design and form of the hull of the fast offshore naval patrol vessel called the "Osprey". The lines plan and

the information embodied in it are of great value to the First Plaintiff being the product of substantial skill, work and expenditure.

8. At a meeting held on or about 29th May 1980 at the S.M.E.T. at 222 London Road, St. Albans, the Fourth Defendant orally informed Mr. David Laurent Giles, a Director of the First Plaintiff, that he was interested in a sight of the lines plan and, if he found the said plan of any interest, he might be prepared to conduct tests in the S.M.E.T. Mr. Giles informed the Fourth Defendant that the First Plaintiff would only be prepared to make a copy of the lines plan available to him on a strictly confidential basis and on the basis that the shipbuilding interests of the First Defendant and the ~~Second~~ Fifth Defendant or of any other party should not be involved. The Fourth Defendant agreed to this and confirmed that information concerning designs tested by tank testers was not communicated to anyone other than the owners except with express permission. Mr. Giles informed the Fourth Defendant that it would be necessary for him to obtain the approval and permission of the other directors of the First Plaintiff before allowing the Fourth Defendant to see the lines plan.

9. In June 1980 the First Plaintiff authorised Mr. Giles to lend a copy of the lines plan to the Fourth Defendant on the terms and basis stated in paragraph 8 hereof.

10. On or about the 20th June 1980 Mr. Giles returned to the S.M.E.T. and lent to the Fourth Defendant a copy of the lines plan in confidence and on the express understanding that the lines plan would not be copied, used or communicated to any third party without the agreement of the First Plaintiff and that the lines plan was to be returned to the First Plaintiff as soon as the Fourth Defendant had completed his inspection.

11. On the 27th June 1980 the Fourth Defendant returned the said copy of the lines plan to the First Plaintiff under cover of a letter in which he stated that "we have examined the plan with interest, but have not seen in it any feature which warrants any further special investigation on our own account at this stage".

12. By virtue of the facts and matters pleaded in paragraphs 7, 8, 9, 10 and 11 of this Amended Statement of Claim hereof the Fourth Defendant and the ~~Second~~ Fifth Defendant, as employer of the Fourth Defendant, owed a duty to the First Plaintiff that they would not use to the detriment of the First Plaintiff any information which they had obtained in confidence from the First Plaintiff. By virtue of that fiduciary duty the Fourth Defendant and the ~~Second~~ Fifth Defendant were bound not to disclose any of the said confidential information to any person without the licence of the First Plaintiff and were also bound not to use any of the said confidential information imparted to

them for their own benefit or for the benefit of any person other than the First Plaintiff.

13. The Defendants and each of them have infringed the Plaintiffs' copyright by reproducing or authorising the reproduction of the lines plan and/or the earlier versions thereof referred to in paragraph 6 hereof and the Azteca Plans without the licence or knowledge of the Plaintiffs.

PARTICULARS

The best particulars which the Plaintiffs can give before discovery herein are as follows:-

- (i) Between about the 20th and the 27th June 1980 the Fourth Defendant reproduced or authorised the reproduction of the lines plan lent to him by Mr. Giles on behalf of the First Plaintiff, in the form of a two-dimensional plan;
- (ii) In or about November 1980 the Third Defendant, acting on behalf of the First Defendant, authorised the ~~Second~~ Fifth Defendant and/or the Fourth Defendant to reproduce the lines plan ~~of~~ or a substantial part thereof in the form of ~~or~~ two three-dimensional models of the "Osprey" as depicted in the lines plan; on a date or dates unknown to the Second Plaintiff the Third Defendant similarly authorised reproduction of the Azteca Plans;

(iii) Between about November 1980 and February 1981 the Fourth Defendant, acting on behalf of the ~~Second~~ Fifth Defendant, reproduced or authorised the reproduction of (a) the lines plan or a substantial part thereof in the form of ~~two~~ two three-dimensional models of the "Osprey" to a scale of approximately one tenth; (b) the Azteca Plans in the form of four three-dimensional models;

(iv) As employer of the Third Defendant the First Defendant is vicariously liable for acts of infringement committed by him in the course of his employment;

(v) As employers of the Fourth Defendant the Second and Fifth Defendants ~~is~~ are vicariously liable for acts of infringement committed by him in the course of his employment. In relation to infringement of copyright in the Azteca Plans the Second Plaintiff will refer to the telex sent by the Fourth Defendant to one G.A. Campbell in Dumbarton on the 12th December 1980 and to an entry in the diary of the Third Defendant for the 11th February 1981, as produced by the Defendants for inspection in the course of discovery in this action. The Second Plaintiff will also rely on

admissions made in an affidavit sworn on behalf of
the Defendants herein on the 7th May 1982 by
George Henry Martin.

14. All copies of the lines plan and of the Azteca Plans made without the licence of the Plaintiffs, whether in two-dimensional or three-dimensional form, are infringing copies of the lines plan and by disposing of or dealing with the same without the licence of the Plaintiffs the Defendants and each of them have converted the same to their own use, whereby the Plaintiffs ~~has~~ have suffered loss and damage, particulars of which will be supplied after discovery herein.

15. Further, the Defendants and each of them have without the licence or knowledge of the First Plaintiff, acted in breach of the duty of confidence by disclosing the First Plaintiff's confidential information and/or using the said information in a manner inconsistent with the duty pleaded in Paragraph 12 hereof of this Amended Statement of Claim. By reason of their knowledge of the facts and matters hereinbefore pleaded the First, Second and Third Defendants are bound by the said duty of confidence in the same fashion as the ~~Second and~~ Fourth and Fifth Defendants.

PARTICULARS

The best Particulars which the Plaintiffs can give before discovery herein are as follows:-

- (i) The Plaintiffs repeat the Particulars given under paragraph 14 hereof of this Amended Statement of Claim;
- (ii) The said models of the "Osprey" ~~was~~ were constructed by use of the First Plaintiff's confidential information embodied in the lines plan;
- (iii) Between about the 5th February 1981 and the ~~24th~~ March 15th April 1981 the Defendants or some of them caused the said models of the "Osprey" to be tested at S.M.E.T. and subjected ~~it~~ them to at least 999 separate experiments and made a video film or films of the models during the said testing. In carrying out the said tests and making the said film the Defendants or some of them made use of the First Plaintiff's said confidential information and the information derived by them therefrom is subject to the said duty of confidence and is held by the Defendants upon a constructive trust for the First Plaintiff.
- (iv) The Defendants or some of them have communicated or disclosed the results of such testing to Her Majesty's Ministry of Defence. The Plaintiffs are unable to give particulars of precisely when, how,

by whom or to whom such communication or disclosure took place save that one such occasion occurred between the 11th and 13th April 1981, and the recipient of such information on that occasion was Mr. K.J. Rawson of the Procurement Executive of the Ministry of Defence.

16. In the premises the Plaintiffs ~~has~~ have suffered loss and damage, particulars of which will be supplied after discovery herein.

16A. Further, the Plaintiffs and each of them claim against the Defendants and each of them exemplary and/or aggravated damages by reason of their scandalous and oppressive conduct as particularised hereafter. The said damages are claimed:

- (a) by virtue of the First Defendant's position as a state-owned corporation having a virtual monopoly (as to which the Plaintiffs will refer to the Aircraft and Shipbuilding Industries Act 1977 and the Regulations made thereunder) and by virtue of the Second, Third, Fourth and Fifth Defendants' relationships with the First Defendant as set out in paragraphs 3-5 hereof. The Third Defendant was at all material times one of the First Defendant's Board members appointed by the Secretary of State for Industry pursuant to provisions contained in the said Act.

(b) by reason of the facts and matters already pleaded in the Re-Re-Amended Statement of Claim and particulars served thereunder and of the further facts and matters particularised hereunder the Plaintiffs contend that the Defendants and each of them acted in cynical disregard of the Plaintiffs' rights and in the expectation that the benefits to be obtained by their unlawful conduct would exceed any damages the Plaintiffs might recover in respect thereof and/or in the expectation that their unlawful conduct could be concealed from the Plaintiffs by false statements and destruction and non-disclosure of evidence and/or in the expectation that the Plaintiffs might have either refused the Defendants permission to make use of their property and information referred to herein or required a substantial fee therefor.

(c) by reason of the provisions of section 17(3) of the Copyright Act 1956.

PARTICULARS OF FACTS AND MATTERS RELIED UPON

Without prejudice to the generality of the matters already pleaded upon which they rely hereunder, the Plaintiffs rely on the further following facts and matters:

(i) Paragraphs 8 to 11 hereof are repeated. On the 12th November 1980 a meeting took place between Mr. Giles and representatives of the Defendants including inter alios the Third and Fourth Defendants, at which the merits and potential of the Osprey design were discussed. At the end of the meeting matters were left that, if Mr. Giles wished, the First Defendant would be prepared to reassess the Osprey and Mr. Giles would submit to the Third Defendant design and trial data relating to it. Following the meeting Mr. Giles duly left with the Third Defendant certain information for his consideration. On the 18th November 1980 the Third Defendant had a meeting with the Fourth Defendant at the S.M.E.T., and there authorised the construction of a model of the Osprey. At this meeting questions were raised about the availability of information as to the trials results and propellers of the Osprey. By his letter to Mr. Giles of the 19th November 1980, the Third Defendant set out details of further information which he required to arrive at a "realistic assessment", which in his letter of the 21st November Mr Giles promised to obtain. Having been informed by Mr. Giles by a letter dated the 30th December 1980 that such information was now available, the Third Defendant by his letter of

the 15th January 1981 asked to see copies of it. Such information was duly left with the Third Defendant following a meeting on the 26th January 1981, and Mr Giles sent further information to the Third Defendant with his letter of the 9th February, which the Third Defendant acknowledged on the 20th February, stating that he was looking at the information and would require more time to do so. Had Mr. Giles been told the truth about the construction and testing of the Osprey models he would not have provided the information referred to without agreement concerning the commercial and other implications of such tests.

- (ii) The Third Defendant was at all material times in overall control of the S.M.E.T. and himself authorised the building and testing of the second model Osprey in addition to the first, as aforesaid. The building of the two Osprey models and four Azteca models was carried out as a matter of urgency from December 1980 and January 1981 onwards, and the Osprey and Azteca models were in fact tested at the S.M.E.T. under the Fourth Defendant's direction from mid-January 1981 onwards. The Third Defendant visited the S.M.E.T. on the 11th February 1981 for the specific purpose of seeing the Osprey model No. 2219 being tested,

having arranged such a visit on or about the 5th February 1981. The Defendants have sought in their Defence inter alia to justify the said acts as having been done as part of the Defendants' assessment of the Osprey referred to in subparagraph (i), above, yet the Third Defendant failed in the course of the said communications with Mr. Giles or at his meeting with him on the 26th January 1981 to disclose the said acts to him until the events hereinafter pleaded. As the Third and Fourth Defendants well knew the Plaintiffs' own model Osprey could have been made available to the Defendants for any authorised assessment of the Osprey hull form. As to such knowledge the Plaintiffs will rely on a telex dated the 19th June 1980 from the Fourth Defendant to the Third Defendant.

(iii) Following the Third Defendant's said letter of the 20th February 1981 no further communication was made to Mr. Giles until the Third Defendant, having discovered on or about the 26th March 1981 that Mr. Giles had found out about the possible existence and testing of an Osprey model by the Defendants, wrote to Mr Giles on the 27th March 1981 suggesting:

(a) that in order to evaluate the data which

Mr. Giles had left as aforesaid more methodical data on the hydro-dynamic characteristics of the Osprey hull form was needed;

(b) that in June 1980 Mr Giles had asked the Fourth Defendant to run a model of an Osprey and had given him a lines plan for him to do so;

(c) that in an effort to provide such additional data the Fourth Defendant had now made and run "a" model Osprey.

Suggestions (b) and (c) were false and made to try to preempt a complaint by Mr. Giles. Further, until it was learnt that Mr. Giles had discovered what the Defendants were doing, the Defendants had no intention of informing the Plaintiffs of the existence or testing of "the model" Osprey. The said letter was also false and deceptive to the Third Defendant's knowledge in that it implied that only one model Osprey had been made and tested, and that it had only been made and tested following the submission by Mr. Giles of information in late January and in February 1981 as aforesaid.

(iv) By a letter dated the 31st March 1981 to the First and Third Defendants the Plaintiffs' solicitors complained of the construction and testing of the model Osprey and sought undertakings in connection with the misuse of the Plaintiffs' intellectual property and information.

(v) By a letter dated the 2nd April 1981 from the First Defendant's legal adviser, and in answer to the said letter of the 31st March to the First and Third Defendants, and on their behalf:

(a) the suggestions (a) and (c) referred to in sub-paragraph (iii) above were in effect repeated;

(b) it was sought to excuse the building of "the model" Osprey as having been done with the Plaintiffs' implicit permission;

(c) the existence and testing of the second model Osprey was concealed; and

(d) it was sought to reassure the Plaintiffs that in any event the investigation of the Osprey design by the Defendants had been completed.

(vi) On the 8th April 1981 at the S.M.E.T. the

Plaintiffs' representatives were shown Model No. 2219 by the Fourth Defendant. The existence of the second model Osprey was actively concealed from them.

(vii) By a letter dated the 13th April 1981 again from the Defendants' legal adviser, in which it was stated that the matter had now been investigated more fully, it was falsely alleged that no copy of the Osprey lines plan had been made, and that "the model" had not been made and could not have been made from the Osprey lines plan since the lines plan had been returned in June 1980 without any copy having been taken, but rather that "it" had been made using information generally available to the First Defendant.

(viii) Notwithstanding the reassurance referred to in sub-paragraph v(d) above, and despite the fact that, as the Defendants knew from the Plaintiffs' solicitors' letter of the 3rd April which enclosed a copy of it, the Writ herein had by then been issued, the Fourth Defendant on Thursday the 9th April gave instructions to the ship model experiment tank in Dumbarton to run tests on the concealed Osprey model No. 2225 with extreme urgency (such tests to be run over the week-end and with overtime if necessary). Pursuant to such instructions a large number of tests was carried

out on consecutive days from Saturday the 11th April to Wednesday the 15th April and on the 21st, 22nd and 23rd April and on Monday the 27th April.

(ix) On the 30th April 1981 the Plaintiffs and their legal advisers attended at the S.M.E.T. for the purpose of inspecting "the model". The Third Defendant invited them to the Board Room for the purpose of explaining exactly what happened, and at that meeting:

(a) the Third Defendant falsely informed the Plaintiffs and their solicitors that instructions for the building of "the model" Osprey had been given after the meeting of Mr. Giles and the Third Defendant on the 26th January 1981, and that the Third Defendant had not told Mr. Giles of this fact before his (the Third Defendant's) letter of the 27th March because he had been too busy to do so. The purpose of this deceit was to attempt to explain why "the model" had not been mentioned in the earlier correspondence between him and Mr. Giles or at the said meeting.

(b) those present on the Defendants' behalf concealed the existence of model No. 2225.

(c) the Third Defendant sought at first to imply that "the model" had been built using information generally available to the Defendants and not from the lines plan, and indeed the Fourth Defendant maintained that it was not in fact an Osprey but merely "of the Osprey type". When directly challenged on this point none of those present on the Defendants' behalf were willing to confirm the position expressly one way or the other.

(d) for the purpose of reassuring the Plaintiffs that no material relating to the Osprey had been used in relation to the design of the Hong Kong patrol craft (referred to in the Further and Better Particulars served under paragraph 15 hereof), the Third Defendant stated that it was not so used and could not have been so used since the tender for the Hong Kong patrol craft had closed on the 4th November 1980. In fact, as the Plaintiffs only learnt after the Defendants had made further discovery herein in 1984, no tender for the Hong Kong patrol craft submitted by the 4th November 1980 had been accepted, and substantial design work on the hull for this craft had been carried out

under the Fourth Defendant's supervision at the S.M.E.T. in December 1980 and the early months of 1981.

(x) On the 1st May 1981, after the Writ herein had to the Defendants' knowledge been issued, and notwithstanding the Plaintiffs' solicitors' express request in their telex of the 23rd April 1981 that all documents should be preserved and none destroyed, and notwithstanding further the fact that at the said meeting on the 30th April 1981 the Plaintiffs' solicitors had stated that they sought every piece of paper and all materials connected with the manufacture and testing of "the model", the Fourth Defendant gave instructions to the ship model experiment tank at Dumbarton for the immediate destruction of the concealed Osprey model No. 2225 and its mould, which instructions were promptly carried out.

(xi) In response to the Plaintiffs' solicitors' requests, and before formal discovery in this action, on the 30th April 1981 and on or about the 19th May 1981 the Defendants produced documents relating to their testing of the Osprey. Such documents showed testing up to the 24th March 1981 but no further, and concealed the existence and testing of model No. 2225.

(xii) On the 3rd July 1981 the Defendants and each of them were ordered by this Honourable Court to serve upon the Plaintiffs an affidavit or affidavits disclosing the names and addresses of all persons to whom they had disclosed any model made from the lines plan. On the 21st August 1981 and pursuant to the said Order the Fourth Defendant swore an affidavit on his own behalf and on behalf of the Second Defendant detailing inter alios the persons to whom disclosure of any model of the lines plan had been made or might have been made by reference to "the model", and referring to the testing of such a model at the S.M.E.T. between the 5th February 1981 and the 24th March 1981. The said affidavit concealed:-

(a) the facts of the existence and testing of model No. 2225.

(b) the fact that the results of the testing of the Osprey models had been communicated to the Ministry of Defence as set out in paragraph (iv) of the Particulars under paragraph 15 hereof.

(xiii) On the 20th August 1981 and also pursuant to the said Order the Third Defendant swore an affidavit on his own behalf and on behalf of the First Defendant. In the said affidavit the Third

Defendant stated that he had read a copy of the affidavit referred to in paragraph (xi) above intended to be sworn by the Fourth Defendant. The Third Defendant knew that the Fourth Defendant's said affidavit concealed the existence and testing of model No. 2225.

(xiv) By a letter dated the 2nd September 1981 the Defendants made an offer of £100 in satisfaction of the First Plaintiff's claims to damages or an account of profits. The said offer was derisory and insulting.

(xv) Pursuant to an order for discovery made in this action on the 3rd July 1981, the Defendants served a list of documents on the 11th September 1981 purporting to be a complete list relating to the issues in questions in this action and supplementing a provisional list served on the 1st September 1981. In fact, the said lists failed to disclose documents relating to the existence and testing of Osprey model No. 2225 and of the four Azteca models, a decision having been taken by the Defendants that the facts relating to these models should be actively concealed from the Plaintiffs. Pursuant to that decision the Defendants' documents were carefully filleted to exclude the aforesaid documents.

(xvi) The Plaintiffs, not being satisfied that all documents relating to the Osprey model No. 2219 had been disclosed by the said lists, issued two summonses for further and better discovery. By a letter dated the 7th January 1982, and shortly before the hearing of the said summonses on the 11th January 1982, the Defendants disclosed to the Plaintiffs for the first time that a second Osprey model (No. 2225) had been built and tested. At the said hearing it was admitted that the model had been destroyed and that its existence had been actively concealed from the Plaintiffs. Pursuant to an order for specific discovery made on the Plaintiffs' said summonses, the Defendants served a further and better list of documents on the 17th February 1982. The said list revealed for the first time:

- (a) that documents relating to Osprey models nos. 2219 and 2225 had also been destroyed;
- (b) that four Azteca models had also been built and tested; and
- (c) that as part of the Defendants' decision to conceal the truth from the Plaintiffs, they had prepared a false report (reference RMSTA 2225/1 SNC 20.3.81) purporting to show that there was only one model Osprey which,

however, had two separate model numbers,
namely no. 2219 and no. 2225.

(xvii) The said further list was verified by affidavits of the Third and Fourth Defendants yet the list was still substantially deficient, 39 categories of documents being omitted relating to Osprey models nos. 2219 and 2225.

17. Unless restrained by this Honourable Court the Defendants and each of them intend to continue to commit the said acts of infringement and breach of confidence complained of.

AND THE PLAINTIFFS' Claim is for:-

1. An injunction to restrain the First ~~and~~ Second and Fifth Defendants and each of them whether acting by their respective directors, officers, servants, agents or otherwise howsoever from doing the following acts or any of them, that is to say:-

(i) Infringing the Plaintiffs' copyright in drawing number 165.2082 and/or in earlier versions thereof and in drawings for the Azteca Fishery Protection and Patrol Craft by reproducing the same or a substantial part thereof whether in the form of other drawings or in three-dimensional form and whether directly or indirectly;

(ii) Making use of or disclosing the First Plaintiffs' confidential information relating to its Osprey 50 metre patrol craft or infringing the Plaintiffs' copyright by developing, producing, selling, researching into or using in any way any naval designs or projects in which any direct or indirect use has been and/or could be made of the Plaintiffs' drawing number 165.2082 or any copy thereof or any confidential information derived therefrom directly or indirectly or by use of it, whether alone or in association with other naval designs or projects of whatsoever size.

2. An Injunction restraining the Third and Fourth Defendants and each of them whether acting by themselves or their servants or agents or otherwise howsoever from doing or authorising the doing of any of the acts specified in paragraph 1 (i) and (ii) of the prayer herein.

3. ~~An Order for an enquiry as to~~ Damages (including exemplary and/or aggravated damages and/or damages under s.17(3) of the Copyright Act 1956) for infringement of copyright, conversion and breach of confidence ~~or at the Plaintiffs'~~ option on account of profits in respect thereof and ~~payment to the Plaintiffs~~ by the Defendants of such sum ~~found due to it on the taking of such enquiry or account together with interest pursuant to statute until payment.~~

3A. Interest pursuant to s.35A Supreme Court Act 1981.

4. An Order for the delivery up to the Plaintiffs upon oath of all infringing copies and materials the dealing with which by the Defendants and each of them would be a breach of the Injunction prayed for in paragraphs 1 and 2 hereof or any of them as are in the possession, power, custody or control of the Defendants or any of them.

5. An Order for the disclosure by the Defendants and each of them upon oath of the names and addresses of all natural or corporate persons or any of them to whom the Defendants have disclosed the Plaintiffs' drawing number 165.2082 or any copy or model thereof or any information contained therein elicited therefrom.

6. Further or other relief.

7. Costs.

JOHN MUMMERY

JOHN MUMMERY

JOHN MUMMERY

KEVIN GARNETT

KEVIN GARNETT

SERVED this second day of July 1981 by Messrs. Frere
Cholmeley of 28 Lincoln's Inn Fields, London WC2A 3HH,
Solicitors for the Plaintiffs.

RE-SERVED this ninth day of September 1981 by Messrs. Frere Cholmeley of 28 Lincoln's Inn Fields, London WC2A 3HH, Solicitors for the Plaintiffs.

RE-RE-SERVED this fourth day of November 1982 by Messrs. Frere Cholmeley of 28 Lincoln's Inn Fields, London WC2A 3HH, Solicitors for the Plaintiffs.

RE-RE-RE-SERVED this ninth day of December 1983 by Messrs. Frere Cholmeley of 28 Lincoln's Inn Fields, London WC2A 3HH, Solicitors for the Plaintiffs.

RE-RE-RE-RE-SERVED this 7th day of May 1986 by Messrs. Frere Cholmeley of 28 Lincoln's Inn Fields, London WC2A 3HH, Solicitors for the Plaintiffs.