Lessons learned: judgment of Mr Justice Jay is a warning to Group Action solicitors

By Hannah Curtain

Earlier this year Mr Justice Jay handed down judgment in *Saunderson & ors v Sonae Industria (UK) Ltd* [2015] EWHC 2264, dismissing all 20 test cases in this Group Action. The Claimants alleged that they had been exposed to clinically significant levels of smoke following an industrial fire at Sonae's plant at Kirkby and had suffered personal injuries as a result. The judgment is notable for its criticism of claims farming tactics deployed by the Claimants' solicitors, with two referrals to the Solicitors Regulation Authority being made. It seems unlikely that the remainder of the Group, which comprised some 16,626 claims, will proceed to trial, the Court noting that *"it would scarcely be proportionate to start examining even a handful of these cases... In my judgment, the Claimants' chance has come and gone."*

The facts

1. On 9th June 2011 a major fire broke out at the Defendant's particle board manufacturing plant at Knowsley Industrial Park, Kirkby. The fire began in the first of the six concrete bunkers where recycled woodchips were stored. It spread to the remaining bunkers and caused a substantial plume of smoke, fumes and chemicals to spread into the surrounding area.

2. The Claimants all lived or worked close by. They complained of injuries including to the eye, skin and respiratory tract, none of which were said to be permanent. It was accepted that the claims were of modest value.

Issues before the Court

3. The Defendant admitted breach of duty. Both the existence and causation of actionable injury were however hotly contested.

4. The Judge considered the evidence of expert toxicologists as to the threshold levels of exposure at which individuals would suffer an injury. Plume modelling evidence addressed the exposures of each Test Claimant depending on his or her proximity to the fire at the relevant time.

5. On the basis of this evidence, the Judge identified a contour line around the plant inside of which the levels of exposure would have been sufficient to trigger an injury [442]. The Judge found that a maximum of 250 people lived within that line [465], nowhere near the 16,626 Claimants in the GLO. Only one of the Test Claimants was in fact resident within the line.

6. Also of significance was the absence, in all but one case, of any contemporaneous medical note recording a complaint about the fire. The Judge found that this called for an explanation particularly where the Claimant had sought advice in relation to the injury that formed the basis of the claim, but did not mention a link to the fire at the time [245].

The Court's decision in the Test Claims

7. The Judge was generally unimpressed by the lay evidence, referring to it as *"vague, impressionistic, imprecise, sometimes inconsistent with the known behaviour of the smoke plume, and often internally consistent"* [451]. He considered that the scientific evidence "*does not begin to support these*

claims" [444], save for in relation to two Test Claimants who lived close to the plant (and whose claims were ultimately rejected on the facts [462]).

8. All 20 claims were accordingly dismissed. As to the remainder of the Group, the Judge observed that whilst he could not rule out the possibility that some individuals might have suffered an injury, the Claimants had only asked him to examine one individual who lived within the contour line, and that if there were stronger cases within this sub-group *"they should have been put forward as Test claims."* Further, *"after a multi-million pound group action which has failed, in my judgment it would scarcely be proportionate to start examining even a handful of these cases, in the pursuit of identifying what would be, at best, modest claims"* [465].

Lessons learned

9. The Judge went on to criticise tactics deployed by the Claimant firms.

Forged signatures

10. Mr Glascott, who suffered from mental health difficulties, wrote directly to the Defendant, having been chased by his own solicitors to complete and sign a 'questionnaire' for the purpose of submitting a claim.

11. Mr Glascott stated that he had been "cold called" at home. He was persuaded to sign a questionnaire when he revealed that he suffered from breathing difficulties. On being diagnosed with emphysema caused by smoking, Mr Glascott informed his solicitors that he wanted to withdraw his claim and was told that he would have to pay their costs [374].

12. Mr Justice Jay considered that the solicitors' agent *"was acting in what he thought were the interests of his firm rather than those of his client"* [378], and

further found that it was not in fact Mr Glascott's signature on the questionnaire [378]. A referral to the SRA was made.

13. The second SRA referral was in Mr Woolvine's claim in which the Court found, again, that his signature had been forged by his solicitors [425].

Unreliable witnesses

14. One claim was dismissed when the Judge held that the Defendant's pleaded case of fraud had been established, on the basis of an exchange that took place on Twitter. The Claimant had asked two friends if *"either of you's jumped on this sonae claim bandwagon?"* and stated *"I'm getting involved I reckon, pays for the summer holiday if it goes thru"* [393].

15. Various other Claimants were also found to be unreliable. One Claimant, recruited to the GLO when she had seen a sign asking *"were you affected by the fire?"* when out shopping, had *"permitted herself to embrace a narrative which gained full currency long after the event."* The Judge observed that *"certain individuals are vulnerable, compliant and suggestible"* [288].

16. Another Claimant, recruited after a "cold call" to her home, had *"persuaded herself into believing, some considerable time after the relevant events, that the fire caused her asthma attack"* [281].

17. A Claimant who had given inconsistent evidence was *"a good example of a suggestible witness who could not remember what actually happened, and therefore tended to say what she assumed could be right because that fitted into her mindset of what this fire must have caused"* [263].

Recruitment of Claimants

18. The Judge also made findings as to the process adopted by the Claimants' solicitors, including the use of questionnaires which posed leading questions, pop-up shops and cold calling. He noted that *"Human beings are naturally susceptible and suggestible, particularly if they are made to believe that they form part of a coherent group with shared experiences, and if they risk none of their own resources in bringing a claim"* [456].

19. He considered that the lawyers in this case had *"sensed the opening of a business opportunity"* and that *"It proved not very difficult to recruit willing claimants to the group, not least because there was a lot of ill-feeling in the neighbourhood directed towards Sonae, and many people genuinely believed that they must have been harmed in some way. The legal process preyed on human susceptibility and vulnerability, and the rest is history"* [463].

20. The Claimants' solicitors were criticised for failing to investigate, at an earlier stage, *"whether the case stacked up"* and instead attempted to *"make a virtue out of necessity – perhaps because they clung to the notion that the litigation would settle"* [466].

Conclusion

21. The case represents the danger of attempting to recruit a large number of claimants, without properly investigating the strength of their claims, in the hope that when faced with a Group Action of such magnitude the Defendant will simply settle. Jay J's criticisms of the practices adopted by the firms highlight the importance of adhering to proper procedures for recruiting Claimants, and for gathering and examining evidence.

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