



LEGAL BRIEFING

Colour Quest Ltd & Ors v Downstream UK Plc, Total UK Ltd, Hertfordshire Oil Storage Ltd & Ors [2009] EWHC 823 (Comm)

The Facts

This case relates to the legal aftermath of the fire at the Buncefield Oil Storage Depot explosion, focussing only on the legal costs and offers to settle.

Total Downstream UK Plc and Hertfordshire Oil Storage Ltd had been found vicariously liable for negligence, which led to the explosion. A petrol storage tank had been over filled, causing a cloud of fuel vapour to engulf the tank. The ignition of the vapour cloud was the cause of the explosion. That tank was operated by Hertfordshire Oil Storage Ltd, which was a joint venture. As a result of the fire a further 20 fuel storage tanks exploded. Apart from the direct damage caused, a number of claims were brought by companies who were situated on the adjoining industrial estate as well as residents in the vicinity. Judgment was given for the claimants.

The Issue

The claimants having won, wanted the defendants to pay their legal costs. The issue was whether Total's conduct justified the award of costs on an indemnity basis. This would mean that the claimants would obtain a greater recovery of costs than on the standard basis.

The Decision

Total denied liability for two years. That in itself was unreasonable and allowed the claimants to recover indemnity costs in respect of the issue of negligence that had been denied. They were able to claim indemnity costs up to the date on which the defendant had abandoned its defence for responsibility for the escape of the vapour.

Part of Total's case was that the type of damage was not foreseeable. They abandoned that argument on the third day of trial. The Judge held that this did not necessarily mean that that part of the defence had been hopeless for two years. However, the claimants had maintained a good case that the type of damage was foreseeable and that Total's claim was bound to fail. However, the defendant's case was not so weak as to justify indemnity costs.

Nonetheless, one of the claimants was entitled to indemnity costs. This was because it had issued a Part 36 offer which the defendant had failed to accept. Had that offer been accepted the claim would have been brought to a conclusion much sooner. That claimant was entitled to costs together with interest at the LIBOR rate plus four percent.

Comment

This case is interesting not just because it relates to the Buncefield Oil explosion, but for two further reasons. First, if damage is caused to adjacent owners and people's homes as a result of the explosion then those operating and owning the facility will be liable for the damages.

The second point relates to costs. Total had defended themselves for two years, and it was arguable that they should have conceded their liability much sooner. The claimants tried to obtain a better recovery of costs on the basis

that the defendant should really have accepted liability from the start. It was a close call for the Judge, but ultimately he decided that the claimant would not receive a better recovery of costs. The defendants were entitled to defend themselves even though the defence was quite weak. The defence was not entirely hopeless.

However, indemnity costs were awarded as a result of one of the claimants offering to accept a lesser amount during the two year period. The case therefore demonstrates the importance of looking realistically at your claim and then on a without prejudice basis or on the formal Part 36 basis offering to accept a lesser amount in order to bring the proceedings to a close. This realistic early assessment can have a major impact on a party's recovery of costs.

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