

UK: Kirkby residents lose class action case against Sonae Indústria

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Some 16,626 residents of Kirkby, in northwest England, recently lost their class action for damages against the Portuguese firm Sonae Indústria.

Sonae was founded in Portugal in 1959, beginning in the wood derivative business and expanding into retail, IT, and the media and other businesses. It operates in 60 countries.

Residents took out the claim, the largest class action of its kind in UK legal history, following a huge fire at the factory in June 2011. Smoke from the blaze blew over the area, and residents complained of skin irritation and breathing difficulties.

The fire burned for eight days, after 1,500 tonnes of woodchips ignited and stopped production at that part of the plant until the end of the following month.

The High Court judge in the case, Mr Justice Jay, admitted, “Many claimants—it is not clear to me how many—suffered some symptoms of shortness of breath, lacrimation and soreness of the throat.” He added, “It is difficult to say for how long the smoke and these mild symptoms lasted, but I have in mind a maximum period of about one week.”

Despite this, in a blatant act of class justice, the judge found in favour of Sonae, which has a history of health and safety violations, including the death by negligence of two of its former employees.

The judge justified his ruling on the grounds of what he called “serious weaknesses”, including a delay in bringing the case. However, according to the Limitation Act 1980, applicable in England and Wales, cases are actionable up to six years following breaches of ordinary contract and 12 for breaches of deed. The case was heard four years after the fire, well within the statute of limitations.

The judge also cited “recall bias” and stated the following: “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.”

The insinuation that some form of collective hysteria induced the residents to somehow imagine their symptoms following the fire is not only an insult to the integrity of the claimants, but defies the well-documented history of health and safety abuses at the factory.

Neither were the lawyers, who dared to bring such a case on behalf of a working class community, exempt from the judge’s ire.

“Many months later,” he continued, “lawyers arrived on the scene and sensed the opening of a business opportunity ... preying on human susceptibility and vulnerability.”

He suggested that the veracity of the accounts of the claimants may have been compromised 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 ill feeling in the neighbourhood towards Sonae was entirely justified and, had justice prevailed, would not have undermined their claim.

Sonae, which claims to be one of the largest chipboard manufacturers in the world, began operations in Kirkby in the year 2000, supported by £2 million of taxpayers’ money. Before the company located to Kirkby, Knowsley council failed to carry out a Health Impact Assessment, despite many countries refusing Sonae building permission.

Within a year, local residents were complaining of symptoms associated with exposure to formaldehyde, including irritation of the eyes, nose and throat, irritation of the skin and breathing problems.

Formaldehyde is used in the manufacture of chipboard, and is a known carcinogen.

White dust from the manufacturing process in the factory coated cars, gardens and washing hanging out to dry. Local farmers began to protest, complaining that they were unable to work the fields when the wind, bearing contaminants from the factory, was blowing in their direction.

There had been a number of previous explosions and fires at the plant since it opened. In September 2001, 70 firefighters battled for three hours to bring under control a blaze that followed an explosion.

By February 2007, Knowsley council had served 17 enforcement notices on Sonae under environmental legislation.

Even worse than the repeated pollution of the surrounding environment were the avoidable accidents at work.

In December 2010, two employees, James Bibby, 25, and Thomas Elmer, 27, tragically lost their lives while working at the factory. Sonae and the subcontractor Metso Paper Ltd were charged with failing to carry out safe and suitable risk assessments towards an employee, in contravention of the Management of Health and Safety at Work regulations 1999. The companies are awaiting sentence, having pled guilty, such was the weight of evidence against them.

The circumstances of the deaths of these young men were horrific. A conveyor belt they were maintaining started automatically, dragging them into a huge silo machine. The conveyor belt should have been properly isolated, but as prosecutor Nigel Lawrence said, “there was no safe system of work” and confusion reigned. “Everyone seems to have had a different view of who should do what, how they should isolate and when it should occur,” he explained.

The company has a long history of injuries due to criminal negligence. According to the *Liverpool Echo*, between 2000 and 2010, “The Health and Safety Executive ... have said they had been called to 22 serious incidents in 10 years including fires and an explosion.” Between 2003 and 2006, it was successfully prosecuted by the Health and Safety Executive (HSE) on four occasions, for which it paid just £132,000 in fines.

In April 2000, the HSE began a prosecution against Sonae after employee Ian Fairclough suffered serious

crush injuries after being trapped in the clamping mechanism of a hydraulic press. The outcome was that Sonae was fined £15,000 and ordered to pay £16,703 in costs. The judge in the case declared, “It is important that firms such as Sonae do not sacrifice safety for profit.”

In April 2001, Michael McNamara broke his leg after it was caught in a piece of machinery. Sonae was fined £3,500 and ordered to pay costs of £6,417.

In June 2002, John Thomas was rescued by firefighters after a dust explosion at the factory, suffering serious injuries to his head, chest and back. The explosion resulted in 20,000 litres of pollutant escaping into local waterways. Again, Sonae was fined and ordered to pay costs.

In 2011, demolition worker James Kay, 62, lost his life while working for a firm that was demolishing part of the site damaged by the June fire. He died after being crushed by industrial machinery.

Speaking to the *Liverpool Echo* after Kay’s death in 2011, a local resident, Helen Moss, said, “Sadly I am not surprised. ... I tell you the Health and Safety Executive had better set up an office at Sonae they are there so often. If that factory isn’t closed down over this then I would like to know why.”

Such was the decade-long “ill feeling in the neighbourhood” towards Sonae, for its disregard for health and safety, that in 2011, Knowsley MP George Howarth tabled an Early Day Motion in the House of Commons. He called for the closure of the factory until safety could be guaranteed.

Following another factory fire in January 2012, Howarth called for the rescinding of Sonae’s environmental permit and for it to be closed.

The company terminated operations in Kirkby in September 2012, with a loss of 220 jobs. This year it reported a rise in profits for the year 2014 to £144 million.



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