

Thomas Cooper's Marine & Commercial Litigation Department represented the Defendant in the case of *Graham Wood v. Esso Petroleum Company Limited* [2011] EWHC 1876 (QB) in the High Court.

The Claimant alleged that in June 2005 he was exposed to a noxious gas of unknown composition whilst working at the Defendant's refinery in Southampton. It was said that this exposure caused him to develop Respiratory Airways Disfunction Syndrome (RADS) and an associated psychiatric injury.

The Claimant relied upon the facts that he and others detected an unpleasant smell at a work site and that the worksite was subsequently evacuated as prima facie evidence of negligence. He also relied upon the expert evidence of a Consultant Physician who diagnosed RADS sometime after the event.

The Claimant was said to have been unable to return to work as a result of the incident and his claim was valued by his solicitors at over £1 million.

On behalf of the Defendant it was argued that there was no evidence whatsoever of a negligent release of any substance (harmful or otherwise) at its premises on the day in question, and that the Defendant had in place excellent safety and risk management procedures to prevent such a release. It was also submitted that the Claimant failed to meet the diagnostic criteria for RADS and that any psychiatric injury was wholly unconnected to the incident in question.

Giving judgment for the Defendant and dismissing the claim, Mr Justice MacDuff held that 'on an enormous balance of probabilities' no liability attached to the Defendant. The Claimant was described as an unreliable historian and a poor witness.

The judge found no evidence of a negligent release of gas or any other substance which was foreseeably likely to cause damage or injury and that the Defendant had in place systems which prevented against this in any event. He found that any smell identified by the Claimant was harmless.

In addition the judge held that the Claimant did not meet the criteria for a diagnosis of RADS and described the Claimant's expert as 'partisan' and his defence of the diagnosis of RADS to be 'wholly unrealistic' and 'based really on the remoteness of possibilities'.

The Claimant was ordered to pay the Defendant's costs of defending this claim.

For further information, please contact Richard Stevens on:



Richard Stevens

D: +44 20 7390 2310

M: +44 77 4863 2559

E: Richard.Stevens@thomascooperlaw.com

LONDON

ATHENS

MADRID

PARIS

SINGAPORE