

In the High Court of Justice
Queens Bench Division

Case No. HQ06X01271

BETWEEN:

Raymond James Fox & Others
Claimant

And

**Shell U.K. Limited (sued as "Shell
International" and "Shell U.K.Oil
International Group of Companies
and others")**
Defendant

DEFENCE

Weightmans Solicitors
Ground Floor Mezzanine
India Building
Water Street,
Liverpool.
L2 0GA

Your Ref: PPF 16269 117

Our Ref: CF/AM/119322

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1. On the basis that this claim related to the terminal at Earley, Reading, the correct Defendant is Shell U.K. Limited.

2. (a) The Defendants understand that the first named Claimant, Mr Raymond Fox is the subject of a bankruptcy order made in the Reading County Court on 12 February 2001 and that the Trustee in Bankruptcy is Louise Mary Brittain. The First Claimant is therefore not entitled to bring these proceedings in the absence of the consent of his Trustee in Bankruptcy and in the circumstances the First Claimant is required to prove that he has such consent.

(b) These proceedings were issued by Raymond James Fox, the First Claimant. The Defendants have requested that Mr Fox confirm his authority to join any other Claimant to this action, specifically the four individuals named on the claim form.

Pending such confirmation, the Defendants neither admit nor deny that these four individuals were properly made parties to the action.

3. The Defendants understand that the claims described in the Particulars of Claim are for personal injury and consequential loss. By virtue of sections 11 and 14 of the Limitation Act 1980, proceedings in respect of such claims must be issued within 3 years of the occurrence of such injury or if later the knowledge of such injury as defined in section 14. The injury alleged was known to the Claimants more than 3 years prior to the commencement of these proceedings on 10 February 2006. Specifically in the First Claimant's affidavit for the purpose of the hearing on 27 April 2006 he indicated:

"In 1997/98 the injuries became a reality to my family . . ."

This statement is consistent with numerous other statements made by the First Claimant to the press, on the web and in correspondence with the Defendants that the First Claimant and his family have had a firm belief since the mid-1990's that their health has suffered as a result of the escape of noxious substances from the Earley Terminal into the Claimant's home.

4. The Defendants understand that the claims described in the Particulars of Claim are all premised on the factual allegation that the Defendants operated a nuclear facility at Earley and thereby caused radioactive material to be transmitted into the Claimant's home. As to this allegation:

- (a) The Defendants admit that they owned and operated the Earley Terminal from January 1976 until its closure in 1989. Prior to 1976, the Defendants admit that business on site was conducted by Shell-Mex & B.P. Limited, then (for a short period) by Shell Marketing Limited (now in liquidation).
- (b) The Defendants deny that at any time they operated a nuclear facility at Earley and they deny that any radioactive material was transmitted from the Earley Terminal to the Claimant's home.
5. The Defendants are uncertain as to the nature of the cause of action alleged in the Particulars of Claim, but, in the interests of proportionality, they will admit that if, contrary to the above, the Claimants prove that the Defendants used or stored radioactive material at the Earley Terminal and that this radioactive material was transmitted from the Earley Terminal to the Claimant's home then this would represent the breach of relevant duties owed by the Defendants to the Claimants as adjoining occupiers and/or persons living in the vicinity of the Earley Terminal.
6. The Defendants intend to request the examination by a medical consultant nominated by them of any Claimant who is entitled to pursue a claim for personal injury in this action. Pending the same the Claimants are each required to prove their claims for personal injury and loss and damage.
7. The reports of Dr Kees do not comply with the Practice Direction CPR 35. In the absence of such compliance, the Defendants cannot judge whether Dr Kees reports amount to admissible expert evidence. In the circumstances, they deny at this stage that the report should be admitted as expert evidence under CPR 35.

- 8. At this stage, the Defendants cannot plead as to value.
- 9. Save as aforesaid, no admissions are made in respect of the Particulars of Claim.

CHARLES FEENY

Statement of Truth

I MICHAEL JOHN GREEN believe the facts stated in this Defence to be true.
I am duly authorised by the Defendants to sign the statement of truth on their behalf.

(Signed) 

Print name MICHAEL JOHN GREEN

Position of Office held LEGAL ADVISOR

DATED this 31st day of MAY 2006.

Weightmans Solicitors
Ground Floor Mezzanine
India Building
Water Street,
Liverpool.
L2 0GA