

General Form of Judgment or Order

In the High Court of Justice King's Bench Division Newcastle Upon Tyne District Registry	
Claim Number	E90NE073
Date	27 April 2023



AB (BY HIS MOTHER AND LITIGATION FRIEND BB)	1 st Claimant Ref 133692.001/JCW/JPS
ROBERT MCBRIDE LTD	1 st Defendant Ref AW.MCB9.390
CHEMCLEAR (UK) LIMITED	2 nd Defendant Ref JJ/JJ/ CHE.MCB.1004.00001
RED INDUSTRIES (BROWNHILLS) LTD	3 rd Defendant Ref NTL/TS/271687/1
TOM CHARNLEY	4 th Defendant Ref
ENVIROSOL LTD	5 th Defendant Ref NTL/TS/271687/1
CHRISTOPHER JONES	6 th Defendant Ref JJ/JJ/ CHE.MCB.1004.00001

BEFORE HHJ Freedman sitting as a High Court judge in the Newcastle District Registry of the High Court, by way of telephone hearing;

UPON THE COURT READING

The Settlement Agreement and Release signed by the Claimant and each of the Defendants dated 17th April 2023 "the Settlement Agreement";

AND UPON HEARING Counsel for the Claimant, Counsel for Robert McBride Limited, counsel for Chemclear (UK) Limited and Mr Jones, and counsel for the Third and Fifth Defendants and the Fourth Defendant in person.

WHEREAS:

(1) the Claimant AB is a Child/Protected Party and has brought claims against the Defendants by his mother and Litigation Friend, BB;

(2) for the purposes of this order:

a. 'Publication' includes any speech, writing, broadcast, or other communication in whatever form (including internet and social media), which is addressed to the public at large or any section of the public.

b. Publication for the purpose of this Order includes any further publication (as defined in subparagraph (i) above) from the date of this Order, even if such information has derived from a previous stage or stages of these proceedings.

AND UPON

The court office at Newcastle Upon Tyne District Registry, Newcastle Civil & Family Courts, And Tribunals Centre, Barras Bridge, Newcastle-upon-tyne, Tyne And Wear, NE1 8QF. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Fax: 0870 3240243. Check if you can issue your claim online. It will save you time and money. Go to www.moneyclaim.gov.uk to find out more.

- (1) Consideration of the Article 8 rights of the Claimant to respect for private and family life, and the Article 10 right to freedom of expression;
- (2) It appearing that non-disclosure of the identity of the Claimant is necessary to secure the proper administration of justice and in order to protect the interests of the Claimant and that there is no sufficient countervailing public interest in disclosure; and
- (3) The Defendants indicating their neutrality to the making of the order and there being no representations from the press or any other interested party.

AND PURSUANT to section 6 of the Human Rights Act 1998; section 11 of the Contempt of Court Act 1981; and CPR rules 5.4C, 5.4D and 39.2(4);

AND UPON

- (1) the parties having agreed terms of settlement;
- (2) the First Defendant admitting that at some indefinite time in the future the Claimant may, as a result of the ingestion of Oven Pride on 3 July 2014, develop oesophageal cancer; and
- (3) the Court approving the terms of this order and the terms of the Settlement Agreement in so far as they relate to the Claimant's claims against the Defendants in this Action.

BY CONSENT IT IS ORDERED—

1. The identity of the Claimant as a party to these proceedings is confidential and shall not be published.
2. Pursuant to CPR Rule 39.2(4), there shall not be disclosed in any report of these proceedings or other publication the name or address of the Claimant, the Claimant's Litigation Friend or other immediate family members, or any details (including other names, addresses, or a specific combination of facts) that could lead to the identification of [AB] as the Claimant in these proceedings. The Claimant and the Litigation Friend shall be referred to as set out at paragraph 3 of this Order.
3. In any judgment or report of these proceedings, or other publication (by whatever medium) in relation thereto:
 - a. The Claimant shall be referred to as "[AB]".
 - b. The Litigation Friend shall be referred to as "[BB]".
 - c. Any other details which, on their own or together with other information publicly available, may lead to the identification of the Claimant (including any names of other immediate family members or their addresses) shall be redacted before publication.
4. Pursuant to CPR Rules 5.4C and 5.4D:
 - a. A person who is not a party to the proceedings may not obtain a copy of a statement of case, judgment or order from the Court records unless the statement of case, judgment or order has been anonymised in accordance with subparagraphs 3(i) to (iii) above;
 - b. If a person who is not a party to the proceedings applies (pursuant to CPR r.5.4C(1B) or (2)) for permission to inspect or obtain a copy of any other document or communication, such application shall be on at least 7 days' notice to the Claimant's solicitor, trustee or deputy.
5. The Claimant's solicitor shall file with the Court an electronic (PDF) bundle of the statements of case that has been anonymised in accordance with paragraph 3 above by 8th May 2023.
6. The Court file shall be clearly marked with the words "An anonymity order was made in this case on 27 April 2023 and any application by a non-party to inspect or obtain a copy document from this file must be dealt with in accordance with the terms of that Order."
7. Any interested party, whether or not a party to the proceedings, may apply to the Court to vary or discharge this Order, provided that any such application is made on 7 days' notice to the Claimant's solicitor, trustee or deputy.
8. Pursuant to the 'Practice Guidance: Publication of Privacy and Anonymity Orders' issued by the Master of the Rolls dated 16 April 2019 a copy of this Order shall be published on the Judicial Website of the High Court of Justice (www.judiciary.uk). For that purpose, a court officer will send a copy of the order by email to the Judicial Office at judicialwebupdates@judiciary.uk.
9. All further proceedings in the action be stayed upon the terms of this Order and the terms set out in the Settlement Agreement save for the purpose of carrying those terms into effect and that there be liberty to apply for that purpose and generally.

10. Any party may be permitted to apply to the court to enforce the terms upon which this action has been stayed without the need to bring a new claim.

11. **IT IS RECORDED** that the parties have agreed that any claim for breach of contract arising from an alleged breach of the terms set out in the Settlement Agreement may, unless the Court orders otherwise, be dealt with by way of an application to the Court without the need to start a new claim.

12. The Claimant be at liberty to accept the sum of £110,333.58 (one hundred and ten thousand three hundred and thirty three pounds and fifty eight pence) in full and final settlement of his claims against the 2nd to 6th Defendants in the manner provided below, such sum being inclusive of any deductible benefits.

13. The Second, Third, Fifth and Sixth Defendants, within 21 days of their receipt of this sealed Order, pay the sum of £110,333.58 (one hundred and ten thousand three hundred and thirty three pounds and fifty eight pence), less deductible benefits of **£20,667.15** to be paid directly to the DWP, leaving a net sum of **£89,666.43** to be paid to the Claimant's solicitors. From that sum of £89,666.43, the Claimant's solicitors shall pay to the Claimant's mother and Litigation Friend, Naomi Thomson, the sum of **£10,000** in respect of past care and expenses, leaving a net balance of **£79,666.43** to be paid into the Court of Protection to be invested for the Claimant's benefit.

14. In satisfaction of his claim against the First Defendant, the Claimant is at liberty to accept the First Defendant's offer that

a. the sum referred to in paragraph 12 above represents an award of immediate damages and interest and has been paid on the basis that the Claimant will not at a future date as a result of his ingestion of Oven Pride on 3rd July 2014 develop oesophageal cancer; and

b. if the Claimant at any future date does develop oesophageal cancer as a result of his ingestion of Oven Pride on 3 July 2014,

c. he shall be entitled, pursuant to section 32A of the Senior Courts Act 1981 and pursuant to CPR Part 41 Part 1, to apply for further damages from the First Defendant (alone), provided that the application is made on or before the Claimant's death. For the avoidance of doubt, upon that application, the First Defendant will be at liberty to dispute that the Claimant's development of oesophageal cancer was as a result of his ingestion of Oven Pride on 3rd July 2014.

15. The documents set out in the schedule to this order be filed on the court file and preserved as the case file until the expiry of the period set out in paragraph (14) above or of any extension of that period which has been ordered.

16. The Second, Third, Fifth and Sixth Defendants do pay the Claimant's costs of the action (including the costs of his action against the First Defendant) on the standard basis to be assessed if not agreed, such payment to be made on a joint and several basis.

17. As between the Claimant and the First Defendant there be no order for costs.

Schedule

1. This Consent Order.

2. The Statements of Case in Action E90NE073.

3. A statement of facts agreed between the Claimant and First Defendant.

4. The medical reports of Mr Hosie dated 08.11.2017, 20.12.2019, 11.05.2020, 14.10.2021, 22.12.2021; the letter from Mr Hosie dated 21.03.2023; the medical reports of Mr Skidmore dated 13.04.2021, 05.05.2021, 14.07.2021; the letter from Mr Skidmore dated 24.03.2023; the medical reports of Mr Alizai dated 16.07.2020, 12.11.2021; the medical reports of Dr Falk dated 07.03.2021; the joint statements of Mr Hosie and Mr Alizai dated 04. 08.2020 and of Mr Skidmore and Dr Falk dated 22.09.2021; Mr Jaffray's letter dated 12.12.22 to James' parent/guardian, copied to his GP, Dr Redburn, proposing laparoscopic fundoplication. Not agreed.

5. The witness statement of Naomi Thomson dated 29.01.2020 and updated witness statement of Naomi Thomson dated 27.03.2023; the witness statement of Gary Smith dated 29.01.2020. Not agreed.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
NEWCASTLE-UPON-TYNE DISTRICT REGISTRY

B E T W E E N:

MASTER JAMES THOMSON (A MINOR)
BY HIS MOTHER AND LITIGATION FRIEND MRS NAOMI THOMSON

Claimant

-and-

- (1) ROBERT McBRIDE LTD**
(2) CHEMCLEAR (UK) LTD
(3) CHEMTECH WASTE MANAGEMENT LIMITED
(4) TOM CHARNLEY
(5) ENVIROSOL LTD
(6) MR CHRISTOPHER JONES



Defendants

**STATEMENT OF FACTS AGREED BY THE CLAIMANT AND FIRST
DEFENDANT
(Pursuant to 41 APD.4)**

1. On 3 July 2014, the claimant, James Thomson ('James') swallowed some 'Oven Pride' oven cleaner, a strong alkali, which caused damage to his oesophagus.
2. James was born on 13 September 2012 and was aged 22 months when he ingested the oven cleaner.
3. In relation to James' course thereafter, the medical reports and letters retained as case file documents pursuant to 41 APD.3, in so far as they contain recitals of the contemporaneous clinical records, will be admissible in evidence as if the same had been contained in statements served pursuant to the provisions of the Civil Evidence Act 1995.
4. By way of summary of James' medical course:

- a. Immediately after the incident, James was admitted to hospital where he remained for 2 weeks;
- b. In hospital, he required ventilation and underwent surgery to have a gastric tube and peg fitted (gastrostomy);
- c. The oven cleaner was found to have caused circumferential burns to the oesophagus and to have left oesophageal stricture;
- d. After discharge from hospital, James required multiple re-admissions to hospital for assessment and oesophageal dilatations for oesophageal stricture;
- e. For the next 5 years the gastrostomy tube remained in place, and was the means of feeding James and providing him with medication;
- f. In 2015, James had a damaged section of his oesophagus measuring 2.5 cms surgically removed;
- g. Further dilation of the oesophageal anastomosis was required on multiple occasions;
- h. After his surgery in 2015, over the years, James reported food becoming stuck in his oesophagus, and had episodes of vomiting;
- i. In 2015 and 2016, surgery for reflux – gastric fundoplication – was considered by his treating paediatric surgeon, Mr Jaffray;
- j. Until February 2019, James obtained his nutrition via his gastrostomy in the form of a liquid feed delivered via a feeding pump;
- k. James has undergone regular surveillance gastroscopies; a gastroscopy was performed in 2021 by Mr Jaffray: he reported that the oesophagus looked good, that the previous stricture from the anastomosis had healed well and was barely visible; however, he also reported mild linear ulcers in the distal oesophagus; intraoperative images were also taken which demonstrated an open gastro-oesophageal junction; Mr Jaffray concluded that the presence of the ulcers and the open gastro-oesophageal junction was indicative of some ongoing gastro-oesophageal reflux;
- l. It was reported by James' mother that in late 2022, James was vomiting continuously and he had started to lose weight;
- m. In December 2022, Mr Jaffray reported that oesophageal biopsies had shown evidence of chronic reflux, and recommended a fundoplication operation;

- n. James has been put on the waiting list for fundoplication surgery.
5. This incident gave rise to a claim on James' behalf, brought against multiple defendants, all of whom were involved in the manufacture of the product (the 1st defendant) and/or its supply to the market (the other defendants).
 6. The claims were brought under the Consumer Protection Act 1987 and, save in so far as the first defendant was concerned, in negligence.
 7. All defendants denied liability. The claim settled without trial of liability and an order for provisional damages was agreed between the claimant and the first defendant, enabling the claimant to seek additional damages in the event that he develops oesophageal cancer, but preserving the first defendant's right to dispute that the claimant's development of oesophageal cancer was as a result of his ingestion of Oven Pride on 3 July 2014.