



JUDICIARY OF
ENGLAND AND WALES

PRESTON CROWN COURT

4 APRIL 2012

**SENTENCING REMARKS OF HIS HONOUR JUDGE ANTHONY RUSSELL QC, RECORDER
OF PRESTON**

PONTINS LIMITED – DEFENDANT

Pontins Limited are to be sentenced for two offences of infringing the Health and Safety at Work etc Act 1974 by failing in their duty to protect persons and their employees against risks to health and safety. The case involves two incidents where visitors staying at their premises in Blackpool who as a consequence of the company's failure of its duty contracted Legionnaire's Disease in March and July 2009. Tragically one of those people, Mrs Karen Taylor, died and the other, Mrs Margaret Coote was very ill indeed, and fortunate to have pulled through her ordeal.

Before I go further I wish to extend my deepest sympathy to the family of Mrs Taylor. Her husband had to give evidence in the case because the case had to be proved by the prosecution and that was clearly a very distressing experience for him. I also wish to offer my sympathy to Mrs Coote and her family. Inevitably everyone will have been subject to strain as a result of the regrettably inevitable length of time that these investigations take and the trial process.

Having heard the evidence with the jury I am satisfied that this is indeed as the prosecution submits a shocking and grave case. In 2006 the company was alerted to a potential problem of legionella bacteria at the site. Although the illness could not be directly attributed to the visit of a patient who contracted Legionnaire's Disease the investigation that followed should have alerted the company to the need for vigilance.

They had the benefit of detailed risk assessments and reports from Western Environmental yet despite these specific reports and all the material readily available from the Health and Safety Executive they failed to take any or any adequate measures to address the problems.

The evidence revealed that for a considerable period of time the company was aware of the water temperature problems not only from these reports but also from their own employees who expressed their concerns. There was a serious failure of management to address these issues.

Serious injury to health was foreseeable – the documentation and the various reports indicated an obvious risk to health which should have been acted upon. Warnings from the

Council, employees and Western Environmental were ignored. The quality of these warnings was such that the matter must have been considered at the highest level of management.

Even after the incident involving Mrs Coote was known about no action was taken with the consequence that Mrs Taylor was put at risk.

As Mr Parrington has pointed out there are many aggravating features to which I have just referred and little mitigation other than that the company did take some steps after Mrs Taylor had died by engaging Western Environmental and later in 2009 the premises were closed down.

There were serious management failings here and those who were responsible should have the death of Mrs Taylor and the ill-health of Mrs Coote on their consciences.

The company is in administration and I have been satisfied that there are no assets from which any appropriate financial penalty could be met. If I were to impose a fine of the appropriate amount all that would happen is that if there are any funds, the distribution to others who have suffered at the hands of this company, namely legitimate creditors, would be diminished or extinguished because any fine would go to the Exchequer.

I have been informed that the company was properly insured and that insurance claims have been met or are being processed in accordance with the law, and it is unusual for a criminal court to make awards of compensation in these sort of cases because the defendants are usually insured.

This means that the fine I shall impose will be a nominal one. However I do consider that it is important for me to indicate the level of fine I would have been considering imposing had this company been solvent and able to meet its obligation, because it is important for those who operate premises to which the public has access whether as employees or visitors to appreciate that there are risks, that reasonable steps must be taken to avoid risks to health and that if they fail in their duty to guard against such risks severe financial penalties will follow.

I have considered the Guidelines provided by the Sentencing Guidelines Council and it is appropriate to quote from them:

“Level of fines

22. There will inevitably be a broad range of fines because of the range of seriousness involved and the differences in the circumstances of the defendants. Fines must be punitive and sufficient to have an impact on the defendant.

23. Fines cannot and do not attempt to value a human life in money. Civil compensation will be payable separately. The fine is designed to punish the defendant and is therefore tailored not only to what it has done but also to its individual circumstances.

24.

*25. The range of seriousness involved in health and safety offences is greater than for corporate manslaughter. However, where the offence is shown to have caused death, the appropriate fine will seldom be **less than £100,000** and may be measured in **hundreds of thousands of pounds or more.**”*

Having considered all the factors in this case, it is impossible to set a precise figure for the fine because a factor which would also be taken into consideration is the profits of the

company, however assuming that this company was making reasonable profits I would have been thinking in terms of a fine of £500,000 with an order that the company should pay the whole of the costs of the prosecution which would be considerably more than the £10,000 figure given in this case.

As it is, given the unusual circumstances there will be a fine of £1,000. There is an order for payment of the Victim Surcharge of £15, which must be imposed in every case where a fine is ordered. Those sums should be paid within 28 days. There will be an order for costs in the sum of £10,000 which I take it will not be enforced.