

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Claim No. CO/9218/2006

Before MR JUSTICE CHARLES

B E T W E E N

THE QUEEN
on the application of
(1) ACTIS S.A.
(2) ACTIS INSULATION LIMITED

Claimants

- and -

THE SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT

Defendant



ORDER

UPON the Court's judgment of 2 November 2007, in which it was held, amongst other things, that the Defendant had acted so as to breach the Claimant's legitimate expectation and with conspicuous unfairness

AND UPON consequential argument from Counsel for the Claimants and Counsel for the Defendant as to the appropriate terms of relief

AND UPON the Defendant providing the undertakings set out in Schedule A hereto

THE COURT ORDERS as follows:

1. It is declared that paragraph 3.10.2 of BR443 (2006) is unenforceable unless and until the notification procedures under the Technical Standards Directive have been duly completed.
2. Unless the parties are agreed that no useful purpose would be served thereby, the Claimants' claim for damages shall be transferred pursuant to CPR Part 54.20 for case management and trial of remaining issues to the Queen's Bench Division, as if begun by Claim Form on the date of the

application for judicial review. Such transfer shall take effect upon the later of:

- a. 35 days hereafter; or
- b. 7 days after the final resolution of the Defendant's application for permission to appeal or appeal, if permission is granted.

Upon such transfer taking effect the Claimants shall have 28 days in which to file Particulars of Claim, at which point the standard provisions of the CPR relating to a damages claim shall apply.

3. The Defendant shall pay the Claimants' costs of this judicial review (including those costs relating to the interim hearing before Mr Justice Bean). One half of the Claimants' costs shall be assessed on the standard basis, the other half shall be assessed on the indemnity basis. Such costs shall be subject of detailed assessment, if not agreed.
4. Permission to appeal is refused, the Court having indicated that it would have been minded to grant permission in relation to the issues decided in relation to the Technical Standards Directive (and those points alone), but for the fact that such issues most probably become academic in nature by reason of the Defendant's proposed fresh notification and consultation process.

THOMAS DE LA MARE
Counsel for the Claimants

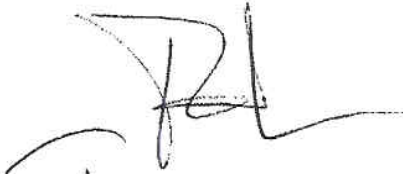
JESSICA SIMOR
Counsel for the Defendant


SCHEDULE A

THE DEFENDANT UNDERTAKES that it will issue clarification to Building Control Bodies ('BCBs') in the form of a circular explaining:

- (a) the key points and effect of the judgment of Mr. Justice Charles in this case;
- (b) that paragraph 3.10.2 of BR443 is unenforceable;
- (c) that the position remains that only results of thermal transmittance obtained from the hot box test give rise to a statutory presumption of validity within the meaning of section 7 of the Building Act 1984;
- (d) that, despite this, BCBs must make their own decisions as to whether test results claimed for products are valid (and accordingly, whether the use of a particular product in a proposed construction satisfies the requirements of the Building Regulations), even where the tests are not carried out in compliance with the Approved Documents or BR443. That BCBs are accordingly free to accept the results of in-situ comparative testing of multi-foil products if they are satisfied that such results are reliable;
- (e) that the Department's current position, based on its understanding of the scientific evidence is that in-situ comparative testing does not produce valid results for thermal performance, but that others hold different views; and
- (f) that the Department would now carry out a consultation exercise, over a 12 week period as recommended by the Cabinet Office guidelines, in the

context of a re-notification of the ADs, which would extend to consideration of the proposed guidance relating to multi-foil insulation as well as other changes that are proposed.


Jon DE LA MAZA
COUNSEL FOR THE
CLAIMANT
20/11/07


Jessica Simer
Counsel for the Defendant
20.11.07

Approved

3/12/07

By the Court