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UK Judge Rejects Alleged Health Effects from Base Station

5/31/05---Madison, Wisconsin---On May 9, 2005, Judge Frances Kirkham ruled against the claimants and in favor of the defendant, Hutchison 3G UK Limited, in a case before the High Court of Justice in Birmingham, England. The claimants---a husband and wife who lived and worked in a building near a mobile-phone base station---claimed that the emissions from the antennas caused them to suffer from a variety of ailments. They sought to have the antennas removed.

However, Judge Kirkham states in her opinion: "In my judgment, the claimants have not demonstrated on balance that the emissions from the defendant's apparatus at the Little Sauce Factory are capable of causing or contributing to adverse health effects or the claimants' well-being, when viewed objectively" In particular, Judge Kirkham severely criticizes the arguments of the claimants' chief witness, Dr. Gerald Hyland.

THE CLAIM

The base station consists of three antennas located in a flagpole mounted on a pub approximately 28 meters (92 feet) from the claimants' property. The claimants had opposed the mast since plans for its installation had been announced. The couple claimed that since the mast went into operation in August of 2003, they, their sons who worked with them in the home, their dog, the maid, and visitors to the home had all experienced a pattern of symptoms, including disorientation, difficulty in concentrating, nausea, dizziness, headaches, sleeplessness, lack of appetite, and, in the case of the dog, waking in the night and howling and the avoidance of certain rooms. The claimants kept a log of their symptoms.

In September of 2003 they moved their business to another site and in February of 2004, they moved their residence to another house. In August of 2004, they sold the property in dispute. Although they initially claimed damages for personal injury and for diminution of the value of their property, the couple dropped those claims and asked solely that the antennas be removed.

ASSOCIATION BETWEEN SYMPTOMS AND MAST OPERATION

A key issue in the case was the relationship between the alleged symptoms and the dates in which the mast was in operation. The mast initially began operating on August 7, 2003, and that is when the couple claimed that their symptoms began. However, when the court ordered the surrender of the computer hard disk on which the log had been recorded, it disclosed that the log began on June 20, when the mast had been installed, and that the couple began reporting symptoms until they were told that operation would not begin until August 7. In addition, the claimants had purchased an Acousit-Com meter to detect the emissions, and the log indicated that after the meter measured no emissions (as, for example, when the couple observed service technicians working on the mast) the couple subsequently noted an alleviation of the symptoms. It appeared to the judge that the symptoms were linked to the claimants' perception of the operational status of the antennas, rather than to emissions.

In addition to the couple and their two sons, a visitor, Mr. Waghorn, testified that he experienced nausea and dizziness at the house but under questioning admitted that it was possible he had experienced the symptoms

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because of suggestion by the claimants. No one else living in the vicinity of the mast gave evidence of symptoms.

The judge states in her opinion that she accepts the claimants' perceptions of effects and anxiety as real on their part. (The couple took steps to protect themselves by fitting metal netting to the walls, hanging nickel-coated curtains, and wearing foil hats, but did not seek medical help.) However, she states, "The claimants' subjective perception is insufficient" to demonstrate causation by the mast. "It seems to me that it is quite possible that the feelings experienced by the claimants, their sons, and Mr. Waghorn were psychosomatic," she concludes.

It was also noted in the case that the home into which the couple subsequently moved was, unbeknown to them, located about 500 meters (1,640 feet) from a free-standing mast operated by four mobile-telephone operators and a television broadcaster. Although the level of emissions at the second home was greater than at the first, the couple reported no symptoms after moving.

EXPERT TESTIMONY

The primary expert witnesses in the case were British physicists Gerald Hyland for the claimants and Philip Chadwick for the defendant. Both Hyland and Chadwick agreed that the emissions of the base station in question were, at worst, 80,000 times lower than the ICNIRP guidelines.

Hyland argued that the ICNIRP guidelines ignore sensitivities to nonthermal effects caused by rhythmically regular underlying features of the transmitted power that interfere with natural electrical biorhythms of the body that are involved in biocommunication and the control of biological processes. He cited the Netherlands' "TNO Report" (see RF Gateway briefings of October 2, 2003, and June 29, 2004) as evidence of adverse health effects from GSM signals.

Chadwick cited the scientific consensus of numerous expert bodies that the existence of adverse effects below guideline levels is unproven. In addition, testimony by Chadwick and the defendant's own technical expert, Mark Navolio, revealed that Hyland "misunderstood the power output from the defendant's apparatus," and that he had confused the frequency of the signal with the rate at which the power of the signal varies.

The judge has harsh words for Hyland:

--"Dr. Hyland lacked balance and impartiality in relation to his evidence in this case. He did not adopt the objective approach which a court expects from an expert witness."

--"Dr. Hyland claimed that all the expert bodies (apart from the SSI (Sweden) and Smirou (France) reviews as to which he had no evidence) lacked honesty, independence, and were economical with the truth."...."I have no hesitation in rejecting Dr. Hyland's statement with respect to these eminent and expert bodies. Dr. Hyland produced no evidence in support of his contention. His unjustified criticism of national and international groups reflects poorly upon himself and must be viewed in the light of his own partiality in giving evidence in this case."

--[In reference to 2001 comments made about Hyland's theories by COST 281] "This indicates strong condemnation by peers as to his own objectivity and scientific rigour."

--"I am not persuaded by Dr. Hyland's theory. His theory is in any event based only on a possibility, not a probability."

DECISION

It is Judge Kirkham's decision that the claimants did not prove their claim and that their case fails. In addition, on a legal basis, she determined that because the claimants had moved from the house, they did not have standing to bring the claim since they could no longer be said to have an interest in having the mast removed.

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