

Grenfell Tower Fire Case Moves From Pa. To UK

By **Matt Fair**

Law360 (September 16, 2020, 7:24 PM EDT) -- A Pennsylvania federal judge on Wednesday agreed to throw out a lawsuit against architectural products firm Arconic Inc. over the fatal Grenfell Tower fire in London so that the case can be litigated in the U.K.

The court sided with Arconic and co-defendant Whirlpool Corp. in finding that the U.K. was clearly the more appropriate forum given that the overwhelming bulk of the evidence and witnesses for the sprawling case was located in Great Britain

Aside from evidentiary issues, though, U.S. District Judge Michael Baylson said the U.K. court system clearly had a prevailing interest in a case involving the deaths of dozens of its citizens.

"At its core, this case is about a London residential fire that tragically resulted in the death of 72 U.K. residents and substantial injuries to hundreds more," he said. "[Arconic and Whirlpool] have demonstrated that they would be genuinely inconvenienced by having to defend against plaintiffs' claims in Pennsylvania and have shown that litigating in the U.K. is significantly more preferable."

Key to the court's decision was assurances it secured from both Arconic and Whirlpool that they would not seek to have the case thrown out on statute of limitations grounds as the dispute now moves to the U.K.

The litigation stems from a massive blaze that broke out in the 24-story Grenfell Tower high-rise in June 2017 that, after quickly spreading throughout the building, killed 72 residents.

Pittsburgh-based Arconic, along with other American companies, was slapped with claims in Pennsylvania state court last June claiming that the company's so-called Reynobond PE insulation panels were defectively designed to include flammable material and that they should never have been used in the high-rise.

Also targeted in the case is Whirlpool, which manufactured a refrigerator-freezer that court records said was blamed for sparking the fire.

After removing the case to federal court, Arconic filed a motion arguing that the case should be dismissed on the grounds that it had no meaningful connection to the U.S. and that all the relevant evidence, including documents and witnesses, was located almost entirely in the U.K.

During a hearing last month, however, Saltz Mongeluzzi & Bendesky PC attorney Robert Mongeluzzi argued on behalf of the plaintiffs that Arconic's allegedly faulty panels had actually been designed in the U.S.

Despite that, however, Judge Baylson said Wednesday that most of the evidence based in the U.S. could be sent electronically to the U.K., and that a greater volume of evidence related to the fire itself was located in the U.K.

"In stark contrast to the U.S.-based evidence — most of which could be made available in the U.K. without much difficulty — it would be burdensome for defendants to obtain the U.K.-based evidence that is relevant to their defenses for use in this court," the judge said.

The judge also considered choice-of-law issues between Pennsylvania and the U.K., including that punitive damages aren't as readily available in English courts.

Under relevant case law, however, the judge said that differences in the availability of damages were not something he was allowed to consider in deciding Arconic's motion to transfer the case to the U.K.

"If this court were free to consider ... that punitive damages as understood in Pennsylvania law are likely unavailable in England, the decision very well may have been a denial of defendants' motion to dismiss," Judge Baylson said.

He noted, however, that a judge in England could potentially apply Pennsylvania law to the case, or could dismiss the damages phase of the case in order for it to be determined back in the U.S.

A representative from Whirlpool praised the decision in a statement to Law360 on Wednesday evening.

"Judge Baylson's ruling further underscores our position that the public interest and justice are best served if claims related to the Grenfell tragedy are resolved in the U.K. legal system," the representative said. "We extend our deepest sympathies to everyone affected by the Grenfell Tower tragedy and we honor the extraordinary courage and dignity of the survivors and those who have lost loved-ones. Everyone touched by this event deserves answers, and it is entirely appropriate that the UK public inquiry and the UK legal system are entrusted with finding those answers. We remain committed to assisting the Grenfell Tower inquiry in any way we can."

Representatives for Arconic and an attorney for the plaintiffs did not immediately return messages seeking comment on Wednesday afternoon.

The plaintiffs are represented by Robert Mongeluzzi, Jeffrey Goodman and Samuel Dordick of Saltz Mongeluzzi & Bendesky PC, Mark DiCello, Mark Abramowitz, Adam Levitt and John Tangren of DiCello Levitt Gutzler LLC.

Arconic is represented by Sean Grimsley, Jason Murray and Abigail Hinchcliff of Bartlit Beck LLP, and Nancy Shane Rappaport, Joseph Kernen, Ilana Eisenstein and Timothy Pfenninger of DLA Piper.

Whirlpool is represented by Matthew Papez, Leon DeJulius Jr., Stephen Pearson and James Gross of Jones Day, and Christopher Scott D'Angelo of Montgomery McCracken Walker & Rhoads LLP.

The case is Behrens et al. v. Arconic Inc. et al., case number 2:19-cv-02664, before the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Jeannie O'Sullivan. Editing by Adam LoBelia.

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