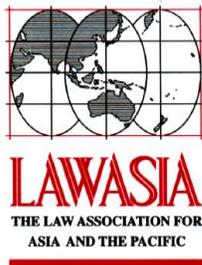




9th LAWASIA International Moot

CLARIFICATIONS TO THE MOOT PROBLEM



Organiser of the LAWASIA International Moot Competition

CLARIFICATIONS

A. The Parties

Mae Sot

1. Is Mae Sot a subsidiary of another company? If so, what company and where is it located?¹
A. No.
2. Does Mae Sot make shirts for other clothing companies?
A. Yes, although Spear Shirts is its largest customer.
3. Does Mae Sot have any divisions or subsidiaries?
A. No
4. Does Mae Sot produce all of its products in-house?
A. Yes
5. Has any Thai government entity ever inspected the factory for safety concerns prior to the fire and, if so, was a report or evaluation rendered?
A. Yes – four years ago – the Report did not disclose any major deficiencies. [There are unsubstantiated rumours that Mae Sot’s management had been advised that an inspection would be made more than a week before it took place.]
6. Has any Thai government entity inspected the factory for underage workers and, if so, were any found?
A. Yes – an inspection is conducted yearly? No evidence of underage workers was found during the most recent inspection. [There are unsubstantiated rumours that some of its younger workers used falsified birth records.]
7. Approximately how many claimants/victims are underage employees of Mae Sot?
A. No reliable information has been found regarding the true ages of the victims.

Spear Shirts

8. Did Spear Shirts belong to any international accord/treaty/agreement that advocated for workers safety?
A. No
9. Was Spear Shirts aware of any reports from any Thai government entity that inspected the factory?
A. No.

¹ The Clarifications should be cited in the Memorials (Briefs) and the oral presentation by section and number. This one should be referred to as “A-1.”

B. The Relationship between Spear Shirts and Mae Sot Clothing

1. Are there any written agreement between Spear Shirts and Mae Sot Clothing (Mae Sot)?
A. Yes – the standard Purchase Order used by Spear Shirts. (Attachment #1)
2. Does the Spear Shirts own shares or any other form of interests in Mae Sot?
A. No
3. Does the Respondent have any power or contractual rights to appoint the Director(s) of Mae Sot?
A. No but it has suggested several suggestions all of which were subsequently made.
4. When did the Spear Shirts begin having its shirts made by Mae Sot Clothing?
A. Spear Shirts has been purchasing men’s shirt from Mae Sot for about 10 years.
5. Was the contract concluded in Thailand or United States?
A. The most recent Purchase Order was sent by FAX from California to Thailand on 1 April 2013.
6. Does Spear Shirts purchase all of its men’s shirts from Mae Sot Clothing?
A. No but Mae Sot is its largest supplier of men’s shirts.
7. Is there an applicable law clause in the contract? Does the contract stipulate the Respondent’s right to inspect? Does the contract stipulate the Respondent’s right to quality control? Was there a requirement to procure an insurance policy for the performance of contract? Was there an express stipulation as to an agency relationship between Mae Sot and Spear Shirts in any of their contracts relating to the manufacturing of the type carried out in Mae Sot’s factory? When did the Respondent enter into the contract with Mae Sot? Was the contract concluded in Thailand or United States? Is there an applicable law clause in the contract? Does the contract stipulate the Respondent’s right to inspect? Does the contract stipulate the Respondent’s right to quality control? Do the working conditions and legal working age in the Mae Sot form part of the terms and conditions of the contract with Spear Shirts? Does the “contract” require either party to procure an insurance policy for the performance of contract?
A. See sample Purchase Order (Attachment #1)
8. Were there any previous communications between Mae Sot and Spear Shirts in regards to the working conditions, working age, and matters consequential and incidental thereof?
A. No
6. Were the victims in the fire assigned to the production of shirts for Spear Shirts?
A. Many were since Spear Shirts was Mae Sot’s biggest customer but others were making shirts for its other customers

7. Are the terms & conditions of the contract with other companies similar to the one between the Spear Shirts?
 - A. Yes, the sample Purchase Order in Attachment #1 is used for all its purchases of clothing products.

C. The fire

1. Was Mae Sot making shirts for Spear Shirts when the fire occurred?
 - A. Yes ... and for at least five other shirt companies.
2. Was the machine which started the fire being used at the time to shirts for Spear Shirts?
 - A. Unknown as documents showing what work was being done on each machine when the fire started was destroyed. However, since Spear Shirts was its biggest customer, it is quite likely that it was.
3. Have any other legal proceedings been brought against Spear Shirts as a result of this fire?
 - A. Yes, several from its customers for damages (loss of profits and good will) they assert they suffered due to the Spear Shirts failure to deliver shirts to them. These were settled by Spear Shirts under its business interruption policy which it is undisputed DOES NOT cover personal injury or wrongful death claims.

C. The Arbitration

1. Does the arbitration provision allow for the arbitrators to apply the concept of *amiable compositeur*? Does the arbitration agreement limit the award which can be made by the tribunal in any way? May it award punitive damages?
 - A. The arbitration agreement was "We agree to submit this dispute to binding arbitration in Bangkok under the supervision of the Thai Arbitration Institute."