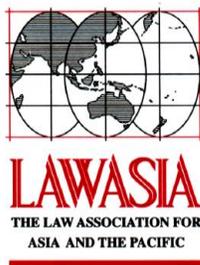




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**9<sup>th</sup> LAWASIA** International Moot  
MOOT PROBLEM 2014

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Organiser of the LAWASIA International Moot Competition

# MOOT PROBLEM

## 1. Background of the Manufacturer - Mae Sot Clothing Ltd.

Mae Sot Clothing Ltd<sup>1</sup> is the largest of the more than 100 clothing factories located in or near Mae Sot (Thailand), a town on the border between Myanmar and Thailand. Collectively, they employ almost 38,000 Thai workers and more than 60,000 workers from Myanmar. Mae Sot produces clothing which carries some of the world's most famous brands, including Spear Shirts™.

## 2. Background of the Wholesaler - Spear Shirts Inc.

Spear Shirt has its principle place of business in Los Angeles, California. Its clothing is sold throughout the United States and much of the world. While Spear Shirts carries insurance which covers injuries or deaths of its employees, this coverage does not extend to employees of its suppliers, such as Mae Sot Clothing Ltd.

## 3. The International Collective in Support of Textile Workers (ICSTW)

A (fictional) NGO based in India which investigates and reports on working conditions in factories throughout Asia. It has also provided legal counsel who are representing the victims and their families.

## 4. The Events

### The Phuket Beach Vacation

Several months prior to the fire, while vacationing at the famous Aquamarine Resort in Phuket, Theodore (Snowy) Snowden, an assistant to Joe Baydon, Vice President in charge of purchasing at Spear Shirts, sent Mr. Baydon the following text message:

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<sup>1</sup> This Problem was inspired by a recent (April 23, 2013) factory collapse in Savar, Bangladesh, which killed more than 1,000 people and injured another 2,500 victims, including many children in the company's day care center. Bangladesh Factory Fires: Why Brands Are Accountable and Should Compensate Victims Now. [listengirlfriends.wordpress.com/2013/12/13/2267/](http://listengirlfriends.wordpress.com/2013/12/13/2267/)  
Although fires of this magnitude have actually occurred in numerous countries, including the US, the one described in this Problem is *fictional* as are the names of the business entities involved.

Hi Boss,

Really enjoying my vacation! The weather is terrific; the beach is warm and sunny; and *Thai women are beautiful*. This place is spectacular – thanks for recommending it.

As you suggested, I paid a visit to the Mae Sot Shirt Factory. Paul Castro, the GM, showed me around the factory and took me to lunch. Now I understand how they can supply us with such great shirts at such a ridiculously low price. The place's a "sweat shop" – they work their employees to death. And there is stuff – rolls of fabric and carts filled with partly finished shirts all over the floor, I was constantly tripping over something like I do back in the office – lucky I didn't break my neck!

The girls seem *really young* – some looked like they were about 12 or 13 but Paul assured me they were all above the legal age. With a smile, he warned me: "Be careful, all Thai women look younger than they are."

Had a great lunch ... but the food was **really spicy!!!**

Going to the beach again today. Did I mention how pretty Thai women are?

See you next week.

Snowy

### The fire

On October 15, 2013, a fire raced through the Mae Sot factory.<sup>2</sup> The fire apparently started from an overheated textile machine and quickly spread through the factory.<sup>3</sup> Fifty employees – all women - lost their lives in the fire and more than 100 more were seriously injured. All were from Myanmar – many were thought to be under the age of 15, the minimum working age in Thailand.<sup>4</sup>

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<sup>2</sup> The building, which was not insured, was totally destroyed

<sup>3</sup> There were some overhead fire extinguishers but following the fire the Thai Fire Inspector reported they were not functional – may were rusty and corroded.

<sup>4</sup> The minimum working age in Myanmar is thirteen (13).

## 5. Legal Proceedings

### Dispute Resolution

In an attempt to avoid the delay and costs associated with formal litigation, the parties have agreed to submit this dispute to binding arbitration in Bangkok in accordance with the KLRCA Arbitration Rules.

### Scope of Hearing

All parties have agreed that this legal action will proceed in three stages:

1. A determination as to what extent, if any, the condition of the factory (including the blocked and/or cluttered aisles and stairways) caused or contributed to the injuries and/or fatalities caused by the fire.

RESULT: A report from an independent auditor concluded this was the major factor in causing the many injuries and deaths.

Legal counsel for both Spear Shirts and the victims have accepted this Report.

2. A determination as to whether Mae Sot Clothing Ltd has any assets – including insurance – which might be available to satisfy some or all of the victim’s claims.

RESULT: A report from an independent auditor concluded that Mae Sot Clothing Ltd has no assets and it would be futile to pursue a legal action against it.

Legal counsel for both Spear Shirts and the victims have accepted this Report.

3. A determination as to whether Spear Shirts is legally responsible in whole or in part for the injuries and fatalities

This issue is currently unresolved and is the central issue to be resolved in this arbitration.

4. A determination of the extent of the injuries to the surviving victims and an attempt to place a monetary value on the injuries and deaths – the potential monetary recovery or damages to be awarded under applicable law - assuming liability is established.

**These issues will be resolved at a later proceeding and are NOT part of this Moot.**

6. Important Issues to be resolved in this arbitration<sup>5</sup> – include but are not necessarily limited to:

1. (procedural) may a large number of claimants (victims and their families) be joined in a single arbitration?
2. (substantive) whether - *assuming* that the Mae Sot Clothing factory was operated in a negligent – or possibly grossly negligent - manner (e.g., non-functioning fire extinguishers, blocked stair ways, etc) and that these factors caused the fire to spread so quickly, can Spear Shirts - a mere customer – can be held liable for the injuries and deaths of Mae Sot Clothing’s employees.
3. (Remedial) what **types** of monetary damages<sup>6</sup> may the victims and their families recover if Spear Shirts is obligated to reimburse them for their injuries and deaths - including but not limited to: reimbursement of lost wages – current and future<sup>7</sup>? disfigurement (scars from the burns)? loss of future wages if an injured employee is unable to work in the future? pain and suffering during the fire and thereafter – perhaps for the rest of their lives? And others.<sup>8</sup>

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<sup>5</sup> The resolution of each of these issues will require a determination of what law or legal rules should be used to resolve them – i.e. a determination of “proper law” a/k/a “choice of law.”

<sup>6</sup> If found to be recoverable, the **amount** to be recovered will be determined *at a future hearing*.

<sup>7</sup> For the families of those who perished in the fire, loss of “care comfort and companionship” may extend for many years – perhaps for the lives of the family members.

<sup>8</sup> It is anticipated that the Mooters representing the victims and their families may wish to add other claims against Spear Shirts under whatever law would be most favorable to their clients. Conversely, Mooters representing Spear Shirts, while asserting that their client is NOT liable for any of the injuries, are expected to attempt to minimize the amount of monetary recovery should their client be found to be liable for the harm cause by the fire.