CA on appeal from QBD (Miss Barbara Dohman QC sitting as a Deputy Judge) before Latham LJ; Mance LJ; Sir Christopher Staughton. 26th April 2001.

LORD JUSTICE LATHAM:

1. This is an appeal from so much of the decision of Miss Barbara Dohman QC of 19th July 2000 in which she allowed an appeal by the claimant from a decision of the costs judge, Master Seager-Berry, on a preliminary issue as to costs. The costs judge had held that the claimants were not justified in instructing London solicitors to pursue their claim. The deputy judge held that they were. In this appeal the defendants seek to restore the decision of the costs judge.

2. The defendants, formerly known as Mansanto Chemicals UK Ltd, owned and operated chemical works near Wrexham in North Wales. The claimants are a group of 165 residents living in the vicinity of these works. Between 11.30 pm on 21st November 1994 and 3.30 am on 22nd November 1994, hydrogen sulphide and carbon disulphide gas leaked from the plant. Hydrogen sulphide is an irritant and an asphyxiant gas with similar properties to hydrogen cyanide gas. It is a substance proscribed under Part 1 of the Environmental Protection Act 1990. The escape was sufficiently serious as to warrant the implementation of the emergency systems which had been set up in compliance with the Control of Industrial Major Accidents Hazards Regulations 1984. Neighbouring residents suffered from the foul smell. Many were distressed by an inability to breathe and were concerned about their own and their families' safety. Because of stable climatic conditions the gas settled rather than dispersed. As a result many residents suffered even more serious symptoms, such as nausea, vomiting, burning eyes and throats, diarrhoea and headaches. Unhappily some suffered from anxiety, distress, asthma, respiratory problems, epilepsy and other factors which were felt to have been brought on as a result of the anxiety provoked by the leak of the gas.

3. On 22nd November 1994 a local environmental organisation known as CARE contacted a London firm of solicitors, Leigh Day & Co, who have undoubted expertise in environmental claims and had been instructed in relation to claims arising out of an earlier leak in 1992. A partner, Sally Moore, informed the defendants by fax that her firm had been instructed on behalf of the residents. That was not wholly accurate. But after a public meeting on 1st December 1994 a substantial number of residents did instruct them to act on their behalf. This group of claimants became known as "Wave 1". Subsequently, a number of other claimants came forward and instructed Leigh Day & Co in what became known as "Wave 2". The claims of both these groups were the subject of detailed negotiations during the course of 1995 and were settled without recourse to proceedings in August 1995, with payments of damages to the individual claimants and a contribution to the costs that had been incurred. At no time during the negotiations did the defendants take exception either to London solicitors having been instructed or to their rates of charge. Indeed, in a letter to Sally Moore of 12th October 1995 the defendants' legal adviser said, inter alia: *"I am happy with the basic calculation of the hours spent by you and your assistant on the basic rates charged."*

4. In the meantime, a few claimants had instructed local solicitors. But it is clear from the material before us that they had not been able to progress their clients' claims with the same efficiency and effectiveness as Leigh Day & Co.

5. In November 1995 a further small leak occurred from the plant. This triggered a further public meeting attended by Sally Moore, as a result of which the 165 residents, who had not formed part of either Wave 1 or Wave 2, decided to instruct Leigh Day & Co to pursue their claims in respect of the earlier leak in November 1994. This became known as "Wave 3". The defendants were not willing to deal with these claimants' claims informally as had been the case with the first two waves. As a result, a writ had to be issued on their behalf on 19th November 1997. There was thereafter procedural skirmishing; and in June 1998 the defendants' application for a transfer of the claim to the county court was dismissed. Directions were given for the determination of generic and lead issues. Happily, negotiations thereafter resulted in settlement. Four claimants dropped out of the action. The claims of the remaining 161 were settled for between £340 and £1,500 and the defendants agreed to pay costs to be subject to detailed assessment if not agreed. The total value of the damages obtained by the claimants was £90,000. Costs were not agreed. That was not surprising. The total bill presented by Leigh Day & Co on behalf of the claimants amounted to some £210,000.

6. The issue with which we have to deal today arises out of the claimants' application for detailed assessment of those costs. The bill consists of an introductory narrative of 15 pages, with a further 173 pages and 23 schedules setting out the costs claimed. This resulted in the hearing before the costs judge at which a number of preliminary issues were identified. The one with which we are concerned is the question of whether or not it was reasonable for Leigh Day & Co to have been instructed, so that the basis of the charge for the solicitors was that appropriate for a firm of solicitors based in London. The defendants at all relevant times argued that a Manchester firm of solicitors could have been instructed and could have carried out the work properly and competently. From what we have been told the difference between the charges based on the London solicitor's hourly rate of charging and a Manchester solicitor's hourly rate of charging would be between £40,000 and £80,000. In other words, this is a dispute about a significant amount of money and indicates the level of difference between the charges of those who practise in London and those who practise elsewhere.

7. It is common ground that the costs of the claimants are to be assessed on the standard basis, all the relevant work having been carried out prior to 26th April 1999, so that RSC O.62,r.12(1) applies. The rule, so far as is relevant, provides: *"On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all*

costs reasonably incurred, and any doubt which the taxing officer may have as to whether the costs were reasonably incurred or were reasonably allowed shall be resolved in favour of the paying party..."

8. In dealing with the relevant issue, the costs judge was clearly unimpressed by the narrative to the bill which sought to set out the particular difficulties of the case and the special expertise of Leigh Day & Co. In his reasoned decision of 18th February 2000 he said as follows:

"The cause of action arose in North Wales. There was on the face of it no direct connection with London. However Leigh Day had been involved in an incident two years previously and were known to CARE, an independent organisation, who recognised the expertise which Leigh Day were able to offer on environmental matters. Proceedings had been issued in London County Court for an earlier wave of claimants.

On the submissions made to me none of the claimants had expressed dissatisfaction with solicitors they had initially instructed. The change over appears to have been caused by the advantage of a wholly co-ordinated approach to Monsanto.

The defendants have submitted strongly that Leigh Day canvassed the claimants and it was not a case of the claimants making an independent approach to Leigh Day.

With the claimants based in North Wales and the solicitors situated in central London there was no easy accessibility to them. It would be necessary for the solicitors to come to North Wales.

A retainer letter was written to each claimant which ran to four pages. Information was provided on the basis for charging.

*Having considered the ringbinder of correspondence and other material, the narrative in the introduction to the bill, the skeleton arguments of the claimants and the defendants and the submissions made by the solicitors I have reached the conclusion that the submissions made by the defendants' solicitors are to be preferred. Stripping away the hyperbole from the narrative to the bill and the extensive claims to expertise by the firm and the partner in particular, I have reached the conclusion that this case could have been handled competently by another firm in the West Midlands or the North West or possibly in Cardiff. It required some expertise in environmental law and in personal injury claims. It did require administrative ability to keep track of the progress in each case but it did also concern several households. That is apparent from the schedule of names and other details contained at the back of the bill of costs. The conclusion which I have reached reflects the extracts from the judgment of Lord Justice May in Sullivan v Co-Operative Insurance Society. He referred to the case having no obvious connection with London being a relevant factor especially if the case did not require expertise only to be found there. He also considered that the judge's reasons substantially overstated the scope and difficulty of the case. Leigh Day recognised that the individual claims were not large when inviting me to look at the totality of the damages rather than the sums of compensation received by each individual. There was no dissatisfaction with local solicitors which warranted transfer of instructions to solicitors at a considerable distance away. The symptoms of the individuals concerned and the sums received by each of them reflects modest claims. Ms Moore made a reference to the difficulty in obtaining legal aid in relatively modest claims for damages and costs in item 2 below. The case is distinguishable from **Truscott.** I have already indicated that waves 1 and 2 could have been handled by solicitors outside London.*

The claims themselves proceeded on the basis of the order dated 12 June 1998 where the generic and lead issues were dealt with in respect of no more than ten lead claimants with up to five claimants being chosen by the claimants' solicitors and up to five claimants being chosen by the defendants' solicitors. At the end of the day the action was one of modest proportions which did not in my judgment require the instruction of London solicitors in a case which had no direct connection with London and where solicitors outside London were available to deal with it. The defendants' solicitors have therefore succeeded in their submissions under this head on the facts of this case."

9. On appeal the deputy judge correctly directed herself that the appeal fell to be dealt with under Part 52 of the Civil Procedure Rules. The test that she had to apply was whether or not the costs judge was wrong; and the appeal was a review of his decision. The deputy judge, having set out the rival submissions, concluded:

"I have experienced considerable hesitation in coming to the conclusion that the costs judge was wrong. However, I do consider that he was wrong in focusing on the question whether other solicitors could competently have handed the claims, and in failing to attach sufficient weight firstly to the extra complexities of a group action, which this was, and secondly the advantages presented by Leigh Day & Co acting, in the light of their expertise in such group actions and in light of their previous successful action for the two groups from the same village. ...

In my judgment it was clearly reasonable for these claimants to have instructed Leigh Day & Co in October 1995, when they did so, and the claimants' appeal therefore succeeds. It is not relevant to a decision in October 1995 to look and see what happened later, but it is noteworthy that the respondents themselves instructed Eversheds, a premier national firm, as well as leading counsel (which Leigh Day & Co on behalf of the claimants did not do)."

10. The question before us is whether the deputy judge was entitled to conclude that the decision of the costs judge was wrong. The test which the deputy judge had to apply, in determining whether or not the costs judge's decision was wrong, was explained by this court in ***Tanfern v Cameron-McDonald*** [2000] 1 WLR 1311, paragraph 32, where Brooke LJ says as follows:

"The first ground for interference speaks for itself. The epithet 'wrong' is to be applied to the substance of the decision made by the lower court. If the appeal is against the exercise of a discretion by the lower court, the decision of the House of Lords in G v G (Minors: Custody Appeal) [1985] 1 WLR 647 warrants attention. In that case Lord Fraser of Tullybelton said, at page 652:

'Certainly it would not be useful to inquire whether different shades of meaning are intended to be conveyed by words such as 'blatant error' used by the President in the present case, and words such as 'clearly wrong', 'plainly wrong' or 'simply wrong' used by other judges in other cases. All these various expressions were used in order to emphasise the point that the appellate court should only interfere when they consider that the judge of first instance has not merely preferred an imperfect solution, which is different from an alternative imperfect solution which the Court of Appeal might or would have adopted, but has exceeded the generous ambit within which a reasonable disagreement is possible.'"

11. The task that faces us is to apply that same test. Essentially the test requires the appellate court to consider whether or not, in a case involving the exercise of discretion, the judge has approached the matter applying the correct principles, has taken into account all relevant considerations and has not taken into account irrelevant considerations, and has reached a decision which is one which can properly be described as a decision which is within the ambit of reasonable decisions open to the judge on the facts of the case.

12. Both parties before us agree that the question which had to be answered by the costs judge in the first instance is one which is governed by the decision of this court in ***Wraith v Sheffield Forgemasters Ltd***, which is a decision reported in [1998] 1 WLR 133 and includes a decision in a conjoined appeal of ***Truscott v Truscott***. In that case the plaintiff, Mr. Wraith, had relied on a trades union to handle his claim for compensation against his employers. The union instructed London solicitors on his behalf. The case was conducted and concluded in Sheffield. Mr Wraith was awarded damages and costs on the standard basis. In their bill for taxation Mr. Wraith's solicitors claimed the hourly charging rate applicable to central London. The defendant objected on the grounds that the Sheffield charging rate, which was lower, should have been applied. The deputy district judge allowed the London rates claimed and Potter J, sitting with assessors, refused the employers' application for a review, holding that the costs had been reasonably incurred within the meaning of RSC O.62,r.12(1).

13. In the case of Truscott Mr. Truscott was involved in matrimonial proceedings and had originally instructed local solicitors to deal with the matter in the local court. He became dissatisfied with his local solicitors and instructed a small firm of solicitors in central London which had been recommended to him to challenge the validity of the order that had been made. On taxation of his costs on his application being successful, the district judge allowed the solicitors' charges based upon London rates applicable to small firms. On appeal the judge held that it was not reasonable for Mr Truscott to have instructed the London solicitors because their rates were higher than those charged locally, and he directed the district judge to reconsider the matter on the basis of the rates appropriate to a firm of solicitors in Sussex or in Tunbridge Wells.

14. The leading judgment in this court was given by Kennedy LJ who, in relation to the issue of principle, cited what Potter J had said in the Wraith case at first instance with approval. What Potter J had said, and which is reported under the same case name, ***Wraith v Sheffield Forgemasters Ltd*** [1996] 1 WLR, 617, 624, was as follows: *"In relation to the first question 'Were the costs reasonably incurred?' it is in principle open to the paying party, on a taxation of costs on the standard basis, to contend that the successful party's costs have not been 'reasonably incurred' to the extent that they had been augmented by employment of a solicitor who, by reason of his calibre, normal area of practice, status or location, amounts to an unsuitable or 'luxury' choice, made on grounds other than grounds which would be taken into account by an ordinary reasonable litigant concerned to obtain skilful, competent and efficient representation in the type of litigation concerned ... However, in deciding whether such an objection is sustainable in practice, the focus is primarily upon the reasonable interests of the plaintiff in the litigation so that, in relation to broad categories of costs, such as those generated by the decision of a plaintiff to employ a particular status or type of solicitor or counsel, or one located in a particular area, one looks to see whether, having regard to the extent and importance of the litigation to a reasonably minded plaintiff, a reasonable choice or decision has been made."*

15. Kennedy LJ, having approved that statement of principle, disagreed with Potter J as to its application to the particular facts of that case. He concluded that the union may have had a perfectly sensible practice, as far as they were concerned, of sending all their work to a firm of solicitors in London, but he did not consider that that justified the conclusion that it was reasonable in the circumstances for London solicitors' charges to be paid by the paying party. His conclusion, however, as far as the appeal of Mr. Truscott was concerned, was that, in relation to his claim, the application of that principle justified the conclusion that Mr. Truscott had reasonably incurred the costs of instructing the solicitors in London. He did so by reference to a number of particular features of the case of Mr. Truscott, including the importance of the case to him, the legal and factual complexities of the case, the fact that Mr. Truscott had been dissatisfied with the solicitors originally instructed, and other matters clearly specific to Mr. Truscott's case.

16. It seems to me that the conclusion that one can properly reach from the judgment of Kennedy LJ is that, whereas it is clear that the test must involve an objective element when determining the reasonableness or otherwise of instructing the particular legal advisers in question, nonetheless that must always be a question which is answered within the context of the particular circumstances of the particular litigants with whom the court is concerned.

17. Mr. Post, on behalf of the defendants/appellants before us, seeks to gain support for a more objective approach to the question in a case such as the present case from the decision of this court in the case of Sullivan v Co-operative Insurance Society Limited [1999] Costs Law Reports 158. That was a case which was almost identical to the case of Wraith. In that case Mr. Sullivan was making a claim against his employers. He made the claim through his union and his union, as was their usual practice, instructed solicitors in London. The argument on behalf of the defendants was that it was an action based upon events which had happened in Manchester. It was a

Manchester case and there was no justification for instructing solicitors in London. This court held that on the facts of that case there was indeed no justification for instructing London solicitors. It was in reality a Manchester case, and the particular arguments which had been put forward to support the contention that the case itself required London solicitors were not sufficient to justify the conclusion that the solicitors in Manchester would not have been the appropriate recourse for the claimant.

18. In the course of his judgment May LJ said at page 1665 as follows: *"Litigants are entitled to engage any lawyer they choose, and from a subjective point of view the choice may be entirely reasonable, but the question is to be judged objectively. The fact that a case has no obvious connection with London is a relevant factor, the more so if the case does not require expertise only to be found there."*

19. Mr. Post submits that those words are entirely apposite to the facts of this case. This case had no connection with London. The circumstances of the case were not such, he submits, as to justify the conclusion that there were no solicitors outside London who could properly have handled the case, whatever its complexities, and that in those circumstances it was not reasonable for the claimants to have sought the advice of Leigh Day & Co.

20. There is obviously force in that submission; and in the present case the stark fact is that substantially greater charging rates formed the basis of the costs claim than would have been the case if solicitors in Manchester had been instructed, and the total bill that has been presented is one which is bound to cause this court concern in the light of the overall value of the claim at the end of the day. Indeed, this was the argument which clearly impressed the costs judge. He came to the firm conclusion that there was nothing special about the complexity of the case, either in terms of the legal arguments or the factual or administrative difficulties which could not have been dealt with properly by solicitors in Manchester. But in doing so, it appears to me that he gave little if any weight to the particular circumstances in which the claims of these claimants came to be made. The deputy judge was right in my view to conclude that he had failed to take into account the background to the instruction of Leigh Day & Co by these claimants. He appears to have, but should not have, ignored what had happened in relation to Waves 1 and 2.

21. This appeal does not, perhaps unfortunately, raise the real question which is of concern, which is whether or not it was reasonable to have instructed Leigh Day & Co in 1994. If it had, then it may be that the approach of the costs judge would have been one which could not have been faulted; but that is not the issue before us today. By 1995, when these claimants came to instruct Leigh Day & Co, Leigh Day & Co had successfully negotiated settlements in Waves 1 and 2. They were fully appraised of the nature of the case, of the background facts, both as to the history and as to the technical problems which may have presented themselves. They had done a significant amount of background work which therefore did not need to be repeated. They had clearly achieved a relationship with the solicitors acting on behalf of the defendants, which was considered to be beneficial to the solicitors for the defendants themselves. In the summer of 1995 they had suggested to some of the claimants who ultimately became part of Wave 3 that they should seek advice from Leigh Day & Co. They at no stage indicated any concern about the fact that it was a London firm of solicitors that was being instructed on behalf of Wave 1 or 2 before Wave 3 instructed Leigh Day & Co, and had shown no concern about the level of hourly rates which they were consequentially being asked to meet for the purposes of settling those first two waves.

22. In those circumstances it seems to me that this case has to be approached very much in the context of the circumstances that I have described which surrounded the claimants' entry into dispute with the defendants. It seems to me that the costs judge was clearly wrong in failing to take account of these special features of the case which were material to the decision to instruct Leigh Day & Co, and therefore the deputy judge was correct to conclude that the discretion which he had exercised was flawed. In the light of the matters to which I have referred, it seems to me that the deputy judge was entitled therefore to allow the appeal from the costs judge and that the decision that she has reached is not one which can properly be categorized as wrong. I would therefore dismiss this appeal.

SIR CHRISTOPHER STAUGHTON:

23. The narrow issue before us is whether it was reasonable for the claimants to instruct London solicitors seeing that the case arose in North Wales and could have been conducted properly by solicitors from, for example, Manchester. As to that, I agree with Latham LJ that we should not interfere with the finding of the deputy judge. It was reasonable in the particular circumstances of this case. On that point I do not think that our decision should be regarded as a precedent, despite the fact that the case was awarded by a single Lord Justice the accolade that it was worthy of a second tier appeal.

24. There are other considerations that have come to light. It does not appear that the costs judge or the deputy judge on appeal were told what the difference was between the costs of London solicitors and Manchester solicitors. But how can one answer the question whether it was reasonable to engage a London solicitor unless one at least takes into account the answer to that question? In this case we did ask and we were told. We were given some figures. Mr. Post's figures produced a difference of 73 per cent. Mr. Morgan's figures were considerably less. This, as my Lord has said, is a matter of some importance.

25. We have also asked what the total was of the bill which fell to be taxed in this case. The answer £210,000. That is two and one-third times the amount that was recovered by the claimants, £90,000. And it is only for one side's costs. Two of us described it as ludicrous, although of course it will be for the costs judge to determine.

26. Under the old regime, as Mr. Post pointed out, what the taxing master did was to consider each item individually and to inquire whether it was an item of work reasonably done and the sum charged reasonable in amount. That process does not include the task of sitting back at the end to see whether the total was reasonable. That is rather like the task which a criminal judge has to carry out when sentencing an offender for a number of offences. He must not only fix an appropriate sentence for each individual offence but for the total. Under the new regime it is to be hoped that things will happen differently.

27. Proportionality has always been a target which courts should aim at, although not perhaps under that name until 1985 or thereabouts. Now it is increasingly known as an overriding objective of the Civil Procedure Rules. Section 65 of the Arbitration Act 1996 confers on an arbitration tribunal power to limit the amount which can be incurred by the parties in a particular case as costs, although the statute provides that this must be done at an early stage so that parties do not find, ex post facto, that they have spent more than the limit. I myself have done that in an arbitration case under the small claims procedure of the London Maritime Arbitrators Association, which incidentally limited my own fee as well as the costs which the parties could incur.

28. I had thought that there was a similar provision to be found in the Civil Procedure Rules but counsel cannot find it expressly said. The allocation questionnaire in item I requires the person preparing it to state the amount of costs already incurred and the amount expected to be incurred in the future. That is linked to rule 3.1(6) which provides:

"When exercising its power under paragraph (5) the court must have regard to -

(a) the amount of the dispute; and

(b) the costs which the parties have incurred or which they may incur."

29. This is in relation to the powers of case management. It seems at first sight to be limited to paragraph (5) but I do not suppose that in fact it is. So surely case management powers will allow a judge in the future to exercise the power of limiting costs, either indirectly or even directly, so that they are proportionate to the amount involved.

30. It would seem that particular care should be paid to the costs likely to be incurred in group litigation cases if they may, in the course of the proceedings, be likely to become disproportionate to the amount at stake. Such actions, as we have been told, may involve a considerable amount of administrative management which do not perhaps require any particular legal skill. That in itself could give rise to disproportionate expense unless controlled. I would hope that in such cases more control will be exercised by way of case management than apparently has been in the past.

31. In many ways I would have wished that we had not been required to decide the isolated issue of London or country solicitors as we have been on this appeal, without at the same time considering the claim for costs as a whole. But that is what has happened, and other matters are for another day. I would dismiss the appeal.

LORD JUSTICE MANCE:

32. Anyone hearing the facts of this case must feel acute concern about, firstly, an apparently disproportionate relationship between costs said to have been incurred of £210,000, and the ultimate recovery of around £90,000 for the benefit of the claimants and, secondly, about the extent to which the £210,000 incurred relates to the fact that the claimants' solicitors were London based as distinct from Manchester based. Lord Justice Latham has indicated that that fact accounts for a figure of not less than £40,000 and perhaps as much as £80,000. £210,000 is even more remarkable when one bears in mind that the Wave 3 claimants are said to have had the benefit of investigatory work done in respect of Waves 1 and 2 without further charge. On the other hand, the defendants, the appellants before us, Monsanto, evidently dug their heels in in respect of the Wave 3 claimants. They sought, amongst other things, to have the claim struck out or to have it transferred because of the court in which it was brought. They put the claimants to the strictest of proof, certainly as regards causation and quantum. They no doubt thereby contributed substantially to the increase in costs.

33. The present litigation was conducted under the old rules preceding the Woolf reforms. It is to be hoped that subsequent to the Woolf reforms judges conducting cases will make full use of their powers under the Practice Direction about costs, section 6, which appears in the Civil Procedure White Book 43/PD-006, to obtain estimates of costs and to exercise their powers in respect of costs and case management to keep costs within the bounds of the proportionate in accordance with the overriding objective. That the amount of costs should play an important part, both in the court's orders about costs and in its orders about case management, is indicated expressly in paragraph 6.1 of that Practice Direction, even though in the main body of the rules in CPR 3.1 (6) the reference to costs is in terms limited to CPR 3.1 (5). The relevant rule, prior to the Woolf rules, was O.62,r.3(1) which my Lord, Lord Justice Latham, has read. It was pointed out in the case of ***Wraith v Sheffield Forgemasters*** [1998] 1 WLR 132 by Kennedy LJ at page 137E that still earlier rules were no longer applicable since they were in significant respects quite differently worded. They related, as Sir Richard Malin VC recounted in ***Smith v Buller*** (1875) LR 19 Eq. 473, in a passage cited in Wraith, to costs necessary to the litigation. Although this is not a point which has been made specifically before us, I note in the present case that the circuit judge, on page 14 (top half) of his judgment, when citing from the authority of Wraith, cited only the old restricted wording and not the more modern rule actually applicable. Nowhere do I see in his judgment that he identified as the test whether the instructions of Leigh Day were reasonable. It occurs to me that this may go some way to explain his more stringent view towards the appropriateness of using Leigh Day. In any event, however, I am satisfied that Miss Barbara Dohmann QC, sitting as a deputy High Court judge, was right, firstly in concluding that the costs judge focused,

and to my mind focused excessively, on the possibility that other, for example Manchester solicitors, could have been instructed and could have handled the matter competently. That was a relevant factor but not one to be elevated to the ultimate test, which was, as I said, although the costs judge did not refer to it, whether the claimants acted unreasonably in instructing Leigh Day. Secondly, I am satisfied that she was right in concluding that the costs judge failed to take into account a number of material and special factors which Lord Justice Latham has summarised, constituting important background to the instruction of Leigh Day by the Wave 3 claimants. She set them out as, in particular, Leigh Day's knowledge of the earlier leaks and the issues, particularly scientific and environmental issues, that arose from it, and accordingly the benefit of the work that they had done in that regard in respect of Waves 1 and 2. Then, as a second issue, the possibility which they offered of pursuing a concerted effort vis-a-vis Monsanto which was consistent with the previous successful handling of the earlier claims. Thirdly, the confidence on the part of villagers in Leigh Day arising from their previous successful handling of earlier claims and, fourthly, the fact that there is some evidence of dissatisfaction or inefficiency on the part of other local solicitors who had been instructed by a few of the residents. That was accepted by Mansanto in the correspondence which we have before us, referring to the likelihood that they were not handling the matter efficiently and certainly not handling it with speed. To those factors one may add, fifthly, the absence of any objection by Monsanto to the use of Leigh Day at any stage, particularly in respect of Waves 1 and 2 and, sixthly, the encouragement by Monsanto, to some at least, of the Wave 3 claimants to use Leigh Day. The correspondence shows that encouragement. In a letter dated 25th October 1995 Monsanto informed Leigh Day that they had heard from three potential new third wave claimants and were going to give them Leigh Day's name. We have a specimen of a letter of 6th November doing exactly that in relation to two further Wave 3 claimants, Mr. and Mrs Burton. That was after a public meeting which had occurred relating to a yet further incident at the plant which had taken place on 29th October 1995. It seems to me that it was in effect incumbent on Monsanto at that stage, if there was an objection to the instruction of a London firm like Leigh Day, to have taken it, and it was natural for the claimants to assume that there was no objection if it was not taken. The previous claims had, as far as was apparent, been settled and settled without objection to the costs or their level.

34. It seems to me therefore that the deputy judge rightly exercised his discretion and came to a conclusion that I would not fault. However, like Lord Justice Latham and Sir Christopher Staughton, I stress that this case turns very much on the history of the particular matter, including the successful conduct of the Wave 1 and 2 claims by Leigh Day, which took place without any resistance by Monsanto to Leigh Day acting and without any objection by Monsanto to Leigh Day claiming London costs when it came to a compromise, and Monsanto's positive encouragement of continued use of Leigh Day. Had we been concerned with the use of Leigh Day by Wave 1 claimants, in circumstances where Monsanto had made or reserved any right to object to such use, the outcome could have been quite different.

Order: Appeal dismissed with costs.

MR. A. POST (instructed by Messrs Eversheds, Cardiff) appeared on behalf of the Appellant.
MR. J. MORGAN (instructed by Messrs Leigh Day & Co., Clerkenwell) appeared on behalf of the Respondent.