Employment

In the line of duty

Rob Weir QC & Vijay Ganapathy examine a parent company's liability to an employee of its subsidiary

IN BRIEF

- *Chandler v Cape plc*: a parent company can owe a direct duty of care to its subsidiary's employees on appropriate circumstances.

In *Chandler v Cape plc* [2012] EWCA Civ 525, the Court of Appeal held that a parent company can owe a direct duty of care to its subsidiary's employees in appropriate circumstances and gave valuable guidance on what those circumstances might be. It upheld the decision at first instance that Cape plc owed and breached its duty to Mr Chandler, an employee of its subsidiary. This is the first case in which a parent company has been found liable to one of its subsidiary's employees in negligence and opens the way for other cases in which a similar duty might be imposed.

Mr Chandler worked for Cape Products for a short period in the late 1950s and early 1960s. His work in a yard exposed him to substantial quantities of asbestos dust, which emanated from a factory on-site. When he subsequently contracted asbestosis as a result of this work, he looked to recover compensation. None was available from his employer, which had long been wound up, as its insurer had an exception for asbestosis cases. So he looked instead to Cape plc, the parent company of his employer. The facts, as found by the trial judge and upheld by the Court of Appeal, showed that Cape operated a group chief chemist and a group medical officer and effectively took charge of health and safety matters relating to exposure to asbestos. It controlled various aspects of Cape Products' business and knew about the systemic failure to protect workers at Cape Products' site. The Court of Appeal held that Cape plc's superior knowledge about the nature and management of asbestos risks made it appropriate to find that it had assumed a duty of care, either to advise Cape Products on what steps it had to take to protect its employees, or to ensure that those steps were taken. The injury to Chandler was the result and so Cape was liable in negligence for his asbestos-related injury.

Arden LJ, delivering the only reasoned judgment in the Court of Appeal, dismissed any notion that imposing such a duty interfered with the long-established principle that the parent and subsidiary were separate entities. This case was not concerned with piercing the corporate veil. Rather, it was concerned with the imposition of a direct duty of care between parent and employee of subsidiary. Arden LJ also rejected the defendant's related argument that there was a threshold test, namely that the parent had to have acted outwith the normal incidents of the relationship between a parent and subsidiary company. There was no authority for such an approach; moreover, it was not possible to say what does or does not amount to a normal incident of that relationship.

Accepting responsibility

Arden LJ explained that a parent company is not likely to accept responsibility towards its subsidiary's employees in all respects, but only, for example, in relation to what might be called high level advice or strategy. Appropriate circumstances for imposing a duty of care would include a situation, as in this case, where:

(i) The business of parent and subsidiary are in a relevant respect the same.
(ii) The parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry.
(iii) The subsidiary's system of work is unsafe as the parent company knew or ought to have known.
(iv) The parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees' protection.

Arden LJ did not consider it was necessary to show that the parent was intervening in the health and safety policies of the subsidiary. After all, the breach of duty may involve a failure to act in this way. It may be enough to show that the parent has a practice of intervening in the trading operations of the subsidiary.

The way is clear

Now that it is clear a parent can owe a duty of care to a subsidiary's employee, this principle can be applied in a range of cases, not just asbestos-related ones. There is good reason to want to sue a parent company, rather than the subsidiary, where the subsidiary is uninsured and has no funds. A foreign claimant injured abroad while working for a foreign employer can sue that employer's parent company in England if the parent is registered in England. It may also be possible to establish a duty of care owed by the parent company to persons other than employees of the subsidiary.

This is pause for thought for group companies when considering how they should structure themselves if they are to insulate the parent company from any possible liability to its subsidiary's employees. NLJ

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