Parent company liability in England for human rights impacts abroad: Lungowe v Vedanta

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Mining Newsletter

Conventionally, a "corporate veil" and the doctrine of "forum non-conveniens" have isolated UK businesses from human rights related claims arising out of the operations of their foreign subsidiaries. In October, the Court of Appeal was asked to consider whether English courts had jurisdiction over claims brought by local farmers against a Zambian mining company and its UK parent in relation to pollution from a mine in Zambia *(Lungowe and Ors. v. Vedanta Resources PLC)*. The landmark judgment increases the scope for parent company liability and has far-reaching consequences for human rights risk management throughout the value chain and around the world.

Vedanta confirms that the Recast Brussels Regulation requires an English court to accept jurisdiction over a UK domiciled defendant. So long as the UK remains a party to the Regulation and subject to the jurisdiction of the European Court of Justice, there is little scope to argue otherwise and arguments of forum non-conveniens against a UK parent company will fail. This will continue to allow relatively weak claims to be brought against a UK parent in order to anchor a stronger claim against a foreign subsidiary in the English courts.

1. Technically, the "corporate veil" remains intact – a parent company is not automatically liable for the acts or omissions of its subsidiary. A claimant must still prove that a separate, direct duty of care of the parent exists. However, Vedanta widens the circumstances in which such a duty may arise, confirming that it can extend to non-employees affected by a subsidiary's operations. It may now suffice to show that the parent controls the operations of the subsidiary or takes direct responsibility for a policy relevant to the claim (for example, in this case, by producing a global sustainability report).
2. The Court chose not to sanction the view that, where there is a real issue as to whether the UK parent owes a duty of care, this should "virtually decide" the issue of forum non-conveniens regarding the foreign subsidiary in favour of the English courts. In future, defendants will be free to argue that English courts are not the appropriate forum to hear claims against the foreign subsidiary, leaving the claimants with only the (often relatively weak) claim against the parent.

In effect, it will be easier for the foreign victim of an alleged human rights violation to bring a

claim against a UK parent company and harder to defeat such a claim on jurisdictional grounds. See our blog post for further analysis of whether this creates a "Catch-22" for UK multinationals who seek to fulfil their responsibilities under the UNGPs.

Given these developments (and parallel developments in Canada – as to which, see our blog), in 2018, we expect to see the increased use of transnational tort and parent company liability by victims of alleged human rights violations. Notwithstanding the Vedanta Catch-22, the best way to avoid these claims remains to prevent the human rights impact occurring in the first place. Accordingly, businesses should take steps to respect human rights throughout their value chain, including by operationalizing the UNGPs. In the meantime, watch this space for updates on appeal decisions expected in this area in England and Canada.

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