

New guidance on parent company liability

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The English Court of Appeal has given some useful guidance on when a parent company might be liable in tort to employees of its subsidiary, in [Thompson v Renwick Group Plc](#) (13 May 2014).

In *Thompson*, the Court of Appeal held that the parent company did not owe a direct duty of care to the employee of its subsidiary. In coming to its decision, the Court of Appeal followed the threefold test set out in *Caparo v Dickman*¹, of foreseeability or damage and proximity where additionally it is fair, just and reasonable to impose a duty of given scope upon the one party for the benefit of another.

The Court of Appeal distinguished the present case from a recent leading authority, *Chandler v Cape*² where the parent company was found liable, on the facts as detailed below. This decision suggests that, while no clear dividing line can be drawn in the *Caparo* threefold test, the key factors which might lead to the imposition of a duty of care will be (i) superior knowledge or expertise to such an extent that it was fair to infer that the subsidiary would rely upon the parent deploying its superior knowledge to protect its employees and (ii) evidence showing the relationship between the two companies was such that it would be fair and appropriate to impose a duty of care.

This judgment should be of some comfort to parent companies. It is the latest in a line of cases before the English courts seeking to establish parent company liability for the activities of their subsidiaries and would likely be followed in Hong Kong.

The facts

From 1975 to 1978, the claimant had been employed by David Hall & Sons Ltd (David Hall), which ran a haulage business. His work had involved handling raw asbestos, which had allegedly caused him to develop pleural thickening, and to have increased his risk of mesothelioma and lung cancer.

Soon after the claimant was employed by David Hall, the company was acquired by the defendant, Renwick Group Plc, and the subsidiary's haulage business was combined with the business of the other companies in the Renwick Group. A new director of David Hall (assumed to be nominated by the defendant), took over running the day-to-day operations of David Hall and the claimant's workplace. It was common ground that David Hall would not be able to meet an award for damages, so the claimant sued its parent.

The trial judge held as a preliminary issue that the defendant had taken control of the daily operation of its subsidiary to such an extent as to give rise to a duty of care towards the claimant for his health and safety in the workplace. The judge placed particular significance on the use of the parent's logo on the subsidiary's paperwork and transport fleet, and the sharing of resources among subsidiaries within the Renwick Group including the interchangeable use of depots.

The defendant appealed. The Court of Appeal allowed the appeal. In running the day-to-day operation of the subsidiary, the new director had not been acting on behalf of the parent group, but pursuant to his fiduciary duty owed to the subsidiary. There was no evidence of any relationship between him and the defendant beyond his inferred nomination by the defendant as director of the subsidiary. Co-ordination of operations between subsidiaries was just that, unless it was demonstrated that the group holding company assumed control in such a way as to show an assumption of duty to the employees of the subsidiaries.

To establish such a duty, the claimant would have had to show that its parent was better placed, through superior knowledge or expertise, to protect its subsidiary's employees against the risk of injury, to such an extent that it was fair to infer that the subsidiary would rely upon the parent deploying its superior knowledge to protect its employees. The defendant had not had any knowledge of the hazards of handling raw asbestos superior to that which the subsidiary could have been expected to have. The evidence thus fell far short of what was required to impose a duty of care on the defendant.

In *Chandler v Cape*, involving in a similar asbestosis claim, the parent company had employed a medical advisor, responsible for the health and welfare of all employees within the group of companies of which it was parent, and a scientific officer, who was involved in seeking ways of suppressing asbestos dust. Many aspects of the production process had been discussed and authorised by the parent company's board. In *Chandler v Cape*, the Court of Appeal considered the variety of ways in groups of companies operate, that in some cases a subsidiary may be run purely as a division of the parent company.

¹ [1990] 2 AC 605

² [2012] 1 WLR 3111

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