Corporate veil will not be pierced

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CATEGORY:
ARTICLE

A recent Court of Appeal judgment held that a parent company should not be held responsible for Heath & Safety failing in its subsidiaries.

*Background

*David Thompson v Renwick Group Plc [2014] EWCA Civ 635 considers Chandler v Cape plc [2012] EWCA Civ 525, a Court of Appeal case which caused immense concern to companies. In Chandler, it was held that a parent company owed a direct duty of care to an employee of one of its subsidiaries contrary to the basic principle that parent companies have a separate legal personality and it should not be possible to 'pierce the corporate veil'. In Thompson the Court of Appeal took a different view based on the facts.

Mr Thompson had been employed by two companies between 1969 and 1970. His work involved the handling of raw asbestos. In 1975, the two companies were acquired by a subsidiary of Renwick Group plc and a new director took over the running of the depot where Mr Thompson worked. As a result of his exposure to asbestos, Mr Thompson developed pleural thickening. His employers did not have liability insurance and no financial means to be able to meet any award for damages.

Mr Thompson brought proceedings against Renwick Group Plc (the parent company). At first instance, the judge agreed that Renwick Group Plc, through the new director, had taken control of the daily operation of the business to a sufficient extent to give rise to a duty of care to Mr Thompson.

*The Appeal

*On appeal it was held that, by appointing the director of the subsidiary to run the day-to-day operations with responsibility for health and safety, Renwick Group Plc had not assumed a duty of care to Mr Thompson. The Court clarified that a duty of care would only be imposed if the test of foreseeability of the damage and proximity was satisfied and if it was fair, just and reasonable to impose a duty.

The critical question in Chandler was whether what the parent company did "amounted to taking on a direct duty to the subsidiary's employees". The factors relied upon by Mr Thompson were far removed from Chandler and the evidence fell far short of what was required for the imposition of a duty of care. Thompson was not a case where the parent company was better placed, because of its superior knowledge and expertise, to protect the employees of the subsidiary companies against the risk of injury making it fair to infer that the subsidiary would rely upon the parent deploying its superior knowledge in order to protect its employees.

Impact
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*This judgment reinforces the principal of the corporate veil and Chandler remains an exceptional case decided on its own unique facts.

These cases illustrate the problems that arise in disease cases where companies have either ceased trading or a full Insurance history cannot be traced. In those circumstances claimants have been looking to the
Parent company and its Insurers for compensation.
It is important to ensure that there is a full record of the Insurance history. Unless there is one in place then it is a worth while task to prepare one going back as far as possible in time covering both EL and PL policies.