

## **Duties Of Care In Groups Of Companies - Just Because A Liability Is In A Subsidiary Doesn't Mean The Risk Is Contained**

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A common assumption in relation to groups of companies is that each company has its own distinct liabilities, and that, in particular, the liabilities of a subsidiary will be contained there and will not pass up to its holding company.

In the recent case of *Chandler v Cape plc*, it was held that, notwithstanding the general rule that a holding company is not responsible for the liabilities of its subsidiaries, a holding company could be responsible to an employee of its subsidiary for damages for asbestosis if in the circumstances a duty of care ought to apply.

### **The facts of the case**

Mr Chandler was employed by a subsidiary of Cape plc from 1959 to 1962, and was engaged in the manufacture of asbestos. He discovered in 2007 that he had asbestosis, but by that point in time the subsidiary of Cape plc no longer existed.

The claim was raised by Mr Chandler against Cape plc on the basis that it should be held jointly and severally liable with the subsidiary for damages to Mr Chandler. The counter-argument by Cape plc was that the subsidiary was a distinct legal entity which employed Mr Chandler, and that accordingly, responsibility did not attach to Cape plc.

### **3 Stage Test**

In reaching its decision, the court considered whether a duty of care could be said to exist between Cape plc and Mr Chandler. The relevant legal test for establishing whether a duty of care existed has 3 stages:

- (1) foreseeability of damage;
- (2) sufficient proximity between the parties concerned; and
- (3) whether the situation is one in which it would be fair, just and reasonable that the law should impose a duty of care.

The court acknowledged that the mere fact that Cape plc was a holding company of the subsidiary does not mean that it owed a duty of care - there must be specific, exceptional circumstances which fairly require a duty of care to be imposed. In the specific circumstances of this case, the court was satisfied that:

Cape plc had been aware of Mr Chandler's working conditions, and in particular of the risks to which he was exposed;

Cape plc had employed a scientific officer and medical officer who were responsible for health and safety issues relating to all employees within Cape plc's group of companies;

it was Cape plc who were responsible for setting policy on health and safety issues across its group. Whilst the subsidiaries would be responsible and have a part in implementing the relevant policies, Cape plc retained overall responsibility.

Overall, in light of this, the court concluded that the 3-stage test was satisfied, and so found Cape plc liable for damages to Mr Chandler under a duty of care owed to him.

## **Conclusion**

This case makes the point that if a group company fails, you're not necessarily home and dry, as liabilities can be due across group companies if a duty of care can fairly be established.

Those in charge of groups of companies will want to be certain whether any such risks exist before deciding to take any action in relation to their subsidiaries. All groups should have suitable procedures in place to establish properly where in the group decisions are made and where ultimate responsibility lies.

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**This article was featured in September 2011 edition of Project Scotland.**

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