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This document was authored by representatives of one of the founding firms prior to our combination launch, and it continues to be offered to provide our clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

The "Wake Up Call" Case

Sam Boileau, partner, and **Ashley Belcher**, lawyer at SNR Denton discuss the Chandler v Cape plc: Parent Company Liability for Health & Safety case, and suggest it serve as a wake-up call for all companies in regulated industries

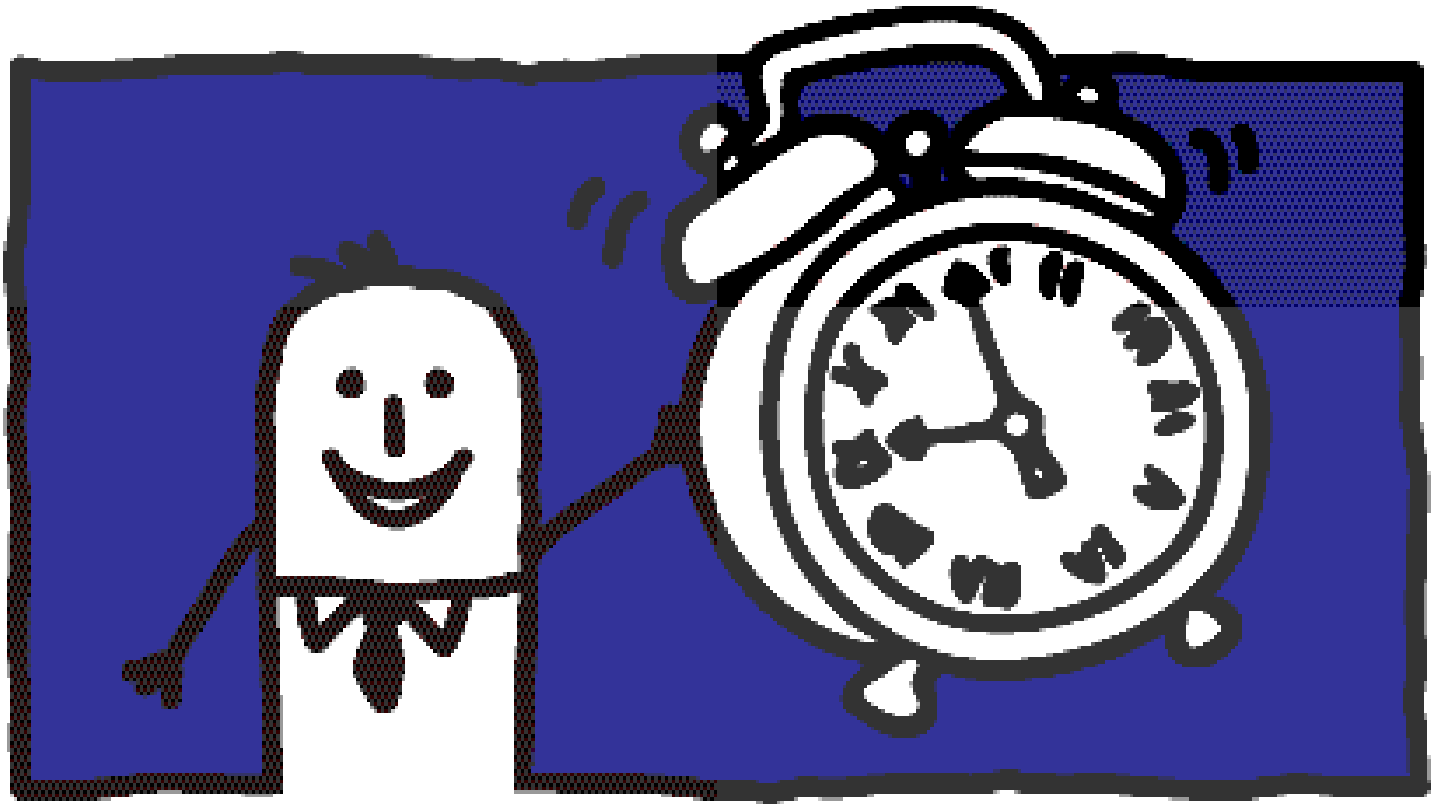
In the recent case of Chandler v Cape plc [2011] EWHC 951 (QB), the Court of Appeal has for the first time held that a parent company has a direct duty of care to the employee of a subsidiary.

The duty of care existed without piercing the corporate veil. In other words, the duty was found to arise on account of the parent's involvement in the affairs of its subsidiary, rather than its status as shareholder.

It is a decision that has potential implications for the management of health and safety across groups of companies, including where a parent company is located in England but has subsidiaries operating overseas in other jurisdictions.

The case dismissed an appeal against a decision that Cape plc (Cape) owed a duty of care to Chandler, an employee of its subsidiary, Cape Building Products Ltd (CBP). The claim was for damages from asbestosis, which the claimant contracted between 1959 and 1961, when he was employed by CBP. It was brought against Cape as CBP was no longer in existence.

Liability for breach of duty in relation to asbestos has a long line of case law. This judgment is particularly important for asbestos-handling industries as asbestos-related illness often occurs many years later, and liability can now be established where the employer no longer exists but the parent company survives. However, the principles establishing a duty of care in this case are likely to apply in other industries where the criteria are met.



A Duty Of Care

THERE IS a threefold test for imposing a duty of care which is well established. The damage must be foreseeable, there must be a relationship of "proximity" between the claimant and the defendant, and it must be just and reasonable to impose liability on the defendant. Key evidence of "proximity" in this case was that Cape employed a scientific officer and medical officer responsible for health and safety issues relating to all the employees within the group of companies.

Regarding the duty between the parent and the subsidiary's employee, the judge decided that there were appropriate circumstances for the law to impose a duty of care on a parent company for the health and safety of its subsidiary's employees. The relevant criteria were that:

- the businesses of the parent and subsidiary are in a relevant respect the same (this could easily be the case, for example, in a waste management group with a number of operational companies all involved in the same type of waste management activity);
- the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry;
- the subsidiary's system of work is unsafe as the parent knew, or ought to have known; and
- the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employee's protection.

The judge stated that it is not necessary to prove the last limb – (d). The court will look at the overall relationship between the companies. Reliance on a parent's superior knowledge can be established where a parent company has a practice of intervening in trading operations of the subsidiary, for example if a parent company involves itself in management decisions of a subsidiary, and/or has a right of veto in connection with decisions on expenditure. In this case, evidence of parent company intervention on matters of production and funding were deemed sufficient evidence that Cape retained overall responsibility.

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Points To Look Out For

WASTE MANAGEMENT companies or other companies operating in the waste sector should take note of this judgment where:

- they have operating subsidiaries, especially where the parent company is involved in decision making or funding of its subsidiaries.
- the parent company has or should have superior knowledge on some relevant aspect of health and safety. Within the waste sector, this could be in relation to handling hazardous wastes (eg asbestos, explosive substances or chemical weapons) or radioactive materials, where specialist knowledge and expertise may exist within a parent company but not all of its subsidiaries.

Indeed the case should serve as a wake up call for all group companies operating in heavily regulated sectors. Any parent company falling into this category would be well advised to check (a) that it is satisfied that its own liability exposure under the principles established in the Cape case is – in respect of its involvement in the activities of its subsidiaries – tolerably low; and (b) that any exposure it does have towards employees of its subsidiaries is adequately covered by the group's insurance arrangements. CIWM

briefs

A West Yorkshire man has been sentenced to more than two years in prison for a combination of handling stolen goods and waste offences. Russell Barratt of Knottingley was given a six-month sentence for operating a waste facility without a permit after Environment Agency officials concluded investigations that had been ongoing since May 2011. He also received almost three years for handling stolen goods and possessing criminal property. When sentencing, Her Honour Judge Belcher said Mr Barratt's failure to obtain a permit was a deliberate and reckless breach of the law. She also accepted that the offence had been aggravated by his failure to respond to advice and guidance from the Environment Agency and she also accepted he had avoided costs by failing to apply for a licence.

The Environment Agency has seized 89 containers of waste to ascertain whether it was exported illegally. The waste was seized and repatriated from Indonesia and will be tested to see if it is contaminated and therefore in breach of international laws.

A wood recycling company has been fines £3 000 with £3 000 costs for allowing wood dust to escape from its yard. Larner Pallets (Recycling) Ltd admitted breaching the Environmental Protection Act 1990 for more than a year, after promising to erect a building to suppress the problem in 2010. Neighbouring businesses claimed the wood dust was so heavy it looked like snow and others said they could "taste" the wood in the air.

Recycling company SITA UK Ltd has been fined £200,000 after a 21-year-old employee died from head injuries at its paper baling site in Tipton. The Health and Safety Executive prosecuted the firm after the worker was killed when the arm of a JCB skid steer loader crushed his head. Wolverhampton Crown Court heard that the man had been driving the vehicle at SITA's premises on the Coneygre Industrial Estate for three months without being properly trained. SITA UK Ltd was fined £200 000 and ordered to pay £77 402 costs. It was also ordered to reimburse the man's family £4 450 in funeral expenses.