When may a parent company be liable for harm caused by the operations of its subsidiary: new developments in Vedanta Resources plc v Lungowe - Harry Sheehan, Devereux Chambers

07/10/19. The Supreme Court's decision in *Vedanta Resources plc v Lungowe* [2019] UKSC 20 marks a substantial new development in the state of parent company liability and provides clear guidance as to when a parent company may be liable to those harmed by the operations of its subsidiary.

Within the last three years the Court of Appeal has decided three cases under very similar circumstances: *Lungowe v Vedanta Resources plc* [2018] 1 WLR 3575, *Okpabi v Royal Dutch Shell plc* [2018] EWCA Civ 191, and *AAA v Unilever plc* [2018] EWCA Civ 1532. In each of these cases a large number of claimants sought to bring claims against a parent company domiciled in the UK after being harmed by operations carried out by their subsidiaries in Africa. In each case the defendants attempted to prevent the claimants from being granted permission to effect service out of the jurisdiction and argued that there was no real issue to be tried against the UK based parent company. In *Shell* and *Unilever* the defendants had succeeded, with only the claimants in *Vedanta* being successful in the Court of Appeal.

It was clear, following the decision in *Chandler v Cape plc* [2012] 1 WLR 3111, that a parent company could sometimes be liable to those harmed by its subsidiary. In that case, the parent company's superior knowledge of the nature and management of asbestos risks led the Court to find that the parent had a duty to advise its subsidiary (paragraph 78), which it had omitted to do (paragraph 79). After the three decisions in the Court of Appeal, however, it was not clear when a parent company would be affected by a duty of care or how *Chandler* should be applied outside its specific circumstances. *Vedanta* was the only one of the three Court of Appeal cases named above to proceed to the Supreme Court, and it is now the leading authority on when a parent company may owe a duty of care to those affected by its subsidiary's operations.

The Supreme Court in *Vedanta* found in favour of the claimants. The judgment was delivered by Lord Briggs, and it clarifies the state of the law on parent company liability in three particular respects. First of all, Briggs JSC accepted that parent companies could be liable for the actions of their subsidiaries under the ordinary common law principles for the existence of a duty of care and that the duty of care contended for by the claimants was not novel. They had argued that the parent company was liable because it had itself, by its own actions, acted negligently and in breach of the duty of care that it owed them. The claimants never argued that there was a novel species of tortious liability or a specific kind of parent company liability that relied on new principles.

Secondly, Briggs JSC explained that *Chandler* gave no more than one example of a situation in which a duty of care may affect a parent company. There is no need for the relation between a parent company and a subsidiary to mirror the specific relationship that existed in *Chandler*.

Thirdly, and most importantly, Briggs JSC gave a number of examples of situations in which the parent company could owe a duty of care. In particular it may do so where (1) the parent company imposes group wide policies and guidelines that subsidiaries must comply with (paragraph 52), (2) where the parent company takes active steps to see that policies and guidelines are implemented by relevant subsidiaries (paragraph 53), and (3) where the parent companies holds itself out as exercising supervision and control of its subsidiaries, even where it does not in fact do so (paragraph 53). These examples can now be taken along with the examples given in *Unilever* of when such a duty may exist, where a parent has substantially taken over the management of the relevant activity or where the parent has given advice about how the subsidiary should manage a particular risk (paragraph 37), to give a variety of specific circumstances in which a parent may owe a duty of care.

The decision in *Vedanta* makes clear that the law does recognise that a parent company may owe a duty of care to people affected by the actions of its subsidiary. It also goes a long way to explaining how and when such a duty of care may arise. This is a relatively new area of law with issues that remain to be explored in future cases, but *Vedanta* brings a new degree of clarity to the question of parent company liability.

Image ©iStockphoto.com/nito100

The opinions expressed in the articles are the authors' own, not those of Law Brief Publishing Ltd, and are not necessarily commensurate with general legal or medico-legal expert consensus of opinion and/or literature. Any medical content is not exhaustive but at a level for the non-medical reader to understand.

PI Industry News

Fresh doubt about April 2020 PI reforms as rule changes left unresolved...
MoJ scotches hopes of whiplash shift over children...
Insurer wins on implant costs...
Government warned that Civil Liability Act leaves injured children stranded...
Claimant loses own appeal and is also found fundamentally dishonest...
Paddington train crash survivor warns 'rail safety is being pushed down agenda'...
Solicitors facing hefty losses on Thomas Cook sickness claims...
NHS notification scheme for brain injuries at birth results in early liabilty admissions to 24 families...
Carbon monoxide poisonings increased 32% since 2014...
Whiplash lawyer demise 'good news' says listed credit hire firm...

Credit Hire Articles

We have now published more than 50 specialist credit hire articles. A selection are shown below, or see the complete list here. Subscribers can also access, for free, the latest edition of Kevan & Ellis on Credit Hire.

Editorial: Pre-Action Disclosure of Financial Documents in Credit Hire Cases - Aidan Ellis, Temple Garden Chambers

30/11/18. As long ago as 2004, in the course of carving out the impecuniosity exception in Lagden v O'Connor, Lord Nicholls expressed the hope that the parties "should be able t...

In Credit Hire circles, what goes around comes around (again...): Irving v Morgan Sindall PLC considered - Jason Prosser, Leeper Prosser Solicitors

30/07/18. In Credit hire arguments go in circles, at least that is the experience of the writer (who has now been engaged in conducting credit hire claims for nearly 15 years), w...

Back to Basics: Should Credit Hire be Stripped? - Gary Herring - Horwich Farrelly Solicitors

11/09/14. In *Dimond v Lovell* the House of Lords made it all seem so simple. In a case where the claimant sought hire charges in the princely sum of £346.63, it was held that ...

Out of 'Control'? Credit Hire and CPR Part 31 - Gary Herring, Horwich Farrelly Solicitors

10/04/14. Disputes relating to disclosure remain an enduring feature of credit hire litigation and, largely to the understandable annoyance of the judiciary, are the source of mu...

Credit Hire and Storage Fraud - Andrew Mckie, Clerksroom

17/03/14. Chapter 6 of 'RTA Allegations of Fraud in a Post-Jackson Era: The Handbook' by Andrew Mckie. Credit hire and storage claims are proving some of the most difficult ...

Opoku v Tintas - Melanie Mooney, Keoghs

09/12/13. In handling credit hire claims it is always preferable to focus on obtaining clarity for issues where there is a degree of uncertainty for all parties dealing with the ...

More:

- Too Little, Too Late: Robertson v Dixon (In the Milton Keynes CC 19th April 2013) - Max Withington, Horwich Farrelly
- Editorial: Challenging Period of Hire - Aidan Ellis, Temple Garden Chambers
- Editorial: Opoku v Tintas: Court of Appeal on Period of Hire - Aidan Ellis, Temple Garden Chambers
- The Sharp End of Employers' Liability – Breach and Causation Under the Personal Protective Equipment Regulations 1992 - Andrew Roy, 12 King's Bench Walk
- Credit Hire: Enforceability Update - Gary Herring, Keoghs LLP
- British Victims of Terrorism Abroad: a Fair Regime Introduced - Jill Greenfield, Field Fisher Waterhouse LLP