



Parent company liable for safety breaches of its subsidiary

A parent company has recently been found guilty of corporate manslaughter, following the death of an employee at the site of one of the subsidiaries.

CAV Aerospace was fined £600,000, after a stockpile of metal billets on the site of its subsidiary, CAV Cambridge fell, fatally crushing an employee. The investigation revealed the cause of the collapse to be unsafe storage of the billets, with stacks exceeding safe height limits, as a result of overstocking and insufficient space.

Corporate Manslaughter is committed when a gross breach of a duty of care which causes death is caused substantially by the way in which senior management organises its business. Although CAV Cambridge was the employer, it was CAV Aerospace that was considered to owe the primary duty.

Courts look at the relationship and responsibilities in practice, boundaries created by legal entities are not absolute. In this case the following points were determinative:

- Management structure: The problem of overstocking had been identified by CAV Cambridge, but it was unable to alleviate this problem without engagement from CAV Aerospace. The management structure was such that the parent company was responsible for matters such as purchase orders and delivery. As a result, the subsidiary had no say over the level of stock it received.

Similarly, the subsidiary had no finance department of its own, with the financial operation of the company being conducted by the parent, further reducing the independence of the subsidiary's decision-making and blurring the separation between parent and subsidiary.

- Ignorance of warnings: Prior to the incident, there had been six near miss reports logged with CAV Aerospace., none of which had resulted in any action or risk assessment being taken. The court heard from the prosecution, how the parent company had *"failed to listen to repeated warnings about the dangers" which were "clear, unequivocal and repeated"*.

CAV Aerospace accepted at trial that its standard of care fell short of the applicable standard, and that a serious injury was foreseeable in the circumstances. However, it argued that the reason for its failure to heed warnings and act was that it did not know it was responsible for the safety of the employees of CAV Cambridge. It believed the duty was owed by the subsidiary. The Court considered that this was too simplistic a view, given the integral role that it played in the operation of its subsidiary.

Will a parent company always be liable for its subsidiaries?

Just as there is no automatic ring-fencing of liability just because a company divides itself into separate legal entities, it is not the case that every parent company is fixed with the failings of its subsidiaries. Each case is very fact dependent.

The key question is whether what the parent company did amounted to taking on a direct duty to the subsidiary's employees. This goes beyond just the co-ordination of operations between members of the same group. A shared use of resources does not mean that a parent and subsidiary ceases in any way to be distinct corporate entities.

Factors which may mean the parent company within a scope of duty may depend on answers to questions such as:

- To what extent is the management of the subsidiary and its operational or financial decision-making independent from its parent?
- Whether the parent exercises some control over the activities of the subsidiary including some financial control?
- Does the parent have (or ought to have) visibility of working conditions at subsidiary level and/or is aware of any failures in respect of control measures.
- Does the parent company oversee any health and safety functions especially where these affect the subsidiary?
- Does the parent company work in the same industry as the subsidiary?
- Does the parent company have (or ought to have) superior knowledge on a relevant aspect of health and safety in the particular industry?
- Is there is an overlap between the directors of the board at parent and subsidiary level?
- Are there procedures set by the parent which apply on a group basis?

There are circumstances when keeping a subsidiary very separate in terms of its governance and resourcing are both beneficial commercially and can effectively limit exposure in the event of an enforcement agency investigation. However, it is clear that turning a blind eye and hiding behind a corporate structure where there is a genuine element of operational

control is unlikely to be an effective shield against a prosecution if safety legislation is breached. Companies must be aware of their own role in the business of their subsidiaries and crucially how safety is being managed in practice within those companies.

The human cost of any safety incident is obvious to both those directly involved and more widely across an organisation. However, with the introduction of the new sentencing guidelines for safety breaches becoming effective from 1 February next year the level of financial exposure is very substantial. Fines are now linked to turnover and for a large parent company that allows unsafe practices to exist in any group company a prosecution could easily become business critical.

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