Corporate Manslaughter – Are Directors The Bait?

Today, Lion Steel Equipment Limited (“Lion Steel”) became the third company to be sentenced for the new offence of corporate manslaughter when it was fined £480,000 plus Prosecution costs of £84,000.

However, what is truly remarkable about this case is that Lion Steel pleaded guilty to corporate manslaughter even though it was not on trial for that offence at the time! The obvious question to ask is why?

The answer is the pressure placed on the company’s directors (who were on trial individually for offences of gross negligence manslaughter and breaches of health and safety legislation) by the prosecution.

With the prospect of a possible custodial sentence (gross negligence manslaughter attracts a maximum sentence of life imprisonment), this article looks at directors’ duties and whether the tactics adopted by the Prosecution in focusing on the company’s directors made them feel sufficiently vulnerable to allow the company to plead guilty to a charge that was not even before the court at the time.

Background to the trial

The company’s plea to the new offence of corporate manslaughter (contrary to the Corporate Manslaughter and Corporate Homicide Act 2007 (“the Act”)) was entered during the trial in June 2012 at which three of the company’s four directors were charged with individual gross negligence manslaughter and the company stood charged with one offence of a breach of Section 2 of Health and Safety at Work Act 1974 (“HSWA”). In addition, each director was charged with a breach of Section 37 HSWA (which relates to directors and senior managers).

Whilst Lion Steel had originally been charged with the offence of Corporate Manslaughter (which only applies to organisations) this charge was severed from the other charges following an earlier application, made on behalf of the company, and was due to be tried separately after the conclusion of the trial against the directors. The trial of the directors mainly focused on directors’ duties and the duty of care they owed employees for their safety.

Following the collapse of the manslaughter case against two of the directors, discussions were entered into with the prosecution who agreed to drop all remaining charges against the individual directors in return for Lion Steel pleading guilty to Corporate Manslaughter. Questions may be raised in the future as to whether it was in Lion Steel’s best interests to plead guilty to this offence which, in turn, could focus attention on the decision making of the directors and whether they breached their fiduciary duty to the company.
Lion Steel Equipment Limited

Lion Steel is involved in the fabrication and manufacture of steel cabinets and shelving systems. The company operates from two sites; one based in Hyde, the other in Chester. The structure of the company was organised so that one director, Kevin Palliser, had overall responsibility for operations at the Hyde site whilst his co-Director, Richard Williams (who was represented by Clyde & Co), had the same responsibility for Chester. The third Director charged was the Finance Director, Graham Coupe.

On the 29 May 2008 the company’s employee, Mr Berry, went on to the roof at the Hyde premises in order to locate and inspect a leak. Whilst on the roof Mr Berry fell some 30 feet through a skylight which resulted in him suffering fatal injuries. The Prosecution alleged that Mr Berry had not received adequate training to work on the roof, there was no risk assessment or safe system of work for undertaking roof work at the Hyde site and there was inadequate supervision.

What application did Lion Steel make to the Court?

The Act, which came into force on the 6 April 2008, created the new offence of corporate manslaughter. It specifically states that the new offence will not apply where the conduct or events, which the Prosecution allege give rise to the offence, occurred wholly or partly before the Act came into force. In those circumstances, any prosecution for corporate manslaughter should be brought under the old law.

With this provision in mind, Lion Steel launched the following two-pronged application to the Court:

1. As all the acts and omissions complained of by the Prosecution occurred prior to 6 April 2008, any corporate manslaughter prosecution should have been brought under the old common law and could not be brought under the Act.

2. In the alternative, if the Prosecution was allowed to continue with the corporate manslaughter charge, then it should not be able to rely on evidence of acts and omissions which occurred prior to the commencement of the Act.
The Court’s decision
The Court’s decision in relation to each limb of Lion Steel’s application was:

1. The events which gave rise to the offence (namely on the day of the accident when the employee was instructed, or allowed, to go on to the roof from which he fell) occurred after the new Act had come into force. On that basis, the Court stated that the charge faced by Lion Steel was the correct one.

2. The Prosecution should be allowed to rely on the evidence of a state of affairs which existed before the new Act came into force but only to demonstrate the extent of any breach, and whether it was gross - not to establish the existence of a breach in itself.

Having considered Lion Steel’s application, the Court concluded that to try the two manslaughter offences together would create a formidably difficult task for a jury which would be required to consider evidence of direct relevance to the death in relation to the individual charges faced by the directors but would then be directed to ignore such evidence when considering the Company’s offence.

In light of this, the Court ordered that the corporate manslaughter allegation be tried separately from, and after, the other charges.

The trial & half time submissions
As a result of Lion Steel’s application, the trial (which commenced on the 12 June 2012) related only to the gross negligence manslaughter and Section 37 HSWA charges faced by the directors and the Section 2 HSWA charge faced by the company.

Somewhat extraordinarily, the Prosecution chose not to call any Lion Steel employees to give evidence and primarily relied on correspondence and other documents passing between the company’s insurance broker, insurer and external health and safety consultant, stretching back to 2002, to prove their case and establish the role each director played in safety at the Hyde site.

At the conclusion of the prosecution case all three directors made submissions of no case to answer in respect of the manslaughter charge they faced, with two directors (Mr Williams and Mr Coupe) also making submissions in respect of their Section 37 HSWA charge.

The Judge’s Ruling on Directors’ Duty of Care
Having heard submissions stretching over two days the Judge (HHJ Gilbart QC) stated in his ruling that whilst it was one thing to consider whether an employer was in breach of its statutory duty it was another matter entirely to consider if the tragic death of an employee had been caused by the gross negligence of a director. The office of director does not of itself create a duty of care to every employee. The evidence must be considered against each director individually.

When considering whether a director owed a personal duty of care the fundamental question is the measure of control and responsibility exercised by the director over the task being undertaken and the systems of work in operation. It will be important to identify whether the director had responsibility for addressing safety in relation to the work being carried out at the time of the accident. A Defendant can only be guilty of gross negligence manslaughter for an omission if he was under a duty to act.

Having considered the evidence which was put before the jury, the Judge ruled that the Crown had failed to adduce sufficient evidence upon which a properly directed jury could convict either Mr Williams or Mr Coupe of manslaughter. Mr Williams was also acquitted of the Section 37 HSWA charge.

The Judge found there was no evidence that Mr Williams owed the deceased a duty of care or that he had any control over work undertaken on the roof at Hyde. Furthermore, whilst an inference could be drawn that Mr Coupe owed the deceased a duty of care there was no evidence that there had been a breach of that duty, let alone any such breach was gross.
What happened next?
Having dismissed the manslaughter charges against Mr Williams and Mr Coupe negotiations were entered into with the Prosecution which resulted in agreement that Lion Steel would enter a plea to corporate manslaughter (albeit that offence was not being tried as part of the ongoing trial) with all remaining charges against the individual defendants being withdrawn. Having entered a plea of guilty to corporate manslaughter the trial was adjourned for sentence.

What was the sentence?
The level of fine imposed by the court (£480,000 plus £84,000 Prosecution costs payable over four years) was generally in keeping with the sentencing guidelines for corporate manslaughter which states fines will seldom be under £500,000. The Judge did indicate that he allowed a 20% discount for the company's guilty plea, which means any fine after trial would have been £600,000.

The fine in this case is probably more representative of the level of fines companies can expect rather than the penalties imposed in the two previous corporate manslaughter prosecutions (£385,000 and £187,500).

In passing sentence the Judge noted "I am very mindful of the 142 people who work at Lion Steel. I would regard it as a most regrettable consequence, which would add to the terrible consequences of Mr Berry's death, if the effect of an Order of this court were to imperil the employment of his former colleagues".

Lessons Learnt
In respect of the application and interpretation of the Act little has been learnt from this case; the trial did not involve the charge of corporate manslaughter. What would appear to have been demonstrated though is the extent to which the Crown are prepared, and willing, to bring charges against individual directors which invariably will put pressure on the corporate entity to plead guilty.

It is unclear if the intention behind prosecuting the directors of Lion Steel was to put pressure on the company to plead guilty and whether this will be a strategy that the Prosecution will deploy in future cases. Certainly, from an early stage in the proceedings, the trial Judge suggested that the Prosecution may be aiming too high with the case they had brought, in particular against the individual directors, but this did not deter them from pursuing the matter to trial.

The extent to which the liberty of the remaining director played a part in Lion Steel pleading guilty to corporate manslaughter can not be underestimated. However, directors must be aware of the fiduciary duty they owe to act in the best interests of the company. Allowing the company to plead guilty to corporate manslaughter could potentially expose them to future civil action, especially if the company were to go into liquidation due to the level of fine imposed by the court.

Whilst the issues of director imprisonment may not necessarily concern very large national, or multinational, corporations where the Board, and shareholders, are remote from the individual charged with gross negligence manslaughter, this will be a real consideration for the SME where directors are also the decision makers within the business. The question is to what extent will an individual be prepared to sacrifice the organisation for personal freedom and to what extent are the Prosecution prepared to utilise this position to secure a corporate conviction.

If charging directors with gross negligence manslaughter becomes a feature of corporate manslaughter cases then it will be essential that adequate insurance cover is in place which will provide for legal representation of individuals as well as the corporate entity. It should also be borne in mind that, it is expected, from 1 October 2012 defence costs orders for defendants tried in the Crown Court will no longer be available.

Further information
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