

HOUSE OF LORDS

SESSION 1999–00
37th REPORT

APPEAL COMMITTEE

FORUM NON CONVENIENS

REPORT

Ordered to be printed 23 March 2000

LONDON

THIRTY-SEVENTH REPORT

from the Appeal Committee

23 MARCH 2000

ORDERED TO REPORT

1. On 7 October 1998, the petition of Cape plc, praying for leave to appeal against an Order of the Court of Appeal of 30 July 1998 in the first cause Lubbe and four other plaintiffs v. Cape Industries plc was presented and referred to an Appeal Committee. Pursuant to the 95th Report from the Appeal Committee, respondents' objections were invited on 26 October. The petition was referred for hearing on 3 December and leave to appeal was ultimately refused on 14 December 1998.

2. The issue involved was whether an action for injury and damage for alleged asbestosis suffered by employees of (and those living around) Cape plc (an English based multinational) in South Africa should be allowed to continue in the High Court, or whether the doctrine of *forum non conveniens* applies.

3. On 10 January last, the petition of Schalk Willem Burger Lubbe, Mamabolo Phale (suing as administratrix of the estate of Nkala Johannes Maile), Matlaweng Johannes Mohlala, Catherina Eksteen Nel (suing as administratrix of the estate of Matthys Christofel Nel) and Sebushi Pauline Selwana praying for leave to appeal against an Order of the Court of Appeal of 29 November 1999 in the second cause Lubbe (suing as administrator of the estate of Rachel Jacoba Lubbe) and about 3,000 other plaintiffs v. Cape plc and 10 other actions was presented and referred to an Appeal Committee. Pursuant to the 15th Report from the Appeal Committee, respondents' objections were invited on 18 January. The petition was allowed, and leave to appeal granted, on 7 January. The petition of appeal was presented on 29 February last.

4. The issue was substantially the same as that of the earlier petition from the other side. As well as disputing the application of the doctrine of *forum non conveniens*, the petitioners rely on Article 2 of the Brussels Convention 1968.

5. In the first cause the Court of Appeal held that the five plaintiffs should be permitted to continue proceedings in the High Court in England, but in the second cause the Court of Appeal held that the plaintiffs, numbering about 3,000, should not be permitted to continue proceedings in the High Court in England.

6. Today, the petition of Cape Industries plc praying that the Order made pursuant to the 8th Report (Session 1998-99) of the Appeal Committee on 14 December 1998, relating to the petition for leave to appeal in the cause Lubbe and others (Respondents) v. Cape Industries plc (Petitioners), be vacated was presented and referred to this Committee.

7. We consider that the issues as to *forum non conveniens* in the two causes are closely interrelated and that as leave to appeal has been granted to the plaintiffs in the second cause the interests of justice require that leave to appeal should now be granted to Cape plc in the first cause.

RECOMMENDATION

8. In these circumstances, therefore, the Committee recommend that the Order made pursuant to the 8th Report (Session 1998-99) of the Appeal Committee on 14 December 1998, relating to the petition for leave to appeal in the cause Lubbe and others (Respondents) v. Cape Industries plc (Petitioners), be *vacated*; that leave to appeal be *given*; and that the petition of appeal be lodged forthwith.