shareholder can readily bring a derivative suit since the revision of the Commercial Law in 1993, such an argument seem to be more appropriate than the view of the decision in this case.

In the United States, a principle is perceived in case law, permitting a shareholder of a parent corporation to bring a derivative suit against a director of its subsidiary corporation, in turn, or permitting a shareholder of a subsidiary corporation to bring a derivative suit against a director of its parent corporation. From the standpoint of comparative law, such a principle should be introduced in Japanese Law somehow.

However, under the current law system, it is difficult to interpret that one shareholder that has a right to bring an action also means a shareholder of a parent corporation. Consequently, we might find some propriety in these findings which rejected the right of standing in a derivative suit. In the long and medium terms aspects, it would be preferable that legislation to permit a shareholder of a parent corporation to bring a derivative suit against a director of its subsidiary corporation is introduced.

8. Labor Law

Supreme Court 2nd P.B., March 24, 2000
Oshima v. Dentsu Inc.
54 (3) MINSHU 1155, 1707 HANREI JIHO 87,
1028 HANREI TAIMUZU 80, 779 RODO HANREI 13,
1725 RODO KEIZAI HANREI SOKUHO 10

Employers have a duty to organize their employees' work so that mental and physical illness will not result from an accumulation of excessive fatigue or stress. Judges cannot take the victim's mental state into consideration when deciding the amount of compensation, unless the mental state is demonstrably abnormal.

Reference:

Civil Code, Articles 709, 715, and 722.

Facts:

"A" started to work for Y (*jokoku* appellant/respondent, *koso* appellant/respondent, defendant), a major advertising agency, on April 1, 1990, immediately after graduation from university. At Y, A was involved in planning commercials and events for radio promotions. Until June of 1990, A could return to his home within the day. He returned home around 1 a.m. or 2 a.m. from August of that year. His late nights at work increased. From November, he sometimes could not return home at all. Around July, 1991, A's team leader found that A was not in good condition. About the same time, A began to tell his team leader things like, "I sometimes cannot recognize what I do and what I should do," and "I can't sleep and I wake up after only two hours of sleep. My insomnia has gotten worse from August and I do not know the reason."

On August 27, A hanged himself in the bathroom of his home, just after the completion of work on a major event for a radio program for which he was responsible.

X_1 and X_2 (*jokoku* respondent/appellant, *koso* respondent/appellant, plaintiff), A's father and mother, filed this case alleging that A committed suicide due to depression arising out of his exhaustion from the extraordinarily heavy overtime work. They explored Y's liability for non-performance of its obligation (to care for safety) under Civil Code art. 415 and/or Y's tortious conduct under Civil Code art. 709, demanding a total of ¥220 million in damages.

On March 28, 1996, the Tokyo District Court accepted the plaintiff's claim in almost full measure and ordered Y to pay ¥126 million yen (692 RODO HANREI 13). Noticing that the work report A had submitted to Y was extremely contradictory to the file which reported the time he actually left the firm, the court concluded that Y's "health-care measures" based on the work report were meaningless. Pointing out the fact that A "worked long hours which far exceeded the limit widely accepted in society," the presiding judge said that, as the em-

ployer, the defendant "neglected to take appropriate measures to prevent A from becoming sick." The court thus held that Y was to blame for A's suicide.

On September 26, 1997, the Tokyo High Court, while reducing the amount of the compensation to 70%, affirmed the reasoning of the District Court that Y was to be blamed for A's death (724 RODO HANREI 13). The court offset the amount of compensation to about ¥89 million, ruling that A's suicide was partly attributable to his mental and physical state, including a proneness to depression, and that X_1 and X_2, who lived together with A, also bore some responsibility for A's overworking.

Y then filed a *jokoku* appeal to the Supreme Court. X_1 and X_2 also filed their *jokoku* appeal claiming that the amount of the compensation was not appropriate.

Opinion:

Y's appeal dismissed while the point of offsetting compensation amount was reversed and remanded.

Employers must abide by the restriction of working hours set by the Labour Standards Law. Also they have a duty under the Occupational Health and Safety Law to make an effort to organize work so as to maintain their employees' health. Therefore, employers, in general, have a duty under tort law to organize the work of their employees so that mental and physical illness will not result from an accumulation of excessive fatigue or stress. Consequently, the employees in administrative or managerial positions, who are responsible for managing other employees on behalf of employers, have the same duty to care for safety as the company and should exercise their managerial authority in this way.

Despite the fact that Y was aware of A's chronic overwork and worsening health, it did not fulfill its responsibility concerning A's excessive workload. Therefore, the lower courts' ruling that Y was to blame for A's suicide was affirmed.

As this court previously held in April 21, 1988 (42(4) MINSHU 243), judges can take into consideration the level of damage attributable to the victim's mental state, when deciding the amount of

compensation. However, when determining the amount of compensation by an employer of an employee who becomes ill due to stress from an overwork, judges cannot take the victim's mental state into account, unless the mental state is demonstrably abnormal.

Also, judges should not take into consideration the possibility that X_1 and/or X_2 could have prevented the suicide even if they lived together, as they could do nothing about A's working conditions.

Therefore, the judgment of the Tokyo High Court regarding the amount of the compensation was reversed and remanded.

Editorial Note:

This *Dentsu* case is the first Supreme Court decision about an employer's legal responsibility concerning its employee's *karojisatsu* (suicide as a result of overwork).

In a worker's accident civil suit, a suit seeking damages from an employer in connection with a worker's accident for violating its duty to care for safety or for tortious conduct, it is proper to establish first that the injury, illness or death resulted from work performed by the worker. Stated differently, an appropriate cause-and-effect relationship must be shown between the performance of the work and the injury, illness or death. (Kazuo Sugeno, (translated by Leo Kanowitz), Japanese Employment and Labor Law, 402–403, 2002).

Generally, as "a worker's purposeful death", suicide is not recognized as attributable to employment. However, in the case where a worker commits suicide as a result of becoming psychologically impaired by the job's extraordinary psychological burdens, the suicide can be deemed a death in the course of employment. A recent circular issued by the Ministry of Labor (1999 Kihatsu, No. 544) stated that where the probability is high that a suicide was brought on by a pathology which was the result of a psychological impairment that had evolved from work-related psychological burdens, it is presumed that the suicide occurred because of a marked impairment in the ability to choose a normal act caused by the mental disability. (Sugeno, supra, at 392–393)

The court in this case, while acknowledging the relationship between overwork and depression, ruled that an employer has a duty un-

der tort law to organize the work of its employees so that mental and physical illness will not result from the accumulation of excessive fatigue or stress.

This interpretation of the employer's duty to care for employees' health is very important and will have a great influence on future cases involving illness related to overwork, since the issues of *karoshi* (death by overwork) and *karojisatsu* have recently been recognized as serious problems in Japan. As is often said, on the basis of a strong group ethic and an adherence to company loyalty, Japanese workers have spent very long hours on the job, no matter how such lengthy labor was unproductive. Such an intense dedication to work and its advantages for employers stand behind *karojisatsu*. This Supreme Court's decision is very important to curb *karojisatsu* by punishing employers' easy dependence on employees' intense dedication to their work.

Not only for this case but also for the other cases regarding employees' *karojisatsu*, i.e., *Kawasaki Seitetsu Mizushima Seitetsujo* case (Okayama District Court Kurashiki Branch, Feb. 23, 1998, 733 RODO HANREI 13), Kyosei Kensetsu Kogyo etc. case (Sapporo District Court, July 16, 1998, 744 RODO HANREI 29) and Higashi Kakogawa Yojien case (Osaka High Court, August 27, 1998, 744 RODO HANREI 17), the lower courts have held that the employers had a legal responsibility to care for their employees' mental and physical health and have ordered the employers to pay compensation. Based on these lower courts' decisions, this Supreme Court's decision on the employer's legal responsibility is regarded as very reasonable.

In this case, X_1 and X_2 explored Y's liability for violating its obligation under Civil Code art. 415 and/or Y's tortious conduct under Civil Code art. 709 and the courts concerned applied the latter. There would be essentially little difference between the content and extent of the employer's duty in both contexts. However, it should be noted that the courts have recognized significant differences between the two contexts in terms of limitation periods, consolation money for survivors (which is not granted for the non-performance of an obligation), and the starting point for reckoning a delayed loss (in the tort context, from the day after the accident; in the context of non-performance of an obligation, from the day after the claim). (Sugeno, supra, at 402–

404).

The Supreme Court also concluded that X_1 and X_2 were unfairly blamed in the determination of the amount to be compensated. This is also very reasonable, as an employer's responsibility in human resource management must not vary according to an employee's living condition, whether he/she lives with his/her family or not.

As stated above, we can agree with this Supreme Court's decision in general. However, we have some concern that an overemphasis on an employer's duty to care for its employees' mental and physical health may conflict with the employees' privacy. With regard to the problem of how an employer respects an employee's privacy under the employer's health-management, a recent judicial decision has held that, "Because the employer has a supplementary obligation under labor contracts to be concerned about the worker's health in the workplace, it should make it a principle to notify the employee that he/she has contracted a disease, unless this is excused by special circumstances. However, where the notification significantly departs from social propriety, it is unlawful" (*HIV Kansensha Kaiko* case, Tokyo District Court, March 30, 1995, 667 RODO HANERI 14). It will be an important matter for discussion in the future to determine to what extent an employer needs to recognize its employees' health conditions.

9. International Law

Tokyo High Court, February 8, 2001
X v. Japan
1224 JURISTO 301 (2002)

Article 3 of the Convention Respecting the Laws and Customs of War on Land (hereinafter referred to as the "Hague Convention") cannot be construed as conferring on individuals the right to claim damages against the wrongdoing State.