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Parent Company's Alleged Control of Subsidiary Insufficient to Establish Personal Jurisdiction

8/16/2018

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It is not uncommon for plaintiff's counsel to assert creative theories in an effort to establish personal jurisdiction over a defendant in a particular forum. However, in *ASEA/AFSCME Local Health 52 Health Benefits Trust v. St. Jude Medical LLC et al*., 2018 WL 3022670 (N.D. Ill. June 18, 2018), a Chicago federal court ruled that Abbott Laboratories' ("Abbott") alleged control over its subsidiary, St. Jude Medical, LLC ("St. Jude"), was insufficient to establish personal jurisdiction (or venue) over the subsidiary in Illinois under an "alter ego" theory.

In the *St. Jude* case, the plaintiff, a third-party payer of medical expenses, brought action against St. Jude for recovery of costs in monitoring and replacing allegedly defective implantable defibrillators manufactured by St. Jude. Putative class counsel filed the complaint in federal district court in Chicago even though St. Jude is a Delaware LLC with a Minnesota headquarters. Defendants moved to dismiss the complaint for insufficient jurisdiction and improper venue.

As the court explained, personal jurisdiction exists in two forms: general jurisdiction and specific jurisdiction. *Id* at *5. General jurisdiction exists only in the forum where defendant is incorporated (or is otherwise organized) or where it has its principal place of business. *Id*. General jurisdiction also may be found where the defendant's activities in the state are otherwise so substantial that the entity is "fairly regarded as at home" in the state. *Id*. As it was undisputed that St. Jude was a Delaware LLC headquartered in Minnesota, not connected to Illinois, the court determined that general jurisdiction was lacking. *Id*.

Specific jurisdiction exists when the acts or omissions giving rise to the claim occurred in the state and where defendant's contacts in the state are "continuous and systematic." *Id* at *9. Plaintiff argued that St. Jude marketed, advertised and sold the defibrillators in Illinois. However, it was undisputed that the health benefits trust plaintiff, based in Alaska, did not buy the defibrillators in Illinois. Nor did its beneficiaries have the devices implanted in Illinois. Thus, the court determined that specific jurisdiction was lacking. *Id*.

Instead, plaintiff contended that following Abbott's recent acquisition of St. Jude, Abbott, an Illinois corporation headquartered in Illinois, controlled St. Jude and should be treated as its "alter ego". Essentially, plaintiff argued that under the "alter ego" exception, St. Jude was a mere "shell" or "sham" entity and the court should pierce the corporate veil and look to the place of incorporation and business of Abbott to determine personal jurisdiction over St. Jude.

Because St. Jude was formed in Delaware, the court applied Delaware law to the alter ego analysis:

> *Under Delaware law, courts disregard the corporate form only in exceptional cases. Determining whether to do so requires an intensive inquiry, which takes into consideration: (1) whether the company was adequately capitalized for the undertaking; (2) whether the company was solvent; (3) whether corporate formalities were observed; (4) whether the controlling shareholder siphoned company funds; and (5) whether the company functioned as a façade for the controlling shareholder. In addition to these factors, Delaware's courts have required an element of fraud or similar injustice in order to pierce the corporate veil. Id* at *6 (citations omitted).

Plaintiff argued a number of factors in an effort to pierce the veil, trying to establish that Abbott exercised "complete" dominion and control over St. Jude. For example, plaintiff alleged that Abbott claimed responsibility for the recall of the defibrillators; issued updates on the recall using the Abbott name; communicated with the FDA using the Abbott name; took over the defibrillator manufacturing facility after its acquisition of St. Jude; advertised that "St. Jude Medical is now Abbott"; shared officers, managers and facilities with St. Jude; and even stated that St. Jude's operations are controlled by Abbott.

But according to the court, such allegations are not sufficient to pierce the veil:

> *These allegations do not call into question St. Jude's capitalization, solvency, or recognition of corporate formalities. Cf. City of Greenville, Ill. v. Syngenta Crop Prot., Inc., 830 F. Supp. 2d 550, 563 (S.D. Ill. 2011) (piercing the corporate veil where evidence showed that the subsidiary company's board unanimously rubber-stamped the parent company's recommendations on a regular basis without discussion and where the subsidiaries employees were sometimes directly managed by employees of the parent company). Nor do they suggest that Abbott was siphoning or diverting funds from St. Jude. At most, the allegations in the complaint suggest that Abbott sometimes spoke on behalf of St. Jude or sometimes represented that it had succeeded St. Jude. See LaSalle Nat. Bank v. Vitro, Sociedad Anonima, 85 F. Supp. 2d 857, 865 (N.D. Ill. 2000) (Nordberg, J.) ("Personal jurisdiction is based on actual evidence of control … rather than on a corporation's general descriptions. Promotional statements made on a public website do not precisely convey the operative corporate structure."). Absent more, however, the allegations do not suggest that unfairness or injustice has resulted from the relationship between St. Jude and Abbott, as would be necessary to justify piercing the corporate veil under Delaware law. Doberstein v. G-P Indus., Inc., No. CV 9995-VCP, 2015 WL 6606484, at *4 (Del. Ch. 2015). Id at *8.*

Accordingly, the court determined that it did not have personal jurisdiction over St. Jude. *Id*. at *10. Because the central events of the case could not be said to have occurred in Illinois, the court also determined that Illinois was not the proper venue. *Id* at *11. Thus, the court granted defendants' motion to dismiss.

The St. Jude case reinforces that courts are not quick to disregard corporate separateness, including for purposes of establishing personal jurisdiction. While it is possible to pierce the corporate veil to extend personal jurisdiction -- and even liability -- from one related entity to another, typically precise pleading and proof of more extreme facts is required. The case also serves as a reminder of the importance of diligent observance to corporate formalities and separateness in corporate planning and operations.