

## COA Opinion: Fraud or wrongdoing is a necessary prerequisite for an alter-ego theory of liability

17. November 2010 By Jason Byrne

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On November 16, 2010, the Court of Appeals approved its earlier September per curiam opinion in *Dutton Partners LLC v CMS Energy Corp*, No. 292094, for publication. In this case, the trial court had denied CMS Energy's motions for summary disposition arguing that plaintiff had sued the wrong party for damages arising out of a natural gas explosion from a pipeline owned and operated by CMS subsidiary, Consumers Energy. Plaintiff argued that Consumers was merely the "alter-ego" of CMS, and the trial court found there was an issue of fact as to whether Consumers was a mere "instrumentality" of CMS, and denied the motions. The Court of Appeals agreed that there was a question of fact on that issue, but concluded that CMS was still entitled to summary disposition. Specifically, the Court of Appeals found that an additional showing of fraud, wrongdoing or misuse of the corporate form is necessary to sustain an alter-ego argument. Here, plaintiff did not point to any such evidence of malfeasance. Thus, the Court of Appeals reversed and remanded the case for an entry of judgment in favor of CMS.