
Legal Updates & News

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Morrison & Foerster Wins *Mead*

May 2008

The U.S. Supreme Court handed Morrison & Foerster a victory in a significant case concerning the constitutional limitations on a State's power to tax multistate businesses.

Morrison & Foerster represented MeadWestvaco Corporation in a dispute over whether the Due Process and Commerce Clauses preclude a State from taxing a nondomiciliary business on a capital transaction that occurred outside of the State. The State of Illinois attempted to tax a portion of a \$1 billion capital gain from MeadWestvaco's sale of its separate division Lexis/Nexis. The State appellate court sustained the tax, but the U.S. Supreme Court vacated that decision.^[1]

Writing for a unanimous Court, Justice Alito explained that where a State seeks to tax a nondomiciliary corporation for its activities that occur outside the taxing state, such as the sale of MeadWestvaco's Lexis/Nexis investment, the Court "must determine whether 'intrastate and extrastate activities formed part of a single unitary business.'"^[2]

The Court noted that, contrary to these principles, the State appellate court created an "operational purpose" exception to the unitary business principle, by expanding upon U.S. Supreme Court decisions indicating that certain assets can be part of a unitary business if they serve an operational function to that business. The Court rejected the Illinois court's attempt to so expand the unitary business test, and held that "[w]here, as here, the asset in question is another business, we have described the 'hallmarks' of a unitary relationship as functional integration, centralized management, and economies of scale."^[3]

Justice Thomas filed a concurring opinion.

This decision is significant because States have, in recent years, sought to expand the requirements of the unitary business test by creating a separate and expanded operational function or operational purpose test. Under the Court's ruling, some of these state taxes may have exceeded a State's constitutional authority to tax multistate businesses and may require state courts to revisit prior rulings.

Paul H. Frankel is counsel of record for MeadWestvaco. Other Morrison & Foerster attorneys involved in the case at the State courts and/or the U.S. Supreme Court level included Beth S. Brinkmann, Craig B. Fields, Roberta Moseley Nero, Brian R. Matsui, Nicole Devero McGrew, and Marc A. Hearron.

Footnotes:

[1] *MeadWestvaco Corp. v. Illinois Dep't of Revenue*, No. 06-1413, 2008 U.S. LEXIS 3473 (Apr. 15, 2008).

[2] *Id.* at *16 (quoting *Mobil Oil Corp. v. Comm'r of Taxes of Vt.*, 445 U.S. 425, 438-39 (1980)).

[3] *Id.* at *24.

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