

FEDERAL COURT FINDS PERSONAL JURISDICTION OVER SWEDISH PARENT CORPORATION

Jun 06, 2012



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Federal Court Finds Personal Jurisdiction over Swedish Parent Corporation

On May 25th, the Northern District of Ohio's Judge Nugent held that the plaintiff in a medical device product liability case had demonstrated a sufficient jurisdictional basis to proceed against the Swedish parent corporation that manufactured and distributed the device.

The decision highlights a growing willingness by U.S. courts to look at the "*alter ego*" theory to impute personal jurisdiction over a foreign parent corporation and subject it to motions practice, the resultant discovery process and the potential considerable expense of trial, notwithstanding the creation of subsidiaries to limit this exposure. These cases appear particularly noteworthy in light of recent Supreme Court decisions which appear disinclined to find personal jurisdiction in cases involving foreign entities that merely place their product in the stream of commerce.

In *Kate v. Artimplant USA et al.*, an Ohio resident alleged that a defective spacer had been implanted into her thumb, necessitating further surgery and resulting in chronic pain. The complaint named a Swedish corporation, its U.S. subsidiary and a local retailer as defendants. Although the parent corporation maintained no property, facilities or employees in Ohio, and provided evidence that it had never purposefully directed any actions at the State, the court found that Ohio's long-arm statute conferred jurisdiction and there was nothing to indicate defendants would be deprived of due process, at least at this early stage. Allegations that the parent corporation sold devices to national retailers, "had a continuous stream of business and income generated" from the State and were "fully aware" that their products would be sold there, were sufficient for the case to proceed.

Alternatively, the court suggested that both parent and subsidiary could also be subject to personal jurisdiction on an *alter ego* theory of jurisdiction. The Court noted that since the U.S. subsidiary did not challenge the personal jurisdiction of the Court (and thus subjected itself to the jurisdiction of the Court), its foreign parent "*alter ego*" is also subject to the jurisdiction of the Court unless and until the defendant companies prove they are not "*alter egos*." The *alter ego* doctrine is an exception to the general rule which permits corporations to limit liabilities incurred by their subsidiaries. The Sixth Circuit has previously considered the following factors in determining whether a subsidiary is a mere *alter ego*: (1) sharing employees and officers between parent and subsidiary; (2) engaging in the same enterprise; (3) having the same address and phone lines; (4) using the same assets; (5) performing the same jobs; (6) not maintaining separate financial books and records; and (6) the extent to which the parent corporation exerts control over the subsidiary's daily operations.

Where the subsidiary is an *alter ego*, courts from the Sixth and other federal circuits have recognized that personal jurisdiction may be imputed to the parent. In *Kate*, the plaintiff used evidence obtained during the discovery process in another case to demonstrate that the parent was the subsidiary's sole shareholder, shared employees and officers with the subsidiary, shared a website, had overlapping assets and maintained control over the subsidiary's daily operational decisions.

Foreign companies may be able to avoid this result by taking care to observe corporate formalities and ensuring that subsidiaries challenge personal jurisdiction whenever a tenable argument exists.



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