

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAN ROSE, Administrator of the : CIVIL ACTION
Estate of KENNETH ROSE, Deceased, :
and JAN ROSE, in her own right, :
and ERIK JOHNSON :
 :
 :
 v. :
 :
 :
CONTINENTAL AKTIENGESELLSCHAFT :
(AG), CONTINENTAL GENERAL TIRE, :
INC., BAYERISCHE MOTORERNWERKE :
AKTIENGESOLLSCHAFT (BMW) and BMW :
OF NORTH AMERICA : No. 99-3794

MEMORANDUM ORDER

This is a product liability action arising from an automobile accident. Plaintiff Erik Johnson and Kenneth Rose were traveling in a BMW automobile in Germany when the tread separated from a tire which caused Mr. Johnson to lose control of the vehicle. According to an insurance report, the tire in question was manufactured by Continental Aktiengesellschaft ("Continental"). Plaintiffs asserted product liability claims against Continental, its American subsidiary Continental General Tire, Inc. ("Tire"), Bayerische Motorenwerke Aktiengesellschaft ("BMW"), and BMW of North America.¹

Presently before the court is defendant Continental's motion to dismiss for lack of personal jurisdiction, or alternatively for forum non conveniens. Plaintiffs counter that

¹BMW of North America was dismissed as a party defendant by stipulation of December 14, 2000. Tire was dismissed as a party defendant by stipulation of April 6, 2000.

Continental has the requisite forum contacts if not directly, then through three of its subsidiaries: Tire, Contitech North America, Inc. ("Contitech") and Continental Teves, Inc. ("Teves").

Once a defendant asserts the defense of lack of personal jurisdiction, the burden is upon the plaintiff to make a prima facie showing with sworn affidavits or other competent evidence that such jurisdiction exists. Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 66-67 n.9 (3d Cir. 1984); Leonard A. Fineberg, Inc. v. Central Asia Capital Corp., 936 F. Supp. 250, 253-54 (E.D. Pa. 1996). A plaintiff must establish with "reasonable particularity" contacts between a defendant and the forum sufficient to support an exercise of personal jurisdiction. See Mellon Bank PSFS v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992).

Because a court sitting in Pennsylvania may exercise personal jurisdiction to the fullest extent allowed by the United States Constitution, see 42 Pa. Cons. Stat. Ann. §§ 5308, 5322(b), the statutory and constitutional assessments of jurisdiction are conflated. See Arch v. American Tobacco Co., 984 F. Supp. 830, 835 (E.D. Pa. 1997); Clark v. Matsushita Elec. Indus. Co., 811 F. Supp. 1061, 1065 (M.D. Pa. 1993).

Specific personal jurisdiction may be established by showing that a defendant undertook some action by which it

purposefully availed itself of the privilege of conducting activities within the forum, thus invoking the benefits and protections of the laws of the forum. Hanson v. Denckla, 357 U.S. 235, 253 (1958). To invoke specific jurisdiction, a plaintiff's cause of action must arise from or relate to the defendant's forum related activities, such that the defendant should reasonably anticipate being haled into court in the forum. Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 414 n.8 (1984); Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980); North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687, 690 (3d Cir.), cert. denied, 498 U.S. 847 (1999). A determination of whether sufficient minimum contacts exist essentially involves an examination of the relationship among the defendant, the forum and the litigation. Shaffer v. Heitner, 433 U.S. 186, 204 (1977).

General personal jurisdiction may be established by showing that a defendant conducts a continuous and systematic part of its business in the forum state. Field v. Ramada Inn, 816 F. Supp. 1033, 1036 (E.D. Pa. 1993). Contacts are continuous and systematic if they are "extensive and pervasive." Id. The standard for general jurisdiction thus "is much higher than that for specific jurisdiction." Clark v. Matsushita Elec. Indus. Co., 811 F. Supp. 1061, 1067 (M.D. Pa. 1993). See also American Cyanamid Co. v. Eli Lilly and Co., 903 F. Supp. 781, 786 (D.N.J.

1995); Sears, Roebuck & Co. v. Sears, PLC, 744 F. Supp. 1297, 1304 (D. Del. 1990).

Plaintiffs expressly rely only on the presence of general jurisdiction. Plaintiffs' contention that Continental has sufficient direct contacts with Pennsylvania to support general personal jurisdiction is predicated on the maintenance by Continental of a website which can be accessed by Pennsylvania Internet users and a national television advertisement for "Continental" tires that aired once during the Superbowl.

Courts have consistently ruled that maintaining an informational website cannot confer personal jurisdiction. See, e.g., E.I. DuPont Nemours & Co. v. Rhodia Fiber & Resin Intermediates, 197 F.R.D. 112, 121 (D.Del. 2000); Molnlycke Health Care, Inc. v. Dumex Med. Surgical Prods., Ltd., 64 F. Supp.2d 448, 452 (E.D. Pa. 1999); Blackburn v. Walker Oriental Rug Galleries, Inc., 999 F. supp. 636, 638-39 (E.D. Pa. 1998); Green v. William Mason & Co., 996 F. Supp. 394, 399 (D.N.J. 1998). Were courts to hold otherwise, any party who established an Internet web site would effectively be subject to nationwide, if not global, jurisdiction in virtually any type of action. National advertising similarly is not a basis for personal jurisdiction. See Gehling v. St. George's Sch. of Med., Ltd., 773 F.2d 539, 542 (3d Cir. 1985). Moreover, plaintiffs have not shown that Continental was responsible for creating or airing the

advertisement. Defendant's affidavits that the advertisement was not sponsored by and did not refer to Continental are uncontroverted.

The averments in the affidavit of Johannes Suttmeier of Continental's lack of direct contacts with Pennsylvania are also uncontroverted. He avers that Continental is a German corporation with no bank account, office, employees or property in Pennsylvania; that Continental neither advertises nor markets its goods in Pennsylvania, pays no Pennsylvania taxes and is not licensed to do business in Pennsylvania; and, that less than 0.1% of Continental's worldwide sales are in Pennsylvania.

Continental clearly is not subject to general personal jurisdiction in Pennsylvania by virtue of its contacts with the Commonwealth.

Plaintiffs contend, however, that the contacts of Contitech, Tire and Teves should also be attributed to Continental for the purpose of personal jurisdiction.

"Generally, a foreign corporation is not subject to the jurisdiction of the forum state merely because of its ownership of the shares of stock of a subsidiary doing business in that state." Lucas v. Gulf & Western Indus., Inc., 666 F.2d 800, 805-06 (3d Cir. 1981) (internal quotations omitted). See also Clark, 811 F. Supp. at 1067 (even one hundred percent ownership is not sufficient); Gallagher v. Mazda Motor of Am., Inc., 781 F. Supp.

1079, 1083 (E.D. Pa. 1992). A foreign corporation may be subject to personal jurisdiction based on its ownership of stock in a subsidiary doing business in Pennsylvania only if one entity is the alter ego of the other, the entities disregarded corporate independence or one corporation exercised pervasive control over the other. See Lewis-Ugdah v. HBE Corp., 2000 WL 1780233, *3 (E.D. Pa. Dec. 1, 2000); Brooks v. Bacardi Rum Corp., 943 F. Supp. 559, 562 (E.D. Pa. 1996).

That the companies may have a close relationship or may coordinate and cooperate, however, is not sufficient to impute forum contacts. See Katz v. Princess Hotels Int'l, Inc., 839 F. Supp. 406, 410-11 (E.D. La. 1993); Hopper v. Ford Motor Co., 837 F. Supp. 840, 844 (S.D. Tex. 1993). That a parent may be interested in and involved with a subsidiary is quite normal and does not demonstrate untoward control. See Craig v. Lake Asbestos of Quebec, Ltd., 843 F.2d 145, 152 (3d Cir. 1988). While relevant, overlapping boards of directors and common officers also are not enough to impute the contacts of one entity to another. See Visual Sec. Concepts, Inc. v. KTV, Inc., 102 F. Supp. 2d 601, 606 (E.D. Pa. 2000); Clark, 811 F. Supp. at 1068; Dutoit v. Strategic Minerals Corp., 735 F. Supp. 169, (E.D. Pa. 1990), aff'd, 922 F.2d 830 (3d Cir. 1990); Dickson v. The Hertz Corp., 559 F. Supp. 1169, 1174 (D.V.I. 1983).

Plaintiffs rely on the inclusion in Continental's consolidated annual report of financial information on its subsidiaries; the listing on Continental's internet site of information about its subsidiaries; Continental's ownership of 80% of Tire's stock; the presence of one Tire board member and one Contitech board member on Continental's board; the presence on Continental's board of one employee member from Teves; and, sales by Tire, purportedly the exclusive distributor of Continental products in the United States, of Continental products in Pennsylvania. These factors are insufficient to make the requisite showing for imputation of forum contacts for purposes of personal jurisdiction. This is particularly so when considered in view of the requirement of German law that Continental issue consolidated annual reports and the uncontroverted averment of Johannes Suttmeier that Tire is the exclusive United States distributor only of Continental replacement tires, while it sells Continental original equipment tires to many automobile manufacturers.²

It is also uncontroverted that Contitech sells products made by a distinct subsidiary and not Continental brand products, and that only 5-10% of Tire's sales are of Continental products.

²That is may be foreseeable to Continental that Tire may sell some of its products in Pennsylvania is insufficient to subject Continental to jurisdiction here. Northeastern Power Co. v. Balcke-Durr, Inc., 49 F. Supp. 2d 783, 788 (E.D. Pa. 1999).

Tire, Teves and Contitech each maintain its own accounting and corporate formalities. Also, Tire was a separate corporate entity for over fifty years before it was purchased by Continental. See B.L. Poe v. Babcock Int'l, PLC, 662 F. Supp. 4, 7 (M.D. Pa. 1985) (that subsidiary was separate corporate entity prior to acquisition by parent weighs against attribution). There has been no showing or suggestion that any of the subsidiaries are undercapitalized.

Apparently recognizing the lack of a prima facie case of general personal jurisdiction on the record presented, plaintiffs suggest that they be allowed to conduct further jurisdictional discovery. A plaintiff is generally entitled to a "fair opportunity" to conduct jurisdictional discovery. Federal Ins. Co. v. Richard I. Rubin & Co., 12 F.3d 1270, 1285 n.11 (3d Cir. 1993). This plaintiffs have had. Continental has answered interrogatories directed at its jurisdictional contacts, its relationship with Teves, Contitech and Tire, and those subsidiaries' contacts with Pennsylvania, and agreed to produce a corporate designee for deposition.³ Plaintiffs do not specify what further relevant information they realistically expect to acquire through additional discovery. Jurisdictional discovery is easily targeted at information pertinent to the well

³It appears that this deposition occurred last fall. In any event, plaintiffs never moved to compel such a deposition in the several months after defendant's motion was filed.

established factors involved in a jurisdictional inquiry. A plaintiff is not entitled to conduct a "fishing expedition." Arch v. American Tobacco Co., 984 F. Supp. 830, 841 (E.D. Pa. 1997); B.L. Poe, 662 F. Supp. at 7. See also William Rosenstein & Sons Co. v. BBI Produce, Inc., 123 F. Supp. 2d 268, 275 (M.D. Pa. 2000) (denying discovery in absence of explanation of what plaintiff seeks to discover or how such discovery would overcome evidence of record showing court lacked personal jurisdiction over defendant); Visual Sec. Concepts, 102 F. Supp. 2d at 609 n.12 (jurisdictional discovery not warranted when case has been pending for many months and plaintiff has engaged in significant discovery directed at least in part towards establishing personal jurisdiction); Arch, 984 F. Supp. at 841 (denying discovery when plaintiffs had opportunity to conduct some jurisdictional discovery).

Plaintiffs have not remotely made a showing sufficient to justify the exercise of general personal jurisdiction over Continental, and have not explained how any further unspecified discovery could realistically be expected to produce evidence necessary to make the requisite showing.

ACCORDINGLY, this day of March, 2001, upon consideration of defendant Continental AG's Motion to Dismiss for Lack of Personal Jurisdiction (Doc. # 19) and plaintiff's response thereto, consistent with the foregoing, **IT IS HEREBY**

ORDERED that said Motion is **GRANTED** and defendant Continental Aktiengesellschaft is **DISMISSED** as a party defendant for lack of personal jurisdiction.

BY THE COURT:

JAY C. WALDMAN, J.