

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

IN RE: LATEX GLOVES PRODUCTS : MDL DOCKET NO. 1148
LIABILITY LITIGATION :
: ALL CASES

M E M O R A N D U M

Ludwig, J.

August 22, 2001

On the ground of lack of personal jurisdiction, defendant Allegiance Corporation moves to be dismissed from all cases excepting those commenced in Illinois, where it is headquartered, and Delaware, where it is incorporated. Fed. R. Civ. P. 12(b)(2). Subject matter jurisdiction is diversity. 28 U.S.C. § 1332. The motion will be denied.

These are products liability actions in which plaintiffs, who are medical and hospital professionals and workers, are alleged to have developed toxic reactions from exposure to latex gloves. See Conditional Transfer Order, Feb. 26, 1997. About 500 cases have now been consolidated in this district for coordinated pretrial proceedings, 28 U.S.C. § 1407.¹ At issue here is whether Allegiance Corporation, as a parent company of latex glove manufacturers and distributors, both domestic and foreign, has sufficient contacts with any forum other than Illinois and Delaware to be subject to personal jurisdiction elsewhere.

¹ There are about 235 actions pending in state courts, in many of which Allegiance Corporation has also been sued. No state court ruling on personal jurisdiction over Allegiance Corporation has come to this court's attention.

I. BACKGROUND²

In 1996, Allegiance Corporation (AC) was incorporated under Delaware law as a subsidiary of Baxter International Inc., a developer of medical technologies and manufacturer of healthcare products.³ Joint statement ¶¶ 1-2. On September 15, 1996, under an “Agreement and Plan of Reorganization,” Baxter International transferred its healthcare products assets to AC, including manufacturing and selling of latex gloves.⁴ *Id.* ¶¶ 2, 6-8. Following the spin-off, AC was a publicly held company until 1999, when it was acquired by Cardinal Health, Inc. *Id.* ¶ 12. AC is qualified to do business only in Illinois and Delaware. *Id.* ¶ 13.

AC owns 100 percent of the stock of Allegiance Healthcare Corporation (AHC) and Allegiance Healthcare International Inc. (AHII). *Id.* ¶¶ 14, 16. In turn, subsidiaries of AHC

² This introductory section is based in part on undisputed facts extracted from the parties’ joint statement of July 31, 2001.

Additionally, AC, as movant, submitted the affidavit of William L. Feather, stating that he is corporate secretary of AC; that AC does not design, distribute, manufacture, or sell any products; does not promote or advertise any products; does not perform any research or development activities; and does not have any offices in the United States other than in Illinois and Delaware. Feather aff. ¶¶ 1, 4-7. AC also proffered portions of transcripts from the depositions of Robert Alan Meyers (Allegiance Healthcare Corporation’s vice-president of manufacturing), Sandra Lee Rigopoulos (Allegiance Healthcare Corporations’s vice-president of corporate and e-commerce finance), and Priscilla Rellas Scoco (AC’s assistant secretary and senior counsel).

Plaintiffs submitted portions of the Meyers, Rigopoulos, and Scoco depositions, as well as copies of pages from the website www.allegiance.net; the “Agreement and Plan of Reorganization,” dated 9/15/96, between Baxter International Inc. and Allegiance Corporation; and a case management order entered in In re Silicone Gel Breast Implants Products Liability Litigation (MDL-926), 837 F. Supp. 1123 (N.D. Ala. 1993).

³ In November 1985, when Baxter International merged with American Hospital Supply Corporation, it acquired assets relating to the manufacture and sale of latex gloves. Joint statement ¶ 3.

⁴ Baxter International retained its medical technology business and transferred its healthcare products and costs management services to AC. Joint statement ¶¶ 2, 9.

and AHII manufacture latex gloves and sell them to AHC for marketing and distribution in the United States.⁵ Id. ¶ 17; Meyers dep. at 31-33, 42. AHC, which owns 50 distribution centers in the United States, does not challenge personal jurisdiction. Joint statement ¶ 17.

For the purpose of the relevant dates in this case, the following is not in dispute. Many managerial functions of AC, AHC, and AHII are performed in a central office located in McGaw Park, Illinois.⁶ Id. ¶ 37. AC's board of directors meets frequently and acts on financial projects of its subsidiaries, including making loans from AC's lines of credit. Id. ¶¶ 38, 78, 85-86. On a number of occasions, AC's board has bought or sold assets for a subsidiary. Id. ¶ 77. The boards of directors of AHC and AHII each consist of the same three members who work together regularly, but do not hold in-person board meetings; instead they transact business in writing. Id. ¶¶ 64, 69, 79.

AC has about 50 employees; its subsidiaries employ, altogether, approximately 19,800. Id. ¶¶ 19, 35. AC and AHC share a payroll department, which uses separate bank accounts. Id. ¶ 47. Healthcare benefits of AC's employees are provided by AHC. Id. ¶ 45.

Financial statements for AC and its subsidiaries are consolidated, as were its annual shareholder reports when AC was publicly owned. Id. ¶¶ 81-83.

⁵ AHC no longer manufactures latex gloves. Joint statement ¶ 17.

AHII has over 35 subsidiaries in various countries around the world. Joint statement ¶ 18. An example given by defendants is Allegiance Healthcare Sdn. Bhd. ("Malaysia"), a Malaysian corporation that owns its plant and purchases the necessary raw materials to manufacture latex gloves. Id. ¶ 17; Myers dep. at 17-18, 26. According to the parties, the four main Allegiance entities important to this decision are AC, AHC, AHII, and Malaysia. Joint statement ¶ 15.

AC and its subsidiaries are organized by various strategic business units, one of which is gloves. Id. ¶¶ 48-50, see footnote 18, infra.

⁶ AHC is the owner of the buildings at McGaw Park. AC and AHII do not pay rent for their offices at that location. Joint statement ¶¶ 40, 41.

II. DISCUSSION

Whether a federal court has personal jurisdiction over an out-of-state defendant depends on the forum state's law and on due process considerations. See Fed. R. Civ. P. 4; Pennzoil Prods. Co. v. Colelli & Assocs., Inc., 149 F.3d 197, 200 (3d Cir. 1998). "In the context of cases consolidated for pretrial purposes under 28 U.S.C. § 1407, the court can exercise personal jurisdiction to the same extent as the transferor court could." In re Teletronics Pacing Sys., Inc., 953 F. Supp. 909, 913 (S.D. Ohio 1997) (citing In re Agent Orange Prod. Liab. Litig., 818 F.2d 145, 163 (2d Cir. 1987)). Although long-arm statutes differ, many states, including Pennsylvania, authorize jurisdiction to the fullest extent allowable by constitutional due process. See 42 Pa. C.S.A. § 5322. Therefore, the issue to be determined is whether AC is subject to jurisdiction under the farthest-reaching jurisdictional statutes.⁷

Upon a motion to dismiss, a plaintiff has the burden of demonstrating by a preponderance the existence of personal jurisdiction. See BP Chems. Ltd. v. Formosa Chem. & Fibre Corp., 229 F.3d 254, 259 (3d Cir. 2000). Upon timely objection, a plaintiff must make a prima facie showing of jurisdiction by "establishing with reasonable particularity sufficient contacts between the defendant and the forum state." Mellon Bank (East) PSFS, Nat'l Assoc. v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992) (citation omitted). In ascertaining whether a prima facie case has been made out, plaintiffs' allegations, if supported by appropriate affidavits or documents, should be initially accepted as true. See Carteret Savings Bank v. Shushan, 954 F.2d 141, 142 n.1 (3d Cir. 1992); Friedman v. Israel Labour Party, 957 F. Supp. 701, 706 (E.D. Pa. 1997) (factual disputes created by affidavits,

⁷ Insofar as some states do not authorize the exercise of jurisdiction to the full extent of constitutional due process, AC may, of course, if pertinent, raise the issue again in the transferor court.

documents and depositions submitted are generally resolved in favor of the non-moving party). Here, while factual disputes exist, the uncontested material facts are sufficient to decide the issue.

To comport with due process, the exercise of personal jurisdiction must be based on sufficient “minimum contacts” with the forum state “such that the maintenance of suit does not offend traditional notions of fair play and substantial justice.” Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quotations omitted); see Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001). Familiarly, there are two forms, or independent grounds, for the assertion of personal jurisdiction. A nonresident defendant is subject to general jurisdiction if its contacts with a forum are “continuous and substantial,” even if the cause of action is not related to those contacts. Pennzoil, 149 F.3d at 200 (quoting Provident Nat’l Bank v. California Fed. Sav. & Loan Ass’n, 819 F.2d 434, 437 (3d Cir. 1987)). General jurisdiction aside, “[s]pecific personal jurisdiction exists when the defendant has ‘purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that ‘arise out of or [are] related to’ those activities.” BP Chems., 229 F.3d at 259 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S. Ct. 2174, 2182, 85 L. Ed. 2d 528 (1985)).

Plaintiffs present three theories: (1) the relationship between AC and AHC confers general jurisdiction under alter-ego principles;⁸ (2) AC assumed liability for latex gloves

⁸ Here, the use of agency principles to establish jurisdiction as set forth in Gallagher v. Mazda Motor of Am., Inc., 781 F. Supp. 1079 (E.D. Pa. 1992) would not be appropriate. Under Gallagher, the imputing of contacts may be proper where a subsidiary is “either established for, or is engaged in, activities that, but for the existence of the subsidiary, the parent would have to undertake itself.” Id. at 1084. However, the agency rule ordinarily does not apply to a holding company inasmuch as the parent could simply use another subsidiary to accomplish the same result. See Arch v. Am. Tobacco Co., 984 F. Supp. 830, 840 (E.D. Pa. 1997) (subsidiary involved in manufacturing, marketing, selling and distributing cigarettes was not parent’s agent under Gallagher because the parent could

claims as part of its spin-off from Baxter International Inc., citing In re Silicone Gel Breast Implants Products Liability Litigation, in which nationwide jurisdiction was found over Baxter International Inc. based on its merger with American Hospital Supply Corporation; and (3) AC's business activities conducted over the Internet ("www.allegiance.net") establish both general and specific jurisdiction.⁹

As to alter-ego principles, "[c]onstitutional due process requires that personal jurisdiction cannot be premised on corporate affiliation or stock ownership alone where corporate formalities are substantially observed and the parent does not exercise an unusually high degree of control over the subsidiary." Central States, Southeast and Southwest Areas Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 943 (7th Cir. 2000); see Lucas v. Gulf & Western Indus., Inc., 666 F.2d 800, 805-06 (3d Cir. 1981). "Appropriate parental involvement includes: 'monitoring of the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies and procedures.'" Doe v. Unocal Corp., 248 F.3d 915, 926 (9th Cir. 2001) (quoting United States v. Bestfoods, 524 U.S. 51, 72, 118 S. Ct. 1876, 1889, 141 L. Ed. 2d 43

have employed another subsidiary); Telectronics, 953 F. Supp. at 920 (relationship between holding companies and their subsidiaries did not display characteristics of "merger," or agency); see also C.R. Bard Inc. v. Guidant Corp., 997 F. Supp. 556, 561 (D. Del. 1998) (agency principles do not apply to a holding company parent).

⁹ Because plaintiffs have made out a prima facie case of liability on other theories, successor liability will not be discussed. As to AC's Internet activity, plaintiffs cite Zippo Manufacturing Company v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1124 (E.D. Pa. 1997) for the proposition that AC "clearly does business over the Internet," and, therefore, an exercise of jurisdiction would be proper. The argument seems to presuppose that because the website's address – www.allegiance.net – does not distinguish between "Allegiance" and "Allegiance Healthcare," AC, and not AHC or AC's other subsidiaries, owns and maintains the website. Pltf. mem. at 31-33; see 11/30/00 Rigopoulos dep. at 29. This factor without more may not be enough, but it may be considered as part of alter-ego or identity analysis.

(1998)). Nevertheless, “if the parent and subsidiary are not really separate entities, or one acts as an agent of the other, the local subsidiary’s contacts with the forum may be imputed to the foreign parent corporation.” Doe, 248 F.3d at 926 (quoting El-Fadl v. Central Bank of Jordan, 75 F.3d 668, 676 (D.C. Cir. 1996)); see Lucas, 666 F.2d at 805-06; Arch v. Am. Tobacco Co., 984 F. Supp. 830, 837 (E.D. Pa. 1997).

While views have been varied,¹⁰ the issue may best be dealt with using a flexible,

¹⁰ Plaintiffs cite Brooks v. Bacardi Rum Corp., 943 F. Supp. 559 (E.D. Pa. 1996), which reviewed three of the tests that are sometimes used. According to plaintiffs, all three are met in this case.

The first test would require plaintiff to show that the independence of the two entities has been disregarded. The second test would require plaintiff to show that the parent company exercises such total control over the subsidiary, that both companies should be considered one company for purposes of a jurisdictional analysis. Under the third test, plaintiff must prove that the subsidiary performs important functions which the parent would otherwise have to perform itself.

Id. at 562-63 (citations omitted).

In Arch v. Am. Tobacco Co., 984 F. Supp. at 837, a comprehensive evaluation approach was suggested as follows:

Instead of applying one rigid test in lieu of all other tests, this Court believes that it should examine all relevant factors that relate to the intimacy of the relationship to the parent and subsidiary to assess whether the contacts of the subsidiary with a particular state should be imputed to the parent. Under this test the court is free to examine all relevant facts such as whether the subsidiary corporation played any part in the transactions at issue, whether the subsidiary was merely the alter ego or agent of the parent (this factor perforce incorporates all the factors that have been historically used in determining whether a subsidiary is an alter ego or agent of the parent), whether the independence of the separate corporate entities was disregarded, and whether the subsidiary is necessarily performing activities that the parent would otherwise have to perform in the absence of the subsidiary. . . .

[T]o establish an alter-ego relationship, plaintiffs must prove that [the parent] controls the day-to-day operations of [the subsidiary] such that [the subsidiary] can be said to be a mere department of [the parent].

Arch has been followed in our district numerous times – e.g., Visual Security Concepts, Inc.

case-by-case standpoint. See, e.g., Gallagher, 781 F. Supp. at 1085 n.10. To prevail, plaintiffs must demonstrate that the “degree of control exercised by the parent [is] greater than normally associated with common ownership and directorship.” Visual Security Concepts, 102 F. Supp. 2d at 605 (quoting Arch, 984 F. Supp. at 837); see also Kelly v. Syria Shell Petroleum Dev. B.V., 213 F.3d 841, 856 (5th Cir. 2000) (citation omitted). The question should be examined in terms of the legal interrelationship of the entities, the authority to control and the actual exercise of control, the administrative chains of command and organizational structure, the performance of functions, and the public’s perception. In this sense, the inquiry should not be limited to traditional alter-ego jurisprudence but should encompass whether or not there is a single functional and organic identity. See Doe, 248 F.3d at 926 and El-Fadl, 75 F.3d at 676 (“if the parent and subsidiary are not really separate entities”).

Ten factors set forth in Superior Coal Co. v. Ruhrkohle, A.G., 83 F.R.D. 414, 421 (E.D. Pa. 1979) offer a discretely individuated and functional framework for this analysis.

- 1) ownership of all or most of the stock of the related corporation;
- 2) common officers and directors;
- 3) a common marketing image;
- 4) the common use of a trademark or logo;
- 5) the common use of employees;
- 6) an integrated sales system;
- 7) the interchange of managerial and supervisory personnel;
- 8) the performance by the related corporation of business functions which the principal corporation would normally conduct through its own agents or departments;
- 9) the acting of related corporation as marketing arm of the principal corporation, or as an exclusive distributor; and

v. KTV, Inc., 102 F. Supp. 2d 601, 605 (E.D. Pa. 2000); Northeastern Power Co. v. Balcke-Durr, Inc., 49 F. Supp. 2d 783, 790 (E.D. Pa. 1999); Frank Sexton Enters., Inc. v. Societe de Diffusion Internationale Agro-Alimentaire(Sodiaal), No. Civ. A. 97-7104, 1999 WL 636668, at *3 (E.D. Pa. Aug. 20, 1999).

10) receipt by the officers of the related corporation of instruction from the principal corporation.

See Savin Corp. v. Heritage Copy Prods., Inc., 661 F. Supp. 463, 469 (M.D. Pa. 1987) (citing Superior Coal).¹¹

Factor one – AC owns all the stock of its subsidiaries. Defendants are correct that this alone does not prove an alter-ego relationship. Indeed, “mere ownership of a subsidiary, even one hundred percent ownership, is not sufficient to assert that a subsidiary is the alter-ego or agent of its parent corporation.” Clark v. Matsushita Elec. Ind. Co., 811 F. Supp. 1061, 1067 (M.D. Pa. 1993); Rose v. Continental Aktiengesellschaft (AG), No. Civ. A. 99-3794, 2001 WL 236738, *3 (E.D. Pa. Mar. 2, 2001). However, this factor may be relevant to a finding of alter-ego or functional identity. See, e.g., Meredith v. Health Care Prods., Inc., 777 F. Supp. 923, 926 (D. Wyo. 1991).

Factor two – AC and its subsidiaries share common directors and officers. At one time, the boards of directors of AHC and AHII consisted of Lester Knight, Joseph Damico and William Feather. Joint statement ¶ 63. Knight was also CEO of AC and chairman of its board of directors; Damico was a director, as well as the president and COO of AC; and Feather was a director, senior vice-president, general counsel, and secretary of AC.¹² Id. ¶¶ 64-67. In those capacities, including the directorships of the subsidiaries, they received all of their salaries from AC. Id. ¶ 68.

“Where a parent company constitutes one hundred percent of the stockholders of the

¹¹ See also Graco Children’s Prods., Inc. v. Draco Corp., Civ. A. Nos. 93-6711, 93-6710, 1995 WL 299023, at *4 (E.D. Pa. 1995) (citing Safin); Parker v. DPCE, Inc., Civ. A. No. 91-4829, 1992 WL 501273, at *5 (E.D. Pa. Nov.3, 1992) (same); Transcontinental Fertilizer Co. v. Samsung Co., 108 F.R.D. 650, 652 (E.D. Pa. 1985) (citing Superior Coal).

¹² Knight, Damico, and Feather were elected as directors of AHII by “Stockholder Written Consent” – i.e., by AC. See joint statement ¶ 71.

subsidiary, it is to be expected that there will be directors which are common to the boards of both.” Arch, 984 F. Supp. at 838 (quoting Poe v. Babcock Int’l, plc., 662 F. Supp. 4, 6 (M.D. Pa. 1985)). Moreover, it is a “well established principle [of corporate law] that directors and officers holding positions with a parent and its subsidiary can and do ‘change hats’ to represent the two corporations separately, despite their common ownership.” Bestfoods, 524 U.S. at 69, 118 S. Ct. at 1888. Here, however, the nearly complete congruence of the entities shows that AC *can* exercise control over its subsidiaries. See Scoco dep. at 157 (AC has the power to direct subsidiaries management). The degree of authority utilized by AC as compared to that of its subsidiaries¹³ – and, more importantly, the functional identity shared by AC and its subsidiaries – suggests that AC actually *does* exert such control. See id. at 158 (“Through its board of directors it manages – Allegiance Corporation through its board of directors manages its wholly-owned subsidiaries.”); id. at 143 (“We do business as one company. Allegiance Corporation does business through its operating subsidiaries. The two operating subsidiaries work together.”).

Factors three and four – AC and its subsidiaries project a unified marketing image as a single company. Example: on October 1, 1996, a notice in “The Wall Street Journal” pertaining to AC’s spin-off from Baxter announced, in part, as follows:

One great company just became two. Baxter International is a global leader

¹³ It is undisputed that all important financial decisions of the subsidiaries are subject to AC’s final approval. Joint statement ¶ 29. Moreover, the subsidiaries’ “ability to spend monies, etc., and dollars would as a matter of policy go to the Allegiance Corporation board of directors for their approval that the amounts being expended for significant transactions or for the sale and significant assets, et cetera, they would approve it.” 11/30/00 Rigopoulos dep. at 110; joint statement ¶ 30. This decisional activity goes beyond mere “supervision of the subsidiary’s finance and capital budget decisions, and articulation of general policies and procedures,” which would not themselves support a finding of alter-ego. Bestfoods, 524 U.S. at 72, 118 S. Ct. at 1889.

in the development of medical technologies that save and improve lives around the world. Allegiance Corporation just became America's largest supplier of health-care products and cost-management services for hospitals and other health-care providers.

* * * *

Think about the supplies a hospital needs. We can provide more than 80% of them – everything from surgical kits and diagnostic equipment to surgeons' gloves and test tubes. These products come from our 28 manufacturing plants and from hundreds of other leading health-care companies through our 60 distribution centers.

* * * *

We are Allegiance Corporation. We just became an independent public company – one with a lot of experience. In fact our history goes back almost 75 years. Today, we're 22,000 employees around the world, creating sales of about \$4.5 billion a year.

Pltf. ex. 6.¹⁴

The same single marketing image is also presented on the AC website, www.allegiance.net. One link is entitled "About Allegiance":

At Allegiance Corporation, everything we do has one ultimate purpose: to help health care providers fulfill their mission of caring for patients. We strive to serve our customers in ways they need, want and value.

Through its subsidiaries, Allegiance is America's leading provider of health-care products and cost-management services needed by hospitals, laboratories, and others in health care. The company manufactures many of the products it markets, while others come from leading health and medical companies around the world. We also provide a range of integrated services

....

Pltf. ex. 11.

¹⁴ As defendants point out, this evidence was introduced during the deposition of Sandra Rigopoulos. Joint submission ¶ 10. In addition to testifying to having not seen the announcement before, she stated that "Allegiance Corporation doesn't manufacture or distribute any products or services, but through its subsidiaries, as a holding company, it does." 11/30/00 Rigopoulos dep. at 40. Her insider knowledge of AC's parental status, however, cannot be transferred onto the public.

Another link is entitled “Company Profile”:

Who We Are

Allegiance provides thousands of products and services needed by hospitals, laboratories, and others in health care

We manufacture many of the products we market, while others come from leading health and medical companies around the world. This is key: we provide not just products, but also a unique set of innovative, integrated cost management services.

* * * *

How Allegiance Responds

More than any other company in health care, Allegiance Corporation can help hospitals and other providers manage their costs and their resources. . . .

Allegiance is a distributor of many thousands of medical, surgical and laboratory products – enough to fill 80 percent of a typical hospital’s supply needs.

We manufacture many of these products ourselves, and virtually every product we make is an industry leader, marketed in the United States and in numerous nations worldwide.

Pltf. ex. 6.

In summary, the evidence shows that AC and its subsidiaries “hold themselves out to the public as a single entity that is conveniently departmentalized either nationally or world-wide.”¹⁵ Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd., 402 F. Supp. 262, 328 (E.D. Pa. 1975). Moreover, the use by the Allegiance entities of the same corporate logo tends to support a finding of both alter-ego and functional and organic identity. Joint

¹⁵ AC’s public image was well described in Scoco’s testimony regarding the company website: “[I]nstead of saying Allegiance Healthcare Corporation and Allegiance Healthcare International, Inc., which is pretty cumbersome for, I think, the normal layperson, you use the word mark Allegiance meaning all the companies did these things on a consolidated basis.” Scoco dep. at 155.

submission ¶¶ 92-93; see, e.g., Parker v. DPCE, Inc., Civ. A. No. 91-4829, 1992 WL 501273, at *5 (E.D. Pa. Nov. 3, 1992); cf. C.R. Bard, 997 F. Supp. at 561 (subsidiary's use of holding company's name, without more, does not justify the exercise of jurisdiction).

Factor five – AC and its subsidiaries used the same employees interchangeably, although there is evidence that in certain instances accounting records were kept to reflect that a particular individual was on loan at the time. Examples given by plaintiffs are Priscilla Scoco, an employee of AC, who is also an officer of AC's subsidiaries, and Alan Myers, an employee of AHC, who is responsible for the management of production at Malaysia.¹⁶ Joint statement ¶¶ 43, 54; Meyers dep. at 13. Two other employees of AHC, Frank Nichols and William Saxelby, served as directors for Malaysia. Joint statement ¶¶ 63, 75; Meyers dep. at 13. Also, AC and AHC share counsel.¹⁷ Joint statement ¶ 109; see Parker, 1992 WL 501273, at *5.

Factors six and seven – The organizational structure of the Allegiance companies reflects an integrated sales and product development system. AC and its subsidiaries

¹⁶ Scoco is paid by AC, not the subsidiaries for whom she actually performs work. Joint statement ¶ 44; Scoco dep. at 18-19.

Regarding the employees of AHC who worked for Malaysia, defendants point out that “for each of those employees there was a chargeback to Allegiance Healthcare Sdn. Bhd. for the salary and fringe benefits which Allegiance Healthcare Corporation paid them.” AC's response to plaintiffs' correction of proposed statement, at 1-2; 1/19/00 Rigopoulos dep. at 131 (“If Frank Nichols was an expatriate he would be paid by Allegiance Healthcare Corporation with a corresponding chargeback to Malaysia for the costs and associated fringe benefits.”).

¹⁷ Also, although Rigopoulos was designated under Rule 30(b)(6) as a corporate representative of AC, she is not a direct employee of AC, but is assigned to AHC. See joint statement ¶¶ 21-23, 94-97.

operate vertically through so-called strategic business units.¹⁸ Meyers dep. at 18-20. One such unit, the “gloves business unit,” has a president, “Mike” Lynch, who is an employee of AHC. Joint statement ¶ 50. According to Sandra Rigopolous, Lynch is “responsible for the gloves business unit to the extent of its selling and marketing and R & D functions, and he would be required to liaison with the Malaysian manufacturing unit, which is one of their gloves suppliers.” 1/19/00 Rigopoulos dep. at 23. Lynch reports to Joe Damico, the COO of AC and AHC. Joint statement ¶ 51.

Alan Meyers works under Lynch and is an employee of AHC. *Id.* ¶ 53. In his words, his responsibilities include “the management of the production of the product and general responsibility for the assets of the Malaysian facility and operation.” Meyers dep. at 13. Frank Nichols, who reports to Meyers and is also employed by AHC, is the managing director of the Malaysian plant, with the power to hire and fire employees at that facility.¹⁹ *Id.* at 13-15; joint statement ¶ 55.

¹⁸ One source defines a strategic business unit as “a relatively independent business with a coherent set of products, strategies, objectives and competitors. Many large corporations consist of a number of SBUs.” *See* <http://newrisk.ifci.ch> (August 8, 2001). Another definition: “Independent business unit within a company that markets its own products.” *See* <http://www.moneywords.com/glossary> (August 8, 2001). Here, there is evidence that the strategic business units cut managerially across corporate lines from the parent through the subsidiaries.

¹⁹ Two other employees of AHC – technical consultants – worked on-site at the Malaysia plant. Meyers dep. at 13-15.

As to the transfer of gloves from AC’s manufacturing subsidiary, Malaysia, to its distributing subsidiary, AHC, plaintiffs submitted a document entitled “Gloves SBU Transfer Price Policy.” *Pltf. ex. 6*; joint statement ¶ 89. Rigopolous said the document was created to establish an appropriate arm’s length transfer pricing arrangement between Malaysia and AHC, and that transfer price policies typically are set with the assistance of the tax department to ensure the appropriate division of profits. 11/30/00 Rigopolous dep. at 173, 177. However, it remains unclear who decides on the fair market of the gloves.

Factor ten – The parties do not dispute that the “subsidiaries perform the only substantial functions and missions of Allegiance Corporation”; it necessarily follows that the subsidiaries, acting through strategic business unit components, receive instructions from the principal corporation. Joint statement ¶ 33.

While severally these factors could be regarded as legally inadequate straws in the wind, when added and bound together they depict a far greater degree of control than exists in the usual interlocking ownership or directorship. See, e.g., Doe, 248 F.3d at 926 (alter-ego liability is satisfied where parent dictates all facets of subsidiary’s business). No doubt defendants can say it “would be virtually impossible” for the 50 employees of AC, as a holding company, to “control the day-to-day operations of its numerous subsidiaries.” Def. reply mem. at 9-10 (citing Arch, 984 F. Supp. at 838). But that line of defense disregards the virtually total interrelationship of the corporate family and the pyramidal absolute control of the holding company – all of which is presented to the public as one and the same entity.

Despite the showing of either an alter-ego relationship or of single organic and functional identity, personal jurisdiction must ultimately be consistent with traditional notions of fair play and substantial justice. See Int’l Shoe, 326 U.S. at 316; Telectronics, 953 F. Supp. at 921.²⁰ Here, given the overwhelming evidence of what characterizes identity of

²⁰ In In re Telectronics Pacing Systems, Inc., a multidistrict litigation transferee court denied a motion to dismiss for lack of personal jurisdiction because of the extent of the foreign parent companies’ supervision over their subsidiaries’ activities and direct involvement in the issues of the case. 953 F. Supp. at 920-21. In lieu of applying a strict alter-ego approach, the decision found that “the proper exercise of jurisdiction depends on a ‘sufficient connection between the defendant and the forum as to make it fair to require defense of the action in the forum.’” Id. at 918 (quoting Energy Reserves Group, Inc. v. Superior Oil Co., 460 F. Supp. 483, 502 (D. Kan. 1978)). The decision continues:

the Allegiance corporate family and, looked at from the standpoint of AC's reasonable expectations as to suability, the inclusion of AC within the ambit of personal jurisdiction to the fullest extent of due process is constitutionally well justified.

Edmund V. Ludwig, J.

Concededly, a corporation's relationship with an affiliated corporation in the forum is relevant to the due process question in a manner different from that in which it pertains to the corporate law question of alter ego relationships and "veil piercing." For alter ego purposes the nature of the relationship – the identity between the corporations is alone controlling. For jurisdictional purposes, the fact of the existence of the relationship . . . is a minimum "contact, tie or relation" with the forum that may render possible the constitutional exercise of jurisdiction if the relevant factors, including both convenience and the orderly administration of the laws, balance in that direction. The mere existence of the relationship is one relevant factor. The nature of the relationship the degree of control or identity bears upon the weight to be given that one factor, but it does not foreclose reliance on this factor as a legitimate consideration in the due process analysis.

953 F. Supp. at 920-21.

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 : ALL CASES

ORDER

AND NOW, this 22nd day of August, 2001, the motion of defendant Allegiance Corporation to dismiss for lack of personal jurisdiction is denied. Fed. R. Civ. P. 12(b)(2).

Edmund V. Ludwig, J.