

Federal District Court Finds Jurisdiction Exists over Foreign Parent in Pension Plan Liability Suit

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A recent federal district court decision defeats a long-standing assumption that a foreign corporate parent would not be subject to personal jurisdiction for a suit seeking payment of pension liabilities merely by acquiring a U.S. subsidiary.

Background

In 2007 Japanese car part manufacturer Asahi Tec Corporation (the parent) acquired U.S.-based Metaldyne Corporation. Metaldyne subsequently filed for bankruptcy protection, but the parent declined to assume sponsorship of the Metaldyne pension plan (the Plan) or to fund the Plan's outstanding liabilities. The **Pension Benefit Guaranty Corporation (PBGC)** obtained a judicial order appointing itself as the Plan's statutory trustee. The parent did not respond to the PBGC's written demands for payment of Metaldyne's outstanding pension liability, and the PBGC ultimately brought a \$175 million suit in the U.S. District Court for the District of Columbia seeking to hold the parent liable for the pension liabilities.

In its complaint, the PBGC alleged the parent should be held jointly and severally liable for the full amount of the Plan's unfunded liability, along with termination premiums and litigation costs. The parent filed a motion to dismiss for lack of personal jurisdiction, which the district court denied on the grounds that, notwithstanding the absence of any affirmative conduct by the parent, personal jurisdiction attached upon consummation of the acquisition, at which point the parent became a member of Metaldyne's controlled group.

The District Court's Ruling

In its motion to dismiss the PBGC's complaint, the parent argued that because it did not commit any acts with respect to the Plan, and because its sole contact with the United States was its ownership of an American subsidiary, there was no basis for personal jurisdiction. However, the district court disagreed, noting the PBGC's claims against the parent are not based on the Plan's termination or underfunding. Instead, the PBGC's claims against the parent are predicated solely on the parent's assumption of joint and several liability as a member of the Metaldyne controlled group. Essentially, the district court concluded that regardless of the parent's role in the Plan's termination, and even if

the parent played no role in the Plan's termination, personal jurisdiction attached to the parent once the parent became a member of the Metaldyne controlled group, *i.e.*, upon consummation of the acquisition.

The district court emphasized in its opinion that the parent acquired Metaldyne only after conducting an extensive due diligence investigation and retaining a consultant to specifically review the nature and scope of Metaldyne's employee benefit and compensation program. In addition, the parent received specific information about the possibility of controlled group liability. Further, the district court noted that the parent actually leveraged its assumption of controlled group status and joint and several liability to negotiate a reduced purchase price. Simply put, the district court held that the mere act of acquiring Metaldyne, and thereby exposing itself to joint and several liability for the Plan's unfunded benefits, subjected the parent to litigation in U.S. federal court *on that issue*, *i.e.*, the issue of whether the parent is liable for the Plan's funding obligations.

What the Ruling Means for Foreign Corporations

Prior to the district court's ruling that a foreign corporate parent is subject to personal jurisdiction and that the \$175 million lawsuit against the parent in this case may proceed, certain foreign corporate parents operated under the assumption that merely acquiring a U.S. subsidiary would not expose them to personal jurisdiction for claims based on the subsidiary's benefit liabilities. Although the district court acknowledged that, as a general principle of corporate law, the mere act of acquiring does not subject a parent to its subsidiary's liabilities, the district court was clear this principle does not extend to unfunded benefit liability under the Employee Retirement Income Security Act (ERISA). Thus, foreign parent corporations would be well-advised to pay particular attention to the employee benefits aspects of their due diligence inquiries, especially if a subsidiary has an office in Washington, D.C., where the district court in *Asahi Tec* sits.

As this case illustrates, unfunded pension plan liability can lead to claims for tens and even hundreds of millions of dollars. Although it remains to be seen if the parent in ***Pension Benefit Guaranty Corporation v. Asahi Tec Corporation*** will ultimately be held liable for the Plan's unfunded benefits, the district court's denial of the parent's motion to dismiss for lack of personal jurisdiction signals that foreign corporations may have to answer in U.S. federal courts for assumed and potentially substantial benefits liabilities, even where they played no role in the decisions that created those liabilities.

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