STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: July 16, 2015)

ROBERT BAZOR and KAY BAZOR,	:	
Plaintiffs,	:	
VS.	:	**C.A. No. PC 10-3965**
	:	
ABEX CORP., et al.,	:	
Defendants,	:	
and		
MARTHANNE STEFANKO, Individually and as Personal Representative of the Estate of KENNETH STEFANKO	:	
Plaintiffs,	:	
VS.	:	**C.A. No. PC 11-2352**
	:	
ADIENCE CO., L.P., et al.	:	
Defendants,	:	
and		
RONALD BURDICK, as Executor of the Estate of WALTER BURDICK and Estate of EVELYN BURDICK,	:	
Plaintiffs,	:	
VS.	:	**C.A. No. PC 11-3431**
	:	
AIR & LIQUID SYSTEMS CORP., et al.	:	
Defendants,	:	
and		
DENNIS R. BAUMGARTNER and GAIL L. BAUMGARTNER,	:	
Plaintiffs,	:	
VS.	:	**C.A. No. PC 13-4151**
	:	
AMERICAN STANDARD, INC., et al.,	:	
Defendants,	:	
and		

BEVERLY TAYLOR, as Administrator of the Estate of ROBERT P. TAYLOR, and Individually Recognized as Surviving Spouse,	:	
Plaintiffs,	:	
VS.	:	**C.A. No. PC l4-1464**
AMERICAN STANDARD, INC., et al.,	:	
Defendants,	:	
and		
MARK COSTELLO and THERESA COSTELLO,	:	
Plaintiffs,	:	
VS.	:	**C.A. No. PC l4-3741**
AGCO CORPORATION, Individually and a Successor in interest to MASSEY FERGUSON and ALLIS CHALMERS, et al.,	:	
Defendants,	:	
and		
CAROL WINCHESTER and DANIEL WINCHESTER,	:	
Plaintiffs,	:	
VS.	:	**C.A. No. PC 14-4697**
AMERICAN BILTRITE, INC., et al.,	:	
***Defendants*.**	:	

DECISION

GIBNEY, P.J. Before the Court is Plaintiffs' motion, pursuant to Super. R. Civ. P. 37(a) (Rule 37(a)), to compel jurisdictional discovery. Specifically, Plaintiffs request that the Court issue an order compelling the Defendant, Dana Companies, LLC (Defendant or Dana Companies), to fully respond to Plaintiffs' Amended Notice of 30(b)(6) Deposition. Defendant has objected thereto.

I

Procedural Posture

The above-captioned Plaintiffs have brought suit against Dana Companies for injuries arising out of exposure to asbestos, which were allegedly caused by Dana Companies' asbestos-containing products. On November 11, 2014, Dana Companies filed a Super. R. Civ. P. 12(b)(6) Motion to Dismiss for Lack of Personal Jurisdiction. Dana Companies argues that: (1) specific personal jurisdiction does not exist because the instant Plaintiffs are all out-of-state residents whose claims do not arise from any conduct in Rhode Island by Dana Companies or its predecessor, Dana Corporation; and (2) general personal jurisdiction does not exist because Dana Companies is not incorporated in Rhode Island, does not have its principal place of business in Rhode Island, and cannot be said to be "essentially at home" in Rhode Island. See Def.'s Mot. to Dismiss for Lack of Personal Jurisdiction. Dana Companies' general personal jurisdiction argument relies on Daimler AG v. Bauman, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014), which the Defendant interprets as narrowing the scope of general jurisdiction. See id.

Subsequently, Plaintiffs served a Notice of a 30(b)(6) Deposition directed to Defendant for purposes of discovering facts that would allow Plaintiffs to establish that this Court may exercise personal jurisdiction over the Defendant. Specifically, Plaintiffs seek information regarding the jurisdictional contacts of Dana Corporation, Dana Companies' corporate predecessor, and Dana Holding Corporation (Dana Holding), Dana Companies' parent corporation. See Pls.' Mot. to Compel Jurisdictional Disc., 6. Defendant submitted its objections and responses on February 9, 2015. Generally, Defendant argues that any information regarding Dana Holding and predecessor Dana Corporation, as it relates to jurisdiction, is irrelevant. Although Defendant has produced documents numbered 1 through 1650, Plaintiffs

argue that the Defendant has failed to fully respond to its requests for jurisdictional discovery, particularly information regarding Dana Corporation and Dana Holding. See Pls.' Mot. to Compel Jurisdictional Disc., 4. Accordingly, Plaintiffs have filed a motion, pursuant to Rule 37(a), seeking an order compelling the Defendant to "fully respond" to their discovery items. Specifically, Plaintiffs ask "the Court [to] compel the defendant Dana Companies to produce all documents requested in Attachment 'B' to the Notice of Deposition, and to designate a witness prepared to testify about the topics listed in 'Attachment A' [sic] to the Notice of Deposition." Id. at 2, 11.

II

Factual Background

On March 3, 2006, as a result of difficult economic conditions in the automotive industries, the former Dana Corporation and forty of its affiliates filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. Prior to filing for Chapter 11, Dana Corporation was a "leading supplier[] of axle, driveshaft, structural, sealing, thermal management and related products for global vehicle manufacturers." Dana Corp.'s Disclosure Statement with Respect to Joint Plan of Reorganization (Disclosure Statement). As such, "Dana Corporation was an original equipment manufacturer and supplier, which meant that their products would be sold directly to vehicle manufacturers such as Ford, Chrysler, and John Deere." In re Asbestos Litig., 2015 WL 556434, at *1 (Del. Super. Jan. 30, 2015). It is undisputed that "[i]n the past, some but not all of the automotive gaskets that Dana [Corporation] sold contained asbestos, [however it] was always in an encapsulated form." Disclosure Statement, at 55.

"Unlike many asbestos-related bankruptcies, the Reorganization Plan provided that all pending and future asbestos-related personal injury claims against Dana Corporation and its

affiliates were not discharged, but were instead 'reinstated' and left to be 'liquidated, determined or otherwise resolved in the appropriate non-bankruptcy forum.'" Vicki L. Stringham Aff. ¶ 3, Oct. 31, 2014. "Under the reorganization plan, Dana Holding Corporation[,] was the newly created entity, which acquired the operating assets [and liabilities] of Dana Corporation out of bankruptcy." In re Asbestos Litig., 2015 WL 556434, at *1. Furthermore, the reorganization plan created a number of subsidiaries wholly owned by Dana Holding. In re Dana Corp., 2007 WL 4589331, at *17 (Bankr. S.D.N.Y. Dec. 26, 2007). One such subsidiary is Dana Companies. Id. Since its creation on January 31, 2008, "Dana Companies' only significant activity has been to manage certain assets and liabilities associated with asbestos personal injury claims and certain other liabilities retained . . . under the Plan." Stringham Aff. ¶ 4. Put another way, "the sole purpose of Dana Companies is to defend claims that were passed through the bankruptcy of Dana Corporation." In re Asbestos Litig., 2015 WL 556434, at *2. Here, Dana Companies is being sued in this action based on the alleged liability of its predecessor, Dana Corporation.

III

Parties' Arguments

In support of their motion to compel, Plaintiffs argue that facts concerning Dana Corporation and Dana Holding's jurisdictional contacts with Rhode Island are discoverable. See Pls.' Mot. to Compel Jurisdictional Disc., 6. First, Plaintiffs argue that facts concerning the relationship between Defendant and its parent corporation, Dana Holding, are discoverable because, under the "alter ego" theory, Dana Holding's contacts may be imputed to the Defendant. Id. at 8. Second, Plaintiffs assert that facts concerning Dana Corporation are discoverable because if Dana Corporation was subject to personal jurisdiction in Rhode Island,

the Defendant, as the successor to Dana Corporation, is subject to personal jurisdiction in Rhode Island. Id. at 7.

In turn, Defendant argues that Plaintiffs' 37(a) motion to compel should be denied because there is already sufficient evidence that general personal jurisdiction is lacking.[1] Moreover, Defendant contends that discovery regarding Dana Corporation's contacts with Rhode Island are irrelevant for three reasons. See Def.'s Opp'n to Pls.' Mot. to Compel Additional Jurisdictional Disc., 7-8. First, relying upon the recent Daimler decision, Defendant argues that because Dana Companies is incorporated in Virginia and has its principal place of business in Ohio, Dana Corporation's contacts with Rhode Island are irrelevant. Second, Defendant contends that additional discovery regarding Dana Corporation is also legally irrelevant because the existing discovery record already establishes that Dana Corporation itself was not subject to general jurisdiction in Rhode Island under the test set forth in Daimler. Specifically, Defendant alleges that the record conclusively establishes that Dana Corporation was incorporated in Virginia and had its principal place of business in Ohio. Third, and finally, Defendant contends that even under the pre-Daimler standard, general jurisdiction "was proper only if the defendant had continuous and systematic contacts with the forum state *at the time the complaint was filed*." See Def.'s Opp'n to Pls.' Mot. to Compel Additional Jurisdictional Disc., 8 (emphasis added).

[1] Here, there is no basis for specific personal jurisdiction. In order "[f]or specific personal jurisdiction to exist, . . . the defendant must have performed 'some act by which [it] purposefully [availed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" Cerberus Partners, L.P. v. Gadsby & Hannah, LLP, 836 A.2d 1113, 1119 (R.I. 2003) (quoting Rose v. Firstar Bank, 819 A.2d 1247, 1251 (R.I. 2003)). However, "a court may [only] exercise specific personal jurisdiction over the nonresident defendant if the claim sufficiently *relates to* or *arises from any of a defendant's purposeful contacts with the forum*. Rose, 819 A.2d at 1251 (emphasis added). Here, none of the Plaintiffs are residents of Rhode Island and thus, even if the Defendant was to have contacts with the forum, there is no indication that the Plaintiffs' causes of action arise out of such contacts. See Def.'s Mot. to Dismiss for Lack of Personal Jurisdiction, 7.

As such, Defendant contends that since Dana Corporation ceased to exist on January 31, 2008, any contacts Dana Corporation had prior to the filing of the Complaint are irrelevant. See id.

Similarly, Defendant argues that further discovery as to Dana Holding's contacts with Rhode Island is not warranted. First, Defendant contends that the Daimler decision specifically rejects the argument that general jurisdiction over a corporate defendant can be based on an affiliate's contacts with the forum state. See Def.'s Opp'n to Pls.' Mot. to Compel Additional Jurisdictional Disc., 8. Second, Defendant alleges that additional discovery concerning Dana Holding is not warranted because the available jurisdictional evidence already establishes that Dana Holding is not subject to general jurisdiction in Rhode Island. Id. at 10-11. Third, Defendant posits that Plaintiffs' "alter ego" theory fails because Dana Companies was separately incorporated, has a separate board of directors, maintains separate financial records, is independently capitalized, and has its own offices and bank accounts. Id. at 11-13.

IV

Motion to Compel

Rule 37(a)(2) provides, in relevant part: "[i]f a . . . corporation or other entity fails to make a designation under Rule 30(b)(6) . . . , the discovering party may move for an order compelling an answer, or a designation . . . in accordance with the request." Rule 37(a)(2). Additionally, Rule 37(a)(3) states that, "[f]or purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond." Rule 37(a)(3). In Smith v. Johns-Manville Corp., our Supreme Court "announce[d] a rule permitting limited jurisdictional fact discovery when pertinent facts bearing on the issue of jurisdiction are in question and the relevant information remains in the exclusive control of the defendant." 489 A.2d 336, 340 (R.I. 1985). However, the Court cautioned:

> "Nothing we say today should be construed as shifting the burden to prove jurisdiction away from the plaintiff. Moreover, we are not granting the plaintiff a license to engage in a 'fishing expedition.' We merely hold that where a controversy exists as to the defendant's contacts with Rhode Island, and where the facts that would clear up the controversy are in the exclusive control of the defendant, the plaintiff should be permitted a limited right to engage in jurisdictional fact discovery." Id.

Here, the Defendant has already produced substantial jurisdictional discovery in this matter. As the Defendant noted,

> "Dana Companies has produced 1650 pages of responsive documents—including the 278 page transcript from the deposition of its corporate representative that took place on July 22, 2014 in response to a motion to dismiss for lack of personal jurisdiction motion filed in Delaware—and has offered Plaintiffs the opportunity to depose its corporate representative again in connection with the [instant] motion to dismiss." Def.'s Opp'n to Pls.' Mot. to Compel Additional Jurisdictional Disc., 2.

As such, the overarching issue before this Court is whether additional jurisdictional discovery is necessary in order to determine whether the Court can exercise general personal jurisdiction over the Defendant, based upon the contacts of Dana Corporation or Dana Holding. See Smith, 489 A.2d at 338 ("The issue properly couched is not whether plaintiff has proven that minimum contacts exist, but rather whether plaintiff should have been afforded an opportunity to engage in discovery to establish if those contacts exist.").

"Jurisdiction in this forum over a nonresident defendant requires both that the complainant allege facts sufficient to satisfy the requirements of Rhode Island's 'long-arm' statute, and that the court's exercise of personal jurisdiction comports with the requirements of constitutional due process." Rose, 819 A.2d at 1250. Rhode Island's "long-arm" statute provides in pertinent part that "[e]very foreign corporation . . . that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state

of Rhode Island . . . in every case not contrary to the provisions of the constitution or laws of the United States." G.L. 1956 § 9-5-33(a). "This language has been interpreted to mean that Rhode Island courts may exercise jurisdiction over foreign defendants within the parameters set forth by the United States Constitution." McKenney v. Kenyon Piece Dye Works, Inc., 582 A.2d 107, 108 (R.I. 1990). As such, "the statutory inquiry necessarily merges with the constitutional inquiry, and the two inquiries essentially become one.'" Nucor Corp. v. Bell, 482 F. Supp. 2d 714, 721 (D.S.C. 2007) (quoting ESAB Grp., Inc. v. Centricut, Inc., 126 F.3d 617, 623 (4th Cir. 1997)).

"The Due Process clause of the United States Constitution limits the exercise of personal jurisdiction over nonresident defendants to those who 'have certain minimum contacts with [the forum] such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" Rose, 819 A.2d at 1250 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). In order "[t]o establish that the forum court possesses personal jurisdiction over a nonresident defendant a plaintiff must allege and prove the existence of either general or specific personal jurisdiction." Id. Moreover, "[w]hen [a defendant's] contacts with a state are *continuous, purposeful, and systematic*, a nonresident defendant will subject itself to the general jurisdiction of that forum's courts with respect to all claims, regardless of whether they relate to or arise out of the nonresident's contacts with the forum. Thus, if a nonresident's contacts with a forum are sufficient for general personal jurisdiction to exist, then such a party may be sued in that forum for 'causes of action arising from dealings entirely distinct from those activities.'" Id. at 1250-51 (emphasis added).

Since International Shoe, "specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has] play[ed] a reduced role." Goodyear Dunlop

Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2854 (U.S. 2011) (citing Twitchell, The Myth of General Jurisdiction, 101 Harv. L. Rev. 610, 628 (1988)). However, the United States Supreme Court recently addressed the limits of general personal jurisdiction in its decision of Daimler, 134 S. Ct. at 749. The Court began its analysis by noting that "Goodyear made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." Daimler, 134 S. Ct. at 760. "With respect to a corporation, [the Court held] the place of incorporation and principal place of business are 'paradig[m] . . . bases for general jurisdiction.'" Id. (quoting Goodyear Dunlop Tires Operations, S.A., 131 S. Ct. at 2853). Nevertheless, the Daimler Court expressly noted that "Goodyear did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums." Id. (emphasis in original). Regarding this more general test for all-purpose jurisdiction, the Court held that the appropriate "inquiry under Goodyear [and International Shoe] is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether the corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum state.'" Id. at 761; see also Alkanani v. Aegis Def. Servs. LLC, 976 F. Supp. 2d 13, 29 (D.D.C. 2014) (holding that, under Daimler, a court must consider whether a foreign corporation's contacts are "so extensive, so constant, and so prevalent that they render the defendant 'essentially at home' in the forum").

Here, neither Dana Companies, Dana Holding, nor the former Dana Corporation is incorporated in Rhode Island; furthermore, none of the aforementioned has a principal place of

business in the forum.[2] Accordingly, in order to establish general personal jurisdiction, Plaintiffs must show the Defendant is "essentially at home" within the forum. Abelesz v. OTP Bank, 692 F.3d 638, 654 (7th Cir. 2012). In assessing general personal jurisdiction, "[c]ourts look for 'continuous and systematic general business contacts,' Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984), and inquire whether the business was 'sufficiently substantial and of such a nature' as to permit the exercise of personal jurisdiction, Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447, 72 S. Ct. 413, 96 L. Ed. 485 (1952)." Abelesz, 692 F.3d at 654. "This is a demanding standard, for the consequences for the defendant can be severe." Id.; see Purdue Research Found. v. Sanofi–Synthelabo, S.A., 338 F.3d 773, 787 (7th Cir. 2003) (quoting United States v. Swiss Am. Bank, Ltd., 274 F.3d 610, 619 (1st Cir. 2001)) (holding that the constitutional requirement for general jurisdiction is "'considerably more stringent'" than that required for specific jurisdiction). Thus, the more nuanced issue is whether additional jurisdictional discovery is necessary in order to determine if any of the aforementioned entities established contacts with Rhode Island that are or were "so 'continuous and systematic' as to render it essentially at home in the forum." Daimler, 134 S. Ct. at 761.

[2] "Th[e] discovery record conclusively establishes that Dana Companies is incorporated in Virginia and has its principal place of business in Ohio." Def.'s Opp'n to Pls.' Mot. to Compel Additional Jurisdictional Disc., 2. Furthermore, "Dana Holding's recent annual report filed with the Securities and Exchange Commission," of which this Court takes judicial notice, "shows that Dana Holding is a Delaware corporation with its principal place of business in Ohio." Id. at 11. Finally, the former Dana Corporation was incorporated in Virginia and had its principal place of business in Ohio. Id. at 8.

A

Dana Companies

Here, no additional jurisdictional discovery is necessary regarding Dana Companies. The Stringham Affidavit clearly provides that:

> "Dana Companies has no offices in the state of Rhode Island, has no employees in the state of Rhode Island, owns no property in the state of Rhode Island, leases no property in the state of Rhode Island, sells no products in the state of Rhode Island, is not registered or authorized to do business in the state of Rhode Island, has no registered agent for service of process in the state of Rhode Island, and maintains no telephone listing, mailing address, or post office box in the state of Rhode Island." Stringham Aff. ¶ 9.

As such, this Court is satisfied that Dana Companies' contacts with the forum are not sufficient to make it amenable to general personal jurisdiction. See Helicopteros Nacionales de Colombia, S.A., 466 U.S. at 416 (finding the defendant's CEO's business trip to forum, acceptance of checks drawn on forum bank, and purchases of equipment from forum manufacturer insufficient to establish general jurisdiction); Noonan v. Winston Co., 135 F.3d 85, 92-93 (1st Cir. 1998) (holding that business solicitation in forum state and approximately $585,000 in orders was insufficient to establish general personal jurisdiction over the defendant); Emissive Energy Corp. v. SPA-Simrad, Inc., 788 F. Supp. 2d 40, 44 (D.R.I. 2011) (finding plaintiff's evidence "d[id] not suggest that [defendant] ever consummated a single sale or other business transaction in Rhode Island[,]" and thus concluding such evidence was insufficient to establish general personal jurisdiction). As such, this Court denies Plaintiff's motion to compel additional jurisdictional discovery as to Dana Companies.

B

Dana Holding

Plaintiffs argue, based upon the "alter ego" theory, that additional jurisdictional discovery is required as to Dana Holding's jurisdictional contacts. However, before reaching the merits of this argument, this Court shall discuss whether the "alter ego" theory is recognized in Rhode Island.

In Russell v. Enterprise Rent-A-Car Co. of Rhode Island, the Rhode Island District Court addressed whether a court may establish personal jurisdiction over a parent corporation based upon the contacts of its subsidiary. 160 F. Supp. 2d 239, 252 (D.R.I. 2001). The court held that "[u]nder the *alter ego rule*, a non-resident parent corporation is amenable to suit in the forum state if the parent company exerts so much control over the subsidiary that the two do not exist as separate entities but are one and the same for purposes of jurisdiction." Id. at 252 (emphasis added). As such, "[i]f the court finds one entity to be the alter ego of the other, jurisdiction over the subsidiary results in jurisdiction over the non-resident parent." Id.

In order "[t]o determine whether a parent corporation and its subsidiary maintain separate corporate identities, a court examines factors that demonstrate whether corporate formalities have been observed. *These factors include whether the parent corporation and its subsidiary were separately incorporated, had separate boards of directors, maintained separate financial records, and had separate facilities and operating personnel*." Id. (internal citations omitted) (emphasis added); see Scully Signal Co. v. Joyal, 881 F. Supp. 727, 736 (D.R.I. 1995) (holding "the factors considered for purposes of piercing the corporate veil in the liability context also inform the jurisdictional inquiry"); Conn v. ITT Aetna Fin. Co., 105 R.I. 397, 407, 252 A.2d

184, 189 (1969) (accepting "as tenable the thesis that stock ownership plus control may create amenability" of a parent corporation to jurisdiction based upon its subsidiary's contacts).

Here, Dana Companies has provided evidence that Dana Companies and Dana Holding: (1) were separately incorporated; (2) maintain separate boards of directors; (3) keep separate financial records; (4) are separately capitalized; and (5) maintain their own offices and bank accounts. See Def.'s Opp'n to Pls.' Mot. to Compel Additional Jurisdictional Disc., 12-13. Accordingly, this Court is satisfied that Dana Holding and Dana Companies, although related, "observe[d] all of the corporate formalities necessary to maintain corporate separateness[.]" Doe v. Unocal Corp., 248 F.3d 915, 928 (9th Cir. 2001); see Barantsevich v. VTB Bank, 954 F. Supp. 2d 972, 983 (C.D. Cal. 2013) (citing Transure, Inc. v. Marsh and McLennan, Inc., 766 F.2d 1297, 1299 (9th Cir. 1985)) (holding "[t]he mere existence of a relationship between a parent company and its subsidiaries is not a sufficient basis upon which to exercise personal jurisdiction over the parent based on the subsidiaries' minimum contacts with the forum"); Ryder Truck Rental, Inc. v. Acton Foodservs. Corp., 554 F. Supp. 277, 279 (C.D. Cal. 1983) (finding that "[s]o long as the separation between parent and subsidiary corporations is real, even if merely formal, the use of the subsidiary to conduct business in California does not automatically subject the parent to suit in this state"). Consequently, because there is no indication that Dana Holding is the "alter ego" of Dana Companies, additional discovery is not required to "illuminate [the] alter ego disput[e][.]" Material Supply Int'l, Inc. v. Sunmatch Indus. Co., 62 F. Supp. 2d 13, 23 (D.D.C. 1999); see Doe, 248 F.3d at 928 (holding "[p]laintiffs' evidence . . . establishes only that [defendant] [was] an active parent corporation involved directly in decision-making about its subsidiaries' holdings[; however,] [b]ecause [defendant] and its subsidiaries observe[d]

all of the corporate formalities necessary to maintain corporate separateness, the first prong of the alter ego test [was] not satisfied").

C

Dana Corporation

Prior to reaching the Plaintiffs' argument regarding the need for additional discovery related to Dana Corporation's jurisdictional contacts, this Court must first look to the doctrine of successor liability within Rhode Island jurisprudence.

"[O]ur Supreme Court has not had occasion to address whether successor liability—as opposed to piercing the corporate veil—also subjects a successor to personal jurisdiction based upon its predecessor's contacts." Barry v. PMC Film Canada, Inc., 2011 WL 3556740, *5 (R.I. Super. Aug. 4, 2011). However, "[o]ur Supreme Court's treatment of the issue in Conn, the U.S. District Court for the District of Rhode Island's approach in Scully Signal and the sound reasoning of other courts all lead to the same conclusion. That is that the continuing enterprise or successor liability theory may be applied to establish [a successor defendant's] contacts with Rhode Island."[3] Id., at *6; see e.g., Williams v. Bowman Livestock Equip. Co., 927 F.2d 1128, 1132 (10th Cir. 1991) ("[C]orporation's contacts with a forum may be imputed to its successor if forum law would hold the successor liable for the actions of its predecessor."); Purdue Research Found., 338 F.3d at 783, 784 ("[C]ourts have recognized that the jurisdictional contacts of a predecessor corporation may be imputed to its successor corporation" such that the successor "can be expected to be haled into the same courts as its predecessor."). Additionally, "federal

[3] Although the Barry Court's holding is not precedential, this Court finds the reasoning persuasive. Our Supreme Court's decision in Conn, in conjunction with established federal precedent, indicates that the Rhode Island Supreme Court, if faced with the issue, would recognize the exercise of personal jurisdiction over a corporate successor based upon the jurisdictional contacts of its predecessor.

courts have consistently acknowledged that it is compatible with due process for a court to exercise personal jurisdiction over . . . a corporation . . . [that] is an alter ego or successor of a corporation that would be subject to personal jurisdiction in that court." Patin v. Thoroughbred Power Boats Inc., 294 F.3d 640, 653 (5th Cir. 2002).

Accordingly, this Court shall permit limited discovery as to whether Dana Corporation's "'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State.'" Daimler, 134 S. Ct. 749 (quoting Goodyear Dunlop Tires Operations, S.A., 131 S. Ct. at 2851) (alteration in the original); Smith, 489 A.2d at 340 (holding "that where a controversy exists as to the defendant's contacts with Rhode Island, and where the facts that would clear up the controversy are in the exclusive control of the defendant, the plaintiff should be permitted a limited right to engage in jurisdictional fact discovery"). However, as the record is clear that Dana Corporation was neither incorporated in Rhode Island, nor maintained its principal place of business within the forum, this Court's authorization of jurisdictional fact discovery, as it relates to general personal jurisdiction, is quite limited. Plaintiffs should restrict their requests to information regarding Dana Corporation's contacts with Rhode Island that were "substantial" and/or "continuous and systematic." Perkins, 342 U.S. at 446, 448; Helicopteros Nacionales de Colombia, S.A., 466 U.S. at 416. To quote our Supreme Court in Smith, this Court "[is] not granting the plaintiff a license to engage in a 'fishing expedition.'" Smith, 489 A.2d at 340. Accordingly, Plaintiffs "are not authorized to conduct discovery on the merits or to support any of their theories of liability. Rather, Plaintiffs are limited to obtaining information directly relevant to demonstrating that [Dana Corporation] [was] subject to [general] personal jurisdiction" in Rhode Island. Le-Bolton v. Koppers Inc., 2013 WL 5674324, at *2 (N.D. Fla.

Oct. 17, 2013); see Smith, 489 A.2d at 339 (finding that "Rules 26(b) and 33(b) are identical to their federal counterparts").

V

Conclusion

Accordingly, this Court grants the Plaintiffs' motion in part, and denies it in part. This Court finds that *limited* jurisdictional discovery is appropriate as to any "substantial" or "continuous and systematic" business contacts Dana Corporation may have had with Rhode Island. However, no additional discovery is necessary regarding Dana Holding or Dana Companies. Counsel shall prepare an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASES:	**Bazor v. Abex Corp., et al.;** **Stefanko v. Adience Co., L.P., et al.;** **Burdick v. Air & Liquid Systems Corp., et al.;** **Baumgartner v. American Standard, Inc., et al.;** **Taylor v. American Standard, Inc., et al.;** **Costello v. Agco Corporation, et al.;** **Winchester v. American Biltrite, Inc., et al.**
CASE NOS:	**PC 10-3965; PC 11-2352; PC 11-3431; PC 13-4151;** **PC 14-1464; PC 14-3741; PC 14-4697**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**July 16, 2015**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
For Plaintiff:	**Donnie E. Young, Esq.; Robert J. Sweeney, Esq.;** **Jeffrey S. Kanca, Esq.**
For Defendant:	**Lawrence G. Cetrulo, Esq.; Stephen T. Armato, Esq.**