

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

IN RE: ASBESTOS LITIGATION,)	
)	
Limited to: Mass, Denis Martinez)	
)	
and)	CA# N10C-10-159 ASB
)	
Martinez, Bethzaida.)	
)	

ORDER

Defendant, Puerto Rico Electric Power Authority, filed an omnibus motion to dismiss count III of Plaintiffs’ amended complaint. Defendant is one of several defendants in this asbestos action. Defendant argues it is entitled to dismissal under Superior Court Rule of Civil Procedure 12(b)(2) because Plaintiffs have not established personal jurisdiction.

1. Defendant is a foreign, non-resident corporation with its primary place of business in Puerto Rico. The Government of Puerto Rico owns this public corporation and its primary business is supplying electricity within Puerto Rico. Defendant argues it does not fall under Delaware’s long-arm statute and even if person jurisdiction were proper under the long-arm statute it would still not comport with the principles of due process.

2. Plaintiffs respond that Defendant has sufficient contacts with Delaware. Plaintiffs offer the fact that Defendant has a subsidiary, PREPA Holdings, LLC, incorporated in Delaware. Additionally, Plaintiffs point to the business relationship between Defendant and URS Corp., a Delaware

corporation. Since 1974 URS and Defendant have had a trust agreement and URS provides Defendant with an annual report with its analysis of Defendant's business and finances. The annual report that Plaintiffs attached as an exhibit to their motion states the report was prepared by URS's Washington division and gives a Cambridge, Massachusetts address. Plaintiffs also seek further discovery in hopes of establishing more contacts with the forum state. Plaintiffs argue that general jurisdiction is proper in this case.

3. Delaware courts apply a two step analysis to determine whether personal jurisdiction exists over a nonresident defendant. First, the court must determine whether there is statutory authority under Delaware's long arm statute.¹ The court broadly considers the statute to the maximum extent permissible under the due process.² Second, the court must consider whether jurisdiction comports with the Due Process Clause of the 14th Amendment to the United States Constitution.³

4. The injury in question did not arise out of conduct in the forum state, so Plaintiffs rightly focus their argument on general jurisdiction under 10 *Del. C. §3104(c)(4)*. Pursuant to the long arm statute, a court may exercise personal jurisdiction over a nonresident if the entity

[c]auses tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of

¹ *LaNuova D&B, S.p.A v. Bowe, Inc.*, 513 A.2d 764, 768 (Del. 1986) (citing *Waters v. Deutz Corp.*, 479 A.2d 273, 276 (Del. 1984)).

² *Bowe*, 513 A.2d at 768 (citations omitted).

³ *Id.* (citing *Waters*, 479 A.2d at 276).

conduct in the state or derives substantial revenue from services, or things used or consumed in the State.⁴

Unlike specific jurisdiction, which requires a showing that the cause of action arises from conduct occurring within the forum state, “general jurisdiction requires plaintiff to show that the defendant regularly and continuously conducted business within Delaware.”⁵ Plaintiffs must establish *prima facie* evidence that this court can exercise personal jurisdiction over Defendant.⁶

5. Plaintiffs have not established sufficient evidence that the court can exercise personal jurisdiction over Defendant. Ownership of a subsidiary in Delaware without evidence that the cause of action arises out of the operation, control, or ownership of the subsidiary is insufficient to establish jurisdiction.⁷ Plaintiffs have not offered any evidence that the cause of action arises out of Defendant’s Delaware subsidiary. To establish general jurisdiction based on Defendant’s relationship with URS, Plaintiffs must show “continuous and systematic general business contacts” with the forum state.⁸ Receiving the business services that Defendant received here from an entity incorporated in Delaware is insufficient to establish continuous and systematic contacts with Delaware.

6. The contacts presented by Plaintiffs also fail to establish minimum contacts for constitutional due process. To comport with due process,

⁴ 10 Del. C. §3104(c)(4).

⁵ *Tell v. Roman Catholic Bishops of Diocese of Allentown*, 2010 WL 1691199, at *8 (Del. Super.) (citing *Elliott v. The Marist Brothers of the Schools, Inc.*, 2009 WL 4927130, at *5 (D. Del)).

⁶ *Computer People, Inc. v. Best Int’l Group, Inc.*, 1999 WL 288119, at *5 (Del. Ch.).

⁷ *Aeroglobal Capital Mgmt. v. Cirrus Indus.*, 871 A.2d 428, 439 (Del. 2005) (citations omitted); *Computer People*, 1999 WL 288119, at *10;

⁸ *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 416 (1984).

Defendant must “have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”⁹ Owning a subsidiary incorporated in Delaware and receiving business services from a Delaware corporation do not create minimum contacts for the court to exercise jurisdiction over Defendant and would offend traditional notions of fair play and substantial justice.

7. Additional jurisdictional discovery is not proper in this case. The court finds that there is not “some indication that this particular defendant is amenable to suit in this forum.”¹⁰ Given the facts, further discovery would not serve an additional purpose and would only amount to a fishing expedition.¹¹

Defendant’s motion for dismissal is **GRANTED**. Plaintiffs’ request for additional discovery is **DENIED**.

IT IS SO ORDERED this 10th day of January, 2012.

Judge John A. Parkins, Jr.

cc: Prothonotary

cc: Michael L. Sensor, Esquire, Wilmington, Delaware—Attorney for Plaintiffs.

James D. Taylor, Jr., Esquire, Jennifer Becnel-Guzzo, Esquire, and Nichole C. Alling, Esquire, Wilmington, Delaware—Attorneys for Defendant.

⁹ *Int’l Shoe Co. v. State of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 316 (1945) (citations omitted) (internal quotations omitted).

¹⁰ *Liveperson, Inc. v. Nextcard, LLC*, 2009 WL 742617, at *6 (D. Del.) (quoting *Hansen v. Neumueller GmbH*, 163 F.R.D. 471, 474 (D. Del. 1995)).

¹¹ *Liveperson*, 2009 WL 742617, at *6.