

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

IN RE: ASBESTOS LITIGATION,)	
)	
THOMAS ANDERSON, <i>et al.</i> ,)	C.A. No.: 13C-03-076 ¹
)	
Plaintiffs,)	
)	
v.)	
)	
DANA COMPANIES, LLC,)	
)	
Defendant.)	
)	

Submitted: November 3, 2014
Decided: January 30, 2015

Defendant Dana Companies, LLC's Motion to
Dismiss Based on Lack of Personal Jurisdiction
GRANTED

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DAVIS, J.

I. INTRODUCTION AND PROCEDURAL HISTORY

This is a multi-case asbestos litigation involving numerous Plaintiffs and Defendant Dana Companies, LLC (“Dana Companies”).

On August 8, 2014, Dana Companies filed the Dana Companies LLC’s Motion to Dismiss Based on Lack of Personal Jurisdiction (the “Motion”). Dana Companies moved under Delaware Superior Court Civil Rule 12(b)(2), arguing that the Plaintiffs’ claims against Dana

¹ Dana Companies, LLC moved in a number of individual civil actions. The heading in this opinion only lists Thomas Anderson, et al. v. Dana Companies LLC, C.A. No. 13C-03-076. However, this opinion applies to all those cases listed on attached Ex. A and will be entered in all of those cases listed on attached Exhibit A.

Companies must be dismissed for lack of personal jurisdiction. On August 11, 2014, Plaintiffs filed Plaintiffs' Opposition to Defendant Dana Companies LLC's Motion to Dismiss Based on Personal Jurisdiction Grounds. On August 18, 2014, Dana Companies filed a Reply in Support of its Motion to Dismiss Based on Lack of Personal Jurisdiction.

A hearing was held on October 6, 2014. At the hearing, the Court ordered Dana Companies to provide supplemental briefing, and redacted and unredacted financial statements. Dana Companies provided such briefing on October 20, 2014. On November 3, 2014, Plaintiffs filed a Supplemental Memorandum in Opposition to Defendant Dana Companies LLC's Motion to Dismiss for Lack of Personal Jurisdiction. The Court has now examined *in camera* the unredacted financial documents. After hearing argument, the Court reserved decision.

For the reasons set forth in this opinion, Defendant Dana Companies LLC's Motion to Dismiss Based on Lack of Personal Jurisdiction is **GRANTED**.

II. FACTUAL BACKGROUND

Dana Companies' predecessor was Dana Corporation, an auto-parts manufacturer incorporated under the laws of Virginia,² which entered Chapter 11 bankruptcy in 2006.³ 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.⁴ Dana Corporation had no facilities or employees in Delaware.⁵ During a deposition of Dana Companies' corporate representative, the corporate representative stated that she was not aware of any direct sales of Dana Corporation products into the State of Delaware.⁶ The

² Third Amended Disclosure Statement, *In Re Dana Corp. et al.*, No. 06-10354, at 1 (Bankr. S.D.N.Y. October 23, 2007).

³ Defendant Dana Companies LLC's Motion to Dismiss Based on Lack of Personal Jurisdiction, at 5.

⁴ Deposition of Vicky Stringham dated July 22, 2014 at 88:22-89:3 (cited hereafter as "Stringham Depo. at ___").

⁵ Stringham Depo. at 87:22-23.

⁶ Stringham Depo. at 88:6-7.

corporate representative could not speculate on where the Dana Corporation products were distributed after being sold to vehicle manufacturers, or whether Dana Corporation products ended up in Delaware.⁷

Although Dana Corporation produced some automobile parts containing asbestos, the bankruptcy was not caused by pending asbestos claims or asbestos litigation in general.⁸ The asbestos claims were not discharged in bankruptcy, and were instead passed through unimpaired.⁹ Liabilities related to asbestos claims were not transferred or assigned to any other debtor or entity, and the reorganized debtor intended to continue to defend, settle, and/or resolve pending and future actions relating to asbestos claims in the ordinary course of their business and consistent with past practices.¹⁰ The United States Bankruptcy Court for the Southern District of New York determined that the reorganized entity would have sufficient insurance policies and assets to cover its asbestos liabilities,¹¹ and that Dana Corporation had implemented a successful defense and settlement strategy which would be carried over to the new entity.¹² Under the reorganization plan, Dana Holding Corporation (“Dana Holding”), was the newly created entity, which acquired the operating assets of Dana Corporation out of bankruptcy.¹³ Dana Holding was incorporated in Delaware.

⁷ Stringham Depo. at 89:3-9.

⁸ Order Confirming Third Amended Joint Plan, *In Re Dana Corp.*, No. 06-10354, ECF No. 7509, at 15 (Bankr. S.D.N.Y. Dec. 26, 2007); Affidavit of Vicki L. Stringham, Defendant Dana Companies LLC’s Motion to Dismiss Based on Lack of Personal Jurisdiction, Exhibit A at ¶3.

⁹ Third Amended Disclosure Statement, *In Re Dana Corp. et al.*, No. 06-10354, at 66 (Bankr. S.D.N.Y. October 23, 2007).

¹⁰ *Id.*

¹¹ Order Confirming Third Amended Joint Plan, *In Re Dana Corp.*, No. 06-10354, ECF No. 7509, at 22-25 (Bankr. S.D.N.Y. Dec. 26, 2007).

¹² *Id.* at 15.

¹³ Defendant Dana Companies LLC’s Motion to Dismiss Based on Lack of Personal Jurisdiction, at 6.

Dana Companies was incorporated in Virginia, has its principal place of business in Ohio, and became a wholly owned subsidiary of Dana Holding.¹⁴ At the October 6, 2014 hearing, Plaintiffs presented a February 1, 2008 Director's Action document which referred to Dana Companies as a Delaware corporation. In the supplemental briefing, Dana Companies filed with the Court each annual Director's Action document from 2008 to 2013. In these documents, Dana Companies is consistently referred to as a Virginia Corporation.¹⁵ Additionally, the Delaware Secretary of State has certified that Dana Companies is not the name of a Delaware Corporation, and that no corporation or company has ever filed a certificate of formation or registered as a foreign limited liability company in Delaware.

The Court is satisfied that the statement in the February 1, 2008 Director's Action document was an error. Accordingly, the Court does not find that there is a genuine issue of fact as to whether Dana Companies is a Delaware corporation or a Virginia Corporation -- Dana Companies is indeed incorporated in Virginia.

Dana Companies commenced activities on January 31, 2008.¹⁶ Since that date, Dana Companies has been independently managed.¹⁷ Dana Companies' only significant activity has been to manage its assets, its liabilities associated with asbestos claims, and certain other liabilities.¹⁸ Dana Companies has no offices or employees in Delaware, conducts no business in Delaware, and is not registered to do business in Delaware.¹⁹ Dana Companies has never manufactured, distributed, or sold any goods, products or services.²⁰ At the October 6, 2014

¹⁴ *Id.*

¹⁵ *See* Stringham Supp. Aff. Exh. D., Dana Companies, LLC's Supplemental Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Affidavit of Vicki L. Stringham, Defendant Dana Companies LLC's Motion to Dismiss Based on Lack of Personal Jurisdiction, Exhibit A, at ¶4.

¹⁹ *Id.* at ¶9.

²⁰ *Id.*

hearing, counsel for Dana Companies stated that the sole purpose of Dana Companies is to defend claims that were passed through the bankruptcy of Dana Corporation. Dana Companies defends claims in all 50 states. Counsel thereafter submitted a breakdown of the claims involving Dana Companies. This information provides that only 1% of Dana Companies' claims are defended in Delaware, and less than 1% of the active claims are defended in Delaware.

III. PARTIES' CONTENTIONS

A. CONTENTIONS OF DANA COMPANIES

In the Motion, Dana Companies raises several arguments for dismissal. First, Dana Companies contends that Delaware does not have specific jurisdiction over it because Dana Companies is an out of state resident whose claims do not arise from or relate to any conduct in Delaware by Dana Companies.

Second, Dana Companies contends that Delaware does not have general jurisdiction over it because Dana Companies is not incorporated in Delaware, does not have its principal place of business in Delaware, does not regularly do or solicit business in the State, nor engage in any persistent course of conduct or derive substantial revenue from the State.

B. CONTENTIONS OF PLAINTIFFS

In response, Plaintiffs first contend that Dana Companies' Motion must fail because it is based on disputed facts.

Second, Plaintiffs contend that Dana Companies has waived personal jurisdiction because it actively participated in Delaware on each one of these cases in anticipation of a potential trial.

Third, Plaintiffs contend that Dana Companies' successor status to Dana Corporation, creates jurisdiction, as Delaware allegedly had jurisdiction over Dana Corporation.

Fourth, Plaintiffs contend that any jurisdictional defense fails because Dana Companies' sole member, Dana Holding, is a Delaware corporation, which controls and dominates its wholly-owned subsidiary.

Fifth, Plaintiffs contend that Dana Companies' jurisdictional defense fails because its sole member is a Delaware entity.

IV. DISCUSSION

A. STANDARD OF REVIEW

When personal jurisdiction is challenged by a motion to dismiss pursuant to Rule 12(b)(2), the plaintiff bears the burden of showing a basis for the court's exercise of jurisdiction over the nonresident defendant.²¹ A motion under Rule 12(b)(2), presents a factual matter, not a legal question alone.²² That factual question will concern the connection that the defendant has had, directly or indirectly, with the forum.²³ The legal questions presented—whether that connection constitutes “doing business,” whether it satisfies some aspect of a long-arm statute, or whether the assertion of personal jurisdiction conforms to conventional notions of fair play and substantial justice—cannot be resolved until the Court determines these predicate factual matters.²⁴ A court cannot grant a motion under Rule 12(b)(2) simply by accepting the well pleaded allegations of the complaint as true²⁵ and the Court cannot restrict a Rule 12(b)(2) motion to the face of the complaint.²⁶

²¹ *Werner v. Miller Tech. Mngmt. LP*, 831 A.2d 318, 326 (Del. Ch. 2003); *See Hornberger Mgmt. Co. v. Haws & tingle Gen. Contractors, Inc.*, 768 A.2d 983, 986 (Del. Super. Ct. 2000); *Boone v. Oy Partek AB*, 724 A.2d 1150, 1154 (Del. Super. Ct. 1997).

²² *Hart Holding Co. Inc. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 538 (Del. Ch. 1991).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 539.

B. APPLICABLE LAW

Dana Companies is a nonresident defendant. To determine whether the Court has personal jurisdiction over a nonresident defendant, the Court must: (1) assess whether the Delaware long arm statute applies; and, if so, (2) determine whether application of the statute comports with the Due Process Clause of the Fourteenth Amendment of the United States Constitution.²⁷ A plaintiff bears the burden of establishing personal jurisdiction over a defendant.²⁸ Where there is conflicting evidence, the Court must construe such evidentiary conflicts in plaintiff's favor.²⁹

Delaware's long arm statute, 10 *Del. C.* § 3104, sets forth in subsection (c) that a nonresident establishes legal presence within the State of Delaware when the nonresident:

- (1) Transacts any business or performs any character of work or service in the State;
- (2) Contracts to supply services or things in this State;
- (3) Causes tortious injury in the State by an act or omission in this State;
- (4) Causes 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 conduct in the State or derives substantial revenue from services, or things used or consumed in the State;
- (5) Has an interest in, uses or possesses real property in the State; *or*
- (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.³⁰

²⁷ *In Re Chambers Development Co., Inc. Shareholders Litigation*, 1991 WL 179335; 19 Del. J. Corp. L. 242, 252 (Del. Ch. May 20, 1993).

²⁸ *See Hornberger Mgmt. Co.*, 768 A.2d at 986.

²⁹ *In Re Chambers Development Co., Inc. Shareholders Litigation*, 19 Del. J. Corp. L. at 252.

³⁰ *Id.*

Subsection (c)(4) pertains to general jurisdiction in cases, like this one, where the cause of action is unrelated to the relevant Delaware contacts.³¹ To exercise jurisdiction under 10 *Del. C.* § 3104(c), the Court must find that a defendant has “current contacts with Delaware” and that those contacts “are so extensive and continuing that it is fair and consistent with state policy to require that [they] appear here and defend a claim even when that claim arose outside of this state and causes injury outside of this state.”³²

For the Court’s application of the long arm statute asserting general jurisdiction to comport with due process, a defendant’s activities within the State must be “continuous and systematic.”³³ Contacts are typically sufficient to comport with due process if:

(a) the defendant regularly advertises his products or services in the state or (b) carries on some other continuous course of activity there or (c) derives substantial revenue from goods used or consumed or from services rendered in the state. It is not necessary that this activity amount to the doing of business.³⁴

Additionally, to satisfy due process when the Court applies the long arm statute, a defendant “should reasonably anticipate being haled into” this Court.³⁵

Stream of commerce theory is a source of specific jurisdiction which is available in addition to the long arm statute. Its application is analogous to application of subsection (c)(4) of the long arm statute.³⁶ Stream of commerce theory

requires that there be evidence of some intent or purpose on behalf of the manufacturer to serve the Delaware market. . . . Only when the manufacturer's product enters the forum state and injures a consumer therein is it acceptable to exercise jurisdiction over the manufacturer under [stream of commerce] theory.³⁷

³¹ *Id.*

³² *Reid v. Siniscalchi, L.L.C.*, 2874-VCN, 2011 WL 378795, at *10 (Del. Ch. Jan. 31, 2011) (citations omitted).

³³ *In Re Chambers Development Co.*, 19 Del. J. Corp. L. at 253 (citing *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977)).

³⁴ *Id.* at 252.

³⁵ *Pandora Jewelry, Inc. v. Stephen's Jewelers, LLC*, CPU4-10005767, 2012 WL 2371043, at *3 (Del. Com. Pl. June 22, 2012).

³⁶ *See Boone v. Oy Partek Ab*, 724 A.2d 1150, 1157 (Del. Super. 1997).

³⁷ *Id.* (citing *World-Wide Volkswagen*, 444 U.S. 286, 297 (1980)).

The law in this area stands for the premise that a defendant must affirmatively exhibit some intent or purpose to serve the Delaware market.³⁸ Like the long arm statute, application of the stream of commerce theory must also comport with the requirements of due process.³⁹ The timing of defendant's contacts with Delaware are of the utmost importance.⁴⁰

In order to make a finding of general personal jurisdiction, the Court must find that a defendant engaged in sufficient activities in Delaware to establish a general presence – i.e., that the defendant is recognized to be “at home” in Delaware.⁴¹ Only where contacts are continuous and systematic, and where the defendant is at home in the state, does exercising personal jurisdiction satisfy due process.⁴² A general presence, however, is not everlasting. When a defendant only has general jurisdictional contacts with a state the defendant may subsequently withdraw from that state for jurisdictional purposes.⁴³ Deciding what constitutes substantial contacts requires both an absolute and a relative analysis.⁴⁴

C. DANA COMPANIES HAS NOT WAIVED THE PERSONAL JURISDICTION DEFENSE

We first turn to the issue of whether or not Dana Companies has waived the personal jurisdiction defense. Personal jurisdiction is a right which can be waived.⁴⁵ A litigant must exercise great diligence in challenging personal jurisdiction or venue, and should do so at the

³⁸ *Id.*

³⁹ *See Id.* at 1157, 1161.

⁴⁰ *Boone*, 724 A.2d at 1156.

⁴¹ *Id.*; *see also Ali v. Beechcraft Corp.*, No. N11C-12-253, 2014 WL 3706619, at *3 (Del. Super. Ct. June 20, 2014).

⁴² *Ali*, 2014 WL 3796619, at *3. Dana Companies goes to great lengths to get this Court to apply the ruling in *Damlier AG v. Bauman*, 134 S.Ct. 746 (2014), to these cases. *Bauman* involved potentially holding a parent corporation subject to personal jurisdiction by imputing a subsidiary's contacts with the forum to the parent. The facts of the *Bauman* case are radically different than the facts here. As demonstrated in this decision, there is adequate law on point in Delaware for the Court to make its determination on personal jurisdiction without the need for the Court to determine whether to extend the decision in *Bauman* to the facts present here.

⁴³ *Boone*, 742 A.2d at 1156.

⁴⁴ *Ali*, 2014 WL 3796619, at *4.

⁴⁵ *Hornberger Mgmt. Co.*, 768 A.2d at 987.

time of the first defense move.⁴⁶ The personal jurisdiction defense may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct.⁴⁷

In *Ross Holdings & Mgmt. Co. v. Adv. Realty*, the Court held that where a party becomes an “active actor” in the case, it may waive a personal jurisdiction defense it previously raised.⁴⁸ The court then found that the personal jurisdiction defense was not waived merely because a party had filed an answer, where it raised personal jurisdiction as a defense, engaged in discovery, and had filed a motion to disqualify counsel, because neither of those actions transformed the party into an active actor for the purposes of waiver.⁴⁹

In *Hornberger Mgmt. Co. v. Haws & Tingle*, this Court found that the defendant waived its personal jurisdiction defense where it was not raised until less than a month before trial, after defendant participated in an arbitration process, filed a motion for a trial de novo, and failed to file the motion before the deadline for the filing of case dispositive motions.⁵⁰ In particular, this Court noted that the agreement between the plaintiff and defendant contained a forum selection clause, naming Delaware as the litigation forum of choice.⁵¹

In *Jones v. Peek*,⁵² the defendant did not assert the personal jurisdiction defense until more than seven years after the complaint was filed, and the default judgment entered. The Court predictably denied the motion to dismiss for lack of personal jurisdiction, stating that it was an understatement to say that the defendant failed to seasonably raise the defense.⁵³

⁴⁶ *Ross Holdings & Mgmt. Co. v. Adv. Realty*, C.A. No. 4113-VCN, 2010 WL 1838608, at *11 (Del. Ch. April 28, 2010); *Hornberger Mgmt. Co.*, 768 A.2d at 987-88.

⁴⁷ *Ross Holdings & Mgmt. Co.*, at *11; *Hornberger Mgmt. Co.*, 768 A.2d at 989.

⁴⁸ *Ross Holdings & Mgmt. Co.*, at *11.

⁴⁹ *Id.* at *11-12.

⁵⁰ *Hornberger Mgmt. Co.*, 768 A.2d at 987-89.

⁵¹ *Id.* at 989.

⁵² *Jones v. Peek*, 2009 WL 3334913, at *1 (Del. Super. Ct. Oct. 14, 2009).

⁵³ *Id.*

Dana Companies first raised the personal jurisdiction defense in its Answer to these complaints, and has only been involved in the case through serving and responding to discovery and filing motions related to the personal jurisdiction issue. None of these actions turn Dana Companies into an “active actor” in the case within the meaning of *Ross Holdings*. Therefore, Dana Companies has not waived its personal jurisdiction defense.

Additionally, the Court reviewed relevant documents related to the bankruptcy of Dana Corporation. Neither Dana Corporation, nor Dana Companies waived their right to assert defenses on the basis of forum in the bankruptcy order. Indeed, the order confirming the Third Amended Plan of Reorganization envisioned that there would be defenses asserted by Dana Companies as part of managing its claims.

Finally, Plaintiffs point out that despite Dana Companies’ extensive litigation in Delaware it has never before sought a dismissal on personal jurisdiction grounds.⁵⁴ However, familiarity with the court system is insufficient to render a defendant at home in Delaware.⁵⁵

D. DELAWARE DOES NOT HAVE SPECIFIC JURISDICTION OVER DANA COMPANIES

Since the U.S. Supreme Court’s decision in *International Shoe*,⁵⁶ specific jurisdiction has become the centerpiece of modern jurisdiction theory. Specific jurisdiction depends on an affiliation between the forum and the underlying controversy, principally, that the activity or occurrence takes place in the forum state and is therefore subject to the State’s regulation.⁵⁷ Specific jurisdiction is at issue when the plaintiff’s claims arise out of the acts or omissions that

⁵⁴ Stringham Depo. at 141-42

⁵⁵ *AstraZeneca AB v. Mylan Pharmaceuticals, Inc.*, No. 14-696 2014 WL 5778016 at *4 (D.Del Nov. 5, 2014); *In re Rosuvastatin Calcium Patent Litig.*, MDL No. 08-1949, 2009 WL 4800702, at *6 (D.Del. Dec. 11, 2009).

⁵⁶ *Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310 (1945).

⁵⁷ von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L.Rev. 1121, 1136 (1966).

take place in Delaware.⁵⁸ Sections 3104(c)(1), (c)(2), and (c)(3) of 10 *Del. C.* § 3104 have been deemed to be specific jurisdiction provisions.⁵⁹

All Plaintiffs here reside outside Delaware, and allege that they were exposed to asbestos-containing products outside Delaware. The Plaintiffs do not allege that their injuries arose from Dana Companies' contacts with Delaware. Moreover, as the evidence developed on the record here indicates, Dana Companies is a Virginia Corporation. Under these facts, Delaware does not have specific jurisdiction over Dana Companies.

E. Delaware does not have general jurisdiction over Dana Companies

Subsection (c)(4) of 10 *Del. C.* § 3104, pertains to general jurisdiction in cases where the cause of action is unrelated to Delaware contacts.⁶⁰ As discussed above, general jurisdiction is premised on a defendant's forum contacts that are unrelated to the plaintiff's injury. Only where contacts are continuous and systematic, and where the defendant is at home in the state, does exercising personal jurisdiction satisfy due process.⁶¹ Deciding what constitutes substantial contacts requires both an absolute and a relative analysis.⁶²

The Court finds that Dana Companies does not have the type of continuous and systematic types of contacts necessary, and is not otherwise found "at home" in Delaware. In summary, Dana Companies is incorporated in Virginia. Dana Companies has no directors, officers or employees resident in Delaware. Moreover, Dana Companies does not currently derive any income from Delaware. There is no evidence that Dana Companies presently transacts any business in Delaware other than liquidating claims through litigation, and only 1%

⁵⁸ *Boone* at 1155 (citing *Colonial Mortgage Serv. Co. v. Aerenson*, 603 F.Supp. 323, 327 (D. Del. 1985)).

⁵⁹ *Id.*

⁶⁰ *Boone* 742 A.2d at 1155.

⁶¹ *Ali*, 2014 WL 3796619, at *3.

⁶² *Id.* at *4.

of Dana Companies' active litigation takes place in Delaware.⁶³ Dana Companies is a subsidiary of Dana Holdings, a Delaware Corporation; however, as discussed below, the parent's contacts do not have any bearing on whether exercising general jurisdiction over Dana Companies comports with due process.

Therefore, the operations of Dana Companies are not so substantial and of such a nature as to render the corporation at home in Delaware.

F. DANA COMPANIES' SUCCESSOR STATUS TO DANA CORPORATION DOES NOT SUBJECT DANA COMPANIES TO JURISDICTION IN DELAWARE

Plaintiffs contend that Dana Companies' successor status to Dana Corporation creates jurisdiction over Dana Companies in Delaware, "due, in part, to the fact that it is undisputed that Dana Corporation, Dana Companies LLC's predecessor in interest, was a lawful Delaware Corporation until the late 2000s."⁶⁴ This is incorrect. According to the bankruptcy documents provided by Defendants, Dana Corporation was incorporated in Virginia.⁶⁵

The Court has not been presented with any other evidence that Dana Corporation had such extensive contacts with Delaware, as to be subject to the jurisdiction – specific or general -- of Delaware.⁶⁶ This Court has not seen sufficient evidence to find that Delaware would have had

⁶³ See, e.g., *Bell Helicopter v. C & C Helicopter*, 295 F.Supp.2d 400 (D. Del. 2002).

⁶⁴ Plaintiffs' Supplemental Memorandum in Opposition to Defend Dana Companies LLC's Motion to Dismiss for Lack of Personal Jurisdiction, Nov. 3, 2014, at ¶4.

⁶⁵ Third Amended Disclosure Statement, *In Re Dana Corp. et al.*, No. 06-10354, at 1 (Bankr. S.D.N.Y. October 23, 2007).

⁶⁶ Plaintiffs also contend in part that Dana Companies' Motion must fail because it is based on disputed facts. To support this allegation Plaintiffs cite extensively to the July 22, 2014 deposition of the corporate representative. The Court has reviewed in full the deposition of the corporate representative and has found that while there are disputed facts, these facts are not relevant or material to the Motion. For example, the corporate representative could not remember how many subsidiaries Dana Companies had, however a chart had been produced for Plaintiffs. Moreover, the subsidiaries were all shell companies which had no employees or facilities and did not manufacture anything. The corporate representative had never seen any retainer agreements between Dana Companies and the attorneys retained to defend Dana Companies in the asbestos matters, thus the corporate representative could not tell whether those retainer agreements had a choice of law provision favoring Delaware. The corporate representative did not know with certainty but believed that "probably" the documents about Spicer clutches were in the repository that Dana Companies specifically created to house all asbestos documents.

personal jurisdiction over Dana Corporation, and thus by extension over Dana Companies, its successor in interest.

G. DANA HOLDINGS' INTEREST IN DANA COMPANIES DOES NOT PROVIDE A BASIS FOR PERSONAL JURISDICTION

Dana Companies is a wholly-owned subsidiary of Dana Holding, a Delaware corporation. Plaintiffs contend that Dana Companies should be subject to personal jurisdiction Delaware because its sole member is a Delaware corporation. Whether the presence of a sole member in the forum jurisdiction will, without more, subject the limited partnership or limited liability corporation to *in personam* jurisdiction is a question that turns on the further question of whether the law creating the entity treats it as a jural entity.⁶⁷

In *Boston Scientific Corp. v. Wall Cardiovascular Technologies, LLC*, the defendant was formed under Texas law and, under Texas law, the defendant was treated as an entity having a distinct legal existence.⁶⁸ However, one of its members was subject to the personal jurisdiction of Delaware.⁶⁹ The U.S. District Court for the District of Delaware found that the Texas Limited Liability Company Act states that a “member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member's right against or liability to the limited liability company.”⁷⁰ Dana Companies, was formed under Virginia law, which expressly treats LLCs and members of LLCs as separate entities.⁷¹

Next, Plaintiffs contend that Dana Holding dominates and controls Dana Companies, thus defeating any jurisdictional defense. This argument fails as a threshold matter. As established in

⁶⁷ *Boston Scientific Corp. v. Wall Cardiovascular Technologies, LLC*, 647 F. Supp. 2d 358, 368 (D. Del. 2009) (citing *Carlton Invs. v. TLC Beatrice Int'l Holdings, Inc.*, 1995 WL 694397, at *11 (Del. Ct. Ch. Nov. 21, 1995).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Va. Code § 13.1-1009 & 1020.

Ali v. Beachcraft Corp., this Court does not have subject matter jurisdiction to pierce the corporate veil.⁷² Moreover, the Court has not been presented with any evidence that clearly shows that Dana Companies is an alter ego or a mere instrumentality of Dana Holdings.⁷³

V. CONCLUSION

Based on the above, Defendant Dana Companies LLC's Motion to Dismiss Based on Lack of Personal Jurisdiction is hereby **GRANTED**.

IT IS SO ORDERED.

/s/ *Eric M. Davis*

Eric M. Davis
Judge

⁷² *Ali*, 2014 WL 3706619 *3, (citing *Sonne v. Sacks*, 314 A.2d 194 (Del. 1973)).

⁷³ *See, e.g.*, Stringham Depo. at 205-10 (Dana Companies operates separately from Dana Holdings and has its own (i) board of directors, (ii) officers and (iii) bank accounts); Confirmation Order at 15-25 (finding that Dana Companies is adequately capitalized).

EXHIBIT A

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

IN RE: ASBESTOS LITIGATION

Eddie Anderson	:	13C-10-168
Thomas Anderson	:	13C-03-076
Ray Anderson	:	13C-12-168
Patrick Archer	:	13C-05-346
James Ardis	:	13C-10-020
Thomas Armstrong	:	12C-09-004
Vincenzo Aveni	:	14C-06-037
Ronald Baker	:	12C-01-114
Joseph Bearden	:	12C-12-242
David Beatty	:	11C-12-122
John Bello	:	14C-01-289
Robert Bills	:	13C-05-253
Elsie Bozell	:	12C-04-194
Rollin Brandenburg	:	13C-09-167
Betty Breazeale	:	12C-05-234
Ernest Briggs	:	12C-05-141
Gary Brohl	:	12C-01-172
Norman Buseth	:	13C-08-014
Raymond Butterfield	:	13C-04-139
Roger Carter	:	11C-12-249
James Carter	:	13C-04-148
Jacqueline Caton	:	11C-06-169
Grady Church	:	13C-09-140
Kyles Clement	:	12C-01-254
Wendell Coats	:	13C-08-143
Robert Colegrove	:	11C-12-210
Maurice Coltey	:	12C-06-155
Willard Conklin	:	13C-09-230
Michael Covine	:	13C-10-181
Darrell Dahl	:	13C-01-117
Gary Davidson	:	13C-11-029
James Davidson	:	13C-07-050
Randall Davies	:	13C-05-107
Kenneth Davis	:	14C-03-026
Paul Dean	:	13C-12-257
Leon Delikat	:	12C-03-137
Wayne Dropiewski	:	14C-04-274

Arvin Duke	:	13C-01-125
James Eads	:	13C-10-032
Michael Eberhard	:	13C-09-162
Terry Engle	:	13C-09-202
John Escherich	:	11C-04-023
Laron Forrister	:	11C-12-211
Glenda Frederick	:	11C-05-187
Charles Gates	:	12C-04-037
James Gill	:	13C-04-091
Roy Girten	:	13C-10-098
Sarah Glammeyer	:	11C-10-249
Walter Godfrey	:	14C-03-079
Henry Godwin	:	13C-09-075
Richard Greenwell	:	13C-11-203
Stephen Gregory	:	13C-10-083
Mitchell Grooms	:	12C-02-017
Arthur Gutierrez	:	13C-08-108
Earl Hagerty	:	11C-04-060
William Hardy	:	14C-01-024
Nathaniel Harris	:	14C-03-220
Robert Harris	:	13C-09-017
Leroy Harrison	:	13C-09-042
Herbert Hatch	:	11C-10-141
Richard Hayes	:	12C-09-115
Hershel Haynes	:	13C-12-024
Robert Henry III	:	13C-09-126
Willard Higdon	:	13C-12-273
Donald Hinthorn	:	12C-05-191
William Hobbs	:	11C-11-188
Billy Hollon	:	12C-05-157
Arlyn Holstege	:	14C-06-038
James Hoyt	:	12C-08-134
Mary Hudson	:	14C-03-247
Johnny Hunter	:	13C-08-267
Ronald Hunter	:	13C-05-032
Jonathan Johnson	:	13C-10-085
Mitchell Jones	:	11C-12-192
Lawrence Kahn	:	13C-10-184
Ralph Kamsch	:	11C-10-250
Theodore Kawasaki	:	13C-11-314
Warren Kimber	:	12C-11-047

Garland Lankford	:	13C-03-197
John Leach	:	11C-11-230
Charles Lilly	:	12C-01-237
Frank Lolli	:	13C-03-179
Jimmy Long	:	13C-11-277
Theron Lorimor	:	12C-03-249
Robert Malone	:	13C-11-323
Luther Marlow	:	14C-01-187
Ann Martin	:	13C-10-290
Charles Massie	:	13C-06-091
Douglas Massingale	:	13C-10-208
Duane Mawdsley	:	14C-01-040
David McClure	:	13C-09-215
Ronald McCurley	:	11C-03-117
James McCutcheon	:	13C-05-080
Billy McDuffie	:	11C-04-210
William McLaurin	:	11C-06-294
George Moitke	:	13C-09-163
Clarence Morris	:	11C-12-191
James Muse	:	13C-06-232
William Naugher	:	13C-12-098
Dale Neumann	:	13C-08-146
Doye Noles	:	12C-03-222
Herbert Ostrander	:	12C-03-265
Glenda Packard	:	11C-06-276
James Pearson	:	12C-12-152
Leo Pfeiffer	:	11C-04-081
Charles Pieratt	:	12C-07-354
Ray Pope	:	11C-11-125
Russell Purrington	:	14C-03-279
Marguerite Riley	:	13C-04-100
Julius Roberts	:	11C-09-204
Hipolito Rodriguez	:	14C-01-112
Randy Rymal	:	13C-08-036
Paul Scaramella	:	14C-03-272
John Schantz	:	12C-08-319
Harold Schurmann	:	14C-01-154
Dennis Scott	:	13C-05-324
Walter Shaffer	:	13C-05-119
Raymond Sizensky	:	14C-03-040
Gregory Smith	:	13C-09-040

Norman Smith	:	13C-01-045
Anthony Smith	:	12C-06-095
Glenn Snider	:	14C-01-284
Lloyd Soliday	:	14C-05-017
Franklin Spencer	:	13C-06-086
Nathaniel Stallings	:	13C-07-320
Richard Strickland	:	13C-10-156
Harry Taylor	:	11C-11-187
Garnet Thacker	:	11C-07-169
Donald Thornton	:	14C-05-224
Sue Thornton	:	12C-05-015
Allen Toothman	:	13C-11-219
Allen Trimp	:	14C-04-026
Ernest Vanatta	:	12C-12-162
Michael Vann	:	13C-03-077
William Vaughan	:	13C-04-265
James Walker, Jr.	:	12C-02-165
Grace Watts	:	13C-12-061
William Weaver	:	13C-09-166
Frank Wesson	:	12C-12-021
Henry White	:	13C-12-086
Richard Wildasin	:	11C-06-221
Charles Williams	:	11C-09-129
Raymond Wilson	:	13C-11-276
Dennis Wink	:	14C-02-207
Cecil Wright	:	14C-01-041
Samuel Zook	:	13C-12-181