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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAYTON SUPERIOR CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	No. 08 C 4093
)	
SPA STEEL PRODUCTS, INC.,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Dayton Superior Corporation ("Dayton") seeks to hale Spa Steel Products, Inc. ("Spa") into this District Court to defend against Dayton's claim that Spa owes it nearly \$1.3 million for goods sold and delivered during the 2006-07 time frame. Spa challenges its amenability to suit here under the Illinois long-arm statute ("Act," 735 ILCS 5/2-209) or, alternatively, seeks a 28 U.S.C. §1404(a) ("Section 1404(a)") transfer to its home base in New York. With that challenge now fully briefed, it is ripe for decision.

As a result of the Act's amendment that extended its reach to the outermost boundaries set by the Due Process Clause, any more restrictive pre-amendment cases in Illinois lose their independent force, and the inquiry into personal jurisdiction telescopes into a straightforward due process analysis. In that respect it is Dayton's burden to "mak[e] out a prima facie showing of the existence of personal jurisdiction" (Citadel Group Ltd. v. Washington Regional Med. Ctr., 536 F.3d 757, 760 (7th

Cir. 2008)). Indeed, Citadel Group serves as a focal point for the current inquiry, for in holding the defendant there subject to suit in this judicial district our Court of Appeals distinguished the case that this Court finds controlling under the circumstances of this action, Lakeside Bridge & Steel Co. v. Mountain State Constr. Co., 597 F.2d 596 (7th Cir. 1979).

There is no question that Spa never budged (either literally or figuratively) from its New York base: It placed its orders from there, it received the ordered materials at various locations there (either at its own place of business or at sites where it was carrying out its business), and its only contacts with Illinois were electronic--e-mails and telephone calls, each at long distance, to an administrative office maintained by Dayton in Illinois. Indeed:

1. All of Spa's purchase orders were sent to Dayton at its Columbus, Ohio office.¹
2. In accordance with Dayton's own written instructions in each of its invoices, payment of those

¹ Take a look at Dayton's attached website, which (1) identifies its home office (unsurprisingly) as located in Dayton, Ohio, (2) refers to its "dependable delivery of technically-superior construction products from thousands of Dayton Superior distributor locations" and (3) refers (among other of those locations) to what it calls "Symons Headquarters" in Elk Grove Village, Illinois. That website in turn links to an extended Symons website that identifies a host of "Symons representatives" around the country. Spa has stated without contradiction that it never dealt with anyone under the Symons rubric--just with Dayton as stated in the text.

invoices was directed to be made to Dayton at a post office box in Cincinnati, Ohio.

3. It was obviously immaterial to Spa from which of Dayton's "thousands of Dayton Superior distributor locations" the Spa orders were filled. In fact, this Court's review of the 23 invoices attached as Ex. 1 to Dayton's response discloses that although Dayton chose to make the majority of shipments of the ordered materials from Kankakee, Illinois, it also chose to make four of its shipments from Kansas City, Kansas, one from Miamisburg, Ohio, three from Allentown, Pennsylvania and two from Rialto, California.

That congeries of facts bears a startling resemblance to the situation that led our Court of Appeals to reject in personam jurisdiction in Lakeside Bridge. What the court stated there could just as well have been written for this case. After saying that, just as in this case, "The principal contact relied upon here as a basis for jurisdiction is performance of contractual obligations by the plaintiff, not the defendant, in the forum state" (597 F.2d at 601), the Lakeside Bridge court engaged in an extended and thoughtful discussion by the late Judge Philip Tone, followed by this language (id. at 603, quoted in Citadel Group, 536 F.3d at 763) (the following quotation has been adapted to the facts of this case):

Although [Spa] in a sense caused the activity in [Illinois] by placing the order, the contract between the parties left [Dayton] in absolute control over where it would conduct that activity, and it made this decision and conducted the activity unilaterally.

"Could just as well have been written for this case" is in a sense an understatement, for the dismissal of this case for lack of in personam jurisdiction flows a fortiori from the analysis in Lakeside Bridge. What the preceding paragraph quoted from that opinion was followed by this language (597 F.2d at 603 (citation omitted), once again adapted to fit the facts of this litigation):

[Spa's] belief, which we may assume existed, that [Dayton] would choose to perform its contractual obligations in [Illinois] does not constitute an invocation of the benefits and protections of [Illinois'] laws; [Spa] did not "purposefully avail itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

There is no basis for assuming a comparable belief here, particularly given Dayton's varying choices as to the sources of its shipments--yet the defendant prevailed in Lakeside Bridge despite the existence of the assumed belief.

To be sure, Citadel Group, 536 F.3d at 763 speaks of the limited scope to be given to the Lakeside Bridge opinion in light of later developments, while at the same time it reconfirms that "Lakeside has never been overruled" (*id.*). But the parallels between this case and Lakeside Bridge are, as already stated, truly startling. Even more is true: Whatever viability Lakeside

Bridge retains is present here in spades--as already stated, a fortiori.

In sum, Spa's motion for dismissal because of the absence of in personam jurisdiction must be granted. But because counsel for the parties are expected to appear for a previously-scheduled status date on November 17, this Court will then inquire as to whether Dayton would prefer to save the expenditure of another \$350 filing fee by agreeing instead to the transfer of this case to a district court in New York.²



Milton I. Shadur
Senior United States District Judge

Date: November 14, 2008

² What has been said in this opinion obviates any need to address Spa's alternative Section 1404(a) motion, although Spa's most recent submission indicates that the motion would have had compelling force if the dismissal motion were to have been denied.


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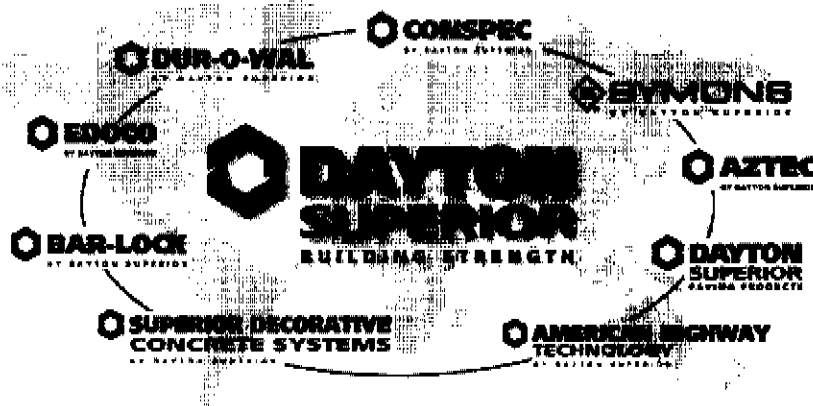
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Contact Dayton Superior

CORPORATE HEADQUARTERS

7777 Washington Village Dr., Ste. 130
Dayton, OH 45466
Phone: 937-428-6360
Corporate Email

TECHNICAL ASSISTANCE

Chemical Tech Service: 866-329-8724
Email
Chemicals

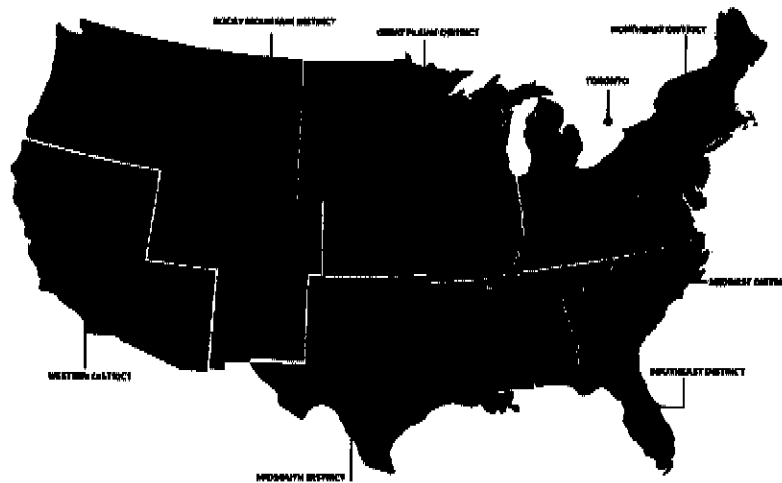
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SYMONS
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City of Industry, CA 91745
1-800-800-7615

All inquiries outside the U.S. should be directed to
DAYTON SUPERIOR INTERNATIONAL OFFICE
Fred Slack, Vice President, International

Dayton Superior
2400 Arthur Avenue
Elk Grove Village, IL 60007
011-847-391-4757 (direct)
01-847-954-4307 (fax)
FredSlack@DaytonSuperior.com



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