MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

DAVID F. SMITH,	)	
	)	
Plaintiff,	)	
	)	Cause No. 1422-CC00457
vs.	)	
	)	Division No. 18
UNION CARBIDE CORP., et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM AND ORDER

The Court has before it Defendant E.I. Du Pont De Nemours and Company's Motion to Dismiss for Lack of Personal Jurisdiction.

Plaintiff David F. Smith filed suit against Defendants for injuries that he allegedly received as a result of exposure to asbestos. Plaintiff alleges in his Petition that he worked as an asbestos insulator from 1951 through 1979 in various states, including Missouri.

Defendant E.I. Du Pont De Nemours and Company ("DuPont") has filed a motion to Dismiss for Lack of Personal Jurisdiction, asserting that Plaintiff states only premises-liability claims against it based on alleged exposure to asbestos fibers in Oklahoma. DuPont further states that Plaintiff does not allege that he worked on or was otherwise exposed to asbestos through DuPont premises in Missouri or that he worked with or around any DuPont products in Missouri. DuPont states that it is a Delaware corporation with its principal place of business in Wilmington, Delaware. DuPont, relying on the case of Daimler AG v. Bauman, 134 S. Ct. 746, 760 (2014), argues that this Court lacks personal

jurisdiction over it because Plaintiff's claims do not arise out of any alleged DuPont contacts with Missouri and because DuPont is neither incorporated in nor has its principal place of business in Missouri. DuPont further asserts that the Missouri contacts of Solae, Inc., which Plaintiff argues is a wholly owned subsidiary of DuPont headquartered in St. Louis, Missouri, do not subject it to general personal jurisdiction in this Court. DuPont further relies on Daimler, 134 S.Ct. at 760, for the proposition that a parent corporation is not subject to general personal jurisdiction simply because its subsidiary does business in the state. Finally, DuPont argues that service of process on its registered agent in Missouri does not provide a valid basis for the exercise of general personal jurisdiction under the Due Process Clause of the United States Constitution.

In response, Plaintiff argues that DuPont conducts continuous and significant business in Missouri through its subsidiary, Solae, as the global headquarters of Solae is based in St. Louis, Missouri. Plaintiff argues that DuPont considers Solae as "part and parcel" of DuPont. Plaintiff notes that Solae and its soy-based industrial products line are related to the litigation in that the DuPont plant in Oklahoma where Plaintiff worked makes or manufactures protein isolates, one of the chief products of Solae. Plaintiff further argues that DuPont is registered to do business in Missouri and has a registered agent here, who was served in this case. Plaintiff also states that he worked in eleven states and that multiple lawsuits in several different states would not

result in the efficient resolution of controversies. Plaintiff concedes that Daimler has limited the application of general personal jurisdiction, but argues that each case should be judged on its unique facts and that jurisdiction should be exercised over DuPont in this case.

Once a defendant raises an objection to jurisdiction, the plaintiff has the burden to show that the circuit court's exercise of jurisdiction is proper. State ex rel. Specialized Transp., Inc. v. Dowd, 265 S.W.3d 858, 862 (Mo.App. E.D. 2008). Plaintiff cannot rely on mere conclusions and must allege facts to carry its burden. City of Fenton v. Executive International Inn, Inc., 740 S.W.2d 338,339 (Mo.App. E.D. 1987).

The Court notes that Plaintiff does not dispute that his claims against DuPont arise out of alleged work in Oklahoma. The Petition also does not allege that DuPont committed any act in Missouri in connection with Plaintiff's claims. Therefore, the Court lacks specific personal jurisdiction over DuPont and will engage in a general personal jurisdiction analysis.

DuPont is a Delaware corporation with its principal place of business in Wilmington, Delaware. Prior to the Supreme Court's decision in Daimler, an inquiry into whether general personal jurisdiction could be exercised over an out-of-state corporate defendant hinged on the plaintiff's ability to assert that the defendant's in-state activities were adequately substantial. See International Shoe Co. v. Washington, 326 U.S. 310, 318, 66 S.Ct. 154, 90 L.Ed. 95 (1945). In Goodyear Dunlop Tires Operations, S.A.

v. Brown, the Supreme Court emphasized that reliance on general personal jurisdiction would only be appropriate when the corporation's contacts were so "'continuous and systematic' as to render [it] essentially at home in the forum State." 131 S. Ct. 2846, 2851 (2011) (quoting International Shoe Co., 326 U.S. at 317). In Daimler, the Supreme Court explained that Goodyear made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." 134 S. Ct. at 760. Daimler states that a corporation's place of incorporation and principal place of business are paradigm bases for general jurisdiction. The Supreme Court further clarified that "the exercise of general jurisdiction in every State in which a corporation engages in a substantial, continuous, and systematic course of business" would be "unacceptably grasping." Daimler, 134 S. Ct. at 761. "A corporation that operates in many places can scarcely be deemed at home in all of them." Daimler, 134 S. Ct. at 762, n. 20. The Supreme Court in Daimler noted, however, that in an "exceptional case a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." 134 S.Ct at 760, n. 19 (internal citation omitted).

Plaintiff, while acknowledging that Daimler limits general personal jurisdiction, relies on State ex rel. K-Mart Corp. v. Holliger, 986 S.W.2d 165 (Mo. banc 1999), for the proposition that jurisdiction is proper where a registered agent is served in Missouri and the corporation conducts substantial and continuous business in Missouri. Plaintiff's reliance on K-Mart, however, is misplaced. In Kmart, K-Mart conceded that "its contacts with Missouri [were] sufficient to satisfy due process requirements." 986 S.W.2d at 168-69. The court in K-Mart noted, therefore, that they "need not address the issue of whether registration of a foreign corporation and designation of an agent for service of process, without more, is always sufficient to confer jurisdiction. The limitation on such assertion may be, of course, the due process clause of the United States Constitution." Id. Here, unlike in K-Mart, DuPont argues in its Motion to Dismiss that the due process requirements of the United States Constitution have not been met. Thus, the Court finds that the due process analysis set forth in Daimler must be applied to determine general personal jurisdiction.

The Court also notes that service on a foreign corporation's registered agent in Missouri pursuant to Section 351.586, RSMo, does not automatically establish general personal jurisdiction. Plaintiff still must show that the exercise of general personal jurisdiction over the foreign corporation complies with the Due Process Clause of the United States Constitution. See Goodyear, 131 S. Ct. at 2853 ("The Due Process Clause of the Fourteenth

Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant.") See also Daimler, 134 S. Ct. at 760-62.

Plaintiff's argument that the Missouri contacts of Solae, which Plaintiff claims is a wholly-owned subsidiary of DuPont, subject DuPont to general jurisdiction is without merit. The United States Supreme Court in Daimler rejected the argument that a subsidiary automatically subjects a foreign corporation to general personal jurisdiction, stating:

> The Ninth Circuit's agency theory thus appears to subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the 'sprawling view of general jurisdiction' we rejected in Goodyear.

134 S. Ct. at 760 (citing Goodyear, 131 S. Ct. at 2856). Missouri courts have noted that "two different corporations are two different persons. . . . This is true even if one corporation is the sole shareholder of the other." Grease Monkey International, Inc. v. Godat, 916 S.W.2d 257, 262 (Mo.App. E.D. 1995). Plaintiff has not demonstrated how Solae's presence in Missouri subjects DuPont, a separate corporation, to general personal jurisdiction under the facts of this case.

In conclusion, the Court finds that DuPont is not incorporated in Missouri, nor does it have its principal place of business here. Plaintiff has not presented evidence indicating that this case is an "exceptional case" under Daimler such that general personal jurisdiction should be extended beyond these paradigmatic forums. See 134 S.Ct at 760, n. 19. Accordingly, the

Court holds, based on the facts of this case, that it lacks personal jurisdiction over DuPont under the Due Process Clause.[1]

ORDER

In light of the foregoing, it is

ORDERED that Defendant E.I. Du Pont De Nemours and Company's Motion to Dismiss for Lack of Personal Jurisdiction be and the same is hereby granted, and Plaintiff's claims against DuPont are hereby dismissed without prejudice at Plaintiff's cost.

SO ORDERED:

_____
Robert H. Dierker
Circuit Judge

Dated: January 12, 2015

[1] The Court observes that it is highly doubtful that DuPont is within the ambit of Missouri's "long-arm" statute, either. Indeed, the Court probably should have dealt with that issue in lieu of the constitutional issue. Indisputably, Plaintiff's claim against DuPont does not arise out of the transaction of any business in this state, the commission of a tort within this state, or the ownership of real property in this state. §506.500, RSMo 2000 & Supp.