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Dilworth Wins Summary Judgment On Behalf Of Clients, Defeating Over \$20 Million In Claimed Alter Ego/Single Employer Liability

Dilworth Paxson won a critical victory when a United States District Judge awarded its clients summary judgment in a case seeking to recover unpaid ERISA withdrawal liability under various theories including alter ego, controlled group, single employer and piercing the corporate veil. If found liable, damages to Dilworth's clients (including interest and attorneys' fees) would have been well in excess of \$20 million.

The litigation arose as the result of the bankruptcy of the Holt Group, Inc., a holding company for several businesses owned by the late Philadelphia businessman, Thomas Holt, Sr., which transported cargo and performed marine terminal operations at several port locations along the Delaware River. One of these companies, NPR, Inc. ("NPR"), operated a steamship line between Puerto Rico and the eastern seaboard of the United States.

Under the Multiemployer Pension Plan Amendment Act of 1980 ("MPPAA"), an amendment to ERISA, an employer incurs statutory liability if it withdraws from a multi-employer pension plan without paying its actuarial share of accrued pension liability. As a result of the Holt Group's bankruptcy, NPR was assessed ERISA withdrawal liability of over \$19 million to two pension funds: the New York Shipping Association – International Longshoreman's Association Pension Trust Fund ("ILA Fund") and the Masters, Mates & Pilots Pension Trust Fund ("MM&P Fund"). The liability to the ILA Fund was subsequently paid by the Government Development Bank of Puerto Rico, pursuant to a Settlement Agreement resulting from the Puerto Rican government's former ownership of NPR.

Both the Government Development Bank and the MM&P Fund instituted lawsuits in the U.S. District Court for the Eastern District of Pennsylvania seeking to recover NPR's withdrawal liability from Thomas Holt, Jr., Leo Holt and Michael Holt (the sons of Thomas Holt, Sr.) and various companies owned by them. *Government Development Bank for Puerto Rico v. Holt*

DEFENSE OF ALTER EGO/SINGLE EMPLOYER LIABILITY

Marine Terminals, et al., No. 02-cv-7825 (E.D. Pa.) (“*GDB* case”); *Brown v. Astro*, No. 04-cv-5031 (E.D. Pa.) (“*Brown*”). Plaintiffs advanced several legal theories, including that the defendants and NPR were within the same “controlled group”; that defendants were “alter egos” of NPR or other companies within the Holt Group; and that defendants and the Holt Group companies operated together as part of a “single employer.” Plaintiffs also sought to “pierce the corporate veil” to reach the Holt sons individually. Dilworth Paxson represented the Holt sons and their companies in both lawsuits.

In ruling on a Motion to Dismiss filed by Dilworth in *Brown*, U.S. District Court Judge Mary A. McLaughlin held as a matter of first impression that ERISA permits a claim based upon the theory that defendants were the alter ego of the primarily liable employer (*i.e.*, NPR), but **not** under the theory that defendants were the alter ego of other companies within the employer’s alleged controlled group (*i.e.* other Holt Group companies). The *Brown* decision should have far-reaching implications with respect to a plaintiff’s ability to pursue alter ego liability within the context of a group of companies allegedly operating as a “single enterprise.” The MM&P Fund trustees subsequently stipulated to place *Brown* into civil suspense pending resolution of the summary judgment motions in the *GDB* case.

In moving for summary judgment in the *GDB* case, attorney Patrick M. Northen of Dilworth Paxson argued that, notwithstanding several years of extensive discovery, no reasonable jury could conclude from the record facts that Defendants and NPR functioned as a single employer or as alter egos of each other. Analyzing the evidence presented by the parties, Judge McLaughlin concluded in a 92-page Memorandum Opinion that Plaintiffs could not support their position under either the “single employer” test derived from federal labor law or the common law “alter ego” test. Among other things, the District Court held that no reasonable jury could find that NPR and the Defendants shared common operations, ownership, management or centralized control of labor relations. The Court held that Defendants and NPR “were more than mere divisions of a fictitiously fractionalized entity; they were entities with separate identities and business purposes.” The Court further noted that “there are no facts supporting an inference that [any] entity engaged in inequitable conduct with an eye to defrauding creditors or the ILA Fund in particular.” The Court also granted summary judgment in favor of the Holt sons on plaintiff’s piercing the corporate veil theory. Judge McLaughlin’s summary judgment decision became final when the plaintiffs voluntarily dismissed their claims against the remaining defendants and elected not to appeal.

In September 2011, Dilworth won another victory when the trustees of the MM&P fund elected to dismiss all of their claims against Dilworth’s clients voluntarily, based upon Judge McLaughlin’s summary judgment ruling in the related *GDB* case.



DEFENSE OF ALTER EGO/SINGLE EMPLOYER LIABILITY