PUBLICATION

Do You Need Another Reason to Avoid a Big (Alter) Ego?

December 21, 2017

Many courts will avoid difficult issues in employment cases – i.e., whether a particular set of facts constitutes discrimination – in favor of legal loophole exits. In other words (and in football terms), courts often choose to punt the ball rather than put forth a risky holding (throw a pass) that could be overturned on appeal (or, intercepted, in keeping with the football jargon). One such manner in which a company can avoid liability from a former employee is by arguing that it is not actually the employer. This argument allows a defendant company to point to another related company and simply say, "it was them, not us." Of course, courts routinely look past this defense and conduct an examination into the corporate reality of and relationship between the two companies. If the court finds that the defendant company is, in reality, a company set up to provide a legal shield for the entity actually controlling the operation, both companies will be considered one and the same for purposes of liability. This is commonly referred to as the alter-ego doctrine.

***Rose Anwar v. Dow Chemical Company et al*, No. 16-2475 (6th Cir. 2017)**
On November 30, 2017, the Sixth Circuit affirmed an order ending a worker plaintiff's gender discrimination suit against chemical manufacturer defendants MEGlobal International (MEG) and Dow Chemical Co. (Dow), stating, in part, that it does not have jurisdiction over MEG. The Sixth Circuit rejected the worker's argument that Dubai-based MEG is the alter-ego of U.S.-based MEGlobal Americas. "[Worker]'s facts simply do not amount to a showing that MEG International, as the alleged parent, controls MEG Americas to such a degree that MEG International is the alter ego of MEG Americas," Judge Bernice Donald wrote.

In so holding, the Sixth Circuit looked to various alter-ego tests in cases involving federal law. Applying this analysis, the Court held that the worker did not sufficiently allege that there were "shared employees (only managers with shared roles), that the same address and phone lines were used, that the two entities completed the same jobs, or that they maintained books, tax returns, and financial statements across the two entities." Most importantly, MEG did not "control the daily affairs" of MEGlobal Americas such that the latter is the alter-ego of the former. As a result, the worker's discrimination claim against MEG was dismissed.

Action Steps

In conclusion, if you and your company ever intend to argue that a related company should bear the brunt of liability, take steps to ensure the related company is not merely an alter-ego of your company. In order to successfully insulate yourself from liability using a related company, try to avoid the following with respect to the related company:

- sharing the same employees and corporate officers;
- engaging in the same business enterprise;
- having the same address and phone lines;
- using or operating from the same assets;
- completing the same jobs;
- maintaining the same books, tax returns, and financial statements; and
- exerting control over the daily affairs of the related company.

As the title suggests, it's not very beneficial – mentally, legally, or fiscally – to maintain a big ego. Please contact the author and/or Baker Donelson should you have any questions or legal needs relating to any future corporate structuring or anticipated liability.