4 PJI 27 | MISCELLANEOUS ISSUES - ALTER EGO - SUBSIDIARY AS ALTER EGO OF PARENT CORPORATION

In this case, [Plaintiff] claims that [Subsidiary] was the mere instrument or tool of its parent corporation, [Corporation] – what the law calls an alter ego. Should you find that [Plaintiff] has proved this claim by a preponderance of the evidence, the law requires you to disregard the separate status of [Subsidiary] and hold [Corporation] legally responsible for the subsidiary's acts.

Under our free-enterprise economic system, the law permits – even encourages – people, and even other corporations, to form corporations as a way to attract stockholder investments. Parent corporations can invest their money in subsidiary enterprises without risking liability for the subsidiary's acts and transactions. In return, society gets the benefit of jobs and other commercial activity that the subsidiary's business creates. So, in most cases, the status of a subsidiary corporation as a separate legal entity apart from its parent corporation must be respected and preserved.

But this rule is not absolute, and you can disregard the separate status of a subsidiary corporation when the parent corporation uses the subsidiary as a mere tool for the purpose of evading or violating a statutory or other legal duty, or for accomplishing some fraud or other illegal purpose.

To decide whether to treat [Subsidiary] as the alter ego of [Corporation], you should consider:

(a) whether the parent caused the subsidiary's incorporation;

(b) whether the parent and subsidiary have common stock ownership, or directors or officers in common;

(c) whether the business purpose or function of the subsidiary is separate and distinct from the parent;

(d) whether the two entities kept separate corporate books and records (even though they may have filed joint tax returns as required by law);

(e) whether the parent finances the subsidiary or pays the subsidiary's salaries and other expenses;

(f) whether the subsidiary's funds were comingled – or not mingled – with the parent's funds; and

(g) any other factor the evidence disclosed tending to show that the subsidiary was or was not operated as an entity separate from its parent.

You should consider all these factors. No single factor is determinative.

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

To prove that a subsidiary should be treated as the alter ego of its parent corporation, it must be shown that the corporation so controls the operation of the subsidiary as to make it a mere instrumentality of the corporation and that such control is used for the purpose of committing fraud or perpetrating the violation of a statutory or other legal duty. *United Steelworkers of Am. v. Connors Steel Co., 855 F.2d 1499, 1505-06 (11th Cir. 1988)* (federal common law); *United States v. Jon-T Chems., Inc., 768 F.2d 686, 691 (5th Cir. 1985)*.

The Eleventh Circuit has stated that, in order for a court to pierce the corporate veil, "a plaintiff must show (1) that the subsidiary is a mere instrumentality of the parent and (2) improper conduct." *Johnson Enters. of Jacksonville, Inc. v. FPL Group, Inc., 162 F.3d 1290, 1320 (11th Cir. 1998)* (applying Florida law).