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January 10

2014



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Indiana Revisits Fiduciary Shield Doctrine For Only The Third Time

Today's discussion focuses on an often-overlooked doctrine of law known as the fiduciary shield doctrine. This week the Indiana Court of Appeals addressed this doctrine for only the third time in the state's almost two hundred-year history (Indiana became the 19th state in 1816). In the case, *Bowden v. Agnew*, the Bowdens sought to contest judgment against them based on a lack of personal jurisdiction over them. In order to facilitate their argument, the Bowdens invoked the fiduciary shield doctrine. The court's examination of that doctrine is the focus of our discussion here.

We have had previous discussions over the concept of subject matter jurisdiction, but have largely left personal jurisdiction untouched. Subject matter jurisdiction, you might remember, is the ability of a specific court to hear a specific kind of case. The most common form of this is the ability for a case to be brought in a federal court instead of a state court. However, there are many other areas of law that deal with subject matter jurisdiction, such as the ability to bring a claim outside of worker's compensation or outside the rigid procedures of Indiana's Medical Malpractice Act; both are topics we have previously covered.

Personal jurisdiction is the court's authority over individual parties to the

case and not merely the legal claims therein. That is, in order for a court to determine a case, it must have jurisdiction over the parties to that case. This is an unsurprising concept when you think about it. It prevents a person in Indiana who has never been to Delaware, never met anyone from Delaware, and never conducted business through Delaware, from having a case brought against him in a Delaware court. Personal jurisdiction is a much more complicated concept than its sister: subject matter jurisdiction. Generally speaking, for a court to have personal jurisdiction over a person, that person must have purposefully availed himself of the laws of the state in which that court is located. If that sounds like a vague definition, I remind you that I said that it is a complicated concept. As a general rule, if you live in a state, courts in that state have personal jurisdiction over you. If you regularly conduct business in a state, courts in that state will likely have personal jurisdiction over you. This is where the fiduciary shield doctrine comes in.

The doctrine “precludes a state from exercising jurisdiction over an individual sued in his or her personal capacity if the only basis for jurisdiction is his or her contacts with the forum in which he or she was acting solely as a fiduciary of a corporation.” Put simply, if you are an officer of a company that transacts business in a state, the state will have personal jurisdiction over the company, but the state does not gain personal jurisdiction over you simply because you are acting as an officer dealing with a state through that position. Though this may seem like a fairly simple concept, it is one that has drawn much criticism. As the Court of Appeals recognized in a 2006 case – only the second such case to discuss the doctrine in Indiana – that “numerous federal courts have declined to consider its applicability when the state’s long-arm statute is coterminous with the full reach of due process.” An Indiana federal judge went so far as to conclude “that the Indiana Supreme Court ‘would decline to adopt the fiduciary shield doctrine and would not follow the decision of the Court of Appeals of Indiana[.]’”

Before we continue on, I need to touch on what a long-arm statute is and what it means to be “coterminous with the full reach of due process.” Indiana’s long arm statute is laid out in Ind. Trial Rule 4.4(A), which states:

Acts Serving as a Basis for Jurisdiction. Any person or organization that is a nonresident of this state, a resident of this state who has left the state, or a person whose residence is unknown, submits to the jurisdiction of the courts of this state as to any action arising from the following acts committed by him or her or his or her agent:

- (1) doing any business in this state;
- (2) causing personal injury or property damage by an act or omission done within this state;

- (3) causing personal injury or property damage in this state by an occurrence, act or omission done outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue or benefit from goods, materials, or services used, consumed, or rendered in this state;
- (4) having supplied or contracted to supply services rendered or to be rendered or goods or materials furnished or to be furnished in this state;
- (5) owning, using, or possessing any real property or an interest in real property within this state;
- (6) contracting to insure or act as surety for or on behalf of any person, property or risk located within this state at the time the contract was made;
- (7) living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations for alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in the state; or
- (8) abusing, harassing, or disturbing the peace of, or violating a protective or restraining order for the protection of, any person within the state by an act or omission done in this state, or outside this state if the act or omission is part of a continuing course of conduct having an effect in this state.

In addition, a court of this state may exercise jurisdiction on any basis not inconsistent with the Constitutions of this state or the United States.

In short, long-arm statutes provide explicit reasons and grounds for a state to exercise personal jurisdiction over someone. When a long-arm statute is “coterminous” with the full reach of due process, it means that the long-arm statute is in accordance and matches the constitutional limitations of due process. That is because personal jurisdiction has necessary limitations on it that flow from the due process clauses of the U.S. Constitution.

Nevertheless, the Indiana Court of Appeals opted not to do away with the doctrine, but for the first time since 1990, applied it in a case. Applying the doctrine, the court found that Indiana did not gain personal jurisdiction over the Bowdens simply because they were the officers of companies that did business here. Even though “an individual’s contact with a forum exclusively as a corporate officer

or agent cannot, standing alone, give rise to jurisdiction over that person in an individual capacity,” this just means that each defendant’s interactions with the state must be assessed individually.

This is a very important point. Even though the doctrine applies, it does not mean that Indiana does not have personal jurisdiction. All it means is that the court must look beyond the defendants’ employer and must look to what each defendant actually did. Here, the state still had personal jurisdiction over the Bowdens. Relevant to his conclusion was:

The Bowdens were the sole shareholders of Golden Companies and Golden Purchasing and Staffing, and the record reflects that they signed the GAGI operating agreement in their individual capacities. In doing so, the Bowdens acted as entrepreneurs entering into a business relationship with an Indiana resident to create a new business with significant operations in Indiana. Agnew seeks his share of profits from the joint venture which he and the Bowdens agreed to share evenly and which he alleged were converted by the Bowdens for their own personal use. The record reflects that the Bowdens’ contacts with Indiana were not executed solely as corporate officers in their representative capacity and, further, that their closely-held companies were their alter egos.

In light of those considerations, the court determined that the Bowdens had interacted with the state as individuals in addition to their roles as officers in the companies. As such, the state had personal jurisdiction over the Bowdens.

The case reaffirms Indiana’s commitment to the fiduciary shield doctrine despite the growing criticism since its introduction into Indiana jurisprudence in 1990. We shall see if this case finds its way up to the Indiana Supreme Court and we can finally see if Judge McKinney was right when he concluded that the Supreme Court would not adopt the doctrine. My guess is that this case will not end up before the Supreme Court, but we shall see.

Join us again next time for further discussion of developments in the law.

Sources

- *Bowden v. Agnew*, --- N.E.2d ---, No. 49A05-1301-PL-23 (Ind. Ct. App. Jan. 9, 2014).

- *Ryan v. Chayes Virginia, Inc.*, 553 N.E.2d 1237 (Ind. Ct. App. 1990), *reh'g denied, trans. denied, abrogated on related but different grounds by Anthem Ins. Companies, Inc. v. Tenet Healthcare Corp.*, 730 N.E.2d 1227 (Ind. 2000).
- *Intermatic, Inc. v. Taymac Corp.*, 815 F.Supp. 290, 296 (S.D. Ind. 1993).
- *Keesling v. Winstead*, 858 N.E.2d 996 (Ind. Ct. App. 2006).
- Ind. Trial Rule 4.4.

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