

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANE FEND : CONSOLIDATED UNDER
 : MDL 875
v. :
 : E.D. PA CIVIL ACTION NO.
ALLEN-BRADLEY COMPANY, et al. : 17-cv-01701
 :

O R D E R

AND NOW, this 19th day of **November, 2019**, upon consideration of the following motions to dismiss, responses, replies, and supplemental briefs, it is hereby **ORDERED** that:

1. The following motions for leave to file replies are **GRANTED**:
 - o Huntington Ingalls Industries (ECF No. 246)
 - o United Technologies Corporation (ECF No. 250)
 - o Lockheed Martin Corporation (ECF No. 251)
 - o Northrop Grumman Corporation (ECF No. 252)
 - o Avco, Bell Helicopters, and Textron (ECF No. 259)
 - o Rolls Royce Corporation (ECF No. 267)
 - o Sikorsky Helicopter (ECF No. 268)
 - o Pratt and Whitney Canada (ECF No. 273),
2. the motion for joinder (ECF No. 293) filed by Avco, Bell Helicopters, and Textron is **GRANTED**,
3. The following motions to dismiss for lack of personal jurisdiction are **GRANTED** and the Defendants **DISMISSED with**

prejudice pursuant to this Court's opinion in Sullivan v. A.W.

Chesterton, Inc., 384 F. Supp. 3d 532 (E.D. Pa. 2019)¹:

- o Huntington Ingalls Industries (ECF No. 223)
- o Lockheed Martin Corporation (ECF No. 225)
- o Northrop Grumman Corporation (ECF No. 230)
- o Avco, Bell Helicopters, and Textron (ECF No. 239)
- o Rolls Royce Corporation (ECF No. 260)²
- o Sikorsky Helicopter (ECF No. 256),

4. Huntington Ingalls' motions to dismiss counterclaims (ECF Nos. 248, 262) are **GRANTED** in light of the Court's lack of personal jurisdiction, and the counterclaims against it are **DISMISSED with prejudice**,

5. the motion for partial dismissal filed by United Technologies Corp. (ECF No. 224) is **GRANTED**³ and Plaintiff's

¹ The Court has considered the Parties' supplemental briefs on the constitutionality of general personal jurisdiction by compulsory business registration after Daimler AG v. Bauman, 571 U.S. 117 (2014), which was the main issue addressed in Sullivan. The Court does not find the cases cited by Plaintiff to be persuasive or relevant. Therefore, the Court finds no reason to amend its ruling in Sullivan that Pennsylvania's statutory scheme requiring foreign corporations to register to do business and, therefore, to consent to general personal jurisdiction, offends the Due Process Clause and is unconstitutional.

² The evidence shows that Rolls Royce Corp. has never been registered to do business in Pennsylvania. As with the other moving Defendants, Rolls Royce is also not incorporated or headquartered in Pennsylvania, and Plaintiff's alleged related injuries did not occur in Pennsylvania. Therefore, even without this Court's ruling in Sullivan, there is no basis to exercise general or specific personal jurisdiction over this Defendant.

³ In its motion to dismiss, United Technologies Corp. ("UTC") claims that Plaintiff has failed to establish liability based on UTC being the parent, successor, or alter ego of two

additional Defendants, Pratt & Whitney Canada ("PWC") and Sikorsky. UTC does not challenge its direct liability. UTC alleges that PWC is a wholly-owned subsidiary of UTC and that Sikorsky is a former subsidiary of UTC.

In the amended complaint, Plaintiff claims baldly that "United Technologies owned or was successor in interest to Sikorsky," "United Technologies owned Pratt and Whitney and Pratt & Whitney Canada. These were mere creators [sic] and alter egos of United," and "Pratt & Whitney Canada (PWC) was a mere division, creature and alter ego of Pratt & Whitney and/or United Technologies. United [d]ivided the Pratt & Whitney business between the larger engines made in America and the smaller ones made by PWC." ECF No. 213 ¶13(x), (z).

First, "a parent corporation neither is required to supervise its subsidiary nor is liable for the wrongful acts of a subsidiary." In Re Suboxone Antitrust Litigation, 13-md-2445, 2017 WL 4810801 at *9 (E.D. Pa. Oct. 25, 2017) (citing Belmont v. MB Investment Partners, Inc., 708 F.3d 470, 490 (3d Cir. 2013)). Therefore, UTC is not liable solely as a parent.

Second, UTC cannot be Sikorsky's successor because Sikorsky is still in existence. Id. at *7 ("If the original entity still exists, however, there is no successor, and therefore, no successor liability.") (citing Norfolk S. Ry. Co. v. Pittsburgh & W. Va. R.R., 153 F. Supp. 3d 778, 807 (W.D. Pa. 2015)).

Third, Plaintiff has failed to adequately plead alter ego liability in regards to these parties. Alter ego liability is reserved for extreme circumstances where the parent "controls the day-to-day operations of the subsidiary such that the subsidiary can be said to be a mere department of the parent." Id. at *10 (quoting In re Latex Gloves Prods. Liab. Litig., No. mdl 1148, 2001 WL 964105, at *3 n.10 (E.D. Pa. Aug. 22, 2001)); In re Chocolate Confectionary Antitrust Litig., 602 F. Supp. 2d 538, 571 (M.D. Pa. 2009). A plaintiff must plead facts supporting an allegation that the subsidiary is a mere sham corporation. In Re Suboxone, 2017 WL 4810801 at *11. There is a strong presumption against such liability. Id. In determining whether two entities are mere alter egos, courts consider factors such as: "(1) gross undercapitalization; (2) failure to observe corporate formalities; (3) non-payment of dividends; (4) insolvency of the debtor corporations at the time; (5) siphoning of the corporation's funds by the dominant stockholder; (6) absence of corporate records; and (7) whether the corporation is merely a façade for the operations of the dominant stockholder." Id. at *10 (citing United States v. Pisani, 646 F.2d 83, 88 (3d Cir. 1981)).

claims imputing liability to UTC for injuries allegedly caused by Pratt & Whitney Canada and Sikorsky, as well as her claim for punitive damages, are **DISMISSED**, and

6. the motion to dismiss filed by Pratt & Whitney Canada (ECF No. 269) is **GRANTED** and Pratt & Whitney Canada is **DISMISSED with prejudice**.⁴

Here, Plaintiff's allegations of alter ego liability in the amended complaint are conclusory, insufficient, and devoid of any factual support. Therefore, the claims cannot survive dismissal.

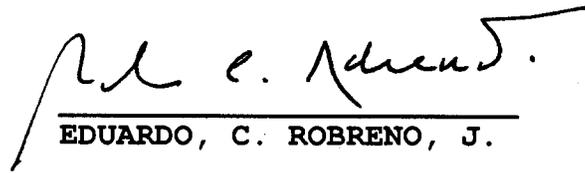
In her response, Plaintiff contends that alter ego liability exists because there is evidence that the entities at issue substantially intermingle their affairs, citing: (1) a webpage describing PWC and Sikorsky as "segments" of UTC; (2) a Wikipedia page ascribing a statement to the President of Pratt & Whitney that if Canada withdrew business from PWC, it could move operations elsewhere; and (3) an alleged news release that UTC had agreed to sell Sikorsky to Lockheed Martin. Even if the Court were to accept these extra-complaint unauthenticated documents (which it does not), they lay absolutely no foundation for the requirements of alter ego liability as described above.

Finally, UTC seeks the dismissal of Plaintiff's claim for punitive damages. The Court will grant dismissal of this "claim" in that punitive damages are unavailable in maritime wrongful death and survival actions. The Dutra Grp. v. Batterton, 139 S. Ct. 2275, 2289-90 (2019) (citing Miles v. Apex Marine Corp., 498 U.S. 19 (1990)).

⁴ PWC contends that the Court lacks general and specific personal jurisdiction over it because it is not incorporated or headquartered in Pennsylvania, it has never registered to do business in Pennsylvania, and the injuries it is alleged to have caused did not happen in Pennsylvania. Plaintiff contends that personal jurisdiction exists over UTC, and because PWC is an alter ego of UTC, it exists over PWC as well. As discussed in footnote 3, Plaintiff has failed to adequately plead or support allegations of alter ego liability. Therefore, this Court lacks personal jurisdiction over PWC.

Finally, the Court will not grant Plaintiff's request for jurisdictional discovery. Her completely inadequate pleading of alter ego liability indicates to the Court that such

AND IT IS SO ORDERED.


EDUARDO, C. ROBRENO, J.

discovery would merely be an impermissible fishing expedition. See Eurofins Pharma US Holdings v. BioAlliance Pharma SA, 623 F.3d 147, 157 (3d Cir. 2010) (“A plaintiff may not, however, undertake a fishing expedition based only upon bare allegations, under the guise of jurisdictional discovery.”); In re Chocolate, 602 F. Supp. at 572 (providing that to obtain jurisdictional discovery “Plaintiffs must identify particular facts that demonstrate the likelihood of contacts sufficient to corral defendants within the court’s jurisdiction”).