

Fiduciary Shield Doctrine: No Jurisdiction over Director in Rescission Action

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A federal court in Texas has held that, absent additional contacts with Texas, the defendant's status as a director or officer of a Texas corporation did not create personal jurisdiction over the director or officer in a rescission action. *Admiral Ins. Co. v. Briggs, et al.*, No. 3:02-CV-0310-P, 2002 U.S. Dist. LEXIS 12030 (N.D. Tex. July 2, 2002). The court denied another director's motion to dismiss, finding that it had personal jurisdiction because the underlying securities action alleged that the director committed an intentional tort in Texas.

The insureds, two directors of a Texas corporation, were named as defendants in the underlying securities and real estate fraud action and a derivative action. One of the insureds was a director of the corporation and a citizen of California. The other insured was the president and chief executive officer of the company and a citizen of Virginia. The insureds sought coverage for the underlying litigation under a directors and officers liability policy. The insurer denied coverage based on material misrepresentations in the application process and based on a breach of the cooperation clause. Thereafter, the insurer filed a coverage action in Texas federal court. Both insureds claimed that the Texas court lacked personal jurisdiction under the fiduciary shield doctrine because their only contacts with Texas were made in their capacity as directors and officers of the corporation. The fiduciary shield doctrine provides that a state cannot exercise personal jurisdiction over corporate directors and officers if their only contacts with the state arise out of activities undertaken in their capacity as directors and officers.

The court first observed that the transaction of business on behalf of a Texas corporation as a corporate director or officer is not sufficient to establish personal jurisdiction under the fiduciary shield doctrine unless the director or officer committed fraudulent or wrongful acts that are personally beneficial in his or her capacity as a corporate officer or director - the fraud/alter ego exception. With respect to the California insured, the court found that the insurer had not shown any additional contacts with Texas that would establish personal jurisdiction. Moreover, the court rejected the insurer's argument that the fraud/alter ego exception to the fiduciary shield doctrine should apply. The court so held because fraud must be pled with particularity, and the underlying complaints contained only bare allegations of fraud without any specific instances of fraud by the California insured. Moreover, the court rejected the insurer's argument that the court had personal jurisdiction because the California insured had purposefully availed himself of Texas insurance law by requesting a defense pursuant to Texas insurance law in the underlying Texas case.

The court, however, did find personal jurisdiction over the Virginia insured based on the allegations of the underlying litigation that the Virginia insured tortiously interfered with a Texas citizen's lien on Texas property. The court observed that the Texas long arm statute specifically provided for personal jurisdiction over a nonresident who commits a tort in Texas. Despite the Virginia insured's minimal contacts with Texas, the court found that committing an intentional tort in Texas and the fact that the coverage action related to or arose out of the intentional tort was sufficient to support the exercise of personal jurisdiction over the insured. In so holding, the court recognized that the fiduciary shield "is removed if the individual's personal interests motivate his actions." Moreover, the court found that traditional notions of fair play and justice supported the court's exercise of jurisdiction because the Virginia insured could have reasonably foreseen being brought into a Texas court as a result of committing an intentional tort in Texas and because Texas had a strong state interest in "redressing" injuries that occur in Texas.