

Cigna Corp. v. Superior Court of San Diego County, No. D041359 (Cal.App. Dist.4
07/16/2003)

[1]

COURT OF APPEAL - FOURTH APPELLATE DISTRICT DIVISION ONE STATE
OF CALIFORNIA

[2]

D041359

[3]

2003.CA.0006714

[4]

July 16, 2003

[5]

CIGNA CORPORATION, PETITIONER,

v.

THE SUPERIOR COURT OF SAN DIEGO COUNTY, RESPONDENT; AMERIMAX
FLOOD CERTIFICATION, L.L.C., REAL PARTY IN INTEREST.

[6]

Proceedings in mandate after motion to dismiss denied. William R. Nevitt, Jr., Judge.
Petition granted with directions. (San Diego County Super. Ct. No. 781497)

[7]

The opinion of the court was delivered by: Haller, J.

[8]

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

[9]

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying
on opinions not certified for publication or ordered published, except as specified by rule
977(b). This opinion has not been certified for publication or ordered published for
purposes of rule 977.

[10]

Cigna Corporation (CIGNA) petitions for a writ of mandate ordering the trial court to
grant its motion to quash service of summons and the complaint for lack of personal
jurisdiction. We issue the writ of mandate, and order the trial court to vacate its denial of
the motion to quash. We remand for the court to make a determination whether the record
supports general jurisdiction over CIGNA, subject to the conclusions expressed in
Discussion sections III and IV.

[11]

FACTUAL AND PROCEDURAL BACKGROUND

[12]

Background

[13]

In 1996, Amerimax Flood Certification, Inc. (Amerimax) operated a business providing
property owners with certifications determining whether real property was within
government-designated flood hazard zones. In October 1996, Amerimax sold the assets
of this business to Cigna Flood Services, Inc. (Cigna FIS) *fn1 under a written Asset
Purchase Agreement (Agreement). In the Agreement, Cigna FIS agreed to pay \$1.5
million at closing, and to make payments from 1997 through 2001, based on a percentage

of certain earnings realized by the business during that period (contingent payments). These earnings were known as EBITDA, which is an abbreviation for earnings before interest, taxes, depreciation, and amortization. During the next several years, Cigna FIS allegedly paid no contingent payments to Amerimax, claiming it had a negative EBITDA.

[14]

The Complaint

[15]

In January 2002, Amerimax sued Cigna FIS and its parent corporation, CIGNA, and others, alleging tort and contract causes of action pertaining to Cigna FIS's failure to pay any contingent payments. As to CIGNA, the complaint alleged three causes of action: fraud, breach of fiduciary duty, and interference with contractual relations.

[16]

In the fraud cause of action, Amerimax alleged that CIGNA, Cigna FIS, and an individual defendant entered into a conspiracy to defraud Amerimax by: (1) fraudulently inducing Amerimax to sell the flood certification business for less than its true value through various false representations, including false promises of future participation in the profits; (2) fraudulently inducing Amerimax to accept a lesser closing payment than otherwise would have been accepted, while intending to ensure that no contingent payments would ever be made; and (3) continuing to fraudulently conceal these acts.

[17]

In its breach of fiduciary duty claim, Amerimax alleged the Agreement created an agency relationship between Cigna FIS and Amerimax, requiring Cigna FIS to "act with the utmost good faith" by "keeping fair and accurate records" and "accounting honestly to Amerimax for 'EBITDA,'" and that Cigna FIS and CIGNA "entered into a common plan or design" to breach this fiduciary duty, and to fraudulently conceal Cigna FIS's profits. Amerimax further alleged that CIGNA's central accounting department assumed responsibility for accounting functions pertaining to the EBITDA, and in doing so, breached its fiduciary duty, including by charging expenses to the business that should have been charged to other CIGNA affiliates, creating unfair and inaccurate records from which the profits would be calculated, and failing to have its independent certified public accountant (PriceWaterhouseCoopers) determine the EBITDA.

[18]

In its interference claim, Amerimax alleged that CIGNA "intentionally induced" Cigna FIS to breach the Agreement by using its position of "ownership and/or control" over Cigna FIS to cause Cigna FIS to breach the Agreement in various ways, including by failing to pay Amerimax the proper amount of contingent payments and to accurately account to Amerimax for EBITDA.

[19]

Motion To Quash

[20]

CIGNA moved to quash the summons and dismiss the claims against it for lack of personal jurisdiction. In support, CIGNA submitted a declaration stating that although it owns various subsidiaries that conduct business in California, the corporation itself has no contacts with California. According to this declaration, CIGNA is a public holding company organized under Delaware laws with its principal office located in Philadelphia, Pennsylvania. CIGNA has never been an insurance company or sold insurance products

or services to the public, and has never entered into any agency contracts to do so. CIGNA has never been licensed in California, has no offices in California, and has never conducted any business in California. CIGNA does not have any employees in California, and its employees were not involved in the factual circumstances underlying Amerimax's claim. CIGNA does not solicit the sale of any products or services in California, own or rent any real property in California, pay income tax or other taxes in California, maintain any bank accounts in California, and has not appointed any agent or public official to accept service of process in actions in California.

[21]

In opposition to the motion, Amerimax submitted a lengthy brief containing 131 separately numbered "facts" and 50 separate supporting written exhibits. Among the facts produced was evidence showing: (1) Cigna FIS is an indirectly owned subsidiary of CIGNA; (2) one of CIGNA's "division[s]" - "Cigna Property & Casualty" - conducts business in California, and a corporate organization chart shows Cigna FIS operates under this division; (3) several employees of CIGNA and/or Cigna Property & Casualty participated in the due diligence and/or negotiations leading to the execution of the Agreement; (4) CIGNA "approved" Cigna FIS's purchase of Amerimax; (5) CIGNA acquired Amerimax's service mark as part of the sale between Amerimax and Cigna FIS; (6) John Chou, an attorney employed by CIGNA, wrote a letter to Amerimax's counsel in California stating that PriceWaterhouseCoopers had made a "determination" of the EBITDA; and (7) an entity identified as "CIGNA" advertises in California and maintains a Web site soliciting employees in California.

[22]

Based on these facts, Amerimax claimed jurisdiction was proper on specific and general jurisdiction grounds, arguing that CIGNA purposely availed itself of an economic market in California; CIGNA's various operating subsidiaries physically present in California are alter-egos and/or agents of CIGNA; acts committed by CIGNA in Philadelphia were calculated to injure Amerimax in California; and CIGNA has continuous and systematic contacts with California.

[23]

In reply, CIGNA submitted a declaration of its assistant vice president, explaining the nature of CIGNA's "Property & Casualty" division and the relationship of this division to CIGNA and its subsidiaries. Essentially, this declaration stated Cigna Property & Casualty is not a separate entity, and instead it is a way of grouping certain of CIGNA's subsidiaries under a convenient organizational title and that the "officers" of this "division" are employees of subsidiaries and not of CIGNA. The declaration also stated that CIGNA's indirectly owned subsidiaries provide various insurance products, CIGNA employees perform centralized functions for these subsidiaries, and that these subsidiaries reimburse CIGNA for the cost of these services.

[24]

After considering these papers, the court found Amerimax met its burden to establish specific jurisdiction over CIGNA based on the May 24 letter written by John Chou, an attorney employed by CIGNA, to Amerimax's counsel in California (Chou letter). *fn2 In this letter, Chou was responding to a letter from Amerimax regarding Cigna FIS's alleged breach of the Agreement to deliver quarterly accounting statements to Amerimax regarding the existence of EBITDA. The court found the Chou letter established that

CIGNA "through the conduct of its employee John G. Chou, engaged in intentional actions expressly aimed at California allegedly causing harm, the brunt of which was allegedly suffered - and which the defendant knew was likely to be suffered - in California" and thus established a basis for the court to exercise specific jurisdiction over CIGNA.

[25]

Shortly thereafter, CIGNA moved for reconsideration based on a new allegation in Amerimax's recently-filed first amended complaint in which Amerimax referred to Chou as an agent for Cigna FIS. This allegation stated: "[Amerimax] reasonably believed that [PriceWaterhouseCoopers] had determined the EBITDA, as prescribed by the [Agreement]. John G. Chou, Esq., an agent of Acquirer [Cigna FIS], bolstered this false impression by letter dated 24 May 1999." (Italics added.) CIGNA argued that this allegation constituted an admission that Chou wrote the May 24 letter on behalf of Cigna FIS, rather than CIGNA, and therefore that the letter cannot be used to establish specific jurisdiction over CIGNA. CIGNA also submitted Chou's declaration stating that his May 24 letter concerned only the Cigna FIS-Amerimax Agreement, and that when he prepared the letter, he was "acting as counsel to Cigna FIS," and that he "did not prepare or send the Letter on behalf of CIGNA" Chou further stated that he was "informed and believed" that the costs for the legal services of preparing the letter "were then allocated to each separate entity for [which] I performed legal services."

[26]

The trial court granted reconsideration, but after considering the newly proffered evidence, reaffirmed its prior order. The court found that Amerimax's new allegation did not negate that Chou wrote the letter "acting as an agent of both [Cigna FIS] and [CIGNA]." The court further found Chou's declaration did not undermine its conclusion that Amerimax "met the burden of proving, by a preponderance of evidence, the existence of sufficient minimum contacts." The court stated that it did not base its conclusion on an alter ego theory. In issuing its final order, the court additionally stated it had considered the recently filed California Supreme Court decision in Pavlovich v. Superior Court (2002) 29 Cal.4th 262 and "the situation described in the Chou declaration is not analogous to the interlocking directors and officers discussed in Sonora Diamond Corp. v. Superior Court (2000) 83 Cal.App.4th 523, 548-549."

[27]

Writ Petition

[28]

In this writ petition challenging the trial court's jurisdiction ruling, CIGNA contends the trial court erred in determining the Chou letter provided sufficient foundation for the assumption of specific jurisdiction. In response to our request for supplemental briefing, CIGNA and Amerimax agree the trial court did not reach the issue of whether sufficient grounds existed to support general jurisdiction.

[29]

DISCUSSION

[30]

I. General Principles Governing Jurisdiction Analysis

[31]

"California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States. [Citation.] The exercise of jurisdiction over a nonresident defendant comports with these Constitutions 'if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate "traditional notions of fair play and substantial justice.'" [Citations.] [¶] Under the minimum contacts test, 'an essential criterion in all cases is whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require him to conduct his defense in that State.' [Citations.] '[T]he "minimum contacts" test . . . is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present.' [Citations.] '[T]his determination is one in which few answers will be written in "black and white." The greys are dominant and even among them the shades are innumerable.'" [Citations.]" (Pavlovich v. Superior Court, supra, 29 Cal.4th at p. 268 (Pavlovich).)

[32]

"[T]he plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction.' [Citation.] If the plaintiff meets this initial burden, then the defendant has the burden of demonstrating 'that the exercise of jurisdiction would be unreasonable.' [Citation.] In reviewing a trial court's determination of jurisdiction, we will not disturb the court's factual determinations 'if supported by substantial evidence.' [Citation.] 'When no conflict in the evidence exists, however, the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record.' [Citation.]" (Pavlovich, supra, 29 Cal.4th at p. 273.)

[33]

A party may establish minimum contacts through the defendant's general contact with the state or through the defendant's specific contact as it relates to the allegations of the complaint. (Pavlovich, supra, 29 Cal.4th at pp. 268-269.) Because the trial court found minimum contacts based on specific jurisdiction, we will initially focus on that theory to determine whether the record supports the court's determination.

[34]

II. Specific Jurisdiction

[35]

A. Relevant Legal Principles

[36]

"A court may exercise specific jurisdiction over a nonresident defendant only if: (1) 'the defendant has purposefully availed himself or herself of forum benefits' . . . ; (2) 'the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum'" . . . ; and (3) "'the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'"" (Pavlovich, supra, 29 Cal.4th at p. 269, citations omitted.)

[37]

In Pavlovich, the California Supreme Court recently clarified that the "purposeful availment" element requires a showing the defendant intentionally targeted its allegedly wrongful conduct towards California. (Pavlovich, supra, 29 Cal.4th at pp. 269-273.) "'The purposeful availment inquiry . . . focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily direct his activities toward the forum so that he should expect by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' his contact with the forum. [Citation.]

Thus, the "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts [citations], or of the "unilateral activity of another party or a third person." [Citations.]" (Id. at p. 269.)

[38]

In examining this element in this case, it is well settled that the mere ownership of a subsidiary operating within a state does not show purposeful availment or justify the imposition of jurisdiction over the parent in that state. (Sonora Diamond Corp. v. Superior Court, supra, 83 Cal.App.4th at pp. 540-542 (Sonora Diamond); see Cannon Mfg. Co. v. Cudahy Packing Co. (1925) 267 U.S. 333, 336; DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 1080, 1092.) Instead, a court must find that the parent itself has "purposefully availed itself of the protection and benefits of the forum state" (Sonora Diamond, supra, at p. 552) or that there exists an alter ego or agency relationship between the parent and subsidiary. (Id. at pp. 536-552.) With respect to agency or alter ego theories, there is a presumption of corporate separateness between parent and subsidiary that must be overcome by clear evidence that the parent, in fact, controls the activities of the subsidiary. (Ibid.) It is only in "exceptional cases" that a court may properly invoke jurisdiction over a parent corporation predicated upon the acts of its subsidiaries. (Jemez Agency, Inc. v. CIGNA Corp. (D.N.M. 1994) 866 F.Supp. 1340, 1343; see Sonora Diamond, supra, 83 Cal.App.4th at pp. 536-552.)

[39]

B. The Chou Letter

[40]

CIGNA contends the trial court erred in finding that jurisdiction was proper based on the single act of CIGNA employee, John Chou, in mailing a responsive letter to Amerimax's counsel. We agree this letter is an insufficient ground to support specific jurisdiction.

[41]

First, the letter cannot be attributed to CIGNA because the factual record supports only one reasonable conclusion - that Chou was writing the letter on behalf of Cigna FIS, and not on CIGNA's behalf. Although Chou was a CIGNA employee, CIGNA presented undisputed evidence that it maintained a centralized professional staff that it shared with its subsidiaries and that it charged the cost of these employee services to the particular subsidiary that benefited from the service. Consistent with this evidence, Chou's undisputed declaration states that he was acting solely on behalf of Cigna FIS in writing the letter, and that such services were billed to Cigna FIS. This declaration is supported by the contents of Chou's letter in which he states that he is responding to Amerimax's allegation that Cigna FIS was in breach of the Agreement for failing to deliver quarterly accounting statements to Amerimax. Although the Chou letter refers to Cigna FIS as merely "Cigna," it is clear from the context of the letter that Chou is referring to the subsidiary because - as Amerimax recognized in its complaint - CIGNA was not a party to the Agreement and therefore could not have been in breach of the Agreement.

[42]

It is well established that "directors and officers holding positions with a parent and its subsidiary can and do 'change hats' to represent the two corporations separately, despite their common ownership." (Sonora Diamond, supra, 83 Cal.App.4th at pp. 548-549, quoting United States v. Bestfoods (1998) 524 U.S. 51, 69.) This sharing of employee

services is a normal attribute of parent-subsidary services and is not enough to create personal jurisdiction over the parent. (See *Sonora Diamond*, supra, 83 Cal.App.4th at p. 548-549.) A dual employee is presumed to act on behalf of the corporation for whom the employee claims to act. (See *United States v. Bestfoods*, supra, 524 U.S. at pp. 69-70, and fn. 13.) Thus, a dual employee is presumed to be wearing his or her "subsidiary hat" if the employee claims or appears to be acting on behalf of the subsidiary, and it is the party attempting to show a different status that has the burden of controverting that presumption. (Ibid.)

[43]

Under these principles, we are required to presume that Chou was acting as a Cigna FIS employee. In attempting to rebut this presumption, Amerimax relied solely on evidence showing that Chou was an employee of CIGNA. This evidence is insufficient to meet Amerimax's burden to show specific jurisdiction, i.e., that Chou was acting as CIGNA's employee when he wrote the letter that is the critical nexus to the cause of action alleged in the amended complaint.

[44]

Moreover, even assuming there was a factual basis for the trial court to construe the Chou letter as reflecting CIGNA's direct representations, the letter does not show purposeful availment as recently defined by the California Supreme Court. (*Pavlovich*, supra, 29 Cal.4th at pp. 269-273.) The *Pavlovich* court held that in applying the jurisdictional "effects" test the fact that a defendant knew or should have known that his or her intentional acts would cause harm in the forum state is not enough to establish purposeful availment. (Ibid.) Instead, to satisfy the purposeful availment element, the plaintiff must show "intentional conduct expressly aimed at or targeting the forum state in addition to the defendant's knowledge that his intentional conduct would cause harm in the forum." (Id. at p. 271, original italics.)

[45]

Although the Chou letter is addressed to an attorney in California, it does not evidence any conduct "expressly aimed at or targeting" California. Amerimax produced no evidence showing that Chou (on CIGNA's behalf) sought to obtain any benefits from California, or that Chou knew or suspected that his letter would actually cause harm in California. The letter merely responds to an allegation made by Amerimax regarding the parties' implementation of the purchase agreement. Moreover, there is no allegation or evidence that the letter in fact caused harm in California. In its complaint, Amerimax alleged only that Chou's letter "bolstered" Amerimax's false impression about Cigna FIS's method for calculating the EBITDA.

[46]

Further, neither the fact of its mailing nor the content of the letter is an act "of a nature as to make reasonable the forum state's exercise of jurisdiction over the parent with respect to that act and its consequences." (*Sonora Diamond*, supra, 83 Cal.App.4th at p. 552; see *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 475-476 (*Vons Companies*)). A business is entitled to incorporate and create separate entities and structure its conduct and activities to insulate itself from liability and jurisdiction. (See *Sonora Diamond*, supra, 83 Cal.App.4th at p. 545; *Frank v. U.S. West, Inc.* (10th Cir. 1993) 3 F.3d 1357, 1362.) If we were to say that a parent corporation is subject to jurisdiction in a state merely because its employee wrote a single letter into that state on

behalf of its subsidiary, this would be undermining the fundamental concept that jurisdiction may not be based on the acts of a subsidiary. The trial court erred in ruling contrary to this settled jurisdictional principle.

[47]

C. Other Asserted Contacts Between CIGNA and California

[48]

Amerimax contends that even if the Chou letter was an insufficient basis for specific jurisdiction, there are other contacts between CIGNA and California related to Amerimax's cause of action that support a specific jurisdiction finding. Upon our detailed review of the factual record, we conclude the asserted contacts between CIGNA and California - when considered singly or cumulatively - are insufficient to show CIGNA may properly be subject to specific jurisdiction in this case. We discuss Amerimax's main arguments below.

[49]

First, Amerimax argues that it established specific jurisdiction because CIGNA's "senior managers and officers were personally involved in inducing Amerimax to sell" its flood certification business. To support this assertion, Amerimax cites primarily to evidence showing Richard Major, a CIGNA assistant vice president of business growth and strategy, led the due diligence effort on behalf of Cigna FIS regarding its purchase of Amerimax's business. This involvement included sending at least one letter and one facsimile from Major's Pennsylvania office to principals of Amerimax in California and Texas, and an unspecified number of telephone conversations between Major in Pennsylvania and Amerimax principals in California.

[50]

These contacts do not show CIGNA intentionally directed its activities at California residents, derived benefit from the forum activities, or availed itself of the privilege of conducting activities within the state. (See Pavlovich, supra, 29 Cal.4th at pp. 269-273.) Most fundamentally, the evidence shows that, as with Chou, Major was acting on behalf of Cigna FIS in conducting this due diligence. As reflected in deposition transcripts submitted by Amerimax, Major's responsibilities typically included providing consultation and negotiation assistance and other related support services to CIGNA subsidiaries that were making acquisitions, and such services would be billed to the subsidiaries. Acting in this role, Major did not engage in activity that can be fairly attributed to CIGNA.

[51]

Additionally, the evidence shows at most that Major was involved only in the due diligence stage of the business purchase. There is no evidence that Major was involved in negotiations to purchase Amerimax or made any representation concerning either the purchase of the business or the buyer's obligations after the purchase. Without more, a parent's involvement in a subsidiary's due diligence investigation (the purpose of which is to protect the buyer's own interests) regarding a business located in the forum state does not constitute purposeful availment of the benefits and protections of that state.

[52]

Further, the evidence of Major's contacts with California in conducting the due diligence does not meet an additional element of the specific jurisdiction test - showing that Amerimax's claims involving fraud and breach of fiduciary duty "arise[] out of" or

have ""a substantial connection with"" Major's due diligence investigation. (Pavlovich, supra, 29 Cal.4th at p. 292; see Vons Companies, supra, 14 Cal.4th at p. 452.) Although a defendant's alleged wrongful activity need not arise out of the particular contacts with the forum state to support specific jurisdiction (Vons Companies, supra, 14 Cal.4th at p. 452), where, as here, the claimed contacts are sporadic and minimal, the plaintiff must show a greater relationship between the contact and the claim. (Id. at pp. 455-458; Cassiar Mining Corp. v. Superior Court (1998) 66 Cal.App.4th 550, 556-559.) Under these principles, there was insufficient evidence that the fraud claims arose out of, or were related to, Major's limited contacts with California.

[53]

Amerimax additionally points to evidence of activity by William Palgutt, who Amerimax claims was the president of an entity known as Specialty Insurance Services. Amerimax produced a "Cigna Property & Casualty" corporate organization chart reflecting Palgutt's position with this entity and showing that Specialty Insurance Services is part of the Cigna Property & Casualty organizational structure. According to Amerimax's evidence, shortly before the Agreement was executed, Palgutt traveled to California and met personally with Amerimax principals to discuss Cigna FIS's acquisition of the business. However, this evidence does not establish Palgutt was acting on behalf of CIGNA at this meeting. Moreover, a single meeting in the forum state in the course of contract negotiations does not establish the type of substantial or continuing contacts that demonstrates purposeful availment to show sufficient minimum contacts with the forum.

*fn3

[54]

Amerimax also relies on the fact that CIGNA approved Cigna FIS's acquisition of the business. However, a corporate parent's involvement in the executive operation of its subsidiary does not permit a forum to assume jurisdiction over the parent based on the activities of the subsidiary. (In re Lupron Marketing and Sales Practices Litigation (D. Mass. 2003) 245 F.Supp.2d 280, 291-292; see Kramer Motors, Inc. v. British Leyland, Ltd. (9th Cir. 1980) 628 F.2d 1175, 1177-1178.) The courts reason that supervision and oversight of the subsidiary's major business decisions is a normal attribute of a parent-subsidiary relationship and does not show the type of day-to-day control that would permit jurisdiction over the parent based on the contacts with the subsidiary. (See Sonora Diamond, supra, 83 Cal.App.4th at pp. 546-552; In re Lupron Marketing and Sales Practices Litigation, supra, 245 F.Supp.2d at pp. 291-292.) Consistent with this reasoning, the courts have held that the mere fact that a parent is required to approve a subsidiary's marketing scheme, entry into a new business, or a purchase of another business does not establish the type of parental domination to support jurisdiction over the parent. (See Kramer Motors, Inc. v. British Leyland, Ltd., supra, 628 F.2d at p. 1178; In re Lupron Marketing and Sales Practices Litigation, supra, 245 F.Supp.2d at pp. 291-292; Huang v. Sentinel Government Securities (S.D.N.Y. 1987) 657 F.Supp. 485.)

[55]

Finally, Amerimax argues that specific jurisdiction is proper because as part of the transaction CIGNA obtained assignments of two of Amerimax's former trademarks used in the flood certification business, and CIGNA filed this assignment with the United States patent office. In response to this evidence, CIGNA presented facts showing that it

regularly holds and manages intellectual property for its various subsidiaries and allocates the costs of this service to the subsidiaries, and that it never used the Amerimax trademarks in California. On this record, the fact that CIGNA acquired Amerimax's trademarks did not show purposeful availment. (See *Williams v. Canon, Inc.* (C.D. Cal. 1977) 432 F.Supp. 376, 380 [ownership of a trademark does not establish purposeful availment of a California forum].)

[56]

After examining each of the asserted contacts between CIGNA and California in light of Amerimax's claims against CIGNA, we conclude Amerimax has failed to meet its burden to show sufficient contacts to support the exercise of specific jurisdiction over CIGNA. In reaching this conclusion, this court has taken a substantial amount of time to sift through the voluminous evidentiary record and Amerimax's numerous arguments woven throughout its briefs. To the extent that we have not specifically discussed one of Amerimax's numerous arguments or items of evidence, it does not mean the argument or evidence was not considered by the court. (See *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1263 [a reviewing court need only set forth the principal reasons for its conclusions, and "need not discuss every . . . fact raised by counsel in support of the parties' positions"].)

[57]

III. General Jurisdiction

[58]

Amerimax contends that even assuming we conclude there is insufficient evidence to support a finding of specific jurisdiction, the court's order may be affirmed based on principles of general jurisdiction, which permit a court to exercise personal jurisdiction over a nonresident defendant if the defendant's contacts with the forum state are "substantial . . . continuous and systematic." (*Vons Companies*, supra, 14 Cal.4th at p. 445.)

[59]

CIGNA responds that we need not reach the issue of general jurisdiction because the trial court relied only on specific jurisdiction grounds. In support of this argument, CIGNA cites this court's decision in *Edmunds v. Superior Court* (1994) 24 Cal.App.4th 221, in which we focused solely on the theory of jurisdiction that the trial court found meritorious - specific jurisdiction based on an "effects" rationale. (*Id.* at p. 229.)

Edmunds, however, does not stand for the proposition that a reviewing court need not consider both specific and general jurisdiction grounds where the trial court has erred as to its finding on one ground. In *Edmunds*, we stated the trial court had found that the evidence did not support general jurisdiction and we specifically concluded that substantial evidence supported that ruling. (*Ibid.*)

[60]

In response to our request for supplemental briefing, the parties concede that, unlike in *Edmunds*, the trial court here did not reach the issue of general jurisdiction and did not make an express or implied finding that there were insufficient grounds to find general jurisdiction. CIGNA nonetheless urges us to determine whether the evidence supports general jurisdiction as a matter of first impression because the issues have been fully briefed and "[a] remand could result in considerable delay" Amerimax does not oppose this request.

[61]

Although we are sympathetic to the parties' delay concerns, it would be improper for this court to resolve the general jurisdiction issue because this issue requires the resolution of conflicting facts. (See *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1234.) Most significantly, the parties dispute the factual issues pertaining to the relationship between CIGNA and Cigna Property & Casualty. Amerimax has presented evidence that Cigna Property & Casualty has significant ties with California. Although CIGNA has presented evidence that these ties have no significance because this "division" is not a separate corporate entity and its employees are not employees of CIGNA, Amerimax has presented conflicting evidence in the form of organization charts, SEC filings, and deposition testimony. Based on this evidence Amerimax argues that Cigna Property & Casualty is a part of CIGNA's internal corporate structure.

[62]

Because the resolution of these conflicting arguments requires a fact-based inquiry by a trier of fact, we remand for the trial court to resolve these issues underlying the general jurisdiction question. (See *Ziller Electronics Lab GmbH v. Superior Court*, supra, 206 Cal.App.3d at p. 1234) On a challenge to personal jurisdiction, a trial court must make the initial factual determinations if there are conflicting declarations, and an appellate court may not disturb the court's factual determinations if they are supported by substantial evidence. (*Pavlovich*, supra, 29 Cal.4th at p. 273.)

[63]

For guidance of the court and parties on remand, we note our additional conclusion that Amerimax has failed to produce sufficient evidence supporting general jurisdiction on two asserted grounds. (See *Pavlovich*, supra, 29 Cal.4th at p. 273 [when no conflict in the evidence exists on a particular issue, the question is purely one of law and the reviewing court engages in an independent review of the record].)

[64]

First, Amerimax seeks to impose general jurisdiction over CIGNA based on a theory that its subsidiary, Cigna FIS, acted as its agent. However, as explained at great length in two recent appellate court decisions, jurisdiction under an agency theory requires a showing that the parent maintained day-to-day control over the subsidiary's business. (*Sonora Diamond*, supra, 83 Cal.App.4th at pp. 540-552; *DVI, Inc. v. Superior Court*, supra, 104 Cal.App.4th at pp. 1092-1093.) Upon reviewing the record in the light most favorable to Amerimax, we conclude Amerimax failed to meet its burden to show that CIGNA maintained day-to-day control over Cigna FIS's business. As discussed previously, the fact that CIGNA approved Cigna FIS's purchase of the business and/or that there was a sharing of professional staff in assisting with the purchase and execution of the Agreement, is insufficient to show the type of control that is necessary to support a finding of agency for jurisdictional purposes. (*Ibid.*)

[65]

We reach the same conclusion with respect to Amerimax's contention that there was a basis for the court to exercise jurisdiction under an alter ego theory. This theory requires a showing that there is such a unity of interest and ownership between the two entities that the separate personalities do not in reality exist, and that an inequitable result would occur if the acts in question are treated as those of the parent corporation alone. (*Sonora*

Diamond, supra, 83 Cal.App.4th at p. 538.) There is insufficient evidence in the record to satisfy either of these requirements. Because there are no underlying factual disputes with respect to this matter, we may properly decide this issue as a matter of law.

[66]

IV. Scope of Remand

[67]

To clarify this court's decision for purposes of the remand in the trial court, we summarize our conclusions below.

[68]

We have concluded the record is insufficient to show specific jurisdiction on any basis. Thus, Amerimax may no longer assert jurisdiction arguments on this ground or present evidence seeking to establish this basis of personal jurisdiction. We have further concluded that Amerimax failed to meet its burden to show general jurisdiction on the basis that Cigna FIS is an agent of CIGNA and/or that CIGNA is the alter ego of Cigna FIS. Thus, Amerimax may no longer assert jurisdiction on these grounds.

[69]

On remand, the trial court is directed to determine whether Amerimax has met its burden to show other grounds exist for general jurisdiction, including but not limited to the assertion that Cigna Property & Casualty is part of CIGNA's corporate structure and thus its contacts with California may be attributed to CIGNA, and whether any advertising or internet-based activities by an entity identified as "CIGNA" permit the assumption of general jurisdiction over CIGNA in this case.

[70]

DISPOSITION

[71]

Let a writ of mandate issue directing the superior court to vacate its orders of October 10, 2002, and December 10, 2002, and to determine whether Amerimax has met its burden of showing grounds exist for general jurisdiction consistent with this opinion. The stay issued by this court on March 6, 2003, is vacated. Each party to bear its own costs in the writ proceeding.

[72]

WE CONCUR:

[73]

NARES, Acting P. J.

[74]

McINTYRE, J.

Opinion Footnotes

[75]

*fn1 Cigna Flood Services, Inc. changed its name on several occasions during the relevant times. For convenience, we will refer consistently to the entity that purchased Amerimax as Cigna FIS.

[76]

*fn2 Because of the importance of this letter to the trial court's conclusion, we set forth its substantive contents in full: "This responds to your letters to Diane Duda dated April 20, 1999 and May 13, 1999 in which you have alleged that CIGNA is in breach of the Asset Purchase Agreement for failure to deliver quarterly accounting statements to your client. In point of fact, Section 2.1(b) of the Asset Purchase Agreement (which is the pertinent section of the agreement) does not require CIGNA to deliver quarterly accounting statements. CIGNA is obligated to estimate on a quarterly basis whether any Contingent Payments are due and, if any such estimated Contingent Payments are due, to advance the pertinent amounts to the sellers. CIGNA is obligated neither to provide quarterly accounting statements to the sellers showing the quarterly calculation nor to give notice to the sellers if no quarterly Contingent Payments are due. [¶] In contrast, Section 2.1(b) does contemplate the delivery of an annual determination by PriceWaterhouseCoopers. Diane Duda provided the determination for 1997 to your client by letter dated July 13, 1998. The determination for 1998 has just been completed and provided to your client. Attached for your information is a copy of the determination for 1998, as provided by Diane Duda to your client. [¶] At this point, the likelihood of Contingent Payments being due to the sellers in the next few quarters is remote in view of the magnitude of the accumulated Net Loss for 1997 and 1998. The accumulated Net Loss for 1997 and 1998 is (\$1,185,140)."

[77]

*fn3 Of course, to the extent that the trial court determines on remand that Cigna Property & Casualty was an internal division of CIGNA and its acts could be properly attributed to CIGNA, the analysis of this issue may be affected. (See Discussion sections III. and IV.) But in such event, the issue would turn on the existence of general jurisdiction over CIGNA based on the acts of Cigna Property & Casualty.