UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	MASTER FILE NO. 12-md-02311
In Re: Wire Harness Systems	HON. MARIANNE O. BATTANI
THIS DOCUMENT RELATES TO:	14-14451
Truck and Equipment Dealership Actions	14-00107

OPINION AND ORDER GRANTING MOTION TO DISMISS TRUCK AND EQUIPMENT DEALERSHIP FIRST AMENDED CLASS ACTION COMPLAINT

Before the Court is Defendant Fujikura Limited's ("F-Co") Motion to Dismiss the First Amended Class Action Complaint for Lack of Personal Jurisdiction or, in the Alternative, for Failure to State a Claim. (Doc. No. 70). The Court heard oral argument on October 6, 2015, and because the Court finds jurisdiction is lacking, the motion is **GRANTED**.

I. INTRODUCTION

Trucks and Equipment Dealership Plaintiffs ("TED Plaintiffs") filed their Amended Complaint in May 2015, "on behalf of themselves" and all other similarly situated dealers of medium-duty (Class 4, 5, 6, & 7) trucks and "heavy-duty (Class 8) trucks,

buses, commercial vehicles (excluding automobiles, light trucks, vans, sports utility vehicles, and/or similar motor vehicles sold by automobile dealers), construction equipment, mining equipment, agricultural equipment, railway vehicles, and other similar vehicles" (collectively, "Trucks and Equipment"). (Doc. No. 64, Am. Compl. at ¶ 235). They allege that Defendants, the largest suppliers of Vehicle Wire Harness Systems ("VWHS") globally and in the United States conspired to fix prices from at least as early as January 1, 1999, until the present (Doc. No. 64 at ¶¶ 1, 2). Vehicle Wire Harness Systems act as the central nervous system of vehicles; they "direct and control electronic components, wiring, and circuit boards in a vehicle," and include "vehicle wire harnesses, speed sensor wire assemblies, vehicle electrical wiring, lead wire assemblies, cable bond, vehicle wiring connectors, vehicle wiring terminals, electronic control units, fuse boxes, relay boxes, junction blocks, high voltage wiring, and power distributors." (Id. at ¶ 3).

According to TED Plaintiffs, the alleged conspiracy targeted many Original Equipment Manufacturers ("OEMs"), including Toyota, Honda, Ford, Chrysler, Mitsubishi Motors, Subaru, Fuji Heavy Industries ("FHI"), Isuzu, and Nissan, that manufacture and sell Trucks and/or Equipment directly or through subsidiaries or affiliated companies. (Id. at ¶ 18). Many of the defendant companies under investigation in the automobile component parts cases also manufacture and sell parts for Trucks and Equipment; (id. at ¶ 17); many of the OEMs involved in the automobile WHS conspiracy also manufacture and "sell Trucks and/or Equipment directly or through subsidiaries or affiliated companies;" (id. at ¶¶ 18, 91, 230); and many of Defendants' employees responsible for negotiating the prices and terms for parts,

including Vehicle Wire Harnesses, were involved in sales to Truck and Equipment manufacturers as well as automobile manufacturers (id. at ¶¶ 95, 231).

In their amended complaint, TED Plaintiffs advance specific allegations regarding F-Co. They allege that F-Co directly or indirectly sold or marketed substantial quantities of VWHS throughout the United States and engaged in an illegal price-fixing conspiracy that was directed at, and caused injury to, individuals and businesses in the United States. (Doc. No. 64 at ¶ 51). In June 2012, F-Co pleaded guilty in the United States to conspiring to rig bids for, and to fix, stabilize, and maintain the prices of, wire harnesses sold to an **automobile** manufacturer in the United States and elsewhere, and was fined $20 million. (Doc. No. 64 at ¶¶ 169-172) (emphasis added).

II. STANDARD OF REVIEW

Before its answer is filed, a defendant may move to dismiss for lack of personal jurisdiction over the defendant. Fed. R. Civ. P. 12(b)(2). "Where personal jurisdiction is challenged in a 12(b)(2) motion, the plaintiff has the burden of establishing that jurisdiction exists." Am. Greetings Corp. v. Cohn, 839 F. 2d 1164, 1168 (6th Cir. 1988); see also McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936) (plaintiff "must allege in his pleading the facts essential to show jurisdiction").

If a district court rules on such a motion before trial, the court, in its discretion, "may determine the motion on the basis of affidavits alone; or it may permit discovery in aid of the motion; or it may conduct an evidentiary hearing on the merits of the motion." Serras v. First Tenn. Bank Nat'l Ass'n, 875 F.2d 1212, 1214 (6th Cir. 1989) (quoting Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 904 (2d Cir. 1981)). The district

court is granted considerable discretion in this decision and will be reversed only for abuse of discretion. Theunissen v. Matthews, 935 F.2d 1454, 1458 (6th Cir. 1991); Mich. Nat. Bank v. Quality Dinette, Inc., 888 F.2d 462, 466 (6th Cir. 1989). The method the court selects will affect the magnitude of the burden on the plaintiff to avoid dismissal. Serras, 875 F.2d at 1214. Where the court relies solely on the parties' affidavits to reach its decision on the motion, the burden rests on the plaintiff to establish a *prima facia* showing of jurisdiction in order to avoid dismissal, Intera Corp. v. Henderson, 428 F.3d 605, 615 (6th Cir. 2005), and the court must consider the pleadings and affidavits in the light most favorable to the plaintiff. CompuServe, Inc. v. Patterson, 89 F.3d 1257, 1261-62 (6th Cir. 1996).

III. ANALYSIS

The Supreme Court has held that to subject a nonresident defendant to personal jurisdiction, due process requires that he must "have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). The defendant's "conduct and connection with the forum State" must be "such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

A party is subject to the personal jurisdiction of the Court through either general or specific. See J McIntyre Machinery, Ltd. v. Nicastro, __U.S. __, 131 S. Ct. 2780, 2789 (2011). Whether general or specific jurisdiction exists turns on the nature of the defendant's contacts with the forum. Bird v. Parsons, 289 F.3d 865, 873 (6th Cir. 2002).

When "a federal court exercises jurisdiction pursuant to a national service of process provision, it is exercising jurisdiction for the territory of the United States, and the individual liberty concern is whether the individual over which the court is exercising jurisdiction has sufficient minimum contacts with the United States." Med. Mut. v. deSoto, 245 F.3d 561, 567-568 (6th Cir. 2001). For federal antitrust claims, 15 U.S.C. § 22 authorizes service of process over an antitrust defendant "wherever it may be found."

Therefore, personal jurisdiction exists, provided F-Co has "sufficient minimum contacts with the United States" to satisfy the due process requirements of the Fifth Amendment. Med. Mut. of Ohio, 245 F.3d at 566–67. "This inquiry parallels the more traditional personal-jurisdiction analysis under which a defendant must have 'minimum contacts' " with the forum state pursuant to the state's long-arm statute. Carrier Corp. v. Outokumpu Oyj, 673 F.3d 430, 449-50 (6th Cir. 2012) (citing Med. Mut. of Ohio, 245 F.3d at 566–67).

A. General Jurisdiction

It is undisputed that F-Co is a Japanese company, incorporated under the laws of Japan, and has its principal place of business in Japan. (Doc. No. 70, Ex. A, Decl. of Norkazu Sato, General Manager, Legal Section of F-Co at ¶ 3). Consequently, F-Co is not "at home" in the United States in the traditional sense, and the existence of general jurisdiction is not at issue. See Daimler AG v. Bauman, __ U.S. __, 134 S.Ct. 746, 761 (2014) ("holding that to exercise general jurisdiction over a foreign corporation, the corporation had to be "at home" in the forum).

B. Specific Jurisdiction

Specific jurisdiction subjects a defendant to actions in the forum arising out of or relating to the defendant's contacts with that forum. Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 (1984). In determining whether the exercise of specific personal jurisdiction is proper, the Sixth Circuit follows the three-prong test articulated in S'ern Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968):

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Calphalon Corp. v. Rowlette, 228 F.3d 718, 721 (6th Cir. 2000) (citing Mohasco, 401 F.2d at 381).

The first issue to be addressed relative to specific jurisdiction is whether F-Co "purposefully avail[ed] [itself] of the privilege of acting in the forum or causing a consequence in the forum." Mohasco, 401 F.2d at 381. In support of its position that TED Plaintiffs cannot show purposeful availment, F-Co directs the Court's attention to TED Plaintiffs' initial complaint; the accuracy of the joint venture allegation added in the amended complaint; and the guilty plea, which involved automotive VWHS, not Trucks and Equipment.

After TED Plaintiffs filed their initial complaint, F-Co moved to dismiss for lack of personal jurisdiction. In its motion, F-Co argued that TED Plaintiffs' claims arose out of their purchase of Trucks and Equipment, yet neither F-Co nor its indirect United States

subsidiary, Fujikura Automotive America, LLC ("FAA"), manufactured, sold, or marketed VWHS for installation in Trucks and Equipment. (Doc. No. 37 at ¶ 3). TED Plaintiffs did not file a response. Instead, TED Plaintiffs filed their amended complaint.

In the amended complaint, they allege that Defendants supplied VWHS for installation in Trucks and Equipment manufactured and sold in the United States and that Defendants participated in a conspiracy that "successfully targeted the motor vehicle industry in the United States, raising prices for Truck and Equipment manufacturers and dealers alike (Doc. No. 64 at ¶¶ 1, 98). TED Plaintiffs' general allegation that all Defendants, which would include F-Co, manufacture and sell VHWS for Trucks and Equipment in the United States does not withstand the declarations submitted by F-Co to show it did not manufacture or sell any wire harness that was installed in Trucks and Equipment for sale in the United States (Doc. No.70, Ex. A, Sato Decl. at ¶ 14; Ex. B, Orem Decl. at ¶ 8). TED Plaintiffs have not controverted the declarations; however, TED Plaintiffs did add Paragraph 53 to tie F-Co to the claims arising out of sales of VWHS for Trucks and Equipment. It reads:

> During the class period, [F-Co] sold Vehicle Wire Harness Systems for Trucks and Equipment through a joint venture entity known as AFL Automotive LP ("AFL"). AFL is a global industry leader and full-service supplier of complete electrical distribution systems and integrated material solutions for commercial vehicles, including Class 4-8 trucks and buses.

(Doc. No. 64 at ¶ 53).

F-Co has provided corporate documents establishing that Alcoa Fujikura Ltd. was the general partner in AFL. (Doc. No. 70, Ex. C 1 at ¶ 4). Alcoa Fujikura Ltd. was itself a joint venture in which F-Co held the minority interest. (Id.) TED Plaintiffs concede that Paragraph 53 omits the extra layer of corporate structure between F-Co

and AFL, but maintains the allegation is sufficient to establish personal jurisdiction.

Courts have imputed the contacts of one co-venturer with the forum to other participants in the venture when that co-venturer is acting in furtherance of the joint venture. See Hanback v. GGNSC Southaven, LLC, No. 3:13-CV-00288-MPM-SAA, 2014 WL 3530613, at *3 (N. D. Miss. 2014); Nolan v. Boeing Co., 736 F.Supp. 120, 127 (E. D. La. 1990); Itel Containers Int'l Corp. v. Atlanttrafik Express Serv., Ltd., 116 F.R.D. 477, 479-80 (S.D.N.Y.1987). But, even if the Court deemed the joint venture involvement sufficient to show purposeful availment, the second part of the Mohasco test is not satisfied by the inclusion of ¶ 53.

To meet the arising out of prong of the test, the Court must consider whether TED Plaintiffs' cause of action arises from F-Co's contacts with the United States. To satisfy this factor, the Sixth Circuit "requires only that the cause of action, of whatever type, have a substantial connection with the defendant's [in-forum] activities." Bird v. Parsons, 289 F.3d 865, 875 (2002). Although the standard is lenient, it is not met. TED Plaintiffs do not allege that the joint venture was involved in the unlawful antitrust activity challenged in this law suit, and the joint venture is not named as a defendant. Therefore, even if the allegations in the amended complaint support that F-Co was involved in a joint venture, the factual allegations do not advance circumstances in which this Court should exercise personal jurisdiction over a nonresident co-venturer. Compare Walker v. Williamson, No. 1:14CV381-KS-JCG, 2015 WL 5534297, at *6 (S.D. Miss. Sept. 18, 2015).

The same problem exists relative to F-Co's guilty plea. Neither the guilty plea in the United States nor the cease and desist order entered against F-Co in Japan relate

to Trucks and Equipment. To the extent that F-Co pleaded guilty to antitrust conduct occurring in the United States through its indirect subsidiary and co-Defendant, FAA, F-Co availed itself of the laws of the U.S. Nevertheless, the guilty plea and cease and desist order related to wire harnesses installed in automobiles, and TED Plaintiffs purposefully exclude automobiles from their definition of Trucks and Equipment. The distinction made between the markets undermines TED Plaintiffs' argument that the overlap in the automotive VWHS market and the Trucks and Equipment market satisfy the second prong of Mohasco. The guilty plea does not act as a blanket admission of personal jurisdiction over every type of claim brought against F-Co. See Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2853 (U.S. 2011) (observing that "the commission of certain 'single or occasional acts' in a State may be sufficient to render a corporation answerable in that State with respect to those acts, though not with respect to matters unrelated to the forum connections") (quotation omitted). In short, a guilty plea does not amount to general jurisdiction over a defendant.

Likewise, the Court rejects TED Plaintiffs' assertion that the allegations of overlap between the automobile conspiracy and the Trucks and Equipment conspiracy provides grounds to deny F-Co's motion. Although the overlap in defendants, OEMs, and the type of component parts used in both conspiracies may support the sufficiency of the claim under the pleadings standards articulated in Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007), the overlap does not necessarily create a single conspiracy. Similarly, an inference favorable to TED Plaintiffs does not arise because F-Co's failed to move for dismissal on the basis of personal jurisdiction in the other component part cases.

The other cases involve automobiles, not Trucks and Equipment.

Lastly, the Court finds that TED Plaintiffs cannot establish personal jurisdiction over F-Co through their allegation that F-Co controlled FAA, an indirect subsidiary operating in the United States. Even if the allegation were sufficient to survive a challenge under Twombly, it does not establish personal jurisdiction inasmuch as F-Co has demonstrated corporate formalities were observed.

To the extent that TED Plaintiffs' allegations might satisfy the first prong of the Mohasco test, the Court cannot exercise personal jurisdiction over F-Co when its activities did not give rise to TED Plaintiffs' cause of action. Because the second prong of the test is not met, the Court finds it would be unreasonable to hale F-Co, a Japanese company, into the United States to defend against a conspiracy claim based upon parts it never supplied.

C. Jurisdictional Discovery

Although TED Plaintiffs ask the Court to allow jurisdictional discovery, they have transactional data, documents, declarations and discovery from F-Co as well as its co-defendants. Despite access to all of this information, TED Plaintiffs have nothing to show that F-Co makes VWHS for Trucks and Equipment. The Court finds there is no reasonable basis for expecting that further discovery would reveal contacts sufficient to support personal jurisdiction. See Chrysler Corp., 643 F.2d 1129, 1240 (6th Cir. 1981).

IV. CONCLUSION

For the reasons discussed above, the Court **GRANTS** the motion to dismiss F-Co for lack of personal jurisdiction.

IT IS SO ORDERED.

Date: December 30, 2015

s/Marianne O. Battani
MARIANNE O. BATTANI
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on December 30, 2015.

s/ Kay Doaks
Case Manager