PUBLICATIONS

My Portfolio Company Did What!? Private Equity and the Perils of Alter Ego Liability

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A private equity ("PE") firm has been named as a defendant in an action arising out of an alleged breach of contract, or tort committed, by its portfolio company. The PE firm is not a party to the contract; nor did the PE firm have notice of the negligence. However, recognizing a deep (or deeper) pocket when it sees one, and seizing on a perceived opportunity to gain leverage in the litigation towards a hefty settlement, the plaintiff names the PE firm as a defendant, alleging that the portfolio company is a mere alter-ego of the PE firm, and asking the court to pierce the portfolio company's corporate veil, disregard the PE firm's limited liability, and hold the PE firm liable for the portfolio company's breach of contract or negligence.

The foregoing scenario is lifted straight from the plaintiff playbook, and has cost PE firms and other parent companies millions of dollars in motion practice, invasive (and, at times, potentially embarrassing) discovery into the relationship between the PE firm and the portfolio company, settlements and judgments. Indeed, given the inherently fact-based nature of an alter-ego claim, even the most frivolous of piercing-the-corporate-veil lawsuits will often survive a motion to dismiss, opening the door for a plaintiff to engage in a discovery fishing expedition in an effort to substantiate what had been conclusory claims of the PE firm's domination and control of, or improper relationship with, the portfolio company.

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