No. 16-____

In the Supreme Court of the United States

NAUTIC MANAGEMENT VI, L.P., NAUTIC PARTNERS VI, L.P., RELIANT SPLITTER, L.P., and KENNEDY PLAZA PARTNERS VI, L.P.,

Petitioners,

v.

CORNERSTONE HEALTHCARE GROUP HOLDINGS, INC.,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

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October 17, 2016

QUESTION PRESENTED

Petitioners are three private equity funds and their common general partner, all of which are Delaware limited partnerships with their principal places of business in Rhode Island. Petitioners formed subsidiary corporate entities under Delaware law to purchase a hospital chain in Texas.

Respondent then sued petitioners in Texas state court claiming, *inter alia*, tortious interference with respondent's ability to purchase the same chain of hospitals.

Reversing two separate panels of the Texas Court of Appeals, the Supreme Court of Texas held that petitioners had established sufficient minimum contacts with Texas to sustain personal jurisdiction. The court acknowledged that respondents had waived any argument for attributing the contacts of the subsidiary that purchased the Texas hospitals to petitioners under an alter ego or agency theory. Instead, the court held that petitioners had created minimum contacts with Texas because, by forming a subsidiary to purchase assets in Texas, they had "targeted Texas assets in which to invest and sought to profit from that investment." App. 14a.

The question presented is:

May a state court, consistent with the Due Process Clause, effectively disregard the separate existence of a subsidiary corporate entity by treating the decision to form the subsidiary as a vehicle for investing in the State as itself providing minimum contacts giving rise to personal jurisdiction over an out-of-state parent?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE

Petitioners, who were defendants below, are Nautic Management VI, L.P., Nautic Partners VI, L.P., Reliant Splitter, L.P., and Kennedy Plaza Partners VI, L.P. No petitioner has a parent corporation. No publicly held corporation owns any portion of any of the Petitioners.

Additional defendants below, who are not party to this appeal, are Addison Resolution, LLC f/k/a Reliant Hospital Partners, LLC; Nautic Partners, LLC; James Beakey; Michael Brohm; Christopher Corey; Chester Crouch; Chad Deardoff; Scott Hilinski; Jerry Huggler; Kenneth McGee; Emmett Moore; and Patrick Ryan.

Respondent, who was plaintiff below, is Cornerstone Healthcare Group Holdings, Inc.

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PETITION FOR A WRIT OF CERTIORARI

This case presents a vitally important question about the scope of personal jurisdiction under the Due Process Clause. If an out-of-state entity forms a subsidiary to purchase assets in a particular State—without forming any other contacts to the State—does the entity thereby expose itself to jurisdiction in that State? Under nearly a century of settled law, the answer has been "no," unless some standard for piercing the corporate veil can be met to attribute the contacts of the subsidiary to the parent. The Texas Supreme Court turned precedent on its head by holding that a subsidiary provided no protection from jurisdiction and instead that petitioners created contacts with Texas by the very act of deciding to "target[] Texas assets" *through their subsidiary* and "to profit from that investment." App. 14a.

Nearly 100 years ago, this Court explained that a corporation could "have business transactions with persons resident in a [State] . . . employ[ing] a subsidiary corporation" and would not thereby "subject the parent corporation to the jurisdiction" of that State. *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U.S. 333, 336 (1925). Since then, the Court has repeatedly indicated that a subsidiary's contacts do not count against a parent unless some standard for disregarding the corporate form (such as piercing the corporate veil or treating the subsidiary as an agent) is met. *See, e.g.*, *Goodyear Dunlop Tires Ops., S.A.* v. *Brown*, 564 U.S. 915, 930–31 (2011); *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 759 (2014).

Based on that precedent, many federal courts of appeals and state courts of last resort have held that

minimum contacts analysis under the Due Process Clause demands respecting corporate separateness and that, as a result, where a parent has formed a subsidiary to invest in a particular State, jurisdiction over the parent "is contingent on the ability of the plaintiffs to pierce the corporate veil." *Epps* v. *Stewart Info. Servs. Corp.*, 327 F.3d 642, 649 (CA8 2003); *see also, e.g.*, *Freudensprung* v. *Offshore Tech. Servs., Inc.*, 379 F.3d 327, 346 (CA5 2004).

The Texas Supreme Court created an end run around those basic principles. Petitioners are three Rhode Island private equity funds (the "Funds") and their common general partner (the "General Partner"). To invest in some Texas hospitals, the Funds formed Delaware subsidiaries, one of which purchased the hospitals. In finding personal jurisdiction over petitioners in a suit related to that purchase, the court below disclaimed any argument "that the Funds and their subsidiaries failed to maintain their legal separateness or that the Texas contacts of any one of those entities could or should be attributed to any other." App. 11a. Nevertheless, the court held that petitioners had constitutionally sufficient contacts with Texas because, in forming and funding the subsidiaries to purchase the hospitals (which they had done entirely in Rhode Island), petitioners "spearheaded and directed the transaction," App. 13a, and "targeted Texas assets in which to invest and sought to profit from that investment." App. 14a. That approach simply allowed the court to ignore the distinction between petitioners and their subsidiaries, and in substance, to exercise jurisdiction on the basis of a subsidiary's Texas contacts without meeting any standard for

disregarding the separateness of the different legal entities.

That decision not only creates a clear conflict with decisions of this Court and multiple courts of appeals, it also raises an issue of immense national importance. This Court has made clear time and again that due process demands clear jurisdictional rules to provide "a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985) (quotations & alteration omitted). The decision below eviscerates that predictability.

It is hard to imagine a jurisdictional rule on which clarity is more essential for business planning than the basic rule that a subsidiary will shield a parent from jurisdiction *unless* some standard for piercing the corporate veil has been met. The decision below perversely makes the very action on which investors rely to *protect* themselves from being haled into court in a distant forum—forming a subsidiary for new operations in a State—into the basis for *exercising* jurisdiction on the theory that it evinces an intent to "target[] . . . assets" in a State and "to profit from that investment." App. 14a. Of course, *every* decision to form a subsidiary for investing in a State could satisfy that standard.

Although several petitions before the Court this Term involve expansive state-court assertions of personal jurisdiction, this case assuredly presents the most sweeping jurisdictional innovation in any petition so far. It strikes at the root of the protection

provided by the corporate form by treating the decision to invest in a State through a Delaware subsidiary—until now a textbook approach for *avoiding* jurisdictional contacts—as itself constituting "purposeful availment" *creating* minimum contacts under the Due Process Clause.

The Court should grant certiorari to reverse the Texas Supreme Court and reinforce the bedrock principle that the separateness of distinct legal entities must be respected in assessing jurisdictional contacts and the corresponding principle that, absent grounds for ignoring the corporate form, the formation of a subsidiary to invest in a particular State will shield a parent from personal jurisdiction.

OPINIONS BELOW

The opinion of the Supreme Court of Texas (App. 1a–18a) is reported at 493 S.W.3d 65. The opinion of the Court of Appeals of Texas in No. 05-11-01730-CV (App. 30a–42a) is reported at 494 S.W.3d 139. The opinion of the Court of Appeals of Texas in No. 05-13-00859-CV (App. 19a–29a) is unpublished and is available at 2014 WL 2807980.

JURISDICTION

The judgment of the Supreme Court of Texas was entered on June 17, 2016. On August 29, 2016, JUSTICE THOMAS extended the time within which to file a petition for a writ of certiorari to and including October 17, 2016 (16A205). This Court has jurisdiction under 28 U.S.C. § 1257(1). *See Calder* v. *Jones*, 465 U.S. 783, 788 n.8 (1984) (decision denying dismissal for lack of personal jurisdiction is final under § 1257).

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment states in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

STATEMENT OF THE CASE

A. Background to the Transaction

Petitioners are three private equity funds[1]—Nautic Partners VI, L.P; Reliant Splitter, L.P.; and Kennedy Plaza Partners VI, L.P. (the "Funds"), App. 2a–3a—and Nautic Management VI, L.P. (the "General Partner"), which is the general partner of two of the Funds, and the manager of the third, App. 3a.[2] All four are Delaware limited partnerships with their principal places of business in Rhode Island. App. 2a–3a. The Funds serve as vehicles for pooling the money of investors (who are limited partners in the Funds) and investing that money. These Funds are organized by Nautic Partners, LLC, a private equity firm that focuses on three sectors: healthcare, industrial products, and outsourced services. Nautic Partners and its affiliates form and operate funds,

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[1] Reliant Splitter, L.P., although referred to as a private equity fund in the decision below, is technically not itself a fund. The distinction is immaterial to the issues presented in this petition, however, and petitioners therefore maintain the convention of referring to all three petitioners as private equity funds.

[2] The Texas Supreme Court noted this distinction in the formal role of Nautic Management VI, L.P., but referred to the entity as the "General Partner." App. 3a. Because the distinction is not material to the issues presented here, petitioners use the same convention to avoid confusion.

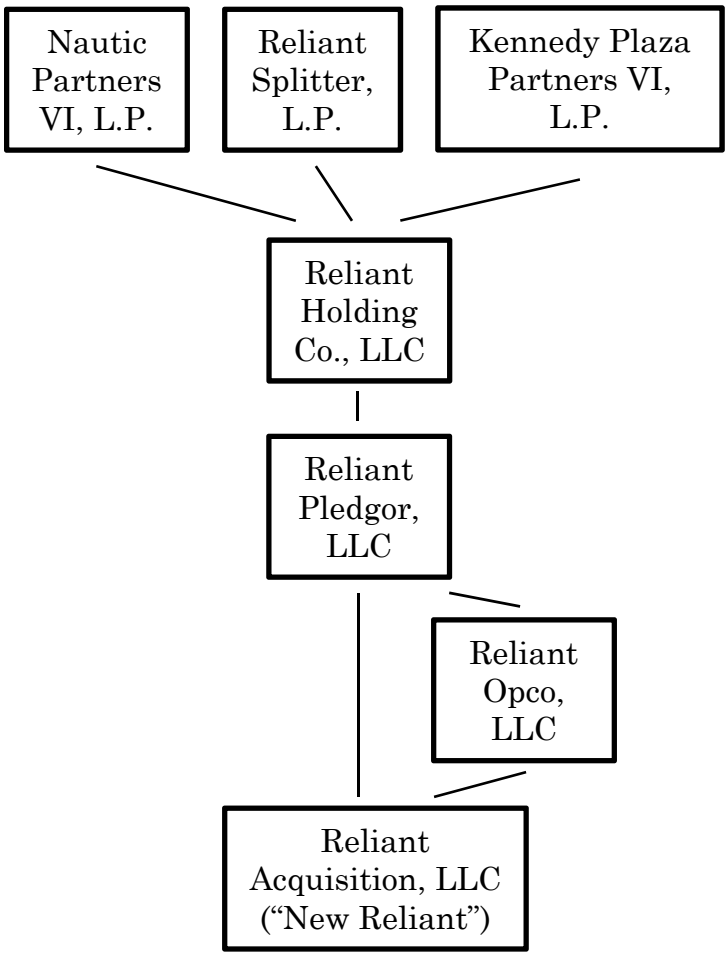
raise money from investors, identify investment opportunities, and provide management services to enhance the value of those investments.

This case arises out of one such investment in a chain of inpatient rehabilitation facilities in Texas owned by Reliant Hospital Partners, LLC ("Old Reliant"). App. 3a. In November 2010, Nautic Partners was approached by Michael Brohm regarding the potential to invest in Old Reliant. App. 3a. Brohm was then the Chief Executive Officer of respondent Cornerstone Healthcare Group Holding, Inc. ("Cornerstone"), which owns long-term acute care hospitals in Texas and other States. App. 3a. Brohm suggested that Nautic Partners' funds should invest in Old Reliant and that Brohm and other Cornerstone employees should be hired to run the company. App. 3a.

Nautic Partners signed a confidentiality agreement with Old Reliant and "began investigating the acquisition." App. 4a. Scott Hilinski, a managing director of Nautic Partners, along with another employee of Nautic Partners, traveled to Texas to conduct due diligence on the Old Reliant facilities. App. 3a–4a. Hilinski is also a member of the General Partner's investment committee, which is responsible for making investment decisions on behalf of the Funds. App. 3a. In January and February of 2011, Hilinski presented the opportunity to invest in Old Reliant to the General Partner's investment committee. App. 4a.

On March 14, 2011, the investment committee approved the investment. App. 4a. The following week, the Funds formed several subsidiaries through

which to acquire Old Reliant's assets. App. 4a. The Funds directly owned one subsidiary, Reliant Holding Company ("Reliant Holding"), a Delaware LLC with its principal place of business in Texas. App. 4a–5a. Reliant Holding, in turn, owned Reliant Pledgor; Reliant Pledgor owned Reliant Opco Holding Corp.; and Reliant Pledgor and Reliant Opco together owned Reliant Acquisitions, LLC. App. 5a. This chart illustrates the ownership structure:



Reliant Acquisitions, LLC purchased the assets of Old Reliant and took on Reliant's name, Reliant Hospital Partners, LLC ("New Reliant"). App. 5a.

The transaction documents explain that, to simplify the transaction, a law firm served as disbursement agent for New Reliant. 2d Supp. R. 267–85.[3] The Funds transferred money to fund the transaction to the disbursement agent, and the money was deemed to pass from the Funds down the chain of subsidiaries: first to Reliant Holding, then to Reliant Pledgor, then to Reliant Acquisitions, LLC (*i.e.*, New Reliant). App. 5a. As is common in such transactions, the only actual transfers of funds that took place were that the Funds transferred money to the law firm serving as disbursement agent for New Reliant, and that law firm then made the net payments required at the closing of the whole transaction, including transferring the purchase price to Old Reliant. App. 5a.

Once the deal closed on March 23, 2011, Brohm and several of his Cornerstone colleagues left Cornerstone to manage New Reliant. App. 4a, 6a.

B. Respondent Sues and Petitioners File Special Appearances.

In April 2011, respondent sued Brohm, the other former Cornerstone employees, New Reliant, and Nautic Partners in Texas state court. App. 6a. Cornerstone alleged that Brohm and other former

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[3] This citation refers to Vol. 2 of the Supplemental Clerk's Record, filed under seal in Case No. 05-11-01730-CV, before the Texas Court of Appeals, 5th District, which constituted part of the record before the Texas Supreme Court below.

employees breached their fiduciary duties, usurped a corporate opportunity, and misappropriated Cornerstone's proprietary information during and after the acquisition. App. 6a. None of the original defendants objected to personal jurisdiction in Texas.

Respondent later amended the complaint to add claims including, *inter alia*, tortious interference against Old Reliant, the Funds, the General Partner, Hilinski, two employees of Nautic Partners, and others. App. 6a.

Petitioners filed special appearances to contest personal jurisdiction because each is a partnership organized under Delaware law with a principal place of business in Rhode Island, and petitioners did not have any contacts with Texas in connection with respondents' claims. App. 6a. The trial court granted the Funds' special appearances, but denied the General Partner's special appearance. App. 6a. Respondent appealed the adverse ruling as to the Funds, and the General Partner separately appealed the adverse ruling as to itself. App. 6a.

C. The Texas Court of Appeals Holds That Exercising Personal Jurisdiction Would Violate Due Process.

1. No. 05-11-01730-CV – The Funds

The Court of Appeals for the Fifth District of Texas at Dallas affirmed the trial court order granting the Funds' special appearance. App. 31a.

The court explained that the Texas long arm statute permits Texas courts to exercise jurisdiction up to the limits of due process and that its analysis therefore focused on "due process requirements of the Constitution." App. 34a. The court

acknowledged that, for purposes of assessing minimum contacts, "[i]n general, a corporation is a separate legal entity that shields its owners and shareholders from the jurisdiction of a foreign jurisdiction, even if the corporation itself is within the court's jurisdiction." App. 36a. The court also recognized that, "under appropriate circumstances," a court may "pierce the corporate veil and bring shareholders or others within its jurisdiction as well." *Id*. The court held, however, that respondent could not justify attributing the subsidiaries' contacts to the Funds. As the court explained, "Cornerstone essentially argues the existence of the subsidiaries should be ignored, and appellees should be required to appear in a Texas court because they 'control the funding and the board of New Reliant' and 'play a strategic and advisory role' to New Reliant. We disagree." App. 38a.

Respondent's arguments were insufficient because the Funds "took no direct action in Texas." App. 42a. "Instead, [they] invested in New Reliant through subsidiaries." *Id.* The court concluded there was no basis in the record for piercing the corporate veil, and as a result, no basis for counting the subsidiaries' Texas contacts against the Funds.

2. No. 05-13-00859-CV – The General Partner

A different panel of Court of Appeals for the Fifth District of Texas at Dallas reversed the trial court's order denying the General Partner's special appearance. App. 19a–20a.

The court observed that, by respondents' own concession at oral argument, the contacts of the General Partner and the Funds were essentially the

same. App. 26a. It also went on to reject three arguments for why the General Partner might be subjected to personal jurisdiction in Texas. As relevant here, the court explained that the General Partner's involvement in the transaction did not create personal jurisdiction because the General Partner's conduct all took place in Rhode Island. App. 26a–27a.

Respondent petitioned for review of both decisions before the Texas Supreme Court, which granted review and consolidated the cases. App. 7a.

D. The Texas Supreme Court Reverses.

On June 17, 2016, the Texas Supreme Court reversed both decisions of the Court of Appeals and held that "[t]he trial court has personal jurisdiction over the Funds and the General Partner." App. 17a.

The court explained that, because "'the requirements of the Texas long-arm statute are satisfied if an assertion of jurisdiction accords with federal due-process limitations,'" those due-process limits were what "guide [the court's] analysis." App. 8a (quoting *Moki Mac River Expeditions* v. *Drugg*, 221 S.W.3d 569, 575 (Tex. 2007)). The court also acknowledged that, because respondents asserted a specific-jurisdiction theory, an exercise of jurisdiction would "comport[] with federal due process if the nonresident defendant has 'minimum contacts' with the state and the exercise of jurisdiction 'does not offend "traditional notions of fair play and substantial justice."'" App. 8a (quoting *Walden* v. *Fiore*, 134 S. Ct. 1115, 1121 (2014), in turn quoting *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945)).

With respect to minimum contacts, the court accepted respondents' argument "that the Funds, via the General Partner, established minimum contacts with Texas by purchasing Texas hospitals *through wholly owned subsidiary New Reliant*." App. 10a (footnote omitted; emphasis added).

The court did not attribute New Reliant's Texas contacts to petitioners based on any finding that the corporate veil should be pierced or that the subsidiary acted as petitioners' agent. To the contrary, the court expressly agreed with petitioners that respondents had forfeited any such arguments. App. 11a ("[Petitioners] are also correct that Cornerstone has not argued that the Funds and their subsidiaries failed to maintain their legal separateness or that the Texas contacts of any one of those entities could or should be attributed to any other."). Indeed, the court at least nominally agreed with petitioners that "so long as a parent and subsidiary maintain separate and distinct corporate entities, the presence of one in a forum state may not be attributed to the other." *Id.* (quotation omitted). Despite concluding that the subsidiaries' contacts could *not* be attributed to petitioners, the court decided that did not end the analysis.

Instead, the court held that petitioners had minimum contacts because they had orchestrated "the acquisition of Old Reliant's assets." App. 12a. The court explained that it would treat that acquisition as "one overarching transaction" rather than "as a succession of events," *id.*, and pointed to two aspects of the transaction in particular. First, the court emphasized that "[t]he LLC agreement between Reliant Holding and its members (the

Funds), . . . provided that the members' capital contributions . . . would be used as 'a contribution to capital to one or more Subsidiaries to effect the consummation of the transactions contemplated by the Asset Purchase Agreement," where "[t]he referenced Asset Purchase Agreement was the agreement between New Reliant and Old Reliant for the hospitals' purchase." *Id.* That is, the holding company subsidiary formed by petitioners was contractually bound to use the capital contribution provided by petitioners for purchasing the hospitals in Texas (through further subsidiaries). Second, the court emphasized that "all of the Funds' relevant subsidiaries, from Reliant Holding to New Reliant, were newly created to complete the transaction that the [petitioners] set in motion." App. 13a.

Drawing on these facts, the court explained that petitioners would be treated as having minimum contacts with Texas because they "spearheaded and directed the transaction, and ultimately stood to profit from it," App. 13a, and because they "targeted Texas assets in which to invest and sought to profit from that investment." App. 14a; *see also id.* (noting that petitioners "sought both a Texas seller and Texas assets"). Thus, in the Texas Supreme Court's view, the fact that petitioners had formed subsidiaries to make their investment could not protect them from jurisdiction in Texas, because the key for due process analysis was that they had specifically decided to make an investment in Texas and had formed the subsidiaries expressly for that purpose. On that basis, despite the fact that petitioners formed three layers of Delaware corporate subsidiaries between themselves and the actual purchase of the assets in Texas, the court

concluded that petitioners had "purposeful" contacts with Texas "such that they impliedly consented to suit here." App. 14a–15a.

Having found that petitioners' role in the acquisition established minimum contacts with Texas, the court concluded that respondents' "causes of action arise from or relate to" those contacts, App. 15a, and that "exercising personal jurisdiction over the respondents comports with traditional notions of fair play and substantial justice," App. 17a. The court remanded to the trial court for further proceedings. App. 17a.

Petitioners now seek a writ of certiorari.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Conflicts with Bedrock Principles of Personal Jurisdiction Established in This Court's Decisions.

The Texas Supreme Court's decision to exercise personal jurisdiction over petitioners based on the fact that they formed a third-tier subsidiary to purchase Texas assets runs counter to nearly 100 years of this Court's personal jurisdiction jurisprudence.

1. Almost a century ago, the Court established the principle that a business may decide to invest in operations in a particular State solely through a subsidiary and may thereby shield itself from personal jurisdiction in that State. *See Cannon Manufacturing Co.* v. *Cudahy Packing Co.*, 267 U.S. 333 (1925). The Court has never since questioned that basic principle.

In *Cannon*, a North Carolina corporation sued a Maine corporation in North Carolina for breach of

contract. *See id.* at 334. The Maine company did no business in North Carolina but instead marketed its products there through a wholly owned Alabama subsidiary with a North Carolina office. *See id.* at 335. The Court explained that, "[t]hrough ownership of the entire capital stock and otherwise, the defendant dominates the Alabama corporation, immediately and completely, and exerts control both commercially and financially." *Id.* The Court nevertheless determined that "[t]he existence of the Alabama company as a distinct corporate entity is . . . in all respects observed," *id.*, and that, as a result, the North Carolina court could not exercise personal jurisdiction over the parent company.

As the Court explained, the core issue before it was "simply whether the corporate separation carefully maintained must be ignored in determining the existence of jurisdiction." *Id.* at 336. The Court answered that question in the negative. As the Court explained, "the defendant wanted to have business transactions with persons resident in North Carolina, but for reasons satisfactory to itself did not choose to enter the state in its corporate capacity." *Id.* Instead, the company "preferred to employ a subsidiary corporation," *id.*, and the Court concluded that it could do so "without subjecting itself to the jurisdiction" of courts in North Carolina. *Id.*; *see also id.* ("use of a subsidiary does not necessarily subject the parent corporation to the jurisdiction" of courts in the forum State). The Court reasoned that, as long as the "corporate separation, though perhaps merely formal, was real," and "was not pure fiction," the subsidiary shielded the parent from jurisdiction. *Id.* at 336–37.

Cannon established the bedrock principle that the separate legal identity of distinct entities must be respected in assessing jurisdiction. As the Fifth Circuit has put it, "*Cannon* . . . stands for the proposition that so long as a parent and subsidiary maintain separate and distinct corporate entities, the presence of one in a forum state may not be attributed to the other." *Hargrave* v. *Fibreboard Corp.*, 710 F.2d 1154, 1160 (CA5 1983). Or, to put it in the language of the Court's more modern minimum contacts analysis, the contacts of the subsidiary cannot be attributed to the parent.

Cannon also established that a necessary consequence of respecting corporate separateness is that a parent entity may shield itself from jurisdiction in a particular State by choosing to do business there solely through a subsidiary. Again, to cast *Cannon* in the terminology of minimum contacts analysis, the contacts of the subsidiary may not be attributed to the parent, and thus unless the parent has contacts with the forum state independent of the subsidiary—or unless the standards for piercing the corporate veil are met—the mere use of the subsidiary cannot create jurisdiction over the parent. That is how numerous courts of appeals and other lower courts have applied *Cannon* for decades. *See, e.g.*, *Freudensprung* v. *Offshore Tech. Servs., Inc.*, 379 F.3d 327, 346 (CA5 2004); *see also infra* Part II.

In the nine decades since *Cannon* was decided, the Court has never squarely revisited the decision, but it has consistently treated the basic principles announced there as retaining their vitality through the era of minimum contacts analysis under

International Shoe Co. v. *Washington*, 326 U.S. 310 (1945).

Of course, the Court has established generally that due process requires that minimum contacts must be established "as to each defendant over whom a state court exercises jurisdiction," *Rush* v. *Savchuk*, 444 U.S. 320, 331–32 (1980), and that simply owning stock in a corporation does not create minimum contacts for the shareholder with the state of incorporation, *see Shaffer* v. *Heitner*, 433 U.S. 186, 213–17 (1977). More specifically, in the express context of assessing jurisdictional minimum contacts of a parent and subsidiary corporation, the Court has explained that "[e]ach defendant's contacts with the forum State must be assessed individually," and that therefore "jurisdiction over a parent corporation" cannot be used to "automatically establish jurisdiction over a wholly owned subsidiary." *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984). Indeed, to support that proposition, the Court cited *Consolidated Textile Co.* v. *Gregory*, 289 U.S. 85 (1933), a decision that, in turn, relied squarely on *Cannon* for the proposition that acts of a subsidiary were "unimportan[t]" for determining jurisdiction over a parent entity. *Id.* at 88.

Similarly, in *Goodyear*, when the plaintiff suggested "a 'single enterprise' theory" as a grounds for finding personal jurisdiction in North Carolina and argued that the Court should lump together the forum contacts of various different Goodyear entities, the Court observed that, "[i]n effect," this would require "pierc[ing] Goodyear corporate veils." 564 U.S. at 930. The Court thus acknowledged that, ordinarily the separate identity of distinct corporate

entities must be respected in assessing forum contacts and that "merging parent and subsidiary for jurisdictional purposes requires an inquiry 'comparable to the corporate law question of piercing the corporate veil.'" *Id.* (quoting Lea Brilmayer & Kathleen Paisley, *Personal Jurisdiction and Substantive Legal Relations: Corporations, Conspiracies, and Agency*, 74 Cal. L. Rev. 1, 14, 29–30 (1986)). [4] The Court declined to apply that analysis in *Goodyear* because the plaintiff had failed to timely raise the argument. *See Goodyear*, at 930–31.

Three years later, in *Daimler AG*, the Court acknowledged that it "has not yet addressed whether a foreign corporation may be subjected to a court's *general jurisdiction* based on the contacts of its in-state subsidiary." 135 S. Ct. at 759 (emphasis added). But in explaining the contours of the issue, the Court took it as a given that the contacts of a subsidiary could be attributed to a parent solely if some showing were made to justify disregarding the corporate form under standards for piercing the corporate veil or, perhaps, treating the subsidiary as an agent of the parent. *Id.* Without deciding exactly what showing would be required to attribute a subsidiary's contacts to a parent for purposes of general jurisdiction, the Court held that the agency standard applied by Ninth Circuit was too lax. *See id.* at 759–60.

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[4] The law review article cited by the Court for this proposition, in turn, derived the rule that the contacts of a subsidiary could be attributed to a parent solely upon piercing the corporate veil from *Cannon*. *See* Brilmayer & Paisley, *supra* at 3–4.

Thus, to the extent the Court has commented on attributing jurisdictional contacts between corporate subsidiaries and parents, it has consistently reaffirmed the principles in *Cannon*. Corporate separateness must be respected in assessing jurisdictional contacts, and attribution requires satisfying some standard to justify ignoring the corporate form, such piercing the corporate veil under a showing that the entities are alter egos or treating a subsidiary entity as the agent of a parent.

2. The decision below cannot be squared with the settled principles established in *Cannon* and consistently reflected in this Court's subsequent due process decisions. Under *Cannon*, the formation of a subsidiary to make an investment in a particular State shields a parent entity from jurisdiction, because the subsidiary's contacts with the forum cannot be used to find jurisdiction over the parent *unless* standards for piercing the corporate veil (or treating the subsidiary as the parent's agent) are met.

The Texas Supreme Court's approach, by contrast, provides an end run around that settled law, because it eliminates any need to conduct a veil-piercing (or agency) analysis at all. The court treated it as sufficient to establish jurisdiction that petitioners had "targeted Texas assets in which to invest and sought to profit from that investment," App. 14a, without regard to whether the veil could be pierced between them and the subsidiaries they formed as vehicles for making that investment. Indeed, the Texas Supreme Court expressly held that respondent had failed even to argue "that the Funds and their subsidiaries failed to maintain their legal

separateness or that the Texas contacts of any one of those entities could or should be attributed to any other." App. 11a. The decision below is thus indisputably not founded on any rationale of veil-piercing or the theory that any of the subsidiaries here could be treated as petitioners' agent.

In addition, the ruling is flatly at odds with the fundamental principle from *Cannon* that a corporation may decide "for reasons satisfactory to itself" to refrain from doing business in a State and, by entering the State solely through a subsidiary, may avoid "necessarily subject[ing] the parent corporation to . . . jurisdiction." 267 U.S. at 336–37. Under the Texas Supreme Court's approach, the key for jurisdiction was the mere fact that petitioners had decided to "target" an investment in Texas, without regard to whether or not they used a subsidiary to make the investment and whether or not they actually formed any contacts with Texas themselves. App. 14a (emphasizing that petitioners "sought both a Texas seller and Texas assets"). As a result, petitioners' role in forming subsidiaries with the express purpose of investing in Texas—that is, their role in "spearhead[ing] and direct[ing] the transaction" in which the subsidiaries were formed, App. 13a—became the *basis* for subjecting petitioners to jurisdiction. That rationale effectively turns the principles of *Cannon* on their head. It ensures that, far from protecting a parent from jurisdiction, a decision to form a subsidiary to conduct business in a particular State *guarantees* jurisdiction over the parent, because forming such a subsidiary would always meet the Texas Supreme Court's test of showing that the parent intended to

"target[] . . . assets" in that State and to "profit from that investment." App. 14a.

The Texas court's rationale also produced the perverse result that, despite following the exact steps that should have shielded petitioners from jurisdiction under *Cannon*—forming a separate subsidiary to invest in Texas (indeed, three tiers of Delaware subsidiaries)—petitioners were treated as having "impliedly consented to suit" in Texas. App. 15a.

Although the Texas Supreme Court nominally professed agreement with the principle that contacts by a subsidiary could not be attributed to a parent, *see* App. 11a, the decision below is plainly incompatible with that rule. Rather than respecting corporate separateness, the decision below effectively obliterated the distinction between a parent and subsidiary by treating the formation of a subsidiary for investing in a particular State as itself the basis for finding that a parent has minimum contacts with that State.[5] The rule that corporate separateness

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[5] The court below noted that "the purchase money was transferred by the Funds directly to the law firm serving as New Reliant's disbursement agent, and from the agent to Old Reliant." App. 13a. But that fact did not carry any weight in the court's minimum contacts analysis, nor could it have. It is undisputed that the Funds themselves did not purchase the hospital chain. Their third-tier subsidiary, New Reliant, did. Moreover, transferring money to New Reliant's disbursement agent did not create any contacts for the Funds themselves with Texas. Transferring money to the disbursement agent, like transferring money to New Reliant, meant that the Funds themselves were not transferring money to Old Reliant (the target of the acquisition in Texas). It is undisputed, moreover, that the wire to the disbursement agent was made to the Rhode

must be respected and that contacts from one entity may not be attributed to another becomes meaningless—and the distinction between entities is, in practice, eliminated—if the decision to form the very entity that is supposed to protect the parent from jurisdiction can be treated as creating the parent's contacts with the forum.

3. The Texas Supreme Court's focus on petitioners' intention to "target" Texas and to "profit" from an investment made through a subsidiary also conflicts with minimum contacts principles this Court has announced in other cases.

In particular, the Court has held that "financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 299 (1980). That is because, more broadly, the fact that a party might indirectly receive "benefits" under state law "does not demonstrate that [petitioners] have 'purposefully avail[ed themselves] of the privilege of conducting activities within the forum State.'" *Shaffer*, 433 U.S. at 216 (quoting *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958)).

Here, petitioners did not avail themselves of *any* rights or benefits under Texas law. The only relevant contract to which they were a party—the LLC Agreement for Reliant Holding—was entered into in Rhode Island and governed by Delaware law. *See* 2d Supp. R. 120–177. Whatever benefits flowed

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Island bank account of a Boston-based law firm. *See* 2d Supp. R. 276–77. It created no contact with Texas.

to petitioners from the transaction as a result of Texas law did so *indirectly* due to their position as ultimate owners of the subsidiaries formed under Delaware law.

The Texas Supreme Court, for its part, concluded that petitioners "sought both a Texas seller and Texas assets" and thus "sought some benefit, advantage, or profit by availing themselves of the jurisdiction such that they impliedly consented to suit here." App. 14a–15a (quotation & alteration omitted). Even putting to one side the blurring of corporate separateness that underlies this statement (again, it was the subsidiary, New Reliant, that actually bought the assets in Texas), it also rests on the erroneous premise that seeking to profit from a transaction (between other parties) in Texas constitutes "purposeful availment." That is precisely the notion that this Court rejected in *World-Wide Volkswagen*, 444 U.S. at 299.

II. The Decision Below Conflicts with Decisions of Numerous Courts of Appeals and State Courts of Last Resort.

The decision below also conflicts with numerous decisions of federal courts of appeals and state courts of last resort that have interpreted the principles from *Cannon* as guiding the minimum contacts analysis mandated by the Due Process Clause. Those decisions hold that, in conducting due process minimum contacts analysis, corporate separateness must be respected and that, as a result, the contacts of a subsidiary cannot be attributed to a parent unless traditional standards for disregarding the corporate form (*e.g.*, veil-piercing or agency) are met.

For example, the Fifth Circuit has explained that "[c]ourts have long presumed the institutional independence of related corporations, such as parent and subsidiary, when determining if one corporation's contacts with the forum can be the basis of a related corporation's contacts." *Dickson Marine, Inc.* v. *Panalpina, Inc.*, 179 F.3d 331, 338 (CA5 1999) (citing *Cannon*). As a result, "[a]s a general rule, . . . the proper exercise of personal jurisdiction over a nonresident corporation may not be based solely upon the contacts with the forum state of another corporate entity with which the defendant may be affiliated." *Freudensprung* v. *Offshore Technical Services, Inc.*, 379 F.3d 327, 346 (CA5 2004) (citing *Cannon*, 267 U.S. at 335). Instead, before contacts of one entity may be attributed to another, there must be proof that one is the "agent or alter ego" of the other, which permits "fus[ing] the two together for jurisdictional purposes." *Id.* (quotation marks and citation omitted).

At least seven additional Courts of Appeals have reached the same result, often expressly relying on *Cannon*. As the Eighth Circuit has put it, "personal jurisdiction can be based on the activities of [a] nonresident corporation's in-state subsidiary . . . *only if* the parent so controlled and dominated the subsidiary that the latter's corporate existence was disregarded." *Epps* v. *Stewart Info. Servs. Corp.*, 327 F.3d 642, 648–49 (CA8 2003) (emphasis added) (citing *Cannon*). As a result, "a court's assertion of jurisdiction [over a non-resident parent] is contingent on the ability of the plaintiffs to pierce the corporate veil." *Id.* at 649; *see also, e.g.*, *Ranza* v. *Nike, Inc.*, 793 F.3d 1059, 1070–71 (CA9 2015);

Saudi v. *Northrop Grumman Corp.*, 427 F.3d 271, 276–77 (CA4 2005); *Cent. States, Se. & Sw. Areas Pension Fund* v. *Reimer Express World Corp.*, 230 F.3d 934, 943 (CA7 2000) ("[W]e hold that constitutional due process requires that personal jurisdiction cannot be premised on corporate affiliation or stock ownership alone where corporate formalities are substantially observed and the parent does not exercise an unusually high degree of control over the subsidiary.") (citing *Keeton* and *Cannon*); *Consol. Dev. Corp.* v. *Sherritt, Inc.*, 216 F.3d 1286, 1293 (CA11 2000); *El-Fadl* v. *Cent. Bank of Jordan*, 75 F.3d 668, 675–76 (CADC 1996) (citing *Cannon*), *abrogated on other grounds by Samantar* v. *Yousuf*, 560 U.S. 305 (2010); *United Elec., Radio & Mach. Workers of Am.* v. *163 Pleasant St. Corp.*, 960 F.2d 1080, 1091 (CA1 1992) (citing *Cannon*).

Numerous decisions from state courts of last resort take the same approach. *See, e.g.*, *Westinghouse Elec. Corp.* v. *Super. Ct. of Alameda Cty.*, 551 P.2d 847, 858 (Cal. 1976) ("[I]n the area of jurisdiction, it has never been the general rule that a corporation will be subject to suit in a state because of the activities of its wholly owned subsidiary. Jurisdiction over a foreign parent corporation will only be sustained where the foreign parent manipulates the subsidiary to the detriment of creditors or the subsidiary is the Alter ego of the parent.") (citing, *inter alia*, *Cannon*, 267 U.S. at 336–337); *Viega GmbH* v. *Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1158 (Nev. 2014); *Gordon* v. *Greenview Hosp., Inc.*, 300 S.W.3d 635, 651 (Tenn. 2009); *LinkAmerica Corp.* v. *Cox*, 857 N.E.2d 961, 968 (Ind. 2006); *Bowers* v. *Wurzburg*, 519 S.E.2d 148, 164 (W. Va. 1999); *Yarborough & Co.* v. *Schoolfield Furniture Indus.,*

Inc., 268 S.E.2d 42, 44 & n.1 (S.C. 1980); *Conn* v. *ITT Aetna Fin. Co.*, 252 A.2d 184, 188 (R.I. 1969); *Perlman* v. *Great States Life Ins. Co.*, 436 P.2d 124, 125 (Colo. 1968); *Botwinick* v. *Credit Exch., Inc.*, 213 A.2d 349, 353–54 (Pa. 1965).

As explained above, the decision below is fundamentally incompatible with the principles from *Cannon* applied in these cases. It effectively ignores the separate identity of a subsidiary by treating the decision to invest in a particular State through a subsidiary as creating forum contacts for the parent. It accomplishes that result, moreover, without the need for *any* showing to pierce the corporate veil or to establish that the subsidiary may be treated as an agent of the parent.

The lower courts have varied to some extent in the precise standard they have applied to determine when corporate separateness may be disregarded and the contacts of one entity may be attributed to another for jurisdictional purposes. *See generally* Daniel G. Brown, *Jurisdiction Over a Corporation on the Basis of the Contacts of an Affiliated Corporation: Do You Have to Pierce the Corporate Veil?*, 61 U. Cin. L. Rev. 595, 601–12 (1992). That variation, however, is irrelevant to the conflict the Texas Supreme Court created. The decision below eliminated the need for *any* assessment of piercing the corporate veil, or treating the subsidiary as an agent, or evaluating *any* similar test for ignoring corporate separateness. Instead, it treated the mere decision to make an investment through a subsidiary as sufficient in itself to create jurisdiction over a parent. Thus, the decision of the Texas Supreme Court conflicts with *all* of the decisions cited above, no matter what

particular standard each court articulated defining the test under which the forum contacts of a subsidiary might be attributed to a parent.

It is also particularly troubling that the Texas Supreme Court has staked out a position contrary to that of the Fifth Circuit. Under Fifth Circuit law, the mere fact that petitioners had "targeted Texas assets," App. 14a, by forming a subsidiary to invest in Texas could not have been used as a basis for *creating* jurisdiction over petitioners. Instead, under Fifth Circuit law, the formation of subsidiaries to invest in Texas assets would have *shielded* petitioners from jurisdiction. This Court has often granted review where the high court of State and its regional circuit are in conflict. *See, e.g.*, *Johnson* v. *California*, 545 U.S. 162, 164 (2005); *Bates* v. *Dow Agrosciences, LLC*, 544 U.S. 431, 436 & n.6 (2005). Indeed, absent review, the decision below creates an intolerable situation in which a corporate parent's amenability to suit in Texas will often hinge on whether the plaintiff files suit in state or federal court (and whether the case happens to be removable based on diversity). That result invites forum-shopping and artful pleading to keep cases in state court, where out-of-state parents will be more easily subjected to personal jurisdiction.

III. This Case Presents an Issue of National Importance.

The decision below is not just incorrect on the law. If left uncorrected, it will have a serious chilling effect on businesses of all types attempting to plan investments or expansion across state lines.

1. This Court has repeatedly explained that clear jurisdictional rules are essential for providing "a

degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King*, 471 U.S. at 472 (quotations & alteration omitted). Put succinctly, "[s]imple jurisdictional rules . . . promote greater predictability," and "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94–95 (2010) (citation omitted).

The decision below brings uncertainty to a rule that is especially vital for businesses making investment decisions across the national economy because it goes to the heart of the protection provided by the corporate form. This Court has recognized that the principle of corporate separateness and limited liability for the owners of corporations—including parents of wholly owned subsidiaries—is essential for promoting economic activity. Based on that principle, "large undertakings are rested, vast enterprises are launched, and huge sums of capital attracted." *Anderson* v. *Abbott*, 321 U.S. 349, 362 (1944).

Part of the crucial role of the doctrine of corporate separateness is providing a parent entity not only protection from substantive liability incurred by its subsidiaries, but also protection from being haled into court in every jurisdiction where it may invest indirectly through subsidiaries. As the Second Circuit has explained, "[t]he principal reason corporations form wholly owned foreign subsidiaries is to insulate themselves from liability for the torts and contracts of the subsidiary *and from the*

jurisdiction of foreign courts." *Sarhank Grp.* v. *Oracle Corp.*, 404 F.3d 657, 662 (CA2 2005) (emphasis added). While the Second Circuit was specifically addressing investments across national borders, the same principle applies to domestic corporations and other business entities expanding from one State to another, which often wish to reduce their exposure to litigation, especially in particular jurisdictions. *Cf., e.g.*, Lynn M. LoPucki, *Virtual Judgment Proofing: A Rejoinder,* 107 Yale L.J. 1413, 1427 & n.76 (1998).

The decision below necessarily creates critical uncertainty—and the chilling effect that comes with uncertainty—for all businesses planning investments across state lines. It raises the risk that the mechanism businesses have relied on for a century to limit exposure to jurisdiction (forming a subsidiary that can hold up under standards for piercing the corporate veil) may simply no longer work. That risk in itself will deter activity where exposure to litigation risk is a significant consideration. Worse, if other States begin to adopt the same approach as Texas, the jurisdictional protection afforded by a subsidiary would be eliminated. In that world, potential investments would be derailed whenever the cost-benefit analysis demands protecting the parent enterprise from exposure to litigation risk in a particular jurisdiction. If not corrected, therefore, the radical innovation in personal jurisdiction adopted below has the potential to deter substantial amounts of otherwise beneficial economic activity.

2. The decision below will have a particularly chilling effect on the private equity industry. Private

equity funds pool capital from many investors and typically use that capital to invest in a number of different, entirely unrelated portfolio companies that may be dispersed throughout the country, far from the private equity fund's home base. Many funds, moreover, focus on investing in underperforming or troubled businesses, with a view to the large returns that can be gained from taking on the risk of turning such companies around. Precisely in order to manage and limit risk, private equity funds almost invariably form subsidiaries to make each investment in a new portfolio company, as petitioners did here.

Using that model, the private equity industry is responsible for significant investments across state borders—including investments in States that otherwise might not attract large amounts of capital. *See Private Equity: Top States & Districts*, American Investment Council, http://tinyurl.com/jx57st3 (last visited Oct. 15, 2016).

Given that business model, clear rules to facilitate managing risk are particularly important for private equity investments. It is important for a fund not only to have assurance that its *substantive* liability will be limited to the amount invested in a particular subsidiary, but also to ensure that the fund itself consisting of all investors' pooled money is not exposed to jurisdiction in every State where various portfolio companies may operate.

The decision below creates substantial uncertainty in previously clear rules allowing private equity funds to manage their exposure to litigation risk by forming and properly maintaining subsidiaries for their investments. That uncertainty

alone will have some chilling effect in investments, at least in States where exposure to jurisdiction is seen as creating real risks from litigation. And the effect will only be compounded if the Texas Supreme Court's approach is copied in other States. As the First Circuit has explained, a "free-wheeling approach to veil piercing would hamstring established businesses in their legitimate efforts to expand into new fields; undermine the predictability of corporate risk-taking; and provide a huge disincentive for the investment of venture capital." *163 Pleasant St. Corp.*, 960 F.2d at 1093 (Selya, J., joined by Breyer, C.J., and Cyr, J.).

3. The facts of this case also highlight precisely the concerns that prompt businesses to seek certainty protecting themselves from expansive assertions of jurisdiction in every State where they may invest through a subsidiary. Here, in a tactic routinely repeated by plaintiffs in litigation, respondent sought to drag petitioners into this case simply as a deep pocket that might be exploited to expand the size of any jury award.

Respondent's basic claim is that Nautic entities tortiously interfered with respondent's opportunity to purchase the same chain of hospitals that petitioners' third-tier subsidiary purchased. The subsidiary that actually purchased the hospitals, New Reliant, was made a defendant and never contested personal jurisdiction. New Reliant held all the hospital assets when this case was filed and in seeking to assert jurisdiction over petitioners respondent did not pursue (and could not have pursued) any argument that New Reliant was insufficiently capitalized or was judgment proof or

that any similar justifications existed for piercing the corporate veil to avoid an injustice.[6] Instead, the only objective for dragging the parent Funds into the case was to exploit the hope that a sympathetic local jury might increase any ultimate damage award when presented with an out-of-state deep pocket in the form of Rhode Island private equity funds that pooled hundreds of millions of dollars in assets—or that the *in terrorem* effect of exposing the Funds themselves to the risk of such a judgment might drive up the price of a settlement.

4. Several petitions before the Court this Term seek review of state court decisions applying expansive approaches to personal jurisdiction. This case, however, assuredly raises the state-court innovation that has the potential for the most sweeping effect. The decision below strikes at the heart of the fundamental protection provided by the corporate form—a protection that has been treated as a given in this Court's personal jurisdiction decisions for almost 100 years.

This Court's review is especially warranted to restore clarity and predictability to the rules governing jurisdiction over a parent whose only contact with a State is through a subsidiary formed to invest in that State and to the principle allowing businesses to plan investments confidently knowing that use of a subsidiary will allow them to take a risk

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[6] Although New Reliant sold the hospitals while the case was pending, the parties reached an agreement under which a specified amount from the proceeds of the sale was held in escrow to be available to satisfy any judgment ultimately entered for respondent.

on a new venture without exposing themselves to jurisdiction in a distant forum.

IV. This Case Presents a Clean Vehicle.

This case also presents a clean vehicle for the Court to address the Question Presented. The Question Presented was fully briefed and squarely addressed below. Indeed, the Court has the benefit of reasoned opinions from two separate panels of the Texas Court of Appeals, *see* App. 19a–29a; App. 30a–42a, and from the Supreme Court of Texas, *see* App. 1a–18a, on both sides of the issue.

The Question Presented was also plainly outcome-determinative and the court below made clear that there were no alternative rationales supporting its decision. In particular, the Supreme Court of Texas expressly held that respondent had forfeited any potential arguments based on the theory that the contacts of the subsidiary that purchased the hospitals should be attributed to petitioners under a veil-piercing, agency, or any other theory. App. 11a. In addition, the court made it express that, while the parties had disputed whether certain contacts with Texas during the due diligence process could be attributed to the General Partner, the court's "analysis . . . render[ed] it unnecessary to address this dispute." App. 15a n.12. As a result, this case presents the validity of the Texas court's theory for exercising personal jurisdiction in the cleanest possible posture.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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October 17, 2016

APPENDIX

APPENDIX CONTENTS

IN THE SUPREME COURT OF TEXAS

No. 14-0538

CORNERSTONE HEALTHCARE GROUP HOLDING, INC., PETITIONER,
v.
NAUTIC MANAGEMENT VI, L.P., RESPONDENT

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

~ consolidated with ~

No. 14-0539

CORNERSTONE HEALTHCARE GROUP HOLDING, INC., PETITIONER,
v.
NAUTIC PARTNERS VI, L.P., RELIANT SPLITTER, L.P., AND KENNEDY PLAZA PARTNERS VI, L.P., RESPONDENTS

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

Argued January 12, 2016

JUSTICE LEHRMANN delivered the opinion of the Court.

In these causes we consider whether Texas courts have specific personal jurisdiction over three nonresident private-equity fund limited partnerships and their general partner. The funds invested in a newly created Texas subsidiary that purchased a chain of Texas hospitals from a Texas company. The plaintiff, another Texas company allegedly in the market to purchase the hospitals, asserts that this conduct was tortious and subjects the defendants to Texas's jurisdiction with respect to claims arising out of that conduct. We agree and hold that Texas courts have specific jurisdiction over the private-equity funds and their general partner.

I. Background

Plaintiff Cornerstone Healthcare Group Holding, Inc. owns and operates long-term acute-care hospitals in Texas and other states. According to its pleadings, Cornerstone "sought to expand into other sectors of the post-acute care continuum." Several Cornerstone executives (Executives) identified Reliant Hospital Partners, LLC (Old Reliant), which owned a chain of inpatient rehabilitation facilities in Texas, as a possible takeover target. Cornerstone alleges that the Executives "decided to take advantage of this opportunity for themselves" rather than present it to Cornerstone's board and that they approached several potential investment sources about the deal, including Rhode Island-based private-equity firm Nautic Partners, LLC.

Nautic Partners is a management advisor that identifies and conducts due diligence on potential investments for several private-equity funds. The

three funds at issue here—Nautic Partners VI, L.P., Reliant Splitter, L.P., and Kennedy Plaza Partners VI, L.P. (collectively, the Funds)—are Delaware limited partnerships with their principal places of business in Rhode Island. Nautic Management VI, L.P., also a Delaware limited partnership, is the general partner of two of the Funds and manager of the third. We will refer to Nautic Management VI as the General Partner. [1]

Based on its due diligence, Nautic Partners determines whether to present an investment opportunity to the General Partner's investment committee, which authorizes investment decisions for the Funds.[2] Scott Hilinski is Nautic Partners' managing director and, along with two other Nautic Partners employees, is also a member of the General Partner's investment committee. According to the General Partner's corporate representative, Hilinski has a fiduciary duty to bring to the committee any deal that would be an "appropriate" investment for the Funds.

In November 2010, Cornerstone's then-Chief Executive Officer Michael Brohm contacted Nautic Partners to discuss a potential health-care investment opportunity. Shortly thereafter, Brohm specifically proposed that the Funds acquire Old Reliant's assets and hire Brohm and other

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[1] The General Partner's corporate representative testified that, despite its designation as manager of one of the Funds, the General Partner has the same authority to act on behalf of all three.

[2] Neither the Funds nor the General Partner has employees, office space, office equipment, or "similar tangible resources."

Cornerstone executives to run the company. Hilinski met with Brohm and another Cornerstone executive at a "get-to-know-you dinner" in Texas. Hilinski subsequently called Old Reliant's owner in Texas expressing interest in the investment. On November 22, Nautic Partners and Old Reliant signed a confidentiality agreement "in connection with [Nautic Partners'] evaluation of a potential transaction with [Old Reliant]," and Nautic Partners began investigating the acquisition.

Nautic Partners' due diligence included site visits to Old Reliant's hospitals in Texas by Hilinski and Chris Corey, another Nautic Partners employee. Cornerstone alleges that Brohm disclosed Cornerstone's confidential information to Nautic Partners during the due-diligence period and that Nautic Partners used that information to evaluate the Reliant deal. On January 7, 2011, Nautic Partners and Old Reliant signed a letter of intent summarizing the "terms and conditions under which an entity . . . to be formed by funds affiliated with Nautic Partners" would purchase Old Reliant's assets. The letter further stated that "Nautic's deal team has discussed the proposed transaction with the members of Nautic's Investment Committee, and this Letter is submitted with the endorsement and excitement of that group."

Hilinski presented the deal to the General Partner's investment committee over three meetings in Rhode Island in January and February 2011. On March 14, 2011, the committee authorized the investment and issued a capital call to fund the deal. A chain of wholly owned subsidiaries was

established to facilitate the transaction, which closed March 23. On that date, the Funds entered into a limited liability company agreement with Reliant Holding Company,[3] a new Delaware LLC with its principal place of business in Texas, which the Funds describe as a "passive investment vehicle." In turn, Reliant Holding owned 100% of Reliant Pledgor, also a Delaware LLC, which owned 100% of Reliant Opco Holding Corp., a Delaware corporation. Finally, Reliant Pledgor and Reliant Opco owned, respectively, 99.9% and 0.1%[4] of Reliant Acquisitions, LLC, which would eventually change its name to Reliant Hospital Partners, LLC (New Reliant).[5] New Reliant, a Delaware LLC with its principal place of business in Texas, entered into an asset-purchase agreement with Old Reliant to acquire and operate its hospitals.

The money New Reliant used to purchase the hospitals came from the Funds' capital contributions to Reliant Holding. The purchase price was "deemed" to pass from the Funds to Reliant Holding, from Reliant Holding to Reliant Pledgor, from Reliant Pledgor to New Reliant, and finally from New Reliant to Old Reliant. In actuality, the Funds transferred the money to the law firm that served as New Reliant's disbursement agent, and the law firm transferred the purchase price directly to Old

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[3] Hilinski signed the LLC agreement on behalf of Reliant Holding as its manager, and on behalf of all three Funds as the General Partner's managing director.

[4] The record is inconsistent as to whether the respective ownership percentages were 99.9% and 0.1% or 99.99% and 0.01%.

[5] The middle subsidiary layer, Reliant Pledgor, was created for tax purposes.

Reliant. New Reliant's transaction expenses on the deal included a $1 million "transaction fee" to the General Partner and $85,000 to Nautic Partners to reimburse its expenses.

Immediately following the acquisition, Brohm and the other Executives resigned from Cornerstone and joined New Reliant. Two weeks later, Cornerstone sued the Executives,[6] New Reliant, and Nautic Partners. Cornerstone later added as defendants, among others, Old Reliant, the Funds, the General Partner, Hilinski, Corey, and one other Nautic Partners employee. Cornerstone accuses the Executives of utilizing its proprietary and confidential information to usurp a corporate opportunity for their own and New Reliant's benefit, misappropriating Cornerstone's confidential information following their resignations, and breaching their fiduciary duties. Cornerstone alleges the Nautic entities and employees conspired with and assisted the executives in their tortious conduct. Cornerstone also asserts tortious interference claims against these defendants.

The Funds and the General Partner, to which we will refer collectively as the respondents, filed special appearances contesting the trial court's personal jurisdiction over them. NauticPartners, New Reliant, Hilinski, and the other Nautic Partners employees entered general appearances and did not contest jurisdiction. The trial court granted the

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[6] Specifically, Cornerstone named as defendants former Cornerstone executives Brohm, Patrick Ryan, Kenneth McGee, Jerry Huggler, and Chad Deardorff.

Funds' special appearance but denied the General Partner's. Cornerstone appealed the former order, and the General Partner appealed the latter. In separate opinions issued by different panels, the court of appeals affirmed as to the Funds and reversed as to the General Partner, holding that Texas lacks jurisdiction over all four entities. ___ S.W.3d ___ (Tex. App.—Dallas 2014); ___ S.W.3d ___ (Tex. App.—Dallas 2014). We granted Cornerstone's petitions for review and consolidated the cases for oral argument.[7]

II. Personal Jurisdiction Framework

In several recent cases, we have reaffirmed the well-established framework for analyzing personal jurisdiction, both generally and more specifically in the business-tort context. Courts have personal jurisdiction over a nonresident defendant when the state's long-arm statute authorizes such jurisdiction and its exercise comports with due

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[7] We have jurisdiction over interlocutory appeals in which the court of appeals "holds differently from a prior decision of" this Court, meaning that "there is inconsistency in the[] respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants." TEX. GOV'T CODE § 22.225(c), (e). Cornerstone argues that the court of appeals' decisions conflict with this Court's opinion in *Spir Star AG v. Kimich*, in which we held that a nonresident manufacturer that "intentionally targets Texas as the marketplace for its products" may not escape Texas's jurisdiction with respect to product-liability claims "merely by forming a Texas affiliate" to make the sales. 310 S.W.3d 868, 871, 875 (Tex. 2010). The court of appeals found *Spir Star*'s reasoning inapposite outside the stream-of-commerce context applicable to product claims, revealing uncertainty to be clarified in this area.

process. *TV Azteca v. Ruiz*, ___ S.W.3d ___, ___ (Tex. 2016). We have held that "the requirements of the Texas long-arm statute are satisfied if an assertion of jurisdiction accords with federal due-process limitations," and those limitations therefore guide our analysis. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007). A state's exercise of jurisdiction comports with federal due process if the nonresident defendant has "minimum contacts" with the state and the exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice.'" *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).[8]

The "touchstone" of a minimum-contacts analysis is purposeful availment. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005). To that end, a "defendant establishes minimum contacts with a forum when it 'purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013) (quoting *Retamco Operating, Inc. v. Republic Drilling Co.*, 278 S.W.3d 333, 338 (Tex. 2009)). Three primary considerations underlie the purposeful-availment analysis: (1) only the

[8] The ultimate question of whether Texas courts have personal jurisdiction over a nonresident defendant is one of law that we review de novo. *Moncrief Oil Int'l, Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013). "When, as here, the trial court does not issue findings of fact and conclusions of law, we imply all relevant facts necessary to support the judgment that are supported by evidence." *Id.*

defendant's contacts with the forum are relevant, not the unilateral activity of another party or third person; (2) the defendant's acts must be "purposeful" and not "random, isolated, or fortuitous"; and (3) the defendant "must seek some benefit, advantage, or profit by availing itself of the jurisdiction" such that it impliedly consents to suit there. *Michiana*, 168 S.W.3d at 785 (citations and internal quotation marks omitted). Although "physical presence in the forum" is "a relevant contact," it "is not a prerequisite to jurisdiction." *Walden*, 134 S. Ct. at 1122.

A defendant's contacts with the forum may give rise to either general or specific jurisdiction. General jurisdiction is established by a defendant's "continuous and systematic" contacts that render it "essentially at home in the forum State," irrespective of whether the defendant's alleged liability arises from those contacts. *TV Azteca*, ___ S.W.3d at ___ (quoting *Daimler AG v. Bauman*, 134 S.Ct. 746, 754 (2014)) (internal quotation marks omitted); *Moki Mac*, 221 S.W.3d at 575. Specific jurisdiction arises when the plaintiff's cause of action "arises from or relates to the defendant's contacts." *Spir Star AG v. Kimich*, 310 S.W.3d 868, 873 (Tex. 2010). Our inquiry in this case is confined to specific jurisdiction, which requires us to "focus on the relationship among the defendant, the forum[,] and the litigation." *Moki Mac*, 221 S.W.3d at 575–76 (citations and internal quotation marks omitted).

III. Analysis

A. Minimum Contacts

Cornerstone argues that the Funds, via the General Partner,[9] established minimum contacts with Texas by purchasing Texas hospitals through wholly owned subsidiary New Reliant. No disagreement should exist, Cornerstone contends, that these contacts were purposeful as opposed to random or fortuitous, and that the respondents sought a benefit or profit from the Texas investment. Cornerstone couches the dispute as whether the Texas contacts "count against" the Funds and the General Partner even though New Reliant actually purchased the hospitals. According to Cornerstone, they do. "[N]obody else made the decision to acquire these Texas hospitals," Cornerstone asserts, "because nobody else had the money."

By contrast, the respondents describe their role in the underlying events as "limited to creating and funding a subsidiary that, in turn, indirectly invested in the Reliant hospital chain through further subsidiaries." They cite settled law that the contacts of distinct legal entities, including parents and subsidiaries, must be assessed separately for jurisdictional purposes unless the corporate veil is pierced. *E.g.*, *PHC-Minden, LP v. Kimberly-Clark*

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[9] It is undisputed that the General Partner acted on the Funds' behalf in all matters related to the Reliant transaction. *See* Lee Harris, *A Critical Theory of Private Equity*, 35 DEL. J. CORP. L. 259, 269 (2010) (noting that in a limited partnership "the general partner raises the fund, manages and operates the fund, owes duties to the fund, and acts as an agent of the fund vis-a-vis third parties"). For example, as noted, the General Partner approved the investment and signed the LLC agreement on each of the Funds' behalf.

Corp., 235 S.W.3d 163, 172–73 (Tex. 2007). They argue in turn that, because "the record shows that it was the Funds' indirect subsidiary, New Reliant, *not* the Funds themselves that had direct contacts with Texas," and because Cornerstone has never argued or proved that New Reliant's contacts may be attributed to the respondents under a veil-piercing theory, jurisdiction over the respondents is lacking. The court of appeals agreed, holding that the Funds "took no direct action in Texas" and merely "invested in New Reliant through subsidiaries." ___ S.W.3d at ___. Similarly, the court held that "Cornerstone did not present evidence of [the General Partner's] contacts with Texas related to the Reliant hospital acquisition and did not rebut [the General Partner's] evidence that it did not have [such] contacts." ___ S.W.3d at ___ (emphasis omitted).

The respondents are correct that "so long as a parent and subsidiary maintain separate and distinct corporate entities, the presence of one in a forum state may not be attributed to the other." *PHC–Minden*, 235 S.W.3d at 172 (quoting *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1160 (5th Cir. 1983)); *see also Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 335 (1925). They are also correct that Cornerstone has not argued that the Funds and their subsidiaries failed to maintain their legal separateness or that the Texas contacts of any one of those entities could or should be attributed to any other. Accordingly, New Reliant's Texas contacts—specifically, its ownership and operation of hospitals in Texas—could not in and of themselves subject New Reliant's limited-partner parent companies and their general partner to Texas's jurisdiction. But we

disagree with the respondents that the Funds' use of a subsidiary to purchase the hospitals effectively ends the inquiry.

The respondents frame the acquisition of Old Reliant's assets as a succession of events: the General Partner's investment committee met in Rhode Island for presentations by Nautic Partners and the prospective Reliant management team (i.e., the Cornerstone executives) about the investment; the General Partner authorized the Funds to invest in Reliant Holding and issued a capital call (actions that also took place in Rhode Island); the Funds created Reliant Holding pursuant to that authorization; Reliant Holding formed Reliant Pledgor and Reliant Opco; Reliant Pledgor and Reliant Opco formed New Reliant; and New Reliant acquired the hospitals. But in reality, these events were all part of one overarching transaction that closed March 23, 2011.

The LLC agreement between Reliant Holding and its members (the Funds), which had a March 23 effective date, provided that the members' capital contributions to Reliant Holding would be used as "a contribution to capital to one or more Subsidiaries to effect the consummation of the transactions contemplated by the Asset Purchase Agreement and payment of certain transaction expenses related thereto on the Effective Date." The referenced Asset Purchase Agreement was the agreement between New Reliant and Old Reliant for the hospitals' purchase. Thus, the money the Funds invested in Reliant Holding—which, incidentally, listed its principal place of business as Addison, Texas—was

contractually required to be used for New Reliant's purchase of the Reliant hospitals. And as noted above, the purchase money was transferred by the Funds directly to the law firm serving as New Reliant's disbursement agent, and from the agent to Old Reliant.[10]

Further, all of the Funds' relevant subsidiaries, from Reliant Holding to New Reliant, were newly created to complete the transaction that the respondents set in motion. Cornerstone is not attempting to attribute the contacts established by New Reliant as a going concern to the Funds or the General Partner. Rather, it is seeking to trace the purchase of Texas assets to the entities that spearheaded and directed the transaction, and ultimately stood to profit from it. We agree with Cornerstone that "[k]eeping legal entities distinct does not mean they can escape jurisdiction by splitting an integrated transaction into little bits." Although "only the defendant's contacts with the forum" count, not "the unilateral activity of another party or a third person," the Reliant deal did not stem from a third party's unilateral activity; it was the result of a transaction stemming from the activity of the respondents themselves. *Michiana*, 168 S.W.3d at 785.

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[10] The respondents maintain that the disbursement agent "credited and debited the money to each subsidiary" and that "corporate formalities were observed." That may be the case, but the document on which the respondents rely expressly distinguishes between the "deemed" transaction sequence involving the chain of subsidiaries and the "actual transfers" documented above.

The General Partner argues that its state of mind when it acted in Rhode Island to direct the investment is irrelevant to whether it had contacts with Texas. *See id.* at 791 ("Business contacts are generally a matter of physical fact, while tort liability . . . turns on what the parties thought, said, or intended."). But whether the respondents' conduct was ultimately tortious is not before us and is not relevant to the minimum-contacts analysis. *Id.* at 790 (holding that purposeful availment does not depend on "whether a tort was directed toward Texas" because, if it did, "a nonresident may defeat jurisdiction by proving there was no tort"). Further, this is not a case in which jurisdiction turns on the mere foreseeability of causing injury in Texas. *Id.* at 787. Instead, the Funds, through the General Partner, targeted Texas assets in which to invest and sought to profit from that investment. [11]

By contrast, we hold today in *Searcy v. Parex Resources, Inc.* that Texas lacks jurisdiction over a Canadian company that was sued for tortious

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[11] The Funds' corporate representative testified about the "lifespan" of a private-equity fund, explaining: "Usually the lifespan is, you have five to six years to make your investments, and then the partnership itself has a 10-year life cycle, with possible extensions." He noted that, at the time of his deposition, one of the Funds was "towards the end of its investment cycle" and therefore "somewhere between the earliest one-third or mid-life of its life cycle." The Funds thus appear to have been established in a manner consistent with the typical private-equity fund arrangement. *See* Harris, 35 DEL. J. CORP. L. at 279 (noting that "parties to a private equity limited partnership frequently agree that the limited partnership shall terminate after some finite period, usually ten years").

interference with the plaintiff's agreement to purchase shares of a Bermuda corporation's subsidiary, which owned Colombian oil-and-gas operations. ___ S.W.3d ___, ___ (Tex. 2016). Although the seller of the shares had operations in Texas and communicated with the Canadian company in Texas, we concluded that the seller's Texas presence was "coincidental" as far as the Canadian company was concerned because it "was not specifically seeking out a Texas seller or Texas assets." *Id.* at ___. Conversely, the respondents here specifically sought both a Texas seller and Texas assets. Accordingly, we hold that the respondents' contacts with Texas were "purposeful" and that the respondents sought "some benefit, advantage, or profit by availing [themselves] of the jurisdiction" such that they impliedly consented to suit here.[12] *Michiana*, 168 S.W.3d at 785.

Because Cornerstone alleges the respondents' minimum contacts give Texas specific, rather than general, jurisdiction over the respondents, we must determine whether Cornerstone's causes of action arise from or relate to the respondents' purposeful contacts with Texas. *Spir Star*, 310 S.W.3d at 873. We have held that this standard requires "a substantial connection between those contacts and the operative facts of the litigation." *Moki Mac*, 221 S.W.3d at 585. Cornerstone alleges that the

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[12] The parties dispute whether the trial court's denial of the General Partner's plea to the jurisdiction is supported by evidence that Hilinski acted on behalf of the General Partner, rather than (or in addition to) Nautic Partners, when he conducted due diligence on the Reliant deal in Texas. Our analysis above renders it unnecessary to address this dispute.

respondents used Cornerstone's confidential information to divert the Reliant deal and that the transaction itself, which culminated in the Funds' subsidiary's purchase of Old Reliant's assets, constituted tortious interference as well as aiding and abetting the Executives' usurpation of the Reliant opportunity. Because the facts surrounding the Reliant transaction—which is the crux of the respondents' purposeful contact with Texas—will be the focus of the claims against the respondents at trial,13 we hold that those claims arise out of the respondents' Texas contacts.[13]

B. Fair Play and Substantial Justice

Having determined that the respondents have minimum contacts with Texas, we turn to whether the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice, as due process requires. *Walden*, 134 S.Ct. at 1121. Relevant factors in this analysis include, where appropriate:

> (1) the burden on the defendant; (2) the interests of the forum in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the international judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several nations in furthering fundamental substantive social

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[13] We noted in *Moncrief* that "a court need not assess contacts on a claim-by-claim basis if all claims arise from the same forum contacts." 414 S.W.3d at 150–51.

policies.

Moncrief, 414 S.W.3d at 155 (citing *Spir Star*, 310 S.W.3d at 878). As we have recognized, if "a nonresident has minimum contacts with the forum, rarely will the exercise of jurisdiction over the nonresident *not* comport with [such] notions." *Id.* at 154–55 (emphasis added).

This is not one of those rare occasions. Nautic Partners, Hilinski, and others associated with the Nautic entities are already litigating in Texas and have not challenged jurisdiction. Any added burden on the respondents is relatively minimal and does not outweigh Texas's interest in adjudicating a dispute involving the alleged usurpation of a corporate opportunity in Texas involving Texas assets. Further, litigating the claims against the respondents together with the claims against the other Nautic entities and individuals promotes judicial economy. *See id.* at 155. Accordingly, we hold that exercising personal jurisdiction over the respondents comports with traditional notions of fair play and substantial justice.

IV. Conclusion

The trial court has personal jurisdiction over the Funds and the General Partner. We reverse the court of appeals' judgments and remand to the trial court for further proceedings.

Debra H. Lehrmann

Justice

OPINION DELIVERED: June 17, 2016

REVERSE, RENDER, and DISMISS; and Opinion Filed June 18, 2014.

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

No. 05-13-00859-CV

NAUTIC MANAGEMENT VI, L.P., Appellant

v.

CORNERSTONE HEALTHCARE GROUP HOLDING, INC., Appellee

On Appeal from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. 11-04339

MEMORANDUM OPINION

Before Justices O'Neill, Lang-Miers, and Evans
Opinion by Justice Lang-Miers

This is an interlocutory appeal from the trial court's order denying the special appearance of Nautic Management VI, L.P. (NMVI), a Delaware limited partnership with its principal place of business in Providence, Rhode Island. For the following reasons, we reverse the trial court's order and render judgment granting the special appearance and dismissing Cornerstone Healthcare

Group Holding, Inc.'s claims against NMVI for want of jurisdiction. We issue this memorandum opinion because the issues are settled. TEX. R. APP. P. 47.2(a), .4.

BACKGROUND

We take the following facts from the parties' briefs. Cornerstone is headquartered in Dallas and owns and operates over a dozen hospitals in several states; it was looking to expand its business. NMVI is the general partner of two private equity funds and the manager of a third (the Funds). NMVI does not have employees or tangible resources; it performs its functions through three committees—investment, executive, and limited partnership—and outsources its functions as necessary. The Funds are limited partnerships formed under Delaware law with their principal places of business in Rhode Island.

In 2010, the CEO and other employees of Cornerstone identified as an opportunity for acquisition a chain of eight Texas hospitals operating under the Reliant name. Instead of presenting the opportunity to Cornerstone, however, they presented it to Nautic Partners, LLC. Nautic Partners is a private equity firm that services private equity funds, chief among them the Funds. Scott Hilinski is a managing director of Nautic Partners and NMVI.

NMVI outsources to Nautic Partners services such as identifying potential investments, performing due diligence activities on those investments, negotiating potential investments, and managing the companies ultimately acquired.

After performing due diligence on the Reliant hospital opportunity, Hilinski presented the investment opportunity to NMVI's investment committee. The committee authorized the Funds to make the investments. The Funds then created Reliant Holding Company, LLC, which had two newly created subsidiaries, Reliant Pledgor, LLC and Reliant Opco Holding Corp., which in turn together owned 100% of Reliant Hospital Partners, LLC. Reliant Hospital Partners is the entity that actually acquired and now operates the Reliant hospital chain. Soon thereafter, the executives at Cornerstone involved in the Reliant transaction left Cornerstone to run the new Reliant hospital chain.

Cornerstone sued its former executives, Reliant Hospital Partners, Nautic Partners, Hilinski, NMVI, the Funds, and others alleging, among other things, breach of fiduciary duty and usurpation of corporate opportunity. NMVI and the Funds filed special appearances. The trial court granted the special appearances of the Funds, and Cornerstone appealed. We recently affirmed the order granting the Funds' special appearances. *Cornerstone Healthcare Group Holding, Inc. v. Reliant Splitter, L.P.*, No. 05-11-01730-CV, 2014 WL 2538881 (Tex. App.—Dallas June 5, 2014, no pet. h.) (mem. op.).

Cornerstone did not contend that the trial court had general jurisdiction over NMVI. As the basis for specific jurisdiction over NMVI, Cornerstone alleged that NMVI purposefully availed itself of the privilege of doing business in Texas and committed torts in Texas. The petition described how the Funds, "through [t]heir general partner

[NMVI]," traveled to Texas to meet with the former executives about the Reliant acquisition, how NMVI "purposefully invested and acquired a business that is based in Texas," and that NMVI is "actively involved in the management of Reliant, a Texas-based business with extensive operations throughout the state."

NMVI argued in its special appearance that Cornerstone's "jurisdictional allegations . . . are identical to [those] alleged with respect to the [Funds]" whose special appearances were granted. NMVI asserted and offered evidence to support that it had no contacts with Texas. It also asserted and offered evidence that it has no ownership interest in Reliant Hospital Partners, Reliant Opco, Reliant Pledgor, or Reliant Holding Co.

In response, Cornerstone alleged that NMVI's special appearance was different from the Funds' special appearances because:

> 1. NMVI's fiduciary, Hilinski, traveled to Texas as part of the conspiracy to usurp the Reliant opportunity from Cornerstone, and to aid and abet the Executives' breaches of their fiduciary duties to Cornerstone [footnote omitted];
>
> 2. NMVI's delegate, Nautic Partners, LLC conducted extensive due diligence in Texas in order to evaluate the Reliant opportunity and report its findings to NMVI; and

> 3. NMVI was the decision-maker and authorized the Funds' investment that ultimately acquired the assets of Reliant Hospital Partners, LLC, including all its Texas assets.

After the hearing on NMVI's special appearance, the court coordinator sent an email to the parties stating that the trial court "has granted [NMVI]'s Special Appearance and has asked that you email me an order for him to sign." Ultimately, however, the trial court signed an order denying NMVI's special appearance, and this interlocutory appeal followed.

On appeal, NMVI argues that the trial court did not have personal jurisdiction because (1) the evidence showed that Hilinski and others acted as officers of Nautic Partners when they investigated the Reliant opportunity, (2) the contacts of Nautic Partners during the due diligence process cannot be attributed to NMVI because Cornerstone did not prove Nautic Partners was an agent of NMVI, and (3) NMVI's involvement in the Reliant transaction was limited and occurred in Rhode Island, and ownership of a Texas subsidiary is insufficient to support personal jurisdiction in this case.

Cornerstone argues on appeal that NMVI's role in the Reliant transaction was not limited and that, but for NMVI's approval, the sale would never have occurred. It argues that NMVI received a substantial fee "for finding, investigating, and planning the acquisition." Cornerstone also argues that NMVI controlled the money, authorized the deal, issued capital calls, had exclusive and complete

control of the Funds, created the wholly owned subsidiaries by signing the Reliant acquisition documents on behalf of the Funds, and automatically controlled the board of every Reliant entity through its relationship to the Funds which "hold or indirectly control 100% of the stock of all Reliant entities today." Cornerstone argues that there was "plenty of evidence" that Hilinski's contacts were on behalf of NMVI, not just Nautic Partners, and that NMVI's transaction fee "could only be for the due-diligence activities." In its brief, Cornerstone stated, "The issue here is not one of imputing acts to NMVI, but whether NMVI's *own acts* establish minimum contacts." And in oral argument, Cornerstone said it was not trying to "pierce any veils."

STANDARD OF REVIEW AND APPLICABLE LAW

The procedure for establishing and contesting personal jurisdiction is well settled. *See BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 793 (Tex. 2002); *Cornerstone*, 2014 WL 2538881, at *2–3; *Anchia v. DaimlerChrysler AG*, 230 S.W.3d 493, 497–99 (Tex. App.—Dallas 2007, pet. denied). The only issue in this case is whether the trial court had specific jurisdiction over NMVI. Specific jurisdiction exists if the defendant "made minimum contacts with Texas by purposefully availing itself of the privilege of conducting activities here and its liability [arose] from or [was] related to those contacts." *DaimlerChrysler AG*, 230 S.W.3d at 498 (citations omitted). In making that determination, we examine the record for evidence of the defendant's contacts with the forum and their relationship to the litigation. *Id.* (citations omitted).

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law which we review de novo. *BMC Software*, 83 S.W.3d at 794. When the record does not contain findings of fact and conclusions of law, we must imply all findings of fact necessary to support the trial court's implied findings that are supported by the evidence. *Id.* at 795. However, when a reporter's record is included in the appellate record, the trial court's implied findings are not conclusive and are subject to challenge on legal and factual sufficiency grounds. *See id.*

DISCUSSION

In the appeal of the Funds' special appearance, Cornerstone alleged two bases for personal jurisdiction over the Funds: purposeful availment and substantial connection between the Funds' contacts and the operative facts of the litigation. *Cornerstone*, 2014 WL 2538881, at *2. Cornerstone argued below "that a nonresident who funds a Texas company, controls its board, and is actively involved in its affairs has established minimum contacts with the state." *Id.* at *4. It argued that the Funds "paid for the hospitals at issue here, structured a chain of wholly owned subsidiaries to hold them, controlled the boards of each, and shortly after the purchase fired the executives who ran them." *Id.*

In examining the Funds' contacts, or lack thereof, with Texas, we stated that "Cornerstone essentially argues the existence of the subsidiaries

should be ignored, and [the Funds] should be required to appear in a Texas court because they 'control the funding and the board of New Reliant' and 'play a strategic and advisory role' to New Reliant." *Id.* But we concluded that the Funds "took no direct action in Texas and did not market any product in Texas." We pointed out that the Funds "invested in New Reliant through subsidiaries" and that Cornerstone had "not established that [the Funds] and the subsidiaries at issue are 'not separate.'" *Id.* at *6. We also concluded that "the record in this case does not show that [the Funds] control the internal business operations and affairs of the subsidiaries at issue or that the degree of control exercised by [the Funds] is greater than that normally associated with common ownership and directorship." *Id.*

NMVI contends that Cornerstone makes the same jurisdictional arguments with respect to NMVI's contacts that it made about the Funds' contacts in *Cornerstone*. *See id.* at *4–6. In oral argument, when asked to respond to the argument that NMVI's contacts with Texas were less than the Funds' contacts, Cornerstone stated that it "wouldn't go that far . . . I'd say they are the same. I agree this and the other appeal have to be coordinated."

Due-diligence activities. NMVI argues on appeal that Nautic Partners' and Hilinski's contacts with Texas cannot be imputed to NMVI. It contends that it offered evidence showing that Hilinski's contacts with Texas regarding the Reliant hospital transaction were made on behalf of Nautic Partners, and all of NMVI's activities regarding the Reliant

hospital transaction were after the due diligence had been conducted and were all done in Rhode Island. Cornerstone argues that the substantial fee NMVI received at the closing "could only be for due-diligence activities" because it "was expressly designated for services rendered *before* the Reliant closing." But the closing documents referred to this fee as a "transaction fee," and Cornerstone does not cite any evidence that this fee was for due-diligence activities conducted by NMVI. We conclude that Cornerstone did not present evidence that NMVI had any contacts with Texas regarding due-diligence activities.

Nautic Partners as agent of NMVI. NMVI also argues on appeal that Nautic Partners' contacts with Texas cannot be imputed to it because Nautic Partners was not its agent. It cites evidence showing that Nautic Partners "was free to accomplish the task NMVI delegated to it (identifying, analyzing, and negotiating potential transactions) in any manner [it] saw fit" and that it did not exercise control over how Nautic Partners performed its functions.

Cornerstone argues that this "claim is irrelevant to this appeal because the contacts at issue are by NMVI, not an independent contractor." Nevertheless, Cornerstone argues that "if a nonresident hires an independent contractor *specifically* to transact a deal in Texas, that counts as purposeful availment." It does not cite case authority to support its argument. But even if that were the law, a question we need not decide, Cornerstone does not cite evidence that NMVI hired

Nautic Partners *specifically* to transact a deal in Texas. Instead, the evidence showed that former executives from Cornerstone initially approached Nautic Partners about the Reliant deal, Nautic Partners investigated the transaction, and Nautic Partners presented the deal to NMVI's investment committee as an opportunity for investment.

NMVI's involvement in Reliant transaction. NMVI also argues on appeal that its own involvement in the Reliant transaction is not sufficient to confer specific jurisdiction. It presented evidence that its investment committee's activities with respect to the Reliant transaction all occurred in Rhode Island and were limited to hearing a presentation about the opportunity, considering the investment, authorizing the investment, and issuing capital call notices to fund the transaction.

Cornerstone does not contend that these activities were sufficient to confer personal jurisdiction on NMVI in Texas, but it makes several arguments that NMVI "controls the board members" and "remains the key player in the future of these Texas hospitals" through its control of the Funds. However, Cornerstone expressly stated it was not asserting jurisdiction under a piercing-the-veil theory, and we do not consider whether NMVI exercised such control over its direct and indirect subsidiaries such that they should be considered fused. *See BMC Software*, 83 S.W.3d at 798–99; *Knight Corp. v. Knight*, 367 S.W.3d 715, 730 (Tex. App.—Houston [14th Dist.] 2012, no pet.).

We conclude that Cornerstone did not present evidence of *NMVI's* contacts with Texas related to the Reliant hospital acquisition and did not rebut NMVI's evidence that it did not have contacts with Texas related to the Reliant hospital acquisition. For the additional reasons articulated in *Cornerstone*, we conclude that the trial court did not have personal jurisdiction over NMVI. 2014 WL 2538881, at *4–6. Consequently, we conclude that the trial court erred by denying NMVI's special appearance.

CONCLUSION

We reverse the trial court's order denying NMVI's special appearance and render judgment dismissing Cornerstone's claims against NMVI for want of jurisdiction.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

Affirmed and Opinion Filed June 5, 2016

IN THE COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

No. 05-11-01730-CV

CORNERSTONE HEALTHCARE GROUP HOLDING, INC., Appellant

v.

RELIANT SPLITTER, L.P., NAUTIC PARTNERS VI, L.P., AND KENNEDY PLAZA PARTNERS VI, L.P., Appellees

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On Appeal from the 68th Judicial District Court
Dallas County, Texas
Trial Court Cause No. 11-04339

MEMORANDUM OPINION

Before Justices Bridges, Lang, and Lewis
Opinion by Justice Bridges

Cornerstone Healthcare Group Holding, Inc. appeals the trial court's orders granting the special appearances of Reliant Splitter, L.P., Nautic Partners VI, L.P., and Kennedy Plaza Partners VI, L.P.. In three issues, Cornerstone argues appellees purposely availed themselves of Texas jurisdiction, there is a substantial connection between appellees'

contacts with Texas and the operative facts of the litigation, and exercising jurisdiction over appellees would not offend traditional notions of fair play and substantial justice. We affirm the trial court's orders.

Cornerstone is a "provider of post acute care hospital services." Since 2007, Cornerstone was interested in growth opportunities, including the acquisition of inpatient and outpatient rehabilitation facilities. Cornerstone's executive management team was responsible for seeking and evaluating prospective business relationships with inpatient rehabilitation hospitals. In late March 2011, several Cornerstone executives resigned in succession.

On March 23, 2011, New Reliant, a Delaware limited liability company with its principal place of business in Texas, acquired substantially all of the assets of "Old Reliant," an operator of inpatient rehabilitation hospitals in Texas. In April 2011, Cornerstone filed suit against New Reliant and other defendants alleging three of Cornerstone's executives had usurped a corporate opportunity from Cornerstone. Specifically, Cornerstone alleged the executives had failed to inform Cornerstone of a potential opportunity to acquire Old Reliant and worked with Nautic Partners, LLC[1], a Rhode Island private equity firm, in acquiring Old Reliant. Cornerstone subsequently amended its petition to include claims against appellees.

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[1] The record indicates Nautic Partners filed a general appearance in this case.

Appellees filed a special appearance asserting the trial court lacked jurisdiction over them because they are partnerships formed and existing under Delaware law with their principal place of business in Rhode Island. Appellees further argued, among other things, they do not continuously and systematically engage in business in Texas; have not appointed a registered agent for service of process in Texas; have not obtained a certificate to do business in Texas; and have no offices, real or personal property, address, telephone number, or bank account in Texas.

Appellees stated they are not direct owners of New Reliant. Instead, appellees entered into a limited liability company agreement with Reliant Holding Company, L.L.C., a Delaware limited liability company. Reliant Holding Company owns one hundred percent of Reliant Pledgor, L.L.C., a Delaware limited liability company. Reliant Pledgor owns one hundred percent of Reliant Opco Holding Corporation, a Delaware corporation. Reliant Pledgor owns 99.9% of New Reliant, and Reliant Opco owns 0.01%. Thus, appellees argued, they are Delaware partnerships with their principal place of business in Rhode Island, and their investment in New Reliant is "an indirect, passive investment via subsidiaries of Reliant Holding Company, a limited liability company formed under the laws of Delaware." The trial court subsequently entered orders granting appellees' special appearances. This appeal followed.

In its first issue, Cornerstone argues appellees purposely availed themselves of Texas jurisdiction. In its second issue, Cornerstone argues there is a

substantial connection between appellees' contacts with Texas and the operative facts of the litigation. And in its third issue, Cornerstone argues exercising jurisdiction over appellees would not offend traditional notions of fair play and substantial justice.

The plaintiff bears the initial burden of pleading sufficient allegations to bring a nonresident defendant within the provision of the Texas long-arm statute. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 793 (Tex. 2002). A nonresident defendant challenging personal jurisdiction through a special appearance carries the burden of negating all bases of personal jurisdiction. *Id.* Whether a court has personal jurisdiction over a defendant is a question of law. *Am. Type Culture Collection, Inc. v. Coleman*, 83 S.W.3d 801, 805-806 (Tex.2002) (citing *BMC Software*, 83 S.W.3d at 794). In resolving this question of law, a trial court must frequently resolve questions of fact. *Coleman*, 83 S.W.3d at 806 (citing *BMC Software*, 83 S.W.3d at 794). Appellate courts review the trial court's factual findings for legal sufficiency and review the trial court's legal conclusions de novo. *BMC Software*, 83 S.W.3d at 794. Where the record contains no findings of fact and conclusions of law, we must imply all findings of fact necessary to support the trial court's findings that are supported by the evidence. *Id.* at 795.

The Texas long-arm statute permits Texas courts to exercise jurisdiction over a nonresident defendant that does business in Texas. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 17.041 -.045 (West 2013). The long-arm statute defines doing business"

as: (1) contracting by mail or otherwise with a Texas resident with performance either in whole or in part in Texas; (2) commission of a tort in whole or in part in Texas; (3) recruitment of Texas residents directly or through an intermediary located in Texas; or (4) performance of any other act that may constitute doing business. *Id.* The broad language of the long-arm statute permits Texas courts to exercise jurisdiction "as far as the federal constitutional requirements of due process will permit." *BMC Software*, 83 S.W.3d at 795.

Personal jurisdiction over nonresident defendants meets the due process requirements of the Constitution when two conditions are met: (1) the defendant has established minimum contacts with the forum state; and (2) the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Spir Star AG v. Kimich*, 310 S.W.3d 868, 872 (Tex. 2010); *BMC Software*, 83 S.W.3d at 795 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Personal jurisdiction exists if the nonresident defendant's minimum contacts give rise to either general or specific jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-14 (1984); *BMC Software*, 83 S.W.3d at 795-96; *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990). Specific jurisdiction is established if the nonresident defendant's alleged liability arises from or is related to activity conducted within the forum. *BMC Software*, 83 S.W.3d at 796. The minimum contacts analysis for specific jurisdiction focuses on the relationship among the defendant, the forum, and the litigation. *Spir Star*, 310 S.W.3d at 873;

Michiana Easy Livin' Country, Inc. v. Holten, 168 S.W.3d 777, 790 (Tex.2005).

The "touchstone" of jurisdictional due process analysis is "purposeful availment." *Michiana*, 168 S.W.3d at 784 (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). "[I]t is essential in each case that there be some act by which the defendant 'purposefully avails' itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Michiana*, 168 S.W.3d at 784 (quoting *Hanson*, 357 U.S. at 253). The Texas Supreme Court has addressed the proper application of the concept of "purposeful availment" outlining three important aspects to be considered. First, it is only the defendant's contacts with the forum that count: purposeful availment "ensures that a defendant will not be haled into a jurisdiction solely as a result of ... the 'unilateral activity of another party or a third person.'" *Michiana*, 168 S.W.3d at 785 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). Second, the acts relied upon must be "purposeful" rather than "random, isolated or fortuitous." *Michiana*, 168 S.W.3d at 785 (quoting *Keeton v. Hustler Magazine Inc.*, 465 U.S. 770, 774 (1984)). Third, a defendant must seek some benefit, advantage or profit by "availing" itself of the jurisdiction. By invoking the benefit and protections of a forum's laws, a nonresident consents to suit there. *Michiana*, 168 S.W.3d at 785 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

Finally, in addition to minimum contacts, the exercise of personal jurisdiction must comport with traditional notions of fair play and substantial justice. *Spir Star*, 310 S.W.3d at 872; *BMC Software*, 83 S.W.3d at 795. The following factors are considered in making that determination: (1) the burden on the nonresident defendant; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering substantive social policies. *World-Wide Volkswagen,* 444 U.S. at 292; *Guardian Royal Exchange Assur., Ltd. v. English China Clays*, 815 S.W.2d 223, 231 (Tex. 1991).

In general, a corporation is a separate legal entity that shields its owners and shareholders from the jurisdiction of a foreign jurisdiction, even if the corporation itself is within the court's jurisdiction. *Cappuccitti v. Gulf. Indus. Prods., Inc.*, 222 S.W.3d 468, 481 (Tex. App.—Houston [1st Dist.] 2007, no pet.). A court may, however, under appropriate circumstances, pierce the corporate veil and bring shareholders or others within its jurisdiction as well. *Id.* (citing *BMC Software*, 83 S.W.3d at 798). One basis for piercing the corporate veil is the alter ego doctrine, which applies when there is such unity between a corporation and an individual that the separateness of the corporation has ceased and asserting jurisdiction over only the corporation would result in an injustice. *Id.*

The alter ego doctrine has also been applied in the context of a parent corporation and its subsidiary. *Id.* (citing *BMC Software*, 83 S.W.3d at 799). Texas courts may exercise personal jurisdiction over a nonresident parent corporation if the parent's relationship with its subsidiary that does business in Texas is one that would allow the court to impute the subsidiary's "doing business" to the parent. *Id.* Because Texas law presumes that two separate corporations are distinct entities and that a corporation is an entity separate from its officers and owners, the party seeking to ascribe one corporation's actions to another corporation or individual for jurisdictional purposes by piercing the corporate veil must prove the alter ego relationship. *Id.* (citing *BMC Software*, 83 S.W.3d at 798). To join the parent company and its subsidiary for jurisdictional purposes, the plaintiff must prove that the parent controls the internal business operations and affairs of the subsidiary. *Id.* (citing *BMC Software*, 83 S.W.3d at 799). The degree of control exercised by the parent must be greater than that normally associated with common ownership and directorship. *Id.* (citing *BMC Software*, 83 S.W.3d at 799). Thus, the plaintiff must present evidence showing that the two entities are not separate and the corporate veil, therefore, should be pierced to prevent fraud or injustice. *Id.* (citing *BMC Software*, 83 S.W.3d at 799). Cornerstone argues that, in *Schlobohm v. Schapiro*, the Texas Supreme Court held "that a nonresident who funds a Texas company, controls its board, and is actively involved in its affairs has established minimum contacts with the state." *See Schlobohm*, 784 S.W.2d at 359.

Cornerstone argues appellees have sufficient minimum contacts to require them to appear in a Texas Court because appellees entered into a limited liability company agreement with Reliant Holding, which owns one hundred percent of Reliant Pledgor, which owns one hundred percent of Reliant Opco and Reliant Pledgor and Reliant Opco own 99.9% and 0.01%, respectively, of New Reliant, which purchased the hospitals at issue. Cornerstone argues further that appellees "paid for the hospitals at issue here, structured a chain of wholly owned subsidiaries to hold them, controlled the boards of each, and shortly after the purchase fired the executives who ran them."[2] In making these arguments, Cornerstone emphasizes that appellees paid 97% of the money to buy the hospitals and "held 100% of the stock of every entity" involved in the purchase of the hospitals. Cornerstone essentially argues the existence of the subsidiaries should be ignored, and appellees should be required to appear in a Texas court because they "control the funding and the board of New Reliant" and "play a strategic and advisory role" to New Reliant. We disagree.

In *Schlobohm*, a Pennsylvania resident, Rolf Schapiro, invested $10,000 in a corporation named Hangers, Inc. formed by Schapiro's son, a Dallas resident, to establish a dry cleaning business in Dallas. *Schlobohm*, 784 S.W.2d at 356. Schapiro received stock in Hangers and became its sole director. Although Schapiro did not participate in

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[2] Plaintiff cites nothing in the record to show appellees acted directly in connection with the hiring and firing of any "executives."

the incorporation, he conducted Hangers' first meeting in Dallas, and his attorney in Pittsburgh kept the corporate records. Hangers leased space for some of its outlets, and Schapiro guaranteed some of the leases. Hangers leased a building from Schlobohm in late 1984, but Schapiro did not participate in the negotiations and did not guarantee the lease. *Id.* Schapiro loaned Hangers $30,000 of his personal funds to buy equipment to expand the business. *Id.* He later visited Dallas and obtained financing for the rest of the plant, signing a promissory note in his individual capacity for $136,702.10. *Id.* Schapiro owned the equipment and leased it to Hangers. *Id.* Schapiro "frequently provided funds during startup, expansion, and throughout Hangers' decline." *Id.* Schapiro "continually" covered Hangers' payroll and other expenses, and these sums, characterized as loans, totaled an estimated $474,000. *Id.* Over the course of his dealings with Hangers, Schapiro demanded that all shares in the Corporation be transferred to him, sent his personal accountant to Dallas twice, and came to Dallas himself to investigate Hangers. *Id.* Schapiro ultimately discontinued his relationship with Hangers, and Hangers stopped paying rent on the building it leased from Schlobohm. *Id.*

Schlobohm sued Schapiro, his son, and Hangers for non-payment of the rent, and Schapiro made a special appearance. The trial court sustained Schapiro's challenge to jurisdiction, and this Court affirmed. In concluding the exercise of jurisdiction over Schapiro was proper, the Texas Supreme Court first determined Schapiro's activity in Texas was continuing and systematic. Second, the

court considered the fact that Schapiro "became actively involved in a Texas business and voluntarily continued his commitment for almost two years" and determined Schapiro therefore purposely availed himself of the benefits of Texas. Finally, having determined Schapiro had minimum contacts with Texas, the court held the exercise of jurisdiction over Schapiro did not offend traditional notions of fair play and substantial justice because Schapiro's activity in Texas justified the conclusion that he should expect to be called into a Texas court. *Id.*

Cornerstone further relies on the Texas Supreme Court's opinion in *Spir Star AG v. Kimich* for its argument "that a nonresident who intentionally targets the Texas market and gains substantial profits from doing so cannot avoid personal jurisdiction merely by conducting its Texas business through a subsidiary." *See Spir Star*, 310 S.W.3d at 875. *Spir Star* is a products liability case in which Spir Star, a German corporation, established a Texas distributorship which used the trademarked "Spir Star" name and acted as Spir Star's exclusive distributor in Texas and North America. *Id.* at 871. The court noted a seller's awareness "that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." *Id.* at 873 (citing *CSR Ltd.v. Link*, 925 S.W.2d 591, 595 (Tex. 1996) (quoting *Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987) (plurality op.))). Instead, citing *Asahi*, the court set out the additional requirement of some "additional conduct" – beyond merely placing

the product in the stream of commerce – that indicates "an intent or purpose to serve the market in the forum State." *Id.* (citing *Asahi*, 480 U.S. at 112). Examples of this additional conduct include: (1) designing the product for the market in the forum State, (2) advertising in the forum State, (3) establishing channels for providing regular advice to customers in the forum State, and (4) marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. *Id.* (citing *Asahi*, 480 U.S. at 112). The court concluded Spir Star did not merely set its products afloat in a stream of commerce that happened to carry them to Texas but marketed its product through a distributor who has agreed to serve as its sales agent in Texas. *Id.* at 880 (citing *Asahi*, 480 U.S. at 112). Further, Spir Star's potential liability arose out of its contacts with Texas, and exercising personal jurisdiction over Spir Star did not offend traditional notions of fair play and substantial justice. *Id.*

We find neither *Schlobohm* nor *Spir Star* dispositive of this case. In *Schlobohm*, Schapiro took an active role in Hangers, investing nearly half a million dollars of his personal funds and repeatedly coming to Texas to take part in angers' business affairs. Among other things, Schapiro came to Dallas and obtained financing for Hangers' plant, signing a promissory note in his individual capacity for $136,702.10; personally guaranteed some of Hangers' leases in Texas; and demanded that all shares in the corporation be transferred to him. *Spir Star* was a products liability case in which a German manufacturer established a Texas distributorship which used the trademarked "Spir Star" name and

acted as Spir Star's exclusive distributor in Texas and North America. Moreover, Spir Star marketed its product through a distributor who agreed to serve as its sales agent in Texas.

In contrast, appellees' took no direct action in Texas and did not market any product in Texas. Instead, appellees invested in New Reliant through subsidiaries. The record in this case does not show that appellees control the internal business operations and affairs of the subsidiaries at issue or that the degree of control exercised by appellees is greater than that normally associated with common ownership and directorship. *See BMC Software*, 83 S.W.3d at 799; *Cappuccitti*, 222 S.W.3d at 481. Cornerstone has not established that appellees and the subsidiaries at issue are "not separate." *See BMC Software*, 83 S.W.3d at 799; *Cappuccitti*, 222 S.W.3d at 481. Under the facts and circumstances of this case, we cannot conclude the trial court erred in granting appellees' special appearances. We overrule Cornerstone's issues.

We affirm the trial court's orders.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE