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The Bulletin **is a quarterly newsletter by Kessler Topaz Meltzer & Check to help institutional investors stay**

FULLY INFORMED

HIGHLIGHTS

KESSLER TOPAZ CLIENTS TAKE A BIG STEP IN THE FIGHT FOR ACCOUNTABILITY FOR THE NATION'S ON-GOING OPIOID CRISIS

Alex B. Heller, Esquire

In *In re Cardinal Health, Inc. Derivative Litigation*, Kessler Topaz clients defeated a motion to dismiss a shareholder derivative action filed against the directors and officers of Cardinal Health, Inc. ("Cardinal Health" or the "Company").[1] The action seeks to hold these individuals responsible for allowing Cardinal Health to repeatedly violate the laws regulating the distribution of prescription opioids. This pleading stage win against one of the nation's largest prescription opioid distributors represents another significant victory by public shareholders focused on increasing corporate accountability for the nation's opioid crisis. As alleged in the action, oversight failures at the highest level at Cardinal Health directly contributed to the opioid epidemic that continues to kill thousands of Americans every year.

In her ruling, the Hon. Sarah D. Morrison of the United States District Court for the Southern District of Ohio fully endorsed the call of the action. As Judge Morrison explained, "The thrust of the claims now before the Court is that the directors and officers of [Cardinal Health] failed (or refused) to mitigate the societal costs of Cardinal Health's business in the face of increasing evidence that the company would be forced to bear them."[2] Finding that the complaint stated a claim against each of the fourteen former and current fiduciaries of the Company, the court ultimately concluded that a majority of Cardinal Health's current directors face a substantial risk of liability in the action.

The action began in July 2019, when Cardinal Health shareholders represented by Kessler Topaz served a demand upon Cardinal Health's board to access the Company's records related to its opioid distribution practices. After reviewing thousands of pages of confidential, board-level documents, plaintiffs commenced their derivative action on

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[1] *See* Opinion and Order, *In re Cardinal Health, Inc. Derivative Litig.*, Case No. 2:19-cv-02491 (S.D. Ohio Feb. 8, 2021), ECF No. 58.

[2] *Id.* at 2.

KESSLERTOPAZ MELTZERCHECK LLP

INVESTING IN CHINESE COMPANIES, IN VOGUE, BUT FRAUGHT WITH DANGER

Part 1: Service of Process

Kevin E.T. Cunningham, Jr., Esquire

Introduction

Despite a general decline in the number of securities cases during 2020, there was an uptick in cases against non-US securities issuers.[1] In fact, class action securities based lawsuits against foreign litigants increased from 15% of total suits in 2019 to 27% in 2020.[2] China-based entities were the target of the plurality of securities suits against foreign entities in 2020, with Chinese defendants being the target of 28 out of 88 total securities actions filed against foreign litigants.[3] For an aggrieved American investor, litigating in China poses unique challenges, due to the often contentious nature of interactions between the governments of both countries and competing economies. However, given the growing influence Chinese companies have on a global scale, investors will have an increasing number of opportunities to invest in them. In fact, in May 5, 2021, the U.S. Government identified 248 China-based companies interacting with U.S. markets through securities exchanges, with a total market capitalization of $2.1 trillion.[4]

The preponderance of Chinese companies in which to invest may pose a significant danger to the American investor, as many of the insiders of these Chinese companies, with little to no U.S. based assets to speak of, are able to participate in U.S. markets while being protected by Chinese service and discovery blocking statutes and the limited reach of U.S. securities laws.[5] Described as the "Great Legal Wall" of China, Chinese law shields corporate insiders from service of process, extradition, seizure of assets in China, and hinders the discovery process.[6] Furthermore, SEC rules and guidelines have fallen short of the task of holding China-based companies to the same reporting standards as their American counterparts, all while these companies avail themselves of the American investing public.[7] In instances of alleged securities fraud, what recourse does an investor have when service cannot be effectuated against corporate insiders, or judgements cannot reliably be collected?

Therefore it is imperative that investors are aware of difficulties likely to be faced in litigation, so that they may take those hurdles into consideration when determining whether to invest in a China-based company. In the first entry of this multi-installment series, we will discuss barriers surrounding effectuating service against Chinese litigants in compliance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters[8] (the "Hague Service Convention," or simply the "Convention"), and how U.S. courts have helped litigants overcome them.

I. The Hague Service Convention

The Hague Service Convention was ratified at the Tenth Session of the Hague Conference on Private International Law.[9] There are currently 78 contracting parties to the Convention.[10] The Preamble of the Convention sets forth its purpose: ". . . to create appropriate means to

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[1] Angela M. Liu, et al. *Non-U.S. Issuers Targeted in Securities Class Actions Filed in the United States*, 6 Dechert LLP (2020).

[2] *Id.*

[3] *Id.*

[4] *U.S.-China Econ. & Sec. Rev. Comm'n, Chinese Companies Listed on Major U.S. Stock Exchanges,* May 5, 2021, at 1, https://www.uscc.gov/sites/default/files/2021-05/Chinese_Companies_on_US_Stock_Exchanges_5-2021.pdf

[5] *See* Jesse M. Fried & Ehud Kamar, *Alibaba: A Case Study of Synthetic Control*, 11 HARV. BUS. L.REV. 1 (2021).

[6] Jesse M. Fried & Ehud Kamar, *China and the Rise of Law-Proof Insiders*, European Corporate Governance Institute – Law Working Paper 557/2020 11 (2021)

[7] *Id.*

[8] *Convention Done at the Hague Nov. 15, 1965*, T.I.A.S. No. 6638 (Feb. 10, 1969).

[9] *Id.*

[10] *Status Table* (July 27, 2020) https://www.hcch.net/en/instruments/conventions/status-table/?cid=17

JURISDICTIONAL DISCOVERY: AN IMPORTANT TOOL WHEN LITIGATING AGAINST FOREIGN ENTITIES

Tyler Graden, Esquire; Jordan Jacobson, Esquire and Scott Adams, Esquire

As every first year law student learns, in *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), the Supreme Court held that the Constitution requires a party have certain "minimum contacts" with the forum where it is being sued in order for a court to exercise its power. This concept is known as personal jurisdiction[1] and establishing personal jurisdiction is vital, as a defendant's successful challenge to personal jurisdiction can lead to early dismissal of a lawsuit.

Increasingly, foreign corporations doing a substantial amount of business in the United States through affiliates, but without a physical presence in the United States, are challenging personal jurisdiction in an attempt to use corporate

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[1] Courts have "general" jurisdiction over corporate defendants in the forum state where the corporation is incorporated or in the forum state where the corporation has its principal place of business. *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cty.*, 137 S. Ct. 1773, 1779–80 (2017). Courts have "specific" jurisdiction over defendants when 1) the lawsuit arises out of some action or contact by the defendant in the forum state, or when 2) the lawsuit relates to the defendant's contacts with the forum state. *Id.* at 1780. This article is focused on lawsuits where plaintiffs seek to establish "specific" personal jurisdiction.

KESSLER TOPAZ VICTORY IN PRESIDIO LITIGATION FURTHER DEVELOPS "FRAUD ON THE BOARD" TORT AGAINST FAITHLESS ADVISORS

J. Daniel Albert, Esquire; Stacey Greenspan, Esquire and Teddy Starling, Esquire

Kessler Topaz recently prevailed on a motion to dismiss on behalf of the Firefighters' Pension System of the City of Kansas City, Missouri Trust ("Kansas City Firefighters") in an action challenging the acquisition of Presidio, Inc. ("Presidio" or the "Company") by BC Partners Advisors, L.P. ("BCP") for $16.60 per share (the "Merger").[1] The action, which is pending in the Delaware Court of Chancery in front of Vice Chancellor Laster, alleges, among other things, that the sale process for Presidio was fatally flawed, because Presidio's conflicted financial advisor, LionTree Advisors, LLC ("LionTree"), violated the prescribed terms of the "go-shop" that Presidio's board of directors (the "Board") had approved by telling BCP the price of an alternative bidder's offer during an active auction. The Court's opinion denying LionTree's motion to dismiss sharpens an avenue for stockholder plaintiffs to hold outside advisors to the board liable for misleading the board they are charged with advising.

A. The Background of the Merger

Leading up to the Merger, Presidio's controlling stockholder Apollo Global Management, Inc. ("Apollo"), wanted to liquidate its Company stake. Apollo had been looking to offload its holdings in Presidio since taking the Company public in 2017, but each time it sold large blocks of shares on the open market it drove Presidio's stock price down. Accordingly, Apollo approached LionTree in the spring of 2019 to explore a sale of the entire Company. Apollo had an extensive relationship with LionTree and was simultaneously advising Apollo on two other deals.

Apollo and LionTree socialized Presidio's sale with private equity firms BCP and Clayton Dubilier & Rice, LLC ("CD&R"). Apollo and LionTree met with BCP first, with whom LionTree was also close. As with Apollo, LionTree had advised BCP on a number of deals, and received millions of dollars in fees from BCP. Apollo and LionTree then met with CD&R, which was in the midst of acquiring Sirius Computer Solutions, Inc. ("Sirius"), a company that operated in the same industry as Presidio. CD&R was interested in acquiring Presidio and merging it with Sirius, which would generate synergies enabling CD&R to pay a higher price than a purely financial buyer like BCP.

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[1] *See Firefighters' Pension Sys. of Kansas City, Missouri Tr. v. Presidio, Inc.*, C.A. No. 2019-0839-JTL, 2021 WL 298141 (Del. Ch. Jan. 29, 2021).

JURISDICTIONAL DISCOVERY: AN IMPORTANT TOOL WHEN LITIGATING AGAINST FOREIGN ENTITIES *(continued from page 3)*

formalities to evade liability for harm caused here. With the evolving jurisprudence on personal jurisdiction, jurisdictional discovery — which allows a plaintiff to collect facts about a foreign defendant's contacts with a forum — has become increasingly more important. Kessler Topaz has had multiple recent successes in persuading courts to allow plaintiffs to conduct jurisdictional discovery for the purpose of establishing personal jurisdiction over foreign defendants.

Foreign Entities Often Challenge Personal Jurisdiction in U.S. Courts

Federal courts do not permit discovery before a complaint has been filed. This can frustrate an attempt to bring claims against foreign corporations, whose contacts with a U.S. forum may be unclear. Jurisdictional discovery is thus an important tool in overcoming a personal jurisdiction challenge.

After the filing of a complaint, foreign defendants will often challenge jurisdiction under Federal Rule of Civil Procedure 12(b)(2). Unlike a standard motion to dismiss under Rule 12(b)(6), which is solely focused on the allegations stated in the complaint, a challenge to jurisdiction under Rule 12(b)(2) allows for additional facts to be considered in the jurisdictional inquiry. This more expansive standard is crucial to plaintiffs, who typically have a limited ability to explore a defendant's internal operations prior to discovery, especially where a foreign defendant uses a U.S. affiliate to conduct activities in the forum.

Federal courts recognize that "jurisdictional discovery should ordinarily be granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *RSE-CA, LLC v. Proficio Mortg. Ventures, LLC*, 2014 WL 12560872, at *1 (C.D. Cal. Nov. 19, 2014). Other courts have found that "unless a plaintiff's claim is 'clearly frivolous,' jurisdictional discovery should be allowed." *Toys "R" Us Inc. v. Two Step, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003)). Moreover, it is well established that "jurisdictional discovery [is] particularly appropriate where a defendant is a corporation." *Rocke v. Pebble Beach Co.*, 541 F. App'x 208, 212 (3d Cir. 2013). Plaintiffs should use these liberal standards to seek jurisdictional discovery in response to personal jurisdiction challenges, in order to avoid early dismissal of viable claims.

The Evolving Landscape of Personal Jurisdiction Jurisprudence

Challenges to personal jurisdiction have become increasingly common in recent years following the Supreme Court's 2017 ruling in *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017). In *Bristol-Myers Squibb*, the Supreme Court determined a California court did not have personal jurisdiction over defendants when claims were brought by out-of-state plaintiffs against out-of-state defendants for out-of-state injuries. The Supreme Court held that in order to establish personal jurisdiction, the claims must "must arise out of or relate to" the forum state where the lawsuit is being pursued. *Id.* at 1781. Corporate defendants have since sought to have courts broadly interpret this decision to mean that personal jurisdiction only exists where the plaintiff's cause of action is directly tied to the defendant's acts within the forum. However, recently, in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021), the Supreme Court rejected this interpretation of its decision in *Bristol-Myers Squibb*.

In *Ford Motor Co.*, Ford argued that personal jurisdiction requires a "causal link" between a defendant's contacts with the forum and a plaintiff's claims. *Id.* at 1023. Ford argued that there was no such "causal link" because plaintiffs' claims arose from personal injuries sustained in Ford vehicles that were not designed, manufactured, or first sold in the forum states. *Id.* The Supreme Court unanimously declined to interpret *Bristol-Myers* in this way, finding that Ford's contacts with the forums were sufficient because, through its dealerships, Ford marketed, sold, and serviced the types of vehicles in which plaintiffs' sustained injuries. *Id.* at 1032. The Supreme Court thus declined to hold that a plaintiff must establish that its claims "arise out of" contacts with the forum, finding that a defendant's actions in the forum that broadly "relate to" the claims at issue are sufficient to establish personal jurisdiction.

Kessler Topaz's Recent Successes in Obtaining Jurisdictional Discovery and Overcoming Personal Jurisdiction Challenges by Foreign Defendants

Kessler Topaz has used jurisdictional discovery in recent cases to effectively oppose a defendant corporation's challenge to personal jurisdiction.

Most recently, in *Opheim, et al. v. Volkswagen Aktiengesellschaft, et al.*,[2] Audi Aktiengesellschaft ("Audi AG"), a German corporation, moved to dismiss plaintiffs' claims for lack of personal jurisdiction in New Jersey. Audi AG argued under Rule 12(b)(2) that its U.S. affiliate Volkswagen Group of America ("VWGoA"), not Audi AG, conducted operations in New Jersey, and thus Audi AG lacked sufficient contacts with New Jersey to establish personal jurisdiction. On behalf of plaintiffs, Kessler Topaz argued that plaintiffs should be permitted to conduct discovery regarding Audi AG's activities in New Jersey and the degree of control that Audi AG exercises over VWGoA. The court agreed, administratively terminated Audi AG's motion to dismiss, and ordered jurisdictional discovery on Audi AG, which is proceeding. *Opheim, et al. v. Volkswagen Aktiengesellschaft, et al.* No. 20-cv-02483, *slip op.*, (D.N.J. April 22, 2021).

In *Sonneveldt, et al. v. Mazda Motor Of America, Inc., et al.*,[3] Kessler Topaz also succeeded in obtaining jurisdictional discovery on a foreign entity — Mazda Motor Corporation ("MMC"). Plaintiffs brought claims against MMC, a Japanese corporation, and its U.S. subsidiary, Mazda North American Operations ("MNAO"), which serves as MMC's distributor in the United States. MMC moved to dismiss plaintiffs' claims for lack of personal jurisdiction, arguing that only MNAO had sufficient contacts with California. In response, Kessler Topaz argued that the relationship between MMC and MNAO was such that both entities had sufficient contacts with the forum and sought jurisdictional discovery, which the Central District of California granted. *Sonneveldt, et al. v. Mazda Motor Of America, Inc., et al.* No. 19-cv-01298, *slip op*, (C.D. Cal. April 22, 2020). After Kessler Topaz vigorously pursued this discovery, MMC dropped its challenge to personal jurisdiction. This litigation is now proceeding on the merits.

As more cases defining the scope of personal jurisdiction work their way through the courts, these examples highlight the importance of using jurisdictional discovery to ensure that courts have all the facts before ruling on whether a foreign corporation may evade liability based upon a purported lack of contacts. ■

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[2] Civil Action No. 20-cv-02483 (D.N.J.)
[3] Case No. 8:19-cv-01298 (C.D. Cal.)

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ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time" and "to improve the organization of mutual judicial assistance for that purpose by simplifying and expediting the procedure.[11] The Convention sets forth a main method of transmission of documents, and also allows for several alternate methods as well: Articles 2 through 6 provide that an authority or judicial officer of the country from which the document originates shall transmit the documents to be served to the designated "Central Authority" of the country in which the recipient resides.[12] The receiving country's Central Authority has the ability to deny service if it believes the method of service did not comply with the strictures of the Convention, or for several other reasons.[13] Once the Central Authority authorizes the documents to be served, it will arrange to have them delivered by an appropriate agency.[14]

The alternative channels of service described in the Convention include "consular or diplomatic channels"[15] and three alternate channels under Article 10:

> Provided the State of destination does not object, the present Convention shall not interfere with:
>
> (a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
>
> (b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
>
> (c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 21 gives any contracting state the ability to object to any of the methods of service in Articles 9 or 10, so long as that country notifies the ministry of Foreign of Affairs of the Netherlands.[16]

II. China's Service-Related Declarations

There are two primary methods by which a country may exempt itself from portions of an international agreement while still remaining a signatory to said agreement. The first is a "reservation" wherein a country purports to exclude or alter the legal effect of provisions of the provision in their application to that state. The second is known as a "declaration," wherein a country merely clarifies its interpretation of a provision in an international agreement, but does not purport to alter its legal import.

China has filed several declarations to the Hague Service Convention. For example, China's declaration to Article 5(3) requires that all documents to be served be translated into Mandarin Chinese, using the "simplified" typography.[17] China only allows for service by the methods set forth under Article 8 if the person being served is a national of the country seeking service.[18] China completely objects to the service of documents pursuant to any of the methods outlined in Article 10, *supra*.[19] Therefore, under most circumstances, Hague-compliant service in China is possible *only* through China's Central Authority. Doing so requires the filing of a document called the USM-94, duplicate copies of all translated documents, and a fee of $95.00.[20] While this process used to require mailing a physical copy of the documents to the Central Authority, there is now a web portal so that they may be uploaded directly.[21]

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[11] *Convention* at Art. 1.

[12] *Id.* at Arts. 2-6.

[13] *Id.* at Art. 4.

[14] *Id.* at Art. 5.

[15] *Id.* at Arts. 8 and 9

[16] *Id.* at Art 21.

[17] *Declaration/Reservation/Notification*, The World Organisation for Cross-border Co-operation in Civil and Commercial Matters, https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=393&disp=resdn (last visited May 13, 2021)

[18] *Id.*

[19] *Id.*

[20] This fee expressly goes against language in Article 12 setting forth that no fee shall be assessed for Hague service requests, however, the fee is a reciprocal move against America's 's practice of charging other countries $95 for service requests.

The Chinese Central authority has a history of taking between 6-9 months to render a decision on whether to serve documents, with no progress updates in the interim.[22] However, in recent years, in some cases, over a year has passed without any decision or update on the status of service requests, causing some to question whether the Chinese Central Authority has stopped executing service for American litigants altogether.[23] Furthermore, the details of the application (such as the spelling of the recipient's name, or the address of the recipient) must be completely free of error, lest the application be summarily rejected, with no attempt made at service.[24] China also has a history of declining to serve documents wherein a state owned or state-affiliated entity is the subject of litigation under the Convention's Article 13, which provides, among other things, that a country may decline to serve documents on the grounds that service would "infringe its sovereignty or security."[25, 26]

The limited methods by which service can be effectuated, coupled with the extended timelines litigants can expect when dealing with the Central Authority, can understandably cause headaches for those who have been defrauded by Chinese companies. Furthermore, case management issues may arise in circumstances where litigation may be able to move forward with some defendants, but not against defendants awaiting Hague service, or for a court order directing alternate service. Noting the difficulties faced by plaintiffs attempting Hague service on recalcitrant foreign parties, U.S. Courts have had ample opportunity to address issues that arise.

III. Strategically Navigating the Hague Service Convention

a. Serve a Domestic Subsidiary

Considering the arduous process involved in serving foreign litigants, it's understandable that domestic plaintiffs might determine that it's best to attempt to circumvent the strictures of the Convention altogether. The case *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988) provides a viable method for circumventing the Hague Convention: serving a domestic subsidiary of the foreign defendant. In *Volkswagenwerk*, the parents of plaintiff Herwig Schlunk ("Schlunk") were killed in an automobile accident.[27] Schlunk filed a wrongful death claim against Volkswagen of America, Inc. ("VWA"), claiming that VWA manufactured his parents' car, and that certain design defects contributed to his parents' death.[28] VWA responded that it did not manufacture the decedent's vehicle, and that Volkwagen Aktiengesellschaft (VWAG) in Germany did, causing Schlunk to amend his complaint to add VWAG, and to serve VWAG with the amended complaint by serving VWA as its registered agent, so designated under Illinois' long–arm statute.[29]

VWAG entered a limited appearance for the purpose of quashing service, claiming that it could only be served pursuant to the strictures of the Hague Convention.[30] The Court disagreed that the Convention applied at all. Pursuant to Article 1, service under the Convention must be effectuated "when there is occasion" to transmit documents abroad.[31] Upon considering negotiating history of the Convention, the Court found that the forum state, that is, the country seeking service, has the power to dictate under which circumstances "there is occasion" to serve documents abroad.[32] Interestingly, the Court noted that VWAG did not directly challenge the Illinois Appellate Court's determination that service was proper under the Illinois long-arm statute or that its application of the Due Process Clause was incorrect, but rather, VWAG argued that under the Due Process Clause, *any* time a foreign litigant is the subject of litigation, due process demands that the specific litigant is served pursuant to the Convention.[33] The Court rejected this argument as well, finding that once a state determines that service is proper under its long-arm statute, and that such service comported with all due process requirements, the Court's inquiry ends and the applicability of the Convention is not reached.[34]

Key to the Court's ruling, however, was an analyses of the close-ness of the relationship between VWA and VWAG: the Appellate Court upheld service only after determining that "the relationship between [VWA] and [VWAG] is so close that it is certain that [VWAG] was fully apprised of the pendency of the action by delivery of the summons to [VWA]." This line of reasoning is repeated in

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[21] Aaron Lukken, *How to Serve Process in China . . . Important Updates, Part Two,* Hague Law Blog (September 5, 2019), https://www.haguelawblog.com/2019/09/how-to-serve-process-in-china-important-updates-part-two/

[22] Aaron Lukken, *How to Serve Process in China . . . Important Updates,* Hague Law Blog (May 14, 2018), https://www.haguelawblog.com/2018/05/serve-process-china-important-updates/

[23] *Id.*

[24] Aaron Lukken, *How to Serve Process in China,* Hague Law Blog (January 12, 2017), *https://www.haguelawblog.com/2017/01/serve-process-china/*

[25] *Convention* at Art. 13

[26] China's ability to utilize Article 13 to protect its "sovereignty or security" can also cover allegations against non-state defendants, if the Central Authority sees fit. *See Zhang v. Baidu.com Inc.*, 932 F. Supp. 2d 561, 566 (S.D.N.Y. 2013)

[27] *Id.* at 696.

[28] *Id.*

[29] *Id.* at 697.

[30] *Id.*

[31] *Convention* at Art 1.

[32] *Volkwagenwerk* at 701.

[33] *Id.* at 707.

[34] *Id.*

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the Second Circuit, where it has been held that service on a foreign litigant need not comply with the Convention if the domestic subsidiary is so dominated by the foreign corporation that it functions as a department of the foreign company.[35] The Court considered four factors in its analysis: (1) common ownership, (2) the subsidiary's financial dependency on the parent, (3) the degree to which the parent corporation interferes in the selection and assignment of the subsidiary's executive personnel and fails to observe corporate formalities, and (4) the degree of control exercised by the parent.[36]

Therefore, investors considering investing in a Chinese company should note: while it may be possible to avoid the long wait times of the Convention by serving a domestic subsidiary, this route still contains the potential for contentious litigation concerning the degree of control the foreign party has over the domestic subsidiary. It also carries substantial risk that the time it takes to fully fight these issues out may take just as long as attempting service through the Convention, and the result maybe that the Court orders Hague-compliant service anyway. It should further be noted that *Volkswagenwerk* does not give U.S. courts carte blanche to alter the *terms* of the Convention. In fact, Justice O'Connor in *Volkswagenwerk* opined that when the Convention applies, all strictures of the convention must be followed to the letter.[37] Furthermore, Federal Rule of Civil Procedure 4(f)(1) makes service under the Convention mandatory when applicable.[38] *Volkswagenwerk* stands merely for the proposition that the forum state may determine *if and when* the Convention applies by following a strict pre-set inquiry.

Despite its limitations, given the positive case law for circumventing Hague service by serving the foreign entity's United States subsidiary, the next question likely on an aggrieved investor's mind is whether this line of reasoning extends to effectuating Hague service on a non-US foreign subsidiary of the target foreign company. In this way, while not circumventing the Convention altogether, a practitioner may be able to serve process against a Chinese company through a subsidiary in a country with less draconian rules than the Chinese Central Authority. This issue has not been considered by U.S. Courts, likely due to the reasoning espoused in *Volkswagenwerk*. The Court's opinion leaned heavily on whether service was proper under the long-arm statute of Illinois and whether due process was given to the defendant. Likewise, the country receiving the service request must determine if effectuating service on a subsidiary residing in *their* country comports with *their* laws concerning the extent of *their* court's jurisdictions to serve foreign companies, and whether it complies with *their* notions of due process. This inquiry is not one for United States courts to undertake, and it is unclear if this has been attempted successfully.[39]

While *Volkswagenwerk* stands merely for the proposition that U.S. courts can determine *when or if* the Convention applies, it could still be an incredibly useful tool to avoid the Hague Convention if the proper conditions can be met. The next follow-up question, however, is what litigants can do if the company being sued does not have a registered agent or domestic subsidiary in the United States. Courts have addressed this issue as well.

b. Make a Good-Faith Attempt

Proof of Convention-complaint service is not necessarily required for a U.S. Court to proceed in a matter involving a foreign defendant. In fact, Article 15 of the Convention itself sets forth the conditions that must be met to proceed in a case without proof of service:

> Each contracting State shall be free to declare that the judge, notwithstanding the provisions

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[35] *C3 Media & Mktg. Grp., LLC v. Firstgate Internet, Inc.*, 419 F. Supp. 2d 419, 427 (S.D.N.Y. 2005).

[36] *Id.*

[37] *Volkswagenwerk* at 699.

[38] Fed. R. Civ. P. 4(f)(1).

[39] The Convention's Article 14 also may be relevant to this question: "[d]ifficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels." It is not for U.S. Courts to decide whether foreign Central Authorities acted properly under the Convention.

of the first paragraph of this article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled —

(a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

(c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 15 is useful against countries like China and Russia, which either take a long time to make a decision whether to serve documents (China), or have openly refused to serve American documents altogether (Russia). However, both countries have a defense against the use of Article 15, though it has been significantly weakened: the right of a country under Article 13 to deny service because effectuating service would "infringe its sovereignty or security."

A rather extreme example of the interplay between Articles 15 and 13 can be found in the matter *In re S. Afr. Apartheid Litig.*, 643 F. Supp. 2d 423, 427 (S.D.N.Y. 2009). Here, plaintiffs were a class of South Africans claiming that several multinational corporations aided and abetted tortious actions in violation of international law.[40] One of the corporations was Rheinmetall AG, a German holding company with several subsidiaries.[41] Plaintiffs commenced their action on November 11, 2002, however, Rheinmetall immediately challenged the propriety of service through the Hague Convention in Germany, on the grounds that it infringed German sovereignty and security, and after six years of litigation, the matter remained unresolved.[42] The Court noted somewhat of a pattern from German companies facing U.S. class actions — American litigants would serve a German company pursuant to the Convention, the company would argue that under Article 13, service infringed upon German sovereignty and security, and German courts would sit on the matter for years until the parties eventually settled.[43]

Upon review of plaintiff's attempts at service, the Court found that plaintiffs could not have exerted greater effort to carry out proper service in conformity with Rules 4(h), Rule 4(f), and the Hague Convention.[44] The Court noted that six years had elapsed since plaintiffs first filed their service request with the German Central Authority, and that Rheinmetall has not been prejudiced by failure to complete service, as it was aware of the lawsuit, and has benefitted from a stay of proceedings against it.[45] The Court found that plaintiffs had established good faith attempts to follow the strictures of the Convention, and that service being thwarted by German courts should be no barrier in allowing plaintiffs to effectuate other forms of service not expressly forbidden by Germany.[46]

As with China, it was known at the time that German could take an inordinately long time to come to a decision whether to serve American papers or not. However, because Germany took so long *without returning a certificate granting or denying the application*, the Court found it fair to order service via another means. However, this begs the question: what if Germany had immediately returned a certificate from its Central Authority stating that it was exercising its rights under Article 13, and outright refusing to effectuate service? This presents a trickier question, albeit, one that has been addressed by the Courts.

c. If Article 13 Is Invoked, Seek Leave for Alternate Service

Article 13 was wielded to great effect in the matter *Zhang v. Baidu.com Inc.*, 932 F. Supp. 2d 561 (S.D.N.Y. 2013). In *Zhang*, Jian Zhang and other self-described "promotors of democracy in China through [] writings, publications, and reporting of pro-democracy events" filed suit against China, and the Chinese internet search engine giant Baidu, Inc. for allegedly censoring their pro-democracy messages.[47] One year after filing the initial complaint, plaintiffs filed two USM-94 service forms, a requirement to effectuate service under the Convention.[48] That same day, plaintiffs also took steps to obtain default judgements against defendants.[49] Each form was returned with a certificate from the Chinese Central Authority declining to effectuate service under Article 13 because "execution of the request could infringe the sovereignty or security of the People's Republic of China."[50] Plaintiffs tried unsuccessfully

(continued on page 10)

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* at 428.

[44] *Id.* at 437.

[45] *Id.*

[46] *Id.*

[47] *Zhang v. Baidu.com Inc.*, 932 F. Supp. 2d 561, 563 (S.D.N.Y. 2013).

[48] *Id.*

[49] *Id.*

[50] *Id.* at 563-564.

INVESTING IN CHINESE COMPANIES, IN VOGUE, BUT FRAUGHT WITH DANGER
Part 1: Service of Process

(continued from page 9)

to serve defendants via FedEx, until finally, a Baidu employee signed for and accepted the FedEx package at Baidu's Beijing offices.[51] Upon confirmation of delivery, Plaintiff moved for entry of default judgment.[52] Baidu opposed the motion on the grounds of insufficient service of process, and China did not enter an appearance as a litigant.

Plaintiffs argued that China improperly invoked Article 13, and that it could not cover a non-state entity like Baidu.[53] Plaintiffs also argued that strict compliance with the Convention is unnecessary when litigants have actual knowledge of the suit. Finally, plaintiffs argued that default judgement should be entered pursuant to Article 15. The Court rejected all three arguments.

The Court first found that it was not within its power to make a determination as to whether China invoked Article 13 correctly, stating that difficulties concerning service disputes should be settled through diplomatic channels.[54] The Court further opined that even if it did have the authority to consider the propriety of China's use of Article 13, there is nothing in the Article limiting its use to only State entities.[55] The Court also found that actual knowledge of the lawsuit *was not* enough to circumvent proper service under the Convention's rules.[56] Distinguishing this matter from *Burda Media, Inc. v. Viertel*, 417 F.3d 292, 298–99 (2d Cir.2005), the Court found that this case did concern a mere technical error in the form by which the Central Authority confirmed service, but was an affirmative rejection of the service request.[57] The Court could not, on a whim, alter the terms of service under the Convention when a country expressly objected to the type of service requested. Finally, the Court determined that Article 15 was inapplicable, finding that it was only applicable when "no certificate of any kind" had been received by the requesting party. Here, a certificate of denial was received by the Chinese Central Authority, expressly asserting its rights under Article 13.

Zhang is important because it suggests that if countries wish to wield section 13 unfairly, there isn't anything U.S. courts can do to force the Central Authority to act. This is not an issue in most international litigation, as the principles of international comity normally prevent bad-faith applications of the Convention.

There is somewhat of an epilogue to the *Zhang* story. After having their motion denied due to failing to comply with the service requirements of the Convention, plaintiffs moved for leave to effectuate alternative service under Rule 4(f)(3).[58] In a matter of first impression, the Court considered whether alternative service was even possible against an entity that had exercised its Article 13 rights under the Convention to refuse service. Noting that there was case law in support of each position, the Court issued an order to show cause as to why the case should not be dismissed as to China.[59]

The Court ultimately found that it does have the power to direct alternative service, despite China's invocation of Article 13 to deny service. In its analysis, the Court recognized that all that Rule 4(f)(3) required was that alternative service be authorized by the Court and not prohibited by international agreement.[60] Baidu argued that because China expressly exercised its rights under Article 13, alternative service would effectively override China's sovereignty and cause Article 13 to be a dead letter.[61] Baidu further argued that even if the Court found that it had the power to order alternative service, it should not exercise that right and allow the matter to be resolved through diplomatic channels.[62]

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[51] *Id.* at 564.

[52] *Id.*

[53] *Id.* at 565-566.

[54] *Convention* at Art. 14.

[55] *Zhang* at 566.

[56] *Id.*

[57] *Id.*

[58] *Jian Zhang v. Baidu.com Inc.*, 293 F.R.D. 508, 511 (S.D.N.Y. 2013).

[59] *Id.*

[60] *Id.* at 512.

[61] *Id.*

[62] *Id.*

The Court disagreed with Baidu's analysis of Article 13, holding that Article 13 only addresses the invoking state's compliance with a *request for service* and does not necessarily indicate that the state takes particular issue with the nature of the underpinning lawsuit.[63] The Court held that ordering alternative service actually *honors* China's sovereignty by *not* calling upon the country to effectuate service.[64] The Court dismissed Baidu's other arguments in a summary fashion.

No matter how one examines this issue, unless the company has a domestic subsidiary with a very close relationship to the main company, the best course of action is to at least attempt service under the Convention. If the Chinese Central Authority sits on its hands for too long, pursuant to Article 15 of the Convention, plaintiffs should request permission for alternate service. If the Central Authority immediately declines service on Article 13 grounds, plaintiffs should again, move for alternate service.

Although U.S. courts have stepped in to remedy many of the issues surrounding service in China, service is only the first step. Plaintiffs in suits against Chinese companies still have to contend with Chinese blocking statutes which prevent meaningful discovery, on penalty of imprisonment. In addition, Chinese courts are extremely unlikely to credit judgements made against its nationals in U.S. courts. Again, United States courts have stepped in to attempt to rectify these problems with varying levels of success, but many policy makers have asked whether the U.S. Government and the SEC should be doing more to lessen the risk for investors in Chinese companies.[65] In the next entry of this article series, we will discuss U.S. judicial responses to blocking statutes and judgement-proof Chinese nationals, as well as governmental responses geared towards protecting investors against fraudulent Chinese companies. ■

[63] *Id.* at 513.

[64] *Id.*

[65] Fried, et al. *China and the Rise of Law-Proof Insiders*, *supra.*

KESSLER TOPAZ CLIENTS TAKE A BIG STEP IN THE FIGHT FOR ACCOUNTABILITY FOR THE NATION'S ON-GOING OPIOID CRISIS

(continued from page 1)

December 13, 2019. The decision to pursue the Company's confidential documents before filing suit proved critical to the court's analysis.

Under Ohio law, when challenging directors' failure to oversee legal compliance, a shareholder can only proceed with the lawsuit if a majority of the directors face a substantial risk of liability. Only then does the law presume that the board cannot be trusted with the decision to pursue the claims. As applicable to Cardinal Health, plaintiffs' action would only proceed if their complaint demonstrated that a majority of the board acted with "reckless disregard" for the "best interests" of Cardinal Health.

In reaching its decision to allow the action to proceed, the court relied heavily on the board-level documents summarized in the complaint regarding the board's reaction to mounting scrutiny by the Company's principal regulators. Because of plaintiffs' pre-suit investigation, the complaint described "no fewer than 53 specific instances in which the Board or one of its relevant committees met to discuss, or was otherwise notified of important information related to, compliance risks or issues in Cardinal Health's distribution of prescription opioids."[3] Even after the Company paid significant sums of money to settle multiple claims from regulators, the board continued to sit on their hands and essentially ignored the unlawful conduct. Crediting plaintiffs' assertion that the board was more concerned with public relations than legal compliance, the court highlighted relatively recent board minutes that include "extensive discussion of a public relations strategy for 'reorienting' the narrative" without any discussion of the "track-record or effectiveness" of Cardinal Health's internal controls.[4]

The court's opinion demonstrates that a public company's board of directors has a duty to react to repeated warning signs of unlawful activity. It is not enough for a board to implement internal reporting controls. Fiduciaries must act when those controls indicate that the corporation is acting unlawfully.

The opinion further reinforces the power public shareholders have to hold their fiduciaries accountable for the harms their decisions cause a corporation. At bottom, the opinion recognizes that short-term profits should not come at the expense of society or the long-term best interests of a company. Rather, fully complying with the law should be a top priority of every corporation and fiduciary. ■

[3] *Id.* at 39.

[4] *Id.* at 20-21.

KESSLER TOPAZ VICTORY IN PRESIDIO LITIGATION FURTHER DEVELOPS "FRAUD ON THE BOARD" TORT AGAINST FAITHLESS ADVISORS *(continued from page 3)*

However, after BCP contacted LionTree to express interest in a transaction, LionTree advised Presidio's Board that CD&R was "not focused on a strategic transaction in the near term."[2] In reality, however, CD&R told LionTree that it simply "required additional time to finish integrat[ing]"[3] Sirius, and was interested in a "potential merger in the future."[4] But that did not appear to fit with Apollo and LionTree's timing for a near-term transaction. Accordingly, the Board pursued a single-bidder process with BCP.

B. The Go-Shop

After only one month of negotiations, the Board approved BCP's acquisition of Presidio for $16 per share pursuant to an August 13, 2019 Agreement and Plan of Merger (the "Merger Agreement"). The Board approved the Merger Agreement without engaging with CD&R during the sale process. The Board justified this decision on the basis that CD&R would be able to engage in discussions during a post-signing "go-shop" process that the Board hotly negotiated with BCP to ensure that it was "robust."[5]

The "go-shop" was divided into two phases. During the 40-day first phase, the Company could solicit and negotiate proposals from alternative buyers. During the 10-day second phase, Presidio was precluded from soliciting alternative proposals, but could continue negotiating with an alternative buyer who made an acquisition proposal during the first phase that was reasonably likely to lead to a superior proposal (an "Excluded Party"). If Presidio terminated the Merger Agreement to pursue a superior proposal with an Excluded Party, Presidio would have pay BCP an $18 million termination fee; any other termination would result in a $40 million payment to BCP. The Merger Agreement gave BCP the right to match an alternative proposal, but Presidio negotiated for the right to disclose to BCP only the identity of an Excluded Party and not the terms of its offer. This would make the go-shop more robust as Presidio would have more leverage in a bidding war if BCP was blind to the price of a well-capitalized Excluded Party's bid.

When the go-shop began, CD&R, which had by that time closed its acquisition of Sirius, showed immediate interest in acquiring Presidio. Within the first week of the go-shop, CD&R was conducting diligence and working on

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[2] *Id.* at *5.

[3] *Id.*

[4] *Id.* at *4.

[5] *Id.* at *6.

a potential bid. Then, on September 23, 2019, CD&R offered to acquire Presidio for $16.50 per share, noting it "'could potentially increase [its] offer price upon' finalizing limited additional diligence."[6] CD&R's bid letter explicitly stated that Presidio should only tell BCP CD&R's identity, but not the terms of CD&R's offer; if Presidio did, CD&R's offer "shall automatically be immediately withdrawn."[7]

On September 24, 2019, Presidio notified BCP that CD&R was an Excluded Party (the "Notice"). The Notice did not disclose that CD&R offered $16.50 per share.

C. LionTree Tells BCP the Price of CD&R's Bid

Unbeknownst to the Board, two hours ***before*** Presidio sent the Notice to BCP, LionTree told BCP about CD&R's offer. BCP immediately used LionTree's tip to "frantic[ally]"[8] work on a revised bid of $16.60 per share — just 10 cents above CD&R's bid — before even receiving Presidio's Notice. Hours later, BCP sent Presidio a $16.60 per share offer to acquire the Company, which was conditioned on an increased termination fee and would expire in twenty-four hours.

Oblivious to LionTree's tip, and squeezed by BCP's twenty-four hour deadline, the Board decided to tell CD&R that evening to strengthen its offer by 5 p.m. the next day. LionTree delivered the message, and told CD&R that BCP made a revised offer, but did not tell CD&R that BCP offered $16.60 per share. LionTree also told CD&R that BCP conditioned its offer on increasing the termination fee to $40 million, which eliminated the Excluded Party benefit of the go-shop.

CD&R responded to the Board that the second phase of the go-shop had only just begun, and urged the Board to not acquiesce to BCP's "attempt to endrun a process that has a high probability of delivering greater value to the Company's stockholders."[9] CD&R committed to providing a superior proposal of $17 per share or higher by October 1, 2019.

Still oblivious to the tip, the Board rationalized accepting BCP's $16.60 per share offer, and, on September 26, 2019, entered into an amended Merger Agreement with BCP ("Amended Merger Agreement"). CD&R walked away.

D. Kessler Topaz Institutes Litigation

Following the announcement of the Amended Merger Agreement, Kessler Topaz, on behalf of Kansas City Firefighters, served the Company with a demand to inspect its books and records, pursuant to Section 220 of the Delaware General Corporation Law. Then, on October 21, 2019, Kessler Topaz brought suit against Apollo, the Board and Robert Cagnazzi, Presidio's Chief Executive Officer and Chairman of the Board ("Cagnazzi"), for breaches of fiduciary duty and against BCP for aiding and abetting thereof, and sought to enjoin the Merger. Kessler Topaz thereafter engaged in expedited discovery leading up to a preliminary injunction hearing. During expedited proceedings, Kessler Topaz unearthed, among other things, LionTree's tip to BCP, a fact unknown to Presidio's Board until the litigation.

Despite Kessler Topaz's best efforts, the Court declined to enjoin the Merger. Then, after the Merger closed, Kessler Topaz filed an amended complaint on behalf of Kansas City Firefighters that incorporated facts learned during expedited discovery and added LionTree as a defendant. The amended complaint pled that by tipping BCP to the amount of CD&R's offer, LionTree curtailed a bidding war between CD&R and BCP that could have resulted in a higher price. The amended complaint further alleged that by failing to disclose the tip to the Board, LionTree knowingly participated in the Board's failure to maximize value and be fully informed.

The claims against Apollo and the Board were ultimately dismissed. However, the Court refused to dismiss the claims against LionTree, BCP and Cagnazzi (the "Defendants").

E. LionTree's Fraud on the Board

In denying Defendants' motions to dismiss, the Vice Chancellor emphasized that LionTree's undisclosed tip to BCP was the "principal defect"[10] in the sales process. The Vice Chancellor held that Plaintiff's allegations easily satisfied the requisite elements to establish a claim for secondary liability against LionTree under a theory of aiding and abetting, which requires a predicate breach of fiduciary duty by the board.[11] However, so egregious was LionTree's tip that the Vice Chancellor took his legal analysis a step further, stating that the facts supported a claim for primary liability against LionTree for committing a fraud on the board.[12] This means that even if the Board did not breach its fiduciary duties, LionTree was still on the hook for fraud.[13]

Delaware courts have recognized the fraud on the board theory since the Delaware Supreme Court's 1988 decision in *Mills Acquisition Co. v.*

(continued on page 14)

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[6] *Id.* at *10.

[7] *Id.*

[8] *Id.* at *12.

[9] *Id.* at *13.

[10] *Id.* at *32.

[11] *Id.* at *37.

[12] *Id.* at *37 n.15.

[13] *Id.*

KESSLER TOPAZ VICTORY IN PRESIDIO LITIGATION FURTHER DEVELOPS "FRAUD ON THE BOARD" TORT AGAINST FAITHLESS ADVISORS *(continued from page 13)*

Macmillan, Inc., in which company officers hid from the board a tip they gave to their preferred bidder during an active auction.[14] In *Presidio*, however, the Vice Chancellor turned the fraud on the board "theory" into an "equitable tort of fraud on the board."[15] In doing so, the Vice Chancellor analogized the equitable tort to common law fraud, in which a plaintiff must plead:

> (i) a false statement, the deliberate concealment of a material fact, or the failure to provide information necessary to prevent a statement from being materially misleading, (ii) the defendant's knowledge of or belief in its falsity or the defendant's reckless indifference to its truth, (iii) the defendant's intention to induce action based on the representation, (iv) reasonable reliance by the plaintiff on the representation, and (v) causally related damages suffered by the plaintiff.[16]

The Vice Chancellor, after reciting these elements, emphasized: "[f]or fraud on the board, the element of reliance changes. Rather than pleading that the plaintiff reasonably relied on the representation, the plaintiff must plead that the ***board*** reasonably relied on the representation."[17]

The Vice Chancellor then held that Kessler Topaz's "allegations more than satisfy"[18] these elements. Indeed, LionTree's undisclosed tip to BCP was surely a "deliberate concealment of material fact."[19] LionTree also knew its tip was wrongful. The Merger Agreement did not entitle BCP to information about the terms of CD&R's bid, and CD&R stated that its offer would terminate if the terms were disclosed to BCP. In addition, by concealing the tip from the Board, LionTree prevented the Board from neutralizing the effect of the tip to facilitate an active bidding contest. Stated differently, LionTree induced the Board to agree to a deal with BCP that LionTree viewed as the "winning solution."[20] Apollo would exit its Company stake, BCP would not overpay and LionTree wanted to please both of them to continue getting their business. The Board also reasonably relied on LionTree as its financial advisor. Finally, damages resulted from "stockholders los[ing] out on a higher valued transaction due to LionTree's tip."[21]

Vice Chancellor Laster's explicit recognition of the equitable tort of a fraud on the board may signal a significant new avenue for recovery against faithless advisors that are operating for their own interests and purposely keeping boards of directors, who they are supposed to be advising, in the dark. This fraud on the board tort is a claim for primary liability against a third party advisor, rather than secondary liability dependent on a director's breach of her own fiduciary duty as claims against third party advisors have typically previously been brought. Being able to assert claims for primary liability against board advisors potentially gives stockholders a powerful new weapon in their arsenal to monitor and challenge illicit behavior in the corporate governance context, and hopefully will send a signal to certain advisors with questionable reputations that Delaware will not abide this type of self-serving conduct. ■

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[14] 559 A.2d 1261 (Del. 1989).

[15] *Presidio*, 2021 WL 298141, at *37 n.15.

[16] *Id.*

[17] *Id.* (emphasis added).

[18] *Id.*

[19] *Id.*

[20] *Id.* at *32.

[21] *Id.* at *44.

EVENTS

WHAT'S TO COME

JUNE 2021

National Association of Public Pension Attorneys (NAPPA) Legal Education Conference

June 22 – 24

LIVE webcast

Florida Public Pensions Trustees Association (FPPTA) 37th Annual Conference

June 27 – 30

Omni Resort at ChampionsGate
ChampionsGate, FL

AUGUST 2021

County Commissioners Association of Pennsylvania (CCAP) Annual Conference and Trade Show

August 1 – 4

Hershey Lodge ■ Dauphin County, PA

Texas Association of Public Employee Retirement Systems (TEXPERS) Summer Educational Forum

August 29 – 31

Grand Hyatt San Antonio ■ San Antonio, TX

SEPTEMBER 2021

Michigan Association of Public Employee Retirement Systems (MAPERS) 2021 Fall Conference

September 18 – 21

Doubletree Hotel ■ Bay City, MI

Council of Institutional Investors (CII) 2021 Fall Conference

September 22 – 24, 2021

Westin Chicago River North ■ Chicago, IL

Illinois Public Pension Fund Association (IPPFA) 2021 Mid-America Pension Conference

September 29 – October 1

Oak Brook Hills Resort and Conference Center
Oak Brook, IL

OCTOBER 2021

International Foundation of Employee Benefit Programs (IFEBP) 66th Annual Employee Benefits Conference

October 17 – 20

The Colorado Convention Center ■ Denver, CO

NOVEMBER 2021

State Association of County Retirement Systems (SACRS) Fall Conference

November 9 – 12

Loews Hollywood Hotel ■ Hollywood, CA

County Commissioners Association of Pennsylvania (CCAP) Fall Conference

November 21 – 23

The Hotel Hershey ■ Dauphin County, PA

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