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A.T. Massey Coal Company v. International Union, United Mine Workers: Binding Parent Corporations to the Collective Bargaining Agreements of Their Subsidiaries

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A.T. MASSEY COAL COMPANY v. INTERNATIONAL UNION, UNITED MINE WORKERS: BINDING PARENT CORPORATIONS TO THE COLLECTIVE BARGAINING AGREEMENTS OF THEIR SUBSIDIARIES

I. INTRODUCTION

The United States Supreme Court in *John Wiley & Sons v. Livingston*[1] clearly established that under certain circumstances a successor corporation may be compelled to arbitrate in accord with the terms of a collective bargaining agreement between its predecessor and the elected representatives of its employees. In *Wiley,* a publishing company entered into a collective bargaining agreement with the plaintiff union, and then merged with John Wiley & Sons, another publishing firm.[2] The surviving firm continued to conduct operations without substantial change using the same employees.[3] The Supreme Court held that: "[T]he disappearance by merger of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically terminate all rights of the employees covered . . . in appropriate circumstances . . . . the successor employer may be required to arbitrate with the union under the agreement."[4] Thus, in *Wiley,* a corporation which did not sign a collective bargaining agreement was nonetheless held to be bound by its terms because of the continuity of identity between the two employers.

Although the principle of successorship has been developed and refined by the Supreme Court in the years since the *Wiley* decision, the court has not had occasion to speak directly to the related issue of whether a corporation which is not a signatory to a collective bargaining agreement may be bound thereby because of its parent-subsidiary relationship with a signatory corporation. This issue, one of first impression for the Court of Appeals for the Fourth Circuit, was presented in the case of *A.T. Massey Coal Co. v. International Union, United Mine Workers,*[5] in which the court held, based on general principles of agency, that the subsidiary company was not authorized to bind its parent and other affiliates to the terms of a collective bargaining agreement.[6] Other courts of appeal have confronted this same question in recent decisions in which they have employed at

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[1] John Wiley & Sons v. Livingston, 376 U.S. 543 (1964).

[2] *Id.* at 545.

[3] *Id.* at 551.

[4] *Id.* at 548.

[5] A.T. Massey Coal Co., Inc. v. International Union, United Mine Workers, 799 F.2d 142 (4th Cir. 1986).

[6] *Id.* at 147.

least three distinct analytical approaches to the problem of determining when it may be appropriate to bind a non-signatory corporation to the terms of a collective bargaining agreement entered into by an affiliated corporation.

This Comment will explore the various approaches utilized by the federal courts in resolving this issue, and discuss the decision in *A.T. Massey* in light of the developing case law in this area.

II. Statement of the Case

The A.T. Massey Coal Company and its seventy-three wholly owned subsidiary corporations are engaged in the production, purchasing, and sale of coal.[7] On occasion, the Massey companies have been represented for collective bargaining purposes by the Bituminous Coal Operators Association (BCOA).[8] Prior to the expiration of the 1981 National Bituminous Coal Wage Agreement (NBCWA), Massey and its affiliates, except for the Omar Mining Company, withdrew from the BCOA and rejected a request from the United Mine Workers of America (UMWA) that they become signatories to a successor contract.[9] The 1984 NBCWA was negotiated and became effective on October 1, 1984, binding all companies in the BCOA, including Omar.[10] Article IA(f) of the 1984 NBCWA provides in part that "Employers agree that this Agreement covers the operation of all the coal lands, coal producing and coal preparation facilities owned or held under lease by them . . . or by any subsidiary or affiliate at the date of this Agreement."[11] Subsequently the UMWA has sought to hold Massey and a number of its affiliated corporations to the terms of the 1984 NBCWA by virtue of their relationship to Omar.[12]

The Massey companies brought an action in the United States District Court for the Eastern District of Virginia seeking a declaration that they were not bound by the collective bargaining agreement which was dismissed for lack of subject matter jurisdiction.[13] In a related action, the union sought a declaratory judgment in the United States District Court for the Southern District of West Virginia that the Massey companies were bound by the 1984 BCOA, and also a preliminary injunction requiring the Massey companies to be joined in and to arbitrate a grievance filed by the UMWA against Omar.[14] The district court determined that

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[7] International Union, United Mine Workers v. A.T. Massey Coal Co., Inc. No. 2:86-0014, slip op. at 3 (S.D. W.Va. Feb. 25, 1986) [hereinafter cited as *International Union*].

[8] *A.T. Massey,* 799 F.2d at 144.

[9] *Id.*

[10] *Id.*

[11] National Bituminous Coal Wage Agreement of 1984 § IA(f).

[12] *A.T. Massey,* 799 F.2d at 144.

[13] *Id.*

[14] *International Union,* No. 2:86-0014 slip op. at 5.

Massey and its subsidiaries who were parties to the action functioned as a single employer and that the union had therefore shown a probable right to bind them to the contract.[15] Judge Knapp went on to hold that "[w]hether or not the defendant companies are all 'subsidiaries or affiliates' of Omar within the meaning of Article IA(f) . . . is a matter which can only be determined under the grievance and arbitration procedure of the 1984 Agreement" and entered an injunction directing Massey and the other defendants to arbitrate this issue.[16]

The Court of Appeals for the Fourth Circuit consolidated these two cases for purposes of appeal. Circuit Judge Murnaghan, writing for the majority, held that the Virginia case had been properly dismissed for lack of subject matter jurisdiction because section 301 of the Labor Management Relations Act[17] does not confer jurisdiction when the plaintiff fails to "allege breach of an existing collective bargaining contract."[18] With respect to the West Virginia case, the court held that whether an agreement to arbitrate existed between the Massey companies and the union was to be determined by the court, not by an arbitrator.[19] Finding that the question of whether Massey and its affiliates, other than Omar, had agreed to arbitrate was ripe for resolution, the court went on to hold, based upon ordinary agency principles that "there is no obligation on the part of Massey and its affiliates, other than Omar, to negotiate as a consequence of the provisions of the 1984 NBCWA."[20] In reaching this determination, the court rejected the proposition that the "single employer" doctrine developed by the National Labor Relations Board would control the determination of whether Omar "was empowered to act as an agent authorized to bind its parent and affiliates to an agreement to arbitrate."[21] Circuit Judge Hall concurred with the majority's holdings except insofar as the court reached the ultimate issue of the existence of an agreement to arbitrate, indicating that this question should properly be resolved in the first instance by the district court.[22]

III. Prior Law

A. *Arbitrability—A Question for Judicial Determination*

In the recent case of *AT&T Technologies, Inc. v. Communications Workers*,[23] the United States Supreme Court reaffirmed the long-standing principle that "the

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[15] *Id.* at 9.
[16] *Id.* at 10.
[17] Labor Management Relations Act of 1947, § 301, 29 U.S.C. 185 (1982).
[18] *A.T. Massey*, 799 F.2d at 146.
[19] *Id.*
[20] *Id.* at 147.
[21] *Id.*
[22] *Id.* (Hall, J., concurring in part).
[23] AT&T Technologies, Inc. v. Communications Workers, 106 S. Ct. 1415 (1986).

question of arbitrability—whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance—is undeniably an issue for judicial determination" unless the parties clearly provide otherwise.[24] This follows from the rule established by the Supreme Court in *Steelworkers v. Warrior & Gulf Navigation Company*[25] that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."[26] In the successorship case, *John Wiley & Sons,* the court expressly reiterated that "whether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the Court on the basis of the contract entered into by the parties."[27]

B. *Holding a Non-Signatory Corporation to the Collective Bargaining Agreement through its Relationship with a Signatory Corporation*

1. Piercing the Corporate Veil

The question of whether it is proper to bind a non-signatory corporation to a collective bargaining agreement on the basis of its relationship to a signatory corporation has been approached by two courts of appeal primarily in terms of piercing the corporate veil. The First Circuit articulated this approach in *United Paperworkers v. T.P. Property Corp.*[28] in which the Paperworkers Union brought suit seeking to compel Penntech Papers, Incorporated, which through its subsidiary, T.P. Property Corporation, had purchased the outstanding stock of the Kennebec River Pulp and Paper Company, to arbitrate concerning certain provisions of a collective bargaining agreement entered into by Kennebec and the union which neither Penntech nor T.P. Property had signed.[29] The district court denied the union's motion to compel arbitration and, on appeal, the court of appeals affirmed, holding that there was no basis for ordering Penntech to arbitrate with the union.[30] The district court had framed the issue before it not in terms of successorship, but as "whether parent corporations should be bound to the collective bargaining agreements of their subsidiaries," and the court of appeals agreed that this was the proper formulation of the issue insofar as a "question of successorship does not arise every time there is a shift in the controlling interest of stock in a corporation."[31]

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[24] *Id.* at 1418.

[25] United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).

[26] *Id.* at 582.

[27] *John Wiley & Sons,* 376 U.S. at 547 (quoting Atkinson v. Sinclair Refining Co., 370 U.S. 238, 241 (1962)).

[28] United Paperworkers International Union v. T. P. Property Corp., 583 F.2d 33 (1st Cir. 1978).

[29] *Id.* at 34.

[30] *Id* at 35.

[31] *Id.*

In reaching its holding, the court of appeals stressed that even though the management of the three companies was "so intertwined as to be indistinguishable" this was not sufficient grounds for the court to pierce the corporate veil and hold Penntech to the agreement in the absence of special circumstances such as fraud or misrepresentation on the part of Penntech which induced the union to enter the agreement; diversion of Kennebec's income or assets to Penntech; mismanagement by Penntech causing Kennbec to fail; or a representation by Penntech that it would meet the terms of the agreement if Kennebec were unable to do so.[32] Given these facts, the court of appeals stated that an order compelling Penntech to arbitrate could be based only "on a policy that a holding parent corporation should be bound to the arbitration agreement of its subsidiary whenever it controls its subsidiary's stock and participates in its management . . . . No such policy has yet been adopted by Congress or the courts."[33]

The Third Circuit has also indicated that corporate veil piercing is a sound framework for analysis of the propriety of binding a non-signatory company to a collective bargaining agreement when an affiliate affiliated company did sign the agreement. In the case of *American Bell Inc. v. Federation of Telephone Workers,*[34] the court was presented with a complex factual situation which arose when one subsidiary of AT&T, Bell Telephone Company of Pennsylvania, transferred certain assets and employees to another AT&T subsidiary, American Bell, Inc. (ABI).[35] ABI brought suit seeking a declaratory judgment that it was not required to arbitrate "disputes about its employment practices" under the collective bargaining agreement between Bell of Pennsylvania and the union "on the basis of Bell's transfer of assets."[36] The district court denied the request for declaratory judgment and dismissed the case; on appeal the Third Circuit remanded for clarification of the lower court's factual and legal findings, after discussing the applicability of the piercing the corporate veil theory to the case.[37]

The Third Circuit stressed that although it might, in unusual circumstances, be appropriate to pierce the corporate veil in order to hold a non-signatory corporation to the terms of a collective bargaining agreement, the existence of a parent-subsidiary relationship alone does not constitute sufficient justification.[38] Noting that the requirements for disregarding corporate form are sometimes imprecisely formulated, the court found that they were still demanding them, and that piercing the veil was appropriate only " 'to prevent fraud, illegality, or injustice, or when recognition of the corporate entity would defeat public policy

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[32] *Id.*
[33] *Id.* at 35-36.
[34] American Bell Inc. v. Federation of Telephone Workers, 736 F.2d 879 (3rd Cir. 1984).
[35] *Id.* at 882-83.
[36] *Id.* at 884.
[37] *Id.* at 887.
[38] *Id.*

or shield someone from liability for a crime.' "[39] The Third Circuit concluded its discussion of corporate veil-piercing as a means of binding a non-signatory to a collective bargaining agreement by concurring with the First Circuit that "there is no policy of federal labor law, either legislative or judge-made, that a parent corporation is bound by its subsidiary's labor contracts simply because it controls the subsidiary's stock and participates in the subsidiary's management."[40]

2. The Single Employer Doctrine

Federal courts also have analyzed the issue of whether a non-signatory corporation, under some circumstances, may be held to the terms of a collective bargaining agreement by virtue of its relationship to a signatory party in terms of whether the two entities, signatory and non-signatory, constitute a "single employer". The United States Court of Appeals for the Fifth Circuit addressed this issue in *Carpenters Local Union No. 1846 v. Pratt-Farnsworth*,[41] holding that the single employer analysis developed by the National Labor Relations Board could be employed by a federal court in deciding a suit for breach of a collective bargaining agreement.[42] Furthermore, the court would have jurisdiction to address both aspects of the single employer issue: whether two (or more) employers should be treated as one, and whether the employees of both constituted a single appropriate bargaining unit.[43]

The National Labor Relations Board utilizes the single employer doctrine which "allows it to treat two or more related enterprises as one employer" for both jurisdictional purposes and in the context of unfair labor practices cases.[44] The Board considers four factors, no one of which is controlling, in determining the existence of single employer status: "(1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership."[45] An initial finding of single employer status does not mean that "all the subentities comprising the single employer will be held bound by a contract signed by only one"; a further finding that the employees of the several entities constitute a single approximate bargaining unit is necessary.[46] The two steps of the analysis are governed by distinct considerations: "under the single employer doctrine, the focus is the interrelatedness of the employers, while in assessing an appropriate bargaining unit, the focus is on the similarity of concerns between

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[39] *Id.* at 886 (quoting Zubik v. Zubik, 384 F.2d 267, 272 (3rd Cir. 1976)).

[40] *Id.* at 887.

[41] Carpenters Local Union No. 1846 v. Pratt-Farnsworth, 690 F.2d 489 (5th Cir. 1982), *reh'g denied,* 696 F.2d 996 (5th Cir.), *cert. denied,* 464 U.S. 932 (1983).

[42] *Id.* at 519.

[43] *Id.*

[44] *Id.* at 504.

[45] *Id.*

[46] *Id.* at 505.

employees."[47] The Fifth Circuit decided that both questions were subject to judicial determination when essential to the resolution of a claim of breach of a collective bargaining agreement.[48]

The holding of the Fifth Circuit that appropriateness of the bargaining unit may be judicially determined is of special interest, because the United States Court of Appeals for the Ninth Circuit decided precisely the same question two days earlier in *Brotherhood of Teamsters, Local No. 70 v. California Consolidators, Inc.*[49] and reached the opposite conclusion. In this case, the union filed a complaint against California Consolidators, a trucking firm, alleging that Consolidators and Marathon Delivery Services (a pool car distributor and signatory to a collective bargaining agreement with the union) constituted a single employer, and requesting that the district court issue a declaratory judgment that Consolidators was bound by the terms of the agreement between the union and Marathon.[50] The district court dismissed the case for lack of jurisdiction and the union appealed.[51]

The Ninth Court decided that although "section 301 grants the district court jurisdiction to decide whether employers constitute a single employer . . . it does not extend to the determination of the second part of the issue, the appropriateness of the bargaining unit."[52] A positive finding on this second aspect, appropriateness of the bargaining unit, would be required before a declaration could issue binding Consolidators to the collective bargaining agreement between the union and Marathon.[53] If the complaint had requested only a declaration of single employer status, this would have been within the lower court's jurisdication, but "[i]nstead it sought relief that would require the court to decide the appropriateness of a bargaining unit, a representational question reserved in the first instance to the Board."[54] This is consistent with the distinction drawn by the Court of Appeals for the Eighth Circuit in addressing the narrower issue of whether it is proper for a federal court to review the merits of an NLRB decision on the appropriateness of a bargaining unit: "[T]he appropriate line between those cases where the district court has jurisdiction under section 301 and those in which it does not is to be determined by examining the major issues to be decided as to whether they can be characterized as primarily representational or primarily contractual."[55]

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[47] *Id.* (emphasis omitted).

[48] *Id.* at 519.

[49] Brotherhood of Teamsters, Local No. 70 v. California Consolidators, Inc., 693 F.2d 81 (9th Cir. 1982), *cert. denied*, 469 U.S. 932, (1983), *reh'g denied*, 469 U.S. 1066 (1984) [hereinafter cited as *Teamsters*].

[50] *Id.* at 81-82.

[51] *Id.* at 82.

[52] *Id.* at 83.

[53] *Id.*

[54] *Id.* at 84.

[55] Local Union 204, International Brotherhood of Electrical Workers v. Iowa Electric Light & Power Co., 668 F.2d 413, 419 (8th Cir. 1982).

The United States Supreme Court denied certiorari to review the decision in *California Consolidators;*[56] however, Justice White dissented from the denial in view of the direct conflict between the Ninth and Fifth Circuits: "Although the conflict is now limited to two circuits, these circuits are very large circuits indeed, and the issue will surely arise elsewhere."[57] He went on to note that the Eighth Circuit also has "characterized the determination of an appropriate bargaining unit as a representational question committed to the jurisdiction of the Board."[58] Justice White pinpointed the origin of the conflict between the circuits as the product of divergent interpretations adopted by them of the Supreme Court decision in *South Prairie Construction Co. v. Local 627, International Union of Operating Engineers,*[59] wherein a union appealed an NLRB determination that two employers did not constitute a single employer and the Court of Appeals for the District of Columbia agreed, set the Board's decision aside, and proceeded to reach the question of whether the employees of the two companies were an appropriate bargaining unit, an issue not previously addressed by the NLRB.[60] The Supreme Court held that the court of appeals should not have determined this issue, because in so doing the court "did not give 'due observance to the distribution of authority made by Congress as between its power to regulate commerce and the reviewing power which it has conferred upon the courts under Article III of the Constitution.' "[61]

In Justice White's view, the Ninth Circuit has interpreted this holding to preclude the court from addressing "the appropriateness of a bargaining unit even when the question has never been presented to the Board" because the parties have proceeded directly into court seeking a determination of single employer status in a controversy revolving around the contractual issue of the applicability of the provisions of a collective bargaining agreement.[62] The Court of Appeals for the Fifth Circuit, on the other hand, has decided to treat appropriateness of bargaining unit as a "collateral issue" which must be decided to resolve the large breach of contract question, relying for support on decisions of the Supreme Court "upholding the jurisdiction of federal courts under section 301 even in the face of the Board's exclusive jurisdiction to consider allegations of unfair labor practices."[63] Thus Justice White dissented from the denial of certiorari because he saw the need to resolve the conflict between the two courts of appeal and thereby

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[56] *Teamsters*, 469 U.S. 887, *reh'g denied*, 469 U.S. 1066 (1984).

[57] *Id.* at 890 (White, J., dissenting).

[58] *Id.*

[59] South Prairie Construction Co. v. Local 627, International Union of Operating Engineers, 425 U.S. 800 (1976).

[60] *Id.* at 802-03.

[61] *Id.* at 806 (quoting FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 141 (1940)).

[62] *Teamsters,* 469 U.S. at 880 (White, J., dissenting).

[63] *Id.* at 889.

"avert the wider conflict that will likely arise in the wake of these inconsistent decisions."[64]

IV. Discussion

In *A.T. Massey,* the Fourth Circuit addressed the propriety of the West Virginia district court's grant of a preliminary injunction requiring the Massey companies to arbitrate the question of whether they were bound by the terms of the 1984 National Bituminous Coal Wage Agreement of which the Omar Mining Company, a wholly-owned Massey subsidiary, was a signatory.[65] The court of appeals held that the district court had erred by overlooking the "necessity of deciding the judicial question of whether agreement to arbitrate had, in fact, taken place."[66] This holding was clearly correct in light of a line of Supreme Court decisions, culminating in *AT&T Technologies*, stressing that "an obligation to arbitrate is a matter of contract and the existence of such contract must be established before an arbitration can occur."[67]

Proceeding to the issue of whether the Massey companies, other than Omar, were obligated to arbitrate certain disputes in accordance with the provisions of the 1984 NBCWA because Omar was a signatory to that agreement, the court of appeals framed the question as "whether Omar was empowered to act as an agent authorized to bind its parent and affiliates to an agreement to arbitrate."[68] In the court's view, ordinary agency principles controlled this question, not the single employer doctrine "developed by the NLRB for other, if related, purposes."[69] On this basis, without indicating a reliance on either its own prior decisions or case law from other circuits, the court of appeals held that there was no evidence indicating that Omar was an authorized agent of the Massey companies empowered to bind them to the agreement and, therefore, found "no obligation on the part of Massey and its affiliates, other than Omar, to negotiate as a consequence of the provisions of the 1984 NBCWA."[70]

In rejecting the applicability of the single employer doctrine advanced by the union, the Fourth Circuit stressed the fact that Omar had remained a member of the Bituminous Coal Operators Association, while the other Massey companies had withdrawn, making it, in the court's view, "inconsistent to conclude that all the subsidaries of Massey are merely puppets."[71] This observation of apparent

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[64] *Id.* at 890.
[65] *A.T. Massey,* 799 F.2d at 146; *International Union,* No. 2:86-0014, slip op. at 10.
[66] *A.T. Massey,* 799 F.2d at 146.
[67] *Id.*
[68] *Id.* at 147.
[69] *Id.*
[70] *Id.*
[71] *Id.*

independence by Omar in choosing to be a party to both the negotiation and execution of the 1984 NBCWA while its parent and affiliates did not participate, also seems to be a significant, and perhaps determinative, factor in the court's conclusion that Omar was not an authorized agent of the other Massey companies. By deciding this case on ordinary principles of agency, the Fourth Circuit did not foreclose a later application of the doctrine of piercing the corporate veil to the question of whether it may, in some circumstances, be appropriate to bind a non-signatory corporation to a collective bargaining agreement entered into by its subsidiary or affiliate. The court of appeals has chosen to disregard the corporate veil in situations arising outside the collective bargaining context, and it does not seem unreasonable to think that in the appropriate factual situation in which piercing the veil would prevent fraud or injustice, the court might apply this doctrine in a labor relations case.[72]

The district court in the West Virginia case decided that the Massey companies consituted a single employer based on its factual findings that all four criteria (interrelationship of operations, common management, centralized control of labor relations, common ownership or financial control) considered by the NLRB in determining single employer status were present in the relationship of Massey and its affiliated companies.[73] The court of appeals, in deciding that the single employer doctrine was not controlling, noted that a finding that two or more companies constitute a single employer "does not settle the issue of whether Massey and its subsidiaries, other than Omar, have agreed to arbitrate,"[74] implicitly recognizing that the analysis as developed by the NLRB would not permit the Massey companies to be bound to the agreement between Omar and the union without a further determination that the employees of the companies constituted a single appropriate bargaining unit.

The *A.T. Massey* decision may be read in such a way as to infer from it that the Fourth Circuit is in unspoken agreement with the Ninth Circuit in that the appropriateness of a bargaining unit is not in the first instance subject to judicial determination. The court clearly wanted a final resolution of the issue of whether the Massey companies were bound to arbitrate under the provisions of the 1984 NBCWA stating that by deciding the question, the court would "avoid delay with respect to a matter which obviously is apt to reappear at a later date."[75] If the court had chosen to apply the single employer doctrine as advocated by the union and agreed with the district court that the Massey companies constitute a single employer, the court would not have been able to decide whether Massey was bound by the contract if it adhered to the Ninth Circuit position that this

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[72] *E.g.*, DeWitt Truck Brokers, Inc. v. W. Ray Fleming Fruit Co., 540 F.2d 681, 686-87 (4th Cir. 1976).

[73] *International Union*, No. 2:86-0014, slip op. at 9.

[74] *A.T. Massey*, 799 F.2d at 147.

[75] *Id.* at 146 n.4.

determination was not within the court's jurisdiction under section 301 of the Labor Management Relations Act. By relying instead on principles developed in the law of agency, the court of appeals could avoid this potential impasse and decide the case before it.

V. Conclusion

Should the *A.T. Massey* decision be appealed, it seems likely that the applicability of the single employer doctrine by the federal courts in section 301 cases concerning whether a non-signatory company to a collective bargaining agreement may be bound by its affiliation with a signatory company will receive further attention. In any event, the present conflict between the Fifth and Ninth circuits in this area, and Justice White's express concern about the consequences of this difference, indicate that at some point the Supreme Court will find it necessary to clarify the law on this issue. As for the immediate impact of the *A.T. Massey* case on law in the Fourth Circuit, it would seem that the court of appeals would be reluctant to consider an argument by a party seeking to bind a non-signatory to a collective bargaining agreement when framed in terms of the single employer doctrine, especially as applied by the Fifth Circuit in *Pratt-Farnsworth*. It is important to note, however, that the court has by no means foreclosed arguments on this issue based on the theory of disregarding the corporate form when presented in an appropriate factual situation.

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