UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	)
VITAMINS ANTITRUST LITIGATION	)
	)
	) Misc. No. 99-197 (TFH)
	) MDL No. 1285
THIS DOCUMENT RELATES TO:	)
ALL ACTIONS	)

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U.S. DISTRICT COURT

MEMORANDUM OPINION Re: UCB Motion to Dismiss

Pending before the Court is defendant UCB S.A.'s ("defendant" or "UCB S.A.") Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(2), for lack of personal jurisdiction. Upon careful consideration of defendant's Motion to Dismiss, plaintiffs' opposition, defendant's reply, the entire record, and oral argument thereon, the Court will grant UCB S.A.'s Motion to Dismiss with respect to Washington, D.C. and deny the Motion in all other respects.

I. BACKGROUND

UCB S.A., a corporation organized and headquartered in Brussels, Belgium, manufactures and sells choline chloride -- one of the vitamins at issue in plaintiffs' alleged conspiracy. Unlike most of the foreign defendants in the Vitamins litigation, UCB S.A. has not pled guilty to any price-fixing or other antitrust violations. The motion to dismiss presently at issue concerns individual actions filed in Arkansas, California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, and Virginia, as well as a class action filed in Washington, D.C.[1]

UCB S.A. argues that it is not subject to the jurisdiction of this Court because it lacks sufficient contacts with any of the forum states and because proceeding with this action would

[1]While the individual actions allege that UCB S.A. conspired with other vitamins manufacturers to fix prices and allocate worldwide markets for all vitamins, the class action is limited to choline chloride.

violate the Due Process Clause of the United States Constitution. On the other hand, plaintiffs allege that UCB S.A. is subject to jurisdiction in each of the forum states under a number of jurisdictional theories, including specific jurisdiction under the Clayton Act through the activities of its subsidiaries in the relevant fora, conspiracy theory jurisdiction, the effects test theory of jurisdiction, and jurisdiction under some of the fora states' long-arm statutes.

II. DISCUSSION

A. Personal Jurisdiction Generally

There are two basic theories of personal jurisdiction – general and specific jurisdiction. General jurisdiction arises from a party's contacts with the forum that are unrelated to the particular claims in the litigation. Helicopteros Nacionales de Columbia S.A. v. Hall, 466 U.S. 408, 414-17 (1984). To establish general jurisdiction, plaintiffs must demonstrate that UCB S.A. has had "continuous and systematic" general business contacts with the respective MDL fora. Id. By contrast, specific jurisdiction attaches over a nonresident defendant solely for causes of action arising from the defendant's contacts with that forum. Id. at 414-17.

In this case, plaintiffs rely largely on specific jurisdiction to reach UCB S.A., because, for the most part, UCB S.A. lacks the type of "continuous and systematic" general business contacts with the forum states necessary to establish general jurisdiction over this defendant. With respect to specific jurisdiction, plaintiffs do not rely on UCB S.A.'s direct contacts with any of the fora, except Georgia. Instead, plaintiffs attempt to establish specific jurisdiction over this defendant by pointing to: (1) the contacts of UCB S.A.'s subsidiaries in the relevant fora for purposes of establishing jurisdiction under Section 12 of the Clayton Act; (2) the actions of UCB S.A. and its United States subsidiaries and affiliates under the conspiracy theory of jurisdiction; (3) UCB

S.A.'s and its subsidiaries' conduct with respect to the vitamins conspiracy under the effects test; and (4) the activities of UCB S.A.'s subsidiaries and affiliates in the relevant fora for purposes of satisfying the states' long-arm statutes. Because plaintiffs have conducted jurisdictional discovery, they must establish personal jurisdiction over UCB S.A. by a preponderance of the evidence.[2] Shapiro Lifschitz & Schram, P.C. v. Hazard, 24 F. Supp. 2d 66, 70 (D.D.C. 1998) ("[a]lthough ordinarily a plaintiff need only establish a *prima facie* case that personal jurisdiction exists to survive a motion to dismiss . . . in situations where the parties are permitted to conduct discovery on the jurisdictional issue a plaintiff must prove personal jurisdiction by a preponderance of the evidence"); see also GTE New Media Services Incorporated v. Ameritech Corp., 21 F. Supp. 2d 27 (D.D.C. 1998); Landoil Resources Corp. v. Alexander & Alexander Servs., Inc., 918 F.2d 1039, 1043 (2d Cir. 1990); Ball v. Metallurgie Goboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir. 1990).

B. Plaintiffs' Theories of Personal Jurisdiction

1. Section 12 of the Clayton Act[3]

Section 12 of the Clayton Act provides that "[a]ny suit, action, or proceeding under the

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[2]Plaintiffs cite Edmond v. United States Postal Service General Counsel, 949 F.2d 415, 424 (D.C. Cir. 1992), for the proposition that the burden of proving personal jurisdiction is a *prima facie* showing unless the trial court holds an evidentiary hearing. However, in Edmond, the Court also noted that the appellants had not had the opportunity to discover jurisdictional facts. Id. at 419-20. Moreover, subsequent cases have clearly established that a *prima facie* showing is necessary to defeat a motion to dismiss for lack of personal jurisdiction "[p]rior to an evidentiary hearing *or* discovery. . . ." In re: Consumer Credit Counseling Servs. Antitrust Litig., No. 97-CV-1741, 1997 WL 755019 (D.D.C. Dec. 4, 1997), at *1 (emphasis added); see also Shapiro, 24 F. Supp. 2d at 70.

[3]Plaintiffs assert personal jurisdiction over UCB S.A. based upon Section 12 of the Clayton Act in the following fora: Arkansas, California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, Virginia, and Washington, D.C.

antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found." 15 U.S.C. § 22. "[A] corporation is engaged in transacting business in a district . . . if in fact, in the ordinary and usual sense, it 'transacts business' therein of any substantial character.'" Chrysler Corp. v. Gen. Motors Corp., 589 F. Supp. 1182, 1195 (D.D.C. 1984) (citing Eastman Co. v. S. Photo Materials Co., 273 U.S. 359 (1927)). In this case, plaintiffs contend that UCB S.A. transacted business in eleven forum states through the activities of its United States' subsidiaries. To determine whether UCB S.A. can be held accountable for the activities of its subsidiaries in the relevant fora, the Court must assess the relationship between this defendant and its subsidiaries.

"In order for a parent corporation to be amenable to suit in a particular district based on the activities of its subsidiaries there, it must exercise a control relationship over its subsidiary." Chrysler, 589 F. Supp. at 1200. The level of control exercised by the parent company must be such that the parent company itself is actually transacting business in the forum through the subsidiary rather than the subsidiary transacting its own independent business. Id. ("Despite a formal separation between parent and subsidiary, where the parent exercises continuing supervision and intervention in the subsidiaries' affairs, the subsidiaries' activities are attributable to the parent for Clayton Act venue purposes"). When deciding whether to exercise jurisdiction over a parent corporation based on its control of its domestic subsidiaries under Section 12 of the Clayton Act, courts consider: (1) whether the subsidiary performs "business activities in a district, for example, sales and servicings, that in a less elaborate corporate scheme

the absent corporation would perform directly by its own branch offices or agents"; (2) whether the subsidiary and its parent are partners in "world-wide business competition"; (3) whether the parent has the capacity "to influence decisions of the subsidiary or affiliate that might have antitrust consequences," e.g., "[c]ontrolling stock ownership and interlocking directorates"; (4) "the part that the subsidiary or affiliated corporation plays in the over-all business activity of the absent corporation"; (5) "the existence of an integrated sales system involving manufacturing, trading, and sales corporations"; (6) "[t]he transfer of personnel back and forth between the absent corporation and its subsidiary"; (7) "the presentation of a common marketing image by the related corporations . . . [(]especially true when those corporations hold themselves out to the public as a single entity that is conveniently departmentalized either nationally or worldwide[)]"; (8) "the granting of an exclusive distributorship by the absent corporation to its subsidiary or affiliate"; (9) "whether the subsidiary pays cash for products sold or services rendered to it by the parent"; and (10) "whether separate books, bank accounts, tax returns, financial statements and the like are kept." Chrysler, 589 F. Supp. at 1200-01. In the absence of a control relationship sufficient to treat the parent and subsidiary as a single entity, the attribution of the contacts of the subsidiary to the parent would exceed the limitations of due process. See Central States, Southeast and Southwest Area Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 942-43 (7th Cir. 2000) ("Where two corporations are in fact separate, permitting the activities of the subsidiary to be used as a basis for personal jurisdiction over the parent violates . . . due process").

Therefore, the critical question here is whether UCB S.A. dominates or controls its subsidiaries such that attribution of the subsidiaries' business activities in the relevant fora

provide a sufficient basis for jurisdiction under Section 12 of the Clayton Act without violating due process.[4] Based upon the evidence presented by the parties, the Court finds that there is sufficient evidence to support plaintiffs' allegations of control by UCB S.A.

First, although the Boards of Directors of the U.S. subsidiaries are the "principal management body of the company," UCB S.A. retains the right to approve or disapprove all decisions of those Boards. See Plaintiff's Opp. (App. III), Van Dingenen Depo. 1 at UCBSA-001808-09 ("Decisions should be taken where appropriate, subject to the approval of the Executive Committee or of the Board of Directors of UCB").

Second, the Executive Committee determines the membership of the Board of Directors of each subsidiary in the UCB Group. UCBSA-001807. In addition, if there are non-UCB employees proposed for membership to one of the subsidiaries' Boards, approval of the Board of Directors of UCB S.A. is required. Id. Even the election of the chairman of each subsidiary's Board requires agreement of the Executive Committee of UCB S.A. as to the person to be elected. Id.

Third, although UCB Chemicals Corp. shares only one Board of Directors member with UCB S.A., the UCB Chemicals Corp. Board is dominated by high-level employees of UCB S.A. There are only two Board members of UCB Chemicals Corp. who are not UCB S.A. employees

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[4]It is already established that UCB S.A.'s subsidiaries transacted business in the relevant fora. UCB Chemicals Corp. and UCB Films, Inc. have stipulated that they are "subject to jurisdiction in the following forums based on [their] transaction of business in such forums: the states of California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas and Virginia." Stip. Among Def's and UCB, Inc., UCB Chemicals Corp., UCC Pharma, Inc., and UCB Films, Inc. (App. I, Ex. 59). Similarly, UCB Pharma, Inc. has stipulated that it is subject to jurisdiction in all of those states as well as in Arkansas by virtue of transacting business there. Id.

and even those two directors have overlapping duties with other UCB entities: one non-employee Board member of UCB Chemicals Corp. is an advisor to the UCB Executive Committee, and the other is the Counsel and Secretary to UCB Chemical Corp., UCB Pharma Inc., and UCB Films Inc. Thus, although there is technically only one overlapping director, UCB S.A. undoubtedly has tremendous influence upon UCB Chemicals Corp. due to the presence of its employees on UCB Chemicals Corp.'s Board of Directors. Moreover, one look at the composition of UCB Inc.'s Board of Directors indicates that this is not a practice limited to UCB Chemicals Corp. At least six of the seven members of UCB, Inc.'s Board of Directors are UCB S.A. employees and five of those six are members of the UCB Executive Committee.

Fourth, UCB S.A. maintains approval authority over the appointment of all domestic managers and the compensation paid to them. The Board of Directors of UCB S.A., through the General Management Regulations, reserves the right to "the approval, prior to nomination, of persons to be appointed to Group senior management posts exercised in a subsidiary or associated company." See UCBSA-001771-72. Additionally, the General Management Regulations reserve to the Executive Committee, "in subsidiaries and associated companies, the approval, prior to the appointment, to management posts, other than senior management posts." Id. The General Management Regulations further reserve for the General Managers of Sectors, "in subsidiaries and associated companies, the approval, prior to appointment, to staff posts." Id. Thus, through the Board of Directors of UCB S.A., the Executive Committee, and the General Managers of Sectors, UCB S.A. controls the approval of nominations of all positions down to and including staff positions. In addition, the Executive Committee retains the authority to set compensation levels for management posts and the General Managers of the Sectors retain the

authority to approve compensation levels for staff employees. See UCBSA-001785 ("for management posts in the Group in general . . . drawn up by the personnel Department, and submitted to the Executive Committee for approval"). Moreover, individual decisions regarding compensation are reviewed and agreed to by the Chairman of the Executive Committee for senior and other Group management posts. Id. at 001786. Furthermore, the General Manager of the Sector reviews all staff posts in his sector and advises the Chairman of the Executive Committee of the remunerations. Id.

Fifth, the UCB entities are organized according to business lines rather than separate corporate entities. See Van Dingenen Depo. at 11. The Presidents of the domestic subsidiaries report to the heads of UCB S.A.'s business sectors in Brussels. See James Depo. at 19-21; see also Denis Depo. at 18 ("Q: What is Mr. Kemmerer's position? A: He's president of UCB Chemicals Corporation. Q: And do you know who Mr. Kemmerer reports to? A: He reports to Ben Van Assche. Q: What is Mr. Van Assche's position? A: He's general manager of the UCB sector, chemical sector, and he's also chairman of the board of UCB Chemicals Corporation. Q: And he's a UCB S.A. employee, correct? A: Yes."). Additionally, UCB S.A. in Brussels is required to approve five-year plans, annual budgets, and capital expenditures in excess of $100,000. See Van Dingenen Depo. 32-34, 40-44; see also id. at 37 ("These budgets are checked upon, set by two angles, by the area organization, and by the business unit organization, in order to evaluate what comes out of it, is in line with the strategic goals that the sector has put for itself for the year to come, in case of budgets, for instance"). Once UCB Chemicals prepares their yearly budget and forwards it to UCB S.A. for consolidation with other UCB Chemical Sector budgets, it is sent to the Executive Committee for approval. Id. at 38-40.

Sixth, profits from the U.S. subsidiaries do not stay with the subsidiaries, but rather are funneled to UCB S.A. Each year UCB Chemicals Corp., UCB Pharma Inc., and UCB Films Inc. forward their profits to UCB Inc. in the form of dividends, and UCB Inc., in turn, dividends its yearly profits to UCB S.A. See id. at 142-143. In addition, UCB Inc., although not the owner of the accounts, has control and manages the U.S. subsidiaries' checking accounts, invests their excess money, and provides them with working capital when necessary. Notably, it is common for UCB Inc. to get its working capital from UCB S.A. See id. at 143-145.

Finally, UCB S.A. and its subsidiaries use the same name and logo for marketing purposes. They use product literature inviting customers to contact "UCB" at its locations in Belgium, China, and Georgia, making no distinction among the legal entities that make up the UCB Group. The logo is intended to have maximum use among UCB Group companies to the exclusion of separate corporate names in marketing products. Id. at 85-86. UCB Chemical sector's products are advertised using the UCB logo and the word "Chemicals" without indicating whether the products are produced or sold by UCB Chemicals in the U.S. or by some other UCB entity. Van Dingenen Ex. 9. Further, a UCB Chemicals Corp. employee testified that the distinction between UCB S.A. and UCB Chemicals "wouldn't be a factor" when dealing with customers. Kelly Depo. at 52. Thus, UCB S.A.'s marketing image presented to the public is one of an integrated corporation with various departments around the world rather than separate corporate entities that function independently of one another.

Despite the above evidence of control, UCB S.A. contends that there is insufficient evidence to support a finding of personal jurisdiction in this case. Specifically, UCB S.A. contends that, contrary to plaintiffs' assertions, the ultimate authority over each subsidiary is

vested in the Board of Directors of that subsidiary:

> In the eyes of the law, the directors' meeting as a Board constitute the principal management body of the [subsidiary] company; everything a [subsidiary] company does is done on their orders or on the orders of persons acting as their delegates. They are responsible for their management decisions and such responsibility could have penal consequences.

UCBSA-001808. Moreover, defendant notes that only one person is a member of both the UCB S.A. Board of Directors and the Boards of Directors of the three indirectly owned U.S. subsidiaries.[5] Defendant further contends that UCB S.A. employees who serve on the U.S. subsidiaries' Boards of Directors carefully differentiate their roles as UCB S.A. employees and their roles as Board members of these subsidiaries.[6] Finally, UCB S.A. argues that "while its managing directors for the various sectors provide high-level strategic input regarding the operations of the various legal entities that fall within their sectors, the individual subsidiaries retain their autonomy," because they are free to disregard the managing directors' comments or advice. See Def's Reply at 9 (citing Croufer Dep. at 74-75). While the defendant has demonstrated that the subsidiaries' Boards of Directors are given latitude in the small decisions relating to the day-to-day management of their corporations, the record shows that UCB S.A.

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[5]There is only one overlapping member, Baron Jacobs, between the Board of Directors of UCB S.A. and the Boards of Directors of the three indirectly owned UCB subsidiaries, UCB Chemicals, Corp., UCB Pharma Inc., and UCB Films Inc. However, both Baron Jacobs and Eric Janssen are members of the Boards of Directors of UCB S.A. and UCB Inc.

[6]To support this argument, defendant cites to the deposition transcript of Croufer, general manager of UCB S.A.'s chemical sector (Def's Ex. G); however, this testimony merely establishes that the authority to hire chief executives of the UCB entities did not reside solely with Croufer but instead was a power that he shared with all Board members, meaning that the Board had to act together to make such decisions but that Croufer was involved in those decisions as a member of the Board.

ultimately retains the power to influence and reverse the decisions of the subsidiaries' Boards on most issues. Furthermore, although there is only one overlapping Board member between the UCB S.A. Board of Directors and the indirectly owned U.S. subsidiaries' Boards, that overlapping member is Baron Jacobs, Chairman and President of UCB S.A. Moreover, although the remainder of the members of the Boards of Directors of the indirectly owned domestic subsidiaries are not members of the Board of Directors of UCB S.A., the fact that they are high-level executives employed by UCB S.A. makes it hard to believe that they do not base their decisions on what is ultimately beneficial for UCB S.A.

Defendant also argues that plaintiffs misrepresent the degree of control that members of the UCB S.A. Executive Committee exercise over the hiring and compensation of the managers of the U.S. subsidiaries; the involvement, according to defendant, is limited to a few senior management positions. See Croufer Depo. at 109 (establishing that the executive committee would interview a prospective senior manager late in the selection process but prior to the selection being finalized, but that the offer would be formally made by the U.S. organization). Moreover, although defendant admits that the proposed salaries may be reviewed by UCB S.A., it contends that "most of the time, we have not much to say because this [the salary] level is established by market condition." Id. at 110. The Court finds these arguments to be unconvincing, because UCB S.A., even if it chooses not to exercise its control, still retains the power to do so and ultimately has the last word with respect to these decisions. While the defendant admits that UCB S.A. reviews all proposed budget plans for the subsidiaries and consolidates each budget with those of the other subsidiaries, see Def's Reply at 12, it claims that the subsidiaries create their own budgets and plans first and that they are not provided to the

subsidiaries by UCB S.A. However, the fact that this budgeting and planning process moves upward rather than downward is not dispositive here; UCB S.A. still retains final authority to affirm or reject the subsidiaries' proposed budgeting plans.

Defendant further urges the Court to reject plaintiffs' reasoning that because UCB S.A. manufactures choline chloride and UCB Chemicals sells choline chloride, they should be deemed a single entity for purposes of establishing personal jurisdiction over UCB S.A. Defendant contends that, by this line of reasoning, any parent/subsidiary relationship involving vertical integration would result in a finding of a control relationship. However, this evidence should not be viewed in a vacuum, and given the totality of the evidence in the record, the Court finds that UCB S.A. sufficiently controlled its U.S. subsidiaries to attribute the business activities of the subsidiaries to the parent company for purposes of establishing personal jurisdiction under Section 12 of the Clayton Act in Arkansas, California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, and Virginia.[7] Taking into account the stipulations of the U.S. subsidiaries that they did in fact engage in sufficient business in these fora to justify jurisdiction over them, and because the Court finds that UCB S.A. controlled these subsidiaries such that they were not independent entities but were rather a part of a single UCB group entity, the Court finds that UCB S.A. "transacted business" in these fora within the meaning of Section 12 of the Clayton Act. Moreover, in light of the extensive contacts that the U.S. subsidiaries have with the

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[7]In making this ruling, the Court did not find the fact that UCB S.A. has service agreements with UCB, Inc., under which UCB S.A. provides certain administrative services to its subsidiary, to be particularly revealing in terms of proving the control relationship. See Central States, Southeast and Southwest Area Pension Fund, 230 F.3d at 942-43. Nor did the Court find the limited number of seemingly voluntary expatriate transfers to be of much significance. See Denis Depo. at 34.

relevant fora, their stipulations to personal jurisdiction within those fora, and the Court's finding that the control relationship has been supported by adequate evidence in this case, the exercise of personal jurisdiction over this defendant "does not offend traditional notions of fair play and substantial justice" and thus comports with due process. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). UCB S.A., through its control of its U.S. subsidiaries, more than satisfies the "minimum contacts" standard with Arkansas, California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, and Virginia and should therefore "reasonably anticipate being hauled into court" in these fora. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

Defendant rightfully contends, however, that plaintiffs' allegations with regard to UCB S.A.'s contacts with the District of Columbia are insufficient, even in light of the fact that the Court finds that it can attribute to UCB S.A. the activities of its U.S. subsidiaries. The fact that UCB Chemicals employs a salesperson who is responsible for the entire Northeast, including the District of Columbia, is clearly insufficient to establish jurisdiction over UCB S.A. in the District of Columbia, especially where UCB Chemicals has no customers in the District. See Denis Depo. at 254 (Def's Ex. A); Kelly Depo. at 267 (Def's Ex. D). The other contacts relied upon by plaintiffs – participation by UCB Chemicals in a task force meeting with the USDA and the hiring of a consulting company to assist with the company's regulatory affairs -- fall within the government contacts exception. Investment Co. Institute v. United States, 550 F. Supp. 1213, 1216 (D.D.C. 1982) (contacts which arise from "the unique character of the District as the seat of national government" and therefore implicate "the need for unfettered access to federal departments and agencies" are covered by the government contacts exception); see also Fandel v.

Arabian American Oil Co., 345 F.2d 87, 88-89 (D.C. Cir. 1965) (government contacts exception applied where defendant maintained a five-person office in the District for purposes of handling diplomatic and regulatory issues).

Accordingly, defendant's Motion to Dismiss is granted with respect to the District of Columbia and denied with respect to Arkansas, California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, and Virginia.

2. Conspiracy Theory[8]

Generally, under the conspiracy theory, jurisdiction may be exercised over a defendant in a forum if: (1) the defendant and one or more persons conspired to do something; (2) that they could reasonably expect to lead to consequences in a particular forum; (3) one co-conspirator commits overt acts in furtherance of the conspiracy; and (4) those acts are a type which, if committed by a nonresident, would subject the nonresident to personal jurisdiction under the

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[8]As a preliminary matter, defendant contends that the conspiracy theory of jurisdiction is unconstitutional. Defendant claims that the Supreme Court has rejected as "frivolous albeit ingenious" the notion that venue in antitrust actions could be established through a conspiracy theory. Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 384. However, the Court finds defendant's interpretation of Bankers Life to be somewhat strained. The issue in Bankers Life was "whether mandamus is an appropriate remedy to vacate a severance and transfer order entered by a district judge on the ground of improper venue, under 28 U.S.C. ¶1406(a)." Id. at 379. Consequently, Bankers Life does not resolve the issue of the constitutionality of the conspiracy theory of jurisdiction. The conspiracy theory of jurisdiction has been upheld by the Seventh Circuit, as well as by a number of lower federal courts, and has not yet been declared unconstitutional by any controlling authority. Thus, this Court holds that there is insufficient basis for finding it unconstitutional at this time. See, e.g., Textor v. Bd. of Regents of N. Ill. Univ., 711 F.2d 1387, 1393 (7th Cir. 1983) (actions by one conspiracy participant in Illinois "provide the requisite minimum contacts between the remaining members of the conspiracy and the [forum state]"); Zivitz v. Greenburg, No. 98C5350, 1999 WL 984397, at *6 (N.D. Ill. Oct. 25, 1999) (exercise of conspiracy jurisdiction in forum state over nonresident defendants comports with due process); Rudo v. Stubbs, 472 S.E.2d 515, 517 (Ga. Ct. App. 1996) (imputation of in-state acts of co-conspirators to defendants under Georgia long-arm statute does not violate due process).

long-arm statute of the forum state. Cawley v. Bloch, 544 F. Supp. 133, 135 (D. Md. 1982).

a. Georgia

Conspiracy theory jurisdiction has been upheld in Georgia based on Section 2 of the Georgia long-arm statute, which provides in pertinent part:

> A court of this state may exercise personal jurisdiction over any nonresident or his executor or administrator, as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section, in the same manner as if he were a resident of the state, if in person or through an agent, he:
>
> . . . (2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act.

Ga. Code Ann. § 91-10-91(2)[9]; see Georgia Gulf Corp. v. Ward, 701 F. Supp. 1556, 1561 (N.D. Ga. 1987) (upheld jurisdiction over nonresident based on defendant's involvement in alleged conspiracy to defraud Georgia corporation); Rudo, 472 S.E.2d at 516 (nonresidents subject to jurisdiction based on in-state acts of co-conspirators in Georgia).

Plaintiffs contend that UCB S.A. is subject to conspiracy jurisdiction in Georgia based on its participation in the conspiracy with the North American and European choline producers.[10]

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[9]Georgia's long-arm statute confers jurisdiction to the maximum extent allowable under the Due Process Clause. Delong Equip. Co. v. Washington Mills Abrasive Co., 840 F.2d 843, 848-49 and n.7 (11th Cir. 1988).

[10]Defendant argues that even if there is sufficient evidence of its participation in a choline chloride conspiracy; aside from the class action in the District of Columbia, plaintiffs have alleged a single conspiracy involving all vitamins and they have thus inadequately pled UCB S.A.'s involvement in this single conspiracy because UCB S.A. has no involvement with any vitamin except choline chloride. However, the Court finds that plaintiffs have adequately alleged an all-vitamins conspiracy, including choline chloride, and will thus allow them to proceed with their claims at this time; severance is an issue which can be addressed at a later stage in these proceedings, if necessary.

Specifically, plaintiffs point to their allegations of an agreement between UCB S.A., Akzo, and BASF not to sell choline chloride in the United States in exchange for Bioproducts, DuCoa and Chinook's agreement not to sell choline chloride in certain parts of Europe; according to plaintiffs, this agreement also involved a decision to maintain prices at certain levels. This alleged conspiracy resulted in more than $5,000,000 of choline chloride sales in Georgia to several plaintiffs by DuCoa and Bioproducts between 1992 and 1998. Additionally, in their printed literature, UCB S.A. advises U.S. customers to contact "UCB" at three different locations, Belgium, China, and Atlanta, GA., thus leading consumers to believe that these three entities are actually one integrated worldwide corporation. Moreover, plaintiffs claim that, in furtherance of this conspiracy, two high-ranking UCB S.A. officials attended a meeting in Stone Mountain, Georgia in January of 1993. Cosburn Tr. at 159-60, 173, 196-97. Furthermore, additional acts in furtherance of the conspiracy allegedly occurred in Georgia when UCB representatives, through their contacts with and control over UCB Chemicals Corp. in Georgia, apparently prevented UCB Chemicals Corp. from selling choline in Canada during the conspiracy due to UCB's fear of retaliation if choline was seen being shipped from Europe into Canada or the United States. Denis Tr. at 196. Finally, Bob Samuelson, who worked for Chinook Group Ltd. and pleaded guilty to violating U.S. antitrust laws by participating in the choline component of the conspiracy, was based in Atlanta. Cosburn Tr. at 237.

On the other hand, the defendant has produced some evidence that UCB S.A. stopped selling choline chloride in North American back in 1988 for economic reasons, thus at least calling into question plaintiffs' allegations that UCB S.A. was involved in the conspiracy at issue. See Hilling Dep. at 332-33 (Def's Ex. K); Croufer Dep. at 79-80, 126-127 (Def's Ex. G);

Coenen Dep. at 115 (Def's Ex. C). Defendant also maintains that the North American market was not even discussed at the Stone Mountain meeting. See Cosburn Dep. at 209-10 (Def's Ex. J); see also Hilling Dep. at 222-23 (Def's Ex. K) (testifying that choline chloride prices were not impacted by discussions at Stone Mountain).

The issue at this stage in the litigation, however, is not whether plaintiffs have fully proven their allegations so as to withstand a verdict in their favor at trial, but rather whether they have satisfied their preponderance of the evidence burden necessary to defeat the pending motion to dismiss for lack of personal jurisdiction. The Court finds sufficient evidence in the record to support plaintiffs' allegations of UCB S.A.'s involvement in an all-vitamins conspiracy, including choline chloride; a meeting in Stone Mountain, in furtherance of the conspiracy; and substantial sales to Georgia customers during the duration of the conspiracy. Accordingly, plaintiffs have produced sufficient evidence to support a finding of conspiracy jurisdiction over UCB S.A. in Georgia.

b. Illinois

As discussed in this Court's earlier ruling on personal jurisdiction,[11] Illinois courts have upheld the validity of the conspiracy theory of jurisdiction. See, e.g., Cameron v. Owens-Corning Fiberglass Corp., 629 N.E.2d 572, 577 (Ill. App. Ct. 1998) (upholding jurisdiction over British corporation based on allegations that it conspired with other companies that performed acts in Illinois). To establish personal jurisdiction over a nonresident defendant in Illinois based on the conspiracy theory, the plaintiff must allege an actionable conspiracy and a substantial act in furtherance of the conspiracy performed in Illinois by one of the co-conspirators. Textor, 711

[11]See In re: Vitamins Antitrust Litig., 94 F. Supp. 2d 26, 32-33 (D.D.C. 2000).

F.2d at 1392-93. As stated above, the Court finds that there is sufficient evidence in the record to support plaintiffs' allegations that UCB S.A. was involved in the alleged all-vitamins conspiracy.[12] Additionally, plaintiffs have presented numerous acts performed by co-conspirators in Illinois that satisfy the conspiracy theory requirements for jurisdiction. For example, plaintiffs have produced evidence that the North American choline chloride producers sent fraudulent choline price increase notifications to choline purchasers in Illinois, misstating the reasons for the price increases, see, e.g., 9/13/94 Letter from DuCoa to Prince Agri Products, Inc. (App. I., Ex. 27); and DuCoa and Bioproducts sold more than $6,000,000 worth of choline chloride to several plaintiffs in Illinois based on the price-fixing agreement and rigged bids. Moreover, co-defendant and co-conspirator Akzo Nobel's wholly owned subsidiary, Akzo Nobel, Inc., maintains its principal place of business in Chicago, Illinois. Thus, based upon the evidence presented by plaintiffs, the Court finds that personal jurisdiction over UCB S.A. in Illinois based upon the conspiracy theory is appropriate.

c. Minnesota

Minnesota courts recognize jurisdiction over a nonresident defendant based on that nonresident's contacts with Minnesota to participate in a tortious conspiracy. Hunt v. Nevada State Bank, 172 N.W.2d 292, 312 (Minn. 1969). Direct or indirect involvement in the fraudulent

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[12]The Supreme Court has held that "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." Hanson v. Denckla, 357 U.S. 235, 253 (1958). In order to satisfy due process concerns under the conspiracy theory of jurisdiction, this Court must find some evidence that the imputed acts of the third party were authorized or undertaken for the benefit of defendant. See Grove Press, Inc. v. Angleton, 649 F.2d 121, 122-23 (2d Cir. 1981) (holding that to establish agency jurisdiction, alleged agent must act "for the benefit of, and under some control by, the nonresident principal"). Therefore, it is necessary for the Court to find that UCB S.A. actually participated in this conspiracy at issue before it employs the conspiracy theory of jurisdiction.

transactions with Minnesota residents constitutes sufficient contacts with the forum state to satisfy due process. Vikse v. Flaby, 316 N.W.2d 276, 281-83 (Minn. 1982). Accordingly, in Minnesota, jurisdiction over a nonresident defendant is appropriate under the conspiracy theory if: "(1) jurisdiction can, under the traditional tests . . . be asserted over a 'resident' defendant (i.e. one with sufficient ties to the state); (2) the plaintiff can demonstrate the existence of a conspiracy in which the non-resident defendant and the resident defendant participated; and (3) an overt act in furtherance of the conspiracy took place within the state. Clim-A-Tech Indus., Inc. v. Quadna, Inc., Civ. No. 99-523, slip op. at 14 (D. Minn. May 18, 2000).

Plaintiffs claim that this Court can establish conspiracy theory jurisdiction over UCB S.A. based upon co-conspirator Chinook Group, Inc.'s activities in Minnesota. Chinook Group, Inc. is a Minnesota corporation with offices in Minnesota, and until recently owned a plant in Minnesota that converted liquid choline into dry choline. See Toll Manufacturing Agreement between Chinook and BASF AG (Plaintiff's App. I, Ex. 31). Moreover, John Kennedy, who worked for Chinook during the relevant period, and who pleaded guilty to participating in the choline chloride conspiracy, was based in Minnesota. See Cosburn Tr. at 201-202. Furthermore, according to plaintiffs, a conspiratorial meeting was held in Minnesota in September of 1995, which was preceded by a series of other meetings, phone calls, and faxes. See Coenen Depo. at 145-46 (admitting that the purpose of the St. Paul meeting was to discuss "acquisitions or partnering in choline chloride" and that this meeting was preceded and followed by many conversations about market allocation). Finally, plaintiffs contend that persons with responsibility for sales and marketing of choline from UCB S.A. and BASF traveled to Minnesota to meet and do business with co-conspirator Chinook. See Coenen Tr. at 27, 144

(App. III); Van Dingenen Tr. at 231.

As additional evidence of overt acts in furtherance of the conspiracy, plaintiffs note that alleged co-conspirator DuCoa owned and operated a blending facility in Minnesota, sold choline chloride in Minnesota, and filed corporate documents with the Minnesota Secretary of State. Transcript of Rick Stejskal in Delaware action at 390 (App. I, Ex. 32). And in 1992, DuCoa announced price increases to Minnesota purchasers. See Plaintiff's App. I, Ex. 33. Plaintiffs allege that the reasons for the price increases were the 1992 meetings and that the reasons set forth by DuCoa were the justifications agreed to by the alleged co-conspirators. Furthermore, according to plaintiffs, alleged co-conspirator Bioproducts is registered to do business in Minnesota, has appointed an agent to accept service of process in Minnesota, and has marketed and sold choline chloride in Minnesota. See Plaintiff's Opp. at 28.[13]

Defendant contends that the Minnesota meeting had nothing to do with the alleged conspiracy but instead concerned a potential joint venture between UCB S.A. and the other party. See Van Dingenen Dep. at 230-33 (Def's Ex. B); see also Coenen Dep. at 291[14] (Def's Ex. C). Defendant further argues that the meetings with Chinook took place outside of Minnesota. See Coenen Dep. at 291-92 (Def's Ex. C).

The Court finds the defendant's evidence to be weak and inadequate to rebut plaintiffs' evidence, at least at this stage in the proceedings. Accordingly, the Court holds that plaintiffs

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[13]Plaintiffs provide no citation to any evidence in the record to support this contention. Therefore, this allegation was not afforded much weight by the Court.

[14]In this passage, Coenen merely notes that he did not recall any discussions with Chinook relating to an agreement whereby UCB would refrain from selling in U.S. A lack of recollection, however, does not prove that the discussions did not occur.

have met their burden of establishing, by a preponderance of the evidence, conspiracy jurisdiction over UCB S.A. in Minnesota.

d. Kansas

In Kansas, the commission by a co-conspirator of tortious acts that have foreseeable consequences in Kansas will subject a defendant who is a participant in the conspiracy to jurisdiction in Kansas. Professional Investors Life Ins. Co. v. Roussel, 445 F. Supp. 687, 696-97 (D. Kan. 1978). Plaintiffs' allegations of tortious acts occurring within Kansas are Chinook's sales of price-fixed choline in Kansas during the years 1993-1997. See App. I, Ex. 34 (Purchase Orders from Hill's Pet Nutrition in Kansas to Chinook Group in Canada).

Given the evidence presented by plaintiffs of UCB S.A.'s co-conspirator Chinook's substantial sales to Hill's Pet Nutrition over a four-year period of time, the Court finds that it is foreseeable that there would be adverse consequences felt in Kansas as the result of these sales of price-fixed choline to purchasers within the State. Once again, since the Court has found sufficient evidence to support plaintiffs' allegations of UCB's involvement in an all-vitamins conspiracy targeting various states, including Kansas, UCB S.A. should anticipate that it could be hauled into Court in Kansas based upon the business contacts and sales of its co-conspirators in that State.

e. Arkansas, Indiana, Missouri, and Virginia

State courts in these fora have not addressed the applicability of the conspiracy theory of jurisdiction. However, it would appear that the application of this theory would be consistent

with both their long-arm statutes and civil conspiracy laws.[15] See, e.g., Sumpter v. Am. Tobacco Co., No. IP98-0401-C-M/S, 2000 WL 1449851, at *15-16 (S.D. Ind. May 4, 2000) (App. I, Ex. 35) (noting that, although Indiana courts have not yet determined whether the state would adopt conspiracy theory jurisdiction, because the state's long-arm statute extended to the limits of due process, "an Indiana court would likely determine whether under its formulation of civil conspiracy law, exercising jurisdiction over a non-resident co-conspirator based on the acts of another co-conspirator in the forum comports with due process").

Plaintiffs claim that UCB S.A. is subject to conspiracy jurisdiction in Arkansas, Indiana, Missouri, and Virginia based on the fraudulent price increase notification letters sent to plaintiffs in these fora in furtherance of the conspiracy, see e.g., 7/28/94 and 12/10/93 letters from Chinook

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[15]The statutes for Virginia and Indiana confer jurisdiction over a nonresident defendant as to any claims based on acts or omissions committed by the nonresident defendant or his or her agent which were (1) done within the state and caused injury; or (2) done outside the state but caused injury in the state provided that the nonresident defendant or his or her agent regularly does or solicits business or engages in any other persistent course of conduct in the state, or derives substantial revenue or benefit from goods or services rendered in that state. See Va. Code Ann. § 8.01-328.1A(3), (4) (App. I, Ex. 36); Ind. Rule of Trial P. 4.4(A) (2), (3) (App. I, Ex. 37) (emphasis added). These statutes confer jurisdiction to the full extent of federal due process limits; and Arkansas's long-arm statute is even broader, conferring jurisdiction over "all persons and all causes of action" to the maximum extent permitted by the due process clause. Ark. Code Ann. § 16-4101 (B) (West 1999) (App. I, Ex. 38). The pertinent provisions of Virginia's and Indiana's long-arm statutes are identical to subsections (2) and (3) of Georgia's long-arm statute; and Missouri's long-arm statute was modeled after the Illinois statute. Moreover, under Arkansas, Missouri, and Indiana law, a civil conspiracy is established by proof of: (1) a combination of two or more persons; (2) to either (i) accomplish a purpose that is unlawful or oppressive, or (ii) accomplish some purpose, not in itself unlawful, by unlawful, oppressive, or immoral means. Sumpter, 2000 WL 1449851, at *17; Colonial Insurance, 13 F. Supp. 2d at 896; Hog Haven, 41 S.W.2d 403. Similarly, in Virginia, a civil conspiracy is demonstrated by proof of: (1) a combination of two or more persons for the purposes of willfully and maliciously injuring others in their business; and (2) resulting damage to such persons. Balbir Brar Assocs., Inc. v. Consol. Trading & Servs. Corp., 1995 WL 1055971, at *6 (Va. Cir. Ct. Sept. 8, 1995) (App. I, Ex. 40).

to Georgia's, Inc. (App. I, Ex. 41), and the sale of price-fixed choline chloride to plaintiffs in these fora based on rigged bids.[16] In addition, BASF AG, in furtherance of the conspiracy, allegedly terminated an exclusive contract with South Central Products ("SCP"), a choline supplier and distributor based in Arkansas, because North American and European choline producers had viewed BASF's agreement to allow SCP to sell all of BASF's choline chloride in the United States to be a violation of the market allocation agreement. See Reed Depo. at 185 (App. I, Ex. 49). Plaintiffs also point to additional meetings and other acts in furtherance of the conspiracy that allegedly occurred in each of these fora. Although none of the meetings mentioned involved UCB S.A. directly, because the Court is satisfied with the evidence currently in the record with regard to UCB S.A.'s participation in this alleged conspiracy and its control over its United States subsidiaries, the Court finds that UCB S.A. is subject to jurisdiction pursuant to the conspiracy theory in Arkansas, Indiana, Missouri, and Virginia.[17]

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[16]According to plaintiffs, DuCoa's and Bioproducts' transactional data from 1992 through 1998 show choline chloride sales in excess of $12,000,000 in Arkansas, $1,000,000 in Indiana, $6,700,000 to NutraBlend in Missouri, and $500,000 in Virginia to several plaintiffs.

[17]As defendant points out, plaintiffs have not argued for conspiracy jurisdiction in Texas or California. Therefore, the Court does not address the applicability of the conspiracy theory of jurisdiction in those two states.

3. Effects Test[18]

Plaintiffs also argue that UCB S.A. is subject to jurisdiction under the "effects test" theory of jurisdiction in ten forum states.[19] The effects test arises from the Supreme Court's opinion in Calder v. Jones, 465 U.S. 783 (1984), where the Court held that minimum contacts may exist even when the defendant's only contact with the forum was calculated to cause and did cause injurious effects to plaintiffs in the forum state.[20] Following Calder, a recent Florida court evaluated minimum contacts in a price-fixing case by looking at the nexus among the forum state, the foreign corporation, and the inflated price paid by the forum's consumers for the price-fixed product. Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co., 752 So.2d 582, 585 (Fla.), cert. denied, 121 S.Ct. 58 (2000) (holding that jurisdictional requirements were satisfied by the

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[18]Defendant argues that if the Court was to allow jurisdiction under the effects test theory in this case, it would contradict its earlier ruling requiring local contacts for personal jurisdiction under the Clayton Act. Defendant is correct that local contacts are required for jurisdiction under the Clayton Act as was directed by this Circuit's ruling in GTE New Media Servs., Inc. v. Bellsouth Corp., et al., 199 F.3d 1343 (D.C. Cir. 2000). However, the decision in GTE New Media focused closely on the language and purpose of the Clayton Act and the appropriateness of local versus national contacts under that statute in determining personal jurisdiction and venue. Therefore, GTE New Media Servs. is inapposite to an analysis of personal jurisdiction under the effects test, which necessarily requires consideration of state law rather than an interpretation of the Clayton Act.

[19]Plaintiffs assert the "effect test" theory of jurisdiction in Virginia, Georgia, Kansas, Illinois, Texas, Minnesota, Indiana, Arkansas, Missouri, and California. They do not assert this theory for Washington, D.C.

[20]Calder involved a libel claim based on a magazine article written and edited by defendants in Florida; the Court found that defendants, who were Florida residents, nonetheless had minimum contacts in California because California was the "focal point both of the story and of the harm suffered" and because the defendants "were not charged with mere untargeted negligence" but rather with actions that were intentionally and "expressly aimed" at California. Id. at 789.

allegations that the conspirators had manufactured the product, for the most part had pleaded guilty to participating in the conspiracy, and the product had been distributed at inflated retail prices in every state, including the forum at issue).[21]

Illinois and California have construed Calder and the "effects test" most broadly. In Illinois, a tort-feasor need only commit a tort against an Illinois business such that the injury is felt in Illinois in order to satisfy the minimum contacts requirement. See Janmark, Inc. v. Reidy, 132 F.3d 1200, 1202 (7th Cir. 1997). In California, it is reasonable to exercise jurisdiction on the basis of the effects test "if the defendant intentionally caused 'effects in the state by an omission or act done elsewhere' whenever . . . the effects are of a nature 'that the State treats as exceptional and subjects to special regulation . . .'"[22] Quattrone v. Super. Ct., 44 Cal. App. 3d 296, 306 (1975) (foreign defendant subject to personal jurisdiction where out-of-state actions caused California corporation to issue stock in manner that violated California's securities laws). Given the broad applications of the effects test in these two fora, jurisdiction over UCB S.A. can be found under the effects test in California and Illinois.[23]

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[21]This case is distinguishable, however, because the defendant whose personal jurisdiction was at issue in that opinion was one of the defendants who had pled guilty. Here, UCB S.A. has not admitted any liability.

[22]California "treats antitrust violations as subject to the special regulation of the Cartwright Act." St. Joe Paper Co. v. Super. Ct., 120 Cal. App. 3d 991, 997 (Cal. Ct. App. 1981).

[23]Defendant also contends that where the alleged conduct has a global effect and does not focus on a particular forum, the exercise of jurisdiction under the effects test does not comport with due process. See Insolia v. Philip Morris, Inc., 31 F. Supp. 2d 660, 673 (W.D. Wisc. 1998) ("To the extent that B.A.T. participated in the alleged conspiracy, the geographic focal point of its participation was not Wisconsin, but all of North America. B.A.T.'s focus or lack thereof, is simply too diffuse to say that it could have anticipated being hauled into court in Wisconsin. Even assuming that defendant B.A.T. could have foreseen the actions it took in furtherance of the

The remaining forum states also recognize the "effects test," but they focus on whether defendants' tortious actions were "expressly aimed" at that forum. See, e.g., Robinson, 699 F. Supp. at 1213-14 (jurisdiction found where defendant's "purposefully targeted conduct" caused harm in Virginia); Horsley, 128 F. Supp. 2d at 1379 (jurisdiction proper where defendant was aware that plaintiff lived and operated a business in Georgia and tortious and intentional acts were specifically directed at plaintiff and his work); Intermatic, 815 F. Supp. at 297 (jurisdiction found where deliberate actions were expressly aimed at Indiana and calculated to have effect in Indiana).

Defendant contends first that the effects test is inapplicable in the remaining fora, because plaintiffs have not satisfied the long-arm statute requirements. Whether plaintiffs' allegations in this case satisfy the long-arm statute requirements depends on whether there is sufficient evidence of control and domination of UCB's subsidiaries by UCB S.A. to impute the actions of the subsidiaries in these fora to UCB S.A.[24] As discussed above, the Court finds the evidence

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alleged conspiracy would eventually have some impact in Wisconsin, foreseeability is not a sufficient substitute for purposefully established contacts"). Defendant reasons that since there is no evidence that any particular state was the focal point of plaintiffs' harm, jurisdiction under the effects test would violate the due process clause. Certainly, defendant is correct that there is no evidence in the record to suggest that there is a unique relationship between choline chloride and any of the individual fora. However, since the Court has found that UCB S.A. may be held accountable for the actions of its subsidiaries, as well as its co-conspirators and given the substantial sales and other conspiratorial activities in these fora, there is sufficient evidence in the record to find that UCB S.A. had sufficient purposeful contact with California and Illinois to reasonably anticipate being hauled into Court there. Accordingly, the Court finds that application of the effects test, as interpreted by California and Illinois, comports with the Due Process Clause.

[24]This is true because all of the long-arm statutes require some sort of regular solicitation of business or other persistent course of conduct in the forum state to justify jurisdiction over the nonresident defendant. Because the Court finds that the acts of UCB S.A. alone are insufficient to support jurisdiction in any of these fora, jurisdiction can only be established by imputing to

presented by plaintiffs to be sufficient to support plaintiffs' contention of control by UCB S.A. over its subsidiaries. Defendant further argues that the "effects test" is inapplicable, because UCB S.A. did not direct any of its conduct towards any forum state or towards any particular forum resident. Defendant reasons that jurisdiction over UCB S.A. is improper because defendant's alleged actions were not expressly aimed at any particular forum. See Def's Reply at 29 (citing Hilling Dep. at 206-34, Def's Ex. K). To support its position, defendant relies heavily on Calder's discussion of defendant's contact with California and the fact that defendants in that case knew the article at issue "would have a potentially devastating impact upon" the plaintiff and "that the brunt of the injury would be felt by [the plaintiff] in the State in which she lives and works and in which the National Inquirer has its largest circulation." Id. at 789-90. Defendant is correct that there must be some limits on the "effects test"; specifically, courts have held that Calder "cannot stand for the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific jurisdiction." Bancroft & Master's Inc. v. August Nat'l Inc., 223 F.3d 1082, 1087 (9th Cir. 2000); see also American Info. Corp. v. American Infometric, Inc., No. JFM-00-3288, 2001 WL 370109 (D. Md. Apr. 12, 2001) ("[c]ases finding personal jurisdiction based on harm involve some form of deliberate targeting of the plaintiff by the defendant"). Defendant argues that Calder requires wrongful conduct "individually targeting a known forum resident." Def's Reply at 29 (citing Bancroft, 223 F.3d at 1087).

Plaintiffs cite Cole v. The Tobacco Institute, et al., 47 F. Supp.2d 812, as support for their argument that actions aimed at the United States as a whole are sufficient to establish jurisdiction under the effects test. Cole, 47 F. Supp. 2d at 815 ("Defendant attempts to argue that Calder does

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UCB S.A. the actions of its subsidiaries.

not apply to this case because it involved a specific plaintiff in a specific state. B.A.T. Industries maintains, consequently, that if its intentional wrongdoing was aimed at more than one state, then the Calder test is not met. This, however, goes against common sense. It implies that a party can avoid liability by multiplying its wrongdoing"). While sympathizing with plaintiffs' argument, the fact remains that the remaining fora have required defendant's tortious conduct to be specifically and purposefully directed at those states to satisfy the effects test. Accordingly, even though the Court may agree with plaintiffs' position, the Court cannot find jurisdiction under the effects test based on actions aimed at the United States as a whole where the fora at issue require conduct "expressly aimed" at those jurisdictions.

In summary, personal jurisdiction against UCB S.A. is proper in California and Illinois based upon those states' broad applications of the effects test; however, personal jurisdiction over UCB S.A. cannot be found based on the effects test in Virginia, Georgia, Kansas, Texas, Minnesota, Indiana, Arkansas, and Missouri, because there is insufficient evidence in the record to demonstrate that UCB S.A. expressly directed its actions at those fora.

4. Long-Arm Statutes

Plaintiffs contend that, in addition to the Clayton Act, the conspiracy theory, and the effects test, several forum states have other provisions in their long-arm statutes which would subject UCB S.A. to jurisdiction. Specifically, plaintiffs claim that jurisdiction is proper under: (a) subsections (2) and (3) of Georgia's long-arm statute; (b) section 543.19 of Minnesota's long arm statute; (c) section 506.500 of Missouri's long-arm statute; and (d) California's long-arm statute.

As defendant points out, determination of personal jurisdiction is a two-step process. Accordingly, even if plaintiffs can satisfy the requirements for these long-arm statutes, the Court must still consider whether the exercise of jurisdiction comports with due process. Since courts in Georgia, Minnesota, Missouri, and California have construed their states' respective long-arm statutes to authorize the exercise of personal jurisdiction to the full extent allowable under the Due Process Clause,[25] the evaluation becomes one of determining whether the defendant's actions satisfy the minimum contacts required by due process so that "maintenance of the suit does not offend traditional notions of fair play and substantial justice." International Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945). The Court must be assured that defendant's contacts with the forum "are such that he should reasonably anticipate being hauled into court there." World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

a. Georgia

The relevant portions of Georgia's long arm statute confer jurisdiction in Georgia over a nonresident (2) with respect to actions arising from the nonresident's acts or omissions if the nonresident commits a tortious act or omission in Georgia; or over a nonresident (3) who commits a tortious injury in Georgia caused by an act or omission outside of Georgia if the tortfeasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in Georgia. See Ga. Code Ann. § 9-10-91(2). In analyzing whether subsections (2) and/or (3) of the Georgia

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[25]See, e.g., HTL Sp. Z.o.o. v. Nissho Corp., 538 S.E.2d 525, 527 (Ga. App. 2001); Rostad v. On-Deck, Inc., 372 N.W.2d 717, 719 (Minn. 1985); State ex rel. Auburn Ford, Inc. v. Westbrooke, 18 S.W.3d 143 (Mo. Ct. App. 2000); Cal. Civ. Proc. Code § 410.10; Quattrone, 44 Cal. App. 3d.

long-arm statute are satisfied, courts follow the Shellenberger test.[26] As stated earlier, the Court finds that plaintiffs have presented adequate evidence of numerous acts performed by UCB S.A. and its subsidiaries either in Georgia or having an effect in Georgia to support their allegations of jurisdiction over UCB S.A. in that forum. Moreover, the Court finds that defendant should reasonably anticipate being hauled into court in Georgia to defend allegations of damages resulting from the sales by UCB S.A. and its subsidiaries of price-fixed choline chloride within Georgia. Accordingly, the Court finds that jurisdiction based upon the Georgia long-arm statute is appropriate in this case considering the ongoing contacts that UCB S.A. and its subsidiaries have with Georgia.[27] Furthermore, based upon those contacts and the evidence in the record, the Court finds jurisdiction to be "reasonable" based upon the factors set forth by DeLong,[28] and

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[26]The Shellenberger test outlines the following factors: (a) the nonresident must have purposefully done an act or consummated some transaction with or in the forum (but the act or omission resulting in the injury need not have occurred in Georgia, the defendant need not have been physically within Georgia when the act or transaction occurs, and a single action may be sufficient); (b) the plaintiff must have a legal cause of action in tort against the nonresident, which arises out of, or results from, the purposeful activity of the defendant involving Georgia; and (c) the exercise of jurisdiction over the nonresident must be reasonable. Delong Equip. Co. v. Washington Mills Abrasive Co., 840 F.2d 843, 849 (11th Cir. 1988); Nat'l Egg Co. v. Bank Leumi le-Israel B.M., 514 F. Supp. 1125, 1128 (N.D. Ga. 1981); Shellenberger v. Tanner, 227 S.E.2d 266, 273-274 (Ga. Ct. App. 1976).

[27]The relevant contacts are discussed above in the conspiracy theory section of this Opinion.

[28]The Court finds that jurisdiction is "reasonable" under the following factors set forth by DeLong: (1) Georgia's interest in protecting its businesses and consumers; (2) the availability of Georgia as a forum if the defendant had brought an action against the plaintiff; (3) the inconvenience to the defendant of requiring it to defend itself in Georgia as compared to the inconvenience to the plaintiff of requiring it to proceed in a foreign forum; and (4) the fact that the Georgia legislature has given state and federal courts in Georgia the authority to entertain litigation against nonresidents who commit a tortious injury in the state of Georgia. DeLong, 840 F.2d at 850-51.

therefore non-offensive to "traditional notions of fair play and substantial justice" as required by the Due Process Clause.

Finally, because the U.S. subsidiaries have stipulated to doing business in Georgia and the Court has found that UCB S.A. "controls" these subsidiaries, plaintiffs have also satisfied subsection (3) of the Georgia long-arm statute.

b. Minnesota

The Minnesota long-arm statute allows the Court to assert personal jurisdiction over a foreign corporation if, in person or through an agent, the foreign corporation (a) commits any act in Minnesota causing injury or property damage, or (b) commits any act outside Minnesota causing injury or property damage, subject to the following exceptions when no jurisdiction can be found: (1) Minnesota has no substantial interest in providing a forum; or (2) the burden placed on the defendant by being brought under the state's jurisdiction would violate fairness and substantial justice. Minn. Stat. §543.19.

Plaintiffs contend that UCB S.A. should be subject to general jurisdiction in Minnesota because of their "continuous and systematic" contacts with the forum. Specifically, plaintiffs allege that (1) UCB S.A. solicited and negotiated business with Chinook regarding methylamines, (2) UCB S.A. solicited and negotiated to acquire or enter into a joint venture with Chinook, (3) UCB S.A. entered into contracts applying Minnesota law, (4) UCB S.A. bought products in Minnesota, and (5) UCB S.A. delivered choline chloride into the stream of commerce that was marketed and sold in Minnesota. Pl's Opp. at 51-52. Defendant argues that the evidence presented by plaintiffs falls short of what can be considered "continuous and systematic" and the Court agrees that when the activities of UCB S.A. alone are evaluated, the

contacts are insufficient. Plaintiffs do present some evidence of limited contacts between UCB S.A. and Chinook, but, as defendant points out, this evidence does not constitute "continuous and systematic" contacts. However, as discussed earlier in this opinion, UCB S.A.'s subsidiaries and alleged co-conspirators do have numerous contacts with Minnesota and since the Court has found that there is adequate evidence to support plaintiffs' allegations regarding UCB S.A.'s control over its subsidiaries and its involvement in the alleged all-vitamins conspiracy, jurisdiction over UCB S.A. under the long-arm statute of Minnesota is valid based upon the activities of these subsidiaries and co-conspirators in Minnesota. Additionally, the Court is satisfied that these contracts are sufficient to satisfy due process concerns.

c. Missouri

In determining whether to exercise jurisdiction over a nonresident in Missouri, this Court must consider whether Missouri's state long-arm statute confers jurisdiction and whether the exercise of jurisdiction violates the Due Process Clause. Peabody Holding Co. v. Costain Group PLC, 808 F. Supp. 1425, 1432 (E.D. Mo. 1992). Missouri's long-arm statute provides, in pertinent part, that the Court may exercise jurisdiction over any person or firm or any corporation, whether or not a citizen of Missouri, who engages in any of the following acts: (1) transaction of any business within this state; (2) making of any contract within this state; (3) the commission of a tortious act within this state. Mo. Rev. Stat. § 506.500 (Pl's App. I, Ex. 65). In enacting this statute, "Missouri's legislature sought to extend the jurisdiction of its courts to numerous classes of out-of-state defendants who could not have been sued in Missouri under the preexisting law." State ex rel. Metal Serv. Ctr. of Ga., Inc. v. Gaertner, 677 S.W.2d 325, 327 (Mo. 1984). Consequently, Missouri courts have construed Missouri's long-arm statute to extend

to extraterritorial acts that have consequences in Missouri. New Dawn Natural Foods, Inc. v. Natural Nectar Corp., 670 F. Supp. 869, 872-73 (E.D. Mo. 1987). This expansive interpretation is based on the rationale that when a company takes action that affects Missouri for its own pecuniary gain, it should be prepared to defend any suit arising out of that action. Id.

Missouri's long-arm statute confers jurisdiction over nonresidents who commit tortious acts within Missouri. A tort-feasor need not be present in Missouri if its "extraterritorial acts have consequences in that forum." Peabody Holding, 808 F. Supp. at 1433; Pfeiffer v. Int'l Acad. of Biomagnetic Med., 521 F. Supp. 1331, 1336 (W.D. Mo. 1981). Conspiracies to fix the prices of products sold in the forum states constitute the commission of a tortious act within the meaning of Missouri's long-arm statute. Adams Dairy Co. v. National Dairy Prods. Corp., 293 F. Supp. 1135, 1162 (W.D. Mo. 1968). Plaintiffs allege that UCB S.A. conspired with other defendants to allocate markets and fix prices to restrain trade in the United States, including Missouri. Moreover, plaintiffs have presented evidence that UCB S.A. met with DuCoa in Missouri for purposes of perpetuating this conspiracy, see Hooghe Tr. at 91-92; Coenen Tr. at 139-40, 164-71; and that DuCoa met with Bioproducts in St. Louis, Missouri in 1998 to discuss future cooperation. Fischer Tr. at 32-33 (Pl's App. I, Ex. 17). The record reflects evidence that UCB S.A. benefitted from this conspiracy through sales of choline chloride at inflated prices in the markets in which it was entitled to sell pursuant to the agreed upon allocations; and that UCB S.A. knew that this conduct would injure purchasers of choline chloride in Missouri, and elsewhere. Accordingly, the Court finds that plaintiffs have met their burden of establishing by a preponderance of the evidence that UCB S.A. knew that its extraterritorial conduct would harm businesses in Missouri.

After finding that UCB S.A.'s contacts with Missouri are sufficient to satisfy the State's long-arm statute, the Court must also consider whether a finding of jurisdiction in that forum would satisfy due process concerns. The Eighth Circuit "considers five factors in determining whether a district court's exercise of jurisdiction over a nonresident comports with due process: (1) the nature and quality of defendant's contacts with the forum state; (2) quantity of contacts; (3) source and connection of the cause of action with those contacts; and, to a lesser degree, (4) the interest of the forum state in providing a forum for its residents; and (5) the convenience of the parties." Northup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A., 51 F.3d 1383, 1387-88 (8th Cir. 1995). Contacts with the forum are reviewed in the aggregate based on the "totality of the circumstances," rather than considered separately to determine whether each "standing alone would have been sufficient to sustain jurisdiction." Bigelow-Sanford, Inc. v. Gunny Corp., 649 F.2d 1060, 1063 (5th Cir. 1981). As discussed above, the Court holds that plaintiffs have met their burden of establishing by a preponderance of the evidence that UCB S.A. has sufficient contacts, both in terms of quantity and quality, to satisfy the Due Process Clause of the Constitution. Additionally, the Court finds that the interest of the forum state in establishing jurisdiction over this defendant is great, considering the fact that there may be no alternate forum for this action.[29] Furthermore, the burden imposed on this international company which participated in a global economy of being forced to litigate in the United States based on the economic impact of its global participation is not compelling. Plaintiffs have met their burden of showing that UCB S.A. has availed itself, through its subsidiaries, of the privileges of

[29]A foreign court is unlikely to entertain a suit against its nationals for violations of United States antitrust laws; therefore, a finding of no jurisdiction could in fact shield UCB S.A. from liability altogether.

conducting business in Missouri, and therefore may reasonably anticipate being hauled into Court in that forum. Consequently, jurisdiction over UCB S.A. in Missouri under that State's long-arm statute is proper.

d. California

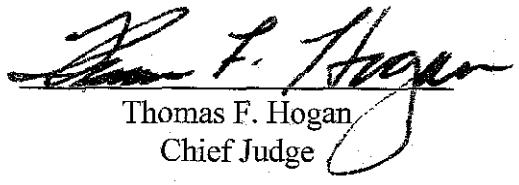
Section 410.10 of the California Code of Civil Procedure provides: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." Ca. Civ. Pro. § 410.10. "By imposing no limitation except those imposed by constitutional considerations, this Section authorizes the broadest possible exercise of judicial jurisdiction." Quattrone, 44 Cal. App. 3d at 302. The Judicial Council comment on this Section states: "All recognized bases of judicial jurisdiction are included." The comment goes on to list nine bases of judicial jurisdiction over corporations: "(1) Incorporation in State, (2) Consent, (3) Appointment of Agent, (4) Appearance, (5) Doing Business in State, (6) Doing an Act [in] the State, (7) Causing an Effect in State by Act or Omission Elsewhere, (8) Ownership, Use or Possession of Thing in State, (9) Other Relationships." Ca. Civ. Pro. § 410.10, Comment – Judicial Council. Of these potential bases of jurisdiction, it becomes immediately apparent that, at the very least, numbers 5 and 7 would be applicable. Given the Court's previous findings with respect to UCB S.A.'s control over its subsidiaries; the subsidiaries' stipulations to jurisdiction in various fora, including California; and UCB S.A.'s participation in the alleged all-vitamins conspiracy affecting various fora, including California; there is sufficient evidence in the record to find that personal jurisdiction over UCB S.A. in California comports with due process. Accordingly, the Court finds that jurisdiction over UCB S.A. under California's long-arm statute

would be proper.[30]

III. CONCLUSION

In conclusion, the Court finds that UCB S.A. is subject to personal jurisdiction: (1) in Arkansas, California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, and Virginia under §12 of the Clayton Act; (2) in Georgia, Illinois, Minnesota, Kansas, Arkansas, Indiana, Missouri, and Virginia pursuant to the conspiracy theory of jurisdiction; (3) in California and Illinois under the effects test; and (4) in Georgia, Minnesota, Missouri, and California under those states' long-arm statutes. Thus, the Court finds that, under the various theories set forth by plaintiffs, personal jurisdiction over UCB S.A. is proper in the actions brought in Arkansas, California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, and Virginia; however, personal jurisdiction over UCB S.A. is improper in Washington D.C. Accordingly, defendant's Motion to Dismiss is granted with respect to Washington, D.C. and denied with respect to the other fora. An order will accompany this Opinion.

October 30, 2001



Thomas F. Hogan
Chief Judge

[30]Since the Court finds personal jurisdiction over UCB S.A. due to UCB S.A. and its subsidiaries' transactions of business within California and the effects suffered by California purchasers due to the substantial sales at inflated prices within that forum, it is not necessary for the Court to address plaintiffs' alternate argument for jurisdiction in California based upon agency principles of law.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	)
VITAMINS ANTITRUST LITIGATION	)
	)
	) **Misc. No. 99-197 (TFH)**
	) **MDL No. 1285**
THIS DOCUMENT RELATES TO:	)
ALL ACTIONS	)

FILED
OCT 30 2001
NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER Re: UCB Motion to Dismiss

In accordance with the accompanying Memorandum Opinion, it is hereby

ORDERED that defendant UCB S.A.'s Motion to Dismiss for lack of personal jurisdiction is granted with respect to the action brought in Washington, D.C. and denied with respect to the actions brought in Arkansas, California, Georgia, Illinois, Indiana, Kansas, Minnesota, Missouri, Texas, and Virginia.

October 30, 2001

Thomas F. Hogan
Chief Judge