# *Texas Supreme Court Limits the Controversial Single Business Enterprise Theory of Joint Liability*

by David F. Johnson, Winstead PC

The Texas Supreme Court has recently limited the controversial single-business-enterprise theory of joint liability. Previously, several courts of appeals recognized the single-enterprise doctrine as an equitable doctrine that treated two interrelated corporations as one under partnership-type principles. *See, e.g., N. Am. Van Lines, Inc. v. Emmons*, 50 S.W.3d 103 (Tex. App.—Beaumont 2001, pet. denied); *Old Republic Ins. Co. v. EX-IM Servs. Corp.*, 920 S.W.2d 393 (Tex. App.—Houston [1st Dist.] 1996, no writ); *Paramount Petroleum Corp. v. Taylor Rental Ctr.*, 712 S.W. 2d 534 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.). The doctrine provides that "when corporations are not operated as separate entities but rather integrate their resources to achieve a common business purpose, each constituent corporation may be held liable for debts incurred in pursuit of that business purpose." *Paramount Petroleum*, 712 S.W.2d at 536. This was true absent any evidence of fraud, which is normally required for other veil-piercing theories such as alter ego. *See N. Am. Van Lines*, 50 S.W.3d at 103.

The Texas Supreme Court previously discussed the single-business-enterprise theory but never recognized its viability. *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 173-74 (Tex. 2007); *S. Union Co. v. City of Edinburg*, 129 S.W.3d 74, 86-87 (Tex. 2003). Recently, however, the Court decided that the single-business-enterprise theory does not apply in Texas to make one entity liable for another entity. *SSP Partners v. Gladstrong Invs. (USA) Corp.*, No. 05-0721, 2008 Tex. LEXIS 997 (Tex. November 14, 2008). In that case, SSP Partners, a retailer, and Gladstrong, a manufacturer, were sued because of a fire that was started by a disposable lighter with a defective child-resistant mechanism. SSP sought indemnity from Gladstrong under statutory and common-law indemnity and because it was in a single business enterprise with the actual manufacturer – its parent company. *Id.* at *3-4. The trial court granted summary judgment for Gladstrong. *Id.* at *6.

SSP argued that the Court should allow it to pursue a statutory indemnity claim because Gladstrong was in a single business enterprise with its parent company, the actual manufacturer. *Id.* at *12. The Texas Supreme Court acknowledged that under Texas law, there were joint-venture or joint-enterprise claims, "the essential elements of which are an agreement, a common purpose, a community of pecuniary interest, and an equal right of control." *Id.* at *14. The Court also noted that in Texas, one entity could be liable for another entity's debts "by piercing the corporate veil or holding it to be the alter ego." *Id.* The Court noted that a corporate structure could "be ignored only 'when the corporate form has been used as part of a basically unfair device to achieve an inequitable result,'" such as when the "corporate structure has been abused to perpetrate a fraud, evade an existing obligation, achieve or perpetrate a monopoly, circumvent a statute, protect a crime, or justify wrong." *Id.* But, the Court held that these theories were very different from the single-business-enterprise theory of joint liability. *Id.* at *15-16.

The Court found that the examples of permissible theories for piercing the corporate veil involved an element of abuse of the corporate structure; for example, the alter-ego basis relied on an injustice. *Id.* at *23. The Court stated that the single-business-enterprise theory was different from these examples:

> Abuse and injustice are not components of the single business enterprise theory stated in Paramount Petroleum. The theory applies to corporations that engage in any sharing of names, offices, accounting, employees, services, and finances. There is nothing abusive or unjust about any of these practices in the abstract. Different entities may coordinate their activities without joint liability.

Id. at *23-24. The Court stated that it had "never held corporations liable for each other's obligations merely because of centralized control, mutual purposes, and shared finances." *Id.* at *24. Rather, to disregard the corporate form, the Court required evidence of abuse, injustice, or inequity. And by "injustice" and "inequity," the Court stated that it did not mean "a subjective perception of unfairness by an individual judge or juror; rather, these words are used in *Castleberry* as shorthand references for the kinds of abuse, specifically identified, that the corporate structure should not shield – fraud, evasion of existing obligations, circumvention of statutes, monopolization, criminal conduct, and the like." *Id.* Thus, the Court concluded that the single-business-enterprise liability theory asserted by SSP would not support the imposition of one corporation's obligations on another. *Id.* at *28.

The end result of this case is that parties asserting claims based on joint liability will have a more difficult burden to establish liability. Further, individuals or entities that own multiple entities that conduct business together, as well as entities that simply coordinate activities, have more assurance that their entities' forms and liability shields will not be easily cast aside.