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French Court Holds US Parent Liable for Employee Benefits of French Subsidiary

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A French court recently held that a US corporate parent of an insolvent French subsidiary was a joint employer with the subsidiary and therefor liable for employee benefits payable upon redundancy of the employees. As the summary below prepared by the Paris law firm Lexcom explains, the court's finding relied heavily on the involvement of the US management in the closure of the French subsidiary. Other US companies with subsidiaries in France may be well advised to consider the facts outlined by the court.

In a decision dated February 7, 2013, the Court of appeals of Toulouse ruled that Molex Inc., the US-based parent company of Molex Automotive SARL ("MAS"), a French company it had set up in 2004 to take over some automotive components manufacturing and distribution business, was joint employer of the MAS' workers working on MAS' plant near Toulouse. The Court held that Molex Inc. should therefore be liable to pay damages to the MAS' employees made redundant.

MAS, the French company, had closed in 2009, eliminating 283 positions under a social plan, which Molex Inc. had agreed to finance (as part of the financial and business undertakings it agreed to in a three-party agreement with the French State and HIG, the investment fund that was taking over the site). Shortly after the employees made redundant had filed a claim in court against MAS, Molex Inc. decided to wind up MAS and therefore filed an insolvency procedure before the commercial court. Molex Inc. then refused the court-appointed liquidator's request to financially contribute to MAS' social plan. This led both the employees made redundant and the liquidator of MAS to seek indemnification from Molex Inc. The Toulouse Labour court and the Toulouse Court of appeals upheld such claims and ordered Molex Inc. to pay for the social plan (as well as additional damages for unfair dismissal).

To reach such a decision, the two courts considered that, despite Molex Inc.'s arguments to the opposite (including especially the legal distinction existing between the two different corporate entities), there actually was a commingling of interests, activities and management between Molex Inc. and MAS, causing Molex Inc. to be considered the joint employer of MAS' employees.

Of course it is important to understand that such an extreme decision was a way to address Molex Inc.'s failure to pay for what it had agreed to pay (i.e., the social plan measures and the initial two years of business for the Toulouse site under HIG's management). It is however also important for US companies with subsidiaries in France to understand what criteria the two French courts considered to come to such a conclusion.

They inter alia considered that Molex Inc. acted as the French employees' joint employer when

i. it decided to replace MAS' French management with executives of Molex Inc.,

ii. it decided to reorganize the automotive components distribution worldwide, on the basis of an operational rather than geographical matrix,

iii. it decided to 'clone' the Toulouse production in Lincoln (IL) and to store stocks with its new distributor (in order to prepare for MAS' closure), without involving MAS' management,

iv. it explicitly presented the closure of the Toulouse site as Molex Inc.'s own decision (when, for instance, communicating to the shareholders of Molex Inc. several months before the works council of MAS was informed and consulted) that as part of global restructuring of USD 125-140 million, USD 21.6 million would be used for closing a site in Europe, and

v. it signed the three-party agreement with the French State and the investment fund which had agreed to take over the site and create between 20 and 60 positions.

If placed in the same situation, US parent companies should be careful not to act as the sole decision-maker with respect to the employees of their French subsidiaries. Instead of deciding on every detail of the subsidiary's closure, parent companies should be careful only to act as shareholders, giving instructions to the subsidiary's management through the relevant corporate bodies (e.g., Board of directors). It is indeed not for the parent companies to handle distribution arrangements or disposal negotiations. And although French case law considers that the economic justification for redundancies should be considered at the level of the business sector of the group to which the employer belongs and the quality of the social plan measures should be assessed on the basis of the group's means, it is not for the parent company to monitor information and consultation of employee representatives or to determine social plan measures.

Although the Molex case is yet to reach the French Supreme Court, it is important to understand that, in a decision of September 28, 2011, the French Supreme Court held a parent company to be joint employer of its subsidiary's employees for the same reasons as Molex Inc. above and therefore ordered the parent company not only to contribute to its subsidiary liquidation (including the social plan) but also to pay damages to the subsidiary's employees made redundant.