

**D.C. Circuit Rejects Fiduciary Shield Doctrine, Holding Corporate Officials
Can Be Subject to Personal Jurisdiction in Their Individual
Capacities for Their Conduct as Corporate Officials**

In the 1960s, courts recognized the fiduciary shield doctrine, which protects corporate officials sued in their individual capacities from being subjected to personal jurisdiction based on their conduct on behalf of the corporation.¹ The doctrine was developed in part because courts perceived that it was “unfair to force an individual to defend a suit brought against him personally in a forum with which his only relevant contacts are acts performed not for his own benefit but for the benefit of his employer.” *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 902 (2d Cir. 1981). The prevailing view at the time had been that the doctrine arises from the Due Process Clause of the U.S. Constitution.²

In 1984, the Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984), and *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), without specifically addressing whether the fiduciary shield doctrine arises from the Due Process Clause, held that corporate officials could be subject to personal jurisdiction in their individual capacity for conduct on behalf of their employers.³ Since then, the majority view has been that the fiduciary shield doctrine does not arise from the Due Process Clause.

On June 30, 2020, in *Urquhart-Bradley v. Mobley*, 964 F.3d 36 (D.C. Cir. 2020),⁴ the Court of Appeals for the District of Columbia Circuit followed the majority view, holding that the fiduciary shield doctrine does not arise from the Due Process Clause. The Court held that, in analyzing personal jurisdiction, all of an individual’s “suit-related contacts—professional and personal—factor into the analysis.” If this view continues, the decision means that the Constitution does not protect corporate officials from being sued in an individual capacity for conduct on behalf of their employers. However, the possibility remains that the doctrine can be required by state long-arm statutes.

I. Background

The fiduciary shield doctrine first emerged in the 1960s⁵ and had been widely accepted by courts across the country by the early 1980s.⁶ Most courts held the doctrine arises from the Due Process Clause, and a minority held that it was required by state long-arm statutes.⁷

¹ See, e.g., *United States v. Montreal Trust Co.*, 358 F.2d 239, 243 (2d Cir. 1966), *cert. denied*, 384 U.S. 919 (1966); see also 3A *William Meade Fletcher et. Al, Fletcher Cyclopedia of the Law of Corporations* § 1296.20 (updated September 2019).

² See, e.g., *Weller v. Cromwell Oil Co.*, 504 F.2d 927, 931 (6th Cir. 1974); *State Sec. Ins. Co. v. Frank B. Hall & Co.*, 530 F. Supp. 94, 98 (N.D. Ill. 1981).

³ *Calder*, 465 U.S. 783, 790 (1984); *Keeton*, 465 U.S. 770, 781 & n. 13 (1984).

⁴ Unless otherwise specified, quoted statements in this memorandum are taken from this case.

⁵ See, e.g., *Rene Boas & Associates v. Vernier*, 257 N.Y.S. 2d 487, 490 (N.Y. App. Div. 1st Dept. 1965); Sponsler, *Jurisdiction Over the Corporate Agent: The Fiduciary Shield*, 35 WASH. & LEE L. REV. 349, 352 (1978).

⁶ See, e.g., *Montreal Trust Co.*, 358 F.2d at 243; *Forsythe v. Overmyer*, 576 F.2d 779, 783-84 (9th Cir. 1978), *cert denied*, 439 U.S. 864 (1978); *Weller*, 504 F.2d at 931.

⁷ Compare *State Sec. Ins. Co.*, 530 F. Supp. at 98 (observing the “prevailing view” was that the fiduciary shield doctrine arises from the due process clause), with *Marine Midland Bank*, 664 F.2d at 902 & n.3 (“[T]he fiduciary shield doctrine is not a constitutional principle, but is rather a doctrine based on judicial inference as to the intended scope of the long arm statute.”).

Then, in *Calder* and *Keeton*, both of which were released on the same day in 1984, the Supreme Court of the United States signaled that due process may not require the fiduciary shield doctrine.⁸ In *Calder*, the plaintiff sued two nonresident defendants in California Superior Court, claiming she had been libeled in an article written and edited by the defendants in Florida and circulated in California. *Calder*, 465 U.S. at 784-85. Although the Court did not specifically consider whether the fiduciary shield doctrine arises from the Due Process Clause, the Court held that a California court could exercise, consistent with due process, personal jurisdiction over the two Florida-based employees in their individual capacities based on their conduct on behalf of their employer. *Id.* at 785-86, 790. In *Keeton*, the Court described its holding in *Calder* as “rejecting the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity.” *Keeton*, 465 U.S. at 781 & n.13.

The Third, Fourth, Ninth, Tenth, and Eleventh Circuits each have held that *Calder* and *Keeton* make clear that due process does not require application of the fiduciary shield doctrine.⁹ The Second Circuit, prior to *Calder* and *Keeton*, had ruled that the fiduciary shield doctrine does not arise from the Due Process Clause. *See Marine Midland Bank*, 664 F.2d at 902 & n.3. After *Calder* and *Keeton*, the Second Circuit re-affirmed that ruling, holding that “the fiduciary shield doctrine does not apply to any of the provisions of New York’s long-arm statute” without analyzing whether the doctrine arises from due process. *Retail Software Servs., Inc. v. Lashlee*, 854 F.2d 18, 22 (2d Cir. 1988). The New York Court of Appeals also has held the doctrine does not exist under New York’s long-arm statute. *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 470 (1988). While no Circuit Court has explicitly held otherwise, the Fifth, Seventh, Eighth, and Federal Circuits continue to recognize the doctrine without clarifying whether it arises from the Due Process Clause or is required by the state long-arm statutes.¹⁰

The D.C. Circuit had the next opportunity to determine whether the fiduciary shield doctrine applies in the personal jurisdiction analysis. In *Urquhart-Bradley v. Cushman & Wakefield, Inc.*, 2019 WL 2526392 (D.D.C. June 19, 2019), the plaintiff, a former employee at the D.C. office of Cushman & Wakefield, sued her employer and its Chicago-based Chief Executive Officer for the Americas in his individual capacity in the United States District Court for the District of Columbia, alleging claims of race and gender discrimination in violation of 42 U.S.C. § 1981 and the D.C. Human Rights Act. *Id.* at *1. The District Court dismissed the plaintiff’s claims against the CEO for lack of personal jurisdiction and did not address plaintiff’s request for jurisdictional discovery. Relying on the fiduciary shield doctrine, the Court refused to consider in its jurisdictional analysis any of the defendant’s contacts with the District of Columbia made in his capacity as CEO. *Id.* at *2. The plaintiff appealed. *Urquhart-Bradley*, 964 F.3d 36 at 43.

⁸ *Calder*, 465 U.S. at 790; *Keeton*, 465 U.S. at 781 & n. 13.

⁹ *See FlagHouse, Inc. v. ProSource Dev., Inc.*, 528 F. App’x 186, 189 & n.4 (3d Cir. 2013); *ePlus Tech., Inc. v. Aboud*, 313 F.3d 166, 177 (4th Cir. 2002); *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 521-22 (9th Cir. 1989); *Newsome v. Gallacher*, 722 F.3d 1257, 1277 (10th Cir. 2013); *Williams Elec. Co. v. Honeywell, Inc.*, 854 F.2d 389, 391-92 (11th Cir. 1988).

¹⁰ *See, e.g., Stuart v. Spademan*, 772 F.2d 1185, 1197 (5th Cir. 1985) (the fiduciary shield doctrine applies unless the court regards the individual or subsidiary as the alter ego of the corporation or parent); *Rice v. Nova Biomedical Corp.*, 38 F.3d 909, 912 (7th Cir. 1994) (the fiduciary shield doctrine is “recognized by the courts of many states including Illinois”); *Arkansas Rice Growers Co-op. Ass’n v. Alchemy Industries, Inc.*, 797 F.2d 565, 574 (8th Cir. 1986) (“[A] corporate officer or agent who has contact with the forum state only with regard to the performance of corporate duties does not thereby become subject to jurisdiction in his or her individual capacity.”); *Grober v. Mako Prods.*, 686 F.3d 1335, 1347 (Fed. Cir. 2012) (the district court properly declined to find personal jurisdiction over the defendants because “[t]he fiduciary shield doctrine buffers corporate officers from personal jurisdiction when their official duties were their only contact with a forum state”).

II. The D.C. Circuit’s Decision in *Urquhart-Bradley*.

In *Urquhart-Bradley*, the D.C. Circuit vacated and remanded the District Court’s decision dismissing the claims against the CEO for lack of personal jurisdiction and held that the fiduciary shield doctrine “lacks any basis in either the Due Process Clause or the transacting-business prong of the District of Columbia’s long-arm statute.”

The Court reasoned that, under *Calder and Keeton*, the “Due Process Clause does not incorporate the fiduciary shield doctrine” because the Supreme Court rejected “the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity.” Therefore, “when evaluating under the Due Process Clause an individual’s contacts with the forum state, courts cannot ignore contacts made by the individual just because they were made in his or her capacity as an employee or corporate officer.”

The Court further held that the fiduciary shield doctrine lacks any basis in D.C.’s long-arm statute because the statute is coextensive with the Due Process Clause. *Id.* at 46-47. However, the Court observed that, while the doctrine is “not required by the Due Process Clause, the District of Columbia could choose to adopt such a limitation [on personal jurisdiction] as a matter of its own law.”

The D.C. Circuit ordered that, on remand, the District Court may either “determine on the current record that [the defendant’s] individual contacts (made in his capacity as Chief Executive Officer and otherwise) establish specific jurisdiction” or “grant jurisdictional discovery to permit development of the record on [the defendant’s] contacts with the District of Columbia.” The Court further stated that, while it leaves the District Court to decide “whether all of [the defendant’s] suit-related contacts are sufficient to support personal jurisdiction,” the defendant’s alleged contacts – including his overseeing of Cushman & Wakefield’s D.C. office and his numerous communications with the plaintiff when she was employed in that office – “have far more heft than [the defendant] recognizes.”

III. Conclusion

In *Urquhart-Bradley*, the D.C. Circuit joined the majority of appellate courts in holding that the fiduciary shield doctrine is not a constitutional requirement. Corporate officers sued in their individual capacities are increasingly likely to be subjected to personal jurisdiction for conduct that occurred on behalf of their employers. Despite the majority view, the fiduciary shield doctrine remains a potentially viable defense in states where the doctrine is required by their long-arm statutes. The decision may prompt states (and the District of Columbia) to consider whether to incorporate the doctrine into their respective long-arm statutes.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Joel Kurtzberg at 212.701.3120 or jkurtzberg@cahill.com; Adam Mintz at 212.701.3981 or amintz@cahill.com; or Changlan (Lucy) Xu at 212.701.3998 or cxu@cahill.com; or email publications@cahill.com.