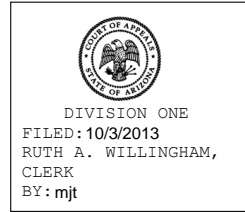


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24.



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

RED WING AEROPLANE COMPANY, a ) No. 1 CA-CV 11-0303  
Wisconsin corporation, )  
 ) DEPARTMENT B  
Plaintiff/Appellant, )  
 ) **MEMORANDUM DECISION**  
v. ) (Not for Publication -  
 ) Rule 28, Arizona Rules  
SOCIETY INSURANCE, ) of Civil Appellate  
 ) Procedure)  
Defendant/Appellee. )  
 )  
 )  
 )

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Appeal from the Superior Court in Maricopa County

Cause No. CV2010-022414

The Honorable J. Richard Gama, Judge

**REVERSED AND REMANDED**

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**K E S S L E R**, Judge

¶1 Red Wing Aeroplane Company ("Red Wing") appeals from  
the trial court's judgment granting a motion to dismiss its

complaint against Society Insurance ("Society") for lack of personal jurisdiction. We hold that the record before the trial court demonstrated that Society had sufficient minimum contacts with Arizona for it to be reasonably haled into Arizona's courts in this matter. We therefore reverse the judgment and remand this matter to the trial court for further proceedings consistent with this decision.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶12 Red Wing, a Wisconsin-based company, operates an airplane-chartering business. According to a declaration that Red Wing submitted to the trial court, Red Wing "sought to expand its operations to Williams Gateway Airport" ("Airport") in Mesa, Arizona. The Airport required operators to "show evidence of worker[s'] compensation insurance effective in Arizona in order to lease space from the Airport." Beginning in late 2006, Red Wing "continually requested" its insurance broker, Lawrence-Bohmbach Agency, Inc. ("Agency"), to ask Society to issue a certificate of insurance to the Airport on its behalf. Red Wing also explained to Agency its Arizona operations. The policy also lists Agency as Society's agent.

¶13 Red Wing had an existing workers' compensation insurance policy with Society, which it renewed in January 2007, for its operations in Wisconsin. That policy covered workplaces in Wisconsin and applied Wisconsin law.

¶14 In February 2007, Society issued a Certificate of Insurance ("Certificate") which it faxed and mailed to Agency on its letterhead. The Certificate, signed by a Society representative, lists the "Producer" as Agency, the "Insured" as Red Wing, the "Companies Affording Coverage" as Society, and the "Type of Insurance" as workers' compensation and employers' liability. The Certificate lists the "Certificate Holder" as the Airport and lists an Arizona address for the Airport in Mesa, Arizona. The Certificate apparently was sent to Red Wing and the Airport because Red Wing became aware of the Certificate and it began operations at the Airport which required the insurance. The Certificate also provides under "Coverages": "This is to certify that the policies of insurance listed below [workers' compensation coverage] have been issued to the insured named above for the policy period indicated notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain." The Certificate also states: "This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below."

¶15 After Society issued the Certificate, Red Wing began operating flights from the Airport. By March 2007, Red Wing employed Arizona resident LynMichael Gerber ("Gerber") and his

wife to work at the Airport. Within the policy period, Gerber was injured at the Airport in the course of his employment with Red Wing. Gerber filed a workers' compensation claim with Red Wing, which then tendered the claim to Society. Society initially paid benefits to Gerber, but later declined coverage, according to Red Wing, on the basis that it did not know Red Wing was conducting business at the Airport.

¶16 Gerber filed a workers' compensation claim with the Industrial Commission of Arizona's ("ICA") Special Fund, which provides benefits to an injured employee who works for an uninsured employer. Society was joined as a party in that proceeding. Although Society conceded that Gerber's claim was compensable, it argued that it was not required to cover the claim. The ICA found that Gerber's claim was compensable but dismissed Society from the proceedings, holding there was no right to relief against it.

¶17 Red Wing filed a complaint in the superior court against Society alleging breach of contract, insurance bad faith, and unauthorized practice of insurance, all claims arising from Society's denial of the claim for coverage of Gerber's injury.

¶18 Society filed a motion to dismiss alleging lack of personal jurisdiction and improper forum. Society argued that the Certificate did not provide coverage for employees in

Arizona, but only certified coverage for Wisconsin employees. Society alleged that it was unaware of Red Wing's correspondence with Agency and that Agency represented to it that "no employees travel out of state." However, Society did not provide an affidavit from Agency to support its allegations.

¶19 Society also argued that jurisdiction is unreasonable because it would be more efficient to bring the claims in Wisconsin given that Wisconsin courts are familiar with Wisconsin's laws and Red Wing had allegedly brought a similar action against Society which was pending in Wisconsin state court. It also argued that it would be a burden for Society to litigate in Arizona from Wisconsin, and Arizona does not have a "substantial or particular interest in litigating the case."

¶10 Red Wing responded, arguing in part that the Certificate is sufficient to prove Society's minimum contacts with Arizona. It also contended that Society waived any objection based on lack of personal jurisdiction when it extensively participated in the ICA proceeding.

¶11 The trial court accepted Society's arguments and granted the motion to dismiss without holding an evidentiary hearing. It held that Society did not have sufficient minimum contacts with Arizona for the court to exercise specific personal jurisdiction. The court also ruled that exercise of

jurisdiction would be unreasonable and would violate Society's due process rights.

¶12 Red Wing timely appealed. This Court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(3) (Supp. 2012).

#### STANDARD OF REVIEW

¶13 When a trial court grants a defendant's motion to dismiss for lack of personal jurisdiction without holding an evidentiary hearing, we review the court's ruling *de novo*. *Planning Grp. of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd.*, 226 Ariz. 262, 264 n.1, ¶ 2, 246 P.3d 343, 345 n.1 (2011). We view "the facts in the light most favorable to the plaintiffs but accept[] as true the uncontradicted facts put forward by the defendants." *Id.* To survive a motion to dismiss for lack of jurisdiction, the plaintiff must offer facts establishing a prima facie showing of jurisdiction. *Beverage v. Pullman & Comley, LLC*, \_\_\_ Ariz. \_\_\_, \_\_\_, ¶ 10, 306 P.3d 71, 74 (App. 2013). The burden then shifts to the defendant to rebut that showing. *Id.*

#### DISCUSSION

¶14 On appeal, Red Wing argues that Society's issuance of the Certificate was sufficient to satisfy the minimum-contacts

test for specific personal jurisdiction.<sup>1</sup> Society contends that Agency failed to inform it of Red Wing's business at the Airport. It also argues that the Certificate "merely certified coverage for Wisconsin employees via the Wisconsin workers['] compensation POOL," impliedly only covers Red Wing's Wisconsin employees while at an Arizona location, and "does not include any language suggesting that Society was covering any additional insureds or non-Wisconsin employees." (Emphasis in the original.)

¶15 Because an Arizona court "may exercise personal jurisdiction to the maximum extent allowed by the United States Constitution," federal law controls our review of jurisdictional issues. *Planning Grp.*, 226 Ariz. at 265, ¶ 12, 246 P.3d at 346. We must first determine whether Society had sufficient minimum contacts with Arizona with respect to the matters alleged in the complaint, and if so, then consider factors such as the burden on Society of litigating the matter in an Arizona court, Red Wing's interest in obtaining relief, Arizona's interest in the controversy, and the importance of an efficient resolution of the controversy. *Id.* at 270, ¶ 37, 246 P.3d at 351 (quoting

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<sup>1</sup> Red Wing also argues that Society's utilization of Arizona's workers' compensation laws to obtain a favorable result was sufficient to confer jurisdiction over Society. Because the record reflects that the trial court had personal jurisdiction over Society based on Society's other activities, we do not address that argument.

*Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 113 (1987)).

## **I. Minimum Contacts**

¶16 The Due Process Clause of the Fourteenth Amendment allows a state to “exercise specific jurisdiction—jurisdiction with respect to a particular claim—over a defendant who has sufficient contacts with the state to make the exercise of jurisdiction ‘reasonable and just’ with respect to that claim.” *Planning Grp.*, 226 Ariz. at 265, ¶ 13, 246 P.3d at 346 (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945)). We will find personal jurisdiction over a foreign corporation only when the corporation “has sufficient contacts” with our state “such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Id.* at 266, ¶ 14, 249 P.3d at 347 (citation and internal quotation marks omitted). To support specific personal jurisdiction, Society’s contacts must be directly related to the asserted cause of action and must arise from its “purposeful conduct” so that it reasonably could be expected to be haled into Arizona courts. *Id.* at 268, ¶ 25, 246 P.3d at 349. If such minimum contacts are established, Society “can fairly be expected to respond to all claims arising out of those contacts, whatever [Red Wing’s] theory of recovery” provided they arise from the



same set of operative facts. *Id.* at 268, 269, ¶¶ 25, 32, 246 P.3d at 349, 350.

¶17 Red Wing made a prima facie case of specific jurisdiction to which Society offered no evidence in rebuttal. *See Beverage*, \_\_\_ Ariz. at \_\_\_, ¶ 10, 306 P.3d at 74 (explaining that to survive a motion to dismiss for lack of jurisdiction, the plaintiff must offer facts establishing a prima facie showing of jurisdiction that is not rebutted by the defendant). The facts offered by Red Wing establish that Society purposefully engaged in contacts with Arizona with respect to Red Wing's operations at the Airport. According to evidence offered by Red Wing, Red Wing repeatedly requested Agency to issue the Certificate to the Airport and had informed Agency of its Arizona operations. Society identified Agency as its agent on the insurance policy it issued to Red Wing. Under the insurance policy's "Wisconsin Law Endorsement," Society provided that if its agent "has knowledge of a change in or a violation of a policy condition, this will be considered our knowledge and will not void the policy or defeat a recovery for a claim." Society issued the Certificate to Agency under Society's letterhead, listing the Airport as the Certificate Holder and noting the Airport's Arizona address. The Certificate apparently was delivered to the Airport and Red Wing. In support of its motion to dismiss, Society did not dispute that

Agency was its agent. Nor did Society present evidence that its issuance of the Certificate was a mistake. Indeed, the Certificate is signed by an authorized representative of Society.

¶18 Based on this record, Society had imputed knowledge through Agency of Red Wing's activities in Arizona and need for coverage in Arizona, and issued a certificate to the Airport through its agent. These contacts with Arizona are not casual or accidental so as to preclude the exercise of specific personal jurisdiction over Society. *Planning Grp.*, 226 Ariz. at 266, ¶ 16, 246 P.3d at 347. Our conclusion finds further support from *Nasca v. Hull*, 100 P.3d 997, 999-1000, 1003-05, ¶¶ 5-6, 25-31 (Mont. 2004), in which the court held that Montana had personal jurisdiction over claims similar to those raised here based on the out-of-state insurance agent's alleged negligence in failing to procure workers' compensation coverage for both Montana and Idaho operations of the plaintiff-insured. See also *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Ct.*, 134 P.3d 710, 714 & n.25 (Nev. 2006) (holding that whether insured had violated policy terms by garaging car in Nevada while temporarily living in Nevada went to merits of the claim for breach of contract and bad faith, not personal jurisdiction when policy provided for coverage outside of Massachusetts).

¶119 Society claims that the Certificate and Arizona case law do not change the terms of its policy and argues that the policy, at least as written before issuance of the Certificate, may be construed as limited to coverage of Wisconsin employees. However, Society's arguments address the merits of whether it agreed to provide coverage for Arizona-based Red Wing employees. The merits of Red Wing's claims are not before us.

¶120 For purposes of specific personal jurisdiction, it is sufficient that Society issued the Certificate that on its face informs an Arizona entity (the Airport) and a company doing business in Arizona (Red Wing) that Society issued a policy of workers' compensation insurance for Red Wing, when Society's agent allegedly knew that such a certificate was needed for Red Wing to operate at the Airport. We acknowledge Society's argument that the Certificate only meant that Society was insuring Red Wing for its Wisconsin employees while at an Arizona location. The possible meaning of the Certificate and whether Society provided coverage for Arizona employees in Arizona, or led Red Wing to believe it was providing such coverage, go to the merits of Red Wing's claims, not to personal jurisdiction.

¶121 Furthermore, Society's purposeful conduct is directly related to Red Wing's claims. Society's issuance of the Certificate and the activities of Agency on its behalf gave rise

to Red Wing's: 1) breach of contract claim, in which it alleges that the Certificate prompted it to lease space at the Airport believing that Society's coverage extended to its Arizona employees, 2) unauthorized practice of insurance claim because by issuing the Certificate Society was representing that it had issued workers' compensation coverage for Red Wing's Arizona employees, and 3) insurance bad faith claim because Red Wing alleges that the Certificate was intentionally misleading about the extent of its insurance coverage. Thus, the issuance of the Certificate to the Airport and Society's other conduct through Agency was purposeful conduct for which Society reasonably could be expected to be haled into an Arizona court with respect to Red Wing's claims.

## **II. Additional Factors**

¶122 In addition to minimum contacts, we must consider other factors, including "the burden on the defendant, the interests of [Arizona] . . . the plaintiff's interest in obtaining relief," and the importance of an efficient resolution of the controversy. *Planning Grp.*, 226 Ariz. at 270, ¶ 37, 246 P.3d at 351 (quoting *Asahi*, 480 U.S. at 113).

¶123 We are not persuaded by Society's arguments that Wisconsin is a better forum for Red Wing's lawsuit because a court will have to apply Wisconsin law, both companies are located in Wisconsin, Arizona has no particular interest in the

matter, and Red Wing has allegedly brought a similar action against Agency and Society in Wisconsin. We start our analysis from two premises. First, "personal jurisdiction is not a zero-sum game; a defendant may have the requisite minimum contacts allowing the exercise of personal jurisdiction by the courts of more than one state with respect to a particular claim." *Planning Grp.*, 226 Ariz. at 268, ¶ 27, 246 P.3d at 349. Second, "whether another [forum] is equally good or better does not bear on whether a prima facie showing has been made that our long arm statute confers jurisdiction [that] does not violate due process." *Manufacturers' Lease Plans, Inc. v. Alverson Draughon Coll.*, 115 Ariz. 358, 361, 565 P.2d 864, 867 (1977). Rather, "[w]e must determine not where this suit most fairly should be brought but whether it is unfairly brought in Arizona." *Id.* at 360, 565 P.2d at 866.

¶124 Although Arizona courts might have to apply Wisconsin contract law, that alone is insufficient to defeat personal jurisdiction. We do not doubt the ability of our courts to apply Wisconsin law. The suit is not unfairly brought in Arizona simply because Arizona courts might have to interpret Wisconsin law.

¶125 Moreover, both Red Wing and Arizona have strong interests in this litigation. Red Wing operated a business at the Airport, its Arizona employee, Gerber, was injured at the

Airport, and it has been required to reimburse the ICA for costs related to Gerber's claim because Society declined to cover that claim under the insurance policy. Arizona has an interest in this litigation because it expended resources related to Society's denial of Gerber's claim, causing the ICA to pay for Gerber's workers' compensation award and pursue Red Wing for recovery of its costs.

¶26 Nor does the fact that Red Wing allegedly brought a similar action in Wisconsin state court alter our conclusion. Red Wing might have brought that action in the face of or in anticipation of Society's motion to dismiss in this case. Its doing so does not inform our decision as to personal jurisdiction. Society's concern about a double recovery or inconsistent judgments in the two trial courts is speculative at this point. We are deciding only a personal jurisdiction issue. We trust that Wisconsin and Arizona trial courts are fully capable of avoiding inconsistent judgments or double recoveries.

**CONCLUSION**

¶127 The trial court erred in granting Society's motion to dismiss for lack of personal jurisdiction. We therefore reverse and remand this matter to the trial court for further proceedings consistent with this decision.

/s/  
DONN KESSLER, Judge

CONCURRING:

/s/  
DIANE M. JOHNSEN, Presiding Judge

/s/  
PATRICIA K. NORRIS, Judge