

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV-05-214

SKS-K91-2/14/06

CONCORD GENERAL MUTUAL  
INSURANCE COMPANY,

Plaintiff

v.

**DECISION ON MOTION  
TO DISMISS**

MARK J. CASTELLANO,

Defendant

This matter comes before the court on the defendant's motion to dismiss the complaint pursuant to M.R. Civ. P. 12(b)(2) for lack of jurisdiction over the person.<sup>1</sup> Finding no jurisdiction, the motion will be granted.

#### **Background**

For purposes of the motion to dismiss, the court will consider all of the allegations in the complaint as true. This litigation arises out of a motor vehicle accident which occurred on May 1, 2003, in Fort Myers, Florida. Involved as drivers in that accident were one Theodore Carter, a Maine resident, and Mark Castellano, a Florida resident. As a result of the accident, Castellano filed suit in Florida against Carter seeking bodily injury damages. Also named as a defendant in the litigation was Concord General Mutual Insurance Company, as a potential source for payment of any judgment against Mr. Carter. There is no indication any where in the complaint that Mark Castellano has had any connection whatsoever with the State of Maine other than the fact that the driver of the other vehicle in the accident happened to be a Maine resident. There is no indication that Mr. Castellano has ever been in the State of Maine,

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<sup>1</sup> The motion was mistakenly identified as being brought pursuant to Rule 12(b)(6).


entered into contracts in the State or with Maine residents, or has any minimal contacts with the State. Nor has the plaintiff in the wake of the motion to dismiss filed any motion to amend the complaint to include any minimal contacts that would provide personal jurisdiction.

Maine has a liberal Long Arm Statute (14 M.R.S.A. § 704-A) which allows finding of personal jurisdiction in virtually any situation that honors constitutional Due Process. However, even under the most expansive statement of jurisdiction, there can be no finding of personal jurisdiction over Mr. Castellano in this case and continued litigation in Maine would violate his due process.

The entry will be:

Motion GRANTED and complaint ORDERED DISMISSED.

Dated: February 14, 2006

  
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S. Kirk Studstrup  
Justice, Superior Court

CONCORD GENERAL MUTUAL INSURANCE COMPANY - PLAINTIFF

SUPERIOR COURT

KENNEBEC, ss.

Docket No AUGSC-CV-2005-00214

Attorney for: CONCORD GENERAL MUTUAL INSURANCE COMPANY  
TAYLOR DOUGLAS FAWNS - RETAINED 08/30/2005  
OFFICE OF WILLIAM J KELLEHER  
7 EAST CRESCENT STREET  
AUGUSTA ME 04330

**DOCKET RECORD**

vs

MARK J CASTELLANO - DEFENDANT

Attorney for: MARK J CASTELLANO  
JAMES FORTIN - RETAINED  
DOUGLAS DENHAM BUCCINA & ERNST  
103 EXCHANGE ST  
PO BOX 7108  
PORTLAND ME 04112

Filing Document: COMPLAINT

Minor Case Type: DECLARATORY JUDGMENT

Filing Date: 08/30/2005

**Docket Events:**

08/31/2005 FILING DOCUMENT - COMPLAINT FILED ON 08/30/2005

08/31/2005 Party(s): CONCORD GENERAL MUTUAL INSURANCE COMPANY  
ATTORNEY - RETAINED ENTERED ON 08/30/2005  
Plaintiff's Attorney: TAYLOR DOUGLAS FAWNS

08/31/2005 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 08/31/2005

09/28/2005 Party(s): CONCORD GENERAL MUTUAL INSURANCE COMPANY  
SUMMONS/SERVICE - PROOF OF SERVICE FILED ON 09/28/2005  
Plaintiff's Attorney: TAYLOR DOUGLAS FAWNS

09/28/2005 Party(s): CONCORD GENERAL MUTUAL INSURANCE COMPANY  
SUMMONS/SERVICE - PROOF OF SERVICE SERVED ON 09/15/2005

09/30/2005 Party(s): MARK J CASTELLANO  
OTHER FILING - ENTRY OF APPEARANCE FILED ON 09/30/2005  
Defendant's Attorney: JAMES FORTIN

09/30/2005 Party(s): MARK J CASTELLANO  
ATTORNEY - RETAINED ENTERED ON 09/30/2005  
Defendant's Attorney: JAMES FORTIN

09/30/2005 Party(s): MARK J CASTELLANO  
RESPONSIVE PLEADING - ANSWER FILED ON 09/30/2005  
Defendant's Attorney: JAMES FORTIN

10/06/2005 ORDER - SCHEDULING ORDER ENTERED ON 09/30/2005  
S KIRK STUDSTRUP , JUSTICE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO  
PARTIES/COUNSEL