

Reversed and Dismissed, and Opinion Filed August 22, 2017.



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01465-CV

SEGUROS AFIRME, S.A. DE C.V., Appellant

V.

**ELAMEX, S.A. DE C.V., ELAMEX USA, CORP., MOUNT FRANKLIN FOODS, L.L.C.,
AND CONFECCIONES DE JUAREZ, S.A. DE C.V., Appellees**

**On Appeal from the 95th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-15-11987**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Lang

In this interlocutory appeal, Seguros Afirme, S.A. de C.V., appeals the trial court's order denying its special appearance in a lawsuit filed by Elamex, S.A. de C.V. ("Elamex"), Elamex USA Corp., Mount Franklin Foods, L.L.C., and Confecciones de Juárez, S.A. de C.V. (collectively the "Elamex parties").¹ Seguros Afirme is one of several defendants sued by the Elamex parties.² Two defendants, Seguros Afirme and Cooper Gay Martinez Del Rio y Asociados Intermediarios de Reaseguro, S.A. de C.V., ("Cooper Gay Mexico") filed special

¹ Elamex USA, Corp. and Confecciones de Juárez, S.A. de C.V. are wholly-owned subsidiaries of Elamex, S.A. de C.V. Mount Franklin Foods, L.L.C., is a wholly-owned subsidiary of Elamex USA.

² Other defendants in this lawsuit are: Cooper Gay Martinez Del Rio y Asociados Intermediarios de Reaseguro, S.A. de C.V., Swett & Crawford, Swett & Crawford of Texas, Inc., Cooper Gay Re, Ltd., HUB International Texas, Inc. and HUB International, Ltd. Cooper Gay Mexico, Swett & Crawford, Swett & Crawford Texas, and Cooper Gay Re are part of Cooper Gay Swett & Crawford Limited. Swett & Crawford, Swett & Crawford of Texas, Inc., and Cooper Gay Re, Ltd., filed an amicus curiae brief in this appeal.

appearances in the trial court, which were denied. In four issues, Seguros Afirme argues the trial court erred when it denied Seguros Afirme's special appearance because: (1) the Texas long-arm statute does not permit the exercise of jurisdiction because Seguros Afirme has not done business in Texas; (2) Seguros Afirme does not have sufficient minimum contacts with Texas to support jurisdiction; (3) the exercise of jurisdiction over Seguros Afirme does not comport with traditional notions of fair play and substantial justice; and (4) the evidence is legally insufficient to support the trial court's findings.

We conclude the trial court erred when it denied Seguros Afirme's special appearance. The trial court's order is reversed and a judgment dismissing the case against Seguros Afirme for lack of personal jurisdiction is rendered.

This appeal involves the same facts and similar legal arguments as *Cooper Gay Martinez Del Rio y Asociados Intermediarios de Reaseguro, S.A. de C.V. v. Elamex, S.A. de C.V., Elamex USA Corp., Mount Franklin Foods, L.L.C., & Confecciones de Juarez, S.A. de C.V.*, No. 05-16-01436-CV (Tex. App.—Dallas August 22, 2017, no pet. h.) (mem. op.). While the parties filed their own special appearances and had separate hearings, Seguros Afirme and Cooper Gay Mexico participated in the transaction that creates the basis for the Elamex parties' claims.

I. FACTUAL AND PROCEDURAL CONTEXT

This recitation of facts is based on the pleadings and documents filed with the trial court as part of the special appearance proceedings. We separate our factual and procedural backgrounds into the following key categories: (1) Elamex's seeking of an excess insurance policy; (2) the fire at the Juárez facility; (3) the lawsuit; and (4) the special appearance.

A. Elamex Seeks an Excess Insurance Policy

In late 2012, Elamex, a Mexican limited liability stock corporation with its principal place of business in El Paso, Texas, sought \$50 million in commercial property and business

interruption coverage for seven manufacturing and distribution facilities located in Mexico and the United States. HUB International Texas, Inc., a Texas corporation with its principal place of business in Dallas, Texas, and HUB International, Ltd., a Canadian corporation with its principal place of business in Chicago, Illinois, (collectively, “HUB”), acting as Elamex’s retail insurance brokers, placed the first \$25 million of coverage with two carriers not involved in the litigation. Facts surrounding the \$25 million excess layer, which eventually was placed with Seguros Afirme, a Mexican limited liability stock corporation with its principal place of business in Monterrey, Nuevo Leon, Mexico, gave rise to this lawsuit.

On November 21, 2012, a HUB employee, Estela Lusky, e-mailed Ralph Higginbotham of Swett & Crawford Texas, a Texas corporation with its principal place of business in Atlanta, Georgia, about obtaining excess coverage for Elamex. Swett & Crawford Texas is an insurance broker. The e-mail stated that “AIG/Lexington are offering 25 million primary, their [Elamex’s] largest location is at 55 million in Mexico, hence we are looking for an additional Property layer of 25mm excess 25mm.” Her e-mail noted that the initial company she contacted, located in Dallas, Texas, was not “able to front in Mexico.” The e-mail included an attachment titled “statement of values” that showed seven locations to be insured for Elamex, including two in El Paso, Texas, and three in Ciudad Juárez, Chihuahua, Mexico.

On December 17, 2012, Higginbotham contacted the Miami, Florida, office of Cooper Gay Re, a New York corporation with its principal place of business in Suwanee, Georgia, about procuring the excess insurance, including for the properties in El Paso and Juárez, as reflected on the statement of values. Cooper Gay Re is an international insurance broker. Richard Stark, an employee of Cooper Gay Re, forwarded Higginbotham’s e-mail to an employee for Cooper Gay Mexico, a Mexican limited liability stock corporation with its principle place of business in Distrito Federal, Cuidad de Mexico, Mexico. Cooper Gay Mexico is a reinsurance broker that

serves clients in Mexico, Central America, and Dominican Republic. Stark forwarded the e-mail on to Fernando Mendoza, the Commercial Director of Cooper Gay Mexico. Mendoza's responsibilities included leading Cooper Gay Mexico's brokerage department and placing reinsurance through the reinsurance market.

An excerpt of Mendoza's deposition was part of the record from the special appearance proceedings. Mendoza explained that in response to Cooper Gay Re's request, Cooper Gay Mexico presented three Mexican insurance companies, Seguros Atlas, S.A., Seguros Afirme, and GMX,³ who could act as insurance carriers for Elamex to Cooper Gay Re. The purpose of providing the names was to allow Cooper Gay Re to select one. Cooper Gay Mexico did not have authority to select an insurer.

Hazel Garcia of Cooper Gay Re e-mailed Higginbotham, Stark, and others on December 21, 2012, and attached a document titled "Reinsurance Slip," which showed "Seguros Atlas and/or to be advised" by Cooper Gay Mexico as the "reinsured" ("Atlas Slip").⁴ Elamex was named as the "original insured." Although the Atlas Slip describes the locations to be insured as "Mexico and USA as more fully defined in the attached breakdown" and "several in Mexico and USA according to the schedule attached," the document does not provide additional specificity. Cooper Gay Mexico's name appears at the bottom of each page of the eight-page document. Higginbotham forwarded Garcia's e-mail, including the Atlas Slip, to a HUB representative.

Mendoza explained that the Atlas Slip was "illustrative" and was prepared for and sent to Cooper Gay Re. The slip was not binding or a formal document. Mendoza said it was akin to a quote, as reflected in the "and/or to be advised" language. Further, Mendoza testified Cooper

³ The full name of GMX is not provided.

⁴ Although the Atlas Slip is titled "Reinsurance Slip" and lists Seguros Atlas as the "Reinsured," the document reflects a quote for excess coverage, not for reinsurance. *Compare Excess Insurance*, BLACK'S LAW DICTIONARY (7th ed. 1999) ("An agreement to indemnify against any loss that exceeds the amount of coverage under another policy.") with *Reinsurance*, BLACK'S LAW DICTIONARY (7th ed. 1999) ("Insurance of all or part of one insurer's risk by a second insurer . . ."). The Texas Supreme Court discussed the distinction in *Tex. Dep't of Ins. v. Amer. Nat'l Ins.*, 410 S.W.3d 843, 848 (Tex. 2012).

Gay Re's Miami office provided all relevant information for Cooper Gay Mexico. Cooper Gay Mexico did not communicate with HUB, the retail broker.

On January 13, 2013, Lusky of HUB e-mailed Higginbotham with instructions to bind the excess coverage with Seguros Atlas and attached a copy of the Atlas Slip. Higginbotham forwarded the e-mail to Stark and Garcia, both of Cooper Gay Re, stating: "Please see request to bind the excess quote, which will be net to the agent with you Swett & Cooper Gay splitting the commission." However, the coverage was not bound with Seguros Atlas.

On January 30, 2013, Mendoza of Cooper Gay Mexico e-mailed Emmanuel Ramirez Lango at Seguros Afirme in reference to "this business we are doing with our Miami office" to provide excess protection for Elamex. Mendoza described Elamex as a "Mexican company with locations in Mexico and the United States." Mendoza attached three documents to his e-mail: a "reinsurance quotation slip," a values detail report, and an inspection report. The "Reinsurance Quotation Slip" ("Seguros Afirme Quote") lists Seguros Afirme as the "reinsured" and Elamex as the original insured.⁵ It states the relevant locations as "Mexico and United States as described in the attached Values Detail." Mexico is listed as the "governing law and jurisdiction." Cooper Gay Mexico's name appears at the bottom of each page of the Seguros Afirme Quote. The values detail report, titled "Mount Franklin/Elamex Property Exposure," lists seven properties: two in El Paso, one each in Florida and Wisconsin, and three in Juárez. The property risk improvement report relates to a property in Juárez.

Excess coverage was bound with Seguros Afirme for the period January 31, 2013 to December 1, 2013 (the "Policy"). The Policy lists "Elamex, S.A. de C.V." as the insured. The insured interest includes all real and personal property of the insured, including business income. The Policy states the relevant locations are "Mexico and USA as more fully defined in the

⁵ Like the Atlas Slip, the Seguros Afirme Quote was a proposal for excess insurance, not reinsurance.

attached breakdown.” The attachment lists locations in El Paso, Florida, Wisconsin, and Juárez. The Policy states Mexico is the applicable “law and jurisdiction.” Cooper Gay Mexico’s name does not appear on the Policy. Invoices for the Policy premium were directed to Elamex at a Mexican address and with a Mexican federal taxpayer number. Seguros Afirme, as the fronting insurer, collected the entire premium. Cooper Gay Mexico was not involved in collecting the Policy premium.

Cooper Gay Mexico subsequently placed the reinsurance for Seguros Afirme as to the Policy. Mendoza explained that “reinsurance is basically placed for an insurance company, not for the specific insurer.” Cooper Gay Mexico, as a reinsurer, acts on behalf of an insurance company or another insurance broker. In this instance, Cooper Gay Mexico placed reinsurance for Seguros Afirme, its “direct client.” Seguros Afirme paid commissions to Cooper Gay Mexico for placing the reinsurance, and Cooper Gay Mexico shared the commissions with Cooper Gay Re. Mendoza testified: “the premium we received was for the reinsurance of Seguros Afirme, irrespective of the original policy conditions. . . . Because we are only placing the reinsurance. . . we are not related to what happens between Seguros Afirme and the client.” He explained the premium paid by Seguros Afirme to Cooper Gay Mexico is “basically to cover a potential loss of Seguros Afirme, a Mexican client, irrespective of what they are covering.”

B. Fire at Juárez Facility

On October 24, 2013, during the coverage period, Elamex’s facility in Juárez suffered damage from an explosion and fire. A portion of the damaged equipment and other property located at the facility were owned by Texas entities, and as alleged by Elamex, those entities suffered business interruption losses. The Elamex parties alleged that “[o]ther personal property at the facility was owned by Texas-based entities, whom the Elamex parties requested and intended to be [n]amed [i]nsured, and cosigned to Elamex or Confecciones.” During the fifteen-

month period required to repair the facility, the Elamex parties claimed they saw a reduction in production and distribution capabilities, which resulted in business interruption losses, and affected operations in Mexico and the United States. Seguros Afirme notified Cooper Gay Mexico, as the reinsurer, of the potential loss. Also, in accordance with the Policy, Seguros Afirme hired Adjustes Calderon & Signoret, S.A. de C.V., an independent adjuster, to investigate the claim. While investigating the claim, Adjustes Calderon attended two meetings on March 26, 2014 and October 1, 2014 in El Paso, Texas, coordinated by the Elamex parties to assist the adjusters with their investigation. According to the Elamex parties, “[t]hese meetings were not settlement meetings, but instead . . . to present the Elamex [p]arties’ estimation of the value of the property damage [] and the value of its business interruption losses.” Adjustes Calderon prepared reports regarding what it learned during the meetings for and made recommendations regarding coverage to Seguros Afirme. After Seguros Afirme adjusted Elamex’s claim and applied the terms of the Policy, Seguros Afirme determined it had no liability and denied coverage. This lawsuit followed.

C. The Lawsuit

The Elamex parties sued Seguros Afirme, Swett & Crawford, Swett & Crawford Texas, Cooper Gay Re, and Cooper Gay Mexico. In their third amended petition, the Elamex parties alleged that:

Jurisdiction is [] proper because each defendant is a resident of Texas or, as the allegations below demonstrate, purposefully availed itself of the privilege of conducting activities in Texas, or both, and because defendants engaged in business in Texas by contracting by telephone, e[-]mail, regular mail and other communications media with Elamex, Elamex USA, and Mt. Franklin, residents of Texas. The contract was to be performed in whole or in part in Texas, by payment of premiums in Texas by Mt. Franklin on behalf of all Plaintiffs, and payment of policy benefits and provision of services to Plaintiffs in Texas. Moreover, defendants’ tortious conduct as alleged herein was directed towards Plaintiffs in Texas.

Also, the Elamex parties alleged the following claims against Seguros Afirme: (1) breach of contract; (2) breach of the duty of good faith and fair dealing; (3) unlawful, illegal, or unauthorized insurer in Texas; and (4) deceptive insurance practices under the Texas Insurance Code.

D. Special Appearance

Seguros Afirme and Cooper Gay Mexico filed separate special appearances arguing the trial court lacked personal jurisdiction over them. First, Seguros Afirme argued that the Texas long-arm statute does not permit the exercise of jurisdiction because there is no evidence Seguros Afirme did business in Texas for the following reasons: (1) it did not contact a Texas resident, only Elamex, which is a Mexican limited liability stock corporation and the only named insured on the Policy; (2) the premiums were paid to Seguros Afirme in Mexico; (3) all dealings for the procurement of the Policy occurred in Mexico; (4) the alleged loss is in Mexico; and (5) it committed no tort in Texas.

Second, Seguros Afirme claimed that the exercise of personal jurisdiction over it would violate due process. It argued that it does not have sufficient minimum contacts with Texas for the following reasons: (1) it did not purposefully avail itself of the privileges and benefits of doing business in Texas because (a) it is a Mexican insurance company that issued the Policy to a Mexican insured, (b) all of its activities related to the issuance of the Policy occurred in Mexico, and (c) any of the telephone calls, e-mails, or other negotiations or communications that occurred in Texas did not involve Seguros Afirme; and (2) its alleged liability does not arise from and is not related to an activity conducted in Texas because (a) the activities of third-party brokers or agents in Texas cannot be a basis for exercising personal jurisdiction over Seguros Afirme, (b) it received instructions from Cooper Gay Mexico to issue the Policy and it issued the Policy to Elamex, a Mexican limited liability stock corporation, (c) Swett & Crawford, which is

in Georgia, made the premium payments to Seguros Afirme in Mexico, (d) the loss at issue in the lawsuit occurred at a facility located, operated, and damaged in Mexico, and (e) according to the Policy, Mexico is the applicable law and jurisdiction. Seguros Afirme acknowledged that: (1) the Policy covered two properties located in Texas, but claimed those properties did not have a substantial connection to the operative facts of the litigation; and (2) after the loss, an independent adjuster attended a meeting in El Paso, Texas, where Elamex presented its damages models for the claimed loss and requested a settlement, but it claimed the independent adjuster did not have the authority to settle the loss on its behalf, no offers to settle were made by Seguros Afirme, and no settlement was reached.

Third, Seguros Afirme argued the exercise of jurisdiction would not comport with traditional notions of fair play and substantial justice because: (1) litigating in Texas would be burdensome for Seguros Afirme; (2) Texas has no legitimate interest in the dispute between a Mexican insurance company and Mexican insured; (3) it would be unduly burdensome and inconvenient since a substantial portion of the evidence and witnesses are in Mexico and many documents and witnesses will require Spanish translation; (4) while the Policy does cover two Texas properties, the parties are a Mexican insurance company and a Mexican insured and the Policy lists Mexico as the applicable law and jurisdiction; and (5) the dispute does not involve a loss in Texas.

The Elamex parties filed a response arguing that Seguros Afirme purposefully availed itself of Texas when it contracted with Texas companies to insure Texas properties and its adjusters traveled to Texas to meet regarding Elamex's claim. It asserted that Seguros Afirme's contacts with Texas were not random or disconnected to the claims asserted in the lawsuit.

Following a hearing, the trial court denied both Seguros Afirme's and Cooper Gay Mexico's special appearances. This interlocutory appeal followed.

II. ORDER DENYING THE SPECIAL APPEARANCE

In issues one through four, Seguros Afirme argues the trial court erred by denying its special appearance for the following reasons: (1) the Texas long-arm statute does not permit the exercise of jurisdiction because Seguros Afirme has not done business in Texas; (2) Seguros Afirme does not have sufficient minimum contacts with Texas to support jurisdiction; (3) the exercise of jurisdiction over Seguros Afirme does not comport with traditional notions of fair play and substantial justice; and (4) the evidence is legally insufficient to support the trial court's findings. The Elamex parties respond that there is specific jurisdiction because the Policy was procured, negotiated, and investigated in Texas. Also, Seguros Afirme benefitted financially by receiving premiums.

A. Standard of Review

Whether a trial court has personal jurisdiction over a nonresident defendant is a question of law. *See, e.g., Searcy v. Parex Resources, Inc.*, 496 S.W.3d 58, 66 (Tex. 2016); *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 150 (Tex. 2013); *Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 657 (Tex. 2010); *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 790–91 (Tex. 2005); *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002); *Am. Type Culture Collection v. Coleman*, 83 S.W.3d 801, 805–06 (Tex. 2002); *Assurances Generales Banque Nationale v. Dhalla*, 282 S.W.3d 688, 694 (Tex. App.—Dallas 2009, no pet.); *Capital Tech. Info. Servs., Inc. v. Arias & Arias Consultores*, 270 S.W.3d 741, 747 (Tex. App.—Dallas 2008, pet. denied) (en banc). If, as is the case here, the trial court does not issue findings of fact and conclusions of law, we must imply all relevant facts necessary to support the trial court's judgment that are supported by the evidence. *Kelly*, 301 S.W.3d at 657.

B. Burdens of Parties in Special Appearance

The plaintiff and defendant bear shifting burdens of proof when the defendant files a special appearance. *Kelly*, 301 S.W.3d at 658. The plaintiff bears the initial burden to plead allegations that would bring the nonresident defendant within the reach of the long-arm statute. *Id.* We look at the jurisdictional facts pleaded in the plaintiff’s petition as well as those alleged in its response to the special appearance. TEX. R. CIV. P. 120a(3); *Flanagan v. Royal Body Care, Inc.*, 232 S.W.3d 369, 374 (Tex. App.—Dallas 2007, pet. denied); *Jani-King Franchising, Inc. v. Falco Franchising, S.A.*, No. 05-15-00335-CV, 2016 WL 2609314, at *4 (Tex. App.—Dallas May 5, 2016, no pet.) (mem. op.). If the plaintiff meets its burden, the defendant must negate all alleged bases of personal jurisdiction, which it can do factually or legally. *Kelly*, 301 S.W.3d at 658. “Factually, the defendant can present evidence that it has no contacts with Texas, effectively disproving the plaintiff’s allegations.” *Id.* The plaintiff can then respond with its own evidence that affirms its allegations, and it risks dismissal if it cannot present the trial court with evidence establishing personal jurisdiction. *Id.* A defendant may also defeat personal jurisdiction by showing that even if the plaintiff’s alleged facts are true, the evidence is legally insufficient, i.e., the defendant’s contacts fall short of purposeful availment, or the plaintiff’s claims do not arise from the alleged contacts, or traditional notions of fair play and substantial justice would be offended if jurisdiction over the defendant were exercised by the trial court. *Id.*

C. In Personam Jurisdiction

Texas’s long-arm statute extends its courts’ personal jurisdiction as far as the federal constitutional due process requirements permit. *Id.* A state’s exercise of jurisdiction comports with federal due process if the nonresident defendant has minimum contacts with the state and the exercise of jurisdiction “does not offend ‘traditional notions of fair play and substantial justice.’” *Id.* (quoting *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014)).

A defendant's contacts with the forum may give rise to general or specific jurisdiction. *Id.* In this case, we are concerned with specific jurisdiction. A Texas court may exercise specific jurisdiction over a defendant when (1) the defendant's contact with Texas are purposeful, and (2) the cause of action arises from those contacts. *Michiana*, 168 S.W.3d at 795; *see also Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cnty.*, 137 S. Ct. 1773, 1786 (2017) (suit must arise out of or relate to defendant's contacts with forum).

An entity has minimum contacts with a forum state if it purposefully avails itself of the privilege of conducting activities within the state, thus invoking the benefits and protections of its laws. *Cornerstone Healthcare Grp. Holding, Inc. v. Nautic Mgmt. VI, L.P.*, 493 S.W.3d 65, 70 (Tex. 2016). Three principles guide our purposeful-availing analysis: (1) only the defendant's forum contacts are relevant, not the unilateral activities of another party or third person; (2) the defendant's contacts must be purposeful rather than random, isolated, or fortuitous; and (3) the defendant must seek some benefit, advantage, or profit by availing itself of the forum such that it impliedly consents to suit there. *Id.* at 70–71.

We focus on the relationship among the nonresident defendant, the forum, and the litigation. *Id.* at 71. "The defendant's activities, whether they consist of direct acts within Texas or conduct outside Texas, must justify a conclusion that the defendant could reasonably anticipate being called into a Texas court." *M & F Worldwide v. Pepsi-Cola Metro. Bottling Co.*, 512 S.W.3d 878, 886 (Tex. 2017). The Supreme Court recently described the specific jurisdiction analysis: "there must be an affiliation between the forum and the underlying controversy, principally an activity or occurrence that takes place in the forum State and is therefore subject to the State's regulation. For this reason, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (internal citation, brackets, and quotation

marks omitted). When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State. *Id.* at 1781.

D. Application of the Law to the Facts

In issue two, Seguros Afirme argues it does not have sufficient minimum contacts with Texas to support jurisdiction. Seguros Afirme claims that, although the Policy includes two Texas facilities in the list of insured properties, neither of those properties is the subject of any loss at issue in this litigation. Further, Seguros Afirme asserts the visits to El Paso, Texas, by Ajustes Calderon, an independent adjusting firm hired by Seguros Afirme to investigate the loss, are not substantially related to the operative facts of the litigation. Also, Seguros Afirme posits the meeting in Texas does not establish purposeful availment because the Elamex parties set up the meeting and dictated the location, and Seguros Afirme did not seek any benefit, advantage, or profit when it allowed the independent adjuster to visit El Paso for the Elamex parties' presentation on their calculation of property loss. The Elamex parties respond that the Policy was procured through discussion and negotiation in Texas, the losses suffered include business interruption losses at Elamex's Texas plants, and the claim was investigated in Texas.

There are several critical points we consider in rendering our decision. First, for a substantial connection to exist between Seguros Afirme and Texas, it must come about by an action of Seguros Afirme purposefully directed toward Texas. *See Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 112 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985); *Assurances Generales*, 282 S.W.3d at 699–700. However, Seguros Afirme did not initiate the interactions it eventually had with the Elamex parties. *See Searcy*, 496 S.W.3d at 76. Rather, Seguros Afirme, a Mexican limited liability stock corporation, became involved with the Elamex parties after HUB sought excess insurance from an insurer that could “front in Mexico” on behalf of the Elamex parties from Swett & Crawford

Texas, who in turn contacted Cooper Gay Re, which sought the assistance of Cooper Gay Mexico. Cooper Gay Mexico then presented Cooper Gay Re with three Mexican insurance companies, one of which was Seguros Afirme. Cooper Gay Mexico described Elamex to Seguros Afirme as a “Mexican company with locations in Mexico and the United States.” Seguros Afirme only became involved with the Elamex parties after this solicitation. Seguros Afirme did not seek out a Texas insured or attempt to develop a Texas business. *See Searcy*, 496 S.W.3d at 73 (although Canadian nonresident defendant appeared to have known company had Texas operations, it did not seek out Texas seller or Texas assets, let alone attempt to meddle with a contract governed by Texas law or develop a Texas business).

Second, the fact that Seguros Afirme knew that Elamex had properties in Texas, taken alone, is insufficient to confer specific jurisdiction. *See Searcy*, 496 S.W.3d at 73. The Policy only shows that Seguros Afirme was insuring a Mexican company with an address in Mexico that had properties in Mexico and the United States. Seguros Afirme asserts it did not know Elamex was headquartered in El Paso, Texas, nor does the Policy identify an El Paso, Texas headquarters. *See Searcy*, 496 S.W.3d at 73 (Canadian nonresident defendant did not know until relatively late in its negotiations that company was incorporated and headquartered in Texas). Further, the evidence does not show that Seguros Afirme sought to launch operations in Texas or reap the benefits of the Texas economy. *See Searcy*, 496 S.W.3d at 74. Seguros Afirme’s decision to enter into a contract with a company that happened to be headquartered in Texas, by itself, cannot provide the basis for specific jurisdiction over Seguros Afirme. *See Searcy*, 496 S.W.3d at 74.

Third, while Seguros Afirme did insure Texas property, it did not show an interest in developing a Texas enterprise. Rather, it appears that Seguros Afirme purposefully avoided Texas. It structured the Policy so as to neither benefit from Texas law nor subject itself to Texas

courts' jurisdiction. Instead, the Policy states that Mexico is the applicable law and jurisdiction. *See Searcy*, 496 S.W.3d at 73; *see also Alstom Power, Inc. v. Infrasure*, No. 03-07-00690-CV, 2010 WL 521105, at * 6–7 (Tex. App.—Austin Feb. 12, 201, no pet.) (mem. op.) (discussing traditional notions of fair play and substantial justice).

Fourth, although Adjustes Calderon investigated the claim in Texas and attended two meetings in El Paso on March 24, 2014 and October 1, 2014, it was an independent adjuster. Those El Paso meetings were coordinated by the Elamex parties. The mere fact that Adjustes Calderon attended a presentation by the Elamex parties in El Paso is not a decisive factor over whether specific jurisdiction exists as to nonresident Seguros Afirme. *See Searcy*, 496 S.W.3d at 73. These contacts were too random and fortuitous to count as purposeful avilment of Texas.

We conclude that the trial court erred when it denied Seguros Afirme's special appearance and concluded it had specific jurisdiction over Seguros Afirme. Seguros Afirme does not have sufficient minimum contacts with Texas to support jurisdiction because it did not purposefully avail itself of the jurisdiction. Issue two is decided in favor of Seguros Afirme.

Based on our resolution of issue two, we need not address issues one, three, or four.

III. CONCLUSION

The trial court erred when it denied Seguros Afirme's special appearance.

The trial court's order denying Seguros Afirme's special appearance is reversed and a judgment dismissing the case against Seguros Afirme for lack of personal jurisdiction is rendered.

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/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

SEGUROS AFIRME, S.A. DE C.V.,
Appellant

No. 05-16-01465-CV V.

ELAMEX, S.A. DE C.V.; ELAMEX USA,
CORP., MOUNT FRANKLIN FOODS,
L.L.C., AND CONFECCIONES DE
JUAREZ, S.A. DE C.V., Appellees

On Appeal from the 95th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DC-15-11987.
Opinion delivered by Justice Lang. Justices
Myers and Stoddart participating.

In accordance with this Court's opinion of this date, the trial court's order denying appellant SEGUROS AFIRME, S.A. DE C.V.'s special appearance is **REVERSED** and appellant SEGUROS AFIRME, S.A. DE C.V., is **DISMISSED** for want of jurisdiction.

It is **ORDERED** that appellant SEGUROS AFIRME, S.A. DE C.V., recover its costs of this appeal from appellees ELAMEX, S.A. DE C.V., ELAMEX USA, CORP., MOUNT FRANKLIN FOODS, L.L.C., AND CONFECCIONES DE JUAREZ, S.A. DE C.V.

Judgment entered this 22nd day of August, 2017.