

Ohio District Court Has Jurisdiction Over California Director Insureds

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The United States District Court for the Southern District of Ohio has denied three insureds' motion to dismiss for lack of personal jurisdiction in a coverage action initiated against them by a D&O insurer, concluding that the court had personal jurisdiction over the three directors because the underwriting and claims handling of the policies at issue were conducted through the insurer's Ohio office. *Genesis Ins. Co. v. Alfi*, 2006 WL 783363 (S.D. Ohio March 23, 2006). The court also denied the insured's motion to dismiss based on *forum non conveniens* and improper venue.

This case arose out of several securities class actions filed against a company that relocated its principal place of business from California to Ohio. After settlement of the securities lawsuits, the carrier initiated a coverage action against its insureds. They subsequently moved to dismiss the coverage action, contending that they were not subject to personal jurisdiction in Ohio. The three director defendants did not maintain residences in Ohio and worked from California. The insurer was incorporated and had its principal place of business in Connecticut, but its Ohio office underwrote the D&O policies at issue. Additionally, in connection with their claim for coverage for the securities litigation, the directors sent invoices, correspondence and emails to the Ohio office. They also made telephone calls to the insurer's representatives there.

The district court considered a variety of additional facts in evaluating the motion to dismiss. The underlying class actions were filed in New York, California and Ohio and consolidated into a single proceeding before the U.S. District Court for the Southern District of Ohio. In addition, the court noted that the insurer agreed to fund part of the settlement reached in connection with the securities action, subject to a reservation of rights memorialized in a memorandum of understanding that allowed it to seek recovery from the insureds to the extent it was ultimately determined that the policy did not provide coverage for the securities actions. The agreement was executed by the insurer in Ohio and by the directors in California.

The court determined that personal jurisdiction existed over the directors, despite the fact that there were practically "no physical ties to Ohio." In doing so, the court first considered whether personal jurisdiction could be exercised consistent with the due process clause based on the three factors articulated by the U.S. Court of Appeals for the Sixth Circuit in *Southern Machine v. Mohasco Industries*, 401 F.2d 374 (6th Cir. 1968). Those factors are whether:

- The defendants "purposefully [availed themselves] of the privilege of acting in the forum state or causing a consequence in the forum state."
- The cause of action arose from activities in the forum state.
- "The acts of the defendant or consequences caused by the defendants [were substantial enough] to make the exercise of jurisdiction . . . reasonable."

Evaluating the first prong, the court found that the "defendants deliberately reached out to [the insurer] in Ohio for insurance protection in light of the numerous federal and state securities suits filed against them." The court also found that the actions of the directors' agents (primarily defense counsel in the underlying action) were attributable to the defendants, including repeated contact with the carrier in Ohio. According to the court, "Ohio is the epicenter of the relationship shared by the defendants and [the insurer]" and the communications regarding the underlying claim "were significant activities within Ohio to recover substantial sums of money to pay for legal fees and settlement costs." The court therefore concluded that the coverage action necessarily arose out of those communications, and that the second prong was thus satisfied. Turning to the last prong, the court concluded that personal jurisdiction in Ohio was reasonable because the officers negotiated the policies and sought coverage in Ohio.

The court then indicated that, in addition to satisfying the three prong test set forth in *Southern Machine*, the exercise of personal jurisdiction must satisfy Ohio's long-arm jurisdiction statute. The court determined that the statute was satisfied because "the defendants continuously sought and received coverage under the ... policies in Ohio." Accordingly, the court concluded that personal jurisdiction existed over the three directors.

The court then denied the directors' motion to dismiss based on *forum non conveniens*, stating that the doctrine was inapplicable, as there was no suggestion that any foreign forum was implicated in the action. The court also denied the motion to dismiss for improper venue or, alternatively, to transfer the case to California, stating that "while California may be a proper venue in this case . . . this Court is a proper venue as well" and that the insurer's choice of venue was due deference as the defendants had not provided "strong support" that the action should be transferred.