

## **Product Liability**

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# **First District Grants Corporate Defendant's Motion to Dismiss for Lack of Personal Jurisdiction in Asbestos Case**

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On May 18, 2018, the Illinois Appellate Court, First District, reversed the circuit court's decision to deny defendant General Electric's motion to dismiss for lack of personal jurisdiction, holding that the plaintiff failed to establish that General Electric (GE) was subject to personal jurisdiction in Illinois. *Campbell v. ACME Insulations, Inc.*, 2018 IL App (1st) 173051, ¶ 26. The first district determined that: (1) general personal jurisdiction was not satisfied because GE was not "at home" in Illinois, and no exceptional conditions existed that would otherwise support the general personal jurisdiction theory; (2) GE did not consent to the circuit court's jurisdiction; and (3) specific personal jurisdiction was not satisfied because the plaintiff failed to establish his injury arose from contacts in Illinois. *Campbell*, 2018 IL App (1st), ¶¶ 16-17, 22.

In *Campbell*, the plaintiff filed suit in the circuit court, alleging that his mesothelioma diagnosis was caused by his exposure to asbestos that "emanated from certain products" he encountered at various jobs in multiple states. *Id.* ¶ 3. Relevant here, was the allegation that during his employment at Republic Steel in Chicago, he was exposed to asbestos contained in GE furnaces used to melt steel at the plant. *Id.* ¶ 5.

## **Circuit Court's Denial of Defendant's Motion to Dismiss**

To meet his burden of establishing that GE was subject to personal jurisdiction in Illinois, the plaintiff argued that: (1) "jurisdiction by necessity" applied because his injuries in multiple states resulted in no single forum in which he could sue every defendant; (2) GE consented to jurisdiction in Illinois because it did business in Illinois and had a registered agent there; (3) GE was subject to general personal jurisdiction in Illinois because of systematic and continuous business contacts causing GE to be "at home" in Illinois; and (4) GE was subject to specific personal jurisdiction in Illinois because the plaintiff's discovery deposition established that the electric furnaces containing asbestos that he was exposed to in Illinois were manufactured by GE. *Id.* In response to the plaintiff's discovery deposition testimony, GE submitted an affidavit of a former employee stating that no such furnaces were manufactured by GE. *Id.* ¶ 6. Ultimately, the circuit court denied GE's motion to dismiss for lack of personal jurisdiction without identifying a basis for its ruling. *Id.* ¶ 8.

## **General Personal Jurisdiction**

In response to the plaintiff's contention that GE was subject to general personal jurisdiction in Illinois due to GE's significant presence and "large amount of business" conducted there, GE argued that neither its headquarters nor principal

place of business is in Illinois, and that GE’s business in Illinois constitutes a relatively small percentage of its national and worldwide operations. *Id.* ¶ 13. Domestically only 2% of GE’s income is generated in Illinois, and 2.4% of GE’s workforce is employed there. *Id.* ¶ 15. The first district sided with GE, finding that under the *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.20 (2014), analysis of a corporation’s nationwide and worldwide activities, and the *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 472 (1985), policy to allow out-of-state businesses to structure their conduct “with some minimum assurance as to where that conduct will and will not render them liable to suit,” GE’s contacts did not render it “at home” in Illinois and no alternative exceptional circumstances existed. *Campbell*, 2018 IL App (1st) 173051, ¶¶ 15-16.

### Consent to Circuit Court’s Jurisdiction

The first district rejected the plaintiff’s argument that GE consented to jurisdiction in Illinois. *Id.* ¶ 17. In accordance with *Aspen American Insurance Company v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶ 24, GE’s registered agent for service of process in Illinois constituted neither a consent to general jurisdiction nor a waiver of due process limitations on Illinois’ exercise of general jurisdiction. *Campbell*, 2018 IL App (1st) 173051, ¶ 17. Additionally, the fact that GE had previously sued in Illinois courts and defended actions without contesting jurisdiction, did not amount to consent to jurisdiction and would not cause GE to reasonably anticipate being haled into court in Illinois. *Id.*

### Specific Personal Jurisdiction

Under *Goodyear Dunlop Tires Operations, S.A. v. Brown*, specific jurisdiction exists when there is an affiliation between the forum state and the underlying controversy, *i.e.*, an activity or occurrence that takes place in the forum state and is therefore subject to that state’s regulation. *Campbell*, 2018 IL App. (1st) 173051, ¶ 18, *citing Goodyear*, 564 U.S. 915, 919 (2011). The first district applied prior appellate court decisions, Illinois Supreme Court Rules, and an Illinois Rule of Evidence to determine that the plaintiff failed to meet his burden of establishing a *prima facie* basis for an Illinois court to exercise specific personal jurisdiction over GE. *Campbell*, 2018 IL App (1st) 173051, ¶¶ 21-23.

To support his allegation that he was exposed to asbestos from GE electric furnaces at a steel plant in Illinois, the plaintiff relied on his discovery deposition. At first, he testified that he did not remember what manufacturers produced the equipment at the plant, then testified that he believed the furnaces were manufactured by GE because his brother “worked on furnaces.” *Id.* ¶ 19. Importantly, the transcript also revealed that the plaintiff was not aware of any tags or writing on the furnaces that suggested they were manufactured by GE, nor did he have “any way of knowing who made any of the furnaces.” *Id.* ¶¶ 19-20.

The first district discussed that although a discovery deposition may be used for any purpose for which an affidavit may be used, Ill. S. Ct. R. 212(a)(4), the mere allegation that an issue of fact exists does not create an issue of fact, and an affidavit for a motion to contest jurisdiction will be deemed insufficient if it shows that the affiant could not competently testify at trial to the matters asserted, Ill. S. Ct. R. 191(a). *Campbell*, 2018 IL App (1st) 173051, ¶ 21. In this case, the first district determined that the discovery deposition as a whole reflected the plaintiff’s inability to competently testify that GE manufactured the furnaces. *Id.* ¶ 22. Further, plaintiff’s discovery deposition “suggest[ed] that his

testimony in that regard is inadmissible hearsay” under Illinois Rule of Evidence 602 because the plaintiff introduced no evidence of personal knowledge of the facts. *Id.*

In response to GE’s former employee’s attestation that GE never manufactured electric furnaces designed for melting steel, plaintiff provided an excerpt from a book identifying GE as a manufacturer of electric furnaces. *Id.* ¶¶ 6-7. The first district found that even if the book excerpt showed that GE manufactured such furnaces prior to the plaintiff’s alleged encounter, nothing in the record, including the plaintiff’s furnace description in his deposition testimony, identified the furnaces in the book with the furnaces used at the steel plant. *Id.* ¶ 23.

### Sliding Scale and Necessity Arguments Rejected

The plaintiff also argued that specific personal jurisdiction could be asserted under a “sliding scale” approach, where as long as a defendant has wide-ranging contacts in a forum making it foreseeable to defend that type of action in the forum, it would not matter whether the particular fact pattern had requisite contacts with the forum. *Id.* ¶ 24. The first district rejected this argument, citing *Bristol-Myers*, where the Supreme Court rejected the application of a “sliding scale” approach to specific personal jurisdiction, noting that a corporation’s continuous activity within a state is not enough to support the demand that a corporation be amenable to suits unrelated to that activity. *Campbell*, 2018 IL App (1st) 173051, ¶ 24, citing *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1781 (2017).

Additionally, the plaintiff argued that a doctrine of “jurisdiction by necessity” applied because there was no other forum in which he could bring an action against all the defendants. *Campbell*, 2018 IL App (1st) 173051, ¶ 25. The first district emphasized the plaintiff’s failure to cite any authority adopting the doctrine, and therefore would not adopt it in this case. *Id.*

### Conclusion

In sum, the first district held that GE was subject to neither general nor specific personal jurisdiction in Illinois and reversed the circuit court’s denial of GE’s motion to dismiss for lack of personal jurisdiction. *Id.* ¶ 26. The first district’s ruling provides vital support for and will undoubtedly result in jurisdictional challenges on top of the increasing number that Illinois courts have already seen as a result of the Supreme Court’s ruling in *Bristol-Myers*.

### About the Author

**Ryan M. Frierott** is a partner in *Goldberg Segalla LLP*’s Chicago office. He focuses his litigation practice in the fields of products liability, toxic torts, complex insurance coverage, and professional liability. He has represented clients in state and federal courts throughout the United States, and has extensive experience defending cases involving fires, product defect, expert witness challenges, and toxic tort exposure.



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