

STATE OF INDIANA)
) ss:
COUNTY OF MARION)

MARION SUPERIOR COURT
CIVIL DIVISION 10
CAUSE NO. 49D10-0212-PL-1980

INTERNATIONAL MEDICAL GROUP,)
INC., and on behalf of)
SIRIUS INTERNATIONAL INSURANCE)
CORPORATION)
)
 Plaintiffs,)
)
 vs.)
)
IRIS REYES SOTO)
)
 Defendant.)

ORDER GRANTING MOTION TO DISMISS

I. STATEMENT OF THE CASE

Plaintiff International Medical Group, Inc. (“IMG”) and Sirius International Insurance Corporation (“Sirius”) seek declaratory judgment on allegations of misrepresentation by Defendant Iris Reyes Soto (“Soto”) on medical insurance applications. Soto, a Honduran living in Texas, moves to dismiss for lack of personal jurisdiction. The Court finds no personal jurisdiction and grants Soto’s motion to dismiss.

II. ISSUE

Does the Court have personal jurisdiction over Soto?

III. FACTS AND PROCEDURAL HISTORY

Sirius is a Swedish insurance company. IMG is not an insurance company, but a managing general underwriter and insurance plan administrator. IMG is an Indiana corporation. Soto is a Honduran citizen residing in Texas.

In July 2000, Soto applied for health insurance through a Texas agent, Rodolfo Beltran. The policy was sold by Sirius, administered by IMG, and became effective July 15, 2000. On July 5, 2001, Soto had surgery in Texas. Her claim for medical coverage was denied by IMG for alleged misrepresentations on her insurance application in Texas.

On November 15, 2002, Soto sued IMG, Sirius, and others in Texas alleging violations of Texas law, breach of common law duty, and breach of contract. Four days later, November 19, 2002, IMG and Sirius filed this action in Indiana seeking declaratory judgment that Soto made material misrepresentations about her medical condition.

On December 13, 2002, Soto filed her “Special Appearance” in this Indiana court moving to dismiss the complaint for lack of personal jurisdiction.

IV. LAW

Indiana state trial courts are courts of general jurisdiction, so jurisdiction is presumed. Anthem Insurance Co. v. Tenet Healthcare Corp. (2000), Ind., 730 N.E.2d 1227. When a defendant alleges a lack of personal jurisdiction, the plaintiff must show personal jurisdiction over the defendant. The defendant, however, bears the burden of proving the lack of personal jurisdiction by a preponderance of evidence, unless the lack of jurisdiction is apparent on the face of the complaint. Id.

Indiana Trial Rule 4.4(A), our “long-arm jurisdiction” statute, provides:

Acts Serving as a Basis for Jurisdiction. Any person or organization that is a nonresident of this state, a resident of this state who has left the state, or a person whose residence is unknown, submits to the jurisdiction of the courts of this state as to any action arising from the following acts committed by him or her or his or her agent:

- (1) doing any business in this state;
- (2) causing personal injury or property damage by an act or omission done within this state;
- (3) causing personal injury or property damage in this state by an occurrence, act or omission done outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue or benefit from goods, materials, or services used, consumed, or rendered in this state;
- (4) having supplied or contracted to supply services rendered or to be rendered or goods or materials furnished or to be furnished in this state;
- (5) owning, using, or possessing any real property or an interest in real property within this state;
- (6) contracting to insure or act as surety for or on behalf of any person, property or risk located within this state at the time the contract was made;
- (7) living in the marital relationship within the state notwithstanding subsequent departure from the state, as to all obligations for alimony, custody, child support, or property settlement, if the other party to the marital relationship continues to reside in this state; or
- (8) abusing, harassing, or disturbing the peace of , or violating a protective or restraining order for the protection of, any person within the state by an act or omission done in this state, or outside this state if the act or omission is part of a continuing course of conduct having an effect in this state.

An Indiana court engages in a two-step analysis to determine personal jurisdiction of an out-of-state defendant. First, the court determines whether the defendant’s contacts fall under any “enumerated act” listed in Indiana’s long-arm statute above. Anthem, 730 N.E.2d at 1233. If so, the court then determines (in a further two-step process) whether the defendant’s contacts satisfy federal due process analysis, that is, whether the defendant a) has “certain minimum contacts” with Indiana, or whether defendant could “reasonably anticipate being haled into court there,” and b) the maintenance of the suit does not offend “traditional notions of fair play and substantial justice,” Id. at 1233-34 [citing International Shoe Co. v. Washington, 326 U.S. 310

(1945)]. Contacts are generally sufficient to establish personal jurisdiction only if there is “some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” Id. at 1234.

But there are two types of personal jurisdiction under the due process “minimum contacts” analysis: “general” personal jurisdiction and “specific” personal jurisdiction. Id. To establish general personal jurisdiction, the court must find “continuous and systematic” contacts with the forum state such that the defendant could reasonably foresee being haled into court in that state for any matter; however, the claim need not arise from the defendant’s contacts with the state. Id. Contacts may constitute general personal jurisdiction if they include: 1) direct advertising and solicitation of Indiana residents; 2) offices in Indiana; 3) employees in Indiana; 4) agents in Indiana; and 5) property in Indiana. North Texas Steel Co. v. R.R. Donnelley & Sons Co. (1997), Ind.App.,679 N.E.2d 513; Anthem at 1235. If the defendant’s contacts with a forum state are unrelated to the lawsuit, they “must be fairly extensive to confer jurisdiction.” Id. (citing Brokemon v. Marshall Field & Co. (1993), Ind.App., 612 N.E.2d 143, 145.

“Specific” jurisdiction is established when the defendant has “purposefully” established contact with the forum state and the basis of the lawsuit must arise out of these contacts. Id. [citing Burger King Corp. v Rudzewicz, 471 U.S. 462, 472 (1985)]. A single act can support jurisdiction so long as it creates a “substantial connection” with the forum state and the suit is based on that connection. Id. [see McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957)]. Contacts sufficient for specific personal jurisdiction are determined on a case-by-case basis, but should include: 1) whether the claim arises from the defendant’s forum contacts; 2) the

overall contacts of the defendant or its agent with the forum state; 3) the foreseeability of being haled into court in that state; 4) who initiated the contacts; and 5) whether the defendant expected or encouraged contacts with the state. Id. at 1236. As a rule, the court must examine the quality and nature of the activities taking place within the state to determine if they are related to the basis of the lawsuit. Id.

As noted above, once “minimum contacts” are sufficient to establish personal jurisdiction, either general or specific, the court must further decide whether asserting personal jurisdiction over the defendant “offends traditional notions of fair play and substantial justice.” Id. (see International Shoe, 326 U.S. at 316)). The United States Supreme Court sets forth five factors: 1) the burden on the defendant; 2) the forum state’s interest in adjudicating the dispute; 3) the plaintiff’s interest in obtaining convenience and effective relief; 4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and 5) the shared interest of the several States in further fundamental substantive social policies. Burger King, 471 U.S. at 476-77.

This fairness inquiry is separate from the contacts question and may defeat jurisdiction even when the defendant has sufficient contacts with the forum state. Id. [citing Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102, 121-22, (1987)]. Accordingly, Indiana courts must look at “the relationship among the defendant, the forum, and the litigation,” the preservation of constitutional principles of interstate federalism, and the existence of an alternative forum to hear the dispute. Id. (citing Griese-Traylor Corp. v. Lemmons (1981), Ind.App., 424 N.E.2d 173, 180).

In Tom-Wat, Inc. v. Fink (2001), Ind., 741 N.E.2d 343, an Indiana resident ordered

goods from a Connecticut corporation. Although suit was filed in Connecticut to collect payment, and a default judgment entered there, the Indiana Supreme Court found contacts with Connecticut did not show the Indiana buyer could “reasonably anticipate being haled into court there.” Id. (citing Burger King, 471 U.S. at 474). Despite a credit application to the Connecticut company, the court found nothing more than an open receivables account, different than a bank account. Id. at 349. Considering the burden on each party, the court determined the Indiana buyer had no resources to defend a suit halfway across the country, but the Connecticut company could prosecute an action in Indiana, despite the inconvenience. Id.

In Richard & O’Neil v. Conk (2002), Ind.App., 774 N.E.2d 540, a New York company’s contacts with Indiana were found not sufficient for Indiana jurisdiction because they were initiated by the Indiana party. Communications by phone, fax, or mail were found not sufficient for personal jurisdiction. Id.

Indeed, this is hardly the first time IMG and Sirius have sought personal jurisdiction in an Indiana state court over an out-of-state insured. In International Medical Group, Inc. v. American Arbitration Association, 312 F.3d 833 (7th Cir. 2002), a foreign resident, like Soto, was refused coverage for medical treatment by IMG and Sirius. The claim was submitted to arbitration in Florida, but IMG and Sirius filed suit in an Indiana state court seeking a declaratory judgment, like this case. The matter was moved to federal court where the Seventh Circuit eventually concluded the exercise of “specific” personal jurisdiction would not comport with substantial justice and fair play. Id. at 847. The court found the following evidence compelling:

1. The insured was never physically present in Indiana.
2. The insured’s contacts with Indiana, such as paying his bills, making

complaints, canceling his policy, etc. were due to Sirius's selection of IMG as plan administrator and policy underwriter

3. The policy was purchased by a Canadian resident for medical care in Florida.
4. There were few contacts with Indiana related to the arbitration, the matter filed by IMG and Sirius, despite three letters sent by the insured's attorney.

The court found the insured could not reasonably anticipate being haled into court in Indiana based on these three letters.

The court concluded the contacts did not show "general" personal jurisdiction *Id.* All the contacts with Indiana occurred as a result of Sirius's selection of IMG, such as the application for insurance, submission of his medical bills, attorney letters, complaints to the Indiana Department of Insurance, and cancellation of the policy. The court reasoned these contacts with Indiana were too attenuated to establish general personal jurisdiction. *Id.* The court emphasized all of the contacts resulted from Sirius's selection of IMG as plan administrator. The insured never purposefully availed himself of the privileges and protection of Indiana law, rather, Sirius purposefully involved IMG in the transaction that ultimately led to the lawsuit, so the insured could not reasonably anticipate being haled into court in Indiana to defend it.

IV. ANALYSIS

A. IMG and Sirius Fail To Show Enumerated Acts Under Trial Rule 4.4 (A)

The Court finds no "enumerated act" under Indiana's long arm jurisdiction statute to assert personal jurisdiction over Soto. The only act argued by either party is "doing any business

in this state” listed at Trial Rule 4.4(A)(1). Since Soto applied for insurance in Texas to a Swedish company, through a Texas insurance agent, there is no showing of “business” in Indiana. IMG and Sirius fail to show Soto’s connection to Indiana in any way other than Sirius’ relationship with Indiana-based IMG to administer its policies. Since Sirius is bound to Soto to provide medical coverage, there is arguably a stronger business relationship between Soto and Sweden, rather than Indiana.

Therefore, this Court has no personal jurisdiction over Soto in this matter.

B. Due Process Analysis Shows No “Minimum Contacts”

Even assuming Soto does business in Indiana, the Court must examine whether asserting jurisdiction violates the Due Process Clause. Anthem, 730 N.E.2d 1233. A person must “have certain minimum contacts with the forum . . .” International Shoe, 326 U.S. 310, 316.

1. Soto Can Not Reasonably Anticipate Being Haled Into Court In Indiana

a. Soto has no continuous or systematic contacts with to establish “general” personal jurisdiction.

Soto purchased an insurance policy of Sirius administered by IMG through an agent in Texas. IMG and Sirius show only telephone calls about health claims or written communications responding to IMG’s decision canceling Soto’s policy. The only other contacts between Soto and IMG are letters written by her attorney demanding IMG pay Soto’s claim. These contacts are not sufficient to establish general personal jurisdiction over Soto.

In addition, none of the factors determining *general* personal jurisdiction are present here:

- 1) Soto does not advertise in Indiana or solicit of Indiana residents;
- 2) Soto has no office in Indiana;
- 3) Soto has no employees in Indiana;
- 4) Soto has no agents in Indiana; and
- 5) Soto has no property in Indiana.

North Texas Steel Co., 679 N.E.2d at 519.

b. Soto has not purposefully established sufficient contacts for “specific” personal jurisdiction.

Contacts are sufficient to establish *specific* personal jurisdiction only if there is “some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” Anthem at 1234; (referring to Burger King, 471 U.S. at 472). Common law guidelines include:

- 1) whether the claim arises from the defendant’s forum contacts;
- 2) the overall contacts of the defendant or its agent with the forum state;
- 3) the foreseeability of being haled into court in that state;
- 4) who initiated the contacts; and
- 5) whether the defendant expected or encouraged contacts with the state.

Id. at 1236.

IMG and Sirius filed this Indiana action seeking declaratory judgment after Soto sued IMG and Sirius in Texas for breach of contracts, breach of fiduciary duty and other unlawful conduct under Texas law.

Soto has never been anywhere near Indiana, but more importantly, has never initiated any substantial contact to Indiana. She filled out an application for a Sirius policy through an insurance agent in Texas, and her disputed medical treatment was rendered in Texas as well. IMG and Sirius contend Soto misrepresented herself and supplied false information on the policy application, but that occurred in Texas, too. After she was refused coverage, her communications, by herself or by counsel, do not constitute “purposeful” contacts, because she did not start the controversy in Indiana, and has never sought to continue it here. Communications with Indiana by telephone, facsimile and mail do not establish personal jurisdiction. Richard & O’Neil, 774 N.E.2d at 546.

IMG and Sirius even argue Soto’s authorized credit card charge for the policy premiums constitute a “contact.” As Tom-Wat clearly shows, authorization to charge Soto’s credit card is merely an account receivable, not a “contact” establishing personal jurisdiction. Furthermore, Soto neither initiated nor encouraged contacts with Indiana. As the Seventh Circuit stated in IMG v. American Arbitration Association, the contacts occurred only because of Sirius’ selection of IMG as its policy underwriter and administrator.

Overall, Soto’s contacts are not sufficient to establish minimum contacts for this Court to exercise personal jurisdiction over Soto.

2. An Exercise of Jurisdiction Over Soto Offends Traditional Notions of Fair Play and Substantial Justice

Regardless of contacts, International Shoe declares five other factors to balance when determining whether jurisdiction is reasonable and fair: 1) the burden on the defendant; 2) the forum state’s interest in adjudicating the dispute; 3) the plaintiff’s interest in obtaining

convenience and effective relief; 4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and 5) the shared interest of the several States in further fundamental substantive social policies. Anthem, 730 N.E.2d at 1235 (see Burger King, 471 U.S. at 476-77).

The burden on Soto is great. She is a foreign individual living in Texas. But Sirius is an international corporation selling insurance all over the world, IMG is a national corporation, and their combined resources can easily pursue an action in Texas. In fact, they are already defending Soto's suit in Texas, so they can easily seek declaratory relief there.

IMG and Sirius allege fraud and misrepresentation engaged by Soto. While this Court has an interest to protect Indiana businesses from fraud, Texas' interest to protect its insureds is at least equally great. Moreover, since IMG and Sirius sell insurance in Texas, that forum has a greater interest than Indiana in this matter.

As the United States Supreme Court said in McGee v. International Life Ins. Co.:

California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold them legally accountable. When the claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum – thus in effect making the company judgment proof.
355 U.S. at 223.

Equity prevents this Court from forcing Soto to litigate here.

V. CONCLUSION

IMG and Sirius fail to show an enumerated act under Trial Rule 4.4(A). Therefore, there is no personal jurisdiction over Soto.

Under Due Process analysis, Soto has no “minimum contacts” with Indiana, and the assertion of jurisdiction offends traditional notions of fair play and substantial justice. Therefore, this Court should not find personal jurisdiction over Soto.

VI. ORDER

Soto’s motion to dismiss is GRANTED.

Dated this 11th day of April, 2003.

David J. Dreyer, Judge
Marion Superior Court