

## PERSONAL JURISDICTION IN TOXIC TORT CASES

Personal Jurisdiction is frequently an issue in mass toxic tort litigation. Maryland employs a two-prong test to determine personal jurisdiction over out of state residents. First, the defendant must be amenable to service of process under Maryland's Long-arm Statute; which is codified in Maryland Code §6-103; viz.:

Cause of action arising from conduct in State or tortious injury outside State.

- (a) Condition. — If jurisdiction over a person is based solely upon this section, he may be sued only on a cause of action arising from any act enumerated in this section.
- (b) In general. — A court may exercise personal jurisdiction over a person, who directly or by an agent:
  - (1) Transacts any business or performs any character work or service in the State;
  - (2) Contracts to supply goods, food, services, or manufactured products in the State;
  - (3) Causes tortious injury in the State by an act or omission in the State;
  - (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State;
  - (5) Has an interest in, uses, or possesses real property in the State; or
  - (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation, or agreement located, executed, or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

Second, the exercise of personal jurisdiction must be consistent with Constitutional Due Process. Both prongs must be separately analyzed and satisfied. Federal law determines the extent to which the reach of a state long-arm statute is limited by due process. State law determines the reach of the state long-arm statute. *See, e.g., Stover v. O'Connell Associates, Inc.*, 84 F.3d 132, 135 (4<sup>th</sup> Cir.1996), *cert. denied*, 519 U.S. 983, 117 S.Ct. 437, 136 L.Ed.2d 334 (1996).

The Maryland long-arm statute extends to the full limit of due process. *Id. at 135; Ellicott Machine Corp. v. Holland Parts, Ltd.*, 995 F.2d 474 (4<sup>th</sup> Cir. 1993); *Nichols v G.D. Searle & Co.*, 991 F2d 1195, 1199 (4<sup>th</sup> Cir.1993); and *Camelback Ski Corp. v. Beliz*, 513 A.2d 874, 876 (Md. 1986).

Therefore, the issue becomes whether the assertion of personal jurisdiction is consistent with due process under the United States Constitution. *See, e.g., Stover, supra.*

#### *Specific Jurisdiction*

The exercise of personal jurisdiction over a non-resident defendant is consistent with Due Process when (1) that defendant purposefully established minimum contacts with the forum state and (2) the exercise of personal jurisdiction over the defendant does not offend traditional notions of fair play and substantial justice. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S.Ct. 2174, 2184, 85 L.Ed.2d 528 (1985); *International*

*Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct 154, 158, 90 L.Ed. 95 (1945).

“Specific jurisdiction involves an expanded factual inquiry into the precise nature of the defendant’s contacts with the forum, the relationship of those contacts with the cause of action, and a weighing of whether those contacts satisfy ‘threshold demands of fairness.’” *Hardnett v. Duquesne Univ.*, 897 F.Supp. 920, 922 (D. Md. 1995). Specific jurisdiction requires a three-part showing: “(1) that the non-forum defendant purposely directed its activities towards the residents of the forum state or purposely availed itself of the privilege of conducting activities therein; (2) that plaintiff’s cause of action arises out of or results from the defendant’s forum-related contacts; and (3) that the forum’s exercise of personal jurisdiction in the case is reasonable.” *Id.*

#### *General Jurisdiction*

Personal jurisdiction over a defendant that does not arise out of or relate to the defendant's activities in the forum state is "general jurisdiction." *Helicopteros Nacionales de Colombia, SA. v. Hall*, 466 U.S. 408, 414 n.9, 104 S.Ct. 1868, 1872 n.9, 80 L.Ed.2d 404 (1984). General jurisdiction requires that a defendant's contacts with the forum state be "continuous and systematic." *Id.* at 415-416, 1872-73. "[B]road constructions of general jurisdiction should be generally disfavored." *Marriott PLP Corp. v.*

*Tuschman*, 904 F.Supp. 461 (D. Md. 1995) (quoting *Nichols v. G.D. Searle & Co.*, 991 F.2d 1195 (4<sup>th</sup> Cir 1993)).

A leading case in Maryland on general jurisdiction is *Camelback Ski Corp. v Behning*, 307 Md 270 513 A. 2d 874 (1986). There the Court held:

Generally speaking, when the cause of action does not arise out of, or is not directly related to, the conduct of the defendant within the forum, contacts reflecting continuous and systematic general business conduct will be required to sustain jurisdiction. On the other hand, when the cause of action arising out of the contact that the defendant had with the forum, it may be entirely fair to permit the exercise of jurisdiction as to that claim.

312 Md. At 338-39, 539 A. 2d at 1111. *See, also, Prebyterian University Hosp. V Wilson*, 337 Md. 541, 548-562, 654 A. 2d 1324, 1328-1335 (1995). General jurisdiction requires substantial contacts with the state. *See, e.g., Helicopteros*, supra (no general jurisdiction in Texas where defendant traveled to Texas to negotiate sale of helicopters, regularly purchased helicopters in Texas, and sent pilots to training in Texas); *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 447-49, 72 S. Ct. 413, 419-20, 96 L. Ed. 485 (1952) (jurisdiction appropriate in Ohio court where contacts did not arise out of Ohio contacts but defendant carried on substantial part of business in Ohio); *Nichols v. G.D. Searle & Co.*, 991 F.2d at 1200 (4<sup>th</sup> Cir. 1991) (no general jurisdiction in Maryland despite defendant's employment of 17-21 people as "detail" representatives and consumer product representatives in Maryland during a six-year period,

annual sales in Maryland of nine million to thirteen million dollars during a four-year period, and other contacts with Maryland).

#### *Shipping Goods Into the State*

Shipping goods that were “manufactured in another state,” into Maryland is insufficient basis to satisfy either the transacting business requirement of Md. Code § 6-103(b)(4) or the “Due Process” requirements of the United States Constitution. *Benty v. M.S. Steel Co.*, 276 F.Supp. 259,263 (D.Md. 1967), *aff’d*, 401 F.2d 157 (4th Cir. 1968), *cert. denied*, 393 U.S. 1049 (1969) (quoting *Hanson v. Denkla*, 357 U.S. 235, 253 (1958)).

#### **Forum Non Conveniens**

The doctrine of *forum non conveniens* permits state and federal courts to refuse to hear a case where the jurisdiction and venue are proper, but the forum is not convenient. Both state and federal courts have the discretionary power to transfer an action where it may be tried more appropriately in another valid venue. *Piper Aircraft v Reyno*, 454 U.S. 234 (1981); *Gulf Oil Corp v Gilbert*, 330 U.S. 501 (1947); and *Simmons v Urquhart*, 101 Md. App. 85, 643 A. 2d 487 (1994), *rev’d on other grounds*, 339 Md 1, 660 A. 2d 412 (1995); *Leung v Joao Nunes*, 354 Md 217, 729 A. 2d 956 (1999). The federal courts’ power to transfer is contained in 28 U.S.C. 1404 (a). Maryland Rule 2-327 (c) vests state courts with the power to transfer cases.

Maryland has adopted the federal test for *forum non conveniens*. *Odenton Development v Lamy*, 320 Md. 33, 40, 575 A. 2d 1235 (1989); and *Simmons, supra*, at Md. App. at 105-106. The test requires that there is an alternative adequate and available forum. *Piper, supra* at 254 n.22. The court then balances the private and public interests; to wit:

Private Interest Factors:

- ?? The relative ease of access to sources of proof
- ?? The availability of compulsory process for attendance of unwilling witnesses
- ?? The cost of obtaining attendance of willing witnesses
- ?? The possibility of viewing the premises
- ?? All other practical problems that make trial of a case easy expeditious and inexpensive
- ?? Whether any judgment eventually obtained could be enforced.

Public Interest Factors

- ?? Administrative difficulties flowing from court congestion
- ?? The unfairness of burdening citizens in an unrelated forum with jury duty
- ?? The local interest in having localized controversies decided at home
- ?? The interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action
- ?? The avoidance of unnecessary problems in conflicts of laws or in the application of foreign law.

?? The appropriateness of a trial in a forum familiar with the law that will govern the case.

*Gilbert, supra*, supra at 508-09. The moving party has the burden of proving that the interests of justice would be served best by transferring the action. *Simmons, supra*, at Md. App 106, citing *Odenton Development supra* at 40,

Decisions by the trial court as to venue, including forum non conveniens, are not reviewable until after trial. *Pittsburgh Corning Corp v. James*, 352 Md. 657 728 A. 2d 210 (1999). Since the issue is the right to avoid a trial in an inconvenient forum, there is no effective right to an appeal.

Steven E. Leder  
Niles, Barton & Wilmer  
111. South Calvert St., Suite 1400  
Baltimore, MD 21202