

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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STATE EX REL. KEY INSURANCE COMPANY,  
*Petitioner,*

v.

THE HONORABLE MARCO A. ROLDAN, JOSIAH WRIGHT,  
and PHILLIP NASH,  
*Respondents.*

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On Petition for Writ of Certiorari to the  
Missouri Supreme Court

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether a court's exercise of specific personal jurisdiction over a nonresident liability insurer violates the Due Process Clause of the Fourteenth Amendment when the insurer's only alleged contact with the forum state is a putative insured's involvement in a motor vehicle accident in the forum.

## **PARTIES**

Petitioner Key Insurance Company was the relator in the proceeding in prohibition below in the Missouri Supreme Court and is a defendant in the trial court.

Respondent The Honorable Marco A. Roldan was the respondent in the proceeding in prohibition below in the Missouri Supreme Court and presides over the litigation in the trial court.

Respondent Josiah Wright was a real party in interest in the proceeding in prohibition below in the Missouri Supreme Court and is the plaintiff against Petitioner Key Insurance Company in the trial court.

Respondent Phillip Nash was a real party in interest in the proceeding in prohibition below in the Missouri Supreme Court and is a nominal defendant and cross-claimant against Petitioner Key Insurance Company in the trial court.

## **CORPORATE DISCLOSURE STATEMENT**

Petitioner Key Insurance Company is a wholly-owned subsidiary of Med James, Inc. No publicly held corporation owns 10% or more of Key Insurance Company's stock.

## **RELATED PROCEEDINGS**

*State ex rel. Key Insurance Company v. The Honorable Marco A. Roldan*, No. SC97623, Missouri Supreme Court. Opinion issued October 29, 2019, and order denying motion for rehearing entered December 24, 2019.

*State ex rel. Key Insurance Company v. The Honorable Marco A. Roldan*, No. WD82333, Missouri Court of Appeals. Order denying petition for writ of prohibition entered December 6, 2018.

*Josiah Wright v. Phillip Nash and Key Insurance Company*, No. 1816-CV12271, Jackson County, Missouri Circuit Court. Order denying motion to dismiss entered November 13, 2018.

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Petitioner Key Insurance Company respectfully prays a writ of certiorari issue to review the Missouri Supreme Court's 4-3 decision below holding Respondent Phillip Nash's mere allegation that Key committed the tort of bad faith refusal to settle a claim pending in Missouri established the requisite minimum contacts necessary to satisfy due process.

### **OPINIONS BELOW**

The Missouri Supreme Court's order denying Key's motion for rehearing, App. A35, is not reported. The Missouri Supreme Court's opinion, App. A1-A18, is reported at 587 S.W.3d 638. The Missouri Court of Appeals' order denying Key's petition for writ of prohibition, App. A19, is not reported. The trial court's order denying Key's motion to dismiss, App. A20-A34, is not reported.

### **JURISDICTION**

The Missouri Supreme Court's October 29, 2019 opinion became final on December 24, 2019, when that court entered an order denying Key's timely motion for rehearing. App. A1-A18, A35. This Court has jurisdiction to review on a writ of certiorari the Missouri Supreme Court's opinion pursuant to 28 U.S.C. § 1257(a). *See id.* ("Final judgments . . . rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution."); *see also Bristol-Myers Squibb Co. v. Super. Ct. of*

*Cal.*, 582 U.S. \_\_\_, 137 S. Ct. 1773, 1779 (2017) (reviewed California Supreme Court’s opinion affirming denial of motion to quash service of summons on nonresidents’ claims “to decide whether the California courts’ exercise of jurisdiction in this case violates the Due Process Clause of the Fourteenth Amendment”).

### **CONSTITUTIONAL PROVISION INVOLVED**

The Due Process Clause of the Fourteenth Amendment states “nor shall any state deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1.

### **STATEMENT OF THE CASE**

Key is an insurance company and a Kansas corporation with its principal place of business in Kansas. App. A2. Key issued an auto liability insurance policy to Nash’s adult daughter, a Kansas resident, for Kansas automobiles. App. A2, A20.

Nash was involved in an accident with Respondent Josiah Wright in Missouri while driving the 2002 Kia Optima listed in the policy issued by Key to Nash’s daughter. App. A2, A20-A21. Wright reported the accident to Key, and Key denied coverage for Wright’s claims against Nash due to misrepresentations in the application about the ownership, garaging location, and principal driver of the 2002 Kia Optima. App. A2, A14 n.3, A21. Wright obtained an arbitration award against Nash, which was confirmed as a non-discretionary final judgment. App. A2, A21. *See* Mo. Rev. Stat.

§ 435.400 (“Upon application of a party, the court shall confirm an award, unless . . . grounds are urged for vacating or modifying or correcting the award.”).

Wright filed an equitable garnishment action against Nash<sup>1</sup> and Key to apply the policy to the satisfaction of his judgment. App. A2-A3, A20. Nash filed a cross-claim against Key for bad faith refusal to settle and breach of contract. App. A3, A20. Wright and Nash alleged the trial court’s exercise of personal jurisdiction over Key was proper because their claims arose out of a contract to insure a person, property, or risk in Missouri. App. A6.

Key moved to dismiss Wright’s and Nash’s claims for lack of personal jurisdiction, in part,<sup>2</sup> because their claims did not arise out of Key’s contacts with Missouri that Key created as required for the exercise of specific personal jurisdiction consistent with due process. App. A3, A26-A27. In support of its

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<sup>1</sup> Nash is a nominal defendant, required by Missouri statute to be named as a defendant in the equitable garnishment action. *See Mo. Rev. Stat. § 379.200* (“[J]udgment creditor . . . may proceed in equity against the defendant and the insurance company to reach and apply the insurance money to the satisfaction of the judgment.”).

<sup>2</sup> In the state court proceedings, Key also argued it did not commit any acts sufficient to invoke personal jurisdiction under Missouri’s long-arm statute, Mo. Rev. Stat. § 506.500. App. A5-A8, A10, A21-A26. While Key disagrees equally with the Missouri Supreme Court’s holding that personal jurisdiction over Key is authorized by the long-arm statute, that holding is beyond the purview of Key’s petition for writ of certiorari.

motion to dismiss, Key submitted uncontroverted evidence that Nash's daughter materially misrepresented the ownership and principal driver of the 2002 Kia Optima, App. A14 n.3, which vitiated coverage for Wright's claim against Nash as a matter of Kansas law. *See* K.S.A. 40-2,118(f) ("An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act.").<sup>3</sup> The trial court denied Key's motion to dismiss, concluding "Key's response to Wright's and Nash's actions [] justify [the] exercise of personal jurisdiction over Key." App. A27.

Key filed a petition for writ of prohibition, which the Missouri Court of Appeals denied. App. A19. Key then petitioned the Missouri Supreme Court for a writ of prohibition. App. A1.

Although the Missouri Supreme Court issued a preliminary writ of prohibition, it subsequently quashed that preliminary writ in a 4-3 decision. App. A1-A18. The principal opinion held, in part, "Key's alleged tortious behavior of bad faith refusal to settle is a contact contemplated by Missouri's long-arm statute," which, "by itself, is sufficient to satisfy due process because Nash's cross-claim arises out of this contact with Missouri." App. A8-A9.

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<sup>3</sup> A "fraudulent insurance act" includes any act "by any person who, knowingly and with intent to defraud, presents . . . any . . . statement as part of, or in support of, an application for . . . an insurance policy . . . , which such person knows to contain materially false information," "or conceals, for the purpose of misleading, information concerning any fact material thereto." K.S.A. 40-2,118(a).

While recognizing that “Key’s alleged tort may be its only contact with this state,” the principal opinion nonetheless concluded, without a single citation to this Court’s relevant decisions, “it is within the bounds of due process to allow Missouri courts to exercise personal jurisdiction over [Key].” App. A9.

As the dissenting opinion pointed out, under the principal opinion’s logic, “*every* duty to defend case necessarily must also be a ‘tortious refusal to settle case,’ and, therefore, “every insurance company is subject to suit in Missouri in such cases as long as the ‘economic harm’ of the failure to settle occurs here.” App. A13-A14. Due process, however, requires more than Key’s alleged tortious refusal to settle a Missouri claim; due process requires contacts created by Key that have a *substantial connection* with Missouri. App. A16. As recognized by the dissenting opinion, neither Wright and Nash nor the principal opinion, nor the trial court, identified any contacts with Missouri created by Key or that proximately resulted from Key’s actions specifically directed or targeted at Missouri. App. A10-A11, A15-A18. Instead, the principal opinion relied on contacts with Missouri created by Nash and Wright and Key’s interactions with Missouri residents. App. A6-A9, A10-A11, A16-A18.

#### **REASONS FOR GRANTING PETITION**

The Missouri Supreme Court’s 4-3 decision below conflicts with numerous decisions of this Court regarding due process limits on personal jurisdiction and effectively elevates Missouri’s long-arm statute

to a place of supremacy over the Due Process Clause of the Fourteenth Amendment. Review is warranted to protect nonresident defendants from being haled into Missouri courts, and other forum states' courts, based solely on a plaintiff's mere allegation of tortious conduct resulting in harm to a forum resident and to correct the Missouri Supreme Court's "unstated premise," App. A14, that Missouri's long-arm statute dictates the bounds of due process.

**I. The Missouri Supreme Court's Principal Opinion Conflicts With This Court's Decisions Regarding Due Process Limits on Specific Personal Jurisdiction.**

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). *See also Walden v. Fiore*, 571 U.S. 277, 283 (2014) ("The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts."). "For a State to exercise jurisdiction consistent with due process, the defendant's *suit-related* conduct must create a *substantial* connection with the forum State." *Id.* at 284 (emphasis added).

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation." *Id.* at 283-84 (internal quotations omitted). Due process

requires that the relationship among the defendant, the forum, and the litigation arise out of the defendant's contacts with the forum that the defendant created; the plaintiff's or a third-party's contacts with the forum are irrelevant, as are the defendant's contacts with persons who reside in the forum. *Id.* at 284-85. While the merits of the plaintiff's claims may turn on the contacts between the defendant and the plaintiff, personal jurisdiction turns on the contacts between the defendant and the forum state. *Id.* at 285 ("[M]inimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there.").

"The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Id.* at 290. "[T]he 'minimum contacts' necessary to create specific jurisdiction" "over an out-of-state intentional tortfeasor" are limited to those contacts with the forum created by the defendant's intentional conduct targeted at the forum state. *Id.* at 283, 286 ("A forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum.").

Thus, a defendant's actions outside the forum state, even if allegedly directed at a plaintiff whom the defendant knows resides in the forum state, do not create sufficient contacts with the forum state for purposes of due process. *Id.* at 289. This is

because “[d]ue process limits on the State’s adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties.” *Id.* at 284.

Contravening these fundamental principles of due process, the Missouri Supreme Court’s principal opinion quashed that court’s preliminary writ of prohibition based, in part, on the conclusion that “Key’s alleged tortious behavior of bad faith refusal to settle is a contact contemplated by Missouri’s long-arm statute,” which, “by itself, is sufficient to satisfy due process because Nash’s cross-claim arises out of this contact with Missouri.” App. A8-A9. While recognizing that “Key’s alleged tort may be its only contact with this state,” the Missouri Supreme Court’s principal opinion nonetheless concluded “it is within the bounds of due process to allow Missouri courts to exercise personal jurisdiction over [Key].” App. A9.

In rendering this perfunctory conclusion, the Missouri Supreme Court’s principal opinion did not identify any alleged conduct by Key that occurred in Missouri or any alleged contacts with Missouri created by Key in committing this alleged tort “in Missouri.” App. A6-A9. Rather, the principal opinion pointed to the following allegations of (1) others’ conduct, (2) Key’s conduct that occurred in Kansas, and (3) Key’s contacts and interactions with Nash and his daughter:

- Nash “is a resident of Jackson County, Missouri”;

- “the Jackson County circuit court entered judgment confirming an arbitration award of \$4.5 million in favor of Wright against [Nash]”;
- “the policy . . . grants Key the exclusive right to contest or settle any claim”;
- “the policy prohibits any insured from voluntarily assuming any liability or settling any claims without Key’s consent”;
- “Key has engaged in fraud or bad faith”;
- “Key decided to deny coverage and an unconditional defense to Nash”;
- “Key took no steps to resolve Wright’s claims within its policy limit despite having a reasonable opportunity to do so”;
- “Key failed to investigate Wright’s claims and his injuries”;
- “Key knew that Wright’s claims were so significant that any judgment would likely exceed the insurance policy’s limits”;
- “Key acted to protect its financial interests at the expense of Nash’s financial interests”; and
- “Key failed to notify Nash of Wright’s settlement offers.”

App. A6-A9.

Due process limits, however, “apply when intentional torts are involved” and “require[] that a defendant be haled into court in a forum State based

on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.” *Walden*, 571 U.S. at 286 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). “[M]ere injury to a forum resident is not a sufficient connection to the forum. . . . [A]n injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State.” *Id.* at 290.

Key’s alleged tort “in Missouri” is precisely the random, fortuitous, and attenuated contact with Missouri created as a result of Key’s interactions with other persons affiliated with Missouri (i.e., Wright and Nash), and not as a result of Key’s own actions directed or targeted at Missouri, that does not create sufficient contacts for purposes of due process. *Id.* at 289. Key has no affiliation with Missouri whatsoever apart from the random, fortuitous, and attenuated contacts created as a result of Nash’s actions in allegedly causing a motor vehicle accident with Wright in Missouri, and attempting to saddle Key with the Missouri judgment entered against him.

The relationship among Key, Missouri, and this litigation did not arise out of Key’s contacts with Missouri that Key created as required for the exercise of specific personal jurisdiction consistent with due process. *Id.* at 284. Under *Walden*, Key’s actions in Kansas “did not create sufficient contacts with [Missouri] simply because [Key] allegedly

directed [its] conduct at [Nash] whom [Key] knew had [Missouri] connections.” 571 U.S. at 289.

Moreover, Key’s issuance of an insurance policy with a coverage territory provision that included Missouri is not a contact with Missouri created by Key under this Court’s precedent. A contact, such as a nationwide coverage territory provision, has “no jurisdictional significance” if it would result in personal jurisdiction “in all 50 states and the District of Columbia . . . simultaneously.” *Rush v. Savchuk*, 444 U.S. 320, 330 (1980).

As recognized by the dissenting opinion below, Wright’s and Nash’s reliance on this “contact” is “nothing more than an assertion that every insurance company is subject to the personal jurisdiction of every state in which an insured could be sued” and “does not create the sort of ‘substantial connection’ with Missouri (let alone all 50 states) required by due process.” App. A17-A18. *See also Repwest Ins. Co. v. Country-Wide Ins. Co.*, 166 A.D.3d 61, 66 (N.Y. App. Div. 2018) (holding “territory clause of a foreign insurer’s policy and the situs of the accident” did not provide sufficient contacts with forum state for exercise of personal jurisdiction consistent with Due Process Clause even though foreign insurer admitted long-arm statute was satisfied).

“In short, when viewed through the proper lens—whether [Key’s] actions connect [it] to [Missouri],” *Walden*, 571 U.S. at 289, Key’s alleged tort “in Missouri” is not a jurisdictionally relevant

contact with Missouri for purposes of the federal due process jurisdictional analysis because none of Key's alleged conduct in committing the alleged tort occurred in Missouri or was targeted at Missouri. *Id.* at 290 ("The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.").

The dissenting opinion correctly concluded the Due Process Clause of the Fourteenth Amendment does "not countenance such an overextension of Missouri courts' power." App. A18. Key's petition for writ of certiorari should be granted because the Missouri Supreme Court's principal opinion's holding that "Key's alleged tortious behavior of bad faith refusal to settle is a contact . . . sufficient to satisfy due process" is contrary to *Walden* and its predecessors.

## **II. The Missouri Supreme Court's Principal Opinion Conflicts With This Court's Decisions by Conflating Due Process Limits on Specific Personal Jurisdiction With Missouri's Long-Arm Statute.**

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear*, 564 U.S. at 923. Accordingly, "Missouri courts use a two-prong test to determine if personal jurisdiction exists over a nonresident defendant." *State ex rel. PPG Indus., Inc. v. McShane*, 560 S.W.3d 888, 891 (Mo. banc 2018). "First, the out-of-

state defendant's conduct must fall within Missouri's long-arm statute." *Id.* (internal quotation and citation omitted). Second, "the court must then determine whether the defendant has sufficient minimum contacts with Missouri to satisfy due process." *Id.*

Although the Missouri Supreme Court's principal opinion cited this two-prong test, it conflated due process limits on specific personal jurisdiction with Missouri's long-arm statute. App. A8-A9, A14-A15. Specifically, the opinion held that "Key has the requisite minimum contacts with Missouri" because "Key's alleged tortious behavior of bad faith refusal to settle is a contact contemplated by Missouri's long-arm statute," which, "by itself, is sufficient to satisfy due process because Nash's cross-claim arises out of this contact with Missouri." App. A8-A9. Under the Missouri Supreme Court's circular reasoning, satisfaction of Missouri's long-arm statute, by itself, would always be sufficient to satisfy due process.

In effect, Missouri's long-arm statute would also define what constitutes a jurisdictionally relevant contact for purposes of due process, thus swallowing the protections afforded by the Fourteenth Amendment to the United States Constitution.

That is not how specific personal jurisdiction or the Constitution works. As explained by this Court in *Walden*, 571 U.S. at 284, and more recently in *Bristol-Myers*, 137 S. Ct. at 1781-82, due process

requires a substantial connection, created by the defendant's own suit-related conduct, between the forum and the specific claims at issue. The "factual" allegations relied on by the Missouri Supreme Court's principal opinion do not include a single act by Key that created a substantial connection between Missouri and the claims asserted by Wright and Nash against Key. Instead, every connection to Missouri was created by Wright's and Nash's conduct.

By conflating the due process limits on specific personal jurisdiction with Missouri's long-arm statute—and, more specifically, by finding due process was satisfied because the long-arm statute was satisfied—the Missouri Supreme Court's principal opinion imposed the reach of Missouri's long-arm statute on the Due Process Clause without any regard for the due process limitations on a forum state's exercise of personal jurisdiction. The Missouri Supreme Court's principal opinion would have Missouri's long-arm statute determine the bounds of due process guaranteed by the Constitution.<sup>4</sup>

As this Court has made abundantly clear, the Due Process Clause applies to all state-court assertions of personal jurisdiction, even those assertions that comply with state law. *See Bristol-*

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<sup>4</sup>Notably, the principal opinion cited four Missouri Supreme Court decisions and not a single decision from this Court discussing the limits imposed by due process on the personal jurisdiction of state courts. App. A8-A9.

*Myers*, 137 S. Ct. at 1781-84 (holding California Supreme Court’s “sliding scale” test for specific personal jurisdiction violated the Due Process Clause); *BNSF Ry. Co. v. Tyrrell*, 581 U.S. \_\_\_, 137 S. Ct. 1549, 1558-59 (2017) (holding Montana courts’ exercise of personal jurisdiction under Montana law expressly providing for such personal jurisdiction did not comport with the Due Process Clause).

The Missouri Supreme Court’s principal opinion’s holding that “Key’s alleged tortious behavior of bad faith refusal to settle is a contact contemplated by Missouri’s long-arm statute,” which, “by itself, is sufficient to satisfy due process because Nash’s cross-claim arises out of this contact with Missouri” is contrary to this Court’s precedent and a violation of Key’s due process rights guaranteed by the Fourteenth Amendment. As such, Key’s petition for writ of certiorari should be granted to review whether the Missouri courts’ exercise of specific personal jurisdiction comports with due process and to correct the Missouri Supreme Court’s “unstated premise,” App. A14, that Missouri’s long-arm statute dictates the bounds of due process.

## **CONCLUSION**

For the reasons set forth above, Key respectfully prays that a writ of certiorari issue to review the Missouri Supreme Court’s 4-3 decision below holding that the mere allegation that Key committed the tort of bad faith in Missouri established sufficient minimum contacts for the

exercise of specific personal jurisdiction by Missouri courts.

Dated this 27th day of March, 2020.

Respectfully submitted,

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