

APPENDIX A

SUPREME COURT OF MISSOURI
en banc

STATE EX REL. KEY)	<i>Opinion issued</i>
INSURANCE COMPANY,)	<i>October 29, 2019</i>
)	
Relator,)	
)	
v.)	No. SC97623
)	
THE HONORABLE)	
MARCO A. ROLDAN,)	
)	
Respondent.)	

ORIGINAL PROCEEDING IN PROHIBITION

Key Insurance Company filed a petition for a writ of prohibition directing the circuit court to dismiss, for lack of personal jurisdiction, claims filed against it by Josiah Wright and Phillip Nash. This Court issued a preliminary writ of prohibition. Nash alleges Key committed the tort of bad faith refusal to settle in Missouri, bringing Key within the purview of Missouri's long-arm statute and establishing the requisite minimum contacts necessary to satisfy due process. The preliminary writ of prohibition is quashed.

Factual Background

Key Insurance Company is an insurance company incorporated under the laws of the state of Kansas with its principal place of business in Kansas. Key issued an insurance policy to Kansas City, Kansas, resident, Takesha Nash (Takesha). The insurance policy covered her 2002 Kia Optima. Takesha's father, Phillip Nash (Nash), was involved in a motor vehicle collision with Josiah Wright in Jackson County, Missouri, while driving Takesha's Optima. Soon after the collision, Wright's counsel informed Key of the collision, and Key denied coverage.¹ Wright sued Nash in Jackson County. Wright and Nash agreed to submit their dispute to arbitration in Jackson County. The arbitrator awarded Wright \$4.5 million in damages. The circuit court then confirmed Wright's arbitration award as a final judgment.

After arbitration, Wright filed a lawsuit against Key and Nash in the Jackson County circuit

¹ This Court recognizes that the parties dispute the applicability of Takesha's Key insurance policy. This opinion is only concerned with the issue of personal jurisdiction; it expresses no opinion as to the underlying merits of the case or as to any interpretation of the insurance policy. *See State ex rel. Deere & Co. v. Pinnell*, 454 S.W.2d 889, 893 (Mo. banc 1970) ("[T]he hearing on the motion to quash will be limited to an evaluation of relators' contacts with this state and a *prima facie* showing that acts contemplated by the statutes involved took place. Certainly a trial on the merits is not required, which, among others, might include questions of negligence, contributory negligence, contributory fault, causation and the extent of damages suffered from the injuries alleged.").

court seeking to collect insurance proceeds from Takesha's Key insurance policy. Nash filed a cross-claim against Key, alleging Key committed the tort of bad faith refusal to settle and breached its contractual duty to defend him. Key filed a motion to dismiss Wright and Nash's claims for lack of personal jurisdiction, which the circuit court overruled. Key sought a writ of prohibition from this Court directing the circuit court to dismiss Wright and Nash's claims for lack of personal jurisdiction. This Court issued a preliminary writ of prohibition.

Standard of Review

This Court has jurisdiction to issue original remedial writs. Mo. Const. art. V, § 4.1.

A writ of prohibition is appropriate: (1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted.

State ex rel. Hawley v. Midkiff, 543 S.W.3d 604, 606-07 (Mo. banc 2018) (quoting *State ex rel. Strauser v. Martinez*, 416 S.W.3d 798, 801 (Mo. banc 2014)). “Prohibition is the proper remedy to prevent further action of the trial court where personal jurisdiction of the defendant is lacking.” *Id.* at 607 (quoting *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d

41, 45 (Mo. banc 2017)). Prohibition will issue only when the lower court’s usurpation of jurisdiction is “clearly evident.” *Id.*

Analysis

Personal jurisdiction is a court’s power over the parties in a given case. *Norfolk S. Ry.*, 512 S.W.3d at 46. “The basis of a court’s personal jurisdiction over a corporation can be general—that is, all-purpose jurisdiction—or it can be specific—that is, conduct-linked jurisdiction.” *Id.* This is not a case in which general jurisdiction is applicable, as Key is a corporation formed under Kansas law with its principal place of business in Kansas. *See id.* (“A court normally can exercise general jurisdiction over a corporation only when the corporation’s place of incorporation or its principal place of business is in the forum state.”).²

Specific jurisdiction over a foreign corporation exists when the underlying lawsuit arises from the corporation’s contacts with Missouri. *State ex rel. PPG Indus., Inc. v. McShane*, 560 S.W.3d 888, 891 (Mo. banc 2018). To establish specific personal jurisdiction over a foreign corporation, a two-prong test must be met: (1) the defendant’s conduct must

² Nor is this the exceptional case in which general jurisdiction applies because the corporation’s operations in the forum state are “so substantial and of such a nature as to render the corporation at home in that State.” *See Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014).

fall within the long-arm statute, § 506.500³; and (2) the court must then determine if the foreign corporation has the requisite minimum contacts so as not to offend due process. *PPG Indus.*, 560 S.W.3d at 891. “A court evaluates personal jurisdiction by considering the allegations contained in the pleadings to determine whether, if taken as true, they establish facts adequate to invoke Missouri’s long-arm statute and support a finding of minimum contacts with Missouri sufficient to satisfy due process.” *State ex rel. Cedar Crest Apartments, LLC v. Grate*, 577 S.W.3d 490, 496 n.5 (Mo. banc 2019).

Missouri’s Long-Arm Statute, § 506.500

Section 506.500, provides in pertinent part:

Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any such acts:

.....

³ All statutory references are to RSMo 2016 unless otherwise specified.

(3) The commission of a tortious act within this state[.]

Nash's cross-claim alleges the tort of bad faith refusal to settle against Key. In Missouri, bad faith refusal to settle is a tort action. *Scottsdale Ins. Co. v. Addison Ins. Co.*, 448 S.W.3d 818, 829 (Mo. Banc 2014). “[A] bad faith refusal to settle action will lie when a liability insurer: (1) reserves the exclusive right to contest or settle any claim; (2) prohibits the insured from voluntarily assuming any liability or settling any claims without consent; and (3) is guilty of fraud or bad faith in refusing to settle a claim within the limits of the policy.” *Id.* at 827.

Taking Nash's allegations in his cross-claim as true, there are facts established that invoke Missouri's long-arm statute and make a *prima facie* showing as to the validity of his bad faith refusal to settle claim. Wright's petition, and subsequently Nash's cross-claim, allege jurisdiction is proper in Missouri under § 506.500 because the action arises out of a contract to insure a person, property, or risk in Missouri.⁴ Further, Nash alleges he is a resident of Jackson County, Missouri, and that the Jackson County circuit court entered judgment confirming an arbitration award of \$4.5 million in favor of Wright against him.

Nash also alleged that the policy Key issued to Takesha grants Key the exclusive right to contest or

⁴ In Nash's cross-claim for bad faith refusal to settle and breach of Key's duty to defend, he incorporated by reference the entirety of Wright's petition to recover insurance proceeds.

settle any claim, that the policy prohibits any insured from voluntarily assuming any liability or settling any claims without Key's consent, and that Key has engaged in fraud or bad faith.⁵ For jurisdictional purposes, Nash has satisfactorily pleaded that Key committed the tort of bad faith refusal to settle in Missouri.⁶ Because Key is alleged to have committed a tort in Missouri, its conduct falls within the purview of Missouri's long-arm statute. The first prong of the test is satisfied.

⁵ For example, Nash makes the following allegations:

(1) Key decided to deny coverage and an unconditional defense to Nash; (2) Key took no steps to resolve Wright's claims within its policy limit despite having a reasonable opportunity to do so; (3) Key failed to investigate Wright's claims and his injuries; (4) Key knew that Wright's claims were so significant that any judgment would likely exceed the insurance policy's limits; (5) Key acted to protect its financial interests at the expense of Nash's financial interests; and (6) Key failed to notify Nash of Wright's settlement offers.

⁶ Additionally, in the choice of law context, the Eighth Circuit has recognized the "injury" in a bad faith refusal to settle claim is the economic harm suffered by the insured as a result of the excess verdict and that the place of that injury is where the economic impact of that excess judgment is felt. *Am. Guarantee & Liab. Ins. Co. v. U.S. Fid. & Guar. Co.*, 668 F.3d 991, 997 (8th Cir. 2012). Jackson County, Missouri, is both where the excess verdict was entered and where Nash resides. *See also W. Am. Ins. Co. v. RLI Ins. Co.*, 698 F.3d 1069, 1074 (8th Cir. 2012) (holding, in a bad faith refusal to settle case, the place of economic impact was Kansas, where the insured resided).

Key's Minimum Contacts with Missouri

The Due Process Clause requires that a foreign corporation have minimum contacts with the forum state for the forum court to exercise personal jurisdiction over the defendant corporation. *Peoples Bank v. Frazee*, 318 S.W.3d 121, 128 (Mo. banc 2010). “Section 506.500 is construed to extend the jurisdiction of the courts of this state over nonresident defendants to that extent permissible under the Due Process clause.” *Andra v. Left Gate Prop. Holding, Inc.*, 453 S.W.3d 216, 225 (Mo. banc 2015) (internal quotations omitted). In Missouri, “[a] single tortious act is sufficient to support personal jurisdiction consistent with due process standards.” *State ex rel. William Ranni Assocs., Inc. v. Hartenbach*, 742 S.W.2d 134, 139 (Mo. banc 1987). Further, “Missouri courts may still assert personal jurisdiction over a non-domiciliary defendant corporation without violating due process if that entity has at least one contact with this state **and** the cause of action being pursued arises out of that contact.” *Cedar Crest Apartments*, 577 S.W.3d at 494.

Key has the requisite minimum contacts with Missouri. Key’s alleged tortious behavior of bad faith refusal to settle is a contact contemplated by Missouri’s long-arm statute. This alleged tortious contact, by itself, is sufficient to satisfy due process because Nash’s cross-claim arises out of this contact with Missouri. Additionally, Missouri’s longarm statute reaches as far as the Due Process Clause lets it reach without violating the constitution. Although

Key's alleged tort may be its only contact with this state, it is within the bounds of due process to allow Missouri courts to exercise personal jurisdiction over it.

Conclusion

The issuance of a writ of prohibition in this case would be inappropriate. There has been no showing that the circuit court's usurpation of jurisdiction was "clearly evident." Nash adequately pleaded facts in his cross-claim that establish personal jurisdiction. This Court's preliminary writ of prohibition is quashed.

s/ Zel M. Fischer

Zel M. Fischer, Judge

Draper, C.J., Powell and Stith, JJ., concur;
Wilson, J., dissents in separate opinion filed;
Russell and Breckenridge, JJ., concur in opinion of
Wilson, J.

SUPREME COURT OF MISSOURI
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STATE EX REL. KEY)
INSURANCE COMPANY,)
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 Relator,)
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 v.) No. SC97623
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 THE HONORABLE)
 MARCO A. ROLDAN,)
)
 Respondent.)

DISSENTING OPINION

As set forth below, Phillip Nash failed to make a *prima facie* showing that personal jurisdiction over Key Insurance is authorized by Missouri's long-arm statute, section 506.500.¹ But, if the long-arm statute is stretched so far as to countenance Nash's bare bones pleading and wholesale refusal to offer any evidence to rebut the evidence offered by Key Insurance in this case, then any exercise of personal jurisdiction based on such a showing must surely violate due process. Key Insurance has no contacts with this state, let alone sufficient minimum contacts so as not to offend "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v.*

¹ All statutory references are to RSMo 2016 unless otherwise noted.

Washington, 326 U.S. 310, 316 (1945). Accordingly, I would make this Court’s preliminary writ of prohibition permanent.

Missouri courts use a two-prong test to evaluate specific personal jurisdiction over a nonresident defendant. *Andra v. Left Gate Prop. Holding, Inc.*, 453 S.W.3d 216, 225 (Mo. banc 2015). First, the out-of-state defendant’s conduct “must fall within Missouri’s long-arm statute, section 506.500.” *Id.* If this prong is met, the court must then determine whether the defendant has sufficient minimum contacts with Missouri to satisfy due process. *Id.* “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.” *Walden v. Fiore*, 571 U.S. 277, 283-84 (2014) (quotation omitted). Specific jurisdiction exists “where the contacts proximately result from actions by the defendant himself that create a ‘substantial connection’ with the forum State.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (emphasis omitted).

Missouri’s long-arm statute provides:

Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his

personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:

- (1) The transaction of any business within this state;
- (2) The making of any contract within this state;
- (3) The commission of a tortious act within this state;
- (4) The ownership, use, or possession of any real estate situated in this state;
- (5) The contracting to insure any person, property or risk located within this state at the time of contracting . . .

§ 506.500.1. The circuit court found Key Insurance's actions satisfied the requirements of subsections (1), (3), and (5).

No colorable argument has been made – and the principal opinion does not even suggest – that Nash's claims arise out of Key Insurance's transacting business in Missouri, making a contract here, or contracting elsewhere to insure a risk located in Missouri at the time of contracting. Accordingly, the only long-arm provision possibly at play in this case is that Nash's claims arise out of Key Insurance committing a tortious act within this state.

The principal opinion holds: “For jurisdictional purposes, Nash has satisfactorily pled that Key committed the tort of bad faith refusal to

settle in Missouri.” *Slip Op.* at 6 (footnote omitted). To be clear, however, the gravamen of all of Nash’s claims is that Key Insurance was contractually obligated to defend him and indemnify his liability to the other driver and that Key Insurance breached that contractual obligation. Having determined – correctly or incorrectly – that it owed no duty to defend or indemnify Nash, Key Insurance took no further steps in his case, including no attempt to settle the other driver’s claims against Nash. If those facts are sufficient, without more – and nothing more was pled or proved by Nash in this case² – then *every* duty to defend case necessarily must also be a “tortious refusal to settle” case. And, under the logic set forth in the principal opinion, 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. *Slip Op.* at 6 n.6.

² Nash did not contend – and certainly offered no proof – in the circuit court that Key Insurance committed a tortious act within this state. Instead, he asserted that Key Insurance committed an act that produced actionable consequence in Missouri. He argued: “Wright’s and Nash’s claims arise directly from Key Insurance’s denial of coverage. Regardless of where Key operated when it denied coverage, it was foreseeable to Key that its denial of coverage would result in a Missouri court entering a judgment against Nash who is a Missouri resident. The Missouri judgment meets any definition of ‘injurious actionable consequences.’” Even if Nash was correct about extraterritorial acts producing injurious actionable consequences in Missouri, the act of denying coverage on which Nash solely relies was, at worst, a breach of contract. It was not a tort.

Even if such a sweeping assertion of jurisdiction is authorized by section 506.500 – and it is not³ – Key Insurance did not have sufficient minimum contacts with Missouri to satisfy due process. The due process analysis in the principal opinion is so perfunctory that it serves only to highlight the principal opinion’s unstated premise, i.e., that every set of facts that satisfies the long-arm statute necessarily satisfies due process or, said another way, that all due process analyses are subsumed within Missouri long-arm statute

³ “A party relying on a defendant’s commission of a tort within this state to invoke long arm jurisdiction must make a *prima facie* showing of the validity of his claim.” *State ex rel. William Ranni Assocs., Inc. v. Hartenbach*, 742 S.W.2d 134, 139 (Mo. banc 1987). This requires more than an evaluation of the sufficiency of the pleadings. *Id.* Conspicuously missing from the principal opinion is any analysis of Key Insurance’s uncontested evidence that the named insured materially misrepresented the ownership (and the principal driver) of the vehicle at issue in this case. Under Kansas law, which governs this insurance contract, such a material misrepresentation negates any contractual obligation Key Insurance otherwise may have had with respect to this accident. *See* K.S.A. 40-2,118(f). Moreover, this Court in *William Ranni Associates* noted that – when determining whether an action sounds in tort or contract for purposes of the long-arm statute – “it is necessary to ascertain the source of the duty claimed to be violated.” *William Ranni Associates*, 742 S.W.2d at 140. Here, there must be a contractual duty to defend and indemnify before the duty of reasonableness arises with respect to negotiation and settlement of liability within the policy limits. Nash’s singular reliance on Key Insurance’s denial of coverage fails to make a *prima facie* showing that such an underlying contractual duty existed before there could be a tort claim for refusing to settle.

analyses. This is incorrect, and nowhere is it more incorrect than in dealing with the provision of the long-arm statute relying on a nonresident defendant committing a tortious act in Missouri.

For purposes of the analysis under the long-arm statute, the question is whether the nonresident defendant committed acts in Missouri that constitute a tort, or committed tortious acts outside Missouri with actionable consequences in this state. For purposes of a due process analysis, however, the only questions are whether the defendant's contacts with Missouri are created by the defendant (rather than third parties) and whether those contacts represent such a substantial connection with this state that the exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice.'" *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011) (quoting *Int'l Shoe*, 326 U.S. at 316); *accord Walden*, 571 U.S. at 283; *Burger King*, 471 U.S. at 476. The answers to these questions may be the same in many (or even most) cases, but the questions are very different and need to be analyzed separately.

Had the principal opinion undertaken a separate, thorough due process analysis, it would have determined – notwithstanding the erroneous conclusion that Nash had made a *prima facie* showing that Key Insurance had committed a tort in Missouri (as well as the necessary predicate showing that Key Insurance had a contractual duty to defend and indemnify him) – Nash failed to show that Key Insurance had any contacts with Missouri, let alone

that there was the “substantial relationship” between Key Insurance, the state of Missouri, and Nash’s claim necessary to satisfy due process and traditional notions of fair play and substantial justice.

In evaluating Key Insurance’s Missouri contacts, it is important to note at the outset that only the actions of Key Insurance can be considered; nothing done by Nash (or the other driver, or the named insured) can subject Key Insurance to the jurisdiction of Missouri courts. For due process purposes, the only relevant contacts “must proximately result from actions by the defendant himself that create a ***substantial connection*** with the forum State.” *Andra*, 453 S.W.3d at 226 (emphasis added) (quotation omitted). *See also Walden*, 571 U.S. at 284 (recognizing the United States Supreme Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State”).

Relying on outdated authorities⁴ from other jurisdictions, the circuit court found that the

⁴ Authorities from 2010 and earlier upholding expansive assertions of personal jurisdiction, particularly those relying on “hoary notions” of foreseeability and purposeful availment, *see State ex rel. Cedar Crest Apartments, LLC v. Grate*, 577 S.W.3d 490, 495 n.2 (Mo. banc 2019), need at least to be reexamined in light of the United States Supreme Court decisions in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1781 (2017); *Daimler AG v. Bauman*, 571 U.S. 117, 126-28 (2014); *Walden*, 571 U.S at 284;

following contacts by Key Insurance were sufficient to satisfy due process: (1) Key Insurance's policy requires it to defend claims brought anywhere in the United States; (2) Key Insurance had notice of the other driver's intent to sue Nash in Missouri; (3) the other driver's lawsuit against Nash alleges negligent acts occurring in Missouri; (4) the lawsuit triggered Key Insurance's duty to defend Nash in Missouri and its duty to attempt to settle the claim; (5) the arbitration occurred in Missouri; and (6) a Missouri court confirmed the arbitration. These are not sufficient.

Purported contacts (2), (3), (5), and (6) have no relevance to this inquiry because they concern the actions of third parties, not actions by Key Insurance in or directed toward Missouri. Contacts (1) and (4), which are substantially the same, do not refer to any act performed by Key Insurance in this state or targeted at this state. Instead, they are 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. Key Insurance issuing of a nationwide policy does not create the sort of "substantial connection" with

and *Goodyear*, 564 U.S. at 918-19. By the same token, because this Court repeatedly has observed that section 506.500 extends personal jurisdiction to the outer limits permitted by due process, constructions of Missouri's long-arm statute prior to the foregoing decisions also may need to be reexamined. *See State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 46 (Mo. banc 2017).

Missouri (let alone all 50 states) required by due process.

Running throughout Nash's arguments for jurisdiction is his claim that it was likely – and Key Insurance reasonably should have foreseen – that its insureds would be involved in accidents outside of Kansas and, therefore, Key Insurance could expect to be sued wherever those accidents occurred. “Yet ‘foreseeability’ alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980).

Instead, there must be a substantial connection between Missouri and the nonresident defendant (created by the actions of the nonresident defendant and not third parties), and such a substantial connection is missing in this case. At the end of the day, Nash claims that Key Insurance breached its contractual duty to defend and indemnify him and that, if it had not done so, Key Insurance would have settled the claims against him within the policy limits. Nothing more. Missouri's long-arm statute does not extend to such extraterritorial acts by a nonresident defendant and, even if it did, due process would not countenance such an overextension of Missouri courts' power.

s/ Paul C. Wilson

Paul C. Wilson, Judge

APPENDIX B

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI)
EX REL., KEY INSURANCE)
COMPANY,)
)
Relator,)
v.) WD82333
)
THE HONORABLE)
MARCO A. ROLDAN,)
Circuit Judge,)
16th Judicial Circuit,)
Jackson County, Missouri,)
)
Respondent.)

ORDER

Relators' Petition for Writ of Prohibition with Suggestions in Support filed on November 30, 2018, is taken up and considered, and the court being fully advised in the premises hereby denies the petition.

Dated at Kansas City, Missouri this 6th day of December 2018.

/s/ Alok Ahuja
Alok Ahuja
Presiding Judge, Writ Division

Thomas N. Chapman, Judge, concurs.

APPENDIX C

IN THE CIRCUIT COURT OF
JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

JOSIAH WRIGHT,)
)
Plaintiff,)
)
v.) Case No. 1816-CV12271
) Division 16
PHILLIP NASH and)
KEY INSURANCE)
COMPANY,)
)
Defendants.)

ORDER

On this date, the court takes up and considers *Defendant Key Insurance Company's Motion to Dismiss Josiah Wright's Petition and Defendant Phillip Nash's Cross-Claim* for lack of personal jurisdiction. Having reviewed the motion, Wright's and Nash's response, and the reply, the court finds as follows:

Background

Key issued an insurance policy to Takesha Nash who resided in Kansas City, Kansas. Key's policy covered a 2002 Kia Optima. Plaintiff's Petition alleges that Takesha's father, Nash,

borrowed her vehicle. Shortly after borrowing it, Nash was involved in a motor vehicle collision in Jackson County, Missouri. Wright notified Key of his claim against Nash, but Key denied coverage for the claim.

In April 2017, Wright filed suit against Nash. After the lawsuit was filed, Wright and Nash entered into a section 537.065 agreement in which they agreed to arbitrate their claims. Wright provided notice of the agreement to Key. On February 15, 2018, the arbitrator conducted a full evidentiary hearing in which he found in favor of Wright. The Circuit Court of Jackson County, Missouri entered judgment confirming the arbitration award. Key now challenges this court's exercise of personal jurisdiction.

Legal Analysis

Missouri courts employ a two-part test to evaluate specific personal jurisdiction over a nonresident defendant. First, Key's conduct must fall within Missouri's long-arm statute.¹ Second, Key must have sufficient minimum contacts with Missouri to satisfy due process.²

The Long-Arm Statute

Missouri's long-arm statute states that:

¹ *Andra v. Left Gate Prop. Holding, Inc.*, 453 S.W.3d 216, 225 (Mo. banc 2015).

² *Id.*

1. Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:
 - (1) The transaction of any business within this state;
 - (2) The making of any contract within this state;
 - (3) The commission of a tortious act within this state;
 - (4) The ownership, use, or possession of any real estate situated in this state;
 - (5) The contracting to insure any person, property or risk located within this state at the time of contracting[.]³

The court need only find that Key's conduct falls within one subsection to justify this court's exercise of personal jurisdiction over Key. The court concludes that Key's conduct falls within subsection 1 (transaction of any business), subsection 3 (tortious act) or subsection 5 (contracting to insure any person, property or risk located within the state at the time of contracting).

³ RSMo § 506.500 (West).

1. The court concludes that Key transacted business in Missouri.

Under Missouri law, the court broadly construes the “transaction of business” provision so that even a single transaction can confer jurisdiction if that transaction gives rise to the lawsuit.⁴ In fact, a corporation may transact business under the long-arm statute even though the corporation would not otherwise qualify to do business as a foreign corporation.⁵ Both the Missouri Supreme Court and the Court of Appeals have held that failure to perform a contractual obligation in Missouri can constitute the transaction of business for the purposes of the long-arm statute.⁶

Plaintiff's allegation are that Key had notice of Wright's claim against Nash for a collision occurring in Missouri. Key's notice of those claims would have triggered its duty under the insurance policy either to resolve the claim by paying a settlement amount to Wright or to enter Missouri to defend Nash against the claim. Key's obligation to defend Nash would have required it to hire Missouri

⁴ *Sloan-Roberts v. Morse Chevrolet, Inc.*, 44 S.W.3d 402, 407-08 (Mo. App. W.D. 2001), as modified on denial of reh'g (May 29, 2001).

⁵ *State ex rel. Metal Serv. Ctr. of Georgia, Inc. v. Gaertner*, 677 S.W.2d 325, 327 (Mo. 1984).

⁶ *State ex rel. Metal Service Center of Georgia, Inc. v. Gaertner*, 677 S.W.2d 325, 327 (Mo. banc 1984); *Wilson Tool & Die, Inc. v. TBDN-Tennessee Co.*, 237 S.W.3d 611, 615 (Mo. App. E.D. 2007).

lawyers to defend Nash in court and would have required Key to investigate the collision and provided a defense.

Key made a decision to deny coverage to Nash, which meant that Key refused to perform any of the alleged contractual obligations. Wright has asserted a claim under section 379.200 to collect Key's insurance proceeds, and Nash has filed claims for Key's failure to defend him and for failing to settle Wright's claims. Wright's and Nash's claims against Key arise out Key's unilateral decision to deny coverage to Nash. These allegations establish that Key transacted business in this state by making a decision to deny coverage instead of providing a defense.

2. The court concludes that Key committed a tort in Missouri.

Missouri courts interpret the "commission of a tortious act" provision broadly.⁷ A single tortious act can support the exercise of personal jurisdiction consistent with due process standards.⁸ Commission of a tortious act within this state includes extraterritorial acts of negligence that produce actionable consequences in Missouri.⁹ The defendant need not intend for his or her acts to

⁷ *State ex rel. William Ranni Associates, Inc. v. Hartenbach*, 742 S.W.2d 134, 139 (Mo. banc 1987).

⁸ *Id.*

⁹ *Id.*

produce consequences in Missouri.¹⁰ Rather, the defendant need only reasonably foresee that his or her acts or omissions might have injurious consequences in the forum state.¹¹ The test, then, is not whether the defendant committed the injurious act in Missouri but whether the defendant committed an act outside the forum and did or should reasonably have foreseen that the action would likely result in injury to someone in Missouri.

Wright's and Nash's claims arise directly from Key's denial of coverage. Regardless of where Key operated when it denied coverage, it was foreseeable to Key that its denial of coverage would result in a Missouri court entering a judgment against Nash who is a Missouri resident. The Missouri judgment meets any definition of "injurious actionable consequence." The court concludes that Key committed a tort in Missouri and Wright's and Nash's claim arise from the commission of that tort.

3. The court concludes that Key contracted to insure a risk in Missouri.

Subsection (5) of the long-arm statute states that this court has jurisdiction over a defendant who contracts to insure any person, property or risk located within this state at the time of contracting. Wright's judgment concludes that Nash was

¹⁰ *Noble v. Shawnee Gun Shop, Inc.*, 316 S.W.2d 364, 372-73 (Mo. App. W.D. 2010).

¹¹ *Id.* at 373.

negligent in the operation of a motor vehicle in Jackson County, Missouri. That negligence is precisely the kind of “risk” that Key insured against.

Furthermore, Key’s insurance policy insures against the risk of litigation. Key’s insurance policy confirms that Key’s coverage obligations extend to and apply in any jurisdiction (i.e., any State or Federal forum) in which there is a proceeding seeking to impose liability on the insured for professional negligence of other tortious conduct. Hence, the “risk” insured against is not merely the risk that the insured will engage in negligence but, also, that the insured will be called into the forum to account for his or her negligence.

Key sold a policy to a resident on the border of Missouri and Kansas. Key should have foreseen that an insured could drive into Missouri and cause a collision in this state. Key should have also foreseen that its insured could be sued in this state. This court concludes that it has jurisdiction under the long arm statute because Key agreed to insure the risk that its insured would be involved in a collision and litigation in Missouri.

The court concludes that Wright’s and Nash’s allegations satisfy Section 506.500.

Minimum Contacts

Key argues that Wright and Nash cannot meet the second part of Missouri’s personal jurisdiction test because they cannot establish that Key has sufficient minimum contacts with Missouri

to satisfy due process. Key concedes that the underlying collision occurred here¹² and Key acknowledges that Wright filed his lawsuit against Nash in Missouri. Key argues that the court cannot base personal jurisdiction over Key on the unilateral contacts of third parties like Wright and Nash. In other words, Key argues that since it had no control over where Nash collided with Wright, the court cannot say that it availed itself to personal jurisdiction in Missouri.

Wright and Nash do not seek personal jurisdiction merely because the collision occurred in Jackson County, Missouri. Rather, Wright and Nash base their assertion of personal jurisdiction on Key's response to the underlying collision. It is Key's response to Wright's and Nash's actions that justify this court's exercise of personal jurisdiction over Key.

Wright and Nash's position is consistent with the general law that the mere fact that someone else initiated the first contact does not mean that the entire course of conduct is considered unilateral for the purposes of jurisdiction.¹³ Wright's and Nash's conduct may have started the chain of events leading to this current lawsuit, but Key's unilateral response to Wright's and Nash's conduct is what gives this court personal jurisdiction over Key.

¹² *Id.*

¹³ *Bryant v. Smith Interior Design Group, Inc.*, 310 S.W.3d 227, 235 (Mo. banc 2010)

There are numerous decisions holding that a court has specific jurisdiction under a state's long-arm statute and under the Due Process Clause over a foreign insurance company when the insurance company fails to defend or settle a lawsuit filed in that state.¹⁴ For example, in *Farmers*, the 9th Circuit held that the district court had personal jurisdiction over a Canadian insurance company because the underlying accident occurred in Montana. In that case, a single accident collision occurred in Montana. Both Farmers and Portage provided coverage for the accident. Farmers was a California insurer doing business in Montana, while Portage was a Canadian insurer that issued no policies in Montana and had no agents there. In that case, Farmers sued Portage as a third-party beneficiary to the promise to provide coverage in Montana and for bad faith refusal to settle. Portage argued that it committed no act that would bring it within the scope of the Montana long-arm statute.¹⁵

The Ninth Circuit disagreed, however, and found that the exercise of personal jurisdiction over Portage was consistent with due process because:

¹⁴ See e.g. *Ferrell v. W. Bend Mut. Ins. Co.*, 393 F.3d 786, 789-90 (8th Cir. 2005); *Payne v. Motorists' Mut. Ins. Companies*, 4 F.3d 452, 457 (6th Cir. 1993); *Farmers Insurance Exchange v. Portage La Prairie Mutual Insurance Co.*, 907 F.2d 911 (9th Cir. 1990); *Rossmann v. State Farm Mut. Auto. Ins. Co.*, 832 F.2d 282, 287 (4th Cir. 1987); see also *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 122 Nev. 509, 513, 134 P.3d 710, 713 (2006).

¹⁵ *Id.*

1) Portage performed some act by which it purposefully availed itself of the privilege of conducting activities in the forum; 2) the claim arose out of Portage's forum-related activities; and 3) the exercise of jurisdiction was reasonable. Specifically, the court held that Portage had purposefully availed itself by issuing a policy that extended coverage into Montana.¹⁶ The court explained that an automobile liability insurance company like Portage could anticipate that its insured would travel into a different state and become involved in litigation there.¹⁷

The court also explained that the claim arose out of Portage's contacts with Montana. An action arises out of contacts with the forum if, "but for" those contacts, the cause of action would not have arisen.¹⁸ The 9th Circuit court explained that but for Portage's breach of its promise to defend its insured in Montana, the current lawsuit would not have arisen.¹⁹ The court also held that it was reasonable for Portage to be sued in Montana because Portage had agreed to defend its insured in any state in the country and Montana had a significant interest in regulating bad faith by insurance companies in its state.²⁰ The 9th Circuit held that personal

¹⁶ *Id.*

¹⁷ *Id.* at 914.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

jurisdiction over Portage satisfied the Due Process Clause because the insurance company had purposefully contracted to defend its insured in any state and could reasonably be expected to be sued in that state for failing to do so.²¹

The 3rd Circuit, the 8th Circuit, and 4th Circuit have reached similar holdings.²² The states have also followed this rule. In discussing these federal court cases, the Maryland Court of Appeal has called this the majority rule and compiled a list of cases from Illinois, Louisiana, New York, and South Carolina following *Rossman*.²³ Florida has also followed this rule.²⁴

Based on these cases, and employing the Missouri and U.S. Supreme Court analysis applicable to determine whether or not specific personal jurisdiction exists over a non-resident corporate defendant, this court concludes that it has personal jurisdiction over Key because: 1) Key's

²¹ *Id.*

²² See e.g. *Ferrell v. W. Bend Mut. Ins. Co.*, 393 F.3d 786, 789-90 (8th Cir. 2005); *Payne v. Motorists' Mut. Ins. Companies*, 4 F.3d 452, 457 (6th Cir. 1993); *Farmers Insurance Exchange v. Portage La Prairie Mutual Insurance Co.*, 907 F.2d 911 (9th Cir. 1990); *Rossman v. State Farm Mut. Auto. Ins. Co.*, 832 F.2d 282, 287 (4th Cir. 1987).

²³ *Bahn v. Chicago Motor Club Ins. Co.*, 98 Md. App. 559, 574, 634 A.2d 63, 70 (1993).

²⁴ *Erie Ins. Exch. v. Larose*, 202 So. 3d 148, 156 (Fla. Dist. Ct. App. 2016); *Virginia Farm Bureau Mutual Insurance Co. v. Dunford*, 877 So.2d 22 (Fla. 4th DCA 2004).

policy requires it to defend claims brought anywhere in the U.S.; 2) Key had notice of Wright's intent to sue Nash in Missouri; 3) that lawsuit alleged various acts of negligence occurring in Missouri; 4) Wright's lawsuit triggered Key's duty to defend Nash in Jackson County Circuit Court and Key's duty to engage in good faith in an attempt to settle the claim; 5) Wright and Nash's arbitration occurred in Missouri; and 6) a Missouri court confirmed the arbitration.

Key's conscious decision to deny defense and indemnity (coverage) to Nash and its failure to perform its obligations to defend Nash in Missouri court has resulted in Wright having a Missouri judgment against Nash for negligence. Wright's garnishment and Nash's cross-claims arise out of Key's decision to deny a defense to Nash in the underlying Missouri action and Key's failure to settle the underlying claim.²⁵

Key focuses on the facts that: 1) Key's policy is a Kansas policy; and 2) Key is a Kansas corporation. Key does not cite any law suggesting these two facts prohibit personal jurisdiction in Missouri. And, in *Ferrell*, *Payne*, and *Farmers*, the courts expressly rejected the insurance company's argument that a state does not have personal jurisdiction over an insurance company merely because the policy was not issued in that state. Based on *Ferrell*, *Payne*,

²⁵ *Ferrell*, 393 F.3d at 789-90; *Payne*, 4 F.3d at 457; *Farmers Insurance Exchange*, 907 F.2d at 913-14.

and *Farmers*, the Court concludes that this court has jurisdiction over Key.

Nor does this court's exercise of jurisdiction offend the traditional notions of due process. In *Ferrell*, *Payne*, and *Farmers*, the courts explained that each insurance company should have foreseen being called into a foreign court to defend itself because each company had written its policy to provide coverage throughout the entire United States.²⁶ Those courts explained that each insurance company presumably offers a broad "coverage territory" to make its policies more marketable and profitable.²⁷ Having written its policies to cover a broad coverage territory, litigation requiring the presence of the insurer is not only foreseeable, but it was purposefully contracted for by the insurance company.²⁸ Like the insurance companies in *Ferrell*, *Payne*, and *Farmers*, Key issued a policy to its insured in which it agreed to defend claims in any state. Thus, not only was it foreseeable that Key might be sued in Missouri in connection with a dispute relating to its policy, but the "expectation of being hauled into court in a foreign state is an express feature of its policy."²⁹

²⁶ *Ferrell*, 393 F.3d at 789-90; *Payne*, 4 F.3d at 457; *Farmers Insurance Exchange*, 907 F.2d at 913-14.

²⁷ *Ferrell*, 393 F.3d at 789-90.

²⁸ *Farmers Insurance Exchange*, 907 F.2d at 914.

²⁹ *Ferrell*, 393 F.3d at 789-90 (citation omitted).

Missouri also has a legitimate interest in providing a forum for this lawsuit. Having denied a defense to Nash and having refused to even attempt to settle the claim against him, Key knew or should have known that Wright could foreseeably obtain a judgment against Nash. Key should reasonably have anticipated that by denying a defense to an individual in a Missouri action, that another Missouri court would someday require Key to appear to answer for that decision.³⁰ Missouri like all states has a significant interest in regulating bad faith by an insurance company in this state.³¹ This interest extends to determining whether an insurance company should have offered a defense in a lawsuit filed in Missouri. Furthermore, Missouri undoubtedly has an interest in determining whether a Missouri judgment is enforceable.

Key does not cite or challenge these cases. Key cites only two cases discussing personal jurisdiction over insurance companies, *King v. American Family* and *Lexington Insurance Company v. Zurich*. In neither case, however, did the insurance company have a duty to defend the insured in forum state and in neither case was the insurance company being sued for its failure to defend the insured or for its bad faith failure to settle.

³⁰ *Id; Payne*, 4 F.3d at 457; *Farmers Insurance Exchange*, 907 F.2d at 913-14.

³¹ *Farmers Insurance Exchange*, 907 F.2d at 915.

For these reasons, the court finds that it has personal jurisdiction over Key. Defendant Key Insurance Company's *Motion to Dismiss Josiah Wright's Petition and Defendant Phillip Nash's Cross-Claim* is DENIED.

IT IS SO ORDERED.

APPENDIX D

SUPREME COURT OF MISSOURI
en banc

STATE EX REL. KEY)
INSURANCE COMPANY,)
)
 Relator,)
)
 v.) No. SC97623
)
 THE HONORABLE)
 MARCO A. ROLDAN,)
)
 Respondent.)

ORDER

Relator's motion for rehearing overruled.

December 24, 2019