No. 23-____

IN THE

Supreme Court of the United States

RICK C. SASSO, M.D.,

Petitioner,

v.

MARC. S. HARDING,

Respondent.

On Petition for Writ of Certiorari to the Iowa Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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April 16, 2024

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QUESTION PRESENTED

Whether Iowa courts have specific personal jurisdiction, consistent with due process and fundamental fairness, over an Indiana doctor who got a call in Indiana from an attorney requesting an opinion on medical malpractice, received an advance payment and medical records that he reviewed before concluding there was no malpractice, and then is sued in Iowa for a refund of the payment?

PARTIES TO THE PROCEEDING

Petitioner, Rick C. Sasso, M.D., a citizen of Indiana, is the defendant in the Iowa trial court and appellant before the Iowa Court of Appeals and Iowa Supreme Court. He was sued in Iowa as "Dr. Rick Sasso d/b/a Indiana Spine Group." Indiana Spine Group is a professional corporation organized under the laws of the State of Indiana with its principal place of business in Carmel, Indiana. Dr. Sasso is the president of Indiana Spine Group. Because Indiana Spine Group is alleged simply to be the business name for Dr. Rick Sasso, it is not believed to be a party to the Iowa proceeding. Marc S. Harding is a citizen of the State of Iowa and is the plaintiff in the trial court and appellee in the Iowa appellate courts.

CORPORATE DISCLOSURE STATEMENT

There are no corporations named as parties in the litigation. Indiana Spine Group P.C. referenced in the caption below, is a professional Indiana corporation owned wholly by Indiana physicians practicing there. No publicly held company owns any stock of Indiana Spine Group P.C.

STATEMENT OF RELATED PROCEEDINGS

Sasso v. Harding, Cause No. 29D03-2312-MI-012097, Hamilton County, Indiana, Superior Court.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Rick C. Sasso, M.D. ("Sasso") respectfully files this petition for a writ of certiorari to the Iowa Supreme Court from an opinion in favor of Marc S. Harding ("Harding") that reversed a unanimous opinion of the Iowa Court of Appeals.

OPINIONS BELOW

The opinion of the Iowa Supreme Court is reported at 2 N.W.3d 260 and reproduced at App. 3a-18a. The order denying rehearing is unreported but reproduced at App. 1a-2a. The opinion of the Iowa Court of Appeals is reported at 990 N.W.2d 823 and reproduced at App. 19a-32a. The trial court order is unreported but reproduced at App. 33a-40a.

JURISDICTION

The Iowa Supreme Court issued its decision on December 15, 2023. Dr. Sasso timely petitioned for rehearing on December 28, 2023. The Iowa Supreme Court denied the petition for rehearing on January 18, 2024. App. 1a-2a. The deadline to file this petition is April 17, 2024, which has not passed. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the 14th Amendment of the United States Constitution, specifically states, "Nor shall any State deprive any person of life, liberty, or property without due process of law."

STATEMENT OF CASE

Sasso is an orthopedic surgeon and President of Indiana Spine Group, P.C. App. 9a. Indiana Spine Group is an Indiana corporation with its principal

place of business in Carmel, Indiana. App. 9a. Sasso founded Indiana Spine Group in Indianapolis, Indiana, in 2002. App. 9a. All of Indiana Spine Group's offices and business are in Indiana. App. 9a. Neither Sasso nor the Indiana Spine Group has advertised or solicited business in the State of Iowa. App. 9a.

In February 2021, Harding called Sasso and requested him to review medical records relating to an issue of esophageal injury from cervical spine surgery. App. 9a. Despite being an attorney, Harding did not present any written agreement to Sasso or Indiana Spine Group relating to the consultation Harding requested Sasso to undertake. App. 9a.

Sasso agreed to review medical records and to give his opinion of whether the spine surgery had been undertaken in compliance with the standard of care for such surgery. App. 9a. Sasso provided an affidavit to the trial court that he did not commit to provide any particular result or opinion and did not commit to providing testimony in any case that Harding might file in the future. App. 9a.

Harding sent Sasso medical records for review and a $10,000 advance payment for his services. App. 8a. In his first amended complaint, Harding alleges that Sasso agreed to work for $1,000 per hour and to return any unearned portion of the $10,000 advance. App 8a. Sasso stated in his affidavit that the $10,000 was a flat fee. App. 9a. Sasso reviewed the information as agreed. App. 8a. Over a week after receiving the records, Sasso informed Harding by telephone from Indiana that Sasso did not believe there was medical malpractice. App. 8a. Harding alleges in his first amended complaint that Sasso told Harding the review took approximately 12 hours. App 8a. Sasso informed Harding he had not kept any time records. App. 8a.

Sasso did not return any portion of the advance and did not provide an accounting of his time. App. 8a.

On April 20, 2021, Harding sued Sasso in Polk County, Iowa. App. 22a. In the initial complaint, Harding asked that "defendant be ordered to refund all or part of the retainer, for costs of this action and statutory interest of 10% on the contract, and for such other and further relief as may be just an appropriate." App. 22a. Sasso was surprised to be sued in Iowa. App. 9a. Sasso had performed all work for Harding at Sasso's office in Carmel, Indiana. App. 9a. After Sasso filed his motion to dismiss for lack of personal jurisdiction and supporting affidavit and brief, Harding amended his petition to add counts for conversion and fraud. App. 22a. In the first amended complaint, Harding further asserts that Sasso agreed to testify in Iowa as his trial expert – before Sasso had reviewed the medical records or provided any opinion. App. 8a, 21a.

The trial court denied Sasso's motion to dismiss for lack of personal jurisdiction. App. 33a-40a. The trial court first determined that it "must accept as true the allegations of the petition and the contents of uncontroverted affidavits." App. 34a. The trial court cited *International Shoe Co. v. State of Washington*, 326 U.S. 310, 326 (1945) and *Walden v. Fiore*, 571 U.S. 277, 283 (2014) for general principles of personal jurisdiction. App.34a-35a. The trial court then referred to the amended complaint, "Plaintiff says Defendant and Plaintiff negotiated and agreed that Defendant would serve as an expert to both evaluate a potential malpractice claim and testify as an expert in any litigation." App. 35a. Later the trial court emphasized that it must view the "averments in the instant Petition as true" that Sasso agreed to serve as an expert in an Iowa lawsuit. App. 37a. That averment

was critical to its analysis that Sasso had "sufficient minimum contacts with Iowa to support assertion of personal jurisdiction over him. . . ." App. 36a, 36a-38a (citing *Golden v. Stein*, 481 F.Supp.3d 843, 857 (S.D. Iowa 2019); *Echevarria v. Beck*, 338 F.Supp.2d 258, 261-62 (D.P.R. 2004); *Guardi v. Desai*, 151 F.Supp.2d 555, 560 (E.D. Penn. 2001)).

The Iowa Court of Appeals reversed and remanded for a ruling dismissing the action for lack of personal jurisdiction. App 20a. The court noted that Harding and Sasso disagreed on critical details of the consultation including: (a) whether the $10,000 advance payment was an advance on an hourly retention or a flat fee; (b) whether the medical chart was extensive and included imaging studies or 166 pages of paper; and (c) the time spent by Sasso in review. App. 22a. The Iowa Court of Appeals further noted the trial court had found, "Critical to the jurisdictional question, the petition also alleged that Dr. Sasso 'agreed to testify as an expert in any ensuing litigation'." App 27a. The Iowa Court of Appeals then distinguished *Golden*, *Echevarria* and *Guardi* because those cases involved pending litigation in which the expert had agreed to testify, not potential litigation never filed. App 28a-29a. The Iowa Court of Appeals found specifically that the parties' agreement involved a two-step analysis, to first evaluate potential malpractice and then, if positively evaluated, testify in litigation. App. 28a. The Iowa Court of Appeals then turned to *Walden* and the requirement that the "defendant himself" create the contacts to allow for jurisdiction, finding:

> *Walden* forecloses Harding's claim that their oral agreement was sufficient to subject Dr. Sasso to personal jurisdiction in Iowa. Dr. Sasso's sole connection with Iowa was initiated

> by Harding. Dr. Sasso's knowledge that Harding was an Iowa lawyer exploring the possibility of litigation in Iowa did not create sufficient minimum contacts.

App. 30a. The Iowa Court of Appeals concluded that the lawsuit had not resulted from Sasso's contacts with Iowa and instead arose from Harding's contacts with Sasso in Indiana. App. 32a.

Harding sought further review with the Iowa Supreme Court. App 4a. The first case cited by the Iowa Supreme Court from this Court was *Ford Motor Co*. v. *Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017 (2021), a case never cited by either party or by the trial court or Iowa Court of Appeals and a case that does not involve the analysis of minimum contacts and specific jurisdiction. App 4a. The Iowa Supreme Court found it must accept as true "the allegations of the petition and the content of any uncontroverted affidavits offered by the parties," App. 7a (citing *PSFS 3 Corp v. Seidman*, 962 N.W.2d 810, 826 (Iowa 2021) and *Mass Sch. Of L. Andover, Inc. v. Am Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998)). As did the trial court, the Iowa Supreme Court found, "Critically, [Sasso] also agreed to provide expert testimony at any trial in the medical malpractice case which would have been venued in Iowa." App. 12a.

To support the finding of jurisdiction, the Iowa Supreme Court cited *Golden*, *Echevarria* and *Guardi* but did not explain how the Iowa Court of Appeals was wrong in distinguishing those cases. The Iowa Supreme Court cited a fourth case, *McNally v. Morrison*, 951 N.E.2d 183, 185 (Ill. Ct. App. 2011), where the Illinois Court of Appeals found jurisdiction over a medical expert who reversed his testimony in a deposition taken in the pending case in which he had

agreed to testify. Because this Court in *Ford Motor Co.* stated "*Walden* has precious little to do with the case before us," the Iowa Supreme Court refused to follow *Walden*. App 18a.

REASONS FOR GRANTING THE PETITION

Walden v. Fiore, 571 U.S. 277, 284 (2014) requires that a "defendant himself" create the jurisdictional contacts with the forum State that support personal jurisdiction. Harding contacted Sasso in an unsolicited phone call to Sasso in Indiana. Harding was representing an Iowa client who had been treated by an Iowa spine surgeon nearly two years earlier. Harding solicited Sasso's opinion on potential medical malpractice and sent Sasso medical records for review in Indiana along with a check for $10,000. A week later, after reviewing records of an initial cervical spine surgery and a second cervical spine surgery the following day, Sasso informed Harding that Sasso did not believe there was medical malpractice. *All* of the Iowa contacts are Harding's contacts with Iowa, not Sasso's. The Iowa Court of Appeals unanimously agreed that *Walden* compelled a holding of no personal jurisdiction.

The Iowa Supreme Court's reversal of its Court of Appeals, citing *Ford Motor Co v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021), wrongly negates *Walden*. *Ford Motor Co.* is a personal jurisdiction opinion on product liability claims against Ford Motor Company ("Ford"), a large publicly traded corporation brought in states where the plaintiffs were injured but not where Ford sold or manufactured the cars. The analysis of specific jurisdiction in product liability cases against multinational corporations is far different than the analysis of specific jurisdiction relating to individual defendants, but *Walden* and *Ford* together now create confusion as to the requirements for

personal jurisdiction against individual defendants. This Court has long found public policy rooted in the due process clause that plaintiffs go to a defendant's jurisdiction to make claims for refunds and the like. State courts across the country will be confused, as is Iowa, as to the meaning of a "defendant himself" creating the jurisdictional contacts.

Honoring the mandates of the due process clause in analysis of personal jurisdiction is compounded by the Iowa practice, existing in other jurisdictions, that requires a trial court to accept as true a plaintiff's jurisdictional allegations. Here, Harding began his case as a simple claim for a refund of some or all of $10,000 paid in advance and then amended his complaint, after Sasso moved to dismiss, to add claims for conversion and fraud. The allegation in the amended complaint that Sasso agreed to testify in Iowa before reviewing the records and coming to an opinion of malpractice is unsupported and implausible. No trial expert would reasonably expect to testify adversely to the party hiring him, and no trial attorney reasonably would ask such an expert to testify. Nonetheless, the Iowa Supreme Court found Harding's allegation that Sasso agreed to testify in Iowa in a potential case that was never filed "critical" to the personal jurisdiction analysis. Providing due process in personal jurisdiction contests requires more than blind adherence to implausible claims made by a plaintiff amending its claim to contest a motion to dismiss. Taking this case will help better define the standard for courts considering the limits of the due process clause when assessing the existence of personal jurisdiction at the outset of a case. This assessment becomes more critical the less there is in controversy. When damages sought look to be less than the cost of defending the claim, out-of-state

defendants will be pressured continually, in violation of their liberty interests, to pay meritless claims.

I. The Iowa Supreme Court's opinion conflicts with *Walden* and circuit cases construing *Walden*.

Both parties cited *Walden* in briefing and the Iowa Court of Appeals relied on *Walden* to determine no jurisdiction over Sasso existed in Iowa. *Walden* requires that a "defendant himself" create the jurisdictional contacts with the forum State. *Walden*, 571 U.S. at 284 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)). Due process limits on a States' adjudicative authority principally protect the liberty of the non-resident defendant. *Walden*, 571 U.S. at 284 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Like the Atlanta DEA agent in *Walden*, the record is devoid of any significant activity by Sasso to create jurisdiction in Iowa. The deputized DEA agent interacted with a traveler he was informed resided in Nevada, not only at the Atlanta airport where the agent seized about $97,000 in cash, but later with the traveler's attorney who called from Nevada seeking a return of the funds to Nevada. *Walden*, 571 U.S. at 280. Here, Sasso learned in an unsolicited phone call that Harding was an Iowa attorney who had his own Iowa client who had been treated by an Iowa physician. None of this information can be "decisive in determining whether the defendant's due process rights are violated." *Walden*, 571 U.S. at 285. Harding, not Sasso, created all these Iowa contacts, including Harding's decision as to whether he would or would not file a lawsuit in Iowa.

In his brief before the Iowa Court of Appeals, Harding cited four federal cases from the Eighth Circuit analyzing *Walden*: (a) *Morningside*

Church, Inc. v. Rutledge, 9 F.4th 615 (8th Cir. 2021); (b) *Pederson v. Frost*, 951 F.3d 977 (8th Cir. 2020); (c) *Deloney v. Chase*, 755 Fed. Appx 592 (8th Cir. 2018); and (d) *Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816 (8th Cir. 2014). Citing *Walden* with approval, all four cases affirmed dismissal for lack of personal jurisdiction. *Morningside Church*, 9 F.4th at 620; *Pederson*, 951 F.3d at 979; *Deloney*, 755 Fed. Appx at 595; *Fastpath*, 760 F.3d at 820. These four federal cases all construe *Walden* correctly and conflict with the Iowa Supreme Court's reversal of the Iowa Court of Appeals.

In *Morningside Church*, televangelist Jim Bakker was investigated by different state and local governments, including the State of Arkansas, relating to his advertisements of a "Silver Solution" cure for COVID-19. *Morningside Church*, 9 F.4th at 617. Bakker sued Leslie Rutledge, the Attorney General of Arkansas, in federal court in Missouri for malicious investigation of consumer fraud. *Id.* at 618. The Arkansas Attorney General's contacts with Missouri were deemed insufficient because of *Walden*. *Id.* at 620.

In *Pederson*, the plaintiff had served as outside counsel for a California corporation, Biozone. *Pederson*, 951 F.3d at 978-979. Pederson moved to Minnesota while continuing to serve Biozone. He then sued Biozone for inducing him to continue representing Biozone by repeated promises of an in-house position or increased compensation. Pederson sued for fraud and other intentional torts, as Harding does here in the amended complaint. *Id.* at 979. *Walden* demanded that the Minnesota case be dismissed for lack of personal jurisdiction. *Pederson*, 951 F.3d at 980-981. The Eighth Circuit restated the test for specific jurisdiction to be "whether the defendant's conduct

connects him to the forum *in a meaningful way*." *Id.* (emphasis supplied) Here, Sasso simply agreed to assist an Iowa attorney with his decision to file or not file a medical malpractice action. Sasso's advice was to not file. Neither Harding nor the Iowa Supreme Court cited any case finding personal jurisdiction against an expert witness in which there was no pending case in the forum jurisdiction. *Walden* demands that unless there is a case in the forum, the conduct of the expert outside the jurisdiction does not connect the expert in a meaningful way.

In *Deloney*, Arkansas plaintiffs alleged that a Louisiana attorney, Hallack, who was holding $110,000 in escrow, negligently disbursed funds to Chase, a non-lawyer who had represented the plaintiffs in a civil rights action. The plaintiffs argued that Hallack's agreement to be an escrow agent for them knowing they resided in Arkansas created minimum contacts there. Construing *Walden*, the Eighth Circuit disagreed. *Deloney*, 755 Fed. Appx at 593. Sasso's situation is similar. Sasso worked in Indiana analyzing potential medical malpractice for an attorney who resided in Iowa. The attorney's Iowa connections do not create personal jurisdiction.

In *Fastpath*, the Iowa plaintiff software company entered into a written mutual confidentiality agreement with the defendant Arbela, which contained an Iowa choice of law provision. *Fastpath*, 760 F.3d at 819. Arbela signed the agreement at a trade show in Atlanta, Georgia, and Fastpath signed later in Iowa. When Fastpath employees were in Iowa, the parties then engaged in remote communication. *Id.* Again construing *Walden*, the Eighth Circuit would not allow Fastpath's contacts with Iowa to be used to establish personal jurisdiction over Arbela. Sasso's Iowa contacts

are far less than Arbela's. There was no written agreement. There was no Iowa choice of law clause. *Fastpath* also demonstrates that the proper application of *Walden* to the case here is to dismiss for lack of personal jurisdiction. Sasso himself did not create any Iowa connections.

II. *Ford Motor Co v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021) is inapposite but has created confusion with *Walden* as to the proper analysis of specific jurisdiction.

In its opinion, the Iowa Supreme Court discounted *Walden* in favor of *Ford Motor Co v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021), a case not cited by either party in any brief. *Ford Motor Co.* is a personal jurisdiction opinion on product liability claims against Ford Motor Company ("Ford"), a large publicly traded corporation brought in states where the plaintiffs were injured but not where Ford sold the products. Ford did not contest it does "substantial business" and "actively seeks to serve the market for automobiles" in the forum states. *Ford Motor Co.*, 141 S. Ct. at 1027. Ford agreed that it "purposefully avail[ed] itself of the privilege of conducting activities" in the forum states. *Id.* Ford argued for a causal connection test to limit specific jurisdiction to states in which it had engaged in activities to design, manufacture, and sell the vehicles at issue, which this Court rejected. *Ford Motor Co.*, 141 S. Ct. at 1029-1030.

The analysis of specific jurisdiction in product liability cases against multinational corporations should be far different than the analysis of specific jurisdiction relating to individuals in disputes over one-time transactions. Sasso is in an interstate dispute with another individual because he accepted a single payment of $10,000 and worked in his home state to earn it.

Unlike the Ford Motor Company, Sasso strongly contests that he purposefully availed himself of the benefits of the State of Iowa by agreeing to help Harding. Sasso asked for no benefits from Iowa and received none. Across the country, individuals routinely contact and engage in commerce with individuals in other states. It is important that *Walden* remain a cornerstone of the personal jurisdictional analysis of disputes arising out of the transactions by individuals in different states.

Walden and *Ford Motor Co.* together are causing confusion and conflicting analyses among the federal courts. In *Bros. & Sisters in Christ LLC v. Zazzle, Inc.*, 42 F.4th 948, 953 (8th Cir. 2022), the Eighth Circuit appropriately construed the two cases together to dismiss the defendant. But in *Yeti Coolers, LLC v. Mercatalyst*, 1:22-CV-01337-DAE, 2023 U.S. Dist. LEXIS 204761, *9 (W.D. Tex. 2023), the district court used *Ford Motor Co.* to limit the effect of *Walden* in finding personal jurisdiction, as did the Iowa Supreme Court. The confusion lies in the misunderstanding that *Ford Motor Co.* limits the use of *Walden* to situations where the defendant "had never formed any contact with the forum state." *Walden* should apply anytime the "defendant himself" has not created significant connections with the forum state. This liberty interest of the due process clause is important in all sorts of individual transactions across the United States.

III. *Ford* did not limit or erase *Walden's* holding that the defendant himself must create the connections with the forum to create personal jurisdiction.

The Iowa Supreme Court noted this Court's statement in *Ford Motor Co.* "*Walden* has precious little to do with the cases before us." *Ford Motor Co.,* 141 S. Ct. at

1031. The Iowa Supreme Court wrongly construed this statement as a rejection of *Walden* in cases like the pending case. While this Court then quoted *Walden* that the officer had never "contacted anyone in or sent anything or anyone to Nevada," that was not intended to be the new test for specific jurisdiction. The test still includes whether the defendant has purposefully availed himself of the privilege of conducting activities in the forum state. *Id.* Ford agreed it had purposefully availed itself of the jurisdictions of Minnesota and Montana. *Ford Motor Co.*, 141 S. Ct. at 1027. This position was emphasized by this Court, "But here, Ford has a veritable truckload of contacts with Montana and Minnesota as it admits." *Ford Motor Co.,* 141 S. Ct. at 1031. This Court then reiterated that *Walden* holds that "the place of a plaintiff's injury and residence cannot create a defendant's contact" with the forum state. *Ford Motor Co.,* 141 S. Ct. at 1032.

Here, Sasso's contact with Harding, after reviewing the medical chart that had been provided a week before, to state that there was no medical malpractice was a statement to not purposefully avail himself of the jurisdiction of Iowa. There was no pending case. Sasso had never agreed to testify in one. Sasso needed first to be of the opinion that medical malpractice had occurred to ever move to the next step of purposefully availing himself of conducting activities "in the forum state" by agreeing to testify as an expert. Reviewing a case for potential malpractice and agreeing to testify in a case that there is malpractice are two separate decisions, as noted by the Iowa Court of Appeals. App. 28a.

The existence of a filed case actually being litigated when an expert agrees to perform services is crucial to the jurisdictional analysis here. ***Every*** appeal of a finding of personal jurisdiction over a testifying expert

cited by the Iowa Supreme Court to support jurisdiction over Sasso as a testifying expert involved an actual filed case in the state where personal jurisdiction is found. *See Golden v. Stein*, 481 F.Supp.3d 843 (S. D. Iowa 2019)(expert agreed to serve as expert in pending federal copyright case); *McNally v. Morrison,* 951 N.E. 2d 183, 185 (Ill. Ct. App. 2011)(retained expert who provided written opinion of malpractice but reversed himself in deposition subject to jurisdiction in state where malpractice action was pending); *Echevarria v. Beck*, 338 F.Supp.2d 258 (D.P.R. 2004) (expert agreed to serve in pending medical malpractice case and to travel there for testimony); *Guardi v. Desai*, 151 F.Supp.2d 555, 560 (E.D. Pa. 2001) (medical expert informed attorney that malpractice existed and agreed to hold the mammogram films, which were lost, while the malpractice action was pending).

Unless there is an actual case pending for which the defendant expert has provided an opinion intended to be used in the pending case, the defendant has not purposefully availed himself of the benefits of the jurisdiction. Merely communicating with a resident of the forum state as part of a business relationship does not create personal jurisdiction. *See Walden*, 577 U.S. at 285 ("Our 'minimum contacts' analysis looks to the defendant's contacts with the forum state itself, not the defendant's contacts with persons who reside there"); *Fastpath*, 760 F.3d at 821 ("This means that the relationship must arise out of contacts that the defendant himself creates with the forum State."); *Deloney*, 755 Fed. Appx at 596 ("Telephone calls written communications, and even wire transfers to and from a forum state do not create sufficient contacts to comport with due process such that a defendant could 'reasonably anticipate being haled into court there.")

When after solicitation, expert advice is given to an Iowa medical malpractice attorney that the case the Iowa attorney is considering does not give rise to malpractice, there are no contacts created by the expert with the State of Iowa itself. The only contacts are with the attorney who resides there.

IV. This Court needs to correct blind adherence to implausible jurisdictional allegations.

The Iowa Supreme Court reiterated that in finding personal jurisdiction, "the district court must accept as true the allegations of the petition and that contents of any uncontroverted affidavits offered by the parties." App. 7a (citing *PSFS 3 Corp. v. Michael P. Seidman, D.D.S.*, 962 N.W.2d 810, 826 (Iowa 2021) and *Mass. Sch. Of L. at Andover, Inc. v. Am Bar. Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998)). This standard, often used by both state and federal courts, becomes unworkable with amended complaints filed after the filing of a motion to dismiss for lack of personal jurisdiction. No plaintiff should be allowed to modify initial allegations to create unreviewable allegations of personal jurisdiction. The critical fact to the Iowa Supreme Court for its finding of personal jurisdiction is that Sasso agreed to testify in Iowa. No such allegation exists in the original complaint. It is an implausible allegation. Sasso had no opinion when he was retained and had not reviewed any medical records. No Iowa lawsuit was pending or ever was filed. The allegation was made only after personal jurisdiction was challenged.

"Due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer,* 408 U.S. 471, 481 (1972). Here, relying upon a "critical" allegation in an amended pleading controverted by a prior affidavit of the defendant is fundamentally unfair to any out-of-state

defendant and a denial of due process under the Fourteenth Amendment.

V. Clear precedent is vital to smaller state court disputes between citizens of different states.

Walden must remain vital after *Ford Motor Co*. The state court systems of all the states eventually will consider personal jurisdiction in similar circumstances involving oral agreements to provide services for less than the $75,000 threshold amount required under 28 U.S.C. § 1332(a) for diversity jurisdiction. Innumerable such agreements are reached telephonically each day. Persons soliciting help from persons in other states must know that their dissatisfaction with services provided generally must be redressed where they solicited the help. Whenever a contractual dispute arises seeking a refund of advance payment, individuals need to know that in the absence of jurisdictional agreement, they must go to the place where payment is made.

Any individual is free to provide written agreements that select the forum for disputes relating to the agreement and to agree to jurisdiction in advance. When there is no advance agreement as to jurisdiction, *Walden*, unanimously decided by this Court in 2014, must remain the personal jurisdictional beacon it was before *Ford Motor Co.* Granting this petition to clarify the relationship of the two cases will assist dispute resolution of small business litigants nationwide whenever personal jurisdiction is called into question.

CONCLUSION

For the above reasons, Sasso respectfully requests that this Court grant this petition.

Respectfully submitted,

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April 16, 2024

APPENDIX

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APPENDIX A

IN THE SUPREME COURT OF IOWA

No. 21–1666

Polk County No. LACL150488

MARC HARDING d/b/a HARDING LAW FIRM,

Plaintiff-Appellee,

vs.

RICK SASSO, M.D., d/b/a INDIANA SPINE GROUP,

Defendant-Appellant.

PETITION FOR REHEARING DENIED

After consideration by this court, the petition for rehearing in the above-captioned case is hereby overruled and denied.

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[SEAL]
State of Iowa
Iowa Appellate Courts

State of Iowa Courts

Case Number	Case Title
21-1666	Harding v. Sasso

So Ordered

/s/ Susan Larson Christensen
Susan Larson Christensen, Chief Judge

Electronically signed on 2024-01-18 10:37:03

APPENDIX B

IN THE SUPREME COURT OF IOWA

No. 21–1666

MARC HARDING d/b/a HARDING LAW FIRM,

Appellee,

vs.

RICK SASSO d/b/a INDIANA SPINE GROUP,

Appellant.

Submitted November 16, 2023—
Filed December 15, 2023
Amended December 15, 2023

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Court for Polk County, Jeanie Vaudt, Judge.

Interlocutory appeal from the denial of motion to dismiss suit for lack of personal jurisdiction. DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT ORDER AFFIRMED AND CASE REMANDED.

McDonald, J., delivered the opinion of the court, in which all justices joined.

Brent R. Ruther of Aspelmeier, Fisch, Power, Engberg & Helling, PLC, Burlington, for appellant.

Jeffrey M. Lipman of Lipman Law Firm, West Des Moines, for appellee.

MCDONALD, Justice.

Iowa attorney Marc Harding engaged Indiana doctor Rick Sasso to provide expert witness services in a potential medical malpractice suit in Iowa. Things did not go according to plan, and Harding filed this suit against Sasso in Polk County, Iowa. Harding sought to recover all or part of the $10,000 retainer he paid to Dr. Sasso plus additional damages. Dr. Sasso moved to dismiss the suit for want of personal jurisdiction over him. The district court denied the motion, and Dr. Sasso filed an application for interlocutory review. We granted the application and transferred the case to the court of appeals. The court of appeals reversed the district court and remanded the case with instruction to dismiss the case. We granted Harding's application for further review.

I.

A state's authority to exercise jurisdiction over a nonresident defendant is limited by both the Federal Constitution and state law. *See Sioux Pharm, Inc. v. Summit Nutritionals Int'l, Inc.*, 859 N.W.2d 182, 188 (Iowa 2015).

With respect to the Federal Constitution, the Supreme Court holds that "[t]he Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). Under the Court's Fourteenth Amendment jurisprudence, a state's authority to exercise jurisdiction over a nonresident defendant "depends on the defendant's having such 'contacts' with the forum State that 'the maintenance of the suit' is 'reasonable, in the context of our federal system of government,' and 'does not offend traditional notions of fair play and substantial

justice.'" *Id.* (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316–17 (1945)).

With respect to state law, Iowa law provides that "[e]very corporation, individual, personal representative, partnership or association that shall have the necessary minimum contact with the state of Iowa shall be subject to the jurisdiction of the courts of this state." Iowa R. Civ. P. 1.306. We have explained that rule 1.306 authorizes the widest exercise of personal jurisdiction allowed under the Supreme Court's precedents interpreting the Fourteenth Amendment. *See Book v. Doublestar Dongfeng Tyre Co.*, 860 N.W.2d 576, 583 (Iowa 2015); *Sioux Pharm, Inc.*, 859 N.W.2d at 188; *Ostrem v. Prideco Secure Loan Fund, LP*, 841 N.W.2d 882, 891 (Iowa 2014). Because Iowa law allows for the exercise of personal jurisdiction up to the federal constitutional limit, we focus on the federal constitutional requirements for exercising personal jurisdiction.

The Supreme Court has "recogniz[ed] two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction." *Ford Motor Co.*, 141 S. Ct. at 1024. "A state court may exercise general jurisdiction only when a defendant is 'essentially at home' in the state." *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). General jurisdiction over a defendant allows a state court to adjudicate any and all claims against a defendant without regard to whether the claims relate to the forum state or the defendant's activities in the forum state. *See id.* In the paradigmatic case, an individual is subject to a state's general jurisdiction if the state is his domicile. *See id.*

"Specific jurisdiction is different: It covers defendants less intimately connected with a State, but only as to

a narrower class of claims." *Id.* The contact necessary to support the exercise of specific jurisdiction is not great. The defendant need only take "some act by which [he] purposefully avails [himself] of the privilege of conducting activities within the forum State." *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). "The contacts must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Id.* at 1025 (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984)). Even when the defendant has sufficient minimum contact with the forum state, the forum state has jurisdiction over the defendant for only a limited set of claims. Specifically, the nonresident defendant can be sued in the forum state only when the plaintiff's claims "'arise out of or relate to the defendant's contacts' with the forum." *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 262 (2017)).

If a nonresident defendant has sufficient minimum contact with the forum state and the claim relates to the contact, the court may exercise personal jurisdiction over the defendant only where it "would comport with 'fair play and substantial justice.' " *Ostrem*, 841 N.W.2d at 893 (quoting *Cap. Promotions, L.L.C. v. Don King Prods., Inc.*, 756 N.W.2d 828, 834 (Iowa 2008)). In making that determination, courts focus on

> "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies."

Id. (quoting *Cap. Promotions*, 756 N.W.2d at 834). In conducting this analysis, courts must be cognizant of not allowing jurisdictional rules to severely disadvantage a defendant. *See Shams v. Hassan*, 829 N.W.2d 848, 857 (Iowa 2013).

II.

Dr. Sasso moved to dismiss Harding's petition for lack of personal jurisdiction. A motion to dismiss for lack of personal jurisdiction is a special proceeding that requires the district court to make findings of fact and conclusions of law in resolving the motion. *See PSFS 3 Corp. v. Michael P. Seidman, D.D.S., P.C.*, 962 N.W.2d 810, 826 (Iowa 2021). It is the plaintiff's burden to make a prima facie showing that the exercise of personal jurisdiction is allowed. *See id.* In determining whether the plaintiff met that burden, the district court must accept as true the allegations of the petition and the content of any uncontroverted affidavits offered by the parties. *See id.*; *see also Mass. Sch. of L. at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998) ("In conducting the requisite analysis under the prima facie standard, we take specific facts affirmatively alleged by the plaintiff as true (whether or not disputed) and construe them in the light most congenial to the plaintiff's jurisdictional claim. We then add to the mix facts put forward by the defendants, to the extent that they are uncontradicted." (citation omitted)). Once the plaintiff makes a prima facie showing that the exercise of jurisdiction is allowed, the burden shifts to the defendant to show the exercise of jurisdiction is unreasonable or otherwise improper. *PSFS 3 Corp.*, 962 N.W.2d at 826.

The operative pleading in this case is Harding's first amended petition. According to the first amended petition, Harding is an Iowa attorney practicing in

Des Moines. Harding represented an Iowa resident pursuing a potential medical malpractice action in Iowa. The potential defendants were a surgeon that practices in Polk County, Iowa, and a medical facility located in Polk County, Iowa. Harding provided his client's medical records to an initial reviewer to make a preliminary assessment of the claim. The initial reviewer emailed an opinion to Harding stating that there was a breach of the standard of care that favored proceeding with the case. Harding then contacted Dr. Sasso d/b/a Indiana Spine Group. Dr. Sasso is an orthopedic surgeon who practices in Indiana. "On February 24, 2021, Harding and Sasso negotiated and agreed that Sasso would serve as an expert to both evaluate a potential malpractice claim and to testify as an expert in any ensuing litigation." Dr. Sasso's rate was $1,000 per hour. Harding sent Dr. Sasso a $10,000 advance for his services. The parties agreed that "any unearned portion of that advance would be returned to Harding." There was no written contract memorializing the agreement. Harding provided Dr. Sasso with the initial reviewer's one-page email plus 166 pages of Harding's client's medical records. Dr. Sasso reviewed the records. On March 4, Dr. Sasso informed Harding via telephone that the potential defendants had not breached the standard of care. Dr. Sasso also informed Harding "that he spent *12 hours* reviewing the 166 pages and one-page email and would not be returning any of the $10,000 advance." Dr. Sasso informed Harding that he had not kept time records. According to the first amended petition, Dr. Sasso never returned any portion of the advance and never provided an accounting for the advance. The first amended petition sets forth claims for breach of contract, breach of fiduciary duty, conversion, and fraud against Dr. Sasso.

The parties then filed competing affidavits in support of and in resistance to the motion to dismiss. Dr. Sasso's affidavit provided that he is an orthopedic surgeon and the president of Indiana Spine Group. He formed Indiana Spine Group in Indiana in 2002. All of Indiana Spine Group's offices and business are in Indiana. Neither Dr. Sasso nor Indiana Spine Group have advertised or solicited business in Iowa. According to Dr. Sasso, Harding called him and requested that Dr. Sasso review the medical records. According to the affidavit, Harding did not share any plans for litigation in Iowa. Dr. Sasso informed Harding that he "would give [his] opinion of compliance with the standard of care . . . for a flat fee of $10,000." Dr. Sasso "did not commit to provide any particular result or opinion and did not commit to providing testimony in any case that Mr. Harding might file in the future." Dr. Sasso "did not imagine that any lawsuits could ever arise." He was "surprised to be sued in the State of Iowa." Dr. Sasso did not "engage in business in Iowa and performed all work for Mr. Harding at [his] office in Carmel, Indiana."

Harding filed an affidavit in support of his resistance to the motion to dismiss. In the affidavit, Harding disputed the terms of the parties' agreement. According to Harding, Dr. Sasso agreed that he "could serve as an expert at trial, and that he would require a $10,000.00 retainer, at which he would charge $1,000.00 per hour for his record review and trial testimony." Dr. Sasso never said the "retainer was non-refundable."

The district court denied Dr. Sasso's motion to dismiss. The district court took as true the averments set forth in the first amended petition and then considered the averments in Dr. Sasso's motion to dismiss along with his affidavit in support of the same

to the extent the affidavit was uncontroverted. In reviewing the record, the district court found that Dr. Sasso agreed "to provide expertise and expert testimony to Plaintiff for a cause of action in an Iowa forum." The district court concluded that this was "sufficient to establish minimum contacts and personal jurisdiction over Defendant." Dr. Sasso did not file any motion to enlarge or amend the district court's ruling but instead sought interlocutory appeal. As noted above, the court of appeals reversed the order of the district court. We granted Harding's application for further review.

III.

We review the district court's ruling on the motion to dismiss for the correction of errors at law. *See Sioux Pharm, Inc.*, 859 N.W.2d at 188; *Shams*, 829 N.W.2d at 853. We are not bound by the district court's application of law or the district court's legal conclusions. *See Shams*, 829 N.W.2d at 853. We are bound by the district court's finding of facts, however. *See id.* "Unlike other grounds for dismissal . . . a court considering a motion to dismiss for lack of personal jurisdiction must make factual findings to determine whether it has personal jurisdiction over the defendant." *Id.* "The trial court's findings of fact have the effect of a jury verdict and are subject to challenge only if not supported by substantial evidence in the record." *Hodges v. Hodges*, 572 N.W.2d 549, 551 (Iowa 1997). "Evidence is not insubstantial merely because we may draw different conclusions from it; the ultimate question is whether [the evidence] supports the finding actually made, not whether the evidence would support a different finding." *State v. Lacey*, 968 N.W.2d 792, 800–01 (Iowa 2021) (quoting *Brokaw v. Winfield-Mt. Union Cmty. Sch. Dist.*, 788 N.W.2d 386, 393 (Iowa 2010)). Where

the district court does not make explicit factual findings, we "presume the court decided the facts necessary to support its decision." *Bankers Tr. Co. v. Fidata Tr. Co. N.Y.*, 452 N.W.2d 411, 413–14 (Iowa 1990).

The following facts are supported by the record. Dr. Sasso provides medical services in Indiana and has never solicited or done business in Iowa. Dr. Sasso did not contact Harding in Iowa regarding this matter but was instead contacted by Harding from Iowa. Dr. Sasso agreed "to provide expertise and expert testimony to Plaintiff for a cause of action in an Iowa forum." While Dr. Sasso disputed this in the district court, the finding is supported by substantial evidence in the record. Specifically, that finding is supported by the averments in the first amended petition and Harding's affidavit in support of his resistance to the motion to dismiss. Dr. Sasso reviewed the medical records at issue from his office in Indiana. Dr. Sasso called Mr. Harding in Iowa to report his findings and conclusions to Harding.

On these facts, the question presented is whether the exercise of personal jurisdiction over Dr. Sasso to resolve a dispute regarding this contract is constitutional. "Personal jurisdiction is only appropriate when 'the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.'" *Book*, 860 N.W.2d at 584 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). The essential inquiry is whether there was "some act by which the defendant purposefully avail[ed] [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Sioux Pharm, Inc.*, 859 N.W.2d at 189 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). "Random or attenuated contacts with the forum state

do not satisfy the minimum contacts test." *Book*, 860 N.W.2d at 584 (quoting *Ostrem*, 841 N.W.2d at 891). Instead, the contacts "must show that the defendant deliberately 'reached out beyond' its home—by, for example, . . . entering a contractual relationship centered there." *Ford Motor Co.*, 141 S. Ct. at 1025 (quoting *Walden v. Fiore*, 571 U.S. 277, 285 (2014)).

Here, Dr. Sasso had sufficient minimum contacts with Iowa to support the exercise of personal jurisdiction over him with respect to claims arising out of and related to the parties' contract. Dr. Sasso's contact with Iowa was not random or attenuated. Instead, he purposefully availed himself of the privilege of doing business in Iowa. He entered into a contractual relationship with an Iowa lawyer. Dr. Sasso agreed to evaluate a medical malpractice claim involving an Iowa resident, a physician practicing in Iowa, and a medical facility located in Iowa. Critically, he also agreed to provide expert testimony at any trial in the medical malpractice case, which would have been venued in Iowa. Thus, at the time of the parties' agreement, one of the "contemplated future consequences" of the contract was that Dr. Sasso would perform part of the contract in an Iowa court. *Ostrem*, 841 N.W.2d at 892 (quoting *Burger King*, 471 U.S. at 479). In addition, the dispute between Harding and Dr. Sasso directly arises out of Dr. Sasso's contact with Iowa. "A single contact with the forum state can be sufficient to satisfy due process concerns when the plaintiff's claim arises out of the contact." *Shams*, 829 N.W.2d at 855; *see also Bristol-Myers*, 582 U.S. at 262 (explaining that there must be "an affiliation between the forum and the underlying controversy" (quoting *Goodyear*, 564 U.S. at 919)); *Sioux Pharm, Inc.*, 859 N.W.2d at 189 (stating a single contact can be enough when the claim arises out of the contact).

Having determined Dr. Sasso had sufficient minimum contact with the State of Iowa to support the exercise of personal jurisdiction over him with respect to this contract dispute, we must still "determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" *Burger King*, 471 U.S. at 476 (quoting *Int'l Shoe*, 326 U.S. at 320); *see also Guardi v. Desai*, 151 F. Supp.2d 555, 559 (E.D. Pa. 2001) ("Second, if minimum contacts exist, the court must determine if exercising jurisdiction over the defendant would comport with 'traditional notions of fair play and substantial justice.'" (quoting *Vetrotex Certainteed Corp. v. Consol. Fiber Glass Prods. Co.*, 75 F.3d 147, 151 (3d Cir. 1996))). Dr. Sasso must present a "compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Shams*, 829 N.W.2d at 860 (quoting *Burger King*, 471 U.S. at 477). These compelling reasons "are limited to the rare situation in which the plaintiff's interest and the state's interest in adjudicating the dispute in the forum are so attenuated that they are clearly outweighed by the burden of subjecting the defendant to litigation within the forum." *Id.* (quoting *Pat. Rts. Prot. Grp., LLC v. Video Gaming Techs., Inc.*, 603 F.3d 1364, 1369 (Fed. Cir. 2010)).

We cannot conclude this is a compelling or rare case where the exercise of jurisdiction is unreasonable or offends the "traditional notions of fair play and substantial justice." *Ford Motor Co.*, 141 S. Ct. at 1024 (quoting *Int'l Shoe*, 326 U.S. at 316). The maintenance of the suit in Iowa does not place an unreasonable burden on Dr. Sasso. The parties contemplated and agreed that Dr. Sasso would perform part of the contract in Iowa. In particular, the parties contemplated and agreed he would testify in an Iowa court in any medical malpractice claim. Dr. Sasso cannot now

claim it is unexpected or unreasonable to make him appear in an Iowa court when he contracted to appear in an Iowa court. Further, "Iowa has a legitimate interest in adjudicating a dispute between one of its residents . . . and an out-of-state" party that contracted for services to be performed in this State. *Ostrem*, 841 N.W.2d at 903. "Certainly Iowa 'has a manifest interest in providing effective means of redress for its residents.'" *Id.* (quoting *McGee v. Int'l Life Ins.*, 355 U.S. 220, 223 (1957)). These last two factors alone, "the interests of the plaintiff and the forum,"—the United States Supreme Court has explained—often "will justify even the serious burdens placed on the alien defendant." *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 114 (1987).

In concluding that the exercise of jurisdiction is constitutionally permissible here, we are persuaded by the decisions of other courts that have reached the same conclusion in materially indistinguishable circumstances. In *McNally v. Morrison*, Illinois plaintiffs filed a suit for breach of contract, consumer fraud, fraud, and professional negligence in Illinois against an Ohio doctor who they had retained to serve as an expert witness in an Illinois medical malpractice case. 951 N.E.2d 183, 185 (Ill. App. Ct. 2011). As in this case, the expert witness "never performed any physical activities in Illinois in conjunction with the medical malpractice case . . . and neither party assert[ed] that there [was] a written contract governing [the doctor's] services as an expert witness." *Id.* at 191. The circuit court dismissed the case for lack of personal jurisdiction, and the appellate court reversed. *Id.* at 194. The appellate court concluded there were sufficient minimum contacts with Illinois because the doctor was contractually "serving as an expert witness in an *Illinois* medical malpractice case." *Id.* at 193. "[E]ven though

the only services that he had actually performed took place in Ohio, [the doctor's] services were intended to produce a result in Illinois." *Id.*

The *McNally* court also concluded that the exercise of jurisdiction would not be unreasonable. "The burden on [the doctor] to defend in Illinois does not appear to be unduly great. Ohio and Illinois are relatively close geographically." *Id.* The same is true here. In addition, the court explained that the doctor could not show how "defending a suit in Illinois under Illinois law would be unduly burdensome when he had already agreed to testify in an Illinois case." *Id.* The same is true here. "Third, exercising jurisdiction would further the plaintiffs' interest in obtaining convenient and effective relief." *Id.* The same is true here. The court concluded that "Illinois's interest in protecting its citizens . . . outweigh[ed] Ohio's interest in protecting its citizens from the inconvenience of defending a lawsuit in another state." *Id.* at 194. The same is true here as well.

In *Golden v. Stein*, a lawyer defendant in a professional malpractice case filed a third-party claim against an accounting firm he hired to provide damages opinions in the underlying case that ultimately gave rise to the malpractice case against the lawyer. 481 F. Supp. 3d 843, 846 (S.D. Iowa 2019). The expert witness moved to dismiss the third-party claim for lack of personal jurisdiction in Iowa. *Id.* The district court denied the motion to dismiss. *Id.* The underlying case was venued in Iowa. The expert witness agreed "to provide expert services for legal proceedings in" Iowa. *Id.* at 857. The parties understood that there was a "95–99 percent chance that the case would settle," *id.* at 849, "and that it was extremely unlikely that she would ever be asked to travel anywhere, let alone Iowa, for purposes of the [u]nderlying [a]ction," *id.* at

857. The witness never actually had to travel to Iowa in the underlying case. That did not change the fact that the expert witness understood at the time of contracting that "by agreeing to provide expert witness services in litigation in Iowa, some of the future consequences of failing to provide those services would occur to some degree in Iowa." *Id.* Further, the district court found the expert witness purposely availed itself "of the privilege of conducting expert witness activities in this forum to earn expert witness fees, thus invoking the benefits and protections of this forum's laws." *Id.* at 860. The court held that "the exercise of personal jurisdiction over [the expert witness] in this forum [was] proper." *Id.* at 861.

Also directly relevant here is *Guardi v. Desai*, 151 F. Supp. 2d 555. In that case, Pennsylvania plaintiffs filed suit against a Colorado doctor who agreed to review medical records as an expert witness for "a potential medical negligence action in Pennsylvania." *Id.* at 559. The plaintiffs' lawyers mailed mammograms to the doctor for her review, but the doctor lost the mammograms; without the original mammograms, the plaintiffs were unable to proceed with their potential malpractice claims. *Id.* at 557. The court held this single contractual arrangement was sufficient minimum contact with the forum state to support the exercise of jurisdiction. The expert "purposefully availed herself of the privilege of doing business in Pennsylvania." *Id.* at 560. The expert's agreement to serve as an "expert in the potential malpractice case . . . created a continuing obligation between herself" and the plaintiffs. *Id.* The expert "should have expected that her activities . . . could cause her to be haled into court in Pennsylvania." *Id.* at 561. The court concluded that the exercise of jurisdiction would not be unreasonable. "While Defendant [did] have the burden of coming to

Pennsylvania from Colorado, given her actions impacting on Pennsylvania residents, it [was] not unfair to require that she conduct her defense in Pennsylvania." *Id.* at 562.

Similarly compelling is *Echavarria v. Beck*, 338 F. Supp. 2d 258 (D.P.R. 2004). Like this case, *Echavarria* involved an expert witness who agreed to provide expert services in a different forum, and the dispute between the parties arose out of that agreement. *Id.* at 260. The district court in that case denied the expert's motion to dismiss, concluding:

> The facts before this Court demonstrate that Beck had minimum contacts with this forum that are sufficient to allow this Court to exercise jurisdiction over him. Beck was aware that he was rendering an expert opinion for a case in Puerto Rico, and that he would need to travel to Puerto Rico at least for a deposition and perhaps a trial. He received economic benefit from his contact, and could reasonably foresee that a cause of action could arise from said contact. This Court believes that plaintiffs have met the required prima facie burden to establish specific *in personam* jurisdiction over Beck.

Id. at 263.

Dr. Sasso argues that the Supreme Court's decision in *Walden v. Fiore*, 571 U.S. 277, compels a different result. In *Walden*, a Georgia police officer working at an Atlanta airport seized money from two Nevada residents traveling back to Nevada. *Id.* at 280. The Nevada residents sued the officer in Nevada. *Id.* at 281. The Court held that Nevada did not have personal jurisdiction over the defendant even though "his

conduct affected plaintiffs with connections to the forum State." *Id.* at 291.

"But *Walden* has precious little to do with the cases before us." *Ford Motor Co.*, 141 S. Ct. at 1031. As the Supreme Court subsequently explained in *Ford Motor Co.*, "In *Walden*, only the plaintiffs had any contacts with the State of Nevada." *Id.* The officer had never "'purposefully avail[ed himself] of the privilege of conducting activities' in the forum State." *Id.* (alteration in original) (quoting *Hanson*, 357 U.S. at 253). But that is not true here. Dr. Sasso did purposefully avail himself of the privilege of providing expert witness services to an Iowa lawyer in a potential Iowa case involving a claim between Iowans with the understanding he might have to testify in an Iowa court. So, the only issue here is whether Dr. Sasso's single contact with Iowa is "related enough" to Harding's suit. *Id.* As set forth above, Dr. Sasso's contact with Iowa is "related enough" to this suit because Harding's claim against Dr. Sasso arises directly out of Dr. Sasso's agreement to serve as an expert witness in an Iowa case, involving Iowans, to be litigated in an Iowa court.

IV.

For these reasons, we affirm the district court's order denying the defendant's motion to dismiss, and we remand this case for further proceedings.

DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT ORDER AFFIRMED AND CASE REMANDED.

APPENDIX C

IN THE COURT OF APPEALS OF IOWA

No. 21-1666

MARC HARDING d/b/a HARDING LAW FIRM,

Plaintiff-Appellee,

vs.

RICK SASSO, M.D., d/b/a INDIANA SPINE GROUP,

Defendant-Appellant.

Filed December 21, 2022

Appeal from the Iowa District Court for Polk County, Jeanie Vaudt, Judge.

A physician from Indiana challenges an interlocutory ruling that he is subject to personal jurisdiction in an Iowa lawsuit. REVERSED AND REMANDED.

Brent Ruther of Aspelmeier, Fisch, Power, Engberg & Helling, PLC, Burlington, for appellant.

Jeffrey M. Lipman of Lipman Law Firm, P.C., West Des Moines, for appellee.

Considered by Bower, C.J., Tabor, J., and Danilson, S.J.[*]

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[*] Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2022).

TABOR, Judge.

Dr. Rick Sasso, an orthopedic surgeon from Indiana,[1] challenges the denial of his motion to dismiss a lawsuit filed by Des Moines lawyer Marc Harding. Dr. Sasso contends the Iowa court was wrong in finding it had personal jurisdiction over Harding's claim that Dr. Sasso should refund "part or all" of a $10,000 retainer that Harding paid for expert consultation on a potential medical malpractice action. Because Dr. Sasso's "preliminary evaluation" of Harding's case did not create the Iowa contacts that would support jurisdiction, we reverse and remand for a ruling dismissing the action for a lack of personal jurisdiction.

I. Facts and Prior Proceedings

We garner these facts from Harding's petitions and the parties' competing affidavits. The parties agree that attorney Harding called Dr. Sasso in February 2021 to solicit his expertise in reviewing the medical records of a patient who suffered an injury to his esophagus during cervical spine surgery in Iowa.[2] The parties also agree that after their conversation, Harding forwarded Dr. Sasso an electronic link to the patient's medical chart, as well as a check for $10,000. The parties did not have a written contract. And they agree that after his records review, in early March 2021, Dr. Sasso reported to Harding that he found "no case" for malpractice. After receiving that report,

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[1] Dr. Sasso is president of Indiana Spine Group, P.C., also named in this suit.

[2] Harding had already shown the patient's records to a Florida doctor for an initial consultation. That doctor sent a one-page email recommending the case be pursued, but did so based on a misreading of the delay between the surgery that resulted in a tear in the patient's esophagus and the surgery to repair it.

Harding declined to sue the Iowa medical providers for breaching the standard of care.

But Harding and Sasso disagree on critical details of the consultation. For example, they offer divergent views of what the $10,000 retainer covered. In his affidavit, Harding asserted that Dr. Sasso "averred that he could serve as an expert at trial" and would charge $1000 per hour "for his record review and trial testimony." Harding added that Dr. Sasso never said the $10,000 was non-refundable. By contrast, Dr. Sasso characterized the $10,000 as a "flat fee" for his review of the records and resulting opinion whether the Iowa medical providers breached the standard of care. The doctor averred that Harding did not explain any plans for litigation with him, nor did he commit to providing testimony in any case that Harding "might file in the future."

The parties also disagree on the volume of the records. In Dr. Sasso's view, "[t]he medical chart was extensive." Included were records of the initial surgery, subsequent physical therapy treatments, the entire chart from the consulting ENT surgeon, and the further surgery. Dr. Sasso recalled: "Also provided were imaging studies which take substantial time to fully review." In all, Dr. Sasso estimated that he spent twelve hours reviewing the records at his Indiana office.

Harding questioned the doctor's time commitment. The attorney asserted the medical records totaled 166 pages. And he pointed out that the malpractice alleged by the initial reviewer was a delay between the first and second surgeries. According to Harding, in less than forty pages, Dr. Sasso could have determined that the initial reviewer had looked at the wrong date for the second surgery. Harding criticized Dr. Sasso for reviewing all the information provided. Dr. Sasso

stated, "It was important to me to review all the records provided because I believe that is essential for quality expert consultant work."

Dr. Sasso recounted that Harding "was not happy with the opinion I had reached after completing the review I committed to make of the medical information provided." When Dr. Sasso refused to refund any of the retainer, Harding asked him to provide time records or notes of his review. But the doctor replied that he kept neither, allegedly out of concern such information would be "discoverable." Harding denied discussing whether the doctor should avoid keeping records "out of fear of discovery." Finally, Harding recalled that when he "expressed disdain that Dr. Sasso was charging $10,000 to tell him something that could have been discovered for far less, Dr. Sasso told Harding that he could have told him there was no case for $500."

Less than two months after his second conversation with Dr. Sasso, Harding sued in Iowa for a full or partial refund of the retainer, plus ten-percent statutory interests on their contract.[3] In response, Dr. Sasso moved to dismiss for lack of personal jurisdiction. The district court denied that motion. And Dr. Sasso successfully sought interlocutory appeal. After the parties completed their briefing, the supreme court transferred the appeal to our court.

II. Scope and Standard of Review

We review the district court's denial of Dr. Sasso's motion to dismiss for legal error. *See Sioux Pharm, Inc. v. Summit Nutritionals Int'l, Inc.*, 859 N.W.2d 182, 188 (Iowa 2015). Unlike other grounds for dismissal, a

[3] Harding later amended the petition, alleging breach of contract, breach of fiduciary duty, conversion, and fraud.

court considering a motion to dismiss for lack of personal jurisdiction must make factual findings to determine whether it has personal jurisdiction over the defendant. *Shams v. Hassan*, 829 N.W.2d 848, 853 (Iowa 2013). The court's legal conclusions and application of legal principles do not bind us. *Id*. But, if supported by substantial evidence, those factual findings do. *Id*.

When considering a motion to dismiss for lack of personal jurisdiction, the court accepts as true the petition's allegations, as well as the content of any uncontroverted affidavits. *See Addison Ins. Co. v. Knight, Hoppe, Kurnik & Knight, L.L.C.*, 734 N.W.2d 473, 476 (Iowa 2007) (quoting *Aquadrill, Inc. v. Env'tal Compliance Consulting Servs., Inc.*, 558 N.W.2d 391, 392 (Iowa 1997)). As plaintiff, Harding must make a prima facie case showing that personal jurisdiction is appropriate. *See id*. Then the burden shifts to Dr. Sasso to rebut that showing. *See id.*

Jurisdictional issues may overlap with the merits of the parties' claims. If genuine issues of material fact exist concerning controverted allegations going to the merits, the district court should not resolve those issues in deciding the jurisdictional challenge, even if jurisdiction depends on those facts. *Hammond v. Fla. Asset Fin. Corp.*, 695 N.W.2d 1, 7 (Iowa 2005). The court should wait to determine those issues at trial. *Id*.

III. Lack of Factual Findings

As Harding concedes on appeal, the district court did not set out its factual findings as required when determining personal jurisdiction. Instead, the court cited *Addison* for the principle that it was bound by the facts alleged in Harding's petition. Because Dr. Sasso did not seek to amend or enlarge that ruling,

Harding argues that we must presume the district court "decided the facts necessary to support its decision" in his favor. *Bankers Tr. Co. v. Fidata Tr. Co. New York*, 452 N.W.2d 411, 413 (Iowa 1990).

As Dr. Sasso offers no response to this argument in his reply brief, we follow *Bankers Trust*. Because its findings have the force and effect of a jury verdict, we must assume the court accepted Harding's claim that Dr. Sasso agreed "to both evaluate a potential malpractice claim and to testify as an expert in any ensuing litigation." *See id*. at 414. That decided, we ask: do the facts presented, viewed in a light most favorable to Harding, support the court's conclusion that because of that agreement Dr. Sasso had submitted to jurisdiction in Iowa? *See id*.

IV. Analysis

Dr. Sasso contests the district court's finding of personal jurisdiction. He claims his "preliminary evaluation" of Harding's case—conducted from his clinic in Indiana—did not create the Iowa contacts that would support jurisdiction. He claims the court failed to follow the analysis in *Walden v. Fiore*, 571 U.S. 277 (2014). That case held that a Nevada court could not exercise personal jurisdiction over a Georgia police officer when none of the officer's allegedly tortious conduct occurred in the forum state. 571 U.S. at 280. *Walden* reasoned that, "To be sure, a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties. But a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id.* at 277.

The doctor's claim is constitutional at its core. The Fourteenth Amendment's Due Process Clause limits

the power of state courts to exercise jurisdiction over an out-of-state defendant. "The canonical decision in this area remains *International Shoe Co. v. Washington*, 326 U.S. 310 . . . (1945)." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). It held that a tribunal's jurisdiction hinges on the defendant having "certain minimum contacts" with the forum state so that maintaining the lawsuit there does not offend "traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316. Dr. Sasso's challenge focuses on those "minimum contacts" necessary to create specific jurisdiction.[4]

Our analysis is also informed by Iowa Rule of Civil Procedure 1.306. It defines the reach of Iowa courts' jurisdiction:

> Every corporation, individual, personal representative, partnership or association that shall have the necessary minimum contact with the state of Iowa shall be subject to the jurisdiction of the courts of this state, and the courts of this state shall hold such corporation, individual, personal representative, partnership or association amenable to suit in Iowa in every case not contrary to the provisions of the Constitution of the United States.

Iowa R. Civ. P. 1.306. "This rule authorizes the widest jurisdictional parameters allowed by the Due Process

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[4] Specific jurisdiction (also called "case-linked" jurisdiction) requires defendants to "purposefully avail" themselves of the privilege to conduct activities in the forum state. *Ford Motor Company*, 141 S. Ct. at 1024. That requirement differs from general jurisdiction (also called "all purpose" jurisdiction) which permits a tribunal to proceed based on a forum connection unrelated to the underlying suit (such as defendant's domicile). *Id.* Harding asserts only specific jurisdiction.

Clause." *Cap. Promotions, L.L.C. v. Don King Prods., Inc.*, 756 N.W.2d 828, 833 (Iowa 2008).

In analyzing minimum contacts, our supreme court has shifted from a five-factor test[5] to a two-part inquiry. Now, to find the contacts necessary for specific jurisdiction, a plaintiff must show: (1) the defendants have "purposefully directed" their activities at residents of the forum state and (2) the litigation results from alleged injuries that "arise out of or relate to" those activities. *Book v. Doublestar Dongfeng Tyre Co., Ltd.*, 860 N.W.2d 576, 584 (Iowa 2015) (citations omitted).

"If sufficient minimum contacts exist, the court must then determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice." *Sioux Pharm*, 859 N.W.2d at 196. That determination also relies on several considerations, including "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Cap. Promotions*, 756 N.W.2d at 834 (internal quotations and citations omitted).

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[5] Those still-relevant factors include: (1) the quantity of the defendant's contacts with the forum state, (2) the nature and quality of those contacts, (3) the source of those contacts and their connection to the cause of action, (4) the interest of the forum state, and (5) the convenience of the parties. *Cap. Promotions*, 756 N.W.2d at 833.

A. Did Sasso purposefully direct his activities at Iowa residents?

The district court decided that Sasso's agreement to provide expert services for Harding's potential malpractice case supplied the connection needed for personal jurisdiction. Of course, by itself, a contract between an Iowa plaintiff and an out-of-state defendant does not establish sufficient minimum contacts to permit Iowa courts to exercise specific personal jurisdiction. *See Ostrem v. Prideco Secure Loan Fund, LP*, 841 N.W.2d 882, 892 (Iowa 2014). Rather, a court must look to the terms of the contract, the parties' actual course of dealings, as well as their prior negotiations and contemplated future consequences. *Id*.

Without a written contract, we are left with Harding's bare-bones description of the terms of his agreement with Dr. Sasso. In short, the petition alleged that Harding agreed to advance $10,000 to Dr. Sasso in exchange for his expertise in evaluating "a potential malpractice claim." Critical to the jurisdictional question, the petition also alleged that Dr. Sasso "agreed to testify as an expert in any ensuing litigation." The district court focused on that second term in denying Dr. Sasso's motion to dismiss. In concluding that the expert's contract to provide services in Iowa was a sufficient contact to establish personal jurisdiction, the court relied on three federal district court opinions: *Golden v. Stein*, 481 F. Supp. 3d 843 (S.D. Iowa 2019); *Echevarria v. Beck*, 338 F. Supp. 2d 258, 262 (D.P.R. 2004); and *Guardi v. Desai*, 151 F. Supp. 2d 555, 560 (E.D. Pa. 2001).

Like Dr. Sasso, we find important differences between his situation and those three cases. We start with *Golden*, where an attorney being sued for malpractice brought a third-party action against an

accounting firm hired to provide expert witness opinions in an underlying copyright infringement action brought in Iowa. 481 F. Supp. 3d at 846. The firm claimed it was not subject to personal jurisdiction because it had insufficient minimum contacts with the state of Iowa. *Id*. at 848. The federal district court disagreed, finding the firm purposefully availed itself of "the privilege of conducting expert witness activities in this forum to earn expert witness fees, thus invoking the benefits and protections of this forum's laws." *Id*. at 860. The court noted those contacts were not "random, fortuitous, or attenuated," because the firm—which was designated as an expert in the copyright case—anticipated that it would have "a relationship with the litigation in the forum for as long as that litigation lasted" and could be called on to testify in this forum. *Id*. As the court explained, members of the firm were "aware of the possibility of testifying in this forum" as evidenced by provisions in its expert witness agreement for testimony and travel fees. *Id.* Assessing personal jurisdiction to be a "close" question, the federal district court decided the firm had sufficient contacts because it could reasonably anticipate being haled into the Southern District of Iowa over its performance of that agreement. *Id.* at 862.

By contrast, Dr. Sasso did not have a relationship with ongoing litigation in Iowa. His agreement with Harding contemplated two steps. First, evaluate a potential malpractice claim. Second, provide testimony in any ensuing litigation. So any commitment by Dr. Sasso to testify in an Iowa court was contingent on a positive evaluation of the potential malpractice claim. Indeed, when Dr. Sasso's records review revealed no breach of the standard of care by the Iowa medical providers, no litigation ensued. Thus his contacts with Iowa were much more attenuated than

the experts in *Golden*. Before Dr. Sasso completed his preliminary evaluation, neither he nor Harding knew whether an action would be filed, much less whether Dr. Sasso would be called as an expert witness. On this factual record, we cannot find that Dr. Sasso deliberately engaged in significant activities within Iowa. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985).

The district court's other two authorities, *Beck* and *Guardi*, can be distinguished for similar reasons. In *Beck*, a surgeon was appointed to serve as an expert in a pending medical malpractice case in Puerto Rico, received a fee, and provided an expert witness report. 338 F. Supp. 2d at 260. When the surgeon backed out of giving a deposition, the plaintiffs were unable to find a replacement expert and were forced to voluntarily dismiss their claims. *Id*. In a later breach-of-contract claim, the federal district court rejected Beck's personal-jurisdiction challenge, finding he knew "that he was rendering an expert opinion for a case in Puerto Rico, and that he would need to travel to Puerto Rico at least for a deposition and perhaps a trial." *Id.* at 263. Again by contrast, Harding did not retain Dr. Sasso to provide expert services in an existing case. Unless his preliminary evaluation showed a promising malpractice claim, Dr. Sasso had no reasonable expectation that he would have to testify in Iowa.

Guardi is strike three. There, a Pennsylvania plaintiff sued a Colorado radiologist in Pennsylvania federal court. 151 F. Supp. 2d at 557. The radiologist had been plaintiff's expert in her Pennsylvania medical negligence action. *Id*. In the second action, the plaintiff alleged that the expert lost her mammogram films and, without those films, she could not prosecute her underlying lawsuit. *Id*. The Pennsylvania court

decided the expert should reasonably have anticipated being haled into court in Pennsylvania because she reviewed the films and wrote a report for Guardi's malpractice action, requested future opportunities from plaintiffs' counsel to write expert reports, and agreed to retain the mammogram films to write an addendum for Guardi. *Id*. at 560. Unlike the expert in *Guardi*, Dr. Sasso did not cultivate an ongoing relationship with Harding.

Having found those federal district court decisions off target, we jump to *Walden*, the Supreme Court case touted by Dr. Sasso. In that case, airline passengers sued a drug-enforcement agent, Walden, alleging he violated their rights by seizing their cash in Georgia during their return trip to Nevada. *Walden*, 571 U.S. at 281. The Supreme Court noted that Walden's relevant conduct occurred in Georgia and held "the mere fact that his conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id*. at 291. *Walden* emphasized "it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State." *Id*. Applied here, *Walden* requires that Dr. Sasso's relationship with the forum state must arise from contacts he initiated or pursued—not those created through attorney Harding or the plaintiff or defendants in the potential malpractice action.

Walden forecloses Harding's claim that their oral agreement was sufficient to subject Dr. Sasso to personal jurisdiction in Iowa. Dr. Sasso's sole connection with Iowa was initiated by Harding. Dr. Sasso's knowledge that Harding was an Iowa lawyer exploring the possibility of litigation in Iowa did not create sufficient minimum contacts. "[T]he plaintiff cannot be the only link between the defendant and the forum."

Fastpath, Inc. v. Arbela Techs. Corp., 760 F.3d 816, 823 (8th Cir. 2014) (quoting *Walden*, 571 U.S. at 825). Their agreement that Dr. Sasso could provide expert testimony in Iowa if Harding eventually filed suit did not create personal jurisdiction. *Id.* at 822 (finding possibility that agreement could lead to future business developments in Iowa was not relevant to jurisdictional analysis because agreement never led to a deal between the parties).

Stated differently, Dr. Sasso did nothing to purposely direct his activities toward residents of the forum state. His only involvement with Iowa was to review the medical records provided by Harding for a negotiated fee. Dr. Sasso did not purposely inject himself into Iowa for the purposes of doing business with Harding; he was solicited to provide expert services and did so. *See Twaddle v. Twaddle*, 582 N.W.2d 518, 521 (Iowa Ct. App. 1998) (citing *OmniLingua, Inc. v. Great Golf Resorts of World, Inc.*, 500 N.W.2d 721, 725 (Iowa Ct. App. 1993) (finding son domiciled in Minnesota was not subject to personal jurisdiction in Iowa for nonpayment of loan from mother when son did not actively solicit the loan from his mother).

B. Does Harding's suit result from or arise out of Dr. Sasso's contacts with Iowa?

We next consider the second prong of the minimum-contacts analysis: whether this litigation results from alleged injuries that "arise out of or relate to" the defendant's contacts with Iowa. "A single contact with the forum state can be sufficient to satisfy due process concerns when the plaintiff's claim arises out of the contact." *Shams*, 829 N.W.2d at 855.

Harding's lawsuit arises out of his contractual relationship with Dr. Sasso and the attorney's belief that

Dr. Sasso took too long to review the medical records and did not account for his time. That entire records review occurred in Indiana. Thus, Harding's alleged injuries did not arise from the doctor's contacts with the forum state. *See Bankers Trust*, 452 N.W.2d at 415.

Given Dr. Sasso's dearth of contacts with Iowa, we conclude that requiring him to submit to jurisdiction in an Iowa court would offend due process.[6] The district court should have granted his motion to dismiss for lack of personal jurisdiction. We reverse and remand for that result.

REVERSED AND REMANDED.

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[6] Having reached that conclusion, we need not determine whether the consideration of "fair play and substantial justice" would defeat the reasonableness of jurisdiction. *See Cap. Promotions*, 756 N.W.2d at 834 ("Once the plaintiff has established the required minimum contacts, the court must determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice.").

APPENDIX D

IN THE IOWA DISTRICT COURT FOR
POLK COUNTY

Case No.: LACL 150488

MARC HARDING d/b/a HARDING LAW OFFICES,

Plaintiff,

v.

RICK SASSO, M.D. d/b/a INDIANA SPINE GROUP,

Defendant.

ORDER ON PENDING MOTIONS

Plaintiff filed the Petition in this matter on February 20, 2021. Telephonic oral argument on Defendant's Motion to Dismiss for Lack of Jurisdiction (the Motion), resisted by Plaintiff (the Resistance), and Plaintiff's Motion to Determine Service (the Service Motion) was held on August 11, 2021.

Appearing for Plaintiff was attorney Jeffrey Lipman. Appearing for Defendant was attorney Brent Ruther. Oral argument was not reported.

Upon review of the Motion, the Service Motion, and the court file in light of the relevant law, and after considering the respective statements of counsel, the court enters the following Order denying the Motion and finding the Service Motion moot for the following reasons.

BACKGROUND FACTS AND PROCEEDINGS

Defendant through Iowa counsel appeared for the limited purpose of challenging personal jurisdiction over him on June 29, 2021. Plaintiff filed the Resistance on July 30, 2021. Defendant filed a Reply on August 3, 2021. Plaintiff filed the Service Motion on that date. On August 4, 2021, Plaintiff filed an Amended Petition, a Motion to File a Sur-Reply, and Sur-Reply.

STANDARDS FOR MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND ESTABLISHING MINIMUM CONTACTS

In ruling on a motion to dismiss for lack of personal jurisdiction, the court must "accept as true the allegations of the petition and the contents of uncontroverted affidavits." *Addison Ins. Co. v. Knight, Hoppe, Kurnik & Knight & Knight, L.L.C.*, 734 N.W.2d 473, 476 (Iowa 2007).

"Iowa Rule of Civil Procedure 1.306 expands Iowa's jurisdictional reach to the widest due process parameters allowed by the United States Constitution." *Addison Ins.*, 734 N.W.2d at 476.

"[D]ue process requires only that in order to be [subject to personal jurisdiction, the defendant must] . . . have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945)

This personal jurisdiction may be either specific or general:

> "Specific" . . . jurisdiction depends on an affiliation between the forum and the underlying controversy (i.e., an activity or occurrence

> that takes place in the form State . . . "[G]eneral . . . jurisdiction . . . permits a court to assert jurisdiction over a defendant based on a forum connection unrelated to the underlying suit.

Walden v. Fiore, 571 U.S. 277, 283 n.6 (2014).

The factors considered in determining if due process is satisfied are: (1) the nature and quality of the contacts; (2) the quantity of those contacts; (3) the source and connection of the cause of action with those contacts; (4) Iowa's interest; and (5) the convenience to the parties. *Addison Ins.*, 734 N.W.2d at 476.

"A defendant's conduct relative to the forum state must be such that the defendant should reasonably anticipate being haled into court there." *Addison Ins.*, 734 N.W.2d at 476. "In determining whether minimum contacts exist, we focus on the relationship among the defendant, the forum, and the litigation." *Id*. at 477.

ANALYSIS

A. Motion to Dismiss for Lack of Personal Jurisdiction. Defendant asserts in an affidavit supporting his position that Plaintiff asked Defendant to review medical records for a fee of $10,000.00. (Motion to Dismiss Attachment # 1 ¶¶ 6, 8). Defendant says the medical records were extensive. (Motion to Dismiss Attachment # 1 ¶ 10). He contends Plaintiff "did not share with [him] any of his plans for litigation in Iowa or any other jurisdiction." (Motion to Dismiss Attachment # 1 ¶ 6).

In his Amended Petition, Plaintiff says Defendant and Plaintiff negotiated and agreed that Defendant would serve as an expert to both evaluate a potential malpractice claim and testify as an expert in any litigation. (Amended Pet. ¶ 6). Plaintiff asserts he and

Defendant agreed that Defendant would be compensated at a rate of $1,000.00 per hour for his services, and that Plaintiff sent Defendant $10,000.00 for such services. (Amended Pet. ¶ 7). The Amended Petition says that the medical records Plaintiff sent Defendant involved an Iowa resident patient and a surgeon and facility that practice in Polk County, Iowa (Amended Pet. ¶¶ 8-9, 13)

When considering a motion to dismiss, it is well-settled that the district court is bound to accept as true the facts alleged in the underlying petition. In accepting these facts here, it emerges that Defendant has sufficient minimum contacts with Iowa to support assertion of personal jurisdiction over him for the following reasons.

Where, as here, there is an agreement for an expert "to provide expert services for legal proceedings in this forum . . . it is the defendant's conduct that . . . form[s] the . . . connection with the forum state." *Golden v. Stein*, 481 F.Supp.3d 843, 857 (S.D. Iowa 2019) (citations omitted). In *Golden*, a California accounting and litigation services firm (the Firm) agreed to supply an expert for a party to an Iowa lawsuit. The court found the Firm did "not market its services in Iowa or solicit business in Iowa . . . [did] not have any office, employ any employees, maintain any bank accounts, or own any property" in Iowa and had "never contracted to perform services for any Iowa citizen or company." *Id*. The entry of the Firm into Iowa did not involve an agent of the Firm physically entering the state, but it did involve "agreement to provide expert services for legal proceedings in this forum," which the court found was not a trivial contact for personal jurisdiction purposes. *Id*.

The *Golden* court ultimately found the Firm and its expert were subject to personal jurisdiction in Iowa because they "reasonably anticipated testifying in Iowa," and "by agreeing to provide expert witness services in litigation in Iowa, [the Firm understood that] some of the future consequences of failing to provide those services would occur to some degree in Iowa," even if the party the Firm was serving resided in another state.[1] *Id*. The court's analysis turned on the "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." *Id*. at 857; *Creative Calling Solutions, Inc. v. LF Beauty Ltd.*, 799 F.3d 975, 980 (8th Cir. 2015).

Viewing the averments in the instant Petition as true—as the court must when considering a motion to dismiss—Plaintiff verified that Defendant agreed to serve as an expert in an Iowa lawsuit involving an Iowa plaintiff and Iowa defendant. (Amended Pet. ¶¶ 6, 8-9, 13). Under this record Defendant reasonably anticipated testifying in Iowa and that the future consequences of not doing so after being paid for it would occur in Iowa. *Golden*, 481 F.Supp.3d at 857-58.

Defendant's averments in the Motion and affidavit that Plaintiff paid Defendant $10,000.00 to only conduct a record review are akin to the facts in a federal district court decision finding personal jurisdiction was established over an out-of-state expert in a Pennsylvania lawsuit. That court identified the

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[1] The Firm contended that negotiations between the parties indicated a 95-99 percent chance that the case would settle. The Firm's expert understood that she did not need to anticipate testifying by deposition or at trial, and it was extremely unlikely she would ever be asked to travel anywhere to advance the underlying litigation.

following as sufficient contacts for personal jurisdiction to attach:

> Even though the [plaintiffs] initiated the first contact with [the out-of-state expert] . . . (1) by reviewing the [record and reporting to plaintiffs] in their potential medical malpractice action, (2) by requesting future opportunities from Plaintiffs' counsel to write expert reports, and (3) by agreeing to retain the mammogram films to write an addendum for the plaintiffs, [the expert] reached out beyond one state and created continuing relationships and obligations with citizens of another state.

Guardi v. Desai, 151 F.Supp.2d 555, 560 (E.D. Penn. 2011). Similarly, in *Echevarria v. Beck*, 338 F.Supp.2d 258 (D.P.R. 2004), a non-resident doctor who agreed to be an expert in Puerto Rico was found to have created sufficient contacts with Puerto Rico by being appointed as an expert, sending a report to Puerto Rico and having direct contact by mail with the plaintiffs' attorney in Puerto Rico. *Id*. at 261-62. That court found particularly compelling that the doctor "knew that his expert opinion would be utilized in Puerto Rico, and that the contract had a substantial connection to Puerto Rico," so it "was foreseeable that a cause of action could arise," in Puerto Rico. *Id*. at 262.

The court ultimately finds and concludes that the parties' agreement for Defendant to provide expertise and expert testimony to Plaintiff for a cause of action in an Iowa forum is sufficient to establish minimum contacts and personal jurisdiction over Defendant.[2]

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[2] The court finds Defendant's alternative argument implying that a written agreement between Plaintiff and Defendant should be a precursor to Plaintiff asserting personal jurisdiction over

B. Service. Subsequent to Plaintiff filing the Petition on April 4, 2021, attempted service of Original Notice and the Petition upon Defendant was made on Joan Morris on May 12, 2021, by a Hamilton County, Indiana Sheriff. (Service Motion, Ex. A). In addition, on May 27, 2021, an attorney purporting to represent Defendant emailed Plaintiff and requested an extension of time to respond with a responsive pleading. (Service Motion, Ex. B). Defendant through Iowa counsel appeared to challenge personal jurisdiction on July 29, 2021.

In the Service Motion Plaintiff asks the court to confirm if Plaintiff has perfected service, and if service is not perfected, to advise Plaintiff "what more needs to be done." (08/03/21 Motion at p. 2, ¶ 9). The docket entries reflect that there is no service controversy before the court.[3] The court cannot give an advisory opinion on matters not joined. Under the instant record the Service Motion is moot.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Dismiss for Lack of Jurisdiction is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Determine Service is moot.

Defendant unpersuasive. Defendant did not cite, and the court has not found, any relevant Iowa authority so limiting an assertion of personal jurisdiction.

[3] When queried by the court during oral argument about Defendant's position on the service issue, his counsel indicated that Defendant was standing on his personal jurisdiction argument.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any costs are assessed equally to the parties.

[SEAL]

State of Iowa Courts

Case Number

LACL150488

Case Title

MARC HARDING VS RICK SASSO MD ET AL

Type:

OTHER ORDER

So Ordered

/s/ Jeanie Vaudt
Jeanie Vaudt, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-10-10 15:47:42