

# Kelley Drye Wins Appeal for Chrome Coalition—No Jurisdiction Based on Participation in Conspiracy

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Kelley Drye successfully represented the Chrome Coalition in a wrongful death, toxic tort lawsuit, which alleged that Chrome Coalition conspired with various chromium manufacturers and distributors to cause injury to the decedent and others in the State of Illinois. In *Ploense v. Electrolux Home Products and the Chrome Coalition*, the plaintiff, Cindy Ploense, the administrator of the estate of Michael Ploense, alleged the defendants participated in a civil conspiracy to suppress information and mislead innocent end users concerning the harmful health effects of exposure to chrome. The alleged conspiracy included the Chrome Coalition and five other defendants: Occidental Chemical Corporation, Metropolitan Life Insurance Company, PPG Industries, Elementis Chromium G.P. and Honeywell. Michael Ploense, who worked in a chrome plating department in a company called Eureka, contracted lung cancer and died. The plaintiff claimed the conspirators' wrongful conduct proximately caused serious disease and death.

The Chrome Coalition is a trade organization whose membership includes manufacturers and users of chromium and chrome products. It provides scientific and regulatory information to its members and the public about chromium, chrome and chrome products. It has never engaged in substantial business, does not own property or assets, does not maintain offices or employees, and has never paid taxes in the State of Illinois. In view of the Chrome Coalition's lack of "minimum contacts" with the State of Illinois, Kelley Drye, on behalf of the Coalition, challenged the jurisdiction of the Illinois courts. Plaintiff asserted that jurisdiction was proper under the conspiracy theory of personal jurisdiction, a theory recognized by numerous Illinois state and federal courts. The trial court denied the Coalition's motion to dismiss primarily on the basis of existing precedent in the very appellate jurisdiction where the *Ploense* case was pending. This precedent was on point and went squarely against the Chrome Coalition. Kelley Drye filed a petition for leave to appeal the trial court's decision, which was denied by the Illinois Appellate Court, 4th District. Kelley Drye then appealed to the Illinois Supreme Court, which issued an order reversing the appellate court's denial of leave to appeal, ordering the appellate court to hear the appeal on its merits. Briefing and oral argument ensued, several months after which the appellate court issued its opinion reversing the trial court's ruling. The appellate court concluded that the Chrome Coalition lacked the minimum contacts with Illinois necessary to justify the exercise of personal jurisdiction.

Aside from achieving a complete victory for its client, the Chrome Coalition, this case is significant for making new law. Kelley Drye convinced the 4th District Appellate Court that its earlier decision embracing a broad application of the conspiracy theory of jurisdiction was unconstitutional and wrongly decided. In limiting the holding of its earlier decision, the 4th District relied on cases and scholarly articles cited in the Chrome Coalition's papers. In the 4th District, and to the extent other appellate courts in Illinois follow the decision, the Constitutional validity of the conspiracy theory of

jurisdiction is at least significantly in question. This decision will now make it much harder for nonresidents to be forced to defend against suit in Illinois where jurisdiction is premised on participation in a conspiracy.