

## OAJ Consumer Law Section Article October 2015

### Protecting Ohioans: An Immediate Call to Amend Ohio's Long-Arm Statute

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A Canadian company advertises its cabins to hunting and fishing enthusiasts throughout Ohio. An Ohio family is successfully lured. They travel deep into the Canadian wilderness to enjoy a remote family vacation. A defective propane refrigerator in the cabin emits carbon monoxide. The family is killed in their sleep. Under current Ohio's Long-Arm jurisdiction statute,<sup>2</sup> particularly under the current interpretation of the Sixth Circuit,<sup>3</sup> the Canadian company cannot be held responsible in Ohio courts.<sup>4</sup>

It does not have to be this way. The conclusion would likely be different under the long-arm statutes of many other states. This lack of legal recourse applies to Ohio corporations and individuals alike. For the benefit of all Ohioans, both families and companies, Ohio's Long-Arm Statute must be amended. This need is even more pressing in light of recent decisions of the U.S. Supreme Court.

A court's personal jurisdiction over a non-resident defendant is limited by due process and permissible only if the forum state has either specific or general jurisdiction over the non-resident.<sup>5</sup> However, as University of Akron School of Law Professor Bernadette Bollas Genetin recently explained, "the Supreme Court's two most recent opinions on personal jurisdiction usher in a new era in the law of general and specific personal jurisdiction."<sup>6</sup>

As to general jurisdiction, a defendant who maintains "continuous and systematic" contacts with a forum state may be subject to its jurisdiction, even where the conduct complained of did not arise from the continuous and systematic contacts.<sup>7</sup> However, last term in *Daimler AG v. Bauman*,<sup>8</sup> the Supreme Court significantly narrowed the scope of general jurisdiction, making it available primarily in an individual's domicile and a corporation's state of incorporation and principal place of business.<sup>9</sup> Outside of those parameters, general jurisdiction will now be found "only on rare occasions."<sup>10</sup>

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<sup>2</sup> R.C. §2307.382.

<sup>3</sup> *Brunner v. Hampson*, 441 F.3d 457, 464, 466-67 (6th Cir.2006).

<sup>4</sup> This factual scenario is loosely based upon the allegations in *Common v. Green Wilderness Lodge, et al.*, N.D. Ohio No. 5:07CV184. It was settled prior to the court's ruling on the defendant's motion to dismiss for lack of personal jurisdiction.

<sup>5</sup> *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-415 (1984).

<sup>6</sup> Bernadette Bollas Genetin, *The Supreme Court's New Approach to Personal Jurisdiction*, 68 SMU L. Rev. 107 (2015).

<sup>7</sup> *Helicopteros*, 466 U.S. at 415.

<sup>8</sup> 134 S. Ct. 746 (2014).

<sup>9</sup> Genetin, 68 SMU L. Rev. at 107.

<sup>10</sup> Tanya J. Monestier, *Where Is Home Depot "At Home"?: Daimler v. Bauman and the End of Doing Business Jurisdiction*, 66 Hastings L.J. 233, 236 (2014).

Holding a non-Ohioan accountable, in large measure, must now depend upon a finding of specific personal jurisdiction. A court's exercise of such jurisdiction comports with due process if the non-resident has "certain minimum contacts" so that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."<sup>11</sup> An important limitation, as the Supreme Court made clear last term in *Walden v. Fiore*, is that "the defendant's suit-related conduct must create a substantial connection with the forum State."<sup>12</sup> In turn, the cause of action must "relate to" this conduct, though, as noted by Professor Cassandra Burke Robertson of the Case Western Reserve School of Law, the contours of this requirement are still developing.<sup>13</sup>

It is not that simple in Ohio. "Unlike other jurisdictions, Ohio does not have a long-arm statute that reaches to the limits of the Due Process Clause, and the analysis of Ohio's long-arm statute is a particularized inquiry wholly separate from the analysis of Federal Due Process law."<sup>14</sup> Based upon the language of Ohio's Long-Arm statute, the Sixth Circuit in *Brunner v. Hampson* expressly held that this analysis requires that a plaintiff's injuries be "proximately caused" by the defendant's Ohio-related conduct in order subject the defendant to the jurisdiction of Ohio courts.<sup>15</sup> In the Canadian cabin case above, the family's carbon monoxide asphyxiation was not "proximately caused" by the Ohio advertisements that lured them there. Ohio's courthouse doors were therefore closed. This is true regardless of whether the advertisements were "related to" the family's death, which is all that Due Process requires.

The long-arm statute of every other state in the Sixth Circuit extends to the limits of the Due Process Clause.<sup>16</sup> The inevitable result of the Canadian cabin case may have been much different had the long-arm statute of any one of those states applied.<sup>17</sup> There is no reason for Ohio to be the outlier that it is.

The current state of the law hurts Ohioans and benefits non-Ohioans. The legislative solution to this problem is astoundingly simple.<sup>18</sup> In light of the near elimination of general personal jurisdiction by *Daimler AG v. Bauman*, the need for action by the General Assembly is immediate. This amendment to Ohio's Long-Arm Statute is constituency neutral, as Ohio families and corporations will equally benefit. Ohio's courthouse doors will be open to all

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<sup>11</sup> *Internatl. Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

<sup>12</sup> 134 S. Ct. 1115, 1121 (2014).

<sup>13</sup> Charles W. Rhodes and Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. Davis L. Rev. 207, 230 (2014).

<sup>14</sup> *Conn v. Zakharov*, 667 F.3d 705, 712 (6th Cir. 2012). See also *Brunner v. Hampson*, 441 F.3d 457, 465 (6th Cir.2006), citing *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 1994-Ohio-229, 638 N.E.2d 541, n. 1.

<sup>15</sup> 441 F.3d at 465.

<sup>16</sup> *Conn*, 667 F.3d at 712, citing *Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269, 1273 (6th Cir.1998) (noting that because Kentucky's long-arm statute reaches to the limit of the Constitution the only issue is whether jurisdiction "is within the requirements of due process") and *Intera Corp. v. Henderson*, 428 F.3d 605, 616 (6th Cir.2005) (affirming that Tennessee's long-arm statute is "coterminous" with Due Process); *Chrysler Corp. v. Fedders Corp.*, 643 F.2d 1229, 1236 (6th Cir.1981) ("The Michigan statute confers on the state courts the maximum scope of personal jurisdiction permitted by the due process clause of the Fourteenth Amendment.").

<sup>17</sup> *Cf. Ford v. RDI/Caesars Riverboat Casino, LLC*, 503 F. Supp. 2d 839, 844 (W.D. Ky. 2007); *Nisby v. Barden Mississippi Gaming LLC*, W.D. Tenn. No. 06-2799 MA, 2007 WL 6892326, \*5 (Sept. 24, 2007).

<sup>18</sup> Replace R.C. §2307.382(C) with: "In addition to the provisions of subsection (A), a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States." See, e.g., 735 Ill. Comp. Stat. Ann. 5/2-209 (Illinois); La. Rev. Stat. Ann. 13:3201 (Louisiana).

Ohioans as far as the Due Process Clause will allow. Outsiders that cause harm to our Ohio families and companies can be held accountable in our Ohio courts. This is absolutely necessary. Action is needed.