



**SUPREME COURT OF MISSOURI**  
**en banc**

STATE EX REL. KEY INSURANCE )  
COMPANY, )  
 )  
 Relator, )  
 )  
v. )  
 )  
THE HONORABLE [REDACTED] )  
[REDACTED] )  
 Respondent. )

*Opinion issued October 29, 2019*

[REDACTED]

**ORIGINAL PROCEEDING IN PROHIBITION**

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

**Factual Background**

Key Insurance Company is an insurance company incorporated under the laws of the state of Kansas with its principal place of business in Kansas. Key issued an insurance

policy to Kansas City, Kansas, resident, [REDACTED]. The insurance policy covered her 2002 Kia Optima. [REDACTED] father, [REDACTED] was involved in a motor vehicle collision with [REDACTED] in Jackson County, Missouri, while driving [REDACTED] Optima. Soon after the collision, [REDACTED] counsel informed Key of the collision, and Key denied coverage.<sup>1</sup> [REDACTED] sued [REDACTED] in Jackson County. [REDACTED] agreed to submit their dispute to arbitration in Jackson County. The arbitrator awarded [REDACTED] \$4.5 million in damages. The circuit court then confirmed [REDACTED] arbitration award as a final judgment.

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

---

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

## Standard of Review

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

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

*State ex rel. Hawley v. Midkiff*, 543 S.W.3d 604, 606-07 (Mo. banc 2018) (quoting *State ex rel. Strauser v. Martinez*, 416 S.W.3d 798, 801 (Mo. banc 2014)). "Prohibition is the proper remedy to prevent further action of the trial court where personal jurisdiction of the defendant is lacking." *Id.* at 607 (quoting *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 45 (Mo. banc 2017)). Prohibition will issue only when the lower court's usurpation of jurisdiction is "clearly evident." *Id.*

## Analysis

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

corporation's place of incorporation or its principal place of business is in the forum state." ).<sup>2</sup>

Specific jurisdiction over a foreign corporation exists when the underlying lawsuit arises from the corporation's contacts with Missouri. *State ex rel. PPG Indus., Inc. v. McShane*, 560 S.W.3d 888, 891 (Mo. banc 2018). To establish specific personal jurisdiction over a foreign corporation, a two-prong test must be met: (1) the defendant's conduct must fall within the long-arm statute, § 506.500<sup>3</sup>; and (2) the court must then determine if the foreign corporation has the requisite minimum contacts so as not to offend due process. *PPG Indus.*, 560 S.W. 3d at 891. "A court evaluates personal jurisdiction by considering the allegations contained in the pleadings to determine whether, if taken as true, they establish facts adequate to invoke Missouri's long-arm statute and support a finding of minimum contacts with Missouri sufficient to satisfy due process." *State ex rel. Cedar Crest Apartments, LLC v. Grate*, 577 S.W.3d 490, 496 n.5 (Mo. banc 2019).

### **Missouri's Long-Arm Statute, § 506.500**

Section 506.500, provides in pertinent part:

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

---

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

<sup>3</sup> All statutory references are to RSMo 2016 unless otherwise specified.

.....

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

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

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

██████ also alleged that the policy Key issued to ██████ grants Key the exclusive right to contest or settle any claim, that the policy prohibits any insured from voluntarily assuming any liability or settling any claims without Key's consent, and that Key has

---

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

engaged in fraud or bad faith.<sup>5</sup> For jurisdictional purposes, █████ has satisfactorily pleaded that Key committed the tort of bad faith refusal to settle in Missouri.<sup>6</sup> Because Key is alleged to have committed a tort in Missouri, its conduct falls within the purview of Missouri's long-arm statute. The first prong of the test is satisfied.

### **Key's Minimum Contacts with Missouri**

The Due Process Clause requires that a foreign corporation have minimum contacts with the forum state for the forum court to exercise personal jurisdiction over the defendant corporation. *Peoples Bank v. Frazee*, 318 S.W.3d 121, 128 (Mo. banc 2010). "Section 506.500 is construed to extend the jurisdiction of the courts of this state over nonresident defendants to that extent permissible under the Due Process clause." *Andra v. Left Gate Prop. Holding, Inc.*, 453 S.W.3d 216, 225 (Mo. banc 2015) (internal quotations omitted). In Missouri, "[a] single tortious act is sufficient to support personal jurisdiction consistent with due process standards." *State ex rel. William Ranni Assocs., Inc. v. Hartenbach*, 742

---

<sup>5</sup> For example, █████ makes the following allegations:

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

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

S.W.2d 134, 139 (Mo. banc 1987). Further, "Missouri courts may still assert personal jurisdiction over a non-domiciliary defendant corporation without violating due process if that entity has at least one contact with this state *and* the cause of action being pursued arises out of that contact." *Cedar Crest Apartments*, 577 S.W.3d at 494.

Key has the requisite minimum contacts with Missouri. Key's alleged tortious behavior of bad faith refusal to settle is a contact contemplated by Missouri's long-arm statute. This alleged tortious contact, by itself, is sufficient to satisfy due process because [REDACTED] cross-claim arises out of this contact with Missouri. Additionally, Missouri's long-arm statute reaches as far as the Due Process Clause lets it reach without violating the constitution. Although Key's alleged tort may be its only contact with this state, it is within the bounds of due process to allow Missouri courts to exercise personal jurisdiction over it.

### **Conclusion**

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

---

Zel M. Fischer, Judge

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