

Sometimes Two Meetings Aren't Better than None: The Texas Supreme Court Clarifies the Circumstances Giving Rise to Personal Jurisdiction

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Litigation and Dispute Resolution

In its recent opinion *M&F Worldwide Corp. et al. v. Pepsi-Cola Metropolitan Bottling Company, Inc.*, the Texas Supreme Court clarified that a nonresident defendant's presence in the State of Texas does not constitute minimum contacts with Texas sufficient to support an exercise of personal jurisdiction unless the plaintiff's cause of action arises out of conduct that took place at those meetings or can be directly connected to that conduct.

At issue in *M&F* was a 2011 settlement agreement that resolved a New York lawsuit arising from indemnity obligations for asbestos-related claims. In the original New York lawsuit, a subsidiary of M&F Worldwide Corp. sued Cooper Industries, LLC and other defendants on claims related to their mutual responsibility to indemnify third parties for products liability claims primarily relating to asbestos.

M&F and Cooper eventually resolved the New York lawsuit in a confidential settlement establishing a Delaware trust with a cash infusion of approximately \$308 million to settle and resolve indemnity claims. Prior to filing the New York lawsuit, the parties to that case had engaged in earlier settlement negotiations, including two trips in 2009 to Texas by M&F representatives. The settlement discussions that took place after the filing of the New York suit did not involve any in-person discussions in Texas, but did involve numerous phone calls and e-mail exchanges between out of state M&F representatives and Cooper representatives based in Texas. The settlement agreement contained a New York forum-selection clause and a New York choice of law clause.

Shortly after the settlement agreement was signed, Pepsi filed suit in Texas against M&F Worldwide Corp. and its affiliates MCG Intermediate Holdings Inc., Mafco Worldwide Corp., Mafco Consolidated Group LLC, and PCT International Holdings, Inc. (collectively the "Mafco Defendants") and against Cooper Industries, LLC alleging that the New York settlement left insufficient assets to pay for defense and indemnity obligations that the defendants owed to Pepsi. The Mafco Defendants were all nonresidents of Texas. The trial court denied the Mafco Defendants' special appearance, and the Fourteenth Court of Appeals in Houston affirmed, relying on the two meetings in Texas in 2009 as the start of a chain of events that "ultimately culminated" in the execution of the settlement agreement at issue in the lawsuit.

The Texas Supreme Court reversed, holding that the two meetings were not enough to establish specific personal jurisdiction. Under federal law, Texas courts can only exercise personal jurisdiction over an out of state defendant when the defendant has “minimum contacts” with Texas and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. The *M&F* case involved the exercise of specific personal jurisdiction, where the plaintiff’s cause of action must arise from or relate to the defendant’s contacts with Texas.

The Supreme Court sided with the Mafco Defendants, holding that the Court of Appeals had misapplied the Court’s holding in *Moncrief Oil International, Inc. v. OAO Gazprom*. Whereas the Court of Appeals had relied on language in *Moncrief* stating that two meetings in Texas supported an exercise of personal jurisdiction over an alleged misappropriation of trade secrets claim, the Texas Supreme Court distinguished that case from the instant one because the alleged misappropriation in *Moncrief* had actually taken place at the meetings in Texas.

Instead, in the *M&F* case, Pepsi did not allege that the Mafco Defendants committed torts in Texas at the 2009 meetings or that they had committed torts against Texas residents. Instead, the torts that Pepsi alleged—including fraudulent transfer and tortious interference—related to the effect of the New York settlement agreement and conduct that occurred outside of Texas. The Supreme Court reasoned that because the transactions giving rise to the alleged torts did not occur in Texas, the Mafco Defendants were not subject to the specific jurisdiction of a Texas court.

The Court also overruled the other arguments in favor of jurisdiction, including that a Texas-based company had taken over management of the asbestos indemnification claims after the settlement was agreed and the Delaware trust was created. The settlement agreement did not provide for a particular management company for the trust or that it would manage the trust from any particular location. The Court held that the fact that the Mafco Defendants knew a Texas-based management company would likely be selected was insufficient. Finally, the settlement agreement did not contemplate performance in Texas and was governed by New York law and a New York forum selection clause.

Having held that specific jurisdiction did not exist, the Court reversed and remanded the case to determine whether the non-resident defendants were subject to general jurisdiction in Texas.

In sum, the decision continued the Supreme Court’s trend in recent years of narrowing the factual situations sufficient to give rise to personal jurisdiction over nonresidents. The *M&F* decision is a reminder that, to ensure personal jurisdiction exists, the plaintiff must identify some act that the defendant took or purposefully caused to occur in Texas. Phone calls and emails to Texas residents are not enough. Further, even meetings that physically took place in Texas must somehow give rise to the plaintiff’s cause of action, otherwise they may also be insufficient to show that the court may exercise specific jurisdiction over a nonresident.

The case at issue was *M&F Worldwide Corp. et al. v. Pepsi-Cola Metropolitan Bottling Company, Inc.*, Case No. 15-0083 (Tex. Mar. 3, 2017).

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