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## Personal Jurisdiction Over The Foreign Defendant: *Brown, Nicaastro, and the Internet*

by Kathleen J. St. John

Your client's husband dies in the crash of a small aircraft piloted by a friend. The crash occurs in Kansas, but your client and the pilot are Ohio residents. Investigators determine the crash to have been caused by a defect in the airplane – specifically, by the failure of a component part manufactured in China by a Chinese corporation.

The part was installed in the airplane in Pennsylvania by a Pennsylvania company that purchased the defective part from the Chinese company through an Internet website. The Chinese company has no offices or employees in the United States, but it does market its parts internationally, through an interactive website that is available in seven languages, including English. Approximately 15% of the Chinese company's exports are sold to customers in the U.S., but only about 4%, 3%, and 1% of its products are sold to companies located in Pennsylvania, Kansas, and Ohio, respectively.

Customers can order the product from the Chinese company through the website, or by phone, email, or regular mail. The products are shipped directly from the Chinese company's factory to the customer's address. The Chinese company also has a call center in China with English speaking employees to handle inquiries, transactions, and complaints. In this particular case, the Connecticut company communicated with the Chinese company through its website, as well as by phone and email.

You would prefer to file the wrongful death action against the Chinese manufacturer in Ohio, but are also considering Pennsylvania and Kansas. In which, if any, of these locations will the State court have personal jurisdiction over the Chinese defendant?

I. The Analysis: State and Federal Components; and General and Specific Jurisdiction.

In any personal jurisdiction analysis, two inquiries must be satisfied. Is the defendant amenable to suit in the forum state? Does the forum state's exercise of personal jurisdiction over the defendant comport with the requirements of federal due process?<sup>1</sup>

Whether the defendant is amenable to suit in the forum state typically depends on the applicability of the state's long-arm statute or civil rule, though there may be other methods of satisfying that requirement – such as consent<sup>2</sup>, presence<sup>3</sup>, or domicile<sup>4</sup>. Additionally, if the forum state recognizes the concept of "general jurisdiction," satisfaction of that doctrine will render the defendant amenable to suit in the forum state.

As for the federal inquiry, the court must determine whether exercising personal jurisdiction over the defendant would violate constitutional due process. Although the ultimate question is whether the defendant has "certain minimum contacts with [the State] such that the maintenance of the suit does not

offend 'traditional notions of fair play and substantial justice,'"5 the analysis differs depending on whether general or specific jurisdiction is pursued.

**General jurisdiction** exists over a defendant if its "contacts with the forum state are of such a continuous and systematic nature that the state may exercise personal jurisdiction over the defendant even **if the action is unrelated to the defendant's contacts with the state.**"6 This is the more demanding standard, and, hence, the rarer; until this year, only two U.S. Supreme Court cases involved general jurisdiction. Indeed, the 1952 opinion in *Perkins v. Benguet Consolidated Mining Co.*,7 is the only case in which the Court has found general jurisdiction to exist. *Perkins* was an action brought in Ohio against a Philippine corporation that, during the Japanese occupation of the Philippines, conducted business in Ohio where its president was temporarily headquartered. Under those circumstances, the Court found the Ohio court's exercise of jurisdiction over the defendant to be consistent with Due Process even though the lawsuit was in no way connected to the defendant's Ohio activities.

**Specific jurisdiction** is by far the more common means of obtaining jurisdiction over a foreign defendant. It exists "when **the suit 'aris[es] out of or relate[s] to the defendant's contacts with the forum.**"8 The specific jurisdiction analysis requires the satisfaction of three factors: (1) the defendant must purposefully avail itself of the privilege of acting in the forum state or causing a consequence in the forum state; (2) the cause of action must arise out of the defendant's activities in the forum state; and (3) the "acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over

the defendant reasonable."9

As with most analyses, the devil's in the details. So, before considering which states might have personal jurisdiction over the Chinese parts manufacturer, it is helpful to examine two things: the U.S. Supreme Court's most recent decisions on personal jurisdiction; and the case law addressing whether Internet contacts give rise to personal jurisdiction.

## II. The *Brown* and *Nicastro* Decisions.

In June of 2011, the U.S. Supreme Court released two decisions dealing with personal jurisdiction in the product liability context: *Goodyear Dunlop Tire Operations, S.A. v. Brown* ("Brown")10, and *J. McIntyre Machinery, Ltd. v. Nicastro* ("Nicastro").11

*Brown* is an interesting example of how one might improperly conflate the general and specific jurisdictional analyses. In *Brown*, the North Carolina families of two boys who died in a bus accident in France brought wrongful death actions in North Carolina against an Ohio tire manufacturer (Goodyear, USA), and three of its foreign subsidiaries, on the ground that the bus accident was caused by a defective tire. The foreign subsidiaries were not registered to do business in North Carolina; they had no place of business, employees, or bank accounts in that state; and they neither designed nor advertised their products in North Carolina, nor solicited business there. The only contact the foreign subsidiaries had with North Carolina was the fact that a small percentage of their tires were distributed in that state by other Goodyear USA affiliates.

The North Carolina appeals court recognized there was no basis for exercising specific jurisdiction over

the foreign subsidiaries, but found general jurisdiction to exist based on the subsidiaries' "placement of their tires in the 'stream of commerce.'" The U.S. Supreme Court, in a unanimous decision, reversed. Noting that the North Carolina court had "confus[ed] or blend[ed] general and specific jurisdictional inquiries,"12 the Supreme Court held that the fact that a small percentage of the subsidiaries' tires were distributed in North Carolina "f[e]ll far short of the 'continuous and systematic general business contacts' necessary to empower North Carolina to entertain suit against them on claims unrelated to anything that connects them to the State."13

Whereas *Brown* is fairly non-controversial, revisiting and clarifying jurisdictional parameters articulated over the past quarter century, the same cannot be said for *Nicastro*.

In *Nicastro*, the plaintiff, a New Jersey worker, suffered an amputation injury while using a metal shearing machine manufactured in England by a British company, J. McIntyre. The product was marketed in the U.S. by an independent distributor, and no more than four J. McIntyre machines, including the one at issue, had ended up in New Jersey. Officials from J. McIntyre had attended annual trade shows in the U.S., but never in New Jersey.

The issue in *Nicastro* was whether specific jurisdiction could be found to exist under a stream-of-commerce analysis. Some 12 years earlier, in *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*,14 two divergent approaches to stream of commerce doctrine had emerged. Justice O'Connor's plurality opinion held that a foreign defendant's mere act of placing a product into the stream of commerce was insufficient to satisfy due process unless accompanied by "an action of

the defendant purposefully directed toward the forum State.” Such conduct might consist of action indicating an intent to serve the forum State’s market, such as designing the product for the forum State’s market, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor serving as a sales agent in the forum State. But the defendant’s “awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.”<sup>15</sup>

Justice Brennan disagreed with this interpretation. In his view, placing products regularly into the stream of commerce with an awareness that the final product is being marketed in the forum State, subjected the defendant to the benefits and burdens of that State’s law, and thus satisfied the “purposeful availment” prong of the due process inquiry.

The plurality opinion in *Nicastro*, authored by Justice Kennedy, agreed with Justice O’Connor’s approach from *Asahi Metal*. The principle inquiry in stream of commerce cases, Justice Kennedy wrote, is “whether the defendant’s activities manifest an intention to submit to the power of a sovereign,” and to target the particular forum state. Sales by an independent intermediary and national marketing efforts through that intermediary were insufficient to constitute directed conduct, particularly when the defendant lacked control over the intermediary.

Justice Breyer, with whom Justice Alito joined, concurred in judgment, but declined to sanction the plurality’s hardened approach. “The plurality,” he wrote,

“seems to state strict rules that limit jurisdiction where a defendant does not ‘inten[d] to submit to the power of a sovereign’ and cannot ‘be said to have targeted the forum.’.... But what do those standards mean when a company targets the world by selling products from its Web site? And does it matter if, instead of shipping products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And what if the company markets its products through popup advertisements that it knows will be viewed in the forum? Those issues have serious commercial consequences but are totally absent in this case.”<sup>16</sup>

The dissent, authored by Justice Ginsburg, and joined by Justices Sotomayor and Kagan, was concerned with how a foreign manufacturer that targets the U.S. market generally, with no efforts to target specific states, can escape suit in the U.S. by acting through a distributor. Where the case involves “a substantially local plaintiff, like *Nicastro*, injured by the activity... of a manufacturer seeking to exploit a multistate or global market,” Justice Ginsburg wrote, courts “have repeatedly confirmed that jurisdiction is appropriately exercised by courts in the place where the product was sold and caused injury.”<sup>17</sup>

### III. Personal Jurisdiction and the Internet.

As Justice Breyer’s concurrence in *Nicastro* suggests, the time will come when the high court is directly faced with a personal jurisdiction issue stemming primarily from Internet contacts in the global market. Meanwhile, in the past two decades, the lower courts have been resolving cases in which Internet contacts have played a primary role.

The case most frequently cited in this area is *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*,<sup>18</sup> where a federal court in Pennsylvania posited a “sliding scale” model for analyzing Internet contacts. “At one end of the spectrum are situations where a defendant clearly does business over the internet” as manifested by the “knowing and repeated transmission of computer files over the Internet.”<sup>19</sup> In such situations, “personal jurisdiction is proper.”<sup>20</sup> At the other end “are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions.”<sup>21</sup> Such websites, described as “passive,” do “little more than make information available to those who are interested in it” and are “not grounds for the exercise of personal jurisdiction.”<sup>22</sup>

It is the “middle ground [which] is occupied by interactive Web sites where the user can exchange information with the host computer” that presents the greatest analytical challenges. “In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site[.]”<sup>23</sup>

Although many courts have used the *Zippo* test for analyzing Internet contacts, it has not been held applicable in all circumstances. In *Kaufmann Racing Equipment, LLC v. Roberts*,<sup>24</sup> for instance, the Ohio Supreme Court found the *Zippo* test to be of little use “[w]hen the Internet activity in question is non-commercial in nature.”<sup>25</sup> *Kaufmann Racing* was a libel action involving comments made by a disgruntled purchaser from Virginia against an Ohio company, when the comments were intended to injure the plaintiff’s business and were seen by at least five Ohio residents. Finding jurisdiction over the defendant using a traditional analysis, the Court noted:

The rise of Internet-related disputes does not mean courts should ignore traditional jurisdictional principles. “[T]he Internet does not pose unique jurisdictional challenges. People have been inflicting injury on each other from afar for a long time. Although the Internet may have increased the quantity of these occurrences, it has not created problems that are qualitatively more difficult.”<sup>26</sup>

The *Zippo* test has, however, been used in a number of Ohio state and federal cases, as well as in many product liability cases throughout the U.S. that have analyzed Internet jurisdictional contacts as to foreign manufacturer defendants.

In *Edwards v. Erdey*<sup>27</sup>, for instance, an Ohio woman who flew to the Cayman Islands to obtain a medical procedure that was not approved in the United States was permitted to sue the surgeon in Ohio based, in part, on her visiting the defendant’s website and exchanging emails to arrange the surgery. In *Neogen Corp. v. Neo Gen Screening, Inc.*<sup>28</sup>, the Sixth Circuit Court of Appeals found the Michigan district court to have jurisdiction over a Pennsylvania corporation in a trademark dispute, even though the defendant had no physical contacts in Michigan, because the defendant conducted a small amount of business over the Internet with Michigan customers and its website specifically indicated Michigan as one of the regions it served.

In *Beightler v. Produkte Fur Die Medizin AG*,<sup>29</sup> the U.S. District Court in the Northern District of Ohio found that the plaintiff, injured by a faulty catheter, had not borne his burden of establishing jurisdiction over the German manufacturer and its California distributor. The court, however, permitted limited jurisdictional discovery to correct that deficiency, but cautioned:

Absent evidence that defendants, or at least one of them, operated an interactive website and had more than incidental contacts with Ohio customers through such site, plaintiffs have not shown that either defendant purposefully availed itself of the privilege of doing business here. This is so, even if both Produkte and PFM Medical may well have foreseen that their products would eventually reach Ohio. To speculate that they may have done more, absent some basis for believing that they did so, is not enough.<sup>30</sup>

Based on these and similar cases, the following matters should be considered in attempting to obtain jurisdiction over a foreign defendant based on Internet contacts:

- Is the website active, passive, or in the middle ground?
- Is the website primarily for advertising, or can the customer actually conduct transactions through the Internet?
- Does the website indicate an intention to serve the state’s particular market?<sup>31</sup>
- How frequent are the defendant’s interactions with the forum state customers?
- Can products be purchased or ordered through the website?
- Does the website permit the customer to sign up for mailing lists and catalogues, or provide a service link whereby users can email questions or directly call an operator?<sup>32</sup>
- Does the website include a link whereby the user can become a “fan” of the defendant on Facebook or tweet the website URL on their Twitter page?<sup>33</sup>

- Does the website indicate an intent to serve the forum state by including a page listing shipping estimates for various states, including the forum state?<sup>34</sup>
- Was it the customer or the defendant who initiated the transaction?<sup>35</sup> If not the defendant, then how much control does the defendant have over who responds to the defendant’s offer?<sup>36</sup>
- What is the level of sophistication of the non-resident defendant?
- How many total on-line sales has the defendant had generally, and specifically in the forum?
- Did the non-resident defendant have any continuing communications with the forum resident?
- Where were the goods delivered, and which party arranged for delivery?

Some of these factors (e.g., a link whereby the website user can become a Facebook fan of the non-resident defendant) are obviously less important in a jurisdictional analysis than others (e.g., the total number of on-line sales within the forum). And all must be considered in the context of the overall inquiry – is the defendant’s website “interactive to a degree that reveals a specific intent to target the forum state and to transact business or otherwise interact specifically with residents of that state[?]”<sup>37</sup>

#### IV. Which Court Has Jurisdiction Over The Chinese Manufacturer?

So which of the three potential forums (if any) has jurisdiction over the Chinese manufacturer of the defective component part in our aircraft crash case?



Ohio is likely to be a non-starter. In the hypothetical given there is no reason to believe that the long-arm statute<sup>38</sup> or Civ. R. 4.3(A)<sup>39</sup> apply, and hence no basis for engaging in a specific jurisdiction analysis. And, although there is conflicting authority as to whether Ohio recognizes general jurisdiction,<sup>40</sup> the hypothetical indicates a mere 1% of the defendant's products are sold to customers in Ohio – a factor which, without more, is probably insufficient to establish that its "affiliations with [Ohio] are so 'continuous and systematic' as to render [it] essentially at home in the forum State."<sup>41</sup>

The case for jurisdiction in Kansas, where the airplane crashed, is not much better. The Kansas long-arm statute extends jurisdiction to non-resident defendants who "caus[e] to persons ... in this state an injury arising out of an act or omission outside this state by the defendant if, at the time of the injury, either: (i) [t]he defendant was engaged in solicitation or service activities in this state; or (ii) products, materials or things ... manufactured by the defendant anywhere were used... in this state in the ordinary course of trade or use[.]"<sup>42</sup> Since the plane crashed in Kansas, and the part manufactured by the Chinese defendant was integrated into a product used in Kansas, the Kansas long-arm statute is likely satisfied.

Jurisdiction probably fails, however, under the constitutional analysis. Recall that for due process to be satisfied under a specific jurisdiction analysis, not only must the defendant have purposefully availed itself of the privilege of acting in the forum state or causing a consequence in the forum state, but the cause of action must arise out of or relate to the defendant's contacts with the forum, and exercise of jurisdiction in that state must be reasonable. As to the requirement that the cause of action must arise out of or relate to the

defendant's contacts with the forum, the courts look to whether at least some of the contacts constituting purposeful availment give rise to the lawsuit.<sup>43</sup> Here, although there is evidence that the defendant sells its products to customers in Kansas, those are not the transactions giving rise to this lawsuit; as such, specific jurisdiction is probably lacking. Furthermore, the amount and quality of the defendant's contacts with Kansas are probably insufficient to satisfy the more demanding general jurisdiction standard.

The best bet for personal jurisdiction over the Chinese company would be Pennsylvania where the Pennsylvania company purchased the component part from the defendant over the Internet. Pennsylvania's long-arm statute "authorizes personal jurisdiction over non-residents 'to the fullest extent allowed under the Constitution of the United States.'"<sup>44</sup> Moreover, since the lawsuit against the Chinese corporation arises out of the sale of the component part to the Pennsylvania company, the specific jurisdiction analysis applies and the second requirement of that analysis is satisfied. As to the purposeful availment requirement, the plaintiff's jurisdictional discovery and/or argument would need to focus on the particular Internet purchase in question, as well as any continuing communications between the parties to that transaction. Other matters to take into account would include the interactivity of the defendant's website, the defendant's total number of sales in the forum state, the defendant's sophistication as a commercial entity, and any factors indicating that the defendant was specifically targeting the Pennsylvania market. ■

## End Notes

1. See, e.g., *Neogen Corp. v. Neo Gen Screening, Inc.* (6th Cir. 2002), 282 F.3d 883, 888; *Avery Dennison Corp. v. Alien Technology Corp.* (N.D. Ohio 2008), 632 F.Supp.2d 700, 705.
2. See, e.g., *Kvinta v. Kvinta*, 10th Dist. No. 02AP-836, 2003-Ohio-2884, ¶157 ("A court obtains personal jurisdiction over a defendant by (1) service of process, (2) the voluntary appearance and submission of the defendant to the court's jurisdiction, or (3) other acts the defendant commits which constitute a waiver of a jurisdictional defense.") (citing *Maryhew v. Yova* (1984), 11 Ohio St.3d 154, 156).
3. The U.S. Supreme Court has held that serving a defendant who is temporarily present in the forum state ("tag jurisdiction") is a sufficient basis for personal jurisdiction without any further "minimum contacts" analysis. *Burnham v. Superior Court of California* (1990), 495 U.S. 604, 622. It is unclear whether Ohio would recognize "tag jurisdiction" as an independent basis for jurisdiction, although there is authority suggesting that it might. See, e.g., *LaCroix v. American HorseShow Assn.* (N.D. Ohio 1994), 853 F. Supp. 992 (appearing to apply Ohio law as authorized by Fed. R. Civ. P. 4, and to hold that Ohio law recognizes as effective service in Ohio on a non-resident only temporarily in the state).
4. See, e.g., *Prouse, Dash & Crouch, L.L.P.*, 116 Ohio St.3d 167, 2007 Ohio 5753 (The Court found personal jurisdiction over the defendant who had absconded from his Ohio home to Canada upon discovering he was being investigated for securities fraud. Although the Court based its decision on its finding that defendant was an Ohio "resident," the factors it considered strongly suggest that the concept it was applying is actually that of domicile).
5. *Goodyear Dunlop Tires Operations v. Brown ("Brown")* (2011), 131 S.Ct. 2846, 2853 (quoting *International Shoe Co. v. Washington* (1945), 326 U.S. 310, 316, 66 S.Ct. 154 (quoting *Milliken v. Meyer* (1940), 311 U.S. 457, 463, 61 S.Ct. 339)).
6. *Solar X Eyewear, LLC v. Bowyer*, N.D. Ohio No. 1:11-CV-00763, 2011 U.S. Dist. LEXIS 85799, \*7 (quoting *Bird v. Parsons* (6th Cir. 2002), 289 F.3d 865, 873).
7. 342 U.S. 437, 72 S.Ct. 413 (1952).
8. *Brown*, 131 S.Ct., at 2853 (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall* (1984), 466 U.S. 408, 414, n.8, 104 S.Ct. 1868).
9. *Solar X Eyewear*, supra, at \*8 (quoting *Southern Machine Co. v. Jahasco Ind., Inc.* (6th Cir. 1968), 401 F.2d 374, 381).
10. \_\_\_ U.S. \_\_\_, 131 S. Ct. 2846 (2011).
11. \_\_\_ U.S. \_\_\_, 131 S. Ct. 2780 (2011).
12. *Brown*, 131 S.Ct., at 2851.
13. *Id.*, at 2857.
14. 480 U.S. 102, 107 S.Ct. 1026 (1989).

15. 480 U.S. at 112.
16. *Nicastro*, 131 S.Ct., at 2791 (Breyer, J., concurring in the judgment).
17. *Id.* at 2804 (Ginsburg, J., dissenting).
18. (W.D. Pa. 1997), 952 F.Supp. 1119.
19. *Id.* at 1123-1124. *See also, Compuserve, Inc. v. Patterson* (6th Cir. 1996), 89 F.3d 1257 (Contract dispute between Ohio Internet service provider and Texas software seller. Although Texas defendant never stepped foot in Ohio, jurisdiction existed in Ohio because the defendant repeatedly sent his software to the Ohio plaintiff via electronic links, advertised his software for sale on the Ohio plaintiff's system, entered into a written agreement with defendant which was subject to Ohio law, and made demands for compensation from the Ohio plaintiff via electronic and regular mail messages.)
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.*
24. 126 Ohio St.3d 81, 2010 Ohio 2551.
25. *Id.* at ¶26 (quoting *Oasis Corp. v. Judd* (S.D. Ohio 2001), 132 F. Supp. 2d 612, 622, fn. 9, citing *Mink v. AAAA Dev. L.L.C.* (5th Cir. 1999), 190 F.3d 333, 336).
26. *Id.* at ¶25 (quoting Scott T. Jansen, Oh, What a Tangled Web\*\*\* The Continuing Evolution of Personal Jurisdiction Derived from Internet-Based Contacts (2006), 71 *Mo.L.Rev.* 177, 182-183, quoting Allen R. Stein, Symposium, Personal Jurisdiction and the Internet: Seeing Due Process Through the Lens of Regulatory Precision (2004), 98 *NW.U.L.Rev.* 411).
27. (C.P. Franklin Cty.), 118 Ohio Misc. 2d 232, 2001-Ohio-4367.
28. (6th Cir. 2002), 282 F.3d 883.
29. N.D. Ohio No. 3:07CV 1604, 2007 U.S. Dist. LEXIS 68512.
30. *Id.* at \*8.
31. *See, e.g., The Cadle Co. v. Schlichtmann*, 6th Cir. No. 04-3145, 123 Fed. Appx. 675, 678 ("The 'operation of an Internet website can constitute the purposeful availment of the privilege of acting in a forum state... if the website is interactive to a degree that reveals specifically intended interaction with residents of the state.'")
32. *Solar X Eyewear, LLC v. Bowyer*, N.D. Ohio No. 1:11-CV-00763, 2011 U.S. Dist. LEXIS 85799, \*10.
33. *Id.*
34. *Id.*
35. *See, e.g., Wood v. Fliehman*, 193 Ohio App.3d 454, 2011 Ohio 2101 (Holding that the Missouri court, whose default judgment the Missouri plaintiff sought to enforce in Ohio, lacked personal jurisdiction over the Ohio defendants who provided horse semen for breeding services to the plaintiff through a one-time Internet transaction. The court found persuasive the facts that it was the plaintiff who initiated the contact, and that the defendant's internet advertisement was not directed towards residents of Missouri).
36. *See, e.g., Malone v. Berry* (10th Dist.), 174 Ohio App.3d 122, 2007-Ohio-6501, ¶20 ("Courts have also focused upon the fact that the seller on an Internet auction website has little or no control over who will ultimately be the highest bidder[.]")
37. *Custom Cupboards, Inc. v. CEMP SRL*, D. Kan. No. 10-1060-JWL, 2010 U.S. Dist. LEXIS 44822, \*8.
38. Under R.C. 2307.382 (A), the only arguably relevant provisions would be (A) (4) "[c]ausing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumer or services rendered in this state" or (A) (5) "[c]ausing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he might reasonably have expected such person to use, consumer, or be affected by the goods in this state, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state." These provisions, however, do not apply, as the deaths occurred outside of Ohio, and the post-death grieving of the Ohio family members does not constitute "injury" for purposes of these sections. *See, e.g., Robinson v. Koch Refining Co.*, 10th Dist. No. 98AP-900, 1999 Ohio App. LEXIS 2682, \*8 ("The injury, which is the basis of the complaint, must have occurred in Ohio to confer personal jurisdiction over an out-of-state party under R.C. 2307.382(A)(4)"), and *id.* at \*9 ("[A] tortious injury is not considered to have occurred in Ohio simply because a party continues to suffer from the effects of the injury after returning to Ohio.")
39. Civ. R. 4.3 (A)(4) and (5) are identical to R.C. 2307.382(A)(4) and (5).
40. *See, e.g., National Strategies, LLC v. Naphcare, Inc.*, N.D. Ohio No. 5:10-CV-0974, 2010 U.S. Dist. LEXIS 137975, \*8-9 ("A continuing debate exists among federal courts in Ohio as to whether Ohio law recognizes general jurisdiction or whether personal jurisdiction over an out-of-state defendant can be established only if Ohio's longarm statute is satisfied. *Compare Keybank Capital Mkts. v. Alpine Biomed Corp.*, Case No. 1:07-CV-1227, 2008 U.S. Dist. LEXIS 112156, 2008 WL 828080, at \*3-6 (N.D. Ohio 2008) (discussing numerous opinions from the Supreme Court of Ohio, the Sixth Circuit, the Federal Circuit, and the Northern and Southern Districts of Ohio and concluding that Ohio law does recognize general jurisdiction) with *Signom v. Schenck Fuels, Inc.*, Case No. C-3- 07-037, 2007 U.S. Dist. LEXIS 42941, at \*3-\*9, 2007 WL 1726492, at \*1-\*3 (S.D. Ohio 2007) (discussing opinions from the Supreme Court of Ohio, the Sixth Circuit, the Federal Circuit, and the Northern and Southern Districts of Ohio and concluding that Ohio law does not recognize general jurisdiction).")
41. *Brown*, 131 S.Ct. at 2851.
42. K.S.A. §60-308 (a) (3) (G).
43. "[A] fundamental element of the specific jurisdiction calculus is that plaintiff's claim must 'arise out of or relate to' at least one of defendant's contacts with the forum." *Oldfield v. Pueblo De Bahia Lora, S.A.* (11th Cir. 2009), 558 F.3d 1210, 1222 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 2182 (1985)). As the Supreme Court "has not yet fully delineated the contours of the 'relatedness' requirement", the state and lower courts have developed their own tests. *Id.* The 6th Circuit has adopted a "lenient standard" which requires only that the "operative facts 'are at least marginally related to the alleged contacts' between the defendant and the forum state[.]" *Contech Bridge Solutions, Inc. v. Keaffaber*, S.D. Ohio No. 1:11-cv-216, 2011 U.S. Dist. LEXIS 122875 (quoting *Third Nat'l Bank in Nashville v. WEDGE Group, Inc.* (6th Cir. 1989), 882 F.2d 1087, 1091). The Tenth Circuit – where Kansas is located – appears to follow a similar test. *See, e.g., Union Pacific Railroad Co. v. Trinity Industries, D. Kan. No. 93-1101-PFK*, 1993 U.S. Dist. LEXIS 14070, citing *Rambo v. American Southern Ins. Co.* (10th Cir. 1988), 839 F.2d 1415, 1419 n. 6 (describing the second criterion of the three part test as being that the "claim arises out of or results from defendant's forum-related activities").
44. *Henning v. Suarez Corp. Industries, Inc.* (E.D. Pa. 2010), 713 F. Supp. 2d 459, 464.