

Specific Jurisdiction on Appeal: Does a Recent Decision from the Third Circuit Beg Further Review?

A recent decision by the United States Court of Appeals for the Third Circuit raises a very simple, but still very fragmented, issue regarding U.S. jurisdictional doctrine: When does a claim “arise out of” a foreign defendant’s contacts with the forum so as to justify the assertion of specific jurisdiction over him. In *O’Connor v. Sandy Lane Hotel, Inc.*, a Pennsylvania resident sued a Barbados resort in federal district court in Philadelphia, Pennsylvania, for a slip-and-fall accident that occurred in its spa. Plaintiff sought to pin personal jurisdiction over the defendant based on the advertisements and promotional mailings that defendant sent, and plaintiff received, in that state. The District Court found no specific jurisdiction and dismissed the case.

The Third Circuit reversed. In a studious opinion by Judge Chagares, the panel began by recognizing the yet-unsettled nature of the specific jurisdiction doctrine. It noted that the Supreme Court granted certiorari over this very question in 1991, but decided that case – *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) – on other grounds. It then went on to discuss the three-way split among at least five circuits on the required degree of connectedness between purposeful forum contacts and the plaintiff’s claims to justify specific jurisdiction. On the one end of the continuum, the First Circuit uses a narrow “proximate causation” test, and asserts specific jurisdiction only when the forum contact is the proximate cause of the harm and the claim. On the other end, the Ninth Circuit uses an expansive “but-for” test, and asserts specific jurisdiction simply if the harm would not

have occurred without the forum contact. The Second and D.C. Circuits apply a fluid “substantial connection” test that falls somewhere in the middle, and pins specific jurisdiction on the “totality of the circumstances.” Judge Chagares purported to take the middle road – requiring more than a ‘but-for’ link and shy of proximate causation. The Third Circuit now seems committed to specific jurisdiction so long as the defendant’s forum contacts were “meaningfully link[ed]” to the “substance of plaintiff’s claims.” Apparently, soliciting a “contract for spa services” via out-of-forum mailings is “meaningfully link[ed]” to a later action sounding in tort.

Beyond the uncertainty of the national rule, there is an immediate practical concern as well. For the time being, in at least the Third and Ninth Circuits, there seems to be emerging a categorical rule that any out-of-jurisdiction services solicited by mail or other communication into the forum will give rise to potential tort suits for negligence if the service would not have been provided without the forum contact. That seems to extend the specific jurisdiction doctrine from its original moorings substantially.

Some other reports on this decision are located [here](#). A link to the decision is provided [here](#).