

Challenging Personal Jurisdiction: A GUIDE TO THE PROCEDURE AND STANDARDS FOR DISMISSING LAWSUITS FOR LACK OF PERSONAL JURISDICTION



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in a federal court and discuss the substantive standards that courts apply when addressing challenges to a court's personal jurisdiction.

Procedure for Challenging Personal Jurisdiction

If a Michigan-based carrier had a vehicle involved in an accident in Iowa that injured a plaintiff as he was driving through Iowa on his way home to Florida, would the Michigan carrier have to defend a personal injury suit in Florida if the plaintiff filed suit there after returning home? Defending the action in Florida will be expensive and time consuming for the Michigan carrier. At trial, the Michigan-based carrier's witnesses will have to travel to Florida to testify. Furthermore, the Michigan-based carrier has no significant business in Florida. Does that sound fair?

The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees that the Florida court cannot require the Michigan carrier to defend itself in Florida if the Michigan carrier is not subject to personal jurisdiction in Florida. At the outset of the case, the Michigan carrier may move to dismiss the suit for lack of personal jurisdiction, allowing it avoid the expense of defending a suit in Florida and, of course, if the carrier wishes to do so, such motion must be made immediately. This article will explain the procedures for dismissing an action for lack of personal jurisdiction

Federal Rule of Civil Procedure 12(b)(2) provides that – before pleading – a party may assert the defense of lack of personal jurisdiction by motion. Accordingly, a motion challenging personal jurisdiction must be filed at the outset of the case. The defense of lack of personal jurisdiction is waivable, and filing an appearance and responsive pleading without moving to dismiss for lack of personal jurisdiction will constitute a waiver of that defense.¹ However, courts have allowed defendants to file a motion for extension of time to answer or otherwise plead without waiving its personal jurisdiction defense, as Rule 12(b) requires only that the motion asserting the defense be filed prior to pleading.² The laws of most states follow a similar course.³

A corollary to the fact that personal jurisdiction is waivable is the fact that challenging personal jurisdiction is optional. In other words, unlike issues involving lack of subject matter jurisdiction, a court cannot dismiss an action *sua sponte* for lack of personal jurisdiction.⁴ A defendant may consent to personal jurisdiction in a particular forum even though personal jurisdiction would not otherwise exist absent that consent. As with

anything that is optional, challenging – or not challenging – jurisdiction presents strategic opportunities. While a defendant may have grounds to challenge personal jurisdiction in a particular case, the defendant should consider whether the forum chosen by the plaintiff confers any strategic advantage relative to forums where personal jurisdiction would be proper. As an example, the defendant may consider its reputation advantageous in the forum, or the forum may have benefits with respect to choice of law issues. The substantive law in the plaintiff's chosen forum may have a cap on damages that is not available in the defendant's resident state, such that it may be to the defendant's advantage to forego an otherwise viable challenge to personal jurisdiction. Accordingly, prevailing on a motion to dismiss for lack of personal jurisdiction is not advantageous in and of itself, and the merits of such a motion must be evaluated within the context of the totality of legal and practical issues raised by a particular case.

A federal court in a diversity action may assume jurisdiction over nonresident defendants only to the extent permitted by the long-arm statute of the forum state and by the Due Process Clause of the Fourteenth Amendment to the United States

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Constitution.⁵ Long-arm statutes identify a number of acts that will give rise to personal jurisdiction in the forum state.⁶ The language of long-arm statutes tends to be more specific and illustrative than the broader Due Process standards. However, a court cannot exercise personal jurisdiction under the purported authority of a long-arm statute if such exercise of jurisdiction does not otherwise comport with the federal Due Process standards.⁷ Given that the federal Due Process standards set the outer limit on a court's authority to exercise personal jurisdiction, many states' long arm statutes simply confer jurisdiction to the extent permitted under Due Process, but the defendant will want to carefully ascertain whether the applicable long-arm statute more severely restricts the exercise of personal jurisdiction.

When a defendant moves to dismiss an action for lack of personal jurisdiction, the plaintiff has the burden of establishing by a preponderance of the evidence that the exercise of personal jurisdiction is proper.⁸ The plaintiff can meet this burden by producing sworn affidavits or other competent evidence. When the plaintiff has made a threshold showing that there is some basis for the assertion of personal jurisdiction, the court – in its discretion – may allow the plaintiff leave to conduct discovery limited to the issue of whether personal jurisdiction exists.⁹

Conducting discovery limited to the issue of personal jurisdiction could potentially be costly and time consuming. As is discussed in more detail below, an analysis of jurisdictional issues sometimes involves evaluating the totality of a defendant's business activity. A deep-pocketed defendant may find it advantageous to move to dismiss for lack of personal jurisdiction if the plaintiff's litigation resources are limited such that the plaintiff cannot afford to engage in discovery on matters that do not go to the merits of the underlying claim.

In the face of a motion to dismiss for lack of personal jurisdiction, the plaintiff may find it advantageous to simply re-file the action in the defendant's home state so that it can proceed directly to the merits of its case and avoid the cost of discovery on the jurisdiction issue. Such an outcome might be advantageous to the defendant if, for example, the defendant gains a significant cost advantage by defending in its home state or if the defendant's home state has a more favorable jury pool. In deciding whether to pursue a motion to dismiss for lack of personal jurisdiction, the defendant should incorporate the potential time and cost of discovery for both sides into its strategic analysis. Defense counsel must also note that a general engagement in discovery may very well waive any contest to personal jurisdiction.

An order granting a motion to dismiss for lack of personal jurisdiction will typically result in a dismissal of the action, although such a dismissal is not a ruling on the merits of the underlying claim. Some states have savings statutes that will permit a plaintiff to re-file in a court with proper jurisdiction an action that was previously dismissed for lack of personal jurisdiction, when such dismissal was conditioned upon re-filing within a certain period of time after dismissal.¹⁰ In the absence of a federal statute providing for a different limitations period, federal courts will apply a state's savings clause in a diversity action to determine whether a re-filed action is timely filed.¹¹

Due Process Standards Applicable to Challenges to Personal Jurisdiction: Minimum Contacts and Reasonableness

Due Process requires that an exercise of personal jurisdiction must satisfy two conditions. First, the defendant must have sufficient "minimum contacts" with the forum state "such that the maintenance of

the suit does not offend traditional notions of fair play and substantial justice."¹² Minimum contacts are some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thereby invoking the protection of those laws while at the same time creating the reasonable expectation that it could be haled into court to answer to them.¹³ The purpose of the minimum contacts standard is to give individuals "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign [state]," and give a "degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."¹⁴ Second, the exercise of jurisdiction must be reasonable.¹⁵

With respect to the minimum contacts analysis, the Supreme Court has recognized two theories for evaluating whether a defendant's contacts with the forum give rise to personal jurisdiction: specific jurisdiction and general jurisdiction.¹⁶ Under the specific jurisdiction theory, jurisdiction is appropriate if the defendant has the requisite minimum contacts with the forum state and the suit arises out of those same contacts.¹⁷ In other words, specific jurisdiction is appropriate if the defendant purposely directed its activities at the forum state and the claim arises out of or relates to those activities.¹⁸ The Supreme Court has recently described specific jurisdiction as "case-linked" jurisdiction, such that the exercise of specific jurisdiction "depends on an affiliation between the forum and the underlying controversy; principally, activity or an occurrence that takes place in the forum state and is therefore subject to the state's regulation."¹⁹

Specific Jurisdiction

The Supreme Court elaborated on the specific jurisdiction theory

in *World-Wide Volkswagen Corp. v. Woodson*.²⁰ In *World-Wide*, the plaintiffs filed a products liability action in Oklahoma arising out of an automobile accident that occurred in that state. Among the defendants was a New York-based retailer that sold the subject automobile. The retailer's sales were limited to the New Jersey, New York, and Connecticut tri-state area. The plaintiffs purchased the automobile in New York, then chose to drive the vehicle to Oklahoma where the subject accident occurred. The Court found that the New York-based retailer was not subject to specific jurisdiction in Oklahoma. The Court explained that "the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state."²¹ The Court further rejected the argument that the retailers could be subject to specific jurisdiction in Oklahoma because it was foreseeable that their products – vehicles whose value is derived from their mobility – would be used in distant forums.²² The Court explained that "foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause" and rejected the outcome whereby "every seller of chattels would in effect appoint the chattel his agent for service of process."²³ Rather, the Court found that jurisdiction in that context must be based upon some conscious effort of the retailers to serve the market for its product in the forum state.

Specific jurisdiction may exist under the "stream-of-commerce" theory if a nonresident defendant sells products in the forum state that ultimately cause harm inside the forum state.²⁴ The stream-of-commerce theory has been invoked when a nonresident defendant – acting outside of the forum state – distributes products which travel through an extensive chain of distribution before reaching the ultimate consumer in the forum state. The mere placement of a

product into the stream of commerce, without more, does not give rise to specific jurisdiction.²⁵ Rather, there must be evidence establishing that the defendant purposefully directed its products into the forum state and intended to serve the market in the forum state.²⁶ Such evidence could consist of marketing campaigns directed towards the forum state or modifying a product to meet the needs of the forum state, including making modifications to comply with the forum state's regulations. Notably, a defendant's mere awareness that the stream of commerce may or will sweep the product into the forum state does not convert the act of placing a product in the stream of commerce into an act purposefully directed towards the forum state.²⁷

The Supreme Court has recently clarified that the "stream-of-commerce" theory is applicable only to the specific jurisdiction analysis.²⁸ In *Goodyear Dunlop Tires Operations SA v. Brown*, a bus utilizing tires manufactured by Goodyear overturned in France, causing fatal injuries to two passengers who were North Carolina residents visiting France. The estates of the deceased passengers filed suit in North Carolina against Goodyear USA – which was based in Ohio and did not contest jurisdiction – and three Europe-based subsidiaries of Goodyear USA. The Europe-based subsidiaries manufactured and distributed the tires that were used on the subject bus. While the Europe-based subsidiaries' tires were designed specifically for use in European markets, some of the tires were distributed in the United States – including North Carolina – pursuant to custom orders. It was undisputed that the tire involved in the subject accident was manufactured in Turkey and was never distributed in North Carolina. The Supreme Court held that the Europe-based subsidiaries were not subject to personal jurisdiction in North Carolina under a stream-of-commerce theory, despite the fact that some of their products were sold in North Carolina. The Court explained

that the stream-of-commerce theory will give rise to specific jurisdiction only if the product at issue was distributed and caused injury in the forum state, neither of which had occurred in that case.

Widespread usage of the Internet to conduct business has resulted in some courts utilizing specific rules for analyzing whether Internet activity can give rise to personal jurisdiction. In the specific jurisdiction context, the leading test for analyzing Internet contacts is styled the "*Zippo* Sliding Scale," which is derived from the case of *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*²⁹ Under the *Zippo* Sliding Scale, a defendant's website is classified on a spectrum, with one end of the spectrum representing active websites and the other representing passive websites.³⁰ At the active end of the spectrum are websites with which the defendant is conducting business over the Internet by entering into contracts online with the knowing and repeated transmission of computer files over the Internet. Under the *Zippo* Sliding Scale, an active website is sufficient to give rise to specific jurisdiction if the claim arises out of the use of the defendant's website in the forum state.³¹ At the passive end of the spectrum are websites that simply post information which is accessible to online viewers. Under the *Zippo* Sliding Scale, a passive website that does nothing more than make information available is not a sufficient basis for exercising personal jurisdiction.³² In the middle of the spectrum are interactive websites where a user can exchange information with the defendant through the website. Under the *Zippo* Sliding Scale, whether such an interactive website gives rise to specific jurisdiction depends on the level of interactivity and the commercial nature of the information exchanged over the website.³³

General Jurisdiction

In contrast to specific jurisdiction, general jurisdiction refers to a

court's ability to exercise personal jurisdiction over any and all claims against a defendant – regardless of the relationship between the defendant's contacts with the forum and the subject action – when the defendant's contacts with the forum are so “continuous and systematic” that the defendant can effectively be considered a resident of the forum.³⁴ The Supreme Court has recently described general jurisdiction as “all-purpose” jurisdiction.³⁵ An individual defendant will be subject to general jurisdiction in his state of residence and a corporate defendant will be subject to general jurisdiction in its state of incorporation.³⁶ Many states' long-arm statutes also authorize the exercise of general jurisdiction when a defendant is found to be “doing business” within the forum state.³⁷ However, mere purchases made in the forum state, even if occurring at regular intervals, are not enough to warrant a state's assertion of general jurisdiction over a nonresident corporation in a cause of action not related to those purchases.³⁸ Further, transient contact such as attendance at trade shows, advertising and mere solicitation has been held to be insufficient to establish general jurisdiction on a doing business standard.³⁹ Again, the court must find that the defendant's contacts with the forum state were continuous and systematic to assert general jurisdiction. Courts applying a doing business standard have focused on whether the quantity and quality of the defendant's contacts with the forum state establish that the defendant has purposefully maintained a substantial and ongoing business relationship with the forum state to justify the finding that the defendant is effectively a resident for general jurisdiction purposes.

The Supreme Court has described its decision in *Perkins v. Benguet Consol. Min. Co.*,⁴⁰ as the “textbook” case on the exercise of general jurisdiction.⁴¹ In *Perkins*, a shareholder in a Philippine mining corporation brought suit against the

company in Ohio for failure to pay dividends and to issue certificates. At the time of suit, the Philippine corporation had ceased its operations in the Philippines due to the Japanese occupation of the Philippines during World War II. During the occupation, the president of the mining company returned to his home in Ohio, where he transferred all of the company's files and continued to carry out the corporation's limited activities. Although the Court found that the suit did not arise out of the corporation's contacts with Ohio, the court found that the corporation was nonetheless subject to general jurisdiction in Ohio due to its continuous and systematic business activity in that state. In a later decision, the Court explained its ruling in *Perkins*, by stating that the exercise of general jurisdiction in Ohio was permissible because “Ohio was the corporation's principal, if temporary, place of business.”⁴²

The only other Supreme Court case to address when general jurisdiction is appropriate is *Helicopteros Nacionales de Colombia, S.A. v. Hall*.⁴³ In *Helicopteros*, the Supreme Court held that Texas could not exercise general jurisdiction over a Columbia-based defendant that was in the business of providing helicopter transportation services to a joint venture building a pipeline in Peru, in a suit arising out of the fatal crash of one of the defendant's helicopters in Peru. The representatives of the estates of the persons killed in the crash filed suit in Texas. It was undisputed that the defendant did not operate its helicopter transportation services in Texas, did not maintain any offices in Texas, and did not own any property in Texas. The defendant did, however, purchase approximately 80 percent of its fleet from Bell Helicopter Company in Fort Worth, Texas, at a cost of more than \$4 million. Further, the defendant's president negotiated the subject contract to provide helicopter services to the pipeline-building venture in Texas, and sent its pilots

and mechanics to Texas for training on the operation and maintenance of the helicopters it had purchased there. The Court held that mere purchases made in the forum state, even if occurring at regular intervals, are not enough to warrant a state's assertion of general jurisdiction over a nonresident corporation in a cause of action not related to those purchases. Further, the Court found that the brief presence of the defendant's president and pilots in Texas did not establish that the defendant had maintained continuous and systematic contacts with Texas.

As is apparent from these examples, general jurisdiction depends upon a finding that the defendant has purposefully engaged in some sort of substantial and ongoing business in the forum state to be subject to general jurisdiction there. Isolated transactions, even if substantial, will not be enough to confer general jurisdiction. Rather, the defendant must maintain some contacts with the forum state such that it can fairly be said that the defendant is effectively a resident of the forum state for jurisdictional purposes.

In the general jurisdiction context, the question of whether Internet contacts can give rise to personal jurisdiction still depends upon whether those Internet contacts have given rise to continuous and systematic contacts with the forum state. The mere fact that a website is available on a continuing basis is not sufficient to establish general jurisdiction. Rather, it must be demonstrated that the defendant's website has actually resulted in sufficiently continuous and systematic business for the defendant to be considered a resident of the forum state.⁴⁴ Accordingly, in the general jurisdiction context, the issue of whether a website can be considered active or passive is immaterial if the website has not in fact produced a sufficiently purposeful and ongoing business presence in the forum state.

Reasonableness

In addition to the minimum contacts analysis, a court cannot exercise personal jurisdiction over a nonresident defendant if such exercise of jurisdiction is unreasonable. The question of whether the exercise of personal jurisdiction is reasonable in a given case depends on whether the exercise of such jurisdiction would “offend traditional notions of fair play and substantial justice.”⁴⁵ Such an analysis requires the court to evaluate five factors: (1) the burden on the defendant of litigating in the forum state; (2) the interests of the forum state in deciding the action; (3) the plaintiff’s interest in obtaining relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies.⁴⁶

The principal case addressing the reasonableness standard is *Asahi v. Metal Indus. Co. v. Superior Court of California*.⁴⁷ In *Asahi*, a California resident was injured in a motorcycle accident and brought a products liability action against various manufacturers of components parts in the motorcycle, including a Taiwan-based distributor of a tube used in the motorcycle’s tires. The Taiwan distributor in turn filed a third-party action for indemnification against the Japan-based manufacturer of the tube. The Japan manufacturer moved to dismiss the indemnification claim for lack of personal jurisdiction. Ultimately, the products liability claims brought by the California resident were settled, leaving only the indemnification claim by the Taiwan distributor against the Japan manufacturer pending in California. A plurality of the court found that the Japan manufacturer had sufficient minimum contacts under a stream of commerce theory to be subject to specific jurisdiction in California, but a majority of the court found that it would not be reasonable to

exercise personal jurisdiction over the Japan manufacturer with respect to the indemnification claim. The court noted the expense to the Japan manufacturer of defending itself in California. The court further noted that since the only claim remaining was an indemnification action between two nonresidents, California had little interest in trying the subject action. Accordingly, the action was dismissed on the ground that it would not be reasonable for California to exercise personal jurisdiction over the claim.

Application of the Due Process Standards


Applying these principles to a hypothetical situation, if a Michigan-based carrier were operating a vehicle in Iowa and that vehicle was involved in an accident in Iowa, then personal jurisdiction would be appropriate in Iowa for a suit arising out of that accident under a specific jurisdiction theory. Suppose now that the person injured in the accident in Iowa was a resident of Florida who happened to be driving through Iowa at the time of the accident and chose to file suit against the Michigan carrier in his home state of Florida. Here, specific jurisdiction would not be appropriate in Florida, because the subject action does not arise out of any contacts between the Michigan carrier and Florida. As was the case in *Goodyear*, the carrier is not subject to specific jurisdiction in Florida due to the mere fact that the accident involved a resident of Florida. However, the Michigan carrier may still be subject to personal jurisdiction in Florida if it is subject to general jurisdiction in Florida. The Michigan carrier would be subject to general jurisdiction in Florida if it had engaged in a continuous and systematic course of business in Florida by, for example, maintaining a regional office in Florida, or regularly shipping goods of a substantial quantity to and from Florida. However, if the Michigan carrier did not maintain any presence in Florida and did not conduct any

business in Florida, then personal jurisdiction would not be appropriate in Florida under a general jurisdiction theory.

Suppose now that a California-based manufacturer sold allegedly defective tires to the Michigan carrier that were used on the tractor involved in the accident in Iowa. The question of whether the California-based manufacturer is subject to personal jurisdiction in Iowa will depend on a number of different issues. As for specific jurisdiction, the California manufacturer is not subject to personal jurisdiction in Iowa simply because the accident occurred there. However, the California manufacturer might be subject to specific jurisdiction in Iowa under a stream-of-commerce theory if the California manufacturer had intended for the tires it sold to the Michigan carrier to be used in Iowa. For example, if the manufacturer had designed its tires to handle the specific roadways and environmental conditions in Iowa and represented to the Michigan carrier that its tires were designed for that purpose, knowing that the Michigan carrier conducted substantial business in Iowa, then specific jurisdiction may be appropriate in Iowa. However, if the California manufacturer simply sold the same tires it sells in California to the Michigan carrier without any intent that the tires be used in Iowa, then the California manufacturer may not be subject to specific jurisdiction in Iowa, even if the California manufacturer was aware that the Michigan carrier would operate its tractors in Iowa.⁴⁸ The critical issue under this scenario is that the California manufacturer has not purposefully directed its products towards Iowa or otherwise intended to serve the market in Iowa. Furthermore, under the facts of the *World-Wide* decision, the California manufacturer cannot be subject to specific jurisdiction in Iowa on the sole basis that the Michigan carrier unilaterally chose to use the manufacturer’s tires in Iowa.

In addition to specific jurisdiction, the California manufacturer may be subject to general jurisdiction in Iowa, for the same reasons as addressed above with respect to the Michigan carrier.

A motion to dismiss for lack of personal jurisdiction can be an effective way of resolving a dispute or transferring a dispute to a more favorable or familiar forum. Considering the national scale on

which most transportation business is conducted, defense counsel should always evaluate whether there are bases and advantages to moving to dismiss an action for lack of personal jurisdiction. 

Endnotes

1. See Fed. R. Civ. Proc. 12(h)(1); See also *Credle-Brown v. Connecticut*, 246 F.R.D. 408, 409 (D.Conn. 2007).
2. See *A-Connoisseur Transportation Corp., v. Celebrity Coach, Inc.*, 742 F.Supp. 39, 41-42 (D.Mass 1990).
3. See e.g. 735 ILCS 5/2-301.
4. See *S.E.C. v. Blazon Corp.*, 609 F.2d 960, 965 (9th Cir. 1979) (“A defendant cannot waive his right to assert a lack of subject matter jurisdiction, but he can confer jurisdiction over his person upon a court otherwise lacking that jurisdiction by expressly consenting to it.”).
5. See *Dever v. Hentzen Coatings, Inc.*, 380 F. 3d 1070, 1073 (8th Cir. 2004).
6. See e.g. 735 ILCS 5/2-209.
7. See *A-Connoisseur*, 742 F.Supp. at 42.
8. See *Thompson v. Roman Catholic Archbishop of Washington*, 735 F.Supp.2d 121, 127 (D.Del. 2010).
9. See, e.g., Ill. Sup. Ct. Rule 201(l); *Monsanto Intern. Sales Co., Inc. v. Hanjin Container Lines, Ltd.*, 770 F.Supp. 832, 838-39 (S.D.N.Y. 1991).
10. See e.g. Tex. Civ. Prac. & Rem. Code Ann. § 16.064.
11. *Valentin v. Ocean Ships, Inc.*, 38 F.Supp.2d 511, 514 (S.D.Tex. 1999).
12. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).
13. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).
14. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).
15. *Asahi Metal Indus. Co., Ltd. v. Superior Ct. of California*, 480 U.S. 102, 113 (1987).
16. See *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414-15 (1984).
17. *Id.*
18. *Goodyear Dunlop Tires Operations v. Brown*, 131 S. Ct. 2846, 2856 (2011).
19. *Id.* at 2851.
20. 444 U.S. 286 (1980).
21. *Id.* at 298.
22. *Id.* at 295-96.
23. *Id.*
24. *Goodyear*, 131 S. Ct. at 2854-55.
25. *Asahi*, 480 U.S. at 112.
26. *Id.*
27. *Id.*
28. *Goodyear*, 131 S. Ct. at 2854-55.
29. 952 F. Supp. 1119 (W.D.Pa. 1997).
30. *Id.* at 1124.
31. *Id.*
32. *Id.*
33. *Id.*
34. *Goodyear*, 131 S. Ct. at 2851.
35. *Id.*
36. See e.g., 735 ILCS 5/2-209(b).
37. See e.g. 735 ILCS 5/2-209(b)(4).
38. See *Goodyear*, 131 S. Ct. at 2856; citing *Helicopteros*, 466 U.S. at 418.
39. *Spartan Motors, Inc. v. Lube Power, Inc.*, 337 Ill.App.3d 556, 562 (2nd Dist. 2003.)
40. 342 U.S. 437 (1952).
41. *Goodyear*, 131 S.Ct. at 2856.
42. *Keeton v. Hustler Magazine, Inc.*, 46 U.S. 770, 779-780 (1984).
43. 466 U.S. 408 (1984).
44. See e.g. *Lakin v. Prudential Securities, Inc.*, 348 F.3d 704 (8th Cir. 2003).
45. *Asahi*, 480 U.S. at 113.
46. *Id.*
47. 480 U.S. 102 (1987).
48. *Asahi*, 480 U.S. at 112.