

No. A12-0495

State of Minnesota  
In Court of Appeals

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Aon Corporation and Aon Risk Services Central, Inc.,

*Respondents,*  
vs.

Lockton, Inc.; Lockton Insurance Agency, Inc.; and Lockton Management, LLC,

*Appellants*

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**APPELLANTS' BRIEF and ADDENDUM**

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## STATEMENT OF ISSUES

- I. Did the district court err in exercising personal jurisdiction over the Foreign Corporate Appellants—Lockton, Inc.; Lockton Insurance Agency, Inc.; and Lockton Management, LLC—under Minnesota’s Long-Arm Statute and the Due Process clauses of the Minnesota and U.S. Constitutions?

How raised: This issue was raised and argued in both parties’ memoranda in support of and in opposition to a motion to dismiss for lack of personal jurisdiction that was heard by the district court on December 21, 2011.

Ruling: The district court failed to address this issue.

- Authority:
- West Am. Ins. Co. v. Westin, Inc., 337 N.W.2d 676 (Minn. 1983).
  - Juelich v. Yamazaki Mazak Optonics Corp., 670 N.W.2d 11 (Minn. Ct. App. 2003).

- II. Did the district court err in concluding that the Foreign Corporate Appellants waived their objections to the Court’s exercise of personal jurisdiction?

How raised: This issue was raised and argued in both parties’ memoranda in support of and in opposition to a motion to dismiss for lack of personal jurisdiction that was heard by the district court on December 21, 2011.

Ruling: The district court ruled that the Foreign Corporate Defendants had waived their objection to personal jurisdiction.

- Authority:
- Alger v. Hayes., 452 F.2d 841, 844 (8th Cir. 1972).
  - Juelich v. Yamazaki Mazak Optonics Corp., 670 N.W.2d 11 (Minn. Ct. App. 2003).

## STATEMENT OF THE CASE

This appeal arises out of a lawsuit commenced by Respondents Aon Corporation and Aon Risk Services Central, Inc. (collectively, “Aon”) against Defendants Paul B. Haskins, Jeffrey J. Herman, Frederick O. Flemig (the “Employee-Defendants”), and Kansas City Series of Lockton Companies, LLC (Kansas City Series”) in Hennepin County district court alleging breach of contract and various forms of unfair competition. (App. 1.)<sup>1</sup> Aon also sued Appellants Lockton, Inc., Lockton Insurance Agency, Inc., and Lockton Management, LLC, along with Lockton Companies, LLC (the “Foreign Corporate Defendants”). The Foreign Corporate Defendants moved to be dismissed for lack of personal jurisdiction, and the Employee-Defendants moved for judgment on the pleadings. (App. 78.)

In an Order dated February 2, 2012, the district court, Honorable Regina M. Chu presiding, denied the motions. (Add. 1-2.) The Foreign Corporate Appellants<sup>2</sup> appealed the district court’s order denying their motion to dismiss for lack of personal jurisdiction.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

This case began when three employees left their at-will employment with Aon and began working with a competitor, Kansas City Series. Both Aon and Kansas City Series are brokers of insurance and reinsurance, and also provide risk management and benefits consultation. (App. 4-5, at ¶¶ 17, 20.) Aon responded by suing its former employees and

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<sup>1</sup> “Add.” refers to Appellants’ Addendum. “App.” refers to Appellants’ Appendix.

<sup>2</sup> One of the Foreign Corporate Defendants, Lockton Companies, LLC, does not join in this appeal. As a result, “Foreign Corporate Appellants,” as used throughout this brief, refers to all of the Foreign Corporate Defendants except Lockton Companies, LLC.

their new employer, Kansas City Series, as well as the Foreign Corporate Defendants—four separate corporations—despite the fact that none of the Foreign Corporate Defendants employ Aon’s former employees.

**I. THE EMPLOYEE-DEFENDANTS.**

**A. Aon Does Not Require the Employee-Defendants to Sign Restrictive Covenants.**

The Employee-Defendants Haskins, Herman, and Flemig were employed by Aon in “at-will” employment relationships for many years. Haskins and Flemig were Aon Producers, responsible for managing existing clients and generating new business, while Herman was an Account Executive for the clients “produced” by Haskins, responsible for providing products and services to Haskins’ clients. (App. 51-53 at ¶¶ 24, 26, 29.) It is undisputed that when Aon hired the men in 1996 and 1997, it did *not* require them to sign noncompete agreements that would restrict their employment options if they ever left Aon. It is also undisputed that subsequent to being hired and throughout the many years that Herman and Flemig worked for Aon, Aon never required them to enter into a noncompete agreement.

**B. Defendant Haskins and the Purported Restrictive Covenant.**

Haskins is the only employee who is supposedly subject to a noncompete agreement. On June 19, 2008, more than 12 years after joining Aon, Haskins was granted unvested stock options as a reward for past performance. (App. 11). In accepting the stock option grant, Haskins signed an Aon Stock Incentive Plan Restricted Stock Unit Agreement (“RSU Agreement”), which purports to restrict Haskins’ post-

employment activities for two years following his separation of employment with Aon. (App. 42-45.)

**C. The Employee-Defendants Leave Their At-Will Employment at Aon.**

As “at-will” employees, the Employee-Defendants could resign or be terminated at any time. In August 2009, Flemig resigned from Aon. He was subsequently employed by Kansas City Series. (App. 56 at ¶ 47.) In October 2009, Haskins and Herman both resigned from Aon and later were hired by Kansas City Series. (App. 56 at ¶ 50.) The crux of Aon’s Complaint against the three Employee-Defendants is that Haskins violated the restrictive covenants in the RSU, that the Employee-Defendants allegedly misappropriated Aon’s trade secrets, and that Kansas City Series benefited from the Employee-Defendants’ actions.

**II. THE FOREIGN CORPORATE DEFENDANTS.**

Appellant Kansas City Series is the employer of the Employee-Defendants. The Foreign Corporate Defendants (Lockton, Inc., Lockton Insurance Agency, Inc., Lockton Companies, LLC and Lockton Management, LLC) are all completely separate corporate entities from Kansas City Series and have no employment relationship whatsoever with the Employee-Defendants. (App. 147 at ¶¶ 2, 3.)

The Foreign Corporate Appellants are not Minnesota corporations and do not have significant contacts with Minnesota. Lockton Insurance Agency, Inc. is a Missouri corporation. (App. 3 at ¶ 11.) Lockton Management, LLC is organized under the laws of Delaware with its principal place of business in Missouri. (App. 3 at ¶ 10.) Lockton, Inc. is a Missouri corporation with its principal place business in Missouri. (App. 3 at ¶ 8.)

None of the Foreign Corporate Appellants has a bank account in Minnesota or a telephone listing in Minnesota. (App. 147 at ¶¶ 5-6). The Foreign Corporate Appellants have no employees in Minnesota, do not conduct business in Minnesota, and do not sell products or services in Minnesota. (App. 147 at ¶¶ 7-9.)

### **III. THE PRESENT LITIGATION.**

Aon brought suit against the various Defendants in Hennepin County District Court on June 16, 2011, asserting numerous causes of action against several combinations of defendants.<sup>3</sup> (App. 17-32.) For purposes of this appeal, Aon's claims include: tortious interference with contractual relations, unjust enrichment, conversion, tortious interference with prospective economic advantage, unfair competition, and conspiracy against the Foreign Corporate Appellants.

#### **A. The Foreign Corporate Defendants Did Not Answer the Complaint.**

The Employee-Defendants and Kansas City Series filed their answer to Aon's complaint on July 22, 2011. (App. 47.) The Foreign Corporate Defendants did not answer the Complaint. (*Id.* at note 1.) Rather, they put Aon on notice that personal jurisdiction was lacking. The first page of Defendants' Answer reads:

Defendants deny that Lockton Inc., Lockton Companies, LLC, and Lockton Management, LLC are proper parties to this action. Absent consent by Plaintiffs to dismiss them from this action, Defendants will bring an appropriate motion. "Lockton," as used throughout this Answer and Defenses, refers to the Kansas City Series of Lockton Companies, LLC.

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<sup>3</sup> Aon previously sued the Employee-Defendants and some of the Lockton entities in the United States District Court for the District of Minnesota. Aon Corp. et al v. Haskins et al., 09-cv-03531 (D. Minn.) The lawsuit was dismissed for lack of subject matter jurisdiction.

(Id.) All parties agree that the Foreign Corporate Defendants did *not* file an Answer to the Complaint.<sup>4</sup>

**B. The Foreign Corporate Defendants Repeatedly Notified Aon That Personal Jurisdiction Was Lacking.**

The Foreign Corporate Defendants repeatedly requested that Aon voluntarily dismiss them from the Complaint in order to avoid needless motion practice. On at least four occasions, counsel for the Foreign Corporate Defendants offered to explain their objections. (App. 246 at ¶ 4.) A month after the Employee-Defendants and Kansas City Series answered Aon's Complaint, counsel for the Foreign Corporate Defendants again wrote Aon's counsel stating:

With respect to the issue of the addition of new parties which Plaintiffs have included in this litigation, the only appropriate party defendant is the Kansas City Series of Lockton Companies, LLC. I reiterate my request, which I have made several times previously, to convene a call with you and Lockton's general counsel to discuss Lockton's organizational structure. This is the most direct and efficient way to clear up this issue.

(App. 257.)

Aon responded to the request on August 26, 2011, stating it would not voluntarily dismiss the Foreign Corporate Defendants. (App. 261.) The Foreign Corporate Defendants accordingly served their motion to dismiss shortly thereafter. (App. 78-79.)

**C. The Defendants Moved to Dismiss and For Judgment on the Pleadings.**

Unable to secure dismissal without court intervention, the Foreign Corporate Defendants moved to be dismissed from the case on the grounds that they never

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<sup>4</sup> Aon acknowledged in its briefing below that "The Foreign Corporate Defendants ... did not join in the answer Defendants served and filed." (App. 155.)

employed the Employee-Defendants, are not present in Minnesota, lack minimum contacts with Minnesota, and were not subject to personal jurisdiction in the district court. (App. 83-89.) Aon responded to the motion by asserting that the Foreign Corporate Defendants had waived any objection to personal jurisdiction. (App. 160-67.)

The Employee-Defendants and Kansas City Series filed a motion for judgment on the pleadings pursuant to Minn. R. Civ. P. 12.03.

**D. The District Court Denied the Motions.**

After a hearing, the district court denied both the motion by the Foreign Corporate Defendants to dismiss for lack of personal jurisdiction, and the motion by the Employee-Defendants and Kansas City Series for judgment on the pleadings. (Add. 1-2.) In its February 12, 2012 Order, the district court concluded that Lockton Companies, LLC had consented to personal jurisdiction, and that each of the Foreign Corporate Defendants had intentionally waived any objection to the court's exercise of personal jurisdiction. (Add. 7-9.)<sup>5</sup>

The Foreign Corporate Appellants thereafter appealed as a matter of right, and the Employee-Defendants and Kansas City Series filed a related appeal. This Court dismissed the related appeal on May 15, 2012.

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<sup>5</sup> Lockton Companies, LLC does not appeal the district court's conclusion that it consented to personal jurisdiction.

## ARGUMENT

### **I. THE DISTRICT COURT ERRED IN EXERCISING PERSONAL JURISDICTION OVER THE FOREIGN CORPORATE APPELLANTS.**

#### **A. A *De Novo* Standard of Review is Applicable.**

Whether personal jurisdiction exists is a question of law reviewed *de novo*. Juelich v. Yamazaki Mazak Optonics Corp., 682 N.W.2d 565, 569 (Minn. 2004); Northwest Airlines, Inc. v. Friday, 617 N.W.2d 590, 592 (Minn. Ct. App. 2000) (“The existence of jurisdiction is a question of law, which we review *de novo*.”)

#### **B. The Foreign Corporate Appellants Are Not Subject to Personal Jurisdiction in Minnesota.**

A party seeking to invoke a court’s jurisdiction has the burden of demonstrating that the exercise of jurisdiction is proper. V.H. v. Estate of Birnbaum, 543 N.W.2d 649, 653 (Minn. 1996); TRWL Fin. Establishment v. Select Int’l, Inc., 527 N.W.2d 573, 575 (Minn. Ct. App. 1995). When the grounds for personal jurisdiction are challenged, a party cannot simply rely on its pleadings, but must come forward with competent, admissible evidence supporting the exercise of personal jurisdiction. See In re Minn. Asbestos Litig., 552 N.W.2d 242, 246 (Minn. 1996); Amba Mktg. Sys., Inc. v. Jobar Int’l, 551 F.2d 784, 787 (9th Cir. 1977) (plaintiff could not simply rest on the bare allegations of its complaint, but rather was obligated to come forward with facts, by affidavit or otherwise, supporting personal jurisdiction).

To establish personal jurisdiction over the Foreign Corporate Appellants, Aon must (i) satisfy Minnesota’s long-arm statute, Minn. Stat. §543.19, and (ii) show that each of the Foreign Corporate Appellants has minimum contacts with Minnesota such

that the court's exercise of jurisdiction would be fair and in accordance with the due process clause of the Fourteenth Amendment. Krambeer v. Eisenberg, 923 F. Supp. 1170, 1173 (D. Minn. 1996). Because Minnesota courts construe the long-arm statute as extending to the maximum limit permitted by federal due process, the critical inquiry is whether federal due process requirements are satisfied. Minn. Asbestos Litig., 552 N.W.2d at 242; Valspar Corp. v. Lukken Color Corp., 495 N.W.2d 408, 411 (Minn. 1992).

Due process requires that a defendant have "certain minimum contacts" with the forum state such that "maintenance of the suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Estate of Birenbaum, 543 N.W.2d at 656. The defendant's conduct and connection with the forum state must be such that the defendant should reasonably anticipate being haled into court there. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980); Busch v. Mann, 397 N.W.2d 391, 394 (Minn. Ct. App. 1986). It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. Burger King Corp. v. Rudzewicz, 471 U.S. 362, 375 (1985) (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)). The defendant's contacts must be more than "random," "fortuitous," or "attenuated." Digi-Tel Holdings, Inc. v. Proteq Telecomms. Ltd., 89 F.3d 519, 522 (8th Cir. 1996) (quoting Burger King, 471 U.S. at 475). Instead, the contacts must result from actions of the defendant that create a "substantial

connection” with the forum state. Digi-Tel Holdings, Inc., 89 F.3d at 522. Personal jurisdiction can either be general or specific. Valspar, 495 N.W.2d at 411.

General jurisdiction arises from a party’s contacts with the forum that are unrelated to the particular claims in the litigation. Helicopteros Nacionales de Columbia S.A. v. Hall, 466 U.S. 408, 414-17 (1984). To establish general jurisdiction, a party must have had “continuous and systematic” general business contacts with the forum state. See Morris v. Barkbuster, Inc., 923 F.2d 1277, 1281 (8th Cir. 1991) (quoting Helicopteros Nacionales, 466 U.S. at 414). The theory underlying the exercise of general jurisdiction is that “a defendant conducts so much business within a state that it becomes subject to the jurisdiction of that state’s courts for any purpose.” Valspar Corp., 495 N.W.2d at 411.

By contrast, specific jurisdiction attaches over a non-resident defendant solely for causes of action arising from the defendant’s contacts with that forum. Helicopteros Nacionales, 466 U.S. at 414. Because the contacts are minimal, “the Due Process Clause requires that the case arise out of or be related to the contacts with the forum.” Valspar Corp., 495 N.W.2d at 411.

The Minnesota Supreme Court has adopted five factors for determining whether jurisdiction exists: 1) the quantity of the contacts with the forum state; 2) the nature and quality of the contacts with the forum state; 3) the relation of the cause of action to the contacts; 4) the interest of the forum state in providing a forum for its residents; and 5) the convenience of the parties. Juelich v. Yamazaki Mazak Optonics Corp., 682 N.W.2d 565, 570 (Minn. 2004). The first three factors, which analyze whether minimum contacts

exist with the forum, are the most important. TRWL Fin. Establishment, 527 N.W.2d at 576.

**1. Each Lockton entity must be analyzed separately and independently for purposes of personal jurisdiction.**

In attempting to meet its burden in the district court, Aon impermissibly lumped all corporate Defendants in this case together for purposes of personal jurisdiction simply because each entity contains the name “Lockton.” (See App. 4 at ¶ 13-14.) Its approach is impermissible because there is a “presumption of separateness” between a parent and subsidiary corporation. Bank of Montreal v. Avalon Capital Group Inc., 743 F.Supp.2d 1021, 1030 (D. Minn. 2010) (citing Ass’n of Mill & Elevator Mutual Ins. Co. v. Barzen Int’l, Inc., 553 N.W.2d 446, 449 (Minn. Ct. App. 1996) (citation omitted)). Indeed, courts should respect the separateness of parent and subsidiary corporations for jurisdictional purposes. Wicken v. Morris, 510 N.W.2d 246, 249 (Minn. Ct. App. 1994), rev’d on other grounds, 527 N.W.2d 95 (Minn. 1995) (citing Busch v. Mann, 397 N.W.2d 391 (Minn. Ct. App. 1986)). Absent a showing that the subsidiary is an instrumentality or an alter ego of the parent, courts presume the subsidiary is a legally separate entity from the parent corporation. Busch, 397 N.W.2d at 395. Therefore, the contacts of one corporate defendant cannot be conferred or imputed upon another corporate defendant for purposes of personal jurisdiction simply because the corporations are related. Wicken, 510 N.W.2d at 249.

Plaintiffs’ Complaint refers to one “Lockton,” and then generically and summarily alleges personal jurisdiction over each corporate entity, stating that “each is a resident of

Minnesota, transacts business in Minnesota, or has knowingly or intentionally committed acts giving rise to injury in Minnesota.” (App. 3 at ¶ 14.) The Complaint is devoid of any specific allegations relating to the independent contacts or actions of any of the Foreign Corporate Defendants. These bare and non-specific allegations are insufficient to confer personal jurisdiction over each separate foreign corporate entity. See Helleloid v. Independent School District Number 361, 149 F. Supp. 2d 863, 867 (D. Minn. 2001) (a court need not accept, as true, wholly conclusory allegations or unwarranted factual inferences); Mid-West Med. Inc., 352 N.W.2d at 60. The three Foreign Corporate Appellants are independent entities, a fact Aon concedes. (App. 2 at ¶¶ 8-11.) It is legally insignificant that the entities may be related, so long as they are not the instrumentality or alter ego of another. Aon has alleged nothing to support an alter ego or instrumentality theory, and the legal presumption of separateness is in no way rebutted by the allegations in Aon’s Complaint.

**2. There is no basis to assert *general* personal jurisdiction over the Foreign Corporate Appellants.**

As an initial matter, the conclusory allegation that each of the Foreign Corporate Appellants “transacts business in Minnesota” is without *any* factual support and therefore cannot be the basis for personal jurisdiction. See Helleloid 149 F.Supp.2d at 867; Mid-West Med. Inc., 352 N.W.2d at 60. The Foreign Corporate Appellants do not have “continuous and systematic” contacts with Minnesota sufficient to confer general personal jurisdiction over them, nor have they done anything to “purposefully avail” themselves of the benefits and protections of Minnesota law. (App. 148 at ¶¶ 4-9.)

The Foreign Corporate Appellants do not own or lease real property in Minnesota. (App. 148 at ¶ 4.) The lease on the office in which the Employee-Defendants work is with Kansas City Series, not any of the Foreign Corporate Appellants. (Id.) None of the Foreign Corporate Appellants conducts business operations in Minnesota. (Id. at ¶ 9.) They do not maintain any bank accounts or telephone listings in Minnesota. (Id. at ¶¶ 5-6.) They have no employees in Minnesota. (Id. at ¶ 7.) They sell no products or services in Minnesota. (Id. at ¶ 8.) There simply is no credible basis for claiming general personal jurisdiction over the Foreign Corporate Appellants.

**3. There is no basis to assert *specific* personal jurisdiction over the Foreign Corporate Appellants.**

In order for the district court to exercise specific jurisdiction, Aon must meet its burden of establishing that the Foreign Corporate Appellants “purposefully directed” their activities at the forum and that the alleged injuries “arise out of or relate to” those activities. Wessels, Arnold & Henderson, 65 F.3d at 1431. In specific jurisdiction cases, the nature and quality of the contacts with the *state* are dispositive. TRWL Fin. Establishment, 527 N.W.2d at 573. In other words, a nonresident’s contacts with the forum state, “*not [with residents] of the forum,*” determine whether minimum contacts exist. West Am. Ins. Co. v. Westin, Inc., 337 N.W.2d 676, 679 (Minn. 1983) (emphasis added).

Aon alleges that personal jurisdiction is established because “*all* of the Lockton entities participated in the tortious scheme.” (App. 163.) In support of this argument, Aon offered four pieces of evidence, none of which individually or collectively was

sufficient to meet its burden of proof. First, Aon produced minutes from a board meeting for Lockton, Inc., where the board approved Kansas City Series' plan to open an office in Minneapolis. (App. 216.) The board minutes do not mention anything that could be construed as a "tortious scheme" against Aon, nor do they even mention Aon at all. Lockton Inc.'s purely ministerial—and lawful—act does not constitute a purposefully directed activity toward Minnesota, and does not subject Lockton Inc. to personal jurisdiction. TRWL Fin. Establishment, 527 N.W.2d at 576; Curtis v. Altria Group, Inc., 792 N.W.2d 836, 847 (Minn. Ct. App. 2010) (holding "ordinary supervision of a subsidiary by a parent corporation is not sufficient to extend personal jurisdiction over the subsidiary to the parent.") Lockton Inc.'s board action was ordinary supervision and insufficient to confer jurisdiction.

The other three pieces of evidence are even less availing. The second piece was a PowerPoint slide labeled "Project Mayo." (App. 204-05.) The slide does not mention any party to this case except Kansas City Series. There is absolutely no evidence that any representative of any Foreign Corporate Appellants either produced or saw this slide. Next, Aon produced a meeting planner from a meeting that took place in Missouri, entitled "Project Mayo." The meeting allegedly took place between Tim Meachem (a member of Kansas City Series), Ron Lockton (also a Kansas City Series member), and John Lumelleau (President and CEO of Lockton Inc.). (App. 207.) The meeting planner shows no participation in a "tortious scheme" whereby any Foreign Corporate Appellant directed wrongful activities toward Minnesota. Finally, Aon proffered an email from Meachem to Lumelleau and Ron Lockton. (App. 209.) The email indicates that

Meachem (a member of Kansas City Series) would be conducting interviews in Minnesota. Again, nothing in the email indicates any Foreign Corporate Appellant directed any activity toward Minnesota, nor is there evidence that a Foreign Corporate Appellant took part in the “tortious scheme” alleged by Aon. A mere email cannot confer personal jurisdiction on a recipient. See Joppru v. Rousher, 2011 Minn. App. Unpub. LEXIS 387, \*6-7 (Minn. Ct. App. Apr. 26, 2011) (“telephone conversations and mail exchanges alone have generally not been found sufficient for the assertion of personal jurisdiction.”)

Aon has not proffered any evidence that the Foreign Corporate Appellants directed activities toward our Minnesota forum, nor have they shown that the Foreign Corporate Appellants participated in a “tortious scheme” in Minnesota. Because Aon has not met the burden of showing that the Foreign Corporate Appellants had sufficient contacts with Minnesota, this Court should find that specific personal jurisdiction does not exist.

**4. The secondary factors do not support a finding of personal jurisdiction over the Foreign Corporate Appellants.**

“Minnesota has very little interest in providing a forum . . . between two nonresidents.” Hanson v. John Blue Co., 389 N.W.2d 523, 528 (Minn. Ct. App. 1986). In this suit, Minnesota’s interest is negligible, if not nonexistent, as to the Foreign Corporate Appellants because neither they nor the Plaintiffs are Minnesota residents. (App. 2 at ¶¶ 3-4.) Although the three Employee-Defendants and Kansas City Series are residents of Minnesota, the remaining parties are from a variety of states. And because many of the parties to this lawsuit would have to travel to a foreign state to litigate regardless of where it

was venued, the convenience of the parties and witnesses is a neutral factor in this personal jurisdiction analysis. Juelich, 682 N.W.2d at 575. Thus, the secondary factors do not support finding personal jurisdiction over the Foreign Corporate Appellants.

## II. THE FOREIGN CORPORATE APPELLANTS DID NOT WAIVE THEIR OBJECTIONS TO THE COURT'S EXERCISE OF PERSONAL JURISDICTION.

Ignoring the merits of the issue entirely,<sup>6</sup> the district court determined that the Foreign Corporate Defendants intentionally waived any objection to the court's exercise of personal jurisdiction. (Add. 7-9.)

A waiver is the intentional relinquishment of a known right. Ill. Farmers Ins. Co. v. Glass Serv. Co., 683 N.W.2d 792, 798 (Minn. 2004). In the context of personal jurisdiction, a waiver can occur if a defendant takes an *affirmative step* to invoke the court's authority. Juelich v. Yamazaki Mazak Optonics Corp., 670 N.W.2d 11, 16 (Minn. Ct. App. 2003) (holding that a "defendant submits to the court's jurisdiction only by taking some affirmative step invoking the power of the court or implicitly recognizing its jurisdiction"). For example, a party takes affirmative steps to invoke the court's authority by answering a complaint and raising affirmative defenses without objection to the court's exercise of jurisdiction. See Alger v. Hayes, 452 F.2d 841, 844 (8th Cir. 1972). However, absent an affirmative act invoking the court's power, the lack of an immediate objection to the court's jurisdiction is not a waiver. Juelich, 670 N.W.2d at 17 (holding that a party had not waived its objection by waiting a year to bring a motion to dismiss).

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<sup>6</sup> The district court did not even cite the legal standard for personal jurisdiction.

The district court, citing Alger v. Hayes, found that the Foreign Corporate Defendants had waived their objection to jurisdiction by not “moving prior to answering” and “[failing] to plead the defense in [their] Answer.” (Add. 7.) This was clear error. The Foreign Corporate Appellants *never answered the Complaint*. Only Kansas City Series answered the Complaint. (App. 47, fn. 1; App. 49 ¶¶ 8, 9, 10, 11.) Indeed, Plaintiffs acknowledged that only Kansas City Series answered the Complaint when they brought a Motion for Default Judgment against the Foreign Corporate Defendants for failing to answer. (App. 263; App. 155.) Accordingly, contrary to the district court’s view, the Foreign Corporate Defendants *did* bring their motion to dismiss for lack of personal jurisdiction before answering the complaint. They took no affirmative steps to invoke the court’s power and did not waive their objection to the court’s exercise of personal jurisdiction.

Likewise, the district court erred in finding that the Foreign Corporate Defendants waived their objection to personal jurisdiction by failing to assert the objection “seasonably” by taking four months to bring their motion to dismiss. During that time, it is undisputed that the Foreign Corporate Defendants contacted opposing counsel about resolving the jurisdiction dispute without the need for court intervention. Importantly, the purpose of requiring personal jurisdiction objections to be resolved early in a case is to “expedite and simplify proceedings in the courts.” See Patterson v. Wu Family Corp., 608 N.W.2d 863, 868 (Minn. 2000). By attempting to resolve the jurisdictional dispute outside the court, the Foreign Corporate Defendants complied with the purpose of the rule. Once the Foreign Corporate Defendants learned that Aon would not cooperate

without court intervention, they immediately brought a motion to dismiss for lack of personal jurisdiction. The district court inappropriately ignored the Foreign Corporate Defendants' attempts to resolve the dispute outside the courts, making no reference to these facts in its order.

The district court erred in finding the Foreign Corporate Appellants had intentionally waived their objection to the court's exercise of personal jurisdiction.

### CONCLUSION

Based on the foregoing, Appellants respectfully request this Court reverse the district court's order, dismissing the Foreign Corporate Appellants for lack of personal jurisdiction.

Respectfully submitted,



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