

No. A12-0495

STATE OF MINNESOTA
IN COURT OF APPEALS

Aon Corporation and Aon Risk Services Central, Inc.,

Plaintiffs/Respondents,

v.

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

Defendants/Appellants,

and

Paul B. Haskins; Jeffrey J. Herman; Frederick O. Flemig; and Kansas City Series of
Lockton Companies, LLC,

Defendants.

RESPONDENTS' BRIEF, ADDENDUM, AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF ISSUES

Did the district court correctly deny the motion to dismiss for lack of personal jurisdiction brought by Appellants Lockton, Inc.; Lockton Insurance Agency, Inc.; Lockton Companies, LLC; and Lockton Management, LLC?

- **How Raised:** Appellants first challenged the district court's exercise of personal jurisdiction over them in their Amended Notice of Motion and Motion to Dismiss and supporting Memorandum of Law, filed and served on November 3, 2011.
- **Ruling:** The district court denied Appellants' motion to dismiss, concluding that each of the Appellants had waived objection to personal jurisdiction and that Appellant Lockton Companies, LLC had consented to personal jurisdiction by appointing an agent for service of process in Minnesota.

MOST APPOSITE CASES

Alger v. Hayes, 452 F.2d 841 (8th Cir. 1972)

Kopperud v. Agers, 312 N.W.2d 443 (Minn. Ct. App. 1981)

Comm'r of Nat. Res. v. Nicollet Cty. Pub. Water/Wetlands Hearings Unit, 633 N.W.2d 25 (Minn. Ct. App. 2001)

STATEMENT OF THE CASE

Appellants are members of a vertically integrated corporate family that does business as the “Lockton Companies.” The Lockton Companies are a direct competitor of Respondents, Aon Corporation and Aon Risk Services Central, Inc. (collectively, “Aon”). In 2009, Appellants and Defendant Kansas City Series of Lockton Companies, LLC (together, the “Lockton entities”), acting through their top executives and pursuant to the explicit authorization of the Board of Directors of Lockton, Inc.—the ultimate corporate parent—executed a carefully-orchestrated and devastating corporate raid on Aon’s insurance brokerage business in Minnesota. The Lockton entities carried out this scheme with the active assistance of the three individual Defendants—former Aon employees who, while still employed by Aon, worked with the Lockton entities’ executives for months to plan the opening of the Lockton entities’ new Minneapolis office, then suddenly resigned from Aon, transferring millions of dollars of business from Aon to the Lockton entities virtually overnight.

Aon initially filed suit against the individual defendants and the Lockton entities in the United States District Court for the District of Minnesota, and the parties actively litigated in that forum, including engaging in extensive document production, for nearly 18 months. In June 2011, however, the federal court *sua sponte* dismissed the case without prejudice for lack of *subject matter* jurisdiction (finding a lack of the complete diversity of citizenship necessary for federal jurisdiction). Aon re-filed its complaint in Hennepin County district court, and all the Defendants answered. Nearly four months

later, Appellants moved to dismiss Aon's claims, asserting for the first time in almost two years of litigation that they were not subject to personal jurisdiction in Minnesota.

The district court, the Honorable Regina M. Chu, denied Appellants' motion to dismiss in an Order dated February 2, 2012, concluding that Appellants had waived objection to personal jurisdiction and that Appellant Lockton Companies, LLC had also consented to personal jurisdiction by appointing an agent for service of process in Minnesota. *See* Feb. 2, 2012 Order at 5-6, Appellants' Addendum ("Aplt. Add.") 7-8. Appellants now appeal the District Court's ruling.¹

Because Appellants waived their personal jurisdiction defense, and also because Appellants purposefully established contacts with Minnesota sufficient to justify jurisdiction, this Court should affirm the decision of the district court.

FACTUAL AND PROCEDURAL HISTORY

I. Aon's Insurance Business And The Lockton Entities' "Project Mayo"

Aon is in the business of risk management consulting and brokering specialized commercial insurance products to clients in a variety of industries. *See* Compl. ¶ 17-18, Appellants' Appendix ("Aplt. App.") 4. Until around August 2009, Aon was a leading provider of insurance and risk management products and services to clients in the health care industry in the Twin Cities and surrounding region. Aon's success in this market was due in large part to its team of specialized "producers" and staff working out of

¹ Although Appellants' notice of appeal included Lockton Companies, LLC, Appellants now state in their revised brief that Lockton Companies, LLC does not join in the appeal, thereby conceding personal jurisdiction over that entity. *See* Aplt. Br. 2 n.2.

Aon's Minneapolis office. Among these employees were the individual Defendants—Fred Flemig, Paul Haskins, and Jeffrey Herman. *See* Compl. ¶¶ 23-31, Aplt. App. 5-8.

The Lockton entities' corporate family—the Lockton Companies—describes itself as the “[w]orld’s largest privately owned, independent insurance brokerage firm.” Aplt. App. 197. The Lockton Companies is a direct competitor of Aon. In late 2008, the Lockton entities began developing a plan to open an office in Minneapolis. In order to minimize the risk associated with entry into this new market, their top executives sought to poach top employees and clients from Aon and other competitors. The intended result of the plan would be a fully operational and almost instantaneously profitable Lockton Companies operation in Minneapolis, built upon the investments (in clients and employees), trade secrets, and goodwill of Aon and other firms. The Lockton entities particularly focused their plan on an attempt to “‘corner’ the market” for commercial insurance in the health care industry by recruiting producers, from Aon and elsewhere, who specialized in that market. Aplt. App. 201. The Lockton entities' executives dubbed their plan “Project Mayo,” likely because the Mayo Clinic was a major health care industry client of Defendant and former Aon producer Fred Flemig. *See* Aplt. App. 201-05.

Tim Meacham and Mark Henderson, executives with the Kansas City Series of Lockton Companies, LLC, were the individuals directly tasked with executing Project Mayo. Working at the direction of Lockton, Inc.—and thus acting as agents for it and the other Lockton entities—Messrs. Meacham and Henderson identified Defendants Haskins and Flemig (along with individuals from other companies) as candidates for recruitment

to Lockton. The Lockton entities' executives and the individual Defendants worked together for months to plan the Minneapolis operation, including targeting other employees and clients for recruitment to the Lockton entities, and developing specific revenue forecasts and business plans. *See* Aplt. App. 201-05, 209, 221. As alleged in Aon's complaint, these activities necessarily entailed misappropriation of trade secrets and other confidential information and breaches of fiduciary duty. *See* Compl. ¶¶ 32-36, 44-53, Aplt. App. 8-9, 12-15.

Although the Lockton Companies' Minneapolis office is formally associated with the Kansas City Series of Lockton Companies, LLC, Project Mayo was a joint effort among top executives at each of the Lockton entities named in Aon's complaint, including the controlling corporate parent, Lockton, Inc.² John Lumelleau and Ron Lockton directly supervised and supported Messrs. Meacham's and Henderson's efforts in carrying out Project Mayo. *See* Aplt. App. 204-09. Mr. Lumelleau is President and CEO of Lockton, Inc. and President of Lockton Management, LLC, which is the Manager of Lockton Companies, LLC. *See* Aplt. App. 212. Mr. Lockton is Senior Executive Vice President of Lockton Insurance Agency, Inc.; a director of Lockton, Inc.;

² The Lockton website presents the Minneapolis office as a branch of the "Lockton Companies," saying nothing about Kansas City Series of Lockton Companies, LLC. *See* <http://www.lockton.com/Global-Locations/North-America/Minneapolis-Minnesota>. Most or all of the Lockton Companies' single line of business is carried out directly by regionally-based "Series" LLCs like the Kansas City Series. The parent company, Lockton, Inc., exercises ultimate and essentially direct control, however, and receives revenues from each of the "Series" LLCs. Thus, while there are numerous legal entities within its corporate structure, the Lockton Companies is in fact a highly integrated and centrally controlled enterprise.

and a member of the Executive Committee of the Kansas City Series of Lockton Companies, LLC. *See* Aplt. App. 212-14.³ Messrs. Lumelleau and Lockton took an active hand in Project Mayo, regularly receiving information from Messrs. Meacham and Henderson, participating in strategic planning, and meeting with the targeted producers.

In addition, the Board of Directors of Lockton, Inc. reviewed and expressly approved Project Mayo. In June 2009, Mr. Meacham presented Project Mayo to the Lockton, Inc. Board. He presented:

Management's recommendation that the Board (1) authorize the establishment of the Minneapolis Operation consistent with the parameters outlined by Mr. Meacham in his presentation, and (2) agree that the Corporation [i.e., Lockton, Inc.] would receive no Corporate Profit Return attributable to the Minneapolis Operation until such time at [sic] the Minneapolis Operation became accretive to the Producer Profit Return of the Kansas City Series.

Aplt. App. 215. Thus, as Mr. Meacham noted, Project Mayo required the authorization of, and "could involve a certain level of financial support" by, Lockton, Inc. *Id.* The parent company would ultimately reap the profits of the Minneapolis Operation but also bore the risk of losing its investment in the event of failure, and the Lockton entities consequently had significant incentives to render the Minneapolis office profitable as quickly as possible. After hearing Mr. Meacham's presentation at the June 2009 meeting,

³ In fact, according to Kansas City Series of Lockton Companies, LLC's answers to Aon's interrogatories, Ron Lockton is ultimately "responsible for the overall management of Lockton's Minneapolis area office." Aff. of Bradley T. Smith in Supp. of Plaintiffs' Mot. for Judgment of Default ("Smith Aff."), Ex. E, Respondents' Appendix ("Resp. App.") 15 (Answer to Interrogatory No. 6); *see also id.* (Answer to Interrogatory No. 5).

the Lockton, Inc. Board voted unanimously to authorize “Management to proceed [with Project Mayo] consistent with Mr. Meacham’s recommendation.” Aplt. App. 216.

Project Mayo culminated in August 2009, when defendant Flemig and three members of his support team suddenly resigned from Aon. They began working for Lockton the same day, and almost overnight moved many clients—and millions of dollars in revenue—from Aon to Lockton. *See* Compl. ¶¶ 47-48, Aplt. App. 12-13. Defendants Haskins and Herman similarly resigned in concert in October 2009, and they too moved many Aon clients to Lockton virtually overnight. *See* Compl. ¶ 50, Aplt. App. 13. Each of the three individual defendants had *previously* accepted written offers of employment from Lockton—and had already begun working to advance the Lockton entities’ interests at the expense of Aon—well in advance of their resignations. *See* Compl. ¶¶ 45-48, 50, Aplt. App. 12-13.

As intended, Project Mayo enabled the Lockton entities to “‘corner’ the market” for specialized insurance products in the Twin Cities health care market. Aplt. App. 201. The Lockton entities not only succeeded in diverting many clients and substantial revenue from Aon to themselves, but by capturing Aon’s specialized employees and misappropriating Aon’s confidential and proprietary information, the Lockton entities crippled Aon’s ability to compete in this market well into the future.

II. Aon's Lawsuits And The Lockton Entities' Participation In Them

In December 2009, Aon sued the individual Defendants and several of the Lockton entities⁴ in the United States District Court for the District of Minnesota, in an effort to redress the injury wrongfully caused by Project Mayo. Aon's complaint alleged breaches of contractual, statutory, and common-law duties based on the individual Defendants' misappropriation of Aon's confidential information, wrongful solicitation of its customers and employees, and wrongful competition with Aon during their employment. Aon also alleged claims against the Lockton entities for their knowing, willful, and tortious procurement of those breaches. Aon later amended its federal complaint to include the Kansas City Series of Lockton Companies, LLC, doing so pursuant to defense counsel's representation that it was "[t]he correct legal entity which employs Haskins, Herman, and Flemig" and that inclusion of that entity as a defendant would "not affect diversity jurisdiction." Respondents' Addendum ("Resp. Add.") 4.

All the Defendants then answered Aon's federal complaint. In their answer, they inserted a footnote stating that the corporate defendants other than the Kansas City Series of Lockton Companies, LLC were not "proper parties" to the action.⁵ Thereafter,

⁴ Appellants Lockton Insurance Agency, Inc. and Lockton Management, LLC were not named as defendants in the federal action, but were added as defendants in this action.

⁵ Defendants' federal answer footnote read in its entirety:

Defendants deny that Lockton Inc. and Lockton Companies, 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 Kansas City Series of Lockton Companies, LLC.

litigation progressed in typical fashion. Although Appellants refused to respond to Aon's discovery requests, the other Defendants and Aon conducted discovery and produced voluminous documents. The parties (including Appellants Lockton, Inc. and Lockton Companies, LLC) also briefed and argued a motion over a protective order at the outset of the case. None of the Defendants filed a dispositive motion in the federal litigation.

In May 2011, the federal court, acting *sua sponte*, issued an order to show cause why the case should not be dismissed for lack of federal diversity jurisdiction. After analysis, Aon determined that adding the Kansas City Series of Lockton Companies, LLC as a party *had* destroyed diversity (one of the LLC's members was a resident of Illinois, where Aon is located), and it so informed the federal court. Accordingly, after approximately eighteen months of active litigation, the federal court dismissed the case without prejudice for lack of subject matter jurisdiction.

Aon promptly re-filed its complaint in state court. *See* Aplt. App. 1. Counsel for Defendants-Appellants accepted service of process on June 27, 2011, acting on behalf of *all* Defendants. Smith Aff. Ex. A. At the request of defense counsel, Aon agreed to extend the time for Defendants to respond to the Complaint until July 22, 2011. "Defendants," which the Answer defined as all the named defendants (Aplt. App. 47), then answered the state-court Complaint⁶—again inserting a footnote materially identical to the footnote in their federal answer:

⁶ The district court correctly concluded that all Defendants had answered the Complaint. *See* Feb. 2, 2012 Order at 5-6, App. Add. 7-8. It is true that in opposing Lockton's motion to dismiss, Aon accepted *arguendo* Appellants' contention that they

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 Kansas City Series of Lockton Companies, LLC.

Aplt. App. 47, Resp. Add. 1.⁷

Aon did not consent to dismiss Appellants from the case.⁸ Instead, Aon served discovery requests on all Defendants on August 19, 2011. In his cover letter, counsel for Aon stated: “We note your position that [Appellants] are not proper parties. We do not agree that this assertion excuses their obligation to respond to discovery requests.” Smith Aff. Ex. B, Resp. App. 11. Aon also proposed that the parties stipulate to entry of a

had not answered the Complaint and argued that Appellants’ motion should therefore be denied as untimely. *See* Aplt. App. 155. Aon also argued in the alternative, however, that even if Appellants had answered the Complaint, they had nevertheless waived any objection to personal jurisdiction by failing to assert the defense in a clear and timely fashion. *See* Aplt. App. 155-57. Counsel for Aon urged the same alternative analyses at the hearing in the district court. *See* Aplt. App. 312-15. Therefore, Appellants’ assertion that “[a]ll parties agree that the Foreign Corporate Defendants did *not* file an Answer to the Complaint,” Aplt. Br. 6, is incorrect.

⁷ Defendants’ omission of Lockton Insurance Agency, Inc. from this footnote appears to have been inadvertent.

⁸ Because Appellants and their counsel still had not raised the issue of personal jurisdiction—expressly or implicitly—counsel for Aon remained entirely unaware of the legal basis for the assertion that Appellants were not “proper parties.” At the outset of the federal litigation, defense counsel had explained that the “correct legal entity which employs Haskins, Herman and Flemig is ‘Kansas City Series of Lockton Companies LLC.’” Aplt. App. 251, Resp. Add. 4. Similarly, in an August 24, 2011 letter, defense counsel stated, “the only appropriate party defendant is the Kansas City Series of Lockton Companies,” and offered “to convene a call with [counsel for Aon] and Lockton’s general counsel to discuss Lockton’s organizational structure.” Aplt. App. 257, Resp. Add. 6. These statements strongly implied that the basis for Appellants’ assertion was the employment relationship between Kansas City Series of Lockton Companies, LLC and the individual Defendants; personal jurisdiction was not an issue.

protective order materially identical to the order previously issued by the federal district court, and stipulate to use in state court of the interrogatories and responses served in the federal litigation.

Defendants responded on August 24, agreeing to these proposed stipulations—and in fact proposing that the parties stipulate to use of the federal document discovery as well.⁹ *See* Resp. Add. 6. In response to Aon’s clear indication of refusal to consent to dismissal of Appellants from the lawsuit, however, Appellants did not bring a timely motion; Appellants also did not express any objection to personal jurisdiction. Instead, counsel for Appellants again asserted that “the only appropriate party defendant is the Kansas City Series of Lockton Companies, LLC,” and “reiterate[d]” a request “to convene a call with [counsel for Aon] and Lockton, Inc.’s general counsel to discuss Lockton’s organizational structure.” *Id.*

Counsel for Aon responded two days later, noting that Aon was entitled to discovery in order to assess whatever assertion the Lockton entities’ general counsel might make, and that Aon’s theories of liability did not necessarily turn on Defendants’ view of which entities were appropriate “party defendant[s].” Resp. Add. 8.

Still, Appellants did not move to dismiss and they did not assert any objection to personal jurisdiction. Instead, nearly a month later, Defendants served discovery

⁹ The district court signed the parties’ stipulated proposed discovery order and protective order on August 29, 2011. In early September 2011, counsel for Appellants—acting on behalf of *all* Defendants—participated in a telephone scheduling conference with the district court. Based on that conference, Judge Chu issued an amended scheduling order on September 6, 2011.

responses, in which they stated, “the Answers provided herein are provided solely by Defendant Kansas City Series of Lockton Companies, LLC. Defendant objects to any discovery directed at Lockton, Inc., Lockton Insurance Agency, Inc., Lockton Companies, LLC, Lockton Management LLC, Kansas City Series of Lockton Companies, LLC, [sic] as they are inappropriate parties to this action.” Resp. App. 13.¹⁰

In an October 5 letter, Aon notified Defendants of its intention to seek appropriate relief from the court if the foreign Lockton entities—Appellants—continued to refuse to respond to discovery requests. Resp. App. 22. Appellants then served notice of their motion to dismiss on October 12, 2011.¹¹ Even then, however, Appellants gave no indication that they objected to personal jurisdiction—their notice merely stated that they would base the motion on Minn. R. Civ. P. 12.02. *See* Resp. App. 1. Not until they served their amended notice of motion and memorandum of law on November 3, 2011—after nearly two years of litigation in Minnesota and some four months after answering Aon’s state-court Complaint and participating in the state court litigation—did Appellants raise the issue of personal jurisdiction. *See* Aplt. App. 78.

The district court denied Appellants’ motion to dismiss on February 2, 2012, concluding that they had waived objection to the court’s exercise of personal

¹⁰ Because Minnesota and federal courts allow jurisdictional discovery (*see* pages 28-29, *infra*), Appellants’ objections to discovery in the state and federal district courts did not portend any dispute over personal jurisdiction.

¹¹ Aon simultaneously brought a motion for default judgment against Appellants and a motion to compel discovery responses from all Defendants. The district court heard all three motions at the same time and addressed them all in its Feb. 2 Order.

jurisdiction¹² and that Lockton Companies, LLC had consented to personal jurisdiction in Minnesota by appointing an agent for service of process.¹³ Forty-three days later—within two weeks of the close of discovery and on the verge of scheduled depositions of Messrs. Lumelleau, Lockton, Meacham, and William “Trey” Humphrey (the Lockton Companies’ general counsel and affiant in support of the motion to dismiss for lack of personal jurisdiction), Appellants filed their notice of appeal. *See* Aplt. App. 381-82.

Aon’s claims against the individual Defendants and Kansas City Series of Lockton Companies, LLC remain pending in the district court. Upon the agreement of the parties, on March 28, 2012, the district court stayed the proceedings below pending the disposition of this appeal.

¹² The other Defendants below (the three individual Defendants and Kansas City Series of Lockton Companies, LLC) moved for judgment on the pleadings. The district court denied that motion in the same Order. The individual Defendants and Defendant Kansas City Series of Lockton Companies, LLC sought review of that portion of the district court’s order via a Notice of Related Appeal filed concurrently with Appellants’ appeal. A special term panel of this Court granted Aon’s motion to dismiss the related appeal on May 15, 2012. Consequently, only Appellants’ direct appeal, and the single issue of personal jurisdiction it raises, are currently before the Court for review.

¹³ In their original brief in this appeal, filed on April 30, 2012, Appellants challenged the district court’s conclusion that Lockton Companies, LLC had consented to personal jurisdiction. In accordance with this Court’s May 23, 2012 Order, Appellants filed a revised brief, limited to the issue remaining in the appeal after the Court granted Aon’s motion to dismiss the Notice of Related Appeal. In their revised brief, Appellants concede that Lockton Companies, LLC consented to personal jurisdiction in Minnesota, and indeed, Appellants now take the position that Lockton Companies, LLC does not even join in the appeal. *See* Aplt. Br. 2 n.2, 7 n.5.

ARGUMENT

The district court correctly concluded that Appellants waived the defense of lack of personal jurisdiction by answering Aon’s Complaint without clearly asserting the defense, and in the alternative, it properly found that Appellants waived the defense through their conduct—by participating in the litigation and invoking the court’s jurisdiction without seasonably asserting their objection. This Court can and should affirm the decision of the district court on either basis.

Furthermore, Aon offered admissible evidence sufficient to make a prima facie showing of personal jurisdiction. Appellants challenge that showing on this appeal. The Court should not reach the merits of the jurisdiction issue on this appeal, however, because the district court did not pass on the merits below and because Aon is entitled to jurisdictional discovery before any court could decide that jurisdiction is lacking. Nevertheless, if this Court were to reach the merits, the evidence in the record is sufficient to establish personal jurisdiction, and the Court could affirm for that alternative reason as well.

I. Standard Of Review

This Court reviews de novo the district court’s denial of a motion to dismiss for lack of personal jurisdiction, but in doing so the Court accepts “the underlying factual determinations unless they are clearly erroneous.” *In re Disciplinary Action Against Coleman*, 793 N.W.2d 296, 302 (Minn. 2011) (per curiam) (citing *Shamrock Dev., Inc. v. Smith* 754 N.W.2d 377, 382 (Minn. 2008)).

The district court's finding that Appellants waived objection to personal jurisdiction through their conduct rested in part on factual findings. "Waiver generally is a question of fact." *Valspar Refinish, Inc. v. Gaylord's, Inc.* 764 N.W.2d 359, 367 (Minn. 2009); *see also Meagher v. Kavli*, 88 N.W.2d 871, 878 (Minn. 1958) ("It is only where there is but one inference which can be drawn from the facts that the question of waiver becomes one of law."). Consequently, this Court should review for clear error the district court's finding of waiver through conduct. *See Coleman*, 793 N.W.2d at 302; *cf. Langford Tool & Drill Co. v. Phenix Biocomposites, LLC*, 668 N.W.2d 438, 445 (Minn. Ct. App. 2003) (stating that district court's "ultimate findings" with respect to party's lien waiver "must be affirmed in the absence of a demonstrated abuse of the court's broad discretion") (quoting *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990)).

II. Appellants Waived Objection To Personal Jurisdiction

The district court correctly concluded that Appellants waived their objection to personal jurisdiction by answering Aon's Complaint without asserting the defense. The district court also did not clearly err in finding that Appellants waived objection to personal jurisdiction through their conduct.

A. Appellants Answered Without Asserting the Personal Jurisdiction Defense

"Personal jurisdiction is an individual right that a party can waive like other such rights." *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 492 (Minn. Ct. App. 1995) (citing *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982)). As the district court recognized, it is a firmly established principle that "if the

defense [of lack of personal jurisdiction] is neither raised by motion before answer nor stated in the answer, it cannot be raised for the first time by motion after the answer.” *Alger v. Hayes*, 452 F.2d 841, 844 (8th Cir. 1972); *see also Comm’r of Nat. Res. v. Nicollet Cty. Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 31 (Minn. Ct. App. 2001) (“The defense of personal jurisdiction is deemed waived if not raised as a defense, made by motion, or included in a responsive pleading.”); *Universal Constr. Co. v. Peterson*, 160 N.W.2d 253, 255 (Minn. 1968) (holding defendant waived objection to adequacy of process and jurisdiction by raising it only after answering complaint).

Applying this fundamental principle, the district court correctly concluded that Appellants waived the defense of lack of personal jurisdiction by answering Aon’s Complaint without asserting the defense. *See* Feb. 2, 2012 Order at 5-6, Aplt. Add. 7-8. Appellants now assert—without reference to the language of their Answer or the reasoning underpinning the district court’s interpretation of it—that they never answered.¹⁴ To the contrary, the text of the Answer manifests Appellants’ clear intent to join in it.

The Answer is entitled simply “Defendants’ Answer.” *See* Aplt. App. 47, Resp. Add. 1. In the first paragraph, the Answer explicitly defines the term “Defendants” to

¹⁴ Appellants assert that Aon agrees they never answered because Aon brought a motion for default judgment. Again, this is incorrect. Aon consistently presented alternative analyses in the proceedings below: either Appellants answered and waived their jurisdictional objection, or they did not answer and defaulted. In fact, at oral argument, counsel for Aon withdrew the motion for default judgment based on the court’s tentative conclusion that Appellants had answered the Complaint. *See* Tr. 80, Aplt. App. 341.

include “Defendants Paul B. Haskins (‘Haskins’), Jeffrey J. Herman (‘Herman’), Frederick O. Flemig (‘Flemig’), Lockton Inc., Lockton Companies, LLC, Lockton Management, LLC, and Kansas City Series of Lockton Companies, LLC.” *Id.* By its plain terms, the Answer uses the word “Defendants” to refer to *all* the Defendants.¹⁵ The Answer goes on to employ the term “Defendants,” as so defined, dozens of times, and in contexts that clearly distinguish the defined term “Defendants” from more limited subgroups of defendants. For example, footnote 1 of the Answer states: “Defendants deny that Lockton Inc., Lockton Companies, LLC, and Lockton Management, LLC are proper parties to this action. . . . ‘Lockton,’ as used throughout this Answer and Defenses, refers to Kansas City Series of Lockton Companies, LLC.” *Id.*

The Answer thus plainly distinguishes between “Defendants” and “Lockton,” evidencing intent to answer the Complaint for all Defendants, but to respond to certain allegations only for the Kansas City Series. For example, Paragraph 20 of the Answer states, “*Defendants* generally admit the allegations in paragraph 20, but deny allegations which compare Lockton to Aon as ‘similar’ and ‘like Aon.’” *Aplt. App.* 50. Paragraph 13 of the “Defenses” section of the Answer similarly distinguishes between “Defendants” and “Defendant Lockton.” *Aplt. App.* 74. The Answer also pleads affirmative defenses and prays for relief on behalf of all the Defendants—for example “[a]n award to Defendants including all costs and attorneys’ fees.” *Aplt. App.* 77.

¹⁵ Aon assumes that the omission of Lockton Insurance Agency, Inc. from the definition of “Defendants” was an inadvertent error. If it was not, it would only make clearer the intent to *include* the other Appellants.

Finally—consistent with the definitions and usage throughout—counsel for Appellants signed the Answer on behalf of *all* Defendants. The signature block on the Answer reads, “*Attorneys for Defendants Haskins, Herman, Flemig, Lockton Inc. and Lockton Companies, LLC, Kansas City Services [sic] of Lockton Companies, LLC.*” *Id.* (italics in original). Aplt. App. 77, Resp. Add. 3.¹⁶

The district court thus correctly concluded that Appellants answered Aon’s Complaint; the text of the Answer reveals a clear intent to do so.¹⁷ Yet, despite reciting 38 affirmative defenses, the Answer does not assert any objection to the court’s exercise of personal jurisdiction. In fact, it nowhere employs the phrase “personal jurisdiction” or even “jurisdiction.”

The statement in the Answer on which Appellants now rely occurs in a footnote, which, again, reads in its entirety:

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

¹⁶ The omission of Lockton Insurance Agency, Inc. and Lockton Management, LLC from the signature block was clearly inadvertent, because this signature block is a verbatim copy of Defendants’ signature block in their federal answer, including the obviously unintentional replacement of “Series” with “Services.” Lockton Insurance Agency, Inc. and Lockton Management, LLC were not parties in the federal action; Aon added them as defendants when it filed in the Hennepin County district court. Defendants evidently did not revise the signature block when drafting the state-court Answer.

¹⁷ At oral argument, the district court explained some of these reasons to conclude that Appellants had answered. *See* Tr. 96, Aplt. App. 357. Counsel for Appellants offered no basis to reject the district court’s interpretation. Instead, counsel tried to explain that some portion of the Answer defined the term “Defendants” as excluding Appellants, *see* Tr. 96-97, Aplt. App. 357-58, but his recollection was mistaken, as that is not the case.

bring an appropriate motion. “Lockton” as used throughout this Answer and Defenses, refers to Kansas City Series of Lockton Companies, LLC.

Aplt. App. 47 n.1, Resp. Add. 1 n.1. Appellants characterize this footnote as “notice that personal jurisdiction was lacking,” App. Br. 5, but it is nothing of the sort, and it is wholly inadequate to raise the defense of lack of personal jurisdiction.

In deciding whether a party has preserved objection to personal jurisdiction, the “determinative” factor is whether it has “provide[d] the court with an opportunity to rule on personal jurisdiction before invoking the court’s jurisdiction” *Nicollet Cty.*, 633 N.W.2d at 32. To provide the court such opportunity—and thus to preserve the defense—a party must assert the objection in its answer “in a clear and unambiguous way.” *Network Prof’ls, Inc. v. Network Int’l Ltd.*, 146 F.R.D. 179, 182 (D. Minn. 1993) (citing *Alger*, 452 F.2d at 843); *cf. Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 867 (Minn. 2000) (holding that party initially preserved defense by asserting it in amended answer so as to “put the plaintiff on notice of its objection to jurisdiction”). The footnote in Appellants’ Answer does not clearly assert any objection to personal jurisdiction. Indeed, it does not refer to “jurisdiction” at all. It only says—without any explanation of the legal basis for the assertion—that Appellants are not “proper parties.”¹⁸

The plain text of the Answer shows that Appellants intentionally joined in it, and the Answer does not raise any challenge to the district court’s exercise of personal

¹⁸ As indicated above, previous correspondence from Appellants’ counsel showed Appellants based their assertion that they were not “proper parties” on the claim that they did not directly employ the individual Defendants, not on any jurisdictional objection. *See supra* note 9; Aplt. App. 251, Resp. Add. 4. None of the correspondence from Appellants’ counsel referred to personal jurisdiction.

jurisdiction over Appellants. The district court thus correctly denied Appellants' motion to dismiss.

B. Appellants Waived Objection to Personal Jurisdiction Through Their Conduct

Even were this Court to conclude that Appellants did not answer Aon's Complaint, the Court should nevertheless affirm the district court's denial of their motion to dismiss because Appellants waived their jurisdictional defense in at least two other ways.

First, regardless of whether Appellants answered Aon's complaint, their motion to dismiss was untimely. Minnesota Rule of Civil Procedure 12.02 provides that a motion raising a defense of lack of personal jurisdiction must be made "*before* pleading if a further pleading is permitted" (emphasis added). A defendant's answer is, of course, a pleading, Minn. R. Civ. P. 7.01, and it must be filed "within 20 days after service of the summons." Minn. R. Civ. P. 12.01. As Rule 12.08(a) clarifies, the defense of lack of personal jurisdiction is "waived . . . if it is neither made by motion pursuant to [Rule 12] nor included in a responsive pleading or an amendment thereof."

Aon served all Defendants with the Summons and Complaint on June 16, 2011. At defense counsel's request, Aon agreed to extend the time for Defendants' response until July 22, 2011. Yet, Appellants did not file and serve their motion to dismiss for lack of personal jurisdiction until nearly four months *after* Defendants answered. *See* Aplt. App. 79, 77. The deadline to bring a motion to dismiss had long passed. *See Granger v. Kemm, Inc.*, 250 F. Supp. 644, 645 (E.D. Pa. 1966) (holding that defendant waived

objection to venue by failing to bring Rule 12 motion within 20 days of service of complaint); *Wabash Ry. Co. v. Bridal*, 94 F.2d 117, 120-21 (8th Cir. 1938) (holding defendant waived objection to venue by failing to assert it within time allowed to answer); *see also* David F. Herr & Roger S. Haydock, 1 Minn. Prac. § 12:3 (5th ed. 2011) (“A Rule 12 motion may be served and filed any time up until, and including, the date a responsive pleading is due.”).

Second, even if waiver by untimely motion had not occurred, Appellants still waived their objection to personal jurisdiction through their conduct by failing to assert the defense seasonably before invoking the district court’s jurisdiction.

A party may waive the defense of lack of personal jurisdiction ““by implication.”” *Nicollet Cty.*, 633 N.W.2d at 31 (quoting *Wu Family Corp.*, 608 N.W.2d at 868). To avoid such waiver, a party must pursue the defense “seasonably” in order to “comply . . . with the spirit of [Rule 12.08], which is to expedite and simplify proceedings in the courts.” *Wu Family Corp.*, 608 N.W.2d at 868 (internal quotation marks, citations, and alterations omitted). A party that does not promptly object to personal jurisdiction waives the objection by “taking affirmative steps in the action, and invoking the power of the court on his own behalf.” *Miss. Valley Dev. Corp. v. Colonial Enters., Inc.*, 217 N.W.2d 760, 764 (Minn. 1974).

In this case, Appellants did not serve notice of their motion to dismiss until nearly four months after acknowledging service of Aon’s Complaint, *see* Feb. 2, 2012 Order at 6, Aplt. Add. 8, and indeed they did not articulate their specific jurisdictional objection

for another three weeks after their initial notice of motion. *See* Aplt. App. 79.¹⁹ In the intervening period, they took numerous steps to invoke the district court’s jurisdiction.

First, Appellants stipulated to two orders. One governed use of discovery in the state court action. The other was a protective order, the terms of which Appellants had litigated vehemently in the federal action, seeking maximum protection for documents and information they might produce in the litigation. By stipulating to these orders, Appellants invoked the jurisdiction of the district court for their own benefit. Second, counsel for Appellants participated in a scheduling conference with the district court—appearing on behalf of all Defendants—and agreed to a detailed scheduling order for the action. Through all of this conduct, Appellants waived any objection to personal jurisdiction. *See, e.g., Federal-Hoffman, Inc. v. Fackler*, 549 N.W.2d 93, 95 (Minn. Ct. App. 1996) (holding a party waived objection to personal jurisdiction by waiting three months after answering complaint before moving to dismiss); *Marquest Med. Prods., Inc. v. EMDE Corp.*, 496 F. Supp. 1242, 1245 (D. Colo. 1980) (holding that defendants waived objection to personal jurisdiction when they “waited some six to ten weeks since the complaint was served” and “objected only after having submitted to an order of [the] court by their stipulation”) (cited with approval in *Yeldell v. Tutt*, 913 F.2d 533, 539 (8th Cir. 1990)).

¹⁹ It bears repeating that Appellants did not object to personal jurisdiction in any way over the course of some 18 months of litigation in federal court. As Judge Chu noted, that inaction certainly did not “expedite and simplify proceedings,” and it weighs heavily in support of the district court’s finding of waiver. *See* Feb. 2, 2012 Order at 6, Aplt. Add. 8.

Contrary to Appellants' suggestion, *Juelich v. Yamazaki Mazak Optonics Corp.*, 670 N.W.2d 11 (Minn. Ct. App. 2003), provides them no refuge, for it is wholly inapposite. In *Juelich*, unlike the Appellants here, the defendant "asserted lack of personal jurisdiction as an affirmative defense" in its answer. *Id.* at 14. Thus, the question in *Juelich* was whether—having properly preserved the defense in its answer—the defendant nevertheless waived it by waiting nearly a year to move for dismissal. Here, of course, Appellants insist that they *did not answer Aon's Complaint at all*. See, e.g., Appellants' Br. 17. *Juelich* consequently has no bearing on this case.

Equally unavailing is Appellants' assertion that they preserved their objection by "contact[ing] opposing counsel about solving the jurisdiction dispute." Aplt. Br. 17. First, Appellants cite no authority supporting the notion that a party can preserve a jurisdictional objection by informal negotiation with an adverse party. To the contrary, the "defense of personal jurisdiction is deemed waived if not *raised as a defense, made by motion, or included in a responsive pleading.*" *Nicollet Cty.*, 633 N.W.2d at 31 (emphasis added); see also *March v. Thursby*, 806 N.W.2d 239, 243 (S.D. 2011) (holding that because objection to personal jurisdiction must, by rule, be made by motion or responsive pleading, "a party cannot preserve a challenge to personal jurisdiction by 'informing' the judge that the issue will be contested").

Furthermore, even if a party theoretically could preserve its objection through discussions with its adversary, Appellants certainly did not do so. Appellants did not discuss with Aon "the jurisdiction dispute," because there *was no* jurisdiction dispute before Appellants served their amended notice of motion and brief on November 3, 2011.

Until that day, counsel for Appellants had literally never used the phrase “personal jurisdiction” in any communication with counsel for Aon. Appellants’ vague assertions that they were not “proper parties” did not indicate any objection to personal jurisdiction. To the contrary, as set forth above, counsel for Aon consistently (and reasonably) interpreted these assertions to mean that Appellants were not the direct employers of the individual defendants. *See, e.g.*, Aplt. App. 261, Resp. Add. 8 (“[O]ur theories of liability are not necessarily tied to the defendants’ view as to who is the ‘only appropriate party defendant.’”),²⁰

The district court’s determination that Appellants waived objection to personal jurisdiction rested in part on its evaluation of their conduct as a matter of fact. Appellants alleged in the proceedings below (and repeat the allegation on appeal), for example, that on at least four occasions their counsel “offered to explain to Plaintiff’s counsel . . . the reasons for the lack of personal jurisdiction over” Appellants. Aplt. App. 246-47. Appellants also asserted that they were “not parties to the Protective Order and did not participate in the telephone discussion with the Court that led to the revised Scheduling

²⁰ Appellants’ assertion that they “immediately brought a motion to dismiss for lack of personal jurisdiction” after learning that Aon “would not cooperate without court intervention” is also not true. Aplt. Br. 17-18. First, Appellants never raised the jurisdiction defense or moved to dismiss in federal court, notwithstanding the fact that Aon never agreed to dismiss the foreign Lockton entities during 18 months of litigation in that forum. Second, Aon expressly stated in an August 19, 2011 letter that it did not agree with the suggestion that Appellants were not “proper parties.” Appellants did not raise their jurisdictional objection until November 3, 2011—some ten weeks later—and they did so then only after Aon expressed its intention to seek relief from the court should Appellants continue to withhold discovery without valid objection.

Order.” Aplt. App. 246. Although the district court did not make explicit findings of fact in its Order denying Appellants’ motion to dismiss, the court’s finding of waiver indicates its implicit rejection of Appellants’ allegations. This Court reviews such determinations with deference. *See Auntie Ruth’s Furry Friends’ Home Away From Home, Ltd. v. GCC Property Mgmt., LLC*, No. A08-1602, 2009 WL 2926485, at *8 (Minn. Ct. App. Sept. 15, 2009) (unpublished) (stating that district court’s finding with respect to waiver was “supported by the record” and “based on an implicit credibility determination to which we defer”); *see also Beberg v. Beberg*, No. A10-2261, 2011 WL 4435396, at *2 (Minn. Ct. App. Sept. 26, 2011) (unpublished) (citing *Vettleson v. Special Sch. Dist. No. 1*, 361 N.W.2d 425, 428 (Minn. Ct. App. 1985)). Deference to the trial court’s evaluation of the parties’ litigation conduct is particularly appropriate given its immediate observation of the parties’ behavior. The district court’s determinations here are amply supported by the record and should be affirmed.

Appellants did not clearly assert any objection to personal jurisdiction, formally or informally, until they brought their motion four months *after* Defendants served their Answer (and two years after being sued in the federal district court). They answered Aon’s Complaint without asserting the defense, and they consequently waived it. Even were the Court to accept their contention that they did not answer, they still waived the defense by failing to seasonably assert it, and in the meantime invoking the district court’s jurisdiction when it suited them. Ultimately, “[b]y engaging in a strategy of delay,” Appellants “have violated the spirit of Rule 12.” *Network Prof’ls*, 146 F.R.D. at 184. In sum, the district court did not clearly err in finding that Appellants waived

objection to personal jurisdiction through their conduct, and even under a de novo standard the district court's ruling was correct as a matter of law. The Court should consequently affirm the district court's Order denying Appellants' motion to dismiss.

III. Appellants' Appeal Also Fails On The Merits

Because the district court correctly concluded that Appellants waived objection to personal jurisdiction, this Court need not reach the merits of the issue. If the Court does consider the merits, however, it can and should affirm the district court's order because Aon introduced sufficient evidence to meet its burden of making a prima facie showing of personal jurisdiction. It must be noted, however, that Aon mustered that evidence without receiving a single discovery response from Appellants. Consequently, if this Court were to conclude that Aon has not yet met its burden of establishing jurisdiction, it should not rule against Aon on the merits—in that event, only a remand would be appropriate, because Aon is entitled to jurisdictional discovery and a fair opportunity to meet its burden of production before any court can properly decide that personal jurisdiction is lacking.

A. If This Court Reaches the Merits, a Remand for the District Court to Consider Personal Jurisdiction After Discovery Would Be Appropriate

Were this Court to decide that Appellants did not waive objection to personal jurisdiction, it would then be confronted with the merits of Appellants' personal jurisdiction argument. For two reasons, the Court should in that event remand this case to the district court to consider the merits of the personal jurisdiction issue in the first instance.

First, the district court did not consider or decide whether Appellants had sufficient minimum contacts to establish personal jurisdiction; its decision appropriately was based solely on waiver and consent. *See* Feb. 2 Order at 5-7, Aplt. Add 7-9. Minnesota appellate courts “must generally consider ‘only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.’” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quoting *Thayer v. Am. Fin. Advisers, Inc.*, 322 N.W.2d 599, 604 (Minn. 1982)). The Court should generally not decide an issue on appeal “‘if it was not passed on by the trial court.’” *Id.* (quoting *Rehberger v. Project Plumbing Co. Inc.*, 205 N.W.2d 126, 127 (Minn. 1973)).

Second, Aon was not afforded jurisdictional discovery before the district court decided the motion to dismiss. The party seeking to establish jurisdiction is ordinarily entitled to jurisdictional discovery before the court decides a motion to dismiss for lack of personal jurisdiction. *See, e.g., Behm v. John Nuveen & Co., Inc.*, 555 N.W.2d 301, 305 (Minn. Ct. App. 1996); *Lakin v. Prudential Sec., Inc.*, 348 F.3d 704, 713 (8th Cir. 2003). Here, Appellants refused to respond to a single discovery request from the inception of this litigation in federal court until the district court ordered them to respond upon Aon’s motion to compel. *See* Feb. 2 Order at 17, Aplt. Add. 19. Accordingly, in opposing Appellants’ motion below, Aon put into the record what jurisdictional evidence it had available. Aon contended this evidence was sufficient to make a prima facie showing of personal jurisdiction, but it also urged the district court to permit jurisdictional discovery

before reaching the merits of the issue. *See* Aplt. App. 158-59.²¹ Accordingly, if this Court were to reach the merits of the jurisdictional issue, a remand for jurisdictional discovery would be appropriate.

B. Even on the Current Record, It Is Clear that Appellants Have Sufficient Contacts to Establish Personal Jurisdiction in Minnesota

In this procedural posture, Aon “need only make a prima facie showing of sufficient Minnesota-related activities through the complaint and supporting evidence, which will be taken as true.” *Hardrives, Inc. v. City of LaCrosse*, 240 N.W.2d 814, 816 (Minn. 1976). In “a close case, doubts should be resolved in favor of retention of [personal] jurisdiction.” *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 412 (Minn. 1992). The evidence already in the record is sufficient to establish personal jurisdiction under these standards; it shows that each of the Appellants, acting through one or more agents, has purposefully directed activities at Minnesota sufficient to establish the minimum contacts requisite to Minnesota courts’ exercise of personal jurisdiction.

²¹ A court may decline to grant jurisdictional discovery only where, unlike here, “the discovery is unlikely to lead to facts establishing jurisdiction.” *Behm*, 555 N.W.2d at 305. Here, some discovery took place after the district court denied Appellants’ motion to dismiss and granted Aon’s motion to compel. While they are not part of the record on this appeal, Appellants’ discovery responses revealed additional information about the relationships between the Lockton entities involved in Project Mayo, and deposition testimony from the individual Defendants and Mark Henderson underscored the degree of direct involvement in Project Mayo by agents of each of the Lockton entities. The depositions of those agents themselves—Messrs. Lumelleau, Lockton, and Meacham—would undoubtedly reveal more. Appellants took this appeal, however, only days before those depositions (and the deposition of their jurisdictional affiant, Trey Humphries) were scheduled to occur, and then obtained a stay of further discovery from the district court.

Minnesota’s long-arm statute provides that Minnesota courts “may exercise personal jurisdiction over any foreign corporation . . . if, in person or through an agent, the foreign corporation . . . (4) commits any act outside Minnesota causing injury or property damage in Minnesota.” Minn. Stat. § 543.19, subd. 1. “[T]he legislature designed the long-arm statute to extend the personal jurisdiction of Minnesota courts as far as the Due Process Clause of the federal constitution allows.” *Valspar Corp.*, 495 N.W.2d at 410. Minnesota courts therefore “may simply apply the federal case law” to personal jurisdiction questions. *Id.* at 411.

A court “may constitutionally exercise personal jurisdiction over nonresident defendants who have ‘minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal quotation marks and alteration omitted). To satisfy the minimum-contacts analysis, the defendant must have “purposefully avail[ed] itself of the privilege of conducting activities within the forum state,” and be able to “reasonably anticipate the possibility of being haled into the state’s courts.” *Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 674 (Minn. Ct. App. 2000). When deciding whether a nonresident defendant has sufficient minimum contacts, Minnesota courts consider five factors: (1) the quantity of contacts with the forum state; (2) the nature and quality of the contacts; (3) the source and connection of the cause of action with these contacts; (4) the interest of the state in providing a forum; and (5) the convenience of the parties. *Id.* The first three factors are considered the most vital. *Id.*

Appellants' central argument with respect to personal jurisdiction is that Aon cannot impute the contacts of Kansas City Series of Lockton Companies, LLC to the other corporate entities to establish personal jurisdiction. Appellants contend that Aon has "impermissibly lumped all corporate Defendants in this case together for purposes of personal jurisdiction simply because each entity contains the name 'Lockton.'" Aplt. Br. 11. This is not true; Appellants have consistently misapprehended the nature of Aon's claims and the thrust of the evidence. In fact, Aon's theories of liability and personal jurisdiction have never rested on "lumping" the corporate Defendants together or imputing the activities of one to another. To the contrary, Aon alleged in its Complaint, and has offered specific evidence to show, that *each* corporate Defendant, acting through one or more agents, participated in Project Mayo—a tortious scheme purposefully directed at Minnesota, designed to accrue profits for the corporate Defendants from business in Minnesota, occurring largely in Minnesota, and giving rise to injury in Minnesota.

As a preliminary matter, Aon alleged in its Complaint that "each defendant . . . is a resident of Minnesota, transacts business in Minnesota, or"—as relevant to Appellants—"has knowingly and intentionally committed acts giving rise to injury in Minnesota." Compl. ¶ 14, Aplt. App. 4. It alleged that the corporate Defendants, including Appellants, "are subject to common control and/or acted in concert" in the alleged tortious conduct. Compl. ¶ 13, Aplt. App. 4. Aon further alleged that "top executives" from the Lockton entities worked "hand-in-hand for months" with the individual

Defendants—who at the time were still employed by Aon—to carry out Project Mayo. Compl. ¶ 2, Aplt. App. 2.

These allegations are broad, but breadth is permissible in the Complaint. *See Goeb v. Tharaldson*, 615 N.W.2d 800, 818 (Minn. 2000). More importantly, in response to Appellants’ motion, Aon came forward with specific evidence of participation in Project Mayo by each individual Lockton entity.

Aon offered specific evidence that John Lumelleau and Ron Lockton supervised and participated in Project Mayo, including minutes from a Lockton, Inc. Board of Directors meeting (both men are Board members), *see* Aplt. App. 214-19, evidence of a meeting among Lumelleau, Lockton, and Meacham concerning the scheme, *see id.* at 207, and an email from Meacham to Lumelleau and Lockton providing detailed information on the progress of the plan, *see id.* at 209.²² Mr. Lumelleau is President and CEO of Lockton, Inc. *See* Aplt. App. 164 (Aon’s Mem. 16 n.7); Aplt. App. 211-12. He is also President of Lockton Management, LLC, which gives him authority to act on behalf of Lockton Companies, LLC, of which Lockton Management, LLC is the Manager. *See* Aplt. App. 212. Ron Lockton, in addition to being a director of Lockton, Inc., is a Senior Executive Vice President of Lockton Insurance Agency, Inc., the corporate Sole Member of Lockton Companies, LLC. *See id.* In sum, between the two

²² That email includes specific financial information about Defendant Haskins’s book of business at Aon as well as information about a planned recruiting meeting specifically involving personnel from the “Holding Company,” i.e., Lockton, Inc. It concludes, “I will keep you apprised as this develops.”

of them, Lumelleau and Lockton acted as agents of each of the Appellants when they authorized and supervised the conduct alleged in Aon's Complaint.

In addition, the Lockton, Inc. Board of Directors received at least one detailed presentation on Project Mayo, which included, for example, the plan to acquire "production teams" from competitors and indicated that one of three targeted producers—Defendant Haskins—was subject to a restrictive covenant. *See* Aplt. App. 204-05. The Board of Directors unanimously voted to authorize implementation of Project Mayo based on this information. *See* Aplt. App. 215-16. By that authorization, Meacham, Henderson, and anyone else carrying out Project Mayo became an agent of Lockton, Inc.

In essence, Mr. Lumelleau, Mr. Lockton, and the Lockton, Inc. Board approved, directed, funded, and orchestrated the entire tortious scheme alleged in Aon's Complaint. In so doing, they acted on behalf of each of the Appellants directly.

This evidence is more than sufficient to establish personal jurisdiction in Minnesota. First, each of the Appellants, through its agents, had numerous contacts with Minnesota over the period of months before Lockton opened its Minneapolis office. And, even if their contacts had not been numerous, "even a single, isolated transaction" can support jurisdiction "[i]f the cause of action arises directly out of" it, as it does here. *TRWL Fin. Establishment v. Select Int'l, Inc.*, 527 N.W.2d 573, 576 (Minn. Ct. App. 1995).

Second, Appellants consciously planned and executed a scheme to poach Aon's top Minneapolis employees (along with their valuable clients and confidential

information) and thereby establish their own immediately competitive insurance business in Minnesota. As such, they plainly “‘purposefully directed’ [their] activities at residents of’ Minnesota and had more than “‘fair warning’ of being sued” there. *Id.* (quoting *Real Properties, Inc. v. Mission Ins. Co.*, 427 N.W.2d 665, 668 (Minn. 1988)).

Third, Aon’s claims arise directly out of Appellants’ contact with Minnesota. The tortious conspiracy and conduct described herein and in Aon’s Complaint is, essentially, Project Mayo. Project Mayo is precisely the conduct Appellants directed at Minnesota.

Fourth, Minnesota has “an obvious interest in providing a forum” to rectify wrongful conduct that occurs here, particularly against a local resident (Aon Risk Services Central, Inc.). *Kopperud v. Agers*, 312 N.W.2d 443, 445 (Minn. 1981). Fifth, convenience weighs in favor of jurisdiction in Minnesota, because a significant portion of the wrongful acts occurred here, and many of the primary witnesses may be found here.

Minnesota courts have often exercised personal jurisdiction where, as here, a nonresident defendant knowingly participated in a tortious course of conduct directed at and causing injury in Minnesota. *See, e.g., Hunt v. Nevada State Bank*, 172 N.W.2d 292, 311 (Minn. 1969), *cert. denied*, 397 U.S. 1010 (1970) (“Once participation in a tortious conspiracy—the effect of which is felt in this state—is sufficiently established, actual physical presence of each of the alleged conspirators is not essential to a valid assertion of jurisdiction.”). For example, in *Kopperud v. Agers*, the defendants conducted a fraudulent real-estate investment scheme, based in Arizona, which defrauded plaintiffs in Minnesota. The Minnesota Supreme Court upheld personal jurisdiction over a non-resident defendant—even though he had acted only in Arizona—because his activities

were “directed toward attaining a commercial benefit in Minnesota” and because “he was instrumental in setting in motion the fraudulent scheme and in keeping it going.”

Kopperud, 312 N.W.2d at 445. Appellants’ role in Project Mayo is precisely the same.

This Court reached a similar decision in *John Doe 1-22 v. Roman Catholic Bishop of Fall River*, 509 N.W.2d 598 (Minn. Ct. App. 1993). In that case, a priest ordained in the Fall River Diocese in Massachusetts had sexually abused the plaintiffs. *See id.* at 599. The priest came to Minnesota by way of a New Mexico monastery, where the Fall River Diocese had paid his expenses and received reports of his conduct. In addition, the Diocese approved his transfer to Minnesota. *See id.* at 599-600. Although the Diocese itself had no direct contact with Minnesota, this Court held it was subject to personal jurisdiction because the New Mexico intermediary had “acted at the behest of Fall River,” which had “tacitly approved” the priest’s assignment to Minnesota. *Id.* at 601.

In this case, Appellants’ participation in the wrongful conduct directed at Minnesota is far more than tacit. Appellants—each of them—knowingly participated in the planning, funding, and execution of Project Mayo, and each stands to profit from it and from the harm caused to Aon. Consequently, Appellants are subject to personal jurisdiction in Minnesota.²³

²³ Appellants attempt to downplay the significance of the jurisdictional evidence, parsing it bit by bit to suggest that no single piece of evidence standing alone shows a “tortious scheme.” *See* Aplt. Br. 13-15. This fundamentally misconstrues the nature of the showing Aon must make. Aon’s burden is to make a *prima facie* showing of sufficient contacts with Minnesota. *See Hardrives, Inc.*, 240 N.W.2d at 816. Aon need not offer conclusive evidence that each Appellant committed an actionable tort—that would go to the merits of the case. Appellants cannot deny that the

The “constitutional touchstone” of personal jurisdiction analysis is “whether the defendant purposefully established minimum contacts in the forum . . . such that he should reasonably anticipate being haled into court there.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (internal quotation marks and citations omitted). Appellants, acting in concert, directed and funded Kansas City Series of Lockton Companies, LLC’s foray into Minnesota and stand to profit from the enterprise. Their professed astonishment at finding themselves in court in Minnesota is difficult to comprehend. Each of them has sufficient contacts with this state to establish the Minnesota courts’ jurisdiction over them, and this Court should accordingly affirm the district court’s order denying Appellants’ motion to dismiss.

CONCLUSION

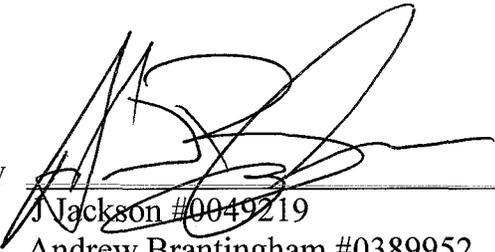
For the reasons set forth above, Plaintiffs/Respondents Aon Corporation and Aon Risk Services Central, Inc. respectfully, request that this Court affirm the District Court’s Order and Memorandum dated February 2, 2012, denying Appellants’ motion to dismiss.

evidence shows purposeful participation in the course of conduct described in Aon’s Complaint. That is all that is required here. Whether any particular Defendant may be held liable for tortious conduct is a separate question, one that is not before the Court on this appeal.

Dated: June 25, 2012

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