

Affirmed and Opinion filed December 2, 1999.



In The

Fourteenth Court of Appeals

NO. 14-99-00402-CV

HEALTH INDUSTRY MANUFACTURERS ASSOCIATION (HIMA), Appellant

V.

JENNIFER F. CRABB, Appellee

**On Appeal from the 55th District Court
Harris County, Texas
Trial Court Cause No. 98-26398**

O P I N I O N

Appellant, Health Industries Manufacturers Association (HIMA), brings this interlocutory appeal of the trial court's denial of its special appearance to Appellee, Jennifer Crabb's, lawsuit. HIMA raises three issues: (1) Crabb's live petition does not allege facts supporting personal jurisdiction over it; (2) Texas courts do not have specific personal jurisdiction over it; and (3) Texas courts do not have general personal jurisdiction over it. We affirm.

Factual background

Appellee, Jennifer Crabb, worked as a hospital nurse. During her employ, she developed a latex allergy which she contends was caused by the repeated use of latex gloves. She sued several parties, including HIMA, a medical device manufacturers trade association registered in Delaware as a non-profit corporation, with 45 to 50 employees in Washington, D.C. Crabb alleges HIMA fraudulently concealed the risks and dangers of latex gloves.

HIMA typically operates through its 30 to 50 task forces, which consist of its employees and member representatives. The task forces usually meet in Washington, D.C., where they determine positions on issues important to its members. Then they communicate to governmental agencies such as the FDA. HIMA also tries to influence members of various governmental bodies and sends mailouts on various issues pertinent to its mission.

HIMA argues it does not have sufficient contacts of any kind with Texas warranting its courts to invoke specific or general jurisdiction over it. In support, HIMA argues that it is not a resident of Texas, nor has it ever in Texas maintained an office, stored files, owned property, held a bank account, manufactured, sold, or produced goods or services, had employees, held board of directors meetings, been licensed to do business, or had a registered agent.

In response, Crabb cites the deposition of an HIMA director, Dr. Tandy, and to records of HIMA as proof of the following of HIMA's contacts:

- S** Its employees traveled to Texas at least 16 times between 1996 and 1998 to give speeches, attend conferences, or meet with members of governmental bodies to discuss issues related to HIMA interests,
- S** It has at least eight members in Texas;
- S** Between 1996 and 1998, it routinely and systematically mailed 97 press releases, which often went to medical device companies and the media in Texas;
- S** It sends one or two solicitation or informational mailouts per year to non-member companies in the medical device industry, some of whom are located in Texas. The purpose is to inform them of industry issues or to sell membership. It has also mailed correspondence to various regulatory bodies and its members in Texas regarding HIMA business;
- S** It routinely makes phone calls to Texas regarding HIMA business;

S It 1998, it mailed members of the Texas legislature material on the issue of “reuse of medical devices”, and in 1995, it solicited cooperation of members of the Texas legislature regarding “registration of facilities in Texas.”

In support of her specific jurisdiction contention, Crabb points us to records showing that one of HIMA’s task forces is the Latex Devices Task Force, which has three Texas members.

Discussion

Existence of personal jurisdiction is a question of law, but proper exercise of that jurisdiction must sometimes be preceded by the resolution of underlying factual disputes. The standard of review to determine the appropriateness of the trial court’s resolution of those facts is an ordinary sufficiency of the evidence review.¹ The scope of that review includes all evidence in the record.² If a special appearance is based on undisputed or otherwise established facts, the court conducts a de novo review of the trial court’s order granting a special appearance.³ No findings of fact and conclusions of law were entered by the trial court in this case, therefore, any questions of fact will be presumed and found in support of the judgment.⁴

Texas courts may exercise jurisdiction over a nonresident if: (1) the Texas long-arm statute authorizes the exercise of jurisdiction, and (2) the exercise of jurisdiction is consistent with federal and state constitutional guarantees.⁵ It is HIMA’s burden to negate all bases of personal jurisdiction.⁶ The

¹ *Hotel Partners v. KPMG Peat Marwick*, 847 S.W.2d 630, 632 (Tex.App.--Dallas 1993, writ denied).

² *Vosko*, 909 S.W.2d at 99.

³ *See Hotel Partners v. Craig*, 993 S.W.2d 116 (Tex.App.--Dallas 1994, no pet.) (citing *Guardian Royal*, 815 S.W.2d at 232).

⁴ *Zac Smith & Co. v. Otis Elevator Co.*, 734 S.W.2d 662, 666 (Tex.1987).

⁵ *Schlobohm v. Schapiro*, 784 S.W.2d 355, 356 (Tex.1990); TEX.CIV.PRAC. & REM. CODE §§ 17.041-17.042.

⁶ *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex.1985); *Siskind v. Villa Foundation for Ed., Inc.*, 642 S.W.2d 434, 438 (Tex.1982).

long-arm statute authorizes the exercise of jurisdiction over a nonresident "doing business" in Texas.⁷ The broad language of the statute's "doing business" requirement permits the statute to reach as far as the federal constitutional requirements of due process will allow.⁸

The United States Supreme Court divides the due process requirement into two parts: whether the nonresident defendant purposefully established "minimum contacts" with Texas, and, if so, whether the exercise of jurisdiction by a Texas court comports with "fair play and substantial justice."⁹

Under the minimum contacts analysis, we must determine whether HIMA purposefully availed itself of the privilege of conducting business in Texas and thus invoked the benefits and protection of its laws. The "purposeful availment" requirement ensures that a nonresident defendant will not be haled into a jurisdiction based on random, fortuitous, or attenuated contacts, or the unilateral activity of another party.¹⁰ Persons must have fair warning that a particular activity may subject them to the jurisdiction of a foreign sovereign.¹¹

The exercise of personal jurisdiction is proper when the contacts proximately result from actions of the nonresident defendant that create a substantial connection with the forum state.¹² The substantial connection between the nonresident defendant and the forum state must come about by the actions or

⁷ TEX.CIV.PRAC. & REM. CODE § 17.042; *Guardian Royal Exch. Assur., Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226 (Tex.1991).

⁸ *Guardian Royal*, 815 S.W.2d at 226; *Schlobohm*, 784 S.W.2d at 357.

⁹ *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-14, 104 S.Ct. 1868, 1871-72, 80 L.Ed.2d 404 (1984); *Guardian Royal*, 815 S.W.2d at 226.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

conduct of the nonresident defendant.¹³ The constitutional touchstone is whether the nonresident defendant purposefully established "minimum contacts" in the forum.¹⁴

The Texas Supreme Court has refined the "minimum contacts" analysis into specific and general jurisdiction. When specific jurisdiction is asserted, the claim must arise out of or relate to the nonresident defendant's contact with Texas to satisfy the minimum contacts requirement.¹⁵ When general jurisdiction is asserted, it is not necessary for the cause of action to arise out of or relate to the nonresident defendant's contact with Texas; in such case, the minimum contacts analysis requires a showing of substantial activities in Texas.¹⁶

The Pleadings

HIMA first contends Crabb's live petition does not sufficiently plead jurisdictional allegations, *i.e.*, that a tort was committed in Texas. If the plaintiff fails to do this, a defendant only need show it is a non-resident to defeat jurisdiction.¹⁷

In her Second Amended Petition, Crabb alleges that all or a substantial part of her claim arose in Harris County. She then states that HIMA aided the distribution of latex-containing products which it knew to be hazardous to the life, health and safety of a person in Crabb's position, yet it deliberately failed to disclose or concealed this information. She alleges that because of this, she was deprived of the informed opportunity to remove herself from exposure to latex and therefore HIMA's fraudulent concealment of the information was the proximate cause of her injuries, which occurred over an approximately nine-year period while she worked in Texas.

¹³ *Id.*

¹⁴ *Id.* at 226-27.

¹⁵ *Id.* at 227.

¹⁶ *Id.* at 228.

¹⁷ *Hotel Partners v. KPMG Peat Marwick*, 847 S.W.2d 630, 633-34 (Tex. App.—Dallas 1993, writ denied).

We find this pleading adequately states jurisdictional allegations against HIMA to bring it within reach of the long-arm statute. Therefore, its first issue is overruled.

Specific Jurisdiction

HIMA next argues Texas courts do not have specific jurisdiction over it . In support, it places much emphasis on *National Indus. Sand Ass'n. v. Gibson*, 897 S.W.2d 769 (Tex. 1995). *National Indus. Sand* involved a Maryland-based non-profit trade association accused by workers who had contracted silicosis of concealing and conspiring to conceal the dangers of silica dust. The supreme court noted the only evidence in the record having to do with inadequate warnings was a (1) letter from NISA to all its members passing along a warning pertaining to silica sand products promulgated by another entity and advising members they may want to consult their own legal counsel; (2) a deposition excerpt from a party stating he always took NISA's warnings under consideration; (3) another deposition excerpt from a Texas co-defendant that he relied on NISA recommendations. The court held this evidence did not demonstrate the "alleged cause of action arises out of or relates to NISA's contact with Texas to support the exercise of specific jurisdiction by a Texas court."¹⁸

In our case, the only cited evidence in the record to support specific jurisdiction is the activity of HIMA's Latex Devices Task Force, which has three Texas members. Crabb has pointed to no place in the record which shows that HIMA or its Task Force members made misrepresentations, sent letters, made calls, or otherwise engaged in any activity that demonstrates a specific effort to conceal any dangers of latex. Rather, it only leaves us to infer such actions by surmise. While there are general contacts with Texas in the record, we see no evidence of any purposeful act by HIMA which could have given rise or have been connected with Crabb's fraudulent concealment cause of action. Therefore, Texas courts do not have specific personal jurisdiction over HIMA.

General Jurisdiction

Finally, HIMA asserts its contacts with Texas are insufficient to establish general jurisdiction. HIMA cites a number of cases in which courts found no jurisdiction existed, despite factors such as large

¹⁸ *National Indus. Sand* , 897 S.W.2d at 775-76.

dollar amounts of purchases in Texas, numerous trips to Texas to negotiate or close purchases, or large bank accounts in Texas.¹⁹ In considering these cases, we note the courts found insufficient contacts to establish general jurisdiction because these contacts were not “continuous and systematic” or were “isolated or disjointed.”²⁰ It is important to emphasize, though, it is not the number, but the quality and nature of the non-resident defendant's contacts with the forum state that is important.²¹ The touchstone of the minimum contacts test is whether the nonresident defendant has "purposefully availed" itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of the forum's laws.²²

HIMA’s business, as stated by Dr. Tandy in her deposition, is to “represent medical device manufacturers” by “advocat[ing] positions on issues that relate to medical device manufacturers in the United States and globally.” The record reflects HIMA regularly conducts business toward that end in Texas and has done so continuously for several years. Though HIMA has no Texas office, it regularly sends mail, press releases, and makes phone calls to the Texas news media, governmental bodies, and to numerous member and non-member medical device manufacturers. Further, it regularly sends employees to travel to Texas to promote its positions. It also regularly performs part of its business through its resident Texas members.

HIMA did not argue or cite to the record any evidence showing the that the assertion of Texas courts’ jurisdiction over it would not comport with “fair play and substantial justice.”

We find sufficient evidence to support the trial court’s determination that HIMA purposefully directed its activities toward Texas and established minimum contacts for purposes of general jurisdiction. Therefore, the court’s order denying appellant’s special appearance is affirmed.

¹⁹ *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S.408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984); *Reyes v. Marine Drilling Cos., Inc.* 944 S.W.2d 401 (Tex. App.–Houston [14th Dist.] 1997, no writ); *J&J Marine v. Le*, 982 S.W.2d 918 (Tex. App.–Corpus Christi 1998, no pet.); *Primera Vista, S.P.R. de R.L. v. Banca Serfin, S.A.*, 974 S.W.2d 918 (Tex. App.–El Paso, 1998 no pet.)

²⁰ *See, e.g., Helicopteros*, 466 U.S. at 416; *Reyes*, 944 S.W.2d at 404.

²¹ *Guardian Royal*, 815 S.W.2d at 230 n. 11.

²² *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-1240, 2 L.Ed.2d 1283 (1958).

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed December 2, 1999.

Panel consists of Justices Amidei, Edelman and Wittig.

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