THE IMPORTANCE OF KNOWING WHERE TO LITIGATE A CYBER-TECHNOLOGY LAWSUIT IN TODAY'S INCREASINGLY VIRTUAL BUSINESS ENVIRONMENT

© Sandra Calin
Partner, Kramer deBoer Endelicato & Keane, LLP

Cyber-technology lawsuits are sometimes difficult to litigate because it might be unclear where they should be litigated. We live in an increasingly borderless environment where companies transact business easily via the Internet across the country, indeed across the world. When litigation arises, should it be handled where the plaintiff lives, or where the company is headquartered, or in some other location? Is it fair to sue an overseas company in California when the only connection to California is that a consumer living in California clicked a button on the company's website? This is not a question of forum-shopping, but a fundamentally important question of due process rights.

In this new virtual world, it is important to know where a lawsuit should be litigated because courts' jurisdictional powers are often defined by a doctrine known as "minimum contacts." Due process permits local courts to exercise personal jurisdiction over nonresidents who have minimum contacts with the jurisdiction, i.e., a relationship between the nonresident and the local court such that the exercise of jurisdiction does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

Here in the United States, every state decides to what extent its jurisdictional power is conferred upon its courts. California has the broadest kind of these so-called "long arm" statutes, which allows California courts to assert jurisdiction over residents and nonresidents alike, so long as there is no conflict with the U.S. Constitution or California Constitution. The factors are:

- The extent to which the lawsuit relates to the defendant's activities or contacts with California;
- The availability of evidence and the location of witnesses;
- The availability of an alternative forum where the claim could be litigated;
- The relative costs and burdens to the parties of litigating the claim in California versus elsewhere; and
- Any state policy in providing a forum for this particular dispute. *Cadle Co. II, Inc. v. Fiscus*, 163 Cal.App.4th 1232, 1239 (2008).

So what constitutes sufficient "minimum contacts" in the age of the Internet when it comes to personal jurisdiction? Just 39 years ago, in *Interdyne Co. v. SYS Computer Corp*., 31 Cal.App.3d 508 (1973), the Court of Appeal ruled that transactions conducted only by interstate telephone and mail did not trigger long-arm jurisdiction in California and the out-of-state defendant was successful in a motion to quash service of summons because it had no physical contacts with California.

Fast forward a few decades. As early as 1997, the Court of Appeal ruled in *Hall v. LaRonde*, 56 Cal.App.4th 1342 (1997) that a New York resident who conducted business through electronic mail and telephone with a California resident purposefully derived a benefit from the interstate activities and so it was fair to exercise jurisdiction over him. Similarly, in *Snowey v. Harrah's Entertainment, Inc.*, 35 Cal.4th 1054 (2005), a Nevada casino was found to have minimum contacts with California by virtue of its website, which allowed visitors to make reservations, and which also specifically targeted California residents.

The analysis of "minimum contacts" for Internet-based activities is often done on a case-by-case basis. In *Pavlovich v. Superior Court*, 29 Cal.4th 262 (2002), the California Supreme Court held that merely posting on an Internet website was not sufficient to allow the court to exercise jurisdiction over the poster. But both the Federal courts in the Ninth Circuit, and California state courts, have increasingly extended jurisdiction to out-of-state defendants when contacts with the state are solely via the Internet. The analysis involves looking at whether the internet activity involves "purposeful availment" aimed at California residents, and intended to affect California residents.

For example, although most "minimum contacts" cases are in the civil context, the case of *Hageseth v. Superior Court*, 150 Cal.App.4th 1399 (2007) involved a defendant charged with a felony offense of practicing medicine in California without a license. The Court ruled that he was subject to jurisdiction in California, even though he was located outside the state and communicated solely via the Internet, because he prescribed drugs to California residents. He thus purposely availed himself of California benefits, which triggered the long-arm statute.

In evaluating jurisdiction, as in many other contexts, courts look to a "reasonableness" test and evaluate whether the exercise of jurisdiction over an out-of-state resident is reasonable under the circumstances. There is no requirement that plaintiffs reside in the state for a local court to exercise jurisdiction over a nonresident defendant. But if the plaintiff is a local resident, the forum state may have more of an interest in the matter, making it easier to justify an exercise of jurisdiction. *Ford Motor Co. v. Insurance Co. of North America*, 35 Cal.App.4th 604, 610-611 (1995).

In one of our firm's cases, for example, our client is a distributor of dietary supplements sold only over the Internet through the company's website. Sales are made all over the country, with substantial sales in California. It is certainly reasonable to expect that a buyer in California claiming adverse effects would be able to file suit in California against the out-of-state company. While disputing the substantive allegations concerning the products, there is no question that jurisdiction is proper in California, where the plaintiff resides.

While presumably the basic legal principles will remain the same regarding jurisdiction, how they will be applied in cyber-technology litigation should be a constantly-evolving phenomenon as the Internet continues to change how we do business. California is at the forefront of such legal trends, so we are well-positioned to handle these types of claims.

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