

FILED  
COURT OF APPEALS DIV  
STATE OF WASHINGTON  
2013 APR 24 PM 2:35

NO. 69413-8-I

COURT OF APPEALS STATE OF WASHINGTON  
DIVISION I

---

JACKSON MIKA,

Respondent,

v.

GREG STEVENS, an individual, husband and wife, and their community,

Appellant.

---

BRIEF OF APPELLANT GREG STEVENS

---

Jeffrey P. Downer, WSBA No. 12625  
Peter E. Sutherland, WSBA No. 17745  
Pamela J. Devet, WSBA No. 32882  
Of Attorneys for Appellant Greg Stevens

LEE SMART, P.S., INC.  
1800 One Convention Place  
701 Pike Street  
Seattle, WA 98101-3929  
(206) 624-7990



## TABLE OF CONTENTS

|   | Page |
|---|------|
| I. INTRODUCTION.....  | 1    |
| II. ASSIGNMENTS OF ERROR.....   | 1    |
| III. STATEMENT OF THE CASE .....  | 3    |
| A. Mr. Mika complains of a gunshot wound occurring at<br>Jillian’s Billiards Club in Seattle, Washington.....   | 3    |
| B. Mr. Stevens is not a proper defendant. ....  | 3    |
| 1. Mr. Stevens has only sporadic contacts with<br>Washington.....   | 4    |
| 2. Mr. Stevens did not establish or oversee policy for<br>security at JBC, nationally or in Seattle. ....   | 4    |
| 3. Mr. Stevens did not know about the event. ....   | 5    |
| C. Mr. Mika sued Mr. Stevens individually. ....   | 6    |
| D. Mr. Mika served Mr. Stevens under the Washington’s long-<br>arm statute in Nevada. ....  | 6    |
| E. The trial court denied Mr. Stevens’s summary judgment<br>motion and sua sponte entered summary judgment <i>against</i><br>him as to jurisdiction. ....                     | 7    |
| F. This Court granted discretionary review finding probable<br>error under RAP 2.3(b)(2). ....  | 7    |
| IV. SUMMARY OF ARGUMENT.....  | 9    |
| V. ARGUMENT.....  | 10   |
| A. Mr. Stevens, as a resident of Kentucky and then Arizona,<br>has a due process right not to be subject to the jurisdiction<br>of the courts in the State of Washington..... | 10   |
| B. Mr. Mika must show Washington Courts have personal<br>jurisdiction over Mr. Stevens.....   | 11   |
| 1. The standard of review is <i>de novo</i> .....   | 11   |
| 2. A plaintiff must establish personal jurisdiction.....  | 12   |

|     |   |    |
|-----|---|----|
| C.  | The court cannot exercise personal jurisdiction over Mr. Stevens by considering the collective Washington contacts of other defendants or consider the general business contacts of his corporate employer..... | 13 |
| D.  | The test for asserting general personal jurisdiction is an exacting standard that Mr. Mika cannot meet as to Mr. Stevens.....   | 14 |
| E.  | Plaintiff cannot demonstrate that the court has specific personal jurisdiction over Mr. Stevens. ....   | 17 |
|     | 1. Mr. Stevens’s due process rights were not adequately considered by the trial court. ...  | 17 |
|     | 2. Mr. Stevens has not personally availed himself of the privilege of conducting business activities in Washington.....   | 20 |
|     | 3. Exercising jurisdiction over Mr. Stevens based on the sporadic quality and nature of his limited Washington contacts would offend the traditional notions of fair play and substantial justice. ....         | 23 |
| F.  | The long-arm statute does not confer jurisdiction even in the absence of due process considerations.....  | 25 |
|     | 1. Mr. Stevens is not personally transacting business within the state.....   | 26 |
|     | a. Under Washington law, Mr. Stevens’s allegedly tortious conduct could not have “occurred” in-state.....   | 27 |
| G.  | This court should award Mr. Stevens his reasonable attorney fees and costs expended in bringing this motion under RCW 4.28.185.....   | 30 |
| VI. | CONCLUSION .....  | 31 |

**TABLE OF AUTHORITIES**

**Table of Cases**

|   | <b>Page(s)</b> |
|---|----------------|
| <b>Cases</b>  |                |
| <i>Bancroft &amp; Masters, Inc. v. August Nat'l, Inc.</i> , 223 F.3d 1082, 1085-86 (9th Cir. 2000) .....                    | 15             |
| <i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462, 476, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).....                    | 19, 20         |
| <i>Cannon Mfg. Co. v. Cudahy Packing Co.</i> , 267 U.S. 333, 336, 45 S. Ct. 250, 251, 69 L. Ed. 634 (1925).....             | 20, 27         |
| <i>Colombia, S.A. v. Hall</i> , 466 U.S. 408, 416, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984).....                            | 15             |
| <i>Dam v. Gen. Electric Co.</i> , 111 F. Supp. 342, 345, 348 (E.D. Wash. 1953).....   | 20, 27         |
| <i>Escude Cruz v. Ortho Pharm. Corp.</i> , 619 F.2d 902, 905 (1st Cir. 1980).....   | 20, 27         |
| <i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> , 564 U.S. ---, 131 S. Ct. 2846, 2850, 180 L. Ed. 2d 796 (2011)..... | 10, 15         |
| <i>Int'l Shoe Co. v. Wash.</i> , 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945) .....                                | 11, 19         |
| <i>J. McIntyre Machinery, Ltd. v. Nicastro</i> , 564 U.S. ---, 131 S. Ct. 2780, 2787, 180 L. Ed. 2d 765 (2011).....         | 11             |
| <i>Keeton v. Hustler Magazine, Inc.</i> , 465 U.S. 770, 781 n.13, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984).....             | 14             |
| <i>Rush v. Savchuk</i> , 444 U.S. 320, 332, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980) .....                                   | 14             |
| <i>Satterfield v. Huebner</i> , 474 U.S. 818, 106 S. Ct. 64, 88 L. Ed. 2d 52 (1985) .....                                   | 14             |
| <i>Schwarzenegger v. Fred Martin Motor Co.</i> , 374 F.3d 797, 801 (9th Cir. 2004).....                                     | 15, 19         |
| <i>Transure, Inc. v. Marsh &amp; McLennan. Inc.</i> , 766 F.2d 1297, 1299 (9th Cir. 1985).....                              | 21             |
| <i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286, 295, 100 S. Ct. 559, 566, 62 L. Ed. 2d 490 (1980)) .....      | 24             |

**State Cases**

*Bartusch v. Oregon State Bd of Higher Educ*, 131 Wn. App. 298, 126 P.3d 840 (2006) .....19

*Craig v. Wash. Trust Bank*, 94 Wn. App. 820, 976 P.2d 126 (1999).....12

*CTVC of Haw., Co. v. Shinawatra*, 82 Wn. App. 699, 919 P.2d 1243 (1996), *rev. denied*, 131 Wn.2d 1020, 937 P.2d 1102 (1997) .....15, 20

*Davis v. W. One Auto. Group*, 140 Wn. App. 449, 166 P.3d 807 (2007), *rev. denied*, 163 Wn.2d 1040, 187 P.3d 269 (2008).....13

*Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 230 P.3d 625 (2010).....12, 17, 18, 19

*Grange Ins. Ass'n v. State*, 110 Wn.2d 752, 757 P.2d 933 (1988), *cert. denied*, 490 U.S. 1004, 109 S. Ct. 1638, 104 L. Ed. 2d 154 (1989) .....13, 18, 27

*Harbison v. Garden Valley Outfitters, Inc.*, 69 Wn. App. 590, 849 P.2d 669 (1993) .....18

*Hartley v. Am. Contract Bridge League*, 61 Wn. App. 600, 812 P.2d 109, *rev. denied*, 117 Wn.2d 1027, 820 P.2d 511 (1991).....15, 16

*Hein v. Taco Bell, Inc.*, 60 Wn. App. 325, 803 P.2d 329 (1991).....13, 16

*Hewitt v. Hewitt*, 78 Wn. App. 447, 896 P.2d 1312 (1995), *rev. denied*, 133 Wn.2d 1030, 950 P.2d 477 (1988).....18, 30

*Huebner v. Sales Promotion, Inc.*, 38 Wn. App. 66, 684 P.2d 752 (1984) .....3, 4, 9, 14, 21, 22, 23, 26

*Im Ex Trading Co. v. Raad*, 92 Wn. App. 529, 963 P.2d 952 (1998), *rev. denied*, 137 Wn.2d 1023, 980 P.2d 1280 (1999).....13, 16

*MBM Fisheries v. Bollinger Shipyard*, 60 Wn. App. 414, 804 P.2d 627 (1991) .....11

*Morgan v. Kingen*, 166 Wn.2d 526, 210 P.3d 995 (2009) .....12

*Perry v. Hamilton*, 51 Wn. App. 936, 756 P.2d 150, *rev. denied*, 111 Wn.2d 1017 (1988) .....1, 24

*Oertel v. Bradford Trust Co.*, 33 Wn. App. 331, 655 P.2d 1165 (1982) .....4, 9, 20, 27, 28, 29

*Raymond v. Robinson*, 104 Wn. App. 627, 15 P.3d 697 (2001)....16, 17, 20

*Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 859 P.2d 1210 (1993).....30

|   |               |
|---|---------------|
| <i>SeaHAVN, Ltd. v. Glitnir Bank</i> , 154 Wn. App. 550, 226 P.3d 141<br>(2010) .....   | 5, 19, 24, 27 |
| <i>Shute v. Carnival Cruise Lines</i> , 113 Wn.2d 763, 783 P.2d 78 (1989), <i>rev'd on other grounds, Carnival Cruise Lines, Inc. v. Shute</i> , 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991)..... | 15            |
| <i>Torgerson v. One Lincoln Tower, LLC</i> , 166 Wn.2d 510, 210 P.3d 318<br>(2009) .....  | 30            |
| <i>Tyee Const. Co. v. Dulien Steel Prods., Inc.</i> , 62 Wn.2d 106, 381 P.2d 245 (1963) .....   | 19            |
| <i>Walker v. Bonney-Watson Co.</i> , 64 Wn. App. 27, 823 P.2d 518 (1992) ....   | 13            |
| <b>Statutes</b>   |               |
| RCW 4.28.080(10) .....  | 15            |
| RCW 4.28.185 .....  | 18, 26, 30    |
| RCW 4.28.185(1) .....   | 26            |
| RCW 4.28.185(1)(a).....   | 2, 20, 26     |
| RCW 4.28.185(1)(b).....   | 2, 27, 29     |
| RCW 4.28.185(5) .....   | 2, 3, 30      |
| <b>Rules and Regulations</b>  |               |
| CR 56(c) .....  | 12            |
| CR 56(c)(12).....   | 8             |
| RAP 2.3 .....   | 8             |
| RAP 2.3(b)(2) .....   | 7, 8          |

## I. INTRODUCTION

Jackson Mika sued Greg Stevens personally for an injury sustained in Seattle, Washington, even though Mr. Stevens is a resident of Reno, Nevada and had no personal involvement in the events that caused the injury. Mr. Stevens moved for summary judgment, asserting the court had no jurisdiction over him as a Nevada resident. Mr. Stevens also requested attorney fees under the Washington Long-arm statute. After the superior court denied summary judgment, this court granted Mr. Stevens's motion for discretionary review. CP 505-07; 513-14.

The basis for this appeal is that the court improperly denied summary judgment when Mr. Mika produced no evidence to establish jurisdiction under the Washington Long-arm statute or under theories of general or specific jurisdiction. CP 71-95. Mr. Mika attempts to base jurisdiction on argument and theory rather than fact regarding Mr. Stevens's role in the events leading to his injury. This is not sufficient to confer jurisdiction to the courts of the State of Washington.

## II. ASSIGNMENTS OF ERROR

### *Assignments of Error*

1. The superior court erred in denying Mr. Stevens's motion for summary judgment as there is no basis to assert general jurisdiction over him.

The superior court erred in denying Mr. Stevens's motion for summary judgment as there is no basis to assert specific jurisdiction over him as to events leading to Mr. Mika's injuries.

The superior court erred in denying summary judgment where the Washington Long-arm statute, RCW 4.28.185(1)(b) does not extend jurisdiction over Mr. Stevens pursuant to the tort prong of the statute.

The superior court erred in denying summary judgment when the Washington Long-arm statute does not extend jurisdiction over Mr. Stevens for transacting business as defined by the statute, RCW 4.28.185(1)(a).

2. The superior court erred in denying an award of attorney fees to Mr. Stevens under RCW 4.28.185(5).

*Issues Pertaining to Assignments of Error*

1. Whether the superior court committed reversible error in denying Mr. Stevens's motion to dismiss all claims against him, where:

- a. The record fails to show that Mr. Stevens individually was carrying on substantial and continuous business in the State of Washington and is therefore subject to the exercise of general jurisdiction;
- b. the record fails to show that Mr. Stevens purposefully committed some act or consummated a transaction connected to Mr. Mika's



allegations of personal injury; and

- c. the assumption of jurisdiction by the State of Washington offends notions of fair play and substantial justice given the quality, nature, and extent of Mr. Stevens's activities in this state.

2. Whether the court should award reasonable attorney fees to Mr. Stevens under Washington's Long-Arm Statute, RCW 4.28.185(5), where the record fails to establish long-arm jurisdiction under that statute, and that statute expressly authorizes such a fee award.

### III. STATEMENT OF THE CASE

#### A. **Mr. Mika complains of a gunshot wound occurring at Jillian's Billiards Club in Seattle, Washington.**

Mr. Mika claims he sustained a gunshot wound on March 21, 2010 at Jillian's Billiards Club (Jillian's) on Westlake Avenue in Seattle, Washington. CP 24, ¶¶ 24-25. Mr. Mika posits Jillian's should have had heightened security in place that evening because Jillian's was playing "hip hop" music and should have foreseen a more violent crowd. CP 26 (¶ 31). Mr. Mika alleged negligence against multiple defendants, including the restaurant, JBC of Seattle, Inc., d/b/a Jillian's Billiards Club, and the parent company, JBC Entertainment, Inc. *Id.*

#### B. **Mr. Stevens is not a proper defendant.**

At the time of Mr. Mika's claimed injury, Jillian's was owned and operated by defendant JBC of Seattle, a Delaware corporation. CP 97

(¶ 5). In turn, JBC of Seattle was owned by defendant JBC Entertainment, a Delaware corporation headquartered in Kentucky. *Id.* (¶ 6). Mr. Stevens was a corporate officer at JBC Entertainment, the parent. CP 96 (¶¶ 1-2). JBC Entertainment partially owned seven restaurants around the country. CP 116 (5:20-23). Mr. Mika knew he was suing foreign defendants, among them Mr. Stevens. CP 103-104 (¶¶ 2, 4, 13, 15).

**1. Mr. Stevens had only sporadic and minimal contacts with Washington.**

In March 2010, Mr. Stevens lived in Louisville, Kentucky, and he has since moved to Reno, Nevada. CP 97 (¶ 2). He has never lived in Washington nor had an in-state office or mailing address. *Id.* (¶ 3). In the past decade, he has traveled to this state only a half-dozen times. *Id.* Other than routine sales or hotel taxes, he has not paid taxes here. *Id.* He has never been in contact with Mr. Mika, who apparently lives in Washington. CP 103 (¶ 1). Mr. Stevens does not have a bank account or any other personal or real property in Washington. CP 97 (¶ 3).

**2. Mr. Stevens did not establish or oversee policy for security at JBC, nationally or in Seattle.**

Mr. Stevens was responsible for JBC Entertainment's overall profitability, not the day-to-day operations of the subsidiary companies running various restaurants around the country. CP 97-98 (¶ 8). Mr. Stevens relied heavily on corporate staff, regional managers, general

managers, and finally restaurant-level management to run those business operations at the parent and subsidiary companies. *Id.* (¶ 8); CP 123-126. Mr. Stevens's authority to hire, fire, and train employees extended only to corporate employees at JBC Entertainment, not employees at subsidiary companies like JBC of Seattle. CP 98 (¶ 9); CP 117-18. The record is undisputed that he was not responsible for either (a) JBC of Seattle's policies and procedure, or (b) any security policies. CP 98 (¶ 10); CP 131.

**3. Mr. Stevens did not know about the event.**

The President and Chief Operating Officer of JBC Entertainment, Mr. Tyler Warfield, oversaw the subsidiary companies' operations. CP 140-41 (dep. pp. 14, 40). Events at Jillian's were organized at the local level and typically involved corporate events with companies like Microsoft. CP 121-22. That is, Mr. Stevens had no hand in organizing or approving events at Jillian's. *Id.*

One of the assistant managers at Jillian's, defendant Michael Knudsen, arranged the event on the evening in question with a outside promoter, Marquis Holmes, but Mr. Knudsen never informed any of his supervisors. CP 148 (dep. pp. 32-33). He had been told not to host events without a supervisor's approval, but he did so anyway. CP 148, 318-19 (¶¶ 14-15). Accordingly, this information was not passed up the corporate chain of command. CP 129, 148. That is, even if Mr. Stevens had been

responsible for events at Jillian's, he did not know beforehand that Jillian's was hosting an unauthorized event. *Id.*

**C. Mr. Mika sued Mr. Stevens individually.**

Mr. Mika filed his initial complaint for damages on January 5, 2011, alleging, *inter alia*, that JBC of Seattle and JBC Entertainment Holdings were liable for injuries suffered at Jillian's on March 21, 2010. Mr. Mika also named Michael Knudsen for his personal involvement in the event occurring when he was injured. However, Mr. Mika did not initially name Mr. Stevens as a defendant.

On February 15, 2012, Mr. Mika amended his complaint, adding Mr. Stevens as a defendant. He alleged that Mr. Stevens personally failed to protect him from the shooting, specifically by failing to foresee that "hip hop" music would lead to violence and therefore provide heightened security. CP 107-08 (¶¶ 31-32, 34-35).

**D. Mr. Mika served Mr. Stevens under the Washington's long-arm statute in Nevada.**

Mr. Mika knew Mr. Stevens resides in Reno, Nevada. CP 155-56. His counsel filed an affidavit admitting that personal service was not possible in Washington. *Id.* (¶ 4). Mr. Stevens was served the summons and first amended complaint at his Reno home. CP 59-60, 307 (¶ 12).

**E. The trial court denied Mr. Stevens's summary judgment motion and sua sponte entered summary judgment *against* him as to jurisdiction.**

On May 29, 2012, Mr. Stevens filed a motion for summary judgment, arguing the trial court had no personal jurisdiction over him. CP 71-95. He argued that as a non-resident, he was not subject to the jurisdiction of Washington, and he did not submit to that jurisdiction in his role as CEO and CFO of JBC Entertainment. *Id.* Mr. Mika responded at length, CP 340-490; and Mr. Stevens filed a reply. CP 491-501.

On July 20, 2012, the trial court heard oral argument and denied the motion but entered no written order until September 10, 2012. The court order of September 10 is entitled "Order Denying Defendant Stevens' Motion for Summary Judgment for Dismissal and for Attorney Fees and Costs." CP 505-507. The Order stated that the motion was "denied because the defendant, Greg Stevens, **is subject to** personal jurisdiction in this court." *Id.* (emphasis added). In essence, then, the trial court appears to have granted summary judgment in Mr. Mika's favor although (a) Mr. Mika had not sought summary judgment; and (b) the court had not permitted Mr. Stevens to respond before *sua sponte* making the adverse ruling.

**F. This Court granted discretionary review finding probable error under RAP 2.3(b)(2).**

Mr. Stevens moved for discretionary review with this court,

asserting that the trial court erred and that such error was immediately reviewable under RAP 2.3. CP 508-12. By written opinion dated February 22, 2013, a panel of this court granted discretionary review finding in a written opinion that Appellant satisfied the criteria of RAP 2.3(b)(2). In granting discretionary review, the panel reasoned:

It is undisputed, here, that JBC Entertainment conducted business and benefited from the protections of Washington laws. But, to acquire general jurisdiction through [the statute,] Mika must establish that Stevens, personally, conducted continuous and substantial transactions with Washington. Despite Mika's claims, **the record does not reflect this**. Stevens did not participate in the daily functioning of the subsidiaries or the restaurants like Jillian's. The President/[COO] of JBC Entertainment, as well as regional, general, and location managers oversaw the day-to-day aspects of the business operations. Stevens's position as CEO/CFO concerned the overall profitability of JBC Entertainment. The President/COO, not Stevens, was responsible for the procedures and policies of Jillian's in Seattle. JBC Entertainment, not Stevens, appears to have the systematic ties necessary for general jurisdiction.

\* \* \*

Mika provides little evidence beyond mere allegation to demonstrate that Stevens, as an individual, "purposely [did] some act or consummated some transaction in this state." Stevens does not appear to have conducted business that rises to the level of minimum contacts with Washington. As a result, **jurisdiction is unlikely over Stevens as an individual**.

No. 69413-8-I (Slip Op. at 4, 6) (citations omitted; emphasis added). The panel agreed that the trial court had committed probable error in asserting

jurisdiction over Mr. Stevens in claims arising from Mr. Mika's injuries.  
*Id.* at 6.

#### IV. SUMMARY OF ARGUMENT

Mr. Mika asserts both general and specific jurisdiction. Specific jurisdiction relates to the cause of action arising out of defendant's activities in the forum. General jurisdiction allows the court to hear cases unrelated to defendant's activities in the forum. Mr. Mika failed to put forth evidence, as he must, to establish a prima facie case that Mr. Stevens, personally, meets the minimum contacts for jurisdiction in Washington.

The trial court erred in failing to grant an order of dismissal to Mr. Stevens and his marital community for lack of personal jurisdiction. Mr. Mika cannot show that Mr. Stevens is subject to the jurisdiction of this court under the Long-arm statute or theories of general or specific jurisdiction. Mr. Stevens is not a resident of this state, and the voluminous written record shows no act by which Mr. Stevens purposefully availed himself of the privilege of conducting activities within Washington State, and thus evoking the benefits and protections of its laws. *Oertel v. Bradford Trust Co.*, 33 Wn. App. 331, 337, 655 P.2d 1165 (1982). Further, Mr. Stevens did not stand in the shoes of JBC of Seattle or JBC Entertainment. *Huebner v. Sales Promotion, Inc.*, 38 Wn. App. 66, 70-71,

684 P.2d 752 (1984)(“The requirements of *International Shoe* must be met as to each defendant.”).

Respondent’s allegations are that he suffered a gunshot wound while at Jillian’s on March 21, 2010. Among other allegations, he asserts that Mr. Stevens was responsible for security at Jillian’s Billiards Club on the night in question. However, despite ample opportunity to make a record establishing this allegation, Mr. Mika failed to do so. A local manger, Michael Knudsen, was responsible for controlling and operating Jillian’s on the night in question. Mr. Stevens was CEO and CFO of JBC Entertainment, a parent company of Jillian’s Billiards Club, with no on-site management responsibility. Further, he was a resident of Kentucky before moving to Reno, Nevada. At no time was he a resident of Washington State, and his contacts with the State of Washington were sporadic at best.

## V. ARGUMENT

### A. **Mr. Stevens, as a resident of Kentucky and then Arizona, has a due process right not to be subject to the jurisdiction of the courts in the State of Washington.**

“A state court’s assertion of jurisdiction exposes defendants to the State’s coercive power, and is therefore subject to review for compatibility with the Fourteenth Amendment’s Due Process Clause.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. ---, 131 S. Ct. 2846,



2850, 180 L. Ed. 2d 796 (2011). Individuals “who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter.” *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. ---, 131 S. Ct. 2780, 2787, 180 L. Ed. 2d 765 (2011) (plurality). In order to subject a foreign defendant to personal jurisdiction in Washington courts, the Mr. Mika must establish certain minimum contacts between the defendant and the State such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Int’l Shoe Co. v. Wash.*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945).

**B. Mr. Mika must show Washington Courts have personal jurisdiction over Mr. Stevens.**

**1. The standard of review is *de novo*.**

Where the underlying facts are undisputed, the trial court’s assertion of personal jurisdiction is a question of law reviewable *de novo*. *MBM Fisheries v. Bollinger Shipyard*, 60 Wn. App. 414, 804 P.2d 627 (1991). Using a *de novo* standard is consistent with requirements that the appellate court conducts the same inquiry as a trial court. *Folsom*, 135 Wn.2d at 663. In fact, “[a]n appellate court would not be properly accomplishing its charge if [it] did not examine all the evidence presented to the trial court.” *Id.* In ruling on a motion for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

CR 56(c).

Summary judgment is proper when the pleadings, depositions, and other documents show that “there is no genuine issue of material fact and that the moving party is entitled to a judgment as to any matter of law.”

CR 56(c). Factual disputes must be material to preclude summary judgment, and a “material fact” is one on which the outcome of the litigation depends. *Morgan v. Kingen*, 166 Wn.2d 526, 533, 210 P.3d 995 (2009). “When reasonable minds could reach but one conclusion regarding claims of disputed facts, such questions may be determined as a matter of law.” *Craig v. Wash. Trust Bank*, 94 Wn. App. 820, 824, 976 P.2d 126 (1999).

**2. A plaintiff must establish personal jurisdiction.**

When a nonresident defendant challenges a court’s exercise of personal jurisdiction over him or her, **the plaintiff bears the burden of establishing a prima facie case of personal jurisdiction.** *Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 654, 230 P.3d 625 (2010); *Im Ex Trading Co. v. Raad*, 92 Wn. App. 529, 533-34, 963 P.2d 952 (1998), *rev. denied*, 137 Wn.2d

1023, 980 P.2d 1280 (1999); *CTVC of Haw., Co. v. Shinawatra*, 82 Wn. App. 699, 708, 919 P.2d 1243 (1996), *rev. denied*, 131 Wn.2d 1020, 937 P.2d 1102 (1997); *Walker v. Bonney-Watson Co.*, 64 Wn. App. 27, 32-33, 823 P.2d 518 (1992); *Hein v. Taco Bell, Inc.*, 60 Wn. App. 325, 328, 803 P.2d 329 (1991); *see* 15A Teglund & Ende, *Wash. Prac.: Wash. Handbook on Civ. Pro.* § 10.18, at 190 (2011-12 ed.). As such, the court may not exercise jurisdiction over Mr. Stevens unless Mr. Mika can establish that doing so comports with Washington's long-arm statute and with constitutional principles of due process. *Grange Ins. Ass'n v. State*, 110 Wn.2d 752, 758, 757 P.2d 933 (1988), *cert. denied*, 490 U.S. 1004, 109 S. Ct. 1638, 104 L. Ed. 2d 154 (1989); *Im Ex Trading Co.*, 92 Wn. App. at 534.

The purpose of summary judgment is to avoid useless trials and wasted time at trial. *See Davis v. W. One Auto. Group*, 140 Wn. App. 449, 456, 166 P.3d 807 (2007), *rev. denied*, 163 Wn.2d 1040, 187 P.3d 269 (2008). That purpose would be served here because any judgment against Mr. Stevens would be void.

**C. The court cannot exercise personal jurisdiction over Mr. Stevens by considering the collective Washington contacts of other defendants or the general business contacts of his corporate employer.**

“The forum court may not aggregate the contacts of multiple defendants, *i.e.*, the requirements of *International Shoe* must be met **as to**

**each defendant** over whom a state court asserts jurisdiction.” *Huebner v. Sales Promotion, Inc.*, 38 Wn. App. 66, 70-71, 684 P.2d 752 (1984), *rev. denied*, 103 Wn.2d 1018, *cert. denied sub nom. Satterfield v. Huebner*, 474 U.S. 818, 106 S. Ct. 64, 88 L. Ed. 2d 52 (1985) (emphasis added) (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)); *see Rush v. Savchuk*, 444 U.S. 320, 332, 100 S. Ct. 571, 62 L. Ed. 2d 516 (1980). “Each defendant’s contacts with the forum State must be assessed individually.” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984).

“[J]urisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him.” *Id.* at 781 n.13. Washington courts cannot consider a corporation’s other in-state activities to assess whether its corporate officers are subject to state jurisdiction. *Huebner*, 38 Wn. App. at 73.

Accordingly, Mr. Mika here must prove that personal jurisdiction is appropriate as to Mr. Stevens individually, and without regard to the other in-state business activities of JBC Entertainment, JBC of Seattle, or any other defendants in this case.

**D. The test for asserting general personal jurisdiction is an exacting standard that Mr. Mika cannot meet as to Mr. Stevens.**

There are two types of personal jurisdiction: general and specific.

*Goodyear Dunlop Tires*, 131 S. Ct. at 2851; *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 767, 783 P.2d 78 (1989), *rev'd on other grounds*, *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991). General personal jurisdiction exists where a defendant's contacts with a forum state are so substantial, continuous, and systematic as to render the defendant essentially at home there. *Goodyear*, 131 S. Ct. at 2851; *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984); *CTVC*, 82 Wn. App. at 708.

The test for general jurisdiction is “an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004); *see CTVC*, 82 Wn. App. at 708-09. Even a showing that a defendant has systematic business contacts with the forum is insufficient. *Bancroft & Masters, Inc. v. August Nat'l, Inc.*, 223 F.3d 1082, 1085-86 (9th Cir. 2000). Rather, the plaintiff must show that the defendant's activities transcend doing business “with” the forum state such that it is fair to say that it is actually doing business “in” the forum state. *See RCW 4.28.080(10)*; *Helicopteros*, 466 U.S. at 417-18; *Hartley v. Am. Contract Bridge League*, 61 Wn. App. 600, 605, 812 P.2d 109, *rev.*

*denied*, 117 Wn.2d 1027, 820 P.2d 511 (1991).

Furthermore, the plaintiff must demonstrate that a nonresident defendant was carrying on substantial and continuous business **when plaintiff was injured**. See *Im Ex Trading Co.*, 92 Wn. App. at 537. Proof of such business after the cause of action arose is insufficient. See *id.*

For example, in *Hartley*, the defendant organization's contacts were deemed continuous and substantial where it sold and transported goods to support bridge tournaments that it organized in Washington and collected fees and dues from Washington residents. *Hartley*, 61 Wn. App. at 602-03. In *Hein*, the defendant corporation's contacts also met the standard where it had been registered to do business in Washington for more than 20 years, owned a chain of restaurants, and depended on local markets and government infrastructure to support its business. *Hein*, 60 Wn. App. at 330-31.

By contrast, in *Raymond v. Robinson*, 104 Wn. App. 627, 15 P.3d 697 (2001), Division Two found that the following contacts were insufficient to constitute the substantial and continuous in-state business necessary for general personal jurisdiction: placing advertisements in four national magazines that reach Washington consumers; sending informational materials or otherwise contacting 150 Washington consumers; negotiating terms with Washington residents by phone and

mail; selling 10 percent of its units to Washington consumers over five years; distributing a list of past Washington consumers to potential Washington customers; authorizing warranty repairs in Washington; sending a technician to Washington to repair the plaintiff's unit; and orally extending the plaintiff's warranty while the plaintiff was in Washington. *Id.* at 633-34.

Here, Mr. Stevens does not have substantial, continuous, systematic contacts with Washington. He does not work or live here and did not routinely conduct business in Washington in March 2010. CP 97 (¶¶ 2-3). He was only in-state on isolated instances, perhaps a half-dozen times in the preceding decade. *Id.* (¶ 3). The “exacting” standard for general personal jurisdiction requires in-state contacts such that a nonresident defendant should be considered to actually do business “in” the forum state. Plaintiff has zero evidence of this. Therefore, Mr. Mika cannot prove that there is general personal jurisdiction over Mr. Stevens.

**E. Plaintiff cannot demonstrate that the court has specific personal jurisdiction over Mr. Stevens.**

**1. Mr. Stevens's due process rights were not adequately considered by the trial court**

Exercising specific personal jurisdiction requires a case-by-case analysis of whether an individual defendant has sufficient minimum contacts with a forum state. *Freestone Capital*, 155 Wn. App. at 653.

Such an analysis does not focus on whether the claims sound in tort, contract, or statutory violations, but rather, whether a nonresident defendant has sufficient minimum contacts to extend jurisdiction in a forum state.

Washington courts may exercise specific personal jurisdiction over a nonresident defendant when the defendant's contacts actually give rise to the cause of action. RCW 4.28.185; *CTVC*, 82 Wn. App. at 709. To determine whether specific personal jurisdiction exists, courts consider whether the long-arm statute confers jurisdiction and the facts satisfy the principles of constitutional due process. *Grange Ins. Ass'n*, 110 Wn.2d at 756; *Freestone*, 155 Wn. App. at 652-53; *Hewitt v. Hewitt*, 78 Wn. App. 447, 452, 896 P.2d 1312 (1995), *rev. denied*, 133 Wn.2d 1030, 950 P.2d 477 (1988); *Harbison v. Garden Valley Outfitters, Inc.*, 69 Wn. App. 590, 597, 849 P.2d 669 (1993).

Mr. Mika must prove that an exercise of jurisdiction satisfies constitutional due process by demonstrating the following three elements:

- (1) The nonresident defendant or foreign corporation must **purposefully** do some act or consummate some transaction in the forum state;
- (2) the cause of action must **arise** from, or be **connected** with, such act or transaction; and
- (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the **quality, nature,**



**and extent of the activity in the forum state**, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

*SeaHAVN, Ltd. v. Glitnir Bank*, 154 Wash. App. 550, 564, 226 P.3d 141 (2010) (emphasis added) (quoting *Shute*, 113 Wn.2d at 767); *Bartusch v. Oregon State Bd of Higher Educ*, 131 Wn. App. 298, 306; 126 P.3d 840 (2006); see also *Int'l Shoe*, 326 U.S. at 316; *Tyee Const. Co. v. Dulien Steel Prods., Inc.*, 62 Wn.2d 106, 115-16, 381 P.2d 245 (1963). If the plaintiff fails to prove either of these first two elements, there is no personal jurisdiction. See, e.g., *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *Schwarzenegger*, 374 F.3d at 802; *Freestone Capital Partners L.P.*, 155 Wn. App. at 654. If the plaintiff succeeds in satisfying both elements, the burden then shifts to the defendant to present a compelling case that the exercise of jurisdiction would not be reasonable. *Burger King Corp.*, 471 U.S. at 476.

“It is the quality and nature of the activities which determine if the contact is sufficient, not the number of acts or mechanical standards.” *Freestone Capital*, 155 Wn. App. at 652 (quoting *Perry v. Hamilton*, 51 Wn. App. 936, 940, 756 P.2d 150, rev. denied, 111 Wn.2d 1017 (1988)). This requirement “ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random’, ‘fortuitous’, or ‘attenuated’

contacts.” *Burger King Corp.*, 471 U.S. at 475. A state “does not acquire that jurisdiction by being the ‘center of gravity’ of the controversy, or the most convenient location for litigation.” *CTVC*, 82 Wn. App. at 710. Rather, it is resolved by considering the acts of the defendant. *Id.*

**2. Mr. Stevens has not purposefully availed himself of the privilege of conducting business activities in Washington.**

Washington courts can exercise jurisdiction over Mr. Stevens for claims “arising from” Mr. Stevens’s own actions of “transact[ing] ... business within this state.” RCW 4.28.185(1)(a). Plaintiff must establish that Mr. Stevens “purposefully avail[ed] [him]self of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Oertel*, 33 Wn. App. at 337; *Raymond*, 104 Wn. App. 627 at 636.

Transacting business through a subsidiary in a foreign state generally insulates the parent corporation from a claim of personal jurisdiction, not to mention its officers and employees who do not transact business in the forum state either. *See Dam v. Gen. Electric Co.*, 111 F. Supp. 342, 345, 348 (E.D. Wash. 1953); *see Escude Cruz v. Ortho Pharm. Corp.*, 619 F.2d 902, 905 (1st Cir. 1980). This is true even if the “parent is sole owner of the subsidiary.” *Escude Cruz*, 619 F.2d at 905; *see, e.g., Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 336, 45 S. Ct.

250, 251, 69 L. Ed. 634 (1925) (“use of a subsidiary does not necessarily subject the parent corporation to the jurisdiction”); *Transure, Inc. v. Marsh & McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985) (“existence of a parent-subsidiary relationship is insufficient to establish personal jurisdiction” over a parent corporation, based on the contacts of a subsidiary, even the parent partly controls the subsidiary).

In *Huebner*, a Washington resident sued to rescind his partnership agreement with a Texas corporation and its subsidiary and to recover the money that he contributed to that partnership. *Huebner*, 38 Wn. App. at 67-68. The plaintiff also named as defendants the Texas corporation’s president and its subsidiary’s vice president, with whom plaintiff personally negotiated that agreement. *Id.* at 68. The trial court analyzed separately whether it had personal jurisdiction in Washington over the foreign corporations, as well as their nonresident corporate officers, ruling that those officers had sufficient personal minimum contacts as to exercise specific personal jurisdiction over them individually. *See id.* at 71-73. The court ultimately granted summary judgment for plaintiff. *Id.* at 68.

On appeal, Division Two upheld the trial court’s exercise of personal jurisdiction over the corporate officers, emphasizing the following facts: The corporation’s president (1) was personally responsible for the in-state advertisements that led plaintiff to sign the

agreement, and (2) offered and negotiated other agreements with similarly-situated Washington residents. *Id.* at 71. In turn, the corporate subsidiary's vice president (1) personally contacted plaintiff and other Washington residents regarding these agreements by telephone and mail, and (2) acted as a "primary participant" in negotiating the agreement with plaintiff. *Id.* at 71-72. The *Huebner* court held there was personal jurisdiction because the purpose of these officers' activities was to form partnership agreements with Washington residents, and any harm caused by those activities would foreseeably occur to the in-state individuals who were directly contacted by these defendant officers. *Id.* at 72.

Here, unlike *Huebner*, Mr. Stevens did not initiate any contact with Mr. Mika in Washington, was not "personally responsible" for security at the Seattle Jillian's, and was not a "primary participant" anywhere along the chain of possibilities that Mr. Mika argues connect Mr. Stevens's alleged omissions to Mr. Mika's injuries. *Id.* at 71-72. Instead, Mr. Stevens was responsible for the overall profitability of a parent company incorporated in Delaware and headquartered in Kentucky. CP 97 (¶¶ 6, 8). While Mr. Mika argues that Mr. Stevens's deposition testimony shows that he purposefully and intentionally created what Mr. Mika refers to as a "non-security" policy at JBC in order to draw a more upscale clientele, the assertion is belied by the deposition transcripts. CP 113-53; 309-13; 321-

38. In fact, witnesses established that the operational issues such as security were within the purview of the Chief Operational Officer of JBC Entertainment, Tyler Warfield. CP 131; CP 140-41. Mr. Stevens testified that JBC trained general managers and management teams in the event of gun violence. CP 447 (Dep. p. 68). Mr. Stevens testified that JBC absolutely takes into consideration the security of its patrons. *Id.* (Dep. p. 67).

The *Huebner* court fully explained what Washington requires to exercise jurisdiction over an out-of-state corporation's officer based on his or her business transactions. The business transactions in *Huebner* bear no resemblance to Mr. Stevens's business activities whatsoever. As such, Mr. Mika has insufficient evidence to demonstrate personal jurisdiction based on this prong of the long-arm statute.

**3. Exercising jurisdiction over Mr. Stevens based on his minimal and sporadic Washington contacts would offend traditional notions of fair play and substantial justice.**

Finally, assuming that this court determines that Mr. Mika indeed has evidence that Mr. Stevens's purposeful acts in Washington state were a "but for" cause of these events, then the court must also determine that the third element of the due process test is met:

[T]he assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial

justice, consideration being given to the **quality, nature, and extent of the activity in the forum state**, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the **basic equities of the situation**.

*SeaHAVN, Ltd.*, 154 Wn. App. at 564 (emphasis added) (quoting *Shute*, 113 Wn.2d at 767). “[T]he foreseeability that an injury **might occur** in another state is not a ‘sufficient bench mark’ for exercising jurisdiction.” *Perry*, 51 Wn. App. at 941 (emphasis added) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 100 S. Ct. 559, 566, 62 L. Ed. 2d 490 (1980)). Instead, the foreseeability which is critical to due process analysis is that “the defendant’s conduct in connection with the forum state is such that he should reasonably anticipate being haled into court there.” *Perry*, 51 Wn. App. at 941.

Put simply, the equities of this situation do not militate toward this court exercising personal jurisdiction over a corporate officer of an out-of-state parent company based on what Mr. Mika alleges he should have, but failed to do. The quality, nature, and extent of Washington contacts by Mr. Stevens — not his corporation, or its subsidiary — are so insignificant that he could not possibly anticipate or foresee being haled into court several states away based on an alleged failure to tighten security, which was unequivocally not within Mr. Stevens’s job responsibilities. To permit Mr. Mika to force him to defend himself in another state under

these circumstances offends the traditional notions of fair play and substantial justice on which Mr. Stevens's constitutional due process rights rely.

Therefore, this court should reverse the trial court's ruling denying Mr. Mika's summary judgment motion.

**F. The Long-arm statute does not confer jurisdiction even in the absence of due process considerations.**

Washington's long-arm statute confers personal jurisdiction over nonresident defendants in the following instances:

(1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his or her personal representative, to the jurisdiction of the courts of this state as to any cause of action **arising from the doing of any of said acts:**

(a) The **transaction of any business** within this state;

(b) The **commission of a tortious act** within this state;

(c) The ownership, use, or possession of any **property** whether real or personal situated in this state;

(d) Contracting to **insure** any person, property, or risk located within this state at the time of contracting; [or]

(e) The act of sexual intercourse within this state with respect to which a child may have been **conceived;**

....

(3) **Only causes of action arising from acts enumerated**

**herein may be asserted against a defendant** in an action in which jurisdiction over him or her is based upon this section.

RCW 4.28.185 (emphasis added). Like the second prong of the due-process test set forth above in Part V.E.1, each of the five possible bases for exercising jurisdiction under RCW 4.28.185(1) also require that claims “aris[e] from” a defendant’s actions with or in this state. It is critical to the jurisdictional analysis that harm actually arise from a nonresident defendant’s actions — so important that the Legislature saw fit to state to place this requirement in sections (1) and (3) of the statute.

While Washington courts may assert jurisdiction over nonresident individuals and foreign corporations to the extent permitted by the due process clause of the United States Constitution, it is limited by the terms of the terms of the statute. *Huebner*, 38 Wn. App. at 70.

**1. Mr. Stevens is not personally transacting business within the state.**

Mr. Mika alleges that the court has jurisdiction over all the defendants “because the defendants were at all relevant times doing business[] in Washington and/or were residents of the State of Washington.” CP 22 (First Amended Complaint ¶ 22), pleading jurisdiction over Mr. Stevens under the “business transaction” provision of the long-arm statute, RCW 4.28.185(1)(a). However as discussed, *supra*, the issue relates to Mr. Stevens’s personal transaction of business within



the state, not the actions attributable to the corporate defendants. *See Dam v. Gen. Electric Co.*, 111 F. Supp. 342, 345, 348 (E.D. Wash. 1953); *Escude Cruz*, 619 F.2d at 905; *see, e.g., Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 336, 45 S. Ct. 250, 251, 69 L. Ed. 634 (1925).

Mr. Stevens has not transacted business in the state that has resulted in the injury claimed by Mr. Mika. No agent of Mr. Stevens has acted under his direction to cause injury to Mr. Mika. At most, Mr. was aware of security procedures employed by JBC of Seattle and this does not amount to Mr. Stevens transacting business in the state.

**a. Under Washington law, Mr. Stevens's allegedly tortious conduct could not have "occurred" in-state.**

Though Mr. Mika elected to plead specific jurisdiction only under the business transaction prong of the long-arm statute, he also argues that jurisdiction is possible under the "tort" prong of this statute. Under RCW 4.28.185(1)(b), a tortious act occurs in Washington when the "injury" occurs here. *Grange Ins. Ass'n*, 110 Wn.2d at 757; *SeaHAVN*, 154 Wn. App. at 569. However, an injury "occurs" in Washington if the **last event necessary to make the defendant liable** for the alleged tort occurred in Washington. *SeaHAVN*, 154 Wn. App. at 569; *see CTVC*, 82 Wn. App. at 717-18; *Oertel v. Bradford Trust Co.*, 33 Wn. App. 331, 337, 655 P.2d 1165 (1982). Establishing jurisdiction under this "tort" prong of the long-

arm statute requires more than showing merely that a Washington resident suffered an in-state loss. *Oertel*, 33 Wn. App. at 337.

For example, in *Oertel*, a New York trust company served as a trustee for a unit investment trust registered there, and the securities were sold nationwide. 33 Wn. App. at 333. The plaintiff purchased 70 units of this trust through a Washington brokerage firm and received certificates of ownership executed by the out-of-state trust company. *Id.* These certificates were stolen from the plaintiff, negotiated through a different brokerage firm, and redeemed for value over a forged endorsement. *Id.* The plaintiff then sued the New York trust company alleging tortious conversion of the certificates. *Id.* at 332-33, 336. The trial court denied the trust company's motion to dismiss for lack of specific personal jurisdiction and ultimately granted summary judgment in the plaintiff's favor. *Id.* at 332-34.

On appeal, Division One reversed the trial court's denial of the motion to dismiss and dismissed plaintiff's case for lack of personal jurisdiction. *Id.* at 336-37. The court rejected plaintiff's argument that the trustee's tortious act originated outside of Washington, but that the impact or damage occurred within the state, and that the tort was therefore committed there. *Id.* Accepting the theory that the place of wrong was in the state where the last event necessary to make an actor liable took place,

the court ruled that no such determining event had occurred in Washington. *Id.* The *Oertel* court held that, in those circumstances, the tort “occurred” in New York, at the defendant’s place of business, and that “the sole connection” to the plaintiff was that she was “the person who suffered the loss.” *Id.* at 337. Accordingly, this was not enough to confer jurisdiction in Washington under RCW 4.28.185(1)(b). *Id.*

Here, Mr. Mika argues that this court has jurisdiction over Mr. Stevens simply by virtue of the fact that Mr. Mika’s injury occurred in Washington. But like the plaintiff in *Oertel*, personal jurisdiction requires more than simply finding the harm ultimately occurred here. Even assuming there was some causal chain connecting Mr. Stevens’s omissions to Mr. Mika’s injuries, which there is not, the last event necessary to render Mr. Stevens liable would have been those omissions, which all occurred in Kentucky at his then place of business.

It is important to note that this is not a case where Mr. Stevens placed a telephone call to a Washington resident during which he engaged in tortious actions or omissions that somehow caused damage to the Mr. Mika. Nor is this a case where he manufactured or sold a product and tortiously released it into the stream of nationwide commerce to let harm occur where it may. Rather, Mr. Mika must prove that Mr. Stevens **purposefully** aimed his tortious **conduct** at Washington residents, and the

record fails to show any such conduct in this case.

**G. This court should award Mr. Stevens his reasonable attorney fees and costs expended in bringing this motion under RCW 4.28.185.**

In Washington, an award of attorney fees is proper when authorized by the parties' agreement, by statute, or by a recognized ground of equity. *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 525, 210 P.3d 318 (2009). Under RCW 4.28.185(5), this court may award reasonable attorney fees and costs to an out-of-state defendant who prevails in an action after being subject to jurisdiction under the long-arm statute. *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 149, 153, 859 P.2d 1210 (1993) (holding that 70 hours was reasonable amount of time to be awarded to defense attorneys under long-arm statute for prevailing on jurisdictional motion, given that attorney spent 34 hours researching and preparing the motion, brief, and affidavit). "Where the defendant obtains a ruling that personal jurisdiction under the long-arm statute does not lie, the court may award up to the amount of attorney fees that the defendant would have incurred had the jurisdictional defense been presented as soon as the grounds or it became available." *Hewitt v. Hewitt*, 78 Wn. App. 447, 457, 896 P.2d 1312 (1995).

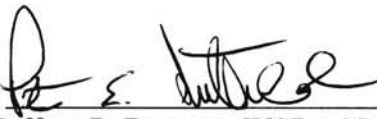
## **VI. CONCLUSION**

For the reasons set forth herein, Mr. Stevens requests this Court to

reverse the superior court's order denying him summary judgment of dismissal for lack of personal jurisdiction and remand for entry of an order granting summary judgment and an award of attorney fees and costs. As an alternative, Mr. Stevens asks that this court reverse the trial court order finding personal jurisdiction and clarify the language to allow additional evidence and consideration of Mr. Stevens's jurisdictional challenge to be submitted in further proceedings. Considering the written record submitted to the trial court and now before this court, Mr. Mika failed to make a prima facie case establishing that Mr. Stevens purposefully availed himself of the jurisdiction of Washington Court. Mr. Stevens at all relevant times was a resident of Kentucky and then Nevada. While the CEO and CFO of a foreign corporation, he committed no act that would subject him personally to the jurisdiction of Washington Courts.

Respectfully submitted this 24 day of April, 2013.

LEE SMART, P.S., INC.

By:   
Jeffrey P. Downer, WSBA No. 12625  
Peter E. Sutherland, WSBA No. 17745  
Pam J. Devet, WSBA No. 32882  
Of Attorneys for Appellant Greg Stevens

**CERTIFICATE OF SERVICE**

I, the undersigned, certify under penalty of perjury and the laws of the State of Washington that on April 24, 2013, I caused service of the foregoing on each and every attorney of record herein:

**VIA EMAIL AND U. S. MAIL**

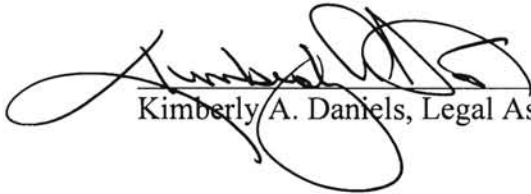
Howard Phillips  
Phillips Law, LLC  
3815 S. Othello St., #100-353  
Seattle, WA 98118  
[Hdefend@aol.com](mailto:Hdefend@aol.com)

**VIA EMAIL**

John Versnel, III  
Lawrence & Versnel, PLLC  
4120 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104  
[jcv@lvpllc.com](mailto:jcv@lvpllc.com)

Jesse O. Franklin, IV  
K & L. Gates, LLP  
925 4th Avenue, Suite 2900  
Seattle, WA 98104  
[jesse.franklin@klgates.com](mailto:jesse.franklin@klgates.com)

DATED this 24 day of April at Seattle, Washington.

  
\_\_\_\_\_  
Kimberly A. Daniels, Legal Assistant