IP 01-0358-C H/K Blubaugh v. ACBL
Judge David F. Hamilton Signed on 7/31/02

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

BLUBAUGH, JOHN, Plaintiff, vs. AMERICAN CONTRACT BRIDGE LEAGUE, COMPTON, CHRIS, GERARD, JOAN, HAMMAN, ROBERT, MORSE, DAN * DISMISSED 02/12/02, SUTHERLIN, JOHN, SUTHERLIN, PEGGY, WEINSTEIN, HOWARD, WOLFF, BOBBY, POLISNER, JEFFREY, Defendants.	)	CAUSE NO. IP01-0358-C-H/K

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN E. BLUBAUGH, Plaintiff, v. AMERICAN CONTRACT BRIDGE LEAGUE, CHRIS COMPTON, JOAN GERARD, ROBERT HAMMAN, JOHN SUTHERLIN, PEGGY SUTHERLIN, HOWARD WEINSTEIN, BOBBY WOLFF, and JEFFREY POLISNER, Defendants.	)	CAUSE NO. IP 01-358-C-H/K

ENTRY ON INDIVIDUAL DEFENDANTS' MOTIONS TO DISMISS
FOR LACK OF PERSONAL JURISDICTION

Plaintiff John Blubaugh has made his living as a professional bridge player. He is a member of the American Contract Bridge League ("ACBL"), the original defendant in this action. The ACBL suspended Blubaugh from ACBL competition for 18 months after the ACBL's Ethical Oversight Committee found him guilty of cheating by dealing an "honor card" to his partner at ACBL tournaments in Indianapolis and in California. Among the 20 counts in his third amended complaint, Blubaugh has asserted federal claims against the ACBL under the

Sherman Act, 15 U.S.C. § 1, and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c) & (d), and state law claims under a variety of tort and contract theories.[1] In general, Blubaugh alleges that he was unfairly targeted for investigation and punishment because he was a whistle-blower who had complained about improper practices in the ACBL and its leaders. He also alleges that he was victim of a conspiracy to defame him in the bridge-playing community. Blubaugh denies that he ever knowingly dealt an honor card to his partner.

In June 2001, this court denied Blubaugh's motion for a preliminary injunction to block his suspension from the ACBL. In November 2001, Blubaugh amended his complaint to add the following individual defendants: Chris Compton, Joan Gerard, Robert Hamman, Jeffrey Polisner, John and Peggy Sutherlin, Howard Weinstein, and Bobby Wolff.[2] Like Blubaugh, the individual defendants are professional bridge players who are ACBL members. John Sutherlin and Weinstein were on the Ethical Oversight Committee that held a hearing in Birmingham, Alabama and suspended Blubaugh in November 2001.

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[1]Blubaugh has abandoned his claim under the Americans with Disabilities Act. Many of the other counts are interrelated. For example, eight counts against the ACBL allege breaches of contract for alleged violations of ACBL procedural rules.

[2]Blubaugh originally named nine individual defendants. Dan Morse has been dismissed from the case by stipulation.

Peggy Sutherlin served on a committee that considered a complaint against Blubaugh in 1995. Polisner served as general counsel to the World Bridge Federation and the ACBL. Blubaugh alleges that all of the individual defendants, regardless of their official roles, exerted substantial control over the ACBL. Blubaugh has asserted claims for "conspiracy to defame" and "damages resulting from a conspiracy to defame" against all of the individual defendants. He also alleges that some of the defendants violated RICO, that John Sutherlin breached a contract by serving on the Ethical Oversight Committee, and that Polisner committed abuse of process under Indiana law.

The individual defendants have moved to dismiss Blubaugh's claims against them for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). For the reasons discussed below, the defendants' motions are granted. The individual defendants are residents of Texas, New York, and Illinois who have had minimal contacts with Indiana. Blubaugh has not come forward with evidence that tends to show that the defendants engaged in a course of conduct that resulted in injury to him in Indiana for purposes of the Indiana long-arm statute. In addition, Blubaugh has not produced evidence of the defendants' contacts with this forum that are sufficient to satisfy the requirements of due process.

Neither side has asked for an evidentiary hearing on the facts relevant to personal jurisdiction. Accordingly, in ruling on defendants' motion to dismiss for lack of personal jurisdiction, the court must accept Blubaugh's allegations as true and resolve any conflicts in the admissible portions of the parties' affidavits in his favor. See *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1275 (7th Cir. 1997). Factual statements in this entry are based on this standard. Cf. *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 676-77 (7th Cir. 2001) (when jurisdiction depends on contested facts, court may hold hearing and resolve factual dispute before allowing case to proceed); 2 Moore's Federal Practice § 12.31[5] at 12-45 (3d ed. 2000).

Preliminary Matters

Defendants Compton, Gerard, John and Peggy Sutherlin, Weinstein, and Polisner have moved to strike large portions of the affidavit Blubaugh submitted in opposition to the motion to dismiss.[3]

The defendants have moved to strike the following paragraphs (including subparts) on the ground that they contain averments made "upon information

[3]This group of defendants is represented by the same counsel. Defendants Hamman and Wolff have retained separate counsel. Both groups of defendants have filed motions to dismiss.

and belief": ¶¶ 1, 3, 5, 6, 11-17, 19-22, 24-26, 30-37, 40-41, 43-48, and 51-52. In addition, the defendants object that some of these paragraphs contain improper legal conclusions and hearsay. In response to these latter objections, Blubaugh has withdrawn the following paragraphs from his affidavit: ¶¶ 5, 19, 21, 30, 31, 40, 41, 43, 48, and 51.

The defendants' motion to strike is granted with respect to the remaining paragraphs to which they objected on the ground that Blubaugh has made averments based only on "information and belief."[4] See *Weiss v. Cooley*, 230 F.3d 1027, 1034 (7th Cir. 2000) (averment "upon information and belief" does not satisfy the personal knowledge requirement for affidavits); see also *Search Force, Inc. v. Dataforce Intern., Inc.*, 112 F. Supp. 2d 771, 774 (S.D. Ind. 2000) ("vague generalizations or 'conclusory allegations unsupported by any factual assertions will not withstand a motion to dismiss'" for lack of personal jurisdiction), quoting *Cushing v. City of Chicago*, 3 F.3d 1156, 1161 n.5 (7th Cir. 1993). A plaintiff opposing a motion to dismiss for lack of personal jurisdiction must present "evidence of specific facts that, when taken as true, are sufficient to support a finding of personal jurisdiction." *Andersen v. Sportmart, Inc.*, 57 F. Supp. 2d 651, 654 (N.D. Ind. 1999). The statement of facts below incorporates only those

[4]Blubaugh filed two identical documents entitled "Plaintiff's Designation of Evidence." See Docket Nos. 90 & 92. Both documents contain identical original affidavits from Blubaugh.

assertions from Blubaugh's affidavit that contain an appropriate foundation for personal knowledge.

Facts & Theories

The court discussed the facts that gave rise to Blubaugh's claims against the ACBL in some detail in its amended entry denying plaintiff's motion for preliminary injunction and granting defendant ACBL's motion for ruling on partial findings. See *Blubaugh v. American Contract Bridge League*, No. IP 01-358-C H/G, 2001 WL 699656 (S.D. Ind. June 20, 2001). The court will not repeat that general information here. Instead, the discussion that follows focuses on Blubaugh's theories against the individual defendants and the evidence related to their contacts with Indiana.

Blubaugh has brought claims for defamation and "damages from a conspiracy to defame" against the individual defendants, Chris Compton, Joan Gerard, Robert Hamman, Jeffrey Polisner, John and Peggy Sutherlin, Howard Weinstein, and Bobby Wolff. See Third Am. Cplt. Counts IV & V. He alleges that the Sutherlins, Weinstein, Polisner, Hamman, and Wolff defamed him by "discussing disciplinary matters" related to Blubaugh in "gross violation" of their qualified privilege to do so. Third Am. Cplt. ¶ 78. In Count XX, Blubaugh alleges

that Compton, Polisner, and "others" committed "fresh slander" against him by publishing unspecified false statements about the evidence in the case.

In addition, Blubaugh alleges that "some or all of the defendants" are "RICO defendants" because they had knowledge that defendant Wolff had an interest in certain ACBL projects, like the "e-bridge" venture. *Id*., ¶ 145. Blubaugh alleges that the John Sutherlin breached a contract with him by not recusing himself from the Ethical Oversight Committee that suspended him because his wife, Peggy, had previously served on a committee that also investigated Blubaugh. *Id*., ¶ 122. Finally, Blubaugh alleges that Polisner has committed abuse of process. *Id*., ¶ 150. Some of the other counts in Blubaugh's complaint mention the named individuals but do not appear to target them as defendants.

Blubaugh has made few specific allegations about particular individual defendants. In his complaint, he has asserted that they are all world-class bridge players and volunteers on various boards of the ACBL. Third Am. Cplt. ¶ 23. He also alleges that the individuals are "control defendants," apparently meaning that they control the ACBL by informal channels. See *id*., ¶¶ 24-26 (alleging, for example that unnamed "control defendants" "control the major policies of the ACBL at private meetings" and "phon[e] in their edicts to the professional staff").

The record contains the following additional evidence about the individual defendants and their contacts with Indiana and Blubaugh:

Chris Compton – Compton is a Texas resident. He attended an ACBL national tournament in Indianapolis in 1991. In about 1992, Compton attended a practice session for the Indianapolis 500 as the guest of a car owner. He then stayed in town and played bridge for two days. Compton's infrequent contacts with Blubaugh have occurred in person and outside of Indiana. See Compton Aff.

Joan Gerard – Gerard is a New York resident. Gerard served as a member of the ACBL Board of Directors in at least 1991 and 2001. She attended the 1991 national tournament in Indianapolis. In addition to playing bridge there, she attended the meeting of the ACBL Board of Directors. After the tournament, Gerard wrote a "thank you" note to the tournament director in Indiana. Gerard was a director of the ACBL in 2001 but she did not participate in the matters referred to in Blubaugh's complaint. Gerard's contacts with Blubaugh have occurred in person and outside of Indiana. See Gerard Aff.

Robert Hamman – Hamman is a Texas resident. He last visited Indiana three or four years ago, but his visit had nothing to do with bridge, the ACBL, or

Blubaugh. Hamman currently holds a non-resident insurance agent license in Indiana through his company, Hamman Insurance Services, Inc. The company is an agent for "hole-in-one" promotional golf events. Hamman's contacts with Indiana and the services offered by his company are not associated with bridge, the ACBL, or Blubaugh. Norman Beck is an employee of SCA Insurance Specialists, of which Hamman is a 40% shareholder. Blubaugh alleges that Beck (who is not a defendant) defamed him in the report he prepared for the Ethical Oversight Committee regarding Blubaugh's play. Beck was not working for SCA when he prepared the expert report. Hamman was not a member of the Ethical Oversight Committee. Hamman has never served as an officer or director of the ACBL. Since 1991, Hamman's contacts with Blubaugh have always occurred outside Indiana. See Hamman Aff.

Jeffrey Polisner – Polisner is a California resident. He has not visited Indiana since he played at a bridge tournament in Indiana in 1964. As general counsel to the World Bridge Federation in 1994, Polisner wrote one or more letters to Blubaugh at his address in Indiana regarding WBF property that Blubaugh refused to return.[5] When Blubaugh's disciplinary charges were pending in 2000, Polisner was general counsel to the ACBL. In that capacity,

[5]The World Bridge Federation is an international bridge organization. The ACBL is a member of the WBF. Tr. 113 (Piltch testimony).

Polisner communicated with Blubaugh's attorney, Carol Welch through correspondence addressed to Welch's place of business in Kentucky. Polisner was also present at Blubaugh's disciplinary hearing in Alabama. Polisner's contacts with Blubaugh have occurred in person and outside of Indiana. See Polisner Aff.

John Sutherlin – John Sutherlin is a Texas resident. He was born in Indiana but has not lived in the state since 1945. He occasionally has made personal telephone calls to a friend while that friend was staying in Indiana. John Sutherlin chaired the Ethical Oversight Committee which presided over Blubaugh's November 2000 disciplinary hearing in Birmingham, Alabama. John Sutherlin did not want to serve on the National Appeals Committee with Blubaugh. Tr. at 121 (Piltch testimony). John Sutherlin's contacts with Blubaugh have occurred in person and outside of Indiana. See J. Sutherlin Aff.

Peggy Sutherlin – Peggy Sutherlin is a Texas resident. She has been to Indiana on three or four occasions, the most recent of which were the national bridge tournament in 1991 and the regional tournament in 1995. Peggy Sutherlin chaired the Ethical Oversight committee that held a disciplinary hearing on charges brought against Blubaugh in 1995. That hearing was held in Atlanta, Georgia. (Blubaugh was found not guilty of any rule violation in that

proceeding. Blubaugh Aff. ¶ 8.) About two years ago, Peggy Sutherlin posted an electronic response to a posting on Blubaugh's website that suggested the World Bridge Federation be dissolved and the world championship be held in Kabul (yes, Kabul!). Peggy Sutherlin was a member of the Ethical Oversight Committee that suspended Blubaugh. She did not want to serve on the National Appeals Committee with Blubaugh. Tr. at 121 (Piltch testimony). Her contacts with Blubaugh have been in person and outside of Indiana. See P. Sutherlin Aff.

Howard Weinstein – Weinstein is a Florida resident. Until October 2001, he was a resident of Illinois. Weinstein attended the national tournament in Indianapolis in 1991. He also has traveled through Indiana on personal vacations from his home in Illinois and visited a friend in Bloomington, Indiana about ten years ago. Other than personal telephone calls to friends in Indiana, Weinstein has not directed any telephone calls or correspondence into Indiana. Weinstein was a member of the Ethical Oversight Committee that voted to sanction Blubaugh in November 2000. See Weinstein Aff. Weinstein did not want to serve on the National Appeals Committee with Blubaugh. Tr. at 121 (Piltch testimony). Weinstein's contacts with Blubaugh occurred outside Indiana. See Weinstein Aff.

Bobby Wolff – Wolff is a Texas resident. He has visited Indiana twice, once in the 1970s and once in 1991, both before he met Blubaugh. Wolff's wife

recently passed away and left him a farm in Indiana. The title has not yet been transferred to him. The farm has never been used for any purpose associated with bridge, the ACBL, or Blubaugh. Wolff was not a member of the Ethical Oversight Committee that suspended Blubaugh. Wolff was not an officer or director of the ACBL at times relevant to Blubaugh's complaint. Wolff's contacts with Blubaugh have always occurred outside of Indiana. See Wolff Aff.

The individual defendants have drawn the court's attention to two additional facts common to all of them. First, none of the defendants attended the 2000 regional tournament held in Indianapolis where Blubaugh was accused of cheating. Second, none personally directed communication into Indiana with respect to the events which are the subject of Blubaugh's complaint.

Discussion

A federal district court exercising diversity jurisdiction has personal jurisdiction over a nonresident defendant "only if a court of the state in which it sits would have such jurisdiction." *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1275 (7th Cir. 1997). In Indiana, personal jurisdiction depends on whether requirements of the state long-arm statute are met and whether federal due process is satisfied. *Anthem Ins. Cos. v. Tenet Healthcare Corp.*, 730 N.E.2d 1227, 1232 (Ind. 2000). In federal court, the plaintiff bears the burden of showing personal jurisdiction when it is challenged by a Rule 12(b)(2) motion. *RAR, Inc.*, 107 F.3d at 1276.[6]

[6]Blubaugh's RICO count in the Third Amended Complaint alleges that "some or all" of the individual defendants, though none are identified in the count, also violated the federal RICO statute. There is no constitutional obstacle to nationwide service of process in the federal courts in federal-question cases, if such service is authorized by statute. *E.g., Lisak v. Mercantile Bancorp, Inc.*, 834 F.2d 668, 671 (7th Cir. 1987). In attempting to avoid dismissal, Blubaugh has not invoked 18 U.S.C. § 1965(b), which authorizes nationwide service of process for civil RICO claims if "it is shown that the ends of justice require that other parties residing in any other district be brought before the court. . . ." Even if Blubaugh had tried to rely on § 1965(b) to support jurisdiction over any of the individual defendants on the RICO claim, the court would not have found on this record that the ends of justice require bringing other defendants before this court. Assuming that Blubaugh's RICO claims have any merit, they could properly be brought in another district. See, *e.g., Eastman v. Initial Investments, Inc.*, 827 F. Supp. 336, 338-39 (E.D. Pa. 1993) (refusing to exercise nationwide venue under § 1965(b) where requirements of § 1391(b) clearly establish venue elsewhere).

Indiana Trial Rule 4.4(A) serves as Indiana's long-arm statute. *Anthem*, 730 N.E.2d at 1231. The rule permits personal jurisdiction where the defendant's contacts with Indiana fall into at least one of eight enumerated categories and the plaintiff's action arises from those contacts. *Id.* at 1233.

Federal due process requirements are satisfied when jurisdiction is asserted over a nonresident defendant who has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984), quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Application of the federal due process standard depends on whether the defendant's contacts with the forum are "general" or "specific." *RAR, Inc.*, 107 F.3d at 1277. A court may exercise general jurisdiction over a defendant whose contacts with the forum are continuous and systematic, even though they may be unrelated to the plaintiff's cause of action. *Helicopteros Nacionales*, 466 U.S. at 414-15 & n.9. Specific jurisdiction may be based on less extensive contacts if they have a substantial connection to the plaintiff's action. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-76 (1985); *RAR, Inc.*, 107 F.3d at 1277.

The court addresses Indiana Trial Rule 4.4(A) and specific jurisdiction separately, following the Indiana Supreme Court's approach in *Anthem*, 730 N.E.2d at 1232.

I. *Indiana Trial Rule 4.4(A)*

Prior to the Indiana Supreme Court's decision in *Anthem*, deciding personal jurisdiction in Indiana required consideration only of federal due process standards. See, *e.g.*, *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1243 (7th Cir. 1990). The Seventh Circuit understood Indiana Trial Rule 4.4(A) as extending personal jurisdiction to the limits of federal due process, and so collapsed the application of the state rule and federal due process into a single inquiry. In *Anthem*, the Indiana Supreme Court reinvigorated Indiana Trial Rule 4.4(A) by requiring courts to determine separately and initially whether its provisions have been satisfied. 730 N.E.2d at 1232.

Because Trial Rule 4.4(A) is an "enumerated act" long-arm statute, its initial requirement is that the defendant's contacts with Indiana must fall within at least one of its eight enumerated categories. See *Anthem*, 730 N.E.2d at 1232-33. The rule's second requirement appears in its introduction, which states: "Any person or organization that is a nonresident of this state . . . submits to the

jurisdiction of the courts of this state as to any action *arising from* the following acts." Thus, the plaintiff's claim must arise from the same Indiana contacts that fall into one of the rule's enumerated categories. See *Sohacki v. Amateur Hockey Ass'n of Illinois*, 739 N.E.2d 185, 189 (Ind. App. 2000) (holding that trial court lacked jurisdiction under Indiana Trial Rule 4.4(A) because none of the allegedly wrongful acts "arose from any action performed by [defendant] in Indiana").[7]

[7]From the language in Rule 4.4(A) – "submits to the jurisdiction of the courts of this state as to any action arising from the following acts" – one might conclude that Indiana would no longer recognize the concept of general jurisdiction. General jurisdiction authorizes the exercise of jurisdiction over a defendant with substantial and continuous contacts with a state even in actions not arising from those contacts. The Indiana decisions show, however, that the equivalent of general jurisdiction is still permissible under Rule 4.4(A) when the contacts are "substantial, continuous, extensive, and systematic," see *Anthem*, 730 N.E.2d at 1235. In *Anthem*, the Supreme Court of Indiana expressly held that one defendant's business contacts with Indiana were sufficient to establish general jurisdiction. *Id.* at 1240; see also *American Economy Ins. Co. v. Felts*, 759 N.E.2d 649, 658 (Ind. App. 2001) (concluding that Supreme Court of Indiana would allow general jurisdiction based on doing business in Indiana where contacts satisfy due process standard for general jurisdiction). In this case, however, there is no claim, and no basis for claiming, general jurisdiction over any of the moving defendants.

To support jurisdiction over the moving defendants, Blubaugh argues that the individual defendants have satisfied Indiana Trial Rule 4.4(A)(3) & (8).[8] Trial Rule 4.4(A)(3) provides that an individual submits to Indiana's jurisdiction by:

> causing personal injury or property damage in this state by an occurrence, act or omission done outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue or benefit from goods, materials, or services used, consumed, or rendered in this state.

Trial Rule 4.4(A)(8) provides that an individual submits to Indiana's jurisdiction by:

> abusing, harassing, or disturbing the peace of, or violating a protective or restraining order for the protection of, any person within the state by an act or omission done in this state, or outside this state if the act or omission is part of a continuing course of conduct having an effect in this state.

Blubaugh's theory is that the individual defendants conspired to and did defame him in Indiana through the printed notice of his suspension in the May 2001 ACBL Bridge Bulletin, which was mailed to recipients all across the country. Among other things, the bulletin stated:

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[8]Blubaugh correctly does not contend that Wolff's prospective interest in a farm located in Indiana or Hamman's Indiana non-resident insurance broker license provides a basis for personal jurisdiction under Trial Rule 4.4(A)(5) or (6), respectively. These contacts do not satisfy the long-arm statute because they bear no relationship to Blubaugh's allegations of wrongdoing.

> The ACBL has suspended John Blubaugh from all ACBL bridge play from March 14, 2001, through Sept. 13, 2002, because of card manipulation during the shuffle and deal. Blubaugh, of Indianapolis, IN was found guilty of giving his partner a specific card when he was the dealer. The ACBL Board of Directors sustained the decision of the Ethical Oversight Committee on this matter.

Blubaugh Aff., Ex. A. Blubaugh relies on *Mart v. Hess*, 703 N.E.2d 190, 192-93 (Ind. App. 1998), where the Indiana Court of Appeals held that sending defamatory letters from another state to Indiana subjected the defendant to personal jurisdiction under Rule 4.4(A)(2) & (8).

Blubaugh's theory fails because, even assuming that the notice could provide the basis for a defamation claim, there is no evidence that any of the individual defendants participated in the drafting or publication of the notice. As discussed above, Blubaugh must support *with evidence* his assertion of jurisdiction over these defendants. Blubaugh's unsupported assertion that the individuals were "control defendants" who made decisions for the ACBL behind the scenes is insufficient to establish that any of the individuals took any action related to the bulletin that could possibly be construed as part of a course of tortious conduct. For the same reason, Blubaugh's allegations about other unspecified acts of defamation cannot support personal jurisdiction over the defendants. See, *e.g.*, Pl. Mem. at 15 ("Aside from the oral defamations that were swirling to unprivileged personnel during the administrative aspect of the case

. . . ."), and at 17 ("We maintain the same here where the defamations occurred throughout the world of the ACBL, having their effect in Indiana . . . ").[9] Although the court must credit the *evidence* a plaintiff offers in support of personal jurisdiction (at least if the court does not hold an evidentiary hearing), a plaintiff's unsupported theory of liability is insufficient to trigger the long-arm statute so as to require a nonresident defendant to appear and defend herself in this court.

The cases cited by Blubaugh to the contrary are inapposite. In *Cummings v. Western Trial Lawyers Ass'n*, 133 F. Supp. 2d 1144 (D. Ariz. 2001), the court found personal jurisdiction over the president of the plaintiff's employer. The association terminated plaintiff's employment as its executive director. The court concluded that the plaintiff could sue the president of the association for defamation and false light in Arizona where the plaintiff lived because there was evidence that the president had sent out a fax accusing the plaintiff of financial improprieties to 52 members of the association, four of whom lived in Arizona. 133 F. Supp. 2d at 1160-62. Similarly, the court also held that another officer could be sued in Arizona for intentional infliction of emotional

[9]The same goes for Blubaugh's general allegations that some or all of the individual defendants may have violated the Sherman Act or RICO. Blubaugh has not even developed his theory behind these possible claims, let alone produced evidence that any of the defendants engaged in specific conduct that could create a basis for jurisdiction in Indiana.

distress because the plaintiff submitted an affidavit stating that the officer verbally harassed her, continually threatened to fire her, and recommended her dismissal. *Id*. at 1157. Blubaugh has offered no such specific evidence that any of the individual defendants took any particular act resulting in alleged defamation of him.

Cummings also is instructive for what it did not hold. The court ruled that there was no personal jurisdiction over the second officer mentioned above for plaintiff's claim of intentional interference with a business relationship. The officer submitted an affidavit stating that she did not make the decision to fire the plaintiff. In the absence of any contrary evidence from the plaintiff, the court concluded there was no jurisdiction over the claim because there was no proof of any intentional act by the defendant that interfered with the plaintiff's business relationship with the association in Arizona. *Cummings*, 133 F. Supp. 2d at 1157-58. Similarly, this court cannot assert jurisdiction over the individual defendants without some evidence that they engaged in conduct that would provide a basis for Blubaugh's claims for conspiracy to defame.

Blubaugh's case is also distinguishable from *Snow v. American Morgan Horse Ass'n*, No. Civ. 93-463-JD, 1989 WL 508485 (D.N.H. Sept. 20, 1989), where the court held that it had personal jurisdiction over the directors of an

association that expelled the plaintiff from its membership. The plaintiff's allegations were similar to Blubaugh's. She asserted that she was unfairly investigated based on false accusations regarding the pedigrees of her horses and that the directors wrongly relied on false information to terminate her membership. The court found jurisdiction over the defendants for purposes of plaintiff's claims under the Sherman Act and 42 U.S.C. § 1983 based on the allegations in plaintiff's complaint. There is no indication that the defendants disputed that they were directors of the association or that they had taken the actions to expel the plaintiff as described in her complaint.

Here, even according to Blubaugh, the individual defendants' connection to his suspension was much more attenuated than the directors' role in the plaintiff's expulsion in *Snow*. Blubaugh has labeled the individuals "control defendants," but there is simply no evidence that the individuals controlled the ACBL. Gerard is the only defendant who was an ACBL director at the relevant time. But she denies any involvement with the ACBL matters involving Blubaugh, and Blubaugh has not submitted any contrary evidence. In addition, although John Sutherlin and Weinstein served on the Ethical Oversight Committee that initially suspended Blubaugh in November 2000, there is no evidence that they were involved in the final appeals decision that ultimately resulted in Blubaugh's 18-month suspension. Even if they were, the "conspiracy"

Blubaugh alleges is not confined to the suspension decision and there is no evidence linking Sutherlin or Weinstein to such a conspiracy.

The individual defendants are situated more similarly to another defendant in *Snow* who competed with the plaintiff but who was not a director of the Morgan Horse Association. See *Snow*, 1994 WL 287719, at *6. Defendant Hudson brought her own later motion to dismiss for lack of personal jurisdiction. Like Blubaugh's primary theory against the individuals here, the plaintiff alleged that Hudson had conspired with the other defendants to defame her. The court concluded that the record was "devoid of factual support" for the plaintiff's claim of conspiracy to defame. The court denied defendant's motion to dismiss without prejudice and gave the plaintiff the opportunity to amend her complaint. The court observed, as is true in Blubaugh's case: "The establishment of a *prima facie* case requires more than a bald assertion that the defendant acted in furtherance of a conspiracy." *Id*.[10]

[10]Other cases cited by Blubaugh do not address the personal jurisdiction issues raised by the defendants' motion. See, *e.g.*, *Indianapolis Horse Patrol, Inc. v. Ward*, 217 N.E.2d 626 (Ind. 1966) (in the only Indiana conspiracy to defame case cited by the parties, the Indiana Supreme Court remanded the case for consideration of a qualified privilege defense); *Cokin v. American Contract Bridge League, Inc.*, No. 79-4958, 1981 WL 2223, at *3 (S.D. Fla. 1981) (calling for additional briefing on the defendants' motion to dismiss on jurisdictional grounds); *Livezey v. American Contract Bridge League*, No. 82-3325, 1985 WL 2648 (E.D. Pa. 1985) (granting summary judgment for the defendants on plaintiff's Sherman Act claims and relinquishing supplemental jurisdiction over (continued...)

II. *Due Process - Specific Jurisdiction*

Even if the court could exercise personal jurisdiction over the individual defendants pursuant to Indiana Trial Rule 4.4(A), such jurisdiction would still violate federal due process requirements. Blubaugh does not contend that there is general jurisdiction over the individual defendants in this case, and their minimal contacts cannot support specific jurisdiction.

Specific jurisdiction exists where the defendant has purposefully made contact with the forum state and the basis of the lawsuit arises out of those contacts. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). "[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). The connection with the forum must be such that the defendant "should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Even a single act can support jurisdiction so long as it creates a "substantial connection" with the forum state and the suit is based on that

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[10](...continued)
state law claims), *aff'd mem.*, 800 F.2d 1135 (3d Cir. 1986).

connection. *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957). However, "'some single or occasional acts' related to the forum may not be sufficient to establish jurisdiction if 'their nature and quality and the circumstances of their commission' create only an 'attenuated' affiliation with the forum." *Burger King Corp.*, 471 U.S. at 475 n.18, quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). Random or fortuitous acts, or the unilateral activities of a third party, do not establish personal jurisdiction. *Burger King Corp.*, 471 U.S. at 475. If the contacts are sufficient, then the court must evaluate whether the exercise of personal jurisdiction offends "traditional notions of fair play and substantial justice." *International Shoe*, 326 U.S. at 316.

As discussed above, Blubaugh argues that personal jurisdiction over the individual defendants is proper because their alleged conspiracy to defame harmed him in Indiana where he lives and works. Blubaugh contends that the defendants' limited contacts with Indiana satisfy due process under the principles the Supreme Court announced in *Calder v. Jones*, 465 U.S. 783 (1984). In *Calder*, a California resident sued the editor of the National Enquirer and one of its reporters for defamation in California. The reporter was a Florida resident, but frequently traveled to California on business. *Id.* at 785. He conducted most of his research on the article about plaintiff in Florida, relying on phone calls to sources in California to gather information. Shortly before

publication, the reporter also made a call to plaintiff's husband in California and read him a draft of the article. He did not have any other relevant contacts with California. *Id*. at 786. The editor was also a Florida resident. He had been to California once for a pleasure trip and once to testify at an unrelated trial. He reviewed, approved, and edited the article about plaintiff prior to its publication. He also declined to print a retraction at plaintiff's request. *Id*. at 786.

Despite these limited contacts with California, the Supreme Court held that personal jurisdiction was still proper because "the brunt of the harm, in terms both of [plaintiff's] emotional distress and the injury to her professional reputation, was suffered in California." *Id.* at 789. In response to defendants' argument that they did not have any control over the National Enquirer's publication of the article in California, the Supreme Court noted that defendants were not charged with "mere untargeted negligence." On the contrary, defendants were responsible for publishing an article "that they knew would have a potentially devastating impact upon [plaintiff]." *Id.* Further, "they knew that the brunt of that injury would be felt by [plaintiff] in the State in which she lives and works and in which the National Enquirer has its largest circulation." *Id*. at 789-90.

In tort cases, the federal Courts of Appeals have interpreted *Calder* to permit personal jurisdiction where the "effects" of a defendant's actions cause injury in the forum *and* the defendant expressly aimed his tortious activity into the forum. *Bancroft & Masters, Inc. v. Augusta National Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) (concluding that the "something more" required under *Calder* is "express aiming" at the forum state); *Imo Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 265 (3rd Cir. 1998) ("the *Calder* 'effects test' can only be satisfied if the plaintiff can point to contacts which demonstrate that the defendant *expressly aimed* its tortious conduct at the forum, and thereby made the forum the focal point of the tortious activity"); *Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club Ltd. Partnership*, 34 F.3d 410, 411-12 (7th Cir. 1994) (football franchise's injury in Indiana, supplemented by defendant's intent to broadcast games played by the infringing football team in Indiana, was sufficient to confer specific jurisdiction).

As discussed above, there is no record evidence linking any of the individual defendants to the one specific act of defamation that Blubaugh has alleged. As a result, even if the publication of the notice about Blubaugh's suspension in the ACBL bulletin could be construed as an act of defamation causing damages in Indiana, there is simply no evidentiary basis for concluding that any of the individual defendants took any intentional act to cause the

publication, let alone to direct any such activity towards Indiana. With no evidence that the defendants had any contacts with Indiana related to the defamation Blubaugh alleges, due process does not permit the defendants to be brought to court in Indiana.

Conclusion

Accordingly, the individual defendants' motions to dismiss for lack of personal jurisdiction and motion to strike portions of Blubaugh's affidavit are GRANTED. Plaintiff Blubaugh's claims against Chris Compton, Joan Gerard, Robert Hamman, John Sutherlin, Peggy Sutherlin, Jeffrey, Polisner, Howard Weinstein, and Bobby Wolff are dismissed without prejudice for lack of personal jurisdiction. No separate judgment shall be entered at this time.

So ordered.

Date: July 31, 2002

DAVID F. HAMILTON, JUDGE
United States District Court
Southern District of Indiana

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