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IN THE
COURT OF APPEALS OF INDIANA

Spokane Kart Racing Association, Northwest Karting Association f/k/a NW Gold Cup, and Mike Schorn,

Appellants-Defendants,

v.

American Kart Track Promoters Association, Inc., and Tim Wilkerson,

Appellees-Plaintiffs

March 20, 2023

Court of Appeals Case No. 22A-PL-1951

Appeal from the Marion Superior Court

The Honorable Gary Miller, Judge

Trial Court Cause No. 49D03-2110-PL-35208

Opinion by Judge Vaidik
Judge Foley concurs.
Judge Tavitas dissents with separate opinion.

Vaidik, Judge.

Case Summary

[1] An Indiana corporation and its president sued two out-of-state corporations and their officers in Indiana state court for breach of contract, criminal conversion, and other claims. The out-of-state parties moved to dismiss the complaint for lack of personal jurisdiction under Indiana Trial Rule 12(B)(2), and the trial court denied the motion. In this interlocutory appeal, we find that the out-of-state parties purposely availed themselves of the privilege of conducting activities within Indiana and therefore conclude that the trial court has specific jurisdiction over them. Accordingly, we affirm the trial court's denial of the motion to dismiss.

Facts and Procedural History

[2] American Kart Track Promoters Association, Inc. (AKTPA) is an Indiana corporation that offers promotion and insurance services to motorsports tracks and clubs. Tim Wilkerson is the president of AKTPA. (AKTPA and Wilkerson are referred to collectively as "the Indiana Parties.").

[3] Northwest Karting Association f/k/a NW Gold Cup ("Northwest") is an Oregon nonprofit corporation comprised of member tracks and clubs, including Spokane Kart Racing Association ("Spokane"), a Washington nonprofit corporation. Mike Schorn is the vice president of Northwest, and Tim Draggoo is the former president of Northwest and Spokane (he passed away shortly after

this lawsuit was filed). (Northwest, Spokane, Schorn, and Draggoo are referred to collectively as "the West Coast Parties.").

[4] The insurance AKTPA offers "is a specialty line of insurance, which requires the tracking of participant totals for each event. Coverage and pricing are based in part upon the tracking of participant totals." Appellants' App. Vol. II p. 15. In accordance with industry practice, "AKTPA tracks participant totals by providing its members with wristbands to distribute to participants at each event." *Id.* In 2018, Schorn and Draggoo contacted Wilkerson about AKTPA putting together a bid for insurance for members of Northwest to vote on at its annual meeting. In early 2019, Northwest and Spokane applied for insurance coverage from and membership with AKTPA. AKTPA accepted the applications and issued certificates of insurance. According to the contracts, the AKTPA memberships and insurance automatically renewed each January 1 (unless canceled according to the terms), and the West Coast Parties were required to return any unused wristbands at the end of each racing season (or else they had to pay for the wristbands that were not returned).[1]

[5] Later, the parties had a dispute about unreturned wristbands. In October 2021, the Indiana Parties sued the West Coast Parties in Indiana state court. The complaint sets forth six counts: Count I: breach of contract (Spokane); Count II: breach of contract (Northwest); Count III: criminal conversion (Spokane and

[1] The contracts do not include a forum-selection clause or any provision whereby the West Coast Parties consented to personal jurisdiction in Indiana.

Draggoo); Count IV: tortious interference with a business relationship (Spokane and Draggoo); Count V: tortious interference with a contractual relationship (Northwest, Draggoo, and Schorn); and Count VI: defamation (Northwest and Draggoo).[2] The complaint alleges that the trial court has personal jurisdiction over the West Coast Parties as follows:

> 8. This Court has jurisdiction over the Defendants because [Spokane] and [Northwest], by and through its Officers and Directors, including but not limited to Mr. Draggoo and Mr. Schorn, submitted applications for (a) membership in AKTPA, and (b) insurance through AKTPA, an Indiana corporation. Defendants also signed Sanction Agreements by which they agreed to submit incident reports, event reports, and completed waiver and release forms, and as well as return all unused armbands, pit passes, and release and waiver forms to AKTPA's office in Indiana. Defendants furthermore agreed to submit regular payments to AKTPA and authorized AKTPA's office in Indiana to charge their credit cards on file for overdue payments.

Id. at 13-14.

[6] In December 2021, the West Coast Parties moved to dismiss the complaint under Indiana Trial Rule 12(B)(2), alleging the trial court did not have personal jurisdiction over them. The Indiana Parties filed a response and attached, among other things, an affidavit from Wilkerson. The affidavit provides:

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[2] The Indiana Parties also filed a negligence claim against all four defendants but filed a "Notice of Voluntary Dismissal" as to that count in June 2022.

7. On or about January 18, 2019 and March 12, 2019, respectively, Northwest and Spokane applied for insurance coverage from and membership with AKTPA.

8. Upon receipt of the applications from Northwest and Spokane, in or about March 2019 AKTPA issued written acceptance of the respective applications by way of issuing Northwest and Spokane Certificates of Insurance.

9. Defendants Northwest and Spokane entered into contracts with AKTPA for specialty event insurance coverage and event promotion services.

10. Defendants Northwest and Spokane tendered premium payments to AKTPA in Indiana in 2019 and 2020.

11. On numerous occasions, Defendants Northwest and Spokane requested and obtained release and waiver forms for use at each of their individual events from Indiana.

12. Northwest and Spokane received attendee wristbands, which are used to track attendance at events for purposes of calculating insurance premiums, from AKTPA for use at their events from Indiana.

13. Throughout 2019 and 2020, numerous representatives of Northwest and Spokane corresponded by email and phone with me, as principal and president of ATKPA, regarding additional insurance needs, event promotion strategies, administrative forms, documents, and policies, and exchanged over 100 communications by email and telephone with AKTPA and me in Indiana about additional insurance needs, event safety, event sponsorships, event rules, operational logistics, event promotion strategies, administrative forms, documents, and policies.

> 14. After every one of their events, Defendants sent event reports and completed waiver and release forms back to AKTPA in Indiana.

Id. at 106-07. A hearing was held via Webex, following which the court denied the motion to dismiss.

[7] The West Coast Parties sought and received permission to bring this interlocutory appeal.

Discussion and Decision

[8] The West Coast Parties contend the trial court should have granted their motion to dismiss based on lack of personal jurisdiction under Trial Rule 12(B)(2). Personal jurisdiction is a question of law, which we review de novo. *Oswald v. Shehadeh*, 108 N.E.3d 911, 916 (Ind. Ct. App. 2018). We do not defer to the trial court's legal conclusion on whether personal jurisdiction exists. *Id.* Personal jurisdiction turns on the facts, "namely the extent of a defendant's contacts with the forum, and ordinarily a trial court's factual findings on that point would be reviewed for clear error." *Id.* (quotation omitted). However, the trial court here did not issue any findings of fact and made its ruling based on the paper records submitted by the parties. "In such a case, we are in as good a position as the trial court to determine the existence of jurisdictional facts and will employ de novo review as to those facts." *Id.* (quotations omitted).

[9] "The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Court*, 141 S. Ct. 1017, 1024 (2021). A state court may exercise personal jurisdiction over an out-of-state defendant who has "certain minimum contacts with [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 (1945) (quotation omitted). There are two kinds of personal jurisdiction: "general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction." *Ford Motor Co.,* 141 S. Ct. at 1024. If the defendant has contacts with the forum state sufficient for general or specific jurisdiction, due process requires that the assertion of personal jurisdiction over the defendant is reasonable. *LinkAmerica Corp. v. Cox*, 857 N.E.2d 961, 967 (Ind. 2006) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)). The assertion of personal jurisdiction will rarely be found unreasonable if "minimum contacts" are found. *Id.*

[10] The Indiana Parties argue the trial court has both general and specific jurisdiction over the West Coast Parties; the West Coast Parties claim the court has neither. We start with general jurisdiction. "A state court may exercise general jurisdiction only when a defendant is 'essentially at home' in the State." *Ford Motor Co.,* 141 S. Ct. at 1024 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)); *see also BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). "General jurisdiction, as its name implies, extends to any and all claims brought against a defendant." *Ford Motor Co.*, 141

S. Ct. at 1024 (quotation omitted). As the United States Supreme Court explained:

> Those claims need not relate to the forum State or the defendant's activity there; they may concern events and conduct anywhere in the world. But that breadth imposes a correlative limit: Only a select set of affiliations with a forum will expose a defendant to such sweeping jurisdiction. In what we have called the paradigm case, **an individual is subject to general jurisdiction in her place of domicile. And the equivalent forums for a corporation are its place of incorporation and principal place of business.**

Id. (emphasis added, quotations and citations omitted).

[11] Here, Northwest is incorporated and does business in Oregon, Spokane is incorporated and does business in Washington, and Schorn and Draggoo were domiciled in Oregon and Washington. Because none of them are "at home" in Indiana, the trial court did not have general jurisdiction over them. *See id.* (holding general jurisdiction over Ford Motor Co. attached in Delaware—where it's incorporated—and Michigan—where it's headquartered—but **not** in Montana and Minnesota—where accidents involving Ford vehicles occurred).

[12] Next, we determine whether the trial court has specific jurisdiction over the West Coast Parties. "Since *International Shoe,* specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role." *Daimler AG v. Bauman*, 571 U.S. 117, 128 (2014) (quotation omitted). Specific jurisdiction "covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Ford Motor*

Co., 141 S. Ct. at 1024. "The contacts needed for this kind of jurisdiction often go by the name 'purposeful availment.'" *Id.* (quoting *Burger King*, 471 U.S. at 475). The defendant "must take some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *Id.* at 1024-25 (quotation omitted). A single contact with the forum State may be sufficient to establish specific jurisdiction if "the defendant's suit-related conduct . . . create[s] a **substantial** connection with the forum State." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis added); *Boyer v. Smith*, 42 N.E.3d 505, 511 (Ind. 2015) ("[A] **substantial** connection to Indiana is the touchstone, because that is the only way defendants can reasonably anticipate being called into court here to defend themselves.").

[13] The West Coast Parties claim that the fact they entered into a contract with the Indiana Parties is not enough to subject them to suit in Indiana. They assert that subjecting them to suit in Indiana means that Indiana would have "personal jurisdiction over any out-of-state party who negotiates a deal with an Indiana company." Appellants' Reply Br. p. 5.

[14] The United States Supreme Court addressed whether a contract, by itself, is sufficient to subject a party to suit in another state in *Burger King*. There, the defendant lived in Michigan and entered into a franchise agreement with Burger King, which is headquartered in Florida. When the defendant did not make the required payments, Burger King sued him in Florida. In finding that personal jurisdiction over the defendant existed in Florida, the Supreme Court acknowledged that "an individual's contract with an out-of-state party **alone**"

does not "automatically establish sufficient minimum contacts in the other party's home forum." *Burger King*, 471 U.S. at 478. Rather, the Supreme Court explained that courts should consider factors such as "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing . . . ." *Id.* at 479. Considering these factors, the Supreme Court found that although the defendant had never set foot in Florida, he had deliberately sought to enter into a "carefully structured" twenty-year franchise agreement with a nationwide company based in Florida, which would require "continuing and wide-reaching contacts with Burger King in Florida," including regulation of the franchise from Florida. *Id.* at 480.

[15] While this case does not involve a twenty-year franchise agreement like *Burger King*, it does involve a contract for insurance and membership into AKTPA, which the West Coast Parties sought out. Contrary to the dissent's suggestion, this case involves more than just a contract for insurance. It also involves a contract for membership into AKTPA, which included event-promotion services. The contracts were intended to form long-term relationships through the automatic year-to-year renewal terms. The West Coast Parties took advantage of the services offered by AKTPA. Around 100 times, the West Coast Parties corresponded with AKTPA about additional insurance needs, event safety, event sponsorships, event rules, operational logistics, event-promotion strategies, and administrative forms, documents, and policies. The West Coast Parties requested and received waiver and release forms and wristbands/pit passes from AKTPA several times. The West Coast Parties also

returned event reports and completed waiver and release forms to AKTPA in Indiana. Finally, the West Coast Parties sent payment to AKTPA in Indiana. Given that the West Coast parties entered into contracts with AKTPA for insurance, membership, and event-promotion services and then heavily relied on AKTPA in Indiana to provide them with services, we conclude that the West Coast Parties purposely availed themselves of the privilege of conducting activities within Indiana. *See id.* at 476 (explaining that personal jurisdiction is proper when the defendant "has created 'continuing obligations' between himself and residents of the forum").[3]

[16] Nevertheless, the West Coast Parties say this case is like *Wolf's Marine, Inc. v. Brar*, 3 N.E.3d 12 (Ind. Ct. App. 2014). There, an Indiana resident owned a boat docked in Chicago from May to October. In 2010, the Indiana resident asked his agent to find a place to store his boat for the upcoming winter. The agent was referred to Wolf's Marine, a Michigan business that offered seasonal storage space for boats and boating equipment. Wolf's Marine's website claimed that it was the "Midwest's Largest Marine Accessory Store." The agent contacted Wolf's Marine, which in turn emailed a rental contract to the agent in Indiana. The agent signed and returned the contract to Wolf's Marine. There was no forum-selection clause in the contract. The agent then piloted the

[3] The West Coast Parties argue that even if we find the trial court has specific jurisdiction over Northwest and Spokane, there is no specific jurisdiction over Schorn. In their motion to dismiss, however, the West Coast Parties did not individually address the facts as they related to specific jurisdiction over Schorn. Instead, they discussed the defendants as a group. As the Indiana Parties assert in their brief, this issue is waived.

Indiana resident's boat across Lake Michigan from Chicago to Wolf's Marine's dock in Benton Harbor, Michigan. Wolf's Marine then stored the boat at its facility. The agent took the boat back to Chicago in May 2011. Wolf's Marine sent a bill for its services to the agent in Indiana, and the agent arranged for payment to Wolf's Marine.

[17] The agent again contracted with Wolf's Marine to store the Indiana resident's boat for the 2011-12 winter season, following the same procedure as in 2010-11. The agent asserted that when he left the boat at Wolf's Marine in October 2011, it was undamaged. However, the agent claimed that when he retrieved the boat in May 2012, the bow was damaged. The Indiana resident filed a small-claims complaint against Wolf's Marine in Indiana. We held that the trial court did not have personal jurisdiction over Wolf's Marine:

> Here, no goods were delivered to or from Indiana, nor were any services performed in Indiana, and the allegedly damaged boat was docked in Illinois, not Indiana, when it was not stored in Michigan. Although [the agent] executed the contract on [the Indiana resident's] behalf in Indiana, the entirety of the contract's performance was to take place in Michigan, save for [the Indiana resident's] payment coming from Indiana. The contract was not in the nature of a long-term entanglement between the parties, as in *Burger King,* but instead was limited in duration and scope and was not automatically renewed from year-to-year. For the second year that [the Indiana resident] and [the agent] contracted with Wolf's to store the boat, it again was [the agent] who initiated contact with Wolf's, not vice versa. The contract also was a pre-printed form contract, created in Michigan and sent from Michigan to Indiana at [the agent's] request, and it was not the result of negotiations between the parties. Wolf's alleged negligence or breach of contract occurred in Michigan, not

> Indiana. Wolf's has no physical presence whatsoever in Indiana, in the form of facilities or employees. Also, Michigan has a greater interest than Indiana in ensuring that Wolf's is operating its facility in a proper manner. Wolf's deliberate contacts with Indiana were limited to general advertising, emailing a form contract to [the agent] at [the agent's] request, and invoicing and receiving payment from [the agent]. We hold this was not sufficient "purposeful availment" of the privilege of conducting business in Indiana by Wolf's so as to permit Indiana to exercise specific personal jurisdiction over it with respect to [the Indiana resident's] cause of action.

Id. at 18-19.

[18] There are more differences between this case and *Wolf's Marine* than there are similarities. While the West Coast Parties do not have a physical presence in Indiana, they sought out a business relationship with AKTPA, which is in Indiana; entered into contracts with AKTPA that included automatic renewal terms; requested and received waiver and release forms and wristbands/pit passes from AKTPA in Indiana; sent payment to AKTPA in Indiana; corresponded with AKTPA around 100 times about various matters, including event-promotion strategies; and returned event reports, signed waiver and release forms, and incident reports to AKTPA in Indiana. *Wolf's Marine* does not support reversal here.

[19] Finally, the West Coast Parties argue that even if the trial court has personal jurisdiction over them, "exercise of that jurisdiction would not be reasonable." Appellants' Br. p. 16. The burden is on the defendant to present "a compelling case that the presence of some other considerations would render jurisdiction

unreasonable." *Burger King*, 471 U.S. at 477. The West Coast Parties claim that the fact that they are over 1,000 miles from Indiana and are nonprofit corporations means that the exercise of personal jurisdiction is not reasonable. While the West Coast Parties are nonprofit corporations located across the country, the litigation is not "so gravely difficult and inconvenient" that they unfairly are at a "severe disadvantage" in comparison to the Indiana Parties. *Id.* at 478. This is especially so considering that many proceedings can be conducted remotely "using telephone or videoconferencing capabilities." *See* Interim Ind. Admin. Rule 14. Indeed, the motion-to-dismiss hearing in this case was held via Webex. *See* Appellants' App. Vol. II p. 9.

[20] We therefore affirm the trial court's denial of the West Coast Parties' motion to dismiss.

[21] Affirmed.

Foley, J., concurs.

Tavitas, J., dissents with separate opinion.

Tavitas, Judge, dissenting.

[22] I believe that the West Coast Parties did not have sufficient minimum contacts with Indiana to give Indiana courts personal jurisdiction over the West Coast Parties. I further believe that, even if the West Coast Parties had sufficient minimum contacts with Indiana to give our courts personal jurisdiction over them, the exercise of that jurisdiction would not be reasonable under the circumstances present in this case. Accordingly, I respectfully dissent from the majority's conclusions to the contrary.

[23] I agree with the majority that our review is de novo, because the existence of personal jurisdiction is a question of law and because the trial court made its ruling on a paper record and did not issue specific findings and conclusions thereon. I also agree that Indiana does not have general personal jurisdiction over the West Coast Parties. I part ways, however, from the majority in their conclusion that Indiana courts have specific personal jurisdiction over the West Coast Parties.

[24] A state may exercise specific jurisdiction when a defendant has purposefully availed itself of the privilege of conducting activities within the forum state and the controversy relates to or arises out of those activities. *LinkAmerica Corp. v. Cox*, 857 N.E.2d 961, 967 (Ind. 2006) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75, 105 S. Ct. 2174, 2183 (1985)).

> In order for a state court to exercise specific jurisdiction, the *suit* must aris[e] out of or relat[e] to the defendant's contacts with the *forum*. In other words, there must be an affiliation between

> the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.

Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cnty., 582 U.S. 255, 262, 137 S. Ct. 1773, 1780 (2017) (internal citations and quotations omitted).

[25] I conclude that the West Coast Parties did not have sufficient minimum contacts with Indiana. There was no activity by the West Coast Parties or any occurrence that took place in Indiana that would give rise to specific jurisdiction. The West Coast Parties purchased insurance from the Indiana Parties. As part of the insurance coverage contract, the West Coast Parties were sent wristbands to monitor attendance at events in order to determine proper insurance coverage.

[26] As held in *Burger King*, 471 U.S. at 477, 105 S. Ct. at 2185, an individual's contract with an out-of-state party, standing alone, cannot automatically establish sufficient minimum contacts that would justify the exercise of personal jurisdiction. The Court in *Burger King* held that the existence of other contacts, in addition to the contract, did support the exercise of personal jurisdiction over the out-of-state party. *Id*. at 479-80, 105 S. Ct. at 2186. The facts in *Burger King*, however, are quite different from those in the present case.

[27] In *Burger King*, the Court observed:

> [N]o physical ties to Florida can be attributed to [the Defendant] other than [his business partner's] brief training course in Miami. [The Defendant] did not maintain offices in Florida and, for all that appears from the record, has never even visited there. Yet this franchise dispute grew directly out of a contract which had a *substantial* connection with that State. Eschewing the option of operating an independent local enterprise, [the Defendant] deliberately reach[ed] out beyond Michigan and negotiated with a Florida corporation for the purchase of a long-term franchise and the manifold benefits that would derive from affiliation with a nationwide organization. Upon approval, he entered into a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida. In light of [the Defendant's] voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters, the quality and nature of his relationship to the company in Florida can in no sense be viewed as random, fortuitous, or attenuated. [The Defendant's] refusal to make the contractually required payments in Miami, and his continued use of Burger King's trademarks and confidential business information after his termination, caused foreseeable injuries to the corporation in Florida. For these reasons it was, at the very least, presumptively reasonable for [the Defendant] to be called to account there for such injuries.

471 U.S. at 479-80, 105 S. Ct. at 2186 (internal citations and quotations omitted).

[28] In contrast, here, there was no twenty-year contractual agreement between the parties; instead, there was merely a year-long contract with automatic annual renewal. Nor did the West Coast Parties or any of their members attend any training sessions in Indiana. In fact, there is no suggestion that any of the West Coast Parties have even set foot in Indiana. And, although the parties did

correspond with each other, these contacts largely related to insurance. Such conversations do little to establish a substantial connection to Indiana; nor does sending payment as required under the contract to the Indiana Parties establish a substantial connection.

[29] Although this case is not directly on all fours with *Wolf's Marine, Inc. v. Brar*, 3 N.E.3d 12 (Ind. Ct. App. 2014), I believe it is closer to *Wolf's Marine* than it is to *Burger King*. The West Coast Parties have no physical presence in Indiana; they do not do business in Indiana; they have never held a race in Indiana; nor do they store property in Indiana. The West Coast Parties merely entered into a contract with an Indiana company, emailed with the Indiana company, and received bracelets from the Indiana company. The West Coast Parties did not "purposefully avail[] [themselves] of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Wolf's Marine*, 3 N.E.3d at 15 (citing *Brockman v. Kravic*, 779 N.E.2d at 1256 (Ind. Ct. App. 2002)).

[30] The West Coast Parties' minimal contacts with Indiana do not support an exercise of personal jurisdiction by Indiana courts. *See Hotmix & Bituminous Equip. Inc. v. Hardrock Equip. Corp.*, 719 N.E.2d 824, 827-28 (Ind. Ct. App. 1999) (holding that Indiana courts did not have personal jurisdiction over New York corporation in dispute between that corporation and an Indiana corporation because, although the companies engaged in numerous telephone calls, and some fax transmissions and letters, the New York corporation never appeared in Indiana, did not normally conduct business in Indiana, the equipment that

was the subject of their transaction was located in Ohio, and that the parties met only in Ohio); *Dura-Line Corp. v. Sloan*, 487 N.E.2d 469, 470-71 (Ind. Ct. App. 1986) (holding that Indiana courts did not have personal jurisdiction over defendant where defendant was a Kentucky corporation with principal office in Kentucky, had only unrelated transactions in Indiana in the past, had no office in Indiana, and claim was based on breach of contract for contract that arose in Minnesota, although written and telephonic communications did occur with plaintiff in Indiana); *Baseball Card World, Inc. v. Pannette*, 583 N.E.2d 753, 755-56 (Ind. Ct. App. 1991) (holding that defendant had insufficient minimum contacts to establish personal jurisdiction of Indiana courts even where defendant knew he was doing business with Indiana company, telephoned Indiana company once or twice per week for five months, and mailed checks to Indiana, but parties began relationship outside of Indiana and defendant never came to Indiana, contract which formed basis of suit was not executed in Indiana, no contract negotiations occurred in Indiana, and defendant did not maintain offices in Indiana), *trans. denied*.

[31] Moreover, even if the West Coast Parties' contacts were sufficient to confer jurisdiction on Indiana courts, I agree with the West Coast Parties that the exercise of such jurisdiction would be unreasonable. As summarized by our Supreme Court:

> 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." The United States Supreme Court has set out five factors that must be balanced to

> determine whether the assertion of jurisdiction is reasonable and fair. They are: (1) the burden on the defendant; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenience and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies. These interests must be balanced and weighed to make certain that asserting jurisdiction is fair in a particular case.

Tom-Wat, Inc. v. Fink, 741 N.E.2d 343, 349 (Ind. 2001) (citing *Burger King*, 471 U.S. at 476, 105 S. Ct. at 2184) (other citation omitted). Applying these factors to the present case, I can only conclude that Indiana asserting jurisdiction in this particular case is not consistent with fair play and substantial justice.

[32] The burden on the defendant West Coast Parties appears to be heavy. They are non-profit corporations located over 1,000 miles away from Indiana. Indiana appears to have a minimal interest in adjudicating this dispute. In addition, the wristbands at issue were located in Washington at the relevant times and were used in that state, the alleged misconduct regarding the wristbands occurred in Washington, and the West Coast Parties' witnesses relating to the wristbands would be located in Washington. Thus, Indiana would not be the most efficient or convenient forum to adjudicate this case.

[33] Although the Indiana Parties have an interest in obtaining convenient and effective relief, there is no indication that they could not obtain such in Washington courts. Lastly, exercising jurisdiction in this case would do little to further fundamental substantive justice social policies among the states.

Balancing the relevant factors, I conclude that exercising jurisdiction over the West Coast Parties in Indiana would not be reasonable. I fear the majority's view that purchasing insurance and abiding by the terms of the contract for continuing insurance coverage is sufficient to confer an Indiana court with personal jurisdiction over an out-of-state party could have a chilling effect on contractual relationships with Indiana organizations.

[34] In summary, I conclude that the West Coast Parties did not have sufficient minimum contacts with Indiana to justify the exercise of personal jurisdiction over them. Moreover, even if such minimum contacts existed, the exercise of jurisdiction over the West Coast Parties by Indiana courts would not be reasonable. Buying insurance from an Indiana company is not doing business in Indiana or purposely availing oneself of the privilege of conducting activities that would invoke the benefits and protection of our laws. Accordingly, I respectfully dissent.