



cross-claims, and a third-party complaint against Transnation Title Insurance Company. Kenders' Third Party Complaint alleges Transnation was negligent in its preparation of a subordination agreement, negligent in its failure to advise the Kenders of the effect of some of the documents prepared in connection with the real estate purchase and sale transaction, and negligent in its handling of the escrow documents by directing the Kootenai County Recorder's Office to record the deed and mortgages on the property in a certain priority, contrary to the intent of the Kenders and other parties to the transaction. Defendant Kenders' Response, pp. 6-7.

Transnation is a corporation organized and existing under the laws of the State of Nebraska with its principal place of business in Richmond, Virginia. Transnation filed this motion to dismiss for lack of personal jurisdiction, arguing jurisdiction is not proper in Idaho because it has no business locations within the State of Idaho, it does not have any employees located within the State of Idaho, nor does it conduct an escrow agent or closing services within the State of Idaho.

On January 30, 2007, oral argument was held on Transnation's Motion to Dismiss.

## **II. ANALYSIS.**

### **A. Specific Personal Jurisdiction is Proper Under Idaho's Long-Arm Statute, Idaho Code § 5-514(a) and (b).**

In order for an Idaho court to exert jurisdiction over an out-of-state defendant, two criteria must be met. **First**, the act giving rise to the cause of action must fall within the scope of the long-arm statute and **second**, the constitutional standards of due process must be met. *Saint Alphonsus Regional Medical Center v. State of Washington*, 123 Idaho 739, 742, 852 P.2d 491, 494 (1992). The Idaho long-arm statute, Idaho Code §

5-514, provides for the exercise of specific personal jurisdiction over those who do any of the acts enumerated in the statute, so long as the cause of action arises from the doing of any said act. 123 Idaho at 743.

Idaho Code § 5-514 provides in pertinent part:

Any person, firm, company, association or corporation, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, firm, company, association or corporation, and if an individual, his 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 which is hereby defined as the doing of any act for the purpose of realizing pecuniary benefit or accomplishing or attempting to accomplish, transact or enhance the business purpose or objective or any part thereof of such person, firm, company, association or corporation;
- (b) The commission of a tortious act within this state;
- (c) The ownership, use or possession of any real property situated within this state;
- (d) Contracting to insure any person, property or risk located within this state at the time of contracting;

The Kenders argue personal jurisdiction over Transnation in Idaho can be found under Idaho's long-arm statute under subsections (a) through (d). The Kenders allege personal jurisdiction can be asserted in Idaho over Transnation under Idaho Code § 5-514(a) because Transnation delivered various documents and monies into Idaho for the purpose of realizing a pecuniary benefit when it paid the Kootenai County Recorder's Office fees to record the conveying deed and mortgages in the priority now at issue.

In its briefing, Transnation claimed this factual assertion is incorrect. However, it did not elaborate on the issue and instead proceeded into a minimum contacts analysis. Transnation admitted it paid various fees, property taxes and assessments to Idaho recipients, but in its briefing failed to elaborate on how and why this conduct would not fall under Idaho Code § 5-514(a). At oral argument, Transnation's counsel candidly admitted that the requirements of Idaho's Long Arm Statute, Idaho Code § 5-514(a) is

likely met due to the fact that Transnation entered into a contract with an Idaho title company (Pioneer Title of Kootenai County) for the purpose of recording documents with the Kootenai County Recorder's Office regarding the status of real property titles in Idaho. Those real property titles form the basis of this litigation. Entering into such a contract was for the purpose of furthering Transnation's business or objective. Under the language of the statute, personal jurisdiction in Idaho is proper over Transnation. Idaho Code § 5-514(a) allows the court to extend specific jurisdiction over the party if the party has transacted business in Idaho for the purpose of enhancing the business purpose or objective of the firm or company. The Court finds the transactions between Transnation and Pioneer Title Company were done in an attempt for Transnation to obtain a pecuniary gain and to enhance its business purpose.

Additionally, Idaho Code § 5-514(b) allows the court to extend personal jurisdiction over an out-of-state defendant if the defendant engaged in a tortious act within the forum state. The Kenders argue personal jurisdiction is proper over Transnation because Transnation negligently caused the Kootenai County Recorder's Office to record conveyance documents in a particular order to evidence priority of the loans contrary to what the parties had believed they had agreed to. Plaintiffs Krivor now claim priority is different than that agreed upon by Rogerses and Kenders as evidenced by Rogerses' signatures on the subordination agreement presented to them by Transnation. Kenders allege it is this negligent filing that subjects Transnation to personal jurisdiction in Idaho.

Transnation argues it was not negligent during the closing because their closing agent, Ms. Crystal Darling, advised the parties she was not acting as an agent or legal representative of any party to the transaction and advised the parties that they had a

right to be represented by an attorney. The problem with this argument is that it goes to the merits of the case and not to the issue of jurisdiction. The Idaho Supreme Court has held that whether or not the defendant's conduct was actually tortious is a factual question that is irrelevant to the examination of jurisdiction under the long-arm statute. *Saint Alphonsus Regional Medical Center*, 123 Idaho at 743. Therefore an allegation that an injury has occurred in Idaho as a result of one single tortious act or transaction is sufficient to invoke the tortious act language of Idaho Code § 5-514(b). *Doggett v. Electronics Corp. of America.*, 93 Idaho 26, 31, 454 P.2d 63, 68 (1969). Kenders assert Transnation was negligent in its performance and duties when recording title to Idaho property. Thus, the requirements of Idaho Code § 5-514(b) have been met.

**B. The Constitutional Standards of Due Process Must Be Met Before This Court Can Confer Personal Jurisdiction Over Third-Party Defendant Transnation.**

If a court finds jurisdiction under any section of Idaho Code § 5-514, that court must then determine whether the assertion of jurisdiction by the Idaho court is permissible under the Due Process Clause. *Duignan v. A.H. Robins Co.*, 98 Idaho 134, 559 P.2d 750 (1977). Before a state can exercise jurisdiction over a non-resident defendant, the defendant must “purposefully avail itself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws.” *Saint Alphonsus Regional Medical Center*, 123 Idaho at 744, 852 P.2d at 96, *citing Schnieder v. Sverdsten Logging Co.*, 104 Idaho 210, 212, 657 P. 2d 1078, 1080 (1983), which quoted *Hanson v. Denkla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-40, 2 L.Ed.2d 1283 (1958).

Due process does not require the physical presence of the defendant in the forum state, but it prohibits an Idaho court from exercising personal jurisdiction over a

non-resident defendant unless that defendant has certain [1] minimum contacts with Idaho, [2] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Schnieder v. Sverdsten Logging Co.*, 104 Idaho 210, 212, 657 P. 2d 1078, 1080 (1983), *citing International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945). The minimum contacts required are supplied if the defendant purposefully directs his activities at residents of the forum state and the litigation arises out of or relates to those activities. *Houghland Farms, Inc., v. Johnson*, 119 Idaho 72, 81, 803 P.2d 978, 987 (1990); quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985). Whether there have been sufficient contacts must be determined on a case-by-case basis. *Intermountain Business Forms, Inc., v. Shepard Business Forms, Co.*, 96 Idaho 538, 531 P.2d 1183 (1975).

Transnation argues that minimum contacts did not exist in this case to meet the constitutional standards of due process. Transnation compares this case to *Saint Alphonsus Regional Medical Center v. State of Washington*, 123 Idaho 739 (1993) where the Idaho Supreme Court held the due process standard of minimum contacts did not exist when the defendant State of Washington had limited contact with the forum state. In *Saint Alphonsus* the Idaho Supreme Court refused to extend personal jurisdiction over the defendant when it pointed to only four significant contacts made by the foreign defendant with Idaho. The Idaho Supreme Court held the defendant State of Washington could not reasonably anticipate being haled into an Idaho court, nor did it avail itself of the benefits and protections of Idaho law, when the defendant neither instigated nor attempted to foster its relationship with the Idaho hospital. Instead, the Idaho hospital voluntarily chose to participate in the foreign defendant State of Washington's worker's compensation program by treating Washington patients and

billing the State of Washington. The State of Washington's involvement with Idaho was the function of the unilateral decision of some Washington workers who moved to Idaho or at least sought medical care in Idaho. 123 Idaho at 745, 852 P.2d at 497.

Transnation argues that the minimum contacts between it and Idaho are far more limited than those in *Saint Alphonsus* and therefore this court should grant its motion to dismiss. Transnation asserts that the only contact it had with Idaho was when it sent certain documents to Idaho for recording and paid various fees, property taxes and assessments to Idaho recipients. Under such limited contacts, Transnation argues there is not enough for this court to find that the due process standards have been met. Additionally, Transnation argues the State of Washington provides a more convenient and alternative forum for this suit.

The Kenders argue that Transnation has purposely availed itself of the privilege of conducting activities in Idaho by interacting with several Idaho governmental entities and with Pioneer Title for the purpose of effectuating the closing activities on real property in Idaho. Furthermore, Transnation knew the sellers resided in Idaho, knew the sellers would depend on Transnation for the accuracy of its closing activities, and Transnation contracted with Pioneer Title for the purpose of affecting priority of the loans involved in the transaction. Kenders assert these activities should have given Transnation fair warning Idaho may reasonably exercise personal jurisdiction over it.

Transnation, through its offices just across the Idaho border in Spokane, Washington, delivered money and legal documents to entities located in Idaho, paid various fees, property taxes and assessments to Idaho recipients, and contracted with an Idaho entity (Pioneer Title) to do so. Accordingly, Transnation would be on notice that it could reasonably be haled into an Idaho court on a claim of negligence. All

conduct in this case was directed at Idaho buyers and sellers of real property located within Idaho. The requirement of minimum contacts with the forum state are met when the foreign defendant purposefully directs its activity at residents of the forum state and the litigation arises out of or relates to those activities. Such is the case here.

Transnation engaged in activity directed towards residents of Idaho when it prepared and presented documents for Idaho residents, the Kenders and the Rogerses, to sign.

Transnation engaged in activity directed towards residents of Idaho because it knew the property was in Idaho, knew the participants to the transaction were residents of Idaho and knew the documents it was drafting which it directed be recorded in Idaho, would impact land titles in Idaho. The requirement of minimum contacts has been met.

The facts of this case are distinct from those in *Saint Alphonsus* in one key aspect. In *Saint Alphonsus*, the State of Washington was very **passive**. Upon the request of St. Alphonsus hospital, the State of Washington *allowed* its worker's compensation system to be billed to pay for medical care at St. Alphonsus for Washington employees injured on the job in Washington but who had moved or had sought medical care in Idaho at St. Alphonsus hospital. In contrast, Transnation is **active** in its behaviors toward Idaho. Transnation *prepared* documents involving the sale of Idaho property among Idaho residents, *presented* those documents to Idaho residents, *contracted* with an Idaho entity, Pioneer Title, to get those documents recorded, *paid* money to entities in Idaho, and *delivered* legal documents to entities located in Idaho.

An additional contact exists, which this Court finds is of no additional weight. Transnation did not issue the title policy underlying this transaction; Pioneer Title issued that policy. Transnation did not underwrite the title policy that was issued in this

transaction and does not underwrite policies for Pioneer Title. However, Transnation underwrites title policies for North Idaho Title, a different title company located in Idaho, and underwrites title policies for other independent agents located within the State of Idaho. Affidavit of Sean Holland, p. 2, ¶ 4. This Court finds that it would be improper for it to find the requirement of personal jurisdiction under Idaho Code § 5-514 (d) (contracting to insure any person, property or risk located within this state at the time of contracting) is met, because while Transnation does contract to insure property located in Idaho, it did not do so in this case, and the “cause of action” in this case did not arise “from the doing of any of said acts [insuring property]” as required by Idaho Code § 5-514. However, the fact that Transnation insures property located in Idaho for other title companies is a factor that may be used in a minimum contacts analysis. Engaging in such activity would put Transnation on notice that it could reasonably be haled into an Idaho court. However, since the litigation in this case does not arise out of or relate to those activities, this Court accords such contact no weight in its minimum contact analysis.

This “minimum contacts” analysis does not end the Court’s inquiry. The due process analysis is a two-step process. Once the court determines that the requisite minimum contacts with the forum state exist, the court must then consider the contacts in light of other factors to determine whether the assertion of personal jurisdiction would comport with “traditional notions of fair play and substantial justice”. *Western States Equipment Co., v. American Amex Inc.*, 125 Idaho 155, 158-159, 868 P.2d 483, 486-87 (1994). This analysis permits the court to consider: 1) the burden on the defendant; 2) the forum State’s interest in adjudicating the dispute; 3) the plaintiff’s interest in obtaining convenient 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. 125 Idaho at 158; *citing Houghland Farms*, 119 Idaho at 76.

Under this analysis, the factors weigh in favor of the Kenders. The burden on Transnation to come into an Idaho court is minimal because Transnation has offices and agents located within Spokane, Washington, close to this Idaho court. This court has a great interest in seeing that Idaho residents obtain convenient and effective relief regarding real estate transactions for property that occurred in Idaho. “Idaho has a manifest interest in providing redress in a controversy concerning an alleged attempt to sell real property situated in this state.” *Tandy & Wood, Inc. v. Munnell*, 97 Idaho 142, 143, 540 P.2d 804, 805 (1975). Viewed from either the plaintiff Krivors’ standpoint, but especially the Kenders’ standpoint, they have an interest in resolving this litigation in one lawsuit, not piecemeal in two different states. One lawsuit would certainly provide the most efficient resolution of the controversies. The only factor that may weigh in favor of Transnation is the fact that Washington seems to also have an interest in this case because the closing agent, Ms. Darling, is a Certified Closing Agent under Washington’s Limited Practice Rules for Closing Officers. Thus, Washington would have an interest in seeing that its laws and policies are upheld in connection with the closing practices of Ms. Darling. However, those laws and policies may also be considered and upheld if this action is brought in an Idaho court. For the above reasons, the five factors to be considered by the Court in determining whether “traditional notions of fair play and substantial justice” comport with the exercise of personal jurisdiction weigh in favor of this Court finding it has personal jurisdiction over Transnation.

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**III. ORDER.**

**IT IS HEREBY ORDERED** that Transnation's Motion to Dismiss for Lack of Personal Jurisdiction is **denied**. This Court finds it has jurisdiction under Idaho's long-arm statute. This Court further finds the standards for due process are met because Transnation directed its activities at Idaho residents in a manner that meet the minimum contacts requirement such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.

Entered this 31<sup>st</sup> day of January, 2007.

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John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the \_\_\_\_\_ day of February, 2007, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Lawyer</u>	<u>Fax #</u>
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Secretary