



## Seventh Circuit Releases Two New Personal Jurisdiction Cases

By Kelly Libbra on February 10, 2023  
Posted in Products Liability

Our product liability clients are often faced with the question of whether an Illinois court has the power to exercise personal jurisdiction over them. Often, these clients are incorporated outside of Illinois and do not have principal places of business in Illinois, yet they're being named as defendants in lawsuits filed in Illinois that have no connection with Illinois.

Last fall, the United States Court of Appeals for the Seventh Circuit interpreted the issue of when a non-resident defendant is subject to jurisdiction in Illinois.

### Types of Jurisdiction

Courts can exercise jurisdiction over defendants in one of two ways -

- **General Jurisdiction** – Is the defendant “at home” in the jurisdiction (Illinois) either by being incorporated in Illinois or having its principal place of business in Illinois. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 924 (2011).
- **Specific Jurisdiction** - Is there 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 Ct.*, 137 S. Ct. 1773, 1780 (2017).

### Summary of Appellate Court Findings

#### The Sheehan Case

The Seventh Circuit upheld the bankruptcy court's determination in *Sheehan v. Breccia Unlimited Company* that the bankruptcy court in Illinois lacked personal jurisdiction over the foreign defendant. (7th Circuit September 7, 2022). The defendant Irish citizens sought to sell plaintiff's property in Ireland to recoup their losses on the property as part of the bankruptcy proceedings. Before the Seventh Circuit could consider whether it had *in rem* jurisdiction over the estate in Ireland, it had to determine whether it had jurisdiction over the Irish Citizens and entities holding the Irish property.

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In *Sheehan*, it was undisputed that the court lacked personal jurisdiction over the defendant Irish citizens. The court looked at whether it had specific jurisdiction. The federal requirements for establishing specific personal jurisdiction mirror the Illinois requirements. To establish specific jurisdiction over a non-resident defendant, the defendants must have done the following:

- Purposefully directed themselves of the privilege of conducting business in the forum; and
- The alleged injury must arise out of or relate to the defendants' forum-related activities; and
- The exercise of personal jurisdiction must comport with traditional notions of fair play and substantial justice. *Rogers v. City of Hobart, Ind.*, 996 F.3d 812, 819 (7<sup>th</sup> 2021); *Tamburo v. Dworkin*, 601 F.3d 693, 702 (7<sup>th</sup> Cir. 2010).

The fact that the plaintiff suffered the negative consequences of defendant's acts in Illinois was not sufficient to confer jurisdiction over the defendant when the defendant's acts occurred entirely outside of Illinois. *Id.* at 16. The only connection between the underlying lawsuit and the defendants was the plaintiff's residence in Illinois and plaintiff's filing for Chapter 11 bankruptcy in Illinois. *Id.* at 8. The court reasoned that it could not exercise jurisdiction over defendant based upon the plaintiff's mere presence in the forum or the "unilateral activity" of a plaintiff. *Id.* Therefore, the Seventh Circuit confirmed the bankruptcy court's holding that it lacked jurisdiction over the foreign defendant.

### The NBC Properties Case

In *NBC Properties, Incorporated, et al. v. Hanwih*, plaintiffs were professional or collegiate sports associations that filed this action under the Lanham Act, 15 U.S.C. sec. 1051, *et seq.*, against defendant, a Chinese-based retailer, alleging that the defendant infringed on NBC trademarks by selling counterfeit products in its online store. (7<sup>th</sup> Cir. August 16, 2022). The Seventh Circuit found jurisdiction over the Chinese-based retailers in *Hanwih*. The defendant Chinese-based retailer alleged that it's only connection with Illinois was its sale of a pair of shorts to an investigator for plaintiff. *Id.* at 2-3. The products at issue were available for sale in Illinois to other customers, in addition to the investigator. *Id.* at 3.

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Looking at the same three requirements that were also applied in *Sheehan*, the court concluded that the three factors had been met. While the mere availability of a retailer's website in the forum is insufficient to confer jurisdiction, the court found that the retailer's readiness to do business with the forum and knowingly doing business and shipping products to the forum *that were the subject of the lawsuit* was a crucial factor. *Id.* at 5-7. The defendant retailer's shipment of the shorts at issue to Illinois met the first prong that defendant purposefully avail itself of the forum of conducting business in the forum. *Id.* at 16-19. The defendants shipped their products to Illinois, which is distinguishable from the situation where a plaintiff unilaterally takes a product to the forum. *Id.* The second prong of the specific jurisdiction test was met because the defendant's sale to Illinois involved the shorts were the basis of plaintiff's claim. *Id.* at 19. Finally, the court held that the third principle was met and it would not offend traditional notions of fair play and substantial justice by asserting jurisdiction over Chinese retailer. *Id.* at 22. The court reasoned that there is no unfairness in making a seller defendant defend a lawsuit in a state where it structured its business to easily serve the state's consumers. *Id.* at 23 (following *Curry v. Revolution Laboratories*, 949 F.3d 385, 402). Defendant did not set forth an unusual burden in defending the matter in Illinois. *Id.* at 23.

## The Takeaway

The Seventh Circuit reached different conclusions in each case, but the analysis is still the same – A Plaintiff's actions alone are insufficient to establish specific personal jurisdiction over a defendant. A defendant's connection with Illinois must meet the three-prong test to confer jurisdiction.

**Tags:** Personal Jurisdiction, U.S. Appellate Court