SC97623

IN THE SUPREME COURT OF MISSOURI

STATE ex rel. KEY INSURANCE COMPANY, Relator,

v.

THE HONORABLE MARCO A. ROLDAN, Respondent.

Proceeding in Prohibition from the Circuit Court of Jackson County, Missouri
Case No. 1816-CV12271

RELATOR'S BRIEF

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I. INTRODUCTION

In this proceeding in prohibition, Relator Key Insurance Company ("Key") seeks a writ of prohibition directing Respondent The Honorable Marco A. Roldan to dismiss the underlying claims filed by Plaintiff Josiah Wright and Defendant Phillip Nash against Key for lack of specific personal jurisdiction. Prohibition is the proper remedy because the underlying claims do not arise out of any contacts with Missouri that were created by Key or that proximately resulted from Key's actions specifically directed or targeted at Missouri. Respondent exceeded the circuit court's authority and jurisdiction in denying Key's motion to dismiss for lack of personal jurisdiction, which was supported by uncontroverted affidavits demonstrating Key did not commit any acts sufficient to invoke personal jurisdiction under Missouri's long-arm statute or the Due Process Clause. Because the circuit court lacks personal jurisdiction over Key, a writ of prohibition should be issued directing Respondent to dismiss the underlying claims filed by Wright and Nash against Key.

II. JURISDICTIONAL STATEMENT

Pursuant to Mo. Const. art. V, § 4.1, this Court has jurisdiction to determine Key's petition in prohibition seeking a writ of prohibition directing Respondent to dismiss the underlying claims filed by Wright and Nash against Key for lack of personal jurisdiction. *See* Mo. Const. art. V, § 4.1 ("The supreme court and districts of the court of appeals may issue and determine original remedial writs.").

III. STATEMENT OF FACTS

A. Key's Nonexistent Contacts With Missouri

Key is an insurance company and a corporation formed under the laws of the State of Kansas with its principal place of business in the State of Kansas. (R.[1] *at 19,* ¶ 2) Key has no offices in Missouri, does not transact insurance business in Missouri, has never sold insurance policies in Missouri, and has never received the Missouri Department of

[1]"R. *at* ___" refers to the specific page number of the supporting exhibits (R. *1 - 133*) attached to Key's petition in prohibition that is the relevant portion of the record.

Insurance's authority to sell insurance products in Missouri. (R. *at 19-20*, ¶¶ 4-5) Key does not accept insurance applications from Missouri residents or insurance applications for automobiles principally garaged in Missouri. (R. *at 20*, ¶ 8)

B. Key's Policies Issued to Takesha Nash

Effective February 21, 2014, Key issued Car Insurance Policy No. KKS0976555 to Nash's adult daughter Takesha Nash ("Takesha"), a resident of Kansas City, Kansas, which Key renewed until December 2016 ("2014-2016 Policy"). (R. *at 98*, ¶ 2) Takesha applied for the 2014-2016 Policy through Auto Insurance Discounters, a broker in Kansas City, Kansas. (R. *at 98*, ¶ 3) In December 2016, Key sent Takesha a notice of cancellation effective Monday, January 23, 2017, after learning of a December 17, 2016 motor vehicle accident involving Nash, who was operating a vehicle listed on the 2014-2016 Policy but was not disclosed to Key as a driver of the vehicle. (R. *at 98-99*, ¶ 5)

On January 20, 2017, Takesha completed a Kansas Automobile Application for insurance on a 2001 Pontiac Grand Am GT1 and a 2002 Kia Optima at Tom Rich Insurance, a different broker in Kansas City, Kansas. (R. *at 21*) Although not disclosed by Takesha in the January 20, 2017 application, Nash owned the 2002 Kia Optima. (R. *at 21-26*, *95*)

In the January 20, 2017 application, Key asked Takesha to list the garaging location of all cars if different from her home address listed in the application and to list "all . . . other operators including those with currently suspended or revoked drivers licenses." (R. *at 21*) Takesha listed no other garaging locations for the 2002 Kia Optima besides her own address in Kansas City, Kansas and listed only herself as an operator. (R. *at 21*) Takesha also answered "Yes" to the question "Have all possible drivers, even those that may operate your vehicle on an infrequent basis been listed on this application? If no, explain." (R. *at 22*)

The January 20, 2017 application included an "Acknowledgement of Applicant" signed by Takesha, which stated in relevant part:

> . . . It is necessary that all potential drivers . . . be disclosed to enable the Company to accurately establish both the acceptability of the application and the rate which is to be charged.
>
> I have provided all information . . . on my application for car insurance with Key Insurance Company honestly and truthfully.
>
> I understand that in the event I have failed to disclose information, particularly relating to potential operators of the vehicle(s) . . . that my policy may be considered void in the event of a claim, and/or I may be subject to the consequences of the commission of a fraudulent insurance act as provided by Kansas Statute 40-2,118.

(R. *at 23*)

Based on the application signed by Takesha, Key issued Car Insurance Policy No. KKS4209179 to Takesha with an effective date of January 20, 2017 ("2017 Policy"). (R. *at 21-23*) The 2017 Policy included Fraudulent Insurance Act provisions, which stated in part: "False statements on **YOUR** application for insurance can include, but <u>are not</u> limited to, failure to disclose: drivers . . . regularly driving **YOUR car(s)**; . . . or failure to provide **US** with **YOUR** correct residence address or garage address of **YOUR car(s)**. . . ." (R. *at 106*) The 2017 Policy also included a Kansas choice-of-law provision, which stated "[t]he provisions of this policy shall be interpreted in accordance with the laws of the State of Kansas." (R. *at 120*) The 2017 Policy stated "[t]his policy only applies to **accidents** and **losses** which happen within the United States of America, its territories or possessions, Puerto Rico, or Canada." (R. *at 118*)

In correspondence dated January 25, 2017, Key notified Takesha that it was cancelling the 2017 Policy because of an undisclosed driver, specifically Nash. (R. *at 121*)

C. February 1, 2017 Accident and Underlying Judgment

On February 1, 2017, Nash was involved in a motor vehicle accident with Wright in Jackson County, Missouri while driving the 2002 Kia Optima listed in Takesha's January 20, 2017 application and on the 2017 Policy's declarations page. (R. *at 26*)

According to Missouri Uniform Crash Report No. 17-8131 prepared by the Kansas City, Missouri Police Department: (1) Nash was the registered owner of the 2002 Kia Optima and the 2002 Kia Optima was registered in Kansas; (2) Nash's home address was in Kansas City, Kansas (a different address than Takesha's address listed in the January 20, 2017 application); and (3) Nash's Kansas driver's license was "Susp / Rev / Denied." (R. *at 95*)

Wright's counsel reported the February 1, 2017 accident to Key. (R. *at 27*) Key subsequently denied coverage for Wright's claims against Nash under the 2017 Policy. (R. *at 13*) Thereafter, Wright obtained an arbitration award against Nash, which was confirmed on April 9, 2018. (R. *at 5, 27, 36*)

D. Procedural History

On May 14, 2018, Wright filed this action "to recover insurance proceeds," alleging he "is entitled to enforce the insurance policy issued by Defendant Key" pursuant to R.S.Mo. § 379.200. (R. *at 4*, ¶ *26*) In his petition, Wright made the following factual allegations and legal conclusions:

- "At the time of the collision, Defendant Nash was driving a vehicle owned by Takesha Nash."
- "On the date of the collision, Defendant Nash had Takesha Nash's permission to use and operate the vehicle."
- "Key issued a personal automobile liability policy that provided insurance coverage to Takesha Nash and a permissive driver of the vehicle covered by Defendant Key's policy."
- "Defendant Nash and Takesha Nash complied with the terms and conditions of Defendant Key's policy."
- "Key's policy nullification was invalid. Defendant Nash was not required to be disclosed to Defendant Key as he did not reside with Takesha Nash."

(R. *at 2-4*, ¶¶ 7, 9, 20, 22, 25) Wright also alleged "this action arises out of a contract to insure a person, property, or risk located within this state" and "upon information and

belief" that Key "transact[s] business and issue[s] policies of insurance in Missouri." (R. *at 2-3*, ¶¶ 3-4)

On May 24, 2018, Nash filed a cross-claim against Key for bad faith and breach of contract. (R. *at 6-9*, ¶¶ 3-24) In his cross-claim, Nash incorporated by reference the allegations of Wright's petition and did not allege any additional facts regarding the circuit court's exercise of personal jurisdiction over Key. (*R. at 6-9*, ¶¶ 1-25)

On June 29, 2018, Key filed a motion to dismiss for lack of personal jurisdiction. (R. *at 11-36*) On July 9, 2018, Wright and Nash filed a joint response to Key's motion to dismiss. (R. *at 37-65*) On July 16, 2018, Key filed a reply in support of its motion to dismiss. (R. *at 66-121*) On November 13, 2018, the circuit court entered an order denying Key's motion to dismiss. (R. *at 122-132*; App 1-11)

On December 6, 2018, the Missouri Court of Appeals denied Key's petition for writ of prohibition. (R. *at 133*) On March 5, 2019, this Court issued a preliminary writ of prohibition.

IV. POINT RELIED ON

Key is entitled to an order directing Respondent to dismiss the underlying claims against it because the circuit court lacks personal jurisdiction over Key in that Key did not commit any acts enumerated in Missouri's long-arm statute and Key does not have sufficient minimum contacts with Missouri to satisfy due process.

Bristol-Myers Squibb Co. v. Superior Court of California, 137 S. Ct. 1773 (2017)

State ex rel. PPG Indus., Inc. v. McShane, 560 S.W.3d 888 (Mo. banc 2018)

State ex rel. Norfolk S. Ry. Co. v. Dolan, 512 S.W.3d 41 (Mo. banc 2017)

Andra v. Left Gate Prop. Holding, Inc., 453 S.W.3d 216 (Mo. 2015)

§ 506.500, R.S.Mo.

V. ARGUMENT

Key is entitled to an order directing Respondent to dismiss the underlying claims against it because the circuit court lacks personal jurisdiction over Key in that Key did not commit any acts enumerated in Missouri's long-arm statute and Key does not have sufficient minimum contacts with Missouri to satisfy due process.

Key preserved this error for review by moving for dismissal based on the circuit court's lack of personal jurisdiction over Key, filing its petition in prohibition with the Missouri Court of Appeals, and filing its petition in prohibition with this Court. (R. *at 11-36, 66-121, 133*) *See PPG Indus.*, 560 S.W.3d at 890.

"The extraordinary remedy of a writ of prohibition is available: (1) to prevent the usurpation of judicial power when the trial court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not granted." *Norfolk S. Ry.*, 512 S.W.3d at 45. "Prohibition is the proper remedy to prevent further action of the trial court where personal jurisdiction of the defendant is lacking." *Id*. Prohibition is proper "when usurpation of jurisdiction . . . is clearly evident." *State ex rel. Tarrasch v. Crow*, 622 S.W.2d 928, 937 (Mo. banc 1981). Usurpation of jurisdiction is clearly evident when "a connection between the forum and the specific claims at issue" "is missing." *Cf. PPG Indus.*, 560 S.W.3d at 893 (quoting *Bristol-Myers*, 137 S. Ct. at 1781).

"Missouri courts use a two-prong test to determine if personal jurisdiction exists over a nonresident defendant." *PPG Indus*., 560 S.W.3d at 891. "First, the out-of-state defendant's conduct must fall within Missouri's long-arm statute, section 506.600." *Id.* (internal quotation and citation omitted). Second, "the court must then determine whether the defendant has sufficient minimum contacts with Missouri to satisfy due process." *Id*. The plaintiff has the burden to "establish facts adequate to invoke Missouri's long-arm statute *and* support a finding of minimum contacts with Missouri sufficient to satisfy due process." *Getz v. TM Salinas, Inc.*, 412 S.W.3d 441, 447 (Mo. App. 2013) (emphasis added). The court's "inquiry is limited to an examination of the petition on its face and the supporting affidavits to determine the limited question of personal jurisdiction." *Andra*, 453 S.W.3d at 224. "Review of the evidence must be on a case-by-case basis that cannot be 'simply mechanical or quantitative' but instead 'must depend rather upon the quality and nature of the activity." *Id*. at 225 (quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 319 (1945)). "Whether there has been sufficient evidence

presented to make a prima facie showing that a circuit court may exercise personal jurisdiction over a defendant is a question of law" reviewed *de novo*. *Good World Deals, L.L.C. v. Gallagher*, 554 S.W.3d 905, 909 (Mo. App. 2018).

A. Respondent Erred in Denying Key's Motion to Dismiss Because the Underlying Claims Do Not Arise from Key's Commission of an Act Enumerated in Missouri's Long-Arm Statute.

"Missouri courts may exercise specific personal jurisdiction over a defendant for claims arising out of, or relating to, the defendant's activities in Missouri covered by the long-arm statute." *Ristesund v. Johnson & Johnson*, 558 S.W.3d 77, 80 (Mo. App. 2018), transfer denied (Oct. 30, 2018), (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). Missouri's long-arm statute states in relevant part:

> [A]ny corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such . . . corporation . . . to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:
>
> (1) The transaction of any business within this state;
>
> . . .
>
> (3) The commission of a tortious act within this state;
>
> . . .
>
> (5) The contracting to insure any person, property or risk located within this state at the time of contracting; . . . .

Section 506.500.1.

Despite Wright's and Nash's failure to make the required prima facie showing that Key did any of the acts enumerated in the long-arm statute, the circuit court denied Key's motion to dismiss, "conclud[ing] that Key's conduct falls within subsection 1 (transaction of any business), subsection 3 (tortious act) or subsection 5 (contracting to insure any person, property or risk located within the state at the time of contracting)." (R. *at 123*; App 2) For the reasons discussed below, the circuit court's usurpation of jurisdiction in

denying Key's motion to dismiss is clearly evident because Key's conduct does not fall within Missouri's long-arm statute.

1. The Underlying Claims Do Not Arise From Key's Transaction of Business in Missouri.

In its November 13, 2018 order denying Key's motion to dismiss, the circuit court concluded Key transacted business in Missouri by "deny[ing] coverage to Nash, which meant that Key refused to perform any of the alleged contractual obligations." (R. *at 124*; App 3) In support of this conclusion, the circuit court cited *State ex rel. Metal Serv. Ctr. of Ga., Inc. v. Gaertner*, 677 S.W.2d 325 (Mo. 1984); *Wilson Tool & Die, Inc. v. TBDN-Tenn. Co.*, 237 S.W.3d 611 (Mo. App. 2007); and *Sloan-Roberts v. Morse Chevrolet, Inc*., 44 S.W.3d 402 (Mo. App. 2001), for the propositions that "even a single transaction can confer jurisdiction" and the "failure to perform a contractual obligation in Missouri can constitute the transaction of business for purposes of the long-arm statute." The circuit court determined that Wright's and Nash's mere allegations that Key failed to defend Nash and to settle Wright's claims "establish that Key transacted business in this state by making a decision to deny coverage instead of providing a defense." (R. *at 124*; App 3)

In this proceeding in prohibition, Wright and Nash similarly contend they "need only to allege facts, which if believed, establish personal jurisdiction" and "Nash has certainly alleged the elements of both a breach of contract claim and fad faith failure to settle claim against Key." (Respondent's Suggestions in Opposition to Key's Petition in Prohibition ("Opposing Suggestions"), pp. 10-11) Under Wright's and Nash's theory of personal jurisdiction, adopted by the circuit court, any stranger to an insurance policy could demand coverage for a clearly noncovered lawsuit pending in the forum state and then subject the nonresident insurer, even one with whom the tortfeasor has no relationship whatsoever, to personal jurisdiction in the forum state by simply alleging the insurer breached the duty to defend.

To the contrary, when, as in this case, the defendant raises the issue of lack of personal jurisdiction and relies on supporting affidavits, "*the burden shifts to the plaintiff*

to make a prima facie showing of jurisdiction by showing: (1) that the action arose out of an activity covered by the long-arm statute, section 506.500, and (2) that defendant had sufficient minimum contacts with the forum state to satisfy due process requirements." *Conway v. Royalite Plastics, Ltd*., 12 S.W.3d 314, 318 (Mo. 2000) (emphasis added) (footnote omitted). "To demonstrate that the action arose out of an activity covered by this statute, *a plaintiff must make a prima facie showing of the validity of its claim*." *Id.* (emphasis added). A plaintiff's burden to make a prima facie showing of a valid claim requires more than just pleading sufficient facts to survive a motion to dismiss for failure to state a claim. *Capitol Indem. Corp. v. Citizens Nat'l Bank of Fort Scott, N.A*., 8 S.W.3d 893, 901 n.6 (Mo. App. 2000) (rejecting plaintiff's argument that factual allegations sufficient to state a claim for conversion upon which relief can be granted satisfied its burden to make a prima facie showing of a valid tort claim for the exercise of personal jurisdiction). Although "[a] plaintiff need not prove all of the elements that form the basis of the defendant's liability," a plaintiff "*must show that acts contemplated by the statute took place*." *Conway*, 12 S.W.3d at 318 (emphasis added).

Wright's and Nash's burden to make a prima facie showing of personal jurisdiction is not so easily satisfied with bald allegations and a recitation of the elements of their claims.[2] *Compare Good World Deals*, 554 S.W.3d at 912-13 (finding plaintiff "sufficiently demonstrated that [defendant's] conduct places it within reach of Missouri's long-arm statute" based on plaintiff's submission of supporting affidavit that defendant failed to contradict). Wright and Nash failed to allege sufficient facts to make a prima facie showing that Key owed any contractual obligations to Nash—a stranger to the 2017

[2]Key disagrees that "Nash has certainly alleged the elements of both a breach of contract claim and fad faith failure to settle claim against Key." (Opposing Suggestions, pp. 10-11) As pointed out in Key's reply in support of its motion to dismiss, neither Wright nor Nash complied with Missouri Rule of Civil Procedure 55.22(a), which requires that they either recite the relevant provisions of the 2017 Policy verbatim in their respective pleadings or attach a copy of the 2017 Policy to their respective pleadings. (R. *at 68*)

Policy—let alone that Key failed to perform any contractual obligations in Missouri. (R. *at 37-65*) They also failed to cite any legal authority for the proposition that a defendant's failure to perform a nonexistent contractual obligation in the forum state constitutes the transaction of business under Missouri's long-arm statute. (R. *at 37-65*)

With one inapposite exception, all of the cases cited by Wright and Nash involved a defendant's *commission* of an action. *See Metal Serv. Ctr.*, 677 S.W.2d at 327-28 (defendant shipped materials to Missouri for processing and received materials from Missouri when work was completed); *Wilson Tool & Die*, 237 S.W.3d at 616 (defendant caused "unfinished die to be shipped into Missouri for further fabrication and retaking it after it was completed"); *Sloan-Roberts*, 44 S.W.3d at 407-08 (defendant purchased automobile in Missouri). In *Mid-America, Inc. v. Shamaiengar*, 714 F.2d 61, 61-62 (8th Cir. 1983), cited in the Opposing Suggestions, the defendants promised to "come to Iowa to aid in the construction of [a fuel alcohol] plant," and "they broke this promise." The Eighth Circuit Court of Appeals affirmed the district court's order denying the defendants' motion to dismiss because, by breaking their promise, "they inevitably caused economic consequences of some magnitude within the State of Iowa" and "[i]t is therefore not unreasonable for them to have anticipated being haled into the courts of Iowa to defend their alleged breach of contract." *Id.* at 62.

Key, in contrast to the defendants in *Mid-America*, made no promises whatsoever in the 2017 Policy to Nash, an unlicensed and undisclosed owner and driver of the 2002 Kia Optima. *Mid-America* is distinguishable on the additional bases that it did not address whether the defendants transacted business in the forum state, did not address whether the defendants' alleged conduct fell within the forum state's long-arm statute, and predated *Helicopteros*, which formally distinguished specific from general personal jurisdiction. The only issue considered in *Mid-America* was whether subjecting the defendants to suit in the forum state would result in "fundamental unfairness." 714 F.2d at 62. *Mid-America*, therefore, does not support Wright's and Nash's contention that Key's failure to perform contractual duties it did not owe to Nash in Missouri constituted the transaction of business in Missouri for purposes of the long-arm statute.

Even if Key had owed a contractual obligation, which it did not, the authorities relied upon by Wright and Nash would not support specific personal jurisdiction based on the transaction of business in Missouri. Key's business activities would have taken place in Kansas, where Key is incorporated and maintains its principal place of business. At best, Key would have hired Missouri defense counsel to represent Nash. Key itself would not have been conducting or transacting any business in Missouri. *Cf. Johnson Heater Corp. v. Deppe*, 86 S.W.3d 114, 120 (Mo. App. 2002) ("[U]se of the mail or telephone communications, without more, does not constitute the transaction of business for purposes of long-arm jurisdiction in Missouri."). Wright and Nash have failed to cite a single case in which an insurer's alleged breach of the duty to defend by failing to retain defense counsel in the forum state constituted the transaction of business in the forum state.

"A particular purpose" of Missouri's long-arm statute is "to confer jurisdiction over nonresidents *who enter into various kinds of transactions with residents of Missouri*." *Metal Serv. Ctr.*, 677 S.W.2d at 327. Key did not enter into any transaction with a Missouri resident, did not solicit or accept any insurance applications from Missouri residents, and did not agree to insure Nash, an unlicensed and undisclosed owner and driver, for his operation of the 2002 Kia Optima in Missouri. (R. *at 12, 4-8*) The only business Key transacted that is relevant to the underlying claims was the issuance of the 2017 Policy to Takesha, a Kansas resident, to insure vehicles Takesha represented as principally garaged in Kansas. Key's "use of the mail or telephone communications" with Wright and Nash in the investigation and denial of Wright's claim against Nash, "without more, does not constitute the transaction of business for purposes of long arm jurisdiction in Missouri." *Capitol*, 8 S.W.3d at 904. *See also Stavrides v. Zerjav*, 848 S.W.2d 523, 529 (Mo. App. 1993) (Illinois defendant did not transact business in Missouri by collecting payment from Missouri).

To the extent Wright and Nash rely on the "promises" Key made in the 2017 Policy to Takesha, as discussed in further detail below, Takesha's material misrepresentations in the January 20, 2017 application vitiated coverage under the 2017

Policy as a matter of Kansas law. *See* K.S.A. 40-2,118(f) ("An insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act."). Key did not owe Nash any contractual obligations under the 2017 Policy. (R. *at 101, 106*) As such, Key did not break any promises to perform any contractual obligations in Missouri. Key's alleged failure to defend a noninsured, Nash, and settle Wright's noncovered claims did not constitute the transaction of business in Missouri for purposes of specific personal jurisdiction. *Cf. State ex rel. Ill. Farmers Ins. Co. v. Koehr*, 834 S.W.2d 233, 235 (Mo. App. 1992) (foreign insurer did not transact business in Missouri by issuing policy to Illinois residents that included uninsured motorist coverage for Missouri accidents); *State ex rel. William Ranni Assocs., Inc. v. Hartenbach*, 742 S.W.2d 134, 141 (Mo. 1987) (exercise of specific personal jurisdiction over foreign defendant was not permitted because he owed no duty and breached no duty to plaintiffs).

Key's supporting affidavits clearly established that Key neither owed nor breached any contractual obligations to a noninsured, Nash, in Missouri. (R. *at 98, 99*) The circuit court's reliance on Wright's and Nash's mere allegations that Key failed to perform a contractual obligation in Missouri to conclude Key transacted business in Missouri was in error. And, even if Key had owed a contractual obligation to Nash, its denial of coverage still would not be sufficient because Key committed no act that constituted the transaction of business in Missouri.

2. Key Did Not Commit a Tortious Act in Missouri.

In its November 13, 2018 order denying Key's motion to dismiss, the circuit court concluded Key committed a tort in Missouri because "it was foreseeable to Key that its denial of coverage would result in a Missouri court entering a judgment against Nash who is a Missouri resident." (R. *at 125*; App 4) What Key did in Missouri or targeted at Missouri is nowhere to be found in the pleadings, the joint response to Key's motion to dismiss, the circuit court's order, or the Opposing Suggestions.

In support of its conclusion that Key committed a tort in Missouri, the circuit court cited *William Ranni Assocs.*, 742 S.W.2d at 139; and *Noble v. Shawnee Gun Shop, Inc.*, 316 S.W.2d [sic] 364, 372-73 (Mo. App. 2010), for the proposition that the test is

"whether the defendant committed an act outside the forum and did or should reasonably have foreseen that the action would likely result in injury to someone in Missouri." (R. *at 125*; App 4) Without any discussion of whether Wright and Nash made the required prima facie showing of a *valid* tort claim arising out of Key's commission of a *tortious* act in Missouri or targeted at Missouri, the circuit court "conclude[d] that Key committed a tort in Missouri and Wright's and Nash's claim [sic] arise from the commission of that tort." (R. *at 125*; App 4)

Neither Wright nor Nash has even asserted any tort claim against Key. Under Missouri law, "[a] party relying on a defendant's commission of a tort within this state to invoke long arm jurisdiction must make a prima facie showing of the validity of his claim." *Capitol*, 8 S.W.3d at 899. A plaintiff's failure to state a cause of action is dispositive as to the failure to make a prima facie showing of a valid claim. *Stavrides*, 848 S.W.2d at 528 ("Having failed to state a cause of action for fraudulent misrepresentation, Stavrides has accordingly made no prima facie showing of the validity of his fraud claim."). As discussed above, a plaintiff's burden to make a prima facie showing of a valid claim requires more than just pleading sufficient facts to survive a motion to dismiss for failure to state a claim. *Capitol*, 8 S.W.3d at 901 n.6. A plaintiff must show that the defendant committed the tortious act in Missouri and the act caused the plaintiff's injuries. *Hollinger v. Sifers*, 122 S.W.3d 112, 116 (Mo. App. 2003). When, as in the instant lawsuit, a defendant owed no duty to the plaintiff, the plaintiff cannot make the required prima facie showing of a valid tort claim. *William Ranni Assocs.*, 742 S.W.2d at 141. In short, Wright and Nash "cannot rely on a non-existent tort claim to establish long-arm jurisdiction." *Flooring Sys., Inc. v. Beaulieu Grp., LLC*, 187 F. Supp.3d 1091, 1096 (E.D. Mo. 2016).

Wright's equitable garnishment claim is not a tort claim, but rather one "in equity against the insurance company to seek satisfaction of one's judgment under an insurance policy." *McDonald v. Ins. Co. of State of Pa.*, 460 S.W.3d 58, 67 (Mo. App. 2015). Nash's breach of contract cross-claim is likewise not a tort claim for purposes of Missouri's long-arm statute. *William Ranni Assocs.*, 742 S.W.2d at 140 ("Because the

duty breached in this case stems from the contract, the breach does not amount to a tort."). Because Kansas law applies to Nash's purported bad faith claim against Key,[3] Nash's bad faith cross-claim sounds in contract and is not a tort claim. *Glenn v. Fleming*, 799 P.2d 79, 90 (Kan. 1990) ("wrongful failure to settle arises from the insurer's contractual obligation to defend" and "[a]n action to enforce that obligation is accordingly based on breach of contract"); *William Ranni Assocs.*, 742 S.W.2d at 140 (alleged breach of contract "does not amount to a tort").

Even if Missouri law did apply to Nash's bad faith cross-claim, Nash could still not make a prima facie showing of a valid tort claim because Key had no duty under the 2017 Policy to defend him or to settle Wright's claims. *Cf. Clayborne v. Enter. Leasing Co. of St. Louis, LLC*, 524 S.W.3d 101, 108 (Mo. App. 2017) (affirming entry of summary judgment on bad faith failure to settle claim in favor of car rental company that did not owe driver a duty to defend or to settle third-party claims). To prevail on a bad faith failure to settle claim under Missouri law, Nash must prove Key: "(1) reserve[d] the exclusive right to contest or settle any claim; (2) prohibit[ed] [him] from voluntarily assuming any liability or settling any claims without consent; and (3) is guilty of fraud or bad faith in refusing to settle a claim within the limits of the policy." *Scottsdale Ins. Co. v. Addison Ins. Co.*, 448 S.W.3d 818, 827 (Mo. 2014).

Nash cannot make a prima facie showing of a valid bad faith failure to settle claim given the uncontroverted evidence of the material misrepresentations in the January 20, 2017 application submitted to Key. (R. *at 21-23*) Pursuant to K.S.A. 40-2,118(f), "[a]n insurer shall not be required to provide coverage or pay any claim involving a fraudulent insurance act." A "fraudulent insurance act" includes any "act committed by any person who, knowingly and with intent to defraud, presents [or] causes to be presented . . . to or by an insurer . . . any . . . communication or statement as part of, or in support of, an

[3]The Policy includes a Kansas choice of law provision. (R. *at 120*) Even without this provision, Kansas law would apply because the principal location of the insured risk was Kansas. *Forsman v. Burgess*, 552 S.W.3d 667, 672 (Mo. App. 2018).

application for the issuance of . . . an insurance policy . . . , which such person knows to contain materially false information" "or conceals, for the purpose of misleading, information concerning any fact material thereto." K.S.A. 40-2,118(a). In the January 20, 2017 application, Takesha materially misrepresented the ownership and the principal driver of the 2002 Kia Optima. (R. *at 21, 95*) She did so knowingly following Key's cancellation of the 2014-2016 Policy based on Nash's involvement in a December 17, 2016 accident. (R. *at 98*) These material misrepresentations vitiated coverage as a matter of Kansas law. *See* K.S.A. 40-2,118(f).

The fact the February 1, 2017 accident occurred in Missouri does not affect the enforceability of the 2017 Policy's Fraudulent Insurance Act provisions or the application of K.S.A. 40-2,118(f) to relieve Key from any duties under the 2017 Policy with respect to the February 1, 2017 accident. *Cf. Forsman v. Burgess*, 552 S.W.3d 667, 672 (Mo. App. 2018) (enforcing exclusion in Kansas auto policy, with respect to Missouri accident, that would not be enforceable under Missouri law). "[T]here is no Missouri law which requires an out-of-state-vehicle, that is neither registered or principally garaged in Missouri, to comply with Missouri's financial responsibility laws." *Id.* "Missouri law only requires that, to operate or permit another person to operate a vehicle in Missouri, a nonresident must maintain the level of financial responsibility required in the nonresident's state of residence." *Id.* (citing R.S.Mo. § 303.025.1). Kansas law expressly allows for the exclusion of liability coverage for fraudulent insurance acts. *See* K.S.A. 40-2,118(f)-(g); *Voyles v. Garcia*, 17 P.3d 947, 950 (Kan. App. 2001) (holding K.S.A. 40-2,118 applies "to any and all insurance policies, including mandatory automobile liability policies, without exception").

The fact that Key's January 25, 2017 notice of cancellation to Takesha stated "your [Takesha's] insurance coverage under policy number KKS4209179 will cease one minute after midnight (12:01 am) on 2/27/2017" (R. *at 121*) likewise does not affect the enforceability of the 2017 Policy's Fraudulent Insurance Act provisions or the application of K.S.A. 40-2,118(f) to relieve Key from any duties under the 2017 Policy with respect to the February 1, 2017 accident. Nash's contention that Key "waived its right to rely on

the Fraudulent Insurance Act or any insurance provision regarding cancellation" (Opposing Suggestions, Exhibit A, ¶ 2.a.) is a misconstruction of Kansas law. Under Kansas law, "an insured's failure to comply with a policy condition may be waived, but generally waiver and estoppel will not expand a policy's coverage." *Russell v. Farmers Ins. Co.*, 163 P.3d 1266, 1268-69 (Kan. App. 2007). Key's denial of coverage was not based on an insured's failure to comply with a policy condition such as timely notice. Key's denial of coverage was based on K.S.A. 40-2,118(f). Moreover, Key's *cancellation* of the 2017 Policy is not at issue in this case; at issue is Key's denial of coverage for Wright's claims against Nash based on K.S.A. 40-2,118(f).

Nash's related contention that "[u]nder the terms of the cancellation notice, Key's policy was in effect on the date of the incident, which was February 1, 2017" (Opposing Suggestions, Exhibit A, ¶ 2.b.) is of no moment. Key has never contended the 2017 Policy was not in effect on February 1, 2017. Key's position is and always has been that the February 1, 2017 accident is not covered under the 2017 Policy and Key owed no duties to Nash with respect to the February 1, 2017 accident because, pursuant to K.S.A. 40-2,118(f), "[a]n insurer *shall not* be required to provide coverage or pay any claim involving a fraudulent insurance act." (Emphasis added).

As discussed above, Wright's and Nash's theory of personal jurisdiction that the mere allegation that a nonresident insurer breached its duty to defend a lawsuit in the forum state is sufficient for the exercise of personal jurisdiction is contrary to well-established case law requiring the plaintiff to "make a prima facie showing of the validity of his claim." *Capitol*, 8 S.W.3d at 899. Wright's and Nash's repeated and entirely unsupported allegations that "Key's policy required it to defend and indemnify Nash," "Key abandoned Nash and left him standing alone on the courthouse steps in Missouri," and "Key committed a tort in Missouri" (R. *at 38, 42, 51*) are not "a prima facie showing of the validity" of any tort claim. The uncontroverted evidence is that Key owed no duties and breached no duties to Nash. *See Forsman*, 552 S.W.3d at 672. Because Wright and Nash failed to identify or submit any evidence of a duty owed by Key to Nash, they failed to make the required prima facie showing of a valid tort claim.

William Ranni Assocs., 742 S.W.2d at 141 ("Because Ranni owed no duty to plaintiffs, plaintiffs fail to make a prima facie tort case. Thus jurisdiction cannot be founded on the commission of a tortious act."). The circuit court's reliance on Wright's and Nash's mere allegations that "Key committed a tort in Missouri" was in error.

3. Key Did Not Contract to Insure Any Risk in Missouri.

In its November 13, 2018 order denying Key's motion to dismiss, the circuit court concluded Key contracted to insure a risk in Missouri because Nash's negligent operation of the 2002 Kia Optima in Missouri "is precisely the kind of 'risk' that Key insured against." (R. *at 126*; App 5) The circuit court also relied on Wright's and Nash's untrue allegations "that Key's coverage obligations extend to and apply in any jurisdiction (i.e., any State or Federal forum) in which there is a proceeding seeking to impose liability on the insured for professional negligence of [or] other tortious conduct." (R. *at 126*; App 5) The circuit court did not cite any legal authority in support of its conclusion Key contracted to insure a risk in Missouri at the time of contracting and ignored the Missouri Court of Appeals' holding to the contrary in *Illinois Farmers*, 834 S.W.2d at 235.[4] (R. *at 126*; App 5)

In *Illinois Farmers*, Illinois plaintiffs sued their own insurer, an Illinois insurer, for uninsured motorist coverage with respect to an accident that occurred in Missouri. 834 S.W.2d at 234. The Missouri Court of Appeals held "because Illinois Farmers *has not committed any of the acts enumerated in § 506.500*, service pursuant to that statute does not subject Illinois Farmers to the jurisdiction of Missouri courts." *Id.* at 235 (emphasis added). When *Illinois Farmers* was decided, the acts enumerated in § 506.500 included "[t]he contracting to insure any person, property or risk located within this state at the time of contracting." *See* L. 1984, H.B. No. 1275, § 1; L. 1993, S.B. No. 253, § A.

[4]The circuit court also ignored non-Missouri cases holding to the contrary. *See Va. Farm Bur. Mut. Ins. Co. v. Dunford*, 877 So.2d 22, 23 (Fla. Dist. Ct. App. 2004) ("agree[ing] with the insurer that it did not contract to insure a risk located within this state at the time of contracting").

As recognized in *Illinois Farmers*, the test is whether the property and risk were located in Missouri *at the time of contracting*. The test is not whether the insured could possibly move the insured property to the state of Missouri at some point in the future. If it were, then the insurer in *Illinois Farmers* would have committed the act of "contracting to insure any person, property or risk located within this state at the time of contracting" and courts in every state to which an insured travels during the policy period would have personal jurisdiction over a nonresident insurer. The *Illinois Farmers* decision expressly rejected such a boundless construction of the long-arm statute. *Id.* at 235 ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.") (internal quotation omitted).

Here, as in *Illinois Farmers*, the property and risk insured under the 2017 Policy were not located in Missouri at the time of contracting. Rather, the property and risk insured under the 2017 Policy were located in Kansas. (R. *at 21-26, 101*) Under the holding in *Illinois Farmers*, Key did not contract to insure a risk in Missouri at the time of contracting by merely issuing an automobile insurance policy to a resident of an adjacent state. Consequently, the circuit court's conclusion that Key contracted to insure a risk in Missouri at the time of contracting was in error.

B. The Circuit Court's Exercise of Personal Jurisdiction Over Key Does Not Comport With Due Process.

In its November 13, 2018 order denying Key's motion to dismiss, the circuit court concluded "Key's response to Wright's and Nash's actions [] justify [its] exercise of personal jurisdiction over Key." (R. *at 127*; App 6) In support of this conclusion, the circuit court cited several non-Missouri cases all predating *Norfolk Southern Railway*, and predating the United States Supreme Court's decisions in *Bristol-Myers*, *Daimler AG v. Bauman*, 571 U.S. 117 (2014), *Walden v. Fiore*, 571 U.S. 277 (2014), and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), for the proposition "that a court has specific jurisdiction under a state's long-arm statute and under the Due Process Clause over a foreign insurance company when the insurance company fails to defend or settle a lawsuit filed in that state." (R. *at 127*; App 6) Relying on these cases, the circuit

court "conclude[d] that it has personal jurisdiction over Key because: 1) Key's policy requires it to defend claims brought anywhere in the U.S.; 2) Key had notice of Wright's intent to sue Nash in Missouri; 3) that lawsuit alleged various acts of negligence occurring in Missouri; 4) Wright's lawsuit triggered Key's duty to defend Nash in Jackson County Circuit Court and Key's duty to engage in good faith in an attempt to settle the claim; 5) Wright and Nash's arbitration occurred in Missouri; and 6) a Missouri court confirmed the arbitration." (R. *at 129*; App 8)

The circuit court erroneously relied on Wright's and Nash's unsupported and untrue allegations that "Wright's lawsuit triggered Key's duty to defend Nash in Jackson County Circuit Court and Key's duty to engage in good faith in an attempt to settle the claim" and ignored the Missouri Court of Appeals' holding in *Illinois Farmers*, 834 S.W.2d at 235, that an automobile insurer does not have "'minimum contacts' with every state in which its insured may operate a vehicle." (Emphasis added).

1. The Coverage Territory Provision in the 2017 Policy Is Not Sufficient to Comport With Due Process.

Of the six "contacts" identified by the circuit court, only one was created by Key—the territory provision in the 2017 Policy, which states "[t]his policy only applies to **accidents** and **losses** which happen within the United States of America, its territories or possessions, Puerto Rico, or Canada." (R. *at 118*) The circuit court relied on this provision as establishing that Key "should have foreseen being called into a foreign court to defend itself" because "not only was it foreseeable that Key might be sued in Missouri in connection with a dispute relating to its policy, but the '"expectation of being hauled into court in a foreign state is an express feature of its policy."'" (R. *at 130*; App 9)

In *Illinois Farmers*, however, the Missouri Court of Appeals specifically rejected the plaintiffs' argument "that by selling a policy of automobile insurance the company has 'minimum contacts' with every state in which its insured may operate a vehicle." 834 S.W.2d at 235. The Missouri Court of Appeals explained that "[d]ue process contemplates a contact with a state which is purposeful and foreseeable in order to subject a non-resident to the jurisdiction of that state." *Id.* ("The 'unilateral activity of

those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.'").

The New York Supreme Court recently addressed the issue of "whether an automobile liability policy's territory of coverage clause that covers any accident within the United States and the occurrence of the accident in the forum state are sufficient to confer personal jurisdiction over the primary insurer of the offending vehicle." *Repwest Ins. Co. v. Country-Wide Ins. Co*., 166 A.D.3d 61, 62 (N.Y. App. Div. 2018). The New York Supreme Court rejected the "foreseeability" argument that "the insurer of a 'New York State resident motorist should have reasonably anticipated that it would have to defend itself in an action where its insured is involved in a motor vehicle accident in a sister state.'" *Id*. at 64. The New York Supreme Court also disagreed with the holdings of *Farmers Insurance Exchange v. Portage La Prairie Mutual Insurance Co*., 907 F.2d 911, 914 (9th Cir. 1990), and *Rossman v. State Farm Mutual Automobile Insurance Co.*, 832 F.2d 282 (4th Cir. 1987), both cited by the circuit court, that "the territory clause of a foreign insurer's policy and the situs of the accident provides sufficient contact with the forum state." *Id*. at 66.

Two of the principal cases cited by the circuit court and relied on by Wright and Nash, *Farmers*, and *Payne v. Motorists' Mutual Insurance Cos.*, 4 F.3d 452, 456 (6th Cir. 1993), involved the application of a "but for" test not adopted by the Missouri Supreme Court. Instead, the Missouri Supreme Court has held "[t]o demonstrate that the action *arose out of* an activity covered by this statute, a plaintiff *must make a prima facie showing of the validity of its claim*." *Conway*, 12 S.W.3d at 318 (emphasis added). In contrast to *Farmers* and *Payne*, in which the plaintiffs had to establish only an alleged "but for" connection between the insurer's alleged forum activities and the plaintiff's claims, Wright and Nash must make a prima facie showing of the validity of their claims against Key, *Conway*, 12 S.W.3d at 318, which they cannot do for the reasons discussed above.

In *Ferrell v. West Bend Mutual Insurance Co*., 393 F.3d 786 (8th Cir. 2005), *Rossman*, and *Arbella Mutual Insurance Co. v. Eighth Judicial District Court ex rel.*

County of Clark, 134 P.3d 710 (Nev. 2006), the courts skipped over the long-arm statute portion of the analysis and jumped to the due process "minimum contacts" analysis. *Ferrell*, 393 F.3d at 790 ("Arkansas's long-arm statute extends personal jurisdiction over nonresidents to the extent permitted by the Constitution."); *Rossman*, 832 F.2d at 286 n.1 ("The Virginia long-arm statute asserts jurisdiction to the extent due process permits."); *Arbella*, 134 P.3d at 712 (Nevada's long-arm statute "reaches the limits of due process set by the United State Constitution."). Because the Courts in *Ferrell*, *Rossman*, and *Arbella* jumped to the minimum contacts analysis, like the Courts in *Farmers* and *Payne*,[5] they did not apply the prima facie validity standard *required* by the Missouri Supreme Court to establish specific personal jurisdiction.

The *Farmers* case is distinguishable for the additional reason that the defendant insurer's agents were alleged to have had "actual knowledge that the vehicle would be driven to Montana" and its refusal to defend an omnibus insured "brought Farmers into the Montana state court action." 907 F.2d at 915. Here, the January 20, 2017 application contained material misrepresentations that concealed Nash's ownership and operation of the 2002 Kia Optima from Key. (R. *at 21-26, 95*) Moreover, none of Key's alleged actions "brought" Nash into any Missouri litigation. Nash chose to operate the 2002 Kia Optima without a license in Missouri and not to obtain his own insurance policy for the 2002 Kia Optima.

As discussed above, under Wright's and Nash's theory of personal jurisdiction, adopted by the circuit court, any stranger to an insurance policy could demand coverage for a clearly noncovered lawsuit pending in the forum state and then subject the nonresident insurer, even one with whom the tortfeasor has no relationship whatsoever, to personal jurisdiction in the forum state following the insurer's rightful denial of coverage based on nothing more than that denial of coverage. Such third-

[5]In *Payne*, the Court also skipped over the long-arm statute portion of the analysis. 4 F.3d at 455 (Tennessee's long-arm statute "is coterminous with the limits on personal jurisdiction imposed by the due process clause").

party actions, however, cannot be used to satisfy due process. *PPG Indus.*, 560 S.W.3d at 893 n.5 ("third party's alleged unilateral mistake" does not "satisfy the due process requirement in the specific jurisdiction analysis").

Even before the sea-changing decisions of *Goodyear*, *Walden*, *Daimler*, and *Bristol-Myers*, courts criticized the holding in *Rossman*. For example, in *OMI Holdings, Inc. v. Royal Insurance Co. of Canada*, 149 F.3d 1086, 1094 (10th Cir. 1998), the Tenth Circuit Court of Appeals referred to the holdings in both *Farmers* and *Rossman* as "troubling." The Court explained:

> *Rossman* is troublesome for several reasons. First, the court's holding is based almost entirely on foreseeability. The Supreme Court, however, has cautioned that foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause. Second, within its foreseeability analysis, by chastising the defendant for having the ability to exclude certain forums from coverage and not exercising that ability, the court placed great weight on what the defendant did not do. Such reliance, however, is clearly at odds with the Supreme Court's mandate that minimum contacts be based on the defendant's affirmative actions which create a substantial connection with the forum state.

Id. (internal quotation and citations omitted) (emphasis added). The Court recognized that *Rossman* "may have stretched the minimum contacts test too far." *Id.* The Court also expressed its concern regarding "the apparent assumptions in *Farmers* [and] *Rossman* . . . that by agreeing to defend its insured in any forum, an insurer foresees being sued by its own insured in any forum when a coverage dispute arises":

> An insurance company who issues a policy in which it agrees to defend its insured in a certain forum can undoubtedly foresee that it may have to provide a defense for its insured who is haled into court there. It does not follow, however, that by agreeing to defend in the forum, that the insurance company also by implication agrees that it will litigate disputes between it

and its insured regarding the terms of an insurance contract in a foreign forum.

Id. at 1095 (emphasis added).

2. Key Did Not Purposefully Direct Any Activities to Missouri.

Despite the Missouri Supreme Court's admonishment "that a personal jurisdiction inquiry must not be mechanical" and "[m]inimum contacts are evaluated on a case-by-case basis," *Andra*, 453 S.W.3d at 226, 226 n.9, the circuit court failed to conduct any analysis of the actual facts of Wright's and Nash's claims against Key as required by *Andra*. Rather, the circuit court relied on Wright's and Nash's unsupported and untrue conclusory allegations that Key breached its duty to defend Nash and failed to settle Wright's claims. Even those allegations are insufficient to support personal jurisdiction.

As explained by the Court in *OMI Holdings*, re-emphasized by the United States Supreme Court in *Goodyear*, *Walden*, and *Daimler*, and affirmed by the Missouri Supreme Court in *Norfolk Southern Railway*, the focus of a personal jurisdiction inquiry is the defendant's contacts with the forum and the litigation. The unilateral actions of other parties are irrelevant; "the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Walden*, 571 U.S. at 285. Key "did absolutely nothing intentionally or specifically directed into Missouri." *See PPG Indus.*, 560 S.W.3d at 893 (no personal jurisdiction over defendant that directed no activity to Missouri). The location of Nash's accident with Wright does not and cannot determine whether Key purposefully availed itself of the privilege of conducting activities in Missouri and undertook actions that resulted in contacts creating a substantial connection to Missouri. *See Andra*, 453 S.W.3d at 226 ("The contacts must proximately result from actions by the defendant himself that create a substantial connection with the forum State.") (internal quotations omitted).

Another distinguishing feature of the cases relied on by Wright and Nash and cited by the circuit court is that all but one, *Farmers*, involved actions by named insureds with whom the insurer had a contractual relationship. *See Ferrell*, 393 F.3d at 790 (named

insured under general liability policy); *Payne*, 4 F.3d at 454 (plaintiffs sued as third-party beneficiaries of named insured); *Rossman*, 832 F.2d at 285 (named driver involved in accident); *Arbella*, 134 P.3d at 711 (named insureds). Even *Farmers* did not involve an undisclosed, unlicensed driver as in this case. 907 F.2d at 912 (permissive driver). This fact further undercuts the application of a foreseeability standard as endorsed by *Rossman* and *Farmers*. Here, in light of the material misrepresentations in the January 20, 2017 application, Key had absolutely no reason to foresee Nash, an undisclosed and unlicensed driver, would operate the 2002 Kia Optima in Missouri and become involved in the February 1, 2017 accident. *Cf. Erie Ins. Exch. v. Larose*, 202 So.3d 148, 156 (Fla. Dist. Ct. App. 2016) ("Larose's attempt to equate himself with a Florida named insured—rather than a nonresident permissive insured—for purposes of due process analysis is unavailing."). But, as explained above, even such foreseeability would not be enough.

Key's alleged suit-related conduct did not create a substantial connection with Missouri. Key did not "reach into" Missouri and purposefully avail itself of the privilege of conducting activities in Missouri. Key has no contacts with Missouri related to the instant lawsuit that allow the circuit court to exercise specific personal jurisdiction over Key. In fact, Key simply has no contacts with Missouri. Key's only connection with Missouri is the one created by Wright and Nash in their efforts to saddle Key with a Missouri judgment against a defendant who was not insured under the 2017 Policy and which arose out of claims that were not covered under the 2017 Policy. Wright's and Nash's unsupported allegations regarding Key's failure to defend a noninsured, Nash, and to settle Wright's noncovered claims do not satisfy their burden to make a prima facie showing that the circuit court's exercise of specific personal jurisdiction over Key comports with due process. For this additional reason, the circuit court's denial of Key's motion to dismiss was in error.

VI. CONCLUSION

Respondent exceeded the circuit court's authority and jurisdiction in denying Key's motion to dismiss for lack of personal jurisdiction. The circuit court's usurpation of jurisdiction is clearly evident from Wright's and Nash's failure to make a prima facie

showing that Key's alleged conduct falls within Missouri's long-arm statute and Key has sufficient minimum contacts with Missouri to satisfy due process. Because the circuit court lacks personal jurisdiction over Key, the preliminary writ of prohibition should be made permanent directing Respondent to dismiss the underlying claims filed by Wright and Nash against Key.

Dated this 3rd day of May, 2019.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The filing attorney certifies that this brief includes the information required by Rule 55.03 and complies with the requirement of Rule 84.06, including the limitation stated in Rule 84.06(c). This brief contains 9,784 words (excluding the cover, signature block, and the certificates) as determined by the software application for Microsoft Word. The typeface is 13 point Times New Roman.

CERTIFICATE OF SERVICE

I hereby certify that, in conformity with Rule 55.03(a), the original of this electronic filing was signed by me and will be maintained in my file. I further certify that on May 3, 2019, the foregoing was electronically filed through the Missouri Courts eFiling System and a true and accurate copy was served by U.S. Mail to:

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