

# **An Example of Personal Jurisdiction in the Cyberworld**

**By Jared R. Green & Elie A. Maalouf<sup>1</sup>**

## **I. Introduction**

We recently obtained a favorable order in a complicated, highly litigated civil case in which Judge St. Hilaire found that it was proper for the court to exercise personal jurisdiction over a foreign corporation without any physical presence in New Hampshire, but which regularly communicated employment screening information to customers in New Hampshire over the Internet. This article will discuss the facts giving rise to this jurisdictional dispute and it will explain the court's decision.

## **II. Factual Background**

In *Cormier v. Cadient, LLC et al.*<sup>2</sup>, we represented a widower whose wife was murdered by a security guard at her place of employment. We alleged that the killer had deep-seated psychological issues that should have been uncovered by the pre-employment assessment that Cadient implemented for his employer. Cadient had no physical presence in New Hampshire, and, it argued that it did not send any information to its customers in New Hampshire. Rather, according to Cadient, its customers reached out to its out-of-state computer servers to obtain pre-employment assessment results.

## **III. Procedural History**

We initially filed this case in federal court on the basis of diversity jurisdiction because Cadient was organized outside of New Hampshire and its offices were outside New Hampshire. The federal court, however, sua sponte issued an order finding that the complaint lacked sufficient evidentiary allegations to support diversity jurisdiction over Cadient because it is a limited liability corporation (LLC), which requires proving that every member of the LLC was not domiciled in New Hampshire. After consultation with Cadient's counsel, we learned that there were many different "members" of the LLC, some of which were LLCs themselves, and that it would be virtually impossible to identify all of them and their domiciles. We provided the court with an affidavit from Cadient stating that none of the members were domiciled in New Hampshire, however, the court found this insufficient. After further consultation with defense counsel, all parties agreed to voluntarily dismiss the federal suit without prejudice and re-file in state court. After we did so, Cadient moved to dismiss, in part, for lack of personal jurisdiction.

#### **IV. The Court's Decision**

In our objection to Cadient's motion to dismiss, we argued that the court had specific personal jurisdiction over Cadient. Specific jurisdiction requires that: (1) the defendant's New Hampshire contacts relate to the cause of action; (2) the defendant has purposefully availed itself of the protection of New Hampshire's laws; and (3) it would be fair and reasonable to require [the defendant] to defend the suit in New Hampshire.<sup>3</sup>

##### **A. Relatedness to the Causes of Action**

First, the trial court analyzed whether Cadient's New Hampshire contacts were related to the cause of action.<sup>4</sup> "To satisfy the relatedness factor, there must be more than just an attenuated connection between the contacts and the claim; the defendant's in-state conduct must form an important, or at least material, element of proof in the plaintiff's case. The court's assessment of relatedness is informed by the concept of foreseeability."<sup>5</sup>

We argued, and the Court agreed, that the cause of action against Cadient arose from the communication of its negligent pre-employment assessment to its customer's New Hampshire office.<sup>6</sup> Moreover, the court found that "it was entirely foreseeable that injury could result from the negligent provision of advice as to whether a person is fit to be a security guard," thus satisfying the "relatedness" prong of the inquiry.<sup>7</sup>

##### **B. Purposeful Availment**

The court next considered whether Cadient purposefully availed itself of the protection of New Hampshire laws. Citing the New Hampshire Supreme Court's decision in *Kimball Union Academy v. Genovesi*,<sup>8</sup> the court explained:

Purposeful availment requires both foreseeability and voluntariness. Voluntariness requires that the defendant's contacts with the forum state proximately result from actions by the defendant.... The contacts must be deliberate, and not based on the unilateral actions of another party. Foreseeability requires that the contacts also must be of a nature that the defendant could reasonably anticipate being haled into court there.<sup>9</sup>

Here, the court found that Cadient voluntarily contracted with its customer's New Hampshire office to provide employment screening for candidates seeking New Hampshire jobs and it was "entirely foreseeable" that the injury in this case could result from a negligent employment assessment.<sup>10</sup> Thus, Cadient could reasonably expect to be "haled into court" in New Hampshire.<sup>11</sup> Since

Cadient's New Hampshire contacts proximately result from its voluntary conduct and it was "foreseeable that such contacts are of a nature that Cadient could reasonably foresee being haled into Court," the court found that the purposeful availment prong was satisfied.<sup>12</sup>

### C. Fair and Reasonable

In assessing the final prong—whether it was fair and reasonable to require Cadient to defend the lawsuit in New Hampshire—the court considered the following factors: (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.

With respect to the first factor, the court recognized the inherent burden non-resident defendants face in defending a lawsuit in a foreign jurisdiction, however, the court noted that Cadient did not identify any specific reason why it would be burdened by defending the suit in New Hampshire. Nevertheless, the Court found that this factor weighed "in Cadient's favor to some degree" but that it was outweighed by the remaining factors.<sup>13</sup>

Next, the court found that New Hampshire's adjudicatory interest and the plaintiff's interest in obtaining convenient relief both substantially weighed in favor of exercising jurisdiction because the case involved a New Hampshire citizen who was killed at work in New Hampshire by a New Hampshire employee.<sup>14</sup>

In analyzing the fourth factor, the court did not "perceive a threat of piecemeal litigation," finding that the interstate judicial system's interest weighed in favor of the plaintiff.<sup>15</sup> Finally, since the complaint alleged that harm occurred to a New Hampshire resident in New Hampshire, the public policy considerations also weighed in favor of exercising jurisdiction.<sup>16</sup>

Since the totality of the factors weighed in favor of exercising jurisdiction, the court concluded that it was fair and reasonable to do so.<sup>17</sup>

## **V. Conclusion**

The court concluded that it was proper to exercise jurisdiction over Cadient because its contacts with New Hampshire gave rise to the cause of action, Cadient purposefully availed itself of the protection of New Hampshire's laws, and it was fair and reasonable to require Cadient to defend itself in a New Hampshire court. The court's decision is an important ruling in the emerging

area of Internet-based commerce, but it is ultimately just a confirmation of New Hampshire’s “interest in preventing [out-of-state companies] from avoiding personal jurisdiction, limiting injured parties’ recovery, and in essence blocking their own liability....”<sup>18</sup>

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<sup>1</sup> Jared Green and Elie Maalouf are attorneys at Abramson, Brown & Dugan in Manchester, New Hampshire. Their firm’s practice focuses on representing plaintiffs in medical malpractice and personal injury litigation.

Jared started working with Abramson, Brown & Dugan in 1992 while still attending law school. In the subsequent thirty years, he has represented injured people and their families in some of New Hampshire’s most complex and tragic cases, including victims of clergy sexual abuse and victims of the Hepatitis C outbreak. Most recently, Jared wrote the Brief for the Plaintiff and presented the oral argument before the New Hampshire Supreme Court in *Chartier v. Apple Therapy, Inc. et al.*—a decision in which the Court clarified the law regarding bystander emotional distress claims in the context of medical negligence cases.

Elie joined Abramson, Brown & Dugan in 2017 after graduating from Suffolk University Law School, where he served as an editor on the Suffolk University Law Review. Since then, Elie has represented numerous medical negligence victims and their families in cases involving catastrophic injuries and wrongful death. In addition to his practice, Elie serves on the New Hampshire Association for Justice’s Board of Governors and Publications Committee. He is also the editor of the Verdicts and Settlements Report in the New Hampshire Trial Lawyer’s Quarterly.

<sup>2</sup> Rockingham Sup. Ct. No. 218-2022-CV-00234 (Feb. 16, 2023) (St. Hilaire, J.)

<sup>3</sup> *Red Oak Apt. Homes v. Strategis Floor & Décor*, 173 N.H. 529, 533-34.

<sup>4</sup> *Cormier v. Cadient LLC et al.*, Rockingham Sup. Ct. No. 218-2022-CV-00234 (Feb. 16, 2023) (St. Hilaire, J.) (citing *Petition of Reddam*, 170 N.H. 590, 599 (2018) (“This factor involves whether the claim underlying the litigation directly arises out of or relates to the defendant’s forum-state activities.”)).

<sup>5</sup> *Petition of Reddam*, 170 N.H. 590, 599 (2018).

<sup>6</sup> *Cormier v. Cadient LLC et al.*, Rockingham Sup. Ct. No. 218-2022-CV-00234 at \*8 (Feb. 16, 2023) (St. Hilaire, J.) (explaining that even if Cadient made the assessment in a different state, this does not mean that Cadient’s communication of the assessment to New Hampshire was “attenuated” and not a material element of proof in the Plaintiff’s case.”)

<sup>7</sup> *Id.*

<sup>8</sup> 165 N.H. 132 (2013).

<sup>9</sup> *Cormier*, at \*9 (quoting *Genovesi*, at 140).

<sup>10</sup> *Id.* at \*9.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at \*10.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at \*11.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *State v. N. Atl. Ref., Ltd.*, 160 N.H. 275, 287 (2010).