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Recent Developments: Lesnick v. Hollingsworth & Vose Co.: Actions Purposely Directed toward Forum State Required to Subject Out-of-State Defendant to Personal Jurisdiction

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truthful commercial speech is *not* actually, inherently, or potentially misleading under the facts alleged. Because the CFP designation is not considered misleading in any way, under the facts of *Ibanez*, State re-

striction is not allowed under the First Amendment. As noted in the opinion, approximately 27,000 persons have qualified for the CFP designation. Consequently, the Supreme Court's stance on its use by individuals

and restriction by the States becomes important since a person's credentials are often considered by consumers when choosing a service provider -- including financial planners.

- *Fiorello J.P. Vicencio Jr.*

Lesnick v. Hollingsworth & Vose Co.:

***ACTIONS
PURPOSELY
DIRECTED TOWARD
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OF-STATE
DEFENDANT TO
PERSONAL
JURISDICTION.***

In *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939 (4th Cir. 1994), the United States Court of Appeals for the Fourth Circuit held that Maryland courts may not exercise personal jurisdiction over an out-of-state defendant unless the defendant's actions were purposely directed toward the forum state. In so ruling, the court followed the long-standing Supreme Court decisions on minimum contacts. Thus, in order for a state to assert personal jurisdiction, the defendant must have certain minimum contacts with the forum state and the defendant must have reasonably anticipated being subject to suit in the forum state.

Lorillard, Inc. ("Lorillard"), a New York corporation, and Hollingsworth & Vose Co. ("Hollingsworth"), a Massachusetts corporation, with their

principal places of business in New York and Massachusetts, respectively, produced the Kent cigarette. The filter medium was manufactured by Hollingsworth in Massachusetts and shipped to Lorillard's plants in Kentucky and New Jersey, where the final Kent cigarettes with the "Micronite Filter" were manufactured. Hollingsworth provided Lorillard with an estimated 10 billion asbestos-containing filters which Lorillard distributed throughout the nation between 1952 and 1956. Hollingsworth was cognizant of Lorillard's national distribution, but Hollingsworth did not direct any of its business toward the state of Maryland.

Stanley Lesnick, a Maryland resident, regularly smoked Kent cigarettes and died of cancer caused by years of inhaling the cancer-causing agent "cro-

cidolite asbestos" which is found in Kent cigarettes' filters. Beverly Lesnick ("Lesnick"), Stanley's widow, filed a diversity action against Lorillard and Hollingsworth in the United States District Court for the District of Maryland. Lesnick asserted that the defendants knew or should have known the dangers of crocidolite asbestos, but failed to make improvements or warn the public of these dangers.

The district court granted Hollingsworth's motion to dismiss for lack of personal jurisdiction. The court held that under Federal Rule of Civil Procedure 12(b)(2), Hollingsworth's contacts with Maryland were insufficient to provide a basis for jurisdiction. On appeal to the United States Court of Appeals for the Fourth Circuit, Lesnick contended that the district court erred in not asserting jurisdiction over Hollingsworth.

The court began its analysis by reviewing the Supreme Court's methodical efforts to construct and refine a standard for determining the minimum contacts necessary for a state to assert personal jurisdiction over an out-of-state defendant. Essentially, the Supreme Court has long recognized states' sovereignty to assert jurisdiction over defendants present within their borders. *Lesnick*, 35 F.3d at 941 (citing *Pennoyer v. Neff*, 95 U.S. 714, 720-22 (1878)). The court also noted the well-established rule that the activities of a foreign corporation's agent within a forum state determined

the presence of that corporation in that state. *Id.* at 941-42 (citing *St. Clair v. Cox*, 106 U.S. 350 (1882)).

Additionally, the court of appeals relied upon *International Shoe v. Washington*, 326 U.S. 310 (1945), which crafted the two-prong minimum contacts standard for evaluating a state court's exercise of personal jurisdiction over an individual not physically present in the forum state. *Lesnick*, 35 F.3d at 942. In *International Shoe*, the Court held that (1) the defendant must have certain minimum contacts with the forum state, and (2) the exercise of jurisdiction should not offend traditional notions of fair play and substantial justice. *Id.* (citing *International Shoe*, 326 U.S. at 316).

The court rejected Lesnick's argument that Hollingsworth had sufficient contacts with Maryland to satisfy the first prong of the *International Shoe* minimum contacts test. *Id.* at 946. The court pointed out that Hollingsworth was a Massachusetts corporation with its principle place of business in Massachusetts. Hollingsworth had no offices, agents, employees, or customers in Maryland. Hollingsworth also directed none of its marketing or any other business toward Maryland. *Id.* Thus, to assert jurisdiction over Hollingsworth would violate due process under the established standard. *Id.*

Lesnick also argued that Hollingsworth's connection to

Maryland stemmed from its close relationship to Lorillard and should, therefore, be subject to jurisdiction derivatively through Lorillard's contacts. *Id.* The court opined that although Hollingsworth's arrangement represented "additional conduct" beyond the mere sale of filters to Lorillard, none of Hollingsworth's activities were purposely directed toward Maryland. *Id.* at 946-47. The court further noted that all of the contacts between Hollingsworth and Lorillard were related to Hollingsworth delivering supplies from its Massachusetts plant to Lorillard's plants in Kentucky and New Jersey. *Id.* at 947.

Additionally, the court acknowledged that less than one percent of Hollingsworth's income was derived from Maryland through Lorillard's sale of cigarettes. *Id.* at 946. Moreover, Hollingsworth neither changed its production to comply with Maryland regulations nor established any type of customer service operation in Maryland. *Id.* at 947. Consequently, Hollingsworth had not enjoyed the benefits and protections of the laws of Maryland because of its lack of continuous and systematic activities within the state. *Id.* at 942 (construed in *International Shoe*, 326 U.S. at 317-19).

The court strengthened its determination by referring to the Supreme Court's refining of the minimum contacts standard. *Id.* The court reasoned that whenever a corporation "pur-

posely avails itself of the privilege of conducting activities within the forum state," it has clear notice that it is subject to suit there. *Id.* at 942-43 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). This often occurs when the defendant's activities create a "substantial connection" with the forum state. *Id.* at 943 (citing *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957)).

Similarly, the court of appeals found unpersuasive Lesnick's reliance on *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). In *World-Wide Volkswagen*, the Supreme Court stated that due process is not violated if a state asserts personal jurisdiction over a corporation "that delivers its products into the stream of commerce with the expectation that they will be purchased in the forum State." *Lesnick*, 35 F.3d at 943 (quoting *World-Wide Volkswagen*, 444 U.S. at 298).

The court interpreted the *World-Wide Volkswagen* decision in a much narrower sense. *Id.* at 944. The court stressed that foreseeability was an element in the minimum contacts analysis; thus, the "mere likelihood" that a product finds its way to a forum state was insufficient. *Id.* at 943. The defendant must "reasonably anticipate being haled into court there." *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 297). Since Hollingsworth directed no activities toward Maryland, it did not anticipate litigation in Maryland; therefore,

asserting jurisdiction over Hollingsworth would offend traditional notions of fair play and substantial justice. *Id.* (construed in *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 114 (1987)).

Ultimately, the court summarized the test it applied to determine whether personal jurisdiction should be exercised. *Id.* at 945. The court held that courts should inquire whether

(1) the defendant has created a substantial connection to the forum state by action[s] purposefully directed toward the forum state or otherwise invoking the benefits and protections of the laws of the state; and (2) the exercise of jurisdiction based on those minimum contacts would not offend traditional notions of fair play and substantial justice, taking into account such factors as (a) the burden on the defendant, (b) the interests of the forum state, (c) the plaintiff's interest in obtaining relief, (d) the efficient resolution of controversies as between states,

and (e) the shared interests of the several states in furthering fundamental substantive social policies.

Id. at 945-46 (citations omitted)

The significance of *Lesnick v. Hollingsworth & Vose Co.* is threefold. First, the United States Court of Appeals for the Fourth Circuit clarifies the extent to which Maryland state courts may assert personal jurisdiction over an out-of-state, third-party defendant. Second, the court provides a forum for citizens seeking redress for their claims by notifying out-of-state businesses that their actions, when purposefully directed toward a state, can permit the state to assert personal jurisdiction. Thus, businesses have an increased responsibility of being cognizant of the directions of their activities. Finally, the court's decision provides protection for businesses against unreasonable litigation in unforeseeable jurisdictions.

- Paul N. St. Hillaire

