

M. Barry Strudwick, <i>et al.</i>	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	FOR
Russell A. Whitney, <i>et al.</i>	*	BALTIMORE CITY
Defendants	*	Case No. 24-C-08-000767
* * * * *		

MEMORANDUM OPINION

Plaintiffs M. Barry Strudwick and Susan E. Weiss have filed suit against eight defendants alleging that they were injured primarily as a result of a defamatory website, “BARRYBUSTED.com.” Two of those defendants, Scott W. Rothstein (“Rothstein”) and Rothstein Rosenfeldt Adler P.A. (“RRA”), filed Motions to Dismiss for Lack of Personal Jurisdiction. Plaintiffs filed a Consolidated Memorandum in Opposition and Defendants Rothstein and RRA filed a reply. The Court heard arguments on the Motions on August 10, 2009. For the reasons stated herein, both Motions to Dismiss will be granted.

Plaintiff Barry Strudwick (“Strudwick”) is a resident of Maryland. Plaintiff Susan E. Weiss (“Weiss”) is a resident of New York. Defendant RRA is a law firm with principal places of business in Florida and New York. Defendant Rothstein is a resident of Florida and Chief Executive Officer of RRA. On January 25, 2008 Plaintiffs filed this action against Defendants Whitney Information Network (“WIN”), Russell A. Whitney (“Whitney”), Michael Caputo Public Relations, Inc. (“CPR”), and Michael R. Caputo (“Caputo”). On March 10, 2008 a member of the Maryland bar entered an appearance on behalf of WIN, and removed the case to the United States District Court for the District of Maryland on grounds of diversity of citizenship. Finding that WIN had failed to show complete diversity, the federal court remanded the case to this Court on May 30, 2008.

In July 2008 Rothstein and Steven N. Lippman, another lawyer at RRA, moved for admission *Pro Hac Vice* to appear on behalf of defendants Whitney and WIN. Although the Motions were initially granted, the parties filed a Consent Motion to Strike the Order granting admission, and the Order was stricken.<sup>1</sup> On July 24, 2008 Plaintiffs filed an Opposition to the Motions for Admission *Pro Hac Vice*, arguing that Rothstein and RRA “participated personally and actively in the tortious course of conduct for which this action has been brought, and, after the Plaintiffs have conducted initial discovery, they may very well be joined as Defendants.”<sup>2</sup>

At the request of the parties the case was stayed pending mediation.<sup>3</sup> On October 27, 2008 Plaintiffs amended their complaint adding Rothstein and RRA as defendants. Only Counts II-V are alleged against RRA and Rothstein: Count II (Injurious falsehood); Count III (Abuse of process); Count IV (Tortious interference with prospective business advantage); and Count V (Invasion of privacy – false light).<sup>4</sup> On January 5, 2009 Rothstein

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<sup>1</sup>The Motions were granted before plaintiffs time to respond had expired.

<sup>2</sup>Plaintiff also argued that “Rothstein participated in the underlying transactions of this case in a manner that was remarkably abusive, unprofessional and violative of the applicable rules of professional conduct[,]” and thus they should be denied admission *pro hac vice*. Plaintiffs also argued Rothstein and [RRA] had an irreconcilable conflict of interest with Whitney and WIN in that:

It is in the interests of Whitney and WIN to claim that they relied upon Rothstein and his law firm in connection with these events and to contend that they believed that Rothstein and his firm, in taking the above-described actions, were performing services that might legitimately be expected of a lawyer. The interests of Rothstein and his firm, to the contrary, are to shift as much blame as possible to Whitney and WIN.

<sup>3</sup>Shortly before the parties joint request for a stay, Defendants Whitney and WIN filed a Motion to Abstain. Before a response to the Motion to Abstain was filed, the stay was entered.

<sup>4</sup>Count I is a defamation count against other defendants.

and RRA as defendants removed the lawsuit once again to federal court. On June 1, 2009 it was once again remanded back to this Court, and on June 17, 2009 the instant Motions to Dismiss were filed.<sup>5</sup> As the facts set forth in detail below make clear, this case is really about the ownership of business interests in Costa Rica. Except where stated otherwise, all the facts come from Plaintiffs complaint and are assumed to be true for purposes of these Motions.

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### **THE COSTA RICA PROPERTIES**

The backdrop for this case are three contiguous tracts of land in Costa Rica: one large tract controlled by defendants WIN and Whitney (“Monterey” or “the Whitney Development”); one large tract owned and controlled by Strudwick and his business partner (“the Strudwick Development”) and; a small hotel owned by Monterey Del Mar, S.A. (“MDMSA”), in which plaintiff Weiss is a shareholder. WIN conducts seminars on topics including real estate investing, business strategies, stock market investment techniques, case management, asset protection, and other financially-oriented subjects, which promise the

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<sup>5</sup>In an affidavit attached to the reply, Rothstein states that he has not been “personally served” nor has he “authorized anyone to accept service” on his behalf. Although there is one sentence in the memorandum in support of the Motion that Rothstein was not served, there is no supporting argument presented. Additionally the Motion does not state lack of service as a basis but only cites Cts. & Jud. Proc. § 6-103(b) and is titled a Motion to Dismiss for *Lack of Personal Jurisdiction*.” Therefore any claim of improper service is not before the Court and has been waived. Md. Rule 2-322(a) provides:

The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

As pointed out by Neimeyer and Schuett, *Maryland Rules Commentary*, p. 201 “This rule radically changed the former Maryland motions practice by eliminating the multiplicity of motions that used to be filed and decided sequentially....” Therefore, because insufficiency of process was not raised in this motion, it has been waived.

students the path to financial riches. WIN also produces infomercials and develops and sells software on these and related topics. Whitney was Chairman and Chief Executive Officer of WIN at the time of the incidents that form the basis of this suit, and although he is no longer in either capacity, he owns 44% of the common stock of WIN.<sup>6</sup>

In 2001 Whitney and two business partners, William Ramirez and Robert Demmes, formed a joint venture for the purpose of acquiring property in Costa Rica, including the Whitney Development. Whitney ultimately bought out his partners and now is the sole owner of the Whitney Development. In 2003 Strudwick formed a company with Whitney's former partners – Demes and Ramirez – and purchased a piece of property called Monterey del Pacifico ("the Strudwick Development."). Later in 2003, Demes relinquished his stake in the Strudwick Development, which is now owned by Ramirez and Strudwick. This property sits adjacent to the Whitney Development.

MDMSA was organized to acquire ownership of land contiguous to both the Strudwick and Whitney Developments to develop a high-end resort hotel, the Hotel del Mar. Plaintiff Weiss learned of MDMSA while attending a WIN seminar. Weiss became a shareholder, investing approximately \$100,000 in MDMSA. At that time Ramirez, Demes,

Weiss and 34 other WIN students were the investors. In June and October of 2003, Whitney acquired Demes and Ramirez's shares. Under the MDMSA bylaws, the sale of stock did not grant the purchaser any voting rights unless and until there was a vote of the

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<sup>6</sup>On November 20, 2008 the Securities and Exchange Commission began an investigation of WIN, and on December 15, 2008 the United States Attorney for the Eastern District of Virginia began a grand jury investigation into WIN's marketing practices. As a result of these actions, WIN shareholders filed a lawsuit in the United States District Court for the Middle District of Florida. That suit is still pending.

shareholders permitting such voting rights. There was no such vote with respect to the shares that Whitney acquired from Demes and Ramirez.

In 2005 Weiss grew concerned about her investment in MDMSA when she noticed that she was not receiving regular financial reports, and that MDMSA had not held annual shareholder meetings in 2002, 2003, and 2004. Weiss contacted and organized some of the WIN student investors and began to exercise some shareholder rights. Whitney attempted to hold a shareholder meeting in 2005 but his efforts failed because Weiss, unhappy that Whitney had refused to disclose certain information on MDMSA prior to the meeting, advised other shareholders not to attend and a quorum was not established. In March 2006 Whitney arranged for a second meeting. Weiss sent a lawyer to represent her and her group but the meeting never progressed beyond a role call. Carl Linder, an attorney from RRA then representing Whitney and WIN, advised those present that Whitney and WIN wanted to sell the Hotel. Linder refused to provide any information on the identity of the purchaser, the purchase price, and whether there would be any remaining proceeds to distribute to the shareholders. The shareholders thus refused to authorize the sale.

In April 2006 Weiss and other investors in MDMSA called a shareholders' meeting in Panama, MDMSA's place of incorporation, and successfully ousted Whitney's board of directors and management group. They installed a new board of directors, which appointed Weiss as President of MDMSA. After this meeting, Whitney wrote the shareholders asking for a proxy so that he could sell the hotel. Again, as at the March meeting, no information was given about the planned sale. After Weiss sought unsuccessfully to gain physical possession of the hotel and Whitney purportedly transferred ownership of the Hotel to himself, MDMSA filed criminal and civil proceedings against Whitney and WIN in Costa Rica. Those proceedings are pending.

## THE TORTIOUS CONDUCT

Whitney was convinced that Strudwick was involved with Weiss's legal battle for control over MDMSA and has since launched a personal campaign against Strudwick and Weiss to cause injury to them and anyone associated with them. On June 15, 2006 Whitney sent an email to Ramirez, Strudwick's business partner, threatening litigation, criminal charges, and public humiliation. Specifically, the email warned that he and Strudwick should "[g]et ready for some criminal and other charges," which would be publicized "big time in Costa Rica and the U.S." The email further warned Ramirez that his "partner [Strudwick] is in for the shock of his life." In a subsequent email on that same day, Whitney warned that "[t]he process has started and you and your family are going to be affected, as is Barry [Strudwick]."

On December 22, 2006 Rothstein, counsel for WIN and Whitney, sent an email to Strudwick stating that he had filed a lawsuit against Strudwick, and that threatened "further legal action that is certain to be protracted, expensive and embarrassing" if Strudwick did not cease "all actions pertaining to the Monterey project." The statement that a lawsuit had been filed against Strudwick was false as the actual lawsuit was not filed until over one month later on January 29, 2007. The email, which is attached to the complaint, states in part:

As you should be aware via the lawsuit filed in New York against you, Susan Weiss, and your fellow co-conspirators, this firm is senior litigation counsel to the Whitney Group of companies.

\* \* \*

. . . . As you should now be aware, the lawsuit against you and your co-conspirators now includes multiple counts implicating all of you in a conspiracy of unprecedented magnitude. Moreover, we will not only continue to add to and amend the

lawsuit until such time as all remedies available are exhausted but we intend to pursue you and your co-conspirators in every available jurisdiction.

\* \* \*

Finally, I expect you to cease all actions pertaining to the Monterey project. Failure to comply will result in further legal action that is certain to be protracted, expensive and embarrassing.

Whitney hired co-defendant Michael Caputo<sup>7</sup> to launch a defamatory website entitled “BARRYBUSTED.com.” The website, posted on January 26, 2007, asks readers, “Are you thinking about investing with Barry Strudwick?” and then warns them that they should “THINK AGAIN.” The site further states that “Barry and his partner William Ramirez are being sued in Federal Court in New York for conspiracy, fraud, civil RICO, racketeering and mail fraud.” The website also contained pictures of Strudwick.<sup>8</sup> Also available on “BARRYBUSTED.com” was an unfiled complaint that Rothstein and Whitney had furnished to Caputo for the purpose of posting on the website. The complaint contained statements that Strudwick and Weiss had committed numerous criminal acts, including “extortion, mail fraud and wire fraud.” The complaint further indicated that Strudwick resides in Baltimore, Maryland.<sup>9</sup>

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<sup>7</sup>On information and belief Plaintiffs allege that Caputo is associated with Roger Stone, the Senior Partner and Director of Public and Governmental Affairs for Rothstein Rosenfeldt Adler Consulting Group, which is a part of RRA.

<sup>8</sup>The website also asked readers, “LISTENING TO WEISS?” and told them to “BE CAREFUL” because she was being sued for conspiracy, fraud, civil RICO, racketeering and mail fraud. Weiss is not a Maryland resident and there is no claim to an injury to her in Maryland.

<sup>9</sup>WIN sued Weiss, but not Strudwick in Florida state court in July 2006 alleging defamation. That suit was dismissed in November 2006 for lack of proper venue and jurisdiction. On December 11, 2006 WIN refiled its lawsuit in the Eastern District of New York against Weiss, not Strudwick,

Three days after “BARRYBUSTED.com” was launched, Rothstein filed the complaint against Strudwick and Weiss in the Federal District Court for the Eastern District of New York on January 27, 2007. Although Rothstein is not a member of the New York bar and not licensed to practice in the Eastern District of New York, he was the sole signatory on the complaint. Rothstein also made no effort to effect service upon any of the defendants, and Strudwick was never subject to suit in New York. Plaintiffs allege that the complaint was filed “for an illegal and improper purpose to satisfy an ulterior motive, by among other things, harassing a competitor, attempting to weaken a shareholder’s voice with her fellow shareholders, trying to extort a shareholder into giving up a legitimate proxy fight, and expecting that the litigation . . . would give them cover to promote their defamatory communications.”

Although she was never served, counsel for Weiss requested permission to file a motion to dismiss and a motion for sanctions against Rothstein and RRA under Fed. R. Civ. P. 11. The court granted the request. After the motions were filed and fully briefed, on or around August 2, 2007, Rothstein dismissed the complaint. Even after the complaint was dismissed, it remained posted on “BARRYBUSTED.com” for a full year.

On January 27, 2007, two days prior to the filing of the lawsuit, Strudwick hosted a group of developers at the Strudwick Development. Defendants displayed and distributed defamatory flyers at the hotel where Strudwick’s potential investors were staying. The flyers repeated the allegation that Strudwick had been “busted” and advised potential investors not to invest with him.

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alleging the same defamation as in the dismissed Florida action.



In February 2007 defendants sent emails that contained the same defamatory statements that were in the flyers and a hyperlink to “BARRYBUSTED.com” to 35 WIN students, including those who had invested with Whitney in the Hotel. Although not alleged in the Complaint, in their Opposition Memorandum, plaintiffs allege that seven (7) of those WIN students are Maryland residents.<sup>10</sup>

Strudwick wrote to RAA demanding that “BARRYBUSTED.com” be removed from the internet. In response, Rothstein and RRA, on February 16, 2007 sent a letter to Strudwick stating that neither the website nor the brochures were “set up or touted by employees or other agents of WIN or with WIN’s resources.” Plaintiffs allege that this statement was false because Caputo was claiming that he put the website up and prepared the flyers at the request of WIN. In an email to Rothstein dated March 1, 2007, counsel for Strudwick asked Rothstein to clarify whether Caputo’s statement that WIN was involved in the defamation was accurate. To date, Rothstein has not replied.

On or around March 7, 2007 representatives from International Living visited the Strudwick Development. On March 22, 2007 a representative from International Living contacted Strudwick and asked him to call International Living to “learn more about working with IL’s marketing team.” International Living, however, changed its mind about doing business with Strudwick upon visiting “BARRYBUSTED.com.” Plaintiffs claim that the lost marketing opportunity with International Living has cost Strudwick “hundreds of visitors and potential buyers, and millions in lost sales.”

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<sup>10</sup>Rothstein and RRA pointed out at the hearing that the document upon which plaintiffs rely to say that the email was sent to people in Maryland is not authenticated or supported by an affidavit. Rather than permitting plaintiffs to amend the complaint or file a supplemental affidavit, the Court accepts as true for purposes of this motion that the email was sent to seven WIN students in Maryland. (The document that plaintiffs rely upon lists four Maryland email addresses, three of which are associated with two persons.)

## DISCUSSION

The standard of review on a motion to dismiss for lack of personal jurisdiction was succinctly stated in *Taylor v. CSR*, 181 Md. App. 363, 373 (2008) as follows:

The defense of lack of personal jurisdiction ordinarily is collateral to the merits and raises questions of law. The burden of alleging and proving the existence of a factual basis for the exercise of personal jurisdiction, once the issue has been raised, is upon the plaintiffs. Plaintiffs must establish a prima facie case for personal jurisdiction to defeat a motion to dismiss. If facts are necessary in deciding the motion, the court may consider affidavits or other evidence adduced during an evidentiary hearing. Without an evidentiary hearing, courts are to consider the evidence in the light most favorable to the non-moving party when ruling on a motion to dismiss for a lack of personal jurisdiction.

*Id.* at 373 (citations omitted). The plaintiff's burden is to "establish a prima facie case" and the Court will view "the evidence in the light most favorable to the non-moving party[.]" *Id.*

The question of whether this Court may exercise personal jurisdiction over a foreign defendant requires a two-step analysis: "First, the requirements under the long-arm statute must be satisfied, and second, the exercise of jurisdiction must comport with due process." *see Bond v. Messerman*, 391 Md. 706, 721 (2006) (citing *Mackey v. Compass Marketing, Inc.*, 391 Md. 117 (2006)). Maryland's long-arm statute extends personal jurisdiction to the full extent allowable under the Due Process Clause. 391 Md. at 721. (citations omitted). Because the Court has "consistently held that the reach of the long arm statute is coextensive with the limits of personal jurisdiction delineated under the due process clause of the Federal Constitution . . . [the] statutory inquiry merges with our constitutional examination." *Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 22 (2005). This, however, does not mean "that it is now permissible to simply dispense with analysis under the long-

arm statute.” *Mackey*, 391 Md. at 141, n. 6. Rather, that the statutory and constitutional inquiries merge means no more than “we interpret the long-arm statute to the limits permitted by the Due Process Clause when we can do so consistently with the canons of statutory construction.” *Id.*

Maryland’s exercise of personal jurisdiction over a nonresident defendant is consistent with due process if the defendant has “minimum contacts” with the forum, so that to hale him into the forum state “does not offend traditional notions of fair play and substantial justice.” *Beyond Systems*, 388 Md. at 22 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). The “minimum contacts” required to satisfy due process can be found in two ways: general and specific jurisdiction.

The standard for determining the existence of personal jurisdiction over a nonresident defendant depends upon whether the defendant's contacts with the forum state also provide the basis for the suit. If the defendant's contacts with the State are not the basis for the suit, then jurisdiction over the defendant must arise from the defendant's general, more persistent contacts with the State. To establish general jurisdiction, the defendant's activities in the State must have been continuous and systematic.

*Beyond Systems*, 388 Md. at 22. (citations and internal quotation marks omitted). In *Camelback Ski Corp. v. Behnig*, 312 Md. 330, 338-39 (1988) the Court explained that sometimes cases do not fit “neatly” into one category or the other and when that happens “the proper approach is to identify the approximate position of the case on the continuum that exists between the two extremes, and apply the corresponding standard, recognizing that the quantum of required contacts increases as the nexus between the contacts and the cause of action decreases.”

Plaintiffs argue that Maryland has personal jurisdiction over Rothstein and RRA pursuant to Cts. and Jud. Proc. § 6-103(b)(4). Section 6-103(b)(4) provides:

A court may exercise personal jurisdiction over a person, who directly or by an agent:

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Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State....

The requirements of this section requires contacts much like the nature of the contacts required for the exercise of general jurisdiction over a defendant. *See Stover v. O'Connell Associates, Inc.*, 84 F.3d 132, 136 n. \* (4<sup>th</sup> Cir. 1996) (“While § 6-103(b)(4) covers out-of-state conduct that causes injury in the forum state, its plain language would appear to require greater contacts than the specific jurisdiction jurisprudence requires.”). However, because plaintiffs rely on both general jurisdiction and specific jurisdiction cases and on contacts relevant to both inquiries, the Court will determine if there is a basis for either general or specific jurisdiction.

### **General Jurisdiction**

In order to establish general jurisdiction, plaintiffs must show that Rothstein and RRA have engaged in “continuous and systematic” activities in Maryland. *Beyond Systems*, 388 Md. at 22. Plaintiffs argue that publically available information establishes that RRA and Rothstein have significant clients in Maryland, and these contacts satisfy Cts. and Jud. Proc. § 6-103(b)(4)’s requirement that the nonresident defendant “regularly does or solicits business” or “engages in any other persistent course of conduct in the State.” In support of their argument, plaintiffs attached to their Memorandum a document that appears to be a

printout of the web page of RRA. That document lists 48 clients including three that plaintiffs presume are Maryland clients: Café Iguana, Insurance Designers of Maryland and Zurich Insurance. RRA does not dispute that Insurance Designers of Maryland (“IDMD”) is one of its client. IDMD is an insurance company and has customers located all over the United States. From 2006 to 2008 IDMD retained RRA to handle about ten cases for IDMD customers. RRA states that during the same period it handled a total of 3,734 new matters and that the revenue’s derived from representing IDMD in those ten cases was *de minimus*. RRA appeared before the Circuit Court for Baltimore City on one of those cases.<sup>11</sup> Its involvement lasted less than six months.

Plaintiff also attached a printout from the Maryland State Department of Assessment and Taxation of Iguana Cantina, LLC and The Zurich Corporation, two businesses with principal offices in Baltimore, presumably to show that they are Maryland clients listed on RRA’s website. Without any evidence to support it, plaintiffs state that Café Iguana is a chain of nightclubs that owns and operates Iguana Cantina Night Club in Baltimore. RRA presented a printout from the Florida Division of Corporations showing that Café Iguana is a fictitious name of a Florida corporation, Kendal Sports Bar. Further Zurich Insurance is located in Illinois and is clearly not the same company as The Zurich Corporation in Baltimore. Rothstein states he does not have any clients in Maryland.

Plaintiffs also argue that “Rothstein and RRA . . . entered their appearance as counsel for their clients in Maryland, and earned hundreds of thousand[s] of dollars in fees while litigating *this case* in Maryland on behalf of WIN and Whitney.” RRA and Rothstein’s

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<sup>11</sup>*Samuel Tetteh v. Iguana Cantina, LLC*, Circuit Court for Baltimore City, 24-C-05-010213

representation in the early stages of this litigation, however, are not factors in the § 6-103(b)(4) analysis because “[w]hether general or specific jurisdiction is sought, a defendant’s ‘contacts’ with a forum state are measured as of the time the claim arose.” *Cape*, 932 F. Supp. at 127 citing *Farmers Ins. Exchange v. Portage La Prairie Mut. Ins. Co.*, 907 F.2d 911, 913 (9<sup>th</sup> Cir. 1990) (“Only contacts occurring prior to the event causing the litigation may be considered.”) and *Rossmann v. State Farm Mut. Auto. Ins. Co.*, 832 F.2d 282, 287, n. 2 (4<sup>th</sup> Cir. 1987).<sup>12</sup> See also *Metropolitan Life Insurance Co. v. Robertson-CECO Corp.*, 84 F.3d 560, 569-70 (2<sup>nd</sup> Cir. 1996) ( in “general jurisdiction cases, district courts should examine a defendant’s contacts with the forum state over a period that is reasonable under the circumstances – up to and including the date the suit was filed”); *In Re South African Apartheid Litigation v. Daimler AG*, 2009 U.S. Dist. Lexis 55065, (S.D. N. Y. June 22, 2009) (prima facie case for general jurisdiction not made where “bulk of evidence . . . post-dates the filing of the Complaint” and “[r]elevant information is limited to a period . . . prior to the commence of this lawsuit . . .”); *Haas v. A.M. King Indus.*, 28 F. Supp. 2d 644, 648 (D.C. Utah 1998) (only relevant contacts were those “up to and including the time this lawsuit was filed in 1994, and [b]ecause the RMR project began after plaintiff filed suit, it will not be considered as a relevant contact for purposes of general jurisdiction.”). *But see Carter v. Massey*, 436 F. Supp. 29, 35 (D. Md. 1977) (“Nothing in *Hanson v. Denckla* [357 U.S. 235

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<sup>12</sup>“We do not base our holding on the fact that Consolidated expanded its connection with Virginia after the accident. The company did hire agents in Virginia to conduct an investigation of the accident and did send an employee to Virginia to attempt to effect a settlement with the Rossmans. We do not think that a party’s investigation of possible legal liability after an accident creates in personam jurisdiction that would not otherwise exist. If it did, insurers would be discouraged from legitimate investigation and insureds would be deprived of its benefits.” *Rossmann* 832 F.2d at 287 n. 2.

(1958)] suggests that the activities of the defendant in the forum state must have been contemporaneous with or prior to the act or omission which created the cause of action.”).

Because Rothstein and RRA entered their appearance on behalf of WIN and Whitney *after* the alleged wrongdoing occurred, their representation of WIN and Whitney is not a relevant forum contact. But even if Rothstein and RAA’s representation of WIN and Whitney in this case is considered along with the other evidence on which plaintiffs rely, the evidence is not sufficient to show “continuous and systematic” activities in Maryland. It does not establish that they regularly do or solicit business in Maryland or that they engage in a “persistent course of conduct” in Maryland.

Plaintiffs rely primarily on *Baker & Kerr, Inc. v. Brennan*, 26 F. Supp. 2d 767 (D. Md. 2008) and *Capital Source Finance, LLC v. Delco Oil, Inc.*, 520 F. Supp. 2d 684, 690 (D. Md. 2007). Neither case advances their position. In *Baker & Kerr*, B & K, a Maryland corporation, sued Michael P. Brennan, a certified public accountant licensed in the Commonwealth of Pennsylvania, for malpractice, breach of contract, and civil conspiracy. 26 F. Supp. 2d at 768-69. Brennan had been retained by B & K to perform Maryland state and federal income tax returns from 1992 until 1995. *Id.* at 768. Over the course of those three years, Brennan frequently communicated with principals of B & K by phone, correspondence, and fax. Brennan also traveled to Maryland at least six times. *Id.* at 768-69. The Court denied Brennan’s motion to dismiss for lack of personal jurisdiction reasoning that “Brennan purposefully directed his activities to B & K in Maryland” and as such he was not being “haled into a . . . [Maryland] . . . court as the result of any random, fortuitous, or attenuated contacts, or because of any unilateral activity.” *Id.* at 770 (citation omitted).

*Baker & Kerr* does not support plaintiffs argument that Maryland has general jurisdiction over Rothstein and RAA because *Baker & Kerr* it is a specific jurisdiction case. Brennan’s contacts with Maryland – the accounting services that he provided B & K over the course of three years – formed the basis of B & K’s cause of action. Therefore, the number and quality of the contacts did not need to be “continuous and systematic.” *Beyond Systems*, 388 Md. at 22. See also *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397 (4<sup>th</sup> Cir. 2003) (“Even a single contact may be sufficient to create jurisdiction when the cause of action arises out of that single contact, provided that the principle of ‘fair play and substantial justice’ is not thereby offended.”) (citation omitted).

*Capital Source Finance*, another specific jurisdiction case, is equally distinguishable. There the Court found out-of-state attorneys subject to Maryland jurisdiction for the purposes of a contempt hearing based on their attendance at a telephonic temporary restraining order hearing and their subsequent alleged violation of the Court’s order. 520 F. Supp. 2d at 690. Because the claims against the defendants arose from their participation in the TRO hearing and their almost immediate violation of the order, the Court found that the defendants’ telephone appearance at the hearing was sufficient to confer specific jurisdiction. *Id.* at 691. Emphasizing that it was fair to subject the defendants to jurisdiction, the Court stated that:

[a]ny inconvenience . . . arising from having to litigate this contempt proceeding in a distant forum is outweighed by the court’s strong interest in requiring compliance with its own orders and by the burdens on the justice system overall if knowing disregard of a court order were not sanctionable by contempt even for nonresidents lacking other contacts with the forum state.

*Id.* Here, unlike in *Capital Source Finance*, the issue is whether the Court can assert



jurisdiction over RRA for its “continuous, extensive, and systematic” contacts that are unrelated to the instant cause of action.<sup>13</sup>

The primary case relied upon by RRA, *Cape v. Von Maur*, 932 F. Supp. 124, 128 (D. Md. 1996), on the other hand, is on point. In *Cape*, a president and sole shareholder of a dissolved Virginia corporation, TCEC, filed a malpractice suit against its non-resident attorneys. *See id.* at 125. The Court summarized the two attorneys’ sparse contacts with Maryland as follows:

As indicated, Defendants are U.S. citizens residing in Germany. The contract between TCEC and Defendants regarding the latter's legal representation of TCEC was executed in Germany. All the services rendered by them on behalf of Plaintiffs were rendered before the Armed Services Board of Contract Appeals in Germany in connection with TCEC's litigation against the U.S. Army. Defendants' only contacts with the State of

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<sup>13</sup>Nor does *Capital Source Finance* provide any support for specific jurisdiction because Plaintiffs claims do not “arise out of” Rothstein and RRA’s representation of WIN and Whitney in this case. There is no allegation in the amended complaint that suggests or hints that Rothstein and RRA’s representation of WIN and Whitney in this case form a basis for Plaintiffs claims. *See Beyond System*, 388 Md. at 25 (“If the defendant’s contacts with the forum state form the basis for the suit, however, they may establish ‘specific jurisdiction.’”) (citation omitted).

Similarly the other cases plaintiffs cite involving suits against out-of-state attorneys where personal jurisdiction was found to exist are distinguishable. *See Lyddon v. Rocha-Albertsen*, 2006 U.S. Dist. LEXIS 78957, 59-65 (E.D. Cal. Oct. 27, 2006) (harm that was done had consequences to the plaintiff’s business in Bakersfield, California); *Lawson v. Baltimore Paint & Chemical Corp.*, 298 F. Supp. 373, 379 (D. Md. 1969) (“alleged tortious injury to the Corporation was sustained in Maryland”); *De Manez v. Bridgestone Firestone N. Am. Tire, LLC*, 533 F.3d 578, 587 (7th Cir. Ind. 2008) (district court had jurisdiction to sanction a lawyer who submitted a false affidavit to the district court that he knew would be relied upon to determine an issue); *Wadlington v. Rolshouse*, 2008 U.S. Dist. LEXIS 29071 (W.D. Ky. Apr. 9, 2008) (legal malpractice case where the question was whether the out of state attorney had established an attorney client relationship to file a suit in the forum state); *Allen v. James*, 381 F. Supp. 2d 495, 498 (E.D. Va. 2005) (defendant attorney contracted to represent the plaintiff in the forum state for a tort that occurred in the forum state); *Medical Assurance Co. v. Jackson*, 864 F. Supp. 576, 577 (S.D. Miss. 1994) (Mississippi had jurisdiction over an Alabama attorney, who represented a plaintiff in alleged medical malpractice that occurred in Mississippi, on a claim that the Alabama attorney had breached the settlement agreement reached in the medical malpractice claim).

Maryland consisted of phone calls and correspondence between them in Germany and Cape in Maryland. Defendants never practiced law in Maryland, never advertised or solicited business in this State and never maintained an office here. At no time during the course of their representation of TCEC did any Defendants or their agents travel to Maryland or appear in a Maryland court on behalf of Plaintiffs or undertake to perform any services in Maryland.

*Id.* at 125-26 (emphasis added). After noting that “[b]road constructions of general jurisdiction should be generally disfavored,” the Court held that “[t]here can be no question on this record that general jurisdiction is lacking and the Court need pursue the issue no further.” *Id.* at 127. The Court also went on to hold that Maryland lacked specific jurisdiction over the nonresident attorneys. *Id.* at 128.

Here, as in *Cape*, RRA does not maintain an office in Maryland and none of its lawyers are licensed to practice law in the State of Maryland. Rather, RRA is a Florida law firm with principal places of business in Florida and New York. RRA’s contacts with Maryland have not been “continuous and systematic.” Maryland does not have general jurisdiction over RRA or Rothstein.

### **Specific Jurisdiction**

Unlike the contacts required for general jurisdiction, contacts required for specific jurisdiction need not rise to the level of “continuous and systematic.” *First American First, Inc. v. National Association of Bank Women*, 802 F.2d 1511, 1516 (4<sup>th</sup> Cir. 1986), *citing Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n. 8 (1984). In determining whether specific jurisdiction exists, the Court considers “(1) the extent to which the defendant has purposefully availed himself or herself of the privilege of conducting activities in the State; (2) whether the plaintiff’s claims arise out of those activities directed at the

State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *Beyond Systems*, 388 Md. at 26 (citations omitted). *See also Bond*, 391 Md. at 723 (citing *Burger King Corp., v. Rudzewicz*, 471 U.S. 462, 72 (1985)). Asserting specific jurisdiction over a non-resident is fair where there is a close “relationship among the defendant, the forum, and the litigation.” *First American*, 802 F.2d at 1516 (citations omitted). The specific jurisdiction analysis does not entail merely “count[ing] the contacts and quantitatively compar[ing] this case to other preceding cases.” *Carefirst of Maryland, Inc.*, 334 F.3d at 397. The analysis rather is qualitative instead of quantitative. *Id.*

The contacts that plaintiffs rely upon that relate to the cause of action are as follows: (1) an email dated December 22, 2006 sent from Rothstein to Strudwick which referenced a lawsuit that had purportedly been filed against Strudwick and threatened future litigation against Strudwick if he did not cease all actions with the subject Costa Rica land project; (2) an allegedly defamatory website, “BARRYBUSTED.com,” that contained a picture of Strudwick, and identified his place of business and residence as Maryland; (3) allegedly defamatory emails with hyperlinks to “BARRYBUSTED.com” sent to specific investors, including Maryland residents; and (4) a letter dated February 16, 2007 sent to Strudwick in Maryland in which Rothstein denies that WIN or Whitney were involved in launching “BARRYBUSTED.com.”

Rothstein and RRA argue that these acts, neither singularly nor in combination, are sufficient to show that they purposefully availed themselves of the privilege of conducting activities in Maryland. Moreover, as the damages requested in this action relate only to the Strudwick Development located in Costa Rica, Rothstein and RRA argue that any relevant contacts they may have with Maryland do not relate to plaintiffs cause of action.

**The December 22, 2006 email and the February 17, 2007 letter sent from Rothstein to Strudwick**

Plaintiffs argue that the December 22, 2006 email that Rothstein and RRA sent to Strudwick concerning the unfiled New York lawsuit, was the beginning of the defendants' defamatory "scheme,"<sup>14</sup> and therefore must be considered in determining if there is personal jurisdiction. The argument fails for two reasons. First, as a general proposition, personal jurisdiction cannot be premised solely on sending correspondence into the State. *See Bond*, 391 Md. at 723, *citing Cape*, 932 F. Supp. at 128 (stating that generally, correspondence and telephone calls with the plaintiff in the forum state are not sufficient contact with the forum state to satisfy due process requirements). In *Bond*, a Maryland plaintiff filed a legal malpractice lawsuit against his Ohio-based attorney. The plaintiff argued that Maryland had personal jurisdiction over the non-resident attorney based on seven contacts over the course of nine years in which plaintiff sought legal advice and his attorney responded either by telephone or by letter. *Id.* at 731. Noting that the non-resident attorney neither solicited business in, nor maintained offices in Maryland, the Court held that the non-resident's "contacts do not rise to the level of an 'act by which the defendant purposefully avail[ed] himself of the privilege of conducting activities within the forum State for the purposes of a Maryland court exercising personal jurisdiction over him . . .'" *Id.*

Second and more importantly, while the email may be relevant evidence at trial, plaintiffs' claims do not arise from the email sent to Strudwick, thus it is not relevant to

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<sup>14</sup>Plaintiffs emphasize that at the time this email was sent, contrary to the representations made, no lawsuit had been filed. While this point is relevant to whether the complaint states a cause of action, it is not relevant to whether Maryland has personal jurisdiction over the authors of the email.

whether there is specific jurisdiction. *Beyond Systems*, 388 Md. at 26. Plaintiffs do not allege that the email was published to a third party, which is a necessary element to three of the four counts asserted against Rothstein and RRA – injurious falsehood of Strudwick<sup>15</sup> (Count II); tortious interference with Strudwick’s prospective business advantage<sup>16</sup> (Count IV); and false light<sup>17</sup> (Count V). And while it may be relevant evidence on the fourth count, abuse of process, the abuse of process claim does not arise from the email.<sup>18</sup> Nor does

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<sup>15</sup>The tort of injurious falsehood requires that the following elements be satisfied: . . . [1] publication of matter derogatory to the plaintiff’s title to his property, or its quality, or to his business in general, or even to some element of his personal affairs, [2] of a kind calculated to prevent others from dealing with him, or otherwise to interfere with his relations with others to his disadvantage. . . [3] The falsehood must be communicated to a third person, since the tort consists of interference with the relation with such persons. . . [4] There is no presumption, as in the case of personal slander, that the disparaging statement is false, and the plaintiff must establish its falsity as a part of his cause of action.

See *Beane v. McMullen*, 265 Md. 585, 608-09 (1972), quoting *Prosser, Law of Torts*, at 919-920 (4<sup>th</sup> ed. 1971).

<sup>16</sup>The tort of interference with a business relationship that does not consist of inducing the breach of an existing contract requires that the following elements be satisfied:

(1) intentional and wilful acts; (2) calculated to cause damage to the plaintiffs in their lawful business; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting.

See *Herbert H. Martello v. Blue Cross and Blue Shield of Maryland*, 43 Md. App. 462, 476-77 (1992), quoting *Natural Design, Inc. v. Rouse*, 302 Md. 47, 71 (1984).

<sup>17</sup>One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of privacy, if (a) the false light in which the other person was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *Furman v. Sheppard*, 130 Md. App. 67, 77 (2000).

<sup>18</sup>The tort of abuse of process occurs "when a party has wilfully misused criminal or civil process after it has issued in order to obtain a result not contemplated by law." *Thomas v. Gladstone*, 386 Md. 693, 702 (2005) (citations omitted).

sending an email to Strudwick “rise to the level” of purposefully availing oneself of the privilege of conducting activities in Maryland. *See Bond*, 391 Md. at 731.

The February 17, 2007 letter sent to Strudwick suffers from the same defects as the email sent to Strudwick: it may be relevant evidence in a trial, but plaintiffs’ claims do not arise out of that letter. Plaintiffs have not alleged any facts to show that the letter injured plaintiffs. And as discussed earlier, sending correspondence into the state, without more, is not “purposefully availing” oneself of the privilege of conducting activities in the state. Thus the letter is not relevant to determining if Maryland has jurisdiction.

**The website and emails sent to Maryland WIN students**

The remaining contacts that plaintiffs assert subject defendants to the jurisdiction of this Court are the website, “BARRYBUSTED.com,” and the email flyers sent to the 35 WIN students, which included seven Maryland residents. These contacts once again illustrate how “technology brings new challenges to applying the principles of personal jurisdiction.” *MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481, 500 (2006) (citation and internal quotation marks omitted). Once upon a time, a person’s “presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citations omitted). This requirement of physical presence, however, evolved into a more flexible standard known today as “minimum contacts.” *Id.* at 316. Over 50 years ago, before the internet was imagined, the Supreme Court recognized that advances in communication technology expanded the “permissible scope of personal jurisdiction.” *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 222-23 (1957). *See also Hanson v. Denckla*, 357 U.S. 235, 250-51 (1958) (“progress in communications and transportation has made the defense of a suit in a foreign

tribunal less burdensome”). With the advent of the internet, technology has progressed in leaps and bounds, but it has still not eliminated the due process limitation on a State’s authority to subject a non-resident to its jurisdiction. *See ALS Scan v. Digital Service Consultants*, 293 F.3d 707, 712-13 (4<sup>th</sup> Cir. 2002) (rejecting the notion that an internet user submits to the jurisdiction of a State by merely sending “electronic signals into the State. . . .” because if such an interpretation of minimum contacts were adopted, “State jurisdiction over persons would be universal, and notions of limited State sovereignty and personal jurisdiction would be eviscerated.”).

*Beyond Systems* was the first time a Maryland appellate court considered the application of personal jurisdiction to cases involving the internet. There the Court cited with approval the test set out in *Zippo Manufacturing Co. v. Zippo Dot Com Inc.*, 952 F. Supp. 1119 (W.D.Pa. 1997) for determining when publication on a website forms the basis for personal jurisdiction.

[A]t one end . . . are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posed information on an Internet Website which is accessible to users in foreign jurisdictions. A passive Website that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction. The middle ground is occupied by interactive Websites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.

952 F. Supp. at 1124, *cited in Beyond Systems*, 388 Md. at 23-24. Although *Zippo* was cited in *Beyond Systems*, it was not applied. Instead the appellate court concluded that there was

no specific jurisdiction because plaintiff could not show an agency relationship between the moving defendants, who had developed and marketed interactive software, and the defendant licensees, who had used the software to the plaintiff's detriment.

In *MaryCLE*, the Court found that Maryland had personal jurisdiction over a non-resident defendant based on its internet contacts with Maryland, namely 83 unsolicited, false, and misleading emails sent to plaintiff in violation of Maryland Commercial Electronic Mail Act ("MCEMA"), Com. Law. Art. § 14-3001, et seq.<sup>19</sup> In deciding that Maryland could constitutionally assert jurisdiction over First Choice for sending the unsolicited emails, the Court noted that "[a]lthough First Choice did not deliberately select Maryland or any other state in particular as its target, it knew that the solicitation would go to Maryland residents." *Id.*

In *MaryCLE* and the three cases it relied upon,<sup>20</sup> the defendants had sent unsolicited

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<sup>19</sup>MCEMA was passed to "curb the dissemination of false or misleading information through unsolicited, commercial e-mail, as a deceptive business practice." *Id.* at 496, quoting *Beyond Systems*, 388 Md. at 16.

<sup>20</sup>One of the cases *Fenn v. MLeads Enters., Inc.*, 103 P.3d 156, 164 (Utah Ct. App. 2004) was reversed shortly after *MaryCLE* was decided. 137 P.3d 706 (Utah 2006). In *Fenn* the complaint had been filed under Utah's Unsolicited Commercial and Sexually Explicit Email Act, which required the characters "ADV" in the subject line of unsolicited commercial email. *Id.* at 709. One month after the complaint in *Fenn* was filed, Utah repealed the Act because the legislature concluded that the federal "Controlling the Assault of Non-solicited Pornography and Marketing Act" 15 U.S.C. § 7701 (2005) preempted it. *Id.* The Court held that asserting jurisdiction violated due process because one unsolicited email was not sufficient minimum contact and imposes a substantial burden on corporations to know the law of 50 states. *Id.* at 715-16.

In *Internet Doorways v. Parks*, 138 F. Supp. 2d 773, 774 (S.D. Miss. 2001) the plaintiff asserted claims for violations of the Lanham Act, 15 U.S.C. § 1125, a federal law prohibiting false or misleading representations of fact relating to commerce, and the state law tort of trespass to chattels. The defendant sent an unsolicited email to people "all over the world, including Mississippi residents, advertising a pornographic web-site" in an attempt to solicit business. The Court noted: By sending an e-mail solicitation to the far reaches of the earth for pecuniary gain, one does so at her own peril, and cannot then claim that it is not reasonably



emails marketing and soliciting business. *See* 166 Md. App. at 504. Also in each of those cases, the plaintiffs were the recipients of the unwanted emails and the receipt of the emails was the injury. Thus there was no question that “the plaintiffs' claims [arose] out of those activities directed at the State.” *Beyond Systems*, 388 Md. At 26. In fact, in *Mary CLE*, as well as the three cases relied upon therein, the cause of action was based on a statute that prohibited sending the emails that were the subject of the suits.

In contrast, here, the Maryland residents who received the emails are not the plaintiffs, and the alleged injury is not the *receipt* of the emails but injury to Strudwick’s and Weiss’ Costa Rica business interests. Count II (Injurious Falsehood) alleges that “Defendants knew the falsehoods would likely influence prospective purchasers of property at the Strudwick Development” and that the “falsehoods played a material and substantial part in inducing others not to buy property at the Strudwick Development.” Count III (abuse of process) and Count V (Invasion of privacy – false light) allege that “Strudwick has been damaged ... in the form of millions of dollars in lost sales [of Strudwick Development]” and that “Weiss has been damages [sic] ... in the form of lost revenue in her ability to effectuate sales of MDMSA or a lease of the Hotel.” Count IV (Tortious interference with prospective business advantage) alleges defendants acts were calculated to “cause a damage to Strudwick in a loss of business.” The only Strudwick business referred to in the complaint is his Costa Rica business.

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foreseeable that she will be haled into court in a distant jurisdiction to answer for the ramifications of that solicitation.”

*Id.* at 779-80.

In *Verizon Online Servs. Inc. v. Ralsky*, 203 F. Supp. 2d 601, 622-23 (E.D. Va. 2001) suit was filed by a Virginia corporation under a Virginia statute governing email. There were “knowing and repeated commercial transmissions” that the defendants knew would be routed through Verizon's servers in Virginia because the defendants sent their emails to Verizon-based domain names. *See id.* at 617-18 (citations omitted).

Therefore while it could be argued that Rothstein and RRA “purposefully availed [themselves] of the privilege of conducting activities in the State” when they sent the emails to the Maryland WIN students, *Beyond Systems*, 388 Md. at 26, because the recipients of those emails are not the plaintiffs in this action, and because the subject matter of the emails was property in Costa Rica, not Maryland, it cannot be said that the claims arise out of activities “directed at” Maryland. *See ALS Scan*, 293 F.3d at 714, *cited in MaryCLE*, 166 Md. App. at 501, n.20 (stating that a State may exercise personal jurisdiction over a non-resident when that person “(1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State’s courts.”). The emails sent to the Maryland WIN students were not sent “with the manifested intent of engaging in business or other interactions within the State” of Maryland. *ALS Scan*, 293 F.3d at 714. Thus the emails by themselves are not sufficient to confer Maryland jurisdiction over Rothstein and RRA.

Because the website in this case was passive -- it simply provided information, accurate or not -- standing alone, it too is insufficient to form a basis for jurisdiction. The fact that it was accessible to Maryland residents is not sufficient to confer jurisdiction. There was no solicitation and no interaction. *See Zippo*, 952 F. Supp. at 1124 *cited in Beyond Systems, Inc.*, 388 Md. at 23-24. *See also Cybersell v. Cybersell*, 130 F.3d 414 (9<sup>th</sup> Cir. 1997) (held that Arizona lacked jurisdiction over non-resident that maintained a passive website with no commercial activity directed at Arizona); *Medinah Mining v. Amunategui*, 237 F. Supp. 2d 1132, 1136 (D. Nev. 2002) (website that is accessible worldwide does not confer personal jurisdiction where no evidence that defendant directed website at Nevada audience); *Barrett*

*v. Catacombs Press*, 44 F. Supp. 2d 717, 731 (E.D. Pa. 1999) (defendant’s website, accessible worldwide, was not a basis for personal jurisdiction absent evidence that it targeted forum residents); *Bailey v. Turbine Design*, 86 F. Supp. 2d 790, 796 (W.D. Tenn. 2000) (held that “the mere fact that the website contained defamatory information concerning the plaintiff does not, absent some supporting evidence, mean that the defendant possessed the intent to target residents of the forum.”). *But see Kauffman Racing Equipment v. Roberts*, 2008 Ohio App. Lexis 1695, \*33 (Ohio App. 5<sup>th</sup> Dist. 2008) (held that Ohio court had jurisdiction over non-resident defendant that posted a defamatory comment on website where the alleged defamation concerned a business located in Ohio and the business practices of an Ohio resident).

The question is whether the emails and the website together<sup>21</sup> are sufficient to confer jurisdiction over Rothstein and RRA and that question is best answered by applying the “effects” test of *Calder v. Jones*, 465 U.S. 783 (1984).<sup>22</sup> In *Calder*, the plaintiff’s television career was centered in California. The non-resident reporter drew primarily on California sources in writing the allegedly defamatory article. *Id.* at 785. Shortly before publication of the article, the reporter called the plaintiff’s home and spoke to her husband to elicit his comments on the article. *Id.* at 786. *The Enquirer*, the other defendant, had its largest

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<sup>21</sup>For the reasons stated earlier, these are the only basis for asserting jurisdiction, but the analysis, and the conclusion that Maryland does not have jurisdiction, is the same even if all the contacts both case specific and general are considered. *See Camelback Ski Corp. v. Behnig*, 312 Md. at 338 (when case does not fit neatly into specific or general jurisdiction it may be appropriate to consider all the contacts together).

<sup>22</sup>Plaintiffs argue that the Court should also consider the email and letter sent to Strudwick in applying the *Calder* effects test. For the reasons stated earlier, this Court disagrees, but even if they are considered, the result is the same because the harm was directed to Strudwick’s business interests in Costa Rica, not Maryland.

circulation - over 600,000 copies - in California, so the defendants knew the harm of the allegedly tortious activity would be felt in California. “The Supreme Court upheld the exercise of personal jurisdiction over the two defendants because they had ‘expressly aimed’ their conduct towards California.” *Revell v. Columbia University School of Journalism*, 317 F.3d 467, 472 (5<sup>th</sup> Cir. 2002) (citation omitted).

In *Revell* the Court applied the *Calder* effects test in the context of a website. Revell, a Texas resident sued Lidov, a Massachusetts resident, and Columbia University, whose principle place of business is New York, for defamation arising out of Lidov's authorship of an article that he posted on an internet bulletin board hosted by Columbia. *Id.* at 569. Lidov had never been to Texas and was unaware that Revell then resided in Texas. *Id.* In the article Lidov accused Revell, then Associate Deputy Director of the FBI, of being part of a conspiracy of senior members of the Reagan Administration that, despite clear advance warnings, failed to stop the terrorist bombing of Pan Am Flight 103, which exploded over Lockerbie, Scotland in 1988. *Id.* Revell claimed damage to his professional reputation in Texas and emotional distress arising out of the alleged defamation. *Id.* Because Texas's long-arm statute reaches to the constitutional limits, the question before the Court was whether exercising personal jurisdiction over Lidov and Columbia would offend due process. *Id.* at 469-70. The Court noted that “[a]nswering the question of personal jurisdiction in this case brings . . . settled and familiar formulations to a new mode of communication across state lines.” *Id.* at 470.

Revell argued that “given the uniqueness of defamation claims and their inherent ability to inflict injury in far-flung jurisdictions,” the Court should not apply the *Zippo* scale. The Court rejected that argument and noted that “defamation has its unique features, but

shares relevant characteristics with various business torts.” *Id.* at 471 (citing *Indianapolis Colts v. Metropolitan Baltimore Football Club Ltd. Partnership*, 34 F.3d 410, 412 (7th Cir. 1994)).<sup>23</sup> The Court also rejected the plaintiff’s argument that the *Zippo* scale is in tension with the "effects" test of *Calder*. *Id.* At 471-72. Revell held that there was no personal jurisdiction in Texas because the article dealt exclusively with Revell’s actions as Associate Deputy Director of the FBI, there was no reference to Texas in the article or any reliance on Texas sources, and the article was not directed at Texas readers as distinguished from readers in other states. *Id.* at 473. The Court noted that the article was directed at the entire world, or perhaps just concerned U.S. citizens, but that it “was not about Texas,” and the defendant did not even know that the plaintiff lived in Texas at the time the article was written.

More recently the Fourth Circuit applied the *Calder* effects test and rejected a claim where the plaintiff relied on internet contacts to establish jurisdiction. In *Consulting Engineers Corporation v. Geometric Limited*, 561 F.3d 273 (4<sup>th</sup> Cir. 2009), the plaintiff sued the out-of-state defendants alleging (1) tortious interference with contractual relations, prospective business relations and/or economic advantages and (2) conspiracy to injure another in trade, business or profession; (3) breach of contract; (4) conversion; and (5) violation of Virginia's Uniform Trade Secrets Act. *Id.* at 276 n. 2. The Court summarized the effects test as requiring a plaintiff to show:

- (1) the defendant committed an intentional tort;
- (2) the plaintiff felt the brunt of the harm in the forum, such that the forum can

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<sup>23</sup>Although there is no defamation count against Rothstein and RRA, plaintiffs consistently refer to the case against them as a defamation case. *See e.g.* Opposition Memorandum at 5 (“This case concerns a campaign by ...Rothstein and RAA, to engage in egregious, *defamatory* and tortious conduct, and to make harassing and *defamatory* statements ...aimed at harming the Plaintiffs....”). Furthermore three of the four counts require proof of publication.

be said to be the focal point of the harm; and (3) the defendant expressly aimed his tortious conduct at the forum, such that the forum can be said to be the focal point of the tortious activity.

*Id.* at 280, quoting *Carefirst of Maryland, Inc.*, 334 F.3d at 398 n.7. The Court emphasized that under the effects test, the plaintiff must “establish that the defendant expressly aimed his tortious conduct at the forum, *such that the forum can be said to be the focal point of the tortious activity.*” *Id.* (emphasis in original) (citations and internal quotation marks omitted).

Here, as in *Revell* and *Consulting Engineers*, the emails and the website were not about Maryland, but rather Strudwick’s business in Costa Rica. The alleged defamatory statements concerned activities in Costa Rica, not Maryland. The alleged wrongdoing of Rothstein and RRA’s was not “expressly aimed” towards Maryland. *Calder*, 465 U.S. at 784-85. To the contrary, it was aimed toward Costa Rica. Although Rothstein and RRA knew Strudwick lived in Maryland and the complaint posted on the internet stated that he lived in Maryland, Maryland was not the “focal point” of the wrongful acts or of the harm suffered. The audience was not Maryland.<sup>24</sup>

It is not accidental that plaintiffs’ complaint alleged only that the email was sent to “WIN students, including those that invested with Whitney in the Hotel,” and that plaintiffs only mentioned that some of those students resided in Maryland in response to the motion to dismiss for lack of personal jurisdiction. “[A] plaintiff’s residence in the forum, and

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<sup>24</sup>Plaintiffs state in their Opposition Memorandum that the purpose of the conduct was aimed “in particular, at intentionally interfering with Barry Strudwick’s contracts and business dealings in his home state, Maryland,” but there are no factual allegations in the complaint in support of that statement. In fact, as Rothstein and RAA point out, Strudwick’s argument that the harm was directed toward Maryland is weakened by his claim that he has appeared on both local and national media and has been frequently cited in such diverse publications as CNBC, “The Investment News,” as well as the “Nikkei Times” in Tokyo, Japan.

suffering of harm there, will not alone support jurisdiction under *Calder*.” *Revell*, 317 F. 3d at 473 quoting *Reynolds v. International Amateur Athletic Federation*, 23 F.3d 1110, 1120 (6th Cir. 1994).<sup>25</sup> Here, neither the sources relied upon or the activities described in the website and the emails connect with Maryland. The fact that some of the WIN students who received the email reside in Maryland is not sufficient to subject these defendants to personal jurisdiction in Maryland. *See id.* at 473-74 (“the sources relied upon and activities described in an allegedly defamatory publication should in some way connect with the forum if *Calder* is to be invoked.”).<sup>26</sup>

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<sup>25</sup>In *Reynolds* the Court held that there was no personal jurisdiction over a London-based association for publication of a press release concerning the Ohio resident plaintiff because the allegedly defamatory press release dealt with the plaintiff’s activities in Monaco, not Ohio; the source of the report was a urine sample taken in Monaco and analyzed in Paris; and the “focal point” of the release was not Ohio. Plaintiff’s claim that the alleged defamation had cost him endorsement contracts in Ohio was not sufficient to subject the defendant to personal jurisdiction in Ohio.

There was no evidence that the defendants knew of the endorsement contracts or of their Ohio origin. Here Rothstein and RRA knew that Strudwick was in Maryland, and that the WIN students who received the emails resided in Maryland but those facts are not sufficient to alter the key fact that all the harm concerned business interests in Costa Rica.

<sup>26</sup>*See also Remick v. Manfredy*, 238 F.3d 248, 257 (3d Cir. 2001) (allegations that the alleged defamatory letter had been distributed throughout the “boxing community” were insufficient, because” there was no assertion that Pennsylvania had a unique relationship with the boxing industry, as distinguished from the relationship in *Calder* between California and the motion picture industry, with which the *Calder* plaintiff was associated.” (emphasis added); *IMO Indus., Inc. v. Kiekert AG*, 155 F.3d 254, 266 (3d Cir. 1998) (“The plaintiff must show that the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum.” (emphasis added)); and *Young v. New Haven Advocate*, 315 F. 3d 256, 262-63 (4<sup>th</sup> Cir. 2002) (“application of *Calder* in the Internet context requires proof that the out-of-state defendant’s Internet activity is expressly directed at or directed to the forum state.”) all discussed in *Revell*. *Revell* rejected the reasoning of the divided court in *Burt v. Board of Regents of University of Nebraska*, 757 F.2d 242, 244-45 (10th Cir. 1985), vacated as moot, *Connolly v. Burt*, 475 U.S. 1063, 89 L. Ed. 2d 599, 106 S. Ct. 1372 (1986), where personal jurisdiction was found to exist in Colorado over a Nebraska doctor who, in response to requests from Colorado hospitals, had written unflattering and allegedly defamatory letters about the plaintiff’s activities in Nebraska.

On August 24, 2009 Plaintiffs sent the Court a copy of an unpublished opinion, *Magedson v. Whitney Information, Inc.*, No. CV-08-1715-PHX-DGC (January 16, 2009) with a letter stating that the district court found that Arizona had personal jurisdiction over RAA for a claim of abuse of process for filing suit in Florida against Xcentric Ventures, LLC., an Arizona company, on facts similar to this case. Rothstein and RAA sent a letter in reply stating that the court should disregard *Magedson* in its analysis for several reasons, including the fact that the opinion was issued in January 2009 and thus, if it was to be considered, should have been attached to plaintiffs' opposition.<sup>27</sup> Sending the opinion, by letter, after argument has been completed is an end run around the order which does not permit surreplies. They are correct but the Court will not disregard the opinion because *Magedson* illustrates why jurisdiction does not exist in this case.

Initially, it is noteworthy that in *Magedson* the parties agreed that no general jurisdiction exists, so the case provides no support for plaintiffs' claim of general jurisdiction. *Slip Op.* at 3. Second, and most important, the plaintiff in *Magedson* is an Arizona company, thus the harm was in Arizona. Thus, although *Magedson*'s stated that it interpreted Ninth Circuit precedent to hold that *Calder* effects are satisfied simply by the fact that the plaintiff is a resident of the forum, there was more than residence in the forum. There was harm in the forum because the company, the business was in the forum. Furthermore, this Court is not convinced that the Ninth Circuit would uphold a finding of personal jurisdiction in this case despite its language that *Calder* effects are satisfied when

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<sup>27</sup>Rothstein and RAA point out that the factual detail in the opinion is too sketchy to determine if the case is in fact similar to this case. While the factual detail is thin, as discussed above, there are enough facts to show why it is **not** similar to this case.



the acts are “targeted at a plaintiff whom the defendant knows to be a resident of the forum state.” *Bancroft & Masters v. Augusta Nat’L*, 223 F.3d 1082, 1087 (9th Cir. 2000) *cited at Slip Op.* at 4. In *Bancroft & Masters* the Court concluded that the defaming letter “was expressly aimed at California because it individually targeted [the plaintiff] a California corporation *doing business almost exclusively in California.*” *Id.* at 1088 (emphasis added). *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1207 (9th Cir. Cal. 2006), also cited by the *Magedson* Court, *slip op.* at 4, makes clear that the Ninth Circuit recognizes that under *Calder* the harm must be suffered in the forum state.

In this circuit, we construe *Calder* to impose three requirements: “the defendant allegedly [must] have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be *suffered in the forum state.*”

(emphasis added) (citation omitted). The Court clarified that while the “brunt” of the harm need not be suffered in the forum state, there still must be “a jurisdictionally sufficient amount of harm suffered in the forum state.” *Id.* As this Court has reiterated throughout this opinion, there is *no* factual allegation of harm suffered in Maryland.

### **Due Process**

For all the reasons discussed above, the exercise of jurisdiction over Rothstein and RRA would be constitutionally unreasonable. The test of reasonableness requires a court to consider:

the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief . . . , the interstate judicial system’s interest in obtaining the most efficient resolution of controversies[,], and the shared interest of the several States in furthering fundamental substantive social policies.

*MaryCLE*, 166 Md. App. at 510, *quoting World-Wide Volkswagen Corp. v. Woodson*, 444

U.S. 286, 292 (1980). Plaintiff Susan Weiss is a resident of New York and does not claim an injury in Maryland; thus Maryland has no special interest in protecting her. Although Strudwick is a Maryland resident, Maryland does not have an interest in adjudicating his claims where the alleged harm concerns only his interests in Costa Rica. The Court rejects plaintiffs argument that a lesser showing is required because there was an intent to harm a Maryland resident. If that argument was accepted, “a nonresident defendant would be subject to jurisdiction in [Maryland] for an intentional tort simply because the plaintiff’s complaint alleged injury in [Maryland] to [Maryland] residents regardless of the defendant’s contacts . . . .” *Panda Brandywine Corp. v. Potomac Elec. Power Co.*, 253 F.3d 865, 870 (5th Cir. 2001). It may be more convenient for Strudwick to sue in Maryland, but his convenience is not controlling especially where the action concerns business interests in Costa Rica. Given Rothstein and RAA’s *de minimus* contacts with Maryland, it would be constitutionally unreasonable to require them to defend themselves in Maryland for alleged wrongdoing concerning Costa Rican properties. Ultimately due process is about fairness, but “[A]t is not fairness calibrated by the likelihood of success on the merits or relative fault.” *Revell*, 317 F. 2d at 476. Rather, the Court looks to the focal point of the wrongdoing, “not the bite of the [tort], the blackness of the calumny, or who provoked the fight.” *Id.*

### **Conspiracy Theory**

Arguing that “there is no question that [Rothstein and RAA] entered into a conspiracy to defame Strudwick and Weiss,” plaintiffs allege that Rothstein and RAA are also subject to personal jurisdiction under the conspiracy theory of jurisdiction. In response Rothstein and RAA point out that (1) there is no count for conspiracy in the complaint and (2) Count I, which alleges defamation, does not include allegations against Rothstein and RAA.

Relying on *Freetown v. Whiteman*, 93 Md. App. 168 (1992), Rothstein and RAA also argue that an attorney cannot conspire with a client in giving advice. As to the pleading, Rothstein and RAA are correct – there is no count on conspiracy and the defamation count is not alleged against them. The Court, however, will address the issue nonetheless to circumvent any request to amend the complaint.

Rothstein and RAA’s reliance on *Freetown* is misplaced. That case makes clear that an attorney may in fact conspire with a client. While acknowledging that “there can be no conspiracy when an attorney acts within the scope of his employment,” 93 Md. App. at 234-35, the Court pointed out that an attorney may be liable for conspiracy where, “the attorney did not act within the role of an advisor and merely advise, but instead knew of the client’s wrongful conduct and was actively involved in the wrongful conduct.” *Id.* (citations omitted). Thus, the fact that Rothstein and RAA are attorneys does not preclude an allegation of conspiracy.

Nonetheless, plaintiffs cannot satisfy the jurisdictional requirements of the conspiracy theory of jurisdiction, the elements of which are:

- (1) two or more individuals conspire to do something
- (2) that they could reasonably expect to lead to consequences in a particular forum, if
- (3) one co-conspirator commits overt acts in furtherance of the conspiracy, and
- (4) those acts are of a type which, if committed by a non-resident, would subject the non-resident to personal jurisdiction under the long-arm statute of the forum state, then those overt acts are attributable to the other co-conspirators, who thus become subject to personal jurisdiction in the forum, even if they have no direct contacts with the forum.

*Mackey*, 391 Md. at 129 (citations and quotation omitted) (emphasis added). *See also Fisher v. McCreary Crescent City, LLC*, 186 Md. App. 86, 109 (2009).

A review of the cases makes clear that the basis for jurisdiction over the co-conspirator must arise out of the tort; the “jurisdictional acts” relied upon must be acts by the co-conspirator that were in furtherance of the conspiracy.

To plead successfully facts supporting application of the conspiracy theory of jurisdiction a plaintiff must allege both an actionable conspiracy and a substantial act in furtherance of the conspiracy performed in the forum state. *Gemini Enterprises, Inc. v. WFMY Television Corp.*, 470 F. Supp. 559, 564 (M.D.N.C. 1979) *Textor v. Board of Regents*, 711 F.2d 1387, 1392-93 (7th Cir. Ill. 1983)

*Mackey*, 391 Md. at 128 (emphasis added). *Mackey* adopted the test set out in *Cawley v. Bloch*, 544 F. Supp. 133, 135, (D. Md. 1982), and noted that the conspiracy theory of jurisdiction is based on two principles: “(1) that the acts of one co-conspirator are attributable to all co-conspirators, and (2) that the constitutional requirement of minimum contacts between non-resident defendants and the forum can be met if there is a substantial connection between the forum and a conspiracy entered into by such defendants.” 391 Md. at 129 (emphasis added).

In concluding that the conspiracy theory of personal jurisdiction is consistent with the due process clause the Court noted:

The central due process issue raised by the conspiracy theory is whether the relationship between co-conspirators specified by the conspiracy theory is sufficient to justify the attribution contemplated by the theory. The legal relationship of one party to another may affect the jurisdictional balance; under the attribution method, the legal relationship between two or more persons may be such that it is reasonable to attribute the jurisdictional contacts of one party to the other. The effect of attribution is that the contacts that permit jurisdiction over the first party may be used against the second, thereby establishing jurisdiction over that party also. Applied to the conspiracy theory of jurisdiction, the acts of a co-conspirator in furtherance of the conspiracy may be attributed to other co-conspirators if

the requirements of the conspiracy theory are met. The attribution principle enables a court to exercise jurisdiction over nonresidents involved in a conspiracy when a co-conspirator performs jurisdictionally sufficient acts in furtherance of the conspiracy.

*Id.* at 130-31 (emphasis added).

For the reasons discussed at length above, Rothstein and RAA “could [**not**] reasonably expect” the consequences of their actions to lead to consequences in Maryland because all the harm was directed toward a business in Costa Rica.<sup>28</sup> There are no allegations of “jurisdictional acts” committed in Maryland by Whitney or WIN or any of the other defendants. WIN and Whitney in particular have continuously and systematically done business in Maryland,<sup>29</sup> and presumably have not contested jurisdiction for that reason; thus Maryland has *general* jurisdiction over them, which means that there is no requirement that the basis of jurisdiction relate to the alleged wrongdoing. There has been no allegation that “a substantial act in furtherance of the conspiracy” was “performed in” Maryland. Thus the requirements of due process are not satisfied because no “co-conspirator [has] perform[ed] jurisdictionally sufficient acts in furtherance of the conspiracy” in Maryland. *See Textor v.*

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<sup>28</sup>This case is distinguished from *Fisher v. McCreary Crescent City, LLC*, 186 Md. App. 86 (2009) where the suit was essentially about the fraudulent conveyance of insurance proceeds and only tangentially about a New Orleans business. In *Fisher* Hurricane Katrina damaged a New Orleans building in which a Maryland resident had an interest. In an action alleging fraud in connection with the insurance proceeds, the Court held that the conspiracy theory of jurisdiction applied because one of the co-conspirators live in Maryland and maintained an office in Maryland and was required under an operating agreement to deposit all funds in connection with the investment in a Maryland bank. Furthermore several meetings occurred in Maryland where one or more of the defendants made fraudulent representations to the plaintiff concerning the insurance proceeds. 186 Md. App. at 100-01, 109.

<sup>29</sup>Plaintiffs alleged in the complaint that WIN and Whitney solicit business in Maryland and schedule and conduct seminars and course work in Maryland and derive substantial revenue from Maryland.

*Board of Regents*, 711 F.2d 1387 at 1392 (noting that “the ‘conspiracy theory’ of personal jurisdiction is based on the ‘time honored notion that the acts of [a] conspirator in furtherance of the conspiracy may be attributed to the other members of the conspiracy.” *quoting Gemini Enterprises, Inc. v. WFMY Television Corp.*, 470 F. Supp. at 564) (emphasis added; alterations in original). Thus, even if the complaint was amended to add a conspiracy count, Maryland would not have personal jurisdiction over Rothstein and RAA.<sup>30</sup>

### **Wavier of Personal Jurisdiction**

Plaintiffs argue that the motion should be denied because Rothstein and RRA lost their right to challenge personal jurisdiction when they asked the court to assign the case to the Business and Technology Program.<sup>31</sup> The Motion to have this case assigned to the Business and Technology Management Program was filed on July 2, 2009, about two weeks after the Motion to Dismiss for Lack of Personal Jurisdiction was filed. The decision to assign a case to the Business and Technology Program is nothing more than a decision by the court on how to manage its cases, and a request to have a case in the program is no more “in derogation” to a contest of personal jurisdiction than a request to have a hearing on a Monday instead of a Friday. A request to have a case assigned to the Business and Technology Program can be made on the Information Report filed by a party pursuant to Md. Rule 2-111 and the decision to assign it or not is not appealable.

Plaintiffs argue that Md. Rule 16-205(c)(4) provides that cases may be transferred to the program when the “parties waive venue objections.” That is not what the rule states.

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<sup>30</sup>The Court is not deciding whether plaintiffs could state a cause of action for conspiracy against Rothstein and RAA.

<sup>31</sup>The Motion was granted.

Instead it states that in deciding whether a case should be assigned to the program, a judge *may* consider “whether the parties agree to waive venue for the hearing of motions and other pretrial matters.” Additionally “venue” is not “personal jurisdiction”. And finally, before the case was transferred to the program, the motion was filed and Judge Berger, who granted the motion, was specifically informed that Rothstein and RRA challenged jurisdiction and venue.<sup>32</sup>

Rothstein and RRA did not waive their right to argue lack of personal jurisdiction.

### **Discovery**

Finally, plaintiffs argue that at the very least, they have made a “colorable showing” of jurisdiction and that therefore the Court should allow for further jurisdictional discovery as to the full extent of the business activities of RRA and Rothstein in Maryland. Rothstein and RAA argue that all plaintiffs have provided is conclusory statements and speculation and that discovery should be denied. Plaintiffs have not suggested that discovery is needed to establish specific jurisdiction, thus any discovery would relate solely to whether RRA and/or Rothstein have “continuous and systematic” contacts with Maryland. The only Maryland contacts plaintiffs rely on to support a claim for discovery are RAA’s representation of Iguana Cantina, LLC in a 2005 case and the fact that Insurance Designers of Maryland is one of RAA’s clients.

In *Beyond Systems* the Court upheld the trial court’s denial of discovery on jurisdiction where the plaintiff produced only scant evidence in support of jurisdiction. 388

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<sup>32</sup>In fact Rothstein and RAA have not challenged venue, and any such challenge is waived. See Md. Rule 2-322(a) and Neimeyer and Schuett, *Maryland Rules Commentary*, p. 201 discussed in note 5.

Md. at 41-42. The Court stated:

We review the denial of discovery under the abuse of discretion standard and will only conclude that the trial court abused its discretion “‘where no reasonable person would take the view adopted by the [trial] court[ ]’ . . . or when the court acts ‘without reference to any guiding principles,’ and the ruling under consideration is ‘clearly against the logic and effect of facts and inferences before the court[.]’ or when the ruling is ‘violative of fact and logic.’”

*Id.* at 41(citations omitted). Thus, although the general rule is that discovery as to jurisdictional facts should be permitted before dismissing a claim for lack of personal jurisdiction, *Androutsos v. Fairfax Hospital*, 323 Md. 634, 638 (1991), the trial court has the discretion to deny discovery when there has been no showing to support a basis for jurisdiction.

During oral argument plaintiff’s counsel argued that discovery was needed regarding contacts with the state, in particular RAA and Rothstein’s representation of Maryland clients and also information about emails and letters to Maryland residents. Specific document requests mentioned were: (1) documents relating to services for Insurance Designers, Iguana Cantina, or any other Maryland client, (2) acts performed in Maryland, irrespective to where the clients are located, (3) documents Rothstein and RAA relied upon in drafting the affidavits in support of the motions; (4) documents relating to the emails sent into Maryland; (5) documents relating to the letter of Feb. 16, 2007. In summary, plaintiffs argued that they want jurisdictional discovery on three issues: (1) the extent to which tortious conduct was directed towards Maryland; (2) the extent to which defendants have engaged in general business activity in Maryland; and (3) whether defendants’ activities on behalf of Maryland clients took place in Maryland or elsewhere.



Plaintiffs’ assertion that RRA has earned “several hundreds of thousands of dollars in legal fees for [services in Maryland] . . . [and] it is only reasonable to conclude that discovery will reveal even a broader range of services, and even greater revenue . . . [.]” appears to be based on unsupported speculation and inaccurate information about the clients of Rothstein and RAA. However, out of an abundance of caution, the Court will permit discovery on general jurisdiction—that is discovery of whether RAA and Rothstein have regularly done or solicited business in Maryland or engaged in a persistent course of conduct in the State or derived substantial revenue from services rendered in the State. Although RAA and Rothstein have presented evidence that they have not, the plaintiffs should have an opportunity to explore and test that evidence. In the exercise of its discretion, the Court will not permit any discovery on the issue of specific jurisdiction because there has been **no** evidence or hint of evidence to support discovery, and to permit discovery of specific jurisdiction would be to allow plaintiffs to go on a fishing expedition.<sup>33</sup> See *Carefirst of Maryland*, 334 F.3d at 403 (“When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery”); *ALS Scan*, 293 F.3d at 716 n. 3 (upheld district court’s refusal to allow jurisdictional discovery where request was based on “conclusory assertions.”).

Therefore discovery permitted will be much narrower than what has been proposed by plaintiffs. For example the number of clients RAA and Rothstein have in Maryland and

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<sup>33</sup>Here, the “fish” have not been identified. *Contrast with Surpitski v. Hughes-Keenan Corp.*, 362 F.2d 254, 255-56 (1st Cir. Mass. 1966) (“The condemnation of plaintiff’s proposed further activities as a ‘fishing expedition’ was unwarranted. When the fish is identified, and the question is whether it is in the pond, we know no reason to deny a plaintiff the customary license.”) *cited Beyond Systems*, 388 Md. at 48 (Raker, J. dissenting).

the amount of money they make from those clients is not helpful in determining if Maryland has jurisdiction even if 100% of RAA and Rothstein clients are Maryland residents, unless RAA and Rothstein solicited business or engaged in business with those clients in Maryland. For example, RAA said that it represented Insurance Designers of Maryland in 10 matters but only one of those was a Maryland case; thus money that RAA made representing Insurance Designers of Maryland for work done exclusively outside the State of Maryland is not evidence that RAA and Rothstein continuously and systematically solicited or engaged in business in Maryland. Similarly, simply making phone calls or sending letters and emails to Maryland is not soliciting or engaging in business in Maryland.

**Conclusion**

For all the reasons stated above, the Court will enter an order granting RAA and Rothstein's motions in part and denying them in part, giving the plaintiffs a limited time to conduct the narrow discovery outlined above and to submit a supplemental memorandum based on that discovery only.

Dated: August 28, 2009

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JUDGE EVELYN OMEGA CANNON