UNDERSTANDING MEDIATION AS AN ALTERNATIVE TO LITIGATION

The most common form of alternative dispute resolution (ADR) is mediation. During a mediation, a neutral third party (often a retired judge or experienced attorney) works with the parties to try to reach a settlement of their dispute. The mediator does so by focusing on the disputed issues and exploring possible options for settlement. Mediation generally is considered “informal,” unlike litigation or arbitration. It is a non-binding, private process, in which the mediator acts as a neutral intermediary or “deal broker.”

Unlike arbitration or trial, the mediator has no power to require the parties to settle their dispute, insist on a particular result or issue a decision. The parties must come to any agreement themselves. If a settlement cannot be reached, the parties are free to try another form of ADR or go to trial.

Mediation offers a number of advantages. Most mediations take no more than a day or two to complete. Since the mediation process moves quickly and requires significantly less preparation than does litigation or arbitration, mediation generally is cost-effective.

A settlement reached at mediation is final and binding. Unlike a court judgment, the details of a mediated settlement can be kept private, allowing the parties to resolve their dispute while keeping the details of that resolution out of the public eye.

The advantages of mediation, however, do conceal certain weaknesses. Since mediation is non-binding, a mediation that ends with no agreement can feel like “wasted time.” And unless both parties are motivated to settle the dispute and demonstrate a willingness to work together to reach a compromise, mediation is unlikely to succeed.

If you have any question, please contact Grant Killoran at grant.killoran@wilaw.com or 414-276-5000.

WHAT DOES IT MEAN TO LITIGATE A CIVIL CASE?

Alternative dispute resolution (ADR) is so named because it provides an “alternative” to litigating a civil dispute before a court in a bench or jury trial. The most popular forms of ADR are mediation and arbitration, although other options exist.

Litigation is when a lawsuit is filed in a court of law. A lawsuit typically involves a dispute over a particular state of affairs: a contract breach, an injury suffered in an accident, or some other dispute situation.

Litigation offers certain advantages. Access to the decision-maker, whether judge or jury, is free of charge, except for minimal filing fees. Discovery is part of the litigation process, and can be wide-ranging, allowing the parties to gather a great deal of information. Third parties can be added to a law suit, if appropriate. The rules of evidence and procedure are well-defined. The final decision can be enforced by the court. If a party loses, that party has the right to appeal. And, litigation does not prevent the parties from attempting ADR or negotiating a settlement before, during or even after trial.

Despite these benefits, litigation also has certain disadvantages. The large case load faced by judges, as well as the demands of discovery and procedural issues, can make litigation both slow and expensive. The broad discovery allowed in litigation and the inherently public nature of litigation can expose damaging or embarrassing details, creating brand or reputation management concerns. Highly technical or complex disputes can be difficult to present to a judge or jury in an efficient and accessible manner, as judges and juries may lack the specialized knowledge needed to fully grasp the issues involved in the dispute. Litigation decisions can be appealed, adding additional expense and extending the duration of the dispute.

If you have any question, please contact Grant Killoran *at grant.killoran@wilaw.com or 414-276-5000.*

YOUR LEASED EMPLOYEES MAY NOW JOIN A UNION WITH YOUR REGULAR EMPLOYEES – AND THEY DON'T NEED TO ASK YOUR PERMISSION

Today, in *Miller and Anderson, Inc. v. Tradesmen International and Sheet Metal Works International Association, Local Union No. 19, AFL-CIO*, the NLRB decided that, pursuant to the NLRA, temporary or leased employees who work for an employer as joint employees under an agreement with a staffing agency or similar entity do not have to have the employer's consent to join the union that covers that employer's regular employees. The full opinion can be found here. This decision overturns a 2004 NRLB decision, *Oakwood Care Center*, which held that employees who were jointly employed by an employer and a staffing agency could not be in the same bargaining unit without the employer's consent. Today's

decision revives a 2000 NLRB decision, *M.B. Sturgis*, which held that both temporary and regular workers could be represented by the same union without the joint consent of the employer and the staffing agency. Under *M.B. Sturgis*, temporary staffing employees could be included in a single bargaining unit with regular employees when: (1) the staffing agency and the employer were determined to be joint employers and (2) the temporary staffing employees shared a "community of interest" with the regular employees. The *M.B. Sturgis* decision by a Clinton-appointed Board upended a 1973 NLRB decision that found that a single bargaining unit of regular employees and leased employees to be inappropriate without the consent of both employers.

The political-weighted pendulum of the Obama-appointed Board continues to swing in favor of the unions by continuing to expand the scope of the NLRA to cover additional employees and additional actions, particularly in the area of joint-employers. This inclusion of leased employees in an employer's bargaining unit is just another step down that road. Employers must be aware of this decision in any situation where they have leased employees in the same or similar positions as regular employees who are represented by a union or wish to be represented by a union.

UNDERSTANDING ALTERNATIVE DISPUTE RESOLUTION IN WISCONSIN: AN OVERVIEW

Alternative dispute resolution (ADR) offers a way for parties to resolve business disputes without going through a civil trial. ADR may take place before or after a lawsuit is filed. Many contracts, including construction, securities and Internet terms-of-service contracts, increasingly require ADR before or instead of trial. Generally speaking, courts have found these provisions enforceable.

The phrase "alternative dispute resolution" is an umbrella term covering several different types of proceedings. Direct negotiation, mediation and arbitration are the most popular forms of ADR. Although the rules differ for each, all three are intended to try to resolve a civil legal dispute without going to trial.

In Wisconsin, courts can order parties to participate in ADR. Wisconsin Statute Section 802.12(2) empowers Wisconsin Circuit Court judges to require ADR prior to trial. The parties generally are free to choose the type of ADR they wish to utilize and the ADR service provider, although the judge may make these decisions for the parties if they cannot agree.

Wisconsin judges cannot, however, require that the parties participate in the more expensive

types of ADR, including non-binding arbitration, summary jury trials, or multiple facilitated ADR processes (such as both mediation and arbitration), without the parties consent.

Also, while a Wisconsin judge can require the parties to participate in ADR, he or she cannot require them to settle their dispute. In *Gary v. Eggert*, the Wisconsin Supreme Court held that while Section 801.12 allows a judge to require some form of ADR before trial in appropriate cases, it does not allow the judge to require that the parties resolve the dispute, abandon one or more legal positions or settle out of court. The right to trial must remain available to the parties even if they are sent to ADR prior to trial.

Federal courts, including those in Wisconsin, also can order parties to participate in ADR. 28 U.S.C. 651(b) allows federal district court judges to authorize the use of ADR in civil actions and bankruptcy adversary proceedings. In the United State District Court for the Eastern District of Wisconsin, Local Rule 16(d) governs ADR considerations. In the United State District Court for the Western District Local Rule 3 (LR 16.6CJ) governs ADR.

If you have any questions, please contact attorney Grant C. Killoran at grant.killoran@wilaw.com or 414-276-5000.

LEGISLATIVE ALERT: NEW RULES AND PROCEDURES REGARDING MORTGAGE FORECLOSURES

Wisconsin recently enacted Act 376 modifying certain aspects of mortgage foreclosure proceedings, most notably a reduction to the period of time that owner-occupied, non-commercial property may be redeemed and the process of declaring a property abandoned.

Under current law, a judgment of foreclosure must specify a length of time, called a redemption period, during which a mortgagor may redeem the mortgaged property by paying the entire amount of the mortgage debt. Upon redemption, the judgment of foreclosure and the underlying mortgage are discharged, and the mortgagor retains the property. Act 376 reduces the foreclosure redemption periods applicable to mortgages upon owner-occupied, non-commercial property that are executed on or after April 26, 2016:

- The period of redemption is reduced from 12 months to 6 months after entry of judgment. This new 6-month redemption period may be extended to 8 months if, upon

motion of a mortgagor, a court finds that the mortgagor is attempting in good faith to sell the mortgaged premises and has entered into a listing agreement with a licensed broker.
- If a mortgagee, however, waives its right to a judgment for any deficiency that may remain following sale, the newly enacted 6-month redemption period is cut in half to 3 months. Similarly, the redemption period in such a case may be extended to 5 months if, upon motion of a mortgagor, a court finds that the mortgagor is attempting in good faith to sell the mortgaged premises and has entered into a listing agreement with a licensed broker.

Act 376 also provides that only a foreclosing plaintiff or the city, town, village or county where the mortgaged property is located may petition the presiding court for a finding that the mortgaged property has been abandoned by the mortgagor and its assigns.

If the court makes a finding of abandonment, Act 376 requires immediate entry of a foreclosure judgment and requires the foreclosing plaintiff, within 12 months of such entry of judgment, to hold a sale of the mortgaged premises and have the sale confirmed or release or satisfy its mortgage lien and vacate the judgment of foreclosure with prejudice. If a foreclosing plaintiff fails to complete either of the above requirements within 12 months of entry of judgment, any party to the foreclosure action or the city, town, village, or county where the mortgaged property is located may petition the court for an order compelling a sale of the property.

If you have any questions, please contact attorney John R. Schreiber at john.schreiber@wilaw.com or 414-276-5000.

"THE JUDGMENT IS AFFIRMED BY AN EQUALLY DIVIDED COURT"

With a one sentence opinion, the United States Supreme Court issued its first deadlocked ruling following the death of Justice Antonin Scalia. The ruling came in a creditors' rights case that languished before the Court for some time, hinting of a divided Court on the issue prior to Scalia's death.

In *Hawkins v. Community Bank of Raymore*, the United States Court of Appeals for the Eighth Circuit addressed a dispute between a bank and a developer that defaulted on its loans from the bank. The two members of the developer and their spouses guarantied the loans. The spouses of the guarantors of the loan sued the bank, alleging they were required to guaranty the loan only because of their spousal status and, therefore, were discriminated against

pursuant to the Equal Credit Opportunity Act ("ECOA"). The district court granted summary judgment to the bank, holding that the spouses were not "applicants" who gained protections of the ECOA. The Eighth Circuit affirmed, reasoning the plain language of the ECOA provides that a person is an "applicant" only if he or she requests credit, but a guarantor does not, simply by executing a guaranty, request credit, and, therefore, the marital status protections of the ECOA did not apply. Conflicting authority exists in the Sixth Circuit.

The Supreme Court granted the petition for writ of certiorari in March of 2015, and oral argument was held in October of 2015. The Court had not issued a decision as of Scalia's death on February 13, 2016, indicating a potentially close decision.

The one sentence decision indicating the deadlock was issued on March 22, 2016. When the Supreme Court is deadlocked at 4–4, the decision of the lower court stands, but it does not have precedential value. Therefore, the bank remained victorious over the spouses, and the circuit split remains unresolved.

Although certainly short and sweet, the Court's first deadlocked decision following the death of Justice Scalia speaks volumes on what future United States Supreme Court decisions hold.

UNDUE INFLUENCE IN WISCONSIN PART 3: ALTERNATIVE METHOD OF PROOF

This is the third and final article in a series on undue influence in Wisconsin.

The second method of challenging a will or gift made during a lifetime on grounds of undue influence, a so-called *inter vivos* conveyance requires that the party establish only two elements. Doing so raises a rebuttable presumption of undue influence.

Moving forward with such evidence shifts the burden from the person raising the issue of undue influence to the proponent of the will or the recipient of the conveyance.[1] If rebutting testimony is introduced, the trier of fact does not need to accept the presumption and may reject it and accept the rebutting evidence.[2]

Existence of Confidential or Fiduciary Relationship

The first element of the second method requires a finding that a confidential or fiduciary relationship exists between the testator/grantor and the favored beneficiary. The basis for the presumption is not merely the existence of a personal relationship between the testator or grantor and the beneficiary. Instead, it's the ease with which a confidant can dictate the

contents or influence the drafting of a will or particular conveyance, or it's the ease with which such an individual can control or influence the draftsman of such a document.[3]

If the person charged with undue influence is not the actual draftsman or the procurer of the draftsman, evidence must be presented which shows that the testator or the grantor depends upon the advice of the confidant in relation to the subject of the will or conveyance. Establishment of this element requires more than showing that a confidential relationship exists between the parties. It requires proof.

The proof offered will be circumstantial because "if a beneficiary has either instructed the draftsman as to the contents of the will or has unduly influenced the testator as to the disposition of his property, he would not testify that he had done so."[4]

Suspicious Circumstances

The final element of the second method requires that suspicious circumstances surround the execution of the will or conveyance. This element requires a detailed review of factual circumstances.

To prove this element, the Supreme Court has found it sufficient to provide:

- Evidence that proves the conveyance was hastily drafted by a layman or drafted with the active participation of the influencer either in the actual drafting of the document or in the procurement of an individual to draft the document.
- Evidence of a weakened condition, be it physical or mental, of the testator or grantor, all of which culminate in sudden and unexplained changes in the attitude of the testator towards the disposition of his or her property.[5]

As was discussed in our prior article in relation to the fourth element of the classic undue influence case, proof of this element requires more than simply suspicious results. The suspiciousness must be judged in light of the totality of the circumstances.

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[1] *In Re Estate of Kamesar*, 81 Wis. 2d 151, 164, 259 N.W.2d 733 (1977).
[2] *Cooper*, 28 Wis. 2d at 399.
[3] *Estate of Fetcher*, 88 Wis. 2d 199, 219, 277 N.W.2d 143 (1979).
[4] *Estate of Velk*, 53 Wis. 2d 500, 507, 192 N.W.2d 844 (1972).
[5] *Estate of Komarr*, 46 Wis. 2d 230, 240, 175 N.W.2d 473 (1970).

UNDUE INFLUENCE IN WISCONSIN PART 2: ELEMENTS OF CLASSIC UNDUE INFLUENCE

This is the second in a series of three articles on undue influence in Wisconsin.

In Wisconsin, the four elements of classic undue influence cases are susceptibility, opportunity, disposition and a coveted result. In addition to classic undue influence in Wisconsin, there is a second method of challenging a will or gift made during lifetime, a so-called *inter vivos* conveyance, which will be discussed in the third and final article in this series.

Susceptibility

The first element of classic undue influence is a finding that the person charged with exercising undue influence unduly influenced a susceptible testator or grantor.

The Wisconsin Supreme Court, in numerous cases, has stated that the key factors regarding the issue of a testator or grantor's susceptibility to undue influence are:

- Age
- Personality
- Physical and mental health
- Ability to handle business affairs[1]

Opinions about the general state of mind of the testator or grantor from third parties with whom he or she may have had contact are given much credence by the court.

For example, the court will consider whether or not a person is considered to be strong-willed, independent, self-reliant, dominant, stubborn, dependent, capable of making decisions, and taking care of ordinary day-to-day management of their affairs.

Age, in and of itself, is of little significance unless it is coupled with a deteriorating physical or mental condition.[2]

If consideration of the factors set forth above demonstrates that the testator or grantor was unusually receptive to the suggestions of others and consistently deferred to others on matters of utmost personal importance, then the element is established.[3]

Opportunity to Influence

This element requires a showing that the person charged with exercising such influence on the susceptible person had the opportunity to procure the improver favor.

As a general rule, this is the easiest of the four elements to prove. To justify a finding of the opportunity to influence, the court must find repeated close contact with the testator.[4] Close personal relationships whether because of familial ties, living conditions, working conditions, or other social conditions have been found sufficient.

However, opportunity to influence does not mean mere physical propinquity or personal contact. It requires that interviews or personal transactions between the parties exist and that they were followed by the accomplishment of a desired end.[5] It is not necessary, nor is it often the case, that opportunities to influence are accomplished in secret or that they culminate in one particular act that represents the attempt to unduly influence. However, the opportunities to influence must exist at or about the time the will or conveyance is effected.[6]

Disposition to Influence

The third element requires proof of more than a desire on the part of the person charged with undue influence to obtain a share of the estate. It necessitates a showing of a willingness to do something wrong or unfair to obtain a share. It requires proof of grasping or overreaching affirmative steps on the part of the person charged.[7]

Evidence must be submitted of conduct designed to take an unfair advantage. Proof of this element requires evidence of the personality traits of the person charged with committing the act of undue influence.

For example, evidence shows a willingness to take advantage of the kindness and generosity of the testator or grantor. Alternatively, evidence shows that the influencer misled or kept a secret from natural beneficiaries.[8] The court has specifically indicated that there is nothing wrong with aiding and comforting a failing testator and that such activity should be encouraged.[9]

Coveted Result

The last element required in order to present a case of classic undue influence is the showing of a result caused by, or the effect of, such undue influence. Two compounds of this element exist.

First, the result must be an “unnatural,” raising “a red flag of warning.”[10] The essential question is whether the person was favored to be excluded from the natural or expected recipients of the testator’s bounty. However, more than a result favorable to the alleged person is required.

The second component is whether the result obtained was caused by or was the effect of

undue influence. What is under scrutiny is that a particular recipient benefits for no apparent reason and that the disposition is, in fact, unnatural and, therefore, the bequest or conveyance is unjust[11]

The mere provision in a will that benefits the influencer does not, by that fact alone, prove the element. Evidence may make what appears unnatural natural given the circumstances of the individual case. The mere fact that the testator makes bequests to his close friends rather than to relatives does not necessarily render the disposition unnatural. Whether a will or conveyance is unnatural or not must be determined from a consideration of all the surrounding circumstances.[12]

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[1] *Dejmal*, 95 Wis. 2d at 156.
[2] *Id.* at 159.
[3] *Id*. at 157.
[4] *In Matter of Estate of Becker*, 76 Wis. 2d 336, 348, 251 N.W.2d 431 (1977).
[5] *Ward vs. Ward*, 62 Wis. 2d 543, 554, 215 N.W.2d 3 (1974).
[6] *Elvers*, 48 Wis. 2d at 21.
[7] *Estate of Brehmer*, 41 Wis. 2d 349, 356, 164 N.W.2d 318 (1969).
[8] *In Matter of Estate of Vorel*, 105 Wis. 2d 112, 312 N.W.2d 850 (1981).
[9] *Estate of McGonigal*, 46 Wis. 2d 205, 214, 174 N.W.2d 256 (1970).
[10] *Estate of Culver*, 22 Wis. 2d 665, 673, 126 N.W.2d 536 (1964).
[11] *Will of Cooper*, 28 Wis. 2d 391, 399, 137 N.W.2d 93 (1965).
[12] *Becker*, 76 Wis. 2d at 349.

UNDUE INFLUENCE IN WISCONSIN PART 1: INHERITANCE DISPUTES AND CLAIMS OF UNDUE INFLUENCE

This is the first of a series of three articles on undue influence in Wisconsin.

Unscrupulous people sometimes use undue influence to change wills and obtain gifts from the elderly, sick, or weak. Increasingly, the public has come to realize this is a form of elder abuse.

Undue influence cases involve predominantly factual determinations and require a lawyer to engage in extensive pretrial fact development and investigation. Since appellate courts have shown great deference to the findings of the trial court in these cases, the importance of adequate trial preparation and courtroom experience cannot be overstated.

Elements of a Successful Case

By its very nature, proof of the necessary elements will rest almost entirely on **circumstantial evidence**, or evidence that relies on an inference to connect it to a conclusion, like a fingerprint at the scene of a crime. Even with adequate preparation, it is difficult to predict with any success the outcome of undue influence cases. Why is this? The outcome is based on disputes in the inferences drawn from facts, not the facts themselves.

Success will depend in large measure upon the **skill and labor of your trial attorney**.

Undue Influence in Wisconsin

Wisconsin has long recognized the doctrine of undue influence, or influence that "commands or compels the exercise of volition on the part of the person subject to such influence so that the result is the accomplishment of the will or purpose of the one using influence rather than, in fact, the will or purpose of the donor."[1] In other words, in Wisconsin a person can be prosecuted if he or she compels a person to act other than by his or her own freewill or without adequate attention to the consequences.

The doctrine of undue influence has been utilized to challenge wills as well as to void *inter vivos* conveyances, or a transfer that was made during a person's lifetime as opposed to one made after his or her death. The same legal principles and theories apply to both situations.[2]

Two distinct methods of proof exist to establish undue influence in Wisconsin. The first, often referred to as **classic undue influence,** is composed of four elements:

1. **Susceptibility** – A person who is susceptible of being duly influenced by the person charged with exercising undue influence.
2. **Opportunity** – The opportunity of the person charged to exercise such influence on the susceptible person to procure the improper favor.
3. **Disposition** – A disposition on the part of the party charged, to influence unduly such susceptible person for the purpose of procuring an improper favor either for himself or another.
4. **Coveted Result** – A result caused by, or the effect of, such undue influence.[3]

The second method of challenging a will or voiding an *inter vivos* conveyance requires establishment of a confidential or fiduciary relationship between the testator or grantor and the favored beneficiary or grantee. It also requires proof of suspicious circumstances surrounding the execution of the will or conveyance.[4]

Proving Undue Influence in Wisconsin

The elements of either method must be proved "by clear, satisfactory and convincing

evidence."[5] This high civil burden of proof must usually be met with **circumstantial evidence**. Undue influence exercised in secret, undercover, and with little opportunity for the presence of disinterested parties usually rests "wholly upon circumstantial evidence,"[6] which, the Supreme Court has noted, "is as convincing as direct testimony."[7]

Lower Standard of Proof

Although the burden is on the objector to prove each of the necessary elements, a lower standard of proof applies because of the secrecy that usually accompanies such affairs. When three of the four elements are established by the necessary clear, satisfactory and convincing evidence, only "slight additional evidence" need be presented as to the fourth element."[8] This lower standard of proof has been variously described as requiring only "slight additional evidence"[9] or "very little evidence."[10]

Application of this lesser quantum of proof has generally not caused problems because the finder of fact in the vast majority of reported cases is the trial court. A jury trial is not available as a matter of right in will contests. Suits relating to *inter vivos* transfers, on the other hand, need not be venued in the probate court, and trial by jury is available.[11]

The manner in which a jury is to be instructed with respect to the lower standard of proof is not the subject of a reported case. Whether a jury should be instructed in the black letter case law language ("slight additional evidence" or "very little evidence") or should be instructed with the usual civil burden of proof (preponderance of the evidence) is an unresolved issue.

However, instructions to the jury in such a case must indicate that the jury need find only **three of the four elements** by clear, satisfactory and convincing evidence. The lesser quantum of proof is all that is needed for the fourth element, whichever element that may be in the mind of the trier of fact.

Scope of Appellate Review in Wisconsin

The law governing the scope of appellate review is also well established in Wisconsin. Undue influence must be proved by **clear, satisfactory and convincing evidence**. Findings by the trial court will not be upset on appeal unless they are against the great weight and clear preponderance of the evidence presented at trial.[12]

The appellate court will examine the trial court record not for facts to support a finding the trial court did not make or could have made, but for facts to support the finding the trial court *did* make.

As a result, the practitioner must make every effort to present a successful case at the trial

court level. A review of undue influence cases decided by the Wisconsin Supreme Court between 1945 and 1968 encompassing 54 decisions revealed that only four trial court decisions were reversed.[13]

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[1] *Kuehn vs. Kuehn,* 11 Wis. 2d 15, 24, 104 N.W.2d 138 (1960).
[2] *Estate of Fillar*, 10 Wis. 2d 141, 102 N.W.2d 210 (1960).
[3] *Will of Freitag*, 9 Wis. 2d 315, 317, 101 N.W.2d 108 (1960).
[4] *Will of Faulks*, 246 Wis. 319, 360, 17 N.W.2d 423 (1945).
[5] *In Matter of Estate of Dejmal*, 95 Wis. 2d 141, 154, 289 N.W.2d 813 (1980).
[6] *Will of Ehlke*, 244 Wis. 115, 121, 11 N.W.2d 497 (1943).
[7] *Estate of Elvers*, 48 Wis. 2d 17, 20, 179 N.W.2d 881 (1970).
[8] *Freitag*, 9 Wis. 2d at 318.
[9] *Id.*
[10] *In Re Stanley's Will*, 226 Wis. 354, 360, 276 N.W. 353 (1937).
[11] *Casper vs. McDowell*, 58 Wis. 2d 82, 205 N.W.2d 753 (1973).
[12] *Dejmal*, 95 Wis. 2d at 154.
[13] *Undue Influence – Judicial Implementation of Social Policy*, 1968 Wis. L. Rev. 569.

WHETHER WEBSITE PRESENCE EXPOSES PUBLISHER TO LAWSUITS IN WISCONSIN ANALYZED IN RECENT CASE

Most people would probably assume that simply maintaining a website would not expose the creator to being sued wherever the website can be viewed. Courts in this country have generally agreed, and have ruled that the mere act of operating a website that can be read within a certain state does not, by itself, give the courts of that state jurisdiction over the entity running the website.

In a recent opinion, the Wisconsin Court of Appeals affirmed this principle. In *Salfinger v. Fairfax Media Limited*, the court concluded that the mere fact that an Australian company published an article on a website, which could be accessed in Wisconsin, did not give the court jurisdiction over that company. This was true even though the plaintiff's claim was for defamation based on the content in that article. Rather, to be consistent with the Due Process Clause of the United States Constitution, there must have been some purposeful conduct within Wisconsin by the company that would make facing suit in Wisconsin foreseeable.

Even more importantly, the court also considered whether the targeted advertising on the website changed the result. Like many companies, Fairfax Media Limited used online

advertising programs, such as through Google or Double Click, that placed advertisements on its website targeted to the reader based on his or her geographic location—for example, placing ads for a Wisconsin business on its website next to the article if the reader was located in Wisconsin. Ultimately, the court concluded that this still was not enough Wisconsin-related conduct to give the court jurisdiction over the publisher and expose it to being sued in Wisconsin.

The Court did note that the question of jurisdiction depends on the facts in each particular case, so it is unclear whether even one change in the circumstances, such as a company mentioning Wisconsin in a website article, could change the result and open the company to lawsuits in Wisconsin. These questions will ultimately have to be resolved in future cases.