STATE OF MAINE
WORKERS' COMPENSATION BOARD

APPELLATE DIVISION
Case No. App. Div. 13-0033
Decision No. 14-14

MATTHEW E. BOLSTRIDGE
(Appellee)

v.

AGM MARINE CONTRACTORS, INC.
(Appellant)

and

AMERICAN HOME ASSURANCE COMPANY (AIG)
(Insurer)

Argued: January 29, 2014
Decided: May 9, 2014

PANEL MEMBERS: Hearing Officers Elwin, Greene, and Collier
BY: Hearing Officer Greene

[¶1] AGM Marine Contractors, Inc., appeals from a decision of a hearing officer (*Pelletier*, *HO*) granting Matthew E. Bolstridge's Petition for Award, and awarding him a closed-end period of partial incapacity benefits. The sole issue on appeal is whether the board had personal jurisdiction over AGM Marine. We conclude that the facts as found by the hearing officer do not support the conclusion that AGM Marine had sufficient contacts with Maine to allow the board to exercise jurisdiction. Accordingly, we vacate the hearing officer's decision.

## I. BACKGROUND

[¶2] Mr. Bolstridge, a union carpenter and millwright, resides in the Houlton area in Aroostook County. In 2002, after learning about an opening at AGM

Marine, Mr. Bolstridge traveled to Massachusetts to apply for the job. AGM Marine did not recruit Mr. Bolstridge in Maine. Mr. Bolstridge was hired and worked for AGM Marine on a temporary job in Provincetown, Massachusetts, for a period of twelve weeks in 2002. The hearing officer found that Mr. Bolstridge suffered a "compensable injury, bilateral carpal tunnel syndrome, (CTS) as a result of work he performed for [AGM Marine] on or about June 26, 2002." After exhausting benefits for the same injury under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C.S. §§ 901-950, Mr. Bolstridge filed his present claim for benefits under the Maine Act.

[¶3] AGM Marine is a closely-held Massachusetts corporation in the business of civil marine contracting, primarily heavy construction involving bulkheads, piers, dredging, and waterfront construction. Headquartered in Mashpee on Cape Cod, AGM Marine has about 25 full-time employees, none of whom resides in Maine. The company does about seven million dollars in annual sales of its services, most of which results from competitive bidding on government contracts. Through its website and other marketing activities, AGM Marine holds itself out as a New England company, offering its services "from southern Maine to northern Connecticut." In order to be able to bid on projects in Maine, AGM Marine annually registers to do business in Maine. The company last worked in Maine in 1993, when it was asked to complete a dredging job in the Saco area after

the previous contractor failed to perform. No evidence was offered as to whether it had bid or worked on any projects in Maine before this; it has not bid on any Maine projects since.

[¶4] Mr. Bolstridge filed his Petition for Award in Maine. AGM Marine challenged the petition, contending that the board lacked authority to exercise general personal jurisdiction in the matter. The hearing officer determined that the board had jurisdiction, and granted the petition for award. AGM Marine appeals.

## II. DISCUSSION

[¶5] The Appellate Division's role on appeal is "limited to assuring that the [hearing officer's] . . . decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995). (quotation marks omitted). The hearing officer's findings of fact are not subject to appeal. 39-A M.R.S.A. § 321-B(2) (Supp. 2013). However, whether the facts as found by the hearing officer from competent evidence are sufficient to establish personal jurisdiction is an issue of law which we review de novo. *Fore, LCC v. Benoit*, 2012 ME 1, ¶ 5, 34 A.3d 1125, 1128.

[¶6] Pursuant to Maine's long-arm statute, the board's authority to exercise personal jurisdiction is coextensive with the reach of the due process clause of the U.S. Constitution. *See* 14 M.R.S.A. § 704-A (2003); *Christiansen v. Elwin*

*G. Smith, Inc.*, 598 A.2d 176, 177 (Me. 1991). Due process allows the exercise of personal jurisdiction when: "(1) Maine has a legitimate interest in the subject matter of the litigation; (2) the defendant, by his or her conduct, reasonably could have anticipated litigation in Maine; and (3) the exercise of jurisdiction by Maine's courts comports with traditional notions of fair play and substantial justice." *Cavers v. Houston McLane Co. Inc.,* 2008 ME 164, ¶ 18, 958 A.2d 905. *See also Tyson v. Whitaker & Son, Inc*., 407 A.2d 1, 4 (Me. 1979) (first articulating this three-prong test in Maine).

[¶7] AGM Marine contends that the board's exercise of personal jurisdiction in this case exceeds the reach of the due process clause. It argues particularly that the board cannot exercise general (as opposed to specific) personal jurisdiction. Specific personal jurisdiction exists when the action arises out of contacts that occur within the state; general jurisdiction refers to jurisdiction exercised when the action is unrelated to any contacts by the defendant with the forum state but the defendant's contacts independently are sufficient to require it to defend an action in the forum without violating due process. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 418-19 (1984) (holding that the foreign corporation did not have sufficient contacts with Texas to satisfy the due process clause of the Fourteenth Amendment in a case arising out of a helicopter crash in Peru); *see also Cossaboon v. Maine Medical Center*, 600 F.3d 25, 31 (1st Cir. 2010); *Harlow*

*v. Children's Hospital*, 432 F.3d 50, 88 (1st Cir. 2005); *Sandstrom v. Chemlawn Corp.*, 904 F.2d 83, 86 (1st Cir. 1990).

[¶8] The Law Court has not employed the terms "specific" or "general jurisdiction," but, in a decision prior to *Helicopteros*, articulated the standard to be applied in cases where the litigation is unrelated to any contacts by the foreign defendant with the forum state:

> When a claim is based upon an act committed outside the state that has no direct consequences within the state, the propriety of asserting jurisdiction depends on whether the corporation has carried on continuous and systematic, although unrelated, activities in the state. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1952); 4 C. Wright & A. Miller, *Federal Practice and Procedure* 261 (1969).
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> Whenever a plaintiff's claim does not arise out of something done in the forum state, other contacts between the defendant and the forum state must be "fairly extensive" before the burden of defending a suit may be imposed upon it without "offending traditional notions of fair play and substantial justice." *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir. 1971); *Tillay v. Idaho Power Co.*, 425 F. Supp. 376, 379 (E.D. Wash. 1976). . . .
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> Furthermore, in the case of the non-consenting foreign corporation, before that corporation can be subjected to jurisdiction it must have purposely availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). *See Perkins*; *Whittaker Corp. v. United Aircraft Corp.*, 482 F.2d 1079, 1083 (1st Cir. 1973). Under the *Perkins* analysis, the question remains one of degree and not one of a kind; that analysis suggests only that greater contacts with the forum state are required to assert jurisdiction over a foreign corporation when the cause of action arose out of activities distinct from its activities in the forum state. D. Louisell & G. Hazard, *Pleading and Procedure* 303 (3rd ed. 1973).

*Labbe v. Nissen Corp.*, 404 A.2d 564, 570-71 (Me. 1979).

[¶9] Since *Labbe,* the "continuous and systematic" contacts requirement has only been referred to by the Law Court in cases where the suit arose out of or was somehow connected with the foreign defendant's forum activity.[1] *See Hewitt v. Arrow Farms, Inc.,* 528 A.2d 446, 448 (Me. 1987); *Harriman v. Demoulas Supermarkets, Inc.*, 518 A.2d 1035, 1038 (Me. 1986) (stating that "[l]ess extensive activity is required where the cause of action arises out of or in connection with the defendant's forum-related activity"). That standard appears to comport generally with the general jurisdiction principles as applied in other courts, including the First Circuit, specifically in the application of the second (purposeful availment/reasonable anticipation of litigation) prong of the *Tyson* test. *Compare Cavers*, 2008 ME 164 ¶ 24 (stating that "the requisite minimum contacts are present when . . . the defendant creates continuing obligations between itself and

[1] In other cases that would fall under the umbrella of "general jurisdiction," meaning that the litigation was not directly related to defendant contacts with Maine, the Court has merely applied the three criteria articulated in *Tyson* without reference to the heightened standard articulated in *Labbe*. *See Connelly v. Doucette*, 2006 ME 124, ¶ 4, 909 A.2d 221, 223 (holding that the court could not exert personal jurisdiction over a Massachusetts resident in Maine resident's negligence action involving motor vehicle accident in New Hampshire where second (minimum contacts) prong not satisfied); *Murphy v. Keenan*, 667 A.2d 591, 593-94 (Me. 1995) (determining that personal jurisdiction was not established in Maine resident buyer's breach of warranty action against New Hampshire seller for boat purchased in New Hampshire where first and second prong not satisfied); *Frazier v. Bankamerica Int'l,* 593 A.2d 661, 662 (Me. 1991) (concluding that no personal jurisdiction would be exerted over New York business vehicle owner in action arising from motor vehicle accident in New York involving Maine residents, due to failure to satisfy minimum contacts prong). Concluding in these cases that personal jurisdiction did not exist under the *Tyson* criteria, the Court did not address the question of whether a more stringent minimum contacts test applies to such cases.

residents of the forum”), *with, e.g., Cossaboon,* 600 F.3d at 11 (explaining that general jurisdiction must be established by “continuous and systematic pursuit of general business activities in the forum state,” a “considerably more stringent” test for determining whether there are sufficient contacts with the forum state to satisfy due process).

[¶10] As the party asserting the existence of personal jurisdiction, Mr. Bolstridge bore the burden of establishing facts sufficient to meet the first two prongs of the *Tyson* test, after which “the burden shifts to the defendant to demonstrate that the exercise of jurisdiction does not comport with traditional notions of fair play and substantial justice.” *Cavers*, 2008 ME 164, ¶ 19, 958 A.2d 905. In determining whether the facts relied on to support personal jurisdiction exist, “[t]he record is construed in the manner most favorable to the plaintiff.” *Bickford v. Onslow Mem. Hosp. Foundation, Inc.*, 2004 ME 111, ¶ 10, 855 A.2d 1150, 1155.

[¶11] The parties do not dispute that Mr. Bostridge established the first criterion of the *Tyson* test, that Maine has a legitimate interest in the subject matter of the litigation. We therefore focus on the second criterion, whether Mr. Bolstridge established that AGM Marine reasonably could have anticipated litigation in Maine.

> The second part of the analysis . . . requires an assessment of whether the foreign corporation has sufficient contacts with the forum State to

> make it reasonable . . . to require the corporation to defend the particular suit which is brought there. The requisite minimum contacts are present when the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. A defendant's activities are sufficient to establish minimum contacts when (1) the activities of the defendant have been directed at the forum's residents; (2) the defendant deliberately engages in significant activities in the forum; or (3) the defendant creates continuing obligations between itself and residents of the forum.

*Cavers*, 2008 ME 164, ¶ 24, 958 A.2d 905 (quotation marks and citations omitted).

[¶12] The hearing officer found that AGM Marine engaged in the following activities in Maine or directed at Maine residents: (1) it performed work on one project in Maine in 1993 when solicited by the Army Corps of Engineers to complete a project; (2) since 1989 it has registered yearly as a corporation authorized to do business in Maine; and (3) on its website and in some marketing materials, it holds itself out as available for work in an area which includes southern Maine.[2]

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[2] The hearing officer also found that AGM Marine bid on jobs in Maine before 1990. The only evidence as to AGM Marine's activities in Maine came from John Mikutowicz, who co-founded the company in 1977 and has served as its president for all but three years since then. Mr. Mikutowicz testified that the company had been licensed to do business in Maine since 1989, but did not bid or work on any jobs in Maine other than the one in 1993. He further explained that given the limited competition for dredging work and the high mobilization costs involved in projects farther away from its home base, the company did the majority of its work in Southeastern Massachusetts. In fact, the company accepted the one Maine job in 1993, in part, because it was able to "[lease] . . . the equipment that the original contractor failed to perform on . . . so the deployment cost was minimal." Even when viewed in a light most favorable to Mr. Bolstridge, this evidence did not establish that the company bid on jobs in Maine before 1990. In any event, as set forth more fully below, bidding on jobs before 1990 is so remote in time from the incident in question that it is unlikely that the existence of this fact would alter our conclusion. *See Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 569-70 (2d Cir. 1996).

[¶13] Upon review of the record and the law, we conclude that it was error to exercise personal jurisdiction over AGM Marine on these facts.

[¶14] The first fact relied on, the single occasion on which AGM Marine worked on a project in Maine in 1993, nine years before the work injury and over seventeen years prior to the filing of the present claim in Maine, occurred so long ago as to have little or no weight in assessing the sufficiency of contacts in this case. *See Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 569-70 (2d Cir. 1996) (holding that six-year period prior to the filing of the suit was reasonable for assessing the sufficiency of "continuous and systematic" contacts); s*ee also* 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1067.5, WestlawNext © 2014 § 1067.5 General Jurisdiction, 4 Fed. Prac. & Proc. Civ. § 1067.5 n.11.75 (3d ed.) (suggesting a range of three to seven years as a reasonable period for assessing contacts).

[¶15] We also conclude that AGM Marine's presence in Maine via its website was insufficient to establish minimum contacts. In recent years, courts have addressed the significance of business websites, distinguishing between interactive websites by which business can be transacted over the computer and a "passive website that does nothing more than advertise on the Internet. With passive websites, personal jurisdiction is not appropriate." *Mink v. AAAA Development LLC*, 190 F.3d 333, 336 (5th Cir. 1999); *see also Zippo Mfg. Co.*

*v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1123-24 (W.D. Pa. 1997). The First Circuit has stated, "[g]iven the omnipresence of internet websites," a rule that conferred jurisdiction when an out of state company merely had a website that is visible in a forum and that gives information about a company and its products "would eviscerate the limits on personal jurisdiction over out-of-state defendants." *Cossaboon*, 600 F.3d at 35 (citations and quotation marks omitted). Instead, for website activity to support the exercise of personal jurisdiction, "something more is necessary, such as interactive features which allow the successful online ordering of the defendant's products." *Id*.

[¶16] In *Labbe*, a case which predated the Internet, the Law Court found sufficient "systematic and continuous" contacts in a general jurisdiction scenario where a foreign trampoline manufacturing company had made sales of about $80,000 a year in Maine over the previous five years and actively solicited sales by advertising in periodicals and catalogs distributed in Maine thus "demonstrat[ing] the purposeful nature of the Defendant's activities" in Maine. 404 A.2d at 572. Advertising the availability of services to Maine businesses is not equivalent to the actual "interstate sale of tangible goods, capable of doing harm elsewhere." *See Harlow*, 432 F.3d at 63.

[¶17] No evidence was presented that AGM Marine's website was more than purely informational or that its advertising was directed at Maine residents as

opposed to industries or agencies in general. Therefore, we conclude that the evidence as to these activities was not a sufficient basis upon which to assert personal jurisdiction.

[¶18] Finally, registering to do business in the forum state, and even appointing an agent in that state for service of process, has been held not to amount to "'continuous and systematic' activities within the forum sufficient to justify requiring it to answer there to a claim unrelated to its in-forum presence." *See Sandstrom*, 904 F.2d at 88; *see also Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 182-83 (5th Cir. 1992). AGM Marine's primary purpose for registering to do business in Maine over the years has been to meet the prequalification requirement for certain governmental agency contracts, should it become interested in bidding on such a job in Maine. However, it has not bid or even worked on a Maine job except for one occasion in 1993. This limited activity does not support a determination that it has purposefully availed itself of the privilege of conducting business in the forum, as opposed to maintaining the ability to do so if it chooses.

[¶19] In addition to *Labbe*, Mr. Bolstridge, relies on *Cavers* and *Christiansen*, workers' compensation cases involving employment relationships stemming from some actual contacts by the employers with Maine, to support his argument that the evidence established an adequate basis for personal jurisdiction. In *Cavers*, the Court found sufficient contacts even though the injury occurred

outside of Maine, when a representative of a Texas major league baseball team had traveled to the employee's home in Maine to negotiate and sign a minor league baseball contract. The Court, "informed by precedent and practice in other jurisdictions . . . directly applicable to Major League Baseball," concluded that the employer "had sufficient contacts with Maine to have reasonably anticipated a court or administrative action in Maine arising from Cavers's employment contract negotiated and signed in Maine." 2008 ME 164, ¶¶ 25-26, 35.

[¶20] The *Christiansen* case, in which the Law Court affirmed the former commission's exercise of jurisdiction over an employer when the employee was injured in New York, is also distinguishable. The Court recited the following contacts as supporting the conclusion that "the employer should have anticipated the present [workers' compensation] claim in Maine":

> Christiansen resided in Maine when he as first recruited by [the employer, a Delaware corporation with a principal place of business in Pennsylvania and registered to do business in Maine, through an employment contract negotiated by phone]. Although the continuing relationship consisted of distinct and independent projects for which the employee was specifically hired, he worked primarily for [the employer] during sixteen of the twenty-five years he was employed as an ironworker. He was always hired directly by the employer, never through the union hall. [The employer] treated him like a "company man." The employee always maintained a permanent residence in Maine to which he returned between jobs and, while working, on weekends when distances permitted. The series of employment contracts between the parties was not the result of solely unilateral action by the employee.

598 A.2d at 178.

[¶21] Unlike in *Cavers* and *Christiensen,* Mr. Bolstridge's workers' compensation case is not related to AGM Marine's contacts with Maine. AGM Marine did not recruit Mr. Bolstridge in Maine, and Mr. Bolstridge traveled to Massachusetts to apply for the job. There was no long-standing relationship or repetitive contacts between Mr. Bolstridge and AGM Marine. His injury is not related to AGM Marine's contacts with Maine.

## III. CONCLUSION

[¶22] Performing a single job in Maine in 1993, registering to do business in Maine since 1989, and indicating on a website and in some industry advertising the availability to work in a region that includes southern Maine, do not add up to the greater quantum of contacts required to support personal jurisdiction over a foreign employer, particularly when the injury occurred and the employment arrangement was negotiated and entered into outside the State. Even when considering these facts "in the aggregate," *see Cossaboon*, 600 F.3d at 33, and applying the "reasonable anticipation of litigation" test rather than the arguably more stringent "continuous and systematic activities" test, *compare Tyson* 407 A.2d at 4, with *Labbe,* 404 A.2d at 570, we conclude that the jurisdictional facts found by the hearing officer are insufficient to establish personal jurisdiction over AGM Marine. Having so concluded, we do not address the third criterion of the test.

The entry is:

> The hearing officer's decision is vacated and the case dismissed for lack of personal jurisdiction.

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Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Supp. 2013).

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