IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No. DA 23-0333

PHILADELPHIA INDEMNITY
INSURANCE COMPANY,

Appellant/Third-Party Plaintiff,

v.

MARTIN J. O'LEARY, KIMBERLY K. FORRESTER,
and the SEDGWICK LLP LIQUIDATING TRUST AS
SUCCESSOR IN INTEREST TO SEDGWICK LLP,

Appellees/Third-Party Defendants.

APPELLANT'S OPENING BRIEF

On Appeal from the Fourth Judicial District Court, Missoula County
Cause No. DV-18-1357
The Honorable Shane Vannatta, Presiding

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INTRODUCTION

> It is imperative in this case that an attorney, whether or not licensed to practice law in Montana, not be allowed to escape the consequences of in-state representation by residing in some other state.

Turner v. Tranakos, 229 Mont. 51, 56, 744 P.2d 898, 901 (1987).

This appeal asks whether California attorneys may render bad advice relative to a Montana lawsuit and take affirmative steps that breach their client's legal duties in Montana, yet escape Montana jurisdiction by rendering their services from an office in San Francisco. The attorneys—Appellees Martin J. O'Leary, Kimberly K. Forrester, and Sedgwick LLP (collectively, "Sedgwick")—negligently advised Appellant Philadelphia Indemnity Insurance Company ("Philadelphia") to deny a defense in a Montana class action lawsuit, without even mentioning the possibility of defending under a reservation of rights or seeking a declaration on coverage. Sedgwick then denied coverage on Philadelphia's behalf, waiving a number of coverage defenses in the process.

The putative insureds—most of whom are Montana citizens—settled the Montana class action and then sued Philadelphia for breaching the duty to defend in Montana state court. After this Court found personal jurisdiction existed over Philadelphia—based in large part on its Montana contacts through Sedgwick—Sedgwick refused to participate in settlement discussions, forcing Philadelphia to resolve the matter on its own in a multi-million dollar settlement. Philadelphia is

entitled to a remedy for Sedgwick's malpractice. The District Court erroneously dismissed this case for want of personal jurisdiction, and Sedgwick—a firm that appeared in multiple other Montana lawsuits as pro hac counsel during the same time period, despite arguing to the District Court it had never conducted business in Montana—should not "escape the consequences of in-state representation by residing in some other state." *Id*. This Court should reverse.

STATEMENT OF THE ISSUE

1. Did the District Court err in concluding Sedgwick was not subject to personal jurisdiction in Montana, where it was Sedgwick's Montana-directed negligence that gave rise to the Montana action against its client?

STATEMENT OF THE CASE

In October 2018, Philadelphia's putative insureds filed this lawsuit in the Montana Fourth Judicial District Court, alleging Philadelphia had wrongfully denied a defense in a Montana class action lawsuit.

Philadelphia moved to dismiss for lack of personal jurisdiction. The District Court denied the motion, and this Court affirmed: "All actions giving rise to the insureds' claims occurred here: the initiation of the Walter Class Action against the Plaintiffs in Montana court, the denial of a defense to Plaintiffs in Montana court by Philadelphia under the Policy, and the Plaintiffs' action to defend themselves." *Gateway Hosp. Grp. Inc. v. Phila. Indem. Ins. Co.*, 2020 MT 125, ¶ 40, 400 Mont. 80, 464 P.3d 44. The Court specifically relied on Sedgwick's correspondence denying

coverage as the key evidence demonstrating Philadelphia's Montana-related activities. *Id.*, ¶¶ 10, 26, 33, 38.

Philadelphia's defense became untenable, and it pleaded with Sedgwick to participate in a mediation. Sedgwick flatly refused, telling Philadelphia it was obligated to mitigate its own damages. Philadelphia did just that, settling the case for millions of dollars.

On April 7, 2021, Philadelphia filed a Third-Party Complaint against the Sedgwick LLP Liquidating Trust (the law firm, Sedgwick LLP, had since declared bankruptcy) and the two attorneys who worked on the case. Sedgwick represented it would be open to an early mediation if Philadelphia delayed service. After nearly a year passed with Sedgwick refusing to mediate with a Montana mediator, and as the statute of limitations was about to expire in California, Philadelphia was forced to file a back-up case in California. That case—which Sedgwick now argues is time-barred—is currently pending.

Sedgwick moved to dismiss Philadelphia's Third-Party Complaint for lack of personal jurisdiction. The District Court granted the motion on May 19, 2023. (Doc. 146, **Appendix 1**.) This appeal followed.

STATEMENT OF FACTS

This legal malpractice action arises from a Montana lawsuit in which Montana hotel employees sued Philadelphia's insured, Gateway Hospitality Group, Inc.

("Gateway"), and a number of Montana businesses to which Gateway provided hotel management services. *Gateway*, ¶¶ 6, 10; (Doc. 125 at ¶ 6). In the so-called "Walter Class Action," the Montana employees alleged Gateway (an Ohio corporation) and a number of Montana LLCs failed to distribute certain service charges paid by banquet customers. *Id*., ¶ 10. Gateway and the Montana entities submitted a claim to Philadelphia for defense and indemnity in the Montana action. *Id*.; (Doc. 125 at ¶ 7).

Philadelphia, a Pennsylvania corporation, hired Sedgwick, an international law firm with multiple offices and hundreds of attorneys across the country, to evaluate its coverage obligations relative to the Montana action and the putative Montana insureds. (Doc. 125 at ¶ 8.) Two California attorneys in Sedgwick's San Francisco office, Martin O'Leary and Kimberly Forrester, undertook the Montana assignment. (Doc. 125 at ¶ 8.)[1] After purportedly evaluating Philadelphia's obligations under Montana law, they advised Philadelphia to simply deny coverage—remarkably, without any consideration for defending under a reservation of rights or filing a declaratory judgment action. (Doc. 125 at ¶¶ 8, 9.) This is baffling. Indeed, as one of Montana's respected state and federal judges observed long ago, "I remain amazed

[1] Mr. O'Leary and two other attorneys from Sedgwick's San Francisco office had previously appeared pro hac vice in Montana on behalf of Philadelphia, and thus should have been familiar with Montana insurance law. *Central Asia Institute v. Philadelphia Indemnity Ins. Co.*, Case No. 2:12-cv-ooo75-DLC (D. Mont. 2012) (Docket, Motions, Orders Granting Pro Hac Vice Admission, and Opposition to Motion for Summary Judgment, **Appendix 3**). Indeed, the central issue in that Montana case—which O'Leary briefed—was Philadelphia's duty to defend under Montana law. (*See* Philadelphia's Opposition to Motion for Partial Summary Judgment, App. 3, at 15-20.)

at the number of cases that have come before this court and the state courts in Montana over the years where presumably sophisticated insurance companies have ignored this maxim of insurance law at their peril. To save the relatively minor costs of tendering a defense and commencing a dec. action, these companies have exposed themselves to risk far in excess of the policy limits at issue." *Nielsen v. TIG Ins. Co.*, 2006 U.S. Dist. LEXIS 49002, at *9 n.1 (D. Mont. May 4, 2006).

Sedgwick then wrote a letter to Gateway inaccurately identifying all the Montana entities as insureds[2] and denying coverage on behalf of Philadelphia:

Sedgwick LLP

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May 29, 2015

Via E-mail and Certified Mail/Return Receipt Requested

Ron Hutcheson
GATEWAY HOSPITALITY GROUP, INC.
8921 Canyon Falls Blvd. Ste. 140
Twinsburg, OH 44087-1976
(rhutcheson@ghghotels.net)

Re: ***Pam Walter, et al. v. Hilton Garden Inns Franchise, LLC, et al.***
Insured: GATEWAY HOSPITALITY GROUP, INC.
Policy No.: PHSD965996
Claim No.: 880619
Our File No.: 00875-012283

Dear Mr. Hutcheson:

We represent Philadelphia Indemnity Insurance Company ("Philadelphia"). This matter involves a class action lawsuit filed in Montana State Court against Hilton Garden Inns Franchise, LLC; Gateway Hospitality Group, Inc.; Hilton Garden Inn Bozeman; Western Hospitality Group, LC dba Hilton Garden Inn of Missoula; JWT Hospitality Group Billings, LLC dba Hilton Garden Inn Billings; Kalispell Hotel LLC dba Hilton Garden Inn Kalispell; and all other Gateway Hospitality Group managed hotels in Montana (collectively "the Insureds"). The lawsuit is styled *Pam Walter, et al. v. Hilton Garden Inns Franchise, LLC, et al.*, Montana Fourth Judicial District Court, Missoula County Case No. DV-15-196 ("the *Walter* Class Action"). Claimants are past and present non-management server employees of the Hilton Garden Inns in Montana that claim they were wrongfully denied service charges for their services at banquets.

The purpose of this letter is to advise the Insureds of Philadelphia's conclusions regarding coverage under Cover-Pro Policy No. PHSD965996. Coverage under any other Philadelphia policy will be addressed under separate cover. Please ensure that all appropriate persons are notified of the contents of this letter.

After careful consideration, Philadelphia is constrained to conclude that coverage cannot be afforded for the *Walter* Class Action as the Claim arises out of the Insureds' Employment Practices, which are precluded from coverage under the Policy. Additional policy exclusions and conditions operate to limit or otherwise preclude coverage as outlined below.

[2] The Montana entities were not insureds because they were not Named Insureds and also did not meet the definition of "Subsidiary"—*i.e.*, they were not more than 50% owned by Gateway. Despite this, Sedgwick inexplicably deemed them "insureds," with apparently no analysis or consideration.

(Doc. 125, Ex. C; Doc. 125, ¶ 9.)

On November 24, 2015, Sedgwick recommended to Philadelphia that the file be closed. (Doc. 125, ¶ 4.) Sedgwick's conduct thus resulted in:

(1) Philadelphia's erroneous representation, through Sedgwick, that there was no duty to defend;

(2) Philadelphia's failure, through Sedgwick, to seek a declaratory judgment before denying coverage;

(3) Philadelphia's failure, through Sedgwick, to monitor the Montana litigation and re-evaluate its coverage position; and

(4) Philadelphia's waiver, through Sedgwick, of a number of coverage defenses, including though Sedgwick's erroneous representation to the Montana entities that they were insureds under the policy.

(See Doc. 125, ¶¶ 6-29.)

After coverage was denied upon the advice of and through Sedgwick, Gateway and the Montana entities defended the Walter Class Action, ultimately settling the claims asserted by the Montana employees for $4,031,519.00. *Gateway*, ¶ 10; (Doc. 125 at ¶ 17.)

On October 10, 2018, Gateway and the Montana entities brought suit against Philadelphia, seeking declarations that: (1) they were insureds under Philadelphia's Policy; (2) Philadelphia had a duty to defend them in the Walter Class Action; (3) Philadelphia breached its duty to defend, and (4) Philadelphia had a consequential duty to pay all damages they suffered as a result of the Walter Class Action. *Gateway*, ¶ 10; (Doc. 125 at ¶¶ 16, 17).

Philadelphia moved to dismiss for lack of personal jurisdiction. The District Court denied the motion, and this Court affirmed: "Philadelphia denied a defense to the Montana Entities in that Montana case; and those Montana businesses therefore sustained the loss of the policy's benefit and acted on their own behalf to defend themselves in the Montana case." *Id*., ¶ 39. The Court found "[a]ll actions giving rise to Plaintiffs' claims occurred here: the initiation of the Walter Class Action against the Plaintiffs in Montana court, the denial of a defense to Plaintiffs in Montana court by Philadelphia under the Policy, and the Plaintiffs' action to defend themselves." *Id*., ¶ 40. For this reason, the claims against Philadelphia "arose out of or resulted from the defendant's forum-related activities, as required to impose specific personal jurisdiction over Philadelphia under the Fourteenth Amendment to the United States Constitution." *Id.* (internal citation and punctuation omitted). The Court specifically relied on Sedgwick's correspondence with Gateway as demonstrating Philadelphia's Montana-related activities. *Id.*, ¶¶ 10, 26, 33, 38.

Philadelphia filed a petition for writ of certiorari with the U.S. Supreme Court, which was denied on May 19, 2020. (Doc. 125 at ¶ 22.) With the denial, Philadelphia's defense became untenable, given the poor advice it had been given by Sedgwick on the requirements of Montana law. Philadelphia pleaded with Sedgwick to participate in a mediation, but Sedgwick refused, counseling Philadelphia it had an obligation to mitigate its own damages. Philadelphia participated in a mediation,

without Sedgwick, and entered into a multi-million dollar settlement. (Doc. 139 at 3.)

On April 7, 2021, Philadelphia filed a Third-Party Complaint against Sedgwick and the two attorneys who rendered the advice and denied coverage for the underlying Montana action on Philadelphia's behalf. (Doc. 125.) Philadelphia raised claims for legal malpractice, indemnity, and contribution. (Doc. 125 at 8-12.)

Sedgwick represented it would be open to an early mediation to resolve the case if Philadelphia delayed service, but would assert a personal jurisdiction defense if the case went forward. (Doc. 138 at 5, Ex. A.) After nearly a year of delay and Sedgwick's refusal to mediate with a Montana mediator, and as the statute of limitations was about to expire, Philadelphia was forced to file a back-up case in California. (Doc. 138 at 5.) Sedgwick maintains the California action is now time-barred. Thus, it hopes to avoid liability entirely by relying on a personal jurisdiction defense in Montana and a statute of limitations defense in California.

Sedgwick moved to dismiss Philadelphia's Third-Party Complaint for lack of personal jurisdiction. The District Court granted the motion on May 19, 2023. (Doc. 146.) Philadelphia timely appealed. (Doc. 150.)

STANDARD OF REVIEW

"This Court reviews a district court's decision on a motion to dismiss for lack of personal jurisdiction *de novo*, construing the complaint 'in the light most favorable

to the plaintiff.'" *Gateway*, ¶ 12 (quoting *Milky Whey, Inc. v. Dairy Partners, LLC*, 2015 MT 18, ¶ 7, 378 Mont. 75, 342 P.3d 13). Additionally, motions to dismiss "should not be granted unless, taking all well-pled allegations of fact as true, it appears beyond a doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle them to relief." *Id*. (quoting *Buckles v. Cont'l Res., Inc. (Buckles I)*, 2017 MT 235, ¶ 9, 388 Mont. 517, 402 P.3d 1213). Where, as here, no preliminary hearing is held to make factual findings necessary to the determination of personal jurisdiction, this Court's review is "entirely de novo." *Tacket v. Duncan*, 2014 MT 253, ¶ 16, 376 Mont. 348, 334 P.3d 920.

SUMMARY OF ARGUMENT

Today the practice of law is increasingly carried out by remote technological means, rendering it unnecessary for an attorney to be physically present within Montana's territorial boundaries to transact business, render services, or engage in tortious conduct in the state. But even 25 years ago, this Court deemed it "imperative" that "an attorney, whether or not licensed to practice law in Montana, not be allowed to escape the consequences of in-state representation by residing in some other state." *Turner*, 229 Mont. at 56, 744 P.2d at 901. That important directive remains true and should be followed here.

The District Court erroneously focused on the fact that Sedgwick's attorneys were not licensed or physically present in Montana to find a lack of personal

jurisdiction. Sedgwick's representation of Philadelphia in Montana—conduct consisting of breaches of Montana law that subjected Sedgwick's client to personal jurisdiction in this state—gave rise to specific personal jurisdiction over Sedgwick as well. Personal jurisdiction exists under Montana's long-arm statute, and its exercise comports with due process. Having provided bad legal advice in Montana and having appeared in multiple other cases in Montana during the same time period, Sedgwick should not escape personal jurisdiction. The District Court's order of dismissal should be reversed and the case remanded to litigate the merits of Philadelphia's legal malpractice claim.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DISMISSING THE CASE FOR LACK OF PERSONAL JURISDICTION.

This Court applies a two-part test to determine whether a Montana court may exercise personal jurisdiction over a nonresident defendant. *Tacket*, ¶ 22. It first asks whether personal jurisdiction exists under Rule 4(b)(1). *Id*. It then asks whether exercising jurisdiction would comport with traditional notions of fair play and substantial justice embodied in the Due Process Clause. *Id.* Both prongs of the test are easily satisfied under the facts of this case. Fundamentally, because Philadelphia's actions, through Sedgwick, subjected Philadelphia to personal jurisdiction in Montana, it follows that Sedgwick itself should also be subject to personal jurisdiction.

Personal jurisdiction may be general (all-purpose) or specific (case-linked). *Ford Motor Co. v. Mont. Eighth Jud. Dist. Court*, 2019 MT 115, ¶ 8, 395 Mont. 478, 443 P.3d 407. Sedgwick may not be found within Montana for purposes of general personal jurisdiction, but its Montana-directed conduct gave rise to specific, case-linked jurisdiction. Specific jurisdiction depends on an affiliation between the forum and the underlying controversy, focusing on "whether the defendant's suit-related conduct created a substantial connection with the forum state." *Tacket*, ¶ 19. It "may be established even though a defendant maintains minimum contacts with the forum, as long as the plaintiff's cause of action arises from any of the activities enumerated in Rule 4(b)(1), M.R.Civ.P. and the exercise of jurisdiction does not offend due process." *Simmons Oil Corp. v. Holly Corp.*, 244 Mont. 75, 83-84, 796 P.2d 189, 194 (1990). Sedgwick's suit-related conduct—the very conduct that comprised the breaches this Court later found to have "occurred in Montana," *Gateway*, ¶ 26—created a "substantial connection" to Montana and, thus, gave rise to specific jurisdiction over Sedgwick.

A. Jurisdiction Exists Under Montana's Long-Arm Statute.

Montana's long-arm statute provides, in pertinent part, that "any person is subject to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, any one of the following acts:

(A) the transaction of any business within Montana;

(B) the commission of any act resulting in accrual within Montana of a tort action; . . . [or]

(E) entering into a contract for services to be rendered or for materials to be furnished in Montana by such person. . . ."

Mont. R. Civ. P. 4(b)(1) (emphasis added). Sedgwick's conduct gives rise to jurisdiction under each of the above subsections.

1. Sedgwick's conduct resulted in the accrual of a tort action in Montana.

Despite this Court's directive that courts not allow non-resident attorneys to evade Montana jurisdiction simply by residing in another state, *Turner*, 229 Mont. at 56, 744 P.2d at 901, the District Court allowed just that. It concluded that even though Sedgwick's tortious conduct may have been directed at Montana and Montana citizens, personal jurisdiction did not arise because its attorneys remained in California and did not physically enter Montana or formally appear as counsel here. (Doc. 146 at 10.) By this logic, a tortfeasor can wreak all manner of havoc in Montana without being subject to the jurisdiction of its courts, as long as he/she does not physically cross its border. Respectfully, this is not a correct reading of Rule 4(b)(1)(b) or this Court's precedent, and undermines Montana's compelling interest in regulating the practice of law within the state.

Rule 4(b)(1)(B) permits the exercise of jurisdiction over one who commits "any act resulting in accrual within Montana of a tort action." In Montana, a tort action ordinarily accrues where "the actions which gave rise to the alleged torts

occurred." *Cimmaron Corp. v. Smith*, 2003 MT 73, ¶ 20, 315 Mont. 1, 67 P.3d 258. A tort action does not accrue in Montana simply because the plaintiffs allegedly experienced or learned of their injuries here. *Bi-Lo Foods, Inc., v. Alpine Bank*, 1998 MT 40, ¶ 27, 287 Mont. 367, 955 P.2d 154; *but see Bunch v. Lancair Int'l Inc.*, 2009 MT 29, 349 Mont. 144, 202 P.3d 784 (in products liability action, the tort accrues where the injury is suffered). Further, the relationship between the defendant and the forum must arise from contacts the defendant himself creates, rather than contacts between the plaintiff and the forum state. *Tacket*, ¶ 32.

The only reported Montana case addressing personal jurisdiction over a non-resident attorney for malpractice appears to be *Turner*. In that case, a Montana couple sought advice from a Georgia attorney who did not reside in Montana, was not licensed in Montana, and generally did not practice in Montana. *Id*., 229 Mont. at 52, 744 P.2d at 899. The Georgia attorney negligently represented the couple in a foreclosure action in Montana, where he failed to associate local counsel and made a number of blunders, putting the couple in danger of losing the family farm. *Id*. The district court dismissed the subsequent malpractice case against the Georgia attorney for lack of personal jurisdiction, but this Court reversed. *Id*. at 899-900. This Court held the attorney's representation resulted in the accrual of a tort action in Montana because "it is exactly those acts of representing the Turners that are the basis of the Turners' claims for relief in this matter." *Id*. at 901.

The Court pointed to "Montana's interest in regulating the practice of law within the state," and held it was "imperative" that an attorney, "whether or not licensed to practice law in Montana, not be allowed to escape the consequences of in-state representation by residing in some other state." *Id*. Because the Court found subsection (b)(1)(B) of the long-arm statute (accrual of a tort action) was dispositive, it did not address the plaintiffs' additional arguments under (b)(1)(A) (transaction of business) or (E) (contract for services or materials in Montana). *Id*.

Likewise, personal jurisdiction exists here because the tortious conduct at issue is Sedgwick's Montana-directed conduct relative to a Montana lawsuit and insurance claim brought by Montana citizens. Admittedly, the attorney in *Turner* actually came to Montana and appeared, albeit illegally, in a Montana action. *See id*. But this does not explain the holding. Contrary to the District Court's conclusion that *Turner* "found jurisdiction under this section of the long arm statute without analysis of *accrual within Montana* of that legal malpractice" (Doc. 146 at 9 (emphasis original), this Court did perform that analysis. It found it was the attorney's acts in rendering advice and representing his clients relative to a Montana action that led to the accrual of the tort action in Montana, irrespective of whether he was licensed in Montana or not. *See id*. Thus, whether the attorney is rendering legal advice from within Montana's borders or without, if he/she is rendering services in connection to clients in a Montana lawsuit, his/her negligence necessarily results in the accrual of a tort

action within Montana. Mont. R. Civ. P. 4(b)(1)(B). This only makes sense. To find otherwise would be to create an artificial distinction based on physical presence or licensure that ignores a substantial relationship with the defendant and the forum through forum-directed activities.

Sedgwick rendered advice to Philadelphia on a contract to be performed in Montana and a Montana class action lawsuit, and then took specific action toward Philadelphia's Montana insureds. It was Sedgwick, after all, that penned the letter denying coverage. As in *Turner*, it was exactly the acts and omissions of Sedgwick relative to the Montana action and Montana citizens that form the basis of this malpractice action. This is a far cry from a case in which the only connection to Montana is the location of injury.

This is further evidenced, in fact, by this Court's express findings in *Gateway*: "Philadelphia failed to appear and defend Plaintiffs in the Walter Class Action, an alleged breach of contract and of the common law, which occurred in Montana." *Id*., ¶ 26 (emphasis added). Those Montana breaches were committed through Sedgwick, which knew at all times it was representing Philadelphia with respect to Philadelphia's obligations to Montana citizens sued in a Montana lawsuit. It is nonsensical that an attorney's advice and assistance in breaching a client's contract and legal duties in Montana—breaches that ultimately subject the client to personal jurisdiction in Montana—is not itself tortious conduct in the same forum.

Furthermore, Sedgwick not only advised Philadelphia to breach its contractual and legal duties in Montana, it committed those breaches on Philadelphia's behalf. A review of this Court's opinion leaves no doubt that jurisdiction over Philadelphia was established through the actions of its "authorized representative," Sedgwick. *Id*., ¶ 38. The Court explicitly pointed to "[t]he denial letter sent by Philadelphia's counsel in response to the claim identified the Entities as insureds under the Policy." *Id*., ¶ 26. It also quoted the plaintiffs' allegations that "Philadelphia representative Sedgwick LLP wrote to Ron Hutcheson of Gateway. . . . In that letter, Philadelphia, through its authorized representative, denied Plaintiffs' request to Philadelphia, for defense and indemnity to plaintiffs for the Walter Class Action." *Id*., ¶ 38. As a result, "Philadelphia denied a defense to the Montana Entities in that Montana case; and those Montana businesses therefore sustained the loss of the policy's benefit and acted on their own behalf to defend themselves in the Montana case." *Id*. Thus, Sedgwick's own Montana-related conduct resulted in the accrual of a tort action in Montana, not just the damages to Philadelphia.

Nonetheless, the District Court determined Philadelphia's reliance on *Gateway* was "misplaced." (Doc. 146 at 11.) It reasoned this Court in *Gateway* "did not find that the breach of contract occurred in Montana." (Doc. 146 at 11.) Rather, "[t]he court found the Walter Class Action occurred in Montana and in that action, plaintiff's allege breach of contract." (Doc. 146 at 11.) Respectfully, this is a

strained and erroneous reading of the Court's explicit finding that "Philadelphia failed to appear and defend Plaintiffs in the Walter Class Action, an alleged breach of contract and of the common law, which occurred in Montana." *Id*., ¶ 26 (emphasis added). It was the breach of the duty to defend that this Court found, correctly, to have occurred in Montana. Again, that Montana breach was committed by and through Sedgwick.

In analyzing other case law, the District Court found "the conclusion and holdings in *Tacket* (relying on *Cimmaron*, *Bird*, *Bi-Lo*, *Threlkeld*) to be persuasive and applicable here." (Doc. 146 at 11.) *Tacket* and its discussion of prior cases is indeed instructive, but only because it demonstrates why this case is so different from those in which the only connection to Montana was the place of injury:

> In analyzing accrual in each of these cases, we focused on where the events giving rise to the tort claims occurred, rather than where the plaintiffs allegedly experienced or learned of their injuries. In *Bi-Lo*, Alpine's alleged mishandling of Bi-Lo's check took place in Colorado. In *Bird*, Hiller's alleged fraud, deceit, and conversion arose from actions that Hiller took in Idaho. In *Threlkeld*, the defendants' alleged malpractice and misrepresentations regarding the horse's treatment occurred in Colorado. In *Cimmaron*, the defendants' conversion and misappropriation of funds occurred in Pennsylvania.

Id., ¶ 31.

In *Tacket* and the cases it discussed, none of the tortious conduct was directed at Montana or indeed had anything to do with Montana. The only connection to Montana was the fact of injury. For example, in *Bird v. Hiller*, 270 Mont. 467, 892

P.2d 931 (1995), another legal malpractice case, Montanans hired an Idaho attorney to represent them in a lawsuit in Idaho. *Id*., 270 Mont. at 468, 892 P.2d at 932. The Montanans later sued the attorney over fees. *Id*. This Court found the mere fact that the attorney sent some documents to his clients in Montana did not create personal jurisdiction because the representation occurred exclusively in Idaho: "Jurisdiction is not acquired through interstate communications pursuant to a contract to be performed in another state." *Id*., 270 Mont. at 468, 892 P.2d at 934 (emphasis added). In contrast to *Bird*, Philadelphia hired Sedgwick to represent it in Montana, where the Montana entities Sedgwick labeled as Philadelphia insureds were being sued, where the Montana Code created the applicable legal duties, and where Philadelphia committed the breach of contractual and legal duties on the advice of and through Sedgwick.

In summary, in this case both the injury-causing events and the injury itself occurred in Montana. This Court has already determined, in fact, that the breach of contract and tort "occurred in Montana." *Gateway*, ¶ 26. There is no question that conduct was committed at the direction of, and through, Sedgwick. Sedgwick's malpractice thus resulted in the accrual of a tort action within Montana, establishing personal jurisdiction under Rule (b)(1)(B).

2. Sedgwick transacted business in Montana.

Sedgwick's conduct also satisfies Rule 4(b)(1)(A) because a Montana court may exert long-arm jurisdiction over any person if the claim arises out of that person's "transaction of any business within Montana." *Buckles v. Cont'l Res., Inc. (Buckles II)*, 2020 MT 107, ¶ 14, 400 Mont. 18, 462 P.3d 223. In analyzing the transaction of business, "[t]he dispositive question . . . is whether a relationship exists among [the defendant], the forum, *and the litigation*, not just with [the defendant's] contacts with Montana in general." *Id.* (emphasis original) (citations and internal punctuation omitted). By consciously and deliberately undertaking to represent a client relative to a Montana lawsuit, a contract to be performed in Montana, and claims asserted against the client by Montana entities, Sedgwick undertook to transact business in Montana.

Despite these facts, Sedgwick argued in the District Court that its attorneys were "asked by PHILADELPHIA to consider coverage for an insurance contract governed by Ohio law." (Doc. 132 at 10.) This argument, which was not adopted by the District Court, fails for at least two reasons. First, this Court has already determined that Montana law governs Philadelphia's contractual obligations relative to the Walter Class Action. *Gateway*, ¶ 25. To the extent Sedgwick had a mistaken understanding of the governing law, its claimed ignorance is no exoneration. As a law firm purporting to have nationwide legal expertise, and whose attorneys regularly

appeared in other Montana lawsuits, Sedgwick was duty-bound to investigate the governing law and advise its client accordingly.

Second, Sedgwick explicitly expressed its views on Montana law in its correspondence to Philadelphia and, with respect to Ohio law, stated "because the Insured is based out of Ohio, we also looked to Ohio law on the issue out of an abundance of caution." (May 4, 2015 Email from Sedgwick, Doc. 138, Ex. B (emphasis added).) And critically, Sedgwick sought and acquired approval from Philadelphia to conduct legal research "on the breadth of the duty to defend and what is or is not an interrelated wrongful act under Ohio and Montana law." (April 20, 2015 Email from Sedgwick, Doc. 138, Ex. C (emphasis added).) This only underscores the unmistakable nexus of Sedgwick's assignment to Montana.

The District Court did not find otherwise. It did not deny the clear relationship between Sedgwick, the forum, and the litigation. Instead, it determined "Philadelphia has not established that its case arises from the nonresident Sedgwick Defendants conducting 'substantial' business activity in Montana." (Doc. 146 at 8 (emphasis added).) It based this ruling on the fact that the Sedgwick attorneys were not licensed to practice law in Montana, and that Philadelphia presented no evidence "Sedgwick regularly conducts business in Montana." (Doc. 146 at 8.) Under this reasoning, a nonresident attorney who provides legal services just once in Montana can avoid specific personal jurisdiction because his Montana business activity is not

"substantial" in the broader sense. Thus, as interpreted by the District Court, the inquiry is largely equivalent to that for general personal jurisdiction. This is an incorrect analysis.

First, the District Court's interpretation is contrary to the plain and explicit language of Rule 4(b)(1)(A), which provides that long-arm jurisdiction exists over any person through "the transaction of any business within Montana." (Emphasis added.) This is consistent with the fact that specific jurisdiction, unlike general jurisdiction, is based on the relationship between the defendant, the forum, and the litigation, not the defendant's contacts with Montana in general. *Buckles II*, ¶ 14. The proper inquiry has nothing to do with whether a defendant's general contacts with Montana are substantial, but whether the specific acts at issue in the litigation have a substantial relationship to the forum. Here, they clearly do.

A review of the Court's prior interpretations of Rule 4(b)(1)(A) offers helpful insight. In a 2011 decision, this Court stated that "[j]urisdiction comports with M. R. Civ. P. 4(b)(1)(A) if the nonresident business conducts 'substantial' business activity in the state." *Grizzly Sec. Armored Express, Inc. v. Armored Group, LLC*, 2011 MT 128, ¶ 23, 360 Mont. 517, 255 P.3d 143. However, the Court was quoting from a prior decision, *Bunch v. Lancair Int'l, Inc.*, 2009 MT 29, ¶ 18, 349 Mont. 144, 202 P.3d 784, and specifically its discussion of a federal district court case:

> Turning first to M. R. Civ. P. 4B(1)(a), the District Court rejected the argument that any of the defendants were subject to jurisdiction in

> Montana based on the transaction of business here. The District Court specifically distinguished the facts at bar from those in *Great Plains Crop Mgmt., Inc., v. Tryco Mfg. Co., Inc*., 554 F. Supp. 1025 (D. Mont. 1983), a case relied upon by Bunch. In that case, the federal district court found that jurisdiction was proper over an out-of-state corporation when it conducted "substantial" activities in Montana, including marketing in Montana, accepting sales calls and soliciting business here, and consummating sales with Montana residents. *Great Plains*, 554 F. Supp. at 1027. No such comparable business activities on behalf of the defendants were present in this case. . . .

Bunch, ¶ 18.

A closer look at *Great Plains* reveals the federal district court conducted a blended analysis of due process and long-arm jurisdiction. *Great Plains Crop Mgmt., Inc. v. Tryco Mfg. Co.*, 554 F. Supp. 1025, 1027 (D. Mont. 1983). Its discussion of general Montana contacts went to the due process analysis, not whether long-arm jurisdiction was proper under Rule 4(B)(1)(a). *Id*. When evaluating "the transaction of business within Montana," the court's analysis appropriately focused on the defendant's specific litigation-related conduct toward the plaintiff, not its general Montana contacts:

> Thus, by resort to Montana case law, this court must determine whether Tryco has "transacted business within Montana." The inquiry does not end there, since it must also be determined whether the exercise of jurisdiction over Tryco would offend due process.
>
> … In the instant case, even accepting Tryco's version that Doane did not visit Johnson in Geraldine, the defendant's activities in Montana were substantial. Tryco advertised in a magazine that could reasonably be expected to reach agriculturally-oriented states like Montana. Tryco mailed its brochure into this state, and facilitated a sale to Great Plains by both calling this state and accepting calls from here. The defendant

> company invited the plaintiff to Illinois in the hope of selling him a piece of equipment for use in this state. Tryco made arrangements for shipping several machines into Montana, and sent the plaintiff a letter soliciting another sale, even including the terms of the sale and indicating the need for prompt action by Great Plains. Finally, the court notes that both the plaintiff and the defendant considered the possibility of the plaintiff becoming a Tryco dealership in Montana. In fact, the defendant points out that Great Plains "was sold the equipment at dealer discount prices with this in mind." Though the dealership idea was later dropped, the facts of this case make it apparent that Tryco's business activity in Montana was considerable, and that its ambitions extended beyond the Illinois border. The court concludes that exercise of jurisdiction over Tryco is consistent with Montana law and not offensive to due process and notions of fair play.

Id. (internal citations omitted).

In summary, it appears the federal district court's blended analysis in *Great Plains* ultimately led to confusion about whether the "substantial" nature of a nonresident's conduct is appropriately part of the Rule 4(B)(1)(a) inquiry. Again, that inquiry simply asks whether the nonresident transacted "any business within Montana." (Emphasis added.) That is the plain text of the rule. For purposes of specific jurisdiction, contacts are sufficiently "substantial" when they are related to the forum and the litigation, as Sedgwick's contacts certainly were here. The District Court erred in also requiring Sedgwick's general contacts with Montana to be "substantial."

Relying on specific personal jurisdiction, Philadelphia could not have anticipated the District Court would require (erroneously) an additional showing that Sedgwick's general business activity in Montana was "substantial." This is

particularly true because the District Court refused to allow Philadelphia to conduct jurisdictional discovery on Sedgwick's other Montana contacts. (Doc. 145.)

When filing its Third Party Complaint, Philadelphia served discovery on Sedgwick specifically asking, among other things, "[f]rom 2010 to its bankruptcy, did Sedgwick conduct other business in Montana by, inter alia, providing legal services to citizens of Montana, providing legal advice on Montana law, or providing legal services for cases/claims filed in Montana?" (Doc. 136, Ex. A.) Instead of answering, Sedgwick moved for a protective order, asking the District Court to stay this discovery. (Doc. 135.) Philadelphia opposed Sedgwick's motion, but the District Court granted it. (Doc. 145.) After denying this jurisdictional discovery, the District Court should not have imposed a requirement that Philadelphia demonstrate Sedgwick's other Montana contacts. It should have based its decision on Philadelphia's prima facie showing in the Third Party Complaint.

Moreover, despite Philadelphia not being allowed to conduct discovery on Sedgwick's other Montana contacts, court records undermine Sedgwick's arguments to the District Court that it "did not avail itself to Montana in any manner," "never purposefully availed [itself] in Montana to be subject to the laws of Montana," and "did not" and "do[es] not conduct business in Montana. . . ." (Doc. 132 at 2,14, 17.) Court records reveal that Sedgwick has appeared as counsel in Montana's courts in multiple other cases during the same time period. *See Gonzalez v. Nat'l Union Fire*

Ins. of Pittsburgh, No. CV 11-20-BU-DLC, 2012 U.S. Dist. LEXIS 80848, at *1 (D. Mont. June 8, 2012); *Central Asia Inst.*, App. 3; *Whalen v. The Catholic Mut. Relief Soc. of America*, Montana First Judicial District Court, Cause No. BDV 2012-976 (2013) (Docket, Motion and Order Granting Pro Hac Vice Admission, **Appendix 4**); *Geldrich v. 3M Company*, Montana Twentieth Judicial District Court, Cause No. DV-13-269 (2015) (Docket, Motion, Brief and Order Granting Pro Hac Vice Admission, **Appendix 5**).[3] These court records reveal at least eight different Sedgwick attorneys have appeared pro hac vice in Montana,[4] including one of the individual Defendants in this case, Martin J. O'Leary. Mr. O'Leary represented Philadelphia in Montana before Judge Christensen in 2012-2013 (notably, in a case in which Philadelphia's duty to defend under Montana law was the central issue). *Central Asia Inst.*, App. 3.

This is significant because it establishes that Sedgwick did, in fact, avail itself to Montana so as to be subject to its laws, and did conduct "any business" in Montana. After all, an attorney practicing pro hac vice in Montana must "certify in writing and under oath to this Court that . . . he or she will be bound by [Montana's] Rules of Professional Conduct in his or her practice of law in this State and will be

[3] This Court may take judicial notice of these judicial records. Under Mont. R. Evid. 202(b)(6), "[r]ecords of any court of this state or of any court of record of the United States" are proper subjects of judicial notice. *See, e.g., Draggin' Y Cattle Co. v. Addink*, 2016 MT 98, ¶ 14, 383 Mont. 243, 371 P.3d 970 (taking judicial notice of state court records).

[4] The eight Sedgwick attorneys who appeared in Montana were: Martin J. O'Leary, Brian D. Harrison, Erin R. Yoshino, Aaron F. Mandel, Scott D. Greenspan, Maria Katina Karos, Catalina J. Sugayan and Micki Singer. (App. 3-5.)

subject to the disciplinary authority of this State." Mont. R. Prof. C. 8.5(b). Sedgwick's arguments to the District Court that it never conducted business in Montana, or that it never availed itself in Montana "in any manner" so as to be subject to the laws of Montana, were simply incorrect. (*See* Doc. 132 at 2,14.)

Philadelphia satisfied its burden by making a prima facie showing in its Third Party Complaint that Sedgwick, through its representation of Philadelphia, conducted business in Montana, and thus a relationship existed between Sedgwick, the forum, and the litigation sufficient to establish specific personal jurisdiction. *Buckles II*, ¶ 14. It was error to hold otherwise. Rule 4(b)(1)(A) provides an additional ground to exercise personal jurisdiction over Sedgwick.

3. Sedgwick entered into a contract to provide services in Montana.

Sedgwick's conduct also satisfies Rule 4(b)(1)(E) of the long-arm statute, largely for the same reasons outlined above. That Rule establishes jurisdiction over any person who "enter[s] into a contract for services to be rendered . . . in Montana by such person." *Id*. When Sedgwick agreed to accept compensation for its legal services, it knew those services were to evaluate Philadelphia's contractual obligations in Montana and provide advice relative to an ongoing Montana class action and insurance claim brought by putative Montana insureds. In fact, the services have no connection to California, apart from the attorneys' San Francisco residence.

The District Court disagreed, stating "services about Montana law is distinguished from a contract for services to be rendered in Montana." (Doc. 146 at 14.) It also stated "Philadelphia does not make any assertions regarding the attorney client agreement between Philadelphia and the Sedgwick Defendants to indicate the scope of representation." (Doc. 146 at 14.) The District Court's analysis misinterprets the allegations of the Third-Party Complaint.

Philadelphia alleged that it hired Sedgwick to evaluate its coverage obligations relative to a Montana class action and its putative Montana insureds. (Doc. 125 at ¶ 8.) These allegations, taken as true for purposes of Sedgwick's motion to dismiss, sufficiently establish the "scope of representation." *See, e.g., Spectrum Pool Prods., Inc. v. MW Golden, Inc.*, 1998 MT 283, ¶¶ 10-11, 291 Mont. 439, 968 P.2d 728 ("The allegations in Spectrum's complaint are sufficient to establish that MW Golden potentially . . . entered into a contract for services to be rendered within the State of Montana pursuant to Rule 4(B)(1)(e), M.R.Civ.P."). Moreover, they establish Sedgwick's agreement to provide services was more than an agreement to provide services "about Montana law," it was an agreement to provide services in Montana—where the lawsuit was ongoing, where most of the putative insureds resided, and where Gateway's legal obligations arose. Thus, personal jurisdiction also exists under Rule 4(b)(1)(E).

B. The Exercise of Jurisdiction Satisfies Due Process.

Finding no personal jurisdiction under the long-arm statute, the District Court declined to analyze due process. However, the exercise of personal jurisdiction over Sedgwick satisfies both prongs of the applicable test. *Tacket*, ¶ 22.

Montana applies a three-part test in analyzing whether personal jurisdiction comports with traditional notions of fair play and substantial justice:

> (1) the nonresident defendant must do some act by which he purposefully avails himself of the privileges of conducting activities in the forum;
>
> (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must be reasonable.

Nasca v. Hull, 2004 MT 306, ¶ 26, 323 Mont. 484, 100 P.3d 997. Once the first element of the test is satisfied, a presumption of reasonableness arises, which a defendant can overcome only by presenting a "compelling case" that jurisdiction would be unreasonable. *B.T. Metal Works v. United Die & Mfg. Co.*, 2004 MT 286, ¶ 23, 323 Mont. 308, 100 P.3d 127. All three parts of the test are met here.

1. Purposeful Availment

"A nonresident defendant purposefully avails itself of the benefits and protections of the laws of the forum state when it takes voluntary action designed to have an effect in the forum." *Id.*, ¶ 35. In this case, there can be no question Sedgwick voluntarily took action designed to have an effect in Montana when it

advised its client whether to undertake a defense in a Monana class action, how to interpret its obligations to Montana citizens, and then denied coverage to those Montanans on Philadelphia's behalf.

In response, Sedgwick has made the same argument Philadelphia made, unsuccessfully, in opposing personal jurisdiction. Sedgwick argued in the District Court that the effects of its conduct in Montana were merely foreseeable, and "[f]oreseeability alone has never been a sufficient benchmark for personal jurisdiction...." (Doc. 132 at 13 (quoting *World Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)).) Addressing this same argument in *Gateway*, this Court observed:

> Regarding foreseeability, the U.S. Supreme Court had further explained in *World-Wide Volkswagen*, "[t]his is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297, 100 S. Ct. at 567; *see also Ford Motor Co.*, ¶ 14.

Id., ¶ 32 (emphasis added).

In rejecting Philadelphia's foreseeability argument, this Court pointed to the fact that Philadelphia was authorized to conduct business in Montana and processed the insurance application with notice that Gateway had active business locations in Montana. *Id*., ¶ 33. It noted that, "consistent therewith, Philadelphia's counsel later

identified the Entities as insureds under the Policy when Gateway presented a claim." *Id*. Thus, "Philadelphia acted purposely, and its contacts with Montana were not merely 'random, fortuitous, attenuated, or due to the unilateral activity of a third party.'" *Id*. (citing *B.T. Metal Works*, ¶ 35).

With regard to Sedgwick, the question is even clearer than it was for Philadelphia. Rather than processing an insurance application in which coverage in Montana was merely a possibility, Sedgwick knew perfectly well it was being asked to represent Philadelphia with respect to an ongoing Montana lawsuit and potential Montana insureds. It knew perfectly well that when it denied coverage on behalf of Philadelphia, its conduct would have an injurious effect on the Montana businesses, in Montana. The consequence was far more than "foreseeable," it was guaranteed.

Because Sedgwick's forum-related conduct is more than sufficient for it to reasonably anticipate being haled into court here, "a presumption of reasonableness arises, which [Sedgwick] can overcome only by presenting a compelling case that jurisdiction would be unreasonable." *Gateway*, ¶ 36. Sedgwick cannot make that case.

2. Forum-Related Activities

The second part of the due process test asks whether there is "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's

regulation." *Buckles*, ¶ 17. In *Gateway*, the Court found this part of the test was satisfied because "Philadelphia denied a defense to the Montana Entities in that Montana case; and those Montana businesses therefore sustained the loss of the policy's benefit and acted on their own behalf to defend themselves in the Montana case." *Gateway*, ¶ 39. Because that coverage denial was not only based on Sedgwick's advice, but was actually carried out by Sedgwick, and because that coverage denial is the very reason this lawsuit exists, this question is, as the Court found in *Gateway*, "not a particularly difficult one." *Id*.

3. Reasonableness

Seven factors have been identified to evaluate reasonableness. *Nasca*, ¶ 32. The factors "are not mandatory tests . . . [but] simply illustrate the concept of fundamental fairness, which must be considered in each jurisdictional analysis." *Simmons*, 244 Mont. at 88, 796 P.2d at 197. The factors are:

(1) The extent of the defendant's purposeful interjection into Montana;

(2) The burden on the defendant of defending in Montana;

(3) The extent of conflict with the sovereignty of the defendant's state;

(4) Montana's interest in adjudicating the dispute;

(5) The most efficient resolution of the controversy;

(6) The importance of Montana to the plaintiff's interest in convenient and effective relief; and

(7) The existence of an alternative forum.

Nasca, ¶ 32.

In *Gateway*, the Court found the most important factor is that "Montana has a significant interest in adjudicating this dispute." *Gateway*, ¶ 43. It relied on the fact that, "as a matter of public policy, Montana has an interest in adjudicating a complaint for declaratory judgment when the underlying suit is brought in Montana and an insurer concludes that coverage is not available and does not defend an insured in that Montana action." *Id*. Similarly, in finding the exercise of jurisdiction was reasonable over the Georgia attorney in *Turner*, this Court held "[f]oremost in this determination is Montana's interest in regulating the practice of law within the state." *Turner* at 901.

This case presents a number of compelling public policy interests that militate in favor of jurisdiction. Montana clearly has an interest in adjudicating a malpractice case when the malpractice caused an insurer to wrongfully deny a defense to Montanans in a Montana lawsuit. Montana also has a strong interest in regulating the practice of law within its borders. More specifically, it has an interest in making sure non-resident attorneys who purport to have expertise in a national company's legal obligations in Montana do so thoughtfully, carefully, and so as not to trample the rights of Montana citizens. Needless to say, the mere fact that Sedgwick's attorneys were physically located in San Francisco when they took action to harm Montanans

does not override these important state interests, particularly because Sedgwick was regularly appearing in Montana's courts.

Far from a "compelling case" that jurisdiction would be unreasonable, in the District Court Sedgwick merely complained that its two attorneys would incur "traveling expenses" by having to come to Missoula. (Doc. 132 at 15.) Given Montana's strong interest in adjudicating this dispute, that slight inconvenience—one that is a common part of litigation—is largely inconsequential. As this case demonstrates, legal representation increasingly crosses state lines in the modern world, and advances in communication technology have made it easier for lawyers to appear and communicate remotely. *See, e.g., Menken v. Emm*, 503 F.3d 1050, 1060 (9th Cir. 2007) ("[W]ith the advances in transportation and telecommunications and the increasing interstate practice of law, any burden is substantially less than in days past."); *Panavision Int'l, Ltd. P'ship v. Toeppen*, 141 F.3d 1316, 1323 (9th Cir. 1998) ("[U]nless the inconvenience is so great as to constitute a deprivation of due process, it will not overcome clear justifications for the exercise of jurisdiction.") A massive international law firm as Sedgwick was, with multiple offices across the country and hundreds of attorneys, cannot credibly complain that potentially having to take a trip to Montana imposes such a burden as to violate due process.

Finally, Sedgwick has suggested that Philadelphia's recent filing of a companion case in California demonstrates "PHILADELPHIA's own awareness that

California, not Montana, is the only state with jurisdiction over the California defendants." (Doc. 132 at 16.) Sedgwick knows full well that Philadelphia was compelled to file that action to protect the statute of limitations in light of Sedgwick's position on Montana jurisdiction, and only after delays and Sedgwick refusing to mediate with a Montana mediator. (Doc. 138, Ex. A.) Sedgwick was explicitly informed the California case was a mere placeholder necessitated by Sedgwick's promised challenge to personal jurisdiction, (Doc. 138, Ex. A.), which is precisely what it is.

In summary, not only does the exercise of jurisdiction satisfy the mandates of Montana's long-arm statute, it also comports with traditional notions of fair play and substantial justice. *Tacket*, ¶ 22.

CONCLUSION

Sedgwick may have committed its malpractice from an office in San Francisco, but this must not allow it to escape responsibility for its tortious conduct in Montana. Sedgwick's legal services were specifically directed at Montana and were ultimately deemed to consist of its client's breach of Montana law—a breach that occurred in Montana and gave rise to personal jurisdiction over its client. The District Court erred in dismissing the case for want of personal jurisdiction. The District Court should be reversed and the case remanded to adjudicate the merits of Sedgwick's legal malpractice.

Dated: September 22, 2023

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing Opening Appellate Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points, is double-spaced except for quoted and indented material, and contains approximately 8,207 words, excluding the Table of Contents, Table of Authorities, and Certificate of Compliance.

Dated: September 22, 2023

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