DA 23-0333

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 235

PHILADELPHIA INDEMNITY INSURANCE COMPANY,

Third-Party Plaintiff and Appellant,

v.

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

Third-Party Defendants and Appellees.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-18-1357
Honorable Shane A. Vannatta, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Matthew B. Hayhurst, Thomas J. Leonard, Boone Karlberg P.C., Missoula, Montana

For Appellees:

David M. McLean, Ryan C. Willmore, McLean & Associates, PLLC, Missoula, Montana

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Submitted on Briefs: March 20, 2024

Decided: October 22, 2024

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Philadelphia Indemnity Insurance Company (Philadelphia) appeals a May 19, 2023 Order from the Fourth Judicial District Court, Missoula County, granting a Motion to Dismiss for Lack of Personal Jurisdiction filed by Martin O'Leary, Kimberly Forrester, and the Sedgwick LLP Liquidating Trust (collectively, Sedgwick or the Sedgwick Defendants). We restate the issue on appeal as follows:

> *Did the District Court err by determining that the Sedgwick Defendants were not subject to personal jurisdiction in Montana?*

¶2 We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Philadelphia is a corporate Pennsylvania insurer with its principal place of business in Pennsylvania. Martin O'Leary (O'Leary) and Kimberly Forrester (Forrester) are attorneys and former employees of Sedgwick LLP, a now-bankrupt law firm that was based in San Francisco. The Sedgwick Defendants formerly represented and provided legal services to Philadelphia, which has now brought claims of malpractice, indemnity, and contribution against Sedgwick. The Sedgwick Liquidated Trust was created by the U.S. Bankruptcy Court for the Northern District of California to manage the firm's remaining liabilities.

¶4 Philadelphia's claims against Sedgwick originate from a Montana class action lawsuit brought by Montana hotel employees in 2015, who claimed that Philadelphia's insured, Gateway Hospitality, Inc. (Gateway), an Ohio corporation, and several Montana companies, failed to distribute to them service charges paid by banquet customers.

Gateway submitted a claim to Philadelphia requesting defense in the lawsuit and indemnity. Philadelphia retained the services of Sedgwick LLP's O'Leary and Forrester to, as stated in Philadelphia's briefing, "evaluate its coverage obligations relative to the Montana action and the putative Montana insureds." Philadelphia alleges that the two attorneys advised it to simply deny coverage to Gateway, and pursuant thereto, the attorneys issued a letter to Gateway at its address in Ohio that conveyed Philadelphia's denial of coverage under Gateway's policy for the Montana class action suit. Philadelphia's Third-Party Complaint makes no allegation of any communications by Sedgwick with the Montana Plaintiffs or any communications into Montana. Sedgwick's only alleged communication, other than the communications with its client Philadelphia in Pennsylvania, was its May 29, 2015 letter, a copy of which was attached to the Third-Party Complaint, which was mailed from Sedgwick's office in San Francisco, California, to Gateway at Gateway's office in Twinsburg, Ohio, conveying Philadelphia's denial of coverage under Gateway's policy for the Walter class action then pending in Montana.

¶5 That lawsuit eventually settled, requiring Gateway to pay approximately four million dollars to the class members. Gateway sued Philadelphia in 2018, alleging breach of their insurance contract for Philadelphia's failure to provide a defense to the class action. Philadelphia filed a Motion to Dismiss for Lack of Personal Jurisdiction, but the District Court denied the motion. On Philadelphia's petition for supervisory control, this Court affirmed the District Court's denial. *See Gateway Hosp. Grp. Inc. v. Phila. Indem. Ins. Co.*, 2020 MT 125, ¶ 46, 400 Mont. 80, 464 P.3d 44, *cert. denied* 141 S. Ct. 1060 (2021). In March 2021, Philadelphia entered into a settlement agreement with Gateway.

¶6 In April 2021, Philadelphia filed a Third-Party Complaint within the same Gateway-Philadelphia proceeding against the Sedgwick Defendants for legal malpractice. The Sedgwick Defendants responded by filing a Motion to Dismiss for Lack of Personal Jurisdiction, which was granted by the District Court on May 19, 2023. The District Court reasoned that Philadelphia failed to make a prima facie showing of specific personal jurisdiction based upon the Sedgwick Defendants' actions and contacts with Montana, as required under Montana Rule of Civil Procedure 4(b)(1). Philadelphia appeals from the District Court's order dismissing its Third-Party Complaint against Sedgwick.

STANDARD OF REVIEW

¶7 "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. 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." *Gateway*, ¶ 12. We review a District Court's conclusions of law to determine whether they are correct and any factual findings to determine whether they are clearly erroneous. *Buckles v. Cont'l Res., Inc.*, 2020 MT 107, ¶ 10, 400 Mont. 18, 462 P.3d 223 (hereinafter, *Buckles II*).

DISCUSSION

¶8 "Personal jurisdiction—a court's power over the parties in a proceeding—may be general (all-purpose) or specific (case-linked)." *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 2019 MT 115, ¶ 8, 395 Mont. 478, 443 P.3d 407, *aff'd* 592 U.S. 351, 141 S. Ct. 1017 (2021). Philadelphia does not contend that the Sedgwick Defendants are subject to

general personal jurisdiction in Montana, and thus we are presented only with the question of whether the Sedgwick Defendants are subject to specific personal jurisdiction.

¶9 "[S]pecific jurisdiction focuses on the relationship among the defendant, the forum, and the litigation, and depends on whether the defendant's suit-related conduct created a substantial connection with the forum state." *Tackett v. Duncan*, 2014 MT 253, ¶ 19, 376 Mont. 348, 334 P.3d 920 (internal quotations and citations omitted). Thus, "a Montana court may assert specific personal jurisdiction over a nonresident defendant when the plaintiff's cause of action arises from the specific circumstances set forth in Montana's long-arm statute, M. R. Civ. P. 4(b)(1)." *Buckles v. Cont'l Res., Inc.*, 2017 MT 235, ¶ 15, 388 Mont. 517, 402 P.3d 1213 (hereinafter, *Buckles I*). We apply a two-part test to determine whether a Montana court may exercise personal jurisdiction, specific or general, over a nonresident defendant. *Ford*, ¶ 10 (citing *Tackett*, ¶ 22). "First, we determine whether personal jurisdiction exists under Montana's long-arm statute, M. R. Civ. P. 4(b)(1)." *Ford*, ¶ 10. Second, if personal jurisdiction exists under the long-arm statute, "we then determine whether exercising personal jurisdiction is constitutional; that is, whether it conforms with 'the traditional notions of fair play and substantial justice embodied in the due process clause.'" *Ford*, ¶ 10 (quoting *Cimmaron Corp. v. Smith*, 2003 MT 73, ¶ 10, 315 Mont. 1, 68 P.3d 258). Here, we resolve the case under the first part of the test.

¶10 "'While a defendant's contacts with the forum State may be intertwined with [its] transactions or interactions with the plaintiff or other parties, . . . a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.'"

Tackett, ¶ 33 (quoting *Walden v. Fiore*, 571 U.S. 277, 286, 134 S. Ct. 1115, 1123 (2014)); *see also Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 417, 104 S. Ct. 1868, 1873 (1984) ("[The] unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.").

¶11 Philadelphia contends that the Sedgwick Defendants' "suit-related conduct" established a substantial connection with Montana and therefore gives rise to specific personal jurisdiction over them. To satisfy the first part of our test, Philadelphia offers three grounds to find that jurisdiction exists under Montana's long-arm statute: (1) the Sedgwick Defendants' conduct resulted in the accrual of a tort action in Montana; (2) the Sedgwick Defendants transacted business in Montana; and (3) the Sedgwick Defendants entered into a contract to provide services in Montana. We analyze each ground in turn.

¶12 Jurisdiction can be established through "the commission of any act resulting in accrual within Montana of a tort action." M. R. Civ. P. 4(b)(1)(B). "[W]hether a tort accrued in Montana is highly fact-specific and dependent on the nature of the alleged tort at issue." *Groo v. State Eleventh Jud. Dist. Ct*., 2023 MT 193, ¶ 32, 413 Mont. 415, 537 P.3d 111. "This Court's analysis of accrual has focused on where the events giving rise to the claims occurred, rather than where the plaintiffs allegedly experienced or learned of their injuries." *Groo*, ¶ 26.

¶13 In *Bird v. Hiller*, an Idaho attorney agreed to represent Montana clients in connection with a car accident that occurred in Idaho, sending a contingency fee letter to Montana and engaging in other communications with the clients in Montana. *Bird*, 270

Mont. 467, 468-69, 892 P.2d 931, 932 (1995). The attorney negotiated a settlement of the case, but a dispute arose over the settlement, and the clients, including two other members of the original client's family, eventually filed suit in Montana state court against the attorney over fees, alleging conversion and fraud, which the clients alleged had accrued in Montana. *Bird*, 270 Mont. at 468, 471, 892 P.2d at 932-33. We reasoned that the conversion tort accrued in Idaho, "as that is where Mr. Hiller came into possession of the [settlement] checks, and allegedly asserted unauthorized control over the checks." *Bird*, 270 Mont. at 472, 892 P.2d at 934. Regarding the tort of fraud and deceit, we reasoned that "any alleged fraud or deceit that Mr. Hiller perpetrated on the Birds as a result of his unstated intentions regarding the representation of [another family member] would have accrued in Idaho." *Bird*, 270 Mont. at 473, 892 P.2d at 934. We thus concluded that Montana did not have jurisdiction over the Idaho lawyer.

¶14 In *Bi-Lo Foods v. Alpine Bank*, 1998 MT 40, 287 Mont. 367, 955 P.2d 154, Bi-Lo Foods (Bi-Lo), a Montana corporation, negotiated a purchase of refrigeration equipment from a Colorado supplier, who instructed Bi-Lo to deposit earnest money of $10,000 into an escrow account at Alpine Bank. *Bi-Lo Foods*, ¶ 6. However, Alpine Bank wrongly deposited Bi-Lo's check directly into the seller's account. *Bi-Lo Foods*, ¶ 6. When the purchase transaction fell through, and the seller would not return the escrow payment, Bi-Lo commenced suit against the bank in Montana state court, arguing long-arm jurisdiction existed because "Alpine took voluntary actions which were calculated to have an effect in Montana, did cause injury in Montana to a Montana resident, and should have caused Alpine to reasonably anticipate being haled into court in Montana," and thus, the

torts of negligence and breach of warranty accrued in Montana. *Bi-Lo Foods*, ¶¶ 20-21. However, citing *Bird*, we reiterated the principle that the place of the alleged tortious conduct is the focus of the inquiry:

> [As in *Bird*], in the instant case, Alpine did not engage in any activity in Montana. All acts giving rise to Bi-Lo's claims of negligence and breach of warranty occurred in Colorado. Bi-Lo sent its check to Alpine in Colorado. Alpine deposited the check into the account of one of its customers in Colorado. Alpine's alleged mishandling of the check occurred in Colorado. Accordingly, Alpine's activities did not result in the accrual of a tort action in Montana.

Bi-Lo Foods, ¶ 31.

¶15 This principle was furthered by our holding in *Cimmaron*. Cimmaron, a Montana corporation, entered into a collection agreement with a Pennsylvania corporation. *Cimmaron*, ¶ 4. Cimmaron later filed suit against the Pennsylvania corporation for conversion and other claims, arguing that jurisdiction was proper in Montana because, while it conceded that the actions of the respondents which gave rise to its claims occurred outside of Montana, it was nonetheless "detrimentally affected within this state by the Respondents' actions," resulting in "the accrual of a tort action within Montana for purposes of Rule 4(B)(1)(b)." *Cimmaron*, ¶ 17. We rejected Cimmaron's contention, explaining that "'interstate communication is an almost inevitable accompaniment to doing business in the modern world, and cannot by itself be considered a contact for justifying the existence of personal jurisdiction.'" *Cimmaron*, ¶ 14 (quoting *Edsall Construction Co., Inc. v. Robinson*, 246 Mont. 378, 382, 804 P.2d 1039, 1042 (1991)). Accordingly, because "the actions which gave rise to the alleged torts occurred outside of Montana," we concluded there was no personal jurisdiction over the Pennsylvania defendants.

Cimmaron, ¶ 20; *see, e.g., Milky Whey, Inc. v. Dairy Partners, LLC.*, 2015 MT 18, ¶ 24, 378 Mont. 75, 342 P.3d 13 (denying personal jurisdiction when an out-of-state defendant's mold-ridden food products were discovered in Utah and never left Utah, despite being purchased by a Montana corporation).

¶16 These cases are not inconsistent with *Ford*, where this Court held that specific personal jurisdiction existed under Rule 4(b)(1)(B) over Ford Motor Company, an out-of-state automobile manufacturer. *Ford*, ¶ 11. The plaintiff in *Ford* experienced injuries from an accident in Montana that she later attributed to a design defect in her Ford Explorer. *Ford*, ¶ 2. Under the first part of the test, we reasoned that the long-arm jurisdiction was established over Ford since "the accident occurred while [the plaintiff] was driving on a Montana roadway," resulting in accrual of a tort in Montana, even though the Explorer was not designed, assembled, or sold in Montana. *Ford*, n.1.

¶17 Nor are they incompatible with our recent decision finding that Montana had jurisdiction over the defendant in *Groo*. There, the defendant, acting from her New York residence, shared social media posts criticizing a Montana business for its allegedly inhumane treatment of animals, "tagged" various Montana residents and Montana clients of the business in the posts, and encouraged these persons to cancel their dealings with the business. *Groo*, ¶¶ 13-14. In response, the business sued the defendant in Montana for tortious interference, and the District Court found that jurisdiction existed over the defendant. *Groo*, ¶¶ 2, 63. Taking up the issue of whether Montana had specific personal jurisdiction "when the tortious activity allegedly accrued in Montana despite [the defendant] only interacting with the forum through social media," *Groo*, ¶ 4, we

acknowledged, as we did in *Cimmaron*, that "interstate communication which reaches Montana, *by itself*, is not enough for a tort to accrue within Montana," *Groo*, ¶ 39 (emphasis in original), but that more than interstate communication was involved there:

> [the defendant] allegedly directed messages into Montana, to Montana residents and businesses, and to residents of other states doing business in Montana with [the plaintiff]; intentionally and unlawfully intending those messages to interfere with Montana contracts and potential business; and caused damage to a Montana business by advocating for others to take action within Montana.
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> . . .
>
> [Plaintiff's tort claims] could not have accrued in any state other than Montana based upon the nature of [Plaintiff's] business.

Groo, ¶¶ 39, 41. We further explained that it was "not the harm [to the Montana plaintiff] *by itself* that accrued within Montana, but also [the defendant's] social media campaign targeted *solely* towards Montana residents and businesses with contractual relations in Montana." *Groo*, ¶ 32 (emphasis in original). We thus concluded that jurisdiction over the defendant existed under M. R. Civ. P. 4(b)(1)(B), and affirmed the District Court. *Groo*, ¶ 41.

¶18 Philadelphia attempts to fit its case within this precedent by arguing that the Sedgwick Defendants engaged in "Montana-directed conduct" that they describe as being "relative to" a Montana lawsuit brought by Montana citizens. In its view, failing to find jurisdiction over the defendants would "allow non-resident attorneys to evade Montana jurisdiction simply by residing in another state" and urges that we reach the same conclusion as we did in *Turner v. Tranakos*, 229 Mont. 51, 744 P.2d 898 (1987), regarding the subject out-of-state lawyer. However, the facts in *Turner* were significantly different,

necessitating a different holding. There, a Georgia attorney provided negligent legal advice to a Montana couple in connection to a Montana foreclosure action, and the couple sued the attorney in Montana, asserting jurisdiction under Rule 4(b)(1)(B). *Turner*, 229 Mont. at 52-53, 744 P.2d at 899. The district court ruled that jurisdiction did not exist, because the attorney did not reside, or generally practice law, in Montana. *Turner*, 229 Mont. at 53, 744 P.2d at 899. This Court reversed, reasoning that the attorney's actions, including coming to Montana, soliciting the couple's business, entering an appearance as attorney of record, and appearing before a Montana court, in addition to providing legal advice to the couple, formed the basis for the couple's malpractice claim, which accrued in Montana and established jurisdiction under Rule 4(b)(1)(B). *Turner*, 229 Mont. at 55, 744 P.2d at 901. We concluded that the actions of the attorney rose to "in-state representation" for which the attorney should "not be allowed to escape." *Turner*, 229 Mont. at 56, 744 P.2d at 901.

¶19 Under a general heading titled "Personal Jurisdiction Over Out-of-State Law Firms," the Dissent offers a number of cases from foreign jurisdictions, all of which involved a client residing in the forum state seeking to exercise jurisdiction over an out-of-state attorney. The Dissent acknowledges the proposition that merely "providing out-of-state legal representation is not enough to subject an out-of-state lawyer or law firm to the personal jurisdiction of the state *in which the client lives*." Dissent, ¶ 34 (emphasis added). The Dissent argues that the contacts in this case are sufficient, but overlooks the premise of the offered authority—that those cases involved a client who lived in the forum state and received services within the forum from an out-of-state law firm. Here, Sedgwick did not even have a client within Montana, and in addition, provided no services here.

Thus, the proffered authority is even more attenuated than the Dissent acknowledges. The Dissent also offers that courts "have consistently extended jurisdiction over non-forum law firms when the law firms were hired to perform legal services within the forum state." Dissent, ¶ 37. Again, that does not describe the case here. Sedgwick was not hired "to perform legal services within the forum state." It was hired to provide coverage advice to Philadelphia in Pennsylvania, and to write a coverage letter to Gateway in Ohio. Philadelphia is forced to base its claim only on the asserted impact that Sedgwick's out-of-state work would ultimately have in Montana, describing it euphemistically as "Montana-directed conduct," because Sedgwick neither provided any services nor communicated with anyone within the forum, and the Third-Party Complaint alleged no such actions. None of the cases offered by the Dissent stand for proposition that by way of advice given by a California law firm to a Pennsylvania client, followed by a letter to an Ohio insured, the California firm should have anticipated being haled into a Montana court. Foreign authority aside, our decision here is consistent with Montana precedent analyzing the forum conduct of an out-of-state defendant, as discussed herein.

¶20 The Sedgwick Defendants did not solicit Philadelphia's business in Montana, did not travel to Montana, did not provide advice, or deliver any other services, or otherwise communicate within Montana, and did not become attorney of record or appear before a Montana court on behalf of Philadelphia—in stark contrast to the out-of-state attorney in *Turner*, who did all these things. There is thus no "in-state representation" here, as the Court found in *Turner*. *Turner*, 229 Mont. at 55, 744 P.2d at 901. In sum, O'Leary and Forrester never worked or communicated in Montana, and never undertook representation

of Philadelphia in any legal proceeding in Montana. As alleged, they provided, entirely from California, coverage advice to Philadelphia in Pennsylvania and a letter delivered to Gateway in Ohio, on Philadelphia's behalf, denying coverage. Thus, the actions that "gave rise to the alleged tort" of malpractice necessarily were committed elsewhere. Even if, as alleged, their work led to a litigation impact and injury in Montana when Philadelphia elected to follow their advice and deny Gateway's claim, such an influence or impact without any corresponding contact or action taken within the State is similar in nature, for jurisdictional purposes, to the alleged detrimental effect that we reasoned was insufficient to establish jurisdiction in *Bi-Lo Foods* ("Alpine took voluntary actions which were calculated to have an effect in Montana [and] did cause injury in Montana to a Montana resident . . . .") and *Cimmaron* (Plaintiffs were "detrimentally affected within this state by the Respondents' actions . . . ."). Even in *Groo*, the forum-related social media actions at issue ("[The defendant] allegedly directed messages into Montana, to Montana residents and businesses . . . .") stand in contrast to the absence of any forum contacts here. *Groo*, ¶ 39. The Dissent offers that "[t]he targeting here is more direct than in *Groo*, where the social media posts were available to an internet-wide audience," Dissent, ¶ 46, but fails to acknowledge that *Groo* also involved, in addition to generalized messaging, specific messaging "into Montana, to Montana residents and businesses. . . ." *Groo*, ¶ 39. Indeed, Philadelphia must premise its jurisdictional argument on vague and ambiguous connections, such as "Montana-directed conduct," and delivery of legal services that are "relative to" a Montana lawsuit, because the Sedgwick Defendants simply took no concrete actions in the forum.

¶21 Philadelphia argues it would be "nonsensical that an attorney's advice and assistance in breaching a client's contract and legal duties in Montana—breaches that ultimately subjected the client to personal jurisdiction in Montana—is not itself tortious conduct in the same forum." It argues that our jurisdictional decision in *Gateway*, which it contends was "based in large part on its Montana contacts through Sedgwick," now necessitates the same result for its malpractice claim against the Sedgwick Defendants. But Philadelphia's attempt to bootstrap its malpractice claim into Montana by our *Gateway* decision misses the mark. Contrary to Philadelphia's argument, *Gateway* was not "based in large part on its Montana contacts through Sedgwick" because Sedgwick did not have any Montana contacts. Our long-arm decision there was made under Rule 4(b)(1)(D) ("contracting to insure any person, property, or risk located within Montana at the time of contracting"), and relied upon Philadelphia's actions related to the sale of its policy to Gateway to cover its Montana activities, which required "'direct affiliation, nexus, or substantial connection between the basis for the cause of action and the act which falls within the long-arm statute' to establish specific personal jurisdiction in Montana over the insurer for litigation concerning the Policy." *Gateway*, ¶ 24 (citing *Seal v. Hart*, 2002 MT 149, ¶ 23, 310 Mont. 307, 50 P.3d 522). In sum, no tort accrued in Montana based upon any Montana actions taken by the Sedgwick Defendants.

¶22 We next consider whether the Sedgwick Defendants engaged in the "transaction of any business" in Montana and are therefore subject to long-arm jurisdiction under Rule 4(b)(1)(A). The District Court concluded that Philadelphia failed to establish that the Sedgwick Defendants transacted business in Montana, reasoning:

> Philadelphia [did] not assert that O'Leary and Forrester are licensed to practice law in Montana. It [did] not assert that Sedgwick regularly conducts business or provides services in Montana. Philadelphia [did] not assert that Sedgwick has offices in Montana, advertises services in Montana, or employs attorneys who are licensed to practice in Montana.

Philadelphia maintains that the District Court erred by conflating our "business activity" analysis under Rule 4(b)(1)(A) with that of a general personal jurisdiction inquiry, which focuses holistically on the defendant's various Montana-related activities. Philadelphia further argues that "[b]y 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."

¶23 Regarding specific personal jurisdiction, our analysis under Rule 4(b)(1)(A) for a nonresident defendant is limited to the particular facts of the defendant's actions regarding the subject litigation (case-linked), not the entirety of the defendant's contacts with the forum (all-purpose). *See Ford*, ¶ 8. Thus, Philadelphia correctly argues that these factual findings are more related to general personal jurisdiction and are largely inapplicable to the requisite inquiry here. We nonetheless agree with the District Court's ultimate conclusion that jurisdiction does not exist over the Sedgwick Defendants pursuant to Rule 4(b)(1)(A).

¶24 As noted above, O'Leary and Forrester were located in California and worked on this matter in California. Thus, Philadelphia sent its insurance policy to Sedgwick's California office for analysis. O'Leary and Forrester gave advice to Philadelphia in its Pennsylvania location and drafted the denial letter to Gateway in California, mailing it to Ohio from its California address. As noted, neither defendant attorney travelled to

Montana, made an appearance in Montana, nor communicated with anyone in Montana. Perhaps because there are no facts connecting the Sedgwick Defendants to the forum, Philadelphia makes the same mistake as the District Court by conflating our analysis under Rule 4(b)(1)(A), which demands specificity to the present litigation, with our general personal jurisdiction analysis, citing facts such as the number of Sedgwick's pro hac vice appearances in the State. However, these general facts do not support case-linked specific personal jurisdiction and indeed, weigh against it, because Sedgwick made no Montana appearance in the Gateway litigation.

¶25 Philadelphia argues that our analysis in *Grizzly Security Armored Express, Inc. v. Armored Group, LLC*, 2011 MT 128, ¶ 23, 360 Mont. 517, 255 P.3d 143, incorrectly stated that the "business activity" required to find jurisdiction under Rule 4(b)(1)(A) must be "substantial," because the text of the Rule plainly permits jurisdiction when a defendant transacts "any" business within Montana. Philadelphia's point is not without merit, but for purposes here, the issue is not determinative, because Philadelphia has not established the Sedgwick Defendants transacted *any* business *within* Montana regarding the class action lawsuit involving Gateway. We thus conclude that the Sedgwick Defendants are not subject to jurisdiction under Rule 4(b)(1)(A).[1]

[1] In *Grizzly*, we stated that jurisdiction was established under Rule 4(b)(1)(A) "if the nonresident business conducts 'substantial' business activity in the state." *Grizzly*, ¶ 23. This statement has been reiterated in subsequent decisions. *See Buckles II*, ¶ 14; *Milky Whey*, ¶ 27. *Grizzly* cited to *Bunch v. Lancair Int'l, Inc.*, 2009 MT 29, ¶ 18, 349 Mont. 144, 202 P.3d 784, to support this assertion, but *Bunch* merely referenced a federal case applying Montana law, *Great Plains Crop Mgmt., Inc. v. Tryco Mfg. Co., Inc*., 554 F. Supp. 1025 (D. Mont. 1983), which explained that a nonresident defendant's "substantial" activities qualified it for jurisdiction. *Great Plains* did not hold that "substantial" business activities were required as a matter of law to meet Rule 4(b)(1)(A)'s basis for personal jurisdiction.

¶26 Lastly, Philadelphia argues that jurisdiction exists over the Sedgwick Defendants under Rule 4(b)(1)(E) for "entering into a contract for services to be rendered or for materials to be furnished in Montana." The District Court also denied this basis for jurisdiction, reasoning that Philadelphia did not establish that the Sedgwick Defendants entered into a contract for services to be rendered in Montana, or that the forum of Montana was included within their "scope of representation," as argued by Philadelphia.

¶27 Philadelphia cites *Spectrum Pool Products, Inc. v. MW Golden, Inc.*, 1998 MT 283, ¶¶ 10-11, 291 Mont. 439, 968 P.2d 728, to support the proposition that its allegations, taken as true at this stage in the litigation, sufficiently establish that the Sedgwick Defendants' scope of representation included Montana. However, the facts in *Spectrum Pool Products* differed significantly. There, the plaintiff, a Montana corporation, alleged that the nonresident defendant contracted by telephone for the sale of a Montana product, made numerous phone calls into Montana, and demanded that the Montana corporation provide repair services for the product in Montana. *Spectrum Pool Products*, ¶ 11. Here, the Third-Party Complaint, with attached representation agreement, alleges only that Philadelphia "retained the services of O'Leary and Forrester at the law firm of Sedgwick LLP to provide a coverage opinion and recommendations regarding [Philadelphia's] obligations and responsibilities to any Insureds or purported insureds under the Cover-Pro Policy with respect to the *Walter* Class Action." Taking these allegations as true, they fail to establish the existence of a contract to perform services *within Montana*. As both the District Court noted below and the Sedwick Defendants reiterate in their brief, there is critical distinction between services "about Montana law" and a "contract for services to

be furnished in Montana."[2] The Sedgwick Defendants' services are shown here to be only "about Montana law," with no delivery of services by the Sedgwick Defendants within Montana. Jurisdiction under Rule 4(b)(1)(E) is thus improper.

CONCLUSION

¶28 Philadelphia has failed to establish the existence of personal jurisdiction over the Sedgwick Defendants in Montana under any of the bases of Rule 4(b)(1). The Sedgwick Defendants' "suit-related conduct" did not create "a substantial connection with the forum state." *Tackett*, ¶ 22 (internal citation omitted). Consequently, we need not consider whether the exercise of personal jurisdiction comports with constitutional standards. We hold the District Court did not err in its holding.

¶29 Affirmed.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR

[2] The Dissent criticizes this statement by the District Court, Dissent, ¶ 30, and we do not disagree that the pithy summary of the case by the District Court does not capture the entirety of the proper jurisdictional analysis. However, we do not "cling" to it, as the Dissent suggests, but decide the case based upon the requisite analysis. Dissent, ¶ 30. Our reference to it closing the opinion simply summarizes the lack of necessary actionable conduct with the Montana forum to exercise specific jurisdiction over Sedgwick in this case.

Justice Laurie McKinnon dissenting.

¶30 In 2020, this Court held Philadelphia was subject to specific personal jurisdiction under Montana's long-arm statute in a lawsuit brought by Hilton Garden Inns of Missoula, Kalispell, Bozeman, and Billings (collectively, Montana Hilton Plaintiffs) who were doing business under Gateway Hospitality Group. *See Gateway Hosp. Grp., Inc. v. Phila. Indem. Ins. Co.*, 2020 MT 125, ¶ 6, 400 Mont. 80, 464 P.3d 44 (*Philadelphia I*). The Montana Hilton Plaintiffs alleged that under Montana law, Philadelphia breached its duty to defend them in a Montana lawsuit—the Walter Class Action—brought against them by hospitality employees who worked in each of the Montana Hiltons. Exercising supervisory control, we held, "[t]he denial letter *sent by Philadelphia's counsel* [the Sedgwick Defendants] in response to the claim identified the [Montana Hilton Plaintiffs] as insureds under the Policy." *Philadelphia I*, ¶ 26 (emphasis added). *See also Philadelphia I*, ¶ 10 ("In a denial letter, *Sedgwick LLP, a law firm representing Philadelphia*, identified Entities as insureds under the Policy." (emphasis added)). In holding Philadelphia accountable under Montana's long-arm statute, we explained that "[a]ll 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." *Philadelphia I*, ¶ 40. We specifically relied on Sedgwick's correspondence *as counsel* for Philadelphia when they corresponded and represented to the Montana Hilton Plaintiffs that Philadelphia was denying coverage in a Montana lawsuit after they had analyzed Montana law. There was no question in 2020 as this Court held, just as there is no question now, that Sedgwick *was*

counsel for Philadelphia directly pertaining to the underlying Walter Class Action litigation. The Court ignores this significant attorney-client relationship between Philadelphia and Sedgwick; it ignores Sedgwick availed itself of a Montana forum—specifically, Montana law and Montana courts when it represented Philadelphia in a Montana lawsuit; it ignores Sedgwick specifically provided legal services in Montana and its business benefited from the services it provided in Montana; and it ignores that the stated purpose of Sedgwick's coverage letter was to inform the Montana Hilton Plaintiffs that its client would not defend them in a multi-million dollar class action lawsuit.[1] Instead, the Court, unenlightened and void of the substantive analysis required when assessing specific personal jurisdiction of an out-of-state law firm, clings to the District Court's distinction, which is unsupported by any authority or precedent, that Sedgwick provided services "about" Montana law and "not a contract for services to be furnished in Montana." The coverage letter from Sedgwick to Gateway and the Montana Hilton Plaintiffs unmistakably demonstrates the Court, at best, is wrong. Sedgwick actively participated as counsel for Philadelphia in the underlying Walter Class Action pending in a Montana court by erroneously representing their coverage obligations pertaining to that suit. Philadelphia alleges Sedgwick committed malpractice during the pendency of Sedgwick's representation in the Montana proceeding. This case asks whether the Sedgwick Defendants, who delivered legal services in a Montana forum in a Montana lawsuit, should

[1] Sedgwick specifically named each of the Montana Hilton Plaintiffs in its letter to Gateway.

now be accountable for their alleged malpractice in a Montana court. I would hold that they should be, and I dissent.

¶31 In May 2015, Sedgwick sent a coverage letter on firm letterhead to Gateway regarding the Walter Class Action. The first sentence in the opening paragraph states, "We represent Philadelphia Indemnity Insurance Company ("Philadelphia")." Next, Sedgwick explains the Walter Class Action and refers the letter's recipients to the case number and the Montana district court in which the litigation was pending. Sedgwick, over the signatures of O'Leary and Forrester (f/k/a Jackanich), advises:

> 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.

The letter proceeds with an in-depth factual summary of the complaint, other information, and documents which were relevant to the Walter Class Action. Sedgwick then refers to specific provisions of the Policy and sets forth Sedgwick's legal analysis as to each and concludes coverage does not exist under Montana law. More particularly, Sedgwick's legal services included an assessment and legal analysis of the insuring agreement in the context of the definition of claim, the employment practices exclusion, the fraud/unfair advantage exclusion, the non-monetary relief exclusion, the other insurance exclusion, the definition of claim expenses and damages, the fee/charges dispute exclusion, and the

knowledge of wrongful act exclusion. Sedgwick advised that "[f]or the reasons expressed herein, Philadelphia must respectfully conclude that coverage is not available for the *Walter* Class Action under the Policy." Sedgwick wrote this letter to the Insureds, which they represented included the Montana Hilton Plaintiffs, and directed that "the purpose of the letter [was] to advise the Insureds" of its conclusions. Sedgwick directed Gateway to "ensure all appropriate persons are notified of the contents of this letter." It is undisputedly a coverage letter written by counsel on behalf of their client; counsel being Sedgwick and their client being Philadelphia. The Court recognized this in *Philadelphia I*, but unexplainably now qualifies the attorney-client relationship as one only advising "about" Montana law.

¶32 Philadelphia's Complaint avers it hired Sedgwick, then 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. The Complaint alleges that after evaluating Philadelphia's obligations under Montana law, Sedgwick advised Philadelphia to simply deny coverage and Sedgwick thereafter issued a denial of coverage letter on behalf of their client to the Insureds—expressly named in the letter as Gateway and the Montana Hilton Plaintiffs. A Rule 12(b)(2) motion must be decided on the facts alleged in the complaint, construed in the light most favorable to the plaintiff. *Threlkeld v. Colorado*, 2000 MT. 369, ¶ 7, 303 Mont. 432, 16 P.3d 359. Sedgwick makes no assertion that they were not acting as Philadelphia's counsel when they denied coverage on behalf of Philadelphia in the Montana class action lawsuit.

¶33 Lawyers are increasingly engaging in multi-jurisdictional representation, and their representation is increasingly giving rise to cross-jurisdictional malpractice actions. The revolution in communication technology has allowed firms to represent geographically distant clients, and larger firms who aspire to have international clients may find that client disputes cross jurisdictional boundaries. Personal jurisdiction nonetheless remains a defendant-focused inquiry. *Tackett v. Duncan*, 2014 MT 253, ¶ 33, 376 Mont. 348, 334 P.3d 920 ("While a defendant's contacts with the forum State may be intertwined with [its] transactions or interactions with the plaintiff or other parties . . . a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." (citations omitted)). The attorney-client contract and services to be provided pursuant to that contract present unique challenges when malpractice is alleged and the forum state is unclear. Here, however, Sedgwick's legal services to Philadelphia were rendered in the Walter Class Action during the pendency of a Montana dispute in a Montana court and in a Montana forum. In the context of legal malpractice suits, the location of the underlying matter where legal services are to be provided is crucial.

A. Personal Jurisdiction Over Out-of-State Law Firms.

¶34 Recognizing the realities of modern commerce, a defendant need not make "physical entrance" into the forum state to become subject to its jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 105 S. Ct. 2174, 2184 (1985). Of course, limited communication, without more, between defendant and plaintiff, will not establish jurisdiction. Thus, generally speaking, correspondence and phone calls from out-of-state defendants to in-state plaintiffs are insufficient to establish the minimum contacts that

satisfy due process. There exists an abundance of case law for the point that merely "providing out-of-state legal representation is not enough to subject an out-of-state lawyer or law firm to the personal jurisdiction of the state in which the client lives." *Cape v. von Maur*, 932 F. Supp. 124, 128 (D. Md. 1996) (listing cases from five courts of appeals). However, the inquiry is not based on quantity but, rather on the quality of the communication, for "even a single telephone call into the forum state can support jurisdiction." *Mendelsohn, Drucker & Assocs. v. Titan Atlas Mfg., Inc.*, 885 F. Supp. 2d 767, 780 (E.D. Pa. 2012). Accordingly, a court must evaluate the nature of the defendant's contacts with the forum state and determine "whether a defendant could anticipate being sued in the forum state" and whether the defendant's "actions were 'directed at the forum state in more than a random, fortuitous, or attenuated way.'" *Allen v. James*, 381 F. Supp. 2d 495, 497 (E.D. Va. 2005) (quoting *Mitrano v. Hawes*, 377 F.3d 402, 406 (4th Cir. 2004)).

¶35 In the context of legal malpractice claims, the forum of the underlying matter is essential. When the substance of the representation does not in any way relate to the forum state, courts consistently decline to find specific personal jurisdiction. For example, in *Cape v. von Maur*, a Maryland resident sued a German law firm and its attorneys for malpractice arising out of its representation in connection with the prosecution of contract claims in Germany. *Cape*, 932 F. Supp. at 125. The location of all underlying judicial proceedings was Germany. *Cape*, 932 F. Supp. at 126. Because the defendants had no nexus to the state of Maryland, other than their client being a Maryland resident, the court

held that the defendants did not possess the minimum contacts with Maryland to be subject to suit in that state. *Cape*, 932 F. Supp. at 128.

¶36 Similarly, in *Danziger & De Llano, LLP v. Morgan Verkamp LLC*, 948 F.3d 124 (3d Cir. 2020) and *Reliance Steel Products Co. v. Watson, Ess, Marshal & Enggas*, 675 F.2d 587 (3d Cir. 1982), plaintiffs sued defendant law firms in Pennsylvania courts. The defendants were out-of-state and the underlying legal services contracts were premised upon matters outside of Pennsylvania. In *Reliance Steel*, Pennsylvania plaintiffs hired the defendant law firm for legal services to be performed in Missouri and Kansas. *Reliance Steel*, 675 F.2d at 589. In *Danziger*, a resident Texas law firm alleged an Ohio law firm breached an oral legal referral contract that was neither formed nor breached in Pennsylvania. *Danziger*, 948 F.3d at 128. In both cases, the court determined none of the defendants' activities arose out of or related to Pennsylvania and the court did not have specific jurisdiction. *Reliance Steel*, 675 F.2d at 589; *Danziger*, 948 F.3d at 129-32. This inquiry into where the out-of-state attorney-defendants are to perform their work makes sense—when an out-of-state attorney works on an out-of-state matter for a client who only happens to be in the forum state, the contacts with the forum are "fortuitous, random, and attenuated," such that they are not directed at the forum state.

¶37 The importance of where the out-of-state attorney-defendants are to perform their work has consistently been a basis for many courts to find specific personal jurisdiction, even when the attorney-defendant is unlicensed and has had no contact in the forum state. These courts have consistently extended jurisdiction over non-forum law firms when the law firms were hired to perform legal services within the forum state. In *Allen v. James*,

defendant law firm was a resident of South Carolina and was hired by a client to represent her in a personal injury claim that arose out of an automobile accident occurring in Norfolk, Virginia. *Allen*, 381 F. Supp. 2d at 496. The client subsequently sued the defendant law firm in Virginia, alleging malpractice. *Allen*, 381 F. Supp. 2d at 496. The court determined that the defendants must have been aware at the time they agreed to represent the plaintiff that any lawsuit would be brought in Virginia and that they would have had to employ Virginia attorneys to bring a suit. *Allen*, 381 F. Supp. 2d at 497. Although defendants claimed that no member of their firm had advertised or solicited business in Virginia and that no member of their firm was an active member of the bar, the court held they contracted with plaintiff to represent her in connection with a lawsuit that would be filed in a Virginia court. *Allen*, 381 F. Supp. 2d at 498. As such, they purposefully availed themselves of the privilege of doing business in Virginia. *Allen*, 381 F. Supp. 2d at 499.

¶38 In *Resolution Trust Corp. v. Farmer*, 836 F. Supp. 1123, 1129 (E.D. Pa. 1993), plaintiffs alleged that defendant out-of-state law firm made representations in certain opinion letters on several occasions during various loan transactions. The court found specific jurisdiction on the basis that the law firm voluntarily conducted business within the forum and availed itself of the laws of the forum. *Res. Tr. Corp.*, 836 F. Supp. at 1129. The court explained defendant law firm knowingly made fraudulent misrepresentations to persons within the forum upon which persons relied to their detriment. *Res. Tr. Corp.*, 836 F. Supp. at 1129. Thus, the defendant law firm should reasonably have anticipated being haled into the forum's court because of its opinion letters. *Res. Tr. Corp.*, 836 F. Supp. at 1129. The court found that "*as a result of the opinion letters*, one of which was directly

presented to [the underlying plaintiff] in Pittsburgh, [the law firm] maintained sufficient 'contacts' with this forum." *Res. Tr. Corp.*, 836 F. Supp. at 1129 (emphasis added).

¶39 Similarly, in *Baird v. Meyers, Roman, Friedberg & Lewis Co., LPA*, 700 F. Supp. 3d 249 (E.D. Pa. 2023), Pennsylvania plaintiffs hired defendant Ohio law firm to help them qualify for significant tax benefits on a Pennsylvania real estate project. After the project failed to qualify for the tax benefits, plaintiffs filed a legal malpractice action in Pennsylvania. *Baird*, 700 F. Supp. 3d at 253-54. The court held that "[w]hen a forum resident retains a law firm to render services on a forum state matter, it is purposefully availing itself of the protections and obligations of the forum state's law." *Baird*, 700 F. Supp. 3d at 259. The court found the law firm performed "entirely while located within Ohio," and rejected the law firm's argument there was no specific personal jurisdiction because of the firm's Ohio location, lack of advertising or solicitation in the forum, and complete lack of physical presence in the forum. *Baird*, 700 F. Supp. 3d at 255-56. The plaintiffs' argument "emphasize[d] the underlying matter of representation . . . is in Pennsylvania." *Baird*, 700 F. Supp. 3d at 257. Far from random or attenuated contacts, "[t]he [forum]-related activities were not incidental to [the law firm's] representation; they were the entire point of it." *Baird*, 700 F. Supp. 3d at 260. *See also Alonso v. Line*, 846 So.2d 745 (La. 2003) (finding that by agreeing to represent a client in an automobile accident case that occurred in Louisiana, the defendant Alabama attorney subjected himself to the jurisdiction of the forum state); *Scheuer v. Dist. Ct. of Denver*, 684 P.2d 249, 251 (Colo. 1984) (finding Colorado retained personal jurisdiction over Virginia attorney hired to assist a Colorado corporation with its financial matters); *Wadlington v. Rolshouse*, No.

3:05CV-558, 2008 WL 1712293 (W.D. Ky. Apr. 9, 2008) (finding Kentucky retained personal jurisdiction over Minnesota law firm that was engaged to represent decedent's estate in Kentucky).

¶40 Appellant relies on *McDevitt v. Guenther*, No. 06-00216, 2006 WL 2092385 (D. Haw. July 25, 2006), a case from the United States District Court for the District of Hawaii addressing malpractice from an out-of-state attorney. There, the Minnesota-based attorney did not enter any appearance in Hawaii, advertise in Hawaii, or otherwise practice law in Hawaii, and allegedly advised the plaintiff that they should seek Hawaii counsel. *McDevitt*, 2006 WL 2092385 at *1-5. Nonetheless, the attorney reviewed plaintiff's prenuptial agreement and received payment for that service. *McDevitt*, 2006 WL 2092385 at *6-8. The court found specific personal jurisdiction over the attorney, finding that the attorney understood the consequences of her advice were likely to have practical effect in Hawaii and that "although the attorney was physically located outside of the state of Hawaii, the attorney-client relationship was undertaken for the purposes of providing advice on Hawaii law and drafting a contract governing property physically located in Hawaii, under the laws of the state of Hawaii." *McDevitt*, 2006 WL 2092385 at *18-19, *21.

¶41 Montana's own precedent, *Turner v. Tranakos*, 229 Mont. 51, 744 P.2d 898 (1987), and *Bird v. Hiller*, 270 Mont. 467, 892 P.2d 931 (1995), supports the proposition that an attorney-client relationship for services pursuant to the law of a given forum creates the requisite "relationship among the defendant, the forum, and the litigation." *Tackett*, ¶ 22.

In *Turner*, we found jurisdiction where an out-of-state attorney gave advice and represented clients in a Montana action based on Montana law, finding that "it is exactly those acts of representing the Turners that are the basis of the Turners' claims for relief in this matter." *Turner*, 229 Mont. at 52, 744 P.2d at 901. We cautioned that "[i]t 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*, 229 Mont. at 56, 744 P.2d at 901. In *Bird*, on the other hand, we declined to find jurisdiction where an Idaho attorney represented a Montana couple in an Idaho lawsuit; the representation did not turn on the law of the forum. *Bird*, 270 Mont. at 468-70, 892 P.2d at 932.

¶42 Here, the substantive matter and purpose of the attorney-client relationship was the Walter Class Action that was filed in a Montana court pursuant to Montana law. The Court fails to appreciate the significance of the substance and location of the underlying lawsuit and Sedgwick's role as counsel for Philadelphia. This is especially true where Philadelphia sought Sedgwick's opinion and recommendations on Montana law pursuant to a lawsuit already pending against them. That Sedgwick did not travel to Montana or formally enter appearances in the lawsuit is immaterial; it is inherent to the practice of law—as regulated by this Court—that a lawyer's advice will have predictable, practical consequences in an anticipated venue.

B. Montana's Long-Arm Statute.

¶43 In the context of the foregoing discussion, I turn to Montana's long-arm statute. I would conclude there was specific jurisdiction under Rule 4(b)(1)(A) (transaction of business), Rule 4(b)(1)(B) (accrual of tort), and Rule 4(b)(1)(E) (contract for services).

1. Transaction of Business.

¶44 Sedgwick's conduct satisfies Rule 4(b)(1)(A) ("transacts any business within Montana") because "a Montana court may 'exert long-arm jurisdiction over any person if the claim arises out of that person's transaction of business within the state.'" *Buckles v. Cont'l Res., Inc.*, 2017 MT 107, ¶ 14, 400 Mont. 18, 462 P.3d 223. Sedgwick cannot credibly argue that it did not have a contract for legal services and that the contract was for legal services to be performed in Montana; specifically, providing legal advice to Philadelphia in its defense of the Walter Class Action pending in the Montana Fourth Judicial District Court. Providing legal services in Montana is the same as transacting business within Montana. That Sedgwick attorneys provided their advice from out-of-state, as set forth in the foregoing discussion, is not a basis to decline the exercise of specific jurisdiction.

2. Accrual of Tort.

¶45 In *Turner*, this Court determined there was specific jurisdiction over an out-of-state lawyer, unlicensed in Montana, for a malpractice action. A Montana couple sought advice from a Georgia attorney who negligently represented the couple in a foreclosure action in Montana. *Turner*, 229 Mont. at 52-53, 744 P.2d at 899. 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 Turner's relief in this matter." *Turner*, 229 Mont. at 56, 744 P.2d at 901. We explained that "[i]t 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*, 229 Mont. at 56, 744 P.2d at 901. This Court found subsection 4(b)(1)(B) dispositive, so it did not address 4(b)(1)(A) or 4(b)(1)(E). Here, it was the act and omission by Sedgwick of advising Philadelphia it had no duty to defend and its failure to seek a declaratory judgment before denying coverage under a reservation of rights. Philadelphia also alleges that it failed to adequately monitor the Walter Class Action litigation.

¶46 In *Groo v. Montana Eleventh Judicial District Court*, 2023 MT 193, 413 Mont. 415, 537 P.3d 111, this Court held there was jurisdiction under the tort accrual provision where a New York-based defendant made allegedly defamatory social media posts about a Montana business. *Groo*, ¶¶ 11-13. We concluded "it is not the harm *by itself* that accrued within Montana, but also Groo's social media campaign targeted *solely* towards Montana residents and businesses with contractual relations in Montana." *Groo*, ¶ 32 (emphasis in original). Here, Sedgwick solely targeted its legal advice into Montana, specifically naming a Montana lawsuit, Montana statutes, and several Montana entities, and caused the tort of legal malpractice to occur and accrue in Montana. The targeting here is more direct than *Groo*, where the social media posts were available to an internet-wide audience.

3. Entering Into a Contract for Services to be Rendered in Montana.

¶47 I would also find that long-arm jurisdiction exists under Rule 4(b)(1)(E), "entering into a contract for services to be rendered or for materials to be furnished in Montana by

such person." The majority echoes the District Court's statement that "there is a critical distinction between services 'about Montana law' and a 'contract for services to be furnished in Montana,'" a newly imposed distinction that is not supported by case law. For the reasons explained below, a contract for the provision of legal services centered on Montana is necessarily a contract for services to be furnished in Montana, and the majority's allegedly critical distinction is, in reality, meaningless.

¶48 Philadelphia's complaint alleges that their contractual agreement with Sedgwick was "to provide a coverage opinion and recommendations regarding [Philadelphia's] obligations and responsibilities to any Insureds or purported insureds under the Cover-Pro Policy with respect to the *Walter* Class Action." Sedgwick argues this language does not include the word "Montana." But it is within the plain meaning of the contract that the legal representation provided by Sedgwick to Philadelphia was for the Walter Class Action, a contract which necessarily involved Montana law, Montana courts, and putative Montana insureds.

C. Exercising Jurisdiction Comports with Due Process.

¶49 The Court did not address the second step of the inquiry because it concludes there is not specific jurisdiction under Montana's long-arm statute. However, as I would conclude there is specific jurisdiction under Montana's long-arm statute, I am compelled to consider whether the exercise of jurisdiction would be compliant with due process. This Court follows a three-part test to determine whether the exercise of personal jurisdiction is constitutional, looking at whether "(1) the nonresident defendant purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws; (2)

the plaintiff's claim arises out of or relates to the defendant's forum-related activities; and (3) the exercise of personal jurisdiction is reasonable." *Ford v. Mont. Eighth Jud. Dist. Ct.*, 2019 MT 115, ¶ 12, 395 Mont. 478, 443 P.3d 407. All three prongs are met here.

¶50 A defendant purposefully avails itself by "taking voluntary action designed to have an effect in the State of Montana," thereby enjoying "the benefits and protections Montana law provides, and thus, should reasonably anticipate being haled into court in this state." *Nasca v. Hull*, 2004 MT 306, ¶ 28, 323 Mont. 484, 100 P.3d 997 (citing *Simmons Oil Corp. v. Holly Corp.*, 244 Mont. 75, 86, 796 P.2d 189, 195 (1990)). The predictable effects of the attorney-client relationship serve an important role in this prong. As a product of this relationship, the Sedgwick Defendants knew, or should have known pursuant to their professional duty, that advice given in a Montana lawsuit regarding putative Montana insureds would have imminent impact in Montana and in the class action litigation. This was not a hypothetical coverage scenario—Sedgwick was fully aware of its relation to the pending litigation. Purposeful availment can be established, at least in part, by the contemplated future consequences of a contract. *See Burger King*, 471 U.S. at 479; 105 S. Ct. at 2185. *McDevitt*, 2006 WL 2092385 at *19-20 ("Far and away, the contract between [p]laintiff and [d]efendant involved contemplated future consequences in Hawaii, not in Minnesota or any other location."). The agreement here contemplated future consequences in Montana, not in California or Pennsylvania, and this is sufficient to establish purposeful availment.

¶51 The second prong of the test asks about the litigation-specific relationship between the defendant and the forum. *Buckles*, ¶ 20. This litigation arises out of advice Sedgwick

gave Philadelphia regarding a Montana lawsuit and constituting what we found to be Philadelphia's alleged coverage breach. Assuming, as I would, that practicing law "about Montana" gives rise to targeted, predictable effects in Montana, this prong is satisfied.

¶52 Finally, we look to several factors to determine whether the exercise of personal jurisdiction is reasonable:

> (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. The factors "are not mandatory tests" but rather "simply illustrate the concepts of fundamental fairness which must be considered in each jurisdictional analysis." *Nasca*, ¶ 32. For the previously stated reasons, the exercise of jurisdiction over Sedgwick is reasonable. Their burden in defending here is negligible, and there are no conflicts of sovereignty with California. Nor is there a better forum for this conflict; Philadelphia brought a self-proclaimed "back-up" companion suit in federal court in California, but Sedgwick asserts that action is time-barred.

¶53 Most importantly, Montana has an enormous interest in having jurisdiction over defendants whose legal services have direct and predictable on-the-ground consequences in this forum. Just as in *Turner*, "[f]oremost in this determination is Montana's interest in regulating the practice of law within the state." *Turner*, 229 Mont. at 56, 744 P.2d at 901. Especially considering the modern multi-jurisdictional nature of law practice, we should

be wary of the gaps left by the majority's holding that erode our ability to regulate the practice of law.

¶54 At its core, personal jurisdiction jurisprudence is driven by fundamental questions of fairness to the defendant. Sedgwick held itself out as an international law firm, presumably of sufficient expertise anywhere they were called to service, offering advice directly involving Montana law that they knew—or should have known, as a duty of the attorney-client relationship—would have an effect in Montana legal proceedings. By and through Sedgwick's advice, Philadelphia denied coverage to the Montana entities, an action which constituted Philadelphia's alleged breach. Sedgwick should now be accountable for those actions in Montana courts. To hold otherwise would allow the Sedgwick Defendants to escape fair and predictable consequences just because the business they transacted and the behavior that was targeted at Montana—representing a client in Montana litigation—took place outside our geographic boundaries.

¶55 This is exactly what we cautioned against in *Turner*, and is fundamentally at odds with the principles and precedent driving this Court's body of personal jurisdiction jurisprudence. I dissent.

/S/ LAURIE McKINNON

Justices James Jeremiah Shea and Ingrid Gustafson join in the dissenting Opinion of Justice Laurie McKinnon.

/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON