IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM D. CONWAY,

Plaintiff,

OPINION AND ORDER
03-C-535-C

v.

RAYMOND L. LEONARD, JR., MANUFACTURER'S
ASSET GROUP, LLC, RODI POWER SYSTEMS, INC.,
BYRON R. SPAIN, GWENDOLYN S. SPAIN,
DAVID TEO, GARY BRASHEAR, ABBY J. BROUSSARD,
STEVEN E. GARMAN, PAUL A. HORN, DOUGLAS C.
SIEFKES,

Defendants.

JOHN ARVOLD, KURT ARVOLD,
ROD CAMREN, WILLIAM R. CLEMENS,
WILLIAM J. KIPPLEY, ANTHONY B. GARDNER,
PETER HARTMAN, RICHARD HEGGE, GREG
HILDEN, JAMES KOCH, GALE KOCH, KEN
KOPPENHAVER, DAVID KRALL, PATRICIA
KRALL, MICHAEL MORAN, WILLIAM PHIPPEN,
RICHARD SMITH, ARLAN SPILDE, DAN SPILDE,
and KENT SPILDE,

OPINION AND ORDER
03-C-536-C

Plaintiffs,

v.

RAYMOND L. LEONARD, JR., MANUFACTURER'S ASSET GROUP, LLC, RODI POWER SYSTEMS, INC., BYRON R. SPAIN, GWENDOLYN S. SPAIN, DAVID TEO, GARY BRASHEAR, ABBY J. BROUSSARD, STEVEN E. GARMAN, PAUL A. HORN, DOUGLAS C. SIEFKES,

Defendants.

RANDY PAUL, RONALD HOLTZ, and S&S PARTNERSHIP,

Plaintiffs,

OPINION AND ORDER
03-C-539-C

v.

RAYMOND L. LEONARD, JR., MANUFACTURER'S ASSET GROUP, LLC, RODI POWER SYSTEMS, INC., BYRON R. SPAIN, GWENDOLYN S. SPAIN, DAVID TEO, GARY BRASHEAR, ABBY J. BROUSSARD, STEVEN E. GARMAN, PAUL A. HORN, DOUGLAS C. SIEFKES,

Defendants.

These are civil actions for monetary relief in which plaintiffs, Wisconsin citizens who invested money in defendant RODI Power Systems, are suing defendants for violation of Wisconsin securities law, Wis. Stat. ch. 551. On March 22, 2004, United States Magistrate Judge Stephen L. Crocker issued an order asking defendants to verify each party's citizenship

for purposes of establishing diversity jurisdiction under 28 U.S.C. § 1332. Defendants' responses to Judge Crocker's request show that diversity jurisdiction exists.

Presently before the court are motions to dismiss filed by defendants RODI Power Systems, Inc., Byron Spain, Gwendolyn Spain, David Teo, Gary Brashear, Abby Broussard, Steven Garman, Paul Horn and Douglas Siefkes, asserting lack of jurisdiction over their persons under Fed. R. Civ. P. 12(b)(2). I conclude that plaintiffs have failed to show that defendants Byron Spain, Gwendolyn Spain, Teo, Brashear, Broussard, Garman, Horn and Siefkes had sufficient contacts with Wisconsin to satisfy the personal jurisdiction requirements of the Fourteenth Amendment's due process clause. Accordingly, the motions to dismiss for lack of personal jurisdiction will be granted as to those defendants. However, I will deny the motion to dismiss defendant RODI Power Systems, Inc. from this action for lack of personal jurisdiction because defendants Leonard and Manufacturer's Asset Group were agents of defendant RODI and had numerous contacts with Wisconsin.

For the sole purpose of deciding this motion, I find the following averments from the allegations in the complaint and in the parties' affidavits to be material. Purdue Research Foundation v. Sanofi-Synthelabo, S.A., 338 F.3d 773, 782 (7th Cir. 2003) (court accepts all well-pleaded allegations in complaint as true, unless they are controverted by challenging party's affidavits; any conflicts concerning relevant facts are to be decided in favor of party asserting jurisdiction). (I note that David Cerqua, who claims that he is a plaintiff in this

action, submitted an affidavit in opposition to defendants' motion. Like the plaintiffs, he purchased RODI stock from defendants. However, Cerqua's name does not appear on any of the pleadings. Although I have included some information from his affidavit in the facts, the information does not influence the outcome of the case.)

JURISDICTIONAL FACTS

Plaintiffs William Conway, Randy Paul, Ronald Holtz, S&S Partnership, John Arvold, Kurt Arvold, Rod Camren, William Clemens, William Kippley, Anthony Gardner, Peter Hartman, Richard Hegge, Greg Hilden, James Koch, Gale Koch, Ken Koppenhaver, David Krall, Patricia Krall, Michael Moran, William Phippen, Richard Smith, Arlan Spilde, Dane Spilde and Kent Spilde are citizens of the state of Wisconsin.

Defendant Raymond Leonard, Jr., a California citizen, manages defendant Manufacturer's Asset Group, LLC, which was formed under the laws of Delaware. Defendant RODI Power Systems, Inc. was incorporated under the laws of the state of Washington and had its principal place of business in the state of Louisiana.

Within defendant RODI, defendant Byron Spain, a citizen of Texas, was the chief executive officer and a director, defendant Gwendolyn Spain, a Texas citizen, was an officer and a director and the following defendants were directors: David Teo, a citizen of the state of Washington; Gary Brashear, a citizen of the state of Illinois; Abby Broussard, a Louisiana

citizen; Steven Garman, a citizen of the state of Washington; Paul Horn, a Texas citizen; and Douglas Siefkes, a citizen of the state of Washington. Except for defendant Brashear, none of the defendants has resided, frequented, visited or owned property in the state of Wisconsin. Once a month defendant Brashear makes day trips to Wisconsin for business purposes unrelated to defendant RODI Power Systems, Inc. He communicates with Wisconsin customers unrelated to defendant RODI. In addition, he has traveled to Wisconsin once on vacation.

On May 15, 2000, defendants RODI and Manufacturer's Asset Group entered into an agreement "[t]o raise $5 million through the sale of 2,500,000 shares of RODI restricted common stock at 2.00 per share to fund production start-up of the HT1-450 engine." Defendant Leonard signed the agreement on behalf of defendant Manufacturer's Asset Group and defendant Byron Spain signed it on behalf of defendant RODI. Under the agreement, defendant Manufacturer's Asset Group was responsible for selling RODI's stock to accredited investors and would receive $0.25 of the share price for each share sold. The agreement laid out the expectation that defendant Manufacturer's Asset Group would "recruit a nationwide group of Broker/Dealers, Investment Advisors and Trust Managers who in turn will contact their accredited investor clients and subsequently make the sale." In relevant part, defendant RODI agreed to 1) accept investment money only through Manufacturer's Asset Group; 2) provide an investment kit to Manufacturer's Asset Group

containing videotape, an offering memorandum, magazine article reprints and a subscription document; and 3) make its officers available on three days' notice to make presentations to investor groups at any location in the United States where at least five accredited investors can be assembled. Defendant Manufacturer's Asset Group agreed to, among other things: 1) make all state (blue sky) filings as clients are identified and send copy to RODI; 2) conduct due diligence on all sellers and stand responsible for their conduct; 3) collect all investment monies and transmit them to RODI on a weekly basis; and 4) provide weekly status reports (with contact names) to RODI. At the August 2000 and December 2000 board of director meetings, defendant Byron Spain asked fellow board members Gwendolyn Spain, David Teo, Gary Brashear, Abby Broussard, Steven Garman, Paul Horn and Douglas Siefkes to assist his efforts in raising capital and provided updates on the sale of RODI stock.

Around the same time that defendants Leonard and Byron Spain signed the agreement, defendant Leonard, acting on his own behalf and on behalf of defendant RODI and its officers and directors, began calling plaintiffs and sending them documents through mail, fax and express delivery regarding the sale of securities in defendant RODI.

In reliance on written and verbal statements made directly by defendants Leonard, Manufacturer's Asset Group and RODI or by others working on their behalf, each of the plaintiffs purchased securities in defendant RODI in amounts varying from $5,000 to $250,000 between July 2000 and February 2001. Most plaintiffs made these purchases by

checks drawn on a Wisconsin financial institution.

For example, plaintiff Ken Koppenhaver invested $250,000 in RODI stock on July 21, 2000. Before making the investment, defendant Leonard told plaintiff Koppenhaver that he was handling the stock purchase and sale for defendant RODI and advised plaintiff Koppenhaver to send a check to him or defendant Manufacturer's Asset Group, made payable to defendant RODI. On September 13, 2000, plaintiff Koppenhaver had a telephone conversation from his Wisconsin home with defendant Byron Spain. On February 23, 2001, a copy of the RODI Chairman's report, signed by defendant Byron Spain, was sent to plaintiff Koppenhaver's home address. On February 28, 2001, defendant Byron Spain sent plaintiff a letter offering to buy back his shares because of defendant RODI's failure to disclose large broker's commissions it paid to defendants Manufacturer's Asset Group and Leonard. On March 1, 2001, plaintiff Koppenhaver returned a completed stock bonus refund request form to defendant RODI. On May 3, 2001, defendant Gwendolyn Spain sent plaintiff Koppenhaver a letter regarding a meeting of the shareholders and a stock bonus refund. Four days later, plaintiff Koppenhaver sent a letter from Wisconsin to defendant Gwendolyn Spain, requesting the stock bonus refund.

David Cerqua had several telephone conferences with a representative from defendant Manufacturer's Asset Group. On December 4, 2000, he sent a certified check for $25,0000 to defendant Manufacturer's Asset Group. On December 12, 2000, Cerqua received a letter

addressed to his Wisconsin address from defendant Gwendolyn Spain, confirming the receipt of his $25,000 payment for RODI stock. On December 27, 2000, Cerqua received at his Wisconsin address a stock certificate for RODI, executed by defendant Byron Spain.

Plaintiff James Koch contacted a representative of defendant Manufacturer's Asset Group regarding investment opportunities with defendant RODI. The representative sent him several documents about investment opportunities. On December 15, 2000, plaintiff Koch sent defendant Manufacturer's Asset Group a $40,000 check from his Wisconsin bank account made payable to defendant RODI. Defendant RODI's representatives endorsed the check.

OPINION

A. General Principles

On a motion to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2), the burden of proof rests on the party asserting jurisdiction. Hyatt International Corp. v. Coco, 302 F.3d 707, 713 (7th Cir. 2002). Unless the court holds an evidentiary hearing, a party meets this burden by making a prima facie showing that personal jurisdiction exists. Id.

A federal court has personal jurisdiction over a non-consenting, nonresident defendant to the extent authorized by the law of the state in which that court sits. Giotis

v. Apollo of the Ozarks, Inc., 800 F.2d 660, 664 (7th Cir. 1986). Generally, Wisconsin courts require plaintiffs to satisfy the requirements of the state's long-arm statute, Wis. Stat. § 801.05, as well as the due process clause of the United States Constitution. Logan Productions, Inc. v. Optibase, Inc., 103 F.3d 49, 52 (7th Cir. 1996). "The burden is on the plaintiff to establish jurisdiction under the long-arm statute." Lincoln v. Seawright, 104 Wis. 2d 4, 10, 310 N.W.2d 596, 599 (1981). A showing of compliance under the long-arm statute "is 'prima facie compliance' with the due process requirements." Id. Once a plaintiff meets his or her burden, the defendant may rebut the presumption that the exercise of personal jurisdiction would comply with due process by using a five-factor test: 1) the quantity of contacts with Wisconsin; 2) the nature and quality of the contacts; 3) the source of the cause of action; 4) the interest of Wisconsin in the action; and 5) convenience. Id. These five factors comport with the due process requirements of International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (due process requires that nonresident defendant have certain minimum contacts with forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice). Zerbel v. H.L. Federman & Co., 48 Wis. 2d 54, 62-63, 179 N.W.2d 872, 876-77 (1970).

Plaintiffs try to meet their burden in establishing personal jurisdiction in a backwards fashion. Instead of discussing how personal jurisdiction is met under specific parts of the Wisconsin long-arm statute first, plaintiffs discuss how asserting personal jurisdiction against

defendants satisfies the five-factor test. After that discussion, plaintiffs cite Wis. Stat. § 801.05(2) as a basis for asserting personal jurisdiction under the long-arm statute. Wis. Stat. § 801.05(2) allows courts to assert personal jurisdiction over defendants being sued under another Wisconsin statute that specifically confers grounds for personal jurisdiction over those defendants. Plaintiffs argue that Wis. Stat. § 551.65 specifically confers grounds for personal jurisdiction over defendants. That statute allows personal jurisdiction over persons who violate the Wisconsin securities law and who have not consented to service of process when personal jurisdiction "cannot otherwise be obtained" in Wisconsin. Wis. Stat. § 551.65(2). I interpret the language "cannot otherwise be obtained" to mean that before plaintiffs can use § 551.65 to assert personal jurisdiction under § 801.05(2), plaintiffs must first exhaust other possibilities in asserting personal jurisdiction.

Although plaintiffs have not identified any other provision of the long-arm statute specifically, defendants concede that if plaintiffs can show that due process is satisfied under the five-part test they will have satisfied the requirements of Wis. Stat. § 801.05(1)(d), which allows a court to assert personal jurisdiction over defendants who are engaged in substantial and non-isolated activities within the state. Dfts.' Br., Case No. 03-C-536-C. dkt. #41, at 4-5; dkt. #38, at 3; dkt. #39, at 3, dkt. #37, at 5-6; Case No. 03-C-535-C, dkt. #39, at 4-5; dkt. #35, at 5-6; dkt. #37, at 3; dkt. #36, at 3; Case No. 03-C-539-C, dkt. #38, at 4-5; dkt. #39, at 5-6; dkt. #36, at 3; dkt. # 35, at 3 (citing PKWare, Inc. v. Meade,

79 F. Supp. 2d 1007, 1012 (E.D. Wis. 2000) ("Five factors are relevant to the question of whether a defendant's Wisconsin contacts are 'substantial' and not isolated for purposes of § 801.05(1)(d)."). Therefore, I will assume that defendants will "come within the grasp of the Wisconsin long-arm statute," Steel Warehouse of Wisconsin, Inc. v. Leach, 154 F.3d 712, 714 (7th Cir. 1998), under § 801.05(1)(d) if plaintiffs can show that defendants are subject to personal jurisdiction in Wisconsin under the due process analysis. Id. (because parties focused attention on due process question, court assumed defendants came within grasp of Wisconsin long-arm statute); see also Dehmlow v. Austin Fireworks, 963 F.2d 941, 945 (7th Cir. 1992) (unnecessary to inquire whether state statute grants personal jurisdiction over defendant when state statutes include "catch-all" provisions that grant state courts jurisdiction over all matters in which state may constitutionally assert jurisdiction); Logan Productions, 103 F.3d at 52 ("Wisconsin presumes its long-arm statute merely codifies the federal due process requirements."); Lincoln, 104 Wis. 2d at 10, 310 N.W.2d at 599 (long-arm statute to be construed liberally in favor of exercising jurisdiction).

Due process requires that a nonresident defendant have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). The contacts between the defendant and the forum state may not be "random, isolated, or fortuitous." Keeton v. Hustler Magazine, Inc.,

465 U.S. 770, 774 (1984). Instead, "the sufficiency of the contacts is measured by the defendant's purposeful acts." Nucor Corp. v. Aceros Y Maquilas de Occidente, S.A. de C.V., 28 F.3d 572, 580 (7th Cir. 1994). The minimum contacts with the forum state must be the result of the defendant's purposefully availing itself of the privilege of conducting business in the forum state, thereby invoking the protections and benefits of the forum state's law. Hanson v. Denckla, 357 U.S. 235, 253 (1958); International Medical Group, Inc. v. American Arbitration Assn., Inc., 312 F.3d 833, 846 (7th Cir. 2002). The minimum contacts requirement serves two objectives: "[i]t protects against the burdens of litigation in a distant or inconvenient forum" unless the defendant's contacts make it just to force him or her to defend there, and "it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980).

Depending on the nature of the contacts, a court may exercise general or specific jurisdiction. When the defendant's contacts with the state are sufficiently continuous, systematic and general, the court may exercise jurisdiction over the defendant in any suit arising out of any controversy. International Medical Group, 312 F.3d at 846. When a defendant's contacts with the state are more limited, but are related to or give rise to the specific controversy in issue, a court may exercise specific jurisdiction over the defendant with respect to that controversy. Logan Productions, 103 F.3d at 52.

Except for defendant Brashear, none of the defendants has resided, frequented, visited or owned property in the state of Wisconsin. Although a defendant's lack of physical presence in the forum state is not determinative, Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473-74, 476 (1985); Purdue Research Foundation, 338 F.3d at 781, plaintiffs have failed to argue that any of the defendants (except defendants Leonard and Manufacturer's Asset Group) had extensive contacts with Wisconsin that would subject them to general jurisdiction. Purdue Research Foundation, 338 F.3d at 787 (contacts with forum must be so extensive as to be tantamount to defendant's being constructively present in state to such degree that it would be fundamentally fair to require it to answer in [Wisconsin] court in any litigation arising out of any transaction or occurrence taking place anywhere in world). Although defendant Brashear might be subject to general jurisdiction because of his frequent business trips to Wisconsin, plaintiffs fail to make such an argument and therefore waive it. See Central States, Southeast and Southwest Areas Pension Fund v. Midwest Motor Express, Inc., 181 F.3d 799, 808 (7th Cir. 1999) ("Arguments not developed in any meaningful way are waived."). Therefore, I will determine whether Wisconsin courts would have specific jurisdiction over defendants.

In order to exercise specific jurisdiction, a court must find that the defendant has purposefully established minimum contacts with the forum state, that the cause of action arises out of or relates to those contacts and that the exercise of jurisdiction is

constitutionally reasonable. RAR, Inc. v. Turner Diesel, Ltd., 107 F.3d 1272, 1277 (7th Cir. 1997). The first and second part of this analysis require the court to evaluate the relationship among the defendant, the forum state and the cause of action. Calder v. Jones, 465 U.S. 783, 788 (1984) (citing Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). The Court has identified two ways in which minimum contacts may be established for the purpose of specific jurisdiction: (1) purposeful availment by the defendant of the benefits and protections of the forum state's laws, Asahi Metal Industry Co., Ltd. v. Superior Court of California, 480 U.S. 102, 109 (1987); or (2) harm to an individual within the state caused by the defendant when the harm is both intentional and aimed at the forum state, Calder, 465 at 788-90. I understand plaintiffs to argue only the "purposeful availment" prong of the specific jurisdiction test. Plts.' Br., Case No. 03-C-536-C, dkt. #30, at 15-17; Case No. 03-C-535-C, dkt. #28, at 15-17; Case No. 03-C-539-C, dkt. #27, at 15-17. Plaintiffs contend that all defendants had sufficient contacts with Wisconsin to meet the specific jurisdiction standard because 1) defendants created an agreement to offer RODI stock nationwide; 2) defendants Leonard and Manufacturer's Asset Group solicited Wisconsin citizens to purchase RODI stock on each defendant's behalf; 3) defendants authorized the stock sales of defendants Leonard and Manufacturer's Asset Group by executing stock certificates and mailing follow-up correspondence; and 4) defendants received checks from Wisconsin banks.

Each defendant's contacts with the forum state must be assessed individually. Calder,

465 U.S. at 790. Because there is no evidence that defendants David Teo, Gary Brashear, Abby Broussard, Steven Garman, Paul Horn and Douglas Siefkes had any contact whatsoever with Wisconsin or the plaintiffs, I will grant defendants' motion to dismiss them. See, e.g, Central States, Southeast & Southwest Areas Pension Fund, 230 F.3d at 943 (stock ownership in or affiliation with corporation without more not sufficient minimum contact).

As to defendant RODI, the evidence shows that defendants Leonard and Manufacturer's Asset Group acted on its behalf when they solicited plaintiffs' stock purchases. The parties agree that defendants Leonard and Manufacturer's Asset Group had multiple contacts with plaintiffs in Wisconsin (through its various agents). Plaintiffs Koppenhaver and Koch aver that agents of defendant Manufacturer's Asset Group discussed RODI investment opportunities with them. These contacts occurred because the agreement between defendants Manufacturer's Asset Group and RODI authorized defendant Manufacturer's Asset Group to raise money on behalf of RODI. The agreement did not authorize defendant Manufacturer's Asset Group to raise money on behalf of the individual officers of the company. Through the agreement, defendants Leonard and Manufacturer's Asset Group became agents of defendant RODI. International Shoe, 326 U.S. at 316 (since corporate personality is fiction, it is unlike individual in that its presence without as well as within the state of its origin can be manifested only by activities carried on its behalf by those authorized to act for it); Pavlic v. Woodrum, 169 Wis. 2d 585, 593-94, 486 N.W.2d

533, 536 (Ct. App. 1992) ("An agency exists if there has been a manifestation by the principal to the agent that the agent may act on the principal's account.") (citing Restatement (Second) of Agency § 15 (1958)). Agents may subject their principal to personal jurisdiction. See generally International Shoe, 326 U.S. at 318-320 (sales agents acting on behalf of defendant company subjected company to personal jurisdiction); Wis. Stat. § 801.05(4)(a) (holding defendants subject to personal jurisdiction under long-arm statute if solicitation or service activities carried on within Wisconsin by *or on behalf* of defendant). Because of this agency relationship, I find that defendant RODI had the requisite minimum contacts for Wisconsin courts to exercise personal jurisdiction over it.

"Once minimum contacts have been established, [defendant] can only escape jurisdiction by making a 'compelling case' that forcing it to litigate in Wisconsin would violate traditional notions of fair play and substantial justice." Logan Productions, 103 F.3d at 53; see also Central States, Southeast and Southwest Areas Pension Fund, 230 F.3d at 943 (once minimum contacts shown to exist, court must examine other factors such as forum's interest in adjudicating dispute and burden on defendant to determine whether exercise of personal jurisdiction satisfies traditional notions of fair play and substantial justice). Defendants have failed to show any reason why forcing defendant RODI to litigate in Wisconsin would violate traditional notions of fair play and substantial justice. Defendant RODI's deliberate effort to conduct a nationwide solicitation of investors

provided it with sufficient notice that it could be haled into court anywhere, including Wisconsin. It would not be burdensome for RODI to litigate this case in Wisconsin, Logan Productions, 103 F.3d at 54 ("it usually will not be unfair to subject a defendant who engages in economic activity in a state to the burdens of litigating in that state"), a state that has a clear interest in addressing potential violations of its own laws. Thus, I will deny defendants' motion to dismiss defendant RODI for lack of personal jurisdiction.

Plaintiffs have failed to show that defendants Byron Spain or Gwendolyn Spain had the necessary minimum contacts with Wisconsin to subject them to specific jurisdiction. Only the affidavits from David Cerqua and plaintiff Ken Koppenhaver show any contact by these two defendants with RODI stock purchasers in Wisconsin. Cerqua received a letter addressed to his Wisconsin address from defendant Gwendolyn Spain, confirming the receipt of his $25,000 payment for RODI stock, and he received at his Wisconsin address a stock certificate for RODI, executed by defendant Byron Spain. Plaintiff Koppenhaver had a telephone conversation from his Wisconsin home with defendant Byron Spain and received at his home address a copy of the RODI chairman's report, signed by defendant Byron Spain, a letter from defendant Byron Spain offering to buy back his shares because of RODI's failure to disclose certain broker's commissions and a letter from defendant Gwendolyn Spain regarding a meeting of the shareholders and a stock bonus refund. In addition, plaintiff Koppenhaver sent a letter from Wisconsin to defendant Gwendolyn

Spain, requesting the stock bonus refund. (Plaintiff James Koch does not assert any contact by Byron Spain or Gwendolyn Spain in his affidavit.)

This evidence is insufficient to show that defendants Byron Spain and Gwendolyn Spain purposefully availed themselves of the benefit of Wisconsin laws. As noted earlier, the agreement entered into by defendants Manufacturer's Asset Group and RODI did not authorize defendant Manufacturer's Asset Group to solicit the purchase of stock on behalf of the individual officers of RODI. Therefore, plaintiffs cannot impute the solicitation contacts they had with agents of defendant Manufacturer's Asset Group to the individual officers and directors of RODI. See Pavlic, 169 Wis. 2d at 591, 486 N.W.2d at 536 ("Apparent authority to do an act is created by conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.") (citing Restatement (Second) of Agency § 27 (1958)). Rather, the evidence plaintiffs adduce merely shows that defendants Byron Spain and Gwendolyn Spain conducted follow-up communications with certain RODI stock purchasers, such as sending reports, letters and certificates and speaking to plaintiff Koppenhaver on the phone. (Plaintiffs fail to state whether plaintiff Koppenhaver contacted defendant Byron Spain by phone or vice versa and they do not provide any information about the subject of the phone conversation.)

These ministerial actions are not equivalent to the solicitation actions conducted by

the agents of defendant Manufacturer's Asset Group that gave rise to this cause of action. For example, in Pavlic, 169 Wis. 2d at 589-90, 486 N.W.2d at 534, the vice-president and shareholder of a corporation contacted a Wisconsin plaintiff by telephone and mail to solicit the plaintiff's investment in the corporation. After the plaintiff purchased some stock, the president of the corporation sent the plaintiff stock certificates by mail to the plaintiff's Wisconsin address. Id. After the corporation failed, the president of the corporation sent a letter to the plaintiff to inform him of the failure. Id. The court found it could exercise personal jurisdiction over the corporation and its vice-president, but did not find that the two contacts made by the president of the corporation through the mail to the plaintiff were a sufficient ground for the exercise of personal jurisdiction over him. Id. at 592, 486 N.W.2d at 535. "Rather, mailing the stock certificates as a corporate agent was a ministerial duty required upon the completion of the contacts between [the vice-president] and [the plaintiff]." Id. Similarly, plaintiffs fail to show that their lawsuits arose directly out of the few contacts defendants Byron Spain and Gwendolyn Spain had with plaintiff Koppenhaver and Cerqua. "[S]pecific jurisdiction is not appropriate 'merely because a plaintiff's cause of action arose out of the general relationship between the parties; rather, the action must directly arise out of the specific contacts between the defendant and the forum state.'" RAR, 107 F.3d at 1278. (quoting Sawtelle v. Farrell, 70 F.3d 1381, 1389 (1st Cir. 1995)). I will grant defendants' motion to dismiss defendants Byron Spain and Gwendolyn Spain from

this action for lack of personal jurisdiction.

ORDER

IT IS ORDERED that

1. The motion of defendants RODI Power Systems, Inc., Byron Spain, Gwendolyn S. Spain, David Teo, Steven E. Garman and Douglas C. Siefkes to dismiss them from these actions for lack of personal jurisdiction is GRANTED as the motion relates to defendants Byron Spain, Gwendolyn Spain, David Teo, Steven Garman and Douglas Siefkes. The motion is DENIED as it relates to defendants RODI Power Systems, Inc.;

2. The motions of defendants Gary Brashear, Abby Broussard, and Paul Horn to dismiss them for lack of personal jurisdiction are GRANTED.

Entered this 22nd day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge