

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

FILED B - 7

2007 AUG 24 PM 2:13

E360INSIGHT, LLC, an Illinois Limited Liability Company, and DAVID LINHARDT, an individual, )  
Plaintiffs, )  
v. )  
MARK JAMES FERGUSON, an individual, )  
SUSAN WILSON A.K.A. SUSAN GUNN, an individual, )  
ROB SAECKER A.K.A. FUDO, )  
an individual, RICH TIETJENS A.K.A. )  
MORELY DOTES, an individual, WILLIAM )  
SILVERSTEIN, an individual, and TIM )  
SKIRVIN A.K.A. SCREWTAPE III, an individual )  
Defendants. )

DEBORAH HUGHES  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL

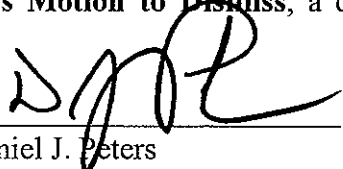
No.: 07 L 004983

JURY DEMAND

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on August 24, 2007, I caused to be filed **Plaintiff's Response to Defendant Robert Saecker's Motion to Dismiss**, a copy of which is attached hereto and hereby served upon you.

  
Daniel J. Peters

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the attached **Plaintiff's Response to Defendant Robert Saecker's Motion to Dismiss** to be served upon the above named parties, via US Mail from Chicago, Illinois before 5:00 p.m. on August 24, 2007.

  
Daniel J. Peters

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
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DONOTHY ROWE  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL

E360INSIGHT, LLC, an Illinois Limited  
Liability Company, and DAVID LINHARDT,  
an individual,

Plaintiffs,

v.

MARK JAMES FERGUSON, an individual,  
SUSAN WILSON A.K.A. SUSAN GUNN, an  
individual, KELLY CHIEN, an individual,  
ROB SAECKER A.K.A. FUDO, an  
individual, RICH TIETJENS A.K.A.  
MORELY DOTES, an individual, WILLIAM  
SILVERSTEIN, an individual, and TIM  
SKIRVIN, an individual

Defendants.

Case No. 07 L 004983

**RESPONSE TO MOTION TO DISMISS**

Plaintiffs, e360Insight, LLC (e360) and David Linhardt ("Linhardt") (collectively "Plaintiffs"), by and through their attorneys, Synergy Law Group, LLC, for their Response to Defendant Robert Saecker's ("Saecker") Motion to Dismiss, state as follows:

1. Defendant Saecker has filed a Motion to Dismiss. The Motion should be denied because this county, Cook, is where "the transaction ... occurred out of which the cause of action arose." 735 ILCS 5/2-101.

**Personal Jurisdiction**

2. Under Illinois law, this Court can exercise jurisdiction over Saecker based on general or specific jurisdiction. This Court can exercise personal jurisdiction on any basis permitted by the Illinois Constitution and the Constitution of the United States. 735 ILCS 5/2-209(c). "Federal due process analysis requires a three-prong analysis consisting of whether (1) the nonresident defendant had 'minimum contacts' with the

forum state such that there was 'fair warning' that the nonresident defendant may be haled into court there; (2) the action arose out of or related to the defendant's contacts with the forum state; and (3) it is reasonable to require the defendant to litigate in the forum state." *Keller v. Henderson*, 359 Ill. App. 3d 605, 613, 834 N.E.2d 930 (2nd Dist. 2005). Here, Saecker clearly had minimum contact by knowingly posting defamatory comments on an internet site he knew would be accessed by an Illinois resident. Saecker knows that e360Insight and David Linhardt are located in Illinois. This cause of action arises out of Saecker's contact with this forum and it is reasonable to require Saecker to litigate here because he committed a tort in this state.

3. Illinois courts have subjected a defendant to its jurisdiction based on internet postings. *See Bombliss v. Cornelsen*, 355 Ill.App.3d 1107, 824 N.E.2d 1175 (Ill.App. 3d Dist. 2005). In *Bombliss*, plaintiff dog-breeders sued non-resident defendants in Illinois state court for, *inter alia*, defamation resulting from chat room postings on the internet. The court in *Bombliss*, while looking at a variety of factors, found that exercising jurisdiction over the non-resident defendants was proper because "it was entirely foreseeable that the injury resulting from defendants' allegedly false assertions of genetic defects over the Internet would be felt primarily in Illinois." *Bombliss*, 355 Ill.App.3d 1107, 1116 (Ill.App. 3d Dist. 2005). Here, it was foreseeable that Saecker's actions would result in injury to Plaintiffs in Cook County.

4. Jurisdictions other than Illinois have justified exercising jurisdiction over non-resident defendants based on internet activity, illustrating the emerging precedent of allowing plaintiffs to file suit where the effects of a defendant's internet activity are felt. *See Goldhaber v. Kohlenberg*, --- A.2d ----, 2007 WL 2198181 (N.J.Super.A.D.).

5. Saecker's reliance on *Howard v. Mo. Bone & Joint Ctr., Inc.*, 869 N.E.2d 207 (5<sup>th</sup> Dist. 2007) is misplaced. In *Howard*, the Court merely held that "Illinois could not exercise jurisdiction over out-of-state defendants merely because they advertised in Illinois and had clients from Illinois." *Id.* at \*16. That is not the issue in this case. In this case Saecker knew this was an Illinois company, and the harm occurred in Illinois and therefore jurisdiction is appropriate.

WHEREFORE, Plaintiffs request that this Court enter and Order denying Defendant Saecker's Motion Dismiss and for any other relief the Court deems just.

Respectfully submitted,

E360Insight, LLC. and David Linhardt

By: 

One of Their Attorneys

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