Opinion issued February 1, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00262-CV

HUNTINGTON INGALLS INCORPORATED, Appellant

V.

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON AND THOSE SOLVENT LONDON MARKET INSURANCE COMPANIES SEVERALLY SUBSCRIBING TO THE SUBJECT INSURANCE POLICIES, INCLUDING BUT NOT LIMITED TO ACCIDENT & CASUALTY CO. AND ACCIDENT & CASUALTY INSURANCE COMPANY OF WINTERTHUR BOTH N/K/A TENECOM LIMITED, ACCREDITED INSURANCE (EUROPE) LIMITED F/K/A ANCON INSURANCE COMPANY (UK) LIMITED, ALLIANZ IARD F/K/A ASSURANCES GENERALES DE FRANCE INCENDIES ACCIDENTS REASSURANCES TRANSPORTS S.A. AND/OR POLARIS/NORSKE SJO INS. CO. AND/OR WURTTEMBERGISCHE FEUERVERSICHERUNG AG, ALLIANZ IARD (F/K/A LA PRESERVATRICE), ALLIANZ IARD F/K/A LA PRESERVATRICE CA D'ASSURANCES A.I.R.D., ALLIANZ SUISSE INSURANCE COMPANY F/K/A HELVETIA-ACCIDENT SWISS INSURANCE COMPANY, AMERICAN HOME ASSURANCE COMPANY, ARGONAUT INSURANCE COMPANY (AS SUCCESSOR TO ARGONAUT NORTHWEST INS. CO.), ASR SCHADEVERZEKERING N.V. AS SUCCESSOR TO EUROPEESCHE VERZEKERING MAATSCHAPPIJ NY, AXA INSURANCE UK PLC AS

SUCCESSOR IN INTEREST TO ATLAS ASSURANCE COMPANY LIMITED, AXA INSURANCE UK PLC AS SUCCESSOR IN INTEREST TO BRITISH TRADERS INSURANCE COMPANY LIMITED, AXA INSURANCE UK PLC (AS SUCCESSOR IN INTEREST TO PROVINCIAL INSURANCE PLC), BALOISE INSURANCE LTD., BISHOPSGATE INSURANCE COMPANY LIMITED, BOTHNIA INTERNATIONAL INSURANCE COMPANY LIMITED (AS SUCCESSOR IN INTEREST TO CERTAIN BUSINESS ORIGINALLY UNDERWRITTEN BY ASSICURAZIONI GENERALI S.P.A. U.K. BRANCH), CAVELLO BAY REINSURANCE LIMITED AS SUCCESSOR IN INTEREST TO BRITTANY INSURANCE COMPANY LIMITED, CHEVANSTELL LIMITED FKA BALTICA SKANDINAVIA INSURANCE CO., COMMERCIAL UNION ASSURANCE COMPANY, DARAG DEUTSCHE VERSICHERUNGS - UND RÜCKVERSICHERUNGS-AG AS SUCCESSOR IN INTEREST TO A.G. SECURITAS VAN 1898 N/K/A BOTHNIA INTERNATIONAL INSURANCE COMPANY LIMITED, DELTA-LLOYD NON-LIFE INSURANCE COMPANY LIMITED, EXCESS INSURANCE COMPANY LIMITED, HARPER INSURANCE LIMITED F/K/A TUREGUM INSURANCE COMPANY, INDEMNITY MARINE ASSURANCE COMPANY LIMITED, INSCO LIMITED, CHUBB EUROPEAN GROUP SE F/K/A INSURANCE COMPANY OF NORTH AMERICA (UK) LIMITED, INTERNATIONAL INSURANCE COMPANY, LONDON AND EDINBURGH GENERAL INSURANCE COMPANY LIMITED, MAAS LLOYD NV SCHADEVERZEKERINGSMAATSCHAPPIJ, MERCANTILE INDEMNITY COMPANY, AS SUCCESSOR IN INTEREST TO CERTAIN BUSINESS OF BRITISH FIRE INSURANCE COMPANY LIMITED, BRITISH LAW INSURANCE COMPANY LIMITED, CONTINENTAL INSURANCE COMPANY, PHOENIX ASSURANCE PUBLIC LIMITED COMPANY, PLANET ASSURANCE COMPANY LIMITED, ROYAL INSURANCE COMPANY LIMITED, AND SUN ALLIANCE INSURANCE COMPANY LIMITED, MS AMLIN S.E., AS SUCCESSOR OF TOLLENAAR & WEGENER ASSURADEUREN B.V.) ON BEHALF OF AMSTERDAM-LONDON VERZEKERING MAATSCHAPPIJ NV PER TOLLENAAR, DELTA-LLOYD SCHADEVERZEKERING NV PER TOLLENAAR, EXCESS INS. CO. PER TOLLENAAR, GRESHAM INSURANCE SOCIETY LIMITED PER TOLLENAAR, AND INTERLLOYD VERZEKERING MAASTSCHAPPIJ NV, NATIONAL CASUALTY COMPANY, NATIONAL CASUALTY COMPANY OF AMERICA LIMITED, NATIONAL CASUALTY COMPANY OF

DETROIT, NEW LONDON REINSURANCE COMPANY LIMITED AND NRG VICTORY REINSURANCE LIMITED, PORTMAN INSURANCE SE (AS SUCCESSOR IN INTEREST TO LONDON & HULL MARITIME INSURANCE COMPANY LIMITED), PORTMAN INSURANCE SE (AS SUCCESSOR IN INTEREST TO ROYAL BEIGE D'ASSURANCES SA), RHEINLAND VERSICHERUNGS AG (AS SUCCESSOR IN INTEREST TO ONLY TO THE SUBSCRIPTIONS OF THE FORMER DUTCH COMPANY RHEINLAND VERZEKERINGEN PER ASSVANWIJK), RIVER THAMES INSURANCE COMPANY LIMITED, ON ITS OWN BEHALF AND AS SUCCESSOR IN INTEREST TO MARLON INSURANCE COMPANY LIMITED (FORMERLY KNOWN AS VESTA (UK) INSURANCE COMPANY LIMITED AND SKANDIA MARINE INSURANCE COMPANY (UK) LIMITED), AND UNIONAMERICA INSURANCE COMPANY LIMITED (ON ITS OWN BEHALF AND IN TURN AS SUCCESSOR IN INTEREST TO CERTAIN BUSINESS OF ST PAUL TRAVELERS INSURANCE COMPANY LIMITED (FORMERLY KNOWN AS ST KATHERINE INSURANCE COMPANY LIMITED, ST KATHERINE INSURANCE COMPANY PLC AND ST PAUL INTERNATIONAL INSURANCE COMPANY LIMITED, RIVERSTONE INSURANCE (UK) LIMITED AS SUCCESSOR IN INTEREST TO IRON TRADES INSURANCE COMPANY LTD, SKANDIA UK INSURANCE PLC FOR THEIR PARTICIPATION IN THE ORION POOL, SKANDIA INTERNATIONAL INSURANCE CORPORATION, SPHERE DRAKE INSURANCE LTD, AND TERRA NOVA INSURANCE COMPANY LTD, SCOTTISH AND YORK INC., SOMPO JAPAN NIPPONKOA INSURANCE COMPANY OF EUROPE LIMITED F/K/A THE NIPPON FIRE & MARINE INSURANCE COMPANY (EUROPE) LIMITED, SUECIA RE & MARINE INSURANCE COMPANY LIMITED (FORMERLY HANSA RE & MARINE INSURANCE COMPANY (UK) LIMITED AND HANSA MARINE INSURANCE COMPANY (UK) LIMITED), SWISS RE SPECIALTY (UK) LIMITED F/K/A THREADNEEDLE INSURANCE COMPANY LTD, TENECOM LIMITED AS SUCCESSOR TO YASUDA FIRE AND MARINE INSURANCE COMPANY (UK) LIMITED AND YASUDA FIRE AND MARINE INSURANCE COMPANY OF EUROPE LTD, THE DOMINION INSURANCE COMPANY LIMITED, THE EDINBURGH ASSURANCE COMPANY, THE OCEAN MARINE INSURANCE COMPANY LTD., THE SCOTTISH LION INSURANCE COMPANY LIMITED, U.S. FIRE INSURANCE COMPANY, WINTERTHUR SWISS INSURANCE CO. N/K/A TENECOM, WORLD

AUXILIARY INSURANCE CORP. LTD., AND WORLD MARINE & GENERAL INSURANCE COMPANY LIMITED, Appellees

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On Appeal from the 133rd District Court
Harris County, Texas
Trial Court Case No. 2021-03290

MEMORANDUM OPINION

In this interlocutory appeal,[1] appellant, Huntington Ingalls Incorporated ("Huntington Ingalls"), challenges the trial court's order denying its special appearance in favor of appellees[2]—collectively, the "London Market Insurers"—in the London Market Insurers' suit against Huntington Ingalls for a declaratory judgment. In its sole issue, Huntington Ingalls contends that the trial court erred in denying its special appearance.

We reverse and render.

Background

In their petition, the London Market Insurers sought a declaratory judgment to "determine[e] the parties' rights and obligations under certain excess liability

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1 *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(7).

2 We do not list appellees by name in the body of the memorandum opinion because of their large number.

insurance policies"[3] for personal-injury claims brought against Huntington Ingalls in alleged asbestos litigation. Those insurance policies, which were in effect between 1968 and 1986, had been "placed in the London Insurance Market on behalf" of Tenneco Inc. ("Tenneco"), and its subsidiaries at the time, including Huntington Ingalls's corporate predecessor, Newport News Shipbuilding and Dry Dock Company ("NNS"), and issued by the various London Market Insurers. The London Market Insurers sought declarations as to whether any "of the [insurance policies were] responsive to one or more [of the] underlying [personal-injury] claims," and if so, "the extent to which each of the London Market Insurers [wa]s responsible to [Huntington Ingalls]" under the policies.

In their petition, the London Market Insurers alleged that Texas had personal jurisdiction over Huntington Ingalls, asserting that:

> at all times relevant to this matter, NNS[, Huntington Ingalls's corporate predecessor,] was a wholly[-]owned subsidiary of Tenneco . . . , which itself was at all relevant times a corporation headquartered in Houston, Texas; the [insurance policies] under which [Huntington Ingalls] seeks insurance coverage from the London Market Insurers were purchased by Tenneco . . . through its insurance department in Houston . . . ; and the premiums for the [insurance policies] under which [Huntington Ingalls] seeks insurance coverage from the London Market Insurers were paid by Tenneco . . . from its headquarters in Houston . . . .

[3] The London Market Insurers attached a list of the relevant insurance policies to their petition.

According to the London Market Insurers, the assumption of personal jurisdiction over Huntington Ingalls would not offend traditional notions of fair play and substantial justice and would be consistent with the constitutional requirements of due process.

Huntington Ingalls filed a special appearance, asserting that Texas lacked general and specific personal jurisdiction over it. As to general jurisdiction, Huntington Ingalls maintained that it and its corporate predecessor NNS had never "registered to do business in Texas," "d[id] not maintain a registered agent for service of process in Texas," did not "own[] real property in Texas," did not have "an office" in Texas, and "d[id] not . . . engage[] in business in Texas." As to specific jurisdiction, Huntington Ingalls asserted that the London Market Insurers' declaratory-judgment claim against it "ar[ose] out of [its] requests that [the London Market Insurers] provide insurance coverage" for the underlying personal-injury claims involving alleged exposure to asbestos during construction, overhaul, or repair activities at NNS's shipyard in Newport News, Virginia or while onboard certain vessels that had been built or repaired by NNS. And these "interactions" occurred entirely outside of Texas.

As to the jurisdictional allegations in the London Market Insurers' petition, Huntington Ingalls argued that Tenneco's alleged procurement of the various insurance policies from the London Market Insurers was insufficient to establish

specific jurisdiction over Huntington Ingalls because "parent corporations and subsidiary corporations are legally separate entities and a parent corporation's contacts with a state are not attributable to a subsidiary." Additionally, Tenneco's alleged use of "its offices in Texas to procure the insurance policies to cover its subsidiaries in various states, including NNS in Virginia," and Tenneco's payment of premiums through its offices in Texas were insufficient to establish specific jurisdiction over Huntington Ingalls "because [the parties'] dispute [wa]s not about the acquisition of the insurance policies," but rather, "a dispute about whether the [insurance] policies appl[ied]" to the underlying personal-injury claims. According to Huntington Ingalls, the exercise of personal jurisdiction over it would offend traditional notions of fair play and substantial justice.

Huntington Ingalls attached to its special appearance the affidavit of Nicolas Schuck, the Corporate Vice President, Controller, and Chief Accounting Officer at Huntington Ingalls Industries, Inc. Schuck attested that Huntington Ingalls "[wa]s a wholly owned subsidiary of Huntington Ingalls Industries, Inc." Schuck also stated that NNS[4] had "always been headquartered in . . . Virginia" and had operated the risk management offices there. And, according to Schuck, while NNS "ha[d] built

[4] Schuck used "NNS" to refer to both Huntington Ingalls and NNS—Huntington Ingalls's corporate predecessor.

ships and submarines in Virginia, Mississippi, and Louisiana," it had never built "ships or submarines in Texas."

Schuck included with his affidavit the "Service of Suit Clause" contained in one of the insurance policies issued by the London Market Insurers, which provided:

> It is agreed that in the event of the failure of Underwriters herein to pay any amount claimed to be due hereunder, Underwriters herein, at the request of the insured (or reinsured), will submit to the jurisdiction of any Court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

The London Market Insurers also agreed, in that provision, to have a New York entity accept service of process on their behalf. And Schuck stated that "NNS believe[d] that most, if not all, of the [insurance] policies listed in [the London Market Insurers' petition] ha[d] a similar, if not the same, Service of Suit Clause."

Huntington Ingalls also attached to its special appearance the affidavit of Michael Burton, the Corporate Director of Risk Management and Assistant Treasurer at Huntington Ingalls Industries, Inc. Burton attested that "[d]uring the time period when NNS[, Huntington Ingalls's corporate predecessor,] was a [Tenneco] subsidiary, [Tenneco] made the decision to purchase insurance policies that provide[d] coverage for NNS and charged NNS an allocated premium." Burton stated that "NNS did not engage [Tenneco]'s broker to obtain insurance for NNS," and NNS's "officers and directors were not involved in the negotiation or

administration of the insurance procured by [Tenneco]." And as to the insurance policies themselves, Burton explained that they "provide[d] nationwide coverage and d[id] not have Texas-related endorsements or an endorsement directing policyholders to contact the Texas Department of Insurance."

In their response to Huntington Ingalls's special appearance, the London Market Insurers asserted that Huntington Ingalls was subject to specific jurisdiction in Texas.[5] According to the London Market Insurers, at the time Tenneco, the parent company of Huntington Ingalls's corporate predecessor, NNS, procured the insurance policies relevant to the declaratory-judgment claim, Tenneco "was headquartered" in Texas, "Tenneco's insurance program was managed by its corporate insurance department" in Texas, Tenneco paid the premiums for the insurance policies in Texas, and the insurance policies were "ultimately delivered to Tenneco in Texas." They also emphasized that the insurance policies "contain[ed] provisions that specifically and expressly appl[ied] to NNS." And, relying on *Eastern Concrete Materials, Inc. v. ACE American Insurance Co.*, 948 F.3d 289 (5th Cir. 2020), the London Market Insurers argued that Texas had specific jurisdiction over Huntington Ingalls "because of the facts surrounding the formation of, delivery to, and payment for the [insurance] policies by Tenneco in Texas." While

[5] The London Market Insurers did not assert that Huntington Ingalls was subject to general jurisdiction in Texas.

acknowledging "as a general proposition, [that] Tenneco may not have controlled the operations and affairs of NNS," the London Market Insurers asserted that for purposes of imputing Tenneco's conduct to NNS, Tenneco's conduct in procuring, negotiating, paying for and managing its insurance program for the benefit of its subsidiaries, including NNS, amounted to control over "the affairs of the subsidiary." And according to the London Market Insurers, the exercise of personal jurisdiction over Huntington Ingalls would not offend traditional notions of fair play and substantial justice.[6]

After a hearing,[7] the trial court denied Huntington Ingalls's special appearance.

Scope of Appeal

As an initial matter, we note that the parties' briefing addresses issues unrelated to the question of whether the trial court erred in denying Huntington Ingalls's special appearance and in concluding that Texas has personal jurisdiction over Huntington Ingalls. For instance, the parties' briefing includes a history of their efforts to litigate their insurance coverage disputes in other forums and a decision made by another state's court about choice-of-law issues, so we must first address

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[6] Huntington Ingalls filed a reply to the London Market Insurers' response, and the London Market Insurers filed a sur-reply.

[7] At the special-appearance hearing, the trial court heard argument of counsel, but it did not hear testimony or admit any evidence.

the scope of this appeal. *See Heckman v. Williamson Cty.*, 369 S.W.3d 137, 146 n.14 (Tex. 2012) ("[C]ourts always have jurisdiction to determine their own jurisdiction." (internal quotations omitted)); *M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 673 (Tex. 2004) (reviewing court is obligated to review issues affecting jurisdiction).

An appellate court's jurisdiction over an interlocutory appeal is limited to the scope permitted by statute. *Fawcett v. Rogers*, 492 S.W.3d 18, 29 (Tex. App.—Houston [1st Dist.] 2016, no pet.); *see also CMH Homes v. Perez*, 340 S.W.3d 444, 447 (Tex. 2011) (holding appellate courts strictly apply statutes granting interlocutory appeals because they are narrow exceptions to general rule that interlocutory orders are not immediately appealable); *Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840 (Tex. 2007) ("Appellate courts have jurisdiction to consider immediate appeals of interlocutory orders only if a statute explicitly provides such jurisdiction."). Issues outside of the scope allowed by statute cannot be considered by the appellate court in an interlocutory appeal. *Fawcett*, 492 S.W.3d at 29.

Here, Huntington Ingalls challenges the trial court's order denying its special appearance. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(7) ("A person may appeal from an interlocutory order . . . that . . . grants or denies the special appearance of a defendant under [Texas] Rule [of Civil Procedure] 120a . . . .");

TEX. R. CIV. P. 120(a). Thus, our task is limited to reviewing only the propriety of that ruling.[8]

Standard of Review

The existence of personal jurisdiction is a question of law, which must sometimes be preceded by the resolution of underlying factual disputes. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002); *Paul Gillrie Inst., Inc. v. Universal Comput. Consulting, Ltd.*, 183 S.W.3d 755, 759 (Tex. App.—Houston [1st Dist.] 2005, no pet.). When the underlying facts are undisputed or otherwise established, we review a trial court's denial of a special appearance de novo. *Paul Gillrie Inst.*, 183 S.W.3d at 759. Where, as here, the trial court does not issue findings of fact and conclusions of law with its special-appearance ruling, we imply all fact findings necessary to support the ruling if the evidence supports them. *Marchand*, 83 S.W.3d at 795; *Paul Gillrie Inst.*, 183 S.W.3d at 759.

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[8] The London Market Insurers have filed a motion to take judicial notice of an opinion letter by a Virginia state court addressing choice-of-law issues. Because of the scope of this appeal, we deny the motion. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(7). We also note that the Virginia state court's opinion letter was issued more than a month after the trial court's ruling on Huntington Ingalls's special appearance and thus was not before the trial court when it denied the special appearance. *See* TEX. R. APP. P. 34.1; *FedEx Corp. v. Contreras*, No. 04-19-00757-CV, 2020 WL 4808721, at *9 (Tex. App.—San Antonio Aug. 19, 2020, no pet.) (mem. op.) ("Because the documents [appellee] relies on were not before the trial court when it signed the [special-appearance] order at issue in this appeal, we may not consider them in our review of that order.").

A trial court determines a "special appearance on the basis of the pleadings, any stipulations made by and between the parties, such affidavits and attachments as may be filed by the parties, the results of discovery processes, and any oral testimony." TEX. R. CIV. P. 120a(3). A single basis for personal jurisdiction is sufficient to confer jurisdiction over a nonresident defendant. *See Citrin Holdings, LLC v. Minnis*, 305 S.W.3d 269, 279 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Thus, if a nonresident defendant is subject to specific jurisdiction in Texas, this is sufficient. *See Am. Express Centurion Bank v. Haryanto*, 491 S.W.3d 337, 346 n.8 (Tex. App.—Beaumont 2016, no pet.); *Minnis*, 305 S.W.3d at 279; *see also* TEX. R. APP. P. 47.1.

The plaintiffs bear the initial burden of pleading allegations sufficient to bring a nonresident defendant within the provisions of the Texas long-arm statute. *Am. Type Culture Collection v. Coleman*, 83 S.W.3d 801, 807 (Tex. 2002); *Paul Gillrie Inst.*, 183 S.W.3d at 759. The burden of proof then shifts to the nonresident defendant to negate all the bases of jurisdiction alleged by the plaintiffs. *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985); *see also Kelly v. Gen. Interior Constr., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010) ("Because the plaintiff defines the scope and nature of the lawsuit, the defendant's corresponding burden to negate jurisdiction is tied to the allegations in the plaintiff's pleading.").

The nonresident defendant can negate jurisdiction on either a factual or a legal basis. *Kelly*, 301 S.W.3d at 659. Factually, the nonresident defendant can present evidence that it had no contacts with Texas, "effectively disproving the plaintiffs[']allegations." *Id.* The plaintiffs can then respond with their own evidence affirming their allegations, and if they do not present evidence establishing personal jurisdiction, they risk dismissal of their suit. *Id.* Legally, the nonresident defendant can show that, even if the plaintiffs' alleged facts are true, the evidence is legally insufficient to establish jurisdiction; the nonresident defendant's contacts with Texas do not constitute purposeful availment for specific jurisdiction; the claims do not arise from the contacts with Texas; or the exercise of jurisdiction offends traditional notions of fair play and substantial justice. *Id.*

Personal Jurisdiction

In its sole issue, Huntington Ingalls argues that the trial court erred in denying its special appearance and in concluding that Texas has personal jurisdiction over it because "[t]he only factual basis alleged by [the London Market Insurers] for specific jurisdiction in Texas over [Huntington Ingalls] is conduct of [its corporate predecessor's] parent company, Tenneco, a wholly separate corporation," "[t]here [were] no facts pleaded that suggest [that Huntington Ingalls] purposefully availed itself of the privileges and benefits of conducting business" in Texas, neither Huntington Ingalls nor its corporate predecessor, NNS, had "control over Tenneco's

actions" or "where or how Tenneco purchased insurance," and the exercise of personal jurisdiction over Huntington Ingalls would offend traditional notions of fair play and substantial justice.

A court may assert personal jurisdiction over a nonresident defendant only if the requirements of both the Fourteenth Amendment's due process clause and the Texas long-arm statute are satisfied. *See* U.S. CONST. amend. XIV, § 1; TEX. CIV. PRAC. & REM. CODE ANN. § 17.042; *Guardian Royal Exch. Assurance, Ltd. v. English China Clays, P.L.C.*, 815 S.W.2d 223, 226–27 (Tex. 1991). The Texas long-arm statute allows a court to exercise personal jurisdiction over a nonresident defendant who does business in Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 17.042. The nonresident "does business" in Texas if it "contracts by mail or otherwise with a Texas resident and either party is to perform the contract in whole or in part" in Texas, it "commits a tort in whole or in part" in Texas, or it "recruits Texas residents, directly or through an intermediary located in [Texas], for employment inside or outside the state." *Id.* The Texas Supreme Court has repeatedly interpreted this statutory language "to reach as far as the federal constitutional requirements of due process will allow." *Guardian Royal*, 815 S.W.2d at 226. Therefore, the requirements of the Texas long-arm statute are satisfied if the exercise of personal jurisdiction comports with federal due process limitations. *Id.*

The United States Constitution permits a state to assert personal jurisdiction over a nonresident defendant only if it has some minimum, purposeful contacts with the state and if the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice. *Dawson-Austin v. Austin*, 968 S.W.2d 319, 326 (Tex. 1998). A nonresident defendant who has purposefully availed itself of the privileges and benefits of conducting business in the state have sufficient contacts with the state to confer personal jurisdiction. *See Guardian Royal*, 815 S.W.2d at 226.

The "purposeful availment" requirement has been characterized by the Texas Supreme Court as the "touchstone of jurisdictional due process." *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W.3d 777, 784 (Tex. 2005). In *Michiana*, the supreme court articulated three important aspects of the purposeful availment inquiry. *Id.* at 785. First, only a nonresident defendant's contacts with the forum count. *Id.* This ensures that the nonresident defendant is not haled into a jurisdiction solely by the unilateral activities of a third party. *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). Second, the acts relied on must be purposeful; the nonresident defendant may not be haled into a jurisdiction solely based on contacts that are "random, isolated, or fortuitous." *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). Third, the nonresident defendant "must seek some benefit, advantage, or profit by 'availing' itself of the jurisdiction" because "[j]urisdiction is premised on notions of implied consent" and by "invoking

the benefits and protections of a forum's laws, a nonresident consents to suit there." *Id.* (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

The nonresident defendant's contacts with a forum can give rise to either general or specific jurisdiction. *Marchand*, 83 S.W.3d at 795. Specific jurisdiction is established if the nonresident defendant's alleged liability arises from or relates to an activity conducted within the forum. *Marchand*, 83 S.W.3d at 796. When specific jurisdiction is asserted, the minimum contacts analysis focuses on the relationship between the nonresident defendant, the forum, and the litigation. *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575–76 (Tex. 2007).

Foreseeability is an important consideration in deciding whether the nonresident defendant has purposefully established minimum contacts with the forum state. *Burger King Corp.*, 471 U.S. at 474; *Guardian Royal*, 815 S.W.2d at 227. The concept of foreseeability is implicit in the requirement that there be a substantial connection between the nonresident defendant and Texas, arising from actions or conduct of the nonresident defendant purposefully directed toward Texas. *Guardian Royal*, 815 S.W.2d at 227.

In determining whether the London Market Insurers pleaded sufficient jurisdictional facts, we consider their pleadings as well as their response to Huntington Ingalls's special appearance. *See* TEX. R. CIV. PROC. 120a(3); *Max Protetch, Inc. v. Herrin*, 340 S.W.3d 878, 883 (Tex. App.—Houston [14th Dist.]

2011, no pet.); *Touradji v. Beach Capital P'ship, L.P.*, 316 S.W.3d 15, 23 (Tex. App.—Houston [1st Dist.] 2010, no pet.). In conducting our review, we accept as true the allegations in the London Market Insurers' petition. *See Tex. Dep't of Transp. v. Ramirez*, 74 S.W.3d 864, 867 (Tex. 2002) (in considering jurisdictional motions, reviewing court construes liberally pleadings in plaintiff's favor); *Max Protetch*, 340 S.W.3d at 883; *Touradji*, 316 S.W.3d at 23.

In their petition, the London Market Insurers alleged that Texas had specific personal jurisdiction over Huntington Ingalls, asserting that:

> at all times relevant to this matter, NNS[, Huntington Ingalls corporate predecessor,] was a wholly[-]owned subsidiary of Tenneco . . . , which itself was at all relevant times a corporation headquartered in Houston . . . ; the [insurance policies] under which [Huntington Ingalls] seeks insurance coverage from the London Market Insurers were purchased by Tenneco . . . through its insurance department in Houston . . . ; and the premiums for the [insurance policies] under which [Huntington Ingalls] seeks insurance coverage from the London Market Insurers were paid by Tenneco . . . from its headquarters in Houston . . . .

And in their response to Huntington Ingalls's special appearance, the London Market Insurers argued that Huntington Ingalls was subject to specific jurisdiction in Texas because Tenneco, the parent company of Huntington Ingalls's corporate predecessor NNS, procured the insurance policies relevant to the London Marker Insurers' declaratory-judgment claim, Tenneco "was headquartered" in Texas, "Tenneco's insurance program was managed by its corporate insurance department" in Texas, Tenneco paid the premiums for the insurance policies in Texas, and the insurance

policies were "ultimately delivered to Tenneco in Texas." Further, according to the London Market Insurers, the relevant insurance policies "contain[ed] provisions that specifically and expressly appl[ied] to NNS." And, relying on *Eastern Concrete Materials*, the London Market Insurers argued that Texas had specific jurisdiction over Huntington Ingalls "because of the facts surrounding the formation of, delivery to, and payment for the [insurance] policies by Tenneco in Texas." Although "Tenneco may not have controlled the operations and affairs of NNS," the London Market Insurers asserted that for purposes of imputing Tenneco's conduct to NNS, Tenneco's conduct in procuring, negotiating, paying for and managing its insurance program for the benefit of its subsidiaries, including NNS, amounted to control over "the affairs of the subsidiary."

Huntington Ingalls asserts that the trial court, in determining that Huntington Ingalls was subject to specific jurisdiction in Texas, erred in imputing to NNS, Huntington Ingalls's corporate predecessor, Tenneco's conduct or contacts in procuring and paying for the insurance policies in Texas. Another party's contacts with the forum may be imputed to a nonresident defendant if that defendant is the other party's alter ego. *McDaniel v. BP Amoco Exploration (In Amenas) Ltd.*, No. 01-17-00475-CV, 2018 WL 614392, at *3 (Tex. App.—Houston [1st Dist.] Jan. 30, 2018, no pet.) (mem. op.); *see BMC Software*, 83 S.W.3d at 798–99; *Cappuccitti v. Gulf Indus. Prods.*, 222 S.W.3d 468, 481–82 (Tex. App.—Houston [1st Dist.] 2007,

no pet.). A corporation is the alter ego of another when the other controls the corporation's business operations and affairs to an atypical degree, exerting authority greater than that normally associated with ownership and directorship. *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W.3d 163, 175 (Tex. 2007). To support an alter-ego finding, the evidence must show that the corporation and the other entity ceased to be separate so that the corporate fiction should be disregarded to prevent fraud or injustice. *Id.* Texas law presumes that two separate corporations are distinct entities. *McDaniel*, 2018 WL 614392, at *3. Thus, the party alleging an alter-ego relationship for jurisdictional purposes bears the burden of proof. *Id.*; *see BMC Software*, 83 S.W.3d at 798; *Cappuccitti*, 222 S.W.3d at 482.

A parent corporation's ordinary and routine interactions with its subsidiaries, by themselves, are not enough to subject its subsidiaries to jurisdiction in the state where the parent conducts its business. *See Preussag Aktiengesellschaft v. Coleman*, 16 S.W.3d 110, 118–20, 123 (Tex. App.—Houston [1st Dist.] 2000, pet. dism'd w.o.j.). Ordinary and routine interactions include the supervision of a subsidiary's finance and capital budget decisions, the formulation of general policies for the subsidiary, the provision of general liability insurance and employee group health insurance policies to a subsidiary, and the offering of a stock option plan to a subsidiary's employees. *PHC-Minden*, 235 S.W.3d at 176; *see also TMX Fin. Holdings v. Wellshire Fin. Servs.*, 515 S.W.3d 1, 11 (Tex. App.—Houston [1st Dist.]

2016, pet. dism'd) (holding alter-ego theory did not apply to subsidiary based on showing that corporate parent made "single, substantial" financial contribution to subsidiary, subsidiary prepared annual financial statements for parent without charging parent for those services, and entities listed same business address as headquarters without showing one paid rent to other); *Preussag Aktiengesellschaft v. Coleman*, 16 S.W.3d 110, 118–25 (Tex. App.—Houston [1st Dist.] 2000, pet. dism'd w.o.j.) (close business relationship between foreign corporate parent and in-state subsidiaries that included unified financial procedures for annual reports, unified corporate banking system, and parental approval of subsidiaries' budgets was insufficient to support imputation of in-state subsidiaries' contacts to foreign parent). If the entities' conduct is consistent with the corporate parent's investor status and nothing indicates that the parent and the subsidiary have disregarded corporate formalities, there is no basis for imputing the parent's contacts to its subsidiary. *See PHC-Minden*, 235 S.W.3d at 176.

In opposing Huntington Ingalls's special appearance, the London Market Insurers asserted that Tenneco's procurement of the insurance policies for NNS—Huntington Ingalls's corporate predecessor—and its other subsidiaries, and the inclusion of "NNS specific" provisions in those policies, establish that Texas has specific jurisdiction over Huntington Ingalls. But the provision of insurance coverage for its subsidiary, NNS, was consistent with Tenneco's role as corporate

parent. *See id.* (considering parent company's provision of subsidiary's general liability insurance and group health insurance policy, which were funded from subsidiary's revenues, consistent with parent's investor status). Tenneco's procurement of insurance policies for NNS thus does not provide a basis for imputing the Tenneco's contacts with Texas to NNS for purposes of finding specific jurisdiction. *See id.*

The London Market Insurers also rely on *Eastern Concrete Materials*, as support for establishing that Texas has specific jurisdiction over Huntington Ingalls, but that case is both factually and procedurally inapposite. There, Eastern Concrete, a New Jersey corporation that operated rock quarries in New Jersey, sought to have its insurer defend and indemnify it in litigation arising from "an unplanned discharge" of rock pellets produced during quarry operations. *Eastern Concrete Materials*, 948 F.3d at 294. The insurance policy at issue was purchased by Eastern Concrete's corporate parent, U.S. Concrete, a Delaware corporation with a principal place of business in Euless, Texas, for itself and its sixty subsidiaries. *Id.* The insurer filed an action in federal district court in Texas seeking a declaratory judgment that the insurance policy's pollution exclusion clause absolved it of any duty to defend or indemnify Eastern Concrete in the rock-pellet discharge litigation. *Id.* at 295.

At least two of Eastern Concrete's corporate officers—its president and secretary—lived in Texas and also served as officers for U.S. Concrete. *Id.* at 294. The insurer, in its pleading, alleged that through its corporate president and secretary, "Eastern Concrete [had] engaged, or authorized its Texas-based parent company to engage on its behalf, . . . an insurance agency licensed by and operating within . . . Texas, to advise on and/or procure insurance coverage for Eastern Concrete's business operations." *Id.* at 297.

The federal district court denied Eastern Concrete's motion to dismiss for lack of personal jurisdiction based on findings that:

- The insurer "plausibly posited" that the insurance policy "was procured on behalf of Eastern Concrete by or through its president or secretary or both, acting in Texas";

- The insurance policy "contained many Texas-specific features," including forty-six endorsements, all of which "list[ed] Texas as the relevant state and at least three of which" were tailored to Texas, and none referring to any other state;

- The insurance policy "direct[ed] insureds to contact the Texas Department of Insurance if they ha[d] complaints or need further information"; and

- "Eastern Concrete contacted a Texas insurance broker for assistance in seeking coverage under the [policy]" for the incident.

Id. at 296 (internal quotations omitted). Based on these contacts with Texas, the federal district court concluded that Texas was an appropriate forum for adjudicating the insurer's declaratory-judgment claim. *Id.*

On appeal, the Fifth Circuit noted that the federal district court's jurisdictional ruling turned on both its "observation that a corporation can purposely avail itself of the benefits of a forum through its agents and its determination that the insurer plausibly posited that the insurance was procured on behalf of Eastern Concrete by or through its president or secretary or both." *Id.* (internal quotations and alteration omitted). Although Eastern Concrete disputed that the corporate officers were acting in their capacity as Eastern Concrete officers in obtaining the policy, asserting that they "were acting solely in their capacity as officers of U.S. Concrete," the Fifth Circuit discounted Eastern Concrete's assertion on procedural grounds, noting first, that because the federal district court had ruled on the jurisdictional challenge without an evidentiary hearing, the insurer was only required to make a prima facie showing of personal jurisdiction, and second, that the federal district court was "required to credit the [insurer's] uncontroverted allegations" at that stage of the proceeding.[9] *Id.* at 296–97. And the Fifth Circuit observed that, because Eastern Concrete did not renew its specific jurisdiction challenge at the summary-judgment stage of the litigation, where the parties addressed their coverage dispute, "or

[9] The Fifth Circuit reviewed the affidavits of the corporate officers proffered by Eastern Concrete in support of its lack-of-capacity argument and concluded that they "fail[ed] to controvert [the insurer]'s allegations." *See Eastern Concrete Materials, Inc. v. ACE Am. Ins. Co.*, 948 F.3d 289, 297 (5th Cir. 2020). In those affidavits, the officers "stated that they d[id] most of their work for Eastern Concrete from New Jersey," but "d[id] not foreclose the possibility" that they "played a role in the procurement of the [insurance policy] in Texas." *Id.*

otherwise before judgment was entered," Eastern Concrete either foreclosed its "right to invoke the higher burden o[f] proof otherwise applicable to jurisdictional facts, or waived the objection entirely." *Id.* (internal quotations and alterations omitted). The Fifth Circuit thus concluded that the federal district court properly credited the insurer's allegations that Eastern Concrete had "engaged, or authorized its Texas-based parent company to engage on its behalf, an insurance agency licensed by and operating within . . . Texas, to advise on and/or procure insurance coverage for Eastern Concrete's business operations," and the Texas insurance agency then "negotiated and procured the [policy] on behalf of U.S. Concrete and Eastern Concrete within . . . Texas." *Id.* (internal quotations and alterations omitted).

In asserting that the trial court had specific jurisdiction over Huntington Ingalls, the London Market Insurers rely on conduct by Tenneco in Texas in procuring and paying for the insurance policies, but they do not provide any evidentiary basis for imputing that conduct to NNS—Huntington Ingalls's corporate predecessor. Unlike the record in *Eastern Concrete*, the undisputed evidence here affirmatively shows that NNS's "officers and directors were not involved in the negotiation or administration of the insurance." *See PHC-Minden*, 235 S.W.3d at 176.

We conclude that Huntington Ingalls satisfied its burden to show that, even if the facts alleged by the London Market Insurers were true, the evidence is legally insufficient to establish specific jurisdiction in Texas over Huntington Ingalls.[10] *See Kelly*, 301 S.W.3d at 658. Thus, we hold that the trial court erred in denying Huntington Ingalls's special appearance.

We sustain Huntington Ingalls's sole issue.

Conclusion

We reverse the trial court's order denying Huntington Ingalls's special appearance and render judgment dismissing the London Market Insurers' suit against Huntington Ingalls for lack of personal jurisdiction.

Julie Countiss
Justice

Panel consists of Justices Hightower, Countiss, and Guerra.

[10] Because of our conclusion, we need not address any remaining arguments in Huntington Ingalls's brief. *See* TEX. R. APP. P. 47.1.