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Obtaining Personal Jurisdiction over Alien Corporations--A Survey of U.S. Practice

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SPECIAL PROJECT

OBTAINING PERSONAL JURISDICTION OVER ALIEN CORPORATIONS— A SURVEY OF U.S. PRACTICE

I. INTRODUCTION

Since the Supreme Court's decision in *International Shoe v. Washington*,¹ the states have sought to employ their long-arm statutes so as to more effectively exercise jurisdiction over foreign corporations. Illinois was the first state to codify this new standard;² the other states eventually followed Illinois by adopting their own long-arm statutes.³ Although the Court's ruling in *Hanson v. Denckla*⁴ limited jurisdiction to cases where the defendant "purposefully avails itself of the privilege of conducting activities within the forum State,"⁵ the trend to allow jurisdiction over foreign persons was quite clear.⁶

While most states base their long-arm statute on the Illinois statute,⁷ a few have adopted the Uniform Interstate and Interna-

1. 326 U.S. 310 (1945). The Supreme Court stated: ". . . due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" 326 U.S. at 316.

2. Currie, *The Growth of the Long-Arm: Eight Years of Extended Jurisdiction in Illinois*, U. OF ILL. L. FORUM 533, 537 (1963).

3. *Id.* A survey and list of all state long-arm statutes appears in 26 CORP. J., No. 4, at 75 (1970).

4. 357 U.S. 235 (1958).

5. 357 U.S. at 253.

6. In *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957), the Supreme Court sustained jurisdiction over a foreign corporation on the basis of a single life insurance policy with a resident of the forum state. In *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961), the Illinois Supreme Court allowed jurisdiction over a foreign manufacturer whose product was sold in Illinois by another company which had incorporated defendant's product in its own.

7. ILL. REV. STAT., ch. 110, § 17 (1963).

Act submitting to jurisdiction — Process

(1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representatives, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of such acts:

tional Procedure Act⁸ which is similar to the Illinois statute in many respects. Delaware appears to have a more conservative approach to the assumption of jurisdiction over foreign corporations as its long-arm statute predicates the assumption of jurisdiction on the transaction of business within Delaware,⁹ but even here, the statute indicates an intent to adopt a liberal interpretation of what constitutes a business transaction.¹⁰ Individual differences exist between the various statutes¹¹ but the goal of most is to pursue jurisdiction to the full limit allowed by due process.¹²

With the increase in international trade, civil litigation between persons of different nationalities has become increasingly important.¹³ Today alien¹⁴ and foreign corporations¹⁵ are being brought

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- (a) The transaction of any business within this State;
 - (b) The commission of a tortious act within this State;
 - (c) The ownership, use, or possession of any real estate situated in this State;
 - (d) Contracting to insure any person, property or risk located within this State at the time of contracting;
 - (e) With respect to actions of divorce and separate maintenance, the maintenance in this State of a matrimonial domicile at the time the cause of action arose or the commission in this State of any act giving rise to the cause of action.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section.

(4) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.

8. Uniform Interstate and International Procedure Act (U.L.A.).

9. DEL. CODE ANN., tit. 8, § 382 (1974).

10. *Gentry v. Wilmington Trust Co.*, 321 F. Supp. 1379, 1382 (D. Del. 1970).

11. 26 CORP. J., No. 4, at 75 (1970).

12. See WEST'S ANN. C.C.P. § 410.10 (West 1973): "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." California's long-arm statute probably carries jurisdiction to the greatest possible extent. *But see* N.Y. CIV. PRAC. § C302:1 (McKinney 1971).

13. Uniform Interstate and International Procedure Act (U.L.A.), Commissioner's Prefatory Note, 279.

14. For the purposes of this article an alien corporation is a company incorporated in a country other than the United States.

15. For the purposes of this article a foreign corporation is a corporation for-

before American courts to defend actions arising out of products liability,¹⁶ contract,¹⁷ and tort.¹⁸ There is considerable authority holding alien and foreign corporations amenable to jurisdiction on the basis of a single act or business transaction.¹⁹ The states themselves are affecting international trade since state law is chosen to determine the amenability of alien and foreign corporations to suit in diversity actions in federal court.²⁰

This survey presents a cross-section of recent cases and attempts to distinguish the treatment given alien corporations from the treatment given foreign corporations. While a variety of actions is represented, the majority of the cases deal with products liability. Generally, these cases concern an alien corporation's contacts with a particular state, although some courts might look to contacts with the United States as a whole in determining whether to assume jurisdiction in some types of cases.²¹ Recurrent considerations which appear throughout include: (1) whether the corporation has availed itself of the privilege of conducting business within the forum state; (2) whether the corporation knew its product was destined for the forum state; (3) whether the assumption of jurisdiction would violate traditional notions of fair play; (4) whether the plaintiff could realistically bring suit in the alien forum; (5) whether the alien corporation set its product in the normal stream of commerce; and (6) whether an American corporation is an alter ego of the alien corporation. While these considerations are largely derived from the major cases in which suit was brought against foreign corporations in a particular state, the courts balance the same considerations and apply the same standards to alien corporations in determining whether jurisdiction is proper. However, it has been advocated that a different standard should be applied in cases where alien corporations are involved.²²

eign to a particular state which may or may not be incorporated in a jurisdiction within the United States.

16. *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969); Annot. 19 A.L.R.3d 13 (1968).

17. *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220 (1957); Annot. 23 A.L.R.3d 551 (1969).

18. Annot. 24 A.L.R.3d 532 (1969).

19. *Elkhart Engineering Corp. v. Dornier Werke*, 343 F.2d 861 (5th Cir. 1965); Annot. 20 A.L.R.3d 1201 (1968); Annot. 27 A.L.R.3d 397 (1969).

20. *Mack Trucks Inc., v. Arrow Aluminum Castings Co.*, 510 F.2d 1029, 1031 (5th Cir. 1975); Annot. 6 A.L.R.3d 1103 (1966).

21. *Cryomedics, Inc. v. Spembly, Ltd.*, 397 F. Supp. 287 (D. Conn. 1975). See, Comment, 9 VAND. J. TRANSNAT'L L. 435 (1976).

22. See *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir.

Arguments against extending the reach of the long-arm statute to alien corporations focus on fears that such jurisdiction will harm international relations, place an undue burden on foreign commerce, or violate ideas of fundamental fairness.²³ The difficulty of enforcing a judgment against an alien corporation has also been noted in arguing against the extension of jurisdiction.²⁴ Some British Commonwealth countries have taken a restrictive attitude toward assuming jurisdiction over alien corporations in tort claims.²⁵ Civil law countries such as France and Germany seem to be in line with the majority American view,²⁶ and even in the British Commonwealth there seems to be a desire for a greater jurisdictional reach over alien persons.²⁷

The following cases are illustrative of the expansion of the long-arm statute to reach alien corporations. This "international long-arm" is an important development which reflects a significant departure from the principle *actor sequitur forum rei* ("the plaintiff follows the forum of the defendant").²⁸ The American states were not the first jurisdictions to assault this doctrine,²⁹ but they have brought the alien corporation much closer to the American plaintiff than ever before and consequently lessened national boundaries as a barrier to litigation.

1969) (dissenting opinion).

23. Note, *Civil Procedure—Long Arm Statutes—Jurisdiction over Alien Manufacturers in Products Liability Actions*, 18 WAYNE L.R. 1585, 1589 (1972).

24. *Id.*

25. Bisset-Johnson, *Jurisdiction Over the Manufacturer of Imported Goods in Cases of Negligence—The British Commonwealth Approach*, 48 CANADIAN B.R. 548 (1970); Lowenfeld & Ehrlich, *International Private Trade*, 65 INTERNATIONAL ECONOMIC LAW, Part 1, (1975).

26. 18 WAYNE L. REV., *supra* note 23, at 1591.

27. Bissett-Johnson, *supra* note 25, at 560-61.

Clearly an international convention by which the signatories agreed to take jurisdiction (and recognize foreign courts' judgments) over overseas manufacturers of defective goods, either causing damage within the jurisdiction of the forum, or where they were used or purchased within the jurisdiction but where the damage was sustained elsewhere, would seem desirable. Such an assertion of jurisdiction would probably be confined to cases in which it was reasonable for the foreign manufacturer to foresee the use of the product within the jurisdiction in question or that damage might result in the particular jurisdiction.

28. Lowenfeld, note 25 *supra*.

29. *Id.*

II. SURVEY

ALABAMA

Elkhart Engineering Corporation v. Dornier Werke, 343 F.2d 861 (5th Cir. 1965). Defendant German corporation, Dornier Werke, borrowed an airplane from plaintiff Wisconsin corporation during an air demonstration for potential buyers. With the exception of the air demonstration in question, neither the plaintiff nor the defendant conducted any business in Alabama. The defendant contended its presence in Alabama was insufficient to subject it to personal jurisdiction in Alabama. The Alabama long-arm statute allows service on a non-resident, non-qualifying corporation which performs any work or service in the State.³⁰ The Court of Appeals reversed the district court and upheld service since the defendant had availed itself of the privilege of conducting activities in Alabama and should therefore reasonably be expected to defend a suit arising out of such activities. Drawing analogy to cases involving jurisdiction over non-resident motorists and vessels,³¹ the court reasoned that due process was not violated where the state afforded a remedy against persons committing torts during a single business transaction within the state.

CALIFORNIA

daSilveira v. Westphalia Separator Co., 248 Cal. App. 2d 789, 57 Cal. Rptr. 62 (1967). Defendant, a German corporation, manufactured a cream separator which exploded and killed plaintiff's son. The machine sold with unlimited title to an independent non-exclusive distributor, Centrico, Inc., a New York corporation. Distributor Centrico listed defendant's product in the San Francisco telephone directory. The machine was returned to defendant after the explosion. Defendant moved to quash service in actions for negligence and breach of warranty in the wrongful death of plaintiff's son, claiming that it was not doing business under the California long-arm statute.³² The court affirmed the denial of service, finding no significant contacts by defendant. Since Westphalia's only business dealings in the United States were with Centrico, which accepted the goods without a distribution agree-

30. ALA. CODE tit. 7, § 199(1) (1958).

31. ALA. CODE tit. 7, § 199 (1958).

32. CAL. CORP. CODE §§ 6500-04, 6501 (West 1955); CAL. CODE CIV. PROC. § 411(2) (repealed 1970) (now CAL. CODE CIV. PROC. § 410.10 (West 1973)).

ment, and since defendant did not avail itself of the privilege of conducting business in California, the court reasoned traditional notions of fair play would be offended were the defendant to be held amenable to personal service. In denying jurisdiction, the court noted that plaintiff might still sue the distributor under theories of strict liability and breach of warranty.³³

Shoei Kaka Co., Ltd. v. Superior Court, San Francisco, 33 Cal. App.3d 808, 109 Cal. Rptr. 402 (1973). Defendant Japanese Corporation, Shoei Kaka Co., Ltd., sought to quash service of summons in a products liability action which alleged that defendant had negligently manufactured a motor cycle helmet. Defendant contended that the court was without jurisdiction, that the method of service was not in accordance with a multilateral treaty³⁴ governing service, and that due process was violated because the service of process documents were in English instead of Japanese. The California Court of Appeals rejected these contentions, finding that defendant's activities in the sale of helmets were sufficient to render it amenable to jurisdiction in California.³⁵ The multilateral treaty governing service abroad was not violated where service was made directly to defendant by mail and defendant signed receipt. Noting that almost all Japanese corporations trading abroad corresponded in English and that defendant had used the English language in sales brochures, the court found service of process adequate.³⁶

Beirut Universal Bank S.A.L. v. Superior Court, 268 Cal. App. 832, 74 Cal. Rptr. 333 (1969). Plaintiffs, Orbi, S.A., a Swiss corporation, and William Forman, sought rescission of agreements and damages for fraud from defendant Lebanese banking association, Beirut Universal Bank, S.A.L. and Selim Habib. Defendant bank moved to quash service of summons. Plaintiffs contended defendant was doing business in California, since a loan had been negotiated and agreed to there and since defendant's officer had alleg-

33. See *Buckeye Boiler Co. v. Superior Ct.*, 71 Cal.2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969); Gorfinkel & Lavine, *Long-arm Jurisdiction in California Under New Section 410.10 of the Code of Civil Procedure*, 21 *HAST. L.J.* 1163 (1970).

34. Service Abroad of Judicial and Extrajudicial Documents, April 24, 1967, [1969] 1 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163.

35. CAL. CODE CIV. PROC. § 410.10 (West 1973).

36. See *Lotus Car Ltd. v. Municipal Ct.*, 263 Cal. App.2d 264, 69 Cal. Rptr. 384 (Ct. App. 1968); *James R. Twiss, Ltd. v. Superior Ct.*, 215 Cal. App.2d 247, 30 Cal. Rptr. 98 (Dist. Ct. App. 1963); *Regie Nationale des Usines Renault v. Superior Ct.*, 208 Cal. App.2d 702, 25 Cal. Rptr. 530 (Dist. Ct. App. 1962).

edly made fraudulent misrepresentations while there. Defendant bank denied that it owned property or was doing business in California. The court held the bank was subject to jurisdiction in California because its activities in negotiating and signing the loan constituted doing business.³⁷ The court reasoned that a contract provision stipulating Lebanese jurisdiction for disputes arising out of the contract did not divest the California court of jurisdiction where the California courts otherwise would have jurisdiction. Since the bank contemplated a continuing relationship, the fact that its officer had left the state was not controlling. Although admitting inconvenience to the alien bank, the court discounted this inconvenience in light of modern communication and transportation.

COLORADO

Alliance Clothing Ltd. v. District Court, 532 P.2d 351 (Colo. 1975). Plaintiff alleged that the poor construction of ski pants manufactured by the defendant aggravated injuries in a skiing accident and sought jurisdiction under Colorado's long-arm statute.³⁸ Plaintiff contended that defendant's failure to manufacture a proper garment constituted a tortious act within the meaning of the statute. Defendant sought to have service quashed claiming that it had no contacts with Colorado. Plaintiff had purchased the pants from a local ski shop, whose distributor had purchased the pants from defendant overseas. The court held that if a manufacturer can reasonably foresee that its product will be used in the United States, and if it places that product in the stream of commerce, it does not violate due process to require the manufacturer to defend itself in the forum where the injury occurs. Noting that the same allegations would support jurisdiction in the case of a foreign corporation, the court reasoned that a different holding would allow alien corporations to escape liability for their torts by structuring their sales so as to technically remain outside the United States.³⁹ Additionally, the court distinguished foreign and alien corporations by establishing a less stringent contacts rule for alien corporations. Corporations must have minimum contacts

37. CAL. CORP. CODE §§ 6500-04 (West 1955); CAL. CODE CIV. PROC. § 411(2), (repealed 1970) (now CAL. CODE CIV. PROC. § 410.10) (West 1973).

38. COLO. REV. STAT. § 13-1-24(1)(a)-(b), 25 (1973). The Illinois statute is similar.

39. For the major arguments against the assertion of long-arm jurisdiction against alien corporations, see 18 WAYNE L. REV. 1585 (1972).

with Colorado before the court will take jurisdiction, while a foreign alien corporation need only have contacts with the United States.

CONNECTICUT

Cryomedics, Inc. v. Spemby, Ltd., 397 F. Supp. 287 (D. Conn. 1975). Plaintiff, a Connecticut corporation, brought an action for patent infringement against defendant English corporation.⁴⁰ Defendant moved to dismiss the complaint claiming that the application of Connecticut's long-arm statute⁴¹ to its activities was unconstitutional. Plaintiff contended that solicitation and sale of defendant's products within the forum by American distributors was enough to satisfy the requirement of minimum contacts. Alternatively, the plaintiff urged that the court look at Spemby's contacts with the United States as a whole in deciding the question of minimum contacts. The court held that when a federal court is asked to exercise personal jurisdiction over an alien defendant sued on a claim arising out of federal law, jurisdiction may appropriately be determined on the basis of the alien's aggregated contacts with the United States as a whole, regardless of whether the contacts with the forum would be sufficient if considered alone.⁴² The court reasoned that if the defendant's contacts with the United States satisfied the fairness test of the fifth amendment, then the only limitation on the place of the trial would be the doctrine of *forum non conveniens*.⁴³

DELAWARE

Eastman Kodak Co. v. Studiengesellschaft Kohle, 392 F. Supp. 1152 (D. Del. 1975). Plaintiff sought a declaratory judgment that it had not infringed defendant's patents, and claimed jurisdiction under Delaware's long-arm statute⁴⁴ by serving process on the Secretary of State. Defendant sought dismissal contending that the court had no personal jurisdiction over it, since it did not do business in Delaware. Defendant had no offices or agents in the State,

40. See Comment, 9 VAND. J. TRANSNAT'L L. 435 (1976).

41. CONN. GEN. STAT. ANN. §33-411(c)(1959).

42. See von Mehren and Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1123-25 n.6 (1966).

43. Cf. *Hold v. Kolsters Rederi A/S*, 355 F. Supp. 354 (W.D. Mich. 1973).

44. DEL. CODE ANN., tit. 8, § 382(a),(b) Supp. 1975. Delaware has a separate statute regarding long-arm jurisdiction over foreign corporations, involving constructive service for non-qualified foreign corporations by service of process on the Secretary of State.

but it was the holder of several patents licensed to several Delaware corporations. This, plaintiff asserted, was sufficient for assumption of jurisdiction by the Delaware court. The court ruled that for long-arm jurisdiction to exist, the corporation must be doing business in Delaware, and the suit must arise from such business. The court held that the first requirement was satisfied by defendant's legal relations with its Delaware licensees, particularly the licensees' stipulated right to withhold payment from defendant if it failed to prevent infringement of its patent in Delaware. However, the court held that the second requirement had not been met. In so ruling, the court rejected the plaintiff's contention that since defendant had sued all of its competitors for infringement of the same patents, it was reasonably apprehensive of being sued itself, and thus its suit was the result of defendant's business activities in Delaware.

FLORIDA

Hitt v. Nissan Motor Co., Ltd., 399 F. Supp. 838 (S.D. Fla. 1975). Defendant foreign motor vehicle manufacturer filed motions to quash service and dismiss complaints for lack of in personam jurisdiction in private antitrust actions which had been transferred to the court for consolidated pre-trial hearings.⁴⁵ Nissan-USA is the wholly-owned subsidiary of Nissan-Japan. Plaintiff contended that defendant Nissan-Japan was subject to personal jurisdiction under the Florida "doing business" statute⁴⁶ or alternatively that the court should pierce the corporate veil and find Nissan-USA to be the alter-ego of the defendant. In a memorandum decision the court declined to pierce the corporate veil but held that the defendant was doing business within Florida and subject to personal jurisdiction. The court reasoned that while Nissan-USA was not the alter-ego of defendant, the potential control of defendant over

45. A total of ten different suits in the jurisdictions of California, Colorado, Connecticut, Illinois, Louisiana, Missouri, New Mexico, and Texas were presented for consolidation with the Florida action.

46. FLA. STAT. ANN. § 48.181 (1969). The statute provides for the service on nonresidents engaging in business within the state. This section has been called "Florida's short long-arm statute" and standing alone was viewed as grossly insufficient. See Note, *In Personam Jurisdiction—Due Process and Florida's Short "Long-Arm"*, 23 U. FLA. L. REV. 336, 349 (1971). The instant case provides an expansive view of the statute. *But see* *Crown Club, Ltd. v. Honecker*, 307 So.2d 889 (Fla. App. 1975) (where court had problems applying 48.181 to a non-resident). Subsequently in 1973 the Florida legislature passed a "single act" long-arm statute. FLA. STAT. ANN. § 48.193 (1973).

the affairs of the wholly-owned American subsidiary as evidenced by transfers of technology, business records and warranty arrangements, and the exchange of officers and directors between the defendants, allowed the court to find that the parent was doing business within the State.⁴⁷

GEORGIA

Thornton v. Toyota Motor Sales U.S.A. Inc., 397 F. Supp. 476 (N.D. Ga. 1975). Toyota Motor Company, Ltd., a Japanese corporation, was served under Georgia's long-arm statute⁴⁸ in a products liability action arising out of an automobile accident in Georgia. Defendant Japanese corporation claimed insufficient contacts to establish jurisdiction since the co-defendants in the chain of distribution⁴⁹ to the United States were also served. The court held that the defendant's contacts with Georgia were sufficient to meet the two step test that: (1) there be certain minimal contacts with the forum state resulting in an affirmative act of the defendant, and (2) it be fair and reasonable to require the defendant to defend a suit brought in the state. The court reasoned that the defendant anticipated that its product would end up in Georgia after it had been placed in the international stream of commerce and had arrived in Georgia through the normal stream of commerce. Additionally, the court found the defendant able to sustain the cost of litigation in a foreign jurisdiction as an inherent business expense.

HAWAII

Duple Motor Bodies, Ltd. v. Hollingsworth, 417 F.2d 231 (9th Cir. 1969). Defendant, an English manufacturer, designed and manufactured coach bodies for Vauxhall, an English chassis manufacturer. Vauxhall shipped the completed coaches to a Hawaiian motor company which sold them to Maui Island Tours. Defendant subsequently solicited business from and supplied parts to Maui

47. Other Florida "doing business" cases involving alien corporations are: *Hoffman v. Air India*, 398 F.2d 507 (5th Cir. 1968); *South Dade Farms v. Investment Bank S.A.L.*, 244 So.2d 555 (Fla. App. 1971).

48. GA. CODE ANN. § 24-113.1 (1971).

49. Japanese manufacturer Toyota Motor Company, Ltd. sells the automobiles to the Japanese exporter, Toyota Motor Sales Company, Ltd. The American importer, Toyota Motor Sales, U.S.A., buys the automobiles from Toyota Motor Sales Company, Ltd., and sells them to Southeast Toyota Distributors, Inc., an independent Florida corporation. All these corporations are defendants in this case.

Island Tours. Plaintiff's claim of products liability for injuries suffered in Hawaii arose when a bus owned by Maui Island Tours overturned.⁵⁰ Duple claimed it did not commit a tortious act within the State and that the long-arm statute⁵¹ should not be applied retroactively. The court sustained jurisdiction because the manufacturer had knowledge that the product was bound for Hawaii. The court followed the interpretation of the Illinois courts of an identical statute holding that jurisdiction need not be predicated on the doing of some act within the state. In so ruling the court noted the possible difficulty of enforcing any judgment in England.⁵²

ILLINOIS

Honeywell v. Metz Apparatewerke, 509 F.2d 1137 (7th Cir. 1975). Defendant, a German corporation, sold its flash units to German exporters and shipped them to American distributors at the exporter's risk. Plaintiff alleged that the flash units infringed its United States patent, and sought jurisdiction based on the Illinois long-arm statute,⁵³ alleging that defendant's infringement constituted tortious activity within the meaning of the statute. Defendant contended that it did not have sufficient contacts with Illinois to support jurisdiction. The court held that the active inducement of another to infringe a patent constitutes a tort whose situs is the location of the injury, and that defendant engaged in

50. Other defendants were the driver of the bus, Maui Island Tours, Halea Kala Motors (from whom Maui Island Tours purchased the bus), Vauxhall Motors, Ltd. and General Motors Corporation.

51. HAWAII REV. LAWS § 230-41.5 (Additional Supp. 1965).

52. The dissent viewed the majority opinion as a denial of due process and an "unnecessary intrusion into the field of international relations." Believing that different standards of jurisdiction should apply in international trade, the dissent feared political, economic, or legal reprisals in international relations. Circuit Judge Ely did not approve of the *ex post facto* application of the long-arm statute and noted that Duple would have no occasion to resort to Hawaiian courts for enforcement of its contract. Overall, the dissent felt that it was basically unfair to force a corporation to go halfway around the world to defend a suit arising out of acts committed solely in England, where a co-defendant could seek indemnity from Duple in England. Judge Ely reasoned that the English courts would want to fully re-examine the facts before enforcing any judgment against Duple. The dissent favored legislative or executive action in implementing a national policy. See Comment, *Products Liability—Application of State Long Arm Statute to Suits for Injuries Caused by Negligent Foreign Manufacture—Duple Motor Bodies, Ltd. v. Hollingsworth*, 12 B.C. IND. & COM. L. REV. 130 (1970); 24 Sw. L.J. 532 (1970).

53. ILL. ANN. STAT. ch. 110, § 17(1)(b) (Smith-Hurd 1968).

such inducement through its activities, which involved not only sales at the German border, but the making of distributorship agreement and promotion of the product within the United States. The court reasoned that formalities of title would not insulate a foreign corporation where it knows that its product will infringe another's patents. The court made no mention of the fact that this defendant was an alien corporation, nor did it address the question of what constituted sufficient minimum contact with Illinois so as to assert jurisdiction over an alien corporation.

IOWA

Midland Forge, Inc. v. Letts Industries, Inc., 395 F. Supp. 506 (E.D. Mich. 1975). Plaintiff, an Iowa corporation, which had contracted with a Michigan corporation⁵⁴ to purchase three electro-hydraulic drop forging hammers manufactured by a German corporation,⁵⁵ sued the two corporations for defects in the hammers. Defendant German corporation moved to dismiss for lack of personal jurisdiction claiming that its acts were not within the purview of the long-arm statute.⁵⁶ Alternatively defendant asserted that its acts did not constitute sufficient minimum contacts required by due process. The court held that plaintiff had established the existence of a contract with the German defendant by means of implied and express warranties and was therefore within the scope of the long-arm statute. Additionally, the court found that since the contract had a "substantial connection" with the forum state, the application of the long-arm statute was within the requirements of federal due process. The court reasoned that the minimum contacts were established by the size of the contract, the attempts of service employees to fix the malfunctions, and the probability of future sales activity within the forum.⁵⁷

KENTUCKY

Davis Elliot Co. Inc. v. Caribbean Utilities Co., Ltd., 513 F.2d 1176 (6th Cir. 1975). Defendant, a utility company, which operated

54. Letts Industries, Inc. is a Michigan corporation not qualified to do business in Iowa.

55. Langenstein and Schemann AG (Lasco) is a West German corporation.

56. IOWA CODE ANN. § 617.3 (1964).

57. The court looked at guidelines set out by the Eighth Circuit to determine the issue of minimum contacts. *Caesar's World, Inc. v. Spencer Foods, Inc.*, 498 F.2d 1176, 1180 (8th Cir. 1974).

on Grand Cayman Island contracted with plaintiff for the construction of utility lines on the island. Plaintiff sued over a contract dispute and sought jurisdiction under the Kentucky long-arm statute⁵⁸ alleging that defendant was doing business in Kentucky, and that his cause of action arose from defendant's activities in Kentucky. Plaintiff further alleged that all of defendant's chief officers were Kentucky residents, and that a meeting had been held at the Kentucky office of the managing director to attempt to settle the dispute, after which a letter confirming their agreement had been sent under defendant's letterhead, giving a Lexington, Kentucky address. The court held that defendant was amenable to jurisdiction in Kentucky despite the fact that it had not engaged in income-generating activity there. The court adopted a "purposeful action" test, requiring that a defendant avail himself of the privilege of acting in Kentucky, that the plaintiff's cause of action arise from those activities, and that those activities have a connection with Kentucky substantial enough to make the exercise of jurisdiction reasonable. The court reasoned that this test will ensure that defendants become involved with Kentucky only through actions freely and intentionally done.

LOUISIANA

Wells v. English Electrical, Ltd., 60 F.R.D. 573 (W.D. La. 1973). Plaintiff sued for damages allegedly caused by malfunction in a diesel engine manufactured by the defendant, an English corporation. Defendant employed no agents in Louisiana, owned no property and had no office within the State, was not authorized to do business within the State, and had not contracted to supply services within the State. Since 1969, the defendant had used Midco, a Texas corporation, as the exclusive United States distributor of its engines and parts. The two parties were autonomous corporations with no formal connections outside the distributorship agreement. To facilitate distribution within Louisiana, Midco had established four in-state subdistributors. Plaintiff contended that personal jurisdiction was proper under the Louisiana long-arm statute,⁵⁹ since defendant was doing business within the State. The court held that personal jurisdiction over the defendant was

58. KY. REV. STAT. § 454.210 (1973). Kentucky's long-arm statute is similar to the Illinois long-arm statute.

59. LA. REV. STAT. ANN. § 13:3201 (1968).

proper, since substantial revenue was obtained from sales of defendant's products within the State.⁶⁰

MASSACHUSETTS

Engine Specialties, Inc. v. Bombardier Ltd., 454 F.2d 527 (2d Cir. 1972). American distributor of recreational vehicles instituted suit against the Canadian distributor for tortiously inducing the Italian manufacturer to breach its distributorship contract with plaintiff and for maliciously interfering with a profitable business relationship between the plaintiff and the manufacturer. Defendant appealed the granting of a preliminary injunction which banned it from selling the minicycles within the United States. Defendant had a wholly-owned subsidiary within Massachusetts and plaintiff had significant minicycle sales within the State through franchised dealers. Defendant claimed that personal jurisdiction under the Massachusetts long-arm statute⁶¹ was improper since it had no place of business within the State and the tortious injury should be measured at the plaintiff's principal place of business, in Pennsylvania. The court held that the plaintiff had shown sufficient injury within the forum and that Bombardier had significantly entered the business life of Massachusetts; therefore, personal jurisdiction was proper.⁶²

MICHIGAN

Belke v. Metalmeccanica Plast, S.P.A., 365 F. Supp. 272 (E.D. Mich. 1973). Plaintiff Michigan citizen was injured while operating a machine manufactured by defendant Metalmeccanica and imported by other parties into the United States.⁶³ Plaintiff's ac-

60. For a similar case see *Boykin v. A.B. Lindenkrantar*, 252 So. 2d 467 (La. App. 1971).

61. MASS. GEN. LAWS ch. 223A, § 3 (Additional Supp. 1975).

A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action in law or equity arising from the person's . . .

(d) causing tortious injury in this commonwealth by an act or omission outside this commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue of goods used or consumed or services rendered in this commonwealth

62. See also *Singer v. Piaggio & Co.*, 420 F.2d 679 (1st Cir. 1970) (injury caused by defendant's motorscooter not sufficiently connected with forum to sustain personal jurisdiction).

63. Danson Corporation, Ltd., a Canadian corporation, purchased the ma-

tion was based on the Michigan long-arm statute for tort claims,⁶⁴ and alleged three theories for recovery: (1) negligence; (2) breach of implied warranty; and (3) breach of express warranty. Metalmeccanica moved to dismiss the personal injury action, claiming insufficient contacts to warrant jurisdiction when the machine was purchased by another corporation, F.O.B., the Italian border. On the issue of the express warranty claim the court determined that the defendant had insufficient contacts under Michigan's long-arm statute to constitute carrying on general business within the State. It then held that jurisdiction could be exercised over all three claims since the negligence and breach of implied warranty claims specifically fell within the statute and all three claims arose from the same transaction. The long-arm statute was found applicable because the manufacturer had placed the product into the stream of commerce with the knowledge that it might be used somewhere and cause injury.

MINNESOTA

Conwed Corporation v. Nortene, S.A., 404 F. Supp. 497 (D. Minn. 1975). Defendant French corporations, Nortene, S.A. and Netlon, moved to dismiss the action against them by Conwed Corporation which sought a declaratory judgment on the validity and use of certain patents. Plaintiff contended that a settlement meeting between the parties in Minnesota, correspondence concerning the rights of the parties, and plaintiff's status as a bona fide purchaser of the patent rights constituted sufficient minimum contacts. The court rejected plaintiff's contentions and granted the motion to dismiss. The court found that while the seller of the patent rights was amenable to jurisdiction, the defendants were not since they had not directly participated in the sale. The court reasoned that public policy favoring dispute settlement precluded a determination that the settlement meeting and correspondence were business transactions. While defendant's letters threatening patent infringement action might be considered the use of personal property under Minnesota's long-arm statutes,⁶⁵ the court refused to assume jurisdiction since the letters were in response to plaintiff's communication.⁶⁶

chine from Metalmeccanica and sold it to Peninsular Machinery Company. Peninsular sold the machine to plaintiff's employer, Metal Products Corporation.

64. MICH. COMP. LAWS ANN. § 600.715(2) (1968).

65. MINN. STAT. ANN. § 303.13 (1969); § 543.19 (Additional Supp. 1976).

66. See *Ritter v. Volkswagenwerk GMBH*, 322 F. Supp. 569 (D. Minn. 1970).

MISSOURI

J.F. Pritchard & Co. v. Dow Chemical of Canada, Ltd., 331 F. Supp. 1215 (W.D. Mo. 1971) *aff'd* 462 F.2d 998. Plaintiff corporation, assignee of its wholly-owned Canadian subsidiary, sued defendant Canadian corporation on a construction contract. The assignment was made and suit was filed in Missouri after defendant agreed not to file suit in the Canadian courts. Plaintiff sought jurisdiction under Missouri's long-arm statute,⁶⁷ alleging that defendant had sufficient contacts with Missouri since design and telephone conferences had originated there, and plaintiff had worked on the project. The court adopted five factors to be considered in determining whether a party's contacts with Missouri were sufficient to render him amenable to jurisdiction: (1) the nature and quality of the contacts with Missouri; (2) the quantity of those contacts; (3) the relationship of plaintiff's cause of action to those contacts; (4) the interest of Missouri in providing a forum for its residents; and (5) the relative convenience or inconvenience to the parties. The court found the first four factors sufficient to support jurisdiction in this case, but dismissed the action on the grounds that the relative convenience to the parties demanded that this suit be tried in Canada. In so ruling the court noted that defendant had already instituted suit in Canada, that a Canadian contract was involved, that the plant and all records were located there, and that the choice-of-law clause in the contract specified Canadian law. The case illustrates the federal courts' willingness to consider differences between alien and domestic corporations under the issue of convenience.

MONTANA

Scanlan v. Norma Projektil Fabrick, 345 F. Supp. 292 (D. Mont. 1972). Plaintiff alleged that injuries suffered while hunting in Montana were caused by defectively manufactured ammunition purchased in Idaho. Defendant Swedish manufacturer's sales contacts with the United States consisted of sales to an American distributor who then sold the products throughout the United States. The court held that the Montana long-arm statute⁶⁸ extended jurisdiction to all acts which collectively result in a tort within the State. The court noted that due process was not denied when a manufacturer who intended that his products be

67. MO. ANN. STAT. § 506.500 (Additional Supp. 1976).

68. MONT. R. CIV. P. 4B (1964).

generally distributed was held amenable to jurisdiction where the products were found.⁶⁹

NEBRASKA

Vergara v. Aeroflot "Soviet Airlines", 390 F. Supp. 1266 (D. Neb. 1975). Plaintiff airline passengers bought around-the-world airline tickets, with portions booked on defendant Soviet airline, from a travel agent in Nebraska. The travel agent had an express agency agreement with Pan American World Airways which authorized it to sell tickets for the defendant. Due to a revolution in Kabul, Afganistan, Aeroflot recommended an alternate flight from Tashkent to Karachi. Upon arrival in Karachi, plaintiffs were allegedly forcibly detained at a remote terminal due to defendant's failure to obtain permission to enter Pakistani air space. Plaintiffs brought suit in Nebraska for damages under the Warsaw Convention. The defendant contested personal jurisdiction and moved to dismiss. Noting that the Nebraska long-arm statute⁷⁰ provides for personal jurisdiction over a person who acts directly or through an agent, as to a cause of action arising from the person's transacting of any business in the State, the court held the authorization of Pan American to sell tickets for defendant and the express agency agreement between Pan American and Nebraskan travel agency were sufficient to sustain personal jurisdiction.⁷¹

NEW HAMPSHIRE

Mulhern v. Holland America Cruises, 393 F. Supp. 1298 (D.N.H. 1975). Plaintiff New Hampshire resident was injured while on a cruise in the Bahamas. She brought a diversity action in New Hampshire against defendant, a Netherlands corporation which organized and sold cruises, invoking jurisdiction under New Hampshire's long-arm statute.⁷² Defendant's only contact with the forum consisted of advertising in a state-wide newspaper and distribution of promotional material to local travel agencies. The defendant moved to dismiss. The district court granted defendant's

69. For another case dealing with alien corporations see *McIntosh v. Heil Co.*, 350 F. Supp. 866 (D. Mont. 1972) (where jurisdiction was denied).

70. NEB. REV. STAT. § 25-536 (1967).

71. For another alien corporation case see *Blum v. Kawaguchi*, 331 F. Supp. 216 (D. Neb. 1971).

72. N.H. REV. STAT. ANN. § 300:11 (1955). New Hampshire's long-arm statute is similar to Delaware's, providing for constructive service in the case of nonqualified corporations.

motion, employing the following test: whether the defendant could reasonably have anticipated that his actions would subject him to New Hampshire jurisdiction. Since defendant did no more than distribute promotional materials in the forum, the court held defendant's accountability in New Hampshire was not foreseeable. The court noted that the element of foreseeability might provide discretion in terms of the fairness of requiring an alien corporation to litigate in the United States, but gave no indication of a willingness to apply a stricter standard to alien corporations.

NEW JERSEY

Reilly v. P.J. Wolff & Sohne, 374 F. Supp. 775 (D.N.J. 1974). Plaintiff New Jersey resident was injured by a machine manufactured by defendant P.J. Wolff & Sohne, a West German corporation. Defendant claimed that contracts to buy its product were consummated and performed entirely in Germany. Since the contract provided that any disputes were to be resolved under the Rules of Conciliation and Arbitration of the International Chamber of Commerce and not the law of Germany or New Jersey, defendant claimed a denial of protection by New Jersey law. However, the court found that the three contracts negotiated between New Jersey and Germany constituted business contacts sufficient to enable the defendant to avail itself of New Jersey law. Defendant's motion to quash service of process under New Jersey's long-arm statute⁷³ was denied because it knew the machine was going to New Jersey and because most of the evidence was in New Jersey. The court noted that it was fundamentally fair to require defendant to defend in New Jersey since plaintiff could not realistically bring suit in Germany.⁷⁴

NEW YORK

Delagi v. Volkswagenwerk A.G. of Wolfsburg, 29 N.Y.2d 426, 328 N.Y.S.2d 653, 278 N.E.2d 895 (1972). Plaintiff purchased a Volkswagen automobile in Germany and sued defendant for injuries sustained when the front wheel suspension collapsed while driving in Germany. Defendant, a German parent corporation, is not qualified to do business in New York, and exports automobiles to the United States through Volkswagen of America, a wholly-

73. N.J.R. Civ. P. 4:4-4(c)(1).

74. See *Van Eeuwen v. Heidelberg Eastern, Inc.*, 124 N.J. Super. 251, 306 A.2d 79 (App. Div. 1973).

owned subsidiary, likewise not qualified to do business in New York. In New York State the franchised wholesale distributor was World-Wide Volkswagen whose entire capital stock was owned by American investors who were unrelated to either the parent or subsidiary. Plaintiff contended that through its affiliates defendant was engaged in a regular and systematic course of business in New York and was therefore subject to the jurisdiction of the New York courts.⁷⁵ The court examined the relationship between defendant and World-Wide and concluded that personal jurisdiction over the defendant was improper. The court reasoned that a foreign corporation was never present under the "control" theory unless a parent-subsidiary relationship was evident,⁷⁶ furthermore, in effect the control must be so complete that the subsidiary has become a department of the parent.⁷⁷

Carbone v. Ft. Eire Club, 47 A.D. 337, 336 N.Y.S.2d 485 (1975). Plaintiff, a New York resident, was injured in a fall on defendant's premises, a horse racing track in the province of Ontario. Defendant was not qualified to do business in New York, had no office or assets in New York, and had no agents within the State. The defendant conducted advertising campaigns in western New York and listed its Canadian phone number in a New York phone directory. The plaintiff contended that under New York law⁷⁸ the defendant was generally doing business within the State and was subject to personal jurisdiction. The court held that the mere solicitation of business coupled with a New York telephone listing did not constitute the requisite minimum contacts so as to be considered to be doing business within the State.⁷⁹ The court cautioned that

75. Plaintiff does not claim a direct transaction of business under N.Y. Civ. PRAC. L. & RULES § 302 (McKinney 1962) [hereinafter cited as CPLR] but uses a doing business test available under CPLR § 301 to sustain jurisdiction: "A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore."

76. See *Taca Int'l Airlines, S.A. v. Rolls-Royce of England*, 15 N.Y.2d 97, 256 N.Y.S.2d 129, 204 N.E.2d 329 (1965) (where court based jurisdiction on agency relationship); cf. *Sunrise Toyota, Ltd. v. Toyota Motor Co.*, 55 F.R.D. 519 (S.D.N.Y. 1972).

77. See *Public Adm'r v. Royal Bank of Canada*, 19 N.Y.2d 127, 278 N.Y.S.2d 378, 224 N.E.2d 877 (1967) (jurisdiction based on theory of piercing the corporate veil); see also *Karlin v. Avis*, 326 F. Supp. 1325 (E.D.N.Y. 1971) (piercing the corporate veil allowed only in extreme circumstances).

78. CPLR § 301.

79. See *Miller Co. v. Noudar, Ltd.*, 24 App. Div.2d 326, 266 N.Y.S.2d 289 (1966).

enthusiasm for extending jurisdiction over foreign persons in foreign lands must be tempered by the realization that the same rule may be reciprocally applied to United States citizens in other countries.⁸⁰

NORTH DAKOTA

Keller v. Clark Equipment Co., 367 F. Supp. 1350 (D. N.Dak. 1973). Plaintiffs negotiated and executed patent licensing agreements with defendant Clark Equipment A.G., a Swiss subsidiary of Clark Equipment Company. During the contract negotiations a close association between a division of Clark which operated in North Dakota and Clark A.G. had developed. Plaintiffs, residents of North Dakota, contended that service of process on Clark in North Dakota was valid against Clark A.G. because of the actions of defendant's employee in North Dakota in contacting plaintiffs and because payments were made to plaintiffs in North Dakota. The court sustained jurisdiction and held that service upon the parent division was notice to Clark A.G. under North Dakota's long-arm statute.⁸¹ One test cited by the court in determining whether notice to the parent serves as notice to the subsidiary was whether the subsidiary is a puppet of the parent. Other factors to be considered in determining fairness in the assertion of jurisdiction over the foreign corporation are: (1) the interest the forum state has in protecting its citizens; (2) whether the courts of the forum would be open to the foreign corporation to enforce the obligation against the resident; (3) an estimate of the inconveniences which would result to the foreign corporation if trial were held away from its home; (4) whether the claimant could afford to bring the action in a foreign forum; and (5) whether the crucial witnesses and evidence are to be found in the forum.

OHIO

Stewart v. Bus & Car Co., 293 F. Supp. 577 (N.D. Ohio 1968). Plaintiff bus driver brought a diversity suit in Ohio against Belgian bus manufacturer, Bus & Car Co., for personal injuries sustained

80. *But see* *Frummer v. Hilton Hotels, Inc.*, 19 N.Y.2d 533, 281 N.Y.S.2d 41, 227 N.E.2d 851, *cert. denied*, 389 U.S. 923 (1967) (where court granted jurisdiction over English defendant corporation having an affiliated corporation in New York which solicited business and made reservations in New York for defendant in London).

81. N.D.R. Civ. P. § 4(b)(2) (1974).

during work. Evidence showed defendant had sold two buses in Ohio for a total of ninety thousand dollars. Plaintiff sought jurisdiction under Ohio's long-arm statute, which provides for personal jurisdiction over a person who derives substantial revenue from goods used or services rendered in Ohio.⁸² The court assumed jurisdiction on the basis of the revenue derived from the sale of the buses in Ohio, noting that relegation of plaintiff's action to a Belgian court would be a poor recourse.

PENNSYLVANIA

Crucible, Inc. v. Stora Kopparbergs Bergslags AB, 403 F. Supp. 9 (W.D. Pa. 1975). Defendant Swedish corporation moved to dismiss a patent infringement action claiming that its contacts with the forum were casual and did not subject it to personal jurisdiction.⁸³ Defendant's products were bought in Sweden by its wholly-owned American subsidiary and were subsequently resold to purchasers in this country, including fifteen regular customers within Pennsylvania. The court held that Stora-Sweden was doing business within the State and within the reach of the state long-arm statute.⁸⁴ The court reasoned that two separate grounds existed under the statute for asserting personal jurisdiction: (1) the defendant was doing business within the State through direct or indirect shipments into Pennsylvania;⁸⁵ (2) Stora-Sweden was engaged in a series of similar acts for the purpose of realizing pecuniary benefit.⁸⁶ The court found the assertion of personal jurisdiction proper since Stora-Sweden had deliberately sought the benefits and protection of the Commonwealth.⁸⁷

82. OHIO REV. CODE § 2307.382(A)(4) (Additional Supp. 1975).

83. Note that this is a case of federal question jurisdiction. Service was obtained under the long-arm statute. For an interesting contrast, also dealing with patent infringement, see *Cryomedics, Inc. v. Spemby, Ltd.*, 397 F. Supp. 287 (D. Conn. 1975) (where court stated that appropriate test in patent infringement was the aggregation of corporation's contacts with the United States).

84. PA. STAT. tit. 42, § 8309 (Purdon's Supp. Jan. 1976).

85. *Id.* § (a)(3).

86. *Id.* § (a)(1).

87. The Pennsylvania long-arm statute has been liberally applied to alien corporations. See also *Boeing Co. v. Spar Aerospace Products Ltd.*, 380 F. Supp. 101 (E.D. Pa. 1974) (Canadian); *Gorso v. Bell Equip. Corp.*, 376 F. Supp. 1027 (W.D. Pa. 1974) (French); *Benn v. Linden Crane Co.*, 370 F. Supp. 1269 (E.D. Pa. 1973) (Swedish).

TEXAS

Murdock v. Volvo of America Corp., 403 F. Supp. 55 (N.D. Tex. 1975). Plaintiffs, the wives of two persons killed in an automobile accident, brought a products liability action against defendant Swedish automobile manufacturer and its wholly-owned subsidiary. Plaintiffs contended that personal jurisdiction over the parent was proper under the Texas long-arm statute⁸⁸ because it was doing business within Texas through the subsidiary. The court held that the plaintiffs had not met their burden of proof since they had failed to establish: (1) the existence of an agency relationship between the parent and the subsidiary; or (2) the sufficient exercise of dominion by the parent over the subsidiary such that the subsidiary became the parent's alter-ego. The court dismissed the complaint reasoning that as a general rule the relationship of parent corporation and subsidiary corporation is not of itself sufficient to subject a non-resident to personal jurisdiction.⁸⁹

UTAH

Engineered Sports Products v. Brunswick Corp., 362 F. Supp. 722 (D. Utah 1973). Defendants, European ski boot manufacturers, moved to quash service made under Utah's long-arm statute⁹⁰ in an action alleging infringement of plaintiff's patents. Defendants, responding to allegations of contributory infringement⁹¹ argued that since their sales in Utah were insubstantial, they did not have contacts with the State substantial enough to support jurisdiction. After finding the necessary contacts in defendants' use of marks and servicemarks in Colorado, the court held that the proper test in cases of this nature should not be the extent of contacts within Utah, but rather should be the extent of contacts with the United States.⁹² The court reasoned that otherwise, defendant might ensure immunity from suit in the United States by holding sales in any particular state to a minimum level.

88. TEX. REV. CIV. STAT. ANN. art. 2031(b)(3) (1964).

89. A similar treatment of the alien parent-sub subsidiary issue was outlined in a previous case, *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

90. UTAH CODE ANN. § 78-27-22 (Additional Supp. 1975). This statute is similar to the Illinois long-arm statute.

91. Contributory infringement is the active inducement of another to infringe a United States patent. See *Honeywell v. Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975).

92. *Accord*, *Cryomedics, Inc. v. Spemby, Ltd.*, 397 F. Supp. 287 (D. Conn. 1975); but see *Crucible, Inc. v. Stora Kopparbergs Bergslags AB*, 403 F. Supp. 9 (W.D. Pa. 1975).

VIRGINIA

Elefterious v. Tanker Archontissa, 443 F.2d 185 (4th Cir. 1971). Plaintiff, an injured merchant seaman, sued his vessel and its owners for negligence and for wages due him when put ashore in Portsmouth, Virginia. Defendant resisted jurisdiction under Virginia's long-arm statute⁹³ claiming that plaintiff's injuries had no relation to its activities in Virginia. The court held that while the injury had no relation to the defendant's conduct of business in Virginia, and could not alone support jurisdiction, the claim for wages was connected to defendant's business and did provide a basis for long-arm jurisdiction. The court reasoned that it might hear plaintiff's other claims and therefore remanded the case. The court made no mention of a different jurisdictional standard for alien corporations but instead based its analysis on whether a corporation not subject to service within Virginia had contacts with the State sufficient to warrant the assertion of jurisdiction.

WASHINGTON

Deutsch v. West Coast Machinery Co., 80 Wash.2d 707, 497 P.2d 1131 (1972). Plaintiff Deutsch was allegedly injured in a Boeing factory by a press manufactured by Japanese corporation Kansai Iron Works, Ltd. Third party defendant Kansai moved to dismiss a cross-claim for indemnification filed by third party plaintiff, Marubeni-Iida, Inc., a New York corporation which purchased the press from Kansai and then resold it.⁹⁴ While Kansai had sent engineers and a replacement switch to Boeing in Washington, it contended that it was not doing business in Washington, that submission to jurisdiction would violate traditional notions of fair play, and that the Commerce Clause would be violated by the burden placed on foreign commerce by the Washington courts. The court ruled that Kansai was subject to jurisdiction under Washington's long-arm statute⁹⁵ because it knew the press was destined for Washington and had transacted business in its activities with

93. VA. CODE § 8-81.2 (1975 Cum. Supp.). Virginia's long-arm statute is similar to the Illinois statute.

94. Kansai Iron Works, Ltd., a Japanese manufacturer, sold the press to Marubeni-Iida Co., Ltd., a Japanese corporation, which sold the press to Marubeni-Iida, Inc., a New York corporation. Marubeni-Iida, Inc. sold the press to West Coast Machinery Company, a Washington corporation, which sold the press to the Boeing Company. West Coast, Marubeni-Iida, Inc. and Kansai are involved in this suit.

95. WASH. REV. CODE ANN. § 4.28.185 (1962).

Boeing. The Supreme Court of Washington held it would be easier and fairer for defendants to appear in Washington than for the plaintiff and witnesses to appear in Japan. The court enunciated a three-step test for the assumption of jurisdiction: (1) the non-resident defendant foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the case of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice.⁹⁶

WISCONSIN

Canadian Bronze Co. v. Kenzler, 64 F.R.D. 79 (E.D. Wis. 1974). Plaintiff Canadian corporation sued defendant Wisconsin corporation for negligence in the performance of services and the design of plaintiff's Canadian facility. Defendant impleaded two foreign corporations, a Michigan company and its Canadian subsidiary, as third party defendants. Both sought to dismiss for lack of personal jurisdiction. The defendant attempted to base personal jurisdiction over the impleaded defendants upon the presence of the third parties within the forum and the local nature of the injury. The court examined the Wisconsin long-arm statute⁹⁷ and found that neither corporation had engaged in substantial activity in Wisconsin. While the misdesign or alleged negligence may have occurred in Wisconsin, the injury occurred in Canada, not Wisconsin. Therefore, the court concluded that neither the Michigan corporation nor its Canadian subsidiary could be impleaded under traditional notions of fair play and substantial justice.⁹⁸

III. CONCLUSION

The cases surveyed confirm several points:

- (1) While a majority of courts still make no express distinction between foreign and alien corporations, a minority does distinguish

96. See *Williams v. Canadian Fishing Co.*, 8 Wash. App. 765, 509 P.2d 64 (1973) (mere subsidiary relationship with Washington corporation held insufficient contact to subject Canadian corporation to jurisdiction under long-arm statute); *Omstead v. Brader Heaters, Inc.*, 5 Wash. App. 258, 487 P.2d 234 (1971) (court upholds jurisdiction but states that contacts of alien corporation must be greater than those of domestic corporation).

97. WIS. STAT. ANN. § 262.05 (1957).

98. See also *Davis v. Mercier-Freres*, 368 F. Supp. 498 (E.D. Wis. 1973).

one from the other. Among those courts drawing no express distinction, many have reached the same result as the minority by manipulation of minimum contacts analysis, and a few have done so through the use of *forum non conveniens*.

(2) Cases involving alien corporations brought under the jurisdiction of the adjudicating forum through the use of a long-arm statute follow a limited number of fact patterns, each of which has a bearing on the policy considerations involved.

(3) There is a need, if not for a different standard for foreign corporations, then for a mode of minimum contacts analysis which takes into account the peculiar circumstances involved in an alien corporation long-arm case.

The question of differentiation between foreign and alien corporations has been explicitly addressed in relatively few decisions. The majority of courts not only fail to draw the distinction, but seem to ignore the issue altogether, treating non-qualified alien corporations the same as any other corporation not licensed to do business in the forum.⁹⁹ To an extent they are justified in doing so, since the foundation of the minimum contacts test is the analysis of a set of facts, and not the application of one mechanical formula or another. Yet cases involving alien corporations present peculiar circumstances that a court should consider in its analysis. In the majority of jurisdictions these circumstances remain unaddressed.

Where courts have been willing to distinguish the two types of corporations, they have adopted one of two approaches. Some courts, by requiring that an alien corporation need have contacts only with the United States,¹⁰⁰ hold them to a standard which will support jurisdiction on a showing of fewer or more tenuous contacts than is required of a foreign corporation. However, the application of this standard appears to be primarily limited to patent infringement cases, and even there it has not been applied universally.¹⁰¹

99. See *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975); *Davis H. Elliott Co., Inc. v. Caribbean Utilities Co., Ltd.*, 513 F.2d 1176 (6th Cir. 1975); *Elefteriou v. Tanker Archontissa*, 443 F.2d 185 (4th Cir. 1971); *Eastman Kodak Co. v. Studiengesellschaft Kohle*, 392 F. Supp. 1152 (D. Del. 1975); *Marshall Exports, Inc. v. C.A. Phillips*, 385 F. Supp. 1250 (E.D.N.C. 1974), *aff'd* 507 F.2d 47 (7th Cir. 1974).

100. See *Cryomedics, Inc. v. Spembly, Ltd.*, 397 F. Supp. 287 (D. Conn. 1975); *Engineered Sports Products v. Brunswick Corp.*, 362 F. Supp. 722 (D. Utah 1973); *Alliance Clothing, Ltd. v. District Court*, 532 P.2d 351 (D. Colo. 1975); see also 9 VAND. J. TRANSNAT'L L. 435 (1976).

101. See *Eastman Kodak Co. v. Studiengesellschaft Kohle*, 392 F. Supp.

Other courts have taken a different approach and have adopted the reasoning of the *Duple* case.¹⁰² These courts hold that before an alien corporation will be required to defend a suit brought on the basis of long-arm jurisdiction, a stronger showing of contacts with the adjudicating forum must be made than would be required in the case of a foreign corporation. Typically, the additional requirement imposed is one or both of the following: (1) it must have been foreseeable that the product (in a products liability case) would have been placed within the broad stream of commerce in the United States; (2) the injury complained of must result from the use intended by the manufacturer.¹⁰³ Only where these further requirements are met will these courts hold an alien corporation amenable to their jurisdiction. The application of this standard appears to be limited mainly to products liability cases.

Even those courts that do not distinguish between foreign and alien corporations have been increasingly willing to deal with the issue implicitly through manipulation of the minimum contacts test.¹⁰⁴ Many courts have developed factors to be considered in connection with minimum contacts analysis, and often "convenience" is listed as a factor to be considered. Thus, while the courts consider the same factors in connection with both foreign and alien corporations, the question of convenience will be more significant in the case of an alien corporation. Those courts that have not enumerated a list of factors to be considered reach the same result by holding that the contacts asserted are insufficient where it seems likely that such contacts would be upheld in the case of a foreign corporation.¹⁰⁵ However, at least one court has approached this problem under the doctrine of *forum non conveniens*.¹⁰⁶

1152 (D. Del. 1975); *Crucible, Inc. v. Stora Kopparbergs Bergslags AB*, 403 F. Supp. 9 (W.D. Pa. 1975); *Benn v. Linden Crane Co.*, 370 F. Supp. 1269 (E.D. Pa. 1973).

102. *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969).

103. 417 F.2d at 235. *See also* *Scanlan v. Norma Projektil Fabrik*, 345 F. Supp. 292 (D. Mont. 1972); *Omstead v. Brader Heaters, Inc.*, 5 Wash. App. 258, 487 P.2d 234 (1971). In the latter case, the court expanded on the requirement of knowledge, which had received minimal treatment in *Duple*, and added the requirement that the use resulting in injury be the one intended by the manufacturer. *Id.* at 242.

104. *See* *J.F. Pritchard & Co. v. Dow Chemical of Canada, Ltd.*, 331 F. Supp. 1215 (W.D. Mo. 1971), *aff'd* 462 F.2d 998 (8th Cir. 1972).

105. *See* *Murdock v. Volvo of American Corp.*, 403 F. Supp. 55 (N.D. Tex. 1975).

106. *See* note 104 *supra*. The basis of the holding in this case is unclear, for while the court lists convenience as a factor to be considered in its minimum

One possible reason for the failure of the courts to distinguish foreign and alien corporations is explained in the limited number of fact patterns. In most cases, the alien corporation has offices or agents within the adjudicating forum, or at least within the United States.¹⁰⁷ If not, it may be doing business through an independent distributor large enough to answer for an injury within the forum. Since plaintiffs in such cases often utilize more traditional bases of jurisdiction, there is no need to resort to long-arm service. When this need does arise, the problem involved will be essentially that of a foreign corporation, since plaintiff will be attempting to reach an agent (or other appropriate person) located in another forum within the United States.

Typically an injured party resorts to long-arm jurisdiction over an alien manufacturer when its distributor has insufficient assets to answer for the damage done because it is either a subsidiary or an exclusive distributor with minimum capitalization,¹⁰⁸ or because it is a small independent retailer.¹⁰⁹ These situations present considerations which are not specifically addressed under the minimum contacts test, but which come within the realm of "fair play and substantial justice."¹¹⁰ These considerations are: (1) whether the defendant has attempted to structure its international commercial transactions so as to artificially insulate itself from liability; (2) whether the "deep pocket theory" should be applied on an international level; and (3) the policy considerations weighing against the exercise of jurisdiction. These factors may be con-

contacts analysis, it discusses the issue under the heading of *forum non conveniens*, which appears to be the ultimate basis of its holding. For a fuller discussion of the *forum non conveniens* issues involved, see 20 STAN. L. REV. 57 (1967).

107. See *Engine Specialities, Inc., v. Bombardier, Ltd.*, 454 F.2d 527 (1st Cir. 1972).

108. See *Honeywell, Inc. v. Metz Apparatewerke*, 509 F.2d 1137 (7th Cir. 1975); *daSilveira v. Westphalia Separator Co.*, 248 Cal. App. 2d 789, 57 Cal. Rptr. 62 (1967).

109. See *Alliance Clothing, Ltd. v. District Court*, 532 P.2d 351 (D. Colo. 1975). For other fact patterns of this type see *Elefteriou v. Tanker Archontissa*, 443 F.2d 185 (4th Cir. 1971) (no distributor involved); *Eastman Kodak Co. v. Studienesellschaft Kohle*, 302 F. Supp. 1152 (D. Del. 1975) (plaintiff in a declaratory judgment action afraid that defendant, who had sued all of plaintiff's competition, was about to sue it); *Engineered Sports Products v. Brunswick Corp.*, 362 F. Supp. 722 (D. Utah 1973) (injunctive relief against foreign corporation's American distributors ineffective, since the corporation could easily choose or create new distributors).

110. *Millihen v. Meyer*, 311 U.S. 457, 463 (1940).

sidered within the framework of substantial fairness under the traditional minimum contacts test, thus lessening the need for their explicit consideration under a separate test for international corporations. This does not mean that they should be ignored.

There are significant policy issues involved in the exercise of long-arm jurisdiction over alien corporations. Those most commonly raised are: (1) any judgment procured on the basis of such jurisdiction is likely to be unenforceable;¹¹¹ (2) the assertion of jurisdiction will adversely affect United States foreign relations,¹¹² placing an undue burden on foreign commerce and violating the exclusive power of Congress to regulate trade with foreign nations;¹¹³ and (3) it is unfair to require an alien corporation to travel halfway around the world to defend itself on the basis of an isolated act.¹¹⁴

The unenforceability argument, though occasionally called a red herring,¹¹⁵ is perhaps the most persuasive argument against the assertion of long-arm jurisdiction. On the national level, the full faith and credit clause of the Constitution¹¹⁶ guarantees that a judgment rendered on the basis of long-arm jurisdiction will be honored in sister-state proceedings, so long as due process requirements are met. Because there is no such guarantee¹¹⁷ in an international long-arm case, a court dealing with a foreign party or parties runs a higher risk of having its judgment dishonored. For this reason, substantial contacts should be required in cases involving alien corporations. However, where the defendant has assets within the forum or within the United States, or where plaintiff seeks injunctive relief, the unenforceability argument has no

111. *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231, 237 (9th Cir. 1969).

112. 417 F.2d at 237.

113. U.S. CONST., art. I, § 8. See also, 18 WAYNE L. REV. *supra* note 23, at 1592.

114. *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231, 237 (9th Cir. 1969).

115. 18 WAYNE L. REV., note 23 *supra*, at 1592. The note cited contends that unenforceability of its judgments is not a matter of concern to the court rendering them, and that it is the plaintiff who should properly be concerned about the expenditure of time and money involved in procuring a worthless judgment. Needless to say, courts are, and should be, concerned about the enforceability of their judgments, for if they can be ignored with impunity, they are worthless as social institutions.

116. U.S. CONST., art. IV, § 1. See 18 WAYNE L. REV., note 23 *supra*, at 1592.

117. The court in *Duple* addresses this problem, noting that an English court would have to re-adjudicate the issues involved there.

merit.¹¹⁸ In those cases the prospective judgment will be enforceable without resort to foreign courts.

The contention that the assertion of jurisdiction will deleteriously affect international relations is not persuasive. While a possibility of international reprisals certainly exists,¹¹⁹ it seems unlikely to occur frequently since the adjudicating forum seeks only to treat alien and foreign corporations alike. Long-arm jurisdiction is asserted directly against an alien manufacturer in relatively few cases, and the alien corporation has the opportunity to spread the cost among its customers either directly through pricing, or indirectly by insuring against the risk.

The question of whether such jurisdiction places an undue burden on foreign commerce merits consideration. It can be argued that Congress has exclusive power to regulate both foreign and domestic commerce. Therefore, if international long-arm jurisdiction violates congressional power as regards foreign commerce, then interstate long-arm jurisdiction violates congressional power under the commerce clause, and the concept of long-arm jurisdiction is itself invalid. This argument gives Congress an opportunity to preempt the field as regards alien corporations, providing a uniform standard and avoiding the criticism that alien corporations have no way of knowing in which forums they may be held liable for a given act.

In light of the due process questions involved, the unfairness argument is perhaps the most complex of the arguments, touching as it does on questions of discrimination and harassment, inconvenience, and unfamiliarity with governing law. While all of these factors can be cited to counter the assertion of long-arm jurisdiction without a showing of substantial contacts, the following considerations, among others, support the assertion of jurisdiction: (1) an alien corporation can spread the cost of litigating abroad among its customers and is therefore more able to bear the burden than an individual plaintiff; (2) alien corporations should be no

118. See *Engineered Sports Products v. Brunswick Corp.*, 362 F. Supp. 722 (D. Utah 1973).

119. As stated by Professors Von Mehren and Trautman: "[I]n establishing bases for jurisdiction in the international sense, a legal system cannot confine its analysis solely to its own ideas of what is just, appropriate, and convenient. To a degree it must take into account the views of other communities concerned. Conduct that is overly self-regarding with respect to the taking and exercise of jurisdiction can disturb the international order and produce political, economic and legal reprisals." (Emphasis added.) von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1127 (1966).

less responsible than foreign corporations for the harm they do in a given forum. To hold otherwise would encourage laxity among alien corporations producing goods for United States consumption; (3) the case should be heard where the injury occurred, since that is where the witnesses and evidence are likely to be located.

As mentioned above, one or more of these policy considerations are often implicit in the reasoning of a given court, even where no explicit distinction is drawn between foreign and alien corporations. Minimum contacts analysis, being factual and based on notions of fair play and substantial justice, is perhaps not amenable to differing standards for foreign and alien corporations. The test is analytic, not mechanical, and in the case of either a foreign or an alien corporation the goal is the same—to submit the corporation to long-arm jurisdiction only when fair. But thus far courts have been unaware of or unwilling to deal with the peculiar circumstances presented by an international as opposed to an interstate long-arm case. These circumstances arise for the most part from the differences between the federal and international systems of law which in turn give rise to policy considerations under which the fact patterns involved are especially significant. In all cases, whether interstate or international, minimum contacts analysis should encompass a cost-benefit approach in evaluating the interests of the plaintiff, the prospective defendant, and the adjudicating forum. The possible costs are higher when an alien corporation is involved, since a judgment against it is not guaranteed full faith and credit and may have international repercussions. In cases of this sort, a more extensive analysis might be appropriate. The analysis would include a consideration of three factors. First, has the defendant deliberately structured its international transactions so as to artificially insulate itself from liability in the United States? If so, a court may be more willing to assert jurisdiction despite the potential costs involved. Secondly, what forum is fairest to both parties? This involves a consideration of whether extreme hardship is involved in requiring an alien corporation to defend in the United States,¹²⁰ and whether there are special reasons for adjudicating the dispute at the situs of the injury. Thirdly, would a judgment be enforceable, and would there be a possibility of retaliation? These latter factors present considera-

120. For a case in which this was a controlling consideration, see *J.F. Pritchard & Co. v. Dow Chemical of Canada, Ltd.*, 331 F. Supp. 1215 (W.D. Mo. 1971), *aff'd* 462 F.2d 998 (8th Cir. 1972).

tions not present where a judgment is guaranteed full faith and credit.

At present, the majority of courts have not addressed these questions explicitly, although some have been implicitly considered in their opinions. Perhaps the best argument that can be made is that a court should address these questions and consider them in deciding the propriety of international long-arm jurisdiction.¹²¹ Where a court is unwilling to do so, these factors may enter into its decision under the broad guise of fairness. Where the defendant's home forum is ready to assert jurisdiction, the possibility exists for a *forum non conveniens* dismissal based on these considerations. However, in light of the undeveloped nature of this doctrine and its inherent limitations, this possibility is slim at best.¹²²

In *Hanson v. Denkla*, the Supreme Court states, "As technological progress has increased the flow of commerce between states, the need for jurisdiction over non-residents has undergone a similar increase."¹²³ As this increased flow spills out into the international realm, followed by a corresponding increase in the need for international long-arm jurisdiction, an increasingly sophisticated analysis is needed to take into account those factors not present between states.

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121. See *Carbone v. Ft. Erie Jockey Club, Ltd.*, 47 App. Div.2d 337, 366 N.Y.S.2d 485 (1975). In this case the New York court, after denying jurisdiction, cautioned that enthusiasm for the extension of jurisdiction over aliens in foreign lands must be tempered by the expectation that the same rule will be reciprocally applied in remote countries to our citizens.

122. For a general discussion of *forum non conveniens* as regards international adjudication, see 20 STAN. L. REV. 57 (1967).

123. 357 U.S. at 250-51.

