

## An Analysis of the Constitutional Guidelines Provided by Section 262.05 (3), (4) and (10)

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### Repository Citation

Francis J. Podvin, *An Analysis of the Constitutional Guidelines Provided by Section 262.05 (3), (4) and (10)*, 49 Marq. L. Rev. 149 (1965).  
Available at: <http://scholarship.law.marquette.edu/mulr/vol49/iss1/8>

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**AN ANALYSIS OF THE  
CONSTITUTIONAL GUIDELINES  
PROVIDED BY SECTION 262.05 (3), (4) AND (10)**

INTRODUCTION

The jurisdiction statute adopted by the Wisconsin legislature in 1959<sup>1</sup> seeks to extend the personal jurisdiction of Wisconsin courts to the limits allowed by the due process clause of the United States Constitution.<sup>2</sup> Perhaps the most litigated jurisdictional area today is that which concerns manufacturers involved in multi-state transactions. Wherever a particular product might be found, there is a possibility of litigation arising out of its purchase or use. The purpose of this discussion is to analyze those provisions of section 262.05 of the Wisconsin Statutes (1963) which are most generally involved in this type of case, in order to assess the extent to which the language therein offers constitutional guidelines for use in products liability litigation.

JURISDICTION UNDER SECTION 262.05 (3), (4) AND (10)

The pertinent statutes are set out below. An analysis of each follows later in the article.

262.05 Personal jurisdiction, grounds for generally. A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 262.06 under any of the following circumstances:

- (3) Local act or omission. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.
- (4) Local injury; foreign act. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury either:
  - (a) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or
  - (b) Products, materials or things processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.
- (10) Insurance or insurers. In any action which arises out of a promise made anywhere to the plaintiff or some third party by the defendant to insure upon or against the happening of an event and in addition either:

<sup>1</sup> Wis. Laws 1959, ch. 226.

<sup>2</sup> The fourteenth amendment to the United States Constitution provides in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

- (a) The person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred; or
- (b) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person insured resided.

In addition to the above cited provisions, Section 262.01 should be mentioned. The Wisconsin Supreme Court has several times announced the following rule of statutory construction:

This court is disposed to give statutes regulating procedure a liberal interpretation. (Citations omitted) Another rule of statutory construction which we deem to be applicable here is that great consideration should be given to the object sought to be accomplished by a statute.<sup>3</sup>

262.01 LEGISLATIVE INTENT. This Chapter shall be liberally construed to the end that actions be speedily and finally determined on their merits. The rule that statutes in derogation of the common law must be strictly construed does not apply to this chapter.

In order for a state to exercise valid jurisdiction through its courts, three constitutional requirements must be satisfied.<sup>4</sup> First, the state itself must have a basis for exercising jurisdiction. This basis, an inherent power, is derived from certain contacts with the parties or their property making it reasonable for the state to affect relations between parties.<sup>5</sup> Second, the state must have conferred this power on the court, thereby making the court competent to adjudicate the particular litigation in question.<sup>6</sup> Finally, a reasonable method must be employed to apprise the defendant of the proceedings so that he has a reasonable opportunity to be heard.<sup>7</sup>

In enacting Chapter 262 of the Wisconsin Statutes, the legislature sought to make the courts of general jurisdiction competent to the limit of the *state's* power to adjudicate controversies. Thus, this discussion will consider only the problems raised by the first requirement mentioned above.

#### THE LIMITS OF STATE COURT JURISDICTION UNDER INTERNATIONAL SHOE CO. V. WASHINGTON<sup>8</sup>

##### A. *Historical Background of International Shoe.*

Historically, territory was the prime measure of a state's judicial power. The judicial competence of a state could not be extended be-

<sup>3</sup> Huck v. Chicago, St. P., M. & O. Ry. Co., 4 Wis. 2d 132, 137, 90 N.W. 2d 154, 157 (1957).

<sup>4</sup> ROSENBERG & WEINSTEIN, ELEMENTS OF CIVIL PROCEDURE 997 (1962).

<sup>5</sup> 14 AM. JUR. Courts §11 (1938).

<sup>6</sup> 21 C.J.S. Courts §1 (1940).

<sup>7</sup> Grannis v. Ordean, 234 U.S. 385 (1914).

<sup>8</sup> 326 U.S. 310 (1945).

yond the state's boundaries.<sup>9</sup> In personam jurisdiction was originally grounded upon the court's *de facto* powers over the defendant i.e., upon the power of the sheriff to enforce writs and other process upon the defendant's person. "Presence" within the jurisdiction was therefore indispensable.

*Pennoyer v. Neff*<sup>10</sup> established the proposition that a judgment in personam against a non-resident is generally void and violates the due process clause of the fourteenth amendment unless the non-resident appears or is served personally within the state. This territorial limitation of state court power permitted non-residents to immunize themselves from personal liability simply by leaving the forum state, creating a "hit and run" tactic in civil litigation. This situation led to a host of fictitious definitions of "presence," to permit the effective recapture of the fugitive "non-residents," including corporate entities. The principal bases of these fictions were "implied consent,"<sup>11</sup> and "doing business within the state."<sup>12</sup>

*International Shoe Co. v. Washington* undertook a broad redefinition of the principle of *Pennoyer v. Neff*, and suggested that a further conglomeration of judicial fictions would never produce a universal, factually based standard by which the power to adjudicate could be measured. A new test for determining jurisdiction was proposed, effectively abrogating the "fictions".

B. *The International Shoe Test and Subsequent Applications.*

Although *International Shoe* could easily have been decided on the "doing business" theory, the Court chose rather to rest its decision on a totally restated doctrine:

[D]ue 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 suit does not offend 'traditional notions of fair play and substantial justice.'<sup>13</sup>

Further, the court noted that:

[W]hether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations.<sup>14</sup>

<sup>9</sup> *Pennoyer v. Neff*, 95 U.S. 714 (1877).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Hess v. Pawloski*, 274 U.S. 352 (1927).

<sup>12</sup> *International Harvester v. Kentucky*, 234 U.S. 579 (1914).

<sup>13</sup> *International Shoe Co. v. Washington*, *supra* note 8, at 316.

<sup>14</sup> *Id.* at 319.

Before deciding that the International Shoe Company had engaged in sufficient activities so that it was not unreasonable to allow the state of Washington to exercise jurisdiction over it, the Supreme Court examined various possible "contacts, ties, or relations" which might or might not be sufficient to enable a state to exercise jurisdiction over a non-resident. The court found that a continuous pattern of activities always affords sufficient contact with the state to sustain jurisdiction, when the cause of action arises out of those activities.

'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given.<sup>15</sup>

The court also observed that casual presence or isolated activity conducted by the defendant within the state, and unconnected with the cause of action, does not afford sufficient contact.

Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there.<sup>16</sup>

The court next recognized that continuous activity may be of such quality and nature as to enable state courts to obtain valid jurisdiction over non-residents even on causes of action unrelated to the activities.<sup>17</sup>

Finally, the court found that certain single or isolated acts by the defendant within the state, because of their quality and nature, may be sufficient contact to allow jurisdiction.<sup>18</sup>

Two subsequent cases tended, in some degree, to clarify the standard created by *International Shoe*. The first was *McGee v. International Life Insurance Co.*<sup>19</sup> Defendant insurance company, a Texas corporation, solicited by mail a reinsurance contract from a California resident. The contract was accepted and premiums were paid in California, but defendant had no other business or activity within California. The court, speaking through Justice Black, evaluated defendant's contacts with the State of California and held them sufficient to allow California to maintain the suit.

Turning to this case we think it apparent that the Due Process Clause did not preclude the California court from entering a judgment binding on respondent. *It is sufficient for purposes of*

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<sup>15</sup> *Id.* at 317.

<sup>16</sup> *Ibid.*

<sup>17</sup> *International Shoe Co. v. Washington*, *supra* note 8, at 318.

<sup>18</sup> *Ibid.*

<sup>19</sup> 355 U.S. 220 (1957).

*due process that the suit was based on a contract which had substantial connection with that state.*<sup>20</sup> (Emphasis added.)

The *McGee* case, therefore, illustrates a situation in which a single, isolated activity within the forum state was of such "nature and quality" that due process was not offended by allowing jurisdiction.<sup>21</sup>

The second significant application of the *International Shoe* standard was in *Hanson v. Denckla*.<sup>22</sup> The Pennsylvania settlor of a trust created in Delaware and having a Delaware trustee, subsequently moved to Florida. The trustee thereafter remitted the trust income to the settlor in Florida, and the settlor performed other acts of trust business there. The trustee, however, transacted no other business in Florida, nor did it have an office there. The trust assets remained in Delaware, and there was no solicitation in Florida either by mail or through agents. Certain powers of appointment were exercised in Florida, and the plaintiffs (cestuis, primarily Florida domiciliaries) brought suit in Florida to determine the effect of this exercise of the powers.

The Supreme Court, in a five-to-four decision, found that the Florida court had no jurisdiction over the Delaware trustee.

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.<sup>23</sup>

The *Hanson* case has imposed a definite limitation upon the exercise of state court jurisdiction, by requiring an activity by which the defendant "purposefully avails itself" of the benefits and protections of the forum state's laws. The most interesting aspect of the *Hanson* case is its apparent attempt to limit the effect of *McGee* to highly regulated areas where the state has a special interest.<sup>24</sup>

#### AN ANALYSIS OF VARIOUS FACT SITUATIONS

##### A. *Local Act or Omission*

Section 262.05 (3) requires the allegation of two jurisdictional facts.

<sup>20</sup> *Id.* at 223. See *Elkhart Engineering Corp. v. Werke*, 343 F. 2d 861 (5th Cir. 1965).

<sup>21</sup> See generally Currie, *The Growth of the Long Arm; Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L. F. 538-544 (1963), condensed in 1964 PERSONAL INJURY COMMENTATOR 278.

<sup>22</sup> 357 U.S. 235 (1958).

<sup>23</sup> *Id.* at 253.

<sup>24</sup> "This case is also different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its 'manifest interest' in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation." *Id.* at 252. See *Trippe Mfg. Co. v. Spencer Gifts, Inc.*, 270 F. 2d 821 (7th Cir. 1959). *But cf.* Currie, *supra* note 21 at 549, 1964 PERSONAL INJURY COMMENTATOR at 289.

First, the defendant or his agent must act or omit to act within this state. Secondly, there must be injury to person or property within or without the state because of the act or omission.<sup>25</sup> There is no problem, of course, where no nonresident (or unlicensed) defendant is involved. Where the plaintiff is a resident, again there seems to be no constitutional problem in allowing jurisdiction by the state in which the act or omission took place, even though the act or omission is an isolated one, where the injury arises therefrom. The state has a genuine interest in protecting its residents from the conduct of defendants within its borders.

A recent New York case has applied the principle under a New York statute allowing jurisdiction over one who "commits a tortious act within this state."<sup>26</sup> An Illinois manufacturer had shipped a mislabeled, defective hammer to a New York distributor, where it was purchased from a retailer by the plaintiff. Sometime later, plaintiff was injured in Connecticut, allegedly as a result of a defect in the hammer. The New York court founded its jurisdiction on the fact that a tortious act, namely, the commercial circulation in New York of the defective hammer, had proximately caused the plaintiff's eventual injury:

(T)here are some breaches of duty which create a continuing condition of hazard to users, very much like an enjoynable nuisance which may ground a cause of action short of the harm having yet occurred. (Citations omitted). In the case of an instrument defective in construction or dangerous because mislabeled the hazard persists wherever and so long as the product circulates.<sup>27</sup>

What would happen under similar facts invoking the Wisconsin statute? Assume that "an act or omission" can be found to have occurred within Wisconsin only by use of the somewhat strained reasoning adopted in New York. Also assume that the negligent manufacturer had lost control over the circulation of his product, had no agent or office and conducted no solicitation activities here. Can it be said that the negligent manufacturer has purposely availed himself of the benefits and protections of Wisconsin laws? Or that he has had sufficient contact with Wisconsin, by reason of the fact that he could possibly have foreseen that one or more of his products could have eventually been circulated in Wisconsin, to justify assertion of jurisdiction?

Cases such as this, involving both resident and nonresident plaintiffs, are not uncommon in the area of products liability. In a fair number of such cases, Wisconsin would seem to have very little interest in providing a Wisconsin forum for a nonresident. There has been no injury within Wisconsin, no manufacturing or sales activity within Wis-

<sup>25</sup> 30 WIS. STAT. ANN. 24 (Supp. 1965).

<sup>26</sup> *Singer v. Walker*, 21 App. Div. 285, 250 N.Y.S. 2d 216 (Sup. Ct. 1964).

<sup>27</sup> *Id.* at 289, 250 N.Y.S. 2d at 221.

consin, and no Wisconsin resident is involved. Yet, under the broad language of section 262.05(3), the action could be brought here, because no Wisconsin interest is required. Professor Currie states that he is "aware of no decision of the United States Supreme Court permitting suit in a state other than that in which the defendant is resident or present, in the absence of an interest in the application of the forum State's law."<sup>28</sup>

B. *Local Injury, Foreign Act.*

The necessary jurisdictional facts required under Section 262.05(4) are: (1) injury to person or property within this state arising out of an act or omission outside this state; (2) provided, however, that in addition to (1) there must be either: (a) solicitation or service activities carried on by the defendant or his agent within this state, or (b) products, materials or things processed, serviced or manufactured by the defendant used or consumed in the ordinary course of trade within this state. The principal constitutional danger presented by this section involves the construction of the additional criteria.

For example, Judge Sobeloff suggested an interesting hypothetical problem in *Erlanger Mills Inc. v. Cohoes Fibre Mills*:

To illustrate the logical and not too improbable extension of the problem, let us consider the hesitancy a California dealer might feel if asked to sell a set of tires to a tourist with Pennsylvania license plates, knowing that he might be required to defend in the courts of Pennsylvania a suit for refund of the purchase price or for heavy damages in case of accident attributed to a defect in the tires.<sup>29</sup>

Substituting a tourist with Wisconsin license plates, would the Wisconsin court hold that the transaction produced a thing processed or serviced by the defendant and used by the plaintiff in the ordinary course of trade within this State? This certainly would not be an unreasonable construction of the statute. But again, if the plaintiff is not a resident of Wisconsin, this state's legitimate interest in the controversy is suspect; and again, there is a serious question whether the *Hanson* test is met.

Has the defendant California tire dealer purposefully availed himself of the privilege of conducting activities within the forum state, and has he invoked the benefits and protections of its laws? If, in fact, the California tire dealer is set up to do business on a national scale, then perhaps the "ordinary course of business" language would be appropriate, but for the local dealer who has no intention of soliciting business in Wisconsin this application would be ridiculously strained.

<sup>28</sup> See Currie, *supra* note 21 at 544, 1964 PERSONAL INJURY COMMENTATOR at 285.

<sup>29</sup> 239 F. 2d 502, 507 (4th Cir. 1956). See also Sobeloff, *Jurisdiction of State Courts Over Nonresidents in Our Federal System*, 43 CORNELL L. Q. 196, 206 (1957).



The significant fact is that this type of case can easily fit the literal terms of Section 262.05(4). The revisor's notes suggest this interpretation:

If the occurrence in the state of the injury sued on is not a sufficient contact, very little more by way of additional contact is required for the exercise of personal jurisdiction in these cases. . . . These contacts have included solicitation of business, servicing equipment within the state and, in some cases, little more than the fact that the defendant enjoyed pecuniary benefit from the efforts of others in the state who sold goods manufactured by the defendant. Sub. (4) relies on such added contacts as those just stated to furnish a basis for jurisdiction in cases where a local injury arises out of some foreign act.<sup>30</sup>

### C. *Insurance and Insurers.*

Section 262.05(10) requires: (1) that the defendant promise the plaintiff or some third party that he would insure him upon or against the happening of an event; and (2), either (a) that the insured was a resident of this state when the insured event from which the cause of action arises occurred, or (b) that the insured event which gives rise to the cause of action occurred within the state. This provision involves more perplexing constitutional problems because the highly regulated insurance industry is one in which each state has a special interest.<sup>31</sup> The *Hanson* case emphasizes the state's special interest in providing effective redress against nonresidents engaged in exceptional activity.<sup>32</sup>

Assuming a case where an Ohio resident purchased a policy of insurance and then moved to Wisconsin, where he resided when the insured event occurred in Indiana, could a Wisconsin court validly exercise jurisdiction over a nonresident insurance corporation which had no contact with Wisconsin other than the fact that the insured mailed premiums from Wisconsin? Under the literal language of the statute, the answer is an unhesitating affirmative. There is a promise to insure against the happening of an event, and the person insured is a resident of this state.

Nevertheless, unlike the *McGee* case, there is in the suggested problem no contract accepted in Wisconsin. Indeed, the case is very similar to *Hanson*, where a Pennsylvania settlor later moved to Florida. The *Hanson* court commented on the significance of this difference:

<sup>30</sup> 30 WIS. STAT. ANN. 26 (Supp. 1965). See also *Newan v. Charles S. Nathan, Inc.*, 33 U.S.L. WEEK 2509 ( ), where personal jurisdiction over non-domiciliary manufacturers was upheld by the Supreme Court of New York where a Kentucky manufacturer sold a component part to a North Carolina manufacturer, who subsequently incorporated the component parts into a chair and sold them to a distributor in New York where the plaintiff was injured. The court allowed jurisdiction on the ground that it could reasonably be anticipated that there would be New York sales of this specific product, or of this product as a component of other products.

<sup>31</sup> See note 22 *supra*.

<sup>32</sup> *Ibid.*

Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance, they have solicited in that State, the Court upheld jurisdiction because the suit 'was based on a contract which had substantial connection with that State.' In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State.<sup>33</sup>

Even allowing for the exceptional activity argument (although trust administration is also highly regulated),<sup>34</sup> it would seem difficult to justify a valid exercise of jurisdiction in the hypothetical case.<sup>35</sup> Yet the Second Circuit Court of Appeals has upheld jurisdiction under the Tennessee Unauthorized Insurance Process Act where the only contacts with the State of Tennessee by the insurance company were the mailing of premiums by the insured from Tennessee, and the fact that the insurer had hired persons to investigate Tennessee claims.<sup>36</sup>

#### THE EFFECT OF THE DOCTRINE OF FORUM NON CONVENIENS UPON PERSONAL JURISDICTION

Divergent opinions have been expressed regarding the effect of *forum non conveniens* upon personal jurisdiction. The first position is best summarized by Professor Foster:

It is submitted that the factor of inconvenience to the defendant is not part of the test whether jurisdiction over his person exists; and it is relevant to the case only if raised by the plea of *forum non conveniens* after a finding by the court that jurisdiction over the defendant was established. This confines the test of jurisdiction to an examination of the nature of the person's contacts with the state and the relation of the cause of action sued upon to those contacts. The question of inconvenience would enter the case only if personal jurisdiction were found to exist and would be treated along with other relevant factors under the doctrine of *forum non conveniens*.<sup>37</sup>

Professor Foster was joined in his opinion by a majority of the Wisconsin Supreme Court in *Lau v. Chicago & N. W. Ry. Co.*<sup>38</sup>

The second position has been taken by Justices Hallows and Fairchild of the Wisconsin Supreme Court. In a concurring opinion in the *Lau* case, Justice Hallows stated that:

*International Shoe Co. v. Washington* . . . makes the inconvenience to the defendant one of the elements to be considered

<sup>33</sup> *Ibid.*

<sup>34</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

<sup>35</sup> This position was taken by the Florida court in *Parmalee v. Commercial Travelers Mut. Acc. Ass'n.*, 206 F. 2d 523 (5th Cir. 1953), where the court held that the Florida Unauthorized Insurers Process Act did not apply to a similar fact situation.

<sup>36</sup> *Schutt v. Commercial Travelers Mut. Acc. Ass'n.*, 229 F. 2d 158 (2d Cir. 1956), *cert. denied*, 351 U.S. 940 (1956).

<sup>37</sup> Foster, *Personal Jurisdiction Based on Local Causes of Action*, 1956 Wis. L. R. 522, 543.

<sup>38</sup> 14 Wis. 2d 329, 111 N.W. 2d 138 (1961).

in determining whether relatively slight contacts with a state are sufficient so that exercise of jurisdiction by the courts of that State fulfill (sic) the due-process requirement; otherwise, the test of what will amount to the minimal of contacts is purely a mechanical and quantitative measure rather than the due-process concept of minimal contacts which is the equivalent of jurisdiction.<sup>39</sup>

The position of Justice Hallows is based upon a distinction between *forum non conveniens* and "an estimate of the inconveniences" to the defendant in litigation away from its home state. Chief Justice Stone, citing *Hutchinson v. Chase & Gilbert*,<sup>40</sup> stated that "an 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection,"<sup>41</sup> the connection being whether or not the demands of due process have been met in the particular case. Since the *Hutchinson* case did not determine how the inconvenience to the defendant was to be decided, and since the case did not decide whether a balancing of the inconvenience to each party should be undertaken, Justice Hallows concludes that the due process inquiry differs from the plea *forum non conveniens*. The upshot of this analysis is that:

The inconvenience to the defendant of being sued in the forum may be of such magnitude as not to satisfy due process and would violate traditional notions of fair play and substantial justice, but such inconvenience considered under the broader issue of *forum non conveniens* may be relatively less than the inconvenience to the plaintiff and other factors taken into consideration in applying such doctrine.<sup>42</sup>

The two opinions above mentioned indicate first, that the broad issue of *forum non conveniens* does not affect personal jurisdiction, since application of that doctrine presupposes that valid jurisdiction exists. Secondly, it is plain that Justice Hallows would interpret the dicta of *International Shoe*<sup>43</sup> to require, as an element for deciding the due process question of personal jurisdiction, an investigation of the inconvenience to the defendant.

A further problem arises, since the *International Shoe* case made no mention of the question of inconvenience to the defendant where the obligations sued upon arose out of or were connected with the defendant's activities within this state.<sup>44</sup> Section 262.05(4)<sup>45</sup> requires no connection at all between the act or omission and the solicitation activi-

<sup>39</sup> *Id.* at 338.

<sup>40</sup> 45 F. 2d 139 (2d Cir. 1930).

<sup>41</sup> *International Shoe, op. cit. supra* note 8, at 317.

<sup>42</sup> *Lau, op. cit. supra* note 38, at 340.

<sup>43</sup> *International Shoe, op. cit. supra* note 8, at 317.

<sup>44</sup> A procedure which compels the defendant to come to the state to defend such a suit "can, in most instances, hardly be said to be undue." *International Shoe, op. cit. supra* note 8, at 319.

<sup>45</sup> *Cf.* text accompanying notes 29-30 *supra*.

ties, use or consumption within this state. In addition, a literal reading of the statute suggests that Section 262.05(4)(a) contemplates *any* solicitation, even though it is phrased in plural form. It would seem that consideration of the inconvenience to the defendant would thus be a serious constitutional question under a fact situation where the activities of the defendant were unconnected with the cause of action being litigated.

#### CONCLUSION

It is not the purpose of this article to speculate on how far courts should extend jurisdiction over nonresidents. The purpose rather, is to point out that the provisions under analysis contain language which, literally read, could easily extend Wisconsin's claims of jurisdiction beyond constitutional limits. An analysis of principal United States Supreme Court holdings has been included, both to indicate the historical development of the trend toward expand jurisdiction, and to demonstrate that the constitutional problems have not begun to be finally or definitively resolved. Chapter 262 is a progressive and determined effort to exhaust state court jurisdictional power. The legislative intent should certainly be effectuated, but not at the risk of unconstitutionality. As the *Hanson* court so aptly stated, "it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts."<sup>46</sup>

The central question raised by all of these tests is constant, i.e., does a state have inherent power to determine a given controversy so as to confer that power upon its courts? Blanket formulations to cover infinite varieties of cases are an inevitably risky business at best, and especially so when no constitutional guidelines are yet available. The merit of a statute of the type under examination is that it may accelerate the process by which more reliable constitutional definition will be achieved.

FRANCIS J. PODVIN

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<sup>46</sup> *Supra* note 22 at 251.