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State Expansion of Personal Jurisdiction Under the International Shoe and McGee Cases

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STATE EXPANSION OF PERSONAL JURISDICTION UNDER THE INTERNATIONAL SHOE AND McGEE CASES

Jurisdiction of state courts over non-resident natural persons and foreign corporations has been a continuing process of expansion. This began with *Pennoyer v. Neff*[1] in 1877 and culminated with *McGee v. International Life Insurance Co.*[2] in 1957.

Ever since *Pennoyer v. Neff*, it has been established that there are limits to a state's power to authorize the exercise of personal jurisdiction over persons and that these limits are controlled by the Fourteenth Amendment forbidding unreasonable exercise of power. It is further established that under the Amendment there are two fundamental requirements of reasonableness in the exercise of state judicial power over persons. 1) There must be a relation or tie between the state and the person which makes it reasonable for a state to make the persons subject to the state's control or power through its courts. This relation or tie is called the basis of personal jurisdiction. 2) There must be reasonable notification to the person that the state is asserting judicial control over him. This is done by service of summons calling him to appear before a court and defend this summons.

Pennoyer v. Neff concluded that the only relation or tie between a state and person which satisfied the first requirement was presence within the state. Consequently, the second requirement of notification could be satisfied only by service within the boundaries of the state whether the person notified be a resident or a nonresident of that state.

This holding as to presence was founded on the territorial concept of state power, the court saying that every state "possesses exclusive jurisdiction and sovereignty over persons and property within its territory," and from this it follows as a corollary that no state can "extend its process beyond that territory so as to subject either persons or property to its decisions."[3]

While presence within a state still remains the fundamentally sufficient basis, gradual departures from *Pennoyer v. Neff* have developed. These departures have expanded both the range of the basis and the range of the notification. In this expansion, the cases have distinguished between natural persons and corporations.

NATURAL PERSONS

One departure from the doctrine of *Pennoyer v. Neff* came in *Milliken v. Meyer*.[4] In this case, the Court gave its qualified approval

[1] 95 U.S. 714 (1877).
[2] 355 U.S. 220 (1957).
[3] *Supra* note 1, at 722.
[4] 311 U.S. 457 (1940). See WIS. STAT. §262.08 (4) (1957). Note that this section provides for *in personam* jurisdiction if a resident departed for purpose

to domicile as an independent basis for personal jurisdiction where a domiciliary had been personally served in Colorado with a process emanating from a Wyoming court. The Court said that a domiciliary must accept burdens as well as the benefits of domicile and one of the burdens was subjection to jurisdiction by that state. The case was significant also for its approving service of process outside the territorial limits of the state. Domicile, not presence in the state, furnished the basis for personal jurisdiction and process outside the state was simply looked on as a "reasonable method for apprising such an absent party of the proceeding against him."[5]

Another departure from the *Pennoyer* doctrine was the tie or nexus of previous consent by a nonresident to the service of the summons within a state on an agent of a nonresident in an action arising out of a dangerous activity of the nonresident within the state.[6] The consent, express or implied, to the appointment could be exacted by the forum state because the state could exclude the dangerous activity entirely unless such consent was given. In *Hess v. Pawloski,*[7] the Court upheld a nonresident motorist statute, which has become the basic model for present day statutes. Under this statute, the mere act of driving within the state was deemed to constitute the appointment of an appropriate official for service. The difference between express and implied consent was unimportant. The Court emphasized that the dangerous character of automobiles justified the statute as a reasonable exercise of the state's police power to preserve the citizens' safety. The exaction of consent was a regulation reasonably calculated to promote care on the part of nonresidents because the statute operated,

> . . . to require a nonresident to answer for his conduct in the state where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights.[8]

Similar statutes have been upheld where the activity of the nonresident is business posing a threat of potential financial harm rather than actual physical danger. An example of this type statute is seen in *Henry L. Doherty & Co. v. Goodman.* In this case, the Court sustained a state statute permitting service on an agent of a nonresident individual who was engaged in the sale of corporate securities in the state in actions arising out of that business. The Court accepted the state court's view that the sale of securities was an exceptional busi-

of avoiding process. However, the Restatement does not seem to include this intention to avoid process as a requirement for *in personam* jurisdiction over a domiciliary not in the forum. RESTATEMENT, JUDGMENTS §16 (1942).

5 Milliken v. Meyer, *supra* note 4, at 464; Foster, *Personal Jurisdiction Based on Local Causes of Action,* 1956 WIS. L. REV. 522, 536.

6 Kane v. New Jersey, 242 U.S. 160 (1916).

7 274 U.S. 352 (1927).

8 *Id.* at 356.

ness which could be subjected to special regulations and noted that the statute could be sustained by going no farther than the *Hess v. Pawloski* principle.[9]

The basis of previous consent resulting from a dangerous activity within the state was applicable to foreign corporations as well as individuals.[10]

FOREIGN CORPORATIONS[11]

The development in the case of foreign corporations was different from that of nonresident natural persons because a corporation being a legal entity could have no physical existence in a state as such. Thus, the early rule with respect to corporations was that it could be sued only in the state of its incorporation because it had no legal existence elsewhere.[12]

With the increasing growth and perplexity of commerce and the extension of business activities and operations by corporations beyond the states of their origination, the rule became unsatisfactory as a means of protecting the rights of persons dealing with such corporations. It was also unrealistic as a means of making corporations subject to personal jurisdiction of the courts of the state in which they carried on business. The doctrine then evolved that the tie or nexus between a foreign corporation and the state in which it is doing business is such as to make it reasonable for the state to make it subject to state judicial control with reference to claims against it arising out of business done within the state.[13]

What constituted "doing business" was a matter of fact and the decisions were divergent but the rule could be summarized that the activities of the foreign corporation in the state should be to some extent continuous, rather than a single or sporadic activity,[14] and even if continuous, must be more than mere solicitation.[15]

Two different theories of the sufficiency of "doing business" basis were offered by the Court. In some cases it was said that "doing business" was evidence of the "presence" of the corporation in the state. Just as the "presence" of an individual in the state is a basis

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[9] Henry L. Doherty & Co. v. Goodman, 294 U.S. 623 (1935).
[10] RESTATEMENT, JUDGMENTS §28 (1942).
[11] For an excellent discussion on expansion of state jurisdiction over foreign corporations, see Keane and Collins, *Changing Concepts of What Constitutes "Doing Business" by Foreign Corporations*, 42 MARQ. L. REV. 151 (1958). The article deals extensively with the Wisconsin statutes involved in this area.
[12] Bank of Augusta v. Earle, 38 U.S. 519 (1839); Peckham v. North Parish in Haverhill, 16 Pick, 274 (Mass. 1834).
[13] RESTATEMENT, JUDGMENTS §30 (1942).
[14] Consolidated Textile Corp. v. Gregory, 289 U.S. 85 (1933); Rosenberg Co. v. Curtis Brown Co., 260 U.S. 516 (1923).
[15] Green v. Chicago, Burlington and Quincy Ry., 205 U.S. 530 (1907); International Harvester v. Kentucky, 234 U.S. 579 (1914).

under the *Pennoyer* doctrine, so the "presence" of the corporation is equally a valid basis.[16]

In other cases it was suggested that by "doing business" in a state the foreign corporation "impliedly consents" to the exercise of jurisdiction over it.[17]

Neither "presence" nor "consent" furnished an entirely satisfactory theory of a state's judicial power over foreign corporations. This inadequacy was recognized by the Supreme Court and the Court redefined the basis of state judicial power in *International Shoe Co. v. State of Washington.*[18]

EXTENDED BASIS UNDER INTERNATIONAL SHOE-MINIMUM CONTACTS

In this case the Supreme Court redefined the basis of state judicial power over persons. This new definition resulted in an expansion of such power under the Fourteenth Amendment.

The Court applied the new basis to the following facts. The defendant shoe company had its home office in St. Louis. It employed about a dozen residents of Washington who regularly solicited orders from retailers in Washington. The orders were forwarded to St. Louis and accepted there. The items were shipped through interstate commerce direct to the Washington retailers and sales resulted in an annual business in Washington of about $31,000. The State of Washington brought this action in one of its courts to collect contributions alleged owing to the state's unemployment fund by reason of commissions paid by the defendant to its salesmen. Service was made locally on one of the defendant's salesmen and also by registered mail to the home office. The defendant insisted that its activities in Washington were merely solicitation and therefore it was not "doing business" and was not subject to the jurisdiction of the Washington courts.

In holding that Washington had jurisdiction over the defendant the Court redefined the basis of personal jurisdiction as follows:

> 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.'[19]

The court added that the demands of due process:

> . . . may be met by such contacts of [the defendant] with the state of the forum as to make it reasonable, in the context of our federal system of government, to require [the defendant] to defend the particular suit which is brought there. An estimate of the

[16] Green v. Chicago, Burlington and Quincy Ry., *supra* note 15.
[17] St. Clair v. Cox, 106 U.S. 350 (1882); Old Wayne Life Ass'n. v. McDonough, 204 U.S. 8 (1907).
[18] 326 U.S. 310 (1945). See also Foster, *supra* note 5, at 535.
[19] *Id.* at 316.

> 'inconveniences' which would result to the [defendant] from a trial away from its 'home' or principal place of business is relevant in this connection.[20]

Having redefined the new basis the Court concluded that:

> It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.[21]

From the facts it is evident that the precise, actual, jurisdictional question decided in the *International Shoe* case was that where a foreign corporation's continuous solicitation activities in a state produced a substantial volume of interstate business in the state and the cause of action sought to be enforced arose out of such activities, they were sufficient under the newly defined basis.

While it was thus clear that the solicitation-plus rule of the "doing business" basis had been abolished, the decision left vague the exact scope of the new basis. Was continuous activity still required or could the newly defined basis be stretched to cover a single activity within the state whether or not it was a single tort or a single business transaction?

The doubt was engendered in part because the Court in its opinion furnished no express compass or chart as to the foundation or legal theory underlying this vague basis of "fair play."

In the years following the *Shoe* case, the Court threw no light on what the foundation of this basis might be, except in *Travelers Health Association v. Virginia.* In that case the court applied the *International Shoe* basis to continuous mail order solicitation of insurance in Virginia.[22] In this case the Court also approved of service of process on the defendant insurance company by mail.

The Court declared in the *International Shoe* case that the sufficiency of the contacts were not to be measured by mechanical or quantitative standards.[23] However, in another part of the opinion, the Court cited the *Rosenberg*[24] case and stated that:

> . . . the commission of some single or occasional acts of the corporate agent in the state sufficient to impose an obligation or liability on the corporation had not been thought sufficient to confer upon the state authority to enforce it.[25]

[20] *Id.* at 317.
[21] *Id.* at 320.
[22] 339 U.S. 643 (1950).
[23] *Supra* note 18, at 319.
[24] Rosenberg Bros. and Co., Inc., v. Curtis Brown Co., *supra* note 14.

The Court also referred to the nonresident motorist and sale of security cases, as examples of "other such acts [which] because of their nature and quality and the circumstances of their commission may be deemed sufficient to render the corporation liable to suit."[26]

As a result of this vagueness, two judicial views developed as to the interpretation of the newly defined "minimum contact" basis. The continuity of activity was still required in one view. This view emphasized that the new basis had been formulated in the plural "contacts." It was also pointed out that the precise jurisdictional question decided in *International Shoe* involved more than sporadic contact, and that the Court had expressly recognized and approved the *Rosenberg* case rule that some single or occasional acts were not a sufficient basis of jurisdiction. The courts holding this view interpreted the reference to *Hess v. Pawloski* as suggesting that continuity was still ordinarily required and that only in the "exceptional circumstances of dangerous activity" would a single activity be enough to support personal jurisdiction.[27]

The second view was that a single contact within a state out of which arose an action in favor of a resident of the state was sufficient to meet the requirements of the Fourteenth Amendment. This view emphasized the Court's declaration that the sufficiency of the contacts was not to be measured by mechanical or quantitative standards. It interpreted the reference to *Hess v. Pawloski* to mean that the foundation or theory underlying the fair play or reasonableness basis was the police power of the state to protect those falling within the ambit of the state's protection from problems or evils arising from changed conditions. Thus, the tremendous increase in transactions between nonresidents and residents caused by our commercial expansion and rapid means of transportation and communication giving rise to legal claims, has underscored the problem of getting redress for these claims. Under such interpretation, singlenss of contact or continuity of acts is immatrial as is dangerousness of the act in question. The theory emphasized the interest of the state in aiding its citizens to secure redress for alleged wrongs committed within the state.[28]

It was apparent that an authoritative declaration from the Supreme Court was needed to clarify the scope of the new basis. This declaration came in the *McGee* case, where the Court adopted the view of the courts that had given the "fair play" basis the broadest scope and held a single-act statute valid.

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[25] *Supra* note 3, at 318.
[26] *Ibid.*
[27] Latimer v. S/A Industrias Reunidas F. Matarazzo, 175 F. 2d 184 (2d Cir. 1949, *cert. denied,* 338 U.S. 867 (1949).
[28] This was the view taken principally by many of the state legislatures. See notes 32-36 *infra.*

THE McGEE CASE

In 1944, one Franklin, a resident of California, purchased a life insurance policy from the Empire Mutual Insurance Company, an Arizona corporation. In 1948, the International Life Insurance Company agreed with Empire Mutual to assume its insurance obligations. International then mailed a reinsurance certificate to Franklin in California offering to insure him in accordance with the terms of the policy he held with Empire Mutual. He accepted this offer and from that time until his death in 1950 paid premiums by mail from his California home to International's Texas office. Franklin's mother was the beneficiary under the policy. She sent proofs of his death to the respondent but it refused pay, claiming that he had committed suicide. It appeared that neither Empire Mutual nor International had ever had any offices or agents in California. International had never solicited nor had any insurance business in California apart from the policy involved.

International was served by registered mail at its principal place of business in Texas, under a California statute subjecting foreign corporations to suit in California on insurance contracts with residents even though the corporation cannot be served with process within its borders.

The Supreme Court held that where, as here, the suit is based on a foreign corporation's life insurance contract, which has a substantial connection with the state of suit in that the contract was delivered in such state, the premiums were mailed from there and the insured was a resident thereof when he died, there was a sufficient contact to meet the "fair play" basis, namely, that a defendant "have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Thus the California court had personal jurisdiction of the defendant, International.[29]

In arriving at its decision, the Court considered several policy factors. Our changed national economy had made a great increase in commercial transactions between parties from different states, requiring expansion of the concept of due process limitations on personal jurisdictions over nonresidents. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend itself where he engages in economic activity. The Court further pointed out that the state has a

> . . . manifest interest in providing an effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forcd to follow the insurance company to a distant state in order to hold it legally accountable. When claims were small or moderate in-

[29] McGee v. International Life Insurance Co., 355 U.S. 220 (1957).

> dividual claimants frequently could not afford the cost of bringing an action in a foreign forum—thus in effect making the company judgment proof. Often the crucial witnesses—as here on the company's defense of suicide—will be found in the insured's locality. Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had its contract but certainly nothing which amounts to a denial of due process.[30]

In short, the rule of the *McGee* case is that under the "fair play" basis, contractual contacts of a nonresident with a resident of a state giving rise to an action in favor of a resident is sufficient to authorize the state to submit the nonresident to the jurisdiction of state courts as to such action.

STATE EXPANSION

Before a state can exercise personal jurisdiction, it must have authorized the exercise of such jurisdiction either by statute or judicial decision.[31]

The state of Florida,[32] Illinois,[33] Maryland,[34] North Carolina,[35] and Vermont,[36] have made major extensions of personal jurisdiction over nonresidents in tort and contract actions and other states have expanded by judicial decision. Some of these will now be examined for the purpose of determining whether or not they are within the bounds of the expansion heretofore approved by the decisions of the Supreme Court of the United States.

The prevalent type of statute applies only to corporations. The states, with a single exception, have not tried to subject nonresident individuals to jurisdiction but have confined expansion to foreign corporations. This is probably due to the still-remaining effects of *Pennoyer v. Neff*.[37] This variance in treatment does not seem warranted under the rationale of the *Shoe* case.[38] An individual, as well as a corporation, should be capable of having the "minimum contacts" required by the *Shoe* case. In accord with this view, the Illinois statute treats nonresident individuals and foreign corporations in the same manner.[39]

[30] Id. at 223, 224.
[31] Perkins v. Benguet Consol. Min. Co., 342 U.S. 437, 440 (1952).
[32] F.S.A. 47.16 (1953). This statute applies to persons who "carry on a business or business venture" in Florida if the suit arises out of this activity. See State *ex. rel.* Weber v. Register, 67 So. 2d 619 (Fla. 1953) and also Continental Copper and Steel Indus. v. "Red" Cornelius, Inc., 104 So. 2d 140 (Fla. 1958).
[33] ILL. CIV. PRAC. ACT §17 (1955).
[34] MD. ANN. CODE, 23 §88 (d) (1951); Now, 23 §92 (d) (1957).
[35] NORTH CAROLINA, G.S. §55-38.1 (1955), now §55-145 (1957).
[36] VT. REV. STAT. §1562 (1947).
[37] Ehrenzweig, *Pennoyer is Dead-Long Live Pennoyer,* 30 ROCKY MT. L. REV. 285, 292 (1958).
[38] Dambach, *Personal Jurisdiction: Some Current Problems and Modern Trends,* 5 U.C.L.A. L. REV. 198, 221 (1958).
[39] *Supra* note 33.

Another general observation on these statutes is that they invariably require the action to arise out of (or be connected to) the contact with the forum state. This is so whether the action sounds in tort or contract. This was the case in both the *International Shoe* and *McGee* cases and apparently has established itself as a requirement of due process where only "minimum contact" is involved.

TORT

Most of these statutes extend personal jurisdiction to a single tortious act. Thus, the Illinois statute provides that the Illinois Courts have jurisdiction over any cause of action arising out of "the commission of a tortious act within this State."[40] This statute was held valid by the Supreme Court of Illinois in *Nelson v. Miller*.[41] In this case, a Wisconsin resident sent his employee into Illinois for the purpose of delivering some appliances. While the employee was delivering one appliance he requested the plaintiff to assist in unloading it. The plaintiff alleged that in the course of this operation the defendant's employee negligently pushed the stove so as to sever one of the plaintiff's fingers. The above activities were the only contact with Illinois by the defendant. Plaintiff had defendant served personally in Wisconsin under the Illinois statute. The defendant raised the issue of the statute's constitutionality. The Supreme Court of Illinois held the statute valid as applied to the above facts by analogy to the basis of jurisdiction in automobile accident and sale of security cases. The court stated:

> The question before us is not materially different from that which was settled more than a generation ago with respect to statutes providing for substituted service on nonresident motorists who caused injury within a State. The advent of the automobile and the rapid extension of its use had underscored the problem of the nonresident who enters the State, causes injuries, and withdraws to the relative sanctuary of his residence beyond the State's borders. In such circumstances the application of old, rigorous concepts of "due process of law" to shield the defendant from the process of the courts of the State where the accident occurred actually resulted in injustice to the persons injured. In many cases redress for the injury, obtainable only in a foreign court at considerable expense and under substantial handicaps, was a practical impossibility. In the light of this situation, there was no injustice to the nonresident in a requirement that he return, to make his defense, to the place to which he had come voluntarily—to the place in which the injury was inflicted. In the great majority of cases, because of the availability of witnesses, the applicability of local law, and other factors, that place was the most convenient forum for trial. It was inevitable that State legislatures should be aroused by the social

[40] *Supra* note 33, §17 (1) (b).
[41] 11 Ill. 2d 378, 143 N.E. 2d 673 (1957).

> problem thus created, and that they should take steps to make the nonresident motorist amenable to the process of local courts. It was equally inevitable that the courts would hold that statutes enacted in response to this need were valid exercises of the police power, not on conflict with constitutional guaranties. . . .[42] The social problems resulting from automobile accidents, or as in *Doherty* from the sale of securities may be of greater magnitude than those resulting from other tortious conduct generally; but the determination that the degree of need is such as to call for remedy is to be made by the legislature and not by the courts. The rational basis of the decision upholding the nonresident motorist statutes is broad enough to include the case in which the nonresident defendant causes injury without the intervention of any particular instrumentality. The legislature may direct its policy to the fact of the injury as well as to its probability.[43]

The court was also of the opinion that the true basis of jurisdiction in these cases is to be found "in the legitimate interest of the State in providing redress in its courts against persons who, having substantial contacts with the state, incur obligations to those entitled to the State's protection."[44]

The court cited two other state decisions and statutes in support of its holding. One citation involved a Vermont statute which provided for jurisdiction over any foreign corporation which "commits a tort in whole or in part in Vermont against a resident of Vermont."[45] The Vermont court had already ruled the statute valid in *Smyth v. Twin State Improvement Corporation.* The tortious conduct in this case involved the negligent repairing of a roof by the nonresident defendant corporation in Vermont.[46]

Another decision of interest pointed out in the *Nelson* case is *Johns v. Bay State Abrasive Products Co.,*[47] which held valid a Maryland statute subjecting foreign corporations to jurisdiction in "any cause of action arising out of a contract made within this state, or a liability incurred for acts done within this state, whether or not such foreign corporation is doing or has done business."[48] It should be noted that in contrast to the *Smyth* case the court here did not rely solely on the alleged tort alone on which to find a basis, but the court pointed out other activities of the defendant in the state.

In a recent decision, *Painter v. Home Finance Company,* the North Carolina court held that its courts could validly exercise jurisdiction over a nonresident corporation under its statute where the cause of action arose out of tortious conduct of defendant's agents committed

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[42] *Id.,* 143 N.E. 2d at 677.
[43] *Id.,* 143 N.E. 2d at 679.
[44] *Ibid.*
[45] *Supra* note 36.
[46] 116 Vt. 569, 80 A. 2d 664 (1951).
[47] 89 F. Supp. 654 (D. Md. 1950).
[48] *Supra* note 34.

in North Carolina. The conduct alleged consisted of the wrongful taking of a mortgaged vehicle, invasion of privacy, unlawful public threat of arrest, and for duress and suffering resulting from the threat.[49]

While the United States Supreme Court has not actually ruled that a single tort is a sufficient basis in anything but the automobile accident cases, the *McGee* case employed the same rationale as the *Nelson* case[50] and did tactly recognize the validity of the *Smyth* decision by referring to it in a footnote. Therefore, it would appear that in cases where the defendant has committed a tortious act in the forum state and injury results there out of the act, there is a sufficient basis under the *International Shoe* and *McGee* cases.

In all of the foregoing cases there were some acts committed by the defendant or his agent in the forum state. In some of the situations that arise it is apparent that the only contact may be a resulting injury from use of an item in the state. Will the mere fact of injury alone be an adequate basis of jurisdiction on which to ground an *in personam* action?

In *Hellreigel v. Sears, Roebuck and Co.*, an attempt was made to expand the basis to an injury resulting from the use of a lawnmower within Illinois. The lawnmower in question was sold outside Illinois to an independent distributor who resold the lawnmower to the plaintiff in Illinois. The defendant's only contact with Illinois had been the use of his products there. The court held that the Illinois statute was not intended to cover a situation such as this. It was the purpose of the statute that certain acts must be committed in Illinois and more than mere damage must occur there.[51] By way of dicta, however, the court added:

> Since I hold that sections 16 and 17(1)(b) cannot be read to authorize out of state service . . . [in this case]. I do not reach the question whether a different reading of those provisions would render them unconstitutional, but I doubt that it would. . . .[52]

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[49] 245 N.C. 576, 96 S.E. 2d 73 (1957). The statute involved is cited at note 35. It permits state courts to take jurisdiction over any cause of action arising "Out of tortious conduct in this State, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance." N.C. G.S. §55-145 (a) (4) (1957).

[50] Compare the language of *McGee, supra* note 30, with that of the *Nelson* case, *supra* note 42.

[51] 157 F. Supp. 718 (N.D. Ill. 1957). In a case where the plaintiff failed to plead that any of the tortious acts in an action in fraud occurred in Illinois, the court held that the state could not exercise jurisdiction. Hardy v. Banders Life and Casualty Co., 19 Ill. App. 2d 75, 153 N.E. 2d 269 (1958).

[52] 157 F. Supp. at 721. Ehrenzweig, *supra* note 37, at 289, suggests that the Illinois Act could be interpreted to read that the occurrence of the injury would be sufficient to give Illinois jurisdiction as seen in the *McGee* language that a state has a "manifest interest" in providing residents with a means of redress. The author points out that such a result would be very harsh even

A North Carolina statute gives that state jurisdiction in situations where the foreign corporation reasonably expects its product to be used in North Carolina and the cause of action arises from such use of the product in the state. The court has refused to allow extension of personal jurisdiction under this provision.[53]

It would appear that mere injury from use of defendant's product in a state is not an adequate minimum contact. No decision of the Supreme Court of the United States nor rationale upon which it is founded appears to warrant a conclusion that it would be sufficient.

Contract

Insurance comprises the greater part of litigation in the contract field. As to these, the *McGee* case has made objective much of what was left unsettled previously.

Insurance has long been regarded as an area of law that can be subjected to heavy state regulation.[54] It involves a great many of the people of a state and the insurer may never do anything but use the mails to secure or carry on business. Because of the prevalence and special interest, insurance is usually regarded in the same police power category as autos and securities. Whether or not this was the tenor of the *McGee* case is not certain and perhaps the rule of the case should not be restricted to the insurance field but extended to include all contracts. The special interest of the state in insurance has given rise to special legislation in most states aimed at subjecting nonresident insurers to jurisdiction for very minimum contacts with the state's residents.[55] A recent state court decision which involved a situation much like the *McGee* case is *Ross v. American Income Life Insurance Company*.[56]

In this case the North Carolina court held that the state could exercise jurisdiction over a cause of action arising out of one policy delivered in the state. The case relied on *McGee* to quite an extent. The court did point out however that only the cause of action for fraudulent breach of policy arose *ex contractu* and was within the scope of the statute. But the cause of action for deceit in inducing the plaintiff to purchase was *ex delicto* and did not arise out of the contract, thus it was not within the statute's purpose.

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granted that an injury is a substantial contact with the state because the defendant has no control over the connection with the state.

[53] N.C.G.S. §55-145 (a) (3) (1957). Erlanger Mills Inc. v. Cohoes Fibre Mills, Inc., 239 F. 2d 502 (4th Cir. 1956). The court said that "It might require corporations from coast to coast having the most indirect, casual, and tenous connection with a state to answer frivolous law suits in its courts. To permit this could seriously impair the guarantee which due process seeks to secure." (p. 507). See also Putnam v. Triangle Publications Inc., 245 N.C. 432, 96 S.E. 2d 445 (1957).

[54] Travelers Health Association v. Virginia, 339 U.S. 643, 648 (1950).

[55] See 44 A.L.R. 2d 416 (1955) for a complete discussion of this area.

[56] 232 S.C. 433, 102 S.E. 2d 743 (1958).

It can be argued that the *McGee* case reasoning should be restricted to its special regulatory field.[57] This would take much out of the effect of the decision in regard to the general contract field. However, in the *McGee* case, the Court again referred in a footnote to a state decision involving a general contract. This was the *S. Howes Co. v. W. P. Milling Co.*[58] In this case the action was for a breach of warranty. The Oklahoma court stated as to the defendant's contention that there could be no basis of jurisdiction:

> Such argument is not based on reason and justice. Courts of a particular state should have jurisdiction over all disputes arising out of contracts made (to be performed) within this state, regardless of the number of contracts of the defendant which were made (or to be performed) there.[59]

Several states have now included in their statutes provisions aimed at gaining jurisdiction over nonresidents by virtue of a single contract in the state.[60] In view of the tacit approval of the *S. Howes Co. v. W. P. Milling Co.* case in *McGee,* such statutes are probably valid.[61]

EXPANSION UNDER EXISTING "DOING BUSINESS" STATUTES

In the discussion thus far the cases have involved statutes drawn by legislatures to meet the new "jurisdictional yardstick" set up by the *International Shoe* case and now implemented by the *McGee* decision. Some states have met the new standard by judicially adapting old "doing business" statutes to new tests set up by these cases. The general theory underlying this is that the basis required by the particular state's "doing business" statute is to be equated with the minimum contacts test as expressed by our highest Court.[62] There is an indica-

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[57] Hoffman, *The Plastic Frontiers of State Judicial Power,* 24 BROOKLYN L. REV. 291, 305, 307 (1958).

[58] — Okl. —, 277 P. 2d 655 (1954). The statute was a typical "doing business" provision. 18 OKL. STAT. ANN. §§1.17 and 472 (1951).

[59] *Id.,* 277 P. 2d at 657. The case was dismissed on stipulation after appeal to the Supreme Court, 348 U.S. 983 (1955).

[60] *Supra* note 34. The Illinois provision, CIV. PRAC. ACT §17 (1) (a), does not specifically state that it covers "any cause of action arising out of a contract made within the state," as does the Maryland statute. However, it would probably be extended to apply to the single contract situation, under its provision "The transaction of any business within this State."

[61] Another recent expansion of state jurisdiction is the presence in the forum of a single risk insured by the defendant. Thus, in Pugh v. Oklahoma Farm Bureau Mutual Insurance Co., the court held valid use of a Louisiana statute subjecting to the jurisdiction of the state a foreign liability insurer, whose only contact with the state was the one insured auto. 159 F. Supp. 155 (E.D. La. 1958). The provision involved was a 1956 amendment to Louisiana's nonresident motorist statute, LSA-R.S. 13: 3474. Illinois' CIV. PRAC. ACT 17 (1) (d) provides for jurisdiction over anyone "Contracting to insure any person, property or risk located within this state at the time of contracting."

[62] Henry R. Jahn and Son, Inc. v. Superior Court, 49 Cal. 2d 855, 323 P. 2d 437 (1958); Carl F. W. Borgward G.M.B.H. v. Superior Court, — Cal. 2d —, 330 P. 2d 789 (1958).

tion from *dicta* in a recent Wisconsin decision that this state's statute will be so interpreted.[63]

> We have no hesitancy in holding that the objective of the statute was to give citizens of Wisconsin the right to make use of the courts of this State in instituting causes of action against any foreign corporation, which actually is carrying on business activities within the State, subject only to such limitations as are imposed by the United States Constitution. We feel certain that neither the Judicial Council in proposing the changed wording of Sec. 262.09(4) nor this court in promulgating the same, had any intention to hamstring such right by adopting into such subsection any definitions of "doing business" laid in past court decisions, which definitions contained limitations which mistakenly were assumed to be required by the United States Constitution.[64]

CONCLUSION

Just how far courts and legislatures can proceed in expanding jurisdiction remains a problem. Since the *McGee* case the Supreme Court has spoken again. In *Hanson v. Denckla*,[65] after referring to the trend toward expanding jurisdiction under the *International Shoe* and *McGee* cases, the Court said:

> It is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. . . . Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. *They are a consequence of territorial limitations on the power of the respective States.* However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him.[66] [Emphasis supplied.]

It would seem from this language that a warning sign is up. State courts and legislatures should tread cautiously in expanding jurisdiction, otherwise litigants may, after obtaining judgments by default, find them invalid because of lack of jurisdiction and unenforceable under the Full Faith and Credit Clause.[67]

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63 Huck v. Chicago, St. Paul, Minn. and O. Ry. Co., 4 Wis. 2d 132, 90 N.W. 2d 154 (1958).

64 *Id.* at 137, 90 N.W. 2d at 157, 158.

65 2 L. Ed. 2d 1283 (1958).

66 *Id.* at 1296.

67 An excerpt from the Report of the Committee on Federal-State Relationships as affected by Judicial Decisions of the Conference of Chief Justices points this out: "Formalistic doctrines and dogmas have been replaced by a more flexible and realistic approach, and this trend has been carried forward in subsequent cases leading up to and including McGee v. International Life Insurance Co., . . . until halted by Hanson v. Denckla. . . ." U.S. News and World Report, October 3, 1958, p. 96. See also Keane and Collins, *supra* note 11, at footnote 48 of that article.