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# Foreign Corporations - Minimum Contacts - Due Process

## Foreign Corporations — Minimum Contacts — Due Process

Uppgren, an employee of the United States Department of the Interior, was killed when the helicopter in which he was a passenger, crashed in Minnesota. The helicopter was manufactured by the Hughes Tool Co., a Texas corporation, with its principal place of business in California. The aircraft was sold to the Department of Interior[1] by Loving Chevrolet Co. (Loving), a Maryland corporation, with its principal place of business in that state. The plaintiff,[2] asserting claims of breach of implied warranty and negligence, brought suit in the United States District Court for the District of Minnesota for the wrongful death of the deceased. The named defendants in the action were the Hughes Tool Co., Loving Chevrolet Co., and Executive Aviation Services, Inc.[3]

Jurisdiction was obtained over defendant Loving by substituted service of process on the Minnesota Secretary of State and notice given to the defendant pursuant to the Minnesota "one-act" statute.[4] Loving moved to quash the service asserting the same to be a denial of due process within the meaning of the Fourteenth Amendment.

The facts were undisputed that Loving had never ". . . advertised, conducted any sales campaign, located any officer, agent, salesman, employee or office in Minnesota. . . . never solicited business by mail, telephone or otherwise . . . nor . . . entered into any contract or other significant legal relationship with nor made any sale to . . ." a resident of Minnesota.[5] The only contact or tie between Loving and the State of Minnesota was the locality of the crash of the helicopter Loving sold to the Department of Interior. *Held*: The single fact that a helicopter sold by a Maryland distributor caused injury in Minnesota to a resident of that state is not sufficient to confer in personam jurisdiction in Minnesota over the distributor.

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[1] The contract for sale of the helicopter was executed in Washington, D.C. or Maryland.

[2] Plaintiff was duly appointed as trustee of the next of kin of the deceased to bring the wrongful death action.

[3] Executive Aviation Services, Inc., a Maryland corporation, with its principle place of business in Maryland, purchased defendant Loving's helicopter distributorship sometime between the sale of the helicopter in question to the United States and the crash of the helicopter in Minnesota.

[4] "If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the state of Minnesota and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort. Such process shall be served in duplicate upon the secretary of state . . . and the secretary of state shall mail one copy thereof to the corporation at its last known address. . . . The making of the contract or the committing of the tort shall be deemed to be the agreement of the foreign corporation that any process against it which is so served upon the secretary of state shall be of the same legal force and effect as if served personally within the state of Minnesota." Minn. Stat. Ann. § 303.13(1), (3) (1957).

[5] Uppgren v. Executive Aviation Services, Inc., 304 F.Supp. 165 (Minn. 1969).

*Uppgren v. Executive Aviation Services, Inc.*, 304 F. Supp. 165 (D. C. Minn. 1969).

## I. Early Development of In Personam Jurisdiction Over Foreign Corporations

For many years, it was thought that in personam jurisdiction could only be obtained over a corporation in the state of its incorporation.[6] However, this theory proved to be less than satisfactory from a jurisdictional point of view as corporate activity often extended beyond the boundaries of its creating sovereign.[7] In the mid-nineteenth century, two theories were developed which afforded states valid in personam jurisdiction over a foreign corporation. The first of those theories to emerge was predicated upon a fictional or actual "consent" of the corporation to submit to the jurisdiction of the courts of any state in which it did business.[8] Since the permission of a state was a prerequisite to a foreign corporation's conduct of business within that state's borders, it was thought that the permitting sovereignty could condition its approval upon the corporation's consent to jurisdiction. By doing business within a state, a corporation impliedly consented to be sued within that state. The second theory was predicated upon the corporation's "presence" within the forum state that would make it amenable to suit in that state.[9] To be deemed *present* within a state, the corporation needed only to conduct sufficient activities to be considered "doing business" within the state.[10] Since both the "consent" and the "presence" theories were dependent upon a judicial determination that the corporation was "doing business" within a state, *doing business* soon became a test in itself without reference to consent or presence.

There was no mechanical rule or formula as to just what activity constituted "doing business," but a number of factors were considered by the courts. Among these factors were: The amount[11] and continuity[12] of the activity; whether or not the corporation had a local agent or office within the forum state;[13] telephone listings in the forum;[14] the existence of local bank accounts;[15] and convenience of the forum and the availability of other forums.[16] None of these factors alone were determinative.[17] These factors were not uniformly used or applied. This led to inconsistent decisions and a certain amount of confusion in the area. Further confusion

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[6] Bank of Augusta v. Earle, 38 U.S. (13 Pat.) 512 (1839).

[7] However, there did appear to be a requirement that corporations organized and chartered under the laws of the United States be sued only in the federal courts.

[8] Lafayette Insurance Co. v. French, 59 U.S. (18 How.) 404 (1856).

[9] International Harvester v. Kentucky, 234 U.S. 579 (1914).

[10] Philadelphia & Reading Ry. Co. v. McKibben, 243 U.S. 264 (1917).

[11] *See* Cooper Mfg. Co. v. Ferguson, 133 U.S. 127 (1885).

[12] Hutchinson v. Chase & Gilbert, 45 F.2d 193 (2d Cir. 1930).

[13] Star Elkhorn Coal Co. v. Red Ash Pocahontas Coal Co., 102 F.Supp. 258 (E.D. Ky. 1951).

[14] Consolidated Cosmetics v. D-A Pub. Co., 186 F.2d 906 (7th Cir. 1951).

[15] Glick v. Empire Box Corp., 119 F.Supp. 224 (S.D. N.Y. 1954).

[16] Hutchinson v. Chase & Gilbert, 45 F.2d 193 (2d Cir. 1930).

[17] *See* Richards v. North American Clay Co., 41 F.Supp. 528 (S.D.N.Y. 1941); Action v. Washington Times, 9 F. Supp. 74 (Md. 1934).

arose in relation to the "drummer"[18] or sales solicitation cases.[19] It was held under the "solicitation plus rule"[20] that solicitation of sales alone was not sufficient to constitute "doing business" in the forum state for jurisdictional purposes.

## II. Minimum Contacts—"Doing Business"

In *International Shoe v. Washington*,[21] the United States Supreme Court attempted to answer the question as to the kind and amount of activity necessary to satisfy the test of "doing business." In *International Shoe* the corporate defendant claimed that it could not be subject to the jurisdiction of the courts of Washington within the limits of the due process clause of the Fourteenth Amendment of the United States Constitution. The Supreme Court in this landmark decision, 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'* [Emphasis added.]."[22] The Court found that *International Shoe* had established "sufficient contacts"[23] with the State of Washington to cause it to be amenable to suit in the courts of that state.

Thus, while recognizing the previous "consent" and "presence" theories,[24] the Supreme Court in *International Shoe* substituted the new due process test of "minimum contacts."[25] The Court, however, did not prescribe any rule of thumb as to which and how many corporate activities were necessary to satisfy the test; it merely stated that the contacts in *International Shoe* were "sufficient"[26] to meet the due process requirements. The Court did, however, state that the test was qualitative in nature as opposed to quantitative, indicating that each case would probably have to be determined on its own facts.[27]

The emergence of the minimum contacts doctrine appeared to be a significant departure from the earlier "consent" and "presence" theories, and seemed to open new horizons to the states in securing *in personam* jurisdiction over non-residents. In view of the Supreme Court's failure to prescribe any rule as to which contacts would satisfy the new test, many state

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[18] Peoples Tobacco Co. v. American Tobacco Co., 246 U.S. 79 (1918).

[19] These "drummers" were generally without power to sell, collect or extend credit or to bind the corporation in any way but would merely solocit orders that would be accepted or rejected by the corporation outside the state.

[20] Green v. Chicago, Burlington & Quincey Ry., 205 U.S. 530 (1907).

[21] 326 U.S. 310 (1945). The defendant, International Shoe, a Delaware corporation with its principle place of business in Missouri, was held to be subject to the courts of the state of Washington where its only activity within that state was the employment of several salesmen domiciled in Washington with authority to solicit orders for the defendant's products. The orders were accepted or rejected by the defendant in Missouri, and goods were shipped to Washington buyers from outside the state.

[22] International Shoe v. Washington, 326 U.S. 310, 316 (1945).

[23] *Id.* at 320.

[24] *Id.* at 317.

[25] *Id.* at 316.

[26] *Id.* at 320.

[27] *Id.* at 319.

legislatures took it upon themselves to do so. A multitude of new "long arm" statutes were passed by the states most of which proscribed the type and quantity of activity necessary to subject a foreign corporate defendant to the jurisdiction of its courts.[28] Among those new laws were the so-called "one-act" or "minimum contacts" statutes.[29]

Jurisdiction under the Minnesota Statute[30] is based upon a corporation's participation in either of two activities: (1) The corporation entering a contract with a resident[31] of Minnesota to be performed in whole or in part by either party in Minnesota; and (2) a corporation committing a tort in whole or in part in Minnesota against a Minnesota resident. Under the statute, a corporation is deemed to be doing business in Minnesota and has impliedly consented to the appointment of the Secretary of State as its agent to receive service of process, if it can be linked to either of the above activities. For purposes of notice,[32] the act requires that a copy of the process be sent to the corporation.[33] Although the language of the statute contains ghosts of the old theories, it is clearly intended to stretch the minimum contacts doctrine to its constitutional limits.

Service of process under this type of statute is now provided for by the Federal Rules of Civil Procedure for actions brought in the federal courts.[34] However, ". . .[t]he validity of service under such statutes depends upon the satisfaction of two requirements. First, the act upon which the service is predicated must be one which the state statute contemplates as a basis for such service. Second, the nonresident defendant must have such minimum contacts with the state that in personam service made upon him outside the forum state does not violate due process."[35]

*A. The Minnesota Supreme Court*

The Supreme Court of Minnesota has upheld jurisdiction obtained under the Minnesota "one-act" statute in five principal cases. In *Beck v. Spendler*,[36] decided in 1959, the court indicated that a single contact or tort

[28] 26 Corp. J. 75 (1970).

[29] *See* 26 Corp. J. 75, 81, 82 (1970).

[30] *See* note 4 *supra.*

[31] A non-resident may also avail himself of the use of the statute in actions based upon contract. *See* Williams v. Connolly, 227 F. Supp. 539 (Minn. 1964); Ewing v. Lockheed Aircraft Corp., 202 F. Supp. 216 (Minn. 1962).

[32] There must be adequate notice given the non-resident defendant, either by mail or personal service to satisfy due process. *See* J. Moore, 2 Moore's Federal Practice, ¶ 4.25 [1] (2 ed. 1967).

[33] Some statutes provide for direct service upon the non-resident defendant, thus dispensing with the fiction of an implied appointment of an agent to receive service. *See* Ill. Rev. Stat. c. 110, § 16.17 (1967); Wisc. Stat. Ann. §§ 262.05-06 (1961); N. Y. C.P.L.R. §§ 302, 313 (McKinney 1963).

[34] Fed. R. Civ. P. 4(e) provides: "Whenever a *statute* or *rule of court* of the *state* in which the district court is held provides . . . for service of summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, . . . service may . . . be made under the circumstances and in the manner prescribed in the statute or rule [Emphasis added.]." Fed. R. Civ. P. 4(d) provides: "Service shall be made . . . upon a . . . foreign corporation . . .by delivering a copy of the summons and of the complaint to an officer, a managing general agent, or to any other agent authorized by appointment or by law to receive service of process and, if such . . . if the statute so requires, by also mailing a copy to the defendant. . . . [I]t is also sufficient if the summons and complaint are [delivered] . . . in the manner prescribed by the . . . state in which the district court is held. . . . [Emphasis added.]."

[35] J. Moore, 2 Moore's Federal Practice, ¶ 4.41-1[3] (2d ed. 1967).

[36] 256 Minn. 543, 99 N.W. 2d 670 (1959). Plaintiff was a purchaser who sought recovery for breach of contractual warranty. The defendant had additional contacts within the state, but the court did not give weight to them in holding the defendant amenable to the courts of Minnesota.

within the purview of the one-act statute, could give rise to valid *in personam* jurisdiction over a foreign corporate defendant. While noting and approving the trend of expanding the permissible jurisdiction of state courts over nonresident corporations, the court reiterated the "quality" rather than "quantity" test of "minimum contacts" from *International Shoe* and concluded, ". . . [i]t seems only fair to permit one who has suffered a wrong at the hands of a resident of a foreign state to sue in his own state. . . ."[37]

*Atkins v. Jones & Laughlin Steel Corp.*[38] was the first major tort case which upheld jurisdiction procured under the "one-act" statute. The court, in holding that the tort application of the statute was not a violation of due process, stated that a manufacturer ". . . is liable to an ultimate user of his product or to others who may be reasonably expected to be in the vicinity of its probable use for injuries arising from his negligence in the manufacture."[39] The court held that even though the "tortious act" (negligence) occurred outside the state, the "tort" (the wrong) occurred within the state, as the locus of the tort is the forum where the last event (injury) occurs.[40]

In *Dahlberg v. Western Hearing Aid Center, Ltd.*,[41] the court appears to have departed from its effort in *Atkins* to extend state jurisdiction to its constitutional limits. Jurisdiction was upheld in *Dahlberg*, but the defendant had several additional contacts with the forum and these additional contacts appear to have been taken into consideration by the court.[42] In *Amedak v. Michigan Door Co.*,[43] however, the court reaffirmed its position taken in *Atkins*. *Amedak* also involved contacts in addition to the one upon which jurisdiction was asserted, but the court, relying on *Atkins*, held that the injury alone would provide sufficient contact between the defendant and the state of Minnesota and, ". . .[t]he solicitation of business in Minnesota, even though by mail, provides even greater contacts with [that] state than those present in *Atkins*. . . ."[44]

*Ehlers v. United States Heating and Cooling Mfg. Corp.*[45] is the most far-reaching Minnesota Supreme Court decision upholding the jurisdiction under the "one-act" statute. The court decided that, absent *specific* controlling authority dealing with federal constitutional limitations, it would follow the trend of its prior decisions. This decision was based upon the

[37] Beck v. Spindler, 526 Minn. 545, 550, 99 N.W. 2d 670, 677 (1959).

[38] 258 Minn. 571, 104 N.W. 2d 888 (1960). Plaintiff was injured due to the negligent packaging of a product. The foreign distributor corporation which shipped the product f.o.b. from outside the state was held to be subject to the jurisdiction of the Minnesota courts.

[39] Atkins v. Jones & Laughlin Steel Corp., 258 Minn. 571, 575, 104 N.W.2d 888, 892 (1960).

[40] *Id.* at 893; RESTATEMENT OF CONFLICT OF LAWS §§ 377, 378 (1934).

[41] 259 Minn. 330, 107 N.W.2d 381 (1961), *cert. denied*, 366 U.S. 961 (1961). Action was on an open account and notes executed, payable and delivered in Minnesota and purchased by the non-resident defendant.

[42] Dahlberg v. Western Hearing Aid Center, Ltd., 259 Minn. 330, 334, 107 N.W.2d 381, 385 (1961).

[43] 260 Minn. 54, 108 N.W.2d 607 (1961). Plaintiff was injured by a door negligently manufactured by the Michigan defendant.

[44] Amedek v. Michigan Door Co., 260 Minn. 54, 55, 108 N.W.2d 607, 608 (1961).

[45] 267 Minn. 56, 124 N.W.2d 824 (1963). Plaintiff sought recovery for property damage caused by an explosion of a boiler within the state manufactured by the defendant outside of the state. There were three successive sales of the boiler before it reached a Minnesota buyer.

fact that the product ". . . involved was manufactured . . . for use by the general public . . .[and] [i]t is not contended that the area of foreseeable use of the product was so limited as to exclude the state of Minnesota."[46] This liberal view taken by the Minnesota Supreme Court in the above cases also appears in decisions[47] under the state's other long-arm statutes.[48]

Jurisdiction under the Minnesota "one-act" statute was denied by the supreme court in *Fourth Northwestern Nat'l Bank v. Hilson Industries, Inc.*[49] There, the court found that the requisite minimum contacts were not present. The *Dahlberg*[50] rationale was applied here, but the opposite result was obtained on the basis that the defendant in *Hilson* did not have the additional contacts found in *Dahlberg* and had not enjoyed the benefit of the laws of Minnesota.[51] In *Hilson* "[t]he only connection with Minnesota . . . however remote . . . [was] the fact that the notes [were] payable [there]."[52] It appears that even conservative readings of the *Beck, Atkins, Ademek* and *Ehlers* cases would support the proposition that the Minnesota Supreme Court would uphold jurisdiction under the "one-act" statute when the corporate activity, even though establishing only a single contact with that state, falls within one of the two categories enumerated by the statute. The minor retreat taken in *Dahlberg* and the denial of jurisdiction in *Hilson* can probably be distinguished by the fact that both cases dealt with nonresident defendants who were buyers rather than sellers and it was the Minnesota resident who was obtaining the economic benefit[53] of the transaction prior to the time of the cause of action.

Minnesota is not the only state to offer a liberal interpretation of the minimum contacts doctrine. In the often cited case of *Gray v. American Radiator and Standard Sanitary Corp.*,[54] the Supreme Court of Illinois held that the manufacturer's injection of its product into the stream of commerce made it foreseeable that it would result in ". . . substantial use and consumption in [that] state . . ."[55] and the fact that the seller was not in privity with the buyer was not determinable. Similar holdings can be found in a multitude of jurisdictions.[56]

[46] Ehlers v. United States Heating and Cooling Mfg. Corp., 267 Minn. 56, 59, 124 N.W.2d 824, 827 (1963).

[47] *See* Danov v. ABC Freight Forwarding Corp., 266 Minn. 115, 122 N.W.2d 776 (1963); Brooks v. International Bro. of Boilermakers, 262 Minn. 253, 114 N.W.2d 647 (1962); Paulos v. Best Securities, Inc., 260 Minn. 283, 109 N.W.2d 576 (1961).

[48] *See* Minn. Stat. Ann. §§ 80.14(1), 540.152, 543.19 (1957).

[49] 264 Minn. 110, 117 N.W.2d 732 (1962). Defendant was a non-resident corporate buyer of notes. The only contacts with the state was the fact that the initial solicitation took place in Minnesota and the notes were payable in there.

[50] *See* note 41 *supra* and accompanying text.

[51] Fourth Northwestern Nat'l Bank v. Hilson Industries, Inc., 264 Minn. 110, 114, 117 N.W.2d 732, 736 (1962).

[52] *Id.*

[53] A few cases have referred to "economic benefit" as a factor to be considered in a due process determination.

[54] 22 Ill. 429, 176 N.E.2d 761 (1961). Plaintiff was injured due to an explosion of a water heater caused by a defective valve in that heater. Defendant foreign corporation was the manufacturer of the valve which was sold to a second foreign corporation and incorporated into the water heater. Defendant's only contacts with the forum state resulted from the fact that some of the water heaters ultimately reached Illinois consumers.

[55] 176 N.E.2d 761, 776 (1961).

[56] *See* Stephenson v. Duriron Co., 401 P.2d 423 (Alaska 1965). *cert. denied.* 382 U.S. 956 (1965); Phillips v. Anchor Hocking Glass Corp. 100 Ariz. 251, 413 P.2d 732 (1966); Anderson

The state supreme court interpretations of the minimum contacts test are, however, not necessarily controlling over other courts within that state. The issue of due process under the Fourteenth Amendment is a federal question, and although the state decisions are of weight, they are not binding upon a federal court.[57] Any self-imposed limitations upon jurisdiction by the states which go beyond the due process limitations, however, must be observed by the federal courts sitting in those jurisdictions.[58]

*B. The Supreme Court Of The United States*

The Supreme Court has set no rule other than the "minimum contacts" doctrine of *International Shoe* to aid in the determination of the jurisdictional limitations imposed upon the states by the due process clause. However, there have been several post *International Shoe* Supreme Court cases which may lend some light to the Court's interpretation of "minimum contacts."

In *Travelers Health Ass'n v. Virginia ex. rel. State Corporation Comm'n.*,[59] the Supreme Court reinforced the *International Shoe* doctrine in the insurance area. The Court concluded that the requisite minimum contacts were present in that case, and in making this qualitative determination mentioned several factors worthy of consideration. Among those factors were: the interest of the forum state in requiring insurance companies to faithfully perform their obligations under the policies, the inconvenience of a policy holder in reaching the insurer elsewhere due to the likely minimal value of the insured's claim, and also, the availability of witnesses and evidence in the forum state.[60]

In 1952 the Court decided *Perkins v. Benguet Consolidated Mining Co.*[61] In that case it was held that so long as the corporation has the necessary minimum contacts with the forum state, due process does not require that the cause of action arise out of those contacts.[62] The Court also noted that a state *may* subject a foreign corporation to *in personam* jurisdiction to the full extent permitted by the due process clause, but is not required to do so.[63] The furthest extension of jurisdiction over nonresidents approved by the Supreme Court was in *McGee v. International Life Insurance Co.*,[64]

v. National Presto Industries, Inc., 135 N.W.2d 639 (Iowa 1965); Roche v. Floral Rental Corp., 95 N.J. Super. 555, 232 A.2d 162 (1967) *aff'd.*, 51 N.J. 26, 237 A.2d 265 (1968); Feathers v. McLucas, 41 Misc. 498, 245 N.Y.S. 2d 282 (Sup. Ct. 1963), *rev'd.*, 21 App. Div. 2d 558, 251 N.Y.S. 2d 548 (1964); Metal-Matic, Inc. v. Eighth Judicial District Court, 415 P.2d 617 (Nev. 1966).

[57] Ark-La. Feed & Fertilizer Co. v. Marco Chem. Co., 292 F.2d 197 (8th Cir. 1961); Vasser v. Raines, 274 F.2d 369 (10th Cir. 1959), *cert. denied.*, 362 U.S. 982 (1960); Pulson v. American Rolling Mill Co., 170 F.2d 193 (1st Cir. 1948).

[58] Jennings v. McCall Corp., 320 F.2d 64 (8th Cir. 1964).

[59] 339 U.S. 643 (1950). Travelers was a Nebraska insurance corporation with about 800 "members" (policy holders) in Virginia. All business was transacted in Nebraska and new members were obtained by recommendations from existing members. Travelers had no agents, offices or property in Virginia. Travelers was served by registered mail for alleged violations of Virginia's "Blue-Sky Law."

[60] *Id.* at 648, 649.

[61] 342 U.S. 437 (1952). The defendant, Philippines Mining Corporation held directors meetings and kept bank accounts within the state of Ohio during World War II. Summons was served on the president of the corporation personally at his home in Ohio.

[62] *Id.* at 446.

[63] *Id.*

[64] 355 U.S. 220 (1957).

where the existence of a single insurance contract with a California resident was considered sufficient to satisfy the requirements of due process. Among the factors considered by the Court in reaching this decision were: the manifest interest of California in providing an effective means of redress for its residents; the hardship on the plaintiff as compared with that of defendant in having to travel to a distant forum; and the availability of witnesses in the forum state.[65]

Had *McGee* been the last word by the Supreme Court on the requirements of due process and the meaning of "minimum contacts," it could have meant the end of nearly all territorial limitations on jurisdiction over nonresidents. This was not the case, however, as the next year the Court decided *Hanson v. Denkla*,[66] a case which is often cited as a limitation upon the Court's liberal decision in *McGee*. Speaking on the trend of diminishing the limitations of due process, Chief Justice Warren, speaking for the *Hanson* Court, stated:

> But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of the state courts. . . . 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 prerequisite to its exercise of power over him. . . . The *unilateral* activity of those who claim some relationship with a nonresident cannot satisfy the requirement of contact with the forum state. The application of the 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 *purposely* avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws [Emphasis added.].[67]

The Court in *Hanson* did not overrule its decision in *McGee*, but merely distinguished *McGee* on its facts.[68] The language is clear that the defendant must perform an affirmative "act," but it is not clear whether that act can be performed outside, but having an effect within, the state, or whether the "act" must be performed totally within the state. It appears, however, that the former may be sufficient to meet the *Hanson* test.[69]

The effect of *International Shoe* and subsequent Supreme Court decisions have reduced the due process limitations of personal jurisdiction over nonresident defendants. But, the extent to which these requirements have been diminished is not yet clear. The Court has stated that each case must be decided upon its own facts,[70] but has offered no formula by which this determination can be made. However, it may be possible to extract some general guidelines from its decisions. The Court has seemingly ". . . set up a dual test for determining whether a court may take jurisdiction without

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[65] *Id.* at 224.

[66] 357 U.S. 235 (1958). The defendant Delaware Trust Company's sole contact with the forum state (Florida) was due to the fact that it had been named trustee of the decedent's estate prior to the decedent's becoming a resident of Florida.

[67] *Id.* at 251, 253.

[68] *Id.* at 250, 252, 253.

[69] *Due Process and Foreign Corporations—The Milwaukee Single Act Statute*, 50 Minn. L. Rev. 946, 951 (1966).

[70] Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437, 445 (1952).

depriving a defendant of due process of law. The first requirement is that there must be some minimum contact with the state that results from an affirmative act of the defendant . . . [and] . . . in addition . . . it must be fair and reasonable to require the defendant to come into the state and defend the action."[71] It remains to be seen just how well the lower federal courts will observe those guidelines.[72]

*C. The Court Of Appeals For The Eighth Circuit*

The Eighth Circuit has decided at least four cases[73] dealing with the due process question under consideration. The most recent of those decisions was *Aftanase v. Economy Baler Company*,[74] decided in 1965. In *Aftanase* the Court thoroughly examined the Minnesota Supreme Court decisions on the subject and concluded that although these decisions were of weight, they were not binding upon the federal court in the determination of a federal question.[75] The court also noted considerable conflict among the Minnesota federal district court decisions involving the Minnesota "one-act" statute.[76] In light of this disparity, the *Aftanase* court set out to examine the relevant United States Supreme Court decisions on the issue and extracted their own set of guidelines from those cases.[77] The court noted five major factors to be considered in the determination of whether *in personam* jurisdiction over a nonresident comports with due process. These factors were: (1) The quantity of the contacts; (2) the nature and quality of the contacts; (3) the source and connection of the cause of action with these contacts; (4) the interest of the forum state; and (5) convenience.[78] The primary factors to be considered were numbers one through three, while four and five should receive lesser attention.[79] Although no attempt was made to indicate the number of factors that must

[71] J. Moore, 2 Moore's Federal Practice, ¶ 4.25[5] (2d ed. 1967).

[72] *See* Deveny v. Rheem Manufacturing Co., 319 F.2d 124 (2d Cir. 1963); W. H. Elliot & Sons Co. v. Nuodex Products Co., 243 F.2d 116 (1st Cir. 1957); Etzler v. Dille & McGuire Mfg. Co., 249 F. Supp. 1 (W. D. Va. 1965); Nationwide Motorist Ass'n of Michigan, Inc. v. Nationwide Motorist Ass'n, Inc., 244 F. Supp. 490 (W. D. Mich. 1965).

[73] *See* Simkins v. Council Mfg. Corp., 332 F.2d 733 (8th Cir. 1964); Jennings v. McCall Corp., 320 F.2d 64 (8th Cir. 1963); Ark-La Feed & Fertilizer Co. v. Marco Chem. Co., 292 F.2d 197 (8th Cir. 1961).

[74] 343 F.2d 187 (8th Cir. 1965). Defendant's only contacts with the forum state resulted from the fact that it sold products to residents of Minnesota upon receipt of orders solicited by independent salesmen and sold replacement parts to the Minnesota purchasers. These contacts were sufficient.

[75] *Id.* at 191.

[76] *See* Williams v. Connolly, 227 F. Supp. 539 (D. Minn. 1964); Thiele Eng'r. Co. v. Weldon Farm Products, Inc., 224 F. Supp. 809 (Minn. 1963); Penzimas v. Eastern Metal Products Corp., 218 F. Supp. 524 (Minn. 1961); Dahlberg Co. v. American Sound Products, Inc., 179 F. Supp. 928 (Minn. 1959); Mueller v. Steelcase Inc., 172 F. Supp. 416 (Minn. 1959); Bard v. Bemidii Bottle Gas Co., 23 F.R.D. 299 (Minn. 1958) quashing service under the one act statute as being violative of due process. *But see* United Barge Co. v. Logan Charter Service, Inc., 237 F. Supp. 624 (Minn. 1964); Haldeman-Homme Mfg. Co. v. Texacon Industries, Inc., 236 F. Supp. 99 (Minn. 1964); Carlson v. Chatfield Mach. Co., 228 F. Supp. 162 (D. Minn. 1964); Ewing v. Lockheed Aircraft Corp., 202 F. Supp. 216 (Minn. 1962); Hutchinson v. Boyd & Sons Press Sales, Inc., 188 F. Supp. 876 (Minn. 1960); McMenomy v. Wonder Bldg. Corp. of America, 188 F. Supp. 213 (Minn. 1960) upholding service.

[77] International Shoe Co. v. Washington, 326 U.S. 310 (1945); Travelers Health Insurance Ass'n. v. Virginia, 339 U.S. 643 (1950); Perkins v. Benquet Consol. Mining Co., 342 U.S. 437 (1952); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Hanson v. Denckla, 357 U.S. 735 (1958).

[78] Aftanase v. Economy Baler Company, 343 F.2d 187, 197 (8th Cir. 1965).

[79] *Id.*

weigh in favor of "fair play and substantial justice"[80] to be consistent with due process, that number is probably less than five.[81] The *Aftanase* court was not confronted with the true "one-act" or "isolated instance" situation, and since jurisdiction was upheld in that case, it is obvious that *Aftanase* is not the last word on due process limitations under the Minnesota "one-act" statute.

## III. The Isolated Instance—Uppgren v. Executive Aviation Services, Inc.[82]

*Uppgren* was a true single act situation. The only contacts[83] that defendant Loving Chevrolet had with Minnesota was ". . . the fortuitous circumstance of injury within . . ."[84] the borders of Minnesota caused by the allegedly defective helicopter it sold to the United States. Upon this premise the court stated that ". . . it is incumbent upon the court to *scrutinize the facts closely* to insure the assertion of *in personam* jurisdiction over the defendant is consistent with due process" [Emphasis added.].[85] And they proceeded to do just that. Two main issues were immediately formulated: (1) Does the Minnesota statute, as construed by the courts of that state, subject the defendant to *in personam* jurisdiction under the circumstances of the case? And (2) ". . . if the forum has attempted to exercise *in personam* jurisdiction, does such action comport with the due process requirements of the Fourteenth Amendment of the United States Constitution?"[86]

With respect to the first issue, the Minnesota "one act" statute[87] requires that the tort be committed ". . . in whole or in part in Minnesota . . ."[88] The court readily conceded that the injury did comprise at least part of the tort, and thus, the action was one contemplated by the statute. This reasoning was supported by the court's examination of the *Atkins* and *Ehlers* cases.[89] The Court summarized:

> Thus according to the Minnesota Supreme Court if a Minnesota resident is injured in Minnesota, the "one-act" statute applies without any further showing . . .[90]

The *Uppgren* court then disposed of a theory supporting jurisdiction as asserted by the plaintiff. It was argued that the Illinois Supreme Court case of *Gray v. American Radiator & Standard Sanitary Corp.*[91] was applicable here, and the ". . . single fact that the product sold by Loving was present in Minnesota and caused injury therein. . ."[92] was sufficient to confer juris-

[80] International Shoe v. Washington, 326 U.S. 310, 320 (1945).
[81] Aftanase v. Economy Baler Company, 343 F.2d 187, 197 (8th Cir. 1965).
[82] 304 F. Supp. 165 (Minn. 1969).
[83] *See* text accompanying note 5 *supra.*
[84] Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 167 (Minn. 1969).
[85] *Id.*
[86] *Id.*, Aftanase v. Economy Baler Company, 343 F.2d 187 (8th Cir. 1965); Williams v. Connolly, 227 F. Supp. 539 (Minn. 1964); J. Moore, 2 Moore's Federal Practice, ¶ 4.41-1[3] (2d ed. 1965).
[87] Minn. Stat. Ann. § 303.13(1), (3) (1957).
[88] *Id.*
[89] *See* notes 38 and 45 *supra.*
[90] Uppgran v. Executive Aviation Services, Inc., 304 F. Supp. 165, 168 (Minn. 1969).
[91] *See* note 54 *supra* and accompanying text.
[92] Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 169 (Minn. 1969).

diction consistent with due process. However, the court distinguished the *Gray* case on the basis that the defendant in *Gray* was a mass producer and should have reasonably foreseen that its product could ". . . come to rest in a particular state or perhaps many states. . ."[93] This was not the case with Loving.[94] The court further pointed out that, in the "foreseeability test" as expounded by Gray, the assumption of "foreseeability" is contingent upon the *substantial*[95] use and consumption of the product within the state, and concluded:

> In the instant case, however, though Loving might reasonably foresee use of its product in interstate commerce, it is doubtful that it could foresee substantial use within the state of Minnesota.[96]

The mere presence of a product within a jurisdiction, and its cause of injury therein ". . . in the absence of any additional facts . . ."[97] would make the defendant "amenable per se" to the courts of that state and could produce consequences which offend ". . . the 'traditional notions of fair play and substantial justice.' "[98]

Turning to the question of due process, the *Uppgren* court looked directly to *Aftanase* for guidance and proceeded to apply the five factors set forth in *Aftanase* to the instant case. (1) *The quantity of the contacts.* In *Uppgren*, the only contact with the forum state was the fact that the product caused injury there. The court did not comment upon the weight of this factor, but it was not considered to be favorable to the plaintiff. On the other hand, under the rationale of *McGee*[99] this factor is not necessarily detrimental to the plaintiff's argument if the contract has a *substantial* connection with the forum state.

(2) *The nature and quality of the contacts.* With respect to this factor, the court stated that, ". . . Loving engaged in no 'voluntary affirmative economic activity of substance' *vis à vis* the plaintiff or the State of Minnesota. The fact of injury was completely fortuitous . . . . the presence of the defective product . . . was an isolated instance . . . [i]t cannot be said that the Loving commercial helicopter business resulted in substantial use and consumption of defendant's products in Minnesota . . . and Loving has [not] benefited . . . from Minnesota law . . ."[100] In light of the court's pre-

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[93] *Id.*

[94] "Though the court has no direct evidence as to the number of helicopters sold by defendant during the period 1965-1967, it is reasonable to assume that the number could not have been large. The product is expensive and supply and demand is limited. Under these circumstances, the use of the alleged defective product in Minnesota was an 'isolated instance,' even conceding the mobile nature of the product." Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 169 (D. Minn. 1969).

[95] Gray v. American Radiator & Standard Sanitary Corp., 176 N.E.2d 761, 776 (1961).

[96] Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 170 (Minn. 1969).

[97] The additional facts necessary to change the mind of this court would be that ". . . the product is mass produced and in extensive commercial use in the forum state . . . defendant derives substantial revenue from goods used or consumed in that state . . . [or] expects or should reasonably expect that his conduct will have consequences in the state . . . and . . . derives substantial revenue from interstate or international commerce." Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 170 (Minn. 1969).

[98] *Id.*

[99] McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957).

[100] Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 171 (Minn. 1969).

vious mention of the few helicopters sold by the defendant, it is submitted that the use of one of them within the State of Minnesota could be considered a *substantial* use of the *defendant's* products in the forum state. Moreover, in light of the court's mention of the high cost of the product, it can be argued that Loving received a substantial economic benefit from that sale. Finally, concerning the fact that the product was of such a mobile nature and was sold to the United States Department of Interior, it is unlikely that the defendant could foresee its use exclusively in Washington, D.C.[101] or Maryland, and that the defendant could not specifically exclude[102] Minnesota as a probable place of use of its product. However, it could be argued that the fact that it was the plaintiff's employer who brought the defendant's product into Minnesota was a "unilateral" act of the type condemned by the Supreme Court in *Hanson*.[103]

(3) *The source and connection of the cause of action with these contacts.* The court states that ". . . [t]he *only* connection . . . is the fortuitous circumstance of presence of the alleged defective product in the state causing injury to the plaintiff within the state." [Emphasis added.].[104] The United States Supreme Court did not demand a direct connection in *Perkins*,[105] however, in the case of a single contact it appears that a direct connection would be required.[106] In the instant case, what could be more direct than the plaintiff's decedent's death from the crash of the defendant's product?

(4) *The interest of the forum state.* The court conceded that Minnesota did have an interest in providing a forum for any injured resident, but declared that this interest alone is not controlling. It might be argued, however, that Minnesota has as great an interest in protecting its residents from defective products as California had in *McGee*.[107]

(5) *The convenience of the parties.* The court states that this factor ". . . militates against the maintenance of the suit in Minnesota, having in mind that defendant is situated many, many miles away and that its records, witnesses and office is in Maryland, although it is recognized that plaintiff undoubtedly will have some witnesses in Minnesota."[108] Today, this factor is not of great importance because ". . . progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome."[109] However, this factor would appear to advocate a more convenient trial in Minnesota where the cause of action occurred. Although defendant may have records and witnesses in Maryland, the plaintiff has the remains of the helicopter in Minnesota. The wreckage would probably need to be thoroughly examined by expert witnesses repre-

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[101] *See* note 1 *supra.*
[102] *See* note 37 *supra.*
[103] Hanson v. Denckla, 357 U.S. 235, 253 (1958).
[104] Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 171 (Minn. 1969).
[105] Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437, 446 (1952).
[106] J. Moore 2, MOORE'S FEDERAL PRACTICE, ¶ 4.25[5] (2 ed. 1967).
[107] McGee v. International Life Insurance Co., 355 U.S. 220, 223 (1957).
[108] Uppgren v. Executive Aviation Services, Inc., 304 F. Supp. 165, 171 (Minn. 1969).
[109] Hanson v. Denkla, 357 U.S. 235, 251 (1958).

senting both parties. The records appear to be the easier of the two to move.

Thus, the court in *Uppgren* reasoned that only one of the five factors examined tended to favor their sustaining jurisdiction. It is submitted that all five, with the possible exception of the second under the *Hanson* rationale, *could* have been construed to show that due process was being afforded. This should, to some extent, exemplify the difficulty in application of any sort of mechanical rule, even one so flexible as that found in the *Aftanase case.*

## IV. Conclusion

The Supreme Court decisions, viewed as a whole, take a seemingly liberal view of the requirements of due process, with *Hanson v. Denckla* being the only possible limitation. The fact that *Uppgren* appears to be a limitation upon the Minnesota statute is by no means conclusive. The factors examined by the *Uppgren* court may be the relevant issues in such a determination, but it is not exactly clear whether the meaning and weight given to each of the factors by the *Uppgren* court would be identical with those that the Supreme Court would assign.[110] Even though the *Hanson v. Denckla* court required a positive act on the part of the defendant as a requisite of due process, that court did not state what sort of affirmative act is necessary. It could possibly be argued that even the interjection of products into the stream of commerce, as in the *Gray v. American Radiator & Standard Sanitary Corp.* could be an affirmative act within the meaning of *Hanson.*

As aforesaid, the *Aftanase* court merely provided the relevant factors to be examined in a due process determination. These factors were extracted from the relevant Supreme Court cases dealing with the minimum contacts doctrine. But, the Fifth Circuit in *Aftanase* refused to make any prediction of the result that would follow any given application of the cited factors. However, it appears that at least one author has taken up where *Aftanase* left off and has postulated the following results from any of four given fact situations:

[1] If there are substantial contacts with the state, for example a substantial and continuing business, and if the cause of action arises of the business done in the state, jurisdiction will be sustained. [2] If there are substantial contacts with the state, but the cause of action does not arise out of these contacts, jurisdiction may be sustained. [3] If there is a minimum of contacts, and the cause of action arises out of the contacts, it will normally be fair and reasonable to sustain jurisdiction. [4] If there is a minimum of contacts and the cause of action does not arise out of the contacts, there will normally be no basis of jurisdiction, since it is difficult to establish the factors necessary to meet the fair and reasonable test.[111]

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[110] *See* Karland, *The Supreme Court and the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 623 (1958).

[111] J. Moore, 2 Moore's Federal Practice, ¶ 4.25[5] (2 ed. 1967).

The *Uppgren* fact situation would fall within the third category where it would "normally be fair and reasonable to sustain jurisdiction." Thus, under the analysis above, it appears that the *Uppgren* court *could* have sustained jurisdiction in that case and *should* have done so in light of Minnesota's expressed desire to extend *in personam* jurisdiction over nonresidents to the limits of due process. However, it must again be noted that the validity of any such result-predicting analysis cannot remain unquestioned until the ramifications of the Supreme Court's decision in the *Hanson* case are made clear.

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