In *Busch* and *Temco*, the jurisdiction of the court had been invoked by the plaintiff under a "long-arm" statute of the state. Although neither case involved a foreign country or a national of a foreign country, the issue of jurisdiction in such an instance is the same as though the relative process in each instance had been used to bring before the court a foreign defendant not presently within the jurisdiction for personal service. In *Busch*, the defendant was doing business in Illinois, manufacturing plastic containers which were sold widely in other states. In Ohio the plaintiff purchased a gallon of milk in a container made by the defendant. While carrying this container to her home, the plastic handle in some way twisted off causing the large container to fall and shatter on the sidewalk, resulting in severe injury to the defendant's foot and ankle. The gravamen of the complaint was the alleged defective container and the damage was for the physical injury. The court reviewed a number of decisions relating to the "long-arm" statutes, including five decisions of the United States Supreme Court. Concerning these the court said:

We also think it is fair to say that these five Supreme Court cases established only general and not precise guidelines. Perhaps they purposely do no more than this. We observe, however, that, at one time or another in the opinions, three primary factors, namely the quantity of the contacts, the nature and quality of the contacts, and the source and connection of the cause of action...
with those contacts, are stressed, and that two others, interest of the forum state and convenience, receive mention. . . .”

(Page 142.)

On this basis and recognizing that a large business was done by this plastic company in Ohio, the court found that there were sufficient grounds for jurisdiction of the Ohio court.

Temco combined both questions of jurisdiction and questions of conflicts of law. The action was an alleged breach of contract between a corporation organized under the laws of Tennessee with its principal place of business in Tennessee, and a corporation organized under the laws of Wisconsin with its principal place of business in Wisconsin. The defendant was alleged to be a subcontractor of the plaintiff which had a contract with the Army to deliver a quantity of artillery shells. Alleging a breach of the agreement, the Tennessee corporation (plaintiff) began suit in the Tennessee courts and sought to subject the Wisconsin corporation to the jurisdiction of Tennessee by service under the “long-arm” statute of that state. Negotiations for the contract had taken place mostly in Tennessee but the written contract was signed in Wisconsin. The plaintiff contended there was an oral contract consummated in Tennessee and merely affirmed in Wisconsin. The defendant maintained there was no contract until it signed the confirmation portion of plaintiff’s purchase order on December 13, 1965, in Wisconsin. The court considered the “long-arm” statutes of Illinois and other states and compared them with that of Tennessee and discussed the negotiations for the contract, finding that the agent of the defendant was “deliberately availing himself of the benefit of Tennessee laws.” The court found that the Wisconsin corporation was subject to the jurisdiction of Tennessee. Some of the discussion might seem to raise the question as to whether the law of Tennessee or Wisconsin should be applied but as to that there is no affirmative decision. Perhaps in this case, the commercial law of the two states was sufficiently identical that no issue on this point could be raised. However, that is not the case under certain other decisions relating to the conflicts of law.

Noel and France as Executors of the Estate of Marshall L. Noel, deceased, and others, v. Linea Aeropostal Venezolana

In this case an airplane of Venezuelan registry and owned by a Venezuelan corporation whose stock was government owned was
one of several defendants. The airplane in question had exploded over the Atlantic Ocean opposite the New Jersey coast shortly after it had left Idlewild (JFK) Airport for its trip to South America. The suit was for damages due to loss of life in the accident. The executors of the deceased had sued various and sundry corporations including the maker of the airplane, the manufacturer and assembler of its engines, and that of its propellors, and the organization which had serviced the plane prior to its departure, and had also included the airplane company. With the exception of the airplane company, all of the parties were United States domestic corporations and against them judgments were obtained and paid and they were discharged. The plaintiffs continued their action against the Venezuelan company on a cause of action available under the laws of Venezuela in such an accident but not available under any United States law. This was for pain and suffering of the deceased prior to his death, which in the peculiarities in this accident could only have been very brief as mentioned in the case. The airplane company defended on the ground that the judgments rendered in the case covered all the damages and had been paid. The court, however, held that the airline must still answer to the allegations of the cause of action claimed under Venezuelan law.

*Lisi v. Alitalia-Linee Aeree Italiane,*

253 F. Supp. 237 (S.D.N.Y. 1966), reported 1 Int. Lawyer

In this case, the lower court had held that the foreign airline did not have a valid defense in the terms of the Warsaw Convention limiting its liability because it had failed to give adequate notice to the passenger of its limitation of liability. This case has now been confirmed on appeal (370 F.2d 508 [2d Cir. 1966]), but the affirmance was by a divided court. Judge Moore vigorously dissented. He said:

The majority in their opinion indulge in judicial treaty-making. The language of the treaty [referred to as the Warsaw Convention] is clear. Its provisions are not difficult to comprehend. Its mandates are simply stated. Ascertainment of compliance should therefore present no real problem. (Page 515.)

Later on he said:

The majority do not approve of the terms of the treaty and, therefore, by judicial fiat they rewrite it. (Page 515.)
He further stated:

Substantial revisions upward have been made [in the treaty provisions] but they have been made, as they should be, by treaty and not by the courts. (Page 515.)

McClure, Administratrix v. United States Lines Company, 368 F.2d 197 (4th Cir. [1966])

The conflicts of law questions also arise in the case of McClure, Administratrix v. United States Lines Company, supra. The operative facts of this case occurred wholly in France and the principal question decided by the United States Court of Appeals was whether French law or United States law should be the controlling law to be applied. There were really two issues in this case. One was the question of fact or rather the determination whether negligence or lack of care was present and the other was as aforesaid what law should apply. The facts were: In a certain harbor in France, two United States ships were tied up at a mole, one toward the sea at a considerable distance from the other. The facts show that a seaman from the ship (S.S. Keystone State) farthest toward the sea, returning from shore leave alighted from an automobile in the inner harbor more than a mile from where his ship lay. As he was passing the ship nearest to the land, the crew of that ship observed that he was too drunk to continue farther. The crew of this United States ship of which he was not a member seated him on a chair, gave him some coffee, and tried to keep supervision over him. When he appeared to be capable of proceeding, a member of the crew of this ship said he would accompany the man to his own ship and asked him to wait while the crewman got his coat from his own quarters. When the crewman returned, however, the drunken sailor had attempted to go forward and a hundred feet or so away had fallen into the bay. He was pulled out immediately but could not be revived. The suit was against the ship whose crew had attempted to assist him. Article 63 of the French Penal Code imposes criminal sanctions upon one

‘W]ho voluntarily abstains from giving assistance to a person which he could, without risk either to himself or to third persons, give either by his personal action or by securing assistance.’

(Page 198.)

This is referred to as the "Good Samaritan statute." *

* Note: For discussion of foreign "Good Samaritan" statutes, see article on that subject, American Journal of Comparative Law, vol. 14, No. 4, page 630.
States law under the Jones Act was found by the court to be as follows:

In American jurisdictions, in cases arising under the Jones Act, it is settled that it is not within the scope of his employment for a seaman to aid an intoxicated member of the same crew in returning to their ship. (Page 199.)

The court found that the case had been erroneously decided by a lower court under French law whereas United States law should have been applied and stated: "All of the really significant relationships are with this country, not with France." (Page 201.) The Court of Appeals recognized that France has an obvious interest in the enforcement of Article 63 of the French Penal Code. However, the Court did not believe that this interest would extend to the concern of the vicarious liability of an American ship to the American widow of an American sailor whose life was lost under the peculiar conditions mentioned although in a French harbor. The Court of Appeals sent the matter back to the lower court for further consideration, stating as its reasons for so doing:

We are loath to enter final judgment for the ship, however, for the tacit assumption that the case was governed by French law may have had a significant effect upon the making of the record. Justice seems to require a remand to give the parties an opportunity to produce any additional evidence that may be available which has a material bearing upon the issues as defined within the framework of American law. Our conclusion that, on the present record, American law is the appropriate choice may have a decided effect upon the relevance of evidence thought immaterial under French law. (Page 202.)

The judgment against the American ship was thereupon vacated and the case remanded for further proceedings.


The question in this case was the jurisdiction of the Interstate Commerce Commission to determine the reasonableness of a joint through rate covering transportation from the United States to a place in Canada. The American railroad involved with its connecting carriers had delivered a large number of loaded freight cars from a point in the United States to a point in Canada. The shipper paid a joint through international rate which it later claimed was unreasonable and began proceedings to secure back a part of
the funds paid under this rate. The Commission found the rate unreasonable and ordered the railroad to pay the difference between the rate charged and what the Commission found to be a reasonable rate. The railroad refused to pay part of the amount on the theory that the award represented an alleged overcharge for the Canadian part of the trip. It claimed that the Commission had no jurisdiction over the rate to be charged in Canada. The shipper then began an action in the District Court to collect the unpaid amount. The District Court found for the petitioner; the Court of Appeals reversed. The United States Supreme Court reversed the decision of the Court of Appeals and reinstated that of the District Court, holding that when a carrier performing transportation within the United States enters into a joint through international rate covering transportation both in the United States and abroad the Commission has jurisdiction to determine the reasonableness of the joint through rate and it may order the carrier performing domestic service to pay reparations in the amount which the Commission finds the rate to be unreasonable.

Mr. Justice Douglas dissented, pointing out that the act of Congress gives the Interstate Commerce Commission jurisdiction over transportation from or to any place in the United States or to or from a foreign country "'but only insofar as such transportation . . . takes place within the United States.'" (Page 184.) Mr. Justice Douglas then states:

How that can be read, 'Whether or not such transportation . . . takes place within the United States' remains a mystery. (Page 184.)