Louisiana Law Review

Volume 12 | Number 4
May 1952

Jurisdiction Over Foreign Corporations

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Notes

JURISDICTION OVER FOREIGN CORPORATIONS

Defendant, a foreign insurance corporation not authorized to do business in Louisiana, issued a policy in that state to a public service company through a Louisiana broker. An action on the policy was brought against defendant-appellant, Excess Insurance Company, with two services of process made upon the secretary of state, pursuant to statutes considered by plaintiff to be in effect.[1] *Held*, jurisdiction could not be established by the statutes invoked;[2] neither could the claim be upheld that Excess Company "was doing business, was present, had made such 'minimum contacts' or had 'established such continuing relationships' in Louisiana as to subject it to the jurisdiction asserted here." *Employers' Liability Assurance Corporation, Ltd. v. Lejeune*, 189 F. 2d 521 (5th Cir. 1951).

Under the doctrine of *Pennoyer v. Neff*,[3] a state has jurisdiction over a nonresident defendant when (1) he has been served personally within the state, (2) he has consented to jurisdiction, or (3) suit is commenced by attachment of his property within the state. Jurisdiction over a foreign corporation may be exercised when its activities within the state are such that "the maintenance of the suit does not offend 'traditional notions of

1. The first service was made under La. Act 159 of 1940, now La. R.S. (1950) 22:1253. The second service was made under La. Act 105 of 1898, Art. 2, § 1, and La. Act 179 of 1918, § 1(c).

2. Plaintiff-appellee, Lejeune, unsuccessfully contended that Act 159 of 1940, now La. R.S. (1950) 22:1253, subjected Excess Company to jurisdiction by service of process upon the secretary of state, because the ambiguous provisions of Act 159 of 1940 had been induced by the title, as held in White v. Indiana Travelers Assur. Co., 22 So. 2d 137 (La. App. 1945), and the reenactment of that act in the Revised Statutes was accomplished without re-enacting the title.

In the *White* case the court held that it was obvious that the provisions of the act were ambiguous and that the legislature intended to subject all insurance companies issuing policies to residents of the state to service of process, but it failed to accomplish such a purpose; "the act applies solely to insurers who are *transacting business* in the state without authority." (Italics supplied.) 22 So. 2d 137, 140.

However, the court was given jurisdiction under La. Act 105 of 1898, but in the principal case the court held that that act was repealed by the Insurance Code, La. Act 195 of 1948, and that no similar provisions have been enacted.

3. 95 U.S. 714 (1877).

fair play and substantial justice.'" [4] There is no all-embracing rule for determining what activities will be sufficient to subject the foreign corporation to service of process, but the question will depend upon the facts of the particular case.[5] However, the recent cases seem to indicate a trend toward finding sufficient basis for jurisdiction in activities which formerly would have been deemed insufficient under the tests of due process of law. Traditional theories[6] of doing business, presence, or implied consent, as tests for subjecting the foreign corporation to jurisdiction, are no longer emphasized.

This trend is apparent in the case of *International Shoe Company v. Washington*,[7] where agents of a foreign corporation, who neither had the authority to make contracts of sale nor to receive service of process, regularly solicited orders in the State of Washington and sent them out of state to be accepted or rejected. In granting jurisdiction to the State of Washington, the court stated, ". . . due process requires only that in order to subject a defendant to 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.'" In *Travelers Health Association v. Virginia*,[8] where a foreign insurance company issued policies through the mail to residents of Virginia, the court asserted that "prior decisions of this Court have referred to the unwisdom, unfairness, and injustice of permitting policyholders to seek redress only in some distant state where the insurer is incorporated. The Due Process Clause does not forbid a state to protect its citizens from such injustice." The court recognized the states' jurisdiction over the foreign corporations in these two cases, but in doing so, it did not rely strictly on the theories of "doing business," "presence," or "implied consent." Instead, the "nature" and the "consequences" of these activities were stressed. It thus seems that the court has

4. International Shoe Co. v. Washington, 326 U. S. 310, 316 (1945).

5. J. R. Watkins Co. v. Hamilton, 26 So. 207, 210 (Ala. App. 1946); St. Louis S.W. Ry. v. Alexander, 227 U.S. 218, 227 (1913).

6. Stumberg, Conflict of Laws 84 (2 ed. 1937); Culp, Constitutional Problems Arising from Service of Process on Foreign Corporations, 19 Minn. L. Rev. 375 (1935); Comment, 24 Mich. L. Rev. 633 (1926).

7. 326 U.S. 310, 316 (1945). See also Notes, 6 LOUISIANA LAW REVIEW 726 (1946), 16 U. of Chi. L. Rev. 523 (1949).

8. 339 U.S. 643, 649 (1950). See also Notes, 64 Harv. L. Rev. 482 (1951), 36 Va. L. Rev. 795 (1950).

developed new criteria for determining jurisdiction in an in personam action against foreign corporations. Certain minimum contacts are necessary, but what these are depends largely upon whether subjecting the foreign corporation to state jurisdiction complies with the court's estimate of "fair play and substantial justice."

In the principal case, the foreign insurance corporation issued but a single policy to a resident of Louisiana. It has been held that a single isolated act does not constitute "doing business" so as to give a state jurisdiction over a foreign corporation.[9] Clearly, it would not be fair and just in every case to subject a foreign corporation to local jurisdiction for an isolated transaction. For example, the sale of one automobile or a single pair of shoes would not satisfy the due process requirement of "minimum contacts" and "continuing relations" necessary to establish jurisdiction. On the other hand, an insurance transaction is continuous in nature because it extends over a length of time and involves the periodic payment of premiums. Insurance transactions may be perfected through the mail with relative ease, and a single policy may extend protection to thousands of people. Thus, the insurance business may be distinguished from other types of activities, and perhaps the negative determination of a "single transaction" should not always control the question of jurisdiction.

In the principal case, the single insurance policy issued by the Excess Company was of such a nature that it merits special notice. The policy had a coverage of $250,000; the purpose of this policy was to protect thousands of people coming in contact with the public service company; premiums were paid upon the policy in Louisiana to a broker, and by him transmitted to the Excess Company. Because of these facts, it would seem that to render Excess Company amenable to jurisdiction in Louisiana, where the policy was negotiated, where the premiums were paid, and where the cause of action arose, would not be contrary to "traditional notions of fair play and substantial justice."

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9. Hunter v. Mutual Reserve Life Ins. Co., 218 U.S. 573 (1910); Rosenberg Brothers & Co. v. Curtiss Brown Co., 260 U.S. 516 (1923); Frene v. Louisville Cement Co., 134 F. 2d 511, 515 (D.C. Cir. 1943).