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Civil Procedure

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CIVIL PROCEDURE

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ACTIONS

Cumulation Of Actions

Louisiana Code of Civil Procedure article 463(3) requires that multiple actions cumulated in a single proceeding must be "mutually consistent and employ the same form of procedure." The fourth circuit interpreted this requirement in *People of the Living God v. Chantilly Corp.*[1] and held that an action in tort was improperly cumulated with a different action for injunctive relief. In finding improper cumulation, the *Chantilly* court cited the procedural differences between injunction and tort actions, such as different delays for answering and for appeal, different standards for presenting evidence, and the availability of a jury in the tort suit but not in the injunction suit.

This issue resurfaced in *Cromwell v. Commerce & Energy Bank.*[2] The plaintiffs in *Cromwell* were investors in a tax shelter partnership. Each delivered a letter of credit to secure the payment of notes they had given to the partnership as capital contributions. The partnership then pledged the letters of credit to European American Bank (EAB) as loan collateral. The partnership defaulted on the loan, and EAB attempted to draw on the letters of credit by forwarding drafts to the issuing banks. Plaintiffs, however, filed suit against the issuing banks, alleging fraud in the procurement of their investment in the partnership and seeking preliminary and permanent injunctions to prevent the issuing banks from honoring EAB's drafts.

The trial court granted preliminary injunctions against the banks. However, after protracted appellate proceedings, the Louisiana Supreme Court reversed the trial court, holding that the plaintiffs were not entitled to the preliminary injunctions.[3] With the preliminary injunctions lifted, the issuing banks paid EAB's drafts, rendering moot any further injunctive relief against the banks.

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1. 211 So. 2d 445 (La. App. 4th Cir. 1968).
2. 514 So. 2d 198 (La. App. 3d Cir. 1987).
3. Cromwell v. Commerce & Energy Bank, 464 So. 2d 721 (La. 1985).

Shortly thereafter, the plaintiffs amended their pleadings in the injunction suit. The supplemental and amending petition, which named EAB and others as defendants, sought damages under securities law in connection with the investment in the partnership. EAB filed an exception to the amendment on the basis that the action under securities law, which sounds in tort, was improperly cumulated with the earlier injunction action against the issuing banks. The trial court, relying on *Chantilly*'s interpretation of article 463(3),[4] granted EAB's exception, and yet another appeal followed.

However, the third circuit court of appeal found article 463(3) and *Chantilly* inapplicable. The court reasoned that "as a practical matter" there had been no cumulation of actions, since at the time of the plaintiff's amendment, the issuing bank's payment of the drafts had rendered the injunction claims moot. "[N]o triable action" remained in the injunction proceedings, and, hence, the addition of a second action under the securities laws "was not a cumulation of actions at all."[5]

The result that the third circuit reached may have been the most practical solution to the problem presented. However, its ruling implicitly validates the amending of an injunction action that has reached the stage of being a dead issue to inject a new action against new defendants. This ignores the general rule that once an action has reached judgment, it cannot be resuscitated by the filing of an amendment asserting an entirely new action;[6] the law requires that a new suit be filed. Though the court of appeal recognized this issue, it apparently was not reached because the trial court had not passed upon it.

In the earlier appeal, the Louisiana Supreme Court had entered a judgment vacating the preliminary injunction that had restrained the issuing banks from paying EAB's drafts.[7] The lifting of the injunctions allowed the banks to pay the drafts, and once these banks had fulfilled their obligations under the letters of credit, the injunction suit was no longer viable. The mere fact that the trial court had not entered a formal order dismissing the injunction suit before the plaintiffs filed their amending petition seems to be an irrelevant formality. If the injunction action was too dead for the new action to be considered cumulated with it, it was arguably too dead to be susceptible to an amendment that presents a new cause of action against different defendants.

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4. 211 So. 2d 445, 447 (La. App. 4th Cir. 1968).

5. *Cromwell*, 514 So. 2d at 202.

6. See, e.g., Booth v. Allstate Ins. Co., 466 So. 2d 703 (La. App. 4th Cir. 1985); Templet v. Johns, 417 So. 2d 433 (La. App. 1st Cir.), writ denied, 420 So. 2d 981 (1982).

7. 464 So. 2d 721 (La. 1985).

Division of Actions

In *Cantrelle Fence and Supply Co. v. Allstate Insurance Co.*,[8] the Louisiana Supreme Court discussed Louisiana Code of Civil Procedure article 425, which prohibits separate "actions" on a single obligation. The plaintiffs in *Cantrelle*, who had been injured in an automobile accident, filed a suit against their uninsured motorist carrier, Allstate, and recovered compensatory damages. Following judgment on this claim, the plaintiffs filed a second suit against Allstate seeking to recover punitive damages under Louisiana Revised Statutes 22:658. Section 658 provides for penalties against an insurer who fails to make payment within sixty days of the filing of a satisfactory claim "when such failure is found to be arbitrary, capricious, or without probable cause."[9] The plaintiffs claimed that the insurer had violated this provision by unreasonably failing to pay the claim asserted in the first suit. Allstate defended by arguing that the plaintiffs were attempting to divide a single obligation in violation of article 425.[10]

The supreme court rejected the insurer's argument, holding that the insurer's obligation to perform under the insurance contract was separate from the insurer's obligation under section 658 to act reasonably in paying claims. The court began its analysis by noting that "a single tort may give rise to multiple obligations." Noting that article 425 uses the term "cause of action" in its caption, the court then discussed the concept of "cause of action" in an analogous area of law, res judicata.[11] The court examined the relation of "cause," under the civil law, to "cause of action," under the common law. This relationship provides "a practical guide to determine whether an obligation is divisible," said the court.[12] Thus, the court explained:

> "Cause is the principle upon which a specific demand is grounded while cause of action embraces the cause and the demand, and

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8. 515 So. 2d 1074 (La. 1987).
9. La. R.S. 22:658 (Supp. 1988).
10. La. Code Civ. P. art. 425:
> An obligee cannot divide an obligation due him for the purpose of bringing separate actions on different portions thereof. If he brings an action to enforce only a portion of the obligation, and does not amend his pleading to demand the enforcement of the full obligation, he shall lose his right to enforce the remaining portion.

11. La. R.S. 13:4231 (Supp. 1988):
> The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality.

12. *Cantrelle*, 515 So. 2d at 1078.

> is related to the party making demand." The common law theory of res judicata precludes relitigation of a "cause of action" and, whether actually litigated or not, all *grounds* in support of the cause of action are merged in the judgment so that relitigation of the "cause of action" on different grounds is barred. Under the civilian doctrine, however, because "cause" is roughly analogous to "theory of recovery" a second suit on a different "ground" is not precluded. Thus, with minor exceptions, the common law "might have been pleaded" rule is inapplicable in Louisiana.[13]

Apparently, the court believed that "cause" and "obligation" were interchangeable terms when interpreting article 425. Hence, if section 658 provided separate "grounds" or a separate "theory of recovery," the plaintiff's failure to raise the claim in the suit on the insurance policy would not impede the second suit based on section 658. The court held that section 658 was an independent theory of recovery based on separate grounds, and, therefore, that plaintiffs' second suit was not barred.[14]

Two problems arise from *Cantrelle*. First, arguably section 658 does not impose a separate affirmative duty on an insurer; rather, it merely supplements the contract between an insurer and insured. Thus, instead of imposing a legal duty, the statute merely operates as a term of the contract that defines the sanctions to be imposed upon an insurer when it breaches. If this is the case, the *Cantrelle* plaintiffs' ground or theory of recovery was the same in both suits: the insurer's breach of a contractual duty. Only the measure of recovery—actual damages in the first suit versus punitive damages and attorneys' fees in the second—was different.

Second, even if *Cantrelle* is correct under existing law, the decision works against the efficient administration of litigation. The relief sought by the *Cantrelle* plaintiffs in the second suit could have been sought in the first. Although present statutory authority may be silent on the resolution of this problem, *Cantrelle* should signal the legislature that a broader theory of preclusion may be needed to promote the efficient administration of justice in Louisiana.

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13. Id. (quoting Comment, Preclusion Devices in Louisiana: Collateral Estoppel, 35 La. L. Rev. 158, 165 n.41 (1974); citing Dixon, Booksh & Zimmering, Res Judicata in Louisiana Since Hope v. Madison, 51 Tul. L. Rev. 611, 621 (1977)).

14. In reaching this decision, the Louisiana Supreme Court found it necessary to overrule Foret v. Aetna Life & Casualty Co., 391 So. 2d 526 (La. App. 3d Cir. 1980), insofar as *Foret* conflicts with *Cantrelle*. *Cantrelle*, 515 So. 2d at 1079 n.5.

WAGE GARNISHMENT

It has long been established practice in Louisiana for an employer-garnishee to remit funds that have been seized on behalf of a judgment creditor under a wage garnishment to the parish sheriff's office rather than directly to the creditor. In fact, many parishes presently use a form of notice of seizure, which directs the employer-garnishee to send the seized funds directly to the sheriff's office.[15] The sheriff's office forwards the balance of the seized funds to the seizing creditor but only after deducting its commission and court costs.

Recently, this procedure was successfully challenged in *Stevens v. Lockett*.[16] Plaintiffs, who were judgment creditors, commenced a garnishment proceeding against the debtor's employer. The district court entered a judgment ordering the employer-garnishee to pay the garnished wages directly to the seizing creditor. The judgment did not require that the sheriff act as intermediary in the collection of the garnished funds.

The sheriff of Webster Parish filed a rule to amend the judgment to require the employer-garnishee to pay the seized funds directly to the sheriff's office, claiming a legal right to have the seized funds turned over to its office in order that its commission could be collected. The judgment creditor opposed this position and challenged the sheriff's right to receive directly and collect a commission on the funds seized through wage garnishment. The district court amended its judgment to provide for payment to the sheriff's office.

On appeal, the second circuit correctly noted that under Louisiana Revised Statutes 33:1428(A)(13)(a)(ii), perfection of the seizure entitles the sheriff to receive a commission on funds seized.[17] The court ruled, however, that the original judgment, which required the employer-garnishee to remit the funds directly to the seizing creditor, was correct.

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15. In the notice of seizure utilized by the civil sheriff in Orleans Parish, the garnishee is instructed that "you will hand over to me" the seized property. The civil sheriff's address is specified and instructions are included for putting the civil docket number on all checks and correspondence sent to the sheriff.

16. 528 So. 2d 689 (La. App. 2d Cir. 1988).

17. Id. at 689 n.1. Section 1428(A)(13)(a)(ii) provides in pertinent part:

> Sheriffs shall be entitled to no more than the following fees and compensation of office in all civil matters:
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> . . . .
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> In all cases where the sheriffs have in their possession for execution a writ of fieri facias, a writ of seizure and sale, or any conservatory or other writ under which property is or may be seized:
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> . . . .
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> When the plaintiff in writ receives cash, other consideration, or both pursuant to judgment rendered in suit in which the writ issued without the necessity of judicial sale . . . .

The court stated that under both Louisiana Revised Statutes 13:3923[18] and Louisiana Code of Civil Procedure article 2415[19] a judgment may direct the employer-garnishee to remit payment of the defendant's garnished wages directly to the seizing creditor. Hence, the second circuit vacated the amended judgment, requiring payment to the sheriff's office, and reinstated the original judgment.

While this application of the law appears to be correct, sheriffs will obviously find it more difficult to calculate and collect commissions. Remedial legislation may be the solution to this problem.

VENUE

The overall civil venue scheme is enunciated in the Louisiana Code of Civil Procedure. The key component of this scheme is article 42, which lays out the general venue rules. Article 42 provides the most convenient forum for Louisiana corporations, partnerships, and individual domiciliaries to be sued.[20] The general article 42 rules are, however, subject to a number of exceptions, which are strictly construed.[21]

In recent years, there has been increasing pressure to modernize this venue scheme. Many regard the general venue rules of article 42 generally favoring the convenience of defendants as outdated in view of modern means of communication and transportation. In addition, the application of the existing exceptions has been cumbersome, particularly when the need arose for a single forum in litigation involving multiple defendants. Some of the exceptions to article 42 have been helpful in this regard. In particular article 73, which provides a single venue when the defendants are joint or solidary obligors, has helped alleviate venue problems in complex litigation, but even that article does not provide a single venue in all cases involving multiple defendants. Given Louisiana's strong policy of avoiding fragmentary litigation of a single factual controversy when multiple defendants are involved,[22] most judges and practitioners

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18. La. R.S. 13:3923 (Supp. 1988) provides that: "the court shall render judgment for the monthly, semimonthly, weekly or daily payments to be made *to the seizing creditor.*" (emphasis added).

19. Louisiana Code of Civil Procedure article 2415, which applies generally to garnishments, requires the court to enter an order directing a garnishee to deliver seized property to the sheriff. However, the article specifically provides that it does not apply to the garnishment of wages, salaries, or commissions.

20. An action against an individual domiciled in Louisiana shall be brought in his parish of domicile, an action against a domestic corporation shall be brought in the parish where its registered office is located, and an action against a domestic partnership shall be brought where its principal business establishment is located. La. Code Civ. P. art. 42.

21. Hawthorne Oil & Gas Corp. v. Continental Oil, 377 So. 2d 285 (La. 1979).

22. See, e.g., McDonald v. Book, 215 So. 2d 394, 395 (La. App. 3d Cir. 1968).

support the modernization of Louisiana's venue rules. The troublesome question is whether this task can be successfully accomplished by liberal judicial interpretations of the existing venue provisions, or if instead the reform should be undertaken by the legislature.

In the absence of legislative action, the appellate courts have taken the former view, attempting to solve this problem by applying the judicially created concept of "ancillary venue."[23] This theory allows a single court to hear an entire case when "venue is proper as to one claim, the disposition of which will necessarily affect a related second claim as to which venue might otherwise be proper."[24] These decisions are justified by the courts on the basis of efficient judicial administration.[25]

Although the Louisiana Supreme Court has not addressed directly the question of ancillary venue, the court has taken steps toward reforming the rigid venue rules. The court's most recent measure in this liberalization process came in *Kellis v. Farber*.[26] The plaintiff, an Orleans Parish domiciliary, was involved in an automobile accident in Jefferson Parish. She filed suit in Orleans Parish against the alleged tortfeasor, his employer, the tortfeasor's insurer, and her own uninsured motorist carrier. The alleged tortfeasor and his employer were domiciled in Jefferson Parish and both insurers were foreign. Finding that Jefferson Parish was the only proper venue for all the defendants, the trial court ordered the case transferred. The fourth circuit court of appeal denied supervisory writs, but the Louisiana Supreme Court granted review and held that Orleans Parish was a proper venue for all the defendants.[27]

Under the literal terms of article 42, venue was not proper in Orleans Parish for any of the defendants. Venue was proper in Orleans Parish for the plaintiff's uninsured motorist carrier under the exception contained in article 76, which provides for venue at the insured's domicile in actions against insurers.[28] The problem for the plaintiff was obtaining

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23. See, e.g., International Stevedores v. Hanlon, 499 So. 2d 1183, 1187 (La. App. 5th Cir. 1986), writ denied, 501 So. 2d 230 (1987); Thibodeaux v. Hood Enter., 415 So. 2d 530, 531 (La. App. 1st Cir. 1982); Reeves v. Dixie Brick, 403 So. 2d 792, 795 (La. App. 2d Cir. 1981); Klumpp v. Colonial Pipeline Co., 389 So. 2d 457, 464 (La. App. 3d Cir. 1890), cert. denied, 451 U.S. 910, 101 S. Ct. 1981 (1981); Tucker v. Tucker, 378 So. 2d 498, 500 (La. App. 4th Cir. 1979).

24. Smith v. Baton Rouge Bank & Trust Co., 286 So. 2d 394, 397 (La. App. 4th Cir. 1973).

25. Kellis v. Farber, 523 So. 2d 843, 850 n.2 (La. 1988) (Lemmon, J., concurring).

26. Id.

27. Id. at 848.

28. Louisiana Code of Civil Procedure article 76 specifies venue in actions on life insurance policies and in actions relating to health and accident insurance. It further provides that actions on "any other type of insurance policy" may be brought in the parish where the loss occurred or where the insured is domiciled.

venue in Orleans Parish against the three remaining defendants. Article 76 offered no help to the plaintiff, for none of the three defendants was the plaintiff's insurer. Likewise, article 73 apparently did not govern venue for these three defendants. This article allows a suit against all solidary or joint obligors in the parish of proper venue "under article 42" for any one of the solidary obligors; in other words, if Orleans Parish had been the article 42 venue for one of these defendants, assuming that they were solidarily or jointly liable, article 73 unquestionably would have made that parish proper venue for all of them. Since Orleans Parish was not the article 42 parish for any of these defendants, the plaintiff apparently could not avail herself of article 73.

The supreme court avoided that result through its construction of article 73 and the "under article 42" language contained in that article. The court first accepted the plaintiff's allegation that all of the defendants, including Kellis' uninsured motorist carrier, were solidary. Next, the court reasoned that article 43 makes article 42 "subject to" all of the venue exception rules that follow it. Article 42, said the court, incorporates the exceptions that follow it, including articles 73 and 76. Hence, if venue could be established in Orleans for anyone of the solidary obligors "under article 42," or under any of the exceptions incorporated into article 42, venue was proper for all the solidary obligors under article 73. Since venue was proper in Orleans Parish against one of the solidary defendants, the uninsured motorist carrier, the court reasoned that under article 73 venue was proper in that parish against all of the defendants.

The problem with the court's analysis, the defendants argued, is that a literal reading of article 73 suggests that the requisite venue must be in a parish of proper venue "under article 42"[29] for at least one of the solidary obligors. The plaintiff could establish venue in Orleans for only one of the defendants, and that venue was under article 76, not "under article 42" as the language of article 73 seemed to require. Thus, the court had to confront the argument that it was ignoring the wording of article 73.

The court responded by applying what it called "proper codal methodology"[30] to its reading of article 73. It cited article 5051, which provides that articles of the Code of Civil Procedure "are to be construed liberally." Considering this admonition and Louisiana's "total procedural system," the court ruled that the "exceptions" to article 42 were actually intended as an "extension, supplement and legal part of the provisions of article 42."[31] Thus, the language "under article 42" contained in

29. La. Code Civ. P. art. 73.
30. 523 So. 2d at 846.
31. Id.

article 73 could be read as "under article 42 or any of its exceptions."

Justices Cole[32] and Marcus[33] dissented, arguing that by construing article 42 to include its own exceptions, the majority had judicially rewritten the Code of Civil Procedure, and the ill-defined "emerging theory of venue" was an insufficient justification for this usurpation of the legislative function. Justice Cole questioned whether the majority's unprecedented application of article 73 could be justified as serving either to simplify application of the venue rules or to promote the convenience to litigants. He predicted that the broad interpretation given to the venue exceptions would actually increase litigation over venue because of uncertainty in the application of articles 71 through 85 and other statutory exceptions. Further, Justice Cole questioned whether considerations of convenience to the litigants could support the "far-reaching" majority opinion since the accident occurred in Jefferson Parish and the only party who had any relationship to Orleans Parish at all was the plaintiff.[34]

The *Kellis* court's effort to provide a creative judicial solution to the problem of inadequate procedural rules for multiparty litigation is not unique. In *Thurman v. Star Electric Supply, Inc.*,[35] for example, the court found that the procedure provided for the commencement of appellate delays after the grant of a partial new trial was unworkable and a trap for the unwary in multiparty litigation. Accordingly, the court fashioned a rule that triggered appellate delays based upon a case-by-case analysis of the severability of the issues raised by the partial new trial. This rule provided a practical solution to the specific problem in that case, but it proved difficult to apply in other situations.[36] Ultimately the legislature, by Act 695 of 1987, amended articles 2087 and 2123 to provide a simplified procedure that required all appellate delays to be automatically suspended when any post trial motion was filed.

The long-term solution to the *Kellis*-type of procedural problem should also rest with the legislature. Exceptions to the general rule found in article 42 are scattered throughout the Civil Code and the Revised Statutes, and the means by which the *Kellis* court attacked the problem

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32. Id. at 848 (Cole, J., dissenting).

33. Id. at 849 (Marcus, J., dissenting).

34. Id. at 848-49 (Cole, J., dissenting). Justice Lemmon joined in the court's opinion and assigned additional reasons. He saw the problem as one of cumulation of actions and agreed with the majority's conclusion that venue was proper as to each defendant. He went on to suggest that even if venue were improper as to some defendants, the exception of improper venue could be overruled on the basis of the ancillary venue developed by the lower courts. Since it was not necessary to the decision of the case, however, he joined in the majority's opinion.

35. 283 So. 2d 212 (La. 1983).

36. See Forrester, Developments in the Law, 1986-1987—Civil Procedure, 48 La. L. Rev. 233, 243-46 (1987).

of outmoded venue rules—by wholesale incorporation of these exceptions into article 42 itself—will undoubtedly cause confusion. When given the opportunity, the legislature has been responsive to proposals that change unworkable procedural rules.

JURISDICTION IN PERSONAM

Two recent Louisiana Supreme Court cases illustrate the court's willingness to extend personal jurisdiction under the amended long arm statute[37] to the full extent of the due process clauses of both the Louisiana and the United States Constitutions. These decisions reflect a new method of evaluating personal jurisdiction. Rather than engaging in a two-step inquiry of determining first whether the statutory requirements are met and second whether the assertion of jurisdiction satisfies due process, the courts now engage in only one inquiry: does the assertion of jurisdiction meet the constitutional requirements of due process?[38]

In *Petroleum Helicopters, Inc. v. Avco Corp.*,[39] the United States Fifth Circuit Court of Appeals certified a question involving the application of Louisiana Revised Statutes 13:3201(B) to the Louisiana Supreme Court. Plaintiff, the purchaser of a helicopter, had filed suit against several defendants after the helicopter sank in the Gulf of Mexico (outside Louisiana territorial waters). One of the defendants, the Garrett Corporation, was a California corporation that had manufactured the helicopter's flotation devices, which were supposed to prevent such an occurrence. Garrett objected to the assertion of jurisdiction by the Louisiana federal district court on the basis that it did not fall within the terms of section 3201 and thus the statute did not provide for jurisdiction.

According to the evidence presented, Garrett had transacted other business in Louisiana, but had never directly supplied the flotation devices to Louisiana. Furthermore, the accident had occurred outside Louisiana. On the basis of these findings the district court dismissed the action for lack of personal jurisdiction.[40]

The Fifth Circuit, however, granted writs and found that the due process requirements of the federal constitution were met;[41] but it was unsure of the proper interpretation of the Louisiana long arm statute

37. La. R.S. 13:3201 (Supp. 1988), as amended by 1987 La. Acts No. 418.

38. La. R.S. 13:3201(B) (Supp. 1988), as amended by 1987 La. Acts No. 418 now reads: "In addition to the provisions of subsection A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States."

39. 513 So. 2d 1188 (La. 1987).

40. Petroleum Helicopters v. Avco Corp., 623 F. Supp. 902, 908 (W.D. La. 1985).

41. Petroleum Helicopters v. Avco Corp., 804 F.2d 1367, 1369-71 (5th Cir. 1986).

because Louisiana appellate court decisions decided shortly before seemed to narrow the scope of the statute.[42] To determine the proper interpretations, the federal court requested the opinion of the Louisiana Supreme Court through the certification procedure.[43]

Before the Louisiana Supreme Court heard the case, the Louisiana statute was amended to extend personal jurisdiction to the limits of due process.[44] Although prior to the amendment the action would have fallen outside the scope of the statute's enumerated bases for jurisdiction, the Louisiana Supreme Court stated that the sole inquiry after the change is "a one-step analysis of the constitutional due process requirements."[45] The court then faced the issue of whether the statute should be applied retroactively:

> The general principle of retroactivity is that laws affecting substantive rights generally do not operate retroactively, while laws that relate to procedure operate retroactively in the absence of clear legislative intent to the contrary. Most courts have characterized long-arm statutes as procedural and have concluded that the enactment of new statutes or the amendment of existing statutes apply retroactively, at least in the sense that such statutes may be used to gain jurisdiction over a defendant whose acts giving rise to the action occurred prior to the effective date of the statute.[46]

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42. In Adcock v. Surety Research & Inv. Corp., 344 So. 2d 969 (La. 1977), in the process of finding that due process prohibited the assertion of jurisdiction over the defendant, the Louisiana Supreme Court said in dicta that the long arm statute "was designed to allow the courts of this state to exercise the broadest basis of personal jurisdiction over nonresidents permissible under the fourteenth amendment." 344 So. 2d at 971. This language, and various repetitions of it, were used by the Fifth Circuit to interpret the Louisiana statute as reaching to the limits of due process. See *Petroleum Helicopters*, 804 F.2d at 1371-72. Two recent appellate court cases, however, had denied personal jurisdiction on the basis that the allegations did not fall within the statutory language of what is now Louisiana Revised Statutes 13:3201(A). See Robinson v. Vanguard Ins. Co., 468 So. 2d 1360 (La. App. 1st Cir.), writ denied, 472 So. 2d 924 (1985); Alba v. Riviere, 457 So. 2d 33 (La. App. 4th Cir.), writ denied, 462 So. 2d 194 (1984). According to the Fifth Circuit, these cases appeared "irreconcilable with the apparently clear statements of the Louisiana Supreme Court." *Petroleum Helicopters*, 804 F.2d at 1372.

43. Petroleum Helicopters v. Avco Corp., 811 F.2d 922 (5th Cir. 1987). The exact question certified was, "Was the service of process made on Garrett Corporation in this case valid under Louisiana Rev. Stat. Ann. § 13:3201(1) (West Supp. 1986)?" Id. at 925. The court, however, disclaimed any intention that the Louisiana Supreme Court confine its reply to the "precise form or scope of the question certified." Id.

44. 1987 La. Acts No. 418.

45. 513 So. 2d at 1191.

46. Id. at 1192.

Because the court found that the long arm statute applied retroactively and agreed with the due process analysis of the facts by the United States Fifth Circuit, it replied to the certified question by stating that the service of process in this case was proper.[47]

Superior Supply Co. v. Associated Pipe and Supply Co.[48] involved a dispute between the plaintiff, a Texas corporation headquartered in Shreveport, Louisiana, and the defendant, a Colorado corporation, over defective steel casings for oil wells. A representative of the Colorado defendant had visited plaintiff's Shreveport office on several occasions to solicit its business. Ultimately, the plaintiff purchased the casings from the Colorado corporation, placing an order by means of a Louisiana-Colorado telephone call. The defendant then shipped the casings to Texas, where they were used. The lower courts had refused to assert jurisdiction because they concluded that the cause of action did not arise from any activity of the defendant in Louisiana, as had been required in Louisiana Revised Statutes 13:3202.

The Louisiana Supreme Court reversed, noting that section 3202 had been repealed and superseded by the same act that amended the long arm statute.[49] Emphasizing that the requirement that the cause of action arise from the conduct enumerated in the statute was no longer law, the court stated: "Inasmuch as the amended Louisiana Revised Statutes 13:3201 applies in the present case, the basis of the intermediate court's decision (which was rendered before the effective date of the amendment) is no longer valid."[50] The court then undertook a due process analysis of the facts of the case:

> Here, the nonresident was in the business of selling pipe and related supplies far beyond the borders of Colorado. By sending its employees to solicit sales in Louisiana and by selling pipe to Louisiana residents, defendant *purposefully* directed its business activities towards the forum state.[51]

Finding sufficient contacts with Louisiana to survive constitutional muster, the court held that the Colorado defendant was subject to the jurisdiction of the Louisiana court.

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47. Id.
48. 515 So. 2d 790 (La. 1987).
49. 1987 La. Acts No. 418.
50. 515 So. 2d at 792.
51. Id. at 797.