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JURISDICTION OVER A FOREIGN CORPORATION

I. INTRODUCTION

In an action against a foreign corporation, it would often be advantageous to the plaintiff to bring the suit within his own state, and the question arises: Does the court have jurisdiction over the foreign corporation? At least three factors make it difficult to establish a hard and fast rule as the answer to this question: First, jurisdiction in many cases is sustained as a result of a number of activities, and the courts repeatedly say that jurisdiction depends upon the facts of each case;¹ second, the appellate court will not overrule unless the trial court's determination is wholly unsupported by the evidence or manifestly influenced or controlled by error of law;² and third, since 1945 the test of service of process has included not only an analysis of the quantum of activities carried on in the state by the corporation but also a balancing of these in relation to the intangible "fair and orderly administration of the laws."³ The purpose of this note is to determine what factors will likely govern the law in this "morass"⁴ in light of a South Carolina amendment to the Uniform Commercial Code⁵ which goes into effect this year. This objective will be approached by examining the trend of South Carolina cases and by looking at what other states have done with similar statutes.⁶

II. JURISDICTION DISTINGUISHED FROM TAXING AND DOMESTICATION

This subject is sometimes broadly referred to as "doing business". Care should be taken to distinguish corporate "doing

1. *E.g.*, *Graybill v. Sims Saddle & Leather Co.*, 241 F. Supp. 432 (E.D.S.C. 1965); *Boney v. Trans-State Dredging Co.*, 237 S.C. 54, 115 S.E.2d 508 (1960); *State v. Ford Motor Co.*, 208 S.C. 379, 38 S.E.2d 242 (1946); *Jones v. General Motors Corp.*, 197 S.C. 129, 14 S.E.2d 628 (1941).

2. *E.g.*, *Lawson v. Jeter*, 243 S.C. 103, 132 S.E.2d 276 (1963); *State v. Ford Motor Co.*, 208 S.C. 379, 38 S.E.2d 242 (1946); *Bass v. American Prod. Export & Import Corp.*, 124 S.C. 346, 117 S.E. 594 (1923).

3. *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

4. *Hutchinson v. Chase & Gilbert, Inc.*, 45 F.2d 139, 142 (2d Cir. 1930).

5. S.C. CODE ANN. § 10.10-101 (1966).

6. For the practitioner there is a booklet, *What Constitutes Doing Business*, published by The Corporation Trust Company in 1963 which lists specific activities and states whether or not a case sustained or set aside service under these activities. Cases under most activities go both ways and, as the publication warns, care should be taken to place a case in chronological perspective in relationship to *International Shoe v. Washington*, 326 U.S. 310 (1945), and to remember that the problem is a factual determination in most cases.

business" in the service of process situation from "doing business" for domestication or licensing purposes and "doing business" for taxation purposes. Basically, the due process test of whether or not a corporation's activity in a state warrants taxation depends upon the corporation's "nexus" with the state.⁷ There also must not be an unreasonable interference with interstate commerce, this restriction stemming from the commerce clause; yet a state tax is permissible even if all the activity of the corporation is interstate in nature.⁸ Congress reacted to this situation and prohibited the state from levying a net income tax on interstate activities when the sole activity was solicitation;⁹ however, the Supreme Court trend in this area continues to lessen the restrictions of the United States Constitution on a state's power to tax.¹⁰

"Doing business" for qualification purposes has the most restrictive constitutional criteria.¹¹ Qualification statutes also must meet a commerce clause test; however, if activities within a state are solely in interstate commerce, the corporation is immune from qualification requirements.¹² Activities such as maintaining a stock of goods in a state,¹³ installation of equipment of a non-technical nature,¹⁴ and rendering the services¹⁵ have been held intrastate for this purpose; whereas activities classified as isolated transactions¹⁶ or preliminary acts¹⁷ and specific acts such as participating in a suit, holding corporate meetings, maintaining bank accounts, maintaining offices or trustees for securities transfers, creating or collecting debts,

7. *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959).

8. *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U.S. 33, 47 (1940).

9. 73 Stat. 555 (1959), 15 U.S.C. § 381 (1964).

10. *Cf. General Motors Corp. v. Washington*, 377 U.S. 436 (1964).

11. *See Shealy v. Challenger Mfg. Co.*, 304 F.2d 102 (4th Cir. 1962).

12. *Sioux Remedy Co. v. Cope*, 235 U.S. 197 (1914); *International Textbook Co. v. Pigg*, 217 U.S. 91 (1910); *Crutche v. Kentucky*, 141 U.S. 47 (1891); *Eli Lilly & Co. v. Sav-on-Drug, Inc.*, 366 U.S. 277 (1961) (dictum).

13. *E.g.*, *Dalton Adding Mach. Co. v. Virginia*, 246 U.S. 498 (1918); *Armour Packing Co. v. Lacy*, 200 U.S. 226 (1906); *THE CORPORATION TRUST CO., WHAT CONSTITUTES DOING BUSINESS* 66 (1963).

14. *E.g.*, *General Ry. Signal Co. v. Virginia*, 246 U.S. 500 (1918); *Browning v. Waycross*, 233 U.S. 16 (1914); *THE CORPORATION TRUST CO., WHAT CONSTITUTES DOING BUSINESS* 52 (1963).

15. *E.g.*, *Union Brokerage Co. v. Jensen*, 322 U.S. 202 (1944); *Interstate Amusement Co. v. Albert*, 239 U.S. 560 (1916); *THE CORPORATION TRUST CO., WHAT CONSTITUTES DOING BUSINESS* 76 (1963).

16. *E.g.*, S.C. CODE ANN. § 12-23.1(b)(9) (Supp. 1966).

17. 20 C.J.S. *Corporations* § 1832 (1940).

owning and controlling a subsidiary¹⁸ are generally activities which do not require a corporation to qualify.

Formerly these three types of "doing business" were confused without any great harm; however, as the inhibitions imposed by the commerce clause and due process were lessened, each of the three types developed its own distinctive line of cases.¹⁹ If today the much more liberal service of process standard were confused with qualification, an activity solely in interstate commerce²⁰ could subject a corporation to a myriad of filing requirements²¹ or could deny the corporation access to the courts of the state and impose a fine of as much as ten dollars a day for the period the corporation did business in the state without qualifying.²²

III. THE CONSTITUTIONAL STANDARD FOR JURISDICTION

A. *Pre-International Shoe*

At common law, jurisdiction could not be obtained over a foreign corporation which did not consent to service since the corporation did not legally exist outside of the state in which it was created.²³ The earlier constitutional due process test of jurisdiction was stated in *Pennoyer v. Neff*:²⁴ "[N]o State can exercise direct jurisdiction and authority over persons or property without its territory."²⁵

This rigid requirement of actual presence was eroded in the corporate field by various fictions of the courts. A foreign corporation could be sued because of its "implied presence" within a jurisdiction.²⁶ Also it was constitutionally permissible to make a corporation "consent" to service of process if it wished to transact business within the state.²⁷ These exceptions were concerned with the degree of activity carried on in the state and they asked

18. *E.g.*, S.C. CODE ANN. § 12-23.1(b) (Supp. 1966).

19. *See* Shealy v. Challenger Mfg. Co., 304 F.2d 102 (4th Cir. 1962); THE CORPORATION TRUST CO., WHAT CONSTITUTES DOING BUSINESS 1 (1963).

20. *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914); RESTATEMENT OF JUDGMENTS § 30 comment c (1942).

21. *E.g.*, S.C. CODE ANN. §§ 12-23.2, 12-24.1 (Supp. 1966).

22. *E.g.*, S.C. CODE ANN. § 12-23.15(a), (b) (Supp. 1966).

23. Annot., 25 A.L.R.2d 1202, 1203 (1952); *Bank of Augusta v. Earle*, 38 U.S. (13 Pet.) 519 (1839) (dictum).

24. 95 U.S. 714 (1878).

25. *Id.* at 721.

26. Annot., 25 A.L.R.2d 1202 (1952); Comment, 15 S.C.L. Rev. 445 (1965).

27. *Id.*

the question: Was the corporation "doing business"?²⁸ In this era, because of the commerce clause, activity termed "mere solicitation" did not subject a corporation to jurisdiction of the state; "solicitation plus" was required.²⁹

B. International Shoe

In 1945 *International Shoe Company v. Washington*³⁰ set forth a new standard. To meet the requirements of due process with respect to a corporation not within the state there must be some "minimum contact with the jurisdiction such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"³¹ No longer was the test to be solely quantitative, asking only what is the degree of activity carried on within the state by the foreign corporation. The spectrum of activities that had previously determined whether or not there was jurisdiction over a foreign corporation, as described by Chief Justice Stone, ranged from the continuous activities from which the suit arose to isolated incidents unrelated to the cause of action.³² The former, of course, always warranted service against a corporation; but as the activity within the state became less and less and the cause of action showed a smaller connection with this activity, the burden on the corporation exceeded the bounds of due process.³³ The difficult situations were between the two ends of the spectrum.³⁴ In cases in which continuous activities in a state were substantial, a suit could arise out of unrelated activities;³⁵ or a single act, because of its very nature and quality, could be deemed sufficient to render the corporation liable to suit.³⁶ According to Stone, due process now required that these activities on the spectrum be balanced with the fair and orderly administration of the law to determine whether or not due process was offended.³⁷ Therefore an additional factor would be the

28. *Id.*

29. *Green v. Chicago B. & O. Ry.*, 205 U.S. 530 (1907). See *Shealy v. Challenger Mfg. Co.*, 304 F.2d 102, 104 (4th Cir. 1962).

30. 326 U.S. 310 (1945).

31. *Id.* at 316.

32. *Id.* at 317.

33. *Id.*

34. See Reese & Galston, *Doing An Act or Causing Consequences as Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249, 252 (1959).

35. *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945).

36. *Id.*

37. *Id.* at 319.

estimate of the inconveniences which would result from the corporation's defending the suit away from its "home."³⁸

C. *The Constitutional Limits of International Shoe*

Since *International Shoe* several cases have shown the extent to which the Supreme Court has invited the states to break with the requirement of presence. In *McGee v. International Life Insurance Company*³⁹ a Texas insurance company assumed the obligations of an Arizona life insurance company. Among these obligations was a policy with a California resident. The insurance company contacted the California policy holder and accepted premiums from him until his death. Although this was the only activity of the defendant in California, the Court upheld service made at defendant's home office under a California statute which subjects foreign corporations to suit in California on insurance contracts with California residents. The Supreme Court took note of the expanding scope of state jurisdiction over foreign corporations and explained the trends as being attributable to the transformation of our economy, in which more and more commercial transactions are being conducted across state lines by mail, and to modern communications and transportation, which have lessened the burden of defending a suit in a distant state where a corporation engages in economic activity.⁴⁰

In an earlier case⁴¹ a Nebraska mail-order health insurance company had challenged the personal jurisdiction asserted by Virginia in the issuance of a cease-and-desist order under a Virginia Blue Sky law. The Supreme Court sustained jurisdiction and held that solicitation of policies by mail was a sufficient "minimum contact" to meet the due process requirement. One factor that seemed to influence the Court was the fact that if jurisdiction were denied the burden on a Virginia citizen would be very great because of the expense and trouble of suing in Nebraska. Moreover, the Court felt that the witnesses were likely to live in Virginia. Thus the Court seemed to have injected another practical consideration into the constitutional criteria for service of process.

Although the trend was very liberal, the Supreme Court in 1958 made it clear that all territorial distinctions were not to be

38. *Id.*

39. 355 U.S. 220 (1957).

40. *Id.* at 223.

41. *Travelers Health Ass'n v. Virginia*, 339 U.S. 643 (1950).

eradicated. *Hanson v. Denckla*⁴² clarified the meaning of "minimum contact" as set forth in *International Shoe* by stating that the defendant must have done some act which purposely avails him of the privilege of conducting activities within the forum state. There must be this "minimum contact" with the forum despite how minimal the burden of defending the suit might be, and a unilateral act of the plaintiff is not a sufficient "minimum contact."⁴³

After *International Shoe* many states took advantage of the growing trend in favor of jurisdiction and enacted "long arm" statutes which extended their jurisdiction over foreign corporations.⁴⁴ The Supreme Court has not directly ruled on the constitutionality of these statutes. In an Opinion of the Justice in Chambers,⁴⁵ Justice Goldberg reviewed New York's "long arm" statute which authorizes personal jurisdiction on the basis of a tortious act in the state. He expressed the opinion that the New York statute was constitutional as applied to the defendant who allegedly entered the state intentionally for the purpose of committing a tort.

IV. JURISDICTION IN SOUTH CAROLINA

A. The Statutes

There are several service of process statutes in South Carolina at present. The general provision for suit against "a corporation" provides for delivery of a copy of the summons "to the president or other head of the corporation, or to the secretary, cashier or treasurer or any director or agent thereof. . . ."⁴⁶ When service is made against a foreign corporation, this section of the code is restricted by statute to cases in which (a) the corporation has property within the state, (b) the cause of action arose therein or (c) the service is made personally in this state upon the president, cashier, treasurer, attorney, secretary or any other agent thereof.⁴⁷ The South Carolina Supreme Court as

42. 357 U.S. 235 (1958).

43. *Id.* at 253.

44. *E.g.*, CONN. GEN. STAT. § 33-411 (c) (3) (1958); ILL. ANN. STAT. § 110-17 (1956); MD. ANN. CODE art. 23, § 92 (1957); MINN. STAT. § 303.13 (1965); N.Y. CIV. PRAC. LAW & RULE § 302 (McKinney 1963); N.C. GEN. STAT. § 55-145 (1965); TEX. REV. CIV. STAT. art. 2031(b), § 4 (1964); VT. STAT. ANN. § 12-855 (1958).

45. *Rosenblatt v. American Cyanamid Co.*, 86 S. Ct. 1 (1965).

46. S.C. CODE ANN. § 10-421 (Supp. 1966).

47. S.C. CODE ANN. § 10-423 (1962).

late as 1957 has held that two things are required for compliance with this section: First, the corporation must be doing business in the state; and second, service must be upon a duly authorized officer or agent of the company within this state.⁴⁸

There are two provisions for substituted service upon the Secretary of State. One provides that if the corporation "transacts business" without complying with the state qualification requirements, service upon the Secretary then is deemed sufficient service provided proper notice is given to the defendant.⁴⁹ The other provision, which was enacted as part of the South Carolina Business Corporation Act of 1962, states that a foreign corporation has designated the Secretary of State as its agent by "doing business" without obtaining authority to do business.⁵⁰ As a general rule "doing business" and "transacting business" are said to be synonymous⁵¹ although there is a minority view which indicates that "transacting business" requires a lesser degree of activity within a state to sustain jurisdiction.⁵²

B. The South Carolina Supreme Court's Interpretation

The earlier cases under these service of process statutes were generally influenced by a restrictive view of due process and of the commerce clause imposed by the United States Constitution.⁵³ For example, in 1938 a case dismissed service on a foreign corporate vendor which, having sold its goods out of state, delivered its goods in state in its own trucks. The court felt that the delivery was unimportant since the goods were not in the state at the time of sale.⁵⁴ The court expressly stated that service was being dismissed because of the federal constitutional authorities and

48. *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957).

49. S.C. CODE ANN. § 10-424 (Supp. 1966).

50. S.C. CODE ANN. § 12-23.14 (Supp. 1966).

51. *E.g.*, *Frye v. Batavia Veterans Administration Employees Fed. Credit Union*, 8 F.R.D. 334, (D.D.C. 1943); *Milbank v. Standard Motor Constr. Co.*, 156 Cal. App. 67, 22 P.2d 271 (1933); *Filmakers Releasing Organization v. Realart Picture, Inc.*, 374 S.W.2d 535 (Mo. App. 1964).

52. *See, e.g.*, *Haas v. Fancher Furniture Co.*, 156 F. Supp. 564, 567 (N.D. Ill. 1957); *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y. 2d 443, 452, 209 N.E.2d 68, 72, 261 N.Y.S.2d 8, 14 (1965). The decisions that feel that there is a difference relate "doing business" to the older line of cases in which the activity in the state was the sole test of jurisdiction. "Transacting business" expresses the lesser activity necessary for jurisdiction after *International Shoe*.

53. *See Shealy v. Challenger Mfg. Co.*, 304 F.2d 102 (4th Cir. 1962).

54. *Zeigler v. Puritan Mills*, 188 S.C. 367, 199 S.E. 420 (1938).

not because of the South Carolina statute which the court viewed as being very broad.

As the restrictions of the United States Constitution were eased, South Carolina required less activity in the state in order to sustain jurisdiction over foreign corporations. Immediately before *International Shoe* the South Carolina Supreme Court sustained assumption of jurisdiction over Ford Motor Company even though Ford had gone to considerable lengths to avoid any contact with the state in its franchise agreements.⁵⁵ This case was later reaffirmed using the "minimum contact" language of *International Shoe*.⁵⁶

These later cases seemed to indicate the full acceptance of "minimum contact" with all its constitutional potential; however, there appeared to be a period of regression from the earlier more liberal standard. In *Hoffman v. D. Landreth Seed Company*⁵⁷ the defendant solicited orders in South Carolina through a traveling "solicitor" (not salesman). The orders were to be accepted outside the state and the goods were to be shipped in interstate commerce. The defendant also sent a representative into the state to investigate any complaints. The court denied jurisdiction, pointing out the limitation by federal authorities because of the due process, equal protection and interstate commerce problems involved and because the trial court's determination was not to be disturbed unless wholly unsupported by the evidence. In another case a year earlier the court affirmed the trial court's determination that there was no jurisdiction, relying on the fact that defendant sold only in interstate commerce.⁵⁸

But then in 1958 South Carolina had a case similar to the Supreme Court case of *McGee v. International Life Insurance Company*,⁵⁹ and the court sustained jurisdiction.⁶⁰ Then in 1960 a Florida dredging corporation, which had its crew based in Georgia and procured its supplies solely from Georgia and

55. *Thompson v. Ford Motor Co.*, 200 S.C. 393, 21 S.E.2d 34 (1942).

56. *State v. Ford Motor Co.*, 208 S.C. 379, 38 S.E.2d 242 (1946). This case shows how early South Carolina recognized the distinction between service of process and domestication situations. In this case Ford was not required to domesticate despite the fact that it had earlier been held to be amenable to service in *Thompson v. Ford Motor Co.*, 200 S.C. 393, 21 S.E.2d 34 (1942).

57. 220 S.C. 193, 66 S.E.2d 813 (1951).

58. *Industrial Equip. Co. v. Frank G. Hough Co.*, 218 S.C. 169, 61 S.E.2d 884 (1950).

59. 355 U.S. 220 (1957).

60. *Ross v. American Income Life Ins. Co.*, 232 S.C. 433, 102 S.E.2d 743 (1958). In this case the court sustained jurisdiction pursuant to S.C. CODE ANN. § 37-265 (1962).

Florida sources, was denied a motion to set aside service for a tort committed in South Carolina.⁶¹ The court used the "minimum contact" language of *International Shoe* and felt that the test was met by the corporation's ten months of dredging activities in the Savannah River which occasionally required cutting into the banks of South Carolina.

Recently the South Carolina Supreme Court removed any doubt that it would attempt to go to the full limits permitted by the federal authorities. In *Carolina Boats & Plastics v. Glascoat Distributors, Inc.*⁶² the court pointed out that the ideas expressed in the *Hoffman* and *Zeigler* cases had been supplanted by a new test of jurisdiction which required "only that the corporation have such contact with the state of the forum that the maintenance of an action against it *in personam* should not 'offend traditional notions of fair play and substantial justice.'"⁶³ Borrowing again from the United States Supreme Court cases, the court stated that the factors which govern jurisdiction in South Carolina now are:

- (a) duration and nature of the corporate activity within the state,
- (b) the character of the acts giving rise to the litigation,
- (c) the circumstances of their commission, and
- (d) the relative inconvenience to the respective parties of a trial in the state of the forum on the one hand and in the state of corporate domicile on the other.

U. The Fourth Circuit's Interpretation of South Carolina's Statutes

A suit in federal court may be commenced against a foreign corporation by service of process in the manner prescribed by the state law in which service is made.⁶⁴ When this procedure is used, the Fourth Circuit has held that it is bound by South Carolina's interpretation of its service of process procedure,⁶⁵ therefore, its handling of these statutes is of some importance.

61. *Boney v. Trans-State Dredging Co.*, 237 S.C. 54, 115 S.E.2d 508 (1960).

62. 249 S.C. 49, 152 S.E.2d 352 (1967).

63. *Id.* at 53, 152 S.E.2d at 353.

64. Fed. R. Civ. P. 4(d)(7).

65. *E.g.*, *Shealy v. Challenger Mfg. Co.*, 304 F.2d 102 (4th Cir. 1962); *Bramlett v. Arthur Murray, Inc.*, 250 F. Supp. 1011, 1014 (D.S.C. 1966). Care should be taken not to apply this literally in every situation. If state

In *Springs Cotton Mills v. Machinecraft, Inc.*,⁶⁶ a case arising before *Boney v. Trans-State Dredging Company*,⁶⁷ the district court held that when a Massachusetts corporation had sold through its exclusive distributor some allegedly defective textile machinery to a South Carolina corporation, *International Shoe* should be *confined to its facts*, and service was quashed. This case should, however, be compared to a later district court case in which the defendant also tried to confine *International Shoe* to its facts. In the latter case the defendant was met with this quotation:

No two cases are alike. The value of constitutional precedent is not merely to guide a decision on like facts. Their value is also in the exposition of legal principles to be applied to the facts which, though different, rationally call for application of the principles which have been expounded.⁶⁸

Another reason why the authority of *Machinecraft* should be limited is the fact that the court felt there was no South Carolina authority which would compel use of a "minimal connection" test. At the time this case was decided the most current South Carolina Supreme Court case in this area was the now-repudiated case of *Hoffman v. D. Landreth Seed Company*.⁶⁹

Following *Boney* the federal courts regarded South Carolina's interpretation of her service of process statutes as being very broad. In *Shealy v. Challenger Manufacturing Company*⁷⁰ a Tennessee manufacturer's primary activity in the state was the delivery of its products in its own trucks to a local wholesaler for resale in the state. The Fourth Circuit, in sustaining jurisdiction, reviewed the federal and South Carolina decisions and concluded that the South Carolina service of process statutes "approach, if they do not reach, ultimate constitutional bounds."⁷¹

law exceeded the due process clause, the federal court could not be bound. Cf. *Charles Keeshin, Inc. v. Gordon Johnson Co.*, 109 F. Supp. 939 (W.D. Ark. 1952). See Annot., 6 A.L.R.3d 1103 (1966), which concludes that when the state standard for jurisdiction is more restrictive than the federal standard, state law should apply. But see *Szantay v. Beech Aircraft Corp.*, 349 F.2d 60 (4th Cir. 1965).

66. 156 F. Supp. 372 (W.D.S.C. 1957).

67. 237 S.C. 54, 115 S.E.2d 508 (1960).

68. *Szantay v. Beech Aircraft Corp.*, 237 F. Supp. 393, 403 (E.D.S.C.), *aff'd* 349 F.2d 60 (4th Cir. 1965).

69. 220 S.C. 193, 66 S.E.2d 813 (1951).

70. 304 F.2d 102 (4th Cir. 1962).

71. *Id.* at 107.

During this time there were numerous district court cases in which jurisdiction was sustained, relying upon *Shealy* and *International Shoe*. One case used the traditional method of analyzing the volume of business done in the state and upheld service upon the foreign corporation.⁷² A number of district court cases have sustained jurisdiction, using "minimum contact" language, because of extensive franchise agreements between the foreign corporation and dealers in the state.⁷³ In one of these cases the cause of action arose outside the state.⁷⁴ While the court had the support of a very early South Carolina case which held this was permissible,⁷⁵ it was not until 1952 that the United States Supreme Court expressly held that it was constitutional to sustain jurisdiction over a foreign corporation for a cause of action arising outside the forum state.⁷⁶

A number of district court cases, however, demonstrate that jurisdiction will not be sustained in every case. Evidence of a delivery of one automobile was insufficient to make a North Carolina corporation amenable to suit,⁷⁷ and the filling of an unsolicited order for a crane by a California corporation did not meet the standards of *Shealy*, *International Shoe*, the South Carolina Supreme Court or the statutes for service.⁷⁸ One case⁷⁹ casts serious doubts as to whether the district courts will apply in every case the sweeping language of *Shealy*. The suit was brought to restrain the defendant from prosecuting a cause of action in Surinam, South America, arising out of a contract for an exclusive selling agency in South Carolina. Part of the negotiation and execution of the contract took place in South Carolina, but the court concluded that under the terms of the contract substantially all of the performance was to take place in South America. Also, the defendant had had representatives solicit

72. *Graybill v. Sims Saddle & Leather Co.*, 241 F. Supp. 432 (E.D.S.C. 1965). Over 150 sale orders had been taken in the state by traveling representatives.

73. *Rodrique v. Yale & Towne, Inc.*, 251 F. Supp. 73 (D.S.C. 1966); *Bramlett v. Arthur Murray, Inc.*, 250 F. Supp. 1011 (D.S.C. 1966) (plaintiff was suing for \$7,217.00 worth of dancing lessons); *Hughes v. Kaiser Jeep Corp.*, 246 F. Supp. 557 (E.D.S.C. 1965); *Szantay v. Beech Aircraft Corp.*, 237 F. Supp. 393 (E.D.S.C.), *aff'd*, 349 F.2d 60 (4th Cir. 1965).

74. *Szantay v. Beech Aircraft Corp.*, 237 F. Supp. 393 (E.D.S.C.), *aff'd*, 349 F.2d 60 (4th Cir. 1965).

75. *Lipe v. Carolina C. & O. Ry.*, 123 S.C. 515, 116 S.E. 101 (1923).

76. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952).

77. *Bolton v. Fair Bluff Motors, Inc.*, 215 F. Supp. 619 (E.D.S.C. 1963).

78. *Clawson v. Garland*, 37 F.R.D. 324 (E.D.S.C. 1965).

79. *Surinam Lumber Co. v. Surinam Lumber Corp.*, 259 F. Supp. 206 (D.S.C. 1966).

orders from two South Carolina firms. The court held there was no jurisdiction, feeling that the guide lines of *Shealy* were not applicable. If the cause of action is viewed as not being concerned with the contract, then the contacts of the defendant within the state should be greater in order to sustain jurisdiction.⁸⁰ It could be argued in this case, however, that the cause of action was based on the contract which was partially executed in this state and concerned an exclusive selling agency in this state. Yet no mention was made of *McGee* which held that a single contract was sufficient to meet the "minimum contact" requirement of due process if the cause of action arose therefrom.

Thus it can be seen that the federal courts, viewing the South Carolina law up to the time of *Boney*, sustained jurisdiction in a large number of cases using very broad language from *International Shoe*; but in at least one instance the court did not extend jurisdiction in a case which conceivably could have met the due process requirements.

V. THE SOUTH CAROLINA AMENDMENT TO THE UNIFORM COMMERCIAL CODE

A. Introduction

In 1965 the South Carolina court, relying upon the South Carolina statutes without any reference to constitutional problems, set aside service on a defendant which had manufactured a coffee brewer that had passed through the channels of trade and had injured a South Carolina plaintiff.⁸¹ It has been suggested that this could be a situation in which jurisdiction could be limited by South Carolina's service of process statute rather than by the United States Constitution.⁸²

Any possibility that the South Carolina Legislature intended a restrictive statute was removed when the General Assembly of South Carolina added a "long-arm" provision to the Uniform Commercial Code. The language is taken from some of the more liberal statutes that were passed by other states after *International Shoe*.⁸³

80. *Perkins v. Benguet Consol. Mining Co.*, 324 U.S. 437 (1952).

81. *Phillips v. Knapp-Monarch Co.*, 245 S.C. 383, 140 S.E.2d 786 (1965).

82. See Comment, 17 S.C.L. REV. 445 (1965).

83. E.g., ILL. ANN. STAT. § 110-17 (1956); N.Y. CIV. PRAC. LAW & RULE § 302 (McKinney 1963); N.C. GEN. STAT. § 55-145 (1965).

B. *The State Constitutionality of the Amendment*

There is a possibility that this new provision may violate the state constitution, which requires that "every Act . . . shall relate to but one subject and that shall be expressed in the title."⁸⁴ Among other things the Uniform Commercial Code extends jurisdiction over persons with certain enduring relationships "to any cause of action,"⁸⁵ and, in another section bases personal jurisdiction on "transacting any business . . . commission of a tortious act . . . causing tortious injury or death . . . or having an interest in, using or possessing real property . . ."⁸⁶ Arguably, some of these topics are not expressed in the title of the Act⁸⁷ nor are they germane to the other provisions of the Uniform Commercial Code. This section of the state constitution is liberally construed⁸⁸ and a statute is upheld whenever possible,⁸⁹ so perhaps the constitutionality could be saved. A re-enactment,⁹⁰ however, could remove any doubt of constitutionality.

C. *The Single-Tort Acts*

Possibly the new UCC provision could cover a situation similar to the facts in *Phillips v. Knapp-Monarch Company*,⁹¹ in which a South Carolina resident was injured inside the state by goods which were manufactured by a foreign corporation outside the state. In the Illinois case of *Gray v. American Radiator & Standard Sanitary Corporation*,⁹² a defective water heater manufactured outside the state exploded and injured an Illinois resident. The Illinois court sustained jurisdiction under a statute which provided for service when a person commits a tortious act or omission within the state.⁹³ The court reasoned that the tort

84. S.C. CONST. art. 3, § 17.

85. S.C. CODE ANN. § 10.2-802 (1966).

86. S.C. CODE ANN. § 10.2-803 (1966).

87. "To Be Known As The Uniform Commercial Code, Relating To Certain Commercial Transactions In Or Regarding Personal Property And Contracts And Other Documents Concerning Them, Including . . ." LIV S.C. STATS. AT LARGE 4027 (No. 1065, 1966).

88. *McKiever v. City of Sumter*, 137 S.C. 266, 135 S.E. 60 (1926); *Southern Power Co. v. Walker*, 89 S.C. 84, 71 S.E. 356 (1911); *Hill v. City Council*, 59 S.C. 396, 38 S.E. 11 (1901); *Floyd v. Perrin*, 30 S.C. 1, 8 S.E. 14 (1888).

89. *Alley v. Daniel*, 153 S.C. 217, 150 S.E. 691 (1929).

90. *Colonial Life & Accident Ins. Co. v. S.C. Tax Comm'n*, 233 S.C. 129, 103 S.E.2d 908 (1958).

91. 245 S.C. 383, 140 S.E.2d 786 (1965).

92. 22 Ill. 2d 432, 176 N.E.2d 761 (1957).

93. ILL. ANN. STAT. § 110-17 (1956).

was committed at the place where the injury occurred and not where the water heater was manufactured, and therefore the language of the statute was met. The current constitutional authorities were discussed and it was felt that "minimum contact" had been satisfied.

The theory of the *Gray* case, however, has not been without its critics. A Pennsylvania case has held that only by a distortion of the language employed by the legislature "can acts or omissions" be equated with "where the injury arose" or "where right of cause of action arose."⁹⁴ A New York court felt that the Illinois court had confused the place of "commission of a tortious act" with "place of wrong" in the conflicts of law area, and it also pointed out that the place of a "tort" was not necessarily the place of the "tortious act."⁹⁵

The Minnesota statute uses the words "commits a tort in whole or in part in [the state],"⁹⁶ and the Minnesota court has had little trouble in holding that an injured citizen may obtain jurisdiction over a foreign corporation which never entered the state.⁹⁷ The first appellate decision⁹⁸ that squarely held that jurisdiction may be acquired by a single tort⁹⁹ also had the benefit of a statute that used the words "commits a tort in whole or in part in [the state]."¹⁰⁰ In that case the defendant had come into the state and had committed the tort; but when faced with the situation where only the injury occurred inside the state, the Vermont court refused to extend jurisdiction under the statute.¹⁰¹ The South Carolina Act does not use the broader language "commission of a tort" as do the Vermont and Minnesota statutes nor is it limited to the words "commission of a tortious act or tortious conduct within this state," which the majority of cases hold should not apply to a product defectively

94. *Rufo v. Bastian-Blessing Co.*, 405 Pa. 123, 173 A.2d 123 (1961).

95. *Longines-Wittnauer Watch Co. v. Barnes & Reinecke, Inc.*, 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965).

96. MINN. STAT. § 303.13 (1965).

97. *Cf. Ehlers v. United States Heating & Cooling Mfg. Corp.*, 267 Minn. 56, 124 N.W.2d 824 (1963); *Atkins v. Jones & Laughlin Steel Corp.*, 258 Minn. 571, 104 N.W.2d 888 (1960).

98. *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664 (1951).

99. Annot., 25 A.L.R.2d 1202, 1205 (1952).

100. VT. STAT. ANN. § 12-855 (1958).

101. *O'Brien v. Comstock Foods, Inc.*, 123 Vt. 461, 194 A.2d 568 (1963).

manufactured outside the state.¹⁰² Thus the South Carolina court could adopt either view.

While it is not clear from the language which way the South Carolina court could interpret the single tortious act provision when faced with a situation in which a product manufactured outside the state injures a resident, two other provisions may be applied under these circumstances. These provisions¹⁰³ spell out activity that a manufacturer, whose product might injure a person in the state, would be likely to conduct. Also these provisions come closer to meeting the constitutional *caveat* expressed in *Hansen v. Denckla*¹⁰⁴ and *International Shoe*¹⁰⁵ that a defendant must have done some act by which he purposely avails himself of the privilege of conducting activity within the forum state. Arguably the court either will have to infer that the defendant's products have substantial use and consumption in the state as was done in *Gray*¹⁰⁶ or will at least have to find some reasonable expectation by the defendant that the goods were to be used in the state in order to meet the due process test under these new sections.¹⁰⁷ This may not be too burdensome since it has been held that a reasonable expectation of use within a state may be the anticipation of a national market which does not specifically exclude the state in question.¹⁰⁸

D. Other Activities

Other activities¹⁰⁹ in the new UCC provision which subject a foreign corporation to suit in South Carolina if the cause of

102. "A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's . . . (c) commission of a tortious act in whole or in part in this state" S.C. CODE ANN. § 10.2-803(1)(c) (1966).

103. (d) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state

(h) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

S.C. CODE ANN. §§ 10.2-803(1)(d), (h) (1966).

104. 357 U.S. 235 (1958).

105. 326 U.S. 310 (1945).

106. 22 Ill. 2d 432, 176 N.E.2d 761, 766 (1957); see *O'Brien v. Comstock Foods, Inc.*, 123 Vt. 461, 194 A.2d 568, 571 (1963).

107. See Comment, 50 MINN. L. REV. 946, 951 (1966).

108. *Ehlers v. United States Heating & Cooling Mfg. Corp.*, 267 Minn. 56, 124 N.W.2d 824 (1963).

109. (a) transacting any business in this State;

(b) contracting to supply services or things in this State . . .

(e) having an interest in, using, or possessing real property in this State;

action arose therefrom probably could have been construed judicially to be "doing business" or "transacting business" under the old service of process sections.¹¹⁰ In fact, "transacting business" is stated as one of these activities¹¹¹ apparently to take advantage of the new methods of service by personal delivery or mail or under other state laws or court direction.¹¹² The provision that sustains jurisdiction if the cause of action arose out of a contract to be performed in the state may have a strong constitutional base in *McGee v. International Life Insurance Company*¹¹³ since it has been held that the constitutional worth of this case should not be limited solely to insurance contracts.¹¹⁴ There is, however, authority to the contrary.¹¹⁵

A provision which might have constitutional difficulty both under the state constitution and Federal Constitution is the provision basing personal jurisdiction on a cause of action arising out of having an interest in, using, or possessing real property in the state.¹¹⁶ Although *Pennoyer v. Neff* has been severely limited by *International Shoe* and by later cases, it has not been expressly overruled by the United States Supreme Court, and it may be argued that this situation runs counter to one of the principles established in *Pennoyer*—"a court has no jurisdiction to render a personal judgment against a nonresident defendant merely because he owns property within the forum."¹¹⁷ There is serious doubt that any court would hold that owning property in a state is not a sufficient "minimum contact," especially when the cause of action was related to the property; yet this brings out the related problem of whether or not state and district court cases decided before *International Shoe* have any authority. At least one South Carolina District Court case has discounted cases cited because they were decided before *International Shoe*.¹¹⁸

(f) contracting to insure any person, property or risk located within this State at the time of contracting;

(g) entry into a contract to be performed in whole or in part by either party in this State

S.C. CODE ANN. § 10.2-803(1)(a), (b), (e), (f), (g) (1966).

110. S.C. CODE ANN. §§ 10-424, 12-23.14 (Supp. 1966). These sections are unaffected by the new provision. S.C. CODE ANN. § 10.2-809 (1966).

111. S.C. CODE ANN. § 10.2-803(1)(a) (1966).

112. *Id.* § 10.2-806.

113. 355 U.S. 220 (1957).

114. *Kornfuehrer v. Philadelphia Bindery, Inc.*, 240 F. Supp. 157, 160 (D. Minn. 1965); see Comment, 50 MINN. L. REV. 946, 959 (1966).

115. *Trippe Mfg. Co. v. Spencer Gifts, Inc.*, 270 F.2d 821 (7th Cir. 1959).

116. S.C. CODE ANN. § 10.2-803(1)(e) (1966).

117. Annot., 2 L.Ed.2d 1664 (1958).

118. *Bramlett v. Arthur Murray, Inc.*, 250 F. Supp. 1011 (D.S.C. 1966).

VI. CONCLUSION

As stated above, the tendency of the South Carolina courts and legislature has been to expand jurisdiction as far as constitutionally possible. Under the new UCC, jurisdiction may be extended to cases arising in the products liability area or arising out of a single contract connected with the state. These situations are at the outer limits of constitutionality.

In other situations the South Carolina Supreme Court has already demonstrated a desire to have the trial court judge follow the guide lines suggested by the United States Supreme Court when determining due process. Not only should the quantity of the foreign corporation's activity in the state be analyzed, but also the nature of the acts giving rise to the cause of action, their relationship to the activities of the corporation, and the convenience of the parties and witnesses¹¹⁹ should be considered.

WILLIAM S. ELDER

119. When jurisdiction is asserted pursuant to S.C. CODE ANN. § 10-803, subsection two denies the use of the venue section, S.C. CODE ANN. § 10-310(3), which gives the court the discretion to change the place of trial when the convenience of witnesses and the ends of justice are promoted.