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Doing Business--A Re-Examination

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vors a relaxation of the present abortion laws,[87] create a need for action on the part of the legal profession. It is not this writer's intent to set forth a model plan for reform (this has been done by almost every writer on the subject), but only to point up the problems inherent in the present law. Many foreign countries have recognized the problem and have acted;[88] we have not. "Ostrich-like we have buried our heads in the sand and refused to look facts in the face."[89]

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Doing Business—A Re-Examination

One of the most vexing problems of corporate law today involves the obtaining of jurisdiction over a foreign corporation. Competing considerations of due process and the desire to hold the corporation locally responsible for the harms produced by its activities within the forum render a solution most difficult.

As first expounded in *Pennoyer v. Neff*,[1] the test of due process required the state exercising jurisdiction to have actual physical control over the person of the defendant. Carrying this concept of physical control into the area of the foreign corporation, the courts, in a continuing process of evolution, accepted and then abandoned a series of fictional tests as standards for measuring the extent of state judicial power over such corporations. Couched in terms of "corporate consent,"[2] "corporate presence"[3] and "doing business,"[4] these tests proved quite unsatisfactory. The utter confusion and inconsistency of the myriad of cases applying them demonstrated the need for a more realistic yardstick.[5]

Finally, a somewhat different approach was suggested by the Supreme Court in *International Shoe Corporation v. Washington*.[6] In holding that jurisdiction attached over a nonresident corporation by virtue of its employment of agents within the forum state to solicit orders with authority to contract for display rooms, the Court said:

> Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain *minimum contacts* with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.[7] (Emphasis added.)

87. MODEL CODE § 207.11, comment at 149.

88. *Id.* at 146-47. In Japan and the Soviet Union abortion is unrestricted, if performed under authorized medical auspices. In Scandanavia, abortion is authorized upon application to a public body which must be satisfied of the existence of one or more medical, humanitarian, eugenic and social considerations. For an excellent discussion of the experiences of broadened legislation in other countries see GEBHARD, POMEROY, MARTIN & CHRISTENSON, PREGNANCY, BIRTH AND ABORTION 215-47 (1958).

89. TAUSSIG, ABORTION, SPONTANEOUS AND INDUCED 396 (1936).

While not so much an innovation of due process as it was a rephrasing of the prevailing fictional tests, the "minimum contacts" theory introduced a much needed flexibility into the law.

In an effort to determine to what extent the potentialites of the *International Shoe* decision have been realized, this note will reflect the trend of the more recent pronouncements in the area, with a view toward isolating those particular contacts within the forum which may be deemed substantial enough to sustain the jurisdiction of the local courts. Through an examination of the most typical factual patterns it is hoped that some guidance will be given to the corporation desirous of avoiding suit in a distant state or to a plaintiff uncertain of the jurisdiction of the local courts.

STATUTORY LIMITATIONS ON JURISDICTION

The "minimum contacts" standard of business activity established by the *International Shoe* decision[8] represents the outer limits of permissible state jurisdiction. It is not, however, the exclusive jurisdictional standard. A state may set its own standard as to what constitutes doing business so long as it does not fall beneath the federal standard. Hence, when the foreign corporate defendant raises the defense of lack of jurisdiction, such defense may be founded on either or both of two standards:

(1) local statutory law which provides the criteria for jurisdiction over out-of-state corporations,
(2) the constitutional guarantee of due process.

As many state courts have construed their "doing business" statutes as being more restrictive of the courts' jurisdictional power than would be demanded by due process considerations, jurisdiction may very frequently be denied even though its assertion would be consistent with due process. Hence, a preliminary examination of the forum's "doing business" statute and the decisions construing it is indispensable.

Following in the wake of the *International Shoe* decision, many states revised their statutes to take advantage of the increased permissible area of jurisdiction. Many of these revisions have departed from the traditional "doing business" concept and have moved toward the outer limits

1. 95 U.S. 714 (1877).
2. Lafayette Ins. Co. v. French, 59 U.S. (How.) 404 (1855).
3. Philadelphia & Reading Ry. v. McKibbin, 243 U.S. 264 (1917).
4. FLETCHER, PRIVATE CORPORATIONS § 8713 (perm. ed. rev. repl. 1955).
5. *Id.* at § 8711.
6. 326 U.S. 310 (1945).
7. *Id.* at 316.
8. International Shoe Corp. v. Washington, 326 U.S. 310 (1945).

of constitutional power.[9] This merger of federal and state standards, where it has occurred, has made due process the exclusive test of "doing business." It has thus become apparent that the modern corporation can expect to be subjected to the jurisdiction of courts within states outside its domicile on the basis of a bare minimum of contacts within those states.

LOCAL ACTIVITY — A QUANTITATIVE ANALYSIS

In determining whether a foreign corporation has sufficient "contacts, ties, or relations" with the forum to make it reasonable and just to subject the corporation to the jurisdiction of its courts, the nature and quantity of the corporation's local activities must be looked to. There is no inflexible formula to be applied as a criterion governing every situation. The facts of each particular case will alone be determinative.

Although it may be an admitted fact that the foreign defendant is transacting a certain amount of business locally, the courts often find that the corporation is not "doing business" there. Such a finding means that the court believes the corporation's activities are not extensive enough to makes it reasonable to require it to defend against a suit or suffer judgment by default. Just what quantum of local activity will produce a different result can only be gleaned through a searching analysis of the various factual patterns presented to the courts.

Cases decided on the constitutional standard of due process can be classified for purposes of analysis into two major categories. The *first* is whether the activities of the corporation's *agents* within a state are a sufficient basis for jurisdiction over the particular suit involved. In the *second* category are cases in which the claim to jurisdiction rests primarily upon the corporation's dealings with *local businesses,* rather than upon the presence of the corporation's agents. In this circumstance, there is little question that the activities of the local business would be sufficient to sustain jurisdiction if the business were operated by agents of the corporation. The issue presented is when will the business of local firms be considered the business of the foreign corporation?

Where Foreign Corporation Acts Through Its Agents

Single or Isolated Acts or Transactions

Prior to the decision in *International Shoe Corporation v. Washington,* it was well settled that the transaction of a single isolated business act in the state was not carrying on or "doing business" there.[10] The casual presence of a corporate agent or even his conducting of single or

9. Note, 31 NOTRE DAME LAW. 223, 235 (1956).

10. FLETCHER, PRIVATE CORPORATIONS § 8715 (perm. ed. rev. repl. 1955).

isolated items of activity was not considered substantial enough to warrant jurisdiction. For the most part, the more recent judicial pronouncements involving single or isolated acts within the forum have similarly refused to extend jurisdiction over the nonresident corporation.[11]

However, the decision in the *International Shoe* case did not foreclose the possibility that certain isolated activity could properly subject the foreign corporation to local suit. Referring to single or occasional acts of the corporate agent, Mr. Chief Justice Stone said:

> . . . other such acts, because of their nature and quality and the circumstances of their commission may be deemed sufficient to render the corporation liable to suit.[12]

Apparently relying upon the above dictum, an Oklahoma court[13] upheld jurisdiction over a New York corporation whose only activity within the forum was the sending of an agent in response to the buyer's complaint that the corporation's machinery did not perform as warranted.[14] Similarly, in *Smyth v. Twin State Improvement Corporation,*[15] jurisdiction was upheld over a suit for damages to the plaintiff's home which were incurred in the course of its being re-roofed by a foreign contractor. Notwithstanding that the defendant's only contact with the forum state was the single job it performed for the plaintiff, the finding was not disturbed on appeal. Even the execution of a single contract of sale within the forum state has been held sufficient to support a finding of "doing business."[16]

Just how far the states will go in subjecting a nonresident corporation to the jurisdiction of their local courts on the basis of single acts performed in the forum is a matter upon which one can only speculate.[17] Since the United States Supreme Court is the final arbiter in such matters, a definitive disposition of the problem must await its pronouncement.

In any event, it is not believed that the above discussed cases nor the Supreme Court's recent holding in *McGee v. International Life Insurance Company*[18] herald the demise of all restrictions on the personal jurisdic-

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11. Kaye-Martin v. Brooks, 267 F.2d 394 (7th Cir. 1959); Orton v. Woods Oil & Gas Co., 249 F.2d 198 (7th Cir. 1957); Erlanger Mills, Inc. v. Cohoes Fibre Mills, 239 F.2d 502 (4th Cir. 1956); Morris v. Lewislor Enterprises, Inc., 163 F. Supp. 486 (S.D.N.Y. 1958).

12. International Shoe Corp. v. Washington, 326 U.S. 310, 318 (1945) (dictum).

13. S. Howes Co. v. W. P. Milling Co., 277 P.2d 655 (Okla. 1954).

14. Compania de Astral v. Boston Metals Co., 205 Md. 237, 107 A.2d 357 (1954), *cert. denied,* 348 U.S. 943 (1955).

15. 116 Vt. 569, 80 A.2d 664 (1951).

16. American Type Founder's Inc. v. Mueller Color Plate Co., 171 F. Supp. 249 (E.D. Wis. 1959); Kappus v. Western Hills Oil, Inc., 24 F.R.D. 123 (E.D. Wis. 1959).

17. An increasing number of states have adopted so-called "single act" statutes. Note, 43 VA. L. REV. 1105 (1957).

18. 355 U.S. 220 (1957). The defendant, a Texas insurance company solicited by mail a reinsurance policy from the plaintiff, a California resident. It was held that the single mail transaction constituted "doing business" in California for purposes of service of process.

tion of the state courts.[19] To require corporations from coast to coast, having the most indirect, casual, and tenuous connections with a state to answer frivolous lawsuits in its courts, would seriously impair the guarantees which due process seeks to secure.

Maintenance of Local Office

The mere maintenance of an office within the forum state does not in and of itself constitute "doing business" within that state,[20] although it is rather difficult to imagine the absence of other corporate activity in such a situation. Hence, the presence of the corporation's name on the door of its local office and its listing in the local phone directory will not alone warrant an inference of "doing business."[21] However, the presence of an office plus very little local activity may be all that is needed.[22]

That undefinable line between mere casual activity and "doing business" may be crossed if the corporation maintains an employee at the local office whose activities, to any extent, are tied in with selling or purchasing. The presence of a local salesman, even though his activities be limited to the taking of orders, would probably be fatal to the corporation attempting to avoid jurisdiction.[23] Of course, if the local salesman were in fact an independent contractor selling his own goods on his own account, a finding of "doing business" might not be forthcoming.[24]

Purchasing, while it may not be as directly productive of income as is selling, has nevertheless been held to be of sufficient benefit to the corporation to constitute the "doing of business."[25] In *Kimberly Knitwear, Incorporated v. Mid-West Pool Car Association,*[26] a Colorado corporation operating a department store, maintained, together with fourteen other department stores, a resident buying office in New York. Although the single employee operating out of the New York office limited his activities there to purchasing on the corporation's account, the corporation was found to be "doing business" in New York.

However, the situation presented where the foreign corporation retains a local buying agent who may represent other nonresident interests, as distinguished from a local employee, may be productive of more

19. Due to the substantial interest a state has in the activities of foreign insurance companies which issue policies of insurance to its residents, the McGee decision must be limited to the insurance field. See, Hanson v. Denckla, 357 U.S. 235, 252 (1958).

20. FLETCHER, PRIVATE CORPORATIONS § 8717 (perm. ed. rev. repl. 1955).

21. Pinkus v. H. Zussman & Son Co., 173 N.Y.S. 2d 538 (Sup. Ct. 1958); Prime Mfg. Co. v. Kelly, 3 Wis. 2d 156, 87 N.W. 2d 788 (1958).

22. Murray v. J.P. Ward Co., 181 N.Y.S. 2d 216 (N.Y.C. Munic. Ct. 1959).

23. Frene v. Louisville Cement Co., 134 F.2d 511 (D.C. Cir. 1943).

24. Grobark v. Addo Machine Co., 16 Ill. 2d 426, 158 N.E.2d 73 (1959).

25. Annot., 12 A.L.R. 2d 1439 (1950).

26. 191 N.Y.S. 2d 347 (N.Y.C. Munic. Ct. 1959).

favorable treatment for the corporation. Where the corporation purchases through the instrumentality of an independent contractor, the courts have indicated some reluctance to make a finding of "doing business," notwithstanding the presence of the corporation's name on the office door of its agent and in the local phone directory.[27] While the distinction between agent and employee may seem tenuous in view of the similarity of benefits flowing to the corporation from both associations, it must be remembered that the line between casual activity and "doing business" is likewise a tenuous one.

Local Solicitation

The activities of the corporation's salesmen within the state of the forum, whether they make the actual contract of sale or merely solicit orders subject to acceptance by the corporation at its home office, are a frequently urged basis for jurisdiction over the corporation. By making the corporation's products easily available to state residents, such activity is likely to result in a substantial economic benefit to the corporation. Even though the solicitation may not presently bear fruit, at least a foundation for future sales has been laid.

Prior to the *International Shoe* decision, it had long been well settled that the mere solicitation of business and the mere presence in the state of a soliciting agent of a foreign corporation, without more, would not suffice to bring the corporation within the term of "doing business."[28] This "solicitation plus" doctrine, as it was called, required the corporation to engage in activities *in addition to* solicitation in order to give the local courts jurisdiction to render a binding in personam judgment against the corporation.

Following the Supreme Court's decisions in *International Shoe* and in *Traveler's Health Association v. Virginia*,[29] a number of state and lower federal decisions assailed the "solicitation plus" rule as an unrealistic approach to the problem.[30] In view of the diminishing requirements for jurisdiction, it was felt that the maintenance of a suit against a foreign corporation whose agents were actively and continuously soliciting busi-

27. Kohl v. Indiana Fur Co., 192 N.Y.S. 2d 12 (Sup. Ct. 1959); Pinkus v. H. Zussman & Sons Co., 173 N.Y.S. 2d 538 (Sup. Ct. 1958).

28. FLETCHER, PRIVATE CORPORATIONS § 8718 (perm. ed. rev. repl. 1955).

29. 339 U.S. 643 (1950). Here the defendant, a foreign insurance company whose only contact with Virginia consisted of solicitation and sale of its policies by mail, was held to be doing business in Virginia.

30. Bourze v. Nardis Sportswear Co., 165 F.2d 33 (2d Cir. 1948); Marlow v. Hinman Milking Machine Co., 7 F.R.D. 751 (D. Minn. 1947); Boyd v. Warren Paint & Color Co., 254 Ala. 687, 49 So.2d 559 (1950); Wooster v. Trimont Mfg. Co., 356 Mo. 682, 203 S.W.2d 411 (1947); Taylor v. Klenzade Products Co., 97 N.H. 517, 92 A.2d 910 (1952).

ness within the state did not offend traditional notions of fair play and substantial justice.[31]

Certainly, since jurisdiction has been extended to include some types of occasional acts and nearly all kinds of continuous operations, the rule which nullifies judicial power when a foreign corporation engages continuously and regularly in "mere solicitation" is, to say the least, anomalous. Solicitation is the foundation of sales.[32] Completing the contract is often a mere formality once the order has been solicited. No businessman would regard selling, the taking of orders, or solicitation as not doing business. Merchants and businessmen regard these as the heart of the business.[33] Under the "solicitation plus" rule it would be possible for a foreign corporation to confine its entire market to a single jurisdiction, yet by carefully limiting its activities there to the soliciting phase it could force each of its customers having cause for legal redress to seek it in the foreign forum of incorporation.

While the trend of the more recent decisions has been in the direction of holding that "mere solicitation," without more, constitutes "doing business" when the solicitation is a regular, continuous, and substantial course of business,[34] a number of jurisdictions, due to statutory limitations, still adhere to the older rule of "solicitation plus."[35] However, in view of the number of states which have revised their statutes to take advantage of the increased permissible area of state jurisdiction, it is believed that the trend is sufficiently established so that its general adoption seems to be but a matter of time.

Local Promotional Activities

Where the activities of the foreign corporation's local agent are less directly related to the production of corporate income than are selling, purchasing, or solicitation, the courts have been less willing to assert jurisdiction over it. In *Anderson v. British Overseas Airways Corporation*,[36] the defendant, a British aircraft manufacturer, maintained an employee in New York whose sole function was that of goodwill liaison between defendant and its American purchasers. As the New York representative did not engage in solicitation or sales activities, the court found his

31. See, International Shoe Corp. v. Washington, 326 U.S. 310, 316 (1945).

32. Frene v. Louisville Cement Co., 134 F.2d 511 (D.C. Cir. 1943).

33. Brewster v. F. C. Russell Co., ____ S.D. ____, 99 N.W.2d 42, 50 (1959).

34. London's, Inc. v. Mack Shirt Corp., 114 F. Supp. 883 (D. Mass. 1953); Perkins v. Louisville & N.R. Co., 94 F. Supp. 946 (S.D. Cal. 1951); Brewster v. F. C. Russell Co., ____ S.D. ____, 99 N.W.2d 42 (1959).

35. Dolce v. Atchison T. & S. Ry. Co., 23 F.R.D. 240 (E.D. Mich. 1959); Shannon v. Brown & Williamson Tobacco Corp., 167 F. Supp. 493 (W.D. Mo. 1958); Vis-U-Matic Door Opener Corp. v. Webster Electric Co., 191 N.Y.S. 2d 408 (Sup. Ct. 1959).

36. 149 F. Supp. 68 (S.D.N.Y. 1956).

New York activities too insubstantial to permit suit in New York. The advising of American customers on the replacement of parts and on miscellaneous flying problems was held not to be tied closely enough with the corporation's business of selling aircraft.[37]

Other illustrations of local activities too divorced from the selling phase to warrant the assertion of local jurisdiction may be found in cases involving the publishing industry. In a suit for invasion of privacy against the publishers of the magazine "TV Guide," the absence of selling and soliciting activities was the determining factor.[38] The corporation was found not to be "doing business" in North Carolina, notwithstanding substantial activity there by three of the corporation's promotional representatives who spent their time contacting TV stations in an effort to effect mutually beneficial advertising arrangements. Another case involving a local promotion and complaint man was disposed of similarly.[39] There the defendant, a publisher of national magazines, maintained a Florida representative who was to see that its magazines received favorable positions on the news stands and was to forward complaints to the home office.

Promotion Plus

Once the corporation permits its local representative to assume additional duties, or the corporation in some other fashion increases its contacts within the forum, it is likely that it will have crossed that narrow undefinable line between "doing business" and jurisdictional immunity. In other words, promotion plus very little additional activity may produce that minimum contact necessary for the assertion of local jurisdiction.

In *Green v. Equitable Powder Manufacturing Company,*[40] the defendant, a munitions manufacturer, in addition to employing promotional representatives within Arkansas, also leased land within that state which it used as a hunting preserve where prospective customers and personal friends were entertained. The corporation was found to be doing business in Arkansas. Similarly, in *Kneeland v. Ethicon Suture Laboratories, Incorporated,*[41] the preparing of exhibits and displays at a California medical convention by the corporation's local promotion men was sufficient additional activity to support an assertion of jurisdiction by the California court. Likewise, where the corporation's promotion man goes so

37. *Accord,* State Street Trust Co. v. British Overseas Airways Corp., 144 F. Supp. 241 (S.D.N.Y. 1956).

38. Putnam v. Triangle Publications, Inc., 245 N.C. 432, 96 S.E.2d 445 (1957).

39. Polizzi v. Cowles Magazines, 197 F.2d 74 (5th Cir. 1952).

40. 99 F. Supp. 237 (W.D. Ark. 1951).

41. 118 Cal. App. 2d 211, 257 P.2d 727 (1953).

far as to service its products,[42] or actually takes occasional orders,[43] a finding of doing business may be expected.

Where Corporation Acts Through Local Business

The discussion thus far has been restricted to cases in which the activities on which the plaintiff bases his claim to jurisdiction were performed by employees of the foreign corporation. In many cases, however, the corporation's only contact with the state is in its dealings with local businesses. A claim of jurisdiction based upon the activities of the local business raises the issue of whether the business of the local firm should be considered the business of the defendant corporation.

According to the weight of present case law, the sale of goods to a local distributor will not of itself serve as a basis for jurisdiction over the foreign corporation.[44] Where the distributor becomes vested with title to the goods, the transaction is not one of agency but of purchase and sale. The mere shipment of the goods into the forum state by independent carrier is not doing business there.[45] However, the nature and character of the activities carried on locally, by either the distributor or the foreign corporation, will substantially influence the corporation's local status.

Local Distributor as Agent

Certainly, if the local distributor renders services for his foreign supplier which resemble those customarily performed by employees, then, notwithstanding his purported status of independent contractor, a finding of agency may well be warranted. Thus, if the distributor collects the corporation's delinquent local accounts, adjusts the claims of its customers, or supplies it with credit information on new customers, the corporation may be doing business within the state.[46]

Under present-day marketing practices, the local handling of goods is often carried on pursuant to contracts which, in varying degrees, restrict independent action on the part of the local dealer. To insure diligence in marketing its product, the foreign manufacturer often insists upon dealer compliance with certain restrictions, such as maintenance of an attractive showroom,[47] exclusive handling of manufacturers' products,[48] and

42. Taylor v. Klenzade Products, 97 N.H. 517, 92 A.2d 910 (1952).

43. Shilling v. Roux Distributing Co., 240 Minn. 71, 59 N.W.2d 907 (1953).

44. FLETCHER, PRIVATE CORPORATIONS § 8726 (perm. ed. rev. repl. 1955).

45. Insull v. New York World-Telegram Corp., 172 F. Supp. 615 (N.D. Ill. 1959); Grobark v. Addo Machine Co., 16 Ill.2d 426, 158 N.E.2d 73 (1959).

46. Denis v. Perfect Parts, Inc., 142 F. Supp. 259 (D. Mass. 1956).

47. Rock-Ola Mfg. Corp. v. Wertz, 249 F. 2d 813 (4th Cir. 1957).

48. Florio v. Powder Power Tool Corp., 248 F.2d 367 (3d Cir. 1957).

fixed retail prices.[49] Often these contractual restrictions become so dominating and influential over the day-to-day operations of the local business that, in substance, it is the foreign corporation that is running the business.

However, the degree of control necessary to give rise to the economic benefit requisite to overcome due process objections is often difficult to ascertain. Many of the decisions subjecting the foreign corporation to local jurisdiction where there was some exercise of control over the local dealer have also involved other significant dealer or corporate activities.[50] Thus, the entire factual pattern must be looked to. If, in addition to regulating the details of the day-to-day operation, the corporation actually dictates the business policies of the local enterprise, a finding of "doing business" seems inescapable. Unfortunately, where the corporation's domination is not so all embracing, the problem is not so readily solved.

Stressing the benefits flowing to the corporation from its local distributorship arrangement as determinative of the jurisdictional question, some courts have gone quite far. In *Sales Affiliates Incorporated v. Superior Court*,[51] the test of doing business was related to an examination of whether the foreign corporation's *modus operandi* in the forum gave it "substantially the same commercial advantages that would be available to it through an office or sales force of employees maintained in the state devoted exclusively to this phase of its business."[52] There the defendant sold beauty products to jobbers and chain stores throughout the state. Certain of its local jobbers contacted beauty parlor operators with respect to inducing them to enter into licensing arrangements with the defendant corporation, whereby, for a five dollar annual fee, such operators were entitled to the use of defendant's patented permanent waving processes. The corporation was subjected to the jurisdiction of the local court only because the jobbers with which it dealt "gave it, in a practical sense, and to a substantial degree, the benefits and advantages it would have enjoyed by operating through its own local sales force."[53] Whether the local representative was an agent or independent contractor was not discussed and apparently was not deemed important.

Carrying this test of "substantial benefit" to what would appear to be the outermost limits of due process, a California court recently found a Massachusetts corporation with very few local contacts to be "doing busi-

49. Kahn v. Maico Co., 216 F.2d 233 (4th Cir. 1954).

50. Rock-Ola Mfg. Corp. v. Wertz, 249 F.2d 813 (4th Cir. 1957); Florio v. Powder Power Tool Corp., 248 F.2d 637 (3d Cir. 1957); Kahn v. Maico Co., 216 F.2d 233 (4th Cir. 1954); Dettman v. Nelson Tester Co., 7 Wis.2d 6, 95 N.W. 2d 804 (1959).

51. 96 Cal. App. 2d 134, 214 P.2d 541 (1950).

52. *Id.* at 137, 214 P.2d at 543.

53. *Id.* at 136, 214 P.2d at 542. *Accord,* Eclipse Fuel Engineering Co. v. Superior Court, 148 Cal. App. 2d 736, 307 P.2d 739 (1957).

ness" within the state.[54] A non-exclusive distributorship contract with a California firm was the corporation's only local contact. The local firm represented manufacturers other than the defendant and solicited business on its own time and at its own expense. Despite numerous precedents to the contrary,[55] the court, determined to provide a local remedy, voiced its decision in terms of "substantial benefit."

Realizing that the benefits accruing to a corporation by virtue of its local distributorship arrangement are undoubtedly significant in determining its amenability to local process, it is urged that such criterion should not serve as the exclusive measure of "doing business." In the words of Mr. Chief Justice Stone:

> The criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative.[56]

Whether due process is satisfied must depend upon the quality and nature of the particular activities involved. To rest the jurisdictional determination solely upon a standard of "corporate benefit" is to ignore other material considerations.

Stimulation of Local Sales

Even though the activities of a corporation's local distributor lack any suggestion of an employer-employee relationship, so that its capacity as an independent contractor is unquestionable, a finding of doing business may yet be forthcoming. In this circumstance, those devices employed by the corporation to stimulate its distributor's sales are relevant. Precisely what quantum of corporate activity will effect this result is by no means clear, the facts of a particular situation alone being determinative.

In *LeVecke v. Griesedieck Western Brewery Company*,[57] the furnishing of advertising material, price lists, and catalogues to the local distributor, coupled with regular "goodwill visits" by the president of the foreign corporation were found too insubstantial to warrant a holding of "doing business." Regular visits by agents of the foreign manufacturer for purposes of demonstrating its products to its local dealers evoked a similar holding in *Carnegie v. Art Metal Construction Company*.[58]

54. Casper v. Smith & Wesson Arms Co., 53 Cal. App. 2d 77, 346 P.2d 409 (1959), *cert. denied*, 362 U.S. 927 (1960).

55. Many recent decisions denying jurisdiction over a foreign corporation may be found, where, through the instrumentality of a local representative the corporation enjoyed many of the benefits and advantages it would have enjoyed had it maintained its own local office. Some of these decisions present an even stronger case for jurisdiction than does the instant one, yet jurisdiction was denied. Rock-Ola Mfg. Corp. v. Wertz, 249 F.2d 813 (4th Cir. 1957); Venus Wheat Wafers, Inc. v. Venus Foods, Inc., 174 F. Supp. 633 (D. Mass. 1959).

56. International Shoe Corp. v. Washington, 326 U.S. 310, 319 (1945).

57. 233 F.2d 772 (9th Cir. 1956).

58. 191 Va. 136, 60 S.E.2d 17 (1950).

However, in instances where foreign corporations have gone beyond these patterns, the courts have been less reluctant to assert jurisdiction. Thus, where the foreign corporation advertises within the state,[59] or uses agents to give technical assistance,[60] or to solicit or promote sales,[61] such activity may so increase the local distributor's effectiveness as to render likely a finding of doing business. In *Beck v. Spindler,*[62] the paying of one half of the distributor's local advertising costs and furnishing him with conditional sales contracts were deemed sufficient to support a finding of "doing business." Paying the distributor's local advertising costs, coupled with sales on a consignment basis, was productive of similar treatment in *Fielding v. Superior Court.*[63]

By virtue of the groundwork laid by the corporation in the foregoing illustrations, the local distributor's work has been made considerably simpler. The benefits reaped resulted from the joint efforts of both the corporation and its distributor. In view of the substantial role played by the corporation within the forum state, the jurisdictional determination appears reasonable.

CONCLUSION

In an effort to determine the extent to which the potentialities of the "minimum contacts" test have been realized, this note has explored some of the more commonly occurring patterns of activity engaged in by the foreign corporation outside the state of its incorporation. Throughout, the liberalizing tendencies of the test have been apparent.

Today, mere solicitation, without more, may be sufficient activity within the forum state to warrant the exercise of its jurisdictional power. Even single isolated non-recurring acts of the corporation's local agents may be "doing business" there. Its dealings with local business will be subjected to the closest scrutiny.

It has thus become apparent that the modern corporation can be subjected to the jurisdiction of courts within states outside of its domicile on the basis of a bare minimum of contacts within those states. While the flexibility of the "minimum contacts" theory may still leave some room for uncertainty in states which have not as yet adopted, in statutory form, the judicial trend toward an expanded use of its jurisdictional power, the trend is sufficiently established so that its general adoption seems to be but a matter of time.

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59. Kahn v. Maico Co., 216 F.2d 233 (4th Cir. 1954).
60. Duraladd Products Corp v. Superior Court, 134 Cal.App.2d 266, 285 P.2d 699 (1955).
61. Shilling v. Roux Distributing Co., 240 Minn. 71, 59 N.W.2d 907 (1953).
62. 256 Minn. 543, 99 N.W.2d 670 (1959).
63. 111 Cal. App. 2d 490, 244 P.2d 968 (1952).