NOTES

JURISDICTION OVER FOREIGN CORPORATIONS—AN ANALYSIS OF DUE PROCESS

One of the more vexing problems of corporate law today is the determination of when a foreign corporation is "doing business" for the purpose of being subjected to the jurisdiction of a state other than that of its incorporation or in which it has named an agent for service of process.¹ When suit is instituted in such a state, the corporation may raise the defense that the court lacks jurisdiction. This may be founded on either or both of two standards: (1) local state law, usually statutory, which provides the criteria for jurisdiction over out-of-state corporations,² (2) the constitutional guarantee of due process which limits any court's power to exercise jurisdiction.³

In most states, the jurisdictional statute provides that the corporation may be subjected to suit if it is "doing business" within the state.⁴ In general, the courts have construed this standard as being more restrictive of the court's jurisdictional power than would be demanded by due process considerations.⁵ However, some states have rejected the standard of "doing business" for more specific statutory terms,⁶ which have tended to

¹ The volume of decisions is illustrative of the failure of the legislatures and the courts to find an understandable solution to the problem. In 1954 alone, the West Reporter system printed 35 opinions on motions to dismiss for lack of jurisdiction by corporations; of these, 26 were decisions on appeal.
⁶ Two states provide for suits by residents in any cause of action arising out of a contract made within the state or liability incurred for acts done within the state.

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expand the court's jurisdictional power under state law. A few have reached a similar result by a more liberal interpretation of the "doing business" statute. In either case, the state's natural desire to protect its citizens by extending its state standards of jurisdiction may result in the exercise of jurisdiction which deprives the corporation of due process of law.

In determining the extent of the court's constitutional power to render a judgment against the foreign corporation, the more widely accepted test has been whether the corporation has had sufficient contacts with the state to warrant the inference that it is present there. Since the foreign corporation is only a fictional entity created by the law, it can never be present in the physical sense of a person being present. A corporation must act through its agents; the myriad of forms which these activities may take within the state reveals the fictional and impractical characteristics of such a rule. This has led to the determination that the exercise of jurisdiction comports with the requirements of due process if the corporation has such contacts with the state of the forum to make it reasonable that it defend the particular suit which is brought there. Although this is a less fictional statement of the considerations involved, it gives little guidance to the corporation desirous of avoiding suit in a distant state or to a plaintiff uncertain of the jurisdiction of the local courts.

Perhaps little more can be expected since the determination of whether due process has been violated turns on a balance of conflicting considerations which vary in accordance with the facts presented. On the one side

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9. The history of the theoretical justifications for rendering in personam judgments against foreign corporations has been long and complex. The three prevailing theories were: consent, St. Claire v. Cox, 106 U.S. 350 (1882); Lafayette Ins. Co. v. French, 59 U.S. (18 How.) 404 (1855); doing business so as to justify the inference that the corporation has subjected itself to the state's jurisdiction, St. Louis S.W. Ry. v. Alexander, 227 U.S. 218 (1913); doing business so as to warrant the inference that it is present there, Bank of America v. Whitney Bank, 261 U.S. 171 (1923); International Harvester Co. v. Kentucky, 234 U.S. 579 (1914). For a history of the applicable theory, see Isaacs, An Analysis of Doing Business, 25 Colum. L. Rev. 1018, 1028 (1925).

10. International Shoe Co. v. State of Washington, 326 U.S. 310, 317 (1945). In this decision the Court rejected the presence theory as fiction. Is is significant that the phrase may have outlived its usefulness. Goodrich, Conflicts of Law 207 (3d ed. 1949).
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are the inconveniences which suit would impose on the corporation. An estimate of these inconveniences will generally be found in the costs and burden of transporting evidence into the claimant's jurisdiction in addition to the necessity of local counsel to conduct the litigation. Opposed to this consideration is the interest of the state in the assertion of jurisdiction over foreign corporations which are allowed to do business within its borders. Two fundamental considerations are involved in determining the extent of the state's interest. First, the corporation's activities may subject the residents of the state to a risk of physical harm or economic loss. Unless the corporation can be compelled to defend the resident's claim within the state, the costs and inconveniences of litigating in a foreign forum may make the resident's use of legal process unfeasible. Secondly, by exercising the privilege of dealing with state residents, the corporation may receive substantial economic benefit which is in part made possible by the protection which state law gives to the corporation's activities.

Cases decided on the constitutional standard of due process can be analyzed as falling into two major categories. The first is whether the activities of the corporation's agents within the state are a sufficient basis for jurisdiction over the particular suit involved. This involves a consideration of the evidentiary burden which various types of suits may impose on the corporation and the countervailing considerations of the character of the activity involved in terms of the benefits which the corporation has received and the risk which it has presented to state residents. The analysis of the law of due process is then presented as a balance between these two competing factors. In the second category are cases in which the claim to jurisdiction primarily rests on the corporation's dealings


12. The term "evidence" is reified in this Note to facilitate reference to all forms of evidence whether it be in the form of eyewitnesses, documents or physical objects.


15. Among other things, the corporation is usually given access to the courts of the state to enforce its rights. However, if the corporation is doing a sufficient amount of business within the state, its failure to qualify in accordance with the state law will prohibit it from instituting suit in the courts of that state. See St. Avit v. Kettle River Co., 216 Fed. 872 (8th Cir. 1914); Buffalo Refrigeration Machine Co. v. Penn H. & P. Co., 178 Fed. 696 (3d Cir. 1910). As a general proposition, however, a higher degree of doing business is required for this purpose than for the purpose of subjecting the corporation to jurisdiction. See Isaacs, An Analysis of Doing Business, 25 Colum. L. Rev. 1018, 1024-25, 1041 (1925).
with local businesses rather than 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 to be considered is when the business of local firms or subsidiaries is to be considered the business of the foreign corporation.

The Presence of Agents

Character of the Suit: The Evidentiary Burden

The evidentiary burden which suit in a foreign jurisdiction may impose on the corporation is probably the principal factor weighing against the reasonableness of the assertion of jurisdiction. This depends largely on the relationship between the agent's presence and the claimant's cause of action. When the claim arises directly out of the agent's acts, the corporation's evidentiary burden may be insignificant since the testimony of the agent, who is already in the state of the forum, will constitute a substantial part of the corporation's case. This is less likely when the agent's activity is not an issue of litigation, but is only indirectly related to the plaintiff's claim, and when the suit has no relation to the corporation's business within the state, the agent's presence is of no relevance to where the evidence may be. Thus it may be helpful in analyzing the burden on the foreign corporation to consider the cases initially, as in the following paragraphs, in terms of direct claims, indirect claims and unrelated claims.\(^\text{16}\) It will be observed later that the amount of corporate activity within the state which is required to support jurisdiction may depend largely on which type of suit is in question.

Direct Claims

In many suits against the foreign corporation, the primary issues of litigation may involve principally what the agents did within the state. Typical of this type of case is the tort action against the corporation for the wrongful act of the agent within the state under the agency doctrine of respondeat superior. In Smyth v. Twin State Improvement Co.,\(^\text{17}\) for example, the claimant's house was damaged through the agent's negligence in the course of reroofing. Since the evidence as to both negligence and damages was within the state, the suit would impose little evidentiary burden on the corporation.

\(^{16}\) By use of the terms direct, indirect and unrelated it is not intended to add to the law distinguishing direct from indirect effects of acts. Although Lord Kenyon may have found these terms useful in distinguishing the action of trespass from an action on the case in Day v. Edwards, S.T.R. 648 (1794), it is doubtful if such a distinction would be useful in this context. They are intended only as shorthand statements of three general classes of cases which involve varying degrees of evidentiary burden to the corporation.

\(^{17}\) 116 Vt. 569, 80 A.2d 664 (1951).
The United States Supreme Court upheld jurisdiction on the basis of a different type of direct claim in *International Shoe Co. v. State of Washington.* In that case, suit was brought by the State of Washington to collect unpaid contributions to the state's unemployment compensation fund. The corporation's "presence" for purposes of jurisdiction, as well as the state's claim for payment, was based on the activities of a varying number of from eleven to thirteen salesmen who were soliciting orders from prospective customers at prices and on terms fixed by the corporation. Since the issues to be litigated directly concerned the agents' activities, i.e., payments due to the state unemployment fund because of the agent's acts, little evidence from outside the jurisdiction would be required other than documents relevant to the amounts owed by the corporation. In this instance state residents might be relied upon to give unbiased testimony, and since the salesmen were residents of the state, the use of their testimony would be of no added burden to the corporation.

As a general rule, it is likely that whenever the acts of an agent within the state are a primary issue of litigation, the corporation's evidentiary burden will be insignificant. However, situations may arise in which the defense of a claim stemming from the agent's acts within the state impose a heavy burden on the foreign corporation. Even in tort actions, which would seem most likely to present a minor evidentiary problem to the out-of-state corporation, the locus of the evidence may vary in some instances. In *Johns v. Bay State Abrasive Products Co.*, for example, suit in Maryland against a Texas corporation was based on the misrepresentation of its agent. The subject of the misrepresentation was the safety of tools made by a Massachusetts firm when used in conjunction with the products of the defendant. Although the exercise of jurisdiction was upheld, the suit may have involved a serious evidentiary burden to the corporation. Since the alleged misrepresentation took place in Maryland, some of the corporation's evidence would be there. On the other hand, the determination of whether the agent was really at fault may well turn on the issue of whether the Massachusetts firm had been negligent in manufacturing the tool in question. Since jurisdiction over the Massachusetts firm could not be obtained, a heavy burden would fall on the Texas corporation.

**Indirect Claims**

With the exception of tort claims arising from vicarious liability, the suit by the private litigant rarely falls within the category of direct claims. In many instances, the subject matter of suit is only indirectly related to the agent's activity within the state. In this type of claim, the agent's testimony will be a minor part of the corporation's evidence, if indeed it is relevant at all.

20. The Massachusetts firm had only one agent in the state who talked to prospective customers but rarely took orders.
This is particularly true in actions of this category which involve personal injury or property damage. In this type of case, there is no issue of vicarious liability, and the agent's acts are not the gravamen of the plaintiff's action. However, the bulk of the evidence is likely to be in the claimant's district. In *Schilling v. Roux Distributing Co.,*\(^2\) for example, suit was instituted for breach of the defendant's warranty that its dye was safe for use if its directions were followed. Although there were agents of the defendant in the state promoting the sale of their employer's product, the claimant had no dealings with these agents; he had purchased the dye from an independent local retailer. Since the only issues of litigation would involve the claimant's use of the dye and the resulting damages, nearly all the evidence would be in the state. In a few cases, however, defending this type of suit may be burdensome to the corporation. For example, if the suit in *Schilling* had been based on the defendant's negligence in the manufacturing process, the evidence as to damages would be in the claimant's state, but all the evidence relevant to liability probably would have to be transported into the state. In either case, it must be noted that the presence of the selling agent is in no way related to the locus of the corporation's evidence.

In the bulk of contract actions which do not primarily involve personal injury or property damage, the agent's presence may be similarly unrelated to where the evidence may be. His testimony would be of value primarily in cases in which he made or breached the contract within the state, but even if the breach of the contract is at issue, the agent's testimony may be of little value. In *Compania de Astral v. Boston Metals Co.,*\(^2\) for example, a Panamanian corporation refused to accept the vessels it had contracted to purchase from a Maryland company on the ground that the conditions imposed by the United States Maritime Administration went beyond the conditions to which it had assented in the contract of sale. Agents had entered the state to negotiate the contract and to inspect the vessels. However, the only issue of litigation was the construction of a written contract and the conditions imposed by the Maritime Administration. Much of the evidence on this point consisted in letters from the Administration, and in any event, it would be easier for the defendant to litigate in Maryland than in Panama due to the location of the Administration's personnel.

A more productive analysis of the locus of the evidence may be made in terms of whether the contract has been performed by either party, since the bulk of the evidence is likely to be where the goods are or where the services were rendered. If the defendant corporation has bought and received goods from the claimant, it would be subject to a large evidentiary burden in establishing such defenses as the failure of the claimant's performance to conform to the contract. On the other hand, if the defendant corporation is the seller instead of the buyer and delivered goods to the

\(^{21}\) 240 Minn. 71, 59 N.W.2d 907 (1953).

claimant, the evidence as to the adequacy of that performance is likely to be in the claimant's jurisdiction. It should be noted, however, that when the claimant is to bear the risk of loss in shipment, liability may hinge on the condition of the goods when they were shipped by the defendant corporation.23

In a few instances, the agent's presence within the state may place him in a position to be a valuable witness for the corporation even though his acts did not directly give rise to the contract or the litigation in question. When the contract requires services to be performed by agents within the state or where they have investigated claims of the failure of defendant's performance under a contract, a suit on the contract may involve little evidentiary burden to the corporation. In many cases, the terms of the contract would be documentary, and the agents may be relied upon, at least in part, to testify on behalf of the defendant as to the basis of the resident's claim.

Unrelated Claims

In some instances, suits may be instituted even though the claimant's cause of action has no relation to the business carried on within the state. In this case, the evidence which the corporation must present in order to defend the suit will nearly always be in other jurisdictions.24 Consequently this type of claim is more likely than either the direct or unrelated claim to impose a sizeable burden on the corporation to defend. *Vilter Mfg. Co. v. Rolaff* 25 is a typical case. Suit for the unpaid balance of a patent royalty account was instituted in Missouri where the defendant maintained offices for the purpose of soliciting sales, installing goods, handling complaints and receiving payments. Since these activities were not related in any way to the royalty account, it is nearly certain that the corporation would be forced to transport all of its evidence from outside the state to defend against a claim based on that account. Although much of the evidence in this case may have been documentary, many unrelated suits are brought for personal injuries,26 in which, by and large, the evidence is testimonial and not documentary.

*Character of the Activity: Benefit From and Risk to Local Residents*

The consideration balanced against the disinclination of the foreign corporation to defend against claims in one of its outlying areas of business activity is the interest of the state in the assertion of jurisdiction.

23. See Uniform Sales Act § 22.
25. 110 F.2d 491 (8th Cir. 1940).
Regardless of how slight the corporation's evidentiary burden may be, no state may make a binding judgment in personam against a corporate defendant with which the state has no contacts, ties or relations. Occasional acts by agents within the state generally have been held to be insufficient contacts with the state of the forum to support the assertion of jurisdiction. Other acts, because of their character and circumstances of commission have been deemed sufficient to subject the corporation to suits arising from those acts, and in some instances, the corporation's business within the state has been considered so substantial as to render the corporation “present” for purposes of all suits.

The character of the activity of the foreign corporation is of dual significance. If it results in substantial benefits to the corporation, it is likely to be reasonable for the state to compel the corporation to defend within the state in return for the protection of state law which made this gain possible. If it presents a great risk of harm to state residents, the state has a greater interest in forcing the corporation to respond in suit for those obligations arising from that activity.

Solicitation and Sale of Goods

The activities of salesmen, whether they make the actual contract themselves or merely solicit orders for the goods to be accepted by corporate agents in another state, are a frequently urged basis of jurisdiction since this is likely to result in a large economic benefit to the corporation. Whether the agents sell to local distributors or to the ultimate consumer, the corporation's goods are made readily available to state residents—thus substantially increasing the corporation's sales volume. The economic benefit derived from this activity may easily be analyzed in terms of sales volume. In International Shoe, for example, the payment of total commissions in the amount of more than $31,000 each year indicates that the corporation received a considerable economic gain from the activities of the soliciting agents. However, the volume of sales should not be the only

32. See note 13 supra and accompanying text.
33. 326 U.S. at 313.
criterion. Whether sales have been made or not, by exercising the oppor-
tunity to solicit state residents, the corporation is able to lay a foundation
for future sales. At least when these acts are in contemplation of more
extensive business dealings within the state, the fortuitous fact that the
claimant was injured before the corporation developed extensive marketing
outlets should be of no relevance, since the first act of business is as im-
portant as any other in the development of sales within the state.

Solicitation and Sale of Insurance

The fact that the corporation has not received or does not stand to
receive a considerable financial return from its activities within the state,
however, is not determinative of when jurisdiction should be asserted since
the danger of economic harm which the business in question presents to
state residents clearly varies the requirements of due process. Perhaps
insurance is the clearest example. The contract of insurance involves
continuing relationships and obligations with resident insureds, and in
consequence, involves a high risk of litigation. Moreover, a large proportion
of claims, especially those involving sickness and injury benefits, are rarely
large enough that the policy holder can afford suit in a foreign state. To
deny jurisdiction in the claimant's state would subject the resident to con-
siderable economic injury since this would place the insurer in a position
to force a settlement favorable to it even though losses can be tried more
conveniently in the policy holder's district where the witnesses would most
likely live and where claims for losses presumably would be investigated.

Purchasing Compared With Selling

When suit arises as a result of a sale by a local resident to the foreign
corporation's purchasing agents, there may be a less effective basis of jurisdic-
tion than if the foreign company was the seller. Since the defendant-
purchasing corporation would only rarely be subject to a liability other than
for failure to pay the price of the goods, the resident's burden of bringing
suit in the defendant's state of incorporation or its principal place of busi-
ness would not be significant. Most of the evidence he would need to
support his claim is embodied in documents so that there would probably
be no necessity to transport numbers of witnesses to a distant court. On
the other hand, for the purchasing corporation to establish, in the plaintiff's
state, defenses such as the failure of the goods to conform to the contract
may involve a considerable evidentiary burden. In the case of the defend-
ant-selling corporation, it is more probable that the evidence on the ques-
tion of adequacy of performance is in the claimant's jurisdiction so that

34. Compare Pennsylvania's statutory definition of "doing business." See note 6 supra.
35. See note 13 supra and accompanying text.
to compel the claimant to present that evidence in the defendant's jurisdiction may well act as a bar to relief. For this reason it may be less reasonable for the state to compel the purchasing corporation to defend within the state in order to protect the state's residents than in the case of the selling corporation. However, it should be noted that the economic value derived from the purchasing activity may be just as important as the selling phase of the business, since the advantageous purchase is an integral part of the corporation's margin of profit.

Activities Arising Out of the Contract

Acts done pursuant to the performance of the contract present a more varied combination of the elements of danger and benefits. When the required performance is similar to construction work, both elements are clearly present. Large amounts of money are involved, heavy equipment moved into the state, local workmen employed, and a substantial amount of goods purchased from local merchants.\(^3\) The extent of the activity and the risks it involves indicate that a large number of residents are subjected to the threat of both physical and economic harm. However, small contracts of installation or repair may affect no one other than the contracting party and may involve little or no risk of personal injury or property damage. Unlike solicitation, the performance of a single contract within the state is unlikely to produce large amounts of revenue for the corporation. However, if many sales have been made to state residents, even a single adjustment of a claim may be essential to maintaining the corporation's good will within the state.\(^4]\n
**The Balance of the Conflicting Interests**

The relative weight to be given to the inconveniences which suit would impose on the corporation as opposed to the extent to which the corporation's activities have benefited it and endangered state residents is the crux of the due process issue. As a tool of analysis, the discussion is organized according to the type of suit at issue as indicative of the evidentiary burden which the suit would impose on the corporation.

To clarify what is in issue, it should be noted that this problem of balancing is a much different problem from that of the application of the principle of forum non conveniens.\(^5\) That determination rests primarily on which forum would be the more convenient for the litigation of the suit

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40. *But see* the opinion of L. Hand, J. in Kilpatrick v. Texas & Pacific Ry., 166 F.2d 788, 790-91 (2d Cir. 1948).
in question, when there are two or more jurisdictions which would have
the power to render a judgment.\footnote{41} However, whether a particular jurisdic-
tion has the constitutional power to render that judgment depends on
whether it is reasonable for the state to compel the corporation to defend
within the state regardless of the convenience of the particular claimant
involved,\footnote{42} and regardless of the fact that, as between the parties to the
litigation, it may be more convenient for the suit to be litigated in some
other jurisdiction.\footnote{43}

Direct Claims

When the suit arises directly out of the agent's acts within the state so
that the acts of the agent are the primary issues of litigation, the assertion
of jurisdiction would only rarely be termed unreasonable.\footnote{44} Even if the
agents were there only temporarily, the burden of transporting them into
the state to testify may not be significantly great. In \textit{Johns v. Bay State
Abrasive Products Co.}\footnote{45} a slight amount of solicitation was held sufficient
to sustain an action for a tort committed by an agent even though a con-
siderable amount of evidence from outside the state may have been required
to defend the action. Similarly, in \textit{Smyth v. Twin State Improvement Co.}\footnote{46} jurisdiction was upheld over a suit for damages to the claimant's
home which were incurred in the course of its reroofing by the foreign
corporation even though this was the corporation's only contact with the
state. Although jurisdiction has rarely been sustained merely on the basis
of a single tort,\footnote{47} it is probable that due process would not be violated in
this type of suit if the agent was engaged in any activity profitable to the
corporation whether it be purchasing, solicitation or performance of a
contract.


\footnote{42} In International Shoe Co. v. State of Washington, 326 U.S. 310, 317 (1945), the
Court refers only to the inconvenience to the corporation as a relevant consideration.
\textit{Id.} at 317. Although inconvenience to the resident to bring suit in another state may
be relevant in estimating the extent of the danger which the corporation's activity
presents to state residents, it would only seem relevant to consider the extent of the
burden to claimants in general. See the Court's discussion of the burden which
suit in a foreign forum would impose on a resident insured in \textit{Travelers Health

\footnote{43} The court may have jurisdiction over the foreign corporation; yet, if suit
would be extremely burdensome to the corporation, the suit may be dismissed on
grounds of convenience. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1946);

\footnote{44} 326 U.S. at 319 (1945).


\footnote{46} 116 Vt. 569, 80 A.2d 664 (1951).

\footnote{47} The commission of a single tort has generally been held insufficient to
Misc. 156, 158 Atl. 329 (Sup. Ct. 1932). \textit{Compare Mississippi Wood Preserving
Co. v. Rothschild}, 201 F.2d 233 (5th Cir. 1953), \textit{with Davis-Wood Lumber Co. v.
Ladner}, 210 Miss. 863, 50 So. 2d 615 (1951); \textit{cf. Johns v. Bay State Abrasive
Improvement Corp.}, 116 Vt. 569, 80 A.2d 664 (1951).
Indirect Claims

When the relationship between the agent's acts and the claimant's cause of action is more indirect, however, perhaps a greater degree of corporate activity is to be required. In this type of suit, the character of the activity which forms the basis of the plaintiff's claim to jurisdiction would seem to be determinative of the actual extent of the activity required.

Solicitation

Although jurisdiction has generally been upheld when contracts of sale are actually made within the state, for many years it was generally accepted that personal jurisdiction over the foreign corporation could not be asserted on the basis of mere solicitation. This tradition was broken by the Supreme Court's decision of *International Shoe Co. v. State of Washington*. In that case, the corporation's only contact with the state was through the solicitation of sales by eleven to thirteen salesmen. The Court was of the opinion that since the obligation sued upon arose out of the salesmen's activities, the large volume of business done and the benefits received through the laws of the state were sufficient contacts "... to make it reasonable and just, according to our traditional conception of fair play and substantial justice ..." to permit the state to enforce the obligation incurred.

Although the suit in *International Shoe* arose directly out of the salesmen's activities, the rejection of the "mere solicitation" rule would not seem to be limited to that type of case. In *Schilling v. Roux Distributing Co.*, for example, the defendant maintained a district manager in Minnesota to direct seven to ten other employees who encouraged the sale of the defendant's product. Suit for breach of warranty was instituted in that state for personal injuries arising from its use. Although the claimant had purchased the product from an independent retailer, jurisdiction was upheld

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49. See note 50 infra.


51. 326 U.S. at 320.

52. 240 Minn. 71, 59 N.W.2d 907 (1953).
on the basis of the activities of these agents which produced a large volume of sales for the corporation.

The reasons for the rejection of the "mere solicitation" rule are quite compelling whether the claim is direct or indirect, since the additional activity required was neither relevant to the locus of the evidence nor a good indication of the extent of the benefits received by the corporation. Under the old rule, little more than solicitation was required to sustain jurisdiction. In some cases, solicitation plus maintaining an office or warehouse may have been sufficient. Solicitation plus making deliveries, collections, gathering material for publication or handling claims may have had a like effect. Without any of these additional activities solicitation may be just as productive of business as it is with them. When the selling phase of the business is segregated from other activities, whether or not the segregation be done intentionally to avoid local jurisdiction, the refusal to subject the corporation to suit on the basis of mere solicitation may give the corporation a considerable immunity from liability. As a matter of policy such an immunity should not be permitted when the extent of the activity indicates that the resulting economic benefits to the corporation are substantial.

Although the suit which arises indirectly out of the agent's activity is likely to involve a greater evidentiary burden than is involved in direct claims when the soliciting activity is continuous, there would seem to be little reason to deny the assertion of jurisdiction. Since whether the agent sells directly to the consumer or sells at wholesale to local retailers, his presence is unlikely to be related to where the evidence may be, the fact that the claimant never dealt directly with the soliciting agent would also be immaterial. By making its goods readily available to state residents the corporation has received a substantial economic benefit and to some extent has subjected the residents of the state to risk of economic injury.

**Insurance**

As a result of the high risk of injury which the insurance business presents to the resident insured, even isolated acts of solicitation or other

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business activities may be sufficient to sustain jurisdiction. In nearly all of these cases, the agent’s presence is not determinative of where the evidence may be, since the events which constitute the issues of litigation are generally subsequent to and unrelated to the sale of the policy. However, the solicitation of new members by mail, independent brokers, or promoters of group policies, although not as effective a sales technique as the use of company agents, may be sufficient to sustain jurisdiction. Solicitation by company agents, even if insubstantial, will clearly suffice. Even in the absence of solicitation, the adjustment of losses and the collection of premiums or assessments on policies delivered in the state have also been held sufficient. Although the benefits which accrue to the corporation through these acts are not nearly as substantial as continuous solicitation, the danger which the sale of insurance presents to the resident has been deemed sufficient to uphold jurisdiction even in absence of a considerable financial return to the corporation.

**Purchasing**

When the corporation’s only contact with the state is the purchase of goods from state residents, the courts have tended to require a much larger amount of corporate activity within the state than in the case of other business functions to sustain a suit on the contract of sale. The decisions have tended to develop two basic factual situations which tend to act as yardsticks in measuring the substantiality of the purchasing agent’s activities. In the 1923 case of Rosenberg Bros. v. Curtis Brown Co., the United States Supreme Court held that a regular course of purchasing by agents coming into the state on trips for that purpose will not subject the

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60. Most states have adopted special statutes for the service of process on foreign unauthorized insurers. E.g., Ariz. Stat. §§66-240 to 66-249 (1947); Fla. Stat. Ann. § 625.30 (Supp. 1954); N.C. Gen. Stat. § 58-164 (1950); S.C. Code § 37-265 (1952); S.D. Code § 31.3906 (Supp. 1952). Under these statutes, little need be done to be subject to jurisdiction. Florida, for example, provides: “Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer: (a) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (b) the solicitation of applications for such contract, (c) the collection of premiums, membership fees, assessments or other considerations of such contracts....” shall constitute an appointment of the Commissioner of Insurance as its agent for service of process.


corporation to the jurisdiction of the local courts even though the cause of action arose out of the purchasing activity. On the other hand, if the corporation maintains an exclusive agency within the state simply for the purpose of purchasing, the corporation can be forced to defend in the claimant's district. Beyond these two types of cases, no structural form of purchasing is controlling and the cases would seem to turn primarily on the court's estimate of how substantial the purchasing has been. Purchasing both through the services of an independent resident buyer and through agents sent into the state according to seasonal requirements may and may not subject the corporation to jurisdiction. The maintenance of an office for the purpose of purchasing is likewise inconclusive. However, if the agents engage in other activities such as settling claims or selling as well as buying, jurisdiction may be asserted. To summarize the cases into a rule of law, it might be said that jurisdiction can be asserted only if the corporation does something more within the jurisdiction than sending agents into the state on periodic but regular purchasing trips. Such a summary is strikingly similar to a statement of the old "mere solicitation" rule.

It might be expected that the decision of the International Shoe case may lead to subjecting the past case law of purchasing to a fate similar to that of the "mere solicitation" rule. In Compania de Astral v. Boston Metals Co., jurisdiction over a Panamanian corporation was upheld in spite of the fact that the corporation's only contact with the state was the negotiation of a single contract of purchase. However, the facts of the case may well limit its authority since the litigation turned on the construction of a contract involving little evidentiary burden to the corporation. Had the bulk of the evidence been in Panama, the result might have been different since it is doubtful that the negotiation of this purchase would be of sufficient economic importance to the corporation to compel it to transport large amounts of evidence into the state.

However, there may be less reason to subject the purchasing corporation to the jurisdiction of the local courts than the selling corporation. As

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72. Meade Fibre Co. v. Varn, 3 F.2d 520 (4th Cir. 1925).

73. Eastern Livestock Co-operative Marketing Ass'n v. Dickenson, 107 F.2d 116 (4th Cir. 1939).

has been noted earlier, the resident's burden in bringing suit against the purchasing corporation in the corporation's home state is not so significant as in the case of the suit against the selling corporation. Since the failure to assert jurisdiction is therefore less likely to act as a bar to relief than in other cases, there is less reason to compel the purchasing corporation to bear the evidentiary burden which suit would force on it.

Activities Arising Out of the Contract

The issues of litigation arising from contracts whose performance requires extensive acts by the corporation's agents in the claimant's state are likely to involve what the agents did within the state. When this is not the case, however, perhaps something more than the agent's performance of the contract should be required. In S. Howes Co. v. W. P. Milling Co., for example, an Oklahoma resident had purchased machinery sold by a New York firm on the advice of a local machinery broker. In response to the buyer's complaint that the machine had failed to operate as warranted, agents of the corporation were sent to investigate and to suggest changes which might cure the defects in the machine's operation. The suggested changes did not yield the proper results and suit was instituted in Oklahoma. On these facts alone, it is doubtful if jurisdiction could be sustained. Although the agents might be used extensively as witnesses, they would have to be brought into the state for that purpose, since they had entered the state only to investigate the claim in question. However, the record in the case reveals that a large number of the defendant's machines had been sold to state residents. Under these circumstances, the agent's activity was of considerable benefit to the corporation since the defendant's failure to attempt to remedy the machine's faulty condition would render its guarantee of little value, which in turn would have a detrimental effect on the defendant's volume of sales within the state. It must be recognized, however, that such a finding of economic benefit creates a problem not hitherto discussed. The benefit is negative, in that it results from averting the loss of good will that might follow among other residents of Oklahoma. While it is true that such good will leads to future sales, it is not necessarily true that those sales will take place in Oklahoma. There is no indication in the case that those residents who had purchased defendant's machines had done so as a result of any activity by the defendant in Oklahoma. It would probably be insufficient "positive" benefit for any state to assert jurisdiction merely on the fact that certain of its residents thought enough of a foreign corporation's product that they would be willing to go out of state to buy it, if the corporation had no contacts with

75. See text at pp. 389-90 supra.
the state otherwise. To use preservation of such good will as "negative" benefit on the strength of the servicing of one contract is dubious.

On the other hand, when the performance requires extensive activity within the state, the large number of residents affected and the amounts of money involved may indicate that this alone should be sufficient to assert jurisdiction over the indirect claim.\textsuperscript{78}

**Unrelated Claims**

In some instances, the suit against the foreign corporation may be entirely unrelated to its activities within the state. In the case of the resident claimant, when the corporation carries on extensive business dealings within the state it would not seem unreasonable that the state be able to protect its residents from the acts of the corporation, regardless of where those acts occurred, in return for the benefits which the state has made available to the foreign corporation. Since the evidence required to defend the suit is probably in other states, more extensive activity within the state may be required than in the case of the ordinary indirect claim. Although jurisdiction has been upheld on the basis of continuous and systematic solicitation,\textsuperscript{79} more extensive activities have generally been in question.\textsuperscript{80}

When suit is instituted by a non-resident, however, it is difficult to analyze the problem in terms of the criterion of reasonableness as set forth by the *International Shoe* opinion. The defense of the suit would impose a large evidentiary burden on the corporation and the assertion of jurisdiction does not directly promote the state's interest of protecting its residents. On the other hand, the traditional doctrine of "presence"\textsuperscript{81} would seem to support the exercise of jurisdiction. When suit is brought against an actual person, the state may assert jurisdiction whenever that person is found within the state regardless of the source of the cause of action or the claimant's residence.\textsuperscript{82} However, the "presence" of a foreign corporation is nothing more than a fictional determination that the corporation may be subjected to suit. In the absence of some criterion such as that as reasonableness, the determination that the corporation is "present" can be little more than arbitrary.\textsuperscript{83}


\textsuperscript{80} See, e.g., Vilter Mfg. Co. v. Rolaff, 110 F.2d 491 (8th Cir. 1940) (solicitation, handled complaints, received payments); Maichok v. Bertha-Consumers Co., 25 F.2d 257 (6th Cir. 1928) (actively conducts business); Koninklijke Luchtmacht Maatschappij v. Superior Court, 107 Cal. App. 2d 495, 237 P.2d 297 (1951) (solicitation, supervision of performance of contracts).

\textsuperscript{81} See note 9 supra.


In fact, jurisdiction has been asserted over this type of suit. The courts' opinions, however, fail to summarize the corporation's activities within the state other than to note that they are extensive. One exception is Perkins v. Benguet Consolidated Mining Co. Suit was instituted in Ohio against a Philippine corporation for the payment of dividends and damages for the failure to transfer shares of stock. The claimant was not a resident of Ohio, and the acts complained of did not take place in Ohio. Because of the Japanese occupation of the Philippines, at the time suit was instituted, the defendant held its directors' meetings, kept bank accounts, made stock transfers, payments of salaries, purchases of machinery, and generally directed corporate activity from Ohio. The Court held that the state had the constitutional power to assert jurisdiction if it so chose. Since the defense of the suit would involve no significant burden to the corporation, it is doubtful that the decision could be questioned. However, when the non-resident's unrelated suit does impose a heavy burden to the corporation, a much different problem is presented. Although the Perkins opinion would seem to indicate that forcing a corporation to respond to such a suit is within the bounds of due process, the peculiar facts of the case would seem to limit its authority severely.

Perhaps the key to the difficulty of finding a rationale to explain cases compelling a foreign corporation to defend against a non-resident's suit on an unrelated claim lies in a re-examination of the fundamental factors that go into a determination of the "reasonableness" of assertion of jurisdiction. The balance in each case is made between the interests of the defendant on one side and the interests of the state (not merely the plaintiff) on the other. The nub of the problem with unrelated claims is whether or not the interests of the state extend beyond protecting its residents, i.e., the group which is exposed to risk of harm by the corporation's acts and from which the corporation's benefits are derived. By hypothesis, the non-resident plaintiff is not a member of this group. Therefore, it is arguable that the state can use its power reasonably, in the International Shoe sense, only for the benefit of those persons whose interests as a class are the interests of the state. On the other hand, the determination of reasonableness might be analogized to the balancing of a scale; for the inconvenience which any given type of claim imposes on a defendant there is a critical point at which the interests of the state (i.e. the sum of interests of the state residents) outweigh those of the defendant. If the scale dips in favor of the state, it is immaterial whether the plaintiff is a resident or a non-resident. If the state chooses to allow a non-resident plaintiff to use its forum, it will do so probably as a matter of comity, but that decision does

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85. 342 U.S. 437 (1952).
86. At least when the claim arises in another state, due process does not require the state to open its courts to non-residents. Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952). To the extent that the refusal to assert juris-
not enter into the balance of interests that determines whether the assertion of jurisdiction is reasonable or unreasonable.

**THE PRESENCE OF LOCAL BUSINESSES**

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 on the basis of the activities carried on by the local business raises a separate issue as to whether these local businesses should be considered agents of the foreign corporation for purposes of jurisdiction. Perhaps the determination to be made is whether the services rendered by the local business give the corporation in large measure the benefits and advantages it would have enjoyed by the use of its own employees. The general failure of the opinions explicitly to utilize such a broad rule perhaps is due to its difficulty of application. Instead, the decisions have drawn frequently on familiar legal principles from other areas of the law or have created new concepts to effect basic judgments of policy.

The cases that have been decided on this type of problem fall into three general classifications: first are those cases in which the foreign corporation's contacts with the state are the result of sales of the corporation's goods to a local distributor; a second type of case arises from transactions in which the defendant corporation has contracted with a local business to perform services or provide supplies for the defendant; finally there are cases in which the local business is a subsidiary of the foreign company.

**Local Distributors**

According to the weight of present case law, the sale of goods to a local distributor will not of itself serve as a basis of jurisdiction over the foreign corporation, but control of the distributor, the use of agents to stimulate the distributor's sales or the sale of goods on a consignment basis may be of sufficiently greater benefit to permit the exercise of jurisdictional power. Under present day marketing practice the local handling of goods is often pursuant to contracts which, in varying degrees, restrict independent action on the part of the local dealer. Control of the retail price, 

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87. Local businesses may be corporations, partnerships, or sole proprietorships. They are to be distinguished from agents or employees of the corporation by the fact that their acts could not impose vicarious liability on the foreign corporation. 88. Sales Affiliates, Inc. v. Superior Court, 196 Cal. App. 2d 134, 136, 214 P.2d 541, 542 (1950) (dictum).


90. See Kahn v. Maico Co., 216 F.2d 233 (4th Cir. 1954); Fielding v. Superior Court, 111 Cal. App. 2d 490, 244 P.2d 968 (1952).
specifications as to the maintenance of a sales force, or prohibitions against selling competing or any other product. In various combinations, these and other restrictions indicate that the corporation has achieved the economic benefits of establishing its own places of distribution. Although the corporation’s margin of profit may be less than if it owned its own points of distribution, this method of securing distribution outlets without bearing the burden of initial capitalization may facilitate volume sales to state residents to a greater extent than would the outright sale of the product to totally independent distributors.

The degree of control necessary to give rise to the requisite economic benefit to overcome the due process objection is difficult to ascertain since few decisions have been made on this basis, and in nearly all of the cases, the corporation has engaged in some activity within the state in addition to its dealing with the distributor. Advertising within the state, or the use of agents to give technical assistance, to coordinate the distributors’ activities or to solicit or promote sales increase the effectiveness of this type of distribution through local businesses. Similarly, the sale of goods on a consignment basis may induce more distributors to sell the corporation’s product since the entrepreneur’s risk of the failure of demand for the goods lies with the manufacturer rather than the distributor. Without any control over the distributor’s business, the use of agents to advise the distributor in selling the corporation’s product has been held to be a basis of jurisdiction, and some decisions would indicate that sales on a consignment basis alone might be sufficient. None of these elements were present in Carroll Electric Co. v. Freed-Eisemann Radio Corp. Although jurisdiction was upheld, the defendant exercised a large amount of control.

92. Ibid.
100. 50 F.2d 993 (D.C. Cir. 1931).
By its contract, the wholesale distributor was required to secure retail distributors who were to be approved by, and sign a contract with, the defendant. He was also required to maintain an office, a showroom, an adequate sales force and stock of the defendant's goods. Since the decision was an interpretation of a "doing business" statute, it is not a fair indication of the extent of control which marks the bounds of due process. However, since the use of a few agents in promoting sales of the defendant's products is of sufficient economic benefit to the corporation to uphold the assertion of jurisdiction, it would seem probable that much less control than was involved in the Freed-Eisemann case would uphold the court's exercise of jurisdiction.

Other Local Businesses

Beyond the contractual control of a local distributor, there are a multitude of varied business relationships that can be created between a foreign corporation and a local business. Many of these seem to be free of any control of the local business by the out-of-state firm, especially the contractual control which was found to be the source of considerable economic benefit and hence justified the assertion of jurisdiction over a foreign company because of its contacts with a local distributor. The resident business may be providing some type of service, or perhaps supplying goods to the defendant corporation. For purposes of jurisdiction, however, this type of relationship has been held in some cases to be an adequate contact to overcome the objection to the assertion of jurisdiction.

In Consolidated Cosmetics v. D-A Publishing Co., for example, a trade mark infringement suit was brought in Illinois against a New York magazine publisher. Jurisdiction was based on the activities of an Illinois firm which printed the defendant's magazine and mailed the finished product to newsstands and individual subscribers. Jurisdiction was upheld since printing is an essential function of the publishing business; if it is performed in a foreign state, the publisher is doing business in that jurisdiction. An analogous situation was presented in Clover Leaf Freight Lines v. Pacific Coast Wholesaler's Ass'n. Several carriers brought suit in Illinois against a California association of wholesalers which was organized for the purpose of securing the benefits of volume freight rates. By contract with a freight forwarder in Chicago, freight destined for the defendant's members was consolidated in Chicago for shipment. Jurisdiction in Illinois was affirmed on the theory that without the services of the freight forwarder, the defendant would be forced to establish a formal branch of its business in Chicago.

101. See note 98 supra.
103. 186 F.2d at 908.
104. 166 F.2d 626 (7th Cir. 1948).
From these and similar cases it would seem that some courts are groping for a principle of non-delegability of essential business functions for purposes of jurisdiction. According to that principle, to allow the corporation to escape suit arising from some activities performed by independent firms is subject to the same objection as was the “solicitation plus” requirement, for a segregation of the corporation’s activities may result in a substantial immunity from suit. However, the test of the essentiality of the business activity is of no value in determining whether the business of the domestic firm should be considered as the business of the foreign corporation. In all cases the activity of the independent firm is of profit to both it and the foreign corporation; furthermore, an adequate definition of the elements of essentiality is probably impossible of formulation.

The decisions would indicate that other factors are involved. Although the printing of a magazine has been held to be an essential function of the publishing business, its distribution by independent firms, which would appear to be just as essential, by itself is insufficient to subject the corporation to jurisdiction. Moreover, when services rendered by the independent firm appear to be essential but constitute only a small part of the independent firm’s business, jurisdiction has been denied. Perhaps the major factor involved is that when the services rendered for the corporation constitute a large portion of the independent firm’s business, it is likely that the corporation has achieved most of the advantages which would accrue if the corporation performed the activity itself. Large scale business dealings make it likely that the corporation has been able to reduce its operating costs materially through volume rates. By contract specifications as to the product to be produced or the services to be rendered, the corporation can control the end result of the contractor’s activity. Through its position as a major customer, it may be able to exercise a large amount of control over the business of the independent firm. Such a relationship places the corporation in a position similar to its control of a distributor since both tend to enable the corporation to increase its earnings.

105. See note 102 supra.
106. See text at note 102 supra.
109. See Gordon, Business Leadership in the Large Corporation 253-55 (1945). As an example, see the discussion of the tremendous pressure Sears Roebuck at one time was able to exert on Goodyear Tire and Rubber in Hamilton, Prices and Price Policies 108-10 (1938). Other tire manufacturers also were subject to important influences from mail order houses, automobile manufacturers, and oil companies, all of which provided mass outlets for the distribution of tires. Id. at 98-108.
FOREIGN CORPORATIONS

This analysis of the economic benefits which the corporation receives through its dealings with independent firms would tend to explicate the decisions and would seem to provide a superior criterion of jurisdiction than would the test of the essentiality of the business function. In Clover-

110. 166 F.2d at 629.


112. See note 108 supra.

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The decisions give no indication of whether the assertion of jurisdiction under these circumstances would be within the bounds of due process, but the applicable law is in direct conflict with this analysis. The leading case in the field is the Supreme Court's decision of Cannon Mfg. Co. v. Cudahy Packing Co. A contract action was instituted in North Carolina against a Maine corporation. The resident claimed that jurisdiction was proper on the basis of the defendant's control of a subsidiary doing business in North Carolina. The Court found that the activities of the subsidiary were dominated "immediately and completely" by the defendant. Nevertheless, jurisdiction was denied.

The Court's insistence that the financial separation of the corporations should not be ignored for purposes of jurisdiction would indicate that the applicable body of law is the concept of corporate separateness, principally invoked to guarantee a limited liability to the corporate parent. Accordingly, subsequent decisions have either followed Cudahy or distinguished it by a "piercing of the corporate veil." When the parent fails to maintain the subsidiary as an independent unit, when both corporations are owned by a single individual, or when the parent's only function is that of a holding company, jurisdiction has been exercised. This is not to say, however, that the separation of the parent and subsidiary in itself will operate as a defense to the assertion of jurisdiction when there are other indicia of control. If a parent by contractual or other means obtains control of the subsidiary distinct from its management control, it would seem that jurisdiction might be asserted despite the doctrine of corporate separateness. Obviously, there will be few such cases of duplication of lines of authority when management control vests in the parent's hands. The nearest approach to this is the case in which the parent corporation sends its own agents into the state in addition to the presence of the subsidiary. In one such case, jurisdiction has been upheld.

113. See note 124 infra and accompanying text.
115. Id. at 335.
116. Id. at 336-37.
120. Southern Electric Securities Co. v. State, 91 Miss. 195, 44 So. 785 (1907); Steinway v. Majestic Amusement Co., 179 F.2d 681, 683 (10th Cir. 1949) (dictum).
To the extent that the doctrine of corporate separateness has been applied, few cases have attempted to challenge the desirability of its use. However, it is perhaps questionable whether it is appropriate to decide a problem of jurisdiction by use of a doctrine designed to insure the parent an immunity from liability incurred by its subsidiary. To the extent that the corporations are kept financially separate and independent, there is good reason to protect management’s use of decentralization of its operations to obviate the risk that a liability incurred by one division of its business may be the end of the entire concern. It is an entirely different matter, to put the hard case, to shield the parent corporation from having to defend claims against the parent because the claimant may be unable to bring suit anywhere but in his home state, even though the defendant is doing a very substantial business in that state through a domestic subsidiary. That is creating a limited liability wholly from the fact that some claimants cannot travel, or find it unfeasible to do so, to press their claims.

Regardless of what might be said of the desirability of the Cudahy rule, whether the assertion of jurisdiction on the basis of the presence of a subsidiary corporation would be prohibited by due process remains unanswered. The Cudahy decision explicitly was not made on constitutional grounds, and the Court’s opinion indicated that a statute authorizing such a suit might be valid. Unlike the situations discussed heretofore, there is no precedent in case law to define the due process requirements in the parent-subsidiary relationship. For this reason, an analysis of constitutionality must of necessity be somewhat speculative.

Considered in terms of striking a reasonable balance between the burden placed upon the defendant to present his case in a foreign jurisdiction and the economic benefit derived by the defendant as well as the risk presented to residents of the state of the forum, the problem seems amenable to at least partial analysis. First, it seems that most cases will arise from claims unrelated to the activities of the subsidiary since no attempt will be made to subject the parent to liabilities of the subsidiary and claims related to the subsidiaries business can be prosecuted against it. This factor has twofold significance: not only does this impose a great evidentiary burden on the defendant, but it implies that the defendant has not subjected state residents to any great danger of economic harm. However, this minimal

122. E.g., Industrial Research Corp. v. General Motors Corp., 29 F.2d 623 (N.D. Ohio 1928). "... [T]his is against sound policy, when a corporation has grown so large, and has entered into activities so various and so generally distributed that it finds itself compelled to operate through many subsidiaries, doing nothing directly itself in carrying on its business, to permit it to enjoy exclusively the fruits of such subsidiary activity and to escape the concomitant responsibilities flowing therefrom." Id. at 627.
124. 267 U.S. at 336.
125. "Congress has not provided that a corporation of one State shall be amenable to suit in the federal court for another State in which the plaintiff resides, whenever it employs a subsidiary corporation as the instrumentality for doing business therein." Ibid.
risk is also characteristic of the cases involving the controlled distributor since the distributor like the subsidiary is liable for any injuries it may inflict. Similarly, it would also appear that control of the subsidiary by virtue of majority or complete shareholding gives the parent at least the same benefits as would accrue through the distribution of its products through a contractually controlled local business or by means of its own employees. From these factors, it is possible to generalize only to the extent of noting that there should be greater economic benefit accruing to the parent to justify assertion of jurisdiction than is required in other cases, e.g., doing business through corporate employees.

**Conclusion**

The uncertainty of the weight to be given to the relevant considerations makes the test of reasonableness of little guidance to the corporation desirous of avoiding suit in a distant state or to a claimant uncertain of the jurisdiction of his local court. If the uncertainty created were limited to the law of due process, the problem might be of little significance. However, the recent expansion of the concept of due process requirements has had other effects. In some states, this expansion has resulted in a corresponding change in the interpretation of the “doing business” phraseology of the state jurisdictional statute. In other states, the enactment of more specific jurisdictional statutes would seem to add some certainty to the law, but the desire to protect state residents may have resulted in provisions which will force the constitutional issue. Maryland, for example, provides for suits “arising out of a contract made within this state.” Since the place of contract is not relevant to where the bulk of the evidence may be the application of the statute poses serious problems when this is the corporation’s only contact with the state.

A more carefully drawn statute is perhaps the best method of removing the uncertainty which faces both the claimant and the corporation. The analysis presented would indicate that such a statute should be drawn in terms of the type of action at issue and the formulation of specific definitions of the extent of the activities which would be required to support the exercise of jurisdiction in each case. Such a statute would tend to reduce variability.

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126. See note 8 supra.
127. See note 6 supra.
129. Jurisdiction under the Maryland statute, Md. Ann. Code art. 23, § 88 (1951), does depend on the type of suit at issue. Subsection (a) provides for any suit by a resident if the corporation is “doing business” in the state; (b) provides for suits arising out of the corporation’s activities within the state by a non-resident if the corporation is “doing business” in the state; (d) provides for suit by a resident which arises out of a contract made within the state or a liability incurred for acts done within the state. However, its failure to define what constitutes doing business causes uncertainty.

The Pennsylvania statute attempts to remove this difficulty. Pa. Stat. Ann. tit. 15, § 2852-101 (Purdon Supp. 1954) provides for substituted service “. . . in any action arising out of acts or omissions of such corporation within the Commonwealth. . . .” Subsection (C) provides: “For the purposes of this act, the entry...”
the volume of litigation on the due process issue, but problem cases are nearly certain to arise. Perhaps the analysis presented will be of some aid in approaching the problem. However, the extent to which any analysis of present case law can state the constitutional limits of the state court's jurisdictional power is unknown. Recent years have witnessed a rapidly expanding concept of the requirements of due process, and it is doubtful if this process of expansion has now been largely completed.

The shipment of magazines to a state resident has been held to be an act of the corporation within the state. Jenkins v. Dell Publishing Co., 130 F. Supp. 104 (W.D. Pa. 1955). If this holding is extended to contract suits, the evidentiary burden which suit would impose on the corporation may require a varied interpretation of the definition of "doing business." This problem would be avoided if different definitions of "doing business" were provided for each type of suit.