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**DePaul Law Review**

Volume 7
Issue 2 *Spring-Summer 1958*

Article 12

# Constitutional Law - Sale of Single Insurance Policy in State Held Sufficient to Confer Jurisdiction over Foreign Corporation

DePaul College of Law

## CONSTITUTIONAL LAW–SALE OF SINGLE INSURANCE POLICY IN STATE HELD SUFFICIENT TO CONFER JURISDICTION OVER FOREIGN CORPORATION

Plaintiff, a California resident, recovered a judgment in California as beneficiary of a life insurance policy. The Texas court refused to enforce the judgment on the ground that service of process on the insurer outside California violated the due process clause of the Fourteenth Amendment. The United States Supreme Court held that even though the defendant had no office or agents in California, and had never solicited or done any insurance business in that state, the entry of the judgment did not violate the requirements of due process. Mr. Justice Black based the decision upon the facts that the policy was delivered in California, premiums were mailed from there, and the insured was a resident of California at the time of his death. The California statute[1] subjecting foreign corporations to suit on insurance contracts with residents of the state, even though process cannot be served within its borders, was held valid. *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957).

The problem involved herein is not at all a new one. It first came to the attention of the courts in the latter part of the nineteenth century in *Pennoyer v. Neff*.[2] In that case the court was very strict in its requirements for obtaining personal jurisdiction over a defendant. The defendant was required to be physically present within the court's jurisdiction and had to be personally served with process before the court could proceed to enter an *in personam* judgment.

The mere transaction of business in a state by a nonresident natural person does not imply consent to be bound by the process of the forum.[3] The power of a state to exclude foreign corporations, although not absolute, is the ground for an implication of consent.[4] The requirements for obtaining personal jurisdiction over foreign corporations have always arisen from their doing business within the state. The courts have always been hesitant to allow acquisition of jurisdiction over such corporations unless the business carried on within the state is continuous and systematic. The foreign corporation was usually required to have an agent physically present within the state who could be served on behalf of the corporation.[5]

[1] Cal. Ins. Code (West, 1953), §§1610–1620.

[2] 95 U.S. 714 (1877).

[3] But cf. Nelson v. Miller, 11 Ill. 2d 378, 143 N.E. 2d 673 (1957). Consult 7 De Paul L. Rev. 281 (1958) for a discussion of this case.

[4] Flexner v. Farson, 248 U.S. 289 (1919); Pennsylvania Fire Insurance Co. v. Gold Issue Mining and Milling Co., 243 U.S. 93 (1917).

[5] G. W. Bull & Co. v. Boston and Maine Railroad, 344 Ill. 11, 175 N.E. 837 (1931).

When the activities of the corporation in the state have not only been continuous and systematic, but also give rise to the liabilities sued on, the due process requirement of "presence" is satisfied. This is true even though no consent to be sued or authorization to an agent to accept service of process has been given.[6] This reasoning was used by the Supreme Court in the familiar case of *International Shoe Co. v. Washington,*[7] where the court said:

> [D]ue 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."[8]

The judicial trend has been and still is toward putting corporations upon the same footing as natural persons in regard to the jurisdiction of suits by or against them.[9] Therefore, the same problems arise in connection with corporations as with individual defendants. Whether due process is satisfied in a suit against a foreign corporation depends on the quality and nature of the corporation's activities in relation to fair and orderly administration of laws which it was the purpose of due process to insure.[10]

The courts often talk in terms of due process but are elusive as to its requirements. The problem is one of ascertaining what "business" is sufficient to satisfy due process. In some of the modern decisions, solicitation, without more, constitutes doing business within a state when the solicitation is a regular, continuous and substantial course of business.[11]

In the *McGee* case, the Supreme Court held that mere issuance of one insurance policy by a foreign corporation to a resident of California established a substantial connection with that state sufficient to meet requirements of due process. This is a further breaking away from the stringent requirement of a systematic and continuous course of business.

In *Travelers Health Ass'n v. Virginia,*[12] the Supreme Court applied its new concept of "doing business" to a foreign corporation which had no office or soliciting agent in Virginia but issued a substantial number of health insurance policies to residents of that state through the mails. The

[6] Commercial Mutual Accident Co. v. Davis, 213 U.S. 245 (1909); Pennsylvania Lumbermens Mutual Fire Ins. Co. v. Meyer, 197 U.S. 407 (1905); Connecticut Mutual Life Ins. Co. v. Spratley, 172 U.S. 602 (1899); St. Clair v. Cox, 106 U.S. 350 (1882).

[7] 326 U.S. 310 (1945). [8] Ibid., at 316.

[9] Koninklijke Luchtvaart Maatschappij v. Superior Court, 107 Cal. App. 2d 495, 237 P. 2d 297 (1951).

[10] Green v. Equitable Powder Mfg. Co., 99 F. Supp. 237 (D.C. Ark., 1951); Harrison v. Corley, 226 N.C. 184, 37 S.E. 2d 489 (1946).

[11] Frene v. Louisville Cement Co., 134 F. 2d 511 (App. D.C., 1943); Perkins v. Louisville & N. R. Co., 94 F. Supp., 946 (D.C. Cal., 1951).

[12] 339 U.S. 643 (1950).

case held that metaphysical concepts of "implied consent" and "presence" in a state were not controlling, and where business activities reach out beyond one state and create continuing relationships and obligations with citizens of another state, courts need not resort to a fictional "consent" in order to sustain the jurisdiction of regulatory agencies in the latter state.

In a recent case it was held that, " 'Such business' includes of course the doing of 'any act whatsoever,' and this is the demand for and the receipt of premiums, which serve to keep the policy in full force and effect. . . . [Doing business includes] the soliciting, making, or delivering of insurance contracts in Tennessee, by agent, mail or otherwise."[13]

Because of this confusion, many states passed legislation especially aimed at foreign insurance companies carrying on a large business through the mails. This type of legislation was involved in the *McGee* case, which subjected foreign corporations to suit on insurance contracts with residents of California, even though such companies could not be served with process within its borders.[14]

The nature of the problem which such legislation is designed to correct is fully described and discussed by Judge Medina in *Schutt v. Commercial Travelers Mutual Accident Ass'n*[15] where he said:

> The background is the mushroom growth of the mail order insurance business. Typically such companies maintain an office and own property only in the state where they are incorporated, but they insure risks in many states, sometimes on a nation-wide basis. They have no agents or solicitors. New business is secured through the efforts of old policy-holders, or "members," spurred on by offers of prizes and aided by advertisements and application blanks furnished by the company. The amounts of money involved are small . . . , the various sums of accident, hospital and health coverage running from a few dollars up to a few thousand. . . . In any event, such has been the success of these companies and so clear is the hardship of requiring the assured or his beneficiaries to hire a lawyer to prosecute such small claims in a state far from the residence of the policy-holder, where the necessary witnesses are generally to be found, that several states have enacted legislation to protect their residents against the expense, inconvenience, and injustice which are found to exist where such claims are required to be prosecuted in far distant forums. . . . Few if any activities within a state touch the people so closely as do those of insurance companies. Here the defendant has hit upon a way of transacting its business which reduces its contacts with its policy-holder and its methods of obtaining new business to communications by mail. But the result is precisely what it would have been if salesmen rather than "members" procured new customers and if agents went from house to house collecting premiums instead of the sending of notices and receiving remittances through the mail.[16]

[13] Schutt v. Commercial Travelers Mutual Accident Ass'n, 229 F. 2d 158, 161 (C.A. 2d, 1956).

[14] Authority cited note 1 supra.

[15] 229 F. 2d 158 (C.A. 2d, 1956).

[16] Ibid., at 159, 162.

During this long history of litigation the Supreme Court has accepted and then abandoned "consent," "doing business," and "presence" as the standard for measuring the extent of state judicial power over foreign corporations. A trend is clearly discernible toward expanding the permissible scope of state jurisdiction over such corporations. The *McGee* case underscores this trend by minimizing the contacts needed for "substantial connection" with the state.

## CRIMINAL LAW–FAILURE TO REGISTER NOT PUNISHABLE WITHOUT ACTUAL KNOWLEDGE OF FELON REGISTRATION ORDINANCE

The defendant, Lambert, was convicted of violating an ordinance of the city of Los Angeles requiring the registration of persons previously convicted of a felony if they remained in the city for over five days. The defendant was a resident of Los Angeles for over seven years at the time of her arrest. Within that time, she had been convicted of forgery which the State of California classified as a felony. She had not been registered under the ordinance at the time of her arrest. The defendant was found guilty and fined $250. On appeal, the United States Supreme Court held that although Blackstone's requisite of a "vicious will"[1] is not necessary to constitute a crime, since conduct alone will often suffice, nevertheless, where conduct wholly passive is involved–a mere failure to register–there must be actual knowledge of a duty to register coupled with that failure before a conviction under the ordinance could stand. The court had to assume that the defendant had no actual knowledge of the registration requirement as she offered proof of this defense which was refused in the California trial. The judgment was reversed. *Lambert v. California*, 355 U.S. 225 (1957).

Blackstone defined the requisites for public wrongs as follows:

> For though, *in foro conscientiae*, a fixed design or will to do an unlawful act is almost as heinous as the commission of it, yet, as no temporal tribunal can search the heart, or fathom the intentions of the mind, otherwise than as they are demonstrated by outward actions, it therefore cannot punish for what it cannot know. For which reason in all temporal jurisdictions an *overt* act, or some open evidence of an intended crime, is necessary, in order to demonstrate the depravity of the will, before the man is liable to punishment. And, as a vicious will without a vicious act is no civil crime, so, on the other hand, an unwarrantable act without a vicious will is no crime at all.[2]

Certain civil cases dispensing with the element of wilfulness involve statutes enacted to protect employees or dependents of employees engaged in hazardous industries operated by the defendant. The employee

[1] 4 Blackstone, Commentaries *21. [2] Ibid.