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Personal Jurisdiction in Minnesota
Over Foreign Insurance Companies

The author of this Note discusses Minnesota law relating to personal jurisdiction over foreign insurance companies and finds that there is considerable doubt whether it extends as far as the federal constitution permits. He then examines the necessity for extending the jurisdictional powers of Minnesota courts to these constitutional limits and recommends appropriate legislation.

I

If a foreign insurance company has qualified to do business in the state, process may be served either upon an agent,1 if one can be found, or upon the Commissioner of Insurance, who has been appointed agent for service of process as a prerequisite to licensing.2 However, a problem arises in obtaining personal jurisdiction over foreign insurance companies which have not so qualified and yet transact business with residents of the state. Typically, their business, including the solicitation of contracts, is done only through the mails; the company will have no office, agents or property in the state. Although the constitutional requirements for obtaining personal jurisdiction over these companies have been greatly liberalized by the United States Supreme Court, there is serious doubt whether Minnesota law has expanded correspondingly.

II

Three United States Supreme Court decisions provide the guides for determining when a state may exercise jurisdiction over foreign insurance companies. In Travelers Health Ass'n v. Virginia,3 the Court upheld the power of the Virginia Corporation Commission to order the defendant mail-order health insurance company to cease and desist from further offerings or sales in Virginia. The defendant had no agents, office, or property in Virginia; applications were sent to recommended prospects by mail, and all other business was done by mail.4 The Court, recognizing the interests of the

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1. Minn. R. Civ. P. 4.03(c).
4. However, the concurring opinion of Mr. Justice Douglas places great emphasis on the fact that the prospects were recommended by policyholders of the defend-
state in the insurance business and the importance to its citizens of being able to enforce locally the obligations arising under the policies, upheld the action of the Virginia commission in a 5-4 decision.

The case did not present the problem of whether Virginia courts had judicial jurisdiction to enforce rights of private parties under the contracts. Actually, the opinion of the Court does not clearly distinguish legislative and judicial jurisdiction, although it does contain dictum indicating that policyholders could secure personal jurisdiction to enforce their rights. 5

Remaining doubts about the extent of judicial jurisdiction were largely resolved by the Court in McGee v. International Life Ins. Co., 6 decided late in 1957. The policy involved in that case was originally issued in Arizona and mailed to the insured. Later, a Texas company, defendant in the case, agreed with the Arizona company to take over the business and accordingly offered a reinsurance agreement by mail to the insured in California. He accepted. The Court said:

It appears that neither Empire Mutual [the original insurer] nor respondent has ever had any office or agent in California. And so far as the record before us shows, respondent has never solicited or done any insurance business in California apart from the policy involved here. 7

The Court found that due process was satisfied since the suit was “based on a contract which had substantial connection with that State.” 8 The substantial connections were: (1) the contract was delivered in California (presumably by mail), (2) the premiums were mailed from there, and (3) the insured was a resident of that state when he died. 9

Since jurisdiction in that case rested upon a single contract, it might appear that territorial boundaries had become almost meaningless as a restriction upon jurisdiction. 10 However, the Court soon demonstrated that the territorial concept of jurisdiction survives to some extent. Hanson v. Denckla, 11 decided later in the same term as McGee, held that Florida could not exercise personal jurisdiction over a foreign trustee, where the only contacts with Florida were that the testator lived in Florida, there executed an appointment

ant. 339 U.S. at 654. The majority also states that investigations on claims had taken place in Virginia. Id. at 648.
5. Id. at 648–49.
7. 355 U.S. at 222.
8. Id. at 223.
9. Ibid.
10. See Note, 42 Minn. L. Rev. 909, 922 (1958).
under the trust, and from there corresponded with the trustee regarding administration of the trust, and that the court had secured personal jurisdiction over some beneficiaries.

Although it is very difficult to support the distinction that the Court finds between the two cases, differences in approach are discernible from the majority and minority opinions in Hanson. The majority apparently requires certain contacts between the forum and the nonresident defendant: "[T]he defendant purposefully avails itself of the privilege of conducting activities within the forum State. . . ." The minority, however, uses the test of the sufficiency of the relationship between the subject of the litigation and the forum state. That this is also the apparent rationale of McGee is probably due to the fact that the opinion of the Court in McGee and the minority opinion in Hanson were both written by Mr. Justice Black.

If restricted to its facts, McGee is probably not limited by Hanson although the precise limits of jurisdiction are still in doubt. If the test depends upon contacts between the forum and defendant, then there might be no jurisdiction in the case where the insured, after taking out a policy elsewhere, moves into the forum state and just continues to pay his premiums. In such a case, it could be argued that the company really has done nothing which could be fairly characterized as "purposefully [availing] itself of the privilege of conducting activities within the forum State." In fact, under many kinds of insurance contracts, it may have no choice but to continue the contracts no matter where the policyholder moves.

But in spite of any doubts which may remain, it is clear that a state now has extensive power to exercise in personam judicial jurisdiction over absent foreign insurance companies.

III

States have chosen to expand their concepts of personal jurisdiction to fit growth in the constitutional area in three ways: (1) passage of Unauthorized Insurers Service of Process Acts, (2) passage of one-act statutes, and (3) informal, judicial lessening of the requirements of "doing business."

But in spite of any doubts which may remain, it is clear that a state now has extensive power to exercise in personam judicial jurisdiction over absent foreign insurance companies.

12. See Kurland, supra note 3, at 622 n.280.
13. 357 U.S. at 253.
14. See Kurland, supra note 3, at 621.
surers Service of Process Acts. These acts vary somewhat, but most resemble the California Act involved in McGee:

§ 1610. Any of the acts described in Section 1611, when effected in this State, by mail or otherwise, by a foreign or alien insurer which is nonadmitted at the time of the solicitation, issuance or delivery by it of contracts of insurance to residents of, or to corporations authorized to do business in, this State, is equivalent to and shall constitute an appointment by such insurer of the commissioner and his successor or successors in office to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contracts of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this State upon such insurer.

§ 1611. The acts referred to in Section 1610 are:
(1) The issuance or delivery to residents of, or to corporations authorized to do business in, this State of contracts of insurance insuring (a) the lives or persons of residents of this State physically present herein at the time of such issuance or delivery or (b) property or operations located in this State.
(2) The solicitation of applications for such contracts.
(3) The collection of premiums, membership fees, assessments or other considerations for such contracts.
(4) Any other transaction of business arising out of such contracts.

Minnesota has no such law as this. However, it does have a “one-act” statute which provides:

If a foreign corporation makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if such foreign corporation commits a tort in whole or in part in Minnesota against a resident of Minnesota, such acts shall be deemed to be doing business in Minnesota by the foreign corporation and shall be deemed equivalent to the appointment by the foreign corporation of the secretary of the State of Minnesota to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against the foreign corporation arising from or growing out of such contract or tort. The making of the contract or the committing of the tort shall be deemed to be the agreement of the foreign corporation that any process against it which is so served shall be of the same legal force and effect as if served personally within the State of Minnesota.

Although it appears from the portion quoted that this statute fills the gap nicely, it does not, for it applies only to a foreign corporation, and the term “Foreign corporation” does not include insurance companies as defined by Minnesota Statutes, Section 60.02. . . .

18. MINN. STAT. § 303.13(3) (1957).
19. MINN. STAT. § 303.02(4) (1957).
Although the statute above clearly excludes service of process on insurance companies, the legislature may not have intended this result. The amendment constituting the one-act statute was adopted in 1957, long after the term "foreign corporation" was defined by an earlier provision of the same section; consequently the distinction did not appear in the amendment itself. But even under the theory of free interpretation the plain, unambiguous words of the statute and the existence of a separate statute to provide for process over insurance companies present formidable obstacles.

The insurance code, however, provides for service under certain circumstances:

Before any corporation, association, or company issuing policies of insurance of any character and not organized or existing pursuant to the laws of this state is admitted to or authorized to transact the business of insurance in this state, it shall, by a duly executed instrument to be filed in the office of the commissioner, constitute and appoint the commissioner and his successors in office its true and lawful attorney, upon whom proofs of loss, any notice authorized or required by any contract with the company to be served on it, summonses and all lawful processes in any action or legal proceeding against it may be served, and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state.

Although this section on its face provides no assistance when a company has not complied, it has been held that a defendant is estopped from denying compliance and consents to appointment of the commissioner as agent by doing business in the state.

In Kulberg v. Fraternal Union the defendant, through a consolidation of two companies, took over the contracts of a company which had been authorized to do business in Minnesota. However, the defendant had never complied with a section similar to that quoted above, providing for appointment of the insurance commissioner as agent for service of process. The court did not rely on the fact that the corporation was a continuance of the earlier one, but rather based its decision on an estoppel theory. In Massey S.S. Co. v. Norske Lloyd Ins. Co. the court again used this approach. The defendants were foreign insurance companies which had not appointed the insurance commissioner as their agent for service of process and had no office or official representative in Minnesota. In spite of the noncompliance, the summons was served on the insurance commissioner. The court held that

22. 131 Minn. 131, 154 N.W. 748 (1915).
24. 131 Minn. at 134, 154 N.W. at 750.
25. 153 Minn. 136, 189 N.W. 714 (1922).
appellants failed to establish immunity from the service made in these cases by merely showing that the contract of insurance was not executed in this state and that they had no officer, agent or place of business in Minnesota and had not appointed the insurance commissioner as their attorney in fact to receive service of process.26

The court further held that since the plaintiffs were citizens of the state, since the insured property was in the state, and since the defendants had issued other policies in the state, the process was sufficient.27

However, this fiction of consent by doing business in the state was later limited. In *Sivertsen v. Bancamerica-Blair Corp.*,28 Judge Nordbye was asked to apply the securities registration statute in the same way as the insurance statute was applied in the earlier cases. The plaintiff argued that the defendant was estopped to deny appointment of the Commissioner of Securities as agent because of noncompliance with the statute. The federal district court extensively analyzed the applicable Minnesota law and found that while the fiction was clearly established, it was limited to cases where the company was *still doing business* in the state at the time of service.29 Therefore, jurisdiction over a company which had ceased doing business in the state could be secured only where a statute specifically provides that if a corporation does not register, it shall be deemed to have consented to the jurisdiction. The statute construed in that case was not such a statute, nor is the insurance statute quoted above. This interpretation of Minnesota law was approved by the Minnesota Supreme Court in *Babcock v. Bancamerica-Blair Corp.*30

This result is undesirable. As long as the court is willing to construe the statute to provide jurisdiction over some companies which have not complied, there is no analytical reason why the result should be different just because a company has stopped doing business in the state. In fact, the policy considerations are then even stronger for allowing jurisdiction, since other sanctions31 which may prove effective to some degree against the company that is still doing business locally would not be available against the company that has discontinued business. Also, if jurisdiction is contested, it may be difficult for the plaintiff to show that a defendant is *still doing business* within the forum state, for only the insurer will have this information.

26. *Id.* at 142, 189 N.W. at 717.
29. *Id.* at 238.
30. 212 Minn. 428, 4 N.W.2d 89 (1942) (securities).
31. See text accompanying notes 34-37 infra.
Furthermore, the Minnesota Supreme Court has subsequently indicated that the fictional concept of presence in the forum has been abandoned as the real basis for asserting jurisdiction. Of course, so has the concept of consent. In view of the abandonment of such fictions, the Minnesota Supreme Court need not continue to make the distinction, although the clear holdings make prediction of such a change somewhat uncertain. Consequently, until the legislature passes a law explicitly providing for appointment of the commissioner as agent even without consent, a plaintiff may not be able to secure jurisdiction over a foreign insurer unless it can be shown that it is still doing business in the state.

However, even if the distinction above is resolved so that it is irrelevant whether or not the foreign insurer is still doing business within the state, the problem remains of defining just how much activity constitutes "the business of insurance." It could be argued that the Minnesota Supreme Court would judicially extend the meaning of these terms to correspond with the constitutional limits. In one case, the court has implied that it would do so:

The decisions of the Supreme Court of the United States are controlling upon the question of whether a foreign corporation was doing business in a state, of such a character as to expose it to suit in the courts of the state.

Several considerations compel the conclusion that the court ought to close any gap between the constitutional limits and the Minnesota position. First, the fact that the gap exists at all will cause unnecessary litigation of the jurisdictional issue in the area of doubt.

Second, if jurisdiction is contested it may be difficult or even impossible for the plaintiff to get the facts showing that the defendant has done any business in the state other than that involved in the suit.

Third, the time at which the insured finds out that he will have trouble collecting on the insurance is usually a time of disaster, or at least severe financial strain, when he is least able to sustain the harm caused by lack of enforceable coverage. He may have relied on the insurance for support of his family or to meet medical expenses. Anything which will add to the cost of recovery will magnify his difficulty. The real reason for permitting personal jurisdiction over foreign corporations is that they are better able than individual plaintiffs to withstand the financial burden of litigating in a foreign jurisdiction. There is no reason to except insurance companies from this burden if it is placed on other corporations.

Fourth, it is well known that the public is reluctant enough to sue on small claims; when any discouragement is added, this reluctance becomes even greater. Unless jurisdiction can be obtained locally, recovery on these small claims will become almost impossible because of the inconvenience and additional cost.

Fifth, since Minnesota has neither an applicable one-act statute nor an Unauthorized Insurers Act, it may be unusually attractive to the mail order insurance companies.

Of course, the insurance commissioner can take certain steps against a company which engages in these practices without becoming licensed to do business in the state. He can issue a cease and desist order and widely publicize it. He can ask the insurance commissioner in the state where the company is domiciled to exert pressure. He may even be able to get extradition of those responsible for violating Minnesota law. However, none of these activities by the commissioner will secure a return of premiums or a payment on a claim for the individual who has been caught by the mail order net. And, although the insurance commissions have a reputation for effective regulation, the company concerned may be in a state where the commissioner is either unable or unwilling to stop the undesirable practices. Furthermore the commissioner probably will not learn of the activities until the harm has already occurred. Consequently these possibilities are not sufficient protection for the individual.

Although the above considerations weigh heavily for the conclusion that the court ought to close the gap, several factors will support the opposite conclusion. It is clear that jurisdictional limits were substantially extended by the legislature when it passed the one-act statute applying to most foreign corporations. Obviously the legislature must have felt that Minnesota law had not been extended as far as it constitutionally could be, for there would be little point in passing the statute if a single contract would support

34. Minn. Stat. § 60.12 (1957).
35. The news media are usually quite cooperative in such matters.
36. Minn. Stat. § 72.10 (1957) provides that every company, and every officer or agent of any company, acting in violation of the Minnesota insurance laws shall be guilty of a misdemeanor on the first offense, and of a gross misdemeanor for each subsequent offense. The question whether there can be extradition for a misdemeanor was apparently settled in Ex Parte Reggel, 114 U.S. 642 (1885), involving a charge of obtaining goods by false pretenses, which was punishable as a misdemeanor in the state of commission. The Court stated that it was erroneous to assume that there could be no extradition for a crime less than a felony, and that it is available for every offense, “from the highest to the lowest.” Id. at 650.

The Uniform Criminal Extradition Act, 9 U.L.A. 263 (1957), has been adopted in forty-two states, 9 U.L.A. 27 (Supp. 1958), including Minnesota. Minn. Stat. §§ 629.01—.29 (1957). It provides that any person guilty of a crime within a state, and not present in that state, may be extradited.
jurisdiction without the additional legislation. The one-act statute with its exceptions stands in clear contrast to the insurance statute which the legislature has not extended. And it is difficult to say that the legislature thought the "doing business" concept expanded on its own for insurance companies but not for other corporations. Finally, it has been observed that there is a substantial time lag before states judicially expand their constitutional concepts of doing business to correspond with the permissible constitutional limits.37

IV

In addition to desirable judicial construction of the statute, there are several possible solutions. The legislature could amend section 71.18 by providing that when a company does not register, it will be deemed to have done so by transacting business within the state. Or it could amend the one-act statute to include insurance companies.

However, the most satisfactory solution would be to enact the same kind of statute as California had in the McGee case,38 since the one-act statutes are still surrounded with at least some uncertainty.39 Furthermore, it may be necessary for a state to use a statute as a means of declaring the public interest which is helpful to sustain such legislation.40 Enactment of the statute would resolve much of the doubt which now exists. The result would be a more practical means for Minnesota citizens to protect their rights in an area of great personal importance to them, and one in which the state has traditionally desired its citizens to have the greatest protection consistent with practicality.