Due Process and Foreign Corporations--The Minnesota Single Act Statute

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Due process limitations upon the exercise of personal jurisdiction over foreign corporations are rapidly declining. The author of this Note examines the trend within the framework of the Minnesota Single Act Statute. Decisions of the Minnesota Supreme Court, the Court of Appeals for the Eighth Circuit, and the United States Supreme Court are considered. He concludes that while some due process requirements will persevere, they may lose nearly all significance in the future.

I. INTRODUCTION

If an action is brought against a corporation organized in a state other than Minnesota, in certain circumstances the plaintiff may have the option to use a Minnesota forum. The availability of this option depends upon whether Minnesota courts have jurisdiction to render a binding personal judgment against the "foreign" corporation. Such in personam jurisdiction exists only if service of process upon the defendant corporation does not violate its rights under federal due process.

The demands of jurisdictional due process have undergone a substantial transformation; restrictiveness has been supplanted by an uncertain permissiveness. Although the requirement that the defendant have a sufficiently substantial relationship with the forum state still remains, the nature of this relationship has been fundamentally altered. The United States Supreme Court originally required physical presence within the forum state to justify personal jurisdiction over a defendant.1 The Court next used various jurisdictional tests which stressed the quantity of activities within the forum state.2 In International Shoe Co. v. Wash-

2. Prior to International Shoe Co. v. Washington, 326 U.S. 310 (1945), a corporation doing business within a state was amenable to jurisdiction upon a theory of consent, Lafayette Ins. Co. v. French, 59 U.S. (18 How.) 404 (1856), or upon a theory of corporate presence, International Harvester Co. v. Kentucky, 234 U.S. 579 (1914). Application of either theory depended primarily upon evidence that a corporation was "doing business" within the forum state. This requirement was a quantitative measure of a corporation's activities within the forum and, generally, was not satisfied by isolated transactions, Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516 (1923).
however, the Court substituted a qualitative test of "minimum contacts." Since *International Shoe* the minimum contacts principle has been given significant application. Jurisdiction has been upheld on the basis of a single insurance contract having a "substantial connection" with the forum state, although no acts were performed within that state. Presumably the "quality and nature" of the single contract was such as to satisfy the minimum contacts principle. However, the Court in a later case added an element of confusion to the area by denying jurisdiction where the defendant had carried on no activities in the forum state.

The uncertain requirement of minimum contacts has prompted a number of states to enact "single act" statutes. Because of the wide variations in the provisions of these statutes, this Note will focus on the Minnesota Single Act Statute. Under the Minnesota statute jurisdiction is obtained over a foreign corporation through substituted service in actions resulting from either of two circum-

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7. See, e.g., CONN. GEN. STAT. ANN. § 33-411(c) (1960); IOWA CODE ANN. § 617.3 (Supp. 1964). For commentaries upon the Minnesota Single Act Statute, see Note, 42 MINN. L. REV. 909 (1958); 48 MINN. L. REV. 187 (1963); 45 MINN. L. REV. 127 (1960).
8. MINN. STAT. § 303.13(1)(b) (1961) 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 and his successors 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.
9. A question arises as to whether it is a violation of the privileges and immunities clause to allow service upon a statutory agent of a nonresident defendant, when service upon resident defendants must be personal. In Minnesota, service is to be personal unless a statute provides for substituted service upon a state official. MINN. R. DIST. CT. (CIV.) 4.03; MINN. R. MUNIC. CT. (CIV.) 4.03. The privileges and immunities clause, however, does not apply to corporations since they are not citizens for purposes of that clause. E.g., Asbury Hosp. v. Cass County, 326 U.S. 207 (1945); Grosjean v. American
stances: (1) the corporation and a Minnesota resident are parties to a contract to be performed at least partially by either party in Minnesota; or (2) the corporation commits a tort in whole or in part in Minnesota against a Minnesota resident.¹⁰

This Note shall attempt to predict the extent to which the Minnesota statute may be constitutionally applied, based upon the decisions of the Minnesota Supreme Court, the Court of Appeals for the Eighth Circuit, and the United States Supreme Court. The constitutionality of the minimum requirements enunciated by the Minnesota court and the Eighth Circuit will be evaluated against standards established by the Supreme Court. A possible logical culmination of the trend toward expanded state jurisdiction under due process will also be considered. Finally, the requirements of the Supreme Court will be evaluated in terms of the probable minimum demands of due process.

II. THE MINNESOTA SUPREME COURT

The Minnesota Supreme Court has given several opinions on the due process question under the Single Act Statute.¹¹ However,

Press Co., 297 U.S. 233 (1936). Therefore, under the privileges and immunities clause there is no question as to the validity of the statute.

Limiting the availability of the statute to resident plaintiffs arguably violates the privileges and immunities or the equal protection clause. This question may have no bearing on the contract provision of the statute because, in applying that provision to a nonresident plaintiff, the federal district court has held that there is no statutory requirement that the plaintiff be a resident of Minnesota. Williams v. Connolly, 227 F. Supp. 539 (D. Minn. 1964); Ewing v. Lockheed Aircraft Corp., 202 F. Supp. 216 (D. Minn. 1962).

In Douglas v. New York, N.H. & H. R.R., 239 U.S. 377, 387 (1929), the Supreme Court stated:

A distinction of privileges according to residence may be based upon rational considerations and has been upheld by this Court, emphasizing the difference between citizenship and residence.... There are manifest reasons for preferring residents in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned.

This opinion may be construed as providing two decisive reasons why the tort provisions of the Minnesota Single Act Statute would not violate the privileges and immunities clause: The statute distinguishes between "residents" and "nonresidents," not "citizens" and "noncitizens"; and second, the distinction is reasonable. The same result would follow under the equal protection clause because the standard is reasonableness of the classification upon which differentiated treatment is founded. Morey v. Doud, 354 U.S. 457 (1957); see, e.g., Railway Express Agency v. New York, 336 U.S. 106 (1949); Goesaert v. Cleary, 335 U.S. 461 (1948).

For decisions upon the due process issue under related Minnesota statutes, see Casperson v. Board of Regents, 187 N.W.2d 194 (Minn. 1965) (Minn. Stat. § 540.152 (1961)); Danov v. ABC Freight Forwarding Corp.,
different applications of the statute have been made depending on the nature of the cause of action.

A. TORT ACTIONS

The application of the statute to a corporate defendant which had never conducted activities in Minnesota has been held constitutional. In the opinion of the court the statute does not violate due process when applied to a tort committed in whole or in part in Minnesota. If injury occurs within the state, the tort is committed "in part" in Minnesota. The statutory objective "to permit a Minnesota citizen injured here by the wrongful act of a foreign corporation to seek recompense therefor in our courts" is thought to outweigh the interest in protecting the foreign corporation from the burdens of defending in a forum which possibly may be inconvenient.


Thus the Minnesota Supreme Court has consistently applied these statutes to partnerships and individuals upon the basis of the International Shoe rationale. The differences among corporations, partnerships, and individuals as entities are differences without a distinction in terms of the International Shoe rationale. That rationale should apply equally to all entities, since it is based upon contacts with a state founded upon economic activity which can be carried on by an individual or partnership, as well as a corporation. Thus, it would appear that the Minnesota court's treatment of individuals and partnerships is basically sound. Arguments for the application of the International Shoe rationale to individuals and partnerships are advanced in detail in Note, 42 Minn. L. Rev. 909 (1958). For an extensive treatment of state court jurisdiction, see Developments in the Law, State-Court Jurisdiction, 73 Harv. L. Rev. 909 (1960).


15. One of the positions taken by the federal district court for Minnesota has been that it is a denial of due process to apply the Single Act Statute to a defendant whose only contact with Minnesota is that his product causes
It is clear that the court will apply the statute to a defendant who has not directly introduced a product into Minnesota by selling either to a local resident or local wholesaler. Jurisdiction was upheld in *Ehlers v. United States Heating & Cooling Mfg. Corp.* even though the defendant manufacturer was at least twice-removed from any Minnesota sale. It is not clear, however, whether the mere presence of the product in Minnesota would provide a sufficient basis for jurisdiction. For example, a conceptual difficulty arises if a Minnesota resident on a trip purchases a defective product from a New York manufacturer which later causes damage in Minnesota. Since the court in *Ehlers*

16. 267 Minn. 56, 124 N.W.2d 824 (1963). In *Ehlers* the corporate defendants in two of the original actions effected removal to the federal district court. Even though the petition for removal on its face evidenced a lack of complete diversity of citizenship, the federal court quashed service of process upon the defendants. 267 Minn. at 58, 124 N.W.2d at 825. However, in subsequent state actions the individual defendant instituted a third party action against his local supplier. Since the supplier was not a party to the federal court proceedings and was not affected by its ruling, he was able to bring third party proceedings against one of the corporate defendants upon which process had been quashed in the federal court. This series of events illustrates a possibility of serious injustice. If an action is before a federal court under alleged diversity jurisdiction, and the diversity question does not raise novel constitutional issues, that question should be determined before any question concerning personal jurisdiction. If the diversity question is not determined, and if diversity in fact does not exist, the judgment on personal jurisdiction will have been made by a court lacking competence to decide the question. While such decision would be open to attack on direct review, it would generally be res judicata in a subsequent state action on the same issue between the same parties. See *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 377 (1940); *Stoll v. Gottlieb*, 305 U.S. 165, 170-71 (1935); *Dowell v. Applegate*, 152 U.S. 327, 340 (1894); *Restatement, Judgments* § 10 (1942). The parties would be precluded from collaterally attacking the diversity jurisdiction of the federal court notwithstanding their failure to litigate that issue in the federal court. See United States v. Eastport S.S. Co., 255 F.2d 795 (2d Cir. 1958). Moreover, it would seem that the federal court should avoid an interpretation of or an attack on the state statute where such disposition is clearly unnecessary. See *Louisiana Power & Light Co. v. City of Thibodeaux*, 360 U.S. 25 (1959). To the extent that this has happened, or may happen, the offending federal courts can be justly criticized.

17. The defendant in *Ehlers* sold the product in Ohio to an Ohio corporation which sold the product to an Illinois corporation. The Illinois corporation sold to a Minnesota corporation which sold to plaintiff.
makes reference to the defendant's reasonable anticipation that one of its products could reach Minnesota in the "regular course of distribution." It appears probable that some foreseeability of a Minnesota market remains as a minimum requirement. However, it need not be foreseeable that the particular product causing damage would be sold in Minnesota. It has been suggested a single act statute cannot be constitutionally applied to isolated sales; the product must have substantial use and consumption in the forum state. Ehlers suggests that for jurisdiction to attach it may be sufficient if the defendant has a reasonable expectation of a national market which does not specifically exclude Minnesota. Thus, in order to find liability, the Minnesota Supreme Court will not require the actual performance of a tortious act in Minnesota by the defendant. Nor will it require that a defendant must have sold its products specifically to Minnesota residents if the defendant could reasonably have anticipated that even one of its products might ultimately have reached a Minnesota purchaser and caused injury in that state.

B. CONTRACT ACTIONS

It appears to be a requirement in contract actions that the defendant must have conducted activities within Minnesota. The nature of the requisite activity may vary, however, depending on whether the resident plaintiff is a purchaser or a seller.

Arguably, Minnesota exercises jurisdiction over foreign corporations to protect residents from faulty products that might be sold for local consumption. The size of the claim and the limitation on an individual's resources might make it impossible to

18. 267 Minn. at 61–62, 124 N.W.2d at 827. The court relied on Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961). Gray found it just to exercise jurisdiction over a corporation which elects to sell its products for use in another state when damages are caused in that state. This conclusion was based upon the Illinois court's conception of modern commercial activity.


21. 267 Minn. at 61, 124 N.W.2d at 827.

bring this pseudocontractual claim elsewhere.\textsuperscript{23} The purchaser in \textit{Beck v. Spindler}\textsuperscript{24} recovered for breach of a contractual warranty. Although the nonresident seller in \textit{Beck} had performed acts in Minnesota, jurisdiction might have been upheld even absent such acts. At least in the area of products liability, there is no logical reason to require local acts to sustain a warranty action, and not to require local acts in a negligence action.\textsuperscript{25} Both theories would be available in the typical products liability case.

When suit is brought by a Minnesota purchaser against a foreign seller for breach of an executory bilateral contract it is not clear whether jurisdiction would depend on the presence of local acts. The \textit{Beck} court indicated that the statute would be applied to a foreign corporation irrespective of the lack of multiple local transactions.\textsuperscript{26} Jurisdiction in \textit{Beck} was not explicitly limited to products liability; the broad language of the opinion supports the opposite conclusion.\textsuperscript{27} Arguably, the policy of providing a local forum for claims that a resident may not economically bring elsewhere applies to the executory bilateral contract. Even if local acts are unnecessary, however, it appears that some sales activity in Minnesota would still be required. When the plaintiff is a residential seller, however, the protective policy underlying the statute has little application.

The tendency to require less sales activity to bring a foreign corporation within the statute has not been accompanied by any parallel lessening of the requirements as to purchasing activities.\textsuperscript{28} The Minnesota Supreme Court determined in \textit{Dahlberg Co. v. Western Hearing Aid Center, Ltd.}\textsuperscript{29} that the statute could constitutionally be applied against a nonresident buyer in a suit by a resident corporate seller. The \textit{Dahlberg} defendant, however, had substantial contacts with Minnesota: The contract was executed

\begin{itemize}
  \item \textsuperscript{24} 256 Minn. 543, 99 N.W.2d 670 (1959).
  \item \textsuperscript{25} Although the Minnesota court has not had occasion to determine whether privity is required to sustain an action for breach of warranty, dictum in \textit{Beck v. Spindler}, 256 Minn. 543, 557-62, 99 N.W.2d 670, 682 (1959), suggests that the privity requirement will be dropped when the question is directly presented. See also \textit{Williams v. Connolly}, 227 F. Supp. 539, 542 (D. Minn. 1964). Warranty without privity is a doctrine of strict tort liability rather than contract.
  \item \textsuperscript{26} 256 Minn. at 553, 99 N.W.2d at 677.
  \item \textsuperscript{27} "It seems only fair to permit one who has suffered a wrong at the hands of a resident of a foreign state to sue in his own state. . . ." \textit{Ibid}.
  \item \textsuperscript{28} See 48 \textit{MINN. L. REV.} 192, 194 (1963).
  \item \textsuperscript{29} 259 Minn. 330, 107 N.W.2d 381 (1961).
\end{itemize}
in Minnesota; notes were executed and delivered in Minnesota; and several meetings between the parties were held in Minnesota. Since the court in Dahlberg specifically limited its holding to the facts, it appears that the activities of a nonresident buyer must be at least as substantial as those of Dahlberg before the statute may be constitutionally applied. Moreover, since the defendant in Dahlberg had performed rather substantial acts in the state, it would seem that acts in Minnesota would be required for any action against a nonresident purchaser.

It also appears that these activities must be such as to give rise to enjoyment of the benefits of Minnesota laws and access to Minnesota courts. In Fourth Northwestern Nat'l Bank v. Hilson Indus., Inc. the defendant nonresident buyer had neither performed acts nor advertised in Minnesota. The only contacts with the state were the initial solicitation and the place of payment. The court, applying Dahlberg, held that subjecting the nonresident buyer to suit in the state forum violated due process. While the defendant in Dahlberg had performed acts within the state and had enjoyed the benefit of its law, the defendant in Hilson engaged in no parallel activity. There appears to be good reason to require substantial activity of a nonresident buyer before invoking the Single Act Statute; an exercise of jurisdiction over casual nonresident buyers could dissuade customers from doing business across state lines. Moreover, a resident corporate seller, sophisticated in business dealings, could both foresee and sustain the burden of a foreign suit.

In both Dahlberg and Hilson reference is made to the factor of convenience. Whether convenience is viewed as an additional requirement of due process, however, is not clear; it well may be

30. Id. at 335, 107 N.W.2d at 384.
31. See id. at 336–37, 107 N.W.2d at 385.
32. 264 Minn. 110, 117 N.W.2d 732 (1962).
33. Id. at 116, 117 N.W.2d at 735–36.
34. See id. at 117, 117 N.W.2d at 736; Conn v. Whitmore, 9 Utah 2d 250, 255, 342 P.2d 871, 875 (1959); 48 Minn. L. Rev. 192, 194 (1963).
only a reaffirmance of the doctrine of forum non conveniens.\textsuperscript{36} It has been suggested that the factors underlying the doctrine are also the primary determinants of the due process issue.\textsuperscript{37} The doctrine serves both public\textsuperscript{38} and private\textsuperscript{39} purposes. Clearly considerations of public convenience are not within the word "inconvenience" as used in the context of due process by either the United States Supreme Court,\textsuperscript{40} or the Minnesota Supreme Court.\textsuperscript{41} Hence, use of the term forum non conveniens to refer only to inconvenience caused a defendant is highly misleading. It would be more accurate to say merely that some of the same private interest factors which underly the doctrine will be reflected in the constitutional determination of minimum contacts sufficient for due process. Since due process may be consistent with greater inconvenience than would support a determination of forum non conveniens, it is suggested that the court should weigh private interest factors differently when determining constitutional validity than when merely deciding whether to dismiss as a matter of discretion.


37. Latimer v. S/A Industrias Reunidas F. Matarazzo, 175 F.2d 184 (2d Cir. 1949); Kilpatrick v. Texas & P. Ry., 166 F.2d 788, 791 (2d Cir. 1948); see 1 Ehrenzweig, \textit{Conflict of Laws} \S 35, at 121 (1959); Traynor, \textit{Is This Conflict Really Necessary?}, 37 Texas L. Rev. 657, 663-64 (1959).

38. The factors of public interest in applying forum non conveniens include administrative difficulties resulting from congested court calendars, the local interest in having local controversies decided at home, imposition of jury duty on the people of a community which has no relation to the litigation, and the desirability of litigating in a forum that is familiar with the applicable state law. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947).

39. The private considerations involved in the application of forum non conveniens include the relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling witnesses, the cost of obtaining attendance of witnesses, the possibility of viewing the premises, if appropriate, and the ability to enforce any judgment obtained. See Gulf Oil Corp. v. Gilbert, \textit{supra} note 38, at 508 (1947).


SINGLE ACT

III. THE EIGHTH CIRCUIT

Aftanase v. Economy Baler Co., a tort action, is the only decision in which the Court of Appeals for the Eighth Circuit has considered the due process question under the statute. The defendant seller had performed substantial acts in Minnesota. While the full extent of the statute's permissible application was not tested, the weight accorded by the court to the criteria it

42. 343 F.2d 187 (8th Cir. 1965).

43. Prior to Aftanase, the federal district court for Minnesota had applied three conflicting viewpoints to the question of due process under the statute. Since these cases are all recent, predictability of result has been virtually impossible. However, it is quite likely and desirable that Aftanase will clear up the difficulty. Upon this assumption the viewpoints of the district court need only be mentioned.


44. Defendant had sold balers to Minnesota residents for a number of years. Solicitation was carried on by independent salesmen on a commission basis. One of the salesmen obtained orders for three or four balers a year, and he was not the only solicitor for defendant within the state. The contracts were concluded in Michigan and defendant shipped the balers directly to Minnesota customers. Brochures and parts lists were sent into the state, and replacement parts were supplied.

45. Aftanase also considered retroactive application of the statute. The alleged negligent act occurred in 1953 when the baler was manufactured. The statute became effective in 1957. Plaintiff was injured in 1962. Relying on Beck v. Spindler, 296 Minn. 543, 99 N.W.2d 670 (1959), the court stated that the statute was applied prospectively because the cause of action accrued after the statute was in effect. 343 F.2d at 191.

The constitutional prohibition of retroactive legislation is based upon the frustration of the expectations of persons acting in reliance upon prior law. Note, 63 Colum. L. Rev. 1105 (1963). Under this rationale the application of the statute to the defendant in Aftanase would be retroactive, but would not be unconstitutional. Retroactive application is unconstitutional when it de-
used affords some basis for prediction. After analysis of the major United States Supreme Court decisions,⁴⁶ the Eighth Circuit found five factors that the Court has used in deciding the due process question: Interest of the state in providing a forum, convenience to the parties, quantity of contacts with the forum, relation of the cause of action to the contacts, and the nature and quality of the contacts.

The interest of the forum state in hearing the cause of action and convenience to the parties merely "receive mention."⁴⁷ The implication is that such an interest is always present, but insufficient to have a substantial effect on the due process question. The summary treatment given to the convenience of the parties in Aftanase is evidence that this factor will not be determinative of the due process question.

The quantity, their connection with the cause of action, and nature and quality of the defendant’s contacts with the forum were the three primary factors stressed in Aftanase. With regard to the quantity of contacts, the court equivocally stated that the defendant’s sales to Minnesota residents were “not insignificant.” These contacts, primarily sales, were not continuous and systematic, but they were not isolated exceptions to the defendant’s pattern of doing business. The court explicitly recognized that a single contract had been sufficient quantitative contact to satisfy

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⁴⁷. 348 F.2d at 197.
Therefore, it can be inferred that the Eighth Circuit would not hold the quantity of contacts to be determinative of the due process question, if the other factors were satisfied.

Connection of the cause of action with the defendant’s contacts is automatically satisfied by the terms of the statute. Since the statute confers jurisdiction only in actions growing out of the contract or tort which provides the contact, that factor must be present for the statute to apply at all. The Eighth Circuit seems to have recognized this fact by implication.

Thus, the extent to which the Eighth Circuit may be willing to apply the statute probably depends almost exclusively upon the nature and quality of the defendant’s contacts with Minnesota, which in turn depend upon three interrelated questions. Must the defendant, through agents or otherwise, conduct any activities involving performance of acts within Minnesota? Must the defendant actively pursue economic benefit through transactions with Minnesota residents? Must the contacts involve substantial economic transactions?

The court's analysis of the nature and quality of the defendant’s contacts indicates that the defendant need not perform any acts within Minnesota; but the defendant must actively pursue substantial economic benefit through a transaction with a Minnesota resident. The defendant in *Aftanase* actively solicited sales and knowingly shipped its products directly into Minnesota. Thus, the defendant purposely and voluntarily placed its products on the state market and was benefited therefrom. The defendant’s transactions received the protection of Minnesota laws. The products in question, metal baling machines with a useful life of thirty years, were substantial devices. The court did not emphasize the acts of the independent solicitors on behalf of the defendant within Minnesota when it applied the “nature and quality of the contacts” standard to the facts. Instead, the court concluded that

48. Id. at 196.
49. See Minn. Stat. § 308.18(1), (2) (1961).
50. The court recognized a state may impose limitations upon its jurisdiction beyond those required by due process. It further acknowledged that these limitations must be observed by federal courts. 343 F.2d at 190-91. Since the statute requires causal connection, and since the Supreme Court held, in Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952), that there can be activities substantial enough to permit jurisdiction where this causal connection is absent, this requirement is a limitation beyond those of due process. The court undoubtedly was aware of the fact that the requirement of causal connection of contacts with the cause of action is merely statutory in nature.
the defendant conducted "voluntary, affirmative economic activity of substance." 51

Hence, it appears that the Eighth Circuit would apply the statute to a tort action even when the defendant had performed no acts in Minnesota. However, the defendant would be required to have voluntarily and affirmatively sought Minnesota customers in transactions from which it would derive substantial economic benefit. The court's emphasis upon the defendant's affirmative and knowledgeable dealings with Minnesota residents would seem to imply that the statute would not be applied to a defendant which placed its products in the stream of interstate commerce with mere knowledge that its products might find their way into the state. 52 The substantial economic benefit could probably be satisfied by one or many transactions. The benefit would be the same whether the defendant sold one taconite plant or one million watchbands. The extent of the minimum benefit which must be sought by the defendant to sustain jurisdiction remains undefined.

Although the Eighth Circuit has not as yet considered the due process question under the statute in a contract action, the same considerations as in a tort action probably apply. However, following the Minnesota Supreme Court, 53 the Eighth Circuit would probably not apply the statute to a foreign corporate buyer which had not actively sought the transaction.

IV. THE UNITED STATES SUPREME COURT AND THE STATUTE AS APPLIED BY THE MINNESOTA SUPREME COURT AND THE EIGHTH CIRCUIT

The extent to which the United States Supreme Court would uphold jurisdiction under the statute depends primarily upon its interpretation of the minimum contacts requirement of International Shoe. This analysis will focus on the question of whether due process demands performance of acts within Minnesota. No distinction will be made between tort and contract actions; the Court has never suggested that such a distinction is relevant.

51. 343 F.2d at 197. Although this conclusion could be taken to apply only to the activities of the defendant's solicitors, it is equally pertinent to the totality of the defendant's contacts.


In McGee v. International Life Ins. Co. the Supreme Court upheld jurisdiction by substituted service upon a corporate defendant which had performed no acts in the forum state. The defendant had solicited a reinsurance contract by mail with a California resident, and the insured had mailed premiums from that state. The defendant had no office or agent in California, nor had it solicited or transacted any other business there. An analysis of the Court's language in McGee suggests that the decision rested only on the substantial connection of the reinsurance contract with the state. The Court stated: "It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State." The Court did not require the defendant to have performed acts within the forum.

The Court also considered the inconvenience which would result to the corporation. Although the defendant would be inconvenienced by a suit in California, it would be "nothing which amounts to a denial of due process." Thus, it could be said that inconvenience to the defendant probably will never be a denial of due process.

The Court also considered California's "manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims." The statement implies that a state has a substantial jurisdictional interest at least in such regulated activities as insurance. While it has been suggested that the reference to insurance is an important limitation of McGee, this

55. Id. at 223.
57. 355 U.S. at 224.
58. "At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." Id. at 223. See also text accompanying notes 35-41 supra.
59. 355 U.S. at 223.
60. This test [of International Shoe] is not rigid, and less contact will be required where a state has a substantial interest which outweighs the defendant's interest in not being subjected to jurisdiction. Naturally, the best indication of this state interest is in a special statute regulating the defendant's activities and granting jurisdiction to the courts.
43 Minn. L. Rev. 569, 576 (1959); accord, Comment, 14 Rutgers L. Rev. 454 (1960); Comment, 65 W. Va. L. Rev. 63 (1962). The Seventh Circuit was more
conclusion has not been universally accepted. It appears, however, that the Court itself might not have considered a "manifest interest" crucial. Since the Court held that due process was satisfied solely on the basis of the connection of the contract with the forum state, California's manifest interest is arguably irrelevant. There is strong state interest in providing a forum for local residents, irrespective of the cause of injury. Moreover, regulation of insurance companies seems to be designed to prevent litigation—not to protect residents from being forced to sue in another state. Since jurisdiction could also be obtained over an insurance company through a general single act statute, regulation of economic activities adds nothing to a state's interest in providing a forum for its residents. Nevertheless, the Court in *Hanson v. Denckla* subsequently distinguished *McGee* partially because the manifest interest present in *McGee* was absent. Whether the Court will explicitly incorporate manifest state interest into the due process standard is not clear.

**B. THE VALIDITY OF MINNESOTA SUPREME COURT AND EIGHTH CIRCUIT DECISIONS UNDER *McGee***

Neither *McGee* nor the Minnesota Supreme Court would require performance of acts in Minnesota in tort actions. Whether the requirements of the two rationales are consistent, therefore, depends upon whether a reasonable expectation that products may reach Minnesota provides the necessary "substantial connection" with that state. The contract in *McGee* was delivered in the forum state, the premiums were mailed from there, and the insured was a resident of the forum. The products of a manufacturer whose potential market includes Minnesota would be delivered in the state, payment would presumably be made there, and the

61. Kornfuehrer v. Philadelphia Bindery, Inc., 250 F. Supp. 157, 160 (D. Minn. 1965), stated that *McGee* was "clearly controlling unless the fact that an insurance contract was involved is sufficient to distinguish it." That distinction was not made. Elkhart Eng'r Corp. v. Dornier Werke, 343 F. 2d 861, 868 (5th Cir. 1965) stated that the substantial state interest of *McGee* consisted generally of providing a forum for redress of tortious injuries even if they do not arise from dangerous activities. From this it can be inferred that such an interest would be present in all cases. If this is the case, such an interest is actually irrelevant to a due process standard.


63. *Id.* at 252.
jured party would be a local resident. If the manufacturer dealt directly with a resident of the forum, as in *McGee*, the substantial connection would probably exist. If the product were only indirectly sold to a resident, however, delivery and payment would be transactions between the resident and a third party. The manufacturer probably would not even be aware of the ultimate sale in the state. The connection with Minnesota would be even more tenuous than was the connection with California in *McGee*. Similar difficulties would be presented if suit were brought on a warranty theory and the product had initially been sold outside of the forum to an independent dealer.

In true contract actions the minimum requirements of the Minnesota Supreme Court satisfy *McGee*. The Minnesota court's requirement of "activity" through transactions with residents would undoubtedly provide the substantial connection. It is possible, however, that this requirement is even more stringent than that required by *McGee*. Although the Minnesota court in *Hilson* found a violation of due process when the defendant was merely a corporate purchaser, jurisdiction could well have been upheld under the *McGee* rationale since payment was to be made and the plaintiff resided in the state. However, the *Hilson* defendant did not actively seek the transaction and the *McGee* defendant did. In addition, the Minnesota court probably would require more than *McGee* in true contract actions against nonresident sellers by requiring acts performed in the state. Finally, the Minnesota court follows *McGee* in its willingness to consider the factor of convenience. Whether convenience is a constitutional requirement, however, is not clear.

The Eighth Circuit, on the basis of *Aftanase*, would not require the performance of acts by a defendant in Minnesota. But it would require active pursuit of economic benefit. Since such activity would involve direct negotiations and dealings with residents, the required substantial connection would be present.

C. **HANSON v. DENCKLA**

*Hanson v. Denckla* made it clear that *McGee* did not foreshadow the end of all territorial restrictions on jurisdiction. In that case the assertion of jurisdiction by Florida over a Delaware trust company which had neither transacted nor solicited business in Florida was held to violate due process.

However, a major question has been left in doubt by the state-
ment in Hanson that "it is essential in each case that there be some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws." Whether due process after Hanson requires the defendant to have performed acts within the boundaries of the forum state is open to conjecture; two readings of Hanson are possible.

There is authority for the suggestion that acts must be performed within the forum state. In McGee, however, due process was satisfied even though the defendant had performed no act in the forum state. It may be significant that the Hanson Court specifically found that the defendant had performed no act in the forum state, and that, consequently, the defendant had not exercised any privilege in the forum state. It would appear to follow that the act required by Hanson would be one performed by the defendant within the forum state. Moreover, the ordinary meaning of the word "activity," contemplates the doing of an act. If such is the case, McGee is inconsistent with Hanson, and has been tacitly disapproved.

It is not clear, however, that Hanson does require the performance of some act by the defendant in the forum state. Hanson neither overruled McGee nor clearly disapproved of its rationale; it distinguished McGee on the facts. The first distinction was that in Hanson "the cause of action . . . is not one that arises out of an act done or transaction consummated in the forum State." Although this language clearly suggests that performance of some act in the forum state is highly relevant, it suggests also that a transaction consummated in the forum state is sufficient, even if an act is not performed there. Furthermore, Hanson appears to

65. Id. at 253.
66. In International Shoe the defendant employed about a dozen salesmen who resided and solicited sales in the forum state. In Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950), members of the defendant's association resided and solicited new members in the forum state. And, in Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952), virtually all of the defendant's activities were conducted through performance of acts in the forum state. In each case the defendant had performed numerous acts within the forum state, and in each case jurisdiction was held to be consistent with due process.
67. See 357 U.S. at 252.
68. "Activity" is defined as "state of action, or quality of being active . . . ." "Action" is defined as "the act or process of acting or doing; the doing of something; the exercise of activity; the exercise of activity by an agent . . . ." MERRIAM-WEBSTER, NEW INTERNATIONAL DICTIONARY (2d ed. 1961).
69. 357 U.S. at 251.
have adopted the requirement of McGee that the contract have a substantial connection with the forum state. This is suggested by the fact that Hanson distinguished McGee on the ground that the agreement in Hanson was entered without such connection.70 The most significant difference, however, was that in Hanson there was "no instance in which the trustee performed any acts in Florida that bear the same relationship to the agreement as the solicitation in McGee. Consequently, this suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida."71 This language supports the strong inference that the “act” required by Hanson does not have to be performed within the borders of the forum state, since the acts of solicitation by the defendant in McGee were performed from outside of the forum state. It may be concluded Hanson recognized that due process does not necessarily require acts within the forum state. Furthermore, the defendant in Hanson had exercised no privilege in the forum state as, by implication, the defendant in McGee had done by soliciting. If this privilege can be taken as the equivalent of “the privilege of conducting activities within the forum State,”72 it follows that the general standard of Hanson would be entirely satisfied by the solicitation in McGee. Thus, the “some act” and the “privilege of conducting activities” could be one and the same.73 If this is the proper reading of Hanson, it is equivalent to the McGee rationale discussed above. Whereas McGee required a substantial connection with the forum state, Hanson required an act by which the defendant purposely avails itself of the privilege of conducting activities in the forum. Hence, the Hanson requirement only defines the substantial connection demanded by McGee.

Until the Supreme Court indicates which reading of Hanson it will adopt, the choice must be left to the lower courts. Although some of the circuits have followed McGee, the defendant has per-

70. Id. at 252.
71. Ibid.
72. Id. at 253.
73. See Mechanical Contractors Ass'n of America, Inc. v. Mechanical Contractors Ass'n of No. Cal., Inc., 342 F.2d 393 (9th Cir. 1965); Kourkene v. American BBR, Inc., 313 F.2d 769 (9th Cir. 1963); L. D. Reeder Contractors v. Higgins Indus., Inc., 265 F.2d 768 (9th Cir. 1959). The standard was adopted from Note, 47 Geo. L.J. 342, 351 (1958): “The nonresident defendant must do some act or consummate some transaction within the forum. It is not necessary that defendant’s agent be physically within the forum, for this act or transaction may be by mail only.”
formed physical acts within the forum state whenever jurisdiction has been upheld.\textsuperscript{74}

D. The Validity of Minnesota Supreme Court and Eighth Circuit Decisions Under the Two Rationales of Hanson v. Denckla

Under the reading of Hanson which merely defines the standard of McGee, the Supreme Court's evaluation of the Minnesota Supreme Court's requirements in tort cases can be predicted more confidently than under McGee itself. A defendant dealing directly with a Minnesota resident is actively seeking a market. In so acting, it purposely avails itself of the privilege of conducting activities within the state such as solicitation, customer service, and direct negotiation of sales. Such activities also give rise to substantial benefits from state laws: The existence of a potential market is due to a great extent to laws of Minnesota pertaining to the state's economy; Minnesota courts will enforce claims against resident customers; and police protection encompasses all property within the state. Thus, the necessary substantial connection under this Hanson rationale would invariably be present. When products reach the state without direct connections between a defendant and either a Minnesota resident or dealer, it is unlikely that the defendant has performed any act which would provide a substantial connection with the state. The activities in Minnesota and the benefits of local law inure directly to the benefit of the third party to whom the defendant sells its products outside the state. Although the defendant does indirectly receive

\textsuperscript{74} In addition to the Ninth Circuit cases, there have been recent decisions in seven other circuits. Elkhart Eng'r Corp. v. Dornier Werke, 343 F.2d 861 (5th Cir. 1965); Aftanase v. Economy Baler Co., 343 F.2d 187 (8th Cir. 1965); Gkiafas v. S.S. Yiosonas, 342 F.2d 546 (4th Cir. 1965); Deveny v. Rheem Mfg. Co., 319 F.2d 124 (2d Cir. 1963); Houston Fearless Corp. v. Teter, 318 F.2d 822 (10th Cir. 1963); Blount v. Peerless Chemicals (P. R.), Inc., 316 F.2d 695 (2d Cir. 1963); WSAZ, Inc. v. Lyons, 254 F.2d 242 (6th Cir. 1958); W. H. Elliot & Sons Co. v. Nuodex Prods. Co., 243 F.2d 116 (1st Cir. 1957). In each case where jurisdiction has been upheld the defendant had performed acts within the forum. Deveny followed McGee and concluded that Hanson in no way increased the requirements which the Court found to be satisfied in McGee. WSAZ also followed McGee, but the acts performed by the defendant in the forum state seemed to have substantial significance. And, as has been stated, Aftanase would not require performance of acts in the forum state. On the other hand, Houston required substantial, continuous, and regular activity in the forum state. Thus, the various circuits have used conflicting rationales, and in those courts which have adopted the McGee rationale, the question has never really been tested.
some benefits through its purchaser’s market, in no sense can it be said that the defendant has performed an act by which it was enabled to conduct activities in Minnesota. Having sold the product to a customer in some other state, the manufacturer ceases to be involved with any further resale. Although the defendant may reasonably expect its product to reach Minnesota, such a result would be due to activities with which the defendant has no connection. Therefore, it would seem that the requisite substantial contact of the defendant would be absent, and an assertion of personal jurisdiction would not comport with due process under this Hanson rationale.

Since the Minnesota Supreme Court would at least require “activity” connected with Minnesota in true contract actions, the requirements of this Hanson rationale would be more than satisfied. McGee might uphold jurisdiction over a nonresident buyer which had not sought the transaction as in Hilson. But jurisdiction in these circumstances would probably violate due process under this suggested reading of Hanson. Although the dealings would be direct, the mere purchase of products from a resident, where payment is to be remitted to the seller in Minnesota, would not appear to involve an act by which the purchaser would purposely avail itself of any privilege of conducting activities in that state.

Since the Eighth Circuit would require active pursuit of economic benefits in Minnesota, the demands of this suggested Hanson rationale would be met. The analysis would be the same as that used in the discussion of the activities of the defendant seller dealing directly with state residents.

Under the interpretation of Hanson which does require an act within the forum, however, there would be some significant differences. Because the state court in tort actions requires only that the defendant should reasonably expect its products to reach Minnesota, the minimum requirements of this Hanson rationale would not be met. Since warranty without a privity requirement is strict tort liability, use of that pseudocontractual theory would have the same result. In contract actions against nonresident purchasers the Minnesota court clearly requires pursuit of some economic benefit as well as acts performed in Minnesota. However, it is not clear whether the court would require local acts if a resident purchaser sued a foreign seller alleging failure of delivery.\footnote{75. See text accompanying notes 26 & 27 supra.} Since the Eighth Circuit would not require the performance of acts in the forum state, the requirements of the strict
Hanson rationale would not be met. However, the Supreme Court might be willing to relax even the strict Hanson standard if the Eighth Circuit’s requirement of substantial economic benefit were satisfied.

V. THE LIBERALIZATION OF DUE PROCESS: A LOGICAL CULMINATION

The two general requirements of jurisdictional due process, although firmly entrenched, have undergone substantial transformation. Territorial limitations upon the jurisdictional power of the states have been considerably relaxed. The requirements of fairness to the defendant under “traditional notions of fair play and substantial justice” are more easily met. Whereas Pennoyer v. Neff required the physical presence of the defendant within the forum state, Hanson may not even require the defendant to perform acts within the forum state. Nevertheless, it appears that due process will continue to require some connection between the defendant and the forum state. Although the justification for a territorial limitation upon state power appears highly elusive, some form of the limitation will probably remain essential.

It is possible to satisfy a realistic territorial requirement, without requiring the defendant to have performed any acts within the borders of the forum. A corporate defendant has substantially the same contact with a state, whether it deals with residents entirely from without that state, or partially from within it. For instance, if the defendant in McGee had solicited the reinsurance contract through a salesman physically situated in California, the transaction would be substantially the same as solicitation conducted by mail. The defendant in either case would have actively pursued economic benefit from a resident and received the protection of local law.

“Fair play and substantial justice” require an examination of convenience. Since bona fide causes of action must be adjudicated somewhere, one party to the action must suffer the inconvenience of litigating away from home. There appears to be a great deal of merit, however, in McGee’s intimation that only rarely would inconvenience be so unfair as to constitute a denial of due process. Since the plaintiff has the original choice of forum, the defendant

76. 95 U.S. 714 (1877).
78. Both International Shoe and Hanson accept this requirement without comment upon its justification.
would normally bear the inconvenience. It might be argued that it is unfair to require a corporation to defend a suit arising out of its acts if it could not have known in advance where it would be subject to jurisdiction. Since a corporation could not make a fully informed choice to act or not to act without this knowledge, fairness might seem to require access to that knowledge.

The concept of foreseeability provides an adequate framework for analyzing the requirement of fairness and substantial justice. If a corporation purposely sells its products to residents of a state, it can weigh the risks of incurring the expense of defending tort actions arising from defects in its products. Since the choice would be voluntary, subjecting the corporation to jurisdiction would not be unfair. Likewise, even if a corporation merely places its products in the stream of interstate commerce, it can reasonably expect that its products may ultimately enter a particular state.\textsuperscript{79} It could be argued, however, that a corporation should not be required to base its decision whether to engage in interstate commerce on the uncertainties of distant litigation.\textsuperscript{80} But in the rare instances in which the inconvenience created would be greatly unfair perhaps the most equitable solution would be to permit suit in the plaintiff's state of residence, subject to the discretionary doctrine of forum non conveniens. Several courts have taken this approach.\textsuperscript{81} Apart from product warranty which

\textsuperscript{79} A manufacturer of component parts sold to the manufacturer of the finished product, has no control over the product's ultimate destination. However, there would still be a voluntary choice of whether or not to act, even though that choice would not be on the tactical level of a specific sale to a known destination. Rather, it would be on the strategic level of whether to engage in interstate commerce at all. In making this decision the component manufacturer could be expected to know the scope of the sales territory of the finished product.

\textsuperscript{80} However, the argument that jurisdiction in a particular case may unduly burden interstate commerce is readily available. U.S. Const. art. I, § 8(3). See generally Farrier, \textit{Suits Against Foreign Corporations As a Burden on Interstate Commerce}, 17 MINN. L. REV. 381 (1933). In a few post-\textit{International Shoe} decisions the commerce clause argument has found favor. Hershel Radio Co. v. Pennsylvania R.R., 334 Mich. 148, 54 N.W.2d 286 (1952); Hayman v. Southern Pac. R.R., 278 S.W.2d 749 (Mo. 1955) (alternative ground); see Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502 (4th Cir. 1956). \textit{Contra}, Ewing v. Lockheed Aircraft Corp., 202 F. Supp. 216, 220 (D. Minn. 1962). For a recent examination of the commerce clause problem see Developments in the Law—State-Court Jurisdiction, 73 HARV. L. REV. 909, 988–97 (1960), where it is concluded that the commerce clause may operate to defeat jurisdiction.

really sounds in tort, a corporation contemplating a contract is always able to exercise some choice whether or not to act. A corporation could always be aware of the residency of the other contracting party and could make the tactical decision to deal or not. Under this analysis, the substantiality of the economic benefit received by a corporation is irrelevant to due process. The outer limits of the due process territorial and fairness requirements would be reached whenever a corporation's products, sold in interstate commerce, reach Minnesota, or whenever a corporation contracts with a Minnesota resident. One product or one contract should be sufficient.

The United States Supreme Court's requirements under McGee or either reading of Hanson are more restrictive than due process would seem to demand. Due process need not require activities by a defendant within the forum state, nor must there be active pursuit of economic benefit in that state. All that should be necessary under a single act statute is an awareness by a defendant that one of its products may find its way to a particular state, or an awareness of the residence of the other party to a single contract. Having this knowledge, a corporation could be expected to weigh the potential jurisdictional consequences of its proposed acts. This result seems more reasonable than requiring a potential purchaser of a product to balance the expense of a foreign suit against his desire to purchase the product.82

VI. CONCLUSION

Convenience, state interest, and substantiality of economic benefit may be relevant to the requirements of due process concerning application of the Minnesota Single Act Statute. But the two decisive questions are whether the defendant corporation must perform acts within the territory of the forum and whether

82. The territorial and fairness requirements of due process, as they have been developed in the preceding analysis, could apply equally to all entities and all activities. There seems to be no significant basis for distinguishing corporations from individuals; a distinction between economic and noneconomic activity need not compel different standards of due process. The territorial requirement could be satisfied if a defendant's acts have consequences in the forum state. A libellous letter written in New York and delivered in Minnesota may have actionable consequences in the latter. Since the writer could reasonably have foreseen the effect in Minnesota, the fairness requirement would be satisfied. Finally, the defendant could invoke the doctrine of forum non conveniens to protect against gross inconvenience. A more detailed analysis of the possibility of applying single act statutes to individuals is beyond the scope of this note.
it must purposely seek economic benefits through dealings with local residents. The answers to these questions have been conflicting. The Minnesota Supreme Court requires neither in tort actions under the statute, but requires both in contract actions apart from the hybrid claim of product warranty. Neither the United States Supreme Court nor the Eighth Circuit has suggested such a distinction. The Eighth Circuit would probably not require acts performed in Minnesota but would require pursuit of economic benefit. The United States Supreme Court clearly requires purposeful pursuit of economic benefits, but it is not at all clear whether the Court would require the performance of acts in Minnesota. The Supreme Court has approached the question of jurisdictional due process rather cautiously. Since the benchmark of *International Shoe*, the Court has refined and liberalized its requirements somewhat hesitantly. Yet, it would appear that even the liberal position of *McGee* is by no means the last step.