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Civil Procedure--Jurisdiction--The West Virginia Long-Arm Statute

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STUDENT NOTES

CIVIL PROCEDURE — JURISIDCTION — THE WEST VIRGINIA LONG-ARM STATUTE

In 1957 the West Virginia legislature enacted a statute which provides that in certain instances foreign corporations would be deemed to be doing business in this state for the purpose of service of process.[1] In enacting this "long-arm" statute, West Virginia joined many other states in taking advantage of the United States Supreme Court's decisions that expanded the extent to which states could exercise personal jurisdiction over nonresidents within the limits of due process.[2] However, upon comparing the jurisdiction afforded by the West Virginia statute to that exercised under other long-arm statutes, it becomes apparent that this state has taken only limited advantage of the maximum jurisdiction allowed under due process.

This situation is contrary to what should be the basic premise behind any long-arm statute. It is in the best interests of the residents of a state to provide the most effective and convenient forum available for the enforcement of claims against nonresidents. The limited reach of the West Virginia long-arm statute denies the residents of this state such a forum and as a result they are more often subject to the difficulty and expense of bringing actions in foreign forums. Considering that all of our surrounding states and many others have enacted comprehensive long-arm statutes,[3] this is an inequitable situation. It allows the residents of this state to be subjected to the jurisdiction of other states without a reciprocal right to bring action in their own state. Therefore, it is the position of this note that this state should extend its jurisdictional authority to the full extent allowed by due process.

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[1] W. VA. CODE ANN. § 31-1-15 (1975 Replacement Volume).

[2] McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952); Travelers Health Ass'n. v. Virginia, 339 U.S. 643 (1950); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[3] KY. REV. STAT. ANN. § 454.210 (Supp. 1976); MD. ANN. CODE art. 6, § 6-102 (Supp. 1976), §§ 6-103, 104 (1974); OHIO REV. CODE ANN. §§ 2307.381, .382, .385 (Baldwin 1975); PA. STAT. ANN. tit. 42, §§ 8301 to 8311 (Supp. 1974-75); VA. CODE ANN. §§ 8-81.1 to -81.5 (Supp. 1976).

In approaching this problem, it must be remembered that the power of a state to exercise personal jurisdiction depends upon: (1) whether there is statutory authority to assert jurisdiction and (2) whether the exercise of that jurisdiction will violate due process rights.[4] Thus, in trying to achieve full due process jurisdiction, there must be a legislative decision to that effect[5] and this decision necessarily entails a determination of what is allowed by due process and how this may be incorporated into a long-arm statute. In order to deal with these problems, this note will explore the development of personal jurisdiction within due process limits. Also, the comparative ability of the West Virignia long-arm act to assert effective jurisdiction will be examined. Finally, to the extent that this comparison suggests a need for reform, alternative long-arm jurisdiction will be explored.

I. Development of Personal Jurisdiction Over Nonresidents And The Limitations of Due Process

In *Pennoyer v. Neff*,[6] the United States Supreme Court determined that the jurisdiction of a state is necessarily restricted by its territorial boundaries and as a result a state could only exercise personal jurisdiction over a nonresident when he was personally served within the state or voluntarily appeared there to defend suit. This definition of state power proved to be severely limited when applied to corporations because of their fictional status as legal entities existing only in the state of their incorporation. In order to satisfy the requirements of *Pennoyer*, the theories of "consent" and "presence" were developed.[7] A corporation conducting business in a state was deemed to have established its "presence" there or to have impliedly "consented" to the jurisdiction of the forum state.[8] The consent theory was also applied in certain circumstances to individuals where there was a "special state interest" involved.[9]

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[4] *See* Beaty v. M. S. Steel Co., 401 F.2d 157 (4th Cir.), *cert. denied*, 393 U.S. 1049 (1968); Pulson v. American Rolling Mill Co., 170 F.2d 193 (1st Cir. 1948).

[5] Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952); Bowman v. Curt G. Joa, Inc., 361 F.2d 706 (4th Cir. 1966) (providing that a state does not have to exercise or provide for jurisdiction to the extent due process allows).

[6] 95 U.S. 714 (1877) (hereinafter cited as *Pennoyer*).

[7] *See* Kurland, *The Supreme Court, The Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 578-582 (1958).

[8] *Id.*

[9] Doherty & Co. v. Goodman, 294 U.S. 623 (1935) (regulation of securities);

As interstate commerce expanded and corporate activities increased, these theories proved to be unsatisfactory and thus, in 1945, the Court in the landmark case of *International Shoe Co. v. Washington,*[10] abandoned the requirement of territorial power. The Court there held that a foreign corporation which had systematically and continuously employed a force of salesmen to solicit business within a state could be sued in that state. In reaching this decision, the Court announced a new test which stated that due process requires that a nonresident defendant have certain "minimum contacts" in the forum state so that the maintenance of the suit does not "offend 'traditional notions of fair play and substantial justice'."[11]

While this new test represented a considerable expansion over the territorial power concept, it was a general one which would have to be developed on a case by case basis.[12] The Court did, however, establish broad outlines based on the number and kind of contacts with the state and whether or not the cause of action arose out of these contacts.[13] In cases where the action arose out of contacts which were systematic and continuous, the Court found that the assertion of jurisdiction was always proper.[14] There was with equal certainty the assumption that when there was a single contact and the cause of action did not arise out of that contact, the assertion of jurisdiction would be improper.[15] The situation of an isolated contact out of which a cause of action arose provided a more difficult problem, and the court determined that jurisdiction was proper only in some circumstances depending on the "nature and quality" of the act.[16] Another gray area arose when there was continuous activity in the state but the cause of action did not arise out of that activity. In that situation "substantial" connections were required to justify a suit.[17]

Hess v. Pawloski, 274 U.S. 352 (1927) (regulation of nonresident motorists).

[10] 326 U.S. 310 (1945) (hereinafter cited as *International Shoe*).

[11] *Id.* at 316.

[12] *Id.* at 319.

[13] For a more detailed discussion of these outlines see Comment, *International Shoe and Long-Arm Jurisdiction — How About Pennsylvania?*, 8 DUQ. L. REV. 319, 320-26 (1970).

[14] International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945).

[15] *Id.*

[16] *Id.* at 318.

[17] *Id. See also* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952) (nonresident sued a Philippine corporation in Ohio on a cause of action that did

These distinctions as to the kind of activity necessary for jurisdiction were expanded upon in *McGee v. International Life Insurance Co.*[18] There the Court upheld a resident's right to assert personal jurisdiction in a cause of action arising out of a life insurance policy with a nonresident insurance company whose sole contact with the forum state was its single life insurance contract with the resident plaintiff. The Court found that only a single contract with the forum state would satisfy due process requirements if the suit was based on a contract which had a substantial connection with the forum state.[19] Here it was noted that the forum state had a manifest interest in providing an effective means of recovery for insured residents when their insurers refused to pay claims.

This trend of expanding state jurisdiction evidenced in *McGee* was not to continue unchecked. In *Hanson v. Denckla,*[20] the Court made this clear by refusing to allow the State of Florida to gain jurisdiction over a Delaware trustee whose only contact with the forum was the mailing of trust income to a settlor who had become a Florida resident after making the trust agreement. The Court stated that it was a mistake to assume that this trend of expanding state jurisdiction "heralds the eventual demise of all restrictions on the personal jurisdiction of state courts" and that the minimum contacts doctrine still imposed certain restrictions.[21] Thus the Court held that "[I]t 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. . ."[22]

The decision in *Hanson* was the last significant opinion of the Supreme Court on personal jurisdiction. Yet, there has been a multitude of state and federal decisions arising from state long-arm statutes enacted upon the authority of *International Shoe* and

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not arise there nor was it related to the defendants activities there).

[18] 355 U.S. 220 (1957) (hereinafter cited as *McGee*).

[19] *Id.* at 223. Despite the fact that *McGee* dealt with an insurance contract, it is generally recognized that jurisdiction may be predicated upon any type of single contract. *See, e.g.,* Shepler v. Korbut, 33 Mich. App. 411, 190 N.W.2d 281 (1971); State *ex rel.* Coral Pools, Inc. v. Knapp, 147 W. Va. 704, 131 S.E.2d 81 (1963). The contract need not be a commercial one. *See also* Van Wagenberg v. Van Wagenberg, 241 Md. 154, 215 A.2d 812, *cert. denied* 385 U.S. 833 (1966) (marriage separation agreement).

[20] 357 U.S. 235 (1958) (hereinafter cited as *Hanson*).

[21] *Id.* at 251.

[22] *Id.* at 253.

its progeny. These decisions reflect the difficulty that state courts have had in defining the limits of personal jurisdiction, particularly in the context of the single contact situation.[23] In the next section this note will attempt to see how West Virginia has faired in defining these limits and applying them on a case by case basis.

II. Personal Jurisdiction In West Virginia

The West Virginia long-arm statute provides for jurisdiction over foreign corporations by service of process received by the Secretary of State.[24] The statute provides that jurisdiction may be exercised:

> (a) if such corporation makes a contract to be performed, in whole or in part, by any party thereto, in this State, (b) if such corporation commits a tort in whole or in part in this State, or (c) if such corporation manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this State notwithstanding the fact that such corporation had no agents, servants or employees or contacts within this State at the time of said injury.[25]

In examining these provisions of the West Virginia statute it is apparent that the act has certain basic limitations. The most obvious limitation is that it only applies to corporations, and this is so despite the fact that *International Shoe* and the minimum contacts analysis generally has been held equally applicable to individuals.[26] In addition, regardless of what contacts a corporate

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[23] The single contact situation includes not only the single contract as in *McGee,* but also the single tort. While the Supreme Court has never directly decided the issue, Justice Goldberg acting as a single justice in Rosenblatt v. American Cyanamid Co., 86 S. Ct. 1 (1965) found, without deciding the issue, that the logic of *International Shoe* and *McGee* supports the "long-arm" statutes that apply to a single "tortious act." *See also* Etzler v. Dillie & McGuire Mfg. Co., 249 F. Supp. 1, 5 (W.D. Va. 1965).

[24] In discussing the extent of contact a nonresident must have before jurisdiction may be asserted within due process limits, this note will not deal with the separate issue of what kind of service of process is permissible under due process.

[25] W. Va. Code Ann § 31-1-15 (1975 Replacement Volume).

[26] While *International Shoe, McGee* and *Hanson* concerned only corporations, the language of these opinions makes no distinction between nonresident individuals and foreign corporations. In *McGee,* the Court specifically spoke of a trend toward expanding jurisdiction over foreign corporations and other nonresidents. 355 U.S. 220, 222 (1957). *See* Smithers, *Virginia's "Long Arm" Statute: An Argument*

defendant has that will satisfy due process requirements, the statute can only be applied when its enumerated conditions of a contract to be performed in the state or a tort or products liability injury exist.[27] Finally, the statute only refers to causes of action arising within the state. This excludes the situation mentioned in *International Shoe* of jurisdiction exercised over a nonresident with substantial and continuing contact with the state on a cause of action arising outside the state.[28]

Even with its limited provisions, the language of the West Virginia long-arm statute is such that it can encompass the majority of commonly litigated problems. However, it will be discovered that often the statute's effectiveness has been further limited by the conservative interpretation of the West Virginia Supreme Court regarding constitutionally acceptable minimum contacts. In order to judge the effect of the court's interpretation and the limited language of the West Virginia long arm statute, it is best to examine the few cases that have dealt with the statute[29] in the context of the statute's enumerated conditions and then compare these cases to the authority of other jurisdictions.

The contract provision of the West Virginia statute has seldom served as a basis of jurisdiction and it appears that the most substantial application of this provision occurred in *State ex rel. Coral Pools, Inc. v. Knapp.*[30] In this, the first decision of the court under the long-arm act, jurisdiction was asserted over a foreign corporation whose only connection with the state was a single oral contract that resulted from an interstate phone offer from the corporation to the resident plaintiff. The court found that the oral contract fell clearly within the statute and that sufficient minimum contacts

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for Constitutionality of Jurisdiction Over Nonresident Individuals, 51 VA. L. REV. 712 (1965).

[27] Schweppes U.S.A. Ltd. v. Kiger, 214 S.E.2d 867, 871 (W. Va. 1975).

[28] *See* note 17 and accompanying text *supra.*

[29] Marietta Mfg. Co. v. Brad Foote Gear Works, Inc., 377 F.2d 889 (4th Cir. 1967); Abrams v. United States, 333 F. Supp. 1134 (S.D.W. Va. 1971); L. S. Good & Co. v. H. Daroff & Sons, Inc., 263 F. Supp. 635 (N.D.W. Va. 1967); Harford v. Smith, 257 F. Supp. 578 (N.D.W. Va. 1966); Mann v. Equitable Gas Co., 209 F. Supp. 571 (N.D.W. Va. 1962); Schweppes U.S.A. Ltd. v. Kiger, 214 S.E.2d 867 (W. Va. 1975); Chase v. Greyhound Lines, Inc., 211 S.E.2d 273 (W. Va. 1975); John W. Lohr Funeral Home v. Hess & Eisenhardt Co., 152 W. Va. 723, 166 S.E.2d 141 (1969); Hodge v. Sands Mfg. Co., 151 W. Va. 133, 150 S.E.2d 793 (1966); State *ex rel.* Corol Pools, Inc. v. Knapp, 147 W. Va. 704, 131 S.E.2d 81 (1963).

[30] 147 W. Va. 704, 131 S.E.2d 81 (1963) (hereinafter cited as *Knapp*).

existed since the contract had a substantial connection with the state. In so finding, the court emphasized the fact that since the offer was accepted in this state, the contract was made in the state.

The holding in *Knapp* is important in several respects. It seems to indicate a willingness by the court to apply a relatively broad standard of minimum contacts[31] at a time when most courts required a more substantial connection with the forum, such as physical presence of the defendant or his agent. This is surprising when compared to the later decisions of the court under the act where a much more conservative analysis is evidenced. The case also serves as an example of the most commonly disputed situation arising under any provision of a long-arm statute — the single act. While it is generally agreed that repeated contact with a forum state under a contract or contracts will satisfy minimum contact requirements,[32] there is a conflict as to when a single act by a nonresident in the state in connection with a contract will be sufficient. While the *Knapp* decision states that the place of contracting is an important consideration in judging minimum contacts in this situation, the cases dealing with this situation indicate that many other factors may be relevant.

In analyzing which factors are important in the single contract situation and in any single act or transaction situation, many courts have employed a three step analysis which combines the factors discussed in *International Shoe, McGee* and *Hanson.*[33] This analysis requires initially that a nonresident do some act or cause a consequence in the forum state thus demonstrating that the defendant has purposely availed himself of the privilege of acting in the forum. In the contract situation, this requirement has been most often satisfied when the nonresident or his agent has been physically present within the state in relation to the contract, such

[31] *See* Gavenda Bros., Inc. v. Elkins Limestone Co., 145 W. Va. 732, 743, 116 S.E.2d 910, 916 (1960), as an example of a more liberal attitude of the court as it endorsed the public policy behind the expansive Illinois long-arm statute, ILL. ANN. STAT. ch. 110, § 17 (Smith-Hurd 1968).

[32] Abrams v. United States, 333 F. Supp. 1134 (S.D.W. Va. 1971); L. S. Good & Co. v. H. Daroff & Sons, Inc., 263 F. Supp. 635 (N.D.W. Va. 1967).

[33] *See, e.g.,* Doyn Aircraft, Inc. v. Wylie, 443 F.2d 579 (10th Cir. 1971); Southern Machine Co. v. Mohasco Indus., Inc., 401 F.2d 374 (6th Cir. 1968); Kourkene v. American B.B.R., Inc., 313 F.2d 769 (9th Cir. 1963). *But see* Comment, *Long-Arm and Quasi in Rem Jurisdiction and the Fundamental Test of Fairness,* 69 MICH. L. REV. 300, 312 (1970), where the three step analysis is criticized as being too restrictive.

as in its negotiation and solicitation,[34] or in the inspection of goods to be purchased.[35] The requirement may also be satisfied without physical presence where a contract is solicited by phone or mail[36] or where goods have been shipped into the state pursuant to a contract.[37] Even the simple making of a contract with a resident of the forum state will suffice when it is reasonably foreseeable that the contract will have commercial consequences in the forum state.[38] The second step of the analysis requires that, in all cases, the cause of action arise out of the contract.

The final step of the analysis requires that the exercise of jurisdiction over the nonresident be consonant with the due process tenets of "fair play" and "substantial justice." The kinds of considerations involved in this step are those normally associated with the *forum non conveniens* doctrine.[39] Such considerations are often the ability of the nonresident to defend the suit in the forum state, whether the evidence and witnesses are in the forum state and the relationship between the size of the claim and the ability of the resident to bring suit in a foreign forum.[40] Considering these factors, many courts have distinguished between nonresident buyers and nonresident sellers with the courts more freely exercising jurisdiction over the nonresident seller.[41]

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[34] *See, e.g.*, Scovill Mfg. Co. v. Dateline Electric Co., 461 F.2d 897 (7th Cir. 1972).

[35] *See, e.g.*, Knopp Forge Co. v. Jawtiz, 37 Ill. App. 2d 475, 186 N.E.2d 76 (1972).

[36] *See, e.g.*, Buckley v. New York Post Corp., 373 F.2d 175 (2nd Cir. 1967).

[37] *See, e.g.*, Ajax Realty Corp. v. J. F. Zook, Inc., 493 F.2d 818 (4th Cir. 1972). However, courts will frequently decline jurisdiction where the shipment of goods is the sole contact with the forum state. The leading case espousing this view is Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502 (4th Cir. 1956).

[38] In-Flight Devices, Corp. v. Van Dusen Air, Inc., 466 F.2d 220, 226 (6th Cir. 1972) (foreign corporation made a contract outside the forum state with a resident corporation for the manufacture of a substantial number of goods in the forum state). *See also* Electro-Craft Corp. v. Maxwell Electronics Corp., 417 F.2d 365 (8th Cir. 1969) (sale of goods by a foreign corporation to resident corporation was held to be a foreseeable impact on the forum state's commerce).

[39] The *forum non conveniens* doctrine is simply the principle that a court may resist the imposition on its jurisdiction if it is an inappropriate forum for trial. Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947).

[40] These factors are mentioned in McGee v. Int'l Life Ins. Co., 355 U.S. 220, 223, 224 (1957); L. D. Reeder Contractors v. Higgins Indus., Inc., 265 F.2d 768, 775 (9th Cir. 1959).

[41] *See, e.g.*, In-Flight Devices Corp. v. Van Dusen Air, Inc., 466 F.2d 220 (6th Cir. 1972); Oswalt Indus., Inc. v. Gilmore, 297 F. Supp. 307 (D. Kan. 1969). *But*

Given the many kinds of acts and the nature of the considerations that have satisfied the three step analysis or other minimum contacts approaches, it is clear that the West Virginia court could exercise its jurisdiction in many instances. However, the court will be limited in dealing with many commercial situations since the West Virginia statute does not apply in the absence of a contract.[42] Thus, actions arising from the reliance on a contract that never occurred, or failed, or which arose from quasi-contract situations, would not be covered under the act.

In contrast to the more limited ability of the statute to deal with commercial activity, the statute provides a comprehensive basis for actions based on tortious injury and products liability. Unfortunately, the extent to which these provisions have been applied has been limited by a much more conservative minimum contacts analysis than evidenced in earlier decisions under the act.

The first applications of the statute's tort provision were by federal courts[43] prior to any decision by the West Virginia Supreme Court of Appeals. In *Mann v. Equitable Gas Co.*,[44] where an action was sought on an injury resulting from a gas line negligently manufactured out of state, the court refused jurisdiction over the nonresident manufacturer. The decision was based on the finding that the statute did not apply because the operative facts constituting the tort occurred outside the state,[45] and, even if the tort was held to occur at the place of injury, the nonresident corporation lacked the requisite minimum contacts since no contact with the state was alleged in the complaint. Four years later, the same court found both the tort and contract provisions of the act were applica-

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see Colony Press, Inc. v. Fleeman, 17 Ill. App. 3d 14, 308 N.E.2d 78 (1974); Fourth Northwestern Nat'l Bank v. Hilson Indus. Inc., 264 Minn. 110, 117 N.W.2d 732 (1962).

[42] Marietta Mfg. Co. v. Brad Foote Gear Works, Inc., 377 F.2d 889 (4th Cir. 1967). *See also* John W. Lohr Funeral Home v. Hess & Eisenhardt Co., 152 W. Va. 723, 166 S.E.2d 141 (1969) (a denial of resident purchaser's claim for jurisdiction over a foreign manufacturer who failed to fill an order from a resident who had contracted with the manufacturer for the purchaser's requirements).

[43] In diversity or other actions in federal courts, the law of the forum state, as limited by due process, determines the amenability of a nonresident to suit in that state. *See, e.g.*, Arrowsmith v. United Press Int'l, 320 F.2d 219 (2nd Cir. 1963).

[44] 209 F. Supp. 571 (N.D.W. Va. 1962) (hereinafter cited as *Mann*).

[45] Other decisions so holding are Marsh v. Tillie Lewis Foods, Inc., 254 F. Supp. 490 (D.S.D. 1966); O'Brien v. Comstock Foods, Inc., 123 Vt. 461, 194 A.2d 568 (1963).

ble in *Harford v. Smith.*[46] In *Harford,* the court granted jurisdiction where injuries were sustained when a gas stove manufactured by a nonresident corporation exploded in the state. The court ignored *Mann's* rejection of a place of injury theory and distinguished the case from *Mann* because of the existence of minimum contacts in the defendant's advertising, soliciting and making direct mail contact in the state.

The confusion resulting from these decisions was soon cleared by the West Virginia court in *Hodge v. Sands Manufacturing Co.*[47] In that decision, the court refused to exercise jurisdiction over a nonresident manufacturer and one of its component part manufacturers where their water heater exploded in the state. The court refused jurisdiction because it did not find minimum contacts to exist since the water heater had been sold to an independent dealer in the state, and neither defendant had engaged in any persistent course of conduct of selling such heaters or other products in the state. While the court did not find minimum contacts, it did confirm the place of injury theory of *Harford* by finding that a tort is committed in the jurisdiction in which the injury occurs.[48]

The *Hodge* decision was unfortunate since it specifically rejected the line of authority initiated by *Gray v. American Radiator and Standard Sanitary Corp.,*[49] which held that due process is satisfied where it is found that a nonresident seller or manufacturer has so placed his goods in the stream of commerce that it is reasonably foreseeable that a product would be marketed in the forum state.[50] This stream of commerce theory seems to be the

[46] 257 F. Supp. 578 (N.D.W. Va. 1966) (hereinafter cited as *Harford*).

[47] 151 W. Va. 133, 150 S.E.2d 793 (1966).

[48] It is well accepted that the situs of the injury is where the tort occurred. *See, e.g.,* Andersen v. National Presto Indus., Inc., 257 Iowa 911, 135 N.W.2d 639 (1965); Dallas v. Whitney, 118 W. Va. 106, 188 S.E. 766 (1936).

[49] 22 Ill. 2d 432, 176 N.E.2d 761 (1961). *See, e.g.,* Coulter v. Sears, Roebuck & Co., 426 F.2d 1315 (5th Cir. 1970); Everly Aircraft Co. v. Killian, 414 F.2d 591 (5th Cir. 1969); Sheridan v. Cadet Chemical Corp., 25 Conn. Supp. 17, 195 A.2d 766 (1963); Ehlers v. U.S. Heating & Cooling Mfg. Corp., 267 Minn. 56, 124 N.W.2d 824 (1963).

[50] The theory is stated in Keckler v. Brookwood Country Club, 248 F. Supp. 645, 649 (N.D. Ill. 1965):

> When a manufacturer voluntarily chooses to sell his product in a way in which it will be sold from dealer, to dealer, transferred from hand to hand and transported from state to state, he cannot reasonably claim that he is surprised at being held to answer in *any* state for the damage the product causes.

approach taken by many courts and is a necessary one if courts are going to provide a reasonable forum for products liability actions in an economy in which a manufacturer rarely deals directly with the consumer. The West Virginia legislature apparently recognized this fact when it added the products liability language to the long-arm statute in 1969.[51] The language of the 1969 amendment may even go beyond the stream of commerce theory by embracing the broader proposition expressed by some courts that a manufacturer is amenable to suit wherever his product causes injury.[52]

However, this conclusion has not been accepted by the West Virginia court which recently refused to apply the West Virginia long-arm statute to a component part manufacturer. In *Chase v. Greyhound Lines, Inc.*, [53] where fatal injury allegedly resulted from a negligently designed camper door manufactured by a foreign corporation, the court was asked whether the foreign corporation that manufactured the camper itself could bring in the door manufacturer as a third party defendant. The court, still relying on *Hodge,* refused to exercise jurisdiction over the component manufacturer finding that it "[h]ad not manufactured, sold, offered for sale or supplied a product which caused injury to a person or property in this State . . . ."[54] This holding was a narrow construction of the long-arm statute and represents a substantial limitation since it precludes jurisdiction over any component-part manufacturer. Most courts have not been so restrictive with such manufacturers, but have instead examined their activity in terms of the stream of commerce theory to see if the injury in the forum state was foreseeable.[55]

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[51] The 1969 amendment added the following language:

> (c) if such corporation manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this State notwithstanding the fact that such corporation had no agents, servants or employees or contacts within this State at the time of said injury.

Acts of the 59th W. Va. Leg. ch. 20, Reg. Sess. (1969).

[52] *See, e.g.,* Andersen v. National Presto Indus. Inc., 257 Iowa 911, 135 N.W.2d 639 (1965); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

[53] 211 S.E.2d 273 (W. Va. 1975).

[54] *Id.* at 276.

[55] *See, e.g.,* Dawkins v. White Products Corp., 443 F.2d 589 (5th Cir. 1971); Gill v. Fairchild Hiller Corp., 312 F. Supp. 916 (D.N.H. 1970).

III. ALTERNATIVE APPROACHES

In reviewing the ability of West Virginia courts to exercise jurisdiction over nonresidents under the present long-arm statute, it has been found that the application of the act is limited by both the West Virginia Supreme Court of Appeals' conception of necessary minimum contacts and by the language of the statute itself. As far as the court is concerned, it can only be hoped that it will adopt a more expansive due process analysis, particularly in products liability situations. However, the legislature can act to provide a more comprehensive statute which deals with the possible jurisdictional problems, consistent with the intent to assert jurisdiction to the fullest extent allowed by constitutional due process. More specifically, West Virginia needs a statute that will provide jurisdiction for both individuals and corporations and one that will be specific enough to provide direction for the courts without limiting the courts when they find due process requirements are met. Keeping these considerations in mind, the question then becomes what is the best language to be employed to achieve these goals.

One method of defining the jurisdictional limits of the courts has been simply to have a statute that states that the courts may exercise jurisdiction to the limits permitted by constitutional due process. A few states have adopted this approach[56] and have thereby avoided the problem of trying to statutorily categorize the applicable situations. However, this approach provides no direction or guidance for the courts in an area of the law already plagued by uncertainty and vague distinctions. Rather than serve as the sole language of a statute, it would appear that the language of such "due process" statutes would serve as a useful addition to a more specific statute[57] so as to allow the statute to be flexible enough to deal with new situations and developing standards.

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[56] CAL. CIV. PROC. CODE § 410.10 (Deerings 1972); R.I. GEN. LAWS ANN. § 9-5-33 (1969).

[57] An example of this is in PA. STAT. ANN. tit. 42, § 8309(b) (Supp. 1974-75) where, in addition to the enumerated jurisdictional situations of § 8309(a), the subsection states:

> Exercise of full constitutional power over foreign corporations — in addition to the provisions of subsection (a) of this section the jurisdiction and venue of the Commonwealth shall extend to all foreign corporations and the powers exercised by them to the fullest extent allowed under the Constitution of the United States.

Approved in 1962, the *Uniform Interstate and International Procedure Act*[58] has become the leading model for states adopting long-arm statutes.[59] The language of the *Uniform Act* is quite comprehensive as the drafters of the Act attempted to define the kind of situations that have been recognized by the courts as suggesting a basis for jurisdiction.[60] The Act applies to both individuals and corporations[61] and contains provisions for handling service of process and other procedural problems. Considering the increasing

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[58] 13 UNIFORM LAWS ANN. 279 (1975) [hereinafter referred to as the *Uniform Act*].

[59] Jurisidictions adopting the *Uniform Act* include: ARK. STAT. ANN. §§ 27-2501 to -2507 (Supp. 1975); D.C. CODE ANN. §§ 13-401 to -434 (1973); MASS. GEN. LAWS ANN. ch. 223A, §§ 1 to 14 (1974); MICH. STAT. ANN. §§ 27A.701 to .735 (1976 Replacement Volume); OKLA. STAT. ANN. tit. 12, §§ 12-1701.01 to -1706.04 (Supp. 1975-76); V. I. CODE ANN. tit. 5, §§ 4901 to 4905 (1967). Also adopting similar provisions: KY. REV. STAT. ANN. § 454.210 (Supp. 1976); LA. REV. STAT. ANN. §§ 13.3201 to .3207 (1966); MD. ANN. CODE art. 6, § 6-102 (Supp. 1976), §§ 6-103, -104 (1974); NEB. REV. STAT. §§ 25-535 to -541 (1975); N. Y. CIV. PRAC. LAW §§ 302 to 320 (McKinney 1972); OHIO REV. CODE ANN. §§ 2307.381, .382, .385 (Baldwin 1975); TENN. CODE ANN. §§ 20-235 to -240 (Supp. 1975); VA. CODE ANN. §§ 8-81.1 to -81.5 (Supp. 1976).

[60] *Uniform Interstate and International Procedure Act* § 1.03, 13 UNIFORM LAWS ANN. 279, 285 (1975):

> (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a [cause of action] [claim of relief] arising from the person's
>
> (1) transacting any business in this state;
>
> (2) contracting to supply services or things in this state;
>
> (3) causing tortious injury by an act or omission in this state;
>
> (4) causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state; (or)
>
> (5) having an interest in, using, or possessing real property in this state; [or
>
> (6) contracting to insure any person, property, or risk located within this state at the time of contracting].
>
> (b) When jurisdiction over a person is based solely upon this section, only a [cause of action] [claim of relief] arising from acts enumerated in this section may be asserted against him.

[61] *Uniform Interstate and International Procedure Act* § 1.01, 13 UNIFORM LAWS ANN. 281, 283 (1975):

> As used in this Article, "person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity, whether or not organized under the laws of this state.

number of adopting jurisdictions, it also has the added advantage of a large body of authority on the application of the act.[62]

In comparing the advantages of the *Uniform Act's* language to the West Virginia statute, the main difference is the "transacting any business" provision of the *Uniform Act*[63] which its drafters intended to have an "expansive interpretation."[64] This provision was broadly drafted to deal with tort, contract and quasi-contract situations and thus would allow the assertion of jurisdiction over nonresidents in many commercial situations that are not covered by the West Virginia long arm statute.[65] The *Uniform Act* also has a contract provision,[66] but it is more limited than its West Virginia counterpart in that it applies only to "contracting to supply services or things in the State." This language is such that it would exclude nonresident buyers, and it seems to reflect the traditional bias of courts in this situation.[67] The West Virginia long-arm statute seems to provide a more flexible approach in that it does not exempt nonresident buyers per se but allows the courts to decide when the exercise over such a buyer would violate due process.

While the *Uniform Act* allows a more comprehensive coverage of commercial situations, it is more limited in its coverage of tort and products liability situations. This is reflected in the requirement of regular business or substantial revenues in the situations of tortious activity outside the state.[68] This additional requirement is unduly restrictive considering the wide acceptance of the stream of commerce test and the increasing number of products liability actions. Also, the vagueness of terms such as "substantial revenues" represents an application problem and it is difficult to comprehend just why the *Uniform Act* placed such a limitation on its tort provision and not the contracting provision, given that courts generally tend to require fewer contacts in personal injury situations.[69]

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[62] *See generally* Woods, *The Uniform Long-Arm Act in Arkansas: The Far Side of Jurisdiction,* 22 ARK. L. REV. 627 (1969); Comment, *Personal Jurisdiction over Nonresidents — The Louisiana "Long-Arm" Statute,* 40 TUL. L. REV. 366 (1966); Note, *The Virginia "Long-Arm" Statute,* 51 VA. L. REV. 719 (1965).

[63] *See* note 60 *supra.*

[64] Commissioners' Comment, 13 UNIFORM LAWS ANN. 281, 285 (1975).

[65] *See* text following text accompanying note 42 *supra.*

[66] *See* note 60 *supra.*

[67] *See* note 41 and accompanying text *supra.*

[68] *See* note 60 *supra.*

[69] *See, e.g.,* Newman v. Fleming, 331 F. Supp. 973, 974 (S.D. Ga. 1971), where

The Act also enumerates two other instances upon which jurisdiction can be based. The insurance provision[70] is a recognition of the well-defined state interest in such matters as announced in the *McGee* decision. Yet this provision is unnecessary in West Virginia and in many other states that already have more explicit provisions providing for the exercise of jurisdiction in their insurance statutes.[71] The other provision allowing actions based on an interest in, use or possession of real property[72] is a seldom used provision and the extent of its application is uncertain. It seems this provision could be used in actions arising from personal injury on real property owned by nonresidents[73] and also eliminate the necessity for *in rem* actions to quiet title to land.[74]

In addition to these provisions under which a cause of action may arise in a state, the Act also has a provision for general jurisdiction which does not require a connection between the activity of the defendant in the state and the cause of action.[75] Such jurisdiction may be based on domicile, place of organization, or principal place of business. Like the West Virginia statute, it does not encompass the situation of asserting jurisdiction over a nonresident with substantial contacts with the forum state in a cause of action arising outside the state.[76]

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the court stated:

> It is easier to obtain jurisdiction over a nonresident tort feasor than over a nonresident wrongdoer in fields other than torts. In the latter instance jurisdiction is posted under the statute on the defendant's transacting any business in this State. . .(citation omitted) and in such cases Due Process must be satisfied by the existence of "minimum contacts" of the nonresident in the state in which he is sued. . . Jurisdiction over nonresidents in tort actions carries no such impediments.

[70] *See* note 60 *supra.*

[71] *See, e.g.,* W. VA. CODE ANN. §§ 33-4-12,13 (1975 Relacement Volume); N.Y. INS. LAW § 59-a(2)(a) (McKinney Supp. 1976).

[72] *See* note 60 *supra.*

[73] *See* Gearhart v. Pulakos, 207 F. Supp. 369 (W.D. Pa. 1962) dealing with PA. STAT. ANN. tit. 12, § 331 (Supp. 1976).

[74] *See* Note, *Jurisdiction in New York: A Proposed Reform,* 69 COL. L. REV. 1412, 1437 (1969).

[75] *Uniform Interstate and International Procedure Act* § 1.02, 13 UNIFORM LAWS ANN. 281, 283 (1975):

> A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, this state as to any cause of action [claim of relief].

[76] *See* note 17 and accompanying text *supra.* One approach to general jurisdiction is contained in WIS. STAT. ANN. § 801.05(1)(d) (Special Pamphlet 1976) which

The final and very important feature of the *Uniform Act* is its inclusion of a statutory statement of the *forum non conveniens* doctrine.[77] Since the Act provides a very broad basis for the exercise of jurisdiction, such a provision is valuable in preventing unjust application of the Act and allowing plaintiffs leeway in their choice of forum. Other statutes have approached the specific problem of abuse in the threat of suits of questionable jurisdiction under such a broad statute by providing compensation for defendants when a plaintiff fails to establish jurisdiction.[78]

IV. CONCLUSION

A review of the statutory attempts to define personal jurisdiction reflects in part the difficulty in framing language that will effectively encompass all the possible jurisdictional problems. In this respect, the *Uniform Act* reflects the best kind of approach for this state in providing some guidelines to its courts. However, as previously noted, certain parts of the Act are unnecessarily restrictive and therefore the best solution would seem to be the incorporation of the provisions of the West Virginia statute and the removal of the contracting and tort provision of the *Uniform Act.* In addition, the language of the "due process" statutes should be added to allow the necessary flexibility in dealing with jurisdictional problems and to provide a clear expression of the desire to exercise jurisdiction to the limits of due process. A statute so constructed would provide a comprehensive framework for the courts and an expanded and convenient forum for the citizens of this state.

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provides for jurisdiction over a nonresident when it "is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise."

[77] *Uniform Interstate and International Procedure Act* § 1.05, 13 UNIFORM LAWS ANN. 281, 291 (1975):

> When the court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any conditions that may be just.

[78] MICH. STAT. ANN. § 27A.741 (1975-76 Replacement Volume); WIS. STAT. ANN. § 814.49 (Special Pamphlet 1976).