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**ILLINOIS COURTS AND FOREIGN CORPORATIONS:
JURISDICTION GONE AWRY—
BRABAND V. BEECH AIRCRAFT CORP.**

Since *Pennoyer v. Neff*,¹ the United States Supreme Court consistently has held that a state's power to enter in personam² judgments binding upon non-resident defendants is limited by the due process clause of the fourteenth amendment.³ Over the years, various concepts, such as "consent" and "presence," were used by the courts to determine the line of limitation.⁴ The landmark cases of *International Shoe Co. v. Washington*⁵ and *Shaffer v. Heitner*⁶ purported to eliminate these differing rationales for determining the extent of state court jurisdiction.⁷ Under *International Shoe*, jurisdiction was to be premised upon whether a defendant had "minimum contacts" with the forum state sufficient to comport with "traditional notions of fair play and substantial justice."⁸ These somewhat "elastic

1. 95 U.S. 714 (1878). *Pennoyer* focused on the territorial limits of a state's judicial powers. By concluding that the authority of every tribunal was restricted by the territorial limits of the state in which it was established, *Pennoyer* sharply limited the availability of in personam jurisdiction over non-resident defendants. *Id.* at 720. Under *Pennoyer*, the state could render judgment binding a defendant personally only if he or she was physically present and served with process within the forum state. *But see* *Shaffer v. Heitner*, 433 U.S. 186, 196-200 (1977); Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533 [hereinafter cited as Currie]. *Pennoyer* was expressly overruled by the Supreme Court in *Shaffer v. Heitner*, 433 U.S. at 206.

2. Jurisdiction is the power or authority of a court to decide a case or controversy. To render a valid judgment, a court must have not only jurisdiction over the subject matter of the litigation, but also jurisdiction over parties to the dispute (in personam jurisdiction) or property in dispute (in rem jurisdiction). M. GREEN, *BASIC CIVIL PROCEDURE* 3-4 (1972).

3. *See* *Kulko v. California Superior Court*, 436 U.S. 84, 91 (1978); *Strait v. Laird*, 406 U.S. 341, 345 (1972); *D.H. Overmeyer Co. v. Frick Co.*, 405 U.S. 174, 184 (1972); *Zenith Corp. v. Hazeltine*, 395 U.S. 100, 110 (1969); *Western Union Co. v. Pennsylvania*, 368 U.S. 71, 74 (1961); *Hanson v. Denckla*, 357 U.S. 235, 249-50 (1958); *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222 (1957).

4. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957). The evolutionary process surrounding jurisdictional questions in connection with foreign defendants has involved an acceptance and later a rejection of such concepts as "consent," "doing business," and "presence." *Id.* at 222. In particular, the courts found that foreign corporations either had "impliedly consented" to jurisdiction in the forum, had been "constructively present" in the state, or had an agent "doing business" when served with process. Currie, *supra* note 1, at 535. *See, e.g.*, *Hess v. Pawlowski*, 274 U.S. 352 (1927) ("consent"); *Barrow S.S. Co. v. Kane*, 170 U.S. 100 (1898) ("presence" and "doing business"); *Lafayette Ins. Co. v. French*, 598 U.S. (18 How.) 404 (1856) ("consent" and "presence").

5. 326 U.S. 310 (1945).

6. 433 U.S. 186 (1977).

7. For a general discussion of the various conceptual stages of state court jurisdiction over non-resident defendants *see* *Shaffer v. Heitner*, 433 U.S. 186, 196-206 (1977); Hazard, *A General Theory of State Court Jurisdiction*, 1965 SUP. CT. REV. 241.

8. The Court said:

[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain

standards"⁹ were further interpreted by *Shaffer* to require, at a minimum, some relationship between the defendant, the litigation, and the forum.¹⁰

In *Braband v. Beech Aircraft Corp.*,¹¹ the Illinois Supreme Court construed these standards to allow a cause of action that arose in Canada¹² to be maintained in Illinois against a foreign corporation¹³ doing only minimal business in the state.¹⁴ The circuit court denied the defendant's motion to quash service of process and dismiss for lack of jurisdiction.¹⁵ This

minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

326 U.S. 310, 316 (1945) (citation omitted).

9. Justice Black, commenting on the majority's opinion in *International Shoe* and the standards it enunciated, said: "No one, not even those who most feared a democratic government, ever formally proposed that courts should be given power . . . under any such elastic standards." *Id.* at 325. At least one commentator has suggested that the *International Shoe* standards are flexible to the point of varying with the economic and moral values at issue in a particular suit. See Carrington & Martin, *Substantive Interests and the Jurisdiction of State Courts*, 66 MICH. L. REV. 227, 231-33 (1967) [hereinafter cited as Carrington & Martin].

10. The *Shaffer* Court interpreted *International Shoe* as follows:

[In *International Shoe*] the inquiry into the State's jurisdiction over a foreign corporation appropriately focused not on whether the corporation was "present" but on whether there have been "such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." [326 U.S.] at 317. . . . [T]he relationship among the defendant, the forum, and the litigation . . . became the central concern of the inquiry into personal jurisdiction.

Shaffer v. Heitner, 433 U.S. 186, 203-04 (1977).

11. 72 Ill. 2d 548, 382 N.E.2d 252 (1978).

12. *Braband* involved a strict liability cause of action brought under the Illinois Wrongful Death Act, ILL. REV. STAT. ch. 70, §§ 1, 2. The pilots of an allegedly defective aircraft were killed when the plane in which they were traveling crashed as it approached the airport in Frobisher Bay, Northwest Territories, Canada. 72 Ill. 2d at 550, 382 N.E.2d at 253.

13. The defendant, Beech Aircraft Corporation, is not incorporated in Illinois, nor is it qualified, authorized, or otherwise chartered or licensed to do business in Illinois. Excerpts From Record at 65, *Braband v. Beech Aircraft Corp.*, 51 Ill. App. 3d 296, 367 N.E.2d 118 (1st Dist. 1977) [hereinafter cited as Record].

14. See notes 53-56, 125-28, and accompanying text *infra*.

15. The circuit court found that it did not offend due process to require a foreign corporation to defend a cause of action in Illinois for the death of Illinois residents, even though the cause of action did *not* occur in Illinois. This decision was based strictly on a "foreseeability" test for jurisdiction. The circuit court's order was as follows:

1. Beech can foresee and knows that aircraft which they manufacture will be flown by Illinois residents;
2. The crash of the Beech Queen Air aircraft near Frobisher Bay, Northwest Territories, Canada, resulted in the death of plaintiffs' decedents who were residents of the State of Illinois;
3. It does not offend traditional notions of fair play and effective justice to require Beech to defend this action in the courts of Illinois, when the action involved deaths of Illinois residents because of an alleged defect in the aircraft and; [sic]
4. That, based upon the above findings, defendant Beech is amenable to process issued by a court of the State of Illinois with respect to this action.

Braband v. Beech Aircraft Corp., No. 72 L 16617 (Cir. Ct. Ill. July 29, 1975) (order denying motion to dismiss).

was affirmed by the appellate court in a divided opinion.¹⁶ In upholding the appellate court, however, the Illinois Supreme Court substantially broadened the ability of Illinois courts to assert jurisdiction over foreign corporations.

The purpose of this Note is to analyze and critique the rationale of *Braband v. Beech Aircraft Corp.* It will demonstrate that the *Braband* opinion does not comport with the standards set forth by the United States Supreme Court in *International Shoe* and *Shaffer*. The Note will also show that even if *Braband* was decided correctly, its confused and inarticulate rationale, unless corrected, will have a detrimental impact on subsequent cases.

THE COURT'S DECISION

Knowledge of the pertinent facts in *Braband* is critical to an analysis of the court's decision. The allegedly defective airplane in which plaintiffs' decedents were travelling at the time of their death was manufactured by the defendant, Beech Aircraft Corp., a Delaware company with its principal place of business in Kansas.¹⁷ In 1966, the aircraft originally was manufactured and sold in Kansas to a Texas firm. Two years later the Texas firm sold it to a company in Nevada. Three years after that it was sold to an Illinois firm who later sold it to a British company.¹⁸ While the plane was being ferried to the British company, it crashed in Frobisher Bay, Northwest Territories, Canada.¹⁹

The Illinois Supreme Court first determined that the cause of action did not arise out of any business the defendant may have transacted in Illinois.²⁰ The court also found that the action did not arise from any act of

16. 51 Ill. App. 3d 296, 367 N.E.2d 118 (1st Dist. 1977). Justice Jiganti, author of the majority opinion, found jurisdiction in Illinois pursuant to § 17 of the Civil Practice Act, ILL. REV. STAT. ch. 110, § 17, because Beech allegedly had committed a "tortious act" in Illinois (i.e., by the alleged delivery in Illinois of a defective plane which subsequently crashed in Canada, causing economic harm to the plaintiffs who were Illinois residents). 51 Ill. App. 3d at 300-01, 367 N.E.2d at 122. Justices Stamos and Downing disagreed. Justice Stamos, in a special concurring opinion, stated that the defendant was amenable to service of process under §§ 13.3 and 16 of the Civil Practice Act by virtue of its contractual relationship with Hartzog Aviation, an independently-owned Illinois corporation who sells Beech aircraft but who did *not* sell the aircraft in question. 51 Ill. App. 3d at 304-06, 367 N.E.2d at 124-26 (Stamos, J., concurring). Justice Downing did not accept either theory. He concluded that the cause of action did not arise from the commission of a tortious act in Illinois, and that Beech was not "present" in Illinois so as to justify suit against the defendant in Illinois. Thus, service on Beech should be quashed. 51 Ill. App. 3d at 308-13, 367 N.E.2d at 127-31 (Downing, J., dissenting). Because of these disparate views, the appellate court granted a certificate of importance to the Illinois Supreme Court. Ill. Sup. Ct. R. 316.

17. 51 Ill. App. 3d at 307, 367 N.E.2d at 127.

18. *Id.*

19. *Id.* at 297, 367 N.E.2d at 120.

20. 72 Ill. 2d at 557, 382 N.E.2d at 257.

the defendant's alleged Illinois "distributor"²¹ nor from any relationship between the defendant and the "distributor."²² Despite this, the defendant was found to be amenable to service of process under sections 13.3 and 16 of the Civil Practice Act.²³ The court reasoned that due to the defendant's relationship with an independently-owned Illinois corporation²⁴ who had nothing to do with the aircraft in question and because of other alleged contacts in Illinois,²⁵ the defendant had engaged in activities sufficient to render it amenable to service.²⁶ Thus, by finding jurisdiction under sections 13.3 and 16, the court determined that Beech was a de facto resident of the state, even though it was incorporated in Delaware and had its principal place of business in Kansas.²⁷

The court reasoned that due to the inherent mobility of its products, Beech could assume that its aircraft would be owned or flown by Illinois

21. Hartzog Aviation is the independently-owned Illinois company with whom Beech had a nonexclusive, mutually cancellable contract whereby Hartzog was permitted to sell and service Beech airplanes in certain counties of midwestern states, including Illinois. The agreement, which was for one year with a thirty-day termination clause, permitted Hartzog to purchase, in Kansas, specified models of new Beech aircraft for resale to the public. The agreement by its terms had as its stated objective the sale of seven airplanes. *Braband v. Beech Aircraft Corp.*, 51 Ill. App. 3d 296, 311-12, 367 N.E.2d 118, 130 (1st Dist. 1977). It is interesting to note that the court referred to Hartzog as "defendant's distributor," although a reading of the Record reveals that at no time was Hartzog found to be legally a franchisee or distributor of Beech. 72 Ill. 2d at 557, 382 N.E.2d at 256.

22. 72 Ill. 2d at 557, 382 N.E.2d at 256. These findings of fact were stipulated to by the parties to the suit. Record, *supra* note 13, at 63-68. For a more extensive discussion of the facts, see 51 Ill. App. 3d at 297-98, 311-12, 367 N.E.2d at 120, 125-27, 130 (1st Dist. 1977).

23. 72 Ill. 2d at 560, 382 N.E.2d at 257. Sections 13.3 and 16 of the Civil Practice Act provide in pertinent part:

§ 13.3. Service on private corporations. A private corporation may be served (1) by leaving a copy of the process with its registered agent or any officer or agent of said corporation found anywhere in the State; or (2) *in any other manner now or hereafter permitted by law*. A private corporation may also be notified by publication and mail in like manner and with like effect as individuals.

§ 16. Personal service outside State. (1) Personal service of summons may be made upon any party outside the State. *If upon a citizen or resident of this State or upon a person who has submitted to the jurisdiction of the courts of this State*, it shall have the force and effect of personal service of summons within this State; otherwise it shall have the force and effect of service by publication.

ILL. REV. STAT. ch. 110, §§ 13.3, 16 (emphasis added).

24. See note 21 *supra*.

25. Other alleged activities of Beech included advertisements in Chicago area telephone books and attendance at one sales promotion dinner with Hartzog. For a more thorough description of Beech's contacts with Illinois see notes 53-56, 125-28, and accompanying text *infra*.

26. The court did not comment on whether the activities of Hartzog Aviation alone would serve as a sufficient basis for asserting jurisdiction. 72 Ill. 2d at 558, 382 N.E.2d at 257. This would have required a discussion of whether or not a principal-agent relationship existed between Beech and Hartzog. Such a discussion would have lent more credibility to the court's finding that Beech was "present and doing business" in Illinois.

27. 51 Ill. App. at 307, 367 N.E.2d at 130.

residents both within and outside of Illinois.²⁸ This mobility of airplanes and airplane parts thus became a significant factor in the court's decision that notions of fair play and substantial justice were not offended.²⁹ In essence, Beech had assumed the risk of such a suit. Finally, because the Illinois Supreme Court found that jurisdiction existed under sections 13.3 and 16, it declined to consider whether a "tortious act" had been committed within the meaning of the section 17 "long-arm" statute.³⁰

The court's opinion is noteworthy in the first instance for not considering use of this "long-arm" statute. Generally, in cases where the defendant is a foreign corporation³¹ and the plaintiffs allege injury in Illinois, the section 17 "long-arm" statute is used to obtain jurisdiction.³² Although section 17 was both one of the plaintiffs' major contentions throughout the litigation³³ and the basis of the appellate court's majority opinion,³⁴ the Illinois Supreme Court was strangely silent on its applicability in the instant case.³⁵ The court's reluctance to assert section 17 jurisdiction apparently stemmed

28. 72 Ill. 2d at 559, 382 N.E.2d at 257.

29. *Id.*

30. 72 Ill. 2d at 560, 382 N.E.2d at 257. ILL. REV. STAT. ch. 110, § 17, provides in pertinent part:

§ 17. Act submitting to jurisdiction—Process. (1) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any such acts:

.....

(b) the commission of a tortious act within this State;

.....

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this Section, may be made by personally serving the summons upon the defendant outside this State, as provided in this Act, with the same force and effect as though summons had been personally served within this State. (3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this Section.

31. In the instant case, the defendant, Beech Aircraft Corp., is incorporated in Delaware, has its principal place of business in Wichita, Kansas, and is neither licensed to do business in Illinois nor owns or rents any property in Illinois. No employees or directors of Beech reside in or are stationed in Illinois and Beech pays no Illinois taxes. Record, *supra* note 13, at 65.

32. In cases involving non-resident defendants like Beech, jurisdiction is usually asserted under section 17. See, e.g., *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961); *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957); *Stansell v. Int'l Fellowship, Inc.*, 22 Ill. App. 3d 959, 318 N.E.2d 149 (1st Dist. 1974).

33. See Brief for Appellee at 14, *Braband v. Beech Aircraft Corp.*, 72 Ill. 2d 548, 382 N.E.2d 252 (1978) [hereinafter cited as Appellee's Supreme Court Brief]; Brief for Appellee at 35, *Braband v. Beech Aircraft Corp.*, 51 Ill. App. 3d 296, 367 N.E.2d 118 (1st Dist. 1977) [hereinafter cited as Appellee's Appellate Brief]; Record, *supra* note 13, at 13.

34. See *Braband v. Beech Aircraft Corp.*, 51 Ill. App. 3d 296, 367 N.E.2d 118 (1st Dist. 1977) (Jiganti, J., majority opinion).

35. 72 Ill. 2d at 560, 382 N.E.2d at 257.

from its inability to find case law to support the proposition that the cause of action arose in Illinois, an absolute requirement for section 17 jurisdiction.³⁶

In *Gray v. American Radiator and Standard Sanitary Corp.*,³⁷ the leading case on the concept of "tortious act" within the meaning of section 17, the Illinois Supreme Court previously stated that "the place of a wrong is where the last event takes place which is necessary to render the actor liable."³⁸ The plaintiffs in *Braband* argued that the event giving rise to the cause of action was the "economic effect" caused by the wrongful deaths of their husbands. The plaintiffs reasoned that these detrimental "economic effects" in and of themselves constituted "the commission of a tortious act" in Illinois; therefore, the cause of action arose in Illinois.³⁹

The *Braband* court was apparently aware, however, that there are no cases holding that the "economic effects"⁴⁰ from a tortious injury consti-

36. ILL. REV. STAT. ch. 110, § 17(3), *supra* note 30. The purpose of § 17(3) is "to insure that there is a close relationship between a non-resident defendant's jurisdictional activities and the cause of action against which he must defend." *Koplin v. Thomas, Haab & Botts*, 73 Ill. App. 2d 242, 252-53, 219 N.E.2d 646, 651 (1st Dist. 1966) (citation omitted). *See also* ILL. ANN. STAT. ch. 110, § 17 Historical and Practice Notes (Smith-Hurd).

37. 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

38. *Id.* at 435, 176 N.E.2d at 762-63, *citing* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 377. In *Gray*, the plaintiff was injured when a water heater, containing an allegedly defective safety valve manufactured by defendant, exploded. The defendant foreign corporation argued that it was not amenable to service of process because it had committed no tort in Illinois, did no business in Illinois, and the allegedly defective product had been sold to another company outside Illinois for use in the latter's products. *Id.* at 434, 176 N.E.2d at 762. Because the actual injury had occurred in Illinois (a significant fact which distinguishes the case from *Braband*), the defendant was deemed to have a substantial connection with the forum and, therefore, it was not unjust to hold the defendant answerable for injuries caused by his products. *Id.* at 442, 176 N.E.2d at 766. Noting that "[u]nder such circumstances the courts of the place of injury usually provide the most convenient forum for trial," the court denied the defendant's motion to quash service of process. *Id.* at 443-44, 176 N.E.2d at 767.

39. The plaintiffs in *Braband* reasoned that Illinois jurisdiction existed because the defendant inflicted injury on Illinois residents and incurred an obligation to the survivors of those residents by the manufacture and sale of a defective aircraft. *See Appellee's Supreme Court Brief, supra* note 33, at 15. At first reading, this argument appears to be supported by RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 (1971) which states:

A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an act done elsewhere with respect to any cause of action arising from these effects unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable.

As the United States Supreme Court noted, however, in the recent case of *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 96 (1978), § 37 was designed "to reach wrongful activity outside the State causing injury within the state. . . ." *Id.* The examples accompanying § 37 would not support such an "effects" oriented test for the assertion of jurisdiction as that proposed by the plaintiffs.

40. The Second Circuit addressed such an "effects" argument in *American Eutectic Welding Alloys Sales Co. v. Dytron Alloys Corp.*, 439 F.2d 428 (2d Cir. 1971), *quoting* *Black v. Oberle Rentals, Inc.*, 55 Misc. 2d 398, 400, 285 N.Y.S.2d 226, 229 (1967), when it stated:

Certainly every person injured in an accident has resultant damage as well as the personal injury. He may suffer lost earnings, diminution of earning capacity, long

tute a separate tort.⁴¹ A tort consists of a breach of duty to the injured party,⁴² and the situs of the alleged wrong is determined by the last event caused by the asserted misconduct of the defendant.⁴³ In *Braband*, the last event did not occur in Illinois. The alleged breach of duty was the defective manufacture of an aircraft in Kansas and the alleged wrong occurred at the situs of the crash in Canada.⁴⁴ As Justice Downing noted in his dissent to the appellate opinion, "the thin thread of pecuniary loss to the plaintiffs in

periods of convalescence and all such attendant damages. Conceptually it is difficult for this Court to hold that a personal or property injury in another State by virtue of a tortious act committed in that State can be said to have suffered some injury within the State of New York simply because he is domiciled here. . . . To hold otherwise would open a veritable Pandora's Box of litigation subjecting every conceivable prospective defendant involved in an accident with a New York domiciliary to defend actions brought against them in the State of New York. This is hardly the minimal contact with the State prerequisite to the exercise of its power over a prospective defendant.

439 F.2d 428, 434 (2d Cir. 1971) (citation omitted).

41. In *McCee v. International Life Ins. Co.*, 355 U.S. 220 (1957), the United States Supreme Court discussed the "economic effects" in the forum resulting from the defendant's activities there but found jurisdiction based on a number of factors—the most important of which was the "substantial connection" which the subject matter of the litigation, an insurance contract, had with the forum. *Id.* at 223. See notes 84-88 and accompanying text *infra*.

42. The concept of "tortious act" within the meaning of § 17 was discussed by the Fifth District Circuit Court of Illinois in *Poindexter v. Willis*, 87 Ill. App. 2d 213, 231 N.E.2d 1 (5th Dist. 1967). The court held that "the word 'tortious' as used in § 17(1)(b) of [the Civil Practice Act] is not restricted to the technical definition of a tort, but includes any act committed in this state which involves breach of duty to another and makes the one committing the act liable to respondent in damages." *Id.* 217-18, 231 N.E.2d at 3. This would appear to support the "economic effects as tort" argument. *Poindexter*, however, involved a cause of action brought under the Illinois Paternity Act, ILL. REV. STAT. ch. 106-3/4, §§ 51-66 (1967), whereby plaintiff sought support and maintenance for her illegitimate child. *Id.* at 214, 231 N.E.2d at 2. The defendant objected to service outside the state under § 17(1)(b), arguing that he did not commit a tortious act in Illinois. *Id.* at 216, 231 N.E.2d at 2-3. The court concluded that the failure of a father to support an illegitimate child did constitute a tort because it involved a breach of his duty to support the child. *Id.* at 218, 231 N.E.2d at 3. The breach of duty in *Braband*, if in fact there was one, was to the users of the defectively manufactured aircraft and not to the plaintiff survivors.

43. *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

44. Certainly the survivors of a person killed in an accident suffer great personal loss. It is conceptually difficult, however, to say death in State X by virtue of a tortious act committed there gives rise to jurisdiction in State Y based on that death simply because the plaintiff survivors are domiciled in State Y. See *American Eutectic Welding Alloys Sales Co. v. Dytron Alloys Corp.*, 439 F.2d 428 (2d Cir. 1971). The forum of the cause of action depends on the acts of the defendant, not on the domicile of the plaintiff. See, e.g., *Hanson v. Denckla*, 357 U.S. 235 (1958). As stated by the Illinois Supreme Court in *Gray*, a jurisdictional question under § 17(1)(b) depends on whether the tortious act was committed in Illinois. *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 435, 176 N.E.2d 761, 762 (1961). In *Braband*, neither the alleged misconduct of the defendant nor the injury occurred in Illinois. The defendant manufactured the airplane five years earlier in Kansas. The consequences of defendant's misconduct and the last event which took place to render the defendant liable occurred in Canada.

Illinois . . . is too weak a connection to lift these facts outside the reach of the due process clause."⁴⁵

Being unable to expand the definition of a section 17 "tortious act" to include the economic effects from a tort, the Illinois Supreme Court was left with two choices: either dismiss the case⁴⁶ or find another means of imposing jurisdictional authority over Beech. The court chose the latter option, relying on sections 13.3 and 16 of the Civil Practice Act⁴⁷ to justify its actions. By utilizing these two sections, the court determined that although Beech was incorporated in Delaware and had its principal place of business in Kansas, it was transformed into a de facto resident of the state for jurisdictional purposes.

Section 16 of the Illinois Civil Practice Act provides for out-of-state service of summons either on residents or non-residents who have submitted to the jurisdiction of the Illinois courts.⁴⁸ The relationship between section 16 and section 17, the long-arm statute, is unclear in that it can be analyzed in either of two ways. One approach is to look to section 16 for the requirements of out-of-state service. Under this analysis, the defendant who is not a citizen or resident of the state must have submitted to jurisdiction by doing one of the acts enumerated in section 17. In such a case, the cause of action must arise from that act.⁴⁹ This reasonable, although somewhat restrictive, interpretation of the two sections is incorporated in the Joint Committee Comments accompanying sections 16 and 17.⁵⁰ The *Braband* court, however, could not adopt such an analysis because the instant cause of action did

45. 51 Ill. App. 3d at 310, 367 N.E.2d at 129 (Downing, J., dissenting).

46. Dismissal for lack of jurisdiction and improper service of process would be appropriate since plaintiffs sought to acquire jurisdiction pursuant to § 17 and served the defendant at its principal place of business in Kansas. Appellee's Supreme Court Brief, *supra* note 33, at 14-27; Record, *supra* note 13, at 37. No attempt was made to serve any agent of the defendant in Illinois. Record, *supra* note 13, at 37. Dismissal, of course, would force the plaintiffs to undergo the time and expense of filing suit in another and possibly less-favorable jurisdiction. See Zammit, *Developments in the Law-State Court Jurisdiction*, 73 HARV. L. REV. 909, 931 (1961) [hereinafter cited as Zammit], for a discussion of the effects of plaintiff's choice of forum on the outcome of litigation.

47. See note 23 *supra*.

48. ILL. REV. STAT. ch. 110, § 16; note 23 *supra*.

49. ILL. REV. STAT. ch. 110, § 17(3); note 30 *supra*.

50. See ILL. ANN. STAT. ch. 110, § 16 (Smith-Hurd), which states:

[P]ersonal jurisdiction is obtained over a citizen or resident of this state or over a person who has submitted to jurisdiction under section 17, by serving him as provided in this section.

* * * *

Jurisdiction based upon acts constituting a submission to jurisdiction of the courts of this state is discussed in the comment to § 17. (Emphasis added).

But see *Gordon v. International Tel. & Tel. Co.*, 273 F. Supp. 164 (N.D. Ill. 1967), where the court found the advisory notes not binding and upheld jurisdiction over a non-resident on the basis of § 16 because the "act submitting to jurisdiction" was the defendant's continuous and substantial business contacts in Illinois.

not arise from any section 17 act.⁵¹ Therefore, the court had to search for another approach to the two sections.

The second and broader interpretation of section 16, although not discussed in the Joint Committee Comments, sanctions various ways, other than through section 17 acts, that a non-resident can "submit to the jurisdiction" of Illinois courts and thereby be served "as if a resident of the state."⁵² This was the approach used in *Braband*.

The court found Beech to be "present and doing business" in Illinois based on four types of alleged activity. Heavy emphasis was placed on a written agreement between the defendant and Hartzog Aviation, an independently-owned Illinois company,⁵³ permitting Hartzog to purchase aircraft in Kansas for resale to the public. Secondly, the defendant's marketing manager, the court noted, "frequently visited Hartzog with the express purpose of promoting the sales of defendant's aircraft."⁵⁴ Also, on one occasion Hartzog and the defendant sponsored a sales program in Illinois for prospective buyers of Beech aircraft.⁵⁵ Finally, reliance was placed on the fact that advertisements had appeared in Chicago area telephone books exhibiting the defendant's logo and indicating where Beech products and parts could be purchased.⁵⁶ Basing its decision on a superficial analysis of such activities, the court concluded that Beech had engaged in activities rendering it a resident of the state. Despite the fact that the comments accompanying sections 16 and 17 take a more restrictive view,⁵⁷ the court chose to expand the means by which Illinois could assert jurisdiction over foreign corporations.

CRITICISM OF THE COURT'S DECISION

The court's conclusion that the non-resident Beech Aircraft Corporation had engaged in activities sufficient to render it amenable to service as a de facto Illinois resident seems unwarranted in light of prior Illinois and United States Supreme Court decisions. The circumstances under which such a

51. See ILL. REV. STAT. ch. 110, § 17; notes 28-45 and accompanying text *supra*.

52. See St. Louis-San Francisco Ry. v. Gitchoff, 68 Ill. 2d 38, 369 N.E.2d 52 (1977).

53. 72 Ill. 2d at 559, 382 N.E.2d at 257; see note 21 *supra*.

54. *Id.* Actually the deposition of defendant's marketing manager showed only that he had visited Hartzog Aviation approximately a dozen times in nine years. In addition, other alleged contacts of the defendant in Illinois had not resulted in the sale of any aircraft to Hartzog customers. Record, *supra* note 13, at 129-31.

55. 72 Ill. 2d at 559, 382 N.E.2d at 257.

56. *Id.* Koplín v. Thomas, Haab & Botts, 73 Ill. App. 2d 242, 219 N.E.2d 646 (1st Dist. 1966), discussed the question of whether advertising put and call options in Chicago newspapers constituted the transaction of business within the State of Illinois. Quoting Koplín v. Saul Lerner Co., Inc., 52 Ill. App. 2d 97, 201 N.E.2d 763 (1st Dist. 1964), the court said "the advertisements indicate the desire and hope for doing business, but none of these denote that business was done. A willingness to do business and solicitation of business do not constitute the doing of business." 73 Ill. App. 2d at 250, 219 N.E.2d at 650 (emphasis added).

57. See note 50 and accompanying text *supra*.

transformation may or may not occur have been set forth by the United States Supreme Court in *International Shoe Co. v. Washington*⁵⁸ and its progeny, culminating with *Shaffer v. Heitner*.⁵⁹

Failure to Properly Apply United States Supreme Court Standards

For purposes of this discussion, the jurisdictional standards enunciated by the United States Supreme Court can be labeled the "substantial and continuous activities" standard, and the "defendant-forum-litigation relationship" standard. Both standards were either ignored or misapplied by the Illinois Supreme Court in the *Braband* opinion.

In *International Shoe*, the United States Supreme Court noted that jurisdiction over foreign corporations is proper where the defendant's contacts with the forum are *of such a substantial nature* and so overwhelming that the assertion of jurisdiction will come as no surprise.⁶⁰ Isolated or casual contacts are insufficient; the defendant's activities must be "continuous and systematic."⁶¹ In other words, jurisdiction can be properly asserted when the defendant is put on notice⁶² that the activities in the forum state are so substantial that in essence he or she is considered a "resident"—that is, physically present. Although *technically* a nonresident,⁶³ the defendant could be considered a "resident" for jurisdictional purposes and called upon to defend in the forum even for a cause of action unrelated to its forum activities.⁶⁴ This is the relevant standard that should have been applied to support the assertion of jurisdiction in *Braband*.

Two Supreme Court cases decided after *International Shoe* illustrate the "substantial and continuous" activities approach to state court jurisdiction. In *Travelers Health Association v. Virginia ex rel State Corporation Commission*,⁶⁵ the Court upheld jurisdiction in Virginia over a Nebraska-based as-

58. 326 U.S. 310 (1945).

59. 433 U.S. 186 (1977).

60. *International Shoe Co. v. Washington*, 326 U.S. 310, 316-19 (1945). *See, e.g.*, *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952) (defendant operated a substantial part of his business from the forum state); *Travelers Health Ass'n. v. Virginia ex rel State Corp. Comm'n.*, 339 U.S. 643 (1950) (defendant solicited business from forum residents for 40 years); *Gordon v. International Tel. & Tel. Co.*, 273 F. Supp. 164 (N.D. Ill. 1967) (defendant continuously solicited business and secured business contracts in the forum state for 30 years); *St. Louis-San Francisco Ry. Co. v. Gitchoff*, 68 Ill. 2d 38, 369 N.E.2d 52 (1977) (defendant maintained office and full-time employees in forum state).

61. *International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945).

62. *See Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring).

63. In such a situation, the defendant is a non-resident because the corporation is legally a resident of another state and has its principal place of business in another state.

64. An example of this is found in *St. Louis-San Francisco Ry. Co. v. Gitchoff*, 68 Ill. 2d 38, 369 N.E.2d 52 (1977), where the Illinois Supreme Court explained that § 13.3 of the Civil Practice Act "has been judicially construed to require that a corporation be 'doing business' in the State to justify the conclusion that the corporation was sufficiently 'present' so that it could be served in the same manner as other resident corporations." *Id.* at 43, 369 N.E.2d at 54 (emphasis added).

65. 339 U.S. 643 (1950).

sociation engaged in the mail-order insurance business. The Court emphasized the prolonged period over which the appellant solicited business from Virginia residents and stressed the fact that the appellant caused numerous insurance claims to be investigated there.⁶⁶ Such contacts, the Court said, were not "mere isolated or short-lived transactions."⁶⁷ Measured by the standards of *International Shoe*, "the contacts and ties of appellants with Virginia . . . justifi[ed] subjecting appellants to . . . proceedings [in Virginia]."⁶⁸

In *Perkins v. Benguet Consolidated Mining Co.*,⁶⁹ the Court also upheld the state's right to assert jurisdiction⁷⁰ due to the defendant's extensive activities in the forum.⁷¹ In essence, the defendant's total business operation was run from the forum during part of World War II. Based on the facts and circumstances in *Perkins*, the defendant's contacts were found to be pervasive, substantial and continuous, and supported a cause of action based on activities entirely distinct from the company's activities in the forum.⁷²

66. The appellant over a 40 year period had issued insurance certificates to Virginia residents and had solicited new business by requesting names of prospective Virginia customers from the ranks of its current Virginia insureds. Evidence showed that the appellant had over 800 insureds in the state at the time suit was instituted. In addition, the appellant had caused claims for losses to be investigated in Virginia and could sue there for the enforcement of the obligations of certificate holders. Finally, the Court acknowledged Virginia's strong regulatory interest in overseeing insurance obligations in the State. *Id.* at 646-48.

67. *Id.* at 648.

68. *Id.*

69. 342 U.S. 437 (1952).

70. *Id.* at 448. The issue in *Perkins* was whether the due process clause prevented or compelled Ohio from asserting jurisdiction under the facts and circumstances of the case. *Id.* at 439, 447.

71. *Id.* at 447-48. The defendant's company was located in the Philippines. During World War II its operations were completely halted due to the Japanese occupation of the islands. The company president returned to his home in Ohio and conducted the business affairs of the company from that state. This included keeping office files, conducting directors' meetings, and maintaining and using local bank accounts in Ohio. In essence, the company's total business operation was run from Ohio during his stay there.

72. *Id.* at 446-49. The lawsuit in *Perkins* was brought in Ohio by a non-resident stockholder of the defendant. The cause of action did not arise in Ohio nor did it relate to the foreign corporation's activities there. *Id.* at 438. Professor Zammit has suggested that *Perkins* is unique in that, due to the war, Ohio was the only forum reasonably available to the plaintiff with which the defendant had any connections. He goes on to note, however, that the Supreme Court did not use this rationale. Rather, the Court concluded that on the basis of the defendant's activities in Ohio, it was just and reasonable to require the corporation to defend there. Zammit, *supra* note 46, at 932.

It is interesting to note that in *Travelers* the lawsuit was instituted to secure a cease and desist order regarding further sales or offers of insurance until defendant complied with the Virginia "Blue Sky Law." *Travelers Health Ass'n. v. Virginia ex rel State Corp. Comm'n.*, 339 U.S. 643, 645 (1950). See also notes 65-68 and accompanying text *supra*. Thus, the cause of action was related to the defendant's forum activities. The Court, however, did not comment on this fact, choosing instead to rely on the "continuous and substantial" nature of the defendant's activities. The defendant in *Travelers* actually satisfied both jurisdictional standards. See notes 60-64, 101-11, and accompanying text *supra*.

Clearly, the activities of the defendant in *Braband* were not of such large proportions. Beech Aircraft Corporation did not at any time conduct its business operations in Illinois.⁷³ The mere existence of a non-exclusive, mutually cancellable agreement⁷⁴ with an independently-owned Illinois company did not place the defendant's total business operation in Illinois. In addition, Beech did not directly solicit customers in the forum for an extended period of time, as occurred in *Travelers*.⁷⁵ Thus, the court's conclusion that Beech was a de facto resident for jurisdictional purposes seems unjustified.

The Illinois court, moreover, declined to comment on the existence of principal-agent relationship based on the agreement.⁷⁶ Such a discussion would have given greater credibility to the court's finding that the defendant was present in Illinois, since the agent's activities in the forum could be imputed to the principal, thereby enhancing the quality and nature of the foreign corporation's contacts.⁷⁷ In the absence of such a discussion, the court's conclusion is, in light of *Perkins* and *Travelers*, very weak. The *Braband* facts show that the foreign corporation merely engaged in isolated and erratic visits to the state that could not be considered conducting a substantial and continuous part of its business in Illinois.⁷⁸ In light of such facts, it is obvious that Beech did not have sufficient contacts for a "resident" status.

Since Beech's activities in Illinois did not warrant the conclusion that it was a resident for jurisdictional purposes, could Illinois have sustained jurisdiction over the defendant as a non-resident? It is doubtful in light of prior case precedent. *International Shoe* held that in personam jurisdiction was not predicated solely on physical "presence."⁷⁹ Where a non-resident defendant is involved, jurisdiction depends on whether there is sufficient "minimum contacts with [the forum state] such that the maintenance of the

73. See notes 13, 21, 25, 31 *supra*.

74. *Braband v. Beech Aircraft Corp.*, 51 Ill. App. 3d 296, 311-12, 367 N.E.2d 118, 130 (1st Dist. 1977).

75. It should be noted that mere solicitation of business, without more, has never been the standard for jurisdiction over foreign corporations in Illinois. See, e.g., *Lindley v. St. Louis-San Francisco Ry.*, 276 F. Supp. 83 (N.D. Ill. 1967), *rev'd*, 407 F.2d 639 (7th Cir. 1968); *Koplin v. Saul Lerner Co., Inc.*, 52 Ill. App. 2d 97, 201 N.E.2d 763 (1st Dist. 1964). The lower court in *Lindley* originally upheld jurisdiction because the defendant allegedly engaged in a continuous course of business in Illinois by maintaining a solicitation office in the state for 30 years. On appeal, the Seventh Circuit, applying Illinois law, specifically limited the interpretation and application of § 13.3 and found the defendant's activities insufficient to justify in personam service of process. 407 F.2d at 643.

76. It is interesting to note that Justice Stamos' opinion at the appellate level was based entirely on this point, yet the Illinois Supreme Court did not mention the subject. See *Braband v. Beech Aircraft Corp.*, 51 Ill. App. 3d 296, 303-07, 367 N.E.2d 118, 124-27 (1st Dist. 1977) (Stamos, J., concurring).

77. See, e.g., *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914).

78. See notes 53-56 and accompanying text *infra*.

79. *International Shoe Co. v. Washington*, 326 U.S. 310, 317-19 (1945).

suit [does] not offend traditional notions" of due process.⁸⁰ The terms "presence" and "present" are merely *symbols* used to describe the conclusion that the non-resident's forum activities satisfy due process.⁸¹ The problem with the *International Shoe* standard is that the language used is inherently uncertain.⁸² The Court did not expressly state that to satisfy due process there must be a relationship between the cause of action sued upon and the non-resident defendant's activities in the forum. Rather, it took a "back door" approach stating that where the cause of action arises from or relates to forum activities, due process is *not denied* by requiring the non-resident defendant to conduct its defense there.⁸³

Cases decided immediately after *International Shoe* emphasized the importance of something more than fictional "presence" as a basis for state court jurisdiction over non-residents. In *McGee v. International Life Insurance Co.*,⁸⁴ the cause of action was based on an insurance contract between the plaintiff's decedent, a resident of the forum, and the defendant foreign corporation.⁸⁵ After commenting on the evolving nature of commercial transactions in today's modern business world,⁸⁶ the Court said it was "suffi-

80. *Id.* at 316.

81. *Id.* at 316-17. See also Zammit, *supra* note 46, at 923-25.

82. See *Shaffer v. Heitner*, 433 U.S. 186, 211 (1977); *International Shoe Co. v. Washington*, 326 U.S. 310, 323 (1945) (Black, J.); *Baltimore & Ohio R.R. Co. v. Mosell*, 67 Ill. 2d 321, 368 N.E.2d 85 (1977) (Dooley, J., dissenting). See also F. JAMES, *CIVIL PROCEDURE* 640 (1965); Royce & Mason, *Non-resident Jurisdiction in Business Litigation PART I*, 53 CHI. B. REC. 100, 101 (1971); Comment, *Civil Procedure—Jurisdiction—Shaffer v. Heitner—If Int'l Shoe Fits, Attach It*, 31 RUTG. L. REV. 308, 315 (1978). The Court's opinion failed to articulate *why* the facts and circumstances of *International Shoe* made the assumption of jurisdiction reasonable or just. Mr. Chief Justice Stone looked behind the "presence" theory to decide that a determination of reasonableness was being made, but failed to look behind that reasonableness to analyze *how* it was being determined. Zammit, *supra* note 46, at 924, 934. See also Carrington & Martin, *supra* note 9, at 231-33.

83. The Court phrased its conclusion as follows:

[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and so far as those obligations arise out of or are connected with the activities within the State, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) (emphasis added).

84. 355 U.S. 220 (1957). *McGee* is generally considered the "culmination of the trend [begun by *International Shoe*] toward expanding state court jurisdiction over foreign corporations and other non-residents." *Shaffer v. Heitner*, 433 U.S. 186, 204 n.19 (1977).

85. In *McGee*, plaintiff's decedent, a California resident, purchased a life insurance contract from an Arizona corporation. Later, defendant, a Texas corporation, assumed the insurance obligations of the Arizona company and mailed a reinsurance certificate to the California resident who accepted the offer and paid his premiums by mail from California every year for eight years until his death. Plaintiff, also a California resident and beneficiary of the policy, sued when the defendant refused to pay the claim. 355 U.S. 220, 221-22 (1957).

86. The *McGee* Court noted that the trend toward expanding state court jurisdiction over foreign corporations and other non-residents

is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more states and may in-

cient for purposes of due process that the suit was based on a contract which had substantial connection with [the forum],"⁸⁷ emphasizing that the cause of action arose from the defendant's business contacts with the state.⁸⁸

In *Hanson v. Denckla*,⁸⁹ however, the Supreme Court *denied* jurisdiction because the cause of action did *not* arise "out of an act done or transaction consummated in the forum state."⁹⁰ In this sense, *Hanson* differed from *McGee*.⁹¹ The *Hanson* Court made it clear that the liberal standards enunciated in *International Shoe* did not "[herald] the eventual demise of all restrictions on the personal jurisdiction of state courts."⁹² However minimal the burden on defendant of defending in the forum state, he or she cannot be called upon to do so without sufficient minimum contacts.⁹³ Jurisdiction, the *Hanson* Court held, does not arise because the forum is the "center of gravity . . . or the most convenient location for litigation."⁹⁴ Rather, jurisdiction accrues because of the acts of the defendant.⁹⁵

Hanson and *McGee* confirmed the indication in *International Shoe* that a relationship between the defendant, the forum, and the litigation was required before jurisdiction could properly be asserted over a non-resident.⁹⁶ No such relationship existed in *Braband*. The only connection with Illinois in the *Braband* suit was the fact that plaintiffs were Illinois residents. The

volve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. 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.

355 U.S. 220, 222-23 (1957).

87. The decedent was directly solicited by the defendant insurance company and the contract in question was delivered in California. Premiums were mailed by the decedent from the forum every year for eight years and the insured was a resident of that State when he died. *Id.* at 223.

88. Like *Travelers*, the *McGee* Court also pointed to the state's strong interest in regulating and overseeing insurance obligations. *Id.* at 223. This factor, a state's interest in regulatory areas, is often used to bolster the Court's decision to assert jurisdiction, but in and of itself is insufficient to satisfy due process requirements. See *Shaffer v. Heitner*, 433 U.S. 186, 223 (1977) (Brennan, J., concurring in part and dissenting in part); note 98 and accompanying text *infra*. See also Note: *State Court Jurisdiction Founded on Territorial Power Denies Due Process to Nonresident Defendants—Shaffer v. Heitner*, 27 DEPAUL L. REV. 447, 457 (1978).

89. 357 U.S. 235 (1958).

90. *Id.* at 251. The *Hanson* Court denied jurisdiction over a non-resident trustee whose contacts with the state were by correspondence with the settlor of a trust established in Delaware. The settlor moved to Florida from Pennsylvania after the trust was created.

91. The *Hanson* Court said, "[T]he record discloses no instance in which the [defendant] performed any acts in Florida that bear the same relationship to the agreement as the solicitation in *McGee*." *Id.* at 252. See also *Shaffer v. Heitner*, 433 U.S. 186, 204 n.19 (1977).

92. *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

93. *Id.*

94. *Id.* at 254.

95. *Id.*

96. See notes 79-83 and accompanying text *supra*.

cause of action arose not from defendant's contacts with Illinois, but from an accident in Canada.⁹⁷ The only contact the aircraft had in the forum was that it took off from Illinois on its last journey.⁹⁸ Neither Beech nor its distributor had any contact with the plane prior to that flight.⁹⁹ In fact, Beech did not have any contact with the aircraft for five years preceding the crash.¹⁰⁰

The exact meaning of the "defendant-forum-litigation relationship" requirement was clarified in *Shaffer v. Heitner*,¹⁰¹ where it was held that the due process requirements of *International Shoe* must be satisfied to justify any and all assertions of state court jurisdiction over non-resident defendants who were physically present in the forum.¹⁰² *Shaffer* concerned an attempted assertion of jurisdiction over non-residents based on the mere presence of their property in the forum.¹⁰³ The property serving as a basis for state court jurisdiction, however, was totally unrelated to the plaintiff's cause of action.¹⁰⁴ The Court held that personal jurisdiction could not be upheld where the property upon which jurisdiction was based was neither the subject matter of the litigation nor related to the underlying cause of action.¹⁰⁵ The *Shaffer* Court noted that although the presence of property might suggest the existence of other ties among the defendant, the forum, and the litigation, it alone could not support jurisdiction.¹⁰⁶ There must be some act, such as conducting substantial and continuous business activities in the forum,¹⁰⁷ by which the defendant purposely avails himself of the benefits and protections of the forum's laws.¹⁰⁸ Even a state's "strong interest" in

97. 72 Ill. 2d at 550, 557, 382 N.E.2d at 253, 256; Record, *supra* note 13, at 63, 66. See note 22 and accompanying text *supra*.

98. Record, *supra* note 13, at 64.

99. 51 Ill. App. 3d at 307, 367 N.E.2d at 127.

100. The aircraft in question was manufactured by the defendant in Wichita, Kansas. In 1966 it was sold to an aircraft distributor in Texas. In 1968, the aircraft was sold by the Texas corporation to a Nevada company. In 1971 the Nevada company sold the plane to Coleman Aircraft Corp. of Morton Grove, Illinois, who, in turn, sold it to Eagle Aircraft Services, Ltd., a British corporation with its principal place of business in London, England. The aircraft crashed in Canada on December 10, 1971, while it was being ferried from Coleman's place of business to Eagle's location in England. 72 Ill. 2d at 550-51, 382 N.E.2d at 253; 51 Ill. App. 3d at 307, 367 N.E.2d at 127.

101. 433 U.S. 186 (1977).

102. *Shaffer v. Heitner*, 433 U.S. 186, 208, 212 (1977).

103. *Id.* at 213. Although *Shaffer* dealt with the question of quasi in rem jurisdiction, conceptually the Court went much further and discussed the whole principle of in personam jurisdiction.

104. *Id.* at 209. The cause of action in *Shaffer* was a shareholder's derivative suit against corporate directors who did not reside in the forum. *Id.* at 189.

105. *Id.* at 209, 213, 216-17.

106. *Id.* at 209.

107. In such a case, jurisdiction would be appropriate under the "substantial contacts" theory. See notes 60-78 and accompanying text *supra*.

108. *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). See also *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945). In *International Shoe*, the Court specifically related the cause of action and the activities by which the defendant avails himself of the benefits and protections of the forum. *Id.* at 319.

the matter, without more, fails to demonstrate that it is a fair forum for the litigation.¹⁰⁹ *Shaffer* made it clear that the "minimum contacts" that make it reasonable to compel a true *non*-resident to defend a lawsuit in the forum state require, at a minimum, a relationship between the defendant, the litigation, and the forum.¹¹⁰ It is this relationship which was ignored in *Braband*, since the Illinois court found Beech to be a *de facto* resident of the state by virtue of alleged activities conducted there.¹¹¹

Beech's isolated and casual activities in Illinois were neither the subject matter of the litigation nor related to the underlying cause of action. The subject matter of the litigation was the alleged defective manufacture of an aircraft in Wichita, Kansas, and the cause of action was a wrongful death suit based on the crash of that aircraft in Canada.

Failure to Properly Apply Prior Illinois Case Law

The Illinois court found that the "quality and nature" of the defendant's activities showed sufficient contacts with Illinois so as not to offend "traditional notions of fair play and effective justice."¹¹² This finding, however, was unwarranted not only in light of prior United States Supreme Court decisions but also prior Illinois case law. In *Nelson v. Miller*,¹¹³ sections 16 and 17 of the Civil Practice Act were first challenged on due process grounds. The Illinois Supreme Court said there was "no injustice to the nonresident in a requirement that he return . . . to the place to which the injury was inflicted."¹¹⁴ In *Nelson*, the defendant was a Wisconsin company whose employee performed acts in the forum within the scope of his employment and that gave rise to injury in Illinois.¹¹⁵ This fact provided the "minimum contact" necessary to satisfy due process and created the link between the defendant, the litigation, and the forum.¹¹⁶

109. *Shaffer v. Heitner*, 433 U.S. 186, 215 (1977). The *Braband* court tried to justify its assertion of jurisdiction over Beech by noting the state's interest "in providing redress in its own courts against persons who inflict injuries upon, or otherwise incur obligations to, those within the ambit of the state's legitimate protective policy." 72 Ill. 2d at 556-57, 382 N.E.2d at 256, citing *Nelson v. Miller*, 11 Ill. 2d 378, 384, 143 N.E.2d 673, 676 (1957). The state's interest in protecting its residents, however, does not suffice to meet due process requirements. The due process clause requires that non-resident defendants have adequate notice of the claim against them and notice that their activities may subject them to jurisdiction. *Accord*, *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969). Beech's activities did not provide such notice. See notes 53-57, 125-29, and accompanying text *infra*.

110. *Shaffer v. Heitner*, 433 U.S. 186, 204, 207, 209 (1977). See also note 10 *supra*.

111. 72 Ill. 2d at 558-60, 382 N.E.2d at 257.

112. 72 Ill. 2d at 558, 559, 382 N.E.2d at 257.

113. 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

114. *Id.* at 385, 143 N.E.2d at 677 (emphasis added).

115. *Id.* at 391, 143 N.E.2d at 680.

116. The *Nelson* court noted that §§ 16 and 17 "reflect a conscious purpose to assert jurisdiction over nonresident defendants to the extent permitted by the due process clause." *Id.* at 389, 143 N.E.2d at 679. The court, however, noted that such authority may be asserted only over

Similarly, the court in *Gray v. American Radiator and Standard Sanitary Corp.*¹¹⁷ held that the particular act or transaction in question must have a connection with the forum if the "minimum contacts" standard of *International Shoe* was to be satisfied.¹¹⁸ Otherwise, the *Gray* court noted, the non-resident defendant must have forum activities "of a sufficiently substantial nature"¹¹⁹ to be required to defend a suit in the state on a cause of action unrelated to those activities. In *Gray*, the cause of action was also prompted by an injury that occurred in Illinois, although the defendant's alleged misconduct took place elsewhere.¹²⁰

Since neither the injury nor the defendant's alleged misconduct in *Braband* occurred in Illinois, the crucial question becomes whether prior Illinois decisions support jurisdiction because Beech had such substantial contacts with the state that "it could be served in the same manner as other resident corporations."¹²¹ In *St. Louis-San Francisco Railway v. Gitchoff*,¹²² the appellant's forum activities went beyond mere solicitation and were sufficiently substantial to support jurisdiction.¹²³ The appellant, although not licensed to do business in Illinois, maintained a Chicago office staffed with seven employees. In addition, over a ten year period the appellant's assistant superintendent spent 60-80% of his working time in the state.¹²⁴

Beech's activities in Illinois, however, were neither qualitatively nor quantitatively as substantial. The agreement between Beech and Hartzog was nonexclusive, mutually cancellable,¹²⁵ and had nothing to do with the lawsuit in question. Beech's marketing manager, moreover, visited Hartzog "approximately a dozen times in nine years."¹²⁶ Nothing in the record states who initiated or paid for the sales program,¹²⁷ nor who placed or paid

defendants who have the requisite minimum contacts with the forum. *Id.* at 389, 143 N.E.2d at 679. In *Nelson*, the § 17 long-arm statute was used to gain jurisdiction over the Wisconsin defendant. Since § 17 requires that the cause of action arise from a § 17 act, ILL. REV. STAT. ch. 110, § 17(3), a relationship between the defendant, the litigation, and the forum existed. Therefore, the "minimum contacts" standard was met.

117. 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

118. *Id.* at 438, 176 N.E.2d at 764.

119. *Id.*

120. See note 38 *supra*.

121. *St. Louis-San Francisco Ry. v. Gitchoff*, 68 Ill. 2d 38, 43, 369 N.E.2d 52, 54 (1977) (emphasis added).

122. *Id.*

123. See also *Gordon v. International Tel. & Tel. Co.*, 273 F. Supp. 164 (N.D. Ill. 1967); *Lindley v. St. Louis-San Francisco Ry.*, 276 F. Supp. 83 (N.D. Ill. 1967).

124. *St. Louis-San Francisco Ry. v. Gitchoff*, 68 Ill. 2d 38, 41; 369 N.E.2d 52, 53 (1977).

125. *Braband v. Beech Aircraft Corp.*, 51 Ill. App. 3d 296, 311-12, 367 N.E.2d 118, 129-30 (1st Dist. 1977); Record, *supra* note 13, at 78, 79, 87; see also note 21 *supra*.

126. *Braband v. Beech Aircraft Corp.*, 51 Ill. App. 3d 296, 305, 367 N.E.2d 118, 126 (1st Dist. 1977).

127. It is one thing to say a corporation partakes of the benefits and protection of a state's laws and therefore subjects itself to jurisdiction when it initiates such a sales program and

for the advertisements.¹²⁸ It strains reason, therefore, to suggest that any company who comes into the state to visit a customer or any company whose customers advertise its products has consented to jurisdiction in Illinois with respect to a cause of action totally unrelated to those activities.¹²⁹ As Mr. Justice Stevens said in his concurring opinion in *Shaffer*, "the [due process] requirement of fair notice also . . . includes fair warning that a particular activity may subject a person to jurisdiction of a foreign sovereign."¹³⁰

If the defendant's alleged misconduct or the consequences of it had occurred in Illinois, there would be no question that the Illinois court could properly have asserted jurisdiction.¹³¹ If Beech had directly solicited the plaintiff's decedents¹³² or the cause of action had arisen from defendant's contacts with Illinois, jurisdiction also would have been warranted. If Beech had conducted a continuous and substantial part of its business in Illinois¹³³ or the cause of action arose from some act done or transaction consummated by the defendant in Illinois,¹³⁴ the court's decision would have been justified. But where jurisdiction is asserted merely on the defendant's isolated or casual activities in the forum and the cause of action does not arise from any of these activities, due process is not satisfied.

To hold as the Illinois Supreme Court did in *Braband* is to open a "veritable Pandora's Box of litigation."¹³⁵ It is to suggest that alleged misconduct in one state (Kansas) causing injury in a second state (Canada) allows suit in a third state (Illinois), even though the defendant did not have contacts of a sufficiently substantial nature to be considered a resident of the forum.¹³⁶

culminates sales transactions with citizens of the forum state. *See, e.g., Hanson v. Denckla*, 357 U.S. 235 (1958). It is quite another thing to draw the same conclusion when the foreign corporation has been invited to assist in a presentation planned and paid for by an independently-owned company and which will benefit directly only that latter company.

128. Each advertisement shown in the record is listed under an independently-owned company's name. Since the court refused to comment on any principal-agent relationship between Hartzog and Beech, the question of use of a corporate logo as a basis for jurisdiction was not addressed. Additionally, to find the placement of advertisements by independent companies as a means of jurisdiction over a second company would mean that anytime a local merchant advertised products manufactured by others but sold in the merchant's store, the manufacturer would be "present and doing business" in Illinois and therefore subject to jurisdiction. Surely, this was not the intent of our legislature, nor the United States Supreme Court in *International Shoe*.

129. *Cf. Shaffer v. Heitner*, 433 U.S. 186, 216 (1977) (discussion of purchasing securities in a state as a basis for consenting to jurisdiction in that state).

130. *Id.* at 218 (Stevens, J., concurring).

131. *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961); *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

132. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957); *Travelers Health Ass'n. v. Virginia ex rel State Corp. Comm'n.*, 339 U.S. 643 (1950).

133. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952); *Travelers Health Ass'n. v. Virginia ex rel State Corp. Comm'n.*, 339 U.S. 643 (1950); *St. Louis-San Francisco Ry. v. Gitchoff*, 68 Ill. 2d 38, 369 N.E.2d 52 (1977).

134. *Hanson v. Denckla*, 357 U.S. 235 (1958).

135. *American Eutectic Welding Alloys Sales Co. v. Dytron Alloys Corp.*, 439 F.2d 428, 434 (2d Cir. 1971).

136. *See* notes 60-78 and accompanying text *supra*.

Moreover, although the defendant is a non-resident, the decision suggests that jurisdiction may be upheld absent a relationship between the defendant, the litigation, and the forum.¹³⁷ As the decision now stands, there is "hardly any limit but the sky"¹³⁸ to the assertion of jurisdiction over foreign corporations.

CONCLUSION

The Illinois Supreme Court overstepped the inherent limitations of the due process clause when it found a foreign corporation to be a de facto resident of the state for jurisdictional purposes. It cannot be said that the Illinois activities of Beech constitute such a *pattern* of business activities as to qualify under the "continuous and substantial" test. While the "minimum contacts" standard is not to be mechanically or quantitatively applied,¹³⁹ due process surely requires more than the isolated, erratic events found sufficient to impose jurisdiction in *Braband*. Absent the *Shaffer* requirement of a relationship between the defendant, the litigation, and the forum, Illinois should not have sustained jurisdiction under the facts and circumstances of this case.

Because the Illinois Supreme Court did not enunciate any concrete standards for the transformation of a non-resident defendant into a resident, its ruling in *Braband v. Beech Aircraft Corp.* opens the door to assertions of jurisdiction not intended by the Supreme Court in *International Shoe* or its progeny. If the *Braband* decision is not reconsidered, non-resident defendants will become subject to Illinois jurisdiction solely because of their isolated and casual visits to the state.

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137. See notes 84-111 and accompanying text *supra*.

138. *International Shoe Co. v. Washington*, 326 U.S. 310, 326 (1945) (Black, J.).

139. *Id.* at 319.

