Buffalo Law Review

Volume 22
Number 3 *Judicial Secrecy: A Symposium*

Article 2

4-1-1973

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SUBSIDIARY CORPORATIONS IN NEW YORK: WHEN IS MERE OWNERSHIP ENOUGH TO ESTABLISH JURISDICTION OVER THE PARENT

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INTRODUCTION

In the past 150 years a vast amount of litigation has focused on the extent to which corporations are subject to suit in states other than their state of incorporation. Among the many issues which remain unresolved is whether and to what extent ownership by a parent corporation of stock in a local subsidiary constitutes "doing business" or provides some other basis for jurisdiction over the parent. This article is concerned with that issue alone and does not discuss the circumstances which would make the subsidiary itself amenable to suit.

I. BACKGROUND DEVELOPMENTS

When corporations ventured outside their state of incorporation for the purpose of carrying on business, the states in which these "local" (as distinguished from interstate) activities were conducted required that these foreign corporations consent to suit in their courts.[1] To deal with foreign corporations which conducted local business within the state but had given no formal consent, the concept of implied consent was developed. By engaging in business in the state, the foreign corporations had consented to being sued there.[2] As an alternative theory, it was said that a foreign corporation might be "present" in the state and thus amenable to suit where the corporation was "doing business."[3] Under this test, the question

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1. LaFayette Ins. Co. v. French, 59 U.S. (18 How.) 404 (1855).

2. *Id.*

3. *See* Philadelphia & R.R.R. v. McKibbin, 243 U.S. 264, 265 (1917):

> A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the State in such manner and to such extent as to warrant the inference that it is present there.

See also Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917).

of presence was decided with reference to the nature and frequency of the corporation's activities within the state.[4]

In *International Shoe Co. v. Washington,*[5] the Supreme Court rejected the consent and presence theories as "mechanical or quantitative" and substituted a qualitative criterion. All that is required in order that due process not be denied, held the Court, is that the foreign corporation have "certain minimum contacts" with the forum such that maintenance of the suit does not offend "traditional notions of fair play and substantial justice."[6]

> But to 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 cases, hardly be said to be undue.[7]

This latter theme was expounded upon again in *Travelers Health Association v. Virginia,*[8] where the Court upheld the state's power to require a foreign insurance company issuing policies to Virginia residents to consent to service within the state because it is no denial of due process for the state to protect its citizens from having to go out of state to enforce claims against the foreign insurer. Nor is it a denial of due process—said the Court in *Perkins v. Benguet Consolidated Mining Co.*[9]—for a state to accept jurisdiction of an in personam proceeding to enforce a cause of action not arising out of the corporation's activities in the state if the corporation engaged in substantial, continuous and systematic activities in that state. In *McGee v. International Life Insurance Co.*[10] the Court made it clear that a single contact with the forum state would be sufficient to satisfy due process by requiring a foreign insurer to defend in the forum

4. Under either the "implied consent" or "presence" theories, the test for determining jurisdiction was whether the corporation was "doing business." But there was a divergence of opinion under each test whether the foreign corporation could be sued on causes of action unrelated to its activity in the state. *See* text accompanying note 47 *infra.* There was also considerable divergence of opinion over the nature and amount of activity sufficient to constitute "doing business."

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

6. *Id.* at 316.

7. *Id.* at 319.

8. 339 U.S. 643 (1950).

9. 342 U.S. 437 (1952).

10. 355 U.S. 220 (1957).

state, where the suit was based on a contract which had a substantial connection with that state. There the contract of insurance was delivered in, the premiums mailed from, and the insured a resident of the forum state. Yet *McGee* did not remove all the limitations surrounding the personal jurisdiction of state courts. In *Hanson v. Denckla,*[11] the Court stated that "in each case . . . there [must] be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State . . . ."[12]

II. THE *Cannon* CASE

Since the primary concern of this article is the parent-subsidiary relationship as a basis for jurisdiction over the parent corporation, our attention should first be directed to *Cannon Manufacturing Co. v. Cudahy Packing Co.*[13] because of the great impact that case has had on the development of law in this area.

In *Cannon,* a North Carolina corporation brought suit in that state against a Maine corporation for breach of contract and served process upon the defendant's subsidiary which was doing business in North Carolina. The Court described the subsidiary as an "instrumentality" employed to market the parent's products in North Carolina but not as its "agent."[14] The subsidiary bought Cudahy products from the parent and sold to dealers. Although distinct corporate entities existed, the complete domination of the subsidiary by the parent paralleled domination of the unincorporated selling branches or departments which marketed Cudahy products in other states.[15] The action was for an alleged breach of contract by the parent, and was not related to the subsidiary or its activities in North Carolina.

The issue was whether the parent "was doing business within the State in such a manner and to such an extent as to warrant the inference that it was present there."[16] No question as to the constitutional power of the state to subject the parent to its jurisdiction was raised, and the Court noted that there was no claim that jurisdiction was

11. 357 U.S. 235 (1958).
12. *Id.* at 253.
13. 267 U.S. 333 (1925).
14. *Id.* at 335.
15. *Cf.* Public Adm'r v. Royal Bank of Canada, 19 N.Y.2d 127, 224 N.E.2d 877, 278 N.Y.S.2d 378 (1967).
16. 267 U.S. at 334-35.

supported by any state statute or local practice. Reflecting its pre-*Erie*[17] posture, North Carolina decisions were not cited, and the Court noted that *Congress* had not declared a parent amenable to suit in such circumstances. The Court cited certain precedent which indicated that the use of a subsidiary would not "necessarily" subject the parent corporation to jurisdiction, and affirmed the dismissal based on the lack of jurisdiction over the parent.

This case is widely considered to have established as a general rule that "mere ownership" of a subsidiary will not subject the parent to the jurisdiction of the state where the subsidiary is doing business. This is unfortunate for at least two reasons. First, the decision is not based on any federal matter but rather is reflective of the pre-*Erie* concept of a "transcendental body of law outside of any particular state."[18] Thus while some courts regard *Cannon* as a statement of due process limitations, it is rather nothing more than the Supreme Court's conception as to what constituted "doing business" at that time. Indeed, *Arrowsmith v. United Press International*[19] has now established the general rule that in diversity cases the question of whether a defendant is amenable to service of process is determined in the first instance with reference to state law. Where jurisdiction is found, federal law is relevant to decide whether the state's assertion of jurisdiction is offensive to due process requirements.

Second, the decision is based upon the concept of "presence" which was scrapped in *International Shoe* and replaced by the less rigid "minimum contacts" approach. As the Supreme Court said in the *McGee* decision:

> In a continuing process of evolution this Court accepted and then abandoned "consent," "doing business," and "presence" as the standard for measuring the extent of state judicial power over such corporations. . . .
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> Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other non-residents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated

17. Erie R.R. v. Tompkins, 304 U.S. 64 (1938).

18. *See id.;* Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co., 276 U.S. 518, 533 (1928).

19. 320 F.2d 219 (2d Cir. 1963).

> 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.[20]

In short, the *Cannon* decision was a product of its time and its currency has long since passed.[21]

III. In Search of a Standard

With this background, it may be well to consider some basic concepts before being exposed to the treatment of the issue in the cases. Virtually all of the cases dealing with the subject have agreed that there is inherent in corporate existence a limitation on amenability—a "limited amenability"—which is coexistent with limited liability. Yet no decision explores the nature or origin of this supposed feature of corporate existence. The courts have simply assumed that both limited liability and limited amenability may be lost under the same circumstances.[22]

The *Restatement of Conflicts (Second)* also accepts the "limited amenability" analysis. According to a comment to section 52, "a state does not have judicial jurisdiction over a parent corporation merely because a subsidiary of the parent does business within its territory."[23] It will be subject to that jurisdiction, it says, only when the subsidiary does "acts" or "causes effects" in the state "at the direction of the parent corporation," or if the parent "so controls or dominates the subsidiary" that its independent corporate existence is disregarded.[24] These are theories common to "piercing the corporate veil" for liability purposes. Insofar as jurisdiction is concerned, they seem merely to beg the question. Common sense tells us that where a subsidiary corpora-

20. 355 U.S. at 222-23.

21. *See* Cardozo, *A New Footnote in Erie v. Tompkins: "Cannon is Overruled,"* 36 N.C.L. Rev. 181 (1958).

22. In New York for example, only in the recent *Frummer* decision has a court distinguished the two and that was over a very vigorous dissent. Frummer v. Hilton Hotels Int'l, Inc., 19 N.Y.2d 533, 227 N.E.2d 851, 281 N.Y.S.2d 41 (1967).

23. Restatement (Second) of Conflicts § 52, comment (1971). These same rules apply without change as to jurisdiction over a subsidiary whose parent does business within the state.

24. *Id.*

tion is organized by a parent *any* act done by the subsidiary will be at the direction of the parent unless clearly outside the scope of the subsidiary's business—whatever fiction may be maintained as to its autonomy. Section 52 itself recognizes reasonableness as the guide for determining when the state may exercise its jurisdiction. Yet it seems that equating (1) liability of the parent for acts of the subsidiary with (2) whether a court should require the citizens of its state to go to the jurisdiction of the parent for their day in court, is most unreasonable—particularly since that analysis ignores the fact that the parent may derive substantial economic benefit from the intrastate activities of its subsidiary.

Is there a foundation for the concept of limited amenability? The powers and rights of corporations and shareholders find their basis in the law of the state of incorporation. The corporation has power to sue and be sued in its corporate name[25] and thus at least for some purposes is an entity. Corporations typically also have power to own shares in other corporations.[26] And the limited liability of shareholders is also expressly a part of these corporation statutes.[27] However, no state's corporation law attempts or could attempt to limit the extent to which a corporation shall be subject to the jurisdiction of *another* state. The amenability of corporations to suit in other states is determined by the jurisdictional law of those states and the only limitations on it, as seen earlier, are federal due process limitations. It hardly seems possible that such niceties as separate incorporation are important when the legal standard is "traditional notions of fair play and substantial justice."[28]

In fact, it was recognized almost fifty years ago that "limited amenability" is not an inherent right by virtue of which parent corporations may avoid jurisdiction where their subsidiaries do business. In 1925, Professor Ballantine responded to the *Cannon* decision by writing that the issue of whether a parent corporation is doing business through its subsidiaries "may be treated as an entirely different question" from that of loss of limited liability.[29] He stated further:

> The doctrine that the parent corporation is not deemed to be

25. *See, e.g.,* ABA-ALI MODEL BUS. CORP. ACT § 4(b) (1969).
26. *Id.* § 4(g).
27. *Id.* § 25.
28. *See* text accompanying note 6 *supra.*
29. Ballantine, *Separate Entity of Parent and Subsidiary Corporations,* 14 CALIF. L. REV. 12 (1925).

> doing business through its subsidiaries, in the eye of the law, may be regarded as a somewhat technical rule adopted from practical reasons of policy to limit the somewhat arbitrary power exercised by the various states over foreign corporations.[30]

Thus it seems that what the courts have been treating as a somewhat inflexible corporate norm for so many years was considered only a matter of policy in 1925, and was adopted as a means of dealing with the issues that *International Shoe* and subsequent Supreme Court cases eventually defined.

In his monumental work *Subsidiaries and Affiliated Corporations*,[31] Professor Latty agreed with the Ballantine analysis.

> The lack of jurisdiction is put upon the familiar ground that the parent and subsidiary are different persons and that the subsidiary is the person who is "present" or "found" or "doing business" in the state or district, not the parent. As usual, this is putting the cart before the horse. It is not that there is no jurisdiction because the two corporations are necessarily different persons; rather, the point is that since there are reasons (or at least, so the court thinks) for denying that jurisdiction exists over a parent simply because it exists over the subsidiary, therefore one may treat the two, under such circumstances, like different persons.
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> . . . The problem in these jurisdiction cases is to be solved not by saying that the subsidiary is or is not the mere instrumentality of the parent, *but by seeking the reasons why the foreign parent should not be subjected* to local jurisdiction, simply because the subsidiary is so subjected, notwithstanding the parent's ownership of substantially all the subsidiary's stock.[32]

Professor Latty then mentions the reason for denying jurisdiction over the parent suggested by Professor Ballantine and—anticipating *International Shoe*'s "balancing" standard—suggests a possible countervailing consideration:

> [A] court may feel these reasons are overbalanced by the injustice which it may believe to follow from allowing the parent to do business all over the country and yet be suable only at home.[33]

Accepting the Ballantine-Latty view that the test should simply be one of fairness, what kind of analysis is appropriate today? It might

30. *Id.* at 14.
31. E. LATTY, SUBSIDIARIES AND AFFILIATED CORPORATIONS (1936).
32. *Id.* at 61 (emphasis added).
33. *Id.*

be proposed that *the parent should be amenable to the jurisdiction of the state where its subsidiary has the requisite minimum contacts whenever it is reasonable to conclude that the parent and subsidiary constitute a "single economic entity."*[34] Under the proposed analysis, the acts of the subsidiary would be attributed to the parent such that the court would have judicial jurisdiction over the parent to the same extent that it would the subsidiary. The court would remain responsible for weighing the interests and conveniences of the parties, but any question as to the consequences of separate incorporation would already be resolved. This broad proposal may be illustrated by the following examples.

First, where there is such a commingling of management and affairs of parent and subsidiary that the subsidiary lacks independent existence, the parent would be amenable to the jurisdiction of the subsidiary's state. This is so only because the two corporations clearly constitute a "single economic entity," and would not necessarily result in the parent's loss of limited liability in respect to the subsidiary.

Irrespective of any failure to maintain this intercorporate separation, the subsidiary's activities should render the parent amenable to local jurisdiction to the same extent as the subsidiary when, considering the nature of the business activities of each corporation and the dealings between them, it is clear that the two are component parts of the same enterprise. A typical example would be a manufacturing concern which organizes subsidiaries in other states or countries to sell and service the manufacturer's products.

Where the corporations constitute a "single economic entity," the acts of the parent would be attributed to the out-of-state subsidiary in the same way,[35] and there would be attribution as between brother-sister corporations which are part of a "single economic entity."

At the opposite end of such a scale would be a corporation which is a subsidiary of one of today's conglomerates and which carries on business activities of a nature not carried on or directly complemented by an affiliated corporation in the forum state. The "complementary" nature of these activities could be measured with reference to an "arm's-length" standard common in the law of taxation and often applied in determining proper allocations of income and deductions between related taxpayers.

34. *Cf.* Berle, *The Theory of Enterprise Entity*, 47 COLUM. L. REV. 343 (1947).
35. *Cf.* RESTATEMENT (SECOND) OF CONFLICTS § 52, comment (1971).

As suggested hereinafter, the New York Court of Appeals may have taken the first steps towards adopting such an approach. It may be suggested therefore that "mere ownership" is enough in cases where the parent and subsidiary corporations constitute a "single economic entity."

IV. New York Law

A. *The "Presence" Standard*

Before examining the New York parent-subsidiary cases, a quick review should be made of the standard utilized in New York as a basis for the exercise of jurisdiction.

Prior to *International Shoe,* the New York courts had developed a "presence" test for determining whether a foreign corporation was "doing business." If the corporation was "present," jurisdiction was sustained although the cause of action sued upon did not originate in the business transacted in New York.[36]

After *International Shoe,* many state courts in construing the meaning of "doing business" began to move irresistibly toward the limits of federal due process. It was argued that previous interpretations of "doing business" were based on the state courts' conception of the limits of due process.[37] In New York, it was held that a change in previous interpretations of that term was a matter for the legislature, not the courts,[38] despite the fact that the Supreme Court of the United States had adapted its jurisdictional standards to the times without legislative direction.[39] Amendments to the New York Civil Practice Act carried over those interpretations by statute[40] while adding a "long-arm" statute[41] to make even a single transaction or act sufficient to subject the corporation to local jurisdiction provided that the cause of action arose from that act. Thus, generally speaking, while a single act does not constitute "doing business" under the "presence" test, it may be sufficient under the "long-arm" statute where the cause of action arises out of that act.[42] On the other hand, whether or not

36. Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917).
37. *See, e.g.,* Simonson v. International Bank, 14 N.Y.2d 281, 200 N.E.2d 427, 251 N.Y.S.2d 433 (1964).
38. *Id.* at 287, 200 N.E.2d at 430, 251 N.Y.S.2d at 437-38.
39. *Cf.* quotation accompanying note 20 *supra.*
40. N.Y. Civ. Prac. Law § 301 (McKinney 1963).
41. *Id.* § 302.
42. *See* McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

the cause of action originates in the business transacted in New York, jurisdiction will be sustained if the foreign corporation is "present."[43] The classic standard as to whether the corporation is doing business continues to be that announced in *Tauza v. Susquehanna Coal Co.*: when the corporation is "here, not occasionally or casually, but with a fair measure of permanence and continuity, then, whether its business is interstate or local, it is within the jurisdiction of our courts."[44]

This standard may be changing in substance if not in form. Quite recently, the Second Circuit Court of Appeals noted that the New York Court of Appeals has sustained in personam jurisdiction under the "doing business" test each time it has considered the issue in the past decade.[45] According to one commentator: "The New York Court of Appeals has in fact interred *Tauza* and has adopted the more fluid notion of minimum contacts."[46] As will be seen, indications of at least partial burial of any rigid standard are apparent in current Court of Appeals decisions respecting parent-subsidiary corporations.

B. *New York Parent-Subsidiary Decisions*

All the king's horses and all the king's men could not assemble the New York decisions in such a way that one could draw any but the most general conclusions from them. Therefore, they have been arranged herein primarily by their result. The first group consists of cases which are consistent with the *Cannon* analysis. Next are those in which the finding of jurisdiction was influenced by the fact that the parent itself had engaged in some activity in the state. In the third group, the subsidiary was considered to be the "agent," "instrumentality," "adjunct" or "arm" of the parent and as a result the parent was subject to New York jurisdiction. Finally, the most current New York decisions on the subject are analyzed.

1. *The "Cannon" cases.* While the *Cannon* decision was an undesirable influence, New York had reached the same result somewhat earlier in a case which indicates the deep roots of the limited liability-equals-limited amenability concept. In *Robert Dollar Co. v. Canadian*

43. Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917).

44. *Id.* at 276, 115 N.E. at 917; *see* Delagi v. Volkswagenwerk, A.G., 29 N.Y.2d 426, 278 N.E.2d 895, 328 N.Y.S.2d 653 (1972).

45. The *Delagi* case, in which in personam jurisdiction was denied, was decided after Beja v. Jahangiri, 453 F.2d 959 (2d Cir. 1972).

46. McLaughlin, *New York Trial Practice,* 168 N.Y.L.J., Feb. 15, 1972, at 1, col. 1.

Car & Foundry Co.,[47] a Canadian corporation which had been doing business in New York organized a subsidiary to which it assigned New York contracts. The parent withdrew after guaranteeing the performance of the contract and furnishing its own employees to act as directors of the subsidiary. Depending on how the contract was performed, the parent stood to make or lose a large sum of money. The court held the question of whether the parent was doing business "a simple one." Since the subsidiary was a separate corporation, no activities by it could make the parent amenable to suit in New York.

This position was solidified by *Cannon* and the often-cited *Compania Mexicana Refinadora Island v. Compania Metropolitana de Oleoductos*[48] decision three years after *Cannon*. There the Court of Appeals stated that New York courts could acquire jurisdiction over foreign corporations only if those corporations were actually present in the state. Therefore the acts of a parent corporation would not subject its foreign subsidiary to local jurisdiction despite the parent's disregard of the separate corporate existence of the subsidiary. Later cases citing the decision generally overlooked the fact that the court's rationale—that the parent's activities were actually on its own behalf and not for the benefit of its subsidiary—would likely be inapplicable where the activities locally are by a subsidiary rather than a parent of one corporation sought to be subjected to jurisdiction in the forum.

The more usual factual situation was presented in cases such as *Vaughan Motors, Inc. v. Société Anonyme des Automobiles Peugeot*[49] where a French corporation organized a New York subsidiary to promote, sell and service its automobiles in the United States. All automobiles sold in America were sold to the subsidiary, with title passing in France. The plaintiff argued that the parent was doing business in New York. Although the only reason for the corporation's existence was to market the products of the parent, the court reasoned that the acts of the subsidiary could not be attributed to the parent because the subsidiary had its own employees, bank account, books and records.[50] The court quoted extensively from the *Cannon* opinion and concluded that the parent had the right to use the subsidiary in this

47. 100 Misc. 564, 166 N.Y.S. 34 (Sup. Ct.), *aff'd mem.*, 180 App. Div. 895, 167 N.Y.S. 1124 (1st Dep't 1917).

48. 250 N.Y. 203, 164 N.E. 907 (1928).

49. 30 Misc. 2d 1047, 220 N.Y.S.2d 292 (Sup. Ct. 1961).

50. *Id.* at 1049, 220 N.Y.S.2d at 294.

way without subjecting itself to suit in the jurisdiction.[51] To the court, the most important factor was the strict observance of all corporate formalities as to the subsidiary. The court's failure to analyze the relationship between parent and subsidiary in "pragmatic"[52] terms resembled the analysis of many other decisions. In *Donner v. Weinberger's Hair Shops, Inc.*,[53] for example, an Illinois corporation had organized a New York subsidiary for the sole purpose of marketing its cosmetics in New York. The parent challenged the jurisdiction of the New York courts and the Appellate Division remanded the case for further evidence to determine whether Helene Curtis Sales, Inc., was acting "in pursuit of its own corporate purpose"[54] or as an instrumentality of its parent, Helene Curtis Industries, Inc.

There are other New York decisions reflecting strict adherence to the *Cannon* rule,[55] but none applied it more inflexibly than the Southern District of New York in three decisions involving British Overseas Airways Corporation.[56] Relying on *Cannon,* the court determined that if the "corporate separation, though perhaps merely formal, was real"[57] the parent was not doing business in the subsidiary's state. In one decision, the test was whether the subsidiary had its own separate financial structure, officers and employees;[58] and in another, whether the subsidiary had been deprived of "any independent corporate existence or financial responsibility" was determinative.[59] All three cases concerned the activities of the American subsidiary of DeHavilland Aircraft Co. which was organized in this country for the purpose

51. *Id.* at 1049-50, 220 N.Y.S.2d at 294-95.

52. An analysis suggested in Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).

53. 280 App. Div. 67, 111 N.Y.S.2d 310 (1st Dep't 1952).

54. *Id.* at 70, 111 N.Y.S.2d at 312.

55. *E.g.,* Mink v. Lago Oil & Transp. Co., 25 App. Div. 2d 853, 854, 271 N.Y.S.2d 189, 190 (2d Dep't 1966) (Benjamin, J., dissenting); Steingold v. Capital Airlines, Inc., 34 Misc. 2d 33, 227 N.Y.S.2d 639 (Sup. Ct. 1962), *aff'd mem.,* 19 App. Div. 2d 778, 242 N.Y.S.2d 1018 (2d Dep't 1963), *aff'd on rehearing,* 47 Misc. 2d 988, 263 N.Y.S.2d 450 (Sup. Ct. 1965) (on forum non conveniens grounds); Joseph Walker & Sons v. Lehigh Coal & Navigation Co., 8 Misc. 2d 1005, 167 N.Y.S.2d 632 (Sup. Ct. 1957); Blau v. Martin, 8 Misc. 2d 54, 167 N.Y.S.2d 662 (Sup. Ct. 1957); Savadge v. Transportes Aeros Centro Americanos, 187 Misc. 921, 66 N.Y.S.2d 280 (Sup. Ct. 1946).

56. Anderson v. British Overseas Airways Corp., 149 F. Supp. 68 (S.D.N.Y. 1956); Anderson v. British Overseas Airways Corp., 144 F. Supp. 543 (S.D.N.Y. 1956); State St. Trust Co. v. British Overseas Airways Corp., 144 F. Supp. 241 (S.D.N.Y. 1956).

57. 144 F. Supp. at 243.

58. *See id.* at 243-44.

59. *Id.* at 547.

of engaging in the business activities of its parent—a circumstance to which the decisions attributed little significance.

The Second Circuit found an opportunity to boost the *Cannon* rule in a suit brought in New York against a New York parent corporation.[60] The court said *Cannon* was the "leading" case and that it survived the *International Shoe* decision, citing a previous opinion which had not mentioned that case.[61] A New York parent had established a Florida subsidiary to sell clothes furnished by the parent's central buying service. Although the parent had guaranteed the lease of its subsidiary, and their directors were identical, under Florida law the parent was not "doing business" because the parent and subsidiary had dealt with each other as separate corporate entities.

Doubtless in some cases the courts were compelled to conclude that the parent was not doing business in New York because the fact of ownership of stock in the subsidiary was the only link to New York shown by plaintiff's evidence. Thus, in *Nursery Plastics, Inc. v. Newton & Thompson, Inc.*,[62] the court stated that the fact of ownership was all that the plaintiff had shown and therefore held the parent not amenable to jurisdiction in New York.[63] While the obvious suggestion is that the plaintiff should have made a better showing, the general tendency to apply the *Cannon* rule at the outset may well have limited the plaintiff's opportunity to engage in the kind of discovery necessary to bolster his case.

2. *Parent Conducting Activities in New York.* Not all New York courts applied the *Cannon* rule with such inflexibility: a sizable number were able to evade the *Cannon* rule. Though these "exceptions" were not always for the best reasons, they seem to indicate judicial realization of the basic unfairness of permitting the parent to escape jurisdiction solely because of the utilization of a separate corporation to carry on and further its business activities in New York.

Several cases involved activities in New York by the parent itself, and these activities, when combined with those of the subsidiaries, led to the finding that the parent was "doing business." In *Maryland*

60. Berkman v. Ann Lewis Shops, Inc., 246 F.2d 44 (2d Cir. 1957).

61. The case cited was Echeverry v. Kellogg Switchboard & Supply Co., 175 F.2d 900 (2d Cir. 1949).

62. 19 Misc. 2d 883, 191 N.Y.S.2d 655 (Sup. Ct. 1959); *cf.* Noble v. Singapore Resort Motel, 21 N.Y.2d 1006, 238 N.E.2d 328, 251 N.Y.S.2d 433 (1964).

63. *Accord,* Simonson v. International Bank, 16 App. Div. 2d 55, 225 N.Y.S.2d 392, *aff'd,* 14 N.Y.2d 281, 200 N.E.2d 427, 251 N.Y.S.2d 433 (1964).

v. Capital Airlines, Inc.,[64] two subsidiaries were organized by a British parent to carry on business in New York. One subsidiary handled sales activities and the other handled after-sales service activities, both of which had previously been carried on in New York by the parent. The court noted that personnel were shifted between parent and subsidiary and that the parent's financial transactions with the subsidiary were not at arm's length. But it also emphasized the significant amount of activity in New York by agents of the parent itself. The court did not make the basis of its decision clear, but in light of all of the foregoing concluded that the parent was "doing business."[65]

Avoiding the *Cannon* rule, two courts found that the action of the parent in investing in the subsidiary constituted "doing business" in New York because the parent was in the business of making such investments. In *Shapiro v. Huntington*,[66] the court found that the parent functioned solely as a holding company and therefore the acts it performed in New York in furtherance of that purpose were sufficient to constitute "doing business." Clearly, simply buying the stock in another corporation would in the ordinary case not be enough to constitute "doing business," but here the court suggested a test somewhat like the tax law principle that "business bad debts" are those incurred by one who is engaged in making such investments as a trade or business in itself.[67] Similar reasoning was employed in *Rubinstein v. Bouard*,[68] where the court remanded the case for the taking of further evidence.

An analogous argument was made by the plaintiff in *Blaustein v. Pan American Petroleum & Transport Co.*[69] He claimed that since the parent paid compensation to its employees for acting as directors of the New York subsidiary and, in addition, paid the expenses which they incurred in coming to New York for that purpose, the parent itself was "doing business" in the state. But the court rejected the

64. 199 F. Supp. 335 (S.D.N.Y. 1961).

65. The combination of activity by both the parent's agents and the subsidiary also sufficed to make the parent subject to suit in New York in Webster v. Doane, 137 Misc. 513, 241 N.Y.S. 242 (Sup. Ct. 1930) (service of process upheld). *See also* Spacarb, Inc. v. Automatic Canteen Co. of America, 101 F. Supp. 485 (S.D.N.Y. 1951).

66. 34 Misc. 2d 599, 226 N.Y.S.2d 319 (Sup. Ct. 1962).

67. *See* Whipple v. Commissioner, 373 U.S. 193 (1963).

68. 176 Misc. 680, 28 N.Y.S.2d 264 (Sup. Ct.), *modified*, 262 App. Div. 835, 28 N.Y.S.2d 403 (1st Dep't 1941).

69. 163 Misc. 749, 297 N.Y.S. 539 (Sup. Ct.), *aff'd mem.*, 251 App. Div. 704, 296 N.Y.S. 996 (1st Dep't 1937).

argument, relying on *Cannon,* and stated that the activities of the directors were on behalf of the subsidiary and not on behalf of the parent.

3. *Agencies, Instrumentalities, Adjuncts and Arms.* Where the parent has itself conducted no activities in New York, the courts have avoided the *Cannon* rule primarily through reliance on principles developed under various theories of "piercing the corporate veil." This is unfortunate not only because it is an inappropriate parallel but because it is an area of the law that is already extremely uncertain. In applying these principles, the courts have variously described the subsidiary as an "agent," "instrumentality," "adjunct" or "arm" of the parent. Use of these labels has been relatively indiscriminate, and it is impossible to break the cases down except into two broad and overlapping categories: those in which the court was concerned primarily with the nature and extent of the activities carried on by the subsidiary on behalf of its parent; and those which emphasized the general commingling of affairs and operations of parent and subsidiary.

The original application of this analysis was in *American Tri-Ergon Corp. v. Ton-Bild Syndikat, A.G.*[70] where the court indicated that *Cannon* would not apply where "the subsidiary was not acting as an independent agent but rather as one subject to the control and direction of the parent."[71]

In *Society Milion Athena v. National Bank of Greece,*[72] the subsidiary had an independent business but received deposits on behalf of its parent and dealt with those depositors on behalf of the parent. Further, it financed wheat shipments of the parent and transacted other business of the parent on forms kept by the subsidiary for that purpose. Because it had dealt directly on behalf of the parent, the court held that the subsidiary was a "mere instrumentality" even though the corporations observed their distinct corporate entities. Similarly in *Sterling Novelty Corp. v. Frank & Hirsch Distributing Co.,*[73] the Court of Appeals found that a South African corporation

70. 145 Misc. 344, 260 N.Y.S. 139 (Sup. Ct.), *aff'd mem.,* 236 App. Div. 792, 258 N.Y.S. 1061 (1st Dep't 1932).

71. 145 Misc. at 345, 260 N.Y.S. at 140.

72. 166 Misc. 190, 2 N.Y.S.2d 155 (Sup. Ct. 1937), *aff'd mem.,* 254 App. Div. 728, 4 N.Y.S.2d 1004 (1st Dep't), *motion for leave to amend denied,* 254 App. Div. 836, 6 N.Y.S.2d 332 (1st Dep't 1938).

73. 299 N.Y. 208, 86 N.E.2d 564 (1949).

whose shareholders owned the shares of a New York corporation was doing business in New York because the local corporation was the "exclusive buying agent" of the South African corporation. Relying on this case, other courts held that where a subsidiary acts as an "exclusive buying agent," its parent is doing business.[74] Yet it is not clear why the same rationale has been equally applicable in cases where the subsidiary is the exclusive "selling agent" of the parent such as the Peugeot sales subsidiary[75] or the Helene Curtis sales subsidiary.[76]

In the foregoing cases, the nature of the subsidiary's activities made the parent amenable to jurisdiction, but in other cases the courts pointed to some failure to observe the separate corporate entity of the subsidiary or to the fact that it had little independent economic substance. Thus in *Rabinowitz v. Kaiser-Frazer Corp.*,[77] service on an officer of the subsidiary was upheld because the operations of the subsidiary, a New York sales outlet for the parent manufacturer, and those of the parent were deeply intertwined both as to management and finance, and the "separate identity of the sales corporation was nominal only."[78]

In *American Cities Power & Light Corp. v. Williams*[79] the parent had previously engaged in the business activities being carried on by the subsidiary but organized a New York subsidiary to reduce its franchise taxes. The officers and directors of the parent assumed the same positions in the subsidiary, and the parent directed and used the subsidiary as a vehicle for ownership, purchase and sale of securities. The subsidiary having no independent substance, the court held the parent amenable to jurisdiction of the New York courts and upheld service on an officer of the subsidiary.

Where a British parent assigned copyrights to its American subsidiary which was to exploit them at its cost and return all other

74. *E.g.*, Kimberling Knitwear, Inc. v. Mid-West Pool Car Ass'n, 191 N.Y.S.2d 347 (N.Y. Mun. Ct. 1959) (local corporation owned and utilized by several unrelated foreign corporations).

75. Vaughan Motors, Inc. v. Société Anonyme des Automobiles Peugeot, 30 Misc. 2d 1047, 220 N.Y.S.2d 292 (Sup. Ct. 1961).

76. Donner v. Weinberger's Hair Shops, Inc., 280 App. Div. 67, 111 N.Y.S.2d 310 (1st Dep't 1952).

77. 198 Misc. 707, 96 N.Y.S.2d 642 (Sup. Ct. 1950), *aff'd mem.*, 278 App. Div. 584, 102 N.Y.S.2d 815 (2d Dep't 1951), *aff'd*, 302 N.Y. 892, 100 N.E.2d 177 (1951).

78. 302 N.Y. at 893, 100 N.E.2d at 178.

79. 74 N.Y.S.2d 374, 378 (Sup. Ct. 1947).

income received to the parent, a federal district judge found that the subsidiary was a "mere agent," "instrumentality" or "adjunct" of the parent and the parent was therefore "doing business" in New York.[80]

In *Little Falls Paper Co. v. Dalemar Paper Corp.*,[81] a North Carolina corporation was held to be doing business in New York by virtue of its activities in connection with a New York corporation. This was not a parent-subsidiary case but one where both corporations were owned by the same family, all of whose members were found to be residents of New York. The North Carolina corporation made seventy per cent of its sales to the New York corporation, kept a bank account and had the same president as did the New York corporation. The court found that the two corporations were "united by a common bloodstream,"[82] noting that the members of the family arranged transactions between the two corporations.

There were several other variations on the same general theme. In *Goodman v. Pan American World Airways, Inc.*,[83] an aircraft manufacturer was held to be doing business in New York by virtue of the activities of its New York subsidiary. There the issue was whether the subsidiary was a "managing agent" of the parent for purposes of service of process. The parent conceded that it was doing business if the subsidiary was its "managing agent." The court relied on the fact that the New York subsidiary was organized for the purpose of handling all foreign sales by the parent and that these sales constituted 98 percent of the subsidiary's business. It noted that the subsidiary carried no inventory but rather bought from the parent when an order was obtained. Sales made by the subsidiary carried the warranty of the parent. On the basis of these facts and the similarity of officers and directors of the two corporations, the court held the subsidiary "an agent and tool" of the parent.[84]

80. Bator v. Boosey & Hawkes, Ltd., 80 F. Supp. 294, 296 (S.D.N.Y. 1948). *See also* United States v. Buffalo Weaving & Belting Co., 155 F. Supp. 454 (S.D.N.Y. 1956) (business of parent and subsidiary operated as an integrated whole).

81. 205 Misc. 370, 128 N.Y.S.2d 305 (N.Y. City Ct. 1954).

82. 205 Misc. at 373, 128 N.Y.S.2d at 307. *See also* Skupsi v. Western Navigation Corp., 123 F. Supp. 309, 311-12 (S.D.N.Y. 1954) (affiliated corporation in New York "agent" for New Jersey corporation).

83. 1 Misc. 2d 959, 148 N.Y.S.2d 353 (Sup. Ct.), *aff'd mem.*, 2 App. Div. 2d 707, 153 N.Y.S.2d 600 (1956).

84. 1 Misc. 2d at 964, 148 N.Y.S.2d at 358; *cf.* Trans World Airlines, Inc. v. Curtiss-Wright Corp., 119 N.Y.S.2d 729 (Sup. Ct. 1953).

In *Streifer v. Cabol Enterprises, Ltd.*,[85] the parent utilized the subsidiary to manage the affairs of another enterprise in New York which was being acquired by the parent. The court found that the management of the parent controlled the subsidiary which generated no income of its own and owed its active existence solely to funds received from the parent. The court found the subsidiary "an instrumentality or agent" of the parent, and held that the parent was doing business in New York.

4. *The Current New York Law.* With this background of inconsistency, the Court of Appeals acted in 1965 to delimit the circumstances which constitute doing business in New York through a subsidiary and indicated that the principles it relied upon had been laid down fifteen years earlier in the *Rabinowitz* decision. In *Taca International Airlines, S.A. v. Rolls-Royce of England, Ltd.*,[86] the defendant was a British corporation, Rolls-Royce of England, Ltd., which owned all the stock of Rolls-Royce of Canada, Ltd., a Canadian corporation, which in turn owned the stock of Rolls-Royce, Inc. which was doing business in New York. The sole function of the subsidiary was to act as the American sales and service department of the British corporation. The court noted that the corporations had directors in common, and that its officers, employee training and sales literature were all furnished by the British corporation. The subsidiary bought the cars which it sold from the British corporation *after* a sale was made. Holding that the British corporation was doing business in New York, and failing to even mention the *Cannon* case,[87] the court said *Rabinowitz* was "controlling authority for affirmance."[88] As noted earlier,[89] that decision rested heavily on the complete disregard by the parent of the distinct corporate entity of the subsidiary. In *Taca* the subsidiary had a no less distinctive corporate personality than any other

85. 231 N.Y.S.2d 750 (Sup. Ct. 1962); *cf.* Rosario v. Public Serv. Coordinated Transp., 270 App. Div. 169, 59 N.Y.S.2d 50 (1st Dep't 1945) (where no facts were set out in the decision which stated only that the subsidiary was not a "mere name or device" of the parent and held the parent not doing business).

86. 15 N.Y.2d 97, 204 N.E.2d 329, 256 N.Y.S.2d 129 (1965). *See also* Geffen Motors, Inc. v. Chrysler Corp., 54 Misc. 2d 403, 283 N.Y.S.2d 79 (Sup. Ct. 1967) (relying on *Taca,* upheld service made on officer of defendant's sales subsidiary).

87. Having failed to mention *Cannon,* the court's view of it as precedent is not clear. But the rigidity of the *Cannon* rule is certainly inconsistent with the analysis adopted by the court in *Taca* and in *Frummer* where the dissenters unsuccessfully attempted to resurrect it.

88. 15 N.Y.2d at 100, 204 N.E.2d at 330, 256 N.Y.S.2d at 130.

89. *See* text accompanying note 77 *supra.*

sales subsidiary could be expected to have and the decision therefore may be read as one recognizing that, in "pragmatic"[90] terms, the parent and subsidiary constituted a "single economic entity,"[91] and the acts of the subsidiary were attributable to the parent for purposes of jurisdiction.[92]

Such a conclusion is supported by the decision in *Boryk v. DeHavilland Aircraft Co.*[93] where it was held that the British parent was amenable to the jurisdiction of New York by virtue of the activities of a sales subsidiary in New York, though as noted earlier the opposite result as to the same company had been achieved several years earlier.[94] On facts similar to those in *Taca,* the Second Circuit noted that the Court of Appeals decision in *Taca*

> indicates New York's steady movement towards holding, that in determining whether a corporation has engaged in activities in the state, it is immaterial whether these are conducted through a branch or through a subsidiary corporation, even though the latter's formal independence has been scrupulously preserved.[95]

The decision in *Public Administrator v. Royal Bank of Canada*[96] is in line with this "single economic entity" analysis, though the case itself represents a more extreme example of the integration of affairs by the parent and subsidiary corporations. There a French subsidiary corporation was held to be doing business in New York by virtue of the activities of its parent. The court found that there was essentially no attempt to treat the French corporation as a separate entity and that the sole reason for its separate incorporation was to avoid the French tax on the entire capitalization of foreign banks that operate in that country. Although many cases subjecting parents to local jurisdiction were based on the idea that the subsidiary was in some way acting for the parent, this decision that the subsidiary is amenable to juris-

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90. A "pragmatic" analysis was suggested in Bryant v. Finnish Nat'l Airline, 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).

91. *See* text accompanying note 34 *supra.*

92. It may be questioned though whether the New York courts should have accepted jurisdiction, applying the principles of Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952), in view of the fact that the plaintiff was an El Salvador corporation seeking recovery for damages alleged to have been incurred in Nicaragua.

93. 341 F.2d 666 (2d Cir. 1965).

94. *See* cases cited note 56 *supra.*

95. 341 F.2d at 668.

96. 19 N.Y.2d 127, 224 N.E.2d 877, 278 N.Y.S.2d 378 (1967).

diction might be read as one recognizing that in fact each is part of a whole and that both serve the same "single economic entity."[97]

Frummer v. Hilton Hotels International, Inc.,[98] is also consistent with the "single economic entity" analysis. That case concerned corporations under common ownership rather than parent-subsidiary corporations. A British hotel corporation (Hilton, U.K.) was held amenable to suit in New York by virtue of the activities in New York of the Hilton Credit Corporation which provided a reservation service and which had ownership in common with Hilton, U.K. The court noted that the Hilton Credit Corporation in New York leased an office, had employees and a bank account, and accepted and confirmed hotel reservations for Hilton, U.K. The court said: "In short—and this is the significant and pivotal factor—the Service does all the business which Hilton (U.K.) could do if it were here by its own officials."[99] Although the meaning of that statement is not altogether clear, a subsequent federal decision provided the following interpretation:

> [A] foreign corporation is doing business in New York . . . when its New York representative provides services beyond "mere solicitation" and these services are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.[100]

On that basis, the federal court held that a foreign corporation was doing business in New York by virtue of the activities of an independent contractor in New York because without his reservation service the defendant's Grand Canyon tour, out of which the suit arose, could not be effectively merchandised.

Did *Frummer* in essence hold that the activities of the Hilton Credit Corporation rendered Hilton, U.K. amenable to New York jurisdiction because the two corporations were part of the same "single economic entity"? It could be argued that it did. In *Miller v. Surf Properties, Inc.*,[101] the Court of Appeals held that providing similar services to an out-of-state corporation would not subject that corpo-

97. *See also* Gonzales v. Ametak, Inc., 50 Misc. 2d 62, 269 N.Y.S.2d 616 (Sup. Ct. 1966); *cf.* Compania Mexicana Refinadora Island v. Compania Metropolitana de Oleoductos, 250 N.Y. 203, 164 N.E. 907 (1928).

98. 19 N.Y.2d 533, 227 N.E.2d 851, 281 N.Y.S.2d 41 (1967).

99. *Id.* at 537, 227 N.E.2d at 854, 281 N.Y.S.2d at 44.

100. Gelfand v. Tanner Motors, Ltd., 385 F.2d 116, 121 (2d Cir. 1967).

101. 4 N.Y.2d 475, 151 N.E.2d 874, 176 N.Y.S.2d 318 (1958).

ration to New York jurisdiction where the services were provided by an independent travel agent and the travel agent did not confirm the reservations. By contrast, in *Bryant v. Finnish National Airline*,[102] the fact that the same services were provided by employees of the out-of-state corporation rendered that corporation amenable to New York jurisdiction even though the employees did not confirm reservations. In *Frummer*, the defendant relied on the *Miller* case but rather than distinguish *Miller* solely on the basis that the Hilton Reservation Service (unlike the travel agent in *Miller*) had power to confirm reservations, the court pointed to the relationship of the Service and Hilton, U.K.:

> Although, in the case before us, the Hilton Reservation Service is not the "employee" of Hilton (U.K.), the Service and that defendant are owned in common by the other defendants and the Service is concededly run on a "non-profit" basis for the benefit of the London Hilton and other Hilton hotels.[103]

Thus the relationship was clearly quite important. In a later paragraph, the court again mentioned the relationship: "the fact that the two are commonly owned is significant only because it gives rise to a valid inference as to the broad scope of the agency . . . ."[104] Apparently this indicated that while the court was not ignoring their corporate separateness, their affiliation established a sufficient "agency" relationship to allow the exercise of jurisdiction. Thus the relationship of the two corporations was a deciding factor in the majority's assertion of jurisdiction.[105]

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102. 15 N.Y.2d 426, 208 N.E.2d 439, 260 N.Y.S.2d 625 (1965).

103. 19 N.Y.2d at 538, 227 N.E.2d at 854, 281 N.Y.S.2d at 45.

104. *Id.*, 227 N.E.2d at 854, 281 N.Y.S.2d at 46.

105. The lack of clarification in *Frummer* has already contributed to some highly questionable results. *E.g.*, Associated Metals & Minerals Corp. v. S.S. Rialto, 280 F. Supp. 207 (S.D.N.Y. 1967) (no jurisdiction over Canadian subsidiary by virtue of the activities of its New York parent, citing *Frummer* but relying on forty-year old Compania Mexicana Refinadora Island v. Compania Metropolitana de Oleoductos, 250 N.Y. 203, 164 N.E. 907 (1928)); Tokyo Boeki (U.S.A.), Inc. v. S.S. Navarino, 324 F. Supp. 361 (S.D.N.Y. 1971) (found parent doing business but felt it necessary to distinguish *Cannon*); Karlin v. Avis, 326 F. Supp. 1325 (S.D.N.Y. 1971) (opinion does not indicate what the full relationship of parent and subsidiary was, and while *Frummer* is cited, the court appears to rely on pre-*Taca* principles and finds parent not doing business); *cf.* American Messer Corp. v. Travelers Indem. Co., 45 F.R.D. 265 (S.D.N.Y. 1968) (court found it had jurisdiction over parent under long-arm statute but relied upon activities of parent as well as those of 50%-owned subsidiary); SCM Corp. v. Brother Int'l Corp., 316 F. Supp. 1328 (S.D.N.Y. 1970) (parent "doing business" even though sales subsidiary only 50% owned by parent).

This construction is borne out by the quite recent case *Delagi v. Volkswagenwerk, A.G.*[106] There the plaintiff sought to obtain jurisdiction over a German corporation on the basis of the activities of its franchised dealer in New York. Because the dealer was "an independently owned corporation, in no way directly related to"[107] the German corporation, a "valid inference of agency" could not be supported. Reinforcing the point, the court said: "Where, as here, there exist truly separate corporate entities, not commonly owned, a valid inference of agency cannot be sustained."[108] Subsequent dicta noted that even if the franchise dealer were a subsidiary of the German corporation, there was not sufficient "control" of the subsidiary such that it would be a "mere department." However if it had been a subsidiary, it seems probable that more control would have existed; thus the illustration seems meaningless. Moreover the lack of "control" itself is inconsequential, since *Frummer* suggests a "valid inference of agency" based on the parent-subsidiary relationship.

There was a vigorous dissent in *Frummer* premised on the view that separate incorporation is an acceptable method of escaping jurisdiction and which, as the majority opinion charged, failed to distinguish between limited liability and limited amenability. The dissent protested the extension of jurisdiction "in the absence of fraud, misrepresentation or intermingling of activities of separate corporations."[109] Primarily, however, the dissent feared that the domicile countries of the foreign corporations might choose to reciprocate against American firms having subsidiaries within their territory. But the majority had an answer for that which has pertinence to out-of-state parents as well:

> We are not unmindful that litigation in a foreign jurisdiction is a burdensome inconvenience for any company. However, it is part of the price which may properly be demanded of those who extensively engage in international trade. When their activities abroad, either directly or through an agent, become as widespread and energetic as the activities in New York conducted by Hilton (U.K.), they receive considerable benefits from such foreign business and may not be heard to complain about the burdens.[110]

106. 29 N.Y.2d 426, 278 N.E.2d 895, 328 N.Y.S.2d 653 (1972).
107. *Id.* at 431, 278 N.E.2d at 897, 328 N.Y.S.2d at 656.
108. *Id.*
109. 19 N.Y.2d at 540, 227 N.E.2d at 855, 281 N.Y.S.2d at 46.
110. *Id.* at 538, 227 N.E.2d at 854, 281 N.Y.S.2d at 45.

It seems almost unthinkable that any general rules could be appropriate in the maze of case law involving "out-of-state corporations";[111] yet they produce an irresistible urge to try. The "single economic entity" analysis may be overly simple; but recent Court of Appeals decisions indicate a propensity to follow this type of approach and a future decision may provide the opportunity for the court to produce some badly needed predictability in this area of the law.

On the other hand, perhaps enough good would be accomplished if only the "*Cannon* rule" and the "rule of limited amenability" could be forever put to rest.

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111. This highly descriptive and useful term was coined by Professor George D. Hornstein of New York University School of Law, to whom the writer acknowledges his debt.