St. Mary's Law Journal

Volume 5 | Number 2 Article 9

6-1-1973

A Further Liberalization of the Minimum Contracts Requirement.

James P. Brennan

others. The benefit was admission to a state law school, and the denial was made on the basis of race alone. The Court held that the fourteenth amendment entitled the plaintiff to admission under the same rules applicable to others, regardless of race.[56] This stands as the law of the land, and the intercession of 17 years and the noblest of motives cannot justify similar discrimination against another citizen of a different color.

Charles J. Fitzpatrick

CONFLICTS OF LAW—In Personam Jurisdiction—A Further Liberalization Of The "Minimum Contacts" Requirement

Jetco Electronics Industries, Inc. v. Gardiner,
473 F.2d 1228 (5th Cir. 1973).

Appellee, Engineers Testing Laboratories (ETL), is a corporation with its principal place of business in Arizona. It has no office in Texas nor does it have any employees, agents, or servants in Texas on a regular basis. Further, it is not qualified to do business in Texas nor has it sought to so qualify. ETL has had two jobs in Texas in the past 5 years, both involving soil investigations for building foundations.

Appellants, Jetco Electronic Industries, Inc., and Thomas H. Doss, are residents of Texas engaged in the manufacturing and selling of treasure hunting devices under the trade names "Jetco" and "Relco." In May of 1970, appellants instituted suits in the Southern District of Texas against Robert F. Gardiner individually and doing business as Gardiner Electronics Company.[1] Gardiner is an Arizona manufacturer and seller of treasure hunting devices, and plaintiffs alleged that he damaged their reputation by circulating a catalogue which contained false information about their products.[2]

In March of 1971, plaintiffs filed an amended complaint naming appellee

56. *Id.* at 414.

1. Jetco Elec. Indus., Inc. v. Gardiner, 325 F. Supp. 80 (S.D. Tex. 1971), *rev'd,* 473 F.2d 1228 (5th Cir. 1973).

2. The catalogue presented in chart form the purported results of a test conducted by ETL. The report stated that a Gardiner device would detect a penny buried as deep as 5½ inches; but that a Jetco device with a 12-inch search coil showed no response to a penny buried deeper than ½ inch. The report claimed that Relco devices were likewise inferior to Gardiner's devices. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1230 (5th Cir. 1973).

ETL as a defendant.[3] The appellants' cause of action against ETL was based on three theories: first, that ETL negligently tested the treasure hunting devices and proximately caused appellants' loss of sales;[4] second, that ETL and Gardiner jointly committed the common law tort of disparagement of property by preparing and circulating the test results;[5] third, that Gardiner and ETL jointly committed libel.[6] An amended summons was served on the Secretary of State of Texas on July 23, 1971[7] seeking to invoke the Texas long-arm statute over ETL.[8] ETL then filed a motion to dismiss for lack of in personam jurisdiction.[9] On March 10, 1972, the district court granted ETL's motion to dismiss plaintiff's cause of action against it for failure to state a cause of action and for failure to comply with the Texas long-arm statute.[10] On this appeal, ETL argued that the dismissal was proper, because appellants did not prove facts sufficient to invoke the long-arm statute and because the exercise of in personam jurisdiction over ETL would offend traditional notions of fair play and substantial justice afforded under the due process clause. Held—*Reversed.* ETL's unrelated business contacts, plus the introduction of the libelous catalogue via interstate

---

3. Jetco's right to hold ETL and Gardiner jointly liable for the publication and circulation of the libelous catalogue, stems from the early Texas case of Belo v. Fuller, 84 Tex. 450, 452, 19 S.W. 616, 617 (1892) which held:

> If a corporation publishes and circulates a libel by the aid and assistance of others they are equally guilty, and will be held liable either jointly or severally, as the pleader may elect.

4. As explained in the opinion:

> There was ample proof that the ETL employee conducting the test was unskilled in the operation of treasure hunting devices, that the devices may have been damaged during the tests, and that the tests were performed carelessly and were possibly prone to bias.

Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1232 (5th Cir. 1973).

5. Gardiner disseminated the catalogues containing the results of the ETL test to more than 20,000 persons, including customers and potential customers of the appellant. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1230 (5th Cir. 1973).

6. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1230 (5th Cir. 1973). The libel was based on TEX. REV. CIV. STAT. ANN. art. 5430 (1960):

> A libel is a defamation expressed in printing or writing . . . tending to injure the reputation of one who is alive, and thereby expose him to . . . financial injury . . . .

7. As set out by TEX. REV. CIV. STAT. ANN. art. 2031b § 3 (1960).

8. TEX. REV. CIV. STAT. ANN. art. 2031b § 4 (1960) which states:

> [A]ny foreign corporation . . . or non-resident natural person shall be deemed doing business in this State by entering into a contract by mail or otherwise with a resident of Texas to be performed in whole or part by either party in this State, *or the committing of any tort in whole or in part in the State.* (Emphasis added.)

See also RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 37 (1971).

9. FED. R. CIV. P. 12(B)(2). *See also* 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1351 (1969).

10. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1231 (5th Cir. 1973). The rule that a plaintiff has the burden of alleging the jurisdictional facts necessary to avoid dismissal for failure to state a cause of action was established in McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 182 (1936). *See* Tetco v. Metal Products, Inc. v. Langham, 387 F.2d 721 (5th Cir. 1968); Welsh v. American Surety Co., 186 F.2d 16 (5th Cir. 1951).

commerce through which the injury occurred, were sufficient to support in personam jurisdiction by Texas over ETL, a foreign corporation.[11]

The right of a forum state to acquire in personam jurisdiction over a foreign corporation and non-resident defendants has developed through a gradual legal evolution over the past one hundred years. The early Supreme Court case of *Pennoyer v. Neff*[12] held that the exercise of in personam jurisdiction over a non-resident was void and violated the due process clause of the fourteenth amendment unless the non-resident appeared or was served personally within the forum state.[13]

The judicial mandate of *Pennoyer* was subsequently circumvented through the subterfuge of "legal fictions."[14] The fictions most frequently used to obtain in personam jurisdiction over non-residents and foreign corporations were presence,[15] implied consent,[16] and the performance of economic and non-economic activities within the state.[17] This use of legal fictions to

---

11. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228 (5th Cir.), *rev'g* 325 F. Supp. 80 (S.D. Tex. 1973).

12. 95 U.S. 714 (1877).

13. *Id.* at 720. As set out by the Court in *Pennoyer*:

> The authority of every tribunal is necessarily restricted by the territorial limits of the state in which it was established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse.

See also International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945), wherein the Court stated that "[H]istorically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person."

14. Hearne v. Dow-Badische Chem. Co., 224 F. Supp. 90, 96-97 (S.D. Tex. 1963).

15. In International Shoe Co. v. Washington, 326 U.S. 310 (1945), the Court stated:

> Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, it is clear that unlike an individual its "presence" without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. . . . For the terms "present" or "presence" are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process.

Id. at 316 (citations omitted).

16. In York v. Texas, 137 U.S. 15 (1890), the court held that a special appearance for the purpose of contesting jurisdiction is sufficient to give the court jurisdiction over the defendant if the law of the forum so provides. Thus under Texas law the defendant was held to have consented to jurisdiction. As of 1962, however, a special appearance may be made for the sole purpose of objecting to the jurisdiction of the court over the person or the property of the defendant on the ground that such party or property is not amenable to process issued by the courts of this State. TEX. R. CIV. P. 120A.

17. Kane v. New Jersey, 242 U.S. 160 (1916) in which a non-resident motorist was required to register and consent to suit as a condition for use of the state's highway. A similar result occurred in Hess v. Pawloski, 274 U.S. 352 (1927) where the Court upheld a Massachusetts statute which provided that a non-resident, by his use of the state highway, consented to service of process upon an official of the state in suits for injuries sustained in the operation of his automobile within the state. *See generally* Horowitz, *Bases of Jurisdiction of California Courts to Render Judgments Against Foreign Corporations and Non-Resident Individuals*, 31 S. CAL. L. REV. 339 (1958).

achieve personal jurisdiction was the *modus operandi* until the landmark case of *International Shoe Co. v. Washington.*[18] There the Supreme Court re-defined in a more succinct manner the approach to be taken when resolving jurisdictional problems. To achieve this end, the Court instituted the "minimum contacts" requirement.[19] This doctrine permitted a foreign state to expand its exercise of in personam jurisdiction by consolidating prior legal fictions into one flexible, but all-encompassing guideline.[20] The consolidation was based on the premise that courts are no longer required to place jurisdictional tests in terms of presence, consent, and conducting activities within the state, rather they may simply inquire whether there is sufficient factual contact with the forum to merit a reasonable exercise of jurisdiction.[21]

The implementation of the "minimum contacts" requirement permits the forum to acquire personal jurisdiction over foreign corporations when the corporation's contacts with the forum state are construed as being sufficient in nature.[22] The "minimum contacts" requirement is sufficient when: (1) the non-resident defendant or foreign corporation purposely performs some act or consummates some transaction within the forum state, (2) the cause of action arises from, or is connected with, such act or transaction, and (3) the assumption of jurisdiction by the forum does not offend traditional notions of fair play and substantial justice.[23] The controlling factors which determine whether or not the assumption of jurisdiction is to be considered fair are: (1) the nature of the defendant's business, (2) the number and type of activities the defendant has within the forum, (3) whether the forum has some special interest in granting relief, (4) whether the defendant's

---

18. 326 U.S. 310 (1945). *See also* Hearne v. Dow-Badische Chem. Co., 224 F. Supp. 90, 97 (S.D. Tex. 1963).

19. International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945) where the Court stated:

> It is evident that these operations establish sufficient contacts or ties with the State of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit the State to enforce the obligations which the appellant has incurred there.

20. As said in Hanson v. Denckla, 357 U.S. 235, 251 (1958): "In response to these changes, the requirements for personal jurisdiction over non-residents have evolved from the rigid rule of *Pennoyer* to the flexible standard of *International Shoe.*" (citations omitted).

21. *See* F. GOODRICH & E. SCOLES, HANDBOOK OF THE CONFLICT OF LAWS, § 73, at 129 (4th ed. 1964), *citing* Cleary, *The Length of the Long Arm*, 9 J. PUB. L. 293 (1960); Dambach, *Personal Jurisdiction*, 5 U.C.L.A.L. REV. 198 (1958); Reese & Galston, *Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249 (1959).

22. International Shoe Co. v. Washington, 326 U.S. 310 (1945); *accord*, McGee v. International Life Ins. Co., 355 U.S. 220 (1957); *see* Bland v. Kentucky Fried Chicken Corp., 338 F. Supp. 871 (S.D. Tex. 1971); Mitsubishi Shoji Kaisha Ltd. v. MS Galini, 323 F. Supp. 79 (S.D. Tex. 1971); Barnes v. Irving Trust Co., 290 F. Supp. 116 (S.D. Tex. 1968).

23. *See* Sun-X Int'l Co. v. Witt, 413 S.W.2d 761, 765 (Tex. Civ. App.—Texarkana 1967, writ ref'd n.r.e.).

activities give rise to the cause of action, and (5) the relative convenience of the forum in settling the dispute between the litigants.[24] The boundary line between those activities which justify the subjection of a foreign corporation to in personam jurisdiction and those which do not, cannot be simply mechanical or quantitative; the facts in each case must be scrutinized closely to determine if extraterritorial jurisdiction will exist.[25]

The continuation of a discernible tendency to construe even more permissively the term "doing business"[26] was reflected by the Supreme Court in *McGee v. International Life Insurance Co.*[27] There the issuance of a single life insurance policy to a California resident by a Texas corporation was deemed sufficient to satisfy the "minimum contacts" requirement without offending due process. The dual rationale for permitting jurisdiction was the increasing nationalization of commerce[28] and the interest which California held in providing effective redress for their residents when a nonresident corporation refused to honor claims on insurance policies they had solicited within the state.[29]

The result of the decision in *McGee* appeared to trumpet the eventual demise of all restrictions placed on federal and state courts in determining whether the forum state had the power to exercise in personam jurisdiction over foreign corporations. This supposition was then qualified by *Hanson v. Denckla*,[30] wherein the Court proclaimed that some limitations remain, however minimal. Thus, the Florida court was unable to impose its jurisdiction upon a Delaware trust company, when no activities or contacts had been initiated by the defendant in Florida. To be amenable to service, the

---

24. Lone Star Motor Import, Inc. v. Citroen Cars Corp., 185 F. Supp. 48, 56 (S.D. Tex. 1960), *rev'd on other grounds*, 288 F.2d 69 (5th Cir. 1961).

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

26. The phrase "doing business," when used in this context, refers to a foreign corporation's activities or contacts within the forum state. McGee v. International Life Ins. Co., 355 U.S. 220, 222 (1957).

27. 355 U.S. 220 (1957). *See also* Thode, *In Personam Jurisdiction; Article 2031B, the Texas "Long Arm" Jurisdiction Statute; And the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279 (1964).

28. McGee v. International Life Ins. Co., 355 U.S. 220 (1957) where the Court stated:

> Today many commercial transactions touch two or more States and may involve 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.

29. *Id.* at 223.

30. 357 U.S. 235, 251 (1958). As the Court in *Hanson* warned:

> But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of the State Courts. Those restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states.

Accord, Lone Star Motor Import, Inc. v. Citroen Cars Corp., 185 F. Supp. 48, 54 (S.D. Tex. 1960).

defendant must have "minimum contacts" with the forum state; without these contacts personal jurisdiction will never be permitted.[31] The rule will often vary with the defendant's activities but it is always essential that the defendant purposefully perform some act within the forum state.[32] The act will indicate the defendant's desire to conduct activities within the forum, thereby invoking the benefits and protections of its laws.[33]

Since the establishment of the "minimum contacts" requirement by the Supreme Court, there has been a continuing trend by both the state and federal courts to subject non-resident tortfeasors to personal jurisdiction in the forum where the injury occurs through the implementation of state long-arm statutes.[34] The significance of the *Jetco* decision was the further liberalization of the "minimum contacts" requirement permitted by the Court of Appeals for the Fifth Circuit in order to effect in personam jurisdiction by Texas over ETL, an Arizona corporation. The thrust of the liberalization was concentrated within two specific areas. First, ETL, a service-oriented corporation, was held to the same degree of foreseeability normally accorded to non-resident manufacturers whose products enter a distant forum and cause injury therein. Second, ETL's previous business activities,[35] unrelated to the cause of action,[36] were deemed sufficient to satisfy the "minimum contacts" requirement.[37]

---

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

32. *Id.* at 253.

33. *Id.* at 253.

34. Rosenblatt v. American Cyanamid Co., 86 S. Ct. 1, 3 (1965), wherein Justice Goldberg stated:

> The logic of this Court's decisions in International Shoe Co. v. Washington, 326 U.S. 310 (1945), and McGee v. International Life Ins. Co., 355 U.S. 220 (1957), supports the validity of state "Long Arm" statutes such as the one involved here which base in personam jurisdiction upon commission of a "tortious act" in the forum State. Since those decisions a large number of States have enacted statutes similar to the one here. In cases under these statutes in state and federal courts, jurisdiction on the basis of a single tort has been uniformly upheld.

In Elhart Eng'r Corp. v. Dornier Werke, 343 F.2d 861, 868 (5th Cir. 1965), the court, following a similar rationale stated that "[A] state has a substantial interest in providing a forum to redress tortious injuries committed within its borders by non-residents." *See* Delray Beach Aviation Corp. v. Mooney Aircraft, Inc., 332 F.2d 135 (5th Cir. 1964); Harford v. Smith, 257 F. Supp. 578 (M.D.W. Va. 1966); Etzler v. Dillie & McGuire Mfg. Co., 249 F. Supp. 1 (W.D. Va. 1965); Anderson v. Penncraft Tool Co., 200 F. Supp. 145 (N.D. Ill. 1961); B. K. Sweeny Co. v. Colorado Interstate Gas Co., 429 P.2d 759 (Okla. 1967); Smyth v. Twin State Improv. Corp., 80 A.2d 664 (Vt. 1951); Nixon v. Cohn, 385 P.2d 305 (Wash. 1963). *See generally* Comment, *In Personam Jurisdiction Over Nonresident Manufacturers in Product Liability Actions*, 63 MICH. L. REV. 1028 (1965).

35. During the past 5 years, ETL has had only two business contracts with the State of Texas. Both of these contacts involved soil testing in El Paso. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1230 (5th Cir. 1973).

36. The soil investigations performed by ETL in 1970 are completely unrelated to the libelous accusations in Gardiner's catalogue, the cause of action in this case. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1234 (5th Cir. 1973).

37. The "minimum contacts" requirement is satisfied when:

The principal function of ETL's corporate activities is soil testing and related engineering work. Within the business community, ETL would be labeled a service-oriented corporation, rather than one concerned with the manufacturing of products.[38] The desired results of ETL's activities will therefore differ from the desired results of a corporation concerned with satisfying consumer demands. The manufacturer, given the multistate kinetics of his products to placate customer needs, should reasonably expect that the "stream of commerce" will deposit his wares in numerous states.[39]

Since service-oriented corporations are sedentary in nature, it is questionable to unequivocally hold, as did the court in *Jetco*, that ETL should be charged with the knowledge that Gardiner would introduce the test results, materially unchanged, into interstate commerce in his advertising literature.[40]

---

1) The defendant purposefully conducts an activity in the forum,
2) The cause of action is connected with the defendant's activities within the forum, and
3) The assumption of jurisdiction is based on traditional notions of fair play and substantial justice.

Sun-X Int'l Co. v. Witt, 413 S.W.2d 761, 765 (Tex. Civ. App.—Texarkana 1967, writ ref'd n.r.e.). This second requirement was later relaxed by the decisions of Eyerly Aircraft Co. v. Killian, 414 F.2d 591 (5th Cir. 1969) and Coulter v. Sears, Roebuck & Co., 426 F.2d 1315 (5th Cir. 1970). The marketing of a tortious instrumentality, plus prior business contacts unrelated to the cause of action were held sufficient to satisfy the "minimum contacts" requirement and thus support in personam jurisdiction by Texas over out-of-state manufacturing concerns. *Id.* at 1317.

38. ETL had no connection with the manufacturing of the treasure hunting device which they tested for Gardiner. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1230 (5th Cir. 1973).

39. In Gray v. American Radiator & Std. Sanitary Corp., 176 N.E.2d 761 (Ill. 1961), the court in considering the constitutionality of the exercise of jurisdiction by Illinois over an Ohio valve manufacturer, whose defective product entered Illinois causing injury therein, outlined the "stream of commerce theory":

> Where the alleged liability arises, as in this case, from the manufacture of products presumably sold in contemplation of use here, it should not matter that the purchase was made from an independent middleman or that someone other than the defendant shipped the product into this State.
>
> With the increasing specialization of commercial activity and the growing interdependence of business enterprises it is seldom that a manufacturer deals directly with consumers in other States. The fact that the benefit he derives from its laws is an indirect one, however, does not make it any the less essential to the conduct of this business; and it is not unreasonable, where a cause of action arises from alleged defects in his product, to say that the use of such products in the ordinary course of commerce is sufficient contact with this state to justify a requirement that he defend here.

Id. at 766. The nexus between foreseeability and the "stream of commerce" was also discussed in Roy v. North American Newspaper Alliance, Inc., 205 A.2d 844, 847 (N.H. 1964), a diversity case involving the publication of a defamatory syndicated news column. Again the court felt it was no more unjust to subject a newspaper distributor to in personam jurisdiction by New Hampshire, than it was to subject an Ohio valve manufacturer (referring to *Gray*) since both had injected their goods into the mainstream of national commerce with the knowledge their product would nomadize from state to state. *See also* Ehlers v. United States Heating & Cooling Mfg. Corp., 124 N.W.2d 824 (Minn. 1963); Hearne v. Dow-Badische Chem. Co., 224 F. Supp. 90 (S.D. Tex. 1963).

Touting a product by displaying the imprimatur of an independent testing laboratory is undoubtably one of the most effective advertising techniques used in the promotion of a manufacturer's product.[41] It is only fair to note, however, the comparative analysis of a competitor's product is often used in business for purposes other than multistate advertising. Frequently, comparative analyses are performed for purposes of research and development, quality control and improvement, and finally, to familiarize the manufacturer with the product capabilities of his competitors. The presence of this commercial reality substantially diminishes the rationalization of fairness dictating that ETL should have foreseen that the test they conducted and later authenticated would eventually enter into the hands of Texas residents via Gardiner's catalogues.[42]

The satisfaction of the "minimum contacts" requirement will vary with the defendant's activities.[43] The assumption of jurisdiction will then be determined by the traditional notions of fair play and substantial justice.[44] One of the factors which determines whether the assumption of jurisdiction will be considered fair is the number and type of activities the defendant has within the forum.[45] ETL's prior contacts with Texas were minimal when compared to those of other defendants in prior cases.[46] The court in the instant

---

40. Unlike the defendant in *Gray* and *Ehlers*, the goal of ETL's corporate activities was not product consumption on an interstate basis.

41. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1233 (5th Cir. 1973).

42. A discussion of this point occurred in Phillips v. Anchor Hocking Glass Corp., 413 P.2d 732 (Ariz. 1966):

> [A] nonresident defendant is amenable to personal jurisdiction where his defective product causes injury within the forum though he did not intentionally put his product there unless he, the defendant, proves that the presence of his product in the forum was an unforeseeable event.

Id. at 736, *quoting* Gray v. American Radiator & Std. Sanitary Corp., 176 N.E.2d 761 (Ill. 1961).

43. As stated in Hanson v. Denckla, 357 U.S. 235 (1958):

> The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State. *The application of that rule will vary with the quality and nature of the defendant's activity,* but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State.

Id. at 253 (emphasis added).

44. McGee v. International Life Ins. Co., 355 U.S. 220 (1957); International Shoe Co. v. Washington, 326 U.S. 310 (1945); Johnston v. Time, Inc., 321 F. Supp. 837, 843 (M.D.N.C. 1970).

45. Phillips v. Anchor Hocking Glass Corp., 413 P.2d 732, 735 (Ariz. 1966).

46. In Coulter v. Sears, Roebuck & Co., 426 F.2d 1315 (5th Cir. 1970), Warwick, the third party defendant, had marketed his television sets in Texas on a regular basis. In Eyerly Aircraft Co. v. Killian, 414 F.2d 591, 594 (5th Cir. 1969), where in addition to the presence of a defective amusement ride within the state of Texas, the defendant's activities between the years 1962 thru 1967 included: (1) sale and deliveries of amusement devices and parts directly into the state, (2) the extension of credit in the state, (3) the retention of liens on items sold, (4) the filing of such liens with state and county authorities, (5) the servicing of machines in the state, and (6)

case de-emphasized this fact by stating that the dollar volume of a defendant's activities[47] is not the controlling criterion in determining jurisdiction.[48]

The decision in *Jetco* will generate much discussion within the legal community. Those in opposition will maintain that the court's continued liberalization of the "minimum contacts" requirement in order to sustain jurisdiction was repugnant to the traditional notions of fair play and substantial justice demanded by due process. Those in favor will applaud the court's ruling as another link forged in the continuing chain of legal progression since the establishment of the "minimum contacts" requirement in the *International Shoe* case. Their justification will be predicated on the theory that when a corporation permits the results of their labor to be distributed on an interstate basis, they may not reasonably claim surprise or indignation at being held to answer in any state for the damages their product causes.[49]

The long-range effects of this decision are difficult to assess at this time. An analysis of the decision only indicates the desire of the court to continue construing permissively the sufficiency of the contacts necessary to support

---

the solicitation of business in the state. For additional cases where the defendant's prior contacts with the forum were much more substantial, *see* International Shoe Co. v. Washington, 326 U.S. 310 (1945) (the selling of shoes within the state on a substantial and continuous basis); Harford v. Smith, 257 F. Supp. 578 (N.D.W. Va. 1966) (prior marketing, advertising and soliciting of bottled gas stoves in the state); Gray v. American Radiator & Std. Sanitary Corp., 176 N.E.2d 761 (Ill. 1961) (prior marketing of steam values in the state).

47. The fees for the two jobs totaled about $2,500, less than two-tenths of 1 per cent of ETL's 1970 gross receipts. Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1230 (5th Cir. 1973).

48. The court predicated the issue of jurisdiction based on fairness on the following points:

> First, it should be no more inconvenient to prepare for and appear at a trial in Texas than it was to send employees to Texas for the soil investigations. Secondly, in performing these jobs in Texas, ETL enjoyed the potential benefits and protections of Texas law.

Jetco Elec. Indus., Inc. v. Gardiner, 473 F.2d 1228, 1234 (5th Cir. 1973). *Contra*, Putnam v. Triangle Publications, Inc., 96 S.E.2d 445 (N.C. 1957). This was an action for libel and invasion of privacy brought by a citizen of North Carolina to recover damages for an article published in a magazine. The court, in denying in personam jurisdiction by North Carolina, stated:

> Defendant has not transacted or done business in the State of North Carolina, and has not been present in the State through its officers, agents, or in any other manner. *The activities and contacts of defendant within North Carolina have been casual, incidental and insubstantial*, and have not been such as would make it reasonable and just under traditional concepts of fair play and substantial justice to subject defendant to suit in the courts of the State of North Carolina.

Id. at 449 (emphasis added).

49. *See* Coulter v. Sears, Roebuck & Co., 426 F.2d 1315 (5th Cir. 1970) where the court stated:

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

Id. at 1318, *quoting* Keckler v. Brookwood Country Club, 248 F. Supp. 645, 648 (N.D. Ill. 1965) (court's emphasis).