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CASE NOTES

CIVIL PROCEDURE—Jurisdiction—Mere Agreement to Make Payments in Texas Fails to Establish Minimum Contact Sufficient To Satisfy Due Process Requirements for Long-Arm Jurisdiction

U-Anchor Advertising, Inc. v. Burt,
553 S.W.2d 760 (Tex. 1977), *petition for cert. filed*, 46 U.S.L.W.
3307 (U.S. Nov. 8, 1977) (No. 77-614).

U-Anchor, a Texas corporation, contracted to supply N.H. Burt, a resident of Oklahoma, advertising displays at various Oklahoma locations. Under the contract, which was solicited and executed in Oklahoma, Burt was to make monthly payments at U-Anchor's office in Texas, and U-Anchor was to construct display signs and erect them in Oklahoma. Burt mailed several payments to U-Anchor's office in Texas, but then ceased further payments. Thereafter, U-Anchor filed suit for breach of contract. Pursuant to the Texas long-arm statute, citation was served upon the Texas Secretary of State as agent for service of process. Burt entered a special appearance to contest the court's jurisdiction; the trial court sustained his motion and dismissed the suit. The court of civil appeals affirmed, and held that although Burt unquestionably was doing business in Texas under the long-arm statute, his contacts with Texas fell short of the requirements of due process.¹ Held—*Affirmed*. Although the contract was one which was partially performable in Texas and thus was within the Texas long-arm statute, a mere agreement to make payment in Texas under a contract solicited and consummated outside the state fails to establish minimum contacts sufficient to satisfy due process.²

Long-arm jurisdiction is the power of a court to render valid judgments against defendants not present within the court's territorial boundaries.³ Such jurisdiction must be invoked whenever a nonresident defendant is to be made amenable to suit in a jurisdiction in which he has not been personally served with process, made a general appearance, or consented to suit.⁴

1. *U-Anchor Advertising, Inc. v. Burt*, 544 S.W.2d 500, 504 (Tex. Civ. App.—Amarillo 1976), *aff'd*, 553 S.W.2d 760 (Tex. 1977), *petition for cert. filed*, 46 U.S.L.W. 3307 (U.S. Nov. 8, 1977) (No. 77-614).

2. *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760, 763 (Tex. 1977), *petition for cert. filed*, 46 U.S.L.W. 3307 (U.S. Nov. 8, 1977) (No. 77-614).

3. R. LEFLAR, *AMERICAN CONFLICTS LAW* § 22 (1968).

4. R. WEINTRAUB, *COMMENTARY ON THE CONFLICT OF LAWS* 93 (1971). *See generally* von

Over the past half-century a fundamental change in the concept of state court jurisdiction has resulted in consistent liberalization of long-arm jurisdiction.⁵ The United States Supreme Court set the stage for this transformation in *Pennoyer v. Neff*,⁶ where it was held that, unless a nonresident was personally served within a court's territorial jurisdiction, the court could not acquire in personam jurisdiction over him.⁷ This conclusion flowed naturally from the basic premises of the "power in fact" concept of state jurisdiction.⁸ Under this concept a state possessed exclusive jurisdiction over persons and property within its territory and, conversely, it possessed no jurisdictional authority outside that territory.⁹ Any judgment rendered without such de facto power, or personal jurisdiction over the defendant, violated due process and was a nullity.¹⁰

The *Pennoyer* territorial power concept fit well within the national scheme of several autonomous states comprising one federation, but its rule soon proved to be overly restrictive.¹¹ As technological progress in the fields of transportation and communications increased, there came a corresponding increase in interstate travel and corporate activities. Yielding to this modern reality, later cases recognized that common notions of justice required some defendants to face suits in foreign states.¹² The initial modification of the *Pennoyer* principle was by means of legal fictions such as

Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1137 (1966); Wilson, *In Personam Jurisdiction Over Nonresidents: An Invitation and a Proposal*, 9 BAYLOR L. REV. 363, 375-77 (1957).

5. *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222 (1957). See generally Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241, 272-88; Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts—From Pennoyer to Denckla: A Review*, 25 U. CHI. L. REV. 569, 586 (1958); 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, 297-302 (1964).

6. 95 U.S. 714 (1877).

7. *Id.* at 720.

8. See *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

9. *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877).

10. *Id.* at 722-23; see *Freeman v. Alderson*, 119 U.S. 185, 188 (1886).

11. In *Hanson v. Denckla*, 357 U.S. 235, 250-51 (1958) the Court stated, "technological progress has increased the flow of commerce between States. . . . In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff*, 95 U.S. 714, to the flexible standard of *International Shoe Co. v. Washington*, 326 U.S. 310." The opinion in *Pennoyer* provided several exceptions to its announced rule concerning divorce jurisdiction and substituted service on corporations and business associations. *Pennoyer v. Neff*, 95 U.S. 714, 734-36 (1877). These exceptions have been characterized as inconsistencies and highly criticized for their impact on subsequent state laws. See Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241, 271-81.

12. See, e.g., *Hess v. Pawloski*, 274 U.S. 352, 356 (1927) (resident injured in forum by nonresident motorist); *Philadelphia & R. Ry. v. McKibbin*, 243 U.S. 264, 265 (1917) (foreign corporation doing business in state); *International Harvester Co. v. Kentucky*, 234 U.S. 579, 583 (1914) (foreign corporation doing business in state). See generally *Developments in the Law—State Court Jurisdiction*, 73 HARV. L. REV. 909, 916-18 (1960).

“implied consent”¹³ and “corporate presence.”¹⁴ The Supreme Court, in *International Shoe Co. v. Washington*,¹⁵ however, expressly rejected these fictions,¹⁶ and set forth the “minimum contacts” test of jurisdiction.¹⁷ Under *International Shoe* it was not the territorial power of the court, but rather the relations between the court, the controversy, and the parties that gave rise to the exercise of long-arm jurisdiction.¹⁸ Thus, if the nonresident defendant had certain “minimum contacts” within the forum state, then “traditional notions of fair play and substantial justice” would not be violated by making him amenable to suit in the forum.¹⁹

After *International Shoe* several states rewrote or enacted long-arm statutes in response to this newly expanded potential jurisdiction.²⁰ In 1959 the Texas Legislature adopted its first general long-arm statute, allowing courts to obtain jurisdiction over nonresidents who engage in business within the state.²¹

Generally, Texas courts must answer two threshold questions when asked to invoke long-arm jurisdiction: first, whether the Texas statute

13. See *Olberding v. Illinois Cent. R.R.*, 346 U.S. 338, 340 (1953) (analysis of nonresident motorist's implied consent to service of process upon state official); *Hess v. Pawloski*, 274 U.S. 352, 356-57 (1927) (by using state's highways nonresident motorist consented to service of process upon state official).

14. See *Philadelphia & R. Ry. v. McKibbin*, 243 U.S. 264, 265 (1917) (corporation could be deemed “present” for service of process in state where it did business); *International Harvester Co. v. Kentucky*, 234 U.S. 579, 583 (1914) (corporation could be deemed “present” for service of process in state where it did business).

15. 326 U.S. 310 (1945).

16. *Id.* at 316-18.

17. *Id.* at 316.

18. *Id.* at 320 (continuous solicitation by defendant's salesmen in state deemed sufficient); see *Hanson v. Denckla*, 357 U.S. 235, 246 (1958) (affiliating circumstances without which courts of a state may not enter judgment); *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222 (1957) (insurance contract with resident deemed sufficient).

19. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

20. See 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, 304 (1964). For examples of long-arm statutes see: ARK. STAT. ANN. § 27-340 (1962); FLA. STAT. § 48.181 (1969); ILL. ANN. STAT. ch. 110, § 17 (Smith-Hurd 1968); MD. CTS. & JUD. PROC. CODE ANN. § 6-103 (1974); MINN. STAT. ANN. § 303.13(1)(3) (West 1969); TEX. REV. CIV. STAT. ANN. art. 2031b (Vernon 1964); VT. STAT. ANN. tit. 12, §§ 851-58 (1973 & Supp. 1977).

21. See TEX. REV. CIV. STAT. ANN. art. 2031b, § 3 (Vernon 1964). By entering into a contract with a Texas resident which is performed by either party in whole or in part in Texas, a nonresident natural person or corporation is considered to be doing business in Texas. *Id.* § 4. Prior to 1959, Texas had several particularized long-arm statutes. See, e.g., 1929 Tex. Gen. Laws, ch. 125 at 279, presently codified in TEX. REV. CIV. STAT. ANN. art. 2039a (Vernon 1964) (nonresident motorist statute); 1933 Tex. Gen. Laws, ch. 202 at 606, presently codified in TEX. REV. CIV. STAT. ANN. art. 2031a (Vernon 1964) (in personam jurisdiction over nonresident by serving agent); 1935 Tex. Gen. Laws, ch. 463, § 1, at 1759, presently codified in TEX. REV. CIV. STAT. ANN. art. 2033b (Vernon 1964) (foreign corporation must appoint agent for service of process to do business in state).

provides for the exercise of jurisdiction over the nonresident under the facts of the case, and second, whether such exercise of jurisdiction would violate due process.²² The fact that a given defendant is amenable to suit under the long-arm statute is not conclusive of due process.²³ On the contrary, the Texas statute has been interpreted as an effort by the state to reach as far as federal constitutional requirements will allow.²⁴ As a result, it is due process considerations, rather than statutory construction, that play the decisive part in determining the extent of Texas long-arm jurisdiction.²⁵

Although no mechanical standards can be applied to a due process test which is based essentially on fairness,²⁶ the Texas courts have adopted a basic guideline.²⁷ The nonresident's contact with the forum must be purposeful²⁸ and the cause of action must have some connection with the contact.²⁹ The equities of the situation are then considered to determine

22. See, e.g., *Lone Star Motor Import, Inc. v. Citroen Cars Corp.*, 288 F.2d 69, 72 (5th Cir. 1961); *Cohn-Daniel Corp. v. Corporacion de la Fonda, Inc.*, 514 S.W.2d 338, 341 (Tex. Civ. App.—Eastland 1974, no writ); *Pizza Inn, Inc. v. Lumar*, 513 S.W.2d 251, 253 (Tex. Civ. App.—Eastland 1974, writ ref'd n.r.e.).

23. *Gubitosi v. Buddy Schoellkopf Prods., Inc.*, 545 S.W.2d 528, 535 (Tex. Civ. App.—Tyler 1976, no writ). This is a logical conclusion from the proposition that due process must be satisfied in the application of long-arm statutes. See *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 491 (5th Cir. 1974); *Zeisler v. Zeisler*, 553 S.W.2d 927, 929 (Tex. Civ. App.—Dallas 1977, writ dism'd).

24. See, e.g., *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 491 (5th Cir. 1974); *Jetco Elec. Indus., Inc. v. Gardiner*, 473 F.2d 1228, 1234 (5th Cir. 1973); *Hoppenfeld v. Crook*, 498 S.W.2d 52, 56 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.).

25. *Hoppenfeld v. Crook*, 498 S.W.2d 52, 56 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.); see *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 492 (5th Cir. 1974). This result has been cited as a desirable one in that it allows courts to concentrate on the constitutional boundaries of due process rather than engage in defining "doing business" under the statute and then turning to the constitutional issue. See *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, 307 (1964).

26. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (due process requires that maintenance of suit does not offend traditional notions of fair play and substantial justice). See generally *Cardozo, The Reach of the Legislature and the Grasp of Jurisdiction*, 43 CORNELL L.Q. 210, 215 (1957); *Comment, Long-Arm and Quasi In Rem Jurisdiction and the Fundamental Test of Fairness*, 69 MICH. L. REV. 300, 311-18 (1970).

27. See, e.g., *O'Brien v. Lanpar Co.*, 399 S.W.2d 340, 342 (Tex. 1966); *Hoppenfeld v. Crook*, 498 S.W.2d 52, 56 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.); *Sun-X Int'l Co. v. Witt*, 413 S.W.2d 761, 765 (Tex. Civ. App.—Texarkana 1967, writ ref'd n.r.e.).

28. This requirement originated in *Hanson v. Denckla*, 357 U.S. 235, 253 (1958), where the court stated that the nonresident must purposely avail himself of the "privilege" of contact within the forum thereby invoking the benefits and protection of its laws. See *O'Brien v. Lanpar Co.*, 399 S.W.2d 340, 342 (Tex. 1966); *Sun-X Int'l Co. v. Witt*, 413 S.W.2d 761, 765 (Tex. Civ. App.—Texarkana 1967, writ ref'd n.r.e.).

29. *O'Brien v. Lanpar Co.*, 399 S.W.2d 340, 342 (Tex. 1966). This second requirement is derived from *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945). The requirement has been relaxed, however, when the defendant has substantial yet unrelated activity

whether traditional notions of fair play and substantial justice prohibit the exercise of jurisdiction.³⁰ Further consideration may be given also to the reasonable expectations of the parties,³¹ the special interest of the forum in litigating the controversy,³² and whether the defendant's contacts with the forum were calculated to extract profits therefrom.³³

In *U-Anchor Advertising, Inc. v. Burt*³⁴ the Texas Supreme Court considered the jurisdictional guidelines and concluded that subjecting Burt to suit in Texas would violate due process.³⁵ Although it was noted that Burt entered into a contract with a Texas resident, and that the cause of action arose from that contract, the court ruled that he did not purposely avail himself of the privilege of doing business in Texas.³⁶ Instead, U-Anchor initiated Burt's sole and fortuitous contact with Texas.³⁷ Thus, the quality, nature, and extent of Burt's contacts with Texas were less than minimal.³⁸ Almost invariably a party desires to litigate in his home state, but since the contract was solicited and executed in Oklahoma the court noted that the parties reasonably must have expected that Oklahoma's laws would govern its enforcement.³⁹

Particular emphasis was placed⁴⁰ upon the United States Supreme Court's ruling in *Hanson v. Denckla*⁴¹ that the plaintiff resident's unilat-

within the forum. See *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 446-47 (1952); *Jetco Elec. Indus., Inc. v. Gardiner*, 473 F.2d 1228, 1234 (5th Cir. 1973); *Eyerly Aircraft Co. v. Killian*, 414 F.2d 591, 595 (5th Cir. 1969).

30. Among the equitable considerations are the quality, nature, and extent of the defendant's activity in the forum, the relative convenience of the parties, and the benefits and protections of the laws of the forum afforded the respective parties. *O'Brien v. Lanpar Co.*, 399 S.W.2d 340, 342 (Tex. 1966); see *National Truckers Serv., Inc. v. Aero Sys., Inc.*, 480 S.W.2d 455, 459 (Tex. Civ. App.—Fort Worth 1972, writ ref'd n.r.e.); *Sun-X Int'l Co. v. Witt*, 413 S.W.2d 761, 765 (Tex. Civ. App.—Texarkana 1967, writ ref'd n.r.e.); *Tyee Const. Co. v. Dulien Steel Prods., Inc.*, 381 P.2d 245, 247 (Wash. 1963).

31. *Jetco Elec. Indus., Inc. v. Gardiner*, 473 F.2d 1228, 1234 (5th Cir. 1973) (reasonable to expect libelous material moving in interstate commerce would cause injury in Texas and result in suit there); *Parrish v. Schrimmscher*, 516 S.W.2d 956, 959 (Tex. Civ. App.—Amarillo 1974, no writ) (nonresident initiated contact with forum and should have foreseen possibility of suit therein).

32. In *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957) the court held the nonresident defendant insurance company amenable to suit in the insured's home forum since the state had a "manifest interest" in providing redress for its residents when their insurers refused to pay their claims.

33. *Uvalde Rock Asphalt Co. v. Consolidated Carpet Corp.*, 457 S.W.2d 649, 652 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.).

34. 553 S.W.2d 760 (Tex. 1977), *petition for cert. filed*, 46 U.S.L.W. 3307 (U.S. Nov. 8, 1977) (No. 77-614).

35. *Id.* at 763.

36. *Id.* at 763.

37. *Id.* at 763. The court felt that Burt had engaged in no activity in Texas. *Id.* at 763.

38. *Id.* at 763.

39. *Id.* at 763.

40. *Id.* at 763.

41. 357 U.S. 235 (1958).

eral activity cannot satisfy the minimum contacts requirement.⁴² In the present case it was clear that Burt's contacts with Texas did not result from his own initiative but, rather, from U-Anchor's solicitations in Oklahoma. Thus, Burt's contacts were fortuitous and not purposeful.

The "purposeful act" requirement seeks to avoid the surprise which results when the defendant's contacts within the forum are based solely on the activity of the plaintiff.⁴³ In *Standard Leasing Co. v. Performance Systems, Inc.*⁴⁴ a federal district court held that this requirement was satisfied when the nonresident defendant knowingly entered into a contract with a Texas resident, and expressly agreed to make payments in Texas.⁴⁵ Under comparable facts the Texas Supreme Court, in *U-Anchor*, held that such contact is not "purposeful." This contradiction is a strong predicate for a conclusion that Texas has adopted a strict definition of "purposeful act." Technical attempts at defining "purposeful," however, ignore the substance of the "purposeful act" test.⁴⁶ More appropriately, the test is whether the nonresident has engaged in some act or conduct by which he may be said to have invoked the benefits and protections of the laws of the forum.⁴⁷ Where a nonresident is active in bringing about contact with the forum, it is reasonable to say that he would have expected to face suit there. Thus, where a nonresident initiates a contract in the forum state, and although his only other contact might be payment by mail into the forum, it has been held reasonable to assume that Texas law might be invoked in the enforcement of the contract.⁴⁸ Similarly, a corporation that

42. *Id.* at 253. The plaintiff in *Hanson* set up a trust in Delaware naming the defendant, a Delaware corporation, as trustee. Subsequently, the plaintiff moved to Florida and filed suit upon the trust there. The court held that the plaintiff's unilateral activity in moving to Florida did not make the defendant amenable to suit there. *Id.* at 252.

43. See *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *In-Flight Devices Corp. v. Van Dusen Air., Inc.*, 466 F.2d 220, 228 (6th Cir. 1972) (purposeful act test designed to insure defendant's contact with forum was free and intentional); *Coulter v. Sears, Roebuck & Co.*, 426 F.2d 1315, 1318 (5th Cir. 1970) (corporation doing interstate business should find no surprise in being subject to laws of various states); *Clark Advertising Agency, Inc. v. Tice*, 331 F. Supp. 1058, 1060 (N.D. Tex. 1971), *aff'd*, 490 F.2d 834 (5th Cir. 1974).

44. 321 F. Supp. 977 (N.D. Tex. 1971).

45. *Id.* at 979.

46. See *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (corporation enjoys benefits and is subject to obligations of forum's laws by doing business there). A purposeful act done by the defendant was required in *Hanson* so that the inference could be drawn that he invoked the benefits and protection of the laws of the forum. Once the defendant had invoked the benefits of the forum's laws, he reasonably should have expected to be subject to them. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

47. See, e.g., *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 496 (5th Cir. 1974); *Jetco Elec. Indus., Inc. v. Gardiner*, 473 F.2d 1228, 1234 (5th Cir. 1973).

48. *N.K. Parrish, Inc. v. Schrimsher*, 516 S.W.2d 956, 959 (Tex. Civ. App.—Amarillo 1974, no writ) (foreseeable that defendant's obligation to perform in Texas might be tested there since he initiated the contact); see *O'Brien v. Lanpar Co.*, 399 S.W.2d 340, 343 (Tex.

engages in various interstate activities may be subjected to the laws of several states.⁴⁹

Some cases have held that by entering into a contract with a Texas resident which is performable by either party in this state, a nonresident has invoked the benefits and protections of the laws of Texas.⁵⁰ In *Clark Advertising Agency, Inc. v. Tice*⁵¹ the district court justified such a finding by pointing out that if the nonresident had found it necessary to bring suit on the contract he would have had the full benefits and protections of the state's laws in a suit in Texas courts.⁵² Other cases have held that an express agreement to make payment in Texas is a purposeful act sufficient to invoke the benefits and burdens of the state's laws.⁵³ But the courts in these cases have failed to sufficiently justify their assumption of jurisdiction on fundamental fairness and public policy grounds.⁵⁴ Instead they have merely ruled that once the defendant purposely has contact within the forum and a cause of action arises in connection with that contact, there is nothing unfair about forcing the nonresident to defend in Texas.⁵⁵

1966). In *O'Brien* the court enforced an Illinois judgment against a Texas corporation. Jurisdiction in Illinois was based on the fact that the defendant's president went to Illinois to arrange a contract with an Illinois attorney. *Id.* at 343.

49. See, e.g., *Coulter v. Sears, Roebuck & Co.*, 426 F.2d 1315, 1318 (5th Cir. 1970); *Clark Advertising Agency, Inc. v. Tice*, 331 F. Supp. 1058, 1060 (N.D. Tex. 1971), *aff'd*, 490 F.2d 834 (5th Cir. 1974); *Keckler v. Brookwood Country Club*, 248 F. Supp. 645, 649 (N.D. Ill. 1965).

50. See *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 497 (5th Cir. 1974); *Clark Advertising Agency, Inc. v. Tice*, 331 F. Supp. 1058, 1059-60 (N.D. Tex. 1971), *aff'd*, 490 F.2d 834 (5th Cir. 1974); *Standard Leasing Co. v. Performance Sys., Inc.*, 321 F. Supp. 977, 979 (N.D. Tex. 1971); *Uvalde Rock Asphalt Co. v. Consolidated Carpet Corp.*, 457 S.W.2d 649, 651-52 (Tex. Civ. App.—Beaumont 1970, writ ref'd n.r.e.).

51. 331 F. Supp. 1058 (N.D. Tex. 1971), *aff'd*, 490 F.2d 834 (5th Cir. 1974).

52. *Id.* at 1060.

53. See *Standard Leasing Co. v. Performance Sys., Inc.*, 321 F. Supp. 977, 979 (N.D. Tex. 1971) (nonresident defendant who agreed to make payments on loan guarantee assigned to Texas resident held amenable to suit in Texas); *Custom Leasing, Inc. v. Gardner*, 307 F. Supp. 161, 164 (N.D. Miss. 1969); *National Truckers Serv., Inc. v. Aero Sys., Inc.*, 480 S.W.2d 455, 459 (Tex. Civ. App.—Fort Worth 1972, writ ref'd n.r.e.); cf. *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 497 (5th Cir. 1974) (agreement to submit test results in Texas sufficient to make nonresident amenable to suit there).

54. Compare *National Truckers Serv., Inc. v. Aero Sys., Inc.*, 480 S.W.2d 455, 459 (Tex. Civ. App.—Fort Worth 1972, writ ref'd n.r.e.) (not unfair to subject nonresident to suit in forum on a certain contact once that contact is found to be purposeful) with *Uppgren v. Executive Aviation Servs., Inc.*, 304 F. Supp. 165, 171 (D. Minn. 1969) (due process issue can be settled only by ascertaining what is fair and reasonable under the circumstances).

55. *National Truckers Serv., Inc. v. Aero Sys., Inc.*, 480 S.W.2d 455, 459 (Tex. Civ. App.—Fort Worth 1972, writ ref'd n.r.e.); see *Standard Leasing Co. v. Performance Sys., Inc.*, 321 F. Supp. 977, 979 (N.D. Tex. 1971). But see *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 227 (6th Cir. 1972). The *In-Flight* court noted that even though the nonresident's contact with the forum is found to be "purposeful," the court must nevertheless inquire into the fundamental fairness of making him defend there. Thus, the nonresident who contracts to make payments in the forum may be said to have purposely done so, but it still may be violative of due process to hold him amenable to suit there. *Id.* at 227 n.13.

On facts similar to those in *U-Anchor*, a federal district court in *McQuay, Inc. v. Samuel Schlosberg, Inc.*⁵⁶ reached the same conclusion as did the Texas Supreme Court.⁵⁷ The federal court held that the purpose of the long-arm statute was to protect the state's citizens from foreign "aggressors" rather than to support their activities outside the forum.⁵⁸ When a nonresident enters a state either personally to create business obligations there, or by selling his products there in order to profit from its markets, he invokes the protection of the forum's laws.⁵⁹ Conversely, a passive nonresident purchaser expects no benefit or protection from the forum's laws.⁶⁰ Courts have frequently distinguished between buyer and seller in applying long-arm statutes on the theory that the nonresident buyer is less likely to have initiated the contact with the forum.⁶¹

Although a state may have an interest in providing a forum for its citizens' grievances, certain policy reasons exist for refusing jurisdiction when the contacts are less than minimal. The extra-territorial power of individual states still has its limitations despite liberalized long-arm jurisdiction, and courts must exercise such jurisdiction cautiously in order not to infringe on the power of a sister state.⁶² Enforcement of a judgment often involves a suit upon that judgment in the nonresident's home forum. A court must therefore satisfy its own jurisdictional requirements to insure that its judgment will be honored in the foreign state under the full faith and credit clause.⁶³ Another reason to deny jurisdiction upon such minimal

56. 321 F. Supp. 902 (D. Minn. 1971).

57. *See id.* at 907.

58. *Id.* at 906.

59. *See* *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945); *Ziegler v. Houghton-Mifflin Co.*, 224 N.E.2d 12, 15 (Ill. App. Ct. 1967).

60. *Fourth Northwestern Nat'l Bank v. Hilson Indus., Inc.*, 117 N.W.2d 732, 736 (Minn. 1962) (no particular privilege or protection enjoyed by purchasing products from resident seller); *see* *Waltham Precision Instrument Co. v. McDonnell Aircraft Corp.*, 203 F. Supp. 539, 541 (D. Mass. 1961), *aff'd*, 310 F.2d 20 (1st Cir. 1962).

61. *See, e.g.*, *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 232 (6th Cir. 1972); *"Automatic" Sprinkler Corp. v. Seneca Foods Corp.*, 280 N.E.2d 423, 426 (Mass. 1972); *Fourth Northwestern Nat'l Bank v. Hilson Indus., Inc.*, 117 N.W.2d 732, 735 (Minn. 1962); *cf.* *Northern States Pump & Supply Co. v. Baumann*, 249 N.W.2d 182, 185 (Minn. 1976) (distinction merely goes to difference in nature and quality of contacts between buyer and seller); *Vacu-Maid, Inc. v. Covington*, 530 P.2d 137, 142 (Okla. Ct. App. 1974) (further distinction between active and passive purchasers).

62. *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). A judgment is ordinarily entitled to full faith and credit in other states if jurisdictional requirements are satisfied. "This linking of jurisdiction and recognition may sometimes suggest a degree of jurisdictional restraint." von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1122 (1966).

63. *Adam v. Saenger*, 303 U.S. 59, 62 (1938). *See* *Moore v. Evans*, 196 So. 2d 839, 840 (La. Ct. of App.), *writ ref'd*, 199 So. 2d 914 (La. 1967), where the court refused to enforce a judgment that the plaintiff, a Texas resident, had recovered in Texas against the Oklahoma