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Montana's Long Arm Statute Construed: Product Liability (Bullard v. Rhodes Pharnacal Co., Inc., 263 F. Supp. 79, D. Mont. 1967)

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influenced by the nature of the crimes, available prison facilities, rehabilitation opportunities, parole practices, and other related factors. In a state that has indeterminate sentencing and rehabilitation programs, the length of time the criminal actually spends in prison can vary according to his rehabilitation. In Montana, however, the emphasis is placed on punishment rather than rehabilitation, and a person convicted of burglary and larceny could receive a definite sentence of up to 29 years.[51] This is nearly twice the sentence he could receive if he committed only one of the crimes, and must be considered in view of the fact that his object was the commission of only a single wrong. Since each crime by itself carries the possibility of a stiff sentence, a rule allowing the offender to be sentenced for only one of them would give the judge enough latitude to impose an adequate sentence according to the facts of the case, and would still be in accord with the "humane policy of our law."

JOSEPH T. SWINDLEHURST

MONTANA'S "LONG ARM" STATUTE CONSTRUED: PRODUCT LIABILITY.—Plaintiff sued an Ohio corporation whose principal place of business was Chicago. She alleged injury to her respiratory system caused by perfume manufactured by the defendant in Chicago. Defendant's only contact with Montana was the shipment of products to Montana wholesale and retail outlets, constituting less than one-half of one per cent of its total business. *Held,* the defendant had sufficient "minimum contacts" with Montana so that personal service of process upon it did not offend the due process clause of the Fourteenth Amendment.[1] Sales and a general intention to sell products in Montana subjects a foreign corporation to the jurisdiction of Montana courts. *Bullard v. Rhodes Pharmacal Co., Inc.,* 263 F.Supp. 79 (D.Mont. 1967).

In 1877, Justice Field, in *Pennoyer v. Neff,*[2] defined the extent of a state court's jurisdiction:

> The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions.[3]

[51]R.C.M. 1947, § 94-2706 provides a punishment of not less than one nor more than fourteen years for grand larceny. R.C.M. 1947, § 94-903 provides a punishment of not less than one nor more than fifteen years for first degree burglary, and not more than five years for second degree burglary.

[1]"[N]or shall any state deprive any person of life, liberty, or property, without due process of law . . . ." U. S. Const. amend. XIV, § 1.

[2]95 U.S. 714 (1877).

[3]*Id.* at 722.

As a result, a state could enforce the obligations of only those corporations formed under its own laws.[4] It was not until the mid-nineteenth century, when corporate transactions assumed a more national character, that state courts recognized a basis for assuming jurisdiction over foreign corporations. That basis was consent, and more important, consent implied from the fact of a corporation doing business within the forum state.[5]

Because state law governs the permissible extent of a state court's jurisdiction—limited only by due process[6]—states enacted "doing business" service of process statutes.[7] States were then confronted with the problem of determining what constituted "doing business."[8]

International Shoe Co. v. State of Washington[9] caused the central issue to shift from doing business to the broader concept of due process as the basis for determining a state court's jurisdiction. In order for a state to attain *in personam* jurisdiction over a defendant corporation it was necessary that the corporation have "certain minimum contacts with the forum state such that the maintenance of he suit does not offend 'traditional notions of fair play and justice'."[10] Emphasis moved from any fictional basis of "presence" in the forum state: "It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there give reasonable assurance that the notice will be actual."[11]

Twelve years later, the Supreme Court in *McGee v. International Life Insurance Co.*[12] again demonstrated the "clearly discernible trend toward expanding the permissible scope of state jurisdiction over foreign corporations."[13] Factors which the Court considered, in addition to the "fundamental transformation of our nation's economy," were the actual receipt of notice by defendant, the relative convenience of the available

[4]*Id.* at 735; Beer Co. v. Massachusetts, 97 U.S. 25 (1877); Eagle Insurance Co. v. Ohio, 153 U.S. 446 (1894).

[5]Article, *Developments in the Law: State-Court Jurisdiction*, 73 HARV. L. REV. 909, 919-20 (1960); HENN, CORPORATIONS 106-07 (1961); JAMES, CIVIL PROCEDURE 636 (1965).

[6]Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

[7]*Developments in the Law, supra* note 5, at 920, citing Maryland as the first state to enact such a statute. Montana's original "doing business" statute was enacted in 1915. Laws of Montana 1915, ch. 22, § 1. Its history is discussed later in the article. See text at notes 25 to 28, *infra.*

[8]See, *e.g.*, Philadelphia & Reading Ry. Co. v. McKibbin, 243 U.S. 264 (1917); Hutchinson v. Chase & Gilbert, Inc., 45 F.2d 139 (2d Cir. 1930); Graham and Ross Mercantile Co. v. Sprout, Waldron & Co., 174 F.Supp. 551 (D.Mont. 1959); State *ex rel.* American Laundry Machinery Co. v. District Court, 98 Mont. 278, 41 P.2d 26 (1934).

[9]326 U.S. 310 (1945).

[10]*Id.* at 316.

[11]*Id.* at 320.

[12]355 U.S. 220 (1957).

[13]*Id.* at 222. The decision was a remarkable extension. Plaintiff was suing as beneficiary of a life insurance contract in California. The defendant insurance company, located in Texas, had never had representatives in California and apparently had no other insurance contracts in that state.

forums, and the state's interest in securing to its citizens a means of redress for wrongs committed against its residents.[14]

One year after *McGee,* the Supreme Court indicated in *Hanson v. Denckla*[15] that the trend toward expanding state jurisdiction was not without limit. Chief Justice Warren, while recognizing that the rigid state-border limitation of *Pennoyer*[16] had been supplanted by the flexible rule of *McGee,*[17] wrote:

> The application of that rule [McGee] 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, thus invoking the benefits and protection of its laws.[18]

The result of *Hanson v. Denckla* is that some voluntary act or activity will be required to secure jurisdiction over foreign corporations.[19]

Since the *International Shoe, McGee,* and *Hanson* decisions, states have enacted statutes which extend state court jurisdiction beyond the traditional "doing business" tests.[20] These "long arm" statutes commonly base product liability jurisdiction over foreign corporations upon two tests: regularly sending products into the forum state,[21] and the com-

[14] *Id.* at 223-24.

[15] 357 U.S. 235 (1958).

[16] *Supra* note 2.

[17] *Supra* note 12.

[18] *Hanson v. Denckla, supra* note 15, at 253. The fact situation was complex. The Supreme Court granted certiorari in cases from both the Delaware and Florida Supreme Courts. Residuary legatees had petitioned a Florida chancery court for a declaratory judgment concerning property passing under the residuary clause of a will. This property included trusts administered by Delaware firms. The Florida Supreme Court upheld service of process on the Delaware trust companies as indispensable parties. Meanwhile, the executrix under the will had instituted a declaratory judgment action in Delaware, and the Delaware Supreme Court refused full faith and credit to the Florida decree on the ground that the Florida courts had no jurisdiction over the trust companies.

[19] *Developments in the Law, supra* note 5, at 934-35; Note, *Due Process and Foreign Corporations—The Minnesota Single Act Statute,* 50 MINN. L. REV. 946, 962-64 (1966).

[20] For examples, see notes 21, 22 *infra.* Montana's statute is partially quoted in text at note 32 *infra.* Cites to many of these "long arm" statutes are collected in *Revision Notes* following WIS. STAT. ANN. § 262.05 (Supp. 1967); Briggs, *Contemporary Problems in Conflict of Laws: Jurisdiction by Statute,* (pt. I) 24 OHIO ST. L.J. 223 (1963); (pt. II) 24 MONT. L. REV. 85 (1963); Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois,* 1963 ILL.L.F. 533; Comment, *Jurisdiction Under "Long-Arm" Statute Over Breach of Warranty Actions,* 22 WASH. & LEE L. REV. 152 (1965).

[21] For example, CONN. GEN. STAT. ANN. § 33-411(*c*) (1961 Rev.), provides:

> Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows:
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> . . .
>
> (3) out of the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; . . . .

mission of a tort or tortious act within the forum state.[22] However, there is authority that the traditional "doing business" statutes might also be exended as far; that is, to the limits of due process.[23]

Montana's history of extending state jurisdiction to encompass foreign corporations has been chiefly statutory. Until 1951, Montana plaintiffs were limited to personal service only upon those corporations doing business and having an agent, cashier or secretary within the state.[24] "Doing business" as a basis for personal service became an especially harsh limitation when the Montana Supreme Court interpreted it as requiring that degree of business which would require a foreign corporation to file a copy of their charter or articles of incorporation in Montana.[25] In 1951, R. C. M. 1947, section 93-3008 was amended to permit

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And in Florida:

> (1) The acceptance by . . . all foreign corporations. . . of the privilege . . . to operate, conduct, engage in, or carry on a business or business venture in the state . . . , shall be deemed equivalent to an appointment by such persons or foreign corporations of the secretary of state of the state as the agent of such persons or foreign corporations upon whom may be served all lawful process in any action, suit or proceeding against them, or either of them, arising out of any transaction or operation connected with or incidental to such business . . . .
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> (2) Any person, firm or corporation which through brokers, jobbers, wholesalers or distributors sells . . . by any means whatsoever, tangible or intangible personal property, to any person, firm or corporation in this state, shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business or business venture in this state. FLA. STAT. § 47.16 (1965).

In several states regular sending of goods into the forum state is *combined* with specific reference to tortious conduct. *See, e.g.*, UNIFORM ACT in note 22, *infra*.

[22]For example, Illinois has what must be considered the "typical long arm statute:"

> Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person . . . to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of said acts:
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> . . .
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> (b) The commission of a tortious act within this State; . . . . ILL. ANN. STAT. ch. 110, § 17(1) (Supp. 1966).

In 1962, the Conference of Commissioners on Uniform State Laws and the American Bar Association approved the Uniform Interstate and International Procedure Act which provides:

> A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a [cause of action] [claim for relief] arising from the person's
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> . . .
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> (4) causing tortious injury in this state by an act or ommission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial benefit from goods used or consumed or services rendered, in this state; . . . . UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.03(*a*).

To date, Arkansas and Oklahoma have adopted this act.

[23]Northern Supply, Inc. v. Curtiss-Wright Corp., 397 P.2d 1013, 1016-17 (Alaska 1965); Henry R. Jahn & Son, Inc. v. Superior Court, 49 Cal.2d 855, 323 P.2d 437, 439 (1958).

[24]Laws of Montana 1939, ch. 186, § 1.

[25]*State ex rel. American Laundry Machinery Co. v. District Court, supra* note 8, at 29. Justice Angstman dissented from equating these two uses of "doing business." One year later, the Montana court seemed to retreat from this position, holding that the same corporation, the American Laundry Machinery Co., was "doing business" in Montana. State *ex rel.* Taylor Laundry Co. v. Second Judicial District Court, 102 Mont. 274, 57 P.2d 722 (1936). The court did not mention whether it still considered the two uses of "doing business" to be equal.

substituted service[26] upon a foreign corporation "actually doing business within this state at the time the said action arose even though such corporation has not filed a copy of its charter in the office of the secretary of state of Montana and has not qualified to do business in this state."[27]

With the enactment of the Montana Rules of Civil Procedure, effective January 1, 1962,[28] Montana adopted its own "long arm" statute which provided:

> [A]ny person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:
> (a) the transaction of any business within this state;
> (b) the commission of any act which results in accrual within this state of a tort action;
> (c) the ownership, use or possession of any property, or of any interest therein, situated within this state;
> (d) contracting to insure any person, property or risk located within this state at the time of contracting;
> (e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or
> (f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as executor or administrator of any estate within this state.[29]

Conceivably, jurisdiction over a foreign corporation which has marketed a defective product in Montana could result from clauses (a), (b) or (e). But a Montana court might be tempted to construe clause (a) only as far as this state's former doing business statute, discussed above. And clause (e) would require contract privity, limiting the effect of the long arm statute.[30] Clause (b) is more clearly applicable, and was the foundation in the instant case for subjecting Rhodes Pharmacal Co. to the jurisdiction of the Montana federal district court.[31]

[26]This method permitted substituted service upon the Secretary of State of Montana. However, the precise method of service is not significant. Due process merely requires that the substitute for personal service be reasonably certain of reaching the defendant. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950); Schroeder v. City of New York, 371 U.S. 208 (1962). In none of the cases considered herein is there an absence of actual knowledge of the pending proceedings.

[27]Laws of Montana 1961, ch. 13, § 4. But Montana courts appeared cautious in extending their jurisdiction. A Montana federal district court noted that although the permissible scope of state jurisdiction over foreign corporations had been expanded, "this does not necessarily mean that the enlarged authority will be exercised." *Graham and Ross Mercantile Co. v. Sprout, Waldron & Co., supra* note 8, at 556.

Moreover, in Clapper Motor Co. v. Robinson Motor Co., 119 F.Supp. 79 (D.Mont. 1954), the court quashed service of process upon an Ohio corporate defendant with contacts similar to those of Rhodes Pharmacal Co. in the instant case. In *Clapper*, the Ohio defendant had made sales through distributors located in Montana. This defendant had even closer contacts with Montana than Rhodes Pharmacal Co. because the Ohio corporation had also sent representatives to Montana to check on sales and business methods. Yet the *Clapper* court held that the Ohio corporation was not "doing business" in Montana, and therefore not subject to Montana jurisdiction.

[28]Laws of Montana 1961, ch. 13, § 4.

[29]MONT. R. CIV. P., Rule 4B(1).

[30]Because of the nature of modern production and business, the retail consumer is seldom in contract privity with the manufacturer of any product.

[31]Bullard v. Rhodes Pharmacal Co., Inc., 263 F.Supp. 79, 81 (D.Mont. 1967). Although sounding in tort, it may be helpful to note that a suit based on "product liability"

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A review of long arm statutes throughout the states shows the wording of clause (b) to be unique. Apparently modeled after the comparable Illinois statute,[32] Montana's is among the broadest of all such provisions.[33] Montana does not require that the person subjected to Montana jurisdiction *commit* a tort or tortious act within this state, but only that the person commit an act which causes a tort action to *accrue* within this state. States with the former requirement, however, have generally construed the provision so that injury within the forum state is sufficient to satisfy the requirement.[34] The apparent intent of recent long arm statutes is to extend state jurisdiction to the limits of due process.[35] Therefore, despite the variation in wording, their effect in extending product liability jurisdiction over foreign corporation may be the same.

The instant case is the first to construe Montana's long arm tort liability statute.[36] Although the court declined to declare that the effect of the statute is to extend personal jurisdiction to the limits of due process, it did recognize that possibility.[37] Consequently, the court had little trouble deciding that the statute providing for jurisdiction in the particular case, and primarily considered the question of whether applying the statute in the instant case would deny the defendant due process.[38]

"Minimum contacts" is one test used by the court, with those contacts being weighed against the "tradition notions of fair play and substantial justice" as promulgated by *International Shoe*[39] and *McGee*.[40]

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quite generally relates to and arises from a prior business transaction. So in that respect, there is a natural interrelationship between clauses (a) and (b) for exercising personal jurisdiction over the corporate defendant.

"Products liability" as a distinct area of law appears to be developing a special set of norms. Thus, although one defective product may be the "act" required by a "long arm" statute, the cases dealing with products liability are based upon a continuity and regularity of distribution of goods. Questions are raised as to whether the "long arm" statutes will be applied to other areas of tort liability. For example, a negligently caused fire may spread across a state line; or a defamatory broadcast may cause tortious injury in a state other than that in which the broadcast originated. These areas have not been as fully considered in relation to expanded state jurisdiction as product liability.

Several "tests for due process" have been proposed. Some of these, including an original one, are considered in Towe, *Personal Jurisdiction Over Non-Residents and Montana's New Rule 4B*, 24 MONT. L. REV. 3 (1962).

[32]*Supra* note 22.

[33]See Briggs, *supra* note 20, 24 MONT. L. REV. at 86 and 88.

[34]See, *e.g.*, McMahon v. Boeing Airplane Co., 199 F.Supp. 908 (N.D. Ill., E.D. 1961); Hearne v. Dow-Badische Chemical Co., 224 F.Supp. 90 (S.D. Texas 1963); cases cited in 3 FRUMER & FRIEDMAN, PRODUCTS LIABILITY § 45.02 n.17 (Supp. 1966).

[35]See, *e.g.*, Deveny v. Rheem Manufacturing Co., 319 F.2d 124, 128 (2d Cir. 1963); Delray Beach Aviation Corp. v. Mooney Aircraft, Inc., 332 F.2d 135, 137-38 (5th Cir. 1964); Roland v. Modell's Shoppers World of Bergen County, Inc., 92 N.J. Super. 1, 222 A.2d 110, 113 (1966). This is also true of Montana's statute. See *Commission Note* following MONT.R.CIV.P., Rule 48. And Montana's statute has been suggested as being among the broadest of such "long arm" statutes. See Briggs, *supra* note 20, 24 MONT. L. REV. at 86.

[36]See text at note 29, *supra*.

[37]*Supra* note 31, at 81 n.2.

[38]*Supra* note 31, at 82.

[39]*Supra* note 9, at 316.

[40]*Supra* note 12, at 222.

The court also recognizes the "purposeful act" limitation of *Hanson v. Denckla*.[41] Observing that each case must be determined on its own facts, the court pointed out that the amount of sales of the foreign corporation within the state may not be as important a factor as the intent to include Montana within its general sales market:

> It is true that in terms of percentage of its total sales, defendant's contacts with Montana were slight. It is however inferable that these contacts were limited only by the lack of demand in Montana for defendant's product. It is fairly inferable that defendant's intention to do business in Montana was a general intention, and that to the extent there was a demand defendant intended to sell in Montana. Given this state of mind which defendant was free to alter, had defendant felt that the products liability climate of the state or its long arm statute would be burdensome on it, is it unfair to treat as the required "minimum contacts" this intention plus the fact of the sales? * * * Certainly a defendant should not be subjected to the jurisdiction of a distant state by accident, but when from the general pattern of its business it may be said that it contemplated a general products distribution in a state it does not seem unfair to require that it defend its products' liability cases arising in that state.[42]

In light of recent decisions, the instant case is not of major national significance. When a manufacturer regularly sends its products directly to wholesale or retail distributors within the forum state, as in the instant case, there seems to be ample authority for sustaining jurisdiction.[43] When the contact has been through an intermediary, such as an assembler or distributor, located outside the forum state, courts have been more reluctant to extend jurisdiction.[44] However, in *Gray v. American Radiator & Standard Corp.*[45] jurisdiction was sustained where a defendant corporation had no direct contacts with the forum state. An Illinois plaintiff was injured by an exploding water heater. Personal service was obtained upon an Ohio valve manufacturer although it had not directly shipped products into the forum state. The court refuted arguments of no "minimum contacts" by pointing out that "a given volume of business is [not] the only way in which a nonresident can form the required connection with this State."[46] Defendant's commercial transactions on the interstate level gave rise to a "reasonable inference that its commercial transactions, like those of other manufacturers, result in substantial use and consumption in this state."[47] The corporation had therefore "undoubtedly

[41] *Supra* note 15, at 253.

[42] *Bullard v. Rhodes Pharmacal Co., Inc., supra* note 31, at 83.

[43] See, *e.g.*, Chovan v. E.I. DuPont De Nemours & Co., 217 F.Supp. 808 (E.D.Mich., S.D. 1963); Harford v. Smith, 257 F.Supp. 578 (N.D. W.Va. 1966). *Contra*, Pendzimas v Eastern Metal Products Corp., 218 F.Supp. 524 (D.Minn. 1961).

[44] Cases denying jurisdiction include Johns v. Bay State Abrasive Products Co., 89 F.Supp. 654 (D.Md. 1950); Hellriegel v. Sears, Roebuck & Co., 157 F.Supp. 718 (N.D.Ill. 1957); *Roland v. Modell's Shoppers World of Bergen County, Inc., supra* note 35; Longines-Wittnauer Watch Co. v. Barnes and Reinecke, Inc., 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965). See Currie, *supra* note 20, at 547.

[45] 22 Ill.2d 432, 176 N.E.2d 761 (1961). *Accord*, Atkins v. Jones & Laughlin Steel Corp., 258 Minn. 571, 104 N.W.2d 888 (1960); Hearne v. Dow-Badische Chemical Co., *supra* note 24.

[46] *Gray, supra* note 45, at 764.

[47] *Gray, supra* note 45, at 776.

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benefited, to a degree, from the protection which our law has given to the marketing of hot water heaters containing its valves."[48]

Gray upheld service of process even though there was no evidence that the defendant had more than the one valve marketed in the forum state.[49] Rather, the court looked to defendant's sales on the interstate level. The instant case raises the question of whether Montana courts may look to it as authority for sustaining jurisdiction upon a foreign corporation which has indirectly introduced only a single product into this state.

The Montana statute refers only to the "commission of any *act*,"[50] and does not suggest the need for continuity of sales within this state. Nor is the language of the instant case[51] necessarily inconsistent with sustaining jurisdiction when there has not been continuity of sales within Montana, but only sales on the interstate level. The court reasons that "*to the extent there was a demand* defendant intended to sell in Montana."[52] Cases which the court cites support the more liberal extension of jurisdiction. *McGee*[53] ruled that a single business transaction is sufficient to exercise personal jurisdiction over a foreign corporate defendant. *McMahon v. Boeing Airplane Co.*[54] upheld personal service on a non-resident corporation although the product, a commercial passenger airplane, had been manufactured, tested, designed, sold and delivered outside the forum state. *Keckler v. Brookwood Country Club*[55] upheld service over an Indiana motorized golf cart manufacturer which had not sold carts inside Illinois, the forum state. Nor was there evidence of other such golf carts having reached the forum state. The Keckler court stated the rule:

> Where a defendant does business of such volume, or with such a pattern of product distribution, that he should reasonably anticipate this his product may be ultimately used in any state, he has done the act required for the exercise of jurisdiction by the state where the injured used provides.[56]

The instant case recognized that this broader state jurisdiction should not be extended so far as to encompass defendant corporation which do not market on the interstate level. For example, a Montana resident vacationing in California might buy a product from a local manufacturer or dealer. If the product caused injury and damages once the Montana resident returned home, it is unlikely that due process

[48] *Ibid.*
[49] *Gray, supra* note 45, at 76.
[50] Statute quoted in text at note 29 *supra.*
[51] Language quoted in text at note 42 *supra.*
[52] *Bullard v. Rhodes Pharmacal Co., Inc., supra* note 31, at 83.
[53] *Supra* note 12. Cited in the instant case *supra* note 31 at nn. 4, 6, 7.
[54] 199 F.Supp. 908 (N.D.Ill. 1961). Cited in the instant case *supra* note 31 at nn. 5, 12.
[55] 248 F.Supp. 645 (N.D.Ill. 1965). Cited in the instant case *supra* note 31 at n. 12.
[56] *Keckler v. Brookwood Country Club, supra* note 55, at 648.

would allow the dealer to be sued in the Montana courts, even though the sale technically resulted "in accrual within this state of a tort action."[57]

It is submitted that the instant case, being the single construction of the Montana long arm tort liability statute, is in accord with nationwide authority and sets a favorable precedent for Montana courts. Restricting jurisdiction to the physical boundaries of the state, while modern corporations distribute their products nationally, hampers an injured plaintiff in obtaining redress. Typically, the relevant evidence and witnesses will be located in the state in which the injury occurs. Requiring plaintiffs initially to assume the costs of maintaining a suit in a foreign jurisdiction may preclude them from enforcing small claims. The profitable right which corporations enjoy by interstate distribution of their products *should* give rise to a corresponding duty to defend suits involving those products wherever they are circulated in the ordinary course of business. Therefore, Montana courts should not limit themselves to jurisdiction over those foreign corporations evincing a specific intent to distribute products in Montana. Rather, the general intent to conduct business on the interstate level, from which introduction of products into Montana can be foreseen, should be the criterion. The instant case should be recognized as authority for extending jurisdiction on the basis of such a general intent.

BRENT REED CROMLEY

BARTER-EQUATION METHOD USED TO VALUE BLOCK OF LISTED STOCK.—In 1957 taxpayer shipping line sold ships to Moore-McCormack Lines, Inc. for $17,000,000. The latter issued 300,000 shares of its stock to taxpayer as part payment of the purchase price.[1] The sales contract assigned a value of $30 to the shares, although they were then selling on the New York Stock Exchange for about $23.[2] Taxpayer reported a capital gain

[57]This is a variation of the hypothetical advanced in Erlanger Mills v. Cohoes Fibre Mills, 239 F.2d 502, 507 (4th Cir. 1956), and commented upon in the instant case, *supra* note 31, at 83 n.11. Such an example demonstrates the need for the rule that each case must be decided upon its own set of facts. *Bullard, supra* note 31, at 82. There are numerous variables to consider, including the extent to which the defendant must be dealing in interstate sales, whether the plaintiff must be a resident of the forum state (not expressly required by the Montana statute quoted in text at note 29 *supra*. *But cf.*, Connecticut's statute, *supra* note 21), and whether the tort must have a relation to the type of commercial activity in which the defendant is engaged.

[1]The remainder of the purchase price was to be paid in cash ($3,200,000) and promissory notes or cash ($4,800,000), at Moore-McCormack's option. The promissory notes actually given by Moore-McCormack were stipulated to have a fair market value equal to their face value.

[2]The highest price at which Moore-McCormack stock had ever been traded on the New York Stock Exchange was 25¼ during January and February of 1957. The price had been as low as 17 in December of 1957, and 10⅝ in 1960.