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Constitutional Law - Due Process - Jurisdiction Over Alien Corporation in Products Liability Action. Duple Motor Bodies, Ltd. v. Hollingsworth, 417 F.2d 231 (9th Cir. 1969)

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the service characterization as protection to institutional suppliers of blood. The *Cunningham* court rejects the underlying policy determination as unsound in view of the rejection of the doctrine of charitable immunity in Illinois.[14] The court concludes that the blood transaction involves a sale since there is no meaningful distinction between blood, food and other products.[15]

The court extends the doctrine of strict liability in tort into the medical supply field by holding that the transfusion of blood constitutes a sale. The court felt that to perpetuate the decision in *Perlmutter* would be counter to Illinois policies of consumer protection and rejection of charitable immunity.[16] This decision does not intimate that the hospital is to be made an insurer of the purity of its medical supplies. The court merely intends that the hospital shall be held to the same standards of accountability as apply to other suppliers of goods.[17]

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Constitutional Law—DUE PROCESS-JURISDICTION OVER ALIEN CORPORATION IN PRODUCTS LIABILITY ACTION. *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969).

Defendant Duple Motor Bodies, a British corporation, designed and manufactured coach bodies for Vauxhall Motors, which assembled the busses and shipped them to Hawaii where they were sold to Maui Island

Inc., 185 So. 2d 749 (Fla. App. 1966) (action against blood bank). *But see* White v. Sarasota County Pub. Hosp. Bd., 206 So. 2d 19 (Fla. App. 1968), *cert. denied*, 211 So. 2d 215 (Fla. 1968) (action against hospital).

14. Darling v. Charleston Community Memorial Hosp., 33 Ill. 2d 326, 211 N.E.2d 253 (1965).

15. — Ill. App. 2d at —, 251 N.E.2d at 736.

16. *Id.*

17. The court's characterization of the blood transfusion as a sale does not eliminate all of the problems of recovery for a plaintiff. This is because the Supreme Court of Illinois has adopted the doctrine of strict liability in tort as provided in RESTATEMENT (SECOND) OF TORTS § 402A (1965). *See* Suvada v. White Motor Co., 32 Ill. 2d 612, 210 N.E.2d 182 (1965). A seller of products which are unavoidably unsafe is not to be held strictly liable "merely because he has undertaken to supply the public with an apparently useful and desirable product, attended with a known but apparently reasonable risk." RESTATEMENT (SECOND) OF TORTS § 402A, comment *k* at 353 (1965). *See* Garibaldi, *A New Look at Hospitals' Liability for Hepatitis Contaminated Blood on Principles of Strict Tort Liability*, 48 CHI. B. RECORD 204 (1967); *Medical Judgment v. Legal Doctrine In the Matter of Hepatitis Contaminated Blood*, 49 CHI. B. RECORD 22 (1967). *See generally* Note, *Liability for Blood Transfusion Injuries*, 42 MINN. L. REV. 640 (1958).

Tours.[1] One of the busses overturned, injuring plaintiff, who initiated this products liability action. From an order of the District Court of Hawaii denying a motion to quash return of service of process, defendant appealed, claiming that due process should prevent defendant from being compelled to defend in Hawaii.

The Court of Appeals for the Ninth Circuit affirmed the order,[2] holding that the presence of the defendant's coach bodies in Hawaii, effected through defendant's sale of the bodies to Vauxhall with knowledge that the product was bound for Hawaii, constituted sufficient contact with the forum state to satisfy the requirements of due process. The court found compliance with both the Hawaii long arm statute[3] and the United States Constitution.[4]

In 1945, in the landmark decision of *International Shoe Co. v. Washington*,[5] the Supreme Court essentially overruled the long-standing "physical power" concept of jurisdiction espoused in *Pennoyer v. Neff*.[6] *International Shoe* held that in order for a state to acquire jurisdiction over a nonresident defendant, due process required merely that defendant be served with proper notice, and that defendant have certain minimum contacts with the forum state.[7] In a series of subsequent de-

1. 417 F. 2d 231 (9th Cir. 1969).

2. *Id.* at 236.

3. HAWAII REV. STAT. § 634-71 (1968):

> (a) 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 his person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of the acts:
>
> (1) The transaction of any business within this State;
>
> (2) The commission of a tortious act within this State . . . .

The Hawaii statute was adopted from the Illinois long arm statute, ILL. ANN. STAT. ch. 110, § 17 (Smith-Hurd 1968), which was held to be constitutionally valid by the Illinois Supreme Court in *Nelson v. Miller*, 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

4. U. S. CONST. amend. XIV.

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

6. 95 U.S. 714 (1877). The Court held that the physical presence of the defendant in the forum state was a jurisdictional requisite.

7. 326 U.S. at 316. A concise summary of the evolution of long arm jurisdiction is provided by Chief Justice Stone:

> Historically the jurisdiction of courts to render judgment *in personam* is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. *Pennoyer v. Neff*, 95 U.S. 714, 733. But now that the *capias ad respondendum* has given way to personal service of summons or other form of notice, due process requires

cisions the Court attempted to define "minimum contacts," [8] culminating in *McGee v. International Life Ins. Co.*,[9] where a single contact having a substantial connection with the forum state was held to be sufficient contact to confer jurisdiction and meet the requirements of due process.[10] This ruling was limited by *Hanson v. Denckla*,[11] which established that a nonresident defendant must have purposefully availed itself of the privilege of conducting transactions within the forum state in order to be amenable to its jurisdiction.[12]

The extension of the states' jurisdiction over nonresident defendants has exerted a momentous influence in the field of products liability.[13] Doubtlessly, the most significant decision to spring from the union of products liability and long arm jurisdiction was *Gray v. American Radiator & Standard Sanitary Corp.*[14] The use of the defendant's product within the state was sufficient contact with the state to render the defendant amenable to suit therein.[15] In short, liability follows the product. This sweeping decision led to a split of opinion among the various jurisdictions. Some courts, grounding their reasoning on the "stream of commerce" approach, followed the lead of the Illinois court in *Gray*.[16]

> only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

Id. at 316, quoting from Millikin v. Meyer, 311 U.S. 457, 463 (1940).

8. For a comprehensive discussion of minimum contacts theory and its difficulties, *see* Johnson, *How Minimum is 'Minimum Contact'? An Examination of 'Long Arm' Jurisdiction*, 9 S. TEX L.J. 184 (1967).

9. 355 U.S. 220 (1957).

10. *Id.* at 223.

11. 357 U.S. 235 (1958).

12. *Id.* at 253.

13. The effect of jurisdictional expansion on products liability is reviewed extensively in Levin, *The 'Long Arm' Statute and Products Liability*, 4 WILLAMETTE L.J. 331 (1967).

14. 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

15. [I]t is not unreasonable, where a cause of action arises from alleged defects in his [manufacturer's] 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.

176 N.E.2d at 766.

16. *E.g.*, Eyerly Aircraft Co. v. Killian, 414 F.2d 591 (5th Cir. 1969); Aftanese v. Economy Bailor Co., 343 F.2d 187 (8th Cir. 1965); Stephenson v. Duriron Co., 401 P.2d 423 (Alas. 1965); Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966); Tice v. Wilmington Chemical Corp., 259 Iowa 27, 141 N.W.2d 616 (1966); Metal-Matic, Inc. v. Eighth Judicial District Court, 82 Nev. 263, 415 P.2d 617 (1966); Nixon v. Cohn, 62 Wash. 2d 987, 385 P.2d 305 (1963).

Others, in line with *Hanson*, required that the defendant commit some definite act with respect to the state in order to come under its jurisdiction.[17]

In *Duple*, the court is clearly applying the stream of commerce theory of jurisdiction, but by extending this rule to an alien defendant it has materially enlarged the scope of long arm jurisdiction in products liability cases. There is an emerging trend implicit in the parallel evolution of products liability and extended jurisdiction toward affording greater protection to the consumer. To this end, previously insurmountable barriers of jurisdiction and privity have been demolished.[18] This decision, the logical conclusion of the stream of commerce doctrine of products liability jurisdiction, carries with it the import that alien corporations will now be required to stand behind their products after entry into this country.[19]

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17. O'Brien v. Comstock Foods, Inc., 123 Vt. 461, 194 A.2d 568 (1963); Hodge v. Sands Mfg. Co., 151 W. Va. 133, 150 S.E.2d 793 (1966).

See Velandra v. Regie Nationale Des Usines Renault, 336 F.2d 292 (6th Cir. 1964). The plaintiff, a resident of Michigan, brought an action against defendant French corporation for injuries received in an automobile accident allegedly caused by defective brakes. The court held that the existence of three dealers in the state for defendant's product, one of which showed annual gross profits in excess of $100,000, together with the distribution of warranties to which defendant was a party, did not constitute sufficient contacts for the state to acquire jurisdiction.

18. For an informative survey of the development of the doctrine of products liability, *see* Prosser, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791 (1966).

19. As pointed out in the court's opinion, a judgment rendered against defendant may be difficult to enforce. However, difficulty of enforcement of a judgment is not to be confused with the judgment's validity. Any judgment rendered against defendant would be binding upon it, and any property it owned or acquired within the United States or any territory thereof would be subject to levy of execution.

This is not the first decision to hold an alien corporation amenable to suit in a domestic court. *Cf.* Stewart v. Bus & Car Co., 293 F. Supp. 577 (N.D. Ohio 1968), where a Belgian corporation was held to be amenable to suit in Ohio because it derived substantial revenue from goods used in that state. *Id.* at 584. However, in *Stewart*, defendant directly transacted business with an Ohio firm, Lakeshore Coach Company. *Id.* at 581. The departure of the *Duple* court lies in the finding that defendant was within the jurisdiction of Hawaii even though it conducted no business with any Hawaiian concern.