Montana Law Review

Volume 37
Issue 2 *Summer 1976*

Article 7

7-1-1976

The Long Arm of Montana's Rule 4B: Due Process Limits to the Exercise of Jurisdiction over Foreign Defendants

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THE LONG ARM OF MONTANA'S RULE 4B: DUE PROCESS LIMITS TO THE EXERCISE OF JURISDICTION OVER FOREIGN DEFENDANTS

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In two recent Montana federal district court cases, the courts reached opposite conclusions about the exercise of jurisdiction under Montana's "long-arm" rule[1] even though the nonresidents had similar contacts with persons in Montana. In both cases, the defendants had never been physically present in Montana prior to suit; they had no offices or agents in the state; and their only contacts with the state were telephone conversations with persons in Montana through which they negotiated single business transactions.

In the first case, *Friberg v. Schlenske*,[2] the court found that the nonresidents did nothing which would make litigation foreseeable in Montana, such that subjecting them to jurisdiction violated the fairness required by the due process clause of the Fourteenth Amendment of the United States Constitution. In *Johnson Flying Service, Inc. v. Mackey International, Inc.*,[3] because the nonresident corporation had allegedly made fraudulent representations to plaintiffs in Montana, the court found that the defendant's activity met the statutory requisites and concluded that due process would not be violated by holding the defendant answerable in Montana courts.

I. Due Process and Personal Jurisdiction

To permit an adjudication that is binding on a person not present within its boundaries, a state must first have statutorily provided the means of subjecting that person to its jurisdiction. If the defendant's acts satisfy the statutes, the state's courts must determine whether the application of the long-arm statute to the facts of a particular controversy satisfies the due process standards of the Fourteenth Amendment. Due process demands that before a state court may adjudicate a controversy involving a nonresident party, the party must have notice of the proceedings against it,[4] an opportunity to be heard, and some nexus with the state making it reason-

1. Mont. R. Civ. P. 4B.
2. 32 St. Rptr. 678 (D. Mont. 1975).
3. 32 St. Rptr. 879 (D. Mont. 1975).
4. The notice requirement is to ensure that a reasonable effort under the circumstances has been made to apprise the defendant of the nature of the proceedings against him. The Supreme Court has said that for notice to be reasonable "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

able to allow the courts of that state to make a binding judgment on the party.[5]

The test courts most often employ to decide jurisdiction questions is the "minimum contacts" test first announced in *International Shoe Company v. Washington*.[6] Briefly stated, a court may assert its jurisdiction if it finds that the nonresident has enough contact with the forum that making it defend there does not violate "traditional notions of fair play and substantial justice."[7] So vaguely stated, the test has limited utility. However, in *International Shoe* the court elaborated by enunciating certain yardsticks to measure the assertion of jurisdiction.[8] When a person partakes of the privilege of conducting activities within a state, he takes on certain reciprocal obligations to respond to suits arising out of his activities there. As a result, the courts of that state have specific jurisdiction over a person to litigate those controversies directly arising out of his activities in that state.[9]

Courts attempting to apply the "fair play" doctrine have struggled to create analytical schemes for examining the particular facts of each case. In *L.D. Reeder Contractors v. Higgins Industries, Inc.*,[10] the Ninth Circuit approved a three step approach[11] to deter-

5. R.J. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 71 (1971).

6. 326 U.S. 310, 316 (1945).

7. *Id.*

8. In the opinion, the Court said that:

> to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that State. The exercise of that privilege may give rise to obligations, and so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. 326 U.S. at 319.

9. Von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121 (1961). The Supreme Court foreshadowed these theories of reciprocal obligations and specific jurisdiction in an earlier decision in which it found a nonresident defendant to be subject to the jurisdiction of a state where he had injured another because his multi-state activities necessarily involved the risk of harm to the state's citizens. As such, he could expect to defend himself for the consequences of his activities there. *Hess v. Pawloski*, 274 U.S. 352 (1927). The Court later held that jurisdiction over a nonresident "who sets in motion in one State the means by which injury was inflicted in another" was not inconsistent with the requirements of due process. *Young v. Masci*, 289 U.S. 253, 258 (1933). Later decisions reinforced these doctrines. *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220 (1957); *Hanson v. Denckla*, 357 U.S. 235 (1958). Although *McGee* seemed to allow almost unlimited jurisdiction over a nonresident who had any incidental contacts with the forum state, the Court in *Hanson* clarified its conception of due process in jurisdiction cases by requiring that the nonresident voluntarily engage in some conduct by which it "*purposely* avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." [Emphasis added] 357 U.S. at 253.

10. 265 F.2d 768, 773 (9th Cir. 1959).

11. This three step approach, drawn from a combined reading of Supreme Court decisions, first appeared in Note, *Jurisdiction Over Nonresident Corporations Based on a Single Act: A New Sole for International Shoe*, 47 GEORGETOWN L.J. 342, 351-52 (1958).

mine whether a court's exercise of jurisdiction exceeded due process limits.

The Sixth Circuit summarized that approach:

> First, the defendant must purposely avail himself of the privilege of acting in the forum or causing consequences in the forum state. Second, the cause of action must arise from the defendant's activities there.
> Finally, the acts of the defendant or consequences caused by the defendant must have substantial enough connection with the forum state to make the exercise of jurisdiction over defendant reasonable.[12]

II. JOHNSON FLYING SERVICE, INC. v. MACKEY INTERNATIONAL, INC.

In *Johnson Flying Service, Inc.*, the plaintiff, a Montana corporation needing a Twin Otter airplane which met government standards of airworthiness, engaged in a series of telephone conversations with agents of Mackey International in Florida and New York about a plane that Mackey wanted to sublease. During those conversations Mackey allegedly made certain representations about the condition of the plane which induced Johnson to enter into an agreement to sublease the plane. Johnson's chief pilot went to Florida to test the plane, execute the contract, and take delivery. He flew the plane back to Montana where, after a few flights, problems with the engine became evident. A Twin Otter specialist tested the plane and determined that it was not airworthy and that the condition had existed prior to the execution of the sublease. Johnson then brought suit in Montana to recover substantial damages resulting from the allegedly fraudulent misrepresentations.

A. Purposeful Act Requirement

The threshold step in the three step *L.D. Reeder* scheme has two significant elements: (1) purpose and (2) an act or consequences of an act in the forum. Mackey resisted jurisdiction, claiming that it had never been physically present in the forum prior to the agreement and that its contacts with Montana were merely incidental and not purposeful because Johnson had initiated the negotiations.[13] However, Mackey purposefully engaged in a national solici-

12. Southern Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968). Similar approaches have been approved in at least two other circuits. *Curtis Publishing Co. v. Birdsong*, 360 F.2d 344, 352-3 (5th Cir. 1966) (Rives, J. concurring); *see Altanese v. Economy Baler Co.*, 343 F.2d 187 (8th Cir. 1965). *See also Koplin v. Thomas, Haab & Botts*, 73 Ill. App.2d 242, 219 N.E.2d 646, 649 (1966). In Montana, three of the four federal judges have recognized and approved the approach. *Continental Oil Co. v. Atwood & Morril Co.*, 265 F. Supp. 692, 696 (D. Mont. 1967) (Jameson, C.J.; Murray, J.; Smith, J.).

13. In *Hanson v. Denckla*, 357 U.S. 235 (1958), the Supreme Court ignored the issue of

tation for the sublease. Whenever one of Mackey's leased planes became surplus, the owner of the plane acted as Mackey's agent to secure a sublessee. In this instance, the owner contacted an international aircraft broker named Dexter. Dexter, whose commission was paid by Mackey, placed an advertisement in a national trade publication offering the Twin Otter for lease. In response to this advertisement, Johnson began negotiations with the various agents of Mackey.

Although Mackey argued that it did no act while physically in the state, other courts have had little trouble finding that threshold step satisfied when a nonresident sends representations into the state by telephone or through advertisements intending them to be relied on there.[14] Jurisdiction is grounded on the nonresident's intent to induce the plaintiff's reliance on those representations.

> Where a defendant knowingly sends into a state a false statement, intending that it should be relied on to the injury of a resident of that state he has for jurisdictional purposes acted within that state.[15]

New communications media allow persons to be "electronically present"[16] in another state, at least for the purpose of perpetrating

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initiative. Federal courts have generally downplayed the importance of that issue. A Circuit Court of Appeals likened the situation of nonresident defendants such as Mackey to the maker of the better mousetrap; an out-of-state corporation which is fortunate to be able to distribute its product nationally without leaving its home state may not thereby evade the consequences of its activities. *Shealy v. Challenger Mfg. Co.*, 304 F.2d 102, 104 (4th Cir. 1962). The factual differences between *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220 (1957), and *Hanson v. Denckla*, 357 U.S. 235 (1958), illustrate the distinction between incidental and purposeful contact with a state. In *McGee*, the nonresident insurer had no other business in California, but when it assumed the obligations of another insurer it mailed an offer to the plaintiff to insure him in accordance with the terms of his previous policy. With the acceptance of the offer, the insurer acquired a legally enforceable right in that state. In *Hanson*, the nonresident trustee's connection with the state of Florida was entirely an incident of the settlor's moving her domicile to that state. The trustee's legally enforceable rights were acquired before the settlor entered the state. Consequently, the Supreme Court held that the suit could "not be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida." 357 U.S. at 252.

14. The Supreme Court has long recognized that a nonresident may have sufficient contact with the forum state to satisfy the constitutional requirements of due process even though he was never physically present. *Eg. Traveler's Health Assn. v. Virginia*, 339 U.S. 643 (1950). Federal courts, following the lead of the Supreme Court, have based jurisdiction on a wide variety of nonphysical contacts. *Buckley v. New York Post Corp.*, 373 F.2d 175 (2d Cir. 1967) (sending newspapers into state); *WSAZ, Inc., v. Lyons*, 254 F.2d 242 (6th Cir. 1958)(radio broadcasts). In fraud cases particularly, courts have had little trouble justifying their assertion of jurisdiction over persons not physically present. *Haddad v. Lewis*, 382 F. Supp. 1365 (E.D. Mich. 1974); *Jeno's Inc. v. Tupman Thurlow Co.*, 349 F. Supp. 1185 (D. Minn. 1972); *McDermott v. Bremson*, 273 Minn. 104, 139 N.W.2d 809 (1966); *Kiefer v. May*, 46 Mich. App. 566, 208 N.W.2d 539 (Mich. Ct. App. 1973). *Contra, Kramer v. Vogl*, 17 N.Y.2d 27, 267 N.Y.S.2d 900, 215 N.E.2d 159 (1966).

15. Murphy v. Erwin-Wasey, Inc., 460 F.2d 661, 664 (1st Cir. 1972).

16. McGraw v. Matthei, 340 F. Supp. 162, 164 (E.D. Mich. 1972).

a fraud upon that state's citizens. Another court has held that "in view of the particular tort [fraud] . . . a single material representation which was relied upon may be sufficient contact with [the state] to allow courts here to exercise jurisdiction. . . ."[17] In *Murphy v. Erwin-Wasey, Inc.*,[18] relied on in *Johnson Flying Service, Inc.*, the court drew an analogy between fraud and products liability cases: sending material misrepresentations to be relied on in the state evidences a purpose similar to that of a manufacturer sending a defective product into the state for economic gain.[19] The nonresident corporation's intentional placement of its product into the stream of commerce justifies the court's assertion of power over it. Mackey intended no general product distribution, but it was its custom when aircraft became surplus to employ leasing agents to advertise the availability of the plane and seek a sublease agreement wherever possible. The purposefulness of Mackey's activities within Montana is even greater than in a products liability case because a defective product may be generally distributed in interstate commerce, merely creating the opportunity for later damage, whereas Mackey knowingly sent statements into the forum state intending that they be relied upon and acted upon there.

B. Specific Jurisdiction Requirement

The second step in the three step *L.D. Reeder* scheme embodies the doctrine of specific jurisdiction.[20] Traditionally jurisdiction cases were categorized as in personam, in rem, or quasi in rem.[21] Once jurisdiction had been obtained the court could adjudicate any controversy involving the person or the subject matter, even claims having no relationship to the state. The doctrine of specific jurisdiction allows a new category of cases in which a court obtains jurisdiction over a nonresident only for suits arising out of his single act or the consequences of that act within the forum state.

Jurisdiction statutes enacted since *International Shoe* have incorporated the doctrine of specific jurisdiction.[22] The Montana Rule

17. Haddad v. Lewis, 382 F. Supp. 1365, 1371 (E.D. Mich. 1974).

18. 460 F.2d 661, 664 (1st Cir. 1972).

19. Federal courts in Montana have asserted jurisdiction over nonresident manufacturers to adjudicate disputes arising out of allegedly defective manufacture of products causing injury in Montana. Scanlan v. Norma Projektil Fabrik, 345 F. Supp. 292 (D. Mont. 1972); Hartung v. Washington Iron Works, 267 F. Supp. 408 (D. Mont. 1967); Continental Oil Co. v. Atwood & Morril, 265 F. Supp. 692 (D. Mont. 1967); Bullard v. Rhodes Pharmacal, 263 F. Supp. 79 (D. Mont. 1967).

20. *See* discussion *supra* note 9.

21. *See generally*, R.J. WEINTRAUB, *supra* note 5, at 65.

22. *See* Note, *Jurisdiction Over a Nonresident Corporation Based on a Single Act: A New Sole for International Shoe*, *supra* note 11 at 368.

4B does so implicitly.[23] Activity which does not fall under the provisions of Rule 4B also does not meet the requisites of the second step of the *L.D. Reeder* scheme. In *Johnson Flying Service, Inc.*, Mackey contacted the forum through a series of telephone negotiations from which the lawsuit arose. Thus the action arose out the tort of fraud and both the accrual of a tort provision of Montana Rule 4B[24] and the second step of the *L.D. Reeder* scheme were satisfied.

C. *The Reasonableness Requirement*

The third and most critical step in the *L.D. Reeder* scheme demands that the exercise of jurisdiction over the defendant be reasonable. Reasonableness and fairness in a court's assertion of power to adjudicate a controversy is the "conceptual core" of due process.[25] The nature and extent of the nonresident's nexus with the state determines how fair and reasonable that assertion is.[26] A state's courts base their interest in adjudicating a given controversy upon the consequences within the state of the non-resident's activity.[27] The United States Supreme Court gives "great weight" in jurisdiction cases to the in-state economic consequences of a transaction and the degree of interest that state has in providing its citizens with a forum to see that transaction carried out.[28] When a

23. The pertinent language from Rule 4B states that any person is subject to jurisdiction for "any claim for relief arising from the doing personally" of an act included within the enumerated categories of conduct. MONT. R. CIV. P. 4B.

24. MONT. R. CIV. P. 4B(1)(b). The language which provides for jurisdiction over any act resulting in the "accrual of a tort" in Montana is unique. Other long-arm statutes use language such as "tortious act". *Eg.* SMITH-HURD ILL. ANNOT. STAT. ch. 110 § 17(1)(b).

25. R.J. WEINTRAUB, *supra* note 5 at 69. Professor Kurland has criticized the terms fair play and reasonableness as statements of conclusion rather than of reasoning. Kurland, *The Supreme Court, The Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569, 623 (1958). For those courts which dismiss jurisdiction issues with single sentence, peremptory statements, that criticism is justified. Nonetheless, those terms remain the principal standards courts use. What those terms mean, however, has evolved considerably. Courts view each new fact situation which comes before them and reason by analogy to prior precedent, taking into consideration the evolution in the national economy and interstate communications networks, to incrementally expand the scope of their power over nonresidents.

26. Professor Currie emphasized there is no "magic formula" which a court should use in evaluating the fairness of jurisdiction. He points to a number of factors which weigh upon a court's calculation of fairness: initiative or solicitation, the nature of the businesses of the litigants, the presence of agents in the forum state, the relative abilities of the parties to defend in a foreign court, and in a contract action the place of performance. Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L. F. 533, 577. Other authorities have cited the location of witnesses and proof, Von Mehren & Trautman, *supra* note 8 at 1168; and whether the person invoking jurisdiction was buyer or seller, *Electro-Craft Corp. v. Maxwell Electronics Corp.*, 417 F.2d 365, 368 (8th Cir. 1969).

27. Southern Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 385 (6th Cir. 1968). Currie, *supra* note 26 at 565; Scoles, *Oregon Conflicts: Three Cases*, 49 ORE. L. REV. 273, 280 (1970).

28. Traveler's Health Assn. v. Virginia, 339 U.S. 643, 648 (1950) (citing *Hoopeston*

defendant's activities have substantial economic impact in another state, that state's interest outweighs any possible inconveniences to the defendant forced to litigate there.[29] Jurisdiction is not unfair because the nonresident should have reasonably foreseen the possibility of suit where the impact of his activities falls.[30]

> A defendant who engages in a form of business which entails conduct *likely to create liability* and has *substantial economic consequences* within a state may reasonably be required to resolve a resulting legal dispute in that state. [Emphasis added][31]

Mackey argued that it could not reasonably be subjected to jurisdiction when its only contacts with the state were telephone calls and nothing it did through those calls made litigation foreseeable. In an early case applying Rule 4B, the Montana supreme court implicitly recognized that under the broad terms of that rule, jurisdiction could reasonably be based upon telephone calls alone.[32] The court subsequently used the accrual of a tort provision of the rule to find jurisdiction over an action involving a contract with a nonresident which the plaintiff partially negotiated and finally accepted while he was in the state.[33] The court found that the complaint sounded in tort, and if there was a tort committed, it was committed in Montana, even though the defendant had never been in the state.[34]

The court in *Johnson Flying Service, Inc.* used somewhat similar reasoning, resting its decision upon the nature of the claim in controversy.[35] It was not unreasonable or unfair to subject Mackey to jurisdiction for claims arising out of allegedly fraudulent misrepresentations made by phone to Johnson and relied upon to its detriment here. As the court pointed out:

Canning Co. v. Cullen, 318 U.S. 313, 316 (1943)).

29. *See McGee v. Int'l Life Ins. Co.*, 356 U.S. 220, 223-4 (1957). In accord with the concept of reciprocal obligations enunciated by the Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) is the principle that part of the cost of doing business for economic gain in a foreign state is being subjected to that state's courts' power. "[T]he conduit of economic benefit affords the means of enforcing economic responsibility to the plaintiff." H. GOODRICH, CONFLICT OF LAWS 130 (4th ed. 1964).

30. It is not unfair to subject a nonresident to jurisdiction when its activities have a "realistic impact on the commerce of the state" and it should have "reasonably foreseen that transaction would have consequences in that state." *Southern Mach. Co. v. Mohasco Indus. Inc.*, 401 F.2d 374, 382-3 (6th Cir. 1968).

31. Scoles, *supra* note 30 at 277.

32. Prentice Lumber Co. v. Spahn, 156 Mont. 68, 474 P.2d 141 (1970). The court used the transacting business provision of Rule 4B to justify the exercise of jurisdiction over a nonresident, relying primarily on the Oregon supreme court decision, *State ex rel. White Lumber Sales, Inc. v. Sulmonetti*, 252 Or. 121, 448 P.2d 571 (1968), which based jurisdiction solely on telephone negotiations.

33. State ex rel. Goff v. District Court, 157 Mont. 495, 487 P.2d 292, 294 (1971).

34. *Id.*

35. 32 St. Rptr. 879, 882 (1975).

> In cases of fraud, the relevant events inhere in the negotiations and the making of the contract, including all the representations inducing agreement. [Footnote omitted][36]

If the act of reliance on the misrepresentations is the proximate cause of damage to the plaintiff, then the place where reliance occurred, where plaintiff parted with his assets, is the place of wrong, not where the representations were made.[37] Although conflicts of law doctrines are not strictly applicable to jurisdiction decisions, they are often useful in evaluating where a tort occurred and for measuring state interest.[38] According to conflicts doctrines, pecuniary loss is more difficult to locate than physical injury. However, it is usually of greatest concern to the state with which the person suffering the loss has the closest relationship.[39]

The state's interest in protecting its citizens from fraud means that Mackey could have reasonably anticipated suit if the plane failed to perform as represented. No matter how the representation arrived in the state, if the sending party should have reasonably anticipated contractual consequences and reliance in the state, then it is not unfair to subject the nonresident to jurisdiction for claims arising out of that transaction.[40]

III. FRIBERG V. SCHLENSKE

In *Friberg v. Schlenske*, the plaintiff, a Utah artist, had delivered to defendant Schlenske four paintings on consignment. Allegedly, Schlenske, without authority, pledged the paintings to secure loans from two Great Falls banks. The banks later foreclosed the pledges. Schlenske then called one of the nonresidents, a Texas art dealer, to try to sell the paintings for the bank. After a series of telephone calls, the paintings were shipped to Texas for approval. After they accepted the paintings, the Texas defendants sent a check to Montana to cover the purchase price. Plaintiff brought suit in Montana to recover the paintings or their value.

There are a number of similarities between this case and *Johnson Flying Service, Inc.* The Texas defendants had no agents in the state and no dealings with the state except for telephone negotiations leading to their purchase of the paintings. The negotia-

36. *Id.*

37. RESTATEMENT OF CONFLICT OF LAWS § 377, note 4 (1934).

38. *See Hanson v. Denckla*, 357 U.S. 235, 254 (1958); *Van Mehren & Trautman*, *supra* note 8 at 1129.

39. RESTATEMENT OF CONFLICT OF LAWS (SECOND) § 148, comment c (1971). *See also* Note, *Conflict of Laws in Multi-State Fraud and Deceit*, 3 VAND. L. REV. 767 (1950).

40. *See e.g., Murphy v. Erwin-Wasey, Inc.*, 494 F.2d 582 (5th Cir. 1974) and fraud cases cited *supra* note 15.

tions constituted purposeful acts within the forum state, and the alleged tort of conversion arose out of those negotiations. Yet, in *Friberg* the court rejected jurisdiction over the nonresidents.

The *Friberg* decision quotes language which expressly recognizes the three step *L.D. Reeder* approach.[41] The court emphasized, however, that it is the third step, the due process requirement of fairness, which is ultimately determinative. The court's finding that fair play was violated rested on two general grounds: (1) the Texas defendants were not engaged in any multi-state business which entailed solicitation in Montana and (2) their conduct in Texas was not such that they should have reasonably foreseen the possibility of litigation in Montana.[42]

Again, fairness determinations rest on the character and foreseeability of the consequences which the nonresident's acts have in the forum. The Texas defendants were buyers, not sellers, of goods. Although they voluntarily engaged in a transaction with persons in Montana, their conduct lacked the purposefulness of Mackey, who placed advertisements in a national publication. Although Mackey had no general interstate product distribution, it customarily subleased planes through interstate brokers when its equipment became surplus. In contrast, the Texas defendants were sought out by the sellers in Montana, and the defendants' Montana transaction was not a part of any multi-state business dealings.

Further, their conduct in Texas had little or no foreseeable impact in Montana. Whereas Mackey could expect litigation if its plane did not perform to the standards represented, the Texas defendants promptly paid the price of the paintings and did nothing else which would have made litigation in Montana foreseeable. The Texas defendants had no contact with the plaintiff. Given the nature of their activities, the limited impact in Montana, and the unforeseeability of litigation, the court properly refused to exercise its power over those defendants.

In a footnote to the opinion, the court recognized that the "fair play" question turns on foreseeability.[43] If the defendants had not paid for the paintings, then litigation would have been foreseeable and jurisdiction not unreasonable. As it was, they paid for the paintings from Texas, and the tort they were alleged to have committed, conversion, would have occurred, if at all, in Texas, not Montana. Jurisdiction is not intended as punishment for the faults of the defendant; it is grounded upon the state's interest in providing a

41. 32 St. Rptr. 678, 678-9 (D. Mont. 1975) (citing *Aylstock v. Mayo Foundation*, 341 F. Supp. 560, 562 (D. Mont. 1972)).

42. *Id.* at 679.

43. *Id.* at 679, n.1.

forum for its residents.[44] However, the state has no interest in bringing nonresidents into its courts to litigate a controversy which was not reasonably foreseeable by the nonresident. At this point, jurisdiction questions merge with tort concepts of the "prudent man". Due process fairness and civil negligence both depend upon the court finding that the party should have foreseen the consequences of its activities.

IV. CONCLUSION

Ever since the Supreme Court's landmark decision in *International Shoe*, state and federal district courts have expanded their jurisdiction over an increasingly broad range of contacts that nonresident defendants have with the forum state. The Supreme Court has upheld that expansion because the "fundamental transformation of our national economy", coupled with advances in communication systems, has lessened the burden on the nonresident to defend himself in a state where he has engaged in economic activity.[45] It is incumbent upon state legislatures and courts to recognize the greater interstate character of the national economy and accept the need for expanded jurisdiction.[46]

Commentators have heralded the Montana long-arm rule as one of the broadest of any state,[47] reaching to the outer limits allowed by the United States Constitution. The Montana legislature has apparently made the policy decision that expanded jurisdiction is necessary for the protection of its citizens. The people of Montana are largely dependent upon foreign production of finished goods; thus the state has a substantial interest in providing a forum for redress of injury to its citizens from such products. Without a relatively broad rule, liberally construed, the citizens of the state would be forced to pursue out-of-state manufacturers to their domicile state. As a result, in many cases the out-of-state manufacturers would be able to gain economic advantage from transactions with citizens of the state without any responsibility for resulting injury because of the inconvenience of following the defendant to its domicile. As long as the nonresident's activities were such that the in-state consequences made the possibility of litigation reasonably foreseeable, there is no violation of due process to require them to defend themselves in a foreign tribunal.

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44. Southern Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 384 (6th Cir. 1968).

45. McGee v. Int'l Life Ins. Co., 356 U.S. 220, 222-3 (1957).

46. *Cf. Hanson v. Denckla*, 357 U.S. 235, 251 (1958) ("the need for jurisdiction over nonresidents has undergone a similar increase".).

47. Towe, *Personal Jurisdiction over Nonresidents and Montana's New Rule 4B*, 24 MONT. L. REV. 3, 22 (1961). *See also*, Boit v. Emmco, Inc. Co., 271 F.Supp. 366, 370 (D. Mont. 1967); Perkins under Cir. v. Spartus, 156 Mont. 68, 474 P.2d 141, 144-5 (1970).