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Cyrus M. Johnson Jr.

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International Products Liability and Long-Arm Jurisdiction: *Hutson v. Fehr Bros., Inc.*

*Hutson v. Fehr Bros., Inc.*¹ raises the issue of the scope of Arkansas' long-arm statute in securing in personam jurisdiction over a foreign distributor of defective products. The increasing volume of products imported into the United States has created a vital need for its citizens to recover damages for injuries suffered from defective products. However, in *Hutson*, the Court of Appeals for the 8th Circuit refused to expand the use of Arkansas' long-arm statute to assert jurisdiction over a foreign distributor of products sold within the state.

The plaintiffs in *Hutson*, two lumber yard employees, were injured when a chain that their employer purchased from a local retailer broke. The chain was manufactured by an unknown Yugoslavian company and purchased by Acciaiere Weissenfels, an Italian corporation. Weissenfels repackaged the chain and sold it as its own product to Frank Fehr & Company, a British corporation that had exclusive rights to sell Weissenfels products in the United States. Fehr & Company resold the chain to its New York subsidiary, Fehr Brothers, which repackaged it under its own brand name, *Fairline*, and sold it to the Arkansas retailer, Carroll Building and Appliance Company.²

Plaintiffs, Arkansas residents, brought a products liability action against Weissenfels and Fehr Brothers in the U.S. District Court for the Western District of Arkansas. Weissenfels moved to dismiss the action for lack of jurisdiction. The court denied Weissenfels' motion, holding that the state's long-arm statute permitted in personam jurisdiction for tortious acts committed outside Arkansas that caused injury in Arkansas. The district court also found that the exercise of in personam jurisdiction over Weissenfels was consistent with the constitutional due process requirements established in *International Shoe v. Washington*³ and *Hanson v. Denckla*.⁴ The minimum contacts test of *International Shoe* was satisfied since Weissenfels, even though two steps removed from the forum state, had received "substantial revenue" from sales totaling \$74,551.35 in Arkansas by Fehr Brothers over a four-year period. Furthermore, the court

¹ 584 F.2d 833 (8th Cir. 1978).

² *Id.* at 834-35.

³ 326 U.S. 310 (1945).

⁴ 357 U.S. 325 (1958).

held that Weissenfels had purposely availed itself of the privilege of conducting business in Arkansas, as required by *Hanson*, in that it was a foreseeable result of Weissenfels' distribution system that some chains would be sold in Arkansas.⁵

At defendants' request, the district court certified the issue of jurisdiction for the Eighth Circuit Court of Appeals, which reversed in a three to two decision. The court of appeals found that Arkansas' long-arm statute was sufficiently broad to reach the tortious activity, but held that the assertion of in personam jurisdiction over Weissenfels would be violative of constitutional due process requirements.⁶ The plaintiff's petition for certiorari to the U.S. Supreme Court was denied.⁷

The majority in *Hutson* acknowledged that some courts have exercised jurisdiction over any corporation that introduces its product into the stream of interstate commerce if it had reason to know or expect that its product would be brought into the state where the injury occurred. They rejected a mechanical application of this foreseeability test as incompatible with due process rights. The court refocused on *International Shoe's* requirement that the "quality and nature" of the defendant's activity be such that it is reasonable and fair to subject a defendant to suit in the forum state.⁸

Although the court never specifically addressed the question, it appears that the dispositive issue in *Hutson* for the majority was whether Weissenfels was the manufacturer or merely a distributor of the defective chain. The majority on the court must have concluded Weissenfels was merely a distributor, because if it was deemed a manufacturer the great weight of precedent supports a finding of jurisdiction.⁹ Courts have asserted jurisdiction where a foreign manufacturer is involved if the use of the defective product in the forum state was foreseeable.¹⁰

After placing its products in the stream of commerce, courts have not allowed a manufacturer to insulate itself from jurisdiction by creating a network of distributors. In *Honeywell, Inc. v. Metz Apparatewerke*,¹¹ the defendant German proprietorship marketed, through a system of exclusive distributorships, goods allegedly infringing on patents held by the U.S. corporation. The court asserted jurisdiction over Metz, holding that the international manufacturer should not be able to "insulate himself from the long-arm of the courts by an intermediary or by professing

⁵ 584 F.2d at 838.

⁶ *Id.* at 835-36.

⁷ 47 U.S.L.W. 3368 (1978).

⁸ 584 F.2d at 836-37.

⁹ *See* cases cited in 19 A.L.R.3d 13, §§ 5(a), 8(a)-(d) (1968).

¹⁰ For example, in *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969), the Court of Appeals for the Ninth Circuit held that an English manufacturer of allegedly defective coach bodies was subject to Hawaii's jurisdiction because it knew that its product's ultimate destination was Hawaii. This was sufficient to satisfy due process requirements under Hawaii's long-arm statute.

¹¹ 509 F.2d 1137 (7th Cir. 1975).

ignorance of the ultimate destination of his products.”¹²

The New Jersey courts, faced with the same issue, held that their long-arm statute was sufficiently broad to reach an international manufacturer who had no direct contacts with New Jersey. In *Certismo v. Heidelberg*¹³ the U.S. distributor of an allegedly defective printing press sought to file a third-party complaint against the German manufacturer in a products liability case. After admitting that the traditional bases of jurisdiction, namely consent, presence and doing business,¹⁴ were absent, the court held that a manufacturer who placed his product into the stream of commerce was subject to jurisdiction anywhere it was foreseeable that the product would travel.¹⁵

The court specifically addressed the issue of whether this connection with a forum state was too tenuous to support in personam jurisdiction. It held that the need of New Jersey citizens to have an accessible forum outweighed the inconvenience to the defendant. “[T]o prevent recovery by an injured plaintiff on third party plaintiff because the manufacturer had no ‘contacts’ in that it handled all transactions through a middleman-distributor, is to allow a legal technicality to subvert justice and economic reality in the worst sense.”¹⁶

On appeal the Superior Court of New Jersey, Appellate Division, declined to decide whether the stream of commerce rule conformed to the requirements of due process.¹⁷ It affirmed the lower court’s jurisdiction on the grounds that the distributor was “an integral spoke to a wheel in which [the German Company] is the hub,” and thus maintenance of the suit did not offend traditional notions of fair play and substantial justice.¹⁸

An argument can be made that obtaining jurisdiction over a corporation chartered in a foreign country should require more substantial “minimum contacts” than a similar assertion of jurisdiction over a domestic out-of-state corporation. In *Seilon, Inc. v. Brema S.p.A.*,¹⁹ the court was confronted with the issue of whether more contacts were required to sustain jurisdiction over a corporate defendant chartered under the laws of a foreign country. The court, without dealing with any of the peculiar facts of the case, merely relied on a prior case that found no difference in applicable standards for jurisdiction over interstate and international de-

¹² *Id.* at 1144.

¹³ 298 A.2d 298 (N.J. Super. Ct. Law Div. 1972).

¹⁴ For an excellent discussion of the traditional bases of jurisdiction, see Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts: From Pennoyer to Neff: A Review*, 25 U. CHI. L. REV. 569, 578-86 (1958).

¹⁵ 298 A.2d at 303.

¹⁶ *Id.* at 304.

¹⁷ *Van Eewen v. Heidelberg Eastern, Inc.*, 306 A.2d 79, 81 (N.J. Super. Ct. App. Div. 1973).

¹⁸ *Id.* at 83 (quoting *Hoagland v. Springer*, 183 A.2d 678, 680 (N.J. Super. Ct. App. Div. 1962)).

¹⁹ 271 F. Supp. 516 (N.D. Ohio 1967).

defendants. In the prior case, *National Gas Appliance Corp. v. A.B. Electrolux*,²⁰ a Swedish corporation was subjected to Illinois jurisdiction in an action for breach of contract where the court found a substantial part of the negotiations, conferences, contacts and meetings culminating in the contract, took place in Illinois.²¹ The court did not discuss any differentiation in the amount or nature of the minimum contacts required between defendants chartered in another state and those chartered in another country. Thus when the Eighth Circuit addressed the issue in *Hutson*, there was no solid precedent for applying a more stringent minimum contacts test in international cases than that used in interstate cases.

A real difficulty underlying the early attempts to work out a satisfactory rationale for personal jurisdiction was that the doctrines of "consent" and "presence" were borrowed from laws relating to wholly independent sovereignties which were not relevant to jurisdictions bound together by a national government.²² In *International Shoe* the Supreme Court abandoned these tests and allowed states to extend their jurisdiction to the full extent permitted by the due process clause. Judgments issued against out-of-state defendants would be enforced in any state in which the defendant had property under the Full Faith and Credit Clause of the Constitution.²³ When international parties are involved, "Full Faith and Credit" is inapplicable for enforcement and the plaintiff must rely on principles of international comity. Consequently, it is arguable that when international defendants are involved, courts should return to the traditional doctrines of jurisdiction between independent sovereigns and find jurisdiction only where the forum has a more traditional "power" to support jurisdiction over the defendant. This power might be the result of the defendant's contacts in the state, but would necessarily be substantial contacts over which the state could exercise a judgment.

Since the majority in *Hutson* found that Weissenfels was not the manufacturer of the chain, the issue is whether a mere distributor should be subject to jurisdiction in Arkansas. In product liability actions most courts and the Restatement of Torts have held that strict liability is applicable to wholesalers or distributors regardless of whether the ultimate consumer purchased the product directly from them or obtained it indirectly further down the distribution chain.²⁴ The cases refusing to apply the strict liability doctrine to distributors generally involve situations in which the manufacturer is reputable and reliable and the product is not inspected or opened until purchased by the final consumer. This excep-

²⁰ 270 F.2d 472 (7th Cir. 1959).

²¹ *Id.* at 475.

²² Kurland, *supra* note 14, at 578-84.

²³ 326 U.S. at 316.

²⁴ RESTATEMENT (SECOND) OF TORTS § 402A; 13 A.L.R.3d 1096, § 10[a] (1967).

tion would not apply in *Hutson* as Weissenfels opened and repackaged the chain.

Despite the trend to hold even a mere distributor strictly liable for a defective product, the majority in *Hutson* rejects a mechanical application of the foreseeability test to determine whether to assert jurisdiction. Paraphrasing the Supreme Court in *Hanson v. Denckla*, the majority stated that it would examine the facts of the case to determine if enough "affiliating circumstances" were present to warrant jurisdiction.²⁵ In *Hanson* the Supreme Court had recognized the trend towards expanding personal jurisdiction over nonresidents due to technological progress both increasing the need for states to provide a local forum for their citizens and minimizing the burden to the defendant of defending an action in a foreign tribunal.²⁶ Yet the court stated that it would be incorrect to assume that all restrictions on personal jurisdiction were disappearing. The minimum contacts restriction was more than a shield against an inconvenient or distant trial. It was based on the

[t]erritorial limitations of the power of the respective states. However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the "minimal contacts" with the state that are a prerequisite to its exercise of power over him.²⁷

The majority in *Hutson* found Weissenfels' contacts with Arkansas consisted of only the fortuitous introduction of products into the state by the decision of the British corporation. Thus Weissenfels had not purposely availed itself of the privilege of conducting business in the forum state. As the product was not manufactured by Weissenfels or marketed or sold by them in the United States, the court found that too few "affiliating circumstances" were present to satisfy the minimum contacts necessary for in personam jurisdiction.²⁸ The court stated that considerations associated with forum non conveniens and forum convenience were pertinent to their decision and that subjecting Weissenfels to the burden of defending the suit in Arkansas would offend "traditional notions of fair play and substantial justice."²⁹

Two dissents to the majority opinion were filed. The first dissent, authored by Judge Stephenson, emphasized Weissenfels' connection with the chain itself. Fehr Brothers, Inc. circulated advertisements to Arkansas consumers in which it was claimed that Weissenfels had been "producing chains for over 500 years" and was a "pioneer in the technological development of chain."³⁰ The brochure stated that the Weissenfels factory was equipped with the most modern machinery available and staffed by "highly skilled workmen to whom chain making

²⁵ 584 F.2d at 837.

²⁶ 357 U.S. at 250-51.

²⁷ *Id.* at 251.

²⁸ 584 F.2d at 837.

²⁹ *Id.*

³⁰ *Id.* at 838.

[was] a family tradition."³¹ The dissent thus treated Weissenfels as the manufacturer of the chain and cited a line of cases in which courts had asserted jurisdiction over alien manufacturers who sold their products into the stream of commerce. Judge Stephenson argued that the use of a foreseeability test was necessary to prevent a manufacturer from insulating himself from jurisdiction simply by adding a distributor to its sales chain. This, he felt, would be fundamentally unfair.³²

Judge Lay in a second dissent cited Arkansas authority to show that the Supreme Court of Arkansas would have upheld jurisdiction over Weissenfels.³³ According to Judge Lay, by denying jurisdiction, the majority in effect declared unconstitutional that part of the Arkansas long-arm statute that authorized jurisdiction over a nonresident alien for torts committed in the state.³⁴ Judge Lay felt that this encroached on the state's prerogative of providing its citizens with a convenient forum for addressing injuries and that it overlooked the sound judicial policy of encouraging the settlement of all claims arising out of the same core of operant facts in a single lawsuit.³⁵

Hutson points to a shift away from placing paramount emphasis on a state's right to provide a convenient forum for its citizens and towards a truer balance of convenience to both parties. This shift was evident in *Shaffer v. Heitner*³⁶ when the Supreme Court ruled that in rem jurisdiction could no longer be secured simply on the basis of the defendant owning property in the forum state. The court held that in rem jurisdiction was contingent on the existence of the same minimum contacts required for in personam jurisdiction.³⁷

The increase in foreign products entering the U.S. market makes it desirable for a definitive statement on the extent of a state's right to claim jurisdiction over a foreign manufacturer and/or distributor. *Hutson* is not such a case. *Hutson* does reemphasize the due process requirement of fundamental fairness to both parties in the choice of a forum. It does not address the issue of if, and to what degree, Weissenfels' foreign nature increased the minimum contacts necessary to satisfy due process. The courts already assert jurisdiction over international manufacturers and over U.S. interstate distributors where the use of the product and thus injury from it are foreseeable. It seems but a logical extension of jurisdiction to next reach an international distributor for injuries occurring where their products foreseeably reach. Fundamental fairness to the

³¹ *Id.*

³² *Id.* at 839.

³³ *Id.* at 840.

³⁴ *Id.*

³⁵ *Id.* at 841.

³⁶ 433 U.S. 186 (1977).

³⁷ *Id.* at 212.

consumer and the courts' interest in settling all liability in one action would require it.

—CYRUS M. JOHNSON, JR.

