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Personal Jurisdiction - Wyoming's New Long-Arm Statute - Olmstead v. American Granby Co.

Rebecca H. Noecker

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PERSONAL JURISDICTION—Wyoming's New Long-Arm Statute. *Olmstead v. American Granby Co.*, 565 P.2d 108 (Wyo. 1977).

On May 13, 1977, the Wyoming Supreme Court handed down *Olmstead v. American Granby Co.*,¹ a personal injury case which upheld the exercise of personal jurisdiction under subsection (a)(iv) of Wyoming's former long-arm statute.² Two weeks later a new long-arm statute,³ which was enacted by the 1977 Wyoming legislature, became effective. This case note analyzes the facts of the *Olmstead* case under Wyoming's new long-arm statute.

An air pressure tank exploded while the appellant, Roger Olmstead, was adjusting it near Powell, Wyoming. Olmstead brought a negligence and breach of warranty action against appellees State Stove and Manufacturing Company, Inc., American Granby Company, Billings Pipe and Supply Company and six other defendants. The district court held that under the previous long-arm statute,⁴ the court lacked personal jurisdiction over the appellees.⁵

The air tank went through a four step distribution system before reaching the Wyoming consumer. State Stove designed and manufactured the air tank and their affiliate, American Granby, supplied the tank to Billings Pipe and Pump Supply Company. Billings Pipe, a wholesale-retail distributor of plumbing equipment, in turn filled Sheridan retailer A. L. Scott and Sons' unsolicited order for the tank. Scott sold the tank to the ultimate Wyoming consumer.⁶

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1. *Olmstead v. American Granby Co.*, 565 P.2d 108 (Wyo. 1977).
2. WYO. STAT. § 5-4.2 (Supp. 1975) (repealed 1977) provided:
 - (a) In addition to all other bases of jurisdiction otherwise authorized or provided by law, any court of this state may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's
 - (i) transacting any business in this state;
 - (ii) contracting to supply services or things in this state;
 - (iii) causing tortious injury by an act or omission in this state;
 - (iv) causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct in this state or derives substantial revenue from goods consumed or services used in this state;
 - (v) having an interest in, using, or possessing real property in this state; or
 - (vi) contracting to insure any person, property, or risk located within this state at the time of contracting.
 - (b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.
3. WYO. STAT. § 5-4.3 (Interim Supp. 1977), provides:
 - (a) A Wyoming court may exercise jurisdiction on any basis not inconsistent with the Wyoming or United States Constitutions.
4. WYO. STAT. § 5-4.2 (Supp. 1975) (repealed 1977).
5. *Olmstead v. American Granby Co.*, *supra* note 1, at 109.
6. *Id.* at 110.

The appellees were not incorporated in Wyoming, nor did they maintain any offices, facilities, agents or employees in Wyoming. State Stove's method of shipping its products to Wyoming consumers through independent parties accounted for less than 1/100 of 1% of its total revenue. American Granby utilized eight Wyoming wholesalers generating revenues under \$5,000.00 while Billings Pipe filled unsolicited Wyoming orders amounting to \$8,423.80 in 1973 and \$13,366.48 in 1974. The Wyoming Supreme Court held there was jurisdiction over the appellees under subsection (1)(iv) of the repealed long-arm statute⁷ based on the rationale that the appellees distribution system was a "persistent course of business" and the appellees derived "substantial revenue from goods consumed"⁸ in Wyoming.⁹

BACKGROUND OF THE LAW

United States Supreme Court

A thorough discussion of the history, growth and development of *in personam* jurisdiction is beyond the scope of this case note; however, a brief identification of the jurisdictional problem and the test used to determine the reach of long-arm jurisdiction is necessary.¹⁰

The jurisdictional problem was set out in *Pennoyer v. Neff*¹¹ when the Supreme Court held that a state only had *in personam* jurisdiction over people who were served with process within the state's territory. Furthermore, a judgment by a court which lacked personal jurisdiction over the parties was unenforceable in other states and void in the rendering state because the judgment violated the due process clause of the fourteenth amendment. The Court's holding in *Pennoyer* was based upon the principles "that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory"¹² and that "no State can exercise direct

7. WYO. STAT. § 5-4.2 (Supp. 1975) (repealed 1977).

8. WYO. STAT. § 5-4.2 (Supp. 1975) (repealed 1977).

9. *Olmstead v. American Granby Co.*, *supra* note 1, at 115.

10. For background discussions see WRIGHT & MILLER, 4 FEDERAL PRACTICE AND PROCEDURE § 1064 (1969); Comment, *Nonresident Jurisdiction in Wyoming: An Analysis of Jurisdiction in Products Liability and Libel Litigation*, 11 LAND & WATER L. REV. 557 (1976); Annot., 19 A.L.R.3d 138 (1968); Annot., 24 A.L.R.3d 532 (1969); Annot., 27 A.L.R.3d 397 (1969).

11. 95 U.S. 714 (1877).

12. *Id.* at 722.

jurisdiction and authority over persons or property without its territory.”¹³

Later Supreme Court decisions modified the territorial limits of a state’s jurisdictional power and thus expanded the boundaries of a state court’s personal jurisdiction. *International Shoe Co. v. Washington*¹⁴ was a landmark decision which established the present “minimum contacts” jurisdictional test. According to the Supreme Court, satisfaction of due process depends upon “the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.”¹⁵ Under this minimum contacts test, a defendant’s continuous, systematic activities which directly give rise to the cause of action will confer jurisdiction. On the other hand, a defendant’s single, isolated activity which is unconnected with the cause of action will be insufficient to confer jurisdiction.¹⁶ The majority of the jurisdiction cases are in between these two extremes. In this grey area “the relationship among the defendant, the forum and the litigation”¹⁷ determines whether or not it is just to exercise jurisdiction over the defendant.

Subsequent to *International Shoe*, the Supreme Court seemed to add one requirement which must be met before the minimum contact test can be applied. *Hansen v. Denckla*¹⁸ indicated that there must be some contact whereby the defendant invokes the benefits and protection of the state laws by “purposefully availing itself of the privilege of conducting activities within the state.”¹⁹

The Wyoming Supreme Court

Until the *Olmstead* decision, there had been only two Wyoming cases which dealt with the reach of Wyoming’s long-arm statutes. The first decision, *Ford Motor Co. v. Arguello*,²⁰ involved a personal injury action brought against Ford Motor Company. The court reasoned that Ford’s con-

13. *Id.*

14. 326 U.S. 310 (1945).

15. *Id.* at 319.

16. *Id.* at 318.

17. *Shaffer v. Heitner*, ___ U.S. ___, 97 S.Ct. 2569, 2580 (1977).

18. 357 U.S. 235 (1958).

19. *Id.* at 253.

20. 382 P.2d 886 (Wyo. 1963).

tacts with Wyoming which included an occasional agent in Wyoming, and a continuous method of doing business with state-wide dealer relationships through which Ford obtained financial benefits and received the protection of Wyoming laws²¹ were sufficient to establish the court's jurisdiction.

The issue as to the length of Wyoming's prior long-arm statute was raised again in *Cozzens v. Piper Aircraft Corp.*, but this time the court refused to exercise personal jurisdiction over the several corporate defendants.²² This case involved Wyoming residents who had purchased a plane from a Montana corporation and who were killed when the aircraft crashed in Colorado. The contacts with Wyoming included several corporate defendants who distributed their products through independent Wyoming dealers. Furthermore, all the defendants had income from previous sales in Wyoming. However, the court held the defendants were immune from jurisdiction due to the facts that the cause of action did not arise from the defendant's Wyoming activities, the defendants did not purposefully avail themselves of the privilege of doing business in Wyoming, and the defendants maintained only casual, isolated transactions of limited duration.²³

JURISDICTION UNDER THE NEW STATUTE

In 1977 the Wyoming legislature repealed Wyoming's detailed long-arm statute (Sections 5-4.1 and 5-4.2 of the Wyoming statutes).²⁴ A simplified long-arm statute was enacted when Section 5-4.3 was amended to read "(a) A Wyoming Court may exercise jurisdiction on any basis not inconsistent with the Wyoming or the United States Constitution."²⁵

Under the repealed long-arm statute, the issue of whether or not the court had jurisdiction was a two-part question. First, the court had to decide whether or not the defendant's activities were sufficient to exercise jurisdiction under the statute. If so, the court then had to decide whether or not the state statute, as applied to the case, violated the due process clauses of the federal and state constitutions.²⁶ The enact-

21. *Id.* at 895.

22. 514 P.2d 1375 (Wyo. 1973).

23. *Id.* at 1378.

24. WYO. STAT. § 5-4.2 (Supp. 1975) (repealed 1977).

25. WYO. STAT. § 5-4.3 (Interim Supp. 1977).

26. *Olmstead v. American Granby Co.*, *supra* note 1, at 111.

ment of the new 1977 long-arm statute now extends jurisdiction to its constitutional limits. In so doing, the legislature has solved some of the problems that faced the old statute; namely, the problem of where defendant's activities fell within due process and not within the statute and also the potential problem of activities which were within the statute but outside due process. Thus, the personal jurisdiction issue has been reduced to the single question of whether or not extending jurisdiction over the defendant violates the due process clause of the federal and state constitutions.

Although the *Olmstead* court purported to utilize the two question analysis,²⁷ the court's opinion focused mainly on the first question; to wit, why the defendants' activities established jurisdiction under the repealed long-arm statute. This case note will focus on the second question of why the court's extension of jurisdiction did not violate due process and thus will attempt to analyze why *Olmstead* would not be unconstitutional under the new "due process" statute.

Since the *Olmstead* defendants did not maintain any agents, employees or offices in Wyoming and did not solicit or advertise in Wyoming, the court's decision to exercise jurisdiction seems to be based on the act of injecting the air pressure tank into a nationwide distribution system.²⁸ The importance of *Olmstead* is therefore the due process considerations which support exercising jurisdiction over a manufacturer which markets its products in Wyoming through a nationwide distribution system. The holding that due process will allow jurisdiction in this situation is particularly important to Wyoming due to the fact that few products are manufactured here, and thus Wyoming consumers must depend upon foreign manufacturer's for their products.²⁹

DUE PROCESS FACTORS INVOLVED IN OLMSTEAD

There are several due process considerations a court will review. Among the most prevalent are: a) foreseeability, including whether the cause of action arose directly from the defendant's contacts, b) the purposefully availing act, c) the

27. *Id.*

28. *Id.* at 115.

29. Note, *Nonresident Jurisdiction in Wyoming: An Analysis of Jurisdiction in Products Liability and Libel Litigation*, 11 LAND & WATER L. REV. 557, 569 (1976).

benefit and protection the defendant received from state laws and d) forum considerations.

Foreseeability is the most important due process factor courts have considered in determining whether the nature and the quality of a defendant's activities satisfy due process.³⁰ Courts have often indicated due process will probably be satisfied if the defendants could reasonably foresee that the state exercising jurisdiction could become a forum for litigation.³¹ The reason is that if a defendant can foresee litigation in Wyoming, he can anticipate the burden of a suit and can take precautionary measures to decrease the inconvenience of defending a suit away from home (such as treating statistically predictable litigation expenses as a cost of doing business).³² Furthermore, when a manufacturer can foresee litigation, it cannot reasonably claim surprise when a state requires it to answer for the damage its product allegedly caused within the state.³³

In *Olmstead* foreseeability weighs heavily towards exercising jurisdiction. American Granby's marketing system included eight local Wyoming wholesalers and other regional wholesalers, such as Billings Pipe. The air tank came to Wyoming through this distribution system, thus *Olmstead's* cause of action arose directly from the defendant's jurisdictional acts. According to the Wyoming Supreme Court, this system of distribution should give the defendants' knowledge that their products "could reasonably be expected to reach Wyoming and be utilized here, especially when wholesalers in this state or region are a part of the distribution process."³⁴

It is not clear from *Olmstead* whether the Wyoming Supreme Court would exercise jurisdiction where the defendant could foresee litigation in Wyoming, but could not in connection with this particular product because the cause of action did not arise from his Wyoming activities. An indirect cause

30. *Pellegrini v. Sachs & Sons*, 522 P.2d 704 (Utah 1974). The Utah Court held that foreseeability as to whether the product would be sold in the state would point toward jurisdiction, whereas foreseeability that the consumer would transport the product into the state would not be sufficient to sustain jurisdiction.

31. *Duple Motor Bodies, Ltd. v. Hollingsworth*, 417 F.2d 231 (9th Cir. 1969).

32. Note, *In Personam Jurisdiction Over Foreign Corporations Dealing Indirectly With the State: Application of the Minimum Contacts Theory When Interpreting a Long-Arm Statute*, 9 LAND & WATER L. REV. 649, 661 (1974).

33. *Keckler v. Brookwood Country Club*, 248 F. Supp. 645 (N.D. Ill. 1965).

34. *Olmstead v. American Granby Co.*, *supra* note 1, at 115.

of action could arise, for example, where the plaintiff could prove that the defendant utilized a marketing system to ship products into Wyoming, but he could not prove how the specific product which caused his injury came into Wyoming. This situation is exemplified in the California case of *Buckeye Boiler Co. v. The Superior Court of Los Angeles County*.³⁵ There the plaintiff proved that the defendant shipped tanks into California, but due to lack of information he was unable to prove how the tank which caused his injury came into California. According to the court, plaintiff had established a prima facie case for exercising jurisdiction when he showed that the defendant used a distribution system to ship products into California. The court then shifted the burden of avoiding jurisdiction to the defendant, who was forced to prove that the particular tank came to California in an unforeseeable manner; in other words that placement in California was not purposeful. Furthermore, the defendant had to show that defending a suit involving this particular boiler was substantially different in nature and extent than defending actions involving boilers regularly shipped into California.³⁶

Another due process requirement that has been suggested by the United States Supreme Court is whether or not the defendant did some act whereby he "purposefully availed" himself of the right to do business in the forum state.³⁷ The significance of *Olmstead* is that a defendant may satisfy this "purposefully availing" requirement indirectly. Placing products into the system of distribution is the purposefully availing act.³⁸ In this respect *Olmstead* seems to recognize the commercial reality that a manufacturer is really doing business with a state when wholesalers or retailers sell its products within the state.

The foreseeability and the "purposefully availing" requirements in *Olmstead* were both satisfied by the act of placing the air pressure tank into the distribution system. While State Stove (the parent corporation of American Granby) manufactured the air tank, American Granby was the only defen-

35. 71 Cal.2d 893, 458 P.2d 57, 80 Cal.Rptr. 113 (1969).

36. *Id.* at 66.

37. Hansen v. Denckla, *supra* note 18.

38. *Olmstead v. American Granby Co.*, *supra* note 1, at 115.

dant who placed the product into the distribution process.³⁹ This fact raised the issue of whether or not American Granby's jurisdictional act can be imputed to its parent corporation State Stove.

The Wyoming Supreme Court imputed Granby's act to State Stove without any discussion; moreover, the opinion gives little information as to the specific nature of the relationship between American Granby and State Stove. Although it is not clear what relationship is necessary, the decisions from the Fifth Circuit may help define the parameters of what facts are required to impute jurisdictional acts of the subsidiary to the parent corporation. The Fifth Circuit has held that common stock ownership and common identity of officers alone were insufficient.⁴⁰ Jurisdiction can be established by a showing of parental control over the subsidiary and that, for operational purposes, they were really one corporation.⁴¹ Control over the subsidiary can be shown by such facts as: the two corporations shared offices, or salesmen; the parent exercised control over the subsidiary through such means as doing the subsidiary's planning, advertising, bookkeeping, legal advice or controlling the subsidiary's salaries.⁴² The court's silence on this issue may be explained by the reasoning that State Stove's delivery of the tank to American Granby after State Stove manufactured the tank was really the first step in the distribution process.

The benefit and protection the defendant receives from state laws is another due process consideration.⁴³ Although the court in *Olmstead* did not recognize this factor, other courts have held this benefit can also be enjoyed indirectly. In *Coulter v. Sears, Roebuck and Co.*,⁴⁴ the Fifth Circuit recognized that because manufacturers rarely deal directly with consumers, the benefits which wholesalers receive from the forum state are essential to the manufacturer's conduct of business. Perhaps one indication of how much benefit a manufacturer received from Wyoming laws is the amount of rev-

39. *Id.* at 110.

40. *Turner v. Jack Tar Grand Bahama, Ltd.*, 353 F.2d 954 (5th Cir. 1965).

41. *Id.* at 956.

42. *Frazier, III v. Alabama Motor Club, Inc.*, 349 F.2d 456 (5th Cir. 1965); *Reul v. Sahara Hotel*, 372 F. Supp. 995 (S.D. Tex. 1974).

43. *International Shoe Co. v. Washington*, *supra* note 14, at 319.

44. 426 F.2d 1315 (5th Cir. 1970).

enues the manufacturer or his wholesalers earned in Wyoming from the sale of the manufacturer's product.

The Wyoming Supreme Court has recognized that certain "forum considerations" are also a part of the due process jurisdictional analysis.⁴⁵ One forum factor is the availability of witnesses and evidence.⁴⁶ If most of the witnesses and the evidence are located in the forum state, then exercising jurisdiction is less likely to offend due process.⁴⁷ This factor seems to recognize that due process is a question of fundamental fairness and, therefore, can be a question of balancing inconveniences of both parties. In *Olmstead*, the explosion occurred in Wyoming; therefore, evidence and witnesses regarding the explosion and the damages were probably located in Wyoming. Furthermore, had the defendants in *Olmstead* raised issues of contributory negligence or negligent maintenance of the tank, their own witnesses would also have been in Wyoming.⁴⁸ All these factors point toward exercising jurisdiction in Wyoming.

A second forum consideration is whether or not the plaintiff has an alternative forum where all the defendants could be sued together.⁴⁹ The availability of an alternative forum can be restricted by the residence of the defendants. In *Olmstead* at least one of the defendants, A. L. Scott and Sons, was a Wyoming resident. Assuming that the warranty allegation was not based upon a federal statute, there was probably no alternative forum where Olmstead could litigate the entire action in one suit. A federal district court would not have subject matter jurisdiction over the case because there would be no diversity jurisdiction,⁵⁰ since plaintiff and one of the defendants were Wyoming residents, and there would be no federal question jurisdiction if the negligence action and the breach of warranty action were both based upon state law claims. If Olmstead attempted to sue State Stove and American Granby in their home state, that court would probably not have long-arm jurisdiction over the Wyoming defendants. If the court had not taken jurisdiction, Olmstead would have

45. Ford Motor Co. v. Arguello, *supra* note 20, at 895.

46. *Id.*

47. Buckeye Boiler Co. v. The Superior Court of Los Angeles County, *supra* note 35.

48. Note, *Nonresident Jurisdiction in Wyoming*, *supra* note 29.

49. Ford Motor Co. v. Arguello, *supra* note 20.

50. In this situation there would be no jurisdiction in federal court due to the complete diversity requirement of *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806).

been forced to split his action into several law suits. This result is undesirable in light of the judicial policy of discouraging multiplicity of litigation.⁵¹ Also, separate law suits could subject the plaintiff to conflicting results. As the California Supreme Court pointed out, "the defendants' in each case may be able to avoid liability for this condition by pointing the finger at the absent defendant(s)."⁵²

CONCLUSION

Even though the *Olmstead* case was decided under Wyoming's repealed long-arm statutes, the decision extends the boundaries of personal jurisdiction further than previous Wyoming cases. Under the new statute this extension does not violate due process because the defendant's method of distributing its products through state and regional wholesalers and retailers was a purposeful act which made Wyoming litigation foreseeable and allowed the defendants protection of the Wyoming laws. The forum considerations of availability of witnesses and evidence and the probable lack of an alternative forum also support the Court's decision to exercise jurisdiction.

Olmstead's cause of action arose directly from the defendant's distribution system. Wyoming could still expand personal jurisdiction where the cause of action arose indirectly by shifting the burden of avoiding jurisdiction to the defendant as the California Supreme Court has done.⁵³

REBECCA H. NOECKER

51. WRIGHT & MILLER, 7 FEDERAL PRACTICE AND PROCEDURE § 1602, at 18 (1972).

52. *Buckeye Boiler Co. v. The Superior Court of Los Angeles County*, *supra* note 35, at 67.

53. *Id.*