

INTERNATIONAL LITIGATION

FROM THE U.S. PERSPECTIVE

REVIEW OF JUDICIAL JURISDICTION ANALYSIS

- SUBJECT MATTER JURISDICTION
 - DIVERSITY
 - FEDERAL QUESTION (“ARISING UNDER”)
 - SPECIAL FEDERAL STATUTES

REVIEW OF JUDICIAL JURISDICTION (Continued)

■ PERSONAL (IN PERSONAM) JURISDICTION

LEGISLATIVE AUTHORITY

- State Long-Arm Statute
- Federal Rule of Civil Procedure #4

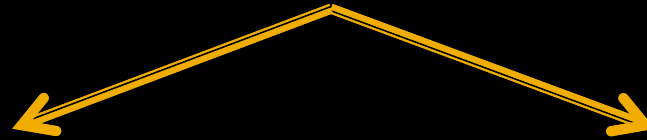
CONSTITUTIONAL AUTHORITY - 5th & 14th Amends

- “Certain Minimum Contacts with [the Forum] Such That the Maintenance of the Suit Does Not Offend Traditional Notions of Fair Play and Substantial Justice.”

REVIEW OF JUDICIAL JURISDICTION (Continued)

RELATEDNESS

NO



YES

GENERAL JURISDICTION

SPECIFIC JURISDICTION

Continuous & Systematic

Minimum Contacts

Nationality, Dom. & Resid.

Purposeful Availment

Incorporation or Registration

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Consent or Waiver

Reasonableness

Tag Service

Balancing Factors

GENERAL JURISDICTION CONTINUOUS & SYSTEMATIC CONTACTS

- Advertising in Forum?
- Shipments (Sales) of Products to Forum?
- Purchase of Products from Forum?
- Ownership of Property in Forum?
- Visits to Forum by Employees or Agents?
- Presence of Branch Office in Forum?
- Entering into Contracts with Forum Residents?
- Maintaining Website Accessible from Forum?

SPECIFIC JURISDICTION IN TORT

“PURPOSEFUL AVAILMENT”

- Designing Product for the Forum Market?
- Providing Promotional Material for Forum?
- Sending Employees or Agents into Forum?
- Establishing Distribution Network in Forum?
- Granting Distribution Licenses in Forum?
- Substantial Sales of Product in Forum?
- Maintenance of Website?

SPECIFIC JURISDICTION IN CONTRACT “PURPOSEFUL AVAILMENT”

- Contracting with Resident of Forum?
 - Not Enough – Need More
 - E.g., Pre-Contract Negotiations, Visits to Forum, Post-Contract Performance and/or Breach
 - Reasonableness
 - Burden on Defendant
 - Forum State Interests
 - Can Pl Get Convenient & Effective Relief Outside Forum?
 - Is Forum the Most Efficient Place to Litigate?

ALTERNATIVE ANALYSIS OF SPECIFIC JURISDICTION

- DEFINITION OF “MINIMUM CONTACTS”
DEPENDENT ON TYPE OF CLAIM
 - 1) Commercial Contracts & Products Liability
 - Purposeful Availment
 - 2) Intentional Torts (Defamation, Patent, etc)
 - “Target” or “Effects” Test
 - 3) Internet
 - Sliding Scale of “Interactivity”

SUGGESTED UNIFORM TEST

For Personal Jurisdiction to Apply:

- 1) PI Must Prove that D Intended (Desired) Its Acts to Have Injurious Results in the Forum Jurisdiction (Subjective Test),
or
- 2) D Should Have Known That Its Acts Were Substantially Certain to Have Injurious Results in the Forum Jurisdiction (Objective Test)

PERSONAL JURISDICTION OVER FOREIGN CORP BASED ON SUBSIDIARY IN FORUM

FOREIGN PARENT – FORUM SUBSIDIARY Relationship is Not Sufficient to Support Personal Jurisdiction Over Parent.

Need More than Mere Ownership of Property in Forum

1. "ALTER EGO" THEORY - Extensive Control Over Activities of Subsidiary
2. "AGENCY" THEORY - The Sub is the Parent's Vehicle for Conducting Business in the Forum

NEXT WEEK 16/3/2010

- 1) FOREIGN SOVERIEGN IMMUNITY
- 2) ACT OF STATE DOCTRINE
 - Commercial Activity Exception