NATURAL RESOURCES JOURNAL

Volume 8
Issue 2 *Spring 1968*

Spring 1968

Jurisdiction—Long-Arm Statute—Doing Business—Commission of Torts: Blount v. T.D. Publishing Corp., 77 N.M. 384, 423 P.2d 421 (1966).

William C. Williams Jr.

Jurisdiction—Long-Arm Statute—Doing Business—Commission of Tort*

Since the 1943 Supreme Court decision in *International Shoe Co. v. Washington*[1] a quiet revolution has been occurring in the law of state in personam jurisdiction over non-residents. Prior to the decision in *International Shoe* the leading jurisdictional case had been *Pennoyer v. Neff*.[2] Traditionally, in diversity of citizenship cases, jurisdiction had favored the defendant by generally allowing suit at the domicile of the defendant but not at the domicile of the plaintiff. The rationale supporting this traditional favoritism of the defendant had been that, since the plaintiff controls the institution of the suit, he might behave oppressively toward the defendant unless restricted.[3] But during the hundred years which followed *Pennoyer*, activities of both businesses and individuals became increasingly interstate in character. This new pattern of interstate activity was superimposed on an existing legal pattern which was essentially intrastate. It became apparent that in cases in which the controversy arose out of conduct that was essentially multistate on the part of the defendant and essentially local on the part of the plaintiff an argument arose for reversing the traditional jurisdictional preference afforded defendants.[4] By 1927 jurisdiction over out-of-state motorists was confirmed in *Hess v. Pawlowski*.[5]

However, general jurisdiction was still based principally on three types of relationships: the defendant's domicile, the defendant's presence, or the defendant's consent.[6] With *International Shoe* came a new "minimum contacts" test. The Supreme Court held that a non-resident defendant could be subjected to the in personam jurisdiction of the forum if certain "minimum contacts" within the forum could be shown so that the suit did not "offend traditional notions of fair play and substantial justice."

---

* Blount v. T.D. Publishing Corp., 77 N.M. 384, 423 P.2d 421 (1966).

1. 326 U.S. 310 (1945).

2. 95 U.S. 714 (1877). For a critical analysis of the problems raised by this case *see* Hazard, *A General Theory of State-Court Jurisdiction*, 1965 The Supreme Court Review 241.

3. von Mehren and Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1127 (1966).

4. *Id.* at 1167.

5. 274 U.S. 352 (1927).

6. *Developments in the Law—State Court Jurisdiction*, 73 Harv. L. Rev. 909, 916-17 (1960).

International Shoe was followed by *McGee v. International Life Ins. Co.*[7] and *Hanson v. Denckla.*[8] In *McGee,* on the basis of a single jurisdictional act, a mail order insurance business was held subject to jurisdiction in the state of residency of the policy beneficiary.

In *Hanson,* a jurisdiction case involving a trust and trustee in one forum and the corpus of the trust in another, the Court refused to extend jurisdiction to the non-resident trustee, and indicated *Pennoyer* was still alive, stating ". . . it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts."[9]

What does not offend traditional notions of fair play and substantial justice under *International Shoe* seems to be a "reasonable" assertion of jurisdiction, but the Supreme Court has yet to give a definitive analysis of what is reasonable under the minimum contacts test. Any attempted reconciliation of the Supreme Court cases is beyond the scope of this Comment,[10] but an assessment of the factors involved in considering the assertion of jurisdiction can be made in conjunction with a discussion of New Mexico's long-arm statute, and the recent case of *Blount v. T.D. Publshing Corp.*[11]

After the decision in *International Shoe* the states recognized the importance of the liberal minimum contacts test. The Illinois long-arm statute was specifically drafted to take advantage of *International Shoe*[12] and it served as a model for subsequent enactments of long-arm statutes by other states,[13] including New Mexico.[14] In adopting the language of the Illinois statute it has been presumed that New Mexico also adopted the prior construction of the statute by the Illinois courts[15] and even though New Mexcio now has its own

7. 355 U.S. 220 (1957).

8. 357 U.S. 235 (1958). For a criticism of this case *see* Hazard, *supra,* note 2.

9. *Id.* at 251.

10. For suggested resolutions *see Extraterritorial In Personam Jurisdiction; The Substantive Due Process Requirement,* 13 Kan. L. Rev. 554, 561-62 (1964-65) and *"Doing Business": Jurisdiction, Qualification and Taxation Applications,* 11 U.C.L.A. L. Rev. 259, 266-69 (1963).

11. 77 N.M. 384, 423 P.2d 421 (1966).

12. Ill. Ann. Stat. ch. 110 § 17 (Smith-Hurd 1956), Historical and Practice Notes. These Notes contain a complete history of the act.

13. See, e.g., Colo. Rev. Stat. Ann. §§ 37-1-26, 37-1-27 (Supp. 1965); Idaho Code Ann. § 5-514 (Supp. 1963); Kan. Gen. Stat. Ann. § 60-308 (1964); Mont. Rev. Codes Ann. § 93-2702 (Supp. 1963); N.Y. Civ. Prac. § 302 (Supp. 1967); Tenn. Code Ann. § 20-235 (Supp. 1967); and Wash. Rev. Code § 4.28.185 (1962).

14. N.M. Stat. Ann. § 21-3-16 (Supp. 1967); Melfi v. Goodman, 69 N.M. 488, 368 P.2d 582 (1962); Blount, *supra.*

15. Melfi v. Goodman, 69 N.M. 488, 368 P.2d 582 (1962). Smith v. Meadows, 56 N.M. 242, 242 P.2d 1006 (1952).

line of cases[16] it is still influenced by subsequent decisions of the Illinois courts construing their statute.[17]

The rationale behind a long-arm statute is to provide in personam jurisdiction over non-residents whose activities affect state residents, and the New Mexcio statute provides wide grounds for the exercise of such jurisdiction,[18] as long as the cause of action arises from the contacts with the forum enumerated in the statute. The New Mexico case of *Blount v. T.D. Publishing Corp.*[19] considers the sections which provide jurisdiction over any person as to any cause of action arising from the transaction of any business within this state, or from the commission of a tortious act within this state. The New Mexico Supreme Court has previously construed the statute,[20] but *Blount* is important for two reasons. In *Blount* the court has extended the transacting business portion of the statute to its widest possible application. But the court has also peripherally raised an interpretation problem relating to the tortious act section which could seriously curtail the effective use of the statute.

Blount involved an action for invasion of privacy. The defendant T. D. Publishing Corp. published a magazine containing the article in question in Pennsylvania and sold it in New York to the defendant MacFadden-Bartell, the primary distributor. Independent wholesale distributors throughout the nation, including the defendant Beck News Agency in New Mexico, purchased the magazine from MacFadden-Bartell. Neither T. D. Publishing Corp. nor MacFadden-Bartell had any control over the independant wholesale distributors, nor did they have offices, employees or agents in New Mexico. On these facts T.D. Publishing Corp. and McFadden-Bartell

16. Hunter-Hayes Elevator Co. v. Petroleum Club Inn Co. 77 N.M. 92, 419 P.2d 465 (1966); Yarbro v. Koury, 72 N.M. 295, 383 P.2d 258 (1963); Crawford v. Refiners Co-operative Assoc. Inc., 71 N.M. 1, 375 P.2d 212 (1962); Gray v. Armijo, 70 N.M. 245, 372 P.2d 821 (1962); and Melfi v. Goodman, 69 N.M. 488, 368 P.2d 582 (1962).

17. Blount, *supra.*

18. N.M. Stat. Ann. 21-3-16 (Supp. 1967) provides:

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 enumerated in this subsection thereby submits himself or his personal representative to the jurisdiction of this state as to any cause of action arising from:

(1) The transaction of any business within this state;

(2) The operation of a motor vehicle upon the highways of this state;

(3) The commission of a tortious act within this state; or

(4) Contracting to insure any person, property or risk located within this state at the time of contracting.

19. 77 N.M. 384, 423 P.2d 421 (1966).

20. *See* note 18, *supra.*

moved to quash service because the New Mexico courts lacked jurisdiction. Plaintiff argued that the New Mexico courts had jurisdiction under both the transacting business and the tortious act provisions of the long-arm statute. The trial court ruled for the defendants. On appeal to the New Mexico Supreme Court, *held,* Reversed. The Supreme Court said that the scheme of distribution established by the defendants was included within the transacting business provision of the long-arm statute but refused to consider application of the tortious act provision of the statute. The court held the jurisdictional act was the distribution of a defective article—the magazine containing the story which allegedly violated the right of privacy of a New Mexico resident—which the defendants chose to place in nationwide channels of distribution. With such a distribution plan, entry of the magazine into New Mexico was foreseeable. The court stated:

> the regular distribution plan of the defendants with the commercial benefit to the non-resident defendants which they derive from the sale of magazines is sufficient contact to satisfy the requirements of due process and subject the defendants . . . to the jurisdiction of our courts.[21]

Two issues are raised in *Blount*: first, the court's broad interpretation of what constitutes transacting business within the state; and second, the court's refusal to consider the commission of a tortious act provision of the long-arm statute as a basis for jurisdiction.

The finding, on the facts presented in *Blount,* that the defendants were transacting business within the state expands jurisdiction close to the limits of due process. However, it is not an unreasonable decision in view of recent cases, nor is it opposed to modern judicial trends. The Uniform Interstate and International Procedure Act,[22] in the comments to its transacting business provision, states that its provisions, based on the Illinois statute, should be given the same expansive interpretation intended by the draftsmen of the Illinois statute and given to that statute by the Illinois courts.[23] New Mexico, in interpreting its own statute, has generally followed the liberal interpretations of the Illinois courts.[24]

In concluding that the defendants were transacting business within

21. Blount, *supra* at 391, 423 P.2d at 426.
22. Uniform Interstate and International Procedure Act, § 1.03, 9B, U.L.A.
23. *Id.,* Commissioner's Note at 310-11.
24. Blount, *supra.*

the state, the New Mexico court relied heavily on *Gray v. American Radiator & Standard Sanitary Corp.*,[25] a leading Illinois case in the area of jurisdiction, and also cited *Andersen v. National Presto Industries, Inc.*[26] and *Ehlers v. U.S. Heating & Cooling Mfg. Corp.*[27] All three of these cases are decisions, not under transacting business provisions, but under tortious act provisions of various long-arm statutes. In *Gray* the non-resident defendant constructed a safety valve which it sold to another non-resident who incorporated it into a water heater. The heater was later sold in Illinois and exploded, injuring the Illinois plaintiff. The defendant had no employees or agents in Illinois. The Illinois court held the defendant committed a tortious act in Illinois, and had sufficient minimum contacts to be subjected to the jurisdiction of Illinois courts. The court in *Gray* talked about ascertaining what is fair and reasonable under the circumstances, the relevant inquiry being whether the defendant engaged in some act or conduct by which he may be said to have invoked the benefits and protection of the law of the forum. The decision placed emphasis on corporate business activities within the state to support its holding that a single tortious act, the negligence occurring outside the forum and the injury occurring inside the forum, was sufficient basis for jurisdiction. Since the court in *Gray* was concerned with the defendant's contacts with the forum, as were the courts in *Ehlers* and *Anderson,* the New Mexico court logically expanded the reasoning in *Gray* to cover activities in the forum amounting to a transaction of business. This expansion of the *Gray* rationale parallels a similar expansion in the Illinois courts. In *Koplin v. Thomas, Haab & Botts,*[28] an action against a New York broker under the transacting business section of the Illinois long-arm statute, the court stated it followed *Gray* in holding that jurisdiction over a non-resident does not depend on the defendant or its agent having participated in substantial transaction of business while physically present in Illinois. In *Ziegler v. Houghton-Mifflin Co.*[29] the Illinois court held that only the "minimum contacts" test must be satisfied in order to find transaction of business. They concluded that, even though *Gray* was a tort case, the same standards should be applied and the contact between the plaintiff and the out-

25. 22 Ill. 2d 432, 176 N.E. 2d 761 (1961).
26. 257 Iowa 911, 135 N.W.2d 639 (1965).
27. 267 Minn. 56, 124 N.W.2d 824 (1963).
28. 73 Ill. App. 2d 242, 219 N.E.2d 646 (1966).
29. 80 Ill. App. 2d 210, 224 N.E.2d 12 (1967).

of-state defendant, under the expanded concept of due process of *Gray*, satisfied the "minimum contacts" prerequisite for in personam jurisdiction. A recent Ninth Circuit case, *Bibie v. T.D. Publishing Corp.*,[30] involved a publisher and a third party distributor under essentially the same facts as presented in *Blount*. The court reached the same conclusion as the New Mexico court did in *Blount*, holding that T.D. Publishing Corp. was doing business within the state under the jurisdictional statute. The court considered the assertion of jurisdiction reasonable in view of the interests of the state in providing redress for wrongs done to its citizens, the availability of the evidence, the injury occurring in the state, and the relative convenience of the forum.

For future assessment of cases no exact rule as to what constitutes "transacting any business within this state" can be formulated. In *Blount* the court said, "what is sufficient minimal contact must be decided case by case."[31] Considering the multitude of possible fact situations to which the statute might be applied, it is reasonable not to unduly restrict the statute with any dicta which might narrow later interpretations. However, from an examination of the Illinois cases, the federal cases and the New Mexico cases, a rough appraisal can be gained of what is reasonable under a minimum contacts test.

Any determination of reasonableness is a balancing of interests, and in such a balancing the following factors may apply:

A. Interest of the forum state.
   1. Providing a forum for its residents.
   2. Regulation of the conduct involved.
   3. Deterrence of tortious conduct in the forum.
   4. Providing and ensuring compensation for its injured plaintiffs.

30. 252 F. Supp. 185 (N.D. Cal. 1966).

31. Blount, *supra* at 391, 423 P.2d at 426. Some courts attempt to give publishers added protection against being subjected to libel suits in foreign jurisdictions, usually on the rationale that a multitude of suits in foreign forums would tend to inhibit freedom of the press. Cases are split over this added protection, but two leading cases representing this view are New York Times Co. v. Conner, 365 F.2d 567 (5th Cir. 1966), and Curtis Publishing Co. v. Cassel, 302 F.2d 132 (10th Cir. 1962). The added protection cases and rationale are fully discussed in *Constitutional Limitations to Long-Arm Jurisdiction in Newspaper Libel Cases*, 34 U. Chi. L. Rev. 436 (1967) and *Long-Arm Jurisdiction Over Publishers: To Chill a Mocking Word*, 67 Colum. L. Rev. 342 (1967). While New Mexico did not follow the added protection cases in *Blount*, since *Blount* deals with a publisher rather than a manufacturer of safety valves as did *Gray*, the added protection cases serve to make the holding in *Blount* more controversial than it otherwise might be.

B. Evaluation of the contacts of the defendant with the forum.
   1. Whether the cause of action arose out of the contacts.
   2. The quality and quantity of the contacts.
   3. Assertion by the defendant, at the time of the contacts, of his ability to function within the forum. (*e.g.*, a life insurance company's assertion of its ability to pay claims in the forum.)
C. Impact in the forum caused by acts or omissions outside the forum.
   1. Foreseeability of the impact.
   2. Extent of the possible impact (*e.g.*, a small retail merchant who sold one defective tire to a person from the forum, or a manufacturer who shipped large quantities of defective tires into the forum.)
D. Relative availability of evidence and witnesses.
E. Relative convenience to the parties, including such elements as whether the parties are individuals or large corporations, and availability of alternate forums.
F. Avoidance of a multiplicity of suits and conflicting adjudications.[32]

These factors will necessarily vary in number and importance from case to case. Even by analyzing these factors as they may be present in a particular case, no definitive line can always be easily drawn. But despite this imprecision, by an analysis which includes these factors some determination of reasonableness can be made.

In *Blount* the injury arose from the contact with New Mexico. New Mexico has some interest in deterring invasions of privacy of its citizens, and also in providing compensation for its injured citizens. The evidence and witnesses would be concentrated in New Mexico. The injury was foreseeable since the publication was knowingly placed in the stream of interstate commerce. The plaintiff was an individual and the non-resident defendants were corporations who regularly transacted business on an interstate level. In defamation cases it has been recognized that the state where the plaintiff resides is usually the state where substantial impact occurs. It is here that consequential injuries such as economic loss, interruption of so-

32. *See* 73 Harv. L. Rev. 909, *supra* at note 6; and 13 Kan. L. Rev. 554 and 11 U.C.L.A. L. Rev. 259, *supra* at note 10. For examples of cases using this type of analysis *see* Bibie v. T.D. Publishing Corp., 252 F. Supp. (N.D. Cal. 1966) and Hearne v. Dow-Badische Chemical Co., 224 F. Supp. 90 (S.D. Tex. 1963).

cial relationships and mental distress are concentrated.[33] This same reasoning applies equally to invasion of privacy cases. None of these factors, by itself, may be sufficient to support jurisdiction, but taken in total, they will support the assertion of jurisdiction.

The extension of the transacting business section of the long-arm statute in *Blount* is controversial and some other courts faced with similar fact situations have found no jurisdiction.[34] But the transaction of business test is not the older and more rigid "doing business" test. The long-arm statutes are designed to give the states wide grounds for jurisdiction and should be so interpreted. In view of the increasingly interstate character of modern commerce it is felt the decision in *Blount* as to what constitutes transaction of business is reasonable and will become increasingly beneficial to New Mexico residents.

However, the holding on transaction of business may be offset by the disturbing statement of the court on the tortious act section of the statute. New Mexico has yet to take full advantage of this section and the discussion in *Blount* may have opened the door to placement of severe limitations on the tortious act provision. The court, in passing on the plaintiff's assertion that the defendants had committed a tortious act within the terms of the statute, said, "the answer to the question raised by this contention depends upon whether the article is privileged which we have determined is a question for the trier of the facts."[35] This statement indicates, assuming a fact situation where jurisdiction could be based solely on the commission of a tortious act, that such jurisdiction would depend on the outcome of a trial on the merits. This could present the absurd picture of requiring a trial on the merits for jurisdiction, or the possibility of two trials; one as to jurisdiction and one as to liability. The serious problem is that this interpretation of the statute could compel the plaintiff to litigate the merits in a distant forum, something the statute was intended to prevent. If the defendant, in a case where jurisdiction was based on the commission of a tortious act, took a default judgment in New Mexico he could resist enforcement in his home forum and, under the guise of a trial as to jurisdictional facts, the

33. *Developments in the Law of Defamation,* 69 Harv. L. Rev. 875 (1956).

34. *See, e.g.,* Insull v. New York World-Telegram Corp., 273 F.2d 166 (7th Cir. 1959); Sonnier v. Time, Inc., 172 F. Supp. 576 (W.D. La. 1959) and Putnam v. Triangle Publications, Inc., 245 N.C. 432, 96 S.E.2d 445 (1957).

35. Blount, *supra* at 391, 423 P.2d at 426.

defendant could compel the plaintiff to litigate the merits in the defendant's forum.[36] Since the New Mexico courts have not decided a case directly in point, the statement in *Blount* could be a compelling argument for other states to adopt this construction of the New Mexico statute.

Illinois long ago solved the problem of interpreting the commission of a tortious act provision and of deciding whether the court would be precluded from taking jurisdiction until the plaintiff had established that the defendant's act was a tort. In *Nelson v. Miller*[37] the Illinois court construed the commission of a tortious act to mean commission of an act which was tortious if proved as alleged. There needed to be no determination of the merits since ultimate liability in tort was not a jurisdictional fact. The court stated:

> the jurisdictional requirements . . . are met when the defendant . . . is the author of acts or omissions within the State, and when the complaint states a cause of action in tort. . . . An act or omission within the State . . . is a sufficient basis for the exercise of jurisdiction to determine whether or not the act or omission gives rise to liability in tort.[38]

In view of the problems raised by the statement in *Blount* and the solution of such problems by the Illinois courts, it is felt that the New Mexico court, at the earliest opportunity, should clarify its position on the tortious act provision of the long-arm statute.

A different problem may arise where there is an in-state injury caused by an out-of-state act or omission of a non-resident. Early federal cases interpreting the Illinois statute held the statute did not cover this fact situation.[39] However, the Illinois courts have subsequently held the place of the wrong is the place where the injury occurred, and that the statute gives Illinois jurisdiction in such cases.[40] This holding follows the general rule that for determining the applicable state substantive law the place of the tort is the place of the

36. *See* 6 J. Moore, Federal Practice § 55.09 (1966); 7 J. Moore, Federal Practice § 60.25(2) (1966); and F. James, Civil Procedure §§ 11.5, 11.6 (1965).

37. 11 Ill. 2d 378, 143 N.E. 2d 673 (1957).

38. *Id.* at 393-94, 143 N.E.2d at 681.

39. *See* Trippe Mfg. Co. v. Spencer Gifts, Inc., 270 F.2d 821 (7th Cir. 1959) and Hellriegel v. Sears Roebuck & Co., 157 F. Supp. 718 (N.D. Ill. 1957).

40. *See* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

injury and not the place of the act or omission.[41] There are, however, some cases interpreting similar statutes which hold otherwise.[42] In jurisdictions following the Illinois interpretation, this holding has not been expanded to the point where it works an unreasonable hardship on the non-resident defendant. In cases of this type most courts look not only at the injury, but also at such elements as the contacts of the non-resident defendant with the forum and the extent of forseeability of injury in the forum.[43] This concern for elements not directly applicable to the issue of tortious conduct is probably due to the regard by courts for due process standards. This concern further explains why the court in *Blount* can take the reasoning from a tortious act case and apply it to a transaction of business case.

Impinging on the question of where the act occurred is the New Mexico Single Publication Act[44] which provides, in part, that no person shall have more than one cause of action for damages for invasion of privacy founded upon a single publication, such as a magazine. This statute might be construed as requiring a finding that an action for libel rises only once at the time of the first publication, and there would be no cause of action in New Mexico if publication occurred first in another state. This is particularly true in view of *Insull v. New York World-Telegram Corp.*,[45] a Seventh Circuit case construing Illinois law. In *Insull,* under a fact situation similar to

41. *See* Hearne v. Dow-Badische Chemical Co., 224 F. Supp. 90 (S.D. Tex. 1963); Ehlers v. U.S. Heating & Cooling Mfg. Co., 267 Minn. 56, 124 N.W.2d 824 (1963); and Golden Gate Hop Ranch, Inc., v. Velsicol Chemical Corp., 66 Wash. 469, 403 P.2d 351 (1965), *cert. denied,* 382 U.S. 1025 (1965).

42. The leading case in this line of decisions is the New York case of Feathers v. McLucas, 15 N.Y.2d 443, 261 N.Y.S.2d 8, 209 N.E.2d 68 (1965), *cert. denied* 382 U.S. 905 (1965). The Court in Feathers held that injury caused in New York by a product manufactured in another state did not constitute a tortious act within the meaning of the jurisdictional statute. For a criticism of this decision *see* 66 Colum. L. Rev. 199 (1966) and 17 Syracuse L. Rev. 49 (1965). Feathers is still followed in some jurisdictions; for example *see* Lichina v. Futura, Inc., 260 F. Supp. 252 (Colo. 1966). However, it is apparent that Feathers did not achieve a correct interpretation of legislative intent, for in 1966 the New York legislature amended N.Y. Civ. Prac. § 302(a)(3) to overcome the interpretive problems of Feathers.

43. *See* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961); Ehlers v. U.S. Heating & Cooling Mfg. Co., 267 Minn. 56, 124 N.W.2d 824 (1963); and Golden Gate Hop Ranch, Inc. v. Velsicol Chemical Corp., 66 Wash. 469, 403 P.2d 351 (1965), *cert. denied* 382 U.S. 1025 (1965). *See also* Restatement (Second) of Conflict of Laws § 379 (Tent. Draft No. 9, 1964) in which jurisdiction is given to the state which has the most significant relationship with the occurrence and with the parties. The place of injury is only one, though an important, factor.

44. N.M. Stat. Ann. 40-27-30 (Repl. 1964).

45. 273 F.2d 166 (7th Cir. 1959).

Blount, the court reasoned there was no cause of action in Illinois since in cases of multi-state circulation the cause of action is absolutely complete at the time of the first publication and subsequent distribution is of no consequence in the creation of a cause of action. *Insull* has been criticized by many, particularly after the Illinois decision in *Gray*,[46] and the holding in *Insull* as to transacting business was specifically rejected in *Blount*. Nevertheless, the tortious act portion of *Insull* has been upheld by the Seventh Circuit court.[47] *Buckley v. New York Post Corp.*,[48] a Second Circuit case, answers these problems and appears to present the better view. The Second Circuit court reasoned that the single publication rule is not designed to deprive a plaintiff defamed in another state of his privilege to bring suit under a long-arm statute, but is designed to protect the defendant, and the courts, from a multiplicity of suits. The court said sending a libel into a state where the plaintiff lives is still "tortious conduct" within the terms of long-arm statutes. This interpretation would solve problems presented by the New Mexico Single Publication Act. But no matter whether the New Mexico Court decided that the fact situation in *Blount* did or did not fall within the terms of the tortious act provision, it should have so stated, rather than avoiding the issue entirely and raising the possible interpretation problems previously discussed.

Blount thus presents a Jekyll and Hyde aspect. The transaction of business interpretation will serve the needs of New Mexico residents who have claims against non-residents, but the tortious act interpretation unless clarified in the manner suggested above could serve to deprive injured plaintiffs of remedies which the statute was designed to give them.

WILLIAM C. WILLIAMS, JR.

46. *See, e.g.*, Curie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. Ill. L. F. 533.

47. Continental Nut Co. v. Robert L. Berner Co., 345 F.2d 395 (7th Cir. 1965).

48. 373 F.2d 175 (2d Cir. 1967). *See also* Restatement (Second) Conflicts, *supra* note 43, § 379(e) and comments following.