St. John's Law Review

Volume 50, Summer 1976, Number 4 Article 13

Ct. Cl. Act § 10: Six-Month Limitations Period and Date of Judgment Time of Accrual Applied to Dole Claims

St. John's Law Review

arbitration and may also induce increased care in drafting and utilizing arbitration clauses in form contracts.

A better solution, however, would be legislative enactment of a single statute of limitations provision applicable to all arbitration proceedings.[135] This would be the simplest method of standardizing the period of limitations for commencement of arbitration. It is a logical extension of *Paver's* attempt to eliminate the difficulties inherent in characterizing such actions as *ex contractu* or *ex delicto*, and would provide greater certainty than *Paver's* selection process.

COURT OF CLAIMS ACT

Ct. Cl. Act § 10: Six-month limitations period and date of judgment time of accrual applied to Dole *claims.*

Section 10 of the Court of Claims Act establishes jurisdictional notice requirements for the assertion of causes of action against the State.[136] Under subdivision 3 of section 10, a prospective plaintiff has 90 days within which to file either a claim or a notice of intention to file a claim for any action against the State grounded in tort.[137] Subdivision 4 provides a 6-month time period to file a notice of intention or a claim against the State for contract actions and any other claim not specifically covered by the other provisions of section 10.[138] Since the landmark decision in *Dole v. Dow*

---

[135] *See also The Quarterly Survey*, 47 ST. JOHN'S L. REV. 530, 566 (1973). A provision defining the limitation period for commencing arbitration proceedings at either 3 or 4 years could easily be inserted in CPLR 7502(b). A statutory amendment would provide a more effective resolution of this issue than does *Paver's* case law solution for the simple reason that the appropriate statute of limitations would be defined with absolute certainty. Indeed, one student author has suggested enactment of a single statute of limitations for both contract and tort claims in all proceedings. Comment, *Tort in Contract: A New Statute of Limitations*, 52 ORE. L. REV. 91 (1972).

[136] N.Y. CT. CL. ACT § 10 (McKinney 1963). When asserting any cause of action against the State, compliance with article II of the Court of Claims Act, which includes § 10, is a prerequisite for subject matter jurisdiction. *Id.* § 8.

[137] *Id.* § 10(3) states:

> A claim to recover damages for injuries to property or for personal injury caused by the tort of an officer or employee of the state while acting as such officer or employee, shall be filed within ninety days after the accrual of such claim unless the claimant shall within such time file a written notice of intention to file a claim therefor, in which event the claim shall be filed within two years after the accrual of such claim.

[138] *Id.* § 10(4) provides:

> A claim for breach of contract, express or implied, and any other claim not otherwise provided for by this section, over which jurisdiction has been conferred upon the court of claims, shall be filed within six months after the accrual of such claim, unless the claimant shall within such time file a written notice of intention to file a claim therefor in which event the claim shall be filed within two years after such accrual.

The other provisions of § 10 set notice and limitation periods for actions involving State appropriation of lands or a right, title, or interest in land, *id.* § 10(1); a wrongful death

Chemical Co.,[139] problems have arisen in interpreting and applying the various notice requirements of section 10 to apportionment claims.[140] Among the issues still unresolved are: First, which time period is applicable when filing either a notice or a claim against the State; and second, when does the cause of action accrue.

In an attempt to resolve these questions, the Court of Claims, in *O'Sullivan v. State*,[141] declared an apportionment claim to be within the purview of the 6-month filing period of subdivision 4. In the same decision, the court also held that a cause of action for apportionment accrues when a judgment of liability is entered. The *O'Sullivan* claimant had satisfied a judgment against her for personal injuries suffered in an automobile accident. Alleging that the accident was caused, at least in part, by the State's negligence, claimant then filed a notice of intention to file a claim against New York for indemnity or apportionment.[142] Contending that the 90-day tort notice period was applicable to *Dole* claims, the State moved to dismiss for failure to file timely notice. The court, however, applied the 6-month limitations period of subdivision 4, and consequently held the apportionment claim to have been seasonably asserted.[143]

Deciding the period of limitations issue on the narrow grounds of statutory construction, Judge DeIorio, the author of the *O'Sullivan* opinion, ruled that an apportionment claim is not a substantive tort cause of action within the provisions of subdivision 3. Instead, the court preferred to view such a claim as falling within the ambit of the catchall provision of subdivision 4.[144] Subsequent decisions

---

action against the State, *id.* § 10(2); torts committed by State military personnel, *id.* § 10(3-a). Recently enacted subdivision 5 provides for the tolling of the period for presenting a claim in the case of claimants under a legal disability. Ch. 280, § 1, [1976] N.Y. Laws 705 (McKinney). Additionally, under present subdivision 6, the court has the discretionary power to permit late filings. *Id.* § 2.

[139] 30 N.Y.2d 143, 282 N.E.2d 288, 331 N.Y.S.2d 382 (1972). For a discussion of the problems created by *Dole*, see 7B McKINNEY'S CPLR 3019, commentary at 232 (1974).

[140] Apportionment claims against the State may only be brought in the Court of Claims. *See* McCorkle v. Degl, 74 Misc. 2d 611, 344 N.Y.S.2d 802 (Sup. Ct. Kings County 1973) (mem.); 2A WK&M ¶ 1403.05.

[141] 83 Misc. 2d 426, 371 N.Y.S.2d 766 (Ct. Cl. 1975).

[142] *Id.* at 428-29, 371 N.Y.S.2d at 768-69. The notice of intention to file a claim was filed more than 2 years after the accident, more than 5 months after the individual defendant was found liable, and more than 90 days after judgment was entered. *Id.* at 429, 371 N.Y.S.2d at 769.

[143] *Id.* at 439, 371 N.Y.S.2d at 778.

[144] *Id.* at 432, 371 N.Y.S.2d at 772-73. Judge DeIorio did not feel constrained to take the further step of integrating the *Dole* claim neatly within the contract clause of subdivision 4. Nevertheless, such a ruling would have been entirely consistent with traditional CPLR concepts, which view indemnity, contribution, and apportionment as quasi-contractual in nature and thereby governed by the contract limitations period. *See* CPLR 213. For the identification of indemnification as a quasi-contractual remedy, see, *e.g.*, Accredited Demoli-

of the Court of Claims have been in consonance with the *O'Sullivan* court on this question, firmly establishing that the time provisions of subdivision 4 apply to all apportionment claims against the State.[145]

The second issue facing the *O'Sullivan* court was the determination of the date of accrual of a *Dole* claim against the State. In choosing the entry of judgment date as the time of accrual, the court relied on the "cast in damages" language of *Dole*.[146] The *O'Sullivan* court considered a party to be "cast in damages" only when the extent of damages is ascertained and liability imposed, *i.e.*, at the entry of judgment. Judge DeIorio dismissed the State's contention that a litigant is "cast in damages" upon the return of the jury verdict. Although conceding that the verdict is significant, he maintained that the rights and obligations of the parties are not fixed until judgment is entered.[147] Similarly, Judge DeIorio dis-

---

tion Constr. Corp. v. City of Yonkers, 37 App. Div. 2d 708, 324 N.Y.S.2d 377 (2d Dep't 1971) (mem.); Musco v. Conte, 22 App. Div. 2d 121, 254 N.Y.S.2d 589 (2d Dep't 1964); Hansen v. City of New York, 43 Misc. 2d 1048, 252 N.Y.S.2d 695 (Sup. Ct. Kings County 1964); Rieger v. Frankstram Realties, Inc., 68 N.Y.S.2d 243 (Sup. Ct. Kings County 1946). A similar view of pre-*Dole* contribution was expressed in Taca Int'l Airlines, S.A. v. Rolls Royce of England, Ltd., 47 Misc. 2d 771, 263 N.Y.S.2d 269 (Sup. Ct. N.Y. County 1965). Quasi-contractual principles have been applied to *Dole* claims on the theory that apportionment is either partial indemnification or a type of contribution. *See, e.g.*, Rock v. Reed-Prentice, 39 N.Y.2d 34, 346 N.E.2d 520, 382 N.Y.S.2d 720 (1976); Winn v. Peter Bratti Associates, Inc., 80 Misc. 2d 756, 364 N.Y.S.2d 137 (Sup. Ct. Albany County 1975); Sanchez v. Hertz Rental Corp., 70 Misc. 2d 449, 333 N.Y.S.2d 699 (Sup. Ct. Kings County 1972); *See also* 2 CARMODY-WAIT 2d § 13:84, at 439 (1965); 2A WK&M ¶ 1403.03.

[145] *See* Berlin & Jones, Inc. v. State, 85 Misc. 2d 970, 381 N.Y.S.2d 778 (Ct. Cl. 1976); Relyea v. State, Claim No. 57973 (N.Y. Ct. Cl. Jan. 7, 1976); Bay Ridge Air Rights, Inc. v. State, 84 Misc. 2d 801, 376 N.Y.S.2d 895 (Ct. Cl. 1975); Leibowitz v. State, 82 Misc. 2d 424, 371 N.Y.S.2d 110 (Ct. Cl. 1975). *But see* Gates-Chili Cent. School Dist. v. State, Claims Nos. 58181, 58204, 58214 (N.Y. Ct. Cl. May 2, 1976), wherein Judge Quigley strongly implied that he favored the application of the 90-day subdivision 3 provision to apportionment claims. Judge Quigley later clarified his position in Relyea v. State, *supra*, by adopting the 6-month period established in subdivision 4. In Leibowitz v. State, *supra*, Judge Blinder, although adopting the 6-month limitations period, caused temporary confusion in the Court of Claims by apparently characterizing an action for apportionment as a claim sounding in tort. 82 Misc. 2d at 428, 371 N.Y.S.2d at 113-14. *See* McLaughlin, *New York Trial Practice*, 174 N.Y.L.J. 113, Dec. 12, 1975 at 1, col. 1. This apparent contradiction was resolved in *Bay Ridge*, wherein Judge Blinder explained that he does not consider a *Dole* claim as sounding in tort for the purpose of applying an appropriate limitations period, but that he does consider the date of the tortious act as pertinent for the establishment of the date of accrual. 84 Misc. 2d at 803 n.*, 371 N.Y.S.2d at 897-98 n.*.

[146] Dole v. Dow Chem. Co., 30 N.Y.2d 143, 148-49, 282 N.E.2d 288, 292, 331 N.Y.S.2d 382, 387 (1972). In *Dole*, the Court concluded:

> [W]here a third party is found to have been responsible for a part, but not all, of the negligence for which a defendant is cast in damages, the responsibility for that part is recoverable by the prime defendant against the third party. To reach that end there must necessarily be an appointment of responsibility in negligence between those parties.

Id.

[147] The State relied on Marchese v. City of Albany, 81 Misc. 2d 166, 364 N.Y.S.2d 140 (Sup. Ct. Albany County 1975), to support its contention that the cause of action accrued

counted the date of the accident as a viable option, since it would fix the accrual date at a time even earlier than the verdict.[148]

In ruling that the earliest possible time of accrual is the date of judgment, the *O'Sullivan* court rejected the traditional date-of-payment rule.[149] Noting that a *Dole* claim can be asserted by cross-claim, counterclaim, or impleader before payment, the court concluded that payment is not a prerequisite for the assertion of a cause of action. Moreover, according to the court, the "cast in damages" language of *Dole* does not permit the conclusion that payment "triggers" the accrual of a cause of action.[150] Recognizing that accrual upon the date of judgment would entail considerable delay, the court reasoned that any further delay caused by post-judgment motions and appeals prior to payment would be impermissibly prejudicial to the State.[151]

Although Judge DeIorio's rationale indicates that there is a legal basis for a date-of-judgment position, it is submitted that purely legal considerations do not mandate abandonment of the traditional date-of-payment rule. It appears that the *O'Sullivan* court seized the "cast in damages" language of *Dole* as a convenient tool for reaching what is primarily a public policy determination. The real merit of the *O'Sullivan* rule lies in its reasoned balancing of a person's right to apportionment from the State as a joint tortfeasor with the State's interest in not being prejudiced by stale claims.[152]

---

upon the jury verdict. *Marchese,* however, provides only dictum on this point. Furthermore, an analysis of available case law indicates that the time-of-verdict theory generally has not been followed.

[148] 83 Misc. 2d 426, 436-37, 371 N.Y.S.2d 766, 776-77. The *O'Sullivan* court expressly considered Gates-Chili Cent. School Dist. v. State, Claims Nos. 58181, 58204, 58214 (N.Y. Ct. Cl. May 2, 1975), wherein Judge Quigley strongly implied that the date-of-neglience rule should be utilized. Judge DeIorio underscored the likelihood that such a position would bar most third-party claims. For instance, use of the subdivision 4 notice requirements might require a third-party claimant to file a notice of intention to file a claim almost 2½ years before the principal tort action is brought against him. Utilizing this approach, a potential defendant often would have to file a claim before receiving any legal notice of his potential liability. Since deciding *Gates-Chili,* Judge Quigley has reversed his position and adopted the *O'Sullivan* rule. *See* Relyea v. State, Claim No. 57973 (Ct. Cl. Jan. 7, 1976). Nevertheless, the date-of-negligence theory is still strongly advocated by Judge Blinder. *See* note 155 and accompanying text *infra.*

[149] 83 Misc. 2d at 437-39, 371 N.Y.S.2d at 777-78. *See* note 157 and accompanying text *infra.*

[150] 83 Misc. 2d at 438-39, 371 N.Y.S.2d at 777-78. It is well established by statute and case law that a *Dole* cause of action may be asserted before the principal claim is resolved. *See, e.g.,* CPLR 1403; Valentino v. State, 44 App. Div. 2d 338, 355 N.Y.S.2d 212 (3d Dep't 1974); Stein v. Whitehead, 40 App. Div. 2d 89, 337 N.Y.S.2d 821 (2d Dep't 1972).

[151] 83 Misc. 2d at 438-39, 371 N.Y.S.2d at 778.

[152] *See* Note, *Contribution Among Joint Tortfeasors When One Tortfeasor Enjoys a Special Defense Against Action by Injured Party,* 52 CORNELL L. REV. 407, 414-15 (1967).

The *O'Sullivan* date-of-judgment rule has not met with unqualified acceptance in the Court of Claims. On the contrary, two distinctly inapposite positions have emerged in recent opinions.[153] One position, advocated by Judge Blinder in *Leibowitz v. State,*[154] maintains that the date of the State's alleged negligence is the time of accrual. The theory underlying the *Leibowitz* position is that any other accrual date for apportionment claims may subject the State to indirect liability at the hands of a joint tortfeasor although the State is not directly liable to the injured party because of the expiration of the 3-year statute of limitations.[155]

---

[153] Three time-of-accrual theories have developed in the Court of Claims. *See* Berlin & Jones, Inc. v. State, 85 Misc. 2d 970, 973-78, 381 N.Y.S.2d 778, 780-83 (Ct. Cl. 1976) (Judge Lengyel — date of payment); Relyea v. State, Claim No. 57973, at 4 (N.Y. Ct. Cl. Jan. 7, 1976) (Judge Quigley — date of judgment); O'Sullivan v. State, 83 Misc. 2d 426, 433-39, 371 N.Y.S.2d 766, 773-78 (Ct. Cl. 1975) (Judge DeIorio — date of judgment); Leibowitz v. State, 82 Misc. 2d 424, 427-29, 371 N.Y.S.2d 110, 113-14 (Ct. Cl. 1975) (Judge Blinder — date of negligence).

Although Judge Quigley has endorsed the *O'Sullivan* date-of-judgment rule for actions in which a judgment was rendered, Relyea v. State, *supra*, he advocates application of the time-of-negligence rule when a voluntary settlement was reached. Gates-Chili Cent. School Dist. v. State, Claims Nos. 58181, 58204, 58214 (Ct. Cl. May 2, 1975). It is submitted that inasmuch as the date of judgment rule obviously cannot be applied to a voluntary settlement, the course followed by Judge Quigley would inhibit resolution of disputes outside of the courtroom. Therefore, policy considerations alone dictate that the traditional date-of-payment rule be used where liability has arisen from a settlement.

[154] 82 Misc. 2d 424, 371 N.Y.S.2d 110 (Ct. Cl. 1975).

[155] Judge Blinder's date-of-negligence theory is based on a misinterpretation of Barry v. Niagara Frontier Transit Sys., Inc., 35 N.Y.2d 629, 324 N.E.2d 312, 364 N.Y.S.2d 823 (1974). In *Barry,* a third-party action was brought against the Village of Kenmore by Niagara Transit for apportionment of damages assessed against the company in a negligence action brought by an injured passenger. Niagara alleged that the injury was partially the result of the village's negligent maintenance of a street curb. The village moved for dismissal on the ground that it had not received prior notice of the curb defect in compliance with § 341-a of the Village Law, ch. 837 [1957] N.Y. Laws 1832, now CPLR 9804. The Court ruled that apportionment applied only where two or more tortfeasors have breached duties owed to the injured party. Since no prior notice of the defect was given to the village, there was no duty owed by the village to the injured passenger. Consequently, allowing a third party action would be imposing liability indirectly where it could not be imposed directly. It was such an indirect imposition of liability in the absence of any substantive duty that the Court of Appeals declared impermissible. The Court did not address itself to actions barred by procedural or limitational provisions after a substantive duty arose. As the Court of Appeals stated in Rogers v. Dorchester Associates, 32 N.Y.2d 553, 564, 300 N.E.2d 403, 409, 347 N.Y.S.2d 22, 31 (1973): "The rule of apportionment in the *Dole* case was not intended to and should not be read to vary the substantive duties as distinguished from the scope of liability for damages and apportionment . . . ." Viewed in this light, it is clear that the Court of Appeals' ruling in *Barry* dealt only with determining substantive rights and simply did not reach the procedural issues surrounding an apportionment claim.

The *Leibowitz* court also attributed a significant substantive effect on the accrual of *Dole* claims to article 14 of the CPLR. Judge Blinder noted that article 14 permits the assertion of *Dole* claims prior to either judgment against or payment of a judgment by the claimant-tortfeasor. As a result, he reasoned that neither should be a prerequisite to the accrual of such a cause of action. Article 14, however, is merely a procedural tool for asserting *Dole* claims and was not meant to change substantive rights previously established by *Dole. See* Slater v. American Mineral Spirits Co., 33 N.Y.2d 443, 449, 310 N.E.2d 300, 303, 354

Another position, advanced by Judge Lengyel in *Berlin & Jones, Inc. v. State*,[156] adopts the date-of-payment rule. This theory enjoys the overwhelming support of authority dealing with *Dole* claims outside of the Court of Claims.[157] Although Judge Lengyel acknowledged that the date-of-payment rule involves greater prejudice to the State's defense, he felt that a departure from the traditional rule should be made only by legislative action.[158]

The *O'Sullivan* decision and its contradictory counterparts are apparently irreconcilable.[159] Absent an authoritative appellate ruling[160] or legislative action,[161] there is every reason to believe that the various judges of the Court of Claims will continue their vigorous advocacy of these inconsistent positions. This inconsistency, coupled with the unique structure of the Court of Claims,[162] presents particularly difficult problems for the practitioner.[163] When

---

N.Y.S.2d 620, 625 (1974) (Jasen, J., dissenting); Berlin & Jones, Inc. v. State, 85 Misc. 2d 970, 975-76, 381 N.Y.S.2d 778, 782 (Ct. Cl. 1976).

[156] 85 Misc. 2d 970, 381 N.Y.S.2d 778 (Ct. Cl. 1976).

[157] *See, e.g.*, Winn v. Peter Bratti Associates, Inc., 80 Misc. 2d 756, 364 N.Y.S.2d 137 (Sup. Ct. Albany County 1975); Adams v. Lindsay, 77 Misc. 2d 824, 354 N.Y.S.2d 356 (Sup. Ct. Monroe County 1974), *discussed in The Survey*, 49 ST. JOHN'S L. REV. 170, 207 (1974); 7B MCKINNEY'S CPLR 1007, commentary at 123 (Supp. 1975); 2A WK&M ¶¶ 1401.19, 1403.03; RESTATEMENT OF RESTITUTION §§ 77, 82, 86 (1937); McLaughlin, *New York Trial Practice*, 174 N.Y.L.J. 113, Dec. 12, 1975 at 1, col. 1.

[158] 85 Misc. 2d at 977, 381 N.Y.S.2d at 783. *See* note 161 *infra*.

[159] The judges of the Court of Claims meet several times a year to coordinate decisions in an attempt to provide a certain amount of consistency within the system. *See* McNamara, *The Court of Claims: Its Development and Present Role in the Unified Court System*, 40 ST. JOHN'S L. REV. 1 (1965). The apportionment decisions, however, decided with full cognizance of their contradictory nature, evince solidified positions, which in all probability will not be voluntarily abandoned.

[160] Appeals from judgments or orders of the Court of Claims can only be brought before the third or fourth departments. N.Y. CT. CL. ACT § 24 (McKinney Supp. 1975).

[161] Most of the accrual cases express an interest in legislative resolution of the § 10 imbroglio. *See* O'Sullivan v. State, 83 Misc. 2d 426, 437, 371 N.Y.S.2d 766, 777 (Ct. Cl. 1975); Berlin & Jones, Inc. v. State, 85 Misc. 2d 970, 977, 381 N.Y.S.2d 778, 783 (Ct. Cl. 1976); Bay Ridge Air Rights, Inc. v. State, 84 Misc. 2d 801, 805, 376 N.Y.S.2d 895, 899 (Ct. Cl. 1975); Leibowitz v. State, 82 Misc. 2d 424, 429, 371 N.Y.S.2d 110, 114 (Ct. Cl. 1975). Recent actions by the legislature, however, do not evidence any inclination to act on this question. *See* Occhialino, *Contribution*, NINETEENTH ANNUAL REPORT OF THE N.Y. JUDICIAL CONFERENCE 219, 229-40 (1974), wherein Professor Occhialino advocated the adoption of a 1-year statute of limitations for apportionment claims to run from the date of service of process in the principal action or from the date of a settlement that occurs prior to a lawsuit. Since the Judicial Conference did not adopt these proposals, they were not forwarded to the legislature. *See* TWENTIETH ANNUAL REPORT OF THE N.Y. JUDICIAL CONFERENCE 197, 212-18 (1975). It should also be noted that although the legislature recently amended § 10, subdivisions 3, 4, and the issue of accrual, were not changed. *See* ch. 280 [1976] N.Y. Laws 705 (McKinney).

[162] The Court of Claims consists of 17 judges, N.Y. CT. CL. ACT § 2 (McKinney Supp. 1975), who are assigned to nine districts for trial purposes. N.Y. CT. CL. R. § 1200.2 (McKinney 1975). Consequently, the potential for inconsistency is substantial.

[163] The inconsistent application of accrual concepts seemingly could result in widespread forum shopping. This possibility is somewhat tempered however, since claims may be asserted only in the trial district in which the principal cause of action arose. N.Y. CT. CL. R. § 1200.2 (McKinney 1975).

asserting a *Dole* claim before a judge who has not yet declared his position — and they are an overwhelming majority[164] — a claimant will be best advised to file a claim against the State within 6 months of the date of negligence. Such a course of action would, in all instances, preserve the tortfeasor's claim for apportionment.

CRIMINAL PROCEDURE LAW

CPL § 20.20(2)(b): Criminal jurisdiction over out-of-state conduct threatening New York's community welfare withheld.

Section 20.20(2) of the CPL permits New York courts to exercise jurisdiction over certain types of criminal conduct having a deleterious effect in New York although the criminal acts themselves have been performed in another state.[165] Departing from the traditional territorial theory of jurisdiction,[166] the statute is based upon the concept of "the injured forum."[167] As the name implies,

---

[164] Out of the 17 judges in the Court of Claims, only Judges Blinder, DeIorio, Lengyel and Quigley have declared their positions.

[165] CPL § 20.20(2) provides state criminal courts with jurisdiction to convict a person of an offense:

> Even though none of the conduct constituting such offense may have occurred within this state [if]:
> (a) The offense committed was a result offense and the result occurred within this state. If the offense was one of homicide, it is presumed that the result, namely the death of the victim, occurred within the state if the victim's body or a part thereof was found herein; or
> (b) The statute defining the offense is designed to prevent the occurrence of a particular effect in this state and the conduct constituting the offense committed was performed with intent that it would have such effect herein; or
> (c) The offense committed was an attempt to commit a crime within this state; or
> (d) The offense committed was conspiracy to commit a crime within this state and an overt act in furtherance of such conspiracy occurred within this state . . . .

[166] Under the common law territorial theory of jurisdiction, a sovereign state has jurisdiction over all crimes committed within its borders. *See* Ludwig, *Improving New York's New Criminal Procedure Law,* 45 ST. JOHN'S L. REV. 387, 396-400 (1971).

[167] For a discussion of the injured forum theory of jurisdiction, see *id.* at 397-98. The injured forum concept appears to be an offshoot of the territorial theory and has been termed "objective territorial jurisdiction." United States v. Daniszewski, 380 F. Supp. 113, 115 (E.D.N.Y. 1974). Jurisdiction based on the concept of the injured forum can be traced through the leading case of Strassheim v. Daily, 221 U.S. 280 (1911), wherein defendant was indicted in Michigan for bribery and the use of false pretenses to defraud that State. In spite of the fact that the alleged criminal acts occurred entirely in Illinois, the State of Michigan was deemed to have jurisdiction, since "[a]cts done outside a jurisdiction, but intended to produce *and producing* detrimental effects within it, justify a State in punishing the cause of the harm . . . ." *Id.* at 285 (citation omitted) (emphasis added). The federal courts have recognized the "objective territorial jurisdiction" theory in the prosecution of crimes committed in a foreign jurisdiction that have resulted in harmful effects in the United States. *See, e.g.,* United States v. Fernandez, 496 F.2d 1294 (5th Cir. 1974) (prosecution in United States for uttering stolen American checks in Mexico); Rivard v. United States, 375 F.2d 882 (5th Cir.), *cert. denied,* 389 U.S. 884 (1967) (jurisdiction asserted over conspiracy conducted abroad which resulted in successful smuggling of drugs into United States); *cf.* SEC v. Kasser, 391 F. Supp. 1167, 1174 (D.N.J. 1975); Ramirez & Feraud Chili Co. v. Las Palmas Food Co., 146 F. Supp. 594, 600 (S.D. Cal. 1956), *aff'd mem.,* 245 F.2d 874 (9th Cir. 1957), *cert. denied,* 355 U.S. 927 (1958).