Ins. Law § 59-a: Unauthorized Act in New York by Agent of Foreign Insurer Held Sufficient Basis for Personal Jurisdiction

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his own defense. One result is clear: where it is found that the insurer's
withdrawal from the defense of the negligence action was not made in
bad faith, this fact will serve as justification for its refusal to participate
in settlement negotiations, thereby avoiding liability for a resulting
judgment in excess of policy limits. 260

**Ins. Law § 59-a: Unauthorized act in New York by agent of foreign
insurer held sufficient basis for personal jurisdiction.**

Many New York residents hold insurance policies issued by in-
surers not authorized to do business in this state, and Insurance Law
section 59-a allows such residents to acquire personal jurisdiction over
such insurers. The section permits service of process on the superinten-
dent of insurance if an unauthorized foreign insurer has performed any
of the acts enumerated therein, 261 including issuance or delivery of
insurance contracts to New York residents. 262

In *Ford v. Unity Hospital*, 263 the Appellate Division, Second De-
partment, decided whether New York could exercise personal jurisdic-
tion over a foreign insurance company whose agent had exceeded its
authority in issuing and delivering a cover note for a malpractice policy
to a New York medical partnership. The partnership was sued for mal-
practice and brought a third-party action against the insurer, which
argued that under the agency agreement the agent was not authorized
to issue medical malpractice insurance or to do business on its behalf in
New York, and thus could not subject it to New York jurisdiction by
the issuance of the cover note. 264 Nevertheless, the court held that juris-

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260 For a contrary view, see Blakely v. American Employers' Ins. Co., 424 F.2d 728,
734 (5th Cir. 1970), which held that an insurer's "breach of its contract to defend should
not release it from its implied duty to consider [its insured's] interest in the settlement"
even though its reasons for denying liability under the policy may not have been entirely
groundless. Professor Keeton indicates that the insurer can manipulate the situation to
its advantage: "[C]omplete denial of policy coverage and refusal to defend has proven to
be one of the more effective ways for a company to prevent excess liability," Keeton,

418 (1st Dep't 1953), which held Insurance Law § 59-a applicable to a foreign insurer which
had issued a policy to a New York resident and collected the premiums through the mail.


263 39 App. Div. 2d 559, 331 N.Y.S.2d 865 (2d Dep't 1972) (mem.).

264 The agent's dealings with the insurer, a Mexican company, were carried on
through Mid-Continent Underwriters, Inc., a Louisiana corporation which was the
insurer's managing agent in the United States. A third-party complaint against Mid-
Contininent was dismissed, for Mid-Contininent was not a party to the agency agreement,
the agent did not purport to act for it in New York, and its activity with respect to the
transaction—the issuance of a cancellation notice to the defendants—was not sufficient
under Insurance Law § 59-a or CPLR 302(a)(1) to subject it to jurisdiction. Id. at 571,
331 N.Y.S.2d at 868.
diction was obtainable under Insurance Law section 59-a, based on the doctrine of apparent authority.265

While recognizing that the case "test[s] the very outer limits of due process requirements,"266 the Ford court felt that the exercise of jurisdiction was proper because of the state's strong policy of protecting the rights of its residents in their dealings with foreign insurers,267 even if such insurers will be called into a foreign forum to defend suits where no authorized acts were performed on their behalf. The doctrine of forum non conveniens remains available to prevent the exercise of jurisdiction where injustice would otherwise occur.

