

CPLR 302(a)(1): Neither Contracting by Mail Nor the Acts of an Independent Broker Are a Sufficient Basis for Jurisdiction

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motional or advertising activities in New York, nor did they employ any local salesmen in the state. The defendants merely shipped goods to dealers in the state who had placed orders with them. The court held that CPLR 302(a)(1) does not apply to a non-resident who never comes into New York and only sends goods into New York pursuant to orders from within the state. The court, however, reserved judgment as to whether it would be constitutional for a state to exercise jurisdiction in such a case by means of a statutory enactment.⁶²

CPLR 302(a)(1): Neither contracting by mail nor the acts of an independent broker are a sufficient basis for jurisdiction.

In *A. Millner Co. v. Noudar, LDA.*,⁶³ the defendant in Portugal sent a letter to the plaintiff, an independent sales broker in New York, offering to make the plaintiff its sole sales outlet for its goods in the United States and Canada. The plaintiff accepted by mail. The defendant, pursuant to orders, shipped its goods to purchasers in New York, and, on occasion, officers of the defendant came to New York to engage in sales on the defendant's behalf. The court, in reaffirming case law prior to the CPLR, held that the acts of the independent broker could not serve as a basis for personal jurisdiction over the defendant.⁶⁴ Thus, the CPLR's substitution of the "transaction of business" test for the CPA's "doing business" test⁶⁵ has not altered this principle.

The court held that neither the shipping of goods into New York nor the mailing of a contract into New York was a sufficient basis for jurisdiction. The court noted that while the mere mailing of an insurance contract into a state is a sufficient basis for jurisdiction,⁶⁶ it could not construe CPLR 302(a)(1) in a like manner for commercial contracts.

The court ultimately upheld jurisdiction, however, on the basis of the acts performed by the defendant's officers, who negotiated sales in New York. This factor was considered to be a sufficient "transaction of business," since it was an attempt by the defendant while in New York "to effectuate . . . a purpose directly related to . . . [its] economic affairs. . . ." ⁶⁷

⁶² *Id.* at 32, 215 N.E.2d at 162, 267 N.Y.S.2d at 904.

⁶³ 24 App. Div. 2d 326, 266 N.Y.S.2d 289 (1st Dep't 1966).

⁶⁴ *Greenberg v. Lamson Bros. Co.*, 273 App. Div. 57, 75 N.Y.S.2d 233 (1st Dep't 1947); *McKeon v. P. J. McGowan & Sons*, 229 App. Div. 568, 242 N.Y. Supp. 700 (2d Dep't 1930).

⁶⁵ CPA § 229-b.

⁶⁶ N.Y. Ins. Law § 59-a. This procedure with respect to insurance contracts was held constitutional by the United States Supreme Court in *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

⁶⁷ *A. Millner Co. v. Noudar, LDA.*, 24 App. Div. 2d 326, 331, 266 N.Y.S.2d 289, 295 (1st Dep't 1966), *citing* *Insull v. New York World-Telegram Corp.*, 172 F. Supp. 615, 629 (N.D. Ill.), *aff'd*, 273 F.2d 166 (7th Cir. 1959), *cert. denied*, 362 U.S. 942 (1960).