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## Civil Procedure - Long-Arm Jurisdiction

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CIVIL PROCEDURE — LONG-ARM JURISDICTION  
*Mouzavires v. Baxter*, No. 11696 (D.C. Dec. 21, 1979),  
*rehearing en banc granted*, No. 11696 (D.C. Feb. 4, 1980).

A recent case in the District of Columbia Court of Appeals reflects the trend toward liberal application of long-arm jurisdiction over nonresident defendants. William E. Mouzavires, a District of Columbia patent and trademark attorney, was called by a member of a North Miami Beach, Florida law firm and asked to assist in representing one of the firm's clients in a trademark infringement claim before the federal district court in Florida.<sup>1</sup> After agreeing to work with the firm on the Florida case, Mouzavires did considerable work at his District of Columbia office and also at the United States Patent Office in Virginia.<sup>2</sup> When a dispute arose as to his fee, Mouzavires filed suit in the Superior Court for the District of Columbia alleging jurisdiction over the Florida defendants pursuant to the District of Columbia "long-arm statute."<sup>3</sup> Defendants were served by certified mail at their offices in Florida and promptly moved to quash service and dismiss the suit for lack of personal jurisdiction. The trial court granted the motion to quash service,<sup>4</sup> and Mouzavires appealed. A three-judge panel of the District of Columbia Court of Appeals reversed and remanded with instructions to deny the motion to quash service.<sup>5</sup> The majority held that if a nonresident law firm hires a District of Columbia attorney to assist it in an out-of-state case with reason to believe that much of the work will be performed in the attorney's office in the District of

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1. The Florida law firm of Baxter, Friedman, Robbins & Fisher first contacted appellant Mouzavires in May, 1974. As a result of this telephone call, Mouzavires agreed to work on the case at his District of Columbia office, and to some extent, at the United States Patent Office facilities in Virginia. Later correspondence between the firm and Mouzavires confirmed the agreement. *Mouzavires v. Baxter*, No. 11696, slip op. at 2-3 & n.2 (D.C. Dec. 21, 1979).

2. The law firm maintained contact with Mr. Mouzavires through telephone and mail communication although they never traveled to the District of Columbia. After accepting a partial retainer, Mouzavires' services included the preparation of interrogatories and legal memoranda as well as other services. *Id.*

3. D.C. CODE § 13-423 (1973) provides in pertinent part:

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's —  
(1) transacting any business in the District of Columbia.

4. *Mouzavires v. Baxter*, No. 5982-76 (D.C. Super. Ct. Oct. 19, 1977).

5. *Mouzavires v. Baxter*, No. 11696 (D.C. Dec. 21, 1979) *rehearing en banc granted*, No. 11696 (D.C. Feb. 4, 1980).

Columbia, the nonresident is "transacting . . . business" within the forum and is therefore properly subject to the jurisdiction of the local courts.<sup>6</sup> The court emphasized that the exercise of personal jurisdiction over the appellees would not offend due process since the appellees' contacts with the forum were deliberate and voluntary, indicating a substantial connection with the District of Columbia.<sup>7</sup> According to the standard applied in *Mouzavires*, jurisdiction over a nonresident defendant is proper when "the defendant's contacts with the forum are of such a quality and nature that they manifest a deliberate and voluntary association with the forum"<sup>8</sup> and that "the possible need to invoke the benefits and protections of the forum's laws was reasonably foreseeable . . . ."<sup>9</sup> The court's standard de-

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6. No. 11696, slip op. at 16. The court cited several cases in which personal jurisdiction was sustained over nonresident defendants who never entered the jurisdiction. *See, e.g.*, *Cook Assocs. v. Colonial Broach & Machine Co.*, 14 Ill. App. 3d 965, 304 N.E.2d 27 (1973) (telephone contacts with the jurisdiction only); *Cohn-Daniel Corp. v. Corporacion De la Fonda, Inc.*, 514 S.W.2d 338 (Tex. Civ. App. 1974) (contact by mail). The court also noted that due process will allow the assertion of long-arm jurisdiction over a nonresident defendant even when the initial solicitation to enter into a contract was made by the plaintiff, as long as the defendant's contacts with the forum were otherwise sufficient and voluntary. No. 11696, slip op. at 14-15. *See Vencedor Mfg. Co., Inc. v. Gougler Indus.*, 557 F.2d 886 (1st Cir. 1977); *Shealy v. Challenger Mfg. Co.*, 304 F.2d 102 (4th Cir. 1962).

7. No. 11696, slip op. at 16-17. The most important and, perhaps, still unsettled aspect of long-arm jurisdiction in the District of Columbia is the extent to which the "transacting any business" standard can be considered to extend to the maximum limits permissible under due process. The majority in *Mouzavires* unequivocally stated that "§ 13-423 is coextensive with the due process clause." *Id.* at 8. Judge Harris, in his dissent in *Mouzavires*, urged that the long-arm statute is not coextensive with the due process clause so that its exercise would never violate due process. Rather, Judge Harris maintained that the long-arm statute should be applied in a two-step procedure. First, there would be a determination whether the defendant has "transact[ed] any business" in the District of Columbia. Then, the court must decide whether service on the defendant would comport with due process. No. 11696, slip op. at 22-23 (citing *Haynes v. James H. Carr, Inc.*, 427 F.2d 700, 703 (4th Cir.), *cert. denied*, 400 U.S. 942 (1970)). *See also Rose v. Silver*, 398 A.2d 787 (D.C. 1979) (Harris, J., dissenting).

8. No. 11696, slip op. at 15.

9. *Id.*, quoting *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 496 (5th Cir. 1974). As a guideline for determining the sufficiency of a nonresident's contacts with the forum, "foreseeability" is rather amorphous. The Supreme Court recently considered long-arm jurisdiction in *World-Wide Volkswagen Corp. v. Woodson*, 100 S. Ct. 559 (1980), and also found foreseeability to be an important component to due process in long-arm jurisdiction. The Court said that in order to satisfy due process, "the defendant's conduct and connection with the forum state [should be] such that he . . . reasonably anticipate[s] being haled into court there." *Id.* at 567. *Woodson* characterized the due process clause as giving "a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Id.* The *Woodson* view of foreseeability is clearly more protective of the nonresident than the *Mouzavires* standard that allows the exercise of long-arm jurisdiction over a nonresident based on a transaction "which they foresaw would have consequences here." Slip op. at 17.

rives principally from the legislative history of the District of Columbia long-arm statute which suggests that the "transacting any business" provision be "given an expansive interpretation."<sup>10</sup> Furthermore, in *Mouzavires* the court concluded that the "transacting any business" basis for long-arm jurisdiction is coextensive with the due process clause.<sup>11</sup> Finally, the court of appeals, relying on the Supreme Court opinions *McGee v. International Life Insurance Co.*<sup>12</sup> and *Hanson v. Denckla*,<sup>13</sup> held that long-arm jurisdiction satisfies due process considerations when the nonresident defendant has a sufficient number of voluntary and deliberate contacts with the forum.<sup>14</sup>

Thus, with an expansive view toward the application of long-arm jurisdiction, the court in *Mouzavires* found that a nonresident defendant is "transacting . . . business" within the scope of section 13-423(a)(1) when its contractual activities "cause a consequence" in the forum.<sup>15</sup> This conclusion, however, is in sharp conflict with the court of appeals' earlier *en banc* decision in *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*<sup>16</sup>

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10. No. 11696, slip op. at 8. The court referred to the legislative history of § 13-423, which indicates that Congress intended the District of Columbia to have a long-arm statute essentially the same as those in Maryland and Virginia. See H.R. REP. NO. 907, 91st Cong., 2d Sess. 61 (1970); S. REP. NO. 405, 91st Cong., 1st Sess. 35 (1969). The Virginia and Maryland statutes have been interpreted as extending personal jurisdiction over nonresident defendants to the fullest permissible limits of due process. See *Groom v. Margulies*, 257 Md. 691, 265 A.2d 249 (1970); *Kolbe, Inc. v. Chromodern Chair Co.*, 211 Va. 736, 180 S.E.2d 664 (1971).

11. No. 11696, slip op. at 8. In support, the court quoted from *Textile Museum v. F. Eberstadt & Co.*, 440 F. Supp. 30, 31 (D.D.C. 1977), in which the same provision of the D.C. long-arm statute was at issue:

This controversy presents both a statutory and a constitutional question. This Court must determine whether there exists a constitutional power to subject defendant to the jurisdiction of this Court, and also whether statutory provision has been made for exercise of that power. Our inquiry need not be bifurcated, however, since the constitutional and statutory provisions are coextensive in the District of Columbia.

No. 11696, slip op. at 8 n.5.

12. 355 U.S. 220 (1957).

13. 357 U.S. 235 (1958).

14. No. 11696, slip op. at 13-14. In his majority opinion in *Environmental Research Int'l, Inc. v. Lockwood Greene Eng'rs, Inc.*, 355 A.2d 808 (D.C. 1976), Judge Harris argued that no simple standard for minimum contacts can be drawn from either *Hanson* or *McGee*. "Rather," he noted, "the jurisdictional issue must be resolved on a case-by-case basis noting in each the particular activities relied upon by the resident plaintiff as providing the supposed basis for jurisdiction." *Id.* at 811.

15. No. 11696, slip op. at 9, citing *Rose v. Silver*, 394 A.2d 1368 (D.C. 1978); *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153 (D.C.), cert. denied, 439 U.S. 980 (1978).

16. 355 A.2d 808 (D.C. 1976) (en banc).

In *Lockwood Greene*, appellant Environmental Research, a consulting firm incorporated in the District of Columbia, contacted Lockwood Greene in South Carolina and agreed to assist in the latter's negotiations with a Pennsylvania textile manufacturer. Toward this end, Environmental Research assisted in the preparation and processing of a grant application through the Environmental Protection Agency (EPA). When a contractual dispute arose between the parties, Environmental Research sued Lockwood Greene in the Superior Court of the District of Columbia. The complaint, however, was dismissed by the trial judge for lack of personal jurisdiction. While acknowledging a "trend towards liberalization of jurisdictional limitations,"<sup>17</sup> the court of appeals nonetheless held that Lockwood Greene lacked sufficient contacts with the forum to satisfy the requirements of due process.<sup>18</sup> The court noted that Lockwood Greene had never solicited work in the District of Columbia and its only affiliations with the forum included two visits to EPA and various mail and telephone contacts with appellant.<sup>19</sup> In addition, the court stated that Environmental Research was an independent contractor which had deliberately and voluntarily solicited business with a nonresident corporation.<sup>20</sup> Therefore, the court concluded, appellant's activities in the District of Columbia on behalf of appellees would not in themselves constitute sufficient minimum contacts with the jurisdiction by the appellees.<sup>21</sup>

In contrast, the *Mouzavires* court emphasized that the voluntary and deliberate nature of appellee's action to engage Mouzavires' assistance in the District of Columbia was sufficient to qualify as "transacting . . . business" under section 13-423(a)(1).<sup>22</sup> Thus, this finding conflicts with the court's earlier conclusion in *Lockwood Greene*: "The mere fact that a nonresident has retained the professional services of a District of Columbia

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17. *Id.* at 811. The court further noted the language in *Hanson v. Denckla*, 357 U.S. at 251, that "it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." 355 A.2d at 811.

18. 355 A.2d at 812. The majority in *Lockwood Greene* relied on the reasoning of *Hanson v. Denckla*, that a defendant must act affirmatively to avail itself of the privileges, benefits and protections of the laws of the forum. 355 A.2d at 812.

19. Appellee's visits to EPA in the District of Columbia were not considered transacting business there because of the "government contacts" doctrine — the traditional judicial view that entry into the District of Columbia solely for the purpose of dealing with the federal government will not subject the nonresident defendant to the general jurisdiction of the District of Columbia courts. *See Mueller Brass Co. v. Alexander Milburn Co.*, 152 F.2d 142 (D.C. Cir. 1945). *But see* 28 CATH. U.L. REV. 930 (1979) (recent District of Columbia cases have substantially diminished the viability of the government contacts principle).

20. 355 A.2d at 812 n.7.

21. *Id.* at 812.

22. No. 11696, slip op. at 17.

firm, thereby setting into motion the resident party's own activities within this jurisdiction, does not constitute an invocation by the nonresident of the benefits and protections of the District's laws."<sup>23</sup>

The conflict between these two opinions could be resolved, however, if key importance is placed upon the fact that in *Mouzavires* the nonresident appellee initiated the activity within the District of Columbia by contacting Mouzavires in the District and soliciting his assistance, while in *Lockwood Greene* Environmental Research went out of the jurisdiction and solicited the business of the nonresident defendant. Yet, this distinction was rejected in a strongly worded dissent to *Mouzavires*. In his dissent, Judge Harris, author of the *Lockwood Greene* opinion, argued that the Florida appellees had not deliberately invoked the benefits and protection of the District's laws since the firm's only connection with the forum was its contact with an attorney who happened to perform some of the work at his office in the District of Columbia. According to Judge Harris, on the basis of this factor alone, it cannot be said that the nonresident firm transacted business within the meaning of section 13-423(a)(1).<sup>24</sup> Therefore, following the "binding authority" of *Lockwood Greene*, Judge Harris argued that "a resident professional may not bring suit here against a nonresident client based upon work which has been done by the resident professional in the District of Columbia."<sup>25</sup>

*Mouzavires*, therefore, leaves the law in the District of Columbia regarding personal jurisdiction over nonresident defendants far from settled. With somewhat similar factual situations, the *Mouzavires* court applied a much more liberal interpretation of what contacts will constitute "transacting . . . business" in the District of Columbia than did the court in *Lockwood Greene*. Indeed, the two cases presently are irreconcilable.

Perhaps to remedy this apparent conflict, the District of Columbia Court of Appeals has granted a rehearing *en banc*. On rehearing, the court may choose to address whether application of the long-arm statute requires both an initial determination that the nonresident defendant has transacted business in the jurisdiction as well as a separate determination that due process will permit the exercise of personal jurisdiction over the defendant. On the other hand, the court may seize the opportunity to affirm *Mouzavires* and embrace a standard liberally construing what constitutes "transacting . . . business."

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23. 355 A.2d at 812.

24. No. 11696, slip op. at 24-25 (Harris, J., dissenting).

25. *Id.* at 30. Judge Harris argued that since *Lockwood Greene* is an *en banc* opinion, it is binding and may not be overturned by one division of the court. *Id.* at 20.

Affirmance of *Mouzavires* on rehearing seems unlikely, however, in light of the recent Supreme Court decision, *Rush v. Savchuk*.<sup>26</sup> In *Rush*, a state court's exercise of *quasi in rem* jurisdiction over a defendant by attaching his insurer's obligation to defend him in auto accident-related suits was held to violate due process. The Court emphasized that the *defendant's* contacts with the forum are still the primary concern in any just exercise of jurisdiction.<sup>27</sup> While *Rush's* insurer did business in the forum state, *Rush* himself had no other contacts with the forum which would allow the exercise of jurisdiction over him.<sup>28</sup> The *Rush* decision makes clear that the defendant's, not the plaintiff's, contacts with the forum will be decisive in determining whether due process will allow the exercise of jurisdiction.

In *Mouzavires*, it appears that the District of Columbia Court of Appeals relied too heavily on the plaintiff's connection with the forum in upholding the exercise of jurisdiction. In light of the Supreme Court's recent indication that it will no longer condone an expansive application of long-arm jurisdiction<sup>29</sup>, the court of appeals may reach a different conclusion in *Mouzavires* after rehearing.

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26. 100 S. Ct. 571 (1980).

27. *Id.* at 577.

28. *Id.*

29. *Id.* at 579.