Effective:[See Text Amendments]

McKinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 3. Jurisdiction and Service, Appearance and Choice of Court (Refs & Annos)

§ 301. Jurisdiction over persons, property or status

A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.

CREDIT(S)

(L.1962, c. 308.)

HISTORICAL AND STATUTORY NOTES

Legislative Studies and Reports

This section is new. The Second Report to the Legislature states that it is designed to make it clear that neither § 302 nor any similar provision which deals with acquisition of jurisdiction in particular situations supersedes or operates as a limitation upon acquisition of jurisdiction over persons, property or status as previously permitted by law and judicial decision or as permitted by this article or any other future provision. Thus, personal jurisdiction may still be acquired over a foreign corporation "doing business" in New York in accordance with present case law or over a natural person as under former § 229-b of the civil practice act. If a corporation which has submitted itself to the jurisdiction of the New York courts by acts performed within the state, as provided in § 302, is sued on a cause of action that did not arise from any of the acts, it would be necessary to determine from prior law whether there is personal jurisdiction because § 302 limits the jurisdiction acquired under it to a cause of action arising from the performance of the acts. In Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915 (1917), jurisdiction over a foreign corporation was sustained even though the cause of action sued upon did not originate in the business transacted in New York, because the corporation was "doing business" in New York.

There has been no attempt to restate the principles of jurisdiction. Omitted from the article are former §§ 483 and 520 of the civil practice act which provided that where jurisdiction over the person is not obtained but the court's power to act is predicated on jurisdiction quasi in rem, the judgment can only be enforced against attached property. These sections restated only one of the fundamentals of jurisdiction and are unnecessary since the same result is required by procedural and substantive due process principles enforceable under both of the Federal and state constitutions. Provisions such as § 59-a [now 1213] of McKinney's Insurance Law and § 52 [now 253] of McKinney's Vehicle and Traffic Law will continue in force.

In a situation where personal jurisdiction over a defendant rests solely upon § 302, an amendment or supplementation of a pleading to assert other causes of action not within § 302 would not be permissible even though the defendant defends the action on the merits. But where there is another basis for personal jurisdiction, as where a foreign corporation can be found to be "doing business" within the state, the pleadings may be amended or supplemented without regard to the limitations of § 302.

Official Reports to Legislature for this section:

2nd Report Leg.Doc. (1958) No. 13, p. 37.

5th Report Leg.Doc. (1961) No. 15, p. 66.

6th Report Leg.Doc. (1962) No. 8, p. 103.

SUPPLEMENTARY PRACTICE COMMENTARIES

by Vincent C. Alexander

2013

C301:9. Doing Business: Affiliated Corporations.

Arbeeny v. Kennedy Executive Search, Inc., 2011, 31 Misc.3d 494, 921 N.Y.S.2d 784 (Sup.Ct.N.Y.Co.), applied the agency theory to assert jurisdiction over an English executive recruitment firm whose affiliate was doing business in New York. The plaintiff, an employee of the New York affiliate, sued for unpaid salary and commissions. The English firm was engaged in global placements of executives, and the affidavit of the defendant's principal officer explained that the New York corporation, a separate entity, had been formed to focus on the placement of executives in the New York and U.S. financial services industries. Three factors led to the court's conclusion that the New York affiliate's agency relationship with the English firm was sufficient to subject the latter to jurisdiction: The two companies had common (but not identical) ownership, the New York company was established to "do all the business which [the English firm] could do were it here by its own officials," and the English firm's marketing literature referred to the two companies as a "group" that was "[h]eadquartered in London under the name Kennedy Associates with an office in New York under the name of Kennedy Executive Search." The case illustrates the evidentiary value of the defendant's own representations about its business.

The court also explored the possible application of the "mere department" theory of jurisdiction. Plaintiff failed on this score. The companies did not have a sufficient parent-subsidiary relationship because "near-identical ownership" was lacking. Even if there had been a parent-subsidiary relationship, the English company did not exercise dominant control over the New York firm, the two firms were financially independent, and they observed corporate formalities.

The "mere department" theory also failed to justify jurisdiction over an out-of-state corporation in *FIMBank P.L.C. v. Woori Finance Holdings Co.*, 2013, 104 A.D.3d 602, 962 N.Y.S.2d 114 (1st Dep't). There, the target defendant was a holding company that shared common ownership with a corporation doing business in New York. The required element of domination, however, was lacking. The holding company "does not control [the other company's] finances, interfere with the selection and assignment of executive personnel or fail to observe the corporate formalities.... Nor does the SEC Form 20-F ... establish pervasive control by [the defendant]. The form's language describes an appropriate parental role of [the holding company] in supervising its subsidiaries." Id. at 603, 962 N.Y.S.2d at 115-16.

2011

C301:8. Doing Business: Foreign Corporations.

(c) Due Process.

In *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 2011, 131 S.Ct. 2846, the Supreme Court unanimously rejected an exercise of general jurisdiction by North Carolina courts over three foreign-country tire manufacturers whose only connections to North Carolina were indirect sales of tires that entered the chain of distribution in Europe. The case arose out of a bus accident in France allegedly caused by defective tires manufactured and sold by the defendants overseas. The North Carolina courts purported to apply the so-called "stream of commerce" concept that has sometimes helped support the exercise of specific jurisdiction for a claim against an out-of-state corporation whose product caused injury within the forum. See Practice Commentaries on CPLR 302, at C302:2. But a mere stream of commerce connection "does not establish the 'continuous and systematic' affiliation necessary to empower [the courts of a state] to entertain claims unrelated to the foreign corporation's contacts with the State." 131 S.Ct. at 2851.

Justice Ginsburg, author of the opinion, wrote: "For an individual [defendant], the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." 131 S.Ct. at 2853-54. The defendants in the present case were "in no sense at home in North Carolina." Id. at 2857. Thus, due process precluded the exercise of general jurisdiction. (Although the defendants' parent corporation was regularly doing business in North Carolina, the Supreme Court declined to address the plaintiffs' alternative argument advocating a "single enterprise" theory of jurisdiction (see Commentary C301:9) because of its belated assertion during the appellate process.)

The *Goodyear Dunlop* case bolsters the correctness of the New York Court of Appeals' position that the mere sales of a foreign corporation's products within New York does not constitute doing business within New York. See *Delagi v. Volkswagenwerk A.G.*, 1972, 29 N.Y.2d 426, 433, 328 N.Y.S.2d 653, 657, 278 N.E.2d 895, 898 ("mere sales of a manufacturer's product in New York, however substantial, have never made the foreign manufacturer amenable to suit in this jurisdiction").

PRACTICE COMMENTARIES

by Vincent C. Alexander

C301:1. In General; Territorial Jurisdiction.

CPLR 301 took effect on September 1, 1963, as one of the original provisions of the CPLR. The section carries forward all the categories of judicial jurisdiction over persons, property and status that existed prior to adoption of the CPLR. According to its drafters, CPLR 301 was intended to make clear that the advent of "long-arm" jurisdiction in CPLR 302 did not supersede or limit any then-existing bases of jurisdiction recognized by statute or caselaw. N.Y.Adv.Comm. on Prac. & Proc., Second Prelim.Rep., Legis.Doc.No.13, p.38 (1958) [hereinafter cited as Second Prelim.Rep.].

The drafters also noted that the CPLR makes no attempt to define or delineate the various principles of jurisdiction encompassed by CPLR 301. Second Prelim.Rep., supra, at p.38. A brief overview of jurisdiction is therefore necessary to understand the application and scope of CPLR 301.

Jurisdiction over persons, property and status--the topic addressed by CPLR 301--has often been called "basis jurisdiction," and more recently "territorial jurisdiction." See, e.g., Restatement (Second) of Judgments § 4 (1982). Territorial jurisdiction is one of the three cornerstones of jurisdiction necessary for a court's exercise of adjudicatory authority. The other two members of the jurisdiction family are subject matter jurisdiction and notice to the defendant (service of process).

Subject matter jurisdiction refers to the authority of a court to entertain particular types of controversies. Such authority is to be found in Article VI of the New York Constitution. For example, the Supreme Court is recognized as a court of general original jurisdiction, signifying that it has the authority to hear virtually any type of action. N.Y.Const., art.VI, § 7(a). Other New York courts of original jurisdiction, such as the County Court and New York City Civil Court, have jurisdiction that is essentially confined to monetary claims of specified limits and whatever equity proceedings may be authorized by the Legislature. Id. §§ 11(a)-(b), 15(b).

The notice branch of jurisdiction is a requirement imposed by the due process clause of the fourteenth amendment to the federal Constitution. The constitutional requirement is one of "notice reasonably cal-

culated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 1950, 339 U.S. 306, 314, 70 S.Ct. 652, 656, 94 L.Ed. 865, 873. CPLR 305-316 contain the statutory prescriptions for process and its service, thereby implementing the notice component of jurisdiction. It bears emphasizing that service of process, no matter how flawlessly it is performed, will not by itself give the court jurisdiction over a defendant. The court must have a proper basis of jurisdiction, such as that provided by CPLR 301 or 302. See *Keane v. Kamin*, 1999, 94 N.Y.2d 263, 265, 701 N.Y.S.2d 698, 699-700, 723 N.E.2d 553, 554-55.

Returning to CPLR 301, jurisdiction over persons, property and status is divided into three categories described by the Latin terms *in personam, in rem* and *quasi in rem*. In personam, or "personal," jurisdiction refers to the court's power to adjudicate a defendant's liability or obligation in favor of the plaintiff. Such jurisdiction empowers the court to award a judgment for monetary relief, as in tort and contract actions for damages, or equitable relief, as in an action for an injunction. An in personam judgment is binding personally on the defendant; it is enforceable both in the state in which it was rendered and in other states. See Restatement (Second), Conflict of Laws, p.103 (1971). The in rem and quasi in rem categories of jurisdiction relate to the court's adjudicatory power over property located within the state, as in foreclosure or partition actions, or the status of a person living within the state, as in a divorce proceeding. When such jurisdiction exists, the scope of the court's judgment is restricted to the local property or status; no personal liability attaches to the defendant. Id. at pp.103-05.

Territorial jurisdiction is thus comprised of the three categories of in personam, in rem and quasi in rem jurisdiction. The term "territorial jurisdiction" conveys the idea that a state court's authority--its power--over the persons or things involved in particular litigation is limited by geographical considerations. With respect to persons and things located beyond their borders, the states, by legislation or judicial decision, have sometimes voluntarily chosen to restrict the exercise of jurisdiction. In other instances, the due process clause of the fourteenth amendment restricts the assertion of jurisdiction over cases that lack a sufficient connection to the state. See generally Kevin M. Clermont, Civil Procedure: Territorial Jurisdiction and Venue 2, 5-7, 17-24 (1999).

When it originally linked due process to territorial limitations on state court jurisdiction, the Supreme Court held that judicial power was dependent on the presence within the state of the defendant or the property or status constituting the subject matter of the action. *Pennoyer v. Neff*, 1877, 95 U.S. (5 Otto) 714, 24 L.Ed. 565. With the passage of time, and the expansion of interstate commerce, travel and communication, the Supreme Court has held that the demands of due process are more flexible. Although the territorial dimension still exists, the rigid requirement of presence has been replaced with a standard of "affiliating circumstances." *Hanson v. Denckla*, 1958, 357 U.S. 235, 245-46, 78 S.Ct. 1228, 1235, 2 L.Ed.2d 1283, 1293.

The modern approach was first articulated in *International Shoe Co. v. Washington*, 1945, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95, where it was said "that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he [must] have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " Id. at 315, 66 S.Ct. at 158, 90 L.Ed. at 102.

The due process standard articulated in *International Shoe* for in personam jurisdiction has evolved into

a two-part test. First, it must be established that the defendant has minimum contacts with the state, i.e., has engaged in such purposeful activity directed toward the forum that the defendant has invoked the benefits and protections of its laws and, as a result, can reasonably anticipate being sued there. Second, if such forum connections exist, the reasonableness and fairness of litigation in that state must be shown. See *World-Wide Volkswagen Corp. v. Woodson*, 1980, 444 U.S. 286, 291-97, 100 S.Ct. 559, 564-67, 62 L.Ed.2d 490, 497-501; *Burger King Corp. v. Rudzewicz*, 1985, 471 U.S. 462, 471-78, 105 S.Ct. 2174, 2181-85, 85 L.Ed.2d 528, 540-44. The Supreme Court has also extended "the standards set forth in *International Shoe* and its progeny" to the assertion of in rem and quasi in rem jurisdiction. *Shaffer v. Heitner*, 1977, 433 U.S. 186, 207-12, 97 S.Ct. 2569, 2581-84, 53 L.Ed.2d 683, 699-703. These standards are discussed in greater detail in the Practice Commentaries on CPLR 302 and 314, infra.

It must be remembered, of course, that due process merely sets the constitutional boundaries for the exercise of territorial jurisdiction. The starting point for analysis must be whether state law--our concern being the statutory and decisional law of New York--authorizes the assertion of jurisdiction in particular circumstances. As will be seen, New York exploits most, but not all, of the freedom it has been accorded by modern standards of due process.

With respect to in personam jurisdiction, New York recognizes five potential bases: presence, consent, domicile, doing business and "long-arm jurisdiction." The first four of these bases were imbedded in the state's jurisdictional law prior to the adoption of CPLR 301 and are preserved by that section. They are discussed in Commentaries C301:2 through C301:10, below. Long-arm jurisdiction is the topic of CPLR 302, which is discussed in the Practice Commentaries that accompany that section. The in rem and quasi in rem categories of territorial jurisdiction are discussed in the Practice Commentaries on CPLR 314.

If the defendant challenges the court's territorial jurisdiction, the plaintiff has the burden of proving the existence of a basis under CPLR 301, CPLR 302, or some other specific jurisdiction-conferring statute. See Practice Commentaries on CPLR 302, at C302:5, infra.

C301:2. Presence: In General, Individuals.

Service of process on the defendant while she is present in New York is a time-honored basis for the exercise of in personam jurisdiction. Indeed, in its first ruling on the relationship between due process and territorial jurisdiction, the Supreme Court declared in 1877 that presence, in effect, was the only permissible means of obtaining personal jurisdiction. *Pennoyer v. Neff*, 1877, 95 U.S. (5 Otto) 714, 24 L.Ed. 565. The presence basis is so much a part of the jurisdictional tradition in New York that its existence has been taken for granted. A rare judicial pronouncement on point is contained in *Rawstorne v. Maguire*, 1934, 265 N.Y. 204, 207, 192 N.E. 294, 295, where the Court of Appeals said, "We may assume that the courts of the State can by [a reasonable method of] service obtain jurisdiction of the person of one who is physically within the State."

Presence is a so-called "general" basis of jurisdiction, meaning that the claim asserted by the plaintiff need not have any relationship to activities of the defendant in New York. See Kevin M. Clermont, Civil Procedure: Territorial Jurisdiction and Venue 52-53 (1999). Consider, for example, a California domiciliary who has breached a contract made in California with a Pennsylvania domiciliary. If the

Pennsylvanian commences an action in New York Supreme Court and uses a proper method to serve process on the Californian while she happens to be in New York, the court will thereby acquire in personam jurisdiction to adjudicate plaintiff's contract claim. The purpose and duration of a defendant's presence in New York generally are irrelevant to the inquiry. See Restatement (Second), Conflict of Laws § 28, comment (a) (1971). “Transient” presence, in other words, will suffice.

Is presence jurisdiction consistent with the modern notions of due process that were introduced in *International Shoe Co. v. Washington*, 1945, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95? See Commentary C301:1, above. The apparent answer is yes, according to the 1990 decision of the Supreme Court in *Burnham v. Superior Court of California*, 1990, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631. There, a New Jersey domiciliary was served with process in California while temporarily in the state to conduct some business and to visit his children. The cause of action sued upon in the California court had no relationship to any of his California activities. The Supreme Court was unanimous in upholding jurisdiction on the facts, but none of the Court's four opinions commanded a majority vote.

Two competing theories sustaining presence jurisdiction were propounded by Justices Scalia and Brennan, respectively. Writing for himself and two other members of the Court, Justice Scalia opined that the historical pedigree of presence jurisdiction automatically brought it into compliance with due process. He saw no need to subject any assertion of personal jurisdiction based on in-state service to the two-part minimum contacts/fairness test of *International Shoe*. That test, he said, has relevance only when jurisdiction is asserted in nontraditional circumstances over defendants who are outside the state's borders.

Justice Brennan, on the other hand, wrote an opinion for himself and three other Justices in which he argued that *International Shoe* introduced a due process standard that must be applied to all assertions of personal jurisdiction regardless of their vintage. He agreed that voluntary presence in the state at the time of service presumptively comports with contemporary notions of due process. The long-standing tradition of presence jurisdiction gives transient defendants fair notice that they may be sued wherever they happen to travel in the United States, they benefit from the protections of the laws and services of the states they visit, and the burdens and inconveniences of interstate litigation are usually few. He rejected Justice Scalia's view, however, that all assertions of jurisdiction based on in-state service are automatically valid. There may be factual circumstances in which such jurisdiction is unfair or unreasonable. Although he did not mention the case, perhaps Justice Brennan had in mind such decisions as *Grace v. MacArthur*, E.D.Ark.1959, 170 F.Supp. 442, where presence jurisdiction in Arkansas was upheld over a defendant who was served in an airplane that was flying over the state.

Despite the *Burnham* Court's lack of consensus as to theory, it is fair to say that any constitutional attack on a New York court's assertion of personal jurisdiction based on in-state service has little probability of success. See, e.g., *Kadic v. Karadzic*, C.A.N.Y.1995, 70 F.3d 232, 247, certiorari denied , 1996, 518 U.S. 1005, 116 S.Ct. 2524, 135 L.Ed.2d 1048 (jurisdiction upheld over citizen of foreign nation who was served while visiting New York for purpose of addressing United Nations). In any event, the issue may be more theoretical than real. As a practical matter, a case of transient jurisdiction in which neither of the parties resides in New York and the plaintiff's cause of action arises wholly from events that occurred elsewhere is a likely candidate for dismissal on the discretionary ground of forum non conveniens. See generally CPLR 327 and the accompanying Practice Commentaries. Furthermore, certain traditional exceptions based on policy considerations are described in Commentaries C301:4 and

C301.5, below.

C301:3. Presence: Partnerships and Unincorporated Associations.

The formation of a partnership does not create a separate legal entity; a partnership is an aggregate of individuals. Accordingly, it has been held that service of process on a member of a partnership while the partner is in New York provides a basis of personal jurisdiction over the partnership as well as the individual partner. *Rait v. Jacobs Brothers*, 1966, 49 Misc.2d 903, 268 N.Y.S.2d 750 (Sup.Ct.Nassau Co.); *Equitable Trust Co. v. Halim*, 1929, 133 Misc. 678, 234 N.Y.S. 37 (Sup.Ct.N.Y.Co.). (Additional issues regarding jurisdiction and procedure in actions against partnerships are discussed in the Practice Commentaries on CPLR 1025 and 1501). Under traditional presence doctrine, it matters not that the partner is a nondomiciliary of the forum, that the partnership conducts all of its business in another state, or that the cause of action being sued upon involves events that occurred outside New York. This view is challenged in the Restatement (Second), Conflict of Laws § 40 (1971), where it is said in comment (b) that "[t]he mere presence of one of the partners or members in the state is not a sufficient basis for the exercise of judicial jurisdiction over the partnership...." The Restatement would require some greater connection between the partnership and the state.

Nevertheless, the Court of Appeals for the Second Circuit concluded that New York continues to recognize service on a partner who is temporarily in the state as a valid basis of personal jurisdiction over his out-of-state partnership. *First American Corp. v. Price Waterhouse LLP*, C.A.N.Y.1998, 154 F.3d 16, 20. Furthermore, said the court, the Supreme Court's decision in *Burnham v. Superior Court of California*, 1990, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (discussed in Commentary C301:2, above) makes clear that such an assertion of jurisdiction comports with due process.

With respect to limited partnerships, the provisions of N.Y. Partnership Law §§ 121-104 and 121-109 should also be consulted.

An unincorporated association, much like a partnership, is not an independent legal entity. It has no legal existence separate and apart from its individual members. For the sake of convenience, an association is sued in the name of the president or treasurer of the association. See Practice Commentaries on CPLR 1025, at C1025:2. If an out-of-state association's president or treasurer happens to be in New York, service on such officer while she is here will confer personal jurisdiction for an action against the association. *Gross v. Cross*, 1961, 28 Misc.2d 375, 211 N.Y.S.2d 279 (Sup.Ct.N.Y.Co.).

C301:4. Presence: Fraud Exception.

For obvious policy reasons, the plaintiff's luring of a nondomiciliary into New York through fraud invalidates the assertion of jurisdiction based on presence. A good example is *Terlizzi v. Brodie*, 1972, 38 A.D.2d 762, 329 N.Y.S.2d 589 (2d Dep't). There, the defendants, New Jersey residents who had been involved in an auto accident with plaintiff in New Jersey, were tricked into coming to New York by an offer of free tickets to a Broadway show as part of a nonexistent promotional venture. At the theatre, they were served with process in an action for plaintiff's injuries, but the action was dismissed on the grounds of fraudulent enticement. See also *DiMartino v. Rivera*, 1989, 148 A.D.2d 568, 539 N.Y.S.2d 38 (2d Dep't) (New Jersey defendant, who was not fluent in English language, was lured to New York by assurances that no serious legal consequences would befall him); *Garabettian v. Garabettian*, 1923, 206 A.D. 502, 201 N.Y.S. 548 (1st Dep't) (in-state service invalidated where New Jersey defendant's

presence in New York was product of plaintiff's fraudulent offer to discuss purchase of defendant's business); *Gampel v. Gampel*, 1952, 114 N.Y.S.2d 474 (Sup.Ct.Monroe Co.) (plaintiff wife's New York service on estranged husband was invalidated where she tricked him into coming to New York by false offer to discuss marital difficulties and to give up her illegal custody of child).

Fraud is no defense, however, to a process server's use of trickery to facilitate service on a defendant who is already voluntarily present in New York. In *Gumperz v. Hofmann*, 1935, 245 A.D. 622, 283 N.Y.S. 823 (1st Dep't), affirmed , 1936, 271 N.Y. 544, 2 N.E.2d 687, for example, a process server misrepresented his identity and mission in order to induce a potential defendant to leave his New York City hotel room for a meeting in the lobby. The resulting service on defendant in the lobby was upheld by the Appellate Division: "It may fairly be said that there is a duty upon persons within the jurisdiction to submit to the service of process.... The deception here ... had only the effect, of inducing the defendant to do that which in any event he should have voluntarily done." 245 A.D. at 624, 283 N.Y.S. at 825.

Similarly, a plaintiff's fraudulent effort to encourage a nondomiciliary to come to New York is irrelevant if the evidence shows that the defendant, at the time of service, was voluntarily in New York for independent reasons. See, e.g., *Hammett v. Hammett*, 1980, 74 A.D.2d 540, 424 N.Y.S.2d 913 (1st Dep't) (plaintiff falsely indicated to estranged husband that she was willing to discuss reconciliation during his forthcoming trip to New York). Furthermore, even if plaintiff's misrepresentations are the sole inducement for a defendant to come to New York, in-state service will be upheld upon a showing of a jurisdictional basis independent of presence. See *Parente v. Kisner*, 1970, 34 A.D.2d 244, 246, 312 N.Y.S.2d 480, 482 (3d Dep't). If plaintiff's cause of action, for example, arises out of a tortious act in New York, long-arm jurisdiction will be available under CPLR 302(a)(2). Since defendant in such case could be served outside New York, luring him here simply to facilitate service is not a fraudulent acquisition of basis jurisdiction.

Service during settlement negotiations in New York is a common scenario in which the fraudulent enticement defense has been invoked. Jurisdiction was denied, for example, where an unwary out-of-state party who responded to plaintiff's invitation to discuss settlement in New York was served with process upon arrival at the negotiating table. *Olean St. Ry. Co. v. Fairmount Construction Co.*, 1900, 55 A.D. 292, 67 N.Y.S. 165 (4th Dep't). On the other hand, in-state service was upheld where it occurred at the conclusion of unsuccessful negotiations in New York that were initiated and conducted in good faith. *Waljohn Waterstop, Inc. v. Webster*, 1962, 37 Misc.2d 96, 232 N.Y.S.2d 665 (Sup.Ct.Kings Co.). Plaintiff's intent "in the event negotiations were not successful, to take advantage of defendant's presence in New York to serve process upon him, ... [was] insufficient to support defendant's claim of being enticed into this jurisdiction by fraud and deceit." Id. at 97, 232 N.Y.S.2d at 666. See also *Freybergh v. Geliebter*, 1959, 16 Misc.2d 621, 184 N.Y.S.2d 902 (Sup.Ct.N.Y.Co.). An out-of-state party who wants to discuss settlement in New York would be well advised to demand, as a prerequisite, an "armistice" agreement providing for immunity from service while in New York. Such an agreement was enforced in *Patino v. Patino*, 1954, 283 A.D. 630, 129 N.Y.S.2d 333 (1st Dep't), appeal dismissed 307 N.Y. 910, 123 N.E.2d 565.

C301:5. Presence: Immunity Exception.

A nondomiciliary's presence in New York for the sole purpose of voluntary participation in judicial or quasi-judicial proceedings generally "immunizes" her from the acquisition of jurisdiction based on such

presence. The immunity serves multiple purposes. It is a privilege of the party as well as a privilege of the court that helps maintain its authority and dignity, encourages voluntary attendance in judicial proceedings, and "promote[s] the due and efficient administration of justice." *Thermoid Co. v. Fabel*, 1958, 4 N.Y.2d 494, 498, 176 N.Y.S.2d 331, 334, 151 N.E.2d 883, 885; *Chase National Bank v. Turner*, 1936, 269 N.Y. 397, 400, 199 N.E. 636, 637.

In New York, the immunity doctrine has been liberally applied. It protects a nondomiciliary who is in New York voluntarily as a witness or party (either as defendant or, in general, as plaintiff). See *Barbella v. Yale*, 1956, 4 Misc.2d 825, 152 N.Y.S.2d 695 (Sup.Ct.Bronx Co.). The proceedings in New York can be pending in either a state or federal tribunal and can cover a wide array of litigation-related activity, including participation in judicial or administrative trials, pretrial depositions, legislative investigative hearings, and arbitrations. See *Treadway Inns Corp. v. Chase*, 1965, 47 Misc.2d 937, 263 N.Y.S.2d 551 (Sup.Ct.Monroe Co.). A party's attendance to hear an appeal of his or her case is also included. *Chase National Bank v. Turner*, supra. The immunity from civil process extends as well to a criminal defendant, provided his or her presence at the criminal proceeding is voluntary. *Thermoid Co. v. Fabel*, supra. Whether a person's participation in a proceeding, civil or criminal, is voluntary is dependent on whether the failure to appear can result in imprisonment or fine, as, for example, in the case of noncompliance with a subpoena. See *Barbella v. Yale*, supra. See also *New England Industries, Inc. v. Margiotti*, 1946, 270 A.D. 488, 490, 60 N.Y.S.2d 430, 432 (1st Dep't). Similarly, the rationale for the immunity doctrine vanishes, and hence is inapplicable, if the individual is brought to New York under arrest. "Such a suitor or witness does nothing to encourage or promote voluntary submission to judicial proceedings." *Netograph Mfg. Co. v. Scrugham*, 1910, 197 N.Y. 377, 380, 90 N.E. 962, 963.

Assuming voluntariness, the immunity applies while the individual is "coming into this jurisdiction, while remaining in attendance at [the proceeding], and while returning home, provided he returns with reasonable dispatch after the [proceeding] has ended." *Finucane v. Warner*, 1909, 194 N.Y. 160, 163, 86 N.E. 1118, 1119. The reason for coming to New York, however, must be solely to participate in litigation. It has been held that a "double purpose," such as the simultaneous transaction of New York business that has no relation to the litigation, will deprive the party of immunity. *Finucane v. Warner*, supra.

The rationale for immunity also disappears if the plaintiff has a basis of jurisdiction over the defendant that is independent of in-state service. For example, in *Merigone v. Seaboard Capital Corp.*, 1976, 85 Misc.2d 965, 381 N.Y.S.2d 749 (Sup.Ct.Nassau Co.), the plaintiff served process on a New Jersey domiciliary defendant immediately after he testified in a New York hearing devoted to the issue of service in a prior action brought by the same plaintiff. The cause of action being sued upon arose out of defendant's transaction of business in New York, thereby giving plaintiff a long-arm basis of jurisdiction under CPLR 302(a)(1). Since long-arm jurisdiction would have permitted service on the defendant anywhere outside New York, it made no sense to deprive plaintiff of the ability to make service within New York. If the defendant cannot claim immunity from New York service on his home turf, he should not be able to claim it in New York. See also *Chauvin v. Dayon*, 1961, 14 A.D.2d 146, 217 N.Y.S.2d 795 (3d Dep't).

In the absence of an independent basis of jurisdiction, however, it bears emphasizing that the immunity doctrine protects a nondomiciliary defendant who comes to New York voluntarily to testify to prior defects in service and the plaintiff makes an attempt to cure such defects by re-service while the defendant

is present. See *Moreo v. Regan*, 1988, 140 A.D.2d 313, 527 N.Y.S.2d 547 (2d Dep't) (alleged errors in service of process, to which defendant testified during deposition in New York in support of jurisdictional defense, could not be cured by re-service while defendant was present in New York for the deposition).

The threat exists, as a result of certain broad language in some judicial opinions, that the time-honored protection for party-defendants that was applied by the Second Department in *Moreo* will be improperly diluted. A growing trend calls for re-examination of the appropriateness of immunity, on a case-by-case basis, if the local service is for the purpose of obtaining jurisdiction for proceedings that are "related" to the subject matter of the case for which the out-of-stater is present. See generally 84 A.L.R.2d 421, at §§ 3 & 4 (1962). The First Department, for example, announced in dictum, "[T]he immunity from service of process does not apply to a case where the issues arise out of the same state of facts as the action in connection with which the person served is in attendance." *Wehr v. Memhard*, 1984, 106 A.D.2d 262, 263, 482 N.Y.S.2d 279, 281 (1st Dep't).

The case cited by the First Department for this proposition, *Zirinsky v. Zirinsky*, 1974, 77 Misc.2d 954, 356 N.Y.S.2d 414 (Sup.Ct.N.Y.Co.), made its pronouncement about relatedness where the rejection of immunity was clearly appropriate. The *Zirinsky* defendant, a nondomiciliary, sought to testify in his wife's duly-commenced matrimonial action without being subject to civil arrest (which would have required separate process) as a result of his noncompliance with prior orders of the court. Such flouting of court orders in an ongoing action for which jurisdiction has already been established arguably justifies the exercise of ancillary jurisdiction for enforcement proceedings that are an adjunct to the pending action. It is submitted that *Zirinsky*, and the First Department's dictum in *Wehr v. Memhard*, should be relied upon only in narrow circumstances and that broad exceptions to the immunity doctrine are unwarranted. See, e.g., *Bartwitz v. Hotaling*, 2000, 184 Misc.2d 515, 708 N.Y.S.2d 590 (Sup.Ct.Warren Co.) (no immunity for service of trial subpoenas on officers of third-party corporate defendants who were in New York to testify at pretrial depositions in same case). As a general matter, it must be remembered that New York policy traditionally seeks to encourage the voluntary attendance of nondomiciliaries to facilitate the efficient disposition of local litigation. See *Chase National Bank v. Turner*, supra, 269 N.Y. at 400, 199 N.E. at 637.

Discomfort with the immunity doctrine is most pronounced, perhaps, where the nondomiciliary who claims immunity is a plaintiff in a pending action. It is arguable that such person, by invoking the jurisdiction of a New York court, should in fairness be subject to service in New York for any and all other litigation in New York. Nevertheless, the law continues to immunize a nondomiciliary plaintiff from in-state service except as to actions commenced against him by other parties to the particular New York proceeding that he initiated. See CPLR 303; *Waterman Steamship Corp. v. Ranis*, 1988, 141 Misc.2d 772, 534 N.Y.S.2d 321 (Sup.Ct.N.Y.Co.).

International law may provide another form of immunity from in-state service. Foreign "heads of state" and diplomats, for example, are usually exempt from local service of process (see, e.g., *Anonymous v. Anonymous*, 1992, 181 A.D.2d 629, 581 N.Y.S.2d 776 (1st Dep't); *Tsiang v. Tsiang*, 1949, 194 Misc. 259, 86 N.Y.S.2d 556 (Sup.Ct.N.Y.Co.)), and international treaties and federal statutes may confer immunity on other foreign officials, such as United Nations personnel (see, e.g., *Shamsee v. Shamsee*, 1980, 74 A.D.2d 357, 428 N.Y.S.2d 33 (2d Dep't), affirmed , 1981, 53 N.Y.2d 739, 439 N.Y.S.2d 356, 421 N.E.2d 848, certiorari denied 454 U.S. 893, 102 S.Ct. 389, 70 L.Ed.2d 207).

C301:6. Consent; Forum Selection Clauses; Corporate Registration.

(a) In General.

Regardless of a party's state of domicile, and irrespective of where the cause of action arose, a party may consent to the exercise of personal jurisdiction by a New York court. Consent can take many forms and can occur before or after the litigation has commenced.

Since the days of *Pennoyer v. Neff*, 1877, 95 U.S. (5 Otto) 714, 24 L.Ed. 565, it has been recognized that a defendant's "voluntary appearance" in an action confers in personam jurisdiction regardless of where and how service of process occurred. This form of consent usually takes the form of a waiver, whether intentional or inadvertent, of personal jurisdiction objections. Today, under CPLR 3211(e), the defense that the court lacks personal jurisdiction is waived if not included in a pre-answer motion to dismiss or asserted in the answer, whichever comes first. The same result is described in CPLR 320(b) as follows: "[A]n appearance of the defendant is equivalent to personal service of the summons upon him, unless an objection to jurisdiction under [CPLR 3211(a)(8)] is asserted by motion or in the answer as provided in rule 3211." See generally Practice Commentaries on CPLR 320, at C320:3, infra. A defendant might also consent to in personam jurisdiction by entering into a stipulation explicitly waiving any defense on that ground. See, e.g., *Milbank v. Lauersen*, 1992, 188 A.D.2d 644, 592 N.Y.S.2d 261 (2d Dep't). But see *Holness v. Maritime Overseas Corp*., 1998, 251 A.D.2d 220-22, 676 N.Y.S.2d 540, 543 (1st Dep't) (stipulation waiving objections to defects in "service" does not waive objections relating to basis jurisdiction).

The plaintiff's conduct may also be deemed an implied consent to personal jurisdiction. For example, a nondomiciliary plaintiff who commences an action in New York thereby confers personal jurisdiction on the court for counterclaims by the defendant. Furthermore, the out-of-state plaintiff opens himself up to entirely separate actions in New York brought by parties to the action that plaintiff initiated. See Practice Commentaries on CPLR 303, infra.

(b) Contractual Consent.

Consent to personal jurisdiction may also be given by contract in advance of litigation. *National Equipment Rental, Ltd. v. Szukhent*, 1964, 375 U.S. 311, 315-16, 84 S.Ct. 411, 414, 11 L.Ed.2d 354, 358. The scope of the court's jurisdiction in such cases is defined by the terms of the consent. See Restatement (Second), Conflict of Laws § 32, comment (a) (1971). In a commercial transaction, for example, the parties may include a contractual provision that any dispute arising out of or relating to the contract may be litigated in the courts of New York. See, e.g., *National Union Fire Ins. Co. of Pittsburgh, PA v. Worley*, 1999, 257 A.D.2d 228, 231, 690 N.Y.S.2d 57, 59 (1st Dep't). The guarantor of such a contract may also be deemed to have consented to New York jurisdiction if the guarantee incorporates by reference all the terms of the underlying agreement. *State Bank of India v. TAJ Lanka Hotels Ltd*., 1999, 259 A.D.2d 291, 686 N.Y.S.2d 44 (1st Dep't). See also *Packer v. TDI Systems, Inc*., S.D.N.Y.1997, 959 F.Supp. 192, 201-03 (corporate officer who guarantees corporate contract containing consent clause may be deemed to have personally consented to New York jurisdiction under "alter ego" doctrine).

The court in *Freeford Limited v. Pendleton*, 2008, 53 A.D.3d 32, 857 N.Y.S.2d 62 (1st Dep't), leave to

appeal denied , 2009, 12 N.Y.3d 702, 876 N.Y.S.2d 350, 904 N.E.2d 505, identifies three situations in which a nonsignatory of a contract containing a New York choice-of-forum clause may enforce the clause. First, a third-party beneficiary of the contract may take advantage of the agreement to litigate in New York. The second situation is a so-called "global transaction" in which the contract containing the choice-of-forum clause is one of multiple agreements executed at the same time by the same parties or for the same purpose. Third, a nonsignatory who is "closely related" to a signatory may enforce the clause.

In some commercial contexts, the contractual conferral of personal jurisdiction is so highly favored that New York courts are prohibited by statute from exercising their discretion to dismiss under the doctrine of forum non conveniens. See Practice Commentaries on CPLR 327, at C327:4, infra.

The validity of contractual consent to personal jurisdiction is not dependent upon the designation of an agent within New York upon whom process may be served. The designation of a local agent may be a convenient way to satisfy the service component of jurisdiction (see, e.g., *National Equipment Rental, Ltd. v. Szukhent*, supra), and it may in and of itself be deemed a consent to in personam jurisdiction, but such designation is not essential. The contract may contain a consent to the personal jurisdiction of the New York courts, thereby creating a basis of jurisdiction, and separately authorize service of process outside New York. See *Pohlers v. Exeter Mfg. Co.*, 1944, 293 N.Y. 274, 279-80, 56 N.E.2d 582, 584; *Gilbert v. Burnstine*, 1931, 255 N.Y. 348, 355-57, 174 N.E. 706, 707-08.

Two distinctions should be noted. First, a contractual provision that the rights and liabilities of the parties shall be determined in accordance with New York law--a so-called choice-of-law clause--is not, by itself, a consent to the jurisdiction of the New York courts. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. McLeod*, 1995, 208 A.D.2d 81, 83-84, 622 N.Y.S.2d 954, 955. Second, a party's ability to confer jurisdiction on a court by consent or waiver is confined to personal jurisdiction; a party cannot consent to subject matter jurisdiction. The personal jurisdiction requirement, even though it has its origins in constitutional due process, represents an individual right of the defendant and, like all such rights, is subject to waiver. *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 1982, 456 U.S. 694, 702-03, 102 S.Ct. 2099, 2104-05, 72 L.Ed.2d 492, 501-02. A court's subject matter jurisdiction, on the other hand, is limited by specific constitutional and statutory authority. Thus, it is well settled that the parties to a dispute cannot, by agreement, consent, waiver or estoppel, confer subject matter jurisdiction on a court that otherwise lacks it. *Morrison v. Budget Rent A Car Systems, Inc.*, 1997, 230 A.D.2d 253, 260, 657 N.Y.S.2d 721, 726 (2d Dep't).

If the defendant in a contract case makes a threshold jurisdictional objection to the enforceability of a forum consent clause on the ground that the underlying contract in which the clause appears never became effective, it may be advisable for the court, as a practical matter, to defer the jurisdictional issue until a trial on the merits. This was the approach taken in *AGR Funding, Inc. v. Half, Ltd.*, N.Y.L.J., Jan. 28, 2002, at p.20, col.4 (Sup.Ct.N.Y.Co.). The court relied primarily on a case decided under § 253 of the Vehicle and Traffic Law, a statute that allows out-of-state service on the nonresident owner of an automobile who has given permission to another person to use the car in New York and the car has been involved in a New York accident. The Appellate Division held in *Harrison v. Malcolm*, 1992, 186 A.D.2d 502, 589 N.Y.S.2d 865 (1st Dep't), that if the owner challenges permission in such a case, "personal jurisdiction under § 253 becomes dependent upon resolution of the substantive question ... [and] where the substantive issue is inextricably intertwined with a procedural point, that combined is-

sue should be resolved by the trier of fact."

*AGR Funding*implies that the court will have sufficient jurisdiction to adjudicate the contract case on the merits if the plaintiff makes a prima facie showing, at the outset, of the existence of a contract containing a consent clause. If the case is triable by jury, the jury will later decide whether the underlying contract actually became effective. If the jury makes a negative finding on this point, the jurisdictional issue becomes academic.

This jurisdiction/merits overlap presents an interesting res judicata issue. If the jury concludes that no contract came into being, could it then fairly be argued that the court lacked jurisdiction *ab initio* because the consent clause of the contract never took effect, thereby nullifying the decision on the merits? In theory, could the plaintiff sue again on the same contract, seeking a different substantive result, in another forum in which jurisdiction is not an issue? This outcome would probably be precluded for two reasons. First, as implied by the *AGR Funding* court, the plaintiff's prima facie showing of a viable contract in the first court should suffice to confer jurisdiction on that court to proceed to a binding decision on the merits. Second, the fact that plaintiff invoked jurisdiction in the first forum might be deemed a voluntary submission by the plaintiff to the court's power to determine the merits, regardless of whether personal jurisdiction existed over the defendant. The issue, after all, is one of personal jurisdiction. Unlike subject matter jurisdiction, personal jurisdiction can be conferred by a voluntary appearance. See, e.g., Practice Commentaries on CPLR 303, infra.

What if the validity of the consent clause is addressed in a threshold motion to dismiss solely for lack of jurisdiction and the court concludes that plaintiff has failed to make even a prima facie showing of an enforceable contract? Would this leave the plaintiff free to sue again elsewhere on the theory that the first decision was not on the merits? It could be argued, as above, that plaintiff is bound by the court's determination for all purposes. The practical way for the court to avoid this potentiality altogether would be to hold the issue in abeyance until a motion on the merits (such as summary judgment) provides an opportunity to resolve the matter on both the merits and jurisdictional grounds. Similar conceptual issues concerning the jurisdiction/merits overlap are discussed in the Practice Commentaries on CPLR 302, at C302:5, in connection with long-arm jurisdiction.

(c) Corporate Registration.

By statute, some parties can be compelled, in effect, to consent to personal jurisdiction in New York as a prerequisite to exercising certain privileges in New York. For example, in order to obtain a New York certificate of incorporation, a domestic corporation must appoint the New York Secretary of State as its agent upon whom process in an action against the corporation may be served. N.Y.Bus.Corp.Law § 304. See also N.Y.Partnership Law § 121-104 (domestic limited partnership); N.Y.Limited Liability Co. Law § 301 (domestic limited liability company). Similarly, a foreign corporation that seeks authorization to do business in New York must, as a condition to obtaining its license, designate the New York Secretary of State as its agent to accept process. N.Y.Bus.Corp.Law §§ 304, 1304. See also N.Y.Ins.Law § 1212 (foreign insurer, as condition to authorization to do business in New York, must designate superintendent of insurance as agent for service); N.Y. Real Prop.Law § 442-g(2) (nonresident real estate brokers). The scope of the consent to personal jurisdiction conferred by such statutory mandates is a question of construction by the courts. *Pennsylvania Fire Ins. Co. of Phil-*

adelphia v. Gold Issue Mining & Milling Co., 1917, 243 U.S. 93, 37 S.Ct. 344, 61 L.Ed. 610. See, e.g., *Muollo v. Crestwood Village, Inc.*, 1989, 155 A.D.2d 420, 547 N.Y.S.2d 87 (2d Dep't) (appointment of Secretary of State in compliance with Martin Act (N.Y.Gen.Bus.Law §§ 352-a & 352-b) is consent to narrowly specified range of litigation).

It appears well settled that a domestic corporation is subject to "general" personal jurisdiction in New York, i.e., the corporation can be sued here on any cause of action, regardless of where the events at issue transpired. See Restatement (Second), Conflict of Laws § 41 (1971). The same rule has traditionally been applied to foreign corporations that are authorized to do business in New York. In other words, where a foreign corporation has expressly appointed the New York Secretary of State (or some other person within the state) as its agent for service of process, the plaintiff's cause of action need not have arisen out of any business conducted by the foreign corporation in New York. *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, 1916, 217 N.Y. 432, 436-37, 111 N.E. 1075; *LeVine v. Isoserve, Inc.*, 1972, 70 Misc.2d 747, 749, 334 N.Y.S.2d 796, 799 (Sup.Ct.Albany Co.).

An issue that has never been addressed by the Court of Appeals is whether jurisdiction for claims that arise outside New York can be asserted if the foreign corporation, although licensed in New York, has never actually done business in New York or has stopped doing so prior to the action. Decisions by a few lower state courts, however, suggest that the answer is "yes."

Augsbury Corp. v. Petrokey Corp., 1983, 97 A.D.2d 173, 470 N.Y.S.2d 787 (3d Dep't), holds that the consent created by § 304 of the Business Corporation Law is an "automatic basis for personal jurisdiction," apparently meaning that there is no need for further inquiry concerning actual activity by the foreign corporation in New York. Earlier decisions have been more explicit. *LeVine v. Isoserve, Inc.*, supra, held that a foreign corporation that was still licensed approximately six years after it ceased doing business in New York remained amenable to in personam jurisdiction. The plaintiffs were said to have had a right to rely on the unrevoked certificate of authority on file with the New York Secretary of State. Accord, *Robfogel Mill-Andrews Corp. v. Cupples Co.*, 1971, 67 Misc.2d 623, 323 N.Y.S.2d 381 (Sup.Ct.Monroe Co.); *Devlin v. Webster*, 1946, 188 Misc. 891, 66 N.Y.S.2d 464 (Sup.Ct.N.Y.Co.), affirmed , 1947, 272 A.D. 793, 71 N.Y.S.2d 706 (1st Dep't). See also *Aaron v. Agwilines*, S.D.N.Y. 1948, 75 F.Supp. 604, 606.

The federal district court in *The Rockefeller University v. Ligand Pharmaceuticals Inc.*, S.D.N.Y.2008, 581 F.Supp.2d 461, 466-67, concluded that New York law treats a foreign corporation's license to do business in New York, which includes the designation of a New York agent for service of process, as a "real consent" to general personal jurisdiction (quoting Judge Cardozo in *Bagdon v. Philadelphia & Reading Coal & Iron Co.*, supra, 217 N.Y. at 436-37, 111 N.E. 1075, 1076). Accord, *STX Panocean (U.K.) Co., Ltd. v. Glory Wealth Shipping PTE Ltd.*, C.A.N.Y.2009, 560 F.3d 127, 131. Such consent is operative irrespective of the corporation's actual New York business activity. Thus, the court found that general jurisdiction existed over a foreign corporation that had not revoked its New York license. "In maintaining an active authorization to do business and not taking steps to surrender it as it has a right to do, defendant was on constructive notice that New York deems an authorization to do business as consent to jurisdiction." 581 F.Supp.2d at 466.

It is submitted that the long-standing judicial construction of Bus.Corp.Law §§ 304 and 1304 is a fair one. Foreign corporations presumably undertake the New York licensing procedure and designation of

the New York Secretary of State as agent with awareness of the effect. They have no one to blame but themselves if they do not actually do business in New York or fail to surrender their license when they stop doing business here. The continuing existence of the privilege to do business in New York, regardless of whether it is exercised, rightfully yields jurisdictional consequences if the consent to service on the Secretary of State goes unrevoked.

It seems doubtful that due process is violated by the assertion of general personal jurisdiction under Bus.Corp.Law § 304 even if the corporation does no actual business in the state. Consent based on agency-by-appointment of a local official, like transitory presence, is a traditional basis of personal jurisdiction that arguably is not subject to minimum contacts analysis. See the discussion of the Supreme Court's opinion in *Burnham v. Superior Court of California*, 1990, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631, in Commentary C301:2, above. Even under a minimum contacts analysis, a foreign corporation's deliberate act of creating a general consent, with the corresponding benefits that flow from a license to do business in the state, is as reasonable a basis as the assertion of general jurisdiction over an individual who happens to be present at the time of in-state service. The express appointment of an agent for service of process obviously forewarns of the prospect of litigation in the forum.

A 1917 opinion of the U.S. Supreme Court, which was reaffirmed in 1939, holds that due process is not violated where the state treats a foreign corporation's act of appointing a local agent, by itself, as a conferral of general jurisdiction: "[W]hen a power actually is conferred by a document, the party executing it takes the risk of the interpretation that may be put upon it by the courts. The execution was the defendant's voluntary act." *Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co*., 1917, 243 U.S. 93, 96, 37 S.Ct. 344, 345, 61 L.Ed. 610, 616. See *Neirbo Co. v. Bethlehem Shipbuilding Corp*., 1939, 308 U.S. 165, 170, 175, 60 S.Ct. 153, 155-56, 158, 84 L.Ed.167, 171, 174. Although these decisions predate development of the "minimum contacts" standard of jurisdiction in *International Shoe Co. v. Washington*, 1945, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (Commentary C301:1, above), the Supreme Court of Delaware maintains that they are consistent with the Supreme Court's subsequent decisions on jurisdiction over foreign corporations. Whereas minimum contacts analysis is appropriate when *implied* consent forms the basis for jurisdiction, "[i]f a foreign corporation has expressly consented to the jurisdiction of a state by registration, due process is satisfied and an examination of 'minimum contacts' to find implied consent is unnecessary." *Sternberg v. O'Neil*, 1988, 550 A.2d 1105, 1113 (Del.)(express consent, based on foreign corporation's statutory appointment of local agent for service of process, is sufficient, without more, to satisfy due process). Accord, *Merriman v. Crompton Corp*., 2006, 282 Kan. 433, 450-55, 146 P.3d 162, 174-77. Some courts, however, have held that due process requires actual business activity in the state beyond registration for service of process. See, e.g., *Freeman v. Second Judicial District Court*, 2000, 1 P.3d 963 (Nev.); *Viko v. World Vision, Inc*., 2009 WL 2230919 (D.Vt.2009).

In any event, consent does not necessarily arise from a nondomiciliary's possession of a license to conduct activity in New York where there is no accompanying statutory duty to appoint an agent for service of process. In *Ingraham v. Carroll*, 1997, 90 N.Y.2d 592, 665 N.Y.S.2d 10, 687 N.E.2d 1293, for example, an out-of-state physician's license to practice medicine in New York was held to be jurisdictionally irrelevant with respect to a malpractice action because the doctor's actual practice was conducted entirely outside New York.

In addition to the requirement of actual appointment of a New York agent, some statutes have treated

certain types of New York-related activity by nondomiciliaries as creating an implied consent to the appointment of the New York Secretary of State as agent for service of process. The pre-eminent example is § 253 of the Vehicle and Traffic Law, which can be invoked in an action against a nonresident motorist whose driving in New York is the basis for plaintiff's claim. In modern times, the notion of implied consent as justifying § 253 has been replaced by the minimum contacts theory that underlies long-arm jurisdiction (see CPLR 302(a)(2)).

C301:7. Domicile.

The defendant who is a New York domiciliary at the time the action is commenced may be served with process anywhere (either within or outside New York), thereby conferring in personam jurisdiction. *Rawstorne v. Maguire*, 1934, 265 N.Y. 204, 207, 192 N.E. 294, 295. See CPLR 313. Domicile is a basis that authorizes the exercise of general personal jurisdiction, meaning that the defendant is amenable to suit on any cause of action regardless of where the claim arose. See Restatement (Second), Conflict of Laws § 29, comment (b) (1971). The constitutionality of this basis was recognized by the Supreme Court in *Milliken v. Meyer*, 1940, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, where it was said: "The state which accords [the defendant] privileges and affords protection to him and his property by virtue of his domicile may also exact reciprocal duties." Id. at 463, 61 S.Ct. at 342, 85 L.Ed. at 283.

Domicile must be distinguished from residence. A New York resident is someone who lives at a location within the state "for some length of time during the course of a year." *Antone v. General Motors Corp.*, 1984, 64 N.Y.2d 20, 30, 484 N.Y.S.2d 514, 518, 473 N.E.2d 742, 746. Domicile is a somewhat different connection with the state. In addition to a physical presence or residence in New York, a domiciliary must have "an intention to make the State a permanent home." Id. at 28, 484 N.Y.S.2d at 517, 473 N.E.2d at 745. See, e.g., *Porcello v. Brackett*, 1981, 85 A.D.2d 917, 446 N.Y.S.2d 780 (4th Dep't), affirmed 57 N.Y.2d 962, 457 N.Y.S.2d 243, 443 N.E.2d 491 (out-of-state student attending college in New York did not intend to acquire New York domicile). A person can have multiple residences but can have only one domicile. 64 N.Y.2d at 28, 484 N.Y.S.2d at 517, 473 N.E.2d at 745. Another characteristic of domicile is that it continues until a new one is acquired. See, e.g., *Zimmerman v. Mingo*, 1991, 171 A.D.2d 662, 567 N.Y.S.2d 142 (2d Dep't) (defendant did not lose New York domicile while serving in military in Kentucky); *Alvord & Alvord v. Patenotre*, 1949, 196 Misc. 524, 92 N.Y.S.2d 514 (Sup.Ct.N.Y.Co.) (jurisdiction sustained over defendant who was served by substituted service (cf. CPLR 308(4)) at his New York apartment while he was en route to Switzerland, where he intended to establish a new domicile).

The drafters of the CPLR contemplated the inclusion of residence as an additional basis of jurisdiction on the theory that actual residence at the time of commencement is a sufficient connection to the state. See N.Y.Adv.Comm.on Prac. & Proc., Second Prelim.Rep., Legis.Doc.No.13, pp.162-63 (1958) [hereinafter cited as Second Prelim.Rep.]. See also Restatement (Second), Conflict of Laws § 30 (1971) . The idea was ultimately rejected pending "some experience with [CPLR 302]; most acts of nondomiciled residents resulting in actions [in New York] will probably be covered by [§ 302]." Second Prelim.Rep., supra, at p.163.

C301:8. Doing Business: Foreign Corporations.

(a) In General.

The “doing business” basis of jurisdiction became prevalent in the late 1800s and early 1900s as a means of asserting in personam jurisdiction over foreign corporations doing business in New York without having obtained a certificate of authorization from the Secretary of State. See, e.g., *Tauza v. Susquehanna Coal Co.*, 1917, 220 N.Y. 259, 115 N.E. 915. This basis was carried forward by CPLR 301 and continues to be viable. N.Y.Adv.Comm. on Prac. & Proc., Second Prelim.Rep., Legis.Doc.No.13, p.38 (1958).

As discussed in Commentary C301:6, subdivision (c), above, authorized foreign corporations explicitly consent to personal jurisdiction by designating the New York Secretary of State as agent for service of process. In the absence of consent, some other theory is necessary to sustain New York jurisdiction over a foreign corporation. If the plaintiff's claim arises from corporate activity that is closely connected to New York, “long-arm” jurisdiction under CPLR 302 is likely to be available. Otherwise, plaintiff will have to establish that the foreign corporation is doing business in New York. Satisfaction of the doing business standard allows for the assertion of “general” personal jurisdiction, i.e., the defendant is subject to in personam jurisdiction for any and all claims regardless of whether they have any relationship to the defendant's New York activity. *Laufer v. Ostrow*, 1982, 55 N.Y.2d 305, 312-13, 449 N.Y.S.2d 456, 460, 434 N.E.2d 692, 696. If the foreign corporation is doing business in New York, process can be served on the corporation anywhere. See CPLR 313. See also N.Y.Bus.Corp.Law § 307 (unlicensed foreign corporation subject to jurisdiction under CPLR 301 or 302 impliedly consents to New York Secretary of State as agent for service of process). Plaintiff has the burden of proving that the doing business standard is satisfied. *Arroyo v. Mountain School*, 2009, 68 A.D.3d 603, 892 N.Y.S.2d 74 (1st Dep't). Other procedural considerations relating to plaintiff's burden of proof on jurisdictional issues are discussed in the Practice Commentaries on CPLR 302, at C302:5, infra.

In their development of the doing business basis of jurisdiction over foreign corporations, New York courts fashioned an analogy to individual defendants who were served with process while present in New York. If the foreign corporation was doing business in New York, it was said to be “present” here, thereby conforming the doing business basis to the presence theory that was the nineteenth century's litmus test for compliance with due process. *Simonson v. International Bank*, 1964, 14 N.Y.2d 281, 285, 251 N.Y.S.2d 433, 436, 200 N.E.2d 427, 429. See, e.g., *Philadelphia & Reading Ry. Co. v. McKibbin*, 1917, 243 U.S. 264, 265, 37 S.Ct. 280, 280, 61 L.Ed. 710, 711-12. Thus, the rule is that the corporation must be doing business in New York at the time the action is commenced. *Uzan v. Telsim Mobil Telekomunikasyon Hizmetleri A.S.*, 2008, 51 A.D.3d 476, 477, 856 N.Y.S.2d 625, 626 (1st Dep't). If the corporation has ceased doing business here at the time of commencement, jurisdiction can be sustained only if plaintiff's claim arose out of the defendant's prior business activity. *Lancaster v. Colonial Motor Freight Line, Inc.*, 1992, 177 A.D.2d 152, 156, 581 N.Y.S.2d 283, 286 (1st Dep't). Although a new constitutional justification for the assertion of general personal jurisdiction over foreign corporations has emerged (see discussion in subsection (c) of this Commentary, below), the New York courts continue to speak of a corporation's doing business here as creating “presence” within the state. See, e.g., *Landoil Resources Corp. v. Alexander & Alexander Services, Inc.*, 1990, 77 N.Y.2d 28, 33, 563 N.Y.S.2d 739, 741, 565 N.E.2d 488, 490.

(b) The Standard for Doing Business.

What yardstick do the courts use to measure the level of activity needed for a finding that an unlicensed

foreign corporation is doing business in New York? Clearly, the mere fact that a corporate officer is in New York and available for service here is insufficient. *Fremay, Inc. v. Modern Plastic Machinery Corp.*, 1961, 15 A.D.2d 235, 241, 222 N.Y.S.2d 694, 700 (1st Dep't). Inasmuch as the defendant is the corporation, not the individual officer, the corporation's doing of business is measured by the aggregate of its business activity within the state. The rule that a partnership travels wherever one of its partners may go (see Commentary C301:3, above) is inapplicable.

The Court of Appeals explains the doing business standard as follows:

> A foreign corporation is amenable to suit in New York courts under CPLR 301 if it has engaged in such a continuous and systematic course of "doing business" here that a finding of its "presence" in this jurisdiction is warranted.... The test for "doing business" is a "simple [and] pragmatic one," which varies in its application depending on the particular facts of each case.... The court must be able to say from the facts that the corporation is "present" in the State "not occasionally or casually, but with a fair measure of permanence and continuity."

Landoil Resources Corp. v. Alexander & Alexander Services, Inc., supra, 77 N.Y.2d at 33-34, 563 N.Y.S.2d at 741, 565 N.E.2d at 490. Thus, jurisdiction is dependent upon a showing that the corporation is doing business in New York systematically, continuously and with a fair measure of permanence. These are elastic terms that befit the infinite variety of ways in which business may be conducted. The Court of Appeals itself has acknowledged that the standard is imprecise (see, e.g., *Sterling Novelty Corp. v. Frank & Hirsch Distrib. Co.*, 1949, 299 N.Y. 208, 210, 86 N.E.2d 564, 565), and federal courts in New York, which are often required to apply New York bases of territorial jurisdiction, have made the same observation (see, e.g., *Aquascutum of London, Inc. v. S.S. American Champion*, C.A.N.Y.1970, 426 F.2d 205, 211). Although the concepts are potentially far-reaching in their application, it is fair to say that the New York courts have taken a restrained approach.

Two leading cases illustrate the clearest sort of situation in which a foreign corporation has been held to be doing business in New York. In both *Tauza v. Susquehanna Coal Co.*, 1917, 220 N.Y. 259, 115 N.E. 915, and *Bryant v. Finnish National Airline*, 1965, 15 N.Y.2d 426, 260 N.Y.S.2d 625, 208 N.E.2d 439, the particular foreign corporation maintained an office in New York staffed by a half dozen or so of its own employees whose function was to promote the business of their employer. No contracts were made by the employees in New York. Rather, their job, in *Tauza*, was to solicit orders for coal resulting in shipments from Pennsylvania to New York; and, in *Bryant*, to engage in publicity work and transmit reservation information between New York and Europe for travel on defendants' European flights. In both cases, New York bank accounts were maintained for the purpose of paying the local employees' salaries and other office expenses. In sum, the combination of a New York office, in-state employees, local activity promoting the defendant's business, and a local bank account and telephone listing, all on an ongoing basis, will suffice for a finding of doing business in New York. See also *Elish v. St. Louis Southwestern Ry. Co.*, 1953, 305 N.Y. 267, 112 N.E.2d 842 (foreign railroad corporation maintained two New York offices, staffed by its own employees, for purpose of soliciting interstate freight carriage; it maintained a third New York office, staffed by a corporate officer, to facilitate the corporation's financing activity).

The defendant's maintenance of an office or other fixed facility in New York helps satisfy the "permanence" criterion, but apparently this is not a *sine qua non*. In *Laufer v. Ostrow*, 1982, 55 N.Y.2d 305, 449 N.Y.S.2d 456, 434 N.E.2d 692, a New Jersey corporation, Mt. Olive, was found to be doing

business in New York on the following facts. The company's sole business was the soliciting of orders on behalf of a North Carolina furniture manufacturer. Mt. Olive employed three sales representatives, one of whom resided in New York, who were assigned New York accounts, including several prominent department stores. In New York, they solicited sales for the manufacturer, whose products were shipped to New York; ran clinics for customers; and handled buyers' complaints. In addition, the president of Mt. Olive frequently visited New York each year to accompany the sales representatives in calling on New York accounts. Although Mt. Olive maintained no office, telephone listing or bank account in New York, the "systematic, regular and continuous" activity of Mount Olive's sales representatives in New York was sufficient for a finding of doing business. (It should be noted that the manufacturer on whose behalf Mt. Olive solicited business was not a party to the action. In an aside, the Court suggested that jurisdiction over the manufacturer might have been possible upon a showing that the manufacturer "exercised parent-subsidiary control over Mt. Olive." *Laufer v. Ostrow*, supra, 55 N.Y.2d at 311, 449 N.Y.S.2d at 459, 434 N.E.2d at 695. See Commentary C301:9, below)).

In *Laufer*, the Court of Appeals left intact the rule that "mere solicitation" in New York by a seller of goods or supplier of services does not constitute doing business here; there must be "activities of substance in addition to solicitation." *Laufer v. Ostrow*, supra, 55 N.Y.2d at 310, 449 N.Y.S.2d at 459, 434 N.E.2d at 695. In other words, there must be "solicitation-plus."

One of the cases most often cited as an example of the "mere solicitation" rule is *Miller v. Surf Properties Inc.*, 1958, 4 N.Y.2d 475, 176 N.Y.S.2d 318, 151 N.E.2d 874. There, jurisdiction was denied over a Florida hotel that used the services of an independent New York travel agency for the distribution of brochures, the answering of telephone inquiries made to defendant's New York phone listing, and the forwarding of reservation requests and deposits that had to be confirmed by the defendant in its home state. The New York agency performed the same services for nearly 50 other hotels. The Florida hotel's aggregate of activity through the travel agent was said to be "mere solicitation" in New York.

The rule was also applied in *Delagi v. Volkswagenwerk AG*, 1972, 29 N.Y.2d 426, 328 N.Y.S.2d 653, 278 N.E.2d 895, where a German car manufacturer, which had no facilities or employees in New York, advertised its products in the New York media. The defendant's cars were sold in New York by independently-owned franchise dealers who purchased the cars from an American wholesale distributor. The defendant manufacturer's local advertising was "mere solicitation," and the sales of its cars in New York, regardless of how much indirect income was generated for the defendant, was not enough of a "plus" factor. See also *Fremay, Inc. v. Modern Plastic Machinery Corp.*, 1961, 15 A.D.2d 235, 241, 222 N.Y.S.2d 694, 700 (1st Dep't) (shipment of goods to New York buyers on contracts made elsewhere did not qualify as doing business in New York even though defendant maintained New York bank account and two of defendant's officers who resided in New York engaged in incidental transactions in New York related to defendant's business).

The Court in *Laufer v. Ostrow* stressed that in both *Miller* and *Delagi*, the solicitation that occurred in New York was performed by independent agencies. After *Laufer*, it would seem that a foreign manufacturer's or service provider's sending of its own employees or agents into the state to engage in solicitation activity to the same extent as that which was performed in *Laufer* could sustain general jurisdiction over the manufacturer or provider. Indeed, in the 1917 *Tauza* decision, Judge Cardozo approvingly referred to *International Harvester Company of America v. Kentucky*, 1914, 234 U.S. 579, 34 S.Ct. 944, 58 L.Ed. 1479, a case in which doing business jurisdiction in Kentucky was upheld over a manufacturer

whose machines were regularly shipped to buyers in Kentucky as a result of orders generated by continuous and systematic solicitation efforts by agents who traversed the state. Although the defendant's "traveling" agents had no authority to approve orders, they could accept payment from customers. If such a case reached the New York Court of Appeals, the "solicitation-plus" requirement undoubtedly would be deemed satisfied.

Aside from the *Tauza*, *Bryant* and *Laufer* cases described above, there are few reported decisions in which the New York business activity of unlicensed foreign corporations has satisfied the "solicitation-plus" requirement. (Another possibility, as discussed in Commentary C301:9, below, is the doing of business in New York vicariously through the activity of a closely-affiliated company). Lower court decisions applying the solicitation-plus rubric to the New York activity of the defendant are plentiful and each is fact-specific. The following examples provide a sense of the types of situations in which the defendant's New York business has not met the requirement that solicitation be accompanied by sufficient "activities of substance." *Laufer v. Ostrow*, supra, 55 N.Y.2d at 310, 449 N.Y.S.2d at 459, 434 N.E.2d at 695.

Jurisdiction was denied in *Pacamor Bearings, Inc v. Molon Motors & Coil, Inc.*, 1984, 102 A.D.2d 355, 477 N.Y.S.2d 856 (3d Dep't), where the defendant, which had no office, phone listing or bank account in New York, made approximately two million dollars in sales in New York through the solicitation efforts of two independent agencies over whom defendant exercised no parent-subsidiary control. Sales directors and managers of the defendant made a dozen or so visits to New York on an annual basis "to see if any problems existed," but there was no evidence that the trips were designed to stimulate additional sales. These solicitation-plus activities were not enough.

The same outcome was reached in *Holness v. Maritime Overseas Corp.*, 1998, 251 A.D.2d 220, 676 N.Y.S.2d 540 (1st Dep't), where jurisdiction was attempted over a ship repair company with a dry dock facility in Virginia. The defendant had a contract with a marine agency in New York whose responsibility was to seek new clients for defendant, to attend maritime functions on its behalf in New York, and to supply office space to defendant's personnel on their occasional visits to New York. The New York agency had no authority, however, to enter into contracts for the defendant. The agency's activity on defendant's behalf was "something more than mere solicitation" but "still not enough" to subject defendant to jurisdiction.

Parsons v. Kal Kan Food, Inc., 2009, 68 A.D.3d 1501, 892 N.Y.S.2d 246 (3d Dep't), followed these precedents in holding that a New Jersey warehouse and distribution facility did not do business in New York even though it had New York customers whose goods were stored at the warehouse. Such goods came from or were shipped to New York by an independent, but related, trucking company, the defendant advertised in New York via its website and brochures, and the defendant's executive vice president came to New York once or twice a year to solicit sales and to call upon existing customers. These activities were not of sufficient permanence and continuity to constitute the defendant's "presence in New York." See also *Aquascutum of London, Inc. v. S.S. American Champion*, C.A.N.Y.1970, 426 F.2d 205 (jurisdiction rejected over English "freight forwarder" that arranged in England for substantial shipments of goods to New York importers; officials of forwarder visited New York every few months to solicit freight forwarding orders and hired agents in New York to transport shipped goods from New York pier into hands of consignees; forwarder engaged independent steamship companies to undertake actual carriage of goods); *Landoil Resources Corp. v. Alexander & Alexander Services, Inc.*,

C.A.N.Y.1990, 918 F.2d 1039 (insufficient "plus" factors where English insurance brokers placed risks with New York brokers, generating large commissions; employees made only sporadic trips to New York (where they had no office) to service existing accounts and solicit new ones).

Numerous decisions have held that the solicitation-plus standard was not satisfied in cases against out-of-state recreational, hotel and educational facilities that sent representatives to New York on a sporadic basis for business-related purposes or maintained financial connections to New York to facilitate out-of-state operations. See, e.g., *Cardone v. Jiminy Peak, Inc.*, 1997, 245 A.D.2d 1002, 667 N.Y.S.2d 82 (3d Dep't) (no jurisdiction where Massachusetts ski resort sold lift tickets in New York ski shops and travel agencies, listed its phone number in local directories, advertised in New York media, attended promotional events, and visited New York high schools to premeasure students for rental equipment); *Savoleo v. Couples Hotel*, 1988, 136 A.D.2d 692, 524 N.Y.S.2d 52 (2d Dep't) (no jurisdiction where resort hotel in Caribbean allowed local independent travel agencies in New York to make reservations and accept payments on its behalf, and defendant's general manager made occasional trips to New York to promote business); *Arroyo v. Mountain School*, 2009, 68 A.D.3d 603, 892 N.Y.S.2d 74 (1st Dep't) (jurisdiction over out-of-state school lacking where school held three alumni events annually in New York, offered its students bus service to New York on five holidays, held investments of $14 million (less than 10% of its endowment) in New York firms, and maintained a New York bank account to receive wire deposits for transfer to a Boston account).

The out-of-state defendant's maintenance of a website accessible to potential customers in New York has figured prominently in recent cases analyzing satisfaction of the solicitation-plus standard. Advertising one's services or products on such a website, standing alone, is "mere solicitation." *Parsons v. Kal Kan Food, Inc.*, 2009, 68 A.D.3d 1501, 1502, 892 N.Y.S.2d 246, 247 (3d Dep't). See also *Rodriguez v. Circus Circus Casinos, Inc.*, 2001 WL 21244 (S.D.N.Y.2001). Even if a potential purchaser can place orders for goods online, courts are unlikely, in the absence of other connections between the defendant and New York, to hold that such activity constitutes doing business in New York sufficient to sustain a cause of action unrelated to a particular purchase. As one federal court suggested, "If ... a website [that merely provides information, identifies store locations, lists products and allows online purchases] gave rise to general jurisdiction, then millions of retailers located throughout the globe could be haled into New York courts for any claim brought against them by any party; such a finding would contravene the purposefully narrow reach and long-standing stringent application of C.P.L.R. § 301." *Holey Soles Holdings Ltd. v. Foam Creations Inc.*, 2006 WL 1147963 (S.D.N.Y.2006). Thus, most courts, to date, have required that the defendant, in addition to soliciting and selling via a website, must engage in other "activities of substance" in New York, such as maintaining a physical facility here or regularly sending its employees into the state to further the defendant's business. See, e.g., *Parsons v. Kal Kan Food, Inc.*, supra; *Bossey ex rel. Bossey v. Camelback Ski Corp.*, 2008, 21 Misc.3d 1116(A), 873 N.Y.S.2d 509 (Sup.Ct.Suffolk Co.), unpublished opinion reported at 2008 WL 4615680; *Atlantic Veal & Lamb Inc. v. Silliker, Inc.*, 2006, 11 Misc.3d 1072(A), 816 N.Y.S.2d 693 (Sup.Ct.Kings Co.), unpublished opinion reported at 2006 WL 852112.

The prospects for satisfying the solicitation-plus standard increase if the website is interactive, involving personalized dealings with New Yorkers via the internet. A case in point is *Chestnut Ridge Air, Ltd. v. 1260269 Ontario Inc.*, 2006, 13 Misc.3d 807, 827 N.Y.S.2d 461 (Sup.Ct.N.Y.Co.). There, a Canadian airplane refinishing company maintained an interactive website to solicit business and derived approximately 4% of its annual revenue from New York customers over a seven-year period. The

plaintiff, owner of an airplane, had retained the management services of a Michigan company that, in turn, entered into a contract with the defendant (apparently through communications exchanged between Michigan and Canada) to strip, paint and refinish the plane. The work allegedly was improperly performed, rendering the plane unairworthy and giving rise to the plaintiff's suit for breach of contract.

Recognizing that the defendant had none of the traditional physical connections with New York typical of the cases in which doing business jurisdiction has been sustained, the court nevertheless concluded that defendant had done more than engage in mere solicitation in New York. The court catalogued the regular and continuous activity that took place on the defendant's website: the defendant offered particularized quotes on its services, offered to email or send computer drawings to customers for particular projects, maintained an internet "forum" for answering questions about such projects, and provided a "private website" by which customers could monitor the daily progress of work being performed for them. "In essence," said the court, "[defendant] created a virtual community in New York that meets all its clients['] needs. The fact that it is not physically in New York is of no moment." 13 Misc.3d at 810, 827 N.Y.S.2d at 465. Also, between 1999 and 2005, the defendant had an annual average of seven New York customers, generating at least 4% of its revenue in some years (as much as $184,000 in 2004).

It is noteworthy that although the plaintiff's claim in *Chestnut Ridge* did not "arise from" a direct transaction in New York between plaintiff and defendant so as to bring the case within the requirements for long-arm jurisdiction under CPLR 302(a)(1), the dispute nevertheless was related to the same type of internet business activity the defendant was conducting in New York. The implications of the case could be more problematic, however, in other circumstances. As previously discussed, when a court finds that an out-of-state corporation is doing business in New York, the company is exposed to general jurisdiction for any and all claims, without regard to their connection to New York. What if the suit against the defendant in the *Chestnut Ridge* case had been brought not by a New York customer of its services but by a creditor suing for nonpayment of a financial obligation that had no connection whatever to New York? Would the general jurisdiction created by the company's "virtual community in New York" be sufficient to sustain such claim? Would the defendant have a good argument that jurisdiction on such facts would offend the "traditional notions of fair play and substantial justice" required by due process, as discussed below in subdivision (c)? See *Citigroup, Inc. v. City Holding Co.*, S.D.N.Y.2000, 97 F.Supp.2d 549, 569-71 (mortgage lender's interactive website was medium for regular and systematic solicitation in New York, but court questioned whether plaintiff could demonstrate enough additional activities of substance by defendant in New York to justify assertion of general jurisdiction under doing business basis; jurisdiction upheld on other grounds).

The Court of Appeals has left open the door to general jurisdiction in cases involving sophisticated financial organizations that use the internet and other electronic means over an extended period of time to engage in multiple purchases and sales of financial instruments, for large sums, with New York counter-parties. In *Deutsche Bank Securities, Inc. v. Montana Board of Investments*, 2006, 7 N.Y.3d 65, 818 N.Y.S.2d 164, 850 N.E.2d 1140, the Court upheld an assertion of long-arm jurisdiction under CPLR 302(a)(1) over a claim against an out-of-state professional investment organization based on a substantial New York financial transaction conducted solely by electronic means. See Practice Commentaries on CPLR 302, at C302:7, infra. The Court observed that advances in electronic communication "enable a party to transact enormous volumes of business within a state without physically entering it." 7 N.Y.3d at 71, 818 N.Y.S.2d at 167, 850 N.E.2d at 1142-43. In an intriguing footnote, the Court

acknowledged that jurisdiction under CPLR 301 was not under consideration but took "note that, in the year preceding the transaction at issue, [the defendant] purchased approximately $471 million worth of securities directly from the New York offices of various entities in the securities industry." 7 N.Y.3d at 72 n.2, 818 N.Y.S.2d at 167, 860 N.E.2d at 1143.

Not all cases, of course, involve solicitation activity. For example, in *Landoil Resources Corp. v. Alexander & Alexander Services, Inc.*, 1990, 77 N.Y.2d 28, 563 N.Y.S.2d 739, 565 N.E.2d 488, the Court of Appeals considered whether certain foreign underwriters affiliated with Lloyd's of London were doing business in New York. The English underwriters in question were grouped together in a syndicate called "Syndicate 317." They sold Lloyd's policies to American insureds through insurance brokers who negotiated with the syndicate in England. Syndicate 317 had no office or sales personnel in New York and engaged in no solicitation here. Three New York connections, however, were proffered in support of the argument that Syndicate 317 was doing business in New York. Neither in isolation nor in the aggregate did the syndicate's New York contacts satisfy the doing business standard.

First, it was contended that the syndicate did business in New York because it had underwritten several policies covering New York insureds and risks. The Court rejected this argument by analogizing to the rule that the mere sales of a manufacturer's product in New York, no matter how substantial in volume, does not constitute doing business here.

The second argument was based on the presence in New York of a nine-billion-dollar fund established by the Lloyd's corporation and held in trust in a New York bank. The fund contained premiums collected worldwide by Lloyd's underwriters, including some attributable to risks underwritten by Syndicate 317. The fund served to satisfy New York insurance regulations that require foreign insurers to maintain adequate security in New York for insureds. The Court held that the syndicate's indirect interest in the fund was inadequate to provide a basis for jurisdiction. The syndicate had no control over the fund, and money could not be withdrawn from or deposited into the account by the syndicate. Even if it were assumed that the syndicate had control over money on deposit in the account, the maintenance of a bank account in New York, standing alone, does not qualify as doing business in New York.

Finally, the Court rejected the argument that the administration of the New York trust fund by a department of Lloyd's amounted to the syndicate's doing of business in New York through an agent. See Commentary C301:9, below. A mere agency relationship, assuming that this is what it was, is not enough if the agent itself is not doing business in New York. Here, the agent administered the fund from its London office.

In light of the Court's holding in *Landoil Resources*, and the generally restrained judicial tradition with respect to the application of CPLR 301, it is difficult to fathom some recent decisions allowing the assertion of doing business jurisdiction solely on the basis of the defendant's use of a New York bank account. In *Georgia-Pacific Corp. v. Multimark's International, Ltd.*, 2000, 265 A.D.2d 109, 706 N.Y.S.2d 82 (1st Dep't), a Georgia corporation bought goods from foreign suppliers and resold them in Latin America. The company, which had no office or employees or agents in New York, did no soliciting in New York and had no New York customers, nevertheless used a bank account in New York to receive payments from overseas purchasers and to make payments to overseas suppliers.

The court acknowledged the general rule that the mere existence of a bank account in New York is not

enough to constitute doing business. See, e.g., *Nemetsky v. Banque De Developpement De La Republique Du Niger*, 1979, 48 N.Y.2d 962, 425 N.Y.S.2d 277, 401 N.E.2d 388; *Fremay, Inc. v. Modern Plastic Machinery Corp.*, 1961, 15 A.D.2d 235, 241, 222 N.Y.S.2d 694, 700 (1st Dep't). Here, however, the account was used for the receipt of substantially all of the corporation's income and payment of all of its expenses. This was said to make a difference because the New York bank was the medium through which the defendant did all of its business. The Appellate Division relied on the federal district court decision in *United Rope Distributors, Inc. v. Kimberly Line*, S.D.N.Y.1991, 770 F.Supp. 128, adhered to on reconsideration, 1992, 785 F.Supp. 446, where a Liberian ship owner used a New York bank account for the receipt of all income and payment of all expenses in connection with the chartering of its ship. All of the actual chartering business, however, occurred overseas.

Both *Georgia-Pacific* and *United Rope*, it is submitted, represent a major deviation from New York precedent. In *Bank of America v. Whitney Central Nat'l Bank*, 1923, 261 U.S. 171, 43 S.Ct. 311, 67 L.Ed. 594, which was cited with approval by the Court of Appeals in *Landoil Resources* (77 N.Y.2d at 35, 563 N.Y.S.2d at 742-43, 565 N.E.2d at 491-92), the Supreme Court held that a Louisiana bank was not doing business in New York despite its relationship with six New York banks that performed numerous banking services for the defendant and in each of which the defendant "carrie[d] continuously an active, regular deposit account." 261 U.S. at 172, 43 S.Ct. at 311, 67 L.Ed. at 595. If a defendant whose very business is banking is not doing business in New York by virtue of six active relationships with New York banks, it is difficult to see how an overseas importer/exporter or ship owner is doing business here by using a local bank when all of the defendants' income-generating business activity occurs wholly outside New York. See *Arroyo v. Mountain School*, 2009, 68 A.D.3d 603, 604, 892 N.Y.S.2d 74, 76 (1st Dep't) (out-of-state school was not doing business in New York based on maintenance of bank account here because defendant's business was educating students in other states; bank account was "only incidental" to that business).

The banks used by the defendants in *Georgia-Pacific* and *United Rope* were in no way participants in, or involved in promoting, the defendants' businesses; the banks executed ministerial functions pursuant to electronic directives that came from outside the state; and they performed similar services for numerous other enterprises. No proper analogy lies to cases in which defendants have been found to be doing business in New York through closely-affiliated agencies that worked closely with the defendants to enhance their actual business enterprise. See Commentary C301:9, below. The more appropriate analogy is to *Miller v. Surf Properties, Inc.*, supra, where the independent travel agency in New York, performing services for several out-of-state organizations, did not exercise any "judgment and discretion [on defendant's behalf] within the State." 4 N.Y.2d at 481, 176 N.Y.S.2d at 322, 1511N.E.2d at 877.

Policy considerations should also be taken into account in delineating the boundaries of the doing business standard of jurisdiction. It is true, of course, as the Court of Appeals has observed, that corporations engaged in extensive international trade cannot be heard to complain about the inconveniences of litigating in New York when their activities through agents in New York are "widespread and energetic." *Frummer v. Hilton Hotels International, Inc.*, 1967, 19 N.Y.2d 533, 538, 281 N.Y.S.2d 41, 45, 227 N.E.2d 851, 854, certiorari denied 389 U.S. 923, 88 S.Ct. 241, 19 L.Ed.2d 266. But the limited scope of activity embodied in the maintenance of a New York bank account does not measure up to this standard. Moreover, the New York banking industry may be ill-served by a rule that permits the use of a bank account, no matter how "important" to the defendant's business, to qualify as a general basis of personal jurisdiction. Out-of-state businesses presumably have come to rely upon New York precedents

that a bank account cannot, by itself, subject the defendant to personal jurisdiction in New York. See also N.Y.Bus.Corp.Law § 1301 (foreign corporation's maintenance of New York bank account is insufficient to require corporation to obtain license to do business in New York).

This is not to suggest that it would necessarily be unconstitutional to assert some type of jurisdiction over defendants in cases like *Georgia-Pacific* or *United Rope*. Sufficient minimum contacts might exist. For example, if the bank account were attached at the outset, quasi in rem jurisdiction might be upheld if the account were related in some meaningful way to the transaction being sued upon. See Practice Commentaries on CPLR 314, at C314:4, infra. When *Landoil Resources* reaffirmed the rule that a bank account, standing alone, is insufficient for general jurisdiction, the Court of Appeals nevertheless hinted at the possibility of quasi in rem attachment jurisdiction in appropriate circumstances. *Landoil Resources Corp. v. Alexander & Alexander Services, Inc.*, supra, 77 N.Y.2d at 35 n.2, 563 N.Y.S.2d at 742, 565 N.E.2d at 491. This possibility does not, however, justify the results in *Georgia-Pacific* and *United Rope* because there is a major theoretical and practical difference between doing business jurisdiction and quasi in rem jurisdiction. The former confers general personal jurisdiction, thereby allowing for the entry of a money judgment in full, whereas the latter limits the judgment to the value of the attached property. See CPLR 320(c)(1).

(c) Due Process.

The doing business basis of jurisdiction is not likely to offend due process when it is applied as cautiously as New York courts traditionally have done. When the Supreme Court replaced the presence theory of due process with that of minimum contacts in *International Shoe Co. v. Washington*, 1945, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (see Commentaries 301:1, above, and C302:1, infra), the Court stated that "the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process." 326 U.S. at 316-17, 66 S.Ct. at 158, 90 L.Ed. at 102. The Court spoke approvingly of "instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against [the corporation] on causes of action arising from dealings entirely distinct from those activities." Id. at 318, 66 S.Ct. at 159, 90 L.Ed. at 103. The Court cited New York's *Tauza* decision as an example.

A few years after *International Shoe*, the Court applied its new formulation of minimum contacts to turn back a due process challenge to the assertion of personal jurisdiction over a foreign corporation that was sued in Ohio on a cause of action that was unrelated to its activities in Ohio. *Perkins v. Benguet Consolidated Mining Co.*, 1952, 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed.2d 485. When the defendant's mining operations in the Philippines were shut down during World War II, the company's president and general manager returned to his home in Ohio where, with two secretaries, he maintained an office to carry on his company's limited wartime activities, including maintaining company files, disbursing checks for salaries and accounts payable, and conducting directors' meetings. Two local bank accounts were opened for the deposit of company funds and another Ohio bank acted as a transfer agent for the company's stock. Such "continuous and systematic" activity was deemed sufficient to satisfy due process.

Several years later, however, a Texas court's assertion of general jurisdiction over a Colombian corpor-

ation for a claim based on a helicopter crash in Peru was found to violate due process. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 1984, 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404. The defendant's connections with Texas consisted primarily of ongoing purchases of helicopters and equipment from a Texas seller together with trips to Texas by company employees for training in the use of the equipment. The Court held that "mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions." Id. at 418, 104 S.Ct. at 1874, 80 L.Ed.2d at 413. The additional brief presence of the company's employees for training in Texas made no difference, said the Court, because such training was merely "a part of the package of goods and services purchased." Id. Significantly, the Court relied heavily upon an earlier decision in which doing business jurisdiction in New York was rejected over an out-of-state buyer of goods who had no New York office but regularly came to New York in connection with the purchases. *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 1923, 260 U.S. 516, 43 S.Ct. 170, 67 L.Ed. 372.

The guidelines thus provided by Supreme Court precedent suggest that continued adherence to the doing business standard as it has been applied in New York--continuous, systematic activity with a fair measure of permanence--will be well within the permissive scope of the due process clause. Of course, even if minimum contacts with the state are established under the doing business criteria, it is conceivable that occasionally the "fairness" branch of the two-part minimum contacts test (see Commentaries C301:1, above, and C302:2, infra) will preclude the assertion of jurisdiction. See, e.g., *Metropolitan Life Ins. Co. v. Robertson-Ceco Corp.*, C.A.N.Y. 1996, 84 F.3d 560, 572-75, certiorari denied 519 U.S. 1006, 117 S.Ct. 508, 136 L.Ed.2d 398. Compare *Wiwa v. Royal Dutch Petroleum Co.*, C.A.N.Y. 2000, 226 F.3d 88, 99 (defendant failed to show that litigation in New York would cause any great inconvenience).

C301:9. Doing Business: Affiliated Corporations.

Two theories have evolved to permit the assertion of general personal jurisdiction over foreign corporations that may be deemed to be doing business in New York vicariously as a result of their relationship with affiliated companies in New York. The first such theory is the "mere department" doctrine, which applies when the defendant and the New York-based corporation, despite separate incorporation, are in reality "mere departments" of one another. The second theory is that of agency.

The "mere department" doctrine can be invoked only when the defendant and the corporation that is doing business in New York are in a parent-subsidiary relationship. *Delagi v. Volkswagenwerk AG of Wolfsburg, Germany*, 1972, 29 N.Y.2d 426, 432, 328 N.Y.S.2d 653, 657, 278 N.E.2d 895, 897 (extent of foreign manufacturer's control over operations of franchise dealers in New York was irrelevant in absence of parent-subsidiary relationship). A parent-subsidiary relationship, however, is not enough. The parent must also exercise such "complete control" over the activities of the subsidiary that it is "in fact, merely a department of the parent." Id.

The test was satisfied in *Taca International Airlines, S.A. v. Rolls-Royce of England, Ltd.*, 1965, 15 N.Y.2d 97, 256 N.Y.S.2d 129, 204 N.E.2d 329, where the defendant, an English manufacturer, owned all the stock of a Canadian company that in turn owned all the stock of a corporation that was doing business in New York. The New York subsidiary's sole business was selling and servicing cars made by the defendant. The following elements of control led the Court of Appeals to a finding that the subsidi-

ary was a mere department of the English parent, thereby subjecting the parent to jurisdiction in New York for a claim that arose outside the state. The parent assigned key executive personnel to positions in the New York company; the subsidiary's operating policies were determined at joint meetings of the executives of the parent, the Canadian intermediary and the New York subsidiary; the subsidiary's employees were trained in England by the parent; and all sales literature was produced by the parent. The subsidiary owned no inventory of cars; it purchased them for re-sale pursuant to individual orders. The subsidiary's net income went first to the Canadian intermediary and eventually appeared on the parent's balance sheet. Thus, the subsidiary, although separately incorporated, was "not really an independent entity."

The same result was reached in *Public Administrator v. Royal Bank of Canada*, 1967, 19 N.Y.2d 127, 278 N.Y.S.2d 378, 224 N.E.2d 877, where the entity doing business in New York was the parent corporation and jurisdiction was asserted over its French subsidiary. Here again, the parent (an international banking organization) controlled the subsidiary to such an extent as to ignore its separate existence.

A decision of the Second Circuit Court of Appeals, *Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp.*, C.A.N.Y.1984, 751 F.2d 117, isolates the factors that are relevant under New York law in the "mere department" analysis. First, of course, is the fundamental requirement of a parent-subsidiary relationship. The second factor is "financial dependency of the subsidiary on the parent corporation," as evidenced by such acts as the parent's giving of no-interest loans to the subsidiary, the financing of its inventory, the guaranteeing of loans to third parties, or the exercising of control over financing. Id. at 120-21. "The third factor is the degree to which the parent corporation interferes in the selection and assignment of the subsidiary's executive personnel and fails to observe corporate formalities." Id. at 121. The fourth factor is the degree to which the parent exercises control over the marketing and operational policies of the subsidiary. Id. at 123. Applying these factors in the case before it, the Second Circuit found that the mere department theory was satisfied. *Palmieri v. Estefan*, E.D.N.Y.1992, 793 F.Supp. 1182, 1187-90, is an example of a case using the same factors but reaching an opposite conclusion.

Agency is a potential alternative to the "mere department" theory. An agency relationship of sufficient breadth between an entity doing business in New York and a foreign corporation can subject the foreign corporation to general personal jurisdiction. A good example is *Sterling Novelty Corp. v. Frank & Hirsch Distrib. Co.*, 1949, 299 N.Y. 208, 86 N.E.2d 564, where a South African export/import dealer was held to be doing business in New York through a New York corporation that made purchases in its New York office exclusively on defendant's behalf. Another example is *Berner v. United Airlines, Inc.*, 1956, 3 A.D.2d 9, 157 N.Y.S.2d 884 (1st Dep't), affirmed , 1957, 3 N.Y.2d 1003, 170 N.Y.S.2d 340, 147 N.E.2d 732, in which doing business jurisdiction was upheld over an Australian airlines corporation that used a "general sales agent," with a New York office, to solicit business and sell tickets for the defendant's flights.

The case most often cited as authority for the agency basis of doing business is *Frummer v. Hilton Hotels International, Inc.*, 1967, 19 N.Y.2d 533, 281 N.Y.S.2d 41, 227 N.E.2d 851, certiorari denied 389 U.S. 923, 88 S.Ct. 241, 19 L.Ed.2d 266. There, the London Hilton, a British corporation, was found to be doing business in New York because of the activity of the Hilton Reservation Service, a company with which the defendant shared common owners. The reservation service maintained a New York office and bank account, advertised and generated business for the entire Hilton chain of hotels and, most significantly, accepted and confirmed room reservations at the London Hilton. In an oft-quoted passage,

the Court said that "the Service [did] all the business which [London Hilton] could do were it here by its own officials." Id. at 537, 281 N.Y.S.2d at 44, 227 N.E.2d at 854. The statement was made in the context of analogizing the New York office activity of the Hilton agents to that of the defendant corporation's own employees in *Bryant v. Finnish National Airline*, 1965, 15 N.Y.2d 426, 260 N.Y.S.2d 625, 208 N.E.2d 439, discussed in Commentary C301:8(b), above. The Court also made the point that although common ownership is not necessary for a finding of agency, such ownership was significant in the case at hand because it gave rise to an "inference as to the broad scope of the agency." Id. at 538, 281 N.Y.S.2d at 45, 227 N.E.2d at 854.

The Second Circuit Court of Appeals gave *Frummer* a broad application in *Gelfand v. Tanner Motor Tours, Limited*, C.A.N.Y.1967, 385 F.2d 116, certiorari denied , 1968, 390 U.S. 996, 88 S.Ct. 1198, 20 L.Ed.2d 95. The court upheld jurisdiction over an out-of-state tour operator where an independent New York travel representative, who had no direct contractual obligation to the defendant, was responsible for arranging and confirming roughly half of defendant's Grand Canyon tour business. The Second Circuit interpreted the "decisive test" in *Frummer* to be as follows: "[A] foreign corporation is doing business in New York ... when its representative provides services beyond 'mere solicitation' and these services are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services." 385 F.2d at 121. See also *Wiwa v. Royal Dutch Petroleum Co.*, C.A.N.Y.2000, 226 F.3d 88, 95.

The Second Circuit's reformulation of the New York agency test for doing business jurisdiction has gained an extensive following among federal district courts (see, e.g., *Palmieri v. Estefan*, S.D.N.Y.1992, 793 F.Supp. 1182, 1189), but it has never been endorsed by the New York Court of Appeals. The reformulated test has the potential for overly broad application if a court focuses too heavily on the "importance" of a representative's New York activity to the defendant. In almost any case it might be argued that without the representative, the defendant would send its own employee to New York to perform the task.

The actual result in *Gelfand*, on the other hand, appears to have been approved by the New York Court of Appeals. In explaining why no agency relationship was present in *Delagi v. Volkswagenwerk AG of Wolfsburg, Germany*, supra, the Court made the following observation: "The nature of the agency relationship was clear in *Gelfand*, since the New York agent was authorized to make final reservations, rather than merely confirming availabilities, and the additional factor was present that the purchase of the tour tickets took place in New York." 29 N.Y.2d at 433, 328 N.Y.S.2d at 657, 278 N.E.2d at 898.

The implication is that in order for a sufficient agency to be found for jurisdictional purposes, the agent must be a substantial participant in the defendant's business and have the discretion and authority to act on defendant's behalf. See, e.g., *Miller v. Surf Properties, Inc.*, 1958, 4 N.Y.2d 475, 176 N.Y.S.2d 318, 151 N.E.2d 874 (no jurisdiction over out-of-state hotel where New York travel agency, which provided services for many other hotels, forwarded reservation requests that had to be confirmed by defendant itself; agent lacked "general powers involving judgment and discretion"); *Parsons v. Kal Kan Food, Inc.*, 2009, 68 A.D.3d 1501, 892 N.Y.S.2d 246 (3d Dep't) (despite common ownership and other affiliating connections, trucking company with New York presence was not agent of New Jersey warehouse because the companies provided different types of services); *Holness v. Maritime Overseas Corp.*, 1998, 251 A.D.2d 220, 676 N.Y.S.2d 540 (1st Dep't) (no jurisdiction over out-of-state ship repair facility where New York agent had authority to solicit business but no power to make contracts); *Sedig v.*

Okemo Mountain, 1994, 204 A.D.2d 709, 612 N.Y.S.2d 643 (2d Dep't) (no jurisdiction over Vermont ski resort where New York ski shops solicited business for defendant but had no authority to contractually bind defendant); *Aquascutum of London, Inc. v. S.S. American Champion*, C.A.N.Y.1970, 426 F.2d 205, 212 (no jurisdiction over out-of-state freight forwarder that sporadically solicited in New York and hired New York agents to carry goods from pier into hands of consignees; *Frummer* was not intended to apply where defendant has done "nothing more than pay persons to perform essentially mechanical tasks for it").

In *Wiwa v. Royal Dutch Petroleum Co.*, C.A.N.Y.2000, 226 F.3d 88, the Second Circuit Court of Appeals applied New York's agency doctrine to uphold the assertion of general jurisdiction over two foreign holding companies engaged in international oil business. The two companies were affiliated with an "Investor Relations Office" in New York City, which was fully funded by the defendants in the amount of one-half million dollars annually. The business of the Investor Relations Office was to perform investor relations services solely on defendants' behalf, which included fielding inquiries from investors and potential investors in the two companies, disseminating information about the companies throughout the United States, and organizing meetings between officials of the companies and investors, potential investors and financial analysts. The defendants were "huge publicly-traded companies with a need for access to capital markets" and a corresponding "need to maintain good relationships with existing investors and potential investors." Even though the Investor Relations Office was not directly involved in the "core function" of the defendants' oil business, its services were of "meaningful importance" to the defendants. The nature and purpose of the agency relationship therefore satisfied the *Frummer/Gelfand* standard for jurisdiction. 226 F.3d at 95-98. See also *Katz Communications, Inc. v. Evening News Ass'n*, C.A.N.Y.1983, 705 F.2d 20, 22-25 (jurisdiction found where New York solicitation agent lacked final authority to accept orders, but it guaranteed orders, billed clients and collected from them, and officers of defendant periodically came to New York to work with agent to plan and execute marketing strategies; agent was "virtually a division of defendant's business").

Two concluding points on agency bear mentioning. First, a true agency relationship must exist. Thus, in *Delagi v. Volkswagenwerk AG of Wolfsburg, Germany*, supra, no agency was found where a German manufacturer's cars were sold in New York by independently-owned franchise dealers who bought the defendant's cars outright from an independently-owned wholesaler. Second, the agent itself must engage in such "systematic and continuous" activity in New York to warrant a finding that it is doing business here. *Landoil Resources Corp. v. Alexander & Alexander Services, Inc.*, 1990, 77 N.Y.2d 28, 37, 563 N.Y.S.2d 739, 743, 565 N.E.2d 488, 492. See, e.g., *Wiwa v. Royal Dutch Petroleum Co.*, supra, 226 F.3d at 98.

C301:10. Doing Business: Unincorporated Businesses.

If an individual proprietor or other unincorporated business, such as a partnership, is doing business in New York, would out-of-state service on the individual/partner confer in personam jurisdiction for claims having no relationship to New York? This same question was posed by Judge McLaughlin in his 1990 Practice Commentaries on CPLR 301, and the Court of Appeals still has not provided an answer.

There would seem to be no constitutional impediment to the assertion of general personal jurisdiction over an individual who conducts continuous and systematic New York business with a fair measure of permanence. See Commentary C301:8(c), above; Restatement (Second), Conflict of Laws § 35(3)

(1971). The issue is whether, under the current statutory regime, New York courts can and should exercise such jurisdiction.

The doing business basis, of course, was created by courts to obtain personal jurisdiction over foreign corporations that did local business without obtaining proper authorization. See Commentary C301:8(a), above. Long before the adoption of the CPLR, such corporations were subject to general personal jurisdiction. Doing business jurisdiction over individuals, however, was limited by § 229-b of the former Civil Practice Act to claims arising from the individual's New York business activity. This provision was dropped from the CPLR. The drafters observed that CPLR 301, which allows courts to exercise jurisdiction as they might have done "heretofore," would preserve the prior statutory rule: "[P]ersonal jurisdiction may still be acquired over a foreign corporation 'doing business' in New York in accordance with present case law or over a natural person as now acquired under section 229-b of the civil practice act." N.Y.Adv.Comm.on Prac. & Proc., Second Prelim.Rep., Legis.Doc.No.13, p.38 (1958) [hereinafter cited as Second Prelim.Rep.].

By distinguishing the doing business test as it was then being applied separately to foreign corporations and individual defendants, the quoted passage suggests a legislative intent to preclude the assertion of doing business jurisdiction over unincorporated businesses for claims that have no relation to their New York business. On the other hand, it can be argued that courts, having created the doing business category of jurisdiction prior to the enactment of the CPLR, would be acting within the common law tradition, and therefore not contravening CPLR 301, by extending the category to all forms of business organizations.

These competing arguments have led to a split in authority in the lower courts. The Appellate Division, First Department, held in *Abkco Industries, Inc. v. Lennon*, 1976, 52 A.D.2d 435, 384 N.Y.S.2d 781 (1st Dep't), that one of the members of the Beatles singing group was doing business in New York, and could therefore effectively be served outside New York, in an action on a claim that arose in England. The court rejected the notion that CPLR 301 preserved the limitations of the Civil Practice Act. Reliance was placed on a passage in the Advisory Committee Report stating that one of the objectives of CPLR 301 and 302 was "to make it possible for a litigant in the New York Courts to take full advantage of the state's constitutional power over persons and things." 52 A.D.2d at 440, 384 N.Y.S.2d at 783, citing Second Prelim.Rep., supra, at p.37. See also *Spirgel v. Henry H. Ackerman & Co.*, 1995, 221 A.D.2d 167, 633 N.Y.S.2d 144 (1st Dep't) (partnership's New York activity made it "present" in New York for purposes of CPLR 301). The court's paraphrase of the particular passage in the Advisory Committee Report, however, omitted the Committee's qualifying language that the full scope of due process could be utilized "with very limited exceptions." See Prelim.Rep. at p.37.

The Second Department disagreed with the First Department in *Nilsa B.B. v. Clyde Blackwell H.*, 1981, 84 A.D.2d 295, 445 N.Y.S.2d 579 (2d Dep't). According to the Second Department, extension of the doing business basis to cover natural persons would be improper judicial lawmaking: "[I]f CPLR 301 had been intended to authorize jurisdiction coextensive with that permitted under due process, 'it would not have been necessary to draft CPLR 302.' " 84 A.D.2d at 302, 445 N.Y.S.2d at 584.

Most of the federal courts applying New York jurisdictional law have thus far been able to avoid the issue, at least with respect to individual defendants, because the New York activity of the particular parties simply did not meet the doing business standard. See, e.g., *Goldenberg v. Lee*, 1999 WL 390611

(E.D.N.Y.1999); *Sherwin v. Indianapolis Colts, Inc.*, N.D.N.Y.1990, 752 F.Supp. 1172. The Second Circuit, however, declared in *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, C.A.N.Y.1991, 937 F.2d 44, 50, that there is no reason to distinguish between corporate and noncorporate organizations under CPLR 301. The court there held that doing business jurisdiction could be asserted over an unincorporated association.

As noted at the outset, the Court of Appeals has not directly passed upon the issue. In *Laufer v. Ostrow*, 1982, 55 N.Y.2d 305, 449 N.Y.S.2d 456, 434 N.E.2d 692, however, the Court was asked to uphold an assertion of jurisdiction over an individual who was allegedly doing business in New York through his activity as president and chief salesman for a foreign corporation. The Court assumed, without deciding, that the doing business basis could be invoked against a natural person, but held that any such application of the rule would require a showing that the person was conducting business in New York in an individual capacity. Here, the individual was in New York solely in his role as an employee/officer of the corporate defendant and therefore was not personally doing business. Id. at 313, 449 N.Y.S.2d at 460, 434 N.E.2d at 696. Although *Laufer* resolves an important point, the fundamental question is still open.

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McKinney's Forms, Matrimonial and Family Law § 7:18, Personal Jurisdiction--Traditional Basis.

McKinney's Forms, Matrimonial and Family Law § 7:20, Notice of Motion to Dismiss Divorce Action for Lack of Personal Jurisdiction (Form: N.Y. C.P.L.R. 301, 302, 3211; N.Y. Dom. Rel. Law S230).

McKinney's Forms, Matrimonial and Family Law § 9:20, Personal Jurisdiction by Service Without the State.

McKinney's Forms, Matrimonial and Family Law § 23:31, Personal Jurisdiction.

McKinney's Forms, Real Property Practice § 8:4, Service of Process.

McKinney's Forms, Selected Consol. Law, Correction Law § 755 Form 6, Complaint for Wrongful Termination Based Upon Criminal History.

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NY Prac. Comm. Lit. in NY State Courts § 68:4, General Jurisdiction Based Upon “Doing Business”.

NY Prac. Comm. Lit. in NY State Courts § 68:6, Subject-Matter Jurisdiction, Extraterritoriality, Fsia, and “Act of State”.

NY Prac. Comm. Lit. in NY State Courts § 99:3, Introduction.

NY Prac. Comm. Lit. in NY State Courts § 99:4, General Jurisdiction: “Doing Business” Online Under CPLR 301.

NY Prac. Comm. Lit. in NY State Courts § 99:6, General Jurisdiction: “Doing Business” Online Under CPLR 301--The “Solicitation-Plus” Requirement.

NY Prac. Comm. Lit. in NY State Courts § 106:8, Personal Jurisdiction.

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NY Prac. Comm. Lit. in NY State Courts § 18:19, Unauthorized Foreign Corporations.

NY Prac. Comm. Lit. in NY State Courts § 83:78, Complaint for Breach of Duty of Care and Duty of Loyalty.

NY Prac. Comm. Lit. in NY State Courts § 99:11, Tortious Acts Jurisdiction--CPLR 302(A)(3): Tortious Acts Committed Outside of New York Causing Injury in the State.

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New York Practice, New York Family Court Practice § 2:43, Issuance and Service of Process.

New York Products Liability 2d § 8:2, Domestic and Foreign Corporations.

New York Products Liability 2d § 8:3, “Doing Business”.

Siegel's New York Practice, 4th § 29, Forum Non Conveniens and Corporations.

Siegel's New York Practice, 4th § 30, Unlicensed Plaintiff Corporation.

Siegel's New York Practice, 4th § 53, Defendant's Absence.

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Siegel's New York Practice, 4th § 80, Basis for Jurisdiction; CPLR 301.

Siegel's New York Practice, 4th § 82, The Corporate “Presence” Doctrine.

Siegel's New York Practice, 4th § 83, Comparing Corporate “Doing Business” Tests.

Siegel's New York Practice, 4th § 86, “Transacts Any Business” Under CPLR 302(A)(1).

Siegel's New York Practice, 4th § 88, Act Without/Injury Within New York Under CPLR 302(A)(3).

Siegel's New York Practice, 4th § 98, Jurisdiction by Written Agreement.

Siegel's New York Practice, 4th § 100, Service Outside New York Under CPLR 313.

Siegel's New York Practice, 4th § 104, Quasi in Rem Jurisdiction.

UNITED STATES CODE ANNOTATED

Jurisdiction of District Courts, see 28 USCA § 1330 et seq.

State civil jurisdiction in actions to which Indians are parties, see 28 USCA § 1360.

UNITED STATES SUPREME COURT

Corporation's principal place of business, diversity jurisdiction, see Hertz Corp. v. Friend, 2010, 130 S.Ct. 1181, 559 U.S. 77, 175 L.Ed.2d 1029, on remand 375 Fed.Appx. 757, 2010 WL 1474106.

Jurisdiction, corporations, place of charter, principal place of business, diversity of citizenship, affiliates, see Lincoln Property Co. v. Roche, 2005, 126 S.Ct. 606, 546 U.S. 81, 163 L.Ed.2d 415, on remand 175 Fed.Appx. 597, 2006 WL 910241.

Jurisdiction, diversity of citizenship, national banks, state in which main office is located, see Wachovia Bank v. Schmidt, 2006, 126 S.Ct. 941, 546 U.S. 303, 163 L.Ed.2d 797, on remand 445 F.3d 762.

Jurisdiction over past and present officers and directors of corporation based on statutory presence of property within states, see Shaffer v. Heitner, 1977, 97 S.Ct. 2569, 433 U.S. 186, 53 L.Ed.2d 683.

NOTES OF DECISIONS

I. IN GENERAL

Subdivision Index

1. Construction and application

Under New York statute, court's general personal jurisdiction, predicated upon corporate presence, does not fail because the cause of action sued upon has no relation in its origin to the business transacted within state. JW Oilfield Equipment, LLC v. Commerzbank, AG, 2011, 764 F.Supp.2d 587. Courts 13.4(3)

Under New York law, district court's two-step inquiry into personal jurisdiction over a defendant involves consideration of the relevant state long-arm provision and federal due process requirements. Heidle v. Prospect Reef Resort, Ltd., 2005, 364 F.Supp.2d 312. Constitutional Law 3964; Federal Courts 76.1

New York court's exercise of jurisdiction depends on presence, consent, domicile, or business activities of party, as well as long arm jurisdiction. Seaweed, Inc. v. DMA Product & Design & Marketing LLC., 2002, 219 F.Supp.2d 551. Courts 11; Courts 13.2

Under New York law, court has general jurisdiction over any foreign corporation doing business within jurisdiction, regardless of whether cause arises out of that transaction or business. Riviera Trading Corp. v. Oakley, Inc., 1996, 944 F.Supp. 1150. Courts 13.4(3)

Nature as well as weight of required showing is different under constitutional “minimum contacts” standard than

it is under “doing business” test. Saraceno v. S. C. Johnson and Son, Inc., 1980, 492 F.Supp. 979. Federal Courts 79

Under this section, courts may develop prior concepts in jurisdiction, without limitations of statutory language. Bryant v. Finnish Nat. Airline (1 Dept. 1964) 22 A.D.2d 16, 253 N.Y.S.2d 215, reversed on other grounds 15 N.Y.2d 426, 260 N.Y.S.2d 625, 208 N.E.2d 439. Courts 2

2. Construction with federal laws

Where personal jurisdiction could be exercised over corporation pursuant to N.Y.McKinney's CPLR 301, which is the traditional “doing business” jurisdictional base, 28 U.S.C.A. § 1391(c), a venue statute which states that a corporation may be sued in any judicial district in which it is doing business, was satisfied, and thus venue was proper in the southern district of New York. Oral-B Laboratories, Inc. v. Mi-Lor Corp., 1985, 611 F.Supp. 460. Federal Courts 79

Even though declaratory judgment suit against foreign corporation was not founded in diversity, and jurisdiction was invoked under patent laws of the United States, this section might be applicable in determining amenability of corporation to suit in view of fact that federal law with respect to whether foreign corporation is “doing business” within state did not appear to significantly differ from state law. Manchester Modes, Inc. v. Lilli Ann Corp., 1969, 306 F.Supp. 622. Federal Courts 417

3. Construction with other laws

Federal district court in New York had general personal jurisdiction over foreign bank that did business in New York systematically and continuously through New York branch that was not incorporated and was not separate entity, and thus, pursuant to New York statute, could issue turnover order that directed bank to turn over account funds of judgment debtor, up to amount of judgment, regardless of whether accounts were held in Germany or New York. JW Oilfield Equipment, LLC v. Commerzbank, AG, 2011, 764 F.Supp.2d 587. Federal Courts 25; Federal Courts 86

Issue of personal jurisdiction over a foreign corporation said to be doing business in New York is governed by general personal jurisdiction statute. William Systems, Ltd. v. Total Freight Systems, Inc., 1998, 27 F.Supp.2d 386. Courts 13.4(3)

Although plaintiff suing Brazilian corporation for drowning death of guest at corporation's Rio de Janeiro hotel met jurisdictional requirements of New York long-arm statute, exercise of jurisdiction was improper where plaintiff failed to meet jurisdictional requirements of New York's Business Corporation Law requiring affidavits of compliance to be filed with clerk of court. Darby v. Compagnie Nationale Air France, 1991, 769 F.Supp. 1255. Federal Courts 86

Holding sustaining jurisdiction over foreign manufacturer under “doing business” test of this section and Rules provision governing jurisdiction over persons, property or status a fortiori justified jurisdiction under identical

language of section 302, governing personal jurisdiction by acts of nondomiciliaries. Andrulonis v. U. S., 1981, 526 F.Supp. 183. Federal Courts 79

In federal action based on diversity of citizenship, personal jurisdiction issue is determined by law of state of forum court. Sultanik v. Cobden Chadwick, Inc., 1982, 94 F.R.D. 123. Federal Courts 417

Because no specific federal statute governed personal jurisdiction in copyright or Lanham Act matters, New York's long-arm statutes applied to performance artist's claims that publisher infringed her copyright and violated her Lanham Act rights. Stewart v. Vista Point Verlag, C.A.2 (N.Y.)2001, 20 Fed.Appx. 91, 2001 WL 1220529, Unreported. Federal Courts 417

Nonresident trucking company's act of designating an agent for service of process in New York pursuant to the Motor Carrier Act was sufficient to permit New York court to exercise personal jurisdiction over the company, in action brought by motorists arising out of accident in Illinois in which their vehicle was struck by a truck owned by the company; designation of an agent under the Act operated as express consent to personal jurisdiction. Brinkmann v. Adrian Carriers, Inc. (2 Dept. 2006) 29 A.D.3d 615, 815 N.Y.S.2d 196. Courts 23

4. Purpose

The intent of this section and §§ 302 and 313 is to authorize service in all types of actions upon non-resident administrator or executor of a deceased person who would be subject to in personam jurisdiction were he alive. Johnson v. Jay, 1965, 45 Misc.2d 101, 255 N.Y.S.2d 705. Executors And Administrators 525

5. Law governing

Question in diversity case as to whether defendant is subject to jurisdiction of courts of New York under this section permitting nonresident doing business in New York to be sued in such state even if cause of action does not arise out of act done in New York or under section 302 pertaining to obtaining of jurisdiction by virtue of acts of nondomiciliary must be resolved under New York law. Erving v. Virginia Squires Basketball Club, 1972, 349 F.Supp. 709. Federal Courts 417

Where real estate trust agreement expressly provided that laws of Massachusetts should be controlling, Massachusetts law governed shareholders' derivative action against corporate trustees, its legal counsel, mortgage broker and real estate advisory firm, even if trust had significant contacts with New York State. Skolnik v. Rose, 1982, 55 N.Y.2d 964, 449 N.Y.S.2d 182, 434 N.E.2d 251. Corporations And Business Organizations 3582

Even if a conflict existed because Brazilian law required alleged rape victim to prove that her honor or image was damaged by the assault, whereas New York law would permit a finding of tort liability against alleged rapist simply upon a showing that he made bodily contact with alleged victim and that the contact was either offensive or made without consent, New York law, and not Brazilian law, was applicable in alleged victim's personal injury action against alleged rapist, even though rape allegedly happened in Brazil, where New York was the only jurisdiction that had significant contacts with both parties, since both lived and worked in New York,

and New York's interest in addressing the alleged assault was stronger than Brazil's. K.T. v. Dash (1 Dept. 2006) 37 A.D.3d 107, 827 N.Y.S.2d 112, issued 2006 WL 3627748. Rape 66

6. Due process

Exercise of long-arm jurisdiction under New York law must satisfy constitutional due process standards, which it does when it is based on defendants' minimum contacts with the state and comports with traditional notions of fair play and substantial justice. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Constitutional Law 3964

Due process considerations were satisfied by exercise of personal jurisdiction over foreign corporation by federal court in New York under New York's general personal jurisdiction statute based on consent due to defendant's unrevoked authorization to do business and its designation of registered agent for service of process, since burden that exercise of jurisdiction would have imposed on defendant was slight given its voluntary decision to enter into agreement with New York-based entity and interests in adjudicating case in New York was substantial given that technology subject to agreement was developed by research institution headquartered in forum. The Rockefeller Univ. v. Ligand Pharmaceuticals, 2008, 581 F.Supp.2d 461. Constitutional Law 3965(3); Federal Courts 79; Federal Courts 82

Federal district court sitting in New York had personal jurisdiction, consistent with due process, over Croatian seller of generic warfarin sodium, sued for breach of contract by pharmaceutical manufacturer planning to use warfarin in anticoagulant drug to be sold in United States; sales of over $5 million of drugs, solicitation of New York customers, and use of New York subsidiary as agent, provided required minimum contacts with state. Genpharm Inc. v. Pliva-Lachema a.s., 2005, 361 F.Supp.2d 49. Constitutional Law 3965(4); Federal Courts 86

Finding of personal jurisdiction over German corporation under New York long-arm statute on basis that its subsidiary located in New York was its agent comported with due process, in negligence and strict liability action against German corporation brought by survivors of Americans killed in ski train accident in Austria; requiring the parent corporation, a multinational corporation with both direct and indirect contacts in New York, to litigate there did not offend notions of fair play and substantial justice, but rather, the undisputed presence of its agent in New York, in addition to its extensive independent contacts in the forum, made it entirely reasonable to require the parent corporation to litigate in New York. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376.

Under New York law, determination of personal jurisdiction over nonresident defendant requires two-fold inquiry: (1) whether New York law provides a basis for exercising personal jurisdiction over the defendant, and (2) if so, whether exercising jurisdiction over the defendant would offend due process. Yurman Designs, Inc. v. A.R. Morris Jewelers, L.L.C., 1999, 41 F.Supp.2d 453, reconsideration denied 60 F.Supp.2d 241. Constitutional Law 3964; Courts 13.2

Due process requires contacts more extensive than frequent visits to state and strong affiliation with state-based

charitable organization before it will presume party generally present for claims unrelated to those contacts; it demands that party benefit from protection of local laws in such way that he would foresee possibility of suit under those laws. Gianna Enterprises v. Miss World (Jersey) Ltd., 1982, 551 F.Supp. 1348. Constitutional Law 3965(9); Federal Courts 76.5

"Doing business" jurisdiction exercised over foreign corporations pursuant to this section governing jurisdiction over persons, property or status satisfies minimum contacts requirements of due process. Andrulonis v. U. S., 1981, 526 F.Supp. 183. Constitutional Law 3965(3); Courts 13.4(3)

Where foreign corporation was doing business in New York with a fair measure of permanence and continuity, assertion of personam jurisdiction over the corporation did not offend due process. Freeman v. Gordon & Breach, Science Publishers, Inc., 1975, 398 F.Supp. 519. Constitutional Law 3965(3)

Due process requirements are satisfied if foreign corporation has certain minimum contacts with state such that maintenance of suit does not offend traditional notions of fair play and substantial justice. Frummer v. Hilton Hotels Intern., Inc., 1967, 19 N.Y.2d 533, 281 N.Y.S.2d 41, 227 N.E.2d 851, motion granted 20 N.Y.2d 737, 283 N.Y.S.2d 99, 229 N.E.2d 696, reargument denied 20 N.Y.2d 758, 283 N.Y.S.2d 1025, 229 N.E.2d 844, certiorari denied 88 S.Ct. 241, 389 U.S. 923, 19 L.Ed.2d 266. See, also, La Belle Creole Intern., S.A. v. Attorney-General, 1961, 10 N.Y.2d 192, 219 N.Y.S.2d 1, 176 N.E.2d 705; Majique Fashions, Ltd. v. Warwick & Co., Ltd., 1979, 67 A.D.2d 321, 414 N.Y.S.2d 916. Constitutional Law 3965(3)

Due process under U.S.C.A.Const. Amend. 14 may be satisfied by existence of such contacts of foreign corporation with activities within the state of forum as would make it reasonable for corporation to defend particular action being brought in such state. Kimberly Knitwear, Inc. v. Mid-West Pool Car Ass'n, 1959, 21 Misc.2d 730, 191 N.Y.S.2d 347. Constitutional Law 3965(3)

Due process permitted exercise of general personal jurisdiction over pharmaceutical company in patent infringement action pursuant to state long-arm statute providing for jurisdiction over parties "doing business" in New York, given company's substantial and continuous solicitation of business in New York and its repeated efforts to avail itself of the state for purposes of soliciting investments. Purdue Pharma L.P. v. Impax Laboratories, Inc., 2003, 2003 WL 22070549, Unreported. Constitutional Law 3965(4); Patents 288(4)

7. Consent to jurisdiction--In general

Nonresident corporate defendant's removal of action from state court to federal court based on diversity of citizenship amounted to appearance and, since defendant could have but did not seek to dismiss complaint in state court for lack of personal jurisdiction, defendant consented to district court's jurisdiction over it, notwithstanding its contention that it lacked sufficient contacts with state. Lomaglio Associates Inc. v. LBK Marketing Corp., 1995, 876 F.Supp. 41. Removal Of Cases 112

Lifeguards' participation in wrongful death suit in which they were initially designated as John Doe defendants, and their counsel's statements confirming that he was appearing on their behalf subsequent to their substitution,

constituted informal appearance on their behalf and waiver of any objection to personal jurisdiction in suit arising from drowning at public beach; although lifeguards were never served with process, counsel for city appeared at lifeguards' depositions and stated that city intended to represent lifeguards for their acts, which occurred during course of their employment. Taveras v. City of New York (2 Dept. 2013) 108 A.D.3d 614, 969 N.Y.S.2d 481. Appearance 8(1); Appearance 22

When a defendant participates in a lawsuit on the merits, he or she indicates an intention to submit to the court's jurisdiction over the action, and by appearing informally in this manner, the defendant confers in personam jurisdiction on the court. Taveras v. City of New York (2 Dept. 2013) 108 A.D.3d 614, 969 N.Y.S.2d 481. Appearance 8(1); Appearance 19(1)

Parties to an agreement may consent to submit to jurisdiction of court that would otherwise not have personal jurisdiction over them. CV Holdings, LLC v. Bernard Technologies, Inc. (3 Dept. 2005) 14 A.D.3d 854, 788 N.Y.S.2d 445. Courts 25

Lack of quasi in rem jurisdiction, if any, because New York assets of nonresident defendant officer subject to attachment were not reasonably related to assets alleged to have been misappropriated from plaintiff corporation was remedied by nonresident officer's submission to personal jurisdiction in state. Deutsche Anlagen-Leasing GMBH v. Kuehl (1 Dept. 1985) 111 A.D.2d 69, 489 N.Y.S.2d 195. Courts 37(3)

Jurisdiction may not be conferred on court solely on basis of stipulation of counsel. Murray v. Murray, 1984, 123 Misc.2d 37, 472 N.Y.S.2d 555. Courts 23

Jurisdiction over parties to an action cannot be conferred either by acquiescence or consent of parties if subject matter of action is without jurisdiction of court. Monroe v. Jordan, 1983, 121 Misc.2d 757, 467 N.Y.S.2d 768. Courts 25

If court has jurisdiction of subject matter, but lacks jurisdiction of person of party, it may obtain latter by said party's consent or stipulation submitting to such jurisdiction or by subjecting itself to said jurisdiction. People ex rel. Smoake v. Morrow, 1968, 58 Misc.2d 266, 294 N.Y.S.2d 586. Courts 25

A national banking institution which was located in California, could not be sued in New York court without consent of the institution, and its motion to vacate service of summons and to dismiss complaint would be granted. Crofoot v. Giannini, 1949, 196 Misc. 213, 92 N.Y.S.2d 191. Banks And Banking 275; Pleading 354; Process 158

8. ---- Agreements, consent to jurisdiction

Parties to a contract may agree in advance to submit to jurisdiction of a given court, to permit notice to be served by opposing party, or even to waive notice altogether, hence service of process on New York resident designated as agent in lease for purpose of accepting process for defendants, who were residents of Michigan, and who

were not acquainted with agent, was sufficient to subject defendants to action in New York even if laws of Michigan and New York was applicable. National Equipment Rental, Limited v. Szukhent, U.S.N.Y.1964, 84 S.Ct. 411, 375 U.S. 311, 11 L.Ed.2d 354.

Valid contractual forum selection clause establishes sufficient contacts with New York for exercise of personal jurisdiction over non-resident defendant to satisfy constitutional principles of due process. Koninklijke Philips Electronics v. Digital Works, Inc., 2005, 358 F.Supp.2d 328. Constitutional Law 3964

Forum selection clauses in contracts will be deemed valid unless enforcement would be unreasonable or unjust, or there has been fraud or overreaching. CV Holdings, LLC v. Bernard Technologies, Inc. (3 Dept. 2005) 14 A.D.3d 854, 788 N.Y.S.2d 445. Contracts 127(4)

Forum selection clause of promissory note constituted consent by obligor to personal jurisdiction, notwithstanding clause's use of term "venue," rather than "jurisdiction," in reference to forum, as required for assignee to institute action in forum based on obligor's alleged default; obligor's interpretation, that clause did not provide consent to jurisdiction, would render clause meaningless, in that court that lacked jurisdiction could not, at same time, be proper venue for action, and it would contradict last sentence of forum selection provision, which broadly stated that obligor waived any objection that such forum was inconvenient or improper, presumably including objections to court's jurisdiction. CV Holdings, LLC v. Bernard Technologies, Inc. (3 Dept. 2005) 14 A.D.3d 854, 788 N.Y.S.2d 445. Contracts 206; Courts 25

Foreign corporation's agreement not to contest service did not mean that it consented to New York's jurisdiction. Holness v. Maritime Overseas Corp. (1 Dept. 1998) 251 A.D.2d 220, 676 N.Y.S.2d 540. Courts 25

Securities investor residing in Florida did not consent to personal jurisdiction of New York courts by signing brokerage agreement providing that disputes would be resolved by arbitration under rules of New York Stock Exchange (NYSE) and sending her arbitration request to NYSE office in New York as required by rules; conduct did not constitute required purposeful action within state. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. McLeod (1 Dept. 1995) 208 A.D.2d 81, 622 N.Y.S.2d 954. Courts 25

In action arising out of automobile accident in which plaintiff was passenger in automobile operated by defendant, who was driving the car from California to Connecticut for auto transport company, plaintiff could not assert existence of personal jurisdiction over defendant based upon agreement between the driver and the auto transport company in which driver consented to service of process by mail anywhere in the United States and to jurisdiction of the courts of New York, in that plaintiff was neither a party nor an intended third-party beneficiary of the agreement. Aytch v. Yellow Freight Systems, Inc. (1 Dept. 1984) 100 A.D.2d 757, 474 N.Y.S.2d 26. Contracts 187(1)

In action for goods sold and delivered and on a guarantee of payment, there was personal jurisdiction over corporate defendant as to the first cause of action but not over the individual defendants as to the second, since first cause of action was within intent of clause in dealer agreement which conferred jurisdiction over corporate de-

fendant in New York, while guarantee of payment executed by individual defendants contained clause referring only to choice of law, which was not a consent to jurisdiction in New York. Pal Pools, Inc. v. Billiot Bros., Inc. (2 Dept. 1977) 57 A.D.2d 891, 394 N.Y.S.2d 280. Courts 13.5(12); Courts 25

Defenses alleging applicability of French and Italian law to joint tenancy account established by Italian citizen and second wife, residing in France, with bank in New York were properly dismissed by New York court, where agreements were in English, parties were in New York, securities were located in New York, and agreements provided that New York law was applicable. Watts v. Swiss Bank Corp. (1 Dept. 1965) 24 A.D.2d 849, 264 N.Y.S.2d 667. Banks And Banking 129

Where Australian corporation undertook, by its agent, to make contract of air carriage, in New York, expressly and in terms governed by Warsaw Convention, at a "place of business" within jurisdiction of New York Supreme Court and that place of business was literally one "through which the contract has been made", for purposes of such Convention, such corporation was "doing business" in New York in such a way as to give New York Supreme Court jurisdiction in personam of it by service of process on agent who thus was brought, with carrier's approval, within literal terms of Convention. Berner v. United Airlines, Inc. (1 Dept. 1956) 3 A.D.2d 9, 157 N.Y.S.2d 884, appeal granted 3 A.D.2d 661, 159 N.Y.S.2d 679, affirmed 3 N.Y.2d 1003, 170 N.Y.S.2d 340, 147 N.E.2d 732. Corporations And Business Organizations 3266(4); Courts 13.6(2)

Noncommercial customers of securities broker who were nondomiciliaries of New York and whose investments tended to be limited partnership units or investment funds, not publicly traded stocks or bonds suggesting nexus with stock exchange located in New York, did not consent to jurisdiction in New York when they chose to arbitrate before National Association of Securities Dealers (NASD) or New York Stock Exchange (NYSE); arbitration provision did not specify that arbitration was to be held in New York, mention of New York only in the choice of law provision did not by itself confer jurisdiction, rules of these organizations did not provide that New York would be arbitration location and when customers mailed their initiating documents to New York, which arbitration forum required them to do, they did not acknowledge that arbitration would occur in New York and could not be said to have agreed to that in light of the common practice for such hearings to be held locally. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Barnum, 1994, 162 Misc.2d 245, 616 N.Y.S.2d 857. Courts 25

As a general rule, express provision contained in agreement to have that agreement governed by law of a particular jurisdiction will be honored but jurisdiction whose law the parties intended to apply must bear reasonable relation to agreement and enforcement of provision applying foreign rule must not violate fundamental public policy of New York. North American Bank, Ltd. v. Schulman, 1984, 123 Misc.2d 516, 474 N.Y.S.2d 383. Contracts 129(1)

Parties' agreement not to raise the issue of lack of jurisdiction of Civil Court of City of New York on appeal would be ineffective to create jurisdiction where there was no statutory conferral. European-American Banking Corp. v. Chock Full O'Nuts Corp., 1981, 109 Misc.2d 615, 442 N.Y.S.2d 715. Courts 37(2)

Reservation in separation agreement of right to plaintiff to apply to any court in state of New York or elsewhere

for relief could not be construed as consent by nonresident defendant to appear in New York court in any such suit. Willis v. Willis, 1964, 42 Misc.2d 473, 248 N.Y.S.2d 260. Courts 25

Foreign corporation not doing business in state legally submitted to jurisdiction of New York court in action for breach of employment contract upon service of summons and complaint on it by registered mail in California pursuant to terms of contract. Fidan v. Austral Am. Trading Corp., 1957, 8 Misc.2d 598, 168 N.Y.S.2d 27. Corporations And Business Organizations 3269(3)

9. ---- License to do business in state, consent to jurisdiction

New Jersey attorney's license to practice law in New York, and his compliance with supreme court rules (SCR) in maintaining his license, did not automatically subject attorney to general jurisdiction in New York. Eastboro Foundation Charitable Trust v. Penzer, 2013, 2013 WL 3001408. Courts 13.3(7)

When a foreign corporation is licensed to do business in New York it consents to be sued in New York in relation to causes of action arising within and without the state. Antonana v. Ore S S Corp, 1956, 144 F.Supp. 486. Corporations And Business Organizations 3255

Delaware corporation's authorization to do business in New York and concomitant designation of Secretary of State as its agent for service of process was consent to in personam jurisdiction. Augsbury Corp. v. Petrokey Corp. (3 Dept. 1983) 97 A.D.2d 173, 470 N.Y.S.2d 787. Courts 25

10. Jurisdiction over individuals

Mere status as an alleged trustee of an entity that owned a stake in a foreign corporation was insufficient to suggest that the corporation or others acted in New York at trustee's direction and control, so as to subject trustee to personal jurisdiction in New York courts. Phillips v. Reed Group, Ltd., 2013, 2013 WL 3340293. Federal Courts 76.20

Allegations that freight forwarder shipped, received, and handled good in New York directly or through a variety of agents were insufficient to establish personal jurisdiction under New York law, absent allegation that freight forwarder was present in New York at the time complaint was filed. China Nat. Chartering Corp. v. Pactrans Air & Sea, Inc., 2012, 882 F.Supp.2d 579. Federal Courts 94

District Court lacked personal jurisdiction over managing director of law firm and sole owner of related business entity, in action brought by group of companies that attempted to start a credit card business in China against law firm and business entities and individuals related to the firm, all located in China, that they had retained for legal and other professional services in preparation for their credit card business, where those individuals did not engage in any transaction or tortious act within or affecting New York, and no corporate defendant of which individuals acted as agents transacted business in New York. TAGC Management, LLC v. Lehman, 2012, 842 F.Supp.2d 575. Federal Courts 86

New York courts do not agree on whether a natural person may be subject to doing business jurisdiction under state long-arm statute. First Capital Asset Management, Inc. v. Brickellbush, Inc., 2002, 218 F.Supp.2d 369, on reconsideration 219 F.Supp.2d 576, affirmed 385 F.3d 159. Courts 13.3(11)

Under New York long-arm statute, fact that corporation is subject to jurisdiction does not, ipso facto, subject every corporate officer to personal jurisdiction. Reynolds Corp. v. National Operator Services, Inc., 1999, 73 F.Supp.2d 299. Courts 13.6(4)

An individual cannot be subject to personal jurisdiction unless he is doing business in New York as an individual rather than on behalf of a corporation. Brinkmann v. Adrian Carriers, Inc. (2 Dept. 2006) 29 A.D.3d 615, 815 N.Y.S.2d 196. Courts 13.6(4)

Non-profit advisory association for excess and surplus lines brokers, created by statute, made no showing that officer of insurance company individually performed business activities in New York, rather than merely as employee or agent of company, precluding court's personal jurisdiction over officer, under state's long-arm statute, in association's action seeking to enforce excess-line law. Excess Line Ass'n of New York v. Waldorf & Associates, 2013, 40 Misc.3d 759, 965 N.Y.S.2d 831. Courts 13.6(4)

11. Presence within state, generally

District Court for the Southern District of New York had personal jurisdiction over District Director of the Bureau of Immigration and Customs Enforcement (BICE) Buffalo Field Office, for purposes of alien's petition for habeas corpus relief, since Buffalo District Director was present within, and amenable to service of process in, state of New York. Diallo v. Holmes, 2003, 288 F.Supp.2d 442. Habeas Corpus 639

Unilateral act of out-of-state insured driving into New York, without more, is insufficient to confer personal jurisdiction over insurer. American Independent Ins. v. Heights Chiropractic Care, P.C., 2006, 12 Misc.3d 228, 811 N.Y.S.2d 904. Courts 13.5(14)

12. Residents

Fact that out-of-state hospitals had several physicians, residents, and medical staff from New York did not establish that hospitals were “doing business” in New York sufficient for assertion of personal jurisdiction. Daniel v. American Bd. of Emergency Medicine, 1997, 988 F.Supp. 127, disapproved in later appeal 428 F.3d 408. Federal Courts 79

Fact that foreign defendant's wife owned apartment in New York did not establish defendant's New York “domicile” within meaning of New York statute providing for jurisdiction over persons domiciled in New York. Biofeedtrac, Inc. v. Kolinor Optical Enterprises & Consultants, S.R.L., 1993, 817 F.Supp. 326. Domicile 4(1)

Evidence disclosing substantial and lengthy stays by defendant in New York, access to and perhaps actual ownership interests in the three residences in New York, and charge receipts and cancelled checks revealing extensive systematic purchases, consistent with residence in New York was sufficient to establish that defendant was a New York resident for purposes of establishing personal jurisdiction in admiralty action, under New York law, despite claims that he was a domiciliary of Bermuda or an "international person." Andros Compania Maritima S.A. v. Intertanker Ltd., 1989, 714 F.Supp. 669. Admiralty 5(1)

New York domiciliary is amenable to suit in state courts at the instance of nonresidents to enforce personal liability. Mary F. B. v. David B., 1982, 112 Misc.2d 475, 447 N.Y.S.2d 375. Courts 13.8(1)

13. Personal representatives of deceased parties

To obtain jurisdiction over the personal representative of deceased defendant, he or she must be served in accordance with rules governing jurisdiction and service. Horseman Antiques, Inc. v. Huch (2 Dept. 2008) 50 A.D.3d 963, 856 N.Y.S.2d 663. Executors And Administrators 441

14. Nonresidents

Judgment debtor's mother and uncle, who were residents and citizens of Switzerland, did not conduct activity in New York that was sufficiently continuous, permanent, and substantial as to establish personal jurisdiction, under New York's long-arm statute, in judgment creditors' Racketeer Influenced and Corrupt Organizations Act (RICO) action; mother's maintenance of New York bank accounts was not sufficient to subject her to jurisdiction, and uncle allegedly made only seven or eight New York-related business transactions and eight business trips in a 20 year time period. First Capital Asset Management, Inc. v. Brickellbush, Inc., 2002, 218 F.Supp.2d 369, on reconsideration 219 F.Supp.2d 576, affirmed 385 F.3d 159. Federal Courts 86

Personal jurisdiction could not be exercised over estate of deceased South Carolina citizen based on presence, consent, or domicile, under New York's personal jurisdiction statute, when citizen resided in South Carolina his entire life, owned property there, and traveled to New York only a handful of times in last 40 years before his death. Shakour v. Federal Republic of Germany, 2002, 199 F.Supp.2d 8. Federal Courts 76.5

Nonresident truck driver, who was involved in motor vehicle accident in Illinois with New York residents, was not subject to personal jurisdiction in New York, in personal injury action brought by the residents, even though truck was owned by company that had expressly consented to personal jurisdiction in New York by designating an agent for service of process under the Motor Carrier Act; truck driver did not do business in New York as an individual. Brinkmann v. Adrian Carriers, Inc. (2 Dept. 2006) 29 A.D.3d 615, 815 N.Y.S.2d 196. Courts 13.6(6)

Nonresident subjected himself to jurisdiction within the state, even in action having no state nexus, by engaging in permanent employment within the state; nonresident's voluntary, continuous, self-benefiting activity within the state made it fair and reasonable for him to expect to be subject to state's jurisdiction. FCNB Spiegel Inc. v. Dimmick, 1994, 163 Misc.2d 152, 619 N.Y.S.2d 935. Courts 13.3(10)

Provisions of New York long-arm statute allowing for personal jurisdiction over those committing tortious acts within state or committing tortious acts outside state that cause injury within state applied to make nonresident corporation and its majority shareholder and employee stock ownership plan (ESOP) amenable to personal jurisdiction in New York in action in which acquisition company adequately alleged fraud by corporation, shareholder, and ESOP inside New York. AIH Acquisition Corp. LLC v. Alaska Industrial Hardware, Inc., 2003, 2003 WL 21511921, Unreported, vacated and remanded 105 Fed.Appx. 301, 2004 WL 1496864. Federal Courts 76.25; Federal Courts 84

15. Foreign corporations

Court had general jurisdiction over German bank based on its wholly-owned New York subsidiary, which was a "mere department" of German bank; both banks had common ownership, parent used subsidiary to gain "immediate access" to the New York markets, parent received and reported subsidiary's results on its financial statements, three out of five of subsidiary's Board of Directors were parent's employees, several members of parent's Board of Managing Directors also held executive positions within subsidiary, and parent controlled subsidiary's marketing and operational policies as shown by the fact that subsidiary could not make lending decisions without parent's approval. King County, Wash. v. IKB Deutsche Industriebank AG, 2010, 712 F.Supp.2d 104. Federal Courts 82; Federal Courts 86

Court may assert general personal jurisdiction over a foreign corporation under New York long-arm statute if foreign corporation has engaged in such a continuous and systematic course of doing business in New York that a finding of its presence in that jurisdiction is warranted. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Courts 13.4(3)

German brokerage's contacts with New York that arose after complaint against brokerage was filed were irrelevant to whether general personal jurisdiction existed over brokerage in tort action under New York's long-arm statute. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Federal Courts 86

Under New York choice of law rules, the law of New Jersey governed a purchase agreement between an Italian pasta manufacturer and its exclusive United States distributor; the distributor was incorporated and located in New Jersey, it kept at least some of the manufacturer's pasta in a New Jersey warehouse, from which it filled customer orders, and at least some of the pasta at issue was supposed to be shipped to the Port of New Jersey. Italverde Trading, Inc. v. Four Bills of Lading Numbered LRNNN 120950, LRNNN 122950, LRNN 123580, MSLNV 254064, 2007, 485 F.Supp.2d 187. Sales 55

District court lacked personal jurisdiction over claims brought by pension fund against Turkish corporations, alleging failure to pay assessed withdrawal liability under ERISA; corporations lacked contractual relationship with fund, and complaint lacked averments that corporations were doing business in New York or United States, or that they were derelict in any individual obligations to fund. Smit v. Isiklar Holding A.S., 2005, 354 F.Supp.2d 260. Labor And Employment 666

French corporation's acquisition of hotels from a subsidiary of United States entity, its joint venture with another

United States entity, and its partnerships with American corporations did not support an exercise of personal jurisdiction under New York's "general jurisdiction" provision, absent allegations of purposeful conduct in New York. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 86

Mere fact that French corporation owned or partially owned businesses that are registered to do business in New York did not subject it to general jurisdiction in New York. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 86

In a diversity suit, it is foreign defendant's contacts with the forum state, not with the United States as a whole, that are relevant to the personal jurisdiction inquiry; conduct directed toward the United States or toward the world generally cannot subject a defendant to personal jurisdiction in a particular state. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 86

French corporation's isolated and scattershot contacts with New York were not the substantial, continuous, and permanent contacts required to support jurisdiction under New York's "general jurisdiction" provision; while New York residents could benefit from corporations's affiliate program, loyalty programs, internet reservation system, and partnership with a United States airline, those benefits did not result from corporation's having reached into New York to solicit business there, but from the fact that access to those programs was available to anyone in the United States who sought them out. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 86

For purposes of establishing personal jurisdiction, activities of an Illinois-based organization could not support a finding that German corporate entities were doing business through an agent in New York. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 82; Federal Courts 86

A court of New York may assert jurisdiction over a foreign corporation when it affiliates itself with a New York representative entity and that New York representative renders services on behalf of the foreign corporation that go beyond mere solicitation and are sufficiently important to the foreign entity that the corporation itself would perform equivalent services if no agent were available. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 86

A corporate entity that is present in New York will be considered a mere department of a foreign parent, so as to expose the parent to personal jurisdiction in New York, only if the foreign parent's control is pervasive enough that the corporate separation is more formal than real. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Corporations And Business Organizations 1078(3)

Under New York's general jurisdiction statute, a foreign corporation is subject to jurisdiction in New York if it engages in systematic and continuous business in New York. Smith v. Circus-Circus Casinos, Inc., 2003, 304 F.Supp.2d 463. Courts 13.4(3)

Under New York law, a foreign corporation is subject to general personal jurisdiction in New York if it is doing

business in the state. Mende v. Milestone Technology, Inc., 2003, 269 F.Supp.2d 246. Federal Courts 79

Although warehousing and distribution services corporation and affiliate were part of family-owned business network, sharing address, phone number, website, promotional brochure, and corporate officers and directors, affiliate's activities in New York did not subject corporation to personal jurisdiction in New York, in personal injury suit arising from accident at corporation's warehouse in New Jersey, since corporation and affiliate provided different types of services, did not have either parent/subsidiary or agency relationship, and were not alter egos of one another. Parsons v. Kal Kan Food, Inc. (3 Dept. 2009) 68 A.D.3d 1501, 892 N.Y.S.2d 246. Courts 13.6(9)

So long as foreign corporation conducted local activity in state the injection of an intermediate fictional corporation for the conduct of such local activity would not deprive courts of jurisdiction over foreign corporation in suit by state resident against such foreign corporation. Kimberly Knitwear, Inc. v. Mid-West Pool Car Ass'n, 1959, 21 Misc.2d 730, 191 N.Y.S.2d 347. Courts 13.6(9)

16. Corporate officers

That a corporation's officer is doing business in his personal capacity in New York does not subject corporation itself to general personal jurisdiction under New York's long-arm statute. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Courts 13.6(1)

That corporate officer for German brokerage bought controlling stake in New York-based broker-dealer, in his individual capacity, and served as broker-dealer's officer in several capacities was irrelevant, standing alone, to determination of whether general personal jurisdiction existed over German brokerage under New York's long-arm statute at the time third-party complaint asserting, inter alia, tort and securities law claims against brokerage was filed. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Federal Courts 86

Under New York long-arm statute, individual defendant may be subject to specific personal jurisdiction based on his actions in his corporate capacity only when plaintiff can show that the corporation was acting as individual defendant's agent. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Courts 13.6(4)

Under New York long-arm statute, individual out-of-state corporate officers may be subject to jurisdiction in New York if it is established that the corporation is acting as their agent in the state; however, a corporation is not necessarily the agent of a corporate officer simply by virtue of the officer's position with the company. Mende v. Milestone Technology, Inc., 2003, 269 F.Supp.2d 246. Courts 13.6(4)

The party asserting jurisdiction over an individual out-of-state corporate officer based on claim that the corporation is acting as the officer's agent must establish that the corporation acted with the knowledge and consent of the officer and the officer must have exercised control over the corporation in the transaction. Mende v. Milestone Technology, Inc., 2003, 269 F.Supp.2d 246. Courts 13.6(4)

17. Agents

Alleged principals were not subject to personal jurisdiction of federal court sitting in New York, based on conduct of their alleged agent who negotiated finder's fee agreement with broker in New York; broker had relied solely upon his relationship with alleged agent, and had failed to identify or seek reassurance from any alleged principal. Reiss v. GAN S.A., 1999, 78 F.Supp.2d 147, vacated in part 235 F.3d 738, on remand 185 F.Supp.2d 335, on remand 246 F.Supp.2d 273, as amended. Federal Courts 76.20

18. Solicitation plus rule

Vermont private school was not subject to general jurisdiction in New York pursuant to "solicitation plus" doctrine in student's personal injury action, even though it offered its students bus service to New York, had $14 million invested with New York firms, and had New York bank account for purpose of receiving wire transfers, where school did not advertise on radio or on television in New York, visited New York only occasionally, held only three alumni-related events in New York annually, issued no bonds in New York, owned no real property in New York, and did not engage in any activities of substance in addition to solicitation, and maintenance of bank account in New York was only incidental to its business of educating students. Arroyo v. Mountain School (1 Dept. 2009) 68 A.D.3d 603, 892 N.Y.S.2d 74. Courts 13.5(4)

19. Time for judicial inquiry

Relevant time frame for jurisdictional inquiry under New York statute providing for general jurisdiction over corporations that are doing business in state is at time of filing of summons and complaint. Whitaker v. Fresno Telsat, Inc., 1999, 87 F.Supp.2d 227, affirmed 261 F.3d 196. Courts 13.4(3)

20. Immunity

Statutory immunity from suit in foreign state granted to national banking association is pre-eminent over jurisdiction and venue provisions of state. Sulil Realty Corp. v. Rye Motors, Inc., 1965, 45 Misc.2d 458, 257 N.Y.S.2d 111, affirmed 47 Misc.2d 715, 262 N.Y.S.2d 989. Banks And Banking 275

21. Habeas corpus

Attorney General of United States was appropriate custodian for petitioner's habeas action and could be reached by service under New York law, where she could direct her subordinates to carry out any order directed to her to produce or release petitioner. Mojica v. Reno, 1997, 970 F.Supp. 130, affirmed in part , dismissed in part 157 F.3d 106, certiorari denied 119 S.Ct. 1141, 526 U.S. 1004, 143 L.Ed.2d 209, question certified 172 F.3d 39, certified question denied 92 N.Y.2d 455, 682 N.Y.S.2d 663, 705 N.E.2d 655, opinion after certified question declined 175 F.3d 287. Habeas Corpus 662.1; Habeas Corpus 677

22. Property within state

Ownership and sale of one piece of New York real estate did not constitute "business" as would support exercise of personal jurisdiction over owner of real estate, who was a citizen and resident of Switzerland, under New

York's long-arm statute, in a judgment creditors' action against the owner, who was the mother of judgment debtor and who had allegedly conspired with debtor to avoid payment of debt, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO) and New York law. First Capital Asset Management, Inc. v. Brickellbush, Inc., 2002, 218 F.Supp.2d 369, on reconsideration 219 F.Supp.2d 576, affirmed 385 F.3d 159. Federal Courts 86

Jurisdiction over person of foreign corporation cannot be obtained by serving officer thereof without the state, but jurisdiction may be obtained over res within the state attached or sequestered, provided foreign corporation is given sufficient notice by service out of the state or other process so that it may defend its title to such property. Howard Converters v. French Art Mills, 1937, 273 N.Y. 238, 7 N.E.2d 115. Corporations And Business Organizations 3279

Courts of state had jurisdiction over person as to foreign corporation which was qualified to do business in state and which owned real property in state. Adriana Development Corp. N.V. v. Gaspar (1 Dept. 1981) 81 A.D.2d 235, 439 N.Y.S.2d 927. Courts 13.4(3)

Liability insurance policies of nonresident retail store corporation which sold golf practice device and nonresident host in whose yard infant plaintiff was guest at time infant was injured by device, which were attached in New York, were not at heart of infant's cause of action in negligence but were related to action only as source of satisfaction of any potential judgment, and no other contacts existed between insurer and litigation or defendants, and thus New York had no constitutional basis for exercising in rem jurisdiction over insurance policies of defendants. Wallace v. Target Store, Inc., 1977, 92 Misc.2d 454, 400 N.Y.S.2d 478. Courts 21

In action for damages for wrongful deaths of five persons who were killed in an automobile accident which occurred in state of Alabama, in rem jurisdiction over nonresident defendants was properly obtained by liability insurance policy issued by insurer to one defendant and by service of summons and verified complaint by certified mail. Menefee v. Floyd & Beasley Transp. Co., Inc., 1975, 84 Misc.2d 547, 378 N.Y.S.2d 555. Automobiles 235; Courts 21

If any property belonging to a defendant is within state, such property may be levied upon pursuant to an order of attachment, and the property so levied upon is then deemed a res within the state permitting court to adjudicate whether debt claimed by plaintiff should be satisfied out of attached property. Jones v. McNeill, 1966, 51 Misc.2d 527, 273 N.Y.S.2d 517. Judgment 17(11)

Mere presence of assets of estate within State of New York would not of itself warrant assumption by New York court of jurisdiction of dispute among foreign coexecutors as to qualification, or lack thereof, under Banking Law § 131, of one of them, a bank licensed to do business only in Connecticut, to act in New York with respect to assets there located; and where it appeared that dispute could be determined as readily in State of Connecticut, whose courts were source of authority of all of parties to action, New York court would decline to exercise its discretion to take jurisdiction. Ray v. Fairfield County Trust Co., 1959, 18 Misc.2d 808, 186 N.Y.S.2d 347. Executors And Administrators 525

Judgment in rem is not personally binding on party over whose person jurisdiction was not obtained, but is conclusive only as to involved property within court's jurisdiction and may be controverted as to all grounds and incidental facts on which founded. Fromm v. Glueck, 1937, 161 Misc. 502, 293 N.Y.S. 530. Judgment 812(3)

State courts cannot entertain jurisdiction in actions against foreign corporations unless they are doing business in state, property belonging to them has been attached, or unless action involves realty in state. Kohn v. Wilkes-Barre Dry Goods Co., 1930, 139 Misc. 116, 246 N.Y.S. 425. Courts 13.4(3)

Where foreign corporation holding stock of New York corporation ceased to do business in state and was dissolved, and officers of foreign and New York corporation transferred all of its assets to another corporation under contract alleged to be in fraud of stockholders of foreign and New York corporation, and stockholders demanded of its corporation, that it bring action for restoration of assets, foreign and New York corporations were in fact parties plaintiff, and their properties in dispute were in fact properties of New York corporation conducting business for foreign corporation, and properties could be controlled by courts; and hence courts had jurisdiction over foreign corporation in stockholder's action to compel return of assets, especially where presence of foreign corporation as formal party defendant was necessary to accomplishment of justice. Guggenheimer v. Beaver Bd. Cos., 1930, 136 Misc. 511, 240 N.Y.S. 15.

23. Pleadings

New York owner of trademarks related to owner's beauty pageant business alleged sufficient facts for prima facie showing of personal jurisdiction over alleged trademark infringers, under New York's long-arm statute and Due Process Clause, in owner's lawsuit asserting Lanham Act claims; alleged infringers knowingly and purposefully reached into New York, primarily through interactive website, and their allegedly tortious acts caused injury to trademark owner within New York, as alleged infringers' website targeted residents of all states including New York to become contestants in rival national beauty pageants, and website allowed users to establish online account, contact alleged infringer, download documents, and make online purchases of products with allegedly infringing trademarks throughout nation including any New Yorker with Internet connection. Mrs. U.S. Nat. Pageant, Inc. v. Miss U.S. Organization, LLC, 2012, 875 F.Supp.2d 211. Trademarks 1560

Plaintiff failed to allege sufficient information regarding foreign company affiliated with leading diamond industry company alleged to have unlawfully restrained trade, as would warrant jurisdictional discovery; plaintiff's allegations suggested foreign company was sister company, rather than parent company, to other entities related to leading company. Tese-Milner v. De Beers Centenary A.G., 2009, 613 F.Supp.2d 404. Federal Civil Procedure 1275.5

24. Burden of proof

Plaintiff made a substantial start towards showing that entities affiliated with leading company in diamond industry were agents or departments of company, as required to support grant of jurisdictional discovery in action alleging unlawful restraint on trade; plaintiff introduced evidence that company described itself as an “integrated company” and admitted that sale and marketing of diamonds were connected to production and manufacturing

of diamonds within corporate structure, and plaintiff alleged that foreign entities had gone to great lengths to hide the extent of their contacts with United States. Tese-Milner v. De Beers Centenary A.G., 2009, 613 F.Supp.2d 404. Federal Civil Procedure 1275.5

Plaintiff failed to make prima facie showing that leading company in diamond industry was subject to personal jurisdiction under New York general jurisdiction statute based on presence there of related business entities; allegations failed to show that related entities were either agent or department of company, as required under statute. Tese-Milner v. De Beers Centenary A.G., 2009, 613 F.Supp.2d 404. Federal Courts 94

Tennis umpires made a sufficient start toward establishing personal jurisdiction over worldwide governing body for tennis, under New York statutes providing for jurisdiction over a defendant engaged in a continuous and systematic course of doing business in New York, or transacting business within New York, to warrant discovery on issue of personal jurisdiction, where umpires alleged that governing body sanctioned tennis matches held annually in New York and employed tennis umpires for those matches, and there was a substantial nexus between umpires' claims of discrimination and business governing body transacted in New York. Hollins v. U.S. Tennis Ass'n, 2006, 469 F.Supp.2d 67. Federal Civil Procedure 1275.5; Federal Courts 96

Under this section, plaintiff has burden of proving that defendant's activities meet the “doing business in state” threshold for assertion of personal jurisdiction over defendant under statute providing that a court may exercise such jurisdiction over persons, property or status as it might have exercised heretofore. Bialek v. Racal-Milgo, Inc., 1982, 545 F.Supp. 25. See, also, ICC Handels, A.G. v. S.S. Seabird, D.C.N.Y.1982, 544 F.Supp. 58; Charles Abel, Ltd. v. School Pictures, Inc., 1972, 40 A.D.2d 944, 339 N.Y.S.2d 242. Federal Courts 76.15

Burden of proving jurisdiction is upon the party asserting it. Preferred Elec. & Wire Corp. v. Duracraft Products, Inc. (2 Dept. 1985) 114 A.D.2d 407, 494 N.Y.S.2d 131. Courts 35

Burden of proving jurisdiction is upon party asserting it, and when challenged, that party must sustain burden of preponderance of evidence. Green Point Savings Bank v. Taylor (2 Dept. 1983) 92 A.D.2d 910, 460 N.Y.S.2d 121. See, also, Pneuma-Flo Systems, Inc. v. Universal Machinery Corp., D.C.N.Y.1978, 454 F.Supp. 858. Courts 35

Massachusetts corporation was not required to come forward with evidence contrary to plaintiff's generalization that corporation's employees often entered New York for business purposes on theory that corporation had sole possession of necessary information where plaintiff asserted that he was “aware” of facts on which he sought to base jurisdiction. Ring Sales Co. v. Wakefield Engineering, Inc. (2 Dept. 1982) 90 A.D.2d 496, 454 N.Y.S.2d 745. Corporations And Business Organizations 3293

Although presumptive effect of judgment sued on was overcome by defendant's denial that it was properly served and that it was a resident of, or engaged in doing business in, state in which judgment was rendered, burden of proof of want of jurisdiction still rested with defendant. Brittain v. Boston Pneumatic, Inc., 1974, 78

Misc.2d 511, 355 N.Y.S.2d 45. Judgment 942

25. Service of process

District Court for the Southern District of New York had personal jurisdiction over District Director of the Bureau of Immigration and Customs Enforcement (BICE) Buffalo Field Office, for purposes of alien's petition for habeas corpus relief, since Buffalo District Director was present within, and amenable to service of process in, state of New York. Diallo v. Holmes, 2003, 288 F.Supp.2d 442. Habeas Corpus 639

In case of foreign corporation or partnership found to be doing business in New York by virtue of activities of its local agent, proper service of process on that agent is considered valid service on foreign defendant. Shaheen Sports, Inc. v. Asia Ins. Co., Ltd., 2000, 89 F.Supp.2d 500. Corporations And Business Organizations 3266(3); Partnership 204

Service of process cannot by itself vest a court with jurisdiction over a non-domiciliary served outside State, however flawless that service may be. Keane v. Kamin, 1999, 94 N.Y.2d 263, 701 N.Y.S.2d 698, 723 N.E.2d 553. Process 68

Service of summonses upon corporation's driver was sufficient to obtain personal jurisdiction over corporation in action for alleged violations of New York City Traffic Rules and Regulations governing overweight vehicles. Isabella City Carting Corp. v. Martinez (1 Dept. 2005) 15 A.D.3d 281, 789 N.Y.S.2d 494. Corporations And Business Organizations 2544(4)

In personal injury action in which defendants were never served with process, mailing of plaintiffs' notice of motion and supporting papers was insufficient to acquire jurisdiction over defendants, and therefore trial court erred in considering merits of plaintiffs' motion to enforce purported settlement and in entering judgment against defendants. Dallemand v. Sun Co., Inc. (2 Dept. 2002) 300 A.D.2d 274, 751 N.Y.S.2d 505. Compromise And Settlement 21; Judgment 17(2); Process 64

Valid service of process, by itself, does not suffice to establish personal jurisdiction over a foreign corporation. Holness v. Maritime Overseas Corp. (1 Dept. 1998) 251 A.D.2d 220, 676 N.Y.S.2d 540. Corporations And Business Organizations 3263

Cause of action in favor of lodger in house leased by nonresident owners to a tenant, for injuries sustained as a result of fire allegedly caused by owners' negligence, was one “arising out of business” of the owners, within former C.P.A. § 229-b relating to service of summons on nonresidents doing business in the state in any action arising out of such business, since it was an incident of ownership, operation, and management of owners' realty that lodger was injured. Miller v. Swann, 1941, 176 Misc. 607, 28 N.Y.S.2d 247. Process 71

26. Waiver

Argument that defendants had been “doing business” in New York, for purposes of personal jurisdiction inquiry, would be considered waived, where plaintiffs failed to address the ground for jurisdiction in memorandum of law on motion to dismiss for lack of personal jurisdiction. First Capital Asset Management, Inc. v. Brickellbush, Inc., 2002, 218 F.Supp.2d 369, on reconsideration 219 F.Supp.2d 576, affirmed 385 F.3d 159. Federal Courts 95

By failing to contend that there was no personal jurisdiction over the corporate defendants in their cross-motion to dismiss plaintiff's breach of contract action on the ground of lack of personal jurisdiction, individual defendants waived their challenge to whether the corporate defendants were subject to personal jurisdiction. Klein v. Educational Loan Servicing, LLC (2 Dept. 2010) 71 A.D.3d 957, 897 N.Y.S.2d 220. Courts 37(1)

Corporation's jurisdictional objections were waived when corporation appeared and challenged the charges against it at administrative hearing alleging violation of New York City Traffic Rules and Regulations governing overweight vehicles. Isabella City Carting Corp. v. Martinez (1 Dept. 2005) 15 A.D.3d 281, 789 N.Y.S.2d 494. Automobiles 15

Defendant who was substituted in amended complaint for defendant initially named as “John Doe” submitted to court's jurisdiction, and waived any objection that court was without personal jurisdiction over it, by opposing plaintiff's summary judgment motion in its own name, and failing to raise any jurisdictional objection prior to post-judgment motion. ICD Group Intern. Ltd. v. Achidov (1 Dept. 2001) 284 A.D.2d 244, 726 N.Y.S.2d 654. Courts 37(3)

27. Review

Federal district court in New York did not have specific personal jurisdiction over Texas corporation under “doing business” provision of New York's long-arm statute in patent infringement lawsuit, where corporation did not maintain New York office, it did not have agents in New York, it did not have any employees in New York, and it did not maintain any New York bank accounts; although alleged infringing product was offered for sale in New York stores and corporation solicited sales via its website, solicitation did not amount to conducting business in manner that was substantial and continuous while engaging in other substantive activities in state. Stephan v. Babysport, LLC, 2007, 499 F.Supp.2d 279. Patents 288(4)

Federal district court sitting in New York had in personam jurisdiction over British accounting partnership, for purposes of enforcing third party subpoena requiring designation of persons to give deposition testimony in suit brought by victims of worldwide banking fraud; British partnership would be deemed to have done business in New York, as its affiliated New York accounting partnership had performed auditing of local branch of bank committing fraud, under close supervision of British partnership, and British partnership would have had to establish New York office to perform auditing function as part of its responsibilities as lead auditor of bank. Price Waterhouse LLP v. First American Corp., 1998, 182 F.R.D. 56. Federal Courts 86

Finding by trial term that foreign corporate sales agency's activities in state were “systematic, regular and continuous,” having been affirmed by Appellate Division, was beyond review of Court of Appeals unless there was

no support for it in record. Laufer v. Ostrow, 1982, 55 N.Y.2d 305, 449 N.Y.S.2d 456, 434 N.E.2d 692. Appeal And Error 1094(2)

Court of Appeals with not ordinarily interfere with Appellate Division's exercise of discretion as to whether to entertain suit between nonresident parties on cause of action having no nexus with the state unless there has been an abuse of discretion as a matter of law, and where Appellate Division in exercising its discretion as to whether to entertain suit between nonresident parties on a cause of action having no nexus with the state fails to take into account all various factors entitled to consideration, Appellate Division commits error of law reviewable by Court of Appeals. Varkonyi v. S. A. Empresa De Viacao Airea Rio Grandense (Varig), 1968, 22 N.Y.2d 333, 292 N.Y.S.2d 670, 239 N.E.2d 542, reargument denied 22 N.Y.2d 972, 295 N.Y.S.2d 1032, 242 N.E.2d 498, reargument denied 22 N.Y.2d 973, 295 N.Y.S.2d 1032, 242 N.E.2d 498, reargument denied 22 N.Y.2d 973, 295 N.Y.S.2d 1033, 242 N.E.2d 499.

In product liability action, issue of whether special term could exercise personal jurisdiction over defendant distributor on basis of rule listing acts which warrant exercise of jurisdiction over nondomiciliary was not properly before Appellate Division, where plaintiff failed to assert, as jurisdictional basis, any transactions by distributor warranting exercise of jurisdiction and failed to object when issue was limited at traverse hearing to whether distributor was doing business in New York. Orellano v. Samples Tire Equipment and Supply Corp. (2 Dept. 1985) 110 A.D.2d 757, 488 N.Y.S.2d 211. Appeal And Error 185(1)

Court had jurisdiction over a foreign corporation by service of process on sole person in charge of its office in New York, where orders were taken and transmitted to it at its principal place of business in another state, though the contracts of sale had to be approved at the principal place of business and remittances were made direct. Hall v. Weil-Kalter Mfg. Co. (1 Dept. 1922) 199 A.D. 592, 191 N.Y.S. 884. Corporations And Business Organizations 3266(1)

Automobile insurer was not required to appeal arbitrator's decision to master arbitrator before commencing judicial proceeding to vacate uninsured/underinsured motorist arbitration award for lack of jurisdiction; insurer was not required to exhaust procedural remedies of a forum that it should not have been in to begin with. American Independent Ins. v. Heights Chiropractic Care, P.C., 2006, 12 Misc.3d 228, 811 N.Y.S.2d 904. Insurance 3328

New York court had no jurisdiction of accounting firm's suit for services which were only incidentally performed in connection with a loan made in New York, but which loan was not connected with the instant lawsuit, the substantial part of which involved claim for regularly performed accounting services performed in Pennsylvania pursuant to retainer entered into in Pennsylvania. Kornbluh, Sirkin, Ritter & Co. v. Keith Enterprises Inc., 1966, 51 Misc.2d 1053, 275 N.Y.S.2d 37. Courts 13.5(11)

Federal district court sitting in New York could not assert personal jurisdiction over nonresident corporation under New York's “doing business” jurisdictional statute, given absence of allegations that corporation maintained New York office, had property or telephone listing in state, conducted public relations work in state, or had individuals located in state to promote its interests, and given that plaintiff's sole jurisdictional allegation, that cor-

poration licensed rights under its patents in New York, the United States, and the world, did not suggest that corporation conducted business in New York on systematic and continuous basis. Pieczenik v. Cambridge Antibody Technology Group, 2004, 2004 WL 527045, Unreported. Federal Courts 76.35

Federal district court did not have general personal jurisdiction in breach of contract action over out of state talent scout, on allegations by modeling agency that its representatives traveled to New York twice a year seeking new or potential business, its website indicated that talent scout had office in the United States, and it released funds to New York bank account maintained by unrelated entity. Madison Models, Inc. v. Casta, 2003, 2003 WL 21978628, Unreported. Federal Courts 76.30; Federal Courts 94

Court had personal jurisdiction over patent holder who was located in Minnesota, in action brought by competitor in New York seeking declaration that certain patents owned by patent holder were invalid and unenforceable; although patent holder did not have any offices, employees, assets, or telephone listings in New York, it was extensively engaged in enforcing and licensing its patents in New York, which was its primary business activity. Ivoclar Vivadent, Inc. v. Hasel, 2003, 2003 WL 21730520, Unreported. Federal Courts 76.35

Federal district court sitting in New York lacked personal jurisdiction over Austrian power utility in personal injury suit, under state long-arm statute conferring jurisdiction over nonresident defendants doing business in state, by virtue of capital raising lease and lease back arrangements, involving power plants, which were closed in New York and involved New York financial and legal personnel. In re Ski Train Fire in Kaprun, Austria on November 11, 2000, 2003, 2003 WL 1807148, Unreported, motion to certify denied 2005 WL 1523508. Federal Courts 86

II. DOING BUSINESS WITHIN STATE

<Subdivision Index>

51. Factors considered, doing business within state--In general

Even accepting as true contractor's allegation that the entities related to entity which hired contractor operated in reality as a single entity, contractor failed to make out a prima facie case of general jurisdiction under New York long-arm statute because none of the entities, alone or in tandem, was doing business in New York when the complaint was filed; none of the entities was or had ever been headquartered in New York, incorporated in New York, maintained an office or bank account in New York, or had any employees who worked in New York, neither entity's stock listing on a New York exchange, nor other alleged ancillary steps in support of entity's listing were sufficient to confer personal jurisdiction over entity or the related entities, and one entity's business relationship with a New York entity did not provide a sufficient basis for jurisdiction at least in the absence of a showing that company had become an agent or division of the entity over which contractor sought to exercise personal jurisdiction. Hunter v. Deutsche Lufthansa AG, 2012, 863 F.Supp.2d 190. Federal Courts 82; Federal Courts 86

Under New York law, an individual cannot be subject to general jurisdiction, as basis for personal jurisdiction, unless he is doing business in New York on his own behalf rather than on behalf of a corporation. RSM Production Corp. v. Fridman, 2009, 643 F.Supp.2d 382, affirmed 387 Fed.Appx. 72, 2010 WL 2838582. Courts 13.6(4)

Under New York law, businessman was not “doing business” in state, for purposes of assertion of personal jurisdiction in federal diversity suit for breach of oral agreement, by reason of his isolated and sporadic activities in sending billing statements to, and having telephone conversations with, one of the plaintiffs in New York, receiving funds from the plaintiffs and their limited liability companies, and sending two e-mails to one of the plaintiffs. Patel v. Patel, 2007, 497 F.Supp.2d 419. Federal Courts 76.30

Under New York law, any contacts that separately incorporated New York company had with Connecticut former employer could not be considered by district court, in former employee's action for breach of contract and other claims, in determining whether district court had personal jurisdiction over the former employer in New York; however, court would consider the work done by the employee on behalf of the employer in connection with the New York company prior to the company's separate incorporation, given that some of employee's claims allegedly arose from that work. Daou v. Early Advantage, LLC, 2006, 410 F.Supp.2d 82. Federal Courts

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Whether a corporation's contacts are “continuous and systematic” under New York law for jurisdictional purposes, courts typically focus on factors such as: whether the company has an office in the state, whether it has any bank accounts or other property in the state, whether it has a phone listing in the state, whether it does public relations work there, and whether it has individuals permanently located in the state to promote its interests. Erne Shipping Inc. v. HBC Hamburg Bulk Carriers GmbH & Co. KG, 2006, 409 F.Supp.2d 427. Courts 13.4(3)

Factors considered in assessing jurisdiction under New York's general jurisdiction statute include: existence of an office in New York, solicitation of business in New York, the presence of bank accounts or other property in New York, and the presence of employees or agents in New York. Burrows Paper Corp. v. R.G. Engineering, Inc., 2005, 363 F.Supp.2d 379. Courts 13.3(7); Courts 13.3(11); Courts 13.6(1)

In action initially brought in state court by film producer, stemming from failed film projects, producer failed to allege that non-domiciliary actor was “doing business” in state, as required to establish personal jurisdiction over action under New York law, since actor was not “present” in state at time action was commenced; even though actor allegedly remained liable on mortgage secured by properties within state, and was alleged to have held shares in New York production company, negotiated film contract in New York, attended meetings in New York to secure funding for films, maintained website from which New York residents purchased various products, and possessed New York gun permit, such actions would not have been sufficient to establish necessary “presence” for doing business in state. Nasso v. Seagal, 2003, 263 F.Supp.2d 596. Federal Courts 94

In determining whether the defendant in a civil action has transacted business in New York within the meaning of New York's long-arm statute, courts look to the totality of circumstances; such circumstances include, but are not limited to: (1) whether the defendant has an ongoing contractual relationship with a New York corporation; (2) whether the contract was negotiated or executed in New York; (3) what the choice of law clause is in the contract; and (4) whether the contract requires notices and payments to be sent into the forum state or requires supervision by the corporation in the forum state. Roper Starch Worldwide, Inc. v. Reymer & Associates, Inc., 1998, 2 F.Supp.2d 470. Courts 13.3(11)

Under this section that court may exercise such jurisdiction over persons, property or status as might have been exercised theretofore, test of jurisdiction is whether aggregate of corporation's activities in state is such that corporation may be said to be present in state not occasionally or casually but with fair measure of permanence and continuity and whether quality and nature of corporation's contacts with state are sufficient to make it reasonable and just according to traditional notions of fair play and substantial justice that it be required to defend action in the state. Diskin v. Starck, 1982, 538 F.Supp. 877. Courts 13.4(3)

“Doing business” determination for jurisdictional purposes is unique to each case, requiring careful consideration of all facts and circumstances without relying too heavily on any one factor. Katz Agency, Inc. v. Evening News Ass'n, 1981, 514 F.Supp. 423, affirmed 705 F.2d 20. Federal Courts 97

Where Massachusetts corporation's only place of business was in Massachusetts and it did not transact business in New York, it never owned any New York realty, and had no subsidiaries, affiliates or agents which regularly transacted business in New York, it was not subject to jurisdiction of New York courts, in action by New York patent counsel to collect fee, under this section providing that "A court may exercise such jurisdiction over persons, property or status as might have been exercised" prior to the effective date of this chapter. Amins v. Life Support Medical Equipment Corp., 1974, 373 F.Supp. 654. Federal Courts 79

Federal district court sitting in New York had personal jurisdiction over corporation, in suit alleging breach of contract and fraud, under long-arm statute and consistent with due process, when corporation admitted both presence and doing business in state on its letterhead and Internet website. Regency Capital, LLC v. Corpfinance Intern., Inc., 2003, 2003 WL 22400200, Unreported. Constitutional Law 3965(3); Federal Courts 79

52. ---- Foreign corporations, factors considered, doing business within state

Contractor was not entitled to leave to amend complaint to add Dubai corporation as a defendant in action against related entities arising from his agreement to provide airport security in Iraq because such amendment would be futile due to lack of personal jurisdiction; there was no allegation that Dubai corporation had any contacts with New York or alternatively that there was any basis upon which to exercise specific jurisdiction. Hunter v. Deutsche Lufthansa AG, 2012, 863 F.Supp.2d 190. Federal Civil Procedure 392

Non-domiciliary defendant company was not subject to general jurisdiction under New York's long-arm statute, where company did not maintain an office in New York, did not conduct solicitations of business in New York, and did not have any employees or agents in New York, or have an on-going contractual relationship with a New York corporation. A.W.L.I. Group, Inc. v. Amber Freight Shipping Lines, 2011, 828 F.Supp.2d 557. Courts 13.3(11)

Under test to determine whether foreign corporation is doing business in New York, as required for general personal jurisdiction under New York's long-arm statute, court must be able to say from the facts that corporation is present in the state not occasionally or casually, but with a fair measure of permanence and continuity. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Courts 13.4(3)

The traditional factors that courts consider under New York's general personal jurisdiction statute when undertaking the analysis of whether a foreign corporation is "doing business" in the New York are whether the company has an office in the state, whether it has any bank accounts or other property in the state, whether it has a phone listing in the state, whether it does public relations work there, and whether it has individuals permanently located in the state to promote its interests. The Rockefeller Univ. v. Ligand Pharmaceuticals, 2008, 581 F.Supp.2d 461. Courts 13.4(3)

Foreign corporation is "doing business" in New York, for purposes of general jurisdiction, when its New York representative provides services beyond mere solicitation, and services are sufficiently important to foreign corporation that, if it did not have representative to perform them, corporation's own officials would undertake to perform substantially similar activities. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293.

Courts 13.6(1)

Swiss company was not "doing business" in New York within the meaning of New York long-arm statute; company did not conduct business in New York, did not have an office, a plant or other center of business, a registered agent for service of process, a bank account, a post office box, or a phone listing in New York nor did company maintain property in New York or pay New York state taxes or franchise fees. and company never commenced a law suit in New York and did not have persons or entities in New York that controlled its activities. Stutts v. De Dietrich Group, 2006, 465 F.Supp.2d 156. Federal Courts 86

Under New York law, the test for determining personal jurisdiction based upon doing business in the state, though not precise, is a simple pragmatic one, asking whether the aggregate of the foreign corporation's activities in the state is such that it may be said to be "present" in the state not occasionally or casually, but with a fair measure of permanence and continuity, and whether the quality and nature of the corporation's contacts with the state are sufficient to make it reasonable and just according to traditional notions of fair play and substantial justice that it be required to defend the action there. Daou v. Early Advantage, LLC, 2006, 410 F.Supp.2d 82. Courts 13.4(3)

Doing business standard under New York law for exercising personal jurisdiction over foreign corporations is a stringent one because a corporation which is amenable to the court's general jurisdiction may be sued in New York on causes of action wholly unrelated to acts done in New York. Mones v. Commercial Bank of Kuwait, S.A.K., 2005, 399 F.Supp.2d 310, reconsideration denied 399 F.Supp.2d 412, vacated and remanded 204 Fed.Appx. 988, 2006 WL 3308202, on remand 502 F.Supp.2d 363. Federal Courts 79

Under New York law, the traditional indicia that courts rely upon in deciding whether a foreign corporation is doing business in New York, for purposes of asserting personal jurisdiction over the corporation, include: (1) the existence of an office in New York; (2) the solicitation of business in New York; (3) the existence of bank accounts or other property in New York; and (4) the presence of employees in New York. Mende v. Milestone Technology, Inc., 2003, 269 F.Supp.2d 246. Federal Courts 79

Court did not have general jurisdiction over foreign corporations under New York law governing corporations "doing business" in the state, in diversity case brought by limited partner against corporations, where corporations did not have New York offices, did not solicit business in New York, did not have a bank account or property in the state, and did not have employees or agents in the state. JN Realty LLC v. Estate of Marvin, 2003, 268 F.Supp.2d 231. Federal Courts 79; Federal Courts 81; Federal Courts 82

In determining personal jurisdiction over a foreign corporation, New York courts have generally focused on the following factors: the existence of an office in New York; the solicitation of business in New York; the presence of bank accounts or other property in New York; and the presence of employees or agents in New York. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544.

Factors to be considered in determining whether foreign corporation is subject to personal jurisdiction in courts

of New York include: (1) existence of an office in New York; (2) solicitation of business in New York; (3) presence of bank accounts or other property in New York; and (4) presence of employees or agents in New York. Yurman Designs, Inc. v. A.R. Morris Jewelers, L.L.C., 1999, 41 F.Supp.2d 453, reconsideration denied 60 F.Supp.2d 241. Courts 13.4(3); Courts 13.6(1)

Important factors to consider in determining whether foreign corporation is "doing business" in New York, so that personal jurisdiction may be exercised over foreign corporation, are whether corporation has office in state, whether it has bank account or property in state, whether it has employees working it state, and whether it or its agents solicit business in state. Central Gulf Lines, Inc. v. Cooper/T. Smith, Stevedoring, 1987, 664 F.Supp. 127 . Federal Courts 97

Court must look to cumulative significance of all activities of a foreign corporation within state in order to determine whether corporation is doing business within state for jurisdictional purposes under New York statute. Potter's Photographic Applications Co. v. Ealing Corp., 1968, 292 F.Supp. 92. Federal Courts 79

What constitutes doing business which will render foreign corporation amenable to process is not susceptible of precise measurement but each case must be decided on its own facts, having in mind nature of action or proceeding involved. La Belle Creole Intern., S. A. v. Attorney-General, 1961, 10 N.Y.2d 192, 219 N.Y.S.2d 1, 176 N.E.2d 705, reargument denied 10 N.Y.2d 1011, 224 N.Y.S.2d 1025, 180 N.E.2d 272. See, also, Ally & Gargano, Inc. v. Comprehensive Accounting Corp., D.C.N.Y.1985, 603 F.Supp. 923; Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa, D.C.N.Y.1977, 428 F.Supp. 1237. Corporations And Business Organizations 3202

In determining whether foreign corporation is amenable to suit in New York courts under New York's general jurisdiction statute, essential factual inquiry is whether corporation has a permanent and continuous presence in the state, as opposed to merely occasional or casual contact with the state. Holness v. Maritime Overseas Corp. (1 Dept. 1998) 251 A.D.2d 220, 676 N.Y.S.2d 540. Courts 13.4(3)

Contacts of New Jersey-based partnership with New York were sufficient to establish a presence in New York for purposes of New York court's jurisdiction over partnership and its members in civil action, where partnership had relatively stable continuing client base in New York both before and after its move to New Jersey, where partnership used attorney's office in Manhattan as conference room, where it was involved several years earlier in New York litigation on behalf of New York client, and where one of defendants resided in New York. Spirgel v. Henry H. Ackerman & Co. (1 Dept. 1995) 221 A.D.2d 167, 633 N.Y.S.2d 144. Courts 13.4(6)

53. Test for doing business, doing business within state

Where presence of foreign corporation is at issue, New York courts apply "doing business" test to satisfy rule that court may exercise such jurisdiction over persons, property or status as it might have exercised before enactment of this section. Saraceno v. S. C. Johnson and Son, Inc., 1979, 83 F.R.D. 65. See, also, Marantis v. Dolphin Aviation, Inc., D.C.N.Y.1978, 453 F.Supp. 803; Lumbermens Mut. Cas. Co. v. Borden Co., D.C.N.Y.1967, 265 F.Supp. 99. Courts 13.4(3)

Test for “doing business” to permit personal jurisdiction of foreign corporation should be simple pragmatic one. Bryant v. Finnish Nat. Airline, 1965, 15 N.Y.2d 426, 260 N.Y.S.2d 625, 208 N.E.2d 439. See, also, Hoffritz for Cutlery, Inc. v. Amajac, Ltd., C.A.2 (N.Y.) 1985, 763 F.2d 55; Carbone v. Fort Erie Jockey Club, Ltd., 1975, 47 A.D.2d 337, 366 N.Y.S.2d 485; W. Lowenthal Co. v. Colonial Woolen Mills, Inc., 1972, 38 A.D.2d 775, 327 N.Y.S.2d 899. Courts 13.4(3)

The “doing business” test used to determine whether court has jurisdiction over foreign defendant requires a finding that a foreign corporation has presence in the state. McNellis v. American Box Bd. Co., 1967, 53 Misc.2d 479, 278 N.Y.S.2d 771. Courts 13.4(3)

Holding of interviews with prospective students or their parents, by a foreign corporation which maintained a school in a sister state, did not constitute “doing business” in the state, sufficient to render it subject to service of process in the state. Kane v. Stockbridge School, 1962, 33 Misc.2d 103, 228 N.Y.S.2d 904. Corporations And Business Organizations 3271

54. Contacts with state, generally, doing business within state

Only those activities not conducted in furtherance of Palestine Liberation Organization's status as permanent observer at United Nations could properly be considered as a basis for jurisdiction under “doing business” section of New York long-arm statute. Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria, C.A.2 (N.Y.)1991, 937 F.2d 44, on remand 795 F.Supp. 112. Federal Courts 86

Under New York law, German corporation was not subject to general personal jurisdiction in New York as result of its investments in New York-based equity funds, occasional visits by its officers, and its maintenance of website that could market funds to New Yorkers, where none of its investors were in New York. NewMarkets Partners LLC v. Oppenheim, 2009, 638 F.Supp.2d 394, reconsideration denied 2009 WL 3631030. Federal Courts 86

German corporation's alleged contacts with the state of New York were sufficient to confer personal jurisdiction over the corporation under New York's long-arm statute, which subjects a foreign corporation to general jurisdiction if it is doing business in the state, in negligence and strict liability action brought by survivors of Americans killed in ski train accident in Austria, even though each of the alleged contacts would not, itself, confer such jurisdiction, where it had employees in New York, its stock was traded on New York Stock Exchange (NYSE), it had an account with a New York bank, it conducted sales in New York over the internet, it used New York law firm on regular basis to register patents and trademarks, and had sued in New York. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376.

Personal jurisdiction did not exist over estate of deceased South Carolina citizen under “doing business” aspect of New York's personal jurisdiction statute when neither citizen nor his corporation had any regular or incidental contact with New York. Shakour v. Federal Republic of Germany, 2002, 199 F.Supp.2d 8. Federal Courts 76.15

English based companies were not doing business in State of New York, for jurisdictional purposes in suit alleging copyright, reverse palming off and antitrust violations in connection with appropriation of facial makeup designs used in musical play, when only allegations of involvement were claims that their names appeared in lists of producers or licensors of allegedly infringing products. Carell v. Shubert Organization, Inc., 2000, 104 F.Supp.2d 236, 55 U.S.P.Q.2d 1454. Antitrust And Trade Regulation 969; Copyrights And Intellectual Property 79; Trademarks 1558

Indiana non-profit corporation was not "doing business" in New York, as would render it subject to personal jurisdiction there under state's long-arm statute; corporation was not registered within New York as a foreign corporation and was not authorized to do business within New York, and corporation did not supply any goods or services to any New York resident or corporation, purchase any goods from a New York vendor or supplier, or derive identifiable income or revenue from any entity in New York. Anderson v. Indiana Black Expo, Inc., 2000, 81 F.Supp.2d 494. Federal Courts 79

Under New York law, widow of individual who died from asbestos-related illness could not establish that Canadian manufacturer of asbestos products was doing business in New York, as would allow New York to assume personal jurisdiction over manufacturer in widow's tort action; manufacturer had no offices in New York, did not own any real estate or have any bank accounts in New York, and was not authorized to conduct business in New York. Hamilton v. Garlock, Inc., 1998, 31 F.Supp.2d 351, on reargument 1999 WL 135203, reversed 197 F.3d 58, on remand 96 F.Supp.2d 352, certiorari denied 120 S.Ct. 2691, 530 U.S. 1244, 147 L.Ed.2d 962. Federal Courts 86

Organization representing emergency medicine residency training programs did not have sufficient continuous contacts with New York to support assertion of personal jurisdiction under "doing business" statute; fact that organization sent its members materials after emergency medicine residency program received accreditation was insufficient where it did not maintain any other business contacts with New York. Daniel v. American Bd. of Emergency Medicine, 1997, 988 F.Supp. 127, disapproved in later appeal 428 F.3d 408. Federal Courts 85

Foreign corporation engaged in research and development of compact discs and compact disc equipment was subject to personal jurisdiction in New York under New York statute affording such jurisdiction when nondomiciliary is "doing business" in New York; although traditional indicia of doing business were not present because corporation did not manufacture or sell tangible goods, its contacts with New York to protect its patents were sufficient to constitute "doing business" in state under statute, as substantial part of its business was the protection and licensing of its patents. Capitol Records, Inc. v. Optical Recording Corp., 1992, 810 F.Supp. 1350, 26 U.S.P.Q.2d 1622, on reargument. Federal Courts 79

Liberian corporation which managed and operated vessel did not have sufficient contacts with New York to constitute doing business; corporation had never been licensed to do business in New York and had no officers, employees, agents, bank accounts or property in New York, and did not maintain any mail address or telephone listings in New York. Loberiza v. Calluna Maritime Corp., 1992, 781 F.Supp. 1028. Admiralty 32.3

Italian corporation and Connecticut corporation were not "doing business" in New York for purposes of exercise

of personal jurisdiction where, although corporations had solicited business in New York and made sales to New York customers through telephone solicitations and occasional visits to state, they did not maintain offices in New York or have regular New York representatives. ICC Primex Plastics Corp. v. LA/ES Laminati Estrusi Termoplastici S.P.A., 1991, 775 F.Supp. 650. Federal Courts 81; Federal Courts 86

Brazilian corporation that owned Rio de Janeiro hotel at which plaintiff's decedent drowned was "doing business" in New York for purposes of long-arm statute by reason of hotel reservation service operated by New York corporation; the New York corporation could in most cases confirm reservations and thus performed all functions Brazilian corporation would perform were it in New York; further Brazilian corporation had minimum contact with forum state to satisfy due process. Darby v. Compagnie Nationale Air France, 1991, 769 F.Supp. 1255. Federal Courts 86

Not-for-profit corporation incorporated and headquartered in Vermont, where it operated six children's summer camps, was not doing business in State of New York as would warrant exercise of personal jurisdiction over it in action brought by mother of child who was injured while sledding during visit to camp; corporation had no offices, no real estate, no bank accounts and no employees in New York. Marks v. Farm and Wilderness Foundation, 1991, 753 F.Supp. 523. Federal Courts 79

New York courts have general personal jurisdiction over foreign corporations that engage in so regular a course of business in New York that they are deemed to be "doing business." Gianna Enterprises v. Miss World (Jersey) Ltd., 1982, 551 F.Supp. 1348. Courts 13.4(3)

English corporation was not "doing business," so as to be subject to jurisdiction in New York for acts unrelated to its in-state business activities, where only activity on part of corporation was corporation's participation in U.S. Grand Prix in New York during two consecutive years, corporation was in New York for only four days for each of the two appearances and the corporation kept no office in New York nor did it keep any bank accounts in the state. Opert v. Schmid, 1982, 535 F.Supp. 591. Federal Courts 86

Contacts of New Jersey-based partnership with New York were sufficient to establish a presence in New York for purposes of New York court's jurisdiction over partnership and its members in civil action, where partnership had relatively stable continuing client base in New York both before and after its move to New Jersey, where partnership used attorney's office in Manhattan as conference room, where it was involved several years earlier in New York litigation on behalf of New York client, and where one of defendants resided in New York. Spirgel v. Henry H. Ackerman & Co. (1 Dept. 1995) 221 A.D.2d 167, 633 N.Y.S.2d 144. Courts 13.4(6)

Where defendant corporations entered state and remained there for upwards of one year to transact the only business they had to conduct up to that time, corporations were within state to such extent as to make service of process upon them valid and effective. Leeds v. El Conquistador Hotel Corp. (1 Dept. 1960) 11 A.D.2d 933, 204 N.Y.S.2d 903. Corporations And Business Organizations 3271

As a matter of law, foreign company which inspected and maintained trailers lacked sufficient contacts with

state to be subject to personal jurisdiction in tractor-trailer driver's personal injury action for injuries allegedly sustained in another state due to braking defect; driver failed to allege that company maintained offices or bank accounts, solicited business, maintained telephone listing or employees in state. Miller v. Weyerhaeuser Co., 1999, 179 Misc.2d 471, 685 N.Y.S.2d 393. Courts 13.5(5)

General jurisdiction did not exist over foreign defendants in action for tortious interference with contract, breach of contract, and recovery in quantum meruit under New York statute, which required defendants to have engaged in continuous, permanent, and substantial activity in New York, given defendants' limited number of forum contacts at the time complaint was filed. United Mobile Technologies, LLC v. Pegaso PCS, S.A. de C.V., C.A.2 (N.Y.)2013, 509 Fed.Appx. 48, 2013 WL 335965, Unreported. Federal Courts 86

Federal district court in New York did not have personal jurisdiction over foreign university under "doing business" provision in long arm statute, on allegations that scientists of university came to New York to speak and present new discoveries and accept awards, or on allegations that university had continuous presence in New York by virtue of historical relationship between England and New York, as public entity established pursuant to Royal Charter. Pieczenik v. Dolan, 2003, 2003 WL 23095553, Unreported. Federal Courts 76.35

Federal district court sitting in New York did not have general personal jurisdiction over nonresident corporation, under New York long-arm statute providing for jurisdiction when defendant did business in state; corporation had no physical presence in state, in form of office, employees or the like, and did not solicit New York customers, and purchases from New York sellers did not count for jurisdictional purposes. Daewoo Intern. (America) Corp. v. Orion Engineering and Service, Inc., 2003, 2003 WL 22400198, Unreported. Federal Courts 81; Federal Courts 84

Recording artist's associate's contacts with New York, including involvement with musical recordings produced in New York, derivation of income from the sale of musical recordings nationwide, including New York, musical performances in New York, and a co-publishing relationship with a New York entity, were insufficient to establish that associate "did business" in the state, as required for personal jurisdiction over him. Brought to Life Music, Inc. v. MCA Records, Inc., 2003, 65 U.S.P.Q.2d 1954, 2003 WL 296561, Unreported. Federal Courts 76.15

55. Continuous and systematic activity, doing business within state--In general

Under New York law, general jurisdiction, as basis for personal jurisdiction, is appropriate only if the defendant is engaged in such a continuous and systematic course of doing business as to warrant a finding of its presence in New York, and the relevant inquiry is a simple and pragmatic one: whether the aggregate of the defendant's activities in the State is such that it may be said to be present in the State not occasionally or casually, but with a fair measure of permanence and continuity. RSM Production Corp. v. Fridman, 2009, 643 F.Supp.2d 382, affirmed 387 Fed.Appx. 72, 2010 WL 2838582. Courts 13.3(11)

Under New York's long-arm statute, jurisdiction is proper in New York if the defendant is "present" in the state, that is, doing business in the state by being engaged in a continuous and systematic course of business within the

state. Katz v. Mogus, 2007, 538 F.Supp.2d 538. Courts 13.3(11)

New York's general jurisdiction statute confers jurisdiction over a non-domiciliary defendant on causes of action wholly unrelated to acts done in New York, when the defendant is engaged in such a continuous and systematic course of "doing business" in New York as to warrant a finding of its "presence" in the jurisdiction. Wickers Sportswear, Inc. v. Gentry Mills, Inc., 2006, 411 F.Supp.2d 202. Courts 13.3(11)

Under New York State's "doing business' standard" for personal jurisdiction, the defendant must operate within the state not occasionally or casually, but with a fair measure of permanence and continuity. Erne Shipping Inc. v. HBC Hamburg Bulk Carriers GmbH & Co. KG, 2006, 409 F.Supp.2d 427. Courts 13.3(11)

Under New York law relating to exercise of jurisdiction over foreign corporations, term "doing business" is used to relate to ordinary business which the corporation was organized to do; it is not the occasional contact or simple collateral activity which is included. Mones v. Commercial Bank of Kuwait, S.A.K., 2005, 399 F.Supp.2d 310, reconsideration denied 399 F.Supp.2d 412, vacated and remanded 204 Fed.Appx. 988, 2006 WL 3308202, on remand 502 F.Supp.2d 363. Federal Courts 79

Casual or occasional activity within the state does not constitute doing business in New York for purposes of New York long-arm jurisdiction statute; rather, statute requires a showing of continuous, permanent, and substantial activity in New York. Heidle v. Prospect Reef Resort, Ltd., 2005, 364 F.Supp.2d 312. Courts 13.3(11)

Merely occasional or casual business in New York does not suffice to establish personal jurisdiction under New York's general jurisdiction statute; plaintiff must show that the defendant is doing business in New York with a fair measure of permanence and continuity. Burrows Paper Corp. v. R.G. Engineering, Inc., 2005, 363 F.Supp.2d 379. Courts 13.3(11)

New York long-arm statute requires continuous and systematic course of doing business in New York as to warrant finding of its presence in that jurisdiction. Smit v. Isiklar Holding A.S., 2005, 354 F.Supp.2d 260. Courts 13.3(11)

Casual or occasional activity does not constitute "doing business" for purpose of New York long-arm statute; rather, the statute requires a showing of continuous, permanent, and substantial activity in New York. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376. Courts 13.3(11)

To prove that defendant is "doing business" under New York's personal jurisdiction statute, plaintiff must show that defendant's continuous and systematic course of doing business in New York warrants a finding of its presence in the jurisdiction. Shakour v. Federal Republic of Germany, 2002, 199 F.Supp.2d 8. Courts 13.3(11)

Under New York law, a court may exercise jurisdiction over a foreign entity on any cause of action if defendant

is engaged in such a continuous and systematic course of doing business in state as to warrant a finding of its presence in the jurisdiction, and standard is that defendant must be present in state not occasionally or casually, but with a fair measure of permanence and continuity; test is pragmatic and fact sensitive, generally focusing on factors such as defendant's maintenance of an office in state, solicitation of business in state, or existence of accounts or other property in state, or of state-based employees or agents. Fort Knox Music, Inc. v. Baptiste, 2001, 139 F.Supp.2d 505, 59 U.S.P.Q.2d 1067, appeal dismissed 257 F.3d 108, 59 U.S.P.Q.2d 1538. Courts 13.4(3); Courts 13.6(1)

For purposes of New York's long-arm statute, a non-domiciliary corporation is engaged in a continuous and systematic course of doing business in New York, subjecting it to personal jurisdiction there, if it is doing business not just occasionally or casually, but with a fair measure of permanence and continuity. Swindell v. Florida East Coast Ry. Co., 1999, 42 F.Supp.2d 320, affirmed 201 F.3d 432. Courts 13.4(3)

Under New York's long-arm statute, fact that Florida railway company hired New York counsel to contest personal jurisdiction in personal injury action was insufficient to establish that railway engaged in a continuous and systematic course of doing business in New York, as would subject company to personal jurisdiction there. Swindell v. Florida East Coast Ry. Co., 1999, 42 F.Supp.2d 320, affirmed 201 F.3d 432. Federal Courts 83

Under New York law, foreign corporations and individuals “doing business” within state subjects themselves to personal jurisdiction as long as they do business in New York not occasionally or casually, but with a fair measure of permanence and continuity. Merritt v. Shuttle, Inc., 1998, 13 F.Supp.2d 371, remanded 187 F.3d 263, opinion after remand 245 F.3d 182. Courts 13.4(3)

“Doing business” within New York, for purposes of personal jurisdiction over out-of-state defendant, does not require that primary activities of business be carried on in state; rather, it is sufficient that foreign corporation has agent or employee who solicits business in New York continuously and systematically. Daniel v. American Bd. of Emergency Medicine, 1997, 988 F.Supp. 127, disapproved in later appeal 428 F.3d 408. Federal Courts 82

For purposes of New York long-arm statute, “doing business” within state requires more than just occasional or casual business activities; rather, defendant's conduct must be with a fair measure of permanence and continuity. Bellepointe, Inc. v. Kohl's Dept. Stores, Inc., 1997, 975 F.Supp. 562. Courts 13.3(11)

Under New York statute allowing exercise of personal jurisdiction over defendants who have engaged in such continuous and systematic course of doing business as to warrant finding of its presence in the state, mere existence of business relationship with entities in the state is insufficient to establish presence. Insurance Co. of State of Pa. v. Centaur Ins. Co., 1984, 590 F.Supp. 1187. Federal Courts 76.15

Term “doing business” in long-arm statute means more than occasional or tangential business activity in the state; it means continuous and systematic course of conduct within state with fair measure of permanence and continuity, and mere solicitation of business in state will not confer jurisdiction. American Independent Ins. v.

Heights Chiropractic Care, P.C., 2006, 12 Misc.3d 228, 811 N.Y.S.2d 904. Courts 13.3(11)

56. ---- Persons, continuous and systematic activity, doing business within state

Indian politician did not have sufficiently substantial or continuous contacts with New York to be subject to personal jurisdiction in New York in action alleging violations of Alien Tort Claims Act (ATCA) and Torture Victim Protection Act (TVPA), even though politician had published book with New York publisher and attended meeting in New York at which admission fee was charged, where politician had no office in New York, no bank accounts or other property in New York, and no employees or agents in New York, he had made no purely personal visits to United States, he had received no royalties from book, and there was no evidence that he received portion of fees from meeting. Sikhs for Justice v. Nath, 2012, 850 F.Supp.2d 435, reconsideration denied 893 F.Supp.2d 598. Federal Courts 86

Plaintiffs' allegation that a British resident and national, who had served as group chief executive of an oil and energy company, delivered a speech at a university in New York, was insufficient to establish a continuous and systematic course of doing business in New York, as required under New York law for general personal jurisdiction, in diversity action, in federal district court, alleging tortious interference with contract and tortious interference with prospective business advantage, relating to alleged oil and natural gas exploration contract between plaintiffs and the Government of Grenada. RSM Production Corp. v. Fridman, 2009, 643 F.Supp.2d 382, affirmed 387 Fed.Appx. 72, 2010 WL 2838582. Federal Courts 86

Dog buyer's contacts with New York did not rise to level of continuous and systematic contacts warranting finding of buyer's presence in jurisdiction, pursuant to New York statute providing for personal jurisdiction over non-domiciliaries, in seller's action for breach of contract, fraud, and misrepresentation, even if buyer had sold certain number of dogs in New York, attended dog shows in New York, or was advertising herself as breeder on Internet. Grasso v. Bakko, 2008, 570 F.Supp.2d 392. Federal Courts 76.25; Federal Courts 76.30

57. ---- Corporations, continuous and systematic activity, doing business within state

Under New York law, a corporation is “doing business” in New York, and is therefore present in New York and subject to personal jurisdiction with respect to any cause of action, related or unrelated to the New York contacts, if it does business in New York not occasionally or casually, but with a fair measure of permanence and continuity. Wiwa v. Royal Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Courts 13.4(3)

Non-resident chemical company was not subject to general jurisdiction in New York, for purposes of breach of contract suit, since it did not have a continuous or systematic course of doing business within the state; company did not maintain an office in New York, it did not conduct solicitations of business targeting New York consumers, it did not maintain any bank accounts or other property in New York, it did not have any employees or agents in New York, and it did not have an on-going contractual relationship with any New York corporation. Wego Chemical & Mineral Corp. v. Magnablend Inc., 2013, 2013 WL 2211460. Federal Courts 79

In cause of action for declaratory judgment of noninfringement and as to invalidity of patents, patent holder, in systematically and continuously availing itself of laws of New York by contacting New York companies, entering into licensing agreements with them, and deriving over $3 million in revenue from its licensing agreements with New York companies over past 12 months alone, sufficiently directed its activities into New York for federal district court in that state to exercise general personal jurisdiction consistent with requirements of due process and the New York long-arm statute, even though patent holder had no offices, employees, or assets in New York. JetBlue Airways Corp. v. Helferich Patent Licensing, LLC, 2013, 2013 WL 713929. Constitutional Law 3965(4); Patents 288(1)

Delaware corporation's officer, a Maryland resident, was not engaged in a continuous and systematic course of doing business in New York that would warrant a finding of his presence in the state, as would support exercise of general jurisdiction over him in Syrian citizen's action arising out of the parties' creation of a joint venture company to build housing and hotels in Syria, even though he had allegedly established New York business ventures and made speeches in New York, where he did not have any business dealings in New York at any time since the filing of the action. Mazloum v. International Commerce Corp., 2011, 829 F.Supp.2d 223. Federal Courts 76.20

Buyer was not New York corporation and had not engaged in continuous and systematic course of retail jewelry business in New York, as required for nondomiciliary buyer to be "present" in New York for exercise of personal jurisdiction over buyer, pursuant to New York long-arm statute. Katz v. Mogus, 2007, 538 F.Supp.2d 538. Federal Courts 76.30; Federal Courts 79

Corporation is subject to the personal jurisdiction of a New York court when it is doing business in New York in the traditional sense, that is not occasionally or casually, but with a fair measure of permanence and continuity. William Systems, Ltd. v. Total Freight Systems, Inc., 1998, 27 F.Supp.2d 386. Courts 13.4(3)

In view of fact that third-party plaintiff, seeking to establish jurisdiction over third-party defendant corporation, furnished no evidentiary support except affidavit of attorney whose statement clearly was not made on personal knowledge of underlying evidentiary facts to warrant finding that corporation was doing business within the forum, court necessarily concluded that infrequent, incidental and attenuated contacts with New York were insufficient to warrant jurisdiction under this section, same requiring defendant to be doing business in New York not merely occasionally, but with fair measure of permanence and continuity. Birmingham Fire Ins. Co. of Pennsylvania v. KOA Fire & Marine Ins. Co., Ltd., 1983, 572 F.Supp. 962. See, also, Arbitron Co. v. E.W. Scripps, Inc., D.C.N.Y.1983, 559 F.Supp. 400. Federal Courts 80

58. ---- Foreign corporations, continuous and systematic activity, doing business within state

This section providing that court may exercise such jurisdiction over persons, property or status as might have been theretofore exercised continues New York law under which foreign corporation not authorized to do business in the state was held amenable to local suit only if it was engaged in such continuous and systematic course of doing business there as to warrant finding of its presence in the jurisdiction. Gelfand v. Tanner Motor Tours, Limited, C.A.2 (N.Y.)1964, 339 F.2d 317. See, also, Hoffritz for Cutlery, Inc. v. Amajac, Ltd., C.A.2 (N.Y.) 1985, 763 F.2d 55; Liquid Carriers Corp. v. American Marine Corp., C.A.N.Y.1967, 375 F.2d 951; Dero Enter-

prises, Inc. v. Georgia Girl Fashions, Inc., D.C.N.Y.1984, 598 F.Supp. 318; Excel Shipping Corp. v. Seatrain Intern. S.A., D.C.N.Y.1984, 584 F.Supp. 734; Dogan v. Harbert Const. Corp., D.C.N.Y.1980, 507 F.Supp. 254; Jayne v. Royal Jordanian Airlines Corp., D.C.N.Y.1980, 502 F.Supp. 848; Cohen v. Vaughan Bassett Furniture Co., Inc., D.C.N.Y.1980, 495 F.Supp. 849; Frummer v. Hilton Hotels International, Inc., 1967, 19 N.Y.2d 533, 281 N.Y.S.2d 41, 227 N.E.2d 851, remittitur amended 20 N.Y.2d 737, 283 N.Y.S.2d 99, 229 N.E.2d 696, certiorari denied 88 S.Ct. 241, 389 U.S. 923, 19 L.Ed.2d 266; Taub v. Colonial Coated Textile Corp., 1976, 54 A.D.2d 660, 387 N.Y.S.2d 869. Courts 13.4(3)

Under New York law, foreign limited liability company (LLC) was "successor in interest" to foreign corporation, as required to subject LLC to jurisdiction in New York based on the activities of its predecessor, where LLC was designed to be successor, it was the only company that existed under predecessor's name, and it continued operations of the corporation once corporation had been dissolved. Phillips v. Reed Group, Ltd., 2013, 2013 WL 3340293. Federal Courts 79

District Court lacked personal jurisdiction over business entities related to a law firm, in action brought by group of companies that attempted to start a credit card business in China against law firm and business entities and individuals related to the firm, all located in China, that they had retained for legal and other professional services in preparation for their credit card business, where entities had not engaged in any transaction or tortious act within or affecting New York, as required for exercise of general or specific personal jurisdiction under New York law. TAGC Management, LLC v. Lehman, 2012, 842 F.Supp.2d 575. Federal Courts 86

Under New York's general personal jurisdiction statute, a foreign corporation is subject to general personal jurisdiction in New York if it is "doing business" in the state, not occasionally or casually, but with a fair measure of permanence and continuity. The Rockefeller Univ. v. Ligand Pharmaceuticals, 2008, 581 F.Supp.2d 461. Courts 13.4(3)

Bahamian corporation that operated golf course in the Bahamas where worker, a resident of New York, was allegedly injured did not engage in a continuous and systematic course of doing business in New York, as required to be subject to general jurisdiction under New York law; corporation never registered to do business in New York, never entered into contracts to supply goods or services in New York, never paid taxes in New York, never owned or leased real estate in New York, and never had any subsidiaries, offices, agents, employees, phone listings, mailing addresses, or bank accounts in New York. Sandoval v. Abaco Club on Winding Bay, 2007, 507 F.Supp.2d 312. Federal Courts 86

Under New York law, fabrics distributor, a North Carolina corporation, never did business in New York with any permanence or continuity, as would warrant a finding of its 'presence" in the jurisdiction, and permit District Court to assert personal jurisdiction over distributor pursuant to New York's general jurisdiction statute, where distributor did not have an office, bank account, property, or employees in New York, and its alleged solicitation of business in New York was not substantial and continuous. Wickers Sportswear, Inc. v. Gentry Mills, Inc., 2006, 411 F.Supp.2d 202. Federal Courts 79

German shipping company's contacts with New York fell short of the "continuous and systematic" activity re-

quired either by New York law or by the Due Process Clause to support conclusion that company could be "found in the district" within meaning of maritime attachment rule; company had no office in the state, had no property in the state, no phone listing or employees located in the state, did not advertise in the state, had caused an employee to come to New York to solicit business exactly once, and entered into a few contractual arrangements each year during the past five years that involved, in part, New York companies. Erne Shipping Inc. v. HBC Hamburg Bulk Carriers GmbH & Co. KG, 2006, 409 F.Supp.2d 427. Admiralty 47; Constitutional Law 4481; Federal Courts 86

Nonresident corporation is "doing business," and is therefore present in New York and subject to personal jurisdiction with respect to any cause of action, related or unrelated to its New York contacts, if it does business in New York not occasionally or casually, but with fair measure of permanence and continuity. Overseas Media, Inc. v. Skvortsov, 2006, 407 F.Supp.2d 563, affirmed 277 Fed.Appx. 92, 2008 WL 1994981. Federal Courts 79

Russian television production company was not "doing business" in New York, for purpose of establishing personal jurisdiction in copyright infringement action; company maintained no office, mailing address, property, or bank account in United States, and its employees had only isolated and casual business contacts with state. Overseas Media, Inc. v. Skvortsov, 2006, 407 F.Supp.2d 563, affirmed 277 Fed.Appx. 92, 2008 WL 1994981. Copyrights And Intellectual Property 79

Under New York long-arm statute, a court may exercise general jurisdiction over foreign corporations so long as they are "doing business" within the state; such activities must constitute continuous, permanent, and substantial activity in New York. Estate of Ungar v. Palestinian Authority, 2005, 400 F.Supp.2d 541, subsequent determination 412 F.Supp.2d 328, affirmed 332 Fed.Appx. 643, 2009 WL 1298530. Courts 13.4(3)

Mere allegation that nonresident breach of contract defendant was multi-million dollar corporation that regularly did business in New York and throughout country was insufficient to satisfy New York long-arm statute's requirement that defendant engage in systematic and continuous course of doing business in New York. Matera v. Native Eyewear, Inc., 2005, 355 F.Supp.2d 680. Federal Courts 96

A foreign corporation is "doing business" and is therefore present in New York and subject to personal jurisdiction with respect to any cause of action, related or unrelated to the New York contacts, if it does business in New York not occasionally or casually, but with a fair measure of permanence and continuity. Mende v. Milestone Technology, Inc., 2003, 269 F.Supp.2d 246. Federal Courts 79

The continuous presence and substantial activities that satisfy the requirements of "doing business" under the New York long-arm statute do not necessarily need to be conducted by a foreign corporation itself. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376. Federal Courts 79

To satisfy the doing business test, as to find that a foreign corporation is amenable to personal jurisdiction in New York, the defendant must be engaged in such a continuous and systematic course of business as to be

present within the jurisdiction; such conduct will be found only if the business conducted by the defendant is not occasionally or casually, but with a fair measure of permanence and continuity. Hinsch v. Outrigger Hotels Hawaii, 2001, 153 F.Supp.2d 209. Courts 13.4(3)

New York statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state requires that the defendant be present in New York not occasionally or casually, but with a fair measure of permanence and continuity. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544.

A foreign corporation's activity in New York rises to the level of "doing business" there, as required for New York court to have personal jurisdiction over such corporation, only when it is engaged in such a continuous and systematic course of activity that it can be deemed present in the state of New York. Hamilton v. Garlock, Inc., 1998, 31 F.Supp.2d 351, on reargument 1999 WL 135203, reversed 197 F.3d 58, on remand 96 F.Supp.2d 352, certiorari denied 120 S.Ct. 2691, 530 U.S. 1244, 147 L.Ed.2d 962. Courts 13.4(3)

Without any physical presence in New York, a foreign corporation may be subjected to the jurisdiction of New York if the corporation conducts, or purposefully directs, business in New York not occasionally or casually, but with a fair measure of permanence and continuity. Hamilton v. Garlock, Inc., 1998, 31 F.Supp.2d 351, on reargument 1999 WL 135203, reversed 197 F.3d 58, on remand 96 F.Supp.2d 352, certiorari denied 120 S.Ct. 2691, 530 U.S. 1244, 147 L.Ed.2d 962. Courts 13.4(3)

California resident's signing of agreement stating that he would indemnify New Jersey corporation and its representatives for legal expenses arising out of case in Southern District of New York did not constitute "doing business" in New York under that state's long-arm statute, and there was no evidence that defendant had continually and systematically conducted business in New York. Falik v. Smith, 1995, 884 F.Supp. 862. Federal Courts 76.15

Idaho corporation did not engage in regular, systematic, and continuous course of activity in New York to warrant finding that it was present in jurisdiction for purposes of asserting personal jurisdiction over corporation under statute governing jurisdiction over persons, property, or status, where it conducted only 2% of its business in New York, and where there was no evidence that corporation advertised or solicited business in New York. Crouch v. Atlas Van Lines, Inc., 1993, 834 F.Supp. 596. Federal Courts 79

Employee failed to demonstrate that Canadian corporation was subject to personal jurisdiction of federal district court in New York under New York statute allowing court to assert in personam jurisdiction over foreign corporations doing business in New York on systemic and continuous basis, even though Canadian corporation was traded on "American Stock Exchange" in New York; there was no evidence that Canadian corporation either possessed license to conduct business in New York or maintained local office, employees, designated agent, bank account, telephone listing, or other property in New York. Celi v. Canadian Occidental Petroleum Ltd., 1992, 804 F.Supp. 465. Federal Courts 86; Federal Courts 96

In order to hold that jurisdiction may be exercised because a foreign corporation is “doing business” within meaning of N.Y.McKinney's CPLR 301, it is necessary to conclude that corporation is engaged in such a continuous and systematic course of doing business in state as to warrant a finding of its presence in that jurisdiction; test is whether aggregate of corporation's activities in the state is such that it may be said to be present in the state not occasionally or casually, but with a fair measure of permanence and continuity. Oral-B Laboratories, Inc. v. Mi-Lor Corp., 1985, 611 F.Supp. 460. See, also, Beacon Enterprises, Inc. v. Menzies, C.A.N.Y. 1983, 715 F.2d 757; Guardino v. American Sav. & Loan Ass'n of Florida, D.C.N.Y.1984, 593 F.Supp. 691; Bialek v. Racal-Milgo, Inc., D.C.N.Y.1982, 545 F.Supp. 25; Loria & Weinhaus, Inc. v. H. R. Kaminsky & Sons, Inc., D.C.N.Y.1980, 495 F.Supp. 253; Glacier Refrigeration Service, Inc. v. American Transp., Inc., D.C.N.Y.1979, 467 F.Supp. 1104; Xedit Corp. v. Harvel Industries Corp., Fidelipac, D.C.N.Y.1978, 456 F.Supp. 725; Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa, D.C.N.Y.1977, 428 F.Supp. 1237; Freeman v. Gordon & Breach, Science Publishers, Inc., D.C.N.Y.1975, 398 F.Supp. 519; Furman v. General Dynamics Corp., D.C.N.Y.1974, 377 F.Supp. 37; Martin Motor Sales, Inc. v. Saab-Scania of America, Inc., D.C.N.Y.1974, 397 F.Supp. 389. Federal Courts 79

In order to be found to be “doing business” within New York for purposes of this section predicating jurisdiction over nonresident defendant on presence or consent measured by the traditional “doing business” test, a foreign corporation must transact, with a fair measure of continuity and regularity, a reasonable amount of business within state. ICC Handels, A.G.v.S.S.Seabird, 1982, 544 F.Supp. 58. Courts 13.4(3); Courts 25

Foreign corporate defendant was not “doing business” in state of New York within meaning of this section providing that “a court may exercise such jurisdiction over persons, property or status as might have been exercised heretofore”, where defendant's business in the state of New York was only casual or occasional. Total Sound, Inc. v. Universal Record Distributing Corp., 1968, 286 F.Supp. 123. See, also, McCarver v. De Mornay-Bonardi Corp., 1958, 13 Misc.2d 651, 178 N.Y.S.2d 443. Federal Courts 79

Whether state courts may exercise jurisdiction over foreign corporation is determined by whether aggregate of corporation's activities in state are such that it may be said to be “present” in state not occasionally or casually, but with fair measure of permanence and continuity and whether quality and nature of corporation's contacts with state are sufficient to make it reasonable and just according to traditional notions of fair play and substantial justice that it be required to defend action in state. Laufer v. Ostrow, 1982, 55 N.Y.2d 305, 449 N.Y.S.2d 456, 434 N.E.2d 692. Courts 13.4(3)

Turkish telecommunications company was not engaged in a continuous and systematic course of doing business in the state of New York sufficient to confer personal jurisdiction over the company in shareholder's action for contribution and indemnification arising out of a very large judgment entered against him in an underlying action; company's defense of an action in federal district court in New York and its negotiation for a loan with a New York branch of a Swiss branch predated the commencement of the action, and equipment purchase and finance agreements that company entered into predated the action and had nothing to do with New York. Uzan v. Telsim Mobil Telekomunikasyon Hizmetleri A.S. (1 Dept. 2008) 51 A.D.3d 476, 856 N.Y.S.2d 625. Courts 13.4(3)

Foreign electricity wholesaler that entered into contracts with New York companies to provide or to deliver power outside New York was not continuously and systematically "doing business" in New York, as required for New York courts to exercise personal jurisdiction over it, where such contracts represented minimal amount of wholesaler's total nationwide sales and purchase of power. Niagara Mohawk Energy Marketing, Inc. v. Entergy Power Marketing Corp. (4 Dept. 2000) 270 A.D.2d 872, 706 N.Y.S.2d 794. Courts 13.5(3)

Foreign corporation is amenable to suit in New York courts under New York's general jurisdiction statute if it has engaged in such a continuous and systematic course of "doing business" in New York such that a finding of its "presence" in the jurisdiction is warranted. Holness v. Maritime Overseas Corp. (1 Dept. 1998) 251 A.D.2d 220, 676 N.Y.S.2d 540. Courts 13.4(3)

Where foreign corporation carries on continuous and systematic course of conduct warranting finding of "presence" within state, courts may assert jurisdiction over corporation; however, corporation's presence must be with a fair measure of permanence and continuity, and solicitation of business alone will not suffice to establish that presence. Cardone v. Jiminy Peak Inc. (3 Dept. 1997) 245 A.D.2d 1002, 667 N.Y.S.2d 82. Courts 13.4(3)

Continuity of action from a permanent location is essential to jurisdiction over foreign corporation under the traditional "doing business" test. Meunier v. Stebo, Inc. (2 Dept. 1971) 38 A.D.2d 590, 328 N.Y.S.2d 608. See, also, Scheier v. Stoff, 1955, 142 N.Y.S.2d 716. Courts 13.4(3)

Federally incorporated youth baseball organization engaged in a continuous and systematic course of doing business on a regular basis within the State of New York, as required for court to exercise "Long Arm" jurisdiction over organization in negligence action brought by youth baseball player who was struck in the face by a ball that he pitched during game; although its headquarters were located in Pennsylvania, organization maintained authority over local youth baseball leagues in New York by mandating the guidelines and rules by which local leagues operated their affairs, and organization owned and operated website where users shopped for officially licensed merchandise. Baggs ex rel. Baggs v. Little League Baseball, Inc., 2007, 17 Misc.3d 212, 840 N.Y.S.2d 529. Courts 13.5(4)

Pennsylvania automobile insurer's payment of portion of uninsured/underinsured motorist claim arising out of accident in New York was not the type of systematic business activity required to confer jurisdiction in New York. American Independent Ins. v. Heights Chiropractic Care, P.C., 2006, 12 Misc.3d 228, 811 N.Y.S.2d 904. Courts 13.5(14)

Foreign corporation's activities in New York did not support a finding that it was "doing business" in the state, for jurisdiction purposes; although president of corporation, which was a provider of continuing professional and legal education courses, came to New York to meet with instructor before it hired him, and although corporation ran a few seminars in New York, this was not the continual and systematic activity required to warrant a finding that the corporation was present in New York. Taibleson v. National Center for Continuing Educ., 2002, 190 Misc.2d 796, 740 N.Y.S.2d 772. Courts 13.4(3)

To subject a foreign corporation to personal jurisdiction in state under long-arm statute, plaintiff must show that the corporation is engaged in a continuous and systematic course of doing business such that the aggregate of its activities have a fair measure of permanence and continuity sufficient to make it reasonable according to traditional notions of fair play and substantial justice that the litigant be required to defend the action in the forum. Miller v. Weyerhaeuser Co., 1999, 179 Misc.2d 471, 685 N.Y.S.2d 393. Courts 13.4(3)

New York contacts of vessel's owner and charterer did not support exercise of personal jurisdiction over them pursuant to provision of New York long-arm statute allowing for personal jurisdiction over foreign corporation "doing business" in New York, in seaman's action to recover for injuries under Jones Act and United States general maritime law, given that defendants were not registered to conduct business in New York, neither maintained office or bank account in New York, and neither owned or insured property in New York, and that, although defendants' vessels called at New York ports on seven occasions over two-year period, one of charterer's vessels had been subject to litigation in New York, and defendants had applied to United States Maritime Administration for permission to use vessel in cabotage trade that would likely result in increased New York activity, such contacts did not establish continuous, permanent, and substantial activity in New York. Hatfield v. Asphalt International, Inc., 2004, 2004 WL 287680, Unreported. Seamen 29(5.5)

59. Transacting business distinguished, doing business within state

Jurisdiction founded on the "doing business" test of this section is not limited to actions arising from the in-state conduct, as is jurisdiction in an action founded on the transaction of business within the state. Merrill Lynch, Pierce, Fenner & Smith Inc. v. Lecopulos, C.A.2 (N.Y.)1977, 553 F.2d 842. Federal Courts 76.15

Non-resident publisher of business directory, who had ongoing contractual relationship with New York company, and who maintained interactive website through which it actively solicited New York business, was transacting business in New York, within meaning of that state's long-arm statute. Thomas Pub. Co. v. Industrial Quick Search, Inc., 2002, 237 F.Supp.2d 489. Federal Courts 76.15

Showing necessary for a finding that a defendant "transacted business" under New York's long-arm statute is considerably less onerous than that required for a finding that a defendant was "doing business" under jurisdictional statute. ESI, Inc. v. Coastal Corp., 1999, 61 F.Supp.2d 35. Courts 13.3(11)

Under New York law, for purposes of personal jurisdiction, considerably less is required to establish that a defendant "transacts business" in New York than to show that it is "doing business" in New York; that relative liberality, however, is offset by the added requirement that the claim must arise out of the business transacted. Gleason Works v. Klingelnberg-Oerlikon Geartec Vertriebs-GmbH, 1999, 58 F.Supp.2d 47. Courts 13.3(11)

"Doing business" standard of New York statute governing personal jurisdiction over foreign corporations requires considerably greater showing of contacts with New York than "transacts business" standard under long-arm statute. Ross v. Colorado Outward Bound School, Inc., 1985, 603 F.Supp. 306. See, also, Bialek v. Racal-Milgo, Inc., D.C.N.Y.1982, 545 F.Supp. 25. Federal Courts 79

New York statutory provisions for exercise of long-arm jurisdiction over foreign corporation "doing business" in New York or "transacting business" in New York involve different criteria for the nature of the contacts with the state; jurisdiction under the "transacting business" provision requires that the cause of action arise out of the business of the foreign corporation that is deemed to be transacted in the state. Caballero Spanish Media, Inc. v. Betacom, Inc., 1984, 592 F.Supp. 1093. Federal Courts 79

Under this section, foreign corporation "doing business" in New York is deemed "present" and subject to personal jurisdiction, while under section 302, but not under this section, cause of action must arise out of transaction of business which is the asserted basis of jurisdiction. Puerto Rico Maritime Shipping Authority v. Almogy, 1981, 510 F.Supp. 873. Courts 13.4(3)

Test for doing business in district for venue purposes under 28 U.S.C.A. § 1391 is not equivalent to transaction of business test used to establish jurisdiction over a foreign corporate defendant under CPLR 302; it is analogous to doing business test used to establish jurisdiction over a person under this section. Sterling Television Presentations, Inc. v. Shintron Co., Inc., 1978, 454 F.Supp. 183, 201 U.S.P.Q. 479. Federal Courts 79

The concept of "doing business" includes transacting it, but a "transaction" may not constitute "doing business" by foreign corporation. Traub v. Robertson-American Corp., 1975, 82 Misc.2d 222, 368 N.Y.S.2d 958. Corporations And Business Organizations 3202

60. Time of doing business, doing business within state

For the purposes of the jurisdictional analysis under New York State law, court focuses specifically on defendants' amenability to suit at the time the lawsuit was filed, not when the claim arose, and not subsequent changes in their status. Mones v. Commercial Bank of Kuwait, S.A.K., 2005, 399 F.Supp.2d 310, reconsideration denied 399 F.Supp.2d 412, vacated and remanded 204 Fed.Appx. 988, 2006 WL 3308202, on remand 502 F.Supp.2d 363. Courts 13.3(3)

Under New York law, foreign corporation's presence in state, for purposes of exercise of personal jurisdiction of New York courts, is determined based on the time the lawsuit is filed, not when the claim arose. Yurman Designs, Inc. v. A.R. Morris Jewelers, L.L.C., 1999, 41 F.Supp.2d 453, reconsideration denied 60 F.Supp.2d 241 . Courts 13.4(3)

For purposes of determining whether New York court has personal jurisdiction over a foreign corporation, the corporation's presence in New York is determined based on the time the lawsuit is filed, not when the claim arose. Hamilton v. Garlock, Inc., 1998, 31 F.Supp.2d 351, on reargument 1999 WL 135203, reversed 197 F.3d 58, on remand 96 F.Supp.2d 352, certiorari denied 120 S.Ct. 2691, 530 U.S. 1244, 147 L.Ed.2d 962. Courts 13.4(3)

To obtain jurisdiction under general personal jurisdiction statute, defendant must be doing business at the time the action is brought, not when the cause of action arose. William Systems, Ltd. v. Total Freight Systems, Inc., 1998, 27 F.Supp.2d 386. Courts 13.3(11)

New York long-arm statute which incorporated all bases of jurisdiction previously recognized at common law, did not provide basis for jurisdiction over shipowners in action brought by administratrix and widow of chef/caterer on oceangoing vessels seeking damages for chef's exposure to asbestos where none of shipowners was doing business in New York at time actions were commenced. Penny v. United Fruit Co., 1994, 869 F.Supp. 122. Federal Courts 79

To find jurisdiction over nonresident under this section, defendant must be doing business in state at time action is brought. Puerto Rico Maritime Shipping Authority v. Almogy, 1981, 510 F.Supp. 873. See, also, Arrow Trading Co., Inc. v. Sanyei Corp. (Hong Kong), Ltd., D.C.N.Y.1983, 576 F.Supp. 67; Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa, D.C.N.Y.1977, 428 F.Supp. 1237. Federal Courts 76.15

Where defendant corporation, against which seller's trustee in bankruptcy brought federal diversity action in New York to obtain payment for goods sold and delivered to defendant, was not present in New York when cause of action arose or when the diversity action was commenced, and where such defendant, although having opened one-man branch office in New York subsequent to sales involved, had closed such office before subject action was commenced, defendant corporation could not be deemed to be doing business and therefore present in New York for purpose of acquiring jurisdiction over it. Klein v. E. W. Reynolds Co., Inc., 1973, 355 F.Supp. 886. Federal Courts 79

Where foreign corporation prior to service of summons upon its vice president within New York had not only ceased doing business in New York and filed certificate of surrender of authority but had been dissolved in state of its residence and where it was incorporated and had transferred its assets to another corporation which assumed its liabilities, service was invalid. Cappello v. Union Carbide & Carbon Corp. (4 Dept. 1950) 276 A.D. 277, 95 N.Y.S.2d 36. Corporations And Business Organizations 3343

Where foreign corporation was doing business in New York when contract was made and the cause of action arose, the withdrawal of corporation from New York thereafter did not prevent acquisition of jurisdiction by service on director of corporation in New York, even if corporation was not, at the time of service, doing business in New York. Mid-Continent Petroleum Corp. v. Universal Oil Products Co., 1950, 198 Misc. 1073, 102 N.Y.S.2d 74, affirmed 278 A.D. 564, 102 N.Y.S.2d 451, appeal denied 278 A.D. 653, 103 N.Y.S.2d 126. Corporations And Business Organizations 3269(1)

61. Relation of claim to business activity, doing business within state--In general

Under New York law, where a plaintiff's claim against a nonresident defendant is not related to the defendant's contacts with New York, so that jurisdiction is properly characterized as “general,” plaintiff must demonstrate the defendant's continuous and systematic general business contacts. Wiwa v. Royal Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Courts 13.3(11)

New York courts may exercise personal jurisdiction over foreign corporation that is engaged in such a continuous and systematic course of doing business in New York as to warrant finding of its presence in New York,

even if cause of action is unrelated to defendant's New York activities. Jazini v. Nissan Motor Co., Ltd., C.A.2 (N.Y.)1998, 148 F.3d 181. Courts 13.4(3)

Once a foreign corporation is found to be "present" in New York, jurisdiction does not fail because cause of action has no relation in its origin to business there transacted. Gelfand v. Tanner Motor Tours, Limited, C.A.2 (N.Y.)1964, 339 F.2d 317. See, also, Cohen v. Vaughan Bassett Furniture Co., Inc., D.C.N.Y.1980, 495 F.Supp. 849; Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa, D.C.N.Y.1977, 428 F.Supp. 1237; Freeman v. Gordon & Breach, Science Publishers, Inc., D.C.N.Y.1975, 398 F.Supp. 519; Potter's Photographic Applications Co. v. Ealing Corp., D.C.N.Y.1968, 292 F.Supp. 92. Courts 13.4(3)

New York general jurisdiction statute confers personal jurisdiction over foreign corporation engaged in such continuous and systematic course of doing business in state as to warrant finding of its "presence" in state's jurisdiction. Semi Conductor Materials, Inc. v. Citibank Intern. PLC, 1997, 969 F.Supp. 243. Courts 13.4(3)

Traditional indicia to which courts refer in deciding whether foreign corporation is doing business in New York, as will confer jurisdiction under general jurisdiction statute, include existence of office in New York, solicitation of business in New York, existence of bank accounts or other property in New York, and presence of employees of foreign defendant in New York. Semi Conductor Materials, Inc. v. Citibank Intern. PLC, 1997, 969 F.Supp. 243. Courts 13.4(3); Courts 13.6(1)

Fact that English bank maintained four accounts with financial institution in New York did not constitute "doing business" in New York, as required to assert personal jurisdiction over bank under New York's general jurisdiction statute in action alleging bank's failure to confirm letter of credit, even though one New York account received plaintiff's confirmation fee in connection with letter of credit; all of bank's branches, offices and employees were in Europe, bank was not registered to do business in New York, and bank did not own any real property in New York. Semi Conductor Materials, Inc. v. Citibank Intern. PLC, 1997, 969 F.Supp. 243. Federal Courts 86

One doing business in New York may be amenable to suit on claims unrelated to activities in the state. Lamar v. American Basketball Ass'n, 1979, 468 F.Supp. 1198. See, also, Erving v. Virginia Squires Basketball Club, D.C.N.Y.1972, 349 F.Supp. 709. Federal Courts 76.10

Under the "doing business" test or corporate presence doctrine, foreign corporation is considered present within New York if it does local business not occasionally or casually but with a fair measure of permanence and continuity; if such test is met, then corporation is subject to jurisdiction of New York courts regardless of whether cause of action arose from the New York business. Masonite Corp. v. Hellenic Lines, Ltd., 1976, 412 F.Supp. 434. See, also, Propulsion Systems, Inc. v. Avondale Shipyards, Inc., 1973, 77 Misc.2d 259, 352 N.Y.S.2d 749. Federal Courts 79

Where jurisdiction over nondomiciliary is predicated upon this section allowing courts to exercise in personam jurisdiction over foreign defendants present within state by virtue of their doing business, there is no need to es-

tablish connection between cause of action in issue and foreign defendant's business activities within state, because authority of New York courts is based solely upon fact that defendant is engaged in such a continuous and systematic course of doing business in state as to warrant finding of its presence in the jurisdiction. McGowan v. Smith, 1981, 52 N.Y.2d 268, 437 N.Y.S.2d 643, 419 N.E.2d 321. Courts 13.3(11)

This section providing that court may exercise jurisdiction over "persons, property, or status as might have been exercised heretofore" does not provide for jurisdiction in paternity proceeding over nondomiciliary served outside the state, regardless of whether cause of action was related to his personal contacts in New York. Nilsa B. B. v. Clyde Blackwell H. (2 Dept. 1981) 84 A.D.2d 295, 445 N.Y.S.2d 579. Children Out-of-wedlock 36

Foreign corporation doing business in state may be sued on any cause of action regardless of whether arising out of that business. Curran v. Rouse Transp. Corp., 1964, 42 Misc.2d 1055, 249 N.Y.S.2d 718. Courts 13.4(3)

62. ---- Actions accruing outside state, relation of claim to business activity, doing business within state

Specific jurisdiction over German theatrical producers was lacking under New York long arm statute for copyright infringement claim based on continued performance of show in Europe after licensing agreement had terminated; there was not a close enough connection between the commission of the alleged copyright infringement and producers' New York activities such as conducting auditions and purchasing supplies. Jacobs v. Felix Bloch Erben Verlag fur Buhne Film und Funk KG, 2001, 160 F.Supp.2d 722. Federal Courts 86

Even if shipowners sued by longshoreman for injuries allegedly sustained while aboard ship at berth in New Jersey were doing business in New York, such fact was not sufficient to confer personal jurisdiction of courts of New York over shipowners, in light of fact that longshoreman's cause of action arose in New Jersey and not in New York. Evans v. Eric, 1974, 370 F.Supp. 1123. Federal Courts 88

Where jurisdiction over individual is obtained independent of section 302 concerning personal jurisdiction based upon acts of nondomiciliaries because individual was "doing business" in the state, jurisdiction will also attach with the respect to causes of action which did not arise in New York. ABKCO Industries, Inc. v. Lennon (1 Dept. 1976) 52 A.D.2d 435, 384 N.Y.S.2d 781. Courts 26(1)

63. License to do business in state, doing business within state

Personal jurisdiction existed under New York's general personal jurisdiction statute where defendant licensee foreign corporation maintained active authorization to do business on file with the New York Department of State; in maintaining active authorization to do business and not taking steps to surrender it as it had right to do, defendant was on constructive notice that New York deemed authorization to do business as consent to jurisdiction. The Rockefeller Univ. v. Ligand Pharmaceuticals, 2008, 581 F.Supp.2d 461. Federal Courts 79

German shipping company's authorization to do business in New York did not by itself mean company could be "found within the district" for purposes of the maritime attachment rule. Erne Shipping Inc. v. HBC Hamburg Bulk Carriers GmbH & Co. KG, 2006, 409 F.Supp.2d 427. Admiralty 47

Under New York law, license to do business in state is not dispositive on issue of personal jurisdiction. Bellepointe, Inc. v. Kohl's Dept. Stores, Inc., 1997, 975 F.Supp. 562. Courts 13.3(11)

Nonresident corporate defendant was not subject to personal jurisdiction in New York, even though defendant had New York business license at time of conduct at issue; there were no allegations that defendant conducted any business in state, and claim did not arise out of any contacts that defendant had in state. Bellepointe, Inc. v. Kohl's Dept. Stores, Inc., 1997, 975 F.Supp. 562. Federal Courts 76.5; Federal Courts 76.15

Corporation licensed to do business in New York meets criteria of "doing business" for purposes of general personal jurisdiction. Laumann Mfg. Corp. v. Castings USA, Inc., 1996, 913 F.Supp. 712. Federal Courts 79

New Jersey corporation was doing business in New York and was subject to long-arm jurisdiction there where it was engaged in business of sampling, analyzing and storing ores and metal, maintained New York City telephone number, and had been licensed to do business in the state. Amalgamet, Inc. v. Ledoux & Co., 1986, 645 F.Supp. 248. Federal Courts 79

Where defendant corporation was licensed to transact business in New York, had office in New York and had authorized Secretary of State of New York to accept service of process on its behalf, it was "doing business" in New York and personal service of summons and complaints upon defendant's president at its Connecticut office was sufficient to confer jurisdiction upon the New York court. Decisionware, Inc. v. Systems Equipment Lessors, Inc. (2 Dept. 1974) 45 A.D.2d 971, 359 N.Y.S.2d 586. Corporations And Business Organizations 3202; Corporations And Business Organizations 3269(4)

64. Offices in state, doing business within state--In general

Even if "doing business" jurisdiction could properly exist over an individual nonresident defendant, no personal jurisdiction existed under section of New York long-arm statute authorizing jurisdiction over corporation which is "doing business" in New York where nonresident defendant did not have an office in New York, did not solicit business in the state and did not have bank accounts, other property or employees in the state. Hoffritz for Cutlery, Inc. v. Amajac, Ltd., C.A.2 (N.Y.)1985, 763 F.2d 55. Federal Courts 81; Federal Courts 84

Account owners alleged that parent corporation of bank was "doing business" within New York forum, as required for court's exercise of personal jurisdiction over bank, pursuant to New York long-arm statute, where parent had branch office in New York and regularly engaged in business in New York. Trabucco v. Intesa Sanpaolo, S.p.A., 2010, 695 F.Supp.2d 98. Federal Courts 82; Federal Courts 86

Greek bank was not present in New York on continuous and systematic basis, and thus was not "doing business" in New York for purposes of general jurisdictional statute; although bank had New York subsidiary, it did not have offices in state, did not own any property in state, had no New York telephone listings, and did no public relations work in New York. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293. Federal Courts 86

Classic indicia of permanent and substantial activities in New York, for purpose of asserting personal jurisdiction over nonresident business under "doing business" statute, include: (1) existence of office in New York; (2) solicitation of business in New York; (3) existence of bank accounts or other property in New York; and (4) presence of employees in New York. Overseas Media, Inc. v. Skvortsov, 2006, 407 F.Supp.2d 563, affirmed 277 Fed.Appx. 92, 2008 WL 1994981. Courts 13.3(11); Courts 13.6(1)

Whether foreign bank was subject to personal jurisdiction in New York could not be determined on motion to hold it contempt for failing to comply with turnover order, where parties disputed whether bank's New York office had closed at time contempt proceeding was initiated. Mones v. Commercial Bank of Kuwait, S.A.K., 2005, 399 F.Supp.2d 310, reconsideration denied 399 F.Supp.2d 412, vacated and remanded 204 Fed.Appx. 988, 2006 WL 3308202, on remand 502 F.Supp.2d 363. Federal Courts 97

When determining whether a foreign corporation is doing business in New York, as to determine whether New York can exercise personal jurisdiction over corporation, either individually or through an agent, courts consider factors including: (1) whether the defendant maintains an office within the state; (2) whether the defendant has solicited business within the state; (3) whether the defendant maintains bank accounts or property within New York and (4) whether the defendant employs individuals in New York. Hinsch v. Outrigger Hotels Hawaii, 2001, 153 F.Supp.2d 209. Courts 13.4(3); Courts 13.6(1)

Liberian vessel owner did not have sufficient contacts with New York to constitute doing business under New York's long-arm statute; corporation's sole asset was the vessel, and it had no offices, employees, agent, property or bank accounts in New York, and did not maintain mailing address or telephone listing in New York. Loberiza v. Calluna Maritime Corp., 1992, 781 F.Supp. 1028. Admiralty 32.3

Corporation's presence in New York was sufficiently continuous and substantial to warrant exercise of jurisdiction pursuant to N.Y.McKinney's CPLR 301, the traditional "doing business" jurisdictional base, where principal shareholder, national sales manager and vice-president maintained permanent office in New York, and corporation had sales of $300,000 in the southern district of New York in one year. Oral-B Laboratories, Inc. v. Mi-Lor Corp., 1985, 611 F.Supp. 460. Federal Courts 84

Fact that defendant corporation's attorney's office was in New York had no bearing on whether the corporation was doing business in New York for purposes of court's exercise of long-arm jurisdiction; even if the minutes of the corporation were made in New York and the stock was issued and signed in New York, those facts were insufficient to subject the corporate defendant to personal jurisdiction in New York on the theory that it was doing business in New York. Glacier Refrigeration Service, Inc. v. American Transp., Inc., 1979, 467 F.Supp. 1104. Federal Courts 84

Where business of Delaware corporation consisted chiefly of financing operation of some or all of its approximately 50 subsidiaries, and one of its vice-presidents spent one-third of each year in New York City office for purpose of financing and approximately 35 percent of borrowings were from New York City banks, Delaware cor-

poration was doing business in New York and could be sued there. Sullivan v. Kilgore Mfg Co, 1951, 100 F.Supp. 983. Federal Courts 79

Where Illinois corporation engaged in publication and distribution of trade magazines occupied office in New York City under written lease, address of office was printed on letterhead, magazines, and general and classified advertising therein were sold at office, and proceeds were retained at office for current expenses, corporation was "doing business" in New York and was subject to process there. Winslow v. Domestic Engineering Co., 1936, 20 F.Supp. 576. Corporations And Business Organizations 3271

Personal jurisdiction existed under the "doing business" provision of New York long-arm statute, where corporate defendant maintained an office and place of business in New York. GMAC Commercial Credit, LLC v. Dillard Dept. Stores, Inc., 2001, 198 F.R.D. 402.

Affidavit asserting that defendant corporation at various times had maintained two offices in New York but revealing only that certain office was maintained by cousin of president of the defendant corporation and that a check made out by a customer of the corporation was made payable to it at that address was insufficient to determine whether the activities conducted through such offices were sufficient to support jurisdiction over the corporation. Loria & Weinhaus, Inc. v. H. R. Kaminsky & Sons, Inc., 1978, 80 F.R.D. 494, motion granted 495 F.Supp. 253. Federal Courts 96

Plastic surgeon, resident of District of Columbia, transacted business within New York City so as to be subject to service under subd. (a) of section 302 where he maintained office, with telephone listing, for practice of his profession in New York City, was present from time to time in furtherance of his professional activities, was licensed to practice medicine in New York, and was first consulted professionally by malpractice plaintiff in his New York office. Sangdahl v. Litton, 1976, 69 F.R.D. 641. Federal Courts 76.15

Canadian corporation which was licensed to sell alcoholic beverages by province of Quebec and which was located on international boundary between United States and Canada with 80% of its building in province of Quebec and remainder in state of New York was conducting business in New York in traditional sense and subject to personal jurisdiction. Richards v. Oakes (3 Dept. 1981) 79 A.D.2d 1072, 435 N.Y.S.2d 810. Courts 13.4(3)

Foreign corporation's claim that office and telephone services of parent New York corporation were lent to foreign corporation as convenience and used only for business with parent was not sustained in view of evidence that foreign corporation's business with parent constituted approximately 90% of its total production, foreign corporation's officers met in New York with supplier at various times and facilities were used and advertised by foreign corporation for its business and permitted foreign corporation to maintain New York base of operations. W. Lowenthal Co. v. Colonial Woolen Mills, Inc. (3 Dept. 1972) 38 A.D.2d 775, 327 N.Y.S.2d 899. Corporations And Business Organizations 3206

Where a foreign corporation, manufacturing an article sold largely through the central market in New York City, paid the rent of a New York office having its name on the door, such office being regarded by the trade as its

local office, and the person in charge being regarded as its chief representative, who, with other salesmen, did a large volume of business for it, it was doing business within the state. Heer & Co. v. Rose Bros. Co., 1923, 120 Misc. 723, 200 N.Y.S. 397. Corporations And Business Organizations 3271

Federal district court sitting in New York did not have general personal jurisdiction under New York long-arm statute over attorneys general of 11 states, in suit challenging statutes requiring payments into escrow by tobacco manufacturers not yet sued for recovery of medical costs associated with tobacco usage, when jurisdiction was based on states' maintenance of offices in New York, for purpose of generating additional tax revenue through audits of New York businesses; offices were insufficient to constitute “doing business” or having “presence” in New York. Grand River Enterprises Six Nations, Ltd. v. Pryor, 2003, 2003 WL 22232974, Unreported, vacated in part on reconsideration 2004 WL 1594869, entered 2004 WL 2480433, affirmed 425 F.3d 158 , certiorari denied 127 S.Ct. 379, 549 U.S. 951, 166 L.Ed.2d 267. Federal Courts 76.15; Federal Courts 76.35

Nonresident motor freight carrier which maintained New York office with secretary and employee who solicited out-of-state trucking business and made recommendations for adjustments of claims, which maintained telephone directory listing and membership in local transportation club and which generally received approximately $100,000 per year in revenues from activities of its employee in New York was "doing business" in New York and amenable to process there. Golding Bros., Inc. v. Overnite Transp. Co., 1973, 214 Va. 270, 199 S.E.2d 676. Corporations And Business Organizations 3206; Corporations And Business Organizations 3271

65. ---- Executive offices, offices in state, doing business within state

Airline passengers' personal injury action against foreign airline would be transferred to district court sitting in New York, in light of absence of personal jurisdiction over airline in New Jersey, and likelihood that personal jurisdiction would be appropriate in New York; airline maintained its North American headquarters in New York. Romero v. Argentinas, D.N.J.1993, 834 F.Supp. 673. Federal Courts 1158

Uncontradicted facts that Canadian corporation was served in a building in New York City by leaving copy of summons with its vice president and treasurer, that corporation was listed on directory of the building, that its management had been in hands of subsidiaries which had their principal places of business in New York, and that their chief executive officers with majority of board of directors and executive committee resided and had their offices in New York established that affairs of Canadian corporation were in large part directed and managed from New York, so that corporation was doing business and amenable to suit in New York. Silver v. Countrywide Realty, Inc., 1966, 39 F.R.D. 596. Corporations And Business Organizations 3206; Federal Courts 86

Evidence that although foreign corporation's only income-producing asset, a multiple apartment development, was located in Connecticut, conduct of virtually all of corporation's affairs took place in or emanated from office which corporation's president maintained in New York, and that no officer, director or other official of corporation might generally be expected to be found in Connecticut or otherwise than in New York, supported determination that corporation was “doing business” in New York and hence was amenable to process in New York. Sher v. Tilles (2 Dept. 1957) 5 A.D.2d 678, 168 N.Y.S.2d 361. Corporations And Business Organizations

3295

Mexican corporation engaged in milling ore in Mexico was subject to service of summons in New York as "doing business" within state, where corporation was systematically and regularly controlled by its officers from their headquarters in New York. Stark v. Howe Sound Co., 1931, 141 Misc. 148, 252 N.Y.S. 233. Corporations And Business Organizations 3271

Foreign corporation, having office within state for chairman of its board of directors and assistant secretary, at which meetings of its directors were held, and having staff of inspectors within state, with at least one bank account in New York City, its bonds being payable at New York office, was "doing business" within state, so that service of summons on its assistant secretary gave court jurisdiction. Stockton v. Goodyear Tire & Rubber Co., 1924, 124 Misc. 213, 208 N.Y.S. 209. Corporations And Business Organizations 3271

66. ---- Purchasing offices, offices in state, doing business within state

Where foreign wholesaling corporation maintained purchasing office in New York, employing three buyers, each of whom reported solely to superior outside state and buyer served with process had control of bank account which was in his own name and was used for office expenses, corporation was "doing business" in state to extent making it amenable to service, and buyer served with process was a "managing agent or cashier" within C.P.A. § 229 , on whom service could be made. Meinhard, Greeff & Co. v. Higginbotham-Bailey-Logan Co. (1 Dept. 1941) 262 A.D. 122, 28 N.Y.S.2d 483. Corporations And Business Organizations 3266(3); Corporations And Business Organizations 3271

Where Colorado corporation, operating a department store, maintained, together with 14 other department stores, a resident buying office in state, and expenses of such office were shared by all the 15 department stores, Colorado corporation was doing business within state and amenable to process in New York. Kimberly Knitwear, Inc. v. Mid-West Pool Car Ass'n, 1959, 21 Misc.2d 730, 191 N.Y.S.2d 347. See, also, Madison Distributing Co. v. Phoenix Piece Dye Works, 1930, 135 Misc. 543, 239 N.Y.S. 176. Corporations And Business Organizations 3271

Where a foreign corporation maintained office in New York with three buyers, one assistant buyer, stenographic assistants and one named individual, had a bank account in state, made $1,000,000 worth of purchases in 1947, had its name on office door and office was listed in telephone directory and in building lobby directory, corporation was "doing business" to such extent as to be subject to service of process in state. Mitchel Schneider Co. v. Gamble-Skogmo, Inc., 1948, 84 N.Y.S.2d 21. Corporations And Business Organizations 3271

Where foreign corporation, operating department store, had resident buyer in New York, who was resident buyer for other foreign corporations, and such resident buyer was operating under written contract obligating it to furnish office space to corporation's buyers and executive, for which foreign corporation paid annual sum per year, and such contract was continuing, requiring continuous performance within state, and resident buyer regularly purchased goods for foreign corporation when its other buyers were not in the market, foreign corporation was "doing business" in state with fair measure of permanency and continuity, so as to bring it within General Cor-

poration Law, §§ 15, 16, , subjecting it to service of process. Merchandise Reporting Co. v. L. Oransky & Sons, 1929, 133 Misc. 890, 234 N.Y.S. 83.

67. ---- Railroad offices, offices in state, doing business within state

A foreign railroad corporation which maintained two offices in New York state for solicitation of freight business and another office in charge of a vice president, who was also secretary and assistant treasurer of corporation, which conducted transactions relating to financial structure of corporation, and which held one meeting of board of directors in New York annually, was "doing business" within the state to such an extent as to be amenable to process of its courts in action to nullify declaration of a dividend on preferred stock and enjoin payment thereof. Elish v. St. Louis Southwestern Ry. Co., 1953, 305 N.Y. 267, 112 N.E.2d 842, reargument denied 305 N.Y. 824, 113 N.E.2d 561. Railroads 33(2)

Foreign railroad corporation's maintenance of two offices in New York for solicitation of freight and passenger traffic for lines which it operated west of Chicago, its occasional collection of money for forwarding to main office in Chicago and its ownership of office equipment and refunding of fares on unused tickets, plus its almost constant earning of income by reason of daily presence of its freight cars in state, even though they were under control of other carriers on their local lines constituted "doing business," for jurisdictional purposes. Rondinelli v. Chicago, R.I. & P.R. Co. (2 Dept. 1958) 5 A.D.2d 842, 170 N.Y.S.2d 947, appeal granted 6 A.D.2d 813, 175 N.Y.S.2d 578. Railroads 33(1)

Where a foreign railway corporation had within the state an assistant secretary and treasurer with an office, and an agent soliciting freight and passenger business, and a majority of the members of its executive committee lived and transacted business within the state, it was "doing business within the state," so that service of summons on the assistant secretary and treasurer was valid. Rothenberg v. Western Pac. R. Co. (4 Dept. 1923) 206 A.D. 52, 200 N.Y.S. 428. Railroads 33(2)

Where out-of-state railroad maintained office in New York City, and employees there performed duties involving solicitation of freight to be routed over railroad lines when freight reached territory served by it, but no bills of lading were issued nor freight charges collected in New York nor did any employee there have authority to adjust claims with shippers and passengers, railroad was not "doing business within the state" so as to render it amenable to service of process there. Cohen v. Gulf, Mobile & Ohio R Co., 1950, 95 N.Y.S.2d 633. Railroads 33(2)

68. ---- Shipping corporations, offices in state, doing business within state

Shipping corporation was not subject to personal jurisdiction in New York, under New York's long-arm statute, for purposes of personal injury action brought against corporation by seamen, even though corporation furnished seamen with transportation to the vessel and returned them to New York after the injury, and corporation used New York hiring hall to recruit seamen, where corporation did not maintain any place of business in New York and did not operate its ships in New York waters. Ocean Ships, Inc. v. Stiles, C.A.2 (N.Y.)2002, 315 F.3d 111. Seamen 29(5.5)

69. ---- Sales offices, offices in state, doing business within state

Federal district court in New York could assert jurisdiction over United Arab Republic airline corporation in United States citizen's action for injuries sustained in airline crash in the Sudanese Republic under this section authorizing exercise of jurisdiction over persons, property, or status as might have been exercised heretofore, since New York courts had regularly asserted in personam jurisdiction over foreign corporations, such as airline, which maintained a substantial executive and sales office in New York. Eck v. United Arab Airlines, Inc., C.A.2 (N.Y.)1966, 360 F.2d 804. Federal Courts 86

Virginia seller, which did not maintain offices, bank accounts, or any other property in New York, and which did not maintain a presence in New York through its employees or agents, was not "doing business" in New York within meaning of New York's general jurisdiction statute; although salesperson did make his home in New York during the summer months, he continued to work out of his Virginia office during that time by using a Virginia based cellular telephone and electronic mail, and seller only sent its representatives to New York for one day visits on three occasions, once each year from 2002 through 2004. Burrows Paper Corp. v. R.G. Engineering, Inc., 2005, 363 F.Supp.2d 379. Federal Courts 79; Federal Courts 82

District court had jurisdiction under New York long-arm statute over nonresident defendant in products liability suit who leased showroom space in New York, maintained a telephone listing and used a local representative to sell his wares within the state, and where local sales efforts resulted in a large volume of sales within the state. Vincent v. Davis-Grabowski, Inc., 1985, 628 F.Supp. 430. Federal Courts 76.25

Where South Carolina State Ports Authority maintained New York "sales office" which performed sales and public relations activities in New York on regular basis, such regular and systematic activities were sufficient to establish that Authority was "doing business" in New York and present there for purposes of amenability to service of process. Doris Trading Corp. v. S. S. Union Enterprise, 1976, 406 F.Supp. 1093. Federal Courts 74

Foreign corporation which had its main offices and factory in San Francisco but which maintained showroom in New York City from which sales were solicited and orders obtained and which employed full-time "sales representative" in charge of New York showroom which was responsible for eight to ten per cent of corporation's total annual sales was "doing business" within district and hence was "present" in district for purpose of amenability to suit. Manchester Modes, Inc. v. Lilli Ann Corp., 1969, 306 F.Supp. 622. Federal Courts 81

Activities of defendant, a foreign corporation engaged in film producing, in maintaining an office in New York for use of an employee, who was not directly associated with defendant's sales effort but who by his activity in developing a film program for New York schools was vital to defendant's long-run growth and was a stimulant to sales, indicated that defendant's presence in state had a fair measure of permanence and continuity, and that it was "doing business within state" for jurisdiction purposes. Potter's Photographic Applications Co. v. Ealing Corp., 1968, 292 F.Supp. 92. Federal Courts 79

Where Illinois corporation maintained a sales office in New York which was presided over by an employee with duties of supervision of the sales efforts of himself and other representatives, corporation was "doing business"

in New York and service of process on the representative was sufficient to confer jurisdiction on federal court in diversity action. Ultra Sucro Co v. Illinois Water Treatment Co, 1956, 146 F.Supp. 393. Corporations And Business Organizations 3271; Federal Courts 79

Foreign corporation, paying half of rent of city office in state for use of traveling salesman and mere office assistant, selling merchandise to its exclusive city sales agent, which paid remainder of rent, and receiving from state less than 6 per cent. of its business outside of that done by such agent, was not "doing business in the state," as required to authorize personal service of summons on it. Wolitz v. India Tire Co., 1934, 10 F.Supp. 53. Corporations And Business Organizations 3271

Where foreign corporation had no office or place of business in state, never carried on business therein, and had never applied for or taken out certificate to do business in state in which it had no property of any kind, fact that its selling agent maintained office in state did not give corporation status of "doing business within state," within meaning of General Corporation Law § 47 authorizing service of summons on such agent in action against corporation. Hamlin v. G. E. Barrett & Co., 1927, 246 N.Y. 554, 159 N.E. 648, affirmed 220 A.D. 763, 222 N.Y.S. 816, affirmed 220 A.D. 839, 222 N.Y.S. 816. Corporations And Business Organizations 3271

Where defendant foreign corporation maintained office in New York state and maintained two employees, and orders were solicited in New York state, defendant was "doing business" in New York state rendering defendant amenable to process. McCaskell Filters v. Goslin-Birmingham Mfg. Co., 1948, 81 N.Y.S.2d 309, affirmed 274 A.D. 761, 79 N.Y.S.2d 925. Corporations And Business Organizations 3271

A foreign corporation maintaining sales offices, with salesmen and clerical staffs, and regularly and systematically soliciting orders, subject to approval by home office, within the state, and shipping merchandise into the state, was "doing business" within the state, so as to authorize service of process on managing agent within the state. Raquet v. Messenger Corp., 1944, 46 N.Y.S.2d 306. Corporations And Business Organizations 3266(3); Corporations And Business Organizations 3271

Where a corporation having its home office in Chicago maintained an office in borough of Manhattan with a manager in charge whose business was to supervise soliciting agents who took orders for goods in New York and to send orders to corporation in Chicago, and orders were accepted in Chicago and goods were then shipped direct to purchasers in New York, the corporation was "doing business" in New York to such an extent as to bring it within Supreme Court's jurisdiction. Thames v. Lund, 1940, 34 N.Y.S.2d 388, affirmed 263 A.D. 1041, 34 N.Y.S.2d 416. Courts 13.6(2)

70. ---- Telephone listing, offices in state, doing business within state

A Louisiana steamship corporation, soliciting cargo and passenger traffic through New York corporation, with offices in New York, as Louisiana corporation's managing agent, and listed in New York City telephone book with address of such offices on building directory at place thereof, and in New York Journal of Commerce and Shipping Digest as having agent at such address, was sufficiently present in New York to be subject to suit in federal court for Southern District of New York and service of process on it was properly effected on such

agent's vice-president within that State. Johannesen v. Gulf & South Am. Steamship Co., 1954, 126 F.Supp. 664. Corporations And Business Organizations 3271

A foreign corporation which had an agent who had a desk in a room in an office building in New York City, and whose duty was to solicit business for and send orders to such corporation the name of which was over the desk and was listed in the telephone directory, when the stationery used contained the words "New York office, 480 Lexington avenue, Grand Central Palace. _____ (giving name of agent), New York Representative, Vanderbilt 7300," with, below, "Address your reply to New York office," at the time of service of summons on such agent was doing business within the state through a managing agent. Cochran Box & Mfg. Co. v. Monroe Binder Board Co., 1921, 232 N.Y. 503, 134 N.E. 547. Corporations And Business Organizations 3266(3)

New York court did not have personal jurisdiction over owners of New Jersey casino in personal injury action, inasmuch as mere listing of telephone number and address in local directory, by itself, was insufficient basis upon which to predicate finding of presence within meaning of jurisdiction statute. Egan v. Resorts Intern., Inc. (1 Dept. 1991) 169 A.D.2d 679, 565 N.Y.S.2d 58. Courts 13.5(4)

A foreign corporation, having no property, leasing no office, employing no salesman, and having no resident manager or representative in the state, though allowed to have its name on the door of another corporation's office within the state, and to have a listing in the telephone book at that address, was not doing business within the state, so as to warrant service of summons and complaint on a director visiting in the state. Sullivan v. Firth & Foster Co. (1 Dept. 1921) 199 A.D. 99, 191 N.Y.S. 246. Corporations And Business Organizations 3266(5)

Allegation that defendant was an Ohio corporation authorized to conduct business in New York and that it had principal office in New York County was insufficient to show that the corporation was doing business in New York and subject to jurisdiction there, especially in the absence of any telephone directory listing for the defendant in Manhattan. National Enerdrill Corp. v. Crown Drilling, Inc., 1983, 119 Misc.2d 162, 462 N.Y.S.2d 533. Corporations And Business Organizations 3286

71. Residence of officers in state, doing business within state

Prospective buyer of yacht that sued boat building company and officer, stemming from purported breach of construction and sale agreement, properly alleged that company was doing business or transacted business in New York, as required to make prima facie showing of jurisdiction under New York long-arm statute; complaint averred that officer lived and worked in New York, and that initial discussions concerning agreement occurred at New York yacht club. EED Holdings v. Palmer Johnson Acquisition Corp., 2004, 387 F.Supp.2d 265. Federal Courts 94

If foreign corporation is not doing business in New York, mere fact that an officer or director resides in the state does not bring the corporation within the jurisdiction of New York. Lumbermens Mut. Cas. Co. v. Borden Co., 1967, 265 F.Supp. 99. See, also, McNellis v. American Box Bd. Co., 1967, 53 Misc.2d 479, 278 N.Y.S.2d 771; Joseph Walker & Sons v. Lehigh Coal & Nav. Co., 1957, 8 Misc.2d 1005, 167 N.Y.S.2d 632. Courts

13.6(1)

Nonresident property managers were not “doing business” within state for purposes of personal jurisdiction in action seeking brokerage fees allegedly earned in connection with procurement of tenants for out-of-state shopping centers, absent showing that managers had done business within forum with fair measure of permanence and continuity. Daniel B. Katz & Associates Corp. v. Midland Rushmore, LLC (2 Dept. 2011) 90 A.D.3d 977, 937 N.Y.S.2d 236. Courts 13.3(11)

Mere presence in state of officer of foreign corporation not doing business in state was insufficient to confer jurisdiction over corporation upon courts of state. Blackburne v. Homasote Co. (2 Dept. 1956) 2 A.D.2d 973, 157 N.Y.S.2d 90. Courts 13.4(3)

Where New Jersey corporation had no office in State of New York, nor had it been licensed to do business therein, alleged fact that business of the corporation had been transacted from the home of the president in New York to whom all corporate bills were rendered and were paid by New York depository of the corporation was insufficient to sustain New York court's jurisdiction over the corporation. Feingold v. Ellman, 1954, 138 N.Y.S.2d 192. Courts 13.6(2)

Where it was contemplated that foreign corporations, which were liable on notes, would conduct their business outside the state, and corporations had no assets in the state and did no business within the state, fact that notes were executed in New York and that corporate officers were residents of New York did not subject corporations to suit in New York courts. Eureka Productions v. Ross-Bart Studio Theatre, 1954, 130 N.Y.S.2d 116. Courts 13.4(3)

71.5. Holding companies, doing business within state

Where a defendant over which jurisdiction is sought to be exercised under New York law is a holding company, the business of that company is the business of investment, for purposes of the determination of venue. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Federal Courts 82

Holding company was not doing business in New York state, as required for personal jurisdiction in action by parents of child injured by exploding beer bottle that was allegedly brewed, bottled and imported by company's subsidiaries, where corporation had no offices, employees or telephone listings in New York or anywhere in the United States, and corporation's only officers were located in Mexico. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Federal Courts 86

72. Subsidiary corporations, doing business within state--In general

Where claim is that foreign corporation is present in New York state, for purposes of long-arm statute, because of activities there of its subsidiary, presence of subsidiary alone does not establish parent's presence in New York, and for New York courts to have personal jurisdiction in that situation, subsidiary must be either an agent or a mere department of foreign parent. Jazini v. Nissan Motor Co., Ltd., C.A.2 (N.Y.)1998, 148 F.3d 181.

Courts 13.6(9)

Nonresident parent corporation may be sued in New York when relationship between parent and local subsidiary validly suggests existence of agency relationship or parent controls subsidiary so completely that subsidiary may be said to be simply a department of parent. Koehler v. Bank of Bermuda Ltd., C.A.2 (N.Y.)1996, 101 F.3d 863. Corporations And Business Organizations 1078(3); Courts 13.6(9)

Subsidiary corporations were not agents of holding company, as required for personal jurisdiction over holding company under New York law in action by parents of child injured by exploding beer bottle allegedly brewed, bottled and imported by company's subsidiaries, where business of subsidiaries was beer brewing and distribution, and business of holding company was investment. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Corporations And Business Organizations 1078(3); Federal Courts 82

Holding company did not exercise pervasive control over subsidiary corporations that brewed and distributed beer, as required for personal jurisdiction over company under New York law in action by parents of child injured by exploding beer bottle, even though company's major asset was stock of corporations responsible for bottling and distribution, where there was no common ownership between company and subsidiaries, subsidiaries were not financially dependent on holding company, and holding company adhered to corporate formalities in dealings with subsidiaries. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Corporations And Business Organizations 1078(3); Federal Courts 82

A subsidiary of a holding company carries on its business as an investmentof the holding company, and not as an agentof the holding company, for personal jurisdiction purposes under New York law. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Corporations And Business Organizations 1078(3); Courts 13.6(9)

Where a subsidiary is engaged in a completely different line of business, it cannot be said that the business of the parent is carried out by the subsidiary, for personal jurisdiction purposes under New York law. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Courts 13.6(9)

When considering issue of agency for personal jurisdiction under New York law, a court considers whether a subsidiary is carrying out its own business, or the business of a parent. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Corporations And Business Organizations 1078(3); Courts 13.6(9)

Stock ownership of a subsidiary, standing alone, is not enough to prove that the subsidiary is a department of the parent, as required for jurisdiction under New York law. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Courts 13.6(9)

To establish that a subsidiary is an agent of the parent company, for purposes of determining whether personal jurisdiction exists over parent company under New York long-arm statute based on subsidiary's activities in state, plaintiff must show that subsidiary does all the business that parent company could do, were it in state, by

its own officials. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Courts 13.6(9)

Under New York law, domestic subsidiary is "department" of foreign parent corporation for jurisdictional purposes when activities of parent show disregard for separate corporate existence of subsidiary. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293. Corporations And Business Organizations 1078(3); Courts 13.6(9)

Foreign corporation may be subject to general jurisdiction in New York on account of its relationship with subsidiary that is doing business in state. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293. Federal Courts 82

Fact that corporate parent did business in New York, and was thus subject to personal jurisdiction in New York, was insufficient to subject Delaware and Florida subsidiaries to personal jurisdiction in New York in negligence action brought by Florida theme park patrons. Intermor v. Walt Disney Co., 2003, 250 F.Supp.2d 116. Federal Courts 82

Austrian subsidiary of German manufacturer lacked sufficient contacts with New York to subject it to general personal jurisdiction of federal court sitting there; although subsidiary provided its employees with English language training and maintained web site which was accessible in New York, it had no employees, agents, or property in state, and had never directly sold any of its products there. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 403, motion to certify denied 2005 WL 1523508. Federal Courts 86

While the presence of a subsidiary alone does not establish the parent's presence in the state for purposes of New York's long-arm statute, personal jurisdiction over a foreign parent exists where its New York subsidiary is either a mere department of, or an agent of, the parent. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376. Federal Courts 82

No determination with respect to piercing of corporate veil is necessary to find that subsidiary is an "agent" of foreign parent corporation for purpose of New York long-arm statute; rather, plaintiffs need only show that the subsidiary does all the business which the parent corporation could do were it present in the jurisdiction by its own officials. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376. Federal Courts 82

Under New York law, a court may obtain general jurisdiction over a foreign corporate defendant: (1) if it has a subsidiary or affiliate in New York which is a "mere department" of the foreign corporation or (2) if it employs or retains a local entity to act as its agent. Jacobs v. Felix Bloch Erben Verlag fur Buhne Film und Funk KG, 2001, 160 F.Supp.2d 722. Federal Courts 86

Mere presence of a subsidiary in New York does not establish the parent's presence in the state under the New York statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state; for New York courts to have personal jurisdiction

in that situation, the subsidiary must be either an “agent” or a “mere department” of the foreign parent. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544.

For a subsidiary corporation to be an agent of the parent, so as to establish the parent's presence in the state for purposes of the New York statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state, a plaintiff must show that the subsidiary does all the business which the parent could do were it here by its own officials. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544.

Wholly-owned banking subsidiary was not shown to have conducted business in New York on behalf of a foreign corporation, so as to be the corporation's agent for purposes of establishing personal jurisdiction under a New York long-arm statute; the corporation's primary function was to hold the equity securities in its subsidiaries, while the subsidiary was engaged in the specialty financial services business and the servicing of residential and commercial mortgages, and it was not shown that the subsidiary conducted business in the state that the corporation would have done if it were in the state with its own officials. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544.

Mere existence of garden-variety parent-subsidiary or franchisor-franchisee relationship is not sufficient to establish jurisdiction under New York statute authorizing personal jurisdiction over foreign corporation “doing business” in New York. Ross v. Colorado Outward Bound School, Inc., 1985, 603 F.Supp. 306. Federal Courts 82

Under New York statute authorizing jurisdiction over foreign corporation doing business in New York, federal district court in New York lacked personal jurisdiction over Colorado corporation against which diversity action was brought alleging that corporation's negligence in Colorado resulted in death of plaintiff's daughter in Colorado, even though Colorado corporation was linked with Delaware corporation that allegedly was parent corporation and allegedly had closer ties to New York than did Colorado corporation. Ross v. Colorado Outward Bound School, Inc., 1985, 603 F.Supp. 306. Federal Courts 79

Entering a joint venture with another foreign corporation does not constitute “doing business” in New York, for purposes of this section governing jurisdiction over foreign corporations present within the state, merely because that foreign corporation is a subsidiary of a New York corporation; the subsidiary itself is not subject to New York jurisdiction unless it can be found to be a mere department of the New York parent. Dogan v. Harbert Const. Corp., 1980, 507 F.Supp. 254. Courts 13.4(6); Courts 13.6(9)

Where subsidiaries are created by parent corporation for tax or corporate finance purposes to carry on business on its behalf, there is no basis for distinguishing between the business of the parent and the business of the subsidiaries and there is a presumption that the parent is sufficiently involved in the operation of the subsidiaries to become subject to jurisdiction. Bellomo v. Pennsylvania Life Co., 1980, 488 F.Supp. 744. Corporations And Business Organizations 1078(2); Corporations And Business Organizations 1086(2)

Same standards by which a parent corporation is sought to be subjected to in personam jurisdiction based on acts of subsidiary are to be applied where a subsidiary is sought to be reached through the presence of a parent. DCA Food Industries Inc. v. Hawthorn Mellody, Inc., 1979, 470 F.Supp. 574, 202 U.S.P.Q. 739. Courts 13.6(9)

Federal district court's assertion of in personam jurisdiction over foreign parent corporation, in action brought by New York corporation based on allegedly defective shipment of Italian knit fabric received by it, comported with federal requirements of constitutional due process where facts made clear that foreign parent, by virtue of activities of its wholly owned New York subsidiary, had certain minimum contacts with New York such that maintenance of suit did not offend traditional notions of fair play and substantial justice; it was clear that foreign parent had purposely availed itself of privilege of conducting activities within forum. Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa, 1977, 428 F.Supp. 1237. Constitutional Law 3965(4)

The French branch of Canadian bank was not merely a subsidiary of the Canadian bank but was, in fact, if not in name the Canadian bank, and, hence, service of process on the New York branch of the Canadian bank sufficed to give New York courts jurisdiction over the French branch. Public Adm'r of New York County v. Royal Bank of Canada, 1967, 19 N.Y.2d 127, 278 N.Y.S.2d 378, 224 N.E.2d 877. Banks And Banking 33

Trial court had personal jurisdiction over foreign subsidiary corporation by virtue of parent corporation's presence in state once it was determined that corporate veil between them should be pierced, where parent leased office within state and shared space with financial consultant retained by it. Tesoro Petroleum Corp. v. Holborn Oil Co., Ltd. (1 Dept. 1986) 118 A.D.2d 506, 500 N.Y.S.2d 118. Courts 13.6(9)

Foreign corporation which purchased some of its raw material from New York concern, sold 85 to 90% of its production to or through parent New York corporation whose office had foreign corporation's name on door and was listed in directories as office of foreign corporation and which owned truck that made regular trips to New York to deliver finished products and pick up raw materials was doing business in New York for purpose of jurisdiction of New York court. W. Lowenthal Co. v. Colonial Woolen Mills, Inc. (3 Dept. 1972) 38 A.D.2d 775, 327 N.Y.S.2d 899. Courts 13.6(9)

Subsidiary corporation, located in New Jersey, which purchased oxygen regulator and pressure gauge from Ohio corporation and thereafter sold them to parent corporation which had filed a certificate of doing business in New York, which gauge exploded causing injury, was “doing business” in New York no less than its parent, so that two causes of action upon which both were sued need not have stemmed from or have been connected with the business done in New York. Gonzales v. Ametek, Inc., 1966, 50 Misc.2d 62, 269 N.Y.S.2d 616. Corporations And Business Organizations 3207

Delaware corporation, which was wholly owned subsidiary of wholly owned Canadian subsidiary of English corporation and purchased and resold in New York automobiles, airplane engines and parts manufactured by English corporation acted solely as sales agent of English corporation which was therefore amenable to process by service on subsidiary Delaware corporation in New York in action for loss of plaintiff's aircraft as result of crash in Nicaragua. Schenker v. Pepperidge Farm Inc., 1964, 42 Misc.2d 380, 248 N.Y.S.2d 269.

Corporation's conduct of business through subsidiary did not necessarily subject it to jurisdiction of courts of state in which subsidiary did business. American Tri-Ergon Corp. v. Ton-Bild Syndikat, A.G., 1932, 145 Misc. 344, 260 N.Y.S. 139, affirmed 236 A.D. 792, 258 N.Y.S. 1061. Corporations And Business Organizations 3255

73. ---- Alter ego, subsidiary corporations, doing business within state

Where jurisdiction over a holding company is based on the activity of a subsidiary or a related company in the forum state by application of the alter ego doctrine, such activity in itself is insufficient to support extending personal jurisdiction to the holding company or parent under New York long-arm statute. Taylor Devices, Inc. v. Walbridge Aldinger Co., 2008, 538 F.Supp.2d 560. Federal Courts 82

Austrian subsidiary was not mere department or alter ego of German parent corporation, for purpose of determining whether it was subject to personal jurisdiction of federal court sitting in state where parent was doing business; there was no evidence that companies failed to observe corporate formalities, or that parent exerted pervasive control. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 403, motion to certify denied 2005 WL 1523508. Federal Courts 82; Federal Courts 86

Personal jurisdiction over foreign defendant could not be exercised on basis of business in New York by managing New York companies, unless plaintiff showed that companies were alter ego of defendant. Biofeedtrac, Inc. v. Kolinor Optical Enterprises & Consultants, S.R.L., 1993, 817 F.Supp. 326. Federal Courts 82

Jurisdiction over nonresident corporation which did no business in New York was acquired by service on its subsidiary in New York, the alter ego of the parent through which it acted. ABKCO Industries, Inc. v. Lennon (1 Dept. 1976) 52 A.D.2d 435, 384 N.Y.S.2d 781. Corporations And Business Organizations 3266(7)

74. ---- Factors considered, subsidiary corporations, doing business within state

To establish that subsidiary is an agent of foreign corporation which is its parent, so that presence of subsidiary in New York will establish parent's presence in New York for purposes of long-arm statute, plaintiff must show that subsidiary does all the business which parent could do by its own officials, were it in New York. Jazini v. Nissan Motor Co., Ltd., C.A.2 (N.Y.)1998, 148 F.3d 181. Courts 13.6(9)

In determining whether subsidiary corporation is a “mere department” of foreign corporation which is its parent, so that presence of subsidiary in New York will allow exercise of jurisdiction over parent under New York long-arm statute, court must consider factors of common ownership, which is essential; financial dependency of the subsidiary on parent corporation; degree to which parent corporation interferes in selection and assignment of subsidiary's executive personnel and fails to observe corporate formalities; and degree of control over marketing and operational policies of subsidiary which is exercised by parent. Jazini v. Nissan Motor Co., Ltd., C.A.2 (N.Y.)1998, 148 F.3d 181. Courts 13.6(9)

Jurisdiction under New York law based upon an agency theory requires a plaintiff to show that a subsidiary does

all the business which a parent corporation could do were it here by its own officials; the agent's activities in New York must be important enough to the foreign parent corporation that in the absence of an agent, the named defendant would undertake to perform substantially similar services. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Corporations And Business Organizations 1078(3); Courts 13.6(9)

While common ownership between a parent corporation and its alleged department is essential to a finding that the subsidiary is a mere department of its parent, in the analysis for personal jurisdiction over the parent under New York law, the remaining factors must thereafter be considered to determine the outcome of the inquiry. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Corporations And Business Organizations 1078(3); Courts 13.6(9)

That a subsidiary is an agent of the parent corporation for jurisdictional purposes may be established by showing that the subsidiary does all the business which the parent corporation could do were it in New York by its own officials; further, a subsidiary will be considered a mere department, sufficient to extend jurisdiction over the parent under New York law, only if the foreign parent's control of the subsidiary is so pervasive that the corporate separation is more formal than real. Taylor Devices, Inc. v. Walbridge Aldinger Co., 2008, 538 F.Supp.2d 560. Federal Courts 82

In determining whether personal jurisdiction exists over parent corporation under New York long-arm statute on the basis that subsidiary is a “mere department” of the parent, court must consider factors including: (1) common ownership, which is “essential”; (2) the subsidiary's financial dependency on the parent; (3) the degree to which the parent is involved in the selection and assignment of the subsidiary's executive personnel and failure to observe corporate formalities, including overlapping officers and directors; and (4) the amount of control exercised by the parent over the subsidiary's marketing and operational policies. Taylor Devices, Inc. v. Walbridge Aldinger Co., 2008, 538 F.Supp.2d 560. Federal Courts 82

In assessing whether domestic subsidiary is “department” of foreign parent corporation for purposes of New York general jurisdictional statute, courts look to: (1) whether there is common ownership; (2) financial dependency of subsidiary on parent, (3) degree to which parent interferes in selection and assignment of subsidiary's executive personnel and fails to observe corporate formalities; and (4) degree of control over marketing and operational policies of subsidiary exercised by parent. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293. Corporations And Business Organizations 1078(3); Courts 13.6(9)

New York subsidiary of Greek bank was not “mere department” of foreign entity, for purposes of general personal jurisdiction over bank under New York statute; subsidiary was not financially dependent on bank, bank did not interfere with subsidiary's selection and assignment of executive personnel, subsidiary did not fail to observe corporate formalities, and bank exercised only minimal control over marketing and operational policies of subsidiary. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293. Federal Courts 82; Federal Courts 86

When analyzing whether subsidiary is a “mere department” of its parent corporation for jurisdictional purposes, New York courts consider: (1) common ownership between the parent and subsidiary, which is essential to a

"mere department" finding; (2) the financial dependency of the subsidiary on the parent corporation; (3) the degree to which the parent corporation interferes in the selection and assignment of the subsidiary's executive personnel and fails to observe corporate formalities; and (4) the degree of control over the marketing and operational policies of the subsidiary exercised by the parent. Stutts v. De Dietrich Group, 2006, 465 F.Supp.2d 156. Federal Courts 82

In order to establish that a subsidiary is a "mere department" of its parent corporation for jurisdictional purposes, a plaintiff seeking to invoke New York long-arm statute must factually allege that the foreign parent's control of the subsidiary is pervasive enough that the corporate separation is more formal than real. Stutts v. De Dietrich Group, 2006, 465 F.Supp.2d 156. Federal Courts 82

Plaintiffs did not sufficiently allege facts establishing that French parent corporation assumed jurisdictional status of subsidiary based on theory that subsidiary was a "mere department" of parent, which owned 90% or more of subsidiary; while plaintiffs alleged facts indicating that parent had some measure of control over the broad financial policies of its subsidiaries, they did not clearly allege dependency, and did not allege that parent interfered in the day-to-day operations of subsidiary, or that it had exerted control over the standard operating procedures of its subsidiaries. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 94

In order to show that a subsidiary is a "mere department" of foreign parent corporation for purposes of New York long-arm statute, plaintiffs must allege facts supporting (1) common ownership, (2) financial dependency of the subsidiary on the parent (3) the degree to which the parent interferes in the selection and assignment of the subsidiary's personnel and fails to observe corporate formalities, and (4) the degree of control that the parent exercises over the subsidiary's marketing and operational policies. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376. Federal Courts 82

To show that subsidiary is an "agent" of defendant foreign parent corporation for purpose of New York long-arm statute, plaintiffs need demonstrate neither a formal agency agreement, nor that the foreign corporation exercised direct control over its putative agent; the agent must be primarily employed by the defendant and not engaged in similar services for other clients. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376. Federal Courts 82

Showing that subsidiary is agent of foreign parent corporation, for purposes of establishing personal jurisdiction over parent under New York law based on activities of subsidiary, may be established by showing that subsidiary does all business parent could do if it were represented here by its own officials. Kirkpatrick v. Rays Group, 1999, 71 F.Supp.2d 204. Courts 13.6(9)

In determining whether personal jurisdiction exists over foreign parent corporation under New York law, on basis that subsidiary subject to jurisdiction is mere department of parent, court must consider (1) common ownership, which is essential, (2) parent's financial dependency on subsidiary, (3) degree to which parent is involved in selection and assignment of subsidiary's executive personnel, observance of corporate formalities, and (4) amount of control exercised by parent over subsidiary's marketing and operational policies. Kirkpatrick v. Rays Group, 1999, 71 F.Supp.2d 204. Courts 13.6(9)

Allegations that certain banking institutions owned by a nonbank holding company which, through a subsidiary, may also have owned defendant Brazilian bank were insufficient to establish that Brazilian bank was doing business and was therefore present in New York, as a basis for district court to assert personal jurisdiction over Brazilian bank, in tort action against bank. Schultz v. Safra Nat. Bank of New York, C.A.2 (N.Y.)2010, 377 Fed.Appx. 101, 2010 WL 1980234, Unreported. Federal Courts 82; Federal Courts 86

Foreign corporation was not "doing business" in New York within meaning of statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state, where it played no role in daily operations of its subsidiary, was not authorized to do business in New York, did not have office, officers, employees, agents or bank accounts in New York, and did not directly buy, sell or trade with New York customers. Tsegaye v. Impol Aluminum Corp., 2003, 2003 WL 221743, Unreported. Federal Courts 86

75. ---- Common ownership or control, subsidiary corporations, doing business within state

Fact that one of four "managing executive directors" of Japanese parent corporation was chairman of corporation's American subsidiary did not establish that subsidiary was a "mere department" of parent, as would make presence of subsidiary in New York sufficient to allow exercise of jurisdiction over parent under New York long-arm statute. Jazini v. Nissan Motor Co., Ltd., C.A.2 (N.Y.)1998, 148 F.3d 181. Federal Courts 86

In personam jurisdiction existed under New York law over foreign corporation by reason of presence in New York of related corporation, which was wholly owned by foreign corporation, was wholly dependent on foreign corporation's financial support to stay in business, had same president, treasurer, and vice-president as foreign corporation, whose salaries were paid by foreign corporation, and marketing policies of which were tightly controlled by foreign corporation. Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp., C.A.2 (N.Y.)1984, 751 F.2d 117. Federal Courts 82

A subsidiary will be considered a mere department of a named defendant for personal jurisdiction under New York law where the defendant's control over the subsidiary is pervasive enough that the corporate separation is more formal than real; common ownership of the defendant over which jurisdiction is sought to be asserted, and the alleged department, is an essential factor for a finding of jurisdiction over the parent. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Federal Courts 82

In determining whether a subsidiary is a "mere department" of parent company, for purposes of determining whether personal jurisdiction exists over parent company under New York long-arm statute based on subsidiary's activities in state, court must find, among other factors, essential element of common ownership. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Courts 13.6(9)

Jurisdiction over a foreign corporation may be established in New York if the foreign corporation has a New York subsidiary or affiliate which serves as a "mere department" of the corporation. Mones v. Commercial Bank of Kuwait, S.A.K., 2005, 399 F.Supp.2d 310, reconsideration denied 399 F.Supp.2d 412, vacated and remanded 204 Fed.Appx. 988, 2006 WL 3308202, on remand 502 F.Supp.2d 363. Federal Courts 82

For purposes of establishing that parent corporation assumed jurisdictional status of subsidiary based on theory that subsidiary is a “mere department” of parent, parent corporation's control over personnel decisions requires more than the parent's appointment of a few of the subsidiary's officers or directors. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Corporations And Business Organizations 1078(2)

Subsidiary was not mere department of parent, as required for assertion of general personal jurisdiction over parent under New York long-arm statute, in patent infringement case; there was only one common director, no showing that subsidiary was financially dependent on parent, and there was no direct control over subsidiary's operations or maintenance of unified marketing image. Meteoro Amusement Corp. v. Six Flags, 2003, 267 F.Supp.2d 263. Patents 288(4)

New York companies which engaged in business with German corporations were not “mere departments” of the German corporations so as to render German corporations subject to general jurisdiction under New York law; there was no common ownership as to one New York company, and, the other maintained its own books and records, had its own bank accounts and functioned independently in its day-to-day operations. Jacobs v. Felix Bloch Erben Verlag fur Buhne Film und Funk KG, 2001, 160 F.Supp.2d 722. Federal Courts 86

Wholly-owned banking subsidiary was not shown to be a mere department of its parent corporation, so as to establish personal jurisdiction over the corporation under a New York long-arm statute, even though they both had overlapping officers and directors, a web page failed to distinguish between the corporation and the subsidiary, and the corporation had consolidated its annual report with the subsidiary. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544.

Buyer of clothing failed to establish that seller, which had New York office, was department of California based manufacturer, which supplied clothing to seller, so as to allow for personal jurisdiction over manufacturer under New York law; there was no showing of common ownership, financial dependency of seller on manufacturer, that formalities required to be kept by separate entities were not observed, or that manufacturer exercised any control over marketing and operational policies of seller. Kirkpatrick v. Rays Group, 1999, 71 F.Supp.2d 204. Federal Courts 82

New York parent and subsidiary corporations' indirect ownership of 90% of affiliate was sufficient to satisfy “common ownership” requirement for purposes of establishing personal jurisdiction in New York over affiliate based on activities of parent and subsidiary corporations; furthermore, subsidiary's 90.5% indirect ownership interest in affiliate's subsidiary was sufficient to establish the nearly identical ownership interest required. ESI, Inc. v. Coastal Corp., 1999, 61 F.Supp.2d 35. Federal Courts 82

Affiliated subsidiaries were subject to personal jurisdiction in New York pursuant to “doing business” jurisdictional statute because they were acting as “mere departments” of parent corporations which were concededly present in New York; parents' ownership interests in affiliates were sufficient to establish the nearly identical ownership interest required, operation and existence of the affiliates was dependent upon the financial support of parent corporations, there was massive overlap of corporate officers and directors between the parents and affiliates, and affiliates were merely holding companies formed to finance, own, operate and manage power plant for

parent corporations. ESI, Inc. v. Coastal Corp., 1999, 61 F.Supp.2d 35. Federal Courts 82

Presence of Florida theme park owner's corporate parent in New York did not render owner subject to personal jurisdiction under "doing business" prong of New York long-arm law, in action for wrongful death at theme park, though owner and its parent shared common directors, where there was no evidence that parent conducted any activities on behalf of owner in New York. Schenck v. Walt Disney Co., 1990, 745 F.Supp. 894, published at.

For purposes of New York long-arm statute, New York corporation's distribution of promotional brochure proclaiming that foreign corporation had overseas branch in New York City was chargeable to foreign corporation because both companies were under sufficient common control and ownership. New York Marine Managers, Inc. v. M.V. Topor-1, 1989, 716 F.Supp. 783. Federal Courts 82

Under this section, a plaintiff seeking to base jurisdiction over a parent corporation on the activities of its subsidiary must show not only that subsidiary "does business" in New York, but must also show that subsidiary does all the business that its parent could do were it in New York by its own officials, making the subsidiary really an "agent" of the parent, or show day-to-day control of the subsidiary by the parent that is so complete as to render the subsidiary, in fact, merely a "department" of the parent. Bialek v. Racal-Milgo, Inc., 1982, 545 F.Supp. 25. See, also, Puerto Rico Maritime Shipping Authority v. Almogy, D.C.N.Y.1981, 510 F.Supp. 873; Bellomo v. Pennsylvania Life Co., D.C.N.Y.1980, 488 F.Supp. 744; Murray v. Plessey Inc., 1972, 40 A.D.2d 811, 338 N.Y.S.2d 311. Courts 13.6(9)

Subsidiary television station was "mere department" of parent nation-wide communications corporation for jurisdictional purposes and thus parent was "doing business" in New York and subject to personal jurisdiction in the United States District Court for the Southern District of New York in view of import of correspondence from parent's vice president to television station's former national advertising sales representative to effect that representative was being terminated and replaced as parent's sales representative for its station and failure of representation and indemnification agreements between parent and successor sales representative to acknowledge separate existence of subsidiary television station apart from mere formality of parent-subsidiary relationship. Katz Agency, Inc. v. Evening News Ass'n, 1981, 514 F.Supp. 423, affirmed 705 F.2d 20. Federal Courts 82

Where French corporation which was a wholly owned subsidiary of a wholly owned subsidiary of a corporation doing business in New York was in fact merely an incorporated division and instrumentality of the latter corporation, in that in conducting its brokerage business it transmitted its own orders from its customers for securities to the parent in New York for execution, it was a guaranteed corporate subsidiary under stock exchange rule, parent had guaranteed its customer and trade creditor liabilities and obligations, and various annual reports and pamphlets published by parent treated French corporation as a branch or international division office operated by the parent, personal jurisdiction existed with respect to the French corporation in diversity action brought in New York. Titu-Serban Ionescu v. E. F. Hutton & Co., 1977, 434 F.Supp. 80, affirmed 636 F.2d 1202. Federal Courts 86

Evidence that parent and subsidiary corporation were commonly owned and had common directors and officers,

that each functioned as an integral part of united endeavor, and that the parent corporation was a New York corporation with its principal place of business in New York City was sufficient to establish personam jurisdiction over the subsidiary. Freeman v. Gordon & Breach, Science Publishers, Inc., 1975, 398 F.Supp. 519. Federal Courts 97

Although corporate defendant was a subsidiary of a Delaware corporation doing business in New York, with Delaware corporation owning 82.7% of defendant's outstanding shares and providing defendant with various corporate services, including general management, financial, industrial relations and other administrative services, where defendant was charged a fee for such services and fee did not exceed charges which would have been paid had services been performed by nonaffiliated persons, circumstances were not such as to establish control of defendant by parent so as to warrant service of process in New York. Baird v. Day & Zimmerman, Inc., 1974, 390 F.Supp. 883, affirmed 510 F.2d 968. Corporations And Business Organizations 3266(7)

Japanese corporation which had a wholly owned subsidiary in New York with which there was a regular interchange of managerial and supervisory personnel and which listed subsidiary as an overseas office or branch and exchanged a variety of records and documents with it was present within New York with respect to claim for damage to cargo shipped by Japanese corporation to its subsidiary for purpose of resale to American corporation, and court had personal jurisdiction under this section by means of service on the subsidiary. Tokyo Boeki (U.S.A.), Inc. v. S. S. NAVARINO, 1971, 324 F.Supp. 361. Corporations And Business Organizations 3266(7); Federal Courts 82

Buyers made prima facie showing of in personam jurisdiction over English corporate parent of seller of belt repair products, on basis that seller was “mere department” of its parent corporation under New York law; there was common ownership and, though subsidiary was not wholly financially dependent on parent, assurances had been made to prospective high level employee that subsidiary would be fully funded by parent and parent granted below-market value lease to subsidiary and provided interest-free loans. Advance Coating Technology, Inc. v. LEP Chemical Ltd., 1992, 142 F.R.D. 91. Federal Courts 82

Fact that foreign corporation was agent of another corporation which was “doing business” in New York for purposes of this section did not confer jurisdiction over the foreign corporation in contract action brought in New York federal district court where there was no parent-subsidiary relationship or common ownership between the two corporations. Grove Valve & Regulator Co., Inc. v. Iranian Oil Services Ltd., 1980, 87 F.R.D. 93. Federal Courts 82

Control inherent in parent-subsidiary relationship does not justify labeling subsidiary “mere department” of parent for purposes of this section. Saraceno v. S. C. Johnson and Son, Inc., 1979, 83 F.R.D. 65. Courts 13.6(9)

Greek limited partnership that acted as shipping agent in Greece for corporation that was headquartered in New York could not be deemed a “mere department” of New York corporation and could not, on that basis, be subjected to New York court's personal jurisdiction, where common ownership between corporation and partnership was limited to corporation's indirect 52% ownership of partnership; this level of commonality was not sufficient

to establish the nearly identical ownership interest required for personal jurisdiction under a "mere department" theory. In re Levant Line, S.A., 1994, 166 B.R. 221. Federal Courts 86

Foreign corporation is not present in state for purpose of assertion of personal jurisdiction on basis of control unless there exists at least a parent-subsidiary relationship and the control over subsidiary's activities must be so complete that the subsidiary is in fact merely a department of the parent. Delagi v. Volkswagenwerk A.G. of Wolfsburg, Germany, 1972, 29 N.Y.2d 426, 328 N.Y.S.2d 653, 278 N.E.2d 895, reargument denied 30 N.Y.2d 694, 332 N.Y.S.2d 1025, 283 N.E.2d 432. See, also, Marantis v. Dolphin Aviation, Inc., D.C.N.Y.1978, 453 F.Supp. 803; Saraceno v. S. C. Johnson and Son, Inc., D.C.N.Y.1979, 83 F.R.D. 65; Taca Intern. Airlines, S.A. v. Rolls-Royce of England, Limited, 1964, 21 A.D.2d 73, 248 N.Y.S.2d 273, resettled 252 N.Y.S.2d 395, affirmed 15 N.Y.2d 97, 256 N.Y.S.2d 129, 204 N.E.2d 329, on remand 47 Misc.2d 771, 263 N.Y.S.2d 269. Courts 13.6(9)

In general, fact that parent corporation owns all stock of subsidiary corporation which is doing business in state does not in and of itself subject parent to jurisdiction of person by such state. Adriana Development Corp. N.V. v. Gaspar (1 Dept. 1981) 81 A.D.2d 235, 439 N.Y.S.2d 927. See, also, Donner v. Weinberger's Hair Shops, Inc., 1952, 280 A.D. 67, 111 N.Y.S.2d 310. Courts 13.6(9)

Foreign corporation which merely made isolated contract in state and whose relations with its subsidiary corporation in state was not such that subsidiary was mere instrumentality of foreign corporation through which it was conducting business in state, was not doing business in state and subject to jurisdiction of courts. Simonson v. International Bank (1 Dept. 1962) 16 A.D.2d 55, 225 N.Y.S.2d 392, appeal granted 13 N.Y.2d 593, 240 N.Y.S.2d 1025, 190 N.E.2d 905, affirmed 14 N.Y.2d 281, 251 N.Y.S.2d 433, 200 N.E.2d 427. Courts 13.6(9)

Multinational corporation having its principal place of business in Korea was doing business in New York and, therefore, was subject to the jurisdiction of the New York Supreme Court, where corporation retained complete control over its wholly owned New York subsidiary, corporation and its subsidiaries operated under umbrella of common management control, New York subsidiary was listed as a branch of corporation and its earnings were consolidated in financial statement of corporation, there was substantial interchange of personnel between Korean parent and New York subsidiary, and management decisions affecting a joint venture, the subject of the instant action, were dictated from the home office. Kossoff v. Samsung Co. Ltd., 1984, 123 Misc.2d 177, 474 N.Y.S.2d 180. Courts 13.6(9)

Circumstance that foreign corporation was represented in its local activities in state of forum by separate individual or by separate corporation and not by directly controlled subsidiary or branch office was not in itself determinative of question whether corporation might be sued in state of forum, nor was circumstance that the representative worked for several principals of special importance. Berner v. United Airlines, 1956, 2 Misc.2d 260, 149 N.Y.S.2d 335, affirmed 3 A.D.2d 9, 157 N.Y.S.2d 884, appeal granted 3 A.D.2d 661, 159 N.Y.S.2d 679, affirmed 3 N.Y.2d 1003, 170 N.Y.S.2d 340, 147 N.E.2d 732. Corporations And Business Organizations 3255

76. ---- Financial arrangements, subsidiary corporations, doing business within state

Indirect loans that were made by German brokerage to New York-based broker-dealer in which one of its officers had interest did not establish that brokerage was "doing business" in New York, as required to establish general personal jurisdiction over brokerage under New York's long-arm statute in third-party tort action, even if such indirect involvement somehow transformed broker-dealer into brokerage's subsidiary; although brokerage may have taken its actions with expectation of conducting business in New York in the future, that expansion had not occurred when third-party complaint was filed. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Federal Courts 86

Allegations of survivors of Americans killed in ski train accident in Austria, in negligence and strict liability action against German corporation and others, that the German corporation's subsidiary located in New York was included in the consolidated financial statements of the German parent corporation, received some funding from the parent corporation, and was held out to the public, along with all of the parent corporation's other subsidiaries, as part of one enterprise, were insufficient to make prima facie showing that the subsidiary was a "mere department" of the parent corporation as would confer personal jurisdiction over the parent corporation under New York's long-arm statute. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376.

Where a subsidiary is created by the parent corporation for corporate finance purposes, or to carry on business on its behalf, the subsidiary's activities may properly be attributed to the parent for jurisdictional purposes under New York's long-arm statute. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376. Federal Courts 82

Corporation incorporated in Delaware with its principal place of business in New Jersey was not "doing business" in New York for purposes of personal jurisdiction in diversity action involving products liability, by virtue of intercompany loans and transfers of idle cash between itself and an affiliated corporation incorporated in New York. Vendetti v. Fiat Auto S.p.A., 1992, 802 F.Supp. 886. Federal Courts 84

77. ---- Independent activity, subsidiary corporations, doing business within state

Even if existence of retail store in New York met "solicitation plus" requirements for finding personal jurisdiction over related foreign corporations, New York district court would not ignore corporate structures that clearly showed corporations were separate entities, to find it had personal jurisdiction over Delaware corporation owning theme park in Florida and Florida corporation operating park in negligence action brought by theme park patrons. Intermor v. Walt Disney Co., 2003, 250 F.Supp.2d 116. Federal Courts 82

Wholly-owned banking subsidiary was not shown to have conducted business in New York on behalf of a foreign corporation, so as to be the corporation's agent for purposes of establishing personal jurisdiction under a New York long-arm statute; the corporation's primary function was to hold the equity securities in its subsidiaries, while the subsidiary was engaged in the specialty financial services business and the servicing of residential and commercial mortgages, and it was not shown that the subsidiary conducted business in the state that the corporation would have done if it were in the state with its own officials. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544. Federal Courts 82

Wholly-owned banking subsidiary was not shown to be a mere department of its parent corporation, so as to establish personal jurisdiction over the corporation under a New York long-arm statute, even though they both had overlapping officers and directors, a web page failed to distinguish between the corporation and the subsidiary, and the corporation had consolidated its annual report with the subsidiary. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544. Federal Courts 82

Under New York law, Canadian corporation which did not have bank account, employee, or lease within state did not conduct business in state with fair measure of permanence and continuity for purposes of exercising personal jurisdiction over corporation even though corporation's subsidiary conducted business in state in absence of any claim that valid agency relationship existed between corporation and subsidiary or that subsidiary was mere department of corporation. U.S. v. International Broth. of Teamsters, 1996, 945 F.Supp. 609. Federal Courts 86

Corporation formed under laws of Italy, and manufacturing automobiles in that country, which did not have an office or employees in New York, was not subject to personal jurisdiction in a products liability diversity suit, even though it had common directors with an affiliated New York corporation. Vendetti v. Fiat Auto S.p.A., 1992, 802 F.Supp. 886. Federal Courts 86

Foreign affiliates of New York corporation, named as defendants in copyright infringement action, were not "mere departments" of New York corporation so as to be subject to personal jurisdiction in New York under New York long-arm statute, where affiliates were not wholly dependent upon New York corporation's financial support to stay in business and each affiliate maintained its own books, records, and bank accounts and functioned independently financially in its day to day operations. Palmieri v. Estefan, 1992, 793 F.Supp. 1182. Federal Courts 79

Canadian corporation was not subject to jurisdiction of New York courts, on ground that it was merely a corporate shell that conducted no business of its own independent of its wholly owned subsidiary, which did substantial business in New York, where parent conducted venture capital and licensing activities and developed new technology in approximate amount of $14 million and entered into licensing agreements with another corporation and until recently had its own data systems division which generated substantial revenues. Morse Typewriter Co., Inc. v. Samanda Office Communications Ltd., 1986, 629 F.Supp. 1150. Federal Courts 86

Foreign parent corporation could be considered to be "doing business" within meaning of this section for limited purposes during period of penetration of American market before its subsidiaries have matured to relatively full independence. Bulova Watch Co., Inc. v. K. Hattori & Co., Ltd., 1981, 508 F.Supp. 1322. Federal Courts 82

Even though a parent-subsidiary relationship existed between corporate defendant and its wholly owned subsidiary authorized to do business in New York, presumption of agency did not arise so as to authorize service of process against defendant on grounds that it was doing business in New York, where subsidiary was employed as an independent contractor devoid of authority to bind defendant in any way, and subsidiary could solicit orders, but had no right to confirm sales or to set price schedules, or terms or conditions of sales, and at best could

try to obtain orders and transmit them to defendant at its home office for acceptance or rejection. Baird v. Day & Zimmerman, Inc., 1974, 390 F.Supp. 883, affirmed 510 F.2d 968. Corporations And Business Organizations 3266(7)

Where aircraft manufacturer, organized under laws of United Kingdom, was not licensed to do and did no business in state other than to maintain, at offices of locally located, though independently operated, subsidiary company, an employee engaged principally in preserving customer good will, foreign corporation was not "doing business" within state to such extent as to warrant inference that it was present within state and was not amenable to process in state. State St Trust Co v. British Overseas Airways Corp, 1956, 144 F.Supp. 241. Corporations And Business Organizations 3271

Alleged parent of New York-based leasing agent was not doing business in New York, as required for it to be subject to personal jurisdiction in New York, where subsidiary was separately capitalized, prepared separate consolidated financial statement, had independent banking relationship, had its own board of directors, selected and assigned its own executive personnel, and exclusively controlled its marketing and operational policies. Stratagem Development Corp. v. Heron Intern. N.V., 1994, 153 F.R.D. 535. Federal Courts 82

Where defendant Mexican corporations did no business in New York through officers, directors, or employes, fact that oil produced by them was sold in state through their parent corporation's subsidiary marketing corporation, under contracts between defendants and marketing corporation, did not constitute "doing business" in New York, so as to make defendants subject to service of process therein, on theory that marketing corporation was merely their agent, where parent corporation, except for bookkeeping purposes, disregarded separate ownership of corporate property by subsidiaries, retained proceeds of sales as if defendants' business was merely departments of its own business, and treated marketing corporation rather as its own agent than as agent of defendant corporations. Compania Mexicana Refinadora Island, S. A. v. Compania Metropolitana De Oleoductos, S. A., 1928, 250 N.Y. 203, 164 N.E. 907.

Where subsidiary in New York agreed to buy such part of parent corporation's products as subsidiary elected and to use its best efforts in selling entire output of parent corporation, but subsidiary could not conduct business under name of or for account of parent corporation and could not enter into contracts on behalf of parent corporation or bill goods to third parties on its behalf, and parent corporation did not assume any responsibility for collection of accounts, guarantee any losses or assume credit risks, and it had no office or telephone listing in New York although its president and treasurer, who were also officers of subsidiary, resided in New York, parent corporation was not "doing business" within jurisdiction of New York and was not amenable to service of process in New York on its president. Blau v. Martin, 1957, 8 Misc.2d 54, 167 N.Y.S.2d 662. Corporations And Business Organizations 3271

The service of summons on president of foreign corporation while president was in New York was ineffective to obtain jurisdiction of corporation on ground that corporation was in New York through presence and activities within New York of corporation's officers, where officers merely represented foreign corporation which owned majority of stock in another corporation which employed same officers, and business done at meeting attended by president and other officers was business of other corporation and not that of foreign corporation. Blaustein

v. Pan Am. Petroleum & Transport Co., 1937, 163 Misc. 749, 297 N.Y.S. 539, affirmed 251 A.D. 704, 296 N.Y.S. 996. Corporations And Business Organizations 3266(5)

Mere presence of a subsidiary in New York does not establish the parent's presence in the state, and for New York courts to have personal jurisdiction over parent under statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state, subsidiary must be either an agent or a mere department of the foreign parent. Tsegaye v. Impol Aluminum Corp., 2003, 2003 WL 221743, Unreported. Courts 13.6(9)

78. ---- Essential services, subsidiary corporations, doing business within state

Under New York law, a New York court may assert jurisdiction over a foreign corporation when it affiliates itself with a New York representative entity, and that representative renders services on behalf of the corporation that go beyond mere solicitation and are sufficiently important to the corporation that the corporation itself would perform equivalent services if no agent were available. Wiwa v. Royal Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Courts 13.6(1)

Subsidiary operating amusement park was not agent of parent, so as to subject parent to general personal jurisdiction under New York long-arm statute, in patent infringement action; subsidiary accounted for three percent of parent's income, amount too small to support necessary claim that parent would be doing business directly in state in absence of subsidiary. Meteoro Amusement Corp. v. Six Flags, 2003, 267 F.Supp.2d 263. Patents 288(4)

German corporation's subsidiary located in New York was an “agent” of the parent corporation as would confer personal jurisdiction over the parent corporation under New York's long-arm statute, in negligence and strict liability action against German corporation brought by survivors of Americans killed in ski train accident in Austria, where the subsidiary was 100% owned by the parent and was engaged primarily in services for the parent and its businesses and served as a holding company for the parent. In re Ski Train Fire in Kaprun, Austria on Nov. 11, 2000, 2002, 230 F.Supp.2d 376.

Foreign corporation may be subject to jurisdiction in New York when separate corporation, acting with its authority and for its substantial benefit, carries out activities in New York that are more than mere solicitation of business and are sufficiently important to foreign corporation that if it did not have representative to perform them, corporation's own officials would undertake to perform substantially similar services. First American Corp. v. Price Waterhouse LLP, 1997, 988 F.Supp. 353, on reconsideration in part 1998 WL 148421, affirmed 154 F.3d 16. Federal Courts 86

Personal jurisdiction could be imposed on United Kingdom accounting partnership, for subpoena compliance purposes, based upon use of affiliated New York partnership as agent to audit local branch of international financial institution; control over auditing procedures was so extensive that it was equivalent to having work done by United Kingdom partnership's own employees. First American Corp. v. Price Waterhouse LLP, 1997, 988 F.Supp. 353, on reconsideration in part 1998 WL 148421, affirmed 154 F.3d 16. Federal Courts 86

Japanese corporation was "doing business" in New York based on activities of its wholly owned New York subsidiary for purposes of assertion of jurisdiction under New York long-arm statute over corporation where most of subsidiary's clients were American subsidiaries of parent's Japanese clients, subsidiary occasionally serviced parent's clients and subsidiary was doing all business that parent would do were parent in New York; parent asserted control over subsidiary through expatriate employees and monthly financial reports. Goyette v. DCA Advertising Inc., 1993, 830 F.Supp. 737. Federal Courts 82

In action brought by New York corporation based on allegedly defective shipment of Italian knit fabric, foreign parent corporation was subject to in personam jurisdiction by virtue of activities of its wholly owned New York subsidiary where subsidiary had effectively taken over functions formerly fulfilled by parent's New York agent which became defunct on day preceding incorporation of subsidiary, where subsidiary did all business which parent could do by its own officials if located in New York, and where parent and subsidiary constituted tightly knit commercial organization of commonly owned entities which manufactured products in Europe and distributed them directly to New York by means of activities of subsidiary; elements of common ownership and performance of essential services by New York subsidiary existed. Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa, 1977, 428 F.Supp. 1237. Federal Courts 82

Piercing the corporate veil, if only for jurisdictional purposes, is a drastic approach authorized only in the most extreme circumstances; in the New York courts it is generally eschewed except where a wholly-owned subsidiary is performing services for the parent in New York, which are essential for the parent's other business activities. Karlin v. Avis, 1971, 326 F.Supp. 1325. Corporations And Business Organizations 1078(3)

Where foreign corporation has subsidiary that acts, in effect, as an agent for it within New York and that subsidiary performs acts so essential to the foreign corporation that, if the subsidiary were not to perform them, the foreign corporation would have to come into New York to perform them itself, the foreign corporation may be deemed present within the state for jurisdictional purposes, but acts of an independent contractor in New York are not imputed to nondomiciliary corporations. Loria & Weinhaus, Inc. v. H. R. Kaminsky & Sons, Inc., 1978, 80 F.R.D. 494, motion granted 495 F.Supp. 253. Courts 13.6(1); Courts 13.6(9)

79. ---- Advertisements and publicity, subsidiary corporations, doing business within state

With respect to marketing policies, the fact that subsidiaries share a logo, or that the parent decides to present several corporations on a website in a unified fashion, is insufficient to show lack of formal separation between two entities for purposes of establishing that parent corporation assumed jurisdictional status of subsidiary based on theory that subsidiary is a "mere department" of parent. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Corporations And Business Organizations 1086(14)

Press release in which subsidiary was described as the "marketing arm" of corporation was insufficient to show that the subsidiary was an agency so that it's acts in New York could be attributed to the foreign corporation for purposes of determining whether it was doing business and thus subject to long-arm jurisdiction in New York. H. Heller & Co., Inc. v. Novacor Chemicals Ltd., 1988, 726 F.Supp. 49, affirmed 875 F.2d 856. Federal Courts 299

80. Derivative jurisdiction, doing business within state

Former employee failed to show that New York corporation was agent or partner of Netherlands-based association for purposes of allowing court to exercise general jurisdiction over foreign association under theory of derivative jurisdiction, despite its proffer of evidence showing marketing materials suggesting that foreign association was global firm or network of firms, where there was no evidence that foreign association controlled activities of corporation, that there was subsidiary or common stock ownership or that there was joint control or shared property between entities. Howard v. Klynveld Peat Marwick Goerdeler, 1997, 977 F.Supp. 654, affirmed 173 F.3d 844. Federal Courts 86; Federal Courts 96

81. Presence within state, doing business within state

Mississippi seller of cranes used for construction projects was not subject to general jurisdiction in New York, pursuant to New York's long-arm statute, in breach of contract action brought by New York buyer, since seller had not maintained a presence in New York by doing business there; seller did not maintain an office in New York, did not conduct solicitations of business targeting New York consumers, did not maintain any bank accounts or other property there, had no employees or agents in New York, and did not have any type of on-going contractual relationship with a New York corporation. Skrodzki v. Marcello, 2011, 810 F.Supp.2d 501. Federal Courts 79

In assessing whether defendant's contacts with New York are sufficient to establish general personal jurisdiction under New York's long-arm statute, the relevant question is whether defendant was present in New York at the time the complaint was filed; to the extent that events occurring prior to that time are relevant, it is only to establish the pattern of contacts which existed at the moment the complaint was filed. Duravest, Inc. v. Viscardi, A.G., 2008, 581 F.Supp.2d 628. Courts 13.3(7)

Under New York's “doing business” test, a foreign corporation is amenable to suit in New York if it is engaged in such a continuous and systematic course of doing business there as to warrant a finding of its presence in the jurisdiction. Mones v. Commercial Bank of Kuwait, S.A.K., 2005, 399 F.Supp.2d 310, reconsideration denied 399 F.Supp.2d 412, vacated and remanded 204 Fed.Appx. 988, 2006 WL 3308202, on remand 502 F.Supp.2d 363. Federal Courts 79

Corporation is “present and doing business” in New York with respect to any cause of action related or unrelated to its New York contacts, for purpose of New York long-arm statute, if it does business in New York not occasionally or casually, but with fair measure of permanence and continuity. Smit v. Isiklar Holding A.S., 2005, 354 F.Supp.2d 260. Federal Courts 79

A New York federal court can exercise jurisdiction over a foreign entity on any cause of action if defendant is engaged in such a continuous and systematic course of doing business in New York as to warrant a finding of the defendant's presence in the jurisdiction; this standard requires that a defendant be present in New York, not occasionally or casually, but with a fair measure of permanence and continuity. Ulster Scientific, Inc. v. Guest Elchrom Scientific AG, 2001, 181 F.Supp.2d 95. Federal Courts 76.15

Songwriter's contacts with New York did not warrant a finding that songwriter was doing business in state sufficient to establish his presence there, for purposes of determining jurisdiction over songwriter in declaratory judgment action by publishing company to enjoin challenges to ownership of song, through use of state's long-arm statute, where songwriter was never physically present in New York, all negotiations took place in Louisiana between Louisiana-based parties, and songwriter maintained no offices or property in New York and had never employed a New York-based employee or agent; songwriter's contacts with New York-based licensing clearinghouse had been limited to clearinghouse supplying to songwriter statements of royalties due him, and license with clearinghouse had been arranged by publishing company, not by songwriter. Fort Knox Music, Inc. v. Baptiste, 2001, 139 F.Supp.2d 505, 59 U.S.P.Q.2d 1067, appeal dismissed 257 F.3d 108, 59 U.S.P.Q.2d 1538. Federal Courts 76.15

Mere presence of a subsidiary in New York does not establish the parent's presence in the state under the New York statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state; for New York courts to have personal jurisdiction in that situation, the subsidiary must be either an “agent” or a “mere department” of the foreign parent. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544. Courts 13.6(9); Federal Courts 82

Construing pleadings and affidavits most favorably to plaintiff, allegations that sales manager for division of Delaware corporation lived and carried on corporate activities in New York and that the Delaware corporation had 11 salesmen residing and working in New York were sufficient to establish a prima facie case that the Delaware corporation was “doing business” in New York, for purpose of New York long-arm provision which permits exercise of personal jurisdiction by the state of New York over a foreign corporate defendant for any cause of action if the foreign corporation is “doing business” in New York. Marketing Showcase, Inc. v. Alberto-Culver Co., 1978, 445 F.Supp. 755. Federal Courts 96

Corporation is subject to in personam jurisdiction in New York when it is engaged in such a continuous and systematic course of doing business in New York as to warrant finding of its presence in jurisdiction. Barth v. Kaye, 1998, 178 F.R.D. 371. Courts 13.4(3)

Former Attorney General of State of New Jersey did not have presence in New York or have contacts rising to level of “doing business” there, as would provide basis for exercise of personal jurisdiction over her by New York court. Barth v. Kaye, 1998, 178 F.R.D. 371. Courts 13.3(11)

Personal jurisdiction did not exist in products liability action over buyer of sawmill manufacturer's assets pursuant to “corporate presence” doctrine, given that assets buyer was nondomiciliary corporation that was not doing business in New York. Semenetz v. Sherling & Walden, Inc. (3 Dept. 2005) 21 A.D.3d 1138, 801 N.Y.S.2d 78, leave to appeal granted 6 N.Y.3d 702, 810 N.Y.S.2d 416, 843 N.E.2d 1156, affirmed 7 N.Y.3d 194, 818 N.Y.S.2d 819, 851 N.E.2d 1170. Courts 13.5(8)

In personal injury action based on motor vehicle collision which occurred in Canada, Canadian freight transporting corporation's occasional presence in New York was insufficient to subject corporation to personal jurisdiction in state, even though its vehicles sometimes traveled over New York roads; corporation did not own prop-

erty in New York, none of its employees lived there, and it made no deliveries there, did not advertise there, and had no bank accounts there. Yacone v. Excalibre Motor Lines (4 Dept. 2002) 298 A.D.2d 874, 748 N.Y.S.2d 831. Courts 13.5(5)

A foreign corporation is amenable to suit in New York courts if it has engaged in such a continuous and systematic course of doing business there that a finding of its presence in jurisdiction is warranted; test is whether aggregate of corporation's activities in state are such that corporation may be said to be present in state not occasionally or casually, but with a fair measure of permanence and continuity. Yacone v. Excalibre Motor Lines (4 Dept. 2002) 298 A.D.2d 874, 748 N.Y.S.2d 831. Courts 13.4(3)

Pennsylvania automobile insurer, which had no offices or bank accounts in New York, did not solicit business in New York, and was not licensed to, and did not, write insurance policies for New York vehicles, was not subject to personal jurisdiction under New York's long-arm statute and, by extension, was not subject to New York arbitration commenced by health care provider which had taken assignment of claims against insurer; although statute governing service of process on unauthorized insurers had derogated common law definition of “doing business” in order to provide broader jurisdiction over certain out of state insurers, provider was not intended beneficiary of that provision. American Independent Ins. v. Heights Chiropractic Care, P.C., 2006, 12 Misc.3d 228, 811 N.Y.S.2d 904. Courts 13.5(14); Insurance 3286

Russian film company that produced unauthorized television sequel was not “doing business” in New York, so as to come within New York‘s general jurisdiction statute, since it did not have an office, bank account, property, or mailing address in New York, it did not employ any personnel in the United States, and its sales overtures to company in the United States did not result in a sale. Overseas Media, Inc. v. Skvortsov, C.A.2 (N.Y.)2008, 277 Fed.Appx. 92, 2008 WL 1994981, Unreported. Federal Courts 86

Federal district court sitting in New York could not exercise personal jurisdiction over English licensing company pursuant to New York statute allowing for general jurisdiction over those “doing business” in New York, given that company specifically stated that it had no facilities, operations, employees, assets, or bank accounts in New York, and that company's alleged New York contacts did not suggest that it was doing business in New York on systematic and continuous basis, even upon aggregation of those contacts, which included being defendant in contract litigation in New York court, listing of non-company employee as contact person on contract underlying that litigation, purported contracts with unnamed New York businesses, allegations of minority ownership by New York corporation that were unaccompanied by averments that company was mere department or alter ego of corporation, and designation of New York bank as depository for its American depository receipts. Pieczenik v. Cambridge Antibody Technology Group, 2004, 2004 WL 527045, Unreported. Federal Courts 76.35

82. Solicitation of business, doing business within state--In general

For purposes of determining whether a foreign corporation is doing business in New York sufficient to subject it to personal jurisdiction, a finding that corporation “solicited business” in New York does not require an offer of contract; rather, the central question is whether the corporation or its agent behaved in such a way so as to encourage others to spend money or otherwise act in a manner that would benefit the corporation. Wiwa v. Royal

Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Courts 13.4(3)

American manufacturer of HIVS/AIDS drug made prima facie showing of personal jurisdiction, under New York long-arm statute, over Indian generic drug manufacturer that was alleged to have violated parties' agreement granting it right to distribute generic version of the drug in certain underdeveloped countries; complaint alleged Indian company's substantial solicitation of business in New York, revenues derived from sales in New York, and ongoing business relationships with New York companies. Bristol-Myers Squibb Co. v. Matrix Laboratories Ltd., 2013, 2013 WL 4056219. Federal Courts 86

Under New York law, Chinese battery manufacturer's operation of website that was accessible in New York, its sale of lithium-ion batteries outside New York that were used in products sold within New York, its unsuccessful solicitation of two New York-based customers, and its successful solicitation of one New York-based customer, which resulted in contract to design and deliver unspecified number of prototype batteries, were insufficient to warrant exercise of general personal jurisdiction over manufacturer in products liability action, where there was no evidence that sales to New York customer constituted substantial portion of manufacturer's sales in United States. UTC Fire & Sec. Americas Corp., Inc. v. NCS Power, Inc., 2012, 844 F.Supp.2d 366. Federal Courts 86

A foreign supplier of goods to an independent agency that solicits orders from New York purchasers is not necessarily present in New York, as required for personal jurisdiction; instead, where the solicitation of business is asserted in support of a doing business allegation, the foreign corporation's activities must rise to the level of solicitation plus some additional activities sufficient to render the corporation amenable to suit. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Federal Courts 81; Federal Courts 86

Solicitation of business alone will not justify finding of corporate presence under New York long-arm statute. CES Industries, Inc. v. Minnesota Transition Charter School, 2003, 287 F.Supp.2d 162. Federal Courts 81

Alleged shareholder's allegations that out-of-state corporation's general business plan was to solicit business at major airports, federal buildings, courthouses, and schools, were insufficient to establish that corporation was “doing business” within meaning of New York long-arm statute, where shareholder did not identify a single New York airport, federal building, courthouse, or school. Mende v. Milestone Technology, Inc., 2003, 269 F.Supp.2d 246. Federal Courts 94

New York district court did not have personal jurisdiction over Delaware corporation owning theme park in Florida and Florida corporation operating park, based on their doing business in state; neither entity had office, bank account, or property in state, even if they solicited potential theme park patrons in state. Intermor v. Walt Disney Co., 2003, 250 F.Supp.2d 116. Federal Courts 79; Federal Courts 81

Non-resident publisher of business directory, who regularly and successfully solicited business in New York,

was “doing business” in New York, within meaning of that state's long-arm statute. Thomas Pub. Co. v. Industrial Quick Search, Inc., 2002, 237 F.Supp.2d 489. Federal Courts 76.15

A defendant's solicitation of business alone cannot justify a finding of presence in New York pursuant to general jurisdiction statute. Photoactive Productions, Inc. v. AL-OR Intern. Ltd., 2000, 99 F.Supp.2d 281. Courts 13.3(11)

Solicitation of business in New York, standing alone, does not justify finding of corporate presence in New York supporting jurisdiction over foreign manufacturer or purveyor of services. Yurman Designs, Inc. v. A.R. Morris Jewelers, L.L.C., 1999, 41 F.Supp.2d 453, reconsideration denied 60 F.Supp.2d 241. Courts 13.4(3) ; Courts 13.5(7)

Solicitation of business, by itself, will not subject a foreign corporation to personal jurisdiction in the state of New York on an unrelated cause of action. Pfeffer v. Mark, 1999, 36 F.Supp.2d 556. Federal Courts 81

Plaintiff, through his pleading and affidavit, alleged facts that established that foreign corporation solicited business in New York and engaged in additional activity that conferred jurisdiction under “doing business” statute; plaintiff, a shareholder and principal of corporation, resided in New York, corporation's bank accounts were in New York, and forty per cent of its sales had been to purchasers in New York. Pfeffer v. Mark, 1999, 36 F.Supp.2d 556. Federal Courts 81

For purposes of determining whether New York has personal jurisdiction over a foreign corporation, corporation's solicitation of business alone will not justify a finding of corporate presence in New York. Hamilton v. Garlock, Inc., 1998, 31 F.Supp.2d 351, on reargument 1999 WL 135203, reversed 197 F.3d 58, on remand 96 F.Supp.2d 352, certiorari denied 120 S.Ct. 2691, 530 U.S. 1244, 147 L.Ed.2d 962. Courts 13.4(3)

District court had personal jurisdiction over nonresident defendant, a college, under the “doing business” prong of the New York long-arm statute; although college was not licensed to do business in New York, it maintained no offices in New York, and did not list a phone number in New York, it actively solicited students in New York by sending representatives to secondary schools in the state; in addition to solicitation, college engaged in substantial commercial activity in the state by having banking relationship with New York bank, by issuing bonds in New York, and by owning real property in the state. Kingsepp v. Wesleyan University, 1991, 763 F.Supp. 22. Federal Courts 81

Federal District Court lacked personal jurisdiction under “doing business” provision of New York's long-arm statute [N.Y. McKinney's CPLR 301] over Alabama corporation, being sued by Delaware corporation with principal place of business in New York for breach of contract for locating purchaser, where Alabama corporation was not licensed to conduct business in New York, maintained no local office or bank accounts in New York, possessed no New York property, did not engage in permanent and continuous hauling of freight into, out of, and through New York, and only occasionally solicited business in New York. New World Capital Corp. v. Poole Truck Line, Inc., 1985, 612 F.Supp. 166. Federal Courts 79; Federal Courts 81

Delaware corporation with corporate office in Illinois was “doing business” in New York sufficient to subject it to in personam jurisdiction of New York courts in breach of contract action, where corporation regularly solicited potential franchises and prepared advertising for existing franchises in New York, its representatives traveled to New York to consult with franchisees, it had conducted regional seminars and attended trade shows in New York, and its representatives had traveled to New York to consult with plaintiff in regard to creation of advertising program. Ally & Gargano, Inc. v. Comprehensive Accounting Corp., 1985, 603 F.Supp. 923. Federal Courts 84

Even if defendant foreign corporation's “agent” solicited substantial business in New York on behalf of foreign corporation, such solicitation would not sustain district court's assertion of jurisdiction over the corporation on ground that it was “doing business” in New York. Associated Trade Development, Inc. v. Condor Lines, Inc., 1984, 590 F.Supp. 525. Federal Courts 82

A foreign corporation may be found to be present in New York through an agent who continuously and systematically solicits business within the state on foreign corporation's behalf; however, mere solicitation is not enough; to subject a foreign corporation to jurisdiction, solicitation by an agent must be in combination with other activities within the state on behalf of the foreign corporation. Associated Trade Development, Inc. v. Condor Lines, Inc., 1984, 590 F.Supp. 525. Federal Courts 82

Minnesota clinic's arrangement with New York corporations to provide corporate executives with medical care and treatment, solicitation and receipt of nationwide charitable contributions, open laboratory facilities available nationwide and nationwide circulation of free medical publications were insufficient to constitute clinic's doing business in New York so as to confer jurisdiction under New York's “doing business” test over Minnesota hospital sued by New York residents in medical malpractice action arising out of medical care performed in Minnesota. Hutton v. Piepgras, 1978, 451 F.Supp. 205. Federal Courts 84

Fact that mere solicitation of business is not sufficient to subject foreign corporation to jurisdiction under this section providing that a court may exercise its jurisdiction over persons, property or status as might have been exercised heretofore does not necessarily mean that any type activity carried on in addition to solicitation is sufficient to establish that corporation is doing business in New York. Lumbermens Mut. Cas. Co. v. Borden Co., 1967, 265 F.Supp. 99. Corporations And Business Organizations 3202; Courts 13.4(3)

For jurisdiction purposes, foreign corporation, business of which is limited to soliciting of orders and servicing of purchasers' accounts, engages directly in its corporate activity when, by persons in its employ and presence in state, it solicits and services state accounts on continuous basis. Laufer v. Ostrow, 1982, 55 N.Y.2d 305, 449 N.Y.S.2d 456, 434 N.E.2d 692. Courts 13.4(3); Courts 13.6(1)

Mere solicitation of business in New York does not establish requisite contacts between the state and a foreign defendant for purpose of establishing personal jurisdiction under general jurisdiction statute. Holness v. Maritime Overseas Corp. (1 Dept. 1998) 251 A.D.2d 220, 676 N.Y.S.2d 540. Courts 13.3(11)

Foreign corporation which did not have any office, bank account or telephone listing in the corporate name within the state but which had divided state into districts and had engaged sales agents to solicit orders therein was "doing business" within the state so as to authorize service of process on the corporation's territory supervisor. Grunder v. Premier Indus. Corp. (4 Dept. 1961) 12 A.D.2d 998, 211 N.Y.S.2d 421, appeal denied 13 A.D.2d 717, 215 N.Y.S.2d 1023. Corporations And Business Organizations 3266(3); Corporations And Business Organizations 3271

That Baltimore newspaper solicited business in New York did not sustain conclusion that newspaper had such a "presence" in New York as to be amenable to process for any cause of action alleged against it. American Radio Ass'n, AFL-CIO v. A. S. Abell Co., 1968, 58 Misc.2d 483, 296 N.Y.S.2d 21. Courts 13.4(3)

The solicitation of business by foreign corporation's traveling salesmen from New York prospects, the solicitation of business by New York corporation from foreign prospects, and insertion of foreign corporation's name in New York-Manhattan telephone book and directory of an office building, paid for by salesmen and the New York corporation for their own convenience did not constitute "doing business" in New York. Irgang v. Pelton & Crane Co., 1964, 42 Misc.2d 70, 247 N.Y.S.2d 743. Corporations And Business Organizations 3206

Although foreign corporation which made sample cards and books for converters of woolens, plastics, cottons and rayons, had principal office and plant in sister state and had no certificate authorizing it to do business in state, no place of business in state and no telephone listing or other directory in state, corporation was present and amenable to process where corporation's solicitation of orders and planning of orders, a substantial part of services rendered by corporation, were performed in state. Artcraft Sample Card Co. v. Stein, 1956, 3 Misc.2d 562, 155 N.Y.S.2d 672. Corporations And Business Organizations 3271

83. ---- Continuous and systematic activity, solicitation of business, doing business within state

Although for purposes of this section providing that nondomiciliary subjects himself to personal jurisdiction if engaged in such continuous and systematic course of doing business as to warrant finding of her presence in jurisdiction, once solicitation is found in any substantial degree very little more is necessary to conclusion of "doing business," to sustain personal jurisdiction, New York courts require substantial solicitation that is carried on with considerable measure of continuity and from permanent locale within state. Beacon Enterprises, Inc. v. Menzies, C.A.2 (N.Y.)1983, 715 F.2d 757. See, also, Acquascutum of London, Inc. v. S.S. American Champion, C.A.N.Y.1970, 426 F.2d 205; Como v. Commerce Oil Co., Inc., D.C.N.Y.1985, 607 F.Supp. 335; C.E. Jamieson & Co., Ltd. v. Willow Labs, Inc., D.C.N.Y.1984, 585 F.Supp. 1410; Katz Agency, Inc. v. Evening News Ass'n, D.C.N.Y.1981, 514 F.Supp. 423, affirmed 705 F.2d 20; Dunn v. Southern Charters, Inc., D.C.N.Y.1981, 506 F.Supp. 564. Federal Courts 76.15

Casual or occasional activities in New York by a foreign corporation, such as mere solicitation of orders in New York, does not constitute "doing business" within this section granting New York courts jurisdiction over persons, property or status which might have been exercised theretofore. Liquid Carriers Corp. v. American Marine Corp., C.A.2 (N.Y.)1967, 375 F.2d 951. See, also, Ally & Gargano, Inc. v. Comprehensive Accounting Corp., D.C.N.Y.1985, 603 F.Supp. 923; I. Oliver Engebretson, Inc. v. Aruba Palm Beach Hotel & Casino, D.C.N.Y.1984, 587 F.Supp. 844; Diskin v. Starck, D.C.N.Y.1982, 538 F.Supp. 877; Cohen v. Vaughan Bassett

Furniture Co., Inc., D.C.N.Y.1980, 495 F.Supp. 849; Carbone v. Fort Erie Jockey Club, Ltd., 1975, 47 A.D.2d 337, 366 N.Y.S.2d 485; Traub v. Robertson-American Corp., 1975, 82 Misc.2d 222, 368 N.Y.S.2d 958. Federal Courts 81

Former employee, who was a New York resident, made prima facie case that personal jurisdiction existed over Connecticut corporation, his former employer, in New York, so as to defeat the employer's motion to dismiss for lack of personal jurisdiction in the employee's action for breach of contract and other claims; at time the suit was commenced, employer solicited business and made significant sales in New York state, amounting to two million dollars of income, and, until just before suit was commenced, employer employed the employee in New York, with employee performing work on behalf of employer and a program that targeted New York schools. Daou v. Early Advantage, LLC, 2006, 410 F.Supp.2d 82. Federal Courts 96

For purposes of establishing personal jurisdiction under New York's general jurisdiction statute, solicitation of business alone will not justify a finding of corporate presence in New York with respect to a foreign manufacturer or purveyor of services; however, if the solicitation is substantial and continuous, and defendant engages in other activities of substance in the state, then personal jurisdiction may properly be found to exist. Burrows Paper Corp. v. R.G. Engineering, Inc., 2005, 363 F.Supp.2d 379. Courts 13.4(3); Courts 13.5(7)

California manufacturer was engaged in a continuous and systematic course of doing business in New York so as to warrant a finding of its presence in New York for purposes of general jurisdiction statute; manufacturer solicited business in New York, selected New York as the center of its advertising activity, conducted a large number of sales in New York, and received considerable revenue from sales in New York. Photoactive Productions, Inc. v. AL-OR Intern. Ltd., 2000, 99 F.Supp.2d 281. Federal Courts 79

A defendant's solicitation of business in New York alone cannot justify a finding of “presence” in New York under New York's long-arm statute, unless the solicitation is substantial and continuous, and the defendant engages in other activities of substance in the state. Anderson v. Indiana Black Expo, Inc., 2000, 81 F.Supp.2d 494. Courts 13.3(11)

The mere solicitation of business within New York does not amount to a continuous and systematic course of doing business in New York, as would render solicitor subject to personal jurisdiction under New York's long-arm statute. Swindell v. Florida East Coast Ry. Co., 1999, 42 F.Supp.2d 320, affirmed 201 F.3d 432. Courts 13.3(11)

If solicitation of business is substantial and continuous, and defendant engages in other activities of substance in state, personal jurisdiction may properly be found to exist in New York; once solicitation is found in any substantial degree very little more is necessary to a conclusion of doing business. Pfeffer v. Mark, 1999, 36 F.Supp.2d 556. Federal Courts 76.15

If a foreign corporation's solicitation of business in the state of New York is substantial and continuous, and the corporation engages in other activities of substance in New York, then personal jurisdiction may properly be

found to exist in New York. Hamilton v. Garlock, Inc., 1998, 31 F.Supp.2d 351, on reargument 1999 WL 135203, reversed 197 F.3d 58, on remand 96 F.Supp.2d 352, certiorari denied 120 S.Ct. 2691, 530 U.S. 1244, 147 L.Ed.2d 962. Courts 13.4(3)

For purposes of establishing that foreign corporation is subject to personal jurisdiction in New York, mere solicitation of business in New York is not sufficient to constitute "doing business" in the state; only if the solicitation is substantial and continuous, and defendant engages in other activities of substance in the state, will personal jurisdiction be found to exist. Roper Starch Worldwide, Inc. v. Reymer & Associates, Inc., 1998, 2 F.Supp.2d 470. Federal Courts 81

Under New York law, to support general jurisdiction over defendant, there must be substantial solicitation that is carried on with considerable measure of continuity and from permanent locale within state. Riviera Trading Corp. v. Oakley, Inc., 1996, 944 F.Supp. 1150. Courts 13.3(7)

Warehousing and distribution services corporation had not engaged in continuous and systematic course of doing business in New York to have presence in New York, as required to assert personal jurisdiction over corporation, under solicitation-plus rule, in personal injury suit arising from accident at corporation's warehouse in New Jersey, although corporation mailed brochures to customers in New York, had website accessible worldwide, and stored products at warehouses that were transported to or from New York, where corporation was organized and had principal place of business in New Jersey, was not registered to do business in New York, neither owned nor leased any real or personal property in New York, paid no New York taxes, did not transport products sold to New York customers, and had corporate officers that did not reside in New York and only visited New York once or twice annually to solicit sales or maintain customer relationships. Parsons v. Kal Kan Food, Inc. (3 Dept. 2009) 68 A.D.3d 1501, 892 N.Y.S.2d 246. Courts 13.5(4); Courts 13.5(7)

Action of Connecticut corporation in regularly soliciting business in New York by sending employee salesmen into New York on an average of once a month to procure orders for products constituted such "purposeful activity" in New York as to render the exercise of jurisdiction over the Connecticut corporation consistent with requirements of due process. Applied Hydro-Pneumatics, Inc. v. Bauer Mfg., Inc. (2 Dept. 1979) 68 A.D.2d 42, 416 N.Y.S.2d 817. Constitutional Law 3965(3); Courts 13.6(2)

Pursuant to New York's long-arm statute providing for jurisdiction over parties "doing business" in New York, long-arm jurisdiction existed over pharmaceutical company in patent infringement action brought in New York federal district court, even though company had no office, bank account, other property, or employees or agents in New York, given company's substantial and continuous solicitation of business in New York and its solicitation of investments in New York, which established that company was not merely in the state occasionally or casually, but rather was present with a fair measure of permanence and continuity. Purdue Pharma L.P. v. Impax Laboratories, Inc., 2003, 2003 WL 22070549, Unreported. Patents 288(4)

Personal jurisdiction did not exist over foreign dockyard, by virtue of dockyard "doing business" in New York, in insurer's action to recover for cargo allegedly damaged as a result of repairs to cargo ship performed by dockyard, given absence of continuous, permanent, and substantial course of business in New York by dockyard,

which did not maintain office, employ workers or agents, maintain bank account, or own property in New York, and which, aside from periodic solicitations of New York companies and a visit to New York offices of law firm, had earned only a total of approximately $875,000 due to contacts with two New York entities, accounting for approximately 1.35% of dockyard's income derived from North America in pertinent year. Atlantic Mut. Ins. Co., Inc. v. CSX EXPEDITION, 2003, 2003 WL 21756414, Unreported, amended 2003 WL 22097774. Federal Courts 86

84. ---- Solicitation plus rule, solicitation of business, doing business within state

To sustain personal jurisdiction over a foreign corporation under the "solicitation-plus" rule, New York courts require substantial solicitation that is carried on with a considerable measure of continuity and from a permanent locale within the state. Daou v. Early Advantage, LLC, 2006, 410 F.Supp.2d 82. Courts 13.4(3)

Under New York law, though mere solicitation of business alone does not constitute "doing business," solicitation coupled with other activities within the forum state will render a corporation "present" for the purposes of personal jurisdiction; to invoke the "solicitation-plus rule," solicitation by a foreign corporation must be substantial. Daou v. Early Advantage, LLC, 2006, 410 F.Supp.2d 82. Courts 13.4(3)

To be considered as doing business within New York, as to find that New York has personal jurisdiction over defendant, defendant must be engaged in activities that go beyond the mere solicitation of business in New York. Hinsch v. Outrigger Hotels Hawaii, 2001, 153 F.Supp.2d 209. Courts 13.3(11)

Solicitation of business alone may not be sufficient to be "doing business" within New York for personal jurisdictional over corporation purposes, but solicitation plus additional business activities related to out-of-state defendant's operative or financial structure usually satisfies test. Daniel v. American Bd. of Emergency Medicine, 1997, 988 F.Supp. 127, disapproved in later appeal 428 F.3d 408. Federal Courts 81

Activities of nonresident defendant corporation constituted "solicitation-plus" within meaning of New York law so as to subject corporation to personal jurisdiction of Federal District Court for Southern District of New York, even though subject of action did not involve New York, where corporation's business plan included active campaign to sell bicycles to New York retailer, and company purchased parts from New York suppliers. Bicicletas Windsor, S.A. v. Bicycle Corp. of America, 1992, 783 F.Supp. 781. Federal Courts 81

For purposes of motion to stay defendant's allegedly duplicative second-filed lawsuit in another district, movant sufficiently established that defendant, a Virginia corporation selling weight loss program to physicians and hospitals, was doing business in New York and was thus subject to personal jurisdiction in New York under long-arm statute; defendant corporation's solicitation activities in New York and significant revenues generated thereby as well as numerous personal visits by corporation's representatives to targeted customers in that state, were sufficient under "solicitation-plus" rule. Thompson Medical Co., Inc. v. National Center of Nutrition, Inc., 1989, 718 F.Supp. 252. Action 69(5); Federal Courts 81

New York rules of civil practice governing jurisdiction over persons generally or by acts of non-domiciliaries

did not provide basis for exercise of personal jurisdiction over Cayman Island company's investment fund, its directors, and investment manager in action brought by investor, even though investment manager came to New York for four-day trip to solicit investor's business; solicitation of business in New York was not alone sufficient to meet standard under rule permitting jurisdiction over foreign corporation that engaged in systematic course of doing business in state, and investment manager's single meeting in New York did not constitute transaction of business for purposes of jurisdiction because investor did not make final decision until several months later. Druck Corp. v. Macro Fund (U.S.) Ltd., 2003, 2003 WL 21297284, Unreported, reconsideration denied 2003 WL 21998962, vacated and remanded 102 Fed.Appx. 192, 2004 WL 1367926, on remand 2004 WL 2313930. Federal Courts 86

85. ---- Recreation spots, solicitation of business, doing business within state

India hotel having no other contacts with New York was not "doing business" within state, so as to be subject to general personal jurisdiction there, by virtue of contract with New York-based commercial agency authorized to solicit business, distribute brochures, and process pre-confirmed reservations on hotel's behalf; agency could not enter into contracts on hotel's behalf or confirm reservations without receiving specific prior confirmation from hotel. Bresciani v. Leela Mumbai-A-Kempinski Hotel, 2004, 311 F.Supp.2d 440. Federal Courts 86

Federal district court sitting in New York did not have general personal jurisdiction over holding company owning stock of corporation alleged to have infringed patent covering amusement park rides, based upon solicitation of amusement park business through interactive Internet website and subsidiary's filing of financing statement under Uniform Commercial Code. Meteoro Amusement Corp. v. Six Flags, 2003, 267 F.Supp.2d 263. Patents 288(3)

Allegations of injured skier concerning activities of Vermont ski resort operator in New York were sufficient to make prima facie showing that personal jurisdiction existed over operator in New York; operator allegedly advertised and solicited business in New York. Pellegrino v. Stratton Corp., 1988, 679 F.Supp. 1164. Federal Courts 94

Actions of nonresident corporation, which operated ski resort in Massachusetts, did not create presence in New York sufficient to support finding that corporation was doing business there, as would allow exercise of personal jurisdiction over corporation in action by skier injured at resort; corporation had not filed to do business in New York and had no mailing address, office, bank account, or employees working in New York, and corporation's ownership of land in New York and solicitation of business there did not create presence. Cardone v. Jiminy Peak Inc. (3 Dept. 1997) 245 A.D.2d 1002, 667 N.Y.S.2d 82. Courts 13.5(4)

Mailing of brochure to travel agencies, infrequent advertising in newspapers, and maintenance of bank account in state by nonresident hotel was not permanent and continuous presence needed to exercise personal jurisdiction. Weinstock v. Le Sport (1 Dept. 1993) 194 A.D.2d 400, 598 N.Y.S.2d 511. Courts 13.3(10)

Nonresident who owned ski slope in Massachusetts was not subject to personal jurisdiction in New York in personal injury action brought on behalf of New York plaintiff; nonresident had not filed to do business in New

York and had no mailing address, office, bank account or employees working there, and nonresident's solicitations and occasional visits to New York schools participating in its ski program to premeasure students for rental equipment, which visits were not pursuant to any routine or schedule, were insufficient. Chamberlain v. Peak (3 Dept. 1991) 176 A.D.2d 1109, 575 N.Y.S.2d 410. Courts 13.5(4)

Evidence that foreign hotel solicited guests by listing its toll-free directline telephone number in local telephone directory did not justify finding that owner of hotel was within jurisdiction of the Supreme Court where hotel stated by affidavit that it had not appointed agent for acceptance of service of process in New York and had no officers or employees who transacted business in New York or visited on a regular basis. Ziperman v. Frontier Hotel of Las Vegas (2 Dept. 1975) 50 A.D.2d 581, 374 N.Y.S.2d 697. Corporations And Business Organizations 3295

Where only activities conducted in New York by Florida hotel corporation apart from solicitation of prospective customers was to receive requests for reservations forwarded to Florida for confirmation and to distribute brochures, activities did not constitute “doing business” in New York so as to authorize service of summons on the corporation. Dana v. Fontainebleau Hotel Corp. (1 Dept. 1961) 34 Misc.2d 20, 215 N.Y.S.2d 938. Corporations And Business Organizations 3271

Austrian corporation's marketing activities, including advertising of its ski resort abroad, offering discount promotions to United States ski clubs, and maintaining a Web site accessible in New York, was not “doing business” in New York within meaning of New York's long-arm statute. In re Ski Train Fire in Kaprun, Austria on November 11, 2000, 2003, 2003 WL 22909153, Unreported. Federal Courts 81

86. Agents, doing business within state--In general

In order to find that a foreign corporation is “doing business” in New York through an affiliation with a New York representative or an agent, as would confer personal jurisdiction over the corporation under New York statute, the agent must be primarily employed by the defendant and not engaged in similar services for other clients. Wiwa v. Royal Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Courts 13.6(1)

Under New York law, the designation of an agent for service of process is not merely a mechanism for transmitting process but a real consent to jurisdiction. The Rockefeller Univ. v. Ligand Pharmaceuticals, 2008, 581 F.Supp.2d 461. Corporations And Business Organizations 3215; Courts 25

New York subsidiary of Greek bank was not “agent” of foreign entity, for purposes of general personal jurisdiction over bank under New York statute; to extent that subsidiary advertised its relationship with bank, such advertising only suggested that subsidiary's business was well-positioned to serve customers' international banking needs, and subsidiary did not market any of bank's services. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293. Federal Courts 82; Federal Courts 86

To establish that domestic corporation is “agent” for foreign parent, for purposes of New York general jurisdic-

tional statute, plaintiff must show that subsidiary does all business which parent could do were it here by its own officials. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293. Courts 13.6(9)

Allegations that United States subsidiary of Croatian based supplier of generic warfarin sodium, used as ingredient in anticoagulant drug, acted as agent for supplier, satisfied requirement that supplier did business in New York, as required for personal jurisdiction under New York long-arm statute in suit claiming breach of contract to provide generic warfarin to buyer planning to resell in United States. Genpharm Inc. v. Pliva-Lachema a.s., 2005, 361 F.Supp.2d 49. Federal Courts 82; Federal Courts 86

To find that a corporation is doing business in New York through an agent, a plaintiff seeking to establish personal jurisdiction over corporation must show that the agent is primarily employed by the defendant and not engaged in similar services for other clients. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 82

Plaintiff could not rely upon his own actions in New York, as alleged agent of out-of-state corporation, to establish personal jurisdiction over corporation under New York long-arm statute which applied to corporations "doing business" in the state. Mende v. Milestone Technology, Inc., 2003, 269 F.Supp.2d 246. Federal Courts 79

Hotel is subject to suit in New York if it has agent doing business within state able to bind hotel by accepting and confirming reservations without having to contact hotel itself. Brown v. Grand Hotel Eden, 2002, 214 F.Supp.2d 335. Courts 13.6(2)

Under New York law, defendant former president of manufacturer was not subject to personal jurisdiction in New York on basis of alleged agency relationship with law firm that sent cease and desist letters to plaintiff manufacturer and its customers, in copyright and patent infringement action, as such conduct did not constitute consistent and systematic business in New York. Modern Computer Corp. v. Ma, 1994, 862 F.Supp. 938, 32 U.S.P.Q.2d 1586. Federal Courts 76.20

New York corporation served as "agent" for 33 foreign affiliates of corporation, named as defendants in action for copyright infringement, so as to subject foreign affiliates to personal jurisdiction in New York under New York long-arm statute, where much of the product marketed by the foreign affiliates abroad derived from records of artists signed by New York corporation. Palmieri v. Estefan, 1992, 793 F.Supp. 1182. Federal Courts 82

Sister corporation's placing nominal business on behalf of nonresident corporation did not meet the test, under New York law, for personal jurisdiction based on a New York agent doing all the business which the foreign entity could do were it in New York by its own officials. Hvide Marine Intern., Inc. v. Employers Ins. of Wausau, 1989, 724 F.Supp. 180. Federal Courts 86

Plaintiff who is agent of nonresident defendant cannot rely on its own activities in New York to establish New

York's in personam jurisdiction over defendant. Ally & Gargano, Inc. v. Comprehensive Accounting Corp., 1985, 603 F.Supp. 923. Federal Courts 82

Federal district court's exercise of power over defendant foreign hoteliers in diversity suit pursuant to this section governing exercise of jurisdiction over foreign corporations was consonant with due process limitations where they had had systematic course of dealings in New York through local agents for nearly two years, generating substantial income for foreign principal. I. Oliver Engebretson, Inc. v. Aruba Palm Beach Hotel & Casino, 1984, 587 F.Supp. 844. Constitutional Law 3965(5)

A foreign corporation may be present in New York, for purposes of this section governing jurisdiction over foreign corporations, by virtue of activities of its agent and, if a corporation is present in New York, it may be sued on any cause of action whether related to activities of its agent or not. Dogan v. Harbert Const. Corp., 1980, 507 F.Supp. 254. See, also, Jayne v. Royal Jordanian Airlines Corp., D.C.N.Y.1980, 502 F.Supp. 848. Courts 13.6(1)

Tasks performed by New York agent of foreign manufacturer, including acting as New York supervisor and coordinator of solicitation, contract preliminaries, cargo shipments, customer complaints and foreign corporation's accounts receivable, extended well beyond essentially mechanical tasks, satisfied New York's “solicitation-plus” requirement, and constituted “doing business” by foreign corporation sufficient to subject it to in personam jurisdiction. Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa, 1977, 428 F.Supp. 1237. Federal Courts 82

Agent of foreign corporation may sue his principal if its activities amount to doing business in state, even if it was agent who conducted such activities. Traub v. Robertson-American Corp., 1975, 82 Misc.2d 222, 368 N.Y.S.2d 958. Corporations And Business Organizations 3255; Courts 13.6(1)

Activities of model in New York could not imputed to out of state talent scout in breach of contract action for purposes of evaluating whether modeling agency proffered allegations sufficient to make primafacie case for exercise of general personal jurisdiction over talent scout under New York long-arm statute; reasonable inference could not be made that activities of model were undertaken as employee of talent scout, since talent scout was not party to contract and model had exclusive right to enter into agreement with agency and was only party entitled to receive remuneration thereunder. Madison Models, Inc. v. Casta, 2003, 2003 WL 21978628, Unreported. Federal Courts 76.30

87. ---- Brokers, agents, doing business within state

Marketing in excess of $100 million of commercial paper by foreign companies through New York brokerage firms did not compel finding that companies were “doing business” in New York within meaning of New York jurisdiction statute, N.Y.McKinney's CPLR 301, where notes were not sold directly by foreign companies to the public but rather were sold to New York commercial paper dealers who then reoffered them to United States investors. Nordic Bank PLC v. Trend Group, Ltd., 1985, 619 F.Supp. 542. Federal Courts 86

Where Illinois insurance broker which was limited agent for Mexican insurer in violation of its agreement with Mexican insurer issued a cover letter to New York insured who had retained New York brokers, and Mexican insurer, its general agent, and Illinois limited agent had no other contacts with New York, Mexican insurer was not subject to jurisdiction of New York courts. Ford v. Unity Hospital, 1973, 32 N.Y.2d 464, 346 N.Y.S.2d 238, 299 N.E.2d 659. Courts 13.6(2)

A foreign corporation's maintenance of a fiscal agent, a regular brokerage concern selling its stock on commission within the state, did not constitute "doing business within the state," necessary for jurisdiction for service of process upon the corporation's president happening within the state. Sunrise Lumber Co. v. Homer D. Biery Lumber Co. (2 Dept. 1921) 195 A.D. 170, 185 N.Y.S. 711. Corporations And Business Organizations 3203

Where there was nothing in the record indicating that a foreign corporation's business in New York was other than casual or occasional and the challenged process was served upon defendant broker who had foreign corporation as one of his many clients and who solicited orders for the sale of its products on an irregular basis, the foreign corporation was not "doing business" in New York so as to be amenable to process. Ippisch v. Moricz-Smith, 1955, 145 N.Y.S.2d 592. Corporations And Business Organizations 3271

88. ---- Independent agents or contractors, doing business within state

Evidence was insufficient to support inference of agency by which foreign corporate defendant could be deemed to be doing business in New York by virtue of alleged agent's presence and activities in that state; there was no evidence that alleged agent's sales contracts with customers were binding on corporation, and alleged agent bore risk of loss associated with transporting goods to customers and entered into contracts with those customers only in its own behalf. Ball v. Metallurgie Hoboken-Overpelt, S.A., C.A.2 (N.Y.)1990, 902 F.2d 194, certiorari denied 111 S.Ct. 150, 498 U.S. 854, 112 L.Ed.2d 116. Federal Courts 96

Swiss manufacturer which sold watches to independent agency located in New York was not "doing business" within meaning of this section governing service of process. McShan v. Omega Louis Brandt et Frere, S.A., C.A.2 (N.Y.)1976, 536 F.2d 516, 191 U.S.P.Q. 8. Federal Courts 86

Plaintiffs' proposed amendments failed to allege either that American subsidiary was an "agent" or a "mere department" of its Swiss parent corporation so that the contacts of subsidiary were attributable to Swiss parent and sufficient to confer jurisdiction over Swiss parent under New York long-arm statute; proposed allegations were insufficient to show that wholly owned subsidiary did all the business Swiss parent would do were it in New York, and plaintiffs failed to make any allegations that subsidiary was financially dependent upon parent or that parent controlled subsidiary. Stutts v. De Dietrich Group, 2006, 465 F.Supp.2d 156. Federal Courts 94

Nonresident boxing association had sufficient contacts with State of New York to satisfy personal jurisdiction requirements of New York long-arm statute, as well as due process minimum contacts requirements; association had been sanctioning bouts in New York for years, it had filed papers with state athletic commission in order to be authorized to sanction bouts, it had accepted sanctioning fees, and it sent independent contractor observers to bouts. M'Baye v. World Boxing Ass'n, 2006, 429 F.Supp.2d 652. Constitutional Law 3965(2); Federal

Courts 76.5

German national rail carrier's use of New York independent contractor to sell train tickets in the United States was insufficient to support a prima facie determination that rail carrier or its subsidiaries were doing business in New York for jurisdictional purposes. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 82; Federal Courts 86

Fact that media research company, a Michigan corporation, mailed three questionnaires and some payments to New York offices of public opinion research company in connection with three studies it hired that company to undertake was not sufficient to constitute "doing business" in New York, as would provide basis for personal jurisdiction over Michigan corporation in public opinion research company's breach of contract action. Roper Starch Worldwide, Inc. v. Reymer & Associates, Inc., 1998, 2 F.Supp.2d 470. Federal Courts 79

Foreign corporation's relationship with New York independent contractor that packaged and shipped 80% of corporation's pet grooming products was sufficient to support exercise of personal jurisdiction over corporation under New York's general jurisdiction statute. Ontel Products, Inc. v. Project Strategies Corp., 1995, 899 F.Supp. 1144. Federal Courts 79

For jurisdiction purposes, foreign corporation can do business in New York through its employees or through independent agents. Bulova Watch Co., Inc. v. K. Hattori & Co., Ltd., 1981, 508 F.Supp. 1322. Courts 13.6(1)

A nonresident defendant will bear responsibility for independent contractor's efforts in New York if they are undertaken with sufficient authority to bind defendant and represent so significant a portion of the business that defendant would have to dispatch its own employees to New York were its affairs not conducted on its behalf. Pneuma-Flo Systems, Inc. v. Universal Machinery Corp., 1978, 454 F.Supp. 858. Federal Courts 76.10

Activities of commission agent in following up bid proposals of New Jersey manufacturer did not establish that the corporate manufacturer was "doing business" in New York where agent was a wholly independent corporation that operated on commission only terms with various manufacturers and its function was to visit prospective customers to whom corporation had already made a proposal to determine status of the customer and to report its findings to corporation's sales manager in New Jersey and agent had been granted no authority other than to investigate and report. J. Baranello & Sons v. Hausmann Industries, Inc., 1980, 86 F.R.D. 151. Federal Courts 82

Foreign supplier of goods or services for whom independent agency solicits orders from state purchasers is not present in state and may not be sued there, however substantial in amount are resulting orders. Laufer v. Ostrow, 1982, 55 N.Y.2d 305, 449 N.Y.S.2d 456, 434 N.E.2d 692. Courts 13.6(1)

89. ---- Ticket agents, doing business within state

Activities of New York agent of foreign common carrier, maintaining office address and telephone listing in Manhattan under principal's name, confirming contracts in New York for principal's services, receiving copies of all documents and correspondence relating to individual shipments by principal, acting as principal's New York overseer of shipments, and answering or processing complaints from customers amounted to more than mere solicitation of business and thus constituted "doing business" by principal sufficient to subject it to in personam jurisdiction of federal district court, in action brought by New York corporation based on allegedly defective shipment of Italian knit fabric received by it; critical elements of commercial dealings in New York and foreign principal holding itself out as operating here through agent were present. Top Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa, 1977, 428 F.Supp. 1237. Federal Courts 82

A foreign shipping corporation which maintained independent agent in state to book passenger accommodations and solicit freight shipments on corporation's vessels, but which had no directors, officers, employees, offices, bank account or property within state and had no ships entering any port in state or anywhere in United States, was not doing business in state of such a kind and to extent sufficient to render corporation amenable to service of process in action in personam. Gertsenstein v. Peninsular & Oriental Steam Nav. Co., 1952, 202 Misc. 838, 113 N.Y.S.2d 360, affirmed 204 Misc. 459, 126 N.Y.S.2d 439. Corporations And Business Organizations 3271

Where defendant, a foreign corporation organized and existing under laws of Colony of Malta was engaged in air transportation principally in the area of Mediterranean Sea and in operating chartered flights in and out of Bermuda, and defendant authorized domestic New York corporation to act as its agent, maintain an office, and use its name for sale of tickets, but did not undertake to pay for those services or defray any expenses and did not reserve any right of supervision or control and agency agreement remained in effect for only three months and was cancelled one month after flights specified in charter agreement between it and domestic corporation were to begin, defendant was not doing business in the State of New York so as to be subject to jurisdiction of its courts. Great Lakes Press Corp. v. Air Malta, Limited, 1952, 202 Misc. 637, 111 N.Y.S.2d 802. Courts 13.6(2)

90. ---- Travel agents, doing business within state

Plaintiffs made prima facie showing that out-of-country hotel in which they were injured was doing business in state and amenable to service of process under New York long-arm statute by offering evidence that hotel was part owner of local booking agency which had made and confirmed plaintiffs' reservations without conferring with hotel. Welinsky v. Resort of the World D.N.V., C.A.2 (N.Y.)1988, 839 F.2d 928. See, also, Frummer v. Hilton Hotels International, Inc., 1967, 19 N.Y.2d 533, 281 N.Y.S.2d 41, 227 N.E.2d 851, remittitur amended 20 N.Y.2d 737, 283 N.Y.S.2d 99, 229 N.E.2d 696, certiorari denied 88 S.Ct. 241, 389 U.S. 923, 19 L.Ed.2d 266. Federal Courts 96

Foreign bus operators were not doing business in New York through travel agency to which passengers made direct payments for tickets. Gelfand v. Tanner Motor Tours, Limited, C.A.2 (N.Y.)1964, 339 F.2d 317. Federal Courts 83

New York travel wholesaler was not agent doing business in New York on behalf of resort company operating

resort in British Virgin Islands, and thus resort company was not subject to general jurisdiction in New York under New York law based on its relationship with wholesaler; wholesaler lacked authority to bind resort company to reservations without first confirming reservations with resort company, and wholesaler solicited business for various entities other than resort company. Heidle v. Prospect Reef Resort, Ltd., 2005, 364 F.Supp.2d 312. Federal Courts 82; Federal Courts 86

For purposes of New York long-arm jurisdiction statute, absent an outright grant of authority to confirm reservations, an agent is not doing business in New York on behalf of a hotel. Heidle v. Prospect Reef Resort, Ltd., 2005, 364 F.Supp.2d 312. Courts 13.6(2)

Under New York law, fact that Nevada casino and its parent company may have paid commissions to independent travel agents in New York who booked rooms or groups at casino would not constitute systematic and continuous business by casino in New York State for purposes of establishing personal jurisdiction over casino and its parent company in patron's personal injury action, where patron was resident of New York. Smith v. Circus-Circus Casinos, Inc., 2003, 304 F.Supp.2d 463. Federal Courts 84

Guest who was injured at campground in Virgin Islands established that campground operator, which was incorporated in Virgin Islands, had "presence" in New York, so as to be subject to jurisdiction under New York's long-arm statute, in personal injury suit brought by guest against operator; numerous advertisements in newspaper articles showed solicitation of business by operator in New York, and sole means of reaching operator was listed as address and telephone number in New York City, although operator claimed that address on brochures was not owned, leased, or rented by operator, but by its owner, and that offices only provided reservations and information distributing services for operator. Begley v. Maho Bay Camps, Inc., 1994, 850 F.Supp. 172. Federal Courts 86

New York activities of foreign corporation in setting up agreement with travel agent did not satisfy New York statute permitting exercise of jurisdiction over foreign corporation engaged in continuous and systematic course of doing business in state for purposes of New York resident's personal injury action against corporation stemming from accident at corporation's out-of-state resort. Lane v. Vacation Charters, Ltd., 1990, 750 F.Supp. 120. Federal Courts 79

Plaintiff in wrongful death action presented prima facie case for New York jurisdiction over foreign corporation by alleging that foreign corporation was connected to alleged tort by corporation's continuous and systematic presence through its subsidiary in New York; presence of corporation's booking agent in New York to satisfy corporation's contractual obligations was purposeful availment by corporation of benefits and protection of forum state's laws. Darby v. Compagnie Nat. Air France, 1990, 735 F.Supp. 555. Federal Courts 94

Vermont ski resort operator's payment of commissions to travel agents in New York for reservations made at resort was not "doing business" in New York for purposes of establishing personal jurisdiction over operator in New York; New York travel agents did not have authority to make final, binding reservations on operator's behalf. Pellegrino v. Stratton Corp., 1988, 679 F.Supp. 1164. Federal Courts 79

Where plaintiff wife became aware of existence of Florida motel operated by Florida corporation through advertisements in New York newspaper and recommendations of New York travel agency and New York telephone directory listed office for Florida corporation at New York travel agency, and Florida corporation was sued in New York for injuries sustained at motel, there should have been development of facts concerning relationship of agency to corporation and scope of travel agency's activities on behalf of Florida corporation to determine whether Florida corporation was "doing business" in New York within meaning of this section. Noble v. Singapore Resort Motel of Miami Beach, 1968, 21 N.Y.2d 1006, 290 N.Y.S.2d 926, 238 N.E.2d 328. Corporations And Business Organizations 3296

Hotel in St. Lucia was not subject to jurisdiction in New York for injuries sustained by New York resident during stay at hotel, even though independent travel agencies made reservations and accepted payment on hotel's behalf; hotel maintained no office, telephone, bank account, or agent in New York, business trips of hotel's general manager to New York to promote business were only occasional, and independent travel agencies' provision of services for hotel were limited. Savoleo v. Couples Hotel (2 Dept. 1988) 136 A.D.2d 692, 524 N.Y.S.2d 52. Courts 13.6(2)

Where resort service in New York City, in pursuance of engagement by a hotel corporation located in another state, quoted rates and information to inquiring prospective guests as to accommodations and activities, resort service took applications for reservations at all of hotels to which it rendered service, and where reservations, before becoming binding on hotels, had to be confirmed, hotels were not listed on door of service's office or in building directory and names of hotels were listed in New York City telephone directory, using service's address and telephone number, hotel corporation which paid resort service $125 per month plus telephone bill for services was not "doing business" or "present" in New York and was not amenable to service of process by serving process on one of owners of resort service. Schwartz v. Breakers Hotel Corp., 1958, 13 Misc.2d 508, 178 N.Y.S.2d 393. Corporations And Business Organizations 3271

Absent an outright grant of authority to confirm reservations, an agent for a Switzerland hotel was not "doing business" on behalf of the hotel, so as to support exercise of personal jurisdiction over the hotel under New York's long-arm statute in a hotel patron's personal injury suit; the hotel withheld from the agent the right to book rooms during time periods of the hotel's choosing. Brown v. Grand Hotel Eden, 2003, 2003 WL 21496756, Unreported. Federal Courts 86

Travel wholesaler based in New York lacked authority to bind a Switzerland hotel without contacting it, and thus, was not the hotel's agent, so as to support exercise of personal jurisdiction over the hotel under New York's long-arm statute in a hotel patron's personal injury suit. Brown v. Grand Hotel Eden, 2003, 2003 WL 21496756, Unreported. Federal Courts 86

91. ---- Offices in state, agents, doing business within state

New York investor relations office of subsidiary of two foreign companies was an "agent" of those companies, for purposes of determining whether companies were doing business in New York sufficient to subject them to personal jurisdiction there in human rights action under the Alien Tort Claims Act (ATCA) and other laws; all of the office's time was devoted to companies' business, companies fully funded office's expenses, and office

sought companies' approval on important decisions. Wiwa v. Royal Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Federal Courts 82; Federal Courts 86

Brochure prepared by California manufacturer of children's apparel, mentioning that it had established its own sales agency in United States, did not show that affiliated entity with office in New York was its agent, for purposes of establishing personal jurisdiction over manufacturer under New York law in breach of contract case. Kirkpatrick v. Rays Group, 1999, 71 F.Supp.2d 204. Federal Courts 82

Nonresident insurance subagent was not subject to jurisdiction under New York's general jurisdictional statute based merely on telephone contacts between principal of subagent corporation and principal's attendance at meetings in New York; subagent did not solicit business in New York and did not maintain office, telephone or bank account in New York. Alexander & Alexander, Inc. v. Donald F. Muldoon & Co., 1988, 685 F.Supp. 346. Federal Courts 76.25

Even though Dutch corporation did not have offices in the United States and orders for its products had to be confirmed at its home office, where Dutch corporation employed New York corporation as its agent to maintain the image of its products in the American market, solicit orders for its products and service all claims and complaints made by customers in the United States, Dutch corporation was doing business in New York and subject to suit therein. Meat Systems Corp. v. Ben Langel-Mol, Inc., 1976, 410 F.Supp. 231, remanded 551 F.2d 300. Federal Courts 82

Activities of New York agent in New York on behalf of ship repair concern with drydock facility in Norfolk, Virginia were not enough to support jurisdiction over ship repairer under New York general jurisdiction statute; agent sought out new clients, and provided office space, and other services for personnel of ship repairer visiting New York on business. Holness v. Maritime Overseas Corp. (1 Dept. 1998) 251 A.D.2d 220, 676 N.Y.S.2d 540. Courts 13.6(2)

Michigan corporation was “doing business” in New York, so that service of summons could be made on its managing agent in New York, where name of corporation appeared on door of office occupied by managing agent in New York City, on directory of tenants in lobby of office building, and in Manhattan telephone directory, and 4.1 percent of corporation's total income was from work in New York, and $974,000 was paid to corporation by plaintiff in connection with work, which was done by corporation in New York, and out of which litigation arose. International Business Machines Corp. v. Barrett Division Allied Chemical & Dye Corp. (3 Dept. 1962) 16 A.D.2d 487, 229 N.Y.S.2d 547. See, also, Rochester Happy House, Inc. v. Happy House Shops, Inc., 1961, 14 A.D.2d 491, 217 N.Y.S.2d 791. Corporations And Business Organizations 3266(3)

Out-of-state corporation was not subject to personal jurisdiction in New York court, under New York statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state, for purposes of diversity action brought against it by New York corporation for breach of contract; although out-of-state corporation advertised in New York, and purchased and sold products in New York through an agent based out of New York, out-of-state corporation did not have New

York office, or any bank accounts, property, or employees in New York. Maurice Silvera, Inc. v. National Center for Employment of the Disabled, 2003, 2003 WL 262508, Unreported. Federal Courts 79; Federal Courts 81

92. ---- Common ownership or control, agents, doing business within state

In order to find that a foreign corporation is "doing business" in New York through an affiliation with a New York representative or an agent, as would confer personal jurisdiction over the corporation under New York statute, a plaintiff need not demonstrate a formal agency agreement or that the corporation exercised direct control over its putative agent. Wiwa v. Royal Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Courts 13.6(1)

To establish that domestic corporation is "agent" for foreign parent, for purposes of New York general jurisdictional statute, plaintiff need demonstrate neither formal agency agreement, nor that defendant exercised direct control over its putative agent. Klonis v. National Bank of Greece, S.A., 2007, 492 F.Supp.2d 293. Courts 13.6(9)

When two corporations have common ownership and their activities are interrelated, they may have "agency relationship" for jurisdictional purposes under New York long-arm statute, even if resident corporation is not controlled by nonresident entity; this may be true even if intimacy of relationship between two corporations does not reach level of finding "mere department" status. Palmieri v. Estefan, 1992, 793 F.Supp. 1182. Courts 13.6(9)

Under New York law, importer incorporated in New York was neither actual nor apparent agent of Japanese distilling corporation, which was 27% shareholder in importer and which agreed to guarantee performance of importer's contract with distributor following distributor's negotiations with importer to obtain such guarantee, for purposes of establishing personal jurisdiction over distilling corporation on theory that distilling corporation was doing business in New York through an agent. Lemme v. Wine of Japan Import, Inc., 1986, 631 F.Supp. 456. Federal Courts 86

Under New York law governing exercise of jurisdiction over foreign corporations by virtue of acts of local agent, common ownership of corporation and agent is not required. I. Oliver Engebretson, Inc. v. Aruba Palm Beach Hotel & Casino, 1984, 587 F.Supp. 844. Federal Courts 82

Fact that Hong Kong corporation's sister corporation, which had offices in New York, provided liaison services for the Hong Kong corporation in nature of relating information by telex, booking car and hotel reservations for visiting representatives and sending and accepting samples on behalf of foreign representatives did not constitute doing business in New York through an agent, for jurisdictional purposes, where the sister corporation's activities were primarily ministerial and it did not solicit sales, accept orders or make decisions on behalf of other corporations, notwithstanding that it made space available for settlement discussions between the Hong Kong corporation and plaintiff. Arrow Trading Co., Inc. v. Sanyei Corp. (Hong Kong), Ltd., 1983, 576 F.Supp. 67. Courts 13.6(9)

93. Litigation in state, doing business within state

United States petroleum corporation, against whom multibillion dollar judgment was entered in Ecuadorian provincial court, in action brought by indigenous peoples of Amazonian rain forest alleging that corporation polluted rain forest, was likely to prevail on its claim that indigenous peoples' foreign representatives were “doing business” in New York, thus subjecting representatives to general jurisdiction in New York, as supported issuance of preliminary injunction barring enforcement of judgment outside Ecuador; representatives repeatedly brought or intervened in actions in district court, and in doing so, they retained New York counsel, and representatives' counsel had been involved in instant litigation for almost 19 years. Chevron Corp. v. Donziger, 2011, 768 F.Supp.2d 581, stay pending appeal denied 2011 WL 1408386, stay pending appeal denied 2011 WL 1560926, vacated 2011 WL 4375022, reversed and remanded 667 F.3d 232, certiorari denied 133 S.Ct. 423, 184 L.Ed.2d 288. Injunction 1174

California resident's signing of agreement stating that he would indemnify New Jersey corporation and its representatives for legal expenses arising out of case in Southern District of New York did not constitute “doing business” in New York under that state's long-arm statute, and there was no evidence that defendant had continually and systematically conducted business in New York. Falik v. Smith, 1995, 884 F.Supp. 862. Federal Courts 76.15

Law firm was not “doing business” under New York's general jurisdiction statute, although law firm advocated for its New York clients in Washington, D.C., and its Internet website could be accessed in New York. E-Z Bowz, L.L.C. v. Professional Product Research Co., Inc., 2003, 2003 WL 22064259, Unreported. Federal Courts 76.15

94. Charitable or non-profit organizations, doing business within state

Activities of national non-profit organization, whose home offices were in Missouri, including furnishing services to its New York chapter, awarding seed subgrants for its projects and enforcing membership policies and decrees incidental to its management to insure that no women could join any of its chapters, were sufficient to constitute “doing business” in New York and to invest federal district court sitting in that state with in personam jurisdiction over national organization. New York City Jaycees, Inc. v. U.S. Jaycees, Inc., D.C.N.Y.1974, 377 F.Supp. 481, reversed on other grounds 512 F.2d 856. Federal Courts 84

Norms prescribed for determining whether commercial corporations are doing business so as to be subject to jurisdiction of particular forum may be applied with equal validity to charitable corporations. Weinberg v. Colonial Williamsburg, Inc., 1963, 215 F.Supp. 633. Courts 13.4(7); Federal Courts 79

95. Clubs and associations, doing business within state

Physicians for Indiana football team, whose only contacts with New York were annual trips when their team played another team in New York, were not subject to personal jurisdiction in New York in former employer's suit alleging that physicians failed to provide adequate medical care and intentionally withheld information regarding true nature of player's injury. Sherwin v. Indianapolis Colts, Inc., 1990, 752 F.Supp. 1172. Federal

Courts 76.25

District court did not have personal jurisdiction over association of medical colleges under this section which confers jurisdiction over a foreign corporation if it is "doing business" in New York where the association had no office, employees, telephone listing or bank accounts in New York and did not carry on regular activities in New York and where the association was not indirectly present in New York by way of an agent, representative, or related corporation. Selman v. Harvard Medical School, 1980, 494 F.Supp. 603, affirmed 636 F.2d 1204. Federal Courts 85

Fact that association of medical colleges which sponsored programs that provided a centralized application processing service for applicants to participating schools forwarded applications to medical schools located in New York on behalf of applicants who had submitted their applications to the association in the District of Columbia was not sufficient "systematic and regular" business to satisfy the "doing business" test for personal jurisdiction over the association under this section. Selman v. Harvard Medical School, 1980, 494 F.Supp. 603, affirmed 636 F.2d 1204. Federal Courts 85

Where automobile club, which was a nonprofit California corporation, principal activity of which consisted in providing motoring related services to members, nearly all of whom were required to be or become California residents, was, inter alia, not qualified to do business in New York and had no office or property owned, leased or occupied or possessed in New York, club was not "doing business" in New York. Sales Arm, Inc. v. Automobile Club of Southern California, 1975, 402 F.Supp. 763. Federal Courts 84

Where defendant professional basketball club made regular and continuous, albeit, periodic, visits to New York for purpose of playing games for profit with New York member club pursuant to obligatory seasonable schedule, defendant's officials and employees made regular and continuous visits to New York and defendant participated in management and revenues of association, which was formed to operate league of basketball clubs and which was headquartered in New York, defendant was "doing business" in New York so as to subject it to personal service of process in Virginia under this section in diversity suit in which player sought to rescind his contract. Erving v. Virginia Squires Basketball Club, 1972, 349 F.Supp. 709. Corporations And Business Organizations 3271

A national fraternal society's subcommittee of management, incorporated in another state, which enforced its policies, decrees, and orders incidental to its management, and collected its dues through the state lodge, transacted business within the state, so that service of process could be made on its resident officer, under C.P.A. § 229 . B.K. Bruce Lodge, Inc., No. 8171, Grand United Order of Odd Fellows v. Subcommittee of Management of Grand United Order of Odd Fellows in America (1 Dept. 1924) 208 A.D. 100, 203 N.Y.S. 149. Beneficial Associations 20(3)

96. Franchises, doing business within state

Activities of foreign corporation's franchises in New York cannot be relied upon to establish in personam jurisdiction over franchisor corporation. Ally & Gargano, Inc. v. Comprehensive Accounting Corp., 1985, 603

F.Supp. 923. Federal Courts 82

Delaware corporation would not be directly exposed to in personam jurisdiction in New York by virtue of control it maintained over its independent franchised sales outlets and through New York business visits by corporate employees, New York bank accounts and transfer agent, and mailings to New York owners of corporation's products. Marantis v. Dolphin Aviation, Inc., 1978, 453 F.Supp. 803. Federal Courts 79

Where German corporation manufactured automobiles in Germany which were imported into United States through New Jersey corporation which was a wholly owned subsidiary of German corporation but which like German corporation was not qualified to do business in New York and had no office or place of business in New York in which the automobiles were sold by local independent franchise dealers, German corporation was not doing business in New York in traditional sense and New York court did not acquire personal jurisdiction over a German corporation in suit by New York resident against it for negligence and breach of warranty with respect to automobile purchased in Germany by New York resident who had an accident there. Delagi v. Volkswagenwerk A.G. of Wolfsburg, Germany, 1972, 29 N.Y.2d 426, 328 N.Y.S.2d 653, 278 N.E.2d 895, reargument denied 30 N.Y.2d 694, 332 N.Y.S.2d 1025, 283 N.E.2d 432. Courts 13.6(9)

Record was insufficient to determine whether activities of South Carolina defendant with regard to operation of its franchises in New York were sufficient to constitute “doing business” necessary to give New York court personal jurisdiction over defendant in personal injury action brought by New York residents arising from injuries received in South Carolina; record included evidence of certain services provided by defendant to franchises generally, but did not indicate extent to which it provided services to New York franchises; therefore, matter would be remitted to Supreme Court for determination of merits of defense of lack of personal jurisdiction. O'Connor v. Bonanza Intern., Inc. (2 Dept. 1987) 129 A.D.2d 569, 514 N.Y.S.2d 67. Appeal And Error 1177(9)

Control exercised over franchisees by nonresident franchisor, in terms of supply specifications, etc., did not warrant finding that franchisees were agents or employees of franchisor for purpose of exercise of personal jurisdiction over franchisor. J. E. T. Advertising Associates, Inc. v. Lawn King, Inc. (2 Dept. 1981) 84 A.D.2d 744, 443 N.Y.S.2d 745. Courts 13.6(2)

Under franchise contract, franchisees did not become agents in New York of franchisor, which was a Florida corporation, and thus franchisor was not subject to jurisdiction in New York, in action to rescind the contract, on theory that the acts of the franchisees were the acts of the franchisor and constituted doing business in New York, where franchisor exercised no control or dominion over franchisees' activities in New York. DelBello v. Japanese Steak House, Inc. (4 Dept. 1974) 43 A.D.2d 455, 352 N.Y.S.2d 537. Courts 13.5(3); Courts 13.6(2)

97. Banking activities, doing business within state

Bank of India was subject to general personal jurisdiction in New York in judgment creditor's action to enforce money judgment against bank customer, based on its continuous operation of branch in state. Eitzen Bulk A/S v.

Bank of India, 2011, 827 F.Supp.2d 234. Federal Courts 86

Contacts of foreign corporation with New York at time of service, that had stopped performing regular banking operations in New York and was in process of unwinding its business, satisfied "doing business" standard and due process requirements, where it had two offices under lease, one full-time employee on staff to handle its liquidation and closure, phone and fax lines, and at least one bank account. Mones v. Commercial Bank of Kuwait, S.A.K., 2007, 502 F.Supp.2d 363, on reconsideration 2007 WL 2815626. Constitutional Law 3965(7); Federal Courts 86

Bank accounts standing alone cannot create jurisdiction under New York's "general jurisdiction" provision unless they are used for "substantially all" of foreign corporation's business. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 86

Alleged shareholder's claim, that he arranged for a loan to out-of-state corporation within New York, was insufficient to establish that corporation was "doing business" within the state, as required for New York to assert personal jurisdiction over corporation under long-arm statute. Mende v. Milestone Technology, Inc., 2003, 269 F.Supp.2d 246. Federal Courts 79

Existence of a bank account in New York is generally not sufficient to confer personal jurisdiction over a foreign defendant under the New York statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544.

Fact that English bank maintained four accounts with financial institution in New York did not constitute "doing business" in New York, as required to assert personal jurisdiction over bank under New York's general jurisdiction statute in action alleging bank's failure to confirm letter of credit, even though one New York account received plaintiff's confirmation fee in connection with letter of credit; all of bank's branches, offices and employees were in Europe, bank was not registered to do business in New York, and bank did not own any real property in New York. Semi Conductor Materials, Inc. v. Citibank Intern. PLC, 1997, 969 F.Supp. 243. Federal Courts 86

Licensees of automobile rental company were not doing business in New York, under state long-arm statute, so as to confer subject matter jurisdiction over licensees in declaratory judgment action brought by company to determine if it could engage directly of rental of temporary replacement automobiles, even though company maintained New York offices to serve as licensees; there was no indication of extent that licensees used offices, and none of them were licensed to do business in state, maintain office there, maintain bank accounts or employees or own property in state, or solicited New York business. Agency Rent A Car System, Inc. v. Grand Rent A Car Corp., 1996, 916 F.Supp. 224, reversed 98 F.3d 25, 40 U.S.P.Q.2d 1455. Federal Courts 79

Corporation incorporated in Delaware with its principal place of business in New Jersey was not "doing business" in New York, for purposes of jurisdiction in a diversity case involving products liability, even though it

maintained eight bank accounts within state; there was no indication that corporation did substantially all of its New York business through New York bank accounts. Vendetti v. Fiat Auto S.p.A., 1992, 802 F.Supp. 886. Federal Courts 84

In trademark dispute between German company and Canadian company, German plaintiff was required to show that New York district court had personal jurisdiction over Canadian company's alleged agent or alter ego by showing that agent's accounts at New York bank and other activities in New York sufficed for court to find that agent was “doing business” in New York and that its bank accounts were maintained or activities conducted with knowledge and consent of German company. Keramchemie GmbH v. Keramchemie (Canada) Ltd., 1991, 771 F.Supp. 618. Trademarks 1558

Bank did not engage in continuous and systematic course of “doing business” in state of New York so as to warrant finding of “presence” within jurisdiction for assertion of personal jurisdiction over it because of its banking transactions in state, which were limited to maintenance of custodial accounts in which securities purchased for it by Federal Home Loan Bank System and others were deposited for safekeeping, particularly where bank had no role in choosing location of banks in which securities were held. Colson Services Corp. v. Bank of Baltimore, 1989, 712 F.Supp. 28. Federal Courts 79

Foreign nation and bank of that nation were not “doing business” in New York for purposes of personal jurisdiction either by reason of maintaining bank accounts in that state or on theory that New York bank, acting as an advising bank with respect to letter of credit issued by the foreign bank, was acting as an agent of the foreign bank. National American Corp. v. Federal Republic of Nigeria, 1977, 425 F.Supp. 1365. Federal Courts 84

British corporation which had no office and no employees within New York, which did not solicit business and did not conduct any regular service to or from New York whether by business representative or subsidiary and whose only contact with New York was a bank account the monies of which were immediately credited to its London bank was not present within New York so as to be subject to jurisdiction of federal court sitting in New York under corporate presence doctrine. Masonite Corp. v. Hellenic Lines, Ltd., 1976, 412 F.Supp. 434. Federal Courts 84

Fact that foreign corporation maintained checking account in New York City did not, without more, amount to “doing business” under New York law such as would permit maintenance of action on contract against foreign corporation in New York federal district court. Grove Valve & Regulator Co., Inc. v. Iranian Oil Services Ltd., 1980, 87 F.R.D. 93. Federal Courts 84

Existence of correspondent bank relationship between defendant and banking institution at which letter of credit was opened was insufficient to support exercise of in personam jurisdiction over defendant and there was nothing in record to support contention that defendant was doing business in state. Nemetsky v. Banque De Developpement De La Republique Du Niger, 1979, 48 N.Y.2d 962, 425 N.Y.S.2d 277, 401 N.E.2d 388. Banks And Banking 18

Foreign corporation's use of a New York bank account to receive payments from foreign purchasers and to pay its foreign suppliers amounted to “doing business” in New York and supported exercise of personal jurisdiction over the corporation in action to attach the account, although no corporate employees were situated in New York; ready availability of various cable and satellite communications media enabled corporation to direct all uses of the bank from foreign office without need for sending actual agent to New York. Georgia-Pacific Corp. v. Multimark's Intern. Ltd. (1 Dept. 2000) 265 A.D.2d 109, 706 N.Y.S.2d 82, issued 2000 WL 307578. Courts 13.5(1)

Corporation's deliberate use of a New York bank to conduct almost all of its business demonstrates an intent to take advantage of the benefits and protections of New York laws on a continuous and systematic basis so as to create a constructive “presence” within State, supporting exercise of personal jurisdiction. Georgia-Pacific Corp. v. Multimark's Intern. Ltd. (1 Dept. 2000) 265 A.D.2d 109, 706 N.Y.S.2d 82, issued 2000 WL 307578. Courts 13.4(3)

While the mere maintenance of a single bank account in New York does not, as a general rule, constitute “doing business” in the State so as to subject a defendant to personal jurisdiction, the use of a bank account for the receipt of substantially all of the income of a foreign corporation and for the payment of substantially all of its business expenses does. Georgia-Pacific Corp. v. Multimark's Intern. Ltd. (1 Dept. 2000) 265 A.D.2d 109, 706 N.Y.S.2d 82, issued 2000 WL 307578. Courts 13.4(3)

Bank which was located and chartered in Massachusetts did not engage in continuous and systematic course of business in New York, as would allow exercise of personal jurisdiction over bank in action by New York resident who alleged that bank had honored fraudulent or forged checks withdrawing money from fund of which bank was custodian; bank did not have office in New York, had no employees there, and was not authorized to conduct business there, and held assets of fund group to which New York resident belonged, rather than of individual fund shareholders. Symenow v. State Street Bank and Trust Co. (4 Dept. 1997) 244 A.D.2d 880, 665 N.Y.S.2d 141. Courts 13.5(13)

The borrowing of money from local bank by foreign corporation after negotiations conducted in state by corporation's officers or representatives constituted “doing of business in state” as to lender, but was not jurisdictional conduct of business therein by borrower and did not warrant holding that it was present within state for service of process on it therein, especially where loan was intended for use in another state. Hastings v. Piper Aircraft Corp. (1 Dept. 1948) 274 A.D. 435, 84 N.Y.S.2d 580, reargument denied 275 A.D. 660, 86 N.Y.S.2d 668. Corporations And Business Organizations 3202; Corporations And Business Organizations 3271

Existence of foreign defendant's New York bank account was sufficient to prove prima facie case for personal jurisdiction under New York law, or at least to warrant additional targeted discovery to reveal further information concerning defendant's use of account. Turbana Corp. v. M/V ""SUMMER MEADOWS", her engines, boilers, 2003, 2003 WL 22852742, Unreported. Federal Civil Procedure 1275.5; Federal Courts 86; Federal Courts 97

In order for foreign corporation's local bank account to be sufficient to establish personal jurisdiction, under

New York law, entity must utilize bank account more than nominally, and/or must exert control over account. Turbana Corp. v. M/V ""SUMMER MEADOWS", her engines, boilers, 2003, 2003 WL 22852742, Unreported. Federal Courts 86

98. Communications, doing business within state

Television station in Washington, D.C., did not have sufficient contacts with New York to subject it to personal jurisdiction in New York in action based on news broadcast; station's broadcast signal did not reach New York, neither station nor its corporate parent was qualified to do business in New York or owned any property there, and actions of station in selling videotapes and written transcripts of its broadcasts through mail order business did not subject it to jurisdiction. Merritt v. Shuttle, Inc., 1998, 13 F.Supp.2d 371, remanded 187 F.3d 263, opinion after remand 245 F.3d 182. Federal Courts 79; Federal Courts 81

Announcer for television station in Washington, D.C., did not have sufficient contacts with New York to be subjected to personal jurisdiction in New York in action based on news broadcast; station's broadcast signal did not reach New York, and announcer did not own property in New York and had not lived there for 20 years. Merritt v. Shuttle, Inc., 1998, 13 F.Supp.2d 371, remanded 187 F.3d 263, opinion after remand 245 F.3d 182. Federal Courts 76.5

Credit card issuer located in Maryland was not “doing business” in New York, for purposes of long-arm statute, by virtue of maintaining “800” phone number for customers in state to request applications for credit cards, and for utilizing payment services membership association which was based in New York. Walsh v. Maryland Bank, N.A., 1992, 806 F.Supp. 437. Federal Courts 84

National satellite television broadcaster made prima facie showing that owner of satellite telemetry, tracking, and control center located in New York acted with authority of lessor of transponder capacity on broadcast satellite and for lessor's substantial benefit, thus creating personal jurisdiction over lessor in broadcaster's suit for breach of lease agreement; either lessor or parent of both corporations on lessor's behalf contracted with center owner to perform functions necessary to satellite's proper operation and use, lessor's employees told broadcaster's representative that facility was maintained by lessor, and corporate affiliation between lessor and center owner gave rise to valid inference that latter had broad authority to act on former's behalf. Tuxxedo Network, Inc. v. Hughes Communications Carrier Services, Inc., 1990, 753 F.Supp. 514. Federal Courts 96

Fact that French company created to organize and administer internationally renowned bicycle race held in France authorized major New York-based television network to broadcast bicycle race and directly participated in and facilitated broadcast by sending telexes and making telephone calls from France was insufficient to establish that French company was present in New York for purpose of assertion of jurisdiction over French company under New York statute allowing for assertion of personal jurisdiction over foreign corporation if such corporation is engaged in such continuous and systematic course of doing business as to warrant finding of its presence in jurisdiction. Broadcasting Rights Intern. Corp. v. Societe du Tour de France, S.A.R.L., 1987, 675 F.Supp. 1439, motion to vacate denied 708 F.Supp. 83. Federal Courts 86

Under New York law, 800-number toll-free telephone calls, three sales invoices, and single written communication between New York corporation and Massachusetts corporation, which has never been licensed to do business in New York, was insufficient to provide adequate basis for in personam jurisdiction over Massachusetts corporation in action for money owed. Standard Enterprises, Inc. v. Bag-It, Inc., 1987, 673 F.Supp. 1216. Federal Courts 84

Arizona mortgage broker was not "doing business" in New York for purposes of New York long-arm statute due to fact that broker placed two telephone calls per year to New York firms, where broker did not have New York office, owned no property, maintained no bank accounts within New York, and had no employees assigned to work in New York. Forgash v. Paley, 1987, 659 F.Supp. 728. Federal Courts 76.15

Where most of the negotiations leading to joint venture between plaintiff and defendant occurred either telephonically or in New Jersey or Washington, there were insufficient contacts to provide a basis for assertion of personal jurisdiction over the defendant in New York. Glacier Refrigeration Service, Inc. v. American Transp., Inc., 1979, 467 F.Supp. 1104. Federal Courts 76.5

Under this section, interstate negotiations by telephone are not contacts that subject a defendant to jurisdiction at the instance of the New York party receiving the communication. Xedit Corp. v. Harvel Industries Corp., Fidelipac, 1978, 456 F.Supp. 725. Federal Courts 76.5

Federal district court sitting in New York lacked personal jurisdiction over Austrian power utility in personal injury suit, under state long-arm statute conferring jurisdiction over nonresident defendants doing business in state, by virtue of maintaining Internet website accessible in New York. In re Ski Train Fire in Kaprun, Austria on November 11, 2000, 2003, 2003 WL 1807148, Unreported, motion to certify denied 2005 WL 1523508. Federal Courts 86

99. Websites, doing business within state

Generally, an interactive website supports a finding of personal jurisdiction over a non-resident defendant, under New York's long-arm statute and the Due Process Clause. Mrs. U.S. Nat. Pageant, Inc. v. Miss U.S. Organization, LLC, 2012, 875 F.Supp.2d 211. Constitutional Law 3965(1); Courts 13.3(12)

In cases involving interactive websites where a user can exchange information with the host computer, the exercise of jurisdiction over a non-resident defendant, under New York's long-arm statute and the Due Process Clause, is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the website. Mrs. U.S. Nat. Pageant, Inc. v. Miss U.S. Organization, LLC, 2012, 875 F.Supp.2d 211. Constitutional Law 3965(1); Courts 13.3(12)

In Internet cases, the analytical framework for asserting jurisdiction over a non-resident defendant, under New York's long-arm statute and the Due Process Clause, employs a sliding scale, based on the degree to which the defendant has used the Internet in its commercial or other relevant activities; at one end of that scale is the creation or maintenance of a purely passive website, which does little more than make information available to

those who are interested in it or the information that it contains, and at the opposite end of the spectrum are defendants who enter into contracts, or otherwise interact with residents of other jurisdictions, that involve the knowing and repeated transmission of computer files over the Internet. Mrs. U.S. Nat. Pageant, Inc. v. Miss U.S. Organization, LLC, 2012, 875 F.Supp.2d 211. Constitutional Law 3965(1); Courts 13.3(12)

A firm does not "do business" in New York, within the meaning of New York's general personal jurisdiction statute, simply because New York citizens can contact the firm via the worldwide web. C.B.C. Wood Products, Inc. v. LMD Integrated Logistics Services, Inc., 2006, 455 F.Supp.2d 218. Courts 13.3(12); Courts 13.4(3)

District Court lacked general personal jurisdiction over non-resident warehouse operator, under both New York law and federal law, in action against warehouse operator for breach of contract and conversion of property; although operator had regular contacts with plaintiff through telephone calls to plaintiff's New York office, and it maintained a website accessible to New York residents, the operator did not have an office or business location in New York, it did not have New York bank accounts, it did not have employees in New York, and there was no showing that operator's business conduct was purposefully directed toward New York. C.B.C. Wood Products, Inc. v. LMD Integrated Logistics Services, Inc., 2006, 455 F.Supp.2d 218. Federal Courts 79

Jurisdiction over French corporation was not proper under New York's "general jurisdiction" provision merely because corporation operated websites through which New York residents could make hotel reservations or purchase other services. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 86

For purposes or establishing personal jurisdiction over a firm under New York law, a firm does not do business in New York simply because New York citizens can contact the firm via the worldwide web. Smith v. Circus-Circus Casinos, Inc., 2003, 304 F.Supp.2d 463. Federal Courts 84

Under New York law, district court had no personal jurisdiction over casino and its parent company, which both had principal places of doing business in Nevada, in personal injury action brought by patron, who was a resident of New York, related to alleged injuries incurred at casino located in Nevada; although casino had website which could be accessed by potential customers in New York, casino and its parent company had no offices, agents, or employees in New York, casino and its parent company had no New York telephone listings, no licenses to do business in New York, and no bank accounts in New York. Smith v. Circus-Circus Casinos, Inc., 2003, 304 F.Supp.2d 463. Federal Courts 84

Illinois customer of New York manufacturer did not avail itself of benefits of New York, did not have sufficient contacts with it, and reasonably could not expect to defend its actions there in manufacturer's breach of contract action, by sending sample tarpaulin into New York, by agreeing to be bound by "Worth Street Rules," and by having Internet website, where cause of action did not arise from website, "Worth Street Rules," which were rules of custom and usage in industry, had only evolved in New York but spread nationwide, and customer shipped sample to show manufacturer what customer needed; bona fide choice of law provision also could not confer jurisdiction. Spencer Laminating Corp. v. Denby, 2004, 5 Misc.3d 200, 783 N.Y.S.2d 220. Courts 13.5(7); Courts 25

Allegation that defendant's website is accessible to New York residents, unaccompanied by averments that the website is either highly interactive or that plaintiff's claims arose out of defendant's website activity, cannot provide the basis for jurisdiction under New York's jurisdictional statutes. Pieczenik v. Cambridge Antibody Technology Group, 2004, 2004 WL 527045, Unreported. Federal Courts 76.15

Modeling agency failed to make prima facie case of personal jurisdiction in breach of contract action over out of state talent scout under transacting business provision of New York long-arm statute, on allegations that scout advertised its services on website, sent representatives to New York twice a year, wired money into agency's account, and sent invoices to New York business; website was not interactive and mere promotion via website was insufficient to constitute transacting business, and representatives' twice-yearly visits to New York did not have anything to do with agency. Madison Models, Inc. v. Casta, 2003, 2003 WL 21978628, Unreported. Federal Courts 76.30; Federal Courts 94

Switzerland hotel's maintenance of an interactive website did not establish that it was doing business in New York, so as to support exercise of personal jurisdiction over the hotel under New York's long-arm statute in a hotel patron's personal injury suit; the only interactivity the website allowed was the opportunity for users to inquire into room availability, to which the hotel would respond through e-mail or fax. Brown v. Grand Hotel Eden, 2003, 2003 WL 21496756, Unreported. Federal Courts 86

100. Public relations, doing business within state

Palestine Liberation Organization (PLO) engaged in sufficient non-United Nations activities in New York prior to passage of Anti-Terrorism Act to be subject to personal jurisdiction in New York in action arising from vessel hijacking; persons in PLO's New York office gave speeches and interviews to live audience and in media appearances, and New York office distributed informational materials. Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria, 1992, 795 F.Supp. 112. Federal Courts 86

Activities in New York of air charterer organized under the laws of the Hashemite Kingdom of Jordan did not provide a basis under New York law for exercising personal jurisdiction over the air charterer where its direct contacts with New York consisted of its purchases of the services of a New York public relations firm, its single purchase of an advertisement in a newspaper with circulation in New York and its borrowing of substantial sums of money from and certain repayments to New York banks and where these activities did not constitute substantial parts of the air charterer's business of chartering jet aircraft for transportation in the Middle East. Jayne v. Royal Jordanian Airlines Corp., 1980, 502 F.Supp. 848. Federal Courts 86

Foreign airline corporation whose New York office employed several people, had New York bank account, and did public relations and publicity work, including maintaining contacts with other airlines and travel agencies, was “doing business” in state and was subject to personal jurisdiction in tort action notwithstanding that it did not sell tickets, solicit sales or plan trips. Bryant v. Finnish Nat. Airline, 1965, 15 N.Y.2d 426, 260 N.Y.S.2d 625, 208 N.E.2d 439. Aviation 52

101. Advertisements and publicity, generally, doing business within state

New York consultant's in-state activities to further a show being performed overseas could not suffice to establish that German theatrical producer was “doing business” in New York through consultant for purposes of establishing general jurisdiction over producer under New York law. Jacobs v. Felix Bloch Erben Verlag fur Buhne Film und Funk KG, 2001, 160 F.Supp.2d 722. Federal Courts 86

In negligence action brought by New York tourist against corporate Hawaii hotel operator, operator did not establish a presence in New York, and thus, operator was not subject to jurisdiction in New York under “doing business” provision; operator's action of placing an advertisement in a publication that was likely to be disseminated in New York was nothing more than solicitation, and hotel operator had no offices, property, bank accounts, and employees in New York. Hinsch v. Outrigger Hotels Hawaii, 2001, 153 F.Supp.2d 209. Federal Courts 79; Federal Courts 81

Out-of-state defendant's advertising in periodicals or journals with national circulation is not activity of substance in any specific jurisdiction, and cannot be basis for personal jurisdiction under New York's “doing business” statute. Daniel v. American Bd. of Emergency Medicine, 1997, 988 F.Supp. 127, disapproved in later appeal 428 F.3d 408. Courts 13.3(11)

Upon motion to dismiss for lack of personal jurisdiction, former employee failed to make prima facie showing of New York court's general personal jurisdiction over Netherlands-based association with no office or employees in United States, despite evidence that association advertised in United States through various media, where there was no evidence that association conducted any business in New York. Howard v. Klynveld Peat Marwick Goerdeler, 1997, 977 F.Supp. 654, affirmed 173 F.3d 844. Federal Courts 86; Federal Courts 96

Plaintiff failed to establish that foreign corporation was “doing business” in New York as required for personal jurisdiction; plaintiff did not show that defendants produced or marketed and distributed pepper spray product within New York, had an office, bank accounts or property or permanent employees in New York, but only showed that pepper spray product had been sold to several police agencies in New York and that either producer or distributor would send advertising material into New York upon request. Murphy v. Cuomo, 1996, 913 F.Supp. 671. Federal Courts 81

Alleged conduct of owner of Florida theme park in advertising in New York through its licensees, contracting with New York advertising agency, and sending promotional material to travel agents in New York did not amount to “doing business” in New York within meaning of New York's long-arm law, absent evidence that any of owner's New York representatives performed services that could contractually bind it. Schenck v. Walt Disney Co., 1990, 745 F.Supp. 894, published at.

Injured skier's allegations that operator of Vermont ski resort provided information to New York media regarding ski conditions at its facilities and advertised in New York newspapers was insufficient to establish that operator was doing business in New York under personal jurisdiction statute; skier failed to present detailed evidence as to source of operator's advertising campaign, amount expended by operator advertising in New York,

and nature of those advertisements. Pellegrino v. Stratton Corp., 1988, 679 F.Supp. 1164. Federal Courts 94

Where neither of advertising agencies used by foreign corporation could definitively confirm advertising orders or guarantee payment by such corporation for advertising that it forwarded to them and their role in billing and collecting was limited to providing assistance in collecting delinquent accounts, contacts of such corporation with New York were inadequate to establish personal jurisdiction under Civil Practice Law and Rules. Arbitron Co. v. E.W. Scripps, Inc., 1983, 559 F.Supp. 400. Courts 13.6(2)

That nonresidents once yearly purchased advertisement for camp in newspaper assertedly printed, published and distributed in New York did not establish jurisdiction over nonresidents under this section providing that court may exercise such jurisdiction over persons, property or status as might have been exercised theretofore. Diskin v. Starck, 1982, 538 F.Supp. 877. Federal Courts 76.10

Defendant's hiring agent to advertise its hotel and take reservation requests did not constitute "doing business" under this section. Voss v. American Federation of Musicians of U. S. and Canada, 1980, 507 F.Supp. 144. Federal Courts 84

Even if advertisement, which appeared in a New York telephone directory and which detailed products sold by corporate defendant and listed a wholly owned subsidiary as its sales agency, was inserted by corporate defendant, advertisement itself was "mere solicitation" and did not support claim that defendant was doing business in New York for purpose of service of process. Baird v. Day & Zimmerman, Inc., 1974, 390 F.Supp. 883, affirmed 510 F.2d 968. Federal Courts 81

Publication of advertisements, without more, has never been basis for personal jurisdiction under this section. Saraceno v. S. C. Johnson and Son, Inc., 1979, 83 F.R.D. 65. Courts 13.3(10)

Mere advertising in New York media by German corporation would constitute no more than a mere solicitation that would not render German corporation subject to personal jurisdiction. Delagi v. Volkswagenwerk A.G. of Wolfsburg, Germany, 1972, 29 N.Y.2d 426, 328 N.Y.S.2d 653, 278 N.E.2d 895, reargument denied 30 N.Y.2d 694, 332 N.Y.S.2d 1025, 283 N.E.2d 432. Courts 13.4(3)

Generally, New York has no jurisdiction over a foreign company whose only contacts with New York are advertising and marketing activities plus occasional visits by company's representatives to New York. Holness v. Maritime Overseas Corp. (1 Dept. 1998) 251 A.D.2d 220, 676 N.Y.S.2d 540. Courts 13.4(3); Courts 13.6(1)

Whether advertisements, brochures and sales solicitations by owner of ski slope were sufficient to establish personal jurisdiction in tort action originating from skier's injury raised fact question warranting immediate trial of

issues on motion to dismiss. Chamberlain v. Peak (3 Dept. 1989) 155 A.D.2d 768, 547 N.Y.S.2d 706. Pretrial Procedure 680

Fact that hotel in Spain had an independent hotel representative in New York and advertised in trade publication circulated among travel agents in New York was insufficient to establish that hotel engaged in continuous and systematic course of doing business in New York so as to warrant finding of presence for purpose of action for injury sustained in the hotel. Kramer v. Hotel Los Monteros S. A. (1 Dept. 1977) 57 A.D.2d 756, 394 N.Y.S.2d 415, appeal denied 43 N.Y.2d 649, 403 N.Y.S.2d 1028, 374 N.E.2d 1249. Courts 13.6(2)

Corporation which operated a resort and hotel in New Jersey, advertised in New York publications and had a New York telephone number through which a New York caller could obtain a direct connection to the corporation in New Jersey, did not have the minimum contacts in New York required for acquisition of jurisdiction over it in personam. Greenberg v. R.S.P. Realty Corp. (2 Dept. 1964) 22 A.D.2d 690, 253 N.Y.S.2d 344. Courts 13.4(3)

Where third party defendant had no office, no property, no bank account in state and its activities consisted of advertising in newspaper and in classified telephone directory and one of its officers also visited several of its customers occasionally and solicited their business, third party defendant's business in state was not “substantial” and such defendant was not “doing business” in state and motion to vacate service of summons and complaint on such defendant would be granted. Flanagan v. Acme Scaffold Co. (2 Dept. 1950) 277 A.D. 988, 100 N.Y.S.2d 15, reargument denied 277 A.D. 1006, 100 N.Y.S.2d 493. Corporations And Business Organizations 3271

Russian corporation was not “doing business within state” for purpose of serving process on it because it owned one-half of capital stock and was represented on board of directors of corporation which did business within state, and because its name was listed in telephone book and its products advertised by American corporation. Lilienblum v. W. Wissotzky & Co. (1 Dept. 1925) 213 A.D. 18, 209 N.Y.S. 704. Corporations And Business Organizations 3271

The distribution of information and of advertising literature in behalf of foreign corporation did not constitute “doing business” in state for purpose of service of process. Guile v. Sea Island Co., 1946, 11 Misc.2d 496, 66 N.Y.S.2d 467, affirmed 272 A.D. 881, 71 N.Y.S.2d 911, appeal denied 272 A.D. 996, 73 N.Y.S.2d 638, appeal dismissed 297 N.Y. 781, 77 N.E.2d 793. Corporations And Business Organizations 3271

102. Trade shows, doing business within state

California corporate officer was not subject to suit in federal court in New York under “doing business” prong of New York long-arm statute, where officer only attended trade show in New York from time to time and went to New York on business on three occasions. Kinetic Instruments, Inc. v. Lares, 1992, 802 F.Supp. 976, 25 U.S.P.Q.2d 1122. Federal Courts 76.15

A foreign corporation, which established a temporary office within the state during a fair, for the primary pur-

pose of taking orders and for the sale of its goods, which orders were not to be binding until approved by the home office from which the goods were to be shipped, was “doing business within the state,” so that service of process there on its secretary and treasurer was service on the corporation. Bogert & Hopper, Inc. v. Wilder Mfg. Co. (1 Dept. 1921) 197 A.D. 773, 189 N.Y.S. 444. Corporations And Business Organizations 3271

The appearance of some of foreign corporation's officers at dental conventions in New York, where foreign corporation's products were displayed and orders sometimes taken, did not constitute “doing business” in New York since such activities are not so systematic and regular as to manifest continuity of action from a permanent locale. Irgang v. Pelton & Crane Co., 1964, 42 Misc.2d 70, 247 N.Y.S.2d 743. Corporations And Business Organizations 3208

Mere solicitation of business for out-of-state corporations was in and of itself not enough to constitute doing business in the state, nor did the fact that an out-of-state corporation participated in a trade exhibition give a state court jurisdiction over it. Wilcox-Gay Corp. v. Hosho of America, Inc., 1959, 22 Misc.2d 869, 194 N.Y.S.2d 140. Corporations And Business Organizations 3206; Courts 13.4(3)

Foreign corporation maintaining no place of business in state did not subject itself to jurisdiction of courts of state by displaying its wares at plastics exposition held in state, even if its agents were available at such exposition to take orders for its goods. Molina v. Hydraulic Press Mfg. Co., 1956, 10 Misc.2d 224, 167 N.Y.S.2d 280. Courts 13.4(3)

Where foreign corporation's president and sales manager maintained hotel room for thirteen days during toy fair in New York, in which toys manufactured by corporation were displayed and president and sales manager solicited and accepted orders for such toys, corporation was amenable to process and service of summons and complaint on such officer was valid. Lindner v. Plastic Toys, 1949, 96 N.Y.S.2d 513. Corporations And Business Organizations 3266(3); Corporations And Business Organizations 3271

New Jersey cosmetics business which exhibited its products at New York City trade shows and used New York City location to collect its cash and handle its accounts receivable activities, and whose principal attended business functions on behalf of company in New York City, was “doing business” in New York, within meaning of that state's long-arm statute. Fashion Fragrance & Cosmetics v. Croddick, 2003, 2003 WL 342273, Unreported. Federal Courts 79

103. Publishing, doing business within state

Distribution by syndicate of articles written by nonresident defendant to syndication members, specifying release date, performed in state, constituted conduct of business in state for purposes of this section. Totero v. World Telegram Corp., 1963, 41 Misc.2d 594, 245 N.Y.S.2d 870. Process 72

104. Insurance, doing business within state

Foreign insurance underwriting syndicate was not “doing business,” for purposes of personal jurisdiction under

New York Civil Practice Law and Rules § 301, and thus, was not subject to third-party action under political risk insurance policies, even if agent of syndicate maintained and managed trust fund on deposit in New York bank, to allow underwriting in New York, since underwriting policies for New York insureds and risk was insufficient activity to support personal jurisdiction. Alexander & Alexander Services, Inc. v. Lloyd's Syndicate 317, C.A.2 (N.Y.)1991, 925 F.2d 44. Federal Courts 86

Foreign insurance and reinsurance brokers did not substantially and continuously solicit business in New York so as to be subject to personal jurisdiction under New York jurisdictional statute in action based on breach of agreement to procure political risk insurance; although brokers' employees made 13 business trips to New York, trips were of short duration, were made by different employees, involved a number of accounts, and occurred sporadically over 18-month period. Landoil Resources Corp. v. Alexander & Alexander Services, Inc., C.A.2 (N.Y.)1990, 918 F.2d 1039. Federal Courts 86

It was appropriate to certify to the New York Court of Appeals the question of whether a foreign syndicate of insurance underwriters may be subject to suit in New York courts on the basis of a trust fund on deposit at a New York bank, into which a portion of the underwriters' premium income derived from underwriting of New York risks is deposited; question was one of first impression, was important, and was likely to recur. Alexander & Alexander Services, Inc. v. Lloyd's Syndicate 317, C.A.2 (N.Y.)1990, 902 F.2d 165, certified question accepted 76 N.Y.2d 760, 559 N.Y.S.2d 237, 558 N.E.2d 39, certified question answered 77 N.Y.2d 28, 563 N.Y.S.2d 739, 565 N.E.2d 488. Federal Courts 392

Under New York law foreign insurer which had been continually licensed in New York for 20 years and had office and agent in state and had issued some insurance there was doing business in New York so as to permit assertion of jurisdiction over insurer and nonresident insureds in attachment of insurer with respect to out-of-state accident. Beja v. Jahangiri, C.A.2 (N.Y.)1972, 453 F.2d 959. Federal Courts 80

Pakistan marine insurer was doing business in New York, as required for exercise of personal jurisdiction in New York buyer's action to recover for damage to goods after delivery, where New York domiciliary was listed as North American “claims settling agent” for insurer with authority to settle claims in North America, thus giving rise to inference of agency. Shaheen Sports, Inc. v. Asia Ins. Co., Ltd., 2000, 89 F.Supp.2d 500. Federal Courts 86

British underwriters alleged to have subscribed to insurance policies at issue in direct action were “doing business” in New York within meaning of New York long-arm statute in a manner sufficient to make assertion of jurisdiction consistent with due process over third-party claims for indemnification and contribution; administrative department of underwriters' London organization maintained an office in New York and administered a substantial fund held in trust as security for policies issued to American insureds. Landoil Resources Corp. v. Alexander & Alexander Services Inc., 1989, 720 F.Supp. 26, amended , question certified 902 F.2d 165, certified question accepted 76 N.Y.2d 760, 559 N.Y.S.2d 237, 558 N.E.2d 39, certified question answered 77 N.Y.2d 28, 563 N.Y.S.2d 739, 565 N.E.2d 488, reversed on other grounds 925 F.2d 44. Constitutional Law 3965(6); Federal Courts 86

Under New York statute providing for exercise of personal jurisdiction over defendants who have engaged in such continuous and systematic course of doing business in the state as to warrant finding of its presence in the state, district court lacked jurisdiction over insurance company in action for breach of contract and negligence where only contact between company and the state was that the company had business relationships with entities in the state. Insurance Co. of State of Pa. v. Centaur Ins. Co., 1984, 590 F.Supp. 1187. Federal Courts 76.25; Federal Courts 76.30

Sale of insurance policies in New York, which are underwritten by group of unauthorized foreign underwriters, does not, without more, support finding that underwriters are engaging in systematic and regular course of business in New York, for purposes of exercising personal jurisdiction. Landoil Resources Corp. v. Alexander & Alexander Services, Inc., 1990, 77 N.Y.2d 28, 563 N.Y.S.2d 739, 565 N.E.2d 488. Courts 13.5(14)

Trial court lacked personal jurisdiction over insurers, in insured's action for breach of contract based upon insurers' denial of coverage for insured's losses under all-risk insurance policies covering its chemical reactor facility in Canada, where insurers were not engaged in such a continuous and systematic course of doing business in New York that a finding of their presence in the jurisdiction was warranted, and their minimal contacts with New York were not sufficient to constitute purposeful business activities required for long-arm jurisdiction. Alberta & Orient Glycol Co., Ltd. v. Factory Mut. Ins. Co. (1 Dept. 2008) 49 A.D.3d 276, 852 N.Y.S.2d 112, leave to appeal denied 10 N.Y.3d 713, 861 N.Y.S.2d 274, 891 N.E.2d 309. Courts 13.5(14)

Mere unilateral act of automobile insurer's alleged insured, in driving into New York State, without more, was insufficient to permit the court to exercise long-arm jurisdiction over automobile insurer. Eagle Ins. Co. v. Gutierrez-Guzman (2 Dept. 2005) 21 A.D.3d 489, 801 N.Y.S.2d 328. Courts 13.5(14)

County in which automobile insurer transacted business was proper venue for action in which medical provider who had treated insured for injuries sustained in accident brought suit, as insured's assignee, to recover under “no-fault” provisions of policy. Neurologic Services, P.C. v. State-Wide Ins. Co., 1999, 183 Misc.2d 343, 703 N.Y.S.2d 651. Venue 7(3)

105. Research companies, doing business within state

Clinical trial participant's allegations that Virginia biopharmaceutical research company tested commercial viability of its only product primarily through New York research institutes using New York residents, that it did so with fair degree of continuity, that it continued to engage in clinical trials for commercial use of product conducted, at least partially, in New York, and that sole means of funding its research was conducted through investors relations agent working in office in New York City, were sufficient to establish prima facie case that company was doing business in New York, and thus was subject to general personal jurisdiction in New York in participant's action challenging company's refusal to support her application for “compassionate use” exception allowing her to resume treatment with drug. Cacchillo v. Insmed Inc., 2011, 833 F.Supp.2d 218. Federal Courts 94

Fact that media research company, a Michigan corporation, solicited public opinion research company, a New

York corporation, to undertake three studies was not sufficient to constitute "doing business" in New York, as would provide basis for personal jurisdiction over Michigan corporation in New York corporation's breach of contract action; solicitation occurred through employee of New York corporation at her home in Illinois. Roper Starch Worldwide, Inc. v. Reymer & Associates, Inc., 1998, 2 F.Supp.2d 470. Federal Courts 81

Fact that New York public opinion research company conducted three studies solicited by Michigan media research company through New York offices, that five previous studies solicited by same company were also performed in New York, and that companies to be studied had offices in New York was insufficient to demonstrate that Michigan corporation was continually and systematically engaged in business in New York, as would provide basis for personal jurisdiction over Michigan corporation in New York corporation's breach of contract action. Roper Starch Worldwide, Inc. v. Reymer & Associates, Inc., 1998, 2 F.Supp.2d 470. Federal Courts 79; Federal Courts 81

Research work and training employees was not "doing business within state," to give state court jurisdiction of foreign corporation. Brocia v. Franklin Plan Corp. (4 Dept. 1932) 235 A.D. 421, 257 N.Y.S. 167. Courts 13.4(3)

106. Sales, doing business within state--In general

Where only contacts by nonresident defendant with New York were her "cease and desist" letter to plaintiff, and an unspecified number of mail order sales of her products in New York, there was no personal jurisdiction under this section providing that a nondomiciliary subjects herself to personal jurisdiction with respect to any cause of action if engaged in such continuous and systematic course of doing business as to warrant finding of her presence in jurisdiction, even if defendant solicited New York mail order sales by advertisements reaching New York. Beacon Enterprises, Inc. v. Menzies, C.A.2 (N.Y.)1983, 715 F.2d 757. Federal Courts 76.15

A foreign manufacturer of a product is not deemed to be present in New York, for purposes of personal jurisdiction, simply because the product is distributed through a New York distributor; the mere sale of the product is not considered the act of doing all the business which the parent corporation could do were it here by its own officials. Gallelli v. Crown Imports, LLC, 2010, 701 F.Supp.2d 263. Federal Courts 82; Federal Courts 86

There was personal jurisdiction, under New York long-arm statute conferring jurisdiction over defendants doing business in state, over Croatian supplier of generic warfarin sodium, used as ingredient in anticoagulant medication, alleged to have breached contract to supply drug to Canadian pharmaceutical manufacturer for sale in United States; supplier did over $5 of business in state, over two year period,and solicited customers, overcoming absence of offices, bank accounts or employees in state. Genpharm Inc. v. Pliva-Lachema a.s., 2005, 361 F.Supp.2d 49. Federal Courts 86

Minnesota buyer was not subject to general personal jurisdiction in New York due to fact that it placed order with New York seller, where buyer did have New York office or any bank accounts, property or employees in state, did not have mailing address, telephone line, or post office box within the state, did not pay New York in-

come or property taxes, and was not licensed to do business in New York. CES Industries, Inc. v. Minnesota Transition Charter School, 2003, 287 F.Supp.2d 162. Federal Courts 76.35

Minnesota buyer was not subject to specific personal jurisdiction in New York due to fact that it placed order with New York seller, absent allegation that agreement between parties was negotiated or executed in New York or that buyer came to New York to discuss supplies or services requested. CES Industries, Inc. v. Minnesota Transition Charter School, 2003, 287 F.Supp.2d 162. Federal Courts 76.35

Colorado auction house and an officer of the house were not amenable to personal jurisdiction under the "doing business" provision of the New York long-arm statute, in an action brought by a collector arising from the defendants' failure to complete an auction transaction; while the house had sold goods to New York buyers, such sales amounted to under $40,000, which was less than 3% of its total revenue for the prior three years, and the mere fact that the house had placed several advertisements in a weekly trade publication directed to a national audience did not subject them to New York jurisdiction merely because the collector saw such an advertisement in New York. Hutton v. Priddy's Auction Galleries, Inc., 2003, 275 F.Supp.2d 428. Federal Courts 76.15

Under New York's long-arm statute, fact that Florida railway company had sales agents in New York was insufficient to establish that railway engaged in a continuous and systematic course of doing business in New York, as would subject company to personal jurisdiction there; agents worked for an independent contractor. Swindell v. Florida East Coast Ry. Co., 1999, 42 F.Supp.2d 320, affirmed 201 F.3d 432. Federal Courts 83

Kentucky coal seller and its officers, who were Kentucky residents, were not "doing business" in New York so as to permit federal district court to exercise personal jurisdiction over them, where seller maintained no offices, agents, telephone listings, or bank accounts in New York, was not licensed to do business in New York, and owned no property in New York, and officers had been in New York only occasionally. Cambridge Energy Corp. v. Tri-Co Fuels, Inc., 1986, 637 F.Supp. 1210. Federal Courts 79

Plaintiff's unsuccessful attempt to sell properties to defendant in New York did not show that defendant purposely availed itself of the advantages of New York commerce so as to be doing business there and subject to general jurisdiction in New York. Advance Realty Associates v. Krupp, 1986, 636 F.Supp. 316. Federal Courts 76.15

Nonresident corporation was not "doing business" in New York within meaning of this section and therefore was not subject to suit there, notwithstanding that it made five percent of its gross sales in New York, employed a New York customs agent to process imports through customs, and had a bank account in New York, where all of its business was conducted out of its New Jersey office, it had no office in New York, no employees in New York, no telephone or mailing address in New York and no property in New York. C.E. Jamieson & Co., Ltd. v. Willow Labs, Inc., 1984, 585 F.Supp. 1410. Federal Courts 79

Chicago-based milk wholesaler which had no physical facilities or employees in New York, but had four per cent of its sales to New York customers for consumption in New York, was not doing business within New York

within provisions of this section permitting New York courts to exercise jurisdiction over corporations doing business in state. Chunky Corp. v. Blumenthal Bros. Chocolate Co., 1969, 299 F.Supp. 110. Federal Courts 81

Mere offering in isolated instances of oil leases for sale in New York on behalf of non-resident individual and foreign corporation did not constitute such a continuous and systematic conduct of business in New York as to authorize service on purported agent of such individual and corporation on theory of doing business within state, when there were no other allegations tending to show presence of corporation or residence of individual in state. Petroleum Financial Corp. v. Stone, 1953, 111 F.Supp. 351. Corporations And Business Organizations 3271

Foreign corporation was not "doing business" in New York for jurisdictional purposes, where it had never derived more than 1 1/2 percent of its total sales revenue from its New York customers, it had no affiliate, parent or subsidiary corporation through which it was doing business in New York, it maintained no offices, telephone listing, or inventory there, its manufacturer's representatives' orders must be accepted by corporation in California, and representatives did nothing else for corporation, so that its New York activities amounted to only advertising and solicitation of orders. Dunn v. Southern Charters, Inc., D.C.N.Y.1981, 506 F.Supp. 564. See also, Cole v. Stonhard Co., 1952, 12 F.R.D. 508.

Sustained and systematic activity in state by foreign corporate sales agency which, through its representatives, solicited sales, ran clinics for customers, followed up complaints or difficulties and delivered samples and sales materials and whose president worked with sales representatives in calling on state accounts was purposeful and continuing rather than casual and limited in time and was sufficient to subject it to suit by one of such sales representatives without regard to volume of business done. Laufer v. Ostrow, 1982, 55 N.Y.2d 305, 449 N.Y.S.2d 456, 434 N.E.2d 692. Courts 13.6(2)

Florida corporation was subject to long-arm jurisdiction under statute permitting New York courts to exercise personal jurisdiction over nondomiciliary who expects or should reasonably expect act to have consequences in state and derives substantial revenue from interstate or international commerce, where corporation could have foreseen that sale and delivery of poly-spray machine, as well as parts therefor, to New York company would have consequences in New York, and where corporation, through sale of its machines via toll-free "Hot-Line" number, derived substantial revenue from interstate and international commerce. Torrioni v. UNISUL, Inc. (1 Dept. 1991) 176 A.D.2d 623, 575 N.Y.S.2d 66. Courts 13.5(7)

Regular maintenance of a sales force by a foreign corporation, if of sufficient magnitude and organized, may constitute "doing of business" in the state authorizing service of process on agent of the foreign corporation. Grunder v. Premier Indus. Corp. (4 Dept. 1961) 12 A.D.2d 998, 211 N.Y.S.2d 421, appeal denied 13 A.D.2d 717, 215 N.Y.S.2d 1023. Corporations And Business Organizations 3266(4); Corporations And Business Organizations 3271

A foreign corporation, maintaining no office in the state, but merely accepting orders taken by commission merchants doing business on their own account, was not doing business in the state, so that noncompliance with

General Corporation Law, § 15 , would prevent actions on contracts based on the broker's orders. Eagle Mfg. Co. v. Arkell & Douglas, Inc. (1 Dept. 1921) 197 A.D. 788, 189 N.Y.S. 140, motion to dismiss appeal denied 233 N.Y. 685, 135 N.E. 970, affirmed 234 N.Y. 573, 138 N.E. 451. Corporations And Business Organizations 3254(1)

Even if someone connected with foreign corporation offered its products for sale in New York City, such occasional or casual act of selling would not suffice to show conduct of business in New York state by foreign corporation of reasonable degree or measure of permanence and continuity to make foreign corporation present within state for jurisdictional process. Nursery Plastics, Inc. v. Newton & Thompson, Inc., 1959, 19 Misc.2d 883, 191 N.Y.S.2d 655. Courts 13.6(2)

Foreign manufacturing corporation which sent sample case to New York, and employed salesman there, but received orders and paid commissions from home office, was not “doing business” in New York and not amenable to service of process there. Trautman v. Taylor-Adams Co., 1931, 141 Misc. 500, 252 N.Y.S. 701. Corporations And Business Organizations 3271

107. ---- Sales representatives, doing business within state

Reliance by corporation running Grand Canyon bus tour upon sales service representative, which had an office in New York, for three-sevenths of its business on the Grand Canyon tour, generating $120,000 per year in bookings which were confirmed in New York, was sufficient contact with New York to satisfy due process requirements and establish a systematic course of doing business in New York by defendant corporations which operated the Grand Canyon tour. Gelfand v. Tanner Motor Tours, Limited, C.A.2 (N.Y.)1967, 385 F.2d 116, certiorari denied 88 S.Ct. 1198, 390 U.S. 996, 20 L.Ed.2d 95. Constitutional Law 3965(5)

Manufacturer which sent catalogs into the state and which maintained an independent sales representative with limited responsibility was not “doing business” in New York for purposes of venue where it had no employees or offices in the state. Baldwin Hardware Corp. v. Harden Industries, Inc., 1987, 663 F.Supp. 82. Federal Courts 82; Federal Courts 84

Independent representative's solicitation of orders from New York purchasers for foreign supplier was not sufficient alone to support jurisdiction under New York long-arm statute over foreign supplier in products liability action. Vincent v. Davis-Grabowski, Inc., 1986, 638 F.Supp. 1171. Federal Courts 81

Radio station owner which had a contractual relationship with its exclusive national representative, whose national representative had a principal place of business in New York and provided a variety of services for the radio station including the negotiation of rights, preparation and execution of contracts, and billing, and which received over $120,000 per year in national sales through the New York office was “doing business” in New York for purposes of exercise of long-arm jurisdiction over it. Caballero Spanish Media, Inc. v. Betacom, Inc., 1984, 592 F.Supp. 1093. Federal Courts 82

Under this section, foreign corporations whose exclusive business involves a systematic and continuous solicita-

tion and servicing of New York accounts through sales representatives in New York are doing business within New York so as to be subject to jurisdiction in New York. Peters Griffin Woodward, Inc. v. Roadrunner Television Ltd. Partnership, 1982, 545 F.Supp. 288. Courts 13.6(1)

Where activities of former national advertising sales representative and its successor in New York on television station's behalf demonstrated degree of solicitation both substantial and systematic, former representative had power to bill and collect for all advertising solicited and successor was required to assist station in collection of delinquent accounts, officials of television station had visited New York regularly to consult with personnel of former representative and successor, and visits played important role in television station's overall sales efforts, television station had engaged in such continuous and systematic course of "doing business" in New York as to warrant finding of its presence in state for jurisdictional purposes. Katz Agency, Inc. v. Evening News Ass'n, 1981, 514 F.Supp. 423, affirmed 705 F.2d 20. Federal Courts 81

Independent sales representative's solicitation of business in New York for furniture companies in continuous and systematic manner was not alone sufficient to constitute doing of business in New York by foreign companies, and thus companies, which lacked New York telephone listing, which approved all orders and consummation of all contracts in Virginia, which confirmed sale representative's commissions in Virginia, and which shipped all merchandise from Virginia, were not "doing business" in New York as required to subject them to personal jurisdiction in sale representative's New York action. Cohen v. Vaughan Bassett Furniture Co., Inc., 1980, 495 F.Supp. 849. Federal Courts 81

Where manufacturer's agent which was located in New York and which was manufacturer's sole representative for overseas sales, was an entirely independent entity from manufacturer, where foreign sales accounted for only a small fraction of goods shipped to or through New York by manufacturer and where any orders solicited by agent had to be forwarded to and accepted by manufacturer in Illinois, manufacturer was not "doing business" in New York through agent so as to subject manufacturer to New York's jurisdiction under this section providing that "A court may exercise such jurisdiction over persons, property or status as might have been exercised heretofore." Furman v. General Dynamics Corp., 1974, 377 F.Supp. 37. Federal Courts 82

Where exclusive national sales representative was an independent economic entity and, under contract, foreign corporation it was representing retained right to refuse any orders solicited by the agent, agent's New York activities undertaken as an independent contractor in behalf of the foreign corporation did not constitute "doing business" in New York by such corporation so as to subject it to personal jurisdiction. Loria & Weinhaus, Inc. v. H. R. Kaminsky & Sons, Inc., 1978, 80 F.R.D. 494, motion granted 495 F.Supp. 253. Federal Courts 82

Under New York law, where foreign corporation, engaged in manufacturing building materials, owned no real estate or personalty and maintained no stock of goods in the state of New York, and had never paid any type of business, franchise or occupancy tax in state; none of its officers resided or had offices in New York; and its sales representative within state drove his own automobile, had no office, and worked from his home and had sole duty of forwarding orders to company, corporation was not "doing business" within state of New York in such manner and to such extent as to warrant reasonable conclusion of its "presence" and render it subject to process. Cole v. Stonhard Co., 1952, 12 F.R.D. 508. Corporations And Business Organizations 3271

Illinois sales representative's allegations that Florida publisher breached publisher-representative agreement executed outside State were insufficient to establish jurisdiction pursuant to statute addressing jurisdiction over persons, property or status. Cybertech Communications Corp. v. Quad Intern., Inc. (1 Dept. 1999) 262 A.D.2d 44, 691 N.Y.S.2d 460. Courts 13.5(3)

Jurisdiction could not be asserted over Massachusetts corporation on theory that corporation was "present" within New York by virtue of doing business in New York where no evidence was proffered to indicate that sales representatives who solicited customers for corporation were either agents or subsidiaries of corporation, nor was there any proof of substantial business activities within New York in addition to solicitation. Ring Sales Co. v. Wakefield Engineering, Inc. (2 Dept. 1982) 90 A.D.2d 496, 454 N.Y.S.2d 745. Corporations And Business Organizations 3295

Foreign corporation having no office, bank account or property in New York but retaining continuously in New York six full-time sales representatives who had territory in various parts of New York was deemed to have been "doing business" sufficiently in New York to have become subject to New York process. Benware v. Acme Chemical Co. (3 Dept. 1954) 284 A.D. 760, 135 N.Y.S.2d 207. Corporations And Business Organizations 3271

It is not sufficient to constitute "doing business" by foreign corporation that sales representatives, even though exclusively representing the foreign corporation in soliciting orders in New York and being paid representative commissions thereon, put foreign corporation's name on sales representatives' office building directory and the phone book. Irgang v. Pelton & Crane Co., 1964, 42 Misc.2d 70, 247 N.Y.S.2d 743. Corporations And Business Organizations 3206

Where Delaware corporation maintained its offices and factory in Wisconsin where all its officers resided, all of its books, all of the meetings of the board of directors, and 472 of its 480 employees were employed in Wisconsin, corporation did not have any officer, director, general manager, managing agent or statutory agent in New York State and had filed no certificate of authority to do business in New York, and corporation's only activity in New York State was that of manufacturers' representative and another salesman whose territory also included New England states and New Jersey but who did not work out of any office located in New York, corporation was not "doing business" within state and hence representative was not authorized to receive legal process in corporation's behalf. Vis-U-Matic Door Opener Corp. v. Webster Elec. Co., 1959, 20 Misc.2d 117, 191 N.Y.S.2d 408. Corporations And Business Organizations 3271

Where foreign corporation was represented by an agent receiving as his compensation a percentage of the total orders solicited by salesman which were accepted in North Carolina and the agent was the exclusive sales representative of the corporation for furniture designed by another and manufactured by the corporation and the agent hired the designer and other designers and salesmen who solicited for the corporation, the corporation was "doing business" in New York state so as to be subject to service of process. Farley v. Murray, 1958, 15 Misc.2d 164, 181 N.Y.S.2d 640. Corporations And Business Organizations 3271

Where foreign corporation, incorporated in State of Washington, was engaged in selling its products only to in-

dependent wholesalers and distributors located in New York, and where orders were solicited by mail and by salesmen who transmitted orders to home office for acceptance, such activities amounted to nothing more than those of a sales representative, and by such activities the corporation did not so manifest its presence in New York as to be amenable to service of process in New York. Princehouse v. Colorshake Corp, 1955, 140 N.Y.S.2d 250. Corporations And Business Organizations 3271

As respects service within state on vice president of foreign corporation, showing that corporation's salesmen took orders within state but that orders were not effective until approved at office in foreign state from which all deliveries were made, was insufficient to show that corporation was "doing business" within state so as to be subject to service. Etter v. Early Foundry Co., 1937, 164 Misc. 88, 298 N.Y.S. 208. Corporations And Business Organizations 3271

108. Dealers and distributors, doing business within state

Foreign automobile manufacturer is not present in New York, for purposes of long-arm statute, simply because it sells automobiles through a New York distributor. Jazini v. Nissan Motor Co., Ltd., C.A.2 (N.Y.)1998, 148 F.3d 181. Courts 13.5(7)

Manufacturer's exclusive distributor of train wheels, a New Jersey corporation, was present in New York, as required for assertion of personal jurisdiction over distributor, pursuant to New York's long-arm statute, in manufacturer's action alleging that distributor violated New York's Uniform Commercial Code (UCC) by failing to pay for goods manufacturer delivered to distributor, and that distributor converted funds owned by manufacturer, where not only did distributor register to do business in New York, but it frequently made deliveries to city transit authority's warehouse and traveled to New York for discussions with the transit authority. MWL Brasil Rodas & Eixos LTDA v. K-IV Enterprises LLC, 2009, 661 F.Supp.2d 419. Federal Courts 79

Delaware jeweler was not "doing business" in New York, as required to support jurisdiction over jeweler in New York designer's copyright infringement and unfair competition action, where jeweler had no offices, owned no real estate, maintained no bank accounts, and was not authorized to conduct business in state, and where jeweler's sole connection to state consisted of employees' semiannual visits to trade shows. Yurman Designs, Inc. v. A.R. Morris Jewelers, L.L.C., 1999, 41 F.Supp.2d 453, reconsideration denied 60 F.Supp.2d 241. Copyrights And Intellectual Property 79; Federal Courts 76.15

Presence in New York of authorized dealers who sold New Jersey corporation's hospital equipment did not establish that the corporation was "doing business". J. Baranello & Sons v. Hausmann Industries, Inc., 1980, 86 F.R.D. 151. Federal Courts 79

A corporation manufacturing automobiles outside the state and selling them in the state through dealers who purchased the cars from the manufacturer and who were not merely sales agents, which corporation was represented in the state only by export agents and by district representatives, whose duties were merely to look after the interests of defendant, but who were not authorized to enter into any contracts in its behalf and whose business was maintained in their own name and not by the corporation, was not engaged in "business within the

state" so as to be liable to service of process therein. Holzer v. Dodge Bros., 1922, 233 N.Y. 216, 135 N.E. 268. Corporations And Business Organizations 3271

Foreign corporation was not subject to jurisdiction of New York courts, as its only connection to New York was presence of distributor of its product. Jurlique, Inc. v. Austral Biolab Pty., Ltd. (2 Dept. 1992) 187 A.D.2d 637, 590 N.Y.S.2d 235. Courts 13.5(7)

Defendant distributor's activities in New York, which were limited to sporadic, infrequent sales solicitations by an independent sales agent and two of distributor's principles, were insufficient to warrant finding that distributor was "present" in New York, and thus, special term, in product liability action, did not have personal jurisdiction over distributor. Orellano v. Samples Tire Equipment and Supply Corp. (2 Dept. 1985) 110 A.D.2d 757, 488 N.Y.S.2d 211. Corporations And Business Organizations 3295

Where an independent domestic corporation acts as distributor for a foreign corporation, the fact that it uses name of foreign corporation on its office door and building directory that it uses letterhead containing name of foreign corporation, and that such corporation is listed in telephone directory, is insufficient to show that foreign corporation is doing business in state so as to confer jurisdiction on state courts. Great Lakes Press Corp. v. Air Malta, Limited, 1952, 202 Misc. 637, 111 N.Y.S.2d 802. Courts 13.6(1)

109. Purchases, doing business within state

Minnesota buyer was not subject to general personal jurisdiction in New York due to fact that it placed order with New York seller, where buyer did have New York office or any bank accounts, property or employees in state, did not have mailing address, telephone line, or post office box within the state, did not pay New York income or property taxes, and was not licensed to do business in New York. CES Industries, Inc. v. Minnesota Transition Charter School, 2003, 287 F.Supp.2d 162. Federal Courts 76.35

District court lacked personal jurisdiction, under New York's "doing business" test, over nondomiciliary individual and corporate defendants; only contact corporate defendant had with New York was its practice of purchasing goods from New York, and only one of three individual defendants had ever set foot in New York and none of his three visits related to wrongs he was being sued for. Diesel Systems, Ltd. v. Yip Shing Diesel Engineering Co., Ltd., 1994, 861 F.Supp. 179. Federal Courts 76.15; Federal Courts 79

Georgia retailer's president's 70 to 80 buying trips to New York did not amount to retailer's "doing business" in New York sufficient to confer personal jurisdiction over it. Dero Enterprises, Inc. v. Georgia Girl Fashions, Inc., 1984, 598 F.Supp. 318. Federal Courts 79

Mere fact that a defendant purchases goods or services from New York does not mean that it is doing business there for personal jurisdiction purposes. Arbitron Co. v. E.W. Scripps, Inc., 1983, 559 F.Supp. 400. Courts 13.3(11)

Ohio corporation which was engaged in the manufacture of portable motor controls, had one customer for a different product in New York, bought some supplies from one New York supplier, and advertised in national trade publications which circulated in New York, but which had no local telephone number, no local office, and no resident salesmen was not, viewed as a manufacturing and trading company, “doing business” in New York or regularly transacting business in New York so as to be subject to personal jurisdiction on such basis. ECC Corp. v. Slater Elec., Inc., 1971, 336 F.Supp. 148, 171 U.S.P.Q. 119. Federal Courts 84

A foreign corporation conducting a wholesale furniture business and frequently buying goods in the state by letter and occasional visits by its treasurer, who inspected goods and placed orders therefor, was present and apparently doing business in the state by such officer when sued on his order for goods at a furniture exhibit in the state which he attended, though his orders were required to be confirmed at the home office where payments therefor were also made. National Furniture Co. v. William Speigelman & Co. (4 Dept. 1921) 198 A.D. 672, 190 N.Y.S. 831. Corporations And Business Organizations 3206

Corporate defendant, which maintained stores in Indiana, could not be held to be doing business in New York where it solicited no orders in that state for sale of its merchandise and where practically all that it did in New York was to buy merchandise, utilizing facilities of resident buyers. Kohl v. Indiana Fur Co., 1959, 20 Misc.2d 89, 192 N.Y.S.2d 12. Corporations And Business Organizations 3206

Where purchasing for a foreign corporation was done in the state steadily by one who was identified with such corporation and who in so doing was not conducting his own independent business, corporation was doing business in the state and was amenable to process notwithstanding that office used was not listed in the corporate name. Scheier v. Stoff, 1955, 142 N.Y.S.2d 716. Corporations And Business Organizations 3271

A foreign corporation, operating department stores in other states than New York and making no sales or solicitation of orders therein, but making substantial part of its purchases through resident buyer in New York City, who acted for many other out-of-town purchasers at same time, was not doing such business in New York as to subject it to New York Supreme Court's jurisdiction. Pollak v. Western Dept. Stores, 1954, 136 N.Y.S.2d 393. Courts 13.6(2)

Electrical appliances and equipment wholesale distributor which was Missouri corporation, which sold its products within Missouri and Kansas only, and which did not make any sales in or employ anyone in New York, but which did purchase goods in New York for resale, was not “doing business” in New York and, therefore was not amenable to process of the Supreme Court, Special Term. Emerson Radio & Phonograph Corp. v. Mayflower Sales Co., 1953, 124 N.Y.S.2d 83. Corporations And Business Organizations 3271

Mere systematic making of purchases in state was insufficient to constitute “doing business” for purpose of service of process on foreign corporation. Samuel Hoffman, Inc. v. Mode Shoppe, 1930, 138 Misc. 742, 247 N.Y.S. 266. Corporations And Business Organizations 3271

110. Securities transactions, doing business within state

District court possessed personal jurisdiction over claim brought by pension fund against Turkish corporation, alleging failure to pay assessed withdrawal liability under ERISA, where complaint averred that corporation entered into contractual relationship with fund via stock purchase agreement and collective bargaining agreements, and that corporation did business in New York under subsidiary's name. Smit v. Isiklar Holding A.S., 2005, 354 F.Supp.2d 260. Labor And Employment 666

Fact that French corporation's stock may be purchased in New York, and that French corporation retained New York-based market makers to assist in its sales of stock, was insufficient to confer general jurisdiction under New York's "general jurisdiction" provision. Reers v. Deutsche Bahn AG, 2004, 320 F.Supp.2d 140. Federal Courts 86

Foreign corporation's transfer of 14 securities to or from a custodial account in a New York bank, resulting in a negative net interest of $750,000, was not "substantially all" of its business, for purposes of a New York statute permitting the general exercise of personal jurisdiction over a foreign corporation engaged in a continuous and systematic course of doing business in the state, and thus, the court lacked personal jurisdiction over the corporation; the corporation's assets exceeded $3 billion, and the account was used simply as a depository to hold securities for safekeeping. J.L.B. Equities, Inc. v. Ocwen Financial Corp., 2001, 131 F.Supp.2d 544.

Sale by Delaware investment company of securities to customers in New York, amounting to less than one percent of its total business over past five years, was inadequate to confer personal jurisdiction in New York. Bush v. Stern Bros. & Co., 1981, 524 F.Supp. 12. Federal Courts 81

Status as controlling shareholder in New York corporation does not, without more, subject shareholder individually to personal jurisdiction, absent facts from which it can reasonably be found that corporation is doing business in New York as shareholder's alter ego or agent. Lamar v. American Basketball Ass'n, 1979, 468 F.Supp. 1198. Federal Courts 76.20

Foreign corporation was not "doing business" within state of New York by virtue of mere fact that it sold $40,000,000 worth of Government National Mortgage Association certificates in that state and employed a New York organization as middleman for such transaction; foreign corporation therefore was not disqualified from bringing suit in New York on such contract. Colonial Mortg. Co. v. First Federal Sav. and Loan Ass'n of Rochester (4 Dept. 1977) 57 A.D.2d 1046, 395 N.Y.S.2d 798. Corporations And Business Organizations 3206; Corporations And Business Organizations 3253

Invitation by circular to buy stock in a foreign corporation by application to its secretary and treasurer, who resided within the state, where the corporation disclaims any responsibility for such circular, and there have been no sales, and no proof of any response to such advertising, did not subject it to process as doing business in the state. Hulick v. Petroleum Corporation of America (1 Dept. 1921) 198 A.D. 359, 190 N.Y.S. 377. Corporations And Business Organizations 3271

Foreign holding company was "doing business" in New York some 20 days before service of summons and

complaint on president-director in New York by virtue of the keeping of all books and records in New York in charge of secretary-director and accomplishment of stock transfers in New York and holding of directors' meetings in New York, and although secretary was purportedly away from office for 20 days preceding service of summons and was removed from office soon thereafter the evidence failed to show that company had ceased to do business in New York on date of service. Tel-A-Sign, Inc. v. Weesner, 1962, 36 Misc.2d 960, 234 N.Y.S.2d 581. Corporations And Business Organizations 3206

A foreign corporation performed sufficient acts in state to be amenable to process in New York where it performed acts in state in execution of its business of making investments and acquiring control over other corporations, it operated a wholly owned subsidiary doing business in New York, it represented to regulatory agencies and stock exchange that it maintained an office in New York and it borrowed money and pledged investments therein. Shapiro v. Huntington, 1962, 34 Misc.2d 599, 226 N.Y.S.2d 319. Corporations And Business Organizations 3271

Under evidence in stockholder's derivative action, Minnesota investment corporation which operated in New York through second Minnesota corporation, which conducted its securities exchange business, was doing business in state so as to be amenable to service, even though second corporation was characterized as an independent contractor and activities were controlled from Minnesota. Ackert v. Ausman, 1961, 29 Misc.2d 962, 218 N.Y.S.2d 822, affirmed 20 A.D.2d 850, 247 N.Y.S.2d 999. Corporations And Business Organizations 3295

The fact that securities of a foreign corporation were traded on a stock exchange within the state did not constitute “doing business” within the state for purpose of conferring jurisdiction. Grossman v. Sapphire Petroleums Limited, 1959, 195 N.Y.S.2d 851. Corporations And Business Organizations 3202

Where foreign corporation, which had executed single bond issue and indenture in state, containing provisions for payment, registration and conversion of bonds in state, was not otherwise doing business in state, corporation was not amenable to service of process in state. Wahl v. Vicana Sugar Co., 1955, 144 N.Y.S.2d 613, affirmed 2 A.D.2d 848, 156 N.Y.S.2d 993. Corporations And Business Organizations 3271

111. Shipments into state, doing business within state

Shipment of goods in New York does not ipso facto constitute “doing business,” within meaning of § 301 providing that nondomiciliary subjects herself to personal jurisdiction in New York if engaged in such continuous and systematic course of doing business as to warrant finding of her presence in jurisdiction. Beacon Enterprises, Inc. v. Menzies, C.A.2 (N.Y.)1983, 715 F.2d 757. Federal Courts 76.15

New Jersey corporation's contacts with New York were too minimal to warrant finding that it was “doing business” within the state for purposes of establishing personal jurisdiction; corporation, which operated trucking company, had neither an office nor employees in New York, had never registered as a foreign corporation in New York, did not advertise, solicit business, make contracts or possess any bank accounts or property within New York, and its pick-ups and deliveries in the New York area amounted to only approximately one percent of the total mileage of its business for year. William Systems, Ltd. v. Total Freight Systems, Inc., 1998, 27

F.Supp.2d 386. Federal Courts 79

Under New York law, shipment of goods into state does not ipso facto constitute "doing business" for purposes of general jurisdiction. Riviera Trading Corp. v. Oakley, Inc., 1996, 944 F.Supp. 1150. Courts 13.3(11)

Corporation which was incorporated in Delaware and had its principal place of business in New Jersey was not "doing business" in state of New York, for jurisdictional purposes in a diversity action involving products liability, by virtue of automobiles it imported and sold in state through independent dealers. Vendetti v. Fiat Auto S.p.A., 1992, 802 F.Supp. 886. Federal Courts 81

In order to exercise personal jurisdiction over foreign corporation pursuant to this section governing personal jurisdiction by acts of nondomiciliaries, corporation must deliver its products into stream of commerce with expectation that they will be purchased by consumers in forum state. Andrulonis v. U. S., 1981, 526 F.Supp. 183. Courts 13.5(7)

Mere shipment of goods into New York does not constitute "doing business". J. Baranello & Sons v. Hausmann Industries, Inc., 1980, 86 F.R.D. 151. See, also, Hastings v. Piper Aircraft Corp., 1949, 274 A.D. 435, 84 N.Y.S.2d 580, reargument denied 275 A.D. 660, 86 N.Y.S.2d 668. Federal Courts 76.15

Aggregate of foreign corporation's activities in state was not sufficient to confer personal jurisdiction over corporation by virtue of its "doing business" in state, in action for personal injuries sustained out-of-state, notwithstanding presence in state of supplier and corporation's sometimes shipping goods purchased in state from state ports or airports. Krakower v. Battles Universal, Inc. (2 Dept. 1989) 152 A.D.2d 656, 543 N.Y.S.2d 526. Courts 13.5(8)

A foreign corporation which maintained an office in city of New York with business facilities bearing its corporate name and by means of its eastern sales manager systematically solicited orders resulting in shipments with reasonable continuity of its products into New York state from its manufacturing plant in Wisconsin, was "doing business" within the state, so as to be amenable to process of courts of New York. Schumann v. National Pressure Cooker Co. (4 Dept. 1939) 256 A.D. 1044, 10 N.Y.S.2d 743, appeal and reargument denied 257 A.D. 913, 12 N.Y.S.2d 772. Corporations And Business Organizations 3271

Fact that nonresident defendant had substantial customer in state and that it shipped goods to that customer was insufficient to subject defendant to jurisdiction of state court either under the "doing business" concept requiring presence or under the more liberalized concept of "transacting business" contained in § 302. McNellis v. American Box Bd. Co., 1967, 53 Misc.2d 479, 278 N.Y.S.2d 771. Courts 13.4(3)

The shipping of foreign corporation's products to New York dealers who paid for such deliveries by mailing remittances from New York did not constitute "doing business" by foreign corporation in New York. Irgang v. Pelton & Crane Co., 1964, 42 Misc.2d 70, 247 N.Y.S.2d 743. Corporations And Business Organizations 3202

Foreign corporation furnishing granite for local construction work, which under contract was delivered f.o.b. in another state, was not "doing business within this state." John H. Black Co. v. Surdam Holding Corp., 1931, 140 Misc. 113, 250 N.Y.S. 17. Corporations And Business Organizations 3202

112. Storage of goods, doing business within state

If a foreign corporation was operating a warehouse in New York on a continuous and systematic basis, then a finding might be made that it was "doing business" in the state for purposes of establishing jurisdiction over the corporation. Manow Intern. Corp. v. High Point Chair, Inc. (1 Dept. 1982) 91 A.D.2d 546, 457 N.Y.S.2d 21, appeal decided 98 A.D.2d 623, 469 N.Y.S.2d 374. Courts 13.4(3)

Where a foreign corporation maintained a stock of goods in New York with a domestic warehouse corporation, the goods being withdrawn on the written order of customers whose names appeared on a credit list furnished by the foreign corporation, the nature and extent of the withdrawals being unknown to the foreign corporation until report thereof was made by the warehouse corporation, it was "doing business" within the state to the extent authorizing service of process on the warehouse corporation as agent, under C.P.A. § 229, authorizing service of summons on foreign corporations doing business within the state, and the fact that the warehouse corporation functioned in a similar way for others and that it disclaims agency was immaterial. Cunningham v. Mellin's Food Co. of North America, 1923, 121 Misc. 353, 201 N.Y.S. 17. Corporations And Business Organizations 3271

113. Transportation, doing business within state

In view of connecting carrier's sale of tickets for through trains regularly operated from and to New York over defendant railroad's tracks and defendant's freight solicitation in New York, defendant which was not a resident of New York was "present" or "doing business" in New York under this section, and federal district court in New York could properly exercise jurisdiction over defendant in diversity action for injuries suffered by passenger in train traveling over defendant's tracks between Washington, D.C. and Richmond, Va. Scanapico v. Richmond, F. & P. R. Co., C.A.2 (N.Y.)1970, 439 F.2d 17. Federal Courts 83

Under New York's long-arm statute, fact that Florida railway company's trains transported persons and goods in and out of New York was insufficient to establish that railway engaged in a continuous and systematic course of doing business in New York, as would subject company to personal jurisdiction there. Swindell v. Florida East Coast Ry. Co., 1999, 42 F.Supp.2d 320, affirmed 201 F.3d 432. Federal Courts 83

Subcharterer made prima facie showing that investment company's systematic financial activities in New York in behalf of vessel owner were carried out with vessel owner's authority and for its substantial benefit, and vessel owner was subject to personal jurisdiction as corporation doing business in New York, for purposes of subcharterer's third-party complaint against it in admiralty action; vessel owner had arranged through its charters to receive virtually all of its income in New York and had used investment company's New York bank account to make payments for most of vessel's expenses. United Rope Distributors, Inc. v. Kimberly Line, 1991, 770 F.Supp. 128, adhered to on reconsideration 785 F.Supp. 446. Admiralty 5(1)

Illinois corporation with no offices, warehouses, personnel, or bank accounts in New York, which did not advertise in New York, although it made deliveries or pickups in New York if requested to do so and logged approximately 1,000 miles in state each week was not doing business in New York for purpose of personal jurisdiction; corporation's only presence in New York was occasional, and was not sufficiently permanent and continuous to require it to defend claim in New York. Mullins v. Hak, 1987, 674 F.Supp. 997. Federal Courts 84

New Jersey plaintiff failed to make necessary prima facie showing that West German and Swiss corporate defendants, which were not authorized to do business in New York, were subject to in personam jurisdiction in New York under N.Y.McKinney's CPLR 301, which provides generally for jurisdiction, where plaintiff alleged no continuous substantial business carried on in New York by defendants, which would suffice to establish jurisdiction under § 301, but merely alleged in memorandum of law that defendants sent ships regularly to port of New York which included subsidiary ports and adjoining state of New Jersey, and defendants had submitted allegations that their ships used only New Jersey ports and had never berthed in New York. Abrantes v. St. Gotthard Schiffahrts, A.G., 1985, 621 F.Supp. 49. Federal Courts 96

Swedish company which brought maritime action against Hong Kong owner of vessel based upon cargo claim failed to establish, under New York law, sufficient contact by Hong Kong company with New York to constitute “doing business” or “transacting business,” absent any evidence which would establish that Hong Kong company conducted or even solicited business or shipped goods to New York, or that Canadian consignee who transported container to New York was agent of Hong Kong company. Hansa Marine Ins. Co., Ltd. v. Ocean Tramping Co., Ltd., 1984, 580 F.Supp. 1532. Federal Courts 86

Connecticut corporation which had neither place of business in New York nor license to do business in New York, which was engaged in the interstate delivery of small packages in certain states, including New York on an occasional basis, which did not conduct or transact business on its trips in New York, whose trucks delivered only the products of others making no business contacts for the corporation with customers in New York, and which did not have any ICC authorization to do substantial business on any New York route was not doing business in New York for purposes of this section. Glacier Refrigeration Service, Inc. v. American Transp., Inc., 1979, 467 F.Supp. 1104. Federal Courts 83

No basis existed for asserting personal jurisdiction over Massachusetts cruise company on New York cruise passenger's claim for injury sustained in France, where cruise ship was to depart, since company was not “doing business” in New York and did not transact business in New York or contract to supply goods or services in New York; New York jurisdiction could not be established by the circumstance that the cruise package, sold from company's office in Massachusetts, included an airline ticket from New York to France, that company advertised in its brochures that New York was a “gateway city,” or that company had guides or representatives that met customers at unspecified airports. Duffy v. Grand Circle Travel, Inc. (1 Dept. 2003) 302 A.D.2d 324, 756 N.Y.S.2d 176. Courts 13.5(4)

Where it appeared that foreign corporation, engaged in conducting a transcontinental airline system, maintained its main office and passenger station in New York City, held itself out as common carrier by air between New

York City and other points, scheduled airport on Long Island as an alternate airport, and that it had led public to believe that New York City was the eastern point of origin and termination of a flight, the corporation was "doing business" in New York and was subject to service of process in New York. Jensen v. United Air Lines Transport Corp. (1 Dept. 1938) 255 A.D. 611, 8 N.Y.S.2d 374, appeal granted 256 A.D. 912, 10 N.Y.S.2d 413, affirmed 281 N.Y. 598, 22 N.E.2d 167. Corporations And Business Organizations 3271

Where foreign railroad solicited freight and passenger business in New York only and there was no showing of additional activities on part of railroad in New York, railroad was not amenable to suit in New York for personal injuries sustained by infant who was a passenger for hire, while entering a train of railroad from a platform in Memphis, Tennessee. Hardaway v. Illinois Cent. R. Co., 1958, 9 Misc.2d 705, 170 N.Y.S.2d 584. Railroads 33(2)

Under New York law, Pennsylvania company that employed lumber truck driver who was involved in collision in Pennsylvania with refrigerated truck owned by New York company was not "doing business" in New York at the time of the accident, as would have supported exercise of personal jurisdiction by federal district court in New York; Pennsylvania company's principal place of business was in New Jersey, although company transported goods into New York and advertised on its website that it "conduct[s] a trucking business in all 48 contiguous" states, that statement did not rise to the level of a "substantial and continuous" solicitation that would have supported the exercise of personal jurisdiction, and there was no evidence indicating that company maintained an office in New York, had bank accounts or other property in New York, had a New York telephone listing, performed public relations work in New York, or had any employees located in New York. Xiu Feng Li v. Hock, C.A.2 (N.Y.)2010, 371 Fed.Appx. 171, 2010 WL 1193446, Unreported, certiorari denied 131 S.Ct. 576, 178 L.Ed.2d 415. Federal Courts 79

Following collision in Pennsylvania between lumber truck and refrigerated truck which resulted in death of refrigerated truck's passenger, even assuming, arguendo, that passenger's widow could have shown that federal district court in New York had personal jurisdiction over driver of lumber truck, a Pennsylvania resident, and his employer, a Pennsylvania company whose principal place of business was in New Jersey, she was unable to show that the exercise of jurisdiction would have been consistent with federal due process requirements; Pennsylvania company's occasional solicitations in and shipments to New York were too infrequent and too insignificant to give rise to an expectation that it would be subject to jurisdiction there, and they therefore did not constitute "minimum contacts." Xiu Feng Li v. Hock, C.A.2 (N.Y.)2010, 371 Fed.Appx. 171, 2010 WL 1193446 , Unreported, certiorari denied 131 S.Ct. 576, 178 L.Ed.2d 415. Constitutional Law 3965(5); Constitutional Law 3965(10); Federal Courts 79

114. Visits and meetings, doing business within state

Foreign corporation was not subject to New York jurisdiction, under this section granting New York courts such jurisdiction over persons, property or status as might have been exercised theretofore, because of occasional visits of its vice-president to New York to solicit business and to negotiate contracts for corporation, since such visits were not sufficiently regular or extensive to constitute "doing business" in the state. Liquid Carriers Corp. v. American Marine Corp., C.A.2 (N.Y.)1967, 375 F.2d 951. Federal Courts 81

German theatrical producers' contacts with New York, viewing theater productions, negotiating for rights to plays, casting and hiring talent for their productions in Germany and purchasing supplies, were not sufficient to satisfy the "doing business" standard for general jurisdiction; activities of producers, who made an average of four to five visits per year and whose New York acts were "incidental" to their business in Europe, were not as systematic or continuous as the law required. Jacobs v. Felix Bloch Erben Verlag fur Buhne Film und Funk KG, 2001, 160 F.Supp.2d 722. Federal Courts 86

New Jersey corporation's supervisory activities in New York, including holding 23 board of directors meetings and roughly half of its executive and shareholder meetings in New York over course of more than 10 years, were sufficiently systematic, continuous and permanent to qualify it as "doing business" in New York for purposes of personal jurisdiction under New York law. Farber v. Zenith Laboratories, Inc., 1991, 777 F.Supp. 244. Federal Courts 79

Defendants were not "doing business" in New York within meaning of New York long-arm statute where no New York business dealings were alleged other than accounting services for one company, and plaintiff had not articulated substantial solicitation by defendants, but merely occasional meetings with plaintiff at her New York apartment where she was solicited by the individual defendant to invest in the corporate defendant. Nee v. HHM Financial Services, Inc., 1987, 661 F.Supp. 1180. Federal Courts 76.15

Visits to the forum state by foreign corporation's officers are not a necessary element to doing business in New York under the New York long-arm statute. Caballero Spanish Media, Inc. v. Betacom, Inc., 1984, 592 F.Supp. 1093. Federal Courts 79

Fact that each of four representatives of Hong Kong corporation visited New York once, for visits totalling 26 days in one year period did not constitute "doing business" in New York, within meaning of this section, regardless of whether visits were social or to solicit business. Arrow Trading Co., Inc. v. Sanyei Corp. (Hong Kong), Ltd., 1983, 576 F.Supp. 67. Courts 13.6(2)

Delaware corporation whose principal and only place of business was Louisville, Kentucky, and which had no registered agent in New York, no office or place of business, no telephone number, no bank account, no officers or employees working regularly or residing in New York, had none of its products warehoused in New York and had not shipped its products into New York for several years, was not "doing business" within New York and no personal jurisdiction existed over corporation in New York, even though corporation's representatives occasionally traveled to New York to confer with its customers. Lumbermens Mut. Cas. Co. v. Borden Co., 1967, 265 F.Supp. 99. Courts 13.5(7); Courts 13.6(2); Federal Courts 79

An occasional visit of an officer of a corporation did not of itself, warrant the inference that the corporation was present in the jurisdiction. Petroleum Financial Corp. v. Stone, 1953, 111 F.Supp. 351. Corporations And Business Organizations 3266(5)

Even assuming that the "doing business" prong of New York long-arm statute provides basis for exercising per-

sonal jurisdiction over individual as well as corporate defendants, trustee and bank, as parties suing to recover from Greek national for his alleged participation in purported fraudulent transfers and conspiracy to defraud, failed to aver requisite continuous and systematic course of activity in New York, based solely on Greek national's attendance at meetings between alleged conspirators in New York or on fact that he may have possessed withdrawal authority over corporation's New York bank account. In re Med-Atlantic Petroleum Corp., 1999, 233 B.R. 644. Bankruptcy 2081

Acts of foreign corporation, which operated dude ranch in Pennsylvania, in sending advertising brochures into New York, maintaining a New York telephone number which provided direct connection with the ranch, and periodically sending corporate officers or employees into New York upon corporation business, including meeting of guests at New York railroad station, did not constitute "doing business" under the traditional test and thus did not subject the foreign corporation to jurisdiction of New York court in action for wrongful death and conscious pain and suffering arising from drowning of guest at the ranch. Meunier v. Stebo, Inc. (2 Dept. 1971) 38 A.D.2d 590, 328 N.Y.S.2d 608. Courts 13.5(4)

115. Winding up of affairs, doing business within state

Delaware corporation, which had dissolved itself in its parent state but had not forfeited its license in New York because it was winding up its business in New York under its certificate of authority to do business in that state, was amenable to personal jurisdiction in New York. Johnson v. Helicopter & Airplane Services Corp., 1974, 389 F.Supp. 509. Federal Courts 84

A Greek bank, which did not renew license to do business in New York after expiration but executed power of attorney to representative to wind up its affairs, was in the state for purposes of suit to recover upon deposit certificates, and summons was properly served upon representative pursuant to C.P.A. § 229, since bank's duty to discharge obligations created prior to expiration of license had not terminated. Marley v. National Bank of Greece, 1937, 20 F.Supp. 214. Corporations And Business Organizations 3271

Where foreign corporation had ceased to do business for transaction of which it was organized, and was defunct in all respects except the winding up of its affairs, fact that its former president lived within this state and wrote letters to bring about settlement of corporation's business did not bring corporation within state and engage it in "doing business" therein so as to subject it to valid service of process by service on such former president. Western Hair Goods Co. v. B.R. Haberkorn Co., 1928, 131 Misc. 930, 229 N.Y.S. 273. Corporations And Business Organizations 3271

A foreign corporation, which had been doing business within the state, but which was in the process of withdrawing therefrom by not initiating further contracts, but was merely completing existing contracts, was "doing business" within the state to a degree that would sustain personal service of process on an officer thereof, whether the action was brought by its customers, who made the contracts, or by its managing agent, who negotiated them. Smith v. Compania Litografica De La Habana, 1923, 121 Misc. 368, 201 N.Y.S. 65. Corporations And Business Organizations 3271

116. Recreation spots, generally, doing business within state

Under New York law and Due Process Clause, Switzerland hotel was subject to suit in federal court in New York for American guest's personal injuries suffered at hotel, where New York travel agency had been able via New York wholesaler to accept payment and confirm reservation without hotel being contacted, indicating agency relationship between wholesaler and hotel, and where hotel maintained presence on hotel association's website which also permitted automatic confirmation of reservations. U.S.C.A. Const.Amend. 14; Fed.Rules Civ.Proc.Rule 12(b)(2), 28 U.S.C.A.; Brown v. Grand Hotel Eden, 2002, 214 F.Supp.2d 335. Constitutional Law 3965(5); Federal Courts 86

Delaware corporation owning and operating recreational theme park in Florida was not subject to personal jurisdiction under New York long-arm statute in action seeking to recover for personal injuries allegedly sustained while visiting recreational theme park in Florida; presence of parent corporation in New York was insufficient to confer jurisdiction over subsidiary and apart from having agreement with New York advertising agency and allowing airline to accept reservations, owner of theme park engaged in no activities in New York. Grill v. Walt Disney Co., 1988, 683 F.Supp. 66. Federal Courts 82

117. Stock exchange listing, doing business within state

Under New York personal jurisdiction statute requiring foreign corporations to be “doing business” in New York, corporation's activities necessary to maintain a stock exchange listing, without more, are insufficient to confer jurisdiction. Wiwa v. Royal Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Courts 13.4(3)

Activities of New York investor relations office of subsidiary of two foreign companies in support of the companies' listing on the New York Stock Exchange (NYSE), including the fielding of inquiries from investors and potential investors and organization of meetings between companies' officials and investors, were more than “incidental” to the listing, for purposes of determining whether companies were doing business in New York sufficient to subject them to personal jurisdiction in human rights action under the Alien Tort Claims Act (ATCA) and other laws. Wiwa v. Royal Dutch Petroleum Co., C.A.2 (N.Y.)2000, 226 F.3d 88, certiorari denied 121 S.Ct. 1402, 532 U.S. 941, 149 L.Ed.2d 345. Federal Courts 82; Federal Courts 86

McKinney's CPLR § 301, NY CPLR § 301

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