

**CALIFORNIA’S “LONG ARM STATUTE” –
“MINIMUM CONTACTS” AND PURPOSEFUL
AVAILMENT**



**QUESTION: CAN SPANISH MANUFACTURER BE
SUBJECT TO CALIFORNIA COURT WHEN IT SELLS A
PRODUCT KNOWING IT IS GOING TO CALIFORNIA
AND FOR A SPECIFIC PURPOSE AND IT THEREAFTER
INJURES A PERSON IN CALIFORNIA?**

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“MINIMUM CONTACTS” AND “PURPOSEFUL AVAILMENT”

SUMMARY OF FACTS: A product manufacturer in Spain sells a product knowing that it will be going through a Connecticut distributor and knowing that it will be sold to a California hotel. The product becomes defective and seriously injures a guest of the hotel. The facts are that this was not a random and fortuitous contact but that the manufacturer knew the product was going to end up in the California hotel. Can a California court obtain jurisdiction over the manufacturer in Spain? *Maybe* [While this appears to be an “isolated” transaction, the manufacturer knew and intended the product to go to California; received a substantial economic benefit from selling the product for California – and agreed to a “California forum” provision in the contract].

CALIFORNIA’S “LONG ARM STATUTE”: “California’s long-arm statute [C.C.P. §410] authorizes California courts to exercise jurisdiction on any basis not inconsistent with the Constitution of the United States or the Constitution of California. *Luberski, Inc. v. Oleificio F.LLI Amato S.R.L.* (2009) 171 Cal.App.4th 409, 413 [Court has jurisdiction over Italian company contracting to sell olive oil; by contracting with a California company for the sale of \$406,000 in olive oil and shipping those goods to Long Beach harbor (or failing to ship such goods). Contract negotiations were conducted via long distance communications with the implicit understanding that the goods were only useful to Plaintiff if they were delivered to California. Amato maintained responsibility for the goods until they arrived in California. Thus, Amato had the expectation that the goods it was placing in interstate commerce would be utilized in California. Furthermore, the size of the contemplated transaction—more than \$400,000 for the first shipment and another similarly-sized shipment contemplated—is “substantial” by almost any definition pertaining to a sale of goods contract.]

CONTACT MUST BE SUBSTANTIAL, CONTINUOUS AND SYSTEMATIC – OR A NONRESIDENT PURPOSEFULLY AVAILS ITSELF OF CALIFORNIA

FORUM: nonresident defendant whose activities within the state are substantial, continuous, and systematic is subject to “general jurisdiction” in the state, meaning jurisdiction on any cause of action. Absent such pervasive activities, a defendant is subject to “specific jurisdiction” only if (1) the defendant *purposefully availed* itself of the benefits of conducting activities in the forum state by purposefully directing its activities toward the state, thereby obtaining the benefits and protections of the state’s laws; (2) the dispute arises out of or has a substantial connection with the defendant’s contacts with the state and (3) the exercise of jurisdiction would be fair and reasonable. These guidelines are not susceptible of mechanical application, and the jurisdictional rules are not clear-cut. Rather, a court must weigh the facts in each case to determine whether the defendant’s contacts with the forum state are sufficient. *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 773-774.

Courts are unlikely to find that the nonresident seller “purposefully availed” itself of forum benefits where the sale was an isolated transaction *initiated by the forum resident*, and the seller had no responsibility for delivering the goods to the forum state. [See *Shisler v. Sanfer Sports Cars, Inc.* (2006) 146 CA4th 1254, 1258].

PRODUCT DELIVERED INTO STREAM OF COMMERCE: The United States Supreme Court has explained that placing goods in the stream of commerce with the expectation that they will be purchased by consumers in the forum state indicates an intention to serve that market and constitutes purposeful availment as long as the conduct creates a “ ‘substantial connection’ ” with the forum state.

“[I]f the sale of a product of a manufacturer or distributor ... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.

The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. [Citation.]” *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 774-775

It is reasonable to subject the manufacturer to personal jurisdiction in the forum state where the sale of a product “ ‘arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product. *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 776.

MANUFACTURER KNEW PRODUCT INTENDED FOR SALE IN

CALIFORNIA: In *Secrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664 California employer purchased machine from manufacturer in Virginia and took delivery in that state. The machine caused injury to an employee in California. Manufacturer was subject to California jurisdiction because it knew the machine was being sold for use in California], an injured employee brought a tort suit in a California court against the Virginia manufacturer of a machine used at his employer's factory. The manufacturer did not maintain any offices, or have any agents, representatives, employees, or property in California. (*Id.* at p. 667.) The president of the employer had heard about the manufacturer through word of mouth, sent a representative to view similar machines in operation at another company's plant in Alameda, California, then sent the same individual to Virginia to negotiate the purchase of the machine. (*Ibid.*) After the Virginia visit, the president continued negotiations from California by phone and mail; ultimately, an agreement was reached, and the president mailed a purchase order for the machine at the price of \$115,116. (*Id.* at pp. 667–668.) The employer took delivery of the machine in Virginia, although the contract conditioned acceptance on satisfactory performance in California. (*Id.* at p. 668.) The employer and manufacturer did not have a formal maintenance agreement, but the manufacturer in fact provided such assistance on request

—mainly advice but also by sending an employee to assist in the installation of the machine. (*Ibid.*) The manufacturer twice sent advertisements to the employer following the purchase of the machine. (*Ibid.*) The *Secrest* court held the manufacturer had purposefully availed itself of the California forum and it was fair and reasonable for California courts to exercise specific jurisdiction. (*Secrest, supra*, 33 Cal.3d at pp. 670–673.) Citing the actions by the manufacturer discussed above, our high court explained, “All of these acts were designed to consummate a business arrangement in which [manufacturer] would profit financially by selling its product for use in California.

Although [employer] initially approached [manufacturer], the sale was a deliberate act by [manufacturer] which generated substantial gross income and constituted economic activity within California ‘as a matter of commercial actuality.’ ” (*Id.* at p. 671).

NOTE: The Court in *Seacrest*, however, did note the fact of the continuing nature of the transaction; the manufacturer continued to provide service assistance and sent advertisements to the employer—it was not merely an isolated transaction.

When a corporation “purposefully avails itself of the privilege of conducting activities within the forum State,” it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297-298, 100 S.Ct. 559, 567.

INCOME IS SUBSTANTIAL: A manufacturer's placement of goods in the stream of commerce with the expectation that they will be purchased or used by consumers in California indicates an intention to serve the California market “directly or indirectly” and constitutes purposeful availment if the income earned by the manufacturer from sale or use of its product in California is substantial. *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 777. Placing goods in the stream of commerce with the expectation that they eventually will be purchased by consumers in the forum state indicates an intention to serve that market and constitutes purposeful availment, as long as the conduct creates a “substantial connection” with the forum state; for example, if the income earned by a manufacturer or distributor from the sale or use of its goods in the forum state is “substantial”. *People ex rel. Harris v. Native Wholesale Supply Co.* (2011) 196 Cal.App.4th 357, 364.

NOTES: There has been no judicial definition of “substantial” as used in this context. However, note that in *Bridgestone* thousands of tires were sold for California and in *Native Wholesale Supply Co.* it involved the sale of millions of cigarettes. Note that in *Luberski, Inc. v. Oleificio F.LLI Amato S.R.L.* (2009) 171 Cal.App.4th 409, 413, above, the court held that an agreement to ship olive oil in the amount of over \$400,000 for the first shipment and a similar amount for a second shipment was “substantial”.

NOT IF ISOLATED, RANDOM OR FORTUITOUS CONTACTS: On the other hand, The foreseeability that the defendant's product will cause injury in the forum state due to an isolated incident does not establish purposeful availment. A defendant cannot be haled into court based on “ ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts, [citations]” or based on the “ ‘unilateral activity of another party or a third person,’ [citation].” Rather, there must be some act by which the defendant creates a “ ‘substantial connection’ ” with the forum state “ ‘such that he should reasonably anticipate being haled into court there.’ ” *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 775.

As the court held in *Luberski, Inc. v. Oleificio F.LLI Amato S.R.L.* (2009) 171 Cal.App.4th 409, 419: “The dispute at issue [agreement to sell olive oil] does not represent a commercially irrelevant shipment of goods, or goods that fortuitously arrived in California. This is not a case of California tourists bringing olive oil home from Italy, or a third party distributor shipping Amato olive oil to California without the specific knowledge of Amato. Amato received the purchase order and was presented with the option of completing a substantial transaction with a California entity in California, which required delivery of goods to California. Amato opted to accept this order. The totality of facts supports a finding that Amato purposefully availed itself of the benefits of the forum.” Local personal jurisdiction has been upheld, however, where a nonresident seller agreed to maintain responsibility for the goods until they arrived in the forum state. By assuming responsibility for local delivery, the nonresident seller was deemed to have “purposefully availed itself of the benefits of the forum.”

PRODUCT GENERATES GROSS INCOME FOR THE MANUFACTURER: if the purchase or use of a product in California “ ‘generates gross income for the manufacturer and is not so fortuitous or unforeseeable as to negate the existence of an intent on the manufacturer's part to bring about this result,’ ” the manufacturer has obtained the benefits and protections of California's laws, and the requirement of purposeful availment is satisfied. *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 775-776.

Several California courts have applied this rule, holding that the defendant's sales to California distributors or other efforts to market a product to customers in this state indirectly through an intermediary constituted economic activity within California as a matter of commercial actuality where the defendant earned gross income from the activity. (See: *As You Sow v. Crawford Laboratories, Inc.* (1996) 50 Cal.App.4th 1859, 1871; *Furda v. Superior Court* (1984) 161 Cal.App.3d 418, 424; *St. Joe Paper Co. v. Superior Court* (1981) 120 Cal.App.3d 991, 999-1000; *Sanders v. CEG Corp.* (1979) 95 Cal.App.3d 779, 785-786.) In *As You Sow*, the court held that a manufacturer whose only

contacts with California were through a series of sales to California distributors was subject to personal jurisdiction because the sales to California distributors reflected an effort to benefit from the California market and constituted economic activity within California “ ‘ “as a matter of commercial actuality.” ’ [Citation.]” (*As You Sow*, at pp. 1864–1865, 1871.) *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 776.

EXERCISING PERSONAL JURISDICTION IS FAIR AND REASONABLE: “[I]n evaluating the reasonableness of personal jurisdiction, a court must consider (1) the burden on the foreign defendant of defending an action in the forum state; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining relief; (4) judicial economy; and (5) the states' shared interest ‘ “in furthering fundamental substantive social policies.” ’ *People ex rel. Harris v. Native Wholesale Supply Co.* (2011) 196 Cal.App.4th 357, 366.

The question is whether it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297, 100 S.Ct. 559, 567

The fact that in this present case there is a “choice of law” provision in the contract indicating that California shall be the appropriate forum makes it clear that the Spanish manufacturer knew that it could be haled into court in California.