

JURISDICTION OVER BUYERS BY PHONE



Many manufacturers do substantial business with non-resident buyers. In some cases the buyer's only contact with the state is its purchase of goods by telephone or through the mail from the in-state manufacturer. If such a buyer defaults, the manufacturer may be faced with the dilemma of whether to write off the debt, or instead underwrite the expense of initiating legal action in the buyer's home state.

At first glance, the Kentucky Long Arm Statute would seem to confer jurisdiction on just about any person buying or selling in Kentucky, one part of which reads:

(2) (a) The court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim arising from the person's: 1. transacting any business in this Commonwealth; . . .

However, the Supreme Court of the United States has held that in addition to the jurisdictional requirements under state statutes, that the Constitution of the United States requires that the defendant have at least "minimum contacts" with the forum state. International Shoe Company v. Washington, 326 U.S. 310 (1945).

The Kentucky Court of Appeals has held that single placement of an order by telephone or mail by a nonresi-

dent buyer, to an in-state manufacturer, is not sufficient to confer jurisdiction on the nonresident buyer. Tube Turns Div. of Chemetron v. Patterson Co., Ky. App. 562 S.W. 2d 99 (1978). The Court indicated that the decision might be different in cases where the goods are specially manufactured, the order is part of a series of transactions, the order is particularly large, or the nonresident purchaser comes into the state to conduct negotiations. No determination was made on those issues, however, by the Tube Turns opinion.

A later decision by the Court of Appeals addressed the issue of whether a seller could bring suit in its home state where there was a continuing business relationship with the nonresident purchaser involving substantial sums of money. In First National Bank v. Shore Tire Co., Inc., Ky. App., 651 S.W.2d 472 (1982), the Kentucky Court of Appeals held that under the above-described circumstances nonresident buyers were subject to the jurisdiction of Kentucky courts. The court distinguished earlier cases where Kentucky courts had declined jurisdiction over out-of-state purchasers. The

court found that although jurisdiction could not be maintained where a buyer made an isolated purchase or only occasional purchases from mail order suppliers, jurisdiction was properly exercised where the purchaser initiated contact with the seller, the relationship between the purchaser and seller extended over a period of time, and the orders were for substantial amounts. □