

views, it can warn them that their action may result eventually in denial to tax credits to the state's employers. In all likelihood this will be sufficient to draw most state administrators into line. But in some instances the state officials, as in the Washington case, may be determined to hold out until the last minute. Whenever that happens, the Knowland amendment enables them to hold out until the court of last resort has sanctioned the administrative ruling.

JURISDICTION OVER FOREIGN HOLDING COMPANIES*

THE development of corporate enterprise on a national scale has prompted state legislatures and courts to enlarge the situations in which foreign corporations are subject to local process.¹ When the state lacks jurisdiction, plaintiffs must endure the hardship of seeking relief in another and often less convenient forum. In determining whether jurisdiction exists, courts must balance the desire of a state to give relief to complaining litigants against the need of the foreign corporation to be free from harassment. Until recently, however, courts obscured this policy judgment beneath fictitious criteria such

*Mazzotti v. Rainey, 77 A. 2d 67 (Del. Ch. 1950).

1. Originally foreign corporations were considered to be subject to process only in the state of incorporation. This was a result of the idea that "a corporation can have no legal existence out of the boundaries of the sovereignty by which it is created." Chief Justice Taney in *Bank of Augusta v. Earle*, 38 Pet. 519, 588 (U.S. 1839). The concentration of vast corporate enterprises in nonchartering states, however, made immunity from local suit intolerable. See *Travelers Health v. Virginia*, 339 U. S. 643, 649 (1950); *Neirbo v. Bethlehem Corp.*, 308 U.S. 165, 170 (1939). For a summary of this development see HENDERSON, *FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW* 77, 163-194 (1918).

The power of a state to require foreign corporations who wish to carry on business within the state to designate an agent on whom process may be served is now settled. See, e.g., *Ouelette v. City of New York Insurance Co.*, 133 Me. 149, 174 Atl. 462 (1934); *Lafayette Insurance Co. v. French*, 18 How. 404 (U.S. 1855). The state may also by statute, designate the agent or officer to be served in an action against a foreign corporation. *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245, 253 (1909). Requiring an agent to accept service of process may include causes of action arising outside the state, or only causes of action arising from business activities within the state. Compare *Pennsylvania Fire Insurance Co. v. Gold Issue Mining and Milling Co.*, 243 U.S. 93 (1917) with *Dunn v. Cedar Rapids Engineering Co.*, 152 F.2d 733 (9th Cir. 1945). When a corporation does not appoint an agent in compliance with these statutes, proper service of process may still give a court jurisdiction to render a personal judgment against the corporation. See Daum, *The Transaction of Business Within a State by a Non-Resident as a Foundation for Jurisdiction*, 19 IOWA L. REV. 421 (1934).

as "presence,"² "consent to jurisdiction,"³ or "doing business"⁴ within the state.

In *International Shoe v. Washington*⁵ the Supreme Court adopted a more realistic approach. It held that solicitation of business by salesmen of a foreign corporation within a state was enough to subject the corporation to the state's *in personam* jurisdiction.⁶ The court recognized that the real issue was whether the activities of a foreign corporation were extensive enough to make the assumption of local jurisdiction consistent with "fair play and substantial justice."⁷ *Travelers Health v. Virginia*⁸ extended this standard

2. Under this standard, a corporation can be served with process "only if it is doing business . . . in such manner and to such extent as to warrant the inference that it is present there." *Philadelphia & Reading Ry. Co. v. McKibben*, 243 U. S. 264, 265 (1917) (railroad company having no property, agents, or ticket offices in New York was not "present" in the state and hence not subject to the jurisdiction of the federal district court in New York). Under this theory, a corporation is a legal person, and like a natural person can be subject to jurisdiction only when it is present within a state and is served there with process. The presence of the agents of the corporation who carry on its activities has been interpreted to be the presence of the corporation. *Westor Theatres Inc. v. Warner Brothers Pictures Inc.*, 41 F. Supp. 757 (D. N.J. 1941); *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914). See BEALE, CONFLICT OF LAWS § 89.6 (1935); Farrier, *Jurisdiction Over Foreign Corporations*, 17 MINN. L. REV. 270, 280-1 (1933); Isaacs, *An Analysis of Doing Business*, 25 COL. L. REV. 1018 (1925).

3. Consent by the corporation to local courts and laws has been inferred from the voluntary conduct of business activities within the jurisdiction. Under the consent theory, process could be served upon an actual agent or upon an agent designated by the state. See, e.g., *Kaw Boiler Works v. Frymyer*, 100 Okla. 81, 227 Pac. 453 (1924); *Connecticut Mutual Life Insurance Co. v. Spratley*, 172 U.S. 602 (1899). See also BEALE, CONFLICT OF LAWS § 89.7 (1935); HENDERSON, *op. cit. supra* note 1, at 87-96.

4. This term has never been given a satisfactory definition. One source of confusion arises from the fact that the "test" has been applied in several different contexts. Apparently, a lesser degree of activity is necessary to subject a foreign corporation to service of process than to bring it within the licensing or taxing laws of the state. See *South Carolina v. Ford Motor Co.*, 208 S.C. 379, 38 S.E. 2d 242 (1946); *Bendix Home Appliances v. Radio Accessories Co.*, 129 F.2d 177 (8th Cir. 1942).

For analysis and criticism of the "presence," "consent" and "doing business" theories of jurisdiction over foreign corporations, see Cahill, *Jurisdiction Over Foreign Corporations*, 30 HARV. L. REV. 686 *et. seq.* (1917); Comment, 3 DETROIT L. REV. 194 (1940); Note, 29 COL. L. REV. 187 (1929).

5. 326 U.S. 310 (1945).

6. The foreign corporation was chartered in Delaware, and had its principal place of business in Missouri where it engaged in manufacturing and selling shoes. Its salesmen were supplied with samples which they displayed to retailers in the state of Washington. Accepted merchandise was shipped f.o.b. from points outside Washington. Service of process was made by personal service on one of these salesmen coupled with registered mail notice to the corporation.

7. "To say that the corporation is so far 'present' . . . as to satisfy due process requirements . . . is to beg the question to be decided. For 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 These demands may be met by such contacts of the corporation with the state of the forum as to make it reasonable in the context of our federal system of government to require the corporation to defend the particular suit which is brought there." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

8. 339 U.S. 643 (1950). *Travelers*, a nonprofit health insurance corporation chartered in Nebraska, solicited new members in Virginia by mail without registering

to a mail order insurance business conducted without employees or agents in the state asserting jurisdiction. Taken together, the two cases show a liberalization, in line with business realities, of jurisdiction over foreign corporations.⁹

Implicit in these cases are two common sense standards which can be utilized in determining what constitutes "fair play" in jurisdictional questions. The first is whether the foreign corporation's contacts within the state are continuous and systematic.¹⁰ If a foreign corporation enjoys substantial economic and legal benefits within a state, it should be subject to corresponding responsibilities. The second is whether the complaint against the foreign corporation arises from the carrying on of its activities within the state.¹¹ If it does, it probably makes more sense in terms of relative convenience and substantial justice to allow suit there.¹² When both of these factors are present, local jurisdiction is neither burdensome nor unjust to the corporation.¹³ Where only one of these factors is present, the question of assuming

under the state Blue Sky law. Service was obtained by the state Corporation Commission through registered mail under the notice provisions of VA. CODE ANN. § 3848 (52) (1942). See Notes, 59 YALE L.J. 360 (1950); 99 U. OF PA. L. REV. 245 (1950).

9. While the *Travelers Health* case involved a state injunction, no logical reason is apparent why the abandonment of the agency requirement for jurisdiction should not be extended to private claims against the foreign corporation.

Justice Black's statement in the *Travelers Health* case illustrates this liberal development: "[W]here business activities reach out beyond one state and create continuing relationships and obligations with citizens of another state, courts need not resort to a fictional 'consent' in order to sustain . . . jurisdiction We rejected the contention . . . that a state's power to regulate must be determined by a 'conceptualistic discussion of theories of the place of contracting or of performance.'" *Travelers Health v. Virginia*, *supra* note 8 at 647-8.

10. "[T]he activities carried on in behalf of the appellant [Shoe Company] in the State of Washington were neither irregular nor casual. They were systematic and continuous. . . . They resulted in a large volume of interstate business, in the course of which were received the benefits and protection of the laws of the state." *International Shoe v. Washington*, 326 U.S. 310, 320 (1945). "The Association did not engage in mere isolated or short-lived transactions. Its insurance certificates, systematically and widely delivered . . . , create continuing obligations between the Association and each of the many certificate holders in the state." *Travelers Health v. Virginia*, 339 U.S. 643, 648 (1950).

11. "The obligation which is here sued upon arose from these very activities within the state." *International Shoe v. Washington*, 326 U.S. 310, 320 (1945). See Note, 29 COL. L. REV. 187 (1929).

12. When the liability arises from local activities carried on by the foreign corporation, the burden of obtaining the necessary witnesses and records to defend there is not likely to be great. Moreover, it seems just to subject a defendant to jurisdiction in the locality where he set in motion the forces which injured the plaintiff.

13. "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corpo-

jurisdiction should be decided pragmatically in terms of the relative convenience of the parties in conducting the trial in the jurisdiction where suit is brought.¹⁴ Important in this respect are considerations expediting the trial, such as the relative ease of access to the sources of proof and the cost of obtaining witnesses.¹⁵

ration to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *International Shoe v. Washington*, 326 U.S. 310, 319 (1945). For cases granting jurisdiction where the activities of the foreign corporation were substantial and the cause of action also arose from these activities, see *International Harvester v. Kentucky*, 234 U.S. 579 (1914); *Commercial Mutual Accident Co. v. Davis*, 213 U.S. 245 (1909).

14. Some cases indicate that jurisdiction over foreign corporations may be assumed even when one of the above criteria is not present. When the activities of the foreign corporation are continuous and substantial, service of process may be had in some cases even though the cause of action arose somewhere else. See, e.g., *Tauza v. Susquehanna Coal Co.*, 220 N.Y. 259, 268, 115 N.E. 915, 918 (1917): ("We hold further that the jurisdiction does not fail because the cause of action sued upon has no relation in its origin to the business here transacted."). The weight of previous law, however, seems to have been to the contrary. RESTATEMENT, CONFLICT OF LAWS §92 (1934). This is based on *Simon v. Southern Ry. Co.*, 236 U.S. 115 (1914) and *Old Wayne Mutual Life Association v. McDonough*, 204 U.S. 8 (1907). In cases subsequent to *International Shoe* where the cause of action arose outside the forum, courts have so far failed to grant jurisdiction. See, e.g., *Fehlaver Pile Co. v. Tennessee Valley Authority*, 155 F. 2d 864 (D.C. Cir. 1946); *D. W. Onan & Sons v. Superior Court*, 65 Ariz. 255, 179 P.2d 243 (1947).

Jurisdiction is also possible despite isolated or sporadic activity by the foreign corporation provided the cause of action arose from the activity. Single acts which are dangerous to property or life within the forum are likely to subject the person to the state's jurisdiction. Obtaining jurisdiction over non-resident motorists illustrates this. State statutes subjecting a non-resident motorist to suit when an accident arises from his use of the state's highways have been upheld. *Hess v. Pawloski*, 274 U.S. 352 (1927). See Scott, *Jurisdiction Over Non-Resident Motorists*, 39 HARV. L. REV. 563 (1926); 2 MOORE, FEDERAL PRACTICE, ¶4.16 (2d ed. 1948).

Where only one of the criteria mentioned above is present, it is important to consider Judge Learned Hand's statement that "the court must balance the conflicting interests involved: i.e. whether the gain to the plaintiff in retaining the action where it was, outweighed the burden imposed upon the defendant; or vice versa." *Kilpatrick v. Texas & P. Ry. Co.*, 166 F. 2d 788, 790, 791 (2d Cir. 1948), *cert. denied*, 335 U.S. 814 (1948).

15. Judge Learned Hand, interpreting the *International Shoe* case, stated that the "question whether the foreign corporation must stand trial in the particular forum which the plaintiff has chosen is . . . identical with the plea of '*forum non conveniens*.'" *Id.* at 791. For an analysis of some of the criteria involved in determining a question of "*forum non conveniens*" see *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). Justice Jackson set out the following relevant considerations: (1) The private interest of the litigants. (2) The relative ease of access to the sources of proof. (3) The availability of compulsory process for the attendance of unwilling witnesses. (4) The cost of obtaining willing witnesses. (5) The possibility of viewing the premises, if such view would be appropriate to the action. (6) All other practical problems that make trial of a case easy, expeditious and inexpensive. See also *Travelers Health v. Virginia*, 339 U. S. 643, 649 (1950).

Although these criteria have been applied with increasing frequency,¹⁶ a recent Delaware case, *Mazzotti v. Rainey*,¹⁷ failed to extend them to foreign holding companies.¹⁸ A stockholder of a subsidiary operating company located in Delaware brought a derivative suit in that state against a Pennsylvania holding company which controlled the subsidiary. It was alleged that the parent had breached its fiduciary duty by utilizing a business opportunity which belonged to the subsidiary.¹⁹ The Delaware Court of Chancery held that it had no jurisdiction over the defendant holding company. The court looked for traditional legal requirements and found them absent. The hold-

16. For example, the rule that solicitation alone, without other activities is not enough to subject a foreign corporation to jurisdiction, seems now to have been abandoned. *Kilpatrick v. Texas & P. Ry. Co.*, 166 F.2d 788 (2d Cir. 1948); *Lasky v. Norfolk & W. Ry. Co.*, 157 F.2d 674 (6th Cir. 1946). And mail order insurers having no office, property or agents within the state have also become subject to jurisdiction. *Storey v. United Insurance Co.*, 64 F. Supp. 896 (E.D.S.C. 1946) (mail order insurer subject to service of process under South Carolina UNIFORM UNAUTHORIZED INSURERS ACT on the ground that the state legislature had the right to define what acts constitute doing business so long as its definition was not arbitrary or unreasonable); *Travelers Health v. Virginia*, 339 U.S. 643 (1950). *Contra*: *Cindrich v. Indiana Travelers Assurance Co.*, 356 Mo. 1064, 204 S.W. 2d 765 (1947). For an excellent discussion of developments since the *International Shoe* case, see Note, 16 U. OF CHI. L. REV. 523 (1949).

17. 77 A. 2d 67 (Del. Ch. 1950).

18. Courts are reluctant to pierce the corporate veil and bind a parent through service on its subsidiary. See *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925) (breach of contract by parent; wholly owned subsidiary, officers and directors similar, separate corporate records), commented on in 14 CALIF. L. REV. 12 (1925) and 20 ILL. L. REV. 281 (1925); *Peterson v. Chicago, Rock Island & Pacific Ry.*, 205 U.S. 364 (1907) (tort by parent; majority stock ownership, common agents and employees but paid by and under control of each company while performing services for it). *But cf.* *Industrial Research Corp. v. General Motors Corp.*, 29 F.2d 623 (N.D. Ohio 1928) (patent infringement; majority ownership, annual reports and advertisements stressed subsidiaries as divisions of parent), criticized in BALLANTINE, CORPORATIONS 324-5 (1946); *Cutler v. Hammer Mfg. Co.*, 266 Fed. 388 (D. Mass. 1920) (parent subject to jurisdiction since subsidiary a mere "bookkeeping" arrangement); *American Cities Power & Light Corp. v. Williams*, 74 N.Y.S.2d 374 (Sup. Ct. 1947) (subsidiary a mere instrumentality of the parent). Unlike the *Cannon* and *Peterson* cases, *supra*, the cause of action in the *Mazzotti* case arose from the very activity in which the parent was engaged, *i.e.*, holding stock.

19. The stockholders of the subsidiary complained that the opportunity of purchasing shares of stock in Delaware corporations to which the subsidiary was entitled was usurped by the defendant holding company and others in breach of their fiduciary obligations. Service of process was made on the holding company by making personal service on two of its officers, who were also directors and stockholders of the subsidiary, while they were attending a stockholders meeting of the subsidiary in Delaware. Service was made under § 4589 of the Revised Code of Delaware which provides: "When a cause of action arises in this State against any Corporation incorporated outside of this State, and there is no President or head officer of such corporation or any officer, director or manager thereof resident in this State, nor any certified agent thereof . . . resident in this State, process against such corporation may be served upon any agent of such corporation then being in the State. . . ." DEL. REV. CODE § 4589 (1935).

ing company was not the *alter ego* of the subsidiary.²⁰ It maintained no offices or agents within the state. Neither did the charter of the foreign corporation indicate that it was established for the sole or primary purpose of being a holding company.²¹ The court held that with these elements lacking it had no choice but to dismiss the action. The court emphasized that ownership of the subsidiary's stock and control of its affairs did not in themselves constitute "doing business" within the state of the subsidiary.²²

The refusal of a court to assume jurisdiction over a foreign holding company on the ground that it is not "doing business" in the state of a subsidiary may easily be unfair to the latter's stockholders. These stockholders may suffer at the hands of a controlling foreign holding company which chooses to divert corporate funds or opportunities to itself or to another of its affiliates.²³ Such diversion can occur whether the directors of the subsidiary and the holding company are the same men, as in the *Mazzotti* case, or whether the subsidiary's directors are the holding company's appointees. Realizing this, courts have held that a holding company has a fiduciary duty to the other stockholders of a subsidiary corporation which it controls.²⁴ The *Mazzotti*

20. See, *e.g.*, *Cities Service Co. v. Koeneke*, 137 Kan. 7, 20 P. 2d 460 (1933) (business of parent and subsidiary so confused that officers didn't know which was which).

21. The following cases form weak precedent for the proposition that a foreign holding company is subject to jurisdiction if it was organized for the purpose of acting as a holding company: *Bankers Holding Corp. v. Mayberry*, 161 Wash. 681, 297 Pac. 740 (1931); *Southern Electric Securities Co. v. Mississippi*, 91 Miss. 195, 44 So. 785 (1907). The argument would appear not to be seriously considered by most courts. The court in the *Mazzotti* case, however, chose to rest its argument in part on the ground that while the defendant was now a holding company, it had obtained its charter and begun as an operating company. *Mazzotti v. Rainey*, 77 A.2d 67, 69 (Del. Ch. 1950).

22. See note 18 *supra*. The court found § 4589 of the Revised Code of Delaware (1935) inapplicable. The cause of action did not arise in Delaware because the holding company was not doing business there.

23. Litigation based on alleged breaches of duty by the parent corporation and those directors of the subsidiary who owe their positions to the parent's voting control has involved the following situations: (1) A claim that the parent has profited at the expense of the subsidiary due to dealings between them. *Geddes v. Anaconda Copper Mining Co.*, 254 U. S. 590 (1921). (2) A claim that advances made to the subsidiary by the parent should be subordinated, on equitable grounds, to the claims of other investors in the subsidiary. *Taylor v. Standard Gas & Electric Co.*, 306 U. S. 307 (1939). (3) Where the holding company and subsidiary are in competing business activities and minority stockholders of the subsidiary claim that business opportunities which are more urgently needed by the subsidiary are utilized by the parent. *Blaustein v. Pan American Petroleum & Transport Co.*, 174 Misc. 601, 21 N.Y.S.2d 651 (Sup. Ct. 1940), *modified* 263 App. Div. 97, 31 N.Y.S. 2d 934 (1st Dep't 1941), *aff'd* 293 N.Y. 281, 56 N.E. 2d 705 (1944), noted in 8 U. OF CHL. L. REV. 329 (1941), and 58 HARV. L. REV. 125 (1944).

24. See, *e.g.*, *Consolidated Rock Products Co. v. DuBois*, 312 U.S. 510, 522 (1941): "A holding company, as well as others in dominating or controlling positions, has fiduciary duties to security holders in its system which will be strictly enforced." Courts have generally adopted the position that the liability of the parent is based on its control and domination and not upon damage or evil intention. *Southern Pacific Co. v. Bogert*, 250 U.S. 483,

decision, however, may make it quite difficult for these stockholders to enforce the fiduciary obligation owed them. Since the subsidiary is a necessary party defendant,²⁵ it may be difficult to obtain jurisdiction in the state of the holding company.²⁶ Even if jurisdiction can be obtained there, the added expense and inconvenience involved in being forced to sue the holding company outside the state of the subsidiary may be an effective deterrent to the bringing of the suit.

By applying the criteria implicit in the *International Shoe* and *Travelers Health* cases, the *Mazzotti* court could have reached a more sensible solution. Since this was a stockholder's derivative suit, the court should first have determined whether any fiduciary relationship existed. Where the parent exer-

487, 488 (1919). A fiduciary may not appropriate for himself a business opportunity belonging to his beneficiaries. *Irving Trust v. Deutsch*, 73 F.2d 121 (2d Cir. 1934), *cert. denied*, 294 U.S. 708 (1935); *Guth v. Loft, Inc.*, 5 A.2d 503 (Del. Sup. Ct. 1939). See Berle, *Subsidiary Corporations and Credit Manipulation*, 41 HARV. L. REV. 874, 881 (1928): "[W]herever a subsidiary is used fraudulently anyone interested in the subsidiary may promptly complain. . . . When such a situation exists . . . the dominant stockholder is a fiduciary toward the other parties interested in the subsidiary."

25. See 3 MOORE, FEDERAL PRACTICE ¶23.21 at 3530 (1948); 13 FLETCHER, CORPORATIONS § 5997 (Perm. Ed. 1933).

26. If the stockholder or stockholders reside in the same state in which the subsidiary is chartered, bringing suit in the state of the parent is particularly difficult. Since the subsidiary is a necessary party defendant, it may object to service of process on grounds that it is not doing business in the state of the parent. See Note, *Joinder of Foreign Corporations in Stockholders' Derivative Suits*, 50 YALE L.J. 1261 (1941). Jurisdiction over the subsidiary might be obtained, however, by the following methods, none of which is satisfactory: (1) The stockholder might apply at the subsidiary's domicile for the appointment of a receiver to preserve the corporate cause of action and prosecute the action abroad. See Winer, *Jurisdiction over the Beneficiary Corporation in Stockholders' Suits*, 22 VA. L. REV. 153 (1935); Note, 44 YALE L.J. 1091 (1935). This remedy is expensive and uncertain. It increases litigation and courts are reluctant to appoint receivers. (2) The stockholder might sue in the subsidiary's domicile for an injunction compelling it to appear in the action in a foreign jurisdiction. This increases litigation expenses, however, and forces dependence on an unfriendly corporation to supply the necessary factual data. See Winer, *op. cit. supra* at 169; *Dresdner v. Goldman-Sachs Trading Corp.*, 240 App. Div. 242, 269 N.Y. Supp. 360 (2d Dep't 1934). For proposals to alleviate this situation see Note, *Joinder of Foreign Corporations in Stockholders' Derivative Suits, supra*.

On the other hand, if the stockholders of the subsidiary bringing suit resided in a state different from that of the subsidiary and the holding company, federal jurisdiction could be invoked—but only in the state of the holding company. See 28 U.S.C. § 1401 (1948); 28 U.S.C. § 1695 (1948). Professor Moore in 3 MOORE, FEDERAL PRACTICE ¶23.21 at 3544 (1948), gives an example of this by assuming that the plaintiff is a citizen and resident of State 1, the subsidiary is a resident of State 2 and the holding company is a resident of State 3. "If the action is brought in State 2 the venue is proper but service of process is limited by Rule 4(f) to that state and hence to be valid process must be served upon the defendant wrongdoers in State 2. If the action is brought in State 3 the venue is proper and, if necessary for service to be made outside that state upon the corporation, § 1695 affords the basis."

cises sufficient control over the subsidiary to establish a fiduciary duty,²⁷ jurisdiction of the parent should be assumed. A foreign holding company, obtaining economic gain from and exercising substantial economic control over its subsidiary, is certainly maintaining the most important contacts within a state of which it is capable. Furthermore, the obligation sued upon—the holding company's duty not to divert opportunities belonging to the operating company—arises from this very ownership and control. When these elements coincide, it is almost always less burdensome to subject the foreign holding company to local control than to force the plaintiff-stockholder to seek recovery elsewhere.²⁸

27. Courts have traditionally looked to the amount of stock owned to establish a fiduciary duty. The Supreme Court has found such a duty where the dominant stockholder owned 33 $\frac{1}{3}$ % of the stock. *Rochester Tel. Co. v. United States*, 307 U. S. 125 (1939). See also cases cited in Comment, *The Meaning of "Control" in the Protection of Investors*, 60 YALE L.J. 311, 315 n.23 (1951). For the extent to which courts have considered other factors, such as historical ties, interlocking directorates, and the type of corporate structures involved, see *ibid.*; Timberg, *Corporate Fictions*, 46 COL. L. REV. 531, 561-2 (1946); Comment, 40 MICH. L. REV. 274 (1941).

One possible solution to the problem of obtaining jurisdiction over foreign holding companies doing business only through stock ownership is the enactment of statutes making ownership conditional upon consent to the state's jurisdiction and authorizing service on a state official. The statute could define the type of control and stock ownership to which it would apply. See Note, 40 YALE L.J. 1322, 1324 (1931).

28. Inspection of a subsidiary's corporate books, records and minutes is essential in this type of case. Such an inspection is likely to disclose any mismanagement or refusal to take advantage of corporate opportunities. Since this data is likely to be available where the subsidiary is operating and incorporated, suit in that jurisdiction is likely to be convenient to the parties.