1980

Anthony G. Harris, Receiver of Mobile Insurance Company v. Robert Briggs and Intermountain General Agency, Inc : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE

STATE OF UTAH

ANTHONY G. HARRIS, Receiver of Mobile Insurance Company, Plaintiff and Appellant, -vs- ROBERT BRIGGS and INTERMOUNTAIN GENERAL AGENCY, INC., Defendants and Respondents.	Case No. 16841

RESPONDENT'S BRIEF

On Appeal from the Third Judicial District Court In and For Salt Lake County, State of Utah, Honorable Christine Durham

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STATEMENT OF THE NATURE OF THE CASE

This is an appeal of a suit by the statuatory receiver of a Texas Insurance Company against Intermountain General Agency, Inc., agent of Mobil Insurance Company and Robert Briggs, a Utah resident as an individual. On September 21, 1978, the District Court of Travis County, Texas, entered a final judgment against the Defendants Briggs and Intermountain, jointly and severally for $145,654.57, plus interest. This judgment has never been satisfied and the Plaintiff-Receiver sought to enforce the Texas judgment against the Defendants in the Third District Court of Utah.

DISPOSITION IN LOWER COURT

Prior to trial, Plaintiff and Defendant each moved for summary judgment, Plaintiff arguing that the Texas judgment was final and was entitled to full faith and credit, and Defendants arguing that the Texas court had not acquired personal jurisdiction over them and therefore the judgment against them was void and unenforcible. On November 15, 1979, the trial court denied Plaintiff's motion for summary judgment. Because Plaintiff's and Defendant's motions addressed different issues, a question arose as to whether the Defendant's motion had been fully argued. Defendant's counsel stipulated that the matter could be reconsidered by the trial court and the court entertained additional affidavits and argument on the issue of whether the Texas court had personal jurisdiction over the Defendants. On November 27, 1979, the trial court ruled that due process required the Plaintiff to try his claims in Utah, and again granted Defendant's motion for summary judgment. From this judgment, Plaintiff appealed.

RELIEF SOUGHT ON APPEAL

Defendant-Respondent seeks an affirmation of both summary judgments entered November 15, 1979 and November 27, 1979.

FACTS

On May 1, 1972, Intermountain General Agency, Inc. (Intermountain) entered into a general agency agreement with Mobil Insurance Company (Mobil) located in Dallas, Texas. Pursuant to this contract, Intermountain became the agent of Mobil and until August of 1975

conducted a continuous course of insurance business between Intermountain and Mobil. Intermountain, directly and through sub-agents solicited, sold, and issued insurance policies to Utah residents living in Utah, and Mobil issued policies for insurance. On a regular basis Intermountain collected and remitted premiums to the Texas insurance company. The policies were issued in Texas and the records and transactions between Mobil and Intermountain were generated and stored in Texas as to the insurance company's records and records of the transactions were also maintained by Intermountain in Utah. Loss claims were filed in Texas where they were reviewed and allowed or disallowed. Payments, pursuant to contract, were made in Texas.

Prior to August, 1975, Mobil became insolvent and was unable to pay a number of claims tendered to it. This, in spite of the fact that Intermountain had forwarded all required premiums to the company. On or about August 21, 1975, delinquency proceedings were commenced by the State of Texas through its insurance commission against Mobil under the Texas Insurance Code. Mobil was placed in receivership and Plaintiff-Appellant Harris was subsequently appointed as successor-receivor to succeed Herbert Crook who initially instituted these legal proceedings in Texas. The thrust of Plaintiff's complaint in the Texas litigation was that because Mobil had gone into receivership and because all of the policies written by Mobil were no longer being honored by Mobil, that the commissions received by the Defendant, Intermountain, were therefore unearned commissions and would have to be returned to Mobil through its receiver to be distributed to the various insureds. Intermountain's con-

tention was that the vast majority of these premiums had not been received by Intermountain, but had been received by twenty-three or more sub-agents of Intermountain who were mobile home dealers in Utah and who sold the policies to the various insureds at the time of the purchase of the mobile homes. In view of the fact that these sub-agents were all residents of Utah, doing business solely and exclusively within the State of Utah, and selling insurance to Utah residents only, and in view of the fact that they had received the vast majority of funds which were now classified as unearned commissions, it would be necessary for Intermountain to join all of these sub-agents as Cross-Defendants in this action and that this could be best done in litigation in Utah and not in Texas.

On or about August 19, 1977, a complaint was filed by Plaintiff's predecessor as receiver of Mobil against Intermountain and additionally against Defendant Briggs personally, alleging that the Defendants previously had entered into a general agency agreement with Mobil and making allegations that Defendants were delinquent in paying earned premiums and unearned commissions owed to Mobil. The receiver sought to recover those amounts allegedly owing to the receivership and filed his original petition in the 201st Judicial District Court of Travis County, Texas. Defendant Briggs filed a special appearance and motion to quash on or about August 31, 1977 appearing pro se. On March 22, 1978, the Plaintiff filed his first amended original petition. Defendants were served with copies on March 27, 1978 by service upon the Texas Secretary of State in accordance with Tex.Rev.Civ.Stat.Ann.Art. 2031b.

The Secretary of State for the State of Texas subsequently forwarded copies to the Defendants in Utah. In March, 1978, Defendants Briggs and Intermountain filed an answer in the Texas proceeding preserving the special appearance. The answer was signed by Briggs personally. Thereafter, Plaintiff filed a brief in opposition to the special appearance of Defendants, and the special appearance was noticed for hearing on September 14, 1978. On June 23, 1978, Briggs was deposed in Salt Lake City in the Texas action. The deposition was taken at the office of Lambertus Jansen, but contrary to the allegations of fact in Plaintiff-Appellant's brief, Mr. Jansen did not appear as counsel for Briggs, but merely as an accommodation to Mr. Briggs and to Texas counsel in the matter. Thereafter, on July 18, 1978, notice was given to the Defendants by the District Court for Travis County, Texas, that hearing on their special appearance had been set for September 14, 1978, at 2:00 p.m. and the trial was set for September 21, 1978.

On September 14, 1978, the hearing on the special appearance was held. Defendants made no appearance at that hearing and subsequently made no appearance at the hearing on the trial of the matter. Judgment was rendered against the Defendants as heretofore stated and this judgment remains wholly unsatisfied.

On January 29, 1979, Plaintiff filed a complaintin the District Court of Utah, seeking to enforce the Texas judgment against the Defendants. Both parties moved for summary judgment and Defendants' motion for summary judgment was granted. Subsequently, the Plaintiffs took this appeal.

ARGUMENT

POINT I: THE UTAH TRIAL COURT RULED PROPERLY THAT AS A MATTER OF LAW, THE TEXAS JUDGMENT WAS NOT ENTITLED TO FULL FAITH AND CREDIT; THE TEXAS COURT WAS WITHOUT JURISDICTION AND THAT ISSUE WAS PROPERLY ATTACKED BY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

Subpoint A. The Utah Court has the power to look behind the issue of jurisdiction even though that has been raised by a motion to quash in the foreign jurisdiction.

It is clearly established that a Court in one state, when asked to give effect to the judgment of a Court in another state, may constitutionally inquire into the foreign Court's jurisdiction to render the judgment. This logic was clearly followed by the Utah Supreme Court in the case of Chevron Chemical Company vs. Mecham, 550 P. 2d. 182, (Utah 1976). In that case, the Third District Court denied enforcement of an Idaho judgment obtained against the Defendant Mecham. The Court in affirming the District Court ruling, held that an individual who was an officer of a corporation located in Idaho, who gave guarantees to a Plaintiff to indemnify it against losses which it might incurr on accounts with the corporation, but who only made one trip to Idaho and had no contacts with any customer, supplier or lending institution, and who never asserted a business presence in Idaho was not subject to jurisdiction of Idaho Courts under the Idaho Long Arm Statute. In that case, Mecham signed a personal guarantee of the loan and mailed that to the Idaho Plaintiff. Mecham, a resident

of Utah, was an officer of an Idaho corporation. The Court noted that Mecham had never asserted a business presence in Idaho, had no busines address in that state, had no telephone listing in that state, and as an individual had never consummated a business transaction in Idaho. Mecham made a special appearance in the Idaho proceedings to challenge the jurisdiction of that Court, but judgment was rendered against him. The Utah Supreme Court in examining the issue stated that,

> "In determining whether or not the Court of the forum state has jurisdiction, certain standards and guidelines have been enunciated by the courts of the various jurisdictions. Those standards include the following guidelines:
>
> (1) The nature and quality of the contacts of the forum state;
> (2) Quantity of such contacts;
> (3) Relationship of the cause to the contact;
> (4) Interest of the forum state in providing a forum for its residents;
> (5) The convenience of the parties.

Those same issues were examined by the trial court in this instant action, and the Third District Court ruled that the Texas Court did not have jurisdiction over the Defendants and that therefore, the judgment was not entitled to full faith and credit.

In examining the facts in the present action, it should be noted that Briggs made only one trip to the State of Texas, not to engage in any business, but to tour the new office building of Mobil. Too, that neither Briggs or Intermountain maintained any business presence in Texas; they had no office, no residence, no telephone listing. They sold no policies to Texas residents and the only course of dealing with any Texas entity was the mailing of premiums and the receipt of insurance policies by mail with the Texas company. Nowhere in the pleadings or in the affidavits on file in these proceedings is

there any showing that either Briggs or Intermountain did business in Texas. Nor did any of the transactions engaged in by either Briggs or Intermountain involve any Texas residents other than the defaulting Texas corporation.

The Court is further cited to Conn vs. Whitmore, 9 Utah 2d. 250, 243 P. 2d 871, (Utah 1959). Therein the Court stated that,

> "There must be some substantial activity which correlates with the purpose to engage in a course of business or some continuity of activity in the state so that deeming the defendant to be present therein is founded upon a realistic basis, and is not a mere fiction."

Clearly, it would be a mere fiction to conclude that Intermountain or Briggs were conducting any business in Texas when they had no business presence there, maintained no office, no telephone listing, and had no dealings with Texas residents.

In the famous case of Pennoyer vs. Neff, (1877) 95 U.S. 714, 24 L.Ed.565, it was established that the due process clause of the 14th Amendment is violated where a Court renders a personal judgment against a non-resident individual Defendant without having jurisdiction over him, and that as a matter of due course, it cannot acquire such jurisdiction merely by serving process upon him outside the forum or by publication. Since Pennoyer vs. Neff, the concept of state jurisdiction over non-residents has been greatly expanded. However the Court should look clearly at the direction that the Supreme Court has been expanding such jurisdiction. In the leading case of International Shoe Company vs. Washington (1945) 326 U.S. 310, 90 L.Ed. 95 66 S.Ct. 154, 161 A.L.R. 1057, the Supreme Court held that a foreign corporation which systemati-

cally and continually employed a force of salesmen, residents of the state of forum to convas orders therein, could, consistently with due process, be sued in the state to recover contributions to the state unemployment compensation fund in respect to their salesmen. What the Plaintiff-Appellant is attempting to do here is to convert that rational in the exact opposite direction. If residents of the State of Utah had desired to file suit against Mobil in Utah, in view of the fact that Mobil had numerous insurance policies in effect in Utah, sold to them by residents of the State of Utah who were agents or sub-agents of a Utah corporation, as is the case here, there would be no doubt that Mobil would be subject to the Long Arm Statute jurisdiction and would be required to defend in Utah. However, it is a fallacy to conclude therefore, that because Mobil could be sued in Utah by Utah residents who were holders of Mobil's policies, that Mobil therefore can sue in Texas against Utah residents on transactions which occurred in Utah and affect Utah residents only. Clearly, Plaintiff-Appellant is trying to put the cart before the horse by asking this Court to approve such a conclusion.

Counsel for Plaintiff-Appellant cites a number of cases in support of this position. However, those can be disposed of rather summarily. Counsel cites Stoll vs. Gottlieb, 305 U.S. 165, 59 S.Ct. 134, 83 L.Ed. 104 (1938). However, in that case the first judgment was in the Federal Bankruptcy Court, a Court of general jurisdiction and the issues involved the supremacy clause and the jurisdiction of federal courts and has nothing to do with full faith and credit. Counsel cites

Trinies vs. Sunshine Mining Co., 308 U.S. 66, 60 S.Ct. 44, 84 L.Ed 85 (1939). However, that was a Federal Court case again which dealt with subject matter jurisdiction and not in personam jurisdiction, again not applicable to this situation. Counsel further cites Sherrer vs. Sherrer 334 U.S. 343, 68 S.Ct. 1087, 92 L.Ed 1429 (1948). In this instance the Defendant made a general appearance and not a special appearance, and again the facts are not even similar to the fact situation which we are dealing with in this case. In Sherrer, the issue was whether the Plaintiff had been a resident of the state and county long enough to be a resident for jurisdiction in a divorce action. The Court found that the Plaintiff had been a resident long enough and the Massachusetts Court concluded that it couldn't decide the issue of whether the Plaintiff was a resident long enough in view of the fact that the local court had reached the conclusion that the Plaintiff had been a resident for a substantial period. The fact situations are so substantially different as to render Sherrer not remotely applicable. Counsel further cites Raynor vs. Stockton Savings & Loan Bank, 332 P.2d. 416, (Cal. 1958), but in that instance there was a general appearance by Defendant, again rendering the case not applicable for precedent in this matter. The same is true of Sanpietro vs. Collins, 250 Cal.App.2d. 230 Cal.Rptr 219 (1967), Heuer vs. Heuer, 201 P.2d. 385,(Cal.1949). Counsel also cites Davis vs. Davis, 305 U.S. 32 59 S.Ct. 3, 83 L.Ed. 26 (1938) and in the Davis case, there was not only personal service but there was a subsequent general appearance. Finally, in Sub-Point A of Plaintiff-Appellant's agrument, he cites Baldwin vs. Iowa State Traveling

Mens Association 283 U.S. 522 51 S.Ct. 517 75 L.Ed. 1244 (1930), and the ruling in that case was that full faith and credit required by the constitution is not involved where neither of the Courts concerned was a state court. Counsel further relies on Durfey vs. Duke, 375 U.S. 106 84 S.Ct. 242 (1963). This was a Federal Court case that dealt with in rem jurisdiction and not in personam jurisdiction. The issue was whether once the Nebraska Federal Court had ruled that a piece of land was located in Nebraska, whether the Missouri Federal Court could determine whether Nebraska had jurisdiction over the land. None of these cases cited by Plaintiff-Appellant are in any way similar to the circumstances alleged in these proceedings, and none of them should be considered precedent for the type of holding Plaintiff-Appellant is requesting herein.

Sub-Point B: Defendants never waived their special appearance, never submitted themselves to the jurisdiction of the Court, and therefore are entitled to attack that jurisdiction collaterally.

Contrary to the allegations found in Plaintiff-Appellant's brief, conversations held between Plaintiff's Texas counsel and Defendants' Utah counsel, clearly were to the effect that counsel in Texas would not hold Briggs or Intermountain to the specific niceties of the rules of procedure with regard to sworn statements, and now Plaintiff's Utah counsel is attempting to do that. This is grossly unfair and clearly amounts to an overreaching on the part of the Plaintiff-Appellant.

Counsel for Plaintiff cites Brown vs. Brown, 520 S.W. 2d. 571 (Tex.Civ.App.1975) as precedent for the contention that Briggs and Intermountain by failing to appear at the hearing on their special appearance, waived the special nature of their appearance and this amounted to general jurisdiction. If The Court will

examine Brown vs. Brown, they will note substantial differences in that action, which was an action for divorce from this present action. Defendant Brown was personally served within the State of Texas and wherein he stipulated that in the event he failed to make monthly temporary alimony payments, his special appearance would be converted to a general appearance. The Defendant then failed to make his timely payments and thus there was a stipulation that the Defendant had appeared personally and generally within the State of Texas. Such is not the case here; contrary to Plaintiff-Appellant's allegation, there is a stipulation that none of the Defendants' conduct in attempting to represent themselves in this action, would constitute a waiver of their special appearance. Plaintiff-Appellant should therefore be estopped from alleging any such allegation in the brief to this Court.

In summary therefore, this Court should affirm the findings and rulings of the Third Judicial District Court for Salt Lake County, State of Utah by sustaining its ruling in Chevron vs. Mecham and Conn vs. Whitmore. The Third District Court was clearly within its perogative to examine the affidavits of the Defendant and determine that Texas was without jurisdiction to proceed against the Defendants in Texas and that the matter should have been initially prosecuted in Utah.

POINT II. THE TRIAL COURT PROPERLY HELD THAT AS A MATTER OF LAW, THE TEXAS COURT DID NOT HAVE JURISDICTION OVER THE DEFENDANTS AT THE TIME IT ENTERED ITS JUDGMENT.

Sub-Point A. The District Court of Texas did not acquire personal jurisdiction over the Defendants under its Long Arm Statute.

Section Three of the Texas Revised Civil Statutes Annotated, Article 2031B, provides that:

> Any foreign corporation or non-resident, natural person, that engages in business in the state and does not maintain a place of regular business in the state or a designated agent upon whom service may be made upon cause of action arising our of such business done in the state, the act or acts of engaging in such business within the state shall be deemed equivalent to an appointment by such foreign corporation or non-resident, natural person, of the Secretary of State of Texas as its agency upon whom service of process may be made in any action, suit, or proceedings arising out of such business done in the state, wherein such corporation or non-resident, natural person is a party or is to be made a party.

Therefore, service of process upon the Texas Secretary of State is proper only where the foreign corporation or non-resident/natural person, satisfied three threshhold requirements:

(1) That he does not maintain a regular place of business in Texas.
(2) That he is not a designated agent in Texas for serving.
(3) He engages in business in Texas.

Therefore, we get down to the threshhold question! "Did Intermountain or Briggs do business in Texas?" It is acknowledged that the Defendants did not maintain any regular place of business in Texas and did not designate an agent in Texas for service of process.

Counsel for Plaintiff-Appellant claims that all that is necessary to do business in Texas is for an individual to enter into a contract by mail with a resident of Texas to be performed in whole or in part by either party in Texas. It cites U-Anchor Advertising vs. Burt 553 S.W. 2d. 760 (Tex. 1977), in support of this proposition. Actually U-Anchor Advertising is far more favorable to the Defendants than it is to the

Plaintiff-Appellant. In U-Anchor Advertising a contract between the Defendant Oklahoma businessman and a Texas advertising company was solicited by the Texas company in Oklahoma. The contract was signed in Oklahoma and required the Texas company to place displays in Oklahoma. The only contact that the Defendant had with Texas was that he was required to send his payments to the company's office in Amarillo, Texas. When the contract was breached, the advertising company attempted to sue the Defendant in Texas. The Texas Supreme Court held that the exercise of Long-Arm jurisdiction would violate the Defendant's right to due process of law.

> "In the instant case, the contacts of Burt with Texas are minimal and fortuitous, and he cannot be said to have purposefully conducted activities within the state. Burt's contacts with Texas were not grounded on any expectation or necessity of invoking the benefits of protections of Texas law, nor were they designed to result in profit from a business transaction undertaken in Texas. The contract was solicited, negotiated, and consummated in Oklahoma, and Burt did nothing to indicate or to support an inference of any purpose to exercise the privilege of doing business in Texas. Simply stated, Burt was a passive customer of a Texas corporation who neither sought, initiated, or profited from his single and fortuitous contact with Texas."

In the present case, we have Utah Defendants who entered into a contract with a Texas corporation, wherein all business transactions were conducted in the State of Utah. Defendants sold insurance policies, either directly or through sub-agents, to Utah residents, and the only contact that the Defendants had with Texas was that they were required to send payments to the company's office in Texas. In addition to the similarity of circumstances, there is an added feature which clearly requires that the original proceedings in this matter be

brought in Utah, which were not present in the U-Anchor case. In present case, the Defendant would have cross-claims against twenty-three (23) or more Utah sub-agents for any of the unearned commissions for which the Plaintiff is allegedly suing. Those sub-agents are all residents of the State of Utah, are all doing business solely in the State of Utah, and would not be subject to jurisdiction of the Texas Court. Thus, it would be necessary for the Defendants to file twenty-three (23) separate actions in the State of Utah against those sub-agents to recover the majority of the funds which Plaintiff claims it is entitled to. Thus, where all of the litigation could be cleared up in one lawsuit in Utah, had the Plaintiff-Appellant elected to sue in Utah, the result if this Court is to affirm the Texas Court's jurisdiction in this matter will be to suddenly promulgate twenty-three or more additional suits in the State of Utah by the Defendants-Respondents against those various sub-agents.

Sub-Point B. The assumption of jurisdiction by the Texas Court offends the traditional notions of fair play and substantial justice.

As previously explained, the Texas Supreme Court in U-Anchor looked at the nature and extent of the contacts of the non-resident with the forum state to determine whether the Court could exercise jurisdiction over the non-resident. In U-Anchor, the Court concluded that there were not such contacts, and this Court can look at the affidavits and other documents on file in these proceedings, and conclude as did the Court below, that there were not the kinds of contacts with

the State of Texas that would give the Texas Court jurisdiction over the Defendants herein. Counsel for Plaintiff states, "It would have been and would be however inconvenient to require Plaintiff to litigate each cause of action against each non-resident insurance agent in their respective states. Not only is it more convenient to allow Plaintiff to litigate each cause of action in Travis County, Texas, it is also more equitable to the receivership estate, and as many creditors, claimants and individual insureds, including Utah residents entitled to disbursements from the receivership estate for the numerous causes of action against non-resident agents to be prosecuted in an efficient and economical manner." Such an allegation is merely window dressing. Once the Plaintiff-Respondent had filed its lawsuits in Texas and had obtained judgment, it is still necessary for him to go to the state wherein the individual defendants reside and file subsequent actions, such as this one, to enforce those judgments. The Plaintiff-Appellant has, therefore, doubled the number of lawsuits necessary, by first filing numerous actions in Texas, and then having obtained judgments, filing numerous actions in various other states to enforce those judgments, when the Plaintiff-Appellant could have gone directly to the state of residence of the individual defendants and filed only one lawsuit. To talk in terms of duplication, waste, and inefficiency, being avoided by such a tack, seems totally illogical. It is impossible for Defendants to see how two lawsuits are better than one. And, when we add to that, the number of cross-claims which will of necessity have to be filed, they are saying twenty-five lawsuits are better than one. How such a theory can avoid waste and duplication totally escapes

counsel for Defendants.

Counsel cites Burt Drilling, Inc. vs. Portadrill, (No. 15709, filed March 4, 1980, Utah), in support of his position. In Burt Drilling, Inc., the Utah corporation was permitted jurisdiction over a California corporation with its principal place of business in San Francisco, and this Court should look very carefully at that decision and compare it with the fact situation in the present case. There, the Defendants delivered drilling equipment which eventually ended up in Utah. They sent representatives to examine and repair the machinery when it malfunctioned in Utah, and sent invoices and price lists to the Plaintiff in Utah. Discussing the requirements of "minimum contacts, the Utah Court stated:

> (1) Defendant purposefully contracted with the resident of this state, knowing that it was a resident, and
> (2) Defendant purposefully undertook to supply goods to that resident reasonably knowing or anticipating that those goods would be used in this state.

This clearly reiterates the position noted by Counsel for the Defendant-Respondents previously, that, were the fact situations changed and, were the Defendants suing the Plaintiff in Utah under Utah's Long-Arm Statute for breach of contract on all of the insurance policies which were written in Utah and which were not honored by Mobil, this Court could clearly take jurisdiction over Mobil; however, the reverse is not necessarily true. True, Intermountain entered into a contract with Mobil with all economic benefit derived out of that contract generated in Utah and all products, i.e. insurance policies, delivered to residents of Utah. It is the residents and the agents and sub-agents located in Utah who have been injured by Mobil's conduct. If Mobil had conducted

its business in a business-like manner, there would be no litigation. It is Mobil who breached the agreement by accepting premiums for insurance and then not being in a position to pay claims. Counsel for Plaintiff-Appellant has consistently attempted to make the Defendants wear the black hat in these proceedings, but it should be noted that it is the Plaintiff's predecessor who is in default, for it is Mobil who became insolvent and could not pay claims, and it is the residents of the State of Utah who have been injured. The State of Texas has not been injured in this situation, and the notions of fair play and substantial justice require that those individuals in Utah who have been injured should have the perogative of choosing the forum.

Counsel for Plaintiff-Appellant finally concludes that to require the Plaintiff to re-try the Texas judgment in a Utah Court would necessitate the transportation of hundreds of documents at great expense and delay, both for the receiver himself, and for all those, including numerous Utah residents, who have filed claims against the receivership. However, Defendants find it difficult to see that as a distinction because the Defendants would be required to travel to Texas at great expense, transport hundreds of documents in their possession, reach a determination as to what amounts, if any, are due the receiver, and then go back to Utah and litigate twenty-three or more causes of action against sub-agents in order to obtain the funds to pay all of these alleged, but unproved claims.

CONCLUSION

The trial court ruled properly in refusing to extend full faith and credit to the Texas judgment and that ruling should be affirmed by this Court. The Texas District Court could not properly assume jurisdiction over either of the Defendants in view of the fact that neither of the Defendants ever conducted any business in Texas. The mere fact that there was an agency agreement in existence between Defendant Intermountain and Mobil Insurance Company of Texas wherein Mobil wrote insurance policies in favor of Utah residents insuring property located in Utah and Intermountain submitted premium payments to Mobil for that insurance and does not constitute Intermountain or Briggs as ever having done business in Texas. The record before the Court indicates that Defendants maintained no business presence in Texas and have never asserted a business presence there. They had no business address in Texas, had no telephone listing, and there is no showing that as an individual, Briggs had ever consummated a business transaction in Texas, his only trip to Texas being for the purpose of looking at the new office building that Mobil had built as a guest of Mobil. Defendants were never waived their special appearance, and by admission of Counsel for Plaintiff, the Answer filed by the Defendants preserved the special appearance, and that special appearance was preserved by the Defendants throughout the proceedings through communication between Counsel for Plaintiff and Defendants Counsel in Utah. Counsel for Plaintiff-Appellant in Utah is now attempting to convert

that special appearance into a general appearance solely because Plaintiff-Appellant cannot prevail under any other theory. Due process requires the Plaintiff-Appellant to litigate its claims in Utah, where not only the Defendants will be present to proceed on the basis of its records here in Utah, but will be enabled to join as Cross-Defendants some twenty-three or more sub-agents who received the substantial portion of the commissions which Plaintiff-Appellant claims are unearned and therefore the property of Mobil. This Court should affirm the ruling of the Third Judicial District Court and require Plaintiff-Appellant to litigate its claim against the Utah Defendants in Utah and deny Plaintiff-Appellant full faith and credit on the Texas judgment.

DATED this 14th day of May, 1980.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Brief to Jerry R. Kennedy, Attorney for Plaintiff-Appellant, a5 900 Kearns Building, Salt Lake City, Utah, 84101, by depositing the same in the United States mail, postage prepaid, on this 15th day of May, 1980.