

**James S. SIROK**  
**vs.**  
**ROTEC ENGINEERING, INC..**

**Civil Action No. 84-0003**  
**District Court NMI**

**Decided August 24, 1984**

**1. Courts - Association of Local Counsel**

Strict compliance with local rule of District Court requiring association of local counsel is not necessary where attorney does not reside in the Northern Mariana Islands, counsel has had no previous contact with the Court or the jurisdiction and appears for the limited purpose of moving to dismiss the complaint for lack of an in personam jurisdiction, and the attorney was willing to fully comply with the Local Rules in the event proceedings continue further in jurisdiction. District Court Local Rule 110-1.

**2. Jurisdiction - Personal - Longarm Statute**

Where nonresident defendant advertised in a widely circulated magazine regularly sold in the Northern Marianas and it agreed to sell and place into shipment an ultralight plane, knowing the buyer resided in and the plane was being shipped to Saipan, nonresident defendant's activities fell within the Commonwealth's longarm statute. 7 CMC §1102.

**3. Jurisdiction - Personal - Longarm Statute**

To comport with due process, a court may exercise jurisdiction over a nonresident defendant only where certain "minimum contacts" exist between a state and the nonresident defendant and the defendant's

contacts with the forum are such that maintenance of a suit against him will not offend "traditional notions of fair play and substantial justice." U.S. Const., Amend. 14; 7 CMC §1102.

**4. Jurisdiction - Personal - Longarm Statute**

Before jurisdiction will be asserted over a nonresident defendant, the reasonableness of doing so must be considered, and the court must determine whether under the totality of the circumstances the defendant could reasonably anticipate being called upon to present a defense in a distant forum. U.S. Const., Amend. 14; 7 C.M.C. §1102.

**5. Jurisdiction - Personal - Longarm Statute**

In determining whether exercising personal jurisdiction is reasonable, the factors to be considered are: (1) the burden of defending; (2) the extent of the defendant's purposeful interjection into the forum state; (3) the interests of the forum state; (4) the most efficient resolution; (5) convenient and effective relief for plaintiff; and (6) the availability of an alternative forum. U.S. Const., Amend. 14; 7 C.M.C. §1102.

**6. Jurisdiction - Personal - Longarm Statute**

Where: (1) defendant has a single place of business located in Texas, and its employees number only thirty-five, and at least five of these employees will need to be called as witnesses, along with other witnesses in Texas; (2) the plaintiff will need only himself, from the Northern Marianas as a witness; (3) the physical evidence can be shipped to Texas cheaper than to fly defendant's necessary personnel and experts to Saipan; and (4) where inspection for both pre-trial and trial purposes may be accomplished by photographs and other investigative

reports thus lessening the expense for both parties, the burden on defendant in defending a suit in the Northern Marianas is overwhelming. U.S. Const., Amend. 14; 7 C.M.C. §1102.

**7. Jurisdiction - Personal -  
Longarm Statute**

Where: (1) a portion of plaintiff's suit may have to be tried in Texas under the contract between the parties; and (2) although the physical evidence is located in Saipan, most of the witnesses are located in the State of Texas; (3) plaintiff alleges several hundred thousand dollars in damages, and where plaintiff has visited defendant's office in the State of Texas in relation to his purchase of the ultralight aircraft at issue, plaintiff's claims here are not so small or moderate as to effectively preclude the bringing of an action in a foreign forum. U.S. Const., Amend. 14; 7 C.M.C. §1102.

FILED  
Clerk  
District Court

AUG 24 1984

IN THE DISTRICT COURT  
FOR THE  
NORTHERN MARIANA ISLANDS

For The Northern Mariana Islands  
By [Signature]  
(Deputy Clerk)

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6 JAMES S. SIROK, ) CIVIL ACTION NO. 84-0003  
7 Plaintiff, )  
8 vs. ) DECISION AND ORDER  
9 ROTEC ENGINEERING, INC., )  
10 Defendant. )  
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13 Plaintiff filed a Complaint in this matter on March 27,  
14 1984, seeking damages for misrepresentation, breach of warranty,  
15 product liability, breach of contract, intentional infliction of  
16 emotional distress, and conversion, all arising from the sale by  
17 defendant to plaintiff of a Rotec Rally III ultralight aircraft  
18 in 1983. On May 14, 1984 defendant moved to dismiss the action  
19 for lack of in personam jurisdiction, or, alternatively, to  
20 transfer this case to the Northern District of Texas, Dallas  
21 Division, under 28 U.S.C. Section 1404, for the convenience of  
22 the parties and witnesses and in the interest of justice. In  
23 response, plaintiff filed a Motion to Strike defendant's motions  
24 pursuant to Local Rules 110-8 and 100-3. Since the Motion to  
25 Strike may be dispositive of both motions now before the Court,  
26 it will be addressed first.

1                                    MOTION TO STRIKE

2                    Defendant is represented in this action by a Dallas,  
3 Texas law firm, and an attorney thereof, Mr. Richard Young, who  
4 resides and is licensed to practice law in Texas. Mr. Young  
5 filed an application to this Court, pursuant to Local Rule 110-1,  
6 for admission pro hac vice but has not associated with local  
7 counsel as required by Local Rules.

8                    L.R. 110-2(a) of the Local Rules for the District Court  
9 for the Northern Mariana Islands provide,

10                    "Except as otherwise provided by  
11 these Rules, only members of this  
12 Court's bar or an attorney other-  
13 wise authorized by these Rules to  
14 practice before this Court may  
appear for a party sign stipula-  
tions, receive payment or enter  
satisfaction or judgment, decree or  
order."

15                    L.R. 110-1(b)(3) provides,

16                    "Any attorney admitted to practice  
17 before this Court, but who does not  
18 reside in and have an office in the  
19 Northern Mariana Islands, may prac-  
tice only by associating with local  
counsel as required by subsection  
(f) of this Rule."

20                    L.R. 110-1(f) provides,

21                    "Designation of Local Counsel. An  
22 attorney applying to practice be-  
23 fore this Court under subsection  
24 (b)(3) or (d)... shall associate as  
co-counsel an attorney who is an  
active member in good standing of  
this Court's bar...."

25                    L.R. 110-8(a) provides,

26                    "A person shall neither exercise

1 the privileges of a member of this  
2 Court's bar or otherwise represent  
3 entitlement to exercise those  
4 privileges if a person:

5 (1) Is not admitted to this  
6 Court's bar; or

7 (2) Has not obtained leave of  
8 Court to appear in a proceeding..."

9 L.R. 110-8(b) further provides,

10 "A person who violates Rule 110-8  
11 may be held in contempt of court  
12 and appropriately sanctioned."

13 L.R. 100-3 provides that,

14 "The failure of counsel or any  
15 party to comply with any of these  
16 Rules is a ground for the imposi-  
17 tion of sanctions."

18 [1] Though Mr. Young has not fully complied with our Local  
19 Rules, and while this Court has consistently strictly enforced  
20 Rule 110, the circumstances at this stage of the litigation in  
21 this case warrant a very limited exception to the Rule.

22 Defendant appears here, and has responded to plain-  
23 tiff's Complaint, only for the purpose of challenging this  
24 Court's personal jurisdiction over it. No Answer to the  
25 Complaint has yet been filed with the Court. Moreover, all of  
26 defendant's pleadings have been filed by mail, and the hearing  
27 wherein the instant motions were heard was conducted by telephone  
28 with defendant's counsel in Texas.

Defendant's counsel has had no previous contact with  
this Court, nor apparently with this jurisdiction, and while most  
federal courts have rules similar to ours and thus he certainly

1 should have been aware that such a rule might have existed, in  
2 view of the very limited purpose for which he now appears it  
3 would be excessively burdensome to require that he associate with  
4 local counsel. Moreover, Mr. Young has expressed a desire to  
5 cooperate with this Court and has shown willingness to fully  
6 comply with our Local Rules in the event these proceedings  
7 continue further in this jurisdiction.

8 In this situation, the Court finds that strict compli-  
9 ance with Local Rule 110 is not necessary, and plaintiff's Motion  
10 to Strike is DENIED.

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12 MOTION TO DISMISS OR TRANSFER

13 This leaves the question of whether this Court has in  
14 personam jurisdiction over defendant Rotec Engineering, Inc.  
15 (Rotec), consistent with the requirements of due process under  
16 the Fourteenth Amendment.

17 Plaintiff is a resident of the Northern Mariana Islands  
18 who purchased an ultralight aircraft from defendant. Defendant  
19 is a Texas corporation and has no office or salesmen in the  
20 Northern Marianas. None of defendant's employees have ever  
21 visited the Northern Marianas in connection with the business,  
22 and this single sale of an ultralight plane to plaintiff is the  
23 only sale the company has ever made here. Defendant does,  
24 however, advertise in a widely circulated trade magazine which is  
25 regularly sold in the Northern Marianas, and it advertises itself  
26 therein as a worldwide distributor of ultralight aircraft. It

1 was in response to such an ad that plaintiff first became  
2 interested in acquiring the Rally III ultralight airplane.

3 In 1981, plaintiff purchased several monthly copies of  
4 the magazine entitled "Flying" from Joeten Enterprises in Saipan.  
5 That magazine often contained Rotec's advertisements promoting  
6 the sale of its product and offered to provide detailed informa-  
7 tion on the ultralight aircraft in exchange for a payment of  
8 \$5.00.

9 In September, 1981 plaintiff sent \$5.00 to Rotec, re-  
10 questing that detailed information be sent to him as Assistant  
11 Attorney General for the Commonwealth of the Northern Mariana  
12 Islands.<sup>1/</sup> He received an information packet from Rotec in  
13 October, 1981. On March 8, 1982 plaintiff made a second request  
14 to Rotec for information concerning the Rally III ultralight  
15 airplane; he also expressed a desire to become a Rotec dealer in  
16 this area, and asked Rotec to provide him with the necessary  
17 information for becoming a dealer. On March 22, 1982 he received  
18 a second information package from Rotec, which on its face con-  
19 tained advertising stating that Rotec provides ultralight powered

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22 <sup>1/</sup>Counsel for both parties, in their briefs and at oral argument,  
23 make several references to the fact that plaintiff used Attor-  
24 ney General of the Commonwealth of the Northern Mariana Islands  
25 letterhead stationary in his correspondence with Rotec, and  
26 that he requested all documents sent to him as Assistant Attor-  
ney General for the CNMI. The Court fails to see the signifi-  
cance of such actions to the specific issues herein, and thus,  
further mention of these arguments will not be made.

1 airplanes for the world. In the same package he received infor-  
2 mation on Rotec's dealership program.

3 On December 2, 1982 plaintiff visited Rotec's office in  
4 Duncanville, Texas for the purpose of obtaining more information  
5 on the various models of ultralight airplanes which Rotec sold.  
6 During this visit plaintiff discussed with Rotec's representa-  
7 tives the price of the Rally III, its performance specifications,  
8 and the costs of shipment to Saipan. He also informed Rotec's  
9 representatives that he lived on Saipan in the Northern Mariana  
10 Islands, and was considering the purchase of an ultralight air-  
11 plane for use in this area. During this visit no commitment was  
12 made by either party with respect to the sale and purchase of an  
13 ultralight airplane.

14 On January 14, 1983 plaintiff sent full payment for the  
15 Rally III Model to Rotec's office in Duncanville, Texas. During  
16 the last week of January, 1983 he received a purchase order from  
17 Rotec, together with a letter requesting his signature on the  
18 purchase order and the return of a copy thereof to Rotec's office  
19 in Texas. Plaintiff signed the purchase order and returned it to  
20 Rotec. On April 5, 1983, the Rally III kit arrived in Saipan, at  
21 which time plaintiff paid the cost of shipping, insurance, hand-  
22 ling, transfer and various other fees.

23 From May, 1983 until the complaint was filed in this  
24 matter, several letters, telexes and telephone calls passed bet-  
25 ween the plaintiff in Saipan and Rotec in Texas, regarding the  
26 shipment of parts, alleged malfunctions of the machine, etc. Also



1 during this time, plaintiff ordered and Rotec shipped various  
2 parts and materials for the ultralight, as well as several  
3 correspondences regarding Rotec dealership events and promotions.

4 Defendant now asks this Court to dismiss plaintiff's  
5 suit for lack of jurisdiction over Rotec. Such a decision  
6 involves, first, a determination of whether Rotec is subject to  
7 suit in this jurisdiction under Title 7, Commonwealth Code,  
8 Division 1, Chapter 1, § 1102, the so-called "long-arm" statute  
9 of the Northern Marianas; and if so, whether that statute com-  
10 ports with the constitutional requirements of due process.

11 1. Long-arm Statute

12 Title 7, Commonwealth Code, Division 1, Chapter 1,  
13 § 1102 provides,

14 (a) Any person, whether or not a  
15 citizen or resident of the Common-  
16 wealth, who in person or through an  
17 agent does any of the acts enume-  
18 rated in this Section, thereby  
19 submits such person, and if not an  
20 individual, its personal represen-  
21 tative, to the jurisdiction of the  
22 courts of the Commonwealth as to  
23 any cause of action arising from  
24 the doing of any of the following  
25 acts:

20 1. The transaction of any  
21 business within the Commonwealth;

22 2. Contracting to supply  
23 goods or services within the  
24 Commonwealth;

24 3. ....

25 4. Causing tortious injury  
26 or damage within the Commonwealth  
by an act or omission done within

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the Commonwealth;

5. Causing tortious injury or damage within the Commonwealth by an act or omission done outside the Commonwealth by a person engaged in business or other acts having impact within the Commonwealth, or who derives income or revenue from supplying goods and services within the Commonwealth.

6. ....

7. Any act done outside the Commonwealth which causes or results in any harmful impact, injury or damages, including pollution of air, land or water, within the Commonwealth; or

8. Any other act done within or outside the Commonwealth from which a cause of action arises and for which it would not be unreasonable, unfair and unjust to hold the person doing the act legally responsible in a court of the Commonwealth.

Plaintiff asserts jurisdiction under every subsection of Section 1102.

In this case, it would be difficult to premise jurisdiction on any one subsection of Section 1102, though cumulatively, defendant's acts are sufficient to subject it to this Court's jurisdiction. It has been held that merely advertising its business in the forum state is not "transacting business" for purposes of the long-arm statute, Rich v. Chicago, B&Q Ry. Co., 74 P.1008; neither does the shipment of goods into the state by common carrier, without more, confer jurisdiction where the

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1 contract was executed elsewhere,<sup>2/</sup> Moore v. Little Giant  
2 Industries, 513 F.Supp. 1042 (1981).

3 It would seem that subsection 2 would most clearly  
4 apply to confer jurisdiction because Rotec arguably "contract[ed]  
5 to supply goods or services within the Commonwealth." However,  
6 the ultralight was shipped f.o.b. Texas, and plaintiff paid all  
7 costs and charges associated with shipment from Texas to Saipan.  
8 Thus, it could be said that Rotec contracted to no more than sell  
9 the ultralight to plaintiff at Rotec's place of business. A  
10 similar analysis is used with respect to subsection 5 in that  
11 Rotec cannot clearly be said to have "suppl[ied] goods and  
12 services within the Commonwealth."

13 [2] Subsections 7 and 8 are relied on most heavily here to  
14 bring defendant's actions within the statute. Rotec did adver-  
15 tise in a widely circulated magazine which is regularly sold in  
16 the Northern Marianas, and it did agree to sell and place into  
17 shipment an ultralight airplane, knowing the buyer resided in and  
18 the airplane was being shipped to Saipan. Since the very liberal  
19 language of Section 1102 clearly indicates that the intent of the  
20 statute was to expand the jurisdiction of the Commonwealth's

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23 <sup>2/</sup>The purchase order provides: Acceptance of this purchase order  
24 is made in the State of Texas and is governed by the jurisdic-  
25 tion and laws of this state." At Paragraph 5 it states: "...  
26 this purchase order, when accepted by manufacturer, is the only  
contract controlling this sale and purchase, and... it contains  
all agreements, expressed or implied, either verbal or in writ-  
ing, and purchaser acknowledges receipt of a copy of the same.

courts to the extent permitted by the due process clause of the Fourteenth Amendment, defendant's activities here are deemed to fall within the outer reaches of its provisions.

## 2. Due Process

[3] The Court must next determine whether exercise of the jurisdiction conferred by the long-arm statute will satisfy the due process clause of the Fourteenth Amendment. The very fundamentally established principle in this respect is that certain "minimum contacts" must exist between a state and a non-resident defendant before that state can exercise jurisdiction over him, International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). The defendant's contacts with the forum must be such that maintenance of a suit against him will not offend "traditional notions of fair play and substantial justice." Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278 (1940).

While there has been a strong trend toward liberalization of the restrictions on personal jurisdiction, the U.S. Supreme Court recently reaffirmed that personal jurisdiction cannot be found in the absence of some affiliations between the forum and the non-resident defendant. Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). One of the key factors in this respect is whether defendant's conduct and connection with the forum are such that he should reasonably anticipate being haled into court there. Thus, if the sale of a product is not simply an isolated occurrence, but

arises from the efforts of the defendant to serve, directly or indirectly, the market for its product in another state, it is not unreasonable to subject it to suit in that state. World-Wide Volkswagen Corp. v. Woodson, 100 S.Ct. at 567-68.

Here, it is clear that Rotec deliberately sought to advertise and market its goods on a world-wide basis, and that it willingly entered into a contract with a customer from another state, knowing its product would be shipped to and used in that foreign state. The exercise of jurisdiction based upon such contact, although in the context of only a single transaction, has often been held not incompatible with the due process clause of the Fourteenth Amendment.

3. Reasonableness

[4] However, before jurisdiction will be asserted over a non-resident defendant, the reasonableness of doing so must be considered, World-wide Volkswagen Corp. v. Woodson, supra, and the court must determine whether, "under the totality of the circumstances the defendant could reasonably anticipate being called upon to present a defense in a distant forum." Taubler v. Giraud, 655 F.2d 991 (9th Cir. 1981).

[5,6] The recent Ninth Circuit case of Olsen By Sheldon v. Government of Mexico, 729 F.2d 641 (9th Cir. 1984), recognizes seven factors to be applied, and their relative significance balanced, in determining whether exercising personal jurisdiction

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1 is reasonable.<sup>3/</sup>

2 1. Burden of Defending. A primary concern in asses-  
3 sing the reasonableness of jurisdiction is the burden on the de-  
4 fendant, though it is not dispositive and is to be considered in  
5 light of other relevant factors. World-wide Volkswagen Corp. v.  
6 Woodson, supra. In this case, however, the burden on defendant  
7 in defending this suit in the Northern Marianas is overwhelming.

8 Defendant has a single place of business, located  
9 in Duncanville, Texas, and its employees number only thirty-five.  
10 Defendant has indicated that at least five of these employees  
11 will need to be called as witnesses, along with a number of  
12 experts, custodians of records, etc., all now located in Texas.  
13 On the other hand, it is difficult to see that plaintiff will  
14 need any witnesses, other than himself, from the Northern  
15 Marianas, and the presentation of his case will certainly not  
16 involve a significant portion of his work force.

17 The ultralight aircraft, the physical evidence  
18 herein, is admittedly located in the Northern Marianas. However,  
19 as defendant points out, it would be far cheaper to ship the air-  
20 plane and/or the parts thereof, to Texas than to fly the neces-  
21 sary personnel, experts, etc. to Saipan and there feed and  
22 shelter them for the duration of the trial. (Not to mention  
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25 <sup>3/</sup>Only six of those factors are relevant here. The seventh  
26 addresses the issue of sovereign immunity and is only appli-  
cable to a suit against a foreign state.

1 during the extensive pre-trial discovery which must be conducted  
2 in a case of this sort). Inspection for both pre-trial and trial  
3 purposes may be accomplished by photographs and other investiga-  
4 tive reports thus lessening the expense for both parties.

5 Finally, plaintiff is an attorney licensed and  
6 practicing in the Northern Marianas, and is conducting his case  
7 pro se. He has alleged very complex, and serious, charges  
8 against the defendant herein, the defense of which is a very  
9 lengthy and expensive proposition, even in the defendant's home  
10 forum. In the Northern Marianas, the cost would be increased  
11 multifold, and to force defendant to defend such a suit would,  
12 defendant contends, amount almost to extortion by the plaintiff.  
13 Plaintiff's costs, on the other hand, are minimal and are  
14 significantly less than defendant's, even if he is required to  
15 prosecute his case in Texas.

16 2. Extent of Purposeful Interjection Into Forum  
17 State. The extent of purposeful interjection by Rotec into  
18 Saipan was limited to its general advertisements in a trade maga-  
19 zine, its responses to plaintiff's repeated inquiries, and its  
20 knowing sale of a single product to a Northern Marianas resident.

21 3. Interests of Forum State. The Northern Marianas  
22 certainly has an interest in protecting its residents from injury  
23 and ensuring that they are fully compensated for their injuries.  
24 While, given the wide dispersion of Micronesia and the transient  
25 nature of its populations, this interest might be somewhat  
26 stronger than that of a stateside forum, there is in reality very

1 little practical difference. In this case, moreover, there is no  
2 special state interest involved; thus, this factor is of little  
3 significance to our determination.

4 [7] 4. Most Efficient Resolution. The purchase order  
5 which constitutes the contract between the parties specifically  
6 states that "[a]cceptance of this purchase order is made in the  
7 State of Texas and is governed by the jurisdiction and laws of  
8 this state." A portion of plaintiff's suit may, therefore, have  
9 to be tried in Texas. Furthermore, as mentioned above, though  
10 the physical evidence is located in Saipan, most of the witnesses  
11 are located in the State of Texas. Thus, the district court in  
12 Texas would be the most efficient judicial forum.

13 5. Convenient and Effective Relief for Plaintiff  
14 While this Court recognizes that individual claimants might be at  
15 a disadvantage when forced to follow a defendant to a distant  
16 state in order to hold it legally accountable, plaintiff's claims  
17 here are not so small or moderate as to effectively preclude the  
18 bringing of an action in a foreign forum-- "thus in effect making  
19 the company judgment proof." McGee v. International Life Ins.  
20 Co., 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957). Quite to  
21 the contrary, plaintiff alleges damages of several hundred  
22 thousand dollars, and thus will not be so easily deterred from  
23 prosecuting his claim in the Texas forum. Moreover, plaintiff  
24 has, himself, visited defendant's office in the State of Texas in  
25 relation to his purchase of the ultralight aircraft. He cannot,  
26 therefore, seriously claim any great inconvenience at having to



1 travel there once more to press his claim.

2 6. Availability of an Alternative Forum. There is no  
3 real question that the State of Texas provides a practical alter-  
4 native forum in which plaintiff may pursue his claim.

5 After balancing the factors above, the Court concludes  
6 that in the interest of justice, for the relative convenience of  
7 the parties and witnesses, and economy to both parties, this case  
8 should be transferred to the Northern District of Texas, Dallas  
9 Division, pursuant to 28 U.S.C. § 1404(a).

10 THEREFORE, it is hereby ORDERED that the above-entitled  
11 action be transferred to the District Court for the Northern  
12 District of Texas, Dallas Division, forthwith.

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DATED this 24<sup>th</sup> day of August, 1984.

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JUDGE ALFRED LAURETA

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