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Minimum Contacts as Applied to Products Liability - World-Wide Volkswagen Corp. v. Woodson

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MINIMUM CONTACTS AS APPLIED TO PRODUCTS LIABILITY— *WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON*

The due process clause of the fourteenth amendment restricts the use of long-arm statutes[1] by states to obtain jurisdiction over nonresident defendants.[2] The original due process standard prohibited personal jurisdiction over a nonresident defendant unless the defendant was physically present within the state's boundaries.[3] In the landmark decision of *International Shoe Co.* v. *Washington*,[4] the United States Supreme Court retracted this territorial presence test, substituting a test based on minimum contacts. In enunciating the new standard, the Court held that *in personam*[5] jurisdiction should be asserted only when a defendant has sufficient minimum contacts with the forum state to satisfy traditional due process notions of fair play and substantial justice.[6]

United States Supreme Court decisions regarding the due process limits of personal jurisdiction have been few, and although these cases provide significant guidelines for claims based upon various legal theories, they did not apply, until recently, the minimum contacts test to a products liability action.[7] In *World-Wide Volkswagen Corp. v. Woodson*,[8] the Court interpreted the *International Shoe* standard to deny a party from maintaining a

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1. Since 1945, almost all states have provided that doing business, transacting business, making a contract with a forum state resident, or committing a tortious act inside or outside the state gives state courts jurisdiction over nonresident defendants performing such acts. *See, e.g.*, FLA. STAT. ANN. § 48.193(1)(f) (West Supp. 1980); ILL. REV. STAT. ch. 110, § 117 (1963); N.Y. CIV. PRAC. LAW § 302(a) (McKinney 1972); ARIZ. R. CIV. P. 4(e)(2). Under the Federal Rules of Civil Procedure, a federal district court may use the long-arm statute of the state in which it sits to acquire jurisdiction over nonresident defendants. FED. R. CIV. P. 4(f).

2. For general discussions of due process as it affects long-arm statutes see Cleary, *The Length of the Long Arm*, 9 J. PUB. L. 293 (1960); Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533; Nordenberg, *State Courts, Personal Jurisdiction and the Evolutionary Process*, 54 NOTRE DAME LAW. 587 (1979); Note, *The Long-Arm Reach of the Courts Under the Effect Test After Kulko v. Superior Court*, 65 VA. L. REV. 175 (1979); Note, *Jurisdiction Over Alien Manufacturers in Products Liability Actions*, 18 WAYNE L. REV. 1585 (1972).

3. Pennoyer v. Neff, 95 U.S. 714 (1877). *See* note 24 *infra*.

4. 326 U.S. 310 (1945).

5. Before a court may render a valid judgment, it must have both subject matter jurisdiction and jurisdiction over the parties. Jurisdiction over the parties involved in the dispute is *in personam* jurisdiction. M. GREEN, BASIC CIVIL PROCEDURE 4-5 (2d ed. 1979).

6. The *International Shoe* Court, quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940), stated:

> [D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of a forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play, and substantial justice."

326 U.S. at 316.

7. *See* cases cited in note 36 *infra*.

8. 444 U.S. 286 (1980).

cause of action against a seller and distributor in Oklahoma when injury resulted from an allegedly defective product sold in New York.[9] The Court held that personal jurisdiction over a nonresident defendant could not be sustained absent "contacts, ties or relations" with the forum state.[10] The minimum contacts test, as defined in *World-Wide Volkswagen*, now limits personal jurisdiction in products liability actions to those cases in which the seller has purposefully sought a market for its product in the forum state.

The purpose of this Note is to analyze *World-Wide Volkswagen*'s application of existing law as well as its formulation of new jurisdictional principles. Further, this Note criticizes the Court's focus on discarded principles of jurisdiction. The result of the decision is also questioned as it favors defendants over plaintiffs by applying too faithfully the minimum contacts and purposeful availment tests. Finally, *World-Wide Volkswagen*'s impact on future products liability cases is evaluated and alternatives are suggested.

FACTS AND PROCEDURAL HISTORY OF *WORLD-WIDE VOLKSWAGEN*

In September 1977, plaintiff Kay Robinson was driving from New York to Arizona when her Audi automobile was struck in the rear by another automobile in Oklahoma.[11] Mrs. Robinson and her children were severely injured when the rupture of the car's gasoline tank caused a fire in the passenger compartment. As a result of the collision, the Robinsons[12] initiated a products liability suit in Oklahoma against the New York sellers of the automobile to recover for personal injuries sustained in the accident.[13] The plaintiffs claimed that their injuries resulted from the defective design and placement of their Audi's gas tank and fuel system. Plaintiffs had purchased the Audi from defendant Seaway Volkswagen in New York in 1976. World-Wide Volkswagen Corporation, as Seaway's regional distributor, was joined with Seaway as defendant in the action.[14]

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9. *Id.*

10. *Id.* at 299.

11. World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351, 353 (Okla. 1978). The driver of the other car was not made a party to the Robinsons' suit.

12. Mrs. Kay Robinson brought suit on her own behalf, and two Robinson children sued through Mr. Robinson as their father and next friend. 444 U.S. at 288 n.2.

13. It has been held that a products liability action can be maintained both against manufacturers and against retailers. Fields v. Volkswagen of America, Inc., 555 P.2d 48, 53 (Okla. 1976). Jurisdiction is then obtained over a foreign manufacturer or retailer by either the consent of the corporation or the fact that it is doing business within the state or both. Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 535.

14. Throughout this Note, references to World-Wide Volkswagen Corporation also include Seaway Volkswagen. Volkswagen and Audi, manufacturers of the automobile, were also named defendants in this action; however, they did not appeal the jurisdictional decision. Rather, they remained as defendants in the litigation before the District Court of Oklahoma. 444 U.S. at 288 n.3.

Seaway and World-Wide Volkswagen entered special appearances in the Oklahoma district court,[15] maintaining that the state's exercise of jurisdiction over them would exceed the due process limitations imposed upon the state's jurisdictional authority. After the district court rejected this constitutional claim,[16] Seaway and World-Wide sought a writ of prohibition[17] in the Oklahoma Supreme Court to restrain the respondent trial judge[18] from exercising personal jurisdiction over them. The defendants asserted that they lacked any contacts whatsoever with Oklahoma[19] and, therefore, that the assumption of jurisdiction over them by the State of Oklahoma would violate their due process rights.[20] In denying the writ, the state supreme court cited the Oklahoma Uniform Interstate and International Procedure Act[21] as authority for its exercise of *in personam* jurisdiction over the out-of-state defendants. The court reasoned that the inherent mobility of cars made their use in other states foreseeable, thus satisfying the minimal contacts requirement of the statute.[22]

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15. Although Volkswagen also entered a special appearance, it did not appeal the issue of jurisdiction to the Oklahoma Supreme Court. *Id.*

16. The district court's rulings are unreported, but they appear at appendices 13 and 20 in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

17. A writ of prohibition is issued by a superior court, directed to the judge and parties of a suit in an inferior court, requiring them to cease action because of a lack of jurisdiction. BLACK'S LAW DICTIONARY 1091 (5th ed. 1979).

18. The respondent in this case was the Hon. Charles S. Woodson, Oklahoma trial court judge. World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351, 352 (Okla. 1978).

19. World-Wide is incorporated in New York, as is Seaway. They both maintain their business offices in New York. World-Wide does business with Volkswagen retailers in New York, New Jersey, and Connecticut. Neither entity "does any business in Oklahoma, ships or sells any products to or in that state, has an agent to receive process there, or purchases advertisements in any media calculated to reach Oklahoma." 444 U.S. at 288-89.

20. Petitioner's Brief for Certiorari at 4, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

21. OKLA. STAT. ANN. tit. 12, § 1701.01-1706.04 (West 1980) (commonly referred to as the Oklahoma Long-Arm Statute). The state supreme court specifically referred to § 1701.03, which provides in part:

> (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:
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> . . .
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> (3) causing tortious injury in this state by an *act or omission in this state;*
>
> (4) causing tortious injury in this state by an act or omission outside this state *if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;* . . .

Id. § 1701.03(a) (emphasis added).

22. 585 P.2d at 353-54. Applying § 1701.03(a)(3), the court held that no act or omission on the part of World-Wide took place in Oklahoma. Nevertheless, under the provision of subsection (a)(4), the court held that, based upon the nature of a car and upon the fact that goods sold and distributed by the petitioners were used in Oklahoma, it was "reasonable to infer, given the retail value of the automobile that the *petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma.*" *Id.* at 354 (emphasis added).

World-Wide Volkswagen Corporation then appealed to the United States Supreme Court, which reversed the state court decision.[23] The issue facing the *World-Wide Volkswagen* Court was whether personal jurisdiction over a nonresident seller of an allegedly defective product could be based upon one isolated incident. Writing for the Court, Justice White found that the State of Oklahoma could not exercise personal jurisdiction over the nonresident defendant, World-Wide Volkswagen Corporation, because World-Wide lacked the requisite minimum contacts with the state. The Court placed great emphasis upon the fact that but for the Robinsons' act of driving through Oklahoma, World-Wide would have had no contacts with the forum state.

PRIOR CASE LAW AND THE COURT'S REASONING

Since the introduction of the *International Shoe* test of minimum contacts,[24] several Supreme Court cases have sought to clarify its application[25]

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23. 444 U.S. at 299. The majority opinion was written by Justice White, who was joined by Chief Justice Burger, and Justices Stewart, Powell, Rehnquist and Stevens. Justices Brennan, Marshall and Blackmun dissented.

24. International Shoe Co. v. Washington, 326 U.S. 310 (1945), brought about the first basic change in the jurisdictional theory of Pennoyer v. Neff, 95 U.S. 714 (1877). It eliminated *Pennoyer's* physical presence requirement, and held that due process does not require that a defendant be present in the state but only that the defendant have certain minimum contacts with the state. 326 U.S. at 316.

In *Pennoyer*, the Supreme Court first faced the question of under what circumstances a state court could constitutionally exercise judicial power over a non-consenting, nonresident defendant. Its decision was two-fold. The state court could directly exercise judicial power over such a defendant through an *in personam* proceeding only if that defendant was served with process while present in that state; it could indirectly exercise judicial power through an *in rem* proceeding if that defendant owned property in that state. 95 U.S. at 732-36. In introducing minimum contacts, the *International Shoe* Court had hoped to provide a theoretical justification for subjecting foreign corporations to the jurisdiction of courts in states where they operated. In the seventy years since *Pennoyer*, the economy had so greatly expanded that corporations were no longer mere creatures of the state in which they were headquartered, but were carrying on activities in many states. *See* note 40 *infra*.

In *International Shoe*, suit was initiated against a Delaware corporation in Washington state court for unpaid contributions to the state unemployment compensation fund. From 1937 to 1940, the corporation had salespersons in Washington who were authorized only to exhibit samples and solicit orders. The orders were filled by mail directly from the home office. The corporation maintained no office in the state. Justice Stone, writing for the Court, found due process to require only that the defendant have certain minimum contacts with the state so that the "maintenance of the suit [would] not offend 'traditional notions of fair play and substantial justice.' " 326 U.S. at 316 (citing Milliken v. Meyer, 311 U.S. 457, 463 (1940)). Further, the Court required that such a due process analysis be based, not upon the quantity, but upon the "quality and nature of the activity" of the defendants within the state. *Id.* at 319. Applying these standards, the Court deemed the Delaware corporation amenable to suit in Washington. Due to the defendant's interstate business, suit in Washington would not have been unreasonable; because of the corporation's contacts in Washington, notice of suit in that state would be actual; and taking into account the estimated inconveniences to the parties, suit in Washington would not impose too great a burden on the Delaware-based corporation. *Id.* at 317-21.

In his dissent, Justice Black capsulized the majority's minimum contacts criteria into one word, "reasonableness." *Id.* at 323-26 (Black, J., dissenting). Such an elastic standard, he felt, would not suffice to provide a reliable measuring rod needed to invalidate laws as contrary to the fourteenth amendment. Justice Black feared that future courts would use the words "fair play," "justice," and "reasonableness" as yardsticks to strike down laws, without realizing that they were intended only to describe the concept of natural justice integral to the Constitution. *Id.* at 325-26. Nonetheless, the minimum contacts standard has survived. *See* cases discussed in note 25 *infra*.

25. In McGee v. International Life Ins. Co., 355 U.S. 220 (1957), the Supreme Court heralded further jurisdictional expansion in holding that a single act within the state would be sufficient contact if it gave rise to the cause of action in that case. Suit was maintained in California by the beneficiary of a life insurance policy issued by a Texas corporation to plaintiff's son, a California resident. The only contact defendant had with the forum was the mailing of one insurance policy to the resident plaintiff. *McGee* offered a more liberal approach than *International Shoe* in determining jurisdiction over a nonresident. The Court held that it was reasonable to exercise jurisdiction over the nonresident insurer because: (1) the forum state had an interest in providing effective means of redress for its citizens when their insurers refused to pay claims; (2) the insurer could foresee that its acts in Texas would have an affect in the forum state; and (3) the forum's situs was not so inconvenient that the defendant insurer would be unduly burdened. *Id.* at 222-24. The Court concluded by discussing the trend toward expanding the states' jurisdictional powers with the increasing ease of modern travel. *Id.* at 222-23.

In Hanson v. Denckla, 357 U.S. 235 (1958), decided during the same term as *McGee*, the Supreme Court arrived at a quite dissimilar result. In *Hanson*, the settlor, domiciled in Pennsylvania, executed an inter vivos trust naming a Delaware trust company as trustee. The settlor then moved to Florida and there executed his will. Beneficiaries under the will brought suit in Florida to declare the trust invalid. The Court held, however, that Florida had no jurisdiction over the trustee, since there had been no voluntary act between the trustee and Florida. The trustee had no office in Florida, transacted no business there, and did not solicit either in person or by mail in the state; therefore, the requisite minimal contacts were absent. *Id.* at 251-52. Thus, in its interpretation of *International Shoe*, *Hanson* imposed another stumbling block for state courts in obtaining jurisdiction over a nonresident. It held that there must "be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State thus invoking the benefits and protections of its laws." *Id.* at 253.

In announcing purposeful availment by a defendant as a requirement of *in personam* jurisdiction, the Court curtailed the jurisdictional expansion initiated by both *International Shoe* and *McGee*. After *Hanson*, a court must look for a voluntary act on the part of a defendant to the exclusion of consideration of general reasonableness. Indeed, the rule laid down in *International Shoe* was much broader than the *Hanson* interpretation. *See* Comment, *Tortious Act as a Basis for Jurisdiction in Products Liability Cases*, 33 FORDHAM L. REV. 671, 682-85 (1965). Justice Black, who dissented in *International Shoe*, also dissented in *Hanson* but for different reasons. He stated the standards that should have been used in *Hanson* were those central to a discussion of reasonableness. 357 U.S. at 260-62 (Black, J., dissenting). He asserted that the Court instead based its denial of jurisdiction on the outmoded principles of *Pennoyer*. *Id.*

Twenty years later, the Court again commented on the proper application of the minimum contacts test. In Shaffer v. Heitner, 433 U.S. 186 (1977), the plaintiff, a nonresident of Delaware, owned one share of stock in the Greyhound Corporation, a business incorporated in Delaware with its principle place of business in Arizona. He filed action in Delaware alleging mismanagement on the part of Greyhound, its officers and directors. The Delaware trial court asserted jurisdiction based on the statutory presence of property owned by over twenty-one of the individual defendants, all nonresidents, by sequestering their property in the state. Delaware courts could compel the appearance of a nonresident defendant by seizing his or her property, and if the defendant failed to appear, his or her property could be sold to satisfy the plaintiff's demands. The property sequestered consisted of 82,000 shares of Greyhound stock. Although none of the stock certificates were located in Delaware, they were considered to be in the state by virtue of a Delaware statute that makes Delaware the situs of ownership of all stock

but have not significantly done so. Initially, under *International Shoe's* minimum contacts test, due process was satisfied through an analysis of the "quality and nature" of the defendant's activity within the forum state.[26] The due process requirement was met if the defendant's contacts with the state made it reasonable to require defense of the particular suit in that state.[27] Later, *Shaffer v. Heitner*[28] held that paramount to an analysis of whether

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in Delaware corporations. The defendants' motion to quash service of process, which was denied, contended that the sequestration did not afford them due process and that they did not have sufficient contact with Delaware under the minimum contact rule of *International Shoe*. The United States Supreme Court reversed the lower court's decision. It held that personal jurisdiction over the nonresidents should not have been assumed because a state's territorial power over property is, by itself, an insufficient basis for assuming jurisdiction. 433 U.S. at 213. The Court then reaffirmed the *Hanson* requirement that the defendant must purposefully avail himself of the benefits of the forum state's laws and concluded that the defendants' acts were insufficient to confer jurisdiction. *Id.* at 216.

Kulko v. Superior Court of Cal., 436 U.S. 84 (1978), is the Supreme Court's latest attempt to delineate the proper application of minimum contacts. Kulko and his ex-wife had negotiated a separation agreement in New York, providing that their children would spend the school year in New York with appellant and that the appellant would pay child support during the children's vacations in California with their mother. In 1972, after signing the agreement, Mrs. Kulko flew to Haiti to obtain a divorce decree. The next year the younger child decided to spend the school year with her mother and vacations with her father. The appellant consented and this arrangement continued without added support payments. In 1976, the older child, desiring the same arrangement, also moved to California, whereupon Kulko's former wife brought suit in California to declare the Haitian divorce a valid California judgment, to award her custody and to increase the support payments. The California Supreme Court held that Kulko was subject to California's jurisdiction because by allowing his children to move to California he caused a foreseeable effect in the forum, and derived an economic benefit from California law. The United States Supreme Court reversed, holding that the acquiescence of a divorced father, who is a New York resident, to a daughter's desire to live with her mother did not constitute purposeful availment of California's laws and therefore did not confer jurisdiction over the divorced father in California courts. *Id.* at 94. The Court pointed to basic considerations of fairness in determining New York to be the proper forum. *Id.* at 97-98.

26. 326 U.S. at 319. The Court specifically denounced a mechanical test. In the past, the Court noted, a single act of a corporation had not been thought to be sufficient to confer jurisdiction, while other acts—"because of the quality and nature and the circumstances of their commission"—would be sufficient to bring a corporation within a state's jurisdiction. *Id.* at 318. The Court also stated that a single or isolated act would not be sufficient to confer jurisdiction over a nonresident defendant in a suit "unconnected" with the activity in that state. *Id.* at 317. This statement implies that if a single act is connected with the cause of action generated, then a suit based on that one isolated incident in the forum state could establish valid jurisdiction under *International Shoe*.

27. *Id.* at 317. In order to determine whether suit away from home was reasonable, the Court stated that an estimate of the inconveniences that would result to the corporation would be relevant. *Id.*

28. 433 U.S. 186, 204 (1977). The Court stated that the central concern in an inquiry into personal jurisdiction is an analysis of the relationship among the parties. The majority specifically stated that nothing in its opinion is to be taken to the contrary. *Id.* at 204 n.20. Moreover, the *Shaffer* Court recognized that the *Hanson* Court's statement about restrictions on state court jurisdiction being "a consequence of territorial limitations on the power of the respective States," simply reiterated that the states are defined by their geographical boundaries. *Id. See generally* Note, *State Court Jurisdiction Founded on Territorial Power Denies Due Process to Non-Resident Defendants*—Shaffer v. Heitner, 27 DEPAUL L. REV. 447 (1977).

minimum contacts are present was a balancing of the relationship among the defendant, the forum and the litigation. Nonetheless, in spite of the significant interests of the state and the plaintiff, *Kuklo v. Superior Court of California*[29] held that there must exist a sufficient nexus between the defendant and the forum state to make it reasonable and fair to compel the defendant to conduct his or her defense in that state. *Hanson v. Denckla*[30] further specified that a unilateral act[31] of the plaintiff could not fulfill the requirement of contact between the nonresident defendant and the forum state.[32] Rather, defendants alone must "purposefully avail"[33] themselves of the privilege of conducting activities within a state before that state could exercise jurisdiction over them.[34] Further, application of purposeful availment will necessarily vary according to the quality and nature of the defendant's activity.[35]

Until *World-Wide Volkswagen*, the Court had not addressed the question of what would constitute minimum contacts in a products liability suit. Indeed, former cases had defined minimum contacts only as related to a state's jurisdiction over corporations or individuals who had become involved

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29. 436 U.S. 84, 91-92 (1978). *Kulko* further stated that any standard based upon reasonableness, like the *International Shoe* test of minimum contacts, is not susceptible of mechanical application. The facts of each case must be examined to determine whether the requisite "affiliating circumstances" are present. *Id.* at 92. The Court neglected, however, to define what circumstances constituted sufficient affiliation, instead citing *Hanson* which had also failed to enunciate the criteria for affiliating circumstances. *See* note 41 *infra*. *See generally* Note, *The Long-Arm Reach of the Courts Under the Effect Test After Kulko v. Superior Court*, 65 VA. L. REV. 175 (1979).

30. 357 U.S. 235 (1958).

31. The term "unilateral activity" was coined by the *Hanson* Court, and while not defined, initiated an additional standard of contact to be met by a foreign defendant before jurisdiction could be maintained. It appears that the Court meant some act neither engaged in nor contemplated by any party other than the acting party. Many cases after *Hanson* implemented the unilateral act test, including *World-Wide Volkswagen*. 444 U.S. at 298.

32. 357 U.S. at 253.

33. *Id.* The *Hanson* Court also coined the term "purposeful availment." The idea, however, originated in *International Shoe*, where the Court stated that due process does not allow a state to make a judgment against an individual "with which the state has no contacts, ties, or relations. 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." 326 U.S. at 319 (citations omitted). The Court went on to say that if a corporation does so benefit from that privilege, obligations to respond to suit within that state could hardly be held unreasonable. *Id.* at 320. The *International Shoe* Court did not specify that the defendant's act must be purposeful, stating rather that the nature of the act must render suit in that forum reasonable. *Id.*

34. 357 U.S. at 253.

35. *Id.* The *Hanson* Court did not specify how the adoption of purposeful availment would vary; rather, it inserted the somewhat nebulous factors of "quality and nature" of the defendant's activities to assuage the harshness of the new standard, similar to the manner in which the *International Shoe* Court utilized those same terms. *See* International Shoe Co. v. Washington, 326 U.S. at 318-19.

in a contract or property dispute.[36] These decisions, however, offered little guidance with respect to state court jurisdiction over tortfeasors.[37]

In *World-Wide Volkswagen*, the Court reduced the dispute to a single issue: whether minimum contacts could be found and jurisdiction could be based upon one isolated occurrence, an automobile collision.[38] After analyzing the facts, the Court found that World-Wide Volkswagen Corporation had carried on no business activity whatsoever in the State of Oklahoma[39] and that the only contact World-Wide had had with the forum state was its connection with the Robinsons' automobile accident. Applying the standard of minimum contacts,[40] the Court found none of the "affiliating circumstances"

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36. The Supreme Court cases dealing with various topics in the context of nonresident jurisdiction are: Kulko v. Superior Court of Cal., 436 U.S. 84 (1978) (child support); Shaffer v. Heitner, 433 U.S. 186 (1977) (shareholder's derivative suit); Hanson v. Denckla, 357 U.S. 235 (1958) (corpus of a trust); McGee v. International Life Ins. Co., 355 U.S. 220 (1957) (action by beneficiary of a life insurance policy); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952) (suit did not originate in forum state, yet jurisdiction was maintained because the corporate president was served in that state); Travelers Health Ass'n v. Virginia, 339 U.S. 643 (1950) (controversy surrounding state permit laws in regard to insurance policies); International Shoe Co. v. Washington, 326 U.S. 310 (1945) (suit regarding unpaid contributions to state unemployment compensation fund).

37. Of the many lower court cases reaching varying results in this area of the law, the Supreme Court singled out four decisions that conflict with the Oklahoma Supreme Court's *World-Wide Volkswagen* holding. 444 U.S. at 291 n.9. Those four cases are: Granite States Volkswagen, Inc. v. District Court, 177 Colo. 42, 492 P.2d 624 (1972) (New Hampshire automobile seller and manufacturer were not subject to the jurisdiction of a Colorado court where injury occurred in Colorado as a result of an allegedly defective automobile sold to plaintiff in New Hampshire); Tilley v. Keller Truck & Implement Corp., 200 Kan. 641, 438 P.2d 128 (1968) (Colorado truck dealer was not subject to the jurisdiction of Kansas where truck wheel broke off causing injury to the Kansas resident); Pellegrini v. Sachs & Sons, 522 P.2d 704 (Utah 1974) (California automobile dealer was not subject to the jurisdiction of a Utah court when injury resulted in Utah because of alleged dealer negligence); Oliver v. American Motors Corp., 70 Wash. 2d 875, 425 P.2d 647 (1967) (Oregon automobile dealer and manufacturer were not subject to the jurisdiction of the State of Washington for injuries incurred by parties who were overcome by carbon monoxide gas while riding in the auto in Washington).

38. 444 U.S. at 295.

39. *Id.* World-Wide did not sell products in Oklahoma, advertise in the local media, nor appoint an agent for service of process. Oral arguments revealed no evidence that any car sold by the respondents had ever entered Oklahoma except for the petitioner's. *Id.* at 289.

40. *Id.* at 295. At the beginning of its opinion, the Court traced the impact of the fourteenth amendment's due process clause on diversity actions. According to *World-Wide Volkswagen* and prior Supreme Court cases, due process requires that the defendant fulfill certain minimum contacts with the forum state for assertion of jurisdiction not to violate established conceptions of "fair play and substantial justice." *Id.* at 292. The minimum contacts test, claimed the Court, has two functions. First, the finding of requisite contacts protects the defendant against the burdens of litigating in a remote or inconvenient forum. The Court substantiated this purpose through reference to *International Shoe* and its progeny, culminating in the relaxed standard enunciated in *McGee*. *See* note 25 *supra*. *McGee* yielded to the tenor of the times in holding that contemporary modes of transportation and communication had made it much simpler for a defendant to defend himself or herself in a foreign state where he or she is involved in

necessary to a finding of jurisdiction.[41]

Respondents argued that due to the inherent mobility of the automobile, petitioners could have *foreseen* the possibility of contact with the State of Oklahoma.[42] The Court responded, however, that foreseeability has never been a sufficient standard for personal jurisdiction under the due process clause.[43] It reinforced this position through a review of recent cases,[44]

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economic activity. 355 U.S. at 223. Therefore, it would appear, based on today's multifaceted network of transportation, that a nonresident party could be forced to litigate anywhere in the country without offending *International Shoe's* standard of reasonableness.

The second function of minimum contacts, according to the *World-Wide Volkswagen* Court, implicates the notion of interstate federalism embodied in the Constitution. 444 U.S. at 293. Minimum contacts acts to preclude state courts from reaching beyond their territorial limits. *Id.* Under this rationale, the Court emphasized that state lines are *not* irrelevant for jurisdictional purposes. *Id.* In the final balancing of these two underlying tenets of minimum contacts, the Court reasoned that however minimal the burden of defending in a foreign court, the due process clause may divest a state of its power to render a valid judgment based upon considerations of interstate federalism. *Id.* at 294. The Court cited *Hanson* for this proposition. It stated that even though the requirements for personal jurisdiction over nonresidents have become more flexible, it would be a mistake to assume that this trend has precipitated the demise of all restrictions. Rather, the Court stated that "[t]hose restrictions are *more* than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Id.* (quoting Hanson v. Denckla, 357 U.S. at 251).

41. 444 U.S. at 295. The phrase "affiliating circumstances," used in several of the leading cases including *Kulko*, originated in *Hanson*, 357 U.S. at 246. The *Hanson* Court never defined affiliating circumstances, and yet the *World-Wide Volkswagen* Court found an absence of such in the facts of the case. *Hanson* quoted the phrase from E. SUNDERLAND, THE PROBLEM OF JURISDICTION, SELECTED ESSAYS ON CONSTITUTIONAL LAW 1270, 1272 (1955) (originally published at 4 TEX. L. REV. 429 (1926)).

In setting forth the historical bases for jurisdiction over the person and thing, Professor Sunderland recounted the criteria that England employed in much the same situation. Ownership of property alone was not sufficient, however, ownership and attachment by the courts would invoke jurisdiction. Aside from *in rem* jurisdiction, "there are other possible *affiliating circumstances*, better calculated to connect the defendant with the local courts." 4 TEX. L. REV. 429, 441 (1926) (emphasis added). Sunderland then described England's practice under Order XI, Rule 1, which provides for service out of jurisdiction whenever the action is based upon a breach of contract which was (1) made within the jurisdiction; (2) made by an agent in the jurisdiction; (3) by its terms governed by English law; or (4) broken within the jurisdiction. Clearly, this English view is analogous to the scheme established by our *International Shoe* doctrine and long-arm statutes. Therefore, it is not unexpected that Professor Sunderland, writing this article almost 20 years prior to *International Shoe*, prophesized that two tests will suffice for every jurisdictional case: convenience and fairness. *Id.* at 439-49. Indeed, according to Sunderland, those affiliating circumstances, if applicable at all to a tort case, are to be measured according to the English theory of due process: fairness and reasonableness. *Id.* at 442.

42. 444 U.S. at 295.

43. *Id.*

44. *Id.* at 296. The Court cited Erlanger Mills Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502 (4th Cir. 1956) (a local California tire retailer did not have to defend in Pennsylvania where the blowout occurred), Reilley v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205 (D.N.J. 1974) (a Wisconsin seller of a defective automobile jack had to defend in a distant court for damages caused in New Jersey), and Uppgren v. Executive Aviation Serv., Inc., 304 F. Supp. 165 (D. Minn. 1969) (Florida concessionaire did not have to defend in Alaska where the injury occurred).

hypothesizing that if foreseeability was the criterion, every manufacturer or distributor who puts a product into the stream of commerce would in effect appoint the product itself as agent for service of process.[45] Further, the Court analogized respondent's reasoning to the outmoded rule of *Harris v. Balk:*[46] that a debt clung to a debtor and followed wherever the debtor went. The *World-Wide Volkswagen* Court, anxious not to comport with *Harris*, held that even though an automobile is mobile in nature, it is no different than other chattels. For purposes of due process, the Court concluded, the mere presence of a product in a state does not constitute presence of the seller in that state.

Justice White's majority opinion relied exclusively on the concept of purposeful availment in rejecting the respondent's foreseeability argument.[47] The Court examined whether or not World-Wide Volkswagen Corporation reasonably should have anticipated litigation in an Oklahoma court. If the petitioner had purposefully availed itself of the laws of Oklahoma through direct or indirect marketing of its product in Oklahoma, then it would not be unreasonable to subject the petitioner to a products liability suit in Oklahoma. The Court, however, found such facts absent in *World-Wide Volkswagen.*[48] The record disclosed no marketing attempt at all on the part of the petitioner.

The Court conceded that it was foreseeable that the patrons of World-Wide Volkswagen would drive their automobiles to Oklahoma.[49] Nevertheless, in the absence of any purposeful act by the defendant which would have led to a degree of foreseeability of out-of-state litigation, the Court declared that the mere act of the respondents' drive into Oklahoma did not constitute contact with the state sufficient to invoke jurisdiction. Therefore, *World-Wide Volkswagen*, in applying the test of minimum contacts to a products liability suit, has precluded states from extending jurisdiction over nonresident sellers in products liability actions unless that seller has personally sought a market for its product in that state.

CRITICISM

In applying the minimum contacts test to the facts of *World-Wide Volkswagen*, the Court accurately, albeit selectively, followed prior case law. In adopting a restrictive view of minimum contacts, the Court digressed to the old standard of *Pennoyer v. Neff*,[50] basing its jurisdictional exercise upon the actual presence of the defendant in the state, rather than upon the fictional presence doctrine of *International Shoe*.[51] The *World-Wide Volkswa-*

45. 444 U.S. at 296.

46. 198 U.S. 215 (1905). The Supreme Court overruled this case in Shaffer v. Heitner, 433 U.S. 186 (1977).

47. 444 U.S. at 297. *See* notes 30-35 and accompanying text *supra*.

48. 444 U.S. at 298.

49. *Id.*

50. 95 U.S. 714 (1877). *See* note 24 *supra*.

51. *Pennoyer* based jurisdiction upon the principles of consent and presence. Although these terms have evolved through case law, they remain the underlying policy for determining juris-

gen Court undertook a quantitative analysis in finding no contacts between the nonresident defendant and forum state, and thereby avoided consideration of the totality of contact as measured by the quality and nature of those connections. Additionally, the Court's emphasis on purposeful availment to establish notice to the defendant was misplaced in light of the mobile nature of the product involved. Finally, the majority avoided discussion of the interests which both the forum state and plaintiff have in adjudicating this matter in Oklahoma.

The Court, relying exclusively on the quantum of contact between the State of Oklahoma and World-Wide, misapplied the *International Shoe* standard of minimum contacts. Emphasizing that the only nexus between the two was one automobile accident, the Court found that the defendant lacked sufficient minimum contacts to justify personal jurisdiction within the parameters of due process.[52] The majority's analysis neglected, however, to consider the quality and nature of the incident. *International Shoe's* minimum contacts test is not based upon the defendant's commission of a certain number of acts, but rather upon the nature of the defendant's act.[53] *Shaffer v. Heitner*[54] reiterated and reaffirmed this theory, stating that quantitative evaluations could not resolve the question of reasonableness in a due process analysis of jurisdiction. Most recently, *Kulko v. Superior Court of California*[55] also conceded that the essential inquiry in a determination of minimum contacts was whether the quality and nature of the defendant's acts made it reasonable and fair to require him or her to defend in that state. Nonetheless, the *World-Wide* Court failed to take into account the grave nature of the sale of an allegedly defective automobile, thereby thwarting the true inquiry in a due process analysis.

An example of such an examination can be found in the Illinois Supreme Court decision of *Gray v. American Radiator & Sanitary Corp.*,[56] which explained the necessity of evaluating the factors of quality and nature in a products liability action. *Gray* held that an Ohio manufacturer of a water heater installed in Pennsylvania, which in the course of commerce was sold to an Illinois consumer, was subject to the jurisdiction of Illinois. The Illinois court stated that they did not think that "doing a given volume of business [was] the only way in which a nonresident [could] form the required connection with [Illinois]."[57] Rather, a substantial connection is established if the product is sold in contemplation of use in other states.[58] Although both *Gray* and *World-Wide Volkswagen* relied upon *International Shoe*, *Gray* re-

diction. Hanson v. Denckla, 357 U.S. 235 (1958), by requiring that the defendant "purposefully avail itself" (consent) of the "privilege of conducting activities within the forum state" (presence), has ultimately acknowledged that *Pennoyer* is still with us. *See* Note, *Hutson v. Fehr Bros., Inc.: A Step in the Wrong Direction*, 33 ARK. L. REV. 553, 555 (1979).

52. 444 U.S. at 295-98.

53. *See* note 24 *supra*.

54. 433 U.S. 186, 204 (1977).

55. 436 U.S. 84, 92 (1978).

56. 22 Ill.2d 432, 176 N.E.2d 761 (1961).

57. *Id.* at 438, 176 N.E.2d at 764.

58. *Id.* at 442, 176 N.E.2d at 766.

jected quantity as the earmark of minimum contacts and instead considered the nature of the incident involved.

In addition, the bulk of the *World-Wide* Court's decision rests upon its application of the test of purposeful availment to the facts of the case. The Court's interpretation of purposeful availment is correct;[59] nonetheless, it was misplaced in a discussion of jurisdiction over a seller of an allegedly defective auto. *Hanson v. Denckla*[60] held that the application of the minimum contacts rule will vary according to the quality and nature of the defendant's activity, but that it is essential that the defendant perform some act by which he or she purposefully avails himself or herself of the privilege of conducting business within the forum state.[61] Subsequent to *Hanson*, both *Shaffer* and *Kulko* implemented the new test in denying jurisdiction when the defendants in both cases were found not to have had reasonable notice of possible litigation in the forum states.[62] A similar application of the purposeful act test to a products liability action, however, seems inapposite where the relation between the seller or manufacturer and the product becomes attenuated as a result of the product's progression through the stream of commerce. "In view of the fortuitous route by which products enter any particular state,"[63] the purposeful availment concept cannot be applied properly in a products liability case.[64] As the Arizona Supreme Court noted in *Phillips v. Anchor Hocking Glass Corp.*,[65] the purposeful activity language of *Hanson*, construed literally, would revitalize the implied consent theory overruled by *International Shoe*,[66] and undercut the utility of the minimum contacts test established therein. *Phillips* held that jurisdiction could be extended over an Ohio corporation for injuries sustained by the plaintiff from a defective baking dish.[67] The Arizona court stated that the

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59. 444 U.S. at 297-98. One interpretation of *Hanson's* purposeful act test is that it should be confined to its facts and not be applied to all cases involving jurisdiction. "A strict application of *Hanson*, a trust case, to product liability situations would limit the test of reasonableness where breadth is most needed." Comment, *Tortious Act as a Basis for Jurisdiction in Products Liability Cases*, 33 FORDHAM L. REV. 671, 685 (1965). Another commentator noted that the *Hanson* decision becomes less meaningful when dealing with a products liability situation because, as a corporation loses control over its product through the circuitous route of commerce, fairness under *International Shoe* must be considered under a broader interpretation than that of *Hanson*. Note, *Hutson v. Fehr Bros., Inc.: A Step in the Wrong Direction*, 33 ARK. L. REV. 553, 562-63 (1979).

60. 357 U.S. 235 (1958).

61. *Id.* at 253.

62. Shaffer v. Heitner, 433 U.S. 186, 216 (1977) (merely because the appellants bought stock in a corporation that was formed in Delaware, "it [would] strain reason . . . to suggest that [they] 'impliedly consent[ed]' to [Delaware jurisdiction] . . . on any cause of action"); Kulko v. Superior Court of Cal., 436 U.S. 84, 94 (1978) (appellant's mere acquiescence to his daughter's wish to live in California does not constitute notice of suit in that state).

63. Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 256, 413 P.2d 732, 735 (1966).

64. *Id.*

65. 100 Ariz. 251, 413 P.2d 732 (1966).

66. *Id.* at 256, 413 P.2d at 735.

67. *Id.* at 259-61, 413 P.2d at 737-39.

degree of foreseeability by the seller of the locale of its product's consumption is one measure of fairness contemplated by *International Shoe* upon which jurisdiction should be based rather than upon the purposeful activity language of *Hanson*. Other fairness factors, according to *Phillips*, are the nature and size of the defendant's business, and the economic independence of the plaintiff.[68]

Foreseeability, and not purposeful availment, has also been found to be a necessary component in determining jurisdiction in automobile products liability actions.[69] These courts have reasoned that it is not unreasonable to assume that a car seller or manufacturer should have anticipated that the car sold would come to be used in other states.[70] Therefore, in light of the normal usage of the product, a car dealer or manufacturer should be prepared to defend wherever the defect surfaces. Nevertheless, instead of recognizing the importance of considering the nature of the product involved, thereby giving significance to the issue of foreseeability, the *World-Wide* Court deemed purposeful availment the deciding factor.[71] Under this analysis, the indirect flow of a product through the stream of commerce does not constitute sufficient control by the defendant to warrant personal jurisdiction.[72] In essence, the Court decided that only a direct sale of automobiles to a state's consumers or a sale through an agency relationship would constitute "purposeful availment" by the defendant. Thus, the Court apparently found that World-Wide Volkswagen sold a product which became the subject of a suit in Oklahoma as a result of mere happenstance.[73]

The Court should have found, based on the intended use of an automobile, that it was foreseeable that a defect in manufacture could have surfaced anywhere in contiguous states. Justice Marshall, in dissent, noted

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68. *Id.* at 260, 413 P.2d at 738.

69. Several cases since *Hanson* have adopted this theory and rejected the purposeful availment test in a products liability action. The exercise of jurisdiction has been upheld in Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205 (D.N.J. 1974) (Wisconsin automobile dealer held liable in New Jersey for injuries resulting from a faulty jack which the dealer had sold to the plaintiff in Wisconsin); Roche v. Floral Rental Corp., 95 N.J. Super. 555, 232 A.2d 162 (1967) (New York corporation installed a refrigerator body in a truck owned by a company doing business in New York; the truck subsequently traveled to New Jersey and was the subject of an accident in which the refrigerator body's design was a contributing factor).

Where it is reasonably foreseeable that a product will enter the flow of commerce, the manufacturer or distributor of that product should expect to be sued in any state where the product is alleged to have caused injury. *See* Note, *Jurisdiction: Construction of "Tortious Act" In New York's Long Arm Statute*, 66 COLUM. L. REV. 199, 207 (1966).

70. Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205, 1207 (D.N.J. 1974); Roche v. Floral Rental Corp., 95 N.J. Super. 555, 564, 232 A.2d 162, 167 (1967).

71. 444 U.S. at 298-99.

72. The indirect flow of commerce theory has been rejected by several lower courts since the *Hanson* decision. *See* note 37 *supra*.

73. 444 U.S. at 298-99. Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205, 1207 (D.N.J. 1974), emphasized that "[a]utomobiles are items that by their nature, and by the driving habits of Americans, commonly traverse long distances." *Id.* In light of this view, *Reilly* held that a dealer should be prepared to defend anywhere in the nation. *Id.*

his confusion with the majority's assertion that if a product was purchased in the chain of distribution, a state could exercise jurisdiction over all members of that chain, but if a product entered a state through its intended use, such jurisdiction would not be allowed.[74] Justice Blackmun also voiced concern, in his dissenting opinion, over the majority's lack of concern for the "nature of the instrumentality under consideration."[75] In spite of contrary logic and reasoning, the Court submitted *World-Wide Volkswagen* to the purposeful act test of *Hanson*.[76] Therefore, until further products liability litigation is presented to the Court, the standard of purposeful availment, not foreseeability, will determine jurisdiction.

A third flaw in the *World-Wide Volkswagen* Court's reasoning resulted in an incomplete analysis of minimum contacts; one that did not balance the interests of all of the parties involved—the defendant, plaintiff and forum state. A basic tenet of minimum contacts is embodied in the consistent consideration afforded the relations between the parties.[77] Nevertheless, this concept eluded any type of analysis in *World-Wide Volkswagen*.[78] *International Shoe* recognized that the importance of defendant contact would diminish if increased significance were afforded other considerations,[79] such as the interests of the state and parties to litigate in a particular forum, and the actual burden to the defendant of defending the suit in that forum.[80] Indeed, the *World-Wide Volkswagen* majority directly addressed these issues as they related to a pure due process analysis in the first half of its opinion.[81] Nevertheless, the Court omitted application of these factors to the facts of the case.[82] Had the *World-Wide* Court balanced the competing interests, it would have recognized that the State of Oklahoma has a paramount interest in protecting its citizens on its highways,

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74. 444 U.S. at 315-16 (Marshall, J., dissenting). Justice Brennan questioned the majority's distinction between chain of distribution and intended use as ways a product arrives in a state. "In each case the seller purposefully injects the goods into the stream of commerce and those goods predictably are used in the forum State." *Id.* at 307 (Brennan, J., dissenting).

75. *Id.* at 318 (Blackmun, J., dissenting).

76. *Id.* at 297-98.

77. Kulko v. Superior Court of Cal., 436 U.S. at 92 (the Court stated that the interests of the forum State and the plaintiff are to be considered in an analysis of minimum contacts). Justice Brennan criticized the Court for its excessive focus on the defendant and his relation to the forum, and its consequent disregard of the interests of the state and plaintiff. 444 U.S. at 300-01 (Brennan, J., dissenting).

78. 444 U.S. at 295-99. The majority specified that implicit in an analysis of reasonableness, which underlies minimum contacts, is a consideration of other relevant factors. Such factors, according to the Court, include the forum state's interest in adjudicating the matter and the plaintiff's interest in obtaining a convenient forum. *Id.* at 292. The *World-Wide* Court, however, neglected to apply these factors to the case at bar.

79. 326 U.S. at 316-21.

80. *Id. See* Kulko v. Superior Court of Cal., 436 U.S. at 97-98; Shaffer v. Heitner, 433 U.S. at 211 n.37; McGee v. International Life Ins. Co., 355 U.S. at 220, 223.

81. *See* note 40 *supra*.

82. 444 U.S. at 295-99.

just as the Court in *McGee v. International Life Ins. Co.*[83] determined that the State of California has a similar interest in providing effective means of redress for its residents. Similarly, *Mullane v. Central Hanover Bank & Trust Co.*[84] held that the state's interest in determining the interests of claimants in trust law is rooted in custom so as to establish it beyond a doubt. Additionally, *Kulko, Shaffer* and *Travelers Health Ass'n v. Commonwealth of Virginia*[85] all espoused the identical view.[86] Although these Supreme Court cases also weighed the interest of the plaintiff in seeking a convenient forum,[87] *World-Wide Volkswagen* disregarded the plaintiff's interest, and instead opted to allow the defendant forum convenience. Yet, World-Wide Corporation, as a large multi-national corporation, was in a much better financial position to move its litigation than were the injured plaintiffs. Pursuing litigation in a distant forum involves the cost of moving witnesses and evidence, and quite possibly could prevent a consumer from bringing suit.[88] Nevertheless, *World-Wide Volkswagen* failed to incorporate into its reasoning the balancing of interests that heretofore exemplified the concept of reasonableness, a concept fundamental to an analysis of minimum contacts.

IMPACT AND ALTERNATIVES

Ostensibly, the Supreme Court has resolved the lower court conflict over application of *International Shoe's* minimum contacts jurisdictional prerequisites to products liability cases. As a result of its decision, a nonresident

83. 355 U.S. 220, 203 (1957). The *McGee* Court held that California had a manifest interest in providing its citizens a court in which to bring suit against foreign insurers refusing to pay claims. California, recognizing this interest, had enacted a statute subjecting foreign corporations to suit in California on insurance contracts with California residents. *Id.* at 224. Evidencing a similar concern for the protection of resident motorists from having to litigate accident claims in some distant jurisdiction, most states, including Oklahoma, have enacted non-resident motor vehicle statutes subjecting non-resident motorists to suit in local courts. Hess v. Pawloski, 274 U.S. 352 (1927). Such statutes have been upheld. *Id.* at 356. The *Hess* Court held that a state may, in the public interest, make and enforce regulations that promote care on the part of all who use that state's highways. *Id.* at 356. Therefore, Oklahoma and all other states have an interest in protecting residents and nonresidents on their highways.

84. 339 U.S. 306, 313 (1950).

85. 339 U.S. 643 (1950).

86. *Id.* at 648; Shaffer v. Heitner, 433 U.S. at 207-08; Kulko v. Superior Court of Cal., 436 U.S. at 100.

87. *Id.* at 648; Shaffer v. Heitner, 433 U.S. at 204; Kulko v. Superior Court of Cal., 436 U.S. at 91.

88. World-Wide Corporation was in a much better position to bear the cost of litigation than were the plaintiffs. Beyond this, the defendants were also insured for loss anywhere in the country. They were fully prepared for multi-state litigation. Respondent's Brief for Certiorari at 17, World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980). In addition to the expense factor, the respondents argued that other elements should have swayed jurisdiction to Oklahoma: (1) The accident occurred in Oklahoma; (2) the injuries were sustained in Oklahoma; (3) the law of Oklahoma should apply; (4) the witnesses to the accident were in Oklahoma; (5) the hospital records and the treating physician were in Oklahoma; and (6) the plaintiffs, at the time of the filing of the suit, were confined in a hospital in Oklahoma. *Id.* at 21-22.

automobile seller that does not purposefully do business in the forum state will remain judgment proof in that state. Further, by making it more difficult to secure *in personam* jurisdiction over a retailer, the Supreme Court has increased the likelihood that consumers will not utilize the courts as a means of redress.[89] Consequently, the defendant retailer will avoid much litigation while the consumer absorbs monetary loss and suffers physical distress. It also is clear from the Court's opinion that other products liability actions will be governed by the *World-Wide Volkswagen* rule.[90] Consequently, such an aftermath, while narrowing the states' jurisdictional powers, will only serve to benefit potentially culpable defendants.

Alternatively, the Court could have remedied these weaknesses in one of two ways. First, the Court could have adopted an expanded jurisdictional approach emphasizing the interests of the state and relative convenience of the parties.[91] Instead of basing jurisdiction on defendant-forum contact alone, the *World-Wide* Court could have given greater import to the interests of the state and plaintiff. Such a balancing of interests would serve to encourage both legitimate consumer litigation as inconveniences to the plaintiffs would be lessened, and state control in product regulation as the state would have an effective means of redress available to its citizenry.

A second alternative available to the Court would have been to categorize automobiles as a unique type of chattel because their mobile nature preempts use of the purposeful availment test.[92] In requiring a purposeful act on the part of the defendant, the Court is merely assuring notice to the defendant of possible out-of-state litigation. Recognizing the mobile nature of a car, however, an automobile dealer already has actual notice. In the instant case, the chattel involved was such that its removal to another state was not a remote possibility, but a substantial likelihood. The intended use of an automobile, unlike that of most personal chattels, gives rise to foreseeability on the part of the seller of the product's possible use in other states or adjacent countries.[93] An automobile dealer may not know that the buyer has resolved to take the car into a foreign state; nevertheless, the mere transfer of a vehicle contemplates its use on highways inside and outside of the state of purchase.

Adoption of a special jurisdictional category based either upon the mobile nature of the chattel or upon the degree of foreseeable multi-state use on the part of the seller could exempt the courts from attempting to apply the rule of purposeful availment.[94] Adopting a special category for automobiles

89. If plaintiff had not chosen Oklahoma's state court as his forum, he would have been left with the option of bringing suit in New York state court or in federal district court, if the matter in controversy exceeded the value of $10,000. *See* 28 U.S.C. § 1331 (1976).

90. 444 U.S. at 297-98.

91. *See* notes 77-88 and accompanying text *supra*.

92. *See* notes 59-76 and accompanying text *supra*.

93. *See* note 73 *supra*.

94. One commentator has suggested that the element of fairness of due process would be satisfied absent the *Hanson* test by eliminating strict application of the purposeful act test, and substituting either amenability to suit if (1) the product causes injury in that state; (2) the

would not necessarily alter the jurisdictional rules as to other products,[95] but would provide a proper forum for the wronged automobile purchaser. It would seem prudent then, to classify automobiles separately according to their mobile nature, instead of grouping all chattels into one aggregate. Apparently, the majority feared even the smallest of jurisdictional extensions in its adherence to the *Hanson* test.

The expanded jurisdictional approach offers a greater latitude to the Court in future litigation than does the automobile categorization approach. Nonetheless, both would serve to ameliorate the apparent injustices about to be served by *World-Wide Volkswagen* upon consumer-plaintiffs.

CONCLUSION

In *World-Wide Volkswagen*, the Supreme Court attempted to clarify the standard of minimum contacts in a products liability suit involving a seller and distributor. The Court—applying *International Shoe* and its hybrid, *Hanson*—determined that a state could not exercise personal jurisdiction over a nonresident seller of a product based upon the unilateral act of the purchaser.[96] Rather, the sellers must purposefully avail themselves of a state's privileges by conducting activities within that state before the state may constitutionally assert jurisdiction over an action for a tort occurring in that state.[97] If it had affirmed the lower court's holding that Oklahoma could entertain jurisdiction over a nonresident automobile dealer, the Supreme Court would have protected the interests of the states and rights of consumers. Instead, by attempting to arrive at a compromise between *International Shoe* and *Hanson*, the Court created an inequitable standard favoring defendant-sellers to be used in forthcoming products liability actions.

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defendant has consented to jurisdiction of that state; or (3) the defendant has purposefully established direct connections with the forum state. Cummins, *In Personam Jurisdiction Over Nonresident Manufacturers in Products Liability Actions*, 63 MICH. L. REV. 1028, 1031-32 (1964-65).

95. Non-mobile chattels would still fit under the present *International Shoe* doctrine; however, items associated with an automobile, such as tires, auto parts, trailers and the like, would be classified according to use. The degree of foreseeability would also be a factor in determining the proper forum.

The court in Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966), attempted to set forth guidelines for determining the proper jurisdiction for suit in products liability actions. Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966). The court said that fair play and substantial justice are satisfied if: (1) the cause of action involves local contacts which make it reasonably desirable from plaintiff's point of view that the case be tried at the designated forum; (2) the defendant has sufficient causal responsibility for the presence of the local contacts in the forum state to permit the conclusion that he has by his own volition subjected himself to answering for them there, and; (3) relevant public policy interests are served, or not disserved, by allowing the cause to be determined at that forum. *Id.* at 255, 413 P.2d at 734-35.

96. 444 U.S. at 298.

97. *Id.* at 298-99.