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The Long Arm Shrinks: The Supreme Court and the Problem of the Nonresident Defendant in World-Wide Volkswagen Corp. v. Woodson

Susan R. Harris

THE LONG ARM SHRINKS: THE SUPREME COURT AND THE PROBLEM OF THE NONRESIDENT DEFENDANT IN *WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON*

INTRODUCTION

In *World-Wide Volkswagen Corp. v. Woodson*,[1] the United States Supreme Court attempted to unravel one of the knottiest paradoxes of long-arm jurisdiction: When may a state court constitutionally obtain jurisdiction over a tortfeasor who at no time was physically present in that state, who had no contacts with that state, but whose product caused injury there?

As Justice Goldberg stated in *Rosenblatt v. American Cyanamid Corp.*,[2] the cases questioning the application of long-arm statutes did so where "the foreign defendant was never physically present in the forum state, and the tortious act there was unintentional."[3] Indeed, the issue was more than ripe for resolution, or at least guidance, long before the highway disaster that precipitated the litigation in *World-Wide*. The nation's courts have been divided in regard to the problem of the distant defendant whose contacts with the forum state amounted solely to the injury produced there by a product he sold to the plaintiff.

This article will explore the positions taken by various courts prior to the Supreme Court's decision in *World-Wide*. At the same time, this article will attempt to assess the implications of a decision which may change the face of jurisdiction in products liability actions.

I. THE DECISION

In September 1977, Kay Robinson, an ex-New Jersey resident, was driving with her two children to their new home in Arizona. While traveling through Oklahoma, the Robinsons' Audi was struck from behind by another vehicle. The Audi's gasoline tank ruptured, and the resulting fire spread to the passenger compartment, severely injuring Mrs. Robinson and the children.

The Robinsons brought suit in Oklahoma against the Audi's manufacturer, Volkswagenwerk Aktiengesellschaft; the importer, Volkswagen of America, Inc.; the regional distributor for Connecticut, New York, and New Jersey, World-Wide Volkswagen Corporation (World-Wide); and the retail dealer, Seaway Volkswagen, Inc. (Seaway).

1. 444 U.S. 286 (1980). For a further discussion of the case, *see* Woods, Pennoyer's *Demise: Personal Jurisdiction After* Shaffer *and* Kulko *and a Modest Prediction Regarding* World-Wide Volkswagen Corp. v. Woodson, 20 ARIZ. L. REV. 861, 907-13 (1978).

2. 86 S. Ct. 1 (stay denied) (Goldberg, J., in chambers), *appeal dismissed*, 382 U.S. 110 (1965).

3. *Id.* at 4.

The plaintiffs attempted to obtain Oklahoma jurisdiction over the defendants through two sections of the Oklahoma long-arm statute:

> (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:
>
> . . .
>
> (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 . . . .[4]

World-Wide and Seaway contended that the district court could not obtain jurisdiction over them since they had no minimal contacts with the State of Oklahoma.[5] Judge Woodson denied their motion to dismiss and the Oklahoma Supreme Court affirmed his ruling.[6]

Justice Barnes of the Oklahoma Supreme Court held that jurisdiction over World-Wide and Seaway was justified on the basis of section 1701.03(a)(4) of the Oklahoma long-arm statute.[7] The trial court, he concluded, could infer that World-Wide and Seaway derived "substantial revenue from goods used or consumed in this state,"[8] and hence, could be subjected to Oklahoma jurisdiction. The rationale was that the defendants could foresee the plaintiffs' Audi being driven in or through Oklahoma during the course of its mechanical life, and thus, because of the retail value of the automobile, the defendants derived substantial revenue from cars used in Oklahoma.[9]

The United States Supreme Court reversed the Oklahoma Supreme Court's ruling. Justice White, speaking for the Court, asserted that the record was devoid of "those affiliating circumstances that are a necessary predicate to any exercise of state court jurisdiction."[10] The Supreme Court decided, in effect, that basing jurisdiction on a single injury inflicted in the forum state by a product sold elsewhere violated the due process clause of the fourteenth amendment.

II. THE BACKGROUND OF *WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON*

A. International Shoe v. Washington

World-Wide represents another chapter of the minimum contacts saga

4. OKLA. STAT. ANN. tit. 12, § 1701.03(a)(3), (4) (West 1980). A corporation is deemed to be a person for the purposes of the Oklahoma long-arm statute. *See id.* § 1701.01.

5. 444 U.S. at 289.

6. World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351 (Okla. 1978).

7. OKLA. STAT. ANN. tit. 12, § 1701.03(a)(3), (4) (West 1980).

8. World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351, 354 (Okla. 1978).

9. *Id.* at 354-55.

10. 444 U.S. at 295. The Court based its decision on the fact that the automobile accident was the petitioner's sole contact with the State of Oklahoma. The petitioner had conducted no sales, services, advertising, or other business activities in Oklahoma, nor had it availed itself of the privileges and benefits of Oklahoma law. *Id.*

that began with *International Shoe v. Washington*.[11] *International Shoe* introduced the modern due process requirements in regard to obtaining jurisdiction over a non-resident defendant:

> [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 the 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*.[12]

In recent years, the Supreme Court has vigorously opposed state court attempts to restrict the application of the "minimum contacts" test.[13] In *Shaffer v. Heitner*,[14] where the principles of *International Shoe* were extended to cover *quasi in rem* actions as well as those *in personam*, the Court flatly stated that "[t]he standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum contacts standard elucidated in *International Shoe*."[15]

The Supreme Court also has applied the requirement that there be a sufficient connection between defendant and forum in cases involving domestic matters,[16] in cases where jurisdiction is attempted through garnishment of a defendant's insurance policy,[17] and, finally, in *World-Wide*, in a products liability action where the plaintiffs attempted to serve process on the nonresident distributors and dealers as well as on the manufacturer and importer.

B. *Products Liability Actions Before* World-Wide

In *Hanson v. Denckla*,[18] the Supreme Court cautioned that it is only by the acts of the defendant—not the plaintiff—that minimum contacts are created between the defendant and the forum. In sustaining the exercise of jurisdiction over the defendant, the Court stated that "it is essential in each case that there 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."[19]

Before the decision in *World-Wide*, there was controversy as to whether the *Hanson* rule, as cited above, applied to products liability actions. If the defendant's contacts with the forum state must be "purposeful," that is, intentionally initiated by the defendant himself, jurisdiction could not be based on an injury in the forum state caused by a defective product brought there by the plaintiff. For example, New York could not provide relief in its

11. 326 U.S. 310 (1945).
12. *Id.* at 316 (emphasis added).
13. *See* Rush v. Savchuk, 444 U.S. 320 (1980); Kulko v. Superior Court, 436 U.S. 84 (1978); Shaffer v. Heitner, 433 U.S. 186 (1977); Hanson v. Denckla, 357 U.S. 235 (1958). In one instance, the Court did adopt a liberal interpretation of the minimum contacts doctrine. *See* McGee v. International Life Ins. Co., 355 U.S. 220 (1957).
14. 433 U.S. 186 (1977).
15. *Id.* at 207.
16. Kulko v. Superior Court, 436 U.S. 84 (1978).
17. Rush v. Savchuk, 444 U.S. 320 (1980).
18. 357 U.S. 235 (1958).
19. *Id.* at 253.

courts to a resident poisoned by tainted food he bought in California and consumed back in New York.

In *Fisher Governor Co. v. Superior Court*,[20] and in *Buckeye Boiler Co. v. Superior Court*,[21] the California Supreme Court applied the *Hanson* rule to products liability actions (even though jurisdiction in *Buckeye* was sustained on other grounds).[22] On the other hand, some courts have insisted that applying the *Hanson* rule to products liability actions creates a mechanical test of jurisdiction and violates the spirit of flexibility that characterized the pronouncements of *International Shoe* and its progeny. In *Phillips v. Anchor Hocking Glass Corp.*,[23] the Arizona Supreme Court disagreed with those states that interpreted the "purposeful activity" language of *Hanson* to refuse jurisdiction in products liability cases over a defendant who could not foresee the presence of his product within the forum.[24]

The problem illustrated by *Fisher*, *Buckeye*, and *Phillips* is that the mobility of products within the vast reaches of the American economic network is such that a defective product may unleash its deadly qualities far from its place of origin. Many dangerous items have a time bomb effect in that the injuries they inflict do not erupt until long after their initial use.

Duignan v. A.H. Robins Co.[25] is illustrative of this phenomenon. In that case, the plaintiff was fitted with an intrauterine device in California. A Virginia-based corporation manufactured the device. After the plaintiff moved to Idaho, she contracted an infection, necessitating an operation to remove a fallopian tube, as well as additional, exploratory surgery. The defendant contended that "[a] forum-shopping plaintiff with a 'portable tort' should not be able to use Idaho's long-arm statute to sue a corporation which lacks any other contact with the state."[26] The Idaho Supreme Court rejected this argument and asserted that because we live in a mobile society, a negligent party in a products liability action must be prepared to defend

20. 53 Cal. 2d 222, 347 P.2d 1, 1 Cal. Rptr. 1 (1959).

21. 71 Cal. 2d 893, 458 P.2d 57, 80 Cal. Rptr. 113 (1969).

22. In *Buckeye*, the court commented:

> Courts and commentators have expressed differing views on whether the statement in *Hanson v. Denckla*, . . . that jurisdiction over an absent nonresident defendant can only be predicated upon activity which the defendant "purposefully" conducts within the forum state, applies in all cases, *including products liability actions against nonresident manufacturers, or is limited to cases factually similar to Hanson* . . . . This court has apparently taken the former and sounder position, that the *Hanson* formulation of the "minimum contacts" test . . . is generally applicable.

71 Cal. 2d at 897, 458 P.2d at 63, 80 Cal. Rptr. at 119 (emphasis added) (citations and footnotes omitted).

23. 100 Ariz. 251, 413 P.2d 732 (1966).

24. Some state courts have been inconsistent in setting forth what constitutes sufficient contacts between a defendant and the forum state. *Compare* Texair Flyers, Inc. v. District Court, 180 Colo. 432, 506 P.2d 367 (1973) *with* Granite States Volkswagen, Inc. v. District Court, 177 Colo. 42, 492 P.2d 624 (1972), *and* Oliver v. American Motors Corp., 70 Wash. 2d 875, 425 P.2d 647 (1967) *with* Golden Gate Hop Ranch, Inc. v. Velsicol Chem. Corp., 66 Wash. 2d 469, 403 P.2d 351 (1965), *cert. denied*, 382 U.S. 1025 (1966).

25. 98 Idaho 134, 559 P.2d 750 (1977). For an analysis of the constitutional problems regarding products liability actions involving nonresident manufacturers, *see* Comment, *In Personam Jurisdiction Over Nonresident Manufacturers in Products Liability Actions*, 63 MICH. L. REV. 1028 (1965).

26. 98 Idaho at 136, 559 P.2d at 752.

itself "wherever injury should occur."[27]

The Ninth Circuit Court of Appeals agreed with this doctrine. In *Duple Motor Bodies, Ltd. v. Hollingsworth*,[28] it reaffirmed the jurisdiction of the district court for the district of Hawaii over an English corporation that manufactured coach bodies for an English vehicle manufacturer. The vehicle manufacturer then shipped the finished coaches to Hawaii, where the plaintiffs' injuries occurred.

The appellate court justified jurisdiction over the coach manufacturer on the ground that even though the defendant itself did not ship the vehicles to Hawaii, "[t]he bodies were designed and manufactured . . . with the knowledge that they were to be used in Hawaii and were made with special modifications to adapt them for use there."[29] Circuit Judge Ely vigorously dissented on the basis of the *Hanson* rule. He attacked "[t]he extension of Hawaii's 'long-arm' statute so that it stretches halfway around the world"[30] in situations where the defendant did not "purposely avail himself of the privilege of conducting activities within the forum state,"[31] as required by *Hanson*.

The question remained, however, whether refusing to apply the *Hanson* rule to products liability actions offended the "traditional notions of fair play and substantial justice"[32] extolled in *International Shoe*. Certainly, there is a limit beyond which it is unfair to force a manufacturer or dealer corporation to defend itself in a state to which it did not ship the product in question, and with which it had no contacts except for the injury caused by that product.

In *World-Wide*, the United States Supreme Court expressed concern that state courts were zealously overreaching the limits imposed by the due process clause of the fourteenth amendment in their efforts to catch elusive manufacturers and dealers whose products injured residents or guests.[33] By applying the *Hanson* rule to products liability actions, the Supreme Court, in *World-Wide*, restrained this state court tendency. The Court ruled that a corporation which purposefully conducts activities within a state is deemed to have had "clear notice that it is subject to suit there."[34] Also, a corporation delivering products into the stream of commerce "with the expectation that they will be purchased by consumers in the forum state"[35] may be sub-

27. *Id.* at 138, 559 P.2d at 754 (citing Dogett v. Electrics Corp., 93 Idaho 26, 31-32, 454 P.2d 63, 68 (1969)).

28. 417 F.2d 231 (9th Cir. 1969).

29. *Id.* at 234.

30. *Id.* at 236 (Ely, J., dissenting).

31. *Id.* (Ely, J., dissenting).

32. 326 U.S. at 316.

33. The Court stated:

> The concept of minimum contacts . . . can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.

444 U.S. at 291-92.

34. *Id.* at 297.

35. *Id.* at 297-98.

jected to a lawsuit in that state. In *World-Wide*, however, no such constitutional grounds existed to justify Oklahoma jurisdiction over World-Wide or Seaway.[36] Thus, a state court may assume jurisdiction in a products liability action only on the basis of the *defendant's* role in knowingly bringing, shipping, or selling a product to customers in that state.

The decision in *World-Wide* also expressly or implicitly dealt with various legal fictions that had been advanced by state and federal courts to justify jurisdiction in products liability actions where affiliations between the defendant and the forum were absent. Several of these legal fictions are explored in the following pages.

III. JURISDICTION OVER THE DISTANT DEFENDANT

A. *Foreseeability*

The Oklahoma Supreme Court in *World-Wide* attempted to justify jurisdiction over defendants World-Wide and Seaway on the basis that, since an automobile is a mobile product, the defendants could "foresee its possible use in Oklahoma"[37] and hence derived substantial revenue from cars that might be driven or resold in that state.

Numerous cases have supported the proposition that foreseeability justifies the forum state's jurisdiction over the defendant. The rationale in those cases is that if a manufacturer or dealer could anticipate a product's ending up in a given state and injuring someone there, the manufacturer or dealer has implicitly consented to service of process from that state.

Some courts, however, have displayed a tendency to employ the foreseeability test as a measure of last resort whenever other minimum contacts standards fail to uphold the exercise of jurisdiction. In *Eyerley Aircraft Co. v. Killian*,[38] the plaintiff's daughter was injured in Texas by a fall from an amusement park ride manufactured by Eyerley Aircraft, an Oregon corporation. Eyerley Aircraft had sold the ride twenty years before to a traveling amusement company in Chicago. The amusement company in turn resold the ride in North Dakota to a second traveling amusement company. Eyerley Aircraft had had no contact with the ride since introducing it into interstate commerce by selling it to the Chicago amusement show.[39] There were some unrelated business contacts between the defendant and the forum. The court, however, which could not base jurisdiction merely upon the existence of unrelated business transactions,[40] emphasized foreseeability in upholding *in personam* jurisdiction over the defendant. Eyerley Aircraft, the court explained, knew that its products were itinerant in nature and "would not come to a permanent rest at the domicile of its original purchaser."[41]

36. *Id.* at 298.
37. World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351, 354 (Okla. 1978).
38. 414 F.2d 591 (5th Cir. 1969).
39. *Id.* at 595.
40. The court in *Eyerley Aircraft* determined that the defendant's business contacts with Texas were not sufficient to sustain Texas jurisdiction over the matter. Had the ride that caused the injury been shipped into Texas, after having been sold and serviced elsewhere many years before, due process requirements would have been satisfied. *Id.*
41. *Id.* at 597.

Since Eyerley Aircraft could anticipate that the stream of commerce would carry its products to Texas, the contacts between the corporation and Texas were sufficient to justify Texas jurisdiction over Eyerley.[42]

In *Metal-Matic, Inc. v. District Court*,[43] the court, unlike the court in *Eyerley Aircraft*, was more direct in that it did not painstakingly examine the sufficiency of the commercial affiliations between the defendant and the forum state. The case involved a boat whose railing, manufactured by the defendant in Minnesota, collapsed, causing the plaintiff's decedent to drown in Lake Mead, Nevada. The court decided that a manufacturer of boat parts reasonably could foresee its products finding markets "where navigable lakes or waters are located,"[44] and thus upheld jurisdiction.

In *Reilly v. Phil Tolkan Pontiac*,[45] as in *World-Wide*, the trial court upheld jurisdiction over a nonresident automobile dealer who had had no contacts with the forum state except for the injury caused by a product the dealer sold. As the Oklahoma court in *World-Wide* attempted to do, the court in *Reilly* justified the exercise of jurisdiction on the basis of foreseeability:

> [T]he Court feels it is not unreasonable to assume Tolkan should have anticipated that the Pontiac it sold to plaintiff and the jack within it [which caused the injury] would come to be used in other States . . . . Tolkan knew that it was selling a product that is distributed, and for which spare parts are available, throughout the nation . . . . Thus, Tolkan should be prepared to defend on alleged defects in the product it sold which had consequences in New Jersey.[46]

Some of the courts that have attacked the foreseeability test have done so on the basis of the problem pinpointed in Judge Sobeloff's illustration in *Ehrlanger Mills, Inc. v. Cohoes Fibre Mills*:[47]

> [L]et us consider the hesitancy a California dealer might feel if asked to sell a set of tires to a tourist with Pennsylvania license plates, knowing he might be required to defend in the courts of Pennsylvania a suit for refund of the purchase price or for heavy damages in case of accident attributed to a defect in the tires . . . . It is difficult to conceive of a more serious threat and deterrent to the free flow of commerce between the states.[48]

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42. *Id.*

43. 82 Nev. 263, 415 P.2d 617 (1966).

44. *Id.* at 266, 415 P.2d at 619.

45. 372 F. Supp. 1205 (D.N.J. 1974).

46. *Id.* at 1207. Other opinions considering the foreseeability factor in upholding jurisdiction include Ajax Realty Corp. v. J.F. Zook, Inc., 493 F.2d 818 (4th Cir. 1972); Deveny v. Rheem Mfg. Co., 319 F.2d 124 (2d Cir. 1963); Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966); Cole v. Doe, 77 Mich. App. 138, 258 N.W.2d 165 (1977); Roche v. Floral Rental Corp., 95 N.J. Super. 555, 232 A.2d 162 (1967), *aff'd mem.*, 51 N.J. 26, 237 A.2d 265 (1968); Gonzalez v. Harris Calorific Co., 64 Misc. 2d 287, 315 N.Y.S.2d 51 (Sup. Ct.), *aff'd mem.*, 38 A.D.2d 720, 315 N.Y.S.2d 815 (1970); Crose v. Volkswagenwerk Aktiengesellschaft, 88 Wash. 2d 50, 558 P.2d 764 (1977).

47. 239 F.2d 502 (4th Cir. 1956).

48. *Id.* at 507. Variations of this hypothetical appear in Uppgren v. Executive Aviation Servs., Inc., 304 F. Supp. 165 (D. Minn. 1969), and Tilley v. Keller Truck & Implement Corp., 200 Kan. 641, 438 P.2d 128 (1968). For other cases criticizing foreseeability as a test of jurisdiction, *see* Kerrigan v. Clarke Gravely Corp., 71 F.R.D. 480 (M.D. Penn. 1975); Hapner v. Rolf

The United States Supreme Court, in *World-Wide*, endorsed the hypothetical in *Ehrlanger*, and commented that if foreseeability were a deciding factor in products liability actions, "[e]very seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel."[49] Yet the Court did not completely dismiss foreseeability as a criterion:

> This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.[50]

Thus, in light of *World-Wide*, foreseeability may not be used as a substitute for the requirement of "purposeful" minimum contacts between the defendant and the forum state. Transient though a product may be, it is the conduct of the defendant—not of the plaintiff or the product—that creates the necessary affiliating circumstances upon which jurisdiction is based.

B. Gray *and the Definition of "Tortious Conduct"*

Gray v. American Radiator & Standard Sanitary Corp.[51] is cited often to support the proposition that, for statutory purposes, a "tortious act" is committed in the forum state if the injury occurred there. The court in *Gray* relied upon the legal maxim that "the place of a wrong is where the last event takes place which is necessary to render the actor liable."[52] Logically, the injury is the last event needed to render the defendant liable; and if the injury occurred in the forum state, the tortious act was committed there.

By this circuitous reasoning, the court in *Gray* decided that the defendant—who manufactured a defective valve in Ohio that was installed in a hot water heater in Pennsylvania, after which the hot water heater was sold to the plaintiff in Illinois—committed a tortious act in Illinois, and hence was subject to Illinois jurisdiction. A number of courts have adopted this approach to jurisdiction in products liability actions.[53] On the other hand, many forums have rejected the tendency to equate "tortious act" with "injury." The court in *Oliver v. American Motors Corp.*[54] maintained that the Restatement's definitions of "tortious conduct" and "place of wrong" adopted in *Gray* are "given strictly within the framework of the subjects to which they relate. To apply them uncritically to problems which relate to *in personam*

Brauchli, Inc., 404 Mich. 160, 273 N.W.2d 822 (1978); Pellegrini v. Sachs & Sons, 522 P.2d 704 (Utah 1974).

49. 444 U.S. at 296.

50. *Id.* at 297.

51. 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

52. *Id.* at 435, 176 N.E.2d at 762-63 (citing RESTATEMENT OF CONFLICT OF LAWS § 377 (1934)).

53. *See, e.g.*, Hutchinson v. Boyd & Sons Press Sales, Inc., 188 F. Supp. 876, 878 (D. Minn. 1960); Atkins v. Jones & Laughlin Steel Corp., 258 Minn. 571, 578-81, 104 N.W.2d 888, 892-94 (1960); Golden Gate Hop Ranch, Inc. v. Velsicol Chem. Corp., 66 Wash. 2d 469, 472, 403 P.2d 351, 354 (1965).

54. 70 Wash. 2d 875, 425 P.2d 647 (1967).

jurisdiction is to apply them out of [the] context"[55] in which they were defined in the Restatement of Torts[56] and the Restatement of Conflict of Laws.[57]

An even more curious definition associates "tortious conduct" with "doing business in the forum state." Yet many courts have justified the exercise of jurisdiction through interpretations which state that it is not a violation of due process to find that if a foreign corporation commits a tort within the state, it shall be deemed to be doing business in that state and will thereby have designated the secretary of state as its agent for service of process in that state.[58]

In *World-Wide*, the United States Supreme Court did not explore the issue of what constitutes a tortious act (for jurisdictional purposes) in products liability actions. Nor did it need to, for the Oklahoma Supreme Court rejected the *Gray* principle in regard to the Oklahoma long-arm statute, because the statute itself precluded the adoption of such a definition and required additional contacts with Oklahoma if the tortfeasor caused an injury there "by an act or omission outside" the state.[59]

In *World-Wide*, the United States Supreme Court did not comment on the semantic gymnastics of state courts in search of a jurisdictional basis. Because of the *World-Wide* decision, however, the minimum contacts standards of *International Shoe* and *Hanson*, as applied to products liability actions, may have been reinforced to withstand future attempts to circumvent these standards through unconventional definitions of legal terms.

C. *The Stream of Commerce and the Forum State's Benevolence*

Some courts have insisted that a company introducing products into the "stream of commerce" automatically incurs liability wherever a defective product injures someone. *Anderson v. National Presto Industries, Inc.*[60] is representative of this trend:

> It would be flying in the face of reality if we did not admit knowledge that manufactured products are ordinarily designed for commercial sale in whatever markets may be found for them, without regard to state lines. *They are placed in the stream of commerce; and when they reach a foreign state they have the protection of its laws*. It is not unfair to say they should assume the burdens as well as the benefits . . . *and the producer of such products who sends them into another state may*

55. *Id.* at 884, 425 P.2d at 653.

56. RESTATEMENT (SECOND) OF TORTS § 6 (1957).

57. RESTATEMENT OF CONFLICT OF LAWS § 377 (1934). Other opinions criticizing the *Gray* definition of tortious conduct include Lichina v. Futura, Inc., 260 F. Supp. 252, 254 (D. Colo. 1966); Easterling v. Cooper Motors, Inc., 26 F.R.D. 1, 3 (M.D.N.C. 1960); Longines-Wittnauer v. Barnes & Reinecke, Inc., 21 A.D.2d 474, 251 N.Y.S.2d 740 (1964), *aff'd*, 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8, *cert. denied*, 382 U.S. 905 (1965).

58. Atkins v. Jones & Laughlin Steel Corp., 258 Minn. 571, 577, 104 N.W.2d 888, 892 (1960). *See also* Deveny v. Rheem Mfg. Co., 319 F.2d 124, 126 (2d Cir. 1963); Anderson v. National Presto Indus., Inc., 257 Iowa 911, 913, 135 N.W.2d 639, 640 (1965); Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951); Annot., 25 A.L.R.2d 1193 (1952).

59. World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351, 353-54 (Okla. 1978).

60. 257 Iowa 911, 135 N.W.2d 639 (1965).

properly be held to respond for such injuries as they may cause . . . .[61]

According to this trend of thought, manufacturers and dealers who send their products into interstate channels should answer to the courts wherever the products cause injury for two reasons: the forum states protect out-of-state sellers through various laws and benefits,[62] and these states have a "manifest state interest" in seeing that their residents obtain relief from non-resident tortfeasors.[63]

The United States Supreme Court has endorsed this analysis. *International Shoe* and *Hanson* established the jurisdictional requirement that the defendant must initiate the contacts with the forum state "thus invoking the benefits and protections of its laws."[64] And in *McGee v. International Life Insurance Co.*,[65] the Court acknowledged the "manifest interest" a state has "in providing effective means of redress for its residents . . . ."[66]

In *World-Wide*, the United States Supreme Court cited *Gray* in affirming that a corporation delivering its products "into the stream of commerce with the expectation that they will be purchased by consumers in the forum State"[67] constitutionally may be subjected to jurisdiction there.[68] A mere likelihood of sale in the forum state, however, is not enough; the defendant must have real, substantial connections with the state in order to be answerable to its courts. World-Wide and Seaway might have anticipated that the cars they sold would be used in Oklahoma, but since the area in which they operated was restricted and distant from the situs of injury, they were not subject to the reach of Oklahoma's courts.

D. *The Convenient Forum*

For a few courts, jurisdiction is justified by convenience. In *Gray*, the

61. *Id.* at 919, 135 N.W.2d at 643 (emphasis added). *See also* Hutson v. Fehr Bros., 584 F.2d 833, 839 (8th Cir.), *cert. denied*, 439 U.S. 983 (1978); Eyerley Aircraft Co. v. Killian, 414 F.2d 591, 596-97 (5th Cir. 1969); Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205, 1206 (D.N.J. 1974); McCoy v. Wean United, Inc., 67 F.R.D. 491, 493 (E.D. Tenn. 1973); Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 899, 458 P.2d 57, 64, 80 Cal. Rptr. 113, 120 (1969); Duignan v. A.H. Robins Co., 98 Idaho 134, 138, 559 P.2d 750, 754 (1977); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 442, 176 N.E.2d 761, 766 (1961); Hapner v. Rolf Brauchli, Inc., 404 Mich. 160, 177, 273 N.W.2d 822, 824 (1978).

62. *See, e.g.*, Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 442, 176 N.E.2d 761, 766 (1961); Anderson v. National Presto Indus., Inc., 257 Iowa 911, 919, 135 N.W.2d 639, 643 (1965).

63. *See, e.g.*, Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 898, 458 P.2d 57, 62, 80 Cal. Rptr. 113, 118 (1969).

64. Hanson v. Denckla, 357 U.S. 235, 253 (1958).

65. 355 U.S. 220 (1957).

66. *Id.* at 223. Some courts have been quick to find a "manifest state interest" in products liability actions against nonresidents:

> A state has a legitimate interest in providing a meaningful forum for its citizens who have suffered damages as a result of faulty products being shipped into the state by foreign corporations.

Hutson v. Fehr Bros., 584 F.2d 833, 839 (8th Cir. 1978). *See also* Fields v. Volkswagen of America, Inc., 555 P.2d 48, 53 (Okla. 1976); Hines v. Clendenning, 465 P.2d 460, 463 (Okla. 1970); Crose v. Volkswagenwerk Aktiengesellschaft, 88 Wash. 2d 50, 57, 558 P.2d 764, 768 (1977).

67. 444 U.S. at 297-98.

68. *Id.*

court stated that "[t]he principles of due process relevant to the issue in this case support jurisdiction in the court where both parties can most conveniently settle their dispute."[69] As in *World-Wide*, the injury in *Gray* occurred in the forum state, the witnesses resided there, and the evidence as to damages and other elements of the action originated there. Yet, the United States Supreme Court in *World-Wide* did not accord consideration to convenience as a factor in long-arm jurisdiction, except to state that minimum contacts, as required by the due process clause, serve in part to protect the defendant against inconvenient litigation.[70]

Convenience, then, may be an element of minimum contacts, to be weighed along with other factors in deciding the question of whether jurisdiction may be exercised over a defendant, but it is no more than that. As pointed out in *Pellegrini v. Sachs & Sons*,[71] the problem with applying convenience as a test of jurisdiction is that convenience is a two-way street.[72] One generally cannot render a situation convenient for one party without inconveniencing the other.

E. *The Wave of the Future*

The United States Supreme Court in *World-Wide* once more acknowledged the economic and technological trends that increased the volume of commerce among the several states and led to the problems of multi-state litigation.[73] The Court, however, firmly maintained that it could not accept "the proposition that state lines are irrelevant for jurisdictional purposes," while remaining "faithful to the principles of interstate federalism embodied in the Constitution."[74]

Many state courts, however, did not feel that a conflict existed between liberalizing long-arm jurisdiction in response to changing conditions, and conforming to the federalist principles of the Constitution. The *Gray* decision reflected an optimism shared by numerous courts in regard to the jurisdictional implications of modernity:

> Advanced means of distribution and other commercial activity have made possible these modern methods of doing business, *and have largely effaced the economic significance of State lines*. By the same token, today's facilities for transportation and communication have removed much of the difficulty and inconvenience formerly encountered in defending lawsuits brought in other States.[75]

The state courts, by and large, have not exhibited a desire to restrain their sovereignty in accordance with the spirit of federalism. The Supreme Court in *World-Wide* may have borne this in mind as it restated the words of

69. 22 Ill. 2d at 442, 176 N.E.2d at 766.
70. 444 U.S. at 294.
71. 522 P.2d 704 (Utah 1974).
72. *Id.* at 707.
73. 444 U.S. at 292-93.
74. *Id.* at 293.
75. 22 Ill. 2d at 442-43, 176 N.E.2d at 766 (emphasis added). Several courts believed that modern conditions called for the further liberalization of jurisdictional requirements. *See, e.g.*, Anderson v. National Presto Indus., Inc., 257 Iowa 911, 917, 135 N.W.2d 639, 642 (1965); Hapner v. Rolf Brauchli, Inc., 404 Mich. 160, 177, 273 N.W.2d 822, 827 (1978) (Moody, J.).

Hanson to the effect that restrictions on the personal jurisdiction of state courts are "a consequence of territorial limitations on the power of the respective States."[76]

CONCLUSION

World-Wide is not a closed chapter in the history of *in personam* jurisdiction. This decision establishes that purposeful minimum contacts are required to sustain jurisdiction in products liability actions. Additional questions, however,—some of which are raised in the dissents of Justices Marshall and Blackmun—remain unresolved. The most important of these questions is whether local dealers and retailers are on the same jurisdictional footing as manufacturers.

Justice Marshall, in dissent, maintained that since automobile distributors serve a multistate market and local dealers participate in a nationwide network of dealerships, they "can fairly expect that the cars they sell may cause injury in distant States and that they may be called on to defend a resulting lawsuit there."[77] Justice Blackmun concurred:

> It therefore seems to me not unreasonable—and certainly not unconstitutional . . . to uphold Oklahoma jurisdiction over this New York distributor and . . . dealer when the accident happened in Oklahoma. I see nothing more unfair for them than for the manufacturer and the importer. All are in the business of providing vehicles that spread out over the highways of our several States.[78]

In the future, courts—perhaps even the United States Supreme Court—may determine whether a defendant's status as a manufacturer or as a dealer ought to influence the extent to which it is subject to long-arm jurisdiction. Only then will the ruling of *World-Wide* be utilized with confidence to solve the problem of the nonresident, nonaffiliated defendant in products liability actions.

In addition to the question of whether manufacturers ought to be protected by the same jurisdictional barriers as dealers are, the decision in *World-Wide* presented a plaintiff's quandary: Where might a claim for relief be heard if the state in which the injury occurred cannot compel the tortfeasor's presence because the requisite affiliations between the two are lacking?

The plaintiff who chooses the state of his residence as the forum still faces the same problem that the petitioner in *World-Wide* faced. Sufficient minimum contacts must exist to enable any state to exercise jurisdiction over a nonresident defendant.

On the other hand, the states in which the defendants reside may be

76. 444 U.S. at 294 (citing Hanson v. Denckla, 357 U.S. 235, 250-51 (1958)).

77. 444 U.S. at 316 (Marshall, J., dissenting).

78. *Id.* at 318 (Blackmun, J., dissenting). Several courts have decided that nonresident retailers should not be subjected to the same jurisdictional tests as manufacturers are. *See, e.g.*, Uppgren v. Executive Aviation Servs., Inc., 304 F. Supp. 165, 169 (D. Minn. 1969); Tilley v. Keller Truck & Implement Corp., 200 Kan. 641, 648-49, 438 P.2d 128, 134 (1968); Pellegrini v. Sachs & Sons, 522 P.2d 704, 706 (Utah 1974); Oliver v. American Motors Corp., 70 Wash. 2d 875, 889-90, 425 P.2d 653, 656 (1967).

unsuitable forums also. A plaintiff suing several defendants could be compelled, at great expense, to file multiple lawsuits in various states in order to obtain complete relief. Each suit risks being dismissed for want of an indispensable party. Furthermore, it often is impossible or prohibitively expensive to transport witnesses and other evidence from the situs of the injury to a distant forum.

A plaintiff in a products liability action may be able to obtain relief in a federal district court, under limited circumstances. The amount of damages to which the plaintiff is entitled must exceed $10,000; also, there must be complete diversity of state citizenship between the parties[79] or else the matter in controversy must arise "under the Constitution, laws or treaties of the United States."[80] Not every plaintiff is fortunate in having none of the defendants residing in his home state, or in having a lawsuit which incorporates a "federal question," thereby enabling him to sue in a federal court.

In protecting defendants from distant and inconvenient litigation, the Supreme Court, by its decision in *World-Wide*, has restricted the plaintiff's forum alternatives. As a result, the scales of justice may shift in favor of the due process rights of corporate defendants and against the injured parties' right to compensation.

Susan R. Harris

79. 28 U.S.C. § 1332 (1976).
80. *Id.* § 1331.