A Non-Resident Defendant is Subject to a Multistate Libel Suit in Any Jurisdiction Where Minimum Contacts are Established between the Defendant and the Forum State.

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PERSONAL JURISDICTION OVER A NON-RESIDENT DEFENDANT—MINIMUM CONTACTS RULE IN LIBEL SUITS—A Non-Resident Defendant is Subject to a Multistate Libel Suit in Any Jurisdiction Where "Minimum Contacts" are Established Between the Defendant and the Forum State

Keeton v. Hustler Magazine, Inc.,
— U.S. —, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984).

Kathy Keeton, a citizen of New York, filed a libel claim against Hustler Magazine, Inc. ("Hustler"), in the United States District Court for the District of New Hampshire.[1] Keeton's only contact with the forum was the circulation in New Hampshire of three magazines with which she was associated.[2] Hustler's association with New Hampshire was limited to the monthly sale of ten to fifteen thousand copies of *Hustler Magazine*.[3] Subject matter jurisdiction was based on diversity of citizenship, but the district court held that due process prohibited the application of New Hampshire's long arm statute[4] to obtain personal jurisdiction over Hus-

1. *See* Keeton v. Hustler Magazine, Inc., — U.S. —, —, 104 S. Ct. 1473, 1477, 79 L. Ed. 2d 790, 796 (1984) (New Hampshire suit was Keeton's second attempt to establish libel claim). Prior to this claim, Keeton brought suit against Hustler in Ohio. *See id.* at — n.1, 104 S. Ct. at 1477 n.1, 79 L. Ed. 2d at 796 n.1. The Ohio court dismissed her claim because it did not comply with the Ohio statute of limitations. *See id.* at — n.1, 104 S. Ct. at 1477 n.1, 79 L. Ed. 2d at 796 n.1; *see also* Keeton v. Hustler Magazine, Inc., 682 F.2d 33, 33 (1st Cir. 1982) (New Hampshire statute of limitation was only one which would permit Keeton to file libel suit without it being barred), *rev'd and remanded*, — U.S. —, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984).

2. *See* Keeton v. Hustler Magazine, Inc., — U.S. —, —, 104 S. Ct. 1473, 1477, 79 L. Ed. 2d 790, 796 (1984) (Keeton is not New Hampshire resident); *see also* Keeton v. Hustler Magazine, Inc., 682 F.2d 33, 33-34 (1st Cir. 1982) (Keeton is an editor of *Viva* and *Omni* magazines and a staff member of *Penthouse*, which are circulated in New Hampshire), *rev'd and remanded*, — U.S. —, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984).

3. *See* Keeton v. Hustler Magazine, Inc., — U.S. —, —, 104 S. Ct. 1473, 1477, 79 L. Ed. 2d 790, 796 (1984) (Hustler's corporate headquarters located in Ohio); *see also* Keeton v. Hustler Magazine, Inc., 682 F.2d 33, 33 (1st Cir. 1982) (New Hampshire accounts for only one percent of Hustler's nationwide circulation), *rev'd and remanded*, — U.S. —, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984).

4. *See* N.H. REV. STAT. ANN. § 300:14 (1978). The applicable part of the statute states:

> [I]f such foreign corporation commits a tort in whole or in part in New Hampshire, such act shall be deemed to be doing business in New Hampshire by such foreign corporation and shall be deemed equivalent to the appointment by such foreign corporation of the secretary of the state of New Hampshire and his successors to be its true lawful

tler.[5] The United States First Circuit Court of Appeals affirmed, holding that since Keeton did not reside or suffer a substantial portion of her damages in New Hampshire, it would be unfair to require Hustler to defend itself there.[6] The Supreme Court of the United States granted certiorari to examine the lower courts' dismissal of Keeton's suit for want of personal jurisdiction.[7] Held—*Reversed and remanded.* A non-resident defendant is subject to a multistate libel suit in any jurisdiction where "minimum contacts" are established between the defendant and the forum state.[8]

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attorney upon whom may be served all lawful process in any actions or proceedings against such foreign corporation arising from or growing out of such . . . tort.

Id. See generally Kubiak, *Jurisdiction—Long Arm Statute—Slanderous Statement Made Outside Forum State by Nonresident Causing Consequences Within Forum State as Basis for Jurisdiction Under Michigan Long-Arm Statute,* 26 WAYNE L. REV. 263, 263 (1979) (survey of cases where long-arm statutes have been extended over non-resident defendants in defamation cases).

5. *See* Keeton v. Hustler Magazine, Inc., 683 F.2d 33, 36 (1st Cir. 1982) (court concluded "that the New Hampshire tail is too small to wag [at] so large [of] an out-of-state dog"), *rev'd and remanded,* __ U.S. __, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984). There is a distinction between personal and subject matter jurisdiction. *See* Cooper v. Reynolds, 77 U.S. 308, 316-17 (1870). According to *Cooper,* subject matter jurisdiction relates "to the nature of the cause of action and of the relief sought." *See id.* at 316. Personal jurisdiction, however, is jurisdiction over the person and can be obtained by "service of process or voluntary appearance of the party in the progress of the cause." *See id.* at 316-17.

6. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1477, 79 L. Ed. 2d 790, 796 (1984) (First Circuit indicates plaintiff's contacts important in jurisdictional inquiry). *Compare* Keeton v. Hustler Magazine, Inc., 682 F.2d 33, 34 (1st Cir. 1982) (First Circuit suggests result might be different if Keeton's contacts more substantial with New Hampshire), *rev'd and remanded,* __ U.S. __, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984) *with* Helicopteros Nacionales de Colombia v. Hall, __ U.S. __, __ n.5, 104 S. Ct. 1868, 1871 n.5, 80 L. Ed. 2d 404, 409 n.5 (1984) (plaintiff's contacts with forum state not determining factor affecting jurisdiction).

7. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1477, 79 L. Ed. 2d 790, 796 (1984) (inferred that certiorari also granted to determine if first amend. protection applies to mass media in jurisdictional analysis); *cf.* New York Times Co. v. Sullivan, 376 U.S. 254, 268-84 (1964) (first amend. rights apply to media through substantive law in numerous circumstances). *See generally* Comment, *Libel Litigation In Texas: The Plaintiff's Perspective,* 13 ST. MARY'S L.J. 978, 978-1011 (1982) (discussion of libel cases since *New York Times Co. v. Sullivan* and how they affect plaintiff's libel claims).

8. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1478, 79 L. Ed. 2d 790, 796 (1984) (Supreme Court, by inference, refused to extend first amend. protection to mass media in jurisdictional analysis); *see also* Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1486, 79 L. Ed. 2d 804, 811 (1984) (citing *Keeton* with approval). In *Calder,* a companion case to *Keeton,* Shirley Jones, a California resident, brought a libel claim against the National Enquirer, a Florida corporation. *See id.* at __, 104 S. Ct. at 1484, 79 L. Ed. 2d at 809. Calder, president of the National Enquirer, argued that California could not entertain jurisdiction because to do so would cause a "chilling effect" on national publications. *See id.* at __, 104 S. Ct. at 1485, 79 L. Ed. 2d at 810. The Supreme Court, however, refused to extend first amendment protection to the media in the jurisdictional inquiry. *See id.* at __,

Historically, a state could not exercise in personam jurisdiction over a non-resident defendant unless the defendant was actually present within the state.[9] The Supreme Court established the concept of territorial sovereignty as the basis for jurisdiction in *Pennoyer v. Neff*.[10] The main principle of territorial sovereignty was that a state had jurisdiction over all persons or things located within its borders, but not over persons or things outside its borders.[11] A state's jurisdiction over a non-resident defendant, however, was significantly expanded sixty-eight years after *Pennoyer* in *International Shoe Co. v. Washington*.[12]

International Shoe established the contemporary due process standard for exercising personal jurisdiction over a non-resident defendant.[13] The

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104 S.Ct. at 1487-88, 79 L. Ed. 2d at 813. *But see* Kotler, *Suing the National Media,* 3 CAL. LAW. 35, 36-37 (1983) (failure to extend first amend. to jurisdictional analysis will have "chilling effect" on mass media).

9. *See* Pennoyer v. Neff, 95 U.S. 714, 722 (1877) (assertion of jurisdiction over nonresident invalid). In *Pennoyer,* the Court held that if a court wrongfully asserted jurisdiction over a nonresident, the court's judgment was void. *See id.* at 732-33.

10. *See id.* at 723-24. *Pennoyer* is considered to be the forefather of modern day personal jurisdiction law. *See* Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts—From Pennoyer to Denckla: A Review,* 25 U. CHI. L. REV. 569, 570 (1958). For a survey of cases involving jurisdiction over nonresidents from *Pennoyer* to *International Shoe,* see *id.* at 569-624; *see also* Lewis, *The "Forum State Interest" Factor in Personal Jurisdiction Adjudication: Home-Court Horses Hauling Constitutional Carts,* 33 MERCER L. REV. 769, 771-72 (1982) (*Pennoyer* being reconsidered by courts because of its fairness to non-resident defendants).

11. *See* Smit, *The Enduring Utility of In Rem Rules: A Lasting Legacy of Pennoyer v. Neff,* 43 BROOKLYN L. REV. 600, 602 (1977) (non-resident defendant must be present in forum for jurisdiction to attach). The *Pennoyer* Court, however, would allow the forum state to entertain jurisdiction if the nonresident's property was present in the state. *See id.* at 602; *see also* Ehrenzweig, *Pennoyer Is Dead—Long Live Pennoyer,* 30 ROCKY MTN. L. REV. 285, 291 (1958) (*Pennoyer*'s rules slowly being eliminated from jurisdictional inquiries). The modern day distinction between types of jurisdiction was set out in Shaffer v. Heitner, 433 U.S. 186 (1977). In *Shaffer,* the Court stated:

> If a court's jurisdiction is based on its authority over the defendant's person, the action and judgment are denominated "in personam" and can impose a personal obligation on the defendant in favor of the plaintiff. If jurisdiction is based on the court's power over property within its territory, the action is called "in rem" or "quasi in rem." The effect of a judgment in such a case is limited to the property that supports jurisdiction and does not impose a personal liability on the property owner, since he is not before the court.

Id. at 199.

12. *See* International Shoe Co. v. Washington, 326 U.S. 310, 312-16 (1945). The State of Washington brought suit against a Delaware corportion, principally located in Missouri, to recover contributions to the state's unemployment fund. *See id.* at 312-13. The shoe company contended that Washington did not possess jurisdiction to entertain this suit. *See id.* at 315. Specifically, the shoe company argued that its actions within Washington did not constitute "presence" within the standard of *Pennoyer. See id.* at 315.

13. *See id.* at 316 (Court sets forth and explains "minimum contact" rule). *See gener-*

due process test established in *International Shoe* to determine whether a state can entertain jurisdiction requires that a plaintiff establish that a non-resident defendant has "certain minimum contacts" with the forum state.[14] In addition, the plaintiff must prove "that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[15] To properly ascertain "minimum contacts," a court must concentrate on "the relationship among the defendant, the forum, and the litigation."[16] In ad-

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ally Scott, *Jurisdiction Over the Press: A Survey and Analysis,* 32 FED. COM. L.J. 19, 20 (1980) (*International Shoe* is standard to be followed in determining personal jurisdiction over non-resident media defendants in libel suits).

14. *See* International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (modifies and redefines *Pennoyer* "presence" standard). One is "present" in a state under the minimum contact rule if activities of a "continuous and systematic" nature are conducted in the state. *See id.* at 317; *see also* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291-92 (1980) (discusses purpose and functions of minimum contacts rule). The minimum contacts rule reduces the possibility of a non-resident defendant having to defend himself in a hostile forum. *See id.* at 292. In addition, it prevents states from overreaching their jurisdictional boundaries and, thus, offending sister states. *See id.* at 292. Many articles have addressed the "minimum contacts" rule. *See, e.g.,* Note, *The Fifth Circuit Considers World-Wide Volkswagen and In Personam Jurisdiction: Oswalt v. Scripto, Inc.,* 32 ALA. L. REV. 571, 571 (1981) (Fifth Circuit adopts reasoning and holding of *World-Wide Volkswagen);* Note, *World-Wide Volkswagen Corporation v. Woodson: Minimum Contacts in a Modern World,* 8 PEPPERDINE L. REV. 783, 783-816 (1981) (examines how post-*International Shoe* cases have interpreted minimum contacts rule); Note, *Civil Procedure—Minimum Contacts—Eighth Circuit Survey. Mountaire Feeds, Inc. v. Agro Impex, S.A.,* 5 U. ARK. LITTLE ROCK L.J. 553, 553 (1982) (examines Eighth Circuit approach to minimum contact rule). *See generally* Comment, *Constitutional Law—In Personam Jurisdiction: Federalism and Fairness as Functions of Minimum Contacts—A Conceptual Failure,* 32 U. FLA. L. REV. 796, 801 n.37 (1980) (list of seven cases from 1961 to 1976 interpreting and applying minimum contacts rule).

15. *See* International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). *International Shoe* discussed the necessary requirements to satisfy due process. *See id.* at 319. The Court stated:

> [W]hether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment "in personam" against an individual or corporate defendant with which the state has no contacts, ties, or relations.

Id. at 319.

16. *See* Shaffer v. Heitner, 433 U.S. 186, 204 (1977) (new interrelationship favors plaintiffs). *Shaffer*'s interpretation of the minimum contacts rule makes it easier for a court to entertain in personam jurisdiction over non-resident defendants. *See id.* at 204. *Shaffer* is a significant decision because it applied the minimum contacts rule to an in rem action. *See id.* at 212. Previously, the minimum contact rule had only been applied to actions in personam. *See id.* at 205-06. *See generally* Glen, *An Analysis of "Mere Presence" and Other Traditional Bases of Jurisdiction,* 45 BROOKLYN L. REV. 607, 607-16 (1979) (critical because *Shaffer* emphasizes "contacts" and not "fairness"); Smit, *The Importance of Shaffer v. Heitner: Seminal or Minimal?,* 45 BROOKLYN L. REV. 519, 519-24 (1979) (questions importance of *Shaffer);* Younger, *Quasi In Rem Defaults After Shaffer v. Heitner: Some Unanswered Questions,* 45 BROOKLYN L. REV. 675, 675-80 (1979) (*Shaffer* has made quasi in rem jurisdic-

dition, the "minimum contacts" rule requires that the defendant's conduct be such that it is both "reasonable" and "fair" to require a nonresident to defend himself in the forum state.[17] In determining reasonableness, a court must ascertain whether the out-of-state defendant "purposefully availed"[18] himself of the benefits and privileges of the state.[19] Additionally, a state should also possess a legitimate interest in the resolution of a plaintiff's claim to justify entertaining jurisdiction.[20]

In libel suits, the "single publication rule"[21] provides states with a suffi-

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tion complicated and confusing); Werner, *Dropping the Other Shoe: Shaffer v. Heitner and the Demise of Presence-Oriented Jurisdiction,* 45 BROOKLYN L. REV. 565, 565-606 (1979) (characterizes *Shaffer* as landmark decision).

17. *See, e.g.,* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 298-99 (1980) (unreasonable for New York automobile wholesaler to be subject to Oklahoma jurisdiction when dealer has no contacts with state); Kulko v. Superior Court, 436 U.S. 84, 101 (1978) (not equitable to subject father to California jurisdiction when only contact with state is sending daughter, at her request, from New York to live with mother in California); Shaffer v. Heitner, 433 U.S. 186, 216-17 (1977) (not reasonable to require non-resident defendants to defend lawsuit in Delaware merely because of statutory presence of their property in that state).

18. *See* Hanson v. Denckla, 357 U.S. 235, 253 (1958) (personal jurisdiction will not attach over non-resident defendant unless "purposefully avails" test is satisfied). The Supreme Court held that personal jurisdiction over a nonresident can be entertained if "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." *See id.* at 253; *see also* Kulko v. Superior Court, 436 U.S. 84, 93-94 (1978) (citing *Hanson*'s "purposefully avails" test with approval). *But see* Phillips v. Anchor Hocking Glass Corp., 413 P.2d 732, 735 (Ariz. 1966) (criticizes *Hanson*'s "purposefully avails" test because does not consider fairness to non-resident defendant). *See generally* Thode, *In Personam Jurisdiction; Article 2031B, The Texas "Long Arm" Jurisdiction Statute; and the Appearance to Challenge Jurisdiction in Texas and Elsewhere,* 42 TEXAS L. REV. 279, 307 (1964) (applied *Hanson* to Texas cases); Comment, *Hanson v. Denckla,* 72 HARV. L. REV. 695, 695-708 (1959) (discussion of impact of *Hanson* on personal jurisdiction over nonresident).

19. *See* Kulko v. Superior Court, 436 U.S. 84, 93-94 (1978) (New York resident's actions in allowing daughter to live in California does not constitute "purposefully availing" oneself of benefits and privileges to allow California to assert jurisdiction).

20. *See* RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 37 (1971) (states possess legitimate interest in adjudicating claims when defendant causes harmful acts to occur within state). In addition, the text states:

> A state has power to exercise judicial jurisdiction over an individual who causes effects in the state by an act done elsewhere with respect to any cause of action arising from these effects unless the nature of the effects and of the individual's relationship to the state make the exercise of such jurisdiction unreasonable.

Id. § 37; *see also* Kulko v. Superior Court, 436 U.S. 84, 96 n.11 (1978) (§ 37 has been adopted by California as law).

21. *See* RESTATEMENT (SECOND) OF TORTS § 577A(4) (1977). The text of the single publication rule is as follows:

> As to any single publication, (a) only one action for damages can be maintained; (b) all damages suffered in all jurisdictions can be recovered in the one action; and (c) a judg-

cient interest for asserting jurisdiction over non-resident media defendants.[22] While all states have an interest in righting wrongs which occur within their own territory,[23] the single publication rule allows a plaintiff to recover in the forum state for injuries suffered elsewhere.[24] This rule eliminates additional litigation between the parties, in that it prevents a plaintiff from bringing another libel suit once his claim has been either satisfied or denied.[25]

Throughout the evolution of libel suits involving non-resident mass media defendants, the most perplexing problem has been whether or not to apply first amendment rights[26] to the jurisdictional determination.[27] The United States Court of Appeals for the Fifth Circuit granted first amendment protection to a national publication in the jurisdictional inquiry in

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ment for or against the plaintiff upon the merits of any action for damages bars any other action for damages between the same parties in all jurisdictions.

Id. § 577A(4). *Compare* Stephenson v. Triangle Publications, 104 F. Supp. 215, 218 (S.D. Tex. 1952) (citing single publication rule with approval) *with* Note, *The Single Publication Rule in Libel: A Fiction Misapplied,* 62 HARV. L. REV. 1041, 1041-50 (1949) (critical discussion of single publication rule).

22. *See, e.g.,* Regan v. Sullivan, 557 F.2d 300, 308 (2d Cir. 1977) (New York applies single publication rule); Carroll City/County Hosp. Auth. v. Cox Enter., Inc., 250 S.E.2d 550, 551-52 (Ga. 1978) (Georgia adopts single publication rule); Church of Scientology v. Minnesota, 264 N.W.2d 152, 155 (Minn. 1978) (Minnesota follows single publication rule).

23. *See* RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 36 comment c (1971). This section states:

A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.

Id. § 36 comment c; *see also* Menchaca v. Chrysler Life Ins. Co., 604 S.W.2d 287, 289 (Tex. Civ. App.—San Antonio 1980, no writ) (Texas court entertained jurisdiction over foreign corporation which committed tortious action in Texas).

24. *See* RESTATEMENT (SECOND) OF TORTS § 577A(4)(b) (1977); *see also* Fouts v. Fawcett Publications, 116 F. Supp. 535, 536-37 (D. Conn. 1953) (single publication rule allows plaintiff only one action for damages).

25. *See* RESTATEMENT (SECOND) OF TORTS § 577A(4)(c) (1977); *see also* Rinaldi v. Viking Penguin, Inc., 420 N.E.2d 377, 382 n.4, 438 N.Y.S.2d 496, 501 n.4 (1981) (purpose of single publication rule to prevent vexatious litigation).

26. *See* U.S. CONST. amend. I. The first amend. provides, in pertinent part: "Congress shall make no law . . . abridging the freedom of speech, or of the press." *Id.*

27. *Compare* Curtis Publishing Co. v. Golino, 383 F.2d 586, 592 (5th Cir. 1967) (first amend. rights should be considered in jurisdictional analysis involving non-resident media defendants) *with* Church of Scientology v. Adams, 584 F.2d 893, 899 (9th Cir. 1978) (first amend. should not apply to jurisdictional inquiry in defamation actions); *see also* New York Times Co. v. Connor, 365 F.2d 567, 572 (5th Cir. 1966) (first amend. protection for non-resident media defendants necessary in determination of jurisdiction). *See generally* Scott, *Jurisdiction Over the Press: A Survey and Analysis,* 32 FED. COM. L.J. 19, 19-53 (1980) (presents overview of cases interpreting whether first amend. applies to jurisdictional analysis in defamation suits).

New York Times Co. v. Connor.[28] The *Connor* court held that the first amendment demands that a plaintiff show a more significant number of contacts by a media defendant with a forum state than would be necessary if a non-media defendant were involved.[29] In contrast to *Connor,* other courts have either modified or rejected the application of the first amendment to the jurisdictional determination.[30]

The United States Ninth Circuit Court of Appeals, in *Church of Scientology v. Adams,*[31] dismissed the first amendment protection standard provided by *Connor* and suggested a version of the products liability jurisdictional approach[32] to defamation suits.[33] In determining jurisdiction

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28. *See* 365 F.2d 567, 568-69 (5th Cir. 1966) (New York Times faced libel claim in Alabama due to article published on racial conditions); *see also* Buckley v. New York Times Co., 338 F.2d 470, 471 (5th Cir. 1964) (libel action against New York Times in Louisiana). The Fifth Circuit dismissed the action in *Buckley* for lack of jurisdiction. *See id.* at 474-75. The court reasoned that the Times' contacts were insufficient to establish jurisdiction. *See id.* at 474-75.

29. *See* New York Times Co. v. Connor, 365 F.2d 567, 572 (5th Cir. 1966) (court suggests precedent has encouraged adoption of this rule). Many articles have addressed the impact of *Connor* on media defendants. *See, e.g.,* Comment, *Constitutional Limitations to Long Arm Jurisdiction in Newspaper Libel Cases,* 34 U. CHI. L. REV. 436, 437-39 (1967) (*Connor* protects newspaper defendants in libel actions); Note, *The Application of the First Amendment to Long Arm Jurisdiction,* 21 SW. L.J. 808, 812-13 (1967) (*Connor* provides relief for media defendants); Note, *Jurisdiction—Minimum Contacts—First Amendment Requires A Greater Showing of Contact in a Libel Action to Satisfy Due Process Than Is Necessary in Other Types of Actions,* 20 VAND. L. REV. 921, 924 (1967) (plaintiffs in libel actions will have difficulty persuading courts to entertain jurisdiction over non-resident media defendants).

30. *See* Church of Scientology v. Adams, 584 F.2d 893, 897 (9th Cir. 1978) (rejected *Connors* and suggested foreseeability of litigation test for jurisdictional analysis in defamation suits); Curtis Publishing Co. v. Golino, 383 F.2d 586, 592 (5th Cir. 1967) (modified *Connor* by holding first amend. rights should be one of many factors in jurisdictional analysis). *Golino* further held that the first amend. should be more relevant in a jurisdictional inquiry in a libel suit involving a small magazine as compared to a national publication. *See id.* at 592 n.13. The court reasoned that the national publication relies on a broader reader base than the regional publication and must, therefore, assume the risk of doing business in a hostile forum. *See id.* at 592; *see also* Sipple v. Des Moines Register & Tribune Co., 147 Cal. Rptr. 59, 64 (Ct. App. 1978) (dismissed *Connor* and suggested foreseeability test similar to *Adams'*).

31. 584 F.2d 893, 895 (9th Cir. 1978) (California church allegedly defamed in Missouri newspaper). The church brought the libel action in a California court. *See id.* at 895. The federal district court dismissed the action for want of jurisdiction. *See id.* at 896. The Ninth Circuit affirmed the district court's order of dismissal. *See id.* at 899.

32. *See* 3 R. HURSCH & H. BAILEY, AMERICAN LAW OF PRODUCTS LIABILITY §§ 16:1-:16 (2d ed. 1975) (examines concepts for asserting jurisdiction over non-resident manufacturers and sellers). Most courts determine jurisdiction over a nonresident in products liability actions on a factual basis. *See id.* § 16:3. Numerous cases have held that a court may entertain jurisdiction over a nonresident in a products liability action where the injury to the plaintiff is the only contact the defendant has with the forum state. *See id.* § 16:4. Other courts have required a non-resident defendant to be "doing business" with the foreign state

over a non-resident defendant in products liability cases, a court is to examine whether the defendant could foresee the defective product entering the forum state.[34] In applying this test to libel suits, the *Adams* court concluded that jurisdiction over a non-resident mass media publication could be asserted if the defendant could foresee harm by defamation in the forum state.[35] Numerous courts and commentators are concerned about the possibility of a literal application of the products liability jurisdictional test to multistate libel suits.[36] They fear that if this test is applied, a non-resident mass media defendant will not be afforded any first amendment guar-

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before they will entertain jurisdiction. *See id.* § 16:11. "Doing business" has been interpreted by different courts to have numerous meanings. *See id.* §§ 16:11-:13. *See generally* Comment, *In Personam Jurisdiction Over Nonresident Manfacturers in Product Liability Actions,* 63 MICH. L. REV. 1028, 1028-44 (1965) (analysis of factors necessary for court to assert jurisdiction over non-resident manufacturer).

33. *See* Church of Scientology v. Adams, 584 F.2d 893, 897-98 (9th Cir. 1978) (jurisdictional test for defamation suits should ask whether injury by defamation was foreseeable in forum state). The Ninth Circuit held that it was not foreseeable that the church could be injured by a Missouri newspaper with a California circulation of 150. *See id.* at 898-99.

34. *See, e.g.,* Duple Motor Bodies v. Hollingsworth, 417 F.2d 231, 235 (9th Cir. 1969) (foreseeable that automobile chassis would enter Hawaii when ordered from Hawaii); Buckeye Boiler Co. v. Superior Court, 458 P.2d 57, 64-65, 80 Cal. Rptr. 113, 120-21 (1969) (manufacturer should foresee possible injury to California residents because of amount of product sold in state); Gray v. American Radiator & Standard Sanitary Corp., 176 N.E.2d 761, 766 (Ill. 1961) (corporations which sell products to other states should foresee injuries to residents of those states).

35. *See* Church of Scientology v. Adams, 584 F.2d 893, 897-98 (9th Cir. 1978) (*Adams* standard less strict than true products liability approach). If the true products liability approach were adopted, a publisher would be subject to a suit in any forum in which only one issue of his publication was circulated. *See* New York Times Co. v. Connor, 365 F.2d 567, 572 (5th Cir. 1966). As the *Adams* court stated:

> The nature of the press is such that copies of most major newspapers will be located throughout the world, and we do not think it consistent with fairness to subject publishers to personal jurisdiction solely because an insignificant number of copies of their newspapers were circulated in the forum state.

Church of Scientology v. Adams, 584 F.2d 893, 897 (9th Cir. 1978).

36. *See* Sipple v. Des Moines Register & Tribune Co., 147 Cal. Rptr. 59, 62-65 (Ct. App. 1978) (distinguishes between newspaper publisher and manufacturer of goods in jurisdictional inquiry). In *Sipple,* the court recognized that a manufacturer sends his product into a forum for the purpose of profit. *See id.* at 64-65. The court also noted that publishers of national magazines send their "product" into a forum to make money. *See id.* at 64-65. The court, however, reasoned that it would be unfair to hold national, regional, and local publications to a literal application of the products liability jurisdictional test. *See id.* at 64-65. The court could not justify holding a publisher of a small magazine or newspaper liable for a tort in a jurisdiction in which the publishers did not intend to realize a profit. *See id.* at 64-65. *See generally* Scott, *Jurisdiction Over the Press: A Survey and Analysis,* 32 FED. COM. L.J. 19, 19-53 (1980) (analysis of cases which discuss products liability jurisdictional test as applied to defamation cases).

antees in a jurisdictional analysis.[37]

In *Keeton v. Hustler Magazine, Inc.*,[38] the United States Supreme Court determined that a non-resident mass media defendant is subject to a multistate libel suit in any jurisdiction where "minimum contacts" are established between the defendant and the forum state.[39] The Court held that Hustler's monthly circulation of ten to fifteen thousand magazines in New Hampshire was sufficient to establish "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "[40] The Court rationalized that since Hustler sells a significant number of its national magazine in New Hampshire, it must anticipate that the potential for a libel suit based on its publication exists in that state.[41] In addition, the Court reasoned that New Hampshire's interests in Keeton's multistate libel action are both legitimate and compelling.[42] The Supreme Court recognized that New Hampshire has a responsibility to the plaintiff and other states via the "single publication rule."[43] Also, New Hamsphire is justified in exercising its libel laws in this

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37. *See* Kotler, *Suing the National Media,* 3 CAL. LAW. 35, 35 (1983) (media will experience chilling effect if first amend. not applied to jurisdictional analysis). Forum shopping by allegedly libeled plaintiffs is the major concern of media attorneys. *See id.* at 35; *see also* Resources Inv. Corp. v. Hughes Tool Co., 561 F. Supp. 1236, 1238 (D. Col. 1983) (plaintiff's choice of forum should be respected); Ginsey Indus., v. I.T.K. Plastics, 545 F. Supp. 78, 80 (E.D. Pa. 1982) (plaintiff's choice of forum should usually prevail); Clopay Corp. v. Newell Cos., 527 F. Supp. 733, 735 (D. Del. 1981) (preference for plaintiff's choice of forum).

38. __ U.S. __, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984); *see also* Calder v. Jones, __ U.S. __, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984) (companion case to *Keeton).*

39. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1477, 79 L. Ed. 2d 790, 796 (1984) (issue was also whether plaintiff can sue magazine where it circulates).

40. *See id.* at __, 104 S. Ct. at 1481, 79 L. Ed. 2d at 801. The *Keeton* court relied on the minimum contacts rule as set forth in International Shoe Co. v. Washington, 326 U.S. 310 (1945), to justify its decision. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1478, 79 L. Ed. 2d 790, 797-98 (1984).

41. *See id.* at __, 104 S. Ct. at 1480, 79 L. Ed. 2d at 800 (Court suggested Hustler be accountable for actions in New Hampshire because magazine would use its courts if it brought suit against New Hampshire resident). The Supreme Court reasoned that Hustler must be aware of the laws of New Hampshire as they apply to national publications. *See id.* at __, 104 S. Ct. at 1480, 79 L. Ed. 2d at 800; *accord* Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1487, 79 L. Ed. 2d 804, 812 (1984) (publishers who directed article at California resident should expect to defend suit in that state if one arises).

42. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1479, 79 L. Ed. 2d 790, 798 (1984) (New Hampshire has responsibility to provide forum for persons injured in their state); *see also* Leeper v. Leeper, 319 A.2d 626, 629 (N.H. 1974) (emphasizes state's responsibility to right wrongs which occur within its jurisdiction); RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 36 comment c (1971) (reasonable for state to entertain jurisdiction over person who commits torts in that state).

43. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1480, 79 L.

action to protect its citizens from false statements.[44] The Court further held that the residence and the contacts of the plaintiff with the forum state are not determinative in ascertaining the appropriateness of granting jurisdiction.[45] Furthermore, the Court did not find New Hampshire's lengthy six year statute of limitation for libel suits a pertinent factor in determining Hustler's contact with the state.[46]

In a brief concurring opinion, Justice Brennan deemphasized the importance of fulfilling a state's best interests and stressed the importance of the due process clause in ascertaining minimum contacts.[47] Justice Brennan suggested that a state's interests must be balanced against a non-resident defendant's due process rights.[48]

The *Keeton* Court has virtually eliminated the extension of first amendment guarantees to jurisdictional inquiries involving non-resident mass media defendants in libel suits.[49] The failure to extend first amendment protection will possibly have a "chilling effect" upon the mass media, especially national publications.[50] In fact, the *Keeton* Court recognized that

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Ed. 2d 790, 799 (1984) (New Hampshire courts will prevent multiplicity of libel claims in other states and best serve judicial economy by asserting jurisdiction).

44. *See id.* at __, 104 S. Ct. at 1479, 79 L. Ed. 2d at 799 (New Hampshire has interest in protecting residents from false statements); *see also* Gertz v. Robert Welch, Inc., 418 U.S. 323, 340 (1974) ("no constitutional value in false statements of fact").

45. Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1480-82, 79 L. Ed. 2d 790, 799-802 (1984) (Court examined importance of plaintiff's residence in determining minimum contacts). The irrelevance of the plaintiff's residence to the jurisdictional analysis is based on the rule that a plaintiff need not establish minimum contacts with the forum state for jurisdiction to attach. *See id.* at __, 104 S. Ct. at 1480-81, 79 L. Ed. 2d at 800-01; *see also* Helicopteros Nacionales de Colombia v. Hall, __ U.S. __, __ n.5, 104 S. Ct. 1868, 1871 n.5, 80 L. Ed. 2d 404, 409 n.5 (1984) (residence of plaintiff not determining factor in decision to grant jurisdiction); Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1486, 79 L. Ed. 2d 804, 811 (1984) (although plaintiff was resident of forum state, plaintiff's contacts not to be considered in determining minimum contacts); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 438 (1952) (allowed forum state to confer jurisdiction although neither party was resident of forum).

46. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1480, 79 L. Ed. 2d 790, 800 (1984) (any unfairness resulting from New Hampshire's statute of limitations should not be discussed in jurisdictional inquiry). The Supreme Court approved Keeton's search for a jurisdiction in which her claim would not be stale. *See id.* at __, 104 S. Ct. at 1480, 79 L. Ed. 2d at 800.

47. *See id.* at __, 104 S. Ct. at 1482, 79 L. Ed. 2d at 802 (Brennan, J., concurring).

48. *See id.* at __, 104 S. Ct. at 1482, 79 L. Ed. 2d at 802 (Brennan, J., concurring).

49. *See id.* at __, 104 S. Ct. at 1478-82, 79 L. Ed. 2d at 797-802 (inference based on holding and reasoning of *Keeton* Court); *see also* Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1487-88, 79 L. Ed. 2d 804, 813 (1984) (Court expressly refused to apply first amend. rights to jurisdictional inquiry in libel suits).

50. *See* Kotler, *Suing the National Media,* 3 CAL. LAW. 35, 37 (1983) (failure to apply first amend. to jurisdictional inquiry will have "chilling effect on the free flow of information available to the public"); *see also* Scott, *Jurisdiction Over the Press: A Survey and Analysis,*

courts may confer jurisdiction in states where the national publication's circulation is less than one percent.[51] The *Keeton* decision, however, does not affect the numerous first amendment protections in the substantive law of defamation first provided by *New York Times Co. v. Sullivan.*[52] The *Sullivan* Court held that the media is not liable for the defamation of a public official unless it is published with "actual malice."[53] In *Curtis Pub-*

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32 FED. COM. L.J. 19, 53 (1980) (fear of excessive libel claims against national publications will produce chilling effect in mass media if first amend. excluded from jurisdictional analysis). *But see* Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1488, 79 L. Ed. 2d 804, 813 (1984) (substantive law protections inherent in actual trial of libel suits eliminates possible chilling effect from not applying first amend. rights to jurisdictional determination); Church of Scientology v. Adams, 584 F.2d 893, 899 (9th Cir. 1978) (first amend. protection in jurisdictional analysis unnecessary because of substantive law at trial stage of libel suit).

51. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1489, 79 L. Ed. 2d 790, 800-01 (1984) (one percent of circulation sufficient to establish minimum contacts for jurisdictional purposes). *Compare* Young, *Supreme Court Report,* 70 A.B.A. J. 108, 108 (1984) ("Regular circulation of a magazine in a state is sufficient to support that state's jurisdiction in a libel suit.") *with* Elkhart Eng'g Corp. v. Dornier Werke, 343 F.2d 861, 868 (5th Cir. 1965) (introduction of single defective product into forum state is sufficient to establish minimum contacts for jurisdictional inquiry in products liability case). A Wisconsin corporation brought a suit against a German corporation, which does no business in the United States, for damages to its custom plane. *See id.* at 863. The defendant's only contact with the forum, Alabama, was during a demonstration flight of the plane for its own purposes. *See id.* at 863. Dornier contended that it was not "doing business" in Alabama such that it would be within the reach of the minimum contacts rule. *See id.* at 864. The Fifth Circuit held that Alabama properly granted jurisdiction although the defendant's only contact with the forum state was the single act which caused the damage. *See id.* at 865. The court reasoned that jurisdiction properly attached because the defendant's "business" involved "dangerous activities." *See id.* at 867. The court, however, stated that its holding should not be limited to single transactions involving "dangerous activities." *See id.* at 868; *see also* Scott, *Jurisdiction Over the Press: A Survey and Analysis,* 32 FED. COM. L.J. 19, 25-26 (1980) (application of *Elkhart Eng'g Corp.* standard to jurisdictional analysis in libel suits). *But see* Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1487, 79 L. Ed. 2d 804, 812 (1984) (rejected argument that media defendants would be subject to version of products liability test). In *Calder,* the National Enquirer's employees likened themselves to a welder who worked on a product in one state and was not held liable when the product exhibited a defect in another state. *See id.* at __, 104 S. Ct. at 1487, 79 L. Ed. 2d at 812. The Supreme Court dismissed the argument as a faulty analogy. *See id.* at __, 104 S. Ct. at 1487, 79 L. Ed. 2d at 812.

52. *See* Kotler, *Suing the National Media,* 3 CAL. LAW. 35, 36-37 (1983) (*Keeton* is limited to application of first amend. to jurisdictional analysis). The first amend. adequately protects media defendants in libel suits through substantive protections. *See id.* at 36; *see also* New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964) (applies first amend. to substantive law). *See generally* Frakt, *The Evolving Law of Defamation: New York Times Co. v. Sullivan to Gertz v. Robert Welch, Inc., and Beyond,* 6 RUT.-CAM. L. REV. 471, 474-89 (1975) (examines first amend. protections provided for media in libel suits).

53. *See* New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). A statement is made with "actual malice" when it is published "with knowledge that it was false or with reckless disregard of whether it was false or not." *See id.* at 279-80. The Court, however,

lishing Co. v. Butts,[54] the Supreme Court applied the actual malice standard to "public figures."[55] In addition, the first amendment protections include the imposition of the actual malice standard to statements of public interest by the media,[56] the requirement that a plaintiff's proof of defamation be of "convincing clarity,"[57] and an independent review of the record by the appellate court.[58]

Although the *Keeton* decision may have an adverse impact on media defendants in the jurisdictional determination, it confers numerous benefits upon allegedly libeled plaintiffs.[59] Most importantly, it permits an in-

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did not define the term "public official." *See id.* at 282-83 n.23; *see also* St. Amant v. Thompson, 390 U.S. 727, 731 (1968) (Court redefines "actual malice" standard). In *St. Amant,* Justice White suggests that "actual malice" exists where there is "sufficient evidence to permit the conclusion that the defendant, in fact, entertained serious doubts as to the truth of his publication." *See id.* at 731. *See generally* Frakt, *The Evolving Law of Defamation: New York Times Co. v. Sullivan to Gertz v. Robert Welch, Inc., and Beyond,* 6 RUT.-CAM. L. REV. 471, 476 (1975) ("actual malice" standard suggested by *St. Amant* is subjective test).

54. 388 U.S. 130 (1967) (football coach defamed by *Saturday Evening Post).*

55. *See id.* at 163-64 (Warren, J., concurring). A public figure is one who is "intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large." *See id.* at 163-64. *See generally* Note, *Constitutional Law—Freedom of Press and Speech—Non-Official Public Figure,* 32 ALB. L. REV. 207, 207-12 (1967) (discussion of *Butts'* application of "actual malice" standard to public figures).

56. *See* Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 44 (1971) (Court expands first amend. protection to include matters of public interest). In *Rosenbloom,* the Court addressed the issue of whether the actual malice standard applied to a private person in a defamation action involving "an event of public or general interest." *See id.* at 31-32. Justice Brennan believed "that the determinant whether the first amendment applies to state libel actions is whether the utterance involved concerns an issue of public or general concern." *See id.* at 44. The Court, however, did not define what constituted an issue of public interest. *See id.* at 44-45; *see also* Frakt, *The Evolving Law of Defamation: New York Times Co. v. Sullivan to Gertz v. Robert Welch, Inc., and Beyond,* 6 RUT.-CAM. L. REV. 471, 478 (1975) (failure of Court to define issues of public concern will permit publishers to define term themselves). *But see* Gertz v. Robert Welch, Inc., 418 U.S. 323, 346 (1974) (Court criticizes *Rosenbloom* decision). In *Gertz,* the Court expressed the belief that the *Rosenbloom* decision was too broad and denied the states substantial rights. *See id.* at 345-46. The *Gertz* Court held that the state courts should be free to set their own standards of defamation liability where private citizens are concerned. *See id.* at 347.

57. *See* New York Times Co. v. Sullivan, 376 U.S. 254, 285-86 (1964) (Constitution demands "convincing clarity" standard).

58. *See* Time, Inc. v. Pape, 401 U.S. 279, 284 (1971) (appellate courts permitted to review conclusions of lower courts as to evidence and facts presented); *see also* New York Times Co. v. Sullivan, 376 U.S. 254, 286 n.26 (1964) (states what circumstances allow independent review of facts by appellate courts).

59. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1477-82, 79 L. Ed. 2d 790, 796-802 (1984) (Court permits plaintiffs to choose forum regardless of personal contacts with forum); *see also* Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1486, 79 L. Ed. 2d 804, 811 (1984) (citing *Keeton* with approval).

jured plaintiff to "shop" for a forum with substantive or procedural rules advantageous to his cause of action.[60] As did Kathy Keeton,[61] a plaintiff may take advantage of New Hampshire's six year statute of limitations, the longest in the nation for libel suits.[62] This would permit a plaintiff to completely ignore the relatively short statutes of limitation designed to protect publishers from stale libel claims.[63] Also, the *Keeton* decision reaffirmed that a plaintiff need not have any contact with the forum state.[64] This creates a situation such that a plaintiff could conceivably bring a libel suit in a state in which harm is practically nonexistent.[65]

A non-resident media defendant, however, is not left without a shield in the jurisdictional determination.[66] Initially, a plaintiff in a defamation suit

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60. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1480, 79 L. Ed. 2d 790, 800 (1984) (equitable for allegedly libeled plaintiff to "shop" for forum hospitable to claim); *cf.* Kotler, *Suing the National Media,* 3 CAL. LAW. 35, 37 (1983) (media defendants will be forced to defend libel claims in hostile forums if plaintiff allowed to seek friendly forum).

61. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1477, 79 L. Ed. 2d 790, 797 (1984) (Keeton's libel suit barred by statute of limitations in every other state at time claim filed in New Hampshire). For example, Ohio, the corporate headquarters for Hustler Magazine, possessed a six month statute of limitations for libel actions. *See id.* at __ n.1, 104 S. Ct. at 1477 n.1, 79 L. Ed. 2d at 796 n.1.

62. *See id.* at __, 104 S. Ct. at 1480, 79 L. Ed. 2d at 800 (statute of limitations is irrelevant in determining minimum contacts). The Court did not discuss the fairness of subjecting media defendants to lengthy statutes of limitations. *See id.* at __, 104 S. Ct. at 1480, 79 L. Ed. 2d at 800. The Court did, however, recognize that the appropriate time to address this question is during trial and not in the jurisdictional determination. *See id.* at __, 104 S. Ct. at 1480, 79 L. Ed. 2d at 800; *see also* Hanson v. Denckla, 357 U.S. 235, 254 (1958) ("The issue is personal jurisdiction, not choice of law.").

63. *See* Kotler, *Suing the National Media,* 3 CAL. LAW. 35, 37 (1983). The states which have a lengthy statute of limitations for libel actions will be flooded with lawsuits by plaintiffs who have delayed their claims. *See id.* at 37. *Compare* N.H. REV. STAT. ANN. § 508:4 (1977) (New Hampshire statute of limitations for libel actions is six years) *with* TEX. REV. CIV. STAT. ANN. art. 5524 (Vernon 1958) (Texas statute of limitations for libel actions is one year).

64. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1480, 79 L. Ed. 2d 790, 800-01 (1984) (plaintiff's contacts with forum state are irrelevant in determining minimum contacts between media defendant and forum state); *see also* Helicopteros Nacionales de Colombia v. Hall, __ U.S. __, __, 104 S. Ct. 1868, 1871, 80 L. Ed. 2d 404, 409 (1984) (if jurisdiction properly ascertained, plaintiff's failure to establish contacts with forum state will not defeat jurisdiction).

65. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1479, 79 L. Ed. 2d 790, 799 (1984) (Court reasons that libel statement made in state in which defamed person is unknown causes harm). The Court suggests that the residents of the state will have a negative impression of the individual because of the libel. *See id.* at __, 104 S. Ct. at 1479, 79 L. Ed. 2d at 799.

66. *See* Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1487-88, 79 L. Ed. 2d 804, 813 (1984) (unnecessary to apply first amend. to jurisdictional analysis because press adequately protected by substantive laws). *But see* Kotler, *Suing the National Media,* 3 CAL. LAW. 35,

must satisfy the "minimum contacts" test before a court may assert jurisdiction.[67] It is significant that the Supreme Court has determined that the "minimum contacts" test is a sufficient standard for determining jurisdiction in virtually all types of actions.[68] Secondly, the first amendment guarantees in the substantive and procedural law provided by *Sullivan* and subsequent decisions are adequate protection for media defendants.[69] Therefore, the first amendment, as an additional protective device for the media, is unnecessary in the jurisdictional analysis.[70]

The United States Supreme Court's decision in *Keeton* maintains the plaintiff as the dominant party in the jurisdictional inquiry in multistate libel cases involving non-resident media defendants. By eliminating the first amendment guarantees from jurisdictional inquiries in multistate libel suits, the Supreme Court has determined that the "minimum contacts" test is sufficient protection for the media defendant in the jurisdictional analysis. Through *Keeton,* the Court has guaranteed that the future holds an increase in libel litigation in those few states with substantive and procedural laws favoring plaintiffs.

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35-37 (1983) (without protection of first amend. in jurisdictional analysis, media vulnerable to rash of lawsuits in hostile forums).

67. *See* Keeton v. Hustler Magazine, Inc., __ U.S. __, __, 104 S. Ct. 1473, 1481, 79 L. Ed. 2d 790, 801 (1984) (minimum contacts rule standard for determining jurisdiction in libel suits).

68. *See, e.g.,* World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980) (minimum contacts test must be satisfied before jurisdiction may attach in products liability actions); Kulko v. Superior Court, 436 U.S. 84, 92 (1978) (minimum contacts rule due process standard which must be met to establish jurisdiction in family law suits); Shaffer v. Heitner, 433 U.S. 186, 207 (1977) (minimum contacts test standard for determining jurisdiction in corporate law actions). *See generally* Millet, *World-Wide Volkswagen Corp. v. Woodson: Minimum Contacts in a Modern World,* 8 PEPPERDINE L. REV. 783, 787-93 (1981) (discusses development of minimum contacts rule).

69. *See* Scott, *Jurisdiction Over the Press: A Survey and Analysis,* 32 FED. COM. L.J. 19, 23-24 (1980) (first amend. protections in substantive and procedural law satisfactorily protect media in defamation suits).

70. *See* Calder v. Jones, __ U.S. __, __, 104 S. Ct. 1482, 1488, 79 L. Ed. 2d 804, 813 (1984) (substantive law protections inherent in actual trial of libel suits eliminates possible chilling effect from not applying first amend. rights to jurisdictional determination); *see also* Church of Scientology v. Adams, 584 F.2d 893, 899 (9th Cir. 1978) (first amend. protection in jurisdictional analysis unnecessary because of substantive law at trial stage of libel suit). *But see* Kotler, *Suing the National Media,* 3 CAL. LAW. 35, 37 (1983) (failure to apply first amend. to jurisdictional inquiry will have "chilling effect on free flow of information available to public"); Scott, *Jurisdiction Over the Press: A Survey and Analysis,* 32 FED. COM. L.J. 19, 53 (1980) (fear of excessive libel claims against national publications will produce chilling effect in mass media if first amend. excluded from jurisdictional analysis).