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World-Wide Volkswagen Corporation v. Woodson: Minimum Contacts in a Modern World

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World-Wide Volkswagen Corporation v. Woodson: Minimum Contacts in a Modern World

World Wide Volkswagen Corporation v. Woodson considers the problem of modifying in personam jurisdiction to comply with the changing nature of the American economy. Several lower courts had adjusted the "minimum contacts" test of International Shoe Co. v. Washington to allow for the differences in modern economic lifestyle, but a uniformity amongst the various approaches was lacking. Rather than synthesize a contemporary test for the assertion of in personam jurisdiction, the World-Wide Court chose to place state sovereignty above modern commercial realities and adhere to a more rigid application of the minimum contacts analysis. The author takes issue with this lack of flexibility and questions the inequitable results that will likely occur from an approach that separates the consideration of fairness to the parties from the minimum contacts test. It is also shown that due to this separation, fairness remains only an academic discussion. Also, the author urges a reconsideration of the issue with a presentation of solutions and examples of other more modern approaches.

I. INTRODUCTION

Matters relating to personal injury and those involving purely economic loss have traditionally been thought to differ. But, this does not seem to be the view of the United States Supreme Court, at least in terms of the contacts necessary to confer state jurisdiction over an out-of-state defendant. In *World-Wide Volkswagen Corporation v. Woodson*,[1] the Supreme Court, on writ of certiorari to the Supreme Court of Oklahoma,[2] reviewed the Oklahoma court's decision upholding jurisdiction over World-Wide Volkswagen Corporation and co-defendant Seaway Volkswagen, Inc. The suit was initially brought as the result of the alleged defective design and construction of an Audi automobile sold in New York, which resulted in injury to the plaintiffs in Oklahoma. The

1. 444 U.S. 286 (1980).

2. World-Wide Volkswagen Corp. v. Woodson, 585 P.2d 351 (Okla. 1978). The Supreme Court of Oklahoma noted that the proper approach to test jurisdiction was against both statutory and constitutional standards. Its analysis probably did not discuss the former because the Oklahoma long arm statute has been interpreted as conferring jurisdiction to the limits of due process as permitted by the fourteenth amendment to the United States Constitution. *See, e.g.*, Fields v. Volkswagen of Am., Inc., 555 P.2d 48 (Okla. 1976) (jurisdiction may be extended over anyone within the commercial chain); Carmack v. Chemical New York Trust Co., 536 P.2d 897, 899 (Okla. 1975) (although one may contract for choice of law, one may not contract for choice of availability to the courts).

Supreme Court of Oklahoma upheld Oklahoma jurisdiction on the grounds that the defendants received substantial benefit from the availability of free travel through Oklahoma and collateral benefit from that part of the auto industry within the state.[3]

Although several lower federal courts and state courts had considered the difference in minimum contacts required to assert jurisdiction in an action for personal injuries, as opposed to economic injuries,[4] the question as presented in the *World-Wide* case was essentially one of first impression to the Supreme Court.[5] The Court was apparently prepared to determine whether or not due process required fewer contacts to confer state jurisdiction over an out-of-state defendant in an action involving personal injury, than those contacts necessary to obtain jurisdiction in an action involving economic harm only. A synthesis was sought, using the essence of doctrines from cases such as *International Shoe Co. v. Washington*[6] and *McGee v. International Life Insurance Co.*[7], to create an analytical tool that would bring the principles of *in personam* jurisdiction current with changing legal policy and economic society.

Although commentators had predicted[8] that the Court would follow the rationale in *McGee* and expand jurisdiction in cases involving tort action, they were shown to be in error. The Court preferred the concepts of *Hanson v. Denckla*[9] and held, as in economic actions, observance of state sovereignty was so important that a defendant must purposefully avail himself of a forum state's benefit in order for jurisdiction to be asserted over him. Foreseeability of consequences within a state or collateral benefit would not be enough. The logic of the majority as compared to the minority with respect to a modern economic society will be examined.

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3. 585 P.2d at 354.

4. *See* note 53 *infra* and accompanying text.

5. *See* note 54 *infra* and accompanying text.

6. 326 U.S. 310 (1945). *International Shoe* set forth the doctrine of minimum contacts. *See* note 32 *infra* and accompanying text.

7. 355 U.S. 220 (1957). *McGee* more fully delineated what would serve to create sufficient minimum contacts. *See* note 40 *infra* and accompanying text.

8. *See, e.g.*, 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 (1978), wherein the author predicted the Court would follow the more progressive decisions and expand jurisdiction in cases involving personal injury. The cases considered were progressive in that they recognized the distinction in effect between economic and tort actions. *See* note 179 *infra* for examples of these decisions.

9. 357 U.S. 235 (1958).

II. FACTS OF THE CASE

In response to medical advice, Harry Robinson and family prepared to move to Arizona to improve Mr. Robinson's health. To facilitate the move, the Robinsons purchased a new Audi automobile from petitioner Seaway Volkswagen, Inc.[10] in Massena, New York, in 1976.

En route to Arizona the Robinsons passed through Oklahoma[11] with Mrs. Robinson and the two children in the Audi and Mr. Robinson driving a truck containing the family possessions.[12] The Audi was subsequently struck in the rear by another car, causing the gasoline tank to rupture resulting in a fire that severely burned Mrs. Robinson and the children. Following the accident, Mr. Robinson continued on to Arizona and was later joined by his wife and children after a recouperative five month stay in the hospital.

Soon after the accident, suit was filed in Oklahoma against the auto's manufacturer, Audi NSU Auto Union Aktiengesellschaft;[13] its importer, Volkswagen of America, Inc.;[14] its regional distributor, petitioner World-Wide Volkswagen Corporation;[15] and the re-

10. Seaway Volkswagen, Inc., [hereinafter Seaway] is a New York corporation with its principle place of business in New York. Its business activities include retail sale of Volkswagen and Audi automobiles, service, and sale of parts. No evidence was introduced to show that Seaway does any business in Oklahoma, ships or sells products to that state, or advertises in any media intended to reach Oklahoma. 444 U.S. at 289.

11. The Robinsons travelled I-44, which parallels Route 66, which counsel for respondents argued would be one of the most logical routes of anyone traveling from the east coast to Arizona; hence, passing through Oklahoma on such a trip is practically inevitable. Respondent's Brief at 3, 7, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

12. The facts are a synthesis drawn from the official report, the Respondent's Brief, and from Professor Woods in Woods, *supra* note 8, wherein the author spoke to the Robinsons and their attorney, Jefferson G. Greer of Tulsa, Oklahoma.

13. Audi NSU Auto Union Aktiengesellschaft [hereinafter Audi] is a German corporation responsible for manufacturing the car involved. Audi did not join in the petition for certiorari, but chose instead to defend its product in Oklahoma. It is likely Audi realized that any attempt to contest jurisdiction would be fruitless since the manufacturer could clearly foresee consequences in any state by exporting its product to the United States. It may be said Audi purposefully availed itself of the United States as a whole and the State of Oklahoma in particular, by allowing its automobiles to be brought into the country.

14. Volkswagen of America, Inc., is responsible for the importation of the Audi and for similar reasons also chose not to join in the petition for certiorari. *See* note 13 *supra*.

15. World-Wide Volkswagen Corporation [hereinafter World-Wide] is a New York corporation distributing Volkswagen and Audi products to Connecticut, New

tail dealer, petitioner Seaway. Jurisdiction was asserted over the nonresident defendants by employing the Oklahoma long arm statute[16] granting personal jurisdiction over a person "causing tortious injury in [Oklahoma] by an act or omission outside [the] 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 [Oklahoma]."[17]

Audi and Volkswagen of America submitted to Oklahoma's jurisdiction, but World-Wide and Seaway contested the state's authority and sought review by writ of prohibition to the Oklahoma Supreme Court.[18] Defendants argued that they had neither intentionally nor sufficiently connected themselves with Oklahoma such that it would be fair to subject them to Oklahoma jurisdiction. The Oklahoma Supreme Court denied the writ, using the following rationale:

> In the case before us, the product being sold and distributed by the petitioners is by its very design and purpose so mobile that petitioners can foresee its possible use in Oklahoma. This is especially true of the distributor who has the exclusive right to distribute such automobile in New York, New Jersey and Connecticut. The evidence presented below demonstrated that goods sold and distributed by the petitioners were used in the State of Oklahoma, and under the facts we believe it reasonable to infer, given the retail value of the automobile, that the petitioners derive substantial income from automobiles which from time to time are used in the State of Oklahoma. This being the case, we hold that under the facts presented, the trial court was justified in concluding that the petitioners derive substantial revenue from goods used or consumed in this State.[19]

World-Wide and Seaway then sought review in the United States Supreme Court by contending that there were insufficient contacts with Oklahoma to justify the assertion of jurisdiction under *International Shoe*;[20] hence, their right to due process, as guaranteed by the fourteenth amendment to the United States

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York, and New Jersey. Joining with Seaway, World-Wide sought review by petition for certiorari. 440 U.S. 907 (1979).

16. The Oklahoma long arm statute essentially provides for jurisdiction over anyone causing consequences within the state including the transaction of business, the commission of a tort, the ownership of an interest in real estate, and the entry into a contract of insurance. *See* note 33 *infra* for provisions of the typical long arm statute.

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

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

19. *Id.* at 354.

20. 326 U.S. 310 (1945). *International Shoe* no longer required physical presence within state boundaries for jurisdictional purposes. Only such "minimum contacts" were required such that it would be *fair* and, therefore, not in violation of due process to require a defendant's appearance in the forum state's courts. *See* notes 30-32 *infra* and accompanying text.

Constitution, had been violated. The Court granted certiorari[21] in order to consider the constitutional question and to resolve a conflict in the method of application of the *International Shoe* doctrine by several state courts,[22] including the Supreme Court of Oklahoma.

III. The Historical Evolution of Minimum Contacts

No discussion of minimum contacts would be complete without mention of the historic case of *Pennoyer v. Neff*.[23] *Pennoyer* limited state jurisdiction to physical presence within a state's boundaries as shown by four separate situations: first, if the defendant was domiciled within the forum state;[24] second, if the defendant was served with process while physically present within the forum state;[25] third, if the defendant had consented to jurisdiction within the forum state;[26] and fourth, if the defendant had prop-

21. 440 U.S. 907 (1979).

22. Inconsistencies among the states may be noted by comparing cases such as Granite States Volkswagen, Inc. v. District Court, 177 Colo. 42, 492 P.2d 624 (1972); Tilley v. Keller Truck and Implement Corp., 200 Kan. 641, 438 P.2d 128 (1968); Pellegrini v. Sachs and Sons, 522 P.2d 704 (Utah 1974); and Oliver v. American Motors Corp., 70 Wash. 2d 875, 425 P.2d 647 (1967), with the reasoning of Oklahoma's highest court. In contradiction to the holding of the Oklahoma Supreme Court, these cases held that auto dealers outside the respective states had not connected themselves in a sufficient manner with the forum state to allow the assertion of jurisdiction.

23. 95 U.S. 714 (1878), *overruled in*, International Shoe Co. v. Washington, 326 U.S. 310 (1945). *Pennoyer* held that state power to adjudicate claims and subject persons to its authority only extended to a state's boundaries.

24. *See* Milliken v. Meyer, 311 U.S. 457 (1940). The case concerned a resident who had left his home state of Wyoming to avoid suit by his creditors. The United States Supreme Court held out-of-state service of process to be valid since the defendant's domicile within Wyoming was sufficient to confer jurisdiction.

25. *See* Grace v. MacArthur, 170 F. Supp. 442 (E.D. Ark. 1959). Service on an airplane flying over the forum state was held to be valid on the theory that the defendant was essentially *present within* that state. This holding seems violative of the principle enumerated in *International Shoe* and Shaffer v. Heitner, 433 U.S. 186 (1977), since the defendant did not have control nor intend to enter the state by merely flying over it. It does not seem such procedure is in keeping with traditional notions of fair play and substantial justice as required by the cases. The implication of *Shaffer* indicates this method of service is no longer valid.

26. *See* National Equip. Rental, Ltd. v. Szukhent, 375 U.S. 311 (1964) (when defendant agreed in contract for sale of goods to appoint a third person to receive process in New York, he consented to suit in that state); Hess v. Pawloski, 274 U.S. 352 (1927) (defendant who operates a motor vehicle within a state impliedly consented to suit in that state for any tort that occurs due to operation of the vehicle).

These cases imply that where the defendant has recognized the state's authority, by observing traffic laws or agreeing to service of process within the state, the defendant may be deemed to be physically present, although not actually or con-

erty within the jurisdiction of the forum that was attached prior to commencement of suit.[27]

As shown, *Pennoyer* equated jurisdiction of a sovereign state with the state's territorial boundaries.[28] The only contact sufficient to confer jurisdiction at this time was an actual physical connection or presence exhibited within the forum state. This concept remained viable for many years.[29]

In 1945, the Supreme Court responded to the needs of a changing economy and formulated a new test. In the case of *International Shoe Co. v. Washington*,[30] the Court invited the states to exercise jurisdiction over any person who may somehow affect the state, whether directly or indirectly.[31] The only restriction was that such an exercise of jurisdiction required that a defend-

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tinuously within the state's boundaries. State statutes embodying these ideas of "implied consent" have been upheld on this basis. For a discussion of the concept of implied consent, see Hunvald & Zimering, *Whatever Happened to Implied Consent? A Sounding*, 33 MO. L. REV. 323 (1968).

27. Harris v. Balk, 198 U.S. 215 (1905), *overruled in*, Shaffer v. Heitner, 433 U.S. 186 (1977). Jurisdiction of this sort is commonly referred to as *quasi in rem*, and is asserted in circumstances where property owned within the forum state is held to be a sufficient basis for jurisdiction over the owner-defendant even though the litigation neither concerns the property itself, as in an *in rem* action, nor is related to the cause of action.

The vitality of this doctrine has been seriously questioned since *Shaffer*. It now appears that *quasi in rem* jurisdiction can do nothing *in personam* jurisdiction cannot do better. This is true since the *Shaffer* decision held that the same minimum contacts necessary for *in personam* jurisdiction must also be shown in a *quasi in rem* action.

This concept was recently addressed in the case of Rush v. Savchuk, 444 U.S. 320 (1980). *Rush* was argued and decided with *World-Wide*, with the Court holding that the fact that the out-of-state defendant's insurance company did business within the forum state would be insufficient to gain jurisdiction over a defendant who in no other way connected himself with that state.

28. Pennoyer v. Neff, 95 U.S. 714 (1878). At this time the Court could not conceive how a state's power could constitutionally extend beyond its physical boundaries.

29. It was not until 67 years later, in 1945, that this concept was expressly overruled in *International Shoe*, although, various decisions, such as *Hess* and *Milliken*, had stretched the concept to include situations where the defendant could be "deemed" present within the state. *See* notes 24 & 26 *supra*.

30. 326 U.S. 310 (1945). The vast increase in interstate commerce and modern methods of transportation caused the Court to reconsider interstate jurisdiction such that defendants would not be able to hide behind the veil of state lines.

31. An indirect effect may exist where a corporation acts wholly outside the state with the knowledge that a result in the forum state is likely to occur. Such a case may involve the negligent manufacture of a product outside the state that causes an injury within the state. *See* Duple Motor Bodies, Ltd. v. Hollingsworth, 417 F.2d 231 (9th Cir. 1969) (defendant's knowledge that its product would be used as tour buses in Hawaii sufficiently connected defendant with Hawaii for purposes of jurisdiction); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961) (installation of defective valves on water heaters shipped into Illinois deemed sufficient contact; state lines were seen as unimportant in relation to modern methods of doing business).

ant have certain minimum contacts with the forum state such that the maintenance of the suit would not offend "traditional notions of fair play and substantial justice."[32] Many of the states responded by enacting long arm statutes which extended jurisdiction to the limits permitted by the due process clause of the Constitution.[33] Since due process was the test, it was not entirely clear exactly what would constitute the necessary minimum contacts to render an out-of-state defendant amenable to suit.[34]

Twelve years later, in *McGee v. International Life Insurance Co.*,[35] the factors that might establish minimum contacts were again explored. The defendant, a Texas corporation, assumed the insurance obligation of the deceased's previous insurer and sent the deceased, a California resident, a reinsurance offer which was accepted. All premiums on the policy were mailed from California until the death of the policyholder. Alleging that the cause of death was suicide, the defendant insurance company refused to pay on the policy. In the ensuing lawsuit, the insurer contested California's assertion of jurisdiction over it as a violation of due process. There was no evidence to indicate that the defendant insurer had ever solicited any business in California or conducted

32. 326 U.S. at 316. The doctrine of "minimum contacts" was created to show that physical contact, as previously required by *Pennoyer*, was no longer the test. It must be demonstrated that the defendant has somehow minimally connected himself with the forum state such that "traditional notions of fair play and substantial justice" are not offended. In *International Shoe*, the Court held that the defendants had connected themselves with the State of Washington by merely employing salesmen there such that a suit could be maintained in Washington for back unemployment taxes.

Left open was the question of whether a defendant may have sufficient contacts with the forum state to subject it to the state's jurisdiction for a cause of action having no relation to its activities within the state.

33. OKLA. STAT. ANN. tit. 12, § 1701.03(a)(4) (West 1980); HAWAII REV. STAT. § 1634-35 (1976); ILL. REV. STAT. ch. 110, § 17 (West 1977).

The language of the statutes is similar. The state may exercise jurisdiction over any person, whether a resident or not, who submits himself to the jurisdiction of the state courts for any cause of action arising from any of the following acts:

1) transaction of any business within the state;
2) the commission of a tortious act within the state;
3) the ownership, use, or possession of any real estate situated within the state; and
4) contracting to insure any person, property, or risk located within the state at the time of contracting.

34. " 'Due process' is an illusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts." Hannah v. Larche, 363 U.S. 420, 442 (1960).

35. 355 U.S. 200 (1957).

any business other than with the one policyholder.[36]

The Supreme Court held that California could assert jurisdiction over the defendant insurer because the insurance contract had "substantial connection" with the forum state. The Court found that California had a manifest interest in providing redress for its citizens when parties to contracts breach their obligations.[37] The Court also noted that the California residents would be at a severe disadvantage if they were forced to go to a distant forum to litigate claims which essentially centered in other states.[38] In balancing the interests of the parties, the Court took note of the fact that although the defendant corporation was obviously amenable to suit in its home state of Texas, the only contact Texas had with the litigation was that the defendant was based there.[39]

It became clear that to establish minimum contacts for jurisdictional purposes, a defendant must have intentionally connected himself with the state in such a way as to benefit from the contact, either by receiving the protection of the laws of the state, or by receiving a benefit in an economic sense.[40]

In the following year the Court decided *Hanson v. Denckla*.[41] *Hanson* was the first post-*International Shoe* case to invalidate asserted jurisdiction over a foreign corporation. In *Hanson*, the assignees and the designated beneficiaries of a trust initiated in Pennsylvania together with a Delaware bank, contested the validity of an assignment of benefits made after the settlor's move to Florida.[42] Plaintiffs sought to bring suit in Florida and defendants

36. *Id.* at 221-22. International Life contended that its right to due process had been violated since it had not substantially connected itself with California having made only one insurance contract there.

In response to this problem, several long arm statutes have specifically enumerated the making of an insurance contract as a basis for asserting jurisdiction. *See* note 33 *supra*.

37. 355 U.S. at 223.

38. *Id.*

39. *Id.* at 221. In *McGee*, the Court appeared more willing to examine relative hardships and relative fairness in upholding or denying jurisdiction. The narrow focus on defendant's state contacts was not evident at this time. Therefore, under *McGee*, the requisite contacts to confer jurisdiction could vary depending on the nature of the case and the correlative fairness to the parties. By relying more on *Hanson*, the *World-Wide* Court will reject this flexibility.

40. *Id.* *McGee* represented the least amount of contacts required when the subject of the litigation was the defendant's activities within the forum state. Where the claim does not involve such activities themselves, significantly greater contacts with the forum state have traditionally been required. Such contacts may exist within a series of contacts within the state, substantial revenue derived from activities within the state, or benefits derived from state law. *See* Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952).

41. 357 U.S. 235 (1958).

42. *Id.*

contested Florida's assertion of jurisdiction over them. The United States Supreme Court held that the Delaware defendant had not "purposefully avail[ed] himself of the privilege of conducting activities within the forum State,"[43] and therefore, Florida's assertion of jurisdiction would not be allowed. The Court, possibly fearful of the way in which *McGee* would be applied by the states, stressed the point that in *Hanson*, no attempt had been made by the defendant bank to connect itself with the forum.[44] *McGee* was distinguished by showing that the *McGee* defendant had received premiums from California such that the defendant should have foreseen the possibility of suit within that forum.[45]

In *Hanson*, a reversal in the expansion of jurisdictional concepts by means of liberal application of minimum contacts should be noted. The *Hanson* Court almost entirely disregarded all aspects of the litigation itself with the exception of defendant's contact with the forum state.[46]

The Supreme Court again addressed the problem of sufficiency of contacts in *Kulko v. California Superior Court*.[47] In that case, it was held that a father who merely permitted his daughter to move to California to live with her mother did not have sufficient contacts to allow the assertion of jurisdiction by California over him in a suit for increased child support.[48] The Court asserted that any benefit the father might derive from not having to pay his daughter's expenses in his home was only incidental to her move to California and, therefore, insufficient to establish the requisite contacts.[49] The Court noted that although the state had an interest in protecting its citizens, that interest was adequately protected by the Uniform Reciprocal Enforcement of Support Act of 1968.[50] Therefore, unlike *McGee*, no real hardship would be

43. *Id.* at 253.

44. *Id.* at 251. It is possible the Court was fearful of the flexible approach initiated by *McGee* being applied too broadly. *See* note 39 *supra*. *McGee* was likely seen as too great an interference with the concept of a united federation of independent states, since in many more cases jurisdiction would be upheld rather than denied. The *Hanson* decision would now require intent or purposeful connection before the forum state could properly claim jurisdiction.

45. 355 U.S. at 220, 223.

46. 357 U.S. at 251-54.

47. 436 U.S. 84 (1978).

48. *Id.*

49. *Id.* at 94-95.

50. CAL. CIV. PROC. CODE §§ 1650-1659 (West 1972 & West Supp. 1980). The Revised Uniform Reciprocal Enforcement of Support Act of 1968 allows a resident claiming child support from a nonresident to file a petition in California and have

placed on the plaintiff by denying jurisdiction over the defendant.[51]

The cases dealt with by the Supreme Court thus far have been associated only with economic loss.[52] Although several lower federal courts and several state courts have dealt with the question of jurisdiction over foreign parties causing torts within the forum state,[53] the Supreme Court had not addressed the subject until *World-Wide*.[54]

Most of these lower court decisions turned on whether a defendant should have foreseen the suit arising in the forum state,[55] with any element of surprise being contrary to "traditional notions of fair play and substantial justice."[56] Evident in the lower court decisions was a concern not only for fairness to the defendant, but also fairness to the plaintiff.[57] Additionally, the most efficient place to litigate a claim was often sought by the more enlightened courts.[58] These decisions reflect judicial awareness of the fact that often the plaintiffs have been seriously injured,

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its merits adjudicated in the state of the alleged obligor's residence, without either party having to leave his or her own state.

51. 436 U.S. at 99. The Court may essentially have been employing a *McGee*-type balancing test in comparing the relative hardships.

52. *See* notes 25, 26, 27 & 29 *supra*.

53. *See, e.g.*, Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205 (D.N.J. 1974) (auto dealer should anticipate interstate travel of its product); Benn v. Linden Crave Co., 326 F. Supp. 995 (E.D. Pa. 1971) (need only show minimum contacts to require Swedish crane manufacturer to defend its product wherever it causes injury); Phillips v. Anchor Hocking Glass Corp., 100 Ariz. 251, 413 P.2d 732 (1966) (dismisses literal interpretation of *Hanson's* "purposefully availing" concept in favor of considering fairness to both parties); Smyth v. Twin State Improvement Corp., 116 Vt. 569, 80 A.2d 664 (1951) (tortious injury to plaintiff's property sufficient contact to deem defendant within state for purposes of jurisdiction).

54. Although a tort situation was addressed in Watson v. Employers Liab. Assurance Corp., 348 U.S. 66 (1954), the case was more directly concerned with the applicability of Louisiana's direct action statute to gain jurisdiction over a foreign defendant by attacking the contractual obligation of his insurance corporation doing business in Louisiana. The language employed by the Court in *Watson* would tend to indicate support for the dissent in *World-Wide*. A similar case decided in New York is Sieder v. Roth, 17 N.Y.2d 111, 216 N.E.2d 317, 269 N.Y.S.2d 99 (1966) (jurisdiction over defendant in direct action against insurer upheld). This concept has now been disapproved in Rush v. Savchuk, 444 U.S. 320 (1980).

55. *See* note 53 *supra*.

56. *See* note 32 *supra*.

57. *See, e.g.*, Phillips v. Anchor Hocking Glass Corp., 100 Ariz. at 253, 413 P.2d at 734.

58. *Cf.* Cross v. Del Webb's Hotels Int'l, Inc., 482 F. Supp. 664 (E.D. Tex. 1979) (jurisdictional analysis should focus on due process as fairness to both parties rather than if the nonresident defendant's activities fall within the technical meaning of "doing business"); Leu v. Leu, 481 F. Supp. 899 (W.D. Pa. 1979) (since fairness is a relative term, the interest of both parties must be balanced in order to promote fairness); Bach v. McDonnell Douglas, Inc., 468 F. Supp. 521 (D. Ariz. 1979) (failure to consider relative economic status of both parties may effectively deny plaintiff his right to adjudication of his dispute).

not merely in their pocketbook, but also in their very health and well-being.

The elusive nature of due process in asserting jurisdiction over a nonresident left the states without a truly adaptive formula which could meet the needs of a changing economic society.[59] The situation compelled the Court to seize the opportunity to adapt the concepts of due process and *in personam* jurisdiction to fit modern societal requirements and to distinguish between the amount of contacts necessary in cases involving economic loss and those involving personal injury. The Justices were faced with the problem of deciding whether to continue the previous trend of past decisions in expanding the ability of the states to assert jurisdiction over nonresidents[60] or to reverse the trend and return to a more restrictive view.[61] The Court ultimately decided in

59. Many of the various formulae proposed by state courts became overly concerned with concepts of "doing business" within the state or "purposefully availing" oneself of state law such that they were unable to keep up with the evergrowing outreach of corporations in a mobile society. *See, e.g.*, Good Hope Indus., Inc. v. Ryder Scott Co., 79 Mass. Adv. Sh. 1155, 389 N.E.2d 76 (1979) (typical rigid application of the *Hanson* rationale allowed that inconvenience may exist without rising to the level of unconstitutionality); Wendt v. County of Osceola, Iowa, 289 N.W.2d 67 (Minn. 1979) (employed five-fold test wherein the court considered quantity of contacts, nature and quality of contacts, source and connection of cause of action with the contacts, interests of forum state in providing forum, and relative convenience of the parties); Tyee Constr. Co. v. Dulien Steel Prod., Inc., 62 Wash. 2d 106, 381 P.2d 245 (1963) (employs five-fold test of *Wendt*); Clement v. United Cerebral Palsy of Southeastern Wisc., Inc., 87 Wis. 2d 327, 274 N.W.2d 688 (1979) (although proposing a qualitative rather than rigid quantitative analysis, the court fell into a traditional interpretation of the state's connection).

60. *See* McGee v. International Life Ins. Co., 355 U.S. 220, 222-23 (1957), in which the Court noted the relaxation of the due process clause as a guarantor against inconvenient litigation. The Court attributed the relaxing trend to a fundamental change in the American economy. This change may be demonstrated by the great distance products may travel and the modern ease of transportation allowing defendants to defend in distant forums without serious inconvenience. For a discussion of the application of due process in jurisdictional cases *see* note 63 *infra*.

61. In preferring the more restrictive view, the *World-Wide* Court relied upon the case of Hanson v. Denckla, 357 U.S. 235 (1958), where it was held:

> Even if the defendants would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for the litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

444 U.S. at 294. The Court apparently believed the guarantee of immunity from inconvenient or distant litigation was wholly secondary to the territorial limitations

favor of the more restrictive view.[62]

IV. THE RATIONALE OF THE MAJORITY

The *World-Wide* Court noted at the outset that the due process clause of the fourteenth amendment[63] was the standard by which the decision of the Supreme Court of Oklahoma must be reviewed.[64] The Court also noted that the minimum contacts test, enumerated in *International Shoe*,[65] was the method by which to determine if due process had been met.[66] It was hoped that the minimum contacts criterion would be adjusted to consider the differing set of circumstances[67] that arise in a personal injury case as compared with one concerned solely with economic interests. Although the opinion had an auspicious beginning by looking toward *McGee*, the subsequent strong reliance on *Hanson* would serve as the basis for the Court's decision not to adjust the jurisdictional tests for circumstances peculiar to personal injury.

A. The Influence of the McGee Decision

In analyzing the appropriate use of minimum contacts, the Court saw the purpose of the application of the test as having two related but distinguishable functions. First, it was believed the doctrine protected the defendant from the burdens of litigating in

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on the power of the respective states. A return to the *Pennoyer* decision seemed desired.

62. The vote was six to three with the majority comprised of an opinion by Mr. Justice White in which Mr. Chief Justice Burger and Associate Justices Stewart, Powell, Rehnquist, and Stevens joined. The minority was comprised of Mr. Justice Brennan who filed a dissenting opinion, Mr. Justice Marshall who also filed a dissenting opinion in which Mr. Justice Blackmun joined, and Mr. Justice Blackmun who filed a dissent of his own.

63. U.S. CONST. amend. XIV. Looking to the famous phrase, no state shall "deprive any person of life, liberty, or property without due process of law," the Court has traditionally held it must be *fair* that jurisdiction be exercised over a defendant. International Shoe Co. v. Washington, 326 U.S. 310 (1945). Components of this fairness have been shown to include that the defendant reasonably foresee suit within the forum state (although the *World-Wide* Court will discount the importance of foreseeability), he has availed himself of the state such that it is fair that the state has power to compel his appearance and bind him by its decision, and that the possibility of unfair forum shopping by the plaintiff be carefully scrutinized. *See generally* Woods, *supra* note 8.

64. 444 U.S. at 287.

65. *See* note 32 *supra* and accompanying text.

66. 444 U.S. at 291.

67. Since tort cases traditionally deal with injured property and, more importantly, injured persons, the plaintiff's case tends to be less mobile than that of the defense. Witnesses, medical records, pertinent evidence, the hospitalized injured parties, and situations in which the site of the injury or accident is crucial, all make it difficult to transport a case to the defendant's distant home forum. Since tort cases also often concern multiple defendants, expansion of jurisdiction could allow for judicial efficiency by consolidating the action in one forum.

a distant or inconvenient forum. Second, the doctrine acted to insure that the states did not unreasonably reach beyond their territorial boundaries imposed upon them by their status as co-equal sovereigns in a federal system.[68]

The *World-Wide* Court believed the burden of litigating in distant forums was embodied in the ideas of fairness or reasonableness and noted the precepts of the *International Shoe* decision, which forbade offending "traditional notions of fair play and substantial justice"[69] and required a relationship between the forum state and the defendant making it "reasonable . . . to require [the defendant] to defend the particular suit which is brought there."[70] Although the court would later place little importance on them, it reiterated the factors that the *McGee* Court had set out as relevant in deciding a question of fairness.[71] The *McGee* formula included an examination of the state's interest in adjudicating the dispute;[72] the plaintiff's interest in obtaining convenient and effective relief;[73] the interest of the interstate judicial system in obtaining the most efficient resolution of the controversy; and the national interest of promoting desirable social policies.[74]

The *World-Wide* Court recognized that the *McGee* decision signified a relaxed application of the due process clause as a limit on

68. 444 U.S. at 294. It should be noted that the Court's concept of fairness only considered fairness to the defendant.

69. 326 U.S. at 316.

70. *Id.* at 317.

71. 444 U.S. at 292. Although the Court gave lip service to the relevant factors concerning fairness shown by *McGee*, the rigid test imposed by the *World-Wide* decision has nearly removed all importance from their consideration. *See* note 110 *infra*.

72. *See* McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957). This point examines whether or not the state is more than just a forum, and also examines whether or not its law and authority is somehow affected such that it may have an interest in the resolution of the dispute. Oklahoma can be seen to have an interest in dangerous products that enter the state and cause injury to citizens or visitors protected by Oklahoma law.

73. *See* Kulko v. California Superior Court, 436 U.S. 84, 92 (1978). Whether or not the plaintiff will be able to obtain adequate relief in another forum is also of appropriate concern for the court. If no other adequate forum is available, the fairness analysis should allow jurisdiction to stand in the forum state. *Cf.* Hutson v. Fehr Bros., Inc., 584 F.2d 833, 837 (8th Cir. 1978), *cert. denied*, 439 U.S. 983 (1978) (tremendous expense or impracticability of trying lawsuit in distant forum may force unfair settlement).

74. 444 U.S. at 292. This point concerns itself with general judicial economy and the avoidance of a multiplicity of lawsuits throughout the states. There may also be a national interest in seeing parties, wronged by defendant's dangerous products, compensated such that the injured do not become public charges.

state jurisdiction. This relaxation was attributed to a "fundamental transformation in the American economy."[75] Not only was the *McGee* decision recognized for its realization of modern commercial realities, the *World-Wide* Court went further to note the greatly accelerated development since the *McGee* holding in 1957. However, the Court's realization of a change in the economy was limited to a consideration of inconvenience to the defendant.[76] Instead of considering that modern products, designed to travel great distances, could cause substantial harm to distant plaintiffs and, hence, requiring expanded jurisdictional allowances, the Court merely noted that "modern transportation and communication have made it much less burdensome for a party . . . to defend himself in a State where he engages in economic activity."[77]

The Court refused to create modern jurisdictional tests that would allow distant plaintiffs injured by modern products to more easily recover their damages. The only effect the Court perceived *McGee* to have, therefore, was to require the defendant to travel a little further now than he would have travelled in 1945 to 1957. It would seem a proper analysis and application of the test in *McGee* would require more than this.[78] The reason the *World-Wide* decision did not contain such a proper analysis of *McGee* was because the Court's final decision did not rest on *McGee*, but actually involved a more rigid application of the *Hanson* decision.

B. State Sovereignty and the Hanson Decision

The *World-Wide* Court stated that in spite of historical developments, as noted in *McGee*, state boundaries still remain relevant for jurisdictional purposes.[79] Although the framers of the Constitution provided for a national common market or free trade unit, state sovereignty still limits the power of state courts over citizens of sister states. Although the Court did not desire to return to the simple rigid standard of *Pennoyer*, it believed that the due process requirements of fairness and orderly administration of laws free from outside state interference would not allow any

75. 444 U.S. at 293. This fundamental transformation can be seen in the areas of transportation, communication, distribution, and mass media. The country and the world exhibit a relation and interdependence that was not the case in 1945.

76. *See* note 68 *supra*.

77. 444 U.S. at 293.

78. By examining the tests set up by *McGee*, it would appear that Oklahoma has an interest in protecting its citizens from dangerous automobiles, that the Robinsons may not be able to seek adequate redress in New York due to the immobility of their case; and that judicial economy and general efficiency would be promoted by consolidation of all defendants in one forum.

79. 444 U.S. at 293.

other course but to uphold *Hanson*.[80]

Relying strongly on *Hanson v. Denckla*,[81] the sovereignty issue was placed above all. Quoting from *Hanson*, the Court reasoned that no matter how convenient technology has made the defense of a suit in a forum state; no matter how strong an interest the forum state may have in adjudicating the dispute; no matter how efficient the location of the forum state may be for the litigation; *the assertion of jurisdiction which infringes upon the sovereignty of the defendant's home state can not be upheld*.[82] Therefore, fairness to the defendant will logically become an issue only if the forum state does not exceed its sovereign authority.

Under this reasoning a forum state will apparently be able to act within its sovereign authority only when a defendant has *invaded* the forum state's sovereignty in such a sufficient manner that the state may, in return, *invade* the sovereignty of the defendant's home state in order to gain jurisdiction over him.[83] In order to invade the sovereignty of the forum state, a defendant must knowingly avail himself of benefits accruing from his activities within that state.[84]

The *World-Wide* majority was unable to find any manner in which the defendants had affiliated themselves with Oklahoma.[85]

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80. *Id.* at 294. The Court construed due process fairness to require predictability in the application of the law. Although procedural fairness may be promoted by the majority's holding, the furtherance of the substantial right of plaintiffs to seek adequate redress is seriously diminished. As shown in the Court's application of *Hanson*, state sovereignty was deemed so important that no other decision could be reached.

81. 357 U.S. 235 (1958). *Hanson* disregards the notion that the forum state may be the center of the controversy and looks only to the defendant's intent. *See* note 43 *supra* and accompanying text.

82. 444 U.S. at 293-94. *Cf.* Bean v. Winding River Camp Ground, 444 F. Supp. 141 (E.D. Pa. 1978) (fairness to defendant considered over sovereignty).

83. This is the doctrine of "minimum contacts" found in *International Shoe*.

84. The concept of purposefully availing oneself of the benefits and obligations of a state before being amenable to suit there was shown in *Hanson*. *But see* Cummins, *In Personam Jurisdiction Over Nonresident Manufacturers in Product Liability Actions*, 63 MICH. L. REV. 1028 (1965). The author contends that since a suit in tort would be frivolous without damages, it is the injury within state boundaries and not the negligence aimed at the state from without that is the wrongful element upon which the suit is based. The "purposefully availing" concept can not be seriously applied to product liability cases due to the fortuitous route that products travel in order to arrive at their destination. Therefore, the injury occurring within the state should provide the invasion. The same thought is embodied in Hearne v. Dow-Badische Chem. Co., 224 F. Supp. 90 (S.D. Tex. 1963), and Phillips v. Anchor Hocking Glass Corp., 100 Ariz. at 257, 413 P.2d at 736.

85. 444 U.S. at 295.

It was noted that since the defendants did not benefit from any of the privileges of Oklahoma law, the single occurrence of a tort committed within the state would not suffice to confer jurisdiction. The fact that the defendant's allegedly defective product caused injury in Oklahoma was not seen as a sufficient invasion of Oklahoma's sovereignty to allow invasion of the sovereignty of the defendants' home state in order to gain jurisdiction.

C. Foreseeability as a Determinant Dismissed

The Supreme Court rejected the argument that due to the auto's designed mobility, entry into Oklahoma was foreseeable such that the defendants should have been aware of a possible suit in that state.[86] Fearing the fatally broad application of a foreseeability criterion, the Court held this not to fulfill the sovereign invasion requirement that would allow reciprocal invasion by the forum state.[87]

The majority stressed that it was not foreseeability of a defendant's product entering and causing harm in the forum state, but that it was the "defendant's conduct and connection with the forum State by which the defendant should reasonably anticipate being haled into court there."[88] Apparently seeing no distinction between an action in tort and a purely economic action, the Court cited *Hanson* and *Kulko* as denying the importance of foreseeability.[89] Neither of these cases were personal injury actions[90]

86. As pointed out in Justice Brennan's dissent, the value of an automobile is based on mobility. By being used in the very manner intended, the car entered the forum state where the accident occurred. Prior notice would seem to have been available to defendants by their very knowledge of the auto industry. Indeed the defendants carried insurance for just such occurrences and stood ready for multistate litigation. Respondent's Brief at 18, World-Wide Volkswagen v. Woodson, 444 U.S. 286 (1980). *See* Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp. 1205 (D.N.J. 1974) (interstate travel of automobile is foreseeable to dealer); Doggett v. Elec. Corp. of Am. Combustion Control Div., 93 Idaho 26, 454 P.2d 63 (1969) (those who place dangerously defective goods in the flow of commerce should be required to defend them wherever they reasonably end up); Tyson v. Whitaker & Son, Inc., 407 A.2d 1, 6 n.11 (Me. 1979) (due to the unique mobility of the automobile, as evidenced by implied consent statutes, the jurisdictional analysis should be expanded). *But see* Kailieha v. Hayes, 56 Hawaii 306, 536 P.2d 568 (1975) (foreseeability has nothing to do with a product's mobility and cannot by itself, establish minimum contacts).

87. The Court felt that to allow foreseeability as the test would be to uphold jurisdiction whenever it was reasonably *possible* that the product would enter a distant state. It was believed this would expand jurisdiction too far. The Court desired the test to be whether it was *probable* that the product would enter a state. This probability could only be supplied under the idea in *Hanson* of purposeful or intentional connection. A specific connection must be evident; a general connection or "one directed at the states as a whole" will not suffice. 444 U.S. at 296-97. *See* note 128 *infra*.

88. 444 U.S. at 297.

89. *Id.* at 295-96.

90. The Court was bothered by the unilateral action of the Robinsons in pro-

and both were decided on grounds other than the notion of foreseeability.[91]

Steering away from foreseeability, and looking more in the direction of such concepts as intentional dealing and economic benefit,[92] the Court believed that the requirement of intentional and purposeful connections would give predictability to the legal system and allow potential defendants to structure their conduct to avoid liability.[93]

The "purposefully availing" or derived benefit must be more than just a collateral benefit derived from the activities of others in the forum state. Substantial benefit must be shown before jurisdiction will be deemed proper.[94] Thus, the Court believed that World-Wide and Seaway derived no benefit from being part of a national network of Volkswagen dealers and distributors, and the Court saw no merit in the argument that the Robinsons' purchased the Audi for their trip across country because they were aware of the nationwide service program employed by Volkswagen.[95] The Court also would not accept the contention that the Robinsons' driving of the car into Oklahoma was within the stream of commerce and, hence, within the reasonable expectations of World-Wide and Seaway.[96] It was held that such unilat-

viding what the Court believed to be the only contact with the forum state. But "trust funds, [as in *Hanson*], and children, [as in *Kulko*], are not inherently dangerous instrumentalities" designed to travel long distances at high speeds. In terms of what the respective defendants may reasonably expect, those cases are markedly different. Woods, *supra* note 8, at 910 n.213.

World-Wide Volkswagen Corp., by its very name, indicated its expectation of far reaching influence. *Cf.* Clay v. Sun Ins. Office, Ltd., 377 U.S. 179 (1964) (policy denoted by the term "World-Wide" anticipated loss anywhere).

91. It is quite likely that the *Kulko* decision rested on the availability of the Revised Uniform Reciprocal Enforcement of Support Act of 1968. *See* note 50 *supra*.

92. *See* note 67 *supra*.

93. If the Robinsons had informed Seaway, from salesman to corporate president, that they were planning to drive their new Audi to Arizona via Oklahoma, it is highly doubtful Seaway would have refused to sell the car. A seller is usually much more "interested in the consumption of his product, not where it is consumed." Phillips v. Anchor Hocking Glass Corp., 100 Ariz. at 259, 413 P.2d at 737.

94. 444 U.S. at 298.

95. All automobile dealers derive substantial benefit from factory warranty service, where they perform warranty work on cars from any state and are reimbursed by the manufacturer. It is logical to assume that Audis may be more marketable due to the factory warranty program honored nationwide, including in Oklahoma.

96. It is not clear why there should be any distinction between entry into the

eral activity of the Robinsons could not establish the necessary contacts with the forum state.[97]

The commercial reality the Court may have been concerned with was embodied in the majority's fear of the possible paralyzing consequences of a single out-of-state tort.[98] Failing to note other possible safeguards,[99] the decision pointed out that, with foreseeability as the sole criterion, a tire dealer could be forced to defend a suit arising from a defective tire in Pennsylvania when the tire was sold in California and installed on a car with Pennsylvania license plates.[100] This famous and troublesome example, set forth by Judge Sobeloff in *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*,[101] would probably not lead to the paralyzing economic consequences predicted by the Court with the application of a modern jurisdictional formula based upon foreseeability.[102] Fear-

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stream of commerce by commercial distribution or by the consumer. This is especially so when an auto has a reasonably long and useful life, sometimes seeing many owners. An auto with a possible life span of one hundred thousand miles (notwithstanding collisons) is unlikely to remain within one state for its entire existence. *See* Mann v. Frank Hrubetz and Co., Inc., 361 So.2d 1021 (Ala. 1978). *But see* Kailieha v. Hayes, 56 Hawaii 306, 536 P.2d 568 (1975) (foreseeability has no connection with a product's mobility).

97. *See* note 90 *supra*.

98. 444 U.S. at 296. *But see* Ajax Realty Corp. v. J.F. Zook, Inc., 493 F.2d 818, 822 (4th Cir. 1972), *cert. denied*, 411 U.S. 966 (1973). The court of appeals stated that the "day is long past when the 'minimal contact' necessary to satisfy due process is to be equated with traditional concept of doing business." The most logical and convenient location for trial was urged. In this case the single tort within state boundaries was sufficient to convince the court that jurisdiction should be upheld. Although strongly argued in Respondent's Brief at 8, 15, and 23, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), this point was glossed over by the Supreme Court in the majority decision. Oddly enough, it was also ignored by the minority.

99. Modern jurisdictional formulae could likely be created to take into account even these most problematic cases. *See* note 103 *infra*.

100. 444 U.S. at 296.

101. 239 F.2d 502, 507 (4th Cir. 1956). The case involved purse string damages only, where the plaintiff sued for loss of profits due to defective products. Judge Sobeloff formed his famous hypothetical concerning the tire dealer to illustrate what he believed would be the consequence if jurisdiction were expanded. He foresaw jurisdiction being upheld with the least amount of foreseeability present and failed to consider other factors. This case is another example of the tendency to confuse tort damages with damages sounding in contract.

102. By using a minimum contacts connection only as part of the analysis, the fairness issue again becomes important. By using a method suggested by Professor Woods, it can be seen that the State of Pennsylvania has a legitimate public interest in promoting safety on its highways. *See* Woods, *supra* note 8. The defendant is on fair notice of the tire's destination, due to the out-of-state license plates. The remaining question then is whether or not it be fair to assert jurisdiction over the defendant.

The size of the defendant's business may become important. Was the tire purchased from a small service station or from a large corporation such as Sears Roebuck and Co.? Does the dealer often engage in the sale of tires to out-of-state cars, possibly engaging in sharp practices since the dealer-defendant may know the chance of being haled into a foreign forum is unlikely? Who will defend the

ing an overly broad application, the majority felt that to allow foreseeability as the test for the assertion of jurisdiction would essentially appoint every chattel as an agent to receive process,[103] a concept disapproved of in *Shaffer v. Heitner*[104] in 1977. Again the majority failed to distinguish when the chattel is the subject of the litigation and where the chattel provides contacts to a state for purposes of other litigation.[105]

The majority went on to say that a car, as a dangerous instrumentality, has no relevance in affecting jurisdictional requirements, but is only relevant in affecting substantive principles of tort law such as strict liability.[106] It is not clear how the policies

suit, the named defendant or his insurance company? It may not be fair to require a defendant to travel over 3,000 miles to defend his product where he made no aggressive attempt to connect himself with the forum. This problem cuts two ways, as the plaintiff must also travel if jurisdiction is not upheld. A true fairness analysis, aided by an examination of the nature and quality of defendant's contacts with the forum state, should be able to balance these interests. Woods, *supra* note 8, at 906-07. *See* Phillips v. Anchor Hocking Glass Co., 100 Ariz. 251, 413 P.2d 732 (1966). The Arizona court held in *Phillips* that a fairness analysis should include, not merely a bare application of the minimum contacts doctrine, but also must consider the nature and size of the defendant's business, economic independence of the plaintiff, and nature of the cause of action including applicable law and practical matters of trial.

103. 444 U.S. at 296.

104. 433 U.S. 186 (1977). The Court held that the mere existence of property within the forum state is not enough, without further minimum contacts, to confer jurisdiction over a nonresident defendant. This would clearly be the requirement of fairness where the subject of the litigation was not the chattel itself. Where the chattel causes injury, the defendant is not receiving process for other wrongs attributable to the defendant, but actually for the wrong inflicted by the product itself.

105. If the defendant's product is capable of inflicting as much or more injury as an actual agent within the state, where is the defect in making the negligently designed, injury causing product sufficient contact to at least support a further fairness analysis in order to determine where suit should be held?

It would seem clear that in *World-Wide*, Oklahoma is the more efficient state for the litigation with witness, medical experts, and creditors present. As previously discussed, the state's interest seems clear. Defendants' inconvenience as balanced against plaintiffs' are such that no real inconvenience is suffered by defendants. If the entry by the Audi into Oklahoma had been at least a sufficient contact to trigger this type of analysis, jurisdiction would likely have been deemed proper. *See* note 30 *supra*.

By using this type of minimum contacts analysis, the single entry of an auto into the forum state would clearly not provide the jurisdictional minimum for suits other than those concerning the auto itself (*i.e.*, shareholder's derivative actions or contract actions). *See* Shaffer v. Heitner, 433 U.S. 186 (1977).

106. This may be true since the defendant's home forum is likely to apply the law of the state where the tort occurred. *See generally* Erie Railroad v. Tompkins, 304 U.S. 64 (1938). This may prove to be of little importance where the plaintiff is effectively denied his day in court because maintaining suit in defendant's home

behind strict liability[107] will be furthered when the power of a state to assert jurisdiction and, hence, the power of a state to vindicate the policies underlying strict liability are so severely curtailed.

D. What Remains of the Fairness Test

The *World-Wide* Court failed to make any distinction between the degree of contacts necessary in a case where economic loss alone occurs and a case where bodily injury, disfigurement, or even death occur.[108] State sovereignty must be observed. However, even if a defendant has purposefully connected himself[109] to

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state would be prohibitively costly and logistically impractical. In addition, there is the problem of one state interpreting the law of another. *See* Respondent's Brief at 22, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Aftarnase v. Economy Baler Co., 343 F.2d 187 (8th Cir. 1965) (failure to grant jurisdiction may disadvantage plaintiff too severely such that no other adequate means of redress may be possible); *Cf.* Bach v. McDonnell Douglas, Inc., 468 F. Supp. 521 (D. Ariz. 1979) (failure to consider economic status of the plaintiff may effectively deny him his right to trial).

107. By removing the elements of negligence from the analysis, it has become easier for the plaintiff injured by dangerously defective products to recover. All that need be shown is that the product is defective and that the injuries of the plaintiff were caused or enhanced by the unknown defect. *See* Greenman v. Yuba Power Prods. Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963). These also are the thoughts embodied in RESTATEMENT (SECOND) OF TORTS § 402(a) (1963-64).

108. This is the same over generalization made by Judge Sobeloff in *Erlanger*. It is not clear why proper judicial analysis could not consider the nature of the harm involved in deciding if fairness to both plaintiff and defendant would be served by granting jurisdiction. Since a personal injury suit involving bodily harm is of a different character than a suit involving only economic loss, and there is an important public policy concern to provide adequate compensation from the wrongdoer (as evidenced by the promulgation of strict liability in tort, RESTATEMENT (SECOND) OF TORTS § 402(a) (1963-64)), it seems the jurisdictional evaluation should be adjusted to account for this. Jones Enterprises, Inc. v. Atlas Servs. Corp., 442 F.2d 1136 (9th Cir. 1971) (injury to body is of a different character than injury to purse, therefore, the jurisdictional analysis should be adjusted accordingly). *See* Carrington & Martin, *Substantive Interests and the Jurisdiction of State Courts*, 66 MICH. L. REV. 227, 245-46 (1967); Comment, *Long-Arm and Quasi in Rem Jurisdiction and the Fundamental Test of Fairness*, 69 MICH. L. REV. 300 (1970). The respective authors assert that the requisite quantum of contacts should vary proportionately with the benefits and inversely with the costs involved with the exercise of jurisdictional power in a given case. Part of this consideration should be an analysis of the nature of the harm involved. *Cf.* New York Times Co. v. Connor, 365 F.2d 567 (5th Cir. 1966) (bodily harm should be considered differently from economic harm).

109. The Arizona Supreme Court, in *Phillips*, equates the purposeful activity as required by *Hanson* with foreseeability of entry into the forum state. The *Phillips* court believed that since negligence (or strict liability) by definition is not purposeful, it would not be proper to apply a purposefully availing doctrine to defendants in negligence cases. The court also noted the difficulties with semantics in *Hanson* and attempted to avoid them by giving little significance to a literal application of the doctrine. 100 Ariz. at 256, 413 P.2d at 735.

But see, Comment, *Long-Arm and Quasi in Rem Jurisdiction and the Fundamental Test of Fairness*, 69 MICH. L. REV. 300, 309 (1970). The holding in *Phillips*

the forum state or has derived sufficient benefit, it is still possible, although unlikely, that a suit may be dismissed as being unfair to the defendant.[110]

If the defendant has somehow availed himself of the privileges and benefits of the forum state sufficient to satisfy the test laid down by the Supreme Court, jurisdiction will usually be upheld, regardless of state interest, inconvenience, or efficiency.[111] This may mean that the fairness test is of no further import, with the possible exception of hard cases.[112] The chance that a hard case would survive seems slim. Any contacts sufficient to show a foreign defendant purposefully availed himself of state law such that he would be amenable to suit, as required by the Court's literal reading of *Hanson*, would not be a hard case.[113] Jurisdiction would be upheld without difficulty. The desirability of this judicial rigidity is highly questionable.[114]

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has been criticized as placing undue influence on the nexus between the act giving rise to the litigation and the defendant's connection to the state.

110. This is what is apparently indicated by the lip service paid to the fairness test as discussed in note 71 *supra*.

111. 444 U.S. at 294. The Court earlier stated that no matter how fair it may be to litigate within the forum, the sovereignty of defendant's home state may act to divest the forum state of jurisdiction unless minimum contacts exist. Thus, the Court has essentially bisected what was once a single fairness test with respect to due process. First, minimum contacts must be established, then fairness will be analyzed. Therefore, if the defendant purposefully avails himself of the state enough to satisfy the Court's view of the constitutional minimum, his inconvenience or the state's interest may no longer be important, since it is rendered unimportant by the establishment of contacts which satisfy the sovereignty issue.

112. A "hard case" such as Judge Sobeloff's example may be conceived of as where the small California tire dealer intentionally and purposefully ships a number of tires directly to Pennsylvania for use on the plaintiff's tour buses. The shipment is pursuant to the plaintiff's order and the defendant has never solicited business in Pennsylvania. Due to defects in the tires, the buses shake violently and much business is lost. Since the plaintiff can better afford it and the records establishing the damages are mobile, suit may be more efficient in California. Since the fairness analysis of the Supreme Court would not consider the small size of the defendant, he may be forced to defend in Pennsylvania. An effective "fairness analysis" would likely prevent this.

113. At least it appears that a minimum contacts sovereignty test must first be performed before a fairness analysis will take place. It is not clear why this bifurcation is desirable. *See* notes 61, 63 & 80 *supra* and accompanying text. *See also* Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 534.

114. As indicated in notes 108-111 *supra* and accompanying text, fairness cannot be assured by rigid application of archaic principles. "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 895 (1961).

V. THE RATIONALE OF THE MINORITY

A. *Justice Brennan: Fairness to the Parties Over Fairness to the State*

In a strong dissent, Justice Brennan rejected the majority's argument as construing *International Shoe* too narrowly. Justice Brennan also believed that the standards set forth by the early cases were perhaps already obsolete.[115] Justice Brennan desired to shift the analysis back to a more detailed consideration of state interest and actual inconvenience to the defendant. He noted that the focus of *International Shoe* was not on state sovereignty, but on fairness and reasonableness.[116] A quantitative test was specifically avoided by the *International Shoe* Court in favor of analyzing the qualities associated with a suit against a foreign defendant. "The existence of contacts, so long as there are some, was merely one way of giving content to the determination of fairness and reasonableness,"[117] rather than being the sole determinant.

Justice Brennan placed great weight on a state's manifest interest in providing an effective means of redress for its citizens or others within its jurisdiction. He believed a state has a legitimate concern in enforcing laws designed to insure safe travel on highways maintained for travel by all citizens or visitors.[118]

Justice Brennan also asserted that very little actual inconvenience would be suffered by World-Wide or Seaway in defending a suit in Oklahoma.[119] Distance to the courtroom was seen as almost insignificant when dealing with defendants such as these.[120]

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115. 444 U.S. at 299.

116. *Id.* at 300.

117. *Id.* *See* notes 99 & 100 *supra*.

118. By reducing the degree of safety a motorist may expect on the forum state's highways, a seller may reasonably be deemed to have sufficiently invaded the forum state's sovereignty to establish contacts for jurisdictional purposes. Thus, a state interest in the litigation should not be difficult to demonstrate. *See* H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 531-32, (1949) (states have broad power to protect inhabitants against perils to health and safety, even by use of measures which bear adversely on interstate commerce); Curtis Publishing Co. v. T.B. Birdsong, 360 F.2d 344 (5th Cir. 1966) (rational nexus between the fundamental events giving rise to the causes of action and the forum state must be shown, giving the state sufficient interest in the litigation); Afternase v. Economy Baler Co., 343 F.2d 187 (8th Cir. 1965) (a state has a manifest interest in providing adequate means of redress for its citizens); B.K. Sweeney Co. v. Colorado Interstate Gas Co., 429 P.2d 759 (Okla. 1967) (state has a manifest interest to provide redress for a tortious episode that results from in-state contacts, however limited or transient those contacts may be).

119. 444 U.S. at 302.

120. Justice Brennan noted that modern technological advancements have made travel to distant forums quite convenient. This is especially true when dealing with large corporations such as World-Wide and Seaway; the cost of airfare

Rather, "the constitutionally significant 'burden' to be analyzed relates to the mobility of the defendant's defense. [It is unlikely the defendants would suffer special hardship or have their defense damaged by travel to a distant forum. If this were the case, constitutional limits] would require consideration for defendant's interests."[121] Justice Brennan found it difficult to see how due process was truly offended if the defendant suffered no real inconvenience.

Justice Brennan also noted that although Seaway and World-Wide's defense was apparently mobile, plaintiff Robinson's case did not share the same feature. The accident, which is the subject of the litigation, occurred in Oklahoma. The injured plaintiffs were hospitalized in Oklahoma at the time the suit was filed. Essential witnesses and evidence, including the defective car, were in Oklahoma. Travel to New York by the Robinsons in order to settle their dispute would be far less than convenient and would certainly not meet the fairness concept embodied in *International Shoe*.[122]

The point most strongly argued by Justice Brennan was that of the foreseeability of the products entry into the forum state.[123] An automobile is intended to travel. Indeed, a car is marketed with a large part of its appeal being the distance it may travel on a single tankful of fuel. No real difference was noted between an auto being placed into the stream of commerce by a distributor and one driven into the interstate stream by a consumer.[124] The

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will be a most insignificant part of the cost of their defense. Also noted was the defendant's preparedness to defend suits in foreign jurisdictions and the fact they did carry insurance for such occurrences. *Id.* at 301 n.1, 304 n.7, and 305 n.9.

121. 444 U.S. at 301.

122. Without a fairness analysis that looks both to the defendant and the plaintiff, true due process cannot be served. The plaintiff has been diminished by injuries suffered due to defendant's possible negligence. By denying jurisdiction, plaintiff's right to recover compensation due him may effectively be denied. Leflar, *The Converging Limits of State Jurisdictional Powers*, 9 J. PUB. L. 282 (1960); *cf.* Hutson v. Fehr Bros. Inc., 584 F.2d 833, 837 (8th Cir. 1967), *cert. denied*, 439 U.S. 983 (1978) (tremendous expense of trying lawsuit in distant jurisdiction may force settlement); Swafford v. Avakian, 581 F.2d 1224, 1227-28 (5th Cir. 1978), *cert. denied*, 440 U.S. 959 (1979) (distinction drawn between commercial and noncommercial activity for purposes of state long arm statutes in terms of who may more easily travel to a distant forum); Garrett v. Ruth Originals Corp., 456 F. Supp. 376, 383 n.8 (S.D. Ohio 1978) (a husband and wife do not have same financial ability as a corporation to defend or bring suit in a foreign forum).

123. 444 U.S. at 306. Justice Brennan places great importance on the personal injury and tortious nature of the harm involved.

124. *See* Ohio v. Wyandotte Chems. Corp., 401 U.S. 493 (1971) (defendant who

entry of the Audi into Oklahoma was not misuse which might negate foreseeability, but was driven on an interstate highway as might be reasonably expected by any realistic dealer or distributor.

Justice Brennan was easily able to conceive of collateral benefits accruing to the defendants from their choice to enter a nationwide network of auto distributors.[125] Automobiles, such as the Audi are generally purchased for their utility. This utility is not only enhanced but actually produced by the endeavors of many others in the auto business who provide service and maintenance at repair centers throughout the nation.[126] Purchasers of Seaway autos are able to rely on such out-of-state repair service, therefore, Seaway's sales are enhanced. Collateral benefit should not have been difficult to find.

Any effort by World-Wide or Seaway to assert that they dealt only within local areas was unrealistic and should have been discounted.[127] By engaging in the business of auto distribution, World-Wide and Seaway should have expected suit anywhere an auto might reasonably be driven.[128] Justice Brennan noted that petitioners not only could have, but actually did, purchase insurance to protect themselves in cases such as these.[129]

Justice Brennan's most valuable insights may be those regarding the changing nature of the economy which may, in essence, render earlier decisions obsolete.[130] A more modern approach may be required. As explained by Justice Marshall in *Shaffer v.*

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ships product into stream of commerce should defend it wherever it reasonably ends up); Sunn Classic Pictures, Inc. v. Budco, Inc., 481 F. Supp. 382 (E.D. Pa. 1979) (exact commercial linkage to distant plaintiff need not be shown as long as arrival was by normal channels of commerce). *But see* Granite States Volkswagen v. District Court, 177 Colo. 42, 492 P.2d 624 (1972) (driving car across country is not within normal channels of commerce sufficient to render defendant amenable to suit in the forum state); Oliver v. American Motors Corp., 70 Wash. 2d 875, 425 P.2d 647 (1967) (mobility of auto is of no importance).

125. 444 U.S. at 307. Interstate highways span the nation; service stations are found on nearly every corner; dealerships and repair centers abound. Therefore, this economic structure makes it feasible and desirable to traverse far from the actual state of purchase of the automobile.

126. National advertising endeavors with messages such as "see your Buick dealer today" or promises of factory-backed warranty service at "any of your friendly Chevrolet dealers" cannot help but enhance sales such that every dealer derives benefit from the national program. *Id.*

127. *Id.* at 305.

128. Mann v. Frank Hrubetz & Co., Inc., 361 So. 2d 1021, 1024 (Ala. 1978) (mobility of product should apprise defendants of its entry into any forum); *but see* Uppgren v. Executive Aviation Servs., Inc., 304 F. Supp. 165, 170 (D. Minn. 1969) (general mobility is not enough to provide foreseeability; the defendant must foresee movement through the precise state in which the tort occurs).

129. 444 U.S. at 305 n.9. Certainly the cost of insurance is past on to the customer as a cost of doing business.

130. *Id.* at 308. Although the majority noted the fundamental change in the

Heitner; " 'traditional notions of fair play and substantial justice' can be as readily offended by the perpetuation of ancient forms that are no longer justified as by the adoption of new procedures."[131] The societal concept on which *International Shoe* was based is no longer accurate. Commercial realities are such that no distributor of goods can truly expect his product to remain in the locale in which it is sold.[132] Mobility of products is even desired in order to compete in today's market. "Customers and goods can be anywhere else in the country usually in a matter of hours and always in a matter of a very few days."[133] Any fair minded businessman should have foreseen the Audi's entry into Oklahoma.

Justice Brennan believed that the extreme concern for inconvenience to defendants was no longer required. To be truly fair, the plaintiff's as well as the defendant's rights must be considered.[134] Merely requiring a defendant to travel to the place of trial could not always be so onerous a burden to amount to a violation of due process. Indeed, there was nothing violative of fairness or reason in recognizing commercial reality and the obsolescence of the older views.[135]

The belief that individuals must be held responsible for the consequences of their wrongful acts is the foundation of Justice Brennan's views. Defendants should not be able to hide behind the sovereignty of their own state in order to effectively avoid compensating those they may injure outside that state. To allow this would frustrate the precepts of due process and substantial

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American economy, they refused to adjust the minimum contacts test. *See* note 60 *supra* and accompanying text.

131. 433 U.S. at 212.

132. This is especially true of manufacturers, but modern law denies the distinction between manufacturers, dealers, or distributors. The trend is now to hold all "sellers" in the commercial chain responsible for a product's presence in the market and liable for any injuries caused by the product. RESTATEMENT (SECOND) OF TORTS § 402(a), Comment f (1963-64).

133. 444 U.S. at 309.

134. Professor Leflar notes:

> Once it was realized that plaintiffs have as much justifiable interest in having their claims adjudicated at convenient places as to defendants, it became possible to begin to give real meaning to the generalization in terms of what facts make it fair and substantially just to both parties for their case to be tried in one state or another.

Leflar, *The Converging Limits of State Jurisdictional Power*, 9 J. PUB. L. 282, 285 (1960).

135. 444 U.S. at 309-10.

justice as required by *International Shoe*[136] by denying in many cases the opportunity to plaintiffs to effectively settle their grievances with defendants.[137]

In summary, Justice Brennan did not wish to do away with the importance of state boundaries as limitations on the assertion of jurisdiction. He desired a modern test using the contacts between the parties, the forum, and the litigation to determine the most reasonable place of trial.[138]

B. *Justice Marshall: A Contemporary View of "Purposefully Availing"*

Justice Marshall was also concerned with the narrow view laid down by the majority.[139] He did not believe that the Robinsons had sought to justify the assertion of jurisdiction by Oklahoma on one single tortious occurrence. Rather, Justice Marshall believed the assertion of jurisdiction was premised "on the deliberate and purposeful actions of the defendants themselves in choosing to become part of a nationwide, indeed a global, network for marketing and servicing automobiles."[140] The defendants' purposeful endeavors in the auto industry were executed with the intent of taking advantage of the collateral economic benefit available by engaging in the national scheme.[141] In fact, Justice Marshall surmised that "Seaway would be unlikely to sell many cars if authorized service were available only in Massena, N.Y."[142] By voluntarily choosing to become part of this national network, Seaway and World-Wide did not attempt to minimize the possibility of effects in other states. Instead, they conducted themselves in such a manner so as to increase the possibility of such effects, since it was to their economic advantage to do so.[143] Justice Marshall asserted that good businessmen dealing in Audi automobiles should certainly have foreseen the likelihood that a defect in an Audi

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136. *Id.* at 311-12.

137. *See* note 108 *supra*.

138. 444 U.S. at 312. This would seem highly preferrable to the rigid application of an obsolete 1945 concept.

139. *Id.* at 313. Justice Blackmun joined Justice Marshall in his dissent, as well as filing his own dissent. *Id.* at 317. *See* note 148 *infra*.

140. 444 U.S. at 314.

141. *See* note 112 *supra*.

142. 444 U.S. at 314. Justice Marshall also noted that dealers derive a substantial amount of income from servicing cars from distant forums. Although Seaway may not hold itself out to service out-of-state cars from specific states, it does hold itself out to all customers from any state in general. It is doubtful Seaway would turn a customer away on the grounds he was a citizen from a certain state. It follows that individual dealers do benefit from being part of a nationally organized and authorized repair system. *See* note 126 *supra*.

143. *See* notes 112 & 128 *supra*.

might manifest itself in Oklahoma.[144]

Such an argument in favor of jurisdiction was not, as the majority proposed, one of "foreseeability alone." Instead, it was the result of the defendants engaging in a national enterprise for economic gain. Although some individuals could attempt to insulate themselves from suit in certain jurisdictions, this would not always be possible.[145] Some activities, by their very nature, may remove an individual's option of conducting oneself in such a way so as to avoid violating public policy or subjecting oneself to the jurisdiction of foreign states.[146] Justice Marshall felt the auto industry was one such endeavor[147] and that torts caused by dangerously designed autos should not provide protection to sellers because they take place in forums unsolicited by the defendant.[148]

144. As Justice Brennan noted, Seaway and World-Wide executives must have been good businessmen since they had purchased insurance for out-of-state liability. 444 U.S. at 305 n.9.

145. It would seem unfair to immunize from suit in Colorado, the seller of a transcontinental aircraft that crashes in that state while en route from California to New York because the seller did not affiliate himself with Colorado. Simply because the aircraft travels somewhat faster, it does not seem to be more foreseeable that it may "enter" Colorado any more than an automobile travelling cross-country. *See* Bach v. McDonnell Douglas, Inc., 468 F. Supp. 521 (D. Ariz. 1979) (nature of instrumentality involved may make precise foreseeability notions impossible); Braband v. Beech Aircraft Corp., 5 Ill. App. 3d 296, 367 N.E.2d 118 (1977) (one who sells transient product must defend product in any reasonably foreseeable place). *But see* Uppgren v. Executive Aviation Servs., Inc., 304 F. Supp. 165, 170-71 (D. Minn. 1969) (extensive mobility is insufficient to provide requisite probability of destination).

146. This idea of considering the nature of the instrumentality and the pertinent public policies regarding inherently dangerous items is taken up by Justice Blackmun, 444 U.S. at 318; *see also* note 148 *infra*.

147. 444 U.S. at 317.

148. Justice Blackmun in a separate dissent, *id.* at 318, asserted that the critical factor in deciding whether to uphold jurisdiction is the nature of the instrumentality involved. A pragmatic examination of the motor vehicle transportation system shows that the United States is a nation on wheels. Interstate highways, wide varieties of license plates, and "miles per gallon" all serve to show the population is on the move, with the principle mover being the automobile. Because of this, Justice Blackmun believed any person in the business of providing vehicles should anticipate the arrival of his product in a foreign state.

Since Oklahoma strives to provide safe roads, regulate travel, and police the highways, travel is promoted in that state (the notion of collateral benefit was discussed earlier at notes 95 & 126 *supra* and accompanying text). These efforts serve to enhance the business of those engaged in auto sales; therefore, amenability to suit in such a foreign jurisdiction is in keeping with the notions of justice and fair play as required. 444 U.S. at 319.

It appears that Justice Blackmun was more concerned with modern social policy

VI. THE IMPACT OF *WORLD-WIDE* AND THE RESULTING UNFAIRNESS

As demonstrated, the early decisions had not clearly distinguished between the number of contacts required to assert jurisdiction when the subject of the litigation concerned the contacts themselves and when the contacts provided the jurisdictional basis to adjudicate a more remote or economic action.[149] Previously it seemed that there was some sort of distinction.[150] In *World-Wide*, the Court appeared to deny any distinction by indicating a desire to return to the rigid rule of *Hanson v. Denckla*.[151] For an action based on either personal injury or economic loss, the defendant must purposefully, intentionally, and directly connect himself with the forum state.[152] This analysis denies an examination of the nature and quality of the defendant's business in general to determine if fairness would permit assertion of jurisdiction over him.[153]

It has been suggested that in tort situations, jurisdiction cannot be based on the fact that the defendant actually committed a tort within the state. To do so is to decide the act itself is tortious, the very question the proceedings are to determine if jurisdiction is to be found.[154] It would be better to avoid such a circular analysis and examine the whole of the defendant's conduct in terms of what he has undertaken to do and what effects his business may likely cause.[155] Under this analysis, where persons are injured, requisite contacts should be at a minimum. The fact that injury has occurred should be enough.[156] When the harm is purely economic, further contacts should be demonstrated.[157] This distinction in requisite contacts would serve to promote the social policy

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and its underlying effects than he was with the rigid application of timeworn precedents.

149. *See* note 54 *supra* and accompanying text.

150. *See, e.g.*, Jones Enterprises, Inc. v. Atlas Servs. Corp., 442 F.2d 1136, 1140 (9th Cir. 1977) (injury to body is of a different character than injury to purse); Carrington & Martin, *Substantive Interests and the Jurisdiction of State Courts*, 66 MICH. L. REV. 227 (1967) (requisite contacts should be adjusted according to the nature of the harm involved).

151. 444 U.S. at 294-96. This is the *Hanson* concept of sovereignty over fairness. *See* note 82 *supra*.

152. 444 U.S. at 294-96.

153. *See* notes 110 and 121 *supra* and accompanying text.

154. *See* Cummins, *In Personam Jurisdiction Over Nonresident Manufacturers in Product Liability Actions*, 63 MICH. L. REV. 1028, 1043 (1965).

155. *See* notes 146, 147, & 149 *supra* and accompanying text.

156. *See generally* Duignan v. A.H. Robins Co., 98 Idaho 134, 559 P.2d 750 (1977) (suit allowed in Idaho for injuries caused by defective I.U.D. manufactured in Virginia and utilized in California).

157. *See, e.g.*, Long v. Mishicot Modern Dairy, Inc., 252 Cal. App. 2d 425, 60 Cal. Rptr. 432 (1967).

of compensating those injured by dangerous products under circumstances like those found in *World-Wide*.[158]

The majority's use of the assertion in *Hanson* of an "orderly administration of the laws" is misplaced.[159] It was believed that this essentially meant predictability of the law's application.[160] It would seem more proper to use the concept with reference to fairness in settling disputes. Where a manufacturer and a national importer have submitted to jurisdiction in Oklahoma, and a regional distributor and dealer may only be sued in New York, how has an orderly administration of the law been accomplished?[161] The fact that a suit had been commenced and proceeding in Oklahoma, therefore, should have been one of the factors in deciding the fairness of the Oklahoma assertion of jurisdiction over the contesting parties.[162]

If the plaintiffs consolidate all defendants in New York, the chance of a favorable outcome may be jeopardized since the plaintiff's case may not be as mobile as the defendant's defense.[163] To be unable to bring suit against all defendants in one forum may cause the defendants who are before the court to do a substantial amount of finger pointing at any absent defendants, creating highly complicated issues for the trier of fact to decide.[164] It is very difficult to see how this constitutes a fair and orderly administration of the laws where plaintiffs are so severely disadvantaged without any corresponding disadvantage to defendants if jurisdiction is upheld.

The majority decision tends to present an unrealistic picture of society. In effect, the changing nature of economic realities was denied with a reassertion of the importance of state bounda-

158. The social policy involved has been demonstrated by the advent of strict products liability at the interest in compensating those injured by dangerous products without resorting to a complicated negligence analysis. *See* note 107 *supra*.

159. 357 U.S. at 250-51, (citing *International Shoe*, 326 U.S. at 319).

160. 444 U.S. at 297.

161. Respondent's Brief at 18, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

162. *See* Jenkinson v. Murrow Bros. Seed Co., 272 S.C. 148, 249 S.E.2d 780 (1978).

163. *Cf.* Curtis Publishing Co. v. T.B. Birdsong, 360 F.2d 344, 346 (5th Cir. 1966) (residents forced to follow nonresident defendants to their home state may so severely disadvantage plaintiffs due to excessive costs and inconvenience such that injustice is promoted); Gray v. American Radiator and Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961) (injustice rather than justice may be promoted by rigidly applying the traditional jurisdictional tests).

164. *Id.* Also, the efficiency in the resultant multiplicity of actions is highly suspect.

ries.[165] Fairness was denied under the rationale that crossing state lines to assert jurisdiction over defendant would be too inconvenient to the defendant without the purposeful connection of the defendant to the forum state under *Hanson*. However, a proceeding held just across the state line may be far more convenient to both parties than one in a distant corner of the defendant's own state.[166] This logic underlies the 100 mile bulge provision with respect to service of process contained in the Federal Rules of Civil Procedure.[167]

It is difficult to conceive why state sovereignty should prevent a suit against a foreign defendant when his acts have injured one within the forum state, where the forum state has a strong interest in adjudicating the dispute, and the defendant's own state has no reciprocal interest in preventing the litigation.[168] A case-by-case analysis should be permitted, not merely to determine purposeful and intentional contacts, but also to explore all issues relevant to fairness. The Court's rigid rule of requiring a *Hanson*-type analysis will preclude most cases from receiving this type of analytical scrutiny.[169]

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165. *See* note 61 *supra*.

166. Currie, *The Growth of the Long Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533, 534. Professor Currie contends that state boundaries should serve as indicia of hardship rather than ad hoc determiners of jurisdiction.

167. FED. R. CIV. P. 4(f). Realizing that state lines may prove to be highly artificial and burdensome, the Federal Rules allow jurisdiction to be extended anywhere in the United States up to 100 miles from the place where the suit was commenced. Thus, in certain circumstances, the jurisdiction of one state may extend across one or several other states to gain jurisdiction over the defendant.

168. *See* Schlesinger, *Methods of Programs in Conflicts of Laws, Some Comments on Ehrenzweigs Treatment of "Transient" Jurisdiction*, 9 J. PUB. L. 313 (1960). Professor Schlesinger supports a national body of systematic law based on an inverse *forum non conveniens* system.

Forum non conveniens allows the court to decline to exercise jurisdiction whenever it appears that the cause before it may be more appropriately tried elsewhere. An inverse system would allow state courts to retain jurisdiction where a case may more appropriately be tried in the plaintiff's state rather than the defendant's home state. Considerations involved would include: (1) whether the plaintiff has a right to the judicial machinery of the forum state; (2) whether the state has a rational interest in the litigation; (3) the forum in which witnesses and evidence are most available; (4) the forum which will be more familiar with the applicable law; and (5) the relative inconvenience and hardships to the parties.

This same idea is embodied in 28 U.S.C. § 1404(a) (1976), which provides "[f]or the convenience of the parties and witnesses, . . . a district court may transfer any civil action to any other district or division . . . ."

For a thorough examination of *forum non conveniens, see* F. JAMES & G. HAZARD, CIVIL PROCEDURE, 663 (2d ed. 1977).

169. *See* note 82 *supra* and accompanying text. *Cf.* RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 37 (1969). The theme running through the Restatement is one of fairness and reasonableness over sovereignty. State lines serve only to trigger a fairness analysis rather than allow automatic jurisdiction. Conversely, these

The *World-Wide* decision appears to place procedure above substance. The fourteenth amendment guarantees no particular form of procedure; only fairness in the administration of substantive rights is protected.[170] To place too much importance on threshold matters, such as "doing business"[171] within state boundaries, may never allow the wrongful acts of defendants to come to light. In addition, the timeworn phrase "to every wrong there is a remedy" may hold little meaning to plaintiffs who cannot compete with corporate funding.[172] In cases such as these, substantive rights would not be protected; they would be denied.

It is true that the *World-Wide* decision will protect defendants from the paralyzing consequences of a finding of requisite contacts by means of a single tort committed within the forum state as feared by Judge Sobeloff.[173] But to applaud the decision for this type of result seems to kill the patient in order to cure the cancer. Also protected will be defendants who intentionally enter into businesses that have far-reaching consequences and corresponding far-reaching profits even though they do not know precisely where the consequences occur or from whence profits are derived.[174] Although foreseeability as part of the basis of asserting jurisdiction is a complicated concept, it is neither the sole determinant, nor is it beyond the capabilities of judicial analysis.[175] To remove foreseeability from the jurisdictional analysis, as the *World-Wide* decision effectively has done, is to deny what a busi-

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same state lines do not erect sovereign boundaries which can only be penetrated by the most "maximum" of minimum contacts.

See Kurland, *The Supreme Court, The Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. OF CHI. L. REV. 569 (1958). The author asserts that fairness calls for an independent determination by the court upon the merits of each case, and that courts should not be overly concerned with federalism. *But see* Sobeloff, *Jurisdiction of State Courts Over Non-Residents in Our Federal System*, 43 CORNELL L.Q. 196 (1957). Judge Sobeloff insists state sovereignty should be jealously protected.

170. Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974).

171. *See* Ajax Realty Corp. v. J.F. Zook, Inc., 493 F.2d 818, 822 (4th Cir. 1972). "[T]he day is long past when the 'minimal contact' necessary to satisfy due process is to be equated with the traditional concept of doing business." *Id.* at 822. *See* note 98 *supra*.

172. *See* notes 122 & 134 *supra*.

173. *See* Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502 (4th Cir. 1956). Judge Sobeloff's illustration and concerns were discussed in notes 101 & 102 *supra* and accompanying text.

174. *See* note 145 *supra*.

175. *See, e.g.*, RESTATEMENT (SECOND) OF TORTS §§ 284, 289, 291, 435, 440, 441, 442 (1963-64).

nessperson truly expects when he enters into a profitable endeavor.

The Court's decision changes the point of argument from "should have reasonably foreseen" to "did actually foresee." Even so, if the defendant did actually foresee interstate consequences and did connect himself to the state, it may be found to be unfair to require him to defend in the forum state. Since the fairness analysis only enters the picture *after* sufficient state contacts are established,[176] it appears as though fairness will only act to divest a state of jurisdiction and never to uphold jurisdiction over the out-of-state defendant. Fairness that considers *only* the possible wrongdoer and not the one wronged cannot be truly fair at all.[177]

Although clarifying the required contacts necessary for jurisdiction over a foreign defendant, it is apparent the majority preferred the simple method over the equitable one. The majority evidently believed enough flexibility would be provided by applying the minimum contacts test of *International Shoe* without resorting to more modern tests. If the minimum contacts test is a threshold to be met prior to a fairness analysis, rather than a part of the fairness analysis itself, then the flexibility sought is not real but remains only an academic discussion.[178]

Instead of revising the doctrine of minimum contacts to adopt the modern commercial realities of the eighties and beyond, the *World-Wide* Court not only halted the progress of enlightened decisions,[179] but also reversed the positive trend of considering the plaintiff's as well as the defendant's rights to due process and fair administration of their respective substantive rights.[180]

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176. *See* notes 111-13 *supra* and accompanying text.

177. *See* note 134 *supra*. It appears as though the Court has traded fairness for simplicity at the expense of the plaintiff's rights.

178. The Illinois Supreme Court observed:

> Unless they are applied in recognition of the changes brought about by technological and economic progress, jurisdictional concepts which may have been reasonable enough in a simpler economy lose their relation to reality, and injustice rather than justice is promoted . . . . [R]ules of law which grow and develop within those principles must do so in light of the facts of economic life as it is lived today. Otherwise . . . the principles themselves become impaired.

Gray v. American Radiator and Standard Sanitary Corp., 22 Ill. 2d 432, 443, 176 N.E.2d 761, 766 (1961).

179. *See, e.g.*, Reilly v. Phil Tolkan Pontiac, Inc., 372 F. Supp 1205 (D.N.J. 1974); Phillips v. Anchor Hocking Glass Co., 100 Ariz. 251, 413 P.2d 732 (1966). These cases represent instances where the respective courts recognized modern commercial realities and that the plaintiff's right to fairness is equal to that of the defendant. Jurisdiction was upheld to provide injured plaintiffs an appropriate chance to recover for wrongs done to them.

180. *See* note 134 *supra*. A reasonable fear may be posed regarding a possible flood of litigation as a result of the more convenient trip to the courthouse. It

By allowing jurisdictional expansion, better social policies would likely be served. This expansion, in tandem with strict product liability,[181] would serve to keep defective and ultrahazardous products off the market or at least promote remuneration to those injured by these dangerous products. A balancing of interest would seem to place the burden of traveling to a distant forum on the defendant-seller rather than on the innocent purchaser. As Professor Woods feared,[182] the Court chose to adhere to a literal interpretation of the *Hanson* formulation. Evidently the time has not yet arrived when the essence of *Hanson*, *McGee*, and *International Shoe* can be synthesized into a modern and useful analytical tool.

VII. CONCLUSION

By tracing the development and evolution of the jurisdictional doctrine of minimum contacts, it has been shown that no distinction will be made between actions that are brought as a result of personal injury and those that result from economic injury alone.[183] The rigid tests required by *Hanson*, as applied to economic situations, will be applied to tort actions as well. State sovereignty remains the ultimate consideration[184] rather than a consideration of fairness to all parties involved with respect to due process requirements.

The *World-Wide* decision is not in keeping with modern economic realities.[185] This may prove to be especially important when considering the recent rash of cases concerning the enhancement of bodily injury from accidents involving the new compact automobiles.[186] The jurisdictional rule established by the

would still seem that a court could weigh the possibility of harassment by the plaintiff as part of the fairness analysis in determining jurisdiction. Also, assessing costs and like measures in such cases should serve to curb any such vexatious litigation.

181. *See* note 107 *supra*. If all matters are equal and a burden must be borne, why not by the seller. He is in business to derive profit from the sale of his product, hence he should be required to defend them. Wronged plaintiffs, however, are not in the business of being injured; therefore, those injured should be provided the greatest ability to recover within the bounds of fairness and due process.

182. Woods, *supra* note 8, at 912-13.

183. *See* notes 52 & 54 *supra*.

184. *See* note 82 *supra* and accompanying text.

185. *See* note 115 *supra* and accompanying text.

186. The recent Pinto cases against the Ford Motor Co. for enhancement of injury due to defectively designed fuel tanks may be seen as an example of this.

World-Wide decision seems especially troublesome when the procedural concern for a state's sovereignty interferes with, or overrides, the policies of substantive law such as that found in the area of products liability.[187] The Supreme Court has apparently chosen to replace the analysis that examines fairness to the parties with one that examines fairness to the state under the guise of protecting a defendant's right to due process.

Where plaintiffs would suffer substantial hardship when jurisdiction is denied and defendants would suffer no real inconvenience if it were granted, it appears as though an analysis that requires denial has rendered the pursuit of "traditional notions of fair play and substantial justice" meaningless.[188]

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187. *See* note 107 *supra*.
188. *See* note 134 *supra* and accompanying text.