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CIVIL PROCEDURE—LIMITATIONS ON THE EXTENSION OF IN PERSONAM JURISDICTION—*World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

In 1976 Mr. and Mrs. Robinson purchased a new Audi automobile from Seaway Volkswagen, Inc., a New York corporation. The Robinsons were residents of New York at the time of the purchase and were traveling through Oklahoma, to a new home in Arizona, when they were involved in an accident. Their car was struck from behind, and burst into flames severely injuring Mrs. Robinson and her two children.[1]

The Robinsons brought a products liability action in the state of Oklahoma, alleging that their injuries were the result of the defectively designed fuel system of their automobile. Joined as defendants were the automobile's retailer, Seaway Volkswagen, and its wholesale distributor, World-Wide Volkswagen, both New York corporations. Respondents produced no evidence that either company did any business in Oklahoma. No evidence was even produced that any of petitioners' cars had entered the state other than the Audi involved in the litigation. After the trial court rejected their claims that Oklahoma's jurisdiction over them offended the due process clause of the fourteenth amendment, petitioners World-Wide and Seaway sought a writ of prohibition in that state's supreme court to restrain the trial judge (respondent) from exercising jurisdiction over them.[2] The writ was denied.[3]

The assertion of in personam jurisdiction was based upon Oklahoma's "long-arm" statute.[4] The trial judge held that the court had in personam jurisdiction because in accordance with the requirements of title 12, sections 1701.01-.03 of the Oklahoma Statutes, the petitioners had derived "substantial revenue" from goods used within the state.[5] On appeal, the Oklahoma Supreme Court held that the lower court

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[1]World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 288 (1980).

[2]*Id.* at 289.

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

[4]Long-arm statutes are so called because they confer jurisdiction upon a state court over a nonresident whose activity falls within the purview of the statute. Oklahoma's statute is adopted from the UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT 13 U.L.A. §1.03. *See generally* 62 Am. Jur. 2d *Process* §§79-81 (1972 and Supp. 1980).

[5]OKLA. STAT. ANN. tit. 12 § 1701.03(a) (West 1971).

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

was justified in its conclusion, and had the power, pursuant to the requirements of section 1701.03(a)(4), to exercise personal jurisdiction over the petitioners because alleged acts or omissions on the part of petitioners *outside* the state allegedly caused tortious injury *within* the state.[6]

It must be noted that unlike those of some states, in order to confer personal jurisdiction over a nonresident based on a "tortious injury" occurring in the state, the Oklahoma statute required more than the resulting injury. The act or omission must either have taken place within the state or if it took place outside the state, must have been accompanied by the conducting of business or other persistent course of conduct in the state or derivation of substantial revenue from goods used or services rendered there.[7] Other statutes, often called one-act or single-act statutes, extend jurisdiction to nonresidents for acts committed which have a certain result or effect in the state seeking to impose jurisdiction, regardless of whether the acts were committed in or outside the state.[8] Mississippi's statute is among these.[9]

Although the Oklahoma Supreme Court based its decision primarily on the application and interpretation of the pertinent statute, the United States Supreme Court in granting certiorari, stated that it sought to resolve an important constitutional question. World-Wide would settle the controversy over the extent and definition of minimum contacts necessary to confer jurisdiction on a state court over a nonresident in a products liability case.[10] Even though the case could have been re-

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[6]World-Wide Volkswagen Corp. v Woodson, 585 P.2d at 354 (Okla. 1978).

[7]OKLA. STAT. ANN. tit. 12 § 1701.03(a) (West 1971).

[8]*See, e.g.*, IDAHO CODE § 5-514 (b); ILL. ANN. STAT. ch. 110, § 17-1 (Smith-Hurd 1955); MINN. STAT. ANN. § 303 (West, Supp. 1981); MISS. CODE ANN § 13-3-57 (Supp. 1980); N.D. CENT. CODE § 28-06.1-02(2) (Supp. 1980); N.M. STAT ANN. § 21-3-16[A](3)(1967); ORE. REV. STAT. §14.305(1)(b) (1963); S.D. COMP. LAWS ANN. § 15-7-2(2) 1967); TENN. CODE ANN. § 20-235 (b)(1968).

Long-arm statutes based on the UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT have provisions similar to those of Oklahoma. *See, e.g.*, N.Y. CIV. PRAC. § 302(a) (McKinney Supp. 1979-80); OHIO REV. CODE ANN. § 2307.38.2 (Page Supp. 1978); VA. CODE ANN. § 8.01-328.1 (Supp. 1979).

[9]MISS. CODE ANN. § 13-3-57 (Supp. 1980). The pertinent portion provides:

> Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi. Such act or acts shall be deemed equivalent to the appointment by such nonresident of the secretary of state of the State of Mississippi, or his successor or successors in office, to be the tried and lawful attorney or agent of such nonresident upon whom all lawful process may be served in any actions or proceedings accrued or accruing from such act or acts, or arising from or growing out of such contract or tort, or as an incident thereto, by any such nonresident or his, their, or its agent, servant or employee.

[10]444 U.S. at 291.

versed on the narrow ground that it was not shown the petitioners derived "substantial revenue" from the use of their automobiles in Oklahoma,[11] the Supreme Court stressed that the proper approach was to test jurisdiction against both statutory and constitutional standards, and this approach should have been followed by the state court.[12]

HISTORY OF PERSONAL JURISDICTION OVER NONRESIDENTS

While a consideration of "long-arm" statutes usually necessitates an inquiry into adequate notice and service of process, the instant case focused narrowly upon what activity constitutes sufficient contacts with the forum state. Therefore, the discussion of the case law which developed and defined such statutes will be limited to an overview of the minimum contact theory.

The leading case in the early development of in personam jurisdiction over nonresidents was *Pennoyer v. Neff*.[13] This case propounded, through Mr. Justice Field, the rigid rule that personal jurisdiction was only proper within the borders of the sovereign state.[14] In language in part gleaned from the 1850 case of *D'Arcy v. Ketchum*[15], the court in *Pennoyer* held that an attempt to bind a nonresident who owned no property within the forum was an "illegitimate assumption of power and resisted as mere abuse."[16] The court must have power over the nonresident's person in order to bind him by a judgment of the court.

In the landmark case of *Hess v. Pawloski*,[17] the United States Supreme Court upheld the extension of in personam jurisdiction over a nonresident motorist on the theory of implied consent or appointment. The acceptance by a nonresident of the rights and privileges conferred by Massachusetts' motor vehicle and highway laws was deemed to be equivalent to an appointment by the nonresident of that state's registrar as his agent for service of process within the state. The court held that in the public interest, the state may make and enforce regulations reasonably calculated to promote care on the part of both residents and nonresidents alike.[18] Because of this principle of the forum's public interest or "manifest interest"[19] in regulating certain activities, this

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[11] *Id.* at 298-99.

[12] *Id.* at 290.

[13] Pennoyer v. Neff, 95 U.S. 714 (1878), *over'd*, Shaffer v. Heitner, 433 U.S. 186 (1977). *See also* Minnesota Commercial Assn'n v. Benn, 261 U.S. 140 (1923).

[14] 95 U.S. at 720.

[15] D'Arcy v. Ketchum, 52 U.S. (11 How.) 165 (1850).

[16] 95 U.S. 714 (construing D'Arcy v. Ketchum, 52 U.S. (11 How.) at 174).

[17] Hess v. Pawloski, 274 U.S. 352 (1927).

[18] *Id.* at 356.

[19] McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957). *See also* Travelers Health Ass'n v. Virginia, 339 U.S. 643, 647-49; Doherty & Co. v. Goodman, 294 U.S. 623, 627.

case precipitated the development of long-arm statutes to cover situations where contracts had been entered into requiring at least part performance in the state, or where tortious injury occurred in the state.[20]

The most important case in the history of "long-arm" statutes is the case of *International Shoe Co. v. Washington*.[21] This case developed the test by which the due process clause of the fourteenth amendment must be balanced when considering the province of the court in asserting in personam jurisdiction over a nonresident. Due process requires only that in order to subject a defendant to a judgment in personam, if he is not found within the forum, *"he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice."*[22] The court went further, defining the test as one which was concerned with the "quality and nature" of the activity as opposed to a "mechanical or quantitative" test. *International Shoe* emphasized that due process requires that a state not make binding an in personam judgment against a defendant with which the state has no contacts, ties or relations. However, the privilege of conducting activities within that state gives rise to obligations; and if the obligations arise out of or are connected with those activities, requiring the corporation to respond to a suit to enforce them is hardly improper.[23]

The flexible standard expounded in *International Shoe* was extended in *McGee v. International Life Ins. Co.*[24] The petitioner, a resident of California, was the named beneficiary of an insurance policy purchased by a California resident from an Arizona corporation. Subsequently, the Arizona corporation sought to release itself from its obligations in California. The respondent, a Texas-based company, voluntarily agreed to assume those obligations. Neither company had an agent or transacted any business in California except for the original insurance contract, and the reinsurance certificate mailed to the California resident from the Texas corporation. The petitioner's benefactor, the insured, accepted the reinsurance certificate and mailed pay-

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[20]*See, e.g.*, MINN. STAT. ANN. § 303.13(3) (West Supp. 1969); MISS. CODE ANN. §13-3-57 (Supp. 1980); OHIO REV. CODE ANN. § 2307.38.2 (Page Supp. 1978).

[21]International Shoe Co. v. Washington, 326 U.S. 310 (1945). The appellant had no offices in the state of Washington, and maintained no stock of merchandise there, but did employ resident salesmen on a commission basis who were supplied with samples and solicited orders there. The Supreme Court held that these operations established sufficient contacts or ties with the state of Washington to make it "reasonable and just" to permit the state to enforce the obligations the corporation had incurred there. According to the majority opinion, these activities were not irregular or casual, but systematic and continuous, and resulted in a large amount of interstate business. *Id.*

[22]326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)) (emphasis added). *See also* Blackmer v. United States, 284 U.S. 421 (1932); Hutchinson v. Chase & Gilbert, 45 F.2d 139 (1930).

[23]326 U.S. at 319.

[24]McGee v. International Life Ins. Co., 355 U.S. 220 (1957).

ments directly to the respondent's office in Texas. The petitioner sought and was awarded a judgment on the policy in California. The Texas court refused to give it full faith and credit.

The Supreme Court noted the expansion of state jurisdiction over nonresidents and attributed the liberalization in part, to the increasing nationalization of commerce.[25] It was held that the requisite minimum contacts were satisfied by the isolated contract involved.[26] The court in *McGee* broadened state jurisdiction to is outer reaches—limited only by the relaxed criteria of minimum contacts.

One year after *McGee*, in *Hanson v. Denckla*,[27] the Supreme Court halted the trend toward expanding the scope of personal jurisdiction. The settlor became domiciled in the forum, and the corporate trustee sent income from the trust to her in that state. The settlor also made some changes in the trust and executed two powers of appointment. However, according to the court, there was no evidence that the *trustee* performed "any acts in Florida that would bear the same relationship to the agreement as the solicitation in *McGee*."[28] Jurisdiction was restricted by requiring not only certain minimal contacts, but also that the nonresident perform some act whereby it purposefully sought to avail itself of the benefits and protections of the forum state's laws.[29] This requirement of purposefulness would later be interpreted by some courts as being satisfied if a product were put into the "ordinary course of commerce."[30]

Response to International Shoe

Following the relaxation of standards for state jurisdiction in *International Shoe*, some states sought to expand their power over nonresidents by interpreting the purposeful requirement of *Hanson* and the minimum contacts rule of *International Shoe* liberally. In *Gray v. American Radiator & Standard Sanitary Corp.*,[31] the Supreme Court

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[25]*Id.* at 222-23.

[26]*Id.* at 223.

[27]Hanson v. Denckla, 357 U.S. 235 (1958). Florida courts sought to exercise jurisdiction over nonresident trustees on the basis that the settlor, most of the appointees and beneficiaries were domiciled in the forum. The Supreme Court held that jurisdiction was not acquired by being the "center of gravity" of the controversy, or the most convenient location for litigation. It is the acts of the trustee, not the unilateral acts of the resident that must be examined. *Id.*

[28]357 U.S. at 252.

[29]*Id.* (citing International Shoe Co. v. Washington, 326 U.S. at 319 (1945)).

[30]*See, e.g.*, Dawkins v. White Products Corp., 443 F.2d 589 (5th Cir. 1971); Duple Motor Bodies v. Hollingsworth, 417 F.2d 231 (9th Cir. 1969); Eyerly Aircraft Co. v. Killian, 414 F.2d 591 (5th Cir. 1969); Williams v. Vick Chem. Co., 279 F. Supp. 833 (S.D. Iowa 1967); Tate v. Renault, Inc., 278 F. Supp. 457 (E.D. Tenn. 1967), *aff'd*, 402 F.2d 795 (6th Cir. 1968); Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 80 Cal. Rptr. 113, 458 P.2d 57 (1969); Doggett v. Electronics Corp. of America, 93 Idaho 26, 454 P.2d 63 (1969); Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961); Smith v. Temco, Inc., 252 So. 2d 212 (Miss. 1971).

[31]22 Ill. 2d 432, 176 N.E.2d 761 (1961).

of Illinois held that the purposeful act need not directly benefit the nonresident. The activity may be indirect, as when a product is put into the "ordinary course of commerce"[32] and is sold to the ultimate consumer in the forum state, through a middleman. In addition, the court ruled that a tort is actionable where the injury occurred, or the last event takes place which is necessary to render the actor liable, thereby bringing the occurrence within the purview of the Illinois long-arm statute.[33]

Buckeye Boiler v. Superior Court[34] equated engaging in economic activity within the state "as a matter of commercial actuality" with the purposeful activity requirement of *Hanson*. This type of economic activity was said to occur "whenever the purchase or use of its product within the state generates gross income for the manufacturer and is not so fortuitous or unforeseeable as to negative the existence of an intent on the manufacturer's part to bring about this result."[35] Buckeye's economic activity consisted of both the large volume of sales of its pressure tanks to customers in California and its indirect sales to customers outside the state for foreseeable resale or use in the forum.[36]

In 1969, the same year that *Buckeye Boiler* was decided, a federal district court in Minnesota decided the case of *Uppgren v. Executive Aviation Services*.[37] This case represents a restrictive application of *International Shoe* and was cited approvingly in *World-Wide*. The court was applying a Minnesota "one-act" provision.[38] It was held that the only contact the nonresident had with the state was the helicopter crash in which the resident Uppgren died.[39] The court reasoned that the contact with the forum was insufficient to grant in personam jurisdiction. Further, the court declared that a single product which inflicts injury in the forum, will not cause the nonresident to be amenable to in personam jurisdiction "in the absence of any additional facts."[40]

Supreme Court's Attempt at Clarification

Finally, in *Shaffer v. Heitner*[41] and *Kulko v. Superior Court*,[42] the

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[32]*Id.* at 442, 176 N.E.2d at 766.

[33]*Id.* at 762-63. *Gray* turned on the Illinois court's interpretation of section 17-1(b) of the Illinois Statutes. That section empowers the courts to exercise jurisdiction over nonresidents who commit a tortious act within the state, with no express provision for such acts committed outside the state. A "tortious act" was interpreted as including the last event taking place which is necessary to render the actor liable, i.e., the injury itself.

[34]Buckeye Boiler Co. v. Superior Court, 71 Cal. 2d 893, 80 Cal. Rptr. 113, 458 P.2d 57 (1969).

[35]80 Cal. Rptr. at 120, 458 P.2d at 64.

[36]80 Cal. Rptr. at 121, 458 P.2d at 65.

[37]Uppgren v. Executive Aviation Services, 304 F. Supp. 165 (D. Minn. 1969).

[38]MINN. STAT. ANN. § 303.13(3) (West Supp. 1981).

[39]304 F. Supp. 165.

[40]304 F. Supp. at 170.

[41]Shaffer v. Heitner, 433 U.S. 186 (1977).

[42]Kulko v. California Superior Court, 436 U.S. 84 (1978).

Supreme Court attempted to clarify the evolution of in personam jurisdiction. In *Shaffer*, the court made it clear that whether it is personal jurisdiction or quasi in rem jurisdiction that is being asserted, the minimum contact standard[43] of *International Shoe* and the purposeful requirement[44] of *Hanson* must be met, as well as the foreseeablility or reasonable expectation of being sued in the forum.[45] However, which of the three tests was the *central* inquiry remained unanswered. In *Kulko*, the consequences or the effect of a defendant's conduct was held to be a factor, but it must be coupled with such conduct as would make it foreseeable that he might be haled into a court in that state.[46] The defendant had not engaged in any commercial activity from which he sought some benefit. Mere acquiesence on the part of the defendant in his ex-wife's decision to move to another state and take their minor child with her, did not constitute the type of purposeful activity contemplated by *Hanson*.[47]

The proper assertion of in personam jurisdiction over nonresidents has been permeated with uncertainty since the flexible standard of *International Shoe* was announced. In *Kulko*, the court expressed its own concern:

> Like any standard that requires a determination of "reasonableness," the "minimum contacts" test of International Shoe is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. [citations omitted] We recognize that this determination is one in which few answers will be written in black and white. The greys are dominant and even among them the shades are innumerable.[48]

THE WORLD-WIDE DECISION

The application of the law found in *International Shoe* and its progeny is difficult in light of the current nationalized marketing of products.[49] The determination of when a nonresident has sufficient "minimum contacts" is one which is subject to many different theories. If the instant case makes at least one clear statement, it is that the several states are not free to legislate away state sovereignty and due process of law in their attempt to expand their jurisdiction over citizens of other states. *Pennoyer* may have been rejected, but some of the principles which formed its foundation are inherent in our system of law.

In its six-three decision, the United States Supreme Court dealt with the application of law to a fact situation in which there was an isolated

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[43]433 U.S. at 212.
[44]*Id.* at 216.
[45]*Id.*
[46]436 U.S. at 96-98.
[47]436 U.S. at 94.
[48]*Id.* at 92.
[49]355 U.S. at 222-223.

occurrence, and "in the absence of any additional facts"[50] this was held not to confer in personam jurisdiction over a nonresident. Further the court noted and decided to "resolve a conflict between the Supreme Court of Oklahoma and the highest courts of at least four other states."[51] The court attempted to use the instant case as a vehicle to clarify the law in this area so as to avoid future conflicting applications. After a summary of the pivotal cases, the Supreme Court applied the established case law to the facts of a case where the only contact with the forum was the automobile accident in which the plaintiffs were injured. The court proceeded to distinguish the criteria required for sufficient minimum contacts from the factors present in *World-Wide*.

The Oklahoma court, to assert in personam jurisdiction pursuant to its statute, found that the petitioners did derive "substantial" revenue from the use of their cars in other states, including Oklahoma.[52] The Supreme Court, however found the revenue to be "collateral," "marginal" and in any event too "attenuated" a contact upon which to substantiate an exercise of in personam jurisdiction.[53] This statement points out that notwithstanding statutory provisions, when revenue is received, whatever contacts exist must still be judged as to their nature and quality under *International Shoe*, and not measured by the "amount" derived.[54] The majority of the court, speaking through Mr. Justice White, found an "apparent paucity of contacts,"[55] save the single fortuitous circumstance involved,[56] and therefore reversed the Oklahoma Supreme Court's finding.

As to the element of foreseeability, it is readily apparent that an automobile is mobile and capable of traveling to any state in the union. However, the majority enunciated that foreseeability does not

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[50]304 F. Supp. at 170.

[51]*See* Granite States Volkswagen, Inc. v. District Court, 177 Colo. 42, 492 P.2d 624 (1972) (where sale took place within the state to a state resident with notice that the automobile was to be used in different state, contacts held to be insufficient); Tilley v. Keller Truck & Implement Corp., 200 Kan. 641, 438 P.2d 128 (1968) (held insufficient contact where a truck sold by resident dealer to resident purchaser used to transport cattle to another state and purchaser was injured in different state on return trip); Pellegrini v. Sachs & Sons, 522 P.2d 704 (1974) (automobile sold in California by local dealer to state resident, held insufficient contact standing alone to subject dealer to suit in Utah where accident occurred); Oliver v. American Motors Corp., 70 Wash. 2d 875, 425 P.2d 647 (1967) (automobile sold by local retailer to resident purchaser allegedly causing injury to purchaser in state of Washington, held insufficient contact with state for imposition of jurisdiction).

[52]585 P.2d at 354.

[53]444 U.S. at 299.

[54]"However, financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State." 444 U.S. at 299.

[55]*Id.* at 289.

[56]*Id.* at 295.

mean the mere possibility of a product terminating in another jurisdiction. Rather, it exists only when "the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there."[57] The underlying principle is that a nonresident should be able to structure his conduct so as to avoid liability in a distant forum.[58]

While the manufacturer and the importer did not prosecute an appeal, the Supreme Court did address the different relationships among those involved in the chain of distribution of the automobile in question. The Court reasoned that if the manufacturer and importer attempted to serve the market of the several states either directly or indirectly, they would be reasonably subject to suit in Oklahoma. This would satisfy the test of "purposefulness" in seeking to avail themselves of the privilege and benefit of conducting activities in the forum state; and it would not be unreasonable to subject them to suit in one of those states if their product was the source of injury there.[59] It was noted that the manufacturer and importer *delivered* the product into the stream of commerce with the expectation that it be purchased ultimately by consumers in Oklahoma and other states. Petitioner Seaway's sales were limited to the state of New York and petitioner World-Wide's market covered only a tri-state area. Even though customers might *carry* the product to other states, petitioners did not *deliver* them into this multi-state network.[60]

Justice Brennan's dissent attacked the Court's distinction between the purposeful activity of the manufacturer and importer, and the activity of the petitioners. He was of the opinion that when a consumer, using the product as the dealer knew he would, takes it into another state, the product is put into the stream of commerce just as much as if placed in the seller's chain of distribution.[61]

ANALYSIS

"The due process clause of the fourteenth amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant."[62] The *World-Wide* decision reaffirmed that a state court may exercise personal jurisdiction consistently with due process, only so long as there exist certain minimum contacts between the defendant and the forum.[63] Although several tests have been propounded, it is clear after *World-Wide*, that minimum contacts is the

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[57]433 U.S. at 216.

[58]444 U.S. at 297, 326 U.S. at 216.

[59]*Id.* at 297-98. *Compare* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, N.E.2d 761 (1961).

[60]*Id.* at 298.

[61]444 U.S. at 306-307 (Brennan, J., dissenting).

[62]444 U.S. at 291 (citing Kulko v. California Superior Court, 436 U.S. 84, 91 (1978)).

[63]444 U.S. at 291.

central and pre-dominant inquiry. Even if the forum state has a strong interest or is the most convenient situs, or if the defendant would not actually be inconvenienced or only minimally so, the requisite contacts must exist to make the imposition of jurisdiction comport with due process.[64]

Other factors discussed in the line of cases following *International Shoe* are fairness and reasonableness, foreseeability and purposefulness. The *World-Wide* court sees all of these as falling within the minimum contacts test. What is fair and reasonable for the defendant is determined by the nature and quality of its ties and relations with the forum. The court was seemingly of the opinion that if the minimum contacts test is met the fairness test is also met. The relationship must be such that it is reasonable to require the defendant to be subject to suit there.[65] Fundamental fairness or reasonableness is not sufficient to establish jurisdiction if the proper contacts are lacking.[66]

The foreseeability element is deemed insufficient by the *World-Wide* court to serve as a standard for the exercise of jurisdiction.[67] It was argued that an automobile is uniquely mobile and it is foreseeable that it would travel to other jurisdictions; however, according to the majority, if foreseeability were the criterion, a seller of chattels "would in effect appoint the chattel his agent for service of process."[68] Even though foreseeability was deemed not to be totally inapplicable it was defined in terms of the conduct of the defendant. If minimum contacts exist, the next inquiry is whether the conduct and connection are such that the defendant should "reasonably anticipate" being subjected to suit in the forum state.[69]

One aspect of the contacts the defendant must have with the state is the purposeful attempt to exercise the privilege of conducting activities within the forum. To meet the minimum contacts test, purposefulness is essential. The majority opinion agreed that the activity was purposeful if the defendant injected a product into the stream of commerce with the expectation that it be sold to consumers in the forum state,[70] but rejected the notion that the mere unilateral activity on the

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[64]*Id.* at 294 (citing Hanson v. Denckla, 251, 254 (1958)).

[65]*Id.* at 292 (citing International Shoe Co. v. Washington, 326 U.S. 310, 317 (1945)).

[66]*Id.* at 294 (citing Hanson v. Denckla, 251, 254 (1958)).

[67]*Id.* at 297.

[68]*Id.* at 296. *See* Granite States Volkswagen, Inc. v. District Court, 177 Colo. 42, 492 P.2d 624 (1972). This case was cited with approval in *World-Wide*. The plaintiff-buyer had informed the automobile retailer that she intended to use the car in another state. Although the dealer clearly had knowledge of the car's destination, jurisdiction was denied. *Id.*

[69]*Id.* at 297. *See* Kulko v. California Superior Court, 436 U.S. 84 (1978); In *Kulko* it was foreseeable that an ex-wife would relocate to another state with a minor child but in an action for child support, jurisdiction over the huband who stayed behind, was denied. 436 U.S. 84.

[70]444 U.S. at 297.

part of the purchaser resulting in the product being used in the forum would be sufficient. It did not constitute purposeful actvity on the part of the nonresident defendant.

The dissenting justices were of the opinion that the defendants had sufficient contacts and connection with Oklahoma. The petitioners benefitted from the nationwide network of service centers located throughout the United States and further, the automobile is expected to be used in states other than where it was purchased.

Justice Brennan also argued that the relevant inquiry should be whether "traditional notions of fair play and substantial justice" are offended.[71] The majority seemed to be of the opinion that if sufficient contacts exist, fairness is met. According to Mr. Justice Brennan, it is fairness which is the key to due process, and the minimum contacts test was only one way of determining whether the assertion of jurisdiction was fair to the defendant.[72] If, after weighing the strength of the forum state's interest in the case and the actual burden or inconvenience to the defendant, the exercise of jurisdiction over the defendant is deemed to be fair, jurisdiction should be allowed, even if there are not minimum contacts.

In weighing the forum state's interest in and connection with the litigation, the dissent pointed out that the plaintiffs were hospitalized in Oklahoma, that witnesses and evidence were located there, and the state had an interest in enforcing its laws and keeping its highway system safe. The petitioners also had connection with Oklahoma. Even though they operated within limited sales territories, the automobile they had sold was in fact driven into the forum. The petitioners' "commercial impact"[73] could not realistically be confined to that limited territory. According to the dissent, automobile dealers not only foresee that the vehicles they sell will move and travel, but *intend* that they will. An automobile dealer also derives substantial benefit from the use of its automobiles in other states, and from the network of dealership and service centers located throughout the nation. The petitioners chose to become part of a nationwide network for marketing and servicing automobiles.[74] Thus the cars were purposefully injected into the stream of interstate commerce.

In today's world of mobility, transportation and commerce, no business, no matter how local, is confined in its impact and distribution of goods to its geographic locality. The society of 1958, when *International Shoe* was decided, has changed substantially. Brennan expressed

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[71] *Id.* at 298. *See* Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

[72] "The existence of contacts, so long as there were some, was merely one way of giving content to the determination of fairness and reasonableness." 444 U.S. at 300 (Brennan, J., dissenting).

[73] *Id.* at 305 (Brennan, J., dissenting).

[74] *Id.* at 314 (Marshall, J., dissenting).

the view that in today's world, the interests of the forum and other parties should be entitled to as much weight as the interests of the defendant. Minimum contacts should exist "among the parties, the contested transaction, and the forum state."[75]

CONCLUSION

World-Wide has made it clear that whenever jurisdiction is sought to be asserted over a nonresident defendant, the minimum contacts standard of *International Shoe* must be met. This is true regardless of the statutory scheme of the forum state. The *World-Wide* decision reaffirms *Kulko*, which held that statutes utilizing the effect test were not unconstitutional so long as the proper contacts with the forum exist so as to make it reasonable that a nonresident be required to defend there. Yet it sharply restricts the application of the effect test, holding that so-called "one-act", "single-act" or "one-tort" statutes will be deemed to have been unconstitutionally *applied* if the requisite contacts were not present.

Regardless of the modern mechanisms of commerce and the interrelationships of the states, jurisdiction over nonresidents cannot be expanded beyond constitutional bounds. These bounds are delineated by *International Shoe*. The minimum contacts standard not only protects the defendant from inconvenience and undue burden, but also serves to maintain the sovereign integrity of the individual states. These important principles could not be sacrificed to the practicalities of modern commerce and interstate movement, according to the majority opinion.

After *World-Wide* the focus is on minimum contacts, with purposefulness being an essential ingredient. Putting a product into the stream of commerce meets the purposeful requirement. However, this decision more clearly defines what this means, stating that there must have been an intent or expectation that the product would ultimately be sold in the forum stae. It is also evident after *World-Wide* that foreseeability alone is an insufficient standard, and comes into play mainly in adjudging fairness to the defendant and purposefulness.

Concepts which are not given much weight in the instant case are the strength of the forum state's interest in the case, the burden upon the plaintiff in bringing suit in New York as opposed to Oklahoma, and practical factors which tend to lessen the degree of the actual burden on the defendant. As Justice Brennan points out, these too, are important considerations. The inquiry into whether "traditional notions of fair play" or "substantial justice" have been offended, ought also to have some application to the injured plaintiff.

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[75]*Id.* at 310 (Brennan, J., dissenting) (quoting Shaffer v. Heitner, 433 U.S. at 225 (Brennan, J., dissenting)).