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Fairness or Federalism in the Supreme Court's Minimum Contact Analysis: World-Wide Volkswagen Corp. v. Woodson

FAIRNESS OR FEDERALISM IN SUPREME COURT MINIMUM CONTACT ANALYSIS?: *WORLD-WIDE VOLKSWAGEN CORP. v. WOODSON*

The due process clause of the fourteenth amendment limits the extent of a state's judicial jurisdiction over absent parties.[1] In 1945 the Supreme Court established the constitutional limit for a state's exercise of jurisdiction over absent parties in *International Shoe Co. v. Washington.*[2] In *International Shoe,* the Court rejected its previous holding in *Pennoyer v. Neff*[3] that a state court has jurisdiction only over persons present in the state. Rather, the Court held that a state may exercise *in personam* jurisdiction over an absent defendant if the defendant has "certain minimum contacts with . . . [the forum-state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."[4]

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[1] Kulko v. Superior Court, 436 U.S. 84, 91 (1978); Shaffer v. Heitner, 433 U.S. 186, 198-200 (1977). The fourteenth amendment to the Constitution provides, in pertinent part, that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

[2] 326 U.S. 310 (1945).

[3] 95 U.S. 714, 733 (1878).

[4] 326 U.S. 310, 316 (1945). The *International Shoe* Court's adoption of the minimum contacts test was not a sudden break from the *Pennoyer* presence rule, but the culmination of a gradual erosion of *Pennoyer. See* Kalo, *Jurisdiction as an Evolutionary Process: The Development of Quasi in Rem and In Personam Principles,* 1978 DUKE L.J. 1147 [hereinafter cited as Kalo]. Courts had used theories of "consent" and "implied consent" as a basis of jurisdiction. *See* Pennoyer v. Neff, 95 U.S. 714, 733-35 (1878); Lafayette Insurance Co. v. French, 59 U.S. (18 How.) 404 (1856). *See also* Kalo, *supra,* at 1171. Jurisdiction by consent arose in states which conditioned the right of foreign corporations to do business in the state on the express consent by the corporation that it was subject to the jurisdiction of the state. Kalo, *supra,* at 1173. The more common consent statutes stated that foreign corporations doing business in the state implicitly consented to *in personam* jurisdiction in the state *Id.* at 1171-72. The Supreme Court upheld the validity of implied consent statutes in Bank of Augusta v. Earle, 38 U.S. (13 Pet.) 277 (1839), and again in *Ex parte* Schollenberger, 96 U.S. 369 (1877). The consent theories were supplemented by the "doing business" theory under which foreign corporations doing business in the forum-state were deemed "present" in the state, and, consequently, were subject to the state's jurisdiction under the *Pennoyer* presence rule. *See, e.g.,* International Harvester Co. v. Kentucky, 234 U.S. 579, 589 (1914). *See also* Kalo, *supra,* at 1176-82; text accompanying note 10 *infra.*

The advent of the automobile created a special problem which *Pennoyer's* inflexible structure could not accommodate theoretically. State residents, injured by non-resident drivers who were driving in the injured parties' state, were often restricted to recovering from these non-resident tort-feasors by suing in the tort-feasor's home state. Consequently, some states enacted statutes which based *in personam* jurisdiction over non-resident drivers on the fiction that, when driving on state roads, non-resident drivers consented impliedly to the appointment of a state official designated by the statute as an agent on whom process could be served. *See* Hess v. Pawloski, 274 U.S. 352, 356 (1927). The Supreme Court upheld the constitutionality of these implied agency statutes for non-residents committing tortious acts within the forum state. *Id.*

The principle factors suggested in *International Shoe* for evaluating minimum contacts are the quantity and nature of the activity relating to the party to the forum state,[5] the relationship between the litigation and the absent party's forum-related activity,[6] and fairness criteria, such as the degree of inconvenience which the absent party would suffer if required to defend a lawsuit in the forum-state.[7] The Court did not, however, establish strict guidelines for evaluating these factors. Rather, the Court held that courts should weigh the factors in light of "the fair and orderly administration of the laws" to determine the propriety of exercising jurisdiction over an absent party.[8]

Despite the *International Shoe* Court's general failure to define firm guidelines, the Court did establish two fundamental prerequisites for minimum contacts. First, states may only exercise jurisdiction over parties which have engaged in some activity relating them to the forum-state.[9] Second, unless a party's activity in the forum-state is continuous and pervasive, the state may exercise jurisdiction over absent parties only if the litigation pertains to the defendant's forum-related activity.[10] The

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[5] 326 U.S. 310, 317-19 (1945).

[6] *Id.* at 319; *see* text accompanying note 10 *infra.*

[7] 326 U.S. at 317. Since *International Shoe,* the Supreme Court has recognized several fairness criteria, including the forum-state's interest in particular types of litigation, *see, e.g.,* Shaffer v. Heitner, 433 U.S. 186, 223 (1977) (Brennan, J., dissenting) (state's interest in fiduciaries of state-chartered corporation); McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957) (state's interest in regulating insurors of state residents); Travelers Health Ass'n v. Virginia, 339 U.S. 643, 647 (1950) (state's interest in blue sky laws); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950) (state's interest in trusts existing under state's laws); 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, 893 (1978) [hereinafter cited as Woods]. Another fairness criteria is whether the plaintiff has another forum in which to sue the defendant. *See* Mullane v. Central Hanover Bank, 339 U.S. 306, 318-19 (1950); Fraser, *Jurisdiction by Necessity—An Analysis of the* Mullane *Case,* 100 U. PA. L. REV. 305, 311 (1951); Woods, *supra* at 894-95. Commentators have suggested several other fairness criteria, such as the relative agressiveness of the parties, the relative economic burden of litigating in distant states on each party and the efficiency of litigating the forum. Woods, *supra* at 891-97.

[8] 326 U.S. at 319.

[9] *Id.*

[10] *Id.* at 317-19. Based upon the *International Shoe* Court's rules regarding a relationship between the litigation and defendant's forum-related activity, professors Aurthur T. von Mehren and Donald T. Trautman suggested the terms "general" and "specific" jurisdiction. vonMehren and Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis,* 79 HARV. L. REV. 1121, 1136, 1144 (1966) [hereinafter cited as von Mehren and Trautman]. Specific jurisdiction encompasses situations in which a state court may only exercise jurisdiction over a party if the litigation is related to defendant's forum-related activity. *Id.* at 1144-64. The *International Shoe* Court justified the exercise of specific jurisdiction by stating that a party engaging in forum-related activity incurs certain obligations, and that a procedure requiring a party to defend an action pertaining to those activities does not, in most cases, violate due process. 326 U.S. 310, 319 (1945). In Shaffer v. Heitner, the Supreme Court applied the specific jurisdiction principles to *in rem* and *quasi in rem* jurisdiction. 433 U.S. 186, 207-09 (1977); *see* note 31 *infra.* The *Shaffer* Court held that a defendant's ownership of property in the forum-state establishes a contact between the defendant and the

Court, however, did not suggest a definition for "forum-related" activity. In a recent decision, *World-Wide Volkswagen Corp. v. Woodson*,[11] the Supreme Court has continued its post-*International Shoe* effort to define the scope of forum-related activity.[12]

The concept of forum-related activity was particularly important after *International Shoe* because of the court's abandonment of *Pennoyer's* rule based on federalism. Additionally, as the Supreme court recognized later in *McGee v. International Life Insurance Co.*,[13] the minimum con-

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forum. 433 U.S. at 207-08. If, however, the defendant's in-state property is unrelated to the litigation, the ownership of property will not, without more, support the state's exercise of jurisdiction. *Id.* at 208-09.

General jurisdiction encompasses situations in which a state court may exercise jurisdiction over a party in any case over which it has subject matter jurisdiction, despite the lack of relationship between the litigation and defendant's forum-related activity. von Mehren and Trautman, *supra*, at 1135-44. Although general jurisdiction appears to provide a broad exception to *International Shoe's* minimum contacts relatedness requirement, general jurisdiction is essentially limited to parties which are present in the forum-state, domiciled in the forum-state, or residents of the forum-state. *Id.* at 1137. Such parties are not "absent parties," and the *International Shoe* minimum contacts requirements apply only to absent parties. 326 U.S. 310, 316 (1945).

The *International Shoe* Court's recognition that a state can exercise general jurisdiction over a party whose activities in the state are continuous and pervasive creates an exception to the relatedness requirement that is applicable to absent parties. *Id.* at 318; *see* Perkins v. Benguet Mining Co., 342 U.S. 437, 447 (1952) (using pervasive activity exception to relatedness requirement). The *International Shoe* Court did not elaborate on the requirements of the pervasive activity rule, but the exception appears to be based on the Pennoyer v. Neff presence rule. *See* 95 U.S. 714, 733 (1878). In cases based on *Pennoyer*, decided prior to *International Shoe*, the Supreme Court recognized that a foreign corporation may carry on activity in the forum-state "in such a manner and to such an extent as to warrant the inference that it is present there." Philadelphia Reading Ry. Co. v. McKibbin, 243 U.S. 264, 265 (1917). Therefore, the *International Shoe* pervasive activity exception to the relatedness requirement is consistent with the rule that a state may exercise general jurisdiction over parties present in the state.

[11] 444 U.S. 286 (1980); see text accompanying notes 48-103 *infra*.

[12] *See* text accompanying notes 13-47 *infra*.

[13] 355 U.S. 220, 222-23 (1957). Speaking for the *McGee* Court, Justice Black attributed the trend toward expanding the permissible scope of state jurisdiction to "fundamental" changes in the national economy, citing in particular the increase in the amount of interstate trade. Justice Black also emphasized the lessening of the burden on a defendant when forced to defend an action away from his home due to the improvements in transportation and communication. *Id.* at 223. *See* World-Wide Volkswagen, 444 U.S. 286, 292 (1980); Hanson v. Denckla, 357 U.S. 235, 250-51 (1958); Travelers Health Ass'n v. Virginia, 339 U.S. 643, 649 (1950). In *Travelers Health Ass'n v. Virginia*, the Supreme Court upheld Virginia's exercise of jurisdiction over a Nebraska association which engaged in the mailorder health insurance business. With Justice Black again writing for the majority, the *Travelers Health Ass'n* Court emphasized the need to provide plaintiffs with convenient forums, particularly in light of the expense of travelling to litigate a claim in proportion to the size of most claims. 339 U.S. 643, 648-49 (1950). Justice Black did not mention that the cost to defendants would be roughly the same when forced to defend in distant states as the cost to plaintiffs forced to pursue actions in distant states. The opinion therefore reflects the Court's concern for the "little man" as opposed to foreign corporations deriving benefits within the forum-state. *See* Kalo, *supra* note 4, at 1182-88 (attributing expansion of state jurisdiction to "social welfare" trends). The opinion also reflects the Court's concern for

tacts standard reflected the trend toward expanding the scope of permissible state jurisdiction over absent parties. In light of this trend, the *McGee* Court upheld a California court's exercise of jurisdiction over a Texas insurance company which had only one insurance contract with a California resident.[14]

In *McGee,* the Court recognized several factors in upholding California's jurisdiction. First, International Life had solicited the contract in California, and the insured party, a California citizen, had paid the insurance premiums from California.[15] Second, California had a long-arm statute providing jurisdiction over foreign insurors of state residents, evincing the state's peculiar interest in that type of litigation.[16] Third, given the country's technological advances in transportation and communications, parties suffer only minimal burdens when forced to defend actions in foreign states.[17] The *McGee* opinion demonstrates clearly, however, that the Court found these factors relevant to the issue of overall fairness. The Court, in fact, did not discuss the need for a relationship between the absent party and the forum-state, holding that due process was satisfied by the fact the litigation was based on a contract which had a substantial connection with California.[18]

One year after *McGee,* in *Hanson v. Denckla,*[19] the Supreme Court amended the *McGee* Court's interpretation of forum-related activity. The *Hanson* Court held that the relationship necessary for minimum contacts must be between the defendant and the forum-state, rather than between the state and a contract or, as in *Hanson,* a trust, with which the defendant has a relationship.[20] The *Hanson* Court justified the *McGee* decision on the grounds that the litigation arose out of the life insurance company's solicitation of business in the forum-state.[21]

The issue in *Hanson* was whether Florida could exercise judicial jurisdiction over an absent party trustee.[22] The trust had been created in Del-

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passive parties, as opposed to aggressive parties. *See* Woods, *supra* note 7, at 891-92.

[14] 355 U.S. 220, 223 (1957).

[15] *Id.* The insurance policy in *McGee* was originally obtained from an Arizona insuror. When the International Life Insurance Company took over the obligations of the Arizona insuror, International Life sent their offer to reinsure the insured party, Lowell Franklin, to him in California. When International Life refused to pay Franklin's beneficiary, Lulu McGee, McGee brought suit in California. A California long-arm statute permitted jurisdiction over foreign corporations which insure state residents. *Id.* at 221-22.

[16] *Id.* at 223-24.

[17] *Id.*

[18] *Id.* Given the relationship between the litigation and the contract, *McGee* satisfies the specific jurisdiction rule of International Shoe Co. v. Washington, 326 U.S. 310, 317-19 (1945); *see* text accompanying note 10 *supra.*

[19] 357 U.S. 235 (1958).

[20] *Id.* at 253-54.

[21] *Id.* at 251-52; *cf.,* 357 U.S. at 258-60 (Black, J., dissenting) (arguing that Court decided *McGee* on basis of relationship between state and insurance contract, state interest, and overall fairness).

[22] 357 U.S. at 243.

aware, and at the time of its creation the textatrix was domiciled in Pennsylvania. The testatrix subsequently moved to Florida where she was domiciled at the time of her death.[23]

The *Hanson* Court refused to uphold the Florida court's exercise of jurisdiction over the Delaware trustee, emphasizing that he had not conducted any activity in Florida which satisfied the minimum contacts forum-related activity requirement.[24] Moreover, the Court held that the fact the trust's testatrix was domiciled in Florida at the time of her death did not establish minimum contacts between Florida and the Delaware trustee.[25] If the Delaware trustee was subject to Florida's jurisdiction based on the testatrix's change of domicile, the contact requirement between the defendant and the forum would have been satisfied by the unilateral activity of a party claiming a relationship with the defendant.[26] Denouncing such a "unilateral activity" rule, the *Hanson* Court held that minimum contacts forum-related activity requires that the defendant engage in some activity by which it "purposefully avails itself of the privilege of conducting activities within the forum State."[27]

Under *Hanson,* forum-related activity was therefore defined as "purposeful" activity affiliating directly the defendant and the forum-state, rather than merely a relationship between the defendant and the forum-state. Unfortunately, the *Hanson* Court failed to define purposeful activity, leaving as one extreme interpretation a requirement that the absent party have the specific intent to conduct activities in the forum-state, or, at the other extreme, the mere requirement that the absent party could foresee the possibility of causing an effect in other states.[28] Consequently, *Hanson* resulted in considerable confusion in lower courts which was exacerbated by the Court's silence on the meaning of purposeful activity for nearly twenty years.[29]

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[23] *Id.* at 238.

[24] *Id.* at 251.

[25] *Id.* at 252, 254.

[26] *Id.* at 253; *see* text accompanying notes 85-89 *infra.*

[27] 357 U.S. at 253.

[28] *See* Woods, *supra* note 7, at 869, 885-87.

[29] *See id.* at 868-80, 885-87 (case study on Arizona courts' interpretation of *Hanson* "purposeful activity" requirement). The confusion over the intent requirement of the *Hanson* purposeful activity rule was particularly evident in products liability cases. *See id.* at 886. If *Hanson* required a company's specific intent to engage in commercial activity in the forum-state, manufacturers would be beyond the reach of a state's extra-territorial jurisdiction if it sold its products through independent national distributors. *Id.* at 885-86. Conversely, if *Hanson* merely required a foreseeable effect in the forum-state, manufacturers would be subject to jurisdiction in almost any forum under the theory that manufacturers should foresee the possibility of a consumer taking the product into another forum and subsequently being injured by the product in that state. *Id.* at 886.

Lower courts favoring a foreseeability interpretation of *Hanson* in products liability cases relied on the theory that manufacturers who place their products in the stream of commerce know or should reasonably anticipate that the products will be sold in other states. *See, e.g.,* Buckeye Boiler Co. v. Superior Ct., 80 Cal. Rptr. 113, 122, 458 P.2d 57, 64 (1969). Similarly, lower courts held that a company is subject to a state's jurisdiction for

In 1977, the Supreme Court finally attempted to clarify the purposeful activity requirement in *Shaffer v. Heitner*.[30] The plaintiff in *Shaffer* brought a shareholders derivative action in Delaware against former and present officers or directors of a Delaware chartered corporation. The plaintiff asserted that the defendants had minimum contacts with Delaware, because, as officers or directors of a Delaware chartered corporation, they had purposefully availed themselves of the benefits of Delaware's laws.[31] The Supreme Court rejected plaintiff's argument, holding that the defendants had not engaged in purposeful activity in Delaware by merely accepting positions with a Delaware corporation whose principle place of business was Arizona.[32] In support of this holding, the Court stated that the defendants' activity did not give them "reason to expect to be haled before a Delaware Court."[33] Thus, the Court couched its interpretation of

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injury caused in the forum by the company's products, unless the company proves that product's presence in the state was unforeseeable. *See* Gray v. American Radiator Corp., 22 Ill. 2d 432, _, 176 N.E.2d 761, 766 (1961); Ehlers v. United States Heating Mfg. Corp., 267 Minn. 56, _, 124 N.W.2d 824, 827 (1963).

[30] 433 U.S. 186 (1977).

[31] *Id.* at 213-14. In addition to arguing that Delaware could exercise *in personam* jurisdiction over the defendants because of their positions with a Delaware corporation, plaintiff argued that Delaware could exercise *quasi in rem* jurisdiction. The defendants owned stock in the Delaware corporation, Greyhound, for which they served as directors or officers. Under Delaware law, the stock was deemed present in the State for jurisdictional purposes. *Id.* at 191, 192; *see* DEL. CODE tit. 8, § 169 (1975). A Delaware statutory sequestration procedure provided *quasi in rem* jurisdiction over absent parties which owned property in Delaware. 433 U.S. at 190 n.4; *see* DEL. CODE tit. 10, § 366 (1975). Plaintiff apparently did not assert that defendants had minimum contacts with Delaware due to their ownership of Greyhound securities. Nevertheless, the Supreme Court of Delaware upheld the Delaware chancery court's exercise of jurisdiction over the defendants, holding that minimum contacts are not necessary for *quasi in rem* jurisdiction. Greyound Corp. v. Heitner, 361 A.2d 225, 229 (Del. 1976). The Supreme Court of the United States reversed, however, holding for the first time that *International Shoe's* minimum contacts requirement is applicable to an action whether brought *in personam, in rem,* or *quasi in rem.* 433 U.S. at 212.

The plaintiff in *Shaffer* also argued that Delaware's strong interest in the management of Delaware corporations warranted the state's exercise of judicial jurisdiction over the defendants. *Id.* at 213-14. The Court rejected the argument, citing the lack of a Delaware statute providing jurisdiction over officers and directors of Delaware corporations as evidence that the state's interest could not support jurisdiction. *Id.* at 214; *cf.* McGee v. International Life Ins. Co., 355 U.S. 220, 221-23 (1957) (California statute subjecting foreign insurors of state residents to California jurisdiction demonstrated state's manifest interest in providing effective means of redress for state's citizens). The *Shaffer* Court did not, however, state that Delaware could have exercised jurisdiction over the absent party defendants if the state did have a long-arm statute for officers and directors of Delaware corporations. *See id.* at 215; *but see* text accompanying note 33 *infra.*

[32] 433 U.S. at 216.

[33] *Id.* The *Shaffer* Court recognized that if Delaware had had a statute providing jurisdiction over officers and directors of Delaware corporations, the defendants could have foreseen the possibility of being haled before a Delaware court. *Id.* The Court thus implied strongly that under such a statute, Delaware could have exercised jurisdiction over the defendants. *See,* Note, Shaffer v. Heitner: *The Supreme Court Establishes a Uniform Approach to State Court Jurisdiction,* 35 WASH. & LEE L. REV. 131, 146-62 (1978).

purposeful activity in terms of an objective "expectation of litigation in the forum-state" test.[34]

One year after *Shaffer*, the Supreme Court adopted the reasonable expectation analysis suggested in *Shaffer* in *Kulko v. Superior Court*.[35] In *Kulko*, a domestic relations action brought for increasing child support payments, the defendant's only activity relating him to the forum state was permitting his children to join his ex-wife in California, contrary to the parties' separation agreement.[36] The Supreme Court of California upheld the state's exercise of jurisdiction, holding that Mr. Kulko had sent his children to California, and therefore, had purposefully availed himself of the benefits of California law.[37] The California court also stressed that Mr. Kulko's purposeful activity had caused an effect in California, thus making the exercise of jurisdiction reasonable.[38]

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[34] In his concurring opinion in *Shaffer*, Justice Stevens drew an analogy between the concept of predicating jurisdiction on activity giving the party the expectation of litigation in the forum state and the due process requirement that parties receive notice of pending litigation. 433 U.S. at 217-18 (Stevens, J., concurring); *see* Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313-14 (1950). Justice Stevens argued that if a party engages in activity which gives it a reasonable expectation that the state will exercise its judicial authority in regard to those activities, the state court does not act unfairly by requiring the party to defend the activity. *Id.* at 218; *see* Woods, *supra* note 7, at 888. In light of this analysis, Justice Stevens concluded that a person buying securities on an open market could hardly expect to know that it thereby becomes subject to suit in Delaware. 433 U.S. at 218 (Stevens, J., concurring).

[35] 436 U.S. 84 (1978).

[36] *Id.* at 94. The original parties in the action, Ezra Kulko and his ex-wife, Sharon Kulko Horn, lived in New York for the duration of their married lives. *Id.* at 87. When the parties separated, they drafted and signed a separation agreement in New York, whereupon Ms. Horn obtained a divorce decree in Haiti incorporating the New York separation agreement. *Id.* The parties' separation agreement provided that the children would live with Mr. Kulko during the school year and in California with Ms. Horn during the vacations. *Id.* at 87-88. Immediately after Mr. Kulko consented to the children's requests to live in California during the school year, Ms. Horn brought suit for the increase of child-support payments. *Id.* at 88. Mr. Kulko made a special appearance in the California court challenging the court's jurisdiction. *Id.* Kulko contended that he did not have minimum contacts with California as defined by International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945), and therefore, California could not properly exercise judicial jurisdiction over him. 436 U.S. at 88.

[37] Kulko v. Superior Ct., 19 Cal. 3d 514, 524, 564 P.2d 353, 358, 138 Cal. Rptr. 586, 591 (1977).

[38] Kulko v. Superior Ct., 19 Cal. 3d 514, 521-24, 564 P.2d 353, 356-59, 138 Cal. Rptr. 586, 589-91 (1977). The California Supreme court recognized that jurisdiction could not be based on any act which causes an effect in California, because, if taken to its logical ends, this basis of jurisdiction would be almost unlimited. 564 P.2d at 56. Therefore, the Court held that the exercise of jurisdiction must be "reasonable" in light of the act and subsequent effect in California. *Id.* The California court also recognized that the standard by which courts should measure the "reasonableness" test is that the defendant must have "purposefully availed himself" of the laws of California. *Id. See* Hanson v. Denckla, 357 U.S. 235, 253 (1958). The court, however, did not specify what criteria would support a holding that a person has purposefully availed himself of the state's laws or what acts which have an "effect" in California would make a court's exercise of jurisdiction reasonable.

Under these broad standards, the California court held that it had jurisdiction over

The United States Supreme Court held, however, that Mr. Kulko's activity did not support California's exercise of jurisdiction.[39] The Court reasoned that purposeful activity is not merely an intentional act which has a foreseeable effect in another state, but rather is one which allows the actor to reasonably "anticipate being 'haled before [the foreign state's] court.' "[40] In applying this rule in *Kulko,* the Court characterized Mr. Kulko's activity as the mere acquiescence to his children's desires to live in California, rather than a unilateral decision to send the children there.[41] The Court also emphasized that Mr. Kulko did not "purposefully derive any benefit" from permitting his children to live with their mother in California, nor had he committed any wrongful activity which should have given him the reasonable expectation of causing harm in California.[42] Based on these findings, the Court held that Mr. Kulko had not engaged in purposeful activity in the *Hanson* sense, because his activity did not give him the reasonable expectation of the burden of litigating a child-support suit in California.[43]

The *Kulko* Court apparently was motivated by the policy of letting parties predict accurately the jurisdictional consequences of their actions.[44] Nevertheless, the distinction between the language of the foreseeability of causing an effect rule and of the foreseeability of being haled into court rule is somewhat cryptic. Mr. Kulko must have foreseen the financial consequences to his ex-wife of allowing his children to live with her, and consequently, he easily could have foreseen the possibility of a

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Kulko because he had "acted" by sending his daughter, Ilsa, to California to live with her mother. 564 P.2d at 356-58. The court held, however, that the exercise of jurisdiction over Kulko would have been unreasonable if the action had only been for increasing Kulko's support payments for his son, Darwin. *Id.* at 358. The court distinguished the two situations on the ground that in Ilsa's case, Kulko not only had consented to her move to California, but, in addition, had purchased her plane ticket. *Id.* In Darwin's case, however, Ms. Horn purchased the plane ticket. *Id.* Therefore, although Kulko consented to Darwin's move, because Kulko's "act" of consent came after Darwin had moved to California and Kulko did not help Darwin get to California, the "act" of acquiescence would not support jurisdiction. *Id.*

Nevertheless, the California court held that since it could exercise jurisdiction over Kulko due to Ilsa's presence in the state, the court could also exercise jurisdiction over Kulko in the action involving Darwin. *Id.* at 358-59. In support of this holding, the court stressed the fact that the cases rested on the same issues, thus implying that the decision was a matter of fairness to Kulko. *Id.*

[39] 436 U.S. at 101.

[40] *Id.* at 94-98.

[41] *Id.* at 94. *Cf.* Kulko v. Superior Ct., 564 P.2d at 358 (reasonable for California court to exercise jurisdiction over Kulko, because he sent his daughter there).

[42] 436 U.S. at 95-96. Although the court recognized that Mr. Kulko's annual expenses for supporting the children would probably decrease due to their move to California, the Court found this financial benefit offset by the absence of his children from his home. *Id.* at 95. Moreover, the Court distinguished Kulko's arguable benefit from those of a commercial enterprise. *Id.* at 101.

[43] *Id.* at 97-98.

[44] Woods, *supra* note 7, at 888; *see* Shaffer v. Heitner, 433 U.S. 186, 217-19 (Stevens, J., concurring).

child-support action in California.[45] The better explanation for *Kulko* is found in the Court's indication that a party has a reasonable expectation of being haled into a state's court if the party intends or should reasonably expect to receive a benefit from the activity relating it to the forum-state.[46] *Kulko* also indicates that a party engaging in wrongful activity which should give the party the expectation of causing injury in the forum state should have a reasonable expectation of being haled into that state's courts.[47]

In a recent case, *World-Wide Volkswagen Corp. v. Woodson*,[48] the Supreme Court again addressed the definitions of "purposeful activity" and "foreseeability of being haled into court." *World-Wide Volkswagen* involved a products liability claim for personal injuries incurred in an automobile accident.[49] Mr. and Mrs. Harry Robinson purchased an Audi automobile from a New York dealer, and moved from New York to Arizona one year later.[50] While the Robinsons were driving through Oklahoma, a vehicle struck their car from behind, causing a fire which injured Mrs. Robinson and her children severely.[51]

Alleging that a defect in the Audi's gas tank had caused the fire, the Robinsons brought an action in an Oklahoma state court naming as defendants the automobile's manufacturer and its importer.[52] The plaintiffs also sued World-Wide Volkswagen Corporation, the regional distributor for Audi in New York; and Seaway Volkswagen, Inc., a local Audi dealer in New York from which the Robinsons had purchased their Audi.[53]

World-Wide Volkswagen and Seaway entered special appearances in the Oklahoma court to challenge the court's jurisdiction.[54] The parties contended that they did not have minimum contacts with Oklahoma, making the court's exercise of jurisdiction a violation of their due process

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[45] *Compare* text accompanying notes 64-66 *infra*.

[46] 436 U.S. at 96-97; *see* Note, *The Long-Arm Reach of the Courts Under the Effect Test After* Kulko v. Superior Court. 65 VA. L. REV. 175, 184 (1979) [hereinafter cited as *The Effect Test*].

[47] 436 U.S. at 97-98; *see The Effect Test, supra* note 46, at 186. One commentator suggested that a person engaged in conduct with a serious risk of harm to persons in other states should anticipate being haled into the other states' courts. *Id.* Similarly, the commentator suggested that persons whose activity crosses state lines only occasionally should anticipate defending their activity in other states when the activity is so dangerous that they would be held to strict liability. *Id.*

[48] 444 U.S. 286 (1980).

[49] *Id.* at 288.

[50] *Id.*

[51] *Id.*

[52] *Id.* Mrs. Robinson sued on her own behalf, while Mr. Robinson sued on behalf of the children, acting as their father and next friend. *Id.* at 288 n.2.

[53] *Id.* at 288. World-Wide Volkswagen is the regional distributor for Audi for New Jersey and Connecticut as well as for New York. *Id.* at 289.

[54] *Id.* Volkswagen of America, Inc., the importer of the Robinson's Audi, also entered a special appearance challenging the Oklahoma court's jurisdiction, but did not take an appeal to the Oklahoma Supreme Court. *Id.* at 288 n.3.

rights under the fourteenth amendment.[55] The Oklahoma district court rejected the defendants' contention, and the defendants subsequently brought an action in the Supreme Court of Oklahoma to restrain the district court judge, Charles Woodson, from exercising *in personam* jurisdiction over them.[56] The Supreme Court of Oklahoma upheld the lower court's decision.[57]

The Supreme Court of the United States prefaced its opinion by explaining the dual functions which the minimum contacts requirement provide.[58] First, minimum contacts protects parties from the burden of defending an action in a distant or inconvenient forum.[59] Second, minimum contacts precludes states from reaching out "beyond the limits imposed on them by their status as coequal sovereigns in a federal system."[60] Given these two functions, the Court stated that even if litigating in the forum-state would impose only minimal inconvenience on the defendant and the state has strong interests in litigating the case, the principles of federalism preclude a state's exercise of jurisdiction over an absent party which has not purposefully availed itself of the state's laws or markets.[61]

The *World-Wide Volkswagen* Court found that the defendants had not engaged in purposeful activity relating them to Oklahoma.[62] The Court recognized that the defendants could have foreseen the possibility that their customers would take their automobiles to Oklahoma, but held

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[55] *See id.* at 288-89.

[56] World-Wide Volkswagen, Corp. v. Woodson, 585 P.2d 351, 352 (Okla. 1978).

[57] *Id.* at 355. The Supreme Court of Oklahoma prefaced its decision by framing the issues as whether the defendants were subject to the state's long-arm statute and whether the state's exercise of jurisdiction would be consistent with the constitutional limits of due process. *Id.* at 352-53. The court found that the defendants were subject to the state's long arm statute which provided jurisdiction over non-residents who cause tortious injury in Oklahoma by their acts or omissions outside the state if the party derives substantial revenues in Oklahoma. *Id.* at 354 (construing OKLA. STAT. tit. 12, § 1701.03(a)(4) (1965)). The Oklahoma court apparently relied on the fact that the Robinsons' automobile was in Oklahoma and the substantial retail value of an automobile to conclude that the defendants derived substantial revenue from goods used in Oklahoma. 585 P.2d at 354. The court also inferred that due to automobiles' inherent mobility, it is likely that other automobiles sold by the defendants were used "from time to time" in Oklahoma. *Id.*

Without addressing the defendants' constitutional objections to the state's jurisdiction, the Oklahoma Supreme Court concluded that the district court had jurisdiction over the parties. *Id.* at 355. The court's failure to address the constitutional issue is explained by the fact the Oklahoma Supreme Court upheld the constitutionality of the same long-arm statute in prior decisions. *See* Fields v. Volkswagen of America, Inc., 555 P.2d 48, 52-53 (Okla. 1976); Carmack v. Chemical Bank Co., 536 P.2d 897, 900 (Okla. 1975); Hines v. Clendenning, 465 P.2d 460, 462-63 (Okla. 1970). The court apparently inferred that the application of the long-arm statute to the defendants in *World-Wide Volkswagen* was also constitutionally permissible.

[58] 444 U.S. at 291-92.

[59] *Id.* at 292.

[60] *Id.*

[61] *Id.* at 294 (citing Hanson v. Denckla, 357 U.S. 235, 250-51 (1958)).

[62] 444 U.S. at 299.

that the mere foreseeability that an action might have an effect in the forum-state cannot support the state court's jurisdiction.[63] Relying on *Kulko* and *Shaffer,* the Court held that the foreseeability necessary for minimum contacts is that, by its activity, a party should reasonably foresee the possibility of being haled into the forum-state's courts.[64] The Court emphasized that, unlike the foreseeability of an effect standard, the reasonable foreseeability of being haled into court rule gives parties due notice of the jurisdictional consequences of their acts.[65] Therefore, parties can insure against the costs of out-of-state litigation by passing the increased costs on to consumers, or, in the alternative, structure their activities to avoid such litigation.[66]

Addressing the facts of *World-Wide Volkswagen,* the Court cited the lack of any cognizable commercial ties between the defendants and Oklahoma to hold implicitly that the defendants did not have a reasonable expectation of defending an action in Oklahoma.[67] The defendants had made no sales in Oklahoma, they had not solicited business in Oklahoma, and they did not sell automobiles to Oklahoma citizens on a regular basis.[68] Furthermore, the defendants had not attempted to serve Oklahoma's markets indirectly by supplying automobiles to other persons serving the Oklahoma market.[69]

The *World-Wide Volkswagen* Court also refused to distinguish automobiles from non-mobile chattels for jurisdictional purposes.[70] The plaintiffs argued that automobiles' mobility gives their dealers and distributors different expectations than persons selling non-mobile chattels.[71] The plaintiffs also asserted that automobile dealers and distributors should be subject to jurisdiction in other states because automobiles are dangerous instrumentalities.[72] In rejecting the dangerous instrumentality argument, the court expressed its disfavor toward incorporating principles of tort law into the law of jurisdiction.[73]

The *World-Wide Volkswagen* Court decision raises three questions. First, was the Court's analysis and subsequent refusal to distinguish mobile and non-mobile chattels for jurisdictional purposes correct?[74] Second, what impact will *World-Wide Volkswagen* have on jurisdiction in prod-

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[63] *Id.* at 295.

[64] *Id.* at 297; *see* Kulko v. Superior Court, 436 U.S. 84, 97-98 (1978); Shaffer v. Heitner, 433 U.S. 186, 216 (1977); Shaffer, 433 U.S. at 217-19 (Stevens, J., concurring).

[65] 444 U.S. at 297.

[66] *Id.*

[67] *Id.* at 295, 297-98. *See* note 77 *infra.*

[68] 444 U.S. at 295.

[69] *Id.* at 295, 297-98. The *World-Wide Volkswagen* Court recognized that a party serving a state's market indirectly is subject to the state's jurisdiction. *Id.* at 297-98; *see* text accompanying notes 87-89 & 91-94 *infra.*

[70] 444 U.S. at 296 n.11.

[71] *Id.*

[72] *Id.; see The Effect Test, supra* note 46, at 185-86.

[73] 444 U.S. at 296 n.11; see text accompanying notes 78-84 *infra.*

[74] *See* text accompanying notes 77-90 *infra.*

ucts liability actions?[75] Third, what impact will *World-Wide Volkswagen* have on jurisdiction in areas of the law other than products liability?[76]

In light of the *Kulko* Court's analysis of "reasonable expectation of being haled into another state's courts," and the facts in *World-Wide Volkswagen,* the *World-Wide Volkswagen* Court's analysis was inadequate. The Court's principal basis for holding that the defendants did not have a reasonable expectation of defending an action in Oklahoma was that the defendants had no cognizable commercial relationship with Oklahoma.[77] In *Kulko,* however, the Court did not state that a commercial relationship was required for minimum contacts. The *Kulko* Court, in fact, recognized that a party engaging in wrongful activity which gives the party a reasonable expectation of causing harm in the forum state should be subject to the forum state's judicial jurisdiction.[78]

The specific purpose of an automobile and similar vehicles is to transport persons from place to place. Therefore, automobile dealers should anticipate that their customers will take their automobiles outside the state of purchase. Automobiles are frequently in accidents which cause substantial harm to persons and property. Therefore, automobile dealers should anticipate that the automobiles they sell will cause harm in other states. Nevertheless, the mere sale of an automobile is not "wrongful activity" and the automobile dealer should not be forced to defend actions in distant states when its customers' poor driving results in harm in other states. In *World-Wide Volkswagen,* however, the defendant's activity was not the mere sale of an automobile, but rather the sale of an automobile with an allegedly defective gas tank subject to explosion upon impact.[79] Given this distinction, the Court should have addressed the issue of what constitutes "wrongful activity" as suggested in *Kulko.*

The *Kulko* Court's only suggested example of wrongful activity which subjects a party to jurisdiction in another state is shooting a bullet from

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[75] *See* text accompanying notes 91-94 *infra.*

[76] *See* text accompanying notes 95-103 *infra.*

[77] 444 U.S. at 295, 297-98. In separate dissenting opinions, Justices Brennan, Marshall, and Blackmum argued that the World-Wide Volkswagen defendants derived benefits from Oklahoma. *Id.* at 307 (Brennan, J., dissenting); *id.* at 314 (Marshall, J., dissenting); *id.* at 319 (Blackmun, J., dissenting). Justices Brennan and Blackmun stressed that automobiles are intended to be driven throughout the country and that Oklahoma invests substantial assets into providing roads and services which indirectly benefit automobile dealers. *Id.* at 307 (Brennan, J., dissenting); *id.* at 319 (Blackmun, J., dissenting). Furthermore, Justices Brennan and Marshall argued that the defendants profited by being a part of a nation-wide network of Audi dealers. The Justices reasoned that without the national network which provides services to Audi owners away from home, the defendants would be hampered in their efforts to sell their automobiles. *Id.* at 307 (Brennan, J., dissenting); *id.* at 315 (Marshall, J., dissenting). The majority recognized the dissenting Justices' arguments, but found the benefit too attenuated to provide "constitutionally cognizable contact" between the defendants and Oklahoma. *Id.* at 298-99. *See* text accompanying notes 67-69 *supra.*

[78] 436 U.S. 84, 96 (1978); *accord, The Effect Test, supra* note 46, at 186.

[79] *See* 444 U.S. at 288.

one state into another.[80] If *Kulko* means that recklessness is an essential element of wrongful activity, the *World-Wide Volkswagen* defendants could be subject to Oklahoma's jurisdiction under this rule only if they sold the automobile with the knowledge that its gas tank was readily subject to explosion.[81] Assume, however, that a construction company engages in blasting near a state line and consequently destroys a home in the neighboring state. Assume further that the construction company took every known precaution to prevent the blasted debris from flying into the neighboring state. If *Kulko* requires recklessness, the aggrieved property owner would have to sue the negligent contractor in the state in which the blasting took place.[82] The unfairness of such a result is self-evident, and the *World-Wide Volkswagen* defendant's activity is certainly more analogous to the negligent blasting than the reckless shooting of a bullet. Moreover, the shooting of a bullet is not per se "wrongful" or "reckless" activity in either criminal law or tort law.[83] If recklessness is required, however, the *Kulko* Court's shooting hypothetical would not be

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[80] 436 U.S. 84, 96 (1978); *see* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37, Comment a (1971).

[81] In criminal law, the term "recklessness" refers to situations in which the actor has a subjective awareness that its conduct creates a substantial degree of harm to others, but does the act anyway. W. LAFAVE AND A. SCOTT, HANDBOOK ON CRIMINAL LAW § 30 (1972) [hereinafter cited as LAFAVE AND SCOTT]. Similarly, in torts, "recklessness" encompasses situations in which the actor proceeds with knowledge that harm is substantially certain to occur. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 34 (4th ed. 1972) [hereinafter cited as PROSSER]. In neither case must the actor have intent to cause the harm. If the defendants in *World-Wide Volkswagen* sold Audis with knowledge that the gas tanks were defective and highly subject to explosion upon impact, the defendants could be held to have acted recklessly. If the defendants did not know that the gas tanks were defective, they may be subject to a standard of gross negligence, because the dangerousness of automobiles places a higher duty on persons selling them to the public. *See id.* Nevertheless, if *Kulko's* wrongful activity requirement requires recklessness, the *World-Wide Volkswagen* defendants would not be subject to Oklahoma jurisdiction on a theory of gross negligence. Justification for this distinction would be based upon the expectations of the parties. A party which knows that its acts create a substantial risk of harm has a greater expectation of litigation than a party which merely should know of the potential danger resulting from its activity.

[82] One commentator suggested that under *Kulko*, a party engaged in conduct with a serious risk of harm to persons in other states should be subject to jurisdiction in other states for injuries resulting from that activity. *The Effect Test*, *supra* note 46, at 185. *See* note 81 *supra*.

[83] Shooting a bullet is "dangerous" activity rather than "reckless" activity. Given the danger of shooting a bullet, many courts in tort actions impose a higher duty of care on a party engaging in the activity as opposed to parties engaging in less dangerous activity. *See* PROSSER, *supra* note 81, at § 34. Consequently, these courts find the party subject to liability if they have been only slightly negligent. *Id.* Nevertheless, the shooting of a bullet is only reckless in tort law when the shooter is aware of the extraordinary risk of harm under the situation. *Id.* The distinction between negligent and reckless shooting is demonstrated clearly by the examples of a hunter shooting in what appears to be a field clear of all people and a person shooting into a busy street corner.

Criminal law also requires that a person shooting a bullet be aware of the unusually high degree of danger to which he is subjecting other parties. LAFAVE and SCOTT, *supra* note 81, at § 30. Consequently, a person does not act recklessly when he shoots a bullet.

applicable if the shooter was merely negligent. Consequently, the *Kulko* Court was apparently concerned with the nature and quality of the actor's activity as well as the actor's reasonable expectations.[84]

The activity of the hypothetical negligent contractor and of the *World-Wide Volkswagen* defendants are distinguishable, because the contractor's own activity caused the debris to fly into the neighboring state, whereas an intervening party moved the automobile into Oklahoma. As the *World-Wide Volkswagen* Court stated, a defendant is not subject to another state's judicial jurisdiction due to the forum-related activity of a party claiming a relationship with the defendant.[85] The Court used this unilateral activity rule to substantiate its holding that the defendants did not derive commercial benefits in Oklahoma merely because of the foreseeability that its customers would travel there.[86] Therefore, the Court would probably use the unilateral activity rule to distinguish the hypothetical negligent contractor and the *World-Wide Volkswagen* defendants.

Given the *World-Wide Volkswagen* Court's reliance on the *Shaffer-Kulko* reasonable expectation of forum-state litigation rule, the Court's use of the unilateral activity rule does not justify either the Court's refusal to distinguish mobile and non-mobile chattels or a distinction between the *World-Wide Volkswagen* defendants and the hypothetical contractor. The Court's inconsistent and confusing use of the unilateral activity rule is demonstrated by the Court's recognition that a manufacturer is subject to a state's jurisdiction if it places its products in the stream of commerce with the expectation that consumers in the forum-state will purchase them.[87] In the case of such a manufacturer, the company's only purposeful activity is placing the product in the stream of commerce with the expectation that the product will move in interstate trade. Once the manufacturer completes this action, the actual purposeful activity which leads to the product's sale is that of independent distributors. For jurisdictional purposes, however, the Supreme Court attributes the independent distributor's activity to the manufacturer.[88] Conversely, under *World-Wide Volkswagen,* an automobile dealer is not attributed with a consumer's act of driving an automobile to other states, despite the dealer's full expectation that the consumer will do so.[89] Clearly, the Court

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[84] *Accord,* International Shoe Co. v. Washington, 326 U.S. 310, 318-19 (1945); *The Effect Test, supra* note 46, at 184-86.

[85] 444 U.S. at 298 (citing Hanson v. Denckla, 357 U.S. 235, 253 (1958); *See* text accompanying notes 26-27 *supra*).

[86] 444 U.S. at 298.

[87] 444 U.S. at 297-98.

[88] *Id.*

[89] In their dissenting opinions, Justices Brennan and Marshall argued that for jurisdictional purposes there is no difference between a manufacturer placing its goods into the stream of commerce through independent distributors and an automobile dealer placing its goods into the stream of commerce through a consumer. *Id.* at 306-07 (Brennan, J., dissenting); *id.* at 315-16 (Marshall, J., dissenting). Both Justice Brennan and Justice Marshall

has established an artificial distinction between the activity of independent commercial parties and of independent consumers using mobile chattels. This artificial distinction has no justifiable constitutional basis. Consequently, the Court should have distinguished mobile and non-mobile chattels for jurisdictional purposes and upheld Oklahoma's exercise of jurisdiction. Moreover, under *Kulko's* reasonable expectation of litigation rule, Oklahoma's exercise of jurisdiction is warranted by both the defendants' indirect commercial relationship with the state and the defendants' commission of wrongful activity which gave them a reasonable expectation of causing harm in the state.[90]

Despite the *World-Wide Volkswagen* Court's refusal to distinguish automobiles and non-mobile chattels, the Court did not deal a devastating blow to the social need of providing fora in products liability cases for plaintiffs injured by absent commercial parties. The Court established the rule that a commercial party is subject to a state's judicial jurisdiction if it sells products or solicits business in the state, if it sells products to citizens of the state regularly, or if it serves the state's markets through middlemen.[91] Therefore, under *World-Wide Volkswagen,* local distributors dealing directly with the public, which includes small businessmen, are only subject to jurisdiction in the area where they carry on business activities.[92] Conversely, manufacturers and large scale distributors are subject to jurisdiction in states where their products are sold by smaller dealers and distributors at the end of the chain of distribution.[93] Plain-

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noted the mobility of automobiles to argue that the manufacturer's expectations are virtually identical to those of an automobile dealer. *Id.* at 306-07 (Brennan, J., dissenting); *id.* at 315 (Marshall, J., dissenting). Therefore, both Justices indicated clearly their positions that a person selling mobile chattels should be subject to the same jurisdictional consequences as a manufacturer. Neither Justice argued, however, that a party selling a chattel which is not designed specifically to move freely from state to state should be subject to the same scope of jurisdiction as a manufacturer selling products to a national or regional market.

[90] *See* text accompanying notes 46-47 *supra.*

[91] 444 U.S. at 295, 297-98. The *World-Wide Volkswagen* Court's holding that parties are subject to a state's judicial jurisdiction if they sell their products or solicit for the sale of their products in the state may be applied mechanically. However, the Court's holding that a party which regularly sells its products to persons living outside the state does not define the requisite amount of sales which will support jurisdiction. The Court did indicate that an isolated sale of a product in a state which does not arise from affirmative efforts to sell the product should not support the state's exercise of jurisdiction over the seller. *Id.* at 297. There remains, however, a gray area between "an isolated sale" and "regular sale" which will probably be the subject of future litigation. *See* International Shoe Co. v. Washington, 326 U.S. 310, 319 (1945) (minimum contact tests cannot be simply mechanical or quantitative).

[92] The *World-Wide Volkswagen* rule will not permit parties operating nearby state lines to avoid litigation in the neighboring state in many instances merely because they do not operate retail outlets in the neighboring state. Nevertheless, unless a party's advertisement is calculated to reach distant states, the party will only be subject to suit in neighboring jurisdictions. 444 U.S. at 295. Another exception would, of course, arise if the defendant sold cars to residents of a distant forum regularly. *Id.*; *see* note 91 *supra.*

[93] 444 U.S. at 297-98. *World-Wide Volkswagen* involved a local retailer dealing directly with the public and a distributor whose sales were limited strictly to a defined territory.

tiffs, therefore, can sue larger business entities taking advantage of a national market, even though these entities do not sell their products in the forum-state themselves.[94]

World-Wide Volkswagen's guidelines for determining the jurisdictional consequences of certain acts will be helpful for resolving jurisdictional issues in products liability litigation and for business planning. Outside the realm of products liability law, however, the reasoning behind *World-Wide Volkswagen* may cause a substantial degree of confusion. Apparently, the *World-Wide Volkswagen* Court was motivated by the need to provide fora for persons injured by defective products and the need to protect small businesses due to their economic position and the fact that they do not aggressively seek a national market.[95] These are legitimate concerns and, with regard to these concerns, the decision is fair.[96] The Court, however, did not admit that it was distinguishing small businesses from large manufacturers on the basis of their relative ability to afford litigation in distant states and to pass on the costs to the consumer.[97] Rather, the Court focused on the relative aggression of manufac-

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Nevertheless, the Court stated in dictum that parties which seek to serve the national market are not immune from jurisdiction in a state simply because they indirectly serve the state's markets through middlemen, rather than selling their products directly to consumers or other commercial parties in the state. *Id.; see* text accompanying notes 87-90 *supra*. The opinion expresses clearly that, under such a case, the *World-Wide Volkswagen* Court would not support an exercise of jurisdiction over a foreign manufacturer unless its goods were actually sold in the forum state as the result of the manufacturer's effort to market its product in other states. 444 U.S. at 297. The Court's dictum should not be read to require the manufacturer's intent to sell its products in the forum-state itself, but merely to serve other states in general. *Id.* at 297-98. Therefore, the manufacturer does not have to have a reasonable expectation of litigation in the specific state, but rather, a reasonable expectation of litigation in other states.

The *World-Wide Volkswagen Court* cited Gray v. American Radiator Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961), as a case with which to compare its suggested criteria for exercising jurisdiction over parties indirectly serving other state's markets. 444 U.S. at 298. In *American Radiator*, an Ohio valve manufacturer sold valves to a Pennsylvania water heater manufacturer. 176 N.E.2d at 762. The Pennsylvania manufacturer incorporated the valves into its water heaters and, in turn, sold the water heaters to parties in other states. *Id.* When a water heater sold to an Illinois resident exploded, the plaintiff brought suit against the Ohio valve manufacturer, alleging that its defective valve had caused the injury. *Id.* The Illinois Supreme Court held that the state court could exercise jurisdiction over the Ohio party. *Id.* at 767. The Illinois court cited the *Hanson* purposeful activity requirement, but based its holding on the principles of the state's interest in the litigation and convenience of forum to uphold jurisdiction. *Id.* at 766-67.

Under *World-Wide Volkswagen's* suggested analysis, the Ohio manufacturer should still be subject to suit in Illinois, because its product was sold in Illinois due to its efforts to indirectly serve other states' markets. The Court, however, rejects clearly the Illinois court's reasoning, which disregards the *Hanson* purposeful activity rule.

[94] 444 U.S. at 297-98.

[95] *See* 444 U.S. at 297. *World-Wide Volkswagen* will allow parties to recover from the deep pocket of manufacturers while simultaneously insulating local dealers from suits in distant states. *See* text accompanying notes 91-94 *supra*.

[96] *See* text accompanying notes 91-94 *supra*.

[97] 444 U.S. at 297. The *World-Wide Volkswagen* Court recognized that it was influ-

turers and local dealers and attempted to distinguish their reasonable expectations and purposeful activity and to distinguish the intervening "unilateral" acts of consumers and independent distributors.[98]

By relying on artificial distinctions, the *World-Wide Volkswagen* Court has confused the already blurry definitions of the "unilateral activity" rule, the "purposeful activity" rule, and the "reasonable expectation of forum-state litigation" rule.[99] More significantly, however, the Court's analysis confuses the requirement that a party engage in forum-related activity[100] and the principle that a state's exercise of jurisdiction be judged in light of its overall fairness.[101] Under the rules of *Hanson, Shaffer,* and *Kulko,* the Court should have held that the *World-Wide Volkswagen* defendants engaged in forum-related activity. The Court then could have distinguished manufacturers and local automobile dealers on the basis of the relative fairness of making them defend actions in distant states.[102] Instead, the Court's opinion suggests that fairness criteria should be weighed when determining whether a party has engaged in forum-related activity. Lower courts should recognize the factors unique to products liability law which influenced the *World-Wide Volkswagen* Court and avoid its improper analytical methodology when applying the case to other ar-

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enced by the need to let parties pass on costs of litigation to their customers. *Id.* The Court stated further that when a company engages in forum-related activity it has a reasonable expectation of that litigation and can pass on the costs to consumers. *Id.* The Court, however, did not recognize explicitly that larger companies are in a better position to pass on litigation costs to consumers that are small local dealers.

[98] 444 U.S. at 297-98.

[99] *See* text accompanying notes 87-90 *supra.*

[100] *See* text accompanying note 9 *supra.*

[101] *See* text accompanying note 8 *supra.*

[102] In his article entitled Pennoyer's *Demise: Personal Jurisdiction After* Shaffer *and* Kulko *and a Modest Prediction Regarding* World-Wide Volkswagen Corp. v. Woodson, Professor Winton Woods proposed a three step test for the analysis of minimum contacts questions. Woods, *supra* note 7, at 861-62. The first step is to determine whether the forum state has a minimal legitimate government interest in the litigation. *Id.* at 882-85. The minimal legitimate governmental interest can be provided by any effect on the forum state resulting from the defendant's activity. *Id.* The second step in the Woods test is to determine if the defendant has engaged in activity which gives it "due notice" of the litigation. *Id.* at 884-90. The term "due notice" was derived from the principles set forth in Shaffer v. Heitner and Kulko v. Superior Court, which define forum-related activity as activity by the defendant which allows it to foresee the possibility of litigation in the forum-state. *Id.* Woods stated that these two steps pertain to the basic limits on the power which a state may exercise over absent parties. *Id.* at 890. Therefore, since these requirements impose limits on the power of the state, they must be satisfied before a court can reach the third question of whether the state's exercise of jurisdiction is fair. *Id.; see* Tyson v. Whitaker & Son, Inc., 407 A.2d 1, 6 (Me. 1979).

In World-Wide Volksvagen, the Court held that the limits on a state's judicial jurisdiction are imposed by the principles of interstate federalism. 444 U.S. at 292-94. The Court stated that the principles of interstate federalism preclude states from exercising their judicial authority beyond the limits "imposed on them by their status as coequal soverigns." *Id.* at 292.

eas of the law.[103]

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[103] *See* text accompanying notes 93-94 & 95-98 *supra.*