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## MINIMUM CONTACTS AND CONTRACTS: THE BREACHED RELATIONSHIP

In *International Shoe Co. v. Washington*,<sup>1</sup> the United States Supreme Court dramatically changed the traditional notion of personal jurisdiction by shifting the focus of jurisdictional inquiry from physical control to fairness.<sup>2</sup> Prior to *International Shoe*, the Supreme Court limited a court's jurisdiction to cases involving persons or property located within the forum state.<sup>3</sup> The *International Shoe* Court held, however, that an out-of-state defendant is subject to the jurisdiction of a court if the defendant has minimum contacts with the state where the court is located.<sup>4</sup> The minimum contact theory of in personam jurisdiction has had a profound impact on state courts by significantly increasing the possibility that an out-of-state defendant will have to defend himself in a foreign jurisdiction.<sup>5</sup> Courts,

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<sup>1</sup> 326 U.S. 310 (1945).

<sup>2</sup> See Nordenberg, *State Courts, Personal Jurisdiction and the Evolutionary Process*, 54 NOTRE DAME LAW. 587, 594 (1979) (*International Shoe* shifted jurisdictional inquiry from physical control to fairness).

<sup>3</sup> See Kamp, *Beyond Minimum Contacts: The Supreme Court's New Jurisdictional Theory*, 15 GA. L. REV. 17, 30 (1980) (traditional notion of jurisdiction based on ability to control persons within state's boundaries). Under the traditional notion of jurisdiction, a state could acquire jurisdiction over a defendant only when the defendant personally was served with process while in the forum state. 4. C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 1065 (1969). The Supreme Court established the restrictive territorial notion of personal jurisdiction in *Pennoyer v. Neff*, 95 U.S. 714, 720 (1877). In *Pennoyer*, Neff, a California resident, allegedly owed Mitchell approximately \$300. *Id.* at 719. Mitchell, an Oregon resident, attached land owned by Neff in Oregon. *Id.* at 715. Mitchell then won a default judgment against Neff and sold the land to Pennoyer. *Id.* Neff challenged the sale to Pennoyer because the Oregon court failed to obtain proper jurisdiction. *Id.* at 716. The Supreme Court agreed with Neff because no Oregon official personally served Neff while he was in Oregon. *Id.* at 73.

Between the period of *Pennoyer* and *International Shoe*, the Supreme Court approved of several theories of personal jurisdiction that allowed courts to force defendants to litigate away from home. See generally Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. CHI. L. REV. 569, 574-86 (1958) (discussion of theories of personal jurisdiction). For instance, the Court approved of statutes that required defendants to consent to being sued by individuals injured by the defendant's automobile when the automobile was involved in an accident while in the forum state. See *Hess v. Pawloski*, 274 U.S. 352, 356 (1927). The Court also approved of jurisdiction over foreign corporations that did business in the forum if a state required the corporation to appoint an agent to receive process. See *Commercial Mut. Accident Co. v. Davis*, 213 U.S. 245, 255 (1909) (foreign corporation liable to suit if corporation appoints official likely to inform corporation of pending litigation). Under another theory of jurisdiction, the Supreme Court required foreign corporations to appear in a state and litigate suits unrelated to the corporation's business if the corporation's activities indicated that the corporation was present in the state. See *Philadelphia & Reading Ry Co. v. McKibbin*, 243 U.S. 264, 265 (1917).

<sup>4</sup> 326 U.S. 310, 316 (1945); see *infra* text accompanying notes 8-17 (discussion of *International Shoe*).

<sup>5</sup> See Nordenberg, *supra* note 2, at 596 (state court jurisdiction has expanded greatly

however, have disagreed over what constitutes sufficient minimum contact.<sup>6</sup> In particular, several of the United States circuit courts of appeals are split over whether a single contract is a sufficient minimum contact for a court to invoke jurisdiction over an out-of-state defendant.<sup>7</sup>

The minimum contacts theory of personal jurisdiction protects the right of a nonresident defendant to receive a fair hearing.<sup>8</sup> The *International Shoe*<sup>9</sup> Court concluded that a defendant does not need to be pre-

since *International Shoe* introduced minimum contact theory of jurisdiction). The reason that a nonresident defendant can expect to litigate in a foreign jurisdiction is that states have enacted long arm statutes to supplement the minimum contacts theory of jurisdiction. *Id.*; see J. MOORE & J. LUCAS, *MOORE'S FEDERAL PRACTICE* ¶ 4.41-1[3] (2d ed. 1981) (states enacted long arm statutes to acquire jurisdiction over nonresident defendants who have established minimum contacts with forum).

A state cannot gain personal jurisdiction over a nonresident defendant who has minimum contacts with the state unless the state has a long arm statute. See *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1264 (5th Cir. 1981) (state's ability to subject nonresident defendant's to suit is limited to extent authorized by long arm statute). A long arm statute typically states the procedure for serving nonresident defendants with process. See *Nordenberg*, *supra* note 2, at 596 n.38 (long arm statutes explain mechanics of serving process). A legislature may enact a long arm statute expressly stating that the state may exercise jurisdiction to the fullest extent permitted by due process. See, e.g., CAL. CIV. PROC. CODE § 410.10 (West 1973); R.I. GEN. LAWS § 9-5-33 (1956). Courts also have interpreted long arm statutes to extend as far as the Constitution allows. See *Hardy v. Pioneer Parachute Co.*, 531 F.2d 193, 196 (4th Cir. 1976) (extending South Carolina statute); *Walsh v. National Seating Co.*, 411 F. Supp. 564, 573 (D. Mass. 1976) (extending Massachusetts statute); *Nelson v. Miller*, 11 Ill. 2d 378, \_\_\_, 143 N.E.2d 673, 676 (1957) (extending Illinois statute). States also enact long arm statutes that are not coextensive with due process. See *Masonite Corp. v. Hellenic Lines, Ltd.*, 412 F. Supp. 434, 438 (S.D.N.Y. 1976) (New York's long arm statute does not reach to the outer limits of due process); *Escambia Treating Co. v. Otto Candies, Inc.*, 405 F. Supp. 1235, 1235 (N.D. Fla. 1975) (Florida's long arm statute requires greater contacts for jurisdiction than due process clause).

<sup>6</sup> Compare *Pedi Bares Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 937 (10th Cir. 1977) (causing an effect in the forum state satisfies minimum contact requirements) with *Scullin Steel v. National Ry. Utilization Corp.*, 676 F.2d 309, 313-14 (8th Cir. 1982) (causing an effect on the commerce of the forum state does not satisfy minimum contacts).

<sup>7</sup> See *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co.*, 445 U.S. 907, 909 (1980) (White, J., dissenting) (jurisdiction based on contractual agreements has divided federal courts). Compare *Southwest Offset, Inc. v. Hudco Publishing Co.*, 622 F.2d 149, 152 (5th Cir. 1980) (contract is minimum contact); *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 937 (10th Cir. 1977) (same) with *Jadair, Inc. v. Walt Keeler Co., Inc.*, 679 F.2d 131, 134 (7th Cir.) (contract is not minimum contact) *cert. denied* 103 S. Ct. 258 (1982); *Aaron Ferer & Sons Co. v. American Compressed Steel Co.*, 564 F.2d 1206, 1211 (8th Cir. 1977) (same).

<sup>8</sup> See 326 U.S. at 316 (nonresident defendant subject to suit in foreign forum if defendant maintains minimum contacts and suit does not unfairly burden defendant); see also Comment, *Constitutional Limitations on State Long Arm Jurisdiction*, 49 U. CHI. L. REV. 156, 156 (1982) (*International Shoe* protects defendant's right to fair hearing). A fair hearing entitles the defendant to notice and an opportunity to be heard. *Milliken v. Meyer*, 311 U.S. 457, 463 (1940). A defendant does not receive a fair hearing if he does not receive notice informing him of what the litigation involves and if he does not have enough time to make an appearance. See *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314 (1950) (notice requires information concerning litigation and sufficient time to appear).

<sup>9</sup> 326 U.S. 310 (1945). In *International Shoe*, the defendant, *International Shoe*, was

sent in a state for the defendant to have maintained sufficient contacts to allow a court in the state to obtain jurisdiction consistent with due process.<sup>10</sup> *International Shoe*, however, limited state court jurisdiction over nonresident defendants to cases in which jurisdiction over a nonresident would not usurp another state's right to protect residents against unjustified litigation.<sup>11</sup>

In *International Shoe*, the Court outlined several factors for courts to consider in determining whether a defendant is subject to in personam jurisdiction.<sup>12</sup> First, courts should consider the defendant's inconvenience in defending away from home.<sup>13</sup> Second, courts should consider whether a defendant has maintained continuous and systematic contacts with the forum state and the relationship between the defendant's contacts and the subject matter of the litigation.<sup>14</sup> Isolated contacts unrelated to the cause of action do not justify jurisdiction over an out-of-state defendant.<sup>15</sup> Third, courts should consider whether a defendant's contacts with the forum state are substantial enough to justify jurisdiction over the defendant if the suit is unrelated to the contacts.<sup>16</sup> Finally, courts should con-

a Delaware corporation that did not maintain an office in the state of Washington or execute any contracts in the state. *Id.* at 313. The company, however, did send salesmen into the state to solicit business. *Id.* Washington claimed jurisdiction over the company in order to obtain past due unemployment insurance contributions. *Id.* at 314.

<sup>10</sup> 326 U.S. at 316; see Comment, *In Personam Jurisdiction: Quality v. Quantity—A Dilemma In the Fifth Circuit*, 31 U. FLA. L. REV. 658, 659-60 (1979) (*International Shoe* expanded notions of jurisdiction by allowing courts to acquire jurisdiction over absent defendants). The due process clause to the United States Constitution states in pertinent part that "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.

<sup>11</sup> See 326 U.S. at 317 (jurisdiction must be consistent with federal system of government). Differing views exist concerning what *International Shoe's* federalism requirement entails. See *Alchemie Int'l, Inc. v. Metal World, Inc.*, 523 F. Supp. 1039, 1045 n.11 (D.N.J. 1981). Some courts hold that federalism requires only that the forum state have a legitimate interest in the litigation. See e.g., *Empire Abrasive Equip. Corp. v. H.H. Watson, Inc.*, 567 F.2d 554, 557 (3d Cir. 1977). On the other hand, some commentators have concluded that the forum state must have a greater interest than the defendant's home state before the forum state can acquire jurisdiction. Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1341, 1347 (1980) [hereinafter cited as Comment, *Federalism, Due Process*].

<sup>12</sup> See *infra* text accompanying notes 13-17 (discussion of factors involved in creation of minimum contacts).

<sup>13</sup> 326 U.S. at 317. The *International Shoe* Court did not state how courts should determine a defendant's inconvenience. *Id.* Other courts, however, indicate that a defendant's financial capabilities may indicate a defendant's ability to litigate away from home. See *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 234 (6th Cir. 1972) (unfairness includes defendant's inability to defend himself in foreign forum).

<sup>14</sup> 326 U.S. at 317-18.

<sup>15</sup> *Id.* at 318.

<sup>16</sup> *Id.*; see *Perkins v. Benquet Consol. Mining Co.*, 342 U.S. 437, 446-47 (1952) (jurisdiction allowed if suit arises out of transaction unrelated to defendant's activities but defendant has substantial in state activities).

sider whether single acts authorized by the defendant are significant enough to justify jurisdiction over the defendant.<sup>17</sup>

In two cases subsequent to *International Shoe*, the Supreme Court further refined the minimum contact test for personal jurisdiction. In *McGee v. International Life Insurance Co.*,<sup>18</sup> the Court held that a California court had jurisdiction over a Texas insurance company because the company agreed to insure a California resident, and most of the commercial activities related to the insurance policy occurred in California.<sup>19</sup> The fact that state boundaries no longer dictate the nature of commercial activities<sup>20</sup> and the fact that modern communication and transportation allow an out-of-state party to defend himself in a foreign jurisdiction without an undue burden persuaded the Court to approve an expansive theory of state court jurisdiction.<sup>21</sup> In *McGee*, the Court concluded that California was a proper place for the parties to litigate the case because California had a significant interest in providing the plaintiff with a forum.<sup>22</sup>

The Supreme Court's decision in *Hanson v. Denckla*<sup>23</sup> in which the Court held that a state did not have jurisdiction over an out-of-state defendant<sup>24</sup> tempered the Court's concern for the plaintiff. The *Hanson*

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<sup>17</sup> 326 U.S. at 318; see *Hess v. Pawloski*, 274 U.S. 352, 356 (1927) (accident involving defendant's car authorizes forum state to assert jurisdiction over defendant).

<sup>18</sup> 355 U.S. 220 (1957). In *McGee*, the plaintiff sought to recover on an insurance policy issued by the International Life Insurance Co. (International) on the plaintiff's son. *Id.* at 221-22. The plaintiff and the plaintiff's deceased son were both residents of California. *Id.* at 222. International declined to pay on the policy because International claimed that the son's death was the result of suicide. *Id.* International did not maintain an office in California or solicit business in California. *Id.* International's only contact with California was the insurance contract covering the plaintiff's son. *Id.* International acquired the contract by assuming the obligations of another insurance company. *Id.* The plaintiff's son paid all of his premiums by mailing his payment from his California home to the defendant insurer in Texas. *Id.*

<sup>19</sup> *Id.* at 223-24.

<sup>20</sup> *Id.* at 223.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 223-24. In *McGee*, the Court held that the California court should have jurisdiction because California residents suffer a disadvantage if they must travel to a foreign forum to litigate small or moderate claims. *Id.* at 223. The Court further concluded that California was the proper forum for the litigation because crucial witnesses were located in California and the inconvenience to the insurance company in defending the suit was minimal. *Id.* at 223-24.

The court also allowed jurisdiction in *McGee* because California had a substantial connection with the insurance policy. *Id.* at 223. The defendant delivered the contract in California and the plaintiff paid the premiums in California. *Id.* The Court also noted that the policyholder died in California. *Id.*

<sup>23</sup> 357 U.S. 235 (1958). In *Hanson*, a settlor created a trust in Delaware by a Pennsylvania settlor who appointed a Delaware trustee. *Id.* at 238. The settlor moved to Florida and executed her power of appointment. *Id.* The settlor continued to receive income from the trust until her death. *Id.* The settlor continued to remain in touch with the Delaware trustee while she resided in Florida. *Id.* at 238-39.

<sup>24</sup> See Jay, "Minimum Contacts" As a Unified Theory of Personal Jurisdiction: A Reap-

Court revived past notions of federalism by stating that the minimum contact requirement of personal jurisdiction restricts the power of states to force nonresident defendants to litigate away from home.<sup>25</sup> *Hanson* protected the defendant against distant litigation by demanding that the defendant purposefully create the minimum contact with the forum state.<sup>26</sup>

The *Hanson* Court's emphasis on territorial integrity is a significant addition to the analysis the Court used in *McGee*.<sup>27</sup> In *McGee*, the plaintiff's relationship to the forum state and the state's interest in seeing the case litigated were the primary factors in deciding if a court could invoke jurisdiction.<sup>28</sup> The *Hanson* Court, however, regarded the *McGee* factors as secondary and held that jurisdiction over a nonresident defendant was contingent on the defendant making a conscious effort to take advantage of the laws and protections of the forum state.<sup>29</sup>

Following *Hanson*, the Supreme Court did not face an important personal jurisdiction question for two decades. The due process rights of nonresident defendants came to the Court's attention in *Kulko v. California Superior Court*.<sup>30</sup> The *Kulko* Court relied on *Hanson* and limited *McGee* by emphasizing that a prerequisite for in personam jurisdiction over a nonresident defendant is that the defendant make a direct effort to gain the benefits and protections of the forum state.<sup>31</sup> *Kulko* held that courts

*praisal*, 59 N.C. L. REV. 429, 461 (1981) (*Hanson* used narrow meaning for contacts that limited jurisdiction).

<sup>25</sup> 357 U.S. at 251; see Redish, *Due Process, Federalism, and Personal Jurisdiction: A Theoretical Evaluation*, 75 NW. U. L. REV. 1112, 1118 (1981) (*Hanson* relied on federalism to limit minimum contacts test).

<sup>26</sup> See *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977) (*Hanson's* requirement that defendant purposely avail himself of benefit of forum state prohibited Delaware from asserting jurisdiction over nonresident defendant).

<sup>27</sup> See Note, *Long-Arm Jurisdiction in Commercial Litigation: When is a Contract a Contract?*, 61 B.U. L. REV. 375, 379 (1981) [hereinafter cited as Note, *Long-Arm Jurisdiction*] (*Hanson* emphasized that minimum contacts depend on activities of defendant).

<sup>28</sup> See *id.* at 378 (*McGee* established that minimum contacts test involves investigation into factors other than defendant's conduct).

<sup>29</sup> See 357 U.S. at 252-54 (defendant must act in manner intended to acquire benefits from the forum state); see also *Kamp*, *supra* note 3, at 21 (*Hanson* is prodefendant because *Hanson* emphasized defendant's purposeful activity).

<sup>30</sup> 436 U.S. 84 (1978). See generally Note, *The Long-Arm Reach of the Courts Under the Effect Test After Kulko v. Superior Court*, 65 VA. L. REV. 175 (1979). *Kulko* involved a couple who were married in California but resided in New York. 436 U.S. at 86. The couple was separated in 1972. *Id.* at 87. The separation agreement provided that the children would live with the mother in California during the summer. *Id.* Mrs. *Kulko* subsequently obtained a divorce in Haiti. *Id.*

The couple's youngest child requested to live year round in California and Mr. *Kulko* agreed to the request. *Id.* at 87-88. Mrs. *Kulko* arranged for her other child to join her in California. *Id.* at 88. Mr. *Kulko* did not consent and Mrs. *Kulko* sued in California to gain full custody of the children. *Id.* The California court asserted jurisdiction over Mr. *Kulko*. *Id.*

<sup>31</sup> See *Nordenberg*, *supra* note 2, at 621 (*Kulko* relied on *Hanson* and failed to cite *McGee*). The Court, in *Kulko* stated that a defendant must make a direct effort to gain the benefits

should conduct a two-part test prior to invoking jurisdiction over a non-resident defendant.<sup>32</sup> First, courts must determine whether a defendant has made a direct attempt to gain some benefit from the forum state by maintaining minimum contacts.<sup>33</sup> Second, courts must determine whether the defendant's presence in the court is consistent with the fundamental fairness considerations of due process.<sup>34</sup> When a court decides the fundamental fairness issue, *Kulko* stated that the court should consider the interest of the forum state in having the case litigated.<sup>35</sup> Implicit in the *Kulko* analysis is the assumption that the greater the forum state's interest in seeing the case litigated, the more minimal the contacts of the defendant must be.<sup>36</sup> A significant state interest, however, is not a replacement for some direct contact between the defendant and the forum state.<sup>37</sup>

The need for direct involvement by the defendant in the forum state was emphasized further in *World-Wide Volkswagen Corp. v. Woodson*.<sup>38</sup> In *World-Wide*, the Court stated that the defendant has established sufficient minimum contacts with the forum state when the defendant can anticipate that a foreign state may force him to defend himself away from home.<sup>39</sup> A defendant should anticipate potential liability in a foreign jurisdiction when he has made an attempt to perform some activity in

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and protections of the forum state. 436 U.S. at 93-94. A defendant can satisfy *Kulko*'s requirements only by receiving a direct benefit. *Id.* at 95. In *Kulko*, the defendant received a benefit from California because his household expenses in New York decreased while his children were in California. *Id.* The Court, however, rejected the argument that the defendant received a direct benefit because his decreased expenses resulted from actions taken by his ex-wife: *Id.*

<sup>32</sup> See *infra* text accompanying notes 33-34 (discussion of *Kulko* test).

<sup>33</sup> 436 U.S. at 92-96.

<sup>34</sup> *Id.* at 96-98; see *supra* note 10 (due process clause of Fourteenth amendment).

<sup>35</sup> See 436 U.S. at 98-99 (state interest is especially important when state enacts special jurisdictional statute).

<sup>36</sup> See *Kamp*, *supra* note 3, at 42 (*Kulko* reasoned that states may reach nonresident defendants if sufficient relationship exists between controversy and state).

<sup>37</sup> See *Nordenberg*, *supra* note 2, at 627 (defendant must receive direct benefits from forum state).

<sup>38</sup> 444 U.S. 286 (1980) See generally Note, *Fairness or Federalism in Supreme Court Minimum Contact Analysis?: World-Wide Volkswagen Corp. v. Woodson*, 37 WASH. & LEE L. REV. 1341 (1980) (discussion of *World-Wide*). In *World-Wide*, Harry and Kay Robinson purchased a new Audi from Seaway Volkswagen in Massena, New York. 436 U.S. at 288. The Robinsons drove the car on Interstate 44 through Oklahoma. *Id.* The Robinsons were on their way to their new home in Arizona. *Id.* In Tulsa, the Robinsons were hit from behind. *Id.* The gas tank ignited and Mrs. Robinson and her two children were burned seriously. *Id.*

The Robinsons initiated a products liability suit in Oklahoma against four defendants. *Id.* The Robinsons sued Audi, the car's manufacturer, Volkswagen of America, Inc., the importer of the car, World-Wide Volkswagen Corp., the distributor of the car, and Seaway Volkswagen, Inc., the seller of the car. *Id.* The Oklahoma Supreme Court ruled that the defendants fell within the jurisdiction of the Oklahoma long arm statute. *Id.* at 290.

<sup>39</sup> 444 U.S. at 297. The *World-Wide* Court, in holding that a defendant's actions must warn defendant that a foreign court may require him to appear, emphasized that the defendant's direct involvement in the forum state was the relevant consideration. *Id.*

the state.<sup>40</sup> A defendant has not established a contact with the forum state merely because he indirectly benefits from the unilateral activity of some other party in the forum state.<sup>41</sup> The Court also stated that a defendant's ability to foresee that his actions may have repercussions in another state is not a sufficient contact with the state for a foreign court to require that the defendant appear.<sup>42</sup>

In *World-Wide*, the Court concluded that the purposeful activity requirement of the minimum contacts test was consistent with due process because requiring defendants to associate with the forum state promoted interstate federalism.<sup>43</sup> The minimum contacts theory of jurisdiction preserves equality among the states because no court can acquire jurisdiction over a defendant unless the defendant voluntarily conducts his activities so that he takes advantage of the forum state's benefits.<sup>44</sup> *World-Wide's* concern with maintaining the sovereign status of each state undermined the inroads *McGee* made in expanding the ability of courts to cross state lines to obtain jurisdiction.<sup>45</sup> In *World-Wide*, the Court adopted *Hanson's* analysis that a state's interest in protecting a defendant from foreign litigation is more important than the forum state's interest in allowing an in-state resident to have his day in court.<sup>46</sup>

Although the Supreme Court has refined the criteria for minimum contacts since the Court first introduced the theory, federal courts of appeals have not been able to agree whether a contract between a defendant and a party within the forum state satisfies the constitutional re-

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<sup>40</sup> *Id.* Two theories exist concerning when a defendant should anticipate that a foreign court can require him to appear. *Constitutional Limitations*, *supra* note 8, at 169. Prior to *Kulko*, a defendant was subject to a court's jurisdiction if he could foresee a consequence of his activity occurring in the forum. *Id. Kulko*, however, implies that the defendant must foresee the possibility that someone might sue him in the forum. *Id.*

<sup>41</sup> See 444 U.S. at 299; see Nordenberg, *supra* note 2, at 627 (minimum contact not established unless defendant receives some direct benefit from associating with the forum).

<sup>42</sup> 444 U.S. at 295-97.

<sup>43</sup> See *id.* at 292 (minimum contacts stops states from reaching out beyond state limits to obtain jurisdiction over defendants); see also Kamp, *supra* note 3, at 24 (*World-Wide* explicitly values federalism more than inconvenience to defendant). In *World-Wide*, the Court stated that an overriding concern of the due process clause was preserving interstate federalism. 444 U.S. at 292. The Court explained that the minimum contact requirements of due process could deny a state jurisdiction over a cause of action although the state had a significant interest in having the case litigated and the defendant failed to suffer any inconvenience in litigating the case. *Id.* at 294.

<sup>44</sup> *Id.* at 297.

<sup>45</sup> See Kamp, *supra* note 3, at 38 (*World-Wide* limited jurisdiction because granting expansive jurisdiction to one state necessarily reduces jurisdictional authority of another state); see also Kurland, *supra* note 3, at 569 (increasing one state's jurisdiction reduces another state's jurisdiction).

<sup>46</sup> 444 U.S. at 293-94. In *World-Wide*, the Court cited *Hanson* for the position that federalism limits personal jurisdiction. *Id.* at 294. See generally, *Federalism, Due Process*, *supra* note 11 (discussion of *World-Wide's* use of federalism).

quirements of due process.<sup>47</sup> While all circuit courts recognize that a defendant's appearance must meet due process standards, the circuits interpret the Supreme Court's opinions differently.<sup>48</sup> Circuits that favor expansive jurisdiction depend heavily on *McGee*.<sup>49</sup> The circuits that view minimum contacts as a vehicle for preserving interstate federalism traditionally rely on *Hanson*.<sup>50</sup>

In *In-Flight Devices Corp. v. Van Dusen Air, Inc.*,<sup>51</sup> the Sixth Circuit held that a contract could satisfy the minimum contact requirements of due process.<sup>52</sup> In *In-Flight*, Van Dusen, a Minnesota corporation engaged in the distribution of airplane parts, entered into a contract with In-Flight.<sup>53</sup> In-Flight manufactured airplane parts at a plant located in Columbus, Ohio.<sup>54</sup> Under the terms of the contract, In-Flight agreed to manufacture and sell to Van Dusen 1,000 aircraft transponders.<sup>55</sup> In-Flight brought suit in Ohio against Van Dusen for breach of contract after Van Dusen stopped payment on a check.<sup>56</sup> The United States District Court for the Southern District of Ohio dismissed the suit because of a lack of personal jurisdiction.<sup>57</sup> The Sixth Circuit reversed and remanded the case back to the district court.<sup>58</sup>

The Sixth Circuit limited its discussion to the due process limitations on personal jurisdiction<sup>59</sup> and applied a *McGee* analysis to determine the

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<sup>47</sup> See *Long-Arm Jurisdiction*, *supra* note 26, at 384 (courts divided whether contract satisfied minimum contacts requirements).

<sup>48</sup> See *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co.*, 445 U.S. 907, 910-11 (1980) (White, J., dissenting) (jurisdiction based on contractual dealings divides federal courts); *cf. Mississippi Interstate Express, Inc. v. Transpo Inc.*, 681 F.2d 1003, 1007 (5th Cir. 1982) (decisions in other circuits are in such disarray that no reason exists to consider opinions of other circuits); *infra* notes 49-50 (different interpretation of jurisdiction based on single contract).

<sup>49</sup> See *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 936-37 (10th Cir. 1977) (citing *McGee* to affirm jurisdiction based on single contract); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 496 (5th Cir. 1974) (citing *McGee* for position that defendant need not be physically present in forum state to satisfy minimum contact requirement); see also *Long-Arm Jurisdiction*, *supra* note 27, at 384 (courts extending jurisdiction based on single contract rely on *McGee*).

<sup>50</sup> See *Anderson v. Shiflett*, 435 F.2d 1036, 1037-38 (10th Cir. 1971) (citing *Hanson* for rejection of jurisdiction based on single contract); see also *Long-Arm Jurisdiction*, *supra* note 27, at 386 (Seventh and Tenth Circuits have cited *Hanson* to deny jurisdiction based on single contract).

<sup>51</sup> 466 F.2d 220 (6th Cir. 1972).

<sup>52</sup> *Id.* at 232.

<sup>53</sup> *Id.* at 222.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 223.

<sup>57</sup> *Id.* at 222.

<sup>58</sup> *Id.* at 236.

<sup>59</sup> *Id.* at 224; see *Didactics Corp. v. Welch Scientific Co.*, 291 F. Supp. 890, 892 (N.D. Ohio 1968) (Ohio long arm statute is coextensive with the United States Constitution). In relevant part, Ohio's long arm statute provides: "A court may exercise personal jurisdic-

nature of Van Dusen's contacts with Ohio.<sup>60</sup> Instead of focusing on Van Dusen's activities in Ohio, the *In-Flight* court stressed the activities of the plaintiff.<sup>61</sup> The court noted that In-Flight manufactured the transponders in Ohio.<sup>62</sup> Although the contract between Van Dusen and In-Flight did not stipulate where In-Flight was to manufacture the transponders, the Sixth Circuit reasoned that Van Dusen should have recognized that In-Flight would manufacture the transponders at In-Flight's Columbus plant.<sup>63</sup> Van Dusen, therefore, established a significant contact with Ohio by signing a substantial business contract with an Ohio resident that ultimately affected the Ohio economy.<sup>64</sup>

After the Sixth Circuit concluded that Van Dusen established the requisite contacts for jurisdiction, the court considered whether Van Dusen would suffer a significant disadvantage by appearing in Ohio.<sup>65</sup> The court indicated that a defendant is capable of defending himself in a foreign court when the defendant is involved in interstate commerce.<sup>66</sup> The *In-Flight* court noted, however, that interstate commerce is not a replacement for direct involvement in the forum state.<sup>67</sup> In *In-Flight*, the court reasoned that Van Dusen should have anticipated that a foreign court might require Van Dusen to appear.<sup>68</sup> Van Dusen's extensive interstate dealings gave Van Dusen sufficient notice that it should prepare itself for litigation in foreign states.<sup>69</sup> Another factor the *In-Flight* court con-

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tion over a person who acts directly or by an agent, as to a cause of action arising from the person's: (1) Transacting any business in this state." OHIO REV. CODE ANN. § 2307.382 (Baldwin 1982).

<sup>60</sup> See *Long-Arm Jurisdiction*, *supra* note 26, at 384-85 (court in *In-Flight* applied *McGee* analysis). The *In-Flight* court articulated a three-part test that a defendant must satisfy before a foreign court can obtain jurisdiction. See *Southern Mach. Co. v. Mohasco Indus., Inc.*, 401 F.2d 374, 381 (6th Cir. 1968) (requirements for jurisdiction in Sixth Circuit). First, a defendant must attempt to perform some transaction in the forum. 466 F.2d at 226. Second, the defendant's activities in the forum state must be the basis of the litigation. *Id.* Third, the defendant's contacts with the forum must justify forcing the defendant to defend himself in a foreign jurisdiction. *Id.*

<sup>61</sup> See *Long-Arm Jurisdiction*, *supra* note 26 at 385. (*In-Flight* emphasized factors other than defendant's relationship with forum).

<sup>62</sup> 466 F.2d at 227.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 232-36. The *In-Flight* court, in determining the fairness of requiring Van Dusen to appear in Ohio, acknowledged that both buyers and sellers fall within the reach of a long arm statute. *Id.* at 232-33. The court, however, stated that nonresident sellers may have to appear in a foreign jurisdiction more frequently than nonresident buyers because sellers frequently initiate commercial transaction. *Id.* at 233. The court also noted that the greater the input the buyer has in forming the contract, the greater the chance that another state can require the buyer to appear and defend himself. *Id.*

<sup>66</sup> *Id.* at 234.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* In *In-Flight*, the Sixth Circuit reasoned that Van Dusen's interstate involvement should have informed Van Dusen that it might have to defend itself away from home because

sidered was the nature and quality of Van Dusen's contacts with Ohio.<sup>70</sup> The court noted that a defendant's communications with the forum state may indicate that a court can require a nonresident defendant to defend himself.<sup>71</sup> In *In-Flight*, the Sixth Circuit held that a district court in Ohio would not burden Van Dusen unfairly by requiring In-Flight to defend itself in Ohio because visits by representatives of Van Dusen to Ohio in connection with the contract suggest that Van Dusen had an ongoing relationship with Ohio.<sup>72</sup> The Sixth Circuit also stressed that the issue of fairness must include an investigation into the forum state's interest in having the case litigated.<sup>73</sup> The *In-Flight* court concluded that Ohio had a significant interest in resolving controversies that involve Ohio residents and substantial business contracts.<sup>74</sup> In *In-Flight*, Ohio was the proper forum for the litigation because Ohio had a significant interest in securing Ohio businessmen the benefits of their bargains and because Van Dusen should have anticipated that the contract with In-Flight might result in litigation in Ohio.<sup>75</sup>

The Tenth Circuit also applied an expansive jurisdictional analysis in *Continental American Corp. v. Camera Controls Corp.*<sup>76</sup> and permitted a federal district court sitting in Kansas to assert jurisdiction over a California defendant.<sup>77</sup> In *Continental*, Continental American Corporation (Continental), a Kansas corporation with its principal place of business in Wichita, purchased the Pioneer Balloon Company (Pioneer) from Sherwood Medical Industries, Inc., a Missouri corporation.<sup>78</sup> At the time Con-

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Van Dusen had corporate dealings with companies spread throughout the United States. *Id.* The Sixth Circuit found, for instance, that Van Dusen maintained its corporate headquarters in Minnesota and its purchasing operations in Missouri. *Id.*

<sup>70</sup> *Id.* at 234-35. The *In-Flight* court measured the quality of Van Dusen's contacts with the forum by trying to determine the significance that both Van Dusen and In-Flight gave to the contract-related events that occurred in the forum. *Id.*

<sup>71</sup> *Id.* at 235. The Sixth Circuit in *In-Flight* reasoned that a letter or a telephone call by a defendant to the forum state may indicate that the defendant is involved substantially with the forum. *Id.* The *In-Flight* court, therefore, concluded that communications often are as reliable as a personal visit to indicate the defendant's connection with the forum. *Id.*

<sup>72</sup> *Id.* The *In-Flight* court held that inspection trips by Van Dusen to In-Flight's manufacturing facilities in Ohio demonstrate that Van Dusen had established a significant relationship with Ohio by showing that Van Dusen had a deep interest in In-Flight's activities in Ohio. *Id.* Although the *In-Flight* court did not consider the negotiations that Van Dusen and In-Flight entered into in Ohio, the court did suggest that the negotiations could provide a basis for jurisdiction. *Id.* at 235 n.26. See *Thompson v. Ecological Science Corp.*, 421 F.2d 467, 469 (8th Cir. 1970) (contract negotiations sufficient basis for jurisdiction).

<sup>73</sup> 466 F.2d at 232; see *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223-24 (1957). In *McGee*, the Court held that California's interest in protecting California residents was a major reason for allowing the California long arm statute to extend to a Texas insurance company. 355 U.S. at 223-24.

<sup>74</sup> 466 F.2d at 232.

<sup>75</sup> *Id.*

<sup>76</sup> 692 F.2d 1309 (10th Cir. 1982).

<sup>77</sup> *Id.* at 1314-15.

<sup>78</sup> *Id.* at 1310.

tinental purchased Pioneer, Camera Controls Corporation, a California corporation, owed Pioneer \$2,628.<sup>79</sup> After the purchase of Pioneer, Camera Controls ordered another shipment of balloons from Pioneer's manufacturing facility in Ohio.<sup>80</sup> Continental agreed to fill the order if Camera Controls promised to pay the \$2,628.<sup>81</sup> Camera Control agreed to Continental's request and Continental shipped the balloons.<sup>82</sup> The invoice received by Camera Control stipulated that Camera Control should remit payment to Continental in Kansas.<sup>83</sup> Continental filed suit in the United States District Court for the District of Kansas against Camera Control when Continental failed to receive several payments from Camera Control.<sup>84</sup> Camera Control moved to dismiss the suit because of a lack of personal jurisdiction.<sup>85</sup> The district court denied the motion.<sup>86</sup>

The Tenth Circuit concluded that the district court properly invoked jurisdiction over Camera Controls because Camera Controls maintained significant contacts with Kansas.<sup>87</sup> The Tenth Circuit found that the most important consideration courts must make in determining personal jurisdiction is not the quantity of contacts between the defendant and the forum state but the quality of contacts.<sup>88</sup> In *Continental*, the court reasoned that Camera Controls' contacts with Kansas were of a sufficient quality to result in Camera Controls taking advantage of the benefits and privileges of conducting business with a Kansas corporation.<sup>89</sup> The Tenth Circuit concluded that Camera Controls satisfied the quality component of the minimum contacts test by making partial payments to Continental in

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<sup>79</sup> *Id.* In *Continental*, Camera Controls owed \$2,628 to Pioneer because Camera Controls thought that Pioneer had double billed Camera Controls for a shipment of merchandise and Camera Controls refused to pay the second bill. *Id.* In fact, Continental provided documentation to Camera Controls showing that Pioneer had made two shipments to Camera Control each for \$2,628. *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* In *Continental*, Continental had a difficult time in collecting the money Camera Controls owed Pioneer. *Id.* Sherwood Medical Industries, the owner of Pioneer prior to Continental's purchase, attempted to help Continental by trying to collect the money Camera Controls owed Continental. *Id.* Sherwood was unsuccessful. *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 1311.

<sup>84</sup> *Id.* In *Continental*, Camera Controls contended that it sent \$6,203.72 to Sherwood in Missouri and \$17,991.61 to Continental in Kansas. *Id.* Neither of these two payments ever reached Sherwood or Continental. *Id.* After Continental filed suit, Camera Controls made thirteen payments to Continental that reduced the amount Camera Controls owed to \$5,158.83. *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 1314. In *Continental*, Camera Controls argued two contentions to defeat jurisdiction. *Id.* at 1311. First, Camera Controls argued that it never created any contacts with Kansas. *Id.* Second, Camera Controls argued that Kansas violated Camera Controls' due process rights by extending jurisdiction over it. *Id.* The Tenth Circuit considered the two arguments as interrelated. *Id.*

<sup>88</sup> *Id.* at 1314.

<sup>89</sup> *Id.*

Wichita and conducting telephone conversations with Continental.<sup>90</sup> Although Camera Controls never had personal contact with Continental, the court did not hesitate to grant jurisdiction because the parties could negotiate the transaction with the convenience of modern long distance communications.<sup>91</sup>

The court concluded that due process did not require Continental to produce and ship the balloons from Kansas.<sup>92</sup> As long as the plaintiff is a resident of the forum state, the Tenth Circuit reasoned that where the plaintiff produced the goods is unimportant.<sup>93</sup> When employees of a forum state corporation manufacture goods to satisfy a contract with an out-of-state resident, the Tenth Circuit treats the goods, although manufactured in a facility outside of the forum state, as though the employees made the goods within the forum state.<sup>94</sup>

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.* In *Continental*, the Tenth Circuit concluded that mail and telephone communications have eliminated that need for an individual to travel into a state in order to conduct business within the state. *Id.*; see Note, Aaron Ferrer & Sons v. Atlas Scrap Iron & Metal Co: A Limit on the Reach of the "Long Arm" of the Law, 22 ST. LOUIS U. L.J. 694, 703 (1978) [hereinafter cited as Note, *Limit on Reach of the "Long Arm"*] (modern communication should limit requirement that plaintiff and defendant have face to face contact in forum). The *Continental* court, moreover, concluded that a defendant can protect himself against foreign litigation by refusing to conduct business with a foreign company. 692 F.2d at 1314.

<sup>92</sup> See 692 F.2d at 1314. (Balloons produced and shipped from Ohio).

<sup>93</sup> *Id.*; see *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co.*, 597 F.2d 596, 603 n.13 (7th Cir. 1979) (Seventh Circuit expresses no opinion concerning effect of where plaintiff produces goods).

<sup>94</sup> 692 F.2d at 1314. The Tenth Circuit has altered its position on personal jurisdiction. In *Anderson v. Shiflett*, the Tenth Circuit applied a restrictive analysis and denied jurisdiction over a defendant when plaintiff performed services for defendant in the forum. 435 F.2d 1036, 1038 (10th Cir. 1971). In *Anderson*, the court followed *Hanson* rather than *McGee* and concentrated on the defendant's activities. *Id.* at 1037-38; see Note, *Long-Arm Jurisdiction*, *supra* note 27, at 386-87 (Anderson court rejected plaintiff's reliance on *McGee* as misplaced in light of *Hanson*). In *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, the Tenth Circuit not only failed to cite *Anderson* but depended heavily on *McGee*. 567 F.2d 933, 936-37 (10th Cir. 1977). The court emphasized that *Hanson* did not modify *McGee* and that the defendant established a contact with the forum by ordering goods manufactured by the plaintiff in the forum. 567 F.2d at 936-37. *But see* *Anderson v. Shiflett*, 435 F.2d 1036, 1038 (10th Cir. 1971) (performance of contract by plaintiff in forum does not establish sufficient contact with forum). In *Continental*, the Tenth Circuit applied a more expansive analysis and concluded that the plaintiff did not have to manufacture the goods in the forum for the defendant to fall under a state's long arm statute. 692 F.2d 1313-14.

*Pedi Bares* was a significant decision in the Tenth Circuit because the court held that due process does not demand that the defendant have physical contact with the forum state. See Note *Civil Procedure - Kansas Long Arm Statute - The Single Contract Provision*, 27 U. KAN. L. REV. 135, 139 (1978) (*Pedi Bares* held minimum contacts do not require physical contact by defendant with forum). The *Pedi Bares* decision, moreover, indicates that a court should consider what is fair for all parties involved in the litigation before the court decides that a defendant does not fall within the reach of the court's jurisdiction. See *id.* (interest of forum, inconvenience to litigants, and basic equities are factors courts must consider when deciding personal jurisdiction). Finally, *Pedi Bares* held that the defendant will satisfy *Hanson's* availment requirement although the plaintiff initiated all of the defendant's contacts in the forum. *Id.* at 137.

The Fifth Circuit is another jurisdiction that applies an expansive jurisdiction analysis. In *Mississippi Interstate Express, Inc. v. Transpo, Inc.*,<sup>95</sup> the Fifth Circuit held that a California corporation subjected itself to litigation in Mississippi by entering into a contract with a Mississippi corporation.<sup>96</sup> In *Transpo*, a representative from Mississippi Interstate Express, Inc. (Mississippi Interstate), a Mississippi trucking firm, contacted Transpo, a freight broker, at Transpo's office in California.<sup>97</sup> The companies entered into an agreement requiring Mississippi Interstate to move goods for Transpo.<sup>98</sup> Transpo's only contacts with Mississippi were several telephone communications requesting Interstate's services, supplying shipping instructions to Mississippi Interstate, and agreeing to contract provisions requiring Transpo to remit payment in Mississippi.<sup>99</sup> None of the shipments that Mississippi Interstate carried for Transpo had a point of origin or destination in Mississippi.<sup>100</sup> Mississippi Interstate never received payment from Transpo and filed suit to recover for unpaid invoices.<sup>101</sup> The United States District Court for the Northern District of Mississippi granted Transpo's motion to dismiss for lack of personal jurisdiction.<sup>102</sup> The Fifth Circuit Court of Appeals reversed.<sup>103</sup>

In reversing the district court, the Fifth Circuit emphasized that personal jurisdiction over nonresident defendants requires courts to consider the quality and nature of the defendant's activities in relation to the forum state.<sup>104</sup> The *Transpo* court held that courts should consider the facts of each case and not apply a mechanical test.<sup>105</sup> Under the Fifth Circuit's approach to personal jurisdiction, a contract will create a minimum con-

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<sup>95</sup> 681 F.2d 1003 (5th Cir. 1982).

<sup>96</sup> *Id.* at 1012.

<sup>97</sup> *Id.* at 1005. In *Transpo*, Mississippi Interstate agreed to make 19 shipments for Transpo. *Id.* The value of Mississippi Interstate's services was \$35,000. *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* In *Transpo*, the court noted that although none of the shipments made by Mississippi Interstate for Transpo had a point of origin or destination in Mississippi, Mississippi Interstate's trucks did travel through Mississippi either because of routing or because the trucks required maintenance. *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* In *Transpo*, the district court dismissed the suit for a lack of jurisdiction because the court held that the due process requirement of the fourteenth amendment barred Mississippi from extending its long arm statute to reach Transpo in California. *Id.* The Mississippi long arm statute allowed Mississippi courts to assert jurisdiction over any party who makes a contract with a Mississippi resident that calls for either party to perform some portion of the contract in Mississippi. *See* MISS. CODE ANN. § 13-3-57 (1972 & Supp. 1982).

<sup>103</sup> 681 F.2d at 1006.

<sup>104</sup> *Id.* The Fifth Circuit in *Transpo* considered two criteria to determine if personal jurisdiction exists. *Id.* First, the court considered whether the defendant had a sufficient minimum contact with the forum so that the court does not put the defendant at a disadvantage by making him appear. *Id.* Second, the court considered whether the defendant created the minimum contact through his activities with the forum. *Id.*; *see* *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 494 (5th Cir. 1974) (articulation of test).

<sup>105</sup> 681 F.2d at 1006.

tact with the forum state if the defendant can foresee that the contract will cause business activity in the forum state.<sup>106</sup> The *Transpo* court noted that the defendant does not have to act within the forum state to create a minimum contact.<sup>107</sup> A nonresident defendant will satisfy the due process requirements of jurisdiction in the Fifth Circuit whenever the defendant engages in an activity that affects the forum state.<sup>108</sup>

The Fifth Circuit determined that *Transpo* purposefully established contacts in Mississippi because Mississippi Interstate performed a significant portion of the contract in Mississippi.<sup>109</sup> The *Transpo* Court, therefore, applied an analysis similar to the Supreme Court's analysis in *McGee*.<sup>110</sup> In *McGee*, the Court focused on the plaintiff's behavior.<sup>111</sup> In *Transpo*, the Fifth Circuit concluded that *Transpo*'s relationship with Mississippi was not fortuitous because *Transpo* should have anticipated that Mississippi Interstate would perform a substantial part of the contract in Mississippi.<sup>112</sup> The Fifth Circuit's analysis implies that a defendant is subject to a foreign

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<sup>106</sup> *Id.* at 107; see *Marathon Metallic Bldg. Co. v. Mountain Empire Constr. Co.*, 653 F.2d 921, 923 (5th Cir. 1981) (defendant takes affirmative act and establishes contact when he causes foreseeable business activity in forum).

<sup>107</sup> 681 F.2d at 1008-09; see *Southwest Offset, Inc. v. Hudco Publishing Co., Inc.*, 622 F.2d 149, 152 (5th Cir. 1980) (jurisdiction allowed over Alabama defendant who never visited Texas and where part of contract completed in Alabama).

<sup>108</sup> 681 F.2d at 1007. By causing a foreseeable effect in the forum, the defendant avails himself of the benefits and protections of the forum. *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1268 (5th Cir. 1981). When the defendant causes a foreseeable consequence in the forum, a court does not offend due process by requiring the defendant to appear. *Id.* The defendant has no due process claim because his actions have given him constructive notice that he may have to appear in a foreign court. *Id.* at 1269 n.16. In *Transpo*, the Fifth Circuit verified a commentator's belief that the court was prepared to uphold personal jurisdiction over a defendant if the defendant had contact with the forum through the use of mass communications. See Note, *Constitutional Law*, 10 TEX. INT'L L.J. 375, 381 (1975) [hereinafter cited as Note, *Constitutional Law*] (after *Product Promotions, Inc. v. Cousteau*, interstate communications may justify jurisdiction). In *Transpo*, most of the defendant's contacts were the result of interstate communications. See *supra* text accompanying note 99 (list of *Transpo*'s contacts with Mississippi).

<sup>109</sup> 681 F.2d at 1009. In *Transpo*, the court concluded that *Transpo* was an active participant in the transaction. *Id.* The court found that *Transpo* initiated all shipments, exercised control over the shipments, maintained a sustained relationship with the plaintiff, and expected plaintiff to perform in the forum. *Id.*

<sup>110</sup> See 681 F.2d at 1008 (Fifth Circuit using *Hudco* to decide *Transpo*). In *Southwest Offset, Inc. v. Hudco Publishing Co.*, 622 F.2d 149 (5th Cir. 1980), the Fifth Circuit relied heavily on a prior decision in *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974). The Fifth Circuit in *Cousteau* decided the personal jurisdiction question by applying a *McGee* analysis. See *Product Promotions v. Cousteau*, 495 F.2d 483, 498 n.27 (5th Cir. 1974) (Fifth Circuit used *McGee* to find personal jurisdiction in *Cousteau*); see also Note, *Constitutional Law*, *supra* note 108, at 380 (*Cousteau* continues trend in *McGee* towards reducing minimum contact requirements); Note, *Long-Arm Jurisdiction*, *supra* note 27, at 385-86 (*Cousteau* stressed and relied on *McGee*).

<sup>111</sup> See *supra* notes 18-22 and accompanying text (discussion of *McGee*).

<sup>112</sup> See 681 F.2d at 1009 (defendant knew that plaintiff had only one place of business to satisfy contract).

court's jurisdiction whenever the plaintiff performs some portion of the contract in the foreign state.<sup>113</sup> The defendant assumes the burden of litigating in a foreign jurisdiction by entering into a contract with a resident of the forum.<sup>114</sup> In the Fifth Circuit, the defendant's only opportunity to avoid litigation in an undesirable forum is to refuse to enter into a contract with a party who does business in the forum.<sup>115</sup>

*In-Flight*, *Continental*, and *Transpo* are characteristic of the approach courts use to gain jurisdiction over nonresident defendants involved in contract disputes.<sup>116</sup> These courts do not give state boundaries much legal significance.<sup>117</sup> Courts that favor expansive personal jurisdiction focus attention on the fact that the defendant purposely entered into a contract with an individual who resides in a foreign jurisdiction.<sup>118</sup> These courts are in agreement that a single contract is a sufficient basis for jurisdiction because the defendant by entering into the contract has received benefits from the forum state.<sup>119</sup> First, the defendant receives the benefit of the plaintiff's performance of the contract in the forum state.<sup>120</sup> Second, the defendant receives the economic benefit of a contract signed by a resident of the forum state.<sup>121</sup> These courts also emphasize the forum state's interest in having the case litigated.<sup>122</sup> Finally, courts that favor expan-

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<sup>113</sup> See *id.* at 1007 (defendant creates minimum contact when defendant agrees to contract that has business effect in forum).

<sup>114</sup> See *id.* at 1008 (defendant can eliminate reach of foreign jurisdiction by severing contact with jurisdiction).

<sup>115</sup> *Id.*

<sup>116</sup> See, e.g., *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 937 (10th Cir. 1977); *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 494-99 (5th Cir. 1974).

<sup>117</sup> See *Continental Am. Corp. v. Camera Controls Corp.*, 692 F.2d 1309, 1314 (10th Cir. 1982) (significance of state boundaries limited by modern communications); *Mississippi Interstate Express, Inc. v. Transpo, Inc.*, 681 F.2d 1003, 1011 (5th Cir. 1982) (jurisdiction granted because of interstate communications).

<sup>118</sup> See *Mississippi Interstate Express, Inc. v. Transpo, Inc.*, 681 F.2d 1003, 1008 (5th Cir. 1982) (rule in Fifth Circuit is that contract with forum state resident requiring some performance in jurisdiction is sufficient basis for jurisdiction).

<sup>119</sup> See *infra* notes 120-21 and accompanying text (discussion of benefits that defendant receives).

<sup>120</sup> See *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 937 (10th Cir. 1977) (defendant receives benefit of forum state's laws and protections when performance of contract takes place in forum).

<sup>121</sup> See, e.g., *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 227 (6th Cir. 1972) (court considered benefit defendant received from substantial contract). See generally, Note, *Long-Arm Jurisdiction*, *supra* note 27, at 384-85 (benefit defendant receives from contract).

<sup>122</sup> See *Vishay Intertechnology, Inc. v. Delta Int'l Corp.*, 696 F.2d 1062, 1067 (4th Cir. 1982) (interest of forum state is relevant factor for court to consider when deciding personal jurisdiction); *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 937 (10th Cir. 1977) (forum's interest in providing residents with protection against nonresidents who breach contracts is important factor in determining jurisdiction); *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 232 (6th Cir. 1972) (extent of forum state's interest important factor in determining fairness of requiring defendant to appear).

sive notions of personal jurisdiction recognize that modern means of transportation and communication enable nonresident defendants to litigate away from home without suffering an unjustified burden.<sup>123</sup>

Parties who are reluctant to subject themselves to foreign litigation are left with two alternatives.<sup>124</sup> The first alternative is for an individual to avoid all possibilities of foreign litigation by refusing to enter into a contractual relationship with someone who resides in a foreign state.<sup>125</sup> The second and more practical alternative is for the parties to stipulate in the contract which forum will hear controversies concerning the contract.<sup>126</sup> In order for a court to enforce the forum selection clause in the contract, the provision must be free of fraud and coercion.<sup>127</sup>

Courts that favor restrictive personal jurisdiction adhere to notions of federalism and pay particular attention to the defendant's activities within the forum state.<sup>128</sup> The Seventh Circuit applied a restrictive minimum contacts analysis in *Lakeside Bridge & Steel Co. v. Mountain State Construction Co.*<sup>129</sup> In *Lakeside*, an agent from Lakeside Bridge & Steel Co. (Lakeside) visited the offices of Mountain State in Charleston, West Virginia.<sup>130</sup> Lakeside, a Wisconsin corporation, maintained its business in Milwaukee.<sup>131</sup> Mountain State was constructing a dam and reservoir in Virginia, and Lakeside hoped to sell structural assemblies to Mountain State.<sup>132</sup> Mountain State sent a purchase order to Lakeside for structural assemblies.<sup>133</sup> Throughout the course of contract negotiations, both Lakeside and Mountain State initiated telephone and mail communications with each other.<sup>134</sup> Although the contract did not stipulate where Lakeside was to produce the goods, Lakeside manufactured the assemblies at its

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<sup>123</sup> See *Vishay Intertechnology, Inc. Delta Int'l Corp.*, 696 F.2d 1062, 1067 (4th Cir. 1982) (California corporation not unfairly inconvenienced if forced to litigate in North Carolina).

<sup>124</sup> See *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 234 n.24 (6th Cir. 1972); see *infra* text accompanying notes 125-27; (two alternatives explained).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* In *M/S Bremen v. Zapata Off-Shore Co.* the United States Supreme Court upheld a contract that contained a forum selection clause. 407 U.S. 1, 8 (1972). Although the Court's opinion in *Zapata* was limited to admiralty jurisdiction and involved an international commercial transaction, the analysis used by the Court seems to apply in cases where parties want to specify in a contract which court will settle disputes. See *Bense v. Interstate Battery Sys. of America*, 683 F.2d 718, 721 (2d Cir. 1982) (no reason to limit *Zapata's* holding to admiralty or domestic suits); *In-Flight Device Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 234 n.24 (6th Cir. 1972) (principles in *Zapata* apply in domestic choice of forum questions).

<sup>127</sup> See *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n.14 (1974) (forum selection clause not enforceable if product of fraud or coercion).

<sup>128</sup> See Note, *Long-Arm Jurisdiction*, *supra* note 27, at 385-87 (courts denying jurisdiction pay close attention to defendant's direct contacts with forum).

<sup>129</sup> 595 F.2d 596 (7th Cir. 1979). *cert. denied* 445 U.S. 407 (1980).

<sup>130</sup> *Id.* at 598.

<sup>131</sup> *Id.* at 597.

<sup>132</sup> *Id.* at 598.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

plant in Wisconsin.<sup>135</sup> Mountain State withheld payment after discovering that the goods were defective.<sup>136</sup> Lakeside brought suit in a Wisconsin state court to recover the money Mountain State owed on the contract.<sup>137</sup> Mountain State removed the case to the United States District Court for the Eastern District of Wisconsin and moved to dismiss for lack of personal jurisdiction.<sup>138</sup> The district court denied Mountain State's motion.<sup>139</sup> The Seventh Circuit reversed the district court and dismissed the suit.<sup>140</sup>

In *Lakeside*, the Seventh Circuit held that a single contract is not a sufficient minimum contact to allow a court located in Wisconsin to assert jurisdiction over a West Virginian defendant.<sup>141</sup> The court reached the result in *Lakeside* by citing *Hanson* as the controlling authority in cases involving in personam jurisdiction.<sup>142</sup> The *Lakeside* court reasoned that *McGee* was inappropriate because the Supreme Court intended courts to apply *McGee* in the limited cases in which the state had a special interest in the subject matter of the litigation.<sup>143</sup> Under the Seventh Circuit's interpretation of *Hanson*, Mountain State did not conduct business inside Wisconsin.<sup>144</sup> Unlike courts applying an expansive jurisdictional analysis, the *Lakeside* court did not consider Lakeside's performance of the contract in Wisconsin as creating a link between Mountain State and Wisconsin.<sup>145</sup> The court emphasized that Mountain State retained no con-

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<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 597.

<sup>141</sup> *Id.* at 603; see Note, *Long-Arm Jurisdiction*, *supra* note 27 at 387 (single contract does not establish minimum contact). The *Lakeside* court decided that the district court lacked jurisdiction by applying a demanding standard for determining minimum contacts. See Note, *Lakeside Bridge & Steel Co. v. Mountain State Construction Co.: Inflexible Application of Long-Arm Jurisdiction Standards to the Nonresident Purchaser*, 75 Nw. U. L. Rev. 345, 346 (1980) [hereinafter cited as Note, *Inflexible Application*] (Seventh Circuit applied demanding minimum contacts analysis). *Lakeside* argued that Mountain State was amenable to suit in Wisconsin because Mountain State ordered goods from a Wisconsin corporation, and Mountain State should have anticipated that Lakeside would manufacture the goods in Wisconsin. 597 F.2d at 600. *Lakeside* also contended that Mountain State had established minimum contacts by initiating communication with Lakeside in Wisconsin during contract negotiations. *Id.* The *Lakeside* court rejected plaintiff's argument and held that the plaintiff acted unilaterally although Mountain State could have anticipated that Lakeside would produce the goods in Wisconsin. *Id.* at 603.

<sup>142</sup> See Kamp, *supra* note 3, at 44-45 (Seventh Circuit's jurisdictional approach restricts state jurisdiction); Note, *In-Flexible Application*, *supra* note 141, at 351 (*Lakeside* relied on *Hanson* in finding that defendant's activity in forum did not constitute minimum contacts); Note, *Long-Arm Jurisdiction*, *supra* note 26, at 386-87 (*Lakeside* denied jurisdiction by emphasizing *Hanson's* purposefully avail requirement).

<sup>143</sup> See 597 F.2d at 600 n.6 (*McGee* applicable only in cases in which state has extraordinary interest in resolving dispute).

<sup>144</sup> See *id.* at 603 (contacts in *Lakeside* unilateral and performed by plaintiff).

<sup>145</sup> See Note, *In-Flexible Application*, *supra* note 141, at 358-59 (court would have reached

trol over where Lakeside would perform the contract and therefore Mountain State had only a fortuitous contact with Wisconsin.<sup>146</sup>

In *Lakeside*, the Seventh Circuit concluded that the most important factor for a court to consider when deciding a personal jurisdiction question is the quality of the defendant's purposeful contacts with the forum state.<sup>147</sup> The Seventh Circuit, therefore, failed to consider Wisconsin's interest in providing residents with protection against breached contracts.<sup>148</sup> Furthermore, the *Lakeside* court did not consider the value of the contract or Mountain State's communications with Lakeside in Wisconsin.<sup>149</sup> Circuits that apply an expansive jurisdictional analysis rely on *McGee* and consider the interest of the forum state when determining whether a court is treating a defendant unfairly by requiring him to defend away from home.<sup>150</sup>

The Eighth Circuit followed *Lakeside's* reasoning in *Scullin Steel Co. v. National Railway Utilization Corp.*<sup>151</sup> In *Scullin Steel*, an officer of Scullin Steel, a Delaware corporation with its principal place of business in Missouri, traveled to Philadelphia to solicit a sales contract from National

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different result if Seventh Circuit had considered plaintiff's performance in forum); see also *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 937 (10th Cir. 1977) (jurisdiction granted where defendant's major contact with forum was plaintiff's manufacturing goods in state).

<sup>146</sup> 597 F.2d at 603. The *Lakeside* court refused to conclude that a contract requiring plaintiff to perform contract in forum state would constitute a contact between the defendant and the forum. *Id.* at 603 n.13.

<sup>147</sup> See 597 F.2d at 601 (whether jurisdiction exists depends on whether defendant purposely avails himself of forum state's benefits); see also *Wisconsin Electrical Mfg. Co. v. Pennant Prods., Inc.*, 619 F.2d 676, 677-78 (7th Cir. 1980) (jurisdiction based on contract requires defendant to conduct activities in forum related to performance of contract). By emphasizing the defendant's actions, the *Lakeside* court refused to conclude that a contract requiring plaintiff to perform contract in forum created a link between the defendant and the forum. 597 F.2d at 603 n.13. If the *Lakeside* court had considered Lakeside's performance of the contract in Wisconsin as a link between Mountain State and Wisconsin, the Seventh Circuit would have found a sufficient minimum contact for jurisdiction. Note, *Inflexible Application*, *supra* 141, at 358-59; see *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 937 (10th Cir. 1977) (jurisdiction granted when defendant's major contact with forum was plaintiff's manufacturing goods in state).

<sup>148</sup> See Note, *Inflexible Application*, *supra* note 141, at 358-59 (*Lakeside* did not consider Wisconsin's interest). *But see* *Froning & Deppe, Inc. v. Continental Illinois Nat'l Bank & Trust Co.*, 695 F.2d 289, 293 (7th Cir. 1982) (state's interest relevant consideration in deciding jurisdiction).

<sup>149</sup> See 597 F.2d at 604 (value of contract and interstate communications unimportant for jurisdictional purposes); see also *Inflexible Application*, *supra* note 141 at 352-53 (*Lakeside* failed to discuss value of contract). Although interstate communications by the defendant to the forum state will not cause the defendant to fall within the forum state's jurisdiction, a visit by the defendant to the forum state in connection with a contract will result in the defendant subjecting himself to the forum state's jurisdiction. *Wisconsin Elec. Mfg. Co., Inc. v. Pennant Prods., Inc.*, 619 F.2d 676, 677 (7th Cir. 1980).

<sup>150</sup> See *supra* note 122 (discussion of courts considering forum state's interest when deciding jurisdiction).

<sup>151</sup> 676 F.2d 309 (8th Cir. 1982).

Railway Utilization Corp. (NRUC), a company that manufactures and leases railroad cars.<sup>152</sup> Scullin Steel was successful in obtaining a contract and NRUC agreed to purchase a number of car sets.<sup>153</sup> No NRUC employee visited Missouri in connection with the agreement.<sup>154</sup> Scullin Steel's only plant to produce the car sets was located in Missouri.<sup>155</sup> NRUC remitted all payments to Missouri.<sup>156</sup> A conflict developed between NRUC and Scullin Steel and NRUC refused to pay for all of the car sets listed in the contract.<sup>157</sup> Scullin Steel filed a suit for breach of contract against NRUC in the United States District Court for the Eastern District of Missouri.<sup>158</sup> NRUC moved to dismiss the suit for a lack of personal jurisdiction.<sup>159</sup> The district court granted the motion<sup>160</sup> and the Eighth Circuit affirmed.<sup>161</sup>

The Eighth Circuit rejected the reasoning of other circuits that have upheld jurisdiction in similar factual situations and held that NRUC did not perform any act in Missouri that established a minimum contact.<sup>162</sup> In *Scullin Steel*, the court strictly interpreted *Hanson's* requirement that the defendant avail himself of the benefits and protections of the forum state.<sup>163</sup> The Eighth Circuit reasoned that NRUC did not avail itself of Missouri's protections merely because Scullin Steel performed part of the contract in Missouri.<sup>164</sup> According to the court's opinion in *Scullin Steel*, a defendant forms a connection with the forum state by direct contacts with the forum.<sup>165</sup> Under the Eighth Circuit's approach in *Scullin Steel*,

<sup>152</sup> *Id.* at 310.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Scullin Steel Co. v. Nat'l Ry. Utilization Corp.*, 520 F.2d Supp. 383, 388 (E.D. Mo. 1981).

<sup>161</sup> 676 F.2d at 310.

<sup>162</sup> *Id.* at 311. In *Scullin Steel*, the plaintiff argued that the plaintiff was subject to Missouri's jurisdiction because the defendant transacted business in Missouri. *Id.* The defendant's contacts were similar to the contacts in *Transpo*. See *Mississippi Interstate Express, Inc. v. Transpo, Inc.*, 681 F.2d 1003, 1005 (5th Cir. 1982) (contract performed in forum at plaintiff's only facility and payment remitted to forum state). The *Transpo* court granted jurisdiction. 681 F.2d at 1012. The court in *Scullin Steel* denied jurisdiction. 676 F.2d at 310.

<sup>163</sup> See 676 F.2d at 313 (court applying *Hanson* to deny jurisdiction). In *Scullin Steel*, the Eighth Circuit relied extensively on *Aaron Ferer & Sons Co. v. Diversified Metals Corp.*, 564 F.2d 1211 (8th Cir. 1977); see 676 F.2d at 313-14 (citing *Aaron Ferer*). In *Aaron Ferer*, the court based its decision on a restrictive *Hanson* analysis. See 564 F.2d at 1215-16 (*Hanson's* territorial limitations denied jurisdiction).

<sup>164</sup> See 676 F.2d at 313 (court rejecting *Scullin Steel's* argument that minimum contact existed between NRUC and Missouri because *Scullin Steel* performed contract in Missouri).

<sup>165</sup> See *id.* (defendant's direct contacts with forum are basis for personal jurisdiction). The analysis the Eighth Circuit used in *Scullin Steel* is similar to the approach the court used in earlier cases in which the court required sufficient business contact with the forum so that the defendant was constructively present in the state. See Note, *Limit on the Reach*

a court will deny a defendant due process if a court forces a defendant to appear merely because the defendant could have foreseen that the contract would have some impact on the forum state's economy.<sup>166</sup> The Eighth Circuit, moreover, places a premium on the defendant's physical presence in the forum.<sup>167</sup> Unlike other circuits, the Eighth Circuit does not consider communications with the forum state or payments sent to the forum state sufficient to justify requiring the defendant to appear in a foreign jurisdiction.<sup>168</sup>

Circuits that deny courts jurisdiction over nonresident defendants whose only contact with the forum is a single contract base their restrictive analysis on federalism.<sup>169</sup> As *Lakeside* and *Scullin Steel* indicate, courts that deny jurisdiction on the basis of a single contract require plaintiffs to demonstrate that the defendant has made an affirmative act within the forum.<sup>170</sup> Circuits that believe that the due process clause requires courts to give state boundaries great significance refuse to place much importance on where the parties perform the contract or on interstate communications between the parties.<sup>171</sup> These circuits, however, are willing to grant jurisdiction over a nonresident defendant, if the defendant traveled into the forum because of the contract.<sup>172</sup> A restrictive jurisdictional analysis, moreover, encourages courts to focus primarily on the defendant's interests and not on the interests of the forum state to have the controversy settled within the forum.<sup>173</sup>

Although the restrictive jurisdictional approach seems consistent with *Hanson* and its progeny,<sup>174</sup> the basic premise upon which courts base the

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of the "Long Arm" *supra* note 91 at 701 (Eighth Circuit requires defendant to establish constructive presence in forum).

<sup>166</sup> See 676 F.2d at 313 n.5 (foreseeability of impact on forum does not justify jurisdiction). In *Scullin Steel*, the court did not express an opinion if a contract requiring the plaintiff to perform in forum would establish a minimum contact between the defendant and the forum. *Id.*

<sup>167</sup> See *id.* at 314 (defendant's use of interstate facilities has little significance on jurisdiction question).

<sup>168</sup> Compare *id.* (communications and payments to forum are insignificant jurisdictional factors) with *Mississippi Interstate Express, Inc., v. Transpo, Inc.*, 681 F.2d 1003, 1005 (5th Cir. 1982) (communications and payments significant jurisdictional factors).

<sup>169</sup> See Note, *Long-Arm Jurisdiction*, *supra* note 27, at 385-87 (courts denying jurisdiction base their analysis on *Hanson's* federalism requirements).

<sup>170</sup> See *supra* text accompanying notes 144-46 (discussion of *Lakeside's* requirement that defendant act affirmatively in forum); *supra* text accompanying notes 164-66 (discussion of *Scullin Steel's* requirement that defendant affirmatively act in forum).

<sup>171</sup> See *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co., Inc.*, 597 F.2d 596, 601 (7th Cir. 1979) (partial performance by plaintiff in forum does not justify jurisdiction over defendant); *Aaron Ferer & Sons Co. v. Atlas Scrap Iron*, 558 F.2d 450, 455 (8th Cir. 1977) (interstate communications do not constitute sufficient basis for jurisdiction).

<sup>172</sup> See *Wisconsin Elec. Mfg. Co. v. Pennant Prods., Inc.*, 619 F.2d 676, 677 (7th Cir. 1980) (contract related visit by defendant to forum justifies jurisdiction).

<sup>173</sup> See *supra* text accompanying note 148 (court not considering forum state's interest).

<sup>174</sup> See *supra* text accompanying note 169 (courts applying restrictive analysis rely on

restrictive analysis is flawed.<sup>175</sup> The Supreme Court predicated *Hanson's* requirement that the defendant must avail himself of benefits of the forum state on the belief that the due process clause contains an element of federalism. Courts therefore must respect the sovereignty of other states when deciding whether to grant personal jurisdiction.<sup>176</sup> No authority exists in the Constitution, however, for allowing concepts of federalism to limit the reach of personal jurisdiction.<sup>177</sup> In *Insurance Corp. of Ireland, LTD v. Campagnie des Bauxites de Guinee*,<sup>178</sup> the Supreme Court concluded that the due process clause, which is the only source of the personal jurisdiction requirement, contained no federalism component.<sup>179</sup> The Court further reasoned that if a federalism requirement existed in personal jurisdiction, a defendant could not waive jurisdiction because an individual may not waive the sovereign power of a state.<sup>180</sup>

Since personal jurisdiction protects defendants against a court's un-

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*Hanson's* use of federalism). The Supreme Court consistently has emphasized *Hanson's* federalism requirements when deciding cases involving personal jurisdiction questions. See *supra* text accompanying notes 31 & 32 (discussion of *Hanson's* federalism requirement in *Kulko*); *supra* text accompanying notes 43-46 (discussion of *Hanson's* federalism requirements in *World-Wide*). See generally Comment, *Federalism, Due Process, supra* note 11, at 1349-52 (discussion of Court's emphasis of *Hanson's* federalism requirements in jurisdiction cases).

<sup>175</sup> See generally Redish, *supra* note 25, at 1113-25 (*Hanson's* federalism component of jurisdiction has no basis in due process clause).

<sup>176</sup> *Id.* at 1113-14. The Supreme Court consistently has based personal jurisdiction decisions on the premise that the due process clause protects interstate sovereignty. *Id.* The Court's use of federalism in personal jurisdiction cases has infringed on each state's right to decide cases that affect the state because the notion of interstate federalism drastically limits the reach of state court jurisdiction. *Id.* Since *Hanson*, the Court has used federalism to limit the autonomy of state courts that desire to assert expansive notions of personal jurisdiction. *Id.* at 1118; see Comment, *Federalism, Due Process, supra* note 11, at 1350 (many courts use *Hanson* to require forum to have physical power before asserting jurisdiction).

<sup>177</sup> See Redish, *supra* note 25 at 1113-14 (no foundation in due process clause for infusing federalism into personal jurisdiction determination).

<sup>178</sup> 456 U.S. 694 (1982).

<sup>179</sup> See 456 U.S. 694, 702-03 n.10 (due process has no federalism component limiting sovereign power of court). Justice Powell in his dissent in *Campagnie des Bauxites* reasoned that the *Campagnie des Bauxites* decision had changed the basis of personal jurisdiction. *Id.* at 714 (Powell, J., dissenting). According to Powell, *Campagnie des Bauxites* defines personal jurisdiction in terms of fair play. *Id.* Fairness in the jurisdictional setting refers to protection against inconvenient litigation, and courts determine fairness by considering the interests of the defendant, the forum, and the plaintiff. Kamp, *supra* note 3, at 24. By stressing fairness, the Court in *Campagnie des Bauxites* is reaffirming the rationale of opinions that rely on *McGee* because *McGee* used a multifactor analysis that emphasized fairness. *Id.* at 34-35. The Fifth Circuit concluded that *Campagnie des Bauxites* has lowered the standard that courts have to apply to determine personal jurisdiction. See *Burstein v. State Bar of California*, 693 F.2d 511, 518 n.12. (5th Cir. 1982) (prior Fifth Circuit opinions used more stringent standards than required by *Campagnie des Bauxites*).

<sup>180</sup> See 456 U.S. at 702-03 n.10 (federalism not part of due process because person can waive personal jurisdiction without state's consent).

constitutional exercise of jurisdiction,<sup>181</sup> courts should consider a contract a sufficient minimum contact that is consistent with due process.<sup>182</sup> Courts, however, are required to deny jurisdiction, even if a contract exists, if the court would prevent the defendant from receiving a fair trial.<sup>183</sup> Courts applying an expansive jurisdictional analysis have established a more efficient means for determining whether personal jurisdiction exists than courts applying a restrictive jurisdictional analysis because an expansive analysis considers the interests of all the parties involved in the suit.<sup>184</sup> Although the Court's opinion in *Campagne des Bauxites* indicates that a contract satisfies the minimum contact requirements of due process, the Supreme Court has yet to make a definitive statement concerning the subject.<sup>185</sup> Because of the division that exists among courts that have considered the issue,<sup>186</sup> the Court should hear a case involving the question and end the confusion that currently exists.<sup>187</sup>

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<sup>181</sup> *Id.* at 2104-2105.

<sup>182</sup> See *supra* note 8 (minimum contact guarantees defendant fair hearing). A contract between a nonresident defendant and a resident of the forum state is consistent with the protections of minimum contacts because the contract gives the defendant notice that he may have to defend himself in the forum. See Redish, *supra* note 25, at 1134 (if defendant knew in advance that his contact was of jurisdictional significance, defendant was not unfairly burdened by litigating in forum).

<sup>183</sup> See Redish, *supra* note 25, at 1134 (defendant not amenable to jurisdiction if significantly inconvenienced).

<sup>184</sup> See Kamp, *supra* note 3, at 43 (expansive *McGee* analysis considers convenience, efficient judicial administration, state regulatory interests). In *World-Wide*, the Supreme Court acknowledged that federalism may prevent a forum from balancing the interests of all of the parties. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 290, 294 (1980) (federalism could prevent forum from hearing case although defendant not inconvenienced, forum has strong interest, and forum is most convenient location).

<sup>185</sup> See Kamp, *supra* note 3, at 54 (many years before Court will decide whether contract is minimum contact).

<sup>186</sup> See *supra* text accompanying note 7 (discussion of division that exists among courts).

<sup>187</sup> See Kamp, *supra* note 3, at 45 (Court's approach to jurisdiction leads to uncertainty). By allowing the circuits to differ on whether a contract is a sufficient minimum contact, the Supreme Court has lessened the protection of the due process clause. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 290, 297 (1980) (due process clause should inform potential defendants how to structure activity so defendants know when they may be liable to suit).