In Personam Jurisdiction - Minimum Contacts - Franchises - Contracts

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Recent Decisions

IN PERSONAM JURISDICTION—MINIMUM CONTACTS—FRANCHISES—CONTRACTS—The United States Supreme Court has held that the law of the franchisor forum state controls where the foreign franchisee has agreed in the contract to be bound by that law and has reached out beyond his state into the forum.

Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174 (1985).

In 1978 John Rudzewicz and Brian MacShara agreed to jointly apply for a franchise from the Burger King Corporation.1 The two approached Burger King’s district office in Birmingham, Michigan and applied for the franchise. The Michigan office then forwarded the application to Burger King’s Miami Headquarters.2 In February, 1979, the Miami office began preliminary negotiations with Rudzewicz and MacShara;3 over the next four months extensive negotiations ensued.

During this same period, MacShara attended required Burger King classes in Florida, and he and Rudzewicz bought necessary equipment worth $165,000 from Burger King’s Florida manufac-

1. Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174, 2179 (1985). Appellees Rudzewicz and MacShara were citizens and residents of Michigan. MacShara, the son of a business associate of Rudzewicz, suggested that he serve as manager while Rudzewicz provide the investment capital. Rudzewicz, considering the business opportunity attractive, agreed. Id. at 2179.

2. Id. at 2178. Burger King operates through a two-tiered structure. The first tier, the Miami tier, is responsible for the administrative aspects of the corporation. Toward that end, the contract provisions state that the franchise relationship is deemed to have been created in Miami; fee payments and notices are to be forwarded to Miami; and, Florida law is to govern the relationship. Burger King policy and resolution of major problems are handled at the Miami headquarters. The second tier, a network of 10 regional offices, is responsible for the daily monitoring of the franchises. These district offices report to the Miami headquarters. Id. at 2178-79.

3. Id. at 2178. A franchise receives a license to use Burger King trademarks and service marks as well as a lease for a standardized restaurant facility for a period of 20 years. Burger King supplies all necessary marketing, management, accounting and inventory-control guidance information which enables the franchisees to enter the market with relative ease. In return, franchisees pay an initial $40,000 fee, as well as monthly royalties, advertising costs and rent computed in part from monthly gross sales. Id.
turer. Nevertheless, the parties soon disagreed over certain site development fees, the building design, rent payment and liability. In attempting to resolve these disputes, Rudzewicz and MacShara negotiated with both the Michigan and Florida offices, relying more heavily upon the latter.

After obtaining some concessions from Miami, a final agreement was executed, and in June, 1979, Rudzewicz and MacShara opened for business. The summer went well for the business, but a subsequent recession occurred and patronage was severely affected. As a result, Rudzewicz and MacShara were unable to meet their monthly payments to Miami.

Thereafter, the Miami office notified the franchisees that they were in default of their payments. Along with the Michigan office, the Miami office and the franchisees entered into negotiations to attempt an amicable resolution to the problem. The negotiations, however, were unfruitful. The Miami office then terminated the relationship and ordered the franchisees to vacate the premises. The franchisees, however, refused to leave and continued to operate the restaurant.

Alleging that the franchisees had breached the franchise agreement in Florida and that they were tortiously infringing upon the trademark, Burger King brought suit against them in the United States District Court for the Southern District of Florida.

The suit was brought pursuant to 28 U.S.C. § 1332(a) which applies to

4. Id. at 2179. Among other things, Rudzewicz and MacShara wanted to assign all of the personal liability to the RMBK Corporation they had formed. Burger King, however, adamantly refused and demanded that the two remain personally liable for their obligations. Id. at 2179 & n.6.

5. Id. at 2179 & n.7. After realizing that the district office in Michigan had little authority to decide the disputed matters, the franchisees looked directly to the Miami office for resolution of the conflicts. Id. at n.7.

6. Id. at 2179. The agreement provided that Rudzewicz would be personally liable for payments of more than $1 million over the 20 year franchise agreement. Id.

7. Id.

8. Id. at 2180. The negotiations with the Miami officials were conducted via the telephone and the mail. Burger King's policy was to have the Miami office deal directly with franchisees when financial difficulties occurred, while involving the district office only when absolutely necessary. Here the Miami headquarters handled all credit problems, ordered cost cutting measures, negotiated partial refinancing and was responsible for termination. Id. at n.9.

9. Id. at 2180.

10. Id. Burger King sought damages, injunctive relief, costs and attorney's fees. Id.

11. 28 U.S.C. § 1332(a) (West Supp. 1985) states:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
diversity jurisdiction, and 28 U.S.C. § 1338(a)\textsuperscript{12} which applies to original jurisdiction over federal trademark disputes.\textsuperscript{13}

Rudzewicz and MacShara made motions, on special appearance, that jurisdiction was invalid. They alleged that being residents of Michigan, the cause of action did not arise in Florida and that, therefore, personal jurisdiction over them in Florida could not be had.\textsuperscript{14} The district court denied these motions, and held that under Florida's long arm statute, jurisdiction was valid.\textsuperscript{15} With this denial, the case proceeded to trial. After a 3-day bench trial, the court concluded that Rudzewicz and MacShara were liable to Burger King for breach of contract and trademark infringement.\textsuperscript{16}

Rudzewicz appealed to the Court of Appeals for the Eleventh Circuit,\textsuperscript{17} where a divided circuit court reversed the judgment. The court of appeals concluded that in light of the circumstances, Rudzewicz had no notice that he would be subjected to litigation in Florida. Therefore, the invocation of the Florida long arm statute

\begin{enumerate}
\item citizens of different States;
\item citizens of a State and citizens or subjects of a foreign state;
\item citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
\item a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.
\end{enumerate}

\textit{Id.}

\begin{enumerate}[resume]
\item 28 U.S.C. § 1338(a) (1976) states: (a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trade-marks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.
\textit{Id.}

\item 12. 105 S. Ct. at 2180.
\item 13. \textit{Id.}
\item 14. \textit{Id.}
\item 15. \textit{Id.} The Florida long-arm statute, FLA. STAT. ANN. § 48.193(1)(g) (West 1986) states:
\begin{enumerate}
\item Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:
\item Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
\end{enumerate}
\textit{Id.}

\item 16. 105 S. Ct. at 2180. The District Court entered judgment against Rudzewicz and MacShara jointly and severally, ordering the payment of monetary damages in the amount of $228,875, the payment of attorney's fees, costs and the closing of the restaurant. \textit{Id.}
\item 17. \textit{Id.} at 2180 n.11. MacShara did not appeal his judgment. \textit{See} Burger King v. MacShara, 724 F.2d 1505 (11th Cir. 1984). Rudzewicz entered a compromise with Burger King in which he waived his right to appeal trademark infringement and injunctive relief. 105 S. Ct. at 2180 n.11.
\end{enumerate}
was improper. The majority stated that “[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process.”

Burger King subsequently appealed to the United States Supreme Court pursuant to 28 U.S.C. § 1254(2), but the Court postponed probable jurisdiction. Thereafter, the Court, uncertain as to whether the Eleventh Circuit had held the Florida long arm statute unconstitutional, dismissed the appeal. Nevertheless, the Court treated the jurisdictional statement as a petition for certiorari, and heard the appeal. At issue before the Supreme Court was whether the application of Florida’s long arm statute offended the traditional concepts of fair play and substantial justice as found in the fourteenth amendment Due Process Clause.

The Supreme Court began its analysis by discussing the underlying principles of in personam jurisdiction. Initially, the Court noted that in personam jurisdiction is grounded in the notion that the Due Process Clause of the fourteenth amendment ensures that one will not be subject to a binding judgment in a forum with which no minimum contacts have been established. Moreover,

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18. 105 S. Ct. at 2181. The court of appeals also noted under the circumstances, Rudzewicz was financially unprepared to litigate in Florida. Id.
19. Id., citing Burger King v. McShara, 724 F.2d at 1513.
20. 28 U.S.C. § 1254(2) (1948) states:
   Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:
   (2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented . . . .
   Id.
21. 105 S. Ct. 2181 n.12. The Florida Supreme Court had not ruled on the scope of § 48.193(1)(g). Therefore, an appeal could not lie since it was not reasonably clear that the court of appeals had independently concluded that the challenged statute governed the case and was unconstitutional. Id.
22. Id.
23. Id.
24. Id. at 2177-78.
25. The Due Process Clause of the fourteenth amendment states:
   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.
26. 105 S. Ct. at 2181-82 (citing International Shoe Co. v. Washington, 326 U.S. 310,
these contacts extend to a party fair warning that he may be subject to suit in a foreign jurisdiction, and lend predictability to both the legal system and the conduct of business.

The Court also noted, however, that in certain instances, minimum contacts and due process requirements are satisfied when a non-resident defendant has purposefully conducted himself so as to affect the residents of the forum, thereby causing the litigation to arise out of that activity. According to the Court, this allows a jurisdiction to protect its citizens against foreign actors who have benefited from their activities in the forum. This, the Court noted, prevents a non-resident actor from avoiding voluntarily undertaken interstate obligations by hiding behind the Due Process Clause.

The Court noted, however, that the overriding factor is whether the defendant has purposefully created minimum contacts within

319 (1945)).

27. 105 S. Ct. at 2182 (citing Shaffer v. Heitner, 433 U.S. 186, 218 (1977)).

28. 105 S. Ct. at 2182. In stating this proposition, the Court cited World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). In World-Wide, the Court indicated that the standard of minimum contacts would extend “a degree of predictability to the legal system” as a potential defendant would be able to conduct his business in such a manner that he could be reasonably assured that certain business activities either would or would not subject him to suit in a foreign jurisdiction. Id. at 297.

29. 105 S. Ct. at 2182 (citing Keeton v. Hustler Magazine Inc., 104 S. Ct. 1473 (1984)). Keeton held that a publisher who distributes magazines in a distant state, may fairly be held accountable in that forum for damages resulting there from an allegedly defamatory story. Id. at 1482. See also World-Wide, 444 U.S. at 297-98 holding that “[t]he forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state” and those products subsequently injure forum consumers. Id.

30. 105 S. Ct. at 2182 (citing Helicopteros Nacionales de Columbia, S.A. v. Hall, 104 S. Ct. 1868 (1984)). See also Travelers Health Ass’n v. Virginia, 339 U.S. 643, 647 (1950). In Travelers, the Court stated: “We have emphasized that parties who reach beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other state for the consequences of their activities.” Id.

31. 105 S. Ct. at 2183. The Court noted that this protection is in the form of affording its residents a convenient forum in which to litigate claims against non-residents. Id.

32. Id. The Court stated that:

where individuals “purposefully derive benefit” from their interstate activities ... it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. Id. (citations omitted). The court also indicated that modern transportation and communication systems more easily allow a non-resident defendant to defend himself in a foreign jurisdiction. Therefore, it is not unfair to subject him to such litigation. Id. (citing McGee v. International Life Ins. Co., 355 U.S. 220 (1957)).
the forum. These minimum contacts in turn allow for the determination of whether the defendant's acts rendered it foreseeable that he might be called to defend himself in that jurisdiction.\(^3\) Indeed the Court indicated that the defendant's purposeful availment of transacting business within the jurisdiction often indicates that litigation in that forum would have been reasonably foreseeable, rather than a mere happenstance.\(^4\) The purposeful availment requirement assures a defendant that he "will not be haled into a jurisdiction solely as a result of random fortuitous or attenuated contacts."\(^5\) A defendant, however, cannot avoid jurisdiction simply because he never physically entered the forum state.\(^6\)

Once it is established that minimum contacts exist, the Supreme Court stated that these contacts could be construed in conjunction

33. 105 S. Ct. at 2183. The Court dismissed the notion that the mere foreseeability of causing an injury is sufficient to establish the requisite contacts needed to allow jurisdiction over a non-resident defendant. The Court, therefore, reaffirmed its reasoning in World-Wide Volkswagen Corp., 444 U.S. 286 (1980). The essential foreseeability turns on whether the defendant's conduct and connection with the forum are such that he should reasonably anticipate being haled into court there. \(\text{Id. at 297. See also Hanson v. Denckla, 357 U.S. 235 (1958) (jurisdiction over nonresident proper only where he has purposefully availed himself of the privilege of conducting activities within the forum state).}\)

34. 105 S. Ct. at 2183 (citing Hanson, 357 U.S. at 253):

The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

\(\text{Id.}\)

35. 105 S. Ct. at 2183 (citing Keeton 104 S. Ct. at 1479 and World-Wide, 444 U.S. at 294). The Court continued by citing instances where jurisdiction is proper:

Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a "substantial connection" with the forum State. . . . Thus where the defendant "deliberately" has engaged in significant activities within a State . . . or has created "continuing obligations" between himself and residents of the forum . . . he manifestly has availed himself of the privilege of conducting business here, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

105 S. Ct. at 2183-84 (citations omitted).

36. 105 S. Ct. at 2184. In discussing the notion that a defendant need not physically enter a state for in personam jurisdiction to be obtained, the Court stated:

it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

\(\text{Id.}\)
with a myriad of other factors in making the determination as to whether the assertion of in personam jurisdiction comports with "fair play and substantial justice." Thus, considering a variety of factors will sometimes aid in establishing the reasonableness of jurisdiction with a lesser amount of proof of minimum contacts than would otherwise be required. Continuing, the Court noted that a defendant's attempt to defeat jurisdiction after purposefully availing himself of the forum and directing his activities there, must present a compelling case to show that jurisdiction is unreasonable.

After discussing the above principles, the Court applied them to the instant case. The Court began by noting that sufficient evidence supported the district court's prior determination that personal jurisdiction over Rudzewicz was valid. The Court also indicated, however, that in deciding whether personal jurisdiction will attach, a mechanical test could not be utilized. In the instant case, therefore, the existence of the contract alone would not, ipso facto, establish jurisdiction. Rather, the contract in conjunction with the surrounding circumstances had to be analyzed. Only then, would personal jurisdiction, based upon the contract, be proper.

In the instant case, noted the Court, no real physical ties existed between Rudzewicz and Florida. However, the dispute grew from a contract having a substantial connection with that state. The Court reasoned, therefore, that Rudzewicz had voluntarily ac-

37. 105 S. Ct. at 2184. As the Court stated: Courts . . . may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several states in furthering fundamental substantive social policies." Id. (citing World-Wide, 444 U.S. at 292).

38. 105 S. Ct. at 2184.
39. Id. at 2185.
40. Id.
41. Id. Relying upon International Shoe, 326 U.S. at 319, the Court indicated its desire of obtaining a highly realistic approach to establishing contacts. Such a goal, therefore, looks beyond the contract to the future consequences of the business transaction which after all is its real object. Id.

42. 105 S. Ct. at 2186. Accordingly, the Court noted that both prior negotiations and perceived future consequences must be considered along with the actions of the parties for a determination about minimum contacts to be made. Id.

43. Id. Rudzewicz did not have an office in Florida and appears to have never visited the state. MacShara endured a brief training session in the forum. Id.

44. Id. The Court noted that Rudzewicz could have operated an independent local enterprise, but chose instead to negotiate an agreement for the purchase of a long-term franchise with an out-of-state, nationwide organization. Id.
cepted the long-term relationship with specific regulation from Burger King's Miami headquarters and, thus, should be held to account for injuries there. 46

The Court acknowledged the reasoning used by the court of appeals, that, although interaction occurred between Rudzewicz and the Miami headquarters, there was sufficient supervision from the Michigan office to reasonably lead him to believe that suit would be conducted in Michigan. Nevertheless, the Court recognized that this reasoning ignored substantial evidence to the contrary, 46 in that the court of appeals did not properly weigh the contract provisions.

The Supreme Court, sensitive to the court of appeal's nonapplication of the choice of law provisions, agreed that standing alone such provision would not confer jurisdiction. Here, however, the Court noted that the choice of law provisions were coupled with the twenty year interdependent relationship deliberately established between Rudzewicz and Miami which gave a reasonable degree of foreseeability of suit in the forum. 47

The Court also dismissed several other factors upon which the court of appeals had relied. The court of appeals had reasoned that Rudzewicz would be severely hampered by not being able to call necessary witnesses on his behalf in Florida, thereby concluding that great disparity existed between the parties. As to the first contention, the Supreme Court stated that Rudzewicz's inability to call witnesses was "wholly without support in the record." 48 As to the second contention, the Supreme Court deferred to the reasoning of the district court which had acknowledged that Rudzewicz and MacShara were sophisticated, experienced businessmen who at no time were under any economic duress or disadvantage. 49

Finally, the Court dealt with the concern voiced by the court of appeals concerning the broad implications that a decision for Burger King could have in jurisdictional disputes. The court of appeals

45. Id. The Court found that the "quality and nature" of Rudzewicz's relationship was anything but "random," "fortuitous" or "attenuated." Id.
46. Id. The contract itself emphasized that supervision emanates from Miami. All notices and payments were to go to Miami with the agreements being enforced there, and the parties' actions demonstrated that Miami was to resolve all major problems. Id.
47. 105 S. Ct. at 2187. Therefore, according to the Court, it could not be concluded that Florida had no legitimate interest in holding Rudzewicz answerable on a claim related to the contacts that he had established in Florida. Id. at 2188.
48. Id. at 2188. The Court further noted, however, that if such a problem were to exist, venue considerations could offer a solution. Id.
49. Id.
was of the opinion that such a holding would enable corporate franchisors to bring into their forum any franchisee or consumer who owed money. The Supreme Court also shared this concern and was careful not to establish a broad precedent in this area, holding instead that decisions in this area must be considered on a case by case basis.\textsuperscript{50}

Thus, the Supreme Court concluded that Rudzewicz had indeed established a substantial and continuing relationship with the Miami headquarters and had received fair notice from both the contract documents and the continuing actions of the parties that he might be subject to suit in a Florida forum for any injuries arising out of this arrangement. Also, Rudzewicz had established no unfair burdens in the eyes of the Court that would have precluded his ability to litigate in Florida; therefore, due process had not been offended.\textsuperscript{51}

In a dissenting opinion, Justice Stevens opined that the decision of the majority resulted in an unfairness to Rudzewicz.\textsuperscript{52} According to Justice Stevens, in light of the surrounding circumstances, the franchisee should not be forced to defend himself in a forum chosen by the franchisor.\textsuperscript{53} As was noted, most of Rudzewicz’s activities occurred in Michigan: he conducted business in Michigan; he was licensed in Michigan; his employees resided in Michigan; and his customers were predominantly from Michigan.\textsuperscript{54} Moreover, all of his taxes\textsuperscript{55} were payable to the State of Michigan.

Justice Stevens, relying heavily on Judge Vance’s opinion for the Court of Appeals for the Eleventh Circuit,\textsuperscript{56} indicated that nothing existed to give Rudzewicz a reason to anticipate litigation outside the state of Michigan. The opinion also expressed concern with the inherent disparity of bargaining power found in franchise arrange-
ments. The opinion concluded that given the fact that Rudzewicz had signed a standard form contract, great disparity existed between the parties. Moreover, because the contract was negotiated and signed in Michigan, nothing indicated that Rudzewicz would ever have to leave Michigan to litigate in a foreign forum.

The concept of personal jurisdiction came to the fore in the late 19th century decision of Pennoyer v. Neff. Therein, the United States Supreme Court considered the nature of the concept and decided that personal jurisdiction was intertwined with the Due Process Clause of the fourteenth amendment to the Constitution. Accordingly, due process afforded a state the right to jurisdiction over persons and property within its territory. An element of state sovereignty was thus protected as due process could only be satisfied by virtue of the actual presence of the defendant or his property in the forum.

After 68 years, the Court expanded the ability to jurisdictionally comply with due process. In the decision of International Shoe Co. v. Washington, the Court held that the extent of a defendant’s protections would depend upon the quality and nature of the ac-

57. Id. at 2191. According to Judge Vance, in a franchise relationship, the franchisor occupies the dominant role. Id.

58. 95 U.S. 714 (1877). In an attempt to obtain jurisdiction over a non-resident defendant, the state of Oregon attached certain property of defendant located within the state. The case was appealed to the United States Supreme Court which adopted a strict territorial approach to the jurisdictional problem. The Court concluded that the forum state could not obtain in personam jurisdiction over a non-resident defendant, unless the defendant were personally served with process within the borders of the state, or unless he voluntarily appeared there to defend his suit. Id. at 733.

59. Id. at 733. Discussing this motion, the Court stated:
Since the adoption of the fourteenth amendment to the Federal Constitution, the validity of judgments may be directly questioned, and enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law.

60. Id. at 722. Justice Field stated that “every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory . . . [and] that no State can exercise direct jurisdiction and authority over persons or property without its territory.” Id.

61. 326 U.S. 310 (1945). In International Shoe, the appellant, a Delaware corporation with its principal place of business in St. Louis, Missouri, employed approximately 13 people in the footwear selling business. Id. at 313. The salesmen, who resided in Washington, carried on their trade by displaying footwear to prospective purchasers. Id. at 313-14. Since none of the salesmen had any authority to enter into contracts, they dispatched all orders to St. Louis for approval, and the merchandise was subsequently shipped into Washington from other states. Id. at 314. Washington wanted to assert jurisdiction over the defendant corporation in order to recover unpaid contributions to the state unemployment compensation fund. Id.
tivity in relation to the fair and orderly administration of the laws. Therefore, a defendant could be subject to a judgment in personam even if he was not present in the territory, as long as he had certain minimum contacts with the forum such that maintenance of the suit did not offend traditional notions of fair play and substantial justice. The decision, although relaxing the strict territorial principle of Pennoyer, retained intact the Pennoyer territorial concept.

The minimum contacts doctrine continued to evolve in cases such as *McGee v. International Life Insurance Co.* and *Hanson v. Denckla.* In *McGee,* the Court upheld jurisdiction of a California court over a Texas insurer based on a single insurance policy issued to the California plaintiff. The Court indicated that because the insurer derived a profit from the California market, and since California had a special interest in providing a state forum for special claims against foreign insurers, jurisdiction would be proper. Thus a single contact via contract established jurisdiction.

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62. *Id.* at 319.

63. *Id.* at 316. The Court also stated that the relationship between the defendant and the forum must be such that it is reasonable to require the corporation to defend the particular suit which is brought there. *Id.* at 317.

64. See Capra, Book Review, 52 *Fordham L. Rev.* 1034, 1038 (1984), wherein the author states:

The Court in *International Shoe,* however, did not upset Pennoyer's morganatic marriage of due process and sovereignty limitations. It merely added the personal interest of the defendant in avoiding the burdens of distant litigation to the due process formula. The due process clause continued to protect abstract notions of territorial sovereignty.

*Id.*

65. 355 U.S. 220 (1957). The Court de-emphasized the quality and quantity of contacts in a suit where a California plaintiff sued a Texas insurance company in California. Jurisdiction was sought to be based upon a California statute subjecting foreign corporations to suit in California on insurance contracts with residents of that state, even though such corporations could not be served with process within its borders. *Id.* at 221. The Supreme Court, in upholding jurisdiction, noted that the contract had been delivered in California, the premiums had been mailed from California and that the insured had become a resident of California by the time of his death. The Court concluded that the requirements of *International Shoe* had been satisfied. *Id.* at 222-23.

66. 357 U.S. 235 (1958). In *Hanson,* the Supreme Court, one year after deciding *McGee,* looked back to the limitations of *Pennoyer,* and failed to find contacts that would have warranted Florida to exercise in personam jurisdiction over a defendant trustee of Delaware. *Id.* at 251.


68. While in *McGee* a single contact via a contract was deemed sufficient, it should be noted that the present case emphatically denied this contention. In *Burger King,* 105 S. Ct. at 2185, the Court stated that standing alone, a foreign defendant's contract with a forum party in the foreign party's home forum cannot establish jurisdiction. Instead the Court emphasized the need for a highly realistic approach to contract in the modern world,
In Hanson, a woman while domiciled in Pennsylvania executed a trust in a Delaware corporation. She subsequently resided and was domiciled in Florida. After her death, litigation arose over the distribution of funds. The Florida court attempted to exert jurisdiction over the defendant corporation. The Supreme Court ultimately favored the defendant because it required that all contacts represent efforts of a defendant to purposefully avail itself of the benefits and protections inured from doing business in the forum. The Court found that the defendant trust company had no office in Florida and transacted no business there; there was never any solicitation of business either in person or by mail in Florida. Jurisdiction, therefore, was not proper and the effects of Pennoyer again were felt.

Shaffer v. Heitner saw an attempt to usher in a new jurisdictional era. The Shaffer Court was concerned about the Pennoyer concept of state court territorial jurisdiction as part of the analysis. Therefore, in Shaffer, Justice Marshall, writing for the majority, stated that presence of property alone was insufficient to confer in personam jurisdiction upon a state court. The Court enunciated a new test to satisfy state court jurisdiction in stating that "the relationship among the defendant, the forum and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of Pennoyer rest [becomes] the central concern of the inquiry into personal jurisdiction." While this attempt was forceful, the

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69. 357 U.S. at 239-40.
70. Id. at 253.
71. Id. at 251.
72. See Book Review, supra note 64, at 1038. Discussing the re-emergence of Pennoyer, the author writes:
   Any doubt on this point was erased by Hanson v. Denckla, in which the Court expressly relied on the continued validity of sovereignty and territoriality limitations embodied in the due process clause. This reliance on the shibboleth sovereignty earned Hanson the mantle of "King Pennoyer II."
Id.
73. 433 U.S. 186 (1977). In Shaffer, a shareholder's derivative suit was filed in Delaware by a nonresident of Delaware against a corporation incorporated under the laws of Delaware with its principle place of business in Phoenix, Arizona, and present or former officers or directors of the corporation and its wholly owned subsidiary. The suit was brought for activities occurring in Oregon. Id. at 189-90. While the Delaware courts found that the Delaware situs of the stock was sufficient for the exercise of quasi in rem jurisdiction, the Supreme Court reversed. Id. at 194-95.
74. 433 U.S. at 211. Justice Marshall stated that "jurisdiction based solely on the presence of property satisfies the demands of due process ... but it is not decisive." Id. at 212.
75. Id. at 204. It was determined, however, that the ownership of stock and the ac-
Thereafter, in *Kulko v. Superior Court*, the Court took another look at personal jurisdiction and attempted to further refine the minimum contacts aspect. Here, a New York resident challenged California's assertion of personal jurisdiction in a custody action. The New York resident's only contact with California occurred when he sent his daughter to live with his separated wife. The Supreme Court, in reversing the California Supreme Court, held that California's application of the minimum contacts test represented an unwarranted extension of *International Shoe*, which if sustained, would sanction a result that was neither fair, just nor reasonable.

76. See Book Review, supra note 64, at 1039. The Court, while utilizing a proper interpretation of *International Shoe* in relying on defendant's contacts, failed to realize a balancing of interests approach also from *International Shoe* which may have afforded jurisdiction. Id. Under the defendant's contacts approach, due process is satisfied "only when the defendant has purposefully created and controlled sufficient contacts with the forum state." Id. In contrast, the more expansive balance of interests approach to fairness allows a court to consider several pragmatic factors relevant to the due process inquiry, including: the actual inconvenience that the defendant would suffer by defending in the forum; the legitimate interest of the forum in hearing the case; whether the case could be conveniently tried in the forum; and whether the plaintiff would be inconvenienced by suing elsewhere. Id.

77. 436 U.S. 84 (1978).

78. Id. at 92. The New York resident had been in California on only two occasions: once in 1959 for a three day military stopover on his way to Korea; and again in 1960 for a 24 hour stopover on his return from Korea. Id. at 93. After a marital separation he purchased a one way ticket for his daughter to move to California to live with his estranged wife, but did not go himself. Id. at 99. The Court further stated that "[t]o hold such temporary visits to a State a basis for the assertion of in personam jurisdiction over unrelated actions arising in the future would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment." Id. at 93.

79. Id. at 92. The Supreme Court reviewed the basis for California finding jurisdiction and dismissed them. The Court noted that to find jurisdiction on the basis of the separated wife residing there would discourage parents from entering into reasonable visitation agreements and could "arbitrarily subject one parent to suit in any State of the Union where the other parent chose to spend time while having custody of their offspring pursuant to a separation agreement." Id. The purposeful act relied upon by California to subject appellant to jurisdiction was equally without merit. The Court stated that it could not accept the proposition that by allowing his daughter to live with her mother, he became subject to the jurisdiction of California courts. Such an act did not comport with the purposeful
As evidenced in *Kulko*, the Supreme Court began to draw distinctions between the nature and quality of contacts. In *World-Wide Volkswagen Corp. v. Woodson*, the court held that the presence of an automobile in Oklahoma was not a meaningful contact of the seller or distributor of such automobiles in a foreign state, although the presence of the automobile in the state of sale would have been. Indeed, the Court took a rather traditional approach to the problem in not finding proper jurisdiction since no meaningful contacts existed. In dissent, Justice Brennan indicated that the Court should have been more cognizant of the modern world and should have considered finding jurisdiction in the absence of any unreasonable burdens on the defendants. Nevertheless, the majority held that a defendant could be free of any legitimate burdens to litigate, and yet not be required to answer, simply because he has no meaningful contacts. Indeed, the Court in *World-Wide* held that despite any freedom from burdens of defending in a foreign jurisdiction, a defendant must have meaningful contacts that would enable him to have reasonably anticipated being haled into the forum.

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*availment doctrine of Shaffer v. Heitner.* *Id.* at 94. Finally, the Court disagreed with California's attempt to assert jurisdiction based upon the financial benefit received by appellant in having his daughter live with her mother in California for nine months of the year. As the Court observed; "[a]ny diminution in appellant's household costs resulted not from the child's presence in California, but rather from her absence from appellant's home in New York," with the New York courts having jurisdiction over any changes in support. *Id.* at 95.

80. 444 U.S. 286 (1980). In *World-Wide*, respondents, New York residents, instituted a products liability suit in an Oklahoma state court to recover for personal injuries they sustained while operating their automobile in Oklahoma. The automobile had been distributed and purchased in New York. *Id.* at 288. The petitioners included the automobile retailer and its wholesaler, both of which were New York corporations not conducting any business in Oklahoma. *Id.* at 288-89. Petitioners entered special appearances, claiming that Oklahoma's exercise of jurisdiction over them would offend limitations on the state's jurisdiction imposed by the Due Process Clause of the fourteenth amendment. *Id.* at 288. The Supreme Court, in reversing the Oklahoma Supreme Court, held that in personam jurisdiction over petitioners was improper. *Id.* at 289-91. The Supreme Court noted that petitioners carried on no activity in Oklahoma, they availed themselves of none of the privileges and benefits of Oklahoma, as they conducted no sales there, and they neither performed any services nor solicited any business from that state's residents. *Id.* at 295.

81. *Id.* at 295-98.

82. *Id.* at 300-01 (Brennan, J., dissenting). Justice Brennan noted that a courtroom just across a state line from a defendant may often be more accessible than one across the state itself. *Id.* at 301 n.1.

83. *Id.* at 297. See also *Kulko*, 436 U.S. at 97-98 ("this single act [of allowing the daughter to live with her mother in another state] is not one that a reasonable parent would expect to result in the substantial financial burden and personal strain of litigating a child-support suit in a forum 3,000 miles away . . . ."); *Shaffer*, 433 U.S. at 216 ("It strains reason . . . to suggest that anyone buying securities in a corporation formed in Delaware 'impliedly
The World-Wide Court having found no meaningful contacts that would give rise to jurisdiction, held that jurisdiction there was improper. The Court had again found itself face to face with the Pennoyer concepts. Moreover, the problem encountered here was clearly avoided in both Shaffer and Kulko since the defendant in each would clearly have been burdened despite any existing meaningful contacts. Nevertheless, despite a lack of burdens upon the defendant in World-Wide, the majority interpreted the fourteenth amendment Due Process Clause to restrict a state's exercise of in personam jurisdiction to only those who have purposefully availed themselves of the forum's laws. As a result, the test evolved into a two-step analysis. First the Court had to determine whether a defendant had purposefully affiliated himself with the forum, and secondly, the burdens of litigation on the parties had to be assessed. The effect of the case was to place the close interests of defendants and interstate federalism ahead of the plaintiff and the forum.

The Court finally took a positive forward leap in its decision in Insurance Corp. of Ireland v. Compagnie Des Bauxites, where it held that a forum could exercise personal jurisdiction over a defendant who waived the right to object to such jurisdiction. The case thus replaced interests of interstate federalism with individual liberty interests of the defendant. To enable the Court to come to

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84. See Book Review, supra note 64, at 1040. In World-Wide, defendant could point to no similar burdens. The defendant was not burdened, but yet could not be made to appear. Therefore, the Court in effect “stifled the ill-fated attempt in Shaffer to repudiate sovereignty limitations on jurisdiction. The only difference between World-Wide and Pennoyer therefore lies in the facts that must exist before sovereignty interests are satisfied: Countable ‘contacts’ are required instead of physical ‘presence’.” Id. at 1040-41.

85. 444 U.S. at 297 (citing Hanson v. Denckla, 257 U.S. 235, 253 (1958)).

86. 444 U.S. at 291-92. The concept of minimum contacts therefore “protects the defendant against the burdens of litigating in a distant or inconvenient forum . . . [and] acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as co-equal sovereigns in a federal system.” Id. at 291-92.

87. Id. at 294. The Court adopted a contacts test that applied a higher quality of purposeful availment. Id. See also id. at 297. The Court reaffirmed the holding of International Shoe that a “state court may exercise personal jurisdiction over a non-resident defendant only so long as there exist ‘minimum contacts’ between the defendant and the forum state.” Id. at 291.

88. 456 U.S. 694 (1982). Here, the Supreme Court grappled with the issue of whether a defendant, by not cooperating with the district court, had waived its right to object to jurisdiction, thereby justifying the forum’s exercise of in personam jurisdiction over it. Id.

89. Id. at 702.
such a holding, the origin of the personal jurisdiction requirement had to be re-evaluated.

In Ireland, the Court determined that the personal jurisdiction requirement comes from the Due Process Clause of the fourteenth amendment under the protection of the defendant's personal liberty interest, and not from article III of the Constitution. Probing more deeply, the Court determined that due process is the only source of the personal jurisdiction requirement, and the clause itself makes no mention of federalism concerns. The Court had to remove concepts of interstate federalism in order for the analysis to function. Therefore, the new emerging test for minimum contacts analysis under personal jurisdiction became the restraining of the forum's exercise of due process over an individual liberty interest.

The Court logically deduced that since the personal jurisdiction requirement is an individual right, it, like other rights, could be waived. The waiving of the right could be executed through various legal arrangements in giving both express and implied consent to jurisdiction.

In Keeton v. Hustler Magazine, Inc., the Court focused on whether the forum state was sufficiently interested in hearing the litigation. Thus, the arguments put forth were in actuality inde-

90. Id.
91. Id. at 702-03 n.10. The Court preserved the concept of minimum contacts. However, it was concerned with the manner in which the defendant must demonstrate facts to show how the contacts manifest themselves when the defendant fails to comply with court ordered discovery. The Court retained the restrictions on state sovereignty, but couched them in terms of individual liberty interests. The Court concluded:

if the federalism concept operated as an independent restriction on the sovereign power of the court, it would not be possible to waive the personal jurisdiction requirement: Individual actions cannot change the powers of sovereignty, although the individual can subject himself to powers from which he may otherwise be protected.

Id.
92. Id.
93. Id. at 703. The Court, citing McDonald v. Mabee, 243 U.S. 90 (1917), indicated that "regardless of the power of the state to serve process, an individual may submit to the jurisdiction of the court by appearance." 456 U.S. at 703.
94. 456 U.S. at 703-04. See also National Equipment Rental, Ltd. v. Szukhent, 375 U.S. 311, 316 (1964) (parties to a contract may agree in advance to submit to the jurisdiction of a given court); Petrowski v. Hawkeye-Security Co., 350 U.S. 495 (1956) (stipulation by defendant gave jurisdiction). The Court also noted that the showing of certain historical facts by plaintiff leading up to the dispute may clarify the fact that the court has personal jurisdiction over the defendant as a matter of law. 456 U.S. at 704.
95. 104 S. Ct. 1473 (1984). Defendant Hustler Magazine was sued for libel in New Hampshire where it sold between 10,000 and 15,000 copies of its magazine each month. Id. at 1477.
pendent of the defendant’s personal interests. Nevertheless, by allowing the defendant’s objection concerning the state’s interest in the litigation, the Court was able to take a very broad view of Ireland, and to not clearly consider it in conjunction with the defendant’s personal interests. The Court was able to accomplish this because the defendant had no personal complaint about defending in the forum.

Justice Rehnquist, writing for the majority in Keeton, quoted Shaffer and stated that the determinative factor in judging minimum contacts is “the relationship among the defendant, the forum and the litigation.” In utilizing this analysis, the Court disregarded the two function test of minimum contacts from World-Wide, and eliminated the sovereignty requirement of the Due Process Clause. In so doing, this elimination of the sovereignty requirement enunciated in Ireland comported with the movement toward a balancing test focusing on the defendant, the forum and the litigation.

The concept of sovereignty in relation to the Due Process Clause established in Pennoyer was inadequate to preserve the defendant’s right to a proper hearing. The Court’s analysis developed

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96. See Book Review, supra note 64, at 1047. In discussing Keeton, the author notes that “a defendant has no complaint about a forum’s interest or lack thereof if: (1) he has sufficient contacts, as the Court admitted was the case in Keeton; (2) he is not burdened by distant litigation; or (3) he has waived his jurisdictional objection.” Id.

97. Id. The author further indicates that Keeton is World-Wide in different clothing. “In World-Wide, the defendants could argue a violation of a sister state’s sovereignty even when they had no personal complaint regarding jurisdiction; in Keeton, the defendant could argue a lack of forum interest even when it had no personal complaint regarding jurisdiction.” Id.

98. 104 S.Ct. at 1478, quoting Shaffer, 433 U.S. at 204. The Court concluded that Hustler’s circulation of magazines constituted sufficient minimum contacts. 104 S. Ct. at 1478.


The purpose of the due process clause is to provide the defendant with an adequate opportunity to be heard. The Court’s balancing test, which focuses on the contacts among the defendant, the forum, and the litigation, fulfills the requirement of the due process clause by providing the defendant being forced to defend with the opportunity to be heard in any state in which sufficient contacts exist among the defendant, that forum, and the litigation.

Id. (citations omitted).

See also Helicopteros Nacionales de Columbia, S.A. v. Hall, 104 S.Ct. 1868, 1872 & n.8 (1984) (“When a controversy is related to or ‘arises out of’ a defendant’s contacts with the forum, the Court has said that a ‘relationship among the defendant, the forum, and the litigation’ is the essential foundation of in personam jurisdiction.”) (citing Shaffer, 433 U.S. at 204).

100. See Comment, supra note 99, at 146. The concept of sovereignty added to due
through time with the focus shifting to the individual.\textsuperscript{101} The analysis has been further honed in Keeton, wherein the main jurisdictional requirement of the Due Process Clause became the focus on the relationship among the defendant, the forum and the litigation.\textsuperscript{102} The Burger King case is thus another step in the continuation of an ever developing realistic approach to jurisdictional analysis challenges in the modern world. While the concept of minimum contacts is still alive, it has been increasingly refined since its emergence in International Shoe,\textsuperscript{103} and now resembles a present perspective of a balancing test.

Justice Brennan, who authored the majority opinion in Burger King, set the stage for the result in his dissenting opinion in World-Wide.\textsuperscript{104} There he stated that the defendant must have an actual burden of constitutional proportion relating to the defense in order to object. Justice Brennan also stated that the defendant has no right to the best forum, or even any particular forum.\textsuperscript{105} Justice Brennan would find proper jurisdiction when the forum state has an interest in the controversy, the litigation is connected to the forum and the burden is not unreasonable.\textsuperscript{106}

In the case at bar, given the nature of the parties and the type of interest involved, there is no unreasonable burden upon the defendant to litigate in Florida.\textsuperscript{107} In 1957, the Court in McGee v. process served well to protect the state, yet the purpose of due process is to protect the defendant. \textit{Id.}  

\textsuperscript{101} \textit{Id.} The author indicates that "[t]he elimination of the sovereignty factor as an independent component of the due process requirement benefits the defendant, because it enables a court to focus on the contacts among the defendant, the forum, and the litigation." \textit{Id.}

\textsuperscript{102} \textit{Id.}

\textsuperscript{103} \textit{See supra} notes 61-64 and accompanying text.

\textsuperscript{104} 444 U.S. at 299 (Brennan, J., dissenting). Justice Brennan believed that the Court had read International Shoe and its progeny too narrowly, with the focus relying too much on the contacts between the defendant and the forum. He indicated that the cases had failed to determine whether any actual burden or inconvenience rested on the defendant. \textit{Id.} at 299-300.

\textsuperscript{105} \textit{Id.} at 301. Justice Brennan stated that the defendant should not be in "complete control of the geographical stretch of his amenability to suit. . . People should understand that they are held responsible for the consequences of their actions and that in our society most actions have consequences affecting many States." \textit{Id.} at 311.

\textsuperscript{106} \textit{Id.} at 302.

\textsuperscript{107} The Burger King Corporation is incorporated and headquartered in Florida. It receives the benefits and protections of the state while producing both tax revenue and employment opportunities. The litigation is connected with the forum in that the corporation is the base of operations with all payments of the franchise being channeled through it. The signed contract between the franchisee and the corporation stipulated that Florida law was to govern any disputes.
International Life Insurance Co.\(^{108}\) recognized a trend toward expanding the permissible scope of state jurisdiction over foreign corporations and other residents.\(^{109}\) The World-Wide Court acknowledged that both the nationalization of commerce and the ease of transportation and communication have greatly accelerated since the 1957 decision of McGee.\(^{110}\)

The majority decision of McGee distinguished between personal injury cases and those involving contracts. While attempting to minimize the availability to sue for tortious activity, the Court illuminated contract cases and made a strong argument for upholding jurisdiction in situations similar to the case at bar.\(^{111}\) The World-Wide Court discussed the purposeful availment concept, and reiterated a recurring theme that a defendant’s conduct and connection with the forum state must be such that he should reasonably anticipate being haled into the forum.\(^{112}\) This reasonable anticipation concept lends predictability to the legal system, thus enabling potential litigants to structure their economic activity to minimize suit.\(^{113}\)

Therefore, when one purposefully avails himself of the privilege of conducting activities within the forum, he has clear notice that he is subject to suit there. Moreover, he can take steps reasonably calculated to alleviate some of the risk of burdensome litigation by purchasing insurance, passing the costs on to his consumers or

Contrary to Justice Stevens’ dissent, the burden on the defendant franchisee is not unreasonable because defendant knew that he was dealing with a corporation located in Florida. The contracts stipulated that Florida law would apply, and the defendant deliberately chose to resolve business problems with Florida representatives rather than with those from the regional Michigan office.

109. Id. at 222-23. As the Court noted:
In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more states and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity.

Id. at 222-23.
110. 444 U.S. at 292-93, citing McGee, 355 U.S. at 222-23. See also supra notes 101 & 109 and accompanying text.
111. 355 U.S. at 222-24.
112. 444 U.S. at 297.
113. Id. citing International Shoe, 326 U.S. at 319. But see Burger King, 105 S. Ct. at 2190 (Stevens, J., dissenting) (Justice Stevens grasped onto the purposeful availment doctrine in his dissenting opinion and found an insufficient connection between the respondent and the Florida forum.).
This argument is especially strong in the contract area. Defendants in contract cases know the identity of the plaintiff and the state in which the plaintiff is located. Contacts furthering contracts should be viewed as purposeful, and, therefore, sufficient for exercising in personam jurisdiction by a foreign forum. In Burger King, respondent franchisee signed a contract with the Burger King Corporation. The contract indicated that the franchise relationship established in Florida was governed by Florida law. The respondent had the experience and ability to understand the nature of the agreement.

While it is true that a contract alone cannot confer jurisdiction, this case is replete with instances of respondent reaching beyond Michigan into Florida through his direct negotiations with

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114. 444 U.S. at 297. See also Hanson, 357 U.S. at 253; Henry Heide, Inc. v. WRH Products Co., 766 F.2d 105 (1985) (citing Burger King). See also Mullane v. Hanover Trust Co., 339 U.S. 306, 313-14 (1950), where the Court held that due process requires a defendant to be given adequate notice of the suit.


116. See Ireland, 456 U.S. at 703 n.10: The restriction on state sovereign power described in World-Wide Volkswagen Corp., however, must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction requirement and the Clause itself makes no mention of federalism concerns. Furthermore, if the federalism concept operated as an independent restriction on the sovereign power of the court, it would not be possible to waive the personal jurisdiction requirement: Individual actions cannot change the powers of sovereignty, although the individual can subject himself to powers from which he may otherwise be protected.

Id.

It must be noted that breakthroughs have come in the area of tortious activities. In Cal- der v. Jones, 104 S. Ct. 1482, 1488 (1984) reporters for the National Enquirer were sued by a California resident. The Court upheld jurisdiction in California because the conduct in Florida was calculated and caused harm in California. The case demonstrates deference to non-physical contacts in the analysis process.

117. 105 S. Ct. at 2178.

118. Id. Respondent was not a mere neophyte in business, but rather an experienced senior partner in his own accounting firm. Id. at 2174, 2178. See also id. at 2188 n.25 (a defendant who has purposefully derived economic benefit in associating himself with the forum, may not defeat jurisdiction merely because the opponent has more financial resources) (citing McGee, 355 U.S. at 223).

119. 326 U.S. at 319. The Court rejected mere mechanical tests. See also Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 316 (1943), where the Court would not rely on conceptualistic theories of place or performance of contract.
the Miami headquarters. The Court had adopted the concept of a highly realistic approach to contracts where the contract is only the means to an end. Business negotiations did occur between the defendant and Florida. While Justice Stevens would disagree, the record established that defendant sought out the opportunity to engage in the arena of Burger King's well established network, and desired to negotiate with only those in power in Florida.

The Court in citing Traveler's Health Association v. Virginia held that respondent franchisee had reached out beyond Michigan and negotiated directly with Florida for the purpose of establishing a long term franchise and the manifold benefits that would derive from such an affiliation with a nationwide corporation.

Therefore, the Court was correct in deciding that Florida jurisdiction was proper. This case represents another step in the continuing development of an ever growing realistic approach to modern day jurisdictional concerns, and comports well with the developing line of cases. Several recent cases have followed this analysis.

In Bond Leather Co. v. Q.T. Shoe Manufacturing Co., the first circuit adopted the principles of Burger King and did not find jurisdiction where only one contact existed without substantial connections. Again the court utilized a highly realistic approach in weighing the action of the parties involved. In Bond, there was no reaching beyond the forum and none of the supplemental contacts upon which Burger King so heavily relied. The decision of Patterson v. Dietz, Inc., again used the standards set forth in Burger King. The Court weighed the evidence as to the nature and extent of the contacts and found no jurisdiction. The recent case of

120. See 105 S. Ct. at 2179, 2179 n.7, 2180, 2180 n.9, 2187 and 2189.
121. 105 S. Ct. at 2185. The Court cited Hoopeston, 318 U.S. at 316-17 recognizing the contract as "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction."
122. 105 S. Ct. at 2190-91 (Stevens, J., dissenting).
123. See supra note 120.
125. 105 S. Ct. at 2186. In reaching out for a 20 year franchise and signing the contract, the Court reasonably held that the respondent had reinforced his deliberate affiliation with the forum and had had a reasonable foreseeability of litigating there. Id.
126. 764 F.2d 928, 933-35 (1st Cir. 1985).
127. Id. at 935 n.4.
128. 764 F.2d 1145, 1148 n.6 (5th Cir. 1985).
Henry Heide, Inc. v. WRH Products Co. is an example where jurisdiction was deemed proper. The third circuit relied very heavily upon the Burger King analysis standard and found in personam jurisdiction over a corporation whose representatives purposefully directed conduct to the forum state, and negotiated directly with the foreign corporation.

Assuming that a state gives a non-resident defendant adequate notice and an opportunity to defend, constitutional concepts of fairness no longer require the extreme concern for defendants that was once so necessary. As Justice Brennan has suggested, the Due Process Clause is not offended merely because a non-resident defendant has to board an airplane. A realistic concept of modern day business and commercial activity should be considered. Today the courts must analyze the jurisdictional question from the point of view that contacts purposefully furthering the initial contract, can be sufficient to give rise to the exercise of in personam jurisdiction by the foreign forum. Subsequently, any burdens upon the defendant must be evaluated.

The Supreme Court must not solve the sovereignty conflict by retreating to Pennoyer, but rather by a clear advance in accordance with the realities of modern commercial and personal activity.

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129. 766 F.2d 105, 108 (3d Cir. 1985).

130. Id. at 108. The defendant corporation knew that the plaintiff corporation was the ultimate purchaser of its product. The defendant shipped the product directly to the foreign state in which the plaintiff corporation had its principal place of business. The defendant's president and chief engineer traveled to the foreign forum meeting with representatives of the plaintiff. The Court found it foreseeable that if there were litigation over the product, it would occur in the foreign forum. Id.

131. 444 U.S. at 311. See also id. at 308-09 n.13.