Non-Resident Defendant is Only Subject to the Jurisdiction of a State Where That DefendantDisplays Intentional, Forum-Directed Conduct and Purposefully Avails Him or Herself of the Benefits and Protections of That State's Laws: J. McIntyre Machinery, Ltd vs Nicastro

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A Non-Resident Defendant is Only Subject to the Jurisdiction of a State Where that Defendant Displays Intentional, Forum-Directed Conduct and Purposefully Avails Him or Herself of the Benefits and Protections of that State's Laws: *J. McIntyre Machinery, Ltd. v. Nicastro*

CONSTITUTIONAL LAW—CIVIL PROCEDURE—PERSONAL JURISDICTION—FORUM ANALYSIS—STREAM OF COMMERCE—PURPOSEFUL AVAILMENT—The Supreme Court held, in a plurality opinion, that a foreign manufacturer was not subject to jurisdiction in New Jersey, because the manufacturer did not engage in any forum-directed conduct targeting New Jersey and thus did not purposefully avail itself of the benefits and protections of New Jersey law.


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I. THE FACTS OF MCINTYRE

Robert Nicastro was operating a metal-shearing machine manufactured by J. McIntyre Machinery, Ltd. ("J. McIntyre") when he sustained a serious injury to his hand.\(^1\) J. McIntyre is a manufacturer of metal-shearing machines that is incorporated and has its principal place of business in England.\(^2\) However, Nicastro’s accident occurred in New Jersey, providing this case with serious jurisdictional ramifications.\(^3\)

II. THE PROCEDURAL HISTORY OF MCINTYRE

Nicastro brought a products liability suit against J. McIntyre in New Jersey state court.\(^4\) In defense, J. McIntyre contended that New Jersey state courts lacked jurisdiction over the suit, because J. McIntyre did not market or ship any of its products to New Jersey.\(^5\) On appeal, the Supreme Court of New Jersey ruled in favor

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1. J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2786 (2011) (Kennedy, J., plurality). Justice Albin’s opinion from the Supreme Court of New Jersey sheds some light on the factual background of this case. Nicastro v. McIntyre Mach. Am., Ltd., 987 A.2d 575, 577-79 (N.J. 2010), rev’d sub nom. J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780 (2011). Interestingly, Nicastro had been an employee of Curcio Scrap Metal for over thirty years when he severed several fingers on his right hand while operating the McIntyre Model 640 Shear. Nicastro, 987 A.2d at 577. Curcio Scrap Metal purchased the McIntyre Model 640 Shear from McIntyre Machinery America, Ltd. ("McIntyre America"), J. McIntyre’s independent United States distributor, after viewing one at a scrap recycling industry convention in Las Vegas, Nevada. Id. at 577-78. Notably, J. McIntyre does not sell any of its products directly to buyers in the United States, with the exception of McIntyre America. Id. at 579. McIntyre America exclusively sells J. McIntyre products to buyers around the country. Id.
2. McIntyre, 131 S. Ct. at 2786 (Kennedy, J., plurality).
3. Id. at 2785-86.
4. Id.
5. Id. at 2786. Justice Albin’s opinion from the Supreme Court of New Jersey also provided more details regarding the procedural history of this case. Nicastro, 987 A.2d at 577-79. Nicastro brought this products liability suit against J. McIntyre and its independent distributor, McIntyre America, alleging that the McIntyre Model 640 Shear that caused Nicastro’s injury was defective. Id. at 577-78. Nicastro argued that his accident occurred because the machine was defective, not fit for its intended use, and that it did not contain proper directions or warnings. Id. at 578. The trial court granted J. McIntyre’s motion to dismiss, finding that New Jersey’s exercise of jurisdiction over J. McIntyre would be inappropriate, based on J. McIntyre’s lack of “sufficient minimum contacts” with New Jersey. Id. The trial court held that J. McIntyre could not be subject to the jurisdiction of New Jersey, even under a “liberal” construction of the “stream of commerce” theory and that J. McIntyre could only be held subject to jurisdiction in New Jersey if it “purposefully availed itself” of the benefits of New Jersey law. Id. at 578-79. The Appellate Division reversed the trial court, finding that J. McIntyre engaged in conduct purposefully directed at the entire United States market and that J. McIntyre should have known one of its machines could end up in New Jersey. Nicastro, 987 A.2d at 580. The New Jersey Supreme Court ultimately affirmed the Appellate Division. Id. at 594.
of Nicastro, holding that New Jersey state courts could exercise jurisdiction over J. McIntyre under the Due Process Clause of the Fourteenth Amendment. Relying heavily on the stream of commerce analysis articulated by the Supreme Court of the United States in *Asahi Metal Industry Co. v. Superior Court,* the Supreme Court of New Jersey held the exercise of jurisdiction over J. McIntyre proper for three reasons: (1) Nicastro sustained his injury in New Jersey; (2) J. McIntyre knew or should have known that because its products were distributed nationally, its machines could potentially end up in any of the fifty states; and (3) J. McIntyre did not take any measures to avert the distribution of its products in New Jersey.

J. McIntyre appealed to the Supreme Court of the United States, and the Court granted *certiorari* to answer the question of whether a state could exercise personal jurisdiction over a foreign defendant, when that defendant was not within the state either when the complainant suffered injury or when the suit commenced, and additionally, did not consent to the jurisdiction of the forum state. The Supreme Court aimed to bring clarity to the rules regarding the exercise of jurisdiction over a foreign defendant that the Court left muddled in the *Asahi* decision.

At oral argument, J. McIntyre presented three principal reasons why New Jersey's exercise of jurisdiction was inappropriate: (1) that while it does sell its machines to an independent distributor in the United States, who subsequently sells the machines to buyers across the country, J. McIntyre itself does not sell any of its

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6. McIntyre, 131 S. Ct. at 2786 (Kennedy, J., plurality). The Due Process Clause of the Fourteenth Amendment provides that "[n]o 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.


8. McIntyre, 131 S. Ct. at 2786 (Kennedy, J., plurality). Justice Kennedy defined the stream of commerce as "the movement of goods from manufacturers through distributors to consumers." Id. at 2788. In *Asahi,* the Supreme Court utilized a stream of commerce analysis in an attempt to delineate the rule for when a state may exercise jurisdiction over a foreign defendant. 480 U.S. at 105 (O'Connor, J., plurality).

9. McIntyre, 131 S. Ct. at 2785 (Kennedy, J., plurality).

10. Id. (citing Asahi, 480 U.S. at 105-16 (O'Connor, J., plurality), 116-21 (Brennan, J., concurring)). The Supreme Court's decision in *Asahi* featured no majority opinion, but rather a plurality opinion written by Justice O'Connor and a concurring opinion written by Justice Brennan. Asahi, 480 U.S. at 105 (O'Connor, J., plurality). Each set forth opposing guidelines for states to follow when determining whether a state could exercise jurisdiction over a foreign defendant, leaving the law on this issue largely open to interpretation. Id.
products directly to buyers in the United States; (2) that although representatives of J. McIntyre have attended annual conventions for the scrap-metal recycling industry in several states, its representatives never attended a convention in New Jersey; and (3) that the record indicates that no more than four, and possibly only one, of J. McIntyre's machines ended up in New Jersey. Based on these facts, J. McIntyre believed that its contacts were insufficient to make New Jersey's exercise of jurisdiction over the dispute proper.

III. THE UNITED STATES SUPREME COURT OPINION IN McIntyre

A. Justice Kennedy's Plurality Opinion

Justice Kennedy, writing for the plurality, overruled the New Jersey Supreme Court's decision. Justice Kennedy held that for a defendant to be subject to another state's jurisdiction, the defendant must have demonstrated conduct specifically targeting the forum state, thereby benefitting from the protection of that state's laws. Beginning with a brief overview of the Due Process Clause of the Fourteenth Amendment, Justice Kennedy emphasized that, generally speaking, the laws of a foreign state do not bind a person or entity.

Relying on the landmark case of International Shoe Co. v. Washington, Justice Kennedy utilized the general rule for a state's exercise of jurisdiction over a foreign defendant as the foundation for the plurality's holding. This rule provides that a state may only exercise jurisdiction over a foreign defendant when that defendant

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11. McIntyre, 131 S. Ct. at 2786 (Kennedy, J., plurality). This is a confusing part of Justice Kennedy's opinion. Justice Kennedy cited these three reasons as arguments provided by Nicastro, supporting New Jersey's exercise of jurisdiction over J. McIntyre. Id. However, in the paragraph immediately following these three arguments, Justice Kennedy stated that they were "emphasized" by the petitioner, J. McIntyre. Id. After a careful reading of these arguments, it is evident that they support J. McIntyre's cause.

12. Id.

13. Id. at 2785.

14. Id. at 2787 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)). Specifically, Justice Kennedy provided that a State's exercise of jurisdiction "requires 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.'" Id. (quoting Hanson, 357 U.S. at 253).

15. Id. (citing Burnham v. Super. Ct., 495 U.S. 604, 608-09 (1990)).

16. McIntyre, 131 S. Ct. at 2787 (Kennedy, J., plurality) (citing Int'l Shoe, 326 U.S. 310, 316 (1945)).
has at least some minimum contacts with the state.\textsuperscript{17} The plurality underscored the idea that in a products-liability suit, it is the foreign defendant's intentional, forum-directed conduct that makes a state's exercise of jurisdiction over the defendant consistent with the Due Process Clause of the Fourteenth Amendment.\textsuperscript{18}

Justice Kennedy next outlined the methods by which a defendant may yield to a state's jurisdiction.\textsuperscript{19} For example, a defendant may expressly consent to the exercise of jurisdiction.\textsuperscript{20} Additionally, a defendant consents to a state's jurisdiction when present in the state during service of process.\textsuperscript{21} Further, a defendant is subject to the jurisdiction of a state if the defendant is incorporated in that state or has its principal place of business in that state.\textsuperscript{22} The vital similarity to each of these methods, Justice Kennedy argued, is that each of the methods demonstrates the intent on the part of the defendant to benefit from and yield to the laws of the forum state.\textsuperscript{23} Additionally, the plurality noted that these scenarios are situations in which a state may exercise general jurisdiction over a defendant and adjudicate issues that arose both within and outside of the state.\textsuperscript{24} Importantly, Justice Kennedy emphasized that a foreign defendant becomes subject to the personal jurisdiction of a state under the same theory as those defendants subject to the general jurisdiction of a state.\textsuperscript{25} The key is that the foreign defendant must have shown the intent to benefit from and yield to the laws of the forum state.\textsuperscript{26}

However, Justice Kennedy cautioned that there is much ambiguity in this area of law, produced by the contrasting opinions of

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\item \textsuperscript{17} Id. (quoting Int'l Shoe, 326 U.S. at 316). Justice Kennedy provided that "[a] court may subject a defendant to judgment only when the defendant has sufficient contacts with the sovereign 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" Id. (quoting Int'l Shoe, 326 U.S. at 316).
\item \textsuperscript{18} Id.
\item \textsuperscript{19} Id.
\item \textsuperscript{20} Id. (citing Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703 (1982)).
\item \textsuperscript{21} McIntyre, 131 S. Ct. at 2787 (Kennedy, J., plurality) (citing Burnham v. Super. Ct., 495 U.S. 604, 628 (1990)).
\item \textsuperscript{22} Id. (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2853-54 (2011)).
\item \textsuperscript{23} Id. (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985)).
\item \textsuperscript{24} Id. (citing Helicopteros Nacionales de Colom., S.A. v. Hall, 466 U.S. 408, 414 (1984)).
\item \textsuperscript{25} Id. at 2787-88.
\item \textsuperscript{26} McIntyre, 131 S. Ct. at 2787-88 (Kennedy, J., plurality) (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).
\end{itemize}
Justice Brennan and Justice O'Connor in the *Asahi* decision.\(^27\)
The plurality first examined Justice Brennan's concurrence, which argued that it was sufficient for a defendant to be subject to the jurisdiction of another state, if that defendant placed its product into the stream of commerce and knew the product could end up in the forum state.\(^28\) This knowledge, Justice Brennan believed, provided the defendant with notice that he could be sued in that state.\(^29\) Justice Kennedy next analyzed Justice O'Connor's plurality opinion, where Justice O'Connor asserted that a defendant simply placing its products into the stream of commerce was not enough to subject that defendant to the jurisdiction of another state.\(^30\) Justice O'Connor explained that a foreign defendant must take action specifically targeting the forum state.\(^31\)

Justice Kennedy agreed with the analysis of Justice O'Connor, because the Supreme Court has previously and consistently held that a defendant’s action, not expectation, subjects him to another state’s jurisdiction.\(^32\) Therefore, the plurality held that whether a

\(^{27}\) *Id.* at 2785 (citing *Asahi Metal Indus. Co. v. Super. Ct.*, 480 U.S. 102, 107 (1987) (O'Connor, J., plurality)).

\(^{28}\) *Id.* at 2788 (citing *Asahi*, 480 U.S. at 117 (Brennan, J., concurring)). Justice Kennedy focused on Justice Brennan’s foreseeability approach, as explained in Justice Brennan’s concurring opinion. *Id.* Specifically, Justice Kennedy, quoting Justice Brennan, provided:

> [As that concurrence contended, “jurisdiction premised on the placement of a product into the stream of commerce [without more] is consistent with the Due Process Clause,” for “[a]s long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise.”](Id. (quoting *Asahi*, 480 U.S. at 117 (Brennan, J., concurring)).)

Justice Kennedy goes on to argue that, “[i]t was the premise of the concurring opinion that the defendant’s ability to anticipate suit renders the assertion of jurisdiction fair. In this way, the opinion made foreseeability the touchstone of jurisdiction.” *Id.* (emphasis added).

\(^{29}\) *Id.* (citing *Asahi*, 480 U.S. at 117 (Brennan, J., concurring)).

\(^{30}\) *Id.* at 2788-89 (quoting *Asahi*, 480 U.S. at 112 (O'Connor, J., plurality)).

\(^{31}\) *McIntyre*, 131 S. Ct. at 2788-89 (Kennedy, J., plurality) (quoting *Asahi*, 480 U.S. at 112 (O'Connor, J., plurality)). Justice Kennedy focused on the “purposefully availed” standard articulated by Justice O'Connor. *Id.* at 2789. Justice Kennedy stated:

> The “substantial connection” between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State. The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.

*Id.* at 2788-89 (quoting *Asahi*, 480 U.S. at 112 (O'Connor, J., plurality)).

\(^{32}\) *Id.* at 2789. Justice Kennedy went so far as to comment that Justice Brennan, “advocating a rule based on general notions of fairness and foreseeability, is inconsistent with the premises of lawful judicial power.” *Id.* Importantly, Justice Kennedy provided the following key language: “[i]t his Court’s precedents make clear that it is the defendant’s actions, not his expectations, that empower a State’s courts to subject him to judgment.” *Id.* (emphasis added).
defendant is subject to the jurisdiction of another state is based on whether the defendant specifically targeted the forum state, rather than the defendant's expectation of suit in that state.\textsuperscript{33} Rationalizing his viewpoint, Justice Kennedy believed that it would not be appropriate to use Justice Brennan's foreseeability approach, because each individual state is a separate and distinct sovereign entity.\textsuperscript{34} Justice Kennedy argued that Justice Brennan's standard had the potential to disrupt state sovereignty by permitting the exercise of jurisdiction over a foreign defendant who never purposefully availed itself of the forum state.\textsuperscript{35}

In the case at bar, the plurality found that, while J. McIntyre targeted the United States in its sales and marketing efforts, it never engaged in conduct that intentionally targeted New Jersey.\textsuperscript{36} According to Justice Kennedy, the facts that J. McIntyre utilized an independent distributor in the United States, attended scrap recycling trade shows in the United States, and had machines in operation in New Jersey were not sufficient enough to demonstrate that J. McIntyre purposefully availed itself of the New Jersey market.\textsuperscript{37} Because the plurality found the Supreme Court of New Jersey's holding, that J. McIntyre did not have contacts in New Jersey, to be of significance,\textsuperscript{38} the plurality determined that New Jersey's exercise of jurisdiction was inappropriate and a violation of the Due Process Clause of the Fourteenth Amendment.\textsuperscript{39}

\textbf{B. Justice Breyer's Concurrence}

Justice Breyer authored a concurring opinion to express his disagreement with the plurality's rationale, because Justice Breyer (1) believed that this case could be decided on Supreme Court precedent alone; and (2) found the decision from the New Jersey

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\item Justice Kennedy argued the importance of individual state sovereignty and its relationship to the exercise of jurisdiction over a foreign defendant, as follows: If the defendant is a domestic domiciliary, the courts of its home State are available and can exercise general jurisdiction. And if another State were to assert jurisdiction in an inappropriate case, it would upset the federal balance, which posits that each State has a sovereignty that is not subject to unlawful intrusion by other States.
\item \textit{Id. at 2790.}
\item McIntyre, 131 S. Ct. at 2790 (Kennedy, J., plurality).
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id. at 2791.}
\end{enumerate}
Supreme Court unpersuasive. Although he believed this case could have been decided on precedent alone, Justice Breyer distanced himself from the plurality by noting the importance of examining global economic trends when evaluating the rules of jurisdiction over a foreign defendant. Moreover, he contended that this case did not provide the Court with the opportunity to conduct such an examination, making the plurality's rule unwarranted.

Justice Breyer determined that the facts were insufficient to demonstrate the minimum contacts required for New Jersey to exercise jurisdiction over J. McIntyre. Based on this Court's decision in World-Wide Volkswagen Corp. v. Woodson, Justice Breyer argued that the limited sale of a foreign defendant's products or machinery in a state was inadequate to allow that state to exercise jurisdiction over the defendant. Justice Breyer believed that Nicastro failed to meet his burden of proof on the issue of whether J. McIntyre purposefully availed itself of New Jersey's laws and market. From this viewpoint, Justice Breyer needed no further analysis to decide that J. McIntyre was not subject to jurisdiction in New Jersey.

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40. Id. at 2791-93 (Breyer, J., concurring). Justice Alito joined Justice Breyer's concurring opinion. Id.
41. McIntyre, 131 S. Ct. at 2791 (Breyer, J., concurring).
42. Id. Justice Breyer specifically emphasized the "many recent changes in commerce and communication, many of which are not anticipated by our precedents. But this case does not present any of those issues. So [he] think[s] it unwise to announce a rule of broad applicability without full consideration of the modern-day consequences." Id.
43. Id. Justice Breyer firmly believed that the "facts do not provide contacts between the British firm and the State of New Jersey constitutionally sufficient to support New Jersey's assertion of jurisdiction in this case." Id.
44. 444 U.S. 286 (1980).
45. McIntyre, 131 S. Ct. at 2792 (Breyer, J., concurring) (citing World-Wide Volkswagen, 444 U.S. at 297). Justice Breyer stated:

None of our precedents finds that a single isolated sale, even if accompanied by the kind of sales effort indicated here, is sufficient. Rather, this Court's previous holdings suggest the contrary. The Court has held that a single sale to a customer who takes an accident-causing product to a different State (where the accident takes place) is not a sufficient basis for asserting jurisdiction.

Id.
46. Id. Justice Breyer pointedly stated:

Mr. Nicastro, who here bears the burden of proving jurisdiction, has shown no specific effort by the British Manufacturer to sell in New Jersey. He has introduced no list of potential New Jersey customers who might, for example, have regularly attended trade shows. And he has not otherwise shown that the British Manufacturer "purposely availed[ed] itself of the privilege of conducting activities" within New Jersey, or that it de-livered its goods in the stream of commerce "with the expectation that they will be purchased" by New Jersey users.

Id. (citing World-Wide Volkswagen, 444 U.S. at 297-98) (alteration in original).
47. Id. at 2792-93.
While Justice Breyer did not agree with the plurality’s rigid rule of exercising jurisdiction over a foreign defendant, he was increasingly underwhelmed by the rule adopted by the Supreme Court of New Jersey. Justice Breyer believed that the New Jersey Supreme Court’s rule would make it too easy for a state to exercise jurisdiction over a foreign defendant. Specifically, Justice Breyer disfavored the scenario created by the New Jersey rule, where a state would be able to exercise jurisdiction over any foreign defendant manufacturer who maintains no contacts with the state, but has a single product end up within the state’s bounds. Additionally, Justice Breyer found that the New Jersey rule created too great a burden on manufacturers, both foreign and domestic, because it would require manufacturers to be prepared to defend suit under the laws of all fifty states. For these reasons, Justice

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48. *Id.* at 2793. Justice Breyer argued that:

[Though I do not agree with the plurality’s seemingly strict no-jurisdiction rule, I am not persuaded by the absolute approach adopted by the New Jersey Supreme Court and urged by respondent and his amici. Under that view, a producer is subject to jurisdiction for a products-liability action so long as it “knows or reasonably should know that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states.” *Id.* (quoting Nicastro v. McIntyre Mach. Am., 987 A.2d 575, 592 (N.J. 2010), rev’d sub nom. *J. McIntyre Mach., Ltd.* v. Nicastro, 131 S. Ct. 2780 (2011)).]

49. *Id.*

50. *McIntyre*, 131 S. Ct. at 2793 (Breyer, J., concurring). Notably, Justice Breyer argued the ramifications of adopting the New Jersey rule:

A rule like the New Jersey Supreme Court’s would permit every State to assert jurisdiction in a products-liability suit against any domestic manufacturer who sells its products (made anywhere in the United States) to a national distributor, no matter how large or small the manufacturer, no matter how distant the forum, and no matter how few the number of items that end up in the particular forum at issue. What might appear fair in the case of a large manufacturer which specifically seeks, or expects, an equal-sized distributor to sell its product in a distant State might seem unfair in the case of a small manufacturer (say, an Appalachian potter) who sells his product (cups and saucers) exclusively to a large distributor, who resells a single item (a coffee mug) to a buyer from a distant State (Hawaii). I know too little about the range of these or in-between possibilities to abandon in favor of the more absolute rule what has previously been this Court’s less absolute approach.

*Id.* Justice Breyer used this hypothetical to further clarify why he agreed with the reversal of the New Jersey Supreme Court. *Id.*

51. *Id.* at 2794. Justice Breyer also voiced his concern about the potential burden of the New Jersey rule on foreign manufacturers:

It may be fundamentally unfair to require a small Egyptian shirt maker, a Brazilian manufacturing cooperative, or a Kenyan coffee farmer, selling its products through international distributors, to respond to products-liability tort suits in virtually every State in the United States, even those in respect to which the foreign firm has no connection at all but the sale of a single (allegedly defective) good. And a rule like the New Jersey Supreme Court suggests would require every product manufacturer, large or small, selling to American distributors to understand not only the tort law of
Breyer agreed with the decision to reverse the Supreme Court of New Jersey, but he did not support the plurality's rationale.\textsuperscript{52}

C. Justice Ginsburg's Dissent

Justice Ginsburg wrote a dissenting opinion in which she voiced her strong disagreement with both Justice Kennedy's plurality opinion and Justice Breyer's concurring opinion, arguing that J. McIntyre purposefully availed itself of the entire United States market and was, therefore, subject to the specific jurisdiction of any of the fifty states.\textsuperscript{53} Additionally, Justice Ginsburg believed that the reversal of the Supreme Court of New Jersey allowed foreign defendants, especially manufacturers, to easily elude jurisdiction in a state where its products were sold and caused harm.\textsuperscript{54}

Justice Ginsburg argued, after analyzing all of the facts available to her in the case, that J. McIntyre purposefully availed itself of the entire United States market.\textsuperscript{55} Justice Ginsburg determined that J. McIntyre's actions demonstrated the intent to solicit customers from all fifty states.\textsuperscript{56} This notion, Justice Ginsburg believed, showed that J. McIntyre purposefully availed itself of the entire United States market, thereby subjecting it to jurisdiction in any state.\textsuperscript{57}

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  \item every State, but also the wide variance in the way courts within different States apply that law.
  \item Id. \textsuperscript{52} Id.
  \item Id. at 2794-97. Justices Sotomayor and Kagan joined Justice Ginsburg's dissenting opinion. \textsuperscript{id}
  \item Id. at 2794-95. \textsuperscript{id}
  \item McIntyre, 131 S. Ct. at 2794-97 (Ginsburg, J., dissenting). In this section of Justice Ginsburg's dissent, she utilized many more facts than originally provided by the Supreme Court of New Jersey. \textsuperscript{id}
  \item Justice Ginsburg drew from varying fact sources, such as the complaint and interrogatories. \textsuperscript{id}
  \item Id. Justice Ginsburg's analysis of the facts focused on several different aspects of the case, such as J. McIntyre's regular attendance at conventions for the scrap metal industry, J. McIntyre's utilization of McIntyre America, J. McIntyre's independent United States distributor, and J. McIntyre's overall desire to solicit business from any potential customer in the United States. \textsuperscript{id}
  \item at 2796. Additionally, Justice Ginsburg described New Jersey as a major player in the scrap recycling industry. \textsuperscript{id}
  \item Id. at 2797. Justice Ginsburg specifically argued that, "[g]iven McIntyre UK's endeavors to reach and profit from the United States market as a whole, Nicastro's suit, I would hold, has been brought in a forum entirely appropriate for the adjudication of his claim." \textsuperscript{id}
  \item Id. Justice Ginsburg provided her analysis of J. McIntyre's forum directed conduct as follows:
  \item The machine arrived in Nicastro's New Jersey workplace not randomly or fortuitously, but as a result of the U.S. connections and distribution system that McIntyre UK deliberately arranged. On what sensible view of the allocation of adjudicatory authority could the place of Nicastro's injury within the United States be deemed off
\end{itemize}
Justice Ginsburg was also concerned that the reversal of the Supreme Court of New Jersey would allow foreign manufacturers to escape jurisdiction in states where their products caused harm. The dissent strongly believed that forcing a foreign defendant to defend suit in a state where its products caused harm was reasonable, especially where that defendant has knowledge that its products could reach a state by distribution through the stream of commerce. Justice Ginsburg believed that this concept had no potential affect on the sovereign authority of each individual state, because it would be reasonable to expect a defendant, whose product caused injury in another state, to defend suit in that state.

Finally, Justice Ginsburg considered the issue involved in this case to be unique, distinguishing this case from other important jurisdiction cases, such as World-Wide Volkswagen and Asahi. limits for his products liability claim against a foreign manufacturer who targeted the United States (including all the States that constitute the Nation) as the territory it sought to develop?

Id. (citations omitted).

58. Id. at 2795.

59. Id. at 2800-01. Justice Ginsburg posed several important questions regarding the exercise of jurisdiction over a foreign defendant, including:

Is it not fair and reasonable, given the mode of trading of which this case is an example, to require the international seller to defend at the place its products cause injury? Do not litigational convenience and choice-of-law considerations point in that direction? On what measure of reason and fairness can it be considered undue to require McIntyre UK to defend in New Jersey as an incident of its efforts to develop a market for its industrial machines anywhere and everywhere in the United States? Is not the burden on McIntyre UK to defend in New Jersey fair, i.e., a reasonable cost of transacting business internationally, in comparison to the burden on Nicastro to go to Nottingham, England to gain recompense for an injury he sustained using McIntyre's product at his workplace in Saddle Brook, New Jersey?

Id. (internal citations removed).

60. McIntyre, 131 S. Ct. at 2798 (Ginsburg, J., dissenting). Justice Ginsburg emphasized her viewpoint, arguing that “[i]indeed, among States of the United States, the State in which the injury occurred would seem most suitable for litigation of a products liability tort claim.” Id. (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).

61. Id. at 2802-03 (citing World-Wide Volkswagen, 444 U.S. at 288-89, 295-98; Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 109 (1987) (O'Connor, J., plurality)). Justice Ginsburg made the argument that the case at bar is dissimilar to two of the most important jurisdictional cases out of the United States Supreme Court. Id. (citing World-Wide Volkswagen, 444 U.S. at 288-89, 295-98; Asahi, 480 U.S. at 109). Justice Ginsburg noted that World-Wide Volkswagen arose out of a case involving “a New York car dealership that sold solely in the New York market, and a New York distributor who supplied retailers in three States only: New York, Connecticut, and New Jersey.” Id. at 2802 (citing World-Wide Volkswagen, 444 U.S. at 289). New York residents purchased a car from the New York dealer and the car caught on fire in Oklahoma causing an accident. Id. (citing World-Wide Volkswagen, 444 U.S. at 288). The Court, according to Justice Ginsburg, held that jurisdiction could not be based on the unilateral actions of the customer. McIntyre, 131 S. Ct. at 2802 (Ginsburg, J., dissenting) (citing World-Wide Volkswagen, 444 U.S. at 298). Additionally, Justice Ginsburg stated that Asahi involved two foreign parties and arose
Hence, Justice Ginsburg argued that the decision from the New Jersey Supreme Court did not violate any precedent set forth from the Supreme Court of the United States. Therefore, Justice Ginsburg dissented, because she found enough significant contacts between J. McIntyre and New Jersey to determine that it was appropriate to subject J. McIntyre to the jurisdiction of the New Jersey state courts.

IV. THE HISTORY OF PERSONAL JURISDICTION AND PRECEDENT LEADING TO McINTYRE

The United States Supreme Court first extensively addressed matters of personal jurisdiction in *Pennoyer v. Neff*. In *Pennoyer*, the Supreme Court held that, in general, a state has exclusive jurisdiction over the people and property within its borders and that no state could exercise jurisdiction over the people and property of other states without the defendant either voluntarily appearing in court in the forum state or receiving personal service of process. After *Pennoyer*, the Supreme Court would not address the issue of personal jurisdiction in a significant manner for another sixty-eight years, when the Court would face the critical question of how a state could obtain jurisdiction over a defendant from another state.

A. International Shoe Co. v. Washington

In the landmark *International Shoe* decision, the Supreme Court held the International Shoe Company ("company") subject to jurisdiction in Washington, even though the company was in-

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"over a transaction that took place outside the United States." *Id.* at 2802-03. Justice Ginsburg argued that "[t]o hold that *Asahi* controls this case would, to put it bluntly, be dead wrong." *Id.* at 2803.

62. *Id.* at 2802.

63. *Id.* at 2804.

64. 95 U.S. 714, 722, 726 (1877).

65. *Pennoyer*, 95 U.S. 714 at 722. Importantly, Justice Field famously stated "that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants." *Id.* The majority went on to provide "that no State can exercise direct jurisdiction and authority over persons or property without its territory." *Id.* Regarding, service of process, Justice Field argued that "[i]f, without personal service, judgments *in personam*, obtained *ex parte* against non-residents and absent parties, upon mere publication of process, which, in the great majority of cases, would never be seen by the parties interested, could be upheld and enforced, they would be the constant instruments of fraud and oppression." *Id.* at 726.

McIntyre Machinery v. Nicastro

corporated in Delaware, with its principal place of business in Saint Louis, Missouri.\textsuperscript{67} In \textit{International Shoe}, the company sold and manufactured footwear.\textsuperscript{68} Although the company did not manufacture or stock any of its merchandise in Washington, it had a small group of salesmen that lived in and sold to sales territories in Washington.\textsuperscript{69} When the company received notice of assessment for unpaid tax contributions in Washington, it argued in court to set aside the notice of assessment on the ground that it was not a citizen of Washington.\textsuperscript{70}

In Chief Justice Stone's opinion, the Supreme Court held that Washington's exercise of jurisdiction over the company was appropriate, because of the company's contacts with the state.\textsuperscript{71} Justice Stone reasoned that the demands of due process require that a foreign, or out-of-state, defendant have at least sufficient or minimum contacts with the forum state, such that it would be reasonable to compel the defendant to defend suit in the forum state.\textsuperscript{72} The majority also provided that a state would have jurisdiction over a foreign defendant when that defendant's contacts with the state were systematic and continuous, and the suit arose out of those contacts.\textsuperscript{73} Specifically, Justice Stone provided that when a

\begin{itemize}
  \item \textsuperscript{67} \textit{Int'l Shoe}, 326 U.S. at 313, 320.
  \item \textsuperscript{68} \textit{Id.} at 313.
  \item \textsuperscript{69} \textit{Id.} at 313-14. The company's sales force residing in Washington did not have any offices in the State. \textit{Id.} at 313. However, the company did provide its salesmen with samples to display in rented rooms in business buildings or hotels for the purpose of soliciting orders. \textit{Id.} at 313-14. Additionally, the company's sales force in Washington was allowed to take orders from buyers for acceptance by the company in Saint Louis. \textit{Id.} at 314. Once the company approved the orders, the company would ship the filled orders to the buyers in Washington. \textit{Int'l Shoe}, 326 U.S. at 314.
  \item \textsuperscript{70} \textit{Id.} at 312. The company first appeared before a tribunal of the office of unemployment. \textit{Id.} The tribunal denied the company's motion to set aside the notice of assessment, and the Commissioner, as well as the Superior Court, affirmed this decision. \textit{Id.} at 312-13. The Washington Supreme Court also affirmed the decision, based on its finding "that the regular and systematic solicitation of orders in the state by [the company's] salesmen, resulting in a continuous flow of [the company's] product into the state, was sufficient to constitute doing business in the state so as to make [the company] amenable to suit in its courts." \textit{Id.} at 314.
  \item \textsuperscript{71} \textit{Id.} at 320.
  \item \textsuperscript{72} \textit{Int'l Shoe}, 326 U.S. at 317. Specifically, Justice Stone argued that the demands of due process "may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." \textit{Id.}
  \item \textsuperscript{73} \textit{Id.} Importantly, Justice Stone pointed out that the exercise of jurisdiction "has never been doubted when the activities of the corporation [in a state] have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given." \textit{Id.} However, Justice Stone also noted that "it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activi-
defendant conducts business, or other activities within a state, thereby invoking the protection of that state’s laws, responsibilities, such as defending suit, manifest in relation to those contacts with the state.\textsuperscript{74}

The majority found that the company’s activities in the state of Washington were systematic and continuous.\textsuperscript{75} The Court reasoned that these contacts generated a substantial amount of business in Washington, thereby leading to the issues that brought about this suit against the company.\textsuperscript{76} Therefore, Justice Stone found that the company’s contacts with Washington were sufficient to make the state’s exercise of jurisdiction reasonable.\textsuperscript{77}

B. Hanson v. Denckla

The Supreme Court next altered the jurisdictional landscape by holding that a state could not exercise personal jurisdiction over a defendant with only limited or unintentional contacts with the forum state.\textsuperscript{78} In \textit{Hanson}, the Florida Chancery Court and the Florida Supreme Court ruled that Florida had jurisdiction over trust property owned by a recently deceased domiciliary of Florida but located and held by trustees in Delaware.\textsuperscript{79} The Supreme

\textsuperscript{74} Id. at 319. Justice Stone rationalized his ruling providing that: \textit{[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.} \textit{Id.} (emphasis added).

\textsuperscript{75} Id. at 320.

\textsuperscript{76} Id.

\textsuperscript{77} \textit{Int’l Shoe}, 326 U.S. at 320.

\textsuperscript{78} Hanson v. Denckla, 357 U.S. at 235, 251, 253 (1958).

\textsuperscript{79} \textit{Hanson}, 357 U.S. at 238-43. In \textit{Hanson}, Dora Donner, the plaintiff’s mother, originally a Pennsylvania resident, set up trusts in Delaware that named herself as the beneficiary of the income from the trusts during her lifetime and various Delaware banks as trustees. \textit{Id.} at 238. Mrs. Donner then moved to Florida, where she executed a will naming one of her daughters, Elizabeth Donner Hanson, executor of her will. \textit{Id.} at 239-40. Mrs. Hanson named her children, Donner Hanson and Joseph Donner Winsor, as beneficiaries of two of Mrs. Donner’s trusts. \textit{Id.} at 239. After Mrs. Donner’s death, Mrs. Donner’s other daughters, Katherine Denckla and Dorothy Stewart, sued Mrs. Hanson and her children in Florida State Court to invalidate the distribution of the trusts to Mrs. Hanson’s children. \textit{Id.} at 240-41. Mrs. Hanson and her children argued that Florida did not have jurisdiction
Court granted certiorari to determine the extent of contacts necessary to subject a foreign defendant to jurisdiction in another state. Specifically, in this case, the question arose as to whether Florida could exercise jurisdiction over trust property held by trustees in Delaware.

Chief Justice Warren, writing for the majority, determined that Florida's exercise of jurisdiction over the trustees in Delaware was not appropriate. Citing International Shoe as a more lenient standard for the exercise of jurisdiction over a foreign defendant, Justice Warren cautioned that it would be improper, however, to believe that International Shoe removed all limits to the exercise of personal jurisdiction over a non-resident defendant. Justice Warren argued that a foreign defendant must, at least, have minimum contacts with the forum state and a suit arising out of those contacts, for the exercise of jurisdiction over that defendant to be appropriate. Specifically, the majority stated that a non-resident defendant must intentionally seek to benefit from conducting business within the forum state, thereby benefiting from the protection of that state's laws.

over the suit, because the non-resident trustees lacked sufficient contacts with Florida, because not all non-resident defendants were personally served with process, and because the trust was property located in Delaware. Hanson, 357 U.S. at 241-42. Meanwhile, Mrs. Hanson filed suit in Delaware, seeking a judgment to determine who was entitled to Mrs. Donner's property that was located in Delaware. Id. at 242. The Florida court ruled in favor of Denckla and Stewart, enjoining Mrs. Hanson from distributing the trusts, while the Delaware court ruled that Mrs. Hanson's distribution of the trusts was valid. Id. The Florida Supreme Court held that it had jurisdiction over the trust property, even though it was in Delaware, because Florida had jurisdiction to interpret Mrs. Donner's will. Id. at 242-43. However, the Delaware Supreme Court did not award full faith and credit to the Florida decision, because Florida did not have jurisdiction over the trust property. Id. at 243.

80. Id. at 243, 251, 253.
81. Id. at 243.
82. Id. at 254.
83. Id. at 251 (citing Int'l Shoe Co. v. Washington, 326 U.S. 310 (1945)). Specifically, Justice Warren noted "it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." Id. (citing Vanderbilt v. Vanderbilt, 354 U.S. 416, 418 (1957)).
84. Hanson, 357 U.S. at 251 (citing Int'l Shoe, 326 U.S. at 319). The majority made the point that "[h]owever minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him." Id.
85. Id. at 253 (citing Int'l Shoe, 326 U.S. at 319). Here, Justice Warren provided that "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." Id.
Applying his rule to the facts of *Hanson*, Justice Warren found the Delaware trust company’s contacts with Florida lacking. The majority found that the trust company conducted no business or transactions in Florida, did not operate in Florida, and did not seek any business in Florida. Furthermore, the suit in *Hanson* did not arise out of any contacts that the defendant had in Florida. The decedent entered into the trust agreement in Delaware with a Delaware corporation. In fact, the first contact that the trust agreement had with Florida did not occur until several years later, when the decedent executed a will and subsequently died in Florida. Therefore, Justice Warren ruled that Florida’s exercise of jurisdiction over the Delaware trustees was inappropriate.

C. World-Wide Volkswagen Corp. v. Woodson

In *World-Wide Volkswagen*, the Supreme Court analyzed the concept of foreseeability and its relation to jurisdiction over a non-resident defendant. In this case, the Robinsons, victims of an automobile accident caused by defective car parts, attempted to sue the vehicle’s distributor, Seaway Volkswagen, Inc. (“Seaway”), and dealer, World-Wide Volkswagen Corporation (“World-Wide”), both New York domiciliaries, in Oklahoma state court. The Supreme Court granted *certiorari* to decide whether the state’s exercise of jurisdiction over a non-resident defendant was proper, be-

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86. *Id.* at 251.
87. *Id.*
88. *Id.*
89. *Hanson*, 357 U.S. at 252.
90. *Id.*
91. *Id.* at 254.
93. *World-Wide Volkswagen*, 444 U.S. at 288-91. In *World-Wide Volkswagen*, Harry and Kay Robinson, New York citizens, bought a car from Seaway in New York. *Id.* at 288. While driving the car through Oklahoma, the vehicle caught on fire, seriously burning Kay Robinson and her children. *Id.* The Robinsons brought a products-liability suit in Oklahoma, alleging that the accident occurred due to the car’s defective design. *Id.* In addition to several other parties, the Robinsons sued World-Wide and Seaway. *Id.* Both World-Wide and Seaway were incorporated in New York and had their principal place of business in New York, only doing business in the northeast United States. *World-Wide Volkswagen*, 444 U.S. at 288-89. World-Wide and Seaway argued in defense that Oklahoma could not exercise jurisdiction over them. *Id.* at 288. The District Court ruled that Oklahoma did have jurisdiction over the case. *Id.* at 289. On appeal, the Supreme Court of Oklahoma ruled that Oklahoma had jurisdiction over the case, because World-Wide and Seaway should have foreseen that the car, because of its mobile nature, could have been used in Oklahoma and because the two companies likely profited from their cars possibly being used in Oklahoma. *Id.* at 289-90 (emphasis added).
cause of conflicting decisions among several of the states' highest courts.  
On appeal, the Court reversed the Oklahoma Supreme Court, finding that World-Wide and Seaway lacked sufficient contacts to render Oklahoma's exercise of jurisdiction appropriate. The Court contemplated the burden on the defendant in defending suit in another state, as well as several other pertinent jurisdictional factors. Additionally, the Court emphasized the importance of state sovereignty, exemplified by the Framers, even in the face of substantial developments and changes in the world economic climate that caused commerce and trade to take place all across state lines and the world. Therefore, the Court, relying on International Shoe, held that a state could not exercise jurisdiction over a foreign defendant that does not have at least minimum contacts with the forum state.

The Supreme Court could not find sufficient contacts between World-Wide or Seaway and the State of Oklahoma. World-Wide and Seaway did not have offices or operations in Oklahoma, they did not target the Oklahoma market in their sales efforts, and they engaged in no conduct that demonstrated an intent to benefit from Oklahoma law. The Court determined that the Oklahoma Supreme Court based jurisdiction on the chance occurrence of one of World-Wide and Seaway's cars ending up in Oklahoma.

94. Id. at 291.
95. Id. at 299.
96. Id. at 292. Notably, the Supreme Court listed several factors used to determine the appropriate forum for the litigation of a non-resident defendant, including:

The burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum; 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. (citations omitted).
97. Id. at 293-94 (citing Hanson v. Denckla, 357 U.S. 235, 250-51 (1958)). The Court argued that, despite a transformation in the national economy that some would argue renders state lines immaterial, "the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts." Id.
98. World-Wide Volkswagen, 444 U.S. at 294 (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 319 (1945)).
99. Id. at 295.
100. Id.
101. Id.
The Robinsons did argue that it was foreseeable that a car could be driven to and cause injury in Oklahoma.\textsuperscript{102} However, the Court argued that foreseeability, on its own, was not enough for a state to exercise jurisdiction over a non-resident defendant.\textsuperscript{103} The Court did not believe foreseeability to be immaterial; rather, it argued that the defendant’s conduct, activity, and relationship with the forum state are the more appropriate determining factors of jurisdiction.\textsuperscript{104} Additionally, the Court reasoned that a state needed more than a possibility that a defendant’s product would end up in the state to exercise jurisdiction.\textsuperscript{105} Therefore, according to the Court, where a defendant purposefully avails itself of, or has knowledge that its product could reach the forum state, it is reasonable to subject that defendant to the jurisdiction of the forum state.\textsuperscript{106} Finally, because in this case the Court found insuffi-
cient contacts between World-Wide or Seaway and Oklahoma, and the fact that Oklahoma based jurisdiction on the improbable appearance of the Robinsons' Volkswagen in Oklahoma, the Court did not find Oklahoma's exercise of jurisdiction sustainable.

D. Burger King Corp. v. Rudzewicz

The Supreme Court would again face the issue of jurisdiction over a non-resident defendant in 1985. In Burger King Corp. v. Rudzewicz, John Rudzewicz and Brian MacShara, citizens of Michigan, briefly operated a failed Burger King franchise in Michigan. Burger King terminated the franchise when Rudzewicz and MacShara fell behind in rent payments and brought suit against the partners in a federal district court in Florida when they continued to operate the franchise anyway. Rudzewicz and MacShara argued that Florida lacked jurisdiction over them. The Supreme Court granted certiorari to review jurisdictional rules pertaining to non-resident defendants.

The Supreme Court held that Florida properly exercised jurisdiction over Rudzewicz in this matter. Reemphasizing its rul-

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107. Id. at 299.
109. Burger King, 471 U.S. at 468. In Burger King, John Rudzewicz and Brian MacShara, both domiciled in Michigan, jointly applied for a Burger King franchise at Burger King's district office in Birmingham, Michigan. Id. at 466. Rudzewicz provided the financial backing for the franchise, while MacShara was to manage it. Id. Negotiations over issues such as building design and rent took place, with both the Birmingham office and Burger King's headquarters in Miami, Florida. Id. at 467. After a successful start to the business in the summer of 1979, business dropped off due to a slowing economy later that year. Id. at 468. Eventually, Rudzewicz and MacShara fell behind in their rent payments to the Florida office, and Burger King terminated the franchise. Burger King, 471 U.S. at 468. Nonetheless, Rudzewicz and MacShara continued to operate the Burger King franchise. Id. Subsequently, Burger King filed suit against Rudzewicz and MacShara in federal court in the Southern District of Florida. Id. In defense, Rudzewicz and MacShara argued that the Southern District of Florida did not have jurisdiction over them, because they were not residents of Florida and Burger King's alleged injury did not occur in Florida. Id. at 469. The District Court determined that it had jurisdiction over Rudzewicz and MacShara, ruling in favor of Burger King, and Rudzewicz alone subsequently appealed to the United States Court of Appeals for the Eleventh Circuit. Id. The Eleventh Circuit held that the District Court could not exercise jurisdiction over Rudzewicz, because the events that took place in the case made it unreasonable to expect him to defend suit in Florida. Burger King, 471 U.S. at 470.
110. Id. at 468.
111. Id. at 469.
112. Id. at 470-71.
113. Id. at 487.
ings from prior jurisdictional cases, the Court held that a state could not exercise jurisdiction over a non-resident defendant, unless the defendant had at least minimum contacts with the forum state and demonstrated forum-directed activity, such that the defendant purposefully availed itself of the protections of the forum state's laws. \(^{114}\) The Court reiterated that a defendant, given his relationship with the forum state, must have the reasonable expectation that he could face suit in the forum state. \(^{115}\) Importantly, the Court added to the states' power to exercise jurisdiction over a defendant by providing that a foreign defendant could not escape the jurisdiction of another state just because the defendant was never present in that state. \(^{116}\) However, the Court cautioned that a foreign defendant's contract with a party from another state did not demonstrate the contacts necessary to validate that state's exercise of jurisdiction over the defendant. \(^{117}\)

Analyzing this case, the Supreme Court found ample evidence of record connecting Rudzewicz with the forum state, thus validating Florida's exercise of jurisdiction over him. \(^{118}\) For example, although Rudzewicz and MacShara maintained no offices or operations in Florida, the partners nonetheless negotiated the franchise agreement with Burger King's Florida office, paid all of their rent to the Florida office, and communicated all of their disputes and concerns to the Florida office. \(^{119}\) The Court believed that it was apparent that the Florida office was vital to the partner's relationship with Burger King. \(^{120}\) Additionally, the franchise document

\(^{114}\) Burger King, 471 U.S. at 474 (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). Arguing the importance of minimum contacts, the Court provided that "the constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum State." \(\text{Id.}\) (emphasis added).

\(^{115}\) Id. at 473. Assimilating concepts of purposeful availment, foreseeability, and the stream of commerce, the Court quoted significant language from World-Wide Volkswagen, providing that a "[s]tate 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." \(\text{Id.}\) (quoting World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297-98 (1980)).

\(^{116}\) Id. at 476. The Court made the assertion that "[j]urisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State." \(\text{Id.}\)

\(^{117}\) Id. at 478. The Court pointedly stated that "[i]f the question is whether an individual's contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot." \(\text{Id.}\)

\(^{118}\) Id. at 478-79.

\(^{119}\) Burger King, 471 U.S. at 479-81.

\(^{120}\) Id. at 480.
contained a choice-of-law provision providing that the franchise agreement was governed according to the laws of Florida. While not dispositive, the Court found that the choice-of-law provision supported the notion that it was foreseeable that litigation could occur in Florida. The Court believed that each of these factors demonstrated intentional, forum directed conduct by Rudzewicz. In short, the Court found that Rudzewicz purposefully availed himself of the protection of Florida, making the possibility of suit in Florida foreseeable and the exercise of jurisdiction by the state proper.

E. Asahi Metal Industry Co. v. Superior Court

In 1987, the Supreme Court had the opportunity to clearly define how substantial a non-resident defendant's contacts with the forum state needed to be for the appropriate exercise of jurisdiction. Asahi Metal Industry Co. v. Superior Court presented the Court with a significant occasion to address the impact of important factors, such as foreseeability, purposeful availment, and the stream of commerce. However, Asahi resulted in two competing jurisdictional standards for the exercise of jurisdiction over foreign defendants that would cloud the jurisdictional landscape for over two decades.

In 1978, Gary Zurcher was driving on Interstate 80 in Solano County, California when he collided with a tractor after losing control of his motorcycle, seriously injuring himself and killing his wife. Zurcher filed suit in California state court, alleging that a defective tire tube caused the accident. Zurcher sued, inter alia, the manufacturer of the tube, Cheng Shin Rubber Industrial Company (“Cheng Shin”) from Taiwan and Asahi Metal Industry Company (“Asahi”), the Japanese manufacturer who made the tube's valve assembly. Subsequently, Cheng Shin filed a cross-claim against Asahi, believing that Asahi was fully aware that

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121. Id. at 481.
122. Id. at 482.
123. Id.
126. Asahi, 480 U.S. at 112 (O'Connor, J., plurality).
127. Id. at 105, 116.
128. Id. at 105 (O'Connor, J., plurality).
129. Id. at 105-06.
130. Id. at 106.
Cheng Shin sold its products, which incorporated Asahi’s products, in California. However, Asahi contended that California’s exercise of jurisdiction over it was invalid, because Asahi sold its valve assemblies to Cheng Shin and did not know that those sales could lead to the possibility of suit in California. The Supreme Court of California determined that California’s exercise of jurisdiction was appropriate, because it was foreseeable that Asahi’s product, which was a part in Cheng Shin’s product, would eventually be sold in California.

Justice O’Connor, writing for the plurality, did not find Asahi’s contacts with California sufficient for the state to have jurisdiction over Asahi, considering the burden on Asahi in forcing it to defend suit in California. The plurality held that the contacts between the non-resident defendant and the forum state must be the result of conduct by the defendant intentionally targeting the forum state. Justice O’Connor found that a defendant introducing its product into the stream of commerce, without other conduct that specifically targeted the forum state, was not intentional, forum-directed conduct. Additionally, Justice O’Connor listed several examples of actions that demonstrate intentional, forum-directed conduct, such as, marketing, advertising, sales solicitation, or selling products through a distributor in the forum state. The crux of Justice O’Connor’s argument was that knowledge alone that the stream of commerce could take a foreign defendant’s product into

131. Asahi, 480 U.S. at 106-07 (O’Connor, J., plurality). The only claim in this suit that the parties did not settle out of court was Cheng Shin’s cross-claim against Asahi. Id. at 106.

132. Id.

133. Id. at 108. The Superior Court of California initially ruled against Asahi, finding that Asahi should have been prepared to defend suit anywhere in the world, because it did business all over the world. Id. at 107. Subsequently, “[t]he Court of Appeal of the State of California issued a peremptory writ of mandate commanding the Superior Court to quash service of summons,” reasoning that it would not be fair to subject Asahi to jurisdiction based on foreseeability alone. Id. at 107-08.

134. Id. at 114, 116.

135. Id. at 112. Justice O’Connor specifically stated that the relationship “between the defendant and the forum State necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State.” Id. (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985); Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774 (1984)).

136. Asahi, 480 U.S. at 112 (O’Connor, J., plurality). Justice O’Connor argued that “[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.” Id.

137. Id.
the forum state was insufficient to provide that state with jurisdiction over the defendant.\footnote{138}

Given these principles, Justice O'Connor determined that Asahi took no action purposefully availing itself of the benefits and protection of California law.\footnote{139} Asahi had no offices, operations, marketing, or sales efforts in California.\footnote{140} Asahi only had knowledge that its product entered the stream of commerce.\footnote{141} Furthermore, Asahi's sole act of selling its tube valve assemblies to Cheng Shin did not lead to any circumstances where Asahi should have reasonably expected to defend suit in California.\footnote{142} Therefore, Justice O'Connor ruled that Asahi did not have the minimum contacts necessary to subject it to the jurisdiction of California.\footnote{143}

Justice Brennan authored a concurring opinion, agreeing that Asahi should not have been subject to jurisdiction in California because it would have been overly burdensome to force Asahi to defend suit in California, but disagreeing with Justice O'Connor's stream of commerce analysis.\footnote{144} Justice Brennan believed that placing a product into the stream of commerce, with knowledge that it would end up in the forum state, was enough to subject a non-resident defendant to jurisdiction in that state.\footnote{145} Justice Brennan argued that the stream of commerce was not a set of randomly occurring events, but a predictable path that products follow from manufacturer to consumer.\footnote{146} Additionally, Justice Brennan asserted that after a defendant's product makes its way through the stream of commerce to the consumer in the forum state, that defendant benefits from the sales revenue and protec-

\footnote{138. \textit{Id.} The plurality further asserted that "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." \textit{Id.} (emphasis added).}
\footnote{139. \textit{Id.}}
\footnote{140. \textit{Id.} at 112-13.}
\footnote{141. \textit{Asahi}, 480 U.S. at 106 (O'Connor, J., plurality).}
\footnote{142. See \textit{id.} at 112-13.}
\footnote{143. \textit{Id.} at 116.}
\footnote{144. \textit{Id.} (Brennan, J., concurring).}
\footnote{145. \textit{Id.} at 117. Supporting his argument, Justice Brennan provided that "most courts and commentators have found that jurisdiction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause, and have not required a showing of additional conduct." \textit{Id.}}
\footnote{146. \textit{Asahi}, 480 U.S. at 117 (Brennan, J., concurring). Specifically, Justice Brennan argued that "[t]he stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale." \textit{Id.}}
tion of that state's laws. This occurs whether or not the defendant took any action specifically targeting the forum state. Finally, Justice Brennan distinguished Asahi from World-Wide Volkswagen. Justice Brennan noted that in World-Wide Volkswagen, the defective product reached the forum state by the conduct of the consumer, while in Asahi, the defective product reached the forum state because the manufacturer placed it into the stream of commerce. Therefore, Justice Brennan believed that placing a product into the stream of commerce, with knowledge that the final product will be sold in the forum state, made it reasonable to compel a non-resident defendant to defend suit in that forum state.

V. THE FAILURE OF McINTYRE

McIntyre presented the Supreme Court with an opportunity to resolve an issue that has plagued jurisdictional analysis for over twenty-four years. Since 1987, courts have been in a state of flux and uncertainty, resulting from the questions presented by the Asahi decision. In McIntyre, the Supreme Court set out to resolve the jurisdictional questions left unanswered by the Asahi decision. Ultimately, the Court would provide no more clarity or direction than what existed immediately following Asahi in 1987.

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147. Id. Justice Brennan asserted that "[a] defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity." Id.

148. Id. Justice Brennan argued that the benefits of selling a product in the forum State "accrue regardless of whether that participant directly conducts business in the forum State, or engages in additional conduct directed toward that State." Id.

149. Id. at 120 (citing World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 306-07 (1980) (Brennan, J., dissenting)).

150. See id.

151. Asahi, 480 U.S. at 117 (Brennan, J., concurring).

152. J. McIntyre Mach., Ltd. v. Ncalestra, 131 S. Ct. 2780, 2785 (2011) (Kennedy, J., plurality) (citing Asahi, 480 U.S. at 107 (O'Conner, J., plurality)).


154. McIntyre, 131 S. Ct. at 2785 (Kennedy, J., plurality).

155. See id. at 2804 (Ginsburg, J., dissenting) ("I take heart that the plurality opinion does not speak for the Court . . . .")
A. The Missed Opportunity of McIntyre

The *Asahi* decision carried no majority opinion, leaving courts with two options to choose from when determining jurisdiction over a non-resident defendant.\(^\text{156}\) One option was Justice O'Connor's plurality opinion, which advocated the purposeful availment standard.\(^\text{157}\) The other option was Justice Brennan's concurring opinion, which supported a foreseeability approach.\(^\text{158}\) As a result of the schism in *Asahi*, courts were unable to uniformly apply one set of rules regarding a state's exercise of jurisdiction over a foreign defendant.\(^\text{159}\)

The stark conceptual differences between Justice O'Connor's opinion and Justice Brennan's opinion have led to an inconsistent application of the law.\(^\text{160}\) Many courts have chosen to apply Justice O'Connor's more stringent standard, which has made it more difficult for the forum state to exercise jurisdiction over a non-resident defendant in those jurisdictions.\(^\text{161}\) Some courts have chosen Justice Brennan's far less rigid standard, which has made the exercise of jurisdiction over an out-of-state defendant easier in those jurisdictions.\(^\text{162}\) Still, some courts have declined to choose between the two standards.\(^\text{163}\) *McIntyre* presented the Supreme Court with the opportunity to make such a choice.\(^\text{164}\) Despite this pivotal occasion to clarify the law from *Asahi* and the resulting discrepancies, the Supreme Court failed.

\[\text{156. Huppert, supra note 153, at 625.}\]
\[\text{157. Asahi, 480 U.S. at 112 (O'Connor, J., plurality).}\]
\[\text{158. Id. at 117 (Brennan, J., concurring).}\]
\[\text{159. Huppert, supra note 153, at 642. Huppert outlined the resulting disarray from Asahi, stating that, "in the wake of Asahi, lower courts have divided over the proper constitutional standard for the stream-of-commerce theory. Some have followed Brennan, some have followed O'Connor, and some have declined to decide between the two." Id.}\]
\[\text{160. Id.}\]
\[\text{161. Id. at 625. According to Huppert, five of the federal circuit courts have chosen to adopt Justice O'Connor's standard. Id. (citing Angela M. Laughlin, This Ain't the Texas Two Step Folks: Disharmony, Confusion, and the Unfair Nature of Personal Jurisdiction Analysis in the Fifth Circuit, 37 CAP. U. L. REV. 681, 727-28 app.A (2009)).}\]
\[\text{162. Id. At the same time, Huppert noted that three of the federal circuit courts have chosen Justice Brennan's standard. Id. (citing Laughlin, supra note 161, 727-28 app.A).}\]
\[\text{163. Id. Still, another five of the federal circuit courts have refused to decide between Justice O'Connor's and Justice Brennan's standard. Id. (citing Laughlin, supra note 161, 727-28).}\]
\[\text{164. J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2786 (2011) (Kennedy, J., plurality).}\]
The *McIntyre* decision was remarkably similar to *Asahi* and paralleled it in several aspects.\(^\text{165}\) Factually, both *McIntyre* and *Asahi* involved foreign manufacturers whose products caused injury in the United States, but who claimed that their contacts with the forum states were insufficient to subject them to jurisdiction.\(^\text{166}\) Additionally, in *McIntyre*, Justice Kennedy embraced and implemented Justice O'Connor's purposeful availment standard.\(^\text{167}\) Further, Justice Ginsburg, in her dissent, argued a less stringent jurisdictional standard, a position similar to that of Justice Brennan.\(^\text{168}\) Finally, with no majority opinion, the *McIntyre* Court left the state of jurisdictional law over a foreign defendant just as unclear as *Asahi*, with lower courts remaining free to continue to choose between Justice O'Connor's and Justice Brennan's standards.\(^\text{169}\)

**B. What the Court Should Have Done**

With the opportunity to bring clarity to an important and complex area of law, the Supreme Court should have adopted a jurisdictional standard in a majority opinion. The Court's failure to adopt any standard left the state of the law on jurisdiction over foreign defendants unstable and muddled.\(^\text{170}\) Additionally, the Supreme Court should not have adopted either Justice O'Connor's strict purposefully availed standard or Justice Brennan's lenient foreseeability standard. Careful review and consideration of *World-Wide Volkswagen* would have provided the Court with the appropriate precedent needed to decide the *McIntyre* case.\(^\text{171}\)

The most detrimental mistake that the Supreme Court made in *McIntyre* was its failure to assemble a majority to affirm or develop a constitutionally appropriate standard. Jurisdictional law is one of the most important facets of the American legal system, and to leave such an important matter in a state of flux is harmful to the country both legally and economically. Legally, *Asahi* and

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166. *McIntyre*, 131 S. Ct. at 2786 (Kennedy, J., plurality); *Asahi*, 480 U.S. at 105-07 (O'Connor, J., plurality).
167. *McIntyre*, 131 S. Ct. at 2790-91 (Kennedy, J., plurality).
McIntyre have left the law regarding jurisdiction over non-resident defendants unstable and complex. The split among the federal circuit courts demonstrates the complexity of the issue and the difficulty lower courts have when determining if they have jurisdiction over a foreign defendant. Economically, jurisdictional uncertainty has the potential to allow manufacturers to manipulate the jurisdictional system. For example, manufacturers may more frequently make use of independent distributors to sell their products in jurisdictions applying Justice O'Connor's standard. This would allow manufacturers to avoid litigation in markets where they derive an economic benefit. Alternatively, the same manufacturers may prevent their products from being sold in a jurisdiction utilizing Justice Brennan's approach. This would deny the manufacturers the opportunity to exploit that market for revenue and consumers the opportunity to purchase the manufacturers' products.

Neither Justice O'Connor's standard nor Justice Brennan's standard produce a satisfying result in many conceivable situations. It is difficult to argue that Justice O'Connor's standard comports with the notions of fair play and substantial justice when it would allow a non-resident defendant to elude jurisdiction simply by using an independent distributor. Additionally, it is conceivable that Justice O'Connor's standard may provide less incentive for manufacturers to work towards designing and building safer products, if all that is necessary to avoid jurisdiction is an independent distributor.

At the same time, under Justice Brennan's standard, it would not be fair to subject a defendant to jurisdiction where a defendant never intended to receive an economic benefit. Perhaps a manufacturer's product could end up in a far-reaching location by the

173. See id.
175. See, e.g., Huppert, supra note 153, at 661; Seidelson, supra note 174, at 579.
176. See, e.g., Huppert, supra note 153, at 661; Seidelson, supra note 174, at 579.
177. See Huppert, supra note 153, at 660.
178. Cf. id.
179. See, e.g., Huppert, supra note 153, at 660-61; Seidelson, supra note 174, at 579.
180. See J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780, 2794-95 (2011) (Ginsburg, J., dissenting); see also Huppert, supra note 153, at 661; Seidelson, supra note 174, at 579.
182. See McIntyre, 131 S. Ct. at 2790 (Kennedy, J., plurality).
unilateral action of a distributor. The modern economic climate has made the stream of commerce a complex entity, with the ability to take products to far-reaching places. Although a defendant’s product ends up in the forum state, it does not mean that the defendant intended for its product to end up in that state or to derive an economic benefit from that state.

Jurisdictional analysis and the stream of commerce theory are complex and challenging areas of law. The fact that the McIn-tyre court was unable to move forward from the position of the also divided Asahi Court demonstrates the multifaceted and divisive aspects of this area of the law. Therefore, there is good reason why the Supreme Court has been unable to adopt a standard with a majority of the Court. However, the fact that Justice O'Connor's and Justice Brennan’s standards often produce unsatisfying results should have signaled the Court to either develop an entirely new standard, or to look to other precedent for guidance. Had the Court looked closer at World-Wide Volkswagen, it would have found a workable approach grounded in precedent.

The Supreme Court should have looked to World-Wide Volkswagen to find the suitable standard to apply in cases involving jurisdiction over a non-resident defendant. In World-Wide Volkswagen, Justice White essentially argued that there were three factors required to assert jurisdiction over a non-resident defendant under a stream of commerce analysis: (1) placement of a defendant’s product into the stream of commerce; (2) knowledge that the product could reach the forum state; and (3) foreseeability or anticipation of suit in the forum state. Justice White’s opinion demon-

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183. Id. Note Justice Kennedy’s hypothetical regarding a small Florida farmer who would be forced to defend suit in Alaska due to the actions of a distributor under a foreseeability approach. Id.
184. See id. at 2791 (Breyer, J., concurring); Huppert, supra note 153, at 626.
185. See McIntyre, 131 S. Ct. at 2791; Huppert, supra note 153, at 626. Huppert described the stream of commerce as “deeper, faster, and more interconnected in the . . . years since Asahi.” Huppert, supra note 153, at 626.
187. See World-Wide Volkswagen, 444 U.S. at 295-98.
188. See id. Specifically, Justice White indicated that the knowledge, or “expectation,” that a defendant’s product could reach the forum state, in addition to placement of that product into the stream of commerce, was a requirement for exercising jurisdiction over a non-resident defendant, when he stated 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.” Id. at 297-98 (citing Gray v. Am. Radiator & Standard Sanitary Corp., 176 N.E.2d 761, 766 (1961)). In regards to foreseeability, Justice White argued that “‘foreseeability’ alone has never been a sufficient benchmark for person-
strated that each factor is necessary to assert jurisdiction over a foreign defendant, because no factor is mutually exclusive.\textsuperscript{189} In other words, without one factor, the other factors either cannot exist or are irrelevant.\textsuperscript{190}

The Court determined that although foreseeability alone was not enough to determine jurisdiction, it was not entirely irrelevant, because the defendant’s behavior and relationship with the forum state established whether the defendant should reasonably expect to face suit in that state.\textsuperscript{191} Importantly, Justice White argued that where a defendant anticipates suit in a state, that defendant has notice that it could be haled into court in that state, allowing the defendant to mitigate the burdens of defending suit.\textsuperscript{192}

Additionally, in \textit{World-Wide Volkswagen}, Justice White further provided that the unilateral or independent conduct of someone claiming a connection with the defendant cannot subject a defendant to jurisdiction.\textsuperscript{193} Under \textit{World-Wide Volkswagen}, the unilateral act exception emphasized the idea that a defendant should not be subject to jurisdiction in a state where it could not reasonably anticipate litigation.\textsuperscript{194} Conceptually, this notion is crucial because the jurisdictional standard set forth in \textit{World-Wide Volkswagen} tends to be more permissive, in that it would be easier to get jurisdiction over a defendant under \textit{World-Wide Volkswa-

\begin{itemize}
  \item \textsuperscript{189} \textit{See id.}
  \item \textsuperscript{190} \textit{See id.}
  \item \textsuperscript{191} \textit{Id. at 295, 297-98.}
  \item \textsuperscript{192} \textit{World-Wide Volkswagen}, 444 U.S. at 297. The ways in which a defendant can mitigate the risk of suit include purchasing insurance, passing on increased costs to customers, or avoiding any relationship with a state altogether. \textit{Id.}
  \item \textsuperscript{193} \textit{Id. at 298 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)).}
  \item \textsuperscript{194} \textit{Id. at 297-98.}
\end{itemize}
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As opposed to Justice O'Connor's standard. However, the unilateral act exception allays the concerns Justice Kennedy articulated, regarding the possibility of a defendant facing suit in a far-reaching state as a result of the actions of a large distributor.

World-Wide Volkswagen provides an appropriate balance between Justice O'Connor's and Justice Brennan's standards. After a foreign defendant puts a product into the stream of commerce, both knowledge that the product could reach the forum state and the foreseeability of suit in the forum state are necessary to subject that defendant to jurisdiction in that state. This notion prevents a manufacturer from being forced to defend suit in a state that the manufacturer never intentionally targeted and where only one of its products ended up. At the same time, a manufacturer cannot escape jurisdiction in a state where its products cause harm, simply by utilizing an independent distributor. This combination of factors, which courts should examine before the exercise of jurisdiction over non-resident defendants, produces the most equitable result.

Both Justice O'Connor's standard and Justice Brennan's standard have the potential to produce rather undesirable results. Nevertheless, the most undesirable result is having no uniform standard to apply whatsoever. The already existing precedent from World-Wide Volkswagen provides a workable hybrid of Justice O'Connor's and Justice Brennan's standards, which the Court could have reaffirmed in an effort to simplify and clarify the troubling state of jurisdictional law. Therefore, in McIntyre, a majority of the Court should have reaffirmed World-Wide Volkswagen and done away with the split opinion of Asahi.

C. The Effect of McIntyre on the Modern Economic World

Moving forward, the state of the law on non-resident jurisdiction will likely remain unchanged. Much like Asahi, McIntyre only provided a plurality opinion leaving courts free, once again, to
adopt Justice O'Conner's standard, Justice Brennan's approach, or neither of the two. In a time of harsh economics, where business abhors uncertainty, it is a shame that the Supreme Court added to that uncertainty, with its inability to provide a workable out-of-state defendant jurisdictional standard. Hopefully, another twenty-four years will not pass before the Supreme Court has the opportunity to tackle this seemingly insurmountable problem.

Richard B. Koch, Jr.

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200. See Huppert, supra note 153, at 642.