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Burger King Corp. v. Rudzewicz: Flexibility v. Predictability in In Personam Jurisdiction

Increasing interstate commercial activity has spurred a corresponding rise in the volume of multistate litigation.¹ Plaintiffs frequently ask courts to invoke the long-arm statutes² of their domiciliary states to assert jurisdiction over non-resident defendants.³ Deciding what types of commercial contacts between a defendant and a forum state satisfy the constitutional standards of due process has caused considerable confusion for state and federal courts. Recent Supreme Court decisions have failed to dispel this confusion or to supply interstate businesses with guidelines for predicting their amenability to suit in foreign courts.⁴

In *World-Wide Volkswagen Corp. v. Woodson*⁵ the United States Supreme Court stated that "[t]he Due Process Clause, by ensuring the 'orderly administration of the laws,' gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."⁶ Current case law interpreting long-arm statutes and due process requirements, however, offers only feeble assistance in predicting jurisdictional decisions. As Justice White has noted, such uncertainty in predicting where a particular enterprise may be required to litigate "may well have a disruptive effect on commercial relations in which certainty of result is a prime objective."⁷ Commentators⁸ and courts⁹ have argued that due process analysis requires a balancing of the interests of the plaintiff, the defendant, and the forum state to determine a fair and reasonable result. Such a flexible standard would require courts to consider the defendant's economic benefit in conducting activities in the forum state, the foreseeability of litigation in the forum state, the state's

1. See 4 C. WRIGHT & A. MILLER, *FEDERAL PRACTICE & PROCEDURE* § 1069, at 263 (1969).

2. Long-arm statutes specify situations in which state courts may assert jurisdiction over non-resident defendants. See, e.g., FLA. STAT. § 48.193 (Supp. 1984).

3. State statutes typically allow assertions of jurisdiction over persons who have committed torts within the state, breached a contract within the state, solicited business within the state, or advertised within the state. 4 C. WRIGHT & A. MILLER, *supra* note 1, § 1068.

4. See *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co.*, 445 U.S. 907, 910-11 (1980) (White & Powell, JJ., dissenting), *denying cert. to* 597 F.2d 596 (7th Cir. 1979). In *Lakeside* the United States Court of Appeals for the Seventh Circuit denied jurisdiction based on a single contract between the parties.

5. 444 U.S. 286 (1980).

6. *Id.* at 297 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

7. *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co.*, 445 U.S. 907, 911 (1980) (White & Powell, JJ., dissenting), *denying cert. to* 597 F.2d 596 (7th Cir. 1979).

8. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 caveat a, para. 4 (1971); Carrington & Martin, *Substantive Interests and the Jurisdiction of State Courts*, 66 MICH. L. REV. 227, 230-31 (1967); *Developments in the Law—State-Court Jurisdiction*, 73 HARV. L. REV. 909, 924 (1960).

9. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980); *Kulko v. Superior Court*, 436 U.S. 84, 92 (1978); *Shaffer v. Heitner*, 433 U.S. 186, 211 (1977); *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957); *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945); *Nova Biomedical Corp. v. Moller*, 629 F.2d 190, 193 n.3 (1st Cir. 1980); *Caesar's World, Inc. v. Spencer Foods, Inc.*, 498 F.2d 1176, 1180 (8th Cir. 1974); *Wright v. Yackley*, 459 F.2d 287, 290 n.7 (9th Cir. 1972); *Chancellor v. Lawrence*, 501 F. Supp. 997, 1001 (N.D. Ill. 1980).

interest in adjudicating the claim, and the plaintiff's interest in choosing the forum.¹⁰

In *Burger King Corp. v. Rudzewicz*¹¹ the Court applied a flexible balancing of interests test to subject defendant, a Michigan resident, to in personam jurisdiction in Florida.¹² The Court expressly rejected the application of a "mechanical" test in favor of a "highly realistic" approach that permits assertion of jurisdiction only after considering a number of factors.¹³ Justice Brennan, in his majority opinion, offered language that attached new constitutional relevance to plaintiff- and forum-based interests.¹⁴ Although courts may continue to stress defendant-based contacts as the principal basis for asserting nonresident jurisdiction,¹⁵ an upgraded constitutional status for plaintiff and forum contacts may allow courts to assert jurisdiction over foreign defendants who would have lacked sufficient minimum contacts with the forum under previous due process interpretations.¹⁶ This Note analyzes the *Burger King* decision in relation to previous jurisdictional decisions and explores the contradictions inherent in applying flexible standards to achieve predictable jurisdictional results.

Burger King's relationship to its franchisees was described as follows by the Supreme Court:

Burger King Corporation is a Florida corporation whose principal offices are in Miami. . . . Burger King conducts approximately 80% of its business through a franchise operation that the corporation styles the "Burger King System"—"a comprehensive restaurant format and operating system for the sale of uniform and quality food products." . . . Burger King licenses its franchisees to use its trademarks and service marks for a period of 20 years and leases standardized restaurant facilities to them for the same term. . . . [Franchisees] receive market research and advertising assistance; ongoing training in restaurant management; and accounting, cost control, and inventory-control guidance.¹⁷

The Supreme Court also noted that Burger King extends to franchisees the bene-

10. Note, *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co.: Inflexible Application of Long-Arm Jurisdiction Standards to the Nonresident Purchaser*, 75 NW. U.L. REV. 345, 353 (1980).

11. 105 S. Ct. 2174 (1985), *rev'g* *Burger King Corp. v. MacShara*, 724 F.2d 1505 (11th Cir. 1984).

12. *Id.* at 2189-90.

13. *Id.* at 2185 (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945); *Hoopeston Canning Co. v. Cullen*, 318 U.S. 313, 316 (1943)). The Court mentioned such factors as prior negotiations, contemplated future consequences, terms of the contract, and the parties' actual course of dealing. *Id.* at 2186.

14. *Id.* at 2184.

15. *Stuart v. Spademan*, 772 F.2d 1185 (5th Cir. 1985); *Madison Consulting Group v. South Carolina*, 752 F.2d 1193 (7th Cir. 1985); *Buckeye Ass'n v. Fila Sports, Inc.*, 616 F. Supp. 1484 (D. Mass. 1985).

16. See, e.g., *Hanson v. Denckla*, 357 U.S. 235 (1958).

17. *Burger King*, 105 S. Ct. at 2178 (quoting Burger King's standard Franchise Agreement). Franchising is a method of distribution in which companies lease trademarks to smaller entities to avoid the problems and responsibilities of a larger integrated system. See generally H. BROWN, *FRANCHISING: REALITIES AND REMEDIES* (2d ed. 1978) (discussing relationship between franchisee and franchisor and the opportunities for abuses).

fit of its national reputation.¹⁸

John Rudzewicz and Brian MacShara jointly applied for a Burger King franchise in late 1978 with Burger King's Michigan district office.¹⁹ The relationship between Rudzewicz, MacShara, and Burger King Corporation was described by the United States Court of Appeals for the Eleventh Circuit:

John Rudzewicz and Brian MacShara decided to purchase a Burger King restaurant franchise near Detroit, Michigan. . . .

Rudzewicz, a senior partner in a Michigan accounting firm, agreed to secure investment capital while MacShara was to handle day-to-day operations. . . . Both were and are residents and citizens of the state of Michigan.

. . . During the course of negotiations, which lasted five months, the Michigan district office was Burger King's sole representative in dealings with Rudzewicz and MacShara. H.G. Hoffman, the Michigan district manager, evaluated their proposal and wrote them on the company's behalf to convey approval of their franchise application. . . .

At the conclusion of each round of Michigan negotiations, the Miami office mailed Rudzewicz printed documents for his signature. The documents, once signed, were returned to Burger King headquarters in Miami for completion. . . .

After granting initial approval, Burger King decided to schedule the grand opening for May 31, 1979, the close of its fiscal year, to ensure that the sale appeared in the company's year-end statement. On May 29, the day the final agreements arrived for signature, Rudzewicz and MacShara finally learned what rent Burger King expected them to pay. The figure was far in excess of the amount Rudzewicz had projected. He telephoned Hoffman and demanded a lower figure. . . . If Rudzewicz was unwilling to accept the figure Burger King proposed, Hoffman [informed Rudzewicz that] he was always free to decline the franchise, rip out the fixtures he had installed at his own expense, and resell them at a loss. . . .

In the lease agreement, Burger King agreed to lease the Drayton Plains store for a term of twenty years. Rent was set at a monthly minimum of \$4,166.66 in the first two years and \$5,286.58 thereafter or 8 1/2% of monthly gross sales, whichever was greater. The franchisees were required to remit rent, as well as royalties, tax refunds and other designated fees to Burger King headquarters in Miami.

In return Burger King promised use of the Burger King mark, architectural advice, advertising services, financial counseling, and operations consultation. At trial, an executive from the Miami headquarters office testified that the Michigan district office was administratively responsible for all of the supervision, advertising and consultation due under the contract.²⁰

18. *Burger King*, 105 S. Ct. at 2178.

19. *Id.* at 2179.

20. *Burger King Corp. v. MacShara*, 724 F.2d 1505, 1506-07 (11th Cir. 1984) (MacShara,

Soon after opening, the store fell behind in its franchise payments. Burger King headquarters notified defendants of their default, and negotiations began among the franchisees, the Birmingham district office, and the Miami headquarters.²¹ After prolonged, unsuccessful rescheduling discussions, headquarters terminated the franchise agreement and ordered the franchisees to vacate the premises.²² They refused and continued operations as a Burger King restaurant.²³

Burger King sued Rudzewicz and MacShara in the United States District Court for the Southern District of Florida for breach of contract and trademark infringement.²⁴ Defendants appeared specially to contest jurisdiction.²⁵ The district court held that defendants were subject to personal jurisdiction in Florida for actions arising out of the franchise agreements.²⁶ Subsequently, Rudzewicz and MacShara filed an answer and a counterclaim²⁷ seeking damages under the Michigan Franchise Investment Act.²⁸ After a three-day bench trial, judgment was entered for Burger King on both the contract claim and the counterclaim.²⁹ Damages of \$228,875.40, court costs, and attorneys fees were awarded to Burger King.³⁰

Rudzewicz appealed the judgment to the United States Court of Appeals for the Eleventh Circuit on both jurisdictional and substantive grounds.³¹ In deciding that Rudzewicz was not subject to personal jurisdiction in Florida, the appellate court relied primarily on the Supreme Court's decision in *Hanson v. Denckla*,³² which premised the assertion of personal jurisdiction on purposeful activity by the defendant that would lead the defendant to anticipate suit in

Rudzewicz's partner, did not appeal his judgment from the district court), *rev'd sub nom.* Burger King Corp. v. Rudzewicz, 105 S. Ct. 2174 (1985).

The lease called for a minimum annual rent consisting of 13.4% of 'construction costs.' At trial, Rudzewicz testified that Michigan Burger King officials estimated construction costs would equal approximately \$180,000. . . . Rent calculated on a base of \$180,000 would equal \$2,010 per month. Rudzewicz boosted his projection to \$2,500 [as his expected rent].

Id. at 1507 n.4. The figure Burger King submitted was based on the estimated cost of a newly constructed facility, not on the renovation of an already standing restaurant. *Id.*

21. *Burger King*, 105 S. Ct. at 2179-80.

22. *Id.* at 2180.

23. *Id.*

24. *Burger King*, 724 F.2d at 1508. Federal subject matter jurisdiction was based upon diversity of citizenship. Diversity jurisdiction gives the federal district courts original jurisdiction over all civil actions in which the matter in controversy exceeds the sum or value of \$10,000 and is between citizens of different states. 28 U.S.C. § 1332(a) (1982).

25. *Burger King*, 105 S. Ct. at 2180.

26. *Id.* Florida's long-arm statute is codified at FLA. STAT. § 48.193 (Supp. 1984). It provides that the Florida courts may assert personal jurisdiction over any person who breaches "a contract in the state by failing to perform acts required by the contract to be performed in this state." *Id.*

27. *Burger King*, 105 S. Ct. at 2180.

28. Michigan's Franchise Investment Act is codified at MICH. COMP. LAWS § 19.854(1)-(45) (1981).

29. *Burger King*, 105 S. Ct. at 2180.

30. *Burger King*, 724 F.2d at 1508.

31. Because the court of appeals decided the case on jurisdictional grounds, it did not reach the substantive grounds. *Id.*

32. 357 U.S. 235 (1958).

another forum.³³ The court stated, "To Rudzewicz, the Michigan office was for all intents and purposes the embodiment of Burger King. He had reason to believe that his working relationship with Burger King began and ended in Michigan, not at the distant and anonymous Florida headquarters."³⁴ A choice of law provision in the franchise contract deeming Florida law controlling was not found to be dispositive for purposes of jurisdiction.³⁵

The United States Supreme Court granted certiorari and reversed the court of appeals.³⁶ Although the Court noted that considerations other than a defendant's purposeful activity may "sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required,"³⁷ it based its decision primarily on the ground that Rudzewicz's purposeful activity in the forum state had rendered him amenable to suit in Florida. As Justice Brennan wrote, "Rudzewicz deliberately 'reach[ed] out beyond' Michigan and negotiated with a Florida corporation for the purchase of a long-term franchise and the manifold benefits that would derive from affiliation with a nationwide organization."³⁸ The Court emphasized that when a contract is the contact relied on to assert jurisdiction, factors such as prior negotiations, contemplated future consequences, terms of the contract, and the parties' actual course of dealing must be evaluated to determine whether the defendant purposefully established minimum contacts with the forum.³⁹ The Court, however, clearly stated that a contract *alone* is insufficient to establish jurisdiction;⁴⁰ the nonresident party must have additional contacts with the forum state.

To subject a nonresident defendant to in personam jurisdiction, a court must consider two factors. First, the court must find authority for asserting jurisdiction in the long-arm statute of the forum state.⁴¹ Second, the court must find that asserting jurisdiction over the defendant would not violate constitutional standards of due process guaranteed to litigants by the fourteenth amendment.⁴²

33. *Burger King*, 724 F.2d at 1509-13.

34. *Id.* at 1511.

35. *Id.* at 1511-12 n.10. The court of appeals relied on *Hanson v. Denckla*, which concluded that the use of a particular state's law for choice of law purposes does not necessarily confer personal jurisdiction on the courts of that state. In *Hanson* a determination whether Delaware or Florida trust law should be applied was deemed irrelevant to the question of jurisdiction. However, the trust agreement did not contain a choice of law provision that might have served notice of possible suit in a foreign jurisdiction, as was the case in *Burger King*. *Hanson*, 357 U.S. at 253-54.

36. *Burger King*, 105 S. Ct. at 2181.

37. *Id.* at 2184.

38. *Id.* at 2186 (quoting *Travelers Health Ass'n v. Virginia*, 339 U.S. 643, 647 (1950)).

39. *Id.*

40. *Id.* at 2185.

41. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 78. For additional discussion of state long-arm statutes, see Comment, *Illinois Long Arm Jurisdiction: The Implications of a "Fixed Meaning,"* 32 DE PAUL L. REV. 635 (1983) (discussing the restrictive language of Illinois' long-arm statute in relation to the due process concept); Note, *The Texas Long-Arm Statute After Hall v. Helicopteros Nacionales de Colombia, S.A.: Will Texas Become A Magnet Forum?*, 20 HOUS. L. REV. 1221 (1983) (discussing the potential broadening of Texas' long-arm jurisdiction by the *Hall* decision).

42. See Comment, *Constitutional Limitations on State Long-Arm Jurisdiction*, 49 U. CHI. L. REV. 156, 157 (1982).

The Supreme Court established the modern due process requirement for exercise of long-arm jurisdiction in *International Shoe Co. v. Washington*,⁴³ holding that "due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" ⁴⁴ *International Shoe* had a profound effect on state courts because it significantly extended the circumstances under which an out-of-state defendant could be forced to defend in a foreign jurisdiction.⁴⁵ The focus of jurisdictional inquiry was thus shifted from physical presence in the forum to fairness.⁴⁶ Courts were thereafter required to examine the relationship between the defendant and the forum state in order to determine the existence of in personam jurisdiction.⁴⁷

The minimum contacts test for due process established in *International Shoe* was stretched to its farthest reaches in *McGee v. International Life Insurance Co.*⁴⁸ In *McGee* the Court upheld the exercise of jurisdiction by a California state court over a Texas-based insurance company on the basis of a single insurance contract.⁴⁹ A unanimous Court stated, "[A] trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other non-residents."⁵⁰ An expanding interstate economy and a corresponding decline in the burden of defending in a foreign jurisdiction were noted as justifications for enlarging the permissible exercise of jurisdiction.⁵¹ The Court cited the strong state interest in adjudicating the claim, manifested in a California statute dealing specifically with the assertion of jurisdiction over

43. 326 U.S. 310 (1945). In *International Shoe* the state of Washington attempted to assert jurisdiction over International Shoe Company to assess unemployment compensation tax obligations against the company. Although defendant was incorporated in Delaware and had its principal place of business in Missouri, the Court concluded that Washington could validly assert jurisdiction over defendant based on the activities of defendant's salespersons in the State. These activities were deemed sufficient to meet the minimum contacts required for an assertion of jurisdiction over a nonresident defendant. For a general discussion of *International Shoe* and its impact on jurisdictional decisions, see Currie, *The Growth of the Long-Arm: Eight Years of Extended Jurisdiction in Illinois*, 1963 U. ILL. L.F. 533; Nordenberg, *State Courts, Personal Jurisdiction and the Evolutionary Process*, 54 NOTRE DAME LAW. 587, 593-96 (1979).

44. *International Shoe*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

45. See Nordenberg, *supra* note 43, at 596.

46. Comment, *Minimum Contacts and Contracts: The Breached Relationship*, 40 WASH. & LEE L. REV. 1639 (1983). The Court abandoned the territorial restrictions on state jurisdiction it had embraced in *Pennoyer v. Neff*, 95 U.S. 714 (1877). Under *Pennoyer* a state court could exercise jurisdiction over only those individuals found within its boundaries. Courts attempting to expand their jurisdictional reach over nonresident defendants had to resort to various legal fictions such as "presence," "consent," and "doing business." See Kurland, *The Supreme Court, The Due Process Clause, and the In Personam Jurisdiction of State Courts from Pennoyer to Denckla: A Review*, 25 U. CHI. L. REV. 569 (1958).

47. *Mouzvires v. Baxter*, 434 A.2d 988, 995 (D.C. 1981), *cert. denied*, 455 U.S. 1006 (1982).

48. 355 U.S. 220 (1957).

49. *Id.* at 223-24. In *McGee* a California resident bought a life insurance policy from an Arizona corporation, naming petitioner as beneficiary. A Texas corporation later assumed the obligations of the Arizona corporation. The insured sent premiums by mail from California to Texas. Neither corporation had any other business contact in California. When petitioner sent proof of the insured's death to respondent, it refused to pay the claim. *Id.*

50. *Id.* at 222.

51. *Id.* at 222-23.

nonresident insurance companies, as a consideration in determining whether jurisdiction was proper.⁵² Because the Court considered state interests in determining jurisdiction, *McGee* implicitly broadened *International Shoe* by allowing factors other than the defendant's conduct to be considered in determining the existence of minimum contacts.⁵³

In the following term the Court decided *Hanson v. Denckla*,⁵⁴ in which a Florida probate court attempted to assert jurisdiction over a Delaware corporate trustee, which was found to be an indispensable party.⁵⁵ The Court declared that "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."⁵⁶ Although the Court noted that application of such a rule might vary with the "quality and nature" of the defendant's conduct,⁵⁷ it stressed that there must 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."⁵⁸ The *Hanson* Court thus returned the focus of jurisdictional inquiry to the relationship between the defendant and the forum. Nevertheless, from the announcement of *Hanson* in 1958 until the Court's next jurisdictional inquiry in 1977, "the case's authority was increasingly regarded as suspect, and most of its principles had either been discounted or ignored."⁵⁹

To dispel the confusion caused by the apparently contradictory opinions in *Hanson* and *McGee*,⁶⁰ the Court decided four major jurisdiction cases between 1977 and 1980.⁶¹ In *Shaffer v. Heitner*⁶² plaintiff asserted jurisdiction based on defendant's ownership of property within the forum.⁶³ The mere presence of

52. *Id.* at 223-24.

53. Note, *Long-Arm Jurisdiction in Commercial Litigation: When Is a Contract a Contract?*, 61 B.U.L. REV. 375, 378 (1981).

54. 357 U.S. 235 (1958).

55. In *Hanson*, a Pennsylvania resident created a trust in Delaware with a Delaware trustee. The Pennsylvania resident later moved to Florida where she exercised her power of appointment and received income from the trust until she died. Despite transactions involving the trust in Florida, the Court found that the trustee did not conduct activities in Florida that could amount to constitutionally reasonable contacts. *Id.* at 253. For a general discussion of *Hanson*, see Scott, *Hanson v. Denckla*, 72 HARV. L. REV. 695 (1959).

56. *Hanson*, 357 U.S. at 253.

57. *Id.*

58. *Id.*

59. Louis, *The Grasp of Long-Arm Jurisdiction Finally Exceeds its Reach: A Comment on World-Wide Volkswagen Corp. v. Woodson and Rush v. Savchuk*, 58 N.C.L. REV. 407, 412 (1980) (Although *Hanson* explicitly limited due process inquiry to defendant contacts, courts continued to give weight to forum and plaintiff interests in determining whether due process requirements were met.).

60. "The clash between *McGee* and *Hanson* is not primarily a clash between 'results.' . . . The true clash between the cases arises from their conflicting descriptions of the test to be applied and the conflicting views of the constitutional limitations in state court jurisdiction which these descriptions reflect." Nordenberg, *supra* note 43, at 613 n.136.

61. *Rush v. Savchuk*, 444 U.S. 320 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978); *Shaffer v. Heitner*, 433 U.S. 186 (1977).

62. 433 U.S. 186 (1977).

63. *Id.* at 213. *Shaffer* involved a shareholder's derivative suit in Delaware against nonresident officers and directors of Greyhound Corporation. The suit was based on a Delaware statute that permits Delaware courts to assert jurisdiction by sequestering property of the defendant located in

property was deemed insufficient to confer jurisdiction, and the Court reaffirmed the importance of defendant-initiated contacts in satisfying due process requirements.⁶⁴

Similarly, in *Kulko v. Superior Court*⁶⁵ the majority opinion reemphasized that the due process clause limits a state court's ability to subject nonresidents to personal judgments.⁶⁶ Although state interests were found relevant to the existence of minimum contacts, they were deemed insufficient in themselves to support jurisdiction.⁶⁷ Although *Shaffer* and *Kulko* seemed to reassert the need for an articulable defendant-forum nexus, they failed to halt the march towards unlimited long-arm jurisdiction.⁶⁸

In *World-Wide Volkswagen* the Court again stressed the importance of the defendant's conduct in assessing minimum contacts. The Court considered such emphasis necessary to preserve the dual functions of the minimum contacts doctrine: (1) to protect "the defendant from the burdens of litigating in a distant or inconvenient forum,"⁶⁹ and (2) "to ensure that the States do not . . . reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system."⁷⁰ Recognizing the important role of due process limitations in ensuring predictability in the legal system,⁷¹ the Court denied jurisdiction, holding that when a state asserts jurisdiction over a nonresident defendant, "the defendant's conduct and connection with the forum [must be] such that [it might]

Delaware. Defendant, who owned stock that was deemed constructively present in Delaware under state law, claimed that the sequestration statute violated the due process clause of the fourteenth amendment. *Id.* at 189.

64. *Id.* at 212-16. The Court stated that the presence of the stock in Delaware did "not demonstrate that appellants have purposefully avail[ed themselves] of the privilege of conducting activities within the forum state, . . . [a]ppellants have simply had nothing to do with the State of Delaware." *Id.* at 216. For a general discussion of *Shaffer*, see Lacy, *Personal Jurisdiction and Service of Summons After Shaffer v. Heitner*, 57 OR. L. REV. 505 (1978); Vernon, *Single-Factor Bases of In Personam Jurisdiction—A Speculation on the Impact of Shaffer v. Heitner*, 1978 WASH. U.L.Q. 273.

65. 436 U.S. 84 (1978). In *Kulko* California attempted to assert jurisdiction over defendant, a New York resident, who had allowed his daughter to go to California to live with her mother. *Id.* at 86-88. The California court held that by permitting his daughter to move to California, defendant had "purposely availed himself of the benefits and protections of the laws of California" and had caused an economic impact in California. *Id.* at 89 (citing *Kulko v. Superior Court*, 19 Cal. 3d 514, 521-22, 564 P.2d 353, 356, 138 Cal. Rptr. 586, 589 (1977), *rev'd*, 436 U.S. 84 (1978)).

66. *Id.* at 98-100.

67. *Id.* For a general discussion of *Kulko*, see Note, *The Long-Arm Reach of the Courts Under the Effect Test After Kulko v. Superior Court*, 65 VA. L. REV. 175 (1979).

68. Louis, *supra* note 59, at 423.

69. 444 U.S. at 292.

70. *Id.* at 291-92. In *World-Wide Volkswagen* a New York couple purchased a car in New York from a local dealer. While driving through Oklahoma, the owners were severely injured when the car was struck from the rear and burst into flames. They filed a products liability suit in Oklahoma against the manufacturer and the importer, as well as the regional and local distributors of the car. World-Wide Volkswagen Corporation contested jurisdiction, but the Oklahoma Supreme Court upheld jurisdiction under Oklahoma's long-arm statute. *World-Wide Volkswagen Corp. v. Woodson*, 585 P.2d 351 (Okla. 1978), *rev'd*, 444 U.S. 286 (1980). The Oklahoma court did not address the due process implications of its assertion of jurisdiction, but cited the foreseeability of the automobile traveling through Oklahoma as grounds for jurisdiction. For a general discussion of *World-Wide Volkswagen*, see Louis, *supra* note 59; Note, *World-Wide Volkswagen Corp. v. Woodson: Beyond the Long-Arm's Reach*, 34 ARK. L. REV. 316 (1980); Note, *World-Wide Volkswagen Corporation v. Woodson: Minimum Contacts in a Modern World*, 8 PEPPERDINE L. REV. 783 (1981).

71. *World-Wide Volkswagen*, 444 U.S. at 297.

reasonably anticipate being haled into court there."⁷² The dissent's argument that the foreseeable effects of a defendant's conduct should be sufficient to establish minimum contacts⁷³ was rejected on the ground that mere "'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process clause."⁷⁴

In *Rush v. Savchuk*⁷⁵ plaintiff sought to garnish an insurance obligation owed to a nonresident defendant by an insurance company. Although the company transacted business in the forum,⁷⁶ the Court found no jurisdiction, rejecting plaintiff's attempt to "shift the focus of the inquiry from the relationship among the defendant, the forum, and the litigation to that among the plaintiff, the forum, the insurer and the litigation."⁷⁷ The Court reemphasized that plaintiff interests might be considered only after a defendant has been shown to have "certain judicially cognizable ties" with the forum.⁷⁸

Due to the single contract nature of *Burger King*, it is helpful to review how courts have treated single contract jurisdictional cases in the past. Although the circuits examining this question have recognized the need to comply with due process standards, differing interpretations of the Supreme Court's opinions on the subject persist.⁷⁹ Circuits favoring expansive jurisdiction have looked to *McGee* for support, and those viewing minimum contacts as a means of preserving

72. *Id.*

73. *Id.* at 313-17 (Marshall, J., dissenting).

74. *Id.* at 295; see also *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F.2d 502, 507 (4th Cir. 1956) (court found no jurisdiction over New York corporation whose only contact with forum was sending defective goods to North Carolina corporation; court held that to allow jurisdiction would be a "deterrent to the free flow of commerce between the states"); *Uppgren v. Executive Aviation Servs., Inc.*, 304 F. Supp. 165, 170-71 (D. Minn. 1969) (Minnesota courts could not assert jurisdiction over a small Illinois helicopter manufacturer for damages due to crash. Court held corporation was not a mass producer who should reasonably anticipate product entering interstate commerce.). But see *Reilly v. Phil Tolkan Pontiac, Inc.*, 372 F. Supp. 1205 (D.N.J. 1974) (upholding jurisdiction over a Wisconsin car dealer for damages sustained in New Jersey due to defective car jack).

75. 444 U.S. 320 (1980). See generally Note, *Rush v. Savchuk: Is the Seider Spoiled or Just Getting Harder?*, 9 HOFSTRA L. REV. 247 (1980) (discussing the effect of *Rush* on *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966)).

76. *Rush*, 444 U.S. at 322-23. Plaintiff was injured while a passenger in defendant's automobile in Indiana. After moving to Minnesota, plaintiff filed suit in Minnesota state court. Because defendant had no contacts with Minnesota to support in personam jurisdiction, plaintiff attempted to obtain quasi in rem jurisdiction by garnishing the obligation of defendant's insurance company to defend and indemnify defendant in connection with the suit. The insurance company did business in Minnesota, although the specific policy was entered into in Indiana. *Id.* at 320.

77. *Id.* at 332. The Court struck down the jurisdictional fiction created in *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966), which permitted courts to assert jurisdiction by attaching a nonresident defendant's insurance policy issued by an insurance company doing business within the forum. The *Seider* concept was based largely on *Harris v. Balk*, 198 U.S. 215 (1905), which recognized that the situs of a debt travels with a debtor. The decision in *Shaffer* overruled *Balk*, thus undercutting the basis for *Seider*. *Shaffer*, 433 U.S. at 212 n.39. *Rush* therefore followed logically from *Shaffer*. See Note, *Shaffer v. Heitner: New Constitutional Questions Concerning Seider v. Roth*, 6 HOFSTRA L. REV. 393 (1978).

78. *Rush*, 444 U.S. at 332-33.

79. See *Ripple & Murphy, World-Wide Volkswagen Corp. v. Woodson: Reflections on the Road Ahead*, 56 NOTRE DAME LAW. 65, 78-81 (1980); see also *infra* notes 81-99 and accompanying text (discussing differing jurisdictional analyses applied by United States Courts of Appeals for the Sixth and Seventh Circuits).

interstate federalism traditionally have relied on *Hanson*.⁸⁰

In *In-Flight Devices Corp. v. Van Dusen Air, Inc.*⁸¹ the United States Court of Appeals for the Sixth Circuit followed the three-tiered jurisdictional analysis announced in *Southern Machine Co. v. Mohasco Industries, Inc.*⁸² and found minimum contacts from a single contract between plaintiff and defendant. The Court stated:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum to make the exercise of jurisdiction over the defendant reasonable.⁸³

In *In-Flight* defendant Van Dusen, a Minnesota corporation, contracted with plaintiff In-Flight, an Ohio corporation, for the purchase of airplane parts at a cost in excess of \$200,000.⁸⁴ Contract negotiations took place in Ohio, and defendant had a portion of the order shipped to its wholly-owned subsidiary in that state.⁸⁵ In-Flight filed suit in Ohio against Van Dusen for payment of the purchase price.⁸⁶ The United States District Court for the Southern District of Ohio dismissed the suit for lack of personal jurisdiction.⁸⁷ The United States Court of Appeals for the Sixth Circuit reversed and remanded the case to the district court.⁸⁸

The appellate court reasoned that the making of a substantial business contact with a corporation in another jurisdiction was adequate to satisfy the "purposeful" test of *Southern Machine*.⁸⁹ Applying a *McGee*-style analysis, the court in *In-Flight* stressed plaintiff's activities in the forum state.⁹⁰ The court determined that Van Dusen should have recognized that the airplane parts would be manufactured in Ohio and that such recognition amounted to a significant contact which would ultimately affect the Ohio economy. Thus, the court concluded that the exercise of jurisdiction was fair under the circumstances.⁹¹

In *Lakeside Bridge & Steel Co. v. Mountain State Construction Co.*,⁹² another single contract jurisdictional case, the United States Court of Appeals for the Seventh Circuit examined defendant's activities in the forum that sought to

80. Comment, *supra* note 46, at 1653-60.

81. 466 F.2d 220 (6th Cir. 1972).

82. 401 F.2d 374 (6th Cir. 1968).

83. *In-Flight*, 466 F.2d at 226 (quoting *Southern Mach.*, 401 F.2d at 381).

84. *Id.* at 222.

85. *Id.* at 223.

86. *Id.* at 223-24.

87. *Id.* at 222.

88. *Id.* at 236.

89. *Id.* at 227; see also *Simpson Timber Co. v. Great Salt Lake Minerals & Chems. Corp.*, 296 F. Supp. 243 (D. Or. 1969) (making of a substantial contract was sufficient purposeful availment).

90. Comment, *supra* note 46, at 1646-47.

91. *In-Flight*, 466 F.2d at 227.

92. 597 F.2d 596 (7th Cir. 1979), *cert. denied*, 445 U.S. 407 (1980).

assert jurisdiction and found jurisdiction lacking.⁹³ Plaintiff, Lakeside Bridge & Steel Company, was a Wisconsin corporation with its principal place of business in Milwaukee. Defendant, Mountain State Construction Company, was a West Virginia corporation with no place of business or agent in Wisconsin.⁹⁴ Lakeside's agents solicited a contract for structural assemblies with Mountain State in defendant's West Virginia office.⁹⁵ Mountain State subsequently accepted the offer and sent a purchase order by mail to Lakeside in Wisconsin. Lakeside manufactured the goods at its Wisconsin plant and shipped them to the project site in Virginia.⁹⁶ Later, Mountain State withheld partial payment of the purchase price, alleging that the goods were defective.⁹⁷

Lakeside filed suit for breach in the United States District Court for the Eastern District of Wisconsin.⁹⁸ In reversing the district court's exercise of jurisdiction, the United States Court of Appeals for the Seventh Circuit echoed *Hanson's* view that assertions of jurisdiction must be based on the defendant's conduct and cautioned that *McGee* must be read in conjunction with *Hanson*.⁹⁹ In a statement contrary to the views expressed by the court in *In-Flight*, the *Lakeside* court declared: "Mountain State's belief, which we may assume existed, that Lakeside would choose to perform its contractual obligations in Wisconsin does not constitute an invocation of the benefits and protections of Wisconsin's laws" ¹⁰⁰

In sum, courts seeking to gain jurisdiction over nonresident defendants involved in contract disputes tend to overlook the legal significance of state boundaries.¹⁰¹ In favoring more expansive personal jurisdiction, such courts often emphasize that the defendant purposely entered into a contract with an individual in a foreign jurisdiction.¹⁰² These courts agree that a single contract is a sufficient basis for jurisdiction.¹⁰³

In contrast, courts that deny jurisdiction over nonresident defendants whose only contact with the forum is a single contract hinge their more restrictive approach on principles of federalism.¹⁰⁴ These courts feel that in the "best

93. *Id.* at 603; see Comment, *supra* note 46, at 1655.

94. *Lakeside*, 597 F.2d at 597.

95. *Id.* at 598.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* at 600.

100. *Id.* at 603.

101. Comment, *supra* note 46, at 1653; see also *Continental Am. Corp. v. Camera Controls Corp.*, 692 F.2d 1309, 1314 (10th Cir. 1982) (significance of state boundaries limited by modern communications); *Mississippi Interstate Express, Inc. v. Transpo, Inc.*, 681 F.2d 1003, 1008 (5th Cir. 1982) (jurisdiction appropriate because of interstate communications).

102. Comment, *supra* note 46, at 1653.

103. *E.g.*, *Pedi Bares, Inc. v. P & C Food Mkts., Inc.*, 567 F.2d 933, 937 (10th Cir. 1977) (defendant receives benefit and protections of forum state's laws when performance of contract takes place in forum); *In Flight*, 466 F.2d at 227 (defendant receives substantial benefit from contract). See generally Note, *supra* note 53, at 384-85 (deliberateness of defendants in entering contract).

104. See, *e.g.*, *Iowa Elec. Light & Power Co. v. Atlas Corp.*, 603 F.2d 1301 (8th Cir. 1979), *cert. denied*, 445 U.S. 911 (1980); *Lakeside*, 597 F.2d 596 (7th Cir. 1979), *cert. denied*, 445 U.S. 407 (1980); *Republic Int'l Corp. v. Amco Eng'rs, Inc.*, 516 F.2d 161, 167 (9th Cir. 1975) (*dictum*);

interests of the international and interstate systems, [a] state should not improperly impinge upon the interests of other states by trying in its courts a case with which it has no adequate relationship.'"¹⁰⁵ These courts "give state boundaries great significance . . . and focus primarily on the defendant's interests and not on the interests of the forum state."¹⁰⁶

Several points relating to the *Burger King* decision should be highlighted. First, Justice Brennan, who wrote the majority opinion upholding Florida's assertion of jurisdiction,¹⁰⁷ had dissented in the Burger Court's four other ventures into personal jurisdiction,¹⁰⁸ all of which had found no jurisdiction over nonresident defendants. Justice Brennan's dissents had emphasized state interests in adjudicating claims¹⁰⁹ as important to the determination whether assertions of jurisdiction were proper. In this sense, the Court's decision to uphold jurisdiction in *Burger King* can be seen as a victory for Justice Brennan's championing of state and plaintiff interests, as well as a reversal of the trend towards limiting state long-arm jurisdiction.

Burger King demonstrates a preference for the analysis applied in *McGee*¹¹⁰ over that applied in *Hanson*.¹¹¹ Justice Brennan first recounted the history of the Court's decisions concerning due process and personal jurisdiction.¹¹² After discussing *Hanson* and the purposeful availment standard, Brennan turned to other factors that might support a reasonable exercise of jurisdiction on a lesser showing of minimum contacts.¹¹³ He wrote:

Thus courts in "appropriate case[s]" 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

Whittaker Corp. v. United Aircraft Corp., 482 F.2d 1079 (1st Cir. 1973); *McQuay, Inc. v. Samuel Schlosberg, Inc.*, 321 F. Supp. 902 (D. Minn. 1971); see also Note, *supra* note 53, at 386-87 (courts denying jurisdiction pay close attention to defendant's direct contacts with forum).

105. *Lakeside*, 597 F.2d at 603 (quoting RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 24 comment b (1969)).

106. Comment, *supra* note 46, at 1658. In *Aaron Ferer & Sons v. Atlas Scrap Iron*, 558 F.2d 450, 454-55 (8th Cir. 1977), the court emphasized that none of the defendants had any physical contacts within the forum state. Although conceding that physical presence was not a prerequisite to jurisdiction, the court refused to recognize letters and telephone calls as a sufficient basis for jurisdiction.

107. *Burger King*, 105 S. Ct. at 2177. Chief Justice Burger and Justices Marshall, Blackmun, Rehnquist, and O'Connor joined in Justice Brennan's opinion. Justice Stevens filed a dissenting opinion in which Justice White joined. Justice Powell took no part in the consideration or decision of the case.

108. *World-Wide Volkswagen*, 444 U.S. at 299 (Brennan, J., dissenting) (Justice Brennan wrote a single dissenting opinion applicable both to the *World-Wide Volkswagen* and *Rush* decisions); *Rush*, 444 U.S. at 299 (Brennan, J., dissenting); *Kulko*, 436 U.S. at 101-02 (Brennan, Powell, & White, JJ., dissenting); *Shaffer*, 433 U.S. at 219, 222 (Brennan, J., concurring in part and dissenting in part).

109. See *World-Wide Volkswagen*, 444 U.S. at 299; *Rush*, 444 U.S. at 299; *Kulko*, 436 U.S. at 101-02; *Shaffer*, 433 U.S. at 222-28.

110. See *supra* notes 48-53 and accompanying text.

111. See *supra* notes 54-59 and accompanying text.

112. *Burger King*, 105 S. Ct. at 2181-85.

113. *Id.* at 2184.

states in furthering fundamental substantive policies.”¹¹⁴

In *Burger King* Brennan stressed that defendant purposely availed himself of the benefits of Florida law.¹¹⁵ Thus, it would appear that “appropriate cases” for the exercise of personal jurisdiction over nonresident defendants are those cases in which sufficient defendant-based contact with the forum has been established.

Nevertheless, the language recognizing plaintiff and forum interests as relevant to the initial minimum contacts analysis could have substantial influence in the state courts. As the most recent pronouncement on jurisdiction by the Court, *Burger King* could induce state courts to sidestep the defendant-forum focus of previous decisions in favor of plaintiff and state interests. With the sanction of the Supreme Court, state courts might return to a more expansive assertion of jurisdiction based on a showing of sufficient state interest.

It is equally possible that courts will regard Justice Brennan’s mention of state and plaintiff interests as mere dicta and continue to use the defendant-forum analysis of *Hanson*. Courts with a strong desire to adjudicate a claim, however, may use Justice Brennan’s language to assert jurisdiction based on state interests and a lesser showing of minimum contacts. The interpretation and application of Brennan’s opinion will rest largely on the attitudes of the various courts toward claims against nonresident defendants. Considering the trend toward expanding the reach of long-arm jurisdiction, however, it is probable that many courts will take advantage of Justice Brennan’s language to broaden jurisdiction.

The due process analysis that must be applied in every assertion of in personam jurisdiction is undertaken to ensure the rights of the defendant, who should be subject to jurisdiction only in a proper forum.¹¹⁶ When the *International Shoe* Court spoke of “fair play and substantial justice,”¹¹⁷ it did so in reference to rights necessarily guaranteed the defendant. In Supreme Court decisions prior to *Burger King*, state and plaintiff interests had limited constitutional relevance in the context of this due process analysis.¹¹⁸ Under *Burger King*, however, these interests appear to gain new constitutional significance in the determination of fairness and reasonableness.¹¹⁹ Facts relating to state and plaintiff interests should be constitutionally irrelevant for purposes of assessing whether a defendant has been afforded due process protections.¹²⁰

In addition, *Burger King*’s emphasis on the state’s interest in providing its own residents with a forum is of doubtful constitutional legitimacy.¹²¹ One

114. *Id.* (quoting *World-Wide Volkswagen*, 444 U.S. at 292).

115. *Id.* at 2186-87. Justice Brennan could have rested the decision solely on a determination that Rudzewicz, through his own action, had “purposefully avail[ed] [him]self” of the benefits and protections of Florida law. *Hanson*, 357 U.S. at 253.

116. *International Shoe*, 326 U.S. at 316.

117. *Id.*

118. Comment, *supra* note 42, at 161-62.

119. *Burger King*, 105 S. Ct. at 2184. By allowing factors other than the defendant’s actions to be considered in the initial due process minimum contacts analysis, these factors—plaintiff and forum interests—achieve heightened constitutional stature.

120. Comment, *supra* note 42, at 161-62.

121. *Id.* at 162.

commentator has noted, "The privileges and immunities clause of article IV prohibits state discrimination against the citizens of other states. Jurisdiction policies that favor residents arguably constitute just such forbidden discrimination."¹²²

Burger King will undoubtedly have far reaching effects on single contract jurisdictional cases. That a defendant did not truly anticipate being haled into court in the forum may be discounted by sufficient plaintiff and state interests.¹²³ The *Burger King* Court noted that prior negotiations and anticipated future consequences should be evaluated to determine the existence of minimum contacts. Apparently, this means that any substantial contract with a resident of a foreign jurisdiction may be asserted as sufficient conduct to render the defendant amenable to suit in the forum.¹²⁴ Thus, a state court wishing to exercise jurisdiction over a nonresident commercial defendant who has entered into a contract with a resident of the forum need find only a substantial connection between the contract and the forum.¹²⁵

The balancing of interests proposed in *Burger King* is an unsuitable test for asserting jurisdiction. A prime objective of the law, especially in the contract area, is to uphold reasonable expectations.¹²⁶ In attempting to further this goal, the due process clause seeks to impart "a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit."¹²⁷ As this language suggests, the Court has set forth certainty of result as a goal in commercial situations. It is precisely this kind of predictability that a flexible, balancing approach like that employed in *Burger King* frustrates.

The balancing approach offers little guidance to individuals seeking to avoid a distant state's jurisdiction.¹²⁸ Each decision is "too fact-bound for general application,"¹²⁹ and the weight accorded each balancing interest is too much in the discretion of the presiding judge. Allowed this leeway, state courts fre-

122. *Id.* (citing U.S. CONST. art. IV, § 2, cl. 1 ("The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.")); see, e.g., Simson, *Discrimination Against Nonresidents and the Privileges and Immunities Clause of Article IV*, 128 U. PA. L. REV. 379, 398-99 (1979).

123. *Burger King*, 105 S. Ct. at 2184 ("These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.").

124. *Id.* at 2186.

125. *Id.* It follows from the decision that the making of a substantial contract will have economic impact within the state. Justice Brennan argued that a defendant who reaches out beyond the defendant's domiciliary state has shown purposeful availment, which is required to satisfy due process requirements. *Id.* at 2186-87.

126. A. CORBIN, CORBIN ON CONTRACTS § 1, at 1-2 (1952).

127. *World-Wide Volkswagen*, 444 U.S. at 297.

128. Comment, *supra* note 42, at 160. See generally Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1687-89 (1976) (distinguishing two distinct legal theories: the use of general rules, producing more certain results, and the use of equitable principles which produce ad hoc decisions); Reese, *Choice of Law: Rules of Approach*, 57 CORNELL L. REV. 315, 315-17 (1972) (contrasting rules, which provide certainty and predictability, with "approach," which weighs competing factors).

129. Comment, *supra* note 42, at 160.

quently resolve borderline cases in favor of jurisdiction.¹³⁰ This leads to a steady and inappropriate expansion of jurisdiction.¹³¹ Further, because the *Burger King* approach considers circumstances beyond the anticipation or control of defendants, it is impossible for individuals to ascertain the jurisdictions in which they may be subject to suit.¹³²

Therefore, the "flexible" balancing of interests test adopted in *Burger King* distorts the function of due process analysis and complicates the task of predicting where and under what circumstances one may be sued. Faced with the Court's decision, commercial actors must choose one of two equally unattractive alternatives: (1) refrain from entering into contracts with out-of-state parties, or (2) enter the stream of interstate commerce with little control over where a suit may be maintained. If due process is to ensure that persons may avoid unwarranted litigation in foreign jurisdictions, "unpredictable and nonconstitutionally based balancing tests should be rejected."¹³³

How then can a due process analysis be structured to enhance the certainty of jurisdictional results? First, courts should not consider circumstances other than the defendant's conduct in deciding when assertion of jurisdiction over nonresident defendants is proper. Second, courts should focus on the defendant's conduct to determine whether elements of causation, notice, and relevance are satisfied.¹³⁴ The defendant must have caused an effect in the forum and have had notice that his or her actions would cause such an effect, and the effect must be related to the cause of action.¹³⁵ Through such analysis, defendants would remain masters of their own fates for purposes of avoiding out-of-state litigation, and states would retain wide latitude in applying long-arm jurisdiction.¹³⁶

In conclusion, the Supreme Court erred in *Burger King* by subjecting Rudzewicz to in personam jurisdiction in Florida. As the court of appeals maintained, the Michigan district office was the embodiment of *Burger King* as far as defendant was concerned.¹³⁷ It would be reasonable to require franchisors like *Burger King Corporation* to litigate contract disputes in the jurisdictions where their district offices are located.

Of greater concern than the result in *Burger King* is Justice Brennan's language, which appears to open the door to state assertions of jurisdiction based on interests of the forum and the plaintiff. The Supreme Court should return to its role as the neutral enforcer of the due process clause, which directly limits the authority of state courts.¹³⁸ By focusing solely on the conduct of the defendant

130. Louis, *supra* note 59, at 431; Comment, *supra* note 42, at 160.

131. Louis, *supra* note 59, at 430-32. But see Jay, *Minimum Contacts as a Unified Theory of Personal Jurisdiction: A Reappraisal*, 59 N.C.L. REV. 429, 457-59 (1981) (arguing that state courts have shown restraint in extending long-arm jurisdiction).

132. Comment, *supra* note 42, at 160.

133. *Id.* at 163.

134. *Id.* at 157.

135. *Id.* at 164-73.

136. *Id.* at 156-57.

137. *Burger King*, 724 F.2d at 1511.

138. Louis, *supra* note 59, at 423.

in determining when assertions of jurisdiction are consistent with due process, courts will further the desired goal of predictability.

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